

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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4 PEOPLE OF THE STATE OF ILLINOIS,

5 Complainant,

6 vs.

No. PCB 96-233

7 ESG WATTS, INC., an Iowa Corporation,

8 Respondent.

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13 Proceedings held on March 25th, 1997 at

14 9:30 a.m., at the Office of the Attorney General,

15 500 South Second Street, Springfield, Illinois,

16 before the Honorable Deborah L. Frank, Hearing

17 Officer.

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A P P E A R A N C E S

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1 I N D E X

2	WITNESS	PAGE NUMBER
3	Kenneth Liss	4, 28, 52, 53
4	Thomas A. Jones	56, 92, 107
5	Ronald E. Mehalic	111, 133, 148

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P R O C E E D I N G S

(March 25, 1997; 9:30 a.m.)

HEARING OFFICER FRANK: Good morning and welcome to day two of The People of the State of Illinois versus ESG Watts, Inc., PCB 96-233. This hearing is on the Viola Landfill, so that we keep that clear. It is a continuation of a prior day of hearing, so Ms. McBride, do you want to go ahead and begin?

MS. McBRIDE: Sure. The People would like to call Ken Liss.

HEARING OFFICER FRANK: Could you please swear in the witness.

(Whereupon the witness was sworn by the Notary Public.)

K E N N E T H W I L L I A M L I S S,
having been first duly sworn by the Notary Public,
saith as follows:

DIRECT EXAMINATION

BY MS. McBRIDE:

Q Ken, would you please state your name, and spell your last name for the record.

A Kenneth William Liss, L-I-S-S.

Q And, Ken, your current position with the

1 Illinois EPA is Groundwater Unit Manager, Permit
2 Section, Bureau of Land; is that correct?

3 A That's correct.

4 Q Okay. Did you provide an evidence
5 deposition for this proceeding on January 8, 1997?

6 A Yes, I did.

7 Q Have you prepared for today's hearing by
8 reviewing files at the Agency regarding the Viola
9 Landfill?

10 A Yes.

11 Q Can you tell us what files you looked at?

12 A The groundwater file and some information
13 from the FOS, which is our field file.

14 Q Okay. What documents were in the field
15 file that you looked at?

16 A The Agency sample result from Agency
17 sampling, a field inspection, and some chemical
18 analysis forms.

19 Q What documents in the groundwater file
20 did you take a look at?

21 A The chemical analysis forms.

22 Q According to the file, Ken, how many
23 sampling events have been conducted by the Illinois
24 EPA at the Viola Landfill since January 1st of

1 1996?

2 A Since January 1st? I think just one.

3 Q Okay.

4 A That's all I found.

5 Q Did you review that sampling report in
6 preparation for today's hearing?

7 A Yes.

8 Q I am now going to hand you what has been
9 previously marked as People's Exhibit Number 2.

10 MS. McBRIDE: For the record, the missing
11 portions of this exhibit are included with the
12 document I am now handing to Ken.

13 Q (By Ms. McBride) Would you please tell us
14 what that document is?

15 A It is the Agency's field office form
16 indicating that samples were taken with the lab
17 sample number correlating to a well number at the
18 Viola Landfill, the sample date, and collection of
19 the samples was 06-12-96 by Ron Mehalic.

20 Q And do the sampling reports in this
21 document include results for both organics and
22 inorganics?

23 A Let me make sure. I see they have
24 organics and I see inorganics, too.

1 Q Is this the document you were referring
2 to when asked at the evidence deposition if the
3 Agency has done its own sampling at the Viola
4 Landfill?

5 A Yes.

6 Q How do you know that this is the
7 document?

8 A It is the only one of its kind for 1996
9 and it is the only one of its kind for this
10 facility that I found in the file, and I recognize
11 it.

12 Q At the evidence deposition, do you
13 remember what you said as to when the sampling
14 event was conducted?

15 A I think I referred to it as August 1996
16 data.

17 Q Was that a correct date?

18 A No, it was not.

19 Q Okay. And the correct date is, if you
20 could repeat that?

21 A There are several dates. There is a date
22 collected of 06-12-96, and there are two dates
23 received, one of July 18th, 1996, and one of July
24 19th, 1996, that are stamped on here.

1 Q Who would have received it in accordance
2 with that date?

3 A The July 19th date, it says received
4 IEPA, DLPC Peoria. That would be the field office.

5 Q Okay. When did Springfield -- is there a
6 date on there for the Bureau of Land for
7 Springfield?

8 A That could be the July 18th date.

9 Q Is there another date on there for the
10 inorganics?

11 A Yes. Let me look. The inorganics are
12 compiled on the sheet in the back.

13 Q Okay.

14 A Those were received -- it appears to be
15 September, possibly 10th, of 1996.

16 Q Okay.

17 A Or 16th. I can't tell by the quality of
18 the copy, but they were also collected 06-12-96.

19 Q So the dates that the IEPA received the
20 inorganics was different from the date that it
21 received the organics, right?

22 A It appears to be so, yes.

23 Q Is there any chance that the organic
24 results could have been placed separately in the

1 files from the inorganic results?

2 A Yes.

3 Q Okay. Ken, can you please tell us why
4 you might have said August of 1996 at the evidence
5 deposition?

6 A I looked at my deposition, and I was also
7 taking about -- on page 12 of my deposition -- that
8 there was some sample results of August 16th or
9 August of 1996, and where I use those two dates, I
10 don't know. I must have just confused it with
11 these. I found nothing to show August of 1996.

12 Q Okay. After the deposition you were
13 given a chance to review the transcript. Did you
14 correct the date at that time?

15 A No.

16 Q Why didn't you correct the date?

17 A I didn't know I missed it.

18 MS. McBRIDE: Okay. Ms. Hearing Officer,
19 I would like to offer People's Exhibit Number 2 in
20 its amended form and move for its admission into
21 evidence.

22 HEARING OFFICER FRANK: Okay. Is there
23 any objection?

24 MR. WOODWARD: Well, yes. First of all,

1 he just testified there were some sample results of
2 August of 1996. He didn't identify who the
3 sample -- yes, he did. He just got through
4 testifying there was some sample results and that's
5 why he missed the date. If you will read back on
6 the record his answer to that question then --

7 HEARING OFFICER FRANK: I would prefer to
8 ask a clarifying question, because that is not what
9 I heard.

10 Mr. Liss, was your testimony that there
11 were August samplings at the Viola Landfill?

12 THE WITNESS: No. If that is the way it
13 came across, that's not what I meant. I just
14 noticed on page 12 and 13 of my deposition, since I
15 reviewed that again, that I had referred on both of
16 those pages to some August 1996 dates and I cannot
17 find anything that shows an August 1996 sampling
18 event.

19 HEARING OFFICER FRANK: Okay.

20 MR. WOODWARD: The second thing is that,
21 you know, my initial objection -- one of my initial
22 objections to this was that we were told at the
23 evidence deposition that the Agency had just gotten
24 this information, that Mr. Liss had just gotten

1 this information. It appears like he is testifying
2 that he got it at the latest in September of 1996,
3 and I had filed a request to produce and that
4 wasn't part of what was produced. Now he is
5 changing his testimony about when the Agency
6 received these documents.

7 HEARING OFFICER FRANK: Mr. Davis?

8 MR. DAVIS: May I suggest we go off the
9 record for a moment?

10 HEARING OFFICER FRANK: Yes.

11 (Discussion off the record.)

12 HEARING OFFICER FRANK: Let's go back on
13 the record.

14 If you wish to continue your objection,
15 you certainly are welcome to do that, and the other
16 side can respond.

17 MR. WOODWARD: Well, I am not going to
18 dispute that -- they made a record of what I
19 copied, so I withdraw my objection on that basis.
20 I must have misplaced it between the trip from
21 Springfield and Moline.

22 HEARING OFFICER FRANK: Okay. So for the
23 record, there is no longer an objection to People's
24 Exhibit 2, as amended, to include the organics?

1 MR. WOODWARD: It is the inorganics.

2 HEARING OFFICER FRANK: The inorganics.
3 Okay.

4 MR. WOODWARD: Right. There is no
5 objection to that.

6 HEARING OFFICER FRANK: All right. Then
7 People's Exhibit 2, as amended, is admitted into
8 evidence. And I am going to take the other
9 People's Exhibit 2 out of the record, so that we
10 don't get it confused. So that the exhibit that
11 will be in the Board's record will be the complete
12 exhibit.

13 (Whereupon said document was
14 admitted into evidence as
15 People's Exhibit 2 as of this
16 date.)

17 HEARING OFFICER FRANK: Okay. Please
18 continue.

19 Q (By Ms. McBride) Ken, what was the
20 Illinois EPA's purpose for conducting the sampling
21 event?

22 A The field sampling event?

23 Q Yes.

24 A To look at the organics, as far as I

1 know. That is in the report from the field office.

2 Q Okay. At the time of the Illinois EPA's
3 sampling event, did the Illinois EPA have any data
4 from Watts confirming the detection of organics?

5 A Not that I am aware of.

6 Q When did Watts provide data that
7 confirmed the detection of organics?

8 A After the Agency's sampling event. I
9 would rather look at the sample sheet to get the
10 date right. But I think they went out and sampled
11 sometime in July of 1996.

12 Q Okay. How was that data reported?

13 A On an Agency -- I think it is an LPC 160
14 chemical analysis form.

15 Q Okay. Is that the quarterly monitoring
16 report, Ken?

17 A Yes.

18 Q Okay. Do you remember what the date of
19 that sampling was?

20 A From the Watts sampling?

21 Q Right.

22 A I think it was July of 1996.

23 Q Okay. Do you know when that report was
24 received by the Bureau of Land?

1 A I can't recall.

2 Q Is there anything that would help refresh
3 your recollection of that date?

4 A Yes, if I saw the form.

5 Q Okay. Ken, I am now going to hand you
6 that second quarter of 1996 groundwater monitoring
7 form from the Viola Landfill.

8 MS. McBRIDE: Larry, you have got that.

9 MR. WOODWARD: Okay.

10 Q (By Ms. McBride) Could you take a look at
11 it. Does that refresh your recollection as to what
12 the date is?

13 A Yes.

14 Q Okay. If I can take it back a minute.

15 MR. WOODWARD: Was that 17?

16 HEARING OFFICER FRANK: Exhibit 17?

17 MS. McBRIDE: It was Exhibit 20.

18 MR. WOODWARD: All right.

19 Q (By Ms. McBride) When did the Illinois
20 EPA receive that document?

21 A You took it back. I didn't get to look
22 at the date. There are two dates. One says
23 received, IEPA Permit Section, November 22nd, 1996,
24 and it went to the Peoria regional office December

1 4th, 1996.

2 Q Ken, I am now going to hand you a group
3 exhibit, which is all four of these reports, 17,
4 18, 19 and 20. Would you please take a look and
5 tell us what they are?

6 A Okay.

7 Q What I would like you to do is tell us
8 the exhibit number, what quarter the report is for,
9 and the sampling and the due date.

10 A Okay. Beginning with People's Exhibit
11 17, it is our chemical analysis reporting form, LPC
12 160. Did you want the date collected?

13 Q The sampling date and the due date, yes.

14 A Okay. The date is 05-31-95, and the
15 report due date is 07-15-95.

16 Q Which quarter would that be for?

17 A It should be for, I think, the second
18 quarter of 1995 sampling event. Go on?

19 Q Yes. Tell us what those exhibits are.

20 A Exhibit 18, date collected, 08-25-95,
21 report due date, 10-15-95.

22 Q Which quarter would that be for?

23 A That would be for the third quarter.

24 Q Of which year?

1 A 1995.

2 Q Okay.

3 A People's Exhibit 19, date collected,
4 03-08-96, report due date, 04-15-96.

5 Q And which quarter?

6 A That would be for the first quarter of
7 1996. And Exhibit 20, date collected, 07-29-96,
8 due date, 07-15-96.

9 Q Which quarter?

10 A That would be the second quarter of 1996.

11 Q Okay. The annual organic analysis
12 appears in which of these exhibits?

13 A According to their permit it is the
14 second quarter of each annual, the annual event.

15 Q So that would be Exhibit 17 and Exhibit
16 20; is that correct?

17 A Yes, Exhibit 20 -- yes.

18 Q Okay. And have you had a chance to
19 review these reports?

20 A Yes, I have.

21 Q Ken, are the results in the quarterly
22 reports provided by Watts consistent with the
23 Illinois EPA's sample results?

24 A In what way?

1 Q Did they detect organics over the Part
2 620 levels?

3 A Yes, they did.

4 Q Okay. So there was a detection of
5 organics in all three of the organics reports; is
6 that correct?

7 A That's correct.

8 Q Okay. And such a detection is something
9 that might trigger a significant change in the
10 groundwater quality; is that correct?

11 A Yes.

12 Q And as for inorganics, there were
13 detections of inorganics over the Part 620 water
14 quality levels?

15 A Yes.

16 Q And, again, those detections were high
17 enough that they might be considered a significant
18 change in the groundwater quality; is that correct?

19 A Yes, it appears that they would be.

20 MS. McBRIDE: Okay. Ms. Hearing Officer,
21 I offer People's Exhibits 17, 18, 19 and 20 and
22 move for their admission into evidence.

23 HEARING OFFICER FRANK: Is there any
24 objection?

1 MR. WOODWARD: No objection.

2 HEARING OFFICER FRANK: Okay. Then 17
3 through 20 are admitted.

4 (Whereupon said documents were
5 admitted into evidence as
6 People's Exhibits 17 through 20
7 as of this date.)

8 Q (By Ms. McBride) Ken, we have heard
9 testimony in the course of this hearing that the
10 high levels of inorganics detected in all of the
11 sampling may be at least partially due to
12 background levels caused by mining activity in the
13 vicinity of the landfill.

14 ESG Watts has admitted the 1995 quarterly
15 monitoring report indicated a significant change in
16 the groundwater quality. Watts has also admitted
17 it did not do the required assessment monitoring,
18 nor did it submit the required assessment report.

19 Is the analysis of background levels
20 something that might have been done under an
21 assessment monitoring plan, if such a plan had been
22 developed and executed by Watts?

23 A Yes, that's one way to review the
24 background.

1 Q Okay. According to its 1991 groundwater
2 permit, when was Watts supposed to start monitoring
3 groundwater and start submitting quarterly reports?

4 A That would be the current permit issued
5 in December of 1991. Without having it in front of
6 me, they were supposed to start the second quarter
7 of 1992 with the installation of some new wells.
8 It was a new program we had issued.

9 Q They were supposed to start monitoring
10 and submitting reports?

11 A They were supposed to start monitoring
12 for organics in that event, inorganics and develop
13 their background and submit those reports.

14 Q So they should have had an organics
15 report submitted in the second quarter of 1992?

16 A I think it would have been the July 15th,
17 1992 reporting event.

18 Q Okay. Watts has admitted it did not
19 submit a quarterly report until the second quarter
20 of 1995, which would have been July of 1995.

21 Is there a possibility Watts would have
22 detected the contaminants at these high levels in
23 1992 if they had started monitoring when they were
24 supposed to?

1 MR. WOODWARD: Objection. Speculation.
2 He doesn't know what the quality of the groundwater
3 was in 1992.

4 Q (By Ms. McBride) Ken, what was the
5 purpose of the groundwater monitoring permit issued
6 in 1991?

7 A We added the organics based on the
8 information that we had on the landfill. We just
9 suspected that there was a groundwater problem.

10 Q Ken, if they would have detected the
11 problem in 1992 in accord with special conditions 5
12 and 6 of Watts groundwater permit, when should
13 Watts have submitted an analysis comparing
14 background levels?

15 MR. WOODWARD: Again, objection. That is
16 mere speculation. It would have to determine -- he
17 would have to know when the problem arose.

18 HEARING OFFICER FRANK: Can you restate
19 your question?

20 MS. McBRIDE: First of all, the question
21 goes to the diligence shown here. Therefore, I do
22 believe that it is not mere speculation. It is --
23 I am asking Ken if they have -- if they have
24 complied with their permit and --

1 MR. WOODWARD: We admitted that we didn't
2 submit the report until the second quarter of 1995,
3 so that's not an issue of whether we complied or
4 not. We agreed that we should have submitted the
5 reports in the second quarter of 1992, started in
6 1992. So that's not the issue.

7 I mean, she is asking him to identify
8 when the problem started so that -- because we
9 don't have to start doing assessments until the
10 problem arises, and that's mere speculation.
11 Nobody knows when the problem arose.

12 HEARING OFFICER FRANK: Ms. McBride?

13 (Mr. Davis and Ms. McBride
14 confer briefly.)

15 Q (By Ms. McBride) Ken, according to the
16 permit, just according to the permit, it required
17 them to sample for organics. If organics had been
18 detected in 1992, would an analysis have been
19 required in that time frame, sometime within 1992?

20 A According to the conditions of the
21 permit, if they detected organics they would have
22 to evaluate that for significant change, which
23 would put them into an assessment or a resampling,
24 some type of response.

1 Q When would that assessment have been
2 expected of them from the Agency?

3 A I think it is 90 days of discovery.

4 Q Okay. Ken, other than the expert
5 testimony that has been offered for this hearing,
6 has Watts submitted an assessment analysis of
7 background levels to the Illinois EPA, to your
8 knowledge?

9 A No.

10 Q Okay. Referring again to the quarterly
11 reports entered as People's Exhibits 17 through 20,
12 and the Illinois EPA's sampling reports, do these
13 documents indicate sample results that show
14 exceedences of Part 620 groundwater quality
15 standards?

16 A Yes, they do.

17 Q In that the samples show exceedences of
18 Part 620 standards, has Watts caused, threatened,
19 or allowed the discharge of contaminants into the
20 environment so as to cause or tend to cause water
21 pollution, as water pollution is defined in the
22 Environmental Protection Act?

23 MR. WOODWARD: I would object. There are
24 several different things there; caused,

1 threatened. Which is it? Can she separate the
2 questions?

3 MS. McBRIDE: I am asking Ken in the
4 language of the statute if there has been a
5 violation of the statute.

6 MR. WOODWARD: We have already admitted
7 that there was a violation of the statute, but we
8 are talking about -- the issue for this hearing is
9 really what is the appropriate penalty, and we also
10 talked about that we have a problem with the --
11 they charged the same things in two separate
12 counts, one of which the Board has already ruled
13 upon.

14 HEARING OFFICER FRANK: Right. But we
15 have -- I mean, we have talked about this at the
16 last hearing, and the Board did request that the
17 Attorney General's office prove that count again,
18 even though you are saying that it has already been
19 proven once. I understand your frustration with
20 it, but the Board's order is very clear that it is
21 requesting the proof again.

22 MR. WOODWARD: I would still renew my
23 objection, because I think it is important that if
24 part of this is to go towards what is the

1 appropriate penalty, is there a difference between
2 threatening harm to the environment and actually
3 causing harm to the environment. She has combined
4 several different questions into one question. I
5 don't care if that is what the statute says. The
6 issue is what part of the statute did we violate.

7 HEARING OFFICER FRANK: Okay. I am going
8 to sustain your objection and ask this question.

9 Ken, did they violate the statute?

10 THE WITNESS: Yes.

11 HEARING OFFICER FRANK: Okay.

12 Q (By Ms. McBride) How did these
13 contaminants violate the statute? How did they
14 cause water pollution?

15 MR. WOODWARD: That's a leading
16 question. She is saying they caused water
17 pollution.

18 MS. McBRIDE: Okay. Can you please --

19 Q (By Ms. McBride) How did they violate the
20 statute, Ken?

21 A The groundwater monitoring results
22 indicate that the landfill is leaking leachate
23 constituents to the groundwater, which would be a
24 violation of 12A of the Act.

1 Q If the contaminants were detected in
2 1992, would they have been violating the statute in
3 1992?

4 MR. WOODWARD: I think that goes to the
5 same issue. She is trying to get him to speculate
6 what the results would have been in 1992.

7 MS. McBRIDE: I am asking him if they
8 were detected in 1992, when Watts was supposed to
9 be monitoring, would they be causing water
10 pollution in 1992.

11 HEARING OFFICER FRANK: I am going to
12 overrule. Go ahead.

13 THE WITNESS: The levels of -- we are
14 still talking about the three organic sampling
15 results in that context, right?

16 MS. McBRIDE: Right.

17 THE WITNESS: At those levels, if they
18 have ever been detected at those levels, they are
19 in violation.

20 Q (By Ms. McBride) Okay. With regard to
21 inorganics, the exceedences that we see with regard
22 to inorganics, are they in violation of the
23 statute?

24 A Yes.

1 Q If they were detected in 1992, would they
2 have been in violation of the statute?

3 A Yes.

4 Q Okay. Ken, Dr. Patterson, Watts' expert,
5 described a process by which the organics and the
6 inorganics, for that matter, may dissipate into the
7 environment, particularly in concrete in this case
8 and, thereby, dilute their effect on the
9 environment, or so was his theory.

10 Would you please give us an opinion on
11 that theory?

12 A First of all, we don't condone dilution
13 as an acceptable response to an impact to the
14 environment. That's what you are describing to me,
15 allowing the release to go unmitigated and
16 dissipate into the environment. And there has been
17 no evaluation to show that, such as a risk
18 assessment, and that even if we would allow such a
19 process, that it would not be damaging to the
20 environment.

21 Q And this isn't a single release being
22 extended to the environment, is it? I mean, what
23 we are talking about here is an ongoing release.
24 How does that hold up in this theory?

1 A In the case of landfills, if it is
2 leaking, we call it a continuous source. Any
3 attenuation capacity, be it through inorganic or
4 organic constituents, that might bind or hold these
5 compounds so that they will not spread any further
6 needs to be evaluated. First of all, it is in
7 varying degrees. It depends upon the soil type,
8 the saturation of the chemicals, etcetera. With
9 the continuous source, you use up those sites
10 quickly, and then there is no more attenuation
11 capacity.

12 Q So there is no more --

13 A There is a limit. There is a limit of
14 the capacity for the soil to ab or adsorb --

15 Q Okay.

16 A -- these compounds.

17 MS. McBRIDE: Ms. Hearing Officer, I
18 offer People's Exhibit Number 1, Ken Liss' evidence
19 deposition, at this time and move for its admission
20 into evidence.

21 HEARING OFFICER FRANK: All right. Are
22 there any objections?

23 MR. WOODWARD: I would still like to do
24 some voir dire. He has testified to some things

1 that apparently need to be clarified before it can
2 be admitted.

3 HEARING OFFICER FRANK: Okay. Why don't
4 you go ahead.

5 Are you done with this witness?

6 MS. McBRIDE: Yes.

7 HEARING OFFICER FRANK: Okay. Why don't
8 you go ahead then and do your cross-examination and
9 I will ask you at the end of that.

10 MR. WOODWARD: Okay.

11 CROSS EXAMINATION

12 BY MR. WOODWARD:

13 Q Mr. Liss, I think you testified on direct
14 examination that Exhibit 20, filed November 22,
15 1996, was the first time Watts provided data
16 detecting organics?

17 MS. McBRIDE: I will object to that
18 question. We used the term "verify" when we
19 introduced that exhibit.

20 MR. WOODWARD: Why don't we read it
21 back. I don't think that's true.

22 HEARING OFFICER FRANK: Can you find the
23 question where Ms. McBride asked Mr. Liss about --

24 MS. McBRIDE: It was either resample or

1 verify, one of the two.

2 HEARING OFFICER FRANK: Where Ms. McBride
3 asked about Exhibit 17.

4 MR. WOODWARD: It was Exhibit 20,
5 specifically. It was the first one introduced.

6 HEARING OFFICER FRANK: Let's go off the
7 record.

8 (Whereupon a short recess was
9 taken.)

10 HEARING OFFICER FRANK: Back on the
11 record.

12 (Whereupon the requested
13 portion of the record was read
14 back by the Reporter.)

15 MR. WOODWARD: So are you sustaining her
16 objection or not?

17 HEARING OFFICER FRANK: Your question was
18 that --

19 MR. WOODWARD: I asked him, if I
20 understood his direct -- I believe, if I understood
21 his direct testimony, was that Exhibit 20, the
22 November 22, 1996 was the first time Watts provided
23 data detecting organics. I believe that is what I
24 asked.

1 MS. McBRIDE: Do you still have an
2 objection?

3 MS. McBRIDE: Yes. The objection was
4 that what we stated was we asked him when did Watts
5 confirm the detection of organics.

6 HEARING OFFICER FRANK: It is my
7 understanding that -- maybe I am mishearing, but I
8 think he is asking the same thing.

9 If I can restate it, you are asking if
10 Exhibit 20 was the first time that Watts provided
11 data that confirmed that there was organics?

12 MR. WOODWARD: I don't want to use the
13 word confirm. I want to say -- I thought he was
14 saying that that was the first time they reported
15 data showing organics. Maybe that's what we need
16 to do, is clarify what he meant by his answer to
17 that question.

18 I will just restate my question.

19 HEARING OFFICER FRANK: Okay. That's
20 fine.

21 Q (By Mr. Woodward) In response to a
22 question in direct testimony that Watts provided
23 data on November 22, 1996, that confirmed the
24 detection of organics, what did you mean by your

1 response that, yes, November 22 was the first time
2 they confirmed detections of organics?

3 A I am looking for the November 22 date.

4 Q It is Exhibit 20.

5 A Okay. That would be the receive date,
6 November 22. What I was talking about was that was
7 the first time Watts had taken any organic sampling
8 to confirm the Agency's sampling event by the field
9 person.

10 Q Had they reported prior to that organic
11 detections?

12 A They reported prior to that, which is
13 Exhibit 17.

14 Q Okay. What was the date of that?

15 A The collect date was 05-31-95, and the
16 Agency received date was July 14th, 1995.

17 Q So you were not implying, in your direct
18 testimony, were you, that Watts went out because
19 the Agency came out in June of 1996 and tested for
20 organics, they first tested for organics in 1996?

21 A I wasn't implying anything. I was
22 answering the question, that that was the first
23 organic sampling Watts had done since the Agency
24 took organic sampling.

1 Q Okay. Now, I believe you testified that
2 organics were -- if Watts had performed sampling or
3 I guess it is called monitoring, also, isn't it,
4 monitoring in 1992 for organics, and they had
5 detected organics at the same level that they
6 reported in 1995 and 1996, that that would be a
7 violation; is that correct?

8 A That's correct.

9 Q Now, there are organic levels that could
10 be detected that would not constitute a violation;
11 is that correct?

12 A Yes.

13 Q Okay. Now, you also testified, I
14 believe, in response to the same question about
15 inorganics, that if we had monitored in 1992 and
16 detected inorganics at the same level that we
17 detected in 1995 and 1996, that that would also
18 constitute a violation; is that correct?

19 A Yes.

20 Q Now, isn't it impossible to determine,
21 just from the level of inorganics, that there is a
22 violation? Isn't that one of the purposes of the
23 assessment, is to determine what is the background
24 so that if it is naturally occurring inorganics

1 that that would not constitute a violation?

2 A That is one of the purposes of assessment
3 but, no, you can do it without going into an
4 assessment.

5 Q Isn't it true that you can't say that
6 just because you have a level of inorganics, that
7 that is a violation of water quality if that level
8 of inorganic material is from a naturally occurring
9 source?

10 A I am not sure what you are saying. It
11 doesn't seem to be correct. If you look at the
12 permit conditions it refers to levels that are
13 written in the I think it is the appendix or the
14 attachment to the permit, where it outlines three
15 criteria for determining whether you should go into
16 assessment to investigate an impact.

17 Q Okay. No question that an assessment was
18 required. But the issue was did that violate the
19 statute. Can you determine, just from a level of
20 inorganics being present, that that is a harm to or
21 a threatened harm to or pollution of the natural
22 resources of the State of Illinois?

23 A I would say it is.

24 Q Even if it is from naturally occurring

1 sources?

2 A There has been no demonstration that it
3 was from naturally occurring sources.

4 Q But it is -- if there is a determination
5 in the assessment, it would not be a violation; is
6 that correct?

7 A Yes.

8 Q Thank you. In your deposition you talked
9 about that you reviewed two groundwater monitoring
10 reports, and I believe you had prepared for that
11 evidence deposition; is that correct?

12 A I am not -- I don't recall if I said --
13 if I limited it to two events but, yes, I did
14 prepare.

15 Q Okay. On page 11 of your deposition in
16 response to the question:

17 "Question: When was the first quarterly
18 report submitted by Watts pursuant to this permit?

19 Answer: I found information for August
20 of 1995."

21 Is that a correct statement?

22 A Could I see it?

23 Q It is on page 11.

24 A Yes, that's what I said in my deposition

1 on page 11.

2 Q Okay. And then on page 12, line 13, the
3 question is:

4 "Question: Okay. Since that report,
5 the second quarter of 1995 report, have other
6 quarterly reports been submitted by Watts?

7 Answer: I found a quarterly report of
8 August of 1996 sampling events, yes, sampling of
9 the wells.

10 Question: Are those the only two
11 quarterly reports that have been submitted pursuant
12 to this groundwater permit?

13 Answer: That's all I could find, yes."

14 Now, is that a correct statement of what
15 your deposition --

16 A Yes.

17 Q How many reports have you found that
18 Watts submitted?

19 A I see four in front of me here.

20 Q I am going to hand you what is marked as
21 Respondent's Group Exhibit J.

22 HEARING OFFICER FRANK: I have it as I.

23 MR. WOODWARD: Solid Waste Management
24 Fee. Is that I?

1 HEARING OFFICER FRANK: That's what I
2 have on my list.

3 MR. WOODWARD: This is J, the top of the
4 next page.

5 HEARING OFFICER FRANK: Oh, okay.

6 Q (By Mr. Woodward) Are any of those the
7 same reports that you reviewed?

8 A Do you want me to go through all of these
9 with the -- beginning with People's Exhibit 17?

10 Q Yes.

11 A Because I notice that the forms that you
12 handed me don't have the Agency's received stamp.

13 Q Are they the same reports, though?

14 A All right. I will begin with the one on
15 the top.

16 HEARING OFFICER FRANK: Can we go off the
17 record for a moment.

18 (Discussion off the record.)

19 HEARING OFFICER FRANK: All right. Back
20 on the record.

21 Q (By Mr. Woodward) Okay. I believe there
22 are eight reports there; is that correct?

23 A There are eight packet of reports,
24 groundwater forms.

1 Q Of those eight, what ones had you
2 previously reviewed?

3 HEARING OFFICER FRANK: I only have
4 seven.

5 MR. WOODWARD: I added one earlier
6 today. You should have --

7 HEARING OFFICER FRANK: Oh, I have one
8 that is stapled to the other one.

9 Okay. Please continue. I have all
10 eight.

11 THE WITNESS: Which ones did I previously
12 review?

13 Q (By Mr. Woodward) Yes, prior to today's
14 hearing?

15 A Prior to today's hearing. That would be
16 the first one, which is 05-31-95.

17 Q Okay.

18 A Exhibit Number 18, which you have here,
19 08-25-95. And 03-08-96, which is also Exhibit 19.
20 And 07-29-96, which is also Exhibit 20.

21 Q And that leaves what dates that you have
22 failed -- that you have not reviewed?

23 A I have four packets of groundwater forms,
24 and I will read the dates. They do not have a

1 received date from the Agency stamped on them. The
2 first one says collected 11-22-95. The second
3 packet says 11-22-96. The third has a date
4 collected of 12-13-96, and the fourth is a date
5 collected of 02-13-97.

6 Q Okay. And, obviously, you could not have
7 reviewed the 02-13-97 for the deposition because
8 that was done prior to that date, correct?

9 A Correct.

10 Q All the others are dated prior to your
11 deposition; is that correct? The date collected is
12 before your deposition date?

13 A Yes.

14 Q If Watts, if ESG Watts had submitted
15 those four that you have not reviewed, what file
16 would they be in in the Agency?

17 A They would be in the groundwater file.

18 Q No other file possibility?

19 A There is always a possibility that they
20 are misfiled.

21 Q On page 29 of your deposition, line 4
22 through 8, you talk about thousands of milligrams
23 per liter. Could you clarify? Is that a correct
24 statement, thousands of milligrams?

1 A By looking at the forms, I could clarify
2 that.

3 Q Okay. I believe you specifically talked
4 about iron and manganese.

5 A Okay. There is a manganese on 05-31-85,
6 Exhibit 17.

7 HEARING OFFICER FRANK: 1985?

8 THE WITNESS: Yes, date collected,
9 05-31-85.

10 MR. DAVIS: 1995.

11 THE WITNESS: 1995. Monitor point number
12 105, page two of three, 3,400 micrograms per liter.

13 Q (By Mr. Woodward) Okay. Is it micrograms
14 then instead of milligrams?

15 A Correct.

16 Q So when you failed to correct milligrams
17 per liter, when you were given the opportunity,
18 that was just overlooked?

19 A Yes. I am still looking through the
20 forms. I gave you one example. Yes, that should
21 have been tens of milligrams per liter, a range in
22 the tens.

23 Q So your evidence deposition just
24 multiplies everything by 100?

1 MS. McBRIDE: I am going to object to
2 that.

3 HEARING OFFICER FRANK: Sustained.

4 THE WITNESS: In that line --

5 Q (By Mr. Woodward) In iron and manganese?

6 A Yes, for iron and manganese that
7 statement should read tens of milligrams per liter.

8 Q I want to make sure I understand.
9 Milligrams and micrograms -- a microgram is one
10 tenth of a milligram; is that correct?

11 A Uh-huh.

12 Q Okay.

13 MR. DAVIS: No.

14 THE WITNESS: 100.

15 MR. WOODWARD: One one hundredth. I am
16 sorry.

17 MR. DAVIS: It is 1,000.

18 THE WITNESS: 1,000. Sorry. It is
19 1000.

20 Q (By Mr. Woodward) One one thousandth?

21 A One microgram would equal -- 1,000
22 micrograms is one milligram.

23 Q Thank you. That clarifies it. Are you
24 familiar with the hydrology of the Viola Site?

1 A I am familiar with the groundwater flow
2 direction.

3 Q And what direction is that?

4 A From memory, I think it was roughly
5 north, northeast. I would have to look at a map.

6 MR. WOODWARD: Are you submitting this?

7 HEARING OFFICER FRANK: I have the
8 original full size of it. Are we talking about
9 this one?

10 MR. WOODWARD: I think this is People's
11 Exhibit 14, the contour --

12 MS. McBRIDE: That was 4.

13 MR. WOODWARD: Exhibit 4?

14 HEARING OFFICER FRANK: Yes, 4.

15 MR. WOODWARD: Yes, you are right. No.
16 I think it is 14.

17 MS. McBRIDE: Exhibit 14 was in accord
18 with the plan. Exhibit 4 was sheet number one of
19 the final closure plan, which had the final
20 closures.

21 MR. WOODWARD: You are right.

22 Q (By Mr. Woodward) Okay. I am handing you
23 what is identical to People's Exhibit Number 4,
24 although it is blown up. What direction is the

1 groundwater flow?

2 A If I recall, as it was reported by Watts,
3 it would have been northeast.

4 Q Which is generally towards Skunk Creek;
5 is that correct?

6 A That's correct.

7 Q Okay. And where are wells 103R and 104?

8 A Well 103 is on the west side of the
9 landfill, about -- situated, it looks like, in the
10 middle of the property boundary that runs north and
11 south. 104 is in the southwest corner of the
12 property upgradient.

13 Q Both of those are upgradient wells; is
14 that correct?

15 A I think only 104 is listed as upgradient
16 in the permit. I would have to look at the permit.

17 Q Are we talking about the February 8, 1995
18 permit or the December 8, 1991 permit?

19 A I am talking about the December of 1991
20 issued permit.

21 MS. McBRIDE: This is People's Exhibit 3,
22 which is the permit.

23 THE WITNESS: This one does not list the
24 wells. It is the December of 1991.

1 MR. WOODWARD: This one? I am happening
2 him People's Exhibit Number 1.

3 HEARING OFFICER FRANK: Exhibit 1A?

4 MR. WOODWARD: Exhibit 1A. Excuse me.

5 MS. McBRIDE: Here is 1A.

6 THE WITNESS: The permit does indicate
7 that G103R and G104 represent upgradient monitoring
8 points, as permitted.

9 Q (By Mr. Woodward) And the groundwater
10 monitoring chemical -- I guess they are called
11 chemical analysis forms -- that you did review,
12 does it detect organics or inorganics at either
13 G103R or at G104?

14 A I would have to look. I remember it did
15 detect inorganics and some organics in 104. I
16 can't recall 103R.

17 Q Does leachate travel upgradient?

18 A Yes, it can.

19 Q And how does it do that?

20 A Dispersion.

21 Q What does that mean?

22 A The leachate had -- the amount of
23 leachate in the landfill could be seeping through
24 the landfill and could cause its own chemical

1 gradient basically and move as it spreads its
2 dispersion.

3 Q Would you expect that with this
4 hydrology?

5 A It is always a concern because wells are
6 so close to the landfill. The facility tries to
7 use the maximum amount of property to place waste.

8 Q I understand a lot of things can be of a
9 concern. But my question was would you expect it
10 with this hydrology?

11 A Yes. I would say that you could
12 reasonably expect something like that to happen,
13 constituents of the leachate being found in
14 upgradient wells.

15 Q Now, as another alternative explanation
16 that the -- any organics that would be detected in
17 G104 and G103R would be because they have --
18 landfill gases have condensed into the groundwater?

19 A That's a possibility, yes.

20 Q Would a gas collection system resolve the
21 problem, if it is a result of landfill gases -- I
22 am not sure I am using the right term -- condensing
23 into the groundwater?

24 A Not necessarily on its own. You still

1 have the contaminants in the groundwater.

2 Q But would the contaminants get into the
3 groundwater if the cause of it is because the
4 landfill gas is condensing into the groundwater and
5 you stop that process by collecting the landfill
6 gas?

7 A That is a possibility, that gas removal
8 could reduce the impact.

9 Q Okay. Would you look at the 02-97
10 collection date? It is not in the People's
11 Exhibits. It is in the group I handed you.

12 A It would be date collected 02-13-97?

13 Q Correct. Could you just make a brief
14 familiarization of that?

15 A Okay. I see monitoring well forms,
16 chemical results submitted for wells G103, G104,
17 G105, G106, G107, G108, each consisting of three
18 pages, and then a chain of custody form.

19 Q All right. Are the results reported in
20 that -- do they appear to be consistent with
21 results that you have reviewed prior to today's
22 hearing?

23 A I am just going by memory. I just saw
24 these. It looks like G103 -- if I can walk through

1 the wells it might be easier. There is no
2 information, chemical data reported for that well
3 on these forms. There isn't any information
4 reported for G104. G105 shows high iron,
5 manganese, possibly sulfate, and TOX, which is
6 total organic halogens. No organics submitted for
7 that well, no organic results. G106, it is not as
8 high. It doesn't appear to be as high as G105 for
9 iron. I am just comparing them to each other,
10 really.

11 Q Which well now?

12 A G106. It is not as high in iron as G105,
13 but it is higher in manganese and sulfate, and it
14 is not as high in organic indicator, TOX. No
15 specified organic compounds were reported.

16 Q This would be the first quarter of 1997;
17 is that correct?

18 A That's correct.

19 Q Okay. Now, organics aren't required
20 except on an annual basis; is that correct?

21 A That's correct.

22 Q Okay. Now, are the inorganics that are
23 reflected in that, are they consistent with the
24 information that you have reviewed prior to today's

1 hearing?

2 A They appear to be.

3 Q Okay.

4 A With the exception of G103 and G104,
5 there are no values reported.

6 Q Had you reviewed the data that you had
7 received with data from the wells that were in
8 place prior to 1992?

9 A I don't recall that I looked at or found
10 the old data. I recall the old data, the data that
11 was collected prior to issuing the 1991 permit.

12 Q Okay. If the Agency had that, where
13 would that be?

14 A If the information is not in one of the
15 files, it might be archived.

16 Q Would it possibly be in the permit
17 application?

18 A It is possible.

19 Q Okay. Would that information be helpful
20 in determining whether you had naturally occurring
21 sources for iron, manganese and sulfate?

22 A Yes. It depends.

23 Q Okay. What would it depend on?

24 A It depends if -- we issued a permit with

1 new wells, so it depends if the wells were located
2 in the same unit as the wells that we are looking
3 at here today.

4 Q Okay. When you say the same unit, does
5 that mean like within 15 feet of each other or
6 something?

7 A No, within the same hydrogeologic units.
8 Vertically, all in the same zone. If the sampling
9 methods were the same, the analytical methods that
10 the laboratory uses, if those were the same.
11 Sometimes those change when we issue a new permit.

12 Q Okay. Can you tell me why there would
13 not be data in the 02-97, the 02-13-97 report for
14 those wells that reported no data?

15 A For G103 it is indicated that the well
16 was dry. For well G104 there is also an indication
17 in the collect or comment box that the well was
18 dry.

19 Q Does that have any significance?

20 A It means it was dry. Apparently, there
21 was not enough water in the well to get a sample.

22 Q Okay. Does that mean that there is not
23 water traveling from the landfill to that location?

24 A No, not necessarily. It could mean a

1 fluctuating water table. It could be a damaged
2 well. I am speculating here. I don't know. There
3 is no information to say why it is dry.

4 Q Okay. Would you agree that if the water
5 table for Skunk Creek is lower than the water table
6 on either side of Skunk Creek, say, at the G105
7 location, that Skunk Creek would act as a water
8 barrier to any -- I think it is called a hydraulic
9 barrier -- to the traveling of any pollutants?

10 A I would like to clarify what you are
11 asking. You are saying if Skunk Creek was higher
12 in elevation?

13 Q No, lower.

14 A Lower.

15 Q Yes, lower.

16 A It would act as a --

17 Q As a water barrier. If the water table
18 at Skunk Creek is lower than the water table on
19 either side of Skunk Creek, would Skunk Creek act
20 as a hydraulic barrier?

21 A What is your definition of a hydraulic
22 barrier?

23 Q I don't know. You used it, I believe, in
24 your deposition, so whatever definition you applied

1 to it.

2 A Where was that? I would like to review
3 the context of how I said that. It just has
4 different meanings.

5 Q I am asking you to refer to the bottom of
6 page 39, starting at line 22, and then continuing
7 to the top of page 40.

8 THE WITNESS: Should I read this out loud
9 for the record?

10 HEARING OFFICER FRANK: No. That's
11 okay.

12 THE WITNESS: I was not talking about the
13 creek as a hydraulic barrier.

14 Q (By Mr. Woodward) No, I didn't say you
15 were. You used the term, so I am just asking you
16 to -- you used the same -- your understanding of
17 what a hydraulic barrier is?

18 A All right. Then if you could repeat the
19 question, I could answer.

20 MR. WOODWARD: Could you read it back?

21 HEARING OFFICER FRANK: I believe the
22 question was if the water levels were higher on
23 either side of the creek, would the creek act as a
24 hydraulic barrier. Is that an accurate --

1 MR. WOODWARD: Yes, that's correct.

2 THE WITNESS: Yes, it is possible that it
3 could act as a hydraulic barrier.

4 Q (By Mr. Woodward) What is the
5 significance of the fact that it could act as a
6 hydraulic barrier?

7 A A hydraulic barrier would prevent the
8 further migration or at least impede the further
9 migration of the contamination beyond that point.

10 Q Okay. Is that part of what you determine
11 in an assessment?

12 A No.

13 Q You wouldn't try to find out what the
14 water levels are for Skunk Creek and on the other
15 side of Skunk Creek?

16 A Oh, yes. I thought you meant if it was a
17 hydraulic barrier.

18 Q And is an erection of a hydraulic barrier
19 one of the things that is often done in a
20 corrective action?

21 A It is not often, but that is one form of
22 remedial action that we could investigate.

23 Q And if it is naturally occurring, you
24 don't have to erect it; is that correct?

1 A That's correct.

2 MR. WOODWARD: That's all of the
3 questions I have.

4 I don't have any objections to his
5 evidence deposition going into the record.

6 HEARING OFFICER FRANK: Then Exhibit 1,
7 Mr. Liss' evidence deposition, is admitted into
8 evidence.

9 (Whereupon said document was
10 admitted into evidence as
11 People's Exhibit 1 as of this
12 date.)

13 REDIRECT EXAMINATION

14 BY MS. McBRIDE:

15 Q Ken, if the creek served as a hydraulic
16 barrier, it would receive the contaminants but it
17 does not serve as a containment, does it?

18 A No. In that -- in this instance here,
19 from the information we have, if we were to call it
20 a hydraulic barrier, it would actually, like I
21 said, impede the migration to the other side of the
22 creek, but it would be a point of discharge, so the
23 contamination would -- assuming that the hydraulics
24 work this way at the site, it would be a point of

1 discharge where the contaminants would just
2 continue to discharge to the creek. We wouldn't
3 necessarily allow that without a risk assessment.

4 MS. McBRIDE: Okay. We have no further
5 questions.

6 HEARING OFFICER FRANK: Anything else?

7 RECROSS EXAMINATION

8 BY MR. WOODWARD:

9 Q Mr. Liss, are the standards for surface
10 water different than for groundwater?

11 A Yes, they are.

12 Q And would surface water, under the
13 currently adopted standards, allow much larger
14 levels of the items that were -- of the analytes
15 that we have shown as being detected?

16 A That would be through an NPDES discharge,
17 the Water Pollution, not groundwater.

18 Q But it would -- do you understand what
19 the standards are for surface water?

20 A I am aware of them. I know the -- I am
21 familiar with the numbers.

22 Q So if Watts were to obtain an NPDES
23 permit, the creek could serve as a discharge?

24 A They would have to get that approved

1 first through the permit process with us as an
2 appropriate remedial action. I don't -- Water
3 Pollution cannot give them permission to discharge
4 those contaminants to the creek under their
5 standards, if that is your question.

6 Q Okay. Maybe I missed something in your
7 answer. Water Pollution, that is not you?

8 A It is Bureau of Water. When I say Water
9 Pollution, it would be the Bureau of Water. We are
10 the Bureau of Land.

11 Q Okay. You are saying the Bureau of Water
12 can't issue an NPDES permit?

13 A They can issue an NPDES permit. I am not
14 sure if they would issue a permit under these
15 circumstances, if it would meet the criteria to
16 issue an NPDES permit.

17 Q I understand your answer now. Okay. But
18 I don't believe you ever answered the question of
19 whether the standards for surface water would allow
20 much larger limits for the analytes that we have
21 detected and reported to the Bureau of Land than
22 the 620 Standards do.

23 A Like I previously said, these standards
24 for the water, for surface water, are generally

1 higher, they are greater than the 620 standards.

2 MR. WOODWARD: Okay. I am sorry. I just
3 missed that part of your answer. That's all.

4 HEARING OFFICER FRANK: Ms. McBride?

5 MS. McBRIDE: Nothing further.

6 HEARING OFFICER FRANK: Okay. Are we
7 done with Mr. Liss?

8 MR. WOODWARD: Yes.

9 MS. McBRIDE: Yes.

10 HEARING OFFICER FRANK: Okay. Thank you
11 very much.

12 (The witness left the stand.)

13 HEARING OFFICER FRANK: Let's go ahead
14 and go off the record. I would like to take a
15 five-minute break.

16 (Whereupon a short recess was
17 taken.)

18 HEARING OFFICER FRANK: Back on the
19 record. For the record, I do note that there are
20 members of the public present.

21 During our break, Ms. McBride informed me
22 that they were going to wait to call Ron Mehalic as
23 a rebuttal witness.

24 So you are done at this point?

1 MS. McBRIDE: Yes.

2 HEARING OFFICER FRANK: All right. Then,
3 Mr. Woodward, would you call your first witness,
4 please? Or not your first witness, your first for
5 today.

6 MR. WOODWARD: Yes. Mr. Jones.

7 HEARING OFFICER FRANK: Could you please
8 swear the witness.

9 (Whereupon the witness was
10 sworn by the Notary Public.)

11 T H O M A S A. J O N E S,
12 having been first duly sworn by the Notary Public,
13 saith as follows:

14 DIRECT EXAMINATION

15 BY MR. WOODWARD:

16 Q State your full name for the record,
17 please.

18 A Thomas A. Jones.

19 Q And where are you employed, Mr. Jones?

20 A ESG Watts.

21 Q And in what capacity are you employed by
22 ESG Watts?

23 A As an engineer.

24 Q Are you familiar with the Viola-Mercer

1 County Landfill operated --

2 A Yes, I am.

3 Q Once operated by ESG Watts?

4 A Yes, I am.

5 Q What is your original hire date with ESG
6 Watts?

7 A It would have been February of 1991.

8 Q And subsequent to that date, did you
9 leave ESG Watts?

10 A Yes, I did.

11 Q What date was that?

12 A That was May of 1995 through May of 1996.

13 Q So you currently have been re-employed by
14 ESG Watts?

15 A That's correct.

16 Q Okay. Are you familiar with the date the
17 Viola-Mercer County Landfill ceased accepting
18 waste?

19 A I think it was September 18th, 1992. I
20 am trying to remember if the official date we had
21 to stop was that date. I think that fell on a
22 Sunday, if I remember correctly, or it might have
23 fell on a Saturday. We may not have accepted waste
24 on that day. It may have been the day before.

1 Basically around that date.

2 Q Is there anything that would refresh your
3 memory?

4 A There might be letters to the Agency.

5 Q I am handing you what has been marked as
6 Respondent's Exhibit C. Now, I will note for the
7 record that there is a page missing from that, but
8 I will clarify that in a moment. Have you looked
9 at that?

10 A Yes.

11 Q Did you author that document?

12 A Yes, I did.

13 Q Okay. In looking at that, does that
14 refresh your memory as to the date the Viola-Mercer
15 County Landfill stopped accepting waste?

16 A The first sentence of the letter, that
17 the Viola Landfill ceased taking waste, initiated
18 closure activities on 18 September 1992.

19 Q And was that for all types of waste?

20 A Yes.

21 Q ESG Watts did not accept household waste
22 or any other type of waste after that date?

23 A That's correct.

24 Q As part of your duties with ESG Watts,

1 have you had the responsibility of serving as kind
2 of a liaison with an organization called Resource
3 Technology Corporation?

4 A Yes, I have.

5 Q Has ESG Watts executed a contract with
6 that organization concerning the Viola-Mercer
7 County Landfill?

8 A Yes, we have.

9 Q I am handing you what has been marked as
10 Respondent's Exhibit B. Can you identify that
11 document, please?

12 A This is a contract between ESG Watts and
13 Resource Technology Corporation. We have
14 contracted with them to construct a landfill gas
15 recovery system at the facility.

16 Q And what is the date of that contract?

17 A The 1st of August of 1996.

18 Q And there currently is not in place a
19 landfill gas collection or recovery system at the
20 Viola-Mercer County Landfill, is there?

21 A That's correct.

22 Q Do you know what steps, if any, Resource
23 Technology Corporation has taken pursuant to that
24 contract?

1 A Well, I know that they have started on
2 the design of the system. I don't know what phase
3 they are at on that. But they have not -- I don't
4 think they have completed it. They are waiting
5 final resolution of our siting application before
6 they apply for the permit to construct a landfill
7 gas recovery system on the landfill.

8 Q When was the last date that you had
9 contact with them concerning specifically the
10 Viola-Mercer County Landfill?

11 A I would say approximately four to five
12 weeks ago.

13 Q What was the nature of that contact?

14 A Basically they wanted to know where we
15 were at on our siting application, if we felt that
16 we were going to go that route or if we were going
17 to move waste. And before, you know, they submit
18 any application to the Agency they want to make
19 sure that it is basically correct, and we will
20 be -- they will be able to construct it as
21 designed.

22 Q Since August 1, 1996, have you had to
23 provide any information to Resource Technology for
24 purposes of their conducting design activities?

1 A Yes. I have supplied, you know,
2 historical data on how much waste we received at
3 the landfill. I supplied to them with a hard copy,
4 which would be Exhibit 14, the big drawing. Is
5 that Exhibit 14?

6 Q I believe that is People's Exhibit 4.

7 A People's Exhibit 4, the large drawing, a
8 hard copy of that, and also an electronic format
9 for them to manipulate with, you know, their CAT
10 system to put in a -- to design a system, and just
11 various other information that would assist them in
12 the design.

13 Q When was the last time you provided
14 information that would be helpful in the design?

15 A That was probably about three or four
16 months ago.

17 Q What did you tell the employees of RTC
18 concerning their request for information about the
19 siting application or movement of waste at the
20 Viola-Mercer County Landfill?

21 A I informed them that Jim Watts had made a
22 decision to site the overfill and not move it, and
23 that we were preparing a siting application and as
24 soon as, you know, we had an answer on that,

1 whether the Mercer County approved the siting or
2 not, you know, we would let them know if they could
3 submit the application.

4 Q What is the status of the preparation of
5 that siting application?

6 A It is under development right now. A lot
7 of the -- a lot of it has been written up. We are
8 in the process of preparing supporting
9 documentation, such as drawings. There are
10 numerous drawings that have to be prepared for it,
11 one being the flood waste drawing, showing, you
12 know, the 100 year flood zone, and the FAA drawing
13 showing the locations of the nearest airports or
14 lack of airports.

15 Q Have you given Mr. Watts an estimate of
16 when that will be completed?

17 A No, I haven't.

18 Q Do you have an estimate of when that will
19 be completed?

20 A I have to talk to the people preparing
21 the maps. We have Beling Consultants. They handle
22 a lot of our drawings for us. They will be
23 assisting us on the maps. I will have to discuss
24 with them to see when those drawings will be

1 ready. I think that, you know, four to six weeks
2 will be a reasonable time frame.

3 Q When did you make the request to Beling
4 to prepare the drawings, approximately?

5 A I have talked to them about some of the
6 drawings, like the final contour drawings, and
7 stuff like that. The drawings for the 100 year
8 flood plane, I haven't requested, and the FAA one I
9 haven't requested at this time.

10 Q Approximately how long -- are you
11 familiar with Resource Technology or RTC's process
12 once they complete design how long -- excuse me --
13 are you familiar with that?

14 A I have been involved with, you know, two
15 different sites with RTC in installing a gas
16 system. They were -- there were two different
17 paths taken because the permitting requirements
18 were different at the two sites. But usually once
19 the design is done they could have it submitted in
20 a relatively short time, you know, a couple weeks.

21 Q Approximately how long does it take from
22 completion of design to beginning of operation?

23 A Well, again, you know, it depends on the
24 landfill. You know, the two sites that I worked

1 on, one was done, you know, relatively quickly and
2 the other one is still in the construction
3 process. And they were probably started
4 approximately four or five months apart from each
5 other, and there is still -- you know, the one is
6 up and operating and the other one still has a
7 little bit of time to go.

8 Q I am handing you what has been marked as
9 Respondent's Group Exhibit J. Can you identify
10 those, please?

11 A Do you want me to identify them each
12 individually?

13 Q Yes, by their data --

14 A Date collected?

15 Q Yes, date collected.

16 A Okay. This is a routine and annual
17 groundwater report on Agency forms, chemical
18 analysis form, filed on 05-31-95.

19 Q Filed?

20 A Date collected, I mean. Date collected,
21 05-31-95.

22 Q Okay.

23 A The next one is a set of data for
24 routine, collected on 08-25-95, Agency forms for

1 the Viola Landfill. The next one is 03-08-96, and
2 it, too, is just routine for the Viola Landfill.

3 HEARING OFFICER FRANK: I think you
4 missed one, or I have one that you don't have.

5 Q (By Mr. Woodward) Did I give you eight?

6 A There should be one more in here
7 somewhere.

8 HEARING OFFICER FRANK: I have 11-22-95.

9 THE WITNESS: Okay. The next one is
10 routine monitoring for the Viola Landfill, dated
11 11-22-95. The next is 03-08-96, which is routine
12 for the Viola Landfill. Next is 07-29-96, which is
13 routine and the annual collected for the Viola
14 Landfill. And then the next one is 11-22-96, which
15 is routine collected for the Viola Landfill. And
16 the next one is 12-13-96, routine collected for the
17 Viola Landfill. And the final one is 02-13-97,
18 collected for the Viola Landfill, which is routine
19 and routine only.

20 Q (By Mr. Woodward) Now, are those copies
21 maintained by the ESG Watts Viola-Mercer County
22 Landfill?

23 A They are maintained at our office located
24 at 8400 77 Street West in Taylor Ridge.

1 Q None of those have a file stamp showing
2 that they were filed with the EPA; is that correct?

3 A That's correct.

4 Q Who files those reports for ESG Watts or
5 on behalf of ESG Watts?

6 A Beling Laboratories. They collect the
7 samples, they analyze them, and they send the
8 reports off to the Agency.

9 Q Does ESG Watts receive a copy prior to
10 Beling Consultants submitting that copy to the
11 Illinois EPA?

12 A No, we do not. We receive our copy when
13 they mail their copy to the Agency.

14 Q So as far as you know all eight of those
15 reports have been filed with the Illinois EPA?

16 A That's my understanding.

17 Q Did you ask Beling Consultants if they
18 had any record of filing, such as a UPS statement
19 or something that they could identify specifically
20 those reports?

21 A We requested if they had a letter of
22 transmittal or anything, and they indicated that
23 they did not, but that they could research their
24 UPS shipping logs, and we requested that they do

1 so, and they were not able to determine which ones
2 were for ours.

3 Q I see. Is ESG Watts being billed for any
4 of those reports, specific reports, those eight
5 specific reports?

6 A Have we been billed for them?

7 Q Have you currently been billed? You
8 haven't paid for those reports or something?

9 A I am sure some of them we probably owe
10 them. You know, the one from 02-13-97, we probably
11 haven't even received an invoice for it yet.

12 Q I see.

13 A You know, the -- we might owe them for
14 the 12-13-96. I couldn't answer that question.

15 Q Is that one of the reasons why they only
16 give you a copy the date they mail it, to assure
17 payment?

18 A Well, sometimes they will -- if we
19 haven't paid for it yet, they will mail the
20 Agency's copy without mailing us a copy.

21 Q Okay.

22 A They usually do not withhold reports to
23 the Agency for lack of payment. They may withhold
24 the reports to us, but not to the Agency.

1 Q So as far as you know, there is nothing
2 that would have prevented Beling from submitting
3 those reports on behalf of ESG Watts?

4 A No.

5 Q Do you know what activities were taken on
6 or about September 18th, 1992, and subsequent
7 thereto through August of 1994 to initiate closure
8 of the Viola Landfill?

9 A I am familiar with the activities.

10 Q Can you describe those activities?

11 A Well, actually prior to September 18th,
12 1992, we had contracted with a construction firm.
13 I can't remember the name of it, but the gentleman
14 that owned it was Ron Blumberg (spelled
15 phonetically), and he was -- he lived in the Mercer
16 County area, not too far from the landfill. And we
17 contracted with him to bring two scrapers and two
18 operators out to the site to haul cover dirt and to
19 cover the landfill.

20 The cover dirt was obtained from the
21 abandoned quarry across the street from the
22 landfill, which would be south of the landfill.
23 The quarry is owned by Dr. Winemeister (spelled
24 phonetically) and we purchased cover soil from him

1 from the quarry, from the spoils of the quarry, and
2 placed it on the landfill. We placed it basically
3 on the two-thirds of the east side of the landfill,
4 and we left an area -- we put intermediate cover
5 on, but we didn't put final cover on a low area of
6 the landfill at that time.

7 Q But did you complete that prior to
8 October 9, 1994?

9 A Yes. You know, again, through 1992, we
10 applied for a -- the regulations were written that
11 the state was kind of ahead of the federal
12 requirements in terms of closure dates. And the
13 State was approximately about a year ahead of the
14 federal government, and a lot of the landfills that
15 had elected to close on that September 18, 1992
16 deadline applied for permits to stay open under the
17 federal requirements with the State of Illinois.

18 I had talked to a couple consulting
19 firms, and they indicated to me that most of the
20 landfills in the State of Illinois were applying
21 for these permits to stay open, and they were being
22 granted. And I requested such a permit. And I had
23 a phone conversation with the permit reviewer, Gary
24 Cima, and he indicated to me that they were

1 generally granting the permits and he did not see
2 why they would not grant one to us.

3 And then sometime in January of 1993 I
4 received a denial of that permit application to
5 stay open, and that's why we did not cover that
6 section at that time. And then the summer of 1993,
7 we did a little bit of work out there in hauling
8 cover dirt. We were hampered by weather
9 conditions. It was the year of the Great Flood,
10 and we were, you know, not too successful in doing
11 a lot of work out there. And then the following
12 summer of -- well, the spring of 1994 we started
13 hauling additional cover dirt.

14 We started off by verifying that we had
15 the minimum thickness on the landfill of -- I think
16 it is two feet of final cover and six inches of top
17 soil, vegetative cover, and we did our verification
18 and in the areas that we thought were low we added
19 additional top soil or additional cover material.
20 That was hauled by our own heavy equipment and our
21 operators, and we obtained the soil, again, from
22 the quarry to the south of the landfill. And I
23 think we submitted a document to the Agency showing
24 what the cover thicknesses were.

1 Q What the cover thicknesses were or what
2 the minimum levels were?

3 A What the minimum -- we had the minimum
4 requirement on there.

5 Q Now, during this period from September
6 18th, 1992 to October 9th, 1994, did you install
7 any monitoring wells or replacement wells at the
8 site?

9 A Yes, we did.

10 Q When did you do that?

11 A That would have been in the fall. I
12 think October of 1994. Or was it October of 1993?
13 I have a letter. May I refer to the letter?

14 Q Sure. I am handing you what has been
15 marked as Respondent's Exhibit D. Is that the
16 letter you are referring to?

17 A Yes, it is. We did install the wells in
18 October of 1994.

19 Q Was there anything about work being done
20 at the site between September 18th, 1992, and
21 October of 1994 that would have prevented you from
22 installing the wells sooner?

23 A We did have trouble in 1993 with the
24 weather. The site was not very accessible.

1 Q Would any of the application of the final
2 cover activities, would that have interfered with
3 the installation of the wells?

4 A No.

5 Q Then why was it that the wells were not
6 installed until October of 1994?

7 A I am not real familiar with what
8 happened, you know, earlier. I was not involved
9 with the permitting of these wells. There was
10 another employee at the landfill who was handling
11 it then, and they were not installed when he left.

12 It is something that, you know, I knew
13 was in the permit and discussed with Mr. Watts, you
14 know, about scheduling, and it was basically for
15 financial reasons. The money was not there to
16 install them.

17 Q Okay. And was there anything about the
18 permit that was issued in December of 1991 that
19 prevented you from using the old wells until the
20 new wells were in place, for monitoring purposes?

21 A Well, I remember a conversation I had
22 with the consulting firm that was hired to draft
23 the permit or draft the application for the permit,
24 and they indicated to me that the old wells were --

1 they shouldn't be used anymore, that they weren't,
2 I guess, reliable indicators of groundwater.

3 They were under -- you know, they were
4 real old construction. They were just basically a
5 piece of PVC pipe put into the ground and, you
6 know, we drilled and put it in properly for what
7 was considered at the time a well. But they were
8 not covered. They were not sealed properly. There
9 was no, you know, control over, you know,
10 infiltration from groundwater or, you know, the
11 elements. And they indicated that we really
12 shouldn't monitor them, that they don't give an
13 accurate representation of what the groundwater is
14 at the site, so we didn't monitor them.

15 Q Subsequent to final completion of
16 installation of the two foot final cover and six
17 inch vegetative cover, or a minimum of that amount,
18 did ESG Watts undertake any activities to repair
19 the final cover?

20 A Yes. It has been ongoing out there since
21 I have been around. Anytime that we feel, you
22 know, we need to make necessary repairs, we make
23 them when we can get equipment down to the site.

24 Q Has ESG Watts applied seed to the

1 vegetative layer?

2 A Yes. Actually, we did some soil samples
3 at the site and determined that, you know, we
4 needed to add fertilizer and lime before we
5 seeded. We seeded, and then it didn't take hold.

6 Q Did you apply the fertilizer and the
7 lime?

8 A Yes, we did put the fertilizer and lime
9 on the site and then we seeded it.

10 Q Okay. Have you done that more than one
11 time?

12 A Yes, we have. We have done it twice.

13 Q When was the last time that was done?

14 A I think the first time we did it was
15 shortly after the fall of 1994 and we reapplied
16 again late spring, early summer of 1995.

17 Q Since the application of the final cover,
18 has ESG Watts used the Viola-Mercer County Landfill
19 to stockpile dirt?

20 A We have placed additional dirt on top of
21 the landfill to control erosion in some areas.

22 Q And when you say the top of the landfill,
23 is that above elevation 690?

24 A Yes, it would be.

1 Q Has that been done more than one time?

2 A As far as I know, we constructed some
3 erosional control measures up there. It was only
4 once.

5 Q Didn't you tell me you had an employee
6 working there one summer who basically that was all
7 he did was move dirt to the top of the hill?

8 A That was previously. That would have
9 been in the summer of 1992.

10 Q I see. Okay. Do you have an
11 understanding about when ESG Watts had to seed the
12 Viola-Mercer County landfill?

13 A I think there is a permit requirement
14 that you only have so many days to do it after we
15 close. We have a letter here from Ed Bakowski
16 saying it was not required by a certain date to be
17 considered, you know, having the cap on properly.

18 Q Okay. I am handing you what has been
19 marked as Respondent's Exhibit H. Can you take a
20 look at that and identify it, please?

21 A This was a letter from Tom Quinn.

22 Q Who is Tom Quinn?

23 A Tom Quinn used to be the general manager
24 of ESG Watts and basically he had a phone

1 conversation with Gary Cima about the deadline for
2 applying final cover and seeding the cover.

3 MS. McBRIDE: Excuse me. What's the date
4 on this letter?

5 THE WITNESS: The 30th of August, 1994.

6 MS. McBRIDE: And addressed to Gary Cima
7 from Tom Quinn?

8 THE WITNESS: Yes.

9 MR. WOODWARD: Respondent's Exhibit H, I
10 believe.

11 MS. McBRIDE: Okay.

12 Q (By Mr. Woodward) And did ESG Watts have
13 an understanding of when seeding was required as a
14 result of that phone conversation?

15 A Basically it says that seeding is not
16 required to be in place by 9 October 1994.

17 Q And the 9 October 1994 date is a
18 significant date because of what?

19 A Well, it is the federal government's
20 compliance date for Subtitle D.

21 Q The Viola-Mercer County Landfill was a
22 Subtitle D Landfill?

23 A No.

24 Q It was not?

1 A It was not.

2 Q What type of landfill was it or what
3 regulations were applicable?

4 A There is a subtitle for it under the
5 federal government, but I don't recall what it is,
6 but it is an 807 Landfill in the State of Illinois.

7 Q So why was the October 9th, 1994 date
8 significant for the Viola Landfill?

9 A I think that the State was basically, you
10 know, mirroring, in some instances, the federal
11 requirements for deadlines.

12 Q So that was a state imposed deadline on
13 the Viola Landfill?

14 A Well, that was a federal imposed deadline
15 that the State adopted.

16 Q I see. Now I am handing you what has
17 been marked as Respondent's Exhibit G. Can you
18 take a look at that and identify that, please?

19 A It is a response to the letter that Mr.
20 Quinn wrote to Mr. Cima discussing this, and
21 basically it confirms that they pretty much say the
22 same thing.

23 Q Who is the author of that letter?

24 A Edwin Bakowski.

1 Q Was he an employee of the Illinois EPA at
2 that time?

3 A He is the Solid Waste Branch Manager,
4 Permit Section, Bureau of Land of the Illinois EPA.

5 Q And what did he say -- I mean, what did
6 he say to ESG Watts about an application of a
7 seeding requirement?

8 A Facilities that stop accepting waste
9 before October 9th, 1993 are exempt from RCRA
10 Subtitle D, unless the facility does not complete
11 final cover before October 9th, 1994. This final
12 cover requirement includes the two foot layer and
13 the six inch vegetative soil layer, as required by
14 the subject facility's operating permit. The final
15 cover requirements includes only the soil layers,
16 not the seeding or vegetating of the cover.

17 Q And do you believe that ESG Watts
18 completed the two foot and the six inch requirement
19 on or before October 9, 1994?

20 A I believe we did.

21 Q Okay. Now, Mr. Mehalic testified that
22 there were certain inspections and inspection
23 reports prepared concerning the Viola-Mercer County
24 Landfill. Did you respond in writing to any of

1 those inspection reports?

2 A Yes. I think he testified that there
3 were four inspection reports. Two of them were
4 relatively close to each other, and I think we
5 received them from the Agency about the same time,
6 so I responded to them with one letter. Basically
7 the inspection reports were identical in the
8 write-up.

9 Q Do you recall responding concerning
10 whether the Viola Landfill was in an operating
11 status at the time of the inspection?

12 A Yes, I did.

13 Q And what was your response, if you
14 recall?

15 A I think that they indicated that we were
16 in violation of operating a landfill for something,
17 and I stated in the letter that the site was
18 closed, and we have not accepted waste since
19 September 19th, 1992.

20 Q I am handing you what has been marked as
21 Respondent's Exhibit C, and you previously
22 identified that as you authoring that document. Is
23 that the response that you prepared to Mr.
24 Mehalic's two inspections?

1 A Well, this is --

2 Q Two of the four inspections?

3 A One of the inspections was performed by
4 Rob Wagner, of the Field Operation Section, and I
5 think there was a follow-up inspection, you know,
6 on -- well, March 17th and March 21. And Mr.
7 Wagner and Mr. Mehalic were together, and I
8 addressed the letter to Mr. Wagner.

9 Q Now, does that document detail that
10 additional work was done on the final cover, kind
11 of a rehabilitative work on the final cover?

12 A I think it explains at that time where we
13 were in relation to closing the site and what
14 activities we had undertaken since the date of the
15 inspection and what we were currently doing.

16 Q Does it specifically address exposed
17 waste, that we were the ones that identified that,
18 and we were taking action to correct that problem?

19 MS. McBRIDE: If I could just object here
20 for a second. We are talking about two inspection
21 reports that have not been entered into evidence,
22 okay. These are 1994 inspection reports. The
23 inspection reports that have been entered into
24 evidence are the 1995 inspection reports.

1 I am objecting that it is not relevant.

2 MR. WOODWARD: I am sure he testified to
3 this report. I mean, that he testified to this
4 inspection.

5 MS. McBRIDE: No. If I could clarify for
6 the record, he testified that he had been to the
7 site on four occasions. He mentioned the fact that
8 he had been there earlier in 1991 and he had been
9 there with Mr. Wagner, and then we went into the
10 inspection reports, which were both 1995 inspection
11 reports.

12 MR. WOODWARD: Okay. I will withdraw the
13 question.

14 HEARING OFFICER FRANK: All right.

15 Q (By Mr. Woodward) Did you ever prepare
16 any other written response to his inspection, to
17 Mr. Mehalic's inspections or any other inspector's
18 inspections for the Viola Landfill?

19 A Not that I recall.

20 Q I am handing you what has been marked as
21 Respondent's Exhibit E. Can you identify that for
22 us?

23 A It is a letter to Mr. Edwin Bakowski,
24 Solid Waste Branch Manager, Permit Section, Bureau

1 of Land, Illinois EPA. It is just documenting the
2 activities and the status of the Viola Landfill.

3 Q Okay. Does it document that you had
4 completed --

5 A The placement and compaction of the
6 entire lower layer on 29 August 1994, and the
7 vegetative layer shortly thereafter. On 16
8 September a topographical survey was completed.

9 HEARING OFFICER FRANK: Tom, you need to
10 slow down for our court reporter.

11 THE WITNESS: On 16 September 1994 a
12 topographical survey was completed for the site,
13 which is the same thing that was submitted as
14 evidence or --

15 HEARING OFFICER FRANK: Number 4?

16 THE WITNESS: Number 4.

17 HEARING OFFICER FRANK: Okay. People's
18 Exhibit Number 4.

19 Q (By Mr. Woodward) And since you are the
20 author of that, as far as you know, you had done
21 that work by August 29th?

22 A Yes, we had.

23 Q Okay. I am handing you what has been --
24 excuse me. Were you present for the first day's

1 hearing?

2 A Yes, I was.

3 Q And do you recall hearing testimony that
4 ESG Watts accepted waste in 1993?

5 A I don't recall the testimony, but there
6 was evidence submitted in one of their exhibits
7 showing that we accepted waste in 1993.

8 Q Okay.

9 A Their capacity reports.

10 Q In fact, wasn't that used in determining
11 some economic benefit?

12 A It was my understanding that he used that
13 number from 1993 in his calculations.

14 Q And you have testified and there are
15 several -- identified several documents that talk
16 about closure having been completed on September
17 18th, 1992; is that correct?

18 A That's correct.

19 Q Did you ever receive any confirmation of
20 that fact from the Agency in writing that closure
21 had been completed on that date?

22 A I think they sent us a letter indicating
23 that their records indicated that we ceased
24 acceptance of waste on that date.

1 Q I am handing you what has been marked as
2 Respondent's Exhibit F. Can you identify that,
3 please?

4 A It is a letter from Lawrence Eastep,
5 Manager of the Permit Section, Division of Land,
6 Pollution Control, Bureau of Land, Illinois EPA.
7 And the letter opens up, according to our records,
8 your facility stopped accepting waste prior to
9 September 19th, 1992.

10 Q And did you review the records of the
11 Viola ESG Watts Landfill to determine if there were
12 any reports submitted that indicated that waste was
13 accepted in 1993?

14 A I could not identify any reports.

15 Q Now, I am handing you what has been
16 marked as Respondent's Group Exhibit I. Can you
17 identify that document, please?

18 A These are the solid waste management fee
19 quarterly summary and payment sheets that we submit
20 to the Agency. They are submitted on a quarterly
21 basis, indicating how much waste -- well,
22 basically, the purpose is to indicate how much fee
23 we owe the Illinois EPA, based upon the amount of
24 waste that we accepted at the site.

1 Q And for what periods -- what periods are
2 covered by Group Exhibit I?

3 A The calendar year of 1993.

4 Q Do they reflect that they reported
5 receiving any waste in the calendar year 1993?

6 A There are four reports for each quarter,
7 and all four reports indicate no fee due, no waste
8 received.

9 Q Are you familiar with an organization
10 called Golder Associates? That is G-O-L-D-E-R.

11 A Yes, I am.

12 Q Have they been retained by ESG Watts for
13 any purpose?

14 A They have been retained by ESG Watts to
15 review all the groundwater for all our facilities.

16 Q Were they specifically retained to do
17 work on the Viola-Mercer County landfill?

18 A Yes, they were.

19 Q When was that authorization given?

20 A We contacted Golder in the summer of 1996
21 requesting that they do certain activities, and we
22 requested that they submit a proposal outlining
23 what they feel needs to be done and the cost
24 associated with those activities.

1 Q Do you recall the date you received their
2 proposal?

3 A The proposal for February -- I mean, the
4 proposal for Viola was received in -- I think in
5 February of 1997.

6 Q Did they submit anything to you in
7 December of 1996, a contract form?

8 A They submitted, I think, their standard
9 agreement for us to sign.

10 Q And has that document yet been signed?

11 A That would have to have been signed by
12 Mr. Watts, and I am not sure if he signed it or not
13 at this point.

14 Q But has ESG Watts provided authorization
15 for them to do a preliminary workup on the
16 Viola-Mercer County landfill?

17 A Yes, I have authorized them to proceed
18 with their proposal, and we have paid them a
19 retainer to -- I guess the retainer was just for
20 all the sites, just not specifically Viola.

21 Q And was one of the purposes for that
22 retainer was for them to finalize a scope of work
23 and cost proposal for each of the three landfills?

24 A That's correct.

1 Q That is the proposal you received in
2 February of 1997 for the Viola Landfill?

3 A That's correct.

4 Q When we say work, we are talking about
5 the assessment report that has been the topic of
6 discussion and the testimony today and on March
7 13th; is that correct?

8 A I think that Golder refers to it as a
9 work plan which includes meeting with the Agency to
10 find out, you know, what direction they would like
11 us to take, and then submitting a supplemental
12 permit application or an assessment monitoring plan
13 in the form of a supplemental permit application to
14 do the work.

15 Q When was the last time you were at the
16 Viola Landfill?

17 A March 12th, 1997. I think that was the
18 day before the last hearing.

19 Q And on that date, did you observe any
20 erosion problems at the site?

21 A I observed some, yes.

22 Q And were those erosion problems -- where
23 were those erosion problems?

24 A Usually on the steep slopes.

1 Q Where is that located in relationship to
2 Skunk Creek, let's say?

3 A Well, the slope that runs adjacent to
4 Skunk Creek, it wasn't real bad. There is a
5 diversion berm at the top of the landfill before
6 the slope breaks down that diverts most that water
7 to the north, and there was an erosional channel
8 along that berm, and then there was some erosional
9 channels on the north side of the landfill.

10 Q Skunk Creek runs generally on the --
11 starts on the east?

12 A The east.

13 Q And runs in a northwesterly direction,
14 but in the landfill property?

15 A Yes, it is in the landfill on the
16 property boundaries.

17 Q So if it is not on the north, where were
18 these erosion problems?

19 A They were on the north.

20 Q Oh, okay. I am sorry. I misunderstood
21 your answer. I thought you said there was an
22 erosion --

23 A That's on the east.

24 Q Oh, I am sorry. I need to listen a

1 little better.

2 Did you note any problems at the upper
3 elevations of the landfill?

4 A Generally the top of the landfill looked
5 fine. I didn't see too much erosion or settlement
6 or ponding of water on the top, except for the
7 diversion berm we constructed.

8 Q Now, since that date, have you formulated
9 any plan to deal with the erosion problems?

10 A Yes. Actually, we have done a couple of
11 different things. We have contacted a source of
12 soil. We know of a construction project ongoing in
13 the area, and they have a large quantity of soil
14 they need to get rid of. We let them know that the
15 Viola Landfill site would be available to place
16 it.

17 Then because of the vegetative problems
18 that we are having, the lack of growth, we
19 contacted the waste water treatment plant at the
20 City of Davenport where they compost the sludges
21 with leaves and grass, and we are working on
22 obtaining some of that material to help with the
23 vegetative layer to help promote growth.

24 Q Is one of the concerns about adding more

1 dirt the issue of siting the overheight?

2 A That is some concern. We would like to
3 site it before we, you know, do an awful lot of
4 work of adding additional material on the top of
5 the landfill.

6 Q You did hear testimony, though, that you
7 could add additional dirt over and above the 690
8 elevation?

9 A Well, I think I heard conflicting
10 testimony. I think I heard one person say that it
11 was acceptable, and one person say that it was
12 not. I think somebody said that they saw no reason
13 why we could add additional soil above the
14 permitted contours.

15 But I think that somebody else -- I can't
16 remember who testified to what. But I think that
17 somebody else testified that our final contours, at
18 closure, we could not exceed them with waste or
19 cover material.

20 Q So is it your intent that ESG Watts not
21 develop a permanent solution to the erosion until
22 the siting issue is resolved?

23 A I would say that's true.

24 Q Do you know whether RTC has done any

1 testing at the Viola site to determine the presence
2 of landfill gases?

3 A They indicated to me that they have done
4 some sampling out there.

5 Q And did they find landfill gas?

6 A It is my understanding that they did.

7 Q And as far as you know, it is of
8 sufficient level for them to continue with the
9 design?

10 A Yes, it is.

11 MR. WOODWARD: I would ask that Exhibits
12 B through Group J, with the exception of Exhibit C,
13 be admitted into evidence.

14 HEARING OFFICER FRANK: Is there any
15 objection?

16 MS. McBRIDE: We don't have any
17 objection.

18 HEARING OFFICER FRANK: All right. Then
19 Respondent's Exhibits B, D, E, F, G, H, Group
20 Exhibit I, and Group Exhibit J are admitted into
21 evidence.

22 (Whereupon said documents were
23 admitted into evidence as
24 Respondent's Exhibits B, D, E,

1 F, G, H, Group I and Group J as
2 of this date.)

3 MR. WOODWARD: That is all I have.

4 HEARING OFFICER FRANK: All right.

5 CROSS EXAMINATION

6 BY MS. McBRIDE:

7 Q Mr. Jones, with regard to those Exhibits
8 D and E, which are talking about the October 9th,
9 1994 deadline, isn't it true the whole purpose of
10 those letters was to handle the landfills that were
11 in a geographic area of the flood exemption in
12 relation to the Subtitle D Regulations?

13 A Could you please repeat the question?

14 Q Isn't it true that the whole purpose of
15 those letters, in alerting landfills to the October
16 9th, 1994 deadline, was to work with those
17 landfills that had opened for the flood exemption;
18 isn't that true?

19 A I don't know.

20 Q Okay. And Watts did not open for the
21 flood exemption; is that true?

22 A We requested, but we never got a response
23 from the Agency.

24 Q Your testimony is that you never got a

1 response from the Agency?

2 A There was a -- through the Pollution
3 Control Board I think there was a -- there was like
4 a group effort or something, and you had to apply
5 to be party to it or something. We applied and we
6 never received any other information. I can't
7 remember all the exact details.

8 But I remember contacting the Pollution
9 Control Board and other EPA personnel, and we never
10 really got an answer on what the status of that
11 was. We decided just not to pursue it.

12 Q It is my understanding you got a denial
13 with a request for more information. Do you
14 remember that at all?

15 A That had nothing to do with the flood
16 waste.

17 Q I understand you got it for the flood
18 waste. I am asking if you --

19 A I don't recall. The only denial letter
20 that I received for accepting additional waste was
21 relating to when we wanted to stay open beyond the
22 September 18th, 1992 deadline.

23 Q Okay. There was nothing in these letters
24 that waived the requirements of 807.305; is that

1 correct?

2 A In the letters that -- in Exhibit D and
3 E?

4 Q Right.

5 A Well, Exhibit D has nothing to do with
6 cover. It is -- it relates to installing the
7 groundwater wells.

8 Q I am sorry. I am referring to the wrong
9 one. Let me just review these a second.

10 MS. McBRIDE: You didn't move Mr. Cima's
11 letter in, did you?

12 MR. WOODWARD: I moved everything but
13 Exhibit C.

14 MS. McBRIDE: Okay. But did you mark Mr.
15 Cima's letter that you referred to, the 30 August
16 1994 letter? That's H. I am sorry. I am
17 referring to Mr. Cima's letter and Mr. Bakowski's
18 letter.

19 HEARING OFFICER FRANK: Exhibit H is a
20 letter to Mr. Cima.

21 MS. McBRIDE: Right. To Mr. Cima. I am
22 sorry.

23 HEARING OFFICER FRANK: Okay.

24 THE WITNESS: So you are talking about

1 Exhibit H and Exhibit E?

2 MS. McBRIDE: Right.

3 HEARING OFFICER FRANK: Would you like to
4 mark copies? Would that make it easier?

5 MS. McBRIDE: No, I think this is all for
6 now.

7 HEARING OFFICER FRANK: Okay.

8 Q (By Ms. McBride) Nothing in there
9 specifically waived the requirements of 807.305; is
10 that correct?

11 A I don't know.

12 Q There is no specific language to that
13 extent, is there?

14 A No. I think the letters were there to
15 attempt to find out what was required at the
16 compliance dates for closing the landfill, and
17 that's what the attempt of these letters were for,
18 to make sure we were in compliance with what the
19 Agency required.

20 Q Okay. But the Viola Landfill is in the
21 geographic area of the flood exemption for
22 landfills, isn't it?

23 A It is or is not?

24 Q It is? I am asking you. It was in the

1 geographic area of --

2 A It was my understanding it was.

3 Q Okay. There is also nothing in those
4 letters that indicate any modification of the
5 closure requirements of the landfill's operating
6 permit; isn't that correct?

7 A That's correct.

8 Q Okay. The deadline applied to Viola,
9 even though Viola did not get a flood exemption,
10 only because you still had not certified final
11 cover at that time, and would be effected by that
12 deadline; isn't that correct?

13 A I don't understand the question.

14 Q Okay. At the time that the Agency was
15 sending out these letters alerting landfills of the
16 coming deadline, the only reason this still applied
17 to you is because you had not certified final
18 closure as of the October 9, 1994 deadline; isn't
19 that true?

20 A I don't know.

21 Q All right. So it was in Watts' own self
22 interest to meet that deadline, or else it would
23 have been subject to the 30 year post closure
24 period instead of the 15 year post closure period;

1 isn't that correct?

2 A That's correct.

3 Q Special condition three of your
4 supplemental permit, 1991-098, which is your
5 closure program, requires that you notify the
6 Agency within 30 days after receiving a final
7 volume of waste; is that correct?

8 A That's correct.

9 Q Okay. Then in your August 3, 1994
10 letter, which is not here, but the August 3, 1994
11 letter, which is referred to in one of the other
12 exhibits you offered here, you confirmed with the
13 Agency that you stopped accepting waste on
14 September 18th, 1992; isn't that correct?

15 A You mean in the October 3rd, 1994
16 letter?

17 Q Right.

18 A I don't see any reference to when we
19 stopped accepting waste on that October 3rd, 1994
20 letter.

21 Q Is there anything that would refresh your
22 recollection of that?

23 A The October 3, 1994 letter, I read it and
24 there is -- no where does it say when we stopped

1 accepting waste.

2 Q Are you looking at a letter to Mr.
3 Bakowski signed by yourself?

4 A I sure am.

5 Q In the first paragraph, could you read
6 the first sentence?

7 A As required by Section 22.17 810 of the
8 Act, the Viola Landfill completed the placement --

9 Q Okay. We don't seem to have the same
10 letter. You are looking at the October 3, 1994
11 letter, I believe?

12 A That's correct.

13 Q Okay. I am talking about the August 3rd,
14 1994 letter. Let me hand you a copy of that
15 letter, and can you please tell us what that is?

16 A It is a letter written by me to Ed
17 Bakowski.

18 Q What is that letter about?

19 A It is stating the date when we stopped
20 accepting waste.

21 Q What is the date on that letter?

22 A August 3rd, 1994.

23 Q Okay. What does the letter -- what does
24 the letter -- if you could just read the first

1 sentence, please?

2 A As required by supplemental permit,
3 1991-098 SP, Special Condition 3, ESG Watts hereby
4 notifies the Agency that the Viola Landfill stopped
5 accepting waste as of 18 September 1992.

6 Q Okay. Thank you. You certified final
7 cover in a letter dated October 3, 1994; is that
8 correct?

9 HEARING OFFICER FRANK: Are you referring
10 to Exhibit E?

11 MS. McBRIDE: Right.

12 THE WITNESS: I don't think that this
13 letter was a certification letter. It was just
14 notifying the Agency that we had done the work. We
15 had submitted a certification report after this
16 letter. I think this is more just a letter to --
17 you know, to let the Agency know that we had
18 completed these activities at these dates.

19 Q (By Ms. McBride) Okay. I am going to
20 hand you a letter here and ask you if you can tell
21 me what that is?

22 A This is a letter from an engineering firm
23 that we retained to do some investigation on the
24 cap of the landfill in Viola.

1 Q Isn't that the letter that -- in which
2 they certify final cover?

3 A Yes, it is.

4 Q Okay. That's dated -- what's the date on
5 there?

6 A October 3rd, 1994.

7 Q Okay. Therefore, you certified final
8 cover more than two years after you stopped
9 accepting waste; is that correct?

10 A That's correct.

11 Q Mr. Jones, what was the cost of
12 constructing the final cover in 1994?

13 A I don't know.

14 Q Okay. Do you have any idea how much it
15 would cost to construct a final cover now?

16 A I could figure it out, but I couldn't
17 pull it off the top of my head, no.

18 Q Do you know what the projected cost of
19 establishing vegetation at Viola is?

20 A We have gotten bids in previous years for
21 \$500.00 an acre.

22 Q And there is 30 acres at that landfill?

23 A There is probably about 24 that would
24 have to be vegetated. There is a lot of property

1 to the north that is vegetated naturally. So 24
2 times \$500.00, is that \$4,800.00 -- or that is
3 \$12,000.00.

4 Q You mentioned -- you did testify earlier
5 as to when you would establish vegetation at
6 Viola. Could you tell us again when you would
7 establish vegetation at Viola?

8 A When will we?

9 Q Yes.

10 A Probably when we have the siting issue
11 cleared up.

12 Q Are there any projections on that sitting
13 issue?

14 A Hopefully we will submit the application
15 in the near future.

16 Q In the near future. Can you be any more
17 specific?

18 A Two months.

19 Q In your December 1995 submission of
20 closure and post closure care plans and cost
21 estimates, Watts stated that gas control was not
22 applicable to the Viola Landfill; is that correct?

23 A I don't recall.

24 Q Okay. How much will it cost you to put

1 in a gas control system at Viola?

2 A I don't know.

3 Q Okay. You mentioned it is under contract
4 with RTC. It is my understanding that RTC has made
5 no further progress at Taylor Ridge since October
6 of 1996. Can you clarify that for us?

7 A They have not done any field work at the
8 site. I can't tell you the exact date when they
9 stopped, but they have been working on design. The
10 wells that they placed out there, they placed them
11 at different locations than they originally
12 anticipated, and so they have had to redesign the
13 collection system.

14 Q Are there any other problems they have
15 run into out there?

16 A There is a building location -- the
17 original location where they wanted to construct
18 the building to house the IC engines and the
19 generators, the soil is not strong enough to
20 support a building of that magnitude. So we are
21 looking at trying to find another location within
22 our property to build it.

23 THE REPORTER: Did you say IC engines?

24 THE WITNESS: Yes.

1 HEARING OFFICER FRANK: Can you, for the
2 record, state what IC means.

3 THE WITNESS: IC means internal
4 combustion.

5 HEARING OFFICER FRANK: Thank you.

6 Q (By Ms. McBride) According to this
7 contract, which is Exhibit B, RTC is obligated to
8 pay the cost of the gas permit and any increase in
9 financial assurance due to gas collection; is that
10 right?

11 A That's correct.

12 Q Okay. As to the financial assurance, RTC
13 has not yet posted additional funding for Taylor
14 Ridge; is that correct?

15 A No, they have not.

16 Q Okay. Do you -- are they under the same
17 obligations here at Viola?

18 A The contract is a little different, but
19 they are under the same obligations.

20 Q Okay. Have you taken any measures with
21 them regarding the fact that they have not posted
22 this final assurance, since they are under
23 contract?

24 A They are only under contract as it

1 relates to the gas portion. There is no post
2 closure costs associated that has been approved by
3 the Agency that deal with closure, post closure
4 care costs associated with methane gas recovery,
5 methane gas.

6 Q At Viola?

7 A At Viola.

8 Q Mr. Jones, the old groundwater wells,
9 were they properly abandoned and closed?

10 A Yes, they were sealed.

11 Q Your testimony was that your consultants
12 felt that they were not adequate wells, they were
13 not providing adequate information?

14 A They didn't meet the standards at the
15 time.

16 Q Okay. Mr. Jones, do you have an opinion
17 as to whether the mine spoils used for cover are
18 suitable to establish vegetative cover?

19 A Yes, I have an opinion.

20 Q What is that?

21 A That they are not suitable.

22 Q They are not suitable? Okay. Were mine
23 spoils used for both the two foot and the six inch
24 layers put on?

1 A The mine soils were used for the two
2 foot -- well, there was some on site soils used
3 originally in the two foot. Where we lacked areas,
4 we used -- where we lacked cover soils in areas, we
5 used the mine spoils. And then we used some top
6 soil from on site areas for the cover in addition
7 to the mine spoils. We used both.

8 Q What happened to that top soil?

9 A Probably eroded.

10 Q Have you made any attempts to replace it?

11 A We have tried to amend the soil with lime
12 and fertilizer. We had the soil tested to see
13 if --

14 Q Pardon me. Which soil are we talking
15 about now?

16 A The soil on top of the landfill.

17 Q That is there right now?

18 A Yes. We have tried to amend it with
19 agricultural lime. It is standard a lot of places
20 where you attain a soil sample if you are having
21 trouble and you see what fertilizers and things
22 that you can add to it to make things grow. And we
23 did that with an agricultural lab. They did soil
24 analysis and they made their recommendations, and

1 we did it and it didn't work.

2 Q Okay. So did you do this on the mine
3 spoils that are there now?

4 A Yes.

5 Q In your testimony are you suggesting that
6 the 52,000 cubic yards of overfill is attributable
7 to excess cover?

8 A I don't know. I just -- I don't know
9 what it is attributable to. I can't see underneath
10 the cover to see how much dirt is there and how
11 much waste. I think we did a -- our estimate was
12 based -- I think the total was 77,000 total above
13 the 690, and we attributed 50 whatever thousand to
14 waste, and that was assuming that we had -- you
15 know, there was only three feet of cover. There
16 could be additional. You know, in some areas there
17 is more than the required minimum amount of soil
18 cover.

19 Q You mentioned in your testimony that
20 there might have been some dirt stockpiling on top
21 of the landfill. Given the situation, where you
22 are suffering erosion and you have deep side
23 slopes, why would you stockpile dirt up?

24 A I don't think I said stockpiled. I think

1 I said that we had placed additional dirt on top of
2 the landfill, not necessarily a stockpile. There
3 are a lot of reasons why. One, if you get
4 differential settlement in the landfill, where some
5 areas settle more than others, and then you create
6 ponding, and that's a violation of the Act. So you
7 have to prevent that ponding. So you put more soil
8 in that depression and, you know, promote runoff.

9 Then there are some areas that we put
10 additional soils to divert runoff away from a side
11 slope, so that you are controlling the runoff so it
12 wouldn't create erosional problems in certain
13 areas. You try to minimize your erosion and you
14 can use additional soil to try to minimize it.

15 Q This additional soil, that was also mine
16 spoils; is that correct?

17 A Yes, it was.

18 MS. McBRIDE: We don't have anything
19 further right now.

20 HEARING OFFICER FRANK: Okay. Redirect?

21 REDIRECT EXAMINATION

22 BY MR. WOODWARD:

23 Q Have you read the contract with RTC?

24 A I have in the past.

1 Q Is it your understanding that the
2 installation of a gas collection system is at their
3 cost, a gas collection and recovery system?

4 A Yes.

5 Q And they are to pay us money for that
6 privilege; is that correct?

7 A That's correct.

8 Q So it is in ESG Watts' best interest to
9 move that forward?

10 A Yes, it is.

11 Q Now, if I understood you correctly, on
12 cross-examination you testified that the 52,000
13 cubic yards that was being used in economic benefit
14 analysis was an estimate prepared by or on behalf
15 of ESG Watts?

16 A It was prepared by Beling Consultants on
17 behalf of ESG Watts.

18 Q And that there was an assumption used to
19 determine that 52,000, and that assumption is that
20 there was only the minimum required cover?

21 A That's correct.

22 Q And your testimony is that there is, in
23 fact, areas that have more than the minimum?

24 A That's correct.

1 Q So the number has to be below 52,000?

2 A I would assume it would be.

3 Q The testing of the soil, that was the
4 soil that's on top of the landfill at the time of
5 the testing?

6 A Yes.

7 Q Okay. And when we talk about mine spoils
8 are you saying that all the top soil -- the six
9 inch vegetative cover had washed away at that
10 point?

11 A No.

12 Q Okay.

13 A There are some areas where we still
14 have -- you know, vegetation is growing in what is
15 left of the top soil.

16 Q But the soil that was tested was the
17 native soil mixed with mine spoils?

18 A That's correct.

19 Q Did the testing say that if you followed
20 certain things that that soil should be able to
21 support vegetation?

22 A We were led to believe that, or I don't
23 think we would have done the work.

24 Q Okay. We followed the recommendations of

1 the organization that did the testing?

2 A Yes, we did.

3 MR. WOODWARD: That's all I have.

4 HEARING OFFICER FRANK: Ms. McBride?

5 MS. McBRIDE: Nothing.

6 HEARING OFFICER FRANK: There is nothing
7 further?

8 MR. WOODWARD: No.

9 HEARING OFFICER FRANK: Okay. Thank you,
10 Mr. Jones.

11 (The witness left the stand.)

12 HEARING OFFICER FRANK: Do you have any
13 other witnesses?

14 MR. WOODWARD: No.

15 HEARING OFFICER FRANK: Okay. Let's go
16 off the record for a minute.

17 (Discussion off the record.)

18 HEARING OFFICER FRANK: Would you please
19 swear the witness?

20 Actually, I can just remind you that you
21 are still under oath, because you were under oath
22 at our last hearing.

23 THE WITNESS: Yes.

24 HEARING OFFICER FRANK: Why don't you go

1 ahead and state your name for the record.

2 THE WITNESS: Ronald Mehalic,
3 M-E-H-A-L-I-C.

4 DIRECT EXAMINATION

5 BY MS. McBRIDE:

6 Q Ron, we heard testimony today from Mr.
7 Watts on March 13th that ESG Watts now intends to
8 go through the siting process rather than relocate
9 the waste in the overfill area.

10 If Watts is successful in the siting
11 process, is it possible that the landfill that
12 is -- pardon me. Is it possible that the final
13 cover that is presently on the overfill waste will
14 remain in place?

15 A Currently?

16 Q Right.

17 A No. It needs to be -- there needs to be
18 additional waste -- not waste, but soils placed in
19 the erosional gullies.

20 Q But if they don't move the waste, that
21 two foot of cover that is on there right now most
22 likely will stay in place; is that true?

23 A Yes.

24 Q Okay. Since March 13th, 1997, which was

1 the date of your last testimony in this proceeding,
2 have you inspected the Viola landfill?

3 A Yes, I have.

4 Q Why did you inspect the landfill?

5 A I inspected it as a result of a fax that
6 was transmitted from our individual in Rock Island
7 County that sent a fax to our region. It was in
8 the newspaper there and it pertained to the hearing
9 that was on March 13th.

10 In this article Mr. Watts was stated as
11 saying that there was three feet of cover over the
12 whole area, over the whole landfill. My supervisor
13 brought it to my attention, we discussed it and
14 then he, in turn, informed me to go out and do an
15 inspection.

16 MR. WOODWARD: I would object to this
17 line of questioning. Unless there is something in
18 the record that Mr. Watts stated, what is he
19 rebutting? I mean, this sounds to me like a new
20 line of questioning, a new line of testimony and
21 not in the nature of rebuttal.

22 HEARING OFFICER FRANK: Ms. McBride?

23 MS. McBRIDE: He is rebutting -- first of
24 all, he is a rebuttal witness to Mr. Jones, and to

1 the fact that we have got a new proposal for
2 handling the waste and, therefore --

3 (Mr. Davis and Ms. McBride
4 confer briefly.)

5 MS. McBRIDE: And Mr. Watts mentioned
6 that the cracks were fixed at the landfill, the
7 erosion gullies were fixed at the landfill.

8 MR. WOODWARD: On the record, he was not
9 asked that question.

10 MS. McBRIDE: He stated that on the
11 record.

12 HEARING OFFICER FRANK: Do you have
13 anything else?

14 Okay. Let's go ahead and go off the
15 record and give both sides a chance to look at the
16 transcript, because we have it.

17 (Discussion off the record.)

18 HEARING OFFICER FRANK: Let's go back on
19 the record.

20 MR. WOODWARD: On page 133, Mr. Watts
21 testified that there was erosion, and in response
22 to the question, at line 21, my question is:

23 "Question: Why have you allowed this to
24 go on?"

1 Answer: We didn't allow it to go on,
2 because it was fresh dirt that was placed down.
3 You do have some erosion with a tremendous rainfall
4 of any type afterwards, and you have to go in and
5 repair it, which we did.

6 Question: When did you go in and repair
7 it?

8 Answer: There again, you will have to
9 talk with Tom or one of the fellas that handles
10 that. I can't give you that date. We did go in
11 and repair it after it eroded."

12 You know, that's in the past tense. He
13 didn't -- there is no where in this record he
14 testified that --

15 HEARING OFFICER FRANK: Starting on line
16 7, Mr. Watts is talking about the cover and it says
17 we covered it in most places in excess of three
18 feet of dirt. That's Mr. Watts' testimony.

19 MR. WOODWARD: That's in the past.

20 HEARING OFFICER FRANK: But I believe
21 that her question is directed directly to that to
22 rebut that statement. So I am going to allow the
23 question.

24 MR. WOODWARD: What page was that on?

1 HEARING OFFICER FRANK: The same page,
2 133, starting on line 7.

3 MR. WOODWARD: But that's in the past,
4 rather than what is current.

5 Q (By Ms. McBride) What was the date of
6 your inspection?

7 A March --

8 Q Pardon me. What was the date of your
9 most recent inspection?

10 A March 19th of 1997.

11 Q Okay. Can you please describe the
12 material that is evident at the surface of the
13 existing final cover?

14 A It is apparent mine spoils.

15 Q Can you tell us what mine spoils consist
16 of?

17 A A heterogenous mixture of shale, silty
18 shale, sandstone, and a predominate component would
19 be clay.

20 Q Okay. I am now handing you what has been
21 marked as People's Exhibit Number 21. Can you tell
22 us what that is?

23 A The Viola Watts Landfill, Viola,
24 Illinois, closure, post closure care plan, dated

1 March 18th of 1991.

2 Q What page of that closure plan is
3 attached there?

4 A Page 12.

5 Q Is this the closure plan currently in
6 effect incorporated by reference in the
7 supplemental permit 1991-098?

8 A Yes.

9 Q And that permit I just referred to is
10 People's Exhibit Number 5. Is this closure plan
11 considered part of the operating permit in effect
12 for Viola?

13 A I believe so.

14 Q What does the second subheading on page
15 12 say?

16 A Schedule for closure.

17 Q Would you read that paragraph into the
18 record, please?

19 A Within 30 days of receipt of the final
20 volume of waste, placement of final cover will
21 begin. This is expected to take 30 to 60 days.
22 After completion of final cover placement, the
23 vegetative layer will be placed, season
24 permitting. Top soil placement is estimated to

1 take 15 to 30 days.

2 The total expected time period from
3 acceptance of the final volume of waste to
4 completion of the vegetative layer is 90 days,
5 weather permitting. No waste will be accepted at
6 the initiation of closure.

7 Q So, Ron, if the landfill stopped
8 accepting waste as of September 18th, 1992, weather
9 permitting, the vegetative cover should have been
10 established by, say, late spring of 1993; is that
11 correct?

12 A That's correct.

13 Q But we have heard that 1993 was a bad
14 year for weather, so perhaps the vegetative cover
15 could not have been established until 1994; is that
16 correct?

17 A That's correct.

18 Q Ron, it is now 1997. How did the
19 vegetative cover look at the landfill on March
20 19th?

21 A Sparse.

22 Q Okay. Was it sparse throughout the
23 landfill?

24 A There is portions along the northern and

1 northeastern slope of the landfill that has a
2 vegetative cover.

3 Q That vegetative cover at that location,
4 how would you describe it? Is it a good cover?

5 A Yes, good.

6 Q Okay. How about the rest of the
7 landfill?

8 A Hardly any.

9 Q Okay. Ron, based on your observations,
10 how much of the landfill is covered with a six inch
11 layer of soil that would support vegetation?

12 MR. WOODWARD: I will object unless there
13 is a foundation laid as to whether he is qualified
14 to determine whether soil is suitable for
15 supporting vegetation or not.

16 HEARING OFFICER FRANK: Ms. McBride?

17 MS. McBRIDE: We have qualified this
18 witness as an environmental specialist. He is an
19 inspector for the IEPA. He is qualified. I
20 believe he is qualified.

21 HEARING OFFICER FRANK: Okay. I am going
22 to allow the question.

23 Q (By Ms. McBride) Ron, based on --

24 MR. WOODWARD: For the record, though, I

1 would like to indicate that I don't believe that
2 those qualifications make you an expert in types of
3 soil, whether they support vegetation or not.

4 HEARING OFFICER FRANK: But that would go
5 to the weight that the Board warrants to give his
6 answer, and not to whether or not to allow the
7 question. So I am going to allow the question.

8 Q (By Ms. McBride) Ron, once again, how
9 much of the landfill is covered with a six inch
10 layer of soil that would support vegetation?

11 A Just the northern and northeastern bottom
12 slopes, as observed by the vegetative cover that I
13 witnessed on that day.

14 Q Okay. What would have to be done at the
15 site in order for the existing cover to support
16 vegetation?

17 A To apply some sort of organic soil
18 material that is conducive to establish vegetative
19 cover.

20 Q Can anything be done to the mine spoils
21 to promote establishing vegetative cover?

22 A Well, I believe Mr. Jones stated that if
23 one were to apply lime at certain rates and
24 fertilizer it could be tried, but evidently that

1 has not worked.

2 MS. McBRIDE: Okay. Ms. Hearing Officer,
3 I offer People's Exhibit Number 21, and move for
4 its admission into evidence.

5 HEARING OFFICER FRANK: Is there any
6 objection?

7 MR. WOODWARD: I object because it is not
8 the current closure -- it is not the current
9 closure, post closure care plan in effect for the
10 Viola-Mercer County Landfill. Unless there is some
11 evidence to say that the current one contains these
12 same provisions, then this is not appropriate for
13 admission, because we would need a new one to know
14 what is currently applicable.

15 HEARING OFFICER FRANK: Ms. McBride?

16 MS. McBRIDE: That's the portion that is
17 attached to 1991-098, which is your operating
18 closure plan.

19 MR. WOODWARD: We have submitted
20 additional closure, post closure care plans with
21 revised estimates since that date. They have been
22 approved, to my understanding.

23 MS. McBRIDE: What has been approved?
24 Which one has been approved?

1 MR. JONES: One was approved in 1996.

2 MS. McBRIDE: It didn't change that part
3 of the closure plan. My understanding is that is
4 the operating closure plan, the one attached.

5 MR. WOODWARD: Well, why don't we find
6 out from the witness before it is determined.

7 Q (By Ms. McBride) Is this the operating
8 closure plan for the Viola Landfill?

9 A Yes, I believe so.

10 Q All right.

11 HEARING OFFICER FRANK: Okay. Then I am
12 going to allow it, and you can question the witness
13 if you believe differently.

14 (Whereupon said document was
15 admitted into evidence as
16 People's Exhibit 21 as of this
17 date.)

18 Q (By Ms. McBride) Ron, did you observe any
19 cracks or erosion gullies at the landfill on March
20 19th?

21 A Yes, I did.

22 MR. WOODWARD: I object. Again, I don't
23 know that -- how is that question in the nature of
24 rebuttal?

1 HEARING OFFICER FRANK: Ms. McBride?

2 MR. WOODWARD: Our own witness testified
3 that there was erosion, so his testimony is not
4 rebuttal. He is not rebutting anything our witness
5 testified to.

6 MS. McBRIDE: Ms. Hearing Officer, it is
7 the most recent evidence we have on what now exists
8 at the Viola Landfill, and for a comprehensive
9 record I feel -- we feel that it is appropriate for
10 this hearing.

11 MR. WOODWARD: If they are trying to
12 introduce new testimony, then they would have to
13 show that they applied due diligence to obtain, and
14 he could have gone out and made his examination on
15 March 12th, 1996, instead of waiting to hear
16 everybody testify and then go out. I mean, it is
17 not in the nature of rebuttal just because it is
18 the most recent record.

19 MS. McBRIDE: Ms. Hearing Officer, it is
20 also, you know, getting back to Mr. Watts'
21 testimony that the landfill was covered with at
22 least three feet of dirt, three feet of cover.
23 This goes to the effect that if there is three feet
24 of cover effectively taking care of what they are

1 supposed to be doing at the landfill.

2 I mean, it is -- it rebuts what Mr.
3 Watts' testified to and also rebuts the fact that
4 we have heard testimony today that these erosion
5 gullies are getting fixed and that the channels are
6 getting fixed, and they are not getting fixed at an
7 appropriate rate.

8 HEARING OFFICER FRANK: I am not going to
9 allow the question. Please continue.

10 MS. McBRIDE: I would like to make an
11 offer of proof on that.

12 HEARING OFFICER FRANK: Okay. That's
13 fine.

14 Q (By Ms. McBride) Did you observe any
15 cracks or erosion gullies at the landfill on March
16 19th?

17 A Yes, I did.

18 Q Okay. Ron, I am now handing you what has
19 already been marked as --

20 HEARING OFFICER FRANK: For the record,
21 are you done with your offer of proof, so that it
22 is demarked for the Board?

23 MR. DAVIS: You are asking us what?

24 HEARING OFFICER FRANK: I was asking her

1 if she was done with her questions within the offer
2 of proof so that --

3 MR. DAVIS: It is a question by question
4 situation.

5 HEARING OFFICER FRANK: Okay. Well, I
6 thought we were just doing it as to that first
7 question.

8 MR. DAVIS: Then do the next question.

9 MS. McBRIDE: I think this is going to be
10 question by question.

11 HEARING OFFICER FRANK: Okay.

12 Q (By Ms. McBride) Ron, I am now handing
13 you what has already been marked as People's
14 Exhibit Number 22. Please tell us what it is.

15 A It is Part 807 landfill inspection
16 checklist conducted at the Viola Landfill on March
17 19th of 1997 by this inspector.

18 Q Okay. You were the inspector?

19 A Yes.

20 Q Would you briefly summarize what you
21 wrote in the narrative?

22 MR. WOODWARD: I would object as to
23 that. I mean, there is no way of my determining
24 whether she is asking something that is in the

1 nature of rebuttal or not, to just summarize what
2 is in that report.

3 HEARING OFFICER FRANK: I am going to
4 allow it for background.

5 Please continue.

6 THE WITNESS: This author observed
7 uncovered refuse on the western slope of the
8 landfill and on the northwestern slope and also at
9 part of the southern slope.

10 Q (By Ms. McBride) Are there photos in your
11 report that show exposed refuse and cracks and
12 erosion gullies?

13 A Yes, there is.

14 Q Could you tell us which ones and the
15 locations depicted in those photos?

16 A Photographs 5, 6, 7, 8, 9 show uncovered
17 refuse at the western slope of the landfill.
18 Photographs 12 and 13 show uncovered refuse at the
19 northwestern portion of the landfill.

20 MR. WOODWARD: Again, I would object if
21 we are going to go further along this line. How is
22 this in the nature of rebuttal? He is called as a
23 rebuttal witness to say that on March 19th, 1997 he
24 saw uncovered refuse. That doesn't rebut anything

1 that was testified to earlier.

2 MS. McBRIDE: Again, yes, it does. Mr.
3 Watts testified that he has three foot of final
4 cover on this landfill.

5 MR. WOODWARD: That is not what Mr. Watts
6 said. Mr. Watts said three foot of cover was
7 applied. Now, there is a major difference between,
8 yes, we did do what we were supposed to do and,
9 yes, we have maintained what we are supposed to.

10 HEARING OFFICER FRANK: I am going to --

11 MS. McBRIDE: But you have also indicated
12 that you are --

13 HEARING OFFICER FRANK: I am going to
14 allow this, but I have the wrong exhibit, because
15 the one that you handed me has an inspection date
16 of November 17th, 1995.

17 MS. McBRIDE: That is previous. You have
18 that in your new exhibit pack --

19 HEARING OFFICER FRANK: Right, except
20 that --

21 MR. WOODWARD: That is it. The one that
22 you had in your hand was the one -- it says
23 previous date of inspection.

24 HEARING OFFICER FRANK: Oh, okay.

1 MS. McBRIDE: They have changed their
2 inspection forms.

3 HEARING OFFICER FRANK: Okay. I
4 apologize. Please continue.

5 Q (By Ms. McBride) Ron, you were describing
6 the photos. Your last photos were 12 and 13. You
7 were describing the photos that were exposed refuse
8 and the cracks and the erosion gullies.

9 A Photographs 14 and 15 show uncovered
10 refuse in an erosional channel at a portion of the
11 northern slope of the landfill. And uncovered
12 refuse was again observed, and it is depicted in
13 photographs 23 and 24 at the southern portion of
14 the landfill.

15 Q Do those photos clearly and accurately
16 depict what you saw at the landfill on March 19th?

17 A Yes, they do.

18 Q Are there photos in your report that show
19 other cracks and erosion gullies?

20 A Yes, there are.

21 Q Would you please tell us which ones those
22 are and the location depicted in those photos?

23 A Photographs 1, 2, 3, 4 show the southern
24 and southwestern portions of the landfill and

1 depict erosional channels. Photographs 10 and 11
2 show an erosional channel on the western portion of
3 the landfill. Photographs 16, 18 and 19 show
4 erosional channels at the northeastern slope of the
5 landfill. Photograph 22 shows erosional channels
6 at the southeastern portion of the landfill just
7 west of the shop area.

8 Q Okay. Do these photographs clearly and
9 accurately depict what you saw at the landfill on
10 March 19th?

11 A Yes.

12 Q Okay. Does your report contain photos
13 that show the condition of the vegetation at the
14 landfill?

15 A Yes.

16 Q Okay. What photos show a lack of
17 vegetation?

18 A The ones that --

19 MR. WOODWARD: I would object. Has there
20 been any testimony from respondent dealing with
21 that there did exist vegetation at this site, other
22 than Mr. Jones' testimony that there was natural
23 vegetation occurring along the northeasterly part
24 of the property?

1 HEARING OFFICER FRANK: Ms. McBride?

2 MS. McBRIDE: There has been testimony to
3 the extent that they have attempted to vegetate
4 this site, and it is part of the requirement of the
5 permit. Again, it goes to the weight of this, and
6 it goes to the due diligence side of it, that this
7 is not getting done.

8 MR. WOODWARD: I believe Mr. Jones
9 testified that we had not been successful in
10 achieving vegetation, so how can this be rebutting
11 something that disagrees with? I mean, that's the
12 opposite nature of rebuttal. This is just a
13 blatant attempt to get a new inspection into the
14 record.

15 MR. DAVIS: And there is nothing wrong
16 with that.

17 MR. WOODWARD: Well, it is if it is after
18 the hearing date.

19 MR. DAVIS: If I can have a couple of
20 minutes here.

21 HEARING OFFICER FRANK: Yes.

22 MR. DAVIS: Under the Board rules, as far
23 as admissible evidence, they look to what the
24 courts do. In the courts, the plaintiff goes

1 first, the defendant goes next. The plaintiff can
2 go with additional evidence. If evidence is
3 relevant and material and not unduly cumulative
4 which, of course, new evidence might be, but I
5 stress the might, it will get in.

6 This evidence should get in, because it
7 is new, it is not unduly cumulative, and it is
8 relevant and material. The objections are
9 achieving one purpose, and that is obstructing our
10 legitimate presentation, which is allowed under the
11 Board rules. It is called complainant's rebuttal.
12 But to put so fine a point on it is misinterpreting
13 the whole point of making a comprehensive record.

14 We are more than willing to offer to
15 prove, so that the Board can decide. But we do
16 expect that the rulings focus on the objections,
17 with no disrespect intended, and the objection
18 seems to be, well, he is not disagreeing with us.
19 Well, that's not the point.

20 The point is that this is legitimate. If
21 it is not material and it is not relevant, then
22 exclude it. But that's not the objection. So
23 that's my two cents worth.

24 MR. WOODWARD: Well, I am sorry, but I

1 think you missed part of my objection. I mean, the
2 objection is that it is -- that he was called as a
3 rebuttal witness. He is not rebutting anything,
4 and he is presenting new testimony.

5 Now, my understanding of the court rules
6 is that newly discovered evidence can only be
7 admitted if there was due diligence in trying to
8 find that newly discovered evidence. My point was,
9 early on, that they could have made their
10 inspection before the hearing of March 13th, and
11 they didn't do so.

12 Now, after they have heard the
13 respondent's case-in-chief, they decided to present
14 somebody that they could have had available
15 beforehand, and I don't think that's right, under
16 the fundamental due process, to just wait and hear
17 your opponent's case, and hope that the case gets
18 continued so that you can go out and do an
19 inspection.

20 HEARING OFFICER FRANK: The Board's rules
21 allow any evidence which is material and relevant.
22 The Board has a more relaxed standard than the Code
23 of Civil Practice.

24 I believe that this information is both

1 material and relevant, and it goes directly to the
2 issues in this case. So I am going to allow it.

3 You may, in writing, request that the
4 Board strike it, and you can do that. I just
5 remind you that you have to do it in writing.

6 So please continue.

7 Q (By Ms. McBride) Ron, which photos in
8 your report show a lack of vegetation? And it
9 might be easier to do this by telling us which
10 photos show vegetation compared to which do not.

11 A Photographs 17, 18 and 19 show vegetative
12 cover at the northeastern slope, at a portion of
13 the northeastern slope of the landfill.

14 Q And which photos show a lack of
15 vegetation?

16 A Photographs 1 and --

17 Q You can just summarize if you want to.
18 Go ahead.

19 A The remaining photographs.

20 MS. McBRIDE: Okay. Ms. Hearing Officer,
21 I offer People's Exhibit Number 22, and move for
22 its admission into evidence.

23 MR. WOODWARD: Can I see it? Because the
24 copy they gave me I couldn't tell from the photos.

1 HEARING OFFICER FRANK: Yes.

2 MR. WOODWARD: I have made my objection
3 earlier.

4 HEARING OFFICER FRANK: I am going to
5 allow it, People's Exhibit Number 22. May I have
6 the original? Thank you.

7 (Whereupon said document was
8 admitted into evidence as
9 People's Exhibit 22 as of this
10 date.)

11 MS. McBRIDE: We are done at this point.

12 HEARING OFFICER FRANK: Okay. Please
13 continue.

14 CROSS EXAMINATION

15 BY MR. WOODWARD:

16 Q On any of your prior inspections had you
17 noted that vegetative cover did exist on the site,
18 if you recall?

19 A I can't recall. However, where I just
20 mentioned, the northeastern slope, there is
21 vegetative cover established at the lower portion.

22 Q Okay. Well, I am talking about prior
23 inspections, had you noted other areas having
24 vegetative cover?

1 A No.

2 Q Okay.

3 A I don't believe so.

4 Q And if I recall, this would be your fifth
5 inspection of the property since 1991?

6 A I would say my fifth visit.

7 Q Your fifth visit. Okay. That is
8 different than an inspection?

9 A Correct.

10 Q Okay. So there could have been periods
11 where they did have vegetative cover; is that
12 correct? I mean, you wouldn't know that, if it was
13 not present on one of the days you visited?

14 A It is possible.

15 Q So you don't know whether Mr. Watts was
16 telling the truth when he said that there was a
17 minimum of three feet of cover and they had some
18 activities started for vegetation?

19 A Could you rephrase that?

20 Q I asked if you knew whether he was
21 telling the truth when he made those statements?

22 A I had no reason to know if he was or was
23 not telling the truth.

24 Q Okay. So basically your testimony today

1 is just what you observed on March 19th, 1997?

2 A On that date.

3 Q Okay. Now, I believe you testified only
4 photographs 17, 18 and 19 show vegetative cover?

5 A (Nodded head up and down.)

6 Q Could you take a look at photograph
7 number 14, please.

8 A What was that again?

9 Q Photograph number 14. Does that have any
10 vegetative cover there?

11 A Yes, it does.

12 Q How about --

13 A It has vegetative cover at the lower
14 portion of the landfill.

15 Q Okay. How about photograph number 11?
16 What do you call this back here (indicating)?

17 A That is the property next door.

18 Q Okay. Are you sure? Isn't that on the
19 landfill side of Skunk Creek?

20 A No, you are looking toward the northwest
21 here.

22 Q Oh, I am sorry. Yes, isn't that where
23 Skunk Creek is?

24 A Skunk runs towards the northeast, on the

1 northeast side. That photograph is taken this
2 direction (indicating).

3 Q This is the northeastern corner, correct?

4 A No, this is the --

5 Q The south, the southeast corner?

6 A Yes.

7 Q And Skunk Creek runs in a northwesterly
8 direction?

9 A Right.

10 Q Okay. So isn't that the vegetative cover
11 that is up there?

12 A Perhaps a portion of the property, but
13 not all the property.

14 Q So you can see that photograph 11 may
15 show some vegetative cover?

16 A Some.

17 Q Okay. How about photograph number 10?

18 A Photograph 10 is the property adjacent to
19 the landfill, the tree line.

20 Q Okay. There is a fence there, right?

21 A Right.

22 Q That's where the tree line is?

23 A Yes.

24 Q You are assuming that the fence is the

1 property line?

2 A Yes.

3 Q What if the property line is actually
4 west of the fence, as shown in one of the prior
5 documents?

6 A I wouldn't know exactly.

7 Q How about photograph number 24, is that
8 vegetative cover?

9 A Sparse.

10 Q But it is vegetative cover?

11 A But it is sparse, yes.

12 Q So photograph number 24 shows a
13 vegetative cover, doesn't it?

14 A Next to the exposed refuse.

15 Q Now, do you have any idea what elevation
16 there first appears any exposed refuse?

17 A You mean -- by elevation, do you mean --

18 Q Mean sea level.

19 A Mean sea level, lower elevation?

20 Q No, what is the highest elevation you saw
21 exposed refuse?

22 A I wouldn't know.

23 Q Okay. Would it be below 690?

24 A I don't know.

1 Q Well, was it -- where was it in
2 relationship to the slopes, halfway up,
3 three-fourths of the way up?

4 A Half to three-fourths.

5 Q Okay. So even though you saw erosion
6 gullies further up than that, you don't know how --
7 what the depth of waste is above a half to
8 three-fourths up?

9 A No, I don't.

10 Q Do you know whether -- could you tell
11 from your prior inspection, your previous
12 inspection, what was that, the November of 1994 --
13 the November 17th, 1995, and this one, whether
14 there had been any dirt removed by mechanical
15 operation, like stripping of dirt?

16 A From --

17 Q From the Viola-Mercer County Watts
18 Landfill?

19 A I could not tell if there was any
20 removed.

21 Q You were in the room, were you not, when
22 you heard testimony that additional final cover had
23 to be put down in some areas because of erosion or
24 settling, various reasons why additional final

1 cover had to be put down, were you not? You were
2 in the room?

3 A To stockpile the soil on top?

4 Q No. The question was that there was
5 additional final cover placed, because -- well,
6 tell me. Do you remember that testimony being
7 given today?

8 A Yes.

9 Q Okay. Do people normally put additional
10 final cover on top of the vegetative cover?

11 A No, not if there is an established
12 vegetative cover.

13 Q They have to strip it off, don't they?

14 A Why would they? I don't see the reason
15 to strip the vegetative cover off when it is
16 established.

17 Q Well, what if they had --

18 A If there was a washout.

19 Q What if the problem was it settled and
20 you had a ponding?

21 A Then you would have to apply additional
22 cover.

23 Q Would you take away the vegetative cover
24 then?

1 A At that time?

2 Q Yes, so you could compact it and
3 everything?

4 A Yes.

5 Q Okay. Do you recall on March -- excuse
6 me -- November 17th, 1995, whether there was
7 vegetative cover on the site?

8 A It was sparse.

9 Q I believe your first visit was in 1991;
10 is that correct? And that was not an inspection,
11 you just went along with somebody?

12 A Yes.

13 Q Do you have any recollection of what you
14 saw at the site then?

15 A During the inspection?

16 Q No, during your visit?

17 A Uncovered refuse.

18 Q But did you see vegetative cover?

19 A No, not to my knowledge.

20 Q You don't recall or you --

21 A I don't recall.

22 Q Okay. Did you bring any of your prior
23 inspection reports with you today?

24 A No.

1 Q Okay. Why don't you take a look at
2 photograph number 2 in People's Exhibit Number 22.
3 Now, is that near the top of the slope, near the
4 top of the --

5 A The south.

6 Q The south?

7 A Yes.

8 Q So that's one of the highest areas of the
9 landfill, as far as you can recall, from the final
10 contour map?

11 A Yes.

12 MR. WOODWARD: Okay. That's People's
13 Exhibit Number 4, isn't it?

14 HEARING OFFICER FRANK: Yes.

15 Q (By Mr. Woodward) Okay. I am showing you
16 the exact duplicate.

17 A The exact elevation would be hard to
18 depict.

19 Q But is it right by this area where the
20 highest is 704.2?

21 A It is right in this area (indicating).

22 HEARING OFFICER FRANK: You are going to
23 have to, for the record, explain where "this area"
24 is.

1 Q (By Mr. Woodward) Okay. There is an E4
2 plus 00 line that intersects with -- that runs
3 perpendicular to two lines designated N1 plus 00 --
4 N2 plus 00 on this map. Is that the area that you
5 are talking about?

6 A Right, in between the 690 and 695
7 elevation.

8 Q Okay. So that's the approximate
9 elevation of that?

10 A Approximate.

11 Q And you don't --

12 HEARING OFFICER FRANK: Which picture is
13 that?

14 MR. WOODWARD: This is photograph number
15 2.

16 HEARING OFFICER FRANK: Okay.

17 Q (By Mr. Woodward) Do you see any exposed
18 refuse in that picture?

19 A No, I do not.

20 Q And is this approximately where you said,
21 halfway to three-fourths of the way up the slope
22 the bottom of the erosion rut that is right in the
23 middle of the picture?

24 A In this photograph?

1 Q Yes. Is that approximately half to
2 three-fourths of the way up the slope?

3 A When you say up the slope, do you mean
4 looking directly at it?

5 Q Well, if you are standing at road level
6 and you looked up to the top of the slope, is that
7 approximately somewhere between a half and
8 three-fourths of the way up the slope?

9 A Yes.

10 Q Okay. You don't see any exposed refuse
11 there?

12 A No.

13 Q And how deep do you think that -- do you
14 recall how deep that erosion rut is?

15 A Approximately six inches.

16 Q Okay. So we know we don't have any
17 exposed refuse at that point, at least six inches
18 below the final cover; is that correct?

19 A Right.

20 Q Now, where is photograph number 3 taken
21 on this map here, if you can identify it?

22 HEARING OFFICER FRANK: For the record,
23 you are referring to People's Exhibit 4?

24 MR. WOODWARD: People's 22.

1 HEARING OFFICER FRANK: Well, you said on
2 this map here. Do you mean on Exhibit 4?

3 MR. WOODWARD: Right. It is just a blown
4 up picture.

5 THE WITNESS: Looking toward the
6 northeast.

7 Q (By Mr. Woodward) Why don't you use these
8 reference lines here?

9 A North 3 plus 00.

10 Q And between what?

11 A East 3 plus 00.

12 MS. McBRIDE: If we are going to be using
13 this thing to this extent we need -- it should be
14 marked.

15 HEARING OFFICER FRANK: It is the same
16 one as your --

17 MR. DAVIS: It has greater detail. It is
18 different. I have heard no indication it has the
19 same date. It certainly seems to be a better
20 copy. That's all we have been using for today's
21 proceeding.

22 MR. WOODWARD: It is the same document.

23 MR. DAVIS: Then let's use the official
24 one.

1 MR. WOODWARD: I had this one at hand.

2 MR. DAVIS: I would much prefer, so that
3 the record doesn't get any more cluttered, that we
4 use what has been admitted into evidence.

5 MR. WOODWARD: The copy that was given to
6 me was an 8 and a half by 11.

7 Q (By Mr. Woodward) You will have to
8 reiterate which lines you were referring to.

9 A The ones I previously mentioned,
10 approximately.

11 Q North 3 plus 00?

12 A And east three plus 00.

13 Q Okay. The intersection of those two
14 lines approximately?

15 A (Nodded head up and down.)

16 HEARING OFFICER FRANK: You need to
17 answer yes or no.

18 THE WITNESS: Yes, approximately.

19 Q (By Mr. Woodward) Okay. Now, let's go
20 back to photograph -- what was it, 3. Now, near
21 the lower left-hand corner of that photograph there
22 is an erosion rut, is there not?

23 A There is.

24 Q Do you see any exposed refuse there?

1 A Not in that one, no.

2 Q That's near the bottom of that slope; is
3 it not?

4 A No, it is up a little ways beyond this
5 road that is designated on the map.

6 Q So it is above the road?

7 A Yes.

8 Q Okay. So somewhere between 690 and 695,
9 if I understand these maps right?

10 A Where I took the photo, right in that
11 area.

12 Q Okay. How deep is that rut, if you
13 recall, or if you can tell from the photograph?

14 A That rut appears to be 12 inches.

15 Q Okay. So at that point you know that
16 there is no exposed refuse or no refuse at least 12
17 inches below the final contour right there?

18 A None that is exposed, no.

19 Q Where is photograph number 9 in
20 relationship to People's Exhibit Number 4 in
21 photograph number 9 of People's Exhibit Number 22?
22 I am sorry. You have these numbered, right?

23 A Yes, I do.

24 Q Maybe that will help. Somewhere I had a

1 copy of that. Here it is. Where, in relationship
2 to the reference lines, are we talking about?

3 A East of 3 plus 00 and just south of N 7
4 plus 00, approximately.

5 Q So that's between elevation 675 and 680;
6 is that correct?

7 A Approximately.

8 Q Assuming that the numbers on this map are
9 correct? I understand that you didn't prepare this
10 map.

11 A Yes.

12 Q Okay. And that photograph does show
13 exposed refuse, does it not?

14 A Yes, it does.

15 Q So you know that somewhere between 675 --
16 elevation 675 and 680 that you have refuse to that
17 elevation, at least?

18 A At least.

19 Q Okay. Are there any other photos showing
20 exposed refuse that are at a higher elevation than
21 this particular photograph?

22 A No.

23 MR. WOODWARD: Okay. That's all.

24 HEARING OFFICER FRANK: Ms. McBride?

1 REDIRECT EXAMINATION

2 BY MS. McBRIDE:

3 Q Ron, we have talked about vegetation in
4 the bottom slopes, in the bottom areas. Is there
5 standing water? Have you observed standing water
6 or wetland conditions in those areas as well?

7 A What do you mean?

8 Q Have you -- in your inspection of March
9 19th, did you observe wetland areas or standing
10 water?

11 A I observed wetland areas, yes.

12 Q Where were those?

13 A North.

14 Q Is that --

15 A On the landfill property.

16 Q Okay. Were those in the same vicinity as
17 where the vegetation was?

18 A No.

19 Q Okay. But there was wetland areas and
20 standing water -- pardon me. Strike that.

21 There were wetland areas on the landfill;
22 is that correct?

23 A On the landfill property.

24 Q On the landfill property. Okay?

1 A Yes.

2 MS. McBRIDE: That's all.

3 MR. WOODWARD: I would object to the
4 terminology of wetland. I think that's a
5 determination made by the Corps of Engineers. We
6 would concede that there is an area that has
7 standing water, has always had standing water, and
8 has always been shown on the plans as having
9 standing water.

10 HEARING OFFICER FRANK: Okay. I am going
11 to sustain your objection to the term, but I am
12 going to allow the questioning of where that area
13 is -- where the standing water is.

14 THE WITNESS: The standing water is
15 located just north of monitoring well G108.

16 MS. McBRIDE: All right. Nothing
17 further.

18 HEARING OFFICER FRANK: Anything else?

19 MR. WOODWARD: Nothing.

20 HEARING OFFICER FRANK: Let's go off the
21 record then.

22 (Discussion off the record.)

23 HEARING OFFICER FRANK: Back on the
24 record.

1 record.

2 With that briefing schedule, I am going
3 to allow up until May 23rd for Watts' attorney, Mr.
4 Woodward, to file any response that you may or may
5 not need to file solely to the issue of the
6 financial assurance that was ordered by the
7 Pollution Control Board.

8 If the complainant ends up addressing it
9 in their reply brief, this is, Mr. Woodward, your
10 opportunity to address what they raise in their
11 reply brief. I am hoping that we won't need to do
12 any of that. That extra week shouldn't matter,
13 because we are past the Board meeting schedule in
14 May anyway.

15 For the record, also, I found all
16 witnesses to be credible. The Board can make its
17 own determination as to weight.

18 Is there anything else that we need to
19 discuss?

20 Okay. Then let's go ahead and go off the
21 record. Thank you.

22 (All exhibits were retained by
23 Hearing Officer Frank.)

24

1 STATE OF ILLINOIS)
) SS
2 COUNTY OF MONTGOMERY)

3 C E R T I F I C A T E

4 I, DARLENE M. NIEMEYER, a Notary Public
5 in and for the County of Montgomery, State of
6 Illinois, DO HEREBY CERTIFY that the foregoing 151
7 pages comprise a true, complete and correct
8 transcript of the proceedings held on the 25th of
9 March A.D., 1997, at the Illinois Office of the
10 Attorney General, 500 South Second Street,
11 Springfield, Illinois, in the case of The People of
12 the State Illinois v. ESG Watts, Inc., an Iowa
13 Corporation, in proceedings held before the
14 Honorable Deborah L. Frank, Hearing Officer, and
15 recorded in machine shorthand by me.

16 IN WITNESS WHEREOF I have hereunto set my
17 hand and affixed my Notarial Seal this 2nd day of
18 April A.D., 1997.

19

20

21 Notary Public and
22 Certified Shorthand Reporter and
Registered Professional Reporter

23 CSR License No. 084-003677
My Commission Expires: 03-02-99

24