

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

KEEFE REPORTING COMPANY

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.

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

CSR License No. 084-004316