

ILLINOIS POLLUTION CONTROL BOARD
January 8, 2004

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 01-167
)	(Enforcement - Land)
ESG WATTS, INC. (Taylor Ridge),)	
)	
Respondent.)	

DISSENTING OPINION: (by T.E. Johnson)

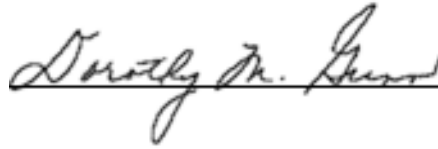
I respectfully dissent from the Board's opinion and order issued today in this matter. I agree with the Board's finding that Watts has violated the Illinois Environmental Protection Act (Act) (415 ILCS 5/1 *et. seq* (2002)) as alleged in the complaint. I also agree with the majority's decision ordering ESG Watts Inc. (Watts) to pay attorney fees. However, I feel that the \$1,000,000 civil penalty assessed by the Board is excessive.

Primarily, I do not believe that the complainant presented adequate evidence at hearing or justification in the pleadings to warrant the imposed penalty. This is not to say that I feel Watts should not be penalized. Watts has exhibited a past history of noncompliance, and the gravity and ongoing nature of these violations mandate a substantial penalty. However, I feel the amount the majority has penalized Watts is unjustifiable. When considering the 42(h) factors (415 ILCS 5/42(h) (2002)) in light of the evidence before the Board, a significantly lower penalty is appropriate.

For these reasons, I respectfully dissent.

Thomas E. Johnson
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the above dissenting opinion was submitted on January 9, 2004.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", is written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board