BEFORE THE ILINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

To: **See Attached Service List**

PLEASE TAKE NOTICE that on March 28, 2023, Protect West Chicago filed with the Illinois Pollution Control Board, 60 E. Van Buren Street, Suite 630, Chicago, IL 60605, an original of the attached:

1) **Petition For Hearing & Review of Local Siting Approval for New Pollution Control Facility;**
2) **Appearance of Ricardo Meza for Protect West Chicago; and**
3) **Notice of Consent of Receipt of E-Mail Service**

copies of which are attached and served upon you.

Dated: March 28, 2023

Respectfully Submitted,

Ricardo Meza
Attorney for Protect West Chicago

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Electronic Filing: Received, Clerk's Office 03/28/2023 **PCB 2023-107**

CERTIFICATE OF SERVICE

I, Ricardo Meza, an attorney, certify that I have served the attached **Petition For Hearing & Review Of Local Siting Approval For New Pollution Control Facility** in this proceeding, on the below-named parties (Service List) by depositing same in the U.S. Mail at the John C. Kluczynski Federal Building & US Post Office, Loop Station, 230 S. Dearborn, Chicago, IL 60604 at 1:30 p.m. on March 28, 2023, with proper postage prepaid.

Ricardo Meza

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BEFORE THE ILINOIS POLLUTION CONTROL BOARD

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

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 petitions 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:

1) This 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.

2) 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. 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.

3) After Lakeshore submitted its Application, West Chicago scheduled a series of "public meetings," which meetings were held at various different locations throughout West Chicago, none of which had any Spanish-Language interpreters.

4) At the public hearings, PWC filed motions, responded to motions, cross-examined witnesses, presented its own witnesses, and submitted its Proposed Combined Findings of Fact and Conclusions of Law, attached as **Exhibit A** and incorporated herein by reference. PWC cited numerous defects in the proceedings, as well as various grounds to dismiss and/or not approve Lakeshore's Application.

5) 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.

6) 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.

7) 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 B**, 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 B**.

8) 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). In addition, this Petition is not duplicative or frivolous.

9) The decision of the City of West Chicago to grant siting approval for Lakeshore's Application should be reversed. In the first instance this is 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.

10) 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.

11) The City of West Chicago's decision to grant siting approval should also be reversed because at the "public hearings," the record reveals that the Siting Hearings did not comport with the dictates of Fundamental Fairness in a multitude of ways, including the fact that

neither West Chicago nor its Hearing Officer took any steps to ensure the hearings were available in Spanish even though both West Chicago and the Hearing Officer were informed that many of West Chicago's residents' primary language was Spanish.

12) The City of West Chicago's decision to grant siting approval should also be reversed because at the "public hearings," 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.

13) 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.

d. Lakeshore failed to meet the requirements of Criterion 8 in that it 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.

14) Finally, 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.

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: March 28, 2023

Respectfully Submitted,

Ricardo Meza
Attorney for Protect West Chicago

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Exhibit A

BEFORE THE CITY OF WEST CHICAGO CITY COUNCIL

In Re: THE APPLICATION OF	)
LAKESHORE RECYCLING SYSTEMS,	)
LLC, FOR SITING APPROVAL OF A	)
TRANSFER STATION AT	)
1655 POWIS ROAD,	)
WEST CHICAGO, ILLINOIS 62418	)

PROTECT WEST CHICAGO'S PROPOSED
COMBINED FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW COMES, Objector, Protect West Chicago, ("PWC") in the above-mentioned matter, by and through its attorney, Meza Law, and submits its Combined Proposed Findings of Fact and Conclusions of Law related to the Application of Lakeshore Recycling Systems, LLC (the "Applicant") for Siting Approval of a new proposed Pollution Control Facility.

I. EXECUTIVE SUMMARY

On September 16, 2022,[1] Lakeshore Recycling Systems ("LRS") submitted their Pre-Filing Notice informing West Chicago and its residents that it intended to submit a proposal to site a pollution control facility in West Chicago, namely a waste transfer station. After multiple so-called "public hearings," it is now clear that West Chicago's City Council has multiple grounds and basis to reject LRS's proposed waste transfer station.

First, LRS's Pre-Filing Notice did not comply with 415 ILCS §5/39.2(b). Specifically, LRS's expert, John Hock failed to provide the required statutory notice to owners of all property within 250 feet. Mr. Hock's failure to provide proper notice, and the manner in which he provided

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[1] Coincidentally, or perhaps not, September 16 is Mexican Independence Day and is often referred to as "El Grito" or "El Grito de Independencia," a tribute to the battle cry that launched a rebellion in 1810 and is celebrated in Mexico and in many majority-minority Latino communities including West Chicago, in the same manner as the 4th of July.

notice, dooms LRS's Application and strips the City Council of any jurisdiction to even consider the Application.

Second, because LRS's proposed facility would, by their own admission, be located within 1,000-feet of property zoned residential, it does not comply with 415 ILCS §5/22.14(a). Despite LRS's multiple attempts to salvage its Application and argue that it is "exempt" from this requirement, none of their efforts can or do circumvent the 1,000-foot setback requirement.

Third, the Siting Hearing did not comport with the dictates of Fundamental Fairness in a multitude of ways. For example, despite West Chicago 21% limited English Proficiency resident population, neither the City of West Chicago nor its Hearing Officer took any steps to ensure the hearing was available in Spanish. This, even though both West Chicago and the Hearing Officer were informed that certain residents' primary language was Spanish. In addition, the Hearing Officer failed to render impartial rulings on the evidence and specifically prevented PWC from cross-examining Applicant's expert on environmental justice related issues and even went so far as to prevent 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."

Fourth, LRS failed to meet 39.2 Criterion 1, 2, 3 and 8. Specifically, LRS failed to establish that there was a "need" for an additional waste transfer station and instead focused on its "need for vertical integration," which, of course, is not a part of Criterion 1. The testimony was clear—there is more than enough waste transfer station capacity to properly handle the current and future waste needs of the proposed LRS Service Area. LRS also 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; thus, it did not satisfy Criterion 2. In regard to Criterion 3, LRS's decision to hinge it expert's opinion on the

"highest and best use" analysis failed to sufficiently establish that the 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. Finally, in regard to Criterion 8, LRS failed to overcome 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. In fact, any ambiguity in that regard was decide when DuPage County confirmed in its prior denial of on an earlier waste transfer station siting proposal that "throughout the County" in its Solid Waste Management Plan did not mean allowing a second transfer station to be located in close proximity to an existing one.

Finally, LRS's last ditch effort to salvage its application by submitting, on the eve of the deadline for the filing of Proposed Findings of Fact and Conclusions of Law, two documents as "public comment" actually represent the final dagger in the heart of LRS's Application; that is because one of the submitted letters, from Canadian National, actually confirms that the owner on the authentic tax records is still in existence and that the pre-Filing Notice was deficient. The other letter was simply improper rebuttal testimony submitted after the close of evidence and must not be considered.

For all of the above reasons, PWC respectfully requests that the Hearing Officer recommend to the City of West Chicago's City Council that the proposed Application be denied. In the alternative, PWC further requests that even if the Hearing Officer does recommend that the City of West Chicago City Council approve LRS's Application to site a second waste transfer station in the City of West Chicago, that the City Council nonetheless deny LRS's Application.

II. APPLICANT HAS FAILED TO MEET THE JURISDICTIONAL NOTICE REQUIREMENTS

In order to proceed with a siting hearing and prior to even determining whether the criterion in 415 ILCS §5/39.2(b) (the "Siting Statute") have been met, an Application must comply with all statutory provisions, including the notice requirement. However, as set forth below, Applicant failed to meet the jurisdictional notice requirements.

The Siting Statute required the Applicant to serve written notice of intent (the "Pre-Filing Notice") on all owners of property within 250 feet in each direction of the lot line of the Subject Property (the "Subject Area Radius"). This notice is required to be made no later than 14 days before the date on which the City of West Chicago (the "City") receives the request for siting approval. 415 ILCS §5/39.2(b). Moreover, under the statute, notice can only be satisfied in one of two ways: (1) Personal Service; or (2) Registered Mail, Return Receipt Requested.

The Siting Statute explicitly and specifically provides that the Applicant shall:

> … cause written notice of such request 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; …

415 ILCS §5/39.2(b) (emphasis added). This requirement is jurisdictional, and the burden of proof rests with the Applicant to show that all procedural requirements relating to issuance and service of the Pre-Filing Notice have been met. *Id*; *see also* 415 ILCS 39.2(b); *Cnty. of Kankakee v. Illinois Pollution Control Bd.,* 396 Ill. App. 3d 1000, 1008, 955 N.E.2d 1, 9 (3rd Dist. 2009) (citing *Waste Mgmt. of Illinois v. Illinois Pollution Control Bd.,* 356 Ill. App. 3d 229, 234, 826 N.E.2d 586 (3d Dist. 2005). Applicant failed to meet the notice requirement.

The Pre-Filing Notice is jurisdictional because it is not just a perfunctory act or perfunctory exercise. The Pre-Filing Notice is the critical document that provides all statutory stakeholders

with adequate notice of what is being proposed in their community. *Kane Cnty. Defs., Inc. v. Pollution Control Bd.*, 139 Ill. App. 3d 588, 593, 487 N.E.2d 743, 746 (2d Dist. 1985). In this matter, the City also failed to post the actual Pre-Filing Notice on its website in Spanish and thus failed to take necessary steps to ensure that this critical document was also available to West Chicago residents whose primary language was Spanish.[2] The City's failure to make the Pre-Filing Notice available in Spanish denied Spanish-speaking residents their rights to meaningful access, as more fully described in the "Fundamental Fairness" section of this filing.

In any event, railroads own two parcels of land within the Subject Area Radius (the "Railroad Parcels"), and those parcels are located directly east of (and directly adjacent to) the Subject Property. Tr. 454. Thus, Applicant was required to serve the two railroads with the perquisite Pre-Filing Notice. The two Railroad Parcels are identified by Parcel Identification Numbers (PINs) 01-32-505-011 and 01-32-506-001. *See* Application at Appendix 2-J (Exhibit C)**.**

On May 5, 2003, the City via Ordinance 03-O-0033 annexed the rights-of-ways of property belonging to Elgin, Joliet and Eastern Railway Company (the "EJ&E") within the City. *See* Exhibit 1 to PWC's Motion to Dismiss. The EJ&E parcels that were annexed into the City included the parcel with PIN 01-32-506-001, which, as noted above, is within the Subject Area Radius. *Id.*

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[2] Although the Pre-Filing Notice was attached as an exhibit to Applicant's Application, it was not easily accessible to Spanish-speaking residents of West Chicago. The only reference to the Pre-Filing Notice of the City of West Chicago's website states as follows:

Notice of Intent (NOI) Sent to Neighboring Properties

Property owners near the area of 1655 Powis Road received an official mailed Notice of Intent (NOI) stating that Lakeshore Recycling Systems, LLC (LRS) would be filing a formal application and proposal on Friday, September 16, 2022 with the City that would request approval to construct and operate a solid waste transfer station facility at the site of 1655 Powis Road. See https://westchicago.org/transfer-station/#process (last visited Feb. 16, 2023).

The Act requires that applications for siting approval of pollution control facilities use "authentic tax records" to determine to whom and where the Pre-Filing Notice must be sent. 415 ILCS §39.2(b). In Illinois, the County Treasurer, the County Clerk and the Assessor each have a role in the keeping of the authentic tax records. *Bishop v. Pollution Control Bd.*, 235 Ill. App. 3d 925, 932, 601 N.E.2d 310, 315 (5th Dist. 1992); *Scott v. City of Chicago*, 2015 IL App (1st) 140570, ¶ 6, 29 N.E.3d 592, 594-595. In *Scott,* the court held that *Bishop* requires that one look to all three of these offices when determining the proper entities and locations to send notice based on the authentic tax records. *Scott v. City of Chicago*, ¶ 12, 29 N.E.3d at 596.

In Illinois, the Department of Revenue sets the tax assessments for all properties owned by the railroad companies that are used in the operation of the railroad [35 ILCS §200/8-5; 35 ILCS §200/11-70(b) and (d); 35 ILCS §20/11-80]; accordingly, local assessors have no role in determining real estate taxes or property values for the Railroad Parcels. Thus, an Applicant must look specifically at the authentic tax records contained in the offices of the DuPage County Treasurer and the DuPage County Clerk to determine to whom and where Pre-Filing Notices must be served for the Railroad Parcels. The Applicant in this case did not do that.

As set forth in the sworn declarations from DuPage County Treasurer Gwen Henry, the authentic DuPage County tax records clearly show that there are only six railroads, identified by name, address, city, state, and zip code included in the authentic DuPage County tax records, and that these are the *only railroads* that are assessed and pay real estate taxes within DuPage County. *See* Exhibit 2 of PWC's Motion to Dismiss.

Below are the six railroads:

	Railroad	Address	City	State and Zip Code
1	Chicago Central & Pacific Railroad	Bus Dev N Real Estate 1 Administration Road	Concord	Ontario L4K1B9
2	Burlington Northern & Santa Fe Railway Company	Property Tax Department PO Box 961089	Fort Worth	Texas 76161
3	CSX Transportation Railroad	Tax Department J-910 500 Water Street	Jacksonville	Florida 32202
4	Soo Line Railroad Company	7th Floor Tax Department 120 S. 6th Street	Minneapolis	Minnesota 55402
5	Elgin, Joliet & Eastern Railway Company	17641 S. Ashland Avenue	Homewood	Illinois 60430
6	Union Pacific Railroad Company	Property Tax Department Stop 1640 1400 Douglas Street	Omaha	Nebraska 68179

Id.

In addition, as set forth in the sworn declaration from DuPage County Clerk Jean Kaczmarek, Railroad Assessment Certifications for DuPage County also confirmed that these same six railroads are the *only railroads* assessed real estate taxes within DuPage County. *See* Exhibit 3 of PWC's Motion to Dismiss.

The six railroads and the locations (addresses) for the sending of real estate tax notices identified by Ms. Kaczmarek are identical to those in the County Treasurer's authentic tax records and are as follows:

	Railroad	Address	City	State and Zip Code
1	Chicago Central & Pacific Railroad	Bus Dev N Real Estate 1 Administration Road	Concord	Ontario L4K1B9
2	Burlington Northern & Santa Fe Railway Company	Property Tax Department PO Box 961089	Fort Worth	Texas 76161
3	CSX Transportation Railroad	Tax Department J-910 500 Water Street	Jacksonville	Florida 32202
4	Soo Line Railroad Company	7th Floor Tax department 120 S. 6th Street	Minneapolis	Minnesota 55402
5	Wisconsin Central, Ltd. (EJ&E Line) Company	17641 S. Ashland Avenue	Homewood	Illinois 60430
6	Union Pacific Railroad Company	Property Tax Department Stop 1640 1400 Douglas Street	Omaha	Nebraska 68179

Id.

In its Siting Application, the Applicant included Appendix 2-J which contains a document titled "Applicant's Affidavit of Compliance With 415 ILCS §5/39.2(b)," ("Applicant's Affidavit of Compliance") as well as the related exhibits which depict copies of notices and receipts of such service, in which Applicant purports to have complied with the requirement of 45 ILCS §39.2(b). *See* Exhibit 4 of PWC's Motion to Dismiss. In fact, the Applicant also included a chart reflecting the identity of the entities Applicant served, including their respective addresses. The following is the relevant portion of Applicant's chart reflecting purported service on three railroads:

Property Owner	Address	City	State	Zip Code	PIN or General Assembly
Union Pacific Railroad Company	Property Tax Department Stop 1640 1400 Douglas Street MS910	Omaha	Nebraska	68179-0910	01-32-505-011
Canadian National Railway	935 de La Gauchetiere Street Ouest	Montreal	Quebec, Canada	H3B 2M9	01-32-506-001
Chicago Central & Pacific Railroad	Bus Dev Real Estate 1 Administration Road	Concord	Ontario Canada	L4K 1B9	01-32-506-001

See Exhibit 4 of PWC's Motion to Dismiss.

Moreover, in its Application, the Applicant declared under oath and via the affidavit of its engineer John Hock, that it attempted service of its Pre-Filing Notice upon Canadian National Railway for PIN 01-32-506-001; however, there is no indication in the authentic tax records of DuPage County that Canadian National Railway is the property owner identified by PIN 01-32-506-001 or, for that matter, owns any property within the Subject Area Radius. *See* Exhibits 3 and 4 of PWC's Motion to Dismiss. In fact, there is no evidence in the authentic tax records that Canadian National Railway is assessed real estate taxes or receives real estate tax bills for any property in DuPage County, let alone in West Chicago. *Id.*

At the Siting Hearing and only after being informed of the notice deficiencies in its Application, Applicant attempted to salvage it fatal error by solely relying on a label included in a

DuPage County map that stated, "Canadian National (EJ&E RR)." Tr. 218. And, although Mr. Hock testified that the map was an "authentic tax record map" or "authentic tax records" of DuPage County; other than his bald assertion, he provided no support for that statement. Tr. 215-46. In fact, Mr. Hock admitted that he never even took the simple step, either before or after PWC filed its Motion to Dismiss, of calling or contacting anyone at DuPage County to ask them whether this map which he had alleged was an "authentic tax record map," was in fact an "authentic tax record" of DuPage County or even whether it had any relevance to the real estate taxes DuPage County issued. Tr. 231-34. Even after PWC specifically pointed out to Mr. Hock that he had served the wrong entity and even after providing Mr. Hock with documentary proof of his error, he still refused to call the DuPage County Clerk's Office or the DuPage County Treasurer's Office to determine, or even try to determine, what their records did show. *Id.*

In summary, other than looking at this one map and conducting a so-called "Google search," (Tr. 245) Mr. Hock took no steps to:

- confirm with the DuPage County Treasurer;
- confirm with the DuPage County Clerk; or
- confirm with any assessor's office at the township or county level;

that the map he claimed was an authentic tax record was an actual authentic tax record of DuPage County. Tr. 108-10. Moreover, and of dispositive significance here, nor did Mr. Hock take any steps whatsoever to determine where or to whom the tax bills were sent or whom the authentic tax records listed as the owner of PIN 01-32-506-001. Tr. 105-06, 108-10 and 231-34.

On the other hand, PWC entered into the hearing record certified copies of actual DuPage County real estate tax records and bills for the Railroad Parcel at issue. *See* Exhibits 2 and 3 of PWC's Motion to Dismiss. In regard to the PWC records, and of further dispositive significance,

Mr. Hock admitted on cross-examination that the certified authentic tax records provided by PWC did not show any DuPage County real estate tax bills ever being sent to Canadian National Railway. Tr. 244-45.

Here, rather than determine who received the authentic tax bills and at what address, Applicant did nothing more than look online for an address for the Canadian National Railway and happened to find an address in Canada. Tr. 245. Applicant then simply attempted to serve the Pre-Filing Notice on Canadian National Railway via overnight express mail at the Canada address (Tr. 102-04), which as noted below was also improper under the Siting Statute.

In its Siting Application, the Applicant also attempted service on Chicago Central & Pacific Railroad (the "Chicago Central") for PIN 01-32-506-001; however, there is no indication in *any* authentic tax record of DuPage County that the Chicago Central owns *any* property identified by PIN 01-32-506-001 or owns *any* property within the Subject Area Radius.[3] This, again, reinforces the fact that Applicant paid no heed whatsoever as to what the authentic tax records of DuPage County actually provided or revealed.

In its Application, despite the Siting Statute's requirement that an Applicant provide all property owners within the 250-foot Subject Area Radius with the required notice as set forth at Section 39.2 (b), the Applicant failed to effectuate any service on EJ&E for PIN 01-32-506-001 even though:

1) West Chicago Ordinance 03-O-0033, which annexed the rights-of-ways of property belonging to EJ&E, clearly revealed that PIN 01-32-506-001 belonged to EJ&E. *See* Exhibit 1 of PWC's Motion to Dismiss.

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[3] A review of the authentic tax bill sent to Chicago Central & Pacific Railroad by the DuPage County Treasurer (Exhibit 2 to PWC's Motion to Dismiss) and a review of the Illinois Department of Revenue PTAX-105-A form provided by the DuPage County Clerk (Exhibit 3 to PWC's Motion to Dismiss), shows that there is no indication that the Chicago Central & Pacific Railroad receives tax bills for any property located in the City of West Chicago.

2) The DuPage County Treasurer certified records unambiguously confirm that EJ&E, *not* Canadian National Railway, is the entity appearing as the "owner" on the ***authentic tax records of the County*** for PIN 01-32-506-001. *See* Exhibit 2 of PWC's Motion to Dismiss.

3) The DuPage County Clerk certified records also confirm that EJ&E, and *not* Canadian National Railway, is the entity assessed real estate taxes in DuPage County generally and in particular for PIN 01-32-506-001. *See* Exhibit 3 of PWC's Motion to Dismiss.

In fact, none of the tax records, let alone the ***authentic tax records of the County***, reveal that Canadian National Railway received any tax bills or paid any taxes thus entitling or requiring that they receive notice for PIN 01-32-506-001 or any other PIN in DuPage County. Further, Mr. Hock's failure to even call the DuPage County Clerk or Treasurer is also telling because it reveals *sub silentio,* that he was likely fully aware of his fatal error. PWC's Motion to Dismiss Exhibits conclusively showed that a review of the records at the DuPage County Treasurer's or Clerk's Offices would only serve to prove PWC's point: the only proper party and location to serve for PIN 01-32-506-001 was EJ&E at 17641 S. Ashland Avenue, Homewood, Illinois, 60430, as that is the address where the authentic tax bills are sent. *See* Exhibit 2 to PWC's Motion to Dismiss. Hence, one can easily assume that Mr. Hock knew that the response from the DuPage County Clerk's Office or the DuPage County Treasurer's Office was going to be unfavorable and decided ignorance was (somehow) bliss.

At the Siting Hearing, Mr. Hock nevertheless attempted to justify Applicant's failure to serve EJ&E by stating that he read internet articles stating that EJ&E was dissolved but offered no competent documentation in this regard. Tr. 245. Going further, Mr. Hock conceded he did not research this issue on the Illinois Secretary of State's website that lists all corporate entities registered to do business in Illinois. Tr. 245-46. In fact, a review of the Illinois Secretary of State's website would have shown that the EJ&E merged with another railway and was not dissolved as

Mr. Hock would like everyone to believe, and that the EJ&E simply merged with the Wisconsin Central Ltd. in 2012. *See* certified copy of Illinois Secretary of State records of the Department of Business Services dated January 17, 2023 attached hereto as Exhibit A. Although not relevant, interestingly enough, Applicant did not serve the Wisconsin Central Ltd either. *See* Application at Appendix 2-J (Exhibits C and D).

Even if Canadian National Railway does own the EJ&E and/or Wisconsin Central Ltd., it would still not save the Applicant's failure to notify the proper entity listed on the authentic tax records. Illinois courts have taken a very strict view on the entities that must be served the Pre-Filing Notice; those being the "Owners" set out in the authentic tax records of a county. *Waste Mgmt. of Illinois, Inc. v. Illinois Pollutions Control Bd.,* 356 Ill. App. 3d 229, 234, 826 N.E.2d 586, 591-92 (3rd Dist. 2005). Actual notice is insufficient to cure notices not served by the statutory method or to the correct person or entity. *Id.* at 592. Moreover, each corporation is its own legal entity under Illinois law, and one cannot consider service on a parent company as service on its subsidiary. *See Wissmiller v. Lincoln Trail Motorsports, Inc.*, 195 Ill. App. 3d 399, 403, 552 N.E.2d 295, 298 (4th Dist. 1990) ("mere existence of a parent-subsidiary relationship is insufficient to establish close ties necessary" for proper service of process). As such, what Mr. Hock thought or what Mr. Hock says he relied upon and the reason(s) he did so is totally irrelevant; what controls is what the Siting Statute requires, not Mr. Hock's "whole cloth" arguments and posits as to what might possibly suffice.

In addition, there was no evidence that the authentic railroad tax records or railroad tax bills were being returned to sender or, for that matter, were not being paid. In other words, the authentic railroad tax records reviewed showed that the railroad addresses, the railroad owner designations, and the railroad bills were all current and were all still functioning addresses.

In this case, even if the Canadian National Railway would somehow be deemed an entity entitled to Pre-Filing Notice, overnight express service through a private company as utilized by the Applicant does not meet the Pre-Filing Notice requirements of the Siting Statute. There are only two methods prescribed by statute (personal service or registered mail, return receipt requested) which satisfy the Pre-Filing Notice service requirement set forth in Section 39.2(b). Overnight express is not one of the two methods, and no decisions have been found or cited by anyone in these proceedings that have ever allowed this type of service for Pre-Filing Notice. Accordingly, service of the Pre-Filing Notice via overnight express service through a private company was void. In other words, in addition to serving the wrong entity, at the wrong location, Applicant's form of service was also improper under the Siting Statute.

With respect to the Siting Statute, the Illinois Appellate Court has adopted the "Plain Language Doctrine" and, in doing so, has adopted a very strict interpretation as to how and whom must be served the Pre-filing Notice, as set forth in Section 39.2(b). *Waste Mgmt. of Illinois v. Illinois Pollution Control Board*, 356 Ill. App. 3d 229, 234, 826 N.E. 2d 586, 591-92 (3d Dist. 2005). The Court in *Waste Management* determined that the General Assembly had provided only two methods by which an applicant could satisfy the Pre-Filing Notice service requirements set forth within the Siting Statute, personal service or registered mail, return receipt requested, to the address appearing on the authentic tax records of the county. *Id.* at 591.

Here, for the reasons set forth above, service of the Pre-Filing Notice is fatally flawed and insufficient as a matter of law because the Applicant has failed to establish that notice was properly served upon all owners within the Subject Area Radius entitled to notice as required by the Siting Statute, namely the Elgin, Joliet and Eastern Railway Company. Further, the method of service

of Applicant's Pre-Filing Notice to Canadian National fails to comply with the notice requirements of the Siting Statute and is, thus, insufficient as a matter of law.

Accordingly, the City of West Chicago has no jurisdiction to approve or deny Applicant's proposed waste transfer station, and this matter must be dismissed for lack of jurisdiction.

III. THE APPLICANT HAS FAILED TO COMPLY WITH 415 ILCS §5/22.14(a)

To obtain local siting approval of a new pollution control facility in Illinois, the Application (the "Application") submitted to the City of West Chicago (the "City") by the Applicant must also comply with 415 ILCS §5/22.14(a) (the "Set-Back Provision"):

> *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, except in counties of at least 3,000,000 inhabitants.*

In its Application, the Applicant confirmed its obligation to comply with the 1,000-foot Set-Back Provision by stating that:

> "DuPage County has less than 3,000,000 inhabitants, so West DuPage RTS may not be established within 1,000 feet of the nearest property zoned for primarily residential uses or within 1,000 feet of any dwelling." *See* Applicant's Exhibit 1, p. 2-10.

The Applicant also confirmed and conceded that two residentially zoned properties (ER-1) are located within 1,000 feet of the proposed waste transfer station. Tr. 454. Specifically, Section 2.1.4.1 of the Application states:

> That "Figure 2-2 indicates that all of the surrounding properties within 1,000 feet of the West DuPage RTS are zoned [non-residential], *except for railroad properties directly to the east of the site*." (emphasis added). Applicant's Exhibit 1.

However, despite conceding that the proposed facility is located within 1,000 feet of West Chicago properties zoned residential, Applicant seeks to circumvent the statutory requirement by advancing two arguments:

> *First*, Applicant argues that "the physical features of the property, the lack of access, and the above lot requirements make it physically impossible to construct a residence on the railroad property." *Id.*
>
> *Second*, Applicant states that the setback criteria is not applicable as evidenced by a letter from a West Chicago city official in which the official states that the "ER-1 zoning classification is a remnant from when it was annexed into West Chicago, residential development on this property is physically impossible, and West Chicago concludes the setback criteria is not applicable to this property." *See* Applicant's Exhibit 2 (Appendix 2-D2).

Applicant's arguments that it complies with the Set-Back Provision are faulty because they are based on an inapplicable exception articulated in an *unpublished* Rule 23 decision which does not apply to this Application. *See Roxana Landfill, Inc. v. Illinois Pollution Control Bd., 2016 IL App (5th) 150096-U.* Moreover, even if the *Roxana* decision did apply, the facts in that case are distinguishable from the facts in the Application and, thus, Applicant's arguments fails for a number of reasons.

A. **The Rules of Statutory Construction Do Not Support Applicant's Position**

First, pursuant to the rules of statutory construction, the statute must be read to comply with its plain language. The plain language of the statute at issue shows that no waste transfer station can legally be sited at the proposed location because there are two properties zoned primarily for residential use within 1,000 feet of the proposed facility. "No" means exactly that, and the Applicant is not authorized to declare that the legislature did not mean what it clearly wrote in order to obtain the outcome it seeks. *See Zahn v. N. Am. Power & Gas, LLC*, 2016 IL 120526, ¶ 15, 410 Ill. Dec. 947, 72 N.E.3d 333, 337 ("No rule of construction authorizes us to declare that the legislature did not mean what the plain language of the statute imports, nor may we rewrite a statute to add provisions *** the legislature did not include.").

When presented with an issue of statutory construction, a court's primary objective is to ascertain and give effect to the intent of the legislature. *Murphy-Hylton v. Lieberman Mgmt.*

Services, Inc., 2016 IL 120394, ¶ 25, 72 N.E.3d 323, 329. Hence, the most reliable indicator of legislative intent is the language of Section 22.14(a), which must be given its plain and ordinary meaning. *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 479, 639 N.E.2d 1282, 1287 (1994). Courts should not depart from the plain language of the Act by reading into the Act exceptions, limitations, or conditions that conflict with the express legislative intent. *Alternate Fuels, Inc. v. Dir. of Illinois E.P.A.*, 215 Ill. 2d 219, 238, 830 N.E.2d 444, 455 (2004). In performing this task, courts will consider the statute's language as well as the reason for the law, the evils to be remedied, and the purposes to be obtained. *M.I.G. Investments, Inc. v. E.P.A.*, 122 Ill. 2d 392, 397-398, 523 N.E.2d 1, 3 (1988); *Murphy-Hylton*, 2016 IL 120394, ¶ 25; *J&J Ventures Gaming LLC, v. Wild, Inc.*, 2016 IL 119870, ¶ 25, 67 N.E3d 243, 251.

Here, the statute is clear and states that no facility may be constructed within 1,000 feet of residentially zoned property. The current zoning classification of the two parcels is, then, dispositive. In turn, there is no factual dispute that within 1,000 feet of the LRS transfer station there are two properties that are zoned residential. Applicant's Exhibit 1, Section 2.1.4.1; Tr. 454 and 1104. Since LRS concedes that the proposed facility is within 1,000 feet of property zoned residential, the inquiry should stop there.[4]

By including residentially zoned properties in the 1,000-foot Set-Back Provision and not just prohibiting residential dwellings, the legislature made a clear choice to include parcels that had the ability to be utilized in the future as residential, even if currently vacant or used in a different manner. To read exceptions into the plain language, as Applicant suggests, would be to change the clear intent of the General Assembly, which in this case was designed to protect the

[4] Although there are statutory exceptions to the 1,000-foot Set-Back Provision, those exceptions are inapplicable to this Application.

quality of areas that are zoned or used for residential purposes. Accordingly, the plain language of Section 22.14(a) that prohibits this type of facility within 1,000 feet of residentially zoned property requires that siting for the project be denied.

B. The Adjacent Rail Lines Could Be Used in A Residential Manner

In an attempt to avoid the plain language of the statute, Applicant argues that the rail lines could never be developed in a residential manner. This argument is legally and factually false.

PWC's expert Joe Abel, a certified land planner who has been involved in the development of hundreds of projects in Illinois, primarily in DuPage County, including residential developments throughout his fifty plus year career on both the developer and regulatory sides of projects (Tr. 1073-77) testified unequivocally that:

(1) the Railroad Parcels are within 1,000 feet of the proposed Pollution Control Facility (Tr. 1105);

(2) the Railroad Parcels are zoned residential (Tr. 1073 and 1097);

(3) adjacent to the Railroad Parcels is vacant property currently used for farming purposes (Tr. 1077);

(4) properties are consolidated and re-zoned on a regular basis (Tr. 1078-79);

(5) numerous rail lines in DuPage County have been vacated during his career and utilized in other ways, including as parts of other developments (Tr. 1071-72, 1087 and 1101-02; and

(6) the adjacent vacant property currently being farmed could be legally re-zoned and consolidated with the Railroad Parcels and the adjacent farmland to develop and use in a residential manner. Tr. 1080-1082 and 1089-91.

None of Mr. Abel's testimony in this regard was ever contradicted or disputed.

C. The Roxana Decision Does Not Help Applicant

Applicant relies upon an unpublished Rule 23 Opinion entitled *Roxana Landfill, Inc. v. Illinois Pollution Control Bd.,* 2016 IL App (5th) 150096-U, to attempt to establish an exception to the 1,000-foot Set-Back Provision set forth in Section 22.14(a). However, *Roxana* is inapplicable and is entirely distinguishable from this case because the property in question in *Roxana* was foreclosed in perpetuity by a deed restriction from ever being utilized for residential purposes.

The same is not true for the Railroad Parcels in this matter. As evidenced via Mr. Abel's testimony, nothing legally or factually prohibits the residentially zoned Railroad Parcels from ever being combined with the farm parcels to the east and being redeveloped as part of a larger residential development.

In *Roxana,* the Fifth District Appellate Court issued a Rule 23 Opinion that examined whether the applicant's non-conformity with Section 22.14(a) was fatal to the application. *Id.* First, and perhaps most importantly, while a Supreme Court Rule 23 ruling may be cited as persuasive, it ***may not*** be cited as binding precedent by any party except in the limited circumstances allowed under Rule 23(e)(1). This case is not one of those limited circumstances; therefore, neither the Hearing Officer nor the City Council can or should rely on this decision. Assuming, *arguendo*, that the case was not a Rule 23 Opinion, it would still hold no weight in this circumstance.

The *Roxana* applicant asserted in its waste transfer station application that there were no residential land uses within 1,000 feet of the site. The applicant therein noted, however, that property approximately 1,000 feet to the southeast of the site previously contained residential dwellings but that St. Clair County had acquired these properties under a Federal Emergency

Management Agency (FEMA) buy-out program, which included permanent deed restrictions prohibiting any future residential use of the parcels. The deed provided that the grantee (the City):

> "agree[d] to conditions which [were] intended to restrict the use of the land to open space in perpetuity" and that the grantee "agree[d] that no new structures or improvements shall be erected on the premises other than a restroom or a public facility that [was] open on all sides and functionally related to the open space use."

In other words, residential buildings were forever banned from being located on the land. The *Roxana* court relying on the perpetual requirement of the deed restriction reasoned that notwithstanding the lack of compliance with Section 22.14(a), the property would not be considered residential under this very limited circumstance.

In this case, however, the Railroad Parcels contain no such prohibition related to use of the properties as residential uses, nor have the owners of the Railroad Parcels agreed that they would never utilize the Railroad Parcels in a residential manner. Further, as shown by Mr. Abel's testimony, there is nothing legally or factually that would prohibit the Railroad Parcels from being utilized as residential in the future. Tr. 1080-1082 and 1089-91. In short, the *Roxana* decision does not allow Applicant to circumvent the clear language set forth in Section 22.14(a).

Further, the Illinois Pollution Control Board has previously held in favor of strict compliance with Section 22.14(a). *C&S Recycling, Inc. v. Illinois Environmental Protection Agency*, 1996 WL 419477, at *3 (PCB 95-100, July 18, 1996). C&S Recycling filed an application for a permit to develop and operate a municipal waste transfer station. *Id*. at *1. The Agency denied the application because it failed to demonstrate that the proposed facility was located at least 800 feet from the nearest residence or property zoned for primarily residential uses as required by Section 22.14 of the Act, and Section 39(1) of the Act prohibits the issuance of a permit for a facility located within the boundaries of any setback zone established by the Act. *Id*. at *2. The Board agreed and concluded its decision with the following language "Further, even if the Board

found in favor of C&S Recycling on these arguments, without a legislative change in the Act, issuance of the permit would still result in a violation of the Act." *Id.* at *3. (Emphasis Added).

Like in *C&S Recycling*, the Applicant has conceded that the facility is within 1,000 feet of a property zoned for residential use. Thus, without a legislative change in the Act, West Chicago cannot read exceptions into the statute in favor of the Applicant, because the issuance of the permit would still result in a violation of the Act.

D. The Dabareiner Letter Does Not Modify the Requirements of Section 22.14(a)

Applicant also attempts to circumvent the clear language of the Act by relying on an August 24, 2022 letter issued by a City of West Chicago staff member named Tom Dabareiner (the "Dabareiner Letter"). *See* Exhibit 1 Application at Appendix 2-D2. According to the Applicant's engineer, Mr. Hock, West Chicago provided a letter "with their determination that the 1,000-foot set-back does not apply to those railroad properties." Tr. 455. Specifically, in the Dabareiner Letter, Mr. Dabareiner wrote, among other things, that "[r]esidential development on this property is physically impossible," and that "[a]s such, the City concludes that the 1,000-foot setback requirement in 415 ILCS 5/22.14(a) is not applicable." *Id.* As shown above, Mr. Abel's testimony destroys the argument that "residential development on this property is physically impossible." Tr. 1073-1105.

Further, at the siting hearing, it became clear that although Mr. Dabareiner eventually signed the version of the Dabareiner Letter included in the Application, the language in the August 24, 2022 letter (Exhibit 1, Application at Appendix 2-D2) was not the same language that had been included in the initial version of the letter Mr. Dabareiner authored and executed on October 15, 2019. *See* Exhibit PWC-200. Rather, at the siting hearing, it was discovered that significant revisions to the initial letter were made at the request of the Applicant's engineer, Mr. Hock. Tr.

539-43. As noted, the revisions made to the initial letter by Mr. Hock were not insignificant or minor. Tr. 542-44. For example, in the initial October 15, 2019 letter, Mr. Dabareiner never included language stating that "residential development on this property is physically impossible." *Compare* Exhibit 1 Application at Appendix 2-D2 *with* Exhibit PWC-200; Tr. 540. In addition, in the initial letter, Mr. Dabareiner did not state that the City "concluded" that the 1,000-foot setback did not apply; rather, in the initial letter, Dabareiner stated, "as such, the City believes Section 22.14(a) 1,000 foot setback requirement is not applicable." *Compare* Exhibit 1 Application at Appendix 2-D2 *with* Exhibit PWC-200; Tr. 540. The ultimate production, then, was much more a work of Mr. Hock's penmanship than that of Mr. Dabareiner. Regardless, Applicant's reliance on a West Chicago staff member's letter to support its position that it has met all location criteria is inapposite.

First, in West Chicago, pursuant to Article VVII - Pollution Control Facility Site Approval Procedures, and in particular Section 14-93, it is clear that: "The applicant remains ***solely responsible*** to demonstrate that the location approval criteria are ***all*** met." (Emphasis Added). Thus, the Applicant's efforts to use the revised/reconstituted version of the Dabareiner Letter to argue that it has met the Set-Back Provision should be rejected because neither Mr. Dabareiner nor the City are the Applicants.

Second, a West Chicago staff member's conjecture or speculation regarding the availability of property for a particular future use is not the standard created by 415 ILCS §5/22.4(a); the current zoning of the property is the issue under the statute. This standard is confirmed and reinforced by the last paragraph of Section 39.2(a), which provides: "If the facility is subject to the location restrictions in Section 22.14 of this Act, ***compliance with that section shall be determined as of the date of filing of the application for siting approval***". (Emphasis added). In this case, as of the date that the siting application was filed, (as well as to the present date), the parcel in question is zoned

"Residential." Accordingly, the parcel in question was zoned Residential as of the time the siting application was filed, and this is dispositive of the issue.

Moreover, as a City of West Chicago staff member, Mr. Dabareiner has no authority to determine whether the Application complies with the Set-Back Provisions of an Illinois statute and the Applicant cannot rely upon representations made by a municipal official to argue that it has satisfied the provisions of the Act, because the controlling law is the Act, ***not*** what a local municipal official may state in a letter provided to the Applicant. Accordingly, neither a West Chicago staff member nor its corporate authorities have the authority to create "whole cloth" exceptions in or to the clear and unequivocal mandate included in both Section 22.14(a) and the last paragraph of Section 39.52(a). That is not within the purview of the City or any city official.

Thus, since the Application fails to comply with the 1,000-foot set-back requirement of 415 ILCS §5/22.14(a), siting approval for this proposed pollution control facility must be denied.

IV. FUNDAMENTAL FAIRNESS RELATED ISSUES

In a local siting proceeding under the Illinois Environmental Protection Act, a nonapplicant who participates in the siting process [] has a statutory right to fundamental fairness in proceedings before the local siting authority. *Land & Lakes Co. v. Illinois Pollution Control Bd.,* 319 Ill. App. 3d 41, 47, 252 Ill. Dec. 614, 743 N.E.2d 188, 193 (3d Dist. 2000), rev'd on other grounds, *Peoria Disposal Co. v. Illinois Pollution Control Bd.,* 385 Ill. App. 3d 781, 796–97, 324 Ill. Dec. 674, 896 N.E.2d 460 (3d Dist. 2008). However, fundamental fairness in this context incorporates only the minimal standards of procedural due process, such as the right to be heard, the right to cross-examine adverse witnesses, and the right to have impartial rulings on the evidence. *Peoria Disposal Co.,* 385 Ill. App. 3d at 797. *See Cnty. of Kankakee v. Illinois Pollution Control Bd.*, 396 Ill. App. 3d 1000, 1014, 955 N.E.2d 1, 14 (3d Dist. 2009), *as corrected* (Jan. 26, 2010).

To show bias or prejudice in a siting proceeding under the Environmental Protection Act, the participant must show that a disinterested observer might conclude that the siting authority, or its members, had prejudged the facts or law of the case. *Fox Moraine, LLC v. United City of Yorkville*, 2011 IL (2d) 100017, ¶ 60, 960 N.E.2d 1144, 1163, appeal denied 360 Ill. Dec. 2, 968 N.E.2d 81 (2012). Although citizens before a municipal board in proceedings regarding site approval for pollution control facilities are not entitled to a fair hearing by reason of constitutional guarantees of due process, they may nevertheless insist that procedures comport with standards of fundamental fairness. *Fairview Area Citizens Taskforce v. Illinois Pollution Control Bd.*, 198 Ill. App.3d 541, 555 N.E.2d 1178, 1180, (3d Dist. 1990) appeal denied 149 Ill. Dec. 319, 133 Ill.2d 554, 561 N.E.2d 689 (1990).

Moreover, the Siting Statute requires that a "public" hearing be held (415 ILCS 5/39.2(d)). In turn, Black's Law Dictionary defines the terms "public" as "Pertaining to a … ***whole community***; proceeding from, relating to ***or affecting the whole body of people or an entire community***." (Emphasis added). For the reasons set forth below, the hearing held by the City of West Chicago did not meet the legal definition of a "public" hearing and thus the hearings were fatally infirmed (from a fundamental fairness/procedural point of view). As James Madison wrote: "A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or perhaps both." 9 Writings of James Madison 103 (G. Hunt ed. 1910). *Branzburg v. Hayes*, 408 U.S. 665, 728 (1972).

In this case, the proceedings regarding site approval, starting with the Pre-Filing Notice and the right to have impartial rulings on evidence did not comport with either standards of fundamental fairness or the procedural requirement that a "public" hearing be held in one or more of the following ways:

First, the statutory Pre-Filing Notice was not made available on the City's website in Spanish, in a community where more than 52% of residents over the age of five speak a language other than English, and nearly 21% have limited English Proficiency ("LEP").[5] In fact, West Chicago's 21% LEP population is four times the 5% threshold set by the Federal Government for requiring language access measures for LEP residents.

Second, no City official or even the Hearing Officer took any steps to determine whether there was a need for a Spanish language interpreter for any citizen or participant. And, even after being informed that certain participants' primary language was Spanish, no City official or the Hearing Officer took any steps to locate a Spanish language interpreter.

Third, despite the fact that the United States Environmental Protection Agency has recommended that environmental justice considerations be taken into account in waste transfer station sitings, the Hearing Officer did not make impartial rulings on the evidence and specifically prevented PWC from cross-examining Applicant's expert on environmental justice related issues and further prevented PWC from asking its environmental expert questions regarding emissions and environmental justice related issues relating to West Chicago's minority community or for that matter the surrounding minority communities.

Individually, any of the above three deficiencies confirm that the Siting Hearing, including the Pre-Filing Notice, did not comport with standards of fundamental fairness; however, combined, the three deficiencies reveal a clear bias that none of those in control of how the Siting Hearing was to be conducted were concerned with the rights of the Latino community, which comprise the majority of West Chicago residents. This, despite the fact that West Chicago is considered a "majority-minority" community because Latinos as an ethnic group represent the largest population, namely 52% of city residents. Each deficiency is described in greater detail below.

A. The Pre-Filing Notice Related Issues and Language Access

As noted above, the Pre-Filing Notice was not available in Spanish. In that regard, the last paragraph of 39.2(b), states, in pertinent part that: "Such notice shall ***state*** the name and address of the applicant, the location of the proposed site, the nature and size of the development, the nature of the

[5] *See* American Community Survey 2021 5-Year Estimates: Language Spoken at Home Tables at https://data.census.gov/table?q=West+Chicago+&t=Language+Spoken+at+Home&tid=ACSST5Y2021.S1601.

activity proposed, the probable life of the proposed activity, the date when the request for site approval will be submitted, and a description of the right of persons to comment and a description of the right of persons to comment on such request as herein provided." (Emphasis added). Black's Law Dictionary defines the verb "state" as: "***To express*** the ***particulars*** of a thing in writing or in word; to set down or set forth ***in detail***." (Emphasis added). The requirement set forth in the Siting Statute to state certain matters in the Pre-Filing Notice requires that they be done with particularity and in detail. The requirement that these matters be stated in the Pre-Filing Notice with particularity and in detail are not afforded to the majority-minority Latino community in West Chicago when the Prefiling Notice was only available in English and only within an exhibit of the Applicant's Criterion 2. *See* Applicant's Criterion-2, Appendix-2-J at Exhibit A. The touchtone purpose of a "notice" is to "notify"—in turn, a notice that does not notify serves no purpose, and is a nullity.

This critical omission of statutory notice in Spanish denied LEP West Chicago residents with their fundamental right to receive notice and meaningful access to critical information. The standard of meaningful participation was established by the landmark *Lau v. Nichols*, where the U.S. Supreme Court found that by receiving no instruction or English only language instruction, "Chinese speaking children" were denied the opportunity for meaningful participation in the same education available to English speaking children. Lau v. Nichols, 414 U.S. 563, 568, 94, S. Ct. 786, 789, 39 L. Ed. 2d 1 (1974). Thus, the Supreme Court ruled that the school district had discriminated against these Chinese students, as a result of their national origin, a protected category under Title VI of the Civil Rights Act of 1964. *Id.* The exact same thing occurred in West Chicago; however, in the context of the Siting Hearing "public" hearings.

Any local government entity receiving federal funds is required to provide meaningful access to information and services to residents with LEP[6] under Title VI of the Civil Rights Act of 1964, Executive Order 13166 (2000). *See* https://www.lep.gov/executive-order-13166; Executive Order 13985 (2021; 2023); and Strengthen Racial Equity and Support for Underserved Communities Through the Federal Government at https://www.whitehouse.gov/briefing-room/presidential-actions/2023/02/16/ executive-order-on-further-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/.

Moreover, the U.S. Department of Justice's (DOJ) safe harbor provision recommends oral language assistance from a qualified interpreter and written translations of any vital documents for LEP groups. In this case, the Pre-Filing Notice is clearly a vital document. An LEP group is defined as one that constitutes 5% of the population, or 1,000 people, whichever is less. In the City of West Chicago, the overall LEP population is 21% and the vast majority of LEP, or 88%, are Spanish speakers. *See* American Community Survey 2021 5-Year Estimates "Language Spoken at Home Tables at https://data.census.gov/table?q=West+Chicago+&t=Language+Spoken+at+Home&tid=ACSST5Y2021.S1601.

In other words, despite having a Latino population that is 52% Latino of which about 38% of Spanish-speakers 18 years and over are LEP, the City of West Chicago failed to take appropriate steps to provide meaningful access to LEP West Chicago residents vis-à-vis the proposed waste

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[6] The City of West Chicago is the recipient of federal funding and in fact recently received funding through the assistance of United States Congressman Sean Casten relating to the environmental damage done to the community. As noted in the appropriation request of Congressmen Casten, he sought federal funding to be "used for remediation of the Kerr-McGee Superfund. The Kerr-McGee site is one of four Superfund National Priorities List sites in the West Chicago area that had been contaminated with radioactive thorium wastes." *See* https://casten.house.gov/services/appropriations-and-community-funding.

transfer station Pre-Filing Notice or Hearings. Moreover, although the City of West Chicago relied on the Google translation feature on their website to provide access to Spanish language information on the siting process, this free Google feature is deemed unreliable and has been rejected by the courts "as simply not reliable enough where rights are on the line." *See*, *United States v. Ramirez-Mendoza*, 2021 WL 4502266, at *6 (M.D. Pa. Oct. 1, 2021) (court not convinced that Google Translate accurately translated [the] request for consent into Spanish. . . .. Precision is important, particularly in this context, and the Court believes that more was needed to establish the accuracy of Google Translate).

In any event, even if the general West Chicago website was translated by Google, no effort was made to provide translation of the application components. In other words, none of the actual application materials LRS submitted were available in Spanish for review by residents. Similarly, the transcripts posted at the end of the hearings were available only in English and, therefore, not accessible to LEP residents of West Chicago. And, as noted above, the entirety of the Siting Hearings were conducted solely in English, with two notable exceptions during the public comment section.

First, one LRS employees whose primary language was Spanish was provided with a Spanish language interpreter, but of both ironic and profoundly revealing and significant note was that the interpreter was provided by LRS itself, not any West Chicago official or the Hearing Officer. In the second case, an LRS employee summarized some of her English language comments in Spanish. So, then even the Applicant itself understood the crucial importance of providing a Spanish language interpreter. Without qualified interpretation during the hearings, many if not all LEP residents were denied meaningful participation in the hearing process. The Siting Hearing is the most critical stage of the site approval process, as it presents the ***only***

opportunity for public comment and participation. *Kane Cnty. Defs., Inc. v. Pollution Control Bd.*, 139 Ill. App. 3d 588, 593, 487 N.E.2d 743, 746 (2d Dist. 1985). (Emphasis Added). Thus, without qualified interpretation during the hearings, West Chicago LEP residents were denied meaningful participation in the hearing process.

B. Siting Hearing Language Access Related Issues

First, although West Chicago is a majority-minority community, no West Chicago official nor the Hearing Officer took any steps to determine whether there was a need for a Spanish language interpreter for any citizen or participant prior to or during the Siting Hearing. In fact, PODER, which is coincidentally an acronym for “People Opposing DuPage Environmental Racism”), a local Latino-based organization that was also a Siting Hearing participant, specifically informed the Hearing Officer that there was no Spanish language interpretation at the Hearing “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.” Tr. 939. This information, however, fell completely on deaf ears.

Second, even after being informed that certain participants’ primary language was Spanish, no West Chicago official (nor did the Hearing Officer) take any steps to locate a Spanish language interpreter in order to provide meaningful access to the Spanish-speaking members of the West Chicago community. Specifically, the Hearing Officer was informed that participant Julieta Garcia’s primary language was not English and had been forced to participate in this hearing without the aid of Spanish interpretation at any point in the process. Tr. 1231. In fact, Applicant

Itself recognized the need for a Spanish language interpreter for a public participant and provided one itself, yet no City official or the Hearing Officer took any similar steps.[7]

The right to understand what is being said is essential to ensuring meaningful participation in a truly "public" hearing. Otherwise, the hearing fails its essential "public" purpose as set forth in Section 39.2(d). In this Siting Hearing, the rights of numerous members of the community were denied and thus they were clearly denied the right to meaningful participation under state and federal law.

C. <u>**The Hearing Officer Improperly Denied Evidence Relating to Environmental Justice Issues**</u>

At the Siting Hearing, the Hearing Officer did not make impartial rulings on the evidence and specifically prevented PWC from cross-examining Applicant's expert on environmental justice-related issues. The Hearing Officer also prevented PWC from asking its own environmental expert questions regarding emissions and environmental justice issues relating to West Chicago's minority community or for that matter the surrounding minority communities. Specifically, the Hearing Officer prevented PWC from asking Applicant's expert Mr. Hock whether the Applicant took any steps to ensure that the siting decision did not impose a disproportionate impact or burden upon the largely low-income or minority community in West Chicago. Tr. 705. This, despite the fact that the United States Environmental Protection Agency's 2002 Manual titled "Waste Transfer Stations: A Manual for Decision-Making (Tr. 703-04) states that "Environmental Justice Considerations" should be taken into consideration during "the site selection process, [and] steps should be taken to ensure that siting decisions are not imposing a disproportionate burden upon low-income or minority communities." *See* Exhibit PWC-49. In rejecting PWC's ability to use this document to question Applicant's expert on whether they took any steps to ensure that the

[7] During the hearing Jonathan Luna, a manager at West Chicago's LRS facility attended the hearing in order to translate for a witness named Jose, who provided public comments. Tr. 1387.

siting decision did not impose a disproportionate burden on West Chicago's minority community, the Hearing Officer not only failed to make impartial rulings on the evidence, he inexplicably even questioned whether a 20-year-old document was still relevant—which of course is still relevant. In denying the questioning of Applicant's expert in relations to environmental impacts on minority communities, the Hearing Officer specifically stated, "The manual is not the criteria. The criteria are set forth in the statute. We're not here to see if we comply with a 20-year-old U.S. EPA document. It's 39.2. Let's stay focused." Tr. 706. In fact, however, environmental justice-related issues go to protection of public health, safety, welfare and the environment, and are then directly relevant in siting proceedings and continue to be relevant today and may be even more relevant than they were 20 years ago, in both the West Chicago context and the overall federal EPA enforcement framework. As noted below, West Chicago's minority community is no stranger to environmental justice issues.

Specifically, there are four Superfund sites in the West Chicago area that were contaminated by radioactive thorium waste and, despite decades of cumulative damage and negative health impact for residents, clean-up has yet to be completed. *See* https://www2.illinois.gov/dnr/programs/NRDA/Pages/KressCreek.aspx. West Chicago Spanish speaking LEP residents in particular, claim they were not provided with accurate and comprehensive information about the environmental risks of moving into West Chicago, which came to be known as the "radioactive capital of the Midwest." *See* https://borderlessmag.org/2022/07/12/west-chicago-is-cleaning-up-the-last-of-its-nuclear-contamination-residents-exposed-to-radiation-say-its-not-over/.

In addition, on the federal level, as recently as January 13, 2023, the United States EPA Cumulative Impacts Addendum to EJ Legal Tools, noted that:

> Addressing cumulative impacts is also an inextricable component of federal environmental justice and equity policy, and integral to protecting civil rights. Executive Order 12898, which lays the foundation for federal environmental justice policy, directs federal agencies to identify "multiple and cumulative exposures" in environmental human health analyses, whenever practicable and appropriate.13 Executive Order 14008 further directs agencies to "make achieving environmental justice part of their missions by . . . address[ing] the disproportionately high and adverse . . . climate-related and ***other cumulative impacts on disadvantaged communities***." *See* https://www.epa.gov/system/files/documents/2022-12/bh508-Cumulative%20Impacts%20Addendum%20Final%202022-11-28.pdf. (Emphasis Added).

In the same January 13, 2023, United States EPA document, it further notes the following with regarding to environmental justice:

> As discussed in the RCRA section of EJ Legal Tools, the landmark decision that set out EPA's and the Environmental Appeals Board's (EAB's) position on the consideration of cumulative impacts in RCRA permitting is *In re Chemical Waste Management of Indiana*. []. As stated by the EAB, RCRA's omnibus clause authorizes EPA to impose permit conditions as follows: Under the omnibus clause, if the operation of a facility would have an adverse impact on the health or environment of the surrounding community, the Agency would be required to include permit terms or conditions that would ensure that such impacts do not occur. . . . Thus, under the omnibus clause, if the operation of a facility truly poses a threat to the health or environment of a low-income community or community of color, the omnibus clause would require the Region to include in the permit whatever terms and conditions are necessary to prevent such impacts. []. As such, in carrying out EPA's hazardous waste permitting program [] and in EPA's oversight of authorized state hazardous waste permitting programs, [] EPA can take into account cumulative impacts to "justify permit conditions or denials based on disproportionately high and adverse human health or environmental effects."[]. Specifically, EPA can "tak[e] a more refined look at its health and environmental impacts assessment, in light of allegations that operation of the facility would have a ***disproportionately adverse effect on the health or environment of low income or minority populations***." []. *Id.* (Emphasis Added).

Thus, the Hearing Officer did not make impartial rulings on the evidence as reflected by his decision to deny PWC the ability to cross-examine Applicant's expert and clearly violated the right to fundamental fairness. In the process of doing so, the Hearing Officer's rulings created a profoundly damaging disregard for the rights of West Chicago's minority (Latino) community.

At the Siting Hearing, the Hearing Officer also failed to make impartial rulings by preventing PWC from asking its own environmental expert questions regarding emissions and environmental justice related issues. This required PWC to submit an offer of proof which denied

members of the community from hearing relevant testimony, which among other things, revealed that if called to testify, PWC's environmental expert, Mr. James Powell, would have testified that:

- according to the Environmental Justice Act and as set forth in **Exhibit PWC-405**, the Illinois General Assembly found that environmental justice requires that no segment of the population, regardless of race, national origin, age or income, should bear disproportionately high or adverse effects of environmental pollution and that certain communities in the state may suffer disproportionately from environmental hazards related to facilities with permits approved by the state.

- as set forth in **Exhibit PWC-406**, the Illinois EPA Environmental Justice Public Participation Policy explains the methods by which the Illinois Environmental Protection Agency will engage with the public in communities located in identified areas of Environmental Justice (EJ) concern.

- the Illinois EPA defines "area of EJ concern" as a census block group or areas within one mile of a census block group with income below poverty and/or minority population greater than twice the statewide average.

- the Illinois EPA has developed a Geographic Information System (GIS) mapping tool call EJ START to identify census block groups and areas within one mile of census block groups meeting the EJ demographic screening criteria.

- EJ START is publicly available and can be found on the Illinois EPA's EJ webpage at the following location: http://epagisportal.illinois.gov/portal/apps/webappviewer /index.html?id=414d804241e94c51809f08f3644c37d9.

- he (PWC's expert) used EJ START to determine whether the proposed LRS waste transfer station facility is in or impacting an "area of EJ concern," and that based on his review of the EJ START, the proposed facility is approximately 1,300 feet from an area determined by the IEPA to have minority population greater than twice the statewide average, and therefore within an "area of EJ Concern."

- he (PWC's expert) also used EJ START to determine whether the proposed LRS waste transfer station's proposed trash transfer-trailer route travels through an "area of EJ concern," and that based on his review of the EJ START, he found that if LRS transfer-trailers leaving the LRS facility on Powis Road travel North on Powis Road and then proceed West on North Avenue and then South on Kirk Road (as depicted by the yellow line on slide 31), all LRS transfer-trailers leaving the LRS facility would travel through numerous "areas of EJ concern," that are located along Kirk Road South from Batavia to I-88 and would include the area of West I-88 at Aurora and North Aurora communities, as depicted by the blue and red portions along the proposed route.

- environmental hazards can result in adverse health effects for the general population in West Chicago, a majority of which (namely 51.85%) is Latino based on United States census information and as set forth below:

LRS Service Area
Burden on Latino Community
2.3 x's Greater on Latinos vs. Non-Latinos

	A	B	C	D	E	F	G	H
1	**DuPage County Townships**	**#**	**%**	**#**	**%**	**#**	**%**	# Total
2		**Latino**	**Latino**	**African American**	**African American**	**White**	**White**	
3	Bloomingdale	23,786	21.26%	5,736	5.13%	60,875	54.41%	111,875
4	Lisle	11,141	9.36%	6,582	5.53%	80,630	67.73%	119,040
5	Milton	10,993	9.14%	5,604	4.66%	87,153	72.48%	120,237
6	Naperville	12,098	11.55%	9,167	8.75%	54,932	52.43%	104,765
7	Wayne	9,506	14.75%	1,890	2.93%	39,097	60.68%	64,427
8	Winfield	17,502	38.18%	1,137	2.48%	23,936	52.22%	45,836
9	**Kane County**							
10	Aurora	74,474	58.67%	12,102	9.53%	34,152	26.91%	126,929
11	St. Charles	5,846	11.26%	975	1.88%	40,296	77.64%	51,902
12	Elgin	45,542	43.58%	6,296	6.03%	43,530	41.66%	104,493
13	Geneva	1,924	7.29%	189	0.72%	22,704	86.01%	26,396
14	Batavia	4,113	11.63%	1,285	3.63%	27,401	77.48%	35,363
15	**Will County**							
16	Du Page Township	24,011	27.49%	14,279	16.35%	36,414	41.69%	87,348
17	Wheatland	7,428	8.36%	5,798	6.52%	50,092	56.35%	88,894
18								
19	Total Service Area	**248,364**	**22.8%**	71,040	6.53%	601,212	55.28%	1,087,505
20								
21	West Chicago	**13,282**	**51.85%**	701	2.74%	8,906	34.77%	25,614
22								

- as set forth in **Exhibit PWC-48**, the National Environmental Justice Advisory Council – Waste and Facility Siting Subcommittee Waste Transfer Station Working Group found that the clustering and disproportionate siting of noxious facilities in low-income communities and communities of color led to the creation of the environmental justice movement and that the "siting and operation of waste transfer stations is such an example."

- the National Environmental Justice Advisory Council – Waste and Facility Siting Subcommittee Waste Transfer Station Working Group also found that waste transfer stations "can cause environmental concerns associated with poor air quality (from idling diesel-fueled trucks and from particulate matter such as dust and glass) and disease-carrying vectors such as rodents and roaches."

- based on his review of the EJ START map, as well as the information from the EPA and Illinois Environmental Protect Act, the proposed facility route for departing trash

> transfer-trailers does impose an adverse impact on various areas of EJ concern as depicted in slide 31 and the image above.

See Exhibit PWC-702 (James Powell Offer of Proof).

All of the above-factors strike at the heart of the concerns the General Assembly has determined need to be addressed via the public health, safety and environment criteria as set out in Criterion 2 of the Siting Statute. They further reveal that West Chicago's Siting Hearing did not comport with the dictates of fundamental fairness.

V. STATUTORY CRITERIA – THE APPLICANT HAS FAILED TO COMPLY WITH STATUTORY CRITERION 1, 2, 3 AND 8

A. Criterion 1: The facility is necessary to accommodate the waste needs of the area it is intended to serve

Applicant has failed to meet Criterion 1 because the proposed facility is not necessary to accommodate the waste needs of the area it is intended to serve. The Application, as well as the the Siting Hearing testimony is undisputed—there is more than enough waste transfer station capacity to handle the current and future waste needs of the proposed LRS Service Area. Tr. 112 and 816-17. In fact, the waste transfer stations currently serving the proposed LRS Service Area have capacity that is almost double the amount of waste being generated by the Service Area. Tr. 816-17. In addition, the existing transfer station in the Service Area (the "Groot Facility") is operating at less than fifty percent (50%) of capacity. Tr. 114.

In light of the fact that LRS's proposed facility is *not* necessary to accommodate the waste needs of the area it is intended to serve, Applicant pivots and argues that the proposed facility is necessary from a competition standpoint because according to Applicant, "if you're going to be able to effectively compete in the market, you need to be fully integrated in that market." Tr. 69. Applicant continues and argues that it needs vertical integration in both trucking and transfer

stations (Tr. 60-64) in order to have the "ability to compete on a level playing field." Tr. 85. However, while making this assertion, Applicant concedes:

- that it is currently the third largest waste provider in Illinois (Tr. 54);
- that it has admittedly been able to obtain over 100 franchise agreements with municipalities (Tr. 32); and
- that it is currently operating a landfill in Atkinson, Illinois (Tr. 58).

In other words, Applicant does have vertical integration and in fact did have vertical integration in portions of its initially proposed service area (Tr. 133 and Exhibit PWC-151-A) before Applicant altered its service area.

In any event, when one looks at the actual facts, it is clear that while Applicant may not have a waste transfer station within the proposed Service Area, there are clearly numerous waste transfer stations surrounding the proposed Service Area and of those, Applicant owns five waste transfer stations in the Chicagoland area. Tr. 137-38. In his testimony, Applicant's engineer confirmed that fifteen miles around the proposed Service Area was a reasonable distance to the Service Area for analysis purpose. Tr. 126-27. And, within the fifteen miles of the Service Area, Applicant has three waste transfer stations, at least two of which receive waste from the Service Area. Tr. 126-27, 133-34 and 140. In other words, Applicant is already vertically integrated in the Chicagoland area and parts of the Service Area despite its assertions to the contrary. Further, the Applicant is not the only large waste hauler that does not have vertical integration in the Service Area. Tr. 134.

Perhaps most importantly is the fact that Criterion 1's analysis hinges on accommodating the waste needs of the <u>area it is intended to serve</u> – not accommodating the needs of a specific waste company such as Applicant. Applicant's alleged need for vertical integration are irrelevant to the plain language in Criterion 1, and no case has been cited or found that holds otherwise. In

fact, if "competition" (rather than actual "need") is to take precedence, then what if two, three, four, five (or more) waste companies decide they too need a facility in West Chicago to achieve their "vertical integration"—where does it end, if ever?

In further arguing that Criterion 1 has been satisfied, Applicant states that this criterion is satisfied because there is a general need for more competition in the Service Area. This statement should be disregarded as Applicant provided no documentation, no data, no reports and no studies to support its otherwise wholly self-serving conclusion that another waste transfer station would benefit anyone, other than itself. Tr. 142-45. On the other hand, the evidence revealed that nowhere in the proposed Service Area is there an actual lack of competition. In fact, the uncontradicted evidence provided by John Lardner, a professional engineer with over 35 years of experience in the waste industry, was that every portion of the Service Area was currently served by at least two, and sometimes up to six different waste transfer stations and companies. Tr. 814 and 819-20. These facts, in and of themselves, belie Applicant's conclusion of a lack of competition, unless of course there was evidence of collusion between waste haulers in the Service Area. However, as Applicant's engineer confirmed, there is no evidence or knowledge of collusion in the waste industry, and both he and Mr. Lardner stated that they were not aware of any collusion to keep Applicant out of the industry. Tr. 129-30 and 903-04.

In reality, Applicant is already successfully competing on a daily basis with the remainder of the hauling industry in the Chicagoland area, including the Counties in the Service Area where it currently holds eight municipal waste contracts. *See* Application at pp. 1-17 and 1-18; Tr. 135-36**.** To say otherwise is disingenuous, as Applicant is clearly competitive in obtaining municipal waste contracts within DuPage and Kane Counties. *See* Application at pp. 1-17 and 1-18.

In making its competition argument, Applicant appears to be relying almost entirely upon the *Will Cty. v. Vill. of Rockdale,* 2018 Il App (3d) 160463, 121 N.E.2d 468. Applicant's argument appears to hinge on their belief that all they have to do to satisfy Criterion 1 is argue that an additional pollution control facility will add competition to the market.

However, Applicant's reliance on the *Rockdale* decision is misplaced, and a review of that decision does not support their argument. The *Rockdale* ruling does not hold that anytime you add competition you satisfy Criterion 1. If that were the case, then every additional pollution control facility would automatically satisfy Criterion 1 because it would add competition. In other words, Applicant's proposed standard would effectively void and make Criterion 1 superfluous from the Section 39.2 criteria analysis as there would never be a scenario where Criterion 1 was not met because, as noted above, every new facility would necessarily add competition. Statutes should not and cannot be read to make all or parts of a statute superfluous and finding for the Applicant on these grounds would, in essence, remove Criterion 1 from the language of the statute and from any future siting hearing. *Sylvester v. Indus. Comm'n,* 197 Ill.2d 225, 232, 756 N.E.2d 822, 827 (2001) (statutes must be read such that each portion not be rendered superfluous, meaningless or void).

In any event, despite Applicant's attempt to remove Criterion 1 from the Section 39.2 analysis, a review of the *Rockdale* decision reveals that it was decided on a very specific set of factual circumstances that do not exist in this Application. Of note, in *Rockdale*, the court found that the only waste station in the service area that accepted solid waste was beyond capacity. *Rockdale,* ¶ 63, 121 N.E.3d at 485. Here, the evidence is very clear that the other transfer stations receiving waste from the Service Area, including the Groot Facility down the street, have more

than enough capacity to service the proposed Service Area. In fact, Mr. Hock admitted the Groot Facility is only utilizing approximately 1,000 tons of its 3,000 tons per day capacity. Tr. 114-15.

In *Rockdale,* because the only other waste transfer station in the service area was beyond capacity, the court found the need for more competition to accommodate the needs of the Service Area in that specific instance; as noted in the decision, the other waste transfer stations in the Service Area were:

- "cutting off trucks waiting in line" at the end of the service day and not allowing those trucks to dump their waste;
- allowing up to "30 loads of waste" to remain overnight and on the tipping floor until the beginning of the facility's operational day;
- allowing "discharged loads of waste [to remain][] partially outside the building;" and;
- one of the waste transfer stations in the Service Area was receiving double the amount of its average volume of waste and "had been observed operating beyond its capacity."

Id. ¶ 58-63**.** In the current Application, there is no evidence that any of the above *Rockdale* conditions or factors, or anything similar, exist or are occurring at the waste transfer stations currently in the Service Area or receiving waste from the Service Area. Moreover, and also of significant note, Applicant's own engineer admitted that he was not aware of any of those conditions occurring at any transfer station serving the proposed Service Area. Tr. 114-16.

The *Rockdale* court, relying on *Fox Moraine, LLC v. United City of Yorkville,* 2011 IL App (2d) 100017, 960 N.E.2d 1144, also specifically stated that to meet Criterion 1, an applicant needs to show an "urgent need" for the facility. Thus, in *Rockdale*, only because the four conditions shown above existed, did the court find an urgent need for further competition in that particular service area. The *Rockdale* court never went as far as Applicant would have one believe—that by

simply adding more facilities "…whenever, wherever . . ." despite not needing more capacity is sufficient to satisfy Criterion 1's "urgent need" for the facility.

In sum, no case has ever found that adding competition to a service area without anything more, is sufficient to satisfy Criterion 1. In fact, as noted above, the only decision that relied on a the theory of competition to satisfy need, actually relied on the fact that the current facilities were not able to properly handle the waste in the service area (which went directly to public health and safety issues) – not that evidence of additional competition in an already properly served area was sufficient to meet the urgent need finding required. Here, the Applicant has failed to introduce evidence of lack of waste transfer service capacity because, as Applicant has confirmed, the other facility located within the Service Area, and down the street, is operating well under capacity. Moreover, the facilities receiving waste from the Service Area are properly handling the waste needs for the area, including Applicant's proposed service area.

Therefore, *Rockdale* actually supports PWC's position that Applicant has woefully failed to meet Criterion 1. *Rockdale* requires a showing of urgent need – not just the fact that another transfer station would add competition. Here, no urgent need, or need of any kind, has been shown. As admitted by John Hock, there is more than enough capacity in the Service Area to meet the waste needs of the Service Area. As Mr. Hock also admitted there is no evidence that the current transfer stations receiving waste from the Service Area are not properly handling the waste. Tr. 114-16. Accordingly, the urgent need required by the court in *Rockdale* has not been shown, and Applicant has failed to meet its burden of proof as to Criterion 1. To hold otherwise, would effectively and improperly remove Criterion 1 from future Section 39.2 analysis.

B. <u>Criterion 2: The facility is so designed, located, and proposed to be operated that the public health, safety, and welfare will be protected"</u>

Applicant has failed to meet Criterion 2 because the proposed facility is not so designed to be operated that the public health, safety, and welfare will be protected. The determination of whether Criterion 2 is met "is purely a matter of assessing the credibility of expert witnesses." *File v. D & L Landfill, Inc.*, 219 Ill. App. 3d 879, 907 579 N.E.2d, 1228, 1236 (5th Dist. 1991), *citing Fairview*, 198 Ill. App. 3d at 552. In this case, Applicant's expert has not shown that the operations of the proposed facility can be operated in a safe manner because Applicant does not rely on proper data and because the City of West Chicago's expert questioned whether the proposed facility's proximity to the DuPage Airport Authority was properly addressed.

First, there is no dispute that it is important to know whether or not this facility can accept all of the waste that it's going to be sited for in order to make sure there's going to be enough room in the facility to unload, leave and then load the transfer trailer. Tr. 556. In its Application, Applicant relied on data to arrive at peak hours (Tr. 557), yet Applicant's peak hours changed and its expert Mr. Hock was unable to remember or provide a reason for the change in peak hours. Tr. 559-60. In fact, when asked who changed the peak hour truck data in the various draft excels obtained via a Freedom of Information Act request (Tr. 562-64), Mr. Hock was unable to explain why peak hour truck numbers were changed.

In addition, to operational issues relating to peak truck traffic hours, Applicant's proposed waste transfer station "Tipping Floor Stockpiling Capacity" inexplicably changed from one draft to another and was ultimately deleted from the body of the final Application. Tr. 566-78.

West Chicago's expert, Aptim, also raised a number of questions regarding the facility and its proximity to the DuPage Airport Authority. Tr. 668. Hazards relating to the DuPage Airport Authority are predominately related to birds. Tr. 670. In its Application, Applicant confirmed that

the FAA Advisory Circular indicates that waste handling facilities should not be located within the Runway Protection Zone commonly referred to as an RPZ. Exhibit 1 Application at 1-13 and 2-14. In fact, Applicant recognized this and specifically cited to FAA Advisory Circular 150/5300-13A, Section 310, which indicates the following regarding the RPZ: "The RPZ's function is to enhance the protection of people and property on the ground through the airport ownership over RPZs." *Id.* Nevertheless, at the Siting Hearing, Exhibit PWC-43 was shown which depicted the Runway Protection Zone. After being shown the depiction of the Runway Protection Zone, Mr. Hock was shown PWC-38, namely a diagram depicting a portion of the proposed facility's operation which clearly revealed that those operations were occurring and were located within the Runway Protection zone. Tr. 686-87. After reviewing PWC-38, Mr. Hock did confirm that a portion of their operations would be located within the Runway Protection Zone and specifically identified spotters as being in that zone. Tr. 689. Specifically, after being shown PWC-38, Mr. Hock went further and stated, "[y]eah, that portion of our facility is within the runway protection sone. Absolutely." Tr. 689.

In addition to the above, and despite recognizing that DOT/FAA/AR-09/62 titled "Evaluation of Trash Transfer Facilities as Bird Attractants," was the "best reference" when experts from Aptim raised questions about the proximity of the airport to the proposed waste transfer facility, Applicant opted to remove any referenced of this FAA document from its Application in its entirety. Exhibit 1 Application; Tr. 703. In other words, the Applicant has failed to meet Criterion 2 because the proposed facility has not been shown to be so designed to be operated that the public health, safety, and welfare will be protected, especially as it relates to the RPZ operations.

C. Criterion 3: The facility is 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.

1. Minimizing incompatibility with character of the surrounding area.

The Applicant has the burden of showing that it meets both prongs of Criterion 3. *Peoria Disposal Company v Peoria Cnty. Bd.,* 2007 WL 1816891, at *24. The first prong requires the Applicant show that the "facility is located so as to minimize incompatibility with the character of the surrounding area." Sec. 39.2. Here, Applicant relies on the testimony and report of an appraiser, Dale Kleszynski, to attempt to show its proposed facility meets the first prong of Criterion 3.

However, Mr. Kleszynski has not provided any of the information necessary to meet this prong nor is he qualified to do so. Demonstrating that the incompatibility of the proposed facility with the surrounding area is not what Mr. Kleszynski did in his testimony related to the first prong of Criterion 3. Rather, Mr. Kleszynski chose instead to testify only to the highest and best use of the subject property, which is in an appraisal practice that allows one to determine what use of the property brings the highest sale price. TR. 342-43. Underlying that analysis was simply Mr. Kleszynski's review of the zoning statute of the subject property and the surrounding area, nothing more. However, nothing Mr. Kleszynski did established that the facility is located so as to minimize incompatibility with the surrounding area, which is the required standard. There was little or no testimony in Mr. Kleszynski's presentation related to how this use was located as to minimize the effect on surrounding properties, other than that the zoning in the area was generally consistent with the proposed use in that both were industrial type uses.

The problem with this analysis, however, is that Mr. Kleszynski is not qualified to discuss proper zoning and compatible uses. As he admitted, he has no experience in zoning or land

planning. Tr. 278-82. He is not, nor has he ever been, a land planner, and he is not a member of the AICP, which is the national organization responsible for certifying land planners' credentials. Tr. 278-79. He has never drafted a zoning ordinance nor land use plan and admitted he has not previously testified in any land planning capacity. Tr. 279-81.[8]

Probably because of this lack of experience, Mr. Kleszynski failed to take into account that the City had already legislatively determined that all land owned by the DuPage Airport in this area, which owns land contiguous to this proposed facility on two sides, was not an appropriate use for any pollution control facility. Tr. 326-30. PWC Ex. 1. This determination is a strong indication of what the City has historically believed is an appropriate use for this portion of its City. That legislative finding was totally ignored by Mr. Kleszynski.

While Mr. Kleszynski is apparently of the opinion that zoning determines incompatibility in and of itself, he also admitted on cross-examination that he had not done any analysis on mitigation or minimizing the effect of the proposed waste transfer station on any of the surrounding properties because that was not "within his area of expertise." Tr. 353. One can assume that this lack of expertise also led him to testify that he never looked at ways to minimize the effect the proposed facility would have on surrounding property or whether proper screening could be used to protect nearby properties, even though he did acknowledge that zoning ordinances often use screening techniques to minimize effect of uses on surrounding properties. Tr. 291-94 and 298-99. His total failure to consider any mitigation measures further shows analyzing the first prong of

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[8] It is interesting to note that PWC's appraiser, Kurt Kielisch, admitted that he did not perform an analysis of the first prong of Criterion 3 because as a licensed appraiser practicing in over 21 states, even with 39 years of experience, he was not qualified to give an opinion on compatibility. Tr. 920-21 and 931-32.

Criterion 3 was clearly not within his expertise. This first prong is a land use issue – not an issue for an appraiser of land values.

Accordingly, the Applicant has wholly failed to meet its burden of proof as to the first prong of Criterion 3.

2. <u>Minimizing effect on the value of surrounding property</u>.

The Applicant also relied on Mr. Kleszynski's testimony as its evidence that the proposed waste transfer station meets the second prong of Criterion 3. Unlike the first prong, Mr. Kleszynski as an appraiser is qualified to testify on this portion of Criterion 3. However, Mr. Kleszynski failed to do any substantive analysis to support his conclusion and, accordingly, provides no actual analysis or evidence that can be relied upon.

Mr. Kleszynski's opinion basically was that the highest and best use of the subject property was as a waste transfer station; hence, by definition, that use standing alone minimized effect on surrounding property values. Tr. 337 and 350. While no one disputes Mr. Kleszynski's ability to opine about highest and best use, his very novel theory went something like this:

- If the property is used at its highest and best use, then it avoids obsolescence. Tr. 337.
- If the property does not become obsolete, then it will not negatively affect surrounding property values. Tr. 337.

Importantly, while Mr. Kleszynski consistently discussed obsolescence is his sworn testimony, his report, which was filed as part of the Application never, even mentions the word "obsolescence." Applicant Ex. 1, pp. 3-1 to 3-63; Tr. 347. Going further, neither in his report nor in his testimony does Mr. Kleszynski ever cite to any particular source for his theory that lack of obsolescence somehow equals minimization of the effect on surrounding property values.

However, as PWC's appraisal expert, Kurt Kielisch, pointed out, highest and best use and minimizing effect on property values are not at all related. Tr. 926-27. In fact, it is nonsensical to say that a property utilized to its highest and best use automatically minimizes the effect on surrounding property values. The driving reason to determine the highest and best of a property is to in turn determine the highest value one can obtain for the property. Tr. 342-43. Every definition of highest and best use posed to Mr. Kleszynski on cross-examination was based on obtaining the highest value for the property. Tr. 341-49. None of the definitions mention or even relate to the effect of the use on surrounding property values. *Id.* In fact, when asked to provide authority for his statement that there was a correlation between minimizing effect on property values and the highest and best use, Mr. Kleszynski was unable to cite any authority. Tr. 350-351. Although Applicant's attorney claimed during his cross-examination of Mr. Kielisch that authority existed where the IPCB approved highest and best use as a factor in Criterion 3 (Tr. 959-960), and while the IPCB has been asked to consider highest and best use analyses in relation to Criterion 3, an exhaustive search of IPCB decisions by PWC counsel found no IPCB decisions where an expert based his entire Criterion 3 opinion on the mere fact that a pollution control facility was the highest and best use – however, that is exactly (and only) what Mr. Kleszynski did in this matter.

Despite Mr. Kleszynski's conclusory opinion, a property being utilized at its highest and best use and not becoming obsolete does not in any way assure that it will not negatively affect surrounding property values. Tr. 926-29. As Mr. Kielisch testified, a hog farm may be the highest and best use in rural areas and may not face obsolescence because it brings in the highest return on value, but it is an enormous leap to say that the hog farm will not affect property values of neighboring farms or other uses. Tr. 929.

Mr. Kielisch went even further and noted that without further studies and sales analysis, Mr. Kleszynski's opinion could not be used to determine whether the subject property was located so as to minimize the effect on surrounding property values. Tr. 932. In order to properly determine whether a facility or use would negatively affect surrounding property values, an appraiser would have to go much deeper, and do a very different analysis than what Mr. Kleszynski performed. Tr. 933-38. One of those possible analyses would have been to perform a "Matched Pair" analysis. Tr. 934-35. Another one would have been to do a "Before and After" study. Tr. 935. Mr. Kleszynski admitted he did neither. Tr. 335 and 352.

Further, Mr. Kleszynski admitted that his report does not look at possible impacts on any specific property in the area – he just looked "globally." Tr. 317. This admission alone shows that his opinion did not look at any of the factors necessary issues to determine effect on property values or minimization thereof. The question is not whether property values are "globally" affected. The issue that must be looked at is the effect of this waste transfer station on the "surrounding" property. That analysis was not done in any way, shape or form here. Therefore, Applicant has failed to meet the second prong of Criterion 3 as well.

D. Criterion 8: The Facility is Inconsistent with the Solid Waste Management Plan Enacted by the County of DuPage

The DuPage County Board is the legislative body that enacted and approved the Solid Waste Management Plan (the "SWMP") at issue in this matter. Tr. 788. In 1996, the SWMP was updated (the "1996 Update") to state that there should be three to five waste transfer stations "***throughout*** the County." Tr. 996. (Emphasis Added). As the court in *Cnty. of Kankakee v. Illinois Pollution Control Bd*, 396 Ill. App. 3d 1000, 1020-23, 955 N.E.2d 1, 19-21 (3d Dist. 2009) held, the cardinal rule of statutory construction when looking at a SWMP is to give effect to the

intent of the County that drafted it. Here the County gave a clear indication of what the intent of the words "throughout the County" was in the early 2000's.

In 2003, a second DuPage County transfer station was proposed (the "2003 Facility") just blocks from the existing Groot Facility. Tr. 998. After a siting hearing, the County of DuPage specifically relied upon its own 1996 Update language finding that transfer stations should be located "throughout the County" to deny siting the 2003 Facility within blocks of the Groot Facility because it failed to comply with the SWMP. Exhibit PWC 3; Tr. 998. The County Board of DuPage made it crystal clear that "throughout the County' did not mean two transfer stations within blocks of each other when it specifically found that the 2003 Facility did not meet Criterion 8 "in that the proposed facility was inconsistent with the solid waste disposal plan of DuPage County because the proposed location is within ¼ mile of another transfer station; and fails to reduce wear on roads, reduces overall truck miles traveled and decrease truck air emissions." PWC Ex. 3.[9] This requirement that two transfer stations not be in close proximity still exists today in the SWMP.

This "throughout the County" language in the 1996 Update has never been repealed by any of the later updates that occurred in 2007, 2012 or 2017. If the County later disagreed with its construction of this SWMP related to the 2003 Facility, its failure to amend or supersede that language denotes its express embracing of that prior interpretation. *See Village of Vernon Hills v. Heelan,* 2015 IL 118170, ¶ 19, 39 N.E.3d, 937, 941 (statutes that have been interpreted but not amended create a presumption that the legislature has acquiesced in the interpretation).

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[9] Interestingly, the City of West Chicago agreed with this interpretation in 2003 as it adopted its own Resolution opposing the siting of the 2003 Facility. PWC Ex. 2.

Accordingly, this language requires that the proposed facility be denied for the exact same reason that 2003 facility was denied – its close proximity to the still existing Groot Facility.

The later SWMP updates only serve to further solidify the requirement that new waste transfer stations should not be sited near existing ones.[10] The 2012 update to the SWMP followed that reasoning when it articulated that "future conditions may necessitate a new facility ***in the southern portion*** of the County." Tr. 1002; Applicant's Ex. 1, Appendix 8-G, p. 5. (Emphasis Added). Of significant note, that same 2012 update did not mention or seek the establishment of a new facility in the northwest portion of DuPage County. Applicant's Ex. 1, Appendix 8-G. Going further, and bringing us to the present, nothing in the 2017 SWMP update superseded or repealed this language. Tr. 793; Applicant's Ex. 1, Appendix 8-H.

In fact, Applicant's own Criterion 8 expert, Mr. Hock, never disputed that any of this language was in the SWMP or its updates, nor did Mr. Hock cite any language in the SWMP (before or after the County's denial of the 2003 Facility), that stated or even implied two waste transfer stations within blocks of each other would comply with the SWMP. Given the fact that the language in the SWMP and its updates never changed the requirements that future waste transfer stations be spread "throughout the County" and only added language seeking a transfer station in the southern portion of the County; the 2003 County Board's reliance on this language in the 1996 Update in denying a second a second waste transfer station within blocks of an existing transfer station clearly shows that the County never intended for there to be two waste transfer stations in close proximity. *Cnty. of Kankakee v. Illinois Pollution Control Bd*, 396 Ill. App. 3d at 1020-23, 955 N.E.2d at 19-21. The fact that the language has never been modified or been

[10] Both the proposed facility and the Groot Facility are in the northwest corner of DuPage County. Tr. 785.

removed points to the still-existing requirement that waste transfer stations be built throughout the County, not next to each other, to satisfy the needs of DuPage County residents and comply with the SWMP. If the County Board had the desire to remove or modify the requirement that waste transfer stations be "throughout the County," there have been numerous opportunities to change that language. PWC Ex. 801, p. 3. However, the County's consistent refusal to modify this language or its position in this regard shows a form of acquiescence in that prior interpretation. *Village of Vernon Hills,* 2015 IL 118170, ¶ 19. Accordingly, the intent of the SWMP is clear – two transfer stations in such a small area violate the SWMP (put a different way, the County does not believe the words "throughout" means "next to" or "next door").

Applicant's engineer, John Hock, relied heavily in his testimony regarding Criterion 8 upon a letter provided by Joy Hinz, an Environmental Specialist with the County of DuPage, stating that the "facility ***appears*** to be consistent with the … DuPage Solid Waste Management Plan Five Year Update (2017)." Applicant Ex. 1, Appendix 8-1 (the "Hinz Letter") (Emphasis Added). However, the Hinz Letter opinion is of little value to the Applicant. First of all, the Hinz letter is not under oath and was not subject to further examination by the participants in the proceeding. Further, the letter is ambiguous in that it only states that the facility proposed here "appears" to be consistent with SWMP. *Id.* Tr. 788. Ms. Hinz never saw the application for the proposed facility before issuing her letter, and her letter was issued over two years before the Application was completed. Applicant Ex. 1, Appendix 8-1; Tr. 785. More importantly, it is the intent of the legislative body that enacted the SWMP (not a staff member with unknown authority) that is most important in determining the actual meaning of the SWMP. *Cnty. of Kankakee v. Illinois Pollution Control Bd*, 396 Ill. App. 3d at 1020-23, 955 N.E.2d at 19-21; *Murphy-Hylton v. Lieberman Mgmt. Services, Inc.*, 2016 IL 120394, ¶ 25, 72 N.E.3d 323, 329 (primary objective is to ascertain and give effect

to the intent of the enacting body). In this case, the County Board made its intent crystal clear in when it previously found that the proposed 2003 Facility violated the SWMP because of its proximity to the Groot Facility.

Hence, the proposed facility is not consistent with the requirements of the Solid Waste Management Plan Enacted by the County of DuPage and thus fails to meet Criterion 8.

E. PWC Does not Challenge Applicant's Remaining Criterion

PWC does not challenge Applicant's ability to satisfy the remaining criterion. Thus, PWC does not dispute that Applicant is able to and has satisfied Criterion 4, 5, 6 or 9.

VI. APPLICANT'S POST HEARING SUBMISSIONS

On February 18, 2023, at 9:48 a.m., and in a desperate last-ditch, Reargued Action to salvage its clearly deficient Application, counsel for Applicant, Mr. George Mueller, sent the Hearing Officer an email in which he wrote: "Attached hereto are a letter from Canadian National and a supplemental report from Dale Kleszynski. These are filed by LRS as post hearing public comment." Attached to the email were in fact the following two documents:

1) A letter dated February 2, 2023 from K.T. Donahue, State and Local Affairs Manager of the Canadian National Rail directed to John Hock; and,

2) A letter dated February 16, 2023 from Dale J. Kleszynski, President of Associated Property Counselors, Ltd. Directed to John Hock.

Neither of the two Hail Mary letters help Applicant because as set forth above, Applicant has already failed to meet the statutory notice requirements, has failed to meet the 1,000-foot set back requirement, the Siting Hearings were riddled with Fundamental Fairness related issues and numerous statutory criterion under 39.2 were not met. And, if this was not enough, the two letters themselves do not help Applicant, and, in fact, one of the letters, the Canadian National Letter, actually supports PWC arguments that the Pre-Filing Notice was statutorily deficient.

A. The February 2, 2023 Canadian National Letter

First, counsel for Applicant is fully aware that the manner to submit post hearing comments is clearly set forth on the City of West Chicago's website and can be submitted in only one of two ways, either via email or by writing to the City of West Chicago at 475 Main Street. The website specifically states the following regarding the submission of Public Comments:

> ***Public Comment***
>
> *Members of the public seeking to submit a public comment for the City Council to consider in making its decision must have already done so as part of the public hearing, or must have submitted a written comment received by the City, or postmarked on or before, Saturday, February 18, 2023.*
>
> *Any comments made at the Special City Council meeting would be outside of the siting record and thus not lawfully considered by the City Council in making its decision.*
>
> *Public comments may be submitted in writing by delivering to the West Chicago City Hall at 475 Main Street, or by email at aadm@westchicago.org.*

Thus, the manner in which counsel for Applicant submitted a proposed "public comment," is inconsistent and inappropriate and, thus, this so-called "public comment" should be rejected.

Second, the February 2, 2023 letter from Canadian National to John Hock is not a public comment and it specifically states so in the body of the letter. In his letter to Mr. Hock, Mr. Donahue wrote that Canadian National does "***not have any comments*** regarding the proposed West DuPage Recycling and Transfer Station." (Emphasis Added). The Canadian National letter, thus, speaks for itself and any effort by counsel to convert a letter written to Mr. Hock specifically stating that Canadian National does not have any comment into a "post hearing comment" is disingenuous and should be summarily rejected.

Third, although the February 2, 2023 letter that has been in the possession of Applicant for weeks now is Applicant's not so veiled attempt to support their argument that their non-compliance with the 1,000-foot set back requirement set forth in 415 ILCS §5/22.14(a) fits within the so-called

Roxana decision exception, the letter actually confirms that PWC is correct—namely, that the Pre-Filing Notice is statutorily deficient. This is because the Canadian National letter makes clear that the EJ&E Railroad Line is a viable railroad line and that the "Leighton sub is part of the old Elgin Joliet & Eastern Railway (EJ&E) which was purchased by CN in 2009 ***and it is doing business as the Wisconsin Central LTD which is a wholly owned subsidiary*** of Canadian National Railway." (Emphasis Added). The reference in the February 2, 2023 letter to the EJ&E "… doing business as the Wisconsin Central LTD …" is consistent with the Secretary of State records showing that these two companies merged in 2012, and that the EJ&E is still alive and well, and a fully-functioning business entity. In addition, as Canadian National wrote regarding the EJ&E:

- CN has spent hundreds of millions of dollars in capital improvements since a***cquiring the EJ&E***.
- The ***EJ&E connects*** the entire network together in the Chicago area. It ties together CN's southern region and its western and eastern regions.
- The ***EJ&E not only connects*** the CN network together, but it also connects with all the major railroads in the Chicago area. It is also home to CN's largest rail yard in the U.S.
- The ***EJ&E serves*** steel mills, petrochemical customers, and a diverse group of distribution centers. (Emphasis Added).

In other words, the February 2, 2023 CN letter confirms in definitive fashion that PWC is and was correct in its Motion to Dismiss—the EJ&E is an active fully-functioning entity that should have received Pre-Filing Notice pursuant to 415 ILCS §5/39.2(b). A simple search of the Secretary of State website would have confirmed that the EJ&E is an active Illinois business in good standing. And, since the evidence showed that the EJ&E was not served with the Pre-Filing Notice, the City lacks jurisdiction to even consider Applicant's proposed siting of a second waste transfer station in West Chicago.

Therefore, despite Applicant's representation to the Hearing Officer that its "research disclosed that EJ&E was wholly acquired by Canadian National on December 31, 2012, and that ***it ceased to operate as an independent entity after that date***"[11] (*see* Applicant's Response to Motion to Dismiss – Notice) no such ceasing of operations of the EJ&E existed according to Canadian National's own correspondence. Interestingly, the Canadian National correspondence submitted by the Applicant as public comment shows the letter came from 17641 S. Ashland Avenue, Homewood, IL 60430, which is the same address in Homewood, Illinois where the authentic tax records are sent for the Subject Property and where PWC's Motion to Dismiss stated was the proper location for the Pre-Filing Notice to be sent.

In any event, the Canadian National letter conclusively dooms Applicant's Pre-Fling Notice violation and thus denies the City of West Chicago with jurisdiction to even consider the proposed Application. This dagger ends the inquiry once and for all.

B. The Dale Kleszynski Letter

In addition, Applicant also included a letter from Mr. Kleszynski to John Hock in which Mr. Kleszynski wrote that the letter was his "response to the testimony of Mr. Kielisch as found on pages 919 thru 940 of the record of the January 12, 2023 hearing." As with the Canadian National letter, this letter was also being submitted "by LRS as post hearing public comment." For the reasons set forth below, this letter should also be rejected.

First, the letter titled "Rebuttal 2-16-23 - Powis Rd," is not a public comment. Rather, it is, as it is called, a Rebuttal to the testimony of Mr. Kielisch. Perhaps recognizing that all evidence is closed and realizing that it was too late to rebut Siting Hearing testimony, counsel for Applicant

[11] PWC assumes that Applicant's representation that EJ&E "ceased to operate as an independent entity" was inadvertent and not meant to intentionally mislead.

seeks to introduce through the back-door what he knows he should have introduced during rebuttal at the hearing. Counsel's efforts should be rejected.

Second, as with the Canadian National letter, this so-called public comment, which it is not, should have been submitted to the City of West Chicago in one of the two manners mentioned above, either via email or in letter form to the address on Main Street. That was not done and thus this letter should be rejected by the Hearing Officer as public comment.

Third, after noting that the letter was in response to the testimony of Mr. Kielisch and in particular testimony found at pages 919 thru 940 of the record, Mr. Kleszynski goes on *ad nausea* about a series of matters that are clearly rebuttal as he continually refers to Mr. Kielisch's testimony throughout. In any event, while Applicant and Mr. Kleszynski may believe they raise good rebuttal points, which they do not, the time to have raised these would have been at the Siting Hearing, not weeks after the close of the evidence.

Unlike the numerous LRS employees who provided public comment in support of their employer (LRS), at the Siting Hearing, Mr. Kleszynski, on the other hand, was identified as an expert who provided specific expert testimony regarding Criterion 3. He was then subject to cross-examination and if he really did have issues with the testimony of PWC's expert (Mr. Kurt Kielisch), the time to have challenged that testimony would have been at the Siting Hearing when the Hearing Officer offered the Applicant an opportunity to present rebuttal testimony (Tr. 1315), not weeks later after he has had time to review and digest the Hearing transcript. Providing what is clearly rebuttal evidence and testimony days before Findings of Fact and Conclusions of Law are due smack of nothing other than additional Fundamental Fairness irregularities. These sort of tactics by counsel for Applicant are unbecoming, inappropriate and should be rejected.

VII. CONCLUSION

In conclusion, PWC respectfully avers that Applicant's proposal to site a second waste transfer station in a majority-minority community be denied for the following reasons:

1) The Pre-Filing Notice was deficient and thus does not comply with 415 ILCS §5/39.2(b);

2) The proposed facility would be located within 1,000-feet of property zoned residential and thus does not comply with 415 ILCS §5/22.14(a);

3) The Siting hearing violated the principals of Fundamental Fairness because:

    a. the Pre-Filing Notice was not in Spanish even though West Chicago receives federal funds and more than 5% of its residents are LEP;
    b. West Chicago failed to provide Spanish-language interpreters for the public even though West Chicago receives federal funds and more than 5% of its residents are LEP;
    c. The Hearing Officer denied PWC the ability to question Applicant's expert on whether he considered the impact of the proposed facility on West Chicago's minority community;

4) The Applicant failed to establish that the proposed "facility is necessary to accommodate the waste needs of the area it is intended to serve;" thus, Criterion 1 was not satisfied;

5) The Applicant failed to establish that the proposed "facility is so designed, located, and proposed to be operated that the public health, safety, and welfare will be protected;" thus, Criterion 2 was not satisfied;

6) The Applicant failed to establish that the proposed "facility is 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, Criterion 3 was not satisfied;

7) The Applicant failed to establish that "if the facility is to be located in a county where a 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;" thus, Criterion 8 was not satisfied.

For all of the above reasons, PWC respectfully requests that the Hearing Officer recommend to the City of West Chicago's City Council that the proposed Application be denied.

In the alternative, PWC further requests that even if the Hearing Officer recommends that the City of West Chicago City Council approve Lake Shore Recycling's Application to site a second waste transfer station in the City of West Chicago, that the City Council nonetheless deny the Application for the reasons set forth herein.

Date: February 21, 2023

Respectfully Submitted,

Ricardo Meza
Attorney for Protect West Chicago

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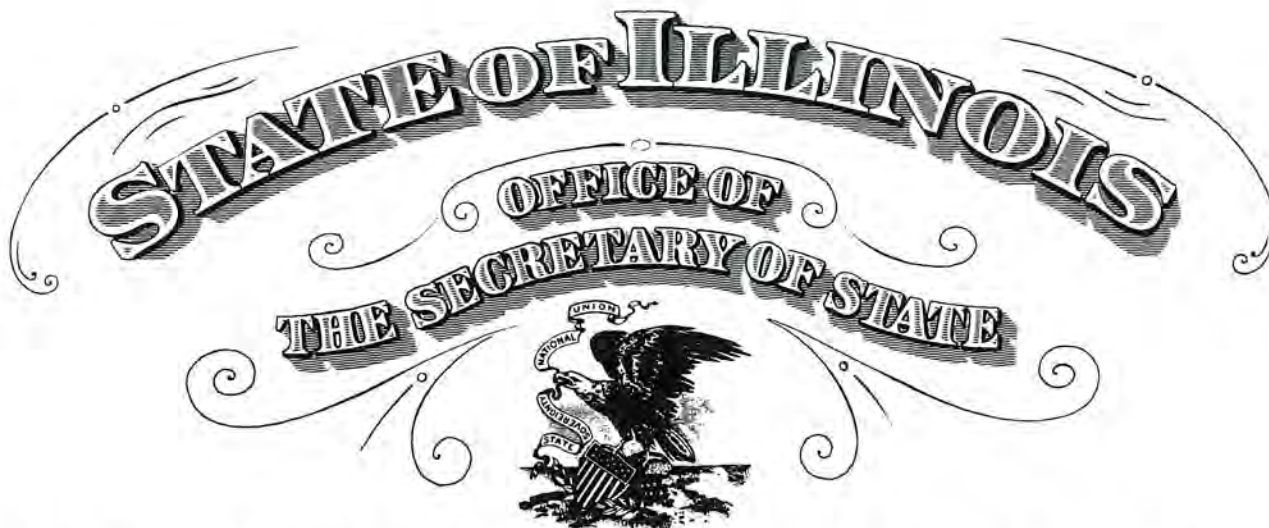
Exhibit A

File Number 5458-646-9



To all to whom these Presents Shall Come, Greeting:

I, Alexi Giannoulias, Secretary of State of the State of Illinois, do hereby certify that I am the keeper of the records of the Department of Business Services. I certify that

ATTACHED HERETO IS A TRUE AND CORRECT COPY, CONSISTING OF 7 PAGE(S), AS TAKEN FROM THE ORIGINAL ON FILE IN THIS OFFICE FOR WISCONSIN CENTRAL LTD..

In Testimony Whereof, *I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois, this* 17TH *day of* JANUARY *A.D.* 2023 .

Authentication #: 2301700741 verifiable until 01/17/2024.
Authenticate at: https://www.ilsos.gov

SECRETARY OF STATE

FORM **BCA 11.25** (rev. Dec. 2003)
ARTICLES OF MERGER, CONSOLIDATION OR EXCHANGE
Business Corporation Act

Secretary of State
Department of Business Services
501 S. Second St., Rm. 350
Springfield, IL 62756
217-782-6961
www.cyberdriveillinois.com

Remit payment in the form of a check or money order payable to Secretary of State.

Filing fee is $100, but if merger or consolidation involves more than two corporations, submit $50 for each additional corporation.

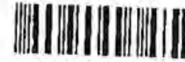
FILED
DEC 2 1 2012
JESSE WHITE
SECRETARY OF STATE

PAID
DEC 2 6 2012
EXPEDITION
SECRETARY OF STATE

File # 5458-6469 Filing Fee: $ 100.00 Approved: lt

---- Submit in duplicate ---- Type or Print clearly in black ink ---- Do not write above this line ----

NOTE: Strike inapplicable words in Items 1, 3, 4 and 5.


CP0903840

1. Names of Corporations proposing to merge ~~consolidate~~ ~~exchange shares~~ and State or Country of incorporation.

Name of Corporation	State or Country of Incorporation	Corporation File Number
WISCONSIN CENTRAL LTD.	ILLINOIS	54586469
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY	ILLINOIS	65674963

2. The laws of the state or country under which each Corporation is incorporated permits such merger, consolidation or exchange.

3. a. Name of the surviving ~~new~~ ~~acquiring~~ corporation: WISCONSIN CENTRAL LTD.

b. Corporation shall be governed by the laws of: ILLINOIS

For more space, attach additional sheets of this size.

4. Plan of merger ~~consolidation~~ ~~exchange~~ is as follows:

PLEASE SEE AGREEMENT AND PLAN OF MERGER ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT A.

Printed by authority of the State of Illinois. March 2007 — 500 — C 195.12

Electronic Filing: Received, Clerk's Office 03/28/2023 **PCB 2023-107**

5. The merger ~~consolidation~~ ~~exchange~~ was approved, as to each Corporation not organized in Illinois, in compliance with the laws of the state under which it is organized, and (b) as to each Illinois Corporation, as follows:

The following items are not applicable to mergers under §11.30 — 90 percent-owned subsidiary provisions. (See Article 7 on page 3.)

Mark an "X" in one box only for each Illinois Corporation.

Name of Corporation:	By the shareholders, a resolution of the board of directors having been duly adopted and submitted to a vote at a meeting of shareholders. Not less than the minimum number of votes required by statute and by the Articles of Incorporation voted in favor of the action taken. (§11.20)	By written consent of the shareholders having not less than the minimum number of votes required by statute and by the Articles of Incorporation. Shareholders who have not consented in writing have been given notice in accordance with §7.10 and §11.20.	By written consent of ALL shareholders entitled to vote on the action, in accordance with §7.10 and §11.20.
WISCONSIN CENTRAL LTD.	☑	☐	☐
ELGIN, JOLIET AND EASTERN	☐	☐	☐
RAILWAY COMPANY	☑	☐	☐
	☐	☐	☐
	☐	☐	☐

6. **Not applicable if surviving, new or acquiring Corporation is an Illinois Corporation.**

It is agreed that, upon and after the filing of the Articles of Merger, Consolidation or Exchange by the Secretary of State of the State of Illinois:

a. The surviving, new or acquiring Corporation may be served with process in the State of Illinois in any proceeding for the enforcement of any obligation of any Corporation organized under the laws of the State of Illinois which is a party to the merger, consolidation or exchange and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such Corporation organized under the laws of the State of Illinois against the surviving, new or acquiring Corporation.

b. The Secretary of State of the State of Illinois shall be and hereby is irrevocably appointed as the agent of the surviving, new or acquiring Corporation to accept service of process in any such proceedings, and

c. The surviving, new or acquiring Corporation will promptly pay to the dissenting shareholders of any Corporation organized under the laws of the State of Illinois which is a party to the merger, consolidation or exchange the amount, if any, to which they shall be entitled under the provisions of The Business Corporation Act of 1983 of the State of Illinois with respect to the rights of dissenting shareholders.

Printed by authority of the State of Illinois. March 2007 — 500 — C 195.12

7. **Complete if reporting a merger under §11.30 — 90 percent-owned subsidiary provisions.**

a. The number of outstanding shares of each class of each merging subsidiary Corporation and the number of such shares of each class owned immediately prior to the adoption of the plan of merger by the parent Corporation:

Name of Corporation	Total Number of Shares Outstanding of Each Class	Number of Shares of Each Class Owned Immediately Prior to Merger by the Parent Corporation

b. **Not applicable to 100 percent-owned subsidiaries.**

The date of mailing a copy of the plan of merger and notice of the right to dissent to the shareholders of each merging subsidiary Corporation was ____________ (Month & Day), ________ (Year).

Was written consent for the merger or written waiver of the 30-day period by the holders of all the outstanding shares of all subsidiary Corporations received? ☐ Yes ☐ No

(If "No," duplicate copies of the Articles of Merger may not be delivered to the Secretary of State until after 30 days following the mailing of a copy of the plan of merger and the notice of the right to dissent to the shareholders of each merging subsidiary Corporation.)

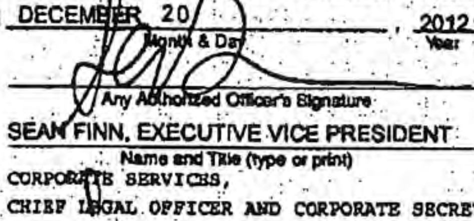
8. The undersigned Corporation has caused this statement to be signed by a duly authorized officer who affirms, under penalties of perjury, that the facts stated herein are true and correct. **All signatures must be in BLACK INK.**

Dated DECEMBER 20 (Month & Day), 2012 (Year) WISCONSIN CENTRAL LTD. (Exact Name of Corporation)

Any Authorized Officer's Signature

SEAN FINN, EXECUTIVE VICE PRESIDENT
Name and Title (type or print)
CORPORATE SERVICES,
CHIEF LEGAL OFFICER AND CORPORATE SECRETARY

Dated DECEMBER 20 (Month & Day), 2012 (Year) ELGIN, JOLIET AND EASTERN RAILWAY COMPANY (Exact Name of Corporation)



Any Authorized Officer's Signature

SEAN FINN, EXECUTIVE VICE PRESIDENT
Name and Title (type or print)
CORPORATE SERVICES,
CHIEF LEGAL OFFICER AND CORPORATE SECRETARY

Dated ____________ (Month & Day), ________ (Year) ____________ (Exact Name of Corporation)

____
Any Authorized Officer's Signature

____
Name and Title (type or print)

Printed by authority of the State of Illinois. March 2007 — 500 — C 195.12

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this "Agreement") is made as of December 20, 2012, by and between Elgin, Joliet and Eastern Railway Company, an Illinois corporation (the "Merging Entity"), and Wisconsin Central Ltd., an Illinois corporation (the "Surviving Entity"). This Agreement has been approved, adopted, certified, executed and acknowledged by each of the undersigned in accordance with the requirements of the Illinois Business Corporation Act of 1983.

WHEREAS, the Merging Entity is a wholly owned subsidiary of Grand Trunk Corporation, a Delaware corporation ("Merger Parent");

WHEREAS, the Surviving Entity is a wholly owned subsidiary of Wisconsin Central Transportation Corporation, a Delaware Corporation ("Survivor Parent"); and

WHEREAS, Merger Parent and Survivor Parent desire that the Merging Entity be merged with and into the Surviving Entity pursuant to the terms of this Agreement.

NOW THEREFORE, in consideration of the promises and mutual covenants and agreements contained herein, and other good and valuable consideration, and further in accordance with the Illinois Business Corporation Act of 1983, it is agreed by and between the parties hereto that the Merging Entity shall be merged into the Surviving Entity upon the terms and conditions set forth herein.

1. Merger. On the Effective Date (as hereinafter defined), the Merging Entity shall be merged with and into the Surviving Entity pursuant to the Illinois Business Corporation Act of 1983, with the Surviving Entity continuing as the surviving entity (the "Merger"). At the time of the Merger, Survivor Parent shall issue 8 shares of its common stock with $0.01 par value to Merger Parent in exchange for the cancellation of the Merging Entity's stock.

2. Effective Date. Upon the execution of this Agreement, the Merging Entity and the Surviving Entity shall be and hereby are directed to file Articles of Merger in the office of the Secretary of State of the State of Illinois. The Merger shall become effective on January 1, 2013 (the "Effective Date").

3. Surviving Entity. On the Effective Date, the Merging Entity shall be merged with and into the Surviving Entity, and the separate corporate existence of the Merging Entity shall thereupon cease. The Surviving Entity shall (a) be the surviving corporation in the Merger and shall possess all the rights, privileges, claims, demands, property, powers, franchises and authority, both public and private, and all debts due to the Merging Entity and the Surviving Entity, (b) be subject to all the restrictions, disabilities and duties of both the Merging Entity and the Surviving Entity, (c) be vested with all assets and property, real, personal and mixed, and every interest therein, wherever located, belonging to the Merging Entity and the Surviving Entity, and (d) be liable for all of the obligations and liabilities of the Merging Entity and the Surviving Entity. On and after the Effective Date, the title to any real estate vested by deed or otherwise in the Merging Entity shall be vested in the Surviving Entity, all rights of creditors and all liens upon property of the Merging Entity shall be preserved unimpaired, and all debts, liabilities and duties of the Merging Entity shall thenceforth attach to the Surviving Entity and

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may be enforced against it to the same extent as if such debts, liabilities and duties had been incurred or contracted by it. The title to any such real estate, or any interest therein, vested in the Merging Entity or Surviving Entity shall not revert or be in any way impaired by reason of the Merger. This Agreement is on file at the principal place of business of the Surviving Entity, the address of which is 17641 South Ashland Avenue, Homewood, Illinois 60430. A copy of this Agreement will be furnished to any shareholder of the Merging Entity or Surviving Entity upon request and without cost.

4. Additional Actions. If, at any time after the Effective Date, the Surviving Entity shall consider or be advised that any deeds, bills of sale, assignment, assurance or any other actions or things are necessary or desirable (a) to vest, perfect or confirm, of record or otherwise, in the Surviving Entity its right, title or interest in, to or under any of the rights, properties or assets of the Merging Entity or the Surviving Entity acquired or to be acquired by the Surviving Entity as a result of, or in connection with, the Merger, or (b) or otherwise carry out the purposes of this Agreement, the Merging Entity and its officers and directors shall be deemed to have granted to the Surviving Entity an irrevocable power of attorney to execute and deliver all such deeds, bills of sale, assignments and assurances and to take and do all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in the Surviving Entity and otherwise to carry out the purposes of this Agreement; and the officers and directors of the Surviving Entity are fully authorized in the name of the Merging Entity or the Surviving Entity, or otherwise to take any and all such actions.

5. Cancellation of Stock of Merging Entity. On the Effective Date, and without any further action on the part of the Merging Entity or the Surviving Entity, (a) each of the shares of common stock of the Surviving Entity issued and outstanding immediately prior to the Effective Date shall remain issued and outstanding immediately subsequent to the Effective Date as shares of common stock of the Surviving Entity, (b) each of the shares of the common stock of the Merging Entity issued and outstanding immediately prior to the Effective Date shall be cancelled and cease to exist and be outstanding.

6. Service of Process. The Surviving Entity hereby agrees that it may be served with process in the State of Illinois in any proceeding for the enforcement of any obligation of the Merging Entity and in any proceeding for the enforcement of the rights of a dissenting shareholder of the Merging Entity against the Surviving Entity.

7. Name. The name of the Surviving Entity immediately prior to the Effective Date shall be the name of the Surviving Entity following the Effective Date.

8. Articles of Incorporation. The Articles of Incorporation of the Surviving Entity immediately prior to the Effective Date shall be the Articles of Incorporation of the Surviving Entity following the Effective Date, unless and until the same shall be amended or repealed in accordance with the provisions thereof.

9. By-laws. The by-laws of Surviving Entity immediately prior to the Effective Date shall be the by-laws of Surviving Entity following the Effective Date, unless and until the same shall be amended or repealed in accordance with the provisions thereof.

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10. Board of Directors and Officers. The members of the board of directors and the officers of Surviving Entity immediately prior to the Effective Date shall be the members of the board of directors and the officers of Surviving Entity following the Effective Date, unless and until the same shall be terminated or replaced in such positions as provided in the by-laws.

11. Plan of Reorganization. This Agreement constitutes a plan of reorganization pursuant to Internal Revenue Code §368(a) to be carried out in the manner, on the terms, and subject to the conditions set forth herein, it being the intent of the parties that the merger of the Merging Entity, which is a wholly owned subsidiary of Merger Parent, into Surviving Entity, which is a wholly owned subsidiary of Survivor Parent, qualify as a forward tri-angular "A Reorganization" described in Internal Revenue Code §368(a)(2)(D).

12. Termination/Abandonment. This Agreement may be abandoned by the mutual consent of the Merging Entity and the Surviving Entity, each acting by its board of directors at any time prior to the filing of the Articles of Merger in the State of Illinois. In the event of any termination of this Agreement, this Agreement shall become wholly void and of no effect and there shall be no further liability or obligation hereunder on the part of (a) the Merging Entity, its board of directors or shareholder or (b) the Surviving Entity, its board of directors or shareholder.

13. Counterparts. This Agreement may be executed in multiple counterparts.

[Signature page follows]

IN WITNESS WHEREOF, each of the Surviving Entity and the Merging Entity, pursuant to authority duly granted by its shareholder and its board of directors, has caused this Agreement to be executed by its duly authorized officers.

Surviving Entity:

WISCONSIN CENTRAL LTD.,
an Illinois corporation

By: ______________________
Sean Finn
Its: Executive Vice President, Corporate Services, Chief Legal Officer and Corporate Secretary

Merging Entity:

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, an Illinois corporation

By: ______________________
Sean Finn
Its: Executive Vice President, Corporate Services, Chief Legal Officer and Corporate Secretary

Survivor Parent:

WISCONSIN CENTRAL TRANSPORTATION CORPORATION,
a Delaware corporation

Acknowledging its consent as the sole shareholder of the Surviving Entity

By: ______________________
Sean Finn
Its: Executive Vice President, Corporate Services, Chief Legal Officer and Corporate Secretary

Merger Parent:

GRAND TRUNK CORPORATION,
a Delaware corporation

Acknowledging its consent as the sole shareholder of the Surviving Entity

By: ______________________
Sean Finn
Its: Executive Vice President, Corporate Services, Chief Legal Officer and Corporate Secretary

Exhibit B

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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

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 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 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 (1st 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 (5th 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 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.

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.

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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 _____ day of _______________, 2023.

Alderman Beifuss	_________	Alderman Chassee	_________
Alderman Sheahan	_________	Alderman Brown	_________
Alderman Hallett	_________	Alderman Dettmann	_________
Alderman Birch-Ferguson	_________	Alderman Dimas	_________
Alderman Swiatek	_________	Alderman Garling	_________
Alderman Stout	_________	Alderman Short	_________
Alderman Jakabcsin	_________	Alderman Morano	_________

APPROVED this _____ day of ______________, 2023.

____
Mayor Ruben Pineda

ATTEST:

____
Executive Assistant

PUBLISHED: ____________

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.

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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 3rd 778 (5th 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 (5th 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.

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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.

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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,* 319 111.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 facia* 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. 2nd 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 (1st 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 be 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 the100 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.

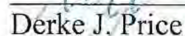
PUBLIC COMMENTS

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,



Derke J. Price

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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,

Derke J. Price

4847-5279-7990, v. 1

Electronic Filing: Received, Clerk's Office 03/28/2023 **PCB 2023-107**

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.