

ILLINOIS POLLUTION CONTROL BOARD

February 15, 1996

ESG WATTS, INC., an Iowa corporation,)	PCB 94-243
)	94-306
Petitioner,)	94-307
)	94-308
v.)	94-309
)	95-133
ILLINOIS ENVIRONMENTAL)	95-134
PROTECTION AGENCY,)	(Permit Appeals - Land)
)	(Consolidated)
Respondent.)	

DISSENTING OPINION (by J. Theodore Meyer and J. Yi):

We respectfully dissent from the majority order today as the result of our frustration with the continuing tardiness of the filings from the Illinois Environmental Protection Agency (Agency). While we agree that the exclusion of the Agency's Post Hearing Brief is not the proper vehicle for sanctioning the Agency in this case, we believe that in the future such sanction may be appropriate. We also understand the demands that the Agency has on the few resources at its disposal and it is reasonable for the Board to expect late filings in a few instances. However, in this case where the Agency agreed to the briefing schedule, there is no excuse for such late filing except for the possible under-staffing at the Agency. While we are not saying that being under-staffed is an acceptable reason for a late filing it is a reason that this Board can understand and appreciate.

The assigned Agency Attorney in this matter stated that since the Agency received the Post Hearing Brief from ESG Watts Inc., on January 12, 1996 and the filing of the Agency's Post Hearing Brief, he worked the following hours:¹

Friday,	January 12, 1996	15 hours
Saturday,	January 13, 1996	4 hours
Sunday,	January 14, 1996	8 hours
Monday,	January 15, 1996	17.5 hours
Tuesday,	January 16, 1996	17 hours
Wednesday,	January 17, 1996	17 hours
Thursday,	January 18, 1996	20.5 hours
Friday,	January 19, 1996	19.5 hours
Sunday,	January 21, 1996	5 hours
Monday,	January 22, 1996	10.5 hours
Tuesday,	January 23, 1996	14 hours
Wednesday,	January 24, 1996	18 hours

¹ We assume that the calculation of the hours worked are not actual hours but calculated pursuant to the Agency's time sheets.

Thursday,	January 25, 1996	18.5 hours
Friday,	January 26, 1996	23.5 hours
Saturday,	January 27, 1996	16 hours
Sunday,	January 28, 1996	16 hours
Monday,	January 29, 1996	22 hours
Tuesday,	January 30, 1996	20 hours
Wednesday,	January 31, 1996	24 hours
Thursday,	February 1, 1996	24 hours
Friday,	February 2, 1996	18.5 hours
Saturday,	February 3, 1996	14.5 hours
Sunday,	February 4, 1996	12.5 hours
Monday,	February 5, 1996	17.5 hours

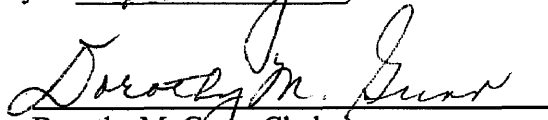
The Agency Attorney has also filed appearances, as a respondent, in twenty-six (26) other matters before the Board. If the Agency is under-staffed, or if this one attorney is over utilized, it should seek additional attorneys in order to insure timely filing before the Board. The failure to address this resource problem creates the unnecessary risk that we may be faced with a situation of deciding matters without the benefit of the Agency's arguments. Additionally, we would like to note that the Agency could of requested for additional time to file its Post Hearing Brief prior to the filing due date and possibly avoided this situation. The Agency should consider this approach in the future.

For the reasons stated above we respectfully dissent.


 Theodore Meyer
 Board Member


 Joseph Yi
 Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above dissenting opinion was filed on the 16th day of February, 1996.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board