

ILLINOIS POLLUTION CONTROL BOARD
April 23, 1992

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

ORDER OF THE BOARD (by J. Anderson):

On February 11, 1992, Grigoleit Company ("Grigoleit") filed a petition to appeal the Illinois Environmental Protection Agency's ("Agency") imposition of several conditions on its January 7, 1992 operating permit. On that same date, Grigoleit filed its third motion for sanctions in PCB 89-184. That case involved Grigoleit's appeal of the Agency's denial of Grigoleit's application for renewal of its operating permit. Grigoleit also filed a motion in this docket requesting the Board to stay the case until the Board issued a ruling on Grigoleit's third motion for sanctions in PCB 89-184.

On February 27, 1992, the Board transferred Grigoleit's motion for sanctions into this docket. The Board, however, reserved ruling on Grigoleit's motion for sanctions and its motion for stay because Grigoleit's petition for permit appeal in this docket was deficient. The Board directed Grigoleit to cure the deficiencies via an amended petition to be filed within 45 days of the date of the order.

On March 5, 1992, the Agency filed a motion to dismiss Grigoleit's motion for sanctions.¹ Grigoleit filed its response to the Agency's motion to dismiss on March 13, 1992. On April 15, 1992, Grigoleit filed its amended petition in this matter curing the relevant deficiencies.

In its motion for sanctions, Grigoleit requests, in part, that the Board sanction the Agency for its failure to issue a permit in compliance with the Board's December 6, 1991 order in PCB 89-184. In response, the Agency argues, in part, that Grigoleit's motion for sanctions should be dismissed because the permit conditions that are the basis of the motion for sanctions

¹On February 27, 1992, the Board granted the Agency's February 24, 1992 motion requesting an extension of time to respond to Grigoleit's motion for sanctions.

must be addressed and reviewed at hearing pursuant to 35 Ill. Adm. Code 105.102(a)(2). In response, Grigoleit argues, in part, that the Board should strike the motion to dismiss because the Agency's February 24, 1992 motion for extension of time to file a response to Grigoleit's motion for sanctions was filed beyond the 7 day time limit of 35 Ill. Adm. Code 101.241(b) and 23 days after Grigoleit's motion for sanctions.

Because Grigoleit has perfected its petition for permit appeal, the Board will set this matter for hearing. The Board also will take Grigoleit's motion for sanctions with the case. As a result, the Board denies the Agency's motion to dismiss Grigoleit's motion for sanctions and Grigoleit's motion for stay becomes moot.

As for Grigoleit's response to the Agency's motion to dismiss, we note that the Agency timely filed its motion for extension of time. Specifically, Grigoleit mailed its motion for sanctions on February 11, 1992. Assuming 4 days for service of the motion (see 35 Ill. Adm. Code 101.144(c)) and the 7 day response time of 35 Ill. Adm. Code 101.241(b), the Agency should have filed its motion for extension by February 21, 1992. The proof of service that is attached to the Agency's motion for extension indicates that the Agency mailed its motion on February 21, 1992. 35 Ill. Adm. Code 101.102(d) states that the time of mailing shall be deemed the time of filing when a document is received by the Board after any due date.

This matter is accepted for hearing. 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 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.

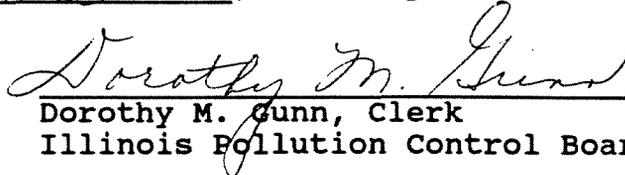
The hearing officer may extend this schedule only on a waiver of the decision deadline by the petitioner and only for the equivalent or fewer number of days that the decision deadline is waived. Such waivers must be provided in writing to the Clerk of the Board. Any waiver must be an "open waiver" or 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 making a decision, 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 requirements 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 23rd day of April, 1992, by a vote of 7-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board