

ILLINOIS POLLUTION CONTROL BOARD
March 17, 1994

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

THE GRIGOLEIT COMPANY,)
)
 Petitioner,)
)
 v.) PCB 92-23
) (Permit Appeal)
 ILLINOIS ENVIRONMENTAL) (Consolidated)
 PROTECTION AGENCY,)
)
 Respondent.)

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

On November 24, 1993, this case was remanded to the Board by the Fourth District Appellate Court of Illinois. (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.)¹ The case was remanded for the specific purpose of assessing sanctions against the Illinois Environmental Protection Agency (Agency), in the form of attorneys' fees paid by The Grigoleit Company (Grigoleit), for costs incurred after June 20, 1991 in attempting to secure the company's air operating permit. More specifically, the Board's December 16, 1991 decision not to award the above-referenced sanctions was reversed by the Fourth District in the following May 6, 1993 order:

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,

¹On November 17, 1993, the Supreme Court of Illinois denied the Illinois Environmental Protection Agency's Motion for Leave to File a Motion for Reconsideration of the Supreme Court's October 6, 1993 order denying the Agency's Petition for Leave to Appeal.

Grigoleit is entitled to some expense reimbursement as a sanction.

Accordingly, we affirm all aspects of [the Board's 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.)

The Motion for Order Assessing Sanctions filed by Grigoleit in this case was filed on December 15, 1994. The motion seeks attorneys fees and expenses incurred by three law firms (Booth & Little; Kehart, Shafter, Hughes, and Webber, P.C; and Gardner, Carton & Douglas) who represented Grigoleit in the matter of the appeal of the Agency's denial of the requested air permit from the time period of June 20, 1991 through November 1, 1993. In that time frame, two Grigoleit air permit appeal cases were processed, PCB 89-184 and PCB 92-23. Grigoleit also requests leave to file a supplement for fees incurred after November 1, 1993 until closure of these two cases.

On January 18, 1994, the Agency filed a response to the Motion for Order which raised several factual issues as to the appropriateness of the attorney fee amounts requested by Grigoleit. Subsequent to that response, on February 3, 1994, we requested that Grigoleit provide further and more specific documentary information. Moreover, in that same order we granted, in part, Grigoleit's December 15th Motion for Order. We directed that the disputed air operating permit be issued within 30 days or March 5, 1994. On March 9, 1994, the Agency filed documentary evidence indicating that the permit was sent to Grigoleit via certified mail on March 5, 1994 and that an agent for Grigoleit signed for the permit on March 8, 1994.

On February 23, 1994, Grigoleit responded to our February 3, 1994 order by filing a Supplement to its original motion. The Supplement further distinguished and delineated the specific purposes for which attorney fees and expenses were charged to Grigoleit by the three law firms which represented it in various aspects of this proceeding. More specifically, one of those firms reduced the fees originally requested by \$2,572.90

Subsequent to this filing, on March 7, 1994, the Agency filed an amended response to Grigoleit's Supplement. In such response, the Agency states it is satisfied with the information provided by Petitioner and therefore requests that the Board consider the record closed and make its determination. The Board considers the record complete, and makes the following determination.

In addition to the authority conferred by court remand, the Board more specifically has sanction authority pursuant to 35 Ill. Adm. Code Section 101.280(a)(7). This provision states:

a) If a party or any person unreasonably refuses to comply with any provision of 35 Ill. Adm. Code 101 through 120 or fails to comply with any order entered by the Board or the hearing officer, including any subpoena issued by the Board or hearing officer, the Board will order sanctions. In addition to remedies elsewhere specifically provided, the sanctions may include, among others, the following:

- 7) That the offending person pay the amount of reasonable expenses incurred in obtaining an order pursuant to this Section.

Thus, it is within this Board's discretion to determine whether the fees requested in this matter are reasonable. The Agency makes two arguments regarding the reasonableness of the requested fees.

First, in its original response to the Motion for Order, the Agency questioned the appropriateness of attorneys fees related to both PCB 89-184 and PCB 92-23, arguing that only fees related to PCB 89-184 are relevant for purposes of the court's sanctions order. We disagree. Rather, we are persuaded by the facts of this case and the intent of the court remand that the two cases are indistinguishable and Grigoleit should be awarded the costs of proceeding on both.

We agree with Grigoleit that the "proceeding" after our second remand included not only litigation occurring in PCB 89-184, but also that occurring in PCB 92-23. Clearly, had the Agency issued the permit as directed by this Board on December 16, 1991, the case filed and docketed as PCB 92-23 would not have been necessary. The only reason for the separate docketing of the second case was because Grigoleit filed an appeal of our denial of sanctions in PCB 89-184 on December 16, 1991, divesting this Board of jurisdiction, and the Agency, on January 7, 1992, had issued a permit with special conditions beyond our December 16th directive. The relief sought in both cases was identical - the issuance of the underlying air operating permit without special conditions, and, now, the resulting attorneys fees for obtaining the permit. Moreover, PCB 92-23 itself was presented to the Appellate Court as an issue by the Agency. The Agency stated to that court in its brief: "In PCB number 92-23, Grigoleit has asked the Board for the same relief it requests in this appeal to this Court." (Agency Br. at 5-6, filed July 20, 1992 in No. 4-92-0029.) Accordingly, we find that the sanctions amount awarded in this order should include attorneys fees incurred in PCB 92-23 as

well as PCB 89-184.

Second, the Agency argues against the Board ordering fees for anything other than what may strictly be construed as hourly fees for legal services. Specifically, it objects to the \$3,658.30 requested by Grigoleit for the expenses incurred by their attorneys in the course of their representation.² We read the court remand, together with 35 Ill. Adm. Code 101.280(a)(7), more broadly than does the Agency. Both the Appellate Court's remand "Grigoleit is entitled to some expense reimbursement as a sanction" and Section 101.280(a)(7) of our rules, "that the offending person pay the amount of reasonable expenses incurred in obtaining an order pursuant to this Section," refer to the word "expenses" when delineating the Board's sanction authority. The expenses requested here are minimal, reasonable, and unquestionably tied to the firms' legal representation of Grigoleit in these permit appeals. We find them reasonable and so order.

Finally, review of the documentary evidence submitted by Grigoleit in both the Motion for Order and the Supplement, shows the fee rates charged by each of the law firms representing Grigoleit are commensurate with those normally charged in the Decatur and Chicago areas. It is no longer disputed that the attorney bills attached to the Motion for Order and the Supplement identify the types of services performed and supply an adequate breakdown of the number of hours spent on those services. We are also satisfied the fees requested in the Motion for Order, as modified by the Supplement, do not reflect services for other than representation of Grigoleit in PCB 89-184 and PCB 92-23. The Agency no longer argues otherwise. We also recognize \$80,634.15 is not an unreasonable or inappropriate amount of attorneys fees in light of Grigoleit's having to appeal two permit denials to the Board, as well as a permit granted with inappropriately-applied special conditions, pursuit of an appeal in the Appellate Court and opposition to a Petition for Leave to Appeal before the Illinois Supreme Court.

For all of the above-stated reasons, the Board orders sanctions in the amount of \$84,292.45 to be paid by the Illinois Environmental Protection Agency to Grigoleit on or before July 31, 1994.

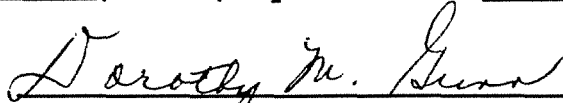
There remains one final matter. In its Motion for Order,

²Booth & Little incurred \$1,068.26 in PCB 89-184 and in PCB 92-23, \$728.22 for faxes, copies, and similar expenses. Kehart & Shafter incurred \$187.26 in PCB 89-184 and Gardner, Carton and Douglas incurred \$291.65 in PCB 89-184 and \$1633.54 in PCB 92-23.

Grigoleit sought leave to file a supplemental request for attorneys' fees incurred from November 1, 1993 to the closure of PCB 89-184 and PCB 92-23. The motion is denied. Essentially, these fees would be for the amount paid in pursuit of this sanction order and resulting attorneys' fees. Since the contested permit has been finally issued by the Agency pursuant to our order of February 3, 1994, we consider this matter closed and the ordered sanctions reasonable pursuant to both the Appellate court remand and our authority under 35 Ill. Adm. Code 101.280(a)(7). Further, since by virtue of this order we award sanctions for both PCB 89-184 and PCB 92-23 and find, pursuant to arguments of Grigoleit, that the two proceedings are "inextricably intertwined" we, on our own motion, herein consolidate both cases and hereby close this docket.

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 17th day of March, 1994, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board