

ILLINOIS POLLUTION CONTROL BOARD  
May 18, 2023

PROTECT WEST CHICAGO, )  
)  
Petitioner, )  
)  
v. ) PCB 23-107  
) (Third-Party Pollution Control Facility  
CITY OF WEST CHICAGO, WEST ) Siting Appeal)  
CHICAGO CITY COUNCIL and )  
LAKESHORE RECYCLING SYSTEMS, )  
LLC, )  
)  
Respondents. )

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PEOPLE OPPOSING DUPAGE )  
ENVIRONMENTAL RACISM, )  
) PCB 23-109  
Petitioner, ) (Third-Party Pollution Control Facility  
) Siting Appeal)  
v. )  
) (Consolidated)  
CITY OF WEST CHICAGO and )  
LAKESHORE RECYCLING SYSTEMS, )  
LLC, )  
)  
Respondents. )

ORDER OF THE BOARD (by J. Van Wie):

The West Chicago City Council (City Council) granted a Lakeshore Recycling Systems, LLC (Lakeshore) application to site a municipal solid waste transfer station at 1655 Powis Road in West Chicago, DuPage County. *See* 415 ILCS 5/40.1(b) (2020); 35 Ill. Adm. Code 101.300(b), 107.204. On March 28, 2023, Protect West Chicago (PWC) timely filed a petition asking the Board to review that February 28, 2023 decision of the City Council. On March 31, 2023, People Opposing DuPage Environmental Racism (PODER) timely filed a petition asking the Board to review the same City Council decision. The Board accepted both petitions for hearing on April 6, 2023.

Lakeshore has filed a motion to consolidate these cases. Lakeshore has also filed a motion to vacate and strike the Board order of April 6, 2023. PWC filed a motion for extension of time to respond to Lakeshore's motion to vacate and strike.

Additionally, PWC has filed a motion for leave to amend its petition. Lakeshore filed its response stating it had no objection, and West Chicago and the City Council also filed their response stating they had no objection. West Chicago and the City Council have also filed a motion to supplement the record.

In this opinion and order, the Board first reviews the factual and procedural history of this case. The Board then addresses each of the four motions ready for decision. The Board concludes by granting the motion to consolidate; granting the motion to amend petition; granting the motion to supplement the record; and denying the motion to vacate and strike Board order.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On March 28, 2023, PWC filed a petition asking the Board to review a February 28, 2023 determination of the City Council granting local siting approval for a new pollution control facility. The City Council's determination granted siting approval to the applicant, Lakeshore, for Lakeshore's proposed waste transfer station in West Chicago. The City Council's decision was based on the findings of the hearing officer for the public hearings on the proposed facility that were held by the City of West Chicago on January 3, 4, 5, 10, 12, 16 and 19, 2023.

On March 31, 2023, PODER filed a petition asking the Board to review the same City Council decision. The Board accepted both petitions for hearing on April 6, 2023. On April 12, 2023, Lakeshore filed a motion to consolidate (Mot. to Cons.) these cases.

On April 14, 2023, Lakeshore filed a motion to vacate and strike the Board order (Mot. to Vac.) of April 6, 2023. On April 14, 2023, PWC filed a motion for extension of time to respond to Lakeshore's motion to vacate and strike. The hearing officer granted PWC's motion for extension of time to respond to May 12, 2023.

Also on April 14, 2023, PWC filed a motion for leave to amend its petition (Mot. to Am.).

On April 14, 2023, Lakeshore filed a waiver of the decision deadline in PCB 23-107, and on April 17, 2023, Lakeshore filed a waiver of the decision deadline in PCB 23-109. Lakeshore waived the decision deadline in both cases to October 5, 2023.

On April 18, 2023, West Chicago filed the record on its proceedings in PCB 23-107. The Board hearing officer noted in his April 21, 2023 hearing officer order that West Chicago will await the Board's decision on the motion to consolidate before filing the record on its proceedings in PCB 23-109.

On April 20, 2023, Lakeshore filed its response stating it had no objection to PWC's motion to amend (Lakeshore Resp.). On April 21, 2023, West Chicago and the City Council filed their response stating they had no objection to PWC's motion to amend (WC Resp.).

On April 21, 2023, West Chicago and the City Council filed a motion to supplement the record (Mot. to Supp.). The Board received no response to the motion.

On April 24, 2023, PODER filed a response of no objection to PWC's motion to amend the petition.

PWC filed its response (PWC Resp.) to Lakeshore's motion to vacate on May 12, 2023. On May 17, 2023, Lakeshore filed a reply (Lake. Rply.) to PWC's response.

### **MOTION TO CONSOLIDATE**

In support of its motion to consolidate, Lakeshore states that both cases arise out of the same Section 39.2 siting location hearing and decision, and that both petitioners participated in the Section 39.2 proceedings before West Chicago concerning Lakeshore's application for site location approval. Mot. to Cons. at 1; *see* 415 ILCS 5/39.2 (2020). Lakeshore contends that both petitioners raise substantially similar issues and that the two petitions will be "most efficiently dealt with by consolidated discovery and briefing." *Id.* at 2. Consolidation will therefore "promote judicial efficiency and economy." *Id.* Lakeshore contends that consolidation will not materially prejudice any party. *Id.*

At an April 13, 2023 status conference conducted by the Board's hearing officer, the petitioners in both cases stated that they had no objection to Lakeshore's motion to consolidate. *See* Protect West Chicago v. City of West Chicago, West Chicago City Council and Lakeshore Recycling Systems, LLC, PCB 23-107, Hearing Officer Order (Apr. 13, 2023). On April 14, 2023, Lakeshore filed a waiver of the decision deadline in PCB 23-107 to October 5, 2023. *See* Protect West Chicago v. City of West Chicago, West Chicago City Council and Lakeshore Recycling Systems, LLC, PCB 23-107, Waiver of Statutory Deadline for Decision (Apr. 14, 2023). On April 17, 2023, Lakeshore filed a waiver of the decision deadline in PCB 23-109 to October 5, 2023. *See* People Opposing DuPage Environmental Racism v. City of West Chicago and Lakeshore Recycling Systems, LLC, PCB 23-109, Waiver of Statutory Deadline for Decision (Apr. 17, 2023).

### **Discussion and Board Finding**

The Board has previously consolidated multiple third-party permit appeals concerning a single site. *See, e.g.,* Roxana Landfill, Inc. v. Village Board of the Village of Caseyville, Illinois, Village of Caseyville, Illinois, and Caseyville Transfer Station, LLC; Village of Fairmont City, Illinois v. Village of Caseyville, Illinois Board of Trustees and Caseyville Transfer Station, LLC, PCB 15-65, 15-69 (Oct. 16, 2014); *see also,* Prairie Rivers Network and Sierra Club v. IEPA and Prairie State Generating Co., LLC; American Bottom Conservancy and Dale Wojtkowski v. IEPA and Prairie State Generating Co., LLC, PCB 06-124, 06-127 (Jan. 19, 2006). The Board believes that "consolidation is in the interest of convenient, expeditious, and complete determination" of the claims. 35 Ill. Adm. Code 101.406. The Board therefore grants Lakeshore's motion to consolidate, and consolidates these two proceedings for hearing.

## **MOTION TO AMEND PETITION**

PWC's original petition (Pet.) alleges that Lakeshore failed to comply with pre-filing notice requirements for its proposed waste transfer station under the Environmental Protection Act (Act) (see 415 ILCS 5/39.2(b) (2020) (Comp. at 3); failed to comply with siting requirements under the Act (see 415 ILCS 5/22.14(a) (2020)) (*Id.*); and failed to establish that it met the criteria required for pollution control facility siting approval (see 415 ILCS 5/39.2 (2020)) (*Id.* at 4). PWC's original petition also alleges that the City's procedures to reach its siting determination were not fundamentally fair. *Id.* at 3.

PWC makes three changes in the amended petition (Am. Pet.). First, PWC includes a signed copy of the City Council's ordinance conditionally granting siting approval. Am. Pet. Exh. 1. Second, the amended petition adds a statement as to why PWC is a proper third-party petitioner. *Id.* at par. 14, 15. Finally, the amended complaint adds to the alleged facts to support its allegations that the siting process conducted by West Chicago and the City Council was fundamentally unfair, as well as additional evidence in support of its allegations. *Id.* at par. 18, 19, 20; *id.* at Exh. 2.

### **Discussion and Board Finding**

The Board has previously granted motions to amend a petition for review, especially where there is no objection from the respondent. See Fox Moraine, LLC v. United City of Yorkville, City Council: Kendall County, Intervenor, PCB 07-146 (Nov. 20, 2008). In certain instances, the Board allows amended petitions to be filed (e.g., Wei Enterprises v. IEPA, PCB 04-83 (Nov. 20, 2003); Randall Industries, Inc. v. IEPA, PCB 03-129 (Sept. 18, 2003); Landfill 33 LTD. V. Effingham County Board et al., PCB 0-43 (Oct. 17, 2002); St. Clair Properties Development, Inc. v. IEPA, PCB 98-72 (Nov. 20, 1997)). However, the instances where the Board allows for amended petitions are generally instances where the initial petition lacks pertinent information required by Board rules and the Board allows the petitioner a set amount of time to correct the deficiencies. The Board has declined to accept amended petitions that fall outside this narrow exception. See XCTC Limited Partnership v. IEPA, PCB 01-46 and PCB 01-51 (consol.) (Feb. 5, 2004).

In this case, all three respondents, including the applicant, have stated that they do not object to the amended petitions. See Lakeshore Resp., WC Resp. Furthermore, a review of the amended petition indicates that, while alleging additional facts and circumstances surrounding the grounds for appeal, no new grounds for appeal are cited. Therefore, the Board will accept the amended petition. See Fox Moraine, LLC v. United City of Yorkville, City Council: Kendall County, Intervenor, PCB 07-146 (Nov. 20, 2008). The Board notes that generally the filing of the amended petition for review by the applicant in a pollution control facility siting appeal can recommence the decision period in this matter. See *id.*; see also 35 Ill. Adm. Code 107.504 ("the Board will issue its decision within 120 days after the proper filing of a petition for review"). However, the decision date has already been waived beyond the decision period to October 5, 2023, and that decision deadline will remain unless waived again by the applicant.

The Board grants PWC's unopposed motion for leave to amend the petition, and finds that the amended petition meets the applicable content requirements of the Board's procedural rules and accepts the petition. *See* 35 Ill. Adm. Code 103.204(c), 107.208.

### **MOTION TO SUPPLEMENT RECORD**

West Chicago filed a motion to supplement the record by adding two exhibits that it states were inadvertently omitted from the record on proceedings filed with the Board on April 18, 2023. Mot. to Supp. at 2; *id.* Exh. A. West Chicago asserts that the additional exhibits intend to provide a complete final record. *Id.* at 2; *see* 35 Ill. Adm. Code 107.304. West Chicago further asserts that no party will be prejudiced by the granting of the motion. The Board received no response to the motion. *See* 35 Ill. Adm. Code 101.500(d).

### **Board Finding**

The Board grants West Chicago's unopposed motion to supplement the record and incorporates Exhibit A of the motion to supplement into the record.

### **MOTION TO VACATE AND STRIKE**

Lakeshore filed a motion to vacate and strike the Board's order of April 6, 2023, on the grounds that, on information and belief, PWC is not a legitimate citizens' group. Mot. to Vac. at 3. Lakeshore alleges that PWC is instead a "shell or front" for a competing waste collection entity and thus lacks standing to bring this petition and is not exempt from the cost of preparing and certifying the record. *Id.*

PWC responds with three arguments in its defense: (1) PWC is a citizen's group as defined by the Illinois legislature; (2) Lakeshore's unsupported motion to vacate is procedurally defective; and (3) Lakeshore's motion and arguments attacking the legitimacy of PWC as a citizens group are waived. PWC Resp. at 2-7.

Lakeshore also filed a reply to PWC's response without seeking leave to file the reply.

### **Statutory and Legislative Background**

In pollution control facility siting appeals, any person who has participated in the public hearing conducted by the unit of local government and is so located as to be affected by the facility may file a petition for review of the decision to grant siting. 35 Ill. Adm. Code 107.200(b). In the event the petitioner is a citizens' group that participated in the siting proceeding and is so located as to be affected by the proposed facility, such petitioner shall be exempt from paying the costs of preparing and certifying the record. 415 ILCS 5/39.2(n) (2020).

The Board has previously looked to Senator Doris Karpel's statements regarding House Bill 98 when determining whether to exempt citizens' groups from the fee payment for preparing and certifying the record in pollution control facility siting appeals brought by private citizens against industry. *See* Alice Zeman, Tony Berlin, Richard Zilka, Michael Turlek, and Kevin

Greene, v. Village of Summit, and West Suburban Recycling and Energy Center, Inc. PCB 92-174, cons. PCB 92-177 (Dec. 17, 1992). Prior to the vote on the bill, Senator Karpziel stated in pertinent part:

And if you will bear with me, I have told the Pollution Control Board that I would read into the record the meaning of “citizens groups.” It means a group of individual citizens that have joined together to participate in a regional pollution control facility siting hearing. This group may be a voluntary association that is formed on an ad hoc basis that may or may not have a name or bylaws. It also can be a group that has incorporated.

*Id.* (Quoting State of Illinois 86th General Assembly Regular Session Senate Transcript, 52nd legislative day, June 22, 1989.)

The Board’s rules require all motions and responses to state the grounds upon which the motion is made and to concisely state the position or relief sought. 35 Ill. Adm. Code 101.504. Facts asserted that are not part of the 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 (2020)). *Id.*; see also, Illinois Environmental Protection Agency v. Gary J. and James R. Szczeblewski, AC 09-56 (Apr. 15 2010). The Board is required to make its decision based on the record. 415 ILCS 5/40.1 (2020). New facts unsupported in the record are not considered in the Board’s decision. See Illinois Environmental Protection Agency v. Gary J. and James R. Szczeblewski, AC 09-56 (Apr. 15, 2010).

### **PWC’s Legitimacy as a Citizens’ Group**

PWC supports its argument that it is a legitimate citizens’ group with facts and evidence regarding West Chicago citizen involvement. PWC attached to its response an affidavit of PWC member Nick Dzierzanowski (PWC Resp. Exh. 1). In the affidavit, Mr. Dzierzanowski states that he is a resident of West Chicago. PWC Resp. Exh. 1 at 1. He attests to his involvement with PWC since at least 2020, describes his opposition to the waste transfer station, and mentions another PWC member by name, Ms. Maria Correra. *Id.* at 2. Exhibits A, B and C to Mr. Dzierzanowski’s affidavit are copies of CBS Chicago and Daily Herald articles where Mr. Dzierzanowski described his opposition to the transfer station and involvement with PWC. *Id.*, Exh. A, B and C. He attests to his involvement as a member of PWC in the public hearings that were held by the City on the waste transfer station siting. *Id.* at 3-4. Mr. Dzierzanowski affirms that PWC was represented at these hearings by attorneys Ricardo Meza and Phil Luetkehans. *Id.* at 3. He also states that he has not been and will not be paid for opposing the transfer station by anyone, including the competitor waste collection entity. *Id.* at 4.

Additionally, PWC filed a motion for leave to file an amended petition in this matter, along with the amended petition. In the amended petition, PWC states that it is a proper petitioner with standing to file the petition. Am. Pet. at 2. Lakeshore, West Chicago and the City Council all filed statements of no objection to PWC’s motion to amend. The Board accepts the amended petition in this order, *supra*.

By contrast, Lakeshore's motion to vacate did not include any additional facts or evidence in support of its allegations that PWC is not a legitimate citizen's group. Lakeshore also did not point to anything in the record to support its motion.

### **Procedural Deficiencies in Lakeshore's Motion**

PWC's response next argues that Lakeshore's motion is procedurally deficient because it is not supported by citations to the record or by oath, affidavit or certification. PWC Resp. at 5. PWC notes that Lakeshore's motion asserts facts solely on information and belief without required citation to the record in the proceeding, or so supporting oath, affidavit or certification. *Id.* PWC argues that because the allegations in the motion are conclusory and lack the required support, the motion should be summarily denied. *Id.* at 6.

### **Waiver of Challenge to PWC's Legitimacy as a Citizens' Group**

Finally, PWC's response argues that Lakeshore waived its ability to challenge the legitimacy of PWC as a citizens' group because Lakeshore failed to raise the issue of PWC's alleged involvement with the competitor waste collection entity at the January 2023 public siting hearings held by West Chicago. PWC Resp. at 6. PWC notes that Lakeshore has also failed to present new post-siting hearing evidence in support of its allegations. *Id.* PWC cites appellate caselaw to support its position that a claim of bias or prejudice is forfeited when not raised promptly in the original proceeding. *See Fox Moraine, LLC v. United City of Yorkville*, 2011 IL App. (2d) 100017 par. 60; *Waste Management of Ill., Inc. v. Pollution Control Bd.*, 175 Ill. App. 3d 1023, 1039-40 (1988) (holding that the PCB correctly noted, that when Waste Management made no objection to an attorney's appearance at the original proceeding, Waste Management's challenge to the appearance at the PCB had been waived).

### **Discussion and Board Finding**

The Board denies Lakeshore's motion to vacate and strike. In its motion, Lakeshore did not present any new facts or evidence to support its allegations that PWC is not a legitimate citizens' group. Nor did Lakeshore cite to facts or evidence in the record before the Board to support these allegations. Lakeshore's motion also did not include a statement that the Board's April 6, 2023 order was procedurally deficient. By contrast, PWC has provided evidence in support of its defense that it is a legitimate citizens' group with standing to bring this petition. With no new evidence before the Board that: (1) PWC is not a legitimate citizens' group, or (2) the Board's order was procedurally deficient, the Board finds it has no reason to vacate and strike its April 6, 2023 order, and denies Lakeshore's motion.

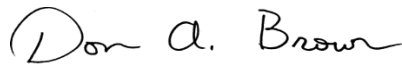
The Board notes that Lakeshore filed a reply in this matter on May 17, 2023. *See Lake Rply.* However, Lakeshore did not include a motion for permission to file its reply as required by the Board's rules. 35 Ill. Adm. Code 101.500(e). The Board therefore declines to accept Lakeshore's reply.

**CONCLUSION**

The Board grants Lakeshore's motion to consolidate these actions, and directs the Clerk to update the caption in this matter. The Board also grants PWC's motion for leave to amend its petition and accepts the amended petition for hearing. The Board grants West Chicago and the City Council's motion to supplement the record. The Board denies Lakeshore's motion to vacate and strike the Board order of April 6, 2023. The parties are directed to proceed to hearing as set by the hearing officer.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 18, 2023, by a vote of 3-0.



Don A. Brown, Clerk  
Illinois Pollution Control Board