ILLINOIS POLLUTION CONTROL BOARD
March 25, 1976

JOHN SEXTON CONTRACTORS CO.,   )
)
                  Petitioner,   )
)
        v.   )   PCB 75-478
)
ENVIRONMENTAL PROTECTION AGENCY,   )
)
                  Respondent.   )

INTERIM OPINION AND ORDER OF THE BOARD (by Mr. Zeitlin):

        The Board here considers a Motion to Dismiss, filed
February 20, 1976 by Intervenor, People of the State of Illinois,
and a Motion for Summary Judgement, filed by Petitioner John Sexton
Contractors Co. (Sexton) on March 4, 1976.

        The People's Motion asks that the matter be dismissed and
remanded to Respondent Environmental Protection Agency (Agency),
"with instructions for it to obtain and evaluate the requisite
site suitability information." Sexton's Motion, among other things,
asks that a previous directive issued by the Agency requiring that
Sexton submit certain data pertaining to "siting and zoning factors"
be declared void, along with specific standard and special conditions
contained in a solid waste development permit issued to Sexton by
the Agency.

        As regards those portions of Sexton's "Complaint" seeking
reversal of those standard and special conditions in the development
permit, we agree that those conditions have already been adjudged
invalid by the Illinois Supreme Court. The hearing to be held in
this matter need not consider those conditions.

        In all other respects, however, the Motion to Dismiss and the
Motion for Summary Judgement are denied.

        As pointed out in the Attorney General's Response to Motion
for Summary Judgement, there are indeed issues of fact remaining
to be determined here. Among other things, facts should be elicited
to allow a determination of the reasonableness of any actions by
Sexton in commencing development of the site, the extent of those
actions, and of whether Sexton reasonably relied on the previously
issued Development Permit when commencing such development.

In addition to those factual issues, to be decided on the record generated at hearing, there also remain several issues of law for determination by the Board. These issues should be thoroughly briefed by the parties, following the hearing, and include:

1.   The effect of Carlson v. Village of Worth, No. 47334 (Ill. S. Ct., Sept. 26, 1975), on other existing development and operating permits, both as to (a) the individual conditions discussed in that case, without specific adjudication by any court or administrative body, and (b) the validity in their entirety of such other permits containing the conditions at issue in Carlson.

2.   The authority of the Agency to modify or withdraw permits containing the stricken conditions, with or without admission by the Agency that it had failed to consider relevant land use or zoning issues when granting such permits.

3.   The authority or power of an individual to rely on such permits following the Supreme Court's Carlson decision.

4.   The authority or power of an individual to act on the assumption that the Supreme Court's Carlson decision would or must apply to similar conditions in a different permit.

5.   The application of reliance or estoppel theories to this Board's decisions in circumstances such as those here.

6.   The effect on otherwise valid permits of the Agency's failure to perform mandatory duties in connection with the issue of those permits.

7.   The effect of community or individual rights which may be prejudiced by such a failure of the Agency, vis-a-vis the presence or absence of any reasonable reliance by a permit holder, or any other theory which might serve to validate such a permit or actions taken under it.

8.   In light of the above issues, any others
which the parties feel are applicable under the facts
in this case.

This matter has previously been set for hearing, which decision
is not altered. Except as noted above, Motions for Dismissal and
Summary Judgement are denied.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution
Control Board, hereby certify the above Interim Opinion and Order
were adopted on the 25ᵗʰ day of March____, 1976, by a vote of 5-0 .

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Christan L. Moffett, Clerk
Illinois Pollution Control Board