ILLINOIS POLLUTION CONTROL BOARD
July 11, 1991

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

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

For the reasons articulated in our April 25, 1991 dissenting opinion in the instant case, we continue to disagree with the majority finding that SES is somehow not subject to the fee requirements found in Section 22.2 of the Act.

In addition, and more disturbing, remains the majority's interpretation of National Environmental Services Corp. v. Illinois Pollution Control Board and Illinois Environmental Protection Agency, No. 4-90-0702 (4th Dist., April 11, 1991). In this case, the appellate court specifically stated that infectious hospital waste is properly classified as hazardous waste and is thus subject to the fee requirements of Section 22.2 of the Act.

Because the Appellate Court concluded in NESC, as we did, that infectious hospital waste is properly classified as hazardous waste, the only remaining issue is whether SES "treats" the waste in question. There can be no doubt that it does. In fact, in its reconsideration order, the majority states:

> 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.

(PCB 91-4, July 11, 1991, p. 2. Emphasis added.)

Here, the majority explicitly admits that SES has a proposed treatment method. Indeed, it would be ludicrous to suggest otherwise. Having established this, we are unable to ascertain how the majority escapes the conclusion that SES should be subject to the fees mandated in Section 22.2 of the Act. The fact that the treatment method chosen by SES does not demonstrate that it is

"designed to change the biological character of the waste in terms of eliminating its infectious characteristics" is hardly dispositive. This criteria is merely one of many under the extremely broad definition of "treatment". Section 3.49 of the Act states:

> "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, amendable for recovery, amendable 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.)

In order for the majority to find that SES is not subject to the fee provisions, all of the terms contained within this section must be construed negatively in relation to the facts in this case. This simply cannot be done.

We can only conclude that the rationale is that found in the initial Opinion and Order. That is, SES' treatment method is not an authorized treatment method under the provisions of 35 Ill. Adm. Code 809.903 and 809.904 and is therefore not subject to a fee. Such a holding ignores the plain meaning of the Act, the direction of the Appellate Court and sets a precedent which is illogical. The end result of the outcome in Sexton decrees that even though a company treats a hazardous waste, so long as that treatment is not Board-authorized, the company is not subject to a tipping fee. We disagree.

The NESC court succinctly summarized the issue when it stated "(b)ecause the waste NESC accepts meets the first part of the definition of hazardous waste it was properly classified as hazardous waste subject to fee." (Slip. Op. at 9).

Finally, we note that footnote cited in the majority's reconsideration Order. To wit:

> 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.

(PCB 91-4, July 11, 1991, p. 2).

It is our understanding that H.B. 2491 has been passed by the legislature and signed by the Governor. Thus as of January 1, 1992, medical waste will no longer be hazardous, but fee provisions will apply. We have a situation, therefore, where SES will not have to pay tipping fees for the duration of its experimental permit simply because the treatment method it has chosen is novel and unauthorized. This is true even though the courts and the legislature have enacted and interpreted the applicable statues in this case as requiring fees. In short, it seems to us that the majority has held that NESC must pay the required fees of Section 22.2 because it uses an authorized treatment method (i.e., incineration) whereas SES does not. SES, then, becomes the only adjudicated entity within the state (past, present or future) which accepts and treats hazardous wastes without the burden of fees pursuant to section 22.2 of the Act. Because we find this result arbitrary and unacceptable, we dissent.

Jacob D. Dumelle, P.E.
Board Member

Bill Forcade
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board hereby certify that the above Dissenting Opinion was submitted on the 23rd day of July, 1991.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board