ILLINOIS POLLUTION CONTROL BOARD
July 3, 1990

ILLINOIS ENVIRONMENTAL, PROTECTION AGENCY,	)	
Complainant,	)	
v.	)	AC 89-131, Docket B (Administrative Citation) (IEPA No. 9711-AC)
ESG WATTS, INC.,	)	
Respondent.	)	

DISSENTING OPINION (by J. Theodore Meyer):

I dissent from the majority order in this matter because I believe that the majority should have taken this opportunity to provide for full recovery of all hearing costs incurred by complainant and the Board.

Section 42(b)(4) of the Illinois Environmental Protection Act (Act) provides that in an administrative citation action, "any person found to have violated any provision of subsection (p) of Section 21 of this Act shall pay a civil penalty of $500 for each violation of each such provision, plus any hearing costs incurred by the Board and the Agency." (Emphasis added. Ill. Rev. Stat. 1989, ch. 111-1/2, par. 1042(b)(4).) In the past, a majority of the Board has narrowly construed "hearing costs" to include only the travel costs of the complainant's attorney, and the Board's hearing officer and court reporter costs. I believe that "hearing costs" as used in Section 42 includes other expenses such as attorney time, administrative and support staff time, and overhead costs. After all, the time spent by complainant's attorney and Board staff in preparing for and reviewing the hearing could have been used to handle other matters if the instant hearing had not been held.

State and local government is now often imposing a series of "user fees", on the theory that those who use a service should pay for it. For example, most state agencies (including the Board) charge fees for photocopies of that agency's records and files. Since those who do not violate the Act are charged such user fees, I believe that those who have been found to have violated the Act should be assessed costs to the full extent of the statutory authority. In this case, the Illinois General Assembly has stated that those found to have violated Section 21(p) shall pay hearing costs incurred by the Board and the Agency. I believe that this mandate should be given a broad interpretation, and all reasonable costs assessed against respondent. This case presented an opportunity to order the Clerk of the Board and the complainant to submit an affidavit of all hearing costs, and I believe that the

Board should have taken this opportunity.

For these reasons, I dissent.

J. Theodore Meyer
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was filed on the 9th day of July, 1990.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board