

ILLINOIS POLLUTION CONTROL BOARD
November 15, 1989

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

ORDER OF THE BOARD (by B. Forcade):

On November 13, 1989, the Grigoleit Company filed a petition for permit appeal. This matter is accepted for hearing.

Pursuant to 35 Ill. Adm. Code 101.161 (c), the Board will conditionally maintain as NOT SUBJECT TO DISCLOSURE, the information attached to the original petition in this proceeding. This conditional protection will remain in effect until further order of the Board. The Board notes several difficulties with the Application for Non-Disclosure and will request briefs or other statements of intent from the parties prior to a final ruling on non-disclosure. The Board orders the parties to file briefs, motions or other appropriate pleadings, not later than December 15, 1989, on the issues described in the following paragraph.

First, the Board notes that this is a permit appeal and in such cases the Board is limited to the information before the Agency at the time it made its decision. Since the Agency must file the record on appeal with this Board, the presently claimed information may be redundant with information filed by the Agency. Obviously, petitioner is free to challenge and augment the Agency record once it is filed. Second, many of the claims made by the petitioner do not seem to involve the non-disclosure material. Assuming, for example, that the Board makes a determination adverse to the Agency on the default issue or adverse to petitioner on the restricted entry issue, no disclosure of the claimed material would be at issue. In that case the Board would intend to return the material to the petitioner at the conclusion of the proceeding without determination. Third, the Board is having great difficulty determining exactly what material is being claimed for non-disclosure. Each page of the original material, or portion thereof, should be marked by Petitioner as "Not Subject to Disclosure". For each page or part thereof, the exact reasons for the claim should be articulated. Since the Petitioner has

not identified the exact material which it claims for non-disclosure, the Board is left to deduce what is claimed for protection. At a minimum, the Board would anticipate a motion by Petitioner to replace or augment the unmarked copies with marked copies. Fourth, some of the material within what the Board believes is claimed information does not appear to meet the description contained in paragraph 3 of the application. Also, some of the information may constitute emissions data which under state and federal law may not be maintained as confidential. The Board would anticipate that such issues would be addressed prior to any ultimate need by this Board to make a determination.

Hearing must be scheduled within 14 days of the date of this Order and completed within 60 days of the date of this Order. The hearing officer shall inform the Clerk of the Board of the time and location of the hearing as expeditiously as possible but at least 40 days in advance of hearing so that public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list, and all actual exhibits to the Board within 5 days of the hearing. Any briefing schedule shall provide for final filings as expeditiously as possible and in no event later than 70 days from the date of this Order.

If after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if after an attempt the hearing officer is unable to consult with the parties, the hearing officer shall unilaterally set a hearing date in conformance with the schedule above. This schedule will only provide the Board a very short time period to deliberate and reach a decision before the due date. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

Within 10 days of accepting this case, the Hearing Officer shall enter a Hearing Officer Scheduling Order governing completion of the record. That Order shall set a date certain for each aspect of the case including: briefing schedule, hearing date(s), completion of discovery (if necessary) and pre-hearing conference (if necessary). The Hearing Officer Scheduling Order may be modified by entry of a complete new scheduling order conforming with the time requirements below.

The hearing officer may extend this schedule only on a waiver of the decision deadline by the petitioner and only for the equivalent or fewer number of days that the decision deadline is waived. Such waivers must be provided in writing to the Clerk of the Board. Any waiver must be an "open waiver" or a waiver of decision until a date certain.

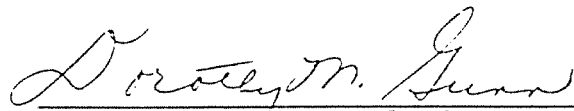
Because of requirements regarding the publication of notice of hearing, no scheduled hearing may be canceled unless the petitioner provides an open waiver or a waiver to a date at least

120 days beyond the date of the motion to cancel hearing. This should allow ample time for the Board to republish notice of hearing and receive transcripts from the hearing before the due date. Any order by the hearing officer granting cancellation of hearing shall include a complete new scheduling order with a new hearing date at least 40 days in the future and at least 30 days prior to the new due date and the Clerk of the Board shall be promptly informed of the new schedule.

Because this proceeding is the type for which the Illinois Environmental Protection Act sets a very short statutory deadline for decisionmaking, absent a waiver, the Board will grant extensions or modifications only in unusual circumstances. Any such motion must set forth an alternative schedule for notice, hearing, and final submissions, as well as the deadline for decision, including response time to such a motion. However, no such motion shall negate the obligation of the hearing officer to establish a scheduling Order pursuant to the sixth paragraph of this Order, and to adhere to that Order until modified.

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 15th day of November, 1989, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board