

ILLINOIS POLLUTION CONTROL BOARD
April 11, 1991

SEXTON ENVIRONMENTAL)
SYSTEMS, INC.,)
)
Petitioner,)
)
v.) PCB 91-4
) (Permit Appeal)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by J. Anderson):

On March 25, 1991, Sexton Environmental Systems, Inc. ("Sexton") filed a motion requesting the Board to maintain as confidential certain "trade secret portions" of the transcript in this matter (page 26, lines 14-20) pending the resolution of a trade secret claim that it filed with the Agency on March 6, 1991. On March 28, 1991, the Board granted the motion with the caveat that, since the response time had not run, the ruling might be subject to reconsideration upon the filing of an objection. On April 3, 1991, the Illinois Environmental Protection Agency ("Agency") filed a response objecting to the motion. On April 10, 1991, Sexton filed its reply to the Agency motion as well as a motion to file the reply instanter. The Board grants Sexton's motion to file its reply instanter and grants reconsideration of this matter.

The Agency asks that the Board deny Sexton's request or, in the alternative, grant the motion only with respect to the fifth word of line 16, page 26 of the transcript. In support of its motion, the Agency states that the testimony at issue does not satisfy 35 Ill. Adm. Code 120.230.* Specifically, the Agency argues that the testimony was disseminated at hearing and became a matter of general public knowledge, and that it has no competitive value because it is a statement regarding the objective of Sexton's research project rather than a discussion of the process itself or the equipment used. The Agency also

* 35 Ill. Adm. Code 120.230(a)(2)(A) and (B) provides that an article is a trade secret only upon a demonstration that 1) the article has not been published, disseminated or otherwise become a matter of general public knowledge; and 2) the article has competitive value.

argues that, assuming that the testimony was excluded, Sexton has waived any right to contest the inclusion of the testimony in the record when it did not object at hearing to the introduction of the testimony. The Agency next argues that the testimony addresses the issue of whether the treatment process is a recycling process, an issue that is central to the disposition of the case, and that Sexton is attempting to exclude the testimony because it is damaging to Sexton's case. Finally, the Agency argues that the testimony has no competitive value because the testimony at issue was read verbatim from page 86 of the Agency's Record and the transcript does not reflect a correct reading of the material.

In its reply, Sexton disputes all of the Agency's assertions. Sexton also notes that no members of the public were present at the hearing.

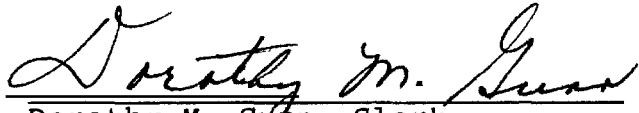
On March 8, 1991, the Board granted Sexton's motion to maintain the permit record in this matter confidential pending a decision by the Agency on Sexton's March 6, 1991 trade secret claim. The testimony at issue is part of Sexton's permit application and thus, part of the confidential permit record in this matter. We note that the Agency itself arguably became entangled in this confidentiality issue when it asked Sexton's witness to read the material at issue verbatim from the permit application.

In light of these facts we hereby deny the Agency's motion and affirm our March 28, 1991 Order. We are not ruling on the question of whether the testimony actually constitutes a trade secret. We will continue to maintain the testimony confidential until Sexton's March 6, 1991 trade secret claim is resolved.

IT IS SO ORDERED.

J. Theodore Meyer abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 11th day of April, 1991, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board