

ILLINOIS POLLUTION CONTROL BOARD
January 6, 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"). The Motion for Order was filed pursuant to the Appellate Court of Illinois, Fourth District's final opinion and order remanding this matter to the Board. (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.)² The Appellate Court mandated that the Board direct the Agency to issue an air operating permit without any special conditions for a decorative metal fabrication plant operated by Grigoleit. The Court also awarded Grigoleit "sanctions" from the date of our second remand in this case (Grigoleit v. IEPA, (June 20, 1991), PCB 89-194) based on the Illinois Environmental Protection Agency's ("Agency") refusal to follow the Board's remand order that the Agency issue the permit.

On December 23, 1993, the Agency filed a "Motion for Extension of Time to File Response" ("Motion for Extension") indicating counsel for the Agency had not been served with a signed copy of the Motion for Order and that on December 21, 1993, the Office of

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.

²The Agency filed a petition for leave to appeal the Appellate Court's opinion and order of May 6, 1993. On October 6, 1993, the Illinois Supreme Court denied the petition and on November 17, 1993, the Supreme Court denied an Agency motion for leave to file a motion for reconsideration of the Court's denial. The Supreme Court's order of November 17, 1993, precipitated the instant motion.

the Attorney General forwarded the Agency its copy of the motion.³ The Agency requests an extension of time of an additional 21 days in which to file a response. The Agency cites Grigoleit's failure to properly and timely serve the Agency and the Agency's need for an adequate amount of time to review the attorneys' billable hour and expense sheets comprising the requested sanctions. On December 29, 1993, the Board received a response to the Motion for Extension from Grigoleit stating several objections. On January 3, 1994, the Agency filed, without an accompanying motion for leave to file, a "Response to Objection to Motion for Extension of Time to File Response".

We hereby grant the Agency's Motion for Extension and do so based on Grigoleit's failure to properly serve Agency counsel with the Motion for Order. Grigoleit's main argument against an extension is its assertion the Agency was "constructively" served on December 20, 1993 when the Agency's counsel received Grigoleit's status report filed in related case, PCB 92-23. An unsigned copy of the Motion for Order was affixed as an attachment to that status report. We find this argument unpersuasive. It is clear from the filings in both this case and in PCB 92-23, that the motion was not only unsigned, but the attorneys' billable hour sheets were not included with the Motion for Order when it was attached to the status report. (See Grigoleit v. IEPA, PCB 92-23, Petitioner's "Status Report" filed December 15, 1993.) These attorneys' billable hour and expense sheets comprise Grigoleit's requested sanctions amount and the Agency would not have had an opportunity to review the figures until having received a copy from the Attorney General on December 23, 1993. (Motion for Extension, at 2.) The Agency may have had notice that Grigoleit intended to file a motion, but its counsel would not have had knowledge of the entirety of that motion, specifically, the billable hour and expense sheets. Moreover, service upon the Office of the Attorney General solely, without also serving the Agency, does not satisfy the Board's service requirements found at 35 Ill. Adm. Code Subpart C. Sharon Davis as counsel for the Agency is unquestionably the proper party in this proceeding warranting service; the Attorney General represented the Agency as the appellate counsel and he has not filed an appearance on behalf of the Agency in this proceeding. To date, there is no evidence in the record that Grigoleit has even

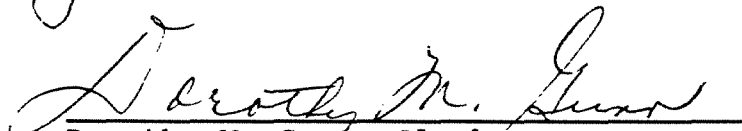
³The Certificate of Service signed by attorney A. James Shafter, indicates that he served via Federal Express, Ms. Dorothy Gunn, Clerk of the Illinois Pollution Control Board, Mr. Mark E. Wilson, Assistant Attorney General and Ms. Musette Vogel, Attorney Assistant to the Chairman of the Illinois Pollution Control Board, and that counsel for the Agency, Sharon Davis, was not served with the Motion for Order.

attempted to perfect service upon the Agency.⁴

As stated above, we hereby grant the Agency's Motion for Extension. The Agency is directed to file its response on or before January 18, 1994.

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 6th day of January, 1994, by a vote of 7-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board

⁴We note that in PCB 92-23, Grigoleit, by its attorney Roy M. Harsch, properly served Sharon Davis, counsel for the Agency, with a copy of the status report.