

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

PEOPLE OPPOSING DUPAGE)	
ENVIRONMENTAL RACISM,)	
)	
Petitioner,)	
)	
v.)	PCB 23-109
)	(Third-Party Pollution Control Facility
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LAKESHORE RECYCLING SYSTEMS,)	
LLC,)	
)	
Respondents.)	


NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on May 11, 2023, the CITY OF WEST CHICAGO electronically filed with the Office of the Clerk of the Illinois Pollution Control Board the Respondent, City of West Chicago's Objection to Petitioner Protect West Chicago's First Request for Production of Documents and First Set of Interrogatories, a copy of which is hereby served upon you.

Respectfully submitted,

CITY OF WEST CHICAGO,
Respondent

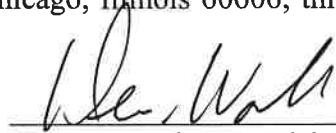
By: 

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AFFIDAVIT OF SERVICE

I, the undersigned, on oath state that I have served the Notice of Filing and Respondent, City of West Chicago's Objection to Petitioner Protect West Chicago's First Request for Production of Documents and First Set of Interrogatories upon the following persons to be served via email transmittal from 20 N. Wacker Drive, Chicago, Illinois 60606, this 11th day of May, 2023.



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**RESPONDENT, CITY OF WEST CHICAGO'S
OBJECTION TO PETITIONER PROTECT WEST CHICAGO'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
AND FIRST SET OF INTERROGATORIES**

Now comes the Respondent, CITY OF WEST CHICAGO ("Respondent"), by and through Dennis G. Walsh and Daniel W. Bourgault of Klein Thorpe and Jenkins, Ltd., its attorneys, and for its Objection to Petitioner, Protect West Chicago's ("PWC"), First Request for Production of Documents and First Set of Interrogatories, states and alleges as follows:

1. Respondent, CITY OF WEST CHICAGO, was served a First Request for Production of Documents and Interrogatories by PWC on May 5, 2023.

2. Discovery before the Illinois Pollution Control Board is governed by 35 Ill. Adm. Code 101.612. Specifically, under subparagraph (a), relevant information and information that is calculated to lead to relevant information is discoverable, excluding those materials that would be protected from disclosure in the courts of this State under statute, Supreme Court Rules or common law, and materials protected from disclosure under 35 Ill. Adm. Code 130.

3. PWC has requested a copy of the audio recording of the City of West Chicago City Council's closed executive session held on February 27, 2023, which is expressly shielded by state statute from discovery in any administrative proceeding held in this State. Section 2.06 (e) of the Illinois Open Meetings Act (5 ILCS 120/1), which is the state law that requires a city to record closed session meetings, definitely states in pertinent part that:

“the verbatim record of a meeting closed to the public SHALL NOT be open for public inspection or subject to discovery in ANY administrative or judicial proceeding other than one brought to enforce this Act.” (5 ILCS 120/2.06 (e), (Emphasis added).

4. The clearly expressed “shall not.... be subject to discovery in any administrative proceeding” language in 2.06(e) is mandatory language without doubt or obscurity and as such, with all due respect, the State Legislature has already preempted the outcome of this discovery request on behalf of the Pollution Control Board and every other administrative body in the State of Illinois.

5. Furthermore, the discussions held in the referenced closed session are protected from disclosure by the attorney-client privilege.

6. The documents requested in #2 of PWC's First Request for Production of Documents predate the filing of the siting application by Respondent on September 16, 2022.

7. Supreme Court Rule 201 provides that "a party may obtain by discovery full disclosure regarding any matter *relevant* to the subject matter involved in the pending action..." Ill. Sup. Ct. R. 201(b)(1) (Emphasis added).

8. Our Supreme Court has defined relevance as: "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Ill. Sup. Ct. R. 401.

9. PWC argues in its Amended Petition that various *ex parte* communications occurred which demonstrated an inherent bias in favor of Respondent that occurred both prior to the filing of the Application and thereafter.

10. Respondent contends that certain of the documents and items requested in PWC's First Request for Production of Documents are irrelevant and not reasonably calculated to lead to relevant information as they predate the filing of the siting application.

11. The documents requested by PWC are permissible pre-filing contacts and are not relevant to their claim of "inherent bias."

12. This Board and Illinois courts have previously held that pre-filing contacts are not relevant to a fundamental fairness calculus. See *Stop the Mega-Dump v. County Board of DeKalb County*, No. PCB 10-103, (March 17, 2011); *Residents Against a Polluted Environment v. County of LaSalle*, PCB 97-139, slip op. at 7 (June 19, 1997).

13. Illinois common law has long held that *ex parte* contacts that occur prior to the filing of the application-filings are permissible and that they are not, by definition, *ex parte* contacts. *Stop the Mega-Dump* (March 17, 2011).

14. In order to constitute a true *ex parte* contact, the contact must occur post-filing in the context of a proceeding. *Residents Against a Polluted Environment v. County of LaSalle*, PCB 96-243, slip op. at 16 (Sept. 19, 1996).

15. At no time has this Board nor Illinois courts found that pre-filing contacts could constitute impermissible *ex parte* communications or render post-filing siting proceedings fundamentally unfair. In *Residents Against a Polluted Environment v. County of LaSalle*, PCB 97-139 (June 19, 1997), this Board held that "contacts between the Applicant and the County Board prior to the filing of the Application are irrelevant to the question of whether the siting proceedings were conducted in a fundamentally fair manner."

16. The documents requested in #4 and #5 of PWC's First Request for Production of Documents and PCW's Interrogatories # 10, #11 and # 12 are not relevant to any issue in this appeal, are not calculated to lead to the discovery of admissible evidence and seek information not relevant to this proceeding.

17. Because certain documents requested in PWC's First Request for Production of Documents and certain Interrogatories served by PWC are both irrelevant and not calculated to lead to relevant information to PWC's claim that the City's decision to grant siting approval was fundamentally unfair, or against the manifest weight of the evidence, those portions of the Request and Interrogatories should be stricken.

WHEREFORE, Respondent, CITY OF WEST CHICAGO, respectfully requests that the Board strike the requests #1, #2, #4 and #5 contained in PWC's First Request for Production of Documents for documents and PCW's Interrogatories # 10, #11 and # 12 and for such other and further relief as this Board deems just and equitable.

Respectfully submitted,

CITY OF WEST CHICAGO,
Respondent

By: 
One of Respondent's Attorneys

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