

ILLINOIS POLLUTION CONTROL BOARD  
December 2, 1993

GRIFFIN SERVICE and SPROULE )  
CONSTRUCTION COMPANY, )  
 )  
Petitioners, )  
 )  
v. ) PCB 93-104  
 ) (UST Fund)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

ORDER OF THE BOARD (by M. Nardulli):

This matter is before the Board on a May 27, 1993, petition filed by petitioners Griffin Service and Sproule Construction Company for review of the Agency's denial of reimbursement for specific costs from the Underground Storage Tank Fund. Petitioners have filed an open waiver of the decision deadline in this matter.

On November 12, 1993, the Agency filed a motion for summary judgment, a request for admission of facts, and notice to produce witnesses, documents and tangible things at the upcoming hearing scheduled for December 3, 1993. On November 29, 1993, petitioner's attorneys, Roger H. Kelly and Terry M. Kurt, filed a motion for leave to withdraw as counsel. Also on November 29, 1993, the Agency filed a motion to compel production of documents and list of witnesses and to continue hearing. On December 1, 1993, the Board received by facsimile Griffin's motion for substitution of attorneys and for extension of time.

The Board will reserve judgment on the Agency's motion for summary judgment until a later date. In addition, the Agency's motion to compel production of documents and list of witnesses, and Griffin's motion for extension of time are not presently ripe for consideration.

Attorneys Kelly and Kurt's motion to withdraw states "good cause exists for granting leave to withdraw and no prejudice will occur to any party if this motion is granted." Griffin, in it's motion to substitute attorney, also requests the Board to allow Kelly and Kurt to withdraw as counsel. In addition, Griffin requests that Thomas L. Kilbride be allowed to appear as substitute counsel for Griffin.

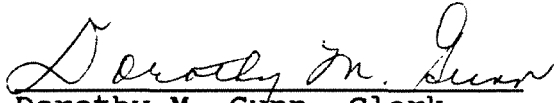
The Board hereby grants the motion to withdraw. In addition, in order to avoid prejudice to any party, the Board

directs the hearing officer to continue the hearing.<sup>1</sup> The Board notes that Mr. Griffin indicates that there exist certain conflicts between Griffin Service and Sproule Construction; and that Mr. Kilbride seeks only represent Mr. Griffin. The Board hereby directs Sproule Construction to inform the Board whether they wish to continue as a party in this matter and to inform the Board of whether Sproule Construction will be represented by counsel in this matter. Sproule Construction shall so inform the Board on or before January 3, 1994.

In summary, the Board will not rule at this time on the Agency's motion for summary judgment, the Agency's motion to compel production of documents and list of witnesses, or Griffin's motion for extension of time. The Board hereby grants Roger H. Kelly and Terry M. Kurt's motion for leave to withdraw as counsel and allows Mr. Thomas L. Kilbride to act as substitute counsel for Griffin. The Board further directs Sproule Construction to inform the Board, on or before January 3, 1994, whether Sproule wishes to remain a party to this matter and, if so, who will act as Sproule's counsel in this matter. In addition, the Board directs the hearing officer to continue hearing. Lastly, the Board directs Sproule Construction to inform the Board on or before January 3, 1994 whether Sproule Construction has retained substitute counsel.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 2<sup>nd</sup> day of December, 1993, by a vote of 6-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board

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<sup>1</sup> The Board believes no prejudice will occur to the Agency, given the Agency's motion of November 29, 1993, to continue hearing.