

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 8, 2014, there was filed electronically Respondent, GROOT INDUSTRIES, INC.'S 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 8, 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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**GROOT INDUSTRIES, INC.'S 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 be affirmed. In support thereof, Groot states as follows:

**I. BACKGROUND**

The Hearing Officer in this proceeding ruled on March 20, 2014 that the Petitioner was limited to pre-filing discovery as of the date a certain expert (Mr. Dale Kleszynski) was hired by the Village of Round Lake Park ("Village"), and that the Petitioner was not entitled to discovery prior to that date. *See* Hearing Officer Order (March 20, 2014) (hereinafter, "Discovery Order"). The Petitioner appealed the Discovery Order to the PCB, and, on April 3, 2014, the PCB issued an order that clearly and unequivocally affirmed the Discovery Order. PCB Order (April 3, 2014) (hereinafter, "PCB Order"). However, on April 7, 2014, the Hearing Officer issued a follow up order interpreting the PCB Order and effectively re-opening the pre-filing discovery allowed by Petitioner. *See* Hearing Officer Order (April 7, 2014) (hereinafter, April 7 Order).

The Hearing Officer was concerned about one sentence contained in the Board Order of April 3, 2014.

The PCB's unanimous Order involved several pages of reasoning to confirm that any pre-filing discovery before the date of the retention of Mr. Kleszynski was irrelevant, overburdensome and not likely to lead to admissible evidence. However, the Board included one sentence in its order which is somewhat vague and is the basis for the Hearing Officer's April 7 Order. Specifically, that Petitioner "may continue discovery, as allowed by the Hearing Officer, concerning documents provided during discovery." (April 3, 2014 IPCB Order, page 4). Unfortunately the Hearing Officer felt obligated to change the time frame of the discovery to be allowed of documents and communications before the landfill siting Application was filed based on his interpretation of this one sentence. Due to this sentence the Hearing Officer on April 7 issued an Order that states:

I interpret the Board's ruling that the parties may proceed with discovery that is the subject of TCH's Request to Admit. I therefore orally ruled during the telephonic status conference on April 3, 2014 that TCH may pursue discovery regarding entries reflected in the Village Board's minutes that was the subject of TCH's Request to Admit as those documents were provided or gained during the course of discovery. The discovery, however, must only pertain to the waste transfer station that is the subject of the above-captioned appeal. Further, any discovery request is limited to relevant information and information calculated to lead to relevant information, excluding any privileged information.

April 7 Order at 2.

The Hearing Officer's interpretation of the one sentence as opening the door to discovery back to 2008 (when the meeting minutes commence) is not consistent with the vast remainder of the Board Order that discovery commences when Mr. Kleszynski was hired.<sup>1</sup> Therefore, the April 7 Hearing Officer Order should be overturned and the April 3, 2014 PCB Order affirmed.

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<sup>1</sup> Kleszynski was retained June 20, 2013.

## II. DISCUSSION

The Hearing Officer's April 7 Order misinterprets the PCB Order and should be reversed. The Discovery Order originally limited discovery from "the date Mr. Kleszynski [Respondent's expert witness] was retained by the Village to December 12, 2013." Discovery Order at 5. The Discovery Order was clear and in all respects affirmed by the PCB. The PCB stated that, "[i]n choosing a date for limiting discovery, the Hearing Officer determined that the date that Mr. Kleszynski was retained was appropriate. The Hearing Officer was not willing to allow TCH to seek discovery of material from prior siting decisions. *The Board agrees with the Hearing Officer.*" PCB Order at 3.

Further, the PCB stated that it "is *unconvinced that information concerning prior activities of the Village, Village Board and Groot in prior siting decisions* is relevant." *Id.* at 4 (emphasis added). The PCB specifically took note of certain meeting minutes attached to Petitioner's Requests to Admit, some of which dated back to 2008, and Petitioner's argument that these meeting minutes should frame the scope of discovery because they somehow reveal a scheme of collusion. The PCB was unimpressed with this argument, and stated that it is "not persuaded that those materials [i.e., 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." *Id.*

The PCB has therefore already addressed, and rejected, Petitioner's argument that the meeting minutes should give rise to discovery on subjects covered in those minutes. The PCB was not convinced that Petitioner's arguments merited allowing discovery outside the bounds originally set by the Hearing Officer. Instead, the PCB affirmed unequivocally that the Petitioner is not entitled to discovery of subjects and documents prior to the date of Mr. Kleszynski's hiring.

The Hearing Officer's interpretation that Petitioner is somehow entitled by this one sentence of the PCB Order to additional pre-filing discovery is simply not supported by the plain language of that Order, nor by the specific sentence interpreted by the Hearing Officer as requiring such discovery. The PCB stated in its order that the Petitioner "may continue discovery, *as allowed by the Hearing Officer*, concerning documents provided during discovery." *Id.* (emphasis added). This sentence cannot logically be read to open the door to additional pre-filing discovery based on the meeting minutes because the Hearing Officer explicitly ruled on March 20, 2014 that only discovery commencing on the date of Mr. Kleszynski's hiring (June 20, 2013) would be allowed. The sentence was not intended to compel the Hearing Officer to revoke his March 20 ruling. To the contrary, the Order explicitly affirmed that ruling.

The most logical reading of the sentence in the context of the surrounding discussion is that Petitioner may conduct additional discovery on the documents, which are allowed in discovery by the Hearing Officer, which are only documents dated after Kleszynski was hired. The sentence in question simply acknowledges that the Hearing Officer has discretion under the PCB rules to control depositions and other discovery *as bounded by the Discovery Order*. Further, the meeting minutes were produced by the Petitioner before the March 20, 2014 Discovery Order was issued. Those documents were not produced during discovery by the Respondents. The Petitioner merely attached those irrelevant minutes to a request to admit to the Village. Those documents which were in the possession of the Petitioner before the March 20, 2014 Discovery Order should not open the door to discovery before Mr. Kleszynski's hiring. If the Petitioner had attached a copy of a publication from the Civil War would discovery then be allowed on the Civil War? Clearly not, as such is irrelevant to the siting application of 2013.

The PCB explicitly held that earlier activities in earlier siting decisions were not relevant to *this* proceeding – specifically taking into account the meeting minutes relied on by Petitioner. Then, immediately after the sentence in question, the PCB stated that "the Hearing Officer correctly limited the scope of discovery in the March 20, 2014 Hearing Officer order and sustains the Hearing Officer's decision." *Id.* It was obviously not the intent of the PCB to spend four pages issuing a ruling to disallow all discovery before the date of Kleszynski's hiring and then vacate its own ruling with a vague reference contained in one sentence. The parties need to be able to rely upon the orders of the PCB and the April 3, 2014 Order clearly and unanimously affirmed the Hearing Officer's March 20, 2014 Order and held that "in limiting discovery, the Hearing Officer determined that the date that Mr. Kleszynski was retained was appropriate". The PCB should again affirm its Order and limit discovery to the documents, records and communications which occurred only after Mr. Kleszynski was hired.

### **III. CONCLUSION**

The PCB specifically considered whether the meeting minutes should give rise to additional pre-filing discovery and was unconvinced that those documents should open the door to additional discovery. The Hearing Officer's misinterpretation of a single sentence in the PCB Order is directly contrary to the PCB's conclusion that the meeting minutes do not support Petitioner's arguments for any more pre-filing discovery. The April 7 Order is not supported by the PCB Order 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 8, 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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**AFFIDAVIT OF SERVICE**

STATE OF ILLINOIS            )  
  ) SS  
COUNTY OF WINNEBAGO    )

The undersigned certifies that on **April 8, 2014**, a copy of the foregoing **Notice of Filing Groot Industries, Inc.'s Motion For Expedited Review of Hearing Officer Order of April 7, 2014** was served upon the following:

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