

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ESG WATTS, INC.,  
(Sangamon Valley Landfill),  
Petitioner,

No. PCB 00-160

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,  
Respondent,

Proceedings held on October 15th, 2002, at 10 a.m., at the offices of the Illinois Pollution Control Board, 600 South Second Street, Suite 403, Springfield, Illinois, before Steven Langhoff, Chief Hearing Officer.

Reported by: Beverly S. Hopkins, CSR, RPR  
CSR License No.: 084-004316

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11 North 44th Street

Belleville, IL 62226

A P P E A R A N C E S  
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY BY:  
Paul R. Jagiello  
Assistant Counsel  
Division of Legal Counsel 9511  
West Harrison Street  
Des Plaines, Illinois, 60016

WATT TRUCKING SERVICE, INC.  
BY: Larry A. Woodward  
Corporate Counsel  
525-17th Street  
Rock Island, Illinois, 61201

(No witnesses were sworn by the reporter.)

E X H I B I T S

NUMBER	MARKED	ENTERED
1	9	10

1 HEARING OFFICER LANGHOFF: Okay. Good morning everyone.  
2 My name is Steven Langhoff. I'm the Pollution Control Board  
3 Hearing Officer who is handling this matter and will be  
4 conducting the hearing today. This is PCB 00-160, ESG Watts,  
5 Inc., (Sangamon Valley Landfill) versus Illinois Environmental  
6 Protection Agency.

7 For the record it is Tuesday, October 15th, 2002, and we  
8 are beginning at 10 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 March 23rd, 2000, petitioner, ESG Watts, filed a  
13 petition for review of a February 22nd, 2000, decision by the  
14 respondent, the Illinois Environmental Protection Agency, or  
15 agency.

16 Underlying this appeal is the issue of whether ESG Watts  
17 substitute financial assurance insurance policy is valid and  
18 whether the Board may release any funds to ESG Watts.

19 On August 24th, 2000, the Board granted the Agency's motion  
20 to dismiss on the grounds that the Agency's February 22nd, 2002,  
21 letter was not a final appealable determination.

22 ESG Watts appealed the Board's decision on December 5th,  
23 2001. The Fourth District Appellate Court issued an opinion. On  
24 May 2nd, 2002, the Board received a mandate from the appellate

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1 court reversing the Board and remanding for a hearing on the  
2 sufficiency of the insurance policy.

3 On May 16th, 2002, the Board issued an order that this  
4 matter proceed to hearing.

5 The hearing will be based exclusively on the record before  
6 the Agency at the time the permit decision was issued under 35  
7 Illinois Administrative Code 105.214(a), and ESG Watts has the  
8 burden of proof.

9 On July 11th, 2002, ESG Watts filed a Motion for Summary  
10 Judgment. On July 29th, 2002, the Agency filed a response to the  
11 Motion for Summary Judgment. On August 8th, 2002, the Board  
12 declined to rule on the Motion for Summary Judgment and again  
13 ordered that this matter proceed to hearing.

14 On September 9th, 2002, the Agency filed the administrative  
15 record. On September 27th, 2002, the Agency supplemented the  
16 administrative record.

17 Is it my duty and responsibility to assess the credibility  
18 of any witnesses giving testimony today and I will do so on the  
19 record at the conclusion of the proceedings.

20 We will begin with opening statements from all the parties  
21 and then we will proceed with the ESG Watts' case followed by the  
22 Agency having an opportunity to put on a case in its behalf.

23 We will conclude with any closing arguments parties may  
24 wish to make, and then we will discuss off the record a briefing

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1 schedule which will then be set on the record at the conclusion  
2 of the proceedings.

3 The Board's procedural rules and the act provide that  
4 members of the public shall be allowed to speak or submit written  
5 statements at hearing.

6 Any person offering such testimony today would be subject  
7 to cross-examination by both of the parties.

8 Any such statements offered by members of the public would  
9 be required to be relevant to the case at hand.

10 I usually call for any statements from members of the  
11 public at the conclusion of the proceedings.

12 This hearing was noticed pursuant to the act and the  
13 Board's rules and regulations and will be conducted pursuant to  
14 Sections 101.600 through 101.632 and Part 105 of the Board's  
15 procedural rules.

16 At this time I'll ask the parties to make their appearances  
17 on the record beginning with the ESG Watts.

18 MR. WOODWARD: Larry A. Woodward, W-O-O-D-W-A-R-D,  
19 corporate counsel, ESG Watts, Inc., 525-17th Street, Rock Island,  
20 Illinois, (309) 788-7700.

21 HEARING OFFICER LANGHOFF: Thank you, Mr. Woodward. For  
22 the Agency.

23 MR. JAGIELLO: Paul R. Jagiello, J-A-G-I-E-L-L-O, assistant  
24 counsel with the IEPA.

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1 HEARING OFFICER LANGHOFF: Thank you, Mr. Jagiello. Do we  
2 have any preliminary matters, outstanding or pre-hearing motions  
3 that the parties would like to present before we proceed?

4 MR. WOODWARD: I have a question concerning the record.  
5 The Agency, the record page 47, is the February 10, 1999, letter  
6 pertaining to Watts' -- ESG Watts' Taylor Ridge/Andalusia  
7 Landfill. And then there is another letter dated February 10th,  
8 1999, pages 79 through 85, that does pertain to the Sangamon  
9 Valley Landfill.

10 My question is is the Agency saying they didn't receive the  
11 Sangamon Valley letter dated February 10, 1999, on February 11,  
12 1999?

13 MR. JAGIELLO: No.

14 MR. WOODWARD: Okay. That's the only thing.

15 HEARING OFFICER LANGHOFF: Okay. Good. Thank you. Okay.  
16 Mr. Woodward, would you like to give a brief opening statement on  
17 behalf of ESG Watts?

18 MR. WOODWARD: Yes. As you've indicated that we appealed  
19 the prior Board's action. And in the appeal we clearly asked the  
20 appellate court to reverse the Board's position that it lacked  
21 jurisdiction to consider the Agency's refusal to act on financial  
22 assurance submitted by ESG for the period of January 26, 1998, to  
23 January 25, 2000.

24 The Court's decision was we reversed and remand to the

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1 Board for hearing on the sufficiency of the insurance policy.

2 The February 10, 1999, filing was made by ESG to the Agency  
3 was made in response to a 415 ILCS 5/31 violation of this, but it  
4 clearly stated that ESG was in compliance with financial  
5 assurance provisions by the renewal policy being filed. And the  
6 subsequent letters dated 9/16 and 9/17/1999 and 1/16/2000 and  
7 1/17/2000, sent and delivered to Hope Wright and Michelle Ryan,  
8 make it clear that financial assurance policy submitted on  
9 2/10/99 were filed to meet financial assurance requirements  
10 placed on ESG.

11 As much as ESG would like this hearing to be about the  
12 release of trust funds, after review it appears that we did not  
13 request the appellate court to grant that as a remedy.

14 Our request was that -- to order the Board -- it remand the  
15 matter to the Board and order the Board to approve the financial  
16 assurance policies and that was -- and that was done even though  
17 we had made a request to approve the policies of substitute  
18 financial assurance and to release trust funds on January 19,  
19 2000, so this case is -- is much more limited than I'd hoped. It  
20 is solely about whether ESG submitted sufficient financial  
21 assurance for Sangamon Valley Landfill for the period January 26,  
22 1998, through January 25, 2000, and whether the EPA's failure to  
23 act within the time frame provided in 415 ILCS 5/398(a) means  
24 that the policies were approved as a matter of law and that

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1 therefore ESG had sufficient financial assurance for the Sangamon  
2 Valley Landfill for the period January 26, 1998, through January  
3 25, 2000.

4 The letter of 2/22/2000 by the Agency does not address the  
5 sufficiency of the policies but only addresses submissions that  
6 were to supplement the Agency's certain requests to ESG and  
7 therefore the IEPA -- the Agency failed to decide whether the  
8 policies were sufficient or not. And because they failed to do  
9 so, it's our position that, just as the Board determined PCB  
10 00- -- excuse me 01-139, these policies were approved as a matter  
11 of law and that the issue of whether ESG Watts had sufficient  
12 financial assurance for the period January 25 -- January 26,  
13 1998, to January 25, 2000, for Sangamon Valley Landfill was  
14 precluded in the future. We did have sufficient financial  
15 assurance by filing of these policies.

16 HEARING OFFICER LANGHOFF: Thank you, Mr. Woodward.  
17 Mr. Jagiello, would you like to give a brief opening statement  
18 now or reserve it until after Mr. Woodward's finished?

19 MR. JAGIELLO: Mr. Hearing Officer, I would reserve  
20 opening.

21 HEARING OFFICER LANGHOFF: Thank you. Mr. Woodward, your  
22 case in chief.

23 MR. WOODWARD: The record's our case in chief.

24 HEARING OFFICER LANGHOFF: Okay. Thank you. You indicated

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1 during our pre-hearing status conference that you might be  
2 putting forward some exhibits. I want to make sure you don't  
3 have anything to add for the Board record.

4 MR. WOODWARD: Well, I have -- in our petition for hearing  
5 to the Board, we did not have the return receipt from the Agency.  
6 We just had the postmarked receipt that we had -- we received  
7 from the post office when we delivered it. I have a copy of  
8 that. That's the only thing. And I guess I should testify  
once

9 more. I guess I should testify about this -- Here's the  
10 original. Do you want it?

11 HEARING OFFICER LANGHOFF: A copy is fine.

12 MR. WOODWARD: I should testify as to this.

13 HEARING OFFICER LANGHOFF: Okay. Let's call this  
Exhibit

14 1. And you need to testify about this to get it in?

15 MR. WOODWARD: Yes.

16 HEARING OFFICER LANGHOFF: Okay.

17 HEARING OFFICER LANGHOFF: Thank you. Go ahead,  
18 Mr. Woodward.

19 MR. WOODWARD: Exhibit 1 is a receipt that I received  
back

20 from the Agency, actually it's a duplicate receipt. It was  
21 signed by Ken parks on -- well, it was delivered to Ken Parks  
on

22 February 11, 1999. It is the receipt received from mailing the

23 February 10, 1999, packet. As you -- My question about the  
24 record, the Agency includes initially just the Rock Island,



1 Andalusia, Taylor Ridge Landfill letter.

2 I handed three February 10, 1999, letters, one for each  
3 landfill, operated by ESG Watts in the state of Illinois; the  
4 Viola Landfill, the Taylor Ridge Landfill and Sangamon Valley  
5 Landfill, saw her put all three of them in the same envelope, and  
6 if they received the Rock Island County one on February 11th,  
7 then they had to receive the Sangamon Valley one on February the  
8 11th.

9 HEARING OFFICER LANGHOFF: Is that it?

10 MR. WOODWARD: That's it.

11 HEARING OFFICER LANGHOFF: Okay. Do you have any questions  
12 for Mr. Woodward?

13 MR. JAGIELLO: This receipt that we just got a copy of  
14 today was for the February 10th, 1999, letter from Mr. Woodward  
15 to Brian White regarding the Sangamon Valley Landfill; correct?

16 MR.

WOODWARD: That's  
correct.

17

HEARING OFFICER

LANGHOFF: Okay.

Thank you. Thank  
you,

18 Mr.

Woodward. Do you

want to offer

Exhibit 1?

19 MR.

WOODWARD: Yes,

sir.

20

HEARING OFFICER

LANGHOFF: Any

objections?

21 MR.

JAGIELLO: No.

22

HEARING OFFICER

LANGHOFF: Okay.

Exhibit 1 is

admitted.

23 Okay.

Anything else,

Mr. Woodward?

24 MR.

WOODWARD: No.

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HEARING OFFICER

LANGHOFF: Okay.

Thank you. Mr.

Jagiello.

2 MR.

JAGIELLO: IEPA

has no witnesses.

3

HEARING OFFICER

LANGHOFF: Do you

want to make an

opening

4 statement?

5 MR.

JAGIELLO: No, we

would reserve

anyone -- or

opening

6 argument for

brief.

7

HEARING OFFICER

LANGHOFF: Okay.

Thank you. Let's

go off

8 the record a  
minute then.

9 (A  
discussion was  
held off the  
record.)

10

HEARING OFFICER  
LANGHOFF: We've  
just had an off-  
the-record

11 discussion  
regarding filing  
of post-hearing  
briefs and the

12 parties have  
agreed to a  
briefing  
schedule.

13 The  
transcript of  
these proceedings  
will be available  
from

14 the court  
reporter by  
October 25th,

2002. I will  
establish a  
15 public  
comment period of  
14 days.

16 ESG  
Watts' brief will  
be due by  
November 15th,  
2002, and  
17 the mailbox  
rule will apply.

The Agency's  
brief will be due  
by  
18 December  
6th, 2002, and  
the mailbox rule  
will also apply.

19 The  
transcript is  
usually put on  
the Board's  
website on the  
20 day of its  
availability.

I'd just like to

note that our  
website  
21 address is  
www.ipcb.state.il  
.us.

22 Any  
post-hearing  
comments must be  
filed in  
accordance with  
23 Section  
101.628 of the  
Board's  
procedural rules.

Public comments  
24 must be  
filed by October  
29th, 2002, and  
the mailbox rules  
set

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1     forth at 35  
IL Admin Code  
101.102(b) and  
101.144(c) will  
apply to

2     any post-  
hearing filings.

3  
Anything further  
from either of  
the parties  
before we

4     conclude?

5             MR.  
WOODWARD:  No.

6             MR.  
JAGIELLO:  No.

7  
HEARING OFFICER  
LANGHOFF:  Okay.  
Thank you.  At  
this time

8     I want to  
note for the  
record that there  
are no members of

the

9 public  
present that wish  
to make  
statements.

10 I'm  
required to make  
a statement as to  
the credibility  
of

11 witnesses  
testifying during  
the hearing. The  
statement is to  
be

12 based upon  
my legal judgment  
and experience.

And, accordingly,

I

13 state that I  
found Mr.

Woodward to be  
credible.

Credibility

14 should not  
be an issue for

the Board to  
consider in  
rendering its  
15 decision in  
this case.

16 And at  
this time I will  
go ahead and  
conclude these  
17 proceedings.

It is Tuesday,  
October 15th,  
2002, at  
approximately  
18 10:20 in the  
morning and we  
stand adjourned.

I thank everybody  
19 for their  
participation and  
wish everyone a  
safe drive.

20 (The  
hearing was  
concluded at  
10:20 a.m.)

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STATE OF ILLINOIS

COUNTY OF FAYETTE

C E R T I F I C A T E

I, BEVERLY S. HOPKINS, a Notary Public in and for the County of Fayette, State of Illinois, DO HEREBY CERTIFY that the foregoing 12 pages comprise a true, complete and correct transcript of the proceedings held on the 15th of October A.D., 2002, at the offices of the Illinois Pollution Control Board, 600 South Second Street, Suite 403, Springfield, Illinois, in the case of ESG Watts, Inc., (Sangamon Valley Landfill) versus IEPA, in proceedings held before Hearing Officer Steven Langhoff, and recorded in machine shorthand by me.

IN WITNESS WHEREOF I have hereunto set my hand and affixed by Notarial Seal this 17th day of October A.D., 2002.

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Beverly S. Hopkins  
Notary Public and  
Certified Shorthand Reporter and  
Registered Professional Reporter

CSR License No. 084-004316