

ILLINOIS POLLUTION CONTROL BOARD
September 21, 1992

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

ORDER OF THE BOARD (by J. Anderson):

On September 15, 1992, hearing was held in this matter. On September 16, 1992, the hearing officer advised the Board, via letter, that he discharged the court reporter and closed the record when neither Grigoleit Company, Inc. (Grigoleit) nor the Illinois Environmental Protection Agency (Agency) appeared at the hearing. The hearing officer also stated that, on September 9, 1992, Grigoleit's attorney telefaxed a letter to him, but that he never received anything from either party after the telefax. The hearing officer discussed the letter at hearing and incorporated the letter into the hearing record. In the September 9, 1992 letter, Grigoleit's attorney stated that he dictated both a "Motion to Vacate Hearing Allotment" and a letter to the hearing officer explaining that the parties were working toward a settlement, but that neither document was transcribed.

On September 18, 1992, the hearing officer advised the Board, via letter, that he received a second telefax, dated September 17, 1992, from Grigoleit's attorney explaining the parties' failure to appear at hearing. Because the Board was not sent a copy of the letter and because of the circumstances of the case, the hearing officer requested that the Board advise him of its wishes in this matter. In the September 17, 1992 telefax, Grigoleit's attorney apologized to the hearing officer and stated that, although the Agency's attorney advised him of the hearing dates, his office did not receive any formal notification concerning the hearing. Grigoleit's attorney also stated that his secretary telephoned the hearing officer's secretary after the September 9, 1992 telefax was transmitted and was told that there was "no problem". Grigoleit's attorney also stated that he construed "no problem" as meaning that the hearing had been vacated, when "no problem" apparently meant that the telefax had been received. Finally, Grigoleit's attorney offered to reimburse the State for any and all reasonable expenses incurred including travel expenses, meals, lodging, court reporter fees, etc.

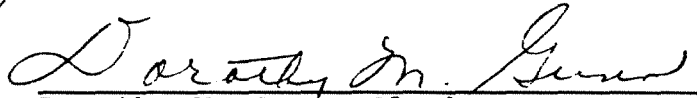
An examination of the Clerk's files shows that the hearing officer drafted an August 3, 1992 scheduling order that contains the September 15, 1992 hearing date. Although there is no indication that the order was mailed to the parties, Grigoleit's September 17, 1992 telefax indicates that the Agency's attorney was aware of the hearing dates.

In light of the unusual circumstances of this case, the Board directs the parties to contact the hearing officer regarding rescheduling this matter for hearing. Because this matter currently has a December 11, 1992 decision deadline, any rescheduling of the hearing will be subject to Grigoleit's providing an appropriate waiver of decision deadline. The Board also directs Grigoleit to pay all costs incurred as a result of the September 15, 1992 hearing. Current receipts show that both the hearing officer and the shorthand reporter incurred a total of \$889.91 in costs. The Clerk of the Board is directed to send all bills to Grigoleit. Grigoleit can then send its payment directly to the hearing officer and shorthand reporter.

IT IS SO ORDERED.

Board Member J. Theodore Meyer concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution control Board, hereby certify that the above order was adopted on the 21st day of September, 1992 by a vote of 4-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board