

ILLINOIS POLLUTION CONTROL BOARD
July 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 May 30, 1991, the Environmental Protection Agency ("Agency") filed a motion for reconsideration of the Board's Order of April 25, 1991. Sexton Environmental Systems, Inc. ("SES") filed a response on June 12, 1991. The Board's Order struck Special Condition #29 of a two year experimental permit issued by the Agency on December 3, 1990 to Sexton Environmental Systems, Inc. (SES) "to develop a solid waste management site to treat hazardous (infectious) hospital waste". (SES Pet. Ex. 1, January 7, 1991). Special Condition #29 made SES subject to the hazardous waste treatment fee requirements of Section 22.2 of the Environmental Protection Act (Act).

The motion for reconsideration is granted; however, the Board declines to modify its Order.

The Agency raised an issue not previously considered by the Board, the Illinois Appellate Court decision in National Environmental Services Corp. v. Illinois Pollution Control Board and Illinois Environmental Protection Agency, No. 4-90-0702 (4th Dist. Ill., April 23, 1991)). In that case the court affirmed the Board's determination that National Environmental Services Corp. (NESC) treatment by incineration was subject to the treatment fee requirements of Section 22.2 of the Act.

Even if one were to view, as it appears does the court, hazardous (infectious) hospital waste as a hazardous waste under the definition of "Hazardous Waste" in Section 3.15 of the Act, we do not believe, given the distinguishing factual situation in the instant case, that the court's reasoning in the NESC case controls here.

It should be noted that SES's application requested, in treatment terms, approval to deal with only the infectious characteristic of the medical waste, and the experimental permit was issued on that basis. It is this biological character of the waste that the proposed method is designed to change. (See Section 3.49 of the Act.). And the change must be complete. Where treatment of infectious characteristics of living organisms in medical waste are involved, nothing short of complete treatment constitutes any treatment. This is in contrast to partial treatments for other characteristics of waste, such as pH or chemical, where partial treatment can make these wastes less hazardous. Unless the ability of living organisms to divide and multiply is completely eliminated, they have the potential to reconstitute their numbers.

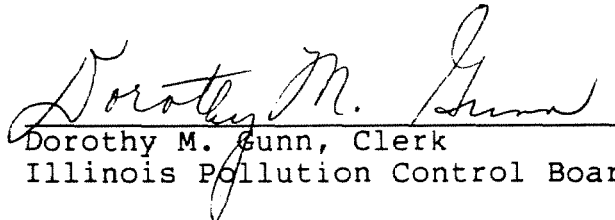
In the NESC case, it was not at issue that incineration is a treatment method that can eliminate the infectious characteristics of the waste. In this case, it is the issue. SES has yet to demonstrate that the proposed treatment method is, in fact, designed to change the biological character of the waste in terms of eliminating its infectious characteristics.

We find nothing else in the arguments* that the Board has not already considered or would otherwise cause it to reverse itself.

IT IS SO ORDERED.

J. Dumelle, B. Forcade and R. Flemal dissented

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 11th day of July, 1991, by a vote of 43.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

* We note that HB 2491 has been adopted by the legislature. If signed by the Governor, it will become effective on January 1, 1992. Included in its provisions is, by January 1, 1992, the elimination of the term, and all regulation of, "hazardous hospital waste". Instead, "potentially infectious medical waste", newly defined, will be regulated and it is specifically not a hazardous waste, but rather a special waste with its own fee provisions.