

BEFORE THE POLLUTION CONTROL BOARD

PROTECT WEST CHICAGO,)	
)	
Petitioner,)	PCB 2023-107
)	(Pollution Control Facility Siting Appeal)
vs.)	
)	
CITY OF WEST CHICAGO, WEST)	
CHICAGO CITY COUNCIL, and)	
LAKESHORE RECYCLING SYSTEMS,)	
LLC,)	
)	
Respondents,)	

PEOPLE OPPOSING DUPAGE)	
ENVIRONMENTAL RACISM,)	
)	
Petitioner,)	PCB 2023-109
)	(Third-Party Pollution Control Facility
vs.)	Siting Appeal)
)	
CITY OF WEST CHICAGO and)	
LAKESHORE RECYCLING SYSTEMS,)	
LLC,)	
)	
Respondents.)	

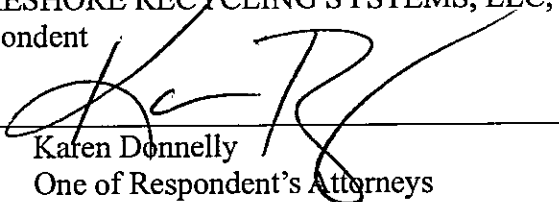
NOTICE OF FILING

TO: See attached Service List

PLEASE TAKE NOTICE that on May 10, 2023, LAKESHORE RECYCLING SYSTEMS, LLC electronically filed with the Office of the Clerk of the Illinois Pollution Control Board its **Objection to Petitioner PROTECT WEST CHICAGO's First Request for Production of Documents**, a copy of which is hereby served upon you.

Respectfully submitted,

LAKESHORE RECYCLING SYSTEMS, LLC,
Respondent


BY: 
Karen Donnelly
One of Respondent's Attorneys

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AFFIDAVIT OF SERVICE

I, the undersigned, on oath state that I have served the attached **Notice of Filing and Respondent LAKESHORE RECYCLING SYSTEMS, LLC Objection to Petitioner PROTECT WEST CHICAGO First Request for Production of Documents** on behalf of LAKESHORE RECYCLING SYSTEMS, LLC upon the following persons to be served via email transmittal from 501 State Street, Ottawa, Illinois 61350, this 10th day of May, 2023.


Karen Donnelly
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PROTECT WEST CHICAGO,)	
)	
Petitioner,)	NO.: PCB 2023-107
)	(Pollution Control Facility Siting Appeal)
v.)	
)	
CITY OF WEST CHICAGO, WEST)	
CHICAGO CITY COUNCIL, and)	
LAKESHORE RECYCLING SYSTEMS,)	
LLC,)	
)	
Respondents.)	

PEOPLE OPPOSING DUPAGE)	
ENVIRONMENTAL RACISM,)	
)	
Petitioner,)	NO.: PCB 2023-109
)	(Third-Party Pollution Control Facility
v.)	Siting Appeal)
)	
CITY OF WEST CHICAGO and)	
LAKESHORE RECYCLING SYSTEMS,)	
LLC,)	
)	
Respondents.)	

RESPONDENT LAKESHORE RECYCLING SYSTEMS, LLC
OBJECTION TO PETITIONER PROTECT WEST CHICAGO
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Now comes the Respondent, LAKESHORE RECYCLING SYSTEMS, LLC, by and through its attorneys, George Mueller and Karen Donnelly, and for its Objection to Petitioner, PROTECT WEST CHICAGO's, First Request for Production of Documents, states and alleges as follows:

1. Respondent, LAKESHORE RECYCLING SYSTEMS, LLC, was served a First Request for Production of Documents by PWC on May 5, 2023.

2. Certain of the documents requested therein predate the filing of the siting application by LAKESHORE on September 16, 2022. In fact, the only request that does not predate LAKESHORE'S siting application is #2 of PWC's First Request for Production of Documents.

3. Discovery before the Illinois Pollution Control Board is governed by 35 Ill. Adm. Code 101.612. Specifically, under subparagraph (a), relevant information and information that is calculated to lead to relevant information is discoverable, excluding those materials that would be protected from disclosure in the courts of this State under statute, Supreme Court Rules or common law, and materials protected from disclosure under 35 Ill. Adm. Code 130.

4. Supreme Court Rule 201 provides that "a party may obtain by discovery full disclosure regarding any matter *relevant* to the subject matter involved in the pending action..." Ill. Sup. Ct. R. 201(b)(1) (emphasis added).

5. Our Supreme Court has defined relevance as: "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Ill. Sup. Ct. R. 401.

6. PWC argues in its Amended Petition that various *ex parte* communications occurred which demonstrated an inherent bias in favor of LAKESHORE that occurred both prior to the filing of the Application and thereafter.

7. Respondent, LAKESHORE, contends that certain of the documents and items requested in PWC's First Request for Production of Documents are irrelevant and not reasonably calculated to lead to relevant information as they predate the filing of the siting application.

8. The documents requested by PWC are permissible pre-filing contacts and are not relevant to their claim of "inherent bias."

9. This Board and Illinois courts have previously held that pre-filing contacts are not relevant to a fundamental fairness calculus. See *Stop the Mega-Dump v. County Board of DeKalb County*, No. PCB 10-103, (March 17, 2011); *Residents Against a Polluted Environment v. County of LaSalle*, PCB 97-139, slip op. at 7 (June 19, 1997).

10. Illinois common law has long held that *ex parte* contacts that occur prior to the filing of the application-filings are permissible and that they are not, by definition, *ex parte* contacts. *Stop the Mega-Dump* (March 17, 2011).

11. In order to constitute a true *ex parte* contact, the contact must occur post-filing in the context of a proceeding. *Residents Against a Polluted Environment v. County of LaSalle*, PCB 96-243, slip op. at 16 (Sept. 19, 1996).

12. At no time has this Board nor Illinois courts found that pre-filing contacts could constitute impermissible *ex parte* communications or render post-filing siting proceedings fundamentally unfair. In *Residents Against a Polluted Environment v. County of LaSalle*, PCB 97-139 (June 19, 1997), this Board held that “contacts between the Applicant and the County Board prior to the filing of the Application are irrelevant to the question of whether the siting proceedings were conducted in a fundamentally fair manner.”

13. Because certain of the documents requested in PWC’s First Request for Production of Documents are both irrelevant and not calculated to lead to relevant information to PWC’s claim that the City’s decision to grant siting approval was fundamentally unfair, those portions of the Request should be stricken.

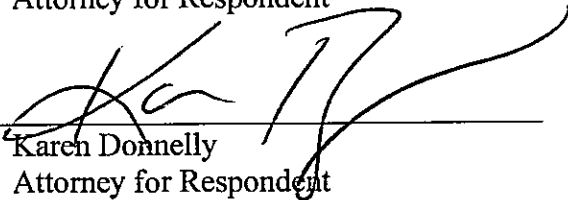
WHEREFORE, the Respondent, LAKESHORE RECYCLING SYSTEMS, LLC, respectfully requests that the Board strike the requests contained in PWC’s First Request for

Production of Documents for documents and items that predate the filing of the siting application, and for such other and further relief as this Board deems just and equitable.

Respectfully submitted,

LAKESHORE RECYCLING SYSTEMS, LLC.,
Respondent

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Attorney for Respondent

BY: 
Karen Donnelly
Attorney for Respondent

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