

implement a stormwater control plan. Am. Comp. at 9; ESG Watts, *slip op.* at 9-10.

Count IV: Watts violated Section 21(d) of the Act (415 ILCS 5/21(d) (2002)) by depositing waste over the maximum permitted height limit and the waste remains in the overfill areas of the landfill. Am. Comp. at 10; ESG Watts, *slip op.* at 13.

Count V: Watts violated Sections 21(d)(1) and (o)(11) of the Act (415 ILCS 5/21(d)(1) and (o)(11) (2002)) by failing to submit quarterly groundwater monitoring reports. Am. Comp. at 12; ESG Watts, *slip op.* at 13.

In response to a request by the People, the Board also found in its January 8, 2004 interim opinion and order that an award of attorney fees would be appropriate in this case under Section 42(f) of the Act. Section 42(f) allows the Board to:

award costs and reasonable attorney's fees, including the reasonable costs of expert witnesses and consultants, to . . . the Attorney General in a case where he has prevailed against a person who has committed a willful, know or repeated violation of the Act. 415 ILCS 5/42(f) (2002).

As directed in the interim order, the Attorney General filed an affidavit requesting attorney fees and expert witness costs on February 13, 2004. As Watts filed no reply, under Section 101.500(d) of the Board's procedural rules, the Board deems Watts to have waived objection to the granting of the motion. 35 Ill. Adm. Code 101.500(d).

The People's affidavit requests a total of \$7,200 in attorney fees and witness costs. The People request an award of fees for 30 hours of attorney activity and 22 hours of expert witness activity, at rates of \$150 and \$120, respectively. As to attorney fees, the People note that previous cases had found that \$120 per hour was a reasonable rate. *See People v. ESG Watts, Inc.*, PCB 96-107 (February 5, 1998), *People v. ESG Watts, Inc.*, PCB 94-127 (May 4, 1995), and *People v. Waste Hauling Landfill*, PCB 95-91 (May 21, 1998). But here, the People "respectfully suggest that the Board ought to increase the rate from \$120 per hour to \$150 per hour" for attorney time, while suggesting that the \$120 rate may be adequate for the expert witness, Gary Styzens, Chief Internal Auditor of the Illinois Environmental Protection Agency. Affidavit at 1.

The Board finds that the number of hours claimed and the rates suggested are reasonable in this case. The Board awards \$2,640 for 22 hours of expert witness activity at a \$120 hourly rate. The Board also awards \$4,500 for 30 hours of attorney activity at a rate of \$150 per hour. The Board accordingly awards a total of \$7,140, payable to the Hazardous Waste Fund as requested by the People under Section 42(f).

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

ORDER

1. The Board finds that ESG Watts, Inc (ESG Watts), has violated the Act and Board regulations at Watts' Taylor Ridge facility, located in Rock Island County, as alleged in the August 14, 2002 amended complaint filed by the People of the State of Illinois. The Board's findings are stated in detail in its January 8, 2004 interim opinion and order, incorporated by reference herein as if fully set forth.
2. The Board hereby orders payment of the one million dollars (\$1,000,000) civil penalty previously assessed against ESG Watts. ESG Watts must pay this penalty no later than May 6, 2004, which is the 35th day after the date of this order. ESG Watts must pay the civil penalty by certified check or money order, payable to the Environmental Protection Trust Fund. The case number, case name, and the ESG Watts' federal employer identification numbers must be included on the certified check or money order.
3. The ESG Watts must send the certified check or money order to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2002)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2002)).
5. The Board awards the People of the State of Illinois \$7,140 in attorney fees and expert witness costs. ESG Watts must pay these costs no later than May 6, 2004, which is the 35th day after the date of this order. ESG Watts must pay the costs by certified check or money order, payable to the Hazardous Waste Fund. The case number, case name, and the ESG Watts' federal employer identification numbers must be included on the certified check or money order. The certified check or money order must be sent to the address in paragraph 3.
6. ESG Watts must cease and desist from the alleged violations.

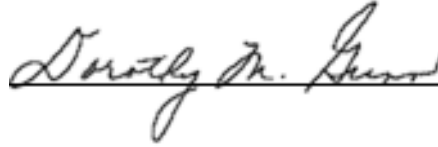
IT IS SO ORDERED.

Board Member T.E. Johnson concurred.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2002); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The

Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on April 1, 2004, by a vote of 4-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board