

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
2 STATE OF ILLINOIS
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4
5 PEOPLE OF THE STATE OF ILLINOIS,)
6 Complainant,)
7) PCB 96-233
8) (Enforcement - Land)
9))
10 Respondent.)

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14 The following is the transcript of a hearing held
15 in the above-entitled matter, taken before me, Angela M.
16 Jones, CSR-RPR, a Notary Public in and for the State of
17 Illinois, before DEBORAH L. FRANK, Hearing Officer, at the
18 Mercer County Courthouse, 100 Southeast Third Street, in the
19 City of Aledo, County of Mercer, and State of Illinois, on
20 the 13th day of March, A.D. 1997, commencing at 10:30 a.m.

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1 HEARING TAKEN BEFORE:

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ILLINOIS POLLUTION CONTROL BOARD
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On Behalf of the Respondent.

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1 HEARING OFFICER: Good morning and welcome to the
2 hearing in People of the State of Illinois v. ESG Watts,
3 Inc., PCB 96-233.

4 As I think everyone is aware, at least the
5 attorneys are aware, the board did grant partial summary
6 judgment last week on some of the counts. So this hearing
7 will focus on the remaining issues in the complaint and the
8 amended complaint.

9 I'll note for the record there are members of the
10 public present. If any of you wish to speak, you may come
11 forward and be sworn in and make a statement on the record.
12 However, you are subject to cross-examination by the
13 attorneys. Don't let that scare you. If you want to say
14 something, come on up. What I will do is probably ask if
15 there's anyone who's interested during or after breaks or if
16 we take a later break -- I don't know that we're going to
17 take a lunch break, but at least I will ask if there's
18 anyone who's interested.

19 If anybody who's here wants to make a statement on
20 the record but has to leave, please let me know. We'll get
21 you in before you go. Otherwise, we will just go ahead and
22 proceed.

23 If the attorneys want to go ahead and make an
24 appearance on the record.

1 MS. McBRIDE: Jane McBride for the People, Illinois
2 Attorney General's Office.

3 MR. DAVIS: Thomas Davis, Illinois Attorney General's
4 Office.

5 MR. WOODWARD: Larry A. Woodward, Corporate Counsel,
6 ESG Watts, Inc.

7 HEARING OFFICER: Ms. McBride, do you have an opening
8 statement?

9 MS. McBRIDE: Yes, I do.

10 HEARING OFFICER: Please proceed unless there are any
11 preliminary matters.

12 MR. WOODWARD: In response to the granting of the
13 summary judgment, I believe that that takes care of some of
14 the remaining issues that they claim are at issue. If you
15 look at the summary judgment, as to Count 2, it indicated
16 that Section 12(a) and 21(d)(2) of the Act were still at
17 issue as to Count 2. But Count 3 finds a violation of
18 Section 12(a) and 21(d)(2) based upon the same set of facts,
19 so I don't believe you can find us responsible with the same
20 set of facts under two counts.

21 HEARING OFFICER: As you know, the hearing officer does
22 not make the ultimate determination in the case. I am left,
23 as you are, with what the board order is. Because the board
24 order does ask us to address those, you know, that's up to

1 the State, whether they're going to or not. But the board
2 order makes it clear that that information would be relevant
3 at hearing.

4 My suggestion would be to put whatever your
5 arguments are into your post-hearing brief.

6 MR. WOODWARD: Okay. Let's see. There was an evidence
7 deposition taken of a Mr. Liss; and in the course of that
8 deposition, he relied on certain reports that were
9 purportedly presented to me after he had completed his
10 deposition and left for the day.

11 In looking at those, though, his testimony says
12 that the samples were gathered in August of 1996; and what I
13 was presented showed something that was gathered by the
14 agency in June of '96. So I was never presented with
15 anything that he relied upon in his deposition.

16 I had objected in the deposition to his testimony
17 about that, but I'm raising it as a preliminary matter
18 because I intend to object to the entry of that evidence
19 deposition altogether.

20 HEARING OFFICER: Okay. At this time, they have not
21 moved the entry of that exhibit. Why don't we go ahead and
22 proceed; and if they move the entry of the exhibit, then we
23 will deal with it at that time.

24 Is there anything further?

1 Please, continue.

2 MS. McBRIDE: Thank you.

3 Miss Hearing Examiner, Mr. Woodward, we are here
4 today to address the violations remaining after the board
5 granted the People's motion for summary judgment last week.
6 The violations left for hearing today include water
7 pollution, exceedances of groundwater standards, conducting
8 waste disposal operations in violation of the board's
9 regulations, failure to upgrade financial assurance to meet
10 the cost estimate approved for the September 6, 1996,
11 supplemental permit, failure to provide final cover at the
12 landfill, and exceedance of final contours.

13 The groundwater and surface water pollution
14 violations have been addressed in an evidence deposition, as
15 just mentioned, of Ken Liss, IEPA groundwater unit manager,
16 taken on January 8, 1997. We will move for entry of that
17 deposition first. We will then address the final contour
18 and final cover violations with testimony from two Illinois
19 EPA environmental protection specialists.

20 The rest of the hearing will pertain to the most
21 recent financial assurance violations, economic benefits,
22 and the decisions that have been made regarding the loss of
23 the Viola Landfill and money. Some of this testimony will
24 address what are known as 33(c) and 42(h) factors which, in

1 accordance with the Environmental Protection Act, are the
2 factors the board considered when setting the penalty.

3 We will address, in particular, the duration of
4 violations, the absence of due diligence, economic benefits
5 accrued to the Watts company, and the potential of injury to
6 health and the environment.

7 ESG Watts is no stranger to the board. All three
8 of the company's Illinois landfills have been the subject of
9 pending actions before the board. The Watts landfills have
10 been the subject of Circuit Court enforcement actions, as
11 well as numerous administrative citation orders. Many of
12 these actions, past and present, involve the very same
13 violations that are at issue again here today.

14 Even while this action was pending, this one
15 before the board today, a new permit was issued to Watts
16 September 6, 1996, for the Viola Landfill which included new
17 cost estimates. Despite the pendency of this action, Watts
18 has, to this day, refused to fund the Viola Landfill
19 Financial Assurance Trust Fund so as to meet the new cost
20 estimates of the September 6, 1996, permit.

21 The relief the People seek today includes complete
22 closure of the Viola Landfill which would require ESG Watts
23 to move the waste which exceeds the final contours or site
24 the landfill as a new pollution-control facility. Complete

1 closure would also entail upgrading the final cover so it
2 may be certified by the Illinois EPA. Complete closure
3 would also mean ESG Watts must address the issue of
4 detection of organic contaminants in the groundwater.

5 The People also seek relief in the form of a fully
6 funded financial assurance trust fund, upgraded to cover the
7 current cost estimates.

8 These enforcement actions against Watts have been
9 expensive in both time and money. They are horribly
10 repetitive. The same violations have reoccurred among the
11 three landfills and at each landfill individually.

12 The People ask the board to do everything in its
13 power to obtain complete closure of the Viola Landfill and
14 assure that Watts does, indeed, actually deposit the
15 required assurance in the Viola Landfill's trust fund.
16 Thank you.

17 HEARING OFFICER: Mr. Woodward?

18 MR. WOODWARD: It's my understanding we've already been
19 ordered to fund the trust fund as to what was in summary
20 judgment Count Number 1.

21 HEARING OFFICER: Except that the board did say in its
22 order that it was not addressing the issues in the amended
23 complaint.

24 MR. WOODWARD: Correct.

1 As far as ESG Watts is concerned, there is no
2 issue as to amended Count 1. We admit that we have not yet
3 funded the trust fund. So that takes a factual issue out of
4 this hearing. The only issue that would remain is what is
5 the appropriate action to take in regard to that.

6 We intend to present evidence that we're working
7 on the siting application for Mercer County to site the
8 overheight so that we can then do a complete closure of the
9 Viola Landfill.

10 As to Count 2, my argument is or my contention is
11 that there are no remaining factual issues in Count 2, that
12 the only issue left for Count 2 is the appropriate penalty
13 to be assessed against ESG Watts and any remedial or
14 corrective action that would be ordered.

15 HEARING OFFICER: So are you admitting to the
16 violations within Count 2?

17 MR. WOODWARD: No. My point is that Count 3 has
18 already ruled on the remaining issues of Count 2; and,
19 therefore, there is no pending violation. It's the same set
20 of facts that is alleged in Count 3 and Count 2 for the
21 remaining issues. We are not admitting any further
22 violations.

23 We are going to show that there is no immediate
24 environmental impact from any groundwater exceedances which

1 are admitted already in our admissions to request for facts;
2 that we are complying with the groundwater monitoring
3 reporting -- monitoring and reporting requirements of our
4 permit, and we have been since the second quarter of '95;
5 and that we are pursuing both assessment and corrective
6 action alternatives to address what we believe the problem
7 is.

8 HEARING OFFICER: Let's go off the record.

9 (Discussion off the record.)

10 HEARING OFFICER: Let's go back on the record. I
11 apologize, Mr. Woodward.

12 MR. WOODWARD: As to Count 3, there are no factual
13 issues remaining as to the issue of liability under
14 Count 3. We intend to produce evidence that says that we
15 are complying with the monitoring and reporting requirements
16 of our permit since the second quarter of 1995; that we have
17 a contract with an organization, Resource Technology
18 Corporation, to deal with corrective action; that we are
19 pursuing assessment of the problem and we intend to submit
20 an assessment report; and also that there is no imminent
21 environmental harm resulting from our actions.

22 As to Count 4, the matters are at issue; however,
23 we do not deny that we haven't obtained certification of
24 final cover, and we intend to produce evidence that

1 indicates that we cannot do so until we get the overheight
2 issue resolved and that we are working on submitting a
3 siting application for that.

4 As to Count 5, that is at issue. We intend to
5 produce evidence to dispute some of the allegations of
6 Count 5. We intend to produce evidence as to economic
7 savings resulting from the exceedance of the maximum
8 permitted height, and we intend to produce evidence showing
9 that we are preparing a siting application that would deal
10 with the overheight issue.

11 Back as to Count 1, we do intend to produce
12 evidence as to economic savings as for failure to fund the
13 financial assurance plan. That's what we intend to do
14 today.

15 HEARING OFFICER: Okay. Ms. McBride, would you call
16 your first witness?

17 MS. MCBRIDE: Yes. First I would like to -- with
18 regard to the deposition, the Liss deposition, I would like
19 at this time to offer and move it into evidence. It was a
20 deposition taken upon agreement of the parties. We have a
21 letter here dated December 23, 1996, that there would be an
22 evidence taken of Mr. Liss on January 8, 1997. And on the
23 basis of that agreement, it was agreed to be an evidence
24 deposition; and I would like to move it in.

1 In court, we normally would read it in. I would
2 like to avoid that process at this point. So we'd like to
3 do so.

4 As mentioned, there are exhibits attached to it;
5 and I can move those in separately or move them in with the
6 deposition.

7 HEARING OFFICER: Mr. Woodward?

8 MR. WOODWARD: Mr. Liss's deposition refers to sampling
9 done by agency personnel -- as soon as I find my notes
10 here. On page 13 of that deposition, it indicates that, "I
11 looked at samples that were done in August of 1996 by the
12 Illinois EPA field office." That's at line 16 and 17 on
13 page 13 of his deposition.

14 At line 24 of that same page, I objected to
15 testimony relying upon those samples until I could determine
16 the chain of custody of sampling media, et cetera, and that
17 I had not been -- later on we both found out that neither
18 one of us had been supplied with those sampling tests. We
19 agreed that he could go ahead and finish his testimony, that
20 I would be provided them that day or the next day.

21 I was provided a copy of what purported to be
22 those samples; and what I was given is date-stamped July 17,
23 1996, at the bottom. The samples show they were all taken
24 on 6/12 of '96 which are not samples he refers to in his

1 deposition.

2 So I was -- I have never been produced a copy of
3 what he relied upon, and I don't believe I was given an
4 opportunity then to fully cross-examine Mr. Liss as to --
5 nor will I be allowed to cross-examine today -- I mean, nor
6 will I be allowed to cross-examine today, nor will I be
7 allowed to test the chain of custody because I don't have
8 the documents that he relied upon.

9 HEARING OFFICER: Ms. McBride?

10 MS. McBRIDE: Yes. There was only one sampling done
11 out at the Watts facility, and that --

12 MR. WOODWARD: Is she testifying?

13 HEARING OFFICER: I'm allowing this.

14 MS. McBRIDE: I'm just saying Mr. Liss misspoke when he
15 said "August." This is the only sampling that was done over
16 there.

17 You know, this objection basically goes to the
18 weight as far as credibility of the witness.

19 HEARING OFFICER: Would it be possible to obtain an
20 affidavit from Mr. Liss that could be submitted before the
21 record closes to that effect, since you cannot testify for
22 Mr. Liss, explaining that about this date so that we know if
23 Mr. Woodward had the correct documents or not?

24 MS. McBRIDE: I'm sure that would be possible.

1 MR. WOODWARD: He was given the opportunity to correct
2 his deposition. He reserved reading of it. He did submit
3 an errata sheet. There's no mention of this correction on
4 that errata sheet.

5 MS. McBRIDE: Again, this goes to weight.

6 MR. WOODWARD: But it also goes to my ability to
7 defend. If I'm not given a document, how do I know what
8 he's relying on had the proper chain of custody? There's
9 nothing that I have that would allow me to defend.

10 HEARING OFFICER: Okay. At this time, I am going to
11 postpone ruling on this document. What I would like is, at
12 the close, we can discuss dates for doing this. I would
13 like an affidavit from Mr. Liss. If the affidavit states
14 what you purport that it will state, that the documentation
15 was the documentation that you provided Mr. Woodward, then I
16 will allow the deposition in with that section not being
17 stricken.

18 If the affidavit from Mr. Liss does not state that
19 this was the correct information, then that section will be
20 stricken. Is that what you're requesting?

21 MR. WOODWARD: No. I'm asking the whole deposition be
22 stricken because it's based -- in here, he talks about
23 relying on three sets of sampling data, one of which is the
24 one that I'm objecting to. If you strike that out, the

1 other two -- he's relying supposedly then on two pieces of
2 data --

3 HEARING OFFICER: Well, at this time, since I haven't
4 even read the evidence deposition, there's no way for me to
5 make a decision about whether this one piece will manage to
6 strike the entire thing. So I will defer ruling on it. We
7 will set a date for Mr. Liss to enter an affidavit, but it
8 is my understanding this was agreed to as an evidence
9 deposition. So I am going to lean on the side of allowing
10 it in.

11 If we can clear up what seems to just be -- I know
12 from doing these hearings that there are a lot of times when
13 people go out and do these sampling, and June and July and
14 August get mixed up. And if we can get it cleared up, I
15 don't think there will be a problem admitting his
16 deposition.

17 MR. WOODWARD: One other point. I did submit a request
18 that they supply me all this before the evidence
19 deposition. The response was that I had reviewed the
20 record, and everything that was in the record was there.

21 HEARING OFFICER: Mr. Woodward, if you had a problem
22 prior to the evidence deposition, your best move would have
23 been to have filed a motion prior to the evidence deposition
24 or directly afterward. This was taken, I believe, in

1 January; and your objection now that you didn't receive
2 information prior to a deposition in January just doesn't
3 carry much weight.

4 MR. WOODWARD: Well, it was a surprise, and I was told
5 I was going to be provided it. And they gave me something
6 that day, but what they gave me doesn't correspond to his
7 testimony.

8 HEARING OFFICER: Okay. Well, let's go ahead and move
9 on then from this.

10 Do you have any more preliminary information? Do
11 you have the accompanying exhibits?

12 MS. McBRIDE: Right. They're with the other exhibit.
13 People's Exhibit 1 is the Supplement Permit 1991-285, as
14 People's 2, which was offered during the time of the
15 deposition. We'd like to move for admission of that into
16 evidence.

17 HEARING OFFICER: So you did not mark the evidence
18 deposition as an exhibit?

19 MS. McBRIDE: No.

20 HEARING OFFICER: I would like to go ahead and do
21 that. Why don't we mark it 1 and mark this one 1A --

22 MS. McBRIDE: Okay.

23 HEARING OFFICER: -- just for the board's purposes? It
24 will make it easier for them. And People's Exhibit 1A was

1 provided at the time of the evidence deposition?

2 MS. McBRIDE: Right.

3 MR. WOODWARD: We have no objection to that being
4 admitted on an independent basis. It's the permit.

5 HEARING OFFICER: Okay. Then that is admitted into
6 evidence as People's 1A.

7 Please, continue.

8 MS. McBRIDE: At this time, the People would like to
9 call Gary Cima.

10 (Witness sworn.)

11 GARY CIMA,

12 called as a witness, after being first duly sworn, was
13 examined and testified upon his oath as follows:

14 DIRECT EXAMINATION

15 BY MS. McBRIDE:

16 Q Gary, would you please state your full name and
17 spell your last name for the record?

18 A Gary Cima, C-i-m-a.

19 Q Gary, where do you work?

20 A At the Illinois EPA in Springfield, Illinois.

21 Q What is your current position?

22 A I'm an environmental protection specialist in the
23 Bureau of Land.

24 Q What section of Bureau of Land?

1 A The Permit Section.

2 Q How long have you held this position?

3 A In the Division of Land Pollution Control, since
4 1990.

5 Q What are your duties as environmental protection
6 specialist in the Division of Land?

7 A To review applications for various solid waste
8 management facilities and recommend either issuance, denial
9 of those applications for a permit.

10 Q Gary, in your position as environmental protection
11 specialist, are you the individual who's primarily
12 responsible for the issuance of the Viola Landfill permits?

13 A Yes, I am.

14 Q Gary, we'll talk more about Viola in just a
15 minute, but I need to get a little bit more information
16 about your background.

17 When did you start to work for the Illinois EPA?

18 A In 1980.

19 Q And you've been in your current position for seven
20 years. So prior to 1990, what position did you hold?

21 A I was in the Division of Water Pollution Control,
22 Industrial Unit.

23 Q Is that in Permits as well?

24 A Yes, it is.

1 Q Can you tell us briefly what your educational
2 background is?

3 A I have a bachelor's from the University of
4 Illinois.

5 Q What is that bachelor's in?

6 A Pardon me?

7 Q What are the subjects of your bachelor's?

8 A Zoology and chemistry.

9 Q Have you taken any continuing education courses or
10 had any additional training?

11 A Yes, I have.

12 Q Can you tell us --

13 A I have taken courses in landfill liner design and
14 construction and groundwater flow and contaminant transport
15 and electric utility waste disposal and cost estimating for
16 closure and post-closure care of solid waste facilities.

17 Q Gary, getting back to the Viola Landfill, how long
18 have you been responsible for permitting of the Viola
19 Landfill?

20 A Since 1991.

21 Q And what do those responsibilities entail
22 specifically with regard to Viola?

23 A It would be review of the applications submitted
24 by the permittee for various modifications to the original

1 operations and issuance or denial of those requests.

2 Q Did you review any documents in the Viola file in
3 preparation for today's hearing?

4 A Yes, I did.

5 Q What documents did you review?

6 A The permit file for Viola Landfill.

7 Q What's in that permit file?

8 A The records stem from 1973 from the original
9 development operation permit to the present.

10 Q Based on your review of those documents, Gary, do
11 you have an opinion as to whether the Viola Landfill's
12 currently in compliance with the permit?

13 A Yes, I do.

14 Q What is that opinion?

15 MR. WOODWARD: I object. There's already a
16 determination that we're not. That's Count 3. And as to
17 Count 5, there's no issue as to the overheight. I mean, I
18 don't know what purpose this particular line of questioning
19 serves as to the complaint.

20 HEARING OFFICER: Ms. McBride?

21 MS. McBRIDE: According to board order, we do have
22 issues left; and summary judgment was regarding those
23 specific counts. So this hearing does have to do with the
24 remaining counts.

1 HEARING OFFICER: Mr. Woodward, I understand your
2 objection. As I said earlier, our hands are tied by the
3 board order which requested information on Count 2. And
4 although you have said that count recovers it, you were not
5 ready to admit violations. So they do need to put on that
6 evidence. As I said before, I would make any arguments in
7 my post-hearing brief.

8 Please, continue.

9 HEARING OFFICER: Do you remember the question?
10 Do you have it?

11 MS. McBRIDE: Yeah. I had asked him if he had any
12 opinion as to whether Viola Landfill's currently in
13 compliance with its permit.

14 BY MS. McBRIDE:

15 Q Do you have an opinion as to --

16 A Yes, I do.

17 Q What is that opinion?

18 MR. WOODWARD: Objection, no foundation. I mean, what
19 factors is he relying upon for the opinion?

20 HEARING OFFICER: Can you ask a background question,
21 please?

22 MS. McBRIDE: Okay.

23 BY MS. McBRIDE:

24 Q Gary, what is the basis for your opinion?

1 A The permitted final height of the landfill as
2 originally permitted in 1973. Currently, the landfill
3 exceeds that permitted envelope height.

4 Q And so what is your opinion?

5 A That the landfill is not in compliance with its
6 original development permit.

7 MS. McBRIDE: Miss Hearing Examiner, just for the
8 record, I'm going to talk first about People's Exhibit
9 Number 14.

10 HEARING OFFICER: Does Mr. Woodward have a copy of
11 that?

12 MS. McBRIDE: Yes, he does.

13 BY MS. McBRIDE:

14 Q Gary, I'm handing you what is marked People's
15 Exhibit Number 14. Would you please tell me what that is?

16 A This is a topographic -- or at least drawing of
17 the proposed final contours of the landfill dated May 5,
18 1973, which was submitted, I believe, with the original 1973
19 application for permit.

20 Q There's some information up in the right-hand
21 corner there?

22 A Yes, there is.

23 Q Can you tell us what that is?

24 A A key to the symbols on the topographic map of

1 runoff flow direction, drainage ways, final contours, and
2 property lines.

3 Q And below that on the right-hand side?

4 A "ESG Watts, Viola Landfill, Figure 4, Final
5 Contours and Drainage Way, Closure/Post-Closure Plan, Viola
6 Watts Landfill, Viola, Illinois," and dated 3/12/1991.

7 Q So those are the final contours permitted for this
8 landfill?

9 A Yes, they are.

10 Q Gary, is that something you rely -- is a map such
11 as that something that would customarily be located in the
12 landfill's permit file?

13 A Yes, it would.

14 Q Is it something you rely on regularly in your
15 permitting duties?

16 A Correct.

17 MS. McBRIDE: Miss Hearing Examiner, I offer People's
18 Exhibit 14 and move for its admission.

19 HEARING OFFICER: Any objection?

20 MR. WOODWARD: I have no objections to it being
21 admitted for it showing contours of final height. There is
22 information on here that's inaccurate, and I would object to
23 it being admitted for any other purpose than that.

24 (Pause in proceedings.)

1 HEARING OFFICER: Okay. Are you objecting or not
2 objecting? because you're having a side bar.

3 MR. WOODWARD: I made my objection.

4 HEARING OFFICER: Can you explain what you believe is
5 not accurate? Are you talking about dates or times or --

6 MR. WOODWARD: Location of the property line and the
7 drainage way.

8 MS. McBRIDE: That's not the purpose of this exhibit.

9 HEARING OFFICER: This is just to show the contour.

10 MS. McBRIDE: This is just to show the final permitted
11 height.

12 HEARING OFFICER: Then it is admitted for that
13 purpose.

14 MR. WOODWARD: That was Exhibit 14?

15 HEARING OFFICER: Exhibit 14 is admitted.

16 Move on.

17 BY MS. McBRIDE:

18 Q Gary, the maximum permitted elevation for the
19 Viola Landfill, can you say what that is again?

20 A Yes. Its elevation is 690, above sea level.

21 MS. McBRIDE: For the record, Miss Hearing Examiner,
22 I'm going to get back in sequence here. I'm next going to
23 talk about People's Exhibit Number 3.

24

1 BY MS. McBRIDE:

2 Q Gary, I'm handing you what has already been marked
3 as People's Exhibit Number 3. Can you tell us what that is?

4 A It is a supplemental permit issued to the original
5 operating permit dated February 8, 1995; and this permit
6 specifically approved a revised post-closure care cost
7 estimate.

8 Q What's the permit number on it?

9 A 1994-532-SP.

10 Q Did you prepare this supplemental permit, Gary?

11 A Yes, I did.

12 Q Is this supplemental permit something that would
13 routinely be located in the landfill's permit file?

14 A Yes.

15 MS. McBRIDE: Miss Hearing Examiner, I offer People's
16 Exhibit 3 and move for its admission.

17 HEARING OFFICER: Is there any objection?

18 MR. WOODWARD: No.

19 HEARING OFFICER: It is admitted.

20 BY MS. McBRIDE:

21 Q Gary, I'd like to direct your attention to special
22 condition Number 4 on that permit. Would you please read
23 that condition to us?

24 A "Number 4: This supplemental permit does not

1 constitute approval of the final contours of the landfill as
2 presented in Plan Sheet 1 dated October 14, 1994, of
3 application Log Number 1994-532. Documentation must be
4 provided showing why such modification does not constitute a
5 new pollution-control facility."

6 Q Gary, I'm now going to take that exhibit from you
7 and hand you what has been marked as People's Exhibit
8 Number 4. Would you please tell us what that is? Go ahead
9 and open it up.

10 A It's a plan sheet entitled "Final Closure Plan"
11 dated 9/23/94, revised 10/14/94.

12 Q On the lower right-hand corner there, is there
13 something that says "sheet Number 1 of 1 of the final
14 closure plan"?

15 A Yes, there is.

16 Q Gary, is this plan sheet Number 1 referencing
17 special condition Number 4, Supplemental Permit
18 Number 1994-532-SP?

19 THE HEARING OFFICER: Can you slow down for our court
20 reporter?

21 Did you get it?

22 THE REPORTER: Yeah.

23 HEARING OFFICER: This is just the map portion.

24 A Special condition Number 4 did refer to the

1 November 14, 1994, plan sheet which this is.

2 MS. McBRIDE: Miss Hearing Examiner, I offer People's
3 Exhibit Number 4 and move for its admission into evidence.

4 HEARING OFFICER: Mr. Woodward, would you like to see
5 the sheet?

6 MR. WOODWARD: No. We have a copy. We have no
7 objections to it.

8 HEARING OFFICER: Then People's Exhibit 4 is admitted.

9 BY MS. McBRIDE:

10 Q Gary, who prepared this map?

11 A The map was prepared by Robert G. Meyer, a
12 professional land surveyor.

13 Q Do you know what the purpose of this map was?

14 A The purpose of this map was to provide existing
15 contours of the landfill upon completion of the cover over
16 the landfill.

17 Q So it shows the actual elevations of the landfill?

18 A As they currently exist, yes.

19 Q Gary, is this map the basis of your opinion that
20 the Viola Landfill has exceeded its vertical boundaries?

21 A Correct.

22 Q What is the highest elevation noted on that map?

23 A 704.2.

24 Q Can you give us any idea as to the amount of area

1 that's shown on that map percentage-wise as to how much
2 exceeds 690 feet in elevation?

3 A The estimate, I would be taking it from the
4 permittee's consultant that estimated that there is
5 somewhere between 6 and 7 acres of total area that may be
6 over 690.

7 Q I can take that back from you now.

8 I'm now handing you what has already been marked
9 People's Exhibit Number 5. Would you please tell us what
10 that is?

11 A This is a supplemental permit issued June 14,
12 1991, to the Viola Landfill, Supplemental Permit Number
13 1991-098-SP.

14 Q Also directing your attention to the last four
15 pages of that exhibit, can you tell us what those are?

16 MR. WOODWARD: Isn't this a duplicate of the one I --

17 MS. McBRIDE: No. There are two '91 permits.

18 MR. WOODWARD: I'm sorry.

19 A This is a portion of the application which was the
20 basis for issuance of this supplemental permit. This was
21 prepared by Rapps Engineering; and it is the establishing
22 vegetative cover section, the vegetative layer
23 specifications for seeding, fertilizing, mulching, and
24 preparing the final cover for vegetation, for growth of

1 vegetation.

2 Q Gary, did you personally prepare this supplemental
3 permit?

4 A Yes, I did.

5 Q Is this supplemental permit something that would
6 customarily be kept in the landfill's permitting file?

7 A Yes.

8 Q Is it something you regularly rely on in
9 performing your permitting duties?

10 A Yes.

11 Q Gary, why was this supplemental permit issued?
12 Could you tell us why this supplemental permit was issued?

13 A This supplemental permit added to the operational
14 permit issued in 1993 a closure plan and post-closure care
15 plan for the facility.

16 Q That was in accordance with this Rapps Engineering
17 plan; is that correct?

18 A That's who prepared the closure and post-closure
19 care plan for ESG Watts.

20 HEARING OFFICER: Did you say this '91 permit
21 supplemented a '93 permit? I'm sorry. I think I
22 misunderstood you.

23 THE WITNESS: The original operational permit carries
24 through, and all permits are supplemental to the original

1 operating permit.

2 BY MS. McBRIDE:

3 Q What's the date on the operational permit?

4 A The operational permit was in 1973.

5 HEARING OFFICER: '73. I thought you said '93. That's
6 what confused me. I'm sorry.

7 Q Gary, can you tell us concisely as possible what
8 kind of vegetative cover is required for the landfill?

9 A A layer of 6 inches of suitable soil to support
10 vegetation is required.

11 MS. McBRIDE: Miss Hearing Examiner, I offer the
12 supplemental permit with pages from the Rapps Engineering
13 plan which has already been marked People's Exhibit 5 and
14 move for its admission into evidence.

15 HEARING OFFICER: Is there any objection?

16 MR. WOODWARD: No objections to Exhibit Number 5.

17 HEARING OFFICER: Okay. Then it's admitted into
18 evidence.

19 BY MS. McBRIDE:

20 Q Gary, what kind of final cover is required at the
21 Viola Landfill that's vegetative cover plus any other
22 requirements? What kind of final cover is required?

23 A A final cover of relatively impermeable compacted
24 soils 2 feet thick is required, plus a vegetative layer of

1 6 inches of soil.

2 Q Where can the operator find that information?
3 Where is that stated?

4 A In the Solid Waste Regulations under Part 807.305
5 is the requirements for the 2-foot cover layer.

6 Q Gary, what does it mean for a landfill to certify
7 final cover?

8 A It means that the landfill has completed closure
9 in accordance with the regulations and has prepared the
10 final cover to the specifications required in the
11 regulations.

12 Q Is a part of that for the landfill to submit
13 engineering -- consulting engineering reports certifying
14 final cover?

15 A Yes, it is.

16 Q Has the Viola Landfill done that?

17 A We have documents supporting that the cover has
18 been certified by an engineer, that it meets the
19 specifications required in the regulations.

20 Q What does it mean for the Illinois EPA to certify
21 final cover?

22 A The Illinois EPA, upon review of those documents,
23 approves the cover certification by the permittee. In other
24 words, the agency reviews the information submitted to

1 testing, data submitted, and approves or disapproves that
2 the construction met the regulations, the specifications of
3 the regulations.

4 Q Has the Illinois EPA certified final cover for the
5 Viola Landfill?

6 A No.

7 Q Can you tell us why not?

8 A As part of the certification of the final cover,
9 the agency is prohibited at this time from issuing that
10 certification because of the final contours of the landfill
11 being over the permitted height which constitutes a new
12 pollution-control facility or an increase in capacity of the
13 landfill. The agency is prohibited from issuing that type
14 of permit until local siting approval is granted for the
15 increase in capacity.

16 Q Gary, when did the Viola Landfill stop accepting
17 waste?

18 A Prior to September 18, 1992.

19 Q So it's been about four-and-a-half years since the
20 landfill stopped accepting waste, and it still doesn't have
21 a certified cover from the agency; is that correct?

22 A Correct.

23 Q Gary, once a landfill submits an engineering
24 certification of final cover, does a landfill have an

1 obligation to maintain that final cover?

2 A Yes.

3 Q Gary, I'm now going to hand you what has already
4 been marked as People's Exhibit Number 6. Can you tell us
5 what that is?

6 A It's Supplemental Permit Number 1996-184-SP issued
7 September 6, 1996. Specifically, the permit approved
8 modification of cost estimates for closure and post-closure
9 care of the Viola Landfill based on relocation of all waste
10 in over-filled areas and placement of this waste in areas of
11 landfill that are below permitted final grades.

12 Q Did you prepare this supplemental permit, Gary?

13 A Yes.

14 Q Is this supplemental permit something that would
15 routinely be located in the landfill's permit file?

16 A Yes.

17 MS. McBRIDE: Miss Hearing Examiner, I offer People's
18 Exhibit 6 and move for its admission.

19 HEARING OFFICER: Is there any objection?

20 MR. WOODWARD: No objection.

21 HEARING OFFICER: People's Exhibit 6 is admitted.

22 BY MS. McBRIDE:

23 Q Gary, special condition Number 2 of that
24 supplemental permit, does it require financial assurance in

1 the amount of 300,000 -- strike that.

2 Does it require financial assurance in the amount
3 of \$397,080?

4 A Yes.

5 Q Gary, how long does a landfill have to upgrade its
6 financial assurance once a new cost estimate has been
7 approved in a permit?

8 A 90 days.

9 Q When was this supplemental permit issued?

10 A September 6, 1996.

11 Q So the new cost estimate of \$397,080 should have
12 been placed on deposit in Viola Landfill's Financial
13 Assurance Trust Fund by approximately December 5, 1996; is
14 that right?

15 A Correct.

16 Q Gary, will you tell us again why this supplemental
17 permit was necessary?

18 A This supplemental permit modified the closure and
19 post-closure care plans approved in 1991, therefore,
20 requiring modification again of the original operating
21 permit to include these modifications.

22 Q Those modifications were the relocation of waste
23 from the over-filled areas?

24 A Correct.

1 Q Once determined that the Viola Landfill was over
2 height, which we spoke of with regard to the 1994
3 supplemental permit, this was a significant change that
4 required modification of the plan; is that correct?

5 A Yes.

6 Q This modification resulted in revision of cost
7 estimates for the landfill; is that correct?

8 A Yes.

9 Q And these cost estimates included the cost of
10 locating the over-fill; is that correct?

11 A Yes.

12 Q When did Watts first submit cost estimates for
13 moving the over-fill?

14 A I'm not sure.

15 Q Did you make a decision with regard to the first
16 cost estimates that they submitted in April of 1996?

17 A I'm not sure about the date; but, yes, the
18 original cost estimates that came in, I was not -- they did
19 not meet the regulations, the assumptions in the regulations
20 of a third-party cost estimate and, therefore, asked for
21 additional documentation to support the original
22 cost estimates.

23 Q So then Watts resubmitted the cost estimates; is
24 that correct?

1 A Yes.

2 Q They did so in June or August of 1996?

3 A I believe so.

4 Q Were these estimates approved?

5 A Yes, they were.

6 Q These are the estimates that appeared in the

7 September 6, 1996, supplemental permit; is that correct?

8 A They were the addition to the original cost

9 estimate. That addition was added as those costs, and those

10 costs were approved.

11 Q So the total, which included that addition,

12 appears in that amount?

13 A Yes, it does.

14 Q And that's the amount, \$397,080, that was due on

15 December 5, 1996; is that correct?

16 A Yes.

17 Q Gary, if there's another significant change at the

18 landfill such as a 1995 detection of organic contaminants in

19 groundwater, might such a significant change trigger the

20 same process?

21 A Yes.

22 Q Gary, to your knowledge, has Watts even started

23 this process with detection of organics in the groundwater?

24 A I'm not aware.

1 Q Gary, I'm going to hand you what has already been
2 marked as People's Exhibit Number 7. Could you please tell
3 us what that is?

4 A This is a letter from Beling Consultants dated
5 October 26, 1995, to ESG Watts, Incorporated; and it is an
6 estimate of the quantities calculated through a software
7 computer program of the fill area above elevation 690 at the
8 Viola Landfill.

9 Q Have you seen this before, Gary?

10 A Yes, I have.

11 Q Where have you seen it?

12 A I've seen it in an application for supplemental
13 permit.

14 Q The Beling Engineering firm, do you know them to
15 be a consulting firm hired by Watts?

16 A Yes.

17 Q Gary, is it customary to have such reports in your
18 permitting file for landfills?

19 A Yes.

20 Q Do such reports serve as a standard source of
21 information that you rely on in your duties reviewing permit
22 applications?

23 A Yes.

24 MS. MCBRIDE: Miss Hearing Examiner, at this time, I

1 offer People's Exhibit Number 7 and move for its admission.

2 HEARING OFFICER: Is there any objection?

3 MR. WOODWARD: I need to -- no objection.

4 HEARING OFFICER: Then People's 7 is admitted.

5 BY MS. McBRIDE:

6 Q Gary, specifically, what does this report say
7 about the volume of waste at the landfill that is over
8 690 feet in elevation?

9 A The estimated volume of waste that is over
10 elevation 690 is 52,000 cubic yards.

11 Q That 52,000 cubic yards, it's noted on there that
12 that does not include the 24 inches of final cover that
13 would be placed over this waste?

14 A Correct.

15 Q Gary, is this something that the Illinois EPA
16 would rely on as to the volume that is over height for their
17 permitting duties?

18 A Yes.

19 Q Gary, do you know when the Viola Landfill was
20 established? When did it start accepting waste?

21 A Prior to 1973.

22 Q Do you know what environmental protections are in
23 place at the Viola Landfill? Specific question: Does this
24 landfill have a liner?

1 A Yes, it does, not a man-made liner as such. An
2 in-situ soil liner.

3 Q Can you tell us what that is?

4 A That is the existing soils -- the existing soils
5 are used as the liner, the containment for the facility.

6 Q So you said this landfill has no man-made liner
7 whatsoever; is that correct?

8 A Correct.

9 Q Gary, how effective are these in-situ soils as a
10 form of protection?

11 A That really depends on the soils itself.

12 Q So do you have -- does the agency have any
13 specific information as far as the protective ability of
14 these types of liners?

15 A In the original 1973 application for permit, the
16 soils were estimated to have a permeability of approximately
17 4.5 times 10 to the -7 centimeters per second.

18 Q So what does that mean as far as environmental
19 protection?

20 A This is basically a clay/silt-tight type soil.

21 Q So --

22 MR. WOODWARD: Did he say "tight" or "type"?

23 HEARING OFFICER: "Type."

24 THE WITNESS: "Tight."

1 BY MS. McBRIDE:

2 Q But compared to a man-made liner, does it afford
3 much protection?

4 A It affords protection in terms of the movement of
5 water through it is extremely slow. However, there is no
6 way of telling if there are small fractures or seams or
7 other unsuitable material or, I guess, more permeable
8 material within the existing soils.

9 Q Gary, just one more question. Does the Viola
10 Landfill have anything else in place that might protect the
11 environment from leachate or landfill gases?

12 A The landfill has a groundwater monitoring network
13 for detection of any release from the landfill.

14 Q Does it have anything else in place?

15 A Not that I am aware of.

16 MS. McBRIDE: I have no further questions of this
17 witness at this point.

18 HEARING OFFICER: Mr. Woodward?

19 CROSS-EXAMINATION

20 BY MR. WOODWARD:

21 Q The fact that the final contour, as submitted by
22 Beling Consultants, shows that it's above 690 doesn't speak
23 to whether the waste is above 687 1/2, does it?

24 A No. It does not.

1 Q You have no information to indicate that the waste
2 was placed above 687 1/2, do you?

3 A No. I do not.

4 Q Have you been to the facility since 1994?

5 A No. I have not.

6 Q Has anybody under you been to the facility,
7 anybody who's reported to you?

8 A Our field staff does regularly visit the landfill.

9 Q Have they reported to you?

10 A I see their reports as part of the permit file.

11 Q Have any of those reports indicated a problem with
12 maintaining vegetative cover?

13 A Not that I am aware of.

14 Q Have any of those reports indicated a problem with
15 erosion?

16 A Not that I am aware of.

17 Q Would placement of additional dirt to correct any
18 erosion problems be a reasonable solution to an erosion
19 problem?

20 A I'm sorry. Could you repeat the question?

21 Q If there is an erosion problem at the site, would
22 the placement of additional dirt and contouring that dirt so
23 you're trying to channel the water to certain locations,
24 would that be a reasonable solution to an erosion problem?

1 A Yes.

2 Q That would be allowed, but we would have to still
3 obtain siting for going above the final contour height, if
4 you're just placing dirt to control erosion; is that your
5 understanding of the regulations?

6 A No. I don't believe so. Placing additional dirt
7 would not be placing waste.

8 Q So if I understand you correctly, once you've
9 placed the final cover on there, you could then go out and
10 buy dirt and put it on there; and nothing could be done
11 about it? You could change the final contour?

12 A Yes, you could.

13 Q The current refusal to grant EPA certification, is
14 that based solely on the final contour issue?

15 A Correct.

16 Q Do you know what the landfill was -- what area of
17 the landfill was originally permitted to develop -- not
18 develop but to operate on?

19 A In terms of acreage?

20 Q Yes.

21 A I don't have a figure offhand.

22 Q Did ESG Watts use the total area that it was
23 permitted to operate?

24 A In terms of the footprint or the envelope?

1 Q Footprint.

2 A The footprint, I believe so.

3 Q They didn't have an additional -- what about the

4 envelope?

5 A I believe that there are portions of the fill at

6 current that could accept additional waste to reach the

7 final permitted contours.

8 Q Do you know approximately how much -- would that

9 be considered air space, measuring that?

10 A Yes, it would.

11 Q Do you know how much air space would have been

12 available to Watts?

13 A No. I don't have a figure.

14 Q Would it exceed 500,000 cubic yards?

15 A I do not know.

16 Q You don't have the slightest idea?

17 A No.

18 Q Now, the 1991 permit, did it require that certain

19 monitoring wells be abandoned?

20 A I'm not sure without getting into the permit

21 application itself.

22 Q You don't know whether that's a condition of the

23 permit?

24 A Not without referring to the permit itself.

1 Q So we'll let the permit speak for itself.

2 Did any agency personnel go out and check whether
3 there was 2 feet of compacted soil on another 6 inches of
4 topsoil?

5 A Not that I'm aware of.

6 Q They took the engineer's word for it?

7 A Correct.

8 Q I think you mentioned that using existing soils,
9 that the type of soils that were there would produce a very
10 slow flow; is that correct?

11 A Yes.

12 Q But your only problem with it is, because it's not
13 man-made, you don't know the compaction and whether there
14 are cracks in it?

15 A Correct.

16 Q Do you know whether an agency has ever done any
17 analysis of the flow of water based upon any sampling data
18 presented since 1973?

19 A I'm not sure I can answer your question. Could
20 you rephrase that maybe?

21 Q My question is: Do you know whether anybody in
22 the agency has done analysis of what the flow rate is of
23 groundwater at this site based upon any data that has been
24 submitted by ESG Watts since 1973?

1 A No. There has been no agency analysis of
2 groundwater flow through a sample of soil from the Viola
3 Landfill.

4 Q Has ESG Watts submitted any information by an
5 engineer that would indicate what the flow of it is?

6 A No, not that I'm aware of. It was requested in
7 the 1973 permit.

8 Q I believe in your direct testimony you referred to
9 the overheight as an increase in capacity. That's not
10 really true, is it? Because the capacity is also a question
11 of how much additional air space they left vacant.

12 A No. An increase in capacity would be increase in
13 the vertical height over the original contours.

14 Q But if the landfill's 20 acres, it allowed 690,
15 and they only have 7 acres that are above 690 and another
16 area was allowed to go up to 680 but they only filled that
17 to 660, are you increasing capacity?

18 MS. McBRIDE: Objection.

19 MR. WOODWARD: I'm asking for him to make an
20 assumption.

21 HEARING OFFICER: I will allow the question.

22 A The envelope we do not trade in terms of capacity,
23 adjusted capacity within the landfill envelope. The
24 envelope is a set elevation. The permittee is allowed to

1 fill within that envelope, but he is not allowed to alter
2 and switch the original shape and design of that envelope.

3 Q Back in 1973 when this landfill was given its
4 developmental permit, the IEPA was the one that allowed the
5 type of liner that this landfill has to be used; is that
6 correct?

7 A Correct.

8 Q This is not a landfill that had to be upgraded, is
9 it?

10 A No. The liner, you mean?

11 Q Right.

12 A No.

13 Q It stopped accepting waste in time for it not to
14 be subject to new regulations; is that correct?

15 A Right.

16 MR. WOODWARD: I believe that's all I have of this
17 witness.

18 MS. McBRIDE: Just a minute.

19 (Pause in proceedings.)

20 REDIRECT EXAMINATION

21 BY MS. McBRIDE:

22 Q Gary, must the final cover and vegetative layer be
23 established within the permitted final contours?

24 A Yes.

1 Q Gary, with regard to a different subject, with the
2 groundwater monitoring, Mr. Woodward asked if the agency had
3 done any groundwater monitoring out at the site.

4 MR. WOODWARD: I didn't ask that question.

5 MS. McBRIDE: Determination of flow.

6 MR. WOODWARD: I said "analysis," but that's different
7 than monitoring.

8 HEARING OFFICER: Right. I believe she's correcting
9 that.

10 BY MS. McBRIDE:

11 Q The question was: Has the agency done any flow in
12 groundwater analysis? Nonetheless, Gary, whose
13 responsibility is it to do groundwater analysis on a site?

14 A The permittee.

15 Q And that analysis is to be done under the auspices
16 of an assessment monitoring plan; is that correct?

17 A Normally, it is referred to as a detection
18 monitoring plan.

19 MS. McBRIDE: Thank you.

20 HEARING OFFICER: Anything else?

21 MS. McBRIDE: No.

22 HEARING OFFICER: Mr. Woodward?

23

24

1 RECROSS-EXAMINATION

2 BY MR. WOODWARD:

3 Q Mr. -- is it Cima?

4 A Cima, yes. Correct.

5 Q Are you in charge of landfills in Christian County
6 by any chance?

7 A No, I'm not.

8 Q Are you familiar with a -- never mind. I'll not
9 ask that question.

10 HEARING OFFICER: Anything further? Are you done with
11 this witness?

12 MS. McBRIDE: I have nothing further.

13 MR. WOODWARD: Before we proceed, I have a witness that
14 I'd like to be able to present out of turn. He has plane
15 tickets to leave at 1:00.

16 HEARING OFFICER: Is there any objection? Why don't we
17 go off the record.

18 (Discussion off the record.)

19 HEARING OFFICER: We will go ahead then, Mr. Woodward,
20 and allow you to call your witness who needs to leave.

21 MR. WOODWARD: Thank you. I would call Art Evans.

22 HEARING OFFICER: Mr. Evans, if you could come forward
23 and be sworn.

24 (Witness sworn.)

1 ARTHUR EVANS,
2 called as a witness, after being first duly sworn, was
3 examined and testified upon his oath as follows:

4 DIRECT EXAMINATION

5 BY MR. WOODWARD:

6 Q Would you state your full name for the record,
7 please?

8 A It's Arthur Evans.

9 Q Mr. Evans, are you a resident of the state of
10 Illinois?

11 A No, I'm not.

12 Q Where are you a resident?

13 A Davenport, Iowa.

14 Q Are you employed by Watts Trucking Service, Inc.?

15 A That is correct.

16 Q In what capacity?

17 A A corporate controller.

18 Q As corporate controller, are you also familiar
19 with the financial records of ESG Watts, Inc.?

20 A Yes, I am.

21 Q Have you reviewed those records to determine if
22 ESG Watts, Inc., has borrowed funds from the period of
23 September 1991 -- excuse me -- September 9, 1991, to the
24 present?

1 A Yes, I have.

2 Q Have they borrowed funds during that period of
3 time?

4 A Yes, they have.

5 Q Do you know at what interest rate those funds have
6 been borrowed?

7 A At various rates between 0 percent and
8 8.75 percent.

9 Q So 8.75 percent is the highest rate of borrowing
10 of funds during that period of time?

11 A That is correct.

12 Q When was the last borrowing conducted?

13 A On July 18, 1994.

14 Q Since that time, has ESG Watts attempted to borrow
15 money and been refused?

16 A Yes, they have.

17 Q Have you examined what the financial assurance
18 records are for the Viola Landfill, the reports issued by
19 the bank?

20 A Oh, yes, I have.

21 Q So you know how much money has been deposited and
22 when it was deposited?

23 A I don't have it in front of me; but, yes, we do
24 have those records.

1 Q Did you prepare any calculations based upon those
2 records as to what was the rate of return for the money put
3 into the trust fund, at the Viola trust fund?

4 A Yes.

5 Q What was the rate of return for the money that was
6 put into Viola trust fund?

7 A It was a little over 4 percent.

8 Q Did you do any weighting analysis of the cost of
9 borrowing from your historical records?

10 A Yes, I did. As of -- our fiscal year is
11 January 31, 1996. In doing a weighted average calculation
12 as of that date --

13 Q I'm sorry. Did you say '96 or '97?

14 A '96. A weighted average cost of borrowed money as
15 of that date was 6.70 percent.

16 Q Is that what would be referred to as the cost of
17 capital or the marginal cost of capital for ESG Watts?

18 A Yes.

19 Q Have you reviewed an economic analysis prepared by
20 Mr. John Taylor of the Illinois EPA?

21 A Yes, I have.

22 Q Are you familiar with the methodology that he used
23 in that report?

24 A Yes, I am.

1 Q In that methodology, do you not deduct the return
2 of the money that you actually had invested versus the cost
3 of capital to get your interest savings?

4 A Yes. He's done it on an incremental differential
5 basis.

6 Q Have you used your numbers to determine what the
7 cost -- what the savings would be to ESG Watts using our
8 historical records?

9 A Yes.

10 Q And what is that number?

11 A I don't have the number. It's dramatically less
12 because he's basically using an 8 percent differential.
13 Where, if we're using a differential between what we earned
14 on the money and our marginal rate of borrowing, it's only 3
15 or 4 percent differential as opposed to 8 percent
16 differential.

17 Q If it's 6.70, would you use the weighted average;
18 or would you use the actual rate for this period of time and
19 then this period of time and then this period of time?

20 A To actually do it precisely, you'd have to do it
21 each year.

22 Q But would using 6.70 percent, the weighted
23 average, dramatically affect the calculation?

24 A No. It would not.

1 Q So aren't we talking about something that's only
2 about 2.7 percent difference?

3 A Yes.

4 Q Did you have any other disagreement with
5 Mr. Taylor's methodology?

6 A Yes. Right at the end, he's double counting --
7 he's actually applying his percentage, and then he's
8 applying it again. So it increases the number somewhat.

9 Q If I understood that correctly, he uses the rate
10 of return to calculate what a number is; and then he applies
11 the rate of return again?

12 A Yes.

13 Q So you're applying a rate of return to whatever
14 the present value of that income stream is?

15 A Yes.

16 Q And using the present value already incorporates
17 the rate of return; does it not?

18 A That is correct.

19 Q So you believe that you would just use the
20 2.7 percent in determining present value, and that would
21 calculate what our savings would be?

22 A That is correct.

23 Q And you don't recall what the number is that you
24 calculated it to be?

1 A No, I don't.

2 Q Could you make that calculation now?

3 A It would be a lot less than half because of the

4 compounding effect. Yes.

5 Q If his analysis is 116,000, yours is less than

6 58,000?

7 A Yes.

8 Q I guess we'll live with that.

9 HEARING OFFICER: There's a calculator on your desk.

10 Q If you had a calculator, could you do it?

11 A I would need a computer.

12 Q Your training is what, Mr. Evans?

13 A Corporate financial management.

14 Q How long have you been with Watts?

15 A Since May of 1994.

16 Q So you weren't present during this whole period of

17 time we're talking about. You're using historical records

18 of the company?

19 A That is correct.

20 Q Are you a CPA?

21 A I am -- in addition to being a CPA, I'm also a CMA

22 and a CFM.

23 Q I don't know what those designations stand for.

24 Could you tell us, please?

1 A Certified Management Accountant and Certified in
2 Financial Management.

3 Q And how long have you worked in the area of
4 financial management?

5 A 20 years.

6 Q If a computer's available, if you took a recess,
7 how long would it take you to make that calculation?

8 A 15 minutes.

9 MR. WOODWARD: Then I would excuse Mr. Evans with the
10 hope that I can recall him in about half an hour.

11 HEARING OFFICER: Okay. Is there any objection to
12 that?

13 MR. DAVIS: Miss Hearing Officer, why don't we proceed
14 with cross-examination; and when Mr. Evans comes back, we
15 can address further issues?

16 HEARING OFFICER: That would be fine. I think that's a
17 cleaner way to do it.

18 Please, proceed.

19 CROSS-EXAMINATION

20 BY MR. DAVIS:

21 Q Mr. Evans, do you have a copy of Mr. Taylor's memo
22 in front of you?

23 A Yes, I do.

24 Q We understand from your testimony that you agree

1 with his first assumption, that the actual trust fund
2 earnings is an interest of approximately 4 percent?

3 HEARING OFFICER: I'm sorry to cut you off. Can we
4 identify that that's People's Exhibit 10? It hasn't been
5 moved into evidence, but that way the board will know what
6 we're talking about. I'm sorry. Please restate your
7 question.

8 MR. DAVIS: Certainly.

9 BY MR. DAVIS:

10 Q We're referring to what we've marked as Exhibit
11 Number 10. Your copy may not have that designation. It's
12 Mr. Taylor's memo of January 7, 1997, directed to myself,
13 Tom Davis.

14 My first question is: We understand your
15 testimony, Mr. Evans, that you agree with the first
16 assumption stated in that memo being that the trust fund
17 earnings is approximately 4 percent?

18 A That is correct.

19 Q The second assumption that Mr. Taylor had was
20 stated as, "ESG Watts has the ability to borrow money at a
21 rate of approximately 12 percent." We understand that you
22 disagree with that. Can you explain your reasons for
23 disagreeing?

24 A Well, we have attempted to borrow money over the

1 last couple years, and we have not been successful.

2 Q So you haven't borrowed any money over the last
3 couple years?

4 A That is correct.

5 Q Previous to the last two years then, we understand
6 your testimony to be that you, the company, were able to
7 borrow money at rates ranging from 0 to 8.5 percent; is that
8 true?

9 A That is correct.

10 Q What sub-prime lenders did you use?

11 A Most of these were secured loans that were secured
12 by equipment.

13 Q So it was not a financial institution type of
14 lending?

15 A No. Most of them were financial institutions.

16 Q Can you identify those for us?

17 A Yes. It was primarily KDC Financial.

18 Q Based out of what city?

19 A I don't have that.

20 Q The third assumption that Mr. Taylor had was
21 basically one of methodology, that he would have simple
22 averages rather than what I guess we could call
23 compounding. Would you agree with that as an assumption?

24 A Yes.

1 Q Then the fourth assumption is more or less a
2 restatement of the regulations; so we won't go into that
3 one.

4 I do have a question regarding the lending of
5 money. Isn't it true that the corporation has lent money to
6 its stockholder during the past few years?

7 A Let's see. I don't know that the stockholder
8 account has increased significantly over the last couple
9 years.

10 Q Let's broaden that inquiry then. Prior to the
11 last couple years, has the corporation lent money to its
12 stockholder?

13 A Yes.

14 Q What would be the present outstanding balance of
15 those loans?

16 A About \$800,000.

17 Q What rate of interest, if any, is being charged on
18 that loan to that stockholder?

19 A We use the IRS legal rate.

20 Q That is approximately what nowadays?

21 A I don't know.

22 MR. DAVIS: Sir, I have no other questions.

23 HEARING OFFICER: Do you have anything else at this
24 time?

1 MR. WOODWARD: I would ask him to be excused and make
2 his calculation.

3 HEARING OFFICER: Okay. That's fine. Let's go off the
4 record.

5 (Discussion off the record.)

6 (Recess in proceedings.)

7 HEARING OFFICER: Let's go back on the record.

8 State your name.

9 And then swear the witness.

10 THE WITNESS: Ronald Mehalic, M-e-h-a-l-i-c.

11 (Witness sworn.)

12 RONALD MEHALIC,

13 called as a witness, after being first duly sworn, was

14 examined and testified upon his oath as follows:

15 DIRECT EXAMINATION

16 BY MS. McBRIDE:

17 Q Ron, who is your employer?

18 A State of Illinois Environmental Protection Agency.

19 Q What is your current position with the agency?

20 A Environmental protection specialist.

21 Q This position is with the Bureau of Land; is that
22 correct?

23 A Yes.

24 Q How long have you held this position?

1 A Approximately seven years.

2 Q What are your duties as an environmental
3 protection specialist?

4 A Related to the field, my duties are to inspect
5 closed and operating landfills, to inspect facilities that
6 are regulated under the Resource Conservation and Recovery
7 Act, to investigate citizens' complaints fielded in the
8 field in the Peoria Region, to, if necessary, respond to
9 emergency situations given a spill of some sort.

10 Q Is ESG Watts Viola Landfill one of the landfills
11 you inspect?

12 A Yes.

13 Q Are you the only inspector for that landfill?

14 A Currently, yes.

15 Q We'll talk more about Viola in a minute. I just
16 want to talk about your background a little bit.

17 Can you tell us what undergraduate and graduate
18 degrees you have?

19 A I have a bachelor of science degree in geology,
20 and I obtained it at the Illinois State University.

21 Q When did you obtain that degree?

22 A The year 1990.

23 Q So immediately after graduating from Illinois
24 State, you started with the agency; is that correct?

1 A That's correct.

2 Q Since joining the agency, Ron, have you taken any
3 continuing education or training courses?

4 A Yes, I have. I've taken courses by the US EPA
5 pertaining to the installation of groundwater monitoring
6 wells, groundwater sampling technologies, site remediation
7 characterization; and then I have taken various courses put
8 on by the Illinois EPA pertaining to closure/post-closure
9 care certification.

10 Q Ron, is your work limited to any particular
11 geographic area of the state?

12 A Yes. Peoria Region.

13 Q That includes Mercer County and the Viola area; is
14 that correct?

15 A That's correct.

16 Q Ron, how many different landfills, both operating
17 and no longer accepting waste, do you currently inspect?

18 A Approximately seven.

19 Q Ron, how often have you been at ESG Watts Viola
20 Landfill?

21 A Could you rephrase that?

22 Q How often have you been to the Viola Landfill?

23 A Four times.

24 Q The first time you went was when you were training

1 with the IEPA; is that correct?

2 A That's correct, in 1991.

3 Q All you did was go along with another inspector at
4 that time; is that correct?

5 A That's correct.

6 Q The second time you went was March 21, 1994, and
7 that was -- you accompanied Rob Wagner to help him out; is
8 that correct?

9 A That's correct.

10 Q The third time you went --

11 MR. WOODWARD: I would object. She's leading the
12 witness. She's testifying for him basically.

13 HEARING OFFICER: That's fine.

14 Could you not ask leading questions, please?

15 MS. McBRIDE: Okay.

16 BY MS. McBRIDE:

17 Q Ron, what was the purpose of your third visit?

18 A The third visit was -- as I recall, it was a
19 landfill inspection.

20 Q The fourth visit was --

21 A Was a groundwater sampling event.

22 Q Ron, we heard earlier today 2 feet of compacted
23 clay soil and a 6-inch vegetative cover is required at the
24 Viola Landfill. Can you tell us why a 2-foot cover of

1 compacted clay soil is required as final cover? What does
2 that accomplish at a landfill?

3 A That ensures that no surface water is percolating
4 down into the underlying trash.

5 Q Why do we want to avoid water getting into the
6 trash?

7 A The establishment of leachate.

8 Q What is leachate?

9 A Water that comes into direct contact with waste.

10 Q Why is leachate a bad thing?

11 A Well, if leachate were to start to precipitate or
12 accumulate in a given area, it would find the least avenue
13 of escape and, more or less, would exit the confines of the
14 landfill as a leachate seep or a leachate pop-out or
15 potentially adversely affect the groundwater.

16 Q Why do we require a vegetative cover?

17 A To maintain the integrity of the 2-foot liner --
18 or 2-foot cover. I'm sorry.

19 Q So to maintain the clay cover?

20 A To maintain the clay cover and also to help soak
21 up like during rain events, if there's an established
22 vegetative cover. It would also prohibit erosion as well as
23 unnecessary water percolating into the underlying trash.

24 Q Ron, can you tell us what kinds of problems can

1 occur to a landfill over time if final cover is not
2 established and maintained on the site?

3 A If final cover isn't established or maintained, it
4 would give way to erosion; and that also would lead way to
5 exposed refuse which would, in turn -- as time and seasons
6 progress, the waters, be it snow or rain, would infiltrate
7 the given exposed erosion and percolate into the trash.

8 Q Ron, we heard earlier this morning the landfill
9 only has an in-situ liner. It's only a soil liner. Given
10 that, if the final cover is not maintained at the landfill,
11 can the problems be exacerbated with regard to groundwater?

12 A That could be --

13 MR. WOODWARD: Object. That's speculation because we
14 don't know the integrity of the liner. I mean, if he's
15 talking about some theoretical site elsewhere, he can answer
16 the question as far as I'm concerned; but if he's talking
17 about the Viola Landfill, I would object because there's no
18 foundation.

19 HEARING OFFICER: Miss McBride?

20 MS. McBRIDE: First of all, there was specific
21 testimony as to the efficiency of this liner, of the soil
22 liner; so it's not a hypothetical question. I'm
23 specifically talking about this liner.

24 Secondly, we're also laying some foundation here

1 for future -- for questions later on about the specific
2 impacts at this landfill.

3 MR. WOODWARD: I'm sorry. Her characterization that
4 there was specific testimony about the quality of this liner
5 I don't believe was true. I mean, the prior testimony was
6 that this was using native soils, and he did know that there
7 might be fractures in it because it wasn't man-made; but he
8 didn't know whether there were fractures. So how do we have
9 any foundation as to the integrity of this liner?

10 HEARING OFFICER: Miss McBride, can you repeat your
11 question, please, just so I can hear it? Do you need it
12 read back?

13 MS. McBRIDE: No.

14 BY MS. McBRIDE:

15 Q Ron, we heard this morning that this landfill does
16 not have a man-made liner. It has an in-situ soil liner.
17 Does that make it particularly susceptible to groundwater
18 and water pollution problems if the final cover is bad?

19 MR. WOODWARD: My objection is there's no foundation
20 because there's no evidence -- there's nothing in the record
21 to show what the integrity of this liner is. I don't know
22 that you can draw a conclusion unless you know the integrity
23 of the liner.

24 HEARING OFFICER: I'm going to sustain his objection.

1 Please move to your next question.

2 BY MS. McBRIDE:

3 Q Ron, there was testimony this morning with regard
4 to permeability of this liner. Would that be a
5 consideration for you in rendering any future opinions about
6 the environmental impacts at this landfill?

7 A The permeability of the liner?

8 Q Uh-huh.

9 A That can be presumed. Yes.

10 MR. WOODWARD: I'm sorry. What was your answer?

11 A That can be -- yes.

12 MR. WOODWARD: I thought you said "presumed."

13 THE WITNESS: Presumed. But I --

14 BY MS. McBRIDE:

15 Q Is the permeability of the liner a factor in any
16 opinion you might have with regard to the environmental
17 impacts at this site?

18 A Yes.

19 HEARING OFFICER: Both of you need to speak up for the
20 court reporter. We can hardly hear.

21 Q Moving on, when you and your fellow inspectors
22 conduct an inspection of a landfill, is it your regular
23 practice to prepare a written report of that inspection?

24 A Yes.

1 Q When do you prepare that report?

2 A Approximately two days after the inspection.

3 Q Is this a standard practice among inspectors, to
4 complete these reports within a couple days after inspecting
5 the landfill?

6 A Yes.

7 Q Have you done that with -- did you and your fellow
8 inspectors prepare written inspection reports documenting
9 your inspections of the Viola Landfill?

10 A Yes.

11 MS. McBRIDE: For the record, Miss Hearing Examiner,
12 I'm going to be talking about Exhibits 8 and 9 now.

13 Q Ron, I'm going to hand you what we've already
14 marked as Exhibit Number 8. Would you agree this is Rob
15 Wagner's inspection report of April 27, 1995?

16 A Yes.

17 Q Ron, is there a typo on the front page of this
18 report with regard to the date, on the front page?

19 A Yes.

20 Q How do you know it's a typo and not the right
21 date?

22 A By looking at the narrative as well as the photos
23 in the back. The date actually is April 27th of 1995.

24 Q Ron, can you tell us who is Rob Wagner?

1 A Rob Wagner is an environmental protection
2 specialist with the FOS Peoria Region.

3 Q Why would he be doing a report on the Viola
4 Landfill?

5 A At that time, he was the Viola Landfill inspector.

6 Q Was he the inspector just before you took over the
7 landfill as the inspector?

8 A Yes.

9 Q Ron, is it the customary and regular practice of
10 the agency to keep records of landfills in the form of a
11 compilation of these inspection reports in that landfill's
12 Bureau of Land file?

13 A Yes.

14 Q Is it often the case that the inspection reports
15 found in any one landfill's file are done by a variety of
16 inspectors?

17 A Yes.

18 Q Ron, before you inspected the Viola Landfill on
19 November 17, 1995, did you review Rob Wagner's report and
20 other documents in the Viola Landfill's file?

21 A Yes.

22 Q Why do you do this?

23 A To either refresh your memory or to become better
24 acquainted with the file regarding the landfill itself.

1 Q Ron, do you rely on these documents in the
2 landfill's file to perform your duties of regulatory
3 oversight of the landfill?

4 A Yes.

5 Q As general background, Ron, can you tell us how an
6 inspection of a landfill that is no longer accepting waste
7 is conducted?

8 A The individual inspector arrives at the site and
9 walks and photographs the whole site or any given area and
10 denotes if there is any need of repair, looks at the
11 vegetative cover, checks to see if there are exposed refuse
12 areas, if there are leachate seeps, if the groundwater
13 wells -- their integrity is maintained, and documents and
14 photographs it all.

15 Q Does the inspector carry a check list with him or
16 her?

17 A Yes.

18 Q If the inspector observes violations, are those
19 violations noted on that check list?

20 A Yes.

21 Q What other various parts of the inspection report,
22 Ron -- besides the checklist, what else might be in there?

23 A A narrative, a site sketch, and photographs.

24 Q Is what we just described a standard method used

1 in inspecting all sanitary landfills that are no longer
2 accepting waste including the Viola Landfill?

3 A Yes.

4 Q Ron, returning your attention to the April 27,
5 1995, inspection report, is it apparent from the appearance
6 and contents of that report that Mr. Wagner followed the
7 agency's standard method of inspecting and reporting that
8 inspection?

9 A Yes.

10 MS. McBRIDE: I'd like to offer People's Exhibit
11 Number 8 at this time and move for its admission.

12 HEARING OFFICER: Is there any objection?

13 MR. WOODWARD: Can I just voir dire about something,
14 specifically about the discrepancy in the date?

15 HEARING OFFICER: Yes.

16 VOIR DIRE

17 BY MR. WOODWARD:

18 Q I want you to refer to page 2 of the narrative, if
19 you would. It's a numbered page 2. Would you look at the
20 full paragraph immediately before numbered paragraph 6 and
21 read that? Not out loud, just read it.

22 (Pause in proceedings.)

23 Q And the sentence immediately before that
24 paragraph.

1 (Pause in proceedings.)

2 A Yes.

3 Q Are you aware of a report submitted by Beling
4 Engineering dated in 1994 that a cover had been put on this
5 property, this landfill? Excuse me. By ESG Watts, not by
6 Beling Engineering.

7 A That established --

8 Q That a final cover had been put on and had final
9 cover contours.

10 A That I don't know. The question I have to ask
11 though is --

12 Q I'm just asking: Are you aware --

13 A Yeah. I'm aware of the document.

14 Q So if that was done in '94, then how are you sure
15 this document isn't rightfully dated April 27, 1994, rather
16 than April 27, 1995, that all the other dates weren't the
17 misprint?

18 A I trust Mr. Wagner's judgment.

19 Q Well, which judgment, the one that put April 27,
20 1994, on the front or the ones that put April 27, 1995?

21 A April 27, 1995.

22 Q Why would you do that when he says that there's no
23 final cover when you had documents that said there was a
24 final cover?

1 A I'm sure that's a question you might have to ask
2 Mr. Wagner.

3 HEARING OFFICER: Okay, Mr. --

4 MR. WOODWARD: I have no objections to the admission of
5 the document. I think testimony goes to the weight.

6 HEARING OFFICER: Okay. Then People's Exhibit 8 is
7 admitted into evidence.

8 CONTINUED DIRECT EXAMINATION

9 BY MS. McBRIDE:

10 Q Ron, judging from Mr. Wagner's report, would you
11 tell us what was noted with regard to uncovered refuse?

12 A Uncovered refuse was observed at the northwestern
13 portion of his site and at the eastern portion of the site
14 and at the southern portion of the site.

15 Q Ron, are there photographs attached to the
16 inspection report that would show cracks in the clay and
17 exposed refuse?

18 A Yes, there is.

19 Q Can you tell us which ones?

20 A Photograph 1, photograph 8, 9, 10, 17, 27, and 32.

21 Q Ron, what does Mr. Wagner's report indicate with
22 regard to the condition of cover at the landfill?

23 A That it was in need of repair, that there was
24 exposed refuse protruding through the cover material.

1 Q Does it say anything about water runoff?

2 A There is ponded water located on the top of the
3 landfill.

4 Q Are there photographs attached to this report that
5 show areas of wetlands and water runoff on the landfill?

6 A Yes.

7 Q Can you tell us which ones?

8 A Photograph 15, photograph 11, 12, 13, 14, 21, 22,
9 and that's it.

10 Q I'm now going to take Exhibit 8 from you and hand
11 you what's been marked People's Exhibit Number 9. Can you
12 tell me what that is?

13 A It's an inspection report for Viola Landfill.

14 Q What's the date on that report?

15 A The date is November 17th of 1995.

16 Q And who conducted this inspection?

17 A Myself, Ron Mehalic.

18 Q Ron, was this report made under the same
19 inspection and reporting procedures you just described for
20 us?

21 A Yes.

22 MS. McBRIDE: Miss Hearing Examiner, I would like to
23 offer People's Exhibit 9 and move for its admission.

24 HEARING OFFICER: Is there any objection?

1 MR. WOODWARD: No.

2 HEARING OFFICER: Then People's Exhibit 9 is admitted.

3 BY MS. McBRIDE:

4 Q Ron, what did you observe with regard to cover and
5 erosion at the Viola Landfill on November 17, 1995?

6 A I observed that the cover material was in need of
7 repair and that there were erosion rills forming on the
8 slopes.

9 Q What about the vegetative cover?

10 A The vegetative cover lacked. There was sparse
11 vegetation throughout the landfill slopes.

12 Q Ron, are there photographs attached in your
13 inspection report that would show the problems with erosion?

14 A Yes.

15 Q Can you identify those photographs for us?

16 A Photos 3, 4, 5, 6, 8, 10, 11, 13, 14, 17, 18, 21,
17 24.

18 Q Ron, can you tell us what 22 and 23 show?

19 A The top of the landfill with frozen water.

20 Q Do those photographs truly and accurately depict
21 the area of erosion rills you observed during your
22 November 17, 1995, inspection?

23 A The photos I just --

24 Q Yes.

1 A Yes.

2 Q Can you tell us which slopes those photos covered?

3 A Those photos documented the slopes around the

4 landfill itself.

5 Q Those are the --

6 A The northern slope.

7 Q Of the landfill; is that correct?

8 A Yes.

9 Q The north slope -- is the west slope among those

10 photos?

11 A Yes.

12 Q Is the east slope?

13 A Yes.

14 Q And the south slope?

15 A Yes.

16 Q Can you identify the photos that show the sparse

17 vegetation cover?

18 A Actually, all the previously mentioned photos

19 document that.

20 Q Do these photographs truly and accurately depict

21 the areas lacking vegetation cover that you observed during

22 your November 17, 1995, inspection?

23 A Yes.

24 Q Basically, the whole landfill was covered with

1 only sparse vegetation; is that true?

2 A Yes.

3 Q Ron, the problems that were noted on the April 27,
4 1995, inspection report and the November 17, 1995,
5 inspection report with regard to erosion, exposed refuse,
6 water runoff, do they indicate to you that ESG Watts Viola
7 Landfill did not have an effective final cover on on those
8 dates?

9 A Yes.

10 Q What other problems besides the ones we've already
11 discussed did you note on your November 17, 1995, inspection
12 report?

13 A Permit violation pertaining to the overheight.

14 Q Ron, what is the permitted final height of the
15 Viola Landfill?

16 A 690.

17 Q Ron, directing your attention to pages 7 and 8,
18 the maps, what is on page 8?

19 A Page 8 is the details and final contours from the
20 May 5, 1997, plan sheet that was subsequently put in the ESG
21 Watts Viola Landfill final contours and drainage way
22 closure/post-closure plan, Viola Watts Landfill.

23 Q That shows the final permitted contours of the
24 landfill; is that correct?

1 A That's correct.

2 HEARING OFFICER: For the record, is this the
3 document --

4 MS. McBRIDE: People's Exhibit 14, for the record.

5 BY MS. McBRIDE:

6 Q And page 7, what is page 7?

7 A That is a portion of the plan sheet previously
8 mentioned.

9 Q What does that show?

10 A That shows the final contours for the closure
11 certification report for the facility.

12 Q So that's the actual elevations at the landfill
13 itself?

14 A At that time, yes.

15 Q At that time?

16 A Yes.

17 Q And what was the date on that map?

18 A October of 1994.

19 MS. McBRIDE: For the record, that was People's Exhibit
20 Number 4.

21 Q Those maps, you use those maps as a basis for the
22 violations noted in that inspection report; is that correct?

23 A That's correct.

24 MS. McBRIDE: I have no further questions.

1 HEARING OFFICER: Mr. Woodward?

2 CROSS-EXAMINATION

3 BY MR. WOODWARD:

4 Q I want to direct your attention to People's
5 Exhibit Number 8. Do you still have that in your hand?

6 A No. I do not.

7 HEARING OFFICER: I have a copy that you can look at.
8 The pictures aren't to scale.

9 Q Again on page 2 of the narrative, the very top
10 sentence of page 2, would you read that out loud, please?

11 A "The facility has not put a final cover of at
12 least 2 feet in thickness on the landfill."

13 Q I believe you testified on direct testimony that
14 somewhere in here -- although I can't find it -- it says
15 that the final cover is in need of repair.

16 A Yes.

17 Q Can you tell me how the final cover's in need of
18 repair if it hasn't been put on the facility?

19 A Well, there was waste protruding through the final
20 cover.

21 Q But the statement says that it hasn't been put on
22 there, right, of at least 2 feet of thickness? That's what
23 the statement says?

24 A Yes.

1 Q And you already testified you have information
2 that says that an engineer told you that it had been. So my
3 question is: Is that a misspeaking on page 2? Isn't he
4 really saying that it hasn't been maintained at 2 feet of
5 thickness?

6 A Perhaps.

7 Q What was your last visit date at this site?

8 A My last visit date?

9 Q Yes.

10 A I believe it was in June of '96.

11 Q That's the sampling event?

12 A Yes.

13 MR. WOODWARD: Has People's Exhibit 2 been offered?

14 MS. McBRIDE: Yes.

15 HEARING OFFICER: No.

16 MR. WOODWARD: It hasn't?

17 HEARING OFFICER: I don't have it.

18 MS. McBRIDE: 2 is the sampling document that came in
19 with the evidence deposition.

20 HEARING OFFICER: The only thing you asked me that
21 would have been with the evidence deposition is what we
22 would have marked as 1A.

23 MS. McBRIDE: That was the subject of Ken Liss's
24 affidavit.

1 HEARING OFFICER: Okay. So 2 is the document where the
2 date is in question on. But you haven't moved it into
3 evidence yet.

4 MS. McBRIDE: I would like to move it into evidence if
5 that be the case because that was the intention when we were
6 talking about it.

7 HEARING OFFICER: Do you have an objection to this
8 document, Mr. Woodward?

9 MR. WOODWARD: Well, I was going to ask a question, but
10 I wasn't going to ask it if it hadn't been admitted.

11 MR. DAVIS: Let's admit it and go ahead and ask it.

12 MR. WOODWARD: No. I want to proceed on that question.

13 HEARING OFFICER: Are you objecting to the admission
14 of --

15 MR. WOODWARD: Did she just move that?

16 HEARING OFFICER: Yes.

17 MR. WOODWARD: I'm sorry. I missed that. Well, this
18 is the document that I was given, but it's not the document
19 that he testified to; and --

20 HEARING OFFICER: Okay. But that goes to the evidence
21 deposition. Are you objecting to this document coming in
22 for what it is? We haven't admitted the evidence deposition
23 at this point. I'm asking if you have an objection to this
24 exhibit.

1 MR. WOODWARD: Yes, I am; and I'm trying to think of
2 what my reason is. I guess I'm objecting because they
3 represented that there was only one sampling event; and this
4 is a different date than the other one, the other one that
5 was identified.

6 Also, if I recall, Mr. Mehalic was identified in
7 the testimony as being one of the sample gatherers, and this
8 one says that the samplers were Karen Nelson and Jeff
9 Turner; and Mr. Mehalic is not listed as a sample gatherer.
10 So, therefore, if this is the only sampling event, there's
11 something seriously wrong here.

12 HEARING OFFICER: How long have you been in possession
13 of this document?

14 MR. WOODWARD: Since the afternoon of January 8th.

15 HEARING OFFICER: Okay. Again, that goes to weight and
16 credibility and admissibility of the evidence deposition.
17 I'm going to allow --

18 MR. WOODWARD: They didn't indicate -- I mean, they
19 presented this; but they didn't say it was going to be an
20 exhibit. I mean, this was an exhibit to his deposition.

21 HEARING OFFICER: I understand that, but I'm going to
22 allow this in for what it purports to be. I believe, since
23 Ron Mehalic is here, that you will be able to cross-examine
24 him on it if you have any questions about it.

1 MR. DAVIS: We certainly don't agree; but if I may beg
2 your indulgence to make a record so that counsel is
3 facilitated, if you will, and the board is not confused, I
4 was involved in the evidence deposition much more directly
5 than Miss McBride. It was our purpose, I can represent, to
6 lay a foundation for the admission of the sampling
7 inspection that I just found out about during the deposition
8 as well as Mr. Woodward. It is obviously embarrassing. I
9 can admit to that.

10 However, as far as discovery compliance, in
11 supplementation, according to the Supreme Court Rules, we
12 did that as soon as we could. Mr. Liss provided myself and
13 Mr. Woodward a copy; and other than the surprise and the
14 discrepancy over the date, it is something that Mr. Liss
15 testified about.

16 So I want the record, Miss Hearing Officer, to
17 show that we did lay a foundation. It's not something, "Oh,
18 here." Thank you.

19 HEARING OFFICER: Right. At this point, it's still an
20 open question because of the date discrepancy in the
21 evidence deposition. But I'm going to allow this in to be
22 discussed as this date says, which is June 13 -- or 12,
23 1996 -- there's two dates on it -- and for what it is, which
24 is a sampling.

1 There's an open question as if it's one sampling
2 or two, but we know we have this one; and it is admitted.
3 So if you have a question regarding it, please go ahead and
4 ask it.

5 MR. WOODWARD: Without waiving my objection to its
6 admission, I do want to know if Mr. Mehalic participated in
7 gathering samples on this sampling event.

8 THE WITNESS: Yes.

9 BY MR. WOODWARD:

10 Q Your name is not listed as a sampler; is that
11 correct?

12 A That's correct.

13 Q But yet you did participate?

14 A Yes, I did.

15 Q Is it normal agency procedure for you not to list
16 your name if you are a sampler?

17 A I was noted project manager.

18 Q But that doesn't say that you participated in
19 gathering the samples, does it, when you sign it as project
20 manager?

21 A I was there observing the gathering of samples; so
22 I would suspect I would be a participant in the sampling.

23 Q But then you should be listed as a sampler?

24 A No.

1 Q If you're not listed as a sampler, then how do we
2 test whether you followed the right procedure in dipping the
3 bottle of your medium down into the water and gathering the
4 water? I mean, if you hadn't just now told me you were a
5 sampler, I would have never asked you --

6 HEARING OFFICER: Mr. Woodward, that's argumentative.
7 Please ask a question.

8 Q Is it agency procedure for you not to list your
9 name as a sampler when you do, in fact, gather samples?

10 A Yes.

11 Q Now, when you signed this document, the front page
12 of People's Exhibit 2, what you signed says that, "I certify
13 that the samples listed above were sealed by me; and I wrote
14 my initials, the date, and the time on the seal." Is that a
15 correct statement of what you signed?

16 A Yes.

17 Q This indicates that the facility representative,
18 which I assume is a representative of ESG Watts in this
19 case -- is that correct, that facility representative? --

20 A Yes.

21 Q -- was not present. Was that offered to ESG Watts
22 on the date that you went out there?

23 A The offering to split samples was given. However,
24 at this time --

1 Q That wasn't my question. My question was: Were
2 they offered to be present when you took your samples?

3 A Yes.

4 Q Did Karen Nelson and Jeff Turner seal any of the
5 samples?

6 A No. They did not.

7 Q So they gathered some and handed them to you; is
8 that how it proceeds? And then you seal them?

9 A Yes.

10 Q Then you do whatever you're supposed to do with
11 them under the agency procedures?

12 A Yes.

13 Q Can you tell me how you gathered the samples?

14 A Could you --

15 Q Be more specific?

16 A Please, be more specific.

17 Q What was the sampling medium -- protocol used?

18 A Initially --

19 Q Would you tell me what the sampling protocol was?

20 A Three well volumes were purged from the initial
21 well. After the three well volumes were purged, then the
22 samples were collected.

23 Q Is there any particular place in the well you make
24 the collection? In the top, at the water level, 6 feet

1 below the water, or what?

2 A At the top of the screen.

3 Q Then what type of vessel is this put in, the
4 sample?

5 A Could you be more specific?

6 HEARING OFFICER: Container.

7 A How the groundwater was obtained or the sample
8 container the groundwater was put in?

9 Q Let's start with what kind of container was used
10 to gather the sample.

11 A A Teflon baler.

12 Q What was it then put into?

13 A It was put in the appropriate containers.

14 Q What is that? I mean, describe the container that
15 was used that day.

16 A For the volatile organics, they were 40 milliliter
17 containers, 2. Then for the semi-volatiles, it was a gallon
18 amber glass.

19 Q Is one of those used to determine inorganics?

20 A The inorganics are gathered next, the metals.

21 Q What are they put into?

22 A Plastic.

23 Q Is the same tool used to gather all the samples?

24 A Yes.

1 Q You didn't gather any samples from metals on that
2 date, did you?

3 A Metals were gathered.

4 Q Do you know whether there was a lab analysis
5 performed for metals on that day?

6 A Yes, there was.

7 HEARING OFFICER: He has the original.

8 Q Does this tell what the --

9 HEARING OFFICER: You have to explain for the record
10 what "this" is.

11 MR. WOODWARD: I'm looking at page 1 of People's
12 Exhibit 2; and immediately below his name as project
13 manager, there is a phone number. And immediately to the
14 right of the phone number is a seven-column listing of
15 parameter group and other analytes.

16 BY MR. WOODWARD:

17 Q Is metals listed there as one of the analytes
18 gathered?

19 A No, it's not.

20 Q But you're telling me that you did gather a sample
21 for metals on this date?

22 A Yes, I did; but they're not contained in here.

23 Q Is there some other document that has not been
24 provided me that talks about the metals?

1 A Apparently.

2 Q I mean, do you have that document in your
3 possession?

4 A No. I do not.

5 Q Do any of these lab results reflect the metals
6 analysis?

7 A People's Exhibit 2?

8 Q Yes. I'm sorry. Attached to People's Exhibit 2.

9 A No. They do not.

10 Q Are there additional analyses that I don't have
11 also besides an additional document?

12 A Apparently.

13 Q Do we know who took custody of those analytes
14 samples?

15 A Could you rephrase that or restate it?

16 Q Are you, again, the person who sealed that sample
17 for the metals?

18 A Yes.

19 Q That's called an analyte sample, right? This
20 parameter group (03) and other analytes, are we talking
21 about an analyte sample then?

22 A Yes.

23 Q You're the one that sealed the one for metals?

24 A Yes.

1 Q Who did you deliver it to?

2 A Those are delivered by the same individuals, the
3 samplers on this document. They were relinquished to Karen
4 Nelson in particular for the CLCs. She delivered them to
5 the organics lab. Regarding the metals analyses or the
6 inorganics --

7 Q Where is the organics lab mentioned?

8 HEARING OFFICER: Go ahead and answer.

9 A It's not. They were given to the Illinois State
10 Environmental Protection Agency's Organics Lab in
11 Springfield. If you look up in the upper left-hand corner,
12 Springfield --

13 Q Springfield's circled. I see that.

14 A That's the lab these were delivered to.

15 Q So we don't have the signature of any person at
16 that lab who was responsible for receiving the samples?

17 A Yes, you do, at the bottom, the very bottom.

18 Q That's what I was asking you.

19 HEARING OFFICER: Who was that person; can you tell
20 us?

21 THE WITNESS: Gary S. -- and I cannot get his last name
22 out of this.

23 BY MR. WOODWARD:

24 Q So that's the person who received both the

1 organics and the inorganics?

2 A Just the organics.

3 Q You've gotten me totally confused, Mr. Mehalic. I
4 thought we were focusing on the inorganics because I don't
5 have any documents about the inorganics. Those are metals,
6 correct?

7 A Right.

8 Q So who received the analyte sample for the
9 metals?

10 A The inorganics was sent to the Champaign Lab.

11 Q There's nothing on here that indicates that that
12 happened?

13 A Correct.

14 Q The second page doesn't do that either?

15 A Correct.

16 Q Do you have any information about ESG Watts
17 engaging in repair activities for the final cover, like
18 reseeding or anything like that?

19 A Currently?

20 Q Any time during the period covered by your four
21 visits and to the present.

22 A I've seen proposed documentation, but I haven't
23 observed it.

24 Q When you say "proposed," somebody wrote you saying

1 this was going to happen on this date; is that "proposed"?

2 A In a document submitted by ESG Watts.

3 Q So ESG Watts wrote you and said they're going to
4 conduct this activity on this date?

5 A I don't believe there was a time frame. It was in
6 a document for a closure certification.

7 Q What about the placement of lime or any other type
8 of fertilizer?

9 A I did not observe that.

10 (Pause in proceedings.)

11 Q None of the pictures that you have in either
12 exhibit, People's Exhibit 8 or Exhibit 9, reflect what the
13 current condition of the property is as of today's date, do
14 they, because you don't know what it is as of today's date?

15 A Correct.

16 Q Current regulations deal with -- I don't know if
17 you call it a deeper or wider cap. Is that correct?

18 A Current by --

19 Q Current regulations. If you were building a
20 landfill today, you wouldn't be allowed to use a 2-foot
21 compacted soil and 6 inches of vegetative cover. You would
22 have to have more than that; is that correct?

23 A That's correct.

24 Q Do you know whether ESG Watts has placed

1 additional fill on top of the 2 1/2 foot final cover?

2 A When you mean "fill" --

3 Q When you were out there on November 17, 1995, and
4 you knew what the final contours were and that this exceeded
5 the final contours, did you go to the spots where the map
6 showed that it exceeded the final contour and try to
7 determine what was there? Was it just dirt, or was it waste
8 2 1/2 feet below --

9 A I most likely walked on the contours, but I did
10 not determine the cover's thickness.

11 Q If I understand the regulations correctly, an old
12 807 landfill is allowed to put an additional 3 feet above
13 the final contours if it's -- 3 feet of dirt; is that
14 correct?

15 A For 807?

16 Q Yes.

17 A Not to my knowledge.

18 Q There's been no interpretation by the Illinois EPA
19 that would allow an 807 landfill to change from 2 1/2 feet
20 of cover to 6 feet of final cover and that that additional
21 3 1/2 feet would be over and above the permitted height?

22 A Not to my knowledge.

23 Q Okay. Why does the EPA require 6 feet of cover
24 now?

1 A On new landfills? Those are promulgated by the
2 811 standards for new landfills.

3 Q It's just a federal requirement?

4 A Which is adopted by the Illinois EPA.

5 Q You don't -- the Illinois EPA hasn't an
6 independent basis for requiring 6 feet of cover now?

7 A They require for new landfills to have it.

8 Q Right. I'm asking: Why was there a change, if
9 you know?

10 A That was -- I do not know.

11 Q On your November 17, 1995, visit, you identified
12 erosion problems; did you not?

13 A Yes.

14 Q And would one of the solutions to an erosion
15 problem be adding additional dirt and contouring that to
16 channel the waters so it would not create an erosion
17 problem?

18 A Yes.

19 MR. WOODWARD: That's all I have.

20 HEARING OFFICER: Let's go off the record.

21 (Discussion off the record.)

22 (Ronald Mehalic steps down; Arthur Evans
23 resumes the stand.)

24 HEARING OFFICER: For the record, we are deferring the

1 redirect of Mr. Mehalic in favor of finishing the direct and
2 cross of Mr. Art Evans who -- I remind you; you're still
3 under oath.

4 THE WITNESS: Thank you.

5 HEARING OFFICER: If you would like to go ahead,
6 Mr. Woodward.

7 REDIRECT EXAMINATION

8 BY MR. WOODWARD:

9 Q Mr. Evans, have you done the calculations that we
10 discussed earlier when you were on the stand before?

11 A Yes, I have.

12 Q Those calculations produce a number that
13 represents what?

14 A Represents what we believe our economic benefit is
15 as of up through September 6, 1996.

16 Q Is there some reason you stopped at September 6th?

17 A Well, I did it both ways, and I did bring it
18 forward to the current date.

19 Q What does your calculation show the economic
20 benefit to be to ESG Watts for failure to fund the
21 closure/post-closure trust fund to the levels required?

22 A \$38,354.

23 Q Did you use Mr. Taylor's method except for the
24 application of the last rate of return?

1 A Yes.

2 Q Do you have Mr. Taylor's --

3 HEARING OFFICER: I have it.

4 MR. WOODWARD: I need to look at it for a moment.

5 BY MR. WOODWARD:

6 Q I'm handing you what's been marked as People's
7 Exhibit 10, and I'm referring you to sheet 2. There are
8 some columns that have up at the top "Biennial Rev. Due,"
9 and underneath that it talks about 8 percent -- "savings at
10 8 percent per year." Is that the column you did not apply?
11 Is that where the formula differs?

12 A Yes.

13 MR. WOODWARD: That's all.

14 RE CROSS-EXAMINATION

15 BY MR. DAVIS:

16 Q Mr. Evans, where Mr. Taylor used 8 percent, what
17 number did you use?

18 A I used 2.62 percent.

19 Q And your number, the 38,000 and change, is up
20 through the present day?

21 A That is correct.

22 Q Would you agree, sir, that this number will
23 continue to increase until such time, if any, that the trust
24 fund is fully funded?

1 A Yes, I do.

2 MR. DAVIS: Thank you very much.

3 THE WITNESS: Thank you.

4 HEARING OFFICER: Anything else?

5 You can go catch your plane.

6 We can recall Mr. Mehalic, if you can mention that
7 to him when you walk out, Mr. Evans.

8 MR. WOODWARD: Are we going to take a brief recess
9 after we complete him?

10 HEARING OFFICER: Maybe.

11 MR. DAVIS: Since we haven't had a chance during
12 Mr. Evans' resumption of his testimony, we need half a
13 minute now, please.

14 HEARING OFFICER: Okay.

15 (Pause in proceedings.)

16 (Ronald Mehalic resumes the stand.)

17 REDIRECT EXAMINATION

18 BY MS. McBRIDE:

19 Q Ron, you testified earlier that Watts' company was
20 given the opportunity to be present at this sampling event;
21 is that correct?

22 A That's correct.

23 Q They were not there; is that correct?

24 A There was an individual there.

1 Q There was an individual there?

2 A Yes.

3 Q Who was there from the Watts company?

4 A Miss Niki Wuestenberg.

5 Q Was she given the opportunity to split samples?

6 A Yes.

7 Q Did you provide her with the sample reports?

8 A No.

9 Q Would you be the one responsible for providing her

10 with the sample reports?

11 A Yes.

12 Q Had she asked for a sample report?

13 A She did.

14 Q Ron, can you provide copies of that sampling

15 report to Watts and to us, as well? Can you make those

16 copies available?

17 A For which -- for the inorganics?

18 Q Yes, the complete sampling report so it can be

19 made available.

20 A Yes.

21 MS. McBRIDE: Ron, I have no further questions.

22 HEARING OFFICER: Recross?

23 MR. WOODWARD: Yes.

24

1 RECROSS-EXAMINATION

2 BY MR. WOODWARD:

3 Q People's Exhibit Number 2, would you please
4 re-examine that. Is there some reason Niki Wuestenberg's
5 name is not listed as the facility representative?

6 A Well, at that time, she wasn't present when we
7 left.

8 Q But you just testified she was present.

9 A She was in a couple of times during our sampling
10 events; but when we left the site, she wasn't present.

11 Q I see. So she couldn't sign the form?

12 A Yes.

13 Q So you misspoke when you said, "She was not
14 present." She just wasn't available to sign?

15 A Yes.

16 HEARING OFFICER: Anything further?

17 Anything further?

18 Thank you, Ron.

19 HEARING OFFICER: Who's your next witness?

20 MS. McBRIDE: John Taylor.

21 HEARING OFFICER: Okay.

22 (Discussion off the record.)

23 (Witness sworn.)

24 HEARING OFFICER: Let's go back on the record. The

1 witness has been sworn.

2 JOHN TAYLOR,
3 called as a witness, after being first duly sworn, was
4 examined and testified upon his oath as follows:

5 DIRECT EXAMINATION

6 BY MS. McBRIDE:

7 Q Mr. Taylor, could you please state your name and
8 spell your last name?

9 A John Taylor, T-a-y-l-o-r.

10 Q With whom are you currently employed, John?

11 A The Illinois Environmental Protection Agency,
12 Bureau of Land.

13 Q What is your current position?

14 A I am a financial assurance analyst.

15 Q How long have you held that position?

16 A Seven years.

17 Q Will you please tell us your duties in that
18 position?

19 A My duties consist of primarily reviewing
20 documentation tendered by owners and operators of
21 pollution-control facilities to assure the closure and
22 post-closure care of the facilities.

23 Q John, as part of your duties as a financial
24 assurance analyst, have you reviewed financial assurance

1 documents for the ESG Watts Viola Landfill?

2 A Yes, I have.

3 Q We'll talk about Viola in just a minute. I'd like
4 to get back to your background.

5 Prior to your position as a financial analyst for
6 the agency, did you hold another position with the agency?

7 A Yes. I was field inspector from 1975 until 1980.

8 Q Have you held any other positions with the agency?

9 A No.

10 Q So you have worked for the agency for about 11
11 years; is that correct?

12 A Yes.

13 Q What did you do between the years of 1980 and
14 1990?

15 A I worked for a consulting firm and two different
16 disposal firms and went back to school, earned a degree.

17 Q Can you give us a brief description of your
18 educational background, both undergrad and graduate level
19 education?

20 A Yes. I have a bachelor's degree in economics from
21 what is now known as the University of Illinois at
22 Springfield. I have a master's in business administration
23 from Washington University in St. Louis, and I've completed
24 two-thirds of the requirements for a juris doctor degree

1 from St. Louis University School of Law.

2 Q Have you taken any continuing education or have
3 you had any training related to your position as a financial
4 assurance analyst with the Illinois EPA?

5 A I have attended some seminars presented by the
6 United States EPA related to financial assurance matters.

7 Q John, in your work with the agency, do you review
8 financial documents from landfills statewide or only
9 pertaining to landfills in a particular region or area?

10 A Statewide.

11 Q How many landfills do you review each year?

12 A I am responsible for monitoring the compliance of
13 about 160 facilities in Illinois.

14 Q Could you please tell us which regulations govern
15 closure and post-closure cost estimates and financial
16 assurance requirements pertaining to Viola Landfill?

17 A I believe that the financial assurance
18 requirements for this site are governed by the Environmental
19 Protection Act and the Illinois Pollution Control Board
20 Rules and Regulations at 35 Illinois Administrative Code
21 807.600 et seq.

22 Q Would you tell us the purpose of the
23 closure/post-closure regulations for financial assurance?
24 What concerns do they address?

1 A The financial assurance requirements are primarily
2 to assure that owners can properly have the financial
3 capacity to properly close their facilities in accordance to
4 the appropriate regulations and to provide post-closure
5 monitoring and maintenance to assure that these facilities
6 don't become environmental problems in the future.

7 Q Can you tell us what closure/post-closure
8 estimates are?

9 A Closure/post-closure care estimates are estimates
10 of what it will cost to properly close a facility and to
11 provide monitoring and maintenance thereafter.

12 Q Who provides those estimates?

13 A Generally, they're prepared by consulting
14 engineers in the employ of the site operator or the facility
15 operator. The facility operator is ultimately responsible
16 for developing those.

17 Q Do they appear in the landfill's permit?

18 A All of these are approved by permit, and the
19 requirement is generally restated in simply one or two
20 sentences in the permit somewhere.

21 Q Can you tell us what the term "financial
22 assurance" means?

23 A As I said, it's just -- it ensures that those
24 responsible for the facility have the financial capacity to

1 comply with the closure and post-closure requirements of the
2 board's rules.

3 Q What financial assurance mechanisms can a landfill
4 use to provide financial assurance?

5 A Currently there are six. Performance bond,
6 payment bond, closure insurance, self insurance, trust fund,
7 and letter of credit.

8 Q The Viola Landfill uses a trust fund; is that
9 correct?

10 A Yes.

11 Q According to the regulations, how much time does a
12 landfill have between the time new cost estimates are
13 approved by the agency and the time the financial assurance
14 fund must be increased to match the new cost estimates?

15 A I believe the board's regulations allow 90 days
16 for that.

17 Q John, did you review documents in ESG Watts Viola
18 Landfill file in preparation for today's hearing?

19 A Yes.

20 Q What documents did you review?

21 A Various reports from the trustee of the fund,
22 landfill permits, and the like.

23 MR. WOODWARD: Can I ask what purpose -- I understand
24 the questions are qualifying the witness; but at this point,

1 the identification of regulations, what documents -- I mean,
2 we've already established from a liability standpoint that
3 we haven't complied. The issue is: What is the appropriate
4 penalty? Can she shorten what she's planned in the way of
5 testimony?

6 HEARING OFFICER: Miss McBride?

7 MS. MCBRIDE: First of all, I don't see that as an
8 objection. You know, we're establishing foundation to the
9 documents that are coming in and to the gentleman as an
10 expert.

11 HEARING OFFICER: That's fine. I think Mr. Woodward
12 does have a point, that if you can shorten it -- you asked
13 some questions -- like the 90 days, that's already in
14 evidence from someone else testifying to that. We don't
15 need to go through it all again. The board's aware of the
16 regulations. They wrote them.

17 BY MS. MCBRIDE:

18 Q John, I'm handing you a copy of what's already
19 been marked as People's Exhibit Number 6 and what's been
20 admitted as People's Exhibit Number 6. Directing your
21 attention to special condition Number 2, what is the amount?

22 A Special condition Number 2 states the approved
23 current cost estimate is \$397,080.

24 Q John, based on the date on that application, when

1 should that amount have been deposited in the landfill's
2 trust fund?

3 A 90 days after issuance, which would be on or about
4 December 6, 1996.

5 Q John, to your knowledge, did Watts meet that
6 deadline?

7 A No.

8 HEARING OFFICER: Go ahead and answer.

9 A No. They have not.

10 Q John, do you know how much is currently in the ESG
11 Watts Financial Assurance Trust Fund?

12 A As of 11:00 this morning, I believe it was my
13 understanding that the balance was \$27,316.

14 Q How do you know?

15 A I spoke with the representative of the trustee by
16 telephone.

17 Q John, in your opinion, is Watts in compliance with
18 its financial assurance requirements at this time?

19 A No.

20 Q I'm now going to hand you what's been marked as
21 People's Exhibit Number 10. Can you tell us what that is?

22 A It's a memorandum I prepared at the request of the
23 Illinois Attorney General's Office concerning the Watts
24 Landfill at Viola.

1 Q What dates mark the beginning of the analysis and
2 the end of the analysis?

3 A The analysis began September 12, 1991, ended
4 January 7, 1997.

5 Q Why did you start on September 12th?

6 A Assistant Attorney General Tom Davis requested
7 that, as it was the effective date of the financial
8 assurance requirement of one of the permits in question.

9 Q John, is this information the type of information
10 you generate as part of your regular duties?

11 A Yes, it is.

12 Q The generation of information regarding economic
13 benefit of noncompliance, is that also part of your regular
14 duties?

15 A Yes.

16 MS. McBRIDE: Miss Hearing Examiner, I offer People's
17 Exhibit 10 and move for its admission.

18 HEARING OFFICER: Is there any objection?

19 MR. WOODWARD: Well, he's present. The best testimony
20 would be for him to testify. I have no objection for it to
21 be admitted as a moralization of what he's done but not by
22 agreeing to the admission -- by agreeing to the admission,
23 we are not agreeing to any of the things contained therein.

24 HEARING OFFICER: Well, you can certainly ask him

1 questions about the document.

2 MR. WOODWARD: I understand that.

3 HEARING OFFICER: Then it's admitted as Exhibit 10.

4 BY MS. MCBRIDE:

5 Q John, can you briefly tell us how you made these
6 calculations?

7 A I'll attempt to. For each of the time periods
8 delineated by the various permits issued during this time
9 period, I calculated an average trust balance and compared
10 that to the required current cost estimate and arrived at a
11 shortfall or deficiency, an average deficiency in the trust
12 fund for that period.

13 Then using what I believe is a conservative figure
14 of 8 percent, I simply calculated a savings for the period
15 by multiplying the deficiency times 8 percent per year.

16 Then later, after doing that for the four relevant
17 time periods, I brought that forward to the present again at
18 8 percent and summed those numbers and came to a total
19 apparent savings of \$116,000 approximately.

20 Q John, this amount that you just gave us, the
21 approximate 116,000, what date is that good through?

22 A I prepared this January 7, 1997.

23 Q That was --

24 A As of that date.

1 MS. McBRIDE: Miss Hearing Examiner, for the record,
2 I'm now going to be talking about People's Exhibits 11, 12,
3 and 13.

4 Q John, I'm handing you what has already been marked
5 as 11, 12, and 13. John, can you tell us what those are?

6 A These are copies from an Illinois Environmental
7 Protection Agency report titled Available Disposal Capacity
8 for Solid Waste in Illinois. They're from three different
9 annual reports.

10 Q What information in particular is attached to the
11 cover piece that announces the report?

12 A There is information about landfills, waste
13 disposed during calendar years, years of site life
14 remaining, and apparently average tipping fees charged
15 during the period.

16 Q Pardon me if I missed this, but does it indicate
17 the amount of waste that facility accepted in any one of
18 those years?

19 A Yes. It details the amount of waste disposed in
20 cubic yards for each year.

21 Q Where did this information come from?

22 A This information is supplied to the Illinois
23 Environmental Protection Agency by the site operator.

24 Q The sheet that's attached there has the excerpt

1 from the Viola Landfill; is that correct?

2 A Yes. I believe each one of them does.

3 Q What year is contained in the fifth annual report?

4 A 1989, 1990, and 1991.

5 Q The sixth annual report?

6 A 1990, 1991, and 1992.

7 Q And the seventh?

8 A '91, '92, and 1993.

9 Q John, is this a report that is customarily
10 produced by the Illinois EPA in its regular course of
11 business?

12 A Yes, it is.

13 MS. McBRIDE: Miss Hearing Examiner, I offer People's
14 Exhibits 11, 12, and 13 and move for their admission.

15 HEARING OFFICER: Any objection?

16 MR. WOODWARD: Yes. I took Mr. Taylor's discovery
17 deposition on January 8. There was no indication he was
18 going to rely on these documents. I have not seen these
19 documents before. They have never been supplied to me until
20 this morning's hearing. They're inaccurate. I haven't had
21 an opportunity to prepare.

22 HEARING OFFICER: Miss McBride or Mr. Davis?

23 MR. DAVIS: Yes. Let me address this.

24 First of all, during a discovery deposition,

1 counsel -- well, rather, prior to the discovery deposition,
2 counsel was advised by our written discovery responses to
3 answers to interrogatories that Mr. Taylor would address
4 this pertaining economic benefit issue.

5 As to the production of the documents, this
6 material is being provided this morning. Copies were given
7 to counsel. If you want an explanation, it's a last-minute
8 decision, to provide relevant evidence based upon the
9 summary judgment narrowing the issues. Mr. Taylor was
10 coming up here to testify about one permit, and we've
11 decided to expand his testimony.

12 HEARING OFFICER: Mr. Woodward?

13 MR. WOODWARD: Well, I mean, I think they had a duty to
14 let me know that these -- I mean, I asked for them in a
15 request for production. I didn't get them. I took his
16 discovery deposition. He didn't mention them in the
17 discovery deposition. I mean, it seems to me this is the
18 essence of a lack of due process to not give me a chance to
19 prepare and adequately defend.

20 My people are saying that the information
21 contained here in these documents is inaccurate. I don't
22 have the ability to test that because I haven't been able to
23 prepare for that.

24 HEARING OFFICER: I will go ahead and allow it because

1 it is public information; but what I will do since this is a
2 non-time deadline case is, if you and your people feel like
3 you need time to prepare and come back and cross-examine
4 this information, we can either continue now or continue to
5 another date. Finish what we're here to do today; and if we
6 need to come back for the limited purpose of cross-examining
7 on this information, I will allow that.

8 MR. WOODWARD: Just one point, Ron Mehalic testified we
9 didn't accept waste -- it was before September 8, 1992.

10 HEARING OFFICER: This is argument now. If you want to
11 question the witness about that, you may do so. Let's
12 continue where we're at. If you feel you have not had an
13 adequate chance to cross-examine, then we can either take a
14 break; or we can come back at a later time for you to
15 question this witness again. Let's go ahead and proceed.

16 BY MS. McBRIDE:

17 Q John, comparing the three reports, does it appear
18 the information provided by the landfill for the years '90,
19 '91, '92 among the three reports is the same?

20 A Yes, it is.

21 Q Did you have a chance to review these reports
22 before today?

23 A Yes, I did.

24 Q So you are familiar with the figures in these

1 reports; is that correct?

2 A Yes, I am.

3 Q Have you had an opportunity to do some
4 calculations with regard to these figures?

5 A Briefly, yes.

6 Q The figures in these reports allow you to get an
7 idea of the revenue generated at the Viola Landfill of the
8 years 1989 through 1993?

9 A Assuming the information supplied by the operator
10 is relatively accurate, yes.

11 Q Having done that calculation, can you tell us how
12 much revenue was generated?

13 A It would appear by simply multiplying the amount
14 reported as having received times the reported tipping fee
15 would come to a figure of just over \$1,100,000.

16 Q Of that amount, State and County often charge a
17 certain amount that they also call a tipping fee; so that
18 would have come out of that amount?

19 A That's my understanding. I understand that
20 perhaps a little over \$100,000 would have been paid to the
21 state tipping fees.

22 HEARING OFFICER: Does that include the county?

23 THE WITNESS: I asked our fees people, and they didn't
24 have any record of this county collecting of county fees.

1 Ultimately, I don't know for certain.

2 BY MS. McBRIDE:

3 Q Minus the government's tipping fees, Viola
4 Landfill, based on these figures, could have generated a
5 million or better in revenue from 1989 through 1993; is that
6 a --

7 A It seems to be a reasonable assumption from the
8 information provided.

9 Q John, we heard earlier today there is 52,000 cubic
10 yards of solid waste in the landfill in the overheight
11 area. Given the tipping fee charged by the landfill, can
12 you tell us what revenue was generated by the 52,000 cubic
13 yards of waste?

14 A It would obviously be somewhere in the
15 neighborhood of \$250,000.

16 MS. McBRIDE: That's all.

17 HEARING OFFICER: Mr. Woodward?

18 CROSS-EXAMINATION

19 BY MR. WOODWARD:

20 Q Why did you use 12 percent in your analysis of
21 savings generated by failure to fully fund the trust fund?

22 A As a cost of capital to ESG Watts, I thought that
23 would be a conservative number; and as I understand it, that
24 was based on some testimony given by an officer of ESG

1 Watts.

2 Q You were made aware of what that testimony was,
3 were you not, in your discovery deposition?

4 A I believe so. Yes.

5 Q Did he not indicate that the prior testimony was
6 an estimate?

7 A Yes. I believe a very conservative one.

8 Q Would historical records and historical cost of
9 borrowing be a better measure of what the cost of capital
10 is?

11 A Perhaps, maybe not.

12 Q You heard Mr. Evans testify; did you not?

13 A Most of it, yes.

14 Q Did you hear him when he indicated he disagreed
15 with one part of your analysis, and that was the application
16 of the final 8 percent?

17 A Yes.

18 Q If I understand your analysis correctly, you had
19 already taken into effect an 8 percent rate of return, had
20 you not, prior to that column?

21 A Which column are you speaking of?

22 Q The column that has the 8 percent return above
23 it. I think it's on sheet 2.

24 A This one, "savings at 8 percent"?

1 Q Right.

2 A Yes.

3 Q Prior to that, you had already used 8 percent to
4 determine what the annual savings was?

5 A No. That is the column where -- this column is
6 simply 8 percent per year multiplied times this number.

7 HEARING OFFICER: For the record, you have to at least
8 give one of the numbers. Let's talk about the first year or
9 something.

10 A Okay. Using the first period of my calculations,
11 September 12 of 1991 to March 8, 1992 -- let me get this
12 right. Permit 1991-098-SP was controlling. The current
13 cost estimate was 159,258. The average balance in the trust
14 was \$21,947. The difference between those two is under the
15 column labeled "short." The trust was short \$137,311. That
16 period of time, .49 years, under the column with the heading
17 of "year" and that's 178 days -- you'll see that under the
18 column labeled "days" -- at 8 percent a year for a half a
19 year you would get about \$5,300. That's what it came out,
20 \$5,357 savings for that 178-day period.

21 Q So is it the last column, the one that has for the
22 period 12 September '91 to 8 March '92 an amount of
23 \$7,921.18 that you again used 8 percent?

24 A Yeah. What was that fellow's name that was here

1 earlier?

2 Q Mr. Evans.

3 A Mr. Evans fails to take into account that ESG
4 Watts had use of that 5,357 -- \$5,357 savings from that
5 point of time until the present. He ignores that in his
6 calculations apparently.

7 Q Okay. But --

8 A That's his first problem.

9 Q So that 5,000, though, would be invested, correct?

10 A If he used it for his business purposes -- I don't
11 know what he did with it.

12 Q In order to determine what is the appropriate
13 return, don't you use what you could obtain through
14 investment?

15 A Or the cost savings through not having to borrow
16 from outside sources, which is why ESG Watts caught -- you
17 know, overall cost of capital is important. That's where
18 the 8 percent comes from.

19 Q You agree that the rate of return was 4 percent
20 during that point of time, money we had invested?

21 A In that trust, yes.

22 Q Why isn't 4 percent or in actuality with your
23 number, 4.08 percent, a better number than 8 percent to
24 determine what is the value for that use of that \$5,357 for

1 the 5.082192 years?

2 A If I basically cheat the State out of \$5,000, I
3 can either put it in a trust fund and get 4 percent; or I
4 can use it instead of borrowing at 15 or 20 percent or
5 whatever I have to pay. If I use it in place of borrowing,
6 I save 15 or 20 percent, not 4 percent.

7 Q Still, you're talking about a marginal cost.
8 You're not talking about marginal cost here. You're talking
9 about, "I have \$6,000 that I can put into trust funds, or I
10 can use it to pay six employees \$1,000 a month"; correct?

11 A Okay.

12 Q That's the choice?

13 A I suppose. Okay.

14 Q Or "I can" -- "but in order to do either one, I
15 have to borrow \$6,000"?

16 A Okay. You have to obtain funds to operate your
17 business from somewhere. Yes.

18 Q So why isn't 4 percent a better number than the
19 8 percent?

20 A I don't know that I can make it any simpler.
21 If -- take a personal example. If you have to borrow money
22 to operate your home, for example, and the only place you
23 can borrow money from is a credit card that costs you
24 18 percent interest, for example, if someone gives you a

1 windfall, you can either use it to pay down your borrowed
2 and save 18 percent per year; or you can simply keep paying
3 the exorbitant interest rate, put the \$5,000 into a fund
4 that pays 4 percent and have, in my example, a net loss of
5 8 percent by doing so. It would be poor money management.
6 That's why I used 8 percent.

7 Q You also heard Mr. Evans testify that he used a
8 weighted average to come up to 6.70 percent and that he did
9 not believe that would significantly change his numbers?

10 A I'm sorry. What was that about?

11 Q Rather than -- he talked about that the range of
12 borrowing was from 0 to 8.75 percent. That was his
13 testimony. Did you hear that?

14 A Some of it.

15 Q Later on, he was asked if he used the historical
16 numbers for 0 percent for this period of time, 8.25 percent
17 for this point in time, or did he use a weighted interest
18 rate. He said he used a weighted interest rate. Did you
19 hear that?

20 A Yes.

21 Q Then, in response to the question, "Would that
22 significantly change the numbers in your analysis," he said,
23 "No." Although he did admit there would be a change.
24 Would you agree that it would not produce a significant

1 change?

2 A I think his testimony was ludicrous.

3 Q I didn't ask that question. I asked --

4 A I can't follow your question. Start over.

5 Q The question is: Using a weighted interest rate
6 versus the actual historical rates, would you agree that,
7 although there would be a change by using the weighted, that
8 it would not be a significant change?

9 A I think it would be insignificant. It would
10 probably be irrelevant.

11 Q Thank you.

12 In one of your responses, I think you used the
13 words "cheat the State out of some money." If I understand
14 these trust funds correctly, doesn't this remain ESG Watts'
15 money? That if closure is done, everything is fine, we get
16 our money back?

17 A Yes. That's true.

18 Q So how are we cheating the State out of the
19 money? Aren't we just --

20 A I thought that was an appropriate hypothetical.

21 Q Now, you used 4.08 percent because that was the
22 historical rate of return for invested money, correct?

23 A In that trust fund, yes. That's what I recall.

24 Q During that same period of time, do you agree that

1 that would be what people earn as a reasonable rate of
2 return on an investment, say, a money market account during
3 that period of time?

4 A It's difficult. I believe the 4.08 percent would
5 probably be net of taxes and trustee fees. You may actually
6 earn more in a savings account or a CD or something. I
7 don't follow rates that closely. Obviously, it's not very
8 much money.

9 Q You used the historical rate because you thought
10 that was the best evidence of what the rate of return was,
11 didn't you?

12 A It's the exact rate of return for that trust.

13 Q Why wouldn't the historical cost of borrowing be
14 the best evidence of our cost of capital?

15 A I don't think the historical cost of borrowing
16 would be relevant when you're talking about someone who
17 can't even borrow by their own admission.

18 Q That was only for the last two years.

19 A Well, if that's the case, you would have to assume
20 that a relevant interest rate would be like 50 or 75 or 100
21 percent of the borrowing.

22 Q Didn't you say in your discovery deposition that
23 if somebody couldn't borrow money your whole analysis is
24 thrown out the window because it assumes that people can

1 borrow money?

2 A Yes. The analysis breaks down because you start
3 talking about a situation where someone should not even be
4 in the landfill business because they cannot provide for
5 closure and post-closure care at all under any
6 circumstances. You're right. My analysis is geared towards
7 a profitable operating company.

8 Q Did you, in reviewing the records for Exhibits 11,
9 12, and 13, review the original submissions by the operator;
10 or did you review what somebody else had compiled?

11 A I saw some of -- I pulled the fees file where I
12 assumed that some of this information came from. I saw some
13 of them; but, no, I didn't do an exhaustive search.

14 Q So 11, 12, and 13, somebody else prepared these
15 documents?

16 A Yes.

17 Q When it talks about waste that was accepted, you
18 never reviewed the original documents submitted by ESG
19 Watts?

20 A I saw some of them; but, no, I did not see all of
21 them.

22 Q When you talked about \$52,000 in revenue -- excuse
23 me -- in excess of \$250,000 in revenue generated from 52,000
24 cubic yards in overheight, haven't you already talked about

1 that -- isn't that already included in the \$1,111,000?

2 A I assume so. Yes. I don't know.

3 Q So that's kind of -- if somebody tried to
4 piggyback those two numbers, there would be double
5 accounting?

6 A If that's the case, yes.

7 MR. WOODWARD: That's all I have of Mr. Taylor;
8 although I don't believe I can pursue anything further with
9 11, 12, and 13 without some time to figure out what they
10 indicate is inaccurate.

11 HEARING OFFICER: Let's go off the record then.

12 (Discussion off the record.)

13 MR. WOODWARD: So is it my understanding that we will
14 have an opportunity on March 25 to pursue any
15 cross-examination dealing with Exhibits 11, 12, and 13?

16 HEARING OFFICER: Yes.

17 MR. WOODWARD: Thank you. I do have an additional
18 couple questions of Mr. Taylor.

19 BY MR. WOODWARD:

20 Q I believe you mentioned that insurance policy was
21 one of the approved methods for funding the trust fund
22 requirement; is that correct?

23 A There is a financial assurance mechanism available
24 to operators of facilities, closure insurance, yes.

1 Q Have you ever had a conversation with a gentleman
2 by the name of Jack Lawley when you indicated you doubted
3 whether ESG Watts or Watts Trucking Service could ever get
4 an insurance policy approved?

5 A No. I don't recall. I don't remember that name.

6 Q What about with anybody else associated with the
7 insurance industry concerning the same subject of
8 conversation?

9 A I don't recall a specific conversation like that.

10 Q Haven't you previously testified at a hearing
11 dealing with enforcement of the Taylor Ridge Landfill that
12 you did have such a conversation?

13 A Yes. But you asked me whether or not I remembered
14 it. At the time we were talking about a hypothetical
15 conversation with someone whose name I didn't remember at
16 the time, and I certainly don't remember it now and don't
17 wish to speculate on what I might have said. I suggest you
18 get this guy and get him here and have him testify.

19 Q But you have had a conversation with somebody
20 about Watts' ability to have an insurance policy serve as
21 its funding mechanism for closure/post-closure?

22 A Probably so.

23 MR. WOODWARD: That's all.

24 HEARING OFFICER: Okay.

1 REDIRECT EXAMINATION

2 BY MS. McBRIDE:

3 Q John, besides the trust fund that's in place, does
4 Watts have an insurance mechanism in place for this
5 landfill?

6 A Not that I'm aware of.

7 MS. McBRIDE: I have no further questions.

8 HEARING OFFICER: Anything else?

9 RECROSS-EXAMINATION

10 BY MR. WOODWARD:

11 Q Before it has one in place, don't you have to
12 review the insurance policy to assure that it meets the
13 IEPA's requirements?

14 A Yes, we do.

15 Q Have you ever told anybody that you wouldn't
16 approve one for Watts?

17 A No. We don't have any choice. If the insurance
18 policy meets the standards and the issuing company meets the
19 standards set forth by the board, we have no choice but to
20 approve it.

21 Q Has there been an insurance policy approved in the
22 state of Illinois yet for any closure/post-closure trust
23 fund -- not trust fund but mechanism funding?

24 A I believe we have over 20 of them, but I would

1 have -- without checking the records, I would have -- that's
2 a guess. It's somewhere in the neighborhood of 20.

3 MR. WOODWARD: That's all.

4 HEARING OFFICER: Anything else?

5 MS. McBRIDE: No.

6 HEARING OFFICER: Thank you, Mr. Taylor.

7 Do you have any further witnesses?

8 MS. McBRIDE: Yes, we do.

9 HEARING OFFICER: Why don't we take a five-minute
10 break.

11 (Recess in proceedings.)

12 HEARING OFFICER: Will the State please call its next
13 witness?

14 MS. McBRIDE: People call James L. Watts.

15 (Witness sworn.)

16 MS. McBRIDE: Miss Hearing Examiner, it's our intention
17 to handle this witness as a hostile witness pursuant to
18 Pollution Control Board Rule 103.209.8.

19 HEARING OFFICER: Is there any objection?

20 MR. WOODWARD: No.

21 HEARING OFFICER: Please, proceed.

22 THE WITNESS: Hostile witness?

23 HEARING OFFICER: It just means she can ask you
24 different types of questions. She can ask leading

1 questions.

2 MR. WOODWARD: Before she begins, we did reach an
3 agreement as to Mr. Watts' testimony pertaining to the
4 hearing in PCB96-237, which is the hearing dealing with
5 Sagamon Valley, that whatever he testifies to today could be
6 incorporated into the record for that hearing.

7 HEARING OFFICER: Okay. We will talk about that again
8 on the 25th, but it's fine to make note of it in this
9 transcript also.

10 Please, proceed.

11 JAMES WATTS,
12 called as a witness, after being first duly sworn, was
13 examined and testified upon his oath as follows:

14 CROSS-EXAMINATION

15 BY MS. McBRIDE:

16 Q Mr. Watts, can you state your name and spell your
17 last name for the record, please?

18 A James Watts, W-a-t-t-s.

19 Q Mr. Watts, you are the sole stockholder of Watts
20 Trucking Service, Inc.; is that correct?

21 A Yes, I am.

22 Q ESG Watts is a wholly owned subsidiary of Watts
23 Trucking Company, Inc.?

24 A Yes, it is.

1 Q ESG Watts owns Viola Landfill; is that correct?

2 A Yes.

3 Q Is it fair to say you are the sole owner of the
4 Viola Landfill?

5 A Yes.

6 Q Mr. Watts, I'm going to start out asking you some
7 questions regarding the management of the landfill.

8 Mr. Watts, supplemental permit was issued for the
9 landfill in 1991; and it contained a groundwater monitoring
10 requirement. The groundwater monitoring wells were to be
11 installed and sampling done and reported by April and May of
12 1992. The Illinois EPA received no reports for groundwater
13 sampling until July of 1995. Can you tell us why ESG Watts
14 did not meet the conditions of its permits for those three
15 years?

16 A That's not an area I work directly in, the
17 management of the landfills. I would defer those questions
18 to the people that work in that department or in that area.
19 I work out of our corporate office downtown and work with
20 many companies, don't work in a direct capacity with the
21 landfill on a daily basis. I work with those people that
22 manage it.

23 Q But as the sole owner and the principal in the
24 company, you do make decisions regarding the management of

1 that landfill, don't you?

2 A I don't recall what was the reason for the
3 holdup. I do know we did eventually get it done. I knew we
4 were late on it. I don't know the reason. I don't recall.

5 Q Mr. Watts, once those reports were submitted,
6 samples indicated that inorganics and organics were detected
7 in the groundwater monitoring wells. Those were your own
8 reports that indicated organics and inorganics. To this
9 day, ESG Watts has not done any further groundwater
10 assessment or taken any corrective action regarding this
11 rather serious problem.

12 Can you tell us why ESG Watts has done nothing to
13 address the problem of serious contamination?

14 MR. WOODWARD: I would object --

15 A I can answer it.

16 MR. WOODWARD: I would object to her characterization
17 of "serious" or "not serious."

18 HEARING OFFICER: Sustained. He can still answer the
19 question.

20 Go ahead.

21 A It's my understanding -- I don't work directly,
22 again, so I'm not that familiar with it. But I do know that
23 the problems that you're characterizing as being very
24 serious -- it's my understanding there was minute

1 contamination, and they weren't even sure if it was coming
2 from our property or coming from upstream. Our people told
3 us they think a lot of it is coming from up above us. It
4 could also be coming from the roads, from the salting of the
5 roads and so forth.

6 Q But by your own admission, you do not know where
7 it's coming from?

8 A Yeah. I'm like the State. I don't know.

9 Q But you will agree that you've done nothing to
10 ascertain --

11 A I don't know what we have done. I said I don't
12 work directly in that. I know we have some people looking
13 at it and working on it. How far they are or what they've
14 done I do not know.

15 HEARING OFFICER: Mr. Watts, if you could let her
16 finish her questions before you answer, please. It's hard
17 for our court reporter.

18 THE WITNESS: Okay.

19 BY MS. McBRIDE:

20 Q Mr. Watts, you realize that four of the organics
21 detected in your wells are cyanogens; do you not? Do you
22 realize that?

23 A Ma'am, I'm not familiar with all the materials
24 that were found in the wells.

1 Q The failure to require monitoring for three years
2 caused a three-year delay in detecting this contamination.
3 Mr. Watts, can you account for your decision as to not do
4 anything about it for three years?

5 A I would prefer you ask those questions to the
6 other people that can tell exactly whether they were
7 monitored or were not since I don't work directly in that
8 area.

9 Q Mr. Watts, did you know three years ago that you
10 had organics in your groundwater monitoring wells?

11 A I don't know. I couldn't answer that question
12 honestly. I do not know.

13 Q As a principal in your company, is it customary
14 for you not to know these kinds of things?

15 A I think it's very customary for people that are
16 president of the company to not know every detail about
17 everything --

18 Q I'm talking about yourself, your own practice. Do
19 you not have your people tell you when something like this
20 is occurring?

21 A I'm certain they did talk with me about it. To
22 list exactly what the contaminants or the chemical makeup of
23 the contaminants were, I can't sit here and answer those
24 questions at this time and say that I recall exactly what

1 the makeup of the contaminants were or the level of
2 contaminants.

3 Q Mr. Watts, we also heard testimony today about the
4 condition of the final cover of the landfill. Again, I need
5 to ask: Why did you let the landfill stand with such poor
6 cover for so long?

7 A We didn't. We did cover the landfill. The
8 landfill was covered. I think the way I heard it today was
9 that they weren't recognizing it because we were over
10 height. We did cover it and covered it in most all places
11 in excess of 3 foot of dirt.

12 Q Mr. Watts, I think Mr. Mehalic testified that
13 there were cracks in the cover. There were erosion rills.
14 There was --

15 A There was some erosion --

16 Q Excuse me.

17 There was waste exposed from these cracks. That's
18 not cover in good condition. That cover needs to be
19 maintained.

20 A Is there a question to me?

21 Q My question is: Why have you allowed this to go
22 on?

23 A We didn't allow it to go on. Because it was fresh
24 dirt that was placed down, you do have some erosion with a

1 tremendous rainfall of any type afterwards; and you have to
2 go in and repair it, which we did.

3 Q When did you go in and repair it?

4 A There again, you'll have to talk with Tom or one
5 of the fellows that handles that. I can't give you that
6 date. We did go in and repair it after it had eroded.

7 Q With regard to the existing height of the Viola
8 Landfill, Mr. Watts, you have known that the landfill
9 exceeded its vertical boundaries since the fall of 1994; is
10 that correct?

11 A I don't know the exact date that I was made aware
12 of it, but I've known for a while it was over height. Yes.

13 Q Your consultant submitted a contour map to the
14 Illinois EPA in '94 that indicated the elevations. Why have
15 you not moved the waste or completed the local siting
16 process in this time? Three years have gone by.

17 A There's been discussion both back and forth. We
18 talked about moving it since. When we closed the site,
19 there was almost a million yards' capacity in the site. So
20 we talked about moving it and were gearing up for that. And
21 then the State and others suggested we site it. We went
22 back to siting. We started off on siting, went to moving,
23 and went back to siting. Now we're working on siting it.

24 It's not an environmentally impairing problem, I

1 don't believe; but it's something that has to be addressed,
2 and we are addressing it.

3 Q Until you get those final contours permitted
4 either by moving the waste or by re-siting it, your final
5 cover has not been addressed. It's still a problem. So
6 this ongoing nature of the whole situation continues to be
7 an environmental problem.

8 A Maybe I don't understand.

9 MR. WOODWARD: Excuse me. Is that a question?

10 MS. McBRIDE: Yes. It is a question.

11 BY MS. McBRIDE:

12 Q I guess my question to you is: Why have you
13 allowed this to go on?

14 A First of all, the final cover is in place. There
15 is over 3 foot of final cover on the soil. Even if it's
16 10 foot high in one location, it still has the ample soil on
17 it to disallow the penetration of water through it. So the
18 soil is there. So the environmental problem is eliminated
19 from that aspect.

20 We do recognize that we're going to have to site
21 it, but it won't be any more or less environmentally
22 impairing once we site it than it is now. And this dirt
23 won't be any more or less than what there is on it now since
24 we do have the 3 feet of certified cover on it.

1 Q So, Mr. Watts, in your statements about there
2 being 3 feet of cover, then you are indicating that there's
3 waste under that 3 foot of cover which is over height?

4 A It's my understanding that we have some areas,
5 small area of the site that has some over-fill in it in
6 height, yes; but it's still maintained -- I'm just
7 maintaining we did cover that with the 3 foot of dirt as
8 well. So the entire site has been covered with an ample
9 final covering.

10 Q Mr. Watts, we heard testimony earlier that the
11 area over height is 6 to 8 acres. Is that a small area?

12 A Well, in the overall size of the site -- I mean,
13 it's not small, but it's -- in the overall size of the site,
14 it's -- it's a lot smaller than the area we left
15 unfinished -- or unfilled, I mean. We left one million
16 yards and put in 50,000 over. It was my understanding we
17 were about 50,000 yards over, and we left close to a million
18 yards capacity in the site when we closed it.

19 There was no economic benefit to us. It was just
20 an inadvertent mistake that somebody shot it wrong.

21 Q But 50,000 is over your permitted height; isn't
22 that correct?

23 A Yes. That's the testimony that was given earlier,
24 approximately 50,000 over and almost a million left

1 unfilled.

2 Q But that's not where the waste is. You haven't
3 moved the waste to the open area; is that correct?

4 A No. The State suggested to us we go back and
5 permit. That's what we're in the process of doing now.

6 Q Mr. Watts, we heard earlier, based on figures that
7 ESG Watts had provided to the Illinois EPA for the years
8 1990 through 1993, Viola Landfill generated close to
9 \$1 million for those years. Is that correct?

10 MR. WOODWARD: I would object. That's not --

11 A No.

12 MR. WOODWARD: I would object. That's not a correct
13 characterization of the prior testimony. Those aren't the
14 years that the testimony was given in.

15 HEARING OFFICER: Can you restate your question,
16 please?

17 MS. McBRIDE: Sure.

18 BY MS. McBRIDE:

19 Q For annual reports to which John Taylor testified
20 covering 1990 through -- excuse me -- covering 1989 through
21 1993 --

22 MR. WOODWARD: I believe he testified through 1992.

23 HEARING OFFICER: The reports are through 1993.

24 MR. WOODWARD: I agree, but I think his testimony was

1 '89 to '92.

2 HEARING OFFICER: Overruled. I believe it was to '93.

3 Please, continue.

4 BY MS. MCBRIDE:

5 Q Mr. Taylor testified that the revenue generated
6 from the Viola Landfill amounted to \$1 million. Is that a
7 correct figure?

8 A I'm not certain of that figure. I don't know that
9 figure, but the majority of the waste put in was put in
10 there by our trucks; so it would have been an intracompany
11 paper transaction. There wasn't any outside cash
12 generated. It would have just been an intracompany
13 transaction. County Waste used the landfill. It was County
14 Waste's landfill. County Waste is one of our companies.

15 Q But you were paid to haul that waste; were you
16 not?

17 A We would like to think most of it, not all of it
18 but most of it.

19 Q Mr. Watts, your company for which you are the sole
20 stockholder paid you a salary of \$365,000 in 1994; is that
21 correct?

22 A I believe so. Yes, ma'am.

23 Q You were paid the same by your company in 1995; is
24 that correct?

- 1 A Yes, ma'am.
- 2 Q Has your salary increased in 1996?
- 3 A No, ma'am.
- 4 Q How about 1997; are you being paid \$365,000?
- 5 A Yes, ma'am.
- 6 Q According to your tax return, Schedule A indicates
7 that loans have been made to stockholders; is that correct?
- 8 A Yes and no.
- 9 Q We heard testimony earlier that loans have been
10 made to stockholders. Have loans been made to stockholders?
- 11 A There were loans made to me, not personally, that
12 I used personally but money that was loaned to me that I put
13 into buildings and real estate and other facilities that we
14 utilize within the company that aren't a part of one
15 company. And it was passed through me because J. L. Watts,
16 another company of ours, is also personally owned by me.
17 The money was spent, most of it, on that and also some very
18 large insurance policies that I had taken out that the
19 company benefited from.
- 20 Q But as the sole stockholder, you are the owner of
21 all of these holdings; is that correct?
- 22 A Yes, ma'am.
- 23 Q Any money generated from these holdings is to your
24 benefit; is that correct?

1 A To the benefit of the company, to the benefit of
2 the company. It depends on how well the company is doing.
3 That's a difficult question.

4 Q According to your 1995 tax returns, a total of
5 \$1,001,422 has been loaned to stockholders. That is you,
6 Mr. Watts; is that correct?

7 A No. I think the testimony was -- I think the
8 stockholder account's 7 or 800,000, somewhere between 6 and
9 800,000.

10 Q I believe that testimony was with regard to
11 today's status of that account which was 800,000; is that
12 correct?

13 A It's somewhere -- I don't know exactly, but
14 it's -- I'd say 6 to 8, somewhere between 6 and 800,000.

15 Q Mr. Watts, what rate of interest are you paying on
16 this loan?

17 A I think the Federal Government sets a rate that
18 you have to pay, and I'm paying that rate.

19 Q And what is that rate?

20 A I don't know. I don't handle it.

21 Q Mr. Watts, Watts Trucking has 25 wholly owned
22 subsidiaries; is that correct?

23 A I don't believe it's that number; but, yes, we
24 have 17 or 18 at least, 19.

1 Q Mr. Watts, according to your Schedule L of your
2 tax returns, at the end of the 1994 tax year, the return
3 indicates corporate assets in the amount of \$30,539,000.
4 Does that sound correct?

5 A I don't know that number right offhand, ma'am.

6 Q Your 1995 return shows corporate assets of
7 \$29,834,000; is that correct?

8 A Ma'am, I don't -- I can't answer to that number.

9 Q Mr. Watts, your company is worth quite a bit of
10 money, could command a good selling price, couldn't it?

11 A Possibly, it could. Yes.

12 Q Mr. Watts, you claimed a gross income for Watts
13 Trucking, Inc., of \$46,981,000 on your 1995 income tax
14 returns; is that correct?

15 A Gross?

16 Q Gross, 46,981,000.

17 A Sounds right.

18 Q Your expenses were \$45,474,000; is that correct?

19 A Sounds correct, somewhere in that neighborhood.

20 Q Your company's taxable income was \$1,500,000 in
21 1995?

22 A Sounds right.

23 Q Your company is making money, Mr. Watts; is that
24 correct?

1 A No. It did that year. It didn't last year.

2 Q 1994, it did, didn't it?

3 A No. I don't believe so. Did it?

4 Q In 1994, your claimed gross income was

5 \$61,835,000?

6 A Sounds familiar.

7 Q Your expenses were \$57,289,000?

8 A I don't recall those numbers.

9 Q Your 1994 taxable income was \$4,545,000?

10 A That number I'm not sure of. That does not sound

11 familiar.

12 Q Mr. Watts, if your company has made money and is

13 worth some money, why is it that you can't get a loan?

14 A The thing that's probably holding us up more than

15 anything right now is because our cash flow is down because

16 the Springfield landfill is closed. If that site were up

17 and running, we wouldn't have any problem getting a loan

18 right now.

19 Q Mr. Watts, you have 17 or 18 companies. Is that

20 one landfill enough to cause that amount of problem?

21 A Without a doubt, absolutely. It is the main

22 reason. Just had a meeting with Bank of Boston, number one

23 waste bank in the nation. They told us as recent as in the

24 last 60 days they felt we were a candidate for the Bank of

1 Boston if we got the landfill up and running.

2 Q Why is that landfill such a problem? I mean, why
3 is it? What's the problem?

4 A The fact that I own it is the biggest problem, the
5 fact that Jim Watts owns it.

6 Q Mr. Watts, right now there should be \$397,000 in
7 the Viola Landfill Trust Fund; and as we heard today,
8 there's only \$26,000 in that trust fund. Can you tell us
9 why that is?

10 A It's because we were going to move the waste --
11 the only reason the number is high is because they put in a
12 number of what the State figured it would cost to move the
13 waste.

14 Q Excuse me, Mr. Watts. My question was: Why isn't
15 there \$397,080 in the trust fund itself?

16 A Because we haven't put it there, ma'am, obviously.

17 Q Why haven't you put it there?

18 A We didn't have the money at the time to put there.
19 We're going to go for bonding on it, and we're in the
20 process right now of putting that together. We're going to
21 bond it as opposed to putting the cash into the trust fund.
22 That's being put together right now.

23 Q When was the last time any money was deposited
24 into the trust fund?

1 A We're not putting money into the trust fund.
2 We're going to bond it. The preparation work for those
3 bonds is being done right now. We're going to put an
4 insurance policy on it or bond it, and that's being done at
5 the present time.

6 Q Mr. Watts, recent summary judgment order indicated
7 a time frame for putting money in that trust fund or making
8 a financial assurance arrangement. When will you have that
9 money available?

10 A We hope that in a very short period of time we'll
11 have the bonds in place on that site, ma'am. When I say
12 "short period," I'm talking a matter of within the next
13 couple months, next 60 days hopefully, even shorter than
14 that.

15 We were told it would be in place by now. It's
16 taken a lot longer than what I thought. We were told it
17 would be in place already by the people that are working on
18 it. It's just taken longer than we thought.

19 Q You do understand you have an obligation by law to
20 have money in there in 90 days after the new cost estimates
21 are approved. Are you purposely violating the law?

22 A Could you rephrase the question maybe?

23 Q I'm asking you if you are purposely violating the
24 law.

1 A No, ma'am. That's why we're working so hard to
2 get the bonding put together to get in compliance on that.

3 Q But you haven't put any money in that trust fund
4 since the late '80s.

5 A Yes, ma'am.

6 Q So you've had 7, 8 years to do this.

7 A We're busy putting the money into fines and things
8 that Mr. Davis is levying every place else.

9 Q Mr. Watts, as we mentioned, you've got some
10 subsidiaries that you hold at this time. Can you tell us
11 when you acquired -- when did you acquire DeLong Disposal
12 Company?

13 A About five years ago.

14 Q 1992?

15 A Or maybe even before that.

16 Q So that was within the time frame that you should
17 have been financing these trust funds?

18 A We bought that by hauling the waste. We didn't
19 buy that with cash. We bought the company by hauling the
20 waste, letting them collect the revenue.

21 Q Do you know how much that company is worth?

22 A No, I don't, right offhand, ma'am.

23 Q When did you acquire East Tex?

24 A Didn't acquire East Tex.

1 Q Where did East Tex come from?

2 A It was a start-up company, ma'am.

3 Q You started it up?

4 A Yes, ma'am.

5 Q When did you start it up?

6 MR. WOODWARD: I would object. Is there some

7 evidence --

8 A It's not a part of Watts Trucking Service.

9 MR. WOODWARD: Is there some evidence that East Tex is

10 a subsidiary company?

11 MS. McBRIDE: It's on the tax returns.

12 MR. WOODWARD: The tax returns are not in evidence

13 right at the moment.

14 THE WITNESS: It's not owned by Watts Trucking Service

15 is what he's saying.

16 MS. McBRIDE: I'm going to ask these tax returns be

17 marked.

18 HEARING OFFICER: 15?

19 MS. McBRIDE: 15 and 16.

20 (Discussion off the record.)

21 (Exhibits 15 and 16 marked for identification.)

22 (Recess in proceedings.)

23 HEARING OFFICER: Mr. Watts, I remind you you're still

24 under oath.

1 BY MS. McBRIDE:

2 Q Mr. Watts, I'm going to hand you what's been
3 marked as Exhibit 15. Can you tell us what that is, please?

4 A A tax return, copy of a Watts Trucking Service and
5 subsidiaries tax return.

6 Q What's the year on that tax return?

7 A I'm trying to find the date.

8 HEARING OFFICER: It should be in that corner.

9 A First month, 31st day -- it's there -- '95.

10 MR. WOODWARD: What exhibit number is that?

11 MS. McBRIDE: It's 15.

12 BY MS. McBRIDE:

13 Q What's this date right here in the upper
14 right-hand corner? What's the year?

15 A '95, I said.

16 Q It's 1994, you said?

17 A No. It says "'95."

18 HEARING OFFICER: The tax return date, though.

19 Q Mr. Watts, is this your tax return for the year
20 1994?

21 A Yeah, submitted -- okay. I'm sorry. It's for
22 '94. I'm sorry.

23 Q That is the tax return for Watts Trucking for the
24 income year 1994; is that correct?

1 A Yes.

2 Q If I can have 15 back, I'm going to hand you
3 Exhibit Number 16.

4 A '95.

5 Q That's your 1995 income tax return; is that
6 correct?

7 A Yes, submitted in '96.

8 HEARING OFFICER: I have a question. When you say
9 "your," are you referring --

10 Q The 1995 tax return for Watts Trucking Services
11 and subsidiaries; is that correct?

12 A Uh-huh.

13 Q Can you look at that tax return and tell me what
14 the date is on that, when it was submitted? On the bottom,
15 there's a date.

16 A 10th month, 14th day, '96.

17 Q So October 14, 1996.

18 MS. McBRIDE: Miss Hearing Examiner, I offer Exhibits
19 15 and 16 and move for their admission.

20 HEARING OFFICER: Is there any objection?

21 MR. WOODWARD: Well, we have no objections to the
22 authenticity of the documents. There are contained in those
23 documents a list of taxpayer identification numbers that do
24 not correspond to the list of subsidiaries.

1 HEARING OFFICER: Well, you can cross-examine or
2 actually, I guess, direct examine. But you can certainly
3 question about the documents. They're admitted into
4 evidence.

5 BY MS. McBRIDE:

6 Q Mr. Watts, I'm going to hand you back Exhibit 15.
7 On the back pages is a list of companies. In that list is
8 East Tex; is that correct?

9 A I haven't looked at it. I don't look at them
10 normally.

11 Q Back two pages.

12 A Yes.

13 Q Can you tell me: Why is East Tex in your tax
14 return if it's not your company?

15 A I didn't ever say it wasn't my company.

16 Q Why is it in the Watts Trucking --

17 A Because -- the same people filed it, and they
18 filed them at the same time. It's not a division of Watts.
19 It's not owned by Watts Trucking Service.

20 Q Who is it owned by?

21 A By Jim Watts personally.

22 Q When did you acquire that company?

23 A I did not acquire it.

24 Q That was a start-up company?

1 A Yes, ma'am.

2 Q When did it start up?

3 A I don't know the exact date. At least five or six
4 years -- like early '90, '91 maybe -- I don't know -- '92.
5 I don't know the exact date. We got a contract there, and
6 we just went there and performed the contract.

7 Q So you formed a company to perform a contract?

8 A That's what we do, ma'am.

9 Q Mr. Watts, was it capitalized through the
10 stockholder loan?

11 A We used existing equipment that we had. It was a
12 very small operation. We used existing equipment.

13 Q So you used equipment owned by Watts Trucking?

14 A Equipment that I owned, yes.

15 Q That you owned or the company owned?

16 A Some of it that I owned and I think we took some
17 that was surplus equipment that I got charged probably in
18 my -- what do you call it -- account for moving it over
19 there, in my intercompany account. We took surplus
20 equipment. We didn't buy any new equipment for it at all,
21 no new trucks.

22 Q Mr. Watts, what about Tex Waste? That, too, is in
23 this list on the back of your 1994 Watts Trucking Services.
24 Do you or Watts Trucking own that company?

1 A I own it.

2 Q Do you know when you acquired it?

3 A Didn't acquire it. Again, it was -- it's a small
4 company, again, that we just opened up an office in that
5 location because we were doing work over there.

6 Q Do you know when you opened that up?

7 A No, I don't. About the same time.

8 Q Early '90s?

9 A Yeah.

10 Q That was the same arrangement? How did you start
11 that company? Where did the money come from?

12 A I don't know if you really -- we were running --
13 like we were already running, over in Beaumont, some work.
14 I just basically opened an office there, rented a facility
15 and opened an office there, rented a small office because it
16 was so far away. We were running all that stuff from a
17 company that we had in Houston. Houston was stretched out
18 and running some outlying stuff. I decided to open an
19 office in a couple of locations for jobs we had there.

20 Q What's the name of the major company in Houston?

21 A Star Disposal.

22 Q Star Disposal is a wholly owned subsidiary of
23 Watts Trucking Company?

24 A Yes, ma'am.

1 Q When did you acquire Star Disposal?

2 A Didn't really acquire Star Disposal. We started
3 it also back in about 1982, I think, '81, maybe '80,
4 '81, '80.

5 Q Mr. Watts, what about Bay Area Waste? Again, the
6 same start-up type of company?

7 A It was the far end of Star Disposal. It was the
8 southernmost work of Star Disposal. We were driving like
9 45 miles out. We decided to open a satellite office down
10 there.

11 Q What about Hawkeye Waste Systems; when did you
12 acquire that?

13 A '77, maybe 1977, right in that area.

14 Q Mr. Watts, what start-ups or acquisitions have you
15 completed in the last five years? Which companies have come
16 in in the last five years?

17 A None of the companies of Watts, none of the ones
18 under Watts Trucking Service. Those three or four small
19 affiliated companies you asked me about earlier, the one in
20 Beaumont and East Texas Waste, Bay Area, and I think
21 Coastal. We're running three trucks down there along the
22 coast, and we opened a satellite office down there for those
23 three trucks to report to.

24 HEARING OFFICER: Where is "down there"?

1 THE WITNESS: I'm sorry. It's in Mississippi, down
2 below New Orleans. We were running down there out of
3 New Orleans; so we opened a satellite office down there.
4 Those three trucks report to that office. It's down on the
5 coast of -- just west or so of Gulf Port.

6 BY MS. McBRIDE:

7 Q Mr. Watts, just a couple more questions.

8 How much are you paying in fines for Sangamon
9 Valley Landfill?

10 A I think it's 550,000.

11 Q 550,000. Okay. Mr. Watts, your understanding is
12 that some of that amount goes to deterrence of further
13 violations?

14 A Pardon?

15 Q Do you understand some of that amount can be
16 attributed to the State's desire to deter further
17 violations?

18 A If you tell me that, I guess. Is that what you're
19 telling me or --

20 Q No. I'm asking if you understand the purpose of
21 these penalties.

22 A Oh, yes. I understand them.

23 Q You understand that deterrence is part of the
24 purpose of penalties?

1 A I understand you're saying that.

2 Q You understand I'm saying that, or do you
3 understand that that's the point of the penalty?

4 A That may be some part of it; but I would say it's
5 a very small part, deterrence.

6 Q Mr. Watts, do you understand that present
7 violations that are alleged in this action can come to the
8 amount of a million dollars, could amount to \$1 million?

9 A On this overheight situation in Viola?

10 Q On this complete action, all the counts involved
11 here.

12 A I will wait and see what Mr. Davis has in mind for
13 me.

14 Q Do you understand this action is before the
15 Pollution Control Board, Mr. Watts?

16 A I understand that. I understand that's basically
17 between myself and Mr. Davis.

18 Q Mr. Watts, do you understand the Pollution Control
19 Board sets these penalties?

20 A Yes, ma'am.

21 Q Mr. Watts, can you tell us when this siting for
22 the over-fill will be complete?

23 A No. I can't give you the exact date. I know
24 we're working on it.

1 Q Working on it. You have no time frame set up for
2 that?

3 A I would rather you ask that question to the people
4 that are working on it.

5 Q Again, Mr. Watts, your principal on this is
6 costing you money. Don't you set deadlines as far as to
7 when problems are solved?

8 A The people that are directed to run that division
9 do. Yes, ma'am. I talk with those people constantly.

10 Q You don't know what those deadlines are?

11 A There are other factors involved. You know, we're
12 working on the bonding, as I told you. Some of the things
13 are not totally in our control.

14 Q Mr. Watts, as the manager of the company, you do
15 realize you can set deadlines and get things done when you
16 need them done; is that correct?

17 A I probably realize a lot more than you do what it
18 means to be a manager of a company, ma'am.

19 Q Mr. Watts, you said you don't know when the
20 bonding will come in; but do you have a date by which you
21 have told your people that the financial assurance needs to
22 be posted?

23 A They realize, as well as I do, the importance of
24 it; and we're working diligently with it, with a bonding

1 agency and with the people who are putting in the methane
2 gases. We're trying to put wells and the generating
3 plants -- to put it all together in one package. We're
4 putting in gas-to-energy plants on two of the landfills
5 right now; and that also has to be bonded, the closure of
6 those gas energy facilities. And we're trying to roll it
7 all together in one package and do it all together at one
8 time.

9 We're in the process right now of -- they're
10 getting the bids on it and hope to have it in place. They
11 told me it would be in place 30 days ago, 60 days ago at
12 least. Right after the first of year it was supposed to be
13 in place. When we talk to them, they're telling us they're
14 close; they're working out the program, but it's going to be
15 done. And all we can do is sit and wait.

16 Q But this is costing you money, Mr. Watts, to
17 wait. Is that a factor in your decision?

18 A Pardon me?

19 Q It's costing you money to wait. Is that a factor
20 in your decision?

21 A I don't have a lot of choice. I can't bond them,
22 ma'am. I have no alternative but to wait for the people who
23 are there putting the bonding together. I guess it's not
24 something that's done that quickly. There's a lot of

1 investigative work they do and that before they commit to it
2 and come up to speed on it. They are in the process. They
3 are assuring me it will be done.

4 MS. McBRIDE: I have no further questions.

5 HEARING OFFICER: Mr. Woodward?

6 DIRECT EXAMINATION

7 BY MR. WOODWARD:

8 Q Would you take a look at both Exhibits 15 and 16
9 and look --

10 A I don't have them.

11 Q Sorry. If you would look three pages in, I
12 believe.

13 A Uh-huh, a list of companies?

14 Q That's a list of wholly owned subsidiaries; is it
15 not?

16 A Yes.

17 Q The list that they were referring to in your prior
18 testimony is at the end, and is that a list of employer
19 identification numbers assigned to companies?

20 A Yes. This is the list. This list you are
21 referring to is the list of the wholly owned subsidiaries of
22 Watts Trucking Service.

23 Q And Watts Trucking Service, Inc., and those
24 subsidiaries is what that tax return is for; is that

1 correct?

2 A Yes. That's what this tax return is for, only
3 those companies.

4 Q 1994 return, it showed 61 million-plus in gross
5 revenues?

6 A Uh-huh.

7 Q Did that number include proceeds from the sale of
8 assets from Star Disposal?

9 A Yes.

10 Q Were you required to take that action to sell
11 assets of Star Disposal in order to meet both federal and
12 state tax obligations?

13 A Yes.

14 Q Watts Trucking Service or Star did not receive
15 that amount of money in cash as net proceeds?

16 A No. The money went to pay back taxes, as you
17 said.

18 Q That was one of the conditions of the sale; was it
19 not? You would wipe out those obligations?

20 A Yes.

21 Q But the sale did produce a taxable event?

22 A Yes. It put us in a taxable position, but it
23 really didn't generate any excess working capital.

24 Q In your prior testimony, you talked about 3 feet

1 of cover.

2 A Yes. I thought I said a minimum of 3 feet.

3 Q Well, is it 3 feet, or is it a minimum of 3 feet?

4 A In some places, it's probably 7 feet. It's a lot
5 more. A minimum, I'd say, all over the whole site, a
6 minimum of 3 feet.

7 Q Do you know in the area that exceeds 690 feet,
8 meaning sea level, whether it's only 3 feet or more than
9 3 feet?

10 A I would say that general area is in excess of
11 3 feet.

12 Q You don't know what it is, though?

13 A I don't know because it varied so much. The
14 topography just varied so much, and we tried to level it up
15 for drainage and so forth. So some areas we may have put 7
16 or 8 foot of dirt.

17 Q There was a question about Hawkeye, when you
18 started or acquired that company. Hawkeye is a wholly owned
19 subsidiary of Watts Trucking Service; is it not?

20 A Yes, it is.

21 Q There are a couple of companies -- I believe one
22 of them is called Triple A Star and -- I have to look at the
23 return to know -- Watts Triple A.

24 A That's Texas limited partnership?

1 Q Those were conditions that were created solely as
2 a pass-through for the sale of Star assets?

3 A Star and Triple A assets. The Texas Waste limited
4 partnership was created for the pass-through of the assets
5 of Star and Triple A.

6 Q Those are not operating entities?

7 A No. They're not hauling. No.

8 Q They're not revenue generated?

9 A No. They are not.

10 Q The \$550,000 number that you indicated that you
11 believed that you're obligated to pay in fines, does that
12 number include interest or not?

13 A No. It does not. That would be plus.

14 Q Part of the fines were imposed by the Circuit
15 Court in Sangamon County; is that correct?

16 A Yes.

17 Q And there is a schedule of payments for that fine;
18 is there not?

19 A Yes.

20 Q And you have met the first obligation; is that
21 correct?

22 A Yes. We've met the obligations so far on those
23 fines.

24 Q That is accruing interest; so that increases the

1 amount you have to pay?

2 A Yes.

3 Q Now, Miss McBride stated in her opening statement
4 that you and your companies were not a stranger to Pollution
5 Control Board procedures. That's a fair statement; is it
6 not?

7 A Yes.

8 Q You have received fines throughout the years for
9 your operations, some of which are characterized as minor
10 parking ticket fines. Others were a little more serious; is
11 that correct?

12 A Majority of them, the vast majority were very
13 minor.

14 Q But you've had a track record of knowing that your
15 actions are going to be looked at; is that correct?

16 A Certainly.

17 Q So you aren't failing to take actions because you
18 expect to escape being fined; is that correct?

19 A Not at all. I'm doing everything I can to improve
20 our ESG Watts company and to bring on constantly more
21 competent help and to do the best job we can possibly do.
22 It's very difficult to pay the fines and, you know, do some
23 of the other things. You know, the money we've paid there
24 would have more than covered the closure funds that we've

1 already paid in fines in Springfield.

2 Q That was made more difficult by the loss of
3 operating revenues from Sangamon Valley?

4 A It has killed our company. It's staggering, the
5 loss of revenue there. The cost has continued. The cost
6 has increased at that location with the gate closed because
7 of the remedial work. They've had us build a well, put in
8 the leachate collection, you know, all for naught.

9 Q You've been doing those things, though?

10 A We've done them all at a tremendous cost. No
11 leachate but we've got leachate wells.

12 Q Some questions were asked about siting application
13 for your Viola Landfill, ESG Watts Landfill. Has part of
14 the problem been some information concerning the amount of
15 deposit required to obtain siting approval?

16 A Yes. We've had a bit of a problem with the people
17 down in Viola trying to get together and meet up with them
18 to agree on what we would have to post. We had requested
19 from them and spent a lot of time running back and forth,
20 months and months down there to meetings -- they don't meet
21 so frequently -- trying to see if we could work out an
22 arrangement since it was for a mere siting, not for a total
23 landfill siting but just a height change in an existing
24 permit.

1 We had hoped to work out something so we didn't
2 have to put up such a large amount of money, the same that
3 we tried to work out with Springfield. We had to post
4 250,000 in Springfield on the siting change.

5 HEARING OFFICER: Are you talking about a filing fee
6 required by the County?

7 THE WITNESS: Yes. I'm sorry.

8 A We felt because we were only talking about a
9 minute aspect of the permit, changing the height in just one
10 location, that they might not request such a large filing
11 fee, you know, like in Springfield and that; but they did
12 require 250,000 cash and, you know, a large one again up
13 here in Viola to change this.

14 Q What was the number you originally thought was the
15 filing fee at Mercer County?

16 A We were told it was going to be 250,000 at Mercer
17 County also.

18 Q Have you since learned that it's different?

19 A It was just recently learned that that wasn't
20 correct. The person who gave us that information was wrong,
21 and it's going to be 150,000.

22 Q Are you working with Resource Technology
23 Corporation to obtain the necessary bonding or letter of
24 credit or some other mechanism to make that filing fee?

1 A Yes, we are.

2 Q And that's involved in the same thing about the
3 insurance or bonding for the financial assurance?

4 A Yeah. It's all involved in, you know, the company
5 that we're working with, the gas-to-energy.

6 Q Do you know the name of the person you're working
7 with to obtain bonding?

8 A Lawley.

9 Q Is that your understanding? Jack?

10 A Yeah.

11 Q Would it be Jack Lawley?

12 A Lawley -- Lawley (varying pronunciation). Excuse
13 me. Yeah, Jack Lawley.

14 Q You're not aware of his being given by employees
15 of ESG Watts a deadline?

16 A Yes. We've given them a deadline.

17 Q You just don't know what it is?

18 A I don't know what the exact deadline is. I know
19 we've talked with them, and they've come back with excuses.
20 Several times we've tried to put pressure on them. It's
21 taking longer than they thought it would take.

22 Q You mentioned that you had -- that part of the
23 stockholder loan dealt with the purchase of an insurance
24 policy; is that correct?

1 A Yeah, a couple insurance policies.

2 Q Watts Trucking Service -- were those existing
3 policies owned by Watts Trucking Service?

4 A Well, when I answered that question, I was
5 referring to both the salary that she talked about and the
6 loan to officer. The officer loan is predominantly monies
7 that were spent in real estate, monies that were spent in
8 real estate that we had moved back when the company was
9 stronger and we were doing well. We had moved some of the
10 real estate over into my name. Because of the tax benefit
11 involved in it, the tax people suggested that we do that;
12 and we did it.

13 Then there was -- it takes quite a bit of money
14 for the maintenance and so forth of that. We increased my
15 salary at that time to the 365,000 to cover those costs,
16 also for the cost of the \$5 million life insurance policy or
17 two \$5 million life insurance policies.

18 Q Do you receive rent payments from the company for
19 this real estate?

20 A Basically on paper, but yeah.

21 Q You don't receive cash?

22 A No, I don't.

23 Q The insurance policies, were those policies that
24 were owned prior to that by Watts Trucking Service on your

1 life?

2 A Some of it was. Yes.

3 Q For some reason, somebody told you that there
4 would be a tax savings if the --

5 A No. Just said we were required to because of the
6 financing that we used to carry on Omaha and some of those
7 things required it. Some of the debt that we have required
8 it because I was the key person in the overall corporation.

9 Q But that was the requirement, that you obtain the
10 insurance, correct?

11 A Yes.

12 Q But the reason for moving it from Watts Trucking
13 Service being the owner of the policies to you being the
14 owner of the policies, was that as a result of somebody
15 advising you there would be a tax savings?

16 A I don't recall. Yes. I believe Jim Mezvenski
17 recommended it, our tax consultant at the time.

18 Q The checks that you receive, do you receive those
19 on a weekly basis, your payroll checks?

20 A I receive a portion of my check. No, I don't
21 receive my check. One of the people in accounting handles
22 my check, and he also handles the payments on all the real
23 estate stuff and so forth. So what he does is deposits my
24 check. I haven't seen my check in 20 years.

1 But Jim Benson handles my check. He deposits my
2 check, and I get a small portion of it that I use as a
3 living expense out of the 365,000. The other money, as I
4 said, goes to cover the real estate stuff that's in my name
5 personally, to pay the insurance policies. That was the
6 purpose of increasing my salary to that level, was to cover
7 that.

8 MR. WOODWARD: That's all.

9 HEARING OFFICER: Miss McBride?

10 RE CROSS-EXAMINATION

11 BY MS. McBRIDE:

12 Q Mr. Watts, you mentioned earlier that you
13 liquidated some assets to pay off some back-taxes. Would
14 you be willing to liquidate an asset or a couple assets to
15 come into compliance at Viola?

16 A I don't know that I have -- what I have today
17 that's unincumbered. Everything I have today is incumbered.

18 MS. McBRIDE: That's all we have.

19 HEARING OFFICER: Anything further?

20 MR. WOODWARD: No.

21 HEARING OFFICER: Is it all right if this witness
22 leaves?

23 MS. McBRIDE: Yes.

24 HEARING OFFICER: Thank you, Mr. Watts.

1 MS. McBRIDE: The only thing I'd like to say is that
2 we'd like to reserve the ability to call Ken Liss at the
3 extension of the hearing on the 25th.

4 HEARING OFFICER: Okay. So you are done for today then
5 with the exception of calling Ken Liss to straighten out the
6 deposition?

7 MS. McBRIDE: Yes. That's it.

8 MR. WOODWARD: And Mr. Mehalic will be made available
9 in case we needed to question him about the report that --

10 MR. DAVIS: You mean Taylor, don't you?

11 MR. WOODWARD: No. The inorganics report, things they
12 haven't provided.

13 MR. DAVIS: That's possible. All things are possible.

14 HEARING OFFICER: Everybody in this room excused
15 Mr. Mehalic, and you said you were not planning on recalling
16 him. So at this point, I don't see any reason why
17 Mr. Mehalic needs to be made available.

18 MR. WOODWARD: I thought we had already discussed that;
19 and I meant that when you asked me that, whether he was
20 excused for today. I'm sorry.

21 MR. DAVIS: We're willing to make Mr. Mehalic
22 available. There may have been some confusion. It's no big
23 deal. We'd rather have a comprehensive record.

24 HEARING OFFICER: That's fine. Mr. Mehalic and

1 Mr. Liss will be available, and Mr. Taylor will be available
2 for cross-examination. But I caution everybody; the reason
3 for the hearing on the 25th is for the other case. So, you
4 know, our first order of business is to get through the
5 other case.

6 Mr. Woodward, would you call your first witness?

7 MR. WOODWARD: Call Ronald Patterson.

8 (Witness sworn.)

9 (Respondent's Exhibit 1 marked for identification.)

10 RONALD PATTERSON,

11 called as a witness, after being first duly sworn, was

12 examined and testified upon his oath as follows:

13 DIRECT EXAMINATION

14 BY MR. WOODWARD:

15 Q Can you state your name for the record?

16 A Ronald Patterson. Do you want me to spell it?

17 P-a-t-t-e-r-s-o-n.

18 Q Where are you employed, Mr. Patterson?

19 A Golder Associates.

20 Q Has ESG Watts, Inc., retained the services of
21 Golder Associates in relationship to the Viola Landfill?

22 A Yes. I think we're finalizing the contract now.

23 Q But there have been some prepayments, and you have
24 done some work for ESG Watts about the Viola Landfill?

1 A Yes.

2 Q What is Golder Associates?

3 A We are an engineering consulting company, an
4 international company. We have offices here throughout the
5 United States, in Canada, Europe, Far East.

6 Q What is your position with Golder Associates?

7 A I am a principal.

8 Q Does that mean a partner, stockholder?

9 A Yeah. We are an employee-owned company, and I'm a
10 shareholder.

11 Q Do you hold any certifications from any state in
12 the United States, professional certification?

13 A Not in the US. I am a professional engineer in
14 Canada.

15 Q What is your training, educational background?

16 A Bachelor of science in geology and Ph.D. in
17 geochemistry.

18 Q So does that make you a geochemist?

19 A Hydrogeologist is the best description.

20 Q How long have you been associated with Golder
21 Associates?

22 A Just about 8 years.

23 Q Prior to that, did you perform services anywhere
24 as an engineer or in any other professional --

1 A Well, I worked with Woodward-Clyde before that for
2 about three years. Before that, it was a variety of
3 regulatory academics.

4 Q Have you prepared a curriculum vitae for today's
5 hearing?

6 A I left one with you.

7 Q I'll hand you what's been marked as Respondent's
8 Exhibit Number 1, a copy of which has been provided to
9 Complainant. Is that the resume, curriculum vitae?

10 A Yes.

11 Q Is it an accurate description of your
12 qualifications?

13 A Yes.

14 Q As part of your work for ESG Watts, have you
15 become familiar with Viola Landfill?

16 A Yes. I was provided with some background
17 information, and yesterday we had an opportunity to go to
18 the site.

19 Q Can you identify the documents that you reviewed
20 and from whom you obtained those documents?

21 A Most of them were obtained from Tom.

22 Q Tom who?

23 A Tom Jones.

24 HEARING OFFICER: For the record, can we explain who he

1 is? I know we all know, but --

2 Q Is he an engineer that works for ESG Watts?

3 A Yes.

4 The documents include a site plan -- this is 1994,
5 some -- two older plans which are not dated but I understand
6 are from the initial permit application, a copy of the
7 testimony that Ken Liss provided, a copy of the results for
8 the sampling that was performed in the summer by IEPA, not
9 the metal results, just the organic results, a copy of the
10 1991 permit application.

11 Q Back on that document, what was the date --

12 HEARING OFFICER: What is "that document"?

13 MR. WOODWARD: The one he just referred to about the
14 sampling data.

15 THE WITNESS: These were the sampling data that were
16 collected.

17 BY MR. WOODWARD:

18 Q On what date?

19 A On June 12, 1996.

20 HEARING OFFICER: Exhibit 2?

21 MR. WOODWARD: Correct.

22 HEARING OFFICER: People's Exhibit 2.

23 A I also received copies of four sets of analytical
24 data. These were sample sets that were performed for ESG

1 Watts. These, in terms of dates, are 4/15/97 -- that's the
2 report due date. The samples were collected on 2/13/97.
3 The previous set was 12/13/96, 7/29/96, and 11/22/95. Those
4 were the sample sets. Some were just -- were inorganics.
5 Some were both.

6 There was a copy of a map which was entered as a
7 respondent's exhibit which had some data on it, but I'm not
8 able to correlate that with any of these sampling events.
9 We're not sure where those results came from. I received a
10 summary of field permeability tests. These were field tests
11 performed in the six wells at the site. I received a copy
12 of boring logs for the wells at the site and the
13 stratigraphic boring that was drilled that was designated
14 EB-1, very close to groundwater GW104. I received several
15 reports by Rapps Engineering. These were dated September
16 '91, September '91, July '91, another December '91, and
17 another December '91.

18 So that was the background information that I had
19 received for the site. I had a chance to review that and
20 then, again yesterday, visit the site to see -- it was my
21 first visit to the site.

22 Q You didn't mention some sampling data from 1973 to
23 1991.

24 A That's contained in one of the Rapps reports. I

1 believe it's the September '91 report where it has tabulated
2 data for three previous piezometers that were present at the
3 site designated G101, G102, and G103. These were analyzed
4 for over a period ranging from 1973 through about 1991; and
5 these samples were analyzed for chloride, ROE/TDS, residual
6 operation and total dissolved solvents, and total iron. It
7 was a limited analytical program.

8 Q You're aware ESG Watts does not dispute that the
9 sampling data that it performed -- I mean the sampling
10 events that it performed and the reports that it prepared
11 show an exceedance of what are called 807 in standards?

12 A Not 807.

13 Q I'm sorry.

14 A 620.

15 Q 620 in standards. I'm sorry.

16 A Yes.

17 Q That's not in dispute?

18 A Right.

19 Q So what have you been focusing on when you
20 reviewed all those documents?

21 A Well, I was asked to review the data that was
22 available and to form an opinion as to the hydrogeologic
23 conditions at the site, what these detections might, in
24 fact, mean and what might be causing them.

1 Q And have you formed an opinion as to what might be
2 causing these exceedances?

3 A Yes.

4 Q And what factors in those documents and in your
5 personal observation of the site have caused -- have you
6 relied upon in forming your opinion?

7 A Well, a wide variety of data, topographic
8 information, obviously the analytical results, water level
9 information, the field testing that was done in the wells,
10 the stratigraphic column that was identified at the site,
11 observations during the site visit when we had a chance to
12 walk on the site. All those together have contributed.

13 Q There are two different types of exceedances that
14 we're talking about; is that correct? There's inorganic
15 analytes, and there's organic analytes?

16 A Yes, there are. The analyses cover both; and in
17 both groups, there are exceedances.

18 Q Do you have a separate opinion as to each one of
19 those types of analytes?

20 A Yes.

21 Q What is your opinion as to the cause of the
22 inorganic analytes being exceeded?

23 A The inorganics -- we're talking about metals
24 principally, like iron and manganese -- it appears to me

1 that the area background for these is very high. The
2 upgradient wells have shown very high levels. In fact, for
3 the data I have, the highest manganese level was in one of
4 the upgradient wells. The downgradient wells, which are to
5 the east, the exceedances there, we see the same metals; and
6 I think that in that area we're also probably seeing a
7 background, a natural background.

8 I think as we approach Skunk Creek we are moving
9 into a discharge zone; and we appear to be getting probably
10 some upward flow and flow coming up from the deeper bedrock
11 units which are pyritic shale, may even have some coal down
12 there. The chemistry suggests that that is what's occurring
13 down there.

14 Q The presence of pyritic shale, what does that do
15 to the sampling results?

16 A Well, with pyrite in the formations, you can
17 oxidize pyrite and produce a lot of sulphate. In fact, we
18 do see some very high sulphate levels down there in the
19 wells close to Skunk Creek.

20 Q When you personally observed the site, could you
21 tell me what is directly south of this landfill on the
22 opposite side of the road that's on the south side?

23 A There's an old quarry.

24 Q Did you actually go over top that quarry and

1 examine that area?

2 A Yes. We walked into the quarry.

3 Q Did you see any evidence of coal in the exposed
4 stratosphere?

5 A Not in that --

6 Q Is it called stratosphere? That's the air,
7 right?

8 A No. I didn't see any coal. The background
9 literature on the units which are present at the site
10 reference this, that locally you can encounter coal.

11 Q On the way to the site on that road that we just
12 referred to that goes along the south side, did you see
13 anything?

14 A We passed some old mining operations. Yes.

15 Q That had now turned into ponds or something?

16 A There are some ponds, yes; but we did not observe
17 coal in the exposure.

18 Q What does the fact that there is coal identified
19 in this area do for the sampling data?

20 A Well, when I first looked at the stratigraphic
21 data, in sequences like this, the water quality is generally
22 quite poor. You typically get mineralized water, a lot of
23 metals. It's very similar to acid mine drainage. You have
24 pyrites in the system.

1 So when I saw the stratigraphy, I was not
2 surprised that we would find high metal levels; and we would
3 find these in the background wells as well as the
4 downgradient unit wells.

5 Q Have you formed an opinion as to the source of the
6 metals that are contained in the sampling data as a result
7 of your review of the documents provided to you and your
8 observations at the site?

9 A At this point, I think for the metals the most
10 reasonable explanation is that they reflect poor-quality
11 water in the area. Natural background is high. We have
12 other -- some of the older data would tend to support that
13 because it goes back prior to the initiation of
14 landfilling. That is the '73 through '90 data which showed
15 similar, very high metal levels in wells which were
16 upgradient.

17 Q I think you have to speak up just a little bit.

18 A Okay. I would also reference the earlier data
19 which, although we would not consider technically valid data
20 because we don't have good information on the wells or the
21 sampling protocols, there is a historical record showing
22 that we have a wide range of metal levels -- iron is the
23 analyte they were measuring -- ranging up, in fact, higher
24 than the levels that we've seen in the wells that have been

1 sampled recently.

2 Q So the historical range encompasses the current
3 range; is that my understanding?

4 A Yes. In fact, goes beyond it.

5 Q Are those ranges typical of areas that have this
6 type of soil and have poor water quality resulting from --

7 A In this type of area, they're not -- most areas,
8 this would be atypical; but in this kind of environment, it
9 can be typical.

10 Q Now, have you formed an opinion as to the cause of
11 organic compounds appearing in the analyte samples?

12 A Yes.

13 Q What is that opinion?

14 A Well, based on several lines of evidence. The
15 type of compounds that we find, they're very volatile. They
16 are occurring in not just the downgradient wells but also
17 the background wells, even though at lower levels; but those
18 wells are perhaps a little more distant from the landfill.

19 That distribution, those types of compounds,
20 suggests to me, since we see a radial distribution, that I
21 would attribute that most likely to gas migration through
22 the unsaturated zone; and that could contribute those to the
23 shallow wells that we're sampling.

24 Q The fact there's a cap on this landfill --

1 A That would only tend to promote lateral
2 migration. Yes.

3 Q Do you know the depth of the bottom liner on the
4 site from reviewing this information?

5 A There was a referencing -- one of the Rapps
6 Engineering reports indicated that they tried to maintain at
7 least 10 feet of drift material between the base of the
8 waste and the top of the bedrock, but that was the only
9 reference that I had seen.

10 Q Were you able to do any trend analysis or whatever
11 type of analysis that was required to determine what the
12 flow was to the groundwater?

13 A No. I didn't see any data on hydraulic
14 connectivity. Although, in earlier testimony this morning,
15 somebody mentioned a number; but I have not seen that
16 number.

17 Q Now, did you observe any -- excuse me. Did the
18 documents that you reviewed identify sites where potable
19 water supply had in the past been extracted?

20 A In one of the Rapps reports, there was an earlier
21 survey of private wells in the area.

22 Q Were any of these downgradient?

23 A No, not based on the gradient that I see at the
24 site.

1 Q One of the upgradient ones, did you observe
2 whether it was in operation or not?

3 A There was a well -- one of the wells which
4 reported across from the southwest corner of the landfill,
5 it did not look like -- I didn't see a well there. It
6 appeared as though no one was living there. That's what we
7 saw in the field.

8 Q Does the fact that in your opinion the cause of
9 organic compounds being caused by gas migration have any
10 bearing on what actions should be taken by ESG Watts to
11 either assess, correct, or remediate the problem?

12 A Well, the gas migration in my opinion would be the
13 first thing that you would want to address. If that is the
14 cause of the detections, particularly in the downgradient
15 wells that are quite close to the landfill, then the most
16 productive course would be to address that, to address that
17 first.

18 Q Is there any information that you reviewed to
19 suggest that the Skunk Creek is on the Watts ESG Landfill
20 property?

21 A On this site plan which I have been given, --

22 Q I believe that's already been admitted into
23 evidence.

24 A -- Skunk Creek is shown to be on the property.

1 MS. McBRIDE: What is he referring to?

2 MR. WOODWARD: I think that's the final contour.

3 HEARING OFFICER: 4?

4 MR. DAVIS: 4?

5 MR. WOODWARD: I think it's 14 or -- it's 4 or 14, one
6 of the two. It's the big one.

7 MS. McBRIDE: That's 4.

8 HEARING OFFICER: This one's 14, the contour map.

9 MR. WOODWARD: Then it's 14.

10 HEARING OFFICER: I don't have the big one.

11 MS. McBRIDE: Yeah. You have a small copy of this.

12 BY MR. WOODWARD:

13 Q Why don't you examine People's Exhibit Number 4
14 and tell me if that's the same document that you have in
15 front of you.

16 (Pause in proceedings.)

17 A Yes. That's the same.

18 Q So the document you have been using for your
19 conducting whatever analysis you've done is the same as
20 People's Exhibit Number 4?

21 A Yes.

22 Q So when you refer to it, you're actually referring
23 to People's Exhibit Number 4?

24 A Right.

1 Q Does that document reflect whether Skunk Creek is
2 on --

3 A It shows the property line to the east and
4 northeast of Skunk Creek placing Skunk Creek within the
5 site. The distance, taking it from the bar scale, perhaps
6 25 feet.

7 Q Does Skunk Creek act as a hydraulic barrier to the
8 migration of these organic compounds, if you know?

9 A I think that it will. We looked at Skunk Creek.
10 Also, I looked at the water level data for the wells to
11 establish the gradient on site. We have about three sets of
12 data. They are quite consistent.

13 The gradient is to the northeast toward Skunk
14 Creek. Water appears to flow normally toward the creek.
15 Based on topographic considerations, I would expect to see a
16 similar flow on the other side of the creek. That would
17 make Skunk Creek a hydraulic divide, or hydraulic barrier
18 perhaps is a better word, that groundwater would not flow
19 across beneath it but would flow to the creek from either
20 side.

21 Q You're not able to state conclusively that that's
22 true, are you?

23 A No, because we don't have good elevation control
24 on the water level in the creek. It hasn't been measured.

1 Based on our estimations from the field and from these
2 contours, it appears that the creek level is a little bit
3 lower than the wells along the creek.

4 The wells in each round also show a gradient in
5 the direction along the creek that appears similar to the
6 creek gradient suggesting that the creek is having an
7 influence on those water levels. We also have no data on
8 the other side of the creek.

9 Q What activity would allow you to determine
10 conclusively whether the creek is a hydraulic barrier or
11 not?

12 A Good evidence would be a similarly constructed
13 well on the other side of the creek that showed an elevation
14 higher than the creek.

15 Q That wouldn't be a monitoring well, would it?

16 A Piezometer.

17 Q What's the difference between a piezometer --

18 A Piezometer is mainly for providing a water level.

19 HEARING OFFICER: Can you spell that for the court
20 reporter?

21 THE WITNESS: P-i-e-z-o-m-e-t-e-r.

22 BY MR. WOODWARD:

23 Q Are you able to state conclusively that any
24 organics that enter the creek as a gas would not migrate on

1 the other side of the creek?

2 A No. If they entered the creek, exposure to air, I
3 think they would volatilize very quickly; and also, flow
4 would be coming to the creek, towards the creek on the other
5 side.

6 Q Were you able to formulate an opinion from your
7 review of the documents and the on-site observation as to
8 any environmental harm caused by the exceedances that have
9 been reported?

10 A Well, currently, the exceedances of the organics
11 are primarily on the downgradient side. There doesn't
12 appear to be any imminent threat to human health because
13 there are no receptors down there who drink that water, no
14 wells or no residents in that area.

15 Q How long would a gas collection or venting system
16 take to work and make a determination whether that would
17 resolve the problem?

18 A It would depend on the design of the system. If
19 it was a good system that provided containment of gas within
20 the facility, then it would not be an instantaneous change
21 that you'd see; but you would expect to see a change
22 starting to occur when you placed the system into operation
23 if it was, in fact, capturing all the gas within the
24 landfill.

1 Q Now, the levels of exceedants that we're talking
2 about, if they do enter Skunk Creek, are they in violation
3 of surface water standards?

4 A Surface water is not my expertise; but at similar
5 sites where we've had this -- our health risk people have
6 worked on it where we've had these kinds of compounds going
7 into surface water -- they have always determined they were
8 not a risk. These are not the kinds of bio-accumulating
9 compounds. But that's the experience.

10 Q Anything that gets into Skunk Creek is not a
11 threat to the environment?

12 A If it's very volatile, yes, that would -- but
13 that's just the experience I've had at similar sites. I'm
14 not a toxicologist.

15 Q Were you able to determine within 2 to 3 feet what
16 the water level was for Skunk Creek?

17 A Based on these contours and just observations in
18 the field, it appears that the creek is probably about
19 640 feet up at the -- where it comes under the road to the
20 south and declines to about 635 toward the north part of the
21 site. The contours that we have there, it looks like it's
22 certainly less than about 639, 638. But the contours are
23 very tightly grouped around it, the creek; and it's very
24 difficult to depict them off clearly.

1 Q If you draw a line straight across from, I believe
2 it's well G105, --

3 A Uh-huh.

4 Q -- would that be the most reasonable place to put
5 this well, this piezometer well?

6 A To put a piezometer on the other side, that would
7 be a reasonable spot. There's more property over there
8 available; but you'd try to duplicate, as near as you could,
9 the well.

10 Q At that point, were you able to determine what the
11 maximum height of Skunk Creek water level would be?

12 A No, not precisely there.

13 MR. WOODWARD: Is this People's Exhibit Number 2?

14 HEARING OFFICER: Yes.

15 BY MR. WOODWARD:

16 Q You had access to People's Exhibit Number 2,
17 correct?

18 A Which is the --

19 Q The June 12, '96, sampling event.

20 A The organic data, yes.

21 Q The one that you didn't have --

22 A There were no metals.

23 Q -- the inorganics listed, correct?

24 A There were just organics.

1 Q Were you given, I believe, eight quarterly reports
2 that included two annual reports submitted by ESG Watts?

3 A Yes. I had -- there were four reports of
4 quarterly samplings. Some of those -- I think two of them
5 had organics and two, just the metals. They were
6 inorganics.

7 Q In essence, you had five sampling events to
8 review?

9 A I believe so. Yes.

10 Q Do any of the sampling events show a compound that
11 is a surprise when you look at the other four?

12 A No. They are very similar from event to event.
13 The same sorts of compounds are appearing. The distribution
14 varies a bit, but they're basically the same few compounds.
15 They are mostly trichlorethylene, cis and trans,
16 1, 2-dichlorethylene, vinyl chloride; and some chloromethane
17 appears.

18 Q Now, you had Mr. Liss's testimony, his deposition
19 testimony?

20 A Yes.

21 Q He mentioned some things in there about lab
22 contamination; did he not?

23 A There was some acetone, for example, for
24 instance. Yes.

1 Q He mentioned it as a possible explanation for some
2 compound?

3 A For some compounds, yes.

4 Q He didn't identify the compounds?

5 A I would presume he may have been referring to
6 acetone. There was some acetone detections. If there were
7 methylene chloride detections, they would also be
8 suspicious. They are common lab artifacts, both of those
9 compounds.

10 Q Is there anything about the other compounds that
11 are detected that would lead you to believe that that is the
12 most reasonable explanation for either one of those
13 compounds appearing?

14 A Well, all these compounds are part of a breakdown
15 sequence for TCE, trichlorethylene. They're quite
16 volatile. If there were compounds that would move in a gas
17 phase, these would be very likely candidates.

18 Q Is there anything about the level that was
19 detected about either one of those two compounds?

20 A The trichlorethylene breakdown products -- there
21 is a lot of variability from sampling event to sampling
22 event; and from well to well, the signature changed. But
23 overall, there was a similarity, same compounds.

24 A couple of wells, we had one other compound which

1 was 11DCA, which would be a breakdown product of another
2 solvent, 11TCA.

3 Q I think I was going to the level that was
4 detected. Mr. Liss discussed trace elements of these
5 compounds that might be --

6 A We had them up into the hundreds of PPB in some
7 cases, generally less than 100; but some values were
8 reported above 100.

9 Q At one point in Mr. Liss's deposition, he talks
10 about thousands of millimeters of a compound.

11 A Thousands of milligrams per liter, I think he
12 meant. I think he meant micrograms per liter.

13 Q Have you looked at the data? Is that supported,
14 or are we talking about micrograms?

15 A I think we are talking micrograms. There are
16 certainly thousands of micrograms per liter. He was
17 referring to the inorganics at that point.

18 Q The difference would mean that, instead of
19 thousands, you're talking about hundreds or tens of --

20 A There's a difference of 1,000. 1,000 micrograms
21 per liter is 1 milligram per liter.

22 Q Are the standards, the 620 standards for these
23 inorganic compounds stated in milligrams per liter or
24 micrograms per liter?

1 A They may be in milligrams per liter. I'd have to
2 look -- actually, I have the regs. there I can look at.

3 HEARING OFFICER: It doesn't matter. The board knows
4 what the regs. are. You can go ahead and move on.

5 MR. WOODWARD: I'm just trying to establish what the
6 level of exceedance is.

7 BY MR. WOODWARD:

8 Q Is there anything about what you reviewed, either
9 the documents or your on-site observation, that would lead
10 you to believe and conclude that the problems detected in
11 the exceedances, in the sampling events, are caused by a
12 leachate rather than a gas migration and natural background?

13 A Well, I looked at the data to see if there
14 appeared to be an influence from leachate. I didn't see a
15 signature that would suggest that there was leachate. There
16 wasn't enough chloride. One well had chloride but only in a
17 couple hundred PBM. It wasn't the well that had the highest
18 organic compound detections.

19 It also had a very high sulphate level, and
20 typically you have much more chloride than sulphate. Here
21 we have a lot of sulphate. I think that reflects the
22 natural water quality in the area.

23 There were also -- in the IEPA data, I would have
24 expected with leachate we would have seen more compounds.

1 They did a scan for SVOCs. We didn't see any. The only
2 volatiles we see are these very few, very volatile ones.
3 There isn't a correlation, again, with the chloride and the
4 organics; and this, I think, is still reasonable for the
5 site because we are dealing with a fairly tight material.

6 The tests in the wells indicate it's a low
7 permeability area. The value that was quoted this morning
8 for the drift materials is, again, a very low permeability.

9 Having the opportunity to do a few calculations to
10 try and estimate what sort of flow rates we might be talking
11 about, taking the maximum gradient and taking those values
12 in the wells at face value and taking an average and taking
13 even a geometric mean, which is perhaps more appropriate for
14 permeability, I come up with flow rates less than 10 feet a
15 year. Seems consistent.

16 That's also consistent with the rather large
17 differences in water elevation we see across the site.
18 Typically, in low permeability areas, you have large
19 differences in water level. In very permeable areas, you
20 just can't sustain these. The rate of migration in the
21 groundwater system is going to be slow; and if we're talking
22 very small values, it would take quite a while for leachate
23 to move very far.

24 Then there are processes along the way which can

1 attenuate the concentrations within leachate. We obviously
2 have breakdown occurring because we're seeing breakdown
3 products; so the environment is appropriate for breakdown.

4 Q What is the location for well G104?

5 A It's in the southwest corner. It's the highest
6 well.

7 Q Is it the closest to the property line as far as
8 you could tell?

9 A Well, it's right in the corner of the property.
10 Yes.

11 Q Were you able to determine whether the gas would
12 migrate any further in that direction?

13 A We've seen from the data -- the data I had here,
14 we had very low detections. It would suggest that probably
15 very much at the margin there.

16 Q Is that the closest point to this well that you
17 saw that was abandoned -- where it was indicated there was a
18 well, but you didn't see anything?

19 A It would be across the well. Yeah.

20 Q Did you proceed west of the site at all when you
21 were out there?

22 A Yes. We drove both to the east and west just to
23 get a feeling for the topography. The west margin of the
24 site appears to be very close to the topographic high, and

1 then it drops off in the other direction. As you go to the
2 east, when you cross Skunk Creek, you then go up another
3 steep incline.

4 Topography being a very good caterer of natural
5 flow, I would suspect that the well 104 is pretty near the
6 center -- probably a recharge area. That's the high point.

7 Q Approximately 20 to 25 feet west of the west
8 property line, is there already a ditch that --

9 A There was a ditch.

10 Q Was it an abandoned railroad right-of-way?

11 A Apparently. That's what I was told in the field.
12 It was on a railroad right-of-way.

13 Q Is that ditch deep enough to allow, if there were
14 any gases migrating in that area, for them to be vented to
15 the --

16 A Only if it was deep enough to have water in it,
17 reach the water table, then it would be a barrier.

18 MR. WOODWARD: That's all I have.

19 HEARING OFFICER: Let's take a five-minute break.

20 (Recess in proceedings.)

21 HEARING OFFICER: Let's start with cross-examination of
22 Mr. Patterson.

23

24

1 CROSS-EXAMINATION

2 BY MS. McBRIDE:

3 Q Dr. Patterson, is your work being done for the
4 purpose of a permit application?

5 A No. That's not what I've been told.

6 Q Do you realize that, as part of what we're asking
7 to come in compliance, that Watts needs to investigate, then
8 do an assessment at this site?

9 A I believe Larry indicated earlier that they do
10 plan to proceed with assessment.

11 Q Is it your feeling that a further investigation
12 and assessment is necessary at this site?

13 A Well, that's the purpose of assessment, is to find
14 out, in fact, where are these detections coming from. Is it
15 gas? Can we verify that? What is the status of the creek,
16 for example. Those are the things that would be addressed
17 under assessment.

18 Q Dr. Patterson, what are the highest levels of
19 manganese detected in what you consider background samples
20 for this site?

21 A The highest value -- I have put together a
22 table -- I think was 38,000, 38,000 micrograms per liter.
23 That was at G103.

24 Q How old is that data?

1 A That was 7/29/96, so last year.

2 Q What was the highest level of iron detected in
3 what you considered background samples?

4 A Well, the highest iron was -- this would be wells
5 G103 and 104.

6 Q Those are background?

7 A Those I would consider background. I believe in
8 the earlier testimony -- I would agree -- the highest was
9 19,900.

10 Q What was the date of that sample?

11 A That was 7/29/96. So that was a set of data from
12 Watts, ESG Watts.

13 Q Dr. Patterson, is it possible to any extent for
14 the inorganics to migrate by gas?

15 A Not the inorganics. The gas may enhance the
16 concentrations of inorganics, however, because -- the
17 landfill gas can change the geochemical environment which
18 may promote the solubility of some irons.

19 Q But the inorganics?

20 A No. Iron is not volatile. Manganese is not
21 volatile.

22 Q Thank you.

23 Dr. Patterson, would you agree that the landfill
24 is the likely source of the organic contaminants?

1 A The trichlorethylene and those, yes. That's a
2 logical source.

3 MS. McBRIDE: Thank you. That's all we have.

4 HEARING OFFICER: Any redirect?

5 MR. WOODWARD: No. But we would ask that Respondent's
6 Exhibit Number 1, his resume, be admitted into evidence.

7 HEARING OFFICER: Is there any objection?

8 MS. McBRIDE: No.

9 HEARING OFFICER: Let's go off the record.

10 (Discussion off the record.)

11 HEARING OFFICER: Off the record, we have had a
12 discussion about the continuation of this hearing but also
13 about the hearing that is scheduled, People of the State of
14 Illinois v. ESG Watts, Inc., PCB96-237.

15 The parties have agreed that in the 96-237 case,
16 which is scheduled for hearing on March 25th, that they will
17 be filing stipulations; and there will be memos with
18 affidavits attached as to what the witnesses would testify
19 to since the witnesses would be testifying to almost exactly
20 what they've testified here today. And then we will also
21 incorporate the testimony from Mr. Watts which was from
22 today into that proceeding.

23 With that said, we are going to continue this
24 hearing, PCB96-233; and that will be continued until

1 March 25th. The start time will be immediately following
2 the conclusion of the 237 case since we noticed that one for
3 9:30. We need to begin that one at 9:30 in case any members
4 of the public are present.

5 The one caveat is that there is a possibility that
6 we will be switching rooms. Currently, it is scheduled for
7 the board's offices; but because of the number of people, we
8 may try and move rooms. But if anyone who's interested
9 shows up at the board's office, the board will be able to
10 direct you to either a different room in that building or
11 the building next door to the attorney general's conference
12 room if we do move rooms.

13 Are there any other questions or anything else
14 that anyone feels needs to be on the record today?

15 MR. DAVIS: The citizens that are present may want to
16 state --

17 HEARING OFFICER: Yeah. Are there any citizens who
18 want to make a statement on the record?

19 Anything further then?

20 MS. McBRIDE: No.

21 MR. WOODWARD: No.

22 HEARING OFFICER: Then, Mr. Jones, you will appear at
23 the hearing on March 25th?

24 MR. JONES: Yes. I'll be there.

1 HEARING OFFICER: Also, we will have Ken Liss and Ron
2 Mehalic at that hearing.

3 Thank you all for coming, and this hearing is
4 adjourned until the 25th.

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9 (Which were all the proceedings
10 had in this matter at this time.)

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1 COUNTY OF TAZEWELL)
2) SS
3 STATE OF ILLINOIS)
4
5

6 CERTIFICATE OF REPORTER
7

8 I, ANGELA M. JONES, CSR-RPR, Notary Public in and
9 for the State of Illinois, do hereby certify that the
10 foregoing transcript consisting of Pages 1 through 199, both
11 inclusive, constitutes a true and accurate transcript of the
12 original stenographic notes recorded by me of the
13 proceedings held in the foregoing cause, on the 13th
14 day of March, 1997.
15

16 Dated this day of , 1997.
17
18
19
20
21

22 Angela M. Jones, CSR-RPR
23 Notary Public, CSR #084-003482
24