

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
SANGAMON COUNTY, ILLINOIS

PEOPLE OF THE STATE)
OF ILLINOIS,)
)
 Complainant,)
)
 v.) No. PCB 96-237
)
 ESG WATTS, INC., an Iowa)
 corporation,)
)
 Respondent.)

Illinois Pollution Control Board hearing taken by and on behalf of both sides on April 16, 1997.

Reporter: Angela K. Sievers, RPR, CSR - #084-004102

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PEOPLE OF THE STATE
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 v. No. PCB 96-237

 ESG WATTS, INC., an Iowa
 corporation,
 Respondent.

APPEARANCES:

Hearing Officer: Deborah L. Frank

 For People: Office of Attorney General
 by Thomas Davis, Esq.

 For Respondent: Larry A. Woodward, Esq.

The Illinois Pollution Control Board hearing was taken by and on behalf of both sides on April 16, 1997, at the State Police Training Center, Third Floor, 600 South Second Street, Springfield, Illinois, before Angela K. Sievers, a Notary Public and Certified Shorthand Reporter.

HEARING OFFICER: The hearing before us today is People versus ESG Watts, Inc., PCB 96-237. A hearing officer order has already been entered establishing a briefing schedule and the complainant's brief has actually already been mailed, I don't know if it's been filed yet with the Board, if they've received it yet. We're here for purposes of allowing any interested members of the public to participate. At this time, there are no members of the public although we will wait for 15 or 20 minutes to see if any show up. If you guys want to go ahead and make your appearances on the record and I don't think you have anything to say but if you have anything for the record. Mr. Davis?

MR. DAVIS: Thank you. My name is Thomas Davis, I'm with the Illinois Attorney General's office on behalf of the People.

MR. WOODWARD: My name is Larry A Woodward, I'm corporate counsel for Watts Trucking Service, Inc. and I'm entering my appearance for ESG Watts, Inc. a subsidiary of Watts Trucking Service, Inc. I do have something to say for the record. We admit the allegations of the amended complaint provided there's people agree that it only applies to events that occurred on or after October 15, 1994, which the filing of the last amended complaint and PCB 94-127 was October 14th, 1994. In addition, there's an allegation that there was an amount submitted with a significant amount in excess of 1,500,000. In fact, it was 1,510,000 and some dollars. However, there was an amount of \$119,500 included in that that were not required to be included in it, in a closure/post-closure care plan estimate, and we're only admitting that we failed to comply with funding \$1,391,090 for that time period.

HEARING OFFICER: Okay.

MR. DAVIS: We agree with what Mr. Woodward has said. As far as our pleading, it is obviously a continuation of some compliance problems which were the subject in 94-127. We're not trying to get from the Board additional penalties for violation that the Board had already adjudicated in that case, we just felt it necessary so that the Board would comprehend to put in our pleading some information that we would characterize more as background provided context. Because when the Board issued its final orders in 94-127, the Board made a statement to the effect that Watts is now in compliance. That statement has been taken out of context and attempted to be used in the pending court case to avoid Court sanctions and so forth. And we wanted to put the statement in more of an appropriate context and acknowledge as the Board was attempting to do in its order simply that at some point in time, and if my memory serves me well, this would have been September 1995 cost estimates had been submitted. We acknowledge that, however, as we put in your pleadings, those cost estimates such as Mr. Woodward has just represented were not approved and so there really was no time during 1995 that Watts was in compliance with those cost estimate revision requirements. Now if any of this is confusing to those of us present, I can well appreciate that and that's why we tried to set it out in our pleading so that the Board would have a context. Thank you.

HEARING OFFICER: Okay. Anything else, Mr. Woodward?

MR. WOODWARD: I believe we submitted prior. If we haven't, I tender the affidavit of Arthur Evans.

HEARING OFFICER: That's already been submitted to the Board and filed with them. Is there anything else?

MR. WOODWARD: And I thought what you had indicated we were going to state for the record that Mr. Watts' testimony at the Viola hearing and also Mr. Taylor's testimony and Mr. Evans' testimony would be considered as part of this record also.

HEARING OFFICER: Yes. And that is recorded in PCB 96-233 and that should be from the first day of hearing in that case which I believe was March 15th.

MR. WOODWARD: 13th, one of the two.

HEARING OFFICER: March 13th, yeah, you're right. So that the Board can find it easily and that was agreed to at that time. I believe the record in 96-233 reflects that but now this record does also.

MR. WOODWARD: And then one final matter is we had agreed in PCB 96-233 that the record would remain open up until a reply brief was due. I would request the same thing in this action because we have submitted the necessary documents to RTC for them to pursue filing financial assurance in the amounts required. But I take it they have not submitted those yet to the Agency from my conversation with Mr. Davis.

MR. DAVIS: Well my only comment would be that it's the permittee's obligation not some third party. And if and when there is compliance, presumably I'll be told and I would have no problem with the respondent's submitting proof that I've upgraded the financial assurance. After all, that's why we've taken this litigation.

HEARING OFFICER: Right. Okay. Then the record will remain open until the reply brief date. If information comes in after that time, you'll need to move the Board to allow the information. Is there anything further before we go off the record?

MR. WOODWARD: I have nothing further.

HEARING OFFICER: Okay. Let's go ahead and go off the record and we'll wait for probably ten more minutes and then close it.

(An off-the-record discussion was held)

HEARING OFFICER: We're back on the record. It is 10:20, no members of the public have shown up for the hearing so we are going to go ahead and close the hearing record and everything else will be written briefs and any submittals that Watts needs to make.

MR. WOODWARD: Except for the right to submit evidence of compliance.

HEARING OFFICER: Right.

MR. DAVIS: We don't object to that but as we talked about off the record, if for instance somebody on the company's behalf submits financial assurance in a form that's not yet been approved, that's going to have to be reviewed by the Agency and there's a chance it might be rejected. If on the other hand there's a deposit into the already approved trust fund, then that's automatically in compliance. So I suppose without re-nigging on any commitments, the only thing I would suggest is that if there is a subsequent denial by the Agency at that point pursuant to the proper pleading with an affidavit and so forth, I would probably submit something to the Board advising them of the action taken by the Agency. It's our hope, of course, that the permittee in this case can come up with the additional money that's due under the permits and that would satisfy our compliance concerns.

HEARING OFFICER: Okay. I think the whole idea is for the Board to know the exact state of where things are at. So if the Agency then acts and for some reason denies, then that would be information that the Board would want. But, you know, at this point it's too early to tell whether or not they will accept the alternative method of compliance that Watts is trying to achieve. So let's go ahead and close the record. Thank you both for coming.

STATE OF ILLINOIS)
COUNTY OF MACOUPIN) SS.

I, ANGELA K. SIEVERS, a Notary Public in and for the County of Macoupin, State of Illinois, DO HEREBY CERTIFY that pursuant to agreement between counsel there appeared before me on April 16, 1997 at the State Police Training Center, Third Floor, 600 South Second Street,

Springfield, Illinois, witnesses, who was first duly sworn by me to testify the whole truth of their knowledge touching upon the matter in controversy aforesaid so far as they should be examined and their examination was taken by me in shorthand and afterwards transcribed upon the typewriter and said hearing is herewith returned.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my Notarial Seal this 17th day of April, 1997.

Notary Public--CSR
#084-004102.

My Commission expires September 6, 1999.