

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 MOTION FOR EXPEDITED REVIEW OF
HEARING OFFICER ORDER**

Now comes Petitioner, Timber Creek Homes, Inc. ("TCH"), by its attorneys, Jeep & Blazer, LLC, and hereby submits its Response to the Motion for Expedited Review of Hearing Officer Halloran's April 7, 2014 Discovery Order filed by Respondent Groot Industries, Inc. ("Groot").

I. INTRODUCTION

This case has been punctuated by Groot's ongoing efforts to avoid producing information relating to the vast number of pre-filing contacts between Groot and the other Respondents. In his April 7 Order, Hearing Officer Halloran limited the discovery to which TCH is entitled to information relating to the subject transfer station, and not to other facilities and other siting proceedings.¹ Now, despite the extensive evidence already in the record reflecting pre-filing collusion regarding the subject transfer station, spanning several years, Groot still wants to produce nothing.

In the first instance, Groot's Motion is procedurally defective. Section 101.512(a) of the Board's procedural rules, 35 Ill.Adm.Code 101.512(a), specifically requires that a motion for

¹ TCH respectfully disagrees with the Hearing Officer's limitation, since the evidence adduced to date demonstrates that Respondents' collusive scheme, which began some time in 2008, encompassed three Groot facilities to be approved, built and operated in the Village of Round Lake Park – a truck terminal/maintenance facility, a construction and demolition debris recycling facility, and the subject waste transfer station. Nevertheless, this Response focuses on the propriety of the discovery that the Hearing Officer did allow.

expedited review “contain a complete statement of the facts and reasons for the request and must be accompanied by an oath or affirmation attesting that the facts cited are true”. Groot has provided no such oath or affirmation.

Nevertheless, Groot has refused to agree to extend the decision deadline in this matter. This has resulted in an expedited discovery schedule – now even more compressed because Groot has persistently failed to respond to discovery. It is therefore important that the issue raised by Groot’s Motion be addressed so that discovery can finally proceed, and TCH’s rights to a full and fair hearing will not be prejudiced beyond what has already occurred. As will be discussed below, Groot’s Motion ignores both the facts and the rules of discovery applicable to Board proceedings.

ii. **THE HEARING OFFICER PROPERLY CONSIDERED THE FACTS, THE LAW, AND THIS BOARD’S RULING IN ALLOWING DISCOVERY REGARDING RESPONDENTS’ PRE-FILING CONTACTS**

The broad scope of discovery allowed in Board proceedings is set forth 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.

There are also well-settled principles regarding the scope of review specifically applicable to siting appeals. “Hearings before the PCB are based exclusively on the record before the [siting authority], **except that evidence may be introduced on the fundamental fairness of the [siting authority’s] siting procedures where the evidence necessarily is outside the record.** [Emphasis added]” *Stop the Mega-Dump v. County Board of De Kalb County*, 2012 IL

App (2d) 110579, ¶11 (2012), citing *Land & Lakes Co. v. Pollution Control Board*, 319 Ill.App.3d 41, 48 (3rd Dist. 2000)

The Board recognized these well-settled principles in its April 3 Order denying TCH's Motion for Expedited Review:

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). 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 (2nd 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).

Timber Creek Homes, Inc. v. Village of Round Lake Park, et al, 2014 WL 1350986, PCB 2014-099, Slip Op. Cite at 3 (April 3, 2014)

Hearing Officer Halloran then exercised his authority under 35 Ill.Adm.Code 101.616(b) "to order discovery or to deny requests for discovery". With the above principles clearly in mind, Hearing Officer Halloran's April 7 Order focuses on two specific rulings in the Board's April 3 Order:

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. Discovery is intended to uncover all relevant information and information calculated to lead to relevant information. 35 Ill. Adm. Code 101.616(a). The Board is unconvinced that information concerning prior activities of the Village, Village Board and Groot **in prior siting proceedings** is relevant.

The Board notes that TCH may continue discovery, **as allowed by the hearing officer**, concerning documents provided during discovery. [Emphasis added]

Id. at 3-4

Regarding “documents provided during discovery”, Hearing Officer Halloran noted in his April 7 Order that:

Regarding the documents that have been provided during discovery thus far includes the documents TCH served on the Village and the [Round] Lake Park Village Board (Village Board), entitled Request to Admit Facts and Genuineness of Documents with attached exhibits of certain Village Board's meeting minutes dating back to April 15, 2008. On March 13, 2014, the Village Board responded admitting to each of TCH's Requests to Admit. On March 31, 2014, the Village responded and adopted the answers put forth by the Village Board.

(April 7 Order at 1) The subject meeting minutes reflect that Respondents’ collusive scheme regarding the subject transfer station began some time in 2008. More specifically, the meeting minutes demonstrate, among other things, the following:

- a. Some time prior to September 2, 2008, Jean McCue (“McCue”), the Village of Round Lake Park’s (“VRLP”) then Mayor and a current member of VRLP’s Board (the “Village Board”), met with Groot, "who is interested in putting a transfer station in our town". (September 2, 2008 Village Board Meeting Minutes, Request to Admit ¶2)
- b. On September 16, 2008, Groot made a presentation to the Village Board regarding "putting in a transfer station in Round Lake Park." All Village Board members, including McCue, approved a vote "expressing interest for investigating further into the transfer station for the Village of Round Lake Park". Groot confirmed that it “already found a location” in VRLP. (September 2, 2008 Village Board Meeting Minutes, Request to Admit ¶3)

- c. On October 21, 2008, McCue spoke to a Groot representative requesting “an update on the transfer station”. (October 21, 2008 Village Board Meeting Minutes, Request to Admit ¶4)
- d. On August 11, 2009, Groot made another presentation to the Village Board. (August 11, 2009 Village Board Meeting Minutes, Request to Admit ¶6)
- e. McCue thereafter continued to have private, personal contacts with Groot regarding its activities in VRLP. (December 8, 2009, January 19, 2010 and February 16, 2010 Village Board Meeting Minutes, Request to Admit ¶¶9, 10, 11)
- f. On December 13, 2011, during discussions about the host agreement being negotiated with Groot, McCue asked the Village Board “if they wanted to take a tough ground and try and get more money **and take a chance on them not having a transfer station** and not having a scale for the police department, or do we want to take something which is better than nothing **and have them in the town** and deal with the next step. [Emphasis added]" (December 13, 2011 Village Board Meeting Minutes, Request to Admit ¶14)
- g. On October 9, 2012, during a discussion about negotiations for the transfer station host agreement, the Village Board acknowledged that, “In order to get things done in a timely fashion and **make this a reality by next operating season**...they don't want to push too far and end up losing everything. [Emphasis added]" (October 9, 2012 Village Board Meeting Minutes, Request to Admit ¶24)

In his April 7 ruling, Hearing Officer Halloran explained why he had at first imposed a more restrictive limitation on TCH’s discovery: “TCH did not reference the Village Board's

meeting minutes in its consolidated response to respondents' discovery objections and only first referenced them in its expedited appeal to the Board.” (April 7 Order at 1) Having now reviewed those meeting minutes, admitted by both VRLP and the Village Board, Hearing Officer Halloran ruled that:

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.

(April 7 Order at 2) However, consistent with the Board's statements in its April 3 Order regarding other “prior siting proceedings”, Hearing Officer Halloran also ruled that, “The discovery, however, must only pertain to the waste transfer station that is the subject of the above-captioned appeal.” (*Id.*)

Groot pursues several avenues in its effort to evade the evidence of its collusion and avoid both the rules of discovery and the Hearing Officer's ruling. First, Groot attempts to justify Hearing Officer Halloran's original limitation on discovery, before he had the benefit of the above meeting minutes, to the date when VRLP retained its testifying expert, Dale Kleszynski (“Kleszynski”). (Groot Motion at 1-2, 3) That would certainly be a convenient outcome for Groot, who has already tried to take advantage of that original limitation.

Groot's initial responses to TCH's Interrogatories and Request for Production are attached hereto as Exhibits A and B. Based on its assertion that VRLP retained Kleszynski on June 20, 2013, Groot limited its responses to one day, “from June 20, 2013, to June 21, 2013”. Groot used this convenient limitation as an excuse to withhold disclosure of any information regarding its pre-filing contacts with VRLP and the Village Board.

Groot next tries to expand the scope of the Board's only express limitation in its April 3 Order. Groot asserts that the limitation regarding “other siting proceedings” applies to all contacts, including those involving the subject transfer station. (Groot Motion at 3) That

limitation is inconsistent with both the Board's statement regarding "documents provided during discovery" and the Hearing Officer's recognition of the import of the meeting minutes.

Groot then attempts to reinterpret the meaning of the Board's statement that TCH "may continue discovery, as allowed by the Hearing Officer, concerning documents provided during discovery." According to Groot, "This sentence cannot logically be read to open the door to additional pre-filing discovery based on the meeting minutes." (Groot Motion at 4) This "logic" ignores one important fact – neither VRLP nor the Village Board objected to TCH's Requests to Admit, and instead admitted the accuracy and authenticity of all the meeting minutes. Although Groot disingenuously refers to the minutes as "irrelevant" (Groot Motion at 4), there is nothing "additional" about the discovery resulting from those admissions.

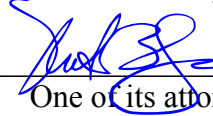
Undaunted, Groot then claims that, "The most logical reading of the sentence in the context of the surrounding discussion is that Petitioner may conduct additional discovery on the documents, which are allowed in discovery by the Hearing Officer, which are only documents dated after Kleszynski was hired." (Groot Motion at 4) That "logic" certainly makes sense in the context of Groot's effort to limit its discovery obligation to one day, and avoid disclosure of any pre-filing contacts. But that "logic" is inconsistent with the rules of discovery, with the express statements in the Hearing Officer's Order, with the evidence of pre-filing collusion already present in this case, and with TCH's right to a full and fair hearing on the merits.

III. CONCLUSION

Fundamental fairness claims are often raised, rarely proven, and routinely rejected. It is rare, however, to be presented with the depth and volume of evidence of collusion such as that already present in this case. Respondents' scheme substantially predates the filing of Groot's siting application. Groot's desire to impose an arbitrary one-day limitation on discovery, which is contrary to both the law and the facts of this case, would preclude a fair inquiry into the substance and extent of that scheme – exactly the result Groot desires. Such a limitation on discovery would result in substantial and irreparable prejudice to TCH, and an inability to obtain

a full and fair hearing before this Board. For all of the foregoing reasons, TCH requests that Groot's Motion be denied.

Respectfully submitted,
Timber Creek Homes, Inc.

By: 
One of its attorneys

Michael S. Blazer (ARDC No. 6183002)
Jeffery D. Jeep (ARDC No. 6182830)
Jeep & Blazer, LLC
24 N. Hillside Avenue, Suite A
Hillside, IL 60162
(708) 236-0830
Fax: (708) 236-0828
mblazer@enviroatty.com
jdjeep@enviroatty.com

EXHIBIT A

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

**ANSWERS TO PETITIONER'S FIRST SET OF INTERROGATORIES TO
GROOT INDUSTRIES, INC.**

Now comes Respondent, Groot Industries, Inc. ("Groot"), by and through its attorneys, HINSHAW & CULBERTSON LLP, and in answer to Petitioner, Timber Creek Homes, Inc.'s First Set of Interrogatories states as follows:

GENERAL OBJECTIONS: Groot objects to the Interrogatories, as set forth in its Objections to Petitioner's Discovery Requests, dated February 26, 2014. Groot specifically objects to these Interrogatories to the extent that they are overbroad and seek documents unrelated to the transfer station that is the subject of this proceeding. That objection was ruled upon and sustained in the Discovery Order of Hearing Officer Halloran ("Discovery Order") dated March 20, 2014. Pursuant to the Discovery Order, the time frame for which discovery could be requested by Petitioner commences on the date that Mr. Kleszynski was retained by the Village. The Village has indicated he was retained on June 20, 2013. Petitioner has limited its Interrogatories to the period ending June 21, 2013. Therefore, Groot's Answers are limited to the period from June 20, 2013, to June 21, 2013.

1. Identify all communications in verbal, written or electronic form made by Groot to any member of the Round Lake Park Village Board (the "RLP Board") relating to the subject of a waste transfer station in the Village of Round Lake Park.

ANSWER: Subject to and without waiving the objections set forth above, see attached e-mail from Peter Karlovics, attorney of RLP Board and Douglas Allen of CB&I, consultant of Groot dated June 20, 2013 and attachment thereto (Groot 000001 to 000003). See also e-mail from attorney for Groot, Charles F. Helsten, to Mr. Karlovics of the same date, attached hereto (Groot 000004 to 000005).

2. Identify all communications in verbal, written or electronic form made by or to the Village of Round Lake Park ("VRLP") relating to the subject of a waste transfer station in the Village of Round Lake Park.

ANSWER: Subject to and without waiving the objections set forth above, this interrogatory is vague and unanswerable as it fails to identify a declarant; subject to this objection and without waiving same, none for the time frame of June 20, 2013 to June 21, 2013 other than the communications identified in Answer to Interrogatory Number 1.

3. Identify all meetings, conversations, communications and contacts between Groot and any member of the RLP Board where the subject of a waste transfer station in the Village of Round Lake Park was discussed.

ANSWER: Subject to and without waiving the objections set forth above, none for the time frame of June 20, 2013 to June 21, 2013.

4. Identify all meetings, conversations, communications and contacts between any member of the RLP Board and any officer, agent, employee or representative of Groot Industries, Inc.

ANSWER: Subject to and without waiving the objections set forth above, none for the time frame of June 20, 2013 to June 21, 2013.

5. Identify all meetings, conversations, communications and contacts between any member of the RLP Board and Lee Brandsma.

ANSWER: Subject to and without waiving the objections set forth above, none for the time frame of June 20, 2013 to June 21, 2013.

6. Identify all meetings, conversations, communications and contacts between any member of the RLP Board and Larry Groot.

ANSWER: Subject to and without waiving the objections set forth above, none for the time frame of June 20, 2013 to June 21, 2013.

7. Identify all meetings, conversations, communications and contacts between any member of the RLP Board and Devin Moose.

ANSWER: Subject to and without waiving the objections set forth above, none for the time frame of June 20, 2013 to June 21, 2013.

8. Identify all meetings, conversations, communications and contacts between any member of the RLP Board and Chicago Bridge & Iron Company.

ANSWER: Subject to and without waiving the objections set forth above, see Groot 000001 to 000003 attached hereto.

9. Identify all meetings, conversations, communications and contacts between any member of the RLP Board and Shaw Environmental, Inc.

ANSWER: Subject to and without waiving the objections set forth above, see Groot 000001 to 000003 attached hereto.

Dated: March 31, 2014

Respectfully submitted,

On behalf of GROOT INDUSTRIES, INC.

/s/ Richard S. Porter

Richard S. Porter
One of Its Attorneys

Charles F. Helsten ARDC 6187258
Richard S. Porter ARDC 6209751
HINSHAW & CULBERTSON LLP
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
815-490-4900

EXHIBIT B

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

**RESPONSE TO PETITIONER'S FIRST REQUEST FOR PRODUCTION OF
DOCUMENTS FROM
GROOT INDUSTRIES, INC.**

Now comes Respondent, Groot Industries, Inc. ("Groot"), by and through its attorneys, HINSHAW & CULBERTSON LLP, and in response to Petitioner, Timber Creek Homes, Inc.'s First Request for Production of Documents states as follows:

GENERAL OBJECTIONS: Groot objects to the Requests for Production, as set forth in its Objections to Petitioner's Discovery Requests, dated February 26, 2014. Groot specifically objects to these Requests to the extent that they are overbroad and seek documents unrelated to the transfer station that is the subject of this proceeding. That objection was ruled upon and sustained in the Discovery Order of Hearing Officer Halloran ("Discovery Order") dated March 20, 2014. Pursuant to the Discovery Order, the time frame for which discovery could be requested by Petitioner commences on the date that Mr. Kleszynski was retained by the Village. The Village has indicated he was retained on June 20, 2013. Petitioner has limited its Requests for Production to the period ending June 21, 2013. Therefore, **Groot's Responses are limited to the period from June 20, 2013, to June 21, 2013.**

1. All documents relating to or reflecting all meetings, conversations, communications and contacts between Groot and the Village of Round Lake Park (“VRLP”).

RESPONSE: Subject to and without waiving the Objections set forth above, see documents attached to the Answers to Interrogatories Bate Stamped 000001 to 000005.

2. All documents relating to or reflecting all meetings, conversations, communications and contacts between Groot and any member of the Round Lake Park Village Board (the “RLP Board”).

RESPONSE: Subject to and without waiving the Objections set forth above, see documents attached to the Answers to Interrogatories Bate Stamped 000001 to 000005.

3. All documents relating to or reflecting all meetings, conversations, communications and contacts between VRLP and Lee Brandsma.

RESPONSE: Subject to and without waiving the Objections set forth above, there are no documents responsive to this request.

4. All documents relating to or reflecting all meetings, conversations, communications and contacts between any member of the RLP Board and Lee Brandsma.

RESPONSE: Subject to and without waiving the Objections set forth above, there are no documents responsive to this request.

5. All documents relating to or reflecting all meetings, conversations, communications and contacts between VRLP and Larry Groot.

RESPONSE: Subject to and without waiving the Objections set forth above, there are no documents responsive to this request.

6. All documents relating to or reflecting all meetings, conversations, communications and contacts between any member of the RLP Board and Larry Groot.

RESPONSE: Subject to and without waiving the Objections set forth above, there are no documents responsive to this request.

7. All documents relating to or reflecting all meetings, conversations, communications and contacts between VRLP and Chicago Bridge & Iron Company.

RESPONSE: Subject to and without waiving the Objections set forth above, see documents attached to the Answers to Interrogatories Bate Stamped 000004 to 000005.

8. All documents relating to or reflecting all meetings, conversations, communications and contacts between any member of the RLP Board and Chicago Bridge & Iron Company.

RESPONSE: Subject to and without waiving the Objections set forth above, see documents attached to the Answers to Interrogatories Bate Stamped 000004 to 000005.

9. All documents relating to or reflecting all meetings, conversations, communications and contacts between VRLP and The Shaw Group and/or Shaw Environmental, Inc.

RESPONSE: Subject to and without waiving the Objections set forth above, see documents attached to the Answers to Interrogatories Bate Stamped 000004 to 000005.

10. All documents relating to or reflecting all meetings, conversations, communications and contacts between any member of the RLP Board and The Shaw Group and/or Shaw Environmental, Inc.

RESPONSE: Subject to and without waiving the Objections set forth above, see documents attached to the Answers to Interrogatories Bate Stamped 000004 to 000005.

Dated: March 31, 2014

Respectfully submitted,

On behalf of GROOT INDUSTRIES, INC.

/s/ Richard S. Porter

Richard S. Porter
One of Its Attorneys

Charles F. Helsten ARDC 6187258
Richard S. Porter ARDC 6209751
HINSHAW & CULBERTSON LLP
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
815-490-4900

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a copy of PETITIONER'S RESPONSE TO MOTION FOR EXPEDITED REVIEW OF HEARING OFFICER ORDER to be served on the following, via electronic mail transmission, on this 11th day of March, 2014:

Hearing Officer

Bradley P. Halloran
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601
Brad.Halloran@illinois.gov

For Groot Industries, Inc.

Charles F. Helsten
Richard S. Porter
Hinshaw and Culbertson
100 Park Avenue
Rockford, IL 61101-1099
chelsten@hinshawlaw.com
rporter@hinshawlaw.com

Peggy L. Crane
Hinshaw and Culbertson
416 Main Street, 6th Floor
Peoria, IL 61602
pcrane@hinshawlaw.com

For the Round Lake Park Village Board

Peter S. Karlovics
Law Offices of Rudolph F. Magna
495 N Riverside Drive, Suite 201
Gurnee, IL 60031-5920
PKarlovics@aol.com

For the Village of Round Lake Park

Glenn Sechen
The Sechen Law Group
13909 Laque Drive
Cedar Lake, IN 46303-9658
glenn@sechenlawgroup.com



Michael S. Blazer
One of the attorneys for
Petitioner