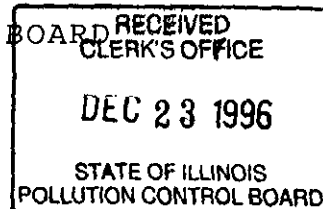


1 BEFORE THE POLLUTION CONTROL BOARD



2 STATE OF ILLINOIS

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5 PEOPLE OF THE STATE
6 OF ILLINOIS,

7 Claimant,

8 -vs-

NO. PCB 96-107
(Enforcement)

9 ESG WATTS, INC.,

10 Respondent.

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16 Hearing held, pursuant to Notice, on the 12th day
17 of December, 1996, at the hour of 8:00 a.m., at 600
18 South Second Street, Springfield, Illinois, before
19 Ms. Deborah L. Frank, duly appointed Hearing Officer.

20
21
22
23 TRANSCRIPT OF PROCEEDINGS

1 APPEARANCES:

2 MR. THOMAS DAVIS
 Chief, Environmental Bureau, and
 3 MS. AMY SYMONS-JACKSON
 Assistants Attorney General
 4 Environmental Bureau
 500 South Second Street
 5 Springfield, Illinois 62706

6 on behalf of the Claimant;

7 SORLING, NORTHRUP, HANNA,
 CULLEN & COCHRAN, by
 8 MR. CHARLES J. NORTHRUP
 Attorney at Law
 9 Suite 800
 607 East Adams Street
 10 Springfield, Illinois

11 on behalf of the Respondent.

12 ALSO PRESENT:

13 MS. MICHELLE M. RYAN
 Assistant Counsel
 14 Waste Enforcement
 Division of Legal Counsel
 15 Illinois Environmental Protection Agency
 2200 Churchill Road
 16 Springfield, Illinois

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1 HEARING OFFICER FRANK: Let's go back on the
2 record. This is a continuation of People of the State
3 of Illinois versus ESG Watts, Inc., PCB 96-107.

4 Mr. Northrup, can you go ahead and call your first
5 witness?

6 MR. NORTHRUP: Sure. Actually, at least one
7 preliminary matter.

8 HEARING OFFICER FRANK: Okay.

9 MR. NORTHRUP: Have you ruled -- remember, I
10 filed a motion about the Lieutenant Chisholm of the
11 Rock Island County Sheriff's Department. Have you
12 made any ruling on that?

13 HEARING OFFICER FRANK: My ruling would be
14 that we are not going to continue this hearing or
15 extend it for purposes of receiving that testimony.
16 If for some other reason we need another day of
17 testimony, which I am not anticipating, then I would
18 be willing to discuss doing that in Rock Island. But
19 if we conclude at the end of today, then we are done,
20 and since he is not here, he will not have the
21 opportunity to testify.

22 MR. DAVIS: You received our response to the
23 motion?

24 HEARING OFFICER FRANK: Yes, I did, thank

1 you.

2 Okay. So do you want to go ahead and call your
3 first witness?

4 MR. NORTHRUP: Yeah. I call Steve Grothus.

5 STEVE GROTHUS

6 called as a witness herein, having been first duly
7 sworn, was examined and testified as follows:

8 DIRECT EXAMINATION BY

9 MR. NORTHRUP:

10 Q. Why don't you go ahead and state your name
11 for the record?

12 A. Steve Grothus.

13 Q. And are you currently employed?

14 A. Yes, with ESG Watts.

15 Q. Okay. What do you do at ESG Watts?

16 A. I'm a project manager for the Landfill
17 Division.

18 Q. Okay. What exactly does that mean? What are
19 some of your duties as a project manager?

20 A. Duties, take care of customer contacts as far
21 as sales, things like that. I also manage
22 construction projects and special waste projects,
23 remediation projects for our company.

24 Q. What do you mean construction projects? What

1 do you mean by that?

2 A. Landfill construction projects, specific to
3 permits probably, or complying with permits or what
4 have you, things like that.

5 Q. So you're generally familiar with the permits
6 that have been issued for the Taylor Ridge Landfill?

7 A. Most of them, yes.

8 Q. How long have you been at ESG Watts?

9 A. I started in 1983 in the fall.

10 Q. Describe for me some of your -- your
11 educational background.

12 A. High school degree. I have a college degree
13 in economics and business administration from St.
14 Ambrose University.

15 Q. Where's that?

16 A. Davenport, Iowa.

17 Q. Where did you go to high school at?

18 A. Assumption High School.

19 Q. Where's that?

20 A. Davenport, Iowa.

21 Q. Do you have any other formal education?

22 A. Worked a little bit on my MBA. I've
23 completed the CHMM testing and passed proficiency,
24 Certified Hazardous Materials Manager.

1 Q. So you do have that license? You are a CHMM?

2 A. It's not a license. It's just a
3 certification of competency in the field.

4 Q. What are some of the things that -- strike
5 that.

6 Do you have to take a test to become certified?

7 A. Yes.

8 Q. What are some of the things that they test
9 you on?

10 A. I think there's probably 38 different topic
11 areas in it.

12 Q. Just generally.

13 A. Everything from the Code of Federal
14 Regulations, 29 CFR, 49 CFR, 40 CFR, OSHA, SARA,
15 CERCLA, TSCA.

16 Q. Is that something that --

17 A. Just all types of -- it's a general knowledge
18 of the industry.

19 Q. And again, what industry is that?

20 A. The hazardous materials industry.

21 Q. Is there any kind of continuing certification
22 that you have to --

23 A. Yes, there is.

24 Q. What's that?

1 A. You have to create -- complete so many -- I
2 forget what they're called -- credit hours and
3 competency hours to maintain it over a period of three
4 years. It's like, I think, 12 hours or 15. They
5 issue you credits on things, classes that you take,
6 things that you do, things like that.

7 Q. Okay. Have you kept up with that?

8 A. I'm lacking in it. I think I have like four
9 or five more credits to obtain, but I have like
10 another year to get it.

11 Q. You're still a certified CHMM?

12 A. Yeah, yes.

13 Q. Let me show you what's already been marked as
14 People's Exhibit Number 5. Why don't you take a look
15 at the third or fourth page on there.

16 A. The map?

17 Q. Yeah. Take a look at the map.

18 A. Okay.

19 Q. Now, that map shows two ponds?

20 A. Uh-huh.

21 Q. What are those referred to as on there?

22 A. Whitley's pond and a landfill pond.

23 Q. Okay. Are you familiar with both of those
24 ponds?

1 A. Yes.

2 Q. Does the landfill pond still exist?

3 A. No.

4 Q. What happened to that pond?

5 A. That was due to construction activities as we
6 moved from -- the face of the fill from the northwest
7 to the northeast. It's created when you expand
8 through.

9 Q. Now, if I use the term the Whitley retention
10 pond, do you understand what I'm talking about?

11 A. Yes.

12 Q. Is that the Whitley retention pond?

13 A. No, it's not.

14 Q. I should say when I use that term Whitley
15 retention pond, what do you understand that to mean?

16 A. That's a pond area -- or it's not -- well,
17 yeah, I guess it is. You'd call it a little pond area
18 that was created by him putting a berm across his
19 property to cut off water that was entering the
20 Whitley lake or Whitley pond.

21 Q. Do you know when that was created?

22 A. I believe sometime around 1989.

23 Q. What happened to the water in that landfill
24 pond?

1 A. It either moved to the east or possibly could
2 have been discharged out. I'm not -- where that pond
3 is now it's landfill actually today. I mean it's a
4 hill now.

5 Q. Let me show you what's been marked as
6 People's Exhibit 6.

7 A. Uh-huh. It's a NPDES permit.

8 Q. Are you familiar with that permit?

9 A. Relatively speaking, yeah. I didn't prepare
10 it or anything.

11 Q. Now, on the second page of at least my copy
12 there are references to discharge number and name?

13 A. Right.

14 Q. And it's got 001?

15 A. Uh-huh.

16 Q. Ponded storm water on north side of the
17 landfill?

18 A. Correct.

19 Q. What is your understanding of what that
20 ponded storm water is?

21 A. Those are ponds that were created as we, like
22 I say, as we excavated from the northwest to the
23 northeast. You have to dig out down to your bottom
24 elevation, and as you do that, you're usually like

1 maybe three or four, maybe even six months ahead of
2 your landfilling activities, and as you do that, as
3 precipitation comes in the landfill, ponds are
4 created. And in order to remove the water to move
5 into those areas, you have to pump it out.

6 Q. Okay.

7 A. And in order to do that, you need a NPDES
8 permit to do that.

9 Q. Would you from time to time pump water out of
10 those ponds?

11 A. Yes, we would.

12 Q. Where did you pump that water to?

13 A. To what's designated as discharge point 001.

14 Q. And what is that? Where is it?

15 A. It's a natural ravine more northeast than
16 northwest. I guess you would refer to where Siebke's
17 property comes up, the ravine at Siebke's property.
18 Wayne Siebke to the north of us.

19 Q. When was the last time you pumped water from
20 -- you pumped ponded storm water?

21 A. Correct.

22 Q. When was that the last time?

23 A. Oh, let me see. It would have been last
24 summer after receiving a -- what we referred to as a

1 nonwaste disposal permit area, an area that defines
2 where we did not have garbage in by October 9 of '93.

3 Q. Describe for me that area.

4 A. It's on the northeast corner of the landfill,
5 not necessarily the corner but in approximately 150
6 feet from the north boundary lines in the northeast
7 corner and approximately 100 feet to the east of the
8 east boundary of the garbage area or the landfill area
9 in there. It was a big depression with garbage all
10 the way around it.

11 Q. Other than that nonwaste disposal area, when
12 was the last time you pumped ponded storm water
13 pursuant to this permit?

14 A. After we put that in or before? I don't I
15 guess --

16 Q. Yeah. Before the nonwaste disposal area was
17 there.

18 A. Oh, we pumped routinely through the years all
19 along there. It wasn't necessarily that area. But
20 for this permit we pumped routinely as we moved across
21 it all the time. Not all the time but when we needed
22 to.

23 Q. When did you need to pump?

24 A. Usually when the water got to an excessive

1 level where you couldn't operate or we were ready to
2 move into that area. You know, it was at our
3 discretion when we pumped, so we pumped when it was
4 advantageous to us to pump or -- yeah, I guess that --
5 whenever we needed to.

6 Q. Is it your understanding that this permit
7 that allows you to discharge ponded storm water would
8 apply to the Whitley retention pond?

9 A. No. I wouldn't consider that at all.

10 Q. Now, you indicated you were familiar with
11 what I've referred to as the Whitley retention pond.

12 A. Correct.

13 Q. How are you familiar with that?

14 A. That was a depression on the northwest corner
15 of the landfill that was created presumably to cut off
16 water that was coming from all those areas, the Watts
17 landfill, possibly even to the west on Whitley's
18 property. That's a ravine area that water from all
19 that area goes into one area. Years and years ago
20 that was a natural ravine that went through there.

21 Q. Describe that area for me.

22 A. It's hilly. Prior to us excavating through
23 there, there was a natural depression ran all the way
24 up there from the north to the south or south to the

1 north, however you want to put it, and as we went
2 through there and landfilled, that ravine obviously
3 was taken out, liner put in, and garbage brought up.
4 And in doing that, like I said, about 1989, in order
5 to cut off water that was running down off the site,
6 Mr. Whitley put a berm across there, whatever you want
7 to call it, and obviously backed up water right there.

8 Q. Have you ever dredged the Whitley retention
9 pond?

10 A. Yes.

11 Q. How many times?

12 A. Personally I was involved with one incident,
13 but I know prior to that it was dredged, I don't know,
14 eight, ten times maybe.

15 Q. Do you have any idea when it was dredged?

16 A. No.

17 Q. Do you know why it was dredged?

18 A. To keep the siltation out of it, to keep the
19 water level down on it to reduce water from -- I guess
20 on a big rain event after he put it in, it went out
21 one time and he put it back in, and then we cleaned it
22 out a few times after that, but the dates we cleaned
23 it I don't know. The one time I'm very much familiar
24 with was back in '95.

1 Q. Let's talk about that for a while. Do you
2 know when exactly in '95 you did this dredging?

3 A. It was around June, I believe, we started it.

4 Q. And what exactly did you do?

5 A. There was some concern by Mr. Whitley at that
6 time about it, and I don't know how I ended up talking
7 to him, but I did. I went down there, met with Joe,
8 looked at the situation, and said really -- we'd been
9 -- we had been taking some of the dredgings and
10 putting them behind us on the hillside. Obviously
11 that wasn't going to work. So, what -- I took it upon
12 myself to go down there with our 400 excavator. We
13 completely cleaned that entire area out.

14 Q. What's a 400 excavator?

15 A. It's a hundred ton track hoe excavating
16 machine. It's the biggest piece of equipment we got
17 to dig with. We went down and completely cleaned out
18 all the siltation, everything that had accumulated
19 behind that dike right up against his dike, I guess
20 you call it. We hauled all of that out, 40, 50, 60
21 truckloads of it, put it near the active area of where
22 we were landfilling at that time. It was fairly dry
23 and we wanted to dry it out. Then I brought in a
24 combination of blue clays and whatever we were digging

1 at that time, brought it back into that area. We
2 brought that area up approximately level with Mr.
3 Whitley's dike, I guess you'd call it.

4 He was concerned about the fence that he lost. We
5 understood that he lost two fences that he put in
6 there. And the way it was being handled at that time
7 wasn't the right way, I didn't feel, so I went down
8 and talked with him. We struck a line where we felt
9 the property line was, brought in blue clay,
10 recompacted it up, set a brand new fence in there for
11 him.

12 After that, it was obvious that if a diversion
13 wasn't built, we were going to have the same problem
14 we had before. So instead of where they had the
15 diversion at that time, which was too low to divert
16 the water, we brought a diversion up about maybe 40 or
17 50 feet above that fence area and started a diversion
18 across, running from west to east so the water that
19 did hit that area hopefully would have entered the
20 area of the 001 discharge or in that general vicinity.
21 Reduce the amount of water that was going in there is
22 what we tried to do.

23 Q. Has that diversion been successful?

24 A. Yeah, it has I think. Relatively speaking.

1 I mean obviously, there's still water from where the
2 diversion is and below going into there, but I don't
3 think it's -- it's not nearly as bad as it was, no.

4 Q. Where does the water get diverted to?

5 A. It gets diverted to the east.

6 Q. Now, let me show you what I have not marked
7 but I'll refer to it as Respondent's Exhibit 6. They
8 are three photographs that the Attorney General has
9 not seen.

10 MS. SYMONS-JACKSON: I was going to say we've
11 not seen those photographs.

12 Ms. Hearing Officer, I would just like to make a
13 statement for the record. I believe the production of
14 these photographs at this point in time is clearly an
15 abuse of the discovery process. These were not
16 previously provided to the Attorney General's office,
17 and the dates on the back of the photographs, at least
18 on one of them, indicates August 23, 1995. These have
19 been in the possession of ESG Watts since at least
20 that time and have not been produced to the Attorney
21 General's office, and we would object to their use at
22 this point in the hearing.

23 MR. NORTHRUP: Yeah. My response is in their
24 request for documents they wanted whatever documents I

1 was intending to rely upon at hearing. At the time I
2 responded to that I had no intention of relying on
3 these at hearing. Since that time there was testimony
4 by Mr. Whitley that during this dredging operation
5 they scooped up the silt and put it on the side of the
6 landfill. They didn't haul it away or anything.
7 These pictures show that in fact the silt was hauled
8 away. It was not just left there to simply run back
9 into his retention pond. So it's kind of a rebuttal
10 type of thing.

11 HEARING OFFICER FRANK: Well, we've had a
12 month and a half between hearings, and you have a duty
13 to supplement timely, and it seems to me that within
14 that month and a half you could have gotten these to
15 the Attorney General's office. So I am not going to
16 admit these exhibits.

17 Q. What did you do with the silt that was
18 removed from the Whitley retention pond?

19 A. The silt went to the east of the -- of that
20 area. That's the northwest corner of the landfill.
21 It went approximately to the northeast corner of the
22 landfill in the active working area.

23 Q. And how many truckloads do you think you took
24 out of there?

1 A. 40, 50, 60 maybe. We dug it clear down to
2 where -- oh, geez, we dug it -- I don't know how deep.
3 That area was approximately maybe 150, 200 feet long
4 by 30, 40 feet wide.

5 Q. Okay. Now, you testified that you put blue
6 clay back in that area.

7 A. Blue and various other clays, right.

8 Q. Where did that come from?

9 A. From the borrow pit area to the north of --
10 excuse me, to the south of the landfill, not in the
11 permitted landfill area but in area we own to the
12 south.

13 Q. How long did this whole process take from
14 beginning to end?

15 A. Well, that immediate -- the removal and the
16 blue clay was taken care of in a couple, three days, I
17 believe. It was done right away. There was other
18 things done as the summer months went on, but the
19 majority of it was done then.

20 Q. Okay. What were some of those other things
21 that were done?

22 A. Like putting back up the fence, putting up
23 the diversion above that, water diversion above that.
24 We solved that problem immediately when I saw it. And

1 through the summer months we took care of other things
2 in that corner area.

3 Q. What were some of those things?

4 A. Well, like I say, the diversion, we seeded
5 some areas down over there, put up silt fencing over
6 there, kind of waited and seen to what happened, you
7 know, with the rainfall and that and how it was going
8 to fill, things like that. The majority of the work,
9 though, was done within that three-day period of time.

10 Q. Okay. I want to focus on the gas management
11 system for a while.

12 A. Okay.

13 Q. You are aware that there's a gas management
14 system being installed at the landfill?

15 A. Yes.

16 Q. Are you familiar with the -- and that system
17 is being installed pursuant to a permit?

18 A. Yes.

19 Q. And are you familiar with that permit?

20 A. Yes.

21 Q. What involvement have you had with the
22 installation of the gas management system?

23 A. Overseeing all the construction activities
24 for Mr. Watts.

1 Q. As a practical matter, what does that mean?

2 A. To make sure a lot of what was in the permit
3 was complied with, more day-to-day operational things
4 than technical things, you know. I have more of a
5 construction background than I do a technical
6 background. We wanted to ensure that things were done
7 right. I had never seen a project like this taking
8 place, so I was very interested in seeing how it
9 worked on that level and also making sure that if
10 there was a problem, if the drillers needed something,
11 you know, they weren't from this area, so if they
12 needed parts or whatever, I was able to help them,
13 just basically do whatever it took to help them
14 expedite the project.

15 Q. What is your understanding of what was to be
16 done with the spoils from the drilling operations?

17 A. Deposit them with the daily receipts of the
18 active area.

19 MR. NORTHRUP: Do you have the People's
20 photographs? I'm looking for Exhibit 18.

21 HEARING OFFICER FRANK: Yes.

22 Q. Do you recall -- let the record reflect
23 you're looking at three photographs which have been
24 previously marked as People's Exhibit 18. Do you

1 recall when Mr. Whitley testified about these
2 photographs?

3 A. Yes, I do.

4 Q. Is it your recollection that -- is there any
5 writing on the back of these photographs?

6 A. Yes, there is.

7 Q. Do they indicate what date these photographs
8 were taken?

9 A. September 10th. All are September 10th.
10 6:55 p.m. --

11 HEARING OFFICER FRANK: Of 1996, correct?

12 A. Of 1996, excuse me. One's at 6:55, one's at
13 7, and one is at 7:05, in that order I guess it is.

14 Q. Were you present at the landfill on September
15 10th, 1996?

16 A. Yes.

17 Q. Were you involved with activities related to
18 the installation of the gas system on that date?

19 A. Yes, I was.

20 Q. What were you doing?

21 A. Overseeing the drilling operations at that
22 time.

23 Q. Tell me what transpired from approximately
24 6:50 to 7:30 that day.

1 A. This day they were finishing up a hole. This
2 is the northeast corner of the landfill. The first
3 photograph shows the drilling rig fully set up with
4 its mast up. As I recall, they were just finishing up
5 a hole, drilling one of these holes.

6 Q. Had they pulled spoils?

7 A. Yes.

8 Q. Okay.

9 A. Yes, they had.

10 Q. What did they do with those spoils?

11 A. Some were on the ground. Some were in the
12 roll-off truck that you see in the 6:55 photograph.
13 The roll-off truck obviously is full. The roll-off
14 box was full of spoils at that time. The remaining
15 spoils -- because we're on the side of the hill, the
16 operator takes those remaining spoils and brings them
17 up close to the roll-off box because you have to load
18 off level ground. You couldn't take the truck down
19 the hill to load it. So they'd scoop it up, and
20 because the box was full, they would carry it up and
21 stockpile it there.

22 Q. Okay. What happened to those spoils?

23 A. They were put in the daily face of the fill
24 that night.

1 Q. On that date were any spoils left uncovered
2 at the landfill?

3 A. No, they were not.

4 Q. On that first photograph, I believe it's the
5 6:55?

6 A. Uh-huh.

7 Q. What's the condition of the drill rig?

8 A. It's in a fully operating drilling mode right
9 there. The mast is fully extended. The stabilizers
10 are down. The tracks are turned to a stable position.

11 Q. Okay. Do you see the drill rig in any of the
12 other photographs?

13 A. No, I do not.

14 Q. How easy is it to move that drill rig?

15 A. Well, one man can move the rig because it's
16 very mobile and it was a custom-made machine by this
17 drilling company. However, the time it takes to knock
18 this rig down from that fully mast position --

19 Q. What do you mean by knock it down?

20 A. Well, take it down so it could be mobile, it
21 could be moved to the next hole. It takes maybe 15 to
22 20 minutes.

23 Q. So in the first photograph it cannot be moved
24 in that state with the mast up?

1 A. No, no.

2 Q. So tell me what exactly do you have to do
3 prior to moving it?

4 A. The mast is fully extended. That has to be
5 retracted down. The stabilizers all have to come up,
6 not necessarily at one time because the rig could tip.
7 So --

8 Q. What are the stabilizers?

9 A. There's four hydraulic stabilizers on the
10 corners of the rig. It has to be on a level situation
11 so you drill a straight hole. If it's off, you'll
12 drill at an angle. You'll see a dozer also in the
13 right side. That's usually to go in there and create
14 what's called a bench so -- there's very little
15 stabilization when you get there. The rig can't be
16 tilted one way or the other. It has to be square.
17 When you're on the side of a hill, the stabilizer
18 won't extend all the way down to level out the rig, so
19 sometimes you have to cut it out and create what's
20 called a bench. And when you're on the side of a
21 hill, it takes a lot to set it up and it takes a lot
22 to get it out of there also, because it's a steep
23 area.

24 Q. Okay. So again, how long would it take to

1 get that machine ready to be moved?

2 A. 15 minutes.

3 Q. Okay.

4 A. At least.

5 Q. How fast does that machine move once it's
6 ready to be moved?

7 A. About walking speed. It's on what's called a
8 990 DLC track hoe frame and there's only one speed on
9 it, which is extremely low. So you can walk faster
10 than the machine can move. And the pictures from 6:55
11 to 7:05 if they were all taken in the same -- it's
12 impossible to move that rig from that position out of
13 that position in the third picture in ten minutes.
14 There's no way you can do it. These pictures could
15 not have been taken from 6:55 to 7:05. You couldn't
16 have the mast down by 7:05 over here. Especially in
17 that area, that's -- it would take them 30 minutes to
18 move it out of that picture at least. And this is
19 late at night in the --

20 MS. SYMONS-JACKSON: Ms. Hearing Officer, I'm
21 going to object here. I think a new question has to
22 be put to this witness.

23 HEARING OFFICER FRANK: Yes.

24 MS. SYMONS-JACKSON: He's not responding to

1 any question from counsel.

2 HEARING OFFICER FRANK: Yes.

3 A. Okay.

4 Q. Are you aware of any occasion where refuse --
5 well, spoils from the installation of the gas system
6 were left uncovered overnight?

7 A. Yes, I am.

8 Q. Okay. When was that?

9 A. The next day.

10 Q. Which would be?

11 A. September 11th, I believe it was a Wednesday.
12 Yeah.

13 Q. And explain that for me.

14 A. The next morning the drillers arrived. They
15 always got there real early, and I arrived at the site
16 probably around 8, 8:30. And there was a thunderstorm
17 coming in and they were in the middle of drilling the
18 hole after this left this position to another
19 position. In a thunderstorm you have to drop the mast
20 whether it's raining or not. Obviously, it's a giant
21 lightning rod, and they were on top of the hill. By
22 the time I got to the top of the hill, it was raining
23 unbelievably hard, extremely hard. Consequently, the
24 pull-off cable that pulls what's called the kelly to

1 empty the box broke.

2 Q. Explain that. What's the kelly? What --

3 A. The kelly is the actual steel rod that does
4 the drilling. The mast supports it, the kelly comes
5 down, the bucket's attached to the kelly. The kelly
6 extends like an antenna out to 120 feet. As you drill
7 down and get a load of garbage in your bucket, which
8 is approximately three feet in diameter by three feet
9 tall, it comes out of the hole, and then there's a
10 cable with a pulley on it that pulls the kelly off to
11 the side. You drop it, hammer it against the side of
12 the rig to drop the garbage and spoils out. Okay?
13 That pulley gets a lot of tension. You replace them
14 -- from what the drillers told me, it's not uncommon
15 to replace them monthly because nobody can build one
16 strong enough to last.

17 That morning that pulley broke. And because it
18 was raining, we were in our office trying to figure
19 out where we were going to get one of these. They had
20 started a hole that morning. We couldn't find on the
21 phone anyone. So I knew of a Jensen's Welding down at
22 Davenport, Iowa, that could manufacture one from
23 scratch. So we proceeded down there. It was probably
24 around 11:00 and still raining. Jensen's told us it

1 wouldn't be ready until approximately 5:00, so we ate
2 lunch, went and shot our bows at a sporting goods
3 place, came back at 5:00, the pulley was done.

4 By this time it had cleared up. We went back to
5 the landfill. It was right around 5:00 when we got
6 back that day at the landfill. I went to open the
7 gate, and we were in the drilling rig's company truck,
8 which is a four-wheel-drive one-ton Ford. We couldn't
9 even get up the hill with that truck it had rained so
10 much and it was just so muddy. It was ungodly muddy.
11 I forget who made the comment, one of his laborers or
12 someone said there was still garbage, a little garbage
13 left from that morning's work. And I said, well --
14 should we go up and get it? And I said, well, even if
15 we go up and get it, we can't get that truck down the
16 hill that night, because it's a straight truck,
17 roll-off truck.

18 Q. Yeah. What's that truck?

19 A. That's in one of these pictures. It's a
20 truck you see in the picture. So I made the decision,
21 no one else, to leave the -- leave the spoils where
22 they were. Even if we got them loaded up, we couldn't
23 get the truck down the hill. I wasn't willing to
24 drive it down the hill and I wasn't expecting anybody

1 else to. Because it had rained so hard, I didn't see
2 any harm in it. So we left the spoils there. The
3 next morning we got inspected, and we got written up
4 for having exposed garbage from the drilling operation
5 from the previous day.

6 Q. Let's move on to another area. Have you ever
7 known the landfill to accept waste in the middle of
8 the night?

9 A. No.

10 Q. Have you ever known the landfill to accept
11 waste between 11:30 and 1:00 at night?

12 A. No.

13 Q. Would it be common for equipment to be
14 running at the landfill in the middle of the night?

15 A. No. Operating? No.

16 Q. Is it possible that Watts' personnel might
17 have been operating on equipment late at night?

18 MS. SYMONS-JACKSON: Object. That calls for
19 speculation.

20 Q. Well, if you know, do you have any
21 personal --

22 A. Servicing equipment?

23 Q. Do you have any personal knowledge of Watts'
24 servicing equipment late at night?

1 A. Late by what do you mean? 1 in the morning,
2 no, not that late.

3 Q. Well, what do you have knowledge of?

4 A. 11:00 maybe, 11:30 possibly at the very
5 latest.

6 Q. What would you consider servicing equipment?

7 A. Daily greasing, oil changes, air filter
8 changes, fueling up for the next day.

9 Q. The engines could have been running?

10 A. Possibly, sure. Or we service inside. We
11 fuel up outside. So it's possible you could take it
12 from one area, fuel it up. Usually the last thing
13 they do is fuel it up before they get ready to go.

14 Q. Yeah. Tell me -- what's the layout of the
15 servicing area? What's that like? Is there a
16 building?

17 A. Yeah. It's probably 160 by 60, the main
18 building, and the fuel island is probably 30 feet to
19 the north, in a real close proximity to the service
20 area.

21 Q. But to fuel up, you're going to have to --
22 you don't have a hose that goes from the fuel isle
23 into the service area?

24 A. No. Have to take it outside. Heavens, no.

1 Q. I guess I should say, too, is your office
2 located in the landfill?

3 A. Yes, it is.

4 Q. Let's move on to another area. Do you know
5 what a Sig Mod is?

6 A. Yes.

7 Q. Has a Sig Mod been submitted for this
8 facility?

9 A. Yes, it has.

10 Q. When was that?

11 A. The initial one I believe was in 1994, if I'm
12 not mistaken.

13 Q. What happened to that submittal?

14 A. It was denied.

15 Q. Was any basis given for that denial?

16 A. There were nine denial points that I recall.

17 Q. How were those denial points conveyed to you
18 through Watts?

19 A. With a letter from the Agency.

20 Q. What did Watts do in response to that denial
21 letter?

22 A. We discussed the denial points with the
23 engineering firm that put the Sig Mod together,
24 CH2M-Hill, and decided to get a meeting with the

1 Illinois EPA to discuss those denial points.

2 Q. Did you in fact have a meeting?

3 A. Yes, we did.

4 Q. When was that?

5 A. The date -- it was right after the meeting

6 with Mr. Davis and that down here last summer I

7 believe, the day after.

8 Q. What's been referred to as the 31(d) meeting?

9 A. Yes, that's correct.

10 Q. Who attended that meeting?

11 A. From ESG Watts Tom Jones and myself,

12 CH2M-Hill Steve Keith, who is the lead engineer, their

13 main hydrogeologist Jewel someone I believe.

14 Q. CH2M-Hill's geologist?

15 A. CH2M-Hill. And then from the Agency Krishna

16 was there, Joyce Munie I believe was there, their

17 hydrogeologist Gwenyth Thompson was there. That's who

18 I recall. I think there were a couple others. I

19 don't remember who all else was there at the time.

20 Q. What was discussed at that meeting?

21 A. We discussed the nine points one at a time

22 and expressed our concern that we felt some of them

23 were kind of petty, and actually, we solved three or

24 four of them within 30 minutes. And then Jewel and

1 Gwenyth started discussing technical matters of
2 groundwater monitoring models and things like that,
3 something I'm not that familiar with. We just went
4 through the denial points to see how we could adjust
5 or fix them to meet the Agency's requirements.

6 Q. Was a resubmittal discussed?

7 A. Yes, it was.

8 Q. And what was said about that?

9 A. There was discussion on how we could resubmit
10 in order to get the Sig Mod in in a more expeditious
11 manner and a more cost savings manner not only to us
12 but to the Illinois EPA so they wouldn't have to
13 review an entire Sig Mod again, let's just talk about
14 the main nine points of denial, let's address those
15 and get on with everybody's business.

16 Q. Is it -- was it your understanding that you
17 reached an agreement with respect to that resubmittal?

18 A. Yes, there was.

19 Q. And what was that agreement?

20 A. I left with the impression that the nine
21 points of denial would be resubmitted to the Illinois
22 EPA as long as there was a certification cover letter
23 on the front stating that nothing else in the Sig Mod
24 was changed.

1 Q. And was in fact that resubmittal made?

2 A. Yes, it was.

3 Q. And did it include this certification?

4 A. Yes, it did.

5 Q. Now, did you subsequently find out that the
6 Agency did not consider that resubmittal a formal
7 submittal of a Sig Mod?

8 A. Correct.

9 Q. When was that?

10 A. The first day of the hearings like a month
11 ago, this hearing. I think it was a Wednesday, I
12 believe.

13 Q. And what did you do in response to that?

14 A. I called Joyce Munie immediately.

15 Q. And what did she say?

16 A. She didn't say anything. I left a message
17 and she did not return my phone call.

18 Q. What has Watts done since that time?

19 A. Since that time, as you know, the last
20 hearing that we had in this case we decided that a
21 formal full-blown resubmittal of the Sig Mod would
22 have to be done and we did that.

23 Q. When was that done? Do you know?

24 A. I think it was sent in a couple, three, four

1 weeks ago, something like that.

2 Q. Does that -- did that formal resubmittal
3 contain the documentation that was previously
4 submitted to the Agency --

5 A. Yes, it did.

6 Q. -- as the resubmittal?

7 A. As far as I know it did, yes.

8 Q. Let me show you what I've marked -- what's
9 been marked as People's Exhibit 24. Can you just
10 identify that for me?

11 A. It's an Illinois Environmental Protection
12 Agency Air Pollution Odor Log prepared by Jerry
13 Martens.

14 Q. Have you ever seen that before?

15 A. No, I have not.

16 Q. Well, is today the first time you've seen it?

17 A. No, I saw it yesterday.

18 Q. If this document were sent to the landfill,
19 would it have come to you?

20 A. I don't know. Depending on who sends it. I
21 think Shirley would have opened this, seen this and
22 given it to me definitely. I was one person that was
23 there at that time.

24 HEARING OFFICER FRANK: Who's Shirley?

1 Q. Who's Shirley?

2 A. My secretary. When she opens the mail, if
3 she saw something from the Illinois EPA, she would
4 have definitely put it on my desk.

5 Q. Switch gears again. Let me show you what
6 I've marked as Respondent's Exhibit 7. Can you
7 identify that for me?

8 A. This is an analysis from off-site groundwater
9 monitoring -- groundwater wells that we had installed
10 in summer of '95, I believe.

11 Q. What is the Hanson field?

12 A. The Hanson field is property directly east of
13 what we consider the closed area of the landfill. I
14 guess you would call it east central of the landfill
15 on Chuck Hanson's property, our neighbor.

16 Q. What's the designation -- one of these pages,
17 the first page says Hanson Field S.

18 A. Uh-huh.

19 Q. And the second page is Hanson Field D.

20 A. One's a shallow well designated by S, deep
21 designated for deep. The two wells, it's a nested
22 area right there.

23 Q. Now, who is Beling Consultants?

24 A. Beling Consultants is the firm that we have

1 under contract to sample and analyze almost all of our
2 groundwater monitoring, NPDES -- analytical -- they're
3 an analytical lab. As far as our groundwater
4 monitoring, they do all our sampling.

5 Q. How long have you used them?

6 A. I've used them for years. I believe they've
7 been doing wells for us for maybe five or six years.

8 Q. Now, is it Beling that took these samples?

9 A. Yes, it was.

10 Q. Is it Beling that analyzed these samples?

11 A. Yes, it was.

12 Q. Was this record made near the time when the
13 sampling occurred?

14 A. As far as I'm concerned, yeah. Yeah, I'm
15 sure it was.

16 Q. Is it the regular practice of Watts to have
17 such records made?

18 A. Yes.

19 Q. Is this record kept in the course of Watts'
20 regular business activity?

21 A. Yes, it is.

22 MR. NORTHRUP: I would go ahead and move to
23 have this admitted.

24 HEARING OFFICER FRANK: Any objection?

1 MS. SYMONS-JACKSON: No.

2 HEARING OFFICER FRANK: Then it's admitted.

3 (Respondent's Exhibit Number 7
4 admitted.)

5 Q. Does the landfill have all of its records,
6 whether they be original permits, original permit
7 applications, going back to the 1980s?

8 A. No. There was a fire where we lost 95
9 percent of our original records. I believe the fire
10 was in '86 or '87, I don't recall.

11 Q. Do you know was the -- with any greater
12 specificity, do you know if the fire was before or
13 after July 10, 1986?

14 A. I believe it was after.

15 MR. NORTHRUP: I don't have any further
16 questions.

17 HEARING OFFICER FRANK: Okay.

18 Cross-examination.

19 MS. SYMONS-JACKSON: May we take a brief
20 recess for just five minutes?

21 HEARING OFFICER FRANK: Sure.

22 MR. NORTHRUP: Can we take it for 15 so I can
23 go make my telephone call?

24 HEARING OFFICER FRANK: Sure. Let's go ahead

1 and do that.

2 (A recess was taken.)

3 HEARING OFFICER FRANK: All right. Let's go
4 back on the record.

5 MR. NORTHRUP: Actually, can I do one thing
6 first?

7 HEARING OFFICER FRANK: Sure.

8 MR. NORTHRUP: I didn't move to offer --

9 HEARING OFFICER FRANK: Exhibit 7.

10 MR. NORTHRUP: 7, yeah. I don't think so.

11 HEARING OFFICER FRANK: I thought that you
12 did and there was no objection.

13 MR. NORTHRUP: I just wanted to make sure.

14 HEARING OFFICER FRANK: It's admitted.

15 Ms. Symons-Jackson.

16 MS. SYMONS-JACKSON: Thank you.

17 CROSS-EXAMINATION BY

18 MS. SYMONS-JACKSON:

19 Q. Mr. Grothus, to try to go back through your
20 testimony and keep things in the best order I can.

21 A. Okay.

22 Q. Starting off with this CHMM certification you
23 said you had?

24 A. Yes, uh-huh.

1 Q. How does that certification assist you in
2 your job duties for ESG Watts at the Taylor Ridge
3 facility?

4 A. Because I do special waste permits for our
5 landfills, things like that. I review TCLP analysis
6 for that, things like that. It helps me in that to
7 understand the chemistry behind it and how to read
8 analytical, things like that. It makes me aware of
9 what needs to be done as far as like material safety
10 data sheets. And we do a lot of transportation. We
11 used to do a lot of hazardous materials transportation
12 years ago. That's what is the reason for it, I guess.
13 It was more for me than it was the company.

14 Q. And does the Taylor Ridge Landfill currently
15 accept any special wastes?

16 A. Yes, we do.

17 Q. What are those?

18 A. We have a variety of generics right now, and
19 we have some stand-alone company permits. In other
20 words, generator specific permits.

21 Q. Moving on to talk about this retention
22 pond --

23 A. Okay.

24 Q. -- that I believe you've described as being

1 located in the northwest corner of the landfill?

2 A. Correct.

3 Q. First of all, isn't this retention pond
4 covered by the NPDES permit?

5 A. No. The one that's there today? That's what
6 you're referring to, correct?

7 Q. Yes.

8 A. No. It's not.

9 Q. Where specifically is this retention pond
10 located?

11 A. The northwest corner on the Whitley property.

12 Q. Well, isn't it true that a portion of this
13 retention pond is located on the landfill property?

14 A. Today?

15 Q. Yes.

16 A. Not that I'm aware of, no.

17 Q. In 1995 before you dredged it, wasn't a
18 portion of it located on the landfill property?

19 A. There wasn't really any water there when we
20 dredged it. It was dry.

21 Q. But a portion of the area that you have
22 referred to as the retention pond --

23 A. Yes, it was.

24 Q. Okay. I think you indicated that you've been

1 employed by the landfill since 1983?

2 A. Uh-huh.

3 Q. Correct?

4 A. November I believe, yes.

5 Q. The first instance you were involved in the
6 dredging of this retention pond was in 1995, correct?

7 A. That I was directly related to it, yes. I
8 was aware of dredging prior to that.

9 Q. I think you said it had been dredged eight to
10 ten times prior to that?

11 A. Something like that.

12 Q. And I think your testimony was that
13 immediately upon learning of the problem with this
14 retention pond, the silt buildup, you responded. Was
15 that correct?

16 A. When it was brought to my personal attention,
17 yes.

18 Q. And that was in 1995?

19 A. Yes, it was. I had -- let me -- can I
20 elaborate on that?

21 Q. Well, let me ask you another question, okay?

22 A. Sure.

23 Q. So prior to 1995 you were not involved at all
24 with the problems with this retention pond?

1 A. I was aware of it.

2 Q. Now, you indicated that 40 to 60 truckloads
3 of silt --

4 A. Yes, ma'am.

5 Q. -- were removed from that retention pond?

6 A. Uh-huh.

7 Q. That's an awful lot of silt, don't you think?

8 A. That's a lot of silt, yes, ma'am. We
9 overexcavated not only where that retention pond was,
10 we brought it all the way back to probably where the
11 liner -- we probably came pretty close to the liner, I
12 would anticipate, judging from the pictures.

13 Q. I'm sorry, what size were the trucks that you
14 were using?

15 A. They are 35 ton Terex haul trucks.

16 Q. And these were 40 to 60 full loads in these
17 trucks?

18 A. No, they're not full at all. The material
19 gets soupy. You can only haul maybe ten yards.
20 Because when you went up the hill, you'd lose it out
21 the back, so we couldn't haul that much of it.

22 Q. The silt was not dry when you moved it from
23 the pond?

24 A. The top half was. As you get down in there

1 it gets soupy, it gets wet, uh-huh.

2 Q. It was a storm water that had accumulated in
3 the retention pond?

4 A. I assume so.

5 Q. Is it your -- wouldn't you agree that the
6 silt and the water that was located in this retention
7 pond had come from runoff from the landfill site?

8 A. Not totally, no.

9 Q. To a large extent?

10 A. Large being -- give me a percentage.

11 Q. I can't give you a percentage.

12 A. It's hard for me to give you an answer. I
13 don't know. I would say some. Yeah. Well, obviously
14 a lot of it was.

15 Q. Don't you agree, Steve, that there are or
16 were in 1995 erosional problems at the landfill?

17 A. Where at?

18 Q. In the northwest corner, northeast corner?

19 A. Yeah, there were some erosion problems,
20 things like that because the seed hadn't taken. Some
21 seed had; some seed didn't. There were some problems
22 there.

23 Q. In fact, that was one of the reasons why you
24 indicated that you installed this diversion trench in

1 an attempt to divert water away from this retention
2 pond?

3 A. I was more interested in the water than I was
4 the silt, yes.

5 Q. Now, these eight to ten prior dredgings prior
6 to 1995, where was the silt taken when it was removed?

7 A. From what I understand, they threw it behind
8 them up on the side of the hill.

9 Q. That would be on the northwest slope?

10 A. Yes, ma'am.

11 Q. And what happened to that silt that was put
12 on the northwest slope of the hill? Didn't it just
13 run right back down into the retention pond?

14 A. I assume that's exactly what it did, yes.

15 Q. Now, going back to the NPDES permit for
16 discharge point 001 --

17 A. Uh-huh.

18 Q. -- the permit is not limited only to pumping,
19 is it, sampling pumped storm water?

20 A. 001 that's how I interpreted it back then,
21 yes.

22 Q. Well, can you look at what we've marked as
23 People's Exhibit 6, which is that NPDES permit, and
24 tell me where it limits it to pumping?

1 A. Ponded storm water north side of landfill.

2 Q. That doesn't say pumping.

3 A. I don't know how you would take ponded storm
4 water off the site if you didn't pump it.

5 Q. It wouldn't discharge in flow on its own?

6 A. It could. This permit -- that wasn't the
7 intent of the ponded storm water permit, no, not at
8 all. It was to regulate the discharge with pumps.

9 Q. Doesn't the water from the retention pond
10 discharge over the banks of the retention pond on its
11 own and flow by gravity?

12 A. It has done that from what I understand. But
13 that pond isn't on our property.

14 Q. There's a fence located through the middle of
15 that retention pond, isn't there?

16 A. No. It's on the -- the fence would be on the
17 south side of that retention pond today.

18 Q. When that fence was first installed in the
19 retention pond --

20 A. The one that we installed, is that what you
21 are -- the '95 one?

22 Q. Yeah. What about prior to '95, was there a
23 fence in the retention pond at that point?

24 A. I understand there was a couple that was put

1 up there by Mr. Whitley, yes.

2 Q. And I think in your prior testimony that's
3 what you indicated, and then in 1995 after the
4 dredging ESG Watts installed a fence, correct?

5 A. Correct.

6 Q. Prior to 1995 when that fence was installed,
7 wasn't the fence installed at what you assumed to be
8 the boundary line between the two properties?

9 A. I would assume.

10 Q. And the fence then at that time was in the
11 middle of the pond?

12 A. It may have been if there was a lot of water
13 in it. If it was dry -- it depends. I mean it
14 depends, you know.

15 Q. Well, now, you're the project manager at the
16 site?

17 A. Yes, ma'am.

18 Q. Didn't you ever prior to 1995 take a look at
19 that retention pond?

20 A. I was down -- I didn't consider it a
21 retention pond back then. I -- I guess it was a
22 retention pond back then after he put the dike up, you
23 could call it that, yeah. And I did see water on both
24 sides of the fence. You mean was the fence in the

1 middle?

2 Q. Uh-huh, yes.

3 A. When there was a lot of water in there, yeah,
4 uh-huh.

5 Q. Was it your understanding that that fence
6 represented the boundary line between the two
7 properties?

8 A. I had some question at that time about it. I
9 couldn't relate coordinate points -- at that time you
10 couldn't really coordinate one from the other where
11 the actual line was. I mean you could make some
12 assumptions based on some of the pictures I've seen,
13 sure.

14 Q. Okay, now, Steve, going on to this -- the
15 photographs that you looked at from, I believe,
16 People's Exhibit 9 or was it 19?

17 MR. NORTHRUP: 18.

18 A. The three?

19 Q. Three photographs?

20 A. Sure.

21 Q. Right. From the installation of the gas
22 extraction wells?

23 A. Correct, uh-huh.

24 Q. The first -- the set of photographs you

1 looked at were from September 10 of this year?

2 A. Correct, uh-huh.

3 Q. Were you personally present during the events
4 at the time those photographs were taken from
5 approximately 6:55 to 7:05?

6 A. I was somewhere on the site, yeah, uh-huh.

7 Q. Well, somewhere on the site. It's a --

8 A. Yeah. I was involved with the drilling
9 operations. It was at night. It was after my regular
10 hours. That's usually when I went up there.

11 Q. What are your regular hours?

12 A. It depends on who you talk to. I guess 8 to
13 5, you know, for the sake of the argument, yeah.

14 Q. So on this night you were there after your
15 regular hours?

16 A. Many nights I was after my regular hours,
17 yes.

18 Q. Now, during the actual drilling of this well
19 that we see in this photograph -- it's the one you
20 looked at earlier.

21 A. Uh-huh.

22 HEARING OFFICER FRANK: These are People's
23 Exhibit 18 for the record.

24 MS. SYMONS-JACKSON: Right.

1 A. Uh-huh.

2 Q. Were you at that location where the well was
3 being drilled or were you somewhere else on the
4 landfill property?

5 A. I could have been up on top of the hill
6 somewhere or somewhere else. I couldn't tell you if I
7 was there at that exact time. No, I couldn't tell
8 you.

9 Q. Were you present during the installation of
10 that well --

11 A. Sure.

12 Q. -- at that time --

13 A. Sure.

14 Q. -- that night?

15 A. Yes. I don't even think that well -- well,
16 yeah, I was, I was there, uh-huh.

17 Q. Steve, did you personally observe the taking
18 down of the drill rig and the moving of the drill rig?

19 A. No, I did not.

20 Q. Do you know what time the drilling was
21 finished on that night?

22 A. I think they started -- I don't recall if
23 they started another hole. I think they set up on
24 another hole after that one that night. We left there

1 probably around 8:30, quarter till 9 that night, maybe
2 9:00.

3 Q. Do you know what time they started taking
4 down the drill rig at this location shown in the
5 photograph?

6 A. No. I don't. I assume it was between 6:55
7 and 7:05 based on these pictures.

8 Q. How late did you stay at the site that night?

9 A. Till dark.

10 Q. Which was what time?

11 A. 8:30, 9:00 I'd say, something like that.

12 Q. Did you personally observe the disposal of
13 the waste from the truck and roll-off box into the
14 day's active area --

15 A. Yes, I did.

16 Q. -- on that night?

17 A. Uh-huh. If I can explain, we left the 400
18 with the ADC, alternate daily cover, hooked up to our
19 400.

20 Q. Which is your bulldozer or --

21 A. No, it's a track hoe excavator. And you use
22 that to pull the tarp over. There were many nights
23 that the last thing we did as we came down the hill
24 was bring the spoils. If you took pictures at 8:00,

1 there would still be spoils many nights. If you took
2 a picture at 9:00 at night, if you could, there
3 wouldn't be. I mean we -- many times I fired the
4 machine up, pulled the ADC back. We left a hole in
5 the garbage. We'd back the truck in, drop it, put the
6 ADC back over the top. We did that many times, and it
7 was dark many times when we did it.

8 Q. Okay. Now let me see if I understand this.
9 During the construction of these gas extraction
10 wells --

11 A. Uh-huh.

12 Q. -- what we've been referring to as spoils,
13 the refuse that's been pulled up --

14 A. Refuse, dirt, whatever comes out of the hole.

15 Q. Okay, the refuse comes up and then it's
16 deposited in either a truck or it's first in a truck
17 and then the truck takes it to a roll-off box?

18 A. No, no, it's -- the bucket comes out and the
19 spoils are, I guess, wedged you would call it, and
20 there's two flaps on the bucket. As you hit the side
21 of the bucket and drop down on it, it pushes it to
22 help relieve it out. It falls right next to the
23 drilling rig.

24 Q. Just on the ground?

1 A. Right on the ground, correct. There's no way
2 I -- it would be great if you could put it right into
3 a box. You can't. Then there was a JCB Load All,
4 it's a called, a four-wheel-drive vehicle that drags
5 it back, scoops it up and puts it into a roll-off box.
6 Usually they would fill the box and move the rest of
7 it out of the way. And because they only had -- there
8 was a lot of times I was doing this because they had a
9 laborer that didn't always show up, so I would go up
10 and help them out. We'd get it out in one big shot.
11 It was a one-man job usually. And the other guy was
12 preparing wells for installation. So if I saw the
13 truck full and I saw a pile of spoils, I'd just jump
14 in the truck and go drop it, come back up, load the
15 roll-off box back up, take it back down. I'd just go
16 ahead and do it.

17 Q. During the course of a day when they were
18 constructing these gas extraction wells, you would
19 wait until the roll-off box was full?

20 A. Usually.

21 Q. And then take it down to the active --

22 A. Usually.

23 Q. -- area and then deposit the waste at that
24 point in time?

1 A. It would depend. If it was a busy time of
2 the day, we would leave it until it slowed down.
3 These guys were very cooperative in working in between
4 our busy schedules. That's why a lot of times a lot
5 of the waste from that was deposited at night in the
6 active fill area.

7 Q. Were there occasions, Steve, when the only
8 disposal from the roll-off box occurred at night after
9 regular operating hours?

10 A. Just from the box?

11 Q. From the roll-off box.

12 A. Sure, uh-huh.

13 Q. Now, you indicated that as project manager
14 for ESG Watts, part of your duties include managing
15 construction or remediation projects?

16 A. Correct.

17 Q. And seeing that the permits for those
18 projects are complied with?

19 A. That's correct.

20 Q. Okay. Now, have you reviewed the permit that
21 was issued by the Agency for the landfill gas
22 management system?

23 A. Yeah.

24 Q. It's permit number 1996-087 SP?

1 A. I've read through it, yeah. I'm fairly
2 familiar with it. Not all the technical aspects but
3 the -- most of them.

4 Q. And it's our -- for the record it's People's
5 Exhibit Number 2.

6 A. Okay.

7 Q. I'm going to read to you what is condition 5
8 of that permit. Condition 5 reads: "Refuse removed
9 during construction of the gas collection system shall
10 be loaded into trucks, covered, and immediately
11 transported to the active fill area and disposed."

12 A. Correct.

13 Q. Now, that's not what you were doing, is it?

14 A. Sure.

15 Q. Immediately does not indicate waiting all day
16 and then disposing of it at night once you get the
17 time.

18 A. A lot of times the rig -- I mean you drill
19 wells so you could complete them by the end of the
20 day. It's more important to set a well than it is to
21 drop garbage.

22 Q. So it was more important to set the well that
23 will ultimately make ESG Watts a lot of money --

24 A. No.

1 MR. NORTHRUP: Objection.

2 Q. -- than to comply with the permit?

3 MR. NORTHRUP: Objection. That's
4 argumentative.

5 HEARING OFFICER FRANK: Sustained. Please
6 rephrase your question.

7 Q. Mr. Grothus, what is more important than
8 compliance with the permit?

9 A. Safety of my workers.

10 Q. And how did leaving the roll-off boxes full
11 of refuse sometimes an entire day --

12 A. We didn't leave them an entire day.

13 Q. -- impact the safety of your workers?

14 A. When you get to the bottom of that hole,
15 okay, you got a 90-foot hole that has --

16 Q. What hole are you talking about?

17 A. A methane -- a gas extraction hole. I would
18 much rather see the well put in, backfilled up to
19 grade than to leave the hole open while we're dumping
20 garbage in the face of the fill. Any driller in the
21 country will tell you the first thing they do once
22 they hit the bottom of that well is to install that
23 well if possible or cover it up. If someone falls in
24 the well, there's not a second chance. So

1 immediately, yeah, if that's the way the permit reads,
2 that's fine. I don't have a problem with that. But
3 the people that write those don't drill wells, either,
4 that I'm aware of. And neither did I. At the time
5 the permit was issued, I was not aware of how wells
6 were put in. After I had observed how wells were put
7 in, there are things that are common sense that
8 sometimes don't read common sense. And to me, if I
9 had to pay a fine daily to do the way I did it, I'd
10 pay it. No problem.

11 Q. I think you indicated in response to one of
12 my prior questions that you were trying to get in as
13 many wells as you could each day.

14 A. Yeah.

15 Q. What were the urgency there? Why did you
16 need to do that?

17 A. You get paid by the foot.

18 Q. I'm sorry?

19 A. You get paid by the foot.

20 Q. Who was paying you for that?

21 A. The drillers get paid by the foot. The more,
22 the faster, the more money. That's one. For the
23 drillers.

24 Q. Were the drillers working for ESG Watts --

1 A. No, they were not.

2 Q. -- or for RTC?

3 A. No. They were working for RTC, the company
4 that put the permit application in.

5 Q. Now, during the construction or installation
6 of these wells wouldn't you agree that there were more
7 odors generated because there was exposed refuse being
8 pulled up?

9 A. More odors from the hole than the exposed
10 refuse, yes, sure.

11 Q. And you personally observed or smelled some
12 of these odors yourself?

13 A. Stood over the hole, yes.

14 Q. How bad were the odors coming from those
15 holes?

16 A. We got good gas, from what I understand.

17 Q. Can you describe what it smelled like?

18 A. A stench, stinky smell. It wasn't a gasoline
19 smell. It wasn't a solvent smell. I guess somewhat
20 maybe of natural gas only without the mercaptan smell
21 to it, you know.

22 Q. Would you say like rotten eggs?

23 A. No, I wouldn't say it was a sulfur smell, no.

24 Q. Was it a hog farm smell?

1 A. No, it's too sweet. I don't know. It's hard
2 to describe. If you smell it, you know exactly where
3 that smell's coming from after you've smelled it once,
4 yeah.

5 Q. Have you smelled odors from the landfill
6 prior or while on the landfill property --

7 A. Certainly.

8 Q. -- prior to the installation of these gas
9 wells?

10 A. Definitely, certainly.

11 Q. And would you say the odors that you had
12 smelled prior to this time were similar to the ones
13 you were smelling coming from the hole?

14 A. Some were, some weren't, yeah. Depends on
15 the day and this and that, yeah.

16 Q. Isn't it true that some nights these gas
17 holes would not be covered?

18 A. Not that I'm aware of.

19 Q. Did you ever personally observe a gas well
20 hole being left uncovered say the next morning?

21 A. Never, never. The drilling company has one
22 inch thick -- they're probably six foot, maybe eight
23 foot by eight foot steel plates that are an inch
24 thick. If they don't finish a well, they usually

1 cover it, more times than not. I wouldn't know any
2 reason why they would not leave -- it's crazy to leave
3 one uncovered. That I know of none were ever left
4 uncovered. If they didn't get the well in, they
5 brought a big plate -- they had two or three of these
6 huge, big plates that they would bring in and lay over
7 the top of it so you could drive anything you wanted
8 over it and you couldn't fall in it.

9 Q. If a citizen or someone would call the
10 landfill to make a complaint about the landfill, would
11 they talk to you?

12 A. I've had people call me, yes. They'll talk
13 to -- back, you know, a year ago when I was the only
14 one there I was taking them, but with the team of
15 people we have today, if Nikki, Tom, whoever's in the
16 office, one of us will answer it if we're there.

17 Q. Okay. Now, did you personally take any calls
18 from citizens complaining about odors during the
19 installation of these gas wells?

20 A. Not that I recall, no.

21 Q. Do you recall discussing with any of the
22 other employees at ESG Watts whether they had taken
23 any phone calls from citizens regarding odor
24 complaints?

1 A. Not that I recall, no.

2 Q. Do you remember ever having a conversation
3 during the installation of these gas wells with Joe
4 Whitley regarding how bad the odor was coming from
5 these holes when they were being dug?

6 A. I don't recall. I don't know. I may have.
7 I may not have. I don't recall. I've had a lot of
8 people ask me a lot of questions about the gas, the
9 odors, things like that. I don't recall, to be honest
10 with you.

11 Q. You indicated your regular working hours at
12 the landfill are --

13 A. I really don't have any, but, yeah, 8 to 5.

14 Q. 8 to 5 roughly, is that what you said?

15 A. If you want, sure.

16 Q. Just real briefly, Mr. Northrup asked you
17 about the servicing of landfill equipment --

18 A. Uh-huh.

19 Q. -- after 8:00 at night?

20 A. Sure.

21 Q. And you indicated that sometimes that might
22 happen at 11:00 at night?

23 A. Possibly.

24 Q. Would you have been present at any of those

1 times?

2 A. No. Just noticed the time cards from who was
3 working.

4 Q. And so when you indicated that vehicles were
5 not commonly -- not commonly operated --

6 A. I don't think they were ever operated after
7 11:00 at night.

8 Q. But you were not personally there?

9 A. No. I'm talking -- know the difference
10 between servicing and operating. Operating means
11 you're using it for its intended purpose. Not that
12 I'm ever aware of. It's too dangerous.

13 Q. Now, regarding this -- the meeting with the
14 Agency in I believe it's August of 1995, does that
15 sound correct to you?

16 A. Something like that, sure.

17 Q. The original Sig Mod submittal was denied in
18 February of 1995?

19 A. Okay.

20 Q. Does that --

21 A. Okay.

22 Q. Okay?

23 A. Sure.

24 Q. And you had the meeting then in August with

1 the Agency?

2 A. Uh-huh.

3 Q. Are you aware that the complaint that we're
4 here for today was then filed in November of 1995?

5 A. Yeah, it was after our 39 -- our meeting with
6 Mr. Davis. The complaint was filed, from what I
7 understand, a couple months after that meeting, yes.

8 Q. And it was your understanding that the
9 meeting with the Attorney General's office took place
10 one day prior to your meeting with the Agency?

11 A. Yes.

12 Q. And then the resubmittal of this Sig Mod was
13 not made until October 18 of 1996?

14 A. I believe that's correct.

15 Q. Okay. Prior to that resubmittal did anyone
16 from ESG Watts call the Agency to let them know that
17 this was on the way and that you were submitting an
18 informal submittal as opposed to a formal permit
19 reapplication?

20 A. No. That was discussed at that meeting. I
21 believe Steve Keith and maybe Jewel from CH2M-Hill had
22 conversations with the Illinois EPA. The reason I
23 didn't have any is because it was an area of -- I
24 wasn't knowledgeable in, and at that time I was the

1 only one at ESG that was kind of looking after this,
2 and I let Steve -- I left it up to Steve Keith to make
3 any communications he needed to make with the Agency
4 to set up -- we actually wanted to set up another
5 meeting after that first one to submit that, you know,
6 like whenever we got it done. After he reviewed a lot
7 of the stuff, we found out that we needed to put in
8 like these Hanson wells, do a little bit more than
9 what we originally intended on doing. So, I believe
10 he had conversations with the Agency after that point.
11 What they talked about I don't know.

12 Q. Now, after this meeting with the Agency in
13 August of 1995, did you -- was it your understanding
14 that you were on your way toward possibly working out
15 the problems with the Sig Mod Application?

16 A. Yeah. Definitely.

17 Q. Did Watts withdraw its permit appeal after
18 that meeting?

19 A. I don't recall. I don't know if he did or
20 not.

21 Q. Do you know if the permit appeal is still
22 pending with the Board today?

23 A. I think it still is. I don't know. I
24 assume.

1 HEARING OFFICER FRANK: Ms. Symons-Jackson,
2 can I ask a question?

3 MS. SYMONS-JACKSON: Sure.

4 HEARING OFFICER FRANK: This is really --
5 it's for the Board. There are several Watts permit
6 appeals pending. If you know which one it is, can you
7 give us the number? If you don't, that's okay.

8 Charlie, do you know?

9 MR. NORTHRUP: It's 95-109 or 110. One is
10 Taylor Ridge and one is Sangamon Valley. I'm not sure
11 which one --

12 MS. SYMONS-JACKSON: The Agency handles their
13 own permit appeals, so we wouldn't know.

14 HEARING OFFICER FRANK: That's fine. I just
15 thought maybe if the Board wanted to look at that, we
16 could try and get that number in there for them.

17 I'm sorry to interrupt you. Go ahead.

18 Q. In your earlier testimony you talked about a
19 depression or a hole at the landfill that you recently
20 or at sometime received a permit for a clean fill?

21 A. Yeah, we call it the nonwaste disposal area,
22 correct.

23 Q. This nonwaste disposal area was first noted
24 or do you recall when it was first constructed by the

1 landfill?

2 A. It was noted sometime I think in '93 after
3 that October -- it was an area identified by our EPA
4 inspector.

5 Q. And can you tell me where on the landfill
6 property this nondisposal -- what is it you've called
7 it?

8 A. Nonwaste disposal area.

9 Q. Nonwaste disposal area is located?

10 A. It would be the northeast corner of the
11 landfill, geez, approximately 250 feet north of the
12 building, extending out I believe 120 feet from the
13 liner. It's kind of in a jog, I guess. I could draw
14 you -- if you have an inspection -- you'll see it on
15 an inspection report what we're referring to. It's
16 very well defined right now.

17 Q. Why don't I get a map we can look at.

18 A. Yeah, that would be great.

19 Q. Is it located in the active area, what is
20 currently the active area of the landfill?

21 A. It is right now, yeah.

22 Q. I've got two maps here, one was previously
23 identified and I believe admitted as People's Exhibit
24 3.

1 A. Okay.

2 Q. And I've also got People's Exhibit 4. I'll
3 ask you to look at both of those.

4 MS. SYMONS-JACKSON: And I'll state for the
5 record that Exhibit 4 was prepared, as indicated, by
6 CH2M-Hill, and at this time I would move to admit map
7 number 4.

8 MR. NORTHRUP: Where did it come from? Do
9 you know?

10 A. It says CH2M-Hill.

11 MS. SYMONS-JACKSON: Yeah. I think it was
12 with the original Sig Mod.

13 A. Might -- with the Sig Mod, yeah. According
14 to that date.

15 MR. NORTHRUP: Yeah, okay, that's fine.

16 HEARING OFFICER FRANK: Then Exhibit 4 is
17 admitted into evidence.

18 (People's Exhibit Number 4 admitted.)

19 Q. Whichever map is best for you to identify
20 that location.

21 A. Exhibit 3.

22 Q. Okay. And again just give us --

23 A. Oh, where is it?

24 Q. Yes.

1 A. If you notice where it says temporary access
2 road.

3 Q. That's up in the upper left-hand corner?

4 A. See, the liner -- yeah, the liner comes like
5 this, okay, and then around the building like that.
6 It would be like going out like that right there.

7 HEARING OFFICER FRANK: Okay. For the record
8 you have to make it more clear.

9 A. Where the Xs are, okay? Want me to put Xs on
10 there? I guess approximately like that, right in
11 there.

12 Q. Now, is this nonwaste disposal area still
13 present at the landfill?

14 A. Yes, it is.

15 Q. And are you currently filling it with
16 anything?

17 A. With clean soil, yes. We're bringing it up
18 as we bring the garbage up in that area, yes.

19 Q. And as it happened over the years you did not
20 have a permit to fill anything in this nonwaste
21 disposal area from 1993 or 1994 when it was first
22 noted until recently, correct?

23 A. You got to do a better job than that because
24 that -- that's not the -- I don't think you understand

1 it. The non --

2 Q. Here's what I'm getting at.

3 A. Okay, yeah, do that.

4 Q. Here's what I'm getting at. As the waste was
5 deposited around this area, the landfill grew around
6 it and the depression got deeper. Is that an accurate
7 statement what happened?

8 A. Well, it stayed at the level and the garbage
9 came up around it, yes, correct.

10 Q. The depth of the hole, although the bottom
11 was not getting deeper, the depth was increasing?

12 A. There you go, yeah.

13 HEARING OFFICER FRANK: You do understand.

14 MS. SYMONS-JACKSON: I knew what I was
15 talking about.

16 A. I was confused. Okay. Go ahead.

17 Q. Now, when it rained, storm water would
18 accumulate in the bottom of this depression?

19 A. Yes, it would, yes.

20 Q. Do you know how long storm water was allowed
21 to be impounded in this depression?

22 A. Year or two, I guess, maybe three. I don't
23 -- since October 9 of '93 I guess. Well, no, it was
24 probably '94 on because we were down that low then.

1 So I would say sometime '94, '95.

2 Q. At some point you pumped water out of this
3 hole, correct?

4 A. Yes.

5 Q. When was that?

6 A. I believe it was after we received that
7 permit. We may have pumped prior to that nonwaste
8 disposal area identification, but I don't recall.

9 Q. The clean fill permit is that what you're
10 referring to?

11 A. Yeah.

12 Q. If I indicated that it was approximately the
13 summer of 1995, would that sound about right to you?

14 A. Yeah. Possibly. We really don't pump that
15 much in December, so if we did, I would be -- it's
16 kind of unusual, but if we did, we did, yeah, we could
17 have.

18 Q. Were you present or did you have any
19 involvement in the pumping of the storm water from
20 this hole?

21 A. Sure did, uh-huh.

22 Q. Were you the one overseeing the pumping of
23 the storm water from this hole?

24 A. When we started pumping after that waste --

1 when we were going to do a big pump, in other words,
2 after that permit came through, we contacted James
3 Kammueller. He came out. We sampled. We showed him
4 how we wanted to do it. He made -- gave us a list of
5 things to do, I want like 500 more foot of hose all
6 the way, I want a sock. We did everything that he
7 asked -- that he suggested that we do, and we did it.

8 Q. Where was the water pumped to?

9 A. The 001 discharge area.

10 Q. Prior to beginning the pumping did you take
11 any samples of the water in the hole?

12 A. I did not. I believe there were samples
13 taken by us and James Kammueller. I think he might
14 have taken some, too. I don't recall if he did or
15 not.

16 Q. Prior to beginning pumping did you calculate
17 how much water was in the hole?

18 A. Yeah, I think we did. I don't recall what
19 the number was, but I think we kind of estimated it.

20 Q. Do you remember what the estimate was?

21 A. No, I don't, no.

22 Q. How long did the pumping take?

23 A. On and off three or four months maybe.

24 Q. And did you conduct any sampling of the water

1 that was being discharged through 001?

2 A. I did not personally, no.

3 Q. Did anyone from ESG Watts?

4 A. Yes.

5 Q. What were done with those sample results?

6 A. They were taken to Beling labs and composited
7 and analyzed according to the permit.

8 Q. Now, Steve, isn't it true that some of the
9 storm water in that hole had come into contact with
10 exposed refuse in the hole?

11 A. I don't know if it did or not. All that area
12 was covered. Do you know what I mean? I mean there
13 wasn't -- there wasn't garbage. No, if you look at
14 those pictures, you'll see that there was dirt
15 completely covered all the way around in that nonwaste
16 -- I believe I sent pictures with the permit
17 application on that so they could see that, yeah.

18 MS. SYMONS-JACKSON: Ms. Hearing Officer, I
19 would like to look at the original photographs with
20 your exhibits.

21 HEARING OFFICER FRANK: That's fine. Let's
22 go off the record. Why don't we go ahead and take a
23 ten minute break.

24 MS. SYMONS-JACKSON: Okay.

1 (A recess was taken.)

2 HEARING OFFICER FRANK: Let's continue with
3 the cross-examination.

4 Q. Mr. Grothus, when we went off the record, I
5 was attempting to find some photographs in People's
6 Exhibit 48. I've located those photographs.

7 A. Okay.

8 Q. But first of all, I've highlighted a portion
9 of the narrative to assist you in giving your
10 testimony. Can you please read in this paragraph
11 starting with -- I guess starting with the beginning
12 of the paragraph.

13 MR. NORTHRUP: I'm sorry, what is that
14 document?

15 MS. SYMONS-JACKSON: It's Exhibit 48.

16 A. "Inspection log. The author proceeded to
17 investigate east of the previous working day area and
18 along the upper northern rim of the hole where a
19 permitted nonwaste disposal area is located. This
20 author observed uncovered refuse along the upper north
21 rim. See photographs 7 and 8. Uncovered refuse was
22 also observed above this area and to the north and
23 west. See photographs 9 through 13. This author
24 proceeded to descend into the hole and observed

1 scattered litter along the western slope of the hole.
2 See photographs 14, 17, 18. At the bottom of the hole
3 this author observed litter standing in the water and
4 scattered around the northern portion of the hole.
5 See photographs 15, 16, 19, 36."

6 Q. That's all you need to read then.

7 So according to this narrative description there
8 was indeed refuse and standing water at the bottom of
9 that hole. Would you agree with that?

10 A. It says the northern rim. I would consider
11 that the top side of it.

12 Q. Well, as you read on, it indicated he
13 descended into the hole and there was standing water
14 at the bottom of the hole?

15 A. Well, yeah, there was water in the bottom
16 with scattered litter, uh-huh.

17 Q. Were you aware of the litter in the standing
18 water at the bottom of that hole?

19 A. There was litter in there. Whenever it blew
20 hard, it was a natural attraction for it, and as it
21 went into the hole, it was taken out as soon as
22 possible, uh-huh.

23 Q. Were you aware of the uncovered refuse along
24 the northern rim and along the sides of that hole that

1 he describes?

2 A. No. I wasn't, not really.

3 Q. Do you know when that refuse, the exposed
4 refuse was either covered or moved and disposed of in
5 the active area of the landfill?

6 A. Say that again.

7 Q. Do you know whether the landfill ever covered
8 that exposed refuse?

9 A. I'm sure it did.

10 Q. Do you know when?

11 A. No.

12 Q. Do you know whether the landfill -- if they
13 didn't cover the refuse, would they have moved it and
14 put it into the active area of the landfill?

15 A. Moved refuse? You mean dig it up and move
16 it?

17 Q. No, just the exposed or the scattered litter
18 that --

19 A. Oh, we'd pick it up. The litter?

20 Q. Uh-huh.

21 A. We'd pick up the litter, yes.

22 Q. Do you know whether that was done in this
23 instance?

24 A. Was it done at the time of this inspection?

1 Obviously, it doesn't look like it. It was done
2 daily, though, or semi -- whenever it needed it, it
3 was done.

4 Q. Do you have any personal knowledge of when
5 the landfill removed the litter from the bottom of
6 this hole and properly disposed of it in the active
7 area of the landfill?

8 A. Along the water line or whatever? Yeah, I
9 saw them do it many times.

10 Q. In response to this particular observation
11 on --

12 A. February 14th.

13 Q. -- February 14, do you know when they removed
14 that litter?

15 A. If it was brought up by Ron Mehalic at this
16 inspection, he talked with Joe Chenoweth it says. I
17 assume they got on it that day or whenever they could,
18 as soon as they could.

19 Q. That's just your assumption?

20 A. Sure.

21 Q. You don't recall actually observing anybody
22 do that work?

23 A. On this particular time?

24 Q. Right.

1 A. No, I couldn't say.

2 Q. Now, this hole we're talking about, the
3 nonwaste disposal area, what is the surface area of
4 that impoundment?

5 A. The nonwaste disposal area?

6 Q. Uh-huh.

7 A. I believe it's 120 by 30, something like
8 that. Whatever is in that permit. Something like
9 that.

10 Q. Fairly large area?

11 A. Yeah. It's bigger than what we had
12 originally thought. We -- actually, when we decided
13 to identify that area, we expanded it by 20 percent or
14 whatever just to cover.

15 Q. I think Jim KammueLLer may have actually
16 referred to it as the size of a football field?

17 A. No. The nonwaste area?

18 Q. Uh-huh.

19 A. No. The size of a football field is 300 by
20 40 yards -- 40 feet or whatever. It's smaller than
21 that. It's 120. It's a square -- rectangular. It's
22 like 120 by 40, something like that, or 50. It's like
23 a little peninsula. Like a little square peninsula
24 where the haul road was.

1 Q. From the very top of the nonwaste disposal
2 area what is the area? Is that what you're talking
3 about or are you talking about the bottom?

4 A. Both. It doesn't matter top or bottom. I
5 mean it's --

6 HEARING OFFICER FRANK: That's not going to
7 work for the record.

8 A. It's like a rectangular cube is what it is,
9 and it's identified specifically by coordinate points
10 and size.

11 Q. What I'm really trying to find out, the rim,
12 the very top of this area --

13 A. Of the nonwaste area?

14 Q. Right. What is the diameter or the area of
15 that?

16 A. It's the same as it is at the bottom as far
17 as I know. It's 120 by 40 or 50, whatever. Butts up
18 against the liner.

19 Q. So your testimony is that from the rim, from
20 the very top of this nonwaste disposal area down to
21 the bottom it's just straight lines all the way down,
22 the sides are straight up and down?

23 A. It's not straight lines. The one side kicks
24 back actually more than 120 feet because the liner is

1 laid back. When you get to grade it will be actually
2 longer, but for the sake of the argument it goes from
3 the liner -- the inside edge of the liner in like 120
4 feet by 40 feet or whatever the dimensions are in the
5 permit. And basically, yeah, it comes straight up.
6 And we keep it about three or four feet above where
7 we're landfilling all the time so the inspector can
8 identify it.

9 Q. Why was it the landfill decided to develop
10 this area?

11 A. We didn't decide. It was an area that was in
12 question on whether we could put garbage in there or
13 not. The only way we were going to go in -- we were
14 going to put garbage in there, anyway. There was some
15 question as to was garbage placed there prior to
16 October 9 of '93. A big discussion, the Agency said
17 no, yes. It was turning into a nightmare. We said
18 how can we make it so we can take care of the problem
19 and identify the area that wasn't supposedly had
20 garbage in it October 9 of '93. That's exactly what
21 the permit that we applied for was to say this is the
22 area, and we don't necessarily agree with it, but we
23 went with the Agency what they said in their
24 inspection reports as to the nonwaste area where you

1 didn't have garbage. We wanted to identify that area.
2 That's the reason for that permit. Okay?

3 Q. Now, isn't it reasonable to assume that the
4 storm water that's at the bottom of this nonwaste
5 disposal area is in part made up of rainwater that
6 comes directly from the sky?

7 A. Sure.

8 Q. Wouldn't it also be reasonable to assume that
9 part of that water or material that accumulates at the
10 bottom of this nonwaste disposal area is attributable
11 to runoff?

12 A. Run-in, sure.

13 Q. From other portions of the landfill?

14 A. Run-in, sure.

15 Q. Isn't it also reasonable to assume that a
16 portion or part of that material at the bottom of this
17 depression is also due to seepage of leachate or other
18 liquids from the garbage that's been deposited all
19 around this hole?

20 A. I have no idea. When we pumped it out and
21 cleaned the silt out that was in there, we didn't find
22 any garbage. When we pumped the water out and took
23 the silt out, we didn't see any garbage.

24 Q. I'm just asking if it's reasonable to assume

1 that there is some seepage that might come -- there's
2 garbage disposed of all around this area, right?

3 A. Sure, yeah.

4 Q. And I'm just asking you in your opinion as
5 project manager for the site that some leachate might
6 have seeped through the sides and into this liquid?

7 A. Don't know. Don't know. We cover every
8 night, so I don't know.

9 Q. Is there any cover placed on this nonwaste
10 disposal area to prevent run-in or precipitation from
11 entering the area?

12 A. This is dirt. The nonwaste area is just
13 dirt. What are you asking?

14 Q. I'm asking if any efforts were made by the
15 landfill to prevent water from accumulating in the
16 bottom?

17 A. From running into that hole? Oh, yeah, we
18 bermed around the outside of it. So basically all
19 that came in was in that area. If you looked at the
20 hole, you could see where it was graded like this. So
21 anything from way outside here, basically the only
22 thing that went in there was what hit in that area.
23 Okay? For instance, if you come off the western slope
24 of our area where we're done, it comes way down and

1 then it levels back off, comes across and then it
2 drops into that hole. It's all graded so water --
3 basically the only water that goes in there falls in
4 there or hits the sides and goes in there. I mean it
5 doesn't come from other areas of the landfill. We're
6 not diverting water into that hole, no. We're
7 diverting it away from it.

8 Q. Has any pumping of storm water or other
9 accumulated water taken place since approximately
10 December of 1995?

11 A. I don't think so. I don't know if we have or
12 not. I don't think so. We've got that up pretty -- I
13 doubt we'll ever pump in that area. I don't think
14 we'll have any more pump water now.

15 Q. Is there still water that's accumulating?

16 A. No.

17 Q. Is there still a depression there?

18 A. No. Well, there's a depression there. Is
19 there water being -- accumulating in there, no, no,
20 huh-uh. We're trying to fill that area as quickly as
21 we can to prevent that from happening.

22 Q. I wanted to go back and ask you another
23 question about the retention pond that we were talking
24 about. I think in your earlier testimony you

1 indicated that in an attempt to divert water away from
2 that retention pond or to divert storm water runoff
3 away from that retention pond you'd built a ditch
4 or --

5 A. Yeah.

6 Q. Is that what you called it?

7 A. They're called diversion or whatever you want
8 to call it. A dirt structure to let the water run
9 away from it, yeah.

10 Q. Is that on one of the terrace roads?

11 A. Well, yeah. If you looked at our landfill
12 now and saw, you would actually maybe see, well, that
13 looks like a terrace road. Yeah, you can drive it
14 now, correct, yes.

15 Q. That's on the northern face of the landfill?

16 A. Northwest corner, yeah.

17 Q. When was that diversion built?

18 A. That summer. It was after we had put that
19 fence up.

20 Q. So summer of '95?

21 A. Yeah, uh-huh. Summer, fall. It took, you
22 know, through -- the reports that we had on that area,
23 we started in June and ended up like in November, so
24 there was always work being done over there.

1 Q. You indicated I think in response of one of
2 Mr. Northrup's questions that that diversion that you
3 built had been successful in diverting storm water?

4 A. A lot of it, yeah, yeah. We don't get near
5 the water in that retention pond that we used to I
6 don't think.

7 Q. I want you to take a look at People's Exhibit
8 13, which is an inspection report prepared by Jim
9 Kammuegger February 9, 1996. By February 9, 1996 that
10 diversion would have been built, correct?

11 A. Oh, it was, yeah.

12 Q. I'm going to have you look at photographs 32
13 and 35 -- well, let's see. 32 and 33, sorry. Looking
14 at photograph 32, there looks to be what I'm referring
15 to as the terrace road through the middle of the
16 photograph and also in photograph 31?

17 A. Yeah, right here, correct.

18 Q. Okay. You'd agree with that?

19 A. Yeah.

20 Q. Then looking at photograph 33, to the right
21 of the middle of the photograph there looks to be --

22 A. Looks like a washout.

23 Q. Right. Where water appears to be discharging
24 from that diversion into that retention pond. Would

1 you agree with that?

2 A. Yeah, uh-huh.

3 Q. Can you describe or would you agree that this
4 -- the water that is on this diversion or the terrace
5 road appears to be fairly muddy in that photograph?
6 Would you agree with that?

7 A. Sure.

8 Q. And that's the water that's discharging into
9 the retention pond?

10 A. Not directly, but it will get there sooner or
11 later, yeah, uh-huh.

12 Q. So would it be fair to say that this
13 diversion that you installed in mid to late 1995 has
14 not been entirely successful in diverting storm water
15 runoff from the retention pond?

16 A. Exactly. That diversion needs maintenance
17 all the time. You can't maintain -- that picture was
18 taken in February. There's no way that you could get
19 in there to maintain that area at that time of the
20 year. Obviously, it's awful muddy. The first chance
21 -- I mean if that was there, I'm sure it's been fixed
22 as soon as possible you could get in there to fix it.
23 But, yeah, you're right. There was water going into
24 there at that time.

1 Q. Do you recall observing this in February of
2 1996?

3 A. I don't remember seeing that, no. I don't
4 recall -- I don't think I went with Jim on that
5 inspection.

6 Q. And you have not dredged that retention pond
7 since 1995, right?

8 A. I spoke with Elmer about that the other day.
9 I believe he has cleaned it, he told me. I'm not
10 personally aware of it being cleaned, but I believe it
11 has been, from what our operations guy told me. He
12 said he thought he'd cleaned it a couple times since
13 we put that -- since the fence went in?

14 Q. Yes.

15 A. I think it's been cleaned a time or two since
16 then, yes.

17 Q. When you say it's been cleaned a time or two
18 since then, do you mean actually dredging it like you
19 did --

20 A. Not like we did that time, no. You can't do
21 that again because we'd lose the fence and everything.

22 Q. What would be involved in cleaning out the
23 pond?

24 A. Taking any of the silt that's out of there.

1 Q. How would he do that?

2 A. Just drop the 400 bucket down in there and
3 take whatever silt's in there. That water is fairly
4 deep now so it's hard to judge how much silt would be
5 in there, if any.

6 Q. Do you know how deep that retention pond is?

7 A. Based on those pictures, I'd say eight feet
8 maybe. I don't know. Seven or eight foot. It
9 depends on how much silt's in the bottom of it, I
10 guess.

11 Q. Now, I've got a -- we were talking before
12 about the fence that's in this retention pond that you
13 installed in 1995.

14 A. It's not in it. It's on the outside of it,
15 to the south of it.

16 Q. Referring again to People's Exhibit 13, this
17 time to photograph 26, the pond -- the retention pond
18 is shown in the upper right-hand portion of the
19 photograph and there appears to be a fence going
20 through the middle of that pond. Is that --

21 A. Yeah, that's a little backed-up water that's
22 in there right now, correct. Uh-huh.

23 Q. Is that fence -- that fence was installed to
24 your knowledge --

1 A. That's the one we installed.

2 Q. -- to your knowledge at the property line.

3 What you assumed to be the property line?

4 A. To the best of my knowledge, yeah.

5 Q. Okay, Steve, I want to ask you just a couple

6 questions about response to complaints you might

7 receive at the landfill.

8 A. Uh-huh.

9 Q. You indicated that you or whomever else might

10 be in the office at the landfill would take a

11 complaint called in by a citizen or a neighbor?

12 A. Sure, uh-huh.

13 Q. Do you as the project manager get involved in

14 responding to those complaints?

15 A. On occasion I do, yeah.

16 Q. Whose responsibility is it to ensure that

17 those complaints are responded to?

18 A. Elmer Elliott, Steve Grothus, Nicole

19 Wuestenberg, Tom Jones, Jim Watts, Jerry Eilers.

20 Q. Are you indicating just whoever might be out

21 there and whoever might take the call?

22 A. Any management personnel that would be

23 around. They better be, yes.

24 Q. There's not one member of the management team

1 for ESG Watts that is designated as the point person
2 to respond to citizen complaints?

3 A. Not specifically, no.

4 Q. Now, have you ever taken a complaint from Joe
5 Whitley?

6 A. Sure.

7 Q. How many times would you say Joe Whitley has
8 called the landfill to make a complaint?

9 A. To me?

10 Q. Yes.

11 A. Oh, I've talked to him a half a dozen times
12 maybe, maybe more. I don't know. I don't recall.
13 Who knows.

14 Q. Over what time period?

15 A. Since I've been there, I've probably talked
16 to him a dozen or two times on the phone. I don't
17 recall. Not all of them were complaints. I mean, you
18 know.

19 Q. What about the other neighbors, for example
20 Mr. or Mrs. Siebke, Wayne Siebke?

21 A. Yes. I've talked to Wayne maybe a dozen
22 times over the years.

23 Q. And would you agree that a majority of the
24 calls from Mr. Siebke or Mrs. Siebke are in reference

1 to the drainageway that's on their property
2 becoming --

3 A. No. I've never talked to Mrs. Siebke.

4 Q. Let me finish my question, okay?

5 A. Sure.

6 Q. I was asking you if the number of calls from
7 the Siebkes, either Mr. or Mrs. Siebke, were in
8 relation to the drainageway on their part of -- on
9 their property becoming filled with refuse from the
10 landfill?

11 A. The majority of the time that I have talked
12 to them?

13 Q. Uh-huh.

14 A. No.

15 Q. Have you taken any calls from them that have
16 had to do with --

17 A. Sure.

18 Q. -- the refuse in their drainage ditch?

19 A. Yes, uh-huh.

20 Q. Now, when Mr. Whitley has called with a
21 complaint and you've taken the call, what has the
22 complaint or what have the complaints been?

23 A. The last major complaint I got from Mr.
24 Whitley was taking care of that fence.

1 Q. And when was that?

2 A. Prior to June of '95. It was before that,
3 you know. Shortly thereafter, I think he was down
4 there when we decided what we were going to do on that
5 fence.

6 Q. You don't recall taking a phone call from Mr.
7 Whitley just earlier this year --

8 A. I may have.

9 Q. -- regarding the gas wells remaining uncapped
10 or uncovered for a period of four or five days over a
11 long weekend?

12 A. I don't recall. That's impossible, though,
13 no. I don't recall him making the phone call, no. I
14 don't recall. He may have. I don't know.

15 Q. Have any other of ESG Watts' employees told
16 you that they took such a call from Mr. Whitley?

17 A. I think I heard from people that there were
18 holes left uncovered or something, and I said that's
19 impossible. They won't -- you can't leave holes like
20 that uncovered. That's ridiculous.

21 Q. Who did you hear from that they had been
22 left --

23 A. Might have been Joe Chenoweth or something
24 like that, maybe Elmer. I don't recall. But they

1 made a mention to me because -- I think it was Joe
2 because -- I may have heard something from him,
3 because I told him, I said, "Joe, you don't leave
4 holes uncovered." That's what those plates are for.
5 That's impossible that four or five holes was left
6 uncovered. If someone said that to me, I'd blow it
7 off and walk away because I know they don't know what
8 they're talking about.

9 Q. As project manager whose responsibility is
10 ensuring compliance with permits, you would not go out
11 to the location where they claim the holes to be
12 uncovered and check?

13 A. No way.

14 Q. You would just blow it off?

15 A. I would blow off a complaint like that
16 because it's ridiculous. I know the drillers; I know
17 their procedures. You can't have four or five holes
18 uncovered at one time, anyway. It doesn't make sense.
19 It's impossible. It just is -- it's very extremely
20 unlikely, and it never happened at our site.

21 Q. So if you --

22 A. Drilling those wells.

23 Q. If you receive a complaint from say a
24 neighboring citizen and in your opinion that complaint

1 is impossible or ridiculous, do you not then
2 investigate or respond to that complaint?

3 A. I would tell them that's ridiculous. I'd
4 tell them straight up it doesn't make sense. No,
5 that's ridiculous. In fact, I would invite them over.
6 I mean if they were persistent enough, I'd say let's
7 go check it out, you know. Do something like that.
8 Sure, I'd do that. But that's impossible. I mean
9 it's not impossible. It's extremely improbable. That
10 doesn't happen.

11 MS. SYMONS-JACKSON: Those are all the
12 questions I have.

13 HEARING OFFICER FRANK: Mr. Northrup.

14 REDIRECT EXAMINATION BY

15 MR. NORTHRUP:

16 Q. Let's talk about these gas management -- the
17 drill holes.

18 A. Uh-huh.

19 Q. You've been present when they've been
20 drilled?

21 A. A lot of them. Not every single one, no, but
22 a lot of them, yeah.

23 Q. What is the -- what's the sequence and how do
24 they drill the holes?

1 A. In a nutshell, they drill to a predetermined
2 depth, okay, whatever was on the engineering spec.
3 Once that's done, they immediately set the pipe up,
4 okay, for the well, and --

5 Q. The casing?

6 A. The pipe. The HDPE. And they usually
7 measure a -- if it's a 90-foot well and we had I
8 believe it was two-thirds, one-third, they'd set it up
9 for the perforated and the solid, get that, and then
10 they'd proceed to set the well, backfill it
11 immediately, get the well installed to grade as
12 quickly as possible.

13 Q. Did they ever -- to your knowledge did the
14 drillers ever have more than one hole open at a time?

15 A. Uncovered at a time?

16 Q. No, first, did they ever have any --

17 A. Did they have two drilled at one time,
18 completed?

19 Q. Right.

20 A. Yeah.

21 Q. How often would that happened?

22 A. Not very often. I know of one instance it
23 happened.

24 Q. When was that?

1 A. I don't -- sometime during the -- I don't --
2 September or August. I don't recall. But I know it
3 happened once, yeah.

4 Q. What was their practice with respect to
5 covering those holes?

6 A. Get the hole set, placed and filled ASAP.
7 That was number one.

8 Q. What would happen if late in the day and it
9 appeared that you were going to have to stop because
10 of darkness or whatever and there was an open hole?
11 What would you do?

12 A. They'd put a plate over it, steel plate.

13 Q. Why would they put a plate over it?

14 A. Safety.

15 Q. How big are these holes?

16 A. 36 inches in diameter.

17 Q. People working around these holes?

18 A. Yes.

19 Q. What would happen if somebody fell in one of
20 these holes?

21 A. You would die.

22 Q. Why is that?

23 A. There's no air.

24 Q. To your knowledge were any of these holes

1 ever left uncovered?

2 A. Uncovered?

3 Q. At the end of a day?

4 A. Uncovered? Unplated?

5 Q. Unplated.

6 A. No, not to my knowledge.

7 Q. When did the -- when did the installation of
8 this system begin?

9 A. I believe sometime in July, I think,
10 something like that. Ran from July to around
11 September, maybe October.

12 Q. Is it complete now?

13 A. The drilling?

14 Q. The drilling.

15 A. For now, yeah.

16 Q. Is it your job at the landfill to personally
17 respond to citizen complaints?

18 A. Part of it. Not totally, no.

19 Q. Let's go back to the '95 dredging of the
20 Whitley retention pond. You said you excavated 40 to
21 50 truckloads?

22 A. Haul truckloads.

23 Q. Haul truckloads?

24 A. Uh-huh.

1 Q. Now, was all that material silt?

2 A. Not all. There was a little bit of tree
3 limbs and junk down at the bottom if I recall right.

4 Q. How large of an area did you excavate out?

5 A. Geez, I don't know. Guesstimate, 150 by 30
6 maybe or something like that.

7 Q. How close did you get to Whitley's dike?

8 A. Right up against it.

9 Q. The fence that was constructed in that area,
10 was that surveyed in?

11 A. No, it was not.

12 Q. How did you arrive at the location of the
13 fence?

14 A. Joe and I talked about that and I --

15 Q. Joe?

16 A. Joe Whitley and I talked about that and I
17 told him I wasn't sure where the property line was,
18 but for the sake of the fence and for the sake of
19 doing this, I'll drop a line from the corner to where
20 -- from the northwest corner exact of the landfill
21 where the fence is that's existing to a part of the
22 fence that was down a ways near the clustered wells we
23 have there and we'll just put a line across there and
24 put the fence right on that line. He said --

1 everybody agreed that's close enough. That's what we
2 did.

3 Q. When the spoils from the drilling with
4 respect to the gas management -- installation of the
5 gas management system, when those spoils would be
6 brought up and put on the ground, did those have an
7 odor?

8 A. Yes.

9 Q. What's that odor like?

10 A. Garbage, rotten garbage.

11 Q. Is that the same odor that you would smell
12 emanating from the hole?

13 A. No, not really. Different.

14 Q. And what's the difference between those two
15 odors?

16 A. In comparison to like diesel and gas, I
17 guess. I don't know. I don't know. Definitely a
18 different odor between the two, you know, a little bit
19 different. But to describe it like rotten eggs or
20 something, it wasn't rotten eggs necessarily.

21 Q. In your meeting with the Agency with respect
22 to the Sig Mod that was held back in August, did they
23 request that Watts notify them prior to any
24 resubmittal of the Sig Mod?

1 A. No. The only thing we -- I thought we agreed
2 that we would have another meeting prior to the
3 submittal and that Steve would set that up, Steve
4 Keith.

5 Q. Did that meeting happen?

6 A. No, I don't believe it did.

7 Q. Do you know if a meeting was requested?

8 A. By us?

9 Q. By Watts.

10 A. No, I don't think so. I believe -- check
11 that. I think maybe Steve set one up and then we
12 decided not to have it because we weren't prepared for
13 it. Steve Keith. I believe he did set one up later
14 on, but we decided not to have it for one reason or
15 another. I don't recall what it was. I'm not sure
16 about that.

17 Q. Let's talk about the nonwaste disposal area.
18 Why didn't you just leave it the way it was?

19 A. It was a landfilling problem, potential a --
20 could be a water problem down the road. It was just a
21 bad situation all the way around.

22 Q. Any safety concerns?

23 A. Yeah. You could slide in there or a truck
24 could. Yeah. You don't want standing water anywhere

1 like that. Sure.

2 Q. And do you recall when you applied for that
3 permit?

4 A. No, I don't.

5 Q. I think you indicated that the pumping
6 occurred over a period of three to four months.

7 A. Yeah.

8 Q. Okay. How often were you pumping during that
9 period?

10 A. We would usually pump for at least like a
11 24-hour period due to the cost of the analysis. You
12 know, it was set up that you had to pump so often. So
13 if we're going to pump, let's pump the maximum we can
14 for the amount of samples like we would have to take,
15 you know. It didn't make sense to pump for two hours
16 one day and two hours the next day. That's two
17 sampling events. So we wouldn't do it that way. But
18 as the water went down and as we brought the nonwaste
19 disposal area out, there was silt in there, and we'd
20 take that silt out, and then the water -- you know, we
21 were trying to just shrink that pond as best we could.
22 So it might be a couple of weeks before we'd pump
23 again. I had pictures if you wanted to show how we
24 did it.

1 Q. So you were not pumping every day for that
2 three or four month period?

3 A. No, no.

4 Q. What would be the frequency of the pumping?

5 A. Maybe once a week. I don't know. To start
6 out with. We pumped a few days in a row, though, I do
7 remember that, to see where we were at.

8 Q. I think you testified Jim Kammueler was
9 present at least on some of those occasions?

10 A. I don't know if he was -- I think we pumped
11 and then we called or he called. He called, showed up
12 after this, and said you should do this, this, and
13 this. He didn't like the way our setup was, so we did
14 what he asked us to do.

15 Q. What were some of those things that you did?

16 A. He suggested we run the hose all the way to
17 the discharge pond instead of like halfway. Okay?

18 Q. And did you do that?

19 A. Yeah. We went out and bought hose.

20 Q. What else did he suggest?

21 A. He suggested to put siltation fences all the
22 way down where the sock from the -- he suggested a
23 sock at the end.

24 Q. Did you put a sock on?

1 A. Yes, we did. Then he suggested a series of
2 siltation fences, this and -- he even suggested to put
3 some down into Mr. Siebke's area, which we did. We
4 did a lot. Basically what he told us to do.
5 Actually, he was pretty helpful in that, yeah.

6 Q. And what was the -- were you continuously
7 sampling as you discharged?

8 A. As we pumped we sampled as we were supposed
9 to, three equal outputs in the amount of time. We
10 tried to time it out, you know, like eight hours, so
11 we knew when we had to sample, you know, timewise. We
12 explained all that to Jim and showed him how we were
13 doing it, the sampling.

14 Q. Did you submit that sampling to the Agency?

15 A. As far as I know, it was, yeah, the DMRs,
16 yes.

17 Q. Oh, it would have been on the DMRs?

18 A. Yeah. The tracking of how we sampled and
19 times. I think we gave him that separately, I
20 believe. He saw that. But that's not a part of the
21 DMRs.

22 Q. During this three- to four-month period was
23 it just one time that Jim Kammueler was there?

24 A. I think he made a couple trips out during

1 that period of time.

2 Q. Now, is water accumulating in the nonwaste
3 disposal area currently?

4 A. No. It can't.

5 Q. Why not?

6 A. It's mounded.

7 Q. I'm sorry?

8 A. It's mounded. It's -- I mean it just -- it's
9 higher than everything else around it. We keep it up
10 above where we're at.

11 Q. I believe you testified that if you received
12 a citizen complaint that you felt was ridiculous, you
13 wouldn't respond to it?

14 A. Yeah. If the sky is falling, exactly.

15 Q. Any idea how many times you would have not
16 responded to a citizen complaint?

17 A. No. I usually responded to all of them. I
18 mean the ones that I got. I'd look into it. A lot of
19 them were -- I mean I did have ridiculous ones, yes.

20 Q. Do you still have Exhibit 13 there?

21 A. Is that the inspection report?

22 Q. Yeah. It's an inspection report.

23 A. Oh, it would be this one. Here's 13, yeah.

24 Q. Let me see that for a minute. Let me show

1 you -- I think you already testified about photograph
2 number 26.

3 A. Uh-huh.

4 Q. On the left-hand side of the picture there
5 appears to be a road and then a slope?

6 A. Right.

7 Q. What is that road? Is that the diversion
8 structure?

9 A. Yeah. Yeah, it's an access road around the
10 site that we put in there to help divert so the only
11 -- basically, you know -- it was down here before, and
12 as you can see, that doesn't --

13 Q. Down at the bottom of the slope?

14 A. Yeah. And that didn't make sense. You want
15 to get it up there a ways from that. Hopefully it
16 will divert all the way this way. Now, the water that
17 you see that would come around that, you see siltation
18 fences and stuff to keep the silt down that does
19 actually make the turn, but it will be going way past
20 here.

21 Q. So there are siltation fences here?

22 A. Yeah, there's one right here. There's one
23 right here.

24 HEARING OFFICER FRANK: Right here?

1 A. Oh, excuse me. Center of the photograph at
2 26 moving from the center left side to the center
3 right side of the picture you can see a chain, I guess
4 you would call it, of siltation fences that were
5 installed.

6 Q. Are there any other siltation fences in that
7 area that do not appear on that photograph?

8 A. Yeah, I'm sure there is. There's a lot of
9 them down there in that area.

10 Q. Take a look at photo 25. What's that a
11 picture of?

12 A. Those are the siltation fences that we're
13 referring to in 26. It's a better picture, actually.

14 Q. What's the description of 25?

15 A. View south at 001 -- I don't know what that
16 is -- flow just downstream of photograph number 24.

17 Q. Could 001 be the permitted discharge from the
18 NPDES?

19 A. No, not at all.

20 Q. What's the purpose of the siltation fences in
21 that photograph?

22 A. Well, this --

23 Q. I guess are there siltation fences in that
24 photograph number 25?

1 A. Oh, yeah, uh-huh.

2 Q. How many?

3 A. One, two, three that I can identify clearly.

4 Q. Where are those located in the --

5 A. Top left-hand corner.

6 Q. What's the purpose of those?

7 A. To keep siltation from running down into that
8 area towards that retention pond -- Mr. Whitley's
9 retention pond area.

10 Q. Do you have any idea when you would have
11 installed those fences?

12 A. They look fairly recent to me because of the
13 amount of material in front of them. I mean not that
14 much material in front of them. You need to do that
15 time of the year because of -- you can't get -- it's
16 extremely hard to get equipment in there, it's so
17 muddy and that, so temporary fixes that time of the
18 year when you can't do a permanent you do siltation
19 fences and that's probably why that was done.

20 Q. Why don't you take a look at photograph 28.

21 A. Uh-huh.

22 Q. Are there siltation fences in that
23 photograph? 28.

24 A. Oh, 28. Yeah. Definitely.

1 Q. Okay. Who would have installed those fences?

2 A. People at the land -- Joe Chenoweth or one of
3 his designees, a couple laborers, whoever, people at
4 the landfill.

5 MS. SYMONS-JACKSON: I'm going to object. I
6 think the witness is pointing out questions or
7 suggesting questions to counsel.

8 HEARING OFFICER FRANK: Sustained.

9 Q. Take you back to photo 33. You indicated
10 that that depicted a washout?

11 A. 32.

12 Q. 33.

13 A. Oh, 33, yeah. It looks like there was a
14 washout there, uh-huh.

15 Q. Now, did Watts have any procedure in place to
16 repair washouts such as that?

17 A. That would be silt fenced.

18 Q. And who would have done that?

19 A. Joe Chenoweth or one of his designees, one of
20 the laborers at the site.

21 Q. Have you ever responded to complaints by Mr.
22 Siebke?

23 A. Yes.

24 Q. What have you done? I guess I should first

1 say what were -- what was the complaint or complaints?

2 A. He was having an erosion problem that he
3 attributed to where we were discharging 001 down near
4 his road where his driveway is that goes out onto
5 Highway 92.

6 Q. Did you respond to that?

7 A. Yes.

8 Q. What did you do?

9 A. We took a dozer down there, brought out --
10 widened it, straightened it, I believe put some
11 erosion things in there like siltation fences, things
12 like that, tried to seed it down for him, make it so
13 that wouldn't happen. It was starting to eat away
14 towards his driveway, and we went down and at his
15 direction we did what he asked us to do.

16 Q. If Mr. Siebke complained of garbage or litter
17 in his drainageway, would you consider that a
18 ridiculous complaint?

19 A. No, not at all.

20 Q. If Mr. Whitley complained of silt running
21 into the retention pond, would you consider that a
22 ridiculous complaint?

23 A. Not at all, no.

24 MR. NORTHRUP: I don't have any further

1 questions.

2 HEARING OFFICER FRANK: Ms. Symons-Jackson.

3 RECROSS-EXAMINATION BY

4 MS. SYMONS-JACKSON:

5 Q. Just real quick. I think you indicated that
6 all your sampling for the NPDES permit was sent to is
7 it Beling?

8 A. As far as I know of, yeah.

9 Q. Would that have been the case with the first
10 NPDES permit that was issued in 1986?

11 A. I don't know. Couldn't tell you.

12 Q. You had two sample points under that permit?

13 A. Correct.

14 Q. 001 and 002?

15 A. Uh-huh.

16 Q. And that permit was or you were operating
17 pursuant to that permit until the new permit was
18 issued just earlier this year, right?

19 A. Uh-huh, uh-huh.

20 Q. And prior to issuance of this new permit were
21 you sending samplings from 001 and 002 to Beling for
22 analysis?

23 A. If there was a discharge, we would have been,
24 sure.

1 Q. Do you know what the cost of a month's
2 sampling and analysis would be from Beling?

3 A. For NPDES?

4 Q. Uh-huh.

5 A. If we pumped 30 days, it would be extremely
6 expensive. If we pumped once -- I mean it depends on
7 how many you send in.

8 Q. Did you only take samples if you were
9 pumping?

10 A. On 001 during that time, yeah.

11 Q. From 1986 to 1996?

12 A. Oh, no, no. Well, yeah, I would assume so,
13 sure. It was ponded.

14 Q. Now, are you familiar with the sampling that
15 is required under the NPDES permit?

16 A. Relatively speaking, yeah.

17 Q. And would you agree that Watts is not always
18 required to composite their samples?

19 A. I thought we always composited them.

20 Q. Okay. How much does it cost for Beling to
21 run a composite sample?

22 A. To composite them?

23 Q. Uh-huh.

24 A. I don't know. They don't charge us for the

1 composite. They charge us for the analytical. They
2 do that.

3 Q. What do they charge you for the analytical?

4 A. Might be 2 or 300 bucks. I don't --

5 Q. Per sample?

6 A. Per event?

7 Q. Uh-huh.

8 A. Yeah. I would say something like that.

9 MS. SYMONS-JACKSON: Okay. That's all I
10 have.

11 HEARING OFFICER FRANK: Mr. Northrup, do you
12 have anything else?

13 MR. NORTHRUP: No.

14 HEARING OFFICER FRANK: Okay. We're done
15 with this witness then. Thank you.

16 (Witness excused)

17 HEARING OFFICER FRANK: Please call your next
18 witness.

19 MR. NORTHRUP: Tom Jones.

20 THOMAS A. JONES

21 called as a witness herein, having been first duly
22 sworn, was examined and testified as follows:

23 DIRECT EXAMINATION BY

24 MR. NORTHRUP:

1 Q. Go ahead and state your name for the record.

2 A. Thomas A. Jones.

3 Q. Where do you work?

4 A. ESG Watts.

5 Q. What do you do there?

6 A. I'm an engineer.

7 Q. How long have you been with ESG Watts?

8 A. I started working there in 1991, February of
9 '91. I did leave there for approximately a year from
10 May of '95 to July of '96.

11 Q. Where did you go in that time frame?

12 A. I went up to Michigan where I'm originally
13 from.

14 Q. What did you do there?

15 A. I worked at a landfill.

16 Q. What types of things do you do -- have you
17 done at ESG Watts?

18 A. I -- there's a lot of duties that I handle.
19 You know, design, permitting, meet with neighbors,
20 take complaints, work on permits, just whatever is
21 necessary.

22 Q. Do you draft permit applications?

23 A. Yes, I do.

24 Q. What kind?

1 A. Closure plans, you know, cost estimates. You
2 know, I've applied for permits for groundwater
3 monitoring wells. You know, I've had a lot of input
4 and drafted portions of our Sig Mods.

5 Q. Why don't you explain a little bit about your
6 educational background, high school and college?

7 A. I graduated from high school in 1981. I have
8 a B.S. degree in civil engineering from Michigan
9 Technological University. And I've been employed in
10 the waste business since 1988.

11 Q. Any graduate work after your B.S.?

12 A. I've taken a few graduate courses, but I
13 don't have a Master's.

14 Q. Are those related to waste operations?

15 A. Somewhat. They're more related to hydrology.
16 I've taken some courses on -- it's the Army Corps of
17 Engineers, it's a program that they've established for
18 hydrology. It's a computer program. It's called the
19 HEP program, and I did a couple courses in that.

20 Q. Anything else?

21 A. No.

22 Q. Do you attend seminars from time to time?

23 A. Yes, I've gone continuing education and
24 seminars, and I have, you know, 40-hour training.

1 It's like a hazardous type response training.

2 Q. Do you hold any professional licenses?

3 A. I'm a professional engineer in the State of
4 Illinois and the State of Michigan.

5 Q. When did you receive those licenses?

6 A. The one in Illinois I received in I think '94
7 and the one in Michigan in '95. Probably the one in
8 Illinois in '93.

9 Q. Do those have any continuing educational
10 requirements to maintain your license?

11 A. Yes, they do.

12 Q. Why don't you describe for me where the
13 landfill is located?

14 A. The landfill is located on a bluff
15 overlooking the Mississippi River in Rock Island
16 County. More specifically it's west of -- east of
17 Andalusia. It's in Andalusia Township. You know,
18 it's approximately about five -- about a mile from the
19 Mississippi River to the south of the river. The
20 setting is, you know, typically it's a very rolling
21 terrain or rough terrain, you know, where we're
22 sitting at. There's a lot of ravines that have been
23 created over the years by, you know, just the natural
24 erosion process. There's farmland, you know, around

1 the property to the east. There's farmland to --

2 Q. Here, let me show you People's Exhibit 3,
3 which may be your -- can you tell me what this is?

4 A. It's a topographical map of the ESG Watts
5 Taylor Ridge Landfill. Basically it encompasses the
6 whole landfill and then there's some boarding property
7 around the landfill but not very much.

8 Q. Why don't you tell me -- let's just go around
9 the landfill and describe for me the topography and
10 the land use of the area around the landfill. Why
11 don't we start on the east side.

12 A. Okay. This east portion over here, this is a
13 wooded ravine area in here.

14 Q. You have to describe a little --

15 A. To the west in the north corner it's a
16 ravine, wooded area.

17 Q. East or west?

18 A. East. And approximately three or 400 feet
19 further south from, you know, the north boundary a
20 crop field is -- it's usually corn is planted, and
21 it's corn basically all the way down to about the
22 middle of the site, and then I think it's soybeans
23 toward the south side on the east side of the
24 landfill.

1 Q. So it's all agricultural?

2 A. Yes.

3 Q. Is there any slope to that ground?

4 A. Toward the south portion it's, you know,
5 rolling hilly. More toward the north it's deep
6 ravines.

7 Q. Okay. How about the -- I guess it would be
8 the south side of the landfill?

9 A. South side is property owned by ESG Watts and
10 it's mostly wooded. Originally it was mostly wooded.
11 We've excavated areas in there to -- for daily cover
12 and final cover and intermediate cover. But for the
13 most part, we're probably in maybe like a five acre
14 area. The rest of it is, you know, wooded in its
15 original state with deep ravines running across the
16 property.

17 Q. You don't landfill in that area?

18 A. No, we do not.

19 Q. How about the west portion?

20 A. Part of the west portion toward the south end
21 is again cropland. I think it's a cornfield. It's,
22 you know, pretty steep, you know, rolling hill. The
23 further north you go there's an open field that has a
24 relatively flat spot but there are deep ravines going

1 away from it in a lot of different directions.

2 Q. What direction do the ravines go? Are they
3 north-south, east-west?

4 A. Most of them run north-south. Some feed, you
5 know -- some head to the south to the -- I think it's
6 -- there's a creek that runs along the south border of
7 the landfill and most of them head that way. There's
8 a few that head to the north toward the Mississippi
9 River or, you know, Andalusia Road.

10 Q. How about then on the north side?

11 A. On the north side there is -- the property is
12 owned by Mr. Whitley. In that corner directly to the
13 northwest there is a pond that was created when -- you
14 know, from my understanding of talking to people, I
15 wasn't there at the time and how it was created, but I
16 was told it was created by somebody constructing an
17 earthen dam across a ravine and then, you know, over
18 the years water has -- runoff water has filled in the
19 ravine to create a pond.

20 Q. You are aware -- if I use the term Whitley
21 retention pond, you know what I'm talking about?

22 A. Yes.

23 Q. What do you understand that to be?

24 A. Mr. Whitley constructed a berm across, you

1 know, approximately, you know, I don't know, 30 or 40
2 feet north of our property line to slow down runoff
3 coming from the surrounding areas. Part of it coming
4 from our landfill and part of it coming from the
5 property to the west of us that drains across our
6 landfill.

7 Q. Okay. Let's talk about that. The property
8 directly south of Whitley's retention pond, that's
9 landfill property?

10 A. Uh-huh.

11 Q. And what's the topography of that? Is there
12 a slope? And where does that go?

13 A. The landfill property?

14 Q. Yeah, the landfill property.

15 A. It's gently sloping. Well, not gently. It's
16 sloping to the -- toward the retention pond and, you
17 know, and most of the water that falls on the landfill
18 in that general area, you know, heads off in that
19 area. We have constructed diversion berms on that
20 northwest area that we try to divert the water toward
21 outfall 001.

22 Q. To the west of the Whitley retention pond
23 describe that property for me, the topography and the
24 slope, if any.

1 A. It's -- you know, it's a -- you know, it's a
2 ravine that comes down to the Whitley pond.

3 Q. To the Whitley retention pond?

4 A. Yeah. But there's also -- there's kind of
5 like a hill there that prevents any water from going
6 down that way, but it comes --

7 Q. Why don't you use this map, just point out
8 directions and that type of thing.

9 A. Okay. Well, there's a high area right in
10 here.

11 Q. Here. Why don't you go ahead and mark on
12 that.

13 MR. DAVIS: Well, wait a minute. This is the
14 original that Mr. Grothus has marked on.

15 MR. NORTHRUP: Kammueeller?

16 MR. DAVIS: No, Steve.

17 HEARING OFFICER FRANK: Let's go off the
18 record for a minute.

19 (Discussion off the record.)

20 HEARING OFFICER FRANK: For the record, there
21 were two copies of People's Exhibit Number 3, both
22 have been used for different witnesses and both have
23 marks on them from the hearing process, so we're going
24 to go ahead and admit both of them and they can just

1 be jointly Exhibit 3. They will both be given to the
2 Board.

3 And, Tom, I believe you're going to mark on the
4 one which has the outfalls on it.

5 A. Okay.

6 HEARING OFFICER FRANK: Okay. So go ahead
7 and use this one.

8 A. I'm drawing basically a circle west of ESG
9 Watts' property on the north end of the site. There's
10 an area here that drains in, you know, across down
11 through here. All this drains in here. And this
12 comes in. And it drains along the west edge of our
13 property down this haul road and down around here like
14 that.

15 Q. That circle that you've drawn, what is that?
16 Is that agricultural field? Is it timber?

17 A. It's just a -- mostly it's just a vacant
18 field. I think Mr. Whitley has a few horses that I've
19 seen them up in there in the past. I don't recall
20 seeing them in the most recent past, but I've seen
21 them in the past there. And then there's -- there's
22 like stands of trees, you know. There might be, you
23 know, some trees here and then over here there might
24 be a few trees. But for the most part it's open

1 pasture.

2 Q. Okay. How about just north of that circle
3 you've drawn, what's in that area?

4 A. There's a lot of trees right in this area.

5 Q. Is it sloped?

6 A. Yeah, it's a steep embankment that comes down
7 onto our landfill.

8 Q. How about the property northeast of the
9 retention pond, what's the topography of that?

10 A. It's a steep slope that comes down into the
11 retention pond and into Mr. Whitley's pond.

12 Q. Why don't you go ahead and draw a circle or
13 something.

14 A. There's a steep slope like right in here.
15 And then, you know, further east of that slope it
16 levels out to another pasture. I think that one of
17 the neighbors uses it to hit golf balls in. So it's
18 pretty -- you know, this might be a better map for me
19 to --

20 HEARING OFFICER FRANK: The second circle
21 that you just drew, can you give a verbal picture of
22 where that is so that when the Board is looking at
23 that map they'll be able to tell which circle you're
24 referring to?

1 A. The second circle is directly north of the
2 landfill toward the west side. It is directly east of
3 the retention basin.

4 Q. Why don't you go ahead and mark that circle
5 with a -- put the bigger circle with an A and then the
6 smaller one with a B.

7 A. Okay.

8 Q. Let's talk about watercourses around the
9 landfill. On the map that you've been writing on
10 there is actually some numbers. The northeast corner
11 is 001. Does that represent any kind of watercourse?

12 A. It's a natural occurring ravine that's been
13 there for, you know, I don't know how many thousands
14 of years. You know, however long it took for it to
15 develop through the erosional process, but it's been
16 there a long time.

17 Q. That something that Watts has created?

18 A. No, it was there before Watts purchased the
19 property. You know, it's a pretty steep ravine
20 through there. I would say the change of elevation is
21 probably, you know, 60, 70 feet from the top of the
22 ravine to the bottom and it's -- you know, it's a
23 pretty steep slope. It's, you know, steeper than the
24 slopes at the landfill.

1 Q. Where's the bottom? Where do you consider --

2 A. I don't understand the question.

3 Q. If you measure down 60 or 70 feet, where are
4 you going to be on that property?

5 A. In terms of mean sea level or elevation?

6 Q. Just location. Okay. I'll scratch those.

7 How often is water in that -- I can't remember
8 what you called it -- in 001?

9 A. Very rarely. Only when there is some type of
10 precipitation and, you know, it might not last very
11 long. You know, I've seen where it's rained quite
12 heavily and nothing's gone down there. It all depends
13 on how much moisture is already in the ground, you
14 know, the ability and the capability of the surface
15 area to absorb the water.

16 Q. You are familiar -- if I use the term Siebke
17 property, you're familiar with that?

18 A. Yeah, it's 20 acres -- I think it's
19 approximately 20 acres directly north of the landfill
20 on the east side.

21 Q. Now, is that the property that 001 flows --
22 travels through?

23 A. Yes, it is.

24 Q. Can you describe for me the topography, any

1 slopes on that property?

2 A. It's a -- his property is all steep ravines
3 except out toward the -- along Andalusia Road there's
4 a small area that he plants corn on that, you know,
5 that might be an acre that's relatively flat, but most
6 of his property is either, you know, rolling hills or
7 ravines. I'd say 90 percent of his property probably
8 has timber on it, too.

9 Q. Let's look at the south side of the landfill.
10 Are there any watercourses along the south side of the
11 landfill?

12 A. There's an intermittent stream that runs
13 along the south boundary.

14 Q. Do you know the source of that stream?

15 A. From what I can tell it starts approximately
16 1500, 2,000 feet southwest of the landfill in a -- you
17 know, in a farm lot. You know, there's animals
18 running around it. I think the farmer has a pond up
19 -- a dammed-up pond there that kind of is where it
20 starts and then it drains on through his cornfield and
21 then all the way out to the Mississippi.

22 Q. How often have you observed water in that
23 intermittent stream?

24 A. You know, again, it depends upon the

1 rainfall. But I would say that there's usually water
2 in there. You know, it's not always flowing. A lot
3 of times you'll just see standing water that might be
4 trapped like in a pool or something, but there's
5 usually water, but I would say probably, you know,
6 there's flowing water 60 percent of the time.

7 Q. Okay. That 60 percent does that vary the
8 amount of water that's flowing through there?

9 A. Oh, yeah. You know, definitely. You just
10 might see a trickle going through there or you might
11 -- you know, after a heavy rainstorm it might be a
12 foot deep.

13 Q. Have you ever observed any aquatic life in
14 that stream?

15 A. No, I haven't.

16 Q. Let's switch gears now.

17 You know what a Sig Mod permit application is?

18 A. Yes, I do.

19 Q. Has one been submitted for the Taylor Ridge
20 site?

21 A. One has been submitted twice.

22 Q. Okay. When was the first one submitted?

23 A. I want to say sometime in 1993. I think we
24 got a denial in February of '90 -- was it '94? So it

1 would have been submitted sometime in '93.

2 Q. What happened to that submittal? I should
3 say did the Agency act on that submittal?

4 A. Well, at first it was -- there was a
5 completeness review. It was deemed incomplete. We
6 met with the Agency personnel. We discussed with them
7 the issues that were involved. We corrected them. We
8 were issued a letter of completeness. And they
9 started to begin the official review of the
10 application and then we received a denial of that
11 application.

12 Q. Let me show you what I have marked as
13 Respondent's Number 8. Can you identify that for me,
14 please?

15 A. It's a section of the Significant
16 Modification that included the Closure and Postclosure
17 Care Plan and cost estimates for the Taylor Ridge
18 Landfill.

19 Q. Who prepared that?

20 A. I prepared it.

21 Q. Is that a true and accurate copy of that
22 portion of the Sig Mod?

23 A. To the best of my recollection.

24 MR. NORTHRUP: I'd go ahead and offer

1 Respondent's 8.

2 HEARING OFFICER FRANK: Do you have a date?
3 Is that the most recent submittal?

4 A. No, this is not.

5 MS. SYMONS-JACKSON: Yeah, which Sig Mod are
6 you talking about?

7 A. This was the first Sig Mod that was denied.

8 HEARING OFFICER FRANK: Is there any
9 objection to it?

10 MS. SYMONS-JACKSON: I'm going to object. I
11 don't think this is relevant to the issues at hand.
12 This submittal has already been filed with the Agency,
13 and it's already been denied by the Agency. There's a
14 permit appeal filed with the Board. If there are
15 issues regarding this, I think they're better taken up
16 in the permit appeal.

17 MR. NORTHRUP: Well, first of all, I've
18 provided this. One of the allegations in the
19 complaint is that no cost revisions were submitted
20 until -- I can't remember when. These are cost
21 revisions that were submitted with the original Sig
22 Mod, which in the PCB opinion 94-127, when the issue
23 came up with respect to the submittals of the Sig Mod,
24 the Board accepted these as being a valid submission

1 -- submittal. I mean one of your allegations is that
2 closure plans haven't been submitted.

3 MS. SYMONS-JACKSON: I think there's some
4 confusion, Charlie, over what the allegations are.
5 You might want to look at page 7 of the complaint.

6 MR. NORTHRUP: Mr. Taylor, as well, testified
7 that closure plans had not been submitted, when in
8 fact this document had been submitted.

9 HEARING OFFICER FRANK: Mr. Northrup, do you
10 have anything else?

11 MR. NORTHRUP: Well, sure, on page 7 they
12 make the allegation in paragraph 21 that by failing to
13 revise the cost estimates on or before April 30th,
14 1995. In fact, this document revising the cost
15 estimates was submitted in September of '94 as
16 indicated on -- in paragraph 20. And the Board in PCB
17 94-127 has accepted the submittal -- has said the
18 submittal of cost revisions with those Sig Mods
19 constitutes the formal submittal of the cost
20 revisions.

21 HEARING OFFICER FRANK: Now you're confusing
22 me. Are these the second submittal or the original
23 submittal?

24 MR. NORTHRUP: This is the original.

1 HEARING OFFICER FRANK: Okay. Do you have
2 anything further?

3 MS. SYMONS-JACKSON: The same objection.
4 They've since filed a revised or a new submittal for
5 the Sig Mod. I don't think this is relevant to the
6 issues before the Board.

7 MR. NORTHRUP: Well, it's extremely relevant.

8 HEARING OFFICER FRANK: I'm going to allow
9 it, so you don't need to argue any more.

10 MR. DAVIS: Which exhibits are we talking
11 about for the record?

12 HEARING OFFICER FRANK: My understanding is
13 Exhibit 8.

14 MR. NORTHRUP: 8.

15 HEARING OFFICER FRANK: The section of it
16 which has the cost estimates.

17 MR. DAVIS: I'm looking at Exhibit 9 which
18 has the cost estimates. So I just wonder how many
19 different ones we have.

20 MR. NORTHRUP: This is a different one. This
21 was the next one they did. 8 is from the original Sig
22 Mod that was submitted back in September of '94.

23 HEARING OFFICER FRANK: Do they have 8?

24 MR. DAVIS: If I may, Ms. Hearing Officer,

1 we've got an allegation on page 6 in paragraph 16
2 that alleges that there was a failure to revise the
3 estimates on or before November 28, 1992. That was
4 the permit imposed date. We tried to acknowledge in
5 the complaint that there had been some permit
6 activity. And then on paragraph 20 on page 7 we say
7 that there was a subsequent failure after the Sig Mod
8 was denied in February of '95 to revise the cost
9 estimates. So I hope it's clear at least to the Board
10 that there is a time period that is not intended to be
11 covered by our complaint, and that we are not trying
12 to relitigate a case that we won in 94-127. We're
13 trying to move on and obtain the relief that we should
14 have been granted.

15 So, you know, I'm looking at Exhibit 9, which is
16 dated October '95, and that -- you know, that would
17 seem to be pertinent, but it doesn't negate the
18 allegation in paragraph 21 on page 7 that Watts failed
19 to revise the cost estimates on or before April 30th,
20 1995.

21 HEARING OFFICER FRANK: Okay. I don't --
22 first of all, I don't believe Mr. Northrup has tried
23 to move Exhibit 9 yet. My understanding was we were
24 talking about Exhibit 8.

1 MR. NORTHRUP: That's correct.

2 HEARING OFFICER FRANK: And as to whether a
3 document does or does not negate items in the
4 complaint, that's up to the Board.

5 MR. DAVIS: I'm simply responding, and albeit
6 Mr. Jones is not my witness, but Mr. Northrup has made
7 statements in support of 8 that tends to confuse the
8 whole big picture, and that's what I'm concerned
9 about. If 8's in, that's fine. But let's not -- you
10 know, let's not have a mistaken impression on what the
11 complaint says. You know, the allegations are clear
12 and that's fine. But that's really what I'm trying to
13 correct. I'm not trying to say it shouldn't be
14 admitted. I'm simply responding to that argument.

15 HEARING OFFICER FRANK: Okay, that's fine.
16 Let's go ahead and move on.

17 MR. NORTHRUP: So 8 is admitted?

18 HEARING OFFICER FRANK: Yes.

19 (Respondent's Exhibit Number 8
20 admitted.)

21 Q. Now, with respect to the original Sig Mod
22 submittal, you said that was denied by the Agency, is
23 that correct?

24 A. That's correct.

1 Q. What did you do in response to that denial?

2 A. Well, we met with our consulting firm,
3 CH2M-Hill and, you know, we looked at the denial
4 points that we had on the denial letter, and we just
5 reviewed them and, you know, what we had to do to
6 correct the deficiencies. We held meetings with the
7 Agency to discuss the denial points in trying to
8 figure out what they expected in the application.

9 Q. Did you submit any documents in response to
10 your meetings with the Agency?

11 A. No.

12 Q. I believe Respondent's Exhibit 1, which was
13 referred to as a Sig Mod resubmittal, was submitted in
14 October of 1996. Are you aware of that?

15 A. Yes. We did redo the application, address
16 the points, and then we did resubmit another Sig Mod.

17 Q. Okay. And at some point after that
18 resubmittal did you learn that that submittal was not
19 in the form the Agency wanted it in?

20 A. Yes. We received the information back with a
21 letter addressing the fact that they felt it was not
22 adequate, what they were looking for.

23 Q. What did you do in response to that?

24 A. We put together a complete application with

1 the signature forms and sent it off to the Agency.

2 Q. Now, since the original submittal of the Sig
3 Mod has Watts submitted any additional cost revisions
4 to the Agency?

5 A. Yes, there's been three revisions since the
6 original Sig Mod was submitted.

7 Q. Okay. Let me show you what I've marked as
8 Respondent's Exhibit 9. Can you identify that for me,
9 please?

10 A. That's a Closure/Postclosure Care Plan and
11 cost estimates for the ESG Watts Taylor Ridge Landfill
12 that was submitted in October of '95.

13 Q. Okay. Did you prepare that?

14 A. I prepared it.

15 Q. Was that submitted to the Agency?

16 A. Yes, it was.

17 Q. Is that a true and accurate copy of that
18 document that was submitted to the Agency?

19 A. From a cursory review it looks like it is
20 what I submitted.

21 MR. NORTHRUP: Okay. I would go ahead and
22 offer Respondent's 9 into evidence.

23 HEARING OFFICER FRANK: Any objection?

24 MS. SYMONS-JACKSON: No.

1 HEARING OFFICER FRANK: Okay. Then it's
2 admitted.

3 (Respondent's Exhibit Number 9
4 admitted.)

5 Q. Now, was a permit issued following the
6 submittal of that application?

7 A. Yes, it was.

8 Q. And let me hand you People's Exhibit 56.
9 Would that be the permit that was issued?

10 A. Yes, it is.

11 Q. Does that permit contain a groundwater
12 assessment program?

13 A. Yes, it does.

14 Q. Did your application contain a request for a
15 groundwater assessment program?

16 A. No, it did not.

17 Q. Where did the requirement in the permit come
18 from, if you know?

19 A. I have no idea. The Agency unilaterally
20 issued an assessment monitoring program without us
21 requesting it.

22 Q. Okay. What's the status of that permit,
23 People's 56?

24 A. It's under appeal.

1 Q. Do you know what the denial points of that --
2 do you know what the grounds are that Watts appealed
3 that permit?

4 A. We didn't necessarily agree with the
5 groundwater monitoring assessment plan that the Agency
6 proposed. We are working on our own, and actually, it
7 has been submitted to the Agency in the Sig Mod, and,
8 you know, we felt that we want to be in control of,
9 you know, of the assessment process, you know, as
10 recommended by our consulting firms.

11 Q. Since the issuance of this permit, People's
12 56, has Watts submitted any additional cost revisions?

13 A. Two additional ones since that's been issued.

14 Q. When -- describe for me those submittals.

15 A. One was submitted in March of '96 that dealt
16 with the Gas Management Plan that we submitted to the
17 Agency. There was some additional cost associated for
18 closure of that activity and the postclosure care of
19 it. That application addressed those issues and those
20 costs.

21 Q. Now, has there been any other submittals
22 since then?

23 A. Yeah, just recently, the one permit that I
24 just looked at, exhibit -- People's Exhibit Number 56

1 has a special condition that the operator -- number 7,
2 the operator shall file and revise cost estimates for
3 closure and postclosure care at least every two years
4 in accordance with 35 Illinois Administrative Code
5 Subtitle G Part 807 Subpart F. The next revised cost
6 estimates are due on or before November 28th, 1996.
7 And that has been submitted.

8 Q. Let me show you Respondent's Exhibit Number
9 11.

10 HEARING OFFICER FRANK: Do you know you
11 haven't had 10?

12 MR. NORTHRUP: Yeah.

13 Q. Can you identify that for me, please?

14 A. It's a copy of an April 26th, 1993
15 application for revised closure plan and revised cost
16 estimates for the closure of the Watts landfill in
17 Taylor Ridge.

18 Q. Did you prepare that document?

19 A. Yes, I did.

20 Q. Is that a true and accurate copy of the
21 document that was submitted to the IEPA?

22 A. Yes, it is.

23 MR. NORTHRUP: I'd move for the admission of
24 Respondent's 11.

1 HEARING OFFICER FRANK: Any objection?

2 MS. SYMONS-JACKSON: One second, please.

3 We have no objection.

4 HEARING OFFICER FRANK: Okay. Then it's
5 admitted.

6 (Respondent's Exhibit Number 11
7 admitted.)

8 Q. Let's shift gears and start talking about the
9 gas management system.

10 What's your understanding of the term landfill
11 gas?

12 A. It's gas that's generated by decomposing
13 garbage that's approximately 50 percent methane.
14 There's CO2. There's nitrogen and various other
15 compounds that, you know, make up less than, you know,
16 one percent.

17 Q. Let me go back. What prior experience, if
18 any, do you have with landfill gas and landfill gas
19 management systems?

20 A. I've been involved with landfill gas projects
21 since 1988 on various landfills in the State of
22 Michigan.

23 Q. So your experience is not just related to
24 your experience at Watts?

1 A. No, it is not.

2 Q. What are some of the other companies that
3 you've had experience with?

4 A. Wayne Disposal. I've been involved with an
5 ongoing gas project. They have a 450 acre landfill in
6 the Detroit area, and there was always need to install
7 additional gas wells there, and so it was an ongoing
8 project where we were installing wells and withdrawing
9 the gas and generating electricity with the gas.

10 Q. How is landfill gas generated?

11 A. From the decomposition of garbage.

12 Q. How does that process work, if you know?

13 A. It's an anaerobic process, just as the
14 garbage decays it gives off, you know, methane and
15 carbon dioxide. It's just the -- it's a natural
16 process of breaking down. You know, as anything
17 starts to decay, it gives off methane. You know, in
18 the forest, you know, the leaves they start decaying,
19 they, you know, in an anaerobic condition they could
20 break down and give off methane and carbon dioxide.

21 Q. Have you smelled methane gas at the Taylor
22 Ridge Landfill?

23 A. Yes, I have.

24 Q. Do you smell it every day?

1 A. Not every day.

2 Q. Let me show you what I've marked as
3 Respondent's Exhibit 10, and can you identify that for
4 me, please?

5 A. This is an application to install a gas
6 management system at the Watts Taylor Ridge Landfill.

7 Q. Did you prepare that submittal?

8 A. I was actively involved in the submittal and
9 I signed the application as a PE.

10 Q. Describe the -- how you were actively
11 involved with that.

12 A. RTC originally sent me an application that
13 they were going to send in on behalf of Watts. I
14 reviewed it. I told them it was unacceptable. I
15 started rewriting it. I probably rewrote, you know,
16 50 to 75 percent of the application, sent it back to
17 RTC. They had their comments added to it and expanded
18 on the application, sent it back to me. I found it
19 acceptable and we submitted it to the Illinois EPA.

20 Q. Is Respondent's 10 a true and accurate copy
21 of what was submitted?

22 A. Yes, it is.

23 MR. NORTHRUP: I'd offer Respondent's 10.

24 HEARING OFFICER FRANK: Is there any

1 objection?

2 MS. SYMONS-JACKSON: No.

3 HEARING OFFICER FRANK: Okay. Then it's
4 admitted.

5 (Respondent's Exhibit Number 10
6 admitted.)

7 Q. Now, was a permit issued for that gas
8 management?

9 A. Yes, it was. I think it was issued in May or
10 June of '96.

11 Q. Let me show you People's Exhibit 2. Would
12 that be the permit?

13 A. Yes, it is. June -- it was issued June 13,
14 1996.

15 Q. Why don't you take a look at Respondent's 10,
16 the permit application. Does that application contain
17 cost estimates?

18 A. Yes, it does.

19 Q. And what is that cost estimate?

20 A. Just for the gas portion the cost added
21 740,000 dollars to the cost estimates for the site.

22 Q. And is that reflected in the gas permit that
23 was issued?

24 A. Yes, it is. They -- I think from the

1 application we submitted in June -- October of '95 it
2 was I think 558,000 dollars and this application
3 raised it to like 1.2 or 3 million dollars. Yeah. On
4 page 5 condition number 7 it states that the new cost
5 estimate for closure/postclosure care is basically 1.3
6 million dollars.

7 I'd also like to point out that --

8 MS. SYMONS-JACKSON: I'm going to object.
9 There's been no question posed to this witness.

10 HEARING OFFICER FRANK: Sustained.

11 Q. What is your understanding of whose
12 responsibility it is to obtain financial assurance?

13 A. The responsibility rests with ESG Watts. We
14 do have a contractual relationship with RTC that any
15 and all activities that they perform on our site they
16 are responsible for any financial repercussions for
17 that, which would include the additional closure
18 costs.

19 Q. But you understand under the law it's ESG
20 Watts' responsibility?

21 A. Yes, I do.

22 Q. Have you been involved in any attempts to
23 obtain financial assurance?

24 A. Yes, I have.

1 Q. Why don't you describe those for me?

2 A. Since the middle of 1995 I've been working
3 with a gentleman by the name of Jack Lawley who owns
4 Lawley Insurance Company. They're out of Buffalo, New
5 York. We've been working on various programs that
6 would allow Watts to fund our trust funds or, I guess,
7 come up with another mechanism to meet the requirement
8 without having to have a trust fund where we have
9 large amounts of cash sitting in a bank.

10 Q. Does Watts currently have whatever it was in
11 the permit, 1.2 million in financial assurance?

12 A. No, we do not.

13 Q. Were you involved in bringing RTC to the
14 landfill?

15 A. Yes, I was.

16 Q. Okay. Explain that for me.

17 A. Probably back shortly after I started working
18 at Watts in '91 I -- one of the things that was
19 identified that needed work was a Gas Management Plan,
20 and I was looking at various mechanisms to fund it, if
21 we could work out a joint venture with somebody or,
22 you know, get somebody to come in and install the
23 system, just a lot of different things. I probably
24 talked to about three or four different companies. We

1 were in negotiations with one company for probably
2 more than a year before we approached RTC. Those
3 negotiations fell through.

4 Q. Okay. When did you approach RTC?

5 A. RTC was approached in December of '94. They
6 had contacted us probably six months prior to that and
7 I had told them I was in negotiations with a company
8 called Air Products, and at that time I said, you
9 know, I don't want to be negotiating with two
10 different companies. If things don't work out with
11 Air Products, I will contact you. And I contacted
12 them and it was December of '94.

13 Q. So for the preceding year, going back to
14 December -- approximately December of '93 you were
15 negotiating with this company called Air Products?

16 A. I started negotiations with Air Products in
17 December of '93.

18 Q. And the negotiations -- the purpose of the
19 negotiations was what?

20 A. Were to determine what they would construct
21 on-site, how much it would cost, whose responsibility
22 it would be to -- you know, just the money issues on,
23 you know, the cost of the site or the construction of
24 the system, the management of the system. And

1 basically what happened there is we had a contract
2 worked out with Air Products. We had signed it and
3 sent it off for them to sign it and they -- their
4 legal department had some problems with them, so they
5 basically tossed the contract and they started from
6 scratch with a new one. I gave them a deadline to
7 have me a new one by on a certain date, and they
8 missed that deadline, and I started talking with RTC.

9 Q. And that would have been in December of '94?

10 A. December of '94.

11 Q. When -- you do have a -- Watts does have a
12 contract with RTC?

13 A. We've hired them as a contractor to construct
14 the gas management site -- gas management system on
15 our site.

16 Q. And when did you do that?

17 A. I think the contract was signed like in June
18 of '95.

19 Q. So -- and then what specifically were you
20 doing then between December of '94 and June of '95?

21 A. Negotiations.

22 Q. What is your understanding of the term final
23 cover?

24 A. At this site final cover in all areas that

1 did not accept waste after I think it was in October
2 of '93, if they had -- it's two feet of final cover.
3 I think it's referred in the regs as a low
4 permeability layer and then six inches of topsoil or
5 soil to sustain vegetative growth.

6 Q. Does Taylor Ridge have final cover?

7 A. In a lot of areas it does.

8 Q. I'm sorry?

9 A. In a lot of areas it does. Probably 90
10 percent of the closed portion of the site has final
11 cover.

12 Q. Has that cover been certified?

13 A. We hired a firm to do a certification.
14 They're in the process of doing that. They have
15 completed the thickness portion of it and they have
16 determined that 90 percent of the site has that
17 minimum thickness as required, but the certification
18 is not complete due -- the soil has to meet certain
19 requirements.

20 Q. Who did you retain to do the testing out
21 there?

22 A. There's two different firms that we're under
23 a contract with to do work. Actually, there's three.
24 There's Noble Earth Corporation; there is Able

1 Technologies; and then Indeco.

2 MS. SYMONS-JACKSON: What was the last one?

3 A. Indeco, I-n-d-e-c-o.

4 Q. What was the middle one, the second one?

5 A. Able Technologies.

6 Q. And what is Able Technologies doing?

7 A. Able Technologies, they are performing the --
8 I guess providing the PE stamp. It has to be
9 certified by a professional engineer. The
10 relationship -- Noble Earth is doing a lot of the
11 field work and Able Technologies, they've been on-site
12 a couple times to review their field activities, and
13 Able Technologies relies on the information supplied
14 by Noble Earth Corporation to certify the cover.
15 Indeco is doing all the laboratory testing for the
16 soil cover. And Able Technologies will also rely on
17 that information to certify the cover.

18 Q. Let me show you what I've previously marked
19 as Respondent's Exhibit 5. Can you identify that for
20 me, please?

21 A. This is a Leachate Control Plan that was
22 developed based on the outcome of a Circuit Court
23 ruling.

24 Q. What's your understanding of that Circuit

1 Court ruling?

2 A. The judge at the time issued an order that
3 ESG Watts develop a Leachate Control Plan.

4 Q. When was that document prepared?

5 A. It was shortly after the ruling. You know,
6 the judge's ruling was issued in, you know, September
7 of '93, and we probably would have done it that fall.

8 Q. Did you prepare that document?

9 A. I helped prepare it. I didn't do it
10 completely. It was a joint effort by myself and Tom
11 Quinn.

12 Q. Who's Tom Quinn?

13 A. Tom Quinn used to be the general manager of
14 ESG Watts.

15 Q. Is that a true and accurate copy of the
16 original Leachate Control Plan?

17 A. Yes.

18 MR. NORTHRUP: I'd go ahead and offer
19 Respondent's 5.

20 HEARING OFFICER FRANK: Is there any
21 objection?

22 MS. SYMONS-JACKSON: I would reserve an
23 objection subject to our cross-examination of this
24 witness.

1 HEARING OFFICER FRANK: Okay. Can we go off
2 the record for a moment.

3 (Discussion off the record.)

4 HEARING OFFICER FRANK: Okay.

5 Q. Have you submitted that document to the
6 Agency?

7 A. I think we've supplied it to them. Not as a
8 formal application. You know, not like in a
9 supplemental permit, but it has been supplied to
10 Agency personnel.

11 Q. Do you keep a copy of this document at the
12 landfill?

13 A. It's kept in our operating record.

14 Q. What's the operating record?

15 A. The operating record is a record that's
16 required by Subtitle D regulations that were imposed
17 by the federal government and the Illinois EPA has
18 adopted a lot of those regulations. One of the things
19 is an operating record where you keep all the
20 information that you develop on the site. You know,
21 there's various things that have to be in it like
22 groundwater monitoring results. You know, there has
23 to be cover records for, you know, daily cover,
24 intermediate cover, and final cover. Just various

1 type of operational records that document activities
2 that we have done or completed.

3 Q. Does Watts rely upon that document?

4 A. Yes, we do.

5 Q. Let me show you what has been marked People's
6 Exhibit 24. Can you just identify that for me?

7 A. It's an Illinois Environmental Protection
8 Agency Air Pollution Odor Log prepared by Jerry
9 Martens.

10 Q. Have you ever seen that document before?

11 A. First time I saw it was today when Mr.
12 Grothus looked at it.

13 Q. You never received a copy of this at the
14 landfill?

15 A. No, I have not.

16 Q. Let me just hand you a copy of People's
17 Exhibit 14. Can you identify that for me, please?

18 A. It's a NPDES permit issued by the Division of
19 Water Pollution Control on April 16th, 1996.

20 Q. Does that permit require Watts to maintain a
21 Storm Water Pollution Prevention Plan?

22 A. Yes, it does. There's a condition in here
23 somewhere that requires that.

24 Q. Has Watts prepared such a plan?

1 A. Watts hired a consulting firm to prepare one
2 for us. CH2M-Hill of Milwaukee, Wisconsin, prepared a
3 -- I think they sent us a draft copy of it in December
4 of '95.

5 Q. Has that plan been finalized since that time?

6 A. I think there are still changes that we're
7 making on it, but for the most part it's probably 90
8 percent complete. We're still complying with the
9 portions that we feel are pertinent in the plan.

10 Q. Where is that plan kept physically?

11 A. It's kept in the operating record at the
12 landfill.

13 Q. Do you rely upon that plan?

14 A. Yes, we do.

15 Q. Now, were you at the October -- it's either
16 the 29th or the 30th -- were you at the hearings in
17 this case?

18 A. Yes, I was.

19 Q. Do you recall Mr. James Kammuehler testifying
20 that I believe on the 30th he had gone to the landfill
21 to look at this storm water prevention plan?

22 A. Yes, he did.

23 Q. Do you recall that he testified that no one
24 at the landfill could show him a copy of that?

1 A. I remember that testimony, yes.

2 Q. Do you recall who he testified he spoke with?

3 A. Shirley, our receptionist, and Elmer Elliott,
4 the manager out at the landfill.

5 Q. Would Shirley know where this plan is kept?

6 A. Probably not.

7 Q. Would Elmer know where this plan is kept?

8 A. He should, but he probably didn't.

9 Q. Are there other people at the landfill who
10 would know where that plan is kept?

11 A. There's probably -- I know three people that
12 would know where they could find it. One would be me,
13 Steve Grothus, and Nikki Wuestenberg.

14 Q. Was Mr. Grothus or Ms. Wuestenberg at the
15 landfill that morning?

16 A. No. We were all at the hearing.

17 Q. Let's take a look at a document that has been
18 marked People's Exhibit Number 7. Can you identify
19 that for me, please?

20 A. It's a February 14th, 1994 inspection report
21 that James Kammuehler performed at the Watts landfill
22 up in Taylor Ridge.

23 Q. Were you present on February 14th?

24 A. Yes, I was.

1 Q. Did you accompany Mr. KammueUler on his
2 inspection?

3 A. Yes, I did.

4 Q. Actually, I should say have you ever seen
5 this document before, People's 7?

6 A. I've seen it since the beginning of this
7 hearing, but it was never mailed to me or -- before
8 that -- before the hearing.

9 Q. On page 3 of that document Mr. KammueUler has
10 written out under the title Apparent Violations a
11 failure to monitor outfall 001 as required by the
12 NPDES permit. On page number 4 at the top he says
13 Failure to Monitor Outfall 002, and then the next
14 paragraph is Falsification of DMRs. No discharge is
15 usually reported for both outfalls.

16 Now, Mr. Jones, have you ever intentionally
17 falsified any DMRs?

18 A. No, I have not.

19 Q. Can you explain why you were apparently
20 writing no discharge for outfalls -- for outfall 001?

21 A. It was my understanding from the permit that
22 that outfall was for ponded storm water that we
23 discharged from the site, and at that point, you know,
24 we stopped collecting ponded storm water and, you

1 know, we weren't pumping it. You know, my
2 instructions to our operating people, if at any time
3 they ever pump water from our site, they were to
4 inform me so we could obtain a sample. And every time
5 that I've been informed that we were pumping water
6 from the site, we obtained a sample.

7 Q. It also says a failure to monitor or
8 apparently you wrote no discharge on outfall 002 as
9 well. Can you explain that for me, please?

10 A. I guess basically it was ignorance on my
11 part. Looking at it, we should have been doing that.
12 I took over a program that was in existence, and I
13 tried to sort out and figure out what we had to do.
14 Nobody had been monitoring 002 before I'd been there.
15 You know, we were never cited as, you know, we were
16 doing anything wrong, so I continued the program that
17 was in existence.

18 Q. Let me show you what I have marked as
19 Respondent's Exhibit 12. Can you identify that for
20 me, please?

21 A. It's a public notice fax sheet proposed
22 modified NPDES permit to discharge into waters of the
23 State. It's stamped the date is May 4th, 1990. At
24 the time it was my understanding this was our permit,

1 but it's since come to our attention that this permit
2 was never issued and that it's always been a draft.
3 This permit was never denied, but it was just never
4 issued either.

5 Q. Have you relied upon that permit?

6 A. Yes, I did.

7 MR. NORTHRUP: I would go ahead and offer
8 Respondent's 12 into evidence.

9 HEARING OFFICER FRANK: Is there any
10 objection?

11 MS. SYMONS-JACKSON: Do you have a copy of
12 that for us?

13 MR. NORTHRUP: Yeah, you should have that in
14 your stack.

15 MS. SYMONS-JACKSON: Charlie, you can give us
16 a copy of that later. I think we've seen this
17 document before.

18 MR. NORTHRUP: You have?

19 MS. SYMONS-JACKSON: Well, I assume it's in
20 the Agency files.

21 MR. NORTHRUP: Well, yeah, I would assume so.
22 Do you want to take a look at it?

23 MS. SYMONS-JACKSON: I believe we'll
24 stipulate to the introduction of this document into

1 evidence. However, for the record I would say this is
2 not a permit. It was never issued as a NPDES permit,
3 and I would object to any reference to this document
4 as a permit.

5 HEARING OFFICER FRANK: I think Mr. Jones has
6 made it clear that and Mr. Northrup through what
7 they've already stated that it's a draft document.

8 MS. SYMONS-JACKSON: Okay. That's fine. I
9 just wanted to make sure it was clear for the record
10 that --

11 HEARING OFFICER FRANK: Then it's admitted
12 into evidence.

13 (Respondent's Exhibit Number 12
14 admitted.)

15 Q. Going back to People's Exhibit 7, on page 5
16 you will see there is a list of things under the
17 heading recommendations.

18 A. Uh-huh.

19 Q. The first one monitor per 1986 permit. Since
20 that February 14 inspection of '94 have you, in fact,
21 been monitoring per the 1986 permit?

22 A. We have relied on the 1986 permit as our
23 guidance to monitor for the NPDES discharge.

24 Q. Okay. And prior to -- well, it says as

1 discussed during the inspection. Who did you have
2 this discussion with?

3 A. This discussion was held with James
4 Kammuelier.

5 Q. And prior to this time apparently you were
6 not relying on the '86 permit?

7 A. No, I was not.

8 Q. And what permit were you relying on?

9 A. I was relying --

10 MS. SYMONS-JACKSON: I'm going to object
11 again. You're calling it a permit.

12 Q. What document were you relying on prior to
13 this discussion?

14 A. I was relying on the draft document from May
15 of 1990.

16 Q. Okay. But -- and what did Mr. Kammuelier say
17 about that?

18 A. He told me I was incorrect that that
19 permit --

20 HEARING OFFICER FRANK: That document.

21 A. That document -- actually, at that time
22 during the inspection when I showed him that, he was
23 unaware of it and did not know of its existence. He
24 was only aware of the permit from 1986. If I

1 recollect correctly, he did do a file search and he
2 cleared up, you know, that -- at the inspection he was
3 pretty confident that a permit was never issued for
4 that, but he said that he would review the files to
5 make sure, and he did call me and tell me that one was
6 never issued.

7 Q. So again, since that conversation you have
8 been monitoring per the 1986 NPDES permit?

9 A. That, and, you know, the permit -- there's --
10 you know, the Code of Federal Regulations that expand
11 upon the permit, too. There's other information in
12 there that we're required to and I rely on that also.

13 Q. Okay. What other information would that be?

14 A. Just there's basically sampling procedures.
15 It expands upon the permit. You know, the proper
16 methods for analytical, retention times. There's a
17 lot more definitions in the Code of Federal
18 Regulations. You know, what constitutes a sampling
19 event, stuff like that.

20 Q. Are you today relying on this 1986 permit?

21 A. No, we're not.

22 Q. And why not?

23 A. A new permit has been issued by the Division
24 of Water of the Illinois Environmental Protection

1 Agency.

2 Q. Number 2 under recommendations, in fact, says
3 submit a revised NPDES permit renewal application?

4 A. We did that. I'd also like to point out that
5 there was another application submitted in 1991 that
6 the Agency never acted on.

7 Q. Okay. Well, when did Watts submit a renewal
8 application for their NPDES permit?

9 A. It was in February of 1991.

10 Q. Okay.

11 HEARING OFFICER FRANK: Is this renewal of
12 the 1986 permit?

13 A. Yes, it is. It's a renewal of the 1986
14 permit.

15 Q. Okay. And what happened to that permit
16 application?

17 A. Shortly after James Kammueler came out to
18 the site, the Agency sent us a letter -- which would
19 have been, you know, in February 1994, the Agency sent
20 us a letter with the notice of the intent to deny that
21 permit. That permit was never denied. We requested
22 that we withdraw the permit from the Agency. They
23 felt it wasn't representative of what was happening on
24 the site. When I got the letter, I called Rick

1 Pinneo. I don't think that he issued the letter. It
2 was issued by Thomas McSwiggin. But I think it said
3 please contact Rick Pinneo. I contacted Mr. Pinneo,
4 who works in the Division of Water, and I asked him,
5 you know, "What's this about?" He says, "Well, we
6 don't feel it's representative of what's happening
7 with the site." I said, "Are you going to deny this
8 permit or is there an opportunity for us to work this
9 out?" And Rick says, "Hey, you know, come on down,
10 let's set up a meeting, and we'll work something out."
11 He was very cooperative, very helpful. And we held a
12 meeting shortly after that to come up with a new NPDES
13 permit that reflects the activities at the site.

14 Q. Did you then make a resubmittal?

15 A. Yes, we did.

16 Q. And what has happened to that resubmittal?

17 A. There was a permit issued based upon that
18 application. It was a little different than what we
19 applied for.

20 Q. Under number 3 the recommendation talks about
21 developing and implementing a comprehensive Storm
22 Water Pollution Prevention Plan. Now, have you done
23 that?

24 A. Yes, we have. We've done that. We had a

1 31(d) meeting with Mr. -- Mr. Davis was present and
2 Mr. Kammuehler and various other personnel of the
3 State, and they requested a lot of different things
4 for us to do, and that was one of the requirements
5 that they requested that we do, and we immediately
6 hired CH2M-Hill to do that and, you know, a draft copy
7 was issued to us in December of '95.

8 Q. This is the Storm Water Pollution Prevention
9 Plan that we've been discussing earlier that Shirley
10 and Elmer couldn't find?

11 A. That is correct.

12 Q. Respondent's Exhibit 2. Why don't you take a
13 look at what's been previously marked as Respondent's
14 Exhibit 2. Can you just identify that for me?

15 A. It is a draft copy of the Storm Water
16 Pollution Prevention Plan.

17 Q. Why don't -- take a look at page number 5
18 under recommendations. And I want you to go down each
19 of these subparts, A, B, C, D, E, F, G, H, read that
20 and explain to me what, if anything, Watts has done to
21 comply with that.

22 A. Okay. Point A.

23 MS. SYMONS-JACKSON: Just a minute. What
24 exhibit are we looking at?

1 MR. NORTHRUP: People's 7.

2 MS. SYMONS-JACKSON: That's the 1994
3 inspection report?

4 MR. NORTHRUP: February 14, '94, right, page
5 5.

6 MS. SYMONS-JACKSON: Okay.

7 A. "Point A. Provide final cover and contouring
8 as needed, and establish vegetative cover on cap, side
9 slopes and perimeter areas."

10 That's been an ongoing process at the site. You
11 know, you're always disturbing soil, so we're always
12 having to, you know, put more cover on, you know,
13 recontour it, regrade it, add, you know, vegetative --
14 we've hired, you know, a local farmer who has come out
15 and he's vegetated, you know, our surfaces on a couple
16 occasions, you know, seeded them. We used like a
17 drill seeder. You know, we've had landfill employees
18 also go out and, you know, put down grass seed on
19 various areas of the landfill. And we've constructed
20 various berms to divert water away from the active
21 face of the landfill. We've constructed berms to
22 divert water away from Whitley's retention basin on
23 his property. We've, you know, we've constructed a
24 lot of different type of berms to control the storm

1 water runoff.

2 Q. Where have these berms been constructed?

3 A. There was one in particular that was a major
4 project that we worked on was -- it was constructed on
5 -- it would have been like the west slope and it would
6 have been in the center of the landfill, kind of like
7 in the active portion, and everything that fell like
8 on the top and went east toward the active area it was
9 caught by this berm and diverted toward outfall 001
10 and away from the active area. You know, it's
11 something that -- we've put silt fences on that berm
12 to slow the water down as it goes. We've placed bales
13 of hay there. We've constructed or we've placed bales
14 of hay that we take large fence posts and we nail them
15 down into the ground. We've done that along the west
16 road headed toward Whitley's pond. We've done it, you
17 know, all in that general area. We've, you know,
18 constructed silt fences over in that northwest area
19 and just about anywhere where we see an erosional
20 problem we will put up a silt fence or a bale of hay
21 or straw to slow down the runoff.

22 Q. With respect to the seeding and vegetation,
23 how effective has that been?

24 A. It depends. A lot of it is a timing issue.

1 You know, if you get it down and, you know, you get
2 the right amount of rain, and it grows, it's
3 effective. But if you get a big rainstorm, it will
4 wash all the seed away before it has a chance to
5 germinate and take hold. Or sometimes you might go a
6 period where you don't get any rain and you get hardly
7 any growth because of the lack of rain. But, you
8 know, when it is able to grow under the right
9 conditions, we're able -- it's pretty effective.

10 Q. Anything else under subpart A?

11 A. No.

12 Q. Why don't you go on to B?

13 A. "Construct defined watercourses and/or
14 conduits to direct storm water to sedimentation ponds
15 prior to discharge."

16 Something we have a problem there is that the
17 sedimentation ponds -- it's difficult for us to
18 construct any type of sedimentation ponds on our
19 property. We did discuss and explore our options
20 to build sedimentation ponds over the garbage.

21 Basically --

22 Q. Who did you have those discussions with?

23 A. Division of Water and Division of Land.

24 Division of Water they had no problems with it, but

1 they said that was not something that they were
2 allowed to permit, that was a Division of Land issue.
3 You know, they did want to see sed ponds, but it was
4 not in their power to permit the location and the
5 design. That was solely up to the Division of Land.
6 And I think CH2M-Hill came up with a couple of designs
7 where they used a synthetic liner over closed portions
8 of the landfill to try to collect runoff and store it
9 for retention time to allow the sedimentation to fall
10 out and then we could discharge it. But the Division
11 of Land, you know, in initial discussions they said
12 that was not a good idea and they don't think that
13 they would approve it, so we didn't, you know, proceed
14 with that avenue.

15 Q. What other avenues then have you proceeded
16 with, if any?

17 A. Well, basically just, you know, trying to
18 construct, you know, the berms and stuff to slow down
19 the water and, you know, the seeding. Just trying to
20 control, you know, water sources and direct the water
21 where we want it to go. You know, water is a pretty
22 strong force of nature and it does what it wants to do
23 a lot of times.

24 Q. Is that it for subpart B?

1 A. Yes.

2 Q. Okay. Go on to C.

3 A. "Erosion control methods in open ditches
4 should include riprap, silt fences and vegetative
5 cover."

6 You know, we have silt fences all over the site.
7 You know, it's an ongoing process where, you know,
8 we've placed the silt fences. We are exploring other
9 options at this time to slow down and control the
10 runoff. You know, we have seeded. We have also used
11 -- we were written up for this, but we were using wood
12 chips to control erosion on our interior roads. We
13 were cited for uncovered refuse for using wood chips.
14 We argued that with the inspector that the wood chips
15 were not waste. They were something that by process
16 of, you know, it's a commodity that we had paid for to
17 use for that purpose, and we paid for the trucking to
18 go pick up the wood chips and bring them to --

19 MS. SYMONS-JACKSON: If I can just interpose
20 an objection here. I don't think this is necessarily
21 responsive to the question asked. This gets into
22 stuff we talked about before. It's not in response to
23 efforts they've taken to comply with Subpart 3 C.

24 MR. NORTHRUP: I would say that's true to a

1 certain extent. But if you look at Subpart F, they do
2 get into that issue of somehow surfacing the perimeter
3 road and borrow road. So if he doesn't get into it
4 now, he'll talk about it then.

5 HEARING OFFICER FRANK: I think for the
6 transcript for the Board it would be much better if he
7 specifically talks about each section as we go through
8 it, especially since he's reading the part out loud.
9 So if you can stick to the one that you're on.

10 Q. Were you finished with C then?

11 A. Yes.

12 "D. Sedimentation ponds should be equipped with
13 open channel flow measurement devices."

14 We did contact various vendors of measurement, you
15 know, flow measuring devices. You know, one of the
16 firms was IOSCO, which is I-O-S-C-O, or something like
17 that. There was another firm that we had them come
18 out and do a demonstration at the facility to try to
19 see if their devices would work for our situation.
20 Both of the individuals that came out --

21 Q. Let me interject. You do not have any
22 sedimentation ponds at the landfill, is that correct?

23 A. No, we do not.

24 Q. Okay. So what situation are you talking

1 about that these people came out to discuss flow
2 meters?

3 A. We tried to have open channel flow meters,
4 which he recommended.

5 HEARING OFFICER FRANK: Who he?

6 A. Mr. Kammuegger. He recommended open channel
7 flow measurement devices leaving a sedimentation pond.
8 We did not have sedimentation ponds, but we looked for
9 something that could be used in the open channels, a
10 ditch that we could place the device that would
11 measure flow leaving our site. And the two vendors
12 that came out to the facility their application would
13 not work in our situation.

14 Q. Okay. Anything else with D?

15 A. No.

16 Q. Okay. Go on to E.

17 A. "The landfill perimeter road elevation should
18 be increased to accommodate construction of defined
19 storm water ditches/conduits. Use of the road surface
20 as a storm water conveyance should be discontinued."

21 We have -- we've added additional soil all, you
22 know, around the perimeter road to prevent it being
23 used as a ditch. There is one area of the landfill we
24 cannot do that. If we were to build the road up any

1 higher, we would block a drainage pathway coming from
2 Mr. Whitley's property to the west of us that drains
3 down that road. And, you know, we don't want to block
4 that and back up water on his property. But for the
5 most part we've added additional soil around the
6 perimeter roads.

7 And one of the problems, you know, we run heavy
8 equipment on the roads and it is an ongoing process
9 where we always have to add additional soil. The
10 heavy equipment will tend to beat the roads down and
11 so we do have to add more soil occasionally to keep it
12 up higher.

13 Q. Anything else?

14 A. No.

15 Q. Turn the page.

16 A. "The surface of the perimeter road and borrow
17 road should be rocked or hard-surfaced to reduce
18 runoff of soil particles."

19 Q. This is subparagraph --

20 A. F on page 6. We have not, you know, added
21 any rock or, you know, we have not hard-surfaced our
22 interior roads or perimeter roads. We did try to use
23 wood chips on the interior roads that the truck
24 traveled on to and from the active waste face.

1 There's a lot of different reasons why we used that.
2 One was to reduce the erosion. Other reasons are it
3 suppresses dust. It prevents mud from tracking out
4 onto the road or to other areas of the landfill. We
5 were cited for not having a permit for that. We were
6 also told that, you know, what's the difference if we
7 purchase rock for the road or if we purchase wood
8 chips to use as a road material, and we were told that
9 you don't have a permit for that either, you know, so
10 it was -- you know, we were trying to do things to
11 minimize erosion and mud tracking with wood chips and
12 we were cited with a violation for that.

13 Q. Have you applied for a permit to use wood
14 chips?

15 A. Yes. It's included in the Significant
16 Modification.

17 Q. What other -- well, go ahead on to G if
18 you're done with F.

19 A. "Storm water diversionary structures should
20 be provided to minimize the entry of surface water
21 into the active landfill area."

22 We have -- it's always been a standard operating
23 procedure at the site to construct berms to divert any
24 type of runoff from entering the active area where

1 we're disposing of garbage, you know. We don't allow,
2 you know, large quantities of the storm water runoff
3 to enter it. It just doesn't happen. You know, the
4 rainfall that lands on it and there's rain that -- in
5 that general area that falls on the garbage, but
6 that's it. There is -- you know, storm water does not
7 run through the active area.

8 Q. Is that it for G?

9 A. Yes.

10 Q. Go on to H.

11 A. "H. Develop and implement spill control
12 measures for the outdoor equipment fueling area as
13 needed to achieve compliance with 40 CFR Part 112."

14 Q. I guess, first of all, let me ask do you know
15 what 40 CFR Part 112 is?

16 A. Well, not in detail. I know basically it's,
17 you know, spill prevention measures to -- you know,
18 where you have operations of heavy equipment, where
19 you're fueling, where you're oiling. They're just
20 trying to prevent you from, you know, spilling the
21 fuel, spilling oil, spilling antifreeze. You know,
22 they just want you to be conscious of the need to have
23 good housekeeping practices for these activities.
24 Most of the -- the fueling would be the only problem,

1 you know, where we would have spills, and there, you
2 know, if they're identified, we will remove the soil
3 and haul it away and then backfill. But most of the
4 oiling that we do and changing of any of the other
5 type of fluids are done inside the building, which is
6 covered and we have a trap that goes down the center
7 of it that everything drains to that and that is
8 cleaned out on a periodic basis and, you know, it's a
9 mixture of, you know, mud and, you know, a little bit
10 of the spillage from those activities and those are
11 hauled down to the active waste face.

12 Q. Now, of all these subparts are there -- are
13 these also discussed in the -- your formal most recent
14 Sig Mod submittal?

15 A. Yes. There's a part in the Sig Mod that's
16 storm water management plan. It's a section in the
17 Sig Mod. It was in the original Sig Mod that was
18 denied and it's in this Sig Mod.

19 Q. Since this inspection of February 14 what has
20 been your -- does Watts have a procedure for sampling
21 the 001 outfall and the 002 outfall?

22 A. Yes. You know, since that inspection we've
23 tried to comply with the permit. You know, it's --
24 I'm not always on-site, you know, if there's a

1 discharge. But there are people that -- who have been
2 trained and instructed any time that they see any
3 runoff leaving the site, they are to collect a sample.
4 You know, we've gone over, you know, compositing
5 samples. You know, we're not always able to composite
6 samples as required by the permit. You know, a storm
7 event might only last for, you know, an hour. We do
8 not know -- you know, we know when the storm starts
9 but we won't necessarily know when the middle of the
10 storm is and the end of the storm, you know, but we
11 try to do the best we can.

12 These permits were originally set up for
13 discharges at wastewater treatment plants, and, you
14 know, they control their discharges very closely, you
15 know, at the times when they do it. So they are able
16 to, you know, plan ahead to collect their samples. We
17 are not afforded that opportunity unless we are
18 pumping the water and we know how long we're going to
19 pump it. Then we are able to collect the composites
20 as required.

21 Q. What are the requirements regarding
22 compositing or collecting composite samples? What
23 does the permit require?

24 A. You are supposed to collect three equal

1 aliquots. And I think an aliquot is 100 milliliters,
2 which really isn't very much water. We collect quite
3 a bit more than that for our sampling. You know,
4 there is usually three or four bottles that we
5 collect. Some have preservatives in it. And I should
6 clarify that. Our permit has recently changed and I'm
7 not real familiar with the permit that was recently
8 issued and, you know, and I don't know, you know, what
9 the bottles are that are set up for that and I'm just
10 talking about for the '86 permit.

11 Q. '86 or '96?

12 A. '86 permit. What I'm familiar with. I have
13 -- I really have not updated myself on the '96 permit.
14 Nikki Wuestenberg has been handling that.

15 Q. You said individuals at the landfill have
16 been trained and instructed on how to collect samples?

17 A. Yeah.

18 Q. Who did the training?

19 A. Basically, I sat down with a gentleman by the
20 name of Joe Chenoweth, who handles a lot of these type
21 of things. I'm not at the site 100 percent of the
22 time. You know, I spend a lot of time traveling
23 around to various company operations. You know, I'm
24 probably at the landfill, you know, 60 percent of the

1 time, 75 percent of the time. And, you know, that
2 other 25 percent when I was not there, I spent time
3 with Mr. Chenoweth explaining to him the proper
4 procedures for collecting samples and about
5 compositing samples during the storm events. And like
6 I said, most of the time he had trouble -- I mean
7 there have been occasions where we have been able to
8 collect a sample from one of the discharges, but by
9 the time we get to the other side of the landfill to
10 collect the discharge, the rain event has stopped and
11 there is no discharge on the other side. So it's a
12 difficult permit to comply with.

13 HEARING OFFICER FRANK: Let's go off the
14 record for a minute so our court reporter can change
15 paper.

16 (Discussion off the record.)

17 HEARING OFFICER FRANK: Let's go back on the
18 record. And, Mr. Jones, you're still under oath.

19 A. I understand.

20 Q. Now, were you present when Mr. Kammuehler
21 testified in the first two days of this hearing?

22 A. Yes, I was.

23 Q. Do you remember him testifying to his belief
24 that the February '94 DMRs had been falsified?

1 A. Yes, I do.

2 Q. In those DMRs it was reported no discharge?

3 A. That's correct.

4 Q. Did you falsify those DMRs?

5 A. No, I did not.

6 Q. Why was there in your opinion no discharge?

7 A. There's a couple reasons. First of all, I
8 tried to obtain a sample after Mr. Kammuegger left.
9 By the time I was able to get some bottles for
10 sampling and went out to the site, there was just
11 hardly anything, you know, just a trickle and I just
12 -- it was difficult to obtain a sample.

13 Mr. Kammuegger, he obtained like from outfall 002
14 he obtained a sample approximately 200 feet from the
15 property line, you know, in the middle on the south
16 side of the landfill. He collected it from a small
17 depression in a haul road where the water was
18 collecting. It was a very small amount. He did not
19 collect that sample as required by our permit. You
20 know, it did not -- that water was not leaving the
21 site. You know, and again, you know, he's been a
22 stickler on like compositing samples from the
23 beginning, middle, and end of the storm. He pulled a
24 grab sample. Mr. Kammuegger never -- did not document

1 that the storm event was greater than or the discharge
2 was greater than .1 inches. And in my belief I do not
3 feel that the discharge was greater than a tenth of an
4 inch, you know, of snowfall melt. A tenth of an inch
5 of snowfall melt is the equivalent of one inch of
6 rain. One inch of rain is a pretty big storm event.

7 HEARING OFFICER FRANK: Did you say a tenth
8 of an inch of snowfall melt is equivalent to one inch
9 of rain?

10 A. The ratio is considered one to ten.

11 Q. Where does that .1 inch come from that you're
12 talking about?

13 A. It's in the CFR, the Code of Federal
14 Regulations, on NPDES discharge permits. It was not
15 in our original 1986 permit for -- but it is -- you
16 know, it was a requirement in the CFR and it was
17 something that was added to our most recent NPDES
18 permit that was issued. That is a special condition
19 there, a tenth of an inch.

20 Q. What procedures do you have in place now to
21 take samples from outfall 001?

22 A. Under the current permit Nikki Wuestenberg is
23 handling most of that. I am familiar with what's
24 going on, having discussions with her on it, but I am

1 not actively involved. Basically any time we see any
2 type of precipitation, you know, rainfall or if we
3 feel that there could be snowmelt leaving the site,
4 Joe Chenoweth is instructed -- he knows to do this on
5 his own, we don't have to go out and say, "It's
6 raining, Joe, go look." Joe has already gone and
7 looked to see if there is any precipitation leaving
8 the site, any runoff leaving the site. If his first
9 inspection he doesn't see any, he will go back, you
10 know, half hour later, you know, an hour later. He
11 will keep looking at the outfalls to see what type of
12 runoff is leaving the site, if at all any is leaving.
13 He is then instructed to collect a sample of the
14 runoff and he's supposed to go back and collect
15 additional samples periodically so we're able to
16 composite.

17 Q. What procedures do you have in place for
18 taking samples from -- and this is prior to the new
19 permit. What procedures did you have in place to
20 sample 002?

21 A. After the inspection from Mr. Kammuehler --

22 Q. After the inspection.

23 A. -- Joe again was instructed to go out and
24 look for discharges along the south side of the

1 landfill. And he was supposed to look for a discharge
2 anywhere along that south side.

3 Q. Let me show you what has been marked People's
4 Exhibit 12. Can you just identify that for me,
5 please?

6 A. February 7th, 1996 inspection performed by
7 Mr. Kammuehler and accompanied by Rick Pinneo of the
8 Illinois EPA.

9 Q. Now, on page 2 of that inspection there is a
10 list of apparent violations. And I want to run down
11 some of these.

12 A. Okay.

13 Q. Look at number 1, talking about composite
14 samples not always being collected.

15 A. Composite samples -- do you want me to read
16 it?

17 Q. Sure, go ahead and read it.

18 A. "The composite samples are not always
19 collected as required by the NPDES permit. This
20 includes but is not limited to February 8th and 9th,
21 1996. Certain chain of custody sheets submitted with
22 DMRs also indicate this condition. Discharges were
23 certainly continuous on February 9th, 1996, and
24 composite samples could have been collected."

1 Q. Have you had any discussions with Mr.
2 Kammuegger on taking composite samples?

3 A. I've asked him in the --

4 Q. Since this time?

5 A. Since this time?

6 Q. February '96.

7 A. No, I have not.

8 Q. Has your procedure changed at all from this
9 time on taking those samples?

10 A. No, it has not.

11 HEARING OFFICER FRANK: Let's go off the
12 record for a second.

13 (Discussion off the record.)

14 Q. Take a look at number 5 and read that one.

15 A. pH is being averaged on certain DMRs.

16 Q. Do you still average pH on your DMRs?

17 A. We -- we averaged -- well, since this has
18 been brought to our attention -- and I guess I -- I
19 would have to talk to Nikki. I mean I'm not real
20 familiar with that, to be honest with you. But I do
21 know that, you know, we did average the pHs. There
22 was no intention of us trying to do anything wrong
23 there. We included the analytical, the raw data from
24 the lab with all the DMRs, so that, you know, it was

1 obvious what the pH was, that you would be able to
2 identify the high, the low, and the average. And you
3 know, that is something that I'm aware of now.

4 Q. Did you attend a -- or I believe you've
5 testified earlier you attended a 31(d) meeting?

6 A. Pertaining to this case, yes, I did.

7 Q. Correct. Do you recall when that was?

8 A. It was August of '95.

9 Q. Do you recall any requests made by the Agency
10 at that time?

11 A. There were -- there were numerous requests.
12 One being that, you know, we submit a revised
13 Closure/Postclosure Care Plan. Part of the agreement
14 that --

15 Q. Let's just go one at a time. Has that
16 revised closure plan been submitted?

17 A. Yes, it was. There was a special condition
18 that Mr. Davis requested on that.

19 Q. What was that?

20 A. The regulations require us only to have a
21 postclosure care period for 15 years. Regulations for
22 new sites require 30 years. Mr. Davis requested that
23 we waive our right to do it for 15 years and we
24 estimate it over a 30-year period.

1 MS. SYMONS-JACKSON: I'm going to object at
2 this point in time. I believe the 31(d) meeting was
3 held as a negotiation at that point with an eye
4 possibly toward settlement. With that in mind,
5 certain negotiations and matters discussed at the
6 31(d) meeting are not the proper subject for
7 discussion at this hearing as they were negotiations
8 with an eye towards settlement, and I would object to
9 this line of questioning for that reason.

10 HEARING OFFICER FRANK: Mr. Northrup?

11 MR. NORTHRUP: My response is in the Attorney
12 General's opening statements, as well as questions to
13 Kammuegger I know they brought out what was discussed
14 at that meeting, what certain requests were made of
15 Watts and whether or not those had been complied with.
16 They've opened the door. I think I'm entitled to
17 pursue this.

18 HEARING OFFICER FRANK: Okay. I'm going to
19 allow the question.

20 Q. Okay. What else -- what else other than the
21 revised closure plan?

22 A. They requested that we do assessment
23 monitoring for the groundwater. They requested that,
24 you know, get the Sig Mod in.

1 Q. Have you done that?

2 A. Yes. Which there's assessment monitoring
3 proposal in the Sig Mod. Mr. KammueLLer requested
4 that we put together a Storm Water Pollution
5 Prevention Plan. You know, he specifically requested
6 that we hire an outside consulting firm to do that,
7 which we complied with. There was -- they requested
8 that we do gas management, leachate control, which
9 we've submitted an application for gas management
10 which has been approved. We're actively constructing
11 a gas management system. We've applied for a permit
12 for a leachate extraction system in our Sig Mod, which
13 we -- you know, we agreed that everything that they
14 requested was reasonable and we would work toward that
15 goal and I think we've -- everything that they
16 requested we have -- we've complied with at this time.

17 Q. Was there any discussion of a penalty?

18 MS. SYMONS-JACKSON: I'm going to object
19 again. We have not raised the issue of penalty in
20 this case and penalty discussions certainly are
21 settlement -- negotiations towards settlement, and I
22 would object to any mention of penalty in this
23 hearing.

24 MR. NORTHRUP: They opened the door to this

1 31(d) meeting by having them say what they proposed to
2 have Watts do. They've opened the door for that. I
3 think we're entitled to inquire on penalty issues.

4 MS. SYMONS-JACKSON: If the ruling on the
5 prior issue was that we had opened the door and so he
6 was allowed to talk about technical things, that's one
7 thing, but penalty is a different issue.

8 HEARING OFFICER FRANK: The objection is
9 sustained. Please ask another question.

10 Q. Was there anything else discussed at that
11 meeting that you recall other than what you've already
12 testified to and the penalty?

13 A. Yeah, Mr. Davis thought we could reach a
14 negotiated settlement. He didn't want to make a
15 career out of --

16 MS. SYMONS-JACKSON: I'm going to object once
17 again. Mr. Davis is not on trial here. He's not a
18 witness. I don't think this is proper, and I would
19 move that the response be stricken.

20 HEARING OFFICER FRANK: Sustained. Please
21 ask another question.

22 MR. NORTHRUP: I don't have any further
23 questions.

24 HEARING OFFICER FRANK: Okay. Then let's go

1 off the record and take a lunch break.

2 (A recess was taken.)

3 HEARING OFFICER FRANK: Let's go back on the
4 record and continue beginning with the
5 cross-examination of Tom Jones.

6 CROSS-EXAMINATION BY

7 MS. SYMONS-JACKSON:

8 Q. Mr. Jones, first of all, let's go back and
9 talk about the retention pond. Okay?

10 A. Okay.

11 Q. Do you know which pond I'm referring to when
12 I say retention pond?

13 A. I assume you're talking about the pond that
14 has been created by Mr. Whitley constructing a berm
15 near our property lines.

16 Q. Okay. It's the retention pond in the
17 northwest corner of the site.

18 A. Okay.

19 Q. And that's the same one you're thinking
20 about, right?

21 A. That's correct.

22 Q. Okay. Was your testimony earlier that the
23 retention pond receives drainage from property other
24 than the landfill?

1 A. There's water that comes off other people's
2 property on our property and drains in the retention
3 pond.

4 Q. And what other property are you talking
5 about?

6 A. It would be Mr. Whitley's property directly
7 to the west of us.

8 Q. So Mr. Whitley owns the property directly to
9 the north and to the west of the landfill?

10 A. It's my understanding, yes.

11 Q. And I think you indicated earlier that that
12 property is just to the west in the northwest corner
13 of the landfill filled with trees and is somewhat
14 hilly, is that what you indicated earlier?

15 A. Yes, I did.

16 Q. How can you tell that there is water or
17 run-on from that portion of the facility to the
18 landfill?

19 A. I've watched it. I've seen it.

20 Q. And have you watched it -- is there any way
21 to differentiate run-on from that portion of the
22 property as opposed to just storm water runoff from
23 the landfill itself?

24 A. I'm sure you could sit down and run some

1 calculations based upon the area of each drainage
2 basin and the terrain and the slope. There are ways
3 that you can do it. You know, use the rational method
4 or --

5 Q. You've not done any of that testing?

6 A. No, I have not.

7 Q. Now, the 001 outfall under the NPDES permit,
8 this does not drain into the retention pond, does it?

9 A. No. That's not our interpretation of the
10 permit.

11 Q. So just back to an earlier question, the
12 runoff from the portion of Whitley's property to the
13 west of the landfill first drains onto the landfill
14 and then into the retention pond?

15 A. It doesn't go directly on the landfill. It
16 drains under our property and it runs along the haul
17 road that runs along the west side of our property,
18 and then it drains down into the retention basin.

19 Q. Now, when you testified earlier, Mr. Northrup
20 had asked you about a number of documents such as the
21 odor logs prepared by Jerry Martens?

22 A. Uh-huh.

23 Q. And the February 14, 1994 inspection report
24 prepared by Jim Kammueler. He'd asked you if you'd

1 ever seen those documents before and I think your
2 response was no. Is that accurate?

3 A. That's correct. Now, I was aware that the
4 odor logs existed, but I had not seen them. Mr.
5 Martens discussed them in his deposition.

6 Q. Were you aware that those documents were
7 provided to Mr. Northrup in the spring in response to
8 a discovery request he made?

9 A. No, they were never provided to me from him.

10 Q. Okay. You had never seen those documents
11 from Mr. Northrup from spring of this year until
12 today?

13 A. No.

14 Q. Okay. Now, what you've called the Storm
15 Water Pollution Prevention Plan, and that is your
16 exhibit --

17 MS. SYMONS-JACKSON: Do you know what exhibit
18 that is, Charlie?

19 A. 2.

20 Q. Respondent's Exhibit 2, okay. This was
21 prepared by CH2M-Hill for the facility?

22 A. Yes, it was.

23 Q. Can you tell me again when that was prepared
24 by CH2M-Hill?

1 A. I remember seeing the first draft copy in
2 December of '95.

3 Q. And I think your earlier testimony was that
4 has not been finalized yet. Is that correct?

5 A. That's correct.

6 Q. Are there any plans or is CH2M-Hill currently
7 working on finalizing that plan?

8 A. Well, I think if you read a NPDES permit,
9 basically it's always an ongoing updating of the
10 operations of the site. We may issue a final version
11 of this plan, but it's something that will always have
12 to change as the site changes. It makes adjustments
13 for current conditions.

14 Q. Has this plan ever been submitted to the
15 IEPA?

16 A. It's not required to be.

17 Q. Have you ever shown this plan to Mr.
18 KammueLLer to see if he thinks that the provisions in
19 this plan are adequate for the site?

20 A. No, we have not.

21 Q. Now, is it fair to say that Elmer Elliott and
22 Joe Chenoweth are responsible for performing
23 day-to-day maintenance at the landfill?

24 A. That's very loosely you could say that, yeah.

1 Q. Elmer is the site manager, correct?

2 A. Uh-huh.

3 Q. And Joe Chenoweth, as we know from his
4 earlier testimony, performs site inspections where he
5 keeps a log and documents any problems he's seen and
6 any actions he's taken to address those problems,
7 right?

8 A. Uh-huh.

9 Q. Now, when you mentioned the people that knew
10 where this Storm Water Pollution Prevention Plan is
11 located at your facility, you did not mention Elmer
12 Elliott and you did not mention Joe Chenoweth. Now,
13 my question is if they are the ones who are performing
14 the daily maintenance at the site, how are they
15 supposed to know what to do to address storm water
16 problems if they don't even know where the plan is?

17 A. Well, we've had the plan out before and we've
18 discussed it with them. And I did mention Elmer
19 Elliott's name in my previous testimony. I did
20 discuss him. But it's not something like we show them
21 exactly where in the file we put it. We've had it
22 out. We've sat around in conferences and discussed it
23 with, you know, various personnel on-site.

24 Q. And with Elmer Elliott?

1 A. I've had discussions with Elmer Elliott on
2 our Storm Water Pollution Prevention Plan and things
3 we needed to do to comply with it.

4 Q. Yet, Mr. Kammuehler stopped out at the site,
5 I believe on the morning of October 29, and questioned
6 Elmer Elliott as to whether the facility had a Storm
7 Water Pollution Prevention Plan, he didn't know what
8 Mr. Kammuehler was talking about?

9 A. I don't know. I wasn't there for the
10 conversation.

11 Q. I think you testified earlier that, in fact,
12 Elmer probably should know about it, but he probably
13 doesn't know about this plan?

14 A. I did probably say that. I said that.

15 Q. Do you think it would be advantageous for you
16 to or someone else from ESG Watts who is familiar with
17 that plan to discuss it with Elmer Elliott so he knows
18 exactly what is required and where it's located?

19 A. We've had discussions with Elmer on the
20 requirements of it, but, you know, I've never taken
21 him and said this is where we put it in the file if
22 you would ever like to see it. Elmer is well aware of
23 the housekeeping duties that he's supposed to perform
24 to prevent spillage of pollutant, chemicals, oils,

1 fuels, antifreezes.

2 Q. Okay. That's all I need.

3 Now, you testified earlier about what is
4 Respondent's Exhibit 5, the Leachate Control Plan.

5 A. Yes.

6 Q. Okay. And I think you testified that
7 preparation of the plan was in response to a court
8 order.

9 A. That's correct.

10 Q. Okay. I'm going to hand you a copy of
11 People's Exhibit 29, and can you tell me what date
12 that order was entered on? That is the preliminary
13 injunction order from the Sangamon County Circuit
14 Court?

15 A. I assume it's this date up here.

16 Q. Okay. And you can check on the back, too,
17 where the judge has signed it.

18 A. Okay. September 11th, 1992.

19 Q. Okay. So your earlier testimony that that --
20 strike that.

21 I think your earlier testimony was that your
22 Leachate Control Plan was drafted or prepared
23 immediately following this court order. Now that
24 you've seen this court order would you say that was

1 accurate testimony earlier?

2 A. I assume it is. I don't remember the exact
3 date that we prepared it, but I know we prepared it
4 shortly after the judge's order.

5 Q. Okay. Who prepared the Leachate Control
6 Plan?

7 A. It was done in conjunction by me -- by myself
8 and Tom Quinn.

9 Q. Who is Tom Quinn?

10 A. Tom Quinn used to be the operating manager
11 for ESG Watts.

12 Q. Okay. Now I'm looking at what is
13 Respondent's Exhibit 5 that I earlier said is the
14 Leachate Control Plan, and I don't see a date on here
15 that actually indicates the date it was prepared, and
16 you don't have any independent recollection of when it
17 was prepared?

18 A. No, I don't.

19 Q. I'm going to direct your attention to the
20 first page of Exhibit 5. Looking along with me, it
21 says for history, on 14 September 1993, which is
22 nearly a year after the preliminary injunction order,
23 Circuit Judge Richard J. Cadagin issued a ruling that
24 required ESG Watts to correct immediately any leachate

1 problems as they apply to the neighbors, and refers to
2 an attachment.

3 And I can -- attached to this, which is
4 Respondent's Exhibit 5, is a letter from Judge Cadagin
5 of that same date, September 14, 1993, which indicates
6 what the docket entry is for that date, September 14,
7 1993, a year after the preliminary injunction order,
8 it indicates rule to show cause allowed in part. And
9 you're ordered through this September 14, 1993 order
10 to implement a Leachate Control Plan. Correct?

11 A. Okay.

12 Q. Do you agree with that?

13 A. I agree with that letter.

14 Q. Okay. From September 11, 1992 until this
15 rule to show cause letter was issued on September 14,
16 1993, what had you done with regard to a Leachate
17 Control Plan?

18 A. We had always -- it's been an ongoing bone of
19 contention with the Agency about leachate and we've
20 always maintained that we have monitored through
21 inspections, you know, we've looked for leachate seeps
22 on our property. We've identified them and we would
23 take necessary corrective action. And it's always
24 been the policy, you know, since I've been there.

1 Q. Okay. Let me refer again to Respondent's
2 Exhibit 5, second paragraph under history, it was
3 determined at the hearing on 15 February 1994 -- now
4 we're two years or a year and a half, I guess, after
5 the original injunction order -- that ESG Watts should
6 submit a Leachate Control Plan that the Illinois
7 Attorney General's office can review and comment on.
8 This Leachate Control Plan which is Respondent's
9 Exhibit 5 indicates in here it was developed for that
10 purpose. So, in fact, according to your Leachate
11 Control Plan, it was developed a year and a half after
12 the preliminary injunction order?

13 A. I disagree with that.

14 Q. Please explain.

15 A. Well, I think that we had been -- we had a
16 plan in place, but it was never formalized in this
17 format to -- and we -- at this point we formalized it,
18 submitted it, I guess according to that. I don't
19 recall us sending it off anywhere. I can't remember
20 that. But it was like, okay, let's sit down and put
21 it down on paper what we're doing. But we had been
22 doing those activities way before this plan was
23 developed.

24 Q. And how were your leachate control measures

1 prior to this plan being developed, how were they
2 communicated to the Watts employees?

3 A. The same way. We -- you know, Joe Chenoweth,
4 he was instructed and there were some personnel before
5 Joe -- we hired Joe. I can't remember the date that
6 we hired Mr. Chenoweth. But they would take, you
7 know, a walk around the site or drive a vehicle or
8 maybe a piece of heavy equipment, and they would look
9 for these type of leachate seeps. And if they
10 encountered them, they were instructed to fix them.
11 And that's what we did. That plan is no different
12 than the everyday practice that we had implemented.
13 It's just a formalization of our activities.

14 Q. Okay. Now, you were present during Mr.
15 Chenoweth's testimony earlier in this hearing, were
16 you not?

17 A. That's correct.

18 Q. First of all, do you recall Mr. Chenoweth
19 testifying that after he would conduct an inspection
20 of the facility, if the weather was particularly bad,
21 he would not undertake corrective actions, not wanting
22 to endanger the safety of himself or his fellow
23 employees?

24 A. I remember that.

1 Q. And so would you agree then, Mr. Jones, that
2 there were some instances at the site where leachate
3 problems may have been noted on one day by Mr.
4 Chenoweth and then went uncorrected for any number of
5 days up to a couple of months even?

6 A. I would disagree with a couple of months. I
7 mean it's well-documented in Mr. Chenoweth's daily
8 inspections when he identifies a leachate seep and
9 when he made the correction. You know, it's on record
10 when he identifies them and when he made the
11 correction.

12 Q. So if in those site inspection reports Mr.
13 Chenoweth himself indicates that for over a period of
14 months, if you look at the inspection reports, he was
15 not able to correct a certain problem, would you
16 disagree with what Joe put in his report?

17 A. No, I wouldn't.

18 Q. Now, according to the injunction order that's
19 Exhibit 29 before you, you're ordered to implement
20 measures to both monitor and control leachate. Would
21 you agree with that?

22 A. Yes.

23 Q. And are there still reoccurring problems with
24 leachate at the landfill on this date?

1 A. Yes, there is.

2 Q. So you would agree that the measures
3 implemented by ESG Watts at some point after September
4 of 1992 to monitor and control leachate have not
5 corrected the problem?

6 A. I disagree with that.

7 Q. You're still having problems with leachate at
8 the site, are you not?

9 A. We're monitoring and controlling leachate.
10 But every landfill in the State of Illinois has
11 leachate seeps.

12 Q. That's not what I asked you, Mr. Jones.

13 A. That's what I told you.

14 Q. You're still having problems with leachate at
15 this time, correct?

16 A. It's an ongoing issue, yes.

17 Q. Okay. That's fine. Now, you indicated that
18 you had some input into the Sig Mod -- I'm sorry, into
19 the gas permit?

20 A. That's correct.

21 Q. And that's working with RTC?

22 A. Resource Technologies Corporation, that's
23 correct.

24 Q. And I believe Robert Fortelka, who testified

1 on behalf of Watts at previous days of this hearing,
2 indicated that some of the wells they have installed
3 for gas extraction are also going to be installed --
4 are also going to be used for leachate extraction?

5 A. We've made that proposal in the Significant
6 Modification. When the Sig Mod is issued, we can do
7 that permitted activity.

8 Q. Can you tell me what will be needed -- what
9 you need to do to those gas extraction wells to ready
10 them for leachate extraction?

11 A. We would have to put down a leachate pump,
12 you know, lower it down into the bottom of the well.
13 It's probably going to be very similar to the ones
14 that we constructed at Sangamon Valley Landfill.
15 They're going to be driven by air. They're pneumatic
16 pumps. You know, they'll pump up leachate to a
17 central holding tank, and then there are a couple
18 different options. We can haul it -- we do have a
19 permit to haul it to a local wastewater treatment
20 plant or we are looking at utilizing landfill gas to
21 -- there is a method that you can heat up the leachate
22 and put it through a volatile organic compound filter
23 that, you know, will pull the volatiles off, and we
24 are looking at that option, and we'll probably apply

1 for a permit to do that once the gas system is up and
2 running.

3 Q. Now, as part of your contract with RTC are
4 they required to do any of the installation of
5 equipment or prepare -- or otherwise prepare these gas
6 extraction wells for the leachate extraction?

7 A. No.

8 Q. That's something that Watts is going to do?

9 A. That's solely on our -- our responsibility.

10 Q. Now, I believe the gas management system is
11 not supposed to be ready and operational until the
12 middle of 1997, is that right?

13 A. Most likely. That's the schedule.

14 Q. Now, when can you begin -- let's assume for a
15 minute you obtain a permit to do the leachate
16 extraction. When based on the completion of the gas
17 management system can you begin installing the
18 necessary equipment on the wells to extract leachate?

19 A. We do not need to wait to complete the
20 activities for the gas management system. We can
21 install the leachate collection system at any time.

22 Q. Okay. Even before the gas extraction system
23 is completed?

24 A. That's correct.

1 Q. Since we're talking about the Sig Mod to a
2 certain extent, can you explain why when the original
3 Sig Mod was denied in February of 1995 why it took
4 Watts until October of this year to make a resubmittal
5 of that application?

6 A. Well, I don't know what happened when I was
7 not employed by Watts. I wasn't privy to the
8 conversations between CH2M-Hill and ESG Watts at all
9 times. I had been involved a little bit. But I had
10 been gone for about a year period at that time and,
11 you know, when I was employed there, CH2M-Hill they
12 were working on the revision. There were certain
13 things that we needed to do. We had to install some
14 -- we wanted to install some wells off-site to do, you
15 know, groundwater investigation. And I'm not real
16 familiar with all the details on it. I'm kind of
17 shaky on it.

18 Q. Are those the Hanson field wells?

19 A. That's correct.

20 Q. And the purpose for installing those wells
21 was to serve as a basis for a background study, is
22 that --

23 A. Background and to help classify the
24 groundwater in the area, if I remember correctly.

1 Q. Now, I do realize that you were not employed
2 by Watts from May of 1995 until July of this year. Is
3 that --

4 A. That's correct.

5 Q. -- the time period you gave?

6 Okay. Do you know, though, did Watts ever give a
7 deadline to CH2M-Hill or to their own site employees
8 as to when this new Sig Mod submittal had to be
9 completed?

10 A. Not that I recall.

11 Q. Isn't it true that the only deadline for
12 resubmittal that was ever mentioned by Watts to
13 CH2M-Hill was that it be submitted prior to beginning
14 the hearing in this case?

15 A. It was the goal.

16 Q. Now, aside from the work you mentioned,
17 installation of the wells and other work you
18 mentioned, was there other engineering work that Watts
19 had to do on-site and provide the results to CH2M-Hill
20 for this Sig Mod resubmittal?

21 A. We had to collect leachate samples.

22 Q. Now, again, understanding that you were not
23 employed by Watts during this certain period of time,
24 do you know when those leachate samples were

1 collected?

2 A. Actually, I think I was employed by the time
3 the samples were taken. It was sometime this summer,
4 summer of '96.

5 Q. Do you have any explanation as to why nearly
6 a year after a meeting with the Agency to discuss the
7 Sig Mod denial why it would take that long for
8 leachate samples to be collected?

9 A. Well, we had to install leachate -- we had to
10 install wells to extract the leachate. We needed a
11 permit to install the wells.

12 Q. Who oversaw this work, the engineering work
13 that Watts performed?

14 A. What work are we --

15 Q. For the Sig Mod resubmittal.

16 A. I was involved with it, Mr. Grothus was
17 involved in it, for CH2M-Hill it was the
18 responsibility of Steve Keith.

19 Q. Was Steve Keith present at the site during
20 the performance of the engineering work?

21 A. He had made visits to the site, I don't know,
22 three or four times.

23 Q. Did Watts hire any outside personnel to
24 assist them in performing the work necessary for the

1 Sig Mod resubmittal?

2 A. CH2M-Hill.

3 Q. People to perform the work that Watts was
4 going to perform on-site?

5 A. We hired contract -- Indeco, we hired them to
6 do some work on-site. They're the company that
7 drilled the Hanson wells.

8 Q. When was that done?

9 A. I'm not exactly sure. I wasn't employed at
10 the time when that was done, but it was in the summer
11 -- it was shortly after that August of '95 meeting.

12 Q. And how is it that you know that?

13 A. Just with conversations with Mr. Grothus.

14 Q. Was the collection of leachate samples the
15 last bit of work that Watts needed to do and submit to
16 CH2M-Hill for the Sig Mod resubmittal?

17 A. I think so but I -- you know, I wouldn't be a
18 hundred percent sure. I think that was one of the
19 things holding up the project was the leachate.

20 Q. Now, we also -- already know through
21 testimony of Steve Keith of CH2M-Hill that there were
22 some delays resulting from Watts' inability or
23 unwillingness to pay bills that were owed to
24 CH2M-Hill. Do you recall that testimony of his?

1 A. I recall that.

2 Q. And would you agree with that testimony of
3 his?

4 A. I have no reason to disagree with it.

5 Q. Do you know how much Watts has paid CH2M-Hill
6 to date for the preparation of the Sig Mod
7 resubmittal?

8 A. The total amount or just for the resubmittal?

9 Q. For the resubmittal. From February of '95 to
10 the present.

11 A. 20 or 30,000 dollars.

12 Q. And is CH2M-Hill currently performing any
13 additional work in connection with the Sig Mod
14 resubmittal?

15 A. At this time the Sig Mod has been submitted.
16 There is no work to be done at this time until we get
17 a response back from the Agency whether it's complete
18 or incomplete or denied or approved.

19 Q. Okay. Now, we know we're talking about two
20 Sig Mod resubmittals. There was a resubmittal on
21 October 18, 1996, and then there was, from what I
22 understand from today's testimony, a formal
23 reapplication in the first couple weeks of November,
24 is that accurate?

1 A. Yeah.

2 Q. Now, between the October 18, 1996 submittal
3 and the resubmittal of the formal application, was
4 there any additional engineering work that needed to
5 be done?

6 A. Not that I recall.

7 Q. Basically, a permit application just needed
8 to be filled out and signed, is that your
9 understanding of the work that needed to be done?

10 A. Yeah. We may have changed a few minor
11 sentences or something, but, you know, no major
12 calculations were performed or major revisions of
13 design or anything like that.

14 Q. Does Watts currently owe CH2M-Hill any money
15 for the work --

16 A. We received an invoice just recently. I
17 think our balance due is 4,000 dollars.

18 Q. Were you involved at all in drafting any
19 portions of the Sig Mod Application or resubmittal?

20 A. Yes.

21 Q. What portions were you involved in drafting?

22 A. You know, they're clearly spelled out in the
23 applications. There's like subtitles or subheadings
24 that, you know, delineate who it was prepared by. I

1 don't know if I'll remember all of them. But I did
2 the closure plans, a lot of them. You know, I had a
3 lot of input probably on just about every section
4 except probably groundwater.

5 Q. And for the groundwater portion of the Sig
6 Mod you relied on CH2M-Hill?

7 A. For the most part.

8 Q. You indicated you were involved in drafting
9 the closure plan in the Sig Mod?

10 A. Uh-huh.

11 Q. And that involves cost estimates?

12 A. Uh-huh.

13 Q. And I assume you were also involved in
14 preparing the cost estimates, correct?

15 A. That's correct.

16 Q. Do the closure/postclosure cost estimates in
17 the Sig Mod Application include any estimates related
18 to the gas management system?

19 A. I think they do.

20 MS. SYMONS-JACKSON: Charlie, what exhibit
21 was this of yours, the Sig Mod resubmittal?

22 MR. NORTHRUP: 1.

23 Q. I'm going to hand you Respondent's Exhibit 1.

24 A. Okay.

1 Q. Actually, if you'll agree that this is
2 Exhibit 1, I'll just show you the portion I'm talking
3 about. It's in Attachment 18, which deals with the
4 contingency plan, and then we've also got closure
5 costs in here.

6 A. Okay.

7 Q. Can you take a look at those for me?

8 A. Are we just looking at closure costs or
9 closure and postclosure costs?

10 Q. What I'm concerned about is whether there are
11 any estimates relating to the gas management system.

12 A. In either section?

13 Q. Right.

14 A. Okay. I would say that we left it off.

15 Q. Okay. Now, you testified earlier that RTC is
16 bearing the responsibility for the finances involved
17 in installing this gas management system, correct?

18 A. Yes.

19 Q. Now, once the gas management system has run
20 its course, 10, 15, however many years down the road,
21 and there's no longer gas to be extracted from the
22 landfill, what happens to all of these wells that have
23 been installed?

24 A. They will be plugged.

1 Q. And who's responsible for the plugging of
2 those wells?

3 A. RTC.

4 Q. And that's pursuant to your contract with
5 RTC?

6 A. That's correct.

7 Q. So any -- strike that.

8 All of the costs associated with the installation,
9 operation, and dismantle, if you will, of the gas
10 management system are costs that are borne entirely by
11 RTC, is that correct?

12 A. That's incorrect.

13 Q. Okay. What costs are not borne by RTC?

14 A. We've assisted them in a lot of their
15 activities that have been costs, you know, solely
16 associated with our company that we have not charged
17 them with. We've supplied them with equipment to use,
18 we've supplied them with personnel when they lacked
19 people, we've supplied them with office space,
20 telephone, secretarial services. There is a cost
21 associated, you know, with all those activities that
22 we have bore.

23 Q. Can you put a dollar figure on that cost?

24 A. I probably could if you want. We have

1 tracked, you know, time that people have spent, the
2 equipment that we've loaned them and used, the fuel,
3 but we've never put a dollar figure to it, but I
4 probably could.

5 Q. Go ahead.

6 A. You know, I -- it would be in the range of
7 tens of thousands of dollars.

8 Q. 10,000 dollars is that what you --

9 A. Tens of thousands, you know, 10, 20, maybe
10 30.

11 Q. Was this a contractual obligation with RTC?
12 As a part of your contract were you supposed to supply
13 them with, you know --

14 A. No, we were not.

15 Q. So it was just out of the kindness of your
16 heart that you did that, is that correct?

17 A. That's correct.

18 Q. That's very nice of you, Tom.

19 A. Thank you.

20 Q. I think you indicated earlier that the burden
21 for providing financial assurance is a burden borne by
22 the landfill owner/operator, correct?

23 A. Yes. It's solely our responsibility
24 according to the regulations of the Illinois

1 Administrative Code 35.

2 Q. And so whether or not you have a separate
3 contract with RTC to dismantle the gas system, isn't
4 that a cost that would be part of the
5 closure/postclosure care costs of the landfill?

6 A. Yes, it would be.

7 Q. So that's a cost that's not included in your
8 recent submittal to the Agency, correct?

9 A. That is not included.

10 Q. Do you have -- would you prepare the
11 calculations for that cost or would that be something
12 that RTC would prepare and submit to you?

13 A. We do it jointly.

14 Q. And do you have an estimate of what that cost
15 is for the closure/postclosure care of the gas
16 management system?

17 A. It's been filed as an application to the EPA
18 and it's been approved and it's 740,000 dollars.

19 Q. Tom, how many acres have been filled at the
20 landfill and are currently inactive?

21 A. 40.

22 Q. And how many acres make up the currently
23 active site?

24 A. 15 to 16.

1 Q. Now, talking only about the inactive areas of
2 the site, when was the final lift of waste placed in
3 those areas?

4 A. The inactive areas, when was the final --
5 could you please repeat the question?

6 Q. Sure. In the 40 some acre inactive area,
7 when was the final lift of waste placed in that area?

8 A. There would have been, you know, various
9 times through the years, you know. Some areas would
10 have reached final grade, you know, four or five years
11 ago. Some maybe, you know, three years ago.

12 Q. So would it be your estimate that the final
13 volume then of waste that was placed in the inactive
14 area would have been placed three years ago?

15 A. Yes, maybe four.

16 Q. I'm going to show you a map. This was not on
17 our previous exhibit list. It's what we've identified
18 as People's Exhibit 68. Can you identify what this
19 map is?

20 A. It's a map prepared by Noble Earth
21 Corporation that it's identified as landfill cover
22 certification depth check locations.

23 Q. Okay. Now, isn't it -- wouldn't it be
24 accurate to say that the map or the contours on the

1 map were not prepared by Noble Earth? Would those
2 have been prepared by someone else?

3 A. This aerial survey would have been prepared
4 by -- I'm pretty sure it's probably Surdex Corporation
5 a few years back.

6 Q. Do you know how many years ago they did that?

7 A. We've had the site flown, you know, two or
8 three times in the last, you know, four or five years,
9 and I don't know which flyover this is from. I
10 honestly don't remember.

11 Q. And the part that was prepared by the Noble
12 Earth would you agree is limited to the grid that's on
13 top of the map or on top of the contoured -- contours
14 of the site?

15 A. The grid and the small circles with numbers
16 identifying the locations.

17 Q. Can you identify looking at this map where
18 the final lift of waste was -- where is the location
19 of the final lift of waste in the inactive area of the
20 site?

21 A. Well, my guess -- and, you know, I haven't
22 been there for all the years, but we started, you
23 know, from talking to site personnel, Watts personnel
24 started filling the landfill in this southwest --

1 southeast corner of the site. They worked their way
2 west and then they worked their way north along the
3 west side. And my guess would be somewhere in the
4 northwest portion.

5 Q. Can you identify it by any numbers that are
6 on there what your estimate would be, the numbers of
7 the grid?

8 A. You know F-0 or E-0 or E-1, somewhere in
9 there.

10 Q. Do you know how much final cover has been
11 applied to this inactive area?

12 A. In terms of thickness or quantity in yards
13 or --

14 Q. Why don't you give me thickness first?

15 A. It varies but, you know, it's anywhere from,
16 you know, two and a half feet to three feet to four
17 feet. I've seen places with thicker cover on it than
18 that.

19 Q. And were you employed by Watts during the
20 years when the final cover was placed on this inactive
21 area?

22 A. Some areas I was employed and some areas was
23 previous to my employment.

24 Q. And would you have been the person during

1 your years of employment that would have been
2 responsible for overseeing the placement of the final
3 cover?

4 A. No, not necessarily. You know, Elmer Elliott
5 would have, you know, known that he had to place final
6 cover. I don't think I ever gave him a direct order,
7 said go put final cover here, but it was done through,
8 you know, the years that I've been there.

9 Q. Now, isn't it true that there's still some
10 work that needs to be done on the final cover?

11 A. There are a few areas that we have identified
12 that lack adequate cover.

13 Q. When are those areas going to be addressed?

14 A. I think some of them have already been
15 addressed. Other ones -- there's an area that was
16 identified I'd say around like K-14 I think. There's
17 a lot of equipment sitting on top of the landfill in
18 that general area that the cover was identified as
19 thin and we would like to move the heavy equipment
20 that's sitting in that area and apply additional
21 cover.

22 Q. Now, there have been gas extraction wells
23 installed in this area, have there not?

24 A. Wherever you see a small circle I think

1 that's what they indicate that that's a gas extraction
2 well. I think there's 88 of them in this area.

3 Q. Now, it was my understanding that the small
4 circles on this map represented the borings taken by
5 Steve Brao in connection with his -- the soil borings
6 he was taking to determine the thickness of cover.

7 A. Well, I look at some of the designations on
8 them, you know, I see like GE 40 and like GE, you
9 know, those are designations that they use solely for
10 landfill gas extraction wells.

11 Q. Was the final cover disturbed during the
12 installation of the gas extraction wells?

13 A. We drilled through it.

14 Q. And was there any work that needed to be done
15 after the wells were installed to reinforce or to
16 correct the final cover?

17 A. When they would set up their drilling rig,
18 they would have to make it level, and they would do
19 one of two things to make it level to set up the
20 drilling rig. They would either cut into the area to
21 make it flat or they would bring soil in to level the
22 area out. And those areas that they had to cut into
23 the cover to level it off, we had to redo and add more
24 cover.

1 Q. And would you say then that was -- well, let
2 me ask you this. Prior to the soil borings taken by
3 Steve Brao, when was the last time cover material was
4 applied over the inactive area?

5 A. I'm going to say sometime in '92.

6 Q. Now, what about the vegetative cover at the
7 inactive area? Isn't it true that there are still
8 some areas that lack a vegetative cover?

9 A. There is areas where we've had problems with
10 maintaining the cover. I think every area that we've
11 applied final cover we have at one time seeded.

12 Q. Can you describe for us in detail what the
13 vegetative cover currently in place is like?

14 A. Well, it depends where you're at. We've had
15 a lot of problems on the west side. At one time I
16 think shortly after 1990 -- sometime in 1992 after we
17 applied a lot of final cover in this area, we hired a
18 local farmer, Bush Farms, to come in and seed, and you
19 know, he seeded, I don't know, 20, 30 acres, you know.
20 We have an invoice, you know, showing that -- he's got
21 a meter on his tractor that counts how many acres he
22 seeds. You know, they use it in farming to track how
23 much they plant for crops and stuff. And that's how
24 he billed us and I can't remember the exact number.

1 But it basically covered this west portion.

2 Q. And what about any other areas of the site,
3 have you had problems maintaining a vegetative cover
4 in any other areas?

5 A. There are areas over the entire site we've
6 had trouble maintaining a vegetative cover.

7 Q. Would you agree that some of the erosional or
8 runoff problems at the site are at least in part due
9 to a lack of vegetative cover in some areas?

10 A. Well, I -- I think that the -- in some places
11 the lack of cover has been caused by the erosion and
12 then, you know, it's a catch-22 situation, you know.

13 Q. Now, aside from having this Bush Farms, or
14 whoever you mentioned, come in and seed the western
15 portion of the site, what other efforts has Watts
16 undertaken to maintain a vegetative cover?

17 A. Well, we've purchased seed on our own and
18 we've applied it ourselves in various areas, you know,
19 in small areas all through the site. What Watts did
20 to seed, you know, the south half of the landfill
21 before I was employed there I have no idea. But there
22 is, you know, vegetation throughout the south side of
23 the landfill. I remember in the northwest corner we
24 did a lot of work there in grading it one summer,

1 regrading it, trying to control the runoff in Mr.
2 Whitley's pond, and we did have it -- you know, it
3 looked like a green grass field for the summer, and
4 then the next spring it really didn't hold the -- it
5 was washed away.

6 Q. Now, this map, People's Exhibit 68, was
7 prepared I think by Steve Brao and Noble Earth to
8 assist in the soil borings he was taking, correct?

9 A. That's correct.

10 Q. When did Watts decide to perform these soil
11 borings?

12 A. We contacted Noble Earth Corporation to do it
13 it was in the early part of 1995. Steve was awarded a
14 contract by Resource Technologies to do the CQUA work
15 on the installation of the gas system and at that time
16 we asked him if he would be interested in performing
17 the -- you know, looking at the cover thicknesses
18 on-site, and he said he would, and we asked him to
19 submit a proposal, and he did.

20 Q. And that was this summer, is that what you
21 said?

22 A. Probably we got the proposal sometime this
23 summer.

24 Q. What prompted your decision to perform the

1 soil borings?

2 A. Basically, you know, we were confident that,
3 you know, we had adequate cover, but we felt that the
4 burden of proof would be on us with the Agency, so
5 that's what prompted it.

6 Q. And did Watts give Mr. Brao and the Noble
7 Earth Corporation a deadline for performing the soil
8 borings?

9 A. No.

10 Q. Was it anticipated or expected by Watts that
11 the soil borings would be completed prior to the
12 hearing of this case?

13 A. That was our intention, but we didn't say it
14 had to be done by that date. I think when we entered
15 into the contract we assumed it would be.

16 Q. And I think you testified earlier that all of
17 the work -- it was not just a matter of taking soil
18 borings, number one, there were some other tests
19 regarding permeability that needed to be performed
20 after that, if I remember Mr. Brao's testimony
21 correctly.

22 A. Yeah. There are various different types of
23 permeability tests. In this case it's not an in situ
24 permeability, it's a lab permeability where you look

1 at the properties of the soil itself and see what type
2 of permeabilities it is able to obtain in the lab
3 conditions. And then you take that information --
4 there's a lot of different -- you use a proctor and
5 you come up with a correlation between the moisture
6 density relationship, and you make an assumption that
7 by this moisture density relationship, if you
8 compacted the soil to a certain density and it has a
9 certain moisture content, you will achieve a certain
10 permeability.

11 Q. And I think you said earlier that those --
12 the tests or the analysis of the soil is still
13 ongoing, is that --

14 A. I called the lab yesterday and the lab
15 manager that I've been communicating was not in and he
16 was supposed to call me back and I haven't heard from
17 him.

18 Q. But in any event, you haven't gotten results
19 from them yet, is that true?

20 A. That's correct.

21 Q. Now, looking at this Exhibit 68, I guess,
22 first of all, would you agree that this is an accurate
23 representation of the facility?

24 A. In some areas it is and in other areas there

1 have been changes to the -- you know, to what these
2 contours would represent.

3 Q. Okay. Who -- you said Surdex prepared this
4 for you?

5 A. There's been a couple different companies.
6 Surdex was one company we've hired and another company
7 I think we've hired is Air Maps.

8 Q. Tom, do you know what the maximum permitted
9 elevation for the Taylor Ridge Landfill is?

10 A. It's like 765 I think.

11 Q. Now, this is a permit 1995-374 SP. It was
12 the January 1996 permit. We've already offered it
13 into evidence. I believe it was Exhibit 59, but if
14 you can double-check for me.

15 MR. NORTHRUP: 56 I think.

16 HEARING OFFICER FRANK: Yeah, 56.

17 Q. Tom, would looking at this permit refresh
18 your recollection as to the permitted maximum
19 elevation of the landfill?

20 A. I'd have to see it to --

21 Q. This one is not marked with an exhibit
22 number, but I think you can probably --

23 A. It's listed as 760 feet MSL.

24 Q. Okay. And MSL is mean sea level?

1 A. That's correct.

2 Q. And you agree that 760 feet mean sea level is
3 the maximum permitted height of the landfill?

4 A. That's correct.

5 Q. I want you to look again at Exhibit 68.
6 Please identify for me what the highest elevation is
7 indicated on this map. If I can direct your
8 attention, there's a lot of numbers to look at.
9 Around in this area?

10 A. I see some 770s. It's kind of hard to read
11 the map. 775. I think this one here might be 775.

12 Q. And a 776 or 778 over here?

13 A. I can't tell whether that's --

14 HEARING OFFICER FRANK: For the record, we're
15 in the center kind of right-hand side of the map.

16 MS. SYMONS-JACKSON: The numbers on the map
17 for reference we're looking in the area of -- there
18 are small circles on the map and the numbers in this
19 area are 153, 149, 152.

20 Q. So the contours on this map, Tom, would you
21 agree are higher -- show elevations higher than the
22 maximum permitted height of the landfill?

23 A. Yes. But, you know, that maximum --

24 Q. That's good. And so are you aware, Tom, that

1 the landfill is currently overheight -- over its
2 permitted height?

3 A. That's debatable.

4 Q. Go ahead and explain.

5 A. That's a stockpile of soil that we put up
6 there. It's not garbage. And that stockpile is no
7 longer there.

8 Q. Have you had any air surveys done since this
9 map was produced?

10 A. We did one in preparation for the Significant
11 Modification that was recently submitted. I mean the
12 original submission of the Sig Mod there was an aerial
13 performed that I think --

14 Q. The '94 submission?

15 A. I think so.

16 Q. I mean we're not talking about the
17 resubmittal of this year?

18 A. No, the original submission had a
19 different --

20 HEARING OFFICER FRANK: Are you talking about
21 Exhibit 3?

22 A. It should say in here when the aerial was
23 taken and by who. This is the same one as this.

24 Q. So this map that is People's Exhibit 3 is the

1 same as People's Exhibit 68? I mean the contours that
2 are shown?

3 A. See, up in here they look at the same, and
4 I'm trying to see if down here at the bottom, it would
5 be the northeast corner, would tell if there was
6 differences. I think that they're probably the same
7 map.

8 Q. Let me ask you this then, since we're talking
9 about People's Exhibit 3. Would you say based on what
10 you know about the site, was this the last aerial
11 survey that was made of the landfill?

12 A. You know, I wouldn't be able to tell without
13 looking at the two different ones that we have done in
14 recent years.

15 Q. Okay. Well, why don't you look at People's
16 Exhibit 3 then and tell me what the contours indicate
17 in the same area we were looking at before? What are
18 the maximum numbers there?

19 A. I see a 775.

20 Q. And that's above the maximum permitted height
21 of the landfill, correct?

22 A. That's correct.

23 Q. And that was the survey that was prepared for
24 the original Sig Mod submittal, right, to the best of

1 your recollection?

2 A. Yes.

3 Q. So am I correct then in understanding your
4 testimony that as you sit here today you're not aware
5 of whether the landfill is overheight or not?

6 A. A lot of the material up on top of that
7 landfill is cover dirt, stockpiled soil from when this
8 aerial photo was taken. There are still areas up
9 there that I know of that we have six, seven, eight
10 feet of cover material. As the drillers drilled down
11 on that top area through the cover, there was, you
12 know, a lot of cover on top before we hit garbage.

13 Q. There's currently material being stockpiled
14 at the top of the landfill, is that your testimony?

15 A. There's stockpiled material up there, but
16 we're not moving material to stockpile it now. It's
17 old spoils piles from before.

18 Q. Now, have gas extraction wells been installed
19 in that area?

20 A. Yes, they have.

21 Q. Wouldn't it be very difficult to go in there
22 and move cover material once the gas extraction wells
23 are in place?

24 A. Not necessarily. I've done it before at a

1 site.

2 Q. Is it difficult to do?

3 A. No, it wasn't.

4 Q. Wouldn't it be easier if there were no wells
5 in place?

6 A. Yeah, it would be easier.

7 Q. Do you have any plans to -- or let me ask you
8 this. Was a new survey prepared for the Sig Mod
9 resubmittal that was just made to the Agency?

10 A. Not that I -- I would say no.

11 Q. Does Watts have any plans to prepare a new
12 survey that would indicate what the elevated -- what
13 the contours of the site are?

14 A. I think we're required to do that on a
15 biennial basis, every two years, and we had planned to
16 do it in '97.

17 Q. And if you do have material stockpiled at the
18 top of the site where gas extraction wells have now
19 been installed, when do you plan to move it?

20 A. You know, we can move it at any time we need
21 to. I mean --

22 Q. At this point do you have any plans to move
23 it?

24 A. No.

1 Q. If you want to put those maps aside, I don't
2 think we're going to talk about them. They're right
3 there in your way.

4 HEARING OFFICER FRANK: Do you want to
5 move --

6 MS. SYMONS-JACKSON: Yes, I would move to
7 admit People's Exhibit 68.

8 HEARING OFFICER FRANK: Is there any
9 objection?

10 MR. NORTHRUP: Yes, there is an objection.
11 First of all, we don't know if this map reflects
12 current conditions at the landfill. Apparently, it's
13 a map from 1983.

14 Number two, you know, obviously they're trying to
15 prove that Watts has filled beyond its permitted
16 boundaries. That's not an allegation that was ever
17 made in the complaint. This is the first time we've
18 ever heard of anything along those lines in this case.
19 The first time I have seen this map marked as an
20 exhibit is today. You know, why haven't they provided
21 me this map two months ago, if in fact they had it? I
22 mean this is just incredible that they wait until, you
23 know, two hours before we're done with a hearing
24 that's lasted three days and has been on file for

1 almost two years for them to bring this thing out.

2 HEARING OFFICER FRANK: Have you had this map
3 prior to today's date?

4 MR. NORTHRUP: From what Tom says -- I don't
5 know where it came from.

6 MS. SYMONS-JACKSON: This came from you guys.
7 You gave it to us at Steve Brao's deposition.

8 HEARING OFFICER FRANK: You've seen this map
9 before.

10 MR. NORTHRUP: It came from Steve Brao.

11 HEARING OFFICER FRANK: I'm going to admit
12 it.

13 (People's Exhibit Number 68 admitted.)

14 MR. NORTHRUP: I just want to go on record.
15 I think that's really stretching and I think it is
16 really incredible that this case would be on file for
17 two years and then at the last minute they bring
18 something like this in with an attempt to prove an
19 overfill where we have had no opportunity to defend
20 ourselves on this. It's just incredible.

21 MS. SYMONS-JACKSON: For the record, we've
22 had this map -- we got this map at the last minute, if
23 you want to say, from your witness, Mr. Brao. You've
24 had this map and you could have looked at it just as

1 easily as we could have.

2 HEARING OFFICER FRANK: Okay. That's enough
3 fighting back and forth. The map has been admitted.
4 We have two hours to finish this hearing, so let's
5 move on.

6 MR. DAVIS: Ms. Hearing Officer, we are not
7 fighting. We are responding to accusations as have
8 been raised continually. And the filing of the
9 complaint was November of last year.

10 HEARING OFFICER FRANK: Okay. And you guys
11 have stated that and Charlie has stated that.

12 Let's move on at this point. Mr. Northrup, I
13 remind you that you can always request that the Board
14 overrule me, but you have to do so in writing and
15 restate your objection. It doesn't -- it's not good
16 enough to just state it orally at hearing.

17 Let's move on.

18 Q. Moving on to the February 14, 1994 inspection
19 that was conducted by James Kammueler, you testified
20 earlier you were present with him during that
21 inspection?

22 A. That's correct.

23 Q. Okay. And you did not dispute the statements
24 you made with regard to never monitoring outfall 002

1 and not monitoring outfall 001 for a period of --
2 whatever period is indicated in Mr. Kammuegger's
3 report?

4 A. I don't dispute the not monitoring 002, but I
5 do dispute 001.

6 Q. Now, with outfall 001, in Mr. Kammuegger's
7 inspection report, which is People's Exhibit 7, he
8 indicates that outfall 001 had not been monitored
9 since February of 1991. Is that an accurate
10 statement? Do you agree with that?

11 A. We had not had a discharge that we pumped
12 that we monitored, no.

13 Q. So your testimony is that your interpretation
14 of your NPDES permit was that only those discharges
15 that you were actively pumping had to be monitored?

16 A. That's correct.

17 Q. And is it now your understanding that that
18 interpretation of the permit is incorrect?

19 A. I don't agree with his interpretation.

20 Q. After Mr. Kammuegger's inspection of February
21 1994 and having just stated that you didn't agree with
22 his interpretation, does that mean you're not going to
23 -- you weren't going to continue -- begin monitoring
24 outfall 001?

1 A. We monitor it after that point as he
2 required, but we still disputed his interpretation of
3 the permit.

4 Q. Now, during the site inspection you observed
5 discharge exiting the site with Mr. Kammueller, did
6 you not?

7 A. Yes, I did.

8 Q. And that was in the area of outfall 001?

9 A. There was a small discharge at outfall 001.

10 Q. And that was the discharge you mentioned
11 earlier or you testified earlier that you then went
12 back after the inspection to try to take a sample,
13 correct?

14 A. That's correct.

15 Q. And when you got there, the discharge was so
16 small that you could not get a sample?

17 A. Not really. I mean I was -- I would have to
18 dig around in, you know, it just -- it was just very
19 minute. There just wasn't that much snowmelt.

20 Q. I think you testified earlier that the sample
21 amount that you were required to take pursuant to that
22 NPDES permit was three aliquots, correct?

23 A. No. Three equal aliquots.

24 Q. Three equal aliquots?

1 A. As a composite sample. One aliquot at each
2 sampling event, beginning of the storm, the middle of
3 the storm, the end of the storm.

4 Q. And you indicated that that was a very small
5 amount, I think in your earlier testimony, an aliquot?

6 A. Well, an aliquot in the permit is defined as
7 a hundred milliliters.

8 Q. Which I think you indicated was a very small
9 amount.

10 A. It's a tenth of a liter.

11 Q. And you were not able to get that amount for
12 a sample from the discharge?

13 A. No, I didn't say that. It was -- you know,
14 the discharge was so small, you know, it just -- I
15 didn't think it was a monitorable event.

16 Q. And so then when you report no discharge on
17 your DMR for February 1994, you in fact knew there was
18 a discharge in February 1994, is that correct?

19 A. I seen small amounts of runoff leaving the
20 site but not what I would attribute as a monitorable
21 discharge.

22 Q. So instead of indicating on your DMR that
23 there was discharge but a small amount, you just put
24 no discharge, which is not entirely accurate, correct?

1 A. Then I filled it out incorrectly.

2 Q. Are you still signing DMRs at this time?

3 A. No, I'm not. No, I'm not.

4 Q. Under the new permit have you signed any
5 DMRs?

6 A. No, I have not.

7 Q. Who signs those DMRs?

8 A. I think they're signed by Jerry Eilers. It
9 was also pointed out that I did not have the authority
10 to sign DMRs.

11 Q. Now, for outfall 002 that you admittedly had
12 not monitored since 1986 when the permit was issued,
13 you also continually reported no discharge from 1986
14 to 1994, correct?

15 A. I would not know anything previous to 1991
16 when I was employed.

17 Q. Okay. From the time you were employed until
18 Mr. Kammuegger's inspection of February 1994, no
19 discharge was reported for outfall 002?

20 A. That's correct.

21 Q. And you indicated in response to one of Mr.
22 Northrup's questions that you did not intentionally
23 file a false DMR. Did you know whether -- did you
24 monitor 002 to ever see if there were discharges

1 occurring?

2 A. No.

3 Q. Now, if you didn't do that, how could you
4 accurately and truthfully report that there were no
5 discharges?

6 A. I couldn't.

7 Q. And yet, that's what you reported and those
8 are the DMRs you signed?

9 A. I did it wrong.

10 Q. Now, do you know how many outfalls -- I
11 realize you've said you're not that involved with the
12 new NPDES permit. Do you know how many outfalls
13 you're required to monitor under that permit?

14 A. The new one I think there are eight.

15 Q. Have you had any problems monitoring any of
16 those eight outfalls?

17 A. We have been collecting samples from them.
18 I'm not aware that we've had real difficulty. I know
19 that there has been a few problems, a few glitches
20 that we're trying to work out.

21 Q. Do you review those DMRs that are submitted,
22 the DMRs under the new permit?

23 A. I do not think I've looked at them.

24 Q. And Beling Consultants, they're the ones that

1 do your lab work for you for the DMRs?

2 A. Yes.

3 Q. And they're still doing that today?

4 A. Yes.

5 Q. Were they your consultants in 1994?

6 A. As long as I've been at the site they've done
7 our analytical for our NPDES permit.

8 Q. Okay. Since 1991 as far as you know?

9 A. As far as I know, yeah.

10 Q. And is there a certain parameters list that's
11 in the permit that you give to Beling that they
12 conduct samples for?

13 A. Yes, there is.

14 Q. And then they report their analyses results
15 to you or to Watts?

16 A. They send us the reports directly.

17 Q. What does the lab charge you to run one
18 sample?

19 A. Our old permit it was 57 dollars per out --

20 Q. Per sample?

21 A. Per outfall.

22 Q. And was that from 1991 until April of 1996
23 when the new permit was issued?

24 A. I don't know -- I can't remember what the

1 prices were in '91. I looked at our most recent
2 invoice, just recently, and it was -- and this is the
3 most recent invoice before we switched our NPDES
4 program over. I happened to look at it the other day
5 knowing that I'd probably get asked this question.

6 Q. And that was the 57 dollars?

7 A. 57 dollars.

8 Q. So for the time prior to February 14 of 1994
9 when you were not sampling 002 and for the time period
10 that you did not sample 001 you weren't having to pay
11 Beling Consultants for any analyses, correct?

12 A. Not any NPDES analysis.

13 Q. Right. That's what I meant.

14 A. That's correct.

15 Q. To clarify, they were also doing groundwater
16 work for you?

17 A. Yes, they were.

18 Q. And so Watts then realized some savings as a
19 result of not sampling these outfalls?

20 A. I guess.

21 MS. SYMONS-JACKSON: That's all I have.

22 A. Okay.

23 HEARING OFFICER FRANK: Mr. Northrup.

24 MR. NORTHRUP: Just a couple of quick

1 questions.

2 REDIRECT EXAMINATION BY

3 MR. NORTHRUP:

4 Q. When we were talking about Respondent's
5 Exhibit 2, which is the Storm Water Pollution
6 Prevention Plan prepared pursuant to the NPDES permit,
7 does Watts rely on that plan?

8 A. Yes, we do.

9 Q. Is that plan required by permit?

10 A. It's required by our NPDES permit.

11 Q. What does the permit require with respect to
12 the preparation of that plan? Do you know?

13 A. I think it has to be within our operating
14 record within 180 days after the issuance of the
15 permit.

16 Q. Does the permit require you to notify --
17 strike that. Does the permit require you to submit
18 that plan to the Agency?

19 A. No, it does not.

20 Q. Does it require any kind of notification at
21 all to the Agency?

22 A. Not that I'm aware of.

23 Q. You said the landfill has reoccurring
24 problems with leachate. Do you recall that?

1 A. Yes.

2 Q. Are there long-term fixes available to
3 address leachate?

4 A. Yeah. We've submitted in the Significant
5 Modification a plan to extract leachate from the
6 landfill.

7 Q. And when can you implement that plan?

8 A. When a permitted is granted.

9 Q. I believe during direct examination you
10 indicated that a cost revision was submitted in
11 November.

12 A. Yes.

13 Q. Did that cost revision contain figures
14 related to closure of the gas management system?

15 A. Yes, it did.

16 Q. You also indicated Watts has had problems
17 maintaining vegetative cover on the west side of the
18 landfill?

19 A. Yes, I have.

20 Q. Is the west side of the landfill bare?

21 A. Not completely.

22 Q. There is some vegetation there?

23 A. Yes.

24 Q. Looking at People's Exhibit 68, does in fact

1 that reflect in your opinion the current elevations of
2 the landfill?

3 A. It does not reflect my opinion of the current
4 elevations of the landfill.

5 Q. Okay. Why not?

6 A. This map is -- you know, I don't know, three,
7 four years old. It was flown during a time when we
8 were doing a lot of excavation in the northeast corner
9 of the site and all the material that we were
10 excavating out was being stockpiled on top of the
11 landfill. We had piles of dirt up there 20, 30 feet
12 high.

13 Q. And that soil has been removed?

14 A. Some of it has been removed. We had
15 different stockpiles up there with different material.
16 We had a very good blue clay that we stockpiled in one
17 area. We had a different brown clay that we
18 stockpiled in another area. And then we had just
19 other soil that we would have no use for like in
20 constructing liners or cover material, and we
21 stockpiled that in another area. And in the last
22 three or four years we have slowly removed some of
23 that material for daily cover operations, intermediate
24 cover. We've removed some of the blue clay for liner

1 material, to construct our liners with.

2 So it's an ongoing process of -- and it's a common
3 practice at most landfills to stockpile soils on top
4 of the landfills. You know, it's a place that's close
5 to the after burial where you're going to need it. We
6 don't want to haul it necessarily to a much further
7 distance where it would take longer to get it to, we'd
8 use more fuel, we wouldn't be able to move as much
9 soil because it's a greater distance. And it's also
10 been used in the past to increase settlement. At one
11 landfill I used, we stockpiled I don't know how many
12 millions of cubic yards on top of a landfill and we
13 went in and removed that stockpile when there was a
14 need for it, and the landfill had settled ten to
15 fifteen feet, and we were able to add another lift of
16 garbage across the top of the landfill.

17 Q. Do you know the purpose of why this map,
18 People's 68, was originally prepared?

19 A. The original preparation by the company that
20 did the aerial or by Noble Earth?

21 Q. Both.

22 A. First of all -- and I don't remember which
23 company flew it. It was flown because we needed to
24 have an aerial or I -- we didn't necessarily have to

1 have an aerial for the Sig Mod, but we had to have a
2 topographical map. One of the easiest and cheapest
3 ways to obtain that is -- on such a large area like
4 this is with an aerial survey. That's what this was
5 originally prepared for when we started work on the
6 Sig Mod, which would have been, you know, three, four
7 years ago.

8 Noble Earth Corporation we supplied this map to
9 them just as a way that they could document the areas
10 that they probed the landfill cover to document the
11 thickness of it and to help them track the locations
12 where they pulled samples.

13 Q. Are you familiar with aerial surveys?

14 A. Yeah.

15 Q. How accurate are they?

16 A. They're only as accurate as the land survey
17 that's performed, the ground survey that supplies --
18 the ground -- they take a picture of the area with a
19 plane, just with a regular -- it's a specialized
20 camera but it's -- and you get a picture, a photograph
21 of it, and they scan that photograph, and by scanning
22 it, the computer can pick up the changes of elevations
23 relative to each other. But you have to give them the
24 baseline information. And so you establish points

1 throughout the site. And in this case we actually
2 established points, you know, as much as a half mile
3 or a mile away from our landfill. We did a complete
4 perimeter around the site, and to the west, to the
5 east, you know, to the north and the south we
6 established these points. And those points are known,
7 you know, done by a ground survey. And those points
8 then are entered into the computer and then the
9 computer adjust -- you know, enters all the data in
10 between everything else.

11 Q. I believe the new NPDES permit gave you -- or
12 contained eight discharge points?

13 A. Uh-huh.

14 Q. Has that number reduced -- do you discharge
15 from all eight points?

16 A. No, I don't think we -- we do not. We've
17 implemented a program where we're trying to eliminate
18 as many discharge points as possible so we only have
19 runoff leaving the site at the minimum amount of
20 points, and I think we'd like to try to get down to
21 four points.

22 Q. What have you done to minimize those
23 discharges?

24 A. We've grade --

1 Q. Discharge points?

2 A. We've graded areas. We've constructed berms
3 to divert the water away from those areas, so the
4 storm water runoff will go to another -- we're
5 probably like -- I guess you could say we're trying to
6 combine discharge points.

7 MR. NORTHRUP: I don't have any further
8 questions.

9 HEARING OFFICER FRANK: Anything else?

10 MS. SYMONS-JACKSON: Just a couple real brief
11 to follow up.

12 RECROSS-EXAMINATION BY

13 MS. SYMONS-JACKSON:

14 Q. I'm curious as to why you would hire someone
15 to conduct a survey knowing that the contours were not
16 going to be accurate.

17 A. I didn't say these contours weren't accurate.
18 I said they're not accurate representation of what's
19 at the site right now.

20 Q. Why would you -- how much does an aerial
21 survey like this cost?

22 A. About 4, 5,000 dollars.

23 Q. Why would you spend 4 or 5,000 dollars on an
24 aerial survey when you know or when you allege that

1 there is cover material on top of the landfill that
2 may bring it overheight and you may have contours that
3 show up on your survey that show the landfill to be
4 overheight?

5 A. Well, we're not trying to hide anything here.
6 I mean, you know, we know what our permit is. We know
7 how high we have to fill garbage and we'll comply with
8 that.

9 Q. Tom, isn't it true that maximum elevation
10 limits are not just for garbage but for everything,
11 cover material and everything on top of the landfill?

12 A. Those are the final cover contours. When we
13 close the site, that is what the elevation is supposed
14 to be. I don't know of any regulation that prevents
15 us from utilizing those areas for stockpile material.

16 Q. Mr. Northrup asked you about the accuracy of
17 aerial surveys and you indicated that sometimes these
18 surveys may not be totally accurate. Is that right?

19 A. It depends on -- they're only as accurate as
20 the ground survey performed as the baseline.

21 Q. Now, when you spend, what did you say, 4 or
22 5,000 dollars on an aerial survey, wouldn't you want
23 your survey company to do all they could to make sure
24 the results were going to be accurate?

1 A. I assume that it's accurate, yeah. I have no
2 reason to doubt that these were the conditions at the
3 site when the aerial was taken.

4 MS. SYMONS-JACKSON: Okay. That's all.

5 HEARING OFFICER FRANK: Mr. Northrup?

6 MR. NORTHRUP: No further questions.

7 HEARING OFFICER FRANK: Okay, thank you, Mr.
8 Jones.

9 (Witness excused)

10 HEARING OFFICER FRANK: Mr. Northrup, did you
11 have another witness?

12 MR. NORTHRUP: Yes. John Reiser.

13 JOHN REISER

14 called as a witness herein, having been first duly
15 sworn, was examined and testified as follows:

16 DIRECT EXAMINATION BY

17 MR. NORTHRUP:

18 Q. Can you go ahead and state your name for the
19 record?

20 A. John Reiser.

21 Q. Where do you work?

22 A. ESG Watts.

23 Q. Where at?

24 A. At the Sangamon Valley Landfill here in

1 Springfield.

2 Q. What do you do there?

3 A. I'm the -- my title is technical
4 representative, and I'm the certified operator for
5 that landfill and work with the day-to-day operations
6 of that facility.

7 Q. As a practical matter what are some of the
8 things that you do?

9 A. Both deal with the County and State
10 inspectors, work with our engineering staff on
11 submittals for Sangamon Valley Landfill, work on some
12 of the, you know, record and information data
13 gathering that's required for the landfill from the
14 permits, you know, the regulatory compliance things
15 that are required by the permits.

16 Q. How long have you been at ESG Watts?

17 A. I've worked at Watts for, let's see,
18 approximately six years.

19 Q. And has that all been at the Sangamon Valley
20 Landfill?

21 A. Most of it has been in Springfield after some
22 training time in Taylor Ridge. My duties have changed
23 during that time.

24 Q. How have your duties changed over the years?

1 A. I began working at Watts as a salesperson for
2 special waste and then my duties have expanded to
3 include some of the more day-to-day operations of the
4 landfill.

5 Q. Just give me a real brief background on your
6 educational, where you went to high school, where you
7 went to college, what your degree's in?

8 A. Graduated from Porta High School in
9 Petersburg in 1985, have a Bachelors of Science Degree
10 from the University of Notre Dame in 1989. That
11 degree was professional studies with a minor in
12 business, mostly like biology, sciences.

13 Q. So the major was primarily biology?

14 A. Yeah.

15 Q. In your position at Watts are you familiar
16 with the various permits that have been issued for
17 that facility?

18 A. For the Sangamon Valley facility?

19 Q. For the Sangamon Valley facility.

20 A. Yes, I am.

21 Q. Are you familiar with some litigation, it's
22 captioned as 91-CH-242, that occurred in Sangamon
23 County before Judge Zappa?

24 A. Yes, I am.

1 Q. How are you familiar with that?

2 A. I was a witness at the hearing and I've also
3 dealt with coming into compliance with the court order
4 issued for that case.

5 Q. Does the Sangamon Valley Landfill have any
6 permits related to groundwater remediation?

7 A. Yes, we do.

8 Q. How many?

9 A. Well, there's one main one called 1992-57.

10 Q. When was that issued?

11 A. In 1992, August I believe.

12 Q. And what does that permit require?

13 A. Several things. There's a requirement for
14 groundwater removal. Basically we had to construct
15 four wells on the southeast corner of the landfill to
16 serve as a hydraulic barrier to keep contaminated
17 groundwater from leaving our property, required
18 installing three leachate wells on the south face of
19 the landfill, some like soil investigation around our
20 shop area to make sure that that wasn't contaminating
21 the groundwater. It's also required some additional
22 monitoring of groundwater wells on an annual basis for
23 volatile organic compounds.

24 Q. What groundwater wells are you required to

1 sample --

2 A. The --

3 Q. -- through the permit?

4 A. Through that permit, I couldn't quote you the
5 numbers, but basically they're the ones, you know,
6 surrounding on the southeast, in the southeastern
7 corner of the removal project. Some of them are -- we
8 put in a new well, you know, beyond the hydraulic
9 barrier to use to sample as like a background well,
10 and then the others, you know, basically surround the
11 well, you know, the well system.

12 Q. Are there private residences in proximity to
13 the landfill?

14 A. Yes, there are.

15 Q. Do you know do those residences have
16 groundwater wells?

17 A. Yeah, everyone in the well is on private
18 wells.

19 Q. Does that permit require you to do anything
20 with those wells?

21 A. Yes. We're also sampling four private wells,
22 basically the four nearest to where we installed the
23 groundwater removal system.

24 Q. And from time to time has Watts sampled those

1 wells?

2 A. Yes, we have.

3 Q. Have any of those samples showed
4 contamination attributable to the landfill?

5 A. No, they have not.

6 Q. Are you currently pumping and treating
7 groundwater at the landfill?

8 A. Yes, we are.

9 Q. And you're doing that pursuant to permit?

10 A. Correct.

11 Q. What -- how are you treating that
12 groundwater?

13 A. The groundwater is pumped and then it's
14 hauled to the Sanitary District, the Springfield Metro
15 Sanitary District for disposal.

16 Q. How many wells do you pump water from?

17 A. There are four.

18 Q. And those are located?

19 A. Basically on the southeastern edge of our
20 facility.

21 Q. Are you currently removing any leachate?

22 A. Yes, we are.

23 Q. And how many wells are you removing the
24 leachate from?

1 A. Three.

2 Q. Where are those wells located?

3 A. Those wells are located on the south face of
4 the landfill, more towards the western side.

5 Q. Let me show you what has been marked People's
6 Exhibit 64. Do you want to go ahead and identify that
7 for me?

8 A. Let's see, it's a supplemental contempt order
9 from the Sangamon County court.

10 Q. Okay. Are you familiar with that order?

11 A. Yes, I am.

12 Q. How is that?

13 A. Just through working at the facility. One of
14 my duties was to help meet the parts of the order.

15 Q. Is it fair to say that that order required
16 the removal of waste or in the alternative filing a
17 siting application with the County?

18 A. Yes, it is.

19 Q. Has any waste been removed?

20 A. Well, actually, yes, it has been.

21 Q. Has any waste been removed pursuant to that
22 order?

23 A. No, not done pursuant to this order.

24 Q. Has a siting application been filed?

1 A. Yes, there has been.

2 Q. When was that?

3 A. That was filed December 2nd.

4 Q. Why wasn't it filed December 1st?

5 A. December 1st was a Sunday and the County
6 Clerk's office was closed.

7 Q. Okay. Let's turn to page 2. And beginning
8 right there can you read that, just that sentence?

9 A. "As to closure, the defendants have made no
10 attempts to conform the slopes to final contours and
11 to provide final cover."

12 Q. With respect to conforming the slopes to
13 final contours, have you done anything to conform the
14 slopes to final contours?

15 A. Well, because the -- there was overfill, we
16 haven't been able to conform the -- until we get the
17 siting application back, then we'll have to put in a
18 permit to change the final contours.

19 HEARING OFFICER FRANK: Can you speak up,
20 please?

21 A. Sorry.

22 HEARING OFFICER FRANK: That's okay.

23 Q. Does -- with respect to providing final
24 cover, does the Sangamon Valley Landfill have final

1 cover?

2 A. No, we do not have final cover in place.

3 Q. Why not?

4 A. Basically until we resolve the overfill
5 issue, we won't be -- we can't put on final cover
6 because if we lose the siting application and are
7 required to remove the overfill, you know, we would
8 have wasted all that work and we can't afford to do it
9 twice basically.

10 Q. Is there intermediate cover on the landfill?

11 A. Yes, there is.

12 Q. Let me show you People's Exhibit 63. Can you
13 just go ahead and identify that for me?

14 A. This is a contempt order from the Sangamon
15 County courts.

16 Q. Let me turn -- direct your attention to page
17 4 and at the top of that page it was your -- you were
18 required to work on approximately 400 feet on the
19 south portion of area 1, et cetera, et cetera. Has
20 Watts done anything to comply with that requirement?

21 A. Yes. We've installed a bentonite slurry wall
22 in that section of the liner.

23 Q. Okay. And has that been acceptable to the
24 Agency?

1 A. Yes. They issued a permit to allow us to
2 construct that liner as a replacement to the original
3 permit.

4 HEARING OFFICER FRANK: You need to speak up.

5 A. I'm sorry.

6 HEARING OFFICER FRANK: That's okay.

7 Q. With respect to subpart B, which talks about
8 proper certification of remainder of the sidewall
9 liner, now what have you done to comply -- what has
10 Watts done to comply with that?

11 A. We've had a soil -- sidewall liner
12 investigation which the final report was turned in in
13 early November of this year. That permit will be the
14 third one issued by the EPA dealing with the sidewall
15 liner investigation.

16 Q. Okay. So that certification hasn't been
17 approved yet?

18 A. No, no, that permit is still on file so --

19 Q. Okay. But the documentation has been
20 submitted?

21 A. Correct.

22 Q. And the Agency is reviewing that?

23 A. Right.

24 Q. Turn to page 5. Let me direct your attention

1 to paragraph 6, which discusses the installation of
2 best available technology for noise control. What has
3 Watts done to comply with that requirement?

4 A. Watts contacted a muffler manufacturer called
5 Nelson Muffler and they reviewed our list of our
6 equipment and recommended their best available
7 mufflers for us, and we installed that equipment --
8 those particular mufflers on our equipment.

9 Q. Let's look at paragraph 7, which talks about
10 implementation of the groundwater remediation program.
11 Is it your understanding that Watts has complied with
12 those requirements?

13 A. Yes, it is.

14 Q. Now, why don't you take a look at paragraph
15 8, this is on page 6, which talks about surface water
16 control measures as required by permits. Now, what
17 has Watts done to comply with that requirement?

18 A. We've finished construction of the storm
19 water outfalls that were required by that permit.
20 Basically they required some concrete pipe being -- to
21 go from a mid slope terrace down to the level, that
22 was to cut down on erosion and keep erosion from
23 destroying the side slopes.

24 MR. NORTHRUP: Those are all the questions I

1 have.

2 MR. DAVIS: If I may.

3 CROSS-EXAMINATION BY

4 MR. DAVIS:

5 Q. Mr. Reiser, pursuant to the original judgment
6 order entered in February of 1994 the Sangamon Valley
7 Landfill was supposed to initiate closure by May 31st
8 of '94, isn't that correct?

9 A. Yeah.

10 Q. And shortly thereafter, during June of 1994
11 the landfill ceased accepting commercial hauling tips?

12 A. Correct.

13 Q. Okay. And subsequent to that, John, in
14 February, I believe of 1994, pursuant to the first
15 contempt order, your landfill ceased accepting all
16 wastes?

17 A. '90?

18 Q. '95?

19 A. '95, right, okay.

20 Q. Being shut down has not prevented you from
21 implementing these corrective action and corrective --
22 and compliance measures, has it?

23 A. Yeah, that's what we've been working on since
24 we've been shut down.

1 Q. Sure. Recently with the filing of the local
2 siting petition the Watts companies paid a filing fee
3 of 200,000 dollars to Sangamon County, did they not?

4 A. That's correct.

5 Q. And recently the Watts companies paid -- made
6 a payment toward penalty of 129,500 and something, did
7 they not?

8 A. That's correct.

9 Q. Would you agree, John, that there seems to be
10 approximately 150,000 dollars remaining to be paid on
11 the original penalty?

12 A. Correct.

13 Q. Would you also agree that there would be
14 200,000 dollars on the contempt sanction to be paid?

15 A. If -- yeah, I think it's -- I'm not exactly
16 sure on the contempt whether the judge has affirmed
17 that or not, but the 200,000 I -- probably that's in
18 one of those reports, but I'll believe you if you say
19 so.

20 MR. DAVIS: Okay. Thank you.

21 That's really it. Thank you.

22 HEARING OFFICER FRANK: Mr. Northrup, have
23 you got anything additional?

24 MR. NORTHRUP: Yeah, let's see.

1 No. I don't have anything.

2 HEARING OFFICER FRANK: Okay. Thank you, Mr.
3 Reiser.

4 (Witness excused)

5 HEARING OFFICER FRANK: Do you have any other
6 witnesses?

7 MR. NORTHRUP: I do not.

8 HEARING OFFICER FRANK: Then I would like to
9 take a ten minute break until a quarter till 4 before
10 we start with your rebuttal.

11 (A recess was taken.)

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

14 You have rested?

15 MR. NORTHRUP: Yes.

16 HEARING OFFICER FRANK: Okay. Then, Ms.
17 Symons-Jackson, did you have additional witnesses you
18 wished to call?

19 MS. SYMONS-JACKSON: Yes, we do.

20 Before we call our first witness, we would just
21 tender People's Exhibit 69 into evidence. It's a copy
22 of the amended complaint in the Sangamon County case
23 91-CH-242 that Mr. Reiser was talking about. I
24 believe we've already stipulated to all court filings,

1 and so would I just offer this into evidence.

2 MR. NORTHRUP: Yeah. I don't have any
3 objection.

4 HEARING OFFICER FRANK: Is there a date on
5 there?

6 MR. DAVIS: This was a document that was hand
7 delivered to the court on November --

8 MS. SYMONS-JACKSON: 18, 1992.

9 MR. DAVIS: -- 18, '92.

10 HEARING OFFICER FRANK: Okay. I just wanted
11 it for the exhibit list. That's fine. That is
12 admitted.

13 (People's Exhibit Number 69 admitted.)

14 MS. SYMONS-JACKSON: And our first rebuttal
15 witness is Mr. Kenneth Liss.

16 HEARING OFFICER FRANK: I believe you
17 testified at our last hearing, so you are still under
18 oath.

19 MS. LISS: Okay.

20 KENNETH LISS
21 called as a witness herein, having been previously
22 duly sworn, was examined and testified as follows:

23 DIRECT EXAMINATION BY

24 MS. SYMONS-JACKSON:

1 Q. Now, Ken, as indicated, you previously gave
2 testimony during the October 29 and 30th hearing in
3 this matter, correct?

4 A. That's correct.

5 Q. And at that time you had not had an
6 opportunity to review the Sig Mod resubmittal, as
7 we've been calling it, from Watts?

8 A. That's correct.

9 Q. At this point in time have you or the
10 groundwater unit of the Agency been able to perform a
11 review of that submittal?

12 A. Yes, we have.

13 MR. NORTHRUP: Okay. I'm going to object at
14 this point. I'm going to object to any testimony from
15 Mr. Liss on the -- his review of the Sig Mod
16 resubmittal. I believe when we left off at the
17 hearing on the 30th, the issue of rebuttal witnesses
18 came up. I was specifically allowed the opportunity
19 to depose anyone that the Agency -- that the AG would
20 call as a rebuttal witness specifically with regard to
21 the Sig Mod resubmittal. I have not been given that
22 opportunity. I have not been notified that Mr. Liss
23 was going to testify today. Therefore, I'm objecting
24 to any of his testimony.

1 HEARING OFFICER FRANK: Ms. Symons-Jackson?

2 MS. SYMONS-JACKSON: In response, first of
3 all -- a couple of things. First of all, Mr. Northrup
4 has already been given the opportunity to depose Mr.
5 Liss and he did. Second thing, there was a report
6 prepared by the personnel of the groundwater unit of
7 the EPA and that document was provided to Mr.
8 Northrup. Mr. Liss' testimony today is basically
9 going to be on that report and that report was
10 provided to Mr. Northrup. Upon receiving that report,
11 Mr. Northrup did not contact me or my office
12 requesting a deposition of Mr. Liss.

13 HEARING OFFICER FRANK: Did you tell him that
14 Mr. Liss would be testifying today?

15 MS. SYMONS-JACKSON: Not specifically, no.

16 MR. NORTHRUP: Let me follow up. I received
17 this --

18 MS. SYMONS-JACKSON: Well, if I could back
19 up. At the previous hearing I think we indicated in
20 conclusion of our hearing that we would be submitting
21 this Sig Mod submittal to the Agency, including
22 someone from the groundwater unit, Ken Liss, and
23 possibly someone from permits to review, and that was
24 the purpose of our needing additional time to put on

1 rebuttal evidence because the submittal was sent to
2 the Agency on October 18. It was not received by them
3 until less than a week before the hearing, and they
4 didn't have time to review it. Mr. Northrup was aware
5 of our intentions regarding rebuttal evidence.

6 MR. NORTHRUP: In response, I received this
7 memo from the AG's office on December 10th, which is
8 two days before this hearing. I don't think that
9 gives me any time -- any reasonable time to review it,
10 certainly to depose Mr. Liss. And once again, I mean
11 I'll just state right out of the transcript on page
12 623, and this is the Hearing Officer speaking, "Mr.
13 Northrup, I did agree to let you depose whatever
14 witness the Attorney General's office decides that
15 they are going to use to testify."

16 HEARING OFFICER FRANK: Okay.

17 MR. DAVIS: What did we talk about during the
18 telephone conference --

19 HEARING OFFICER FRANK: You're asking me to
20 recall a telephone conference that I don't
21 specifically recall. Why don't you tell me what we
22 talked about?

23 MR. DAVIS: -- that you ordered the parties
24 to have so that we'd be ready to proceed?

1 Yes, I am asking you that. Because I don't
2 remember, either.

3 HEARING OFFICER FRANK: My -- I can tell you
4 that it was very clear when we left you objected. You
5 objected several times to the fact that I as the
6 Hearing Officer ruled that Mr. Northrup would have the
7 opportunity to depose whoever you decided to call. It
8 was left open at the close of the last hearing as to
9 who you were going to call.

10 MR. DAVIS: Sure.

11 HEARING OFFICER FRANK: Because you guys
12 weren't sure who you were going to call.

13 MR. DAVIS: But we talked about this on the
14 phone, didn't we, Charlie?

15 MR. NORTHRUP: We talked about setting this
16 date.

17 HEARING OFFICER FRANK: We talked about a
18 hearing date.

19 MR. NORTHRUP: I don't recall one way or
20 another what we talked about.

21 HEARING OFFICER FRANK: I'm not sure the
22 three of us were ever on the phone together because
23 you guys were supposed to call me, and I ended up
24 calling both Amy and Charlie about hearing dates, and

1 at that time I specifically asked Amy is X person
2 going to testify, and she said, "I don't know yet."
3 If you're talking about that conversation between me
4 and Amy, I remember that clearly.

5 MR. DAVIS: That's what I'm asking you.

6 HEARING OFFICER FRANK: So at that point she
7 still was not sure who was going to be testifying.
8 That was part of what she was going to check on for
9 checking hearing dates.

10 I am not going to allow this witness to testify.
11 As Charlie read straight from the transcript, it was
12 very clear that you were to allow him enough time to
13 depose a witness. And I know that you objected to it,
14 but that was still my ruling, and you guys did not try
15 to have the Board overrule that.

16 MR. DAVIS: Then we'll make an offer of
17 proof.

18 HEARING OFFICER FRANK: Okay. That's fine.
19 You may do that.

20 Q. (by Ms. Symons-Jackson) Ken, I believe my
21 last question to you was at this point in time you
22 have had an opportunity to review the Sig Mod
23 resubmittal?

24 A. Yes, that's correct.

1 Q. And during your previous testimony in this
2 matter you indicated that it was your opinion, based
3 on your review of all available information, that the
4 groundwater at the Taylor Ridge site was classified as
5 a Class I groundwater, is that accurate?

6 A. Yes.

7 Q. Now, does the Sig Mod submittal from Watts
8 address the classification of groundwater at the site?

9 A. Incompletely. So it addresses it, but it
10 does not address all of the units at the site.

11 Q. Okay.

12 A. In the classification.

13 Q. Can you explain for me what you mean by that?

14 A. In the different stratum there are some wells
15 and I guess hydraulic information to attempt to
16 indicate that it's Class II, but the information is
17 incomplete to verify the validity of the data, and
18 some of the units are not characterized with respect
19 to classification in that report.

20 Q. Okay. So, Ken, based on your review of this
21 Sig Mod submittal, what is your opinion today as to
22 the classification of groundwater at the site?

23 A. I would still say we would consider it Class
24 I at this time.

1 Q. Briefly, one other area to touch on. I
2 believe you testified prior in this case that an
3 assessment or assessment monitoring is required at
4 this site.

5 A. Yes.

6 Q. Of the groundwater. And is that still your
7 opinion today?

8 A. Yes, it is.

9 Q. How is the requirement of assessment
10 monitoring triggered?

11 A. Based on a comparison of groundwater data at
12 the site where we find exceedences over the background
13 or exceedences over State standards -- groundwater
14 standards.

15 Q. So is it fair to say when an exceedence or an
16 event, can we call it, occurs, that this in turn
17 requires the performance of assessment monitoring?

18 A. That's correct.

19 Q. Now, does the Sig Mod submittal address
20 groundwater assessment?

21 A. No, it does not.

22 Q. Is there an assessment -- there's not an
23 assessment monitoring plan proposed in that Sig Mod
24 submittal?

1 A. There is information provided for an
2 assessment, but it does not meet the rules that are
3 applicable to that type of a facility.

4 Q. And so is it your opinion that that
5 assessment monitoring plan that is prepared is
6 incomplete?

7 A. Yes.

8 Q. And can you briefly tell us how it is
9 incomplete?

10 A. It does not contain the frequency of
11 monitoring. It does not contain the parameters which
12 were concerned. I think there are about seven or nine
13 organic parameters that were detected that were not
14 included in the assessment, which is the basis for the
15 assessment, or additional monitoring wells, or the
16 federal assessment monitoring parameter list.

17 Q. Now, are there elements under Section 811.319
18 of the Pollution Control Board regulations that
19 pertain to groundwater assessment?

20 A. Yes.

21 Q. And does the Sig Mod submittal address --
22 adequately address those five elements?

23 A. No.

24 Q. Are you aware, Ken, what the status of this

1 -- can we call it a Sig Mod Application now? Has a
2 Sig Mod Application been made?

3 A. That's correct.

4 Q. And that was made first couple weeks of
5 November?

6 A. I think it was the end of October.

7 Q. You're not quite sure on the date?

8 A. I'm not quite sure. I think it was October.

9 Q. Do you know what the current status of that
10 Sig Mod Application is?

11 A. We denied it based on incompleteness. Do you
12 want me to explain what that means?

13 MS. SYMONS-JACKSON: That's fine. That's all
14 I have.

15 HEARING OFFICER FRANK: Okay. Mr. Northrup.

16 CROSS-EXAMINATION BY

17 MR. NORTHRUP:

18 Q. When did you deny the Sig Mod based on
19 incompleteness?

20 A. Official -- the official denial I think was
21 yesterday, the 12th.

22 Q. Has Watts -- how has Watts been notified of
23 that denial?

24 A. The notification would have been mailed and

1 signed yesterday.

2 Q. Now, this is an incompleteness denial, so
3 does that mean that Watts has an opportunity to make
4 it complete?

5 A. There is some information on the -- above the
6 signature of the permit section manager that explains
7 the alternatives to filing an appeal, resubmitting the
8 application, and a time frame.

9 Q. With respect to resubmitting the application,
10 what is the time frame associated with that?

11 A. I think it's 35 days.

12 Q. If in fact this -- these incompleteness
13 points are addressed, something is resubmitted within
14 35 days, what happens then?

15 A. We will look at that for completeness.

16 Q. Basically do your completeness review all
17 over again?

18 A. Correct.

19 Q. If it is deemed complete, what happens?

20 A. We'll do a full technical review.

21 Q. If it is incomplete, what happens?

22 A. We will deny it based on incompleteness.

23 Q. Which would give Watts another 35 days to --

24 A. I think so.

1 Q. Would you consider portions of the
2 groundwater at the facility to be Class II
3 groundwater?

4 A. As I testified previously, I think there's a
5 potential that one of the units could be classified as
6 Class II.

7 Q. Are you familiar with the original Sig Mod
8 that was submitted for the Taylor Ridge facility?

9 A. The one that was denied in February of '95?

10 Q. Right.

11 A. Yeah, I'm familiar with it.

12 Q. Did the Agency perform a technical review on
13 that?

14 A. I think the denial was based on a technical
15 review.

16 Q. So in other words, that application was
17 complete?

18 A. That would indicate it's complete. Or it
19 could be the Agency passed its technical completeness
20 review time period. If we don't perform a technical
21 completeness within so many days, 30 days, and issue a
22 letter of incompleteness, we have to do a full
23 technical review. I don't think we're required to do
24 a completeness review.

1 Q. Do you recall if a letter of incompleteness
2 was issued for that permit?

3 A. No, I don't recall.

4 MR. NORTHRUP: I don't have any further
5 questions.

6 HEARING OFFICER FRANK: Anything else?

7 MR. DAVIS: Ms. Hearing Officer, let me take
8 just a minute here to state something.

9 First of all, we opposed the request for
10 deposition. We objected. We didn't disagree with
11 your ruling. We didn't seek any appeal of it. We did
12 attempt to comply by giving notice. Obviously or
13 apparently, that was insufficient.

14 But what we've done here on an offer of proof has
15 been in good faith. What Mr. Northrup has done is to
16 avail himself of cross-examination and to go beyond
17 the scope of our offer of proof. Now he has
18 acquiesced in that. He has waived any claim of
19 prejudice. And that's what I wanted to say.

20 HEARING OFFICER FRANK: Okay. Well, you can
21 bring that issue before the Board because it will be
22 up to the Board as to whether or not they're going to
23 accept the offer of proof, and I'm going to leave it
24 to them to decide.

1 MR. DAVIS: Sure.

2 HEARING OFFICER FRANK: And if you want to
3 use that argument before them, you certainly may.

4 MR. DAVIS: I think I'll have to.

5 MR. NORTHRUP: Let me just respond, too. I
6 mean that's -- the purpose of being given the
7 opportunity to depose anybody you were going to call
8 was to be able to go into certain things in depth what
9 their testimony was going to be. I have been denied
10 that opportunity. It was stated at the last hearing
11 on the 30th if witnesses were going to be called, I
12 was going to have Steve Keith here from Milwaukee to
13 assist in that. Since I did not know, I was not
14 availed of the opportunity to have my people here to
15 effectively cross-examine Mr. Liss. I have not waived
16 anything by asking him some follow-up questions to
17 your questions.

18 MR. DAVIS: May I?

19 What was the date on the document that we faxed to
20 you?

21 MR. NORTHRUP: The memo from Andrew Catlin to
22 Ken Liss was dated December 3rd of '96.

23 MR. DAVIS: When did you receive it?

24 MR. NORTHRUP: I received my fax at the top

1 says December 10th at 10:52 a.m..

2 MR. DAVIS: Does it show when we received it?

3 MR. NORTHRUP: Where would it show that?

4 MR. DAVIS: It would have been a fax.

5 MR. NORTHRUP: I would assume you received it
6 on December 10th at 10:50 -- it came in sequentially,
7 10:53, 10:54, that type of thing.

8 MR. DAVIS: Okay. So it looks, Charlie, as
9 if we turned it right around to you after we got it.

10 MR. NORTHRUP: Oh, that's what it looks like,
11 yeah. And I don't dispute that --

12 HEARING OFFICER FRANK: At this point you
13 guys are making arguments that are better off before
14 the Board.

15 MR. DAVIS: I'm trying to get some facts into
16 the record if you don't mind. If will just take
17 another half a minute.

18 HEARING OFFICER FRANK: Okay.

19 MR. DAVIS: Did you think that we might be
20 calling Mr. Liss or did you think that we might not be
21 calling Mr. Liss?

22 HEARING OFFICER FRANK: I don't think it's
23 appropriate for you to be questioning Mr. Northrup.
24 If you want to make arguments to the Board as to

1 accepting the offer of proof, you may do so.

2 MR. DAVIS: It's a minor issue, Ms. Hearing
3 Officer.

4 HEARING OFFICER FRANK: I am not going to
5 allow you to question the other attorney at this
6 point.

7 MR. DAVIS: But I already have.

8 HEARING OFFICER FRANK: Well, let's move on.
9 If you would like to call another witness, you may do
10 so.

11 MR. DAVIS: Joyce Munie.

12 MR. NORTHRUP: I'm going to make the same
13 objection to her.

14 MR. DAVIS: Different issue.

15 HEARING OFFICER FRANK: Well, let Joyce come
16 on up.

17 Thank you.

18 (Witness excused)

19 JOYCE MUNIE

20 called as a witness herein, having been first duly
21 sworn, was examined and testified as follows:

22 DIRECT EXAMINATION BY

23 MR. DAVIS:

24 Q. Would you state your name and occupation,

1 please?

2 A. My name is Joyce Munie. I'm the Solid Waste
3 Unit Manager in the Bureau of Land, Permit Section.

4 Q. And how long have you worked for the Illinois
5 EPA?

6 A. I've worked for the Agency since October of
7 1984.

8 Q. Could you summarize your credentials and
9 qualifications in 30 seconds or less?

10 A. I am a Licensed Professional Engineer in the
11 State of Illinois. I have a degree in environmental
12 engineering from Southern Illinois University at
13 Carbondale.

14 Q. Now, Joyce, we've asked you to testify
15 concerning a meeting that you may have had with the
16 folks from the ESG Watts company back in August of
17 1995. Do you understand that?

18 A. Yes.

19 Q. Was this meeting intended to address the
20 denial points from the February 1995 denial of the Sig
21 Mod?

22 A. This meeting was meant to assist Watts in
23 complying with the denial, to come to compliance with
24 the regulations, and to explain the denial to them.

1 Q. Okay. And was the meeting at their request?

2 A. I'm sorry, I don't recall. It probably was.

3 Q. Did you have a productive discussion
4 regarding the various technical issues?

5 A. I thought we did, yes.

6 Q. Did you come to any agreement or arrangement
7 as to how a resubmittal of the Significant
8 Modification Application would be made by Watts?

9 A. We didn't so much as discuss the resubmittal
10 specifically of the application. We discussed how
11 they would go through the denial and -- I guess we did
12 discuss the resubmittal of the application. That they
13 would have to submit information in regards to all the
14 denial points and attempt to address all the
15 regulations that the denial said they did not comply
16 with in the first one and then resubmit the
17 application to us.

18 Q. Now, were you senior staff member, if you
19 will, in attendance on behalf of the Agency at that
20 meeting?

21 A. Yes, I was.

22 Q. Did you allow Watts to deviate from any of
23 the generally applicable procedures or requirements as
24 far as permit application submittals?

1 A. Not in regards to the resubmittal of the
2 application, no.

3 Q. Now, I can represent to you that there's been
4 testimony to the effect that all they had to do was to
5 send in some supplemental information, along with a
6 letter -- cover letter indicating that nothing else
7 had changed. Would this be acceptable to the Agency?

8 A. Not as a resubmittal to the Significant
9 Modification Application.

10 Q. And was a filing made in mid October, I think
11 October 18th, 1996, from this company?

12 A. I don't know the specific date, but we did
13 receive some information that was purporting to
14 address the denial points.

15 Q. And what action did the Agency take with that
16 submittal?

17 A. We rejected that application on the basis
18 that it did not include application forms and
19 signatures, and we sent the information back.

20 Q. Was there a subsequent filing by this
21 company?

22 A. Yes. They submitted a Significant
23 Modification Application.

24 Q. Let me show you what we've just marked, and

1 for that matter just received, from your Agency.
2 We've identified this as Exhibit 70. Could you
3 identify it as to subject matter and so forth?

4 A. This is a letter of incompleteness for the
5 Significant Modification Application for Watts
6 Landfill, Andalusia in Rock Island County.

7 Q. Is this an official permitting action by the
8 Illinois EPA?

9 A. Yes, it is.

10 Q. Would you consider this to be a business
11 record created and maintained in the usual course of
12 the business of the Illinois EPA?

13 A. Yes.

14 MR. DAVIS: We would move into evidence
15 Exhibit 70.

16 HEARING OFFICER FRANK: Is there any
17 objection?

18 Is the letter dated yesterday?

19 A. Yes.

20 MR. NORTHRUP: Yeah, I am going to object to
21 it. And the basis is that the whole point of our
22 discussion on the 30th was that the Agency would
23 present a witness to discuss the items in the
24 resubmittal. You've already ruled, I mean, they

1 didn't give me the opportunity to depose anybody, and
2 I think this is just a backdoor attempt to get their
3 determination into the record without allowing me any
4 opportunity to cross-examine or to depose and to have
5 my witnesses look at the substance of the denial.

6 MR. DAVIS: It is not a backdoor attempt. We
7 had intended to put Ken Liss on to address certain
8 specific issues. Ms. Munie has been called to attempt
9 to rebut the assertion that's been made several times
10 regarding some sort of commitment by the Agency on the
11 act of filing. As to this Exhibit Number 70, it's a
12 business record. It -- I haven't read it. I don't
13 know what it says, but it is an official action by the
14 EPA on what they filed as Exhibit 1, and I think it
15 has intrinsic value for that purpose. We're not
16 asking her, nor is she prepared to discuss any of the
17 technical matters underlying the decision. It's not a
18 technical decision. It's a matter of completeness.

19 HEARING OFFICER FRANK: I'm going to allow
20 it. I believe that it's relevant to this case.

21 (People's Exhibit Number 70 admitted.)

22 Q. Joyce, let me show you what we've had
23 admitted previously as Exhibit 56 and ask if this
24 appears to be a permit issued by your Agency on

1 January 9, 1996?

2 A. Yes, it is.

3 Q. And is it your understanding that this permit
4 is under appeal to the Pollution Control Board?

5 A. Yes.

6 Q. Now, let me back up once again to August
7 1995. Did you participate in discussions with the ESG
8 Watts company regarding the need for assessment
9 monitoring for their groundwater problems?

10 A. Yes. We discussed groundwater monitoring at
11 the landfill while they were attempting to get their
12 Significant Modification.

13 Q. Even though his testimony is in dispute or
14 subject to being stricken from the record, did you
15 understand that Mr. Liss just now indicated that
16 assessment monitoring was triggered at this facility
17 because of some exceedences in the monitoring reports?

18 A. Yes.

19 Q. Now, as a general matter, isn't this how it
20 happens?

21 A. Yes. They start monitoring groundwater, and
22 if something is found, it's triggered, then they start
23 an assessment.

24 Q. That's the whole point of quarterly

1 monitoring and so forth, isn't it?

2 A. Yes.

3 Q. Now, getting back specifically to the Watts
4 Taylor Ridge facility, did you also participate,
5 Joyce, in discussions involving the Attorney General's
6 office and ESG Watts, either collectively or with
7 separate parties at separate times throughout the fall
8 of 1995 on the issue of assessment monitoring?

9 A. Yes.

10 Q. Did your Agency fax to ESG Watts a list of
11 parameters that would be subject to assessment
12 monitoring?

13 A. We faxed them a list of groundwater
14 monitoring parameters that is a standard 620 list that
15 you monitor for.

16 Q. During the discussions that you participated
17 in did it appear that ESG Watts was agreeable to
18 undertaking assessment monitoring?

19 A. They agreed to do groundwater monitoring in
20 accordance with the 620 standards.

21 Q. And did it appear that there may have been an
22 issue as to what exactly had to be tested and you
23 attempted to resolve that issue?

24 A. Yes. When they were asking about the

1 specific constituents that they would have to monitor
2 for, we faxed them a list of standard constituents
3 under 620.

4 Q. Does Exhibit 56 indicate when a permit
5 application was logged in with the Agency?

6 A. It was dated October 9th, 1995, and received
7 by the Agency on October 11th, 1995.

8 Q. Do you recall whether that application
9 included any assessment monitoring proposal?

10 A. It included a proposal to monitor the
11 standard groundwater list.

12 Q. And was -- and does the Agency in its permit
13 issuance of this Exhibit Number 56 grant authority to
14 do that?

15 A. We grant the requirement to monitor
16 groundwater quarterly and annually, and do the
17 statistics and all the standard groundwater monitoring
18 requirements.

19 Q. I can also represent to you that there's been
20 testimony earlier in this hearing that in issuing this
21 permit, Exhibit 56, the Agency acted "unilaterally" by
22 including an assessment monitoring program. Do you
23 agree with that testimony?

24 A. We gave them a standard Attachment A for

1 groundwater monitoring, which would include assessment
2 monitoring if something was triggered in the
3 groundwater.

4 Q. And was it your understanding that they were
5 not only proposing to do so but were willing to
6 implement such a program?

7 A. It was my understanding that they were
8 willing to do the standard groundwater monitoring,
9 yes.

10 MR. DAVIS: Thank you. No other questions.

11 HEARING OFFICER FRANK: Cross?

12 MR. NORTHRUP: Yeah, just a couple.

13 CROSS-EXAMINATION BY

14 MR. NORTHRUP:

15 Q. Going back to the Sig Mod meeting, what was
16 the purpose of allowing Watts to resubmit information
17 on the denial points?

18 A. We had some discussion about assisting them
19 with specific plans within the denial. There's
20 leachate plans and there's gas monitoring plans, and
21 things like that that did not comply with the 811
22 standards, and we did agree to assist them in bringing
23 those specific plans to the 811 standards and discuss
24 any specific problems with it prior to them

1 specifically submitting the Significant Modification
2 Application.

3 Q. So the information that was -- the
4 information that was submitted on those denial points
5 what were you going to do with it?

6 A. We would review them for adequacy with the
7 811 regulations and assist Watts to bring them up to
8 the 811 standards if they didn't meet it or basically
9 tell them that that plan would meet the 811 standards.

10 Q. Is that what you did?

11 A. We only received one attempt before the
12 Significant Modification Application, and that was an
13 807 application for leachate and gas management. We
14 reviewed it in accordance with the 811 standards, but
15 we issued it under the 807 supplemental.

16 Q. You're aware that Watts submitted or through
17 CH2M-Hill they made a submittal on October 18th of
18 '96?

19 A. Yes.

20 Q. That submittal addressed the denial points?

21 A. I believe so. To be perfectly honest, I did
22 not review that submittal.

23 Q. Okay. What did the Agency do with that?

24 A. We were looking for a Significant

1 Modification Application, and we rejected that
2 particular packet because it did not include
3 signatures or the application forms themselves.

4 Q. Okay. But at your meeting you just testified
5 that you were willing to assist Watts when they
6 submitted documentation with respect to those denial
7 points?

8 A. Watts also indicated to us that they would be
9 doing that soon, and a year later when the package
10 came in, we were looking for an application.

11 Q. Did Watts notify you that they were going to
12 submit an application?

13 A. No.

14 Q. A formal application. Did you at any time
15 notify Watts that you would not consider documentation
16 that they submitted to you unless it was in the form
17 of a formal Sig Mod Application?

18 A. No.

19 MR. NORTHRUP: I don't have any further
20 questions.

21 HEARING OFFICER FRANK: Is there redirect?

22 REDIRECT EXAMINATION BY

23 MR. DAVIS:

24 Q. Joyce, disregarding for the moment the fact

1 that what you received in October was 14 months beyond
2 the discussions that you had in August of '95, and
3 disregarding the fact that an enforcement complaint
4 had been filed regarding these issues with the Board
5 in November of 1995, what's your -- did what you
6 receive comport with your expectations?

7 A. No.

8 Q. Was it neither fish nor fowl? Was it neither
9 a formal permit application nor the informal let's sit
10 down and talk about it, how's it look so far approach
11 that you thought you were encouraging?

12 A. It was questionable as to what it was. And
13 we have specific statutory deadlines that say that
14 once we receive an application, and if we accept it,
15 we have 90 days or possibly 180 days to review it,
16 depending on what regulations we're falling under.

17 Q. And as a general matter, has the Pollution
18 Control Board expressed its expectations in a variety
19 of rulings in permit appeals about just how rigorous
20 and stringent and exact these procedures must be?

21 A. Yes. We take those deadlines very seriously.

22 Q. And for that matter, is there not also a
23 prohibition between permitting and enforcement
24 actions?

1 A. Yes, specifically.

2 Q. And is there any overt caution expressed by
3 you in your unit to try to avoid any mixing of those
4 types of issues?

5 A. Always. It's one of the first things we
6 teach permit reviewers.

7 Q. Okay. So while on the one hand we folks at
8 the Attorney General's office may make enforcement
9 demands and have you sitting at the table with us,
10 it's up to you folks in the Permit Section to actually
11 receive and do technical reviews and issue permits?

12 A. Yes.

13 MR. DAVIS: Okay. I think I've made enough
14 argument. Thank you.

15 HEARING OFFICER FRANK: Mr. Northrup.

16 MR. NORTHRUP: Yeah, just real quick.

17 RECROSS-EXAMINATION BY

18 MR. NORTHRUP:

19 Q. You said the submittal did not comport with
20 your expectations?

21 A. Yes.

22 Q. When did your expectations change?

23 A. I had no reason to believe that we were still
24 doing preliminary reviews for this facility. I was

1 expecting a Significant Modification Application by
2 this time.

3 Q. When did your expectations change?

4 A. Soon after we sent a letter in October to all
5 facilities warning them that the September 18th, 1997
6 deadline is fast approaching, and that if they don't
7 get their Significant Modification approved by that
8 date, they would have to shut down.

9 Q. October of what year did that letter go out?

10 A. Of this year.

11 Q. Okay. So your expectations changed in
12 October of '96 and yet Watts made this resubmittal on
13 October 18th of '96?

14 A. Yes.

15 Q. Do you know the precise date when your
16 October letter went out?

17 A. It was I -- now I'm going to say it was
18 August 9th. No, I cannot tell you the exact date that
19 that warning letter went out, but I do now believe it
20 was August.

21 Q. And did you do anything to notify Watts that
22 your expectations had changed?

23 A. We did send that letter to Watts.

24 Q. Okay. What was this letter again?

1 A. It was a letter telling them that because of
2 the new Subtitle D requirements, as of October 8th
3 they would have to start monitoring in accordance with
4 RCRA Subtitle D, and in addition to that, this is --
5 it was a warning that the September 18th, 1997
6 deadline was fast approaching.

7 Q. Was that a form letter?

8 A. It was a specific letter sent only to the 19
9 facilities that don't have a Significant Modification,
10 but you might consider it a form letter.

11 Q. How many facilities don't have a Sig Mod?

12 A. As of that date 19.

13 Q. And those 19 facilities got the same letter?

14 A. Yes.

15 Q. Was there anything in that letter specific to
16 Watts?

17 A. No, except that it was specifically sent to
18 their facilities.

19 Q. Did you send any letter to Watts specifically
20 indicating your changed expectations with respect to
21 the resubmittal?

22 A. No. I haven't been in communication with
23 Watts for quite a while.

24 Q. Do you know if Watts has attempted to contact

1 you?

2 A. They did the day of the last hearing.

3 Q. Did you return that call?

4 A. On advice of my counsel I did not.

5 MR. NORTHRUP: I don't have any further
6 questions.

7 REDIRECT EXAMINATION BY

8 MR. DAVIS:

9 Q. When you say counsel, Joyce, do you mean the
10 Illinois EPA's Division of Legal Counsel?

11 A. Yes, I do.

12 Q. The letter that you referred to that went out
13 to 19 facilities, would it have gone out to ESG Watts
14 Sangamon Valley Landfill?

15 A. I believe we sent them one.

16 MR. DAVIS: No other questions.

17 MR. NORTHRUP: No questions.

18 HEARING OFFICER FRANK: Okay. Thank you.

19 (Witness excused)

20 MR. DAVIS: We would call Joe Whitley.

21 HEARING OFFICER FRANK: Mr. Whitley, I remind
22 you that you're still under oath from our last
23 hearing.

24

JOE WHITLEY

1
2 called as a witness herein, having been previously
3 duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY

MR. DAVIS:

4
5
6 Q. Mr. Whitley, were you here this morning when
7 Steve Grothus testified?

8 A. I was for the latter part of it. I wasn't at
9 the early part.

10 Q. I'm going to wait until the train goes by,
11 okay, Joe?

12 The issue that I'd like to explore with you, Joe,
13 concerns the gas extraction wells. Did you have a
14 conversation with Mr. Grothus sometime in late summer?

15 A. Yes, I did.

16 Q. Did you initiate that conversation?

17 A. Yes, I did.

18 Q. Was this a telephone call?

19 A. Yes, it was.

20 Q. Can you tell us what you told him?

21 A. On a Monday fairly early in the morning, I'm
22 going to say around 8, 9:00, I called to the landfill
23 and I got in touch with Steve Grothus, and I said
24 since Friday -- well, Friday, Saturday and Sunday, all

1 weekend we have been absolutely smothered with odors.
2 Steve Grothus replied to me, "I smelled it when I
3 turned off the Andalusia Road going into the landfill.
4 I will check and see what's the matter, and I will
5 call you back."

6 Q. Did he do so?

7 A. He did so.

8 Q. What did he tell you?

9 A. He told me there were some open wells. That
10 on Thursday they was drilling and the rain caught them
11 unexpectedly and the wells was open at this time and
12 they didn't get them covered up till Monday and
13 assured me that it would not happen again.

14 Q. Okay. So your conversation was on a Monday?

15 A. Yes, it was.

16 Q. And did you understand him to refer to the
17 previous Thursday?

18 A. Yes.

19 Q. Okay. Now, did he use the word or term open
20 wells?

21 A. I -- I'm not sure of the exact terms that he
22 did use. He said that there were some wells that did
23 not have the casings put in them. Now, whether that
24 is open or what it is, I'm not sure. Steve would

1 answer that better than I, but he said there was, he
2 said, three or four wells there that wasn't finished.
3 They were incomplete, caught by the rain.

4 Q. And did he acknowledge whether these were,
5 quote, open wells or incompletely installed wells that
6 such were the source of these odors that both he and
7 you had detected?

8 A. Yes.

9 Q. Did this occur before or after your
10 deposition that Mr. Northrup took?

11 A. I'm not sure. What date was the deposition?

12 MR. NORTHRUP: I don't know. I don't have it
13 with me.

14 MR. DAVIS: I don't remember.

15 Q. Do you recall at that deposition, Joe, that
16 Mr. Grothus was present and made certain statements
17 about there being a danger regarding the wells being
18 open?

19 A. Yes, I do.

20 Q. And did he in particular indicate that these
21 were deep wells and that somebody, if they didn't know
22 that they were there, could fall into the wells?

23 A. Yes, he did.

24 Q. And did he express to you a concern that you

1 should stay off the property?

2 A. Yes, he did.

3 Q. Did he mention anything at that time about
4 big heavy steel plates that would cover these open
5 wells?

6 A. No, he did not.

7 Q. Did he use at that time the term open wells?

8 A. Yes, he did.

9 Q. Let me turn to one more issue regarding the
10 retention pond. First of all, is the retention pond
11 as it has existed these past several years, that is,
12 generally speaking, is it located on your property
13 entirely, on the landfill property entirely, or
14 partially on both?

15 A. I constructed the dike and through the
16 erosion and sediment that has come off of the landfill
17 and where the new fence was put back in, it ran -- the
18 water is higher than the elevation of the fence.

19 Q. Okay.

20 A. So there is water on the landfill side.
21 There is water on my side.

22 Q. Do you know how far from the fence, which
23 represents the boundary, the dike is?

24 A. 20 to 30 feet.

1 Q. So at least that portion is without a dispute
2 on your property?

3 A. It is.

4 Q. I understand from your previous testimony
5 that the location of the fence was a matter of
6 agreement between you and Mr. Grothus?

7 A. Yes, it was.

8 Q. And is it fair to say, sir, that your
9 agreement was based upon some surveying that you had
10 had conducted?

11 A. I did not conduct a survey, no, but I was
12 there when the survey was done and I do know where the
13 stakes are.

14 Q. Okay. Was the -- how was the survey done?
15 Who requested it?

16 A. The guy's name was Marvin Kammerman that
17 actually did the surveying at the time that I was
18 present or the time that I was there, because he sent
19 me a letter stating so that he was going to be there
20 surveying the property. That's why I was there.

21 Q. On whose behalf was he acting apparently?

22 A. On ESG Watts.

23 Q. Okay. So regardless of all of that, where
24 the fence is is where everybody agrees the property

1 line is?

2 A. That's where the stakes are set.

3 Q. Directing your attention now to November 19,
4 1996. Has anything occurred with -- in regards to the
5 retention pond?

6 A. I've had the retention pond cleaned, yes,
7 sir.

8 Q. On that date?

9 A. On a date in November. I'm not positive.
10 I've got notes back there but -- I'm going to say it
11 was in November, yes.

12 Q. Middle November?

13 A. Right.

14 Q. Okay. At whose behalf and at whose expense?

15 A. My behalf and my expense.

16 Q. How much?

17 A. 80 dollars.

18 Q. Has the landfill removed any silt or done any
19 dredging in regards to the retention pond since summer
20 of '95?

21 A. No, sir.

22 Q. Is your property still being impacted mid
23 December, that is as of today, by the retention pond?

24 A. Yes, it is.

1 Q. How?

2 A. There's siltation in it right now. The
3 siltation is approximately six inches from the top of
4 the dike. That is why that I had it cleaned out, the
5 part that never was cleaned out in '95, and built the
6 dike a little higher to -- so it will retain more of
7 the siltation that's coming in there before the water
8 actually comes off, because actually it's only six
9 inches from the top prior to my having it done. I had
10 it done in late November because I've asked the
11 landfill personnel since April of this year to do it,
12 they haven't done it. So before the ground froze and
13 got hard and the spring thaws next spring would
14 completely fill the pond and overflow the pond, so I
15 hired a guy to come down and dig out the portion that
16 was there and put it on the dike.

17 Q. Who did you talk to at the landfill to
18 discuss this?

19 A. I didn't -- I haven't talked to anyone --

20 Q. I mean who did you make the requests upon?

21 A. You mean to clean out the pond?

22 Q. Right.

23 A. I've made the request on numerous occasions,
24 but mostly to Elmer Elliott, and he has been the

1 contact, I would say, probably 75 percent of the time.

2 Q. Has Mr. Grothus been the contact any other
3 times?

4 A. Oh, I've talked with Mr. Grothus on numerous
5 occasions, yes, sir.

6 Q. Joe, you testified in the evening of the 29th
7 of October of this year, and it occurs to me that that
8 was a rather rainy evening, was it not?

9 A. I'm not sure, sir.

10 HEARING OFFICER FRANK: I can take official
11 notice of the fact that we had a huge thunderstorm
12 that night.

13 A. Oh, okay, at the hearing.

14 Q. At the hearing.

15 A. Yes, we did. We had a terrible storm. I do
16 remember.

17 Q. After you left the witness chair and went
18 home that night or the next day, did you observe any
19 runoff problems from the landfill?

20 A. I'm not sure that I went there the night, but
21 in the next few days there was some runoff, yes, sir.

22 Q. Are things just as bad as they were, say,
23 last year?

24 A. There's not much change, no, sir.

1 MR. DAVIS: Okay. Thank you, sir.

2 HEARING OFFICER FRANK: Cross?

3 CROSS-EXAMINATION BY

4 MR. NORTHRUP:

5 Q. You say there hasn't been much change in the
6 last year. Has there been much change from the way
7 things were in 1988?

8 A. There's been lots of changes in the landfill,
9 yes, sir, in the last ten years, eight years, seven
10 years. There's changes all the time.

11 Q. When you had this telephone conversation with
12 Steve Grothus, it was late summer of '96?

13 A. Yes, sir, either July -- late July or August
14 of this year, yes, sir.

15 Q. At any time -- well, with respect to the
16 November 19th cleaning of the pond, did you request
17 anybody at Watts to clean that pond at that time?

18 A. On that specific date?

19 Q. Uh-huh.

20 A. On November the 19th?

21 Q. Did you make any request of Watts to clean
22 the pond between August of '95 and November 19th of
23 '96?

24 A. Yes, sir.

1 Q. How many times?

2 A. Probably four.

3 Q. Okay.

4 A. At least.

5 Q. Okay. Now, did Watts clean that pond on any
6 of those four occasions?

7 A. No, sir.

8 Q. Who did you make your request to?

9 A. I made most of the requests to Elmer Elliott.
10 I'm not sure if Steve or Mr. Jones either one that I
11 have talked to them about it or not, but Elmer was at
12 my place and did go to the site with me and see what I
13 wanted done, informed me that they had a breakdown of
14 their small backhoe, I believe he called it, and he'd
15 get it as soon as the backhoe got fixed.

16 Q. And when was this?

17 A. This would have been in April probably of
18 this year.

19 Q. Of '96?

20 A. '96, yes, sir.

21 Q. Had you made any requests of the landfill to
22 clean the pond since April of '96 to today's date?

23 A. I'm not sure if that was the last
24 conversation that I had. I do have that as a note in

1 my book that I talked with Elmer and went to the
2 landfill site with Elmer on that date of April the
3 26th. The other dates I'm not sure of whether I --
4 I'm sure that I've asked him on more than one occasion
5 to clean it out.

6 Q. Do you have any notations in your book that
7 you made any --

8 A. I probably do. I don't have it with me, Mr.
9 Northrup.

10 Q. -- that you made any requests after April
11 26th?

12 A. It would be in my book, but I don't have my
13 book with me.

14 Q. Where is your book?

15 A. It's at home.

16 Q. Why didn't you bring it with you?

17 A. I didn't know I was going to testify.

18 MR. NORTHRUP: Those are all the questions I
19 have.

20 MR. DAVIS: Nothing further.

21 HEARING OFFICER FRANK: Okay. Thank you.

22 (Witness excused)

23 HEARING OFFICER FRANK: Are there any other
24 witnesses?

1 MS. SYMONS-JACKSON: No.

2 HEARING OFFICER FRANK: Okay.

3 MR. NORTHRUP: I want to call Steve Grothus
4 as a rebuttal -- surrebuttal. At least I think I do.
5 I want to talk to Steve first.

6 HEARING OFFICER FRANK: Can I go ahead and do
7 a housekeeping matter before you -- we go off the
8 record and I let you do that.

9 I just wanted to make clear at our last hearing I
10 accepted an exhibit list instanter for purposes of
11 hearing. You guys were nice -- you guys, the Attorney
12 General's office were nice enough to provide it. I am
13 not going to forward that to the Board because I think
14 it would cause some confusion because it's going to be
15 so similar to the complete exhibit list which I
16 provide. It was very helpful for hearing, but I'm
17 going to just go ahead and do an official exhibit
18 list. So I want you to know that that will not be
19 part of the record. It will be sort of part of the
20 entire one.

21 I also need to mention for the record that there
22 have been members of the public present throughout the
23 day listening to the hearing.

24 And all of the witnesses that have testified I

1 have found credible. Weight of testimony, as we
2 discussed at the last hearing, is something for the
3 Board to examine.

4 And let's go ahead and go off the record. And
5 while you talk to Steve, I'd also like you guys to
6 think of -- both parties to think about briefing
7 schedules.

8 MR. NORTHRUP: Quick question. I'd given you
9 an exhibit list. It was incomplete in that I didn't
10 have my numbers on here. Do you want me to give you a
11 revised list of my own or are you just going to
12 incorporate?

13 HEARING OFFICER FRANK: Actually, I don't
14 remember ever receiving an exhibit list from you.

15 MR. NORTHRUP: Okay. Do you want one?

16 HEARING OFFICER FRANK: No. I've been
17 keeping track of them, and I've already typed in the
18 ones from the last hearing onto the disk which was
19 provided to me by the Attorney General's office. So I
20 don't need it.

21 Let's go off the record.

22 (Discussion off the record.)

23 HEARING OFFICER FRANK: You're still under
24 oath.

1 MR. GROTHUS: Yes, ma'am.

2 HEARING OFFICER FRANK: Okay.

3 STEVE GROTHUS

4 called as a witness herein, having been previously
5 duly sworn, was examined and testified as follows:

6 DIRECT EXAMINATION BY

7 MR. NORTHRUP:

8 Q. Okay, a couple quick questions. You were in
9 the room here when Mr. Whitley just testified?

10 A. Yes, sir.

11 Q. He testified about a telephone conversation
12 that he purportedly had with you perhaps late July or
13 August of 1986 regarding odors from the landfill. Do
14 you recall that?

15 A. No.

16 Q. '96?

17 A. '96. No, I don't recall.

18 Q. Do you recall him testifying to that?

19 A. Yeah, I remember him saying it.

20 Q. Do you recall that telephone conversation?

21 A. No.

22 Q. Have you -- based on your knowledge have you
23 ever left a gas extraction well hole left uncovered?

24 A. No.

1 Q. Now, Mr. Whitley talked about -- used the
2 term purportedly you said something about you left --
3 there were casings in these holes. Is casing a term
4 that you understand?

5 A. Not in this type of well drilling operation.
6 Casing meaning the well casing? Is that what he's --
7 okay, the well casing, yeah. Okay.

8 Q. Well, I'll just strike that question.

9 There was also some testimony regarding some
10 statements you purportedly made at Mr. Whitley's
11 deposition in this case.

12 A. Uh-huh.

13 Q. Do you recall him testifying about that?

14 A. Yes.

15 Q. Do you recall that day?

16 A. Yes.

17 Q. When he was deposed?

18 A. Yes, I do.

19 Q. What is your recollection of what you told
20 Mr. Whitley that day?

21 A. We were talking about the well drilling
22 operation, and I believe I asked him that I noticed
23 some people on the landfill late one evening prior to
24 the well drilling operation. Knowing what was going

1 to happen, I was very concerned about that. If there
2 are people walking across it from -- they came from
3 north to south when I saw them. If we're up there
4 drilling, they may not realize what's going on. I
5 told him I was very concerned, I was afraid that
6 somebody might fall in a well. Basically to scare him
7 or for him to let people know or whatever. I told him
8 that to scare them off, keep people out of there at
9 all costs.

10 Q. At the time you made that statement was there
11 ever a period prior to that time when a well had not
12 been covered at the end of the day?

13 A. Not that I'm aware of.

14 Q. So what again was the purpose of putting him
15 on notice that these holes were out there?

16 A. To make sure that if anyone he knew or any
17 one of the neighbors or anything were walking across
18 the site, that's extremely dangerous at that time.

19 MR. NORTHRUP: No further questions.

20 CROSS-EXAMINATION BY

21 MR. DAVIS:

22 Q. Steve, I seem to recall you also discussed
23 the fact that people had been driving recreational
24 vehicles or something?

1 A. Yeah, I found ATC tracks and things like that
2 up there.

3 Q. And the people that you may have seen
4 on-site, that didn't include Mr. Whitley, did it?

5 A. No. Heavens, no. Could have been anybody.
6 I'm assuming it was kids.

7 Q. So when you did talk about the danger of open
8 wells and the long shafts and the lack of air and all
9 that, that was just, as you put it, an effort to scare
10 him?

11 A. Yes. To scare him and to let -- I figured he
12 talked to a lot of neighbors all the time and he was
13 kind of the source of communication possibly.
14 Irregardless if we covered the wells or not, hopefully
15 it was a deterrent.

16 Q. Did he make any response or reply to these
17 statements by you?

18 A. I don't recall.

19 Q. Did he say something to the effect that he
20 would not go on the site?

21 A. Oh, I'm -- I think he did probably, yeah. He
22 never -- I mean to my knowledge he's never come onto
23 it without talking to us or whatever.

24 Q. Let's turn our attention now to late July,

1 early August, that time period.

2 A. Okay.

3 Q. Were the odors attributable to the well
4 drilling and dredging or, rather, the spoils, were the
5 odors worse then than they had been prior to the
6 implementation of the project?

7 A. I don't get it.

8 Q. After the project commenced, were the odors
9 worse than they were before the project commenced?

10 A. They may have increased a little bit, yeah.

11 Q. Did he ever call you to complain about the
12 odors?

13 A. I don't really recall him -- he may have, but
14 I don't recall it.

15 Q. Is it plausible?

16 A. Sure.

17 Q. Or even likely?

18 A. Well, I don't know if it's likely. It's
19 plausible. Sure, it's plausible that he could,
20 uh-huh.

21 Q. But you don't remember ever responding to him
22 if indeed he did call you to the effect that, yes, you
23 smelled it, too, and it was bad?

24 A. Well, I smelled it when I was working on the

1 project. Yeah, you smelled it all the time when you
2 were working the project. Gas was coming out of the
3 hole.

4 Q. All right. And gas would -- you could smell
5 it regardless whether the plates were covering the
6 openings or not?

7 A. Sure.

8 MR. DAVIS: Okay. That's fine. Nothing
9 else.

10 REDIRECT EXAMINATION BY

11 MR. NORTHRUP:

12 Q. One last question. Do you ever recall
13 telling Joe Whitley that there was a time where the
14 holes were not covered?

15 A. No.

16 MR. NORTHRUP: No further questions.

17 HEARING OFFICER FRANK: Anything else?

18 MR. DAVIS: No.

19 HEARING OFFICER FRANK: Okay.

20 (Witness excused)

21 HEARING OFFICER FRANK: Do we have any other
22 witnesses?

23 MR. DAVIS: No, the People have none.

24 HEARING OFFICER FRANK: Okay. Then let's go

1 off the record to talk about briefs.

2 (Discussion off the record.)

3 HEARING OFFICER FRANK: Let's go back on the
4 record.

5 For the briefing schedule, the People's first
6 brief will be due on January 17th. Mailed is filed as
7 far as the Board is concerned. However, and I want to
8 be clear about this, I do expect you to get the brief
9 to Mr. Northrup's office by 5:00 on Friday. You can
10 stick it in the mail to the Chicago office of the
11 Board, but that way Mr. Northrup will have it. And
12 you guys are all in Springfield, so it shouldn't be a
13 problem.

14 Then -- actually, the 17th is three weeks and you
15 agreed -- oh, no, we're starting the 3rd because of
16 when the transcript is coming in. That's right.

17 So, Mr. Northrup, your brief will be due on
18 February 7th.

19 MR. NORTHRUP: That's three weeks?

20 HEARING OFFICER FRANK: That is three weeks.

21 MR. NORTHRUP: Thank you very much.

22 HEARING OFFICER FRANK: And the People have
23 agreed to their final brief being February 21st.

24 MR. DAVIS: And Mr. Northrup will give us his

1 as well by 5:00 on the 7th?

2 HEARING OFFICER FRANK: Yes. That applies to
3 all of them, except for your reply brief. You can
4 mail it to him or walk it over, I don't care how you
5 get it to him.

6 But I would expect that, Mr. Northrup, your brief
7 which is due February 7th you need to have in the
8 hands of someone at the Attorney General's office by
9 5:00 or --

10 MR. DAVIS: 4:45. That's when the building
11 shuts.

12 HEARING OFFICER FRANK: At what time? 4:30?

13 MR. DAVIS: 4:45. I'm not always facetious.
14 This is true.

15 HEARING OFFICER FRANK: That's fine. By 4:45
16 on the 7th of February.

17 Is your office open until 5?

18 MR. NORTHRUP: Oh, we're open 24 hours a day.

19 HEARING OFFICER FRANK: Then the Attorney
20 General's brief which is due January 17th, as long as
21 Mr. Northrup has it by 5. And you can put them all in
22 the mail to the Board.

23 Are there any other questions or anything else we
24 need to discuss?

1 MR. NORTHRUP: I have a procedural question
2 just because I've never dealt with this before.

3 Do I need -- on Ken Liss's offer of proof do I --
4 is it appropriate for me to file some kind of motion
5 excluding that from the transcript and being set apart
6 or --

7 HEARING OFFICER FRANK: If you want to do
8 that, that is a personal decision. On other offers of
9 proof that I have seen it would be up to the Attorney
10 General's office to move the Board to accept it as
11 part of the transcript. It just remains in the
12 transcript and the Board knows when they see offer of
13 proof, you know, that they're not going to -- that
14 testimony isn't something that they can base their
15 decision on.

16 MR. DAVIS: Yeah. We've done all we need to
17 do. If you want to make some further argument, then
18 we would respond to it when you make your motion.

19 HEARING OFFICER FRANK: But you probably
20 should procedurally, at least, reiterate in your brief
21 that you wish the offer of proof to be accepted.
22 Because the Board rule states that motions that are
23 orally done at hearing must be restated in writing to
24 the Board. And it's just the safer way to go to make

1 sure that the Board sees it and does something about
2 it. I would suggest that you do it in writing. And
3 if you want to do it as part of your brief, that's
4 fine. But you ought to reiterate it in writing.

5 MR. NORTHRUP: Kind of following up then, so
6 if I were to file a motion on People's 68, is the
7 preferable way to do it in my briefs or to file a
8 separate motion?

9 HEARING OFFICER FRANK: I've seen it done
10 both ways. A lot of times people do it in their
11 briefs because the briefing schedule is tighter. I
12 would suggest that because we're talking about your
13 brief being filed in February that if you want to file
14 something -- the Board's going to start looking at
15 information in this case prior to February.

16 MR. NORTHRUP: Right.

17 HEARING OFFICER FRANK: And if you want them
18 to exclude an exhibit, then file a motion.

19 MR. NORTHRUP: And I --

20 HEARING OFFICER FRANK: Is that it for
21 procedural questions?

22 MR. DAVIS: I guess just to -- maybe it
23 wasn't clear before, but our 68 is a reproduction of
24 your Exhibit 2. So I don't know how you can move to

1 strike our 68 if you've, you know --

2 HEARING OFFICER FRANK: Okay. The exhibit is
3 in evidence. He was asking procedurally if he chose
4 to make a motion to the Pollution Control Board what
5 to do. I'm not going to go over again whether or not
6 that exhibit is -- it is in evidence now. It's up to
7 the Board and up to Charlie.

8 MR. DAVIS: Fine.

9 MR. NORTHRUP: Thanks, Tom.

10 HEARING OFFICER FRANK: Is there anything
11 else that we need to cover?

12 MR. NORTHRUP: One last thing. I think you
13 talked about this before. The record is going to be
14 here so we'll have access to it?

15 HEARING OFFICER FRANK: What the clerk's
16 office has agreed is that it will stay in Springfield
17 for some amount of time. I will give them the
18 briefing schedule and it should at least be here
19 through the briefing schedule time. And they will set
20 up some kind of a system in the Springfield office for
21 you to make sure that you don't walk out with
22 exhibits. And they're here now, so if you need them
23 tomorrow, they should -- you should have access to
24 them.

1 Is there anything else?

2 MS. SYMONS-JACKSON: Just so you know, the
3 two photographs that were missing from Ron Mehalic's
4 inspection report we will provide those to you as soon
5 as we get them from him.

6 HEARING OFFICER FRANK: Was that 41?

7 MS. SYMONS-JACKSON: Yeah. It was December
8 14, 1994.

9 HEARING OFFICER FRANK: Do you have any idea
10 timewise?

11 MS. RYAN: I understand it takes them about a
12 day after you request them to get them back, so a few
13 days I would think.

14 HEARING OFFICER FRANK: If you send them --
15 send them directly to me and I will take care of
16 making sure they're in the right place in the exhibit.
17 Okay?

18 Thank you all very much.

19 (Which were all of the proceedings had
20 on the hearing of this cause on this
21 date.)

22

23

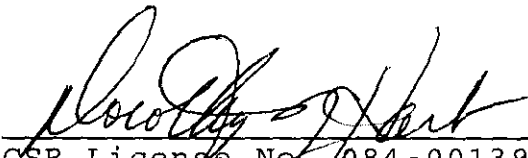
24

1 STATE OF ILLINOIS)
)SS
2 COUNTY OF SANGAMON)

3
4 CERTIFICATE

5 I, Dorothy J. Hart, affiliated with Capitol
6 Reporting Service, Inc., do hereby certify that I
7 reported in shorthand the foregoing proceedings; that
8 the witnesses were duly sworn by me; and that the
9 foregoing is a true and correct transcript of the
10 shorthand notes so taken as aforesaid.

11 I further certify that I am in no way associated
12 with or related to any of the parties or attorneys
13 involved herein, nor am I financially interested in
14 the action.

15
16 
17 CSR License No. 084-001390
18 Certified Shorthand Reporter
Registered Professional Reporter
and Notary Public



19
20 Dated this 17th day of
21 December, A.D., 1996, at
22 Springfield, Illinois.

23
24

- 1 -

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