

ILLINOIS POLLUTION CONTROL BOARD  
August 13, 1992

ESG WATTS, INC., )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 92-54  
 ) (Permit Appeal)  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by M. Nardulli):

This matter is before the Board on the July 16, 1992 motion for summary judgment filed by petitioner ESG Watts, Inc. (ESG). Respondent Illinois Environmental Protection Agency (Agency) filed its response on July 28, 1992.

On March 9, 1992, the Agency denied ESG's seven applications for special waste stream permits. Each of the denial letters listed identical reasons for denial. Denial reason no. 1 concerns water pollution from releases of leachate. The Agency states that ESG has failed to demonstrate that disposal of the special wastes will not cause or contribute to the generation of contaminated leachate. In support of denial reason no. 1, the Agency cites general prohibitions against water pollution and provisions concerning leachate and refuse in standing water. Denial reason no. 2 concerns inadequate cover and states that ESG has failed to demonstrate that the special waste stream is suitable for disposal without daily cover. The Agency cites various provisions requiring daily cover and the collection of litter. Denial reason no. 3 concerns ESG's failure to comply with enumerated permit conditions, including financial assurance requirements and prohibiting discharge without an NPDES permit, and states that adding the special wastes to the site would increase the threat of contamination and endangerment to the environment.

Summary judgment will be granted where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. (Sherex Chemical v. IEPA (July 30, 1992), PCB 91-202; Williams Adhesives, Inc. v. IEPA (August 22, 1991), PCB 91-112.) ESG contends that testimony of Agency personnel submitted in support of its motion establishes that ESG is in compliance with all provisions of the Act and regulations cited in the denial letters. ESG contends that Agency inspector Mitch Smith's testimony establishes that there is no litter, leachate or "refuse-in-standing-water" problems at the site. ESG also contends that Smith's testimony establishes that the violations for inadequate cover are not a continuing problem and that there have been no such violations since April 3, 1992. As

0135-0301

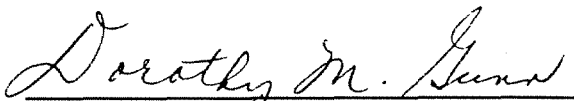
to denial reason no. 3, ESG contends that the testimony establishes that it does have an NPDES permit and also that it has deposited the requisite financial assurance into the trust fund.

In attempting to establish that there is no genuine issue of material fact concerning compliance, ESG has submitted select portions of the transcripts of hearings held in the Circuit Court of Cook County on March 30, 1992, April 7, 1992 and April 27, 1992 in an enforcement action brought by the People against ESG and portions of Mitch Smith's deposition taken March 30, 1992. Smith testified that, on April 3, 1992, he no longer observed refuse in standing water or uncovered refuse. (Ex. 1 at 6-7.) The transcripts submitted by ESG in support of its motion for summary judgment were all taken after the Agency rendered its permit denial decisions on March 9, 1992. As a general rule, the Board reviews the Agency's permit denial based upon the record before the Agency at the time it rendered its denial. Moreover, without complete transcripts, the Board cannot determine the context of the testimony given in these other proceedings. The Board cannot conclude, based upon incomplete transcripts taken pursuant to a motion for injunctive relief in a separate enforcement action, that there is no genuine issue of material fact in this permit appeal as to whether ESG has met its burden of establishing as a matter of law that its applications for special waste permits demonstrate compliance with the Act and regulations.

For the foregoing reasons, the Board denies ESG's motion for summary judgment.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 13<sup>th</sup> day of August, 1992 by a vote of 7-0.

  
 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board