

ILLINOIS POLLUTION CONTROL BOARD
April 6, 2023

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

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

On March 28, 2023, Protect West Chicago (PWC) timely filed a petition asking the Board to review a February 28, 2023 decision of the City Council of the City of West Chicago (West Chicago). *See* 415 ILCS 5/40.1(b) (2020); 35 Ill. Adm. Code 101.300(b), 107.204. West Chicago granted Lakeshore Recycling Systems, LLC’s (Lakeshore Recycling) application to site a pollution control facility at 1655 Powis Road, West Chicago, DuPage County.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2020)), before the Illinois Environmental Protection Agency can issue a permit to develop or construct a new or expanding pollution control facility, the permit applicant must obtain siting approval for the facility from the local government (*i.e.*, the county board if in an unincorporated area or the governing body of the municipality if in an incorporated area). If the local government approves siting, certain third parties may appeal the local government’s decision to the Board. *See* 415 ILCS 5/40.1(b) (2020); 35 Ill. Adm. Code 107.

In this case, PWC appeals on the grounds that Lakeshore’s application failed to comply with pre-filing notice requirements under the Act (*see* 415 ILCS 5/39.2(b) (2020)); failed to comply with siting requirements under the Act (*see* 415 ILCS 5/22.14(a) (2020)); and failed to establish that it met the criteria required for pollution control facility siting approval (*see* 415 ILCS 5/39.2 (2020)). PWC also appeals on the grounds that West Chicago’s procedures to reach its siting decision were not fundamentally fair. For the reasons below, the Board accepts the petition for hearing.

THIRD-PARTY APPEAL

Section 40.1(b) of the Act (Act) (415 ILCS 5/40.1(b) (2020)) allows third parties to appeal a local government decision granting approval to site a pollution control facility if the third parties participated in the local government’s public hearing and are so located as to be affected by the proposed facility. *See* 415 ILCS 5/40.1(b) (2020); 35 Ill. Adm. Code 107.200(b).

The petition for review must, among other things, specify the grounds for appeal and include a copy of the local government's siting decision. *See* 35 Ill. Adm. Code 107.208. The third party must file the petition within 35 days after the local government approves siting. *See* 415 ILCS 5/40.1(b) (2020); 35 Ill. Adm. Code 107.204. Unless the Board determines that the third party's petition is "duplicative or frivolous," the Board will hear the petition. 415 ILCS 5/40.1(b) (2020); 35 Ill. Adm. Code 107.200(b).

PWC's petition states that it participated in West Chicago's public hearings and that it is so located as to be affected by the proposed facility. PWC specifies the grounds for the appeal and includes a copy of West Chicago's siting decision. The petition meets the content requirements of 35 Ill. Adm. Code 107.208. PWC also filed its petition within 35 days after West Chicago's approved siting.

HEARING AND DECISION DEADLINE

An action before the Board is duplicative if it is "identical or substantially similar to one brought before the Board or another forum." 35 Ill. Adm. Code 101.202. An action before the Board is frivolous if it is "a request for relief that the Board does not have the authority to grant" or "fails to state a cause of action upon which the Board can grant relief." *Id.* No evidence before the Board indicates that this action is duplicative or frivolous. The Board accepts PWC's petition for hearing.

PWC has the burden of proof. *See* 415 ILCS 5/40.1(b) (2020); 35 Ill. Adm. Code 107.506. Hearings will be based exclusively on the record before West Chicago, except that, if relevant, evidence may be introduced on: (1) the local government's jurisdiction over the siting application, and (2) the fundamental fairness of the procedures used by the local government in reaching its decision. *See* 415 ILCS 5/40.1(b) (2020); Land & Lakes v. IPCB, 319 Ill. App. 3d 41, 48, 743 N.E.2d 188, 194 (3d Dist. 2000).

Upon its own motion or the motion of any party, the Board or the hearing officer may order that the hearing be held by videoconference. In deciding whether to hold the hearing by videoconference, factors that the Board or the hearing officer will consider include cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties' preferences, and the proceeding's complexity and contentiousness. *See* 35 Ill. Adm. Code 101.600(b), 107.400.

Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40.1(a), (b) (2020)), which only Lakeshore Recycling may extend by waiver (35 Ill. Adm. Code 107.504; *see also* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Lakeshore Recycling "may deem the site location approved." 415 ILCS 5/40.1(a) (2020). Currently, the decision deadline is July 26, 2023, which is the 120th day after the Board received the petition. *See* 35 Ill. Adm. Code 107.504. The Board meeting immediately before the decision deadline is scheduled for July 20, 2023.

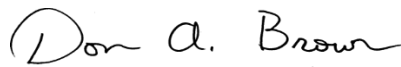
CITY OF WEST CHICAGO'S RECORD

West Chicago must file the entire record of its proceedings within 21 days after the date of this order. *See* 35 Ill. Adm. Code 107.302. The record must comply with the Board's requirements for content, organization, and certification. *See* 35 Ill. Adm. Code 101.1030(g), 107.304, 107.308. In addition, West Chicago must file the record electronically instead of in paper. Specifically, the record must be filed through the Clerk's Office On-Line (COOL) or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF. *See* 35 Ill. Adm. Code 101.302(h)(2)(C), 107.302.¹

Because PWC is a citizens' group, it is "exempt from paying the costs of preparing and certifying the record." 415 ILCS 5/39.2(n) (2020); 35 Ill. Adm. Code 107.306.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 6, 2023, by a vote of 3-0.



Don A. Brown, Clerk
Illinois Pollution Control Board

¹ Any questions about filing the record in an electronic format should be directed to the Clerk's Office at (312) 814-3620 or (312) 814-3461.