

ILLINOIS POLLUTION CONTROL BOARD  
October 29, 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.

In light of the above circumstances, the Board directed the

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parties, via a September 21, 1992 Board order, to contact the hearing officer regarding rescheduling this matter for hearing. Because this matter currently has a December 11, 1992 decision deadline, the Board stated that any rescheduling of the hearing would be subject to Grigoleit's providing an appropriate waiver of decision deadline.

As of the date of this order, neither party has contacted the hearing officer to reschedule the hearing, nor has Grigoleit filed a waiver of the December 11, 1992 decision deadline. Moreover, neither party has apprised the Board of the status of the settlement negotiations. In PCB 91-157, People of the State of Illinois v. The Grigoleit Company, Inc., however, Grigoleit filed an amended motion on August 28, 1992, requesting the hearing officer to continue the September 24 and 25, 1992 hearing in the case. In support of its motion, Grigoleit stated:

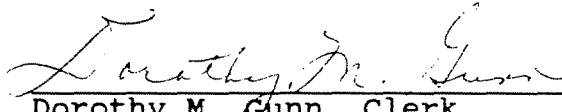
[a]n effort is being made to settle this case as well as others between the People of the State of Illinois and Grigoleit...currently pending before the...Board (90-135, 92-110 and 92-23) and the Fourth District Appellate Court for the State of Illinois (4-92-0029).

On September 11, 1992, the hearing officer issued an order granting Grigoleit's motion and continuing hearing to January 21 and 22, 1993.

In light of the forgoing, the Board orders both Grigoleit and the Agency to provide a status report to the Board. The status reports are to be received by the Board no later than November 16, 1992. In addition, the Board reminds the parties that they are obligated, via the Board's September 21, 1992 order, to contact the hearing officer if they wish to hold another hearing in this matter. If there is no second hearing and if no waiver is forthcoming, the Board intends to make a final determination in this matter by the December 11, 1992 decision deadline.

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 29<sup>th</sup> day of October, 1992 by a vote of 7-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board

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