

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 February 26, 2014, there was filed electronically Respondent, GROOT INDUSTRIES, INC'S OBJECTIONS TO PETITIONER'S DISCOVERY REQUESTS, a copy of which is hereby attached and served upon you.

Dated: February 26, 2014 Respectfully submitted,

On behalf of GROOT INDUSTRIES, INC.

/s/ Richard S. Porter

Richard S. Porter
One of Its Attorneys

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Petitioner,)	
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**GROOT INDUSTRIES, INC.'S OBJECTIONS TO
PETITIONER'S DISCOVERY REQUESTS**

NOW COMES the Respondent, Groot Industries, Inc. ("Groot"), and sets forth the following objections to Petitioner's First Request for Production of Documents and First Set of Interrogatories to Groot:

I. OBJECTIONS TO REQUESTS FOR PRODUCTION

With respect to Petitioner's First Request for Production of Documents ("RFPs"), Groot objects to each of the Requests because they are overbroad and because they seek information that is neither relevant nor calculated to lead to relevant information. 35 Ill. Admin. Code § 101.616(a). Petitioner is not entitled to discovery on the criteria because the PCB's review is limited to the record before the Village Board pursuant to Section 40.1 of the Environmental Protection Act. Petitioner further waived its claim regarding fundamental fairness by not raising it in the underlying proceeding. Therefore, Petitioner is not entitled to discovery at all in this proceeding.

If the PCB nonetheless determines that Petitioner should be permitted some discovery, then it should be extremely narrow in scope and limited solely to fundamental fairness. All of Petitioner's Requests, except Request No. 15, seek "[a]ll documents relating to or reflecting all

meetings, conversations, communications and contacts between" Groot or Groot representatives¹ and the Village of Round Lake Park (the "Village") or the Round Lake Park Village Board ("Village Board"). These requests are not limited to the proposed transfer station that is the subject of this proceeding.² Request No. 15 is also extremely broad, although it is confined to the subject of the proposed transfer station. The requests also purport to seek information for the time period between March 1, 2008, and Jun 21, 2013. Petitioner's RFPs are therefore overbroad as to subject matter and time frame.

The discovery standard under Section 101.616 is not an unlimited license to seek such a broad swath of documents. Instead, Petitioner's discovery requests must be narrowed to require the production only of *relevant* information. See *Atkinson Landfill Co. v. IEPA*, 2013 WL 633913, PCB No. 13-8, at *2 (Feb. 14, 2013) ("The scope of discovery in a permit appeal is in part 'controlled by the general issue presented'"). Groot owns, operates, or has permits for several other facilities in the area of the Village, including a truck maintenance facility, a container storage area, and a proposed Clean Construction and Demolition Debris site. These facilities may have been, and likely were, the subject of communications between Groot or its representatives, and the Village or Village Board. However, documents related to those facilities and sites are not in any way relevant to TCH's appeal in this transfer station matter, regardless of how broadly one interprets the vague Petition. Groot therefore respectfully requests that discovery be limited to documents related to Petitioner's fundamental fairness allegations regarding the transfer station at Round Lake Park, as further described below.

¹ Request Nos. 7 through 12 seek communications with Groot's consultants.

² Petitioner's Petition for Review is so vague and generalized that it is impossible to determine the specific subject of Petitioner's appeal. It is likewise impossible to determine whether Petitioner's Requests will lead to relevant information, because the parties have not been sufficiently apprised of the subject of Petitioner's appeal such that they may discern what is relevant. Petitioner should not be permitted to conduct a fishing expedition in the guise of discovery in this appeal. For this reason, Petitioner's Requests should be read narrowly.

Petitioner's RFPs are also overbroad because they are not even purportedly limited to the issues raised in Petitioner's appeal. Petitioner is not entitled to all documents that are in any way related to the proposed transfer station. Instead, Petitioner must narrow its requests to seek only *relevant* information, the contours of which are set by subjects raised in the Petition.³ Petitioner alleges that the siting procedures were fundamentally unfair and that the Village Board's decision was against the manifest weight of the evidence with respect to criteria i, ii, iii, vi, and viii. However, as noted in Groot's Motion to Dismiss, Petitioner did not raise its fundamental fairness arguments in the underlying proceeding, and has therefore waived them. *Fox Moraine LLC v. United City of Yorkville*, 2011 IL App (2d) 100017, at ¶ 60 (2d Dist. 2011) Therefore, the only claims that might arguably be permitted to proceed are those regarding the siting criteria. And because review is limited to the record before the Village Board, Petitioner is not, as a matter of law, entitled to discovery regarding the siting criteria. 415 ILCS 5/40.1 (permitting a hearing upon a third party appeal of a grant of siting approval, provided that such hearing is "to be based *exclusively* on the record before [the] county board or the governing body of the municipality") (emphasis added); *Fox Moraine, LLC v. United City of Yorkville*, 2011 IL App (2d) 100017 (2d Dist. 2011).

Even if the PCB were to allow discovery on Petitioner's waived claim of fundamental fairness, Petitioner's RFPs are significantly overbroad with respect to the time frame for which they seek information. Petitioners seek information from March 1, 2008, to the date of the filing of the siting application. Information related to the time frame prior to the filing of the application, much less information that is almost six years old, is simply not relevant to the present proceeding. As a matter of law, contacts between the Village or Village Board and Groot

³ As noted in Groot's Motion to Dismiss, Petitioner's Petition is so vague and broad that it is impossible to know what might be relevant to Petitioner's claims.

or its representatives prior to the filing of the siting application are not improper *ex parte* contacts. *Stop the Mega-Dump v. County Board*, 2011 WL 986687, PCB 10-103 (Mar. 17, 2011) (stating that contacts that occurred prior to the filing of the application "were permissible under prior Board precedent" and "were not, by definition, *ex parte* contacts"). Pre-filing contacts, if such occurred, are generally allowable under Board precedent and are not an appropriate basis for finding that a proceeding was fundamentally unfair. *Id.* at *38, 40 (noting that in the absence of evidence of pre-filing collusion between the applicant and the decision maker, pre-filing contacts are not relevant to the fundamental fairness inquiry).

Petitioner has not pled collusion, or indeed any specific allegation regarding fundamental fairness. Therefore, Petitioner should not be permitted to obtain documents that pre-date the filing of the application at all, much less documents that pre-date the filing by almost six years. Indeed, because of the absence of any specific allegations regarding Petitioner's claim of fundamental fairness, Groot cannot determine what may actually be relevant to Petitioner's claims. Relevance is dictated by the pleadings, which in this case are so broad, vague, and ambiguous that it is impossible to discern what the subject matter of Petitioner's claims actually is. Petitioner is simply not entitled to obtain every document that might in any way related to the proposed transfer station by virtue of its inartfully pled Petition. Groot respectfully requests that Petitioner's Requests be denied in their entirety, or, in the alternative, narrowed to the time-frame after the application was filed.

II. OBJECTIONS TO INTERROGATORIES

In much the same manner as its RFPs, Petitioner's Interrogatories to Groot are overbroad and irrelevant, and Groot objects to the same. Specifically, Groot objects to each of the Interrogatories, as they request the identification of communications, meetings, conversations,

and/or contacts between Groot or its representatives and the Village or Village Board for the period between March 1, 2008, through June 21, 2013.

For Interrogatories 1 through 3, Groot objects to these on the basis that they seek information regarding pre-filing contacts. As discussed above, contacts occurring prior to the filing of the application are not relevant to Petitioner's allegations that the Village Board's decision was against the manifest weight of the evidence with respect to several siting criteria. The PCB's review is instead limited to the record before the Village Board. Because Petitioner did not raise its fundamental fairness claim below, it should not now be permitted to conduct discovery on the issue. Further, even if the PCB does permit discovery regarding Petitioner's fundamental fairness claim, pre-filing contacts are not relevant to such claim, for the reasons set forth above. These Interrogatories should therefore be limited to the time frame after the application was filed.

Interrogatories 4 through 9 are not even limited to the subject of the transfer station at issue in Petitioner's appeal, much less to any of the siting criteria Petitioner claims were not met. As discussed above, Groot owns and operates several facilities that might have been the subject of such contacts during the identified time frame. To the extent that these Interrogatories seek information regarding facilities other than the proposed transfer station at issue in this matter, Groot objects to such Interrogatories. Petitioner's Interrogatories should be limited to information related to the proposed transfer station. Further, the time frame identified by Petitioners is overbroad and irrelevant, as is discussed above. Therefore, Groot objects to these Interrogatories on the basis that they seek information prior to the filing of the siting application and/or not related to the subject of Petitioner's appeal.

WHEREFORE, Respondent Groot Industries Inc. respectfully requests that the Pollution Control Board enter an order limiting discovery as set forth herein.

Dated: February 26, 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 **February 26, 2014**, a copy of the foregoing **Notice of Filing and Respondent Groot Industries, Inc.'s Objections to Petitioner's Discovery Requests** was served upon the following:

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