

ILLINOIS POLLUTION CONTROL BOARD  
February 28, 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 February 25, 1991, the Agency filed a Motion for Summary Judgment asserting that there was no genuine issue as to material fact and that the Agency was entitled to Judgment as a matter of law. On February 27, 1991, Sexton Environmental Systems (SES) filed a motion for extension of time until March 26, 1991, to respond to the summary judgment motion, stating that, "...SES... believes that information developed at hearing will assist the Board in deciding the Motion for Summary Judgment".

The Motion for extension of time is granted only insofar as Sexton may file its response no later than March 7, 1991. If the Board were to grant the extension as requested, it would be faced with two unacceptable choices: if the March 11 hearing is cancelled in order to await Sexton's March 26 response, the Board would not be able to schedule and notice another hearing before the decision deadline, and thus the Board would risk this matter going by operation of law; if the Board allows a "ministerial" hearing to be held and then continued, the Board would be using its extremely limited hearing money for no substantive purpose.

Therefore, the Board intends to act upon the summary judgment issue on Friday, March 8, 1991. If the Agency's motion is granted, the March 11 hearing will be cancelled. The Board will accept a "fax" copy of Sexton's response to be followed by a formal filing pursuant to Section 101.103 of the Board's procedural rules.

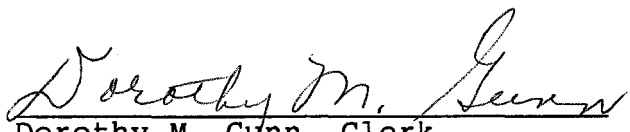
We also note that Sexton is asserting a non-sequiter to state that facts developed at hearing will help the Board determine whether there is a genuine issue of material fact. SES has not disputed in its motion for extension the Agency's assertion that there is no issue of material fact. Unless SES's response can clearly identify disputed issues of fact from this record, hearing will be denied. Due to a fiscal shortfall, the Board is involved in the painful process of deferring some

hearings, and prioritizing others, as funds are presently insufficient to allow hearings to be held in all pending cases.

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 28<sup>th</sup> day of February, 1991, by a vote of 5-1.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board