

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PROTECT WEST CHICAGO,	)	
	)	
Petitioner,	)	
	)	PCB No: <u>2023-107</u>
v.	)	(Pollution Control Facility Siting Appeal)
	)	
CITY OF WEST CHICAGO, WEST	)	
CHICAGO CITY COUNCIL, and	)	
LAKESHORE RECYCLING SYSTEMS,	)	
LLC,	)	
Respondents	)	
_____	)	
PEOPLE OPPOSING DUPAGE	)	
ENVIRONMENTAL RACISM,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB No: <u>2023-109</u>
	)	(Third-Party Pollution Control Facility
CITY OF WEST CHICAGO and	)	Siting Appeal)
LAKESHORE RECYCLING SYSTEMS,	)	
	)	
Respondents.	)	

**NOTICE OF FILING**

To: **See Attached Service List**

PLEASE TAKE NOTICE that on July 14, 2023, Protect West Chicago electronically filed with the Illinois Pollution Control Board, 60 E. Van Buren Street, Suite 630, Chicago, IL 60605, an original of the attached: **Response to Lakeshore Recycling Systems, LLC's First Set of Interrogatories**, copies of which are attached and served upon you.

Dated: July 14, 2023

Respectfully Submitted,



\_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I, Ricardo Meza, an attorney, certify that I have served the attached: **Response to Lakeshore Recycling Systems, LLC's First Set of Interrogatories**, on the below-named parties (Service List) by delivering the document to them via electronic mail on July 14, 2023 and via the PCB's Clerk's Office electronic filing system.



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Ricardo Meza

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**PROTECT WEST CHICAGO’S COMBINED RESPONSE TO LAKESHORE’S FIRST INTERROGATORIES TO PROTECT WEST CHICAGO**

NOW COMES the Petitioner, Protect West Chicago, (“PWC”), by and through its attorney, Meza Law, and in Response to Lakeshore Recycling Systems, LLC’s (“Lakeshore”)

First Set of Interrogatories, states as follows:

**GENERAL OBJECTIONS**

1. PWC objects to Lakeshore’s instructions and definitions insofar as those instructions and definitions purport to impose obligations to supplement or modify that exceed the obligations contained in the Illinois Code of Civil Procedure and the Illinois Supreme Court Rules and the Board's discovery rules. PWC recognizes its obligations under the applicable rules, but objects to any attempt to expand those obligations beyond that required by law.

2. PWC objects to Lakeshore’s definitions and instructions to the extent they demand production or identification of information, materials and documents that would be

protected from disclosure in the courts of Illinois under statute, Supreme Court Rules or common law.

3. PWC objects to Lakeshore's several instructions and definitions stating how to identify persons, entities and documents. Such instructions are overbroad, burdensome and call for more detail than is necessary or useful. The delay and burden imposed by such instructions would outweigh any legitimate or useful purpose to which Lakeshore could put such information. PWC will make any necessary identifications with sufficient specificity to avoid confusion but will not undertake to follow Lakeshore's full checklist of identification and other instructions.

4. PWC objects to Lakeshore's instructions regarding documents and/or information to be disclosed about privileged or immune information to the extent that such instructions would require disclosure of privileged or immune information or require the description of any such information in more detail than reasonably necessary to clearly identify the information and the basis on which it was withheld.

5. PWC objects to any instructions, definitions and requests concerning information belonging to a third party. PWC will respond on its behalf and on its behalf alone.

6. PWC objects to Lakeshore's discovery requests to the extent the requests would require disclosure of any information that is subject to the attorney-client privilege, the doctrine of attorney work product immunity, or other applicable privileges or immunities. If any privilege or work product immune information is disclosed, except pursuant to a specific written agreement covering such information, such disclosure is inadvertent and is not intended to waive or prejudice any applicable privilege or immunity, either as to the disclosed information, or as to any other information.

7. In order to expedite discovery rather than oppose disclosure, PWC may disclose information covered by an objection in this response or in other discovery responses. Such disclosure is not intended to waive the PWC's objections generally, nor to enlarge the scope of discovery, nor to waive or prejudice PWC's rights to object should Lakeshore seek additional information of the same type.

8. PWC objects to Lakeshore's requests to the extent they seek information not in its possession, custody or control and/or which is already in Lakeshore's possession, custody or control or as contained in the Record of Proceedings, or otherwise.

9. These General Objections apply to and are incorporated into each specific answer herein, whether or not expressly incorporated by reference in such individual answer.

**INTERROGATORIES**

**INTERROGATORY NO. 1:**

Identify all persons answering these Interrogatories and all persons who provided information regarding or who otherwise assisted in answering these Interrogatories.

**PWC ANSWER TO INTERROGATORY NO. 1:**

- **Nicholas Dzierzanowski**

**INTERROGATORY NO. 2:**

Is it the Petitioner's contention that the siting process and procedures utilized by the City Council were fundamentally unfair?

**PWC ANSWER TO INTERROGATORY NO. 2:**

- **Yes**

**INTERROGATORY NO. 3:**

If your answer to the foregoing Interrogatory is in the affirmative, please state the following:

- A. Every fact within Petitioner's knowledge which is relied upon in making that assertion.
- B. Each statement, declaration, assertion, or conversation relating to the fundamental fairness of the siting process and procedures utilized in this matter by the City Council.

**PWC ANSWER TO INTERROGATORY NO. 3:**

- **Objection, premature, is overly broad and vague, and invades the Attorney Work Product Privilege. In addition, it calls for legal conclusions and involves opinions or conclusions that relate to ultimate facts involved in this case, and/or the application of law to these ultimate facts and therefore answers should be deferred until discover has been completed.**
- **Without waiving any objections set forth above and as alleged in the Amended Petition, it is the contention of PWC that the entire local siting review process, and in addition, going back at least to April of 2019 (when the Host Agreement was entered into) which include various actions, various conduct and various *ex parte* communications engaged in by the City of West Chicago Mayor Ruben Pineda and other City officials, which demonstrate an inherent bias in favor of Lakeshore that occurred both prior to the filing of the Application and thereafter, the scheduling of**

the actual hearing dates, the decisions and rulings rendered at the Public Hearing, and the procedures, (individually and collectively) implemented in arriving at the City's decision to grant siting approval were fundamentally unfair and confirm that "a disinterested observer might conclude that the local siting authority adjudged both the facts and the law before hearing the case." It is further a contention of PWC that there was pre-adjudication in favor of approving Lakeshore's Application in multiple ways, some of which are not currently totally known, rendering the entire local siting review process fundamentally unfair. Specifically, and without limitation, the entire siting process was fundamentally unfair in at least one or more of the following ways:

- a. There were no steps taken to initially ensure reasonable access or availability of hearing proceedings in Spanish, despite the majority-minority Latino population in West Chicago. Further, although accommodations could have been made in reasonable fashion to ensure meaningful access to and availability of key portions of the siting proceedings as a whole (such as the West Chicago Siting Ordinance, the Pre-Filing Notice of Intent to File Siting Application, various Orders entered by the Hearing Officer prior to commencement of the Public Hearings concerning the right to participate and offer public comment, no such accommodations were made.
- b. There were no steps taken to ensure reasonable access or availability of hearing proceedings in Spanish even after both West Chicago officials and the Hearing Officer were informed that many of West Chicago's residents' primary language was Spanish, and even though a great majority of information are already accessible in either English or Spanish on the West Chicago website already.
- c. The actions of the West Chicago officials seeking to conceal information which related directly to criticisms leveled by the City's own consultant (Aptim) during the Pre-Filing Application Review process which were subject to lawful disclosure under the Freedom of Information Act (FOIA) which led to the filing of a lawsuit resulting in a court order requiring disclosure of public documents and payment of attorneys' fees.
- d. The actions of West Chicago officials as revealed in documents, emails, and draft siting applications obtained under the FOIA litigation which documents reveal biased and preferential communications by and between various West Chicago officials, and Applicant Lakeshore prior to the submission of Lakeshore's Application, which attempted to blunt and significantly minimize serious concerns which had been raised by the City's own consultant (Aptim), and shield them from public scrutiny;
- e. The action(s) of West Chicago officials prior to submission of Lakeshore's Application, including action of Mayor Ruben Pineda, discovered as a result of the FOIA litigation, which revealed a pre-adjudication bias in favor of Lakeshore's Application even before any application was submitted, as reflected by a November 2020 text message Mayor Pineda sent to a local member of the

clergy (Father Josh) with a large Latino congregation who had expressed opposition to the proposed facility on social media, wherein Mayor Pineda wrote: “We need to talk next week. *You’re pushing propaganda.* Please get all information prior to posting on social media. Thanks in advance.” The intent of Pineda’s conduct was to curb and inhibit negative comment on Lakeshore’s proposal.

- f. Actions of West Chicago official’s summary rejection of their own independent review consultants’ (Aptim) (expert) opinion that numerous criterion were not met, including criterion relating to the health and safety of the community and the proximity of the proposed facility to a local airport.**
- g. Actions of West Chicago officials in submitting letters in support of the Lakeshore’s Application on West Chicago letterhead and then editing the letter to make it more favorable to the Applicant, all at the express request (and direction) of Lakeshore’s expert John Hock.**
- h. Upon information and belief, the actions and/or statements made by one or more third-parties in closed session reflecting or revealing that City Council members’ deliberation may not have been based on Hearing Evidence, but, rather, on attorney recommendations revealed by at least one West Chicago official, namely Alderman Lori Chassee, who stated in open session on February 28, 2023 that the decision to approve was based on and prompted by comments from two attorneys for the City that a vote against Applicant may place the City and City officials at risk of being sued.**
- i. Without waiving any objections set forth above and as alleged in the Amended Petition, as demonstrated by the circumstances surrounding (i) 1-3 below, it is further the contention of PWC that the actions of West Chicago officials further reflect the decision to approve Lakeshore’s Application may have been made on February 27, 2023 (day before the official vote of February 28, 2023) as West Chicago officials:**
  - 1. Did not receive the Hearing Officer’s Recommendations until Friday, February 24, 2023;**
  - 2. The City Council met just three days after receiving Hearing Officer’s recommendations and in closed session on Monday, February 27, 2023; and**
  - 3. That the Tuesday, February 28, 2023 open-meeting lasted no more than about five-minutes, after which the City Council voted and approved a 13-page single-spaced (previously-prepared) Ordinance, together with a 20-page Recommendation by the Hearing Officer.**

j. PWC further asserts that the siting process and procedures utilized by the City Council were fundamentally unfair because on February 27, 2023, at 7:03 p.m., rather than deliberate as to whether Lakeshore's Application did or did not comply with the Illinois Environmental Protection Act in public and in an open meeting, the City proceeded to closed session. As set forth in the subsequent closed session meeting minutes, the City claimed that it was authorized to proceed to closed session pursuant to 5 ILCS 120/2 (C)(4) of the Open Meetings Act. The City remained in closed session on February 27, 2023 from 7:03 p.m. until 8:40 p.m. Then, on February 28, 2023, at 6:00 p.m., the City reconvened in an open meeting relating to Lakeshore's Application. This open meeting only lasted a total of five (5) minutes. At this open meeting and as reflected in the Closed Session meeting minutes, and other than attendance and roll call, only three Alderman spoke. Specifically, the open meeting minutes attribute the following information to the three Alderman:

- Alderman James E. Beifuss stated that the applicant has not met Criteria #1, 2 or 8.
- Alderman Matthew Garling expressed that he feels that Criteria #1 and 3 have not been met.
- Alderman Lori Chassee conveyed that she believes the applicant has met all of the Siting Criteria.

After its five-minute February 28, 2023 open meeting, the City voted and passed Ordinance 23-O-0006. However, upon information and belief, on February 28, 2023, Alderman Lori Chassee made public statements indicating that closed session City Council deliberations were not solely on "evidence or testimony presented in open hearing," but, rather, on attorney comments, statements and/or recommendations. Specifically, on information and belief, Alderman Lori Chassee stated in the February 28, 2023 open meeting that the decision to approve Lakeshore's Siting Application was based on and prompted by comments from two attorneys for the City and that a vote against Applicant Lakeshore may place the City and/or City officials at risk of being sued.

Despite the above, the February 28, 2023 Ordinance that the City approved at 6:06 p.m., namely Ordinance 23-O-0006, was drafted sometime after the February 27, 2023 closed session meeting of the West Chicago City Council by Special Counsel Dennis Walsh, which he then provided to the City Council sometime prior to the February 28, 2023, 6:00 p.m. City Council Meeting. Ordinance 23-O-0006 was then approved as drafted at about 6:05 p.m. by the West Chicago City Council. Thus, and in light of the fact that Special Counsel Walsh had drafted Ordinance 23-O-0006 prior to the February 28, 2023 6:00 p.m. City Council Meeting, the written ordinance did NOT set forth the determinative reasoning as to:

- Why City Council Alderman James E. Beifuss did not believe the applicant had not met Criteria #1, 2 or 8.



- **Why Alderman Matthew Garling did not believe the Applicant had not met Criteria #1 and 3.**
- **Why Alderman Lori Chassee believed that voting against Applicant Lakeshore would place West Chicago at risk and what information she had received from attorneys in closed session, which had not been presented in open hearing, that made her believe she was required to approve the application.**

**The above actions led PWC to, on May 5, 2023, serve discovery upon the City seeking to learn the names and identities of the persons who attended the February 27, 2023, City Council closed session meeting as well as a copy of the closed session meeting tape. On May 11, 2023, the City objected to the production of the closed session recording on two grounds:**

- **The City cited to 5 ILCS 120/2.06 (e) which states: “the verbatim record of a meeting closed to the public shall not be open for public inspection or subject to discovery in any administrative or judicial proceeding other than one brought to enforce this Act.**
- **The City alleged that the discussions held in closed session are protected from disclosure by the attorney-client privilege.**

**On June 12, 2023, the Illinois Pollution Control denied PWC’s request for the closed session recording and stated that “while PWC may have an argument regarding the conduct and content of the closed meeting, this is not the forum for that argument. The provisions of OMA are enforceable through the circuit court and the Public Access Counselor (5 ILCS 120/3, 3.5 (2022)).”**

**On June 21, 2023, after being required to respond, the City submitted its responses to PWC’s interrogatories. That day, PWC learned for the first time that Hearing Officer and attorney Derke Price was present during the entire February 27, 2023, closed session meeting. Mr. Price is not an attorney for the City and as noted above, was retained to serve as a neutral hearing officer but as alleged, he was not neutral. Moreover, Ordinance 23-O-0006 did not provide any indication as to what information Mr. Price told the City council in response to questions they had relating to Lakeshore’s Application and/or anything relating how a vote against Applicant Lakeshore may place the City and/or City officials at risk of being sued.**

**On July 7, 2023, in light of the Hearing Officer’s June 12, 2023 Ruling as well as the City of West Chicago’s June 21, 2023 Response to Interrogatories confirming that Derke Price was in attendance at the February 27, 2023 closed session meeting of the City Council, PWC sought a determination from the Illinois Attorney General Public Access Counselor, as copy of which is attached hereto as Exhibit 1, seeking a copy of the closed session recording. In its request, PWC alleged and asserted that the proceedings that occurred in closed session on**

February 27, 2023, were and are in violation of the Open Meetings Act for at least one or more of the following reasons:

*First*, because of the attendance at the closed session of Hearing Officer Derke Price, a third-party attorney who does not represent the City, the attorney-client privilege *does not apply*.

*Second*, because the February 28, 2023 open meeting statements Alderman Chasse made, in which she stated the City's approval was based on the comments of *two* attorneys, one of whom was likely Mr. Price reveal that City Council members' deliberation were not based on Hearing "Evidence or testimony presented in open hearing," but, rather, on attorney recommendations or comments that Hearing Officer Price or other attorney made in favor of Lakeshore's Siting Application, thus Open Meetings Act exemption 5 ILCS 120/2 (C) (4) *does not apply*.

*Third*, because the February 28, 2023 open meeting Ordinance that approved Lakeshore's Siting Application (Ordinance 23-O-0006) makes no reference to why City Council Alderman James E. Beifuss did not believe the applicant had not met Criteria #1, 2 or 8, thus the City has not "prepare[d] and ma[de] available for public inspection a written decision setting forth its determinative reasoning," and thus the Open Meetings Act exemption 5 ILCS 120/2 (C) (4) *does not apply*.

*Fourth*, because the February 28, 2023 open meeting Ordinance that approved Lakeshore's Siting Application (Ordinance 23-O-0006) makes no reference to why Alderman Matthew Garling did not believe the Applicant had not met Criteria #1 and 3, thus the City has not "prepare[d] and ma[de] available for public inspection a written decision setting forth its determinative reasoning," and thus the Open Meetings Act exemption 5 ILCS 120/2 (C) (4) *does not apply*.

*Fifth*, because the February 28, 2023 open meeting Ordinance that approved Lakeshore's Siting Application (Ordinance 23-O-0006) makes no reference to any information that any attorney provided the City Council during their deliberations and thus the City has not "prepare[d] and ma[de] available for public inspection a written decision setting forth its determinative reasoning," and thus the Open Meetings Act exemption 5 ILCS 120/2 (C) (4) *does not apply*.

In addition, PWC further alleges and asserts that the Open Meetings Violations, as well as the actions leading up to and including the proceedings that occurred in closed session on February 27, 2023, and the actions that occurred after the closed session meeting further support the claim that the proceedings relating to the approval of Lakeshore's Application were fundamentally unfair.

INTERROGATORY NO. 4:

Is it Petitioner's contention that the merits of the Siting Application were pre-adjudicated?

**PWC ANSWER TO INTERROGATORY NO. 4:**

- **Yes.**

INTERROGATORY NO. 5:

If your answer to the foregoing Interrogatories is in the affirmative, please state the following:

A. Every fact, opinion, statement, declaration, assertion, or evidentiary item of any type or kind within Petitioner's knowledge which is relied upon in making that assertion.

B. Each statement, conversation, declaration, assertion, or writing relating to the alleged pre-adjudication of the merits of the Siting Application.

**PWC ANSWER TO INTERROGATORY NO. 5:**

- **Objection, premature, is overly broad and vague, and invades the Attorney Work Product Privilege. In addition, it calls for legal conclusions and involves opinions or conclusions that relate to ultimate facts involved in this case, and/or the application of law to these ultimate facts and therefore answers should be deferred until discover has been completed.**
- **In addition, see PWC's Response to Interrogatory No. 3**

INTERROGATORY NO. 6:

Is it Petitioner's contention that an *ex parte* or otherwise alleged improper communications took place concerning the Siting Application?

**PWC ANSWER TO INTERROGATORY NO. 6:**

**Objection, premature, is overly broad and vague, and invades the Attorney Work Product Privilege. In addition, it calls for legal conclusions and involves opinions or conclusions that relate to ultimate facts involved in this case, and/or the application of law to these ultimate facts and therefore answers should be deferred until discover has been completed.**

INTERROGATORY NO. 7:

If your answer to the foregoing Interrogatory is in the affirmative, please state the following:

A. Every fact, opinion, statement, declaration, assertion, or evidentiary item of any type or kind within Petitioner's knowledge which is relied upon in making that assertion.

B. Each statement, conversation, declaration, assertion, or writing related to any *ex parte* or alleged improper communication.

**PWC ANSWER TO INTERROGATORY NO. 7:**

- **Objection, premature, is overly broad and vague, and invades the Attorney Work Product Privilege. In addition, it calls for legal conclusions and involves opinions or conclusions that relate to ultimate facts involved in this case, and/or the application of law to these ultimate facts and therefore answers should be deferred until discover has been completed.**

**INTERROGATORY NO. 8:**

Is it Petitioner's contention that the City Council was in any way biased regarding the Siting Application?

**PWC ANSWER TO INTERROGATORY NO. 8:**

- **Yes**

**INTERROGATORY NO. 9:**

If your answer to the foregoing Interrogatory is in the affirmative, please state the following:

A. Every fact, opinion, statement, declaration, assertion, or evidentiary item of any type or kind within Petitioner's knowledge which is relied upon in making that assertion.

B. Each statement, conversation, declaration, assertions, or writing related to any alleged bias by the City Council.

**PWC ANSWER TO INTERROGATORY NO. 9:**

- **Objection, premature, is overly broad and vague, and invades the Attorney Work Product Privilege. In addition, it calls for legal conclusions and involves opinions or conclusions that relate to ultimate facts involved in this case, and/or the application of law to these ultimate facts and therefore answers should be deferred until discover has been completed.**
- **In addition, see PWC's Response to Interrogatory No. 3**

**INTERROGATORY NO. 10:**

Is it Petitioner's contention that the decision by the City Council was against the manifest weight of the evidence regarding statutory criterion I (need)?

**PWC ANSWER TO INTERROGATORY NO. 10:**

- Yes

**INTERROGATORY NO. 11:**

If your answer to the foregoing Interrogatory is in the affirmative, please state the following:

- A. Every fact within your knowledge which is relied upon in making that assertion.
- B. Each statement, declaration, assertion, or conversation relating to your contention.

**PWC ANSWER TO INTERROGATORY NO. 11:**

- **Objection, premature, is overly broad and vague, and invades the Attorney Work Product Privilege. In addition, it calls for legal conclusions and involves opinions or conclusions that relate to ultimate facts involved in this case, and/or the application of law to these ultimate facts and therefore answers should be deferred until discovery has been completed.**
- **Without waiving any objections set forth above and as alleged in the Amended Petition, it is further the contention of PWC that Lakeshore failed to establish that there was an actual “need” for an additional waste transfer station within the area it is intended to serve, and instead focused merely on its own purported “need for vertical integration,” which, of course, is not a part of Criterion 1. In addition, see PWC’s Combined Proposed Findings of Fact and Conclusions of Law, filed in the underlying siting proceedings, which set forth detail why Applicant failed to demonstrate compliance with Criterion 1, which detail are fully incorporated in this response.**

**INTERROGATORY NO. 12:**

Is it Petitioner’s contention that the decision by the City Council was against the manifest weight of the evidence regarding statutory criterion ii (public health, safety, and welfare)?

**PWC ANSWER TO INTERROGATORY NO. 12:**

- Yes

**INTERROGATORY NO. 13:**

If your answer to the foregoing Interrogatory is in the affirmative, please state the following:

- A. Every fact within your knowledge which is relied upon in making that assertion.
- B. Each statement, declaration, assertion, or conversation relating to your contention.

**PWC ANSWER TO INTERROGATORY NO. 13:**

- **Objection, premature, is overly broad and vague, and invades the Attorney Work Product Privilege. In addition, it calls for legal conclusions and involves opinions or conclusions that relate to ultimate facts involved in this case, and/or the application of law to these ultimate facts and therefore answers should be deferred until discover has been completed.**
- **Without waiving any objections set forth above and as alleged in the Amended Petition, it is further the contention of PWC that Lakeshore failed to establish that its proposed facility would be operated in a safe manner, especially considering its proximity to the DuPage Airport Authority and its admission that its operations were within the runway protection zone for the Airport; thus, it did not satisfy Criterion 2. In addition, see PWC's Combined Proposed Findings of Fact and Conclusions of Law, filed in the underlying siting proceedings, which set out detail why the Applicant failed to demonstrate compliance with Criterion 2, which information is incorporated into this response.**

**INTERROGATORY NO. 14:**

Is it Petitioner's contention that the decision by the City Council was against the manifest weight of the evidence regarding statutory criterion iii (compatibility with the character of the surrounding area)?

**PWC ANSWER TO INTERROGATORY NO. 14:**

- **Yes**

**INTERROGATORY NO. 15:**

If your answer to the foregoing Interrogatory is in the affirmative, please state the following:

- A. Every fact within your knowledge which is relied upon in making that assertion.
- B. Each statement, declaration, assertion, or conversation relating to your contention.

**PWC ANSWER TO INTERROGATORY NO. 15:**

- **Objection, premature, is overly broad and vague, and invades the Attorney Work Product Privilege. In addition, it calls for legal conclusions and involves opinions or conclusions that relate to ultimate facts involved in this case, and/or the application of law to these ultimate facts and therefore answers should be deferred until discover has been completed.**

- **Without waiving any objections set forth above and as alleged in the amended petition, it is further the contention of PWC that Lakeshore failed to establish that its proposed facility was to be located so as to minimize incompatibility with the character of the surrounding areas and to minimize the effect on the value of the surrounding property, thus it did not satisfy Criterion 3. In addition, see PWC's Combined Proposed Findings of Fact and Conclusions of Law, filed in the underlying siting proceedings, which set out detail why the Applicant failed to demonstrate compliance with Criterion 3, which information is incorporated into this response.**

INTERROGATORY NO. 16:

Is it Petitioner's contention that the decision by the City Council was against the manifest weight of the evidence regarding statutory criterion vi (minimization of impact on traffic)?

**PWC ANSWER TO INTERROGATORY NO. 16:**

- **Yes.**

INTERROGATORY NO. 17:

If your answer to the foregoing Interrogatory is in the affirmative, please state the following:

- A. Every fact within your knowledge which is relied upon in making that assertion.
- B. Each statement, declaration, assertion, or conversation relating to your contention.

**PWC ANSWER TO INTERROGATORY NO. 17:**

- **Objection, premature, calls for a legal conclusion or in the alternative, involves an opinion or conclusion that relates to fact or the application of law to fact and therefore that answers should be deferred until discover has been completed, work product, overly broad and vague.**

INTERROGATORY NO. 18:

Please identify the name, current address, and current telephone number of all witnesses who will testify at the hearing for Petitioner and the subject matter of each individual's testimony.

**PWC ANSWER TO INTERROGATORY NO. 18:**

- **Objection, premature.**

INTERROGATORY NO. 19:

Please identify and list any and all documents which will be introduced into evidence at the hearing and the purpose and content of each such document.

**PWC ANSWER TO INTERROGATORY NO. 19:**

- **Objection, premature.**

**INTERROGATORY NO. 20:**

How much money has PWC and/or its attorneys received from Waste Connections, Groot Industries, or any of their related/affiliated/owned entities?

**PWC ANSWER TO INTERROGATORY NO. 20:**

- **Objection, relevance.**

**INTERROGATORY NO. 21:**

How much money has PWC received from all other sources?

**PWC ANSWER TO INTERROGATORY NO. 21:**

- **Objection, relevance.**

For the Answers:

  
\_\_\_\_\_  
Nicholas Dzierzanowski

For the Objections:

  
\_\_\_\_\_  
Ricardo Meza

Dated: July 14, 2023

Respectfully Submitted,



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# Exhibit 1

**OMA – REQUEST FOR REVIEW BY PUBLIC ACCESS COUNSELOR (PAC)**

Name of Requester: Ricardo Meza

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E-mail Address: rmeza@meza.law

Telephone Number: (312)-802-0336

Preferred Method of Contact: U.S. Mail  E-mail

Name of the Public Body: City Council of the City of West Chicago

Date of Alleged Violation of Open Meetings Act (OMA) by Public Body: February 27, 2023\_\_\*

**\*A Request for Review usually must be filed within 60 calendar days of the date of the alleged violation of OMA. However, if facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date by a requester utilizing reasonable diligence (not exceeding 2 years after the alleged violation), a Request for Review may be filed within 60 days of the discovery of the alleged violation. The extended period for filing a Request for Review applies only to violations occurring at meetings on or after August 19, 2015.**

Please provide a summary of facts supporting your allegations that the public body violated OMA. Attach additional pages as necessary:

See Attached Letter

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**I hereby submit this request for the PAC to review this potential OMA violation.**

Signature of Requester:  Date: 7/7/23



Via Electronic Mail

July 7, 2023

542 S. Dearborn Street  
10<sup>th</sup> Floor  
Chicago, IL 60605  
TEL: (312) 802-0336  
www.meza.law

Ricardo Meza\*  
[rmeza@meza.law](mailto:rmeza@meza.law)

Public Access Counselor

\*Licensed in Illinois & Texas

**Re: City of West Chicago Open Meetings Act Violation**

Dear Public Access Counselor:

On behalf of Protect West Chicago, a citizens group, I respectfully request that you review violations of the Open Meetings Act by the City of West Chicago's City Council (the "City"). In light of the nature of the underlying matter pending before the Illinois Pollution Control Board,<sup>1</sup> we are asking for an expedited ruling. Below are the facts that support our request:

- 1) In January 2023, the City held a series of Public Meetings to consider Lakeshore Recycling Systems, LLC's ("Lakeshore") Siting Application for a Second Waste Transfer Station in West Chicago (a pollution control facility).
- 2) At the City public meetings, extensive testimony<sup>2</sup> and exhibits were presented over a series of days extending from January 3 through 19, 2023 relating to whether Lakeshore's Application complied with the criteria set forth in the Illinois Environmental Protection Act, 415 ILCS §5/39.2 (b).
- 3) Although not required to attend the City public hearings, some, but not all West Chicago City Council members whose duty would be to determine whether Lakeshore's Application did or did not comply with the Illinois Environmental Protection Act, 415 ILCS §5/39.2 (b), attended one or more of the public hearings.
- 4) On February 27, 2023, at 7:03 pm, rather than deliberate as to whether Lakeshore's Application did or did not comply with the Illinois Environmental Protection Act in public and in an open meeting, the City proceeded to closed session. As set forth in the subsequent closed session meeting minutes, the City claimed that it was authorized to proceed to closed

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<sup>1</sup> Titled *Protect West Chicago v. City of West Chicago, et al.*, 23-PCB-107 & 23-PCB-109 is pending before the Illinois Pollution Control Board. See, <https://pcb.illinois.gov/Cases/GetCaseDetailsById?caseId=17341>

<sup>2</sup> Over 1,400 pages of transcripts resulted from the public hearings.

session pursuant to 5 ILCS 120/2 (C)(4) of the Open Meetings Act.<sup>3</sup> **See Exhibit A.** The City remained in closed session on February 27, 2023 from 7:03 p.m. until 8:50 p.m. **Id.**

- 5) On February 28, 2023, at 6:00 p.m., the City reconvened in an open meeting relating to Lakeshore's Application. This open meeting only lasted a total of five (5) minutes. **Id.** At this open meeting and as reflected in the Closed Session meeting minutes, and other than attendance and roll call, only three Alderman spoke. Specifically, the open meeting minutes attribute the following information to the three Alderman:
- a. Alderman James E. Beifuss stated that the applicant has not met Criteria #1, 2 or 8.
  - b. Alderman Matthew Garling expressed that he feels that Criteria #1 and 3 have not been met.
  - c. Alderman Lori Chassee conveyed that she believes the applicant has met all of the Siting Criteria.

After its five-minute open meeting on February 28, 2023 open meeting, the City voted and passed Ordinance 23-O-0006. **Id.**

- 6) In fact, upon information and belief, on February 28, 2023, Alderman Lori Chassee did not only convey that she believed that the applicant had met all of the Siting Criteria, Alderman Chasse also made public statements indicating that closed session City Council deliberations **were not** solely on "evidence or testimony presented in open hearing," but, rather, on attorney comments, statements and/or recommendations. Specifically, on information and belief, Alderman Lori Chassee stated in the February 28, 2023 open meeting that the decision to approve Lakeshore's Siting Application was based on, and prompted by comments from **two attorneys for the City** that a vote against Applicant Lakeshore may place the City and/or City officials at risk of being sued.
- 7) The February 28, 2023 Ordinance that the City approved at 6:06 p.m., namely Ordinance 23-O-0006, was drafted sometime after the February 27, 2023 closed session meeting of the West Chicago City Council by Special Counsel Dennis Walsh, which he then provided to the City Council sometime prior to the February 28, 2023, 6:00 p.m. City Council Meeting. Ordinance 23-O-0006 was then approved as drafted at about 6:05 p.m. by the West Chicago City Council. **See Exhibit B.**
- 8) In light of the fact that Special Counsel Walsh had drafted Ordinance 23-O-0006 prior to the February 28, 2023 6:00 p.m. City Council Meeting, the written ordinance did NOT set forth the determinative reasoning as to:
- a. Why City Council Alderman James E. Beifuss did not believe the applicant had not met Criteria #1, 2 or 8

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<sup>3</sup> 5 ILCS 120/2 (C) (4) — Evidence or testimony presented in open hearing or in closed hearing where specifically authorized by law, to a quasi-adjudicative body, as defined in this Act, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning.

- b. Why Alderman Matthew Garling did not believe the Applicant had not met Criteria #1 and 3.
  - c. Why Alderman Lori Chassee believed that voting against Applicant Lakeshore would place West Chicago at risk and what information she had received from attorneys in closed session, which had not been presented in open hearing, that made her believe she was required to approve the application.
- 9) On March 28, 2023, PWC filed a petition for review of the City's approval with the Illinois Pollution Control Board. In its amended Petition, PWC alleged, among other things, that the decision of the City to approve the application was fundamentally unfair and further alleged that the City's retained and alleged neutral Hearing Officer (Derke Price) failed to render impartial rulings on the evidence. **See Exhibit C.**
- 10) On May 5, 2023, PWC served discovery upon the City seeking to learn the names and identities of the persons who attended the February 27, 2023, City Council closed session meeting as well as a copy of the closed session meeting tape.
- 11) On May 11, 2023, the City objected to the production of the closed session recording on two grounds:
  - a. The City cited to 5 ILCS 120/2.06 (e) which states: "the verbatim record of a meeting closed to the public shall not be open for public inspection or subject to discovery in any administrative or judicial proceeding other than one brought to enforce this Act.
  - b. The City alleged that the discussions held in closed session are protected from disclosure by the attorney-client privilege.
- 12) On June 12, 2023, the Illinois Pollution Control denied PWC's request for the closed session recording and stated that "while PWC may have an argument regarding the conduct and content of the closed meeting, this is not the forum for that argument. The provisions of OMA are enforceable through the circuit court and the Public Access Counselor (5 ILCS 120/3, 3.5 (2022))." **See Exhibit D.**
- 13) On June 21, 2023, after being required to respond, the City submitted its responses to PWC's interrogatories. That day, PWC learned for the first time that Hearing Officer and attorney Derke Price was present during the entire February 27, 2023, closed session meeting.
- 14) Mr. Price is not an attorney for the City and as noted above, was retained to serve as a neutral hearing officer but as alleged, he was not neutral. Moreover, Ordinance 23-O-0006 did not provide any indication as to what information Mr. Price told the City council in response to questions they had relating to Lakeshore's Application and/or anything relating how a vote against Applicant Lakeshore may place the City and/or City officials at risk of being sued.

Based upon the above, PWC alleges and asserts that the proceedings that occurred in closed session on February 27, 2023, were and are in violation of the Open Meetings Act for at least one or more of the following reasons:

*First*, because of the attendance at the closed session of Hearing Officer Derke Price, a third-party attorney who does not represent the City, the attorney-client privilege **does not apply**.

*Second*, because the February 28, 2023 open meeting statements Alderman Chasse made, in which she stated the City's approval was based on the comments of *two* attorneys, one of whom was likely Mr. Price, reveal that City Council members' deliberation were not based on Hearing "Evidence or testimony presented in open hearing," but, rather, on attorney recommendations or comments that Hearing Officer Price or other attorney made in favor of Lakeshore's Siting Application, thus Open Meetings Act exemption 5 ILCS 120/2 (C) (4) **does not apply**.

*Third*, because the February 28, 2023 open meeting Ordinance that approved Lakeshore's Siting Application (Ordinance 23-O-0006) makes no reference to why City Council Alderman James E. Beifuss did not believe the applicant had not met Criteria #1, 2 or 8, thus the City has not "prepare[d] and ma[de] available for public inspection a written decision setting forth its determinative reasoning," and thus the Open Meetings Act exemption 5 ILCS 120/2 (C) (4) **does not apply**.

*Fourth*, because the February 28, 2023 open meeting Ordinance that approved Lakeshore's Siting Application (Ordinance 23-O-0006) makes no reference to why Alderman Matthew Garling did not believe the Applicant had not met Criteria #1 and 3, thus the City has not "prepare[d] and ma[de] available for public inspection a written decision setting forth its determinative reasoning," and thus the Open Meetings Act exemption 5 ILCS 120/2 (C) (4) **does not apply**.

*Fifth*, because the February 28, 2023 open meeting Ordinance that approved Lakeshore's Siting Application (Ordinance 23-O-0006) makes no reference to any information that any attorney provided the City Council during their deliberations and thus the City has not "prepare[d] and ma[de] available for public inspection a written decision setting forth its determinative reasoning," and thus the Open Meetings Act exemption 5 ILCS 120/2 (C) (4) **does not apply**.

As noted above, PWC utilized reasonable diligence to uncover violations of the Open Meetings Act by serving interrogatories upon the City on May 5, 2023, and submitted this request to the Public Access Counselor within 16 days of the City's response, and PWC's actual discovery of violations on June 21, 2023. Thus, PWC has complied with the statutory requirements 5 ILCS 120/3.5(a) by submitting a request for review within 60 days of discovery of an alleged violation and respectfully requests the Public Access Counselor require the City of West Chicago to disclose the closed meeting recording to PWC because the closed session meeting violated the Illinois Open Meetings Act.

Sincerely,



Ricardo Meza

# EXHIBIT A

CITY OF  
**WEST CHICAGO**

WHERE HISTORY & PROGRESS MEET

**CITY COUNCIL SPECIAL MEETING  
MONDAY, FEBRUARY 27-28, 2023 - 6:00 P.M.  
475 MAIN STREET, WEST CHICAGO, ILLINOIS**

**AGENDA**

February 27, 2023 Agenda

1. **Call to Order**
2. **Pledge of Allegiance to the Flag**
3. **Roll Call and Establishment of a Quorum**
4. **Executive Session (Roll Call Vote)**
  - a. **5 ILCS 120/2 (C) (4) – Evidence or testimony presented in open hearing or in closed hearing where specifically authorized by law, to a quasi adjudicative body, as defined in this Act, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning**
5. **Roll Call to Return to Open Session**
6. **Continue the Meeting to February 28, 2023 at 6:00 p.m. at Community High School**

February 28, 2023 Agenda Continued

7. **Call to Order**
8. **Roll Call and Establishment of a Quorum**
9. **Adoption of an Ordinance relating to the APPLICATION FOR LOCAL SITING APPROVAL FOR LAKESHORE RECYCLING SYSTEMS, LLC, FOR THE WEST DUPAGE RECYCLING AND TRANSFER STATION, 1655 POWIS ROAD, WEST CHICAGO.**
10. **Public Participation (three minutes per speaker)**
11. **Adjournment**



These minutes were approved at the 3/20/23 City Council meeting with no changes  
CITY OF WEST CHICAGO – 475 Main Street  
CITY COUNCIL MINUTES  
Special Meeting  
February 27-28, 2023

The Special City Council meeting of February 27-28, 2023, was held partly remote (via Zoom) and partly in person.

**1. Call to Order.** Mayor Ruben Pineda (in person) called the meeting to order at 6:00 p.m. on February 27, 2023. The Mayor said that he determined that fully in person meetings are not practical and prudent at this time.

**2. Pledge of Allegiance.** Alderman Morano led all in the Pledge of Allegiance.

**3. Roll Call and Establishment of a Quorum.**

Roll call found Lori Chassee, James E. Beifuss, Jr., Jayme Sheahan, Rebecca Stout, Melissa Birch Ferguson, Jeanne Short, Sandy Dimas, Christine Dettmann, Heather Brown, Matthew Garling, Joseph C. Morano, John E. Jakabcsin, Alton Hallett, and Christopher Swiatek present. Aldermen Brown and Garling were present via Zoom. The Mayor announced a quorum

Also in attendance were City Administrator Michael Guttman and Special Legal Counsel Dennis Walsh and Dan Bourgault from Klein, Thorpe & Jenkins, and Derke Price, from Ancel Glink.

**4. Executive Session (Roll Call Vote).**

a. **5 ILCS 120/2 (C) (4)** – Evidence or testimony presented in open hearing or in closed hearing where specifically authorized by law, to a quasi adjudicative body, as defined in this Act, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning.

At 7:03 p.m., Alderman Swiatek made a motion, seconded by Alderman Chassee, to go into Executive Session.

Voting Aye by Roll Call Vote: Chassee, Beifuss, Stout, Birch Ferguson, Short, Dimas, Dettmann, Morano, Garling, Sheahan, Hallett, Brown, Jakabcsin and Swiatek. Motion carried.

**5. Roll Call to Return to Open Session.** At 8:50 p.m., Alderman Dimas made a motion, seconded by Alderman Birch Ferguson, to return to Open Session.

Voting Aye by Roll Call Vote: Chassee, Beifuss, Stout, Birch Ferguson, Short, Dimas, Dettmann, Morano, Garling, Sheahan, Hallett, Brown, Jakabcsin and Swiatek. Motion carried.

**6. Continue to February 28, 2023 at 6:00 p.m. at Community High School.** Alderman Chassee made a motion, seconded by Alderman Short, to continue the meeting to February 28, 2023 at Community High School.

Voting Aye by Roll Call Vote: Chassee, Beifuss, Stout, Birch Ferguson, Short, Dimas, Dettmann, Morano, Garling, Sheahan, Hallett, Brown, Jakabcsin and Swiatek. Motion carried.

**February 28, 2023 Agenda Continued**

The Special City Council meeting of February 28, 2023, was held partly remote (via Zoom) and partly in person.

**7. Call to Order.** Mayor Ruben Pineda (in person) called the meeting to order at 6:00 p.m. on February 28, 2023. The Mayor said that he determined that fully in person meetings are not practical and prudent at this time.

**8. Roll Call and Establishment of a Quorum**

Roll call found Lori Chassee, James E. Beifuss, Jr., Jayme Sheahan, Rebecca Stout, Melissa Birch Ferguson, Jeanne Short, Sandy Dimas, Christine Dettmann, Heather Brown, Matthew Garling, Joseph C. Morano, John E. Jakabcsin, Alton Hallett, and Christopher Swiatek present. Aldermen Chassee and Garling were present via Zoom. The Mayor announced a quorum.

Also in attendance were Director of Community Development Tom Dabareiner, City Administrator Michael Guttman and Special Legal Counsel Dennis Walsh.

**9. Adoption of an Ordinance relating to the APPLICATION FOR LOCAL SITING APPROVAL FOR LAKESHORE RECYCLING SYSTEMS, LLC, FOR THE WEST DUPAGE RECYCLING AND TRANSFER STATION, 1655 POWIS ROAD, WEST CHICAGO.**

City of West Chicago  
Regular City Council Meeting  
February 27-28, 2023  
Page 2

Alderman Dimas made a motion, seconded by Alderman Swiatek, to approve Ordinance No. 23-O-0006 approving the siting application for Lakeshore Recycling Systems.

Alderman Beifuss stated that the applicant has not met Criteria #1, 2 or 8. Alderman Garling expressed that he feels that Criteria #1 and 3 have not been met. Alderman Chassee conveyed that she believes the applicant has met all of the Siting Criteria.

Voting Aye by Roll Call Vote: Chassee, Stout, Birch Ferguson, Short, Dimas, Dettmann, Morano, Sheahan, Hallett, Brown, and Swiatek. Alderman Beifuss, Garling and Jakabcsin voted Nay. Motion carried.

**10. Public Participation (three minutes per speaker)**  
None

**11. Adjournment**

At 6:05 p.m., Alderman Stout made a motion, seconded by Alderman Dimas, to adjourn the meeting. All Aldermen voted aye by Roll Call Vote.

Respectfully submitted,

Michael Guttman  
City Administrator



WHERE HISTORY & PROGRESS MEET

NOTICE OF A MEETING OF THE CITY COUNCIL OF THE CITY WEST CHICAGO

Notice is hereby given to all interested parties pursuant to the Illinois Open Meetings Act, that a majority of a quorum of the City Council for the City of West Chicago may be attending the public hearings relating to the Lakeshore Recycling Systems, LLC, Application for Site Location for the West DuPage Recycling and Transfer Station located at 1655 Powis Road in West Chicago. At the following public hearing dates, times, and locations have been set but not all dates may be necessary to conclude the public hearings and/or more dates may be added for the public hearing:

Tuesday, January 3 from 6:00 p.m. to 10:00 p.m. at Wheaton Academy  
(900 Prince Crossing Road)

Wednesday, January 4 from 6:00 p.m. to 10:00 p.m. at Wheaton Academy  
(900 Prince Crossing Road)

Thursday, January 5 from 6:00 p.m. to 10:00 p.m. at Wheaton Academy  
(900 Prince Crossing Road)

Tuesday, January 10 from 6:00 p.m. to 10:00 p.m. at Wheaton Academy  
(900 Prince Crossing Road)

Thursday, January 12 from 6:00 p.m. to 10:00 p.m. at the West Chicago Community  
High School (326 Joliet Street)

There will be no agenda for this meeting of the members of the City Council but public comments regarding the Application will be allowed on the last day of the public hearings.

**CITY OF WEST CHICAGO**

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**ORDINANCE NO. 23-O-0006**

**AN ORDINANCE CONDITIONALLY APPROVING THE APPLICATION FOR  
LOCAL SITING APPROVAL OF LAKESHORE RECYCLING SYSTEMS, LLC  
FOR WEST DUPAGE RECYCLING AND TRANSFER STATION**

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**ADOPTED BY THE  
CITY COUNCIL  
OF THE  
CITY OF WEST CHICAGO  
February 28, 2023**

Published in pamphlet form by the authority of the City Council of the City of West Chicago, DuPage County, Illinois, on the 1<sup>st</sup> day of March, 2023.

**ORDINANCE NO. 23-O-0006**

**AN ORDINANCE CONDITIONALLY APPROVING THE APPLICATION FOR LOCAL SITING APPROVAL OF LAKESHORE RECYCLING SYSTEMS, LLC FOR WEST DUPAGE RECYCLING AND TRANSFER STATION**

**WHEREAS**, on September 16, 2022, Lakeshore Recycling Systems, LLC. (“Applicant”) filed an application with the City of West Chicago for siting approval of a new pollution control facility within West Chicago, Illinois, for the development of a new transfer station as defined by Section 3.500 of the Illinois Environmental Protection Act located at 1655 Powis Road (“the Facility”), pursuant to Section 39.2 of the Illinois Environmental Protection Act (415 ILCS 5/39.2) (“Act”); and

**WHEREAS**, the waste accepted for transfer will be general municipal solid waste, hydro excavation waste, recyclables and construction or demolition debris generated by residential, commercial and industrial sources; and

**WHEREAS**, the proposed Facility falls within the definition of a “pollution control facility” under the Illinois Environmental Protection Act and, as such, requires site location approval by the municipality in which the proposed Facility will be located pursuant to 415 ILCS 5/39.2; and

**WHEREAS**, the City of West Chicago, DuPage County, Illinois, is the municipality in which the proposed Facility will be located if approved and Article VII of the City of West Chicago’s Code of Ordinances (the “Siting Ordinance”) enacted by the City Council of the City of West Chicago, establishes a procedure for pollution control facility site approval in the City of West Chicago, DuPage County, Illinois; and

**WHEREAS**, following notice, the City of West Chicago held public hearings on January 3, 2023, January 4, 2023, January 5, 2023, January 10, 2023, January 12, 2023, January 16, 2023, and January 19, 2023, pursuant to the Act and West Chicago’s Siting Ordinance; and

**WHEREAS**, the Applicant, Protect West Chicago, People Opposing DuPage Environmental Racism and the City of West Chicago staff are parties that appeared at the public hearings. Protect West Chicago by and through counsel moved to dismiss the application asserting that the City of West Chicago lacked jurisdiction due to fatal defects in the pre-filing notice required by 415 ILCS 5/39.2, and argued that since the application fails to comply with the 1,000 foot set-back requirement of 415 ILCS 5/22.14 concerning the setback from property zoned primarily for residential uses, the siting approval must be denied. The Applicant filed a response in opposition to the Motion to Dismiss and a memorandum explaining why the 1,000 foot residential setback does not apply to this Facility due to impossibility.

**WHEREAS**, the Hearing Officer appointed to preside over the public hearing has made his report and recommendation regarding the Motion to Dismiss the residential setback issue and regarding conditional siting approval to the City Council of the City of West Chicago, based upon

the siting application, notifications, hearings, exhibits, public comment and the record, which includes the following determinations, subject to the decision of this City Council:

1. The Applicant complied with all pre-filing notice requirements of Section 39.2(b) of the Act and the pre-hearing notice requirements of Section 39.2(c) of the Act;
2. The City has jurisdiction to consider the Application;
3. Section 5/22.14 of the Act does not bar this proposed Facility;
4. The siting proceedings herein, both procedurally and substantively, complied with the requirements of fundamental fairness;
5. The Applicant has demonstrated that the proposed Facility meets Criterion 1: “the facility is necessary to accommodate the waste needs of the area it is intended to serve....;”
6. The Applicant has not demonstrated that the proposed Facility meets Criterion 2; however, with the imposition of and compliance with the special conditions provided below, the proposed Facility meets Criterion 2: “the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;”
7. The Applicant has demonstrated that the proposed Facility meets Criterion 3: “the facility is so located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property;”
8. The Applicant has demonstrated that the proposed Facility meets Criterion 4: “for a facility other than a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100 year floodplain or the site is flood-proofed”;
9. The Applicant has not demonstrated that the proposed Facility meets Criterion 5; however, with the imposition of and compliance with the special conditions provided below, the proposed Facility meets Criterion 5: “the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents;”
10. The Applicant has demonstrated that the proposed Facility meets Criterion 6: “the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows;”
11. The Applicant demonstrated that the facility will not be accepting hazardous waste and therefore demonstrated that Criterion 7 is not applicable;
12. The Applicant has demonstrated that the proposed Facility meets Criterion 8: “...where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan ...;”

13. The Applicant demonstrated that the Facility is not located within a regulated recharge area and therefore Criterion 9 is not applicable;

14. The Applicant's operating history demonstrates that the Applicant is qualified to operate the Facility safely and properly and provides no basis to deny the Application;

15. The proposed Facility, when developed and operated in compliance with the special conditions, is consistent with all appropriate and relevant location standards, including airport setback requirements, wetlands standards, seismic impact zone standards, and residential setback requirements; and

16. The Applicant has agreed to comply and approval is conditioned upon compliance with all terms of the Host Community Benefit Agreement between the City of West Chicago and Lakeshore Recycling Systems, LLC, dated April 1, 2019; the Secondary Host Community Benefit Agreement between DuPage County and Lakeshore Recycling Systems, LLC, dated March 10, 2020; and the Airport Agreement.

**WHEREAS**, the City Council of the City of West Chicago met on February 27, 2023 to deliberate, and to review and consider the hearing record in light of each of the Criterion established for consideration of siting of pollution control facilities in Section 39.2, and to the extent applicable, the provisions of the Siting Ordinance; and

**WHEREAS**, Section 39.2 allows the City Council of the City of West Chicago, in granting siting approval, to impose such conditions as may be reasonable and necessary to accomplish the purposes of Section 39.2 and as are not inconsistent with Illinois Pollution Control Board regulations; and

**WHEREAS**, during the above deliberations, the City Council of the City of West Chicago found that the Applicant complied with all the pre-filing notice requirements of Section 39.2(b) of the Act, and the pre-hearing notice requirements of Section 39.2(c) of the Act and that the City of West Chicago has jurisdiction to consider the application and found further that the Applicant met Criterion (1), (3), (4), (6), (7), (8) and (9) of Section 39.2 without conditions, and that the Applicant met Criterion (2) and (5) of Section 39.2 subject to the special conditions provided below; and

**WHEREAS**, after careful review and consideration, the City Council of the City of West Chicago desire to adopt the Hearing Officer's Findings as the basis of their decision as to a whether the Applicant met the Criterion under Section 39.2.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF WEST CHICAGO, DU PAGE COUNTY, ILLINOIS**, pursuant to its home rule powers as provided by Article VII, Section 6 of the Illinois Constitution and the authority under Section 39.2 of the Illinois Environmental Protection Act (415 ILCS 5/39.2), that the Report of Hearing Officer Recommended Findings of Fact and Recommended Conditions of Approval, attached hereto as Exhibit A, is adopted by the City Council of the City of West Chicago.

**BE IT FURTHER RESOLVED**, that the City Council of the City of West Chicago has jurisdiction and hereby determines that Lakeshore Recycling Systems, LLC. has satisfied the applicable criteria, subject to the special conditions provided below; and

**BE IT FURTHER RESOLVED**, that the City Council of the City of West Chicago conditionally approves the request of Lakeshore Recycling Systems, LLC. for site approval of its proposed municipal solid waste transfer station, provided that the special conditions are not inconsistent with regulations of the Pollution Control Board or the terms of any development or operating permits approved by the Illinois Environmental Protection Agency.

**SECTION 1:** The preceding "Whereas" clauses are hereby incorporated into this Ordinance as if they were fully set forth herein.

**SECTION 2:** The City Council of the City of West Chicago denies Protect West Chicago's Motion to Dismiss the Application for lack of jurisdiction due to fatal defects in the notice required by 415 ILCS 5/39.2(b) and due to the restrictions of 415 ILCS 5/22.14 concerning the setback from property zoned primarily for residential uses and finds that it has jurisdiction to consider the application.

**SECTION 3:** The City Council of the City of West Chicago hereby adopt the Report of Hearing Officer Recommended Findings of Fact and Recommended Conditions of Approval and Proposed Findings of Fact and Conclusions of Law in its entirety, as attached hereto as Exhibit A and incorporated as if fully set forth herein, and by so doing, the City Council of the City of West Chicago expressly adopts, in expansion of, but not in limitation of the foregoing, the introduction, all findings of fact, all conclusions of law, citations, recommendations, analysis, references and incorporations made in the Report of Hearing Officer Recommended Findings of Fact and Recommended Conditions of Approval and Proposed Findings of Fact and Conclusions of Law as its own to the same extent as though fully set forth herein. The City Council of the City of West Chicago further find, in expansion of, but not in limitation of the foregoing, that it has proper jurisdiction to hear the Application, that all notices required by law were duly given, that the procedures outlined in Section 39.2 and the Siting Ordinance were duly followed, and such procedures were fundamentally fair to the Applicant, all parties, and all participants involved.

**SECTION 4:** Based on the Application, expert testimony and record, we find the following:

The determination of Criterion 2 is primarily a matter of assessing the credibility of expert witnesses. *Fairview Area Citizens Taskforce v. Illinois Pollution Control Board*, 198 Ill.App.3d 541, 552, 555 N.E.2d 1178, 1185 (3d Dist. 1990); *CDT Landfill Corp. v. City of Joliet*, 1998 WL 112497 (Ill. Pollution Control Board). In the City Council's opinion, Mr. Hock's testimony was the more thorough and credible testimony on this issue. Accordingly, we find that the Applicant has met its burden of proof as to Criterion 2 of Section 39.2, the Transfer Station Facility is designed, located and proposed to be operated so that the public health, safety and welfare will be protected, provided that the Applicant operates the Facility in accordance with the following special conditions:



1. The maximum tonnage per day that may be received by the Facility shall not exceed 1,950 tons per day, of which up to 650 tons per day may be municipal solid waste (MSW), up to 300 tons per day may be hydro excavation waste, up to 750 tons per day may be construction and demolition debris (C&D) and up to 250 tons per day may be single stream recyclables (SSR).
2. The Applicant shall keep the truck doors to the transfer Facility closed, except for emergencies and to allow trucks to enter and exit the Facility, during regular business hours. The doors shall be equipped with sensors such that they will open and close automatically as vehicles enter and exit the transfer building. Alternatively, an employee may open and close the doors when trucks access and exit the transfer Facility.
3. The push walls in the transfer Facility shall be designed to ensure to the satisfaction of the City that there will be no buildup of waste behind the walls which could result in fire, odor, or harborage for vectors. In addition, the Applicant shall provide a certification from a licensed structural engineer that the push walls will be capable of withstanding impact from waste loading equipment at 5 mph without shearing the beams or compromising the integrity of the building's walls.
4. All transfer vehicles utilizing the Facility shall be equipped with auto tarping systems, and all loaded transfer trailers shall be tarped inside of the transfer building prior to exit.
5. The Applicant shall continue to operate the C&D recycling portions of the Facility in accordance with the requirements of 415 ILCS 5/22.38 for so long as the current permit (2015-124-OP) remains in effect. If the current permit (2015-124-OP) is discontinued, replaced or terminated, the following conditions, as modified, shall remain in effect:
  - a) The Facility shall be designed and constructed with roads and traffic flow patterns adequate for the volume, type and weight of traffic using the Facility including, but not limited to hauling vehicles, emergency vehicles, and on-site equipment. Sufficient area shall be maintained to minimize traffic congestion, provide for safe operation, and allow for queuing of waste hauling vehicles.
  - b) The operator shall provide adequate parking for all vehicles and equipment used at the Facility and as necessary for queued hauling vehicles.
  - c) Roadways and parking areas on the Facility premises shall be designed and constructed for use in all weather, considering the volume, type and weight of traffic and equipment at the Facility.
  - d) The Facility shall be designed and constructed so that site surface drainage will be diverted around or away from the recycling and waste transfer areas. Surface drainage shall be designed and controlled so that adjacent property owners encounter no adverse effects during development, operation and after closure of the Facility.
  - e) Run-off from roadways and parking areas shall be controlled using storm sewers or shall be compatible with natural drainage for the site. Best management practices (e.g., design features, operating procedures, maintenance procedures, prohibition of certain practices and treatment) shall be used to ensure that run-off from these areas does not carry wastes, debris or constituents thereof, fuel, oil or other residues to soil, surface water or groundwater.
  - f) The Facility, including, but not limited to, all structures, roads, parking and recycling areas, shall be designed and constructed to prevent malodors, noise, vibrations, dust and exhaust from creating a nuisance or health hazard during development, operation and

closure of the Facility. Facility features (e.g., berms, buffer areas, paving, grade reduction), best available technology (e.g., mufflers, machinery enclosures, sound absorbent materials, odor neutralizing systems, air filtering systems, misting systems), and building features (e.g., enclosed structures, building orientation) shall be among the measures to be considered to achieve compliance.

- g) The Facility shall be designed and constructed to prevent litter and other debris from leaving the Facility property. Facility features (e.g., windbreaks, fencing, netting, etc.) shall be among the measures considered to ensure that the debris does not become wind strewn and that no other provisions of the Act are violated.
- h) No regulated air emissions shall occur from these facilities, except as authorized by a permit from the Illinois Environmental Protection Agency (IEPA) Bureau of Air (BOA). No process discharge to Waters of the State or to a sanitary sewer shall occur from these facilities, except as authorized by a permit from the IEPA Bureau of Water (BOW).
- i) The Facility shall be designed and constructed with a water supply of adequate volume, pressure, and in locations sufficient for cleaning, firefighting, personal sanitary facilities, and as otherwise necessary to satisfy operating requirements (e.g., dust suppression, wheel washing) and the contingency plan.
- j) The Facility shall be designed and constructed with exterior and interior lighting for roadways, and waste handling areas adequate to perform safely and effectively all necessary activities.
- k) The Facility shall be designed and constructed with truck wheel curbs, guard rails, bumpers, posts or equivalents to prevent backing into fuel storage tanks, equipment, and other structures.
- l) The Facility shall be designed and constructed with adequate shelter, sanitary facilities, and emergency communications for employees.
- m) The Facility operator shall install fences and gates, as necessary, to limit entry. Except during operating hours, the gates shall be securely locked to prevent unauthorized entry.
- n) The Facility may receive general construction and demolition debris at the site Monday through Saturday, 24 hours a day. The Facility shall be closed on Sunday and the six major federal holidays (New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day). When the Facility is operated before sunrise or after sunset, adequate lighting shall be provided. If it is required for the Facility to be open beyond normal operating hours to respond to emergency situations, a written record of the date, time and reason the Facility was open shall be maintained in Facility operating records. The IEPA's Regional Office and the county authority responsible for inspection of the Facility, per a delegation agreement with the IEPA, must be notified and must grant approval each day that the operating hours need to be extended. No later than 10:00 a.m. of the first operating day after the operating hours have been extended, the Applicant shall send a written report by email to the City Administrator, which describes the length of the extension of the operating hours and the reason for the extension.
- o) The Facility may receive and transfer MSW, hydro excavation waste and SSR from 4:00 a.m. to 12:00 a.m. Monday through Friday and from 4:00 a.m. to 12:00 p.m. on Saturday, with no operation on Sunday or the six major federal holidays (New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day), provided that on the Saturday following a major federal holiday, regular business hours

may be extended to 12:00 a.m. If it is required for the Facility to be open beyond normal operating hours to respond to emergency situations, a written record of the date, time and reason the Facility was open shall be maintained in Facility operating records. The City of West Chicago must be notified by email to the City Administrator each day that the operating hours need to be extended. The IEPA's Regional Office and the county authority responsible for inspection of the Facility, per a delegation agreement with the IEPA, must be notified and must grant approval each day that the operating hours need to be extended.

- p) Fire safety equipment (fire extinguishers) shall be maintained in accordance with recommended practice.
- q) Non-recyclable waste may be kept temporarily in covered containers or transfer trailers for no more than 24 hours (except on weekends and holidays), provided that loaded or partially loaded trailers intended to be stored overnight or that will not be picked up and transported the same operating day are stored indoors and suitably covered.
- r) Piles of general construction or demolition debris shall be covered or wetted to prevent air-borne dust.
- s) The Facility shall be designed and constructed to prevent unauthorized access to recycling areas, storage areas for unauthorized wastes, salvaged and recycled materials, and staging areas where loaded site equipment or vehicles may be parked. Facility features such as fences and gates shall be provided.
- t) Waste handling areas shall be designed and constructed to prevent exposure of wastes and recyclable materials to run-off and flooding.
- u) The sorting areas shall be properly graded and compacted to prevent ponding from forming leachate during storms.
- v) Records shall be maintained on-site at the Facility office for each operating day. The operator shall record operating hours, load ticket information, load inspections, daily processing time, volume processed per day, transfer load out and waste disposition details.
- w) The operator shall, within 48 hours of receipt of the general construction or demolition debris at the Facility, sort the general construction or demolition debris. The operator shall separate the recyclable general construction or demolition debris from nonrecyclable general construction or demolition debris and dispose of the non-recyclable general construction or demolition debris, in accordance with Section 22.38(b)(l) of the Act.
- x) The operator must place wood, tires, and other unacceptable materials in covered dumpsters or vehicles adequate to prevent the release of leachate.
- y) All non-recyclable general construction or demolition debris, and unacceptable material shall be moved to the waste transfer Facility on the same day it is received, and disposal of such material shall be handled in accordance with all applicable federal, State, and local requirements and with these conditions.
- z) The operator shall transport all non-putrescible recyclable general construction or demolition debris for recycling or disposal within 6 months of its receipt at the Facility, in accordance with Section 22.38(b)(4) of the Act.
- aa) In accordance with Section 22.38(b)(6) of the Act, the operator shall employ tagging and record keeping procedures to identify the source and transporter of C&D material accepted by the Facility.

- bb) The operator shall use load tickets to control the site activities and comply with the tagging and record keeping procedures. These load tickets shall identify the source of the C&D material delivered to the site. The operator shall use these tickets to identify the location in the yard or in the covered dumpsters and the length of time stored at the site to achieve compliance.
- cc) The operator is prohibited from receiving hazardous and asbestos containing materials.
- dd) The operator may separate clean concrete and clean soil from the general construction or demolition debris as recyclable materials for use in construction. The operator is permitted to store recyclable concrete and clean soil for a maximum period of 3 months.
- ee) The operator may store the steel separated from concrete or other construction or demolition debris for a maximum period of 6 months. After six months, the steel must be sent offsite for disposal or recycling.
- ff) The operator shall ensure that site surface drainage, during development, during operation and after the site is closed, shall be such that no adverse effects are encountered by adjacent property owners.
- gg) The best available technology (mufflers, berms and other sound shielding devices) shall be employed to minimize equipment noise impacts on property adjacent to the site during both development, operation and during any applicable post-closure care period.
- hh) Management of Unauthorized Waste by the operator
  - i. Landscape waste found to be mixed with general construction and demolition debris shall be removed the same day and transported to a facility that is operating in accordance with the Illinois Environmental Protection Act (Act), Title V, Sections 21 and 39 (415 ILCS 5/21 and 39).
  - ii. Lead-acid batteries mixed with general construction and demolition debris shall be removed the same day and transported either to a drop-off center handling such waste, or to a lead-acid battery retailer.
  - iii. Special wastes including hazardous waste, non-hazardous special waste, and potentially infectious medical waste mixed with general construction and demolition debris shall be containerized separately and removed from the property no later than five hours after receipt by a licensed special waste hauler. Special wastes shall be transported to a licensed special waste management facility that has obtained authorization to accept such waste. The operator shall maintain a contract with haulers so that the immediate removal is ensured. The operator shall develop an emergency response/action plan for such occurrences.
  - iv. Asbestos debris from general construction and demolition debris shall be managed in accordance with the National Emission Standards for Hazardous Air Pollutants (NESHAPS) regulations.
  - v. Tires found to be mixed with general construction and demolition debris shall be removed and managed in accordance with Section 55 of the Act [415 ILCS 5/55].
  - vi. White good components mixed with general construction and demolition debris shall be removed and managed in accordance with Section 22.28 of the Act [415 ILCS 5/22.28].
  - vii. No person may knowingly mix liquid used oil with general construction and demolition debris.
  - viii. After the unauthorized waste has been removed from the Facility, a thorough cleanup of the affected area shall be made according to the type of unauthorized waste

managed. Records shall be kept for three years and will be made available to the IEPA upon request. In addition, the Applicant shall provide an annual written report to the City of West Chicago not later than January 31 of each year, which report shall: list the types, quantities and dates of receipt of all unauthorized waste; the generators of such waste; and the sites to which the wastes were delivered for disposal, processing or handling.

- ix. The following wastes shall not be accepted at the Facility:
- Hazardous substances (as defined by Section 3.215 of the Illinois Environmental Protection Act);
  - Hazardous waste (as defined by Section 3.220 of the Illinois Environmental Protection Act);
  - Potentially infectious medical wastes (as defined by the Illinois Environmental Protection Act in Section 3.84);
  - Universal waste (as defined by Title 35 of the Illinois Administrative Code Part 733 including batteries, pesticides, mercury-containing equipment and lamps);
  - Regulated asbestos containing materials;
  - Polychlorinated biphenyl wastes;
  - Used motor oil;
  - Source, special or by-product nuclear materials;
  - Radioactive wastes (both high and low level);
  - Sludge;
  - White goods (incidental white goods received at the proposed transfer station will be segregated and stored for pickup by an off-site recycler);
  - Lead-acid automotive batteries (incidental automotive batteries received at the transfer station will be segregated and stored for pickup by an off-site recycler);
  - Used tires (incidental tires received at the transfer station will be segregated and stored for pickup by an off-site recycler); and
  - Landscape waste.
- ii) Special wastes generated at the site for disposal, storage, incineration or further treatment elsewhere shall be transported by the operator to the receiving facility utilizing the IEPA's Special Waste Authorization system and manifest system.

6. Upon receiving final, non-appealable siting approval pursuant to 415 ILCS 5/39.2 to construct and operate the Facility, and upon receiving an IEPA development permit, LRS shall, prior to commencing operation of the waste transfer Facility, 1) execute and grant to the DuPage Airport Authority ("DAA") a new aviation easement, which is Exhibit A to the Agreement Between the DuPage Airport Authority, Oscar (IL) LLC, and Lakeshore Recycling Systems, LLC, dated January 19, 2022 ("Airport Agreement"), 2) LRS shall reduce the roof height of its existing transfer building so as to stay below all critical elevations in the new aviation easement, and 3) LRS shall not allow any penetrations whatsoever to the new aviation easement.

7. All improvements installed on and offsite by the Applicant shall be funded by and solely at the expense of the Applicant.

8. The tipping floor of the waste transfer building shall be cleaned and free of waste at the end of each operating day. Except as set forth in Condition 5, no waste or other material shall be left on the floor inside the transfer building or outside the transfer building overnight or when the Facility is not operating.

9. The Applicant shall control litter by discharging and loading all waste within the enclosed portion of the Transfer Facility. After unloading, any remaining loose waste shall be removed or contained in the vehicle prior to exiting the site. The Applicant shall use its best efforts to assure that vehicles, hauling waste to or removing waste from the Transfer Facility, shall be suitably covered to prevent waste from leaving the vehicles. A fence to aid in the interception of any blowing litter shall surround the Transfer Facility. The Applicant shall diligently patrol the Subject Property during hours of operation to collect any litter. At a minimum the Applicant shall diligently patrol and remove litter from: the Subject Property; all property owned or controlled by the Applicant; and, before 10:00 a.m. each operating day, Powis Road between Hawthorne Lane and Route 64 (North Avenue) as well as Powis Court. In addition, the Applicant shall, at a minimum, patrol and remove litter from private property within 500 feet of the aforesaid public streets and corresponding rights-of-way with the written permission of the owner of said properties, which permission the Applicant shall diligently attempt to obtain. The Applicant shall provide the City of West Chicago the names, addresses, telephone numbers and email addresses of such owners granting permission. The Applicant shall also post on the company's website the name and email address of an employee of the company to whom any owner of property along Powis Court or Powis Road between Route 64 (North Avenue) and Hawthorne Lane may report litter from the Facility or trucks using the Facility, in which case the Applicant shall remove the litter with the written permission of the owner within two hours of receiving notification of the litter concern. Upon written request, logs showing the private owner, the property address for the request for litter removal, the time such was received and the time the concern was abated shall be available to the City and provided within one business day. Also, the Applicant shall diligently seek the written approval of the DuPage County Forest Preserve District to remove litter, which is visible from Route 64 (North Avenue), from the portion of the Pratts Wayne Woods Forest Preserve that is located within the City of West Chicago. If permission is granted, litter removal from the Forest Preserve shall occur not less than monthly; the City shall be provided written notice of each occurrence within one business day of such being completed.

10. The Applicant shall provide a street sweeper to remove mud and dust tracked onto hard surfaces inside and outside the Transfer Facility, on property owned or controlled by the Applicant as well as Powis Court and Powis Road between Hawthorne Lane and Route 64 (North Avenue) on an as needed basis, but not less frequently than daily.

11. The Applicant shall retain a pest control service on an on-going basis to address the potential for infestation by rodents and other vectors. Such service shall inspect the Transfer Facility on an as needed, but no less than monthly, basis.

12. Transfer trailers entering and exiting the Subject Property shall use only the following roads: Powis Road (between the Facility entrance and Route 64 (North Avenue)), Route 64 (North Avenue), Kirk Road and Interstate 88. Except for waste collection trucks servicing property within the City of West Chicago, waste collection trucks entering and exiting the Subject Property shall use only the following streets within the City and no others: Powis Road south of Route 64, Route 64 (North Avenue), Route 38, and Kress Road. The Applicant shall have installed within City right-of-way to the satisfaction of the City, license plate readers in each of the following locations: Hawthorne Lane between Route 59 and Powis Road; Smith Road between Powis Road and Route 64; and Powis Road between Smith Road and Route 64. The license plate readers shall provide remote access to the City of West Chicago to be used for any lawful purpose. The specific make and model of license plate readers and the specific locations for installation of the license plate readers shall be subject to the written approval/direction of the West Chicago Police Chief, and may be relocated for operational need

at the expense of the City; the initial and any annual costs associated with the license plate readers shall be at the Applicant's sole cost and expense. The Applicant shall be responsible for maintaining and, if necessary, replacing the license plate readers when in disrepair or at the end of their useful lives as determined by the City through documentation from the vendor. The Applicant shall also provide a set of certified portable scales to the City at its sole cost and expense, which thereafter shall be maintained and replaced by the City.

13. Trucks transporting hydro excavation waste shall be water-tight. Dump style trucks transporting solidified hydro excavation waste shall include liners that are sufficient to prevent leakage onto roads and other surfaces.

14. All incoming hydro excavation waste loads shall be accompanied by a completed/signed manifest and shall be pre-approved using a waste profile sheet and other supporting documentation as necessary. These materials shall be reviewed to verify that the waste is nonhazardous as defined in Title 35 Illinois Administrative Code Part 722.111. Pre-approved waste streams and such profile packets shall be kept on file at the Facility, shall accurately characterize the accepted material, and may not be more than one year old.

15. The Facility shall be maintained with a negative pressure condition such that the ventilation system provides a minimum of 6 air changes per hour. The Facility design shall include an ozone system to treat the ventilation air prior to exhaust. The Facility shall also be equipped with a misting system that will assist in mitigation of dust and odors above the tipping floor.

16. The Facility shall otherwise be constructed and operated in substantial conformance with the plans and operating procedures specified in the siting application.

17. Approval is further conditioned upon compliance with all terms of the Host Community Benefit Agreement between the City of West Chicago and Lakeshore Recycling Systems, LLC, dated April 1, 2019; the Secondary Host Community Benefit Agreement between DuPage County and Lakeshore Recycling Systems, LLC, dated March 10, 2020; and the Airport Agreement.

**SECTION 5:** To meet Criterion 5, the Applicant must show that there is a plan of operation designed to minimize the danger. As in any industrial setting, the potential exists for harm both to the environment and the residents. *Industrial Fuels & Resources v. Illinois Pollution Control Board*, 227 Ill.App.3d 533, 547, 592 N.E.2d 148, 157-58 (1<sup>st</sup> Dist. 1992). The key to this criterion is minimization. *Id.*, citing *Wabash and Lawrence Counties Taxpayers and Water Drinkers Assoc.*, 198 Ill.App.3d 388, 394, 555 N.E.2d 1081, 1086 (5<sup>th</sup> Dist. 1990). "There is no requirement that the applicant guarantee no accidents will occur, for it is virtually impossible to eliminate all problems. *Id.* Guaranteeing an accident-proof facility is not required." *Industrial Fuel*, 227 Ill.App.3d at 547, 592 N.E.2d at 157-58. As such, the City Council of the City of West Chicago find that the Applicant has met its burden of proof as to Criterion 5 of Section 39.2, provided that the Applicant operates the Facility in accordance with the following special conditions:

1. All transfer vehicles utilizing the Facility shall be equipped with auto tarping systems, and all loaded transfer trailers shall be tarped inside of the transfer building prior to exit.

2. Upon receiving final, non-appealable siting approval pursuant to 415 ILCS 5/39.2 to construct and operate the Facility, and upon receiving an IEPA development permit, LRS shall, prior to commencing operation of the waste transfer Facility, 1) execute and grant to the DuPage Airport Authority ("DAA") a new aviation easement, which is Exhibit A to the Agreement Between the DuPage Airport Authority, Oscar (IL) LLC, and Lakeshore Recycling Systems, LLC, dated January 19, 2022 ("Airport Agreement"), 2) LRS shall reduce the roof height of its existing transfer building so as to stay below all critical elevations in the new aviation easement, and 3) LRS shall not allow any penetrations whatsoever to the new aviation easement.

3. The Applicant shall control litter by discharging and loading all waste within the enclosed portion of the Transfer Facility. After unloading, any remaining loose waste shall be removed or contained in the vehicle prior to exiting the site. The Applicant shall use its best efforts to assure that vehicles, hauling waste to or removing waste from the Transfer Facility, shall be suitably covered to prevent waste from leaving the vehicles. A fence to aid in the interception of any blowing litter shall surround the Transfer Facility. The Applicant shall diligently patrol the Subject Property during hours of operation to collect any litter. At a minimum the Applicant shall diligently patrol and remove litter from: the Subject Property; all property owned or controlled by the Applicant; and, before 10:00 a.m. each operating day, Powis Road between Hawthorne Lane and Route 64 (North Avenue) as well as Powis Court. In addition, the Applicant shall, at a minimum, patrol and remove litter from private property within 500 feet of the aforesaid public streets and corresponding rights-of-way with the written permission of the owner of said properties, which permission the Applicant shall diligently attempt to obtain. The Applicant shall provide the City of West Chicago the names, addresses, telephone numbers and email addresses of such owners granting permission. The Applicant shall also post on the company's website the name and email address of an employee of the company to whom any owner of property along Powis Court or Powis Road between Route 64 (North Avenue) and Hawthorne Lane may report litter from the Facility or trucks using the Facility, in which case the Applicant shall remove the litter with the written permission of the owner within two hours of receiving notification of the litter concern. Upon written request, logs showing the private owner, the property address for the request for litter removal, the time such was received and the time the concern was abated shall be available to the City and provided within one business day. Also, the Applicant shall diligently seek the written approval of the DuPage County Forest Preserve District to remove litter, which is visible from Route 64 (North Avenue), from the portion of the Pratts Wayne Woods Forest Preserve that is located within the City of West Chicago. If permission is granted, litter removal from the Forest Preserve shall occur not less than monthly; the City shall be provided written notice of each occurrence within one business day of such being completed.

4. The Applicant shall provide a street sweeper to remove mud and dust tracked onto hard surfaces inside and outside the Transfer Facility, on property owned or controlled by the Applicant as well as Powis Court and Powis Road between Hawthorne Lane and Route 64 (North Avenue) on an as needed basis, but not less frequently than daily.

5. The Applicant shall retain a pest control service on an on-going basis to address the potential for infestation by rodents and other vectors. Such service shall inspect the Transfer Facility on an as needed, but no less than monthly, basis.

6. Trucks transporting hydro excavation waste shall be water-tight. Dump style trucks transporting solidified hydro excavation waste shall include liners that are sufficient to prevent leakage onto roads and other surfaces.



7. The Facility shall be maintained with a negative pressure condition such that the ventilation system provides a minimum of 6 air changes per hour. The Facility design shall include an ozone system to treat the ventilation air prior to exhaust. The Facility shall also be equipped with a misting system that will assist in mitigation of dust and odors above the tipping floor.

8. The Facility shall otherwise be constructed and operated in substantial conformance with the plans and operating procedures specified in the siting application.

**SECTION 6:** That all ordinances or parts of ordinances conflicting with any of the provisions of this Ordinance shall be and the same is hereby repealed.

**SECTION 7:** That the Executive Assistant is hereby directed to publish this Ordinance in pamphlet form.

**SECTION 8:** That this Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

PASSED this 28<sup>th</sup> day of February, 2023.

Alderman Beifuss	<u>Nay</u>	Alderman Chassee	<u>Aye</u>
Alderman Sheahan	<u>Aye</u>	Alderman Brown	<u>Aye</u>
Alderman Hallett	<u>Aye</u>	Alderman Dettmann	<u>Aye</u>
Alderman Birch-Ferguson	<u>Aye</u>	Alderman Dimas	<u>Aye</u>
Alderman Swiatek	<u>Aye</u>	Alderman Garling	<u>Nay</u>
Alderman Stout	<u>Aye</u>	Alderman Short	<u>Aye</u>
Alderman Jakabcsin	<u>Nay</u>	Alderman Morano	<u>Aye</u>

APPROVED this 28<sup>th</sup> day of February, 2023.

  
Mayor Ruben Pineda

ATTEST:

Valeria Perez  
Executive Assistant

PUBLISHED: March 1, 2023

STATE OF ILLINOIS  
CITY OF WEST CHICAGO  
BEFORE THE CORPORATE AUTHORITIES

*In Re:* )  
)  
APPLICATION OF )  
LAKESHORE RECYCLING SYSTEMS, LLC )  
FOR SITING APPROVAL UNDER 415 ILCS 5/39.2 )  
OF A NEW POLLUTION CONTROL FACILITY )

REPORT OF HEARING OFFICER  
RECOMMENDED FINDINGS OF FACT AND  
RECOMMENDED CONDITIONS OF APPROVAL

INTRODUCTION

Lakeshore Recycling Systems, LLC (“Applicant”) has applied for local siting approval of a new municipal waste transfer station on its property at 1655 Powis Road, West Chicago, Illinois. The Applicant owns the real property (the “Property”) upon which the proposed pollution control facility (“Facility”) is to be located. The Property is located within the corporate limits of the City. The Application was filed on September 16, 2022. The City is to render a decision on the Application in accordance with the criteria and procedures set forth in Section 39.2 of the Illinois Environmental Protection Act (415 ILCS 5/39.2) (the “Act”) and its own Code of Ordinances establishing rules and procedures for pollution control facility siting. Among the procedures set forth in the Act and the Code of Ordinances is the requirement that the City conduct a public hearing on the Application, accept public comment, and make a formal decision on the Application within 180 days of the date of filing (March 15, 2023). The City opened the public hearing on January 3, 2023.

In accordance with the procedures and other terms and provisions of the Act and the Code of Ordinances, I reviewed the Application and initial filings. The following parties appeared at the Hearing by and through counsel:

The Applicant (“LRS”), represented by George Mueller;

Protect West Chicago (“PWC”) represented by Ricardo Meza and Phil Luetkehans;

“P.O.D.E.R.” represented by Robert A. Weinstock;

The City of West Chicago Staff (“City”), represented by Gerald Callaghan; and

The City of West Chicago Corporate Authorities (“Council”), represented by its corporate counsel, Dennis Walsh.

During the hearing, I admitted the Application, the Host Agreement, and testimony and exhibits from witnesses called by the Applicant in support of the Application. I also admitted exhibits and testimony from witnesses called by PWC and PODER in opposition to the Application. I also ruled some proffers of proof by PWC and PODER on “environmental justice related issues” to be irrelevant; an offer of proof on those issues was entered into the record. Further, PODER presented witnesses that testified as to their observations at the existing facility; however, I ruled that they were not experts and that they lacked a proper foundation for some of their offered testimony.

As discussed below, PWC filed a Motion to Dismiss the Application for Lack of Jurisdiction due to fatal defects in the Notice required by 415 ILCS 5/39.2(b) and due to the restrictions of 415 ILCS 5/22.14 concerning the setback from property zoned primarily for residential uses. The Applicant filed Responses in opposition to the Motion.

In addition to evidence and testimony, oral public comment was received throughout the hearing proceedings and written public comment has been received by the City from September

16 through (and including) February 18, 2023. “Comment” is distinguished from “testimony” in that “comment” is not provided under oath and is not subject to cross examination and therefore entitled to less weight than testimony.

I declared the hearing closed on January 19, 2023. In accordance with the Act, written comment was then received by the City for an additional 30 days (i.e., through 11:59:59 p.m. CDST on February 18, 2023, including any written comment post-marked on or before February 18, 2023). Substantial public comment was received in support of the Application; and there was public comment filed from various residents and PODER opposing the application. Notably, public comment was also offered after the close of the hearing by the Applicant including a letter from the Canadian National Railway. As indicated above, public comment is entitled to less weight because it is not subject to being tested by the opportunity for cross examination. I have not relied upon the public comment filed by the Applicant in reaching my findings of fact or conclusions of law.

I received proposed conditions of approval from City Staff; I received argument in favor of siting approval and proposed findings of fact and law from the Applicant; I received argument in opposition to siting approval as well as proposed findings of fact and conclusions of law from PWC; and argument in opposition to approval as well as proposed findings of fact, conclusions of law, and alternatively proposed special conditions from PODER.

### **RECOMMENDED ACTIONS**

It is my recommendation that the City Council vote separately on the three propositions:

1) Whether to grant PWC’s motion to dismiss for failure to effectuate proper notice under Section 39.2(b).

2) Whether to grant PWC's motion to dismiss claiming the Facility violates the 1,000 foot setback under Section 22.14.

3) Whether the Proposed Facility (with any special conditions imposed by the City Council) satisfies the siting criteria of Section 39.2.

For the reasons set forth below, my recommendation to the City is to deny the Motion to Dismiss under Section 39.2(b).

For the reasons set forth below, my recommendation to the City is to deny the Motion to Dismiss under Section 5/22.14.

For the reasons set forth below, my recommendation to the City is to impose Special Conditions (appended to my proposed Findings of Fact and Conclusions of Law) and with those Special Conditions approve the Application as satisfying the siting criteria of Section 39.2. More specifically, I find that the application as filed, and the testimony concerning the application as filed, did not establish that the proposed Facility satisfies all of the criteria for local siting approval set forth in Section 39.2 of the Act; however, I further find that, with the imposition of special conditions (and compliance by the Applicant with those conditions), the proposed Facility does satisfy all of the criteria for local siting approval.

### **MOTION TO DISMISS**

#### **Motion to Dismiss Under Section 39.2(b)**

Whether the applicant provided proper notice under section 39.2(b) of the Act is a threshold question in the pollution control siting. *Maggio v. Pollution Control Board*, 2014 IL App (2d) 130260, ¶ 15. Compliance with the pre-filing Notice requirements of Section 39.2 is jurisdictional and substantial compliance is not sufficient. See, *Daubs Landfill v. Pollution*

*Control Board*, 166 Ill.App 3<sup>rd</sup> 778 (5<sup>th</sup> Dist. 1998). However, as *Daubs* indicates, perfection in providing the Notice is not the standard.

Section 39.2(b) requires, in relevant part, that the applicant shall cause written notice of its request for site approval “to be served either in person or by registered mail, return receipt requested, on the owners of all property within the subject area not solely owned by the applicant, and on the owners of all property within 250 feet in each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of the County in which such facility is to be located...”). PWC has challenged whether the Applicant fulfilled this requirement with respect to the railroad property putatively owned by the Elgin, Joliet and Eastern Railway.

The evidence concerning the authentic tax records of DuPage County is as follows:

The records placed in evidence by PWC indicate that the owners of the railroad properties within 250 feet of the Facility are, for one parcel, the Union Pacific Railroad Company and, variously and alternatively for the second parcel, the “Elgin, Joliet & Eastern Railway,” and/or the “Wisconsin Central, Ltd. (EJ&E Line) Company.”

The DuPage County, Illinois 2022 Real Estate Tax Assessment Parcels Map placed in evidence by the Applicant indicates that the second parcel is owned by the “Canadian National Railway.”

It is not disputed that the Applicant caused written notice of its request for site approval to be served by registered mail return receipt requested upon the Union Pacific Railroad Company. It is also not disputed that the Applicant did not cause notice of its request for site approval to be served on the Elgin, Joliet & Eastern Railway or on the Wisconsin Central, Ltd.

The publicly available information – of which I take judicial notice – is that the Elgin, Joliet & Eastern Railway was merged into the Wisconsin Central, Ltd. in December of 2012 and, further, that the Wisconsin Central, Ltd. is wholly owned by the Canadian National Railway.

It is not disputed that the Applicant did not serve the Canadian National Railway by personal service nor by registered mail return receipt requested. Instead, the Applicant caused written notice of the Applicant's request for site approval to be delivered via paid courier to the Canadian National Railway at the corporate offices of the Canadian National Railway in Montreal, Quebec, Canada, and that the Applicant's courier secured the signature of a representative of the Canadian National Railway documenting that delivery.

After reviewing the briefing concerning "service" under Illinois law filed by both PWC and the Applicant, I find that the Applicant's use of a paid courier to deliver written notice of the Applicant's request, where the paid courier documented the delivery, was sufficient to satisfy the requirements of Section 39.2(b) of the Act and that strict compliance with the requirements of formal service is not required as a matter of law where, as here, actual notice has been documented. See, e.g., *Waste Management of Illinois v. Illinois Pollution Control Board*, 365 Ill.App.3d 229 (3d Dist. 2005) (difference in delivery method not of "pivotal importance" when delivery method documents that the addressee received the letter); see also, *Olin Corp. v. Bowling*, 95 Ill.App.3d 1113, 1116-17 (5<sup>th</sup> Dist. 1981)).

#### **Motion to Dismiss Under Section 5/22.14**

Section 415 ILCS 5/22.14 states, in relevant part, that "no person may establish any pollution control facility for use as a garbage transfer station, which is located less than 1000 feet from the nearest property zoned for primarily residential uses or within 1000 feet of any

dwelling....” It is undisputed that no dwelling is within 1000 feet of the proposed Facility. However, the railroad properties are zoned ER-1 in the City and are located within 1000 feet of the proposed Facility. It is not disputed that property zoned “ER-1” in the City of West Chicago is property zoned primarily for residential uses. PWC’s Motion to Dismiss asserts that Section 5/22.14 bars the Applicant from proceeding with this proposed Facility.

The Applicant argues that the size and the active use of the railroad properties make residential development of the parcels in compliance with ER-1 requirements improbable (and therefore the set-back requirement a nullity with respect to the railroad properties). The Applicant has submitted the testimony of John Hock and the August 23, 2022 letter of Tom Dabareiner, City Community Development Director and Zoning Administrator for the City of West Chicago, to support a finding that, due to the requirements of the ER-1 zoning (minimum lot area, minimum lot width, minimum setbacks, physical features of the property, the lack of access) it is not reasonably possible to develop the railroad properties for residential uses.

Conversely, PWC called Joe Abel, a planning expert, who testified that the Application does not meet the setback requirements of Section 5/22.14. He further testified that if the railroad properties at issue were abandoned by the railroads, and if the railroad properties were then assembled with other adjacent properties, and if those assembled properties were then rezoned to a residential zoning district, then the railroad properties could be put to residential uses.

No evidence was introduced that the conditions recited by Joe Abel as preconditions to residential use of the railroad properties are probable--or even potentially contemplated--for the foreseeable future.



The statutory language of Section 22.14 protects any existing dwelling within 1,000 feet of the facility (regardless of underlying zoning for that dwelling) and properties for which there is a reasonable expectation of future residential use and dwellings based initially upon the zoning designation. The PCB has taken a pragmatic approach to enforcement of Section 22.14. Where actual residential use of property (even though it is zoned for residential uses and even though homes exist on the properties) is not reasonably probable, Section 22.14 will not bar the facility. Although not a binding opinion, the Appellate Court agreed with the PCB's interpretation of Section 22.14 in *Roxana Landfill, Inc. v. Illinois Pollution Control Board*, 2016 WL 4005892, (Ill. App. 5 Dist. 2016).

Here, the proposed facility is not within 1,000 feet of any existing dwelling nor within 1,000 feet of any property zoned for residential use where such actual residential use is reasonably probable in the foreseeable future. Based upon the PCB's decision (ultimately affirmed in *Roxana*), Section 22.14 does not prohibit the siting of the facility in this case nor make the proposed facility incompatible with the character of the area.

#### **JURISDICTION**

The record, the statutes, and the case law discussed above establish that the Applicant owns the real property upon which the proposed pollution control facility will be located and that the property and the Facility are wholly located within the City of West Chicago. I have discussed the requirements of 415 ILCS 5/39.2(b) above and, over the objections and motions of PWC and PODER, found that the Applicant fulfilled these requirements. I have also discussed the application of Section 5/22.14 and found that in this case, Section 5/22.14 does not bar the proposed Facility.

I further find that the Applicant complied with all notice requirements of Section 39.2(c) concerning the notice requirements prior to the hearing on the Application. No objections were filed concerning compliance with Section 39.2(c).

Likewise, no objections were filed concerning compliance with the City Code of Ordinances. I find that the Applicant complied with all requirements of the City of West Chicago.

Accordingly, I find that the City has jurisdiction to consider the statutory criteria of Section 39.2.

#### **SECTION 39.2 CRITERIA**

These proceedings are governed by Section 39.2 of the Environmental Protection Act (“the Act”), 415 ILCS 5/39.2, which sets forth the exclusive siting procedures for pollution control facilities in Illinois. Section 40.1 of the Act and case law require that siting proceedings and the decision making be conducted in accordance with the requirements of fundamental fairness. The application (or request) must contain sufficient details of the proposed facility demonstrating that it satisfies each of the nine criteria by a preponderance of the evidence. *Land & Lakes Co. v. Illinois Pollution Control Board*, 319 Ill.App.3d 41, 743 N.E.2d 188, 191 (3d Dist. 2000.) If the applicant fails to establish any one of the criteria, the application should be denied. *Waste Management v. Pollution Control Board*, 175 Ill.App.3d 1023, 520 N.E.2d 682, 689 (2d Dist. 1988).

The Act requires that the Applicant for local siting approval prove compliance with each of nine different criteria (or alternatively demonstrate that they do not apply) and local siting approval shall be granted if the proposed facility meets each of those criteria. As a matter of

law, once an applicant makes a *prima facie* case on a criterion, the burden of proof shifts to the opponents to rebut the applicant's case. *People v. Nuccio*, 43 Ill.2d 375, 253 N.E. 2d 353 (1969). In order to rule against an applicant on any criterion, the decision maker (the City Council in this case) must find competent rebuttal or impeachment evidence in the record. *Industrial Fuels and Resources v. Illinois Pollution Control Board*, 227 Ill.App.3d 553, 592 N.E. 2d 148 (1st Dist. 1992).

The Applicant called expert witnesses to offer evidence as to the statutory siting criteria. Counsel for PWC and PODER, as well as counsel for the City Staff, cross-examined the witnesses. PWC and PODER also called witnesses in rebuttal. The basis and rationale for my findings on each criterion is set forth below.

***1. The Facility is necessary to accommodate the waste needs of the area it is intended to serve.***

This Criterion is contested by PWC and PODER. I find that Criterion 1 is satisfied.

Criterion 1 has been the subject of litigation and the Courts have provided guidance as to its requirements. For example, to prove criterion 1, the courts have previously held the Applicant must show that the proposed Facility is reasonably required by the waste needs of the service area, taking into consideration the waste production of the area and the waste disposal capacity available to it. *Waste Management of Illinois, Inc. v. Pollution Control Board*, 175 Ill.App.3d 1023, 1031, 530 N.E.2d 682, 689 (2d Dist. 1988). Although a petitioner need not show absolute necessity, it must demonstrate that the new facility would be expedient as well as reasonably convenient. *Waste Management of Illinois, Inc. v. Pollution Control Board*, 234 Ill.App.3d 65, 69, 600 N.E.2d 55, 57 (1<sup>st</sup> Dist. 1992). The petition must show that the landfill is reasonably required by the waste needs of the area it is intended to serve, including the area's waste production and disposal capabilities. *Id.*

PWC and PODER both focused on the available transfer station disposal capacity for the area to be served (including facilities outside of, but still serving, the area intended to be served) and they argue that the existing excess capacity—which is not contested by the Applicant—means that the proposed Facility is not necessary and therefore does not satisfy Criterion 1.

However, in *Will County v. Village of Rockdale*, 2018 IL. App (3d) 160463, 121 N.E.2d 468, 484 (3d Dist. 2018), our Appellate Court held that Criterion 1 is not determined exclusively by reference to capacity analysis. Indeed, in *Rockdale*, the applicant submitted no capacity analysis at all. Instead, the Appellate Court agreed with Village and the Applicant that the “waste needs of the area” could include other factors such as improving competition, benefits through the host agreements, operational concerns and hours, and positive environmental impacts.

In this case, the Applicant called John Hock from Civil and Environmental Consultants, Inc. to testify on this criterion. Mr. Hock acknowledged the existing available capacity at other transfer stations but testified that the need for this Facility is found in the need to increase competition in the hauling market (through further vertical integration of disposal from curb-to transfer station-to landfill, this facility will increase competition for the hauling of waste in the area); in reduced environmental impacts (less diesel exhaust as a result of shorter travel distances); in increased recycling; in the meeting the need for the handling of hydro-wastes; and in operational benefits (hours of operation). Cross-examination focused on the available capacity and questioned the competitive impacts but did not overcome the substantive proof on the benefits to which Mr. Hock testified.

PODER focused on the premise that there are positive environmental impacts, arguing just the opposite that the added operations at this Property will necessarily increase diesel

emissions in the community. But PODER has offered no competent evidence to contradict the demonstrated savings in overall emissions as testified to by the Applicant concerning hauling and disposal activities presently (i.e., before siting) and the amount of reduced emissions from the availability of this transfer station. Moreover, a premise of PODER's analysis is that there would be no other new industrial uses of the Applicant's property of any kind that would involve diesel engines. No evidence was offered to support the validity of such a premise.

PWC called John Lardner. Mr. Lardner focused on the available capacity at transfer stations in and around the area. But Mr. Lardner also admitted that Criterion 1 now considers environmental factors, impacts on competition, and operational concerns--and Mr. Lardner further admitted that he has so opined in other siting proceedings—although he did not consider competitive or environmental matters in reaching his conclusions in this case. Mr. Lardner further admitted that there is a need for a transfer station to handle hydro-excavation waste.

**2. *The Facility is so designed, located, and proposed to be Operated that the Public Health, Safety and Welfare will be Protected.***

This Criterion is contested by PWC and PODER. I find that Criterion 2 is satisfied through the imposition of--and compliance by the Applicant with--special conditions.

Like Criterion 1, Criterion 2 has been the subject of litigation and guidance is available from the Courts. To prove criterion 2, the Applicant must demonstrate that the proposed Facility is designed, located and proposed to be operated to protect the public health, safety and welfare. 415 ILCS 5/39.2 (a) (ii). This includes a demonstration that the facility is not flawed from a public safety standpoint and that its proposed operations are neither substandard nor unacceptably risky. Industrial Fuels and Resources, Inc. v. Illinois Pollution Control Board, 227 Ill.App.3rd 533, 592 N.E.2d. 148, 157 (1st Dist. 1992).

Mr. Hock testified that the Application met the location standards (wetlands, archeological sites, threatened species, wild and scenic rivers and the airport). PWC questioned Mr. Hock extensively on airport safety related issues and particularly operations in the Runway Protection Zone. The record also contains a letter from the DuPage Airport Authority in which LRS agreed to comply with several conditions and actions required of LRS by the Airport Authority to safeguard airport operations. Imposition and compliance with these conditions are essential to a finding that Criterion 2 can be satisfied. With the imposition of the conditions set forth in that letter, the Airport Authority concluded that proposed Facility did not pose a threat to the safety of the Airport. No expert testimony was introduced that challenged that determination by the Airport Authority.

Mr. Hock also described the proposed site plan and the proposed operations. The Facility as proposed will handle a maximum of 1950 tons of material per day composed of 650 tons of municipal solid waste, 300 tons per day of hydro-excavation waste, 750 tons per day of construction or demolition debris (for which the site is already permitted), and 250 tons per day of single-stream recyclables.

Mr. Hock testified as to the fact that the transfer building will be a “fully enclosed” facility (which is an important requirement to protect the airport) and testified as to the truck movements on site, the number and function of “spotters,” the operation of the entrance doors, the movements and operations of the transfer trailers, and the movements and operations of the front-loaders on the tipping floor. Mr. Hock testified as to the anticipated sources of business and the equipment that is anticipated to be used by LRS to bring that equipment to the Facility. Mr. Hock described the stormwater management plan for the proposed facility and testified that

the stormwater management has been approved by DuPage County and the City. There was no substantive challenge to the stormwater management plan in place.

PWC challenged whether the Facility, as proposed, was “fully enclosed” and entered videos of a different LRS facility in the record to challenge the Applicant on whether the facility would, in practice, actually operate as described. Mr. Hock responded that timing and operational differences shown in the video is a consequence of the different sources of material (and equipment bringing that material) from that which is anticipated at the Facility.

PWC also raised issues concerning litter control and tarping of the trailers, as well as the speed and the efficiency of the movements of the front loaders as used in Mr. Hock’s modeling and calculations. Based on an early pre-filing review of the design performed by the City’s engineering consultant, PWC (and subsequently the City Staff) also raised questions about the design of the building, push walls and other structural elements. Under PWC’s cross examination, and then again under cross examination by City Staff, Mr. Hock admitted that the imposition of certain special conditions would improve the Facility and add protections for public health, welfare and safety.

PODER called Steve DeLaRosa who raised concerns about employee safety and, particularly, the proposed use of ozone by the Applicant. There was no evidence, however, that what the Applicant was proposing did not comply with the applicable OSHA regulations.

PODER also inquired into the potential use of exclusively electric powered vehicles. The evidence, however, is that currently the technology does not exist to require the Applicant to use an exclusively electric-powered fleet of vehicles or equipment.

The application, modeling evidence, and testimony - with the special conditions in place -- demonstrated that the Facility could safely handle the proposed maximum tonnages per day. The special conditions are appended to the Proposed Findings of Fact and Conclusions of Law.

**3. *The Facility is located so as to minimize incompatibility  
With the Character of the Surrounding Area and to Minimize the Effect  
On the Value of Surrounding Property.***

This Criterion is contested by PWC and PODER. I find that Criterion 3 is satisfied.

The Application sets out the land uses in the vicinity and manner in which the proposed Facility relates to the character of the area. Applicant called Dale Kleszynski, a licensed Illinois real estate appraiser and member of the Appraisal Institute. He testified to the historical use of the subject property and surrounding area--which includes current and historical uses related to the management and disposal of waste—and characterized the area as “industrial in character.” The area is also segregated from other uses, especially residential uses.

In addition to concluding that the location minimizes incompatibility with uses in the surrounding area, Mr. Kleszynski also concluded that the Facility is located to minimize the effect on the value of surrounding property. Mr. Kleszynski submitted a highest and best use analysis of the subject property for purposes of analyzing impact on the values of surrounding property. He opined that this highest and best use analysis is related to the statutory siting criterion in that highest and best use of property is the use which would, by definition, minimize any deleterious effect on the values of the surrounding property. After reviewing the traditional criteria used to analyze highest and best use, he testified that development as a solid waste transfer station would fit within the highest and best use of the property.

In rebuttal, PWC called Kurt Kielisch who rendered the opinion that the highest and best use analysis employed by Mr. Kleszynski did not accurately determine the effect the Facility



would have on surrounding property values. Mr. Kielisch is not a licensed Illinois appraiser, has never previously testified in a Section 39.2 siting hearing, and further testified that he is not knowledgeable about the siting process. He testified that a matched pairs analysis (rather than a highest and best use analysis) should be used to determine “the least intrusive use of the property” and whether the proposed use would have “positive impact on the surrounding property values.” He further admitted that such an analysis of sales would not be possible here due to the 20-year existence of the nearby Groot transfer station.

Because of his lack of familiarity with the actual siting criterion, the testimony of Mr. Kielisch was of no probative value. Criterion 3 requires an analysis as to whether the location minimizes incompatibility with the character of the surrounding area and minimizes the (obviously assumed negative) impact on property values--not (as he opined) whether the proposed use has a positive impact. The analysis relevant to Criterion 3 is simply not that to which Mr. Kielisch testified (he also offered no opinion on the character of the uses in the area). Contrary to Mr. Kielisch’s opinion, the use of the highest-and-best use methodology as an analytical tool for determining the magnitude of potential impact of the proposed facility on surrounding property values has been recognized by the PCB as an appropriate methodology for expert opinions concerning Criterion 3.

**4. *The Facility is located outside the Boundary of the 100 Year Floodplain.***

I find that the Applicant demonstrated that the Facility meets Criterion 4.

The testimony and other evidence entered in the Record at the Hearing supports the finding that the Facility meets this Criterion. No challenge to this Criterion has been filed.

5. ***The Plan of Operations for the Facility is designed to Minimize the Danger to the surrounding Area from Fire, Spills and Other Operational Accidents.***

I find that the Applicant demonstrated that the Facility meets Criterion 5 but I also find that the testimony of Mr. Hock, under cross examination, and the testimony of Colin Hale concerning existing litter problems with the current operations at the Property all support the imposition of and compliance with special conditions to further improve the Plan of Operations and minimize dangers to the surrounding area. In particular, I find that the testimony concerning where, when and how transfer trailers will be tarped and the handling of hydro-wastes will be improved to further minimize the danger to the surrounding area from litter or spills by the imposition of special conditions. No formal challenge to this Criterion has been filed.

6. ***The Traffic Patterns to and from the Facility Are So Designed as to Minimize the impact on Existing Traffic Flow.***

I find that the Applicant demonstrated that the proposed Facility meets Criterion 6.

The Applicant called Michael Werthmann, a registered professional engineer and certified professional traffic operations engineer, with more than 25 years of traffic engineering experience for both the private and public sectors. Mr. Werthmann testified that he used standard methodology used by transportation planning officials. Mr. Werthmann testified he studied traffic volumes, distributions and movements at the site entrance and the potentially affected intersections. He described the local roadway system and detailed present and future improvements on that system. He testified that the location, existing operations, and proposed route for the transfer trailers all minimized the impact on existing traffic flows. No challenge to this Criterion has been filed; however, both the City and PODER proposed a special condition concerning the traffic routes and

such is included in the Special Conditions appended to the Findings of Fact and Conclusions of Law.

**7. Hazardous Waste Emergency Plan**

Per the Application and the Testimony of John Hock, the Facility will not be treating, storing or disposing of Hazardous Waste. This Criterion is therefore not applicable and therefore deemed satisfied. No challenge to this Criterion has been filed.

**8. *If the Facility is to be Located in a County Where The County Board has adopted a Solid Waste Management Plan Consistent With The Planning Requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, The Facility is Consistent with that Plan.***

This Criterion is contested by PWC and PODER. I find that Criterion 8 is satisfied.

John Hock reviewed the contents of the DuPage County Solid Waste Management Plan from its adoption to its most recent update. He reviewed the provisions concerning pollution control facilities in that plan including the recognized need for additional transfer stations, additional recycling and additional competition. On cross-examination by PWC, Mr. Hock agreed that the 2007 Plan Update recommended that an additional transfer station should be located in the “southern portion” of the County and that West Chicago is not in the southern portion of the County. However, he further testified that such a recommendation concerning the location of additional transfer stations did not appear in subsequent plan updates.

Mr. Hock also testified as to the secondary host agreement executed between LRS and DuPage County in which the County stated the proposed Facility appears to be consistent with the County’s plan. PWC’s witness, John Lardner, testified that “appears to be consistent” is not the same as “is consistent” and opined that the Facility is in fact not consistent with the County’s

Plan. Lardner did acknowledge that the County's Plan does call for more transfer stations, more recycling, and more competition.

I find the PCB decision in *Rockdale* is again instructive. As in this case, both the PCB (and the court) in *Rockdale* found that the very existence of a secondary host agreement approved by the County weighs heavily in favor of a finding that Facility is consistent with the County's plan (as it is the County's plan to interpret and administer). Because the County approved the secondary host agreement for this Facility, I find the proposal to be consistent with the County's plan.

**9. Recharge Area**

Per the Application and the testimony of John Hock, the Facility is not located in a regulated recharge area. This Criterion is therefore not applicable and therefore deemed satisfied. No challenge to this Criterion has been filed.

**10. Consideration of Previous Operating Experience**

The Act permits the Corporate Authorities to consider the previous operating experience of an applicant. Specifically, the Act permits the City to consider the "past record of convictions or admissions of violations of the Applicant...". Here, the record contains no past convictions of violations by LRS nor admissions of violations by LRS, which favors approval of the Application.

PWC did enter videos showing actual operations at different LRS facility and PODER called witnesses about the current operations at the Property raising litter and air quality concerns and that testimony serves as the basis for the imposition of some special conditions, but that testimony did include any evidence of any actual violations of the regulatory standards and

therefore is not a sufficient basis to find the proposed Facility does not satisfy the criteria of Section 39.2.

### **PUBLIC COMMENTS**

In addition to the public comment (oral and written) received during the Hearing, the City Clerk received written public comments after the hearing closed. The public comment supporting the Application focused on the benefits that the Facility would bring to the City. PODER, the Applicant, and persons associated with both also filed comment after the hearing closed. I found that the public comment, while important to understand the context of the application, was not focused on the statutory criteria in a relevant and “probative” way or, alternatively, lacked sufficient evidence about the sources cited (i.e., an evidentiary foundation) as required by the statute and case law and therefore the comment, neither singly nor collectively, caused any change in how I weighed the evidence received from the Application, the admitted exhibits, and the admitted testimony.

### **PROPOSED FINDINGS OF FACT**

My proposed findings of fact are attached.

Respectfully submitted,



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Derke J. Price

Ancel Glink, PC  
140 South Dearborn, 6<sup>th</sup> Floor  
Chicago, Illinois 60603

4828-0676-7394, v. 1

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. On September 16, 2022, Lakeshore Recycling Systems, LLC (“Applicant”) applied to the City of West Chicago (“City”) for local siting approval of a new municipal waste transfer station on its 27.66 acre parcel of real estate at 1655 Powis Road, West Chicago, Illinois, 60185 (as legally described in the application and hereafter referred to as the “Property”).
2. The Applicant owns the Property upon which the proposed pollution control facility (“Facility”) is to be located.
3. The Property is located within the corporate limits of the City, is the subject of a Host Community Benefit Agreement between the Applicant and the City, and the City has jurisdiction to consider the Application.
4. The public hearing on the application was opened on January 3, 2023.
5. The hearing closed on January 19, 2023.
6. In accordance with the Act, written comment was then received by the Office of the City Manager acting as City Clerk for and additional 30 days after the close of the Hearing (i.e., through 11:59:59 p.m. CDST on February 20, 2023, including any written comment post-marked on or before February 18, 2023).
7. Concerning the pre-filing notice requirements of Section 39.2(b) (which states, in relevant part, that the applicant shall cause written notice of its request for site approval “to be served either in person or by registered mail, return receipt requested, on the owners of all property within the subject area not solely owned by the applicant, and on the owners of all property within 250 feet in each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of the County in which such facility is to be located...”):
  - A) with respect to all properties within 250 feet of the proposed facility, other than railroad properties, the applicant caused written notice of its request for site approval to be served by registered mail return receipt requested upon all such owners;
  - B) with respect to the railroad properties within 250 feet of the proposed facility, the owners as appears from authentic—and in some cases conflicting--tax records of DuPage County, are the Union Pacific Railroad Company and, variously and alternatively, the Elgin, Joliet & Eastern Railway, the Wisconsin Central, Ltd. (EJ&E Line) Company, and, per the DuPage County, Illinois 2022 Real Estate Tax Assessment Parcels Map, the Canadian National Railway;
  - C) the Applicant caused written notice of its request for site approval to be served by registered mail return receipt requested upon the Union Pacific Railroad Company;
  - D) the Applicant did not cause notice of its request for site approval to be served on the Elgin, Joliet & Eastern Railway;
  - E) the Elgin, Joliet & Eastern Railway was merged into the Wisconsin Central, Ltd. in December of 2012;

F) the Applicant did not cause notice of its request for site approval to be served on the Wisconsin Central, Ltd.;

G) the Wisconsin Central, Ltd. is a wholly owned subsidiary of the Canadian National Railway;

H) the Applicant caused written notice of the Applicant's request for site approval to be delivered via paid courier to the Canadian National Railway at the corporate offices of the Canadian National Railway in Montreal, Quebec, Canada;

I) the Applicant's courier secured the signature of a representative of the Canadian National Railway for that delivery;

J) the Applicant's use of the paid courier to deliver written notice of the Applicant's request, together with the documentation from the courier of that delivery, is sufficient to effectuate delivery of the request for site approval to the ultimate corporate parent/owner of the railroad property (not owned by the Union Pacific Railroad) and thereby satisfy the requirements of Section 39.2(b) of the Act.

8. Concerning 415 ILCS 5/22.14 (which states, in relevant part, that "no person may establish any pollution control facility for use as a garbage transfer station, which is located less than 1000 feet from the nearest property zoned for primarily residential uses or within 1000 feet of any dwelling"):

A) no dwelling is within 1000 feet of the proposed facility;

B) the railroad properties are zoned ER-1 in the City and are located within 1000 feet of the proposed facility;

C) property zoned "ER-1" in the City of West Chicago is property zoned primarily for residential uses;

D) the size and the active use of the railroad properties make residential development of the parcels in compliance with ER-1 requirements improbable as a practical and pragmatic matter (see August 23, 2022 letter of Tom Dabareiner, City Community Development Director and Zoning Administrator);

E) in applying Section 22.14 restrictions, the Pollution Control Board (and at least one Appellate Court) has interpreted and enforced Section 22.14 so as to protect actual residences or properties where residential development is probable (at least as an initial matter of zoning) (see, *Roxana Landfill, Inc. v. Illinois Pollution Control Board*, 2016 WL 4005892, (Ill. App. 5 Dist. 2016) (a Rule 23 opinion affirming the PCB which allowed siting even though actual housing structures and residentially zoned properties were within 1,000 feet of the facility because the residential properties were now vacant and deed restrictions against residential use had been recorded against the properties, making actual residential use improbable, though not impossible);

F) Accordingly, Section 22.14 does not bar this proposed facility.

9. The Applicant complied with all pre-filing notice requirements of Section 39.2(c) of the Act.

10. The siting proceedings herein, both procedurally and substantively, complied with the requirements of fundamental fairness:

A) PWC and PODER interposed an objection to the failure to make the Pre-Filing Notice available on the City's website in Spanish; however, the Act itself does not require that

the Pre-Filing Notice in these proceedings be made available in a language other than English and no case has applied language access requirements to a Section 39.2 Siting Hearing nor the Section 39.2 filings.

B) PWC and PODER interposed objections to the lack of a Spanish-language translator for the hearing proceedings; however, neither the Act itself does nor any other statute or case requires that Language Access Services be made available for a Section 39.2 Siting Hearing (compare 725 ILCS 140/1 requiring such services in the criminal law context).

C) PWC and PODER filed objections to the exclusion of proffered evidence concerning “environmental justice related issues;” however, the State of Illinois has not amended the Environmental Protection Act to add “environmental justice related issues” to the Section 39.2 criteria and neither the Pollution Control Board nor any Court has held that “environmental justice related issues” is now a part of any criterion under Section 39.2.

D) In the absence of a defined statutory criteria concerning “environmental justice related issues,” testimony proffered about such issues is not relevant to the siting decision.

11. Based on the understanding of Criterion 1 as articulated by the Pollution Control Board and affirmed by the Illinois Appellate Court for the Third District in *Will County v. Village of Rockdale*, 121 N.E.3d 468 (3d Dist. 2018), the Applicant demonstrated that the proposed Facility meets Criterion 1: “the facility is necessary to accommodate the waste needs of the area it is intended to serve....”

12. The Applicant did not demonstrate that the Facility--as proposed in the Application--meets Criterion 2; however, with the imposition of the special conditions proposed by City Staff (and compliance therewith by the Applicant) which are attached hereto as Exhibit A, the proposed Facility does meet Criterion 2: “the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;”

13. The Applicant demonstrated that the proposed Facility meets Criterion 3: “the facility is so located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property;”

14. The Applicant demonstrated that the proposed Facility meets Criterion 4; “for a facility other than a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100 year floodplain or the site is flood-proofed;”

15. The Applicant did not demonstrate—as proposed in the Application--that the Facility meets Criterion 5; however, with the imposition of the special conditions proposed by City Staff (and compliance therewith by the Applicant) which are attached hereto as Exhibit A, the proposed Facility does meet Criterion 5: “the plan of operations for the is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents;”

16. The Applicant demonstrated that the proposed Facility meets Criterion 6: “the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows;



17. The Applicant demonstrated that the facility will not be accepting hazardous waste and therefore demonstrated that Criterion 7 is not applicable.

18. Based on the analysis of Criterion 8 as articulated by the Pollution Control Board and affirmed by the Illinois Appellate Court for the Third District in *Will County v. Village of Rockdale*, 121 N.E.3d 468 (3d Dist. 2018), the Applicant demonstrated that the proposed Facility meets Criterion 8: "...where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan; ..."

19. The Applicant demonstrated that the facility is not located within a regulated recharge area and therefore Criterion 9 is not applicable.

20. The Applicant's operating history demonstrates that the Applicant is qualified to operate the Facility safely and properly and provides no basis to deny the Application.

21. The proposed Facility, when developed and operated in compliance with the special conditions, is consistent with all appropriate and relevant location standards, including airport setback requirements, wetlands standards, seismic impact zone standards, and residential setback requirements.

22. The Applicant has agreed to comply and approval is conditioned upon compliance with all terms of the Host Community Benefit Agreement between the City of West Chicago and Lakeshore Recycling Systems, LLC, dated April 1, 2019; the Secondary Host Community Benefit Agreement between DuPage County and Lakeshore Recycling Systems, LLC, dated March 10, 2020; and the Airport Agreement.

With the imposition of and compliance by the Applicant with the Special Conditions set forth above, the evidence demonstrates that the Application complies with each of the nine siting criteria in Sec. 39.2(a) of the Act and therefore the City should grant siting approval.

Respectfully submitted,



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Derke J. Price

**EXHIBIT A**

**Special Conditions**

1. The maximum tonnage per day that may be received by the facility shall not exceed 1,950 tons per day, of which up to 650 tons per day may be municipal solid waste (MSW), up to 300 tons per day may be hydro excavation waste, up to 750 tons per day may be construction and demolition debris (C&D) and up to 250 tons per day may be single stream recyclables (SSR).
2. The Applicant shall keep the truck doors to the transfer facility closed, except for emergencies and to allow trucks to enter and exit the facility, during regular business hours. The doors shall be equipped with sensors such that they will open and close automatically as vehicles enter and exit the transfer building. Alternatively, an employee may open and close the doors when trucks access and exit the transfer facility.
3. The push walls in the transfer facility shall be designed to ensure to the satisfaction of the City that there will be no buildup of waste behind the walls which could result in fire, odor, or harborage for vectors. In addition, the Applicant shall provide a certification from a licensed structural engineer that the push walls will be capable of withstanding impact from waste loading equipment at 5 mph without shearing the beams or compromising the integrity of the building's walls.
4. All transfer vehicles utilizing the facility shall be equipped with auto tarping systems, and all loaded transfer trailers shall be tarped inside of the transfer building prior to exit.
5. The Applicant shall continue to operate the C&D recycling portions of the facility in accordance with the requirements of 415 ILCS 5/22.38 for so long as the current permit (2015-124-OP) remains in effect. If the current permit (2015-124-OP) is discontinued, replaced or terminated, the following conditions, as modified, shall remain in effect:
  - *The facility shall be designed and constructed with roads and traffic flow patterns adequate for the volume, type and weight of traffic using the facility including, but not limited to hauling vehicles, emergency vehicles, and on-site equipment. Sufficient area shall be maintained to minimize traffic congestion, provide for safe operation, and allow for queuing of waste hauling vehicles.*
  - *The operator shall provide adequate parking for all vehicles and equipment used at the facility and as necessary for queued hauling vehicles.*
  - *Roadways and parking areas on the facility premises shall be designed and constructed for use in all weather, considering the volume, type and weight of traffic and equipment at the facility.*
  - *The facility shall be designed and constructed so that site surface drainage will be diverted around or away from the recycling and waste transfer areas. Surface drainage shall be designed and controlled so that adjacent property owners encounter no adverse effects during development, operation and after closure of the facility.*
  - *Run-off from roadways and parking areas shall be controlled using storm sewers or shall be compatible with natural drainage for the site. Best management practices (e.g., design features, operating procedures, maintenance procedures, prohibition of certain practices and treatment)*

- shall be used to ensure that run-off from these areas does not carry wastes, debris or constituents thereof, fuel, oil or other residues to soil, surface water or groundwater.*
- *The facility, including, but not limited to, all structures, roads, parking and recycling areas, shall be designed and constructed to prevent malodors, noise, vibrations, dust and exhaust from creating a nuisance or health hazard during development, operation and closure of the facility. Facility features (e.g., berms, buffer areas, paving, grade reduction), best available technology (e.g., mufflers, machinery enclosures, sound absorbent materials, odor neutralizing systems, air filtering systems, misting systems), and building features (e.g., enclosed structures, building orientation) shall be among the measures to be considered to achieve compliance.*
  - *The facility shall be designed and constructed to prevent litter and other debris from leaving the facility property. Facility features (e.g., windbreaks, fencing, netting, etc.) shall be among the measures considered to ensure that the debris does not become wind strewn and that no other provisions of the Act are violated.*
  - *No regulated air emissions shall occur from these facilities, except as authorized by a permit from the Illinois Environmental Protection Agency (IEPA) Bureau of Air (BOA). No process discharge to Waters of the State or to a sanitary sewer shall occur from these facilities, except as authorized by a permit from the IEPA Bureau of Water (BOW).*
  - *The facility shall be designed and constructed with a water supply of adequate volume, pressure, and in locations sufficient for cleaning, firefighting, personal sanitary facilities, and as otherwise necessary to satisfy operating requirements (e.g., dust suppression, wheel washing) and the contingency plan.*
  - *The facility shall be designed and constructed with exterior and interior lighting for roadways, and waste handling areas adequate to perform safely and effectively all necessary activities.*
  - *The facility shall be designed and constructed with truck wheel curbs, guard rails, bumpers, posts or equivalents to prevent backing into fuel storage tanks, equipment, and other structures.*
  - *The facility shall be designed and constructed with adequate shelter, sanitary facilities, and emergency communications for employees.*
  - *The facility operator shall install fences and gates, as necessary, to limit entry. Except during operating hours, the gates shall be securely locked to prevent unauthorized entry.*
  - *The facility may receive general construction and demolition debris at the site Monday through Saturday, 24 hours a day. The facility shall be closed on Sunday and the six major federal holidays (New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day). When the facility is operated before sunrise or after sunset, adequate lighting shall be provided. If it is required for the facility to be open beyond normal operating hours to respond to emergency situations, a written record of the date, time and reason the facility was open shall be maintained in facility operating records. The IEPA's Regional Office and the county authority responsible for inspection of the facility, per a delegation agreement with the IEPA, must be notified and must grant approval each day that the operating hours need to be extended. No later than 10:00 a.m. of the first operating day after the operating hours have been extended, the Applicant shall send a written report by email to the City Administrator, which describes the length of the extension of the operating hours and the reason for the extension.*
  - *The facility may receive and transfer MSW, hydro excavation waste and SSR from 4:00 a.m. to 12:00 a.m. Monday through Friday and from 4:00 a.m. to 12:00 p.m. on Saturday, with no*

*operation on Sunday or the six major federal holidays (New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day), provided that on the Saturday following a major federal holiday, regular business hours may be extended to 12:00 a.m. If it is required for the facility to be open beyond normal operating hours to respond to emergency situations, a written record of the date, time and reason the facility was open shall be maintained in facility operating records. The City of West Chicago must be notified by email to the City Administrator each day that the operating hours need to be extended. The IEPA's Regional Office and the county authority responsible for inspection of the facility, per a delegation agreement with the IEPA, must be notified and must grant approval each day that the operating hours need to be extended.*

- *Fire safety equipment (fire extinguishers) shall be maintained in accordance with recommended practice.*
- *Non-recyclable waste may be kept temporarily in covered containers or transfer trailers for no more than 24 hours (except on weekends and holidays), provided that loaded or partially loaded trailers intended to be stored overnight or that will not be picked up and transported the same operating day are stored indoors and suitably covered.*
- *Piles of general construction or demolition debris shall be covered or wetted to prevent air-borne dust.*
- *The facility shall be designed and constructed to prevent unauthorized access to recycling areas, storage areas for unauthorized wastes, salvaged and recycled materials, and staging areas where loaded site equipment or vehicles may be parked. Facility features such as fences and gates shall be provided.*
- *Waste handling areas shall be designed and constructed to prevent exposure of wastes and recyclable materials to run-off and flooding.*
- *The sorting areas shall be properly graded and compacted to prevent ponding from forming leachate during storms.*
- *Records shall be maintained on-site at the facility office for each operating day. The operator shall record operating hours, load ticket information, load inspections, daily processing time, volume processed per day, transfer load out and waste disposition details.*
- *The operator shall, within 48 hours of receipt of the general construction or demolition debris at the facility, sort the general construction or demolition debris. The operator shall separate the recyclable general construction or demolition debris from nonrecyclable general construction or demolition debris and dispose of the non-recyclable general construction or demolition debris, in accordance with Section 22.38(b)(l) of the Act.*
- *The operator must place wood, tires, and other unacceptable materials in covered dumpsters or vehicles adequate to prevent the release of leachate.*
- *All non-recyclable general construction or demolition debris, and unacceptable material shall be moved to the waste transfer facility on the same day it is received, and disposal of such material shall be handled in accordance with all applicable federal, State, and local requirements and with these conditions.*
- *The operator shall transport all non-putrescible recyclable general construction or demolition debris for recycling or disposal within 6 months of its receipt at the facility, in accordance with Section 22.38(b)(4) of the Act.*

- *In accordance with Section 22.38(b)(6) of the Act, the operator shall employ tagging and record keeping procedures to identify the source and transporter of C&D material accepted by the facility.*
- *The operator shall use load tickets to control the site activities and comply with the tagging and record keeping procedures. These load tickets shall identify the source of the C&D material delivered to the site. The operator shall use these tickets to identify the location in the yard or in the covered dumpsters and the length of time stored at the site to achieve compliance.*
- *The operator is prohibited from receiving hazardous and asbestos containing materials.*
- *The operator may separate clean concrete and clean soil from the general construction or demolition debris as recyclable materials for use in construction. The operator is permitted to store recyclable concrete and clean soil for a maximum period of 3 months.*
- *The operator may store the steel separated from concrete or other construction or demolition debris for a maximum period of 6 months. After six months, the steel must be sent offsite for disposal or recycling.*
- *The operator shall ensure that site surface drainage, during development, during operation and after the site is closed, shall be such that no adverse effects are encountered by adjacent property owners.*
- *The best available technology (mufflers, berms and other sound shielding devices) shall be employed to minimize equipment noise impacts on property adjacent to the site during both development, operation and during any applicable post-closure care period.*
- *Management of Unauthorized Waste by the operator*
  - *Landscape waste found to be mixed with general construction and demolition debris shall be removed the same day and transported to a facility that is operating in accordance with the Illinois Environmental Protection Act (Act), Title V, Sections 21 and 39 (415 ILCS 5/21 and 39).*
  - *Lead-acid batteries mixed with general construction and demolition debris shall be removed the same day and transported either to a drop-off center handling such waste, or to a lead-acid battery retailer.*
  - *Special wastes including hazardous waste, non-hazardous special waste, and potentially infectious medical waste mixed with general construction and demolition debris shall be containerized separately and removed from the property no later than five hours after receipt by a licensed special waste hauler. Special wastes shall be transported to a licensed special waste management facility that has obtained authorization to accept such waste. The operator shall maintain a contract with haulers so that the immediate removal is ensured. The operator shall develop an emergency response/action plan for such occurrences.*
  - *Asbestos debris from general construction and demolition debris shall be managed in accordance with the National Emission Standards for Hazardous Air Pollutants (NESHAPS) regulations.*
  - *Tires found to be mixed with general construction and demolition debris shall be removed and managed in accordance with Section 55 of the Act [415 ILCS 5/55].*
  - *White good components mixed with general construction and demolition debris shall be removed and managed in accordance with Section 22.28 of the Act [ 415 LCS 5/22.28].*

- *No person may knowingly mix liquid used oil with general construction and demolition debris.*
- *After the unauthorized waste has been removed from the facility, a thorough cleanup of the affected area shall be made according to the type of unauthorized waste managed. Records shall be kept for three years and will be made available to the IEPA upon request. In addition, the Applicant shall provide an annual written report to the City of West Chicago not later than January 31 of each year, which report shall: list the types, quantities and dates of receipt of all unauthorized waste; the generators of such waste; and the sites to which the wastes were delivered for disposal, processing or handling.*
- *The following wastes shall not be accepted at the facility:*
  - *Hazardous substances (as defined by Section 3.215 of the Illinois Environmental Protection Act);*
  - *Hazardous waste (as defined by Section 3.220 of the Illinois Environmental Protection Act);*
  - *Potentially infectious medical wastes (as defined by the Illinois Environmental Protection Act in Section 3.84);*
  - *Universal waste (as defined by Title 35 of the Illinois Administrative Code Part 733 including batteries, pesticides, mercury-containing equipment and lamps);*
  - *Regulated asbestos containing materials;*
  - *Polychlorinated biphenyl wastes;*
  - *Used motor oil;*
  - *Source, special or by-product nuclear materials;*
  - *Radioactive wastes (both high and low level);*
  - *Sludge;*
  - *White goods (incidental white goods received at the proposed transfer station will be segregated and stored for pickup by an off-site recycler);*
  - *Lead-acid automotive batteries (incidental automotive batteries received at the transfer station will be segregated and stored for pickup by an off-site recycler);*
  - *Used tires (incidental tires received at the transfer station will be segregated and stored for pickup by an off-site recycler); and*
  - *Landscape waste.*
- *Special wastes generated at the site for disposal, storage, incineration or further treatment elsewhere shall be transported by the operator to the receiving facility utilizing the IEPA's Special Waste Authorization system and manifest system.*

6. Upon receiving final, non-appealable siting approval pursuant to 415 ILCS 5/39.2 to construct and operate the West DuPage RTS, and upon receiving an IEPA development permit, LRS shall, prior to commencing operation of the waste transfer facility, 1) execute and grant to the DuPage Airport Authority (“DAA”) a new avigation easement, which is Exhibit A to the Agreement Between the DuPage Airport Authority, Oscar (IL) LLC, and Lakeshore Recycling Systems, LLC, dated January 19, 2022 (“Airport Agreement”), 2) LRS shall reduce the roof height of its existing transfer building so as to stay below all critical elevations in the new avigation easement, and 3) LRS shall not allow any penetrations whatsoever to the new avigation easement.

7. All improvements installed on and offsite by the Applicant shall be funded by and solely at the expense of the Applicant.

8. The tipping floor of the waste transfer building shall be cleaned and free of waste at the end of each operating day. Except as set forth in Condition 5, no waste or other material shall be left on the floor inside the transfer building or outside the transfer building overnight or when the facility is not operating.

9. The Applicant shall control litter by discharging and loading all waste within the enclosed portion of the Transfer Facility. After unloading, any remaining loose waste shall be removed or contained in the vehicle prior to exiting the site. The Applicant shall use its best efforts to assure that vehicles, hauling waste to or removing waste from the Transfer Facility, shall be suitably covered to prevent waste from leaving the vehicles. A fence to aid in the interception of any blowing litter shall surround the Transfer Facility. The Applicant shall diligently patrol the Subject Property during hours of operation to collect any litter. At a minimum the Applicant shall diligently patrol and remove litter from: the Subject Property; all property owned or controlled by the Applicant; and, before 10:00 a.m. each operating day, Powis Road between Hawthorne Lane and Route 64 (North Avenue) as well as Powis Court . In addition, the Applicant shall, at a minimum, patrol and remove litter from private property within 500 feet of the aforesaid public streets and corresponding rights-of-way with the written permission of the owner of said properties, which permission the Applicant shall diligently attempt to obtain. The Applicant shall provide the City of West Chicago the names, addresses, telephone numbers and email addresses of such owners granting permission. The Applicant shall also post on the company's website the name and email address of an employee of the company to whom any owner of property along Powis Court or Powis Road between Route 64 (North Avenue) and Hawthorne Lane may report litter from the facility or trucks using the facility, in which case the Applicant shall remove the litter with the written permission of the owner within two hours of receiving notification of the litter concern. Upon written request, logs showing the private owner, the property address for the request for litter removal, the time such was received and the time the concern was abated shall be available to the City and provided within one business day. Also, the Applicant shall diligently seek the written approval of the DuPage County Forest Preserve District to remove litter, which is visible from Route 64 (North Avenue), from the portion of the Pratts Wayne Woods Forest Preserve that is located within the City of West Chicago. If permission is granted, litter removal from the Forest Preserve shall occur not less than monthly; the City shall be provided written notice of each occurrence within one business day of such being completed.

10. The Applicant shall provide a street sweeper to remove mud and dust tracked onto hard surfaces inside and outside the Transfer Facility, on property owned or controlled by the Applicant as well as well Powis Court and Powis Road between Hawthorne Lane and Route 64 (North Avenue) on an as needed basis, but not less frequently than daily.

11. The Applicant shall retain a pest control service on an on-going basis to address the potential for infestation by rodents and other vectors. Such service shall inspect the Transfer Facility on an as needed, but no less than monthly, basis.

12. Transfer trailers entering and exiting the Subject Property shall use only the following roads: Powis Road (between the facility entrance and Route 64 (North Avenue), Route 64 (North Avenue), Kirk Road and Interstate 88. Except for waste collection trucks servicing property within the City of West Chicago, waste collection trucks entering and exiting the Subject Property shall use only the following streets within the City and no others: Powis Road south of Route 64, Route 64 (North Avenue), Route 38, and Kress Road. The Applicant shall have installed within City right-of-way to the satisfaction of the City, license plate readers in each of the following locations: Hawthorne Lane between Route 59 and Powis Road; Smith Road between Powis Road and Route 64; and Powis Road between Smith Road and Route 64. The license plate readers shall provide remote access to the City of West Chicago to be used for any lawful purpose. The specific make and model of license plate readers and the specific locations for installation of the license plate readers shall be subject to the written approval/direction of the West Chicago Police Chief, and may be relocated for operational need at the expense of the City; the initial and any annual costs associated with the license plate readers shall be at the Applicant's sole cost and expense. The Applicant shall be responsible for maintaining and, if necessary, replacing the license plate readers when in disrepair or at the end of their useful lives as determined by the City through documentation from the vendor. The Applicant shall also provide a set of certified portable scales to the City at its sole cost and expense, which thereafter shall be maintained and replaced by the City.

13. Trucks transporting hydro excavation waste shall be water-tight. Dump style trucks transporting solidified hydro excavation waste shall include liners that are sufficient to prevent leakage onto roads and other surfaces.

14. All incoming hydro-excavation waste loads shall be accompanied by a completed/signed manifest and shall be pre-approved using a waste profile sheet and other supporting documentation as necessary. These materials shall be reviewed to verify that the waste is non-hazardous as defined in Title 35 Illinois Administrative Code Part 722.111. Pre-approved waste streams and such profile packets shall be kept on file at the facility, shall accurately characterize the accepted material, and may not be more than one year old.

15. The facility shall be maintained with a negative pressure condition such that the ventilation system provides a minimum of 6 air changes per hour. The facility design shall include an ozone system to treat the ventilation air prior to exhaust. The facility shall also be equipped with a misting system that will assist in mitigation of dust and odors above the tipping floor.

16. The facility shall otherwise be constructed and operated in substantial conformance with the plans and operating procedures specified in the siting application.

17. Approval is further conditioned upon compliance with all terms of the Host Community Benefit Agreement between the City of West Chicago and Lakeshore Recycling Systems, LLC, dated April 1, 2019; the Secondary Host Community Benefit Agreement between DuPage County and Lakeshore Recycling Systems, LLC, dated March 10, 2020; and the Airport Agreement.



STATE OF ILLINOIS        )  
COUNTY OF DU PAGE     )

***CERTIFICATE***

I, Valeria Perez, Certify that I am the Executive Assistant of the City of West Chicago, DuPage County, Illinois.

I further certify that on February 28, 2023 the Corporate Authorities of such municipality passed and approved Ordinance No. 23-O-0006 entitled:

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**AN ORDINANCE CONDITIONALLY APPROVING THE APPLICATION FOR  
LOCAL SITING APPROVAL OF LAKESHORE RECYCLING SYSTEMS, LLC  
FOR WEST DUPAGE RECYCLING AND TRANSFER STATION**

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Which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 23-O-0006 including the ordinance and a cover sheet hereof was prepared, and a copy of such ordinance posted in the municipal building, commencing on March 1, 2023 continuing for at least ten days thereafter. Copies of such ordinance were also available for public inspection upon request in the Office of the City Administrator.

Dated at West Chicago, Illinois, this 28<sup>th</sup> of February, 2023.

SEAL

*Valeria Perez*  
\_\_\_\_\_  
Valeria Perez, Executive Assistant

# EXHIBIT B

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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.	)	

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

**RESPONDENT CITY OF WEST CHICAGO'S OBJECTIONS AND ANSWERS TO PETITIONER'S FIRST SET OF INTERROGATORIES**

Respondent, City of West Chicago ("Respondent"), by and through Dennis G. Walsh and Daniel W. Bourgault of Klein, Thorpe and Jenkins, Ltd., its attorneys, answers Petitioner Protect West Chicago's ("Petitioner") First Set of Interrogatories as follows:

**GENERAL OBJECTIONS**

1. The Respondent objects to Petitioner's instructions and definitions insofar as those instructions and definitions purport to impose obligations to supplement or modify that exceed the obligations contained in the Illinois Code of Civil Procedure and the Illinois Supreme Court

Rules and the Board's discovery rules. The Respondent recognizes its obligations under the applicable rules, but objects to any attempt to expand those obligations beyond that required by law.

2. The Respondent objects to the Petitioner's definitions and instructions to the extent they demand production or identification of information, materials and documents that would be protected from disclosure in the courts of Illinois under statute, Supreme Court Rules or common law.

3. The Respondent objects to Petitioner's several instructions and definitions stating how to identify persons, entities and documents. Such instructions are overbroad, burdensome and call for more detail than is necessary or useful. The delay and burden imposed by such instructions would outweigh any legitimate or useful purpose to which Petitioner could put such information. The Respondent will make any necessary identifications with sufficient specificity to avoid confusion but will not undertake to follow Petitioner's full checklist of identification and other instructions.

4. Respondent objects to Petitioner's instructions regarding documents and/or information to be disclosed about privileged or immune information to the extent that such instructions would require disclosure of privileged or immune information or require the description of any such information in more detail than reasonably necessary to clearly identify the information and the basis on which it was withheld.

5. The Respondent objects to any instructions, definitions and requests concerning information belonging to a third party. The Respondent will respond on its behalf and on its behalf alone.

6. The Respondent objects to Petitioner's discovery requests to the extent the requests would require disclosure of any information that is subject to the attorney-client privilege, the doctrine of attorney work product immunity, or other applicable privileges or immunities. If any privilege or work product immune information is disclosed, except pursuant to a specific written agreement covering such information, such disclosure is inadvertent and is not intended to waive or prejudice any applicable privilege or immunity, either as to the disclosed information, or as to any other information.

7. In order to expedite discovery rather than oppose disclosure, the Respondent may disclose information covered by an objection in this response or in other discovery responses. Such disclosure is not intended to waive the Respondent's objections generally, nor to enlarge the scope of discovery, nor to waive or prejudice the Respondent's rights to object should Petitioner seek additional information of the same type.

8. The Respondent objects to the Petitioner's requests to the extent they seek information not in its possession, custody or control and/or which is already in Petitioner's possession, custody or control through a Freedom of Information Act response, contained in the Record of Proceedings, or otherwise.

9. These General Objections apply to and are incorporated into each specific answer herein, whether or not expressly incorporated by reference in such individual answer.

### **INTERROGATORIES**

1. Identify all persons who attended the City of West Chicago City Council closed/executive session held on February 27, 2023.

**ANSWER:** Mayor Ruben Pineda, Aldermen Lori Chassee, James E. Beifuss, Jr., Jayme Sheahan, Rebecca Stout, Melissa Birch Ferguson, Jeanne Short, Sandy Dimas, Christine Dettmann, Heather Brown, Matthew Garling, Joseph C. Morano, John E. Jakabcsin,

Alton Hallett, and Christopher Swiatek. City Administrator Michael Guttman and Special Counsel Dennis Walsh from Klein, Thorpe & Jenkins, Ltd., Attorney Daniel Bourgault, from Klein, Thorpe & Jenkins, Ltd. and Hearing Officer/Attorney Derke Price, from Ancel Glink, P.C.

2. State the time the City of West Chicago City Council closed/executive session started and ended on February 27, 2023.

**ANSWER:** 6:00 p.m. – 8:40 p.m.

3. Identify all non-City of West Chicago City Council members who spoke at or otherwise participated or communicated in the February 27, 2023 closed meeting/session.

**ANSWER:** City Administrator Michael Guttman , Special Counsel Dennis Walsh and Hearing Officer/Attorney Derke Price

4. Identify all documents shown to the City of West Chicago City Council members or documents otherwise referred to during or at the February 27, 2023 closed/executive session.

**ANSWER:** The following documents were present and made available to the entire City Council at the February 27, 2023 closed session meeting:

- (1) The Siting Application
- (2) The City's Siting Ordinance
- (3) The Public Hearing Transcripts
- (4) The Public Hearing Exhibits
- (5) The Notice of Participation by Oral Public Comments
- (6) The Written Public Comments
- (7) Notice of Intent to File a Request for Local Siting Approval of a New Pollution Control Facility with the City of West Chicago, Illinois
- (8) Notice of Participation as a Party by Phillip A. Leutkehans of Leutkehans, Brady, Garner & Armstrong, LLC. and Ricardo Meza of Meza Law on behalf of Protect West Chicago
- (9) Notice of Participation as a Party by Julieta Alcantara Garcia on behalf of People Opposing DuPage Environmental Racism

- (10) Notice of Participation as a Party by Julieta Alcantara Garcia and Cristobal Cavazos on behalf of People Opposing DuPage Environmental Racism
- (11) Waste Transfer Station Hearing Request by Noreen LiginoKubinski
- (12) Notice of filing Traffic Report Review Letter By Gerald P. Callaghan
- (13) Protect West Chicago Motion to Dismiss Applicant's Request For Local Siting Approval of a Transfer Station For Inadequate Notice
- (14) Applicant's Response to Motion to Dismiss-Notice
- (15) Applicant's Memorandum entitled The 1000 Foot Residential Zoning Setback Does Not Apply to This Project Due to Impossibility
- (16) Notice of Withdrawal of Luetkehans, Brady, Garner & Armstrong of its representation of Protect West Chicago
- (17) Letter from Canadian National to John Hock dated February 2, 2023 filed by Applicant
- (18) Letter from Associated Property Counselors, Ltd to LRS c/o George Mueller dated February 16, 2023 filed by Applicant
- (19) Public Comments of PODER-Immigrant Solidarity DuPage in Opposition to the Application for Local Siting Approval submitted by Lakeshore Recycling Systems, LLC.
- (20) Notice of Filing Proposed Conditions and Siting Conditions proposed by City Staff
- (21) Applicant's Proposed Findings of Fact and Law
- (22) Protect West Chicago's Proposed Combined Findings of Fact and Conclusions of Law
- (23) People Opposing DuPage Environmental Racism's Proposed Combined Findings of Fact and Conclusions of Law
- (24) The Host Agreements
- (25) The Report of Hearing Officer Recommended Findings of Fact and Recommended Conditions of Approval

5. Identify the person(s) who drafted or otherwise participated in the formation of City of West Chicago Ordinance No. 23-O-0006 and the date(s) when he/she drafted the Ordinance.

**ANSWER:** Special Counsel Dennis Walsh was the only person who drafted the Ordinance. The Ordinance was sent to the City Administrator Michael Guttman on February 28, 2023.

6. State what edits, if any, were made to City of West Chicago Ordinance No. 23-O-0006 and the basis (reasons) for the requested edits prior to the time the City of West Chicago City Council members signed Ordinance No. 23-O-0006 on February 28, 2023.

**ANSWER:** After receiving the draft on February 28, 2023, City Administrator Michael Guttman made some formatting changes only and assigned an Ordinance number to the Ordinance.

7. If there were any edits made to the City of West Chicago Ordinance No. 23-O-006 (referenced in interrogatory No. 6 above) please provide the dates and times of those requested edits as well as the person(s) who so requested the edits.

**ANSWER:** City of West Chicago Ordinance No. 23-O-006 is not the correct Ordinance number for An Ordinance Conditionally Approving the Application For Local Siting Approval of Lakeshore Recycling Systems, LLC For West DuPage Recycling and Transfer Station which is Ordinance No. 23-O-0006. With that being said, City Administrator Michael Guttman made some formatting changes only to Ordinance No. 23-O-0006 and assigned an Ordinance number to it in the afternoon of February 28, 2023.

8. State whether Ordinance No. 23-O-0006 was shared with anyone (either in draft or final form/version) prior to the February 27, 2023 closed/executive session.

**ANSWER:** No

9. If the answer to Interrogatory No. 8 is in the affirmative, set forth the date and person with whom Ordinance 23-O-006 was shared.

**ANSWER:** Not applicable

10. State whether Lakeshore Recycling, LLC reimbursed the City of West Chicago \$9,109.00 in attorney fees and \$352.91 in costs for the City of West Chicago's failure to comply with the Freedom of Information Act request in cause number 2021 MR 449 and as set forth in the attached exhibit PWC-31.



**ANSWER:** Objection. See Hearing Officer's Order dated June 12, 2023.

11. State what if any action the City of West Chicago took to obtain Spanish-Language interpreters either prior to the start of the public Siting Hearings in January 2023 or after Mr. Steve De La Rosa publicly informed the City of West Chicago, during the siting hearing that there was "no Spanish language translation here for people from the community in a minority-majority community that have an interest in this along with the rest of the people of West Chicago." *See* Siting Hearing Transcript at p. 939.

**ANSWER:** Objection. See Hearing Officer's Order dated June 12, 2023.


12. State what if any action the City of West Chicago took to translate Lakeshore Recycling LLC's September 16, 2022 Siting Application materials from English to Spanish.

**ANSWER:** Objection. See Hearing Officer's Order dated June 12, 2023.


13. Identify all person(s) who communicated with Tom Dabareiner in relation to the two letters he prepared dated October 15, 2019 and August 24, 2022 identified at Exhibits PWC-13A and PWC-34 and attached hereto, as well as the date(s) of such communications.

**ANSWER:** John Hock communicated by phone (date unknown but prior to the date of the filing of the Application) and by e-mail on August 24, 2022 and August 25, 2022.

For the Answers

  
\_\_\_\_\_  
Michael Guttman, City Administrator  
City of West Chicago

For the Objections

  
\_\_\_\_\_  
Dennis G. Walsh, Attorney

Respectfully submitted,

CITY OF WEST CHICAGO,  
Respondent

By:   
One of Respondent's Attorneys

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# EXHIBIT C

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PROTECT WEST CHICAGO,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB No: <u>2023-107</u>
	)	(Pollution Control Facility Siting Appeal)
	)	
CITY OF WEST CHICAGO, WEST	)	
CHICAGO CITY COUNCIL, and	)	
LAKESHORE RECYCLING SYSTEMS,	)	
LLC,	)	
Respondents	)	
_____	)	
PEOPLE OPPOSING DUPAGE	)	
ENVIRONMENTAL RACISM,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB No: <u>2023-109</u>
	)	(Third-Party Pollution Control Facility
CITY OF WEST CHICAGO and	)	Siting Appeal)
LAKESHORE RECYCLING SYSTEMS,	)	
	)	
Respondents.	)	

**PROTECT WEST CHICAGO’S AMENDED PETITION FOR HEARING & REVIEW OF LOCAL SITING APPROVAL FOR NEW POLLUTION CONTROL FACILITY**

NOW COMES the Petitioner, Protect West Chicago, (“PWC”), by and through its attorney, Meza Law, and hereby files its Amended Petitions with the Illinois Pollution Control Board (“PCB”) for hearing on and review of the decision of the City of West Chicago’s City Council (“City Council”) granting site location approval to Lakeshore Recycling Systems, LLC (“Lakeshore” or “Applicant”) for the proposed West DuPage Recycling and Transfer Station, located at 1655 Powis Road, West Chicago, IL (“Application”). In support hereof, PWC states as follows:

**Background**

1) On March 28, 2023, PWC filed its initial Petition pursuant to Section 40.1 of the Illinois Environmental Protection Act, 415 ILCS 5/401.1 (“Act”), in accordance with Sections 107.200 through 107.208 of the PCB procedural rules, 35 Ill Admin. Code §§ 107.200-208.

2) On April 6, 2023, the Illinois Pollution Control Board issued an Order accepting PWC’s petition for hearing.

3) On April 13, 2023, at a scheduled status conference, PWC informed Illinois Pollution Control Board Hearing Officer Bradley Halloran of the need to undertake discovery concerning Fundamental Fairness issues involved in this case, and of its intent to amend its Petition to reflect the same. Hearing Officer Halloran allowed PWC until April 14, 2023 to file its Amended Petition.

**Protect West Chicago’s Amended Petition**

4) PWC’s Amended Petition is filed pursuant to Section 40.1 of the Illinois Environmental Protection Act, 415 ILCS 5/401.1 (“Act”), in accordance with Sections 107.200 through 107.208 of the PCB procedural rules, 35 Ill Admin. Code §§ 107.200-208.

5) As set forth below, and in accordance with Section 107.208, this Amended Petition includes: 1) a copy of the City’s Ordinance conditionally granting siting approval (Exhibit 1), 2) a statement as to why PWC is a proper petitioner, and 3) a specification for the grounds for appeal, along with supporting documentation therein.

**Lakeshore Recycling’s Application**

6) On September 16, 2022, Lakeshore submitted and filed its Application with the City of West Chicago for siting approval of a new pollution control facility in West Chicago.

7) The proposed facility was to be located at 1655 Powis Road, West Chicago, IL. West Chicago is a “minority-majority” community with a population that is 51.8% Latino,

according to the U.S. Census. It constitutes an “area” of environmental justice (EJ) concern, as defined by Illinois law.

8) The City of West Chicago appointed a Hearing Officer who then scheduled and held a series of “public meetings,” on January 3, 4, 5, 10, 12, 16, and 19, 2023. The “public meetings” were held at various different locations throughout West Chicago, none of which had any Spanish-Language interpreters.

9) At the public hearings, PWC filed motions, responded to motions, cross-examined witnesses, presented its own witnesses, and submitted its Proposed Findings of Fact and Conclusions of Law. In its proposed findings, PWC cited numerous defects in the proceedings, as well as various grounds to dismiss and/or not approve Lakeshore’s Application.

10) At the close on the public meetings, written public comment was received until 30 days after the close of the Public Hearing, after which the record was closed.

11) On February 27, 2023, after holding a series of “public hearings,” the City Council met in private and behind closed doors to review, deliberate and approve Lakeshore’s Application. No public comment was allowed, nor were the City Council deliberations made in public that day.

12) Upon information and belief, after the City Council’s February 27, 2023 approval of Lakeshore’s proposed facility, in a private closed session as noted above, West Chicago asked its counsel to prepare Ordinance 23-O-006 and then met, and appeared at, a “public session” held the following day.

13) On February 28, 2023, after having approved Lakeshore’s Application in private and without public deliberation the day before:

- a. The City Council held an “open meeting” (lasting no more than about five-minutes) in which the City Council then purportedly “deliberated” prior to asking for a formal vote to approve Lakeshore’s Application.

- b. After the City Council's five-minute meeting ended, counsel for the City Council distributed a 12-page, single-spaced West Chicago City Ordinance 23-O-006 (along with attachments) attached as **Exhibit 1**, in which West Chicago confirmed that it had met on February 27, 2023 (in closed session) and had then deliberated "to review the hearing record in light of each of the Criterion established for consideration," which hearing record included the Application, notifications, hearing exhibits, public comment and that after reviewing same, had made no less than sixteen specifically enumerated determinations. (Again, in a private, closed session.)
- c. As set forth in Ordinance 23-O-006, West Chicago concluded that Lakeshore's proposed facility, "when developed and operated in compliance with the special conditions, is consistent with all appropriate and relevant location standards, including airport setback requirements, wetlands standards, seismic impact zone standards, and residential setback requirements," and then approved Lakeshore's Application for its West DuPage Recycling and Transfer Station, located at 1655 Powis Road, West Chicago, IL. See **Exhibit 1**.

**PWC is a Proper Petitioner**

14) Lakeshore's proposed facility is located in West Chicago, DuPage County, so citizens of West Chicago, including PWC West Chicago citizens who oppose the proposed facility, are situated so as to be directly affected by the proposed facility and therefore, PWC has standing to file this Petition pursuant to Section 107.200(b) of the PCB procedural rules. 35 Ill Admin. Code § 107.200(b).

15) PWC participated as a registered party in the public hearings on the Application, including by filing an Appearance, presentation of evidence, cross-examination of witnesses, and submission of proposed findings of fact and conclusions of law.

**PWC's Grounds for Appeal**

16) *First*, the decision of the City of West Chicago to grant siting approval for Lakeshore's application should be reversed on jurisdictional grounds because Lakeshore's Application failed to comply with the Pre-Filing Notice requirements set forth in 415 ILCS §5/39.2(b). Thus, West Chicago was without jurisdiction to consider the application and, therefore, it is necessary to reverse the decision to ensure compliance with the law.

17) *Second*, the City of West Chicago's decision to grant siting approval should also be reversed because at the "public hearings," and in its Application, Lakeshore stated that the proposed facility would be located within 1,000-feet of property zoned residential, thus admitting that its proposed facility did not and does not comply with the site location standard included at 415 ILCS §5/22.14(a), and further, neither Lakeshore nor West Chicago established that its proposed facility is somehow "exempt" from this requirement.

18) *Third*, the entire local siting review process and going back at least to April of 2019 (when the Host Agreement was entered into) and also including various actions, various conduct and various *ex parte* communications engaged in by the City of West Chicago Mayor Ruben Pineda and other City officials, which demonstrated an inherent bias in favor of Lakeshore that occurred both prior to the filing of the Application and thereafter, the scheduling of the actual hearing dates, the decisions and rulings rendered at the Public Hearing, and the procedures, (individually and collectively) implemented in arriving at the City's decision to grant siting approval were fundamentally unfair<sup>1</sup> and confirm that "a disinterested observer might conclude that the local siting authority adjudged both the facts and the law before hearing the case."<sup>2</sup>

19) *Fourth*, there was pre-adjudication in favor of approving Lakeshore's Application in multiple ways, some of which are not currently totally known, rendering the entire local siting review process fundamentally unfair. Specifically, and without limitation, the entire siting process was fundamentally unfair in at least one or more of the following ways:

- a. There were no steps taken to initially ensure reasonable access or availability of hearing proceedings in Spanish, despite the majority-minority Latino population in West Chicago.

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<sup>1</sup> While the Board is usually confined to the siting authority's record of the proceedings, the Board may hear new evidence when considering the fundamental fairness of the proceedings, as such evidence often lies outside the record. *Land & Lakes*, 319 Ill.App.3d at 48, 252 Ill. Dec. 614, 743 N.E.2d 188.

<sup>2</sup> See *County of Kankakee v. Illinois Pollution Control Board*, 396 Ill. App.3d 1000 (2009)



- b. There were no steps taken to ensure reasonable access or availability of hearing proceedings in Spanish even after both West Chicago officials and the Hearing Officer were informed that many of West Chicago's residents' primary language was Spanish.
- c. The actions of the West Chicago officials seeking to conceal information which related directly to criticisms leveled by the City's own consultant (Aptim) during the Pre-Filing Application Review process which were subject to lawful disclosure under the Freedom of Information Act (FOIA) which led to the filing of a lawsuit resulting in a court order requiring disclosure of public documents and payment of attorneys' fees.
- d. The actions of West Chicago officials as revealed in documents, emails, and draft siting applications obtained under the FOIA litigation which documents reveal biased and preferential communications by and between various West Chicago officials, and Applicant Lakeshore prior to the submission of Lakeshore's Application, which attempted to blunt and significantly minimize serious concerns which had been raised by the City's own consultant (Aptim), and shield them from public scrutiny;
- e. The action(s) of West Chicago officials prior to submission of Lakeshore's Application, including action of Mayor Ruben Pineda, discovered as a result of the FOIA litigation, which revealed a pre-adjudication bias in favor of Lakeshore's Application even before any application was submitted, as reflected by a November 2020 text message Mayor Pineda sent to a local member of the clergy (Father Josh) with a large Latino congregation who had expressed opposition to the proposed facility on social media, wherein Mayor Pineda wrote: "We need to talk next week. ***You're pushing propaganda.*** Please get all information prior to posting on social media. Thanks in advance." **See Exhibit 2.** (Emphasis added). The intent of Pineda's conduct was to curb and inhibit negative comment on Lakeshore's proposal.
- f. Actions of West Chicago official's summary rejection of their own independent review consultants' (Aptim) (expert) opinion that numerous criterion were not met, including criterion relating to the health and safety of the community and the proximity of the proposed facility to a local airport.
- g. Actions of West Chicago officials in submitting letters in support of the Lakeshore's Application on West Chicago letterhead and then editing the letter to make it more favorable to the Applicant, all at the express request (and direction) of Lakeshore's expert John Hock.
- h. Upon information and belief, on February 27, 2023, the City Council approved, in a private closed session, approved Lakeshore's Application and Ordinance 23-O-006.
- i. Upon information and belief, the actions and/or statements made by one or more third-parties in closed session reflecting or revealing that City Council members' deliberation

may not have been based on Hearing Evidence, but, rather, on attorney recommendations revealed by at least one West Chicago official, namely Alderman Lori Chassee, who stated in open session on February 28, 2023 that the decision to approve was based on and prompted by comments from two attorneys for the City that a vote against Applicant may place the City and City officials at risk of being sued.

- j. Upon information and belief, the actions of West Chicago officials further reflect the decision to approve Lakeshore's Application may have been made on February 27, 2023 (day before the official vote of February 28, 2023) as West Chicago officials:
  1. Did not receive the Hearing Officer's Recommendations until Friday, February 24, 2023;
  2. The City Council met just three days after receiving Hearing Officer's recommendations and in closed session on Monday, February 27, 2023; and
  3. That the Tuesday, February 28, 2023 open-meeting lasted no more than about five-minutes, after which the City Council voted and approved a 13-page single-spaced (previously-prepared) Ordinance, together with a 20-page Recommendation by the Hearing Officer.

20) *Fifth*, the record further reveals that West Chicago's Hearing Officer failed to render impartial rulings on the evidence and specifically:

- a. Prevented PWC from cross-examining Applicant's expert on environmental justice related issues which go directly to certain of the criteria set forth at 415 ILCS §5/39.2(a);
- b. Prevented PWC from asking its own expert about environmental justice-related issues, all under the guise that issues relating to minority or disadvantaged communities were not "relevant,"; and,
- c. Prevented PWC from presenting evidence regarding environmental justice concerns, requiring PWC to submit an Offer of Proof, which directly related to the proposed facility's impact on air pollution and its negative effects on the West Chicago community, specifically the majority-minority population which is in violation of Section 9(a) of the IEPA (415 ILCS 5/9), which grants the Illinois Environmental Protection Agency the power and duty to address environmental justice concerns and enforce environmental laws and regulations.

21) *Sixth*, the City of West Chicago's decision to grant siting approval should also be reversed because at the "public hearings," the record reveals that Lakeshore failed to meet various Criterion set forth in Section 39.2 and in particular:

- a. Lakeshore failed to establish that there was an actual “need” for an additional waste transfer station within the area it is intended to serve, and instead focused merely on its own purported “need for vertical integration,” which, of course, is not a part of Criterion 1.
  - b. Lakeshore failed to establish that its proposed facility would be operated in a safe manner, especially considering its proximity to the DuPage Airport Authority and its admission that its operations were within the runway protection zone for the Airport; thus, it did not satisfy Criterion 2.
  - c. Lakeshore failed to establish that its proposed facility was to be located so as to minimize incompatibility with the character of the surrounding areas and to minimize the effect on the value of the surrounding property, thus it did not satisfy Criterion 3.
  - d. Lakeshore failed to establish that its proposed facility overcame the DuPage County’s Solid Waste Management Plan’s clear language that the siting for any additional waste transfer stations should be located “throughout the County” and in the southern portion of DuPage County, not next door to the other waste transfer station in the northwest corner of DuPage County, which is the only other waste transfer station in the entirety of DuPage County, thus it failed to meet the requirements of Criterion 8.
- 22) *Seventh*, the City of West Chicago’s decision to grant siting approval should also be reversed because on the eve of the deadline for the filing of Proposed Findings of Fact and Conclusions of Law, Lakeshore filed two documents as “public comment” which were in effect improper substantive rebuttal testimony submitted after the close of evidence, and which was thus improperly considered by West Chicago’s City Council.

23) *Eighth*, the City of West Chicago’s decision to grant siting approval should also be reversed, to the extent not mentioned above, for specific reasons set forth in PWC’s combined Proposed Findings of Fact and Conclusions of Law, which are incorporated in this Amended Petition as **Exhibit 3** as if fully set forth herein.

WHEREFORE, PWC, requests the PCB enter an Order:

- a) Setting for hearing this contest of the City of West Chicago’s siting decision;
- b) Reversing the City of West Chicago’s siting approval decision for Lakeshore’s proposed facility;

c) Providing such other and further relief as the Board deems appropriate.

Dated: April 14, 2023

Respectfully Submitted,



---

Ricardo Meza  
Attorney for Protect West Chicago

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# EXHIBIT D

ILLINOIS POLLUTION CONTROL BOARD

June 12, 2023

PROTECT WEST CHICAGO,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 23-107
	)	(Third-Party Pollution Control Facility
CITY OF WEST CHICAGO, WEST CHICAGO	)	Siting Appeal)
CITY COUNCIL and LAKESHORE	)	
RECYCLING SYSTEMS, LLC,	)	
	)	
Respondents.	)	
_____	)	
PEOPLE OPPOSING DUPAGE	)	
ENVIRONMENTAL RACISM,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 23-109
	)	(Third-Party Pollution Control Facility
CITY OF WEST CHICAGO and LAKESHORE	)	Siting Appeal)
RECYCLING SYSTEMS, LLC,	)	
	)	(Consolidated)
Respondents.	)	

**HEARING OFFICER ORDER**

On May 5, 2023, Protect West Chicago (PWC) served a request for documents as a part of discovery in this proceeding. On May 10, 2023, Lakeshore Recycling Systems LLC (Lakeshore) filed an objection to the request (ObjLS). On May 11, 2023, City of West Chicago (West Chicago) also filed an objection to PWC's request for the production of documents and interrogatories (ObjWC). PWC filed a response to the objections on May 24, 2023. On June 1, 2023, West Chicago filed a motion for leave to file a reply and reply. I will first address WC's objection based on the Open Meetings Act and then the objections to discovery on pre-filing contacts.

**Open Meetings Act Exemption**

West Chicago objects to the request by PWC for a copy of the audio recording of the West Chicago's closed executive session held on February 27, 2023. ObjWC at 2. West Chicago argues that the Open Meetings Act (OMA) specifically prohibits release of the verbatim record of the meeting. ObjWC at 2, citing 5 ILCS 120/2.06(e) (2020).

PWC argues that because West Chicago is a party to the action, it is "unjust to afford the government the benefit of withholding relevant evidence". Resp. at 6. PWC argues it is clear

that the closed meeting was about the siting application, but it is unclear who attended the closed meeting. *Id.* at 7. Also, PWC argues that the council waived any privilege from the closed meeting. *Id.* at 7-8.

OMA contemplates that there will be times when a group ordinarily subject to OMA requirements, will need to hold closed meetings. Those times are extremely limited and are regulated by OMA. A verbatim record of the meeting must be kept for 18 months and then only destroyed after approval of minutes and the public body. *See* 5 ILCS 120/2.06(c) (2020). The verbatim recording is not available to the public.

Unless the public body has made a determination that the verbatim recording no longer requires confidential treatment or otherwise consents to disclosure, the verbatim record of a meeting closed to the public shall not be open for public inspection or subject to discovery in any administrative or judicial proceeding other than one brought to enforce this Act. 5 ILCS 120/2.06(e) (2020).

There has been no action by West Chicago to disclose the recording, or to determine the recording should not remain confidential. Therefore, under the clear provisions of the OMA, the recording is not discoverable in this proceeding. The objection to providing the verbatim copy is sustained.

The Board notes that while PWC may have an argument regarding the conduct and content of the closed meeting, this is not the forum for that argument. The provisions of OMA are enforceable through the circuit court and the Public Access Counselor (5 ILCS 120/3, 3.5 (2022)).

### **Pre- Filing Contacts**

Both Lakeshore and West Chicago argue that many of the documents requested are items provided prior to the filing of the application, and are therefore, not relevant to this proceeding. Specifically, Lakeshore argues the documents are not relevant and the content is not *ex parte*. *See generally* ObjLS at 2-3. Lakeshore argues that the Board has consistently held the pre-filing contacts are not relevant to fundamental fairness, and to be *ex parte* the contact must occur post-filing of the application. ObjLS at 3, citing Stop the Mega-Dump v. Dekalb County, PCB 10-103 (Mar. 17, 2011); Residents Against a Polluted Environment v. LaSalle County, PCB 97-139, slip op at 7, (June 19, 1997); Residents Against a Polluted Environment v. LaSalle County, PCB 96-243, slip op. at 16 (Sept. 19, 1996). West Chicago echoes this argument. ObjWC at 3-4.

In contrast PWC, argues that the Board has allowed to hear new evidence of pre-filing contacts to review the fundamental fairness of the proceeding. Resp. at 9-10. PWC argues respondents' reliance on Stop the Mega Dump and Residents Against a Polluted Environment are misplaced. PWC asserts that evidence of pre-filing collusion is acceptable evidence, and subject to discovery. *Id.* at 10. PWC maintains that there is evidence of collusion in the pre-filing contacts in this proceeding, and therefore, discovery should be allowed. *Id.* at 11.

The purpose of discovery is to uncover all relevant information and information calculated to lead to relevant information. *See* 35 Ill. Adm. Code 101.616(a). On appeal of a municipality's decision to grant or deny a siting application, the Board generally confines itself to the record developed by the municipality. 415 ILCS 5/40.1(b) (2020). However, the Board will hear new evidence relevant to the fundamental fairness of the proceedings where such evidence lies outside the record, including pre-filing contacts. *See* Land and Lakes Co. v. PCB, 319 Ill. App. 3d 41, 48, 743 N.E.2d 188, 194 (3d Dist. 2000).

The Board does agree that contacts prior to the application being filed are not *ex parte*. As the Board stated in Stop the Mega-Dump:

The Board first observes that the courts have long held that County Board Members act in an adjudicatory manner in proceedings under Section 39.2. Were they acting as legislators, there would be no possibility of *ex parte* contacts, which by definition cannot occur in the legislative context. The prohibition against *ex parte* contacts is not intended to be a "gag order" on the decisionmaker. It exists primarily for the protection of the public, to ensure that each person has equal access to the "ears" of the decisionmakers, and each person is aware of all the information that is being placed before the decisionmakers for their consideration. PCB 10-103, slip op. at 45.

Further, the Board has affirmed local hearing officer orders that did not allow questioning regarding pre-filing contacts. The Board stated:

There is no authority for applying *ex parte* restrictions concerning pollution control facility siting prior to the filing of an application for siting approval. Because evidence of these contacts are not relevant to the siting criteria and are not indicative of impermissible pre-decisional bias of the siting authority, we find that the county hearing officer's failure to allow testimony concerning these allegations did not render the proceedings fundamentally unfair. PCB 96-243, slip op. at 16.

However, as PWC argues, the Board will hear evidence of pre-filing contacts that could establish collusion and bias. The Board agrees. 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). *See* Timber Creek Homes, Inc. v. Village of Round Lake Park et.al., PCB 14-199 (Apr. 3, 2014).

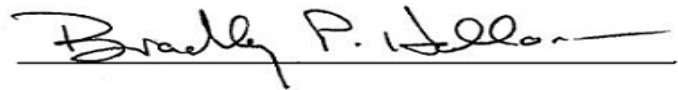


Based on a review of the case law and the parties' arguments, I sustain the objection to PWC Interrogatories 10, 11, and 12. It is unclear how responses to those interrogatories could provide evidence of bias or prejudice of facts. Because the OMA exemption does not allow for production of the closed meeting audio recording, the objection to PWC's request to produce #1 is sustained.

Also, because the objection was sustained to interrogatories 11 and 12, the objection PWC's request to produce 4 and 5 are also sustained. As to the remaining objections, I find the information being sought may assist in determining if West Chicago prejudged the application or had a bias. Therefore, those objections are overruled.

WC's reply is denied and was not needed to address the filed discovery objections, and therefore no material prejudice. *See* Section 101.500 (e) of the Board's procedural rules.

IT IS SO ORDERED

A handwritten signature in black ink, reading "Bradley P. Halloran", is written over a horizontal line.

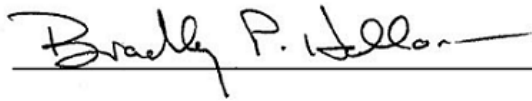
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CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were e-mailed on June 12, 2023, to each of the persons on the service list below.

It is hereby certified that a true copy of the foregoing order was e-mailed to the following on June 12, 2023:

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Chicago, Illinois 60605



Bradley P. Halloran  
Hearing Officer  
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312.814.8917

@ Consents to electronic service

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