

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PROTECT WEST CHICAGO,)

Petitioner,)

v.)

CITY OF WEST CHICAGO, WEST)

CHICAGO CITY COUNCIL, and)

LAKESHORE RECYCLING SYSTEMS,)

LLC,)

Respondents)

PEOPLE OPPOSING DUPAGE)

ENVIRONMENTAL RACISM,)

Petitioner,)

v.)

CITY OF WEST CHICAGO and)

LAKESHORE RECYCLING SYSTEMS,)

Respondents.)

PCB No: 2023-107
(Pollution Control Facility Siting Appeal)

PCB No: 2023-109
(Third-Party Pollution Control Facility Siting Appeal)

NOTICE OF FILING

To: **See Attached Service List**

PLEASE TAKE NOTICE that on June 30, 2023, Protect West Chicago electronically filed with the Illinois Pollution Control Board, 60 E. Van Buren Street, Suite 630, Chicago, IL 60605, an original of the attached: **Objection to Lakeshore Recycling Systems, LLC (“Lakeshore”) First Set of Interrogatories**, copies of which are attached and served upon you.

Dated: June 30, 2023

Respectfully Submitted,



Ricardo Meza
Attorney for Protect West Chicago

Ricardo Meza
Meza Law
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Chicago, IL 60605
(312) 802-0336
rmeza@meza.law

CERTIFICATE OF SERVICE

I, Ricardo Meza, an attorney, certify that I have served the attached: **Objection to Lakeshore Recycling Systems, LLC (“Lakeshore”) First Set of Interrogatories**, on the below-named parties (Service List) by delivering the document to them via electronic mail on June 30, 2023 and via the PCB’s Clerk’s Office electronic filing system.



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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PROTECT WEST CHICAGO,)	
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v.)	PCB No: <u>2023-107</u>
)	(Pollution Control Facility Siting Appeal)
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_____)	
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)	(Third-Party Pollution Control Facility
CITY OF WEST CHICAGO and)	Siting Appeal)
LAKESHORE RECYCLING SYSTEMS,)	
)	
Respondents.)	

OBJECTION TO LAKESHORE RECYCLING SYSTEMS, LLC’S FIRST SET OF INTERROGATORIES UPON PROTECT WEST CHICAGO

NOW COMES the Petitioner, Protect West Chicago, (“PWC”), by and through its attorneys, Meza Law, and for its Objection to Lakeshore Recycling Systems, LLC (“Lakeshore”) First Set of Interrogatories (INTERROGATORY 20 and 21), PWC states as follows:

1. On June 16, 2023, Lakeshore served PWC with its First Set of Interrogatories. **See Exhibit 1.**
2. Discovery before the Illinois Pollution Control Board (“IPCB”) is governed by 35 Ill. Adm. Code 101.616. Specifically, under subparagraph (a), discovery is limited to relevant information or matters that are reasonably calculated to lead to the discovery of relevant information and excludes 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. In addition, under the Illinois Administrative Procedure Act, any irrelevant, immaterial, and unduly repetitious evidence should be excluded. 5 ILCS 100/10-40.

4. Moreover, Illinois 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). The 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.

5. In a siting decision appeal, however, the only relevant evidence on appeal includes “the written decision and reasons for the decision of the county board or the governing body of the municipality, the transcribed record of the hearing held pursuant to subsection (d) of Section 39.2, and the fundamental fairness of the procedures used by the county board or the governing body of the municipality in reaching its decision.” 415 ILCS 5/40.1(a). In crafting these factors, by clear design and with clear intent, the General Assembly has precisely defined the limited set of factors it deems relevant in siting appeals such as this one. And, of these three factors, the first two are already part of the record. As such, the only other factor the General Assembly has left open to possible discovery efforts on appeal is the *fundamental fairness* of the procedures employed by West Chicago in reaching its decision. In other words, the focus is solely on the actions taken by the City, and nothing else. All this being the case, it is then abundantly clear that the sources of litigation funding obtained by PWC in no way, shape, or form bear upon the fundamental fairness

of the procedures employed by the City in reaching its decision, and are, accordingly, totally irrelevant.

6. In its amended petition, PWC asserted various grounds for appeal, including whether the siting decision complied with the Pre-Filing Notice requirements set forth in 415 ILCS §5/39.2(b); the 1,000-foot set-back requirement in violation of 415 ILCS §5/22.14(a), and whether Lakeshore failed to meet various Criterion set forth in Section 39.2 and in particular Criterion 1, 2, 3 and 8.

7. However, in addition to the above grounds for appeal, PWC also alleged that the entire local siting review process and procedures were fundamentally unfair in one or more of the following ways:

- a. No steps were taken to ensure reasonable access or availability of hearing proceedings in Spanish.
- b. The actions of the West Chicago officials concealing information directly related to criticisms leveled by the City's own consultant (Aptim) during the Pre-Filing Application Review process.
- c. The actions of West Chicago officials reflecting bias and preferential communications by and between various West Chicago officials, and Applicant Lakeshore prior to the submission of Lakeshore's Application.
- d. The actions of West Chicago officials prior to submission of Lakeshore's Application, including action of Mayor Ruben Pineda reflecting pre-adjudication bias in favor of Lakeshore's Application.
- e. The actions of West Chicago official's summary rejection of their own independent review consultants' (Aptim) expert opinion.
- f. The actions of West Chicago officials editing official letters to make it more favorable to the Applicant, at the express request (and direction) of Lakeshore's expert John Hock.
- g. Whether the City of West Chicago's Hearing Officer failed to render impartial rulings on the evidence.

8. In light of the amended petition's allegations of fundamental unfairness, PWC issued Lakeshore discovery in the form of written interrogatories and document requests aimed at uncovering facts solely involving the issue of *fundamental fairness*.

9. In a filing dated May 10, 2023, Lakeshore submitted its objection to PWC's discovery request citing the above-referenced Illinois Supreme Court rules relating to relevancy, and, of both significant (and ironic) note here, specifically argued that "Because certain of the documents requested in PWC's First Request for Production of Documents *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, those portions of the Request should be stricken.*" See Exhibit 2 (Lakeshore's Objections) (Emphasis added).

10. On June 12, 2023, the IPCB issued its ruling on PWC's discovery request, and in its ruling, held that:

"Pre-filing contacts may be probative of prejudgment of adjudicative facts, which is an element to be considered in assessing a *fundamental fairness* allegation. *American Bottom Conservancy (ABC) v. Village of Fairmont City*, PCB 00-200, slip op. at 6 (Oct. 19, 2000). Further, the courts have indicated that *fundamental fairness* refers to the principles of adjudicative due process and a conflict of interest itself could be a disqualifying factor in a local siting proceeding if the bias violates standards of adjudicative due process. *E & E Hauling v. PCB*, 116 Ill. App. 3d 586, 596, 451 N.E.2d 555, 564 (2nd Dist. 1983), *aff'd* 107 Ill. 2d 33, 481 N.E.2d 664 (1985). The manner in which the hearing is conducted, the opportunity to be heard, whether *ex parte* contacts existed, prejudgment of adjudicative facts, and the introduction of evidence are important, but not rigid, elements in assessing *fundamental fairness*. *Hediger v. D & L Landfill, Inc.*, PCB 90-163, slip op. at 5 (Dec. 20, 1990). *See Timber Creek Homes, Inc. v. Village of Round Lake Park et.al.*, PCB 14-199 (Apr. 3, 2014)." See Exhibit 3 (Order of June 12, 2023) (emphasis added).

Thus, the IPCB allowed the discovery because it was directed at matters going to *fundamental fairness* and because "the information being sought may assist in determining if West Chicago prejudged the application or had a bias." *Id.*

12. Moreover, the IPCB has also *already* limited discovery in this case by sustaining objections to certain other PWC requests stating: “it is unclear how responses to those interrogatories *could provide evidence of bias or prejudgment of facts.*” **Id.** (Emphasis added).

13. Going further, and of significant note, also included in the June 12, 2023 IPCB decision, was a refusal by the IPCB to require an answer to an interrogatory sought by PWC to discover who paid for certain attorney’s fees owed by the City of West Chicago. **See Exhibit 3.**

14. Thus, on appeal the only issues subject to introduction of new facts and information outside of those developed in the record of the underlying siting proceeding are those that relate solely to the issues of fundamental fairness. 415 ILCS 5/40.1(a); *see also Timber Creek Homes, Inc., Petitioner v. Village of Round Lake Park, Round Lake Park Village Board and Groot Industries, Inc., Respondents*, PCB 14-99, 2014 WL 904837, at *2.

15. Nevertheless, despite the IPCB Order of June 12, 2023, in Lakeshore INTERROGATORY 20, it asks “how much money PWC or its attorneys have received from Waste Connections, Groot Industries, or any related affiliate.” **See Exhibit 1.** Moreover, and as set forth in Lakeshore INTERROGATORY 21, it further asks PWC how much money it has received from all other sources. **Id.**

16. PWC objects to Lakeshore INTERROGATORY 20 and 21 for the following reasons:

- a. *First*, discovery of PWC’s method of funding its litigation efforts has nothing to do with the issue of fundamental fairness and in fact has nothing to do with *any* other issue in dispute. In other words, those interrogatories are irrelevant to *any* subject matter involved in the pending action;
- b. *Second*, since Lakeshore’s interrogatories are not relevant to any relevant fundamental fairness issue, they are clearly beyond the scope of the Illinois Supreme Court Rules and the Appeal of Siting Approval Statute and, thus, should be stricken as a waste of resources.

- c. *Third*, whether PWC's costs were \$500,000 or \$10,000, and/or whether it was funded by one corporate/business source, a local philanthropist/community leader or by 1,000 separate individuals who donated \$50 each, discovery of this information would not advance the issue of fundamental fairness, nor would it advance any other issue in dispute. Moreover, the merits of the underlying issues involved here would also not change in any way upon its discovery.

17. In addition to the above, Illinois courts have repeatedly denied parties the production of records relating to payment of attorneys' fees where the matter of attorneys' fees was not a central issue in the case. *See Fulton v. Foley*, 17-CV-8696, 2019 WL 6609298 (N.D. Ill. Dec. 5, 2019) ("As a general matter, courts across the country have addressed the issue and held that litigation funding information is generally irrelevant to proving the claims and defenses in a case"); *Stevens v. DeWitt Cnty., Ill.*, 11-CV-3162, 2013 WL 819372 (C.D. Ill. Mar. 6, 2013) (sustaining objections to interrogatory requests for discovery of attorney's fees on the basis that it is not relevant to any claims or defenses and not reasonably calculated to lead to discovery of admissible evidence about any claims or defenses).

18. As noted in its objections to allowing Lakeshore to serve late interrogatories, PWC informed the IPCB that it feared Lakeshore would use the interrogatories as a fishing expedition to build on speculative claims and, as suspected, that is exactly what Lakeshore is now doing.

19. On May 18, 2023, the IPCB *already* and squarely held that PWC was a legitimate "community group;" therefore, how PWC chose to fund its cause is irrelevant to any issues in dispute in this appeal. **See Exhibit 4** (IPCB Order of May 18, 2023).

20. Finally, Lakeshore's current discovery request is another vehicle by which it intends to divert attention away from the actual merits of the case, because Lakeshore knows it cannot afford to have the IPCB direct its focus on the myriad of deficiencies in Lakeshore's siting proposal.

WHEREFORE, PWC respectfully requests the entry of an Order Denying Lakeshore's INTERROGATORIES 20 and 21 served on PWC and for such other relief as is just.

Dated: June 30, 2023

Respectfully Submitted,



Ricardo Meza
Attorney for Protect West Chicago

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Exhibit 1

BEFORE THE POLLUTION CONTROL BOARD

PROTECT WEST CHICAGO,)	
)	
Petitioner,)	PCB 2023-107
	)	(Pollution Control Facility Siting Appeal)
vs.)	
)	
CITY OF WEST CHICAGO, WEST)	
CHICAGO CITY COUNCIL, and)	
LAKESHORE RECYCLING SYSTEMS,)	
LLC,)	
)	
Respondents.)	

PEOPLE OPPOSING DUPAGE)	
ENVIRONMENTAL RACISM,)	
)	
Petitioner,	)	PCB 2023-109
	)	(Third-Party Pollution Control Facility
vs.	)	Siting Appeal)
)	
CITY OF WEST CHICAGO and)	
LAKESHORE RECYCLING SYSTEMS,)	
LLC,	)	(Consolidated)
)	
Respondents.)	

LAKESHORE’S FIRST INTERROGATORIES TO PROTECT WEST CHICAGO

Now comes the Respondent, LAKESHORE RECYCLING SYSTEMS, LLC, (LAKESHORE) by and through its attorneys, George Mueller and Karen Donnelly, and hereby propounds the following Interrogatories to the Petitioner, PROTECT WEST CHICAGO (PWC), to be answered by PWC.

DEFINITIONS

A. “PWC” refers to PROTECT WEST CHICAGO and all of its respective agents, directors, officers, employees, representatives, and all other persons and entities who have acted or purported to act on its behalf.

B. "CITY OF WEST CHICAGO" means the City of West Chicago and all of its respective agents, directors, officers, employees, representatives, and all persons and entities who have acted or purported to act on its behalf.

C. "WEST CHICAGO CITY COUNCIL" means the West Chicago City Council, its members, and any of their respective agents, directors, officers, employees, representatives, and all persons and entities who have acted or purported to act on their behalf.

D. "LAKESHORE" means Lakeshore Recycling Systems, LLC and any of its respective agents, directors, officers, employees, representatives, and all persons and entities who have acted or purported to act on its behalf.

E. "Communication" means, without limiting the generality of its meaning, any form of communication between two or more persons, whether written or oral, including but not limited to correspondence, emails, conversations, phone calls, reports, documents, and memoranda.

F. "Siting Application" means Lakeshore's Application seeking approval for a solid waste transfer station to be located at 1655 Powis Road in West Chicago, Illinois.

G. "Document" means, without limiting the generality of its meaning, writings, papers, or tangible things of any kind or nature whatsoever in the possession of or subject to the control of PWC, its respective agents, employees, representatives, witnesses, or attorneys, including but not limited to letters, handwritten notes, calendar pads, appointment books, notepads, notebooks, correspondence of any kind, postcards, memoranda, telegrams, telexes, emails, internal communication of any kind, annual or other reports, financial statements, billing statements, payment authorizations, canceled checks, books, records, ledgers, journals, minutes of all meetings, contracts, agreements, appraisals, analysis, charts, graphs, bulletins, speeches, reports, data sheets, data tapes, or readable computer interpretations thereof, computer programs, software or any medium containing computer programs, circulars, pamphlets, notices, statements, stenographic notes, surveys, microfilm, microfiche, tape and disc recordings, photostats, photographs, drawings, transparencies, overlays, periodicals, sketches, illustrations, blueprints, plans, and personal interviews, wheresoever located, including non-final drafts or earlier versions and non-identical copies of any of the above, and all compilations of the foregoing, including binders, notebooks, folders, and files.

H. "Refer" or "relate" means anything which directly or indirectly concerns, consists of, pertains to, reflects, evidences, describes, sets forth, constitutes, contains, shows, underlies, supports, or refers to in any way, or was used in the preparation of, appended to, legally, logically or factually connected with, proves, disproves, or tends to prove or disprove.

I. "Siting process and procedures" includes any and all proceedings and processes employed by the CITY OF WEST CHICAGO or WEST CHICAGO CITY COUNCIL before and after the filing of the Siting Application through the decision rendered by the WEST CHICAGO CITY COUNCIL concerning the Siting Application of LAKESHORE.

J. The singular and plural form shall be construed interchangeably so as to bring within the scope of these requests any documents which might otherwise be construed outside their scope.

K. The words "and" and "or" shall be construed conjunctively and disjunctively as necessary to bring within Interrogatories all information that may otherwise be construed as outside their scope.

INTERROGATORIES

INTERROGATORY NO. 1:

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

ANSWER TO INTERROGATORY NO. 1:

INTERROGATORY NO. 2:

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

ANSWER TO INTERROGATORY NO. 2:

INTERROGATORY NO. 3:

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

A. Every fact within Petitioner's knowledge which is relied upon in making that assertion.

B. Each statement, declaration, assertion, or conversation relating to the fundamental fairness of the siting process and procedures utilized in this matter by the City Council.

ANSWER TO INTERROGATORY NO. 3:

INTERROGATORY NO 4:

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

ANSWER TO INTERROGATORY NO. 4:

INTERROGATORY NO. 5:

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

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

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

ANSWER TO INTERROGATORY NO. 5:

INTERROGATORY NO. 6:

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

ANSWER TO INTERROGATORY NO. 6:

INTERROGATORY NO. 7:

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

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

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

ANSWER TO INTERROGATORY NO. 7:

INTERROGATORY NO. 8:

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

ANSWER TO INTERROGATORY NO. 8:

INTERROGATORY NO. 9:

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

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

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

ANSWER TO INTERROGATORY NO. 9:

INTERROGATORY NO. 10:

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

ANSWER TO INTERROGATORY NO. 10:

INTERROGATORY NO. 11:

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

A. Every fact within your knowledge which is relied upon in making that assertion.

B. Each statement, declaration, assertion, or conversation relating to your contention.

ANSWER TO INTERROGATORY NO. 11:

INTERROGATORY NO. 12:

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

ANSWER TO INTERROGATORY NO. 12:

INTERROGATORY NO. 13:

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

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

ANSWER TO INTERROGATORY NO. 13:

INTERROGATORY NO. 14:

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

ANSWER TO INTERROGATORY NO. 14:

INTERROGATORY NO. 15:

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

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

ANSWER TO INTERROGATORY NO. 15:

INTERROGATORY NO. 16:

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

ANSWER TO INTERROGATORY NO. 16:

INTERROGATORY NO. 17:

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

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

ANSWER TO INTERROGATORY NO. 17:

INTERROGATORY NO. 18:

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

ANSWER TO INTERROGATORY NO. 18:

INTERROGATORY NO. 19:

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

ANSWER TO INTERROGATORY NO. 19:

INTERROGATORY NO. 20:

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


ANSWER TO INTERROGATORY NO. 20:

INTERROGATORY NO. 21:

How much money has PWC received from all other sources?

ANSWER TO INTERROGATORY NO. 21:

LAKESHORE RECYCLING SYSTEMS, LLC,
Respondent

BY: 
George Mueller
One of its Attorneys

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VERIFICATION OF ANSWERS TO INTERROGATORIES

STATE OF ILLINOIS)
) ss.
COUNTY OF)

_____, being first duly sworn on oath, deposes and states that he/she is an authorized agent or representative of PROTECT WEST CHICAGO, that he/she has read the foregoing Interrogatories and his/her Answers to those Interrogatories, and that his/her Answers and the facts stated therein are true and correct to the best of his/her knowledge and belief.

SUBSCRIBED AND SWORN TO
before me this _____ day of _____, 2023.

NOTARY PUBLIC

Exhibit 2

BEFORE THE POLLUTION CONTROL BOARD

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)	
Petitioner,)	PCB 2023-107
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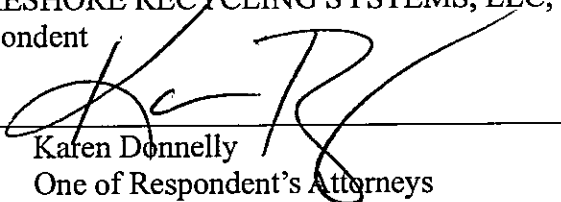
NOTICE OF FILING

TO: See attached Service List

PLEASE TAKE NOTICE that on May 10, 2023, LAKESHORE RECYCLING SYSTEMS, LLC electronically filed with the Office of the Clerk of the Illinois Pollution Control Board its **Objection to Petitioner PROTECT WEST CHICAGO's First Request for Production of Documents**, a copy of which is hereby served upon you.

Respectfully submitted,

LAKESHORE RECYCLING SYSTEMS, LLC,
Respondent


BY: 
Karen Donnelly
One of Respondent's Attorneys

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AFFIDAVIT OF SERVICE

I, the undersigned, on oath state that I have served the attached **Notice of Filing and Respondent LAKESHORE RECYCLING SYSTEMS, LLC Objection to Petitioner PROTECT WEST CHICAGO First Request for Production of Documents** on behalf of LAKESHORE RECYCLING SYSTEMS, LLC upon the following persons to be served via email transmittal from 501 State Street, Ottawa, Illinois 61350, this 10th day of May, 2023.


Karen Donnelly
Attorney for Respondent

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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RESPONDENT LAKESHORE RECYCLING SYSTEMS, LLC
OBJECTION TO PETITIONER PROTECT WEST CHICAGO
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Now comes the Respondent, LAKESHORE RECYCLING SYSTEMS, LLC, by and through its attorneys, George Mueller and Karen Donnelly, and for its Objection to Petitioner, PROTECT WEST CHICAGO's, First Request for Production of Documents, states and alleges as follows:

1. Respondent, LAKESHORE RECYCLING SYSTEMS, LLC, was served a First Request for Production of Documents by PWC on May 5, 2023.

2. Certain of the documents requested therein predate the filing of the siting application by LAKESHORE on September 16, 2022. In fact, the only request that does not predate LAKESHORE'S siting application is #2 of PWC's First Request for Production of Documents.

3. 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.

4. 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).

5. 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.

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

7. Respondent, LAKESHORE, 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.

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

9. 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).

10. 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).

11. 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).

12. 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.”

13. Because certain of the documents requested in PWC’s First Request for Production of Documents 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, those portions of the Request should be stricken.

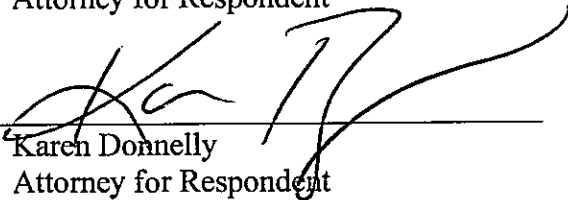
WHEREFORE, the Respondent, LAKESHORE RECYCLING SYSTEMS, LLC, respectfully requests that the Board strike the requests contained in PWC’s First Request for

Production of Documents for documents and items that predate the filing of the siting application, and for such other and further relief as this Board deems just and equitable.

Respectfully submitted,

LAKESHORE RECYCLING SYSTEMS, LLC.,
Respondent

BY: /s/ George Mueller
George Mueller
Attorney for Respondent

BY: 
Karen Donnelly
Attorney for Respondent

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Exhibit 3

ILLINOIS POLLUTION CONTROL BOARD
June 12, 2023

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

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

HEARING OFFICER ORDER

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

Open Meetings Act Exemption

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

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

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

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

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

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

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

Pre- Filing Contacts

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

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

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

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

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

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

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

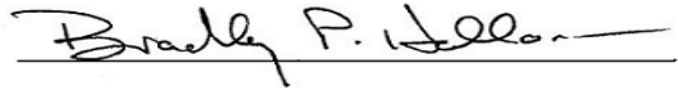
However, as PWC argues, the Board will hear evidence of pre-filing contacts that could establish collusion and bias. The Board agrees. Pre-filing contacts may be probative of prejudgment of adjudicative facts, which is an element to be considered in assessing a fundamental fairness allegation. American Bottom Conservancy (ABC) v. Village of Fairmont City, PCB 00-200, slip op. at 6 (Oct. 19, 2000). Further, the courts have indicated that fundamental fairness refers to the principles of adjudicative due process and a conflict of interest itself could be a disqualifying factor in a local siting proceeding if the bias violates standards of adjudicative due process. E & E Hauling v. PCB, 116 Ill. App. 3d 586, 596, 451 N.E.2d 555, 564 (2nd Dist. 1983), *aff'd* 107 Ill. 2d 33, 481 N.E.2d 664 (1985). The manner in which the hearing is conducted, the opportunity to be heard, whether *ex parte* contacts existed, prejudgment of adjudicative facts, and the introduction of evidence are important, but not rigid, elements in assessing fundamental fairness. Hediger v. D & L Landfill, Inc., PCB 90-163, slip op. at 5 (Dec. 20, 1990). *See* Timber Creek Homes, Inc. v. Village of Round Lake Park et.al., PCB 14-199 (Apr. 3, 2014).

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

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

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

IT IS SO ORDERED

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

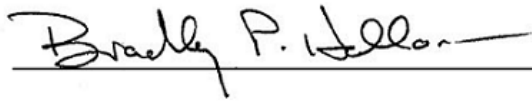
Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
60 E. Van Buren Street
Suite 630
Chicago, Illinois 60605
312.814.8917
Brad.Halloran@illinois.gov

CERTIFICATE OF SERVICE

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

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

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Illinois Pollution Control Board
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Chicago, Illinois 60605



Bradley P. Halloran
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Exhibit 4

ILLINOIS POLLUTION CONTROL BOARD

May 18, 2023

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

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

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

The West Chicago City Council (City Council) granted a Lakeshore Recycling Systems, LLC (Lakeshore) application to site a municipal solid waste transfer station at 1655 Powis Road in West Chicago, DuPage County. *See* 415 ILCS 5/40.1(b) (2020); 35 Ill. Adm. Code 101.300(b), 107.204. On March 28, 2023, Protect West Chicago (PWC) timely filed a petition asking the Board to review that February 28, 2023 decision of the City Council. On March 31, 2023, People Opposing DuPage Environmental Racism (PODER) timely filed a petition asking the Board to review the same City Council decision. The Board accepted both petitions for hearing on April 6, 2023.

Lakeshore has filed a motion to consolidate these cases. Lakeshore has also filed a motion to vacate and strike the Board order of April 6, 2023. PWC filed a motion for extension of time to respond to Lakeshore's motion to vacate and strike.

Additionally, PWC has filed a motion for leave to amend its petition. Lakeshore filed its response stating it had no objection, and West Chicago and the City Council also filed their response stating they had no objection. West Chicago and the City Council have also filed a motion to supplement the record.

In this opinion and order, the Board first reviews the factual and procedural history of this case. The Board then addresses each of the four motions ready for decision. The Board concludes by granting the motion to consolidate; granting the motion to amend petition; granting the motion to supplement the record; and denying the motion to vacate and strike Board order.

FACTUAL AND PROCEDURAL BACKGROUND

On March 28, 2023, PWC filed a petition asking the Board to review a February 28, 2023 determination of the City Council granting local siting approval for a new pollution control facility. The City Council's determination granted siting approval to the applicant, Lakeshore, for Lakeshore's proposed waste transfer station in West Chicago. The City Council's decision was based on the findings of the hearing officer for the public hearings on the proposed facility that were held by the City of West Chicago on January 3, 4, 5, 10, 12, 16 and 19, 2023.

On March 31, 2023, PODER filed a petition asking the Board to review the same City Council decision. The Board accepted both petitions for hearing on April 6, 2023. On April 12, 2023, Lakeshore filed a motion to consolidate (Mot. to Cons.) these cases.

On April 14, 2023, Lakeshore filed a motion to vacate and strike the Board order (Mot. to Vac.) of April 6, 2023. On April 14, 2023, PWC filed a motion for extension of time to respond to Lakeshore's motion to vacate and strike. The hearing officer granted PWC's motion for extension of time to respond to May 12, 2023.

Also on April 14, 2023, PWC filed a motion for leave to amend its petition (Mot. to Am.).

On April 14, 2023, Lakeshore filed a waiver of the decision deadline in PCB 23-107, and on April 17, 2023, Lakeshore filed a waiver of the decision deadline in PCB 23-109. Lakeshore waived the decision deadline in both cases to October 5, 2023.

On April 18, 2023, West Chicago filed the record on its proceedings in PCB 23-107. The Board hearing officer noted in his April 21, 2023 hearing officer order that West Chicago will await the Board's decision on the motion to consolidate before filing the record on its proceedings in PCB 23-109.

On April 20, 2023, Lakeshore filed its response stating it had no objection to PWC's motion to amend (Lakeshore Resp.). On April 21, 2023, West Chicago and the City Council filed their response stating they had no objection to PWC's motion to amend (WC Resp.).

On April 21, 2023, West Chicago and the City Council filed a motion to supplement the record (Mot. to Supp.). The Board received no response to the motion.

On April 24, 2023, PODER filed a response of no objection to PWC's motion to amend the petition.

PWC filed its response (PWC Resp.) to Lakeshore's motion to vacate on May 12, 2023. On May 17, 2023, Lakeshore filed a reply (Lake. Rply.) to PWC's response.

MOTION TO CONSOLIDATE

In support of its motion to consolidate, Lakeshore states that both cases arise out of the same Section 39.2 siting location hearing and decision, and that both petitioners participated in the Section 39.2 proceedings before West Chicago concerning Lakeshore's application for site location approval. Mot. to Cons. at 1; *see* 415 ILCS 5/39.2 (2020). Lakeshore contends that both petitioners raise substantially similar issues and that the two petitions will be "most efficiently dealt with by consolidated discovery and briefing." *Id.* at 2. Consolidation will therefore "promote judicial efficiency and economy." *Id.* Lakeshore contends that consolidation will not materially prejudice any party. *Id.*

At an April 13, 2023 status conference conducted by the Board's hearing officer, the petitioners in both cases stated that they had no objection to Lakeshore's motion to consolidate. *See* Protect West Chicago v. City of West Chicago, West Chicago City Council and Lakeshore Recycling Systems, LLC, PCB 23-107, Hearing Officer Order (Apr. 13, 2023). On April 14, 2023, Lakeshore filed a waiver of the decision deadline in PCB 23-107 to October 5, 2023. *See* Protect West Chicago v. City of West Chicago, West Chicago City Council and Lakeshore Recycling Systems, LLC, PCB 23-107, Waiver of Statutory Deadline for Decision (Apr. 14, 2023). On April 17, 2023, Lakeshore filed a waiver of the decision deadline in PCB 23-109 to October 5, 2023. *See* People Opposing DuPage Environmental Racism v. City of West Chicago and Lakeshore Recycling Systems, LLC, PCB 23-109, Waiver of Statutory Deadline for Decision (Apr. 17, 2023).

Discussion and Board Finding

The Board has previously consolidated multiple third-party permit appeals concerning a single site. *See, e.g.*, Roxana Landfill, Inc. v. Village Board of the Village of Caseyville, Illinois, Village of Caseyville, Illinois, and Caseyville Transfer Station, LLC; Village of Fairmont City, Illinois v. Village of Caseyville, Illinois Board of Trustees and Caseyville Transfer Station, LLC, PCB 15-65, 15-69 (Oct. 16, 2014); *see also*, Prairie Rivers Network and Sierra Club v. IEPA and Prairie State Generating Co., LLC; American Bottom Conservancy and Dale Wojtkowski v. IEPA and Prairie State Generating Co., LLC, PCB 06-124, 06-127 (Jan. 19, 2006). The Board believes that "consolidation is in the interest of convenient, expeditious, and complete determination" of the claims. 35 Ill. Adm. Code 101.406. The Board therefore grants Lakeshore's motion to consolidate, and consolidates these two proceedings for hearing.

MOTION TO AMEND PETITION

PWC's original petition (Pet.) alleges that Lakeshore failed to comply with pre-filing notice requirements for its proposed waste transfer station under the Environmental Protection Act (Act) (see 415 ILCS 5/39.2(b) (2020) (Comp. at 3); failed to comply with siting requirements under the Act (see 415 ILCS 5/22.14(a) (2020)) (*Id.*); and failed to establish that it met the criteria required for pollution control facility siting approval (see 415 ILCS 5/39.2 (2020)) (*Id.* at 4). PWC's original petition also alleges that the City's procedures to reach its siting determination were not fundamentally fair. *Id.* at 3.

PWC makes three changes in the amended petition (Am. Pet.). First, PWC includes a signed copy of the City Council's ordinance conditionally granting siting approval. Am. Pet. Exh. 1. Second, the amended petition adds a statement as to why PWC is a proper third-party petitioner. *Id.* at par. 14, 15. Finally, the amended complaint adds to the alleged facts to support its allegations that the siting process conducted by West Chicago and the City Council was fundamentally unfair, as well as additional evidence in support of its allegations. *Id.* at par. 18, 19, 20; *id.* at Exh. 2.

Discussion and Board Finding

The Board has previously granted motions to amend a petition for review, especially where there is no objection from the respondent. See Fox Moraine, LLC v. United City of Yorkville, City Council: Kendall County, Intervenor, PCB 07-146 (Nov. 20, 2008). In certain instances, the Board allows amended petitions to be filed (e.g., Wei Enterprises v. IEPA, PCB 04-83 (Nov. 20, 2003); Randall Industries, Inc. v. IEPA, PCB 03-129 (Sept. 18, 2003); Landfill 33 LTD. V. Effingham County Board et al., PCB 0-43 (Oct. 17, 2002); St. Clair Properties Development, Inc. v. IEPA, PCB 98-72 (Nov. 20, 1997)). However, the instances where the Board allows for amended petitions are generally instances where the initial petition lacks pertinent information required by Board rules and the Board allows the petitioner a set amount of time to correct the deficiencies. The Board has declined to accept amended petitions that fall outside this narrow exception. See XCTC Limited Partnership v. IEPA, PCB 01-46 and PCB 01-51 (consol.) (Feb. 5, 2004).

In this case, all three respondents, including the applicant, have stated that they do not object to the amended petitions. See Lakeshore Resp., WC Resp. Furthermore, a review of the amended petition indicates that, while alleging additional facts and circumstances surrounding the grounds for appeal, no new grounds for appeal are cited. Therefore, the Board will accept the amended petition. See Fox Moraine, LLC v. United City of Yorkville, City Council: Kendall County, Intervenor, PCB 07-146 (Nov. 20, 2008). The Board notes that generally the filing of the amended petition for review by the applicant in a pollution control facility siting appeal can recommence the decision period in this matter. See *id.*; see also 35 Ill. Adm. Code 107.504 ("the Board will issue its decision within 120 days after the proper filing of a petition for review"). However, the decision date has already been waived beyond the decision period to October 5, 2023, and that decision deadline will remain unless waived again by the applicant.

The Board grants PWC's unopposed motion for leave to amend the petition, and finds that the amended petition meets the applicable content requirements of the Board's procedural rules and accepts the petition. *See* 35 Ill. Adm. Code 103.204(c), 107.208.

MOTION TO SUPPLEMENT RECORD

West Chicago filed a motion to supplement the record by adding two exhibits that it states were inadvertently omitted from the record on proceedings filed with the Board on April 18, 2023. Mot. to Supp. at 2; *id.* Exh. A. West Chicago asserts that the additional exhibits intend to provide a complete final record. *Id.* at 2; *see* 35 Ill. Adm. Code 107.304. West Chicago further asserts that no party will be prejudiced by the granting of the motion. The Board received no response to the motion. *See* 35 Ill. Adm. Code 101.500(d).

Board Finding

The Board grants West Chicago's unopposed motion to supplement the record and incorporates Exhibit A of the motion to supplement into the record.

MOTION TO VACATE AND STRIKE

Lakeshore filed a motion to vacate and strike the Board's order of April 6, 2023, on the grounds that, on information and belief, PWC is not a legitimate citizens' group. Mot. to Vac. at 3. Lakeshore alleges that PWC is instead a "shell or front" for a competing waste collection entity and thus lacks standing to bring this petition and is not exempt from the cost of preparing and certifying the record. *Id.*

PWC responds with three arguments in its defense: (1) PWC is a citizen's group as defined by the Illinois legislature; (2) Lakeshore's unsupported motion to vacate is procedurally defective; and (3) Lakeshore's motion and arguments attacking the legitimacy of PWC as a citizens group are waived. PWC Resp. at 2-7.

Lakeshore also filed a reply to PWC's response without seeking leave to file the reply.

Statutory and Legislative Background

In pollution control facility siting appeals, any person who has participated in the public hearing conducted by the unit of local government and is so located as to be affected by the facility may file a petition for review of the decision to grant siting. 35 Ill. Adm. Code 107.200(b). In the event the petitioner is a citizens' group that participated in the siting proceeding and is so located as to be affected by the proposed facility, such petitioner shall be exempt from paying the costs of preparing and certifying the record. 415 ILCS 5/39.2(n) (2020).

The Board has previously looked to Senator Doris Karpel's statements regarding House Bill 98 when determining whether to exempt citizens' groups from the fee payment for preparing and certifying the record in pollution control facility siting appeals brought by private citizens against industry. *See* Alice Zeman, Tony Berlin, Richard Zilka, Michael Turlek, and Kevin

Greene, v. Village of Summit, and West Suburban Recycling and Energy Center, Inc. PCB 92-174, cons. PCB 92-177 (Dec. 17, 1992). Prior to the vote on the bill, Senator Karpel stated in pertinent part:

And if you will bear with me, I have told the Pollution Control Board that I would read into the record the meaning of “citizens groups.” It means a group of individual citizens that have joined together to participate in a regional pollution control facility siting hearing. This group may be a voluntary association that is formed on an ad hoc basis that may or may not have a name or bylaws. It also can be a group that has incorporated.

Id. (Quoting State of Illinois 86th General Assembly Regular Session Senate Transcript, 52nd legislative day, June 22, 1989.)

The Board’s rules require all motions and responses to state the grounds upon which the motion is made and to concisely state the position or relief sought. 35 Ill. Adm. Code 101.504. Facts asserted that are not part of the record in the proceeding must be supported by oath, affidavit, or certification in accordance with Section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109 (2020)). *Id.*; see also, Illinois Environmental Protection Agency v. Gary J. and James R. Szczeblewski, AC 09-56 (Apr. 15 2010). The Board is required to make its decision based on the record. 415 ILCS 5/40.1 (2020). New facts unsupported in the record are not considered in the Board’s decision. See Illinois Environmental Protection Agency v. Gary J. and James R. Szczeblewski, AC 09-56 (Apr. 15, 2010).

PWC’s Legitimacy as a Citizens’ Group

PWC supports its argument that it is a legitimate citizens’ group with facts and evidence regarding West Chicago citizen involvement. PWC attached to its response an affidavit of PWC member Nick Dzierzanowski (PWC Resp. Exh. 1). In the affidavit, Mr. Dzierzanowski states that he is a resident of West Chicago. PWC Resp. Exh. 1 at 1. He attests to his involvement with PWC since at least 2020, describes his opposition to the waste transfer station, and mentions another PWC member by name, Ms. Maria Correra. *Id.* at 2. Exhibits A, B and C to Mr. Dzierzanowski’s affidavit are copies of CBS Chicago and Daily Herald articles where Mr. Dzierzanowski described his opposition to the transfer station and involvement with PWC. *Id.*, Exh. A, B and C. He attests to his involvement as a member of PWC in the public hearings that were held by the City on the waste transfer station siting. *Id.* at 3-4. Mr. Dzierzanowski affirms that PWC was represented at these hearings by attorneys Ricardo Meza and Phil Luetkehans. *Id.* at 3. He also states that he has not been and will not be paid for opposing the transfer station by anyone, including the competitor waste collection entity. *Id.* at 4.

Additionally, PWC filed a motion for leave to file an amended petition in this matter, along with the amended petition. In the amended petition, PWC states that it is a proper petitioner with standing to file the petition. Am. Pet. at 2. Lakeshore, West Chicago and the City Council all filed statements of no objection to PWC’s motion to amend. The Board accepts the amended petition in this order, *supra*.

By contrast, Lakeshore's motion to vacate did not include any additional facts or evidence in support of its allegations that PWC is not a legitimate citizen's group. Lakeshore also did not point to anything in the record to support its motion.

Procedural Deficiencies in Lakeshore's Motion

PWC's response next argues that Lakeshore's motion is procedurally deficient because it is not supported by citations to the record or by oath, affidavit or certification. PWC Resp. at 5. PWC notes that Lakeshore's motion asserts facts solely on information and belief without required citation to the record in the proceeding, or so supporting oath, affidavit or certification. *Id.* PWC argues that because the allegations in the motion are conclusory and lack the required support, the motion should be summarily denied. *Id.* at 6.

Waiver of Challenge to PWC's Legitimacy as a Citizens' Group

Finally, PWC's response argues that Lakeshore waived its ability to challenge the legitimacy of PWC as a citizens' group because Lakeshore failed to raise the issue of PWC's alleged involvement with the competitor waste collection entity at the January 2023 public siting hearings held by West Chicago. PWC Resp. at 6. PWC notes that Lakeshore has also failed to present new post-siting hearing evidence in support of its allegations. *Id.* PWC cites appellate caselaw to support its position that a claim of bias or prejudice is forfeited when not raised promptly in the original proceeding. *See Fox Moraine, LLC v. United City of Yorkville*, 2011 IL App. (2d) 100017 par. 60; *Waste Management of Ill., Inc. v. Pollution Control Bd.*, 175 Ill. App. 3d 1023, 1039-40 (1988) (holding that the PCB correctly noted, that when Waste Management made no objection to an attorney's appearance at the original proceeding, Waste Management's challenge to the appearance at the PCB had been waived).

Discussion and Board Finding

The Board denies Lakeshore's motion to vacate and strike. In its motion, Lakeshore did not present any new facts or evidence to support its allegations that PWC is not a legitimate citizens' group. Nor did Lakeshore cite to facts or evidence in the record before the Board to support these allegations. Lakeshore's motion also did not include a statement that the Board's April 6, 2023 order was procedurally deficient. By contrast, PWC has provided evidence in support of its defense that it is a legitimate citizens' group with standing to bring this petition. With no new evidence before the Board that: (1) PWC is not a legitimate citizens' group, or (2) the Board's order was procedurally deficient, the Board finds it has no reason to vacate and strike its April 6, 2023 order, and denies Lakeshore's motion.

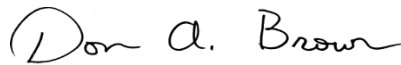
The Board notes that Lakeshore filed a reply in this matter on May 17, 2023. *See Lake Rply.* However, Lakeshore did not include a motion for permission to file its reply as required by the Board's rules. 35 Ill. Adm. Code 101.500(e). The Board therefore declines to accept Lakeshore's reply.

CONCLUSION

The Board grants Lakeshore's motion to consolidate these actions, and directs the Clerk to update the caption in this matter. The Board also grants PWC's motion for leave to amend its petition and accepts the amended petition for hearing. The Board grants West Chicago and the City Council's motion to supplement the record. The Board denies Lakeshore's motion to vacate and strike the Board order of April 6, 2023. The parties are directed to proceed to hearing as set by the hearing officer.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 18, 2023, by a vote of 3-0.

A handwritten signature in cursive script that reads "Don A. Brown".

Don A. Brown, Clerk
Illinois Pollution Control Board