

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

TIMBER CREEK HOMES, INC.,)	
)	
Petitioner)	
)	
v.)	No. PCB 2014-099
)	
VILLAGE OF ROUND LAKE PARK,)	(Pollution Control Facility Siting Appeal)
ROUND LAKE PARK VILLAGE BOARD)	
and GROOT INDUSTRIES, INC.,)	
)	
Respondents)	

**PETITIONER'S RESPONSE
TO VILLAGE OF ROUND LAKE PARK'S APPEAL**

Now comes Petitioner, Timber Creek Homes, Inc. ("TCH"), by its attorneys, Jeep & Blazer, LLC, and hereby submits its Response to Respondent Village of Round Lake Park's ("VRLP") Appeal of Hearing Officer Brad Halloran's March 4, 2014 Order denying VRLP's Motion to Quash Subpoena.

i. INTRODUCTION

This siting review proceeding has not "proceeded" very far, largely because Respondents have expended substantial efforts in attempting to avoid both this Board's prior rulings on the adequacy of Petitions for Review, and in repeated efforts to avoid responding to TCH's discovery requests. Hearing Officer Halloran already rejected one of those efforts, and denied VRLP's Motion to Quash a subpoena served on Dale Kleszynski ("Kleszynski"), a testifying expert retained by VRLP. A copy of that Order, which is the subject of VRLP's "appeal" is attached hereto as Exhibit A. Notably, the "appeal" includes an extended discussion regarding why VRLP should not have to comply with discovery – mainly a repetition of assertions already made in prior objections and in a motion to strike TCH's discovery requests.

VRLP also takes a different approach in its ongoing effort to avoid disclosure of evidence regarding its collusive scheme with Respondent Groot Industries, Inc.

("Groot"). Groot has agreed to one waiver of the Board's decision deadline, and has indicated that it will not agree to any others. That resulted in an agreement among all parties for an expedited discovery schedule. A copy of the Hearing Officer's Order memorializing that agreement is attached hereto as Exhibit B. But in the ultimate in bootstrapping, VRLP now argues that it should not have to comply with discovery, despite its agreement to the discovery schedule, "in an attempt to complete this Section 40.1 'on the record' appeal, including discovery, within the allotted time frame." (VRLP Appeal at 1) This assertion has two purposes.

First, as noted, VRLP wants to avoid responding any discovery, and therefore argues that the Board's review is limited to the siting hearing record. However, as Hearing Officer Halloran noted in his Order denying VRLP's Motion to Quash:

[T]he Board will hear new evidence relevant to the fundamental fairness of the proceedings where such evidence lies outside the record, including pre-filing contacts. See *Land and Lakes Co. v. PCB*, 319 Ill. App. 3d 41, 48, 743 N.E.2d 188, 194 (3d Dist. 2000). Pre-filing contacts may be probative of prejudgment of adjudicative facts, which is an element to be considered in assessing a fundamental fairness allegation. *American Bottom Conservancy (ABC) v. Village of Fairmont City*, PCB 00-200, slip op. at 6 (Oct. 19, 2000).

(March 4, 2014 Order at 2-3)

Notably, VRLP and the VRLP Board (the "Village Board") have in fact responded to one element of TCH's discovery – Requests to Admit the genuineness of certain Village Board meeting minutes. Those meeting minutes confirm that Respondents' scheme began some time between April and September 2008, and encompassed three Groot facilities to be approved, built and operated in VRLP – a truck terminal/maintenance facility, a construction and demolition debris recycling facility, and the subject waste transfer station.

Moreover, VRLP uses the ruse of an “appeal” to avoid the requirements of the Board’s discovery rules. The majority of VRLP’s “appeal” does not discuss the Hearing Officer’s Order that is purportedly being appealed. Rather, VRLP spends the majority of its “appeal” arguing about its objections to TCH’s other discovery requests. (VRLP Appeal at 1-4) But VRLP and the other Respondents have already filed objections and motions directed at TCH’s discovery requests. Those matters are pending before the Hearing Officer. Notably, VRLP tendered non-specific, blanket objections, contrary to the Hearing Officer’s February 11, 2014 Order. The Hearing Officer reiterated that point in his March 4, 2014 Order denying VRLP’s Motion to Quash. VRLP’s present effort is therefore redundant and duplicative, and attempts to avoid the Hearing Officer’s authority under 35 Ill.Adm.Code 101.616.

Beyond this, VRLP previously acknowledged that it has made no effort to respond to TCH’s discovery requests. (See VRLP Motion to Make Specific at 3) VRLP now asks this Board to sanction that dilatory conduct because there is not enough time to properly respond to the discovery. To borrow a phrase, VRLP “doth protest too much, methinks”. *Hamlet*, Act III, Scene II The more VRLP tries to avoid responding, the more obvious it becomes that it has something to hide.

II. VRLP FAILS TO MEET ITS BURDEN OF PROVING THAT ANY SPECIFIC MATERIAL IS SUBJECT TO ANY APPLICABLE PRIVILEGE

VRLP first repeats its argument that TCH’s Petition is factually deficient. (VRLP Appeal at 2, 4) TCH addressed this argument in its Response to Respondents’ Motions to Dismiss. Among other things, VRLP’s argument completely ignores the Board’s decision in *American Disposal Services of Illinois, Inc. v. County Board of McLean County, et al.*, 2012 WL 586817, PCB 11-60 (February 16, 2012)¹ More important, the

¹ That failure by VRLP’s counsel to mention authority that directly contradicts its argument violates Rule 3.3(a)(2) of the Illinois Rules of Professional Conduct.

Board denied the Motions to Dismiss on March 20, 2014, and found that TCH's Petition adequately states its claims.

VRLP then lists a series of general, blanket and non-specific "objections", including:

1. Attorney-client privilege;
2. Legislative privilege;
3. Mental impressions and strategy of RLP's Counsel;
4. Attorney work product privilege;
5. Appraiser related material; and
6. Post siting approval material.

(VRLP Appeal at 2-3) VRLP fails to identify a single item that might even arguably fall within any of the asserted bases for non-disclosure (the last two items on the list can hardly be called "privileges"). It is important in this regard to recognize that it is VRLP's burden to establish that any particular item that is subject to the discovery requests is in fact subject to some applicable privilege. See, *e.g.*, *Cangelosi v. Capasso*, 366 Ill.App.3d 225, 228 (2nd Dist.), appeal denied 222 Ill.2d 568 (2006); *In re Marriage of Daniels*, 240 Ill.App.3d 314 324 (1st Dist. 1992) Moreover, communications between an attorney and a testifying expert retained by the attorney's client are not privileged. See, *e.g.*, *Midwesco-Paschen Joint Venture For Viking Projects v. IMO Industries, Inc.*, 265 Ill.App.3d 654, 666-669 (1st Dist.), appeal denied 157 Ill.2d 505 (1994)

VRLP avoids any effort to meet its burden. Rather, because of the time constraints that Respondents have themselves created, VRLP asks this Board for a blanket ruling regarding its equally blanket objections.

III. VRLP PROVIDES NO BASIS TO OVERRULE THE HEARING OFFICER'S ORDER

It is only after its list of blanket generalities that VRLP finally turns to its “appeal” of the Hearing Officer’s denial of the Motion to Quash Subpoena. Answering a series of rhetorical questions regarding the information sought by the subject subpoena, VRLP argues that, “All of this is simply a manifest weight issue mascairaing [sic] as fundamental fairness.” (VRLP Appeal at 5)

First, VRLP’s “appeal” is moot – Kleszynski has already responded to the subject subpoena. That fact amplifies the real purpose for VRLP’s efforts – to interminably delay responding to TCH’s discovery by filing a series of legally and factually baseless objections.

Second, as noted above, VRLP’s argument completely ignores the fact that a fundamental fairness claim is not limited to the siting hearing record, and discovery is allowed with respect to such a claim. VRLP says nothing in its “appeal” to warrant an exception to that established rule in this case.

More to the point, the general scope of discovery in Board proceedings is found in 35 Ill.Adm.Code 101.616(a), which provides, in relevant part:

(a) All relevant information and information calculated to lead to relevant information is discoverable, excluding those materials that would be protected from disclosure in the courts of this State pursuant to statute, Supreme Court Rules or common law, and materials protected from disclosure under 35 Ill. Adm. Code 130.

(e) Unless a claim of privilege is asserted, it is not a ground for objection that the testimony of a deponent or person interrogated will be inadmissible at hearing, if the information sought is reasonably calculated to lead to relevant information.

A copy of the subject subpoena is attached hereto as Exhibit C. In summary, the subpoena sought documents from Kleszynski’s company, Associated Property

Counselors (“APC”), which was hired by VRLP for the siting hearing, relating to the scope of its retention and the services provided, and any communications with VRLP and both Groot and several of Groot’s retained siting witnesses. Why was this information sought?

The fundamental fairness issue arose during the course of the siting hearing. VRLP’s counsel, Glenn Sechen (“Sechen”), indicated that VRLP had already determined that it was “prudent” to site a transfer station, and was proceeding jointly with Groot for approval of that transfer station. (C03214, C03219-03220; 9/25/2013 Hearing Transcript-2 at 98, 103-104) Sechen further acknowledged that VRLP and Groot had found it necessary to site a transfer station for their own business reasons. At that point, counsel for the Solid Waste Agency of Lake County (“SWALCO”), another participant in the siting hearing, noted that VRLP had failed to disclose that it was a co-applicant with Groot. (C03220-03221; 09/25/13 Hearing Transcript-2 at 104-105) None of the Respondents had disclosed prior to that time that VRLP was proceeding jointly with Groot – in effect as an undisclosed co-applicant for siting of the transfer station.

VRLP’s complicity with Groot reached its zenith with Kleszynski’s report and testimony. Kleszynski’s report (C02437-C02456) and testimony were in lockstep support of Groot’s siting application. Kleszynski nevertheless admitted that the various operative provisions of the Uniform Standards of Professional Appraisal Practice (“USPAP”) governed his activities in this case:

Q. And you're aware that under that Code of Ethics, an appraiser must not advocate the cause or interest of any party or issue, correct?

A. I am absolutely aware of that part of the Code of Ethics, as well as the Uniform Standards.

Q. You're also aware then that an appraiser must not accept an assignment that includes the reporting of predetermined opinions and conclusions, correct?

A. That is absolutely correct. But that is part of both of the Code of Ethics as well as USPAP.

Q. A couple of more that I think we're going to agree on. You're also aware that an appraiser must not misrepresent his or her role when providing valuation services that are outside of appraisal practice, correct?

A. We would agree on that also.

Q. Here's another one, an appraiser must not communicate assignment results with the intent to mislead or to defraud, correct?

A. That would also be true.

Q. And then finally, an appraiser must not use or communicate a report that is known by the appraiser to be misleading or fraudulent, correct?

A. That is also true.

(C3742.064-C3742.05; 10/02/13 Hearing Transcript-1 at 64-65)

Kleszynski agreed that it was a violation of the USPAP code of ethics for him to advocate any particular position. Because of that preclusion, Kleszynski sought to misrepresent the fact that he had been directed by VRLP, as the undisclosed co-applicant acting through Sechen, to generate an "independent" statement supporting Groot's position. Despite his claim that he "volunteered" an opinion (C3742.067; 10/02/13 Hearing Transcript-1 at 67), Kleszynski's report in fact confirmed that he was asked to render a separate opinion by his client, and that his report is "specific to the needs of the client", VRLP. (C3742.070-C3742.074; 10/02/13 Hearing Transcript-1 at 70-74) Sechen never told Kleszynski that the contents of his report were inconsistent with VRLP's needs. (C3742.087; 10/02/13 Hearing Transcript-1 at 87) On the contrary, Kleszynski was given an assignment in this case, and Sechen, on behalf of VRLP, communicated that assignment to Kleszynski. (C3742.108; 10/02/13 Hearing Transcript-1 at 108)

The foregoing facts amply demonstrate why VRLP is so anxious to avoid discovery related to its collusion with Groot. APC, through Kleszynski and at Sechen's

direction, was an integral part of VRLP's joint effort with Groot. The information sought in the subpoena at issue related directly to the scope, nature and extent of Kleszynski's role in, and knowledge of, that effort.

IV. CONCLUSION

For all of the foregoing reasons, VRLP's "appeal" should be denied.

Respectfully submitted,
Timber Creek Homes, Inc.

By: _____
One of its attorneys

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a copy of PETITIONER'S RESPONSE TO VILLAGE OF ROUND LAKE PARK'S MOTION TO MAKE SPECIFIC to be served on the following, via electronic mail transmission, on this 20th day of March, 2014:

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Michael S. Blazer
One of the attorneys for
Petitioner

EXHIBIT A

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MAR 04 2014

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD

March 4, 2014

TIMBER CREEK HOMES, INC.,)
)
 Petitioner,)
)
 v.)
)
 VILLAGE OF ROUND LAKE PARK,)
 ROUND LAKE PARK VILLAGE BOARD)
 and GROOT INDUSTRIES, INC.,)
)
 Respondents.)
)



PCB 14-99
 (Pollution Control Facility
 Siting Appeal)

HEARING OFFICER ORDER

On February 18, 2014, respondent Village of Round Lake Park (Village) filed a motion to quash Timber Creek Homes, Inc. (TCH) subpoena *duces tecum* . (Mot.) On February 19, 2014, TCH filed its response (Resp.). On February 24, 2014, the Village filed its reply.

In summary, the subpoena requests documents related to Dale Kleszynski, an expert in the field of real estate appraisal retained by the Village for the siting hearing. Mr. Kleszynski is a principal and employee of Associated Property Counselors, Inc. (APC). The subpoena also seeks any communications with the Village and Groot Industries, Inc. (Groot), and several of Groot's retained siting witnesses. Mot. at para. 6¹; Resp. at 2.

Village's Motion To Quash Subpoena

In a nutshell, the Village makes a blanket objection and argues that the subpoena is overly broad and "outside the scope of these proceedings". Mot. at para. 2, 5, 11. In support, the Village cites to Section 40.1(b) of the Environmental Protection Act (Act) and states that this appeal hearing must "be based exclusively on the record before the county board or the governing body of the municipality". *Id.* The Village also argues that this appeal is void of any facts that would support TCH's fundamental fairness allegation and therefore the subpoena goes beyond the scope of these proceedings as contemplated by Section 40.1 of the Act. *Id.* at para. 11.

¹ The Village neglected to paginate its motion. Citation to paragraph is required.

Finally, the Village argues that because TCH did not properly raise the fundamental fairness issue at the local siting hearing it would be improper to raise it in this proceeding. *Id.* at para. 12.

TCH's Response

Citing case law, TCH argues that when an issue of fundamental fairness is alleged, as is here, evidence may be introduced where the evidence necessarily lies outside the record. Resp. at 1.

In support of its argument that the information sought may lead to relevant information, TCH alleges that the Village failed to disclose that it was a co-applicant with Groot. TCH further alleges that appraiser Dale Kleszynski, an employee of APC, violated provisions of the Uniform Standards of Professional Appraisal Practice (USPAP) by failing to generate an independent statement and instead generated a report that was "in lockstep support of Groot's siting application". Resp. at 3. TCH argues "[t]hat the information sought in the subpoena at issue relates directly to the scope, nature and extent of Kleszynski's role in, and knowledge of, that effort". *Id.*

Finally, TCH states that the fundamental fairness issue was indeed raised at the local siting hearing and therefore not waived. Resp. at 4, 5.

Village's Reply

The Village again, citing to Section 40.1 of the Act, argues, *inter alia*, that "the Legislature did not intend to allow time consuming fishing expeditions". Reply at 5. The Village states that "TCH is not entitled to any of what it seeks in its subpoena *duces tecum*". Reply at 1. The Village further argues that some of the documents TCH seeks would include attorney-client material or involve work product. Reply at 2.

Discussion And Ruling

On January 23, 2014, the Board accepted TCH's petition for review that alleged the Village's procedures were fundamentally unfair and the decision was against the manifest weight of the evidence. Timber Creek Homes, Inc. v. Village of Round Lake Park, Round Lake Park Village Board and Groot Industries, Inc., PCB 14-99 (Jan. 23, 2014).²

The purpose of discovery is to uncover all relevant information and information calculated to lead to relevant information. See 35 Ill. Adm. Code 101.616(a). On appeal of a municipality's decision to grant or deny a siting application, the Board generally confines itself to the record developed by the municipality. 415 ILCS 5/40.1 (b) (2012). However, the Board will hear new evidence relevant to the fundamental fairness of the proceedings where such evidence lies outside the record, including pre-filing contacts. See Land and Lakes Co. v. PCB, 319 Ill. App. 3d 41, 48, 743 N.E.2d 188, 194 (3d Dist. 2000). Pre-filing contacts may be probative of

² The respondents' respective motions to strike and dismiss are pending before the Board.

prejudgment of adjudicative facts, which is an element to be considered in assessing a fundamental fairness allegation. American Bottom Conservancy (ABC) v. Village of Fairmont City, PCB 00-200, slip op. at 6 (Oct. 19, 2000). Further, the courts have indicated that fundamental fairness refers to the principles of adjudicative due process and a conflict of interest itself could be a disqualifying factor in a local siting proceeding if the bias violates standards of adjudicative due process. E & E Hauling v. PCB, 116 Ill. App. 3d 586, 596, 451 N.E.2d 555, 564 (2d Dist. 1983), *aff'd* 107 Ill. 2d 33, 481 N.E.2d 664 (1985). The manner in which the hearing is conducted, the opportunity to be heard, whether ex parte contacts existed, prejudgment of adjudicative facts, and the introduction of evidence are important, but not rigid, elements in assessing fundamental fairness. Hediger v. D & L Landfill, Inc., PCB 90-163, slip op. at 5 (Dec. 20, 1990).

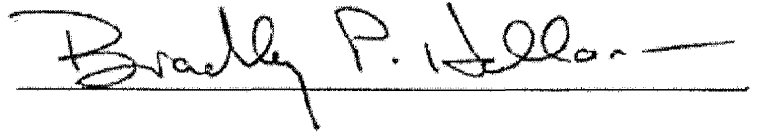
Conclusion

TCH has alleged that the local siting proceedings were fundamentally unfair when the Village failed to disclose that it was a co-applicant with Groot and that the retained appraiser failed to generate an independent review as required by the USPAP. At this time, I find that TCH's subpoena seeking information that lies outside the record might be relevant information or information calculated to lead to relevant information. The Village's motion to quash, with its blanket objection, is denied.

Procedural rules provide that parties may seek Board review of discovery rulings pursuant to 35 Ill. Adm. Code 101.616 (e). The parties are reminded that the filing of any such appeal of a hearing officer order does not stay the proceeding. In statutory decision deadline cases, such as at bar, the hearing officer must manage the case to insure that discovery, hearing and briefing schedules allow for Board deliberation and a timely decision of the case as a whole.

For all of these reasons, the Village's motion to quash is denied in its entirety.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Bradley P. Halloran" with a horizontal line underneath it.

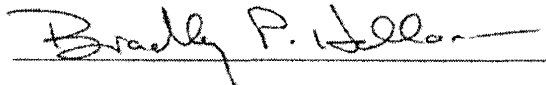
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CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, on March 4, 2014, to each of the persons on the service list below.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on March 4, 2014:

John T. Therriault
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Ste. 11-500
Chicago, Illinois 60601

A handwritten signature in black ink, reading "Bradley P. Halloran", is written over a horizontal line.

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
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EXHIBIT B

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FEB 04 2014

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD
February 4, 2014

TIMBER CREEK HOMES, INC.,)	
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 ORIGINAL

HEARING OFFICER ORDER

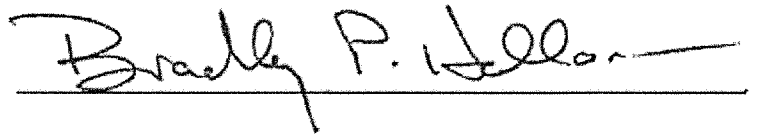
On February 3, 2014, the parties submitted an agreed and proposed discovery schedule based on a June 2, 2014 hearing. The discovery schedule is accepted to the extent as follows.

All written discovery must be served on or before February 14, 2014. All responses to written discovery must be served on or before March 15, 2014. All discovery, including depositions, must be completed on or before May 9, 2014. All prehearing motions, including motions *in limine*, must be filed on or before May 12, 2014. All responses to prehearing motions must be filed on or before 12:00 p.m. on May 15, 2014. The mailbox rule does not apply.

The parties also agreed to a post-hearing briefing schedule. Assuming the transcript will be filed on or before June 12, 2014, the petitioner's brief is due to be filed on or before June 23, 2014. The respondents' response briefs are due to be filed on or before July 3, 2014. The petitioner's reply is due to be filed on or before July 10, 2014. The mailbox rule does not apply. The record closes on July 10, 2014.

The parties or their legal representatives are directed to appear at a telephonic status conference with the hearing officer on February 11, 2014, at 9:30 a.m. The telephonic status conference must be initiated by the petitioner, but each party is nonetheless responsible for its own appearance. At the conference, the parties must be prepared to discuss the status of the above-captioned matter and their readiness for hearing.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Bradley P. Halloran". The signature is written in a cursive style and is positioned above a solid horizontal line.

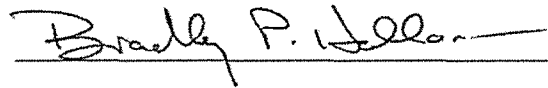
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PCB 2014-099
Village of Round Lake Park
203 E. Lake Shore Drive
Round Lake Park, IL 60073

EXHIBIT C

Before the Illinois Pollution Control Board

TIMBER CREEK HOMES, INC.,)	
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Petitioner)	
)	
v.)	No. PCB 2014-099
)	
VILLAGE OF ROUND LAKE PARK, ROUND)	(Pollution Control Facility Siting Appeal)
LAKE PARK VILLAGE BOARD and GROOT)	
INDUSTRIES, INC.,)	
)	
Respondents)	

SUBPOENA DUCES TECUM

TO: Associated Property Counselors, Ltd.
c/o Dale J. Kleszynski
15028 S. Cicero, Unit L
Oak Forest, IL. 60452

Pursuant to Section 5(e) of the Environmental Protection Act (415 ILCS 5/5(e) (2006)) and 35 Ill. Adm. Code 101, Subpart F, you are ordered to produce the documents designated below in connection with the above-captioned matter at 10:00 a.m. on March 12, 2014 at Jeep & Blazer, LLC, 24 N. Hillside Avenue, Suite A, Hillside, IL 60162.

DOCUMENTS TO BE PRODUCED

1. All documents relating to or reflecting the retention of Dale Kleszynski ("Kleszynski") and Associated Property Counselors, Ltd. ("APC") by or on behalf of the Village of Round Lake Park, Illinois ("VRLP"), in connection with the proposed Groot Industries, Inc. Lake Transfer Station, including, but not limited to, all documents relating to or reflecting the scope of Kleszynski's and APC's retention.

2. All documents relating to or reflecting all services performed by Kleszynski and ATC from the date of their retention by or on behalf of VRLP to the present, including, but not limited to, all invoices or statements for services rendered.

3. All documents relating to or reflecting all meetings and communications between anyone acting or purporting to act on behalf of VRLP, including all of VRLP's present and former agents, employees, appointed officials, elected officials and attorneys on the one hand, and all present and former shareholders, directors, officers, agents, employees, and attorneys of APC and Kleszynski on the other hand, from the date of APC's and Kleszynski's retention by or on behalf of VRLP to the present.

4. All documents relating to or reflecting all meetings and communications between anyone acting or purporting to act on behalf of Groot Industries, Inc. ("Groot"), including all of Groot's present and former shareholders, directors, officers, agents, employees, attorneys, and consultants on the one hand, and all present and former shareholders, directors, officers, agents, employees, and attorneys of APC and Kleszynski on the other hand, from the date of APC's and Kleszynski's retention by or on behalf of VRLP to the present.

5. All documents relating to or reflecting all meetings and communications between anyone acting or purporting to act on behalf of Chicago Bridge & Iron Company ("CBI"), including all of CBI's present and former shareholders, directors, officers, agents, employees, attorneys, and consultants on the one hand, and all present and former shareholders, directors, officers, agents, employees, and attorneys of APC and Kleszynski on the other hand, from the date of APC's and Kleszynski's retention by or on behalf of VRLP to the present.

6. All documents relating to or reflecting all meetings and communications between anyone acting or purporting to act on behalf of The Shaw Group and/or Shaw Environmental, Inc. ("Shaw"), including all of Shaw's present and former shareholders, directors, officers, agents, employees, attorneys, and consultants on the one hand, and all present and former shareholders, directors, officers, agents, employees, and attorneys of APC and Kleszynski on the

other hand, from the date of APC's and Kleszynski's retention by or on behalf of VRLP to the present.

7. All documents relating to or reflecting all meetings and communications between anyone acting or purporting to act on behalf of Poletti and Associates, Inc. ("Poletti"), including all of Poletti's present and former shareholders, directors, officers, agents, employees, attorneys, and consultants on the one hand, and all present and former shareholders, directors, officers, agents, employees, and attorneys of APC and Kleszynski on the other hand, from the date of APC's and Kleszynski's retention by or on behalf of VRLP to the present.

8. All documents relating to or reflecting all meetings and communications between anyone acting or purporting to act on behalf of The Lannert Group ("Lannert"), including all of Lannert's present and former shareholders, directors, officers, agents, employees, attorneys, and consultants on the one hand, and all present and former shareholders, directors, officers, agents, employees, and attorneys of APC and Kleszynski on the other hand, from the date of APC's and Kleszynski's retention by or on behalf of VRLP to the present.

For purposes of this Subpoena, "documents" shall include all written material or other tangible medium of reproduction of every kind or description, however produced or reproduced, including, without limitation, correspondence, notes, memoranda, recordings, photographs, letters, financial statements, tax returns, bank account statements, specifications, inspection reports, blueprints, drawings, diagrams, charts, summaries, computer printouts, computer or other digital data, microfilm, microfiche, records of oral conversations, diaries, calendars, field reports, logs, minutes, meetings, analyses, projections, work papers, tape recordings, films, video tapes, models, statistical statements, graphs, laboratory and engineering reports and notebooks, plans, minutes or records of meetings, minutes or records of conferences, lists of persons

attending meetings or conferences, reports and/or summaries of investigations, opinions, or reports of consultants, appraisals, evaluations, records, contracts, agreements, leases, invoices, receipts, preliminary drafts, however denominated, by whomever prepared, to whomever addressed, which are in possession of the respondent as defined herein. Further, "documents" includes any copies of documents which are not identical duplicates of originals, including, but not limited to, all drafts of whatever date and copies with typed or handwritten notations, and any other form of reporting, storing, maintaining or indexing such information, including, without limitation, electronic storage, computer storage, shorthand notes, diagrams, magnetic cards and other forms of storage.

Failure to comply with this subpoena will subject you to sanctions under 35 Ill. Adm. Code 101.622(g) and 101.802.

ENTER:



John T. Therriault, Assistant Clerk
Pollution Control Board

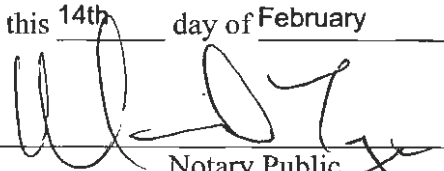
Date: February 11, 2014

I served this subpoena duces tecum by handing a copy to Dale J. Keszynski
on February 13, 2014.



Gary McDaniels

Subscribed and sworn to before me this 14th day of February,
2014.



Notary Public