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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ESG WATTS, INC. (SANGAMON
VALLEY LANDFILL, TAYLOR RIDGE
LANDFILL, AND VIOLA LANDFILL),

Petitioner,

vs. PCB No. 01-139

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

Proceedings held on December 27, 2001, at 10:30 a.m., at
the Illinois Pollution Control Board, 600 South Second Street,
Suite 403, Springfield, Illinois, before Hearing Officer Steven
C. Langhoff.

Reported by: Darlene M. Niemeyer, CSR, RPR
CSR License No.: 084-003677

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A P P E A R A N C E S

WATTS TRUCKING SERVICE, INC.
BY: Larry A. Woodward
Corporate Counsel
525 - 17th Street
Rock Island, Illinois 61201
On behalf of ESG Watts, Inc.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
BY: Daniel P. Merriman
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Division of Legal Counsel
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
On behalf of the Illinois EPA.

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1 P R O C E E D I N G S

2 (December 27, 2001; 10:30 a.m.)

3 HEARING OFFICER LANGHOFF: Good morning. My name is Steven
4 Langhoff. I am the Pollution Control Board Hearing Officer
5 assigned to this matter and who will be handling the hearing
6 today. This is PCB 01-139, ESG Watts, Inc., versus Illinois
7 Environmental Protection Agency. For the record, it is Thursday,
8 December 27th, 2001, and we are beginning at 10:30 a.m.

9 I want to note for the record that there are no members of
10 the public present. Members of the public are encouraged and
11 allowed to provide public comment if they so choose.

12 On July the 5th of 2001, ESG Watts, Inc., or ESG Watts,
13 filed a petition for review of the Illinois Environmental
14 Protection Agency's, or Agency, refusal to release any existing
15 financial assurance instruments issued by Firstar Bank, on the
16 grounds that ESG Watts had not provided acceptable alternate
17 financial assurance. The Agency issued a single letter
18 concerning three ESG Watts' landfills. These are the Viola
19 Landfill, the Taylor Ridge Andalusia Landfill, and the Sangamon
20 Valley Landfill.

21 The Board's Procedural Rules and the Act provide that
22 members of the public shall be allowed to speak or submit written
23 statements at hearing. Any person offering such testimony today
24 should be subject to cross-examination by both parties. Any such

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1 statements offered by members of the public must be relevant to
2 the case at hand. I will call for any statements from members of
3 the public at the conclusion of the proceedings.

4 This hearing was noticed pursuant to the Act and the
5 Board's rules and regulations and will be conducted pursuant to
6 Section 105.214 and Sections 101.600 through 101.632 of the
7 Board's Procedural Rules.

8 At this time I would like to ask the parties to make their
9 appearances on the record. For the Petitioner, ESG Watts?

10 MR. WOODWARD: Larry A. Woodward, W-O-O-D-W-A-R-D, and the
11 address is 525 - 17th Street, Rock Island, Illinois, 61201. The
12 telephone number is (309) 788-7700.

13 HEARING OFFICER LANGHOFF: Thank you, Mr. Woodward. For
14 the Respondent?

15 MR. MERRIMAN: Dan Merriman for the Illinois EPA.

16 HEARING OFFICER LANGHOFF: Thank you, Mr. Merriman. Do we
17 have any preliminary matters that need to be discussed on the
18 record, a stipulation?

19 MR. WOODWARD: The parties have stipulated to several
20 matters. I present Joint Exhibit A, a stipulation of the
21 parties. That document details several exhibits, Joint Exhibit
22 B, it incorporates the petition for hearing as Joint Group
23 Exhibit C, which includes the request and the Agency response.
24 Let's see. Joint Exhibit D -- where is Joint Exhibit D? Okay.

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1 Here we go. Joint Exhibit E, Joint Exhibit F, and Joint Exhibit
2 G.

3 HEARING OFFICER LANGHOFF: Okay. Thank you. Mr. Merriman,
4 have you signed the stipulation?

5 MR. MERRIMAN: I have.

6 MR. WOODWARD: There are the joint exhibits. Now, I do
7 have a copy of the petition for hearing if you wanted it, but
8 that incorporates the one that was filed with the --

9 HEARING OFFICER LANGHOFF: Okay. That's fine. I don't
10 need to take it. It is part of the record.

11 MR. WOODWARD: Okay.

12 HEARING OFFICER LANGHOFF: Okay. Mr. Merriman, your
13 stipulation understanding is contained in the agreement and is
14 signed?

15 MR. MERRIMAN: Yes. We have discussed this prior to the
16 hearing.

17 HEARING OFFICER LANGHOFF: Okay. Thank you. I will accept
18 the stipulation for the record, the stipulation of the parties in
19 this case, PCB 01-139.

20 Is there any outstanding or any preliminary motions that
21 the parties would like to present before we proceed? Mr.
22 Merriman?

23 MR. MERRIMAN: At this time I would move for leave to file

24 instanter the Agency's record. I have an original and four

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1 copies of the record, consisting of the November 27th letters and
2 attachments from ESG Watts, the November 27th of 2000, to the
3 Agency, and some additional information that the Agency acted
4 upon and relied upon. It includes a specific request to
5 incorporate certain delineated pages from the record in PCB
6 01-62, 01-63 and 01-64 now pending before the Board, the hearing
7 of which was held on December 10th of 2001. Those matters were
8 consolidated and the record was filed in that case.

9 The index to the record we are filing today -- this record
10 contains some 300 pages of documents, primarily insurance
11 policies submitted by ESG Watts and then copies of the Agency's
12 February 28th of 2001 decision letter. In addition to that,
13 there were some matters that the Agency relied on that were
14 included in the earlier record, and those items are set out in
15 the index, many of which are actually included in the joint
16 exhibits with the stipulation.

17 HEARING OFFICER LANGHOFF: Okay. Thank you. Mr. Woodward,
18 any objection?

19 MR. WOODWARD: No.

20 HEARING OFFICER LANGHOFF: Thank you. I will grant your
21 motion to file the record --

22 MR. MERRIMAN: Thank you.

23 HEARING OFFICER LANGHOFF: -- instanter and I will take the

24 record and the four copies for the file.

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1 MR. MERRIMAN: Okay. The big one is the original. It is
2 on single-sided and the copies are double-sided.

3 HEARING OFFICER LANGHOFF: Thank you. Anything further,
4 Mr. Merriman?

5 MR. MERRIMAN: Nothing preliminarily, no.

6 HEARING OFFICER LANGHOFF: Okay. Mr. Woodward.

7 MR. MERRIMAN: I would note, just for the record, that the
8 stipulation does indicate that in the prior proceeding, PCB
9 01-62, 63 and 64, that is consolidated, heard on December the
10 10th of 2001, Christopher Liebman was called as a witness and
11 testified on behalf of the Agency and was examined by Mr.
12 Woodward on behalf of Watts. We have stipulated that for
13 purposes of this proceeding if he was called as a witness his
14 testimony would be substantially the same as it was at that time.
15 And that the exhibits that were introduced by Mr. Woodward during
16 cross-examination, over the Agency's objection, would be
17 incorporated in this proceeding as well for purposes of argument
18 and relying on those things during the brief, and the Agency's
19 objection would continue.

20 HEARING OFFICER LANGHOFF: Okay. Thank you. It is noted.

21 MR. MERRIMAN: Okay. Thank you.

22 HEARING OFFICER LANGHOFF: All right. Anything else, Mr.

23 Woodward?

24 MR. WOODWARD: The Petitioner filed a motion for summary

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1 judgment, which the Board ruled upon. But now that the record
2 has been filed, we would move that the -- that the Petitioner be
3 granted judgment in its favor and the insurance policies approved
4 as a matter of law.

5 The 415 ILCS 5/39 indicates that when the Agency denies a
6 permit under this Section the Agency shall transmit to the
7 applicant within the time limitations of this Section specific
8 detailed statements as to the reason the permit application was
9 denied. Such statements shall include but not be limited to the
10 following sections of this Act, which may be violated if the
11 permit were granted, the provisions of the regulations
12 promulgated under this Act which may be violated if the permit
13 were granted, the specific type of information, if any, which the
14 Agency deems the applicant did not provide the Agency and a
15 statement of specific reasons why the Act and the regulations
16 might not be met if the permit were granted.

17 Exhibit M to the petition for hearing is the decision
18 rendered by the Agency, and in that it specifically states the
19 Environmental Protection Agency has, in separate actions, refused
20 to accept the closure insurance policies tendered by ESG Watts,
21 Inc., as substitute financial assurance for the above-referenced
22 Taylor Ridge Landfill and the Viola Landfill sites. The record

23 contains no such separate actions, and Exhibit M contains no
24 detailed specific reasons meeting 415 ILCS 5/39. And, therefore,

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1 they did not deny the insurance policies within the time limit
2 provided, and that those policies are approved as a matter of law
3 at the passage of 90 days from the date of submission.

4 HEARING OFFICER LANGHOFF: Okay. Thank you, Mr. Woodward.
5 Mr. Merriman, do you need to respond?

6 MR. MERRIMAN: I have several things. I will just cover it
7 briefly. I assume this being a dispositive motion that --

8 HEARING OFFICER LANGHOFF: Yes, I am going to treat this as
9 a renewed motion for summary judgment.

10 MR. WOODWARD: Okay. For the Board?

11 HEARING OFFICER LANGHOFF: Yes, for the Board to decide,
12 transmitted to the Board.

13 MR. MERRIMAN: Okay. Just in brief response and, of
14 course, I would reserve the right to make further arguments to
15 the Board in response to the -- to any written arguments raised
16 by the Petitioner. The letter of February the 28th of 2001 is
17 notice of decisions. The Agency mentioned there were separate
18 actions. It does not say there were separate letters.

19 A decision was made to deny the insurance policies.
20 Section 39(a) does state that there are -- that specific reasons
21 should be provided. However, the remedy for that omission, as

22 stated in the Centralia case, and I can't provide the full cite
23 at this point, but a recent Board case called Ozinga, that was
24 just decided a few weeks ago, would be a remand to the Agency to

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1 provide that specific information to the petitioner, in this
2 case, as in the Ozinga case, the parties are full aware of their
3 perspective positions with respect to these policies, the policy
4 that was attached in the November 27th. There were two policies
5 attached. One was a duplicate copy of one that was previously
6 denied on September the 11th of 2000. And the other one was
7 substantially the same but from a different company, and I think
8 the major difference is that the record shows that that company
9 was licensed to do business in the State of Illinois.

10 So there has been discovery in this case. I don't think
11 that ESG Watts is unaware of the reasons behind the Agency's
12 action, and the letter was notice of that action as well as the
13 refusal of the request for all three. And the other thing that I
14 think we need to point out is although specifically the Part 807
15 regulations in Subpart F say that a financial assurance decision
16 may be appealed in the manner of a permit denial decision under
17 Section 40 of the Act, it is not itself a permit decision or a
18 permit denial decision. It is sort of a separate animal.

19 It is included in the regulations of Part 807, but it is
20 not a permit application. Other aspects of the permit
21 application, like review for completeness and the public notice,

22 the hearing notice, those things don't apply. So based on that I
23 think that the renewed motion for summary judgment should be
24 denied and the Board should rule on the merits of the case.

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1 HEARING OFFICER LANGHOFF: Okay. Thank you, Mr. Merriman.
2 Mr. Woodward, would you like to give a brief opening statement?

3 MR. WOODWARD: Well, this application was made following a
4 prior denial that denied insurance approval on the main reason
5 that it was not by a company licensed to transact business in the
6 State of Illinois. The argument was that both Viola and Taylor
7 Ridge had to be under 807, and the regulations required that the
8 insurance policy submitted be by companies -- by a company
9 licensed to transact business in the State of Illinois.

10 On November 27th the Petitioner submitted policies that
11 were issued by a company licensed to transact business in the
12 State of Illinois. In addition, it submitted duplicate original
13 policies. Now, Mr. Merriman has just argued that the Petitioner
14 is well aware of the reasons for denial. Well, those were two of
15 the main reasons for denial in the prior cases. So these
16 policies addressed those specific issues. Therefore, a decision
17 needed to be rendered telling us why these policies were not
18 valid policies as substitute financial assurance. That was not
19 done.

20 The time frame for issuing such a letter has long passed.

21 5/39 talks about the permit appeal that has to be decided within
22 certain time frames. I believe those time frames are set out in
23 5/40, which it refers to. And 415 ILCS 5/21.1 specifically says
24 that financial assurance decisions are heard as a permit appeal.

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1 Therefore, we believe that the insurance policies are approved as
2 a matter of law. Once the insurance policies are approved as a
3 matter of law, that brings you down to the only thing that is
4 mentioned in Exhibit M, the Agency decision of February 28th,
5 which is that no matter whether these policies would be approved
6 or not, the Agency had reason to believe that the amount which
7 was the amount of the approved cost estimates for Taylor Ridge,
8 Viola, and Sangamon Valley were insufficient.

9 The evidence will show that the Agency, in subsequent
10 actions, approved a lower amount for Viola on conditions that
11 existed in the same month of this denial. That the closure -- in
12 fact, I think it was the month before. The closure period
13 actually began for Viola in -- the post-closure period -- excuse
14 me -- began in October of 2000, and this decision was dated
15 December 27, 2000.

16 In addition, a short time later, they approved -- the
17 Agency approved the exact same amount for Taylor Ridge. And to
18 argue that they had reason to believe that the amounts submitted
19 were insufficient is belittled by their subsequent actions. We
20 believe that these policies should be approved as substitute

21 financial assurance, and that our trust funds should be released
22 pursuant to the Board regulations and pursuant to our request,
23 because we have established all of the prerequisites for approval
24 of the policies and for the release of those funds.

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1 HEARING OFFICER LANGHOFF: Thank you, Mr. Woodward. Mr.
2 Merriman, would you like to give a brief opening statement on
3 behalf of your client?

4 MR. MERRIMAN: I would prefer to reserve that argument for
5 the brief.

6 HEARING OFFICER LANGHOFF: Okay.

7 MR. MERRIMAN: I think the Hearing Officer and the Board
8 will be able to discern what the evidence is when it is presented
9 and when they examine the record.

10 HEARING OFFICER LANGHOFF: Okay. Thank you. Mr. Woodward,
11 your case-in-chief.

12 MR. WOODWARD: We ask the Board to take judicial notice of
13 415 ILCS 5/21.1 and 415 ILCS 5/39, and 415 ILCS 5/40.

14 HEARING OFFICER LANGHOFF: I will take judicial notice of
15 those three parts of the Act, and I will leave that for the Board
16 also to take judicial notice of.

17 MR. WOODWARD: Other than the exhibits submitted as part of
18 the joint exhibit, the Petitioner rests.

19 HEARING OFFICER LANGHOFF: Okay. Thank you.

20 MR. MERRIMAN: I call John Taylor.
21 HEARING OFFICER LANGHOFF: All right. Would you please
22 come up here.
23 Would you swear in the witness, please.
24 (Whereupon the witness was sworn by the Notary Public.)

14

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1 JOHN TAYLOR,
2 having been first duly sworn by the Notary Public, saith as
3 follows:
4 DIRECT EXAMINATION
5 BY MR. MERRIMAN:
6 Q. Would you please state your name for the record.
7 A. John Taylor.
8 Q. Where do you reside?
9 A. In Springfield, Illinois.
10 Q. And, John, how are you employed?
11 A. I am an attorney in private practice in Springfield,
12 Illinois.
13 Q. How long have you been so employed?
14 A. I have been employed as an attorney in private practice
15 part-time and full-time for three years.
16 Q. Prior to being engaged as an attorney full-time, how
17 were you employed?
18 A. I was employed by the Illinois Environmental Protection
19 Agency in the Bureau of Land.

20 Q. Approximately how long were you employed by the Illinois
21 Environmental Protection Agency?

22 A. The last time I worked there I was employed there from
23 January of 1990 until the end of February of 2001.

24 Q. You said the last time. Were you previously employed by

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1 the Illinois EPA?

2 A. Yes, I worked for the Illinois Environmental Protection
3 Agency from 1975 to 1980.

4 Q. In what capacity?

5 A. As a field inspector, again, for what is now the Bureau
6 of Land.

7 Q. And between those periods were you employed?

8 A. Yes, I worked primarily in the pollution control
9 industry for several different places.

10 Q. And can you briefly give us a summary of your
11 educational background?

12 A. I have a Bachelor of Arts in economics. I have a
13 Master's in business administration from Washington University in
14 St. Louis, and I have a Juris Doctor from St. Louis University
15 School of Law, and I am admitted to the bar in Illinois.

16 Q. When were you admitted to the bar?

17 A. November of 1998.

18 Q. Did you say in what capacity you were working for the

19 Illinois EPA the last time?

20 A. I worked primarily as a financial assurance analyst
21 reviewing financial assurance documents and related matters.

22 Q. And what is the purpose of the review of financial
23 assurance documents for the Bureau of Land?

24 A. To determine whether or not the submissions by owners

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1 and operators of facilities that are required to provide these
2 financial assurance mechanisms meet the requirements of the Act
3 and the Rules and related matters and transactions.

4 Q. Calling your attention to ESG Watts, are you familiar
5 with the Petitioner in this case?

6 A. Yes.

7 Q. And, in fact, you have reviewed a number of financial
8 assurance submissions provided by ESG Watts, right?

9 A. Over the years, yes.

10 Q. Specifically, with respect to this case, on November the
11 27th of 2000, and I will just show you a copy of it, although it
12 is also included in the stipulation. I guess I have a copy of
13 the exhibit, but I will just show you a copy of the records.

14 MR. WOODWARD: Do you want this?

15 MR. MERRIMAN: That's fine. Thanks.

16 Q. (By Mr. Merriman) I will refer you to what has been
17 marked with a Bates stamp marking at the bottom of page one of
18 the administrative record. Are you familiar with that? Do you

19 recognize that?

20 A. Yes. It has my handwriting on it. It was a letter the
21 Agency received from ESG Watts, or Watts Trucking Service, in
22 November of 2000.

23 Q. And to whom is it addressed?

24 A. Hope Wright, financial analyst.

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1 Q. Did she work with you at that time?

2 A. Yes.

3 Q. Did she make the review of this submittal?

4 A. No, she did not.

5 Q. Who did?

6 A. I did.

7 Q. And I am going to now ask you in that same document to
8 refer to page 94.

9 A. Okay. I have it.

10 Q. Do you recognize that?

11 A. Yes. It is another letter from ESG Watts. I believe it
12 came with the one that we just previously discussed.

13 Q. Okay. Which facility does this reference?

14 A. The Rock Island facility, sometimes known as the Watts
15 Trucking Landfill or the Taylor Ridge Landfill.

16 Q. Also sometimes known as Andalusia?

17 A. Yes.

18 Q. Did you review this submittal as well?
19 A. Yes, I believe I did.
20 Q. Okay. Finally, I will refer you to the page marked 188.
21 A. Okay. I have it.
22 Q. Do you recognize that?
23 A. Yes. It is a copy of the third package we received or
24 letter with attachments at the same time as the previous two that

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1 I just mentioned from ESG Watts.
2 Q. Did you review that one?
3 A. Yes, I did.
4 Q. Did you -- now, going back to page one, the Sangamon
5 Valley Landfill, that included, did it not, some insurance
6 policies covering certain items relating to the closure,
7 post-closure care for the Sangamon Valley Landfill?
8 A. Yes, I believe it did.
9 Q. Did you specifically review those policies related to
10 the Sangamon Valley Landfill?
11 MR. WOODWARD: I would object. The decision of the Agency
12 is set forth in Exhibit M to the petition. The hearing -- there
13 is not supposed to be additional matters that -- the Agency
14 decision speaks for itself, and you can't explain it on the
15 record.
16 HEARING OFFICER LANGHOFF: Okay. Thank you. Mr. Merriman?
17 MR. MERRIMAN: Well, I would take exception to that. I

18 believe you can explain it on the record. You can't add new
19 basis for the decision or raise new issues. I think we are bound
20 by the issues that are framed by the denial letter, the February
21 28th of 2001 letter. But, certainly, I think the Agency reviewer
22 and the Agency witnesses can testify to what they did prior to
23 that decision.

24 MR. WOODWARD: The Agency --

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1 HEARING OFFICER LANGHOFF: Go ahead, Mr. Woodward.

2 MR. WOODWARD: Okay. The Agency record is the Agency
3 record, and you can't add to the Agency record unless there is
4 evidence that is referred to inside the record that is not part
5 of the record. Such as in this case you have evidence that they
6 have reason to believe that there is different cost estimates,
7 but that is not part of the Agency record. There is nowhere in
8 the Agency record that there is a reference to other estimates.

9 HEARING OFFICER LANGHOFF: Okay. Thank you.

10 MR. WOODWARD: But in this case he wrote a decision. The
11 decision speaks for itself.

12 HEARING OFFICER LANGHOFF: Okay. Thank you. Mr. Merriman,
13 anything else?

14 MR. MERRIMAN: I think he can testify as to the process of
15 his review.

16 HEARING OFFICER LANGHOFF: Okay. Thank you. I am going to

17 overrule your objection, Mr. Woodward. I find that this is
18 similar to some of the evidence that I admitted in our previous
19 hearing for PCB 01-62, and describes what the Agency based their
20 decision on at the time that they made their decision. In other
21 words, I am going to find that it is relevant and falls within
22 the requirements needed in Section 105.214 of the procedural
23 rules.

24 MR. MERRIMAN: Thank you. After this I will maybe try to

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1 rephrase my question, if I may.

2 HEARING OFFICER LANGHOFF: Certainly.

3 MR. MERRIMAN: Thank you.

4 HEARING OFFICER LANGHOFF: I am sorry. Excuse me, Mr.

5 Merriman.

6 Mr. Woodward, please feel free to make an objection again
7 or if you want to make some sort of running objection to these
8 questions for the record that would be fine. If you want to make
9 another objection as soon as the next question is asked after
10 this one, please feel free to do so. Okay. Thank you. Mr.
11 Merriman.

12 MR. MERRIMAN: Thank you.

13 Q. (By Mr. Merriman) Mr. Taylor, did you specifically
14 analyze and review the Sangamon Valley insurance policies that
15 were submitted with the November 27th letter, a copy of which is
16 set out on page one of the record?

17 A. No.

18 Q. Why not?

19 A. ESG Watts was under no requirement to provide financial
20 assurance for the Sangamon Valley site.

21 Q. And, in fact, were you aware that the ESG Watts facility
22 had been sold and the operating permit was transferred in
23 February of the year 2000, I believe, several months prior to
24 this letter?

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1 A. Yes. I believe I reviewed the financial assurance that
2 was submitted prior to the permit transfer by the new owner or
3 operator sometime before February of 2000, which was roughly a
4 year before this letter was submitted.

5 Q. Is it your understanding that when a facility is sold
6 and the operating permit is transferred to another party that the
7 seller -- or excuse me. Does the seller have any continuing
8 obligation to close the facility at some point down the road or
9 provide post-closure care?

10 A. Not under these circumstances. The new owner/operator
11 provided adequate financial assurance, and the permit was
12 transferred to the new owner/operator. Therefore, the old
13 owner/operator, ESG Watts, had no further obligation to do
14 anything at the site, that I am aware of.

15 Q. Thank you. There has been some reference made already

16 by Mr. Woodward to the February the 28th of 2001 letter that was
17 issued in response to these November 27th requests. And I am
18 going to refer you to an example of that, a copy of that letter
19 in the record at page 84, the beginning of page 84.

20 A. I have it.

21 Q. Okay. By whom was that letter written?

22 A. I wrote this letter.

23 Q. And in the heading of the letter it says in reply
24 referred to and it sets out certain information. What is that?

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1 Can you explain what that is?

2 MR. WOODWARD: I would object again as a continuing
3 objection. This document speaks for itself. If there is any
4 ambiguity in the document it would have to be construed against
5 the Agency, because they are the ones that issued it. But they
6 have not introduced any question of ambiguity. So there is no
7 need to explain this document. It speaks for itself.

8 HEARING OFFICER LANGHOFF: I am going to overrule your
9 objection, Mr. Woodward.

10 THE WITNESS: The letter -- or the heading that you
11 inquired about refers to the three ESG Watts sites that were the
12 subject of the letters submitted by Mr. Woodward in November of
13 the previous year.

14 Q. (By Mr. Merriman) What was your understanding of the
15 thrust of ESG Watts' request in those letters?

16 A. They were asking for the approval --

17 MR. WOODWARD: A continuing objection. The requests speak
18 for themselves, too. They are in writing and they are part of
19 the record.

20 HEARING OFFICER LANGHOFF: All right. Thank you. It will
21 be noted for the record that Mr. Woodward has made a running
22 objection to the discussion and explanation of this document and
23 other documents that appear in the record. Thank you.

24 Q. (By Mr. Merriman) Okay. If you can answer?

23

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1 A. ESG Watts asked that the Agency accept some insurance
2 policies that they tendered as a form of financial assurance and
3 also asked for the release of monies contained in a trust for
4 these sites, and this was the response to those letters.

5 Q. And you indicated that the Agency was refusing to
6 release the trust funds or any other financial instruments?

7 A. Yes.

8 Q. We have stipulated in this case that if called as a
9 witness Christopher Liebman would testify the same or
10 substantially the same as he testified in prior proceeding PCB
11 01-62, 01-63, and 01-64 consolidated, as heard on December the
12 10th of 2001. Were you present at the hearing at that time?

13 A. Yes, I was.

14 Q. And you mentioned and I believe you were asked at that

15 other proceeding also some similar statement made in denial
16 letters at issue in those cases regarding the statement that the
17 Agency has reason to believe that the cost of closure and
18 post-closure care of the Viola Landfill and the Taylor Ridge
19 Landfill will be significantly greater than the total value of
20 financial assurance tendered for all of Watts facilities
21 regardless of acceptability. Do you recall that?

22 A. Yes.

23 Q. What is the significance of that fact?

24 A. In the regulations, and I can't cite the specific

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1 regulation, but in the 807 regulation that governs trusts and
2 release of trusts or excess funds, there is a provision that if
3 the Agency has a reason to believe that the cost of closure and
4 post-closure care is substantially greater than all of the
5 financial assurance tendered including, say, for example, the
6 trust value itself, that the Agency has the option, as I recall,
7 of refusing to release its financial assurance mechanisms, or in
8 this case the money in the trust.

9 Q. That was the purpose of the statement being included in
10 this letter?

11 A. Yes, yes. The Agency had reason to believe -- as Mr.
12 Woodward says, it speaks for itself. That the Agency had reason
13 to believe that the cost of closure and post-closure care of the
14 two remaining Watts sites would be substantially greater than the

15 amount of the insurance policies, whether they were acceptable or
16 not, and the money in the trust fund.

17 Q. What was your basis for making that statement?

18 A. I had no personal basis. I was informed of this by
19 members of our permit section. It was discussed and discussed in
20 meetings, the rationale, and what the possible costs would be once
21 the sites were fully permitted under 811. There was a problem of
22 a possible corrective action problem at one or both sites, I
23 believe. One of the sites was over height. There was no way to
24 really know how much it was going to cost ultimately to solve all

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1 of these problems, but it was reasonable to believe that it would
2 be far more than the amount of cash in the trust fund plus these
3 insurance policies.

4 Q. Was one of the persons of the permit -- employed by the
5 Bureau of Land Permit Section whom you discussed this with
6 Christopher Liebman?

7 A. I don't recall.

8 MR. WOODWARD: I object. Mr. Liebman's prior testimony is
9 part of the record. I believe his testimony specifically stated
10 that he didn't talk to Mr. Taylor.

11 THE WITNESS: Well, I am --

12 HEARING OFFICER LANGHOFF: Okay. Thank you, Mr. Taylor.

13 Mr. Merriman, any response?

14 MR. MERRIMAN: I will withdraw the question.

15 HEARING OFFICER LANGHOFF: Okay. Thank you.

16 Q. (By Mr. Merriman) This is going to be in response to
17 something stated earlier, I think by Mr. Woodward. Was the
18 primary reason for denial or the sole -- strike that. I don't
19 want to get into that. That's in that record, as well.

20 Outside of the record and the stipulation and the things
21 that have been previously submitted, and I think the Board in
22 this proceeding can, if appropriate, take official notice of the
23 prior recorded testimony given under oath by the witness in the
24 other proceedings. And I would ask that they do so, if

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1 appropriate, to supplement any questions that they might have on
2 this proceeding. Given that, I think I have no further
3 questions.

4 HEARING OFFICER LANGHOFF: Would you want to specifically,
5 I guess, enter in the record in this matter that has been
6 testified to in another matter?

7 MR. MERRIMAN: Well, the discussion about the insurance
8 policies and the issue with respect to --

9 HEARING OFFICER LANGHOFF: Whose testimony, Mr. Merriman?

10 MR. MERRIMAN: Mr. Taylor's.

11 HEARING OFFICER LANGHOFF: Mr. Taylor's. So we could say
12 all of the prior testimony of Mr. Taylor in the other proceeding?

13 MR. MERRIMAN: Yes. I believe that -- if I asked him the

14 same questions would he give the same answers, and I -- that's,
15 yes, I would like to do that if we can do that.

16 HEARING OFFICER LANGHOFF: Mr. Woodward, do you have any
17 objection?

18 MR. WOODWARD: I would object to the relevancy of a lot of
19 that. The prior testimony was about policies that were not
20 issued by a company licensed to transact business in the State of
21 Illinois. These policies specifically were. These policies
22 specifically have --

23 HEARING OFFICER LANGHOFF: Okay. Thank you, Mr. Woodward.
24 Section 101.626 allows for the introduction of written testimony.

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1 It has to be provided to all of the other parties of record prior
2 to the date of the hearing. It has been. Maybe not by Mr.
3 Merriman. Have you received your transcript?

4 MR. WOODWARD: Unfortunately not, because my internet site
5 has been down for a week.

6 MR. MERRIMAN: It is available.

7 HEARING OFFICER LANGHOFF: Okay. Thank you, Mr. Merriman.
8 I am going to deny your request, Mr. Merriman, just because it
9 raises too many questions about what might be relevant and not.

10 MR. MERRIMAN: Well, I would make the request subsequent to
11 relevancy. The only reason I am doing it is at the close of this
12 hearing I -- these cases were not -- this case was not

13 consolidated with the other cases for purposes of hearing because
14 it was not listed in the notice and it had to be separately
15 noticed. But there is a number of -- there are a number of
16 overlapping issues, and I think that we discussed the possibility
17 of having one briefing schedule for both proceedings. And so
18 just to make it simpler to include in one brief. That's why I
19 was trying to -- why I wanted to be able to incorporate any prior
20 testimony. So that if a statement that was made under oath in
21 the hearing on December 10th, for example, might be relevant to a
22 particular argument, that would also apply to this case, and that
23 the Board could rely on that statement as sworn testimony of the
24 witness. And if you are asking if I have anything specific in

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1 mind at this point without having the transcript in front of me,
2 no, I don't. But I think that it would be a matter of
3 convenience to the parties and to the Board.

4 HEARING OFFICER LANGHOFF: Yes, I understand the matter of
5 convenience. Mr. Woodward, do you --

6 MR. MERRIMAN: And subject to relevance, obviously.

7 HEARING OFFICER LANGHOFF: Do you have any objection, Mr.
8 Woodward?

9 MR. WOODWARD: I still object to the relevancy of that
10 testimony, because it was dealing with different insurance
11 policies.

12 HEARING OFFICER LANGHOFF: Do you have any other

13 objections?

14 MR. WOODWARD: No.

15 HEARING OFFICER LANGHOFF: Okay. Mr. Merriman, I am going
16 to deny your request and deny your motion, and let you ask Mr.
17 Taylor whatever you need to ask him at this time just in case
18 there is any problems.

19 MR. MERRIMAN: That's fine. I understand that.

20 HEARING OFFICER LANGHOFF: Okay. Thank you.

21 Q. (By Mr. Merriman) The insurance policy that was included
22 with the November 27th of 2000 letter and, again, just, for
23 example, I will refer you to page -- let me see if I can find it.
24 At page 94 of the record, for example, the one relating to Watts

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1 Landfill, Rock Island County, also known as Taylor Ridge, that
2 letter indicates that there were two policies included in that
3 submittal; is that right?

4 A. Yes, that's what it says.

5 Q. The second policy mentioned --

6 A. I believe it is on page 135.

7 Q. Page 135. Thank you. That covers what period?

8 A. The stated policy period is January 26, 2000 to January
9 26th of 2001.

10 Q. So that policy, of its own terms, is expired?

11 A. That's what it seems to say, yes.

12 Q. The term that was covered by the first policy, which
13 begins on page 96 of the record, covers what period?

14 A. The policy period is January 26th of 1999 to January
15 26th of 2000.

16 Q. So based on the terms of that policy also expired?

17 A. Yes.

18 Q. What is your understanding of the ability to rely for
19 financial assurance upon an expired policy?

20 A. An expired policy would be an expired policy and would
21 have no value, as far as I know.

22 Q. With respect to the Viola and the Rock Island
23 submissions, do you recall having reviewed the insurance policies
24 that were submitted?

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1 A. I believe I did, yes.

2 Q. Okay. In your February 28th of 2001 letter, that you
3 previously testified about, indicates that you accepted or
4 rejected those policies?

5 A. These were essentially the same policies that we had
6 rejected a number of times before. There was nothing new here.
7 And the size of the policies, acceptable or not, in connection
8 with the trust fund still, in our estimation, would not provide
9 enough financial assurance for the closure, post-closure care of
10 the two sites and we denied the release of the funds.

11 Q. I have two follow-up questions to that. One, you

12 indicated that there is nothing new, but you do recall that the
13 United Capital Insurance Company filled out a certificate of
14 insurance for closure and post-closure care that indicated that
15 they were licensed to transact the business of insurance in
16 Illinois; do you recall that?

17 A. I don't recall it specifically. I would have to look to
18 see if something like that was included.

19 Q. Let me refer you, for example, to page 172 of the
20 record.

21 A. Okay.

22 Q. Then page 173, following up.

23 A. Okay. Yes, I have it.

24 Q. Okay. That was not the sole reason for denying the

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1 prior policies, was it, the lack of Illinois licensure?

2 A. It was my understanding that United Capital Insurance at
3 this point in time or at the point in time I made this decision
4 or wrote this letter that they didn't have an Illinois license.

5 MR. WOODWARD: I would object.

6 HEARING OFFICER LANGHOFF: What grounds?

7 MR. WOODWARD: There is nothing in the record that would
8 reflect that.

9 HEARING OFFICER LANGHOFF: Thank you. Mr. Merriman.

10 THE WITNESS: Huh?

11 MR. MERRIMAN: I think he can testify as to what his
12 understanding was at the time he entered the decision.

13 MR. WOODWARD: Well, what is he basing it on? Unless I can
14 have a voir dire. He can't just give opinions.

15 HEARING OFFICER LANGHOFF: Okay. Mr. Merriman, does that
16 appear -- does the answer to the last question appear anywhere in
17 the record.

18 MR. MERRIMAN: The prior decision specifically referenced
19 the lack of licensure of Frontier Pacific Insurance Company. And
20 this is a substantially similar policy by a company, but as Mr.
21 Woodward pointed out, a company that says that it is licensed in
22 the State of Illinois.

23 HEARING OFFICER LANGHOFF: Where does it appear that --

24 MR. WOODWARD: It is stipulated.

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1 HEARING OFFICER LANGHOFF: Where does it appear that --

2 MR. WOODWARD: We have stipulated to that, that it is
3 licensed to transact business. That is part of the joint
4 stipulation.

5 MR. MERRIMAN: And where does it say that they are
6 licensed? For example, in the certificate of insurance for
7 closure and post-closure care, appearing at 172 and 173 of the
8 record.

9 HEARING OFFICER LANGHOFF: So, Mr. Woodward, do you have
10 any response?

11 MR. WOODWARD: Well, Joint Exhibit A, which is the
12 stipulation of the parties, paragraph three, says that at all
13 relevant times United Capital Insurance Company was an insurer
14 licensed to transact business of insurance in the State of
15 Illinois.

16 HEARING OFFICER LANGHOFF: Okay. Thank you. Mr. Merriman?

17 MR. MERRIMAN: Well, my original question relating to this
18 to Mr. Taylor had to do with whether the failure to be licensed
19 was the sole reason for him denying the prior insurance policies
20 that these are substantially similar to, and I think that's when
21 this all started.

22 HEARING OFFICER LANGHOFF: Okay.

23 MR. MERRIMAN: I didn't get an answer to that question.

24 MR. WOODWARD: He volunteered some information that was

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1 untrue, and so I objected. If he would like to strike the --

2 HEARING OFFICER LANGHOFF: Actually, you objected to his
3 answer, that it does not appear in the record.

4 MR. WOODWARD: Right.

5 HEARING OFFICER LANGHOFF: And you still stand by that
6 objection and we have gone in a circle now. But, Mr. Merriman, I
7 have not heard your response that that testimony that he gave
8 appears anywhere in the record.

9 MR. MERRIMAN: That it was his understanding that they were

10 not licensed?

11 HEARING OFFICER LANGHOFF: That's correct.

12 MR. MERRIMAN: I don't think there is any -- I would agree
13 that there is nothing in writing in this record that states that
14 with respect to United Capital Insurance Company.

15 HEARING OFFICER LANGHOFF: Mr. Woodward, your objection is
16 that it is not part of the Agency record?

17 MR. WOODWARD: Right.

18 HEARING OFFICER LANGHOFF: It is the same objection that
19 you had before.

20 MR. WOODWARD: Except in this case it is in direct opposite
21 to their stated stipulation, too.

22 HEARING OFFICER LANGHOFF: That is correct. Paragraph
23 three of the parties stipulation.

24 MR. MERRIMAN: Yes. I would -- again, I am not sure that

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1 the -- that what Mr. Taylor said was that they are not -- I don't
2 think he testified that they were not licensed. I think he
3 testified that he thought that it was -- it was his understanding
4 that they were not licensed. It is two separate things. I don't
5 want to split hairs.

6 HEARING OFFICER LANGHOFF: I am going to --

7 MR. MERRIMAN: How about this.

8 HEARING OFFICER LANGHOFF: I am going to --

9 MR. MERRIMAN: I will withdraw my question.

10 HEARING OFFICER LANGHOFF: -- grant Mr. Woodward's motion.
11 Do you have a motion to strike, Mr. Woodward?

12 MR. WOODWARD: Well, unfortunately, I don't think I am
13 allowed to move. It is his witness. That's what I was getting
14 ready to say. If he wanted to strike that part of the testimony
15 as not responsive to his question, fine.

16 HEARING OFFICER LANGHOFF: Okay. Thank you. Mr. Merriman?

17 MR. MERRIMAN: Well, if I was in cross-examination I would
18 move to strike it as not being responsive, but he is my witness.
19 But I would like to withdraw the question because it is leading
20 to a lot of extraneous issues that are not particularly matters
21 of concern.

22 HEARING OFFICER LANGHOFF: Let the record reflect that the
23 question that has been asked and answered, the last question, is
24 withdrawn. I am going to strike the question and the response,

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1 if there is any question left for the Board, I strike all of that
2 testimony.

3 MR. MERRIMAN: Okay. Thank you.

4 HEARING OFFICER LANGHOFF: Thank you.

5 Q. (By Mr. Merriman) These policies, speaking about all of
6 them that were at issue here, is it your understanding that there
7 is a claims procedure whereby the Illinois EPA would present a
8 claim for costs incurred in closure or post-closure care in order

9 for the policy to pay?

10 A. Yes, it works like that, yes.

11 Q. Okay. Is a part of that claim process, does it require
12 some default on the behalf of the insured?

13 A. No, the insured is required to pay for closure and
14 post-closure care from the issuance of the policy. There is no
15 claim or question as to the eventuality of that. They are on the
16 hook for closure, the cost of closure and post-closure care
17 immediately from the issuance of the policy.

18 Q. Now, that is what the regulations require?

19 A. Yes.

20 Q. Is that what these policies provided?

21 A. No.

22 MR. MERRIMAN: I think I am not going to belabor anything
23 further on this. I think that's all I would like to ask Mr.
24 Taylor.

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1 HEARING OFFICER LANGHOFF: Okay. Thank you, Mr. Merriman.
2 Mr. Woodward?

3 CROSS EXAMINATION

4 BY MR. WOODWARD:

5 Q. Mr. Taylor, these policies were in effect on the date of
6 submission; is that correct?

7 A. Yes, I believe that they were.

8 Q. And they covered a period or periods for which the

9 Petitioner had an obligation to provide financial assurance; is
10 that correct?

11 A. Generally, yes, for the Viola and Andalusia site.

12 Q. And for the Sangamon Valley site, the Petitioner had an
13 obligation to provide financial assurance until February the 18th
14 of the year 2000, correct?

15 A. Yes, that is my recollection.

16 Q. Okay. And this policy covers January 26th of 1999 to
17 January 26th of 2000, and January 26th of 2000 to January 26th of
18 2001. So February 18th falls within that time period of the
19 policy, does it not?

20 A. That's two questions. The first is I didn't review the
21 policies for the Sangamon Valley Landfill, so I will take your
22 word for it, but I don't know. Second, the obvious answer to the
23 second question is, yes, February 18th falls within that time
24 frame.

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1 Q. You don't recall ever issuing a written decision, do
2 you, releasing ESG Watts, Inc., from the obligation to provide
3 financial assurance for Sangamon Valley, do you?

4 A. That's not my function, no.

5 Q. The regulations do provide for release of financial
6 obligations, do they not?

7 A. As part of the permit function, yes.

8 Q. On November 27th of 2000, were you aware that the Viola
9 landfill post-closure care period had already begun?
10 A. I don't recall.
11 Q. Okay. Were you aware that the financial assurance for
12 the Viola Landfill was less than the amount that was submitted?
13 A. I don't recall.
14 Q. I misstated that question. I am sorry. That the cost
15 estimate for the post-closure care was less than the amount
16 submitted on February -- on November 27th of 2000?
17 A. The amount of what? I am not sure.
18 Q. Post-closure care for the Viola Landfill.
19 A. Was less than something?
20 Q. Than the amount that was submitted in the financial
21 assurance, the requested substitute financial assurance on
22 November 27th of 2000?
23 A. Was less than the face value of the insurance policy?
24 Q. Yes.

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1 A. That sounds familiar. I am sure you are right. I just
2 don't recall specifically.
3 Q. Now, these policies that you say require that a claim be
4 made, do you read every page of the policies?
5 A. I didn't say that, one. Two, yes.
6 Q. I am going to refer you to page 214 of the record. Do
7 you have it?

8 A. Yes.

9 Q. Now, there is a box on this page that has in bold print
10 closure and/or post-closure endorsement; is that correct?

11 A. Yes.

12 Q. And underneath that there is some paragraphs, correct?

13 A. Several pages of them, yes.

14 Q. All right. The second full paragraph underneath that
15 box, I want to direct your attention to that.

16 A. Which one would that be?

17 Q. It begins, in consideration of the premium charged.

18 A. Okay.

19 Q. Now, this language clearly talks about just having the
20 regulatory body instructing the insured or the insurer that it
21 needs to pay for the closure costs, does it not?

22 A. It says the policy will apply to costs. That the
23 regulatory body instructs the company to indemnify the insured
24 for.

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1 Q. So this policy does provide for payment of the closure
2 and post-closure costs, does it not, through this endorsement?

3 A. Under certain circumstances, yes.

4 Q. All right. Without requiring that a claim be made; is
5 that correct? That is just merely instruction?

6 A. Well, yes, it talks about claims. There are several

7 pages of claims and what claims are, and so on and so forth. It
8 goes on for -- well, there are actually five pages. There are
9 conditions precedent on page four that would perhaps give the
10 insurer a reason to not have to pay, so on and so forth. You are
11 asking me for a snap judgment on five pages of language. This
12 does not say in one short sentence the insurer shall pay for
13 closure and post-closure care.

14 Q. You believe that is what it is required to say?

15 A. Yes.

16 Q. You are aware that the statute provides that insurance
17 is a permitted financial assurance mechanism, are you not?

18 A. Yes, I have heard that, yes.

19 Q. I am going to refer you to page 96 of the record.

20 A. Okay.

21 Q. There are two signatures on that page; is that correct?

22 A. Yes.

23 Q. Now, first, the top most signature. It contains some
24 printing in bold print immediately above the signature; is that

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1 correct?

2 A. Yes.

3 Q. What does that say?

4 A. Duplicate original.

5 Q. In prior submissions was that one of the reasons why you
6 rejected the submitted policies, because they were not duplicate

7 originals?

8 A. To the best of my recollection, no.

9 Q. Your recollection may be incorrect, though; is that
10 correct?

11 A. My recollection is often incorrect.

12 Q. Okay. At any time did you check with the Department of
13 Insurance to determine if United Capital Insurance Company was
14 licensed to transact business in the State of Illinois?

15 A. Yes, I believe I did.

16 Q. And when did you do that?

17 A. I don't recall. I would have to see if my calendar
18 would reflect that.

19 Q. Okay.

20 A. I offhand don't remember. I don't have -- I am not
21 aware of a written note of when that was done.

22 Q. Now, you are aware that the Agency was requested to
23 provide in discovery any such document. Are you aware of that?

24 A. Yes.

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1 Q. Now, if the Agency did not provide any such
2 documentation, either from the Department of Insurance or from
3 its own files that that occurred, would your recollection
4 possibly be wrong, that you didn't check about United Capital?

5 A. No. I checked on various insurance companies from time

6 to time and rarely did we actually formally request in writing
7 some sort of a verification from the Department of Insurance. As
8 a matter of fact, the only time I can remember doing that is for
9 one of these Watts denials, one of the previous ones. Normally
10 we just called them up and asked them.

11 Q. So if the record reflects that you did check and there
12 was a written verification about Frontier Pacific, it is clear
13 that you checked about Frontier Pacific?

14 A. Yes, we did so in writing after a phone call.

15 Q. Okay. But your testimony now is that you think -- you
16 recall -- you have a recollection of checking on United Capital?

17 A. Yes.

18 Q. But you don't recall whether you ever received anything
19 in writing to confirm that?

20 A. No, I don't believe we did any -- I am reasonably sure I
21 didn't ask in writing and receive any sort of a response. I am
22 sure it would have been in the record had I done so.

23 Q. All right. Mr. Taylor, was February 28th of 2000 your
24 last day of work for the Agency?

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1 A. No.

2 Q. That's the last --

3 A. February 28th of 2001 was, yes.

4 Q. I am sorry. 2001. That was the day that you issued the
5 decision that is identified as Exhibit M and contained there in

6 the record at some page?

7 A. Yes.

8 Q. Is that the only decision you prepared of that letter
9 that was dated February 28th?

10 A. I am sorry. I am not sure I understand.

11 Q. Is that the only written decision that you prepared?

12 A. For --

13 Q. For the November 27th of 2000 submissions by ESG Watts?

14 A. Yes, I believe so.

15 Q. Okay. So you actually never prepared -- when the letter
16 that is dated February 28th talks about two separate decisions,
17 you never actually prepared those two separate decisions?

18 A. I don't know how you prepare a decision. This was a
19 letter notifying you, you personally, of a decision. It was not
20 the decision itself.

21 Q. You never prepared a written statement as referred to in
22 those two letters by separate actions?

23 A. I don't believe so.

24 MR. WOODWARD: Okay. That's all I have.

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1 HEARING OFFICER LANGHOFF: Thank you, Mr. Woodward. Mr.
2 Merriman, do you have anything on redirect?

3 MR. MERRIMAN: I don't think so.

4 HEARING OFFICER LANGHOFF: Okay. Thank you. Thank you,

5 Mr. Taylor.

6 (The witness left the stand.)

7 HEARING OFFICER LANGHOFF: Anything else, Mr. Merriman?

8 MR. MERRIMAN: No, Your Honor. We have nothing further.

9 HEARING OFFICER LANGHOFF: Okay. Thank you. Mr. Woodward,
10 would you like to make -- well, do you have anything --

11 MR. WOODWARD: I have nothing further to present.

12 HEARING OFFICER LANGHOFF: Would you like to make any kind
13 of closing arguments at this time or do you want to reserve them
14 for the brief?

15 MR. WOODWARD: I will reserve it for the brief.

16 HEARING OFFICER LANGHOFF: Okay. Mr. Merriman, the same
17 question.

18 MR. MERRIMAN: The same thing.

19 HEARING OFFICER LANGHOFF: Okay. Thank you. At this point
20 I will go off the record for just a couple of minutes to discuss
21 the availability of the transcript and the submission of briefs.
22 We have discussed this in the related case of PCB 01-62, et al.
23 Okay. We are off the record.

24 (Discussion off the record.)

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1 HEARING OFFICER LANGHOFF: Okay. Thank you. We are back
2 on the record. We have just had an off-the-record discussion
3 regarding the filing of post hearing briefs. The parties have
4 agreed to a briefing schedule.

5 The transcript of these proceedings will be available from
6 the court reporter by January the 10th of 2002. I will establish
7 a public comment period of 14 days, per the Board's regulations
8 and Procedural Rules. ESG Watts' brief will be due by January
9 the 24th of 2002 and the mailbox rule will apply. The Agency's
10 brief will be due by February 8th and the mailbox rule will
11 apply.

12 The transcript of today's hearing is usually put on the
13 Board's web site within a few days after its availability. I
14 will note again that our web site address is
15 www.ipcb.state.il.us.

16 Also, any public comment must be filed in accordance with
17 Section 101.628 of the Board's Procedural rules. Public comments
18 must be filed by January the 11th of 2002. The mailbox rule set
19 forth at 35 Ill. Admin. Code 101.102(d) and 101.144(c) will apply
20 to any post-hearing public comment.

21 Is there anything further from the parties before we
22 conclude?

23 MR. MERRIMAN: I would move to exceed the page limitation
24 for the briefing schedule since we have a number of consolidated

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1 cases and companion cases going, and ask for 75 instead of 50
2 pages.

3 HEARING OFFICER LANGHOFF: Thank you. Mr. Woodward, any

4 objection?

5 MR. WOODWARD: No objection.

6 HEARING OFFICER LANGHOFF: Okay. Thank you. I will grant
7 the motion to exceed the page limitation for this brief. The
8 briefs are not to exceed 75 pages.

9 For the record, the parties are going to be filing one
10 consolidated brief for this case, PCB 01-139, as well as the
11 cases PCB 01-62, 63, and 64. And we would expect the Board to
12 render separate decisions based on the issues in each of those
13 cases.

14 All right. Is there anything further, gentlemen?

15 MR. WOODWARD: Even though there is no member of the public
16 present --

17 HEARING OFFICER LANGHOFF: Yes. At this time I do want to
18 ask again and note for the record that there are no members of
19 the public present that want to make any statements. There are
20 no members of the public present.

21 I am required to make a statement as to the credibility of
22 the witness testifying today during this hearing. This statement
23 is to be based on my legal judgment and experience. Accordingly,
24 I state that I have found Mr. John Taylor's testimony to be

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1 credible. Credibility should not be an issue for the Board to
2 consider in rendering its decision in this case.

3 At this time I would like to conclude the proceedings. It

4 is Thursday, December 27th of 2001, at approximately 11:55 a.m.

5 We stand adjourned. Thank you all.

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2 COUNTY OF MONTGOMERY)

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C E R T I F I C A T E

I, DARLENE M. NIEMEYER, a Notary Public in and for the County of Montgomery, State of Illinois, DO HEREBY CERTIFY that the foregoing 47 pages comprise a true, complete and correct transcript of the proceedings held on the 27th of December A.D., 2001, at 600 South Second Street, Suite 403, Springfield, Illinois, in the case of ESG Watts, Inc., versus Illinois Environmental Protection Agency, in proceedings held before Hearing Officer Steven C. Langhoff and recorded in machine shorthand by me.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my Notarial Seal this 7th day of January A.D., 2002.

Notary Public and
Certified Shorthand Reporter and
Registered Professional Reporter
CSR License No. 084-003677
My Commission Expires: 03-02-2003