

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
TO PETITIONER PROTECT WEST CHICAGO'S EXHIBITS**

Respondent, City of West Chicago, respectfully requests that the Board preclude Petitioner Protect West Chicago ("PWC") from introducing into evidence the following exhibits which are not a part of the Record and for which it neither established a foundation through deposition testimony nor plan to have a live witness appear at the hearing to do so. In addition, the exhibits are irrelevant and immaterial for the purposes of this siting appeal and even if relevant, should be excluded because their probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, and based on considerations of undue delay,

waste of time, and needless presentation of misleading and immaterial evidence. In addition, some of the documents proposed by PWC to be admitted clearly meet the definition of hearsay.

PWC is seeking to admit certain exhibits to prove the truth of the matters asserted within the documents. However, PWC has not established and will not be able to establish that a hearsay exception—such as the business records exception—applies to render them admissible. Courts generally require a witness to testify about a document prior to its admission for this very reason. Without a sponsoring witness, PWC cannot establish their admissibility, and the Board is not given adequate context to assess their relevancy. See *United States v. AT&T Inc.*, 310 F. Supp. 3d 161, 186-87 (D.D.C. 2018) (explaining that the Court “generally instructed the parties to seek admission of documents through sponsoring witnesses, in order to facilitate determinations of relevancy or to establish the foundation necessary for nonhearsay or hearsay exceptions. Witnesses would be able to contextualize and explain the technical and lengthy documents at issue, which might otherwise be misunderstood or selectively cited in post-trial briefs.”). This is particularly important for third party documents because the third party is not a participant in this action and cannot otherwise explain the document or contest the misrepresentation of a document. Further, the Board will not be able to hear from anyone with personal knowledge about some of these documents to explain their relevance to this case.

The following exhibits are all irrelevant (IR), immaterial (IM) and some are without any foundation (F) and a number of them are hearsay (H):

1. PWC 8 (IR, IM, F, H)
2. PWC 12 (IR, IM, F, H)
3. PWC 14 (IR, IM, F, H)
4. PWC 28 (IR, IM, F, H)
5. PWC 802 (IR, IM)
6. PWC 803 (IR, IM)
7. PWC 804 (IR, IM)
8. PWC 805 (IR, IM)

- 9. PWC 807 (IR, IM)
- 10. PWC 812 (IR, IM, F, H)
- 11. M-1/PWC 2 (IR, IM)
- 12. M-2/PWC 4 (IR, IM, F, H)
- 13. M-4 (IR, IM, F, H)
- 14. M-5 (IR, IM, F, H)
- 15. M-6 (IR, IM, F, H)
- 16. M-7 (IR, IM, F, H)
- 17. M-8 (IR, IM, F, H)
- 18. M-13 (IR, IM)
- 19. M-14 (IR, IM)
- 20. M-15 (IR, IM)

The City objects to the entire deposition transcripts being admitted of Mayor Ruben Pineda (PWC 809), Alderman Loti Chassee (PWC 810) and Thomas Dabareiner (PWC 811) for the following reasons:

1. Each one of the proposed exhibits is incomplete and does not contain the changes on the Errata Sheets and the Certification of the Witnesses which were provided to the court reporter who transcribed the depositions.

2. PWC has called each one of these deponents as a live witness who will testify in the hearing, and they are not witnesses who are no longer available to testify.

3. There were evidentiary objections made at these depositions which have not been ruled on in advance by the hearing officer.

4. These depositions were discovery depositions which allow for the more liberal and broader questioning permitted in discovery and not an evidence deposition taken as though the deponent were testifying at trial or the hearing.

5. Pursuant to Illinois Supreme Court Rule 212, deposition testimony may be used for limited purposes at the hearing but both the use of discovery depositions and the use of evidence depositions requires that the deponent be unable to attend or testify at the hearing which is not the case for any of these three deponents.

WHEREFORE, for the foregoing reasons, Respondent City of West Chicago requests that the Board grant its objections to the above-mentioned exhibits and exclude them from the Hearing.

Respectfully submitted,

CITY OF WEST CHICAGO,
Respondent.

By: 

One of Respondent's Attorneys

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NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on September 21, 2023, the City of West Chicago electronically filed with the Office of the Clerk of the Illinois Pollution Control Board **Respondent City of West Chicago's Objections to Petitioner Protect West Chicago's Exhibits**, copies of which are served upon you.

Respectfully submitted,

CITY OF WEST CHICAGO,
Respondent

By: 

One of Respondent's Attorneys

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AFFIDAVIT OF SERVICE

I, the undersigned, on oath state that I have served this **Notice of Filing and Respondent City of West Chicago's Objections to Petitioner Protect West Chicago's Exhibits** upon the following persons via email transmittal from 15010 S. Ravinia – Suite 10, Orland Park, Illinois 60462, on the 21st day of September, 2023.



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