

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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4 COUNTY OF SANGAMON,

5 Petitioner,

6 vs. No. AC 98-4

7 ESG WATTS, INC.,

8 Respondent.

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13 Proceedings held on December 7, 1998 at 2:10 p.m.,

14 at 600 South Second Street, Third Floor Conference

15 Room, Springfield, Illinois, before the Honorable

16 Kathleen Crowley, Hearing Officer.

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21 Reported by: Darlene M. Niemeyer, CSR, RPR
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APPEARANCES

SANGAMON COUNTY STATE'S ATTORNEY OFFICE

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On behalf of Respondent, ESG Watts, Inc.

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1 PROCEEDINGS

2 (December 7, 1998; 2:10 p.m.)

3 HEARING OFFICER CROWLEY: Good afternoon. We are
4 reconvening to begin hearing in the matter of County
5 of Sangamon versus ESG Watts, which is an
6 Administrative Citation, docketed as AC 98-4.

7 My name is Kathleen Crowley. I am the Board's
8 Hearing Officer today. I don't make any decisions or
9 recommendations to the Board. I just act as a person
10 that deals with evidentiary objections and tries to
11 put together as complete a record as we can for the
12 Board to review the action today.

13 If we can take appearances from the parties.

14 MR. SMITH: My name is Robert Smith. I am an
15 Assistant State's Attorney in Sangamon County. I am
16 here on behalf of the County of Sangamon.

17 MR. GAB: Dwayne Gab, Assistant State's Attorney,
18 here on behalf of Sangamon County.

19 MR. WOODWARD: Larry A. Woodward, Corporate
20 Counsel, on behalf of ESG Watts.

21 HEARING OFFICER CROWLEY: Thank you. Do we have
22 any preliminary matters?

23 MR. WOODWARD: I would move that the two cited
24 violations, Section -- the violation of Section 21-09
25 415 ILCS 5/21-09 and Section 21-06, 415 ILCS 5/21-06,

1 be dismissed on the basis of res judicata. Those two
2 sections deal with disposition of special waste,
3 unpermitted portion, failure to provide final cover
4 within the established time limits. The attached
5 memorandum inspection report says that failure to
6 provide final cover within established time limits,
7 and found that the landfill had exceeded both its
8 horizontal and vertical boundaries.

9 And then it goes on to cite the case 91 CH 242.
10 And 91 CH 242 provides that we did not have to move
11 the overfill until such time as it was sited or a
12 failure to site we would then have to move it. Well,
13 98 -- PCB 98-2 is a continuation of our efforts to
14 site the overfill. And, therefore, I don't believe
15 that we can be in violation when the Court has said
16 that we have the right to site it before we have to
17 move it.

18 As to the final cover, you don't -- you can't put
19 final cover down until it is determined whether you
20 have the right to site it, or if you fail to get it
21 sited, then you are going to have to move it and not
22 have final cover anyway.

23 HEARING OFFICER CROWLEY: That motion to strike or
24 dismiss any portion of an Administrative Citation is
25 outside the authority of the Hearing Officer. That

1 will go to the Board with the case as a whole.
2 If you have anything you would like to put on the
3 record in response at this point you may do so, Mr.
4 Smith. If not, you may address it in any final
5 remarks.

6 MR. SMITH: Thank you. I will save it for final
7 remarks.

8 HEARING OFFICER CROWLEY: Thank you.

9 MR. SMITH: We would call Allan Alexander as our
10 first witness.

11 (Whereupon the witness was sworn by the Notary
12 Public.)

13 A L L E N A L E X A N D E R,
14 having been first duly sworn by the Notary Public,
15 saith as follows:

16 DIRECT EXAMINATION

17 BY MR. SMITH:

18 Q Would you state your name for the Board,
19 please.

20 A Allen Alexander.

21 Q Mr. Alexander, how are you employed?

22 A I am employed as an associate sanitarian with
23 the Sangamon County Department of Public Health.

24 Q How long have you worked for the Sangamon
25 County Department of Public Health?

1 A About seven years and four months.

2 Q As part of your duties with the Sangamon
3 County Department of Public Health, does it include
4 inspecting facilities that operate under Environmental
5 Protection Agency permits?

6 A Yes, it does.

7 Q Okay. Are one of those facilities that is
8 located here in Sangamon County commonly referred to
9 as the Sangamon Valley Landfill?

10 A Yes, it is.

11 Q Okay. Have you had occasion to perform
12 inspections of the Sangamon Valley Landfill pursuant
13 to the delegation agreement that the Sangamon County
14 Department of Public Health has with the Environmental
15 Protection Agency?

16 A Yes.

17 Q I would refer your attention to June the 5th
18 of 1997. Did you have occasion to perform an
19 inspection of the Sangamon Valley Landfill on that
20 day?

21 A Yes, I did.

22 Q Okay. You prepared a -- did you prepare an
23 inspection report?

24 A Yes, I did.

25 Q Okay. Is that the inspection report that has

1 been previously attached to the Administrative

2 Citation that has been filed with the Board?

3 A Yes.

4 Q I want to hand you what has been marked as

5 People's Exhibit Numbers A1 and A2.

6 MR. WOODWARD: May I see them, please?

7 MR. SMITH: Sure.

8 MR. WOODWARD: I would object to these pictures on

9 the basis that they violate the Fourth Amendment

10 against unreasonable searches. And I would request

11 that I be able to ask Mr. Alexander some questions

12 concerning the location of those pictures before he

13 can go into where -- I mean, to any violations shown

14 by them.

15 I believe his affidavit says that violations could

16 be seen from the roadway. So I think it is important

17 as to whether the fact that those pictures can depict

18 areas that can be seen from public areas.

19 HEARING OFFICER CROWLEY: I am going to overrule

20 the Fourth Amendment objection. As to any questions

21 you may have to ask about the photos, let's see what

22 happens after Mr. Smith has laid a foundation for

23 them.

24 Q (By Mr. Smith) I am going to refer you to

25 People's Exhibits A1 and A2. Do you recognize the

1 photographs that are attached to People's Exhibit

2 Numbers A1 and A2?

3 A Yes, I do.

4 Q Were these photographs taken on June the 5th,

5 1997, at approximately 1:10 that afternoon?

6 A Yeah.

7 Q Do they fairly and accurately represent the

8 Sangamon Valley Landfill as you observed it on that

9 day?

10 A Yes.

11 MR. SMITH: We would offer People's Exhibits A1

12 and A2 into evidence.

13 MR. WOODWARD: I would again object without his

14 laying a foundation as to what areas of the landfill

15 they display and from where the pictures were taken,

16 and whether those are areas that can be observed from

17 public areas.

18 HEARING OFFICER CROWLEY: Could you lay some

19 additional foundation before I rule on it?

20 MR. SMITH: Sure.

21 Q (By Mr. Smith) Part of your inspection report

22 has a map indicating where pictures were taken from?

23 A Yes.

24 Q Prior to -- I am going to show you -- and the

25 Hearing Officer has, I believe, the original. Is this

1 the site sketch for your --

2 A Yes, it is.

3 Q Does it show portions of the Sangamon Valley

4 Landfill?

5 A Yes, it does.

6 Q Okay. Can you indicate for the Hearing

7 Officer where the photographs that are shown on

8 People's Exhibits A1 and A2 were taken?

9 A They were taken along the northeast slope of

10 the landfill.

11 Q From your vantage point on Sand Hill Road,

12 could you see that portions of the Sangamon Valley

13 Landfill had waste not covered?

14 A Yes.

15 Q Okay. Could you see that there were portions

16 of the Sangamon Valley Landfill that had garbage that

17 was not covered from -- prior to entering the facility

18 that day?

19 A Yes.

20 Q Okay.

21 MR. WOODWARD: I am sorry? What was the question

22 and the answer? "I guess" was the answer?

23 THE WITNESS: No, I said yes, sir.

24 MR. WOODWARD: Okay.

25 MR. SMITH: I don't have any other questions as

1 far as for foundation purposes. Once again, I would
2 offer People's Exhibits A1 and A2 into evidence.

3 HEARING OFFICER CROWLEY: Okay. I would
4 appreciate it if -- you did some gesturing and the
5 witness gave a general description of his location.

6 Could we mark -- could the witness mark that on the
7 site sketch, and perhaps we could mark the site sketch
8 also as a --

9 THE WITNESS: You mean where the photos were
10 taken?

11 HEARING OFFICER CROWLEY: You gave some testimony,
12 and perhaps Mr. Smith can ask the questions.

13 Q (By Mr. Smith) Mr. Alexander, I am going to
14 hand you this pen. Can you, for the Hearing Officer,
15 take and circle the location of the pictures that are
16 shown as photographs 7, 8, 9 and 10?

17 A Okay. (Witness complied.)

18 MR. SMITH: I am going to mark it as People's B
19 and offer it as evidence.

20 (Whereupon said document was duly marked for
21 purposes of identification as People's Exhibit B
22 as of this date.)

23 HEARING OFFICER CROWLEY: Could we have Mr.
24 Alexander initial that, please?

25 Q (By Mr. Smith) Please initial the circle that

1 you put on.

2 A (Witness complied.)

3 MR. WOODWARD: May I ask some questions before you

4 accept those into evidence as far as -- it shows where

5 the pictures are, but it does not show where he is

6 standing.

7 HEARING OFFICER CROWLEY: As these photos are the

8 originals of inspections which were attached to the

9 original citation, and as the photos are part of the

10 required statutory shown on part of the pleading, I am

11 going to admit the photos. But you may ask whatever

12 questions you care to on cross-examination concerning

13 them.

14 MR. WOODWARD: Okay, on cross-examination.

15 Q (By Mr. Smith) I am going to refer you to

16 what has been marked as People's Exhibit A1 as roll

17 883, photo number 7.

18 A Yes.

19 Q Could you explain for the Board approximately

20 where that picture was taken at in regards to the site

21 sketch?

22 A It was taken towards -- close to the north

23 corner of the northeast slope at the landfill.

24 Q And why was the picture taken at this

25 location?

1 A Because it shows uncovered refuse that was
2 visible on the slope of the landfill.

3 Q What did this uncovered refuse indicate to
4 you?

5 A It indicated that there was inadequate final
6 cover on the landfill.

7 Q Okay. When did this -- do you recall
8 approximately when this landfill stopped accepting
9 waste?

10 A February of 1995. I believe it was around
11 February 22nd or 23rd of 1995, but I can't recall
12 specifically.

13 Q I want to direct your attention now to the
14 photo marked roll 883, photo number 8.

15 A Okay.

16 Q Could you identify for the Board
17 approximately where this photo was taken at?

18 A It was taken in approximately the same
19 general area as photo 7 was.

20 Q Okay. Is there anything remarkable or why
21 did you take the picture at this location?

22 A Again, it shows some uncovered refuse poking
23 out of the cover of the landfill.

24 Q Once again, you are -- I now refer you to
25 roll 883, photo number 9, and ask you if you can

1 identify approximately where this picture was taken

2 at?

3 A Yes, it was taken somewhat south of the
4 previous two photos and, again, it illustrates some
5 uncovered refuse poking out of the cover of the
6 landfill.

7 Q And the uncovered refuse that is located in
8 photos number 8 and number 9, did that indicate
9 anything to you?

10 A Again, that there was not adequate final
11 cover applied to the landfill.

12 Q And you so marked upon your inspection
13 report?

14 A Yes.

15 Q You also marked a violation of 21-09 on your
16 inspection report?

17 A Yes.

18 Q Failure to -- deposit of refuse in
19 unpermitted portion of the landfill?

20 A Yes, I did.

21 Q Why did you mark that?

22 A Because the landfill has extended their
23 deposition of the waste beyond the permitted vertical
24 and lateral boundaries.

25 Q And on your inspection on June the 5th, had

1 they taken any steps to remove the waste that had
2 previously been found to exceed the horizontal and
3 vertical boundaries?

4 A No, they had not.

5 MR. SMITH: I don't have anything further. I
6 would just offer People's A1 and A2 back into
7 evidence. I don't have any further questions.

8 HEARING OFFICER CROWLEY: Okay.

9 MR. WOODWARD: Again, we renew our objection to A1
10 and A2.

11 HEARING OFFICER CROWLEY: I should make that
12 clear. I am going to admit the County's A1 and A2 and
13 B into the record.

14 (Whereupon said documents were duly admitted into
15 evidence as People's Exhibits A1, A2 and B as of
16 this date.)

17 MR. WOODWARD: It is no longer A1 and A2? It is A
18 and B?

19 MR. SMITH: No, A1, A2, and B is the site sketch
20 that the Hearing Officer asked to be marked.

21 MR. WOODWARD: Okay. Thank you.

22 CROSS EXAMINATION

23 BY MR. WOODWARD:

24 Q On exhibit -- on People's Exhibit B, that's
25 the sketch?

1 A Yes.

2 Q Could you put an X where you were able --
3 where you were standing on public property and
4 observing the conditions depicted in photos 7, 8, 9
5 and 10?

6 A Observing the condition or observing -- would
7 you clarify the question, please, or just repeat the
8 question?

9 MR. WOODWARD: Could you read it back.
10 (Whereupon the requested portion of the record was
11 read back by the Reporter.)

12 THE WITNESS: Okay. (Witness complied.)

13 Q (By Mr. Woodward) Since I am not over there,
14 is it --

15 A I marked in front of the landfill on Sand
16 Hill Road.

17 Q Okay. There are several things listed down
18 here right next to Sand Hill Road. Is it adjacent to
19 any one of those symbols?

20 A It is probably southeast of GA2.

21 Q Okay.

22 HEARING OFFICER CROWLEY: If you would like to
23 take a quick look at this to make sure you are looking
24 at the correct spot.

25 MR. WOODWARD: Okay.

1 Q (By Mr. Woodward) Can you describe the
2 landfill's contour as you are looking north from the X
3 that you placed on --

4 A Describe its contour?

5 Q Right.

6 A Okay. Just -- I am not sure exactly what you
7 mean by that. Describe what portion of the landfill I
8 am looking at?

9 Q Yes.

10 A Okay. I am facing the south slope.

11 Q And is the south slope the highest portion of
12 the landfill?

13 A No, it is not.

14 Q Pictures 7, 8, 9 and 10 are not at the top of
15 its slope, right? It is not at the top of the
16 northeast face?

17 A Well, photos 7, 8, 9 and 10 are probably
18 about midway up the northeast slope.

19 Q Okay. And Sand Hill -- when you are standing
20 on Sand Hill Road, is the south face of the landfill
21 higher than you are?

22 A Yes.

23 Q And you are able to see through the landfill
24 to the northeast face from that location?

25 A I cannot see the area where the photos were

1 taken from Sand Hill Road. But you asked me where I
2 could stand on public property and see the conditions
3 presented within the photos. And I can see from Sand
4 Hill Road that final cover has not been applied, and
5 that there is some uncovered refuse on parts of the
6 landfill.

7 Q That is not what I asked you. I asked you
8 specifically where were you standing when you saw the
9 conditions depicted in photos 7, 8, 9 and 10. And you
10 said southeast of this GA2?

11 A Well, then I am sorry. I misunderstood the
12 question. I thought you were asking me where I was
13 standing when I could observe the conditions, you
14 know, that were described, because there were
15 conditions similar to this --

16 Q You have answered my question. There is not
17 a --

18 A -- on the south side of the landfill.

19 MR. WOODWARD: I ask that it be stricken as not
20 responsive to the question. He answered the question
21 and then he added information.

22 HEARING OFFICER CROWLEY: If you can strike the
23 portion after the immediate answer to the question.

24 Q (By Mr. Woodward) Did you take any photos of
25 the south face?

1 A No, I did not.

2 Q As you proceed east on Sand Hill Road on the
3 location that you marked as an X, have you been down
4 that road before further east?

5 A Many times.

6 Q Okay. Could you describe the vegetation on
7 the north side of Sand Hill Road?

8 A Partly wooded in places. You know, there is
9 houses, trees.

10 Q As you proceed east on Sand Hill Road from
11 the area that you marked as an X on People's Exhibit
12 B, would you be able to see the area depicted in
13 photos 7, 8, 9 and 10 from Sand Hill Road?

14 A Possibly some portions of it.

15 Q Would it be obstructed, though, through trees
16 and --

17 A It is possible. You can see some areas of
18 the northeast slope from Sand Hill Road.

19 Q On June 5th did you go on the property?

20 A Yes, I did.

21 Q And did you offer to any employee of ESG
22 Watts the opportunity to accompany you on your tour of
23 the facility?

24 MR. SMITH: Objection. It is not relevant. There
25 is no requirements in the Environmental Protection Act

1 that when a delegated authority goes on to a property
2 to inspect the site that they be accompanied by
3 members of the business or landowners. There is no
4 such requirement. So there is no relevance to that
5 question.

6 MR. WOODWARD: There may not be --

7 HEARING OFFICER CROWLEY: I will allow you the
8 latitude for the question. Please answer.

9 THE WITNESS: There was no one at the site when we
10 arrived.

11 Q (By Mr. Woodward) Nobody at the site or
12 nobody at the office?

13 A As far as I know, there was nobody -- I
14 didn't -- nobody was at the office, and I didn't see
15 anybody in the shop.

16 Q Have you been requested ever in writing or
17 orally to sign in at the facility when you enter the
18 property?

19 MR. SMITH: We object once again. We would object
20 that it is not relevant.

21 HEARING OFFICER CROWLEY: Object to what?

22 MR. SMITH: I am going to object that it is not
23 relevant.

24 HEARING OFFICER CROWLEY: I didn't quite hear the
25 question. Did you ask at this site or any site?

1 MR. WOODWARD: At this site.

2 HEARING OFFICER CROWLEY: I think the relevance is

3 pretty arguable, but I will allow it.

4 THE WITNESS: Okay. Yes.

5 Q (By Mr. Woodward) Did you sign in?

6 A I don't believe we signed in when we went

7 in. I don't recall if we signed in before we left or

8 not.

9 Q Does your inspection report cite 92 CH -- 91

10 CH 242?

11 A I believe that the court case is mentioned in

12 the inspection report.

13 Q Are you familiar with that court case?

14 A Yes, I am.

15 Q Okay. On June 5th was ESG Watts required by

16 the court, by any order of the court, to remove the

17 waste on that date, that you claim as overfill?

18 A I believe that ESG Watts had been instructed

19 by the court to remove the waste or to seek local

20 siting. I do not recall the exact time frame.

21 Q Are you aware that ESG Watts on June 5th was

22 pursuing local siting approval?

23 A I was not aware on -- wait. June 5th, yes, I

24 was aware.

25 Q On June 5th when you entered the property,

1 did you take any measurements?

2 A No.

3 Q You didn't take a tape measure and measure

4 from the property line to the top of the slope of the

5 waste?

6 A No, no.

7 Q On what basis did you form an opinion that

8 ESG Watts had not -- had exceeded the permitted fill

9 boundaries, then, on June 5th?

10 A Based on aerial surveys that were done prior

11 to that date.

12 Q Are you able to detect changes from the

13 ground in aerial photography?

14 A You can -- by aerial surveys they use them to

15 measure surface features, yes.

16 Q Okay. But you were standing on the ground.

17 You were not up in the air, were you? You were not

18 taking new aerial photographs and comparing them to

19 the previous ones?

20 A No, no, I was using data that had been

21 collected previously.

22 Q My question is are you able to detect, while

23 you stand on the ground, changes in the contours that

24 would be shown on the aerial photographs while you are

25 standing on the ground?

1 A No.

2 Q Do you know when those aerial photographs
3 that you were basing your opinion on were taken?

4 A I believe the initial fly over was in 1992.

5 Q Okay. Since 1992, has there been any dirt
6 moved at the Sangamon Valley Landfill, either for gas
7 well installation, gas piping installation, leachate
8 collection, storm water retentions?

9 A Yes, there have been some surface changes.

10 Q And do you know whether those surface changes
11 did anything to the overfill or not?

12 A Well, the vertical overfill, I am not sure
13 how that was affected. The lateral overfill,
14 especially on the southeast side, no, there has not
15 been anything that could really affect that.

16 (Mr. Woodward and Mr. Reiser confer briefly.)

17 Q (By Mr. Woodward) Is there any reason that
18 you picked June 5 to make your inspection?

19 A No.

20 Q You didn't have anything to do with the
21 County Board making a decision on May 31 about the
22 siting application?

23 A We are required to -- at that point we were
24 required to inspect the site twice a month. That was
25 just a routine inspection.

1 Q On the south face of the landfill, wasn't a
2 slurry wall constructed between 1992, the date of the
3 aerial photographs and the date of your inspection, on
4 June 5, 1997?

5 A Yes, there was.

6 Q And do you know whether that slurry wall
7 affected the lateral overfill or not?

8 A The slurry wall was put in at the edge of the
9 overfill, so I don't believe it created any
10 significant changes in elevation.

11 Q There was excavation, though, was there not,
12 to install the slurry wall?

13 A Yes, there was, at the foot of the slope.

14 Q So if I understand your testimony correctly,
15 you are basing your opinion as to the lateral overfill
16 on aerial photographs taken in 1992, and you didn't
17 take any measurements on June 5, 1997, but there had
18 been excavation on the south slope. Is that a fair
19 summary of your testimony as to that?

20 A Yes.

21 Q If ESG Watts is successful in siting the
22 overfill -- strike that.

23 If ESG Watts is unsuccessful in siting the
24 overfill, will it have to move the overfill?

25 MR. SMITH: Objection as to relevancy.

1 HEARING OFFICER CROWLEY: I will allow him to
2 answer within the limits of his expertise as a Public
3 Health Department inspector.

4 THE WITNESS: If siting is not allowed, then
5 removal of the waste will be necessary.

6 Q (By Mr. Woodward) Okay. I believe you
7 testified on direct examination that there is cover on
8 the site, and you used the term inadequate cover. Is
9 that how you described it in your direct testimony?

10 A Yes.

11 Q Will cover have to be removed in order to
12 move waste?

13 A Yes.

14 Q Did you prepare an affidavit dated December
15 4, 1997, in which you stated that I could see as I
16 drove down Sand Hill Road that ESG Watts had failed to
17 provide the proper final cover, and that the overflow
18 outside the permitted boundaries had not yet been
19 removed?

20 A Yes.

21 Q Are those statements based upon the
22 conditions that you have described in your testimony
23 today?

24 MR. SMITH: Objection as to the form of the
25 question.

1 MR. WOODWARD: Well, he described that he stood on
2 Sand Hill Road and that he couldn't see 7, 8, 9 and
3 10.

4 HEARING OFFICER CROWLEY: If I heard this
5 correctly you were asking about an affidavit executed
6 on December 4th, 1997?

7 MR. WOODWARD: Correct.

8 HEARING OFFICER CROWLEY: That is beyond the scope
9 of this proceeding.

10 MR. WOODWARD: All right. Not to beat a dead
11 horse, but this is cross-examination. I should be
12 allowed to test the veracity of this witness. On
13 12-04 he made a statement under oath that he could see
14 certain conditions. And I am trying to test whether
15 the statement made on December 4th, 1997, is a
16 truthful statement, and I should be allowed to do that
17 on cross-examination.

18 HEARING OFFICER CROWLEY: Mr. Smith?

19 MR. SMITH: It is improper impeachment. If you
20 are testing the truth and veracity of somebody, you
21 have to say --

22 HEARING OFFICER CROWLEY: I am not going to allow
23 the question.

24 MR. WOODWARD: This is your copy, so it can't be
25 marked really.

1 HEARING OFFICER CROWLEY: I appreciate that.

2 MR. WOODWARD: Can I still produce it and then
3 later on submit a marked copy?

4 HEARING OFFICER CROWLEY: Before you leave we will
5 run a quick copy.

6 MR. WOODWARD: I want the 12-04-97 affidavit of
7 Mr. Alexander marked as Petitioner's Exhibit Number
8 1.

9 HEARING OFFICER CROWLEY: Respondent's Number 1.

10 MR. WOODWARD: Respondent's Exhibit Number 1.
11 Excuse me.

12 (Whereupon said document was duly marked for
13 purposes of identification as Respondent's Exhibit
14 1 as of this date.)

15 Q (By Mr. Woodward) Mr. Alexander, I am handing
16 you what has been marked as Respondent's Exhibit
17 Number 1. Is that an affidavit that you executed on
18 December 4, 1997?

19 HEARING OFFICER CROWLEY: Excuse me. I thought I
20 told you that I would not allow the question.

21 MR. WOODWARD: I thought you indicated that the --
22 he made an objection that it was improper
23 cross-examination, because I had not set the
24 foundation for impeachment. So I thought maybe you
25 ruled on that basis. You didn't really explain.

1 HEARING OFFICER CROWLEY: You are correct. I
2 didn't explain. I am sorry. I really don't see the
3 relevance. I am just not going to allow the
4 question.

5 MR. WOODWARD: Do the People have the original
6 roll of 883, photo 5, with them today?

7 MR. SMITH: Yes.

8 (Mr. Smith passed photographs to Mr. Woodward.)

9 Q (By Mr. Woodward) Mr. Alexander, I believe
10 you have testified that you didn't take any
11 photographs of the south face; is that correct?

12 A That is correct. I didn't take the photos on
13 that date. Derrick Pillman (spelled phonetically)
14 with our department did.

15 Q I see. Were you with Mr. Pillman?

16 A Pillman, yes.

17 Q Pillman. Photos were taken of the south face
18 of the landfill on June 5?

19 A Yes, it looks like one may have been.

20 Q Okay. Would that be what is on this map G?

21 A Number 5.

22 Q Number 5?

23 A Yes.

24 MR. WOODWARD: Just this photo here, could that be
25 marked as Respondent's Exhibit Number 2?

1 MR. SMITH: I have previously marked it as
2 People's Exhibit A3, because I was going to use it on
3 cross-examination. So it already has a mark on it.

4 MR. WOODWARD: All right. I will be glad to use
5 that.

6 Q (By Mr. Woodward) I am handing you what has
7 been marked as People's Exhibit A3. And I am
8 directing your attention just to the top photo.

9 A Yes.

10 Q Is that a depiction of the south face of the
11 Sangamon Valley Landfill on June 5, 1997?

12 A That's a depiction of the portion of the
13 south face, yes.

14 Q Is there any waste, open waste showing
15 through the cover in that picture?

16 A On that portion I don't believe so.

17 Q And this is what you could see when you stood
18 at the X place?

19 A That's a portion of what I could see.

20 MR. WOODWARD: I would ask that People's Exhibit
21 A3, just the top photo, be admitted into evidence.

22 I have no further questions of Mr. Alexander.

23 MR. SMITH: I don't have any objection to People's
24 Exhibit A3 being entered.

25 MR. WOODWARD: I am doing so without waiving my

1 right -- my objection that his testimony concerning

2 his inspection violates the Fourth.

3 HEARING OFFICER CROWLEY: Okay. I understand

4 that.

5 (Whereupon said document was entered into evidence

6 as People's Exhibit A3 as of this date.)

7 REDIRECT EXAMINATION

8 BY MR. SMITH:

9 Q Mr. Woodward referred to the May 31, 1997

10 County Board meeting?

11 A Yes, he did.

12 Q And at that meeting the Sangamon County Board

13 denied the siting request for the Sangamon Valley

14 Landfill, correct?

15 A Yes.

16 Q On June the 5th, 1997, did you know if ESG

17 Watts had filed appeal on the decision?

18 A No.

19 Q They didn't file their appeal on that

20 decision until July the 2nd; isn't that correct?

21 A I don't know.

22 Q Okay. As you were standing on the south side

23 of the -- looking at the south side of Sand Hill Road,

24 were you able to determine or able to indicate whether

25 there was the final cover that is required in the

1 permit that the Sangamon Valley Landfill has?

2 A No final cover had been applied.

3 Q How could you tell from standing on Sand Hill

4 Road?

5 A There was no change in the appearance of the

6 facility. Plus, for final cover to be applied, you

7 need to have essentially a three foot clay cap and

8 then, you know, a three foot vegetative layer.

9 Basically you would need to add an additional six

10 feet, and the changes made from that application would

11 be very marked changes.

12 Q Okay. It is quite obvious from looking at

13 photo 883-5, offered into evidence by the Respondent,

14 that there is not three foot of vegetation on the

15 south side of the Sangamon Valley Landfill?

16 A That's correct.

17 Q In the siting case, there was approximately

18 300,000 cubic yards of overfill?

19 A I believe that is one of the numbers that was

20 used, yes.

21 Q In your monthly inspections of the Sangamon

22 Valley Landfill that you referred to, did you see them

23 move 300,000 cubic yards of overfill?

24 A No.

25 Q Have they removed any significant amount of

1 waste from the last inspection to when you went on
2 June the 5th of 1997?

3 A No.

4 MR. SMITH: I don't have anything further.

5 RECROSS EXAMINATION

6 BY MR. WOODWARD:

7 Q On June 5, 1997, when you went on the
8 property, did you take a test boring to determine
9 whether there was three feet of vegetative cover?

10 A No, I did not.

11 Q Vegetative soils, I mean?

12 A No, I did not.

13 Q And did you take a test drilling to determine
14 whether there was three feet of impermeable clay cap?

15 A No, I did not.

16 Q And is it -- that's your understanding, that
17 they have to have six feet?

18 A Yes, final cover is six feet.

19 Q What characteristics would three feet of
20 vegetative soils display in a photograph that would
21 make a photograph clearly display that three feet had
22 not been placed?

23 A It would be -- from just looking at a
24 photograph it would be tough to tell unless you were
25 familiar with the site and you knew what was currently

1 existing.

2 Q So when you stated that it was clear in that
3 photograph, that is really not true. Because you are
4 telling me now it is not so easy to tell from a
5 photograph?

6 A Well, it was clear to me because, I mean, the
7 south slope looked pretty much the same as it had for
8 three years. So, I mean, if you are going to apply a
9 cover to a depth of six feet to something it is going
10 to produce a marked change in the contour.

11 Q In the contour or just the overall height?

12 A Well, you would have to -- it would change
13 the height, but it would -- at this site it would also
14 affect the contour.

15 Q You could not uniformly apply three feet of
16 cover so that the contour would not be affected one
17 way or another?

18 HEARING OFFICER CROWLEY: Was that a question or a
19 statement.

20 MR. WOODWARD: That's a question that I am asking.

21 THE WITNESS: Given the slope characteristics of
22 parts of this site it would be tough to do.

23 Q (By Mr. Woodward) What about on the south
24 face, because that's the site that presented itself to
25 you while you were on public property?

1 A I don't think you could do it.

2 Q Do you have any training as an engineer?

3 A No, I don't.

4 Q What did you do before you became an
5 associate sanitarian for the Department of County
6 Health?

7 MR. SMITH: Objection. Beyond the scope of
8 redirect and, two, it is irrelevant.

9 HEARING OFFICER CROWLEY: I will allow him to
10 answer.

11 THE WITNESS: I worked as a lab technician.

12 Q (By Mr. Woodward) Have you ever had any
13 experience doing civil engineering work like surveying
14 or anything like that?

15 A Very little.

16 Q Had you already entered the property before
17 Mr. Pillman had arrived?

18 A Mr. Pillman was with me.

19 Q Okay. He was with you. Your inspection
20 report indicates that work on a surface water control
21 system had begun, and that it was mostly completed on
22 the south and west slopes; is that correct?

23 MR. SMITH: Objection. Beyond the scope of
24 redirect.

25 HEARING OFFICER CROWLEY: Sustained.

1 MR. WOODWARD: That's all I have for this witness.

2 MR. SMITH: I have nothing further.

3 HEARING OFFICER CROWLEY: Thank you very much, Mr.

4 Alexander.

5 (The witness left the stand.)

6 MR. SMITH: The County would rest. We don't have

7 any additional witnesses.

8 HEARING OFFICER CROWLEY: Okay. So we have

9 admitted all three exhibits.

10 MR. SMITH: A1, A2, and B, and they moved for the

11 admission of A3, which we have no objection to.

12 HEARING OFFICER CROWLEY: Right. Those are all

13 admitted.

14 MR. WOODWARD: We would call John Reiser.

15 (Whereupon the witness was sworn by the Notary

16 Public.)

17 JOHN REISER,

18 having been first duly sworn by the Notary Public, and

19 saith as follows:

20 DIRECT EXAMINATION

21 BY MR. WOODWARD:

22 Q State your name, please, for the record.

23 A John Reiser.

24 Q And Reiser is spelled, R-E-I-S-E-R?

25 A That's correct.

1 Q Where are you employed, Mr. Reiser?

2 A I work for ESG Watts at the Sangamon Valley

3 Landfill.

4 Q How long have you worked there?

5 A Since June of 1990.

6 MR. WOODWARD: Could you hand him -- I believe it

7 is People's B.

8 Q (By Mr. Woodward) All right. I have asked

9 you to examine People's Exhibit B. And I direct your

10 attention to the Number 7, 8, 9 and 10 that are

11 circled, and should be on the northeast face.

12 A Okay. I see it.

13 Q Okay. If you are standing on Sand Hill Road,

14 can you see that area of the landfill?

15 A No, I don't believe so.

16 Q At any point on Sand Hill Road, even as you

17 go east?

18 A Especially in June with the foliage out on

19 the trees, no, I don't think you can see that area of

20 the northeast slope.

21 Q Were you at the landfill on June 5, 1997?

22 A I was there that day, but not at the times

23 that the inspection occurred.

24 Q Did you observe the south face on that date,

25 the south face of the landfill?

1 A Well, I obviously saw it while I was there

2 but --

3 Q Was there any open waste presented on the

4 south face on that date?

5 A I have no way of really recollecting a

6 specific day in June of 1997 when I didn't take any

7 photographs or anything.

8 Q Okay. Do you maintain a log, a sign in log

9 for visitors to the landfill?

10 A Yes, we do.

11 Q Did you inspect the log for June 5, 1997 at

12 my request?

13 A Yes, I did.

14 Q And did either Allen Alexander or Mr. Pillman

15 sign in on that log that day?

16 A No, they hadn't.

17 Q Were you ever offered the opportunity to

18 accompany the County inspectors on their inspection of

19 the landfill on that date?

20 A No, I didn't see them that day.

21 Q Did you ever give them permission to come on

22 the property on that date?

23 A No, we had no discussions at all that date.

24 Q Had you, on previous occasions, instructed

25 them that they needed to sign in for safety reasons?

1 A I think there was a letter from Steve Grothus
2 to explain that to them.

3 HEARING OFFICER CROWLEY: A letter from Steve --

4 THE WITNESS: Steve Grothus, another employee of
5 ESG Watts.

6 HEARING OFFICER CROWLEY: Spelled?

7 MR. WOODWARD: G-R-O-T-H-U-S.

8 HEARING OFFICER CROWLEY: Thank you.

9 MR. WOODWARD: I believe that's right.

10 Q (By Mr. Woodward) And had directions been
11 given that you wanted the opportunity to accompany
12 inspectors when they made the inspections of the
13 property?

14 A Yes, that was the usual way that it was done,
15 that I went around with whoever was inspecting.

16 Q Was the offer to be made to you?

17 A Yes.

18 Q You are the highest ranking employee at the
19 landfill?

20 A Right. Yes, they ask me to go with them.

21 MR. WOODWARD: That's all I have.

22 CROSS EXAMINATION

23 BY MR. SMITH:

24 Q How tall is the landfill?

25 HEARING OFFICER CROWLEY: Excuse me?

1 MR. SMITH: How tall is the landfill?

2 HEARING OFFICER CROWLEY: Thank you.

3 THE WITNESS: You know, I don't know the mean sea

4 level height of it right now today. It would be

5 approximately 670 and some feet.

6 Q (By Mr. Smith) On June 5 of 1997

7 approximately how tall was the landfill?

8 MR. WOODWARD: I object. It exceeds the scope of

9 direct examination.

10 MR. SMITH: He asked questions about whether you

11 could see uncovered waste on part of the landfill.

12 HEARING OFFICER CROWLEY: Correct. Please answer

13 the question.

14 Q (By Mr. Smith) How tall was the landfill back

15 in June of 1997?

16 A Probably mean sea level of about 670 some

17 odd.

18 Q How tall is the vegetation?

19 A The vegetation?

20 Q Yes, in June of 1997?

21 A How tall was the vegetation?

22 Q That you say obstructed the view of the

23 landfill from Sand Hill Road?

24 A Well, the trees further east along -- that

25 obstruct the view of the northeast slope of the

1 landfill are, you know, Oak and Maple trees that are
2 probably up to 75 feet, 80 feet tall.

3 Q Have you measured those trees?

4 A No. I guess that is just based on my
5 knowledge of trees.

6 Q Are you a horticulturist?

7 A No, I am not. I just look at trees often.

8 Q Okay. On June the 5th of 1997, did the
9 Sangamon Valley Landfill have six foot of cover, as
10 required by its permit?

11 MR. WOODWARD: I object. It exceeds the scope of
12 direct examination.

13 MR. SMITH: Mr. Woodward asked questions about
14 could he see open waste on the south side of the
15 landfill.

16 MR. WOODWARD: How does whether it has six feet of
17 cover deal with the issue of whether he could see open
18 waste? They are not connected in any way.

19 MR. SMITH: It is very connected as to whether if
20 they didn't have sufficient amount of cover, if there
21 was open waste appearing.

22 HEARING OFFICER CROWLEY: Overruled. Please
23 answer the question.

24 THE DEPONENT: Could you repeat it, please?

25 MR. SMITH: Could you --

1 HEARING OFFICER CROWLEY: Could you read it back,
2 please.

3 (Whereupon the requested portion of the record was
4 read back by the Reporter.)

5 THE WITNESS: No, there was not six foot of cover.

6 Q (By Mr. Smith) Okay. And I refer you to
7 People's Exhibit A3, photo number 5, the south side of
8 the landfill. Does the south slope of the landfill
9 have six foot of vegetative cover -- or excuse me --
10 three foot of vegetative cover on it?

11 MR. WOODWARD: I would object. Is he asking him
12 whether the photo displays that, or if he knows that
13 from another basis? I mean, he says -- he referred
14 him to that photo, but is the question does the photo
15 display that or does he just generally know that
16 answer?

17 MR. SMITH: I am asking him does this photo
18 indicate that there is three foot of vegetative cover
19 on the south side of the landfill.

20 THE WITNESS: Just looking at a photo, I don't
21 think you could tell how thick the cover is.

22 Q (By Mr. Smith) You indicate -- I am going to
23 just circle a little piece right here. What does that
24 appear to you to be?

25 HEARING OFFICER CROWLEY: Excuse me. But right

1 here -- if you are circling something that is fine,

2 but "right here," won't convey itself to the people

3 reading this transcript.

4 MR. SMITH: I am sorry. I am going to circle on

5 photo roll 883, photo number 5, with a circle and line

6 here with my initials on the side. Does this --

7 A The circle next to the post? I see it.

8 Q Does this part of the ground that is in the

9 circle have three feet of vegetative cover on it?

10 A Just from looking at the picture can I answer

11 that question or --

12 Q You can answer the question however you think

13 is appropriate. Does this have three foot of cover?

14 A Could you clarify whether or not you are

15 saying based on my other knowledge or based on this

16 picture?

17 Q Based on this picture.

18 A Based on this picture or any picture, I don't

19 think you can look and state that the dirt is this

20 thick.

21 Q Is this dirt?

22 A Yes, we recently planted the -- you can see

23 the grass starting to come up in the dirt.

24 Q Is it dirt?

25 A Yes, the lighter area right there that your

1 pen is on is dirt.

2 Q It didn't have six foot of cover on June 5th,
3 1997?

4 A Pardon?

5 Q It didn't have six foot of cover on June 5th,
6 1997?

7 A I do not believe there is six foot of cover
8 right there, no.

9 Q Okay. Did you perform a physical inspection
10 of the landfill on June the 5th of 1997?

11 A No, I didn't.

12 Q You indicated you are the highest ranking
13 official on June the 5th, 1997?

14 A Yes, I think Larry indicated that, right.

15 Q Okay. So were you the highest ranking
16 official on June the 5th?

17 A Yes.

18 Q Were you working that date?

19 A Yes, I was.

20 Q Did part of your duties require you to do a
21 physical inspection of the landfill to see if there
22 was any leachate seeps, pop outs, uncovered refuse?

23 A That's not something that we do every day,
24 no.

25 Q So it is okay to -- how often do you do

1 inspections of the landfill?

2 MR. WOODWARD: This goes way beyond the scope of
3 direct examination. I object to this. I mean, is he
4 trying to establish a new violation that is not
5 charged?

6 MR. SMITH: No. He indicated that he had
7 knowledge of the south side of the landfill and what
8 the inspector could or could not see of the landfill
9 that day. So I am inquiring as to what his actual
10 knowledge is of the landfill on June the 5th of 1997.

11 HEARING OFFICER CROWLEY: I sustain the objection,
12 when we are getting into frequency of inspection and
13 that sort of thing.

14 MR. SMITH: Okay. I don't think I have any other
15 questions.

16 MR. WOODWARD: We rest.

17 HEARING OFFICER CROWLEY: I have one clarifying
18 question.

19 Could you please describe what your position is
20 either at the landfill or within the ESG Watts
21 Corporation, other than highest ranking official? I
22 mean, what is your job title?

23 THE WITNESS: My job title is technical
24 representative, and I am the certified operator.

25 HEARING OFFICER CROWLEY: Fine. Thank you very

1 much.

2 (The witness left the stand.)

3 MR. WOODWARD: We would again renew our motion to
4 dismiss on the basis that they have not proved their
5 case by the standard of proof required. In addition,
6 that the -- all of the testimony of Allen Alexander
7 should be excluded on the basis that his inspection
8 was a violation of the Fourth Amendment of ESG Watts,
9 the Fourth Amendment rights, and the rights under the
10 Illinois Constitution dealing with reasonable searches
11 and seizures.

12 Further, we would move that the -- renew our
13 motion to dismiss the violation as cited under 415
14 ILCS 5/21-06, I believe, the one dealing with
15 overfill, on the basis that by their own testimony
16 there was a pending siting application whose denial
17 had not become a final order, and under the court case
18 we did not have to move it until the siting
19 application issue was determined. That's all.

20 MR. SMITH: It is clear from the testimony of
21 Allen Alexander, and even the admissions of the
22 respondents, that the landfill did not have the proper
23 final cover on June the 5th of 1997. The photos in
24 People's Exhibits A1 to A3 clearly show the total lack
25 of sufficient cover on the Sangamon Valley Landfill,

1 with garbage showing from the face of the landfill in
2 the photos that are numbered 7, 8, and 9, and on the
3 photo number 5 clearly showing numerous areas of dirt
4 where the cover has not taken.

5 The Pollution Board has already ruled upon the
6 objection of the respondent in regards to an improper
7 inspection and violation of rights. The Miller case
8 clearly shows that inspectors have the right to go
9 upon properties to document what they can see from the
10 areas where the public will be.

11 In addition, the administrative area involving
12 landfills are so highly regulated that the regulated
13 authorities have the duty and responsibility to go on
14 the properties to make sure. All of this testimony
15 that they are -- that inspectors are required to sign
16 in, and that they were not given the opportunity to
17 sign in, has no -- is totally irrelevant, because
18 there are no statutory or legal requirements that the
19 site operator be given an opportunity to accompany the
20 inspectors upon their inspections or being able to do
21 anything in regards to keep the inspectors from doing
22 their statutory duty to make sure that the environment
23 is protected.

24 The other allegation is the deposit of waste in
25 unpermitted portions of the landfill, Section 21-09.

1 It is clear, and the Board can take judicial notice of
2 the record that has been prepared in the other case,
3 that the Sangamon County Board on May 31, 1997, denied
4 ESG Watts' siting application.

5 The Board can take judicial notice that the appeal
6 from that case was not filed until July the 2nd of
7 1997. This inspection was performed on June the 5th
8 of 1997. There was no appeal pending. There was
9 nothing pending at the time. ESG Watts had failed to
10 remove the overfill. Every day that that took place
11 after May 31, 1997, should be a separate new offense.

12 There is nothing that requires the Sangamon County
13 Department of Public Health to wait until the landfill
14 operators file an appeal or might not file an appeal,
15 because they don't know what they are going to do.
16 The hearing was on May 31, 1997, a week before this
17 inspection that was performed, and there was no
18 pending case at that time. They were under a duty and
19 obligation to begin removal upon denial.

20 According to the Sangamon County Department of
21 Public Health, they did not do that. Mr. Alexander
22 clearly testified, based on his experience with the
23 landfill over the course of his duties with the
24 Sangamon County Department of Public Health, that he
25 was able to tell on June the 5th, 1997, that ESG Watts

1 did not begin removal of the 300,000 cubic yards of
2 overfill that is the subject of the other case.

3 We believe that the Board should find that the
4 operator has violated both Section 21-09 and Section
5 21-06, and we would ask the Board to impose the
6 \$1,000.00 statutory penalty.

7 HEARING OFFICER CROWLEY: The siting appeal you
8 are asking the Board to take notice of is PCB 98-2; is
9 that correct?

10 MR. SMITH: That's correct.

11 HEARING OFFICER CROWLEY: Let's go off the record
12 for a moment.

13 (Discussion off the record.)

14 HEARING OFFICER CROWLEY: We are back on the
15 record.

16 We have agreed on a briefing schedule that has the
17 County filing its brief on December 21st, and ESG
18 Watts filing its brief on January 19th. The County
19 has waived the opportunity to file a reply brief.

20 As the Hearing Officer in these cases, I am
21 required to make a statement, either on the hearing
22 record or on a post hearing report, or both, as to the
23 credibility of witnesses. And it is my professional
24 opinion, based on the demeanor of the witnesses, that
25 credibility is not an issue in this case.

1 I will be preparing a post hearing report and
2 exhibit list, which will be served on all of you
3 shortly. Thank you very much.

4 MR. SMITH: Thank you.

5 MR. WOODWARD: Thank you.

6 HEARING OFFICER CROWLEY: By the way, you will
7 also in the siting case be getting an exhibit list and
8 a post hearing report, and I frankly forgot to put on
9 the hearing record that I didn't find a credibility
10 problem there either, but it will be in the written
11 report. Thank you.

12 (Exhibits retained by Hearing

13 Officer Crowley.)

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1 STATE OF ILLINOIS)
) SS
2 COUNTY OF MONTGOMERY)

3

4 C E R T I F I C A T E

5

6 I, DARLENE M. NIEMEYER, a Notary Public in and for
7 the County of Montgomery, State of Illinois, DO HEREBY
8 CERTIFY that the foregoing 49 pages comprise a true,
9 complete and correct transcript of the proceedings
10 held on the 7th of December A.D., 1998, at 600 South
11 Second Street, Third Floor Conference Room
12 Springfield, Illinois, in the case of County of
13 Sangamon v. ESG Watts, Inc., in proceedings held
14 before the Honorable Kathleen Crowley, Hearing
15 Officer, and recorded in machine shorthand by me.

16 IN WITNESS WHEREOF I have hereunto set my hand and
17 affixed my Notarial Seal this 14th day of December
18 A.D., 1998.

19

20

21 Notary Public and
22 Certified Shorthand Reporter and
23 Registered Professional Reporter

24 CSR License No. 084-003677
25 My Commission Expires: 03-02-99

24

25

