ILLINOIS POLLUTION CONTROL BOARD
January 8, 2004

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

THOMAS DAVIS ASSISTANT ATTORNEY GENERAL APPEARED ON BEHALF OF COMPLAINANT; and

LARRY A. WOODWARD, CORPORATE COUNSEL, APPEARED ON BEHALF OF RESPONDENT.

INTERIM OPINION AND ORDER OF THE BOARD (by G.T. Girard):

On June 12, 2001, the People of the State of Illinois (complainant) filed a three count complaint against ESG Watts, Inc. (Watts) for alleged violations of the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2002)) and Board regulations at Watts' Taylor Ridge facility located in Rock Island County. On August 14, 2002, an amended five-count complaint was filed. Based on the record in this proceeding, the Board finds Watts in violation as alleged in the amended complaint and fines Watts $1,000,000 along with attorney fees.

## PROCEDURAL HISTORY

On June 12, 2001, the complainant filed a three-count complaint against Watts for alleged violations of the Act and Board regulations at Watts' Taylor Ridge Landfill located in Rock Island County. The Board accepted the complaint for hearing on June 21, 2001.

On August 14, 2002, the complainant filed an amended five-count complaint (Am. Comp.). The amended complaint specifically alleges in count I that Watts violated Section 21(d) of the Act (415 ILCS 5/21(d) (2002)) by failing to initiate and complete closure of the Taylor Ridge facility. Am. Comp. at 4. Count II of the complaint alleges that Watts violated Sections 9(a) and 21(d) of the Act (415 ILCS 5/9(a) and 21(d) (2002)) by failing to implement a gas management plan and causing, threatening or allowing the emission of gas to cause air pollution. Am. Comp. at 7. Count III of the complaint alleges that Watts violated Sections 12(a) and 21(d) of the Act (415 ILCS 5/12(a) and 21(d) (2002)) by causing, threatening, or allowing discharge of any contaminant so as to cause or tend to cause water pollution, and failing to implement a stormwater control plan. Am. Comp. at 9. Count IV of the complaint alleges that Watts violated Section 21(d) of the Act (415 ILCS 5/21(d) (2002)) by depositing waste over the maximum permitted height limit and the waste remains in the overfill areas of the landfill. Am. Comp. at

10. Count V of the complaint alleges Watts violated Sections 21(d)(1) and (o)(11) of the Act (415 ILCS 5/21(d)(1) and (o)(11) (2002)) by failing to submit quarterly groundwater monitoring reports. Am. Comp. at 12.

Watts filed an answer to the amended complaint on March 14, 2003 (Answer), and the complainant filed an answer to affirmative defenses on May 14, 2003 (C.Answer).

On June 3, 2003, a hearing was held in Rock Island before Board Hearing Officer Carol Sudman. On July 11, 2003, complainant filed a brief in this proceeding (Comp. Br.) and on October 14, 2003, a reply (Reply). On September 23, 2003, Watts filed a brief (Resp. Br.) along with a motion to file *instanter*, which the Board hereby grants. Also on September 23, 2003, Watts filed a motion to supplement the record. Complainant does not object to that motion (*see* Reply at 1). Therefore, the Board grants the motion to supplement the record.

## FACTS

Watts is an Iowa corporation that currently owns and operates the Taylor Ridge Landfill in Rock Island County. Am. Comp. 1. On February 5, 1998, the Board found that Watts had violated numerous sections of the Act and Board regulations at the Taylor Ridge Landfill. People v. ESG Watts, Inc., PCB 96-107 (Feb. 5, 1998). Specifically, the Board found that Watts violated Sections 9(a), 12(a) and (f), 21 (d)(1) and (2), (o)(5), (6), and (13), and 21.1(a) of the Act (415 ILCS 5/9(a), 12(a) and (f), 21 (d)(1) and (2), (o)(5), (6), and (13), and 21.1(a) (1994))). PCB 96-107 slip op. at 2. Further, the Board found Watts violated 35 Ill. Adm. Code 302.203, 304.120(c), 304.124(a), 304.141(a), 305.120(b), 620.115, 620.301, 620.405, 807.305(a)-(c), 807.312, 807.313, 807.314(e), and 807.623. PCB 96-107 slip op. at 2. All of these violations occurred through Watts' operation of the Taylor Ridge Landfill. PCB 96-107 slip op. at 1.

As a result of the violations, the Board ordered Watts to pay a penalty in the amount of $100,000 and to pay $26,567 in attorney fees. PCB 96-107 slip op. at 1. The Board also revoked the operating permit for the Taylor Ridge Landfill and ordered Watts to stop accepting waste at the landfill. PCB 96-107 slip op. at 54. The Board further ordered that in accordance with supplemental permits issued by the Illinois Environmental Protection Agency (Agency), Watts was to initiate: (1) timely completion of closure and post-closure care; (2) groundwater assessment monitoring; and (3) gas and leachate extraction. *Id*.

On March 20, 1998, the Circuit Court for the Fourteenth Judicial Circuit, Rock Island County, entered an "agreed order" that required Watts to "immediately cease accepting waste for disposal at its Taylor Ridge Landfill until such time, if any, that a stay of permit revocation may be issued by a Court of competent jurisdiction." People's Exh. 1 at 2. On December 29, 1999, the Rock Island County Circuit Court found that Watts had ceased accepting waste on March 20, 1998, and that Watts failed to timely initiate and complete closure activities in accordance with the Board's order in PCB 96-107 particularly with regards to gas and leachate extraction. *Id*. The court further found that "beginning prior to December 1996 and continuing through the present" Watts caused or allowed the emission of landfill gas in violation Section 9(a) of the Act (415 ILCS 5/9(a) (1996)). People's Exh. 1 at 3. The Court ordered Watts to proceed with closure and post-closure care pursuant to the approved closure plan and to obtain a significant

modification permit in order to comply with the regulations. *Id*. The Court further ordered Watts to undertake the required groundwater assessment monitoring, implement and operate the gas extraction system and perform all necessary work to correct erosion and runoff problems. People's Exh. 1 at 4.

On July 2, 1999, the Agency issued a supplemental permit number 1996-136-SP that included a special condition that Watts "initiate implementation of closure plan within 30 days after the site receives its final volume of waste." People's Exh. 3 at 2. An additional supplemental permit number 2000-458-SP was issued on March 2, 2001. Resp. Exh. 22.

## Testimony

At hearing the parties presented both oral and written testimony. In addition one member of the public gave a sworn statement and was cross-examined by the parties. The following discussion summarizes the relevant testimony.

Mr. Joe Whitley, who lives next to the Taylor Ridge Landfill, testified at hearing regarding runoff from the facility and odors. Tr. at 72-115. Mr. Whitley also testified in PCB 96-107. Tr. at 72-73. Mr. Whitley stated that the problems with runoff and odors have become worse since he testified in PCB 96-107. Tr. at 73. Mr. Whitley also provided photographs depicting runoff problems at the site. *See* People's Exh. 21- 26. Mr. Whitley indicated that the odors interfere with the use of his property and require him to use his air conditioner even when the temperature outside would not require air conditioning. Tr. at 88-93.

The written testimony of Joyce Munie, manager of the Illinois Environmental Protection Agency's (Agency) land permit bureau was presented as People's Exhibit 5. Tr. at 75. The subject matter of Ms. Munie's testimony was the regulatory and permit obligations applicable to Taylor Ridge Landfill, the significant modification requirements, and the possible cost of compliance. People's Exh. 5 at 1.

Specifically, Ms. Munie states that Watts was initially required to file a significant modification permit by September 1993. People's Exh. 5 at 2. Watts did file an application in September 1994, however the Agency denied Watts the permit and that decision was affirmed by the Board. *Id*. Ms. Munie states that since that time several applications have been filed but each has been technically deficient. *Id*.

Ms. Munie testified that Watts was required by permit to initiate closure within 30 days of receipt of the final volume of waste. People's Exh. 5 at 2. Ms. Munie indicates that Watts should then have initiated closure in July of 1999. *Id*. Further, Ms. Munie states that by permit Watts was required to install a gas management system and in her opinion the system installed is inadequate to control odors at the site. People's Exh. 5 at 2-3. Regarding the overfill, Ms. Munie states that Watts informed the Agency of the overfill and the waste remains in place. People's Exh. 5 at 3.

Mr. Gary Styzens, chief internal auditor for the Agency, testified concerning the economic benefit Watts incurred by failing to comply with the Act and Board regulations. Tr.

20-70; People's Exh. 20. Mr. Styzens indicated that there are two key items that are looked at when doing an internal audit on economic benefit. Tr. at 27. One item is the noncompliance period and the second item looked at is the delayed or avoided capital expenditures. Tr. at 27-28. Mr. Styzens testified that he understood the noncompliance period was from October 16, 1998 through May 31, 2003. Tr. at 30.

To determine the avoided or delayed capital expenditures, Mr. Styzens used the current cost estimate for closure (Tr. at 30) and deflated the dollars back to 1998 dollars. Tr. at 35; People's Exh. 20. Mr. Styzens then subtracted the inflation and tax savings from the cost estimates. Tr. at 38; People's Exh. 20. The calculated final delayed capital expenditure was $779,354. Tr. at 39; People's Exh. 20. Mr. Styzens then multiplied that number by the prime rate to determine the net benefit. *Id*. The net benefit for the entire noncompliance period was $284,283 according to Mr. Styzens' analysis. Tr. at 40; People's Exh. 20.

Thomas Arthur Jones, an engineer employed by Watts testified. Tr. at 148. Mr. Jones has been employed by Watts as the chief engineer for over ten years. Tr. tat 149-50. Mr. Jones testified that Watts had been attempting to obtain a significant modification permit and had hired two different consulting firms to prepare applications. Tr. 151-59. Watts paid the two firms over $200,000 for their work. *Id*. Mr. Jones also indicated that Watts paid a third firm over $300,000 for work on groundwater assessments and closure plans. Tr. at 161-62. Mr. Jones testified that groundwater assessments were performed pursuant to permit number 2000-077 for a period of time. Tr. at 165. Watts stopped gathering data however because Watts had stopped paying the firm doing the analytical analysis. *Id*.

Regarding the overfill, Mr. Jones stated that Watts sought approval from Rock Island County to leave the overfill waste in place, however, the Rock Island denied approval. Tr. at 160-61. Mr. Jones testified that he believed "everybody" was aware of the overfill in 1998 as there was no attempt on the part of Watts to hide the overfill. Tr. at 180. Mr. Jones testified that removal of the overfill adds over $100,000 to the cost of waste removal. Tr. at 182.

Mr. Jones further testified as to his familiarity with contracts with Resource Technology Corporation (RTC). Tr. at 168-69. Mr. Jones stated that RTC was given exclusive contract rights to allow RTC to extract landfill gas from the landfill. Tr. at 168. Mr. Jones testified that RTC was in bankruptcy but retained possession of the company's assets. Tr. at 168-69, Resp. Exh. 29. Mr. Jones testified that the only temporary measure that could be undertaken to prevent odors was repairing the flare at the site. Tr. at 170.

Mr. Joseph Chenoweth, the landfill operator for Watts, testified that RTC drilled several wells and piped the methane gas from the landfill to an area where it is flared. Tr. at 127-28. Mr. Chenoweth stated that the flare was nonoperational from January 27, 2003, and he notified RTC that the flare was nonoperational. Tr. at 129. RTC has not made any effort to correct the problem, so Mr. Chenoweth investigated the problem and ordered a replacement part. Tr. at 129-30. Mr. Chenoweth stated he did not know about the hearing until the day before so the ordering of the replacement part was not related to the hearing. Tr. at 130-31.

Mr. Chenoweth also indicated that in May of 2003, Watts removed some of the sediment from the ponds. Tr. at 132. He stated he was not attempting to "improve" the area just for the hearing. *Id*. Mr. Chenoweth stated he does his job the "best I can" everyday. *Id*. Mr. Chenoweth indicated that he does site inspections all the time and addresses the sediment when necessary. Tr. at 132-33.

Pursuant to an agreement made at hearing, Watts filed the written testimony of Ken Liss, a director for Andrews Environmental Engineering in Springfield, Illinois (Test.). Tr. at 197, Test. at 1. Mr. Liss indicated that he would be discussing Andrews' efforts to comply with permit requirements as applied to the Taylor Ridge Landfill. Test. at 1. Mr. Liss stated that Andrews had prepared "numerous" documents to address the environmental and regulatory issues at the Taylor Ridge Landfill. Test. at 4. Mr. Liss opined that the potential adverse impacts of relocation of the waste does more harm than good. *Id*. He further stated that field work conducted to date and provided to the Agency "indicates no immediate environmental threats due to the waste identified as overfill." *Id*. Mr. Liss indicated that the technical remedies prepared by Andrews for Watts "appear to be evaluated under a more conservative interpretation of the applicable regulations." *Id*.

Mr. James Bohnsack, a resident of Taylor Ridge, testified at hearing. Tr. at 116-22. Mr. Bohnsack stated that he is concerned that Watts has taken this long to correct the problems at the landfill. Tr. at 117.

## STATUTORY BACKGROUND

Section 9(a) of the Act provides no person shall:

> Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act. 415 ILCS 5/9(a) (2002).

Section 12(a) of the Act provides no person shall:

> Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act. 415 ILCS 5/12(a) (2002).

Section 21 of the Act provides in pertinent part no person shall:

* * *

d) Conduct any waste-storage, waste-treatment, or waste-disposal operation:

(1) without a permit granted by the Agency or in violation of any conditions imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder; provided, however, that, except for municipal solid waste landfill units that receive waste on or after October 9, 1993, no permit shall be required for (i) any person conducting a waste-storage, waste-treatment, or waste-disposal operation for wastes generated by such person's own activities which are stored, treated, or disposed within the site where such wastes are generated, or (ii) a facility located in a county with a population over 700,000, operated and located in accordance with Section 22.38 of this Act, and used exclusively for the transfer, storage, or treatment of general construction or demolition debris;

(2) in violation of any regulations or standards adopted by the Board under this Act; or

* * *

(o) Conduct a sanitary landfill operation which is required to have a permit under subsection (d) of this Section, in a manner which results in any of the following conditions:

* * *

(11) failure to submit reports required by permits or Board regulations;

* * *

415 ILCS 5/21(d) and (o) (11) (2002).

Section 33(c) of the Act provides that:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

i. The character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;

ii. The social and economic value of the pollution source;

iii. The suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;

iv. The technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and

v. Any subsequent compliance. 415 ILCS 5/33(c) (2002).

Section 42(h) of the Act[1] provides:

In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2), (b)(3), or (b)(5) of this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

(1) the duration and gravity of the violation;

(2) the presence or absence of due diligence on the part of the violator in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;

(3) any economic benefits accrued by the violator

(4) the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this Act by the violator and other persons similarly subject to the Act; and

5) the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator. 415 ILCS 5/42(h) (2002).

## COUNT I CLOSURE VIOLATIONS

In count I, the complaint alleges that Watts failed to initiate and complete closure as required by permits issued to Watts and the Board's order in PCB 96-107 in violation of Section 21(d) of the Act (415 ILCS 5/21(d) (2002)). Am. Comp. at 4. The complaint further alleges that this violation has been occurring since at least December 29, 1999. *Id*. The following discussion will summarize the parties' arguments on the count. Then, the Board will discuss the count and make the Board's findings.

### Complainant's Argument

[1] Section 42(h) of the Act (415 ILCS 5/42(h) (2002)) was substantially amended by P.A. 93-575, effective January 1, 2004. The amendments include establishing that the economic benefit from delayed compliance is a minimum penalty. Because the record in this proceeding was complete prior to January 1, 2004, the Board did not use the amendments to Section 42(h) of the Act in determining the appropriate penalty in this proceeding.

The complainant maintains that Watts was required to initiate closure within 30 days after the site received the final volume of waste and the testimony of Ms. Munie demonstrates that Watts failed to comply. Comp. Br. at 17. Complainant takes issue with the testimony of Mr. Jones that seems to imply that closure was initiated on December 18, 2000. Comp. Br. at 17-18. Specifically, complainant notes that the steps taken starting in December, 2000, were requirements in prior permits and were not necessarily steps, which constituted closure activities. *Id*. Complainant points to a February 5, 1998 Board order in which the Board specifically found that Watts failed to comply with the requirements of the groundwater monitoring permit. Comp. Br. at 18, citing ESG Watts, Inc. v. IEPA, PCB 96-233[2] (Feb. 5, 1998). Complainant argues the testimony of Mr. Jones is impeached by the prior factual findings of the Board. *Id.*

## Watts' Arguments

Watts argues that the fact that a significant modification permit addressing the relocation of the overfill has not been issued is relevant to the discussion on this count. Resp. Br. at 6. To support this proposition, Watts points to Ms. Munie's testimony that Watts has not been issued a significant modification permit. Resp. Br. at 7. Watts asserts that until the permits are issued for relocation, Watts cannot know what closure activities will be required and proceeding with relocation without permits would subject Watts to potential enforcement. Resp. Br. at 7.

## Discussion

Based on the Rock Island County court order (People's Exh. 1), the record establishes that the final volume of waste was accepted in March of 1998. Watts admits in the answer that closure did not begin at earliest until December 18, 2000. *See* Answer at 2. Furthermore, the activities undertaken at that time including groundwater assessments, were required by Board order in PCB 96-107 and the Rock Island County court order (People's Exh. 1). Thus, the Board finds that the record establishes that Watts did not initiate closure within 30 days of receiving the final volume of waste. Permit number 1999-136 clearly requires that closure must be initiated within 30 days of receipt of the final volume of waste. *See* People's Exh. 3 at 2. Therefore, the Board finds that Watts violated Section 21(d) of the Act (415 ILCS 5/21(d) (2002)) by failing to initiate and complete closure of the Taylor Ridge Landfill.

Watts asserts in the answer that permit 2000-458-SP allowed for closure to commence within sixty days of the approval of the significant modification permit. Answer at 2. However, the Board cannot find such language in the record. *See* Resp. Exh. 22. Also, permit 2000-458-SP was not issued until March 2, 2001. *Id*. Therefore, even if the permit did contain language providing that closure should be initiated within 60 days of the issuance of a significant modification permit, from at least 1998 until 2001 Watts was out of compliance and a finding of violation would be appropriate.

[2] The Board notes that the complainant's brief cites to ESG Watts, Inc. v. IEPA, PCB 97-210 (Feb. 5, 1998). However, the Board did not enter an order in PCB 97-210 on February 5, 1998 and PCB 97-210 involved a permit appeal not an enforcement action. Therefore it is clear that the complainant's citation is a typographical error and the citation should be to PCB 96-233.

## COUNTS II AND III ODOR AND RUNOFF VIOLATIONS

In counts II and III, the complaint alleges that Watts has caused or allowed emissions of landfill gas and other contaminants in sufficient quantities as to unreasonably interfere with the enjoyment of life or property by neighbors of the landfill. Am. Comp. at 7. The complaint alleges that Watts thereby violated Section 9(a) of the Act (415 ILCS 5/9(a) (2002)). *Id*. In addition the complaint alleges that Watts allowed stormwater runoff and other contaminants to flow into waters of the State in violation of Sections 12(a) and 21(d) of the Act (415 ILCS 5/12(a) and 21(d) (2002)). Am. Comp. at 9. The following discussion will summarize the parties' arguments on the counts. Next, the Board will discuss the counts and make the Board's findings.

### Complainant's Argument

Complainant argues that the testimony of Mr. Whitley in this proceeding clearly supports another finding of violation. Comp. Br. at 16. The complainant provided a copy of Mr. Whitley's testimony from PCB 96-107 (*see* People's Exh. 18). The complainant points out that Mr. Whitley's testimony in this proceeding asserts that the problems have "gotten worse" over the last six years. Comp. Br. at 16, citing Tr. at 73. Complainant also points to the photographs (People's Exh. 21-26) as further support that Watts should be found in violation.

### Watts' Arguments

Watts argues that RTC has exclusive rights to extract landfill gas from the Taylor Ridge landfill. Resp. Br. at 8. Watts asserts that the bankruptcy court stay on RTC's bankruptcy petition is a major hurdle to resolving the odor problem. Resp. Br. at 9. Watts has actively sought to compel RTC to assume or reject the contracts between Watts and RTC. Resp. Br. at 8. Watts argues that short of terminating RTC's rights, the only way to alleviate odor problems was to repair the flare. *Id*. Watts maintains that the problems were reported to RTC and ultimately Watts repaired the flare. Resp. Br. at 8-9.

### Complainant's Reply

In the reply, complainant maintains that RTC's failure to perform gas management activities does not relieve Watts of the liability and the circuit court agrees. Reply at 4, citing People's Exh. 1. Complainant concedes that RTC's contractual rights may be an assets in bankruptcy, however, Watts permit obligation to control emissions does not necessarily conflict with RTC's rights. Reply at 4-5. Complainant asserts that in fact an argument could be made that proper gas management could act to preserve RTC's rights. Reply at 5. In any event, the complainant asserts that the bankruptcy of a third party does not excuse Watts' failure to comply with prior Board and court orders. *Id*.

### Discussion

Watts seems to concede that there are both odor and runoff problems at the landfill. Watts asserts that the responsibility for odor problems lies with RTC not Watts. The Board

agrees that RTC may share some responsibility; however, the facts establish that Watts has been ordered by both the Board and the Rock Island circuit court to implement a gas extraction system. *See* PCB 96-107, *slip op*. at 54; People's Exh. 1. RTC's role in the odor problem may mitigate potential penalties, but RTC's role does not absolve Watts of responsibility to properly maintain the Taylor Ridge Landfill in compliance with the Act (415 ILCS 5/9(a) and 21(d) (2002)). Therefore, the Board finds that Watts violated Sections 9(a) and 21(d) of the Act (415 ILCS 5/9(a) and 21(d) (2002)) by failing to implement a gas management plan and causing, threatening or allowing the emission of gas to cause air pollution.

Regarding the issue of runoff, Watts presented testimony that the landfill operator does the "best he can" to correct problems at the landfill. *See* Tr. at 132. The Board notes that the speed with which problems are corrected may mitigate penalties for violations of the Environmental Protection Act, but correction of the problems does not mean the violations did not occur. The Board finds that the record in this case clearly establishes that runoff is occurring from the landfill. Therefore, the Board finds that Watts violated Sections 12(a) and 21(d) of the Act (415 ILCS 5/12(a) and 21(d) (2002)) by causing, threatening, or allowing discharge of any contaminant so as to cause or tend to cause water pollution, and failing to implement a stormwater control plan. Am. Comp. at 9.

## COUNT IV OVERFILL VIOLATIONS

In count IV, the complainant alleges that prior to March 1998, Watts deposited approximately 34,100 cubic yards of waste in areas of the landfill exceeding the maximum permitted level of 758 feet mean sea level in violation of Section 21(d) of the Act (415 ILCS 5/21(d) (2002)). Am. Comp. at 10. In the answer, Watts admits that an overfill exists at the facility. However Watts asserts a claim that any violation for overheight of waste occurring prior to December 29, 1999,[3] is precluded by the doctrine of *res judicata*. Answer at 4-5; Resp. Br. at 5. The following discussion will outline the parties' arguments on the count. Then, the Board will discuss the count and make the Board's findings.

### Complainant's Argument

The complainant argues that the doctrine of *res judicata* does not apply in this instance. *Res judicata* prohibits a cause of action from being relitigated by the same parties or those in privity with them in a subsequent proceeding before the same or any other tribunal. Comp. Br. at 9, citing People v. Kidd, 398 Ill. 405 (1947). The complainant states that the Illinois Supreme Court has more recently summarized the essential elements of *res judicata* as:

1. a final judgment on the merits rendered by a court of competent jurisdiction;

2. an identity of cause of action;

[3] This is the date on which an order was entered by the Rock Island County Court. People's Exh. 1.

3. an identity of parties or their privies. Comp. Br. at 9, citing People v. Progressive Land Developers, Inc., 151 Ill. 2d 294 (1992).

Complainant maintains that the overfill violation is not the "same claim, demand or cause of action" adjudicated previously. Comp. Br. at 9. Further, complainant asserts that the overfill violation is not one of the "grounds of recovery or defense which might have been presented" in the previous prosecution. *Id*. Specifically, complainant argues that the commonality between the prior cases is merely that the complainant is alleging environmental violations against Watts and that is not sufficient to invoke *res judicata*. Comp. Br. at 10. The complainant argues that the overfill violation was not one of the grounds underlying the previously adjudicated violations and therefore *res judicata* is not applicable. *Id*.

Complainant further argues that Watts assumed an evidentiary burden that Watts failed to satisfy. Comp. Br. at 11. Complainant argues that the documented existence and extent of the overfill was not provided to the Agency until after the entry December 29, 1999 court order. *Id*. Complainant agrees that the issue of overfill did come "to light" during the preceding in PCB 96-107. *Id*. However, complainant notes that the Board denied a motion to conform pleadings to the proof because the evidence was lacking. Comp. Br. at 11-12, citing PCB 96-107. Furthermore, complainant maintains that the testimony in this preceding establishes that the overfill was not "quantified" until January 29, 2001. Comp. Br. at 13.

The complainant also argues that the Board cannot exercise equitable powers in order to defeat the claim in count IV of the complaint through a finding of *res judicata*. Comp. Br. at 13-14. The complainant acknowledges that the Board has made findings of *res judicata* in the past including in PCB 96-107; however, complainant maintains that ruling was erroneous. Comp. Br. at 14. In support of this argument, complainant asserts that Sections 31.1(g), 33(d), and 42(d) of the Act (415 ILCS 5/31.1(g), 33(d), and 42(d) (2002)) "acknowledges" that the Board lacks the authority to enforce Board orders by providing for enforcement through filing of a civil action in the circuit courts to obtain injunctions and collect penalties. Comp. Br. at 10. The complainant maintains that "in addition to the absence of expressly granted authority to enforce its own orders, the administrative powers of the Board are strictly delineated by specific statutory provisions." *Id*. The complainant asserts that the Board "is simply unable to function as a court does." Comp. Br. at 10-11.

## Watts' Arguments

Watts argues that the December 19, 1999 order is silent regarding the overfill. Resp. Br. at 4. Further Watts argues that the complainant attempted to add the overfill violation to the case before the Board in PCB 96-107 but was unsuccessful. *Id*. Watts asserts that since 1994 submittals to the Agency demonstrated that the maximum height of the landfill was 775.2 feet. *Id*. Thus, Watts argues there "can be no doubt" that the Agency knew there was an overfill in 1999. Resp. Br. at 5. Watts asserts that *res judicata* includes not only issues that were raised but issues that could be raised. *Id*.

Watts also argues that the complainant ignores the evidence and "refuses to recognize" that the complainant plays a role in the "continuing controversy" in this case. Resp. Br. at 3.

Watts asserts that complainant draws no distinction between the facts surrounding the Taylor Ridge facility and the Viola facility also owned by Watts. *Id*. Specifically, Watts argues that the differences in the two facilities require Watts to obtain a permit from the Agency before Watts can move the overfill or else Watts would risk potential prosecution for proceeding without a permit. Resp. Br. at 4.

Watts argues that the evidence shows that in 1999 and through July 5, 2001, Watts has attempted to obtain approval for the relocation of overfill. Resp. Br. at 5. Watts asserts that $657,620.24 has been expended in engineering fees in an attempt to gain approval of a significant modification permit. Resp. Br. at 6. Further, Watts maintains that the Agency reviews Watts' application "under more conservative interpretations of the regulations than applications from other persons." *Id*. Watts admits that to date no significant modification permit has been issued which would allow for the relocation of the overfill. *Id*.

## Complainant's Reply

In the reply, complainant argues that a proposed court order, sanctioning the removal of the overfill, was proposed to Watts and Watts failed to reply to the proposed order. Reply at 2, citing People's Exh. 10 and 11. Complainant maintains that Watts should not be able to "hide behind its own inaction" and now argue that Watts sought to avoid enforcement for acting without a permit. Reply at 2.

The complainant further states that the development permit imposed the permitted maximum elevation and final contours for the Taylor Ridge Landfill and the previously approved closure plans. Reply at 2. Complainant argues that activities consistent with those permits should not be considered as a "modification" requiring further permitting. Reply at 2. The complainant opines that Watts is expressing concern about needing a permit because in the past Watts had sought to leave the overfill in place in order to avoid the relocation costs estimated to exceed $100,000. Reply at 2, citing People's Exh. 4.

Concerning the application of *res judicata* to this count, complainant states in the reply that Watts has failed to satisfy the evidentiary burden. Reply at 2. Watts has failed to prove that the Agency had sufficient knowledge of the overfill violation prior to December 29, 1999, according to the complainant. Reply at 3. Complainant argues that Watts relies on a drawing submitted with the significant modification permit in November 1996 for the argument that the Agency knew of the overfill and yet the Board found this drawing insufficient evidence in PCB 96-107. *Id*. Complainant argues that the Board must reject this argument. Reply at 4.

## Discussion

Before addressing the merits of Watts' argument that *res judicata* bars a finding that the Taylor Ridge landfill overfill is a violation of the Act, the Board will address the complainant's assertion that the Board is barred from considering a defense of *res judicata* by statute. Clearly, complainant's assertion is without merit. The Board is a creature of statute, as complainant points out, and the Board has only the authority granted by statute. However, in citing to authority granted by statute, complainant overlooks pertinent statutory provisions.

The Board is clearly authorized by Section 5(d) of the Act to "conduct proceedings upon complaints charging violations of the Act." 415 ILCS 5/5(d) amended by P.A. 93-509, eff. Aug. 11, 2003. Section 26 of the Act (415 ILCS 5/26 (2002)) grants the Board the authority to adopt procedural rules necessary to accomplish the purposes of the Act. The Board has adopted procedural rules for conducting proceedings on complaints and the procedural rules set forth requirements for pleadings and discovery. *See* 35 Ill. Adm. Code 103. Specifically, the Board has adopted procedures for affirmative defenses and *res judicata* is an affirmative defense as the complainant notes. *See* 35 Ill. Adm. Code 103.204(d). Thus, the Board has the authority to adopt rules which allow the Board to hear arguments regarding affirmative defenses, and simply because *res judicata* is a principal rooted in equity does not mean the Board cannot entertain an argument on the principle.

The next issue for the Board to consider is whether *res judicata* bars enforcement for overfill at the Taylor Ridge landfill prior to December 29, 1999. The Board finds that Watts has not established that the doctrine of *res judicata* applies in this instance. First and foremost, there has been no final judgment on the merits of this issue. The mere fact that the complainant might have known about the overfill prior to the court's order on December 29, 1999, is not sufficient to invoke the doctrine of *res judicata*. There are numerous reasons a prosecutor might wait to prosecute a case and those considerations are within a prosecutor's discretion.

The Board also notes that even if the court or Board had previously found a violation for overfill, Watts would still be in violation for the period of time after the entry of the court or Board order until the violation was corrected. Thus, the doctrine *res judicata* would have only a limited application in this case if the doctrine were applicable.

In conclusion, the Board finds that the Board may consider the doctrine of *res judicata* when appropriate. However in this case, the Board finds that *res judicata* does not apply and Watts violated Section 21(d) of the Act (415 ILCS 5/21(d) (2002)) by depositing waste over the maximum permitted height limit and the waste remains in the overfill areas of the landfill.

## COUNT V

In count V, the complaint alleges that Watts failed to provide quarterly groundwater reports for the third and fourth quarters of 2001 and the first and second quarters of 2002 in violation of Sections 21(d)(1) and (o)(11) of the Act (415 ILCS 5/21(d)(1) and (o)(11) (2002)). Am. Comp. at 12. Watts admits the violations contained in count V in the answer. Answer at 4. Therefore, the Board finds that Watts violated Sections 21(d)(1) and (o)(11) of the Act (415 ILCS 5/21(d)(1) and (o)(11) (2002)) by failing to submit quarterly groundwater reports for four quarters.

## PENALTY

The following discussion will begin with general comments on penalties in Board cases. Then, the Board will discuss the factors from Sections 33(c) and 42(h) of the Act (415 ILCS 5/33(c) and 42(h) (2002)) which must be considered when determining the appropriate penalty

before the Board. Finally, the Board will assess the appropriate penalty and explain the Board's reasons for the penalty amount.

Having found violation, the Board must now determine the penalty to be assessed. In determining the appropriate civil penalty, the Board considers the factors set forth in Sections 33(c) and 42(h) of the Act. People v. Gilmer, PCB 99-27 (Aug. 24, 2000). The Board must take into account factors outlined in Section 33(c) of the Act in determining the unreasonableness of the alleged pollution. Wells Manufacturing Company v. Pollution Control Board, 73 Ill. 2d 226, 383 N.E.2d 148 (1978). The Board is expressly authorized by statute to consider the factors in Section 42(h) of the Act in determining an appropriate penalty. In addition, the Board must bear in mind that no formula exists, and all facts and circumstances must be reviewed. Gilmer PCB 99-27, slip. op. at 8.

The Board has stated that the statutory maximum penalty "is a natural or logical benchmark from which to begin considering factors in aggravation and mitigation of the penalty amounts." Gilmer, PCB 99-27, slip. op. at 8, citing IEPA v. Allen Barry, individually and d/b/a Allen Barry Livestock, PCB 88-71 (May 10, 1990), slip. op. at 72. The basis for calculating the maximum penalty is contained in Section 42(a) and (b) of the Act 415 ILCS 5/42(a) and (b) (2002). Section 42(a) provides for a civil penalty not to exceed $50,000 for violating a provision of the Act and an additional civil penalty not to exceed $10,000 for each day during which the violation continues. By multiplying the number of sections of the Act that respondents are alleged to have violated (eight) a potential civil penalty of $400,000 is reached. Add to that sum, a civil penalty of $10,000 a day for each day of noncompliance with those sections (1097)[4], the total maximum penalty that could be assessed against respondents is over $11,370,000. The complainant requests an imposition of civil penalties in the amount of $1,000,000.

## Section 33(c) Factors

### The Character and Degree of Injury to, or Interference With the Protection of the Health, General Welfare and Physical Property of the People

The potential for pollution of waters of the State, both groundwater and surface water, at this site establishes an interference with the protection of health for the people. Furthermore, the testimony establishes that both the runoff and odors from the facility interfere with the neighbors' enjoyment of their property. Finally, the failure to properly close a landfill could cause additional injury to the health and welfare of the people. The Board finds that this factor must be weighed against Watts.

### The Social and Economic Value of the Pollution Source

Watts argues that the facility is no longer a "going concern" and is not generating income. Resp. Br. at 10. However, the facility was a "going concern" at one time. Therefore, the Board finds that this factor does not affect the violations in this case.

[4] The Board is using the most conservative calculations here and starts on December 29, 1999, and does not include any of 2003.

**The Suitability or Unsuitability of the Pollution Source to the Area in Which it is Located, Including the Question of Priority of Location in the Area Involved**

The Board finds that this factor also has no affect on the penalty amount in this case. The landfill was sited many years ago and now that it is not accepting waste, the Board will not revisit the suitability of its location.

**The Technical Practicability and Economic Reasonableness of Reducing or Eliminating the Emissions, Discharges or Deposits Resulting from Such Pollution Source**

Proper closure of a landfill, including groundwater monitoring, stormwater control and gas management is technically practicable and economically reasonable. Therefore, the Board finds that this factor aggravates the violation.

**Any Subsequent Compliance**

The record does indicate that Watts has attempted to address the issues of the overfill and a significant modification permit. However, Watts has not yet achieved compliance with the Act. The Board finds that this factor weighs against respondents.

**Section 42(h) Factors**

Both parties have presented arguments which relate to the Board consideration of the factors set forth in Section 42(h) of the Act (415 ILCS 5/42(h) (2002)). The Board will summarize the arguments and then discuss the Board's finding on the factors.

**Complainant's Argument**

Complainant argues that Watts has benefited economically from the delay in undertaking closure activities. Comp. Br. at 18. Complainant points to Mr. Styzens' testimony that the minimum economic benefit for the delay in initiation of closure activities is $284,383. Complainant concedes that the landfill is no longer generating revenue and that Watts has expended resources for attorney's fees and consulting fees. Comp. Br. at 18. However, complainant points out funding has been found for these activities while compliance and corrective action as well as court ordered payments have been delayed indefinably. *Id*.

Complainants further argue that the calculations used to determine economic benefit for the delay in initiation of closure activities is "quite conservative and fair" because the current closure cost estimates used are those provided by Watts and the estimates have not yet been approved. Comp. Br. at 19. Further, the calculations reflect deflated dollars and provided the most significant tax break possible. *Id*. Finally, the prime lending rates were utilized even though prime rate may not have been available and the economic benefit did not include calculations for failure to properly maintain the gas collection system or provide groundwater-monitoring reports. *Id*.

**Watts' Arguments**

Watts takes issue with the economic benefit as calculated by Mr. Styzens. Resp. Br. at 10. Watts argues that "ignoring" the problem that Watts does not know what closure activities must be performed, Mr. Styzens' testimony is based on flawed assumption, which adds 610 days to the period of noncompliance. *Id*. Watts argues that several of Watts' exhibits indicate that the closure for the activities would require 50 weeks after approval. *Id*. In contrast, Watts alleges that Mr. Styzens relied on statements from Agency attorneys regarding the schedule for closure and that schedule indicated 211 days was what was needed. *Id*.

Watts also argues that the complainant seeks to "continually paint" Watts as a "recalcitrant who has the ability but not the desire to comply with the law and is always crying foul at the hands of the People." Resp. Br. at 11. Specifically, Watts argues that the facility is no longer operating and Watts has no source of income. Resp. Br. at 10. Watts asserts that the complainant has presented no evidence regarding the ability of Watts to pay fines or pay for compliance. *Id*. Watts also points to the agreement made between complainant and Watts to pay $1.4 million in penalties and fines (*See* Resp. Br. Attachment) and argues that the complainant should have introduced evidence of other attempts by Watts to pay penalties by using the trust fund posted as financial assurance for the closure/post-closure care of the landfill. Resp. Br. at 11. Watts "hopes" that an examination of the facts by the Board will dispel the factual "perspective" offered by complainant. *Id*.

**Discussion**

Watts has presented several factors in this proceeding which Watts hopes will mitigate the penalty in this proceeding. In essence, those factors coalesce into two categories. First, Watts argues that the violations are not really Watts' fault because if the Agency would issue a significant modification permit all the problems at the landfill would be solved. Resp. Br. at 6, 7, 12. The second category is that Watts doesn't have any income and therefore cannot pay penalties. Resp. Br. at 6. The Board will discuss each of those two categories below. Then the Board will discuss the factors in Section 42(h) of the Act (415 ILCS 5/42(h) (2002)).

**Significant modification permit.** Section 39(a) of the Act grants the Agency the authority to issue permits and impose conditions. 415 ILCS 5/39(a) (2002). Pursuant to Section 40 of the Act (415 ILCS 5/40 (2002)), the Board reviews the Agency decision upon appeal. In a permit appeal, the petitioner bears the burden of proving that the application, as submitted to the Agency, would not violate the Act or the Board's regulations. This standard of review was enunciated in Browning-Ferris Industries of Illinois, Inc. v. PCB, 179 Ill. App. 3d 598, 534 N.E. 2d 616, (2nd Dist. 1989). Thus, it is the obligation of Watts to provide a significant modification permit application to the Agency which meets the requirements of the Act and Board regulations. If the application does not meet the requirements of the Act and Board regulations, the Agency cannot issue a permit and the Board cannot overturn the Agency's decision.

Watts argues that Agency reviews the application submitted by Watts "under more conservative interpretations of the regulations" from the applications of other persons. Resp. Br. at 6. However, that argument is specious. As indicated above, the Act and case law regarding

permits is well settled. Even if the Agency were reviewing Watts' application more conservatively, the fundamental principle is that a permit cannot violate the Act or Board regulations. Any permit application that fails that standard cannot be approved. Watts must provide an application that meets the requirements of the Act and Board regulations; only then can a significant modification permit can be issued.

Watts also implies that the overfill at the Taylor Ridge landfill should be left in place and a Board or court order would protect Watts if Watts left the waste in place. Resp. Br. at 2; Tr. at 182; Test. at 4. The Board is not convinced that the overfill should be left in place. First, Watts does not make the specific argument that the waste should be left in place. Second, Taylor Ridge Landfill was not sited by Rock Island County for the current height of the facility. *See* Tr. at 160-61. The Environmental Protection Act clearly authorizes the local governing body to make the initial determination when siting a landfill (*see* 415 ILCS 5/39.2 (2002)).

**Ability to Pay.** Watts argues that there is no evidence regarding the ability of Watts to pay fines or for compliance in this record. Resp. Br. at 10. Watts argues that the facility is closed and Watts has no source of income. *Id*. The Board is not convinced by Watts' argument. The Taylor Ridge Landfill may indeed no longer be a source of income; however, the facility was a "going concern" at one time.

**Section 42(h) factors.** The factors in Section 42(h) of the Act (415 ILCS 5/42(h) (2002) include the duration and gravity of the violation, the presence or absence of due diligence in attempting to comply with the Act, any economic benefit accrued, the amount of penalty that will deter future violations, and the number, proximity in time, and gravity of previously adjudicated violations. The Board will discuss each of the factors in detail below.

***Duration and Gravity of the Violation.*** The violations adjudicated in this proceeding have occurred over three years and include violations for runoff, odor, overfill, failure to properly close and failure to report groundwater monitoring results. Testimony from a neighbor indicates that the odor from the property has interfered with the enjoyment of his property. Clearly the duration and gravity of the violations is extensive. The Board finds that consideration of this factor warrants a substantial penalty.

***Due Diligence.*** The Board acknowledges that Watts is taking steps to comply with the Act and Board regulations; however, those steps have not yet achieved compliance. The Board finds that consideration of this factor mitigates against assessing a maximum penalty in this case.

***Economic Benefits Accrued.*** Clearly Watts has benefited economically and the conservative estimate for delayed compliance on count I is $284,283. That estimate does not include the savings Watts has enjoyed by failing to comply with the reporting requirements (count V) or the savings from leaving the overfill in place over the last three years (count IV). Furthermore, the testimony of Watts' employee is that analytical testing on groundwater is no longer taking place. *See* Tr. at 165. Thus, Watts has achieved a substantial economic benefit by not complying with the Act. The Board finds that consideration of this factor justifies a substantial penalty in this case.

***Penalty Which Will Serve To Deter Further Violations.*** Watts has been penalized by the Board and the courts in the past and yet Watts continues to violate provisions of the Act. The history of noncompliance at the Taylor Ridge Landfill as well as two other landfills owned by Watts is well documented and the Board recited that history in PCB 96-107. *See* PCB 96-107 *slip op* 9-11. Furthermore, Watts has only recently agreed to pay accrued penalties and interest in a number of cases. *See* Resp. Br. at Attach. In light of this history, a substantial penalty is clearly necessary to deter Watts from further violations of the Act. Therefore, the Board finds that consideration of this factor demands a substantial penalty be assessed.

***The Number, Proximity In Time, And Gravity Of Previously Adjudicated Violations Of This Act By The Violator.*** Watts has been previously found in violation for numerous earlier periods (*see* PCB 96-107). In addition, Watts has a long history of past violations and only recently has Watts agreed to pay the fines. The history of noncompliance at the Taylor Ridge Landfill as well as two other landfills owned by Watts is well documented and the Board recited that history in PCB 96-107. *See* PCB 96-107 *slip op* 9-11. To briefly summarize the past noncompliance, Watts has been found to have violated Section 21 of the Act (415 ILCS 5/21 (2002)) in over 19 administrative citation cases. *Id*. Furthermore, the Board has found various violations of the Act in PCB 96-107, People v. ESG Watts, PCB 96-233 (Feb. 5, 1998), People v. ESG Watts, PCB 96-237 (Feb. 19, 1998). In summary, Watts has an extensive history of noncompliance with the Act and Board regulations. Therefore, the Board finds that consideration of this factor requires that a substantial penalty be assessed.

## Penalty Discussion

The Board is authorized by the Act (415 ILCS 5/42 (2002)) to levy financial penalties to aid in enforcement of the Act. In the instant case, the Board has found numerous violations of the Act and Board regulations at the Taylor Ridge landfill owned by Watts. The Board also notes that we have previously adjudicated violations and levied fines at the same facility, as well as other facilities owned by Watts. *See* ESG Watts v. PCB, 282 Ill. App. 3d 43, 668 N.E.2d 1015 (4th Dist. 1996); People v. ESG Watts, PCB 96-233 (Feb. 5, 1998), People v. ESG Watts, PCB 96-237 (Feb. 19, 1998); and PCB 96-107. Watts prior history of noncompliance with the Act does not justify a minimal penalty in the instant case.

The Board has previously penalized two dollars for each dollar gained through noncompliance with the Act and Board regulations. ESG Watts v. PCB, 282 Ill. App. 3d 43, 668 N.E.2d 1015 (4th Dist. 1996); People v. ESG Watts, PCB 96-233 (Feb. 5, 1998), People v. ESG Watts, PCB 96-237 (Feb. 19, 1998). The penalties assessed in those cases ranged from $60,000 in ESG Watts v. PCB, 282 Ill. App. 3d 43, 668 N.E.2d 1015 (4th Dist. 1996) to $680,200 in People v. ESG Watts, PCB 96-233 (Feb. 5, 1998). In addition to penalties, the Board, in PCB 96-107, revoked the operating permit for Taylor Ridge Landfill. The Board noted in that opinion that a larger penalty might be warranted, however given the decision to revoke the permit, the Board fined Watts only $100,000. PCB 96-107 *slip op* at 53.

The testimony of Agency employee, Mr. Styzens, suggests that Watts in this instance has gained an economic benefit of over $284,000 by not initiating closure of the landfill (count I).

Based on past Board precedent, the Board finds that a penalty of $600,000 is appropriate for the finding of violation on count I alone.

The Act authorizes the Board to levy a penalty of several million dollars for the violations found in counts II and III (odor and water pollution) due to the length and ongoing nature of those violations. The record also indicates that moving the overfill to correct the violation in count IV will cost over $100,000, and the failure to do so has financially benefited Watts. Finally, as indicated above, Watts has also realized a savings by not complying with groundwater reporting requirements for four quarters in count V. While the Board has authority under the Act to levy a fine of several million dollars for the violations adjudicated in counts II, III, IV, and V, the Board also notes that Watts has attempted to comply with the Act, and this mitigates against a maximum penalty. However, Watts' extensive record of noncompliance indicates that a minimal penalty will not achieve compliance with the Act. Therefore, the Board finds that in, light of Watts' past history of noncompliance, a penalty of $400,000 for the violations in counts II, III, IV, and V is appropriate.

## Penalty Summary

In this proceeding, the Board has found that Watts violated numerous Illinois environmental laws and regulations over three years at the Taylor Ridge Landfill. These violations include runoff, odor, overfill, failure to properly close, and failure to report groundwater monitoring results. The testimony of neighbor, Mr. Whitley, indicated that odor from the landfill did not allow him to enjoy his property, and that he witnessed runoff from the landfill entering the waters of the State. The failure of Watts to provide timely groundwater reports deprives the State of vital information on the potential threat to the environment. The Board has found that the duration and gravity of the violations, the economic benefits accrued to Watts, the penalty amount necessary to deter future violations, and the number, proximity in time, and gravity of previously adjudicated violations of the Act by Watts, all justify a substantial penalty. Although the Board is authorized by the Act to levy a fine of several million dollars for these violations, the Board notes that Watts' attempts at compliance mitigates against the maximum penalty. Therefore, the Board finds that after review of the 33(c) and 42(h) factors, a penalty of 1,000,000 dollars is warranted in this case.

## ATTORNEY FEES

Section 42(f) of the Act allows the Board to assess attorney's fees where the violator has committed "willful, knowing or repeated violations of the Act." 415 ILCS 5/42(f) (2002). The complainant asks for reasonable fees and costs and asks for leave to file an affidavit as to costs. Comp. Br. at 23. The Board finds that awarding of attorney fees is appropriate and directs the complainant to file an affidavit within 35 days of this order. Watts may respond to the affidavit of costs within 14 days of receipt.

## CONCLUSION

The Board finds that Watts has violated numerous sections of the Act by failing to timely initiate closure of the Taylor Ridge Landfill located in Rock Island County. Further, Watts has

placed waste in unpermitted portions of the landfill by placing waste over the permitted height of the landfill. Watts has also failed to timely submit groundwater assessment reports. Because of Watts past history, the gravity and ongoing nature of these violations, and the need to deter further violations, the Board fines Watts $1,000,000. The Board further orders Watts to pay attorney fees in the amount to be determined after complainant files an affidavit of costs. Upon receipt of the affidavit of attorney fees and response the Board will enter a final order in this proceeding directing the payment of the assessed penalty and attorney fees.

This interim opinion constitutes the Board's findings of fact and conclusions of law.

## ORDER

1. The Board finds that respondent, ESG Watts, Inc, has committed the violations as alleged in the complaint.

2. The Board hereby assesses a penalty of one million dollars ($1,000,000) against respondent.

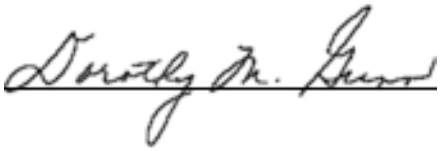
3. Complainant shall file an affidavit of attorney fees no later than 35 days from this order. Respondent may respond within 14 days of the receipt of the affidavit of attorney fees.

4. Respondent shall cease and desist from violations of the Act and the Board's regulations.

IT IS SO ORDERED.

Board Member T.E. Johnson dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above interim opinion and order on January 8, 2004, by a vote of 4-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board