BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ROCK ISLAND COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	**PCB NO. 01-167**
	)	
ESG WATTS, INC., an Iowa corporation,	)	
	)	
	)	
Respondent.	)	

NOTICE OF FILING

To: Lisa Madigan, Attorney General
Attn: Tom Davis
Assistant Attorney General
Environmental Bureau
500 S. Second Street
Springfield, IL 62706

Carol Sudman
Board Hearing Officer
Illinois Pollution Control Board
600 S. Second Street, Suite 402
Springfield, IL 62704

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, RESPONDENT'S POST-HEARING BRIEF and MOTION FOR LEAVE TO FILE INSTANTER and MOTION FOR LEAVE TO SUPPLEMENT THE RECORD, a copy of which is attached hereto and herewith served upon you.

Larry A. Woodward, Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that I did on the 22nd day of September, 2003, on or before 4:30 p.m. send by Express Mail, with postage thereon fully prepaid, by depositing in the U.S. mails a true and correct copy of the following instruments entitled NOTICE OF FILING and RESPONDENT'S POST-HEARING BRIEF and MOTION FOR LEAVE TO FILE INSTANTER and MOTION FOR LEAVE TO SUPPLEMENT THE RECORD to the following persons addressed as follows:

Lisa Madigan, Attorney General
Attn: Tom Davis
Assistant Attorney General
Environmental Bureau
500 S. Second Street
Springfield, IL 62706

Carol Sudman
Board Hearing Officer
Illinois Pollution Control Board
600 S. Second St., Suite 402
Springfield, IL 62704

and the original of said foregoing instruments and ten copies thereof by Express Mail with postage thereon fully prepaid to the following person addressed as follows:

Dorothy Gunn, Clerk
Pollution Control Board
State of Illinois Center
Suite 11-500
100 West Randolph
Chicago, IL 60601

Larry A. Woodward, Attorney for Respondent

Larry A. Woodward, Corporate Counsel
ESG Watts, Inc.
525 17th Street
Rock Island, IL 61201
309-788-7700
Dated: September 22, 2003

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ROCK ISLAND COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	
Complainant,	)	
v.	)	**PCB NO. 01-167**
	)	**(Enforcement)**
ESG WATTS, INC., an Iowa corporation,	)	
Respondent.	)	

RESPONDENT'S POST-HEARING BRIEF

Respondent, ESG WATTS, INC., acting by and through its Corporate Counsel Larry A. Woodward, hereby files its Brief subsequent to the hearing conducted on June 3, 2003, and provides the following argument:

Argument

The People's position in this case has been concisely stated. In People's Exhibit 9, the Tom Davis letter to Richard Kissel, Mr. Davis states as follows:

> ESG Watts was required by Permit No. 1996-136-SP to implement the closure plan in July 1999.
>
> * * * * * *
>
> In my view, there exist (sic) no legal or technical impediment to the relocation of the overfilled wastes within the previously permitted contours of the landfill. . . .
>
> * * * * * *
>
> I anticipate that ESG Watts may tell you that it cannot initiate or implement stormwater control because the closure plan must be revised to modify the final contours and/or the sig mod permit must be issued before any work may proceed. I would disagree with such contentions.
>
> * * * * * *
>
> As to Count II, and the continuing gas emissions and odor problems, my position is similar to the December 1999 finding of the Rock Island County Circuit Court: "Although ESG Watts has a contract with Resource Technology Corporation ("RTC") regarding an energy recovery system, and RTC may not have satisfied its contractual obligations to ESG Watts, this Court FINDS that ESG Watts remains responsible as the permittee for all aspects of landfill

operations and compliance requirements. This Court FINDS that these uncontrolled emissions have unreasonably interfered with the enjoyment of life and property by neighboring residents by preventing or disrupting outdoor activities, and by invading or penetrating their homes and disrupting indoor activities." I acknowledge that the contract between ESG Watts and RTC is part of the bankruptcy estate as an interest regarding potential future revenues. However, I do not consider the accumulation of landfill gas to be an asset of the bankruptcy estate. The real issue, of course, is the extent to which ESG Watts has control over the premises. RTC has connected only 30 of the 88 extraction wells to the flare; emissions are uncontrolled as to the remaining 58 wells. In my view, ESG Watts must take action to control these emissions as soon as possible and such action would not necessarily violate the automatic stay or bankruptcy prohibitory restriction. Neither the contract nor the pending bankruptcy may constitute an affirmative defense to the allegation of continuing air pollution.

As to Count II the Attorney General's Office demands that the gas wells not presently connected to the flare must either be temporarily capped to prevent emissions or be connected to the existing flare or a new flare no later than October 1, 2001.

The People in its Post-Hearing Brief then goes on to state as follows:

The evidence has clearly shown that closure has not been completed because the overfill has not been relocated; that the overfill has not been relocated because the closure plan has not been revised; that the closure plan has not been revised because the pending sig mod application has not been approved. Similarly, the runoff problems and the adverse off site impacts to Mr. Whitley's property have not been corrected because the stormwater control plan has not been implemented because final cover has not been installed because the overfill has not been relocated. The odor problem and the nuisance caused to Mr. Whitley are just as bad as in 1996 because Watts has failed to properly operate the gas collection system, which had been installed by December 12, 1996; the single flare, which was connected to only 30 of the 88 wells on or before April 3, 2000, has not been operational since January 27, 2003. As to the reporting violations, these are admitted as alleged; in addition, Ms. Munie indicates that no reports were submitted for the subsequent three quarters.

Evidence in aggravation has been presented to demonstrate previously adjudicated violations, lack of due diligence, and economic benefit. The gravity and duration of the violations are well supported by the proof. The remaining Section 42(h) factor pertains to "the amount of monetary penalty which will serve to deter violations by the violator. . . ." First, the previously imposed Board penalties in PCB 96-107 as well as PCB 96-233 and 96-237 have not been paid; and secondly, it is obvious that those penalties ($100,000; $658,787; and $256,000, respectively) were inadequate to deter these subsequent violations. Therefore, it stands to reason that the amount of monetary penalty which will serve to deter further violations by the violator must be increased to achieve the

> statutory objective and thus the Board must impose a significantly higher civil penalty upon ESG Watts. . . .

Unfortunately, the People ignore their own evidence and refuse to recognize that it plays a role in the continuing of this controversy. The People seem to draw no distinction between the facts in this case and those in the Viola landfill case and deduce that, since ESG Watts relocated overfilled waste at Viola without a significant modification permit or other permit, ESG Watts should do exactly the same thing at the Taylor Ridge landfill. However, there are differences in the facts between the two cases. At Viola, 99 CH 10, a court order is entered ordering ESG Watts to relocate overfilled waste in accordance with parameters identified in paragraphs B.2, 3, 4, and 5 of the order. (See People's Exhibit 12.) This court order provided ESG Watts the protection it needed to proceed with waste relocation – without it ESG Watts would have had to proceed with waste relocation at its own risk and be subject to redoing the relocation if the result was not acceptable to the Illinois Environmental Protection Agency ("IEPA") but with it ESG Watts could proceed with waste relocation safe in the knowledge that, if it complied with the parameters set forth in the court's order, it could not be required to redo its efforts and could not be prosecuted for proceeding without a permit. In addition, the landfill at Viola was an isolated facility; odor, dust, transportation noise, and other adverse effects of relocating waste would not be easily experienced by third parties. However, at Taylor Ridge, the landfill abuts neighbors who are especially concerned with the activities of the landfill (see Page 77, Transcript) and would easily be disturbed by the adverse aspects of waste relocation. Added to this is the fact that the Taylor Ridge landfill has never been adjudicated as having exceeded its permitted height, and the fact that the permits issued to ESG Watts for the Taylor Ridge landfill by

the IEPA have consistently contained the condition reading as follows: "any modification to the facility shall be the subject of an application for supplemental permit for site modification submitted to the Illinois EPA." (See People's Exhibit 2, ¶ I.15 and ¶ IV.4 and ¶ IV.5; People's Exhibit 3, ¶ C.1 and ¶C.5; Respondent's Exhibit 21, ¶ C.1 and ¶C.5; and Respondent's Exhibit 22, ¶C.1 and ¶ C.5.) Also, the previous order in 98 CH 20 (see People's Exhibit 1) provides as follows:

> 2. The Defendant [ESG Watts] shall undertake and complete closure and post-closure care of the landfill as required by its previously approved Closure Plan. The Defendant shall obtain approval of and comply with all permits and modifications thereof, regarding any necessary revisions to the Closure Plan, as may be required to conform final contours for proper closure and post-closure care. The Defendant shall obtain a significant modification to its permits in order to comply with the regulations in effect at the time disposal operations ceased in March 1998. The Defendant shall not accept any waste for disposal during closure activities.
>
> * * * * * *
>
> 7. The Defendant shall undertake all activities in compliance with the permits issued by the Illinois EPA. . . .

All of these differences would place anybody on notice that the approval of the EPA would be required to protect ESG Watts from redoing waste relocation and from prosecution for proceeding without permit.

It is interesting to note that the December 29, 1999 order is silent about the overfilled waste, which the People attempted to add to PCB 96-107 but were unsuccessful in doing so. The People had to have a reasonable factual basis to attempt adding the overheight to PCB 96-107 or the attorneys committed an ethical violation in making the pursuit. Since 1994 ESG Watts' submittals to the IEPA show the maximum height within the limits of waste to be 775.2 above mean sea level and the original permit show that the maximum height of waste to be 758 feet above mean sea level. The 1996 sig mod application prepared by CH2M Hill and submitted to the IEPA on

November 11, 1996 contained a drawing prepared by The Noble Earth Corporation and it is a landfill cover certification dated 10/16/96. It clearly shows overfill above the 758 mean sea level elevation. Therefore, there can be no doubt that IEPA knew that there was overheight clearly in 1999. When the People pursued ESG Watts in the Rock Island Circuit Court in 98 CH 20, it could have raised the overheight issue but it failed to do so. As the People have already admitted in its Post-Hearing Brief, *res judicata* includes not only issues that were raised but also issues that could have been raised. Therefore, any violation of overheight waste occurring prior to December 29, 1999 is precluded by the doctrine of *res* judicata.

ESG Watts has produced evidence showing that in 1999 and through July 5, 2001 it was attempting to obtain approval of plans from the IEPA to allow overfilled waste to remain in place without relocation. (See Respondent's Exhibits 14, 15, and 16.) ESG Watts and its engineers thought that the IEPA and Attorney General's Office looked upon said efforts favorably. (See Page 2, Respondent's Exhibit 33: "A proposal to leave the waste in place or relocate the waste to other areas of the landfill as an alternative was discussed with representatives of the IEPA and AGO. Both options were discussed in favorable terms.") Once it was learned that keeping overfilled waste in place would not be approved, ESG Watts began to seek approval of a Closure/Post-Closure Plan providing for waste relocation while awaiting approval of a significant modification permit. (See Respondent's Exhibit 17.) However, the IEPA reused to approve the limited objective of a waste relocation plan. Thereafter, ESG Watts combined waste relocation and significant modification applications since 35 IllAdmCode §811.110(d)(2) specifically identifies a revision to the closure/post-closure

care plan as a significant modification. However, as Ken Liss has testified (see Respondent's Exhibit 33), reviews of ESG Watts' applications are reviewed under more conservative interpretations of the regulations than applications from other persons are reviewed.

The upshot of all this is that ESG Watts has expended at least $657,620.24 in engineering fees to gain approval of a significant modification permit to allow it to close, has used four different engineers – CH2M Hill, Envirogen, in-house engineer Tom Jones, and Andrews Environmental Engineering, Inc. in seeking this approval. To date it has nothing to show for its efforts but loads of rejected plans, prosecutions, and fines. But the facts hardly describe a recalcitrant in need of further huge fines to force compliance. In fact, if anything the facts describe a People more concerned about being punitive and thereby siphoning off funds needs for compliance and little concerned in cooperating with ESG Watts to achieve the closure all desire. In addition it is clear that there are legal impediments to just relocating waste and modifying a stormwater plan without benefit of a permit. There are also sever legal consequences to being wrong inadvertently or arguably if one is to believe the testimony of the People's witness Gary Styzens. Unfortunately, ESG Watts, with no source of income since 1998, does not have $102,000 (see People's Exhibit 4) to risk in relocating overfilled waste without protection that it will not be wrong inadvertently or arguably and that it will not be ordered to redo the waste relocation or prosecuted for doing so.

The above discussion has relevance to the issue of whether ESG Watts has effectuated closure activities in a timely manner also. People's Exhibit 3, the July 2, 1999 supplemental permit states that "3. Operator shall initiate implementation of the

closure plan within 30 days after the site receives its final volume of waste." Ms. Munie, in People's Exhibit 5, testifies that ESG was required to implement the closure plan in July 1999; however, she goes on to testify that the threat of leachate discharges to surface or ground waters will be mitigated by proper disposal and that "***[o]nce the wastes are relocated, final cover and stormwater control measures may be installed*** to also mitigate the threat of leachate discharges. "[Emphasis added.] Ms. Munie also testifies as follows:

> The Illinois EPA has never issued a permit for the significant modification of the Taylor Ridge Landfill; such a permit would have required closure and post-closure care including providing adequate final cover, installing groundwater monitoring wells, addressing landfill gas emissions and monitoring groundwater.

This testimony would seem to support that until the permits were issued for relocation of the overfill and the overfill was relocated and until the permit was issued for significant modification, ESG Watts could not know what closure activities would be required and to proceed without the permit approving waste relocation and closure would place ESG Watts at risk to have to do it all over again.

In the People's Post-Hearing Brief, it is stated that Respondent's Exhibit 29 relating to the RTC bankruptcy case file docket sheet is completely meaningless. ESG Watts understands that the People want to rely upon the order in 98 CH 20 (People's Exhibit 1) in which the court on December 29, 1999 finds that RTC's failure to perform in accordance with its contract with ESG Watts does not relieve ESG Watts at the operator to control air pollution. However, in People's Exhibit 9 the People acknowledge that there is some prohibitory restriction resulting from RTC's bankruptcy. Respondent's

Exhibit 29 clearly demonstrates that since the entry of the Court Order on December 29, 1999, the RTC bankruptcy was converted from a Chapter 7 bankruptcy to a Chapter 11 bankruptcy. (See Docket Entry 15 dated 1/13/00.)

This event was very important to the ability of ESG Watts to control its premises as far as air pollution is concerned. Under 11 USC §701 et seq. RTC would have been ousted from possession of its assets such as leases and executory contracts. However, as a Chapter 11 bankruptcy, RTC retains possession of such assets under 11 USC §§1107(a) and 1108. 11 USC §365 requires RTC to elect to assume or reject such leases and contracts. ESG Watts entered its appearance in the RTC bankruptcy (see Docket Entry 97) but RTC obtained extensions of time to make the required election to assume or reject until 9/28/00 (see Docket Entries 171, 194, 221, 267, 367, and 368) and finally obtained an order that gave RTC until the earlier of the date that RTC obtains an order confirming a plan of reorganization or 60 days after the date that an order is entered converting the case back to a Chapter 7 bankruptcy. (See Docket Entry 434.) Docket Entry 1098 shows that on 3/31/03 ESG Watts was still pursuing its attempt to compel RTC to make an election to assume or reject the contracts between ESG Watts and RTC and that said matter was continued to 5/7/03 for status hearing. There is no docket entry for 5/7/03 pertaining to such motion to compel by ESG Watts. It is uncontroverted testimony (see Page 168, Transcript) that RTC's contract gives it the exclusive right to extract landfill gas from the Taylor Ridge landfill. Short of terminating RTC's rights the odor problems could only be alleviated by fixing the flare (see Page 170, Transcript), by preventing emissions from escaping from an extraction well not connected to the flare or to connect said 58 wells to the flare or to a new flare. (See

People's Exhibit 9.) However, it is uncontroverted that the 58 wells not connected to the flare have shutoff valves affixed to them and that gas does not escape from an extraction well not connected to the flare if the shutoff valve is in the proper position. In addition it is uncontroverted that the 58 gas extraction wells could not be connected to the existing flare because of condensate buildup blocking the gravity lines. While it is true that the existing flare was not operational from January 27, 2003 to June 17, 2003, the date it was repaired and became operational (see the affidavit of Joe Chenoweth contained in the Supplement to the Record), it is also true that the Monthly Status Reports for February 2003 and April 2003 reflect that ESG Watts notified RTC of the nonoperational status of the flare and ordered the part necessary to repair same but was waiting on delivery. (See People's Exhibits 7 and 8) While the first part ordered was being installed, it was determined that a motor was also required and it was immediately ordered and installed on June 17, 2003, when it arrived. (See the affidavit of Joe Chenoweth contained in the Supplement to the Record.) While the People may not see the relevance that a bankruptcy court stay has on interfering with RTC's exclusive right to mine landfill gas from the Taylor Ridge landfill, ESG Watts sees it as a major hurdle to resolving the odor problems identified in the testimony and sees it as putting ESG Watts between a rock and hard place – the superior authority of federal law versus the right of the State of Illinois to enforce its laws. ESG Watts has diligently sought to force a decision in the bankruptcy court on the status of RTC's rights while in the interim working to keep landfill gas from escaping from the Taylor Ridge landfill.

In People's Exhibit 9, Mr. Davis states, "ESG Watts was required by Permit No. 1996-136-SP to implement the closure plan in July 1999." ESG Watts has presented

evidence in Respondent's Exhibits 18, 19, and 20 that the closure schedule for the activities required would require 50 weeks after receipt of approval. There is no indication in IEPA comments about these submittals that the schedule was found to be inappropriate or must be revised. However, Mr. Styzens testified that IEPA attorneys gave him information and he relied upon that information to conduct his analysis that closure activities were required to implemented in April 1998 and that there was a 211-day period to implement the closure, "so that is the reason it went from March of '98 up through October and brought the noncompliance period up to October 16th of '98 and then performed our analysis through May 31st of 2003." (See Pages 28-30, Transcript.) Therefore, ignoring the problem that ESG Watts did not know what closure activities were required or the manner in which they should be performed to meet IEPA requirements, Mr. Styzens testimony is based upon flawed assumptions and adds 610 days or 20 months to the period of alleged noncompliance. Add to this the fact that Mr. Styzens whole analysis is based upon a going concern and he admits (Page 70, Transcript) that "[i]t's difficult to deal with a situation if it's not even a going concern" and the fact that the evidence is uncontroverted that ESG Watts has no landfills in operation and has no source of income except for meager monthly royalty payments from RTC (Pages 185-186, Transcript) and one conclusion is evident; the analysis of supposed economic benefits obtained by ESG Watts performed by Mr. Styzens is worthless.

This points out another area where the People cavalierly ignore the evidence in the record. The evidence, as aforementioned, is uncontroverted that ESG Watts has no source of income. The People argue that there has been no evidence presented upon ESG Watts' ability to pay fines or pay for compliance. The People argue that ESG

Watts has refused to pay prior fines when the supplement to the record shows that the Attorney General's Office acknowledges payment of these fines just as agreed to between the parties as shown by Respondent's Exhibits 27 and 28. Now the People cannot be faulted for arguing that the fines were not paid since that had not been done when the People's Post-Hearing Brief was submitted, but the People can be faulted for failing to introduce the agreement between the parties to pay the fine out of a special source of funds. The People did not introduce that agreement because it is more interested in being punitive than in achieving closure. The People did not introduce the fact that ESG Watts inquired about using the monies in the trust fund posted as approved financial assurance to pay for closure costs, which request was rejected outright, because it is more important to the People to continually paint ESG Watts as a recalcitrant who has the ability but not the desire to comply with the law and who is always crying foul at the hands of the People. ESG Watts hopes that a close look at the record in this case and the arguments made by the People in its Post-Hearing Brief dispel this perspective on the facts. Remember that it takes two to tango and, when the People, through the IEPA and the AG's office, interpret laws and regulations more conservatively when ESG Watts is involved and continue to seek punitive solutions that take away from ESG Watts' ability to achieve compliance, the question will be asked if it is ESG Watts or the People who are preventing closure and preventing a resolution to this long-running controversy.

Section 42(h) of the Act (415 ILCS 5/42(H) provides:

> In determining the appropriate civil remedy to be imposed, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including, but not limited to the following factors:

(1) The duration and gravity of the violation;
(2) The presence or absence of due diligence on the part of the violator in attempting to comply with the requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
(3) Any economic benefits accrued by the violator because of delay in compliance with requirements;
(4) The amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this Act by the violator and other persons similarly subject to the Act; and
(5) The number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.

ESG Watts believes that it has shown that no economic benefit has been obtained by ESG Watts from the alleged activities, it has shown that it has acted with due diligence to obtain the necessary permits to relocate waste and proceed with closure activities and to be relieved of the burden of the automatic stay enforced by the bankruptcy court in the RTC case so that it can proceed with making any necessary correction to the gas management system and that a monetary penalty is not needed to deter violations or to otherwise aid in enhancing voluntary compliance. ESG Watts believes that it has shown that what is need to obtain the desired closure is the cooperation of the IEPA in the issuance of the necessary permits. While the positions and defenses raises by ESG Watts may not in each instance constitute a complete defense to the charges alleged against it and some of which it has admitted, the evidence presented and the positions espoused by ESG Watts surely provide mitigation to those violations that are found to exist.

Respectfully submitted by,

Larry A. Woodward, Corporate Counsel
ATTORNEY FOR RESPONDENT

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ROCK ISLAND COUNTY, ILLINOIS

ORIGINAL

RECEIVED
CLERK'S OFFICE
SEP 23 2003
STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

v.

ESG WATTS, INC., an Iowa corporation,

Respondent.

PCB NO. 01-167
(Enforcement)

MOTION FOR LEAVE TO FILE POST-HEARING BRIEF
and MOTION FOR LEAVE TO SUPPLEMENT RECORD INSTANTER

NOW COMES Respondent, ESG WATTS, INC., acting by and through its Corporate Counsel Larry A. Woodward and moves the Board, pursuant to 35 IllAdmCode §§101.522 and 101.500(a), for leave to file its Post-Hearing Brief and its motion for leave to supplement the record instanter and shows the Board as grounds therefor the following:

1. That the Post-Hearing Brief of Respondent was due on September 19, 2003.
2. That Respondent's counsel had oral argument before the 4th District Court of Appeals on September 16, 2003, which required more preparation time than originally contemplated and caused Respondent's Counsel to be out of his office for 1.5 days.
3. That Respondent's counsel had to prepare an answer due in the U.S. District Court, Central District of Illinois, Rock island Division and file same on September 17, 2003.
4. That the record in this matter is quite lengthy and its review and cataloguing required more time than originally contemplated.

5. That the filing of the Post-Hearing Brief was done on September 22, 2003, and was filed by the use of U.S. Express mail thereby guaranteeing its actual receipt only one after the day it would have been received if filed timely and mailed by regular U.S. Mail and the tardiness of the filing is not done for the purpose of delay.

6. That on September 17, 2003, the Illinois Attorney General issued a press release (as shown by the affidavit of counsel attached hereto and incorporated herein) acknowledging Respondent's payment of fines and penalties which the nonpayment of which was the subject of evidence admitted into evidence at the hearing of this matter and is referred prominently in Complainant's Post-Hearing Brief. The payment of said fines and penalties came after the filing of Complainant's Post-Hearing Brief so it was impossible for the Complainant to set the record straight prior hereto.

7. That after the hearing in this matter the parts ordered by ESG Watts, Inc. in order to repair the flare and make it operational again arrived and was installed on June 17, 2003 (as shown by the affidavit of Joseph Chenowith attached hereto and incorporated herein).

8. That the interest of justice and avoidance of the appearance of prejudicing Respondent by the presentation of information that is now untrue requires the supplementation of the record in this matter.

WHEREFORE, for good cause shown Respondent hereby requests leave to file its Post-Hearing Brief instanter and for leave to file its motion for leave to supplement the record of the proceedings.

ESG WATTS, INC., RESPONDENT

By _____
Larry A. Woodward, Corporate Counsel

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ROCK ISLAND COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	**PCB NO. 01-167**
	)	**(Enforcement)**
ESG WATTS, INC., an Iowa corporation,	)	
	)	
	)	
Respondent.	)	

STATE OF IOWA)
) ss
COUNTY OF SCOTT)

AFFIDAVIT

The undersigned, being first duly sworn, upon oath deposes and states as follows:

1. That he went to the official web site of the Illinois Attorney General (http://www.ag.state.il.us/pressrelease/091603.htm) on September 18, 2003, after he had been contacted by a reporter for comment on a press release from the Illinois Attorney General dated September 16, 2003.
2. That he found the attached press release posted on said site and printed a copy of same.
3. That same constitutes an admission against interest concerning the payment of the fines and penalties upon which evidence was presented at hearing in this matter and came after the close of the record in same and the nonpayment of which is featured in Complainant's Post-Hearing Brief in this matter.
4. That he presents same to the Board in order to prevent the Board's decision from being based upon incorrect factual basis and to prevent injustice to ESG Watts, Inc. that would result from such decision.
5. That the payment of said fines and penalties was made after the filing of Complainant's Post-Hearing Brief but pursuant to the agreement reached by the parties at the September 12, 2002 hearing in 00-CH-0239 in the Sangamon Circuit Court and, therefore, Respondent does not intend to imply that Complainant has intentionally attempted to mislead the Board.

6. That the affiant saith further not.

Larry A. Woodward

SUBSCRIBED AND SWORN to before me this 19th day of September, 2003.

Notary Public

ANGELA S. GOYETTE
Commission Number 722110
My Commission Expires
11-24-06

ILLINOIS ATTORNEY GENERAL **LISA MADIGAN**

PRESS RELEASE

For Immediate Release
Contact: Melissa Merz (AG)
312-814-2518
877-844-5461 (TTY)
mmerz@atg.state.il.us
September 16, 2003

MADIGAN SAYS LANDFILL OWNER PAYS $1 MILLION IN PENALTIES, FINES

ESG WATTS OPERATED IN SANGAMON, MERCER AND ROCK ISLAND COUNTIES

Chicago – Following a payment of $1.04 million in penalties and fines, Attorney General Lisa Madigan today said ESG Watts is getting closer to resolving its differences with the state over environmental violations at three landfills the waste disposal giant formerly operated in Illinois.

Since 1991, the Attorney General's office has prosecuted 11 separate cases in the courts or before the Illinois Pollution Control Board (IPCB) involving Watts' landfills in Sangamon, Mercer and Rock Island counties.

The payment by Watts stems from an October 2000 order of the Sangamon County Circuit Court to collect civil penalties and fees imposed by the IPCB in three contested enforcement proceedings involving the Sangamon Valley Landfill near Springfield, Taylor Ridge Landfill in Rock Island County and Viola Landfill in Mercer County. In all three cases, Watts refused to pay judgements against it and filed appeals. In the case of Taylor Ridge, Watts even continued to operate the facility until the Attorney General's office went to court and obtained an injunction.

"In the past, Watts has failed to comply with the numerous judgements against it, but we're making progress," Madigan said. "While Watts is not yet in full compliance, I commend Environmental Bureau Chief Thomas Davis for his years of diligence in holding Watts' feet to the fire and forcing it to pay the citizens of Illinois what it owes for breaking the law."

The Illinois Environmental Protection Agency (IEPA) had cited Watts for problems including groundwater contamination, exceeding permitted disposal limits and closure violations at all three landfills. In addition, complaints against Watts involved recurring odor violations, creation of a public nuisance and surface water pollution problems at the Rock Island and Sangamon County landfills.

During the time that Watts refused to pay its fines and penalties, Watts claimed that its ability to pay the $1.04 million judgement depended on its selling the company's former Sangamon Valley Landfill. The sale of that landfill recently was finalized and the IEPA has granted the new owner, a subsidiary of Allied Waste Systems, a permit to reopen the Sangamon Valley Landfill.

Madigan said that two cases are still pending with Watts. A penalty of $1 million was recommended at a June hearing before the IPCB over continued closure violations at Taylor Ridge. While Viola is no longer accepting refuse, a court order was entered in early August over Watts' failure to comply with groundwater remediation requirements at the site. A penalty of more than $284,000 was imposed.

Return to September 2003 Press Releases

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ROCK ISLAND COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	**PCB NO. 01-167**
	)	**(Enforcement)**
ESG WATTS, INC., an Iowa corporation,	)	
	)	
	)	
Respondent.	)	

STATE OF ILLINOIS)
) ss
COUNTY OF ROCK ISALND)

AFFIDAVIT

The undersigned, being first duly sworn, upon oath deposes and states as follows:

1. That he is employed by ESG Watts, Inc. and is in charge of the day to day activities at the Taylor Ridge Landfill.
2. That he noticed and reported the nonoperational status of the flare on said landfill on January 27, 2003 to Resource Technology Corporation ("RTC").
3. That he began immediately to investigate the problem and determined that it was a 50-amp breaker used by the flare to collect gas.
4. That he began contacting parts suppliers immediately after making said determination and was told that no one had said part in stock; he began making inquiry as to where such part could be obtained and finally on May 14, 2003, Republic Electric Company indicated that it had found a supplier of said part and it could be ordered. It was ordered immediately, and it arrived on or about June 3, 2003.
5. That Farlow Electric Co. was engaged to install the 50-amp breaker, Farlow Electric informed me that the motor had burn out when the amp blew; I authorized the ordering of a new motor and it arrived on June 17, 2003 when it was installed and the flare became operational again.
6. That the affiant saith further not.

Joe Chenoweth
Joseph Chenoweth

SUBSCRIBED AND SWORN to before me this 22nd day of September, 2003.

OFFICIAL SEAL
BARBARA J BURANEK
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES:02/18/04

Barbara J Buranek
Notary Public