

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 15, 2014, there was filed electronically Respondent, GROOT INDUSTRIES, INC.'S MOTION FOR LEAVE TO FILE REPLY IN SUPPORT OF MOTION TO QUASH SUBPOENA, a copy of which is hereby attached and served upon you.

Dated: April 15, 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 MOTION FOR LEAVE TO FILE REPLY
IN SUPPORT OF MOTION TO QUASH SUBPOENA**

NOW COMES the Respondent, Groot Industries, Inc. ("Groot"), and respectfully moves that it be permitted to file a Reply in Support of Motion to Quash Subpoena. In support thereof, Groot states as follows:

1. Groot filed a Motion to Quash Subpoena for Deposition of Derke J. Price ("Mr. Price") on April 9, 2014, joining the Motion to Quash Deposition of Derke J. Price filed by the Round Lake Park Village Board ("Village Board") and further noting that the subpoena of Mr. Price is outside the scope of the discovery permitted by the hearing officer in this matter.

2. Petitioner Timber Creek Homes, Inc. filed a response that for the first time argued Petitioner should be permitted discovery on matters not allowed by the hearing officer's order of April 7, 2014. Petitioner specifically argued that it should be permitted discovery on matters prior to the hiring of Dale Kleszynski *and* not the subject of the meeting minutes, despite the hearing officer order limiting such additional discovery.

3. Groot requests that it be granted leave to respond to Petitioner's new arguments regarding the discovery limitations in this matter, as set forth in the Reply in Support of Motion to Quash, attached hereto as Exhibit 1.

WHEREFORE, Groot respectfully requests that an order be entered permitting Groot to file its Reply in Support of Motion to Quash Subpoena for Deposition of Derke J. Price, and other relief as this Board or Hearing Officer deems just and proper.

Dated: April 15, 2014

Respectfully submitted,

On behalf of GROOT INDUSTRIES, INC.

/s/ Richard S. Porter

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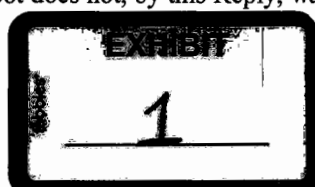
**GROOT INDUSTRIES, INC.'S REPLY IN SUPPORT OF
MOTION TO QUASH SUBPOENA**

NOW COMES the Respondent, Groot Industries, Inc. ("Groot"), and respectfully requests that the Subpoena for Deposition of Derke J. Price be quashed. In support thereof, Groot hereby adopts the Reply of Respondent Round Lake Park Village Board ("Village Board") and further states as follows:

Petitioner's Subpoena and its Response to Respondents' Motion to Quash demonstrate exactly why discovery should be – and indeed has already been – limited in this matter. Petitioner should not be permitted to repeatedly ignore the orders of the hearing officer and continue to push the boundaries of discovery already set in this matter, based on an ever-shifting case theory. Petitioner should instead be bound to the orders already in place that govern discovery in this matter.¹

The Petitioner's constantly moving discovery target is graphically illustrated by the discovery motions already filed in this matter. After the hearing officer properly ruled in his March 20 Discovery Order that pre-filing discovery was limited to the date Dale Kleszynski was hired by the Village of Round Lake Park ("Village"), and after that ruling was affirmed *in all respects* by the Illinois Pollution Control Board, Petitioner moved the target by arguing that it

¹ As noted in its Motion for Expedited Review of the Hearing Officer's April 7 Order, Groot believes that order is based on an erroneous reading of the PCB's Order on discovery. Groot does not, by this Reply, waive its arguments in opposition to the April 7 Hearing Officer Order.



should be permitted to conduct discovery outside the bounds of the Discovery Order regarding subjects raised in meeting minutes it had attached to Requests to Admit to the Village and Village Board. In an order dated April 7 (the "April 7 Hearing Officer Order"), the hearing officer acceded to Petitioner's argument, based on a single vague sentence in the midst of the PCB's four-page order. The hearing officer stated "that the parties may proceed with discovery [prior to Mr. Kleszynski's hiring] *that is the subject of TCH's Requests to Admit*. I therefore orally ruled . . . that TCH may pursue discovery *regarding entries reflected in the Village Board's meeting minutes that [were] the subject of TCH's Requests to Admit*." April 7 Hearing Officer Order at 2 (emphasis added).

Now, despite the hearing officer's clear (if erroneous) order that this additional discovery outside the scope of the Discovery Order be limited to entries in the meeting minutes, Petitioner is again attempting to move the target of discovery and broaden the scope of allowed discovery, completely ignoring the hearing officer's April 7 Order in the process. Petitioner now argues that it should *not* be limited to entries in the meeting minutes in its discovery outside the scope of the Discovery Order. Petitioner argues that *Groot* is attempting to limit the scope of the April 7 Hearing Officer Order by confining it to the meeting minutes.² Pet'r's Resp. Mot. Quash at 5. However, *Groot* is merely reading the words of the April 7 Hearing Officer Order and assigning them the clear meaning afforded by plain English and common sense. It is indeed difficult to discern *any* other meaning from the hearing officer's words, which apparently bear repeating: "I interpret the Board's ruling that the parties may proceed with discovery *that is the subject of TCH's Requests to Admit*." April 7 Hearing Officer Order at 2 (emphasis added).

² 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.

Petitioner's Subpoena to Mr. Price completely ignores this limitation. Petitioner instead relies on a tortured reading of the state's Rules of Professional Conduct to manufacture an argument that Mr. Price, the proposed deponent, must somehow be in possession of confidential information. Petitioner notably omits any argument that *even if* Mr. Price had such confidential information (a leap of logic not supported by any facts set forth by Petitioner), that information is in any way relevant to Petitioner's claim of fundamental fairness in this matter or allowed by the hearing officer's orders on discovery in this matter. Petitioner's argument fails based on the plain language of the Rules of Professional Conduct, as set forth in the Village Board's Reply, and its Subpoena is outside the scope of the existing discovery limitations.

Petitioner's conduct in ignoring the discovery limitations set by the hearing officer has caused the parties to waste considerable time and effort attempting to force compliance with these limitations. This conduct is based on a theory of collusion that is ever shifting based on what the documents already available to Petitioner *do not* show. Petitioner's frank disregard of the discovery orders in place in this matter must be curtailed.

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 15, 2014

Respectfully submitted,

On behalf of GROOT INDUSTRIES, INC.

/s/ Richard S. Porter

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One of Its Attorneys

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