

ILLINOIS POLLUTION CONTROL BOARD  
June 20, 1991

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

ORDER OF THE BOARD (by J. Anderson):

On May 30, 1991, the Grigoleit Company ("Grigoleit") filed a Motion asking the Board to impose sanctions upon the Agency for exceeding the scope of the Board's November 29, 1990 Opinion and Order. Grigoleit requests the Board to bar the Illinois Environmental Protection Agency ("Agency") from filing any other pleadings in this matter, to direct the Agency to pay Grigoleit's expenses in obtaining any order pursuant to its motion, and to order the Agency to issue an operating permit and declare the Agency's April 25, 1991 denial of Grigoleit's operating permit null and void. On June 7, 1991, the Agency filed a response to the motion.

Before proceeding any further, we will first summarize the procedural history that lead to the current motion. On October 12, 1989, the Agency denied Grigoleit's application for renewal of its air operating permit. Grigoleit appealed the denial on November 13, 1989. On November 29, 1990, the Board remanded the case to the Agency so that the Agency could elicit the information that it requested in subparagraphs 2(a) and (b) of its October 11, 1989 permit denial letter and, in turn, determine whether Grigoleit was in compliance with 35 Ill. Adm. Code 215.301. Subparagraphs 2(a) and (b) of that letter read as follows:

2. Your application fails to provide proof of compliance with 35 Ill. Adm. Code 215.204(h), (j) and 215.301. The following information is required to assess compliance with these rules:
  - a. Provide usage and percentage by volume for each ingredient in ink and solvent used for each coating application.
  - b. Provide the weight percentage of

the volatile organic compound in  
the ink and solvent and the amount  
of ink and solvent used per hour.

In a letter dated January 10, 1991, the Agency attempted to elicit certain information from Grigoleit. On January 25, 1991, Grigoleit provided information to the Agency which it claims demonstrates that it is in compliance with 35 Ill. Adm. Code 215.301. On April 25, 1991, the Agency again denied Grigoleit's application for renewal of its operating permit. Grigoleit filed its motion for sanctions in response to the Agency's January 10, 1991 letter and January 25, 1991 permit denial.

In its motion for sanctions, Grigoleit claims that the Agency, via its January 10, 1991 letter and its April 25, 1991 permit denial, exceeded the scope of the Board's remand order and that the Agency has no authority to deny Grigoleit an operating permit or consider Grigoleit's January 25, 1991 letter an application for an operating permit.

In its response, the Agency agrees that, in its January 10, 1991 letter, it asked Grigoleit to provide information regarding compliance with 35 Ill. Adm. Code 215.301. The Agency also notes that, because it obtained information which indicated that a new emission source was present at Grigoleit's facility and that the operation of the various air emission sources at the plant may generate certain emissions, discharges, or wastes, it asked Grigoleit to provide information to demonstrate that its operation of the equipment and the emissions were in compliance with the regulations. The Agency also argues that the Board's November 20, 1991 Opinion and Order did not require the Agency to base any future permitting decision only on the state of affairs as of the date of Grigoleit's first permit application (i.e., July 12, 1989) and that Section 39(a) of the Environmental Protection Act ("Act") requires the Agency to examine the additional operations at the facility to ensure that the operations will not cause a violation of the Act or regulations.

A review of the Agency's January 10, 1991 letter indicates that the Agency went beyond the Board's November 20, 1990 mandate in three respects. First, with respect to 35 Ill. Adm. Code 215.301, the Agency went beyond the Board's mandate when it attempted to elicit information regarding additional operations at Grigoleit's facility. It appears that although Grigoleit informed the Agency of the existence of the additional operations in its July 12, 1989 permit application, the Agency chose not to express any concern about the operations in its October 11, 1989 permit denial. Rather, the Agency waited until its January 10, 1991 letter and until after the Board's remand to express its concern over the additional operations. The Agency cannot now express concern about the additional operations in this permit appeal at this juncture, nor can it argue that the Board did not

require the Agency to base its review only on the state of affairs at Grigoleit's facility as of the date of its earlier permit application. Although we did not explicitly state that our November 29, 1990 mandate was limited in scope, it is implicit in any remand order that the order is limited to only those facts that were before the Agency when it denied the permit. To hold otherwise would allow the Agency, in effect, to conduct a de novo permit review on remand. Earl Bradd v. IEPA, PCB 90-173 p. 6 (May 9, 1991). As for the Agency's argument that Section 39(a) of the Environmental Protection Act would not allow the Agency to issue a permit if Grigoleit's operations would cause violations, we remind the Agency that it already made its 39(a) determination in this case when it reviewed Grigoleit's permit application and chose not to list its concerns regarding Grigoleit's additional operations in its October 11, 1989 permit denial letter.

Second, the Agency went beyond the Board's mandate when it attempted to elicit information regarding the violation of 35 Ill. Adm. Code 215.204(h) and (j). In our November 29, 1990 Opinion and Order, we determined that there was sufficient information in Grigoleit's permit application for the Agency to determine that Grigoleit's emissions were exempt from and that Grigoleit did not violate these regulatory sections. (see Grigoleit at 14, 116 PCB 260 (November 29, 1990)). Accordingly, we will not allow the Agency to cite these two sections when we expressly limited the Agency's scope of review on remand to a determination of whether Grigoleit is in compliance with 35 Ill. Adm. Code 215.301. Bradd, PCB 90-173 p. 6 (May 9, 1991).

Third, the Agency went beyond the Board's mandate when it attempted to obtain additional information regarding possible land violations at the facility that were first cited in the Agency's October 11, 1990 denial letter. Denial reason 3 of that letter read as follows:

You have been previously notified by the Agency's Division of Land Pollution Control of apparent violations of 35 Ill. Adm. Code Sections 722.111, 722.112, 722.134, 725.152, 725.116 and 725.273. Since these violations are still outstanding, pursuant to sections 21 and 39 of the Act, no permit may be granted.

In our November 29, 1990 Opinion and Order, we struck denial reason 3 and stated, in part, that if the Agency had waste concerns, the proper mechanism to address those concerns was through an enforcement action rather than the denial of an air permit. (see Grigoliet at 16, 116 PCB 262 (November 29, 1990)). Accordingly, we will not allow the Agency to cite possible land violations when we expressly struck denial reason 3 and limited

the Agency's scope of review on remand to a determination of whether Grigoleit is in compliance with 35 Ill. Adm. Code 215.301. Bradd, PCB 90-173 p. 6 (May 9, 1991).


Based on the above, we find that the Agency has not complied with the Board's November 20, 1991 Order. Accordingly, we hereby grant Grigoleit's motion for sanctions. Rather than barring the Agency from filing any other pleading regarding any related issue or directing the Agency to reimburse Grigoleit for its costs associated with this motion, however, we find that the most appropriate sanction is to declare the Agency's January 10, 1991 letter and April 25, 1991 denial letter null and void. This matter is again remanded to the Agency for the sole purpose of eliciting the information requested in subparagraphs (a) and (b) of denial reason 2 of the Agency's October 11, 1989 denial letter in order to determine whether Grigoleit is in compliance with 35 Ill. Adm. Code 215.301.

IT IS SO ORDERED.

Board Members J. Dumelle and B. Forcade dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution control Board, hereby certify that the above Order was adopted on the

204 day of June, 1991 by a vote of  
5-2.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board