

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

TIMBER CREEK HOMES, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB No. 14-99
)	(Pollution Control Facility
)	Siting Appeal)
VILLAGE OF ROUND LAKE PARK, ROUND)	
LAKE PARK VILLAGE BOARD and GROOT)	
INDUSTRIES, INC.,)	
)	
Respondents.)	

NOTICE OF FILING

PLEASE TAKE NOTICE that on April 14, 2014, there was filed electronically Respondent, GROOT INDUSTRIES, INC.'S REPLY IN SUPPORT OF MOTION FOR EXPEDITED REVIEW OF HEARING OFFICER ORDER OF APRIL 7, 2014, a copy of which is hereby attached and served upon you.

Dated: April 14, 2014

Respectfully submitted,

On behalf of GROOT INDUSTRIES, INC.

/s/ Richard S. Porter
Richard S. Porter
One of Its Attorneys

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GROOT INDUSTRIES, INC.'S REPLY IN SUPPORT OF MOTION FOR EXPEDITED REVIEW OF HEARING OFFICER ORDER OF APRIL 7, 2014

NOW COMES the Respondent, Groot Industries, Inc. ("Groot"), and respectfully requests that the Hearing Officer's Order of April 7, 2014 ("Hearing Officer Order") be reversed and the prior Order of the Board of April 3, 2014 ("PCB Order") be affirmed. In support thereof, Groot states as follows:

In supporting the hearing officer's misinterpretation of the PCB Order, Petitioner has simply restated the argument it made to the PCB in opposing the original Discovery Order in this proceeding. Petitioner's argument hinges on certain meeting minutes of the Round Lake Park Village Board ("Village Board"), which Petitioner yet again argues reveal an alleged collusive scheme between the Village Board, the Village of Round Lake Park ("Village"), and Groot. This argument has already been made to the PCB, and has left the PCB, in its own words, "not persuaded that [the meeting minutes] establish that additional materials, relevant to this siting appeal, would be uncovered if TCH were allowed to seek discovery of materials from 2008." PCB Order at 4. Petitioner offers several reasons why these meeting minutes somehow now merit additional discovery, but never addresses the fact that this very argument has already been heard – and rejected – by the PCB.

Despite the clear rejection of Petitioner's theory that these meeting minutes entitle it to extensive pre-filing discovery, the hearing officer has erroneously reopened discovery based on

one ambiguous sentence in the PCB Order. Petitioner attempts to explain the Hearing Officer Order by stating that the hearing officer amended his position on discovery because of the meeting minutes. However, this is a complete fabrication, unsupported by the actual language of the Hearing Officer Order. The hearing officer expressly stated that he is allowing additional pre-filing discovery based on his interpretation that "the Board's ruling [is] that the parties may proceed with discovery that is the subject of TCH's Requests to Admit." Hearing Officer Order at 2.

The hearing officer's interpretation of the PCB Order – that the meeting minutes already considered by the PCB and specifically *rejected* as a basis for additional discovery now somehow merit additional discovery – is simply not supported by the PCB Order. The PCB was unpersuaded by the meeting minutes and their alleged revelation of collusion. The entirety of the PCB Order, save for one arguably vague sentence on which the hearing officer is relying, unequivocally rejects the notion that Petitioner is entitled to pre-filing discovery beyond the scope of the hearing officer's original Discovery Order.

Petitioner attempts to make much of the fact that the Village and Village Board did not object to the Requests to Admit,¹ but this is neither a significant fact nor a basis to reopen discovery beyond the scope of the Discovery Order. The amount of effort required to authenticate the meeting minutes attached to Petitioner's Requests to Admit was minimal in comparison to the work that will be required if Petitioner is allowed to re-open discovery back to 2008. The Respondents should not be punished for simply authenticating meeting minutes by reopening the floodgates to discovery that the PCB has already ruled is irrelevant. And lest Petitioner make an argument that it would only be significant effort if there are somehow

¹ Groot did not receive any Requests to Admit to which it could object. It objected wholesale to all discovery pre-dating the filing of its siting application.

thousands of responsive documents in this time frame, it should be noted that the tremendous effort will be in culling through six years of documents to confirm that they are, in fact, not relevant. The PCB has already ruled that the meeting minutes do not merit this effort.

Petitioner also argues that Groot is attempting to limit discovery to a single day, but that is another misstatement of the facts. The Discovery Order stated that the applicable time frame for discovery was from the date of Mr. Kleszynski's hiring (which was June 20, 2013) to December 12, 2013. Petitioner's actual discovery requests to Groot requested documents from 2008 to June 21, 2013, the date Groot's siting application was filed. Petitioner has never amended its discovery requests to Groot, so the time frame for discovery requests issued to Groot – *based on the Petitioner's self-imposed cut-off of the filing date* – is a single day. That limitation is not Groot's doing.

The Hearing Officer Order at issue here misinterpreted the PCB Order. The arguments Petitioner makes in support of the Hearing Officer Order are the same arguments that were made to, and expressly rejected by, the PCB. The Hearing Officer's Order is erroneous and should be reversed.

WHEREFORE, Respondent Groot Industries Inc. respectfully requests that the Pollution Control Board reverse the April 7 Hearing Officer Order and affirm its April 3, 2014 Order.

Dated: April 14, 2014

Respectfully submitted,

On behalf of GROOT INDUSTRIES, INC.

/s/ Richard S. Porter

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AFFIDAVIT OF SERVICE

STATE OF ILLINOIS)
) SS
COUNTY OF WINNEBAGO)

The undersigned certifies that on **April 14, 2014**, a copy of the foregoing **Notice of Filing Groot Industries, Inc.'s Reply in Support of Motion for Expedited Review of Hearing Officer Order of April 7, 2014** was served upon the following:

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