

ILLINOIS POLLUTION CONTROL BOARD
February 3, 1994

GRIGOLEIT COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 89-184
)	(Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by C.A. Manning):

On December 15, 1993, the Grigoleit Company ("Grigoleit") by and through one of its attorneys, A. James Shafter of KEHART, SHAFTER, HUGHES & WEBBER, P.C.¹, filed a Motion for Order Assessing Sanctions and Remandment for Issuance of Air Operating Permit without Special Conditions ("Motion for Order"). Grigoleit filed the Motion for Order pursuant to the Appellate Court of Illinois, Fourth District's final opinion and order remanding this case to the Board to determine an award of attorneys fees to be paid to Grigoleit as a sanction. (Grigoleit Company v. Illinois Pollution Control Board and Illinois Environmental Protection Agency, (4th Dist. 1993) 245 Ill. App.3d 337, 613 N.E.2d 371, appeal denied (1993) 152 Ill.2d 558, 622 N.E.2d 1205.) The appellate court held:

While we recognize the great discretion granted the Board in ruling upon sanctions, we are compelled to conclude that granting Grigoleit a renewal permit which it was apparently entitled to anyway, was as a matter of law, an insufficient sanction for the Agency's unnecessary stubborn defiance of the Board. We fully agree with the Board's rejection of Grigoleit's request that a collateral complaint against Grigoleit should be dismissed as a sanction. However, Grigoleit is entitled to some expense reimbursement as a sanction.

Accordingly, we affirm all aspects of the December 6, 1991[sic.], Board order on judicial review except to the extent it refuses an award of attorneys fees. We reverse that portion of the order and remand to the Board with directions to award Grigoleit attorney fees in regard to the proceeding after the second remand. (Grigoleit, 613 N.E.2d at 351.)

¹Grigoleit is represented by A. James Shafter of KEHART, SHAFTER, HUGHES & WEBBER, P.C. in PCB 89-184 and by Roy M. Harsch, of GARDNER, CARTON & DOUGLAS in PCB 92-23.

Thus, the principal issue on remand is for the Board to ascertain whether the sanctions amount requested by Grigoleit is reasonable (35 Ill. Adm. Code Subpart 101.280) and appropriate pursuant to the appellate court's remand.

Having received an extension of time by Board order dated January 6, 1994, on January 18, 1994, the Illinois Environmental Protection Agency ("Agency") by and through its attorney, Sharon Davis, filed a response to the Motion for Order pursuant to 35 Ill. Adm Code 101.241. Inter alia, the response raises factual issues regarding the amount of Grigoleit's request for attorney fees and expenses.

On January 26, 1994, Grigoleit filed a Motion for Leave to File Reply and a Reply to Response to Motion for Order Assessing Sanctions and Remandment for Issuance of Air Operating Permit without Special Conditions. We hereby grant Grigoleit's Motion for Leave to File Reply. However, we find the reply unresponsive to the factual questions the Agency requested Grigoleit address. The Board agrees the information by the Agency is also necessary for our review. Therefore, Grigoleit shall submit additional information and/or documentation to the Board on or before February 24, 1994 clarifying the following Agency concerns:

1. "21. ...It is also very difficult to distinguish the services and fees associated with this proceeding, PCB 89-184, from those associated with PCB 92-23."
(Response, at 7.)

2. "22. In the fee documentation provided for the law firm of Kehart, Shafter, Hughes and Weber, P.C., it is often impossible to distinguish the services and fees associated with this proceeding, PCB 89-184, from those associated with PCB 92-23." (Response, at 7.)

3. "23. In the Affidavit of Attorney's Fees and Expenses submitted by the law firm of Gardner, Carton and Douglas, the Affiant states that entries relating to the enforcement, trade secret and other matters not relating to the air pollution issue were deleted from the services and fees for which award sought. However, there are various entries listed that include these other matters. For many entries, it is impossible to determine whether all or any portion of the services listed and associated fees are related to this proceeding, PCB 89-184, or even related to any air issue. (See entries for December 23, 1992, February 9, 1993, July 14, 1993, September 14, 1993, for example)." (Response, at 7-8.)

In addition to requesting an award of sanctions, the Grigoleit Motion For Order also asks that the Board enter an order remanding this issue to the Agency to:

Issue to THE GRIGOLEIT COMPANY its air operating permit, without special conditions, effective until December 6, 1996, and further requiring the Agency to issue said permit within thirty (30) calendar days after execution of an appropriate order by the ILLINOIS POLLUTION CONTROL BOARD. (Grigoleit Motion for Order, at 11.)

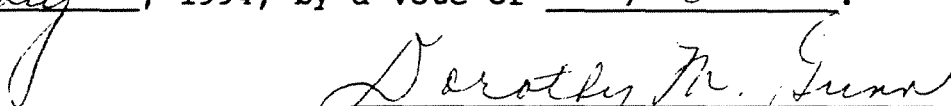
The Fourth District affirmed the Board's order of December 6, 1991 insofar as the Board directed the Agency to issue Grigoleit's operating permit (Grigoleit, 613 N.E.2d at 345 and 351) and on November 24, 1993, the mandate issued. As of the date of the last Grigoleit filing (January 26, 1994), an air operating permit without special conditions has not yet been issued. The Agency response only states that, "As noted in the Agency's Response to Petitioner's Objection to Motion for Extension of Time to File Response, the Agency fully intends to issue to the Petitioner a permit that fully complies with the directive of the 4th District."

Accordingly, because the Agency's task at this juncture, is one of merely issuing the permit as directed in our December 6, 1991 order, Grigoleit's Motion for Order is granted. Within 30 days of the entry of this order, the Agency shall issue the permit without any special conditions other than those automatically imposed by law.

We hereby reserve jurisdiction to resolve the remaining requests for relief in the Motion for Order concerning the sanctions amount and Grigoleit's filing of a supplemental sanctions motion.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 3rd day of February, 1994, by a vote of 7-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board