

ILLINOIS POLLUTION CONTROL BOARD
March 8, 1991

SEXTON ENVIRONMENTAL SYSTEMS, INC.)
)
 Petitioner,)
)
 v.)
)
)
ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
 Respondent.)

PCB 91-4
(Permit Appeal)

ORDER OF THE BOARD (by J. Anderson):

On February 28, 1991, the Board ordered Sexton Environmental Systems, Inc. (Sexton) to file by March 7, 1991 its response to the February 25, 1991 Motion for Summary Judgment filed by the Illinois Environmental Protection Agency (Agency). Sexton timely filed its Response and Affidavit in Opposition to Motion for Summary Judgment.

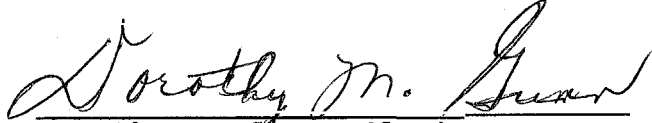
After reviewing the pleadings, the Agency's Motion for Summary Judgment is denied. This matter will go to hearing on March 11, 1991.

The Board grants Sexton's request that the Board deny the Agency's motion as untimely under the provisions of 35 Ill. Adm. Code 101.245, which requires motions preliminary to hearing to be filed 21 days prior to hearing, unless otherwise allowed by the Board or hearing officer to prevent material prejudice. (Sexton Resp. March 7, 1991, p. 1). The Agency's motion was untimely filed and was not accompanied by a Motion to File Instanter. Of special note, we direct the Agency's attention to the Board's "Go to Hearing" order of January 10, 1991. In that Order the Board stated "Any such [summary judgment] motion should be expeditiously filed to ensure no unnecessary hearing notice expenses or hearing costs are incurred." As noted, the Agency's motion was not filed until February 25, 1991, one and one-half months later, which is hardly expeditious. Also, the lateness of the filing resulted in unacceptably compressing the time to resolve this matter to this day, the Friday before the scheduled hearing on Monday; regardless of the outcome the Board risked incurring the very costs that we were trying to avoid.

IT IS SO ORDERED.

Bill Forcade dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 8th day of March, 1991, by a vote of 5-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board