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BEFORE THE

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ILLINOIS POLLUTION CONTROL BOARD

4

5

PEOPLE OF THE STATE OF ILLINOIS, )

6

Petitioner, )

7

-vs- )

NO. 96-107

8

ESG WATTS, Inc., an Iowa )

Corporation, )

9

Respondent. )

10 -----)

11

12 PROCEEDINGS taken on October 30, 1996, at  
 13 the Rock Island County Building, 1504 Third  
 14 Avenue, Third Floor, Rock Island, Illinois,  
 15 commencing at 8:08 a.m., before Deborah L.  
 Frank, Attorney/Hearing Hearing Officer, and  
 Victoria Fickel, Certified Shorthand and Notary  
 Public of the County of Rock Island, State of  
 Illinois.

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A-P-P-E-A-R-A-N-C-E-S

Hearing Officer: DEBORAH L. FRANK  
Attorney/Hearing Officer  
Illinois Pollution Control  
Board  
608 South Prospect Avenue  
Champaign, IL 61820

Petitioner by: AMY SYMONS-JACKSON  
Office of the Attorney General  
Assistant Attorney General  
Environmental Bureau  
500 South Second Street  
Springfield, IL 62706

THOMAS DAVIS  
Office of the Attorney General  
Chief Environmental Bureau  
500 South Second Street  
Springfield, IL 62706

Respondent by: CHARLES J. NORTHRUP  
Sorling, Northrup, Hanna,  
Cullen and Cochran, Ltd.  
Suite 800 Illinois Building  
P.O. Box 5131  
Springfield, IL 62705

Also Present: Michelle M. Ryan, Assistant Counsel,  
Waste Enforcement, Division of  
Legal Counsel.

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1 THE HEARING OFFICER: Let's go ahead  
2 and begin. Just for the record, we ended with Ron  
3 yesterday, but we are going to begin with some  
4 neighbors today for their convenience. They need  
5 to get to work. So let's go ahead and call your  
6 first witness.

7 MS. SYMONS-JACKSON: The state would  
8 call Mr. Jerry Martens.

9 THE HEARING OFFICER: Would you  
10 please swear the witness.

11 JERRY MARTENS,  
12 called as a witness, after having been first duly  
13 sworn, was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MS. SYMONS-JACKSON:

16 Q. Would you please state your full name for  
17 the record, sir.

18 A. Jerry Martens.

19 Q. Mr. Martens, where do you live?

20 A. 7928 - 78th Avenue West, Milan, Illinois.

21 Q. And Mr. Martens, where is your residence  
22 in relationship to the Taylor Ridge landfill?

23 A. North of it.

24 Q. And who lives there with you?

25 A. My wife.

1 Q. Do you have any kids?

2 A. My daughter.

3 Q. Any other children living at home?

4 A. No.

5 Q. Okay. So the three of you that live

6 in --

7 A. Yes.

8 Q. -- the home? Okay. Mr. Martens, for the

9 sake of the court reporter, let me finish my

10 questions, and go ahead and answer, so she can take

11 down one voice at a time. All right?

12 A. (Nods head.)

13 Q. And how long have you been resided at

14 your current address?

15 A. 20 years.

16 Q. And was the landfill present when you

17 moved in 20 years ago?

18 A. Yes.

19 Q. And at that time, what were your thoughts

20 about living near a landfill?

21 A. Never really bothered me that much,

22 'cause if it was run by the rules, there shouldn't

23 be no problems with it.

24 Q. Now, over the past 20 years, was your

25 opinion with regard to living near a landfill



1 changed at all?

2 A. Yes.

3 Q. And can you explain how that opinion has  
4 changed?

5 A. Because it's never been run by the rules.

6 Q. And how has -- how have the landfill  
7 operations affected your daily life?

8 A. Well, we get odors, smells, the highway  
9 is muddy when -- after it rains, litter on the  
10 road, noise from the landfill.

11 Q. Do you get litter on your property from  
12 the landfill?

13 A. No. It's too far away to catch the  
14 litter. It gets caught before it gets to my  
15 house. Pasture in-between.

16 Q. When you talk about mud on the road and  
17 litter on the road, what road are you talking  
18 about?

19 A. Highway 92. Better known as Andalusia  
20 Road.

21 Q. And would that road be north of your  
22 property?

23 A. Yes.

24 Q. Okay. Now, I want to talk about the  
25 odors for a little bit. Can you describe for us

1    what the odor from the landfill smells like?

2           A.    It plain smells like rotten garbage,  
3    shit, whatever you want to call it, raunchy smells.

4           Q.    And do you have an opinion as to where  
5    that odor is coming from?

6           A.    Yes.   The landfill.

7           Q.    And are there things that your family  
8    does not do any more as a result of the odor  
9    problems?

10          A.    Yes.   We don't have a lot of outside  
11    cookouts like we used to because of it, because you  
12    got to be afraid of having people up with getting  
13    in the middle of the steak or something, and she  
14    comes through, and that's the end of it.

15          Q.    What about are you able to keep the  
16    windows open on your house?

17          A.    Not all the time.

18          Q.    Now, are there certain times either of  
19    the day or of the year that you notice the odor  
20    problems more than other times?

21          A.    Well, sometimes it's when the air is  
22    heavier that we catch it, and the wind is out of  
23    the south is when we catch it.  But it is a  
24    year-round thing.

25          Q.    Now, Mr. Martens, when would -- you say

1     you've lived at this site for the past 20 years.

2     When would you say you first really started  
3     noticing a problem with the odors?

4             A.     It's been off and ongoing for ten years  
5     at least, I'd say.

6             Q.     Mr. Martens, I want to hand what you we  
7     have already market as Peoples Exhibit 24. And can  
8     you please identify that for the record? Is it a  
9     two-page document?

10            A.     Yeah. Yep.

11            Q.     Can you identify what that is, please.

12            A.     Well, that tells where I live. That  
13     tells dates that odors have been recorded on it.

14            Q.     And who has -- have you been the one  
15     recording the dates when you've experienced odors  
16     on that?

17            A.     My wife and I both have.

18            Q.     And can you tell us the dates that are  
19     covered by that exhibit?

20            A.     7-22, the 23rd, the 24th, 25th, 26th,  
21     27th.

22            Q.     If I could interrupt. First date through  
23     to the last date, what time period is covered?

24            A.     Oh the seventh month, from the 22nd to  
25     the 28th. The eighth month, the 4th. Then it

1 jumps to the 8th. And then -- well, it jumps into  
2 August. Jumps clear up to 29th. There is a couple  
3 of days in-between where it didn't get an odor  
4 in-between.

5 Q. And what year are we talking about?

6 A. Last year.

7 Q. 1995?

8 A. Yep.

9 Q. So it basically covers July and August of  
10 1995?

11 A. Yep.

12 Q. Mr. Martens, to the best of your  
13 recollection, do the dates and the comments you've  
14 recorded in this Exhibit 24 accurately reflect the  
15 actual dates and times during which you were  
16 bothered by odor from the landfill?

17 A. Yes.

18 MS. SYMONS-JACKSON: Okay.

19 Ms. Hearing Officer, I would move for admission of  
20 Peoples Exhibit 24.

21 THE HEARING OFFICER: Is there any  
22 objection?

23 MR. NORTHRUP: I would object to any  
24 of the entries that were made by his wife as being  
25 hearsay.

1 THE HEARING OFFICER: Do you have  
2 any response?

3 MS. SYMONS-JACKSON: Well, I would  
4 inquire further with Mr. Martens if that's -- if  
5 it's necessary.

6 THE HEARING OFFICER: Okay. Why  
7 don't you go ahead and do that.

8 BY MS. SYMONS-JACKSON:

9 Q. Mr. Martens, did you and your wife  
10 discuss the recording of dates and odors on this  
11 exhibit?

12 A. Oh, yes, we have. Because I'm not there  
13 24 hours a day. Sometimes it's during the day that  
14 it comes. Sometimes it's early evening, late  
15 evening. I mean, we are a unit as one.

16 Q. And after your wife may have recorded  
17 odors on this exhibit, did you discuss what she had  
18 done?

19 A. Yeah. We talked about it.

20 Q. Okay.

21 A. You know, the dump stunk today.

22 MS. SYMONS-JACKSON: I would renew  
23 my motion to admit this into evidence.

24 THE HEARING OFFICER: Okay. I'm  
25 going to allow --

1                   MR. NORTHRUP: Just for the record.  
2 Same objection. It's hearsay.

3                   THE HEARING OFFICER: Okay. I'm  
4 going to allow the admission.

5 BY MS. SYMONS-JACKSON:

6           Q. Mr. Martens, would you agree that the  
7 dates recorded in this odor log from July to August  
8 of 1995 are not the only occasions in the past ten  
9 years on which you have experienced odor problems  
10 from the landfill?

11          A. Definitely.

12          Q. This is just a limited picture for those  
13 two months; is that correct?

14          A. Right.

15          Q. Mr. Martens, the frequency of the odors  
16 that you've recorded in this Exhibit 24 and the  
17 comments regarding these specific odors, would you  
18 agree that those are consistent with what -- with  
19 what the odors are actually like on a regular  
20 basis?

21          A. Yeah. They are, you know, just during  
22 the time periods. You just never know. You might  
23 have a lot. Depends upon the wind.

24                   If the wind is out of the north, I don't  
25 catch the odors. But when you get the southerly

1 winds or deep still evening, then I get them where  
2 it can kind of roll.

3 Q. Okay. Now, Mr. Martens, have you ever  
4 talked to anyone at the landfill regarding these  
5 odors?

6 A. Personally, no.

7 Q. Are you aware of whether your wife has?

8 A. Yes.

9 Q. And are you aware of what the -- what, if  
10 anything, the landfill has done to attempt to  
11 correct the odor problems?

12 A. They said, we will try and take care of  
13 it. And there has been times they have went out  
14 and throwed some cover on to cover it.

15 Q. And when they have done that, have the  
16 odor problems returned?

17 A. Eventually, yes.

18 Q. Now, I want to talk a little bit about  
19 the other -- the other things you mentioned with  
20 regard to problems you've experienced as a result  
21 of the landfill operations. You mentioned mud on  
22 the road. Can you describe how that's affected  
23 your life?

24 MR. NORTHRUP: I'll object to that.  
25 It's irrelevant. No allegation in the complaint

1 with respect -- I'm objecting as to relevancy.  
2 There is no allegation in the complaint with  
3 respect to mud on any roads.

4 MS. SYMONS-JACKSON: It's our  
5 position, Ms. Hearing Officer, that this testimony  
6 is relevant. We have been discussing a number of  
7 off-site impacts as a result of landfill  
8 operations. Mr. Martens covered this during his  
9 discovery deposition. This is nothing new to  
10 Mr. Northrup. Just trying to get an overall  
11 picture of how the landfill operations have  
12 affected his life.

13 THE HEARING OFFICER: I'm going to  
14 allow the testimony.

15 BY MS. SYMONS-JACKSON:

16 Q. Can you describe for us how the mud on  
17 the road has affected your life?

18 A. Yeah. I got to drive down that highway  
19 at least twice a day. And there has been wrecks  
20 there because of the mud. You can slide off the  
21 road. It's just scary. It gets scary, 'cause it  
22 gets just like ice. It will get so thick. Plus  
23 debris flying up at you hitting your vehicle.

24 Q. Mr. Martens, are you aware that at one  
25 point in time the highway department posted a sign



1 on the highway alerting drivers on the road to mud  
2 on the road?

3 A. Yes.

4 Q. Do you recall when that happened?

5 A. It's been a few years back. It's been  
6 there two or three years, I'd say.

7 Q. And is that sign still there?

8 A. I think it's still there. After so long,  
9 you forget to look at it. You just look at the  
10 highway when you come by.

11 Q. And do you recall what it was -- whether  
12 it was a citizen complaint or request from the  
13 landfill or what prompted the highway department to  
14 put up that sign?

15 A. I don't know for positive, but I'm pretty  
16 sure it was because of the complaints from the  
17 citizens to do something about it.

18 Q. Had you ever yourself made a complaint to  
19 the highway department about the mud on the road?

20 A. No.

21 Q. Had you made a complaint to the landfill?

22 A. No.

23 Q. Had your wife?

24 A. I don't know for sure.

25 Q. Now, what about the noise problems you

1 mentioned? Can you explain those for us?

2 A. Well, it isn't as bad as it used to be.  
3 But it used to be you could hear -- they could be  
4 running maybe at 8 o'clock yet at night. Running  
5 Cats with closing time 5 o'clock. Give me a  
6 break. Something is wrong.

7 Q. Now, when you would hear those noises,  
8 how would that effect what you were doing at your  
9 home on your property?

10 A. If you are trying to watch TV, you are  
11 listening to Cats running. You know, you got to  
12 turn your volume up and everything else. Got to  
13 talk over it. Plus running the vehicles in the  
14 middle of the night.

15 Q. There have been times when you've heard  
16 vehicles being operated in the middle of the night?

17 A. Yes, ma'am.

18 Q. How many occasions would you say that's  
19 occurred?

20 A. It's been few, but --

21 Q. When was the last time you noticed that?

22 A. It's been about a year.

23 Q. Okay. And what's happened? Has the  
24 noise been so loud that it's awakened you from your  
25 sleep?

1           A.    Yes.

2           Q.    With regard to the odors, have the odors  
3   ever been so bad that they have awakened you from  
4   your sleep?

5           A.    That I can't say for sure, 'cause I wake  
6   up now and then anyhow. But I've woke up to them  
7   in the middle of the night. Now, I can't say for  
8   sure whether it's caused me to wake up.

9           Q.    Now, you mentioned your property was too  
10   far from the landfill for litter to actually be  
11   blown on your property. It gets intercepted  
12   somewhere.

13          A.    Yes.

14          Q.    Can you give my an estimate of how far  
15   your property is located from the landfill?

16          A.    Probably about a block. Between a block  
17   and a block-and-a-half.

18          Q.    Can you give me an idea of how many feet  
19   or yards we are talking about?

20          A.    Maybe a thousand feet or so, 1500,  
21   somewhere around in there.

22          Q.    Mr. Martens, have the odors at the  
23   landfill unreasonably interfered with your  
24   enjoyment of life and property?

25          A.    Yes.

1           Q.    And this has been going on for the past  
2   ten years?

3           A.    At least.

4                   MS. SYMONS-JACKSON:   Okay.   That's  
5   all I have.

6                   THE HEARING OFFICER:   Mr. Northrup.

7                   MR. NORTHRUP:   Okay.   Just a couple  
8   of quick follow-up questions.

9                           CROSS-EXAMINATION

10          BY MR. NORTHRUP:

11           Q.    You talk about hearing noises late at  
12   night.   You said that occurred on a few occasions.  
13   How many?   Can you be more specific?

14           A.    Well, years ago, it was maybe once a week  
15   there for a while.   And how many years ago, I don't  
16   remember.   And it's got down to where it's very  
17   seldom anymore.   Of course, they work on equipment,  
18   I guess, now up there in the evenings.   So that's  
19   running it up till 11 o'clock at night when they  
20   are working on stuff.

21           Q.    Okay.   So you've heard them working on  
22   equipment.   It's not machinery dumping or, you  
23   know, bulldozers covering garbage, that type of  
24   thing?

25           A.    In the past, I've heard them dumping late

1 at night. Hear the clanging and bang of the  
2 tailgates on the trucks.

3 Q. Okay. When you say the past, what are  
4 you talking about? How far back?

5 A. Oh, it's been within the last year since  
6 I recall.

7 Q. Now, you still do some entertaining,  
8 correct?

9 A. Yeah.

10 Q. Still sleep with your windows open?

11 A. Try to.

12 Q. I believe you said you've never been  
13 wakened by the odor.

14 A. I say I don't know for sure whether it's  
15 woken me or I've just woken up and smelled it.

16 Q. Okay. Were you deposed on September 26th  
17 of this year?

18 A. If that was the date.

19 Q. Were you deposed at the Watts Trucking  
20 Service offices?

21 A. Yes.

22 Q. Just take a look at this question; 19, 20  
23 and 21.

24 A. (Complies.)

25 Q. Now, does that refresh your recollection

1 at all if you've ever been awakened by an odor?

2 MS. SYMONS-JACKSON: I'm going to  
3 object to this question. Mr. Martens hasn't  
4 indicated that he's had any problem with calling  
5 what he's recollected or not. He said he doesn't  
6 know what's been the reason for him waking up in  
7 the middle of the night.

8 THE HEARING OFFICER: Mr. Northrup,  
9 did you have a response to her objection?

10 MR. NORTHRUP: That's fine. I'll  
11 rephrase the question.

12 BY MR. NORTHRUP:

13 Q. Having read this from your deposition,  
14 how do you address the inconsistency between your  
15 testimony?

16 MS. SYMONS-JACKSON: I'm going to  
17 object again. I think this is improper  
18 impeachment.

19 THE HEARING OFFICER: Mr. Northrup,  
20 do you have a response?

21 MR. NORTHRUP: To the extent I don't  
22 believe it is improper. How is it improper? I've  
23 given him the deposition. He's looked at it. This  
24 is clearly a different answer in this deposition  
25 than he gave a few minutes ago with respect to

1    whether he's ever been wakened by an odor.

2                   THE HEARING OFFICER:   Okay.  I'm  
3    going to allow the question.  Can you repeat it  
4    again for Mr. Martens?

5    BY MR. NORTHRUP:

6           Q.    Having looked at this deposition, those  
7    couple of lines, how do you -- do you see any  
8    inconsistency between this and your response to the  
9    earlier question on whether you had ever been  
10   awakened by an odor?

11          A.    I don't know, because it says no there,  
12   but I said I don't know.

13          Q.    Why?

14          A.    And I don't remember whether I said no or  
15   don't know down there.

16          Q.    Well, it's recorded in the deposition  
17   what you said --

18          A.    Okay.

19          Q.    -- down there.  So which is more  
20   accurate?  What was said here, or what you just  
21   said?

22          A.    What I just said.  That I don't know.

23          Q.    Have you ever actually witnessed  
24   equipment operating in the evening at the landfill?

25          A.    Yes, I have.

1 Q. Okay. When is that?

2 A. It's been years back.

3 Q. More than one year?

4 A. I think most of it was in the time span  
5 of one year there.

6 Q. Now, this -- I can't remember what the  
7 number was. Peoples Exhibit 24, is that a form  
8 that you developed?

9 A. Yeah. Somebody developed it.

10 Q. I'm sorry?

11 A. Somebody developed it.

12 Q. Did you?

13 A. No, not personally.

14 Q. Where did you get the form?

15 A. I'm not sure where my wife got it.

16 Q. Your wife got it. Where do you get your  
17 drinking water from?

18 A. A well.

19 Q. Is that on your property?

20 A. Yes.

21 Q. Do you know how deep it is?

22 A. What is it? 315 I think or 215. I don't  
23 remember.

24 Q. Have you ever had it sampled?

25 A. Yes.



1           Q.    Has anyone ever told you not to drink the  
2    water?

3           A.    Not as of yet.   But this last report that  
4    just come back showed high levels of lead.

5           Q.    Did you have that report with you?

6           A.    No, I don't.

7           Q.    Who did the sampling?

8           A.    State of Illinois.

9           Q.    They provided you with a copy?

10          A.    Yes.

11          Q.    Do you recall more specific than the  
12   state?   Was it EPA?

13          A.    Yeah.

14          Q.    Is there anyplace on your property where  
15   vegetation will not grow?

16          A.    No.

17          Q.    Did you ever -- were you ever a member of  
18   any neighborhood association whose purpose it was  
19   to fight the landfill?

20          A.    Yes.

21          Q.    Do you know what the name of that  
22   organization was?

23          A.    If I can think of it again.   Like I  
24   stated before, I cannot remember what we called it.

25          Q.    Is that organization still active?

1 A. No.

2 Q. Okay. When did it cease to be active?

3 A. It's been a few years back. About the  
4 time that Mr. Watts put the lawsuit against Joe  
5 Whitley.

6 Q. Is Joe Whitley a member of that  
7 organization?

8 A. I believe he was. I don't know for  
9 positive.

10 Q. Did he take an active role in that  
11 organization?

12 A. Did who?

13 Q. Joe Whitley. I'm sorry.

14 A. What do you define as an active role?

15 Q. Did he ever speak at public gatherings?

16 A. Yes.

17 Q. Did he search on any -- were any  
18 committees formed?

19 A. Yeah. There was some committees formed  
20 at times.

21 Q. Okay. What were those committees?

22 A. One that I was involved in was to try and  
23 get the publicity on the landfill.

24 Q. Okay. Was Joe Whitley involved in that  
25 committee?

1 A. Not that I recollect.

2 Q. Okay. What did Joe Whitley do, if you  
3 know, on behalf of this organization?

4 A. He was just an involved citizen like the  
5 rest of us.

6 Q. When was the last time any debris hit  
7 your vehicle on the Andalusia Road?

8 A. Last night. Mud going home from here.

9 Q. And you attribute that to the landfill?

10 A. Yes, sir. Them big hunks of mud out  
11 there in the center of the highway. They sure  
12 didn't grow there.

13 Q. Where do you think they came from?

14 A. Off the wheels of garbage vehicles.

15 Q. When was the time before that that there  
16 was any mud on the road?

17 A. Let's see. Just about a week ago when it  
18 rained.

19 Q. Now, you've -- even considering those  
20 instances, is it better now than it was a year ago?

21 A. No. You get the big rains, we still get  
22 the big muds on the roads.

23 Q. And have you ever complained about that  
24 to the landfill?

25 A. No, I haven't.

1 Q. Have you ever complained to the state?

2 A. No, I haven't.

3 Q. Now, you believe -- you said you smell  
4 landfill odors on a regular basis. Can you -- can  
5 you be more specific for me?

6 A. Well, the last time was Monday evening.  
7 And before that was -- was it Friday, I think, or  
8 something like that.

9 Q. On Monday, how long did the odors last?

10 A. I don't know. I didn't stick around. I  
11 went back inside.

12 Q. Could you smell it inside?

13 A. I was down -- no. Windows was closed,  
14 garage was closed up, and I was in the garage, so I  
15 couldn't smell it.

16 Q. What's the most in terms of duration that  
17 you've ever smelled any odors coming off the  
18 landfill?

19 A. Well, hard to say, because when it gets  
20 smelling, I get out of the smell. Close the  
21 windows in the house if they are open. Or if  
22 things are closed up and I'm outside doing  
23 something, I go inside. I smell it for at least an  
24 hour at a time.

25 Q. And you would say -- or it's true that

1 the odor is not constant? I mean, it comes and  
2 goes?

3 A. Right.

4 MR. NORTHRUP: I don't have any  
5 further questions.

6 THE HEARING OFFICER: Redirect.

7 MS. SYMONS-JACKSON: Yes. Just a  
8 few questions.

9 REDIRECT EXAMINATION

10 BY MS. SYMONS-JACKSON:

11 Q. First of all, Mr. Martens, you mentioned  
12 the big hunks of dirt that -- in the middle of the  
13 highway. Can you tell us what size you are talking  
14 about?

15 A. Oh, you know, that big around  
16 (indicating). Well, for 6-inch diameter, around in  
17 there, down to an inch. Sometimes you get  
18 foot-size clogs that come out from between the  
19 tandem wheels.

20 Q. Have you seen dirt falling off trucks  
21 coming out of the landfill before?

22 A. No. You know, it's always there. I --  
23 very seldom do I see one coming right out of it. I  
24 have followed them, though, and got rapped with  
25 stuff at times.

1 Q. Stuff blowing off the trucks?

2 A. Off the wheels. Coming up off the  
3 wheels.

4 Q. Okay. Now, you indicated that you have  
5 not personally complained to the landfill about  
6 these areas of concern, the odors and the mud, the  
7 litter and the noise. Why not?

8 A. What good does it do? It doesn't seem to  
9 do any good for anybody to complain.

10 Q. The problems you've experienced over the  
11 past ten years, would you say they have improved  
12 over the years or just stayed the same?

13 A. In some instances, it's improved some.  
14 But in others, it's the same old stuff.

15 Q. Would you say the odors have been pretty  
16 consistent all along?

17 A. Yes.

18 Q. Now, looking again at Peoples Exhibit  
19 24. Can you look down there at the bottom, right  
20 underneath the chart. And I'll read for the  
21 record. It says: Do you authorize this Agency to  
22 send a copy of this log to the suspected source of  
23 pollutant? And there is two boxes there where you  
24 can check yes or no. And which box is checked?

25 A. Yes.

1           Q.    Now, do you -- do you have any knowledge  
2   of whether this was actually ever sent to the  
3   landfill?

4           A.    No, I don't.

5           Q.    But the landfill -- no one at the  
6   landfill has contacted you regarding these odor  
7   logs; is that correct?

8           A.    No.

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

11                   THE HEARING OFFICER:  Mr. Northrup.

12                   MR. NORTHRUP:  Just  -- just a  
13   couple of quick follow-up.

14                   RE CROSS-EXAMINATION

15   BY MR. NORTHRUP:

16           Q.    What are the things that have improved  
17   over the years at the landfill?

18           A.    There is a little bit of green.  Not  
19   look -- I'm not looking out at nothing but clay all  
20   the time and as much -- well, blowing litter on  
21   that part of it, because they have moved the  
22   operation down where I can't see it now from my  
23   sliding glass door.

24           Q.    That's it.  That's all?

25           A.    Yeah.

1           Q.    I believe you'd earlier said that at  
2   times your wife would call the landfill, and Elmer  
3   would take some action.  Is that correct?

4                   MS. SYMONS-JACKSON:  I'm going to  
5   object.  I don't think that was his testimony  
6   today.

7                   THE HEARING OFFICER:  Mr. Northrup.

8                   MR. NORTHRUP:  I thought it was.

9                   MS. SYMONS-JACKSON:  It certainly  
10  wasn't brought out on redirect.  Therefore, I would  
11  object as improper on recross.

12                  THE HEARING OFFICER:  I don't know  
13  what you are referring to, so I don't think it's  
14  been brought out today at all.

15                  MR. NORTHRUP:  That's fine then.  
16  I'm done.

17                  MS. SYMONS-JACKSON:  No further  
18  questions.

19                  THE HEARING OFFICER:  Can we go  
20  ahead and excuse this witness so he can go to  
21  work?

22                         Please call your next witness.

23                   MS. SYMONS-JACKSON:  People call  
24  Mr. Wayne Siebke.

25                   THE HEARING OFFICER:  Please swear



1 the witness. Have him spell his name.

2 WAYNE SIEBKE,  
3 called as a witness, after having been first duly  
4 sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MS. SYMONS-JACKSON:

7 Q. Mr. Siebke, can you please state your  
8 name for the record and spell your last name?

9 A. Wayne L. Siebke. It's spelled  
10 S-I-E-B-K-E.

11 Q. Mr. Siebke, where do you currently  
12 reside?

13 A. 7716 - 78th Avenue West, Milan.

14 Q. And where is that residence in location  
15 to the -- or in relation to the Watts landfill?

16 A. It lays to the northeast corner of their  
17 property.

18 Q. And approximately how far is your  
19 property from the Watts landfill property?

20 A. My south property line is adjacent to  
21 their northeast corner.

22 Q. Okay. So your property directly borders  
23 the landfill property?

24 A. Directly borders, yes.

25 Q. And who lives there at this address with

1     you?

2           A.     My wife, Janet, and two children.  I  
3     guess as of a week ago, it would be three  
4     children.  But Brandy, Rochelle and April.

5           Q.     You have three daughters?

6           A.     Yeah.  Three daughters.  Brandy is 21,  
7     Rochelle is 18, and April is 15.

8           Q.     And how long have you lived at this  
9     address?

10          A.     Approximately 15 to 20 years.  I forget  
11     exactly.  At least 15.

12          Q.     Now, you were present for the testimony  
13     from Mr. Jerry Martens when he discussed odors at  
14     the landfill, correct?

15          A.     Yes, I was.

16          Q.     Now, Mr. Siebke, you don't personally  
17     have any complaints regarding odor.  Is that fair  
18     to say?

19          A.     That would be fair to say.

20          Q.     And why not?

21          A.     I don't have much sense of smell.

22          Q.     Okay.  So there is a physical -- you have  
23     a physical, I guess, impairment that you just don't  
24     have a sense of smell?

25          A.     I guess.  I have no idea what caused it.

1 So odors are not real offensive to me, although I'm  
2 aware there are odors there.

3 Q. How are you aware there are odors there?

4 A. Me and my wife have been up on top of the  
5 hill at times for a relaxing walk or whatever, and  
6 she will suggest that we leave, that it's not  
7 pleasant. We have been up there chopping wood and  
8 stuff different times, and we have to cease the  
9 operation because it's not pleasant. Last winter  
10 we baby-sat for a young boy, and we were walking,  
11 and he -- well, I sensed the smell, but it wasn't  
12 objectable to me. But to him, it was. He made an  
13 obvious yuck or, you know, covered his nose or, you  
14 know, whatever. So it was obviously objectable to  
15 him. But I sense --

16 MR. NORTHRUP: I object to that.  
17 It's hearsay.

18 MS. SYMONS-JACKSON: It's not  
19 hearsay for him to observe what the person with him  
20 was doing. He's not telling us what the person  
21 said or anything. Just making an observation.

22 THE HEARING OFFICER: I'm going to  
23 allow it for -- just to show that that's what the  
24 child did, not as proof that there was a bad smell.  
25 BY MS. SYMONS-JACKSON:

1           Q.    So, Mr. Siebke, would you agree there  
2   have been times when you and your wife have been  
3   outside of your property and you've had to go  
4   inside as a result of some odors?

5           A.    I don't think that would necessarily be  
6   true.  We have had to relocate.  I got 20 acres.  
7   And when my family senses the smells, it's  
8   generally when we are back towards the south of our  
9   property.  The house lays towards the front of the  
10   property and down the hill.  So I believe the  
11   smells tend to get blown over the house or  
12   whatever.  Don't get that far.  But I would say we  
13   don't get forced inside, no.

14          Q.    And how far is your house from the  
15   landfill?

16          A.    Well, I suppose -- anybody know how many  
17   rods is an acre?  It's -- my property is 20 acres,  
18   and it's twice as deep as it is wide.  So my house  
19   is located on the front half.  So it's at least a  
20   ten-acre square away.  I can't come up with -- I  
21   suppose it would be 500, 600 feet maybe.  Just  
22   guessing.

23          Q.    Mr. Siebke, is there a creek located  
24   anywhere on your property?

25          A.    I don't think -- I don't know the

1 definition of creek. I don't think it would be  
2 classified as a creek. It's more of an erosion  
3 drainage ditch or whatever. I don't know that  
4 technical definition of a creek. But there is not  
5 constant water running there, so I don't think --  
6 in my opinion, it would not be considered a creek.  
7 It's more of a drainage ditch.

8 Q. Where is that drainage ditch located on  
9 your property?

10 A. The main one -- the main one -- several  
11 main ones run north and south, cutting my property  
12 approximately in half. Leaving a section on the  
13 east and a section on the west.

14 Q. Does that main drainage ditch come into  
15 contact at the landfill property?

16 A. It originates up at the landfill.

17 Q. And do you know where that drainage ditch  
18 leads to at the other end?

19 A. Yes. It goes to the Mississippi River.

20 Q. And do you know whether -- you may not  
21 know this. Do you know whether this drainage ditch  
22 is what is referred to as outfall 001 at the  
23 landfill?

24 A. I guess I kind of picked it up at the  
25 hearing that's what it was referred to. I think

1     that's the first time I recall it being referred to  
2     as that.

3           Q.     Are you aware of whether the landfill  
4     discharges any water or other materials from their  
5     landfill through their drainage ditch?

6           A.     Yes.

7           Q.     Now, is this drainage ditch something you  
8     can see from your house? Let me rephrase that.

9                   Okay. Is -- the point where the drainage  
10    ditch leaves the landfill property and enters your  
11    property, is that point something you can see from  
12    your house?

13          A.     No.

14          Q.     Okay. How frequently would you say  
15    you -- you actually go out and observe this  
16    drainage ditch?

17          A.     Probably two, three times a week.

18          Q.     And under what circumstances do you -- do  
19    you go out to observe the drainage ditch? What are  
20    you doing?

21          A.     Just going outside for a walk, maybe  
22    going out with the dogs, or just feel like going  
23    outside. I assume you are talking about the --  
24    what I can see from the house. I don't go back to  
25    the landfill where you said where it originates. I

1 don't go back there that often.

2 Q. What point of the drainage ditch  
3 didn't -- let me ask you this.

4 Have the landfill operations, in your  
5 opinion, had any impact on that drainage ditch?

6 A. Definitely.

7 Q. And can you explain that for us?

8 A. The erosion is bad, for lack of a better  
9 term. I mean, whatever the worst term you can come  
10 up with is probably what I would consider it.

11 Q. By erosion, do you mean the drainage  
12 ditch has gotten deeper or gotten larger?

13 A. Well, it can't get any deeper than the  
14 Mississippi River. Or basically there is a culvert  
15 going under Highway 92, which is directly in front  
16 of my place. Water just will not cut a ditch  
17 deeper than the excess or what -- where it goes  
18 out.

19 So, yes, it is getting somewhat deeper  
20 and wider. It's washing trees out. The course  
21 changes, and something will block it, and it will  
22 cause a swirl in the water, and it will wash roots  
23 away from a tree that's next to the creek bank.  
24 And it just -- just typical erosion. I don't know  
25 how else to explain it.

1           Q.    Have you lost any trees or other  
2    vegetation as a result of the erosion in this  
3    drainage ditch?

4           A.    Oh, yes.  I'm not concerned with it,  
5    though.  I don't think it was anything of any value  
6    really.  It was a nice oak tree that I believe was  
7    killed partially maybe erosion and maybe  
8    compaction.  But it's not within sight of the  
9    house, and I got 20 acres of timber, so it's not  
10   that.  Trees live and die, so I'm not that  
11   concerned with it.

12          Q.    But the trees that have died, I guess,  
13   along the drainage ditch, you've attributed to the  
14   changing current or the erosion in that drainage  
15   ditch?

16          A.    The ones that the roots were washed away,  
17   yeah.  The dirt was washed away from the roots.  In  
18   my opinion, I think anybody's opinion, definitely  
19   be the cause of that, yeah.

20          Q.    Any other problems you've noticed or  
21   impacts you've noted from the landfill in that  
22   drainage ditch?

23          A.    Lot of debris that gets washed out with  
24   the water.  We have found -- you name it.  Their  
25   tires, tampon applicators, surgical gloves, you



1 know, tin cans. Anything that would go in a  
2 landfill, we have seen. Bottles.

3 Q. Mr. Siebke, when you say debris, do you  
4 mean refuse, trash from the landfill?

5 A. Yes. A big one I just thought of is  
6 plastic garbage bags seems to be the main thing you  
7 see.

8 Q. Empty bags or bags full of stuff?

9 A. Both. Mostly empty, I guess. It's hard  
10 to say.

11 Q. And can you describe for us the frequency  
12 with which you observed this refuse in the drainage  
13 ditch?

14 A. Well, it's particularly worse after a big  
15 rain, like the water ran hard down there last night  
16 and ran over my road last night, and I know if we  
17 go out there, we would see a truckload of it.

18 Q. Did you go down there?

19 A. No. It was dark when I got home and dark  
20 when I left. But every time it rains heavy, there  
21 is stuff in there. And then any time you go down  
22 there, you could observe refuse laying along the  
23 creek banks.

24 Q. Now, what happens when you observe this  
25 refuse in the creek? What do you do? Or in the

1 drainage ditch. Excuse me.

2 A. For the most part, I haven't done too  
3 much about it. The -- within the past, I suppose  
4 four or five years, it wasn't -- it wasn't so  
5 severe before. But the operation has changed, and  
6 they are actively filling in that. It would be  
7 northeast corner now.

8 So that has -- the problem has really  
9 gotten worse since they have started actively  
10 filling that corner. And I suppose when it first  
11 got bad, I contacted the landfill, and it was very  
12 hard to get through to them. But I think some new  
13 employees came to work at that time, and I believe  
14 one of them may have been Tom. I'm not sure who  
15 they were.

16 But I was up there complaining. And for  
17 some reason, must have been a nice day or whatever,  
18 I got them to go for a walk. And they came down to  
19 where I was concerned, where there was kind of a  
20 log dam there. And it would slow the water up.  
21 And it caught a lot of refuse, and the creek had  
22 overflowed, and a lot of stuff laying on the creek  
23 banks. And I told them -- I suppose it's really  
24 coming from my wife complaining to me about it.  
25 She had been down there and seen it, I believe.

1 Prompted me to go up and talk to them.

2           When they seen how bad it was, they had  
3 people work overtime that night to come down and  
4 pick it up. And they don't do a complete job when  
5 they do come down, but they do make an attempt to.  
6 They pick up the obvious.

7           And the main time I call them is when the  
8 creek runs over my driveway, like it did last  
9 night. And most of the time, there is garbage bags  
10 of stuff laying along there. And they do a pretty  
11 fair job of picking up in that immediate area. But  
12 they don't pursue the creek back southerly from  
13 the -- my driveway.

14          Q. Now, do the garbage bags actually  
15 overflow the drainage ditch and come up onto your  
16 property or onto your driveway?

17          A. Yeah. I think I've seen plastic bags lay  
18 up on the driveway. Whatever would float is what  
19 would end up laying on top of the driveway. If  
20 it's not washed down to New Orleans, it gets caught  
21 along the edges. Yes, there has been plastic bags  
22 there.

23          Q. You mentioned an employee named Tom. Is  
24 that Tom Jones you are talking about?

25          A. I believe it is, yes.

1           Q.    You also mentioned a log damn in the  
2    drainage ditch.  Is that something that is there  
3    naturally or has that been installed by someone?

4           A.    No.  I believe that occurred before I  
5    bought the property.  There was a logging operation  
6    there that drug trees out, and I think they made a  
7    creek -- a temporary creek crossing there, and I  
8    believe they threw tree tops and stuff and pushed  
9    dirt in to drive across.

10                But the erosion from the landfill exposed  
11    those trees and caught the garbage bags and stuff,  
12    refuse.

13           Q.    How would you say the presence of refuse  
14    in this drainage ditch on your property has  
15    affected your enjoyment of your property?

16           A.    Well, I guess for me personally, I  
17    wouldn't say it's affected me drastically, other  
18    than the complaints I get from my wife.  I guess  
19    when I bought the property, the landfill was there,  
20    and I guess I had it in my head that I was going to  
21    try and be a neighbor and get along with them.

22                And as long as it's -- it wasn't on my  
23    kitchen table or whatever, I wasn't going to really  
24    make any major complaints.  So I guess honestly I  
25    can't say that it bothers me that drastically, but

1 it's not pleasant, I guess.

2 Q. But it bothers your family?

3 A. Yeah. I would say so.

4 Q. And when you observed the refuse in the  
5 drainage ditch, is there water also present in the  
6 drainage ditch?

7 A. I would -- I'd say no probably. I mean,  
8 I don't know what we classify as water. Probably  
9 50, 75 percent of the time, the creek bottom, or  
10 whatever, or the drainage ditch bottom, is wet.  
11 Approximately what you call a trickle. I don't  
12 know that I would call that water.

13 I think you are talking flowing water  
14 that would flush refuse down. It's not -- I never  
15 seen water that would flush it down other than  
16 during a rainstorm or immediately after.  
17 Otherwise, it's just a trickle in, and the refuse  
18 laying there.

19 Q. You have observed standing water in the  
20 bottom of the drainage ditch?

21 A. Oh, yes. I've been down in my culvert  
22 trying to unplug it when it's raining.

23 Q. And there has been refuse in that  
24 standing?

25 A. Yes.

1           Q.    At one time, I was almost -- when I tried  
2   to unplug it, I thought I was going to get sucked  
3   in the culvert.  It kind of got unplugged and kind  
4   of scared me.  All of a sudden, there was a big  
5   suction of, you know, it kind of got unplugged and  
6   kind of felt like it was going to suck me in  
7   almost.

8           Q.    Because of the volume of water?

9           A.    Oh, yes.  Yes.  30-inch culvert, and it  
10  runs.  I could crawl through it, and it would take  
11  something for me to crawl through anything.

12          Q.    Mr. Siebke, it's your opinion that the  
13  refuse in your drainage ditch, the source of that  
14  refuse is the Watts landfill?

15          A.    Oh, definitely.

16                   MS. SYMONS-JACKSON:  Those are all  
17  the questions I have on direct.

18                   THE HEARING OFFICER:  Mr. Northrup.

19                   MR. NORTHRUP:  Okay.

20                   CROSS-EXAMINATION

21  BY MR. NORTHRUP:

22          Q.    You said you've seen standing water in  
23  the drainage ditch, particularly by the culvert?

24          A.    Yes.

25          Q.    Do you observe that only when it's

1 raining?

2 A. Yes.

3 Q. You also mentioned that that culvert gets  
4 plugged up.

5 A. Yes.

6 Q. What causes it to get plugged up?

7 A. I would say a tree limb or something  
8 would be the -- what catches the garbage bags and  
9 stuff. A tree limb on its own wouldn't plug it up,  
10 you know. It takes garbage bags or something like  
11 that to plug up the spaces between the twigs.

12 Q. Okay. Is there any erosions that  
13 originates from your property that goes in this  
14 ditch?

15 A. I suppose there is. Minimal. Most of my  
16 ditches that go into that doesn't show active  
17 erosion. There is vegetation growing in most all  
18 of them, and there is no vegetation in that one.

19 Q. Okay. So there are a couple of other  
20 ditches that intersect with this?

21 A. Yeah. There is three of them, yes.

22 Q. Has there ever been a time when you or  
23 your wife has complained to the landfill where they  
24 haven't come down to pick up trash?

25 A. Yes, there was a time.

1 Q. Okay. When was that?

2 A. Well, like I was trying to describe  
3 earlier. I couldn't put a date to it. But before  
4 they realized there was a real problem there, I'd  
5 say, and I think there have been times they have  
6 been too busy. But it takes a second phone call to  
7 remind them.

8 Q. And if you make that second phone call,  
9 they come down?

10 A. I would say probably.

11 Q. When did you have this walk with Tom?

12 A. Well, it was shortly after his employment  
13 there.

14 Q. More than a year ago?

15 A. Yes.

16 Q. More than --

17 A. I believe he's worked there three or four  
18 years. I'm not sure.

19 Q. Have you ever complained to the landfill  
20 about this culvert being blocked?

21 A. Oh, yes.

22 Q. Okay. And has the landfill been  
23 responsive to those complaints?

24 A. Yes. As far as coming down and cleaning  
25 up the debris after the -- after it's created. But



1 they don't try to solve the problem. I've -- I've  
2 asked them. I've been on them for three or four  
3 years to dredge that ditch out prior to the culvert  
4 so that there is a place for the water to  
5 accumulate in so it don't run over the culvert.  
6 And I guess I've also approached them about putting  
7 a dry damn in the ravine to slow the water down to  
8 alleviate the erosion problem.

9 Q. Can you quantify how much trash you've  
10 seen in your drainage ditch? I mean, is it a lot,  
11 is it not very much?

12 A. Anything is too much. But, yes,  
13 definitely more than a pickup load. When they come  
14 down and clean up, I would say they leave 10, 12  
15 bags laying there. I cannot recall ever seeing  
16 them come back and pick up the bags. I think they  
17 have, but I don't know that I've ever seen it. I  
18 know one time I loaded them up and took them up  
19 there to them. Yeah. But when they come down,  
20 they leave at least a dozen bags or so of stuff  
21 that they have picked up.

22 Q. Okay. What size bags are you talking  
23 about?

24 A. Oh, your average, like a leaf bag or  
25 something, a big garbage bag. I wouldn't say it

1 was huge, but --

2 MR. NORTHRUP: I don't have any  
3 further questions.

4 THE HEARING OFFICER:  
5 Mr. Symons-Jackson.

6 MS. SYMONS-JACKSON: I don't have  
7 any redirect.

8 THE HEARING OFFICER: Can we go  
9 ahead and excuse this witness then?

10 MS. SYMONS-JACKSON: Yes.

11 MR. DAVIS: Ms. Hearing Officer,  
12 I've been advised a member of the public may wish  
13 to make a statement.

14 THE HEARING OFFICER: Okay. Have a  
15 seat for us.

16 THE WITNESS: Sure.

17 THE HEARING OFFICER: Off the record  
18 for a minute.

19 (Off-the-record discussion held.)

20 THE HEARING OFFICER: Please swear  
21 the witness.

22 HEIDI SCHULTZ,  
23 called as a witness, after having been first duly  
24 sworn, was examined and testified as follows:

25 THE HEARING OFFICER: Could you

1 please state your name for the record?

2 THE WITNESS: Sure. My name is  
3 Heidi Schultz.

4 THE HEARING OFFICER: Okay.

5 THE WITNESS: I live at 8320 - 78th  
6 Avenue West in Milan. Address is Milan.

7 THE HEARING OFFICER: You may go  
8 ahead and make whatever statement you wish to  
9 make.

10 THE WITNESS: This morning I was  
11 reading in the paper where this testimony and the  
12 hearing was going on about the landfill.

13 My husband and I bought our property  
14 along Andalusia Road and moved in in the spring of  
15 '93. And not too long after that was when we  
16 began to notice the smell. And it would be -- the  
17 odor was the first thing that we noticed. Of  
18 course, the wind has to be blowing the right  
19 direction. We live a little farther away than  
20 Mr. Whitley from the landfill. But the smell still  
21 reaches out without any problems on a windy day.

22 Also the part that really bothered me the  
23 most was we have moved in in the spring. And that  
24 summertime that I started to hear the trucks at  
25 night, and I would say that that's the part that

1 really bothers me the most or that caused me the  
2 most concern. Between like 11:30 and maybe 1:00 in  
3 the morning, you would hear trucks up there. And  
4 you'd, like, hear the back-up beep, beep, beep of  
5 back-up vehicles.

6 And I called the sheriff's department  
7 twice. Once probably during the summertime of '93  
8 and once during the summertime of '94. I'd have to  
9 go back to the sheriff's department to find out the  
10 records of the calls. But I asked them to please  
11 log in the calls, that I wanted a deputy to go up  
12 and find out what was going on up in the landfill  
13 area, that somehow there was large pieces of  
14 equipment.

15 That -- we sleep with our windows open  
16 also in the summertime if the weather is nice, and  
17 you could easily hear these large pieces of  
18 equipment moving. Earth moving kind of equipment  
19 moving ground around. And that's what I wanted to  
20 add.

21 THE HEARING OFFICER: Okay. Are  
22 there any questions?

23 MR. DAVIS: Yes. I have a few.

24 CROSS-EXAMINATION

25 BY MR. DAVIS:

1 Q. Ma'am, what is your occupation?

2 A. I'm a human resource consultant.

3 Q. And what's your educational level?

4 A. I have a bachelor's degree of business  
5 administration work on my MBA.

6 Q. I'm sorry?

7 A. Work on my MBA at Iowa.

8 Q. How long have you lived in the Quad  
9 Cities area?

10 A. I've only lived in the Quad City area --  
11 came here when I was married in November of '92.  
12 And we purchased the property in that spring. We  
13 bought our house that next spring. So since the  
14 spring of '93 is when we have been living out along  
15 Andalusia Road.

16 Q. My next few questions imply that we are  
17 talking generally, but if there is any specific  
18 instance, please try to identify this for us as far  
19 as time and such.

20 Have the odors been a continuing problem?

21 A. On and off. It's not a consistent where  
22 you'll smell it every single day. But when it  
23 comes, it seems to come. It will be a couple of  
24 nights. Then it will go away again for a little  
25 while. And a couple of nights, pretty strong. And

1 it will go away again. It is enough to make you  
2 want to go in the house and close the windows at  
3 times.

4 Q. Have you noticed odors at least weekly?

5 A. I would -- it would be hard for me to say  
6 it was weekly. It's definitely more frequent --  
7 it's on a frequent enough basis that you are aware  
8 of it, and you are like, oh, there is the landfill  
9 again.

10 We have three acres of property up there  
11 and have patios that we entertain on, and it is  
12 always a fear of mine that the odors are going to  
13 hit on a day when we are having people for a  
14 barbecue.

15 Q. Has your fears been realized? Have you  
16 detected odors?

17 A. Not to the best of my recollection. No,  
18 it hasn't hit on a Friday or Saturday night when we  
19 are having a party. We don't entertain that  
20 frequently though.

21 Q. Have the odors unreasonably interfered  
22 with your enjoyment of your life and property?

23 A. It has sent us inside at times. And we  
24 have a new infant. We had a baby in April of '96.  
25 And that has heightened my concern again, that if

1     there is a problem there, we don't know what that  
2     smell is.  If it's any type of a toxic odor or what  
3     it is, it's a concern with having an infant.

4                     MR. DAVIS:  Thank you.  I have no  
5     other questions.

6                     THE HEARING OFFICER:  Mr. Northrup.

7                     CROSS-EXAMINATION

8     BY MR. NORTHRUP:

9             Q.     You said the odor has sent you inside on  
10    a few times.

11            A.     Uh-huh.

12            Q.     Can you quantify what a few times is?

13            A.     Probably a dozen.  And it annoys your  
14    nasal passages.

15            Q.     Okay.  And this has been since you moved  
16    in in '93?

17            A.     Yes.

18            Q.     Okay.

19            A.     Approximately June 1st, Labor Day or  
20    Memorial weekend.

21            Q.     And I'm sorry if I didn't catch this  
22    earlier.  Do you know how far in distance you are  
23    from the landfill?

24            A.     You know, no, I don't.  And I'm not a  
25    good one to judge that.  Probably as the crow flies,

1 I think we are about a half mile. But that is a  
2 guesstimate. I know if you climb up to the top of  
3 a couple of the little peaks of hills, you can see  
4 it. I can see the top of the landfill. But we  
5 cannot see it from our house at all. We are  
6 protected by lots of trees.

7 Q. Have you ever seen -- on these occasions  
8 where you hear noise, have you ever seen any trucks  
9 or equipment?

10 A. No, I can't not see the landfill. At one  
11 time, I was -- attempted to go up there in the  
12 evening when I was hearing the noise, and there is  
13 a large dog. They have a big dog up there one time  
14 when I drove up the road, so I wasn't about to get  
15 out of my car.

16 Q. The noise. When was the last time you  
17 heard any noise problems?

18 A. And I was sitting here this morning  
19 trying to think of the last time I heard trucks up  
20 there. And it was this summertime. During this  
21 summer when we were outside in the summertime.  
22 Especially being up -- in fact, it's definitely  
23 been since the baby was born, 'cause having a new  
24 infant, there was times when we were up in the  
25 middle of the night and I could hear trucks up



1     there. And basically what I would hear is that  
2     beep, beep, beep. The back-up noise, you know.  
3     When trucks back up, they have that beep, beep,  
4     beep that goes off.

5           Q.     How do you know that's coming from  
6     equipment at the landfill?

7           A.     Well, we are in the middle of nowhere.  
8     There is nothing else moving.

9           Q.     You don't look out your window down  
10    Andalusia Road?

11          A.     Look out towards that direction, and  
12    that's where the sound is coming from. But there  
13    is nothing else out there but woods.

14          Q.     That beep, beep, beep noise, is that --  
15    is that annoying to you?

16          A.     It's loud enough that if you are laying  
17    in bed, you sure can hear it. After 11 o'clock at  
18    night.

19          Q.     Does it ever wake you up?

20          A.     Has that specifically woken me up? I  
21    couldn't say that that's what actually woke me up.  
22    When I am awake, though, it's something that I can  
23    definitely hear laying in bed. You can hear the  
24    beep, beep, beep.

25                   MR. NORTHRUP: That's all the

1 questions I have.

2 RE CROSS-EXAMINATION

3 BY MR. DAVIS:

4 Q. Has the noise, when you are awake and  
5 you've heard it, inhibited your ability to get back  
6 to sleep or to go to sleep?

7 A. It's concerned me. I'm wondering what  
8 they could possibly be doing up there so late in  
9 the evening. So yeah, it has inhibited me from  
10 going back to sleep.

11 MR. DAVIS: Thank you, ma'am.

12 THE WITNESS: Also the mud on the  
13 road. It's only -- after it rains, it seems to be  
14 the biggest problem. I seem to time it, lucky me,  
15 when the trucks are coming out in the early in the  
16 morning on my way to work several times when a  
17 truck has pulled in front of me as I'm getting  
18 ready to pass the landfill road, and I have  
19 definitely seen large chunks of mud fall off the  
20 back of underneath the wheel wells and fall onto  
21 the road.

22 BY MR. DAVIS:

23 Q. So you observed mud coming off the  
24 vehicles leaving the landfill?

25 A. Coming on my vehicle.

1           Q.    Has it changed the driveability of the  
2   road conditions?

3           A.    It makes you slow.  You are very cautious  
4   there, because it is slick and slippery.  
5   Especially if it's raining.  The road is a little  
6   slick, you know.  When you have all this other, you  
7   lose your traction.

8           Q.    And there is a sign posted by the highway  
9   people?

10          A.    Yeah.  I remember when that sign went  
11   up.  Again, you kind of get used to seeing it every  
12   day.  I couldn't tell you if it was still up.  I  
13   remember when it went up.  That's since we moved in  
14   that -- since it went up.  That says mud on the  
15   road.

16                       MR. DAVIS:  Nothing further.

17                       RE CROSS-EXAMINATION

18   BY MR. NORTHRUP:

19          Q.    The inability to get back to sleep, you  
20   said that's caused -- or you are concerned about  
21   whether --

22          A.    What could be going on.

23          Q.    What the noise -- what could be going on?

24          A.    Yeah.

25          Q.    So what is actually keeping you up?  Is

1 it your thinking of the concern, or is it the  
2 noise?

3 A. It's the concern.

4 MR. NORTHRUP: Okay. I don't have  
5 any further questions.

6 THE HEARING OFFICER: Okay. Thank  
7 you very much.

8 THE WITNESS: Thank you.

9 THE HEARING OFFICER: Are there any  
10 other members of the public? Okay.

11 Call your next witness then.

12 Off the record for a minute.

13 (Off-the-record discussion held.)

14 (Recess taken.)

15 THE HEARING OFFICER: All right.

16 Let's go back on the record. We are resuming with  
17 Ron Mehalic. And I remind you that you are under  
18 oath. He is your witness.

19 RON MEHALIC,  
20 called as a witness, after having been previously  
21 duly sworn, was examined and testified as follows:

22 CONTINUED DIRECT EXAMINATION

23 BY MS. SYMONS-JACKSON:

24 Q. Okay. Now, Ron, we had been talking  
25 yesterday when we broke for the evening regarding

1 your inspection reports at this facility, and we  
2 are just going to keep doing that today.

3 So to start off, I will hand you Peoples  
4 Exhibit 32. And would you agree that this is a  
5 copy of your July 28, 1993 inspection report?

6 A. Yes, it is.

7 Q. And what observations did you make on  
8 this date? Let me take a step back.

9 During your previous inspection reports,  
10 you had noted an area of exposed refuse on the  
11 southern slope of the landfill. Do you recall that  
12 testimony?

13 A. Yes, I do.

14 Q. Okay. And had anything been done to that  
15 area of exposed refuse on this date?

16 A. Yes.

17 Q. What had been done?

18 A. The facility covered the areas with  
19 synthetic fabric.

20 Q. Did you make any observations on this  
21 date regarding leachate?

22 A. Yes, I did.

23 Q. What observations did you make?

24 A. I observed leachate seeps at the  
25 Northwestern bottom of the waste placement area.

1           Q.    Did you observe one seep, or give me the  
2   number of seeps you observed?

3           A.    Two.

4           Q.    Ron, is this an area where you have had  
5   previously observed either leachate seeps or  
6   repaired leachate seeps?

7           A.    Yes.

8           Q.    Okay.  And do you have any photographs  
9   attached to your inspection report, which is  
10   Exhibit 32, which accurately and truly depict those  
11   leachate seeps?

12          A.    Photographs 6 and 7.

13          Q.    Okay.  Is that it?

14          A.    And also 21 and 22.

15          Q.    Okay.  And how did the leachate appear on  
16   that date?

17          A.    Appear as in color?

18          Q.    Well, just describe what it looked like.

19          A.    Describe it as a brownish, oily liquid.

20          Q.    Was there any odor associated with the  
21   leachate?

22          A.    Not that I can recall.

23          Q.    Okay.  Now, Ron let's move on.  I'm going  
24   to hand you Peoples Exhibit 33.  Would you agree  
25   this is a copy of your September 2, 1993 inspection

1 report?

2 A. Yes, it is.

3 Q. Okay. Now, Ron are you familiar with the  
4 requirements of submitting a significant  
5 modification application?

6 A. All the requirements?

7 Q. No. I mean, was the landfill required to  
8 submit a significant modification application?

9 A. Yes.

10 Q. Do you recall when they were required to  
11 have that application submitted to the Agency?

12 A. The Agency called their sig-mod in, and  
13 it was due September 1st of 1993.

14 Q. Okay. Now, during this inspection of  
15 September 2, 1993, did you inquire as to the status  
16 of that sig-mod application?

17 A. Yes.

18 Q. And what was the status of the  
19 application? Had it been submitted?

20 A. It was currently being worked on.

21 Q. Can you give us a brief description of  
22 what is meant by a sig-mod application?

23 A. A sig-mod application should be submitted  
24 by facilities to come into compliance with the new  
25 Subtitle D regulations. They should incorporate in

1 the sig-mod groundwater monitoring, groundwater  
2 impact assessment, gas recovery, if needed, other  
3 facets that I really can't remember.

4 Q. Okay. Now, Ron, as of today, the 30th  
5 day of October, 1996, does the Taylor Ridge  
6 facility yet have a modified sig-mod?

7 A. Not to my knowledge.

8 Q. Okay. Now, let's look at Peoples Exhibit  
9 34. Do you agree this is a copy of your inspection  
10 report from October 20, 1993?

11 A. Yes.

12 Q. Okay. Let's move on to Peoples Exhibit  
13 35. Would you agree this is a copy of your  
14 inspection report from December 13, 1993?

15 A. Yes, it is.

16 Q. Okay. Please identify the next exhibit  
17 for the record, please, Exhibit 36. Is this a copy  
18 of your February 18, 1994 inspection report?

19 A. Yes, it is.

20 Q. Okay. Peoples Exhibit 37. Is this a  
21 copy of your inspection report from April 13, 1994?

22 A. Yes, it is.

23 Q. And, Ron, did you observe any leachate  
24 during this inspection?

25 A. Yes, I did.



1           Q.    Can you tell me where at the facility the  
2   leachate was located?

3           A.    Along the southwestern portion of the  
4   landfill, and at the southeastern portion of the  
5   landfill, in the middle of the landfill.

6           Q.    Okay.  Ron, how many leachate seeps did  
7   you observe?

8           A.    Approximately four.

9           Q.    Do you have photographs attached to your  
10   inspection report that accurately and truly depict  
11   the appearance of the leachate seeps on that date?

12          A.    Yes.

13          Q.    Which photographs?

14          A.    Photographs 8, 19, 20, and 21.

15          Q.    Can you tell us what the leachate looked  
16   like on that day?

17          A.    A brownish, orangeish liquid.

18          Q.    Were there any other violations that you  
19   observed during this inspection?

20          A.    Yes.

21          Q.    And can you tell us about those, please.

22          A.    The failure to comply with terms and  
23   conditions of permits.

24          Q.    And is that relating to the sig-mod  
25   application?

1 A. Yes.

2 Q. It had not yet been submitted?

3 A. Yes.

4 Q. Okay. What about any problems with  
5 odors? Did you notice any odors on that date?

6 A. Yes.

7 Q. Can you tell us about the odors -- odor  
8 problems you observed or noticed?

9 A. I just noticed odor problems at one  
10 portion of the landfill.

11 Q. What portion was that?

12 A. At the southwestern portion of the  
13 landfill.

14 Q. Was that the same area where you had  
15 noticed some leachate seeps?

16 A. Yes.

17 Q. Did you observe -- observe a gas hole in  
18 the area of the odors?

19 A. Yes.

20 Q. Do you have a photograph that shows that  
21 gas hole?

22 A. Yes, I do.

23 Q. What photograph?

24 A. Photograph 8.

25 Q. And is that photograph a true and

1 accurate representation of what you observed on  
2 that day?

3 A. Yes.

4 Q. Ron, can you tell us how a -- a gas hole  
5 formed at a landfill?

6 A. A gas hole is created by decomposition of  
7 the waste in place. And as it decomposes, it  
8 creates methane and other odors associated with  
9 it. And as the pressure increases, it seeks an  
10 avenue of least resistance and pops out in that  
11 area.

12 Q. Ron, would you agree that the pressure of  
13 the gas in a landfill would have to be fairly  
14 substantial to cause a gas hole?

15 A. Yes.

16 THE HEARING OFFICER: Ron, you need  
17 to speak up, please.

18 THE WITNESS: Okay.

19 BY MS. SYMONS-JACKSON:

20 Q. Ron, did you also observe problems with  
21 erosion on the date of this inspection?

22 A. Yes.

23 Q. Can you describe what you observed with  
24 regard to erosion?

25 A. The beginnings of an erosion -- erosional

1 channel, a rill, forming.

2 Q. At what part of the landfill?

3 A. At the northern part.

4 Q. Okay. Ron, is it your opinion that  
5 problems with erosion can contribute to problems  
6 with leachate and odor?

7 A. Eventually if they are not remediated.

8 Q. Okay. And how can that -- how can those  
9 problems result from the erosion if that goes  
10 unremediated?

11 A. Well, in time, as during rain events or  
12 as runoff is cascading off the sides of a given  
13 slope, it would have a tendency to transect through  
14 these channels and eventually encounter waste in  
15 place at some points.

16 Q. Ron, is it your opinion that at this  
17 facility, the Taylor Ridge facility, uncorrected  
18 erosional problems have contributed to the problems  
19 with leachate and odor?

20 A. Yes.

21 Q. And did I ask you already if there are  
22 any photographs that depict the erosional rills  
23 that you observed?

24 A. Yes, you did.

25 Q. And you identified those for us?

1           A.    Photos 14 and 15.

2           Q.    Okay.  I'm going to hand you now what we  
3   have marked as Peoples Exhibit 38.  Do you agree  
4   this is a copy of your inspection report from May  
5   25, 1994?

6           A.    Yes.

7           Q.    And did you, again, note on this day any  
8   problems with regard to leachate seeps?

9           A.    Yes.

10          Q.    And where were those leachate seeps  
11   located?

12          A.    At the southwest -- or southeastern  
13   portion at the inner part of the landfill and at  
14   the southern portion of the upper slope at the  
15   landfill.

16          Q.    Ron, is this the same general area where  
17   you had noted leachate seeps on prior inspections?

18          A.    Yes.

19          Q.    Do you have any photographs attached to  
20   your inspection report that adequately or  
21   accurately depict those leachate seeps?

22          A.    Yes, I do.

23          Q.    Which photographs?

24          A.    Photographs 10, 16, 17, and 18.

25          Q.    Now, Ron, directing your attention to

1 photographs 9 and 10. Did you observe any  
2 erosional rills in those photographs?

3 A. Yes, there are.

4 Q. And had you observed erosion in that  
5 location at the landfill on previous inspections,  
6 if you recall?

7 A. Yes.

8 Q. Now, what did you observe with regard to  
9 gas holes or odor during this inspection?

10 A. At this particular time, I didn't see any  
11 gas holes. They were apparently remediated.

12 Q. So you saw some areas where there had  
13 previously been gas holes but had now been  
14 remediated?

15 A. Yes.

16 Q. Now, Ron, you indicated that the leachate  
17 seeps you observed during this inspection were in  
18 the same approximate location as leachate seeps you  
19 had observed during previous inspections, correct?

20 A. Yes.

21 Q. Now, if a facility such as Taylor Ridge  
22 continues to have leachate seeps generated in the  
23 same general area time and time again, what does  
24 that tell you about the remedial actions that the  
25 facility is undertaking to correct the leachate

1   seeps?

2           A.   Remedial actions.  The immediate --  
3   excuse me.  The immediate remedial actions taken  
4   would rectify them on the short-term.  But as far  
5   as the long-term remedial action, it would need to  
6   be further addressed.

7           Q.   And do you know what the facility was  
8   doing in the short-term to address the leachate  
9   seeps?

10          A.   Yes.  They would cover the area with clay  
11   and compact it.

12          Q.   Was there any vegetative cover in place  
13   over the area where the leachate seeps were noted?

14          A.   No.

15          Q.   Now, Ron, in your opinion, if clay or  
16   soil is put down to cover a leachate seep and a  
17   rain occurs without vegetative cover, what's going  
18   to happen to that clay or soil?

19          A.   Eventually, over time, it would erode.

20          Q.   And the leachate would come back?

21          A.   In time.

22          Q.   All right.  Let's move on to your -- to  
23   Peoples Exhibit 39.  Would you agree this is a copy  
24   of your inspection report from August 3, 1994?

25          A.   Yes.

1 Q. Did you observe any areas of remediated  
2 leachate seeps or gas holes during this inspection?

3 A. Yes.

4 Q. In what portion of the landfill?

5 A. The northern portion.

6 Q. Ron, I want to direct your attention to  
7 the photographs attached to this report. Are there  
8 any photographs that show refuse protruding from  
9 the cover material on the landfill?

10 A. Could you repeat that?

11 Q. Sure. May I see the exhibit, please.

12 A. (Complies.)

13 Q. Thank you. Okay. I'll withdraw that  
14 last question, Ron.

15 Can you tell me, are there any  
16 photographs attached to your inspection report that  
17 depict erosional channels at the landfill?

18 A. Yes.

19 Q. Which photographs?

20 A. Photographs 18 and 9. The beginnings.

21 Q. And what portion of the landfill are  
22 those erosional channels located?

23 A. The northern part of the landfill.

24 Q. Okay. Ron, I'm going to hand you the  
25 next exhibit, Peoples Exhibit 40. Would you agree



1 this is a copy of your inspection report from  
2 October 6, 1994?

3 A. Yes.

4 Q. Ron, did you observe any leachate seeps  
5 during this inspection?

6 A. Yes.

7 Q. Where were those seeps located?

8 A. Photograph 21 at the southern -- at the  
9 southeastern portion of the slope within the  
10 landfill area.

11 Q. Okay. And did you observe any erosional  
12 rills during this inspection?

13 A. Yes.

14 Q. And what photographs are those erosional  
15 rills depicted?

16 A. Photograph 12 depicts an erosional rill  
17 with a silt fence right at the bottom portion of  
18 the rill. And photograph 17 and 18.

19 Q. And what portion of the landfill are  
20 those photos taken?

21 A. Photographs 17 and 18 were taken at the  
22 northern slope of the landfill.

23 Q. What about photograph 12?

24 A. It's at the southwestern slope of the  
25 landfill.

1           Q.    Okay.  Ron, I want to direct your  
2   attention for a minute to the eastern side slope of  
3   the landfill.  You've got a map that's attached --  
4   or a diagram that's attached to your inspection  
5   report, isn't that correct?

6           A.    Yes.

7           Q.    Now, referring to that or to the  
8   photographs in your inspection report, can you tell  
9   me if you observed any problems with regard to the  
10  eastern side slope of the landfill?

11          A.    The only problem being the beginning of  
12  erosion.

13          Q.    Did you observe any exposed or uncovered  
14  refuse on the eastern side slope of the landfill?

15          A.    No.

16          Q.    May I see a copy of the inspection  
17  report.

18          A.    (Complies.)

19          Q.    Ron, looking at the narrative portion of  
20  your inspection report, which is Peoples Exhibit  
21  40, I want to direct your attention to paragraph  
22  four.  Can you take a look at that paragraph and  
23  maybe that will refresh your recollection as to  
24  whether there was any exposed refuse you observed  
25  during this inspection.

1           A.    Okay.  Yes.

2           Q.    Okay.  Now, can you tell me what you  
3 observed on that date?

4           A.    Just observed portions of trash starting  
5 to poke out, but not necessarily dotting the  
6 landfill with it.  It was just something that  
7 should be remediated at some point.

8           Q.    Is it your opinion, Ron, that there was  
9 an inadequate amount of cover on the eastern side  
10 slope and that inadequate amount of cover was  
11 allowing the refuse to poke out, as you said?

12          A.    It needs to be addressed.  At this  
13 juncture, I suppose it could have been inadequate.

14          Q.    And did you make a comment to any of the  
15 landfill employees as to the need to correct the  
16 cover --

17          A.    Yes, I did.

18          Q.    -- in that area?

19          A.    Yes, I did.

20          Q.    Okay.  Ron, let's move on to the next  
21 exhibit.  Peoples Exhibit 41.  Would you agree this  
22 is a copy of your inspection report from December  
23 14, 1994?

24          A.    Yes.

25          Q.    Did you during this inspection observe

1 any areas of remediated leachate seeps and/or gas  
2 holes?

3 A. Yes, I did.

4 Q. Do you have any photographs that show  
5 those areas of remediated leachate seeps or gas  
6 holes?

7 A. Photographs 9, 10, 11 and 12.

8 Q. At what portion of the landfill were  
9 those areas located?

10 A. At the western slope.

11 Q. Okay. Now, Ron, during the previous  
12 inspection of October 6, 1994, Exhibit 40 that we  
13 just discussed, there was some uncovered refuse or  
14 exposed refuse on the eastern side slope. And you  
15 just testified that you advised landfill employees  
16 that additional cover material was needed at that  
17 site.

18 A. Yes.

19 Q. Okay. Can you take a look at this  
20 inspection report, specifically paragraph four in  
21 the narrative portion of your inspection report.  
22 Can you tell me whether that area had been  
23 addressed?

24 A. Well, an attempt was made, but it wasn't  
25 totally addressed.

1           Q.    Did you advise the landfill that further  
2   work was needed to adequately cover that area of  
3   the landfill?

4           A.    Yes, I did.

5           Q.    So would it be your opinion that on this  
6   date there was inadequate cover material on that  
7   portion of the landfill?

8           A.    Yes.

9           Q.    Okay.   Okay.   Ron, we are going to move  
10   on to Peoples Exhibit 42.   Would you agree this is  
11   a copy of your inspection report from February 9,  
12   1995?

13          A.    Yes, it is.

14          Q.    Okay.   Now, do you -- do you recall what  
15   the purpose of this inspection was or what prompted  
16   your inspection on this date?

17          A.    Well, as was -- it was solid waste  
18   inspection but also a complaint investigation.

19          Q.    Okay.   And what complaint specifically  
20   were you investigating?

21          A.    Actually, there were two complaints.  
22   Complaints pertaining to odors emanating from the  
23   landfill.

24          Q.    And do you recall who made those  
25   complaints?

1 A. In particular, the neighbors.

2 Q. Does your inspection report indicate  
3 which neighbors?

4 A. No.

5 Q. Okay. And were those odor complaints  
6 received by the Agency?

7 A. Yes.

8 Q. Now, did you note any odor during your  
9 inspection?

10 A. Yes.

11 Q. Did you discuss the odor with anyone at  
12 the landfill?

13 A. Yes, I did.

14 Q. And what did you talk about?

15 A. The area where odors could be detected.

16 Q. Was it your understanding --

17 A. And --

18 Q. I'm sorry. Please finish?

19 A. And future attempt to cover it up. And  
20 we discussed the complaint.

21 Q. Was it your understanding that the  
22 landfill had made any attempt to address the odor  
23 problem?

24 A. Yes.

25 Q. And yet you still noticed an odor on that

1 date, correct?

2 A. Yes.

3 Q. Are you aware of what the landfill had  
4 done in an attempt to correct the odor problem?

5 A. Yes.

6 Q. What did they do?

7 A. Covered the area with soil from the  
8 borrow pit.

9 Q. Now, when you mention area, are we  
10 talking about a gas hole or just an area where  
11 they -- where they smelled the odor more  
12 predominantly?

13 A. Predominant area was the western slope.  
14 It was a large area.

15 Q. Now, Ron, in your opinion, was this an  
16 adequate remedy for the odor problem?

17 A. Apparently not. It's -- you could still  
18 smell it.

19 Q. You still smelled the odor that day?

20 A. Yes.

21 Q. Now, did you observe any other violations  
22 on that date, specifically with regard to the  
23 leachate?

24 A. Yes, I did.

25 Q. Now, Ron, would you refer to your

1 inspection report. The third paragraph, first page  
2 of your narrative --

3 A. Yes.

4 Q. -- where you describe the leachate seep.  
5 Would you agree that you described the leachate  
6 seep as bubbling out of the ground and a strong  
7 odor could be detected? Do you see that?

8 A. Yes.

9 Q. What is it -- in your opinion, what did  
10 that indicate, that the leachate was bubbling out  
11 of the ground?

12 A. The bubbles were most likely caused by  
13 gas.

14 Q. So there was landfill gas, in your  
15 opinion, escaping at that location?

16 A. Through the leachate seep, yes.

17 Q. Do you have any photographs attached to  
18 your inspection report that accurately depict that  
19 leachate seep?

20 A. Photographs 12 -- photograph 12.

21 Q. And aside from bubbling, can you describe  
22 how the leachate appeared on that day?

23 A. A brownish liquid.

24 Q. Was that the only leachate seep you  
25 observed?



1           A.    No, it was not.

2           Q.    Okay.  Why don't you tell us at what  
3   locations at the landfill you observed leachate  
4   seeps?

5           A.    The other locations were at the  
6   southwestern corner and the southeastern corner of  
7   the landfill.

8           Q.    Okay.  Once again, Ron, these are areas  
9   that you have noticed leachate seeps at during  
10  previous inspections, correct?

11          A.    At the southeastern -- or western corner,  
12  yes.

13          Q.    Okay.  Let's move on to Peoples Exhibit  
14  44.

15                   THE HEARING OFFICER:  42?

16                   MS. SYMONS-JACKSON:  Can we go off  
17  the record for a second?

18                   THE HEARING OFFICER:  (Nods head.)  
19                   (Off-the-record discussion held.)

20                   MS. SYMONS-JACKSON:  Okay.  Back on  
21  the record?

22                   THE HEARING OFFICER:  (Nods head.)

23  BY MS. SYMONS-JACKSON:

24          Q.    I'm going to hand you a copy of Peoples  
25  Exhibit 43, Ron.  Would you agree this is a copy of

1 your inspection report from May 18, 1995?

2 A. Yes, it is.

3 Q. And what time did you get to the landfill  
4 on this day?

5 A. Approximately 4:50 a.m.

6 Q. And did you make any observations  
7 regarding the previous day's operating area?

8 A. Yes. On the previous day's active area,  
9 yes.

10 Q. And what observations did you make?

11 A. Uncovered refuse.

12 Q. Would you agree there was inadequate  
13 daily cover at that location then?

14 A. Yes.

15 Q. Okay. And do you have any photographs  
16 attached to your inspection report that truly and  
17 accurately depicts that area of exposed or  
18 uncovered refuse?

19 A. Photographs 1 through 4.

20 Q. What size of area comprise this area of  
21 uncovered refuse?

22 A. Approximately I would have to make an  
23 estimate, 15 by 30.

24 Q. Feet?

25 A. Feet, yes.

1           Q.   All right.  Ron, did you observe any  
2   other violations at the facility on this date?

3           A.   Yes, I did.

4           Q.   And can you tell me what other violations  
5   you observed?

6           A.   Violations pertaining to the observation  
7   of the leachate seeps.

8           Q.   And how many leachate seeps did you  
9   observe?

10          A.   Approximately ten.

11          Q.   Okay.  And do you have photographs  
12   attached to your inspection report that accurately  
13   depict those leachate seeps?

14          A.   Yes, I do.

15          Q.   And can you tell me which photographs and  
16   at what portion of the facility those photographs  
17   were taken?

18          A.   Photographs 15 and 16 were taken at the  
19   southwestern corner of the landfill.  Photograph 21  
20   was taken at the upper southwestern corner of the  
21   landfill.  Photographs 22 and 23 were taken at the  
22   upper western portion of the landfill.  Photographs  
23   17 and 19 were taken at the lower portion of the  
24   western landfill slope.  And photographs 25, 26, 27  
25   and 28 were taken of the northern slope of the

1 landfill.

2 Q. Okay. Now, did you observe or notice any  
3 problems with regard to landfill odor on this date?

4 A. Yes, I did.

5 Q. What did you observe?

6 A. I observed a malodorous odor around the  
7 areas at the southwestern and western portion of  
8 the landfill.

9 Q. Okay. Ron, I'm going to direct your  
10 attention to photographs 16 and 17 attached to your  
11 inspection report. Do those photographs show -- do  
12 those photographs show a gas hole?

13 A. Yes.

14 Q. In reviewing the narrative portion of  
15 your inspection report, would you agree that on  
16 this date the gas emanating from those gas holes  
17 was audible, you could hear the gas?

18 A. Yes, you could.

19 Q. And it was odorous?

20 A. It was malodorous, yes.

21 Q. And what did you observe with regard to  
22 erosion during this inspections?

23 A. I observed exposed waste in erosional  
24 rills at the western portion of the landfill in  
25 photographs 22 and 23.

1           Q.    Did you observe any standing water in the  
2   erosional rills?

3           A.    No.

4           Q.    Okay.  Okay.  Ron, did you make an  
5   observation regarding the eastern side slope of the  
6   landfill?

7           A.    Yes.

8           Q.    Was this the area that you had previously  
9   noticed inadequate cover material?

10          A.    No.

11          Q.    Was -- this is a different area?

12          A.    Yes.

13          Q.    Okay.  Were there any cover problems in  
14   the eastern slope on this date?

15          A.    No.

16          Q.    Okay.  All right.  Ron, let's move on to  
17   Peoples Exhibit 44.  Well, do you agree this is a  
18   copy of your inspection report from July 12, 1995?

19          A.    Yes, it is.

20          Q.    And did you observe or notice any  
21   violations on this date with regard to gas or odor  
22   problems?

23          A.    Yes, I did.

24          Q.    I'm going to direct your attention to  
25   photograph No. 10 attached to your inspection

1 report. Can you tell me what is depicted in  
2 photograph No. 10?

3 A. A gas hole.

4 Q. And what -- would you agree on this date  
5 the gas was again audible and odorous?

6 A. Yes, it was.

7 Q. Now, why don't you -- we look at  
8 photograph 14 attached to your inspection report.  
9 And can you tell me what is depicted in this  
10 photograph?

11 A. An area of stressed vegetation, and there  
12 is a gas hole right in the center of the photo.

13 Q. And at this location, would you agree  
14 that the gas emanating from that gas hole was again  
15 audible and odorous?

16 A. Yes, it was.

17 Q. Ron, do you have an opinion as to the  
18 cause of the stressed vegetation in this area  
19 around the gas hole?

20 A. If I were to make -- I would suspect it  
21 would be the gas that would be causing the  
22 vegetation to be stressed.

23 Q. Now, Ron, based on your experience as an  
24 environmental protection specialist, do you have an  
25 opinion as to whether landfill gas can, in fact,

1     cause stress to vegetation?

2             A.     Yes, it can.

3             Q.     And it's your opinion that that is what  
4     was occurring at this location during this  
5     inspection?

6             A.     At that time, yes.

7             Q.     What is it about landfill gas, what  
8     quality does it have or what does it contain that  
9     can cause this stress to vegetation?

10            A.     The main constituents of gas, I'm not  
11     very familiar with, but I do know that methane is  
12     typical of gas.  And as far as it stressing the  
13     vegetation, I'm sure it would deplete the necessary  
14     nutrients for the gas (sic) to sustain life.

15            Q.     For the vegetation to sustain any life?

16            A.     Yeah.  For its growth.

17            Q.     Okay.

18                   THE HEARING OFFICER:  Mr. Mehalic,  
19     you need to speak up.

20     BY MS. SYMONS-JACKSON:

21            Q.     Ron, did you observe any problems with  
22     regard to leachate during this inspection?

23            A.     Yes, I did.

24            Q.     Where were those leachate seeps located,  
25     and can you tell me what pictures they are

1 depicted?

2 A. I observed -- I observed leachate at the  
3 upper portion of the southern slope of the  
4 landfill, and these seeps are depicted in  
5 photographs 17 and 18.

6 Q. Okay. Now, Ron, I'm going to direct your  
7 attention to photograph 21. Would you take a look  
8 at that photograph, please.

9 A. Yes.

10 Q. And what is shown in photograph 21?

11 A. The retention pond at the north --  
12 northern portion of the landfill property.

13 Q. Would you agree that it's close to the  
14 northwest corner of the property?

15 A. Yes, I would agree with that.

16 Q. And, Ron, are you familiar, based on your  
17 knowledge, of the site as to whether this pond is  
18 sometimes referred to as the small Whitley pond?

19 A. It's been called that.

20 Q. Now, what is the appearance of this pond  
21 in your photograph 21?

22 A. Heavily laden with silt.

23 Q. And, Ron, do you have an opinion, based  
24 on your experience as an environmental production  
25 specialist and on your knowledge of the site, as to



1 the source of the silt in this pond?

2 A. Principally the landfill sloped area from  
3 the northern portion.

4 Q. And how would the silt get down into that  
5 pond?

6 A. Via runoff from a precipitation event on  
7 the landfill.

8 Q. Ron, are you familiar with the operating  
9 permit that was originally issued to this facility,  
10 I believe, back in the early '70s?

11 A. I'm familiar that they were given an  
12 operating permit in 1972.

13 Q. Ron, would you agree that the operating  
14 permit contains a provision from off-site impacts  
15 as a result of its operations?

16 A. I really don't know.

17 Q. Okay. Okay. Let's move on to Peoples  
18 Exhibit 45. Ron, would you agree this is a copy of  
19 your August 23, 1995 inspection report?

20 A. Yes.

21 Q. And did you make any observations or  
22 notice any problems with regard to odor on this  
23 day?

24 A. Yes, I did.

25 Q. And what did you notice about the odor?

1           A.    That I detected a malodorous odor at the  
2   western portion of the landfill.

3           Q.    Okay.  Now, looking at photograph 8  
4   that's attached to your inspection report, can you  
5   tell me what is shown in that photograph?

6           A.    A leachate seep --

7           Q.    Okay.

8           A.    -- with a red flag.

9           Q.    Do you know what purpose the red flag  
10   serves?

11          A.    That flag is put there by a landfill  
12   employee to note it and to remediate it as time  
13   allows.

14          Q.    Was this the only leachate seep you  
15   observed during this inspection?

16          A.    Yes.

17          Q.    Ron, I asked you a few minutes ago a  
18   question regarding the terms of an operating permit  
19   that had been issued to ESG Watts and whether there  
20   were terms regarding prohibition on off-sites  
21   impact and, you weren't quite sure if you  
22   remembered seeing any terms like that.

23                Are there any permit documents that might  
24   help to refresh your recollection on that point?

25          A.    Probably.

1           Q.    Okay.  I'm going to show you a  
2   supplemental permit number 1993-167-SP that was  
3   issued on an August 27, 1993.  Referring  
4   specifically to --

5                   THE HEARING OFFICER:  Is it on your  
6   exhibit list?

7                   MS. SYMONS-JACKSON:  It's not on my  
8   exhibit list.

9                   THE HEARING OFFICER:  Okay.

10                  MR. NORTHRUP:  I believe it's on  
11   mine, if you want.  Go ahead.

12                  THE HEARING OFFICER:  I just was  
13   looking for it.  Please continue.  I'm sorry.

14                  MS. SYMONS-JACKSON:  I think we have  
15   agreed and stipulated to the introduction of  
16   permitting materials.

17                  MR. NORTHRUP:  Yeah.

18                  MS. SYMONS-JACKSON:  So I would go  
19   ahead and move that this be introduced into  
20   evidence as Peoples Exhibit 65.

21                  THE HEARING OFFICER:  Let's go off  
22   the record for a second.

23                           (Off-the-record discussion held.)

24                  THE HEARING OFFICER:  Okay.  We can  
25   go back on the record.  Thank you.

1 BY MS. SYMONS-JACKSON:

2 Q. Okay. Ron, I'm going to hand you what we  
3 have now marked as Peoples Exhibit 65, and I'll  
4 direct your attention to page three, paragraph 18  
5 of that exhibit. And would you please review that  
6 paragraph 18 and tell me if that refreshes your  
7 recollection with regard to a prohibition on  
8 off-site impacts from the landfill?

9 A. It refreshes my memory.

10 Q. Okay. And can you tell me now whether  
11 there is, in fact, a prohibition against off-site  
12 impacts as a result of operations of the landfill?

13 A. Yes, there is, according to this  
14 condition.

15 Q. Okay. And, Ron, would you agree the  
16 siltation in this retention pond or the small  
17 Whitley pond is that you described in a previous  
18 inspection report, I believe Exhibit 44, does that  
19 siltation, in your opinion, constitute an off-site  
20 impact?

21 A. If the siltation were occurring on  
22 Mr. Whitley's property, yes.

23 THE HEARING OFFICER: For the  
24 record, Exhibit 65 is admitted into evidence.

25 MS. SYMONS-JACKSON: Thank you.

1 BY MS. SYMONS-JACKSON:

2 Q. Okay. I think we have finished talking  
3 about -- about Exhibit 45. So let's move on to  
4 Peoples Exhibit 46.

5 Ron, does this appear to be a copy of  
6 your October 26, 1995 inspection report?

7 A. Yes, it is.

8 Q. And did you observe any uncovered refuse  
9 during this inspection? If it will help, I'll  
10 direct your attention to paragraph 3 in the  
11 narrative portion of your inspection report.

12 A. Photograph 3.

13 Q. No. Paragraph 3.

14 A. Paragraph?

15 Q. Uh-huh.

16 A. Yes.

17 Q. Was the landfill using woodchips on this  
18 day?

19 A. Yes, they were.

20 Q. Okay. What were they using the woodchips  
21 for?

22 A. They were utilizing the woodchips as a  
23 road base during inclement weather.

24 Q. Ron, is it your -- does the landfill or  
25 did the landfill at that time have a permit

1 allowing them to use woodchips in the manner that  
2 they were using them that day?

3 A. No, they did not.

4 Q. And in your opinion, Ron, did those  
5 woodchips constitute a refuse material?

6 A. Yes.

7 Q. And were these woodchips covered in any  
8 way on the date of this inspection?

9 A. No, they were not.

10 Q. So this would constitute an area of  
11 uncovered refuse?

12 A. Yes.

13 Q. Okay. What observations did you make  
14 with regard to landfill odors or gas during this  
15 inspection?

16 A. I notice the -- a malodorous odor at the  
17 western side slope of the landfill.

18 Q. Can you describe the odor that you  
19 noticed on that day? How did it smell?

20 A. Well, kind of analogous to four-week-old  
21 garbage sitting in the sun for weeks.

22 Q. Now, on the dates you've noticed odor at  
23 the landfill prior to this and after this, is that  
24 the same smell that you have noticed?

25 A. Yes.

1           Q.    Okay.  And are you aware of whether the  
2   landfill had done anything or was doing anything to  
3   address the odor problems on that day?

4           A.    Yes.

5           Q.    What were they doing?

6           A.    Five borings were completed.  They were  
7   testing the gas in the landfill.

8           Q.    And have you ever received the results  
9   from those borings?

10          A.    I believe those results are contained in  
11   the permit application for the gas recovery system.

12          Q.    Okay.  Okay.  Let's move on to the next  
13   exhibit.  Peoples Exhibit 47.

14                Does this appear to be a copy of your  
15   inspection report from January 23, 1996?

16          A.    Yes, it is.

17          Q.    And did you notice odor problems again on  
18   this date?

19          A.    Yes.

20          Q.    And, Ron, did you notice any problems  
21   with regard to erosion during this inspection?

22          A.    Yes, I did.

23          Q.    And can you describe for me where those  
24   erosion problems were?  And if you have any  
25   photographs, please identify those photographs for

1 us.

2 A. Photographs 13 and 14 were taken of the  
3 upper portion of the southern slope of the  
4 landfill.

5 Q. Okay. Ron, let's look at Peoples  
6 Exhibit 48, please. Do you agree this is a copy  
7 of your inspection report from January 23 -- or I'm  
8 sorry -- from February 14, 1996?

9 A. Yes.

10 Q. And did you make any observations with  
11 regard to uncovered refuse on this date?

12 A. Yes, I did.

13 Q. And where was the uncovered refuse  
14 located?

15 A. Located north of, and I should say, south  
16 of the previous day's working area or active area.

17 Q. In your opinion?

18 A. In the center of the landfill.

19 Q. In your opinion, Ron, was this an area  
20 that should have been covered with a daily cover  
21 material at the end of the previous operating day?

22 A. Yes.

23 Q. And are the photographs attached to your  
24 inspection report that depict this area of  
25 uncovered refuse? And if so please, identify those



1 photographs for us.

2 A. Photograph 7, 8, 9, 10, 11, 12, 13, 14,  
3 17, 18, 20, 21, 22, 23, 24, 25, 26, and 27.

4 Q. Would you agree that it was a fairly  
5 large area on that date of uncovered refuse?

6 A. Yes.

7 Q. Okay. Now, Ron, tell us what are the  
8 potential environmental impacts that can result  
9 from allowing refuse to remain uncovered?

10 A. Well, if you were to leave the refuse  
11 uncovered for an extended period of time and if it  
12 were to rain, therefore you would create leachate  
13 and vectors. There is a chance for vectors, such  
14 as rats, I imagine. Odors from decomposing refuse.

15 Q. What other violations did you observe on  
16 this date?

17 A. I observed litter.

18 Q. Where did you observe the litter?

19 A. Scattered throughout the landfill area  
20 actually.

21 Q. Throughout the entire landfill?

22 A. Not throughout the -- near the previous  
23 day's active area.

24 Q. So scattered throughout the active area  
25 of the landfill?

1 A. Yes.

2 Q. Okay.

3 A. And I observed refuse in standing water.

4 Q. Where was the standing water located?

5 A. Standing water, north of the nonwaste  
6 disposal area.

7 Q. And what quantity of refuse did you  
8 observe in that standing water?

9 A. Excuse me?

10 Q. Can you refer to any photographs attached  
11 to your inspection report and describe for us the  
12 amount of refuse you observed in the standing  
13 water?

14 A. Photographs 15, 16 and 19.

15 Q. Ron, looking at those photos, can you  
16 tell us how much refuse you observed in the  
17 standing water, if you can tell from the  
18 photographs?

19 A. If I were to hazard a guess, I would say.

20 Q. Ron, I don't want you to get. Do you  
21 have a picture that shows the refuse in the  
22 standing water?

23 A. Yes, I do. Photographs 15 and 16.

24 Q. Would you characterize it as a large  
25 quantity of refuse in standing water, a small

1 quantity?

2 A. A small quantity.

3 Q. What potential environmental impacts can  
4 result from allowing refuse to accumulate in  
5 standing water?

6 A. Water pollution.

7 Q. In your opinion, can that cause any  
8 problems with groundwater?

9 A. If it's not rectified in the necessary  
10 time fashion, I would say yes.

11 Q. And what about odor, can refuse in  
12 standing water contribute to odor problems at the  
13 landfill?

14 A. Yes.

15 Q. Okay. Ron, let's move on to Peoples  
16 Exhibit 49. Does this appear to be a copy of your  
17 May 23, 1996 inspection report?

18 A. Yes.

19 Q. What violations did you observe during  
20 that inspection?

21 A. Operational?

22 Q. Did you observe any violations with  
23 regard to odor or gas?

24 A. Yes, I did. As well as refuse in  
25 standing or flowing waters.

1 Q. Was the refuse in the standing water in  
2 the same area as noted during the previous  
3 inspection, or was this a different new area?

4 A. A different area.

5 Q. And where was this located?

6 A. At the northern portion of the area.

7 Q. Okay. Can I direct your attention to  
8 November No. 11 attached to your inspection report?

9 A. Yes.

10 Q. And can you tell me, is photograph 11 a  
11 photograph of the refuse in the standing water?

12 A. Yes. That also depicts refuse in flowing  
13 water.

14 Q. Okay.

15 A. And located at the western portion of the  
16 landfill.

17 Q. So there were two areas at the landfill  
18 on this date where you observed exposed refuse in  
19 standing water?

20 A. Yes.

21 Q. Now, with regard to the odor that you  
22 said you noted, I'm going to direct your attention  
23 to photographs 5, 16 and 10. And can you tell me  
24 what is shown in those photographs?

25 A. Photograph 5 shows an area of stressed

1 vegetation. Photographs 9 and 10.

2 Q. 16 and 10?

3 A. 16 and 10. Photograph 16 shows another  
4 area of stressed vegetation, and photograph 10  
5 shows a gas hole.

6 Q. Can you tell me how would you describe  
7 the appearance of the gas hole shown in photograph  
8 10?

9 A. It was under artesian pressure. There  
10 was water bubbling out of it.

11 Q. And was there a noticeable odor at the  
12 location of the gas hole?

13 A. Yes, there was.

14 Q. I want to direct your attention to  
15 photograph 17. Can you tell me what is shown in  
16 photograph 17?

17 A. A couple of tires.

18 Q. At what portion of the landfill?

19 A. At the northern portion of the landfill.

20 Q. And were these tires partially covered by  
21 any soil or other cover material?

22 A. Partially, yes.

23 Q. So in other words, they were protruding  
24 from the cover?

25 A. Yes.

1           Q.    Would it be your opinion then that there  
2   was inadequate cover at that northern portion of  
3   the landfill area?

4           A.    According to the rules and regs, yes.

5           Q.    Okay.  Ron, let's go on to Peoples  
6   Exhibit No. 50.  Does this appear to be a copy of  
7   your inspection report from July 18, 1996?

8           A.    Yes.

9           Q.    Did you observe any violations with  
10  regard to leachate on this date?

11          A.    Yes, I did.

12          Q.    And can you tell us with reference to  
13  photographs you took where the leachate was  
14  observed at what portion of the landfill?

15          A.    The leachate was observed at the  
16  southwestern corner of the landfill and is depicted  
17  in photographs 9 and 7.

18          Q.    And did you note anything during your  
19  inspection on this day regarding landfill gas or  
20  odors?

21          A.    Yes.

22          Q.    Can you tell me what you noted and  
23  reference any photograph that might --

24          A.    Photograph 5 shows an area of stressed  
25  vegetation that an odor was detected.

1 Q. In what portion of the landfill was that  
2 photograph taken?

3 A. At the southeastern corner.

4 Q. Okay. Now, Ron, on July 18, 1996, did  
5 you conduct any off-site inspections of, for  
6 example, neighboring property?

7 A. Yes.

8 Q. And did you observe any violations off  
9 site?

10 A. Yes, I did.

11 Q. Can you describe what you observed?

12 A. I observed litter in a ravine north of  
13 the facility on the neighbor's property.

14 Q. And is that the neighbor Wayne Siebke?

15 A. Yes, it is.

16 Q. Now, prior to this date, had you been  
17 aware of any complaints or problems Mr. Siebke had  
18 with regard to litter coming onto his property?

19 A. Could you repeat that?

20 Q. Sure. Did you know about the litter  
21 accumulating on Mr. Siebke's property prior to this  
22 date?

23 A. I was informed by Mr. Siebke prior to  
24 this date.

25 Q. At what point were you informed?

1 A. A week prior perhaps.

2 Q. Okay. So just a short time?

3 A. Short time.

4 Q. Prior to this inspection?

5 A. Uh-huh, yes.

6 Q. And are there photographs attached to  
7 your inspection report at that show the litter in  
8 the ditch on Mr. Siebke's property?

9 A. Photographs 23 and 24.

10 Q. And what amount of litter or refuse did  
11 you observe on Mr. Siebke's property that day?

12 A. On this day, a small amount.

13 Q. And, Ron, do you have an opinion as to  
14 the source of the refuse on Mr. Siebke's property  
15 on July 18, 1996?

16 A. Most likely from the landfill.

17 Q. Okay. Now, let's look at Peoples Exhibit  
18 51. And is this a copy of your inspection report  
19 from September 12, 1996?

20 A. Yes, it is.

21 Q. Now, Ron, would you agree that the  
22 landfill has been issued a permit for the  
23 installation of a methane gas recovery system?

24 A. Yes, they have.

25 Q. And did you observe any work related to



1     that system while you were at the site in  
2     September?

3             A.     Yes, I did.

4             Q.     What did you observe?

5             A.     I observed numerous gas extraction wells  
6     in the landfill itself and also observed an area  
7     where consultants failed to properly dispose of  
8     waste extracted from one of their borings.

9             Q.     And, Ron, would you agree that as these  
10    wells are being installed, borings are being made  
11    down into the previously covered areas of refuse?

12            A.     Yes.

13            Q.     And is refuse actually removed then from  
14    those boring areas?

15            A.     Yes.

16            Q.     Okay. And are there requirements  
17    regarding properly disposing of and covering the  
18    refuse that is removed during the installation of  
19    these wells that you are aware of?

20            A.     According to their permit, they are  
21    required to dispose of any waste extracted from  
22    these borings and dispose of it in the active  
23    working area on that day.

24            Q.     On the same --

25            A.     At the end on the same day.

1           Q.    And when you were on July 18, do you know  
2   how long the refuse had remained uncovered?

3           A.    A day.

4           Q.    Did you observe any problems with regard  
5   to odors on that day that you recall?

6           A.    Yes.

7           Q.    And is this the same typical odor that  
8   you've noticed on other occasions while at the  
9   landfill?

10          A.    Yes.

11          Q.    Since September 12, 1996 have you been  
12   back to the Taylor Ridge landfill?

13          A.    No.

14          Q.    Okay.  That was your last inspection?

15          A.    Yes.

16          Q.    Now, Ron, during the September  
17   inspection, did you have an opportunity to return  
18   to this ravine or ditch on the northeast corner of  
19   the property leading onto Mr. Siebke's property?

20          A.    Yes, I did.

21          Q.    Ron, did you observe that the landfill  
22   had done anything, constructed any retention  
23   barrier at that point of the landfill to restrict  
24   the movement of refuse or other materials from the  
25   landfill to this drainage ditch on Mr. Siebke's

1 property?

2 A. I observed that they put a clay side  
3 slope liner to try to restrict any off-site  
4 movement of litter, if it would go through the  
5 ravine.

6 Q. And do you have an opinion as to the  
7 adequacy of that -- that action?

8 A. Time will tell.

9 Q. Ron, would you have an opinion, based on  
10 what you've observed at the facility, that -- as to  
11 whether something above grade such as a berm or  
12 other structure would be more effective in  
13 controlling runoff or runoff containing refuse from  
14 the landfill into this drainage ditch?

15 A. That would be effective, yes.

16 Q. Is it your opinion that that would be  
17 potentially more effective than something such  
18 as the clay liner that you mentioned; that is,  
19 actually something above grade would be more  
20 effective?

21 A. Something above grade to deter the litter  
22 if litter were to run down the ravine that would be  
23 effective.

24 Q. Okay. And the landfill had not  
25 constructed any berm or above-grade structure?

1 A. Not during that inspection, no.

2 Q. Okay. Ron, I want to ask you a couple of  
3 questions about some inspection records that have  
4 been prepared by the Watts facility. Okay. Are  
5 you aware of whether any employee of the Watts  
6 landfill prepares any site inspection reports?

7 A. Yes.

8 Q. And do you know is that one employee that  
9 prepares the reports?

10 A. Principally, yes.

11 Q. Who is that?

12 A. Mr. Joe Chenoweth.

13 Q. Do you recall when the facility began  
14 prepares the site inspection reports?

15 A. Couple of years back when Subtitle D  
16 came, I believe.

17 THE HEARING OFFICER: For the  
18 record, I'm not sure that we admitted Exhibit 52  
19 yesterday. Is that what you are going to be  
20 referring to?

21 MS. SYMONS-JACKSON: Yes.

22 MR. DAVIS: You have it, don't you?  
23 You have it with your stuff?

24 THE HEARING OFFICER: No. Off the  
25 record.

1 (Off-the-record discussion held.)

2 THE HEARING OFFICER: Let's go back  
3 on the record then.

4 BY MS. SYMONS-JACKSON:

5 Q. Okay. Ron, I'm going to hand you a copy  
6 of Peoples Exhibit 52, and this a Group Exhibit,  
7 and I'm going to represent to you and to the Board  
8 that this contains all of the site inspection  
9 reports prepared by the Watts personnel that were  
10 provided to the attorney general's office by  
11 Mr. Northrup.

12 THE HEARING OFFICER: Okay. And  
13 those are stipulated to?

14 MS. SYMONS-JACKSON: Well, it was my  
15 understanding that originally we did stipulate to  
16 the introduction of these documents.

17 THE HEARING OFFICER: Is there any  
18 objection to them now?

19 MR. NORTHRUP: No.

20 THE HEARING OFFICER: Then Exhibit  
21 52 is admitted into evidence.

22 BY MS. SYMONS-JACKSON:

23 Q. Now, Ron, during the course of your  
24 inspections at this facility, you've had an  
25 opportunity to review some of these inspection

1 reports, isn't that correct?

2 A. Yes.

3 Q. And what types of things does the  
4 facility include in their inspection reports?

5 A. Areas of odors, exposed refuse, leachate.

6 Q. And, Ron, do you have an opinion with  
7 regard to the frequency or the continuing nature of  
8 the leachate problems as noted in these inspection  
9 reports?

10 A. That there is a troubled area where  
11 leachate is a continuing nuisance, yes.

12 Q. Leachate is continuously reported as an  
13 area of concern in these site inspection reports?

14 A. Not all of them, but --

15 Q. Not all of them, but regularly?

16 A. Yeah. Yes.

17 Q. Do you have an opinion as to whether --  
18 are odor problems ever noted in these site  
19 inspection reports?

20 A. Yes.

21 Q. Do you have an opinion as to whether odor  
22 problems are regularly cited by the landfill as an  
23 area of concern in their site inspection reports?

24 MR. NORTHRUP: I'll object. Just  
25 regularly is kind of vague.

1 THE HEARING OFFICER: Can you be  
2 more specific, please.

3 MS. SYMONS-JACKSON: I can rephrase  
4 the question, sure.

5 THE HEARING OFFICER: And,  
6 Mr. Northrup, you need to speak up. It's hard to  
7 hear you.

8 MR. NORTHRUP: Sorry.

9 BY MS. SYMONS-JACKSON:

10 Q. Ron, reviewing these site inspection  
11 reports prepared by Watts employees, have you ever  
12 observed or noted where they have indicated  
13 problems with odors?

14 A. Yes.

15 Q. And how would you characterized the  
16 frequency of those odor problems as contained in  
17 site inspection reports?

18 A. Could you rephrase that?

19 Q. I'm trying to get at how would you  
20 consider the odor problems to be frequent,  
21 infrequent, regular, continuing? How would you  
22 characterize the odor problems?

23 A. Frequent to infrequent. Frequent.

24 Q. You would characterize them as frequent?

25 A. Yes.

1           Q.    Now, in these inspection reports do the  
2   Watts employees or employee preparing the report,  
3   do they indicate what remedial measures are taken  
4   to correct the -- the problems they find?

5           A.    Yes.

6           Q.    And have you reviewed -- are you familiar  
7   with the remedial measures they take to correct,  
8   for example, leachate odor and erosional problems  
9   at the landfill?

10          A.    Yes.

11          Q.    Ron, do you have an opinion as to whether  
12   those remedial measures have been effective at the  
13   landfill in correcting the leachate odor and  
14   erosional problems?

15          A.    In the short-term, yes.  It's effective.  
16   But evidently, it's not correcting the problem in  
17   the long-term.  The long-term needs to be  
18   addressed.

19          Q.    Would you agree, though, Ron, that even  
20   though measures might be taken, the problems  
21   continue to reoccur and reappear?

22          A.    Yes.

23          Q.    And, Ron, do you have an opinion as to  
24   what long-term remedies the landfill needs to  
25   implement to address the leachate and erosional



1 problems at the facility?

2 A. As far as the -- remediating the  
3 continuing leachate problems, I would suggest  
4 leachate extraction.

5 Q. Have they undertaken any leachate  
6 extraction measures at the facility that you are  
7 aware of?

8 A. Not to my knowledge.

9 Q. And what about erosion, what can they be  
10 doing to correct the erosional problems?

11 A. Restructure the side slopes to  
12 accommodate runoff and to deter any surface water  
13 runoff to adjoining retention ponds.

14 Q. And, Ron, has the landfill done any of  
15 this?

16 A. Not to my knowledge.

17 MS. SYMONS-JACKSON: Those are all  
18 the direct examination questions I have.

19 THE HEARING OFFICER: Okay. Then  
20 let's go off the record until 11 o'clock and allow  
21 our court reporter to change paper.

22 (Recess taken.)

23 THE HEARING OFFICER: Okay. I'd  
24 like to go back on the record. Is Amy here?

25 MS. SYMONS-JACKSON: I'm here.

1 THE HEARING OFFICER: Okay.

2 Mr. Northrup, we'll begin with your  
3 cross-examination.

4 MR. NORTHRUP: Okay.

5 THE HEARING OFFICER: Let me get the  
6 rest of those inspection reports out too.

7 CROSS-EXAMINATION

8 BY MR. NORTHRUP:

9 Q. I believe you testified that -- well,  
10 your inspection reports indicate that you often  
11 show up at the landfill to do your inspections  
12 prior to operating hours.

13 A. Yes.

14 Q. Is that correct? Okay. Is that  
15 something routine that you do with all landfills?

16 A. Yes.

17 Q. Have there been times when you have gone  
18 onto the landfill property without any  
19 representative of Watts?

20 A. Yes.

21 Q. And would those times be before operating  
22 hours?

23 A. Prior to 5:00 a.m., yes.

24 Q. Okay. On any of those occasions, have  
25 you ever obtained a search warrant?

1           A.    No.

2           Q.    Have you ever observed or noticed odors  
3 off site of the landfill?

4           A.    Yes.

5           Q.    Okay.  When was that?

6           A.    Particular time frame, I can't recall.

7           Q.    Within the last year?

8           A.    I can't recall.

9           Q.    Where were you when you noticed these  
10 odors?

11          A.    On the landfill.

12          Q.    Okay.  That was my question.

13          A.    Yeah.

14          Q.    So you've never been off the landfill  
15 property and smelled odors?

16          A.    No.

17          Q.    You talked about some -- some long-term  
18 fixes for some of the problems at the landfill,  
19 particularly with respect to leachate erosion  
20 and erosional problems.  Are you aware -- for  
21 leachate -- you mention leachate extraction.  Are  
22 you aware of any plans or permits -- well, strike  
23 that.

24                   Are you aware of any plans by Watts to  
25 perform leachate extraction?

1           A.    I believe it was proposed in that gas  
2    recovery permit application.

3           Q.    Now, are there long-term fixes for odor  
4    problems?

5           A.    Potentially.

6           Q.    Okay.  And what would those be?

7           A.    Gas recovery.

8           Q.    And you are aware that Watts has a permit  
9    for gas recovery?

10          A.    Yes.

11          Q.    Do you have any opinion on how that gas  
12   recovery system will impact odors at the site?

13          A.    Only time will tell if it's effective.

14          Q.    You testified earlier that pressure in  
15   the landfill causes leachate seeps?

16          A.    It's a contributing factor, yes.

17          Q.    Will the gas system have any effect on  
18   the pressure in the landfill?

19          A.    Could you say that again?

20          Q.    Yeah.  Will the operation of the gas  
21   recovery system have any impact on the pressure  
22   within the landfill?

23          A.    I believe so.

24          Q.    And what would that effect be?

25          A.    It would most likely decrease the

1 pressure.

2 Q. Now, in your inspection reports you cite  
3 a number of leachate seeps. Have you ever sampled  
4 any of that leachate?

5 A. No, I have not.

6 Q. Have you ever observed any leachate  
7 leaving the site?

8 A. No, I have not.

9 Q. Is it a violation to repair a leachate  
10 seep?

11 A. No.

12 Q. It's a good thing to repair a leachate  
13 seep?

14 A. Yeah.

15 Q. You testified earlier that it was your  
16 opinion that the landfill did not have adequate  
17 measures to control leachate in the long-term. Is  
18 it your opinion that the landfill has adequate  
19 measures to monitor leachate?

20 A. In the short-term?

21 Q. Sure. In the short-term.

22 A. Yes. Progress -- yes.

23 Q. Now, you have responded to complaints  
24 made by Mr. Whitley related to the landfill; is  
25 that correct?

1 A. Yes.

2 Q. On how many occasions?

3 A. That I don't know.

4 Q. An approximation?

5 A. Approximation. During when I inherited  
6 the site, I would say 15 approximate.

7 Q. And how did you respond to those  
8 approximately 15 complaints?

9 A. Go out and investigate the site during  
10 one of my solid waste inspections.

11 Q. Do you recall what any of those  
12 complaints were?

13 A. Mostly leachate and odors.

14 Q. Were you able to confirm any of those  
15 complaints?

16 A. Yes.

17 Q. How many?

18 A. That I don't know. Probably -- I would  
19 go out and investigate each complaint, and then I  
20 would address the situation with a landfill  
21 employee, and then we would discuss it. But as far  
22 as the number, I would say out of the 15, maybe 13.

23 Q. Now, the 13 times that you confirm these  
24 complaints, would these result in any -- any  
25 documentation other than your inspection reports?

1           A.    No.

2           Q.    Do you know for those 13 instances the  
3 landfill was formally cited for any violations?

4           A.    Based on those complaints?

5           Q.    Based on the -- formally cited, I mean,  
6 in a document, such as your inspection report where  
7 you -- where you check off a violation?

8           A.    It would be in the inspection report.

9           Q.    Let me hand you -- or direct your  
10 attention to Peoples Exhibit 28, which is the April  
11 14th, '93 inspection report. Here. You can look  
12 at mine. I believe with respect to the issue of  
13 any exposed garbage, you indicated that the  
14 landfill had inadvertently exposed refuse. Okay.  
15 Is that correct?

16          A.    That's correct.

17          Q.    Okay. And if you'll look at the fifth  
18 paragraph. It talks about a conversation you had  
19 with Mr. Jones, and you talked about -- and there  
20 was a discussion of unstable slope. --

21          A.    Uh-huh.

22          Q.    -- and weather conditions. Do you  
23 disagree with anything that's on that -- in that  
24 paragraph? Was there an unstable slope?

25          A.    Yes.

1 Q. In your opinion, could cover have been  
2 put on that garbage at that time?

3 A. No. What kind of cover?

4 Q. Dirt.

5 A. No.

6 Q. Do you need a permit to extract leachate  
7 from a landfill?

8 A. I believe so, yes.

9 Q. I think some of your inspection reports  
10 also discussed the -- the ravine or creek on the  
11 Siebke property. And you testified that -- and  
12 this may be in your September 12th inspection, I  
13 don't recall, that Watts had installed or  
14 constructed some kind of clay barrier across the  
15 landfill above the ravine. Is that correct?

16 MS. SYMONS-JACKSON: I'm going to  
17 object. I think that mischaracterizes his earlier  
18 testimony.

19 BY MR. NORTHRUP:

20 Q. Do you recall your testimony in that  
21 regard?

22 A. When you mentioned clay barrier, the clay  
23 barrier that I observed was not on the landfill  
24 slope itself. It was downstream. It was down in  
25 the area where the waste was observed on



1 Mr. Siebke's property.

2 Q. Okay. Okay. Other than that measure,  
3 have you observed anything that Watts has done to  
4 prevent runoff down that ravine?

5 A. There is in that area -- I believe it's  
6 clay that is on that side slope. But as far as  
7 directing runoff from that area, I'm not certain if  
8 it does.

9 Q. I believe, too, you testified that it's  
10 your understanding that that ravine is the 001  
11 outfall in the N.P.D.E.S. permit.

12 A. Yes.

13 Q. With respect to Peoples Exhibit 40, I  
14 believe you testified that there was inadequate  
15 amount of cover.

16 MS. SYMONS-JACKSON: Which exhibit?  
17 I'm sorry.

18 THE HEARING OFFICER: 40.

19 MR. NORTHRUP: 40.

20 BY MR. NORTHRUP:

21 Q. Do you recall that?

22 A. Yes.

23 Q. Okay. Why wasn't that cited as a  
24 violation?

25 A. Well, there really wasn't a lot of trash

1 poking out, and I gave the benefit of the doubt to  
2 rectify it.

3 Q. Okay. Exhibit 41, again, there was a  
4 discussion about inadequate cover. Do you recall  
5 that?

6 A. Yes.

7 Q. Okay. Again, that -- no violations were  
8 checked on that inspection report. Why was that?

9 A. Again, I gave Mr. Chenoweth the benefit  
10 of the doubt.

11 Q. Have you performed any depth cover tests  
12 during any of your inspections?

13 A. No.

14 Q. Let's look at Exhibit 42. On the  
15 narrative portion, the third paragraph. About in  
16 the middle of the third paragraph where it talks  
17 about you observed a leachate seep. And according  
18 to your inspection you've got in here, it indicates  
19 that Mr. Chenoweth stated that the frozen ground  
20 makes it rough for travel as well as producing an  
21 adequate seal over the seep.

22 Would you agree with that?

23 MS. SYMONS-JACKSON: I'm going to  
24 object. Agree with what?

25 MR. NORTHRUP: Two-part question.

1 BY MR. NORTHRUP:

2 Q. Do you agree that during this inspection  
3 at that time the frozen ground made it rough for  
4 traveling?

5 A. The frozen ground would make it rough for  
6 traveling. But as far as producing an adequate  
7 seal, I would suggest that if one were to scrape  
8 over the frozen ground and then apply the seal, the  
9 clay seal would be more effective.

10 Q. Did you suggest that to Mr. Chenoweth at  
11 that time?

12 A. No.

13 Q. I suppose there are other causes of  
14 vegetative stress than landfill gas. There can be  
15 other causes.

16 MS. SYMONS-JACKSON: Is that a  
17 question, Charlie?

18 MR. NORTHRUP: Oh, yeah. That's a  
19 question. I'm sorry.

20 BY MR. NORTHRUP:

21 A. Not to my knowledge.

22 Q. There can be no other cause for  
23 vegetative stress than landfill gas?

24 A. Well, when you observe a gas hole and you  
25 see vegetative -- or the vegetation being stressed,

1   you naturally would presume that the stressed  
2   vegetation is being caused by the gas.

3           Q.   Okay.  That's a presumption on your part;  
4   is that correct?

5                   THE HEARING OFFICER:  Will you  
6   answer the question, please.

7   BY MR. NORTHRUP:

8           A.   Yes.

9           Q.   Are you aware of other landfills using  
10   woodchips on their roads?

11          A.   Yes.

12          Q.   Do those landfills have permits for that?

13          A.   Yes.

14          Q.   In your opinion, is that a difficult  
15   permit to obtain?

16          A.   No.

17          Q.   What's the purpose for putting woodchips  
18   on a road?

19          A.   I've been told their purpose serves as an  
20   absorbent in inclement weather.

21          Q.   You've been told.  Have you observed  
22   that?

23          A.   Yes.

24          Q.   Yeah.  Are you aware where these  
25   woodchips come from?

1 MS. SYMONS-JACKSON: I'm going to  
2 object, Charlie. I just want to make it clear for  
3 the record. What woodchips you are talking about?  
4 What inspection report?

5 MR. NORTHRUP: It's inspection  
6 report 46, and they are the woodchips that are  
7 placed on the landfill roadways.

8 BY MR. NORTHRUP:

9 Q. You understand what I'm referring to?

10 A. Yes. Could you repeat the question?

11 Q. Yeah. Do you know where Watts got the  
12 woodchips?

13 A. I believe they obtained them from  
14 someplace in East Moline. Jacobs Energy.

15 Q. Do you know if they paid for them?

16 A. That I don't know.

17 THE HEARING OFFICER: Mr. Mehalic,  
18 you need to speak up and try and face our court  
19 reporter. I know Mr. Northrup is talking to you,  
20 but it's hard to hear you.

21 THE WITNESS: Okay.

22 BY MR. NORTHRUP:

23 Q. Have you ever observed any silt fences on  
24 the landfill property?

25 A. Yes, I have.

1           Q.    Okay.  How often would you have observed  
2  those?

3           A.    Nearly every inspection.

4           Q.    Can you tell me where you've seen those?

5           A.    At the northern portion of the property,  
6  the landfill property.

7           Q.    Okay.  With a little more specificity.

8           A.    The northern slope area adjoining the  
9  road right adjacent to Mr. Whitley's property, and  
10 I have also seen them on the southern slope.

11          Q.    Have you ever seen them by the Siebke  
12 property?

13          A.    No.

14          Q.    Now, since this complaint was filed, you  
15 have inspected the landfill on numerous occasions,  
16 correct?

17          A.    Correct.

18          Q.    At any time since this complaint has been  
19 filed have you ever felt that you were under any  
20 pressure to cite problems that in your estimation  
21 may not be violations of the Act or regulations?

22          A.    No.  I just perform my duties.

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

25                   THE HEARING OFFICER:  Redirect.

1 MS. SYMONS-JACKSON: Yes. Just a  
2 few questions on redirect.

3 REDIRECT EXAMINATION

4 BY MS. SYMONS-JACKSON:

5 Q. Ron, going back to some of the early  
6 questions Charlie asked you regarding odors that  
7 you may or may not have observed or noticed off  
8 site.

9 Have you ever conducted an inspection of  
10 the facility an purposefully gone off site of the  
11 landfill to see if there are odors present?

12 A. No.

13 Q. Now, regarding this gas recovery system  
14 that's -- that you testified to as being installed  
15 currently at the landfill. In your opinion, is  
16 this an acceptable solution to the gas problem at  
17 the landfill?

18 A. Yes. Only time will tell its  
19 effectiveness.

20 Q. Now, Ron, is it your opinion that this is  
21 something that should have been addressed three  
22 years ago in a sig-mod application by the landfill?

23 A. Yes.

24 Q. Now, regarding the April 13, 1993  
25 inspection.

1                   MR. NORTHRUP: What's the number on  
2 that?

3                   MS. SYMONS-JACKSON: It would be  
4 exhibit -- Peoples Exhibit 28. It's April 14th. I  
5 think I said April 13.

6 BY MS. SYMONS-JACKSON:

7           Q.     Regarding the uncovered refuse that we  
8 were talking about, you had stated that it was  
9 inadvertently uncovered.

10          A.     Yes.

11          Q.     And you indicated, in your opinion, that  
12 slope was unstable on that day.

13          A.     Yes.

14          Q.     Would you agree that the proper operation  
15 of a landfill would require ensuring that all  
16 slopes are stable?

17          A.     Yes.

18          Q.     And on this date, the Watts landfill had  
19 not ensured that this slope was, in fact, stable;  
20 is that correct?

21          A.     Could you repeat that?

22          Q.     Sure. The slope wasn't stable on this  
23 day, was it?

24          A.     No. It wasn't.

25          Q.     And it's the landfill's obligation to



1 ensure that such a slope is stable?

2 A. Yes.

3 Q. Okay. Now, regarding a leachate  
4 collection plan. You indicated that you may have  
5 recalled that some plan had been proposed in an  
6 application for gas management system. Is that  
7 accurate?

8 A. I believe it was touched on in there, in  
9 the gas plan as far as putting -- proposing to put  
10 leachate extraction wells and gas wells in the same  
11 boring.

12 Q. Okay. Now, Ron, are you aware of whether  
13 there has been issued a permit to the landfill for  
14 a leachate extraction system?

15 A. Not to my knowledge.

16 MS. SYMONS-JACKSON: Okay. That's  
17 the redirect I have.

18 THE HEARING OFFICER: Anything  
19 further, Mr. Northrup?

20 MR. NORTHRUP: No.

21 THE HEARING OFFICER: Let's go off  
22 the record for a moment.

23 (Off-the-record discussion held.)

24 (Recess taken.)

25 THE HEARING OFFICER: Let's go back

1 on the record, and please swear the witness.

2 KENN LISS,

3 called as a witness, after having been first duly  
4 sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MS. SYMONS-JACKSON:

7 Q. Please state your name for the record.

8 A. Kenneth W. Liss, L-I-S-S.

9 Q. Kenn, who is your current employer?

10 A. Illinois EPA.

11 Q. What is your position with the Illinois  
12 EPA?

13 A. Groundwater unit manager, permits  
14 section.

15 Q. And that's with the Bureau of Land?

16 A. Bureau of Land.

17 Q. And in the permits section, correct?

18 A. Correct.

19 Q. And how long, Kenn, have you been the  
20 unit manager?

21 A. Since 1991.

22 Q. Prior to 1991, were you employed by the  
23 Illinois EPA?

24 A. Yes.

25 Q. And what was your position with the

1 Illinois EPA prior to 1991?

2 A. Senior technical groundwater person in  
3 the permits section.

4 Q. And how long did you hold that position?

5 A. About three years.

6 Q. So approximately 1988 to 1991?

7 A. Correct.

8 Q. Prior to 1988, were you employed by the  
9 Illinois EPA?

10 A. Yes.

11 Q. And what was your position prior to 1988?

12 A. Staff level.

13 Q. In the groundwater unit?

14 A. In the groundwater. I've been working in  
15 the groundwater at the EPA since August of '84.

16 Q. And in all of your years with the Agency,  
17 you have been employed in the groundwater section?

18 A. Doing groundwater work. It wasn't the  
19 groundwater section.

20 Q. In the permits section?

21 A. It was the compliance section. And in  
22 1991, permits section. But it's the same work.

23 Q. Kenn, can you briefly tell us about your  
24 educational background?

25 A. I have a bachelors degree in geology from

1 Illinois State University.

2 Q. How does geology relate to groundwater?

3 A. Geology is the study of the earth, and my  
4 studies are focused on groundwater movement through  
5 the earth.

6 Q. Your studies now or your studies while  
7 you were in school?

8 A. My studies now. And it was environmental  
9 in hydro classes in college.

10 Q. Have you done any postgraduate work?

11 A. Not in geology.

12 Q. Have you done any at all?

13 A. Chemistry and statistics.

14 Q. Have you obtained any postgraduate  
15 degrees?

16 A. No, I haven't.

17 Q. What type of course work have you taken  
18 in chemistry and statistics?

19 A. I don't know. The course -- let me see.  
20 It's basically statistics class and organics class  
21 that pertains to the machinery for groundwater  
22 samples.

23 Q. Okay.

24 A. A spectrometer.

25 Q. My question is: How does this training

1 in chemistry and statistics benefit you in the --  
2 your current position with the Agency?

3 A. In our position, we look at groundwater  
4 contamination. So it's necessary to look at a lot  
5 of data. We use statistics. And the samples that  
6 are taken to a laboratory. So I took the class to  
7 better understand how those numbers were derived.

8 Q. Now, in addition to this, your  
9 undergraduate degree and postgraduate work, have  
10 you had any other training in the area -- areas  
11 related to groundwater?

12 A. Yes.

13 Q. Can you give us a general idea of what  
14 areas you've had training in?

15 A. Okay. Continuing education credits in  
16 groundwater movement, sampling procedures, U.S. EPA  
17 courses. They put on seminars for the state,  
18 things like that. Probably eight, ten of them.

19 Q. Kenn, are you also involved in the  
20 rulemaking procedures with the Illinois EPA?

21 A. Yes.

22 Q. And have you testified before the state  
23 legislature before?

24 A. Yes, I have.

25 Q. And on what issues did you testify?

1           A.    Before the legislature -- legislation, it  
2    was for the certification and qualifications of  
3    geologists in the state.

4           Q.    And what about the rulemaking, what areas  
5    of rulemaking have you been involved in?

6           A.    Landfill rules, the groundwater rules,  
7    changes to the landfill rules for specific  
8    industries, solid waste landfills, utilities.  I  
9    can't think ever anything else right now.

10          Q.    Okay.  Now, Kenn, have you reached a  
11   point in your career where you are actually  
12   providing information at these seminars?

13          A.    Yes.

14          Q.    Conducting some of the training yourself?

15          A.    Yes.

16          Q.    And what areas did you conduct training  
17   in?

18          A.    Groundwater movement, looking at the  
19   numbers and basic training on how to review the  
20   data, what it means.

21          Q.    Okay.  Now, as unit manager of the  
22   groundwater assistance unit, what do your job  
23   duties include?

24          A.    Currently I have 12 people that work for  
25   me.  Bachelor's degree to masters degree.  Some now

1 are specifically degree'd in hydrogeology. We look  
2 at compliance work, permitting work for landfills,  
3 groundwater detection, technical support for  
4 rulemakings at the Agency.

5 Q. And how does your groundwater unit or  
6 section fit into the larger permits section of the  
7 Agency?

8 A. Permits section is five units. We are  
9 one of the five, and it's concentrated on all the  
10 hydrogeology and groundwater chemistry aspects.

11 Q. Now, getting to the Taylor Ridge facility  
12 in Rock Island. Have you through the course of  
13 your work at the Illinois EPA become aware of the  
14 Taylor Ridge landfill?

15 A. Yes.

16 Q. And have you reviewed various permits and  
17 permit submittals that pertain specifically to  
18 groundwater at the Taylor Ridge facility?

19 A. Yes.

20 Q. And as the manager of the groundwater  
21 assistance unit, would you have a responsibility  
22 for reviewing documents generated by the  
23 groundwater assistance unit with regard to the  
24 Taylor Ridge facility?

25 A. Yes.

1           Q.   And do you also, excuse me, as manager of  
2   the groundwater assistance unit, unit review,  
3   groundwater-related documents that are submitted by  
4   the landfill?

5           A.   Yes, I do.

6           Q.   Now --

7           A.   Or someone on my staff would review  
8   those.

9           Q.   Now, what types of documents do you  
10   review or have you reviewed related to groundwater  
11   that have been submitted by the Taylor Ridge  
12   facility?

13          A.   In preparation of this proceeding here, I  
14   looked at the 19- -- 1994 inspection by Ron  
15   Mehalic, the historical data that was submitted by  
16   the facility, and I reviewed part of the  
17   application for 814 -- part 814, which was a  
18   significant modification to the site's permit.

19          Q.   Ron, have you also reviewed groundwater  
20   monitoring, Ron?

21          A.   Kenn.

22          Q.   What did I say?

23          A.   Ron.

24          Q.   Kenn.   Sorry about that?

25                   THE HEARING OFFICER:   Last witness.



1 BY MS. SYMONS-JACKSON:

2 Q. Have you also reviewed quarterly  
3 groundwater reports that have been submitted by  
4 Watts to the Illinois EPA?

5 A. Yes, I have.

6 Q. Kenn, I'm going to hand you what we have  
7 marked as Peoples Exhibit 53. Would you agree that  
8 this is a group exhibit that constitutes a  
9 compilation of the groundwater monitoring reports  
10 that the Agency has received from the Taylor Ridge  
11 facility?

12 A. Yes.

13 Q. And do you recall that Watts is required  
14 by permit to submit these reports to the Illinois  
15 EPA?

16 A. Yes.

17 MS. SYMONS-JACKSON: I would move  
18 for the admission of Peoples Exhibit 53.

19 MR. NORTHRUP: No objection.

20 THE HEARING OFFICER: It's admitted.

21 BY MS. SYMONS-JACKSON:

22 Q. Okay. Now, Ron -- I'm sorry. Kenn, I'm  
23 going to hand you a second exhibit, Peoples Exhibit  
24 54. You mentioned earlier a groundwater monitoring  
25 inspection report that had been prepared by Ron

1 Mehalic.

2                   Would you agree that this is, in fact,  
3 that report from August of 1994?

4           A.    Yes, it is.

5           Q.    Kenn, do you agree that this is the type  
6 of report that is typically prepared and kept in  
7 the Agency files in the regular course of Agency  
8 business?

9           A.    Yes, it is.

10                   MS. SYMONS-JACKSON:  I would also  
11 move to admit Exhibit 54 into the record.

12                   THE HEARING OFFICER:  Any  
13 objection?

14                   MR. NORTHRUP:  No objection.

15                   THE HEARING OFFICER:  It's admitted.

16 BY MS. SYMONS-JACKSON:

17           Q.    Now, Kenn, based on your review of the  
18 documents contained in both Exhibits 53 and 54,  
19 have you developed some opinions regarding the  
20 status of the groundwater at the Taylor Ridge  
21 facility?

22           A.    Yes, I have.

23           Q.    Next exhibit I'm going to hand you is  
24 Peoples Exhibit 55.  And can you identify for the  
25 record what this is?

1           A.    Yes.  This is a letter I prepared for you  
2   and Tom Davis, of the AG's office, concerning the  
3   conditions at the site.

4           Q.    And, Kenn, when did you prepare this  
5   letter?

6           A.    Oh, within the last two weeks, and it's  
7   dated October 25th, 1996.

8           Q.    Kenn, would you agree that this is the  
9   type of letter or document that is prepared in the  
10  regular course of your Agency business?

11          A.    Yes, it is.

12          Q.    And is this the type of document that  
13  would be kept in the Agency files in the normal  
14  course of the Agency's business?

15          A.    Yes, it is.

16                   MS. SYMONS-JACKSON:  I would move to  
17  admit Exhibit 55 into the record.

18                   THE HEARING OFFICER:  Any  
19  objection?

20                   MR. NORTHRUP:  No objection.

21                   THE HEARING OFFICER:  It's admitted.

22  BY MS. SYMONS-JACKSON:

23          Q.    Kenn, would you agree that this report  
24  reflects the Agency's position regarding the  
25  groundwater situation at the Taylor Ridge facility?

1           A.    Yes, it does.

2           Q.    And I want to address briefly some of the  
3   conclusions, the opinions that are contained in  
4   this exhibit 55.

5                   First of all, with regard to the  
6   classification of groundwater at that facility,  
7   Kenn, have you reached any opinion as to the  
8   classification of groundwater at this facility at  
9   this point in time?

10          A.    Yes, I have.

11          Q.    Okay.  Can you explain that opinion for  
12   us, please.

13          A.    May I look at the letter.

14          Q.    Certainly.

15          A.    It's in point No. 1 of the October 25th  
16   letter.  After reviewing the information submitted  
17   by the Watts facility, it appears that the  
18   groundwater could be Class I and in some areas  
19   Class II.

20          Q.    At this point in time, has the  
21   groundwater at the Taylor Ridge facility been  
22   classified as anything other than Class I?

23          A.    No, it has not.

24          Q.    Whose obligation is it to make a proposal  
25   that the groundwater is anything other than Class

1 I?

2 A. The owner/operator.

3 Q. And have you received any proposal from  
4 the owner/operator regarding a classification of  
5 groundwater at this facility?

6 A. No. As of this date. I know we made a  
7 couple of requests, and it's in writing, and we  
8 have not received anything.

9 Q. So as you sit here today, it's your  
10 opinion that the groundwater at the Taylor Ridge  
11 facility is a Class I resource groundwater?

12 A. Yes.

13 Q. Now, Kenn, have you reached any  
14 conclusions or do you have any opinions with regard  
15 to whether there are contaminants found in the  
16 groundwater at the Taylor Ridge facility?

17 A. Yes, I have.

18 Q. Can you explain those opinions for us?

19 A. Yeah. Those were in point No. 2 of that  
20 same letter. And I noted increasing trends in high  
21 concentrations of inorganic compounds, based on the  
22 samples submitted by Watts, and similar  
23 concentrations in organic contaminants.

24 I think these were from our 1994 FOS  
25 inspection by Ron Mehalic.

1           Q.    Ron -- Kenn, do you have any opinion as  
2   to the source of these contaminants in the  
3   groundwater?

4           A.    Based on the information we have from the  
5   facility, it's my opinion that it is probably due  
6   to the facility.

7           Q.    Kenn, are you aware of whether the  
8   landfill currently has any problems with gas?

9           A.    To the specific problems, I'm not aware.  
10   I know that the Agency in the engineering  
11   department felt that there was a gas problem that  
12   needs to be addressed, and I am aware that they are  
13   pursuing selling the gas.

14          Q.    Do you have an opinion, Kenn, as to  
15   whether landfill gas can contribute to  
16   contamination of groundwater?

17          A.    Yes.

18          Q.    What is that opinion?

19          A.    As the landfill gas builds up, it puts  
20   additional pressure within the landfill itself.  
21   And the fluid build up, which is the leachate, has  
22   to have a place to go. And it generally goes out  
23   the bottom of the landfill or the sides. One other  
24   thing the gas can do is it can migrate through the  
25   more permeable sediments and cause gas

1   contamination, which carries with it some of the  
2   inorganics that we have seen or organics that we  
3   have seen.

4           Q.   Kenn, if I were to tell you -- and I  
5   believe there will be testimony offered later on in  
6   the course of this hearing that the landfill is  
7   estimated to be producing 200 cubic yards per  
8   minute -- 2,000 cubic yards per minute of landfill  
9   gas.  How would that effect your opinion as to  
10   whether landfill gas plays any role in  
11   contaminating the groundwater at this site?

12          A.   I know from experience and from  
13   discussions with experts in this field that that's  
14   a significant amount of gas, and it would be worth  
15   removing.  Therefore, the landfill is generating  
16   enough gas that would be putting pressure,  
17   additional pressure, inside the landfill, and it  
18   should be removed.

19                  I think you had the units mixed up.

20          Q.   Just to clarify, I think it's 2,000 cubic  
21   feet per minute.

22          A.   Feet per minute.

23          Q.   And your opinion is the same?

24          A.   Right.

25          Q.   Would you agree that production of

1 landfill gas at that volume would increase the  
2 chances of the gas contributing to the groundwater  
3 contamination?

4 A. It's very probably.

5 Q. Based on your review of all these  
6 documents, Kenn, do you have an opinion as to  
7 what -- what should the landfill do now to address  
8 the groundwater issues at the facility?

9 A. In the permits for the landfill, they are  
10 required to do an assessment when certain values of  
11 these parameters that we monitor are exceeded. And  
12 they have not performed the assessment.

13 Q. And the certain parameters that you  
14 monitor have been exceeded in the documents that  
15 you have reviewed from this facility?

16 A. That's correct.

17 Q. Okay. Kenn, I'm going to hand you  
18 Peoples Exhibit 56.

19 THE HEARING OFFICER: This exhibit  
20 stipulated to, so it is in evidence.

21 MS. SYMONS-JACKSON: Okay.

22 BY MS. SYMONS-JACKSON:

23 Q. Kenn, would you agree this is a copy of  
24 permit number 1995-374-SP?

25 A. Yes.



1           Q.   And is this, Kenn, a permit that was  
2   issued to the Watts landfill allowing them to  
3   perform a groundwater assessment and groundwater  
4   monitoring?

5           A.   That's correct.

6           Q.   When was this permit issued to the  
7   landfill?

8           A.   January 9th, 1996.

9           Q.   And do you know what the current status  
10   of this permit is?

11          A.   As far as I know, it's been appealed.

12          Q.   And are you aware, Kenn, as to whether  
13   any of the actions approved or required in permit  
14   1995-374-SP have been, in fact, implemented by the  
15   facility?

16          A.   I am not aware that they have complied  
17   with all of these things, if that's what you are  
18   asking. Specifically, with the groundwater  
19   monitoring. I had two other people reviewing all  
20   our records the past two weeks, which you've asked  
21   me to do, and we cannot find the information that's  
22   required by that permit.

23          Q.   So, in your opinion, they have not  
24   complied with this permit?

25          A.   That's correct.

1           Q.    Now, Kenn, above and beyond the permit  
2   requirements contained in Exhibit 56, the landfill  
3   is required by regulation to perform groundwater  
4   assessment and monitoring?

5           A.    It's in their permit.  Their part 807  
6   permit that we issued.

7                   MS. SYMONS-JACKSON:  Okay.  These  
8   are all the questions I have for you on direct,  
9   Kenn.

10                   THE HEARING OFFICER:  Okay.  
11   Mr. Northrup.

12                   MR. NORTHRUP:  Real quick.

13                   CROSS-EXAMINATION

14   BY MR. NORTHRUP:

15           Q.    Is groundwater contamination common at  
16   landfills?

17           A.    No.  Maybe you can clarify common.  How  
18   common?  Common in every day occurrence or --

19           Q.    Is groundwater contamination uncommon at  
20   landfills in Illinois?

21           A.    Depends upon how they are operated and if  
22   they are constructed in accordance with their  
23   plans.

24           Q.    Watts isn't the only landfill that may  
25   have groundwater contamination in Illinois?

1 A. No.

2 Q. Do you have any idea how many landfills  
3 across the state might have a problem with  
4 groundwater contamination?

5 A. No. We don't track that specifically.

6 Q. Have you reviewed a submittal made by  
7 Watts' consultants CH2MHill on or about October  
8 18th to address sig-mod deficiencies?

9 A. October 18th of what year?

10 Q. '96.

11 A. No. I have not seen it.

12 Q. Now, you indicated that the source of the  
13 alleged contamination at the landfill is probably  
14 due to the facility, to the landfill?

15 A. That's correct.

16 Q. What might other sources be other than  
17 the landfill?

18 MS. SYMONS-JACKSON: Let me object.  
19 It calls for speculation on the part of the  
20 witness.

21 MR. NORTHRUP: Well, he's been  
22 qualified as an expert. He's rendered his opinions  
23 on where he thinks the contamination comes from.

24 THE HEARING OFFICER:

25 Mrs. Symons-Jackson, did you have anything

1 further?

2 MS. SYMONS-JACKSON: This is the  
3 whole point. He testified, too, earlier he doesn't  
4 know until the assessment is performed what other  
5 possible sources might be contributing.

6 MR. NORTHRUP: So how can he say it  
7 probably comes from the landfill? What's the basis  
8 for that if there is no assessment?

9 THE HEARING OFFICER: I'm going to  
10 allow the question. Can you repeat it please for  
11 the witness?

12 BY MR. NORTHRUP:

13 Q. What might be other sources of  
14 contamination of the alleged contamination of this  
15 groundwater?

16 A. Generally speaking, when we go into an  
17 assessment for a landfill, a facility looks at the  
18 analytical data to see if there is any errors in  
19 the sample data, the handling of the information.  
20 You look at the wells to make sure they are intact,  
21 so that surface water that's running off of the  
22 landfill may not be migrating down the casing. The  
23 way the wells -- if you have a bad well, let's  
24 say. There is background. Obviously if there is  
25 some source other than the landfill in the area,

1     there is that potential.

2           Q.     Iron is naturally occurring in the soil?

3           A.     Yes.

4           Q.     How about manganese?

5           A.     Yes.

6           Q.     You in your letter -- I can't remember  
7     what this was admitted as.  Peoples 55.  You  
8     reference on page two at the first paragraph,  
9     R.O.E.

10          A.     Uh-huh.

11          Q.     What is that?

12          A.     Residue on evaporation.

13          Q.     What does that mean?

14          A.     A sample is taken.  It's a known volume.  
15     And the water is driven off or the liquid is driven  
16     off.  It's just a determination of the solids.  
17     It's a way we determine similar like suspended  
18     solids, total dissolved solids.  It's related to  
19     amount of solids in the sample.

20          Q.     If there is groundwater contamination in  
21     a facility, how can it be addressed?

22          A.     It depends upon the source.

23          Q.     Okay.  Assuming the source is the  
24     landfill.

25          A.     Well, I mean, the source, meaning if it's

1 driven by gas, if it's a breach if the liner, if --  
2 if -- if the wells are bad, and surface water that  
3 is infiltrating down. It depends.

4 Q. Okay.

5 A. But I guess for your answer -- to answer  
6 you, I'll assume that it's the landfill and it's  
7 the leachate that's leaving the facility.

8 Capping, which is redoing the cap for  
9 proper slope and reduce infiltration. Removing  
10 gas. Getting an idea of the leachate head buildup  
11 in removing the leachate. Most expensive and the  
12 worst way is to have to clean up the leachate after  
13 it leaves the facility and enters the groundwater.  
14 That's the purpose ever the assessment.

15 Q. Cleaning up the groundwater in that  
16 scenario, is that commonly referred to as a pump  
17 and treat?

18 A. That is one method.

19 Q. What other methods are there?

20 A. Sometimes we go for containment.

21 Q. Which would be what?

22 A. Going around the contaminated areas with,  
23 say, a slurry, sheet piles.

24 Q. Okay. Now, if the contamination was  
25 driven by gas, how would you fix that?

1           A.    We would first want to relieve the  
2    pressure, take care of the gas.

3           Q.    Now, are you aware that the Watts  
4    landfill has been issued a permit to operate a gas  
5    recovery system?

6           A.    I haven't specifically reviewed it.

7           Q.    In your opinion, would a gas recovery  
8    system relieve pressure from inside the landfill?

9           A.    It should, yes.

10          Q.    And if it relieves that pressure, would  
11   it be your opinion that groundwater contamination  
12   would be less likely --

13          A.    No.

14          Q.    -- than if there wasn't a system?

15          A.    No. The gas is a component that adds to  
16   the problem. In fact, if there is a leachate  
17   buildup on the liner, and depending upon how the  
18   facility is constructed, the leachate will still  
19   migrate.

20          Q.    Now, does the gas itself add -- in your  
21   opinion, can it add constituents to the  
22   groundwater?

23          A.    Yes, it can.

24          Q.    So it's not just that the gas itself  
25   facilitates movement of the groundwater?

1           A.    Right.  The gas can move as a separate  
2    phase and carries with it some of the highly  
3    volatile constituents of the leachate.

4           Q.    Okay.  In your opinion, what are some of  
5    those highly volatile constituents?

6           A.    Based on what's been seen at the site,  
7    the chlorinated solvents.

8           Q.    This is the last area I want to ask you  
9    about.  On this Exhibit 55, was it?  On page -- the  
10   second to last page.  Under heading No. 3.  You  
11   have got some figures down here.  That cost benefit  
12   to the operator for not complying with, I guess,  
13   its the groundwater assessment.  You've got the  
14   figure 20,000 to 30,000.  Can you explain where you  
15   came up with those figures?

16          A.    Yes.  That's based on the analytical work  
17   and some consultant review.  The figures are  
18   estimates.  We have surveyed three different  
19   laboratories in the state, and we routinely look at  
20   the post closure and closure cost estimates  
21   provided by the landfills and analytical work is  
22   based on the list.  Well, it's in your Peoples  
23   Exhibit 56.

24          Q.    So basically, these numbers are your  
25   opinion of what it would cost for Watts to



1 implement the groundwater assessment?

2 A. That would be to take the samples and  
3 have them analyzed for the required parameters and  
4 compile the data. That does not include  
5 installation of any additional wells.

6 Q. Are sulfates naturally occurring?

7 A. Yes.

8 MR. NORTHRUP: I don't have any  
9 further questions.

10 THE HEARING OFFICER: Redirect.

11 MS. SYMONS-JACKSON: Yes.

12 REDIRECT EXAMINATION

13 BY MS. SYMONS-JACKSON:

14 Q. Kenn, are you aware of whether ESG Watts  
15 operates other landfills in the state of Illinois?

16 A. Yes, I am.

17 Q. Are you aware of the two other landfills  
18 operated by ESG Watts; Sangamon Valley and Viola?

19 A. Yes, I am.

20 Q. And are there groundwater problems at  
21 either or both of those facilities?

22 A. I haven't looked at anything lately on  
23 Viola. But, yes, there is extensive groundwater  
24 problems at the Sangamon Valley.

25 MS. SYMONS-JACKSON: That's all I

1 have.

2 THE HEARING OFFICER: Mr. Northrup.

3 MR. NORTHRUP: Yeah.

4 RECROSS-EXAMINATION

5 BY MR. NORTHRUP:

6 Q. What are those extensive groundwater  
7 problems at Sangamon Valley?

8 A. We -- oh, gosh. I can't give you  
9 specific permit numbers, but we have issued several  
10 permits to require groundwater remediation. There  
11 are people on the south side of the road that  
12 contamination is a -- these are private wells.  
13 It's been detected in their wells that the state  
14 has proven has come from the Watts facility. And I  
15 guess the situation -- it's our position the  
16 situation got worse because of their failure to act  
17 in accordance with their permits.

18 Q. Do you know if Watts is undertaking any  
19 groundwater remediation at that site?

20 A. I know he's -- the Watts company is  
21 required to. I know specifically that some wells  
22 were replaced and that they are trying to repair  
23 the liner, which evidently was not installed on the  
24 one side of the landfill. And as for any  
25 groundwater, pump and treat, I'm not aware that

1 it's been implemented.

2 Q. I assume there are other landfills in  
3 Illinois besides the Watts landfills that have  
4 groundwater problems.

5 A. Yes.

6 MR. NORTHRUP: Okay. I don't have  
7 any further questions.

8 MS. SYMONS-JACKSON: I don't have  
9 anything else.

10 THE HEARING OFFICER: Okay. Let's  
11 go off the record.

12 (Off-the-record discussion held.)

13 (Recess taken.)

14 THE HEARING OFFICER: I'd like to go  
15 back on the record if everybody is ready. Please  
16 swear the witness.

17 JOHN TAYLOR,  
18 called as a witness, after having been first duly  
19 sworn, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MS. SYMONS-JACKSON:

22 THE HEARING OFFICER: Okay. We are  
23 back on the record, Ms. Symons. Could you please  
24 begin.

25 BY MS. SYMONS-JACKSON:

1           Q.    Would you state your name for the record,  
2    please.

3           A.    John Taylor.

4           Q.    Mr. Taylor, with whom are you currently  
5    employed?

6           A.    The Illinois EPA.

7           Q.    What is your job with the Illinois EPA?

8           A.    I'm a financial assurance analyst.

9           Q.    And how long have you been the Agency's  
10   financial assurance analyst?

11          A.    About a little over six-and-a-half years.

12          Q.    What types of facilities are you a  
13   financial assurance analyst for?

14          A.    Solid waste disposal facilities, tire  
15   storage disposal sites, underground injection  
16   control facilities, and I oversee some of the  
17   compost site financial assurance issues.

18          Q.    Can you describe for us, John, what your  
19   duties are as a financial assurance analyst for the  
20   Illinois EPA?

21          A.    My primary duty is to review financial  
22   assurance documents submitted to the Agency by  
23   operators of the facilities in question and to  
24   determine compliance with the applicable statutes  
25   and regulations, and if there is a lack of

1 compliance initiate enforcement activities.

2 Q. Now, prior to becoming a financial  
3 assurance analyst, did you have any other  
4 experience regarding landfills?

5 A. Yes. I worked for the EPA as a field  
6 operations inspector from 1975 to 1980 and worked  
7 in the industry from 19- -- roughly from 1980  
8 through 19- -- or sorry. From 19- -- yes. 1980 to  
9 1990, when I returned to the Agency.

10 Q. So how many total years have you worked  
11 for the Illinois EPA?

12 A. A little over 11.

13 Q. John, what sorts of educational  
14 background do you have?

15 A. I have a bachelor's degree in economics,  
16 a master of business administration from Washington  
17 University in St. Louis, and I've completed half  
18 the requirements of a jurist doctorate degree in  
19 St. Louis University.

20 THE HEARING OFFICER: Mr. Taylor,  
21 can you please speak up. Some people are having  
22 trouble hearing.

23 THE WITNESS: Okay.

24 BY MS. SYMONS-JACKSON:

25 Q. John, can you tell us what is financial

1 assurance?

2 A. Concept of financial assurance is  
3 straightforward. Operators of pollution control  
4 facilities, such as landfills, are required by  
5 statutes and regulation now to provide some form of  
6 financial guaranty that they will be able to --  
7 they or someone else will be able to clean up the  
8 facility at the end of its useful life, that there  
9 will be money -- effectively money available to  
10 close the landfill and provide for monitoring after  
11 closure and maintenance and related activities.

12 Q. Okay. John, have you had an opportunity  
13 to review financial assurance related documents  
14 with regard to the Taylor Ridge facility?

15 A. Yes, I have.

16 Q. Can you give us a brief idea of what sort  
17 of documents you would review?

18 A. In the course of -- course of my duties,  
19 I would review the permits that have been issued to  
20 the facilities that set forth the financial  
21 assurance requirements, any information provided by  
22 the operator at the site.

23 And in this case, we periodically receive  
24 reports from the trustee of the trust created for  
25 the financial -- to meet the financial assurance

1 requirement for this facility.

2 Q. Okay. And based on your review of these  
3 documents, would you agree that the financial  
4 assurance obligations for the Taylor Ridge landfill  
5 have increased over the past several years?

6 A. Yes, they have.

7 Q. Can you explain for us how financial  
8 assurance is calculated and why there might be  
9 these increases over time?

10 A. Okay. Financial assurance requirements  
11 are developed by the operator's consultants,  
12 usually a consulting engineering firm. And it's  
13 basically a third-party estimate of all the costs  
14 of closing the facility, providing post closure  
15 care and maintenance.

16 These estimates are submitted to the EPA  
17 as part of a permit application and approved by our  
18 permits section and generally are included in a  
19 permit letter issued to the operator.

20 Q. So the cost estimates for final assurance  
21 are provided to the Agency by the owner/operator?

22 A. Yes.

23 Q. And is there a mechanism by which the  
24 facility is required to update cost estimates?

25 A. Yes. The regulations for landfill

1 facilities are -- contain various, depending on  
2 which -- depending on which set of the regulations  
3 the facility is operating under, there are various  
4 forms of various requirements to update the cost  
5 estimates.

6 Q. John, would you agree that this facility  
7 is currently operating under the 807 part 807  
8 regulations?

9 A. Yes.

10 Q. And under those 807 regulations, what are  
11 the requirements regarding submitting revised cost  
12 estimates?

13 A. Okay. Generally speaking, rule 807.623  
14 requires that the cost estimates for these  
15 facilities be revised every two years.

16 Q. And is there a specific due date that's  
17 assigned for that revision?

18 A. Yes. Generally there is, yes.

19 Q. How is that date determined?

20 A. As I recall, there is an Agency policy  
21 statement that explains it in detail. But when a  
22 facility is first issued -- or first issued a  
23 permit, including the approval of a closure and  
24 post closure care plan, they are given a date two  
25 years hence. And which to -- at which time they



1 must provide revised cost estimates. At that time  
2 they are effectively assigned that date every two  
3 years indefinitely for the life of the site such  
4 that -- as an example. If your first permit were  
5 issued July 1st of a year, that your next revision  
6 would be two years from that date and two years  
7 further and then two years after that.

8 But if there are problems with the  
9 revisions, so on so forth, and delay in meeting  
10 this requirement, you don't get additional time.

11 Q. Okay. Now John, what happens in that  
12 two-year period -- say cost estimate is approved.  
13 Let's take your example. July 1, 1990. Say on  
14 some day within the two-year period from July 1  
15 1990 to July 1, 1992, there is some reason that the  
16 facility has to file a revised cost estimate within  
17 that amount of time.

18 A. Yes.

19 Q. And it's approved within that amount of  
20 time. When is the next cost estimate due?

21 A. It would be due July 1st of two years  
22 hence from the date of the initial permit according  
23 to the -- to our policy -- the Agency's policy.

24 Q. So any interim revision within that  
25 two-year period does not change the date for the

1 biannual cost revision?

2 A. Normally, no.

3 Q. And do you know, does the Taylor Ridge  
4 facility have a set biannual revision date?

5 A. I believe so, yes.

6 Q. Do you know what that date is?

7 A. It's in late November. I believe the  
8 next biannual revision due is next month.

9 Q. November of 1996?

10 A. Right.

11 Q. And do you know when the first biannual  
12 revision was due to be submitted from Watts for the  
13 Taylor Ridge facility?

14 A. No, I don't. I'm -- not from memory.

15 Q. John, are there any documents that you  
16 have prepared in anticipation for your testimony  
17 today that might help refresh your recollection as  
18 to the exact biannual revision date?

19 A. Yes. I prepared a memorandum file as a  
20 result of the review of the relevant documents for  
21 you last week.

22 Q. Okay. I'm going to hand you a copy of  
23 Peoples Exhibit 59. Memorandum prepared on October  
24 25, 1996.

25 Can you take a look at that document and

1 please inform us if it refreshes your recollection  
2 as to the biannual revision due date?

3 A. Yes. I believe the next biannual  
4 revision due date would be November 28th, 1996.

5 Q. So would you agree, then, that the first  
6 due date would have been November 28 of 1994?

7 A. There may have been others before that.  
8 I just don't recall.

9 Q. Okay. Would you agree that a biannual  
10 revision was due on November 28, 1994?

11 A. Yes.

12 Q. And, John, based on your review of the  
13 documents in your Agency file, are you aware of  
14 whether Watts did file a revised cost estimate on  
15 November 28, 1994?

16 A. I recall that they did not. However, the  
17 next biannual revision was finally approved some 13  
18 months after the November 28th, 1994 date.

19 Q. So at some point then after November 28,  
20 1994, a revision must have been filed?

21 A. Yes.

22 Q. Now, John, as of November 28th -- well  
23 strike that. Let me start over.

24 Can you tell us what financial assurance  
25 mechanisms a facility can use to provide financial

1 assurance?

2 A. Yes. There are six for solid waste  
3 disposal facilities. Payment bond, performance  
4 bond, closure insurance, letter of credit,  
5 self-insurance. And forgetting one other, I guess.  
6 I believe that's all of them.

7 Q. Okay. Now, the Watts facility, in this  
8 case for Taylor Ridge, has provided any financial  
9 assurance for the facility?

10 A. Yes. They used the sixth method, the  
11 trust funds.

12 MR. NORTHRUP: I'm going to object  
13 at this point with respect to any line of  
14 questioning on Watts' funding of financial  
15 assurance. I've made the objection yesterday.

16 There is no allegation in the complaint  
17 that deals with funding type of issues, whether or  
18 not Watts has assurance or not.

19 The complaint is solely limited to when  
20 revisions have or have not been filed. With  
21 respect to the anticipated testimony for this  
22 September (sic) deadline, again, that's -- that has  
23 occurred.

24 I mean, there has been no notice pursuant  
25 to 31-D of the Act for that. So I don't think any

1 of that is relevant.

2 THE HEARING OFFICER:

3 Ms. Symons-Jackson.

4 MS. SYMONS-JACKSON: A couple of  
5 comments, Ms. Hearing Officer. First of all, we do  
6 believe this evidence in this testimony is  
7 relevant.

8 The respondent has opened the door to the  
9 financial condition of the corporation of the  
10 landfill and the corporation, ESG Watts, in their  
11 answers to interrogatories.

12 If there is a legal objection to the  
13 testimony that we are going to be presenting, then  
14 I would suggest that we just address that in our  
15 briefs.

16 In our complaint we do make allegations  
17 regarding the failure to file revised cost  
18 estimates. And in our supplemental pleading, we do  
19 indicate that we will be presenting evidence and  
20 proving up violations that have continued from the  
21 date of our complaint.

22 THE HEARING OFFICER: Okay. Do you  
23 have anything else, Mr. Northrup?

24 MR. NORTHRUP: Yeah. Again, that's  
25 right. The complaint talks about failure to -- to

1 file revisions. There is nothing about whether  
2 these things are adequately funded.

3 Furthermore, I don't think I have opened  
4 the door in any of my answers to interrogatories on  
5 the funding issue.

6 THE HEARING OFFICER: Okay. I'm  
7 going to allow it. The Board's rules do plainly  
8 state that proof may depart from the pleadings and  
9 that pleadings may be amended, as long as there is  
10 no undue surprise.

11 In this case, I don't believe that it  
12 should come as a surprise that this information is  
13 being brought up.

14 Mr. Northrup, if you wish to make  
15 arguments as to 31-D notice, you may do so in your  
16 brief.

17 MR. NORTHRUP: Okay.

18 MS. SYMONS-JACKSON: I would just --  
19 Ms. Hearing Officer, I would ask that you please  
20 acknowledge and state on the record that we have  
21 advised Mr. Northrup of our intentions to address  
22 these issues at the hearing during previous phone  
23 conversations. I believe the first of which  
24 occurred over a month ago.

25 THE HEARING OFFICER: You're asking

1 me to recall something that I'm not sure that I  
2 recall specifically talking about the amount of  
3 money in the trust funds. So I can't make that  
4 statement on the record.

5 We did have several pre-hearing phone  
6 conferences where I believe that the attorney  
7 general's office made it clear that they would be  
8 trying to prove ongoing violations, and anything --  
9 any proof that they could find to show that. But  
10 as to the specific information, I don't remember  
11 that.

12 MS. SYMONS-JACKSON: Okay.

13 THE HEARING OFFICER: It's not that  
14 you didn't do it. It's just that I don't remember  
15 that conversation.

16 MR. NORTHRUP: I'll make the  
17 affirmative statement, that issue did come up in  
18 phone conversations, and I did indicate at that  
19 time that I would be raising these objections to  
20 it.

21 THE HEARING OFFICER: Okay. And  
22 certainly, this does not prescribe you from any  
23 legal arguments in your briefs. But I am going to  
24 allow the information into evidence now.

25 MS. SYMONS-JACKSON: May I continue?

1 THE HEARING OFFICER: Yes. Please.

2 MS. SYMONS-JACKSON: Ms. Hearing  
3 Officer, I'm going to need the original Peoples  
4 Exhibit 2 that we introduced into evidence earlier  
5 in the case.

6 THE HEARING OFFICER: Certainly.  
7 Let's go off the record for a minute.

8 (Off-the-record discussion held.)

9 THE HEARING OFFICER: Then let's  
10 continue.

11 MS. SYMONS-JACKSON: Okay.

12 BY MS. SYMONS-JACKSON:

13 Q. John, we have just handed you a copy of  
14 the permit the number of which is 1996-087-SP. I  
15 would ask that you please review that permit and  
16 tell us what the approved cost estimate is in that  
17 permit.

18 A. The approved current cost estimate or the  
19 current cost estimate approved by this permit is  
20 \$1,299,564.

21 Q. And, Mr. Taylor, are you aware of what  
22 the current balance of the trust fund for Watts'  
23 financial assurance is?

24 A. Yes. As of the latest available  
25 information as of this morning was that the fund



1 contains just over \$435,000. As of Friday. The  
2 close of business Friday, October 25th.

3 Q. And where did you get this information?

4 A. From the trustee, the Rock Island Bank.

5 Q. John, based on your review of this permit  
6 that I've handed you that was previously admitted  
7 into evidence as Peoples Exhibit 2, is there a due  
8 date on which the facility was required to provide  
9 that amount of financial assurance?

10 A. Okay. In accordance with rule 807.603  
11 the operator was to provide additional financial  
12 assurances so as to equal the current cost estimate  
13 within 90 days of the issuance of the permit, which  
14 was June 13th, 1996.

15 So on or about September 13th, 1996, the  
16 rules would require the operator to provide  
17 financial assurance at least equal to 1,299,000 so  
18 forth.

19 Q. Okay. John, I'm going to hand you what  
20 we have already marked as Peoples Exhibits 57 and  
21 58. I'm going to ask that you identify both of  
22 those, referring to each exhibit number for the  
23 record.

24 A. Yes. These are both memoranda prepared  
25 by myself. Peoples Exhibit 57 is a memorandum

1 detailing a financial assurance record review  
2 performed by myself on September 19th, 1996. And  
3 Peoples Exhibit 58 is a memorandum, prepared again  
4 by myself, detailing the deficiencies and the three  
5 trust funds for the three ESG Watts sites in  
6 Illinois.

7 Q. John, are these the types of reports that  
8 you would normally prepare in the regular course of  
9 your business and your duties as a financial  
10 assurance analyst --

11 A. Yes.

12 Q. -- at the Illinois EPA?

13 A. Yes.

14 Q. And are these the type of reports that  
15 you would, as a matter of custom or business, keep  
16 in the Agency files regarding this landfill?

17 A. Yes.

18 MS. SYMONS-JACKSON: Ms. Hearing  
19 Officer, I would move to admit both Exhibits 57 and  
20 58 into evidence.

21 THE HEARING OFFICER: Is there an  
22 objection?

23 MR. NORTHRUP: No. Other than just  
24 subject to the prior objection on the line of  
25 questioning.

1 THE HEARING OFFICER: Okay. They  
2 are both admitted.

3 BY MS. SYMONS-JACKSON:

4 Q. John, referring to Peoples Exhibit 57.  
5 Can you tell us briefly what information is  
6 contained in this document?

7 A. Okay. This document is a -- a written --  
8 written report that details the violations I found  
9 at the time of the review on September 19th. It's  
10 various information detailing what financial  
11 assurances, what the financial assurance  
12 requirements are for the facility and what  
13 financial assurance has been provided by the  
14 operator, and any apparent violations of the Act  
15 and regulations.

16 Q. John, is it your opinion that the  
17 violations that you included in that record have  
18 continued to the present?

19 A. Yes.

20 Q. Okay. Now, looking at Peoples Exhibit  
21 58. You indicated that this addresses financial  
22 assurance at the three ESG Watts facilities in the  
23 state of Illinois, correct?

24 A. Yes.

25 Q. And what was the purpose in preparing

1 this document?

2 A. To provide -- to provide information to  
3 anyone looking at any of the three site files for  
4 the ESG Watts facilities. That information about  
5 the sister facilities or the other facilities also  
6 owned by Watts, such that the financial assurance  
7 violations that did not only pertain to one of  
8 these sites but all three sites were seriously  
9 underfunded.

10 Q. So it's your conclusion, then, that each  
11 of the three ESG Watts facilities are underfunded  
12 with their financial assurance obligations?

13 A. Yes.

14 Q. And, John, based on your experience as  
15 the financial assurance analyst for the Agency,  
16 what concerns do you have when you find a facility  
17 that is underfunded in its financial assurance  
18 obligations to the state?

19 A. I believe what our concern is a larger  
20 picture. Is that -- that there is a possibility  
21 that the site will be abandoned, and the taxpayers  
22 ultimately will end up providing the closure and  
23 post closure of the facility. And effectively, the  
24 operator -- the operator or the customers of the  
25 operator that use the facility wouldn't be paying

1 the true cost of closure and post closure care of  
2 the facility. The burden will be borne by the  
3 taxpayers.

4 Q. John, would you agree that for a facility  
5 that has a number of operational violations, would  
6 your concern regarding the lack of sufficient funds  
7 to close and post close the facility is heightened,  
8 that your concern is heightened by that?

9 A. Yes. I believe so.

10 Q. And why would that be?

11 A. Just in general, you know, it would be  
12 more concerned that higher likelihood that the site  
13 may be abandoned for any number of reasons. There  
14 simply wouldn't be enough money to close it or  
15 provide monitoring and maintenance after closure.

16 Q. Now, referring to document Exhibit 58.  
17 Have you reached a conclusion as to the total  
18 extent of underfunding attributable to the three  
19 Watts facilities in Illinois?

20 A. Yeah. As of the time I prepared this  
21 memorandum, the total deficiency for the three  
22 facilities was 1,842,000.

23 Q. And what portion of that amount is  
24 attributable to the Taylor Ridge facility?

25 A. At the time, it was \$869,000.

1           Q.    Okay.  John, I'm going to hand you a copy  
2   of Peoples Exhibit 59.  Can you please identify  
3   this document for the record.

4           A.    Yes.  It's a memorandum I prepared on  
5   October 25th, 1996, with an estimate of possible  
6   economic benefits from failure to fund the trust  
7   for the Andalusia site.

8           Q.    Okay.  When did you say this document was  
9   prepared?

10          A.    October 25th.

11          Q.    And is this the type of document that you  
12   would normally prepare in the regular course of  
13   your business and duties as a financial assurance  
14   analyst for the Illinois EPA?

15          A.    Yes.  I occasionally produce information  
16   like this.

17          Q.    And is this the type of report that you  
18   would as a matter of customary business keep in the  
19   Agency files regarding the Taylor Ridge facility?

20          A.    Yes.

21                   MS. SYMONS-JACKSON:  Ms. Hearing  
22   Officer, I would move to admit Peoples Exhibit 59  
23   into evidence.

24                   THE HEARING OFFICER:  Is there an  
25   objection?

1                   MR. NORTHRUP: No. Other than  
2 subject to my prior objection on relevance.

3                   THE HEARING OFFICER: Okay. That  
4 Exhibit 59 is also admitted into evidence.

5 BY MS. SYMONS-JACKSON:

6           Q. John, referring to Exhibit 59. And based  
7 on your experience with the Agency, do you have an  
8 opinion as to whether ESG Watts has benefitted  
9 economically from failing to properly fund its  
10 financial assurance trust fund for the Taylor Ridge  
11 facility?

12          A. Yes.

13          Q. Can you explain your opinions for us,  
14 please.

15          A. Yes. Generally assume that there is some  
16 form of benefit from failure to fully fund a  
17 trust. Otherwise, the question would be, why would  
18 they not fund the trust if there was no benefits in  
19 not doing so. Placing some sort of a cost on the  
20 benefits is a little more problematical.

21               The method I used is, simply put, for  
22 this analysis was assume a cost of capital for ESG  
23 Watts as a company, minus what sort of interest  
24 rate they would receive from the investments in the  
25 trust fund. And in giving that a number, and an

1 assumed number obviously, and multiplying that  
2 interest rate times the deficiencies since the  
3 site -- since the point in time it was decided the  
4 trust fund was underfunded.

5 Q. Okay. You indicated that this assumed  
6 number -- the percentage that you come up with, is  
7 an -- an assumed number?

8 A. Yes.

9 Q. What do you base that on?

10 A. Well, several assumptions you have to  
11 make. First is what the trust fund would earn.  
12 What trust funds like this or what this specific  
13 trust fund earns. And that -- the trust fund this  
14 year has earned very little money. But sort of  
15 arbitrarily assigned it a return of 3 percent.

16 Q. And is that based on your review of what  
17 trust funds such as this one typically earn?

18 A. That's a little difficult. Right now,  
19 for example, CD's and government bonds are earning  
20 about 5 percent. However, this trust, I believe,  
21 from December 31st of this year to September,  
22 earned something like 1-1/2 percent for nine  
23 months. So something like 2 percent.

24 So the annual rate that they are earning  
25 is something actually less than 3 percent. That's



1 where that number came from.

2 The -- the other number is even harder to  
3 come up with. It would be a cost of capital to ESG  
4 Watts, who historically has not had a great credit  
5 rating. I obviously don't know what their cost of  
6 capital is. But have to assume that it would be  
7 much higher than normal. And I just for the sake  
8 of demonstrating, assign it a cost capital of 15  
9 percent.

10 Q. And the cost of capital, is that the  
11 interest rate that you are assuming ESG Watts is  
12 going to have to pay to borrow or obtain that  
13 money?

14 A. Yes. Exactly.

15 Q. And in formulating that number, do you  
16 look at the standard interest rates in the banking  
17 facility for this time?

18 A. No. As I say, it's a difficult number to  
19 come up with. It would depend largely on how ESG  
20 Watts obtains funds, who they obtain them from,  
21 what sort of rates they have to pay.

22 Without some testimony from someone from  
23 Watts, it would be extremely difficult to pin  
24 down. I used this number as an approximation for  
25 the sake of this demonstration.

1           Q.    Okay.  And based on these calculations,  
2   have you come up with an amount of money that would  
3   show the amount that ESG Watts is benefiting by  
4   failing to properly fund their trust fund?

5           A.    Assuming that these numbers are -- that  
6   the cost of capital to Watts is somewhere near  
7   accurate, that their economic benefits by failure  
8   to fund the trust would be in the neighborhood of  
9   \$55,000.

10          Q.    Per year?

11          A.    No.  That would be more the period from  
12   November of 1994 to the present.

13          Q.    Okay.  Now, from the period of  
14   September -- mid September 1996 until today, do you  
15   have an opinion as to what their economic benefit  
16   is, say, on a per month basis?

17          A.    Assuming -- assuming -- given the  
18   previous assumptions, it would probably be  
19   something like \$9,000 a month.

20          Q.    And that benefit will continue to improve  
21   to ESG Watts until their financial assurance  
22   properly funded.

23                   MS. SYMONS-JACKSON:  That's all the  
24   direct examination I have, John.

25                   THE HEARING OFFICER:  Mr. Northrup.

1 CROSS-EXAMINATION

2 BY MR. NORTHRUP:

3 Q. Are you aware that the sig-mod submitted  
4 in September of '94 contained cost revisions?

5 A. Not specifically, no.

6 Q. Do -- your calculations on Peoples  
7 Exhibit 59, do they take into account the fact that  
8 Watts was overfunded from the period at least  
9 assuming from March 1, '93 through November of '94?

10 A. No.

11 Q. Would it be true to say that Watts --  
12 Watts employees, particularly a financial person,  
13 is in a better position to identify their cost of  
14 capital?

15 A. Certainly. Yes.

16 Q. Do you know what the prime rate is today?

17 A. No, I don't. I have yesterday's Wall  
18 Street Journal with me. We can like it up.  
19 Offhand, I don't know.

20 Q. Is it more than 3 percent?

21 A. I don't recall. I really don't recall  
22 what it is.

23 Q. Okay. Now, you indicated that between  
24 December 31st, I guess, of '95 and September of  
25 this year, Watts earned about 1-1/2 percent on its

1 trust fund.

2 A. I believe that's correct, yes.

3 Q. Again, where did that number come from?

4 A. Okay. The balance -- the market value of  
5 the trust as of December 31st, '95 was  
6 four-twenty-four, six-thirty-five, eighty-eight.  
7 And as of September 13th, it was four-thirty-nine,  
8 forty-one.

9 If you want to do the calculation, I  
10 think you'll find that's like 1.3 percent or  
11 something over a nine-month period. So a very low  
12 increase in value.

13 Q. Okay. Do you know what Watts has  
14 invested these trust funds in, these funds in?

15 A. Not offhand, no, I don't.

16 Q. Okay.

17 A. That would be between Watts and the  
18 trustee.

19 Q. Do you know who an individual name John  
20 Lawly (phonetic spelling) is?

21 A. I don't believe so, no.

22 Q. Have you ever -- do you ever recall  
23 having a telephone conversation with him, perhaps a  
24 Jack Lawly?

25 A. Not offhand, I don't. Not offhand.

1           Q.    Do you recall discussing financial  
2    assurance with anyone on Watts' behalf last week,  
3    funding mechanisms?

4           A.    Yes, sir.  I've had several phone calls  
5    from people.  Some of whom, I've known.  Some I  
6    don't recall their names.

7           Q.    Okay.  Who are the ones who you recall  
8    their names?

9           A.    I believe we had somebody from Scheer's  
10   Incorporated.  It's a bond broker in the Chicago  
11   area.

12                   MS. SYMONS-JACKSON:  Can you speak  
13   up?

14                   THE HEARING OFFICER:  Thank you.

15   BY MR. NORTHRUP:

16           A.    I had a telephone conversation with  
17   someone from shears incorporated.  It's  
18   S-C-H-E-E-R-'-S.  It's a brokerage firm in Chicago,  
19   and I believe two other telephone calls in the last  
20   four to six weeks.

21           Q.    Okay.  On those two other calls, what  
22   were the subjects of those calls?

23           A.    I believe people were asking about - they  
24   were asking questions, about how the financial  
25   assurance regulations for the Watts -- not for the

1 Watts. They were asking about how various  
2 financial assurance mechanisms and regulations were  
3 in Illinois.

4 Q. Do you recall specific discussion about  
5 the availability of insurance?

6 A. Yes. Someone did call last week. That  
7 may be the person that you were asking about.  
8 Someone called last week and asked about closure  
9 insurance.

10 Q. And what did you tell that person?

11 A. That it's one of the availability  
12 mechanisms.

13 Q. Did you say it wasn't an available  
14 mechanism to Watts?

15 A. I wouldn't know if it's an available  
16 mechanism to Watts. But I believe I told him that  
17 as of this time we have no closure -- I do not  
18 believe we have any closure insurance for any  
19 facilities in Illinois, other than Brownie Ferris  
20 (phonetic spelling) industry sites and the waste  
21 management sites. And those are issued by  
22 subsidiary companies of BFI and waste management,  
23 and they are not available to anyone, to other  
24 facility operators.

25 Q. But insurance is an acceptable financial

1 assurance mechanism?

2 A. Yes.

3 Q. Did you state or imply to this gentleman  
4 that there would be no way Watts would be able to  
5 ever get insurance -- or financial insurance?

6 A. I don't recall using that language. I  
7 told him I thought it was highly unlikely he  
8 would be able to obtain closure insurance, since  
9 no one -- since we don't have any. No one has  
10 successful.

11 THE HEARING OFFICER: Mr. Taylor,  
12 you are trailing off.

13 THE WITNESS: I'm sorry.

14 BY MR. NORTHRUP:

15 A. I told him that I thought it would be  
16 highly -- highly unlikely that Watts would be able  
17 to obtain financial assurance, as there was no --  
18 there are no policies issued that we have accepted  
19 to date.

20 Q. So there is some discretion on your part  
21 as to whether or not to accept insurance as an  
22 acceptable funding mechanism?

23 A. No. If -- there is no discretion if the  
24 if the policies meet the requirements of the Act  
25 and regulations. Obviously, we must accept them.

1           Q.    Did you tell this individual that it was  
2   highly unlikely that you would approve insurance as  
3   an acceptable funding mechanism for the Watts  
4   facility?

5           A.    Not in those words.  They were asking --

6           Q.    What words?

7           A.    They were asking whether or not Watts  
8   would -- would be able to obtain insurance.  I told  
9   him it was highly unlikely.  There are no policies.  
10   So far.

11          Q.    Well, I don't think that quite answers my  
12   question.

13                Did you tell this individual that it was  
14   highly unlikely you would approve insurance as an  
15   acceptable funding mechanism for Watts?

16          A.    That was the net result of our  
17   conversation, yes.  I thought it was highly  
18   unlikely he would be able to obtain insurance.

19          Q.    Well, did you tell him in so many words  
20   that it was highly unlikely that the Agency would  
21   approve insurance as a funding mechanism for  
22   financial insurance?

23                MS. SYMONS-JACKSON:  I'm going to  
24   object.  You've asked this question three times.  I  
25   haven't said anything before now.  It's been asked



1 and answered.

2 MR. NORTHRUP: Yeah. I get  
3 different answers every time I ask it.

4 THE HEARING OFFICER: I'm actually  
5 going to overrule your objection, because I haven't  
6 heard a responsive answer yet. And I was actually  
7 going to reask the question if Charlie didn't.

8 So, Mr. Taylor, if you will answer the  
9 question specifically. Just what he is asking.  
10 Not a net result of your conversation. But did you  
11 say those words?

12 BY MR. NORTHRUP:

13 A. You are obviously asking me to recall  
14 what I said in a phone call to someone whose name I  
15 didn't remember in the past.

16 What I recall saying to him was that I  
17 thought it was highly unlikely ESG Watts would be  
18 able to obtain an insurance policy that would be  
19 acceptable to the Agency. And exactly what words I  
20 used, I frankly don't recall.

21 THE HEARING OFFICER: Okay. Let's  
22 go ahead and move on.

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

25 THE HEARING OFFICER: Redirect.

1 MS. SYMONS-JACKSON: I don't have  
2 any.

3 THE HEARING OFFICER: Okay. Thank  
4 you. Let's go off the record.

5 (Off-the-record discussion held.)

6 THE HEARING OFFICER: Go ahead and  
7 go back on the record. Does the state have any  
8 further witnesses?

9 MS. SYMONS-JACKSON: No, we do not.

10 THE HEARING OFFICER: Okay.

11 MR. DAVIS: Ms. Hearing Officer, we  
12 would, however, move pursuant to stipulation  
13 Peoples Exhibit 62 identified as the judgment order  
14 in the Sangamon Valley case; Peoples Exhibit No. 3  
15 (sic), the first contempt order in the Sangamon  
16 Valley case, and Peoples Exhibit No. 64, the  
17 supplemental contempt order.

18 (Proceedings interruption.)

19 MR. DAVIS: Let me start over.

20 THE HEARING OFFICER: Peoples  
21 Exhibit 62 through 64?

22 MR. DAVIS: Yes, Ms. Hearing  
23 Officer.

24 THE HEARING OFFICER: Okay.

25 MR. DAVIS: Peoples Exhibit 63, the

1 first contempt order in the Sangamon Valley case;  
2 and Peoples Exhibit, 64 the supplemental contempt  
3 order in the Sangamon Valley case.

4 THE HEARING OFFICER: Okay. Those  
5 are admitted into evidence by stipulation.

6 MR. DAVIS: The People would also  
7 tender for a ruling on admissability at this point  
8 the 1994 U.S. corporate income tax return and the  
9 1995 U.S. corporate income tax return. Which would  
10 be No. 66 and 67.

11 We have had a discussion off the record,  
12 and I'll reiterate part of that. We only have one  
13 copy of these documents with us. We would ask for  
14 a ruling at this point in time and be prepared to  
15 argue the objection that we anticipate. And if  
16 there -- if the exhibits are admitted, we would  
17 provide the court - the hearing officer with copies  
18 within a few days.

19 THE HEARING OFFICER: Okay. I was  
20 writing on the other exhibits while you were  
21 talking.

22 Can you tell me -- they are both  
23 corporate tax records. Can you tell me what date  
24 66 is and what date 67 is?

25 MR. DAVIS: Yes. 66 would be the

1 1994 return filed in, I believe, October of '95.

2 THE HEARING OFFICER: Okay.

3 MR. DAVIS: 67 would be the 1995  
4 return filed in October of 1996.

5 THE HEARING OFFICER: Okay.

6 Mr. Northrup, is there any objection?

7 MR. NORTHRUP: Yeah. I'm going to  
8 object to their admission at this time. There have  
9 been no -- the issue of ESG Watts' financial health  
10 certainly at this point in time has not been put  
11 into issue. Therefore, those documents are  
12 irrelevant at this point.

13 THE HEARING OFFICER: Okay.

14 Mr. Davis.

15 MR. DAVIS: Thank you. The issue of  
16 relevancy is not dependent upon whether the defense  
17 has made its case or whether there will be a  
18 defense case.

19 It's inherent within the documentary  
20 exhibit whether that exhibit is relevant. I can  
21 submit to this hearing officer in this proceeding  
22 that this hearing officer in the previous  
23 proceeding, 94-127, correctly allowed similar  
24 documents, that being, I think, the 1992 corporate  
25 tax return, that the Board properly looked at that

1 documentary exhibit in 94-127, and that the  
2 appellate court in its published opinion 224  
3 Illinois Ap 3rd 43, close, 282, Illinois Ap 3rd 43,  
4 correctly and extensively addressed the information  
5 contained in that document.

6 We have had some pre-hearing efforts by  
7 the respondent to exclude that information by  
8 protective order. This hearing officer correctly  
9 ruled on that.

10 We are tendering it for admission now,  
11 and we will tender it later if -- if necessary as  
12 far as Mr. Ehlers (phonetic spelling) is  
13 testifying. But we expect that he will talk about  
14 the things that the interrogatory answer indicated  
15 he would talk about. And is - that is directly  
16 going to put financial status at issue. So it's a  
17 good faith effort to complete our presentation at  
18 this time.

19 THE HEARING OFFICER: Okay.  
20 Mr. Northrup, do you have anything further?

21 MR. NORTHRUP: Yeah. A couple of  
22 things. In the 127 case, the tax returns were put  
23 in issue primarily by Watts because his theory in  
24 that case was that there were cash flow problems,  
25 and he could not comply with the -- those fee

1 payments. So we put the issue at issue in that  
2 case.

3 In this case, there is going to be, as  
4 far as I can see right now, no issue of Watts'  
5 inability to comply with any of the allegations in  
6 this case, based upon an inability to -- or a  
7 financial inability to comply.

8 I understand that obviously if I put  
9 Mr. Ehlers in the chair, this issue may resurface  
10 again, depending on what I ask him, and what his  
11 responses are. But at this time, that issue is not  
12 before the Board. It's not my intention to put  
13 that issue before the Board.

14 MR. DAVIS: I've only attempted to  
15 address the objection as articulated. I would  
16 suggest however that under 42-H, we have some  
17 criteria to look to. We have also touched on  
18 economic benefits. These documents are relevant to  
19 that.

20 There is a larger issue on simply the  
21 delay of compliance, regardless of whether or not  
22 an economic benefit does occur. And that is the  
23 due diligence aspect.

24 These documents will show that there is  
25 money there to be spent. I believe we have already

1 established in our case in chief that the leachate  
2 management plan has not been formally applied for  
3 or approved. The storm management plan has not  
4 been applied for or approved. The assessment  
5 monitoring program that was permitted has not been  
6 implemented.

7 We merely attempted to show  
8 simplistically what must be done. And now we are  
9 trying to show that Watts could afford to do it.

10 THE HEARING OFFICER: Okay.

11 MR. NORTHRUP: That was an issue for  
12 them in their case in chief. They could have named  
13 Jerry Ehlers as a witness. They did not.

14 THE HEARING OFFICER: Okay. I  
15 believe that this information is relevant to the  
16 42-H factors, and I am going to admit the corporate  
17 tax returns based on that.

18 MR. DAVIS: We can tender those.

19 THE HEARING OFFICER: I've added  
20 them to the list. We have a couple of pages that  
21 we needed -- or one page we needed. We can talk  
22 about that at the end and get a date for all of  
23 that.

24 Do the People rest at this time?

25 MS. SYMONS-JACKSON: The People rest

1 at this time.

2 THE HEARING OFFICER: Okay. Let's  
3 go off the record.

4 (Off-the-record discussion held.)

5 (Lunch recess taken at 1:11 p.m.)

6 (Proceedings resumed at 2:03 p.m.)

7 THE HEARING OFFICER: Mr. Northrup,  
8 please call your first witness.

9 MR. NORTHRUP: Call Mark Mehall.

10 MARK MEHALL,  
11 called as a witness, after having been first duly  
12 sworn, was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. NORTHRUP:

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

17 A. Mark David Mehall, M-E-H-A-L-L.

18 Q. And what do you do for a living?

19 A. I'm the solid waste coordinator of the  
20 Rock Island County Waste Management Agency.

21 Q. Now, what exactly are your duties or  
22 responsibilities in that position?

23 A. Well, basically I head the Agency. I'm  
24 the director on down. We are a planning and  
25 implementation Agency for a number of governments



1 in Rock Island County.

2 Q. Anything else?

3 A. As I said, we are a municipal action  
4 agency under Illinois law. We have 13 member  
5 governments. The Agency was formed in 1992 in  
6 order to undertake solid waste management efforts.  
7 It has been seated the planning and authority to  
8 implement and manage the solid waste management  
9 plan by Rock Island County. So we are the solid  
10 waste management authority for Rock Island County.

11 Q. What kind of planning do you do?

12 A. Well, first of all, we keep and update  
13 the solid waste management plan as mandated in the  
14 Environmental Protection Act.

15 Q. And do you supervise any employees?

16 A. No, I do not.

17 Q. How is your organization funded?

18 A. We are funded through the solid waste fee  
19 provided by the three solid waste disposal  
20 facilities. Solid waste disposal facilities in  
21 Rock Island County.

22 Q. Please provide a brief description of  
23 your educational background.

24 A. Yes. I have a bachelors of science from  
25 Central Michigan University and a master of public

1 administration from Central Michigan University.  
2 The bachelors was obtained in 1983, and the master  
3 was obtained in 1985.

4 Q. Do you from time to time attend seminars  
5 or workshops related to your work?

6 A. Yes, I do.

7 Q. When was the last one of those you went  
8 to?

9 A. The Illinois County Solid Waste  
10 Management Association annual conference, October  
11 10th and 11th, 1996.

12 Q. Now, are you familiar with the ESG Watts  
13 Taylor Ridge landfill?

14 A. Yes, I am.

15 Q. How are you familiar with that?

16 A. It is one of the three landfills which  
17 pay the solid waste fee which funds our Agency.  
18 I'm also familiar with it as, again, one of the  
19 three solid waste management facilities in Rock  
20 Island County, which we monitor in relation to the  
21 solid waste management plan.

22 Q. Okay. Now, you collect a fee from these  
23 facilities?

24 A. Correct.

25 Q. What is that fee based on?

1           A.    It's based on cubic yards or tonnage as  
2    allowed by Illinois state statute.

3           Q.    Do you know what percentage of your  
4    budget is attributable to the Taylor Ridge  
5    landfill?

6           A.    Yes.  Of the revenue received by us on an  
7    annual basis, it makes -- it's approximately 50  
8    percent of the total revenue.

9           Q.    Have you ever visited the Taylor Ridge  
10   landfill?

11          A.    Yes, I have.

12          Q.    On how many occasions?

13          A.    Officially twice.

14          Q.    How about unofficially?

15          A.    As official site visits, twice.  I was  
16   adjacent to the landfill on one occasion, which I  
17   could see landfill operations from an adjoining  
18   property.  That was when I paid a visit to  
19   Mr. Whitley's property.

20          Q.    Okay.  You are familiar with Joe Whitley?

21          A.    Correct.

22          Q.    And where is his property in relation to  
23   the landfill?

24          A.    It is immediately adjacent to it on the  
25   southwest side of the landfill.

1           Q.   And you indicated you visited his  
2   property?

3           A.   Yes.

4           Q.   When was that, if you can recall?

5           A.   March 21st, 1995.

6           Q.   What was the purpose of your visit?

7           A.   The purpose of my visit was responding to  
8   a concern of a resident of Rock Island County.

9           Q.   What did he say those concerns were?

10          Well, I assume Joe Whitley is that citizen.

11          A.   Yes. Mr. Whitley. His concerns were  
12   basically the effect was having on his property.

13          Q.   And did he say what those effects were?

14          A.   Basically deleterious effects on his pond  
15   and the immediately adjacent area.

16          Q.   Did he mention any other effects?

17          A.   That's -- no. Of the reason to go out  
18   there, no.

19          Q.   Did -- or how long were you at his  
20   property?

21          A.   Approximately an hour-and-a-half.

22          Q.   What were the weather conditions on that  
23   day?

24          A.   It was a warm -- warmer spring like day.  
25   Warm, early spring day. Sunny.

1           Q.    Did you smell any odors while you were  
2   there?

3           A.    Not that I can recall.

4           Q.    Did you observe any litter on  
5   Mr. Whitley's property?

6           A.    Not -- not that I can recall.

7           Q.    Did Mr. Whitley tell you that he thought  
8   Jim Watts had a vendetta against him?

9           A.    He did mention that he believed as a  
10   result of both the landfill operations and  
11   countersuit that Mr. Watts had filed against him  
12   that it had a negative effect on his person, both  
13   reputation and healthwise.

14          Q.    Did he use the term vendetta?

15          A.    I do not recall him using that term.

16          Q.    Did Mr. Whitley indicate to you that he  
17   was a member of a neighborhood association?

18          A.    He did -- yes, he did indicate that he  
19   had been a part of an effort to oppose Watts.

20          Q.    Now, are you aware of the relief that the  
21   attorney general's office is seeking in this  
22   matter?

23          A.    Yes, I am.

24          Q.    And what is that?

25          A.    The relief is revocation of the operating

1 permit for ESG Watts Taylor Ridge landfill.

2 Q. Do you have any opinion as to what the  
3 effect the revocation of Watts' operating permits  
4 would have on Rock Island County or the community?

5 A. From what I can best gauge from our  
6 planning efforts over the last couple of years, it  
7 would, one -- do one of two things. One, either  
8 increase the amount of waste going to the two  
9 remaining landfills in Rock Island County, and thus  
10 bring into question -- shorten the life expectancy  
11 ever those. Or two, it would cause -- it would be  
12 cause for a new facility, either a transfer station  
13 or a new landfill, to be sited somewhere in Rock  
14 Island County.

15 Q. In your opinion, would it have any impact  
16 on competition in the waste industry?

17 A. I think it would have some impact in  
18 lessening competition, but I cannot say that it  
19 would be an extremely great impact at the present  
20 moment. Mainly due to the consolidation that's  
21 already going on in the waste industry.  
22 Particularly involving the Allied Corporation.

23 Q. The what?

24 A. The Allied Corporation. Allied Waste  
25 Systems, who owns the upper Rock Island County

1 landfill.

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

4 THE HEARING OFFICER: Okay.

5 CROSS-EXAMINATION

6 BY MR. DAVIS:

7 Q. Mr. Mehall, to your knowledge, based upon  
8 your studies and reports and planning efforts, does  
9 Rock Island County receive waste from haulers  
10 coming from Iowa?

11 A. Correct.

12 Q. Is this a significant amount of the waste  
13 load?

14 A. Yes, it is. It is approximately 45 to 50  
15 percent of the total waste load in all three  
16 landfills.

17 Q. And do you know whether the hauling  
18 companies owned by Watts Trucking Service would  
19 bring some of the waste in from Iowa?

20 A. I believe they do, yes. Specifically,  
21 the Watts' Muscatine County and Scott County  
22 operations come almost exclusively to the Watts  
23 landfill.

24 Q. Would you agree, sir, that one of the  
25 possible impacts of the closure of Taylor Ridge

1 would be a decrease in the waste importation from  
2 Iowa?

3 A. I really cannot say, because of the  
4 unique situation that we are in vis-a-vis the Iowa  
5 counties, as Muscatine right now doesn't have a  
6 landfill, and Scott County is basically closed to  
7 their member governments, and doesn't do a lot of  
8 commercial business. Chances are a lot of that  
9 waste would still come into Rock Island County. So  
10 I really can't say that there would be any sort of  
11 significant impact at the beginning at least.

12 Q. On the issue of tipping fees and the  
13 budgetary concerns of your governmental agency,  
14 would you agree that if the waste going to the two  
15 other landfills would, in fact, increase, which  
16 does seem reasonable --

17 A. Uh-huh.

18 Q. -- that this would offset any tipping  
19 fees impact or partially offset any tipping fee  
20 impact on your agency?

21 A. From what I can determine, it would  
22 either partly or significantly offset it. There  
23 were -- as we would only suffer a slight decrease,  
24 if any. I believe that most of the waste would  
25 come -- that's coming into Rock Island County would



1 continue to come into our county. And like I said  
2 before, the reduction would only be slight.

3 MR. DAVIS: Thank you, sir.

4 MR. NORTHRUP: Just one  
5 clarification.

6 REDIRECT EXAMINATION

7 BY MR. NORTHRUP:

8 Q. Muscatine and Scott County, those are  
9 Iowa counties?

10 A. Correct.

11 MR. NORTHRUP: I don't have anything  
12 else.

13 THE HEARING OFFICER: Anything else?  
14 Can this witness be excused? Okay. Thank you.

15 THE HEARING OFFICER: Call your next  
16 witness.

17 MR. NORTHRUP: Jerry Eilers.

18 GERALD EILERS,  
19 called as a witness, after having been first duly  
20 sworn, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. NORTHRUP:

23 Q. State your name for the record?

24 A. Gerald Eilers, E-I-L-E-R-S.

25 Q. And what do you do for a living,

1 Mr. Eilers?

2 A. I'm employed with Watts Trucking Service  
3 Company.

4 Q. Do you hold any positions with ESG Watts?

5 A. Yes, I do. I'm a vice president of the  
6 company.

7 Q. What do you do for ESG Watts?

8 A. I'm in charge of accounting, personnel,  
9 safety, as well as many other -- many other duties.

10 Q. I guess I should say what is ESG Watts?

11 A. ESG Watts is a corporation that owns  
12 land -- owns and operates landfills and is a  
13 subsidiary of Watts Trucking Services.

14 Q. How many landfills does ESG Watts own and  
15 operate?

16 A. It owns the Taylor Ridge landfill, which  
17 it operates. It owns the Sangamon Valley landfill  
18 in Springfield, which at this time is not accepting  
19 waste. And it owns the landfill north of Viola,  
20 which is closed.

21 Q. Can you give me a little bit about your  
22 educational background?

23 A. I have a BA degree in accounting from  
24 Norris College in Dubuque in 1965. I worked in  
25 public accounting from 1965 until 1976. At that

1 time, I took a job with the Watts companies as  
2 controller.

3 Q. Okay. When you said you worked in public  
4 accounting, what does that -- can you give us a  
5 little more description?

6 A. I worked for a CPA firm. I was an audit  
7 manager with Peat Marwick Mitchell. At the time  
8 that I left their employ, I was in charge of  
9 auditing various companies.

10 Q. Are you familiar -- if I use the term  
11 solid waste fee, would you know what I was  
12 referring to?

13 A. Yes.

14 Q. Okay. Explain to me what a solid waste  
15 fee is?

16 A. Solid waste fee is a fee that landfills  
17 are required to remit to the state, in some  
18 instances to local government, based on yards or  
19 tonnage coming into the landfill.

20 Q. Okay. And assuming ESG pays these  
21 fees --

22 A. Yes.

23 Q. -- who do they pay them to?

24 A. They pay them to the state of Illinois  
25 and to the Rock Island County Solid Waste Agency.

1 Q. Do you know what the last payment was to  
2 the state of Illinois?

3 A. I don't know the specific amount. But it  
4 was approximately \$65,000.

5 Q. How about over the last year?

6 A. Total fees would be in the range of  
7 \$240,000 a year.

8 Q. Okay. And then how about Rock Island  
9 County, what was the last fee paid to them?

10 A. Approximately 25,000.

11 Q. And over the last year?

12 A. I think it runs about \$100,000 a year.

13 Q. Are you current with fee payments to the  
14 state of Illinois?

15 A. Yes.

16 Q. Have you been current with fee payments  
17 to the state of Illinois since the Board -- let me  
18 strike that.

19 Are you familiar with a Pollution Control  
20 Board opinion issued in a matter 94-127?

21 A. That number doesn't really mean anything  
22 to me. Relating to what?

23 Q. Solid waste fee payments?

24 A. I think so.

25 Q. Okay. Have -- are you -- have you -- are

1   you current -- have you been current with all  
2   payments since the order was issued in that case?

3           A.    Yes, we have.

4           Q.    Now, are you current with your payments  
5   to Rock Island County?

6           A.    Yes.

7           Q.    Do you know what relief the attorney  
8   general is seeking in this case?

9           A.    Yes.

10          Q.    And what is that?

11          A.    Revocation of the operating permit for  
12   the Taylor Ridge landfill.

13          Q.    Do you have any opinion as to what impact  
14   the closure of the Taylor Ridge landfill would have  
15   on the Rock Island community?

16          A.    Yes.

17          Q.    Okay.  What is that opinion?

18          A.    Well, the first impact that it would have  
19   is that it would cause a reduction in the  
20   production of goods and services for the Quad City  
21   community.

22                I made some calculations based on the  
23   United States Department of Commerce information  
24   that is used to calculate what business is coming  
25   into the community or going out of communities,

1 contributing to the community in the form of  
2 economic impact of dollars, et cetera.

3 And based on those calculations, ESG has  
4 had annual expenditures in excess of 2.2 million  
5 dollars over the last three years. And based on  
6 those calculations, I determined that there would  
7 be a reduction in the production of goods and  
8 services in the community of approximately 5.6  
9 million dollars, a reduction in household earnings  
10 of 1.9 million dollars, and reduction in jobs of  
11 183.

12 Q. Now, that reduction in jobs? Does ESG  
13 employ 183?

14 A. No, we do not.

15 Q. Where does that figure come from?

16 A. That's a multiplying effect of dollars  
17 going through the community.

18 Q. Any other impacts?

19 A. Yes, there is. There will be an impact  
20 on the EPA fees, the solid waste fees that are  
21 collected by the state of Illinois and the Rock  
22 Island County Solid Waste Agency.

23 Q. Okay. What would that impact be?

24 A. A substantial portion of the garbage that  
25 comes into our landfill comes from our hauling

1 company. Our hauling company, excuse me, is the  
2 largest hauling company in Davenport and  
3 Bettendorf, and also in Muscatine, Iowa. We haul  
4 all of that refuse back to the Rock Island County  
5 landfill or to the Taylor Ridge landfill. In  
6 addition we haul waste from Galesburg, Monmouth and  
7 many other smaller cities south of Rock Island  
8 County into the Rock Island County landfill.

9           Should the landfill be closed, we will be  
10 looking at disposing of garbage at the nearest  
11 point to where we collect our garbage. And the  
12 garbage collected in Iowa will probably end up  
13 going to the Scott County landfill, and the garbage  
14 in Muscatine would go to the transfer station which  
15 ends up in the city of Muscatine's landfill, and  
16 the refuse collected south of Rock Island County  
17 would go into local landfills in those areas. That  
18 will have a substantial impact on the amount of  
19 fees that are paid both to the county and to the  
20 state.

21           Q. Okay. Any other impacts?

22           A. Yes. The closing -- closing of one of  
23 the three landfills in the county will reduce  
24 competition by a third. And when competition is  
25 reduced, typically rates are increased. An example

1 of that is in Springfield where the Sangamon Valley  
2 closed in June of '94.

3 Since that time, rates have gone up 26  
4 percent, and I would see a substantial increase  
5 coming here, too, in the future.

6 Q. Any other impacts?

7 A. I think those are the main ones that I  
8 identified.

9 Q. Now, it has been -- or the issue has  
10 arisen that ESG has failed to meet a financial  
11 assurance funding requirement that was imposed in I  
12 believe it was the gas management application.

13 Are you aware of that?

14 A. Yes, I am.

15 Q. Okay. Now, has Watts obtained that  
16 financial assurance?

17 A. Not at this point in time.

18 Q. Have you taken any steps to obtain that  
19 financial assurance?

20 A. Yes, we have.

21 Q. Okay. Describe for me those steps.

22 A. ESG Watts entered into a contract with  
23 Resource Technology Corporation in early 1995 to  
24 set up these gas energy plants. And part of that  
25 contract, we knew at the time there was going to be



1 an increase in the financial assurance. And part  
2 of the responsibility that Resource Technology has  
3 will be to fund the additional financial assurance  
4 that's going to be -- that is required as a result  
5 of that plan.

6 And so in 1995, we started having  
7 discussions with a number of insurance brokers and  
8 insurance agencies, because insurance companies  
9 were starting to get interested in providing  
10 financial assurance. And at that time, they were  
11 looking at doing it with surety bonds, which are  
12 not necessarily the easiest to get either. One of  
13 the companies that we talked to was Lawly Service  
14 out of Buffalo New York.

15 They indicated that they eventually were  
16 going to try to get an insurance company to write  
17 an insurance policy to cover financial assurance.

18 Just within the last 30 days, they  
19 indicated they were successful in putting that  
20 program together in California. And they  
21 anticipate they would be able to do this throughout  
22 the state.

23 And that's the approach that we are  
24 working directly with Resource Technology to at the  
25 time accomplish as soon as possible.

1 MS. SYMONS-JACKSON: I want to make  
2 an objection to a portion of the answer given by  
3 Mr. Eilers as to anybody at the name of this  
4 business in Buffalo, New York might have said.  
5 They are certainly not here, and I believe it is  
6 hearsay.

7 THE HEARING OFFICER: Okay.  
8 Mr. Northrup.

9 MR. NORTHRUP: I don't -- I don't  
10 think it's hearsay. It's not going to the truth of  
11 what those people may have said. But it's rather  
12 just to identify how Watts has reacted and what  
13 actions it has taken in response to those things.

14 THE HEARING OFFICER: Okay. I'm  
15 going to allow it.

16 MR. NORTHRUP: Let me go off the  
17 record too.

18 THE HEARING OFFICER: Okay.  
19 (Off-the-record discussion held.)

20 THE HEARING OFFICER: Back on the  
21 record.

22 BY MR. NORTHRUP:

23 Q. When did -- maybe I just missed this.  
24 You said these discussions began with brokers in  
25 '95?

1 A. Yes.

2 Q. Do you recall when?

3 A. The earliest date I can remember is, you  
4 know, January 1st of '95. But we had many  
5 telephone conversations over the long period of  
6 time.

7 Q. Okay. Which brokers, insurance agents?  
8 How many did you talk to?

9 A. I think we have talked to at least three.

10 Q. And do you remember their names?

11 A. Two of them, I do. Lawly, I already  
12 mentioned. The other one was Evergreen Indemnity,  
13 which I think the agency on that was Huffman  
14 (phonetic spelling). Huffman Group.

15 I think there was one other. I can't  
16 remember the name.

17 Q. Are you currently -- strike that.

18 Are you actively seeking financial  
19 assurance as of today's date?

20 A. Yes, we are. The Lawly Group has within  
21 the last 30 days submitted a formal application to  
22 Zurich Insurance Company.

23 Q. And what is that application? What is  
24 that intended to do? What's the purpose of the  
25 application?

1           A.    The purpose of the application is to  
2   provide Zurich with the necessary information to  
3   make a determination as to whether they will issue  
4   an insurance policy for the amount of the financial  
5   assurance required on the Taylor Ridge landfill.

6           Q.    Okay.  And if Zurich agrees to do that,  
7   what steps would follow after that?

8           A.    Illinois regulations do include insurance  
9   as a vehicle that can be used.  My understanding as  
10  to what will happen is a proposed insurance policy  
11  will have to be submitted to the state agency.  The  
12  state agency will review that insurance policy to  
13  determine its adequacy to meet their requirements.

14                  And if it's approved, then it's a matter  
15  of doing the paperwork.  Put it together.

16           Q.    In your position at ESG Watts, are you in  
17  a position to know what ESG's cost of capital is?

18           A.    I'm in a position to know approximately  
19  what that cost would be.

20           Q.    Okay.  I guess explain to me what cost of  
21  capital means to you.

22           A.    The cost of borrowing money.

23           Q.    And what is that cost of capital for ESG  
24  Watts?

25           A.    Well, my estimate of the cost of capital

1 would be -- right now, the prime interest rate is  
2 8-1/4. And so, you know, my estimate would be  
3 probably two to three points above that.  
4 Conservative number would be 12 percent at the  
5 most.

6 Q. You are familiar with financial -- the  
7 state's financial assurance requirements?

8 A. Yes.

9 Q. Do you know that Watts needs to set aside  
10 a certain amount of money for that?

11 A. Yes.

12 Q. Has Watts currently -- does Watts  
13 currently have any such money set aside?

14 A. Yes.

15 Q. How about specifically for the Taylor  
16 Ridge landfill?

17 A. Yes.

18 Q. Do you know what amount that would be?

19 A. I don't recall a specific number, but I  
20 think it's somewhere in the neighborhood of  
21 440,000. Somewhere in there.

22 Q. Okay. Where is that money?

23 A. It's in a trust fund at Rock Island Bank  
24 and Trust.

25 Q. Is that an interest bearing account?

1           A.    Yes.

2           Q.    What kind of -- well, what kind of  
3 interest does that account earn?

4           A.    The fund is invested in U.S. treasury  
5 obligations, and the rate of interest on those  
6 range anywhere from 5 percent to 7-3/4 percent.

7                   (Proceedings interruption.)

8                   (Recess taken.)

9                   MR. NORTHRUP:  Those are all the  
10 questions I have.

11                   THE HEARING OFFICER:  Oh, okay.

12                   CROSS-EXAMINATION

13 BY MS. SYMONS-JACKSON:

14           Q.    Mr. Eilers, first of all, you began your  
15 testimony talking about solid waste fees.  Do you  
16 recall that?

17           A.    Yes.

18           Q.    Okay.  And you indicated that your solid  
19 waste fee payments are currently up-to-date with  
20 the state and the county.  Correct?

21           A.    Correct.

22           Q.    Have there been occasions in the past  
23 when, in fact, those solid waste fees have not been  
24 paid?

25           A.    There have been occasions when they were

1 paid late prior to '95.

2 Q. Have there been occasions, sir, when  
3 those solid waste fees were paid by checks that  
4 have bounced or been returned by the bank with  
5 insufficient funds?

6 A. I think that happened back in '92, '93,  
7 maybe '94.

8 Q. I want to talk a little bit more about  
9 these conclusions that you say you have reached  
10 regarding the supposed impact on the Rock Island  
11 area as a result of the closure of this landfill.

12 First of all, in the solid waste landfill  
13 capacity report, do you agree that this landfill is  
14 anticipated to close within the next three years  
15 anyway?

16 A. I don't know what the length of time is.  
17 Three to five years, it's a relatively short number  
18 of years though.

19 Q. If that's the amount of time that was  
20 included in solid waste capacity report prepared by  
21 one of Watts own employees, you wouldn't disagree  
22 with that amount of time, would you?

23 A. No.

24 Q. Mr. Eilers, I believe you were present in  
25 the room during the direct examination and

1 cross-examination of Mr. Mark Mehall from the Rock  
2 Island County Solid Waste, I guess, Management  
3 Office.

4 A. Yes.

5 Q. How, sir, can you justify your opinion  
6 with regard to the overall reduction in solid waste  
7 fees that would be paid to the county or to the  
8 state as a result of the closure of this landfill  
9 when Mr. Mark Mehall has stated that he doesn't  
10 believes there would be a significant reduction in  
11 those fees?

12 A. He doesn't understand the total  
13 situation. The hauler is the company that makes  
14 the decision as to where the garbage goes. The  
15 solid Rock Island County Solid Waste Agency does  
16 not dictate to the haulers where to take their  
17 garbage.

18 Q. Can you explain for me again how you --  
19 how you came about the conclusions that you reached  
20 regarding the effect closure of the landfill would  
21 have on the community, on the income of households,  
22 and on the number of jobs that you estimate if the  
23 landfill was closed?

24 A. Everybody that reads the paper and reads  
25 about new companies that are going to come into



1 town reads about the impact that -- the economic  
2 impact it's going to have on the community. It's  
3 common sense when a new business comes into town,  
4 it's going to spend X dollars per year, going to  
5 ever a ripple effect through the economy, to help  
6 the economy.

7 By the same token, if you take the money  
8 out, the same thing is going to happen, just in  
9 reverse.

10 Q. Now, if the landfill closed, one of the  
11 things Mr. Mark Mehall testified to as a possible  
12 result would be the development siting and  
13 permitting for another landfill in Rock Island  
14 County.

15 If that, in fact, were to happen, how  
16 would that affect your opinions regarding the  
17 effect on the Rock Island community if the landfill  
18 were to close?

19 A. I don't know.

20 Q. You indicated with regard to the  
21 financial assurance obligations that the landfill  
22 currently has with the state that you had been in  
23 discussions with various brokers or, I guess, banks  
24 since 1995. Is that correct?

25 A. Yes.

1           Q.    Do you remember when in 1995 those  
2   discussions began?

3           A.    The earliest we began talking to these  
4   people was in, like, January, February of '95.

5           Q.    And you still do not have adequately  
6   funded financial assurance at this point in time;  
7   is that correct?

8           A.    For the Taylor Ridge site?

9           Q.    Yes.

10          A.    No, we do not.

11          Q.    Isn't it true, Mr. Eilers, that you've  
12   had a difficult time getting financing for your  
13   financial assurance trust fund?

14          A.    I don't know what you mean by having a  
15   difficult time.

16          Q.    You've been in discussions since early  
17   1995 with various facilities, and you still don't  
18   have financial assurance today.

19          A.    Reason we started discussions in '95 was  
20   we knew the gas plant was going to be coming  
21   on-line and cause a substantial bump in the amount  
22   of financial assurance required. The closure cost  
23   estimate that reflected that was approved in  
24   September of '96.

25                And so, I mean, we started in advance.

1 And the vehicles that it -- the insurance company  
2 had looked like they were not going to work for us,  
3 and we had had discussions -- we have had calls  
4 from -- from a number of insurance companies that  
5 are getting interested in this market. And it all  
6 takes time to try and put that stuff together.

7 Q. Have you in your discussions with  
8 facilities since 1995 ever inquired into obtaining  
9 a loan for the funding of the financial assurance  
10 document or financial assurance fund?

11 A. No, I did not.

12 Q. Have you, since becoming aware of the  
13 anticipated increase in your financial assurance  
14 obligations -- when I say you, I mean ESG Watts,  
15 Incorporated.

16 Has ESG Watts, Incorporated made any  
17 efforts to recoup the amount of money they have  
18 made in loans to stockholders? I believe it totals  
19 \$370,000 over the past two years?

20 MR. NORTHRUP: Objection. No  
21 foundation for that.

22 MS. SYMONS-JACKSON: We have income  
23 tax returns that have been admitted into evidence,  
24 and the information is set forth in the documents.

25 THE HEARING OFFICER: Mr. Northrup,

1 do you have anything?

2 MR. NORTHRUP: No.

3 THE HEARING OFFICER: Okay. I'm  
4 going to allow it.

5 Can you repeat your question or rephrase  
6 it? Do you want it read back?

7 MS. SYMONS-JACKSON: (Shakes head.)

8 BY MS. SYMONS-JACKSON:

9 Q. Mr. Eilers, I'm going to refer your  
10 attention to Peoples Exhibit No. 67. It has  
11 already been admitted into evidence.

12 On the balance sheet -- this is the  
13 United States corporation income tax return for the  
14 year '95 for Watts Trucking Services, Inc., and  
15 it's subsidiaries.

16 At the beginning of that tax year loans  
17 to stockholders, outstanding loans to stockholders,  
18 total \$799,000. \$799,691. Would you agree with  
19 that?

20 A. Yes.

21 Q. In looking at that document, can you tell  
22 me your -- what was the outstanding amount in loans  
23 to stockholders?

24 A. \$1,012,014.

25 Q. Has there been any attempt to recoup the

1 amount of money loaned to stockholders --

2 A. Yes.

3 Q. -- by ESG Watts?

4 A. Stockholder doesn't owe ESG Watts any  
5 money. There aren't any loans.

6 Q. Watts Trucking?

7 A. Watts Trucking, yes.

8 Q. What attempts have been made?

9 A. He's repaying that at about the rate of  
10 \$80,000 a year.

11 Q. And what interest rate is he charged?

12 A. He's charged -- it varies each year. The  
13 interest rate is used out of the Internal Revenue  
14 Service Regulations, and I think it runs in the 8,  
15 9 percent range. 6 to 9 percent range. I don't  
16 know. It varies each year, depending upon the  
17 rates that the federal government publishes. We  
18 use the rate that was established by the IRS some  
19 years ago.

20 Q. Which years actually were payments made  
21 by the stockholder back to Watts Trucking,  
22 Incorporated?

23 A. He's been making payments back on that  
24 loan probably for the last five years. Five, six  
25 years.

1           Q.    Now, you've been making payments back,  
2   but the loan has continued to be made to the  
3   stockholder; is that correct?

4           A.    I'm not aware of any loans that are  
5   actually made to the stockholder.  You know, it's  
6   not like as if we decided to loan him a half  
7   million dollars or something or other.  That's not  
8   done.

9           Q.    Well, the amount of money that's  
10   indicated in the column that reads loan to  
11   stockholders, that is -- has continued -- continued  
12   to increase, hasn't it?

13          A.    It goes up and down.

14                   MS. SYMONS-JACKSON:  I don't have  
15   any other cross-examination.

16                   THE WITNESS:  Okay.

17                   REDIRECT EXAMINATION

18   BY MR. NORTHRUP:

19          Q.    I was a little confused with some of that  
20   testimony.  You said these weren't loans?

21          A.    The -- they are recorded as loans.  It's  
22   recorded as receivable from Jim.  It's not a  
23   situation where he decides to borrow money from the  
24   company.

25                   Lots of times when you have family-owned

1 businesses of this nature, it's -- it's just one of  
2 those things that happens, that some personal  
3 things go through the books. And we charge those  
4 against his account.

5 I can't remember in the last two years  
6 the time he came in said he wanted to borrow money  
7 from the company. That doesn't just happen that  
8 way.

9 THE HEARING OFFICER: For the  
10 record, I think we all know who is being referred  
11 to, but we haven't made that clear for the record  
12 at all. When you are referring to the stockholder  
13 and Jim, who are you talking about?

14 THE WITNESS: Jim Watts.

15 THE HEARING OFFICER: Okay. And you  
16 also made a reference to Watts Trucking. Is that  
17 owned by Jim Watts?

18 THE WITNESS: Jim Watts owns Watts  
19 Trucking Service, and Watts Trucking Service owns  
20 ESG Watts, yes.

21 THE HEARING OFFICER: Okay. Thank  
22 you.

23 BY MR. NORTHRUP:

24 Q. Was there any time from when you began  
25 these discussions with insurance brokers for any

1 extended period of time where you stopped these  
2 discussions?

3 A. Yes. We did, because we were -- the only  
4 vehicle that they had available were surety bonds,  
5 and surety bonds needed 100 percent collateral.  
6 And we just weren't in a position to just -- to  
7 secure those. And one of the companies indicated  
8 they thought eventually they would be able to get  
9 to a fully insured program. And so, you know, we  
10 were hoping that that would come to eventuality,  
11 and it has.

12 MR. NORTHRUP: I don't have any  
13 further questions.

14 THE HEARING OFFICER: Anything else?

15 MS. SYMONS-JACKSON: No.

16 THE HEARING OFFICER: Okay. Can we  
17 excuse this witness? Any reason to recall him?

18 MR. DAVIS: Oh, no.

19 THE HEARING OFFICER: Thank you.  
20 Please call your next witness.

21 STEVE KEITH,  
22 called as a witness, after having been first duly  
23 sworn, was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. NORTHRUP:



1 Q. Why don't you identify yourself for the  
2 record, please.

3 A. My name is Steven Montgomery Keith.

4 Q. And where are you employed?

5 A. I'm employed by the engineering firm of  
6 CH2MHill.

7 Q. Where is that at?

8 A. Our office is located in Milwaukee,  
9 Wisconsin.

10 Q. Okay. How long have you been employed  
11 there?

12 A. Been employed there about ten-and-a-half  
13 years.

14 Q. Okay. And what do you do there?

15 A. I'm an environmental engineer.

16 Q. What does that entail? What kind of work  
17 do you do?

18 A. Basically work involves engineering  
19 activities, planning, design, oversight of  
20 construction activities, permit assistance, things  
21 like that for solid and hazardous waste management  
22 activities for clients.

23 Q. Why don't you tell me a little bit about  
24 your education background.

25 A. I received a bachelors of science in

1    engineering from the University of Michigan in  
2    1980, and then a masters of science in  
3    environmental engineering from the University  
4    Illinois in 1986.

5            Q.    Have you continued your education in any  
6    way since 1986?

7            A.    Yes, I have.   I've attended several short  
8    courses offered through the University of Wisconsin  
9    extension service.

10          Q.    What types of courses?

11          A.    Those would be courses related to the  
12    field of solid and hazardous waste management,  
13    including landfill design, sanitary landfill  
14    design, transfer station design, and materials  
15    appropriate facility design.

16          Q.    Have you written any scholarly articles?

17          A.    I've authored a couple of articles.   Two  
18    were published in the Madison Waste Conference, and  
19    one published in the conference proceedings for  
20    hazardous waste conference in Washington D.C.

21          Q.    What were the subject matters of those  
22    articles?

23          A.    The subjects of the articles for the  
24    Madison Waste Conference were collection and  
25    treatment of landfill gas from several landfills in

1 Madison, Wisconsin area. And the article for the  
2 hazardous waste conference related to assessing  
3 uncertainty in groundwater monitoring.

4 Q. You are familiar with ESG Watts?

5 A. Yes.

6 Q. How are you familiar with them?

7 A. We were under agreement with them to  
8 provide engineering services to them.

9 Q. Okay. Specifically what types of  
10 engineering services?

11 A. Specifically to assist in their  
12 preparation of an application for a significant  
13 modification permit for the Taylor Ridge landfill  
14 site.

15 Q. Have you ever been to the Taylor Ridge  
16 landfill?

17 A. Yes, I have.

18 Q. On how many occasions?

19 A. I can't recall exactly. I think -- I  
20 think on three occasions.

21 Q. Okay. Did you, in fact, prepare a  
22 sig-mod application?

23 A. Yes, we did.

24 Q. And when was that?

25 A. That was prepared and submitted, I

1 believe, in 1994. The month, I can't recall. I  
2 think it was August of 1994.

3 Q. And do you know what the Agency did that  
4 with that submittal?

5 A. That submittal was initially determined  
6 to be administratively incomplete. We then filed a  
7 follow-up submittal to that several months later.  
8 And that one was determined to be administratively  
9 complete.

10 Q. Okay. And what happened to that  
11 submittal?

12 A. Let's see. Initially, the submittal did  
13 not undergo a technical review. My recollection  
14 was that it -- ESG Watts requested that -- that it  
15 did -- it would receive a technical review. And  
16 eventually it was given a technical review.

17 Q. Was that application approved?

18 A. No, it was not.

19 Q. Okay. Do you know when it was denied?

20 A. A denial letter was issued in February of  
21 1995, I believe.

22 Q. Okay. Have you ever seen a copy of the  
23 denial letter?

24 A. Yes, I have.

25 Q. After that February of '95, did you or

1 CH2MHill perform any additional work for Watts with  
2 respect to the Taylor Ridge landfill?

3 A. Yes, we did.

4 Q. And what work was that?

5 A. That would have included conferencing  
6 with people from ESG Watts to discuss the denial  
7 letter, discussing how we planned to approach,  
8 address the issues raised by the Illinois EPA. And  
9 then arranging for a meeting with the Illinois EPA  
10 to discuss those issues.

11 After the meeting, we then prepared a  
12 scope of work for how we would plan to proceed from  
13 that point forward.

14 Q. Okay. What exactly is the scope of work?

15 A. Scope of work for that point forward  
16 would have been to address the specific issues or a  
17 number of the specific issues raised in the  
18 February denial letter.

19 Q. Has CH2MHill submitted any kind of  
20 response to the February denial letter?

21 A. Yes, we have.

22 Q. And when was that sent in?

23 A. That was submitted on October 18th, I  
24 believe.

25 MR. NORTHRUP: I'm going to go ahead

1 and mark this as our first one. I've got a copy,  
2 if you guys want one. It's the October CH2MHill  
3 submittal.

4 MS. SYMONS-JACKSON: Yeah. We would  
5 like a copy.

6 MR. NORTHRUP: Ms. Hearing Officer,  
7 on the outside or on the inside?

8 THE HEARING OFFICER: On the  
9 outside, please.

10 BY MR. NORTHRUP:

11 Q. Let me show you what I have just marked  
12 as Respondent's Exhibit 1. Can you identify that  
13 for me, please.

14 A. Yes. This would be our responses to the  
15 notices -- response to the letter of denial letter  
16 of February 16th of 1995 for the Taylor Ridge  
17 landfill significant modification application.

18 Q. Okay. And did you prepare that  
19 submittal?

20 A. Yes.

21 Q. What did you do with the submittal once  
22 it was prepared?

23 A. We mailed four copies to the Illinois EPA  
24 and several copies to ESG Watts.

25 MR. NORTHRUP: I'd go ahead and

1 offer this into evidence.

2 THE HEARING OFFICER: Any objection?

3 MS. SYMONS-JACKSON: Yes. This  
4 document was, first of all, not covered by our  
5 stipulation in the beginning, and we would object  
6 to the relevancy of this document, as it is not an  
7 approved permit. It's not a formal application for  
8 a significant modification.

9 THE HEARING OFFICER: Okay.  
10 Mr. Northrup.

11 MR. NORTHRUP: Well, I think it is.  
12 And I can explore that a little bit as to why it  
13 was submitted in this form. But it was also my  
14 understanding that this was stipulated to. I  
15 believe I've identified it as one of the  
16 applications that I would be relying on. I would  
17 have certainly provided it to the attorney  
18 general's office long before today in response to  
19 in response to their document -- request to  
20 produce.

21 MS. SYMONS-JACKSON: Can we go off  
22 the record for a second?

23 THE HEARING OFFICER: Yes.

24 (Off-the-record discussion held.)

25 THE HEARING OFFICER: Let's go back

1 on the record. I'm going to allow the document.  
2 If you -- we have had a discussion off the record.  
3 If you want to admit evidence that goes to what  
4 weight the Board should give this document, then  
5 you certainly are free to try and do that.

6 MS. SYMONS-JACKSON: Yeah. One --  
7 one concern we have, and we would like to get an  
8 agreement from Mr. Northrup, this is not to be  
9 referred to as an application. It's misleading.  
10 And I believe -- I can look through this  
11 deposition, but I believe Mr. Keith admitted during  
12 his deposition that he agrees that this, in fact,  
13 is not an application for a significant  
14 modification.

15 MR. NORTHRUP: I think that's fine.  
16 I mean, I don't have a problem with not referring  
17 to it as an application. We will see what  
18 Mr. Keith says about what the EPA told him and how  
19 the fact that they would accept this in this form  
20 as an application under the sig-mod, that they did  
21 not have to resubmit an entire new sig-mod.

22 THE HEARING OFFICER: Okay. You are  
23 testifying.

24 MR. NORTHRUP: I don't care.

25 THE HEARING OFFICER: You are



1     testifying now. It sounds like you agree to not  
2     refer to it as an application. Please question  
3     your witness about it without calling it an  
4     application. I have it listed on the exhibit list  
5     as a submittal.

6                     MR. NORTHRUP: That's fine. I can  
7     refer to it as that.

8     BY MR. NORTHRUP:

9             Q. You indicated that you had had several  
10    telephone conversations leading up to a meeting  
11    with the IEPA.

12            A. Correct.

13            Q. Okay. When did that meeting occur?

14            A. That meeting occurred in August of 1995.

15            Q. Who was present or where was that meeting  
16    held?

17            A. That meeting was held at the offices of  
18    the Bureau of Land in Springfield.

19            Q. Okay. I assume you were present.

20            A. Yes.

21            Q. Who else was present, if you can recall?

22            A. I recall as being present Tom Jones and  
23    also Steve Grothus from ESG Watts. Also present  
24    would have been Krishna Brahmandam. I also believe  
25    present was Gweneth Thompson from the IEPA as well

1 as Joyce Mooney. I believe there may have been one  
2 to three other additional present from the Illinois  
3 EPA. Their names, I cannot recall.

4 Q. What was the purpose of this meeting?

5 A. The purpose was to discuss the issues  
6 raised by the Illinois EPA in their February denial  
7 letter. February of 1995 denial letter.

8 Q. And were various issues discussed at that  
9 time?

10 A. Yes.

11 Q. What were some of those issues?

12 A. Some of the issues included kind of  
13 specifically how we planned to address things such  
14 that effect our control plan.

15 We reviewed the property survey. We were  
16 curious what deficiencies they had identified in  
17 that. We discussed the plan for groundwater  
18 modeling.

19 The Agency was of the opinion that there  
20 was need to do -- need for some additional field  
21 sampling activities. We discussed how we would use  
22 that field data in our analysis of the groundwater  
23 impact assessment. Those were some of the issues.

24 Q. Okay. But there were others?

25 A. Yes. I believe so. We had -- in

1 preparation for the meeting, we had prepared a --  
2 two memorandums and mailed those to the Illinois  
3 EPA just kind of as preparatory for the meetings.

4 My recollection is they did not wish to  
5 go through each of those one by one.

6 Q. Points. You mean points of the denial  
7 points?

8 A. Correct. So we tended to group the  
9 issues together into larger issues.

10 Q. Was the issue of the form of the sig-mod  
11 remittal discussed?

12 A. My recollection is that near the end of  
13 the meeting, the question was asked as to whether  
14 or not we needed to resubmit the application in its  
15 entirety. And the response that we received was  
16 that we only needed to resubmit the changed pages,  
17 the pages that were undergoing changes, if it was  
18 accompanied by a letter certifying as such.

19 Q. Do you recall who made that statement?

20 A. I do not recall.

21 Q. Okay. And did you rely on that statement  
22 in making this October 18 resubmittal?

23 A. Yes.

24 Q. Did the February sig-mod denial letter  
25 contain denial points related to the classification

1 of groundwater at the site?

2 A. Yes, it did.

3 Q. Do you recall what that denial point was?

4 A. I recall the denial point was something  
5 to the effect that until the state had received  
6 better documentation or demonstration that, the  
7 uppermost aquifer was not a Class I aquifer, then  
8 basically would default to a Class I aquifer. They  
9 would they would treat it as a Class I aquifer.

10 Q. In the October 18th resubmittal, is there  
11 any material addressing that issue?

12 A. Yes, there is. That is one of the  
13 attachments.

14 Q. Okay. And what is concluded in that  
15 attachment?

16 A. It's concluded that it should be  
17 classified as a Class II aquifer.

18 Q. In the February '95 denial letter, were  
19 there issues relating to the performance of  
20 groundwater assessments?

21 A. Yes. Are you referring to performing an  
22 assessment monitoring?

23 Q. That's correct. That's correct.

24 A. Yes. There was. I believe that was one  
25 of the points making reference to the need to

1 address that in some fashion.

2 Q. Okay. What's the purpose of the  
3 groundwater assessment monitoring plan?

4 A. The purpose is first to determine whether  
5 or not some apparent increases or significant --  
6 significant increases in the components that are  
7 being monitored in the monitoring, if there is --  
8 in fact, has been a statistically significant  
9 increase. And that's generally done through  
10 resampling of wells or sampling more frequently.

11 If it is then confirmed that there has  
12 been a significant increase in concentrations of  
13 some compounds or contaminants of concern, then the  
14 plan would be to then embark on additional  
15 sampling, perhaps at locations other than existing  
16 ones, to help define -- better define the source of  
17 the increase and the nature and extent.

18 Q. Does the October 18th resubmittal contain  
19 a proposal for groundwater monitoring assessment?

20 A. Yes, it does.

21 Q. If, in fact, there were groundwater  
22 contamination at the landfill, is that something  
23 that can be -- let me strike that.

24 How would you address groundwater  
25 contamination just in general?

1           A.    If the question is if it had been  
2   determined that there was a significant increase in  
3   some of the monitoring wells, then first we would  
4   need to determine -- attempt to determine what the  
5   source of that contamination increase was from.  
6   And then once that had been determined, then there  
7   would be a plan established to take measures that  
8   would mitigate any further spreading of  
9   contamination or release from the suspected source.

10          Q.    How would you mitigate the sporadic  
11   contamination?

12          A.    That could be done in a variety of  
13   methods.  It would depend upon the defined -- the  
14   source that's been identified.  But if -- for  
15   instance, if the source was from the landfill, then  
16   one approach would be to install leachate  
17   extraction wells.  If the source was from outside  
18   the landfill, or if it had been migrated to a point  
19   where there was contamination outside the landfill  
20   that could not be addressed through leachate  
21   extraction, one could install groundwater  
22   extraction wells outside the landfill to collect  
23   the collect the contaminated water.

24          Q.    Is there any proposal in the October  
25   resubmittal to install leachate extraction wells?

1 A. There was some discussion of that point.

2 Q. Okay. And what is that discussion?

3 A. See, there is a -- in the -- in the  
4 application, there is a section that's referred to  
5 as the contingency plan. And in that section, it  
6 presents a hypothetical scenario by which a  
7 remedial action could be undertaken to address  
8 groundwater contamination at the site, if, in fact,  
9 that was determined to be a problem as resulting  
10 from a significant increase in the landfill being  
11 the source.

12 Q. Have you performed -- outside of the --  
13 of this October resubmittal, have you prepared any  
14 other documents for Watts for the Taylor Ridge  
15 landfill?

16 A. Yes. I believe we have.

17 Q. And what documents would those be?

18 A. I believe we had prepared a draft of the  
19 storm water management pollution prevention plan.

20 Q. What types of things are in that plan?

21 A. It discusses activities to be undertaken  
22 at the site to help reduce release of sediment from  
23 the site as well as other operational activity that  
24 could be undertaken to help reduce the potential  
25 for release of other contaminants into surface

1 water runoff.

2 Q. And what are some of those other things?

3 A. Aside from activities related to  
4 modification of the final cover and cap to  
5 reconstruct some of the ditches and downshoots.  
6 There would also be some discussion regarding how  
7 improvements or being aware of the potential for  
8 release of oil, gasoline, that type of thing from  
9 operating vehicles to help prevent any release of  
10 contaminants in, say, like petroleum products into  
11 surface water runoff, general containment.

12 Q. Now, was -- this storm water prevention  
13 plan, is this part of the resubmittal?

14 A. That pollution prevention plan in itself  
15 is not part of the submittal. There is a part of  
16 the plan, a storm water management plan.

17 Q. There is a storm water management plan as  
18 part of the October resubmittal?

19 A. Correct. That was a part of the original  
20 sig-mod submittal. And there have been some  
21 revisions to it.

22 MR. NORTHRUP: Let me go ahead and  
23 mark this as Respondent's No. 2.

24 BY MR. NORTHRUP:

25 Q. Can you identify that for me, please.



1           A.    Yes.  This would be a draft version of  
2   the storm water pollution prevention plan we had  
3   prepared for the Taylor Ridge landfill.

4           Q.    When was that prepared?

5                   MS. SYMONS-JACKSON:  Sorry,  
6   Charlie.  Can I interrupt you for a second?  Do you  
7   have a copy?

8                   MR. NORTHRUP:  I think that's my  
9   only one.

10                  MS. SYMONS-JACKSON:  It is my  
11   understanding that copies were going to be  
12   provided.

13                  MR. NORTHRUP:  Yeah.  And I thought  
14   I had made copies, and I was looking for it last,  
15   night and I couldn't find it.  If you want to bear  
16   with me for ten minutes, I'll look again.  Or feel  
17   free to take a look.

18                  MR. DAVIS:  Go ahead.

19                  THE HEARING OFFICER:  Let's go off  
20   the record for a second.

21                   (Off-the-record discussion held.)

22                  THE HEARING OFFICER:  Go back on the  
23   record.

24   BY MR. NORTHRUP:

25           Q.    I'm sorry.  Can you identify Respondent's

1 Exhibit No. 2?

2 A. It that question for me?

3 Q. Yeah. I'm sorry. Sorry.

4 A. Yes. This is a draft version of a storm  
5 water pollution prevention plan that we had  
6 prepared for the Taylor Ridge landfill site.

7 Q. Have you conveyed a copy of that to ESG  
8 Watts?

9 A. Yes. I believe we did. I can't recall  
10 the exact date. It would have been early this  
11 year.

12 MR. NORTHRUP: I'd go ahead and  
13 offer that into evidence.

14 THE HEARING OFFICER: Is there an  
15 objection?

16 MS. SYMONS-JACKSON: Same objection  
17 as before to the sig-mod submittal. We haven't  
18 stipulated to the introduction of this document.  
19 Other than that, it's -- this is simply a draft  
20 document. The permit requires that a plan be  
21 submitted. I don't know if this is actually the  
22 plan or a draft.

23 THE HEARING OFFICER: Okay.

24 Mr. Northrup.

25 MR. NORTHRUP: Well, I mean, it's

1 being offered. I've laid the proper foundation for  
2 it. The Watts people will talk about what they  
3 have used it for and that type of thing.

4 THE HEARING OFFICER: I'm going to  
5 allow it. Your objection is really going to the  
6 weight that we need to give the document, and not  
7 to its admissability. I think it's relevant.

8 MR. NORTHRUP: In case why I -- did  
9 I offer Respondent's No. 1 into evidence?

10 THE HEARING OFFICER: Yes. It has  
11 been admitted. Let's go off the record.

12 (Off-the-record discussion held.)

13 (Recess taken.)

14 THE HEARING OFFICER: Let's go back  
15 on the record.

16 BY MR. NORTHRUP:

17 Q. Let me ask you just a couple of  
18 clarifying questions with respect to Respondent's  
19 Exhibits 1 and 2. Now, the October resubmittal  
20 contains a storm water management plan.

21 A. That's correct.

22 Q. That is different than the storm water  
23 pollution prevention plan, which has been marked as  
24 Respondent's Exhibit 2?

25 A. That's correct.

1 Q. Correct. Okay.

2 MR. NORTHRUP: I don't have any  
3 further questions.

4 THE HEARING OFFICER: Okay.

5 CROSS-EXAMINATION

6 BY MS. SYMONS-JACKSON:

7 Q. Mr. Keith, do you recall when you  
8 completed the sig-mod submittal that was sent into  
9 the Agency on October 18, 1996?

10 A. When it was completed? This document  
11 right here?

12 Q. Uh-huh.

13 A. Yes. That was completed on the 18th.

14 Q. Okay. Was there some point prior to  
15 October 18 when you presented a complete package so  
16 to speak to ESG Watts to review?

17 A. There was a point in time where we  
18 presented a draft version to ESG Watts for review.  
19 That was not fully complete. It was -- it was 80  
20 percent complete.

21 Q. Would you agree that that draft review  
22 was made approximately one month prior to today?

23 A. Yes. That's about right.

24 Q. Now, you had some delays along the way in  
25 preparing this sig-mod submittal. Is that

1 accurate?

2 A. Yes.

3 Q. Mr. Keith, do you agree that at least  
4 three months could be -- of delay could be  
5 attributable to the failure of ESG Watts to make  
6 payments to CH2MHill for the work they were  
7 performing?

8 A. I would say that there was perhaps some  
9 delay caused by it. As to whether or not three  
10 months is an accurate number, I think it's hard to  
11 say. But that's probably not far off.

12 Q. Okay. And I believe you testified in  
13 your deposition, do you recall, that it was  
14 probably that -- it was as many as three months of  
15 delay?

16 A. Yes. That's correct.

17 Q. Okay. And Mr. Keith, the only deadline  
18 with regard to submitting this sig-mod submittal to  
19 the Agency was that it be into the Agency prior to  
20 this hearing. Isn't that correct?

21 A. We had that as a goal to try.

22 Q. Okay.

23 A. Have it prepared by that point in time.

24 MS. SYMONS-JACKSON: Those are the  
25 only questions I have.

1 THE HEARING OFFICER: Any redirect?

2 MR. NORTHRUP: Yeah.

3 REDIRECT EXAMINATION

4 BY MR. NORTHRUP:

5 Q. When did you begin working on the  
6 resubmittal?

7 A. We began working on the resubmittal  
8 immediately following our August meeting with the  
9 Illinois EPA. Actually, we would have initiated  
10 work on it even prior to that. If we consider our  
11 assessment of how we might approach addressing the  
12 questions raised by the IEPA, then to some extent  
13 we would have started even prior to the August  
14 meeting in that regard.

15 Q. I recall you indicated you had sent a  
16 couple -- were they memos or letters to the EPA  
17 prior to August?

18 A. That's right.

19 Q. Okay. And did those -- did you elicit  
20 some kind of response from the EPA with those?

21 A. I don't think that we anticipated  
22 receiving a response from them prior to that time.  
23 But it was, I think, intended to just set the table  
24 so to speak prior to the meeting, giving them some  
25 idea about some thoughts that we had in terms of

1    how we plan to approach addressing their concerns.

2           Q.    Okay.  How did you happen to settle on  
3    August for this meeting?

4           A.    I can't recall exactly.  I think that we  
5    had made contact with the Illinois EPA prior to  
6    that.  On what dates, I can't recall.  But  
7    scheduling meetings in the summer is often a  
8    difficult task.  I think we may have contacted the  
9    Illinois EPA, you know, some weeks prior to that  
10   exactly.  How far in advance, I can't recall.  But  
11   that meeting date was set with the Illinois EPA --

12          Q.    Okay.

13          A.    -- through discussions with them.

14          Q.    Now, between August of '95 and October of  
15    '96, that's about 14 months.  Taking into  
16    consideration what you believe to be a three-month  
17    delay because of money problems, for lack of a  
18    better term, were there any other delays involved?

19          A.    Yes.  Some delay could be attributed to  
20    the need to obtain some leachate samples from the  
21    landfill.  The samples were needed to obtain data  
22    that would be input into the groundwater model that  
23    was used to perform the groundwater impact  
24    assessment or revised version of that.

25          Q.    Okay.  Was any kind of permit needed

1 prior to or before you could take those samples?

2 A. Yeah. I can't recall exactly. I believe  
3 that ESG Watts did need to submit some type of a  
4 request. I can't recall if it was, in fact, a  
5 permit application to have the wells installed.

6 Q. Anything else that you can think of that  
7 would contribute to this nine-month period in which  
8 to develop the resubmittal?

9 A. Yes. Some of the items that were  
10 addressed in the denial letter related to the need  
11 to collect more field data, that being including  
12 drilling, some soil borings, doing some probing for  
13 landfill gas. There might have been something  
14 else. But -- but some of it was based upon the  
15 need to collect some additional field data. Also  
16 included in there would have been getting some more  
17 information on the hydraulic conductivity of some  
18 of the soil layers surrounding the landfill. This  
19 would have been done using some slug tests.

20 Q. Anything else?

21 A. Nothing comes to mind right now.

22 Q. This three-month delay for money  
23 problems, when did this occur? Is it one big chunk  
24 of three months, or is it a month here, a month  
25 there?



1           A.    It would have been one chunk.

2           Q.    Okay.  And do you recall when that was?

3           A.    That would have been probably spring to  
4 summer of this year.  Summertime of this year.

5                   MR. NORTHRUP:  I have no further  
6 questions.

7                   THE HEARING OFFICER:  Anything  
8 else?

9                   MS. SYMONS-JACKSON:  No.

10                  THE HEARING OFFICER:  Okay.  Can we  
11 excuse this witness?

12                  MR. NORTHRUP:  Thanks.

13                  THE HEARING OFFICER:  Okay.  Thanks  
14 you.  Please call your next witness.

15                  MR. NORTHRUP:  Call Rob Fortelka.

16                  THE HEARING OFFICER:  Okay.  Please  
17 swear the witness.

18                   ROBERT FORTELKA,  
19 called as a witness, after having been first duly  
20 sworn, was examined and testified as follows:

21                   DIRECT EXAMINATION

22   BY MR. NORTHRUP:

23           Q.    Go ahead and identify yourself for the  
24 report, please.

25           A.    Robert Marshall Fortelka.

1 Q. And where do you work?

2 A. I work for Resource Technology  
3 Corporation, Chicago, Illinois.

4 Q. What is Resource Technology Corporation?

5 A. Resource Technology Corporation is a  
6 developer of gas-to-energy systems.

7 Q. How long have you worked at RTC?

8 A. Since the beginning of September 1996.

9 Q. I guess I should say, if I use the term  
10 RTC, you understand that?

11 A. Yes. RTC, Resource Technology  
12 Corporation.

13 Q. What kind of responsibilities do you have  
14 at RTC?

15 A. I'm a resident engineer, which means I  
16 have responsibility for the construction and  
17 operation of their gas to energy facilities.

18 Q. How many projects are you currently  
19 working on?

20 A. Over a dozen. I'm sorry. Yeah. Over a  
21 dozen.

22 Q. Now, are they all over the country or  
23 just in the Midwest?

24 A. Yeah. All over the country.

25 Q. Can you explain a little bit about your

1 educational background?

2 A. I'm a civil engineer by degree with an  
3 environmental emphasis from the University of  
4 Wisconsin, Platteville. Graduated in 1990.

5 Q. Do you have any postgraduate work?

6 A. No postgraduate work.

7 Q. Since 1990, have you attended seminars or  
8 workshops with respect to the environmental field?

9 A. Yes. I've attended numerous conferences  
10 and seminars with technical presentations presented  
11 at those.

12 Q. Have you ever presented any of those?

13 A. Myself? No.

14 Q. What were some of the subject matters of  
15 those conferences and seminars?

16 A. The last couple of years I've attended  
17 conferences specific to the landfill gas industry,  
18 Swana's (phonetic spelling) Landfill Gas  
19 Conference, two years in a row, '95, '94.

20 Q. What did you do after you graduated from  
21 college?

22 A. I went to work for Waste Management of  
23 North America in Oakbrook, Illinois as a staff  
24 engineer, where I was involved with the design and  
25 permitting of landfill and landfill-related

1 facilities.

2 Q. When you say landfill-related facilities,  
3 what do you mean by that?

4 A. Anything to do with the operation or  
5 general compliance at a landfill, gas systems,  
6 leachate collection systems, that type of thing.

7 Q. Okay. How long were you at Waste  
8 Management?

9 A. For three years.

10 Q. Okay. What did you do after that?

11 A. I went to work for Sexton Companies  
12 (phonetic spelling), which is a similar landfill  
13 owner/operator as Waste Management.

14 Q. Were you involved with gas methane issues  
15 at Sexton?

16 A. Yes. I was involved with not only the  
17 direction of design of gas systems, but also the  
18 operation of systems in place.

19 Q. How many systems do you think did you  
20 design and how many did you operate?

21 A. Four systems that I was involved with the  
22 operation of. The design and/or design  
23 modification of probably five or six.

24 Q. Okay. Are you familiar with the Taylor  
25 Ridge landfill -- scratch that.

1 Are you familiar with ESG Watts?

2 A. Yes.

3 Q. Okay. How are you familiar with ESG  
4 Watts?

5 A. I'm familiar with ESG Watts as a landfill  
6 owner/operator that RTC has contracted with with  
7 regard to the gas rights on their facilities.

8 Q. Okay. Have you ever been to the Taylor  
9 Ridge landfill?

10 A. Yes, I have.

11 Q. How many times?

12 A. I've been to the site three times since  
13 I've been with RTC.

14 Q. What have you done on those site visits?

15 A. I've toured the site. I've inspected the  
16 gas well construction progress. I've reviewed  
17 general site conditions. I've been involved in the  
18 location of -- future location of the RTC gas  
19 facility, gas processing facility.

20 Q. Are you familiar with the gas management  
21 permit that the Agency has issued for the Taylor  
22 Ridge facility?

23 A. I believe so.

24 Q. And have you reviewed that?

25 A. Yes.

1 Q. What does that permit permit Watts to do?

2 A. That permit permits Watts to construct  
3 and operate a gas collection system, including an  
4 electrical generating facility.

5 Q. Okay. When you talk about a gas  
6 collection system, what exactly -- and with  
7 reference to the Taylor Ridge site, what exactly do  
8 you mean by that?

9 A. The permit encompasses approximately 88  
10 gas collection wells, a network of gas transmission  
11 piping and a gas processing facility and electrical  
12 generating facility.

13 Q. Now, has that system been installed as of  
14 today's date?

15 A. That system is partially installed. The  
16 gas collection wells are currently in place.

17 Q. Anything else other than the wells?

18 A. I don't believe so.

19 Q. Okay. Do you know when installation of  
20 the wells began?

21 A. I don't have the exact date. I'd have to  
22 say two to three months ago.

23 Q. You were not there when the wells were  
24 started?

25 A. Correct.

1 Q. What remains to be put in place?

2 A. The gas collection or gas transmission  
3 piping, the headers and laterals associated with  
4 that piping. And then the complete gas processing  
5 control center and electrical generating facility.

6 Q. When you talk about the gas processing  
7 facility, what exactly is that?

8 A. That's a section of the gas-to-energy  
9 plant that will contain the compressors that will  
10 actually apply a vacuum to the collection wells  
11 through the header system and transmit the gas from  
12 the landfill into the plant. Also associated with  
13 the gas processing facility are a series of gas  
14 cleaning and processing equipment that will ready  
15 the gas for use as a fuel.

16 Q. Now, what's the effect of applying the  
17 vacuum?

18 A. The effect of applying the vacuum, the  
19 vacuum will create a negative pressure within the  
20 wells and cause the landfill gas in and around the  
21 individual wells to flow towards the wells and thus  
22 be extracted up through the wells and into the  
23 collection piping to the plant.

24 Q. I should have said, what's the purpose of  
25 this system?

1           A.    The purpose of the system is to extract  
2    landfill gas from the landfill.

3           Q.    And why do you want to do that?

4           A.    RTC wants to extract as much gas as  
5    possible to use as a fuel in the generation of  
6    electricity.

7           Q.    Are these systems fairly common at  
8    landfills?

9           A.    Gas collection systems are fairly common  
10   at landfills.

11          Q.    Are systems where electricity is  
12   generated common?

13          A.    They are becoming more common. They are  
14   currently only in operation on some of the larger  
15   facilities due to their relatively high capital  
16   cost.

17          Q.    What is the cost for constructing one of  
18   these facilities?

19          A.    The current cost estimate for the Taylor  
20   Ridge processing -- or gas collection and  
21   generating facility is 4.5 million dollars.

22          Q.    When -- is there a proposed date where  
23   this system is going to be up and running?

24          A.    We have a projected time frame, sometime  
25   mid 1997 to have the facility operational.



1           Q.   How much gas is the system designed to  
2 collect?

3           A.   Currently the design will be able to  
4 handle approximately 2,000 cubic feet per minute.

5           Q.   Do you know how much gas the landfill  
6 produces?

7           A.   We base our design estimate to try to  
8 collect as much gas as possible. However, the  
9 system is not designed, nor is there any system I  
10 don't believe designed, to extract the gas at its  
11 absolute peak rate of generation. I don't know how  
12 much gas the landfill itself is currently or  
13 potentially can develop, generate.

14          Q.   Currently where does the gas going -- or  
15 I should say, the landfill is currently generating  
16 gas?

17          A.   The landfill is currently generating gas.

18          Q.   Where does that gas go right now?

19          A.   I would say a large portion of that gas  
20 currently generated escapes to the atmospheres.

21          Q.   Do you have an opinion with respect as to  
22 whether this system will affect how much gas is  
23 escaping the landfill?

24          A.   This system -- I would predict this  
25 system would dramatically reduce the amount of gas

1 escaping into the atmosphere.

2 MR. NORTHRUP: Those are all the  
3 questions I have.

4 THE HEARING OFFICER:  
5 Cross-examination.

6 MS. SYMONS-JACKSON: Yes.

7 CROSS-EXAMINATION

8 BY MS. SYMONS-JACKSON:

9 Q. Mr. Fortelka, you testified that it's  
10 estimated that the installation of this entire  
11 system will cost in the neighborhood of 4.5 million  
12 dollars.

13 A. Correct.

14 Q. Can you tell me how much of that amount  
15 is attributable to the installation of the gas  
16 collection system only?

17 A. I believe around \$600,000.

18 Q. And the remainder of that amount would be  
19 attributable to the energy production?

20 A. Yes.

21 Q. Are there any other expenses that are  
22 included in that 4.5 million dollars, aside from  
23 energy production and the gas collection?

24 A. Just activities and materials associated  
25 with that plant.

1           Q.    Okay.  Now, isn't it true, Mr. Fortelka,  
2           that the 4.5 million dollars, or ultimately how  
3           much it costs to install this gas collection  
4           system, is being paid for out of RTC's pockets and  
5           not out of Watts' pockets?

6           A.    As far as capital costs, yes.

7           Q.    RTC is paying for the whole thing?

8           A.    Yes.

9           Q.    Now, isn't it true also, Mr. Fortelka,  
10          that as a result of Watts, if you want to call it,  
11          selling the gas to RTC, Watts will earn a royalty  
12          on the gas that is, in fact, generated and turned  
13          into the energy in the amount of approximately  
14          15,000 to \$25,000 per month that this gas is  
15          generated and sold as electricity?

16          A.    If the current output of the plant meets  
17          expectations, then that range is true.  That  
18          royalty range is true.

19          Q.    And would you agree, then, that for -- or  
20          tell me how many years do you anticipate being able  
21          to collect gas from this landfill?

22          A.    Well, the plant may operate for 10 to 15  
23          years.  However, it should be noted that the  
24          royalty amount will decrease with the output of the  
25          facility, which definitely will decrease over time.

1           Q.    But gas will be continued to be collected  
2   and sold off as electricity as long as you can  
3   still get gas out of the landfill, right?

4           A.    As long as it continues to be  
5   economically feasible.

6           Q.    As long as the gas is being sold off as  
7   electricity, money is going to go back to Watts as  
8   a royalty payment?

9           A.    That's correct.

10          Q.    Now -- RTC also paid for the permit  
11   application fees pursuant to its contract with  
12   Watts?

13          A.    I believe it did.

14                   MS. SYMONS-JACKSON:  That's all I  
15   have.

16                   THE HEARING OFFICER:  Mr. Northrup.

17                   REDIRECT EXAMINATION

18   BY MR. NORTHRUP:

19          Q.    Would you consider gas being a commodity?

20          A.    Yes.

21          Q.    Let me back up a little bit.  Ms. Symons  
22   asked you about application fees.  Do you know how  
23   much were involved?  Do you know if any application  
24   fees were involved in applying for this permit?

25          A.    I would anticipate there were fees, yes.

1 Q. Do you have any idea what those might be?

2 A. I don't know what this facility was.

3 Q. Does RTC expect to earn more than 4.5  
4 million dollars from this electricity generating  
5 system?

6 A. Yes.

7 MR. NORTHRUP: Those are all the  
8 questions I have.

9 THE HEARING OFFICER: Anything  
10 further?

11 MS. SYMONS-JACKSON: Just a quick  
12 point to clarify.

13 RE-CROSS EXAMINATION

14 BY MS. SYMONS-JACKSON:

15 Q. When I asked you about the payment of  
16 application fees, what I was actually referring to  
17 were the preparation costs in preparing the  
18 application for the gas management system.

19 Do you know, did RTC pay for the  
20 preparation of this application?

21 A. Yes.

22 Q. It did pay for it?

23 A. Yes.

24 MS. SYMONS-JACKSON: Okay. That's  
25 all.

1 THE HEARING OFFICER: Anything else?

2 MR. NORTHRUP: Huh-uh.

3 THE HEARING OFFICER: Okay. Thank  
4 you. This witness be excused?

5 MR. DAVIS: Yes.

6 THE HEARING OFFICER: Off the record  
7 for a minute.

8 (Off-the-record discussion held.)

9 MR. NORTHRUP: Call Steve Brao.

10 THE HEARING OFFICER: Please swear  
11 the witness.

12 STEVE BRAO,  
13 called as a witness, after having been first duly  
14 sworn, was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. NORTHRUP:

17 Q. Please state your name for the record,  
18 please.

19 A. Steven Brao.

20 Q. And what do you do for a living?

21 A. President of Noble Earth Corporation.

22 THE HEARING OFFICER: You are going  
23 to have to speak up.

24 BY MR. NORTHRUP:

25 A. Environmental consultant company.

1           Q.    What is -- what does Noble Earth  
2   Corporation do?

3           A.    Provide consulting services to  
4   waste-related industries.

5                   MS. SYMONS-JACKSON:  Charlie, if I  
6   can interrupt you for a second.  I need a copy of  
7   his deposition.

8                   MR. NORTHRUP:  Of his deposition?

9                   MS. SYMONS-JACKSON:  Yeah.  Sorry  
10   about that.

11                  THE HEARING OFFICER:  That's okay.

12                  MR. NORTHRUP:  Sorry.  What was the  
13   last question?

14                  THE HEARING OFFICER:  You asked what  
15   Noble Earth does.

16   BY MR. NORTHRUP:

17           Q.    What does Noble Earth do?

18           A.    Provide consulting services to  
19   waste-related companies.

20           Q.    Okay.  What types of consultant services?

21           A.    I do permitting, construction, quality  
22   assurance services.  I do consulting in regulatory  
23   issues, environmental assessments.

24           Q.    Where is your corporation based out of?

25           A.    St. Louis, Missouri.

1           Q.    Do you want to describe your educational  
2 background for me, please.

3           A.    I have a bachelor of science degree in  
4 geology from Eastern Michigan University.  
5 Graduated in 1984.

6           Q.    Did you have any formal education after  
7 that?

8           A.    No.

9           Q.    Have you attended any seminars or  
10 workshops on environmental issues?

11          A.    Yes.

12          Q.    What -- list out some of those for me.

13          A.    Continuing education at the University of  
14 Wisconsin, Madison.  Also -- also Green Bay.  
15 Landfill operation, design classes specific to the  
16 waste industry.

17          Q.    Are you familiar with ESG Watts?

18          A.    Yes.

19          Q.    Okay.  How are you familiar with them?

20          A.    Prior to starting the Noble Earth  
21 Corporation, I operated a landfill in Litchfield,  
22 Illinois.  I knew Tom Jones professionally.  ESG  
23 Watts operated the Sangamon Valley Landfill.  That  
24 was one of my competitors.  So I was aware of that  
25 facility.  And through Tom, became aware of the



1 Taylor Ridge facility.

2 Q. Take a step back. Can you give me some  
3 of your work experience? You say you operated a  
4 landfill?

5 A. Yes. I was a landfill operator.  
6 Litchfield, Illinois site. Prior to that, I  
7 operated a facility in Auburn Hills, Michigan.  
8 Prior to that, I was construction manager at a  
9 co-disposal facility, Ford Motor Company, Dearborn,  
10 Michigan. One of the suburbs there. And prior to  
11 that, I was the operations manager and also served  
12 as -- in the capacity of compliance engineer with a  
13 hazardous waste company. It was -- also a  
14 co-disposal facility in Belleville, Michigan.  
15 Prior to that, I worked for a consulting company  
16 and provided consulting services to various  
17 waste-related industries. And before that, similar  
18 position with another consulting company. Both  
19 consulting companies, I was employed as a staff  
20 geologist.

21 Q. Okay. Before that, you were in school?

22 A. Yes.

23 Q. Okay. The first consulting company you  
24 worked for, what -- what are the dates that you  
25 were there? Who were they? What's the name of the

1 company?

2 A. I had submitted a resume. I don't recall  
3 the dates offhand.

4 Q. Okay. That's fine, if you don't recall.  
5 I don't have a copy with me.

6 A. Roughly in 1984 to '85.

7 Q. Okay. Then the next consulting company?

8 A. I was there for approximately two years.

9 Q. Okay. And what types of work did you do  
10 there?

11 A. The same type of work I did at the first.  
12 I was a staff geologist. Majority of my time was  
13 spent on solid waste sites, constructing landfills,  
14 providing CQA services.

15 Q. What is CQA?

16 A. Construction quality assurance services.

17 Q. And your next position, you were a  
18 compliance engineer?

19 A. Yes. I was hired by -- at the time, the  
20 company was known as Wayne (phonetic spelling)  
21 Disposal. Later to become known as Environmental  
22 Quality Company. I was hired by their engineering  
23 department to provide their in-house construction  
24 quality assurance.

25 Q. How long were you at Wayne Disposal?

1           A.    About ten years.

2           Q.    Okay.  And then you worked at -- is it a  
3   Ford co-disposal?

4           A.    Wayne Disposal provided management  
5   services for that Ford Motor Company co-disposal.

6           Q.    Okay.  And then how about the Auburn  
7   Hills, is that the same thing?

8           A.    Wayne Management, the environmental  
9   quality company, owned that facility.

10          Q.    Okay.  And how about Litchfield?

11          A.    The environmental company owned that  
12   facility as well.

13          Q.    Now, you are familiar with the Taylor  
14   Ridge landfill?

15          A.    Yes.

16          Q.    You are familiar with ESG Watts' other  
17   landfill sites in Illinois?

18          A.    I'm familiar with the Sangamon Valley  
19   landfill.

20          Q.    When was the first time you visited the  
21   Taylor Ridge landfill?

22          A.    I believe it was Monday, July 15th.

23          Q.    Of what year?

24          A.    1996.

25          Q.    Okay.  And why were you there?

1           A.    I made a site visit with Mike Olson, who  
2    is the CQA officer for a project that I am working  
3    on.  Mike and I did a site inspection together.

4           Q.    What's the project that you were working  
5    on at that time?

6           A.    Resource Technology Corporation's gas  
7    installation.  Gas management installation.

8           Q.    Okay.  And what exactly were you doing  
9    for RTC?

10          A.    Providing construction quality assurance  
11   services.

12          Q.    Exactly what does that mean?

13          A.    I was providing services.  The state of  
14   Illinois requires certification by an independent  
15   registered professional engineer.  Mike Olson would  
16   be that professional engineer.  I work with Mike  
17   doing the field end of that requirement and more or  
18   less acting as his eyes and ears on a project.

19          Q.    How many times between July and today,  
20   just in general terms, in approximation, have you  
21   spent at the Taylor Ridge landfill?

22          A.    39 days.

23          Q.    And what types of things have you done  
24   there during those 39 days?

25          A.    Monitoring the installation of gas

1 extraction, leachate extraction wells. I have been  
2 initiating some zoning variance efforts, locating  
3 the future location of the power plant. I've  
4 provided some assistance in determining locations  
5 of gas wells. Most recent, I've been doing some  
6 borings in the landfill cap and measuring cover  
7 thickness.

8 Q. Now, were you retained by Watts to do  
9 these borings on the landfill cap, when did you do  
10 that?

11 A. Yes. It would have been March or April  
12 of -- it was originally discussed in March or April  
13 of 1996. I didn't actually begin any work.

14 A. About two weeks ago. I did some survey  
15 work.

16 Q. Okay. So mid-October?

17 A. Yes.

18 Q. Okay.

19 A. I believe it was the 15th and 16th.

20 Q. Why did it take you between March and  
21 April of '96 to October before you actually started  
22 doing some work?

23 A. The -- the cover certification requires  
24 me to provide some field density testing. To do  
25 that testing, I needed to obtain a license to own

1 and operate a small portable nuclear device. In  
2 order to get the license, I had to get some  
3 certification. By the time I got the certification  
4 and then the license, it was already mid-August.  
5 And then I ordered my equipment. And then the  
6 equipment came out of South Carolina. And they had  
7 a hurricane. And that delayed shipment. And I  
8 finally got the equipment about a week or so ago.

9 Q. Besides the hurricane, have there been  
10 any other weather problems that have prevented you  
11 performing your borings?

12 A. Yes. When I went to the site, I believe  
13 it was the 16th of October. I have my date book if  
14 you'd like me to verify the date. When I did the  
15 survey work, the intention was to -- was to go  
16 ahead with the borings the following day. But  
17 what -- we got quite a bit of rain that night, that  
18 morning, and we just couldn't access the landfill.

19 Q. So when did you actually begin your  
20 borings?

21 A. The afternoon of the deposition last  
22 week. I believe deposed on Thursday, and I drove  
23 to Taylor Ridge and began doing borings on the cap  
24 that afternoon.

25 Q. Okay. Step back a minute. What -- what

1 were you specifically retained to do by ESG Watts?

2 A. I was asked -- I was asked to verify  
3 three foot of cover on the landfill.

4 Q. Okay. Now, how do you go about verifying  
5 cover?

6 A. The two ways I'm most familiar with would  
7 be using two surveys, surveying the top of waste,  
8 placing your cover, and then surveying again, and  
9 doing a subtraction between the points. And that  
10 would then show you thickness.

11 But since there was no top-of-waste  
12 survey to rely on, I would use direct measurement.  
13 I was going to use a -- I used a portable boring  
14 rig and drilled holes in the -- in the cap, so I  
15 could take direct measurement.

16 Q. How many borings did you -- did you take?

17 A. The first afternoon we worked -- we  
18 worked late. We did the flatter portion of the  
19 landfill. We did 65. The second day, I completed  
20 the balance. I had originally identified 171  
21 potential locations. Those locations were shown on  
22 a plan grid pattern, and I completed 152.

23 Q. You completed 152 total for both days?

24 A. Yes.

25 Q. And that's all that you did?

1           A.    Yes.

2           Q.    Now, did you do all these borings  
3 yourself, or did you have any assistance?

4           A.    I did not run the equipment.  I had  
5 Mr. Watts' personnel run the boring equipment.

6           Q.    Who was that?

7           A.    Steve Grothus.

8           Q.    Okay.  What were you doing while  
9 Mr. Grothus was running the equipment?

10          A.    I watched him running the equipment,  
11 examine the spoils, remove the auger.  I looked at  
12 the spoils on the auger, the spoils on the ground.  
13 And then I examined the bore hole itself and take a  
14 direct measurement to whatever depth counterweight.

15          Q.    How do you take the direct measurement?

16          A.    With a tape measure.

17          Q.    Now, were your borings confined to the  
18 flat area of the landfill, or did you do the slopes  
19 as well?

20          A.    We had to do the slopes as well.

21          Q.    And did you record your findings?

22          A.    Yes.

23                   MR. NORTHRUP:  I'm going to go  
24 ahead and mark this as Respondent's 3.  It's a  
25 two-page -- two pages.  I'll go ahead and mark



1 the second page separately.

2 THE HEARING OFFICER: There is no  
3 need. Is it not stapled.

4 MR. NORTHRUP: No. It's not  
5 stapled.

6 THE HEARING OFFICER: Okay.

7 MR. NORTHRUP: Okay.

8 BY MR. NORTHRUP:

9 Q. Can you identify what I am about to hand  
10 you, which have been marked Respondent's Exhibits 3  
11 and 4?

12 A. My field log from October 24th and  
13 October 25th, 1996.

14 Q. Which one is 24 and which one is 25?

15 A. The one dated the 24th in the upper  
16 right-hand corner is from the 24th. The one that's  
17 nearly completely filled out is from the 25th, and  
18 this is also dated.

19 THE HEARING OFFICER: Is that  
20 Exhibit 4?

21 THE WITNESS: Yes.

22 THE HEARING OFFICER: Okay.

23 BY MR. NORTHRUP:

24 Q. Okay. Now, did you -- did you prepare  
25 these documents?

1           A.    Yes.

2           Q.    And do they accurately reflect your depth  
3 readings?

4           A.    Yes.

5                   MR. NORTHRUP:  I'd go ahead and move  
6 for the admission of these two documents.

7                   THE HEARING OFFICER:  Is there any  
8 objection?

9                   MS. SYMONS-JACKSON:  No.

10                  THE HEARING OFFICER:  Then they are  
11 both admitted.

12 BY MR. NORTHRUP:

13           Q.    Now, on Respondent's Exhibit 4, I want  
14 you to take a look at two boxes at the intersection  
15 of I-14 and J-14 and K-14.  Can you tell me what  
16 those say?

17           A.    I-14 says 1.5 foot of cover.  That depth  
18 measurement was taken on the I line at the  
19 intersection of the 1400 plus 25 line.  J-14, I  
20 found 1.5 foot of cover.  And K -- you asked for  
21 K-14?

22           Q.    Yeah.

23           A.    K-14, I also found 1.5 foot of cover.  
24 And that's at -- located at the I plus -- I can't  
25 read this copy.  It came from a fax, I assume.

1 Q. (Nods head.)

2 A. That came slightly off of the J line. I  
3 believe 50 feet off the J line at the 1400 line.

4 Q. You'll note from just reviewing the other  
5 documents that the 1.5 do appear to be quite a bit  
6 less than the other borings. Do you have any  
7 explanation as to why that might have occurred?

8 A. The -- that specific area, I found --  
9 found four borings -- there were four borings that  
10 showed insufficient cover. There is no vegetative  
11 cover laying in place in that area. And that area  
12 is being used as an equipment storage area. Their  
13 roll-off boxes and heavy construction equipment  
14 sitting there.

15 Q. Has Watts instructed you to do anything  
16 with your boring findings?

17 A. Not yet.

18 Q. Are you doing any additional testing?

19 A. Yes.

20 Q. Okay. What is that?

21 A. If -- since all of the borings did not  
22 show compliance with our objectives, I went back.  
23 And as I stated in my deposition, I reviewed the  
24 pertinent criteria as far as depth measurement.

25 And Tom Jones had originally asked me to

1 certify three foot of cover. When I took out the  
2 807 regs, the August 1993 closure -- closure  
3 document supplied by Watts and the supplemental  
4 permit, I found the requirement was -- was very  
5 clear. There is only two foot of final cover  
6 necessary, and six inches of a layer to support  
7 vegetation.

8           So with that in mind, the requirement for  
9 certification would be reduced to a total of  
10 two-and-a-half foot. But there are also some other  
11 requirements. The top -- the top lift of cover.  
12 This is not to see the vegetative lift that would  
13 be exposed, but the top lift of cover was to have  
14 been placed in an eight-inch lift and compacted to  
15 approximately six inches. It had to be compacted  
16 to 90 percent of its maximum dry density. And it  
17 had to be placed at a -- at a moisture content. I  
18 believe it's 2 to 5 percent above optimum. Perhaps  
19 it's 3 to 5 percent above optimum.

20           Since I wasn't there to see this be  
21 placed, I can't make any assessment as to the  
22 condition when it was placed, how thick the lifts  
23 were. However, the weather was such that I could  
24 access the site. And I began doing density tests.

25           The density tests at this point are

1 inconclusive, because I don't have the lab  
2 information to tell me what the maximum density  
3 is. And make an -- and on surveying of whether or  
4 not we were compliant with the 90 percent  
5 requirement it appears.

6 I'm done with my density testing. I was  
7 hoping to complete the sampling yesterday, but I  
8 just couldn't get up on the landfill because of the  
9 weather. So I will complete the sampling of that  
10 lift, get the appropriate lab analysis completed,  
11 and compare my results with that. And that will  
12 also then be included in my report.

13 Q. Now, you can't certify the cover, is that  
14 correct?

15 A. That's correct.

16 Q. You have to be a P.E. to do that?

17 A. Yes.

18 Q. So what are you going to do with your --  
19 with the data that you've produced from your  
20 testing?

21 A. Mike Olson is doing the certification.

22 Q. You -- I assume Watts agreed to pay you  
23 for this work.

24 A. Yes.

25 Q. Okay. Was payment contingent in any way

1 on your findings?

2 A. No.

3 MR. NORTHRUP: I don't have any  
4 further questions.

5 THE HEARING OFFICER:

6 Ms. Symons-Jackson.

7 MS. SYMONS-JACKSON: Yes.

8 CROSS-EXAMINATION

9 BY MS. SYMONS-JACKSON:

10 Q. Mr. Brao, you only just began your  
11 sampling or taking your soil logs less than a week  
12 ago, correct?

13 A. Yes.

14 Q. And you have not finished your data  
15 collection at the facility, correct?

16 A. That is correct.

17 Q. Okay. So as you sit here today, you  
18 can't give us any opinion regarding the adequacy of  
19 the final cover of this landfill, can you?

20 A. Not in its entirety.

21 MS. SYMONS-JACKSON: That's all I  
22 have.

23 THE HEARING OFFICER: Mr. Northrup.

24 REDIRECT EXAMINATION

25 BY MR. NORTHRUP:

1           Q.    Okay.  What limited opinions can you give  
2   us about the cover on this landfill?

3           A.    There is sufficient cover thickness in  
4   place over much of the area.  However, there exists  
5   an area approximately half an acre that clearly  
6   shows insufficient cover.

7           Q.    Okay.  And where is that?  Where is that  
8   half acre?  Is that what we have been talking  
9   about?

10          A.    Yes.  J-14.  There were also two other  
11   borings that indicated insufficient cover, both of  
12   which measured 2.4 feet.  One was in the northeast  
13   corner.  A-1.  It measured 2.4 feet.  And the  
14   another in the northwest corner.  F minus 100  
15   feet.  There is insufficient cover in both of those  
16   locations, but I was unable to make any -- the  
17   surroundings borings show greater than three feet  
18   or three feet of cover.  I did -- I made no effort  
19   to simulate the area into a smaller description.

20                   MR. NORTHRUP:  I don't have any  
21   further questions.

22                   MS. SYMONS-JACKSON:  I don't have  
23   anything else.

24                   THE HEARING OFFICER:  Okay.

25                   THE WITNESS:  Thank you.

1 THE HEARING OFFICER: Off the record  
2 for a second.

3 (Off-the-record discussion held.)

4 THE HEARING OFFICER: Okay. Let's  
5 go back on the record. Please swear the witness.

6 JOSEPH CHENOWETH,  
7 called as a witness, after having been first duly  
8 sworn, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. NORTHRUP:

11 Q. Please state your name for the record.

12 A. Joseph Chenoweth.

13 Q. And where do you work?

14 A. I work for ESG Watts Taylor Ridge  
15 landfill.

16 Q. What do you do at Taylor Ridge?

17 A. What is my position or what do I do?

18 Q. What's your position?

19 A. I'm a landfill supervisor.

20 Q. What exactly does that mean?

21 A. I fill in for my immediate supervisor,  
22 Elmer Elliot. When he's off site, I take over his  
23 responsibility. My responsibilities are many, all  
24 the way from picking up paper to running heavy  
25 equipment, site inspections, fixing and repairing



1 leachate seeps, odors. I run guard shack, do a  
2 little bit of everything, fill out site inspection  
3 reports.

4 Q. What's your typical day at the landfill?  
5 When do you get there? When do you leave?

6 A. Oh, on average of probably a quarter to  
7 6:00 in the morning till earliest I leave is 4:00  
8 in the afternoon. Sometimes it's later than that.

9 Q. Are you familiar with the term daily  
10 cover?

11 A. Sure am.

12 Q. What's your understanding of that term?

13 A. Daily cover, there is a requirement of  
14 six inches of soil that needs to be covered at the  
15 end of each workday. Or what we have is a  
16 synthetic fabric, ATC, Alternate Daily Cover, that  
17 we can use also.

18 Q. With respect to the dirt, where does that  
19 come from? Where does it come from for use as  
20 daily cover?

21 A. We have a borrow area that we haul the  
22 dirt from to the active phase each day.

23 Q. Now, you do not yourself apply daily  
24 cover on a -- on a daily basis?

25 A. Myself, not on a daily basis, no.

1 Q. Okay. You have applied it, though, in  
2 the past?

3 A. I have applied it, yes.

4 Q. Okay. Have you instructed other landfill  
5 employees about the requirements of daily cover?

6 A. Every employee there knows the  
7 requirement for daily cover.

8 Q. Okay. And what is your basis for saying  
9 that?

10 A. I have talked to each one and have  
11 stressed it at least three, four times a week on  
12 it.

13 Q. Do you ever go out at the end of the day  
14 to insure that daily cover is in place?

15 A. Every day.

16 Q. Can you recall any day where -- in the  
17 last year where there has not been daily cover on  
18 the place?

19 A. On the active work space, I can never  
20 recall a time that it was never properly put on.

21 Q. Now, I suppose to be fair, you do take  
22 vacations from time to time.

23 A. I do take vacations from time to time.

24 Q. So you are not at this landfill every  
25 day?

1 A. Not every day.

2 Q. Let me show you --

3 MR. NORTHRUP: I will go ahead and  
4 mark this as Respondent's Exhibit 5.

5 BY MR. NORTHRUP:

6 Q. Can you identify that for me? Tell me  
7 what it is.

8 MR. NORTHRUP: Also, if I did not  
9 move for the admission of 3 and 4 --

10 THE HEARING OFFICER: They are in.

11 MR. NORTHRUP: Okay.

12 BY MR. NORTHRUP:

13 A. Could you ask the question again?

14 Q. Sure. Can you just identify that for  
15 me? Tell me what it is?

16 A. Table of contents. It's referring to  
17 site inspection reports, leachate seep repair.

18 Q. Okay. Hand it back to me.

19 THE HEARING OFFICER: That who  
20 prepared? I'm sorry.

21 MR. NORTHRUP: I don't think he  
22 said.

23 THE WITNESS: I didn't say who  
24 prepared it.

25 MR. NORTHRUP: I'm not going to get

1 it in through Joe.

2 THE HEARING OFFICER: Okay.

3 BY MR. NORTHRUP:

4 Q. Take a look at the seventh page of this  
5 document. Can you tell me what that is?

6 A. That's a site inspection report that I  
7 fill out each time I walk the landfill site and I  
8 return.

9 Q. Did you have any input into developing  
10 that form?

11 A. I've had some input into developing  
12 that. Mostly the attachment that I have put onto  
13 it is mostly input that I had.

14 Q. What's the -- what is the attachment?

15 A. It's a topo map of the landfill.

16 Q. And what do you do with the topo map?

17 A. I pinpoint a little more accurate of  
18 where the problem areas are on the -- that had been  
19 repaired or need attention or repair work done to  
20 it.

21 Q. Okay. How often, approximation, in any  
22 given week do you perform -- I should say do you  
23 perform site inspections?

24 A. Yes, I do.

25 Q. Okay. How often in any given week do you

1 go out and perform these inspections?

2 A. No. Less than three times a week as far  
3 as I can remember doing it. And all the way up to  
4 six times a week.

5 Q. Does anyone else at the landfill perform  
6 these inspections?

7 A. Not these inspections, no. But everybody  
8 knows to look for problem areas that sometimes I  
9 may miss, because I got 80 acres to cover, and it's  
10 a tough job to do. And any time through their  
11 operations, if they see something, they will notify  
12 me. But it is my job to do.

13 Q. What exactly do you do on site  
14 inspections?

15 A. I'll walk the landfill on foot when  
16 weather permits, which is most of the time, and  
17 I'll be looking for any sort of troubles; litter,  
18 erosions, seeps, odors, any problems whatsoever.

19 Q. Okay.

20 A. Then I'll note it, and then I'll get the  
21 problems corrected.

22 Q. Okay. When you note it, what do you mean  
23 by that? Note it where?

24 A. Note it on my site inspection report.

25 Q. Okay. So you take one of these forms

1 with you when you go?

2 A. No. I'll take a notebook with me, and  
3 then I'll come back and put it down on a site  
4 inspection report.

5 Q. Okay. Do you mark the location on the  
6 landfill in any particular way?

7 A. Like I said, on my topo map that I attach  
8 to it is where I do the markings at, and I carry  
9 one with me when I'm out there, so I know.

10 Q. But do you -- if you come across a  
11 leachate seep, do you mark that in some way?

12 A. Oh, yes, I do. Unless I'm going to  
13 repair it myself, then I'll flag it.

14 Q. Then how do you mark it?

15 A. I put an orange flag by it, and then I  
16 get word to the people where it's at, and they go  
17 pull the flag and bring it back to me. That way I  
18 know it's repaired.

19 Q. If -- how do you repair -- say, if you  
20 come across a leachate seep. How do you repair one  
21 of those?

22 A. Depending on weather conditions, and if  
23 the problem area -- because we do have certain  
24 areas that we have problems with. It's one of the  
25 reasons for the site inspection report. Keeps me

1 posted where they are at, so I keep an eye on it on  
2 a daily basis.

3 If it's a serious problem, we will  
4 excavate it, take it out, and we will fill it in  
5 sometimes with gravel and dirt. Most generally, we  
6 just cap the area. We haul clay to the area, cap  
7 it and compact it.

8 Q. And have you instructed other landfill  
9 employees on how to repair leachate seeps?

10 A. Yes, I have.

11 Q. Do you fill out one of these site  
12 inspections reports every time you do a site  
13 inspection?

14 A. Every time I do a site inspection, I fill  
15 one out.

16 Q. Even if you didn't find anything?

17 A. Even if I didn't find anything.

18 Q. Do -- the problems that you discover on  
19 your site inspections, are those repaired the same  
20 day?

21 A. I would say rough guess, 90 percent of  
22 them are repaired that day, depending upon the  
23 weather. The weather will stop us most of the  
24 time, 'cause I don't risk life or limb.

25 Q. Now, are there other occasions where you

1 might be notified of a problem other than your own  
2 personal observations through the site inspections?

3 A. Rephrase that again.

4 Q. Yeah. Would you ever be alerted to any  
5 other -- to problems at the landfill from any other  
6 person?

7 A. Other than myself?

8 Q. Other than yourself.

9 A. Yes. About any source. The office  
10 personnel, if they see something, they will notify  
11 me. Like I said, the employees themselves.  
12 Neighbors' complaints. I've also answered to all  
13 of those.

14 Q. You have made repairs in response to  
15 neighbors' complaints?

16 A. Always.

17 Q. If you have received a neighbor's  
18 complaint, has there been any time where you did  
19 not respond?

20 A. Never.

21 Q. Are you aware at -- what are the  
22 operating hours of the landfill?

23 A. Operating hours, Monday through Friday  
24 are from 6:00 a.m. till 4 o'clock p.m. On  
25 Saturday, it's 7:00 a.m. until 12 o'clock noon.



1           Q.    Now, when you say the operating hours is  
2   until 4 o'clock, does that mean the last truck  
3   comes in at 4 o'clock, or do you stop sometime  
4   before then?

5           A.    They are required to be out of the gate  
6   by 4 o'clock.

7           Q.    Be out?

8           A.    Right.

9           Q.    To your knowledge, have you ever operated  
10   your -- you or any of your employees, operated  
11   equipment, say, within the last three years after  
12   8 o'clock at night?

13          A.    The only time I can recollect is probably  
14   the summer of '93 when we were running three  
15   shifts. After that summer of '93, never, to my  
16   knowledge, have we ever operated after dark.  
17   Never.

18          Q.    Now, would you from time to time be  
19   making repairs on equipment --

20          A.    No.

21          Q.    -- at night?

22          A.    There is -- well, I take that back.  
23   There is a second shift during that time that might  
24   be bringing a machine in from the parking area  
25   outside to work on it or something like that. But

1 it's not like they are -- they are running it for  
2 anything more than a half an hour to get it started  
3 and move it inside.

4 Q. Okay. When you talk about --

5 A. That's what I'm assuming.

6 Q. When you talk about a second shift, is  
7 that something that's currently going on?

8 A. Not right now. We had -- it was a  
9 maintenance crew.

10 Q. Okay. And when was the last time that  
11 you had this second shift?

12 A. I couldn't even take a guess.

13 Q. More than a year ago?

14 A. I guess not -- maybe that. Maybe that.  
15 I really don't know.

16 Q. While I'm looking for one of these  
17 documents, why don't you -- do you live in the Rock  
18 Island area?

19 A. I live in Davenport, Iowa.

20 Q. Okay. What is your educational  
21 background?

22 A. I have a high school education.

23 Q. Did you get that in the Rock Island area?

24 A. I got it in Davenport.

25 Q. Okay. You ever been in the service?

1           A.    I was in the United States Marine Corps.  
2   for four years.

3           Q.    When was that?

4           A.    1967 through 1971.

5           Q.    Let me -- I will hand you what has been  
6   marked Peoples Exhibit 40, which is an inspection  
7   report done by Ron Mehalic.  Why don't you take a  
8   look at -- I'm going to show you the narrative  
9   portion.

10                   MS. SYMONS-JACKSON:  What's the date  
11   on that, Charlie?

12                   MR. NORTHRUP:  This is October 6th  
13   of '94.

14                   MS. SYMONS-JACKSON:  Thank you.

15                   THE HEARING OFFICER:  Do you have a  
16   copy?

17                   MS. SYMONS-JACKSON:  Yes.

18                   THE HEARING OFFICER:  Okay.  ;

19   BY MR. NORTHRUP:

20           Q.    I've marked a little portion.  Why don't  
21   you go ahead and read that for me, just to  
22   yourself.

23           A.    Okay.

24           Q.    Do you recall this incident?

25           A.    I recall that incident.

1           Q.    Okay.  Now, Mr. Mehalic indicates that  
2   Mr. Chenoweth stated that he would have this area  
3   covered as soon as possible.  Do you recall what  
4   you did in response to this?

5           A.    I remember taking scrapers, which are  
6   dirt hauling equipment, and hauling dirt from the  
7   borrow area to that area, and unloading it, and  
8   then dozers would come by and spread it throughout  
9   the area and fix the erosions that were showing  
10  exposed refuse through it.

11          Q.    Okay.  And the second part where he talks  
12  about -- let's see.  This steep slope and the fact  
13  that more intermediate soil cover needed to be  
14  applied, did you respond to that?

15          A.    Yes, I did.

16          Q.    Okay.  What did you do about that?

17          A.    The same thing as I -- I did to the  
18  erosions area.

19          Q.    I should say, when did you act on this?

20          A.    That I can't recollect.

21          Q.    Would it have been on or about the date  
22  of the inspection?

23          A.    That I can't recollect.  I react upon  
24  everything according to weather mostly.  I guess I  
25  wouldn't risk anybody's life or limb for hauling

1 dirt.

2 Q. From time to time, rather than go through  
3 all of the inspections, you would accompany  
4 Mr. Mehalic on his inspections?

5 A. Most every one of them, I have. There  
6 has been a few occasions where I have arrived late  
7 for some reason, and he is already out and about  
8 doing it.

9 Q. And from time to time, would Mr. Mehalic  
10 identify problem areas?

11 A. Every time I walked the inspects with  
12 him, would he identify the problem areas.

13 Q. And was it your practice to act upon  
14 those problem areas?

15 A. Yes.

16 Q. Okay. Do you recall ever having a time  
17 where you and Mr. Mehalic discussed something that  
18 needed to be done and you not performing that?

19 A. Never have I ever remembered that, no.  
20 It might have been two or three days later or maybe  
21 a week later, but I've always acted upon it.

22 Q. I'm going to hand you Peoples Exhibit 51,  
23 which is also a Mehalic inspection report. Why  
24 don't you read just this last paragraph of the  
25 narrative and then up at the top?

1           A.    Okay.  Okay.

2           Q.    Do you recall at that specific incident?

3           A.    Without a doubt, I do, yes.

4           Q.    And how do you remember that?

5           A.    I heard that there was a complaint that  
6 we had exposed garbage left over from the drilling  
7 rigs.  And the next day, I did investigate it, and  
8 Ron Mehalic was with me.  And he -- there was  
9 exposed garbage by the drilling rig, and there was  
10 an open -- there wasn't an open gas hole, but it  
11 was a well that they dug, but it was covered with a  
12 steel plate so nobody would fall in it.  And he  
13 asked me, why this is.  And I told him, as I've  
14 stated all along, that the weather would not permit  
15 equipment to get down to where that exposed garbage  
16 is to haul it away to the active area for that  
17 day.

18                   There is a lighting storm and everything,  
19 and the drilling company left that day because of  
20 the boom.  It sticks up in the air.  Asking for a  
21 lightning rod.  But I would not let anyone go down  
22 that slope to check that, because, like I said, I  
23 wouldn't offer life or limb.  I will not do that.

24           Q.    To you it was a serious enough situation?

25           A.    To me, yes, but I know it is a citing.

1 I'll take the citing over life and limb any day.

2 Q. What do you mean citing?

3 A. That there is exposed garbage.

4 Q. Other than this incident, are you aware  
5 of any time where waste was -- spoils were  
6 produced from the gas wells that was not covered  
7 that day?

8 A. I don't know what you mean there. Could  
9 you say that again?

10 Q. Other than this incident --

11 A. Okay.

12 Q. -- are you aware of any other time where  
13 waste produced from the drilling operations at  
14 these gas wells was not -- was left exposed  
15 overnight?

16 A. No. I don't ever remember another time.  
17 They had -- they had a problem with litter control  
18 that is kept care of by though. No.

19 Q. Did they address that problem at all?

20 A. Yes, they did.

21 Q. How did they do that?

22 A. They spent two weeks hiring temporary  
23 help, picking up the litter, stuff like that that  
24 was left over.

25 Q. Okay.

1           A.    And I would do an inspection each day and  
2   address it and find out where they needed more work  
3   and where they didn't.

4           Q.    Did they pick -- was this -- were they  
5   focused -- strike that.

6                    This litter that they were to pick up,  
7   was it primarily on the landfill, or was it off  
8   site?

9           A.    It was all on the landfill.

10          Q.    Have you ever installed silt fences on  
11   the landfill?

12          A.    I've had them installed, and I have  
13   installed them myself, yes.

14          Q.    Where would you have installed those?

15          A.    Oh, numerous places.  North -- northwest  
16   corner, northeast corner, south slopes, west  
17   slopes.  All over the landfill.  Wherever it needed  
18   it the most.

19          Q.    Any idea how often you would have done  
20   that?

21          A.    I can't really say how often.

22          Q.    Currently, as of today, how much of the  
23   landfill, the inactive portion, has vegetative  
24   growth on it?

25          A.    Estimate 3/5ths of it.



1 Q. Now, where is that other 2/5ths?

2 A. That would be the top portion of the  
3 landfill, and that would be the northeast slope.

4 Q. Why isn't there any vegetation up there?

5 A. On the top?

6 Q. Yeah.

7 A. Mostly because of we knew the ongoing  
8 work with the gas extraction wells going in.

9 Q. What's -- what's the ongoing work? Lots  
10 of vehicles?

11 A. Lots of vehicles. Heavy equipment.  
12 Everything. Yes.

13 MR. NORTHRUP: I don't have any  
14 further questions.

15 MR. DAVIS: May we have five  
16 minutes, please.

17 THE HEARING OFFICER: Yes.

18 (Recess taken.)

19 THE HEARING OFFICER: Let's go back  
20 on the record.

21 MR. DAVIS: Madam hearing officer,  
22 we have been consulting; that is, lead counsel,  
23 myself and the Agency attorney, on the issue of  
24 dealing with -- primarily dealing with Respondent's  
25 Exhibit No. 1 the sig-mod resubmittal.

1           Now, as you've been aware through our  
2 presentation, we have focused on, from our  
3 perspective, the failure of the Watts companies to  
4 pursue leachate management, storm water management,  
5 this that and the other.

6           It now appears that this exhibit  
7 contains -- attempts to do that. It also should be  
8 very obvious that it was recent submitted. It has  
9 not received a technical review. I can represent  
10 that as an officer of the court so to speak. I can  
11 also represent that it's not been filed as a  
12 permanent application. We need to take a look at  
13 that.

14           We need to prepare ourselves not only for  
15 rebuttal but for the testimony that we anticipate  
16 from Mr. Jones, who is the in-house engineer. We  
17 need to be able to cross him and so forth.

18           This is a big case to us. We have  
19 certainly made a big production out of it. And  
20 there is no reason to impose upon the good graces  
21 of the court reporter in going further tonight or  
22 even doing a partial day tomorrow.

23           What I'm asking essentially is at your  
24 convenience as the hearing officer, could give us  
25 another full day at some point in the future. We

1   night only need a couple of weeks. And that's  
2   perhaps optimistic, because I've got -- I've --  
3   what I'm got in mind is involving a rebuttal  
4   witness by the name of the Joyce Munie, M-U-N-I-E.  
5   And I don't know your schedule.

6               That's the type of motion that I'm  
7   seeking to try to finish with Mr. Chenoweth. To  
8   try to stop at a reasonable time together and  
9   resume when we are ready to proceed, because I can  
10   represent to you that the extent of Exhibit No. 1  
11   has come as somewhat of a surprise to us.

12              Additionally -- and that was the primary  
13   reason. Secondly, we have heard some testimony  
14   from Mr. Brao, whom we only deposed last week, as  
15   you may recall, regarding certification attempts on  
16   final cover under 807. And we have an issue  
17   whether that's going to be acceptable. A big  
18   issue.

19              Obviously, 88 wells have been put in on  
20   the site and so forth. Certainly, you know, nobody  
21   advised the Agency that there -- and they could not  
22   have -- that there were such and such depth of  
23   so-called final cover in these portions. That  
24   wasn't part and parcel of the gas management plan,  
25   et cetera, et cetera. So we do have -- have

1 several reasons. I don't really want to belabor  
2 the point, because I don't know if Mr. Northrup is  
3 going to object.

4 THE HEARING OFFICER: Mr. Northrup,  
5 do you have any objection?

6 MR. NORTHRUP: Can I talk to these  
7 guys? I kind of doubt I will object, but I want to  
8 check with the client.

9 MR. DAVIS: Sure.

10 THE HEARING OFFICER: Can we go  
11 ahead? I'm sorry.

12 MR. DAVIS: Mr. Riser (phonetic  
13 spelling) is from Springfield, so we may want to  
14 squeeze him in. I don't know.

15 THE HEARING OFFICER: Can we go off  
16 the record for a second?

17 (Off-the-record discussion held.)

18 (Recess taken.)

19 THE HEARING OFFICER: Back on the  
20 record. Okay. We have just had a lengthy  
21 conversation off the record regarding suspension or  
22 continuance of the hearing until such time as the  
23 attorney general can get someone at IEPA -- we're  
24 not sure who yet -- to review the submittal, which  
25 is Exhibit No. 1.

1                   And it has -- we have agreed off the  
2     record that we will have a conference call next  
3     week, which would be the first full week in  
4     November to pick our next hearing date, which we  
5     are going to have in Springfield, because we have  
6     fulfilled our requirement to be within the county,  
7     and we have been here for the public.

8                   I believe that what we are talking about  
9     for the rest of the hearing is pretty much  
10    testimony by IEPA people, with the exception of Tom  
11    Jones to talk about the submittal.

12                   MR. NORTHRUP:   And Riser.

13                   MR. DAVIS:    Steve.

14                   MR. NORTHRUP:   Steve Grothus too.

15                   THE HEARING OFFICER:   And for the  
16    convenience of everyone, I believe that we will  
17    reconvene in Springfield.   And that time we will  
18    set in a conference call.   So that we don't forget  
19    the briefing schedule and things like it, we will  
20    take care of when we are finally done with the  
21    hearing.

22                   But my intention was to ask for page two  
23    of Exhibit 13, and I believe you had two tax  
24    returns which you needed to provide to the Board on  
25    the same day that the transcript is due.

1 MR. DAVIS: 66 and 67.

2 THE HEARING OFFICER: Will you be  
3 able to provide those by the time the transcript is  
4 due?

5 MR. DAVIS: Sure.

6 THE HEARING OFFICER: Okay. And it  
7 is still my intention to give our court reporter  
8 extra time, because we have kept her late and  
9 started her early. She's going to need some extra  
10 time besides the eight working, days to prepare the  
11 transcript.

12 Right now I'm looking at November 18 for  
13 the transcript. And if you can do it more quickly,  
14 that would be great. Is there any reason that we  
15 need the transcript before we reconvene for  
16 hearings?

17 MR. DAVIS: (Shakes head.)

18 MS. SYMONS-JACKSON: (Shakes head.)

19 THE HEARING OFFICER: Well, then,  
20 November 18th will be the transcript due date. I  
21 think also that it makes sense to finish the  
22 cross-examination of Mr. Chenoweth now so that he  
23 does not have to return to Springfield for  
24 hearings. So if we could continue with that and  
25 get that taken care of, then we will go ahead and

1 suspend the hearing. And we will reconvene in  
2 Springfield, and we will renotice in the Rock  
3 Island area. But it will just notice that the  
4 hearing is in Springfield.

5 Is there anything further that needs to  
6 be taken care of on the record?

7 Mr. Northrup, I did agree to let you  
8 depose whatever witness the attorney general's  
9 office decides that they are going to use to  
10 testify.

11 MR. DAVIS: Over our objection.

12 THE HEARING OFFICER: Over your  
13 objection.

14 MR. NORTHRUP: Do you know whether  
15 that will be one or two?

16 MS. SYMONS-JACKSON: We don't know  
17 yet.

18 THE HEARING OFFICER: Okay. Let's  
19 proceed then. Are you done with direct?

20 MR. NORTHRUP: Yes.

21 THE HEARING OFFICER: Okay.

22 Ms. Symons-Jackson or Mr. Davis, I don't know who  
23 is --

24 MS. SYMONS-JACKSON: I'll be doing  
25 cross-examination.

1 CROSS-EXAMINATION

2 BY MS. SYMONS-JACKSON:

3 Q. Mr. Chenoweth, first of all, one comment  
4 you made at the beginning of your direct. I know  
5 it seems like it's been a long time ago now.

6 You talked about the alternative daily  
7 cover that the landfill is using as an alternate  
8 daily cover for the soil.

9 A. Yes.

10 Q. When did the facility first receive a  
11 permit to use that as an alternate daily cover?

12 A. That I cannot recollect.

13 Q. And how long have you employed at the  
14 landfill?

15 A. About -- rough guess, four-and-a-half  
16 years, I think.

17 Q. And have they been using the alternate  
18 daily cover for each of those four-and-a-half  
19 years?

20 A. No. It started after -- after I was  
21 employed there. I do believe that Nicky was the  
22 one that first looked into it and got the permit  
23 for it.

24 Q. And you are referring to Nicky Hute?

25 A. That's correct.



1 Q. Who is an engineer for the landfill?

2 A. I'm not real sure on what her position  
3 is.

4 Q. Is that H-U-T-E, her last name?

5 A. Her name has changed. She has married  
6 since, and I don't know what her new married name  
7 is. I apologize for that.

8 Q. I just wanted to identify who we were  
9 talking about.

10 A. Okay. Yes.

11 Q. Now, Mr. Chenoweth, have you had  
12 experience applying both the six inches of soil  
13 material as daily cover and the alternate daily  
14 cover?

15 A. Yes, I have.

16 Q. And isn't it true that the alternate  
17 daily cover is a lot easier to apply?

18 A. Without a doubt, it is.

19 Q. Mr. Chenoweth, I do want to talk about  
20 your site inspection reports that you perform at  
21 the Watts landfill. You performed quite a number  
22 of them.

23 Do you recall when you first started  
24 performing those site inspections?

25 A. That's a tough one. I'm just going to

1 take a rough guess of '93. Summer. Fall. I'm not  
2 real sure.

3 Q. If I suggested to you that it was, in  
4 fact, August, I believe, 30th of 1993, does that  
5 sound accurate to you?

6 A. I guess. It would be fine.

7 Q. And do you recall why you began  
8 conducting these site inspections?

9 A. I was requested by the office to do  
10 this. It was -- they said that it's not  
11 necessarily a requirement, that we are just doing  
12 it upon ourselves, and they explained to me why.  
13 And I understand why.

14 It's been official to myself, my job.  
15 This way I know the landfill like the back of my  
16 hand. I know where the problems are, where they  
17 are not, what needs to be done. And it's a  
18 constant reminder to me. And a lots of times, the  
19 problem may not be able to be fixed that day or  
20 maybe not for three or four days. I can go back  
21 and tell and do so.

22 Q. Okay. Mr. Chenoweth, are you familiar  
23 with a preliminary injunction order that was  
24 entered by the Sangamon County Circuit Court, cause  
25 No. 92-CH-23, People versus Watts Trucking, Inc.,

1 and ESG Watts, Inc., Incorporated?

2 A. Know nothing about it.

3 Q. Okay. Has anyone from the Watts landfill  
4 office told you that they are under a court order  
5 to adequately monitor and control leachate?

6 A. No, they have not.

7 Q. So that was not a reason they gave you  
8 for starting these site inspections?

9 A. That was not one of the reasons they gave  
10 me, no.

11 Q. Now, Mr. Chenoweth, I've taken a look at  
12 all your site inspection reports. And according to  
13 those reports, would you agree that when you detect  
14 a leachate seep, for example, that the remedy you  
15 perform for that leachate seep is typically the  
16 same remedy each time?

17 A. That's correct.

18 Q. And I think you testified earlier that  
19 that remedy is to cover the area with a clay cap?

20 A. That's correct.

21 Q. And compact the area?

22 A. That's correct.

23 Q. Okay. Now, the same thing with regard to  
24 any odors that you might detect at the landfill.  
25 Would you agree that when you detect an odor, that

1 the remedy you employ is the same remedy each time?

2 A. Yes. That's correct.

3 Q. And the remedy that you employ is again  
4 to cover the area with a clay cap and compact the  
5 area?

6 A. That is correct. The majority of the  
7 time, but not all of the time.

8 Q. Okay. What else do you do?

9 A. At times excavate the area, or I dig it  
10 out. And then where it's dry, and reclang the area  
11 and compact it.

12 Q. Now, would you -- would you excavate the  
13 area as opposed to just applying the clay cap when  
14 the odors are particularly bad?

15 A. No. It's generally held to the leachate  
16 seeps.

17 Q. Okay. So when you talk about excavating,  
18 you are talking about a repair of the -- the  
19 leachate seeps and not the odors?

20 A. Generally.

21 Q. Now, talking about the leachate seeps,  
22 would you agree that if we looked through every  
23 single site inspection report, you have prepared  
24 since August of 1993, we would notice recurring  
25 problems with leachate?

1           A.    Most definitely.

2           Q.    And would you also agree that if we  
3   looked through all of the maps that are attached to  
4   your site inspection reports, we would see that  
5   those recurring problems with leachate tend to  
6   recur in basically the same areas of the landfill?

7           A.    Basically the same area, yes.  That's  
8   correct.

9           Q.    And so would you agree, Mr. Chenoweth,  
10   that despite the interim, you may be compacting or  
11   excavating the leachate seep, that does not  
12   permanently fix the problem?

13          A.    It does not permanently fix the problem  
14   short-term.

15          Q.    Now, regarding odor, would you agree that  
16   if we look through all your site inspection  
17   reports, we would notice that odor is also a  
18   recurring problem at the landfill?

19          A.    Yes, it is.

20          Q.    And, Mr. Chenoweth, would you agree that  
21   the odors you have noted at the landfill tend to  
22   recur in basically the same areas time and again?

23          A.    Not always.  Sometimes, yes.  But not  
24   always.

25          Q.    Have there been occasions where you have

1 just been unable to pinpoint the location where the  
2 odor is coming from?

3 A. Lots of times.

4 Q. And on those occasions, would it be fair  
5 to say you might characterize that in your  
6 inspection report as odors throughout the entire  
7 landfill?

8 A. No. I don't believe so. I may just say  
9 the western area or something like that.

10 Q. Okay. Had there been occasions where you  
11 have noticed odors throughout the entire landfill?

12 A. No.

13 Q. Now, if I mentioned to you or represent  
14 to you that if you took a look at the site  
15 inspection report for May 28, 1996, it would, in  
16 fact, indicate that there were odors all through  
17 the landfill area reported?

18 A. Of what was the date on that again,  
19 please.

20 Q. May 28 of this year. Please take a look  
21 at the inspection report, if you need to.

22 A. That may be because of the gas drilling,  
23 I might have said that.

24 Q. Do you have it more accessible?

25 A. I've got them right here.

1 Q. Here. We have got this thing.

2 MR. DAVIS: 52.

3 THE HEARING OFFICER: What?

4 MR. DAVIS: 52.

5 THE HEARING OFFICER: I have them.

6 I just start pulling them out.

7 MR. NORTHRUP: Date again?

8 MR. DAVIS: May 28 of '96.

9 THE WITNESS: May 28th, you said.

10 BY MS. SYMONS-JACKSON:

11 Q. Here you go. Did you find it?

12 A. Yes.

13 Q. Mr. Chenoweth, can you please -- please  
14 read for the record what you have entered in the  
15 site inspection report for that day?

16 A. I have problem odors. Location, all  
17 throughout landfill area.

18 Q. And what do you indicate for corrective  
19 action?

20 A. Corrective actions, none taken today due  
21 to muddy conditions.

22 Q. Mr. Chenoweth, do you know when any  
23 corrective actions were taken following this date  
24 to address the odor problems?

25 A. Not right offhand, no. I cannot say.

1           Q.    Okay.  Now, do you know when the  
2   installation of the gas wells began at the  
3   landfill?

4           A.    I'd have to stop and think.  I'm not real  
5   sure.  No, I do not recollect when.

6           Q.    Is it possible, Mr. Chenoweth, that the  
7   installation of the gas wells actually began  
8   sometime after?

9           A.    After this, yes.

10          Q.    Okay.  You would agree that it was after?

11          A.    Yes.

12          Q.    Okay.  Now, since you've got your site  
13   inspection report out there in front of you, do  
14   those go back -- do they date back to February of  
15   1995?

16          A.    September of '95.  No, it does not.

17          Q.    Okay.  I'm going to hand you a copy of  
18   the February 21st, 1995 site inspection report.  
19   And since I don't have a copy of it in front of me,  
20   can you tell me what it says for the first problem  
21   that day?

22          A.    Problem No. 1, odors.  Large problem  
23   area.

24          Q.    And what was the corrective action taken  
25   on that day?



1           A.    Corrective action, try to bulldoze dirt  
2   over area.  Wouldn't last long because of ground  
3   conditions.

4           Q.    And where was the location of that odor  
5   problem?

6           A.    Do you want me to give you the location  
7   according to the coordinates I wrote down on here  
8   or just in general off of the topo?

9           Q.    Why don't you give me both.

10          A.    Okay.  Location was north 50000 to north  
11   50500, east 48500 to east 49000.

12          Q.    And what general location is that at the  
13   landfill?

14          A.    Okay.  Okay.  That would be the  
15   midsection of the western slope.

16          Q.    Okay.  I'm going to ask you to set that  
17   inspection report aside, and I'll hand you the one  
18   for the next day, February 22, '95.

19                What problems have you noted for that  
20   day?

21          A.    Okay.  Problem No. 1, it says odor,  
22   No. 1.  Want me to give you the location?

23          Q.    Well, just tell me, is it the same  
24   location or a different location from the previous  
25   day?

1           A.    It is a different location.

2           Q.    Okay.  And did you check the location  
3   from February 21, 1995 during this inspection  
4   report on the next day?

5           A.    Too far back to tell if I did or not.  
6   Most generally, getting to this location, I would  
7   have to walk by that area.  I probably looked at it  
8   as a guess.  It's a long time ago.  I do not know.

9           Q.    Okay.  Now, isn't it fair to say that you  
10  were not able to complete remedy of the odor  
11  problem on that date due to whether?  Is that  
12  what's indicated on your report?

13          A.    On which?  On this one here, February  
14  22nd?

15          Q.    Yes.

16          A.    Because of weather and landfill  
17  conditions, could not get to it to fix.  That is  
18  correct.

19          Q.    Mr. Chenoweth, do you recall when you  
20  were able to get to those problems to correct them?

21          A.    Like I said, I really couldn't answer  
22  that, because it was a long time ago.  And all I  
23  know is I get to these problems as soon as I can  
24  with weather conditions.

25          Q.    Okay.  Now, I've got in front of me an

1 inspection report from April 28, 1995. And on this  
2 inspection report, actually a number of them, April  
3 24, 1995; April 25, 1995; and April 28, 1995. You  
4 indicate retractions from February and March.  
5 Okay.

6 Does that mean that these were the times  
7 when you were able to go back and correct the  
8 problems you noted in February and March?

9 A. My assumption would be that, yes.

10 Q. And what would be the reason that you had  
11 not corrected those problems for that month- to  
12 two-month time period?

13 A. It's hard to say. I couldn't answer  
14 being that far back.

15 Q. Have there been occasions, Mr. Chenoweth,  
16 where problems may have gone uncorrected at the  
17 landfill for a various number of reasons for longer  
18 than a week?

19 A. It all depends on by -- what you mean by  
20 a problem.

21 Q. A leachate seep or an odor or an  
22 erosional rill, a problem that you have.

23 A. I would say so, yes.

24 Q. What about for longer than a month?

25 A. Off the top of my head, that's -- I can't

1 recollect anything going maybe that long.

2 Q. Okay. Except for the ones we have got  
3 here in front of us right now?

4 A. Once again, all depends on maybe -- like  
5 I said, if it's wintertime, icy conditions and  
6 stuff like that, and it's on a slope area, I will  
7 not send any heavy equipment back there. So there  
8 is a small possibility it will go that long.

9 Q. So during periods of bad weather, repairs  
10 are not made at the facility?

11 A. If it's-- if it can be -- if I feel that  
12 it is safe for equipment and a person to get back  
13 there, yes. If I feel that it is not, I will not  
14 do it.

15 Q. Can you look through the inspection  
16 reports you have in front of you and find an  
17 inspection for June 14th of this year, 1996?

18 A. Okay.

19 Q. Can you read for us what you indicate as  
20 the problem for the problems on that date?

21 A. Same old problems, no new ones.

22 Q. Okay. What are you talking about when  
23 you talk about same old problems?

24 A. I would imagine I would have to look back  
25 through here to see what I was talking about.

1 Q. Okay. Would it be fair?

2 A. 'Cause I didn't know this stuff was going  
3 to come out like this. A lot of times, I write  
4 things just so I know.

5 Q. Would it be fair to say, Joe, that -- and  
6 I think you've testified to this already -- that  
7 the same old problems would include leachate and  
8 odor and erosion?

9 A. In a way, yes. What I mean by it is  
10 maybe I haven't gotten to that one problem as of  
11 this date. Like it might have been an erosion, and  
12 still to this day that problem is still there.

13 Q. Now, when you indicate on your inspection  
14 reports, as you have done on some of them, if there  
15 are no new problems today?

16 A. That's correct.

17 Q. Does that necessarily -- or strike that.  
18 That does not necessarily mean that there  
19 aren't any problems at the landfill, just that  
20 there aren't any new ones?

21 A. That is correct.

22 Q. There might be some problems that you had  
23 noted during some prior inspections, that due to  
24 whether or some other reason, you weren't able to  
25 get to?

1           A.    That is correct.

2           Q.    Okay.  Now, Mr. Chenoweth, have there  
3   been times when you have not had adequate equipment  
4   at the landfill to address any of these problems?

5           A.    I would say it all depends on what do you  
6   mean by time.  Two weeks, three weeks, half an  
7   hour, an hour.  There are times that we have been  
8   short for an hour or two hours or something like  
9   that.

10          Q.    Short on equipment?

11          A.    Short on equipment for an hour or two,  
12   yes.

13          Q.    Now, Mr. Chenoweth, do you -- is it  
14   frustrating to you having to go back and correct  
15   the same problems day after day at the landfill?

16          A.    It's a challenge.  It's got a lot of  
17   pride there.  Not really.  At times.  At times.  
18   But overall, no.  It's my job, and it has to be  
19   kept care of.

20          Q.    Now, we were talking about the vegetative  
21   cover earlier.  Charlie was asking you some  
22   questions regarding, I think, percentage of it --

23          A.    Uh-huh.

24          Q.    -- of the nonactive area that is covered  
25   by vegetation.  And you indicated that one of the

1 areas that is not covered by vegetation is the  
2 top --

3 A. Correct.

4 Q. -- of the inactive area?

5 A. Yes.

6 Q. Do you know when that final lift of  
7 refuse was deposited in that area?

8 A. I was employed there at the time. I  
9 really can't answer that.

10 Q. Okay. Now, I don't want to get an exact  
11 date from you. But if you could give me an  
12 estimate. Was it within a year of you starting  
13 your employment at the landfill?

14 A. No. I'm going to guess no. And that's a  
15 guess.

16 Q. Okay. Do you know which landfill  
17 employee might know when the refuse was placed in  
18 that area?

19 A. The last -- you mean the last finals?

20 Q. Right.

21 A. You mean like the next time you talk to  
22 him or call him right now, they will. No. I can  
23 find out myself. But there is a lot of people with  
24 that knowledge. But they would have to look and  
25 see.

1 Q. Okay. Do you think Tom Jones would have  
2 that knowledge?

3 A. He would have that knowledge. Whether he  
4 would have it on hand right today, I don't know.

5 Q. Okay.

6 A. Maybe more than I would.

7 Q. What about Steve Grothus, would he know?

8 A. Less than Tom or me maybe. No offense,  
9 Steve. No offense, Steve. You be sure.

10 MR. NORTHRUP: I'll tell him.

11 THE WITNESS: No offense. You be  
12 sure and tell him

13 BY MS. SYMONS-JACKSON:

14 Q. Do you remember -- your site inspections,  
15 do you perform any storm water prevention measures?

16 A. Yes, I do.

17 Q. Can you tell me what those are?

18 A. Well, such as erosions and silt fences.  
19 We will repair the erosions and silt fences. We  
20 have built new terraces on the north face, which  
21 surprised -- it surprised me that Ron forgot about  
22 that, because that was probably in the last  
23 year-and-a-half that we built a new terrace for  
24 storm water direction on the north face. That's  
25 about it for right now all I can remember.



1 Q. Do you recall when that was done?

2 A. No, I do not. Probably, like I said, in  
3 the last year-and-a-half.

4 Q. Okay.

5 A. Maybe sooner. Maybe later.

6 Q. Mr. Chenoweth, would you agree that the  
7 facility despite these measures is still  
8 experiencing problems about storm water runoff?

9 A. Could you say that again?

10 Q. Sure. Despite the measures you just  
11 talked about, would you agree that the facility is  
12 still having problems with storm water runoff?

13 A. On certain -- on certain rainy days, I  
14 would say yes. On other days, not so much.

15 Q. Now, I asked you about leachate and odor,  
16 but I didn't specifically ask you about erosion.

17 A. Uh-huh.

18 Q. If we look through all your site  
19 inspection reports, would we find that erosion is a  
20 problem that is repeatedly being addressed at the  
21 landfill?

22 A. Yes.

23 Q. Okay. Would you gee if we look through  
24 all your inspection reports that the portions of  
25 the landfill that experience problems with the

1 erosion are typically the same portion of the  
2 landfill time and time again?

3 A. Not always, no. There are certain spots  
4 that are problems, yes. But other ones come and  
5 go.

6 Q. Okay. But there are certain locations at  
7 the facility that do pose erosional problems time  
8 and time again?

9 A. Yes.

10 MS. SYMONS-JACKSON: Okay. I think  
11 that's all the cross-examination I have for you.  
12 Thank you, Mr. Chenoweth.

13 THE HEARING OFFICER: Redirect.

14 MR. NORTHRUP: Yeah. A couple of  
15 quick follow-ups.

16 REDIRECT EXAMINATION

17 BY MR. NORTHRUP:

18 Q. Going back to the May 28th, '96 site  
19 inspection report. I think that was the one that  
20 said odors throughout the entire landfill.

21 A. Yes.

22 Q. Do you recall that particular day?

23 A. Yes, I do. For some odd reason, I do  
24 believe -- I'm not -- I'm just going to take a  
25 guess. Maybe Ron Mehalic had an inspection

1     probably the day after or something. I'm not real  
2     sure. But I just remember -- for some odd reason,  
3     I don't know why, I had gas leaks popping up all  
4     over the place. And I don't know why, and it took  
5     me -- it took me a while to get them all fixed.

6           Q.     Okay. Let's see. Why don't you take a  
7     look at -- you would -- or were you asked some  
8     questions about the April 24, 25 and 28 inspection  
9     reports that had on there retraction from February  
10    and March.

11          A.     Okay.

12          Q.     Do you recall that?

13          A.     I remember them asking that, yes.

14          Q.     Okay. What -- again, what does that mean  
15    retraction?

16          A.     That means going back and repairing some  
17    problems I wasn't able to get to at that time for  
18    whatever reason.

19          Q.     Okay. Do you recall if -- well, let me  
20    scratch that.

21                 In the retractions, did they go back to  
22    these February 21 and February 22 in the site  
23    inspection reports?

24          A.     I'm assuming that it does. 100 percent,  
25    I cannot say. It's been a long time ago.

1           Q.    Do you recall, then, from February 21st  
2   and 22nd to these April dates, it was a constant  
3   odor problem?

4           A.    That I can't recall. Long time ago.

5           Q.    Have you ever not taken corrective action  
6   and an odor problem within one week's time of  
7   discovering it?

8           A.    The only time is weather, so I would have  
9   to answer your question, I have waited longer than  
10   a week because of weather conditions.

11          Q.    And, again, that was primarily -- that  
12   would have been because of safety concerns?

13          A.    Always safety concerns comes first with  
14   me.

15          Q.    Now, on the June 14th, '96 inspection, I  
16   think there was a notation, same old problems.

17          A.    That's going to haunt me, ain't it?

18          Q.    Okay.

19          A.    Okay.

20          Q.    Okay. Could that -- could that be a  
21   reference to one problem?

22          A.    It could be.

23          Q.    You just don't know?

24          A.    I just don't know.

25          Q.    Do you take a lot of pride in the work

1     you do?

2             A.     Yes, I do.   Very much so.

3                     MR. NORTHRUP:   That's all I've got.

4                     THE HEARING OFFICER:   Anything  
5     else?

6                     MS. SYMONS-JACKSON:   No.

7                     THE HEARING OFFICER:   Okay.   Before  
8     we recess, I'd like to make a credibility statement  
9     about the witnesses that we have had for the last  
10    two days while they are all still fresh in my  
11    mind.

12                    MR. NORTHRUP:   Can I address that  
13    issue?

14                    THE HEARING OFFICER:   Yes.

15                    MR. NORTHRUP:   The credibility.   I  
16    don't know -- I know with respect to Mr. Whitley,  
17    there were a couple of things that I want to make  
18    sure you remember.

19                    First, we had asked Mr. Whitley if he  
20    felt Jim Watts had a vendetta against him.   He said  
21    no.   I think that was contradicted by the  
22    statements of Mr. Mehall.

23                    Also Mr. Whitley indicated that he was  
24    not a member of an organization that -- whose  
25    purpose it was to fight the landfill.   That

1 statement was contradicted by both Jerry Martens  
2 and Mr. Mehall. So --

3 THE HEARING OFFICER: Okay.  
4 Mr. Davis.

5 MR. DAVIS: Yes. Thank you. I've  
6 done several enforcement hearings before the Board  
7 and have yet to see that this matter is subject to  
8 argument. Something that the hearing officer does,  
9 and I don't believe it's appropriate to interject  
10 these thoughts.

11 And having had this put on the table, if  
12 you will, I would suggest that Mr. Mehall didn't  
13 say that.

14 THE HEARING OFFICER: Okay. Well,  
15 before we get into a lengthy argument, I find that  
16 all of the witnesses were credible. The statements  
17 Mr. Northrup, which you have referred to, go to the  
18 weight of his testimony. The Board can believe or  
19 disbelieve any witness. What they are really  
20 asking me to do is look at the body language and  
21 how I perceive them, the witnesses, because they  
22 can't be here. If somebody is -- you know, really  
23 looks like there is a problem.

24 So the witnesses were credible for the  
25 hearings officer's purposes. And the weight is up

1 to the Board.

2 Are there any other matters that we need  
3 to discuss before our we recess the record?

4 Okay. I'd just like to make a statement  
5 thanking both sides for being incredibly  
6 professional and organized and moving through this  
7 in a timely manner. This is a big case with a lot  
8 at stake for everyone, and I know there has been a  
9 lot of hard work that's gone into it. And  
10 everybody has really done a great job. And I  
11 will -- let's recess, and I will see you all in  
12 Springfield.

13 (Proceedings concluded at 6:12 p.m.)

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1  
2 STATE OF ILLINOIS            )  
                                  ) ss.  
3 COUNTY OF ROCK ISLAND    )

4  
5           I, Victoria Fickel, a Notary Public, in  
6 and for the County of Rock Island, in the State of  
7 Illinois, do hereby certify:

8           That the witness in the foregoing  
9 deposition named was present at the time and place  
10 therein specified;

11           That the said proceeding was taken before  
12 me as a Notary Public at the said time and place  
13 and was taken down in shorthand writing by me;

14           That I am a Certified Shorthand Reporter  
15 of the State of Illinois, that the said proceeding  
16 was thereafter under my direction transcribed into  
17 computer-aided transcription, and that the  
18 foregoing transcript constitutes a full, true and  
19 correct report of the proceedings which then and  
20 there took place;

21           That I am a disinterested person to the  
22 said action.

23           IN WITNESS WHEREOF, I have hereto  
24 subscribed my hand and affixed my official seal  
25 this 16th day of November, 1996.

\_\_\_\_\_  
Victoria Fickel, Notary Public  
In and For the County of Rock Island  
State of Illinois  
C.S.R. License No. 84-003220