

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

To: see service list

PLEASE TAKE NOTICE that prior on June 1, 2014, I filed the attached with the Clerk of the Illinois Pollution Control Board, copies of which are hereby served upon you by email.

By: *Glenn C. Sechen*
The Sechen Law Group, PC
Attorney for the
Village of Round Lake Park

Certificate of Service

The undersigned hereby attorney certifies prior to 4:30 p.m. on June 1, 2014 a copy of the above was filed and served by email, as agreed by counsel, upon the persons shown in the Service List:

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The Sechen Law Group, PC
Attorney for the
Village of Round Lake Park

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

TIMBER CREEK HOMES, INC.,)	
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)	
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RESPONSE TO TCH MOTION FOR SANCTIONS

NOW COMES the Village of Round Lake Park (“RLP” or “VLRP”) and responds to Petitioner’s Motion for Sanctions as follows:

1. TCH’s untimely Motion for Sanctions (“Motion”) is vague and based upon the mere conclusion that Respondents RLP and Round Lake Park Village Board (“RLPVB”) have refused “...to comply with unspecified rules of discovery and Hearing Officer’s Orders...” (Petitioner’s Motion for Sanctions, Paragraph 19)

2. 35 Ill. Adm. Code 101.504 provides that:

All motions and responses **must clearly state the grounds upon which the motion is made** and must contain a concise statement of the position or relief sought. Facts asserted that are not of record in the proceeding must be supported by oath, affidavit, or certification in accordance with Section 1-109 of the Code of Civil Procedure [735 ILCS 5/1-109]. A brief or memorandum in support of the motion or response may be included. (**Emphasis** Supplied)

3. The Board is required to exercise its discretion and consider such factors as “the relative severity of the refusal or failure to comply; the past history of the proceeding; the degree to which the proceeding has been delayed or prejudiced; and the existence or absence of bad faith on the part of the offending party or person.” 35 Ill. Adm. Code 101.800(c); *Freedom Oil*

Company v. Illinois Environmental Protection Agency, 2006 WL 391850, Page 9; *IEPA v. Celotex Corp.*, 168 Ill. App. 3d 592, 597, 119 Ill.Dec. 226, 229, 522 N.E.2d 888, 891 (3d Dist. 1988)

4. TCH's Motion fails to state any grounds upon which the Board could impose the drastic sanction of striking all of RLP's or RLPVB's defenses.¹

5. TCH's Motion acknowledges that Respondents tendered their initial discovery responses on March 31, 2014, in compliance with the Hearing Officer's order dated March 25, 2014. (Petitioner's Motion for Sanctions, Paragraphs 1 & 2)

6. TCH's Motion acknowledges that Respondents tendered their supplemental responses to discovery on April 25, 2014, in compliance with the Hearing Officer's order dated April 18, 2014 order. (Petitioner's Motion for Sanctions, Paragraph 4)

7. TCH's Motion acknowledges that Respondents tendered discovery documents identified in privilege logs on May 21, 2014, one (1) day after the Hearing Officer denied Respondents' Motions to Reconsider.² (Petitioner's Motion for Sanctions, Paragraph 8)

8. TCH incorrectly implies that the Hearing Officer's April 7, 2014 Order expanded unlimited discovery to early 2008.³ (Petitioner's Motion for Sanctions, Paragraphs 3 & 4)

¹ TCH's naked claim is contained in Paragraphs 15 of its motion. Likewise, TCH does not provide any basis for its claim that Respondents "withheld" any information that was subject to the Hearing Officer's April 7, 2014.

² Even though Respondents believed that the documents identified in its privilege logs were privileged, Respondents did not appeal the Hearing Officer's May 20, 2014 order requiring production of the privileged documents, and did not appeal the above Hearing Officer's order to the Board.

³ In paragraph 13 of its Motion, TCH inaccurately claims that none of the privileged documents produced by Respondents predate September 28, 2013. Respondents produced an email dated January 18, 2013 from RLP Attorney Glenn Sechen to RLPVB Attorney Peter Karlovics pertaining to the retention of Dale Kleszynski as a witness for RLP which is marked as TCH Hearing Exhibit 58. That email is contained in Exhibit A and is a part of documents that were produced by RLP even though they are outside of any requirement to do so.

9. Page 2 of the Hearing Officer's April 7, 2014 provides in pertinent part:

“...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...” (**Emphasis** supplied)

10. TCH has repeatedly ignored the Hearing Officer's order through repeated requests for discovery that: 1.) does not pertain to entries reflected in the Village Board's minutes that was the subject of TCH's Request to Admit; and 2.) does not pertain to the waste transfer station that is the subject of this appeal.

11. An example of TCH's repeated violation is contained in paragraph 11 of Petitioner's Motion for Sanctions, in which TCH attempts to seek discovery pertaining to the “RLP's award of its municipal waste hauling contract to Groot” and to “other businesses for which Groot received approval from the Village Board.”

12. TCH failed and, in fact, expressly refused to modify its various discovery requests to comport with the scope permitted by the Hearing Officer. In its subsequent responses to TCH's request for production and interrogatories RLP noted this fact and included a statement regarding how it is complying:

In a April 7, 2014 order affirmed by the PCB, the Hearing Officer ruled that “TCH may pursue discovery regarding entries reflected in the Village Board's minutes” which were the subject of the TCH Request to Admit, but specifically limited that discovery to that pertaining to the subject transfer station itself. TCH has failed to propounded new discovery requests and has orally declined to do so during a telephonic conference with the Hearing Officer. Accordingly there is some confusion. In good faith RLP is providing TCH with discovery in modified form in order to incorporate the provisions of the Hearing Officer's April 7, 2014 order. RLP's response is consistent with TCH's original discovery

requests and the Hearing Officer's order. RLP is providing nonprivileged discovery information only to the extent that it pertains 1) to the subject transfer station itself; and 2) to an entry in the Village Board's meeting minutes which were the subject of Petitioner's Requests to Admit. Thus, such things as those related to zoning, land planning, solid waste planning, hauling contracts and recycling, including but not limited to construction and demolition debris [as well as the facility related thereto], are outside the scope of this response. Since Village Board meetings are essentially updates, information up to 14 days prior to the subject Village Board meeting is being provided. Only a portion of the relevant requests to admit pertain. The ability of RLP to respond is limited as RLP's Counsel was retained on or about April 20, 2010. RLP is unable to respond regarding dates prior to retention. *Emphasis added*

13. RLP filed these discovery responses on April 25, 2012 and TCH should have promptly raised that disagreement rather than waiting until just prior to the hearing to do so. Accordingly TCH has waived any right to file its Motion and is also barred by laches.⁴

14. TCH claims that it was harmed by the late disclosure of the email string in Exhibit B wherein Glenn Sechen, outside special counsel to the Village forwarded to Peter Karlovics the Village Attorney (inside counsel) an email from Groot's counsel, Chuck Helsten, requesting a telephone conference with the Mayor to discuss the content of Mr. Helsten's email regarding the host fees to be paid on MSW collected by Groot as the Village hauler and to discuss strategy and provide legal advice related thereto.⁵

⁴ TCH characterizes this as an open discovery issue, but whatever TCH's vague claims are, they are of TCH's own making. RLP did exactly what was required and what it said it was doing in its April 25, 2014 discovery responses. TCH bemoans the fact that there was no *in camera* inspection of documents the Respondents determined to be outside the scope of the Hearing Officer. Had TCH promptly raised whatever issues it has, the situation could have been addressed.

⁵ TCH claims that the subject email "string" could "not possibly have been subject to any known privilege." The attorney-client privilege applies to communications between a corporation's in-house counsel and outside counsel. *Hertzog, Calamari & Gleason v. Prudential Insurance Company of America*, 850 F. Supp. 255 (United States District Court, S.D. New York, 1994); *Garvy v. Seyfarth Shaw*, 2012 IL App(1st) 110115, 359 Ill.Dec. 202, 215, 966 N.E. 2d 523, 536 (1st Dist. 2012). The Mayor is a member of the "control group," defined as "top managers who have the ability to make final decisions" according to *Consolidation Coal Co. v. Bucyrus-Erie*, 89 Ill.2d 103, 117-18, 432 N.E.2d 250, 256 (1991).

15. Mr. Karlovics replied, copying the Mayor to provide Mr. Helsten's email as the initial part of and foundation for the requested conversation. None of this was sent back to Mr. Helsten.

16. TCH claims that "the subject email reflects a direct link" between the host agreement and the Village hauling contract, which is not discoverable under the Hearing Officer's order, and complains that had the substance of the email been revealed it would have inquired into its substance during depositions.⁶ para 10 and 11.

17. There is such a specific host fee but TCH did not need the subject email string to know it as that provision is expressly highlighted on page 1-27 of the Application and is set forth in detail in the Host Agreement, attached to the Application in Appendix C.1 of the Application. (Record C 00046, C 00746).

18. Accordingly, and regardless of whether any of this email string was discoverable or when TCH obtained it, TCH was not and could not have been deprived of anything as it already had the information it now claims it did not.

19. As shown above, TCH's own motion shows meticulous compliance with the rules of discovery and the Hearing Officer's Orders, even exceeding the scope of limited discovery allowed by the Hearing Officer and the Pollution Control Board.

20. At bottom, TCH seeks sanctions for compliance with the scope of discovery ordered by the Hearing Officer and its own motion shows nothing but compliance therewith.

⁶ This is the first time that TCH has even mentioned what it now claims to have been a "consistent position".

21. Significantly, TCH cannot claim in good faith that it was harmed when it is clear that TCH already had the information that it incorrectly claims was wrongly withheld.⁷

WHEREFORE, Respondent, Village of Round Lake Park, respectfully requests that Petitioner's Motion for Sanctions be denied, and that Respondent, Village of Round Lake Park be granted such further and other relief as deemed just and proper.

Respectfully submitted,
Village of Round Lake Park

By *Glenn C. Sechen*
One of its Attorneys

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⁷ RLP does not desire to create a side show by moving to sanction TCH for filing its Motion.

**EXHIBIT
A**

From: glenn <glenn@sechenlawgroup.com>
To: Peter Karlovics <pkarlovics@aol.com>
Subject: Appraiser
Date: Fri, Jan 18, 2013 12:15 pm

Pete,

I found the guy I was looking for. I have worked with him in the past but just couldn't find him. I got an email yesterday evening.

Dale J. Kleszynski, MAI, SRA
P- 708-535-6900
dkleszynski@apclimited.com

Dale is really good and he knows how to testify. He will email you a fee letter for board approval. I will send another email and will copy you.

Best Regards,

Glenn

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**EXHIBIT
B**

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Subject: RE: Further Discussion of Host Agreement Terms] MAYOR PHONE CONFERENCE
From: glenn@sechenlawgroup.com
Date: Fri, Sep 28, 2012 10:39 pm
To: "Peter Karlovics" <pkarlovics@aol.com>

ok Great. Are you calling me?

Have a great weekend,

Glenn

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----- Original Message -----

Subject: Re: Further Discussion of Host Agreement Terms] MAYOR PHONE CONFERENCE
From: Peter Karlovics <pkarlovics@aol.com>
Date: Fri, September 28, 2012 6:02 pm
To: glenn@sechenlawgroup.com
Cc: jean4994@sbcglobal.net

Dear Glenn:

How about Tuesday, October 2, 2012 at 10am? Please let me know.

The Law Offices of

Rudolph F. Magna

Peter S. Karlovics

495 N. Riverside, Suite 201

Gurnee, Illinois 60031

Office: (847) 623-5277 Facsimile: (847) 623-5336

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-----Original Message-----

From: glenn <glenn@sechenlawgroup.com>

To: Peter Karlovics <pkarlovics@aol.com>

Sent: Fri, Sep 28, 2012 11:06 am

Subject: [FWD: Fw: Further Discussion of Host Agreement Terms] MAYOR PHONE CONFERENCE

Pete,

We need that phone conference with the Mayor. I can do it Monday, Tuesday or Wednesday before Noon. Let me know if you need afternoon time. That is more scarce.

Thanks,

Glenn

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----- Original Message -----

Subject: Fw: Further Discussion of Host Agreement Terms

From: chelsten@hinshawlaw.com

Date: Thu, September 27, 2012 2:12 pm

To: seclaw@yahoo.com

CONFIDENTIAL AND PRIVILEGED

Wasn't sure if you received this e-mail so I am resending it.

Charles F. Helsten
HINSHAW & CULBERTSON LLP
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389

Phone: 815-490-4906
Fax: 815-490-4901
chelsten@hinshawlaw.com

----- Forwarded by Joan Lane/HC07 on 09/27/2012 02:11 PM -----

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Glenn: This time with the correct email address.

Charles F. Helsten
HINSHAW & CULBERTSON LLP
100 Park Avenue
P.O. Box 1389

Rockford, IL 61105-1389

Phone: 815-490-4906

Fax: 815-490-4901

chelsten@hinshawlaw.com

----- Forwarded by Charles F. Helsten/HC07 on 09/17/2012 06:13 PM -----

Charles F. Helsten/HC07

09/17/2012 06:14 PM

To glenn@sechenlawgroup.com

cc

Subject Fw: Further Discussion of Host Agreement Terms

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Glenn: This follows our most recent conversation of earlier today concerning HA terms. As I indicated earlier this afternoon, Groot will pay \$.10/ton as an additional Host fee for tonnage that comes from the Village to the Transfer Station where the Village is under direct contract with Groot. Groot will not offer any additional/supplemental Host Fee for the Village simply directing its waste to this Transfer Station where Groot does not have the hauling contract with the Village.

In addition, Groot needs a 3 (three) year hiatus before the first Annual Host Fee Adjustment takes place (not the 1 (one) year hiatus currently proposed by the Village. Moreover, the Annual Adjustment cannot exceed 3% (three per cent), with no recapture/"claw back" provision.

As previously indicated, Groot is in agreement with all other terms of the Village's proposed Host Agreement, but those discussed above are of critical importance to Groot.

Charles F. Helsten
HINSHAW & CULBERTSON LLP
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389

Phone: 815-490-4906

Fax: 815-490-4901

chelsten@hinshawlaw.com

Charles F. Helsten/HC07

09/17/2012 05:00 PM

To glenn@sechenlawgoup.com

cc

Subject Further Discussion of Host Agreement Terms

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