ILLINOIS POLLUTION CONTROL BOARD
April 25, 1991

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

DISSENTING OPINION (by B. Forcade and J.D. Dumelle):

We cannot support the language adopted today because it holds that SES's process is not "treatment". Section 3.49 of the Illinois Environmental Protection Act defines "treatment":

> Section 3.49
>
> "TREATMENT" when used in connection with hazardous waste means any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous. (Emphasis Added)

SES's permit applications was for , "a novel treatment process", SES designates the facility in its general application as a treatment facility, the Agency permit allows SES to treat the waste, SES agrees that the process will reduce the waste in volume (see emphasized language above), SES agrees that the process will change the physical and biological character of the waste so as to render it amenable for recovery or storage (see emphasized language above). This must be "treatment".

The opinion seems to adopt a standard that "treatment" is not treatment if the resulting final product is not rendered totally non-hazardous. That is not what the statutory definition says. The statute talks about making the resulting product safer, smaller. In short, the statute talks about comparative or proportional reductions in danger or volume as being treatment. SES agrees that their process makes such a comparative reduction.

Also, the opinion language could result in removing a large part of hazardous waste "treatment" from the fee system in Illinois. Assume a hazardous waste is hazardous because it contains a listed waste and is flammable. Would a process that only removed its flammability be treatment? It would not under today's alternative opinion language. This is not the result we believe the General Assembly intended. The only other possibility is that the definition of treatment is different when applied to some wastes compared to when it is applied to others. The General Assembly only provided one definition to treatment. Years later the General Assembly adopted the tax on treatment. If they had intended the tax only to apply to certain types of treatment or treatment of certain wastes, they would have said so.

The Board in its rulemaking process cannot lessen a statute's scope. Section 3.15 of the Act defines "hazardous waste" to include wastes with "infectious characteristics." That portion of the definition is separated by a semi-colon from other text made dependant upon RCRA designations or Board rules. Thus, since the wastes here at issue had "infectious characteristics", it falls under those wastes covered by the General Assembly's tax for treatment.

We would hold that SES's process is treatment and affirm the Agency determination.

Bill S. Forcade
Board Member

J. D. Dumelle
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was filed on the 3rd day of May, 1991.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board