

**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 July 26, 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: **Protect West Chicago's Supplemental Response to Lakeshore Recycling Systems, LLC's First Set of Interrogatories numbered 6,7, 18 and 19**, copies of which are attached and served upon you.

Dated: July 26, 2023

Respectfully Submitted,



\_\_\_\_\_  
Ricardo Meza  
Attorney for Protect West Chicago

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**CERTIFICATE OF SERVICE**

I, Ricardo Meza, an attorney, certify that I have served the attached: **Protect West Chicago's Supplemental Response to Lakeshore Recycling Systems, LLC's First Set of Interrogatories numbered 6,7, 18 and 19**, on the below-named parties (Service List) by delivering the document to them via electronic mail on July 26, 2023 and via the PCB's Clerk's Office electronic filing system.



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Ricardo Meza

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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PROTECT WEST CHICAGO,	)	
	)	
Petitioner,	)	
	)	PCB No: <u>2023-107</u>
v.	)	(Pollution Control Facility Siting Appeal)
	)	
CITY OF WEST CHICAGO, WEST	)	
CHICAGO CITY COUNCIL, and	)	
LAKESHORE RECYCLING SYSTEMS,	)	
LLC,	)	
Respondents	)	
_____	)	
PEOPLE OPPOSING DUPAGE	)	
ENVIRONMENTAL RACISM,	)	
	)	
Petitioner,	)	
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v.	)	PCB No: <u>2023-109</u>
	)	(Third-Party Pollution Control Facility
CITY OF WEST CHICAGO and	)	Siting Appeal)
LAKESHORE RECYCLING SYSTEMS,	)	
	)	
Respondents.	)	

**PROTECT WEST CHICAGO’S SUPPLEMENTAL RESPONSE TO LAKESHORE’S FIRST INTERROGATORIES NUMBERED 6, 7, 18 AND 19**

NOW COMES the Petitioner, Protect West Chicago, (“PWC”), by and through its attorney, Meza Law, and submits its Supplemental Responses to Lakeshore Recycling Systems, LLC’s (“Lakeshore”) First Set of Interrogatories numbered 6, 7, 18 and 19 and states as follows:

**GENERAL OBJECTIONS**

PWC incorporates and includes all prior general objections set forth in Response to Lakeshore’s First Set of Interrogatories, as if fully set forth herein and specifically, general objections numbered 1 through 10 as set forth in the filing of July 14, 2023.

**INTERROGATORIES**

**INTERROGATORY NO. 6:**

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

**PWC SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 6:**

**Objection, premature, is overly broad and vague, and invades the Attorney Work Product Privilege. In addition, it calls for legal conclusions and involves opinions or conclusions that relate to ultimate facts involved in this case, and/or the application of law to these ultimate facts and therefore answers should be deferred until discover has been completed.**

**Without waiving any objections set forth above and as alleged in the Amended Petition and notwithstanding: 1) the fact that discovery is ongoing; 2) the fact that depositions are scheduled for July 31, 2023; 3) the fact that the City of West Chicago has not produced the February 27, 2023 closed session meeting audio record; 4) the outstanding Illinois Attorney General Public Access Counselor request alleging that the City of West Chicago's February 27, 2023 closed meeting violated the Illinois Open Meetings Act, it is Petitioner's contention that *ex parte* and/or otherwise alleged improper communications took place concerning the Siting Application.**

**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.

**PWC SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 7:**

- **Objection, premature, is overly broad and vague, and invades the Attorney Work Product Privilege. In addition, it calls for legal conclusions and involves opinions or conclusions that relate to ultimate facts involved in this case, and/or the application of law to these ultimate facts and therefore answers should be deferred until discover has been completed.**
- **Without waiving any objections set forth above and as alleged in the Amended Petition and notwithstanding: 1) the fact that discovery is ongoing; 2) the fact that depositions are scheduled for July 31, 2023; 3) the fact that the City of West Chicago**

has not produced the February 27, 2023 closed session meeting audio record; 4) the outstanding Illinois Attorney General Public Access Counselor request alleging that the City of West Chicago's February 27, 2023 closed meeting violated the Illinois Open Meetings Act, it is Petitioner's contention that *ex parte* and/or otherwise alleged improper communications took place concerning the Siting Application, below is some of the evidence Petitioner has been able to uncover supporting this contention:

- ***First***, as set forth in response to Interrogatory 3 and as alleged in the Amended Petition, it is the contention of PWC that the entire local siting review process, and in addition, going back at least to April of 2019 (when the Host Agreement was entered into) which include various actions, various conduct and various *ex parte* communications engaged in by the City of West Chicago Mayor Ruben Pineda and other City officials, which demonstrate an inherent bias in favor of Lakeshore that occurred both prior to the filing of the Application and thereafter, the scheduling of the actual hearing dates, the decisions and rulings rendered at the Public Hearing, and the procedures, (individually and collectively) implemented in arriving at the City's decision to grant siting approval were fundamentally unfair and confirm that "a disinterested observer might conclude that the local siting authority adjudged both the facts and the law before hearing the case."
  
- ***Second***, it is further a contention of PWC that there was a pre-adjudication in favor of approving Lakeshore's Application in multiple ways, some of which are not currently totally known, and some of which include and involve improper communications which communications are inextricably intertwined with other facts, documents and/or other evidence that took place concerning the Siting Application, rendering the entire local siting review process fundamentally unfair. Specifically, and without limitation, the entire siting process was fundamentally unfair, and which included improper communications in at least one or more of the following ways:
  - There were no steps taken to initially ensure reasonable access or availability of hearing proceedings in Spanish, despite the majority-minority Latino population in West Chicago. Further, although accommodations could have been made in reasonable fashion to ensure meaningful access to and availability of key portions of the siting proceedings as a whole (such as the West Chicago Siting Ordinance, the Pre-Filing Notice of Intent to File Siting Application, various Orders entered by the Hearing Officer prior to commencement of the Public Hearings concerning the right to participate and offer public comment), no such accommodations were made.
  
  - There were no steps taken to ensure reasonable access or availability of hearing proceedings in Spanish even after both West Chicago officials and the Hearing Officer were informed that many of West Chicago's residents' primary language was Spanish, and even though a great majority of information was already accessible in either English or Spanish on the West Chicago website already.

- **The actions of the West Chicago officials seeking to conceal critical information leveled by the City's own consultant (Aptim) involving the inability of Lakeshore to meet or satisfy multiple siting criteria which related directly to and involved Lakeshore's Pre-Filing Application Review process, which the City of West Chicago knew or should have known were subject to lawful disclosure under the Freedom of Information Act (FOIA) which led to the filing of a lawsuit resulting in a court order requiring disclosure of public documents and payment of attorneys' fees.**
- **The actions of West Chicago officials as revealed in multiple documents, emails, and draft siting applications obtained under the FOIA litigation which documents reveal biased and preferential communications by and between various West Chicago officials and Applicant Lakeshore prior to the submission of Lakeshore's Application, which attempted to blunt and significantly minimize serious concerns which had been raised by the City's own consultant (Aptim), and shield them from public scrutiny, and which concerns the City of West Chicago knew would prevent Lakeshore from meeting or satisfying multiple siting criteria;**
- **The action(s) of West Chicago officials prior to submission of Lakeshore's Application, including action of Mayor Ruben Pineda, discovered as a result of the FOIA litigation, which revealed a pre-adjudication bias in favor of Lakeshore's Application even before any application was submitted, as reflected by a November 2020 text message Mayor Pineda sent to a local member of the clergy (Father Josh) with a large Latino congregation who had expressed opposition to the proposed facility on social media, wherein Mayor Pineda wrote: "We need to talk next week. *You're pushing propaganda.* Please get all information prior to posting on social media. Thanks in advance." The intent of Pineda's conduct was to curb and inhibit negative comment on Lakeshore's proposal.**
- **Actions of West Chicago official's summary rejection of their own independent review consultants' (Aptim) (expert) opinion that numerous criterion were not met, including criterion relating to the health and safety of the community and the proximity of the proposed facility to a local airport.**
- **Actions of West Chicago officials, and in particular Tom Dabareiner, in submitting multiple letters in support of the Lakeshore's Application on West Chicago letterhead, including a final letter dated August 24, 2022 which had been redlined and edited by Lakeshore to make the letter more favorable to Lakeshore, all at the express request (and direction) of Lakeshore's expert John Hock, despite the fact that West Chicago Ordinance Section 14-93 states that the applicant remains solely responsible to demonstrate that the location of approval criteria are all met.**
- **Upon information and belief, the actions and/or statements made by one or more third-parties in closed session reflecting or revealing that City Council members' deliberation may not have been based on Hearing Evidence, but, rather, on**

attorney recommendations revealed by at least one West Chicago official, namely Alderman Lori Chassee, who stated in open session on February 28, 2023 that the decision to approve was based on and prompted by comments from two attorneys for the City that a vote against Applicant may place the City and City officials at risk of being sued.

- ***Third***, without waiving any objections set forth above and as alleged in the Amended Petition, as demonstrated by the circumstances surrounding 1-3 below, it is further the contention of PWC that the actions of West Chicago officials further reflect the decision to approve Lakeshore's Application may have been made on February 27, 2023 (day before the official vote of February 28, 2023) as West Chicago officials:
  1. Did not receive the Hearing Officer's Recommendations until Friday, February 24, 2023;
  2. The City Council met just three days after receiving Hearing Officer's recommendations and in closed session on Monday, February 27, 2023; and
  3. That the Tuesday, February 28, 2023 open-meeting lasted no more than about five-minutes before the City Council voted and approved a 13-page single-spaced (previously-prepared) Ordinance, together with a 20-page Recommendation by the Hearing Officer.
- ***Fourth***, PWC further asserts that the siting process and procedures utilized by the City Council were fundamentally unfair and that *ex parte* and/or otherwise alleged improper communications took place concerning the Siting Application because on February 27, 2023, at 7:03 p.m., rather than deliberate as to whether Lakeshore's Application did or did not comply with the Illinois Environmental Protection Act in public and in an open meeting, the City proceeded to closed session. As set forth in the subsequent closed session meeting minutes, the City claimed that it was authorized to proceed to closed session pursuant to 5 ILCS 120/2 (C)(4) of the Open Meetings Act. The City remained in closed session on February 27, 2023 from 7:03 p.m. until 8:40 p.m. Then, on February 28, 2023, at 6:00 p.m., the City reconvened in an open meeting relating to Lakeshore's Application. This open meeting only lasted a total of five (5) minutes. At this open meeting and as reflected in the Closed Session meeting minutes, and other than attendance and roll call, only three Alderman spoke. Specifically, the open meeting minutes attribute the following information to the three Alderman:
  - Alderman James E. Beifuss stated that the applicant has not met Criteria #1, 2 or 8.
  - Alderman Matthew Garling expressed that he feels that Criteria #1 and 3 have not been met.

- Alderman Lori Chassee conveyed that she believes the applicant has met all of the Siting Criteria based upon what two attorneys for the City told her.

After its five-minute February 28, 2023 open meeting, the City voted and passed Ordinance 23-O-0006. However, upon information and belief, on February 28, 2023, Alderman Lori Chassee made public statements indicating that closed session City Council deliberations were not based solely on “evidence or testimony presented in open hearing,” but, rather, on attorney comments, statements and/or recommendations. Specifically, on information and belief, Alderman Lori Chassee stated in the February 28, 2023 open meeting that the decision to approve Lakeshore’s Siting Application was based on and prompted by comments from two attorneys for the City and that a vote against Applicant Lakeshore may place the City and/or City officials at risk of being sued.

Despite the above, the February 28, 2023 Ordinance that the City approved at 6:06 p.m., namely Ordinance 23-O-0006, was drafted by Special Counsel Dennis Walsh, which he then provided to the City Council sometime prior to the February 28, 2023, 6:00 p.m. City Council Meeting. Ordinance 23-O-0006 was then approved as drafted at about 6:05 p.m. by the West Chicago City Council. Thus, and in light of the fact that Special Counsel Walsh had drafted Ordinance 23-O-0006 prior to the February 28, 2023 6:00 p.m. City Council Meeting, the written ordinance did NOT set forth the determinative reasoning as to:

- Why City Council Alderman James E. Beifuss did not believe the applicant had not met Criteria #1, 2 or 8.
- Why Alderman Matthew Garling did not believe the Applicant had not met Criteria #1 and 3.
- Why Alderman Lori Chassee believed that voting against Applicant Lakeshore would place West Chicago at risk and what information she had received from attorneys in closed session, which had not been presented in open hearing, that made her believe she was required to approve the application.

The above actions led PWC on May 5, 2023 to serve discovery upon the City seeking to learn the names and identities of the persons who attended the February 27, 2023, City Council closed session meeting as well as a copy of the closed session meeting tape. On May 11, 2023, the City objected to the production of the closed session recording on two grounds:

- The City cited to 5 ILCS 120/2.06 (e) which states: “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.



- The City alleged that the discussions held in closed session are protected from disclosure by the attorney-client privilege.

On June 12, 2023, the Illinois Pollution Control denied PWC's request for the closed session recording and stated 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))."

On June 21, 2023, after being required to respond, the City submitted its responses to PWC's interrogatories. That day, PWC learned for the first time that Hearing Officer Derke Price was present during the entire February 27, 2023, closed session meeting. Mr. Price is not an attorney for the City and as noted above, was retained to serve as a neutral hearing officer but as alleged, he was not neutral. Moreover, Ordinance 23-O-0006 did not provide any indication as to what information Mr. Price told the City council in response to questions they had relating to Lakeshore's Application and/or anything relating how a vote against Applicant Lakeshore may place the City and/or City officials at risk of being sued.

On July 7, 2023, in light of the Hearing Officer's June 12, 2023 Ruling as well as the City of West Chicago's June 21, 2023 Response to Interrogatories confirming that Derke Price was in attendance at the February 27, 2023 closed session meeting of the City Council, PWC sought a determination from the Illinois Attorney General Public Access Counselor, as copy of which is attached as Exhibit 1 to the initial responses to these interrogatories in which Petition PWC seeks a copy of the closed session recording. In its request, PWC alleged and asserted that the proceedings that occurred in closed session on February 27, 2023, were and are in violation of the Open Meetings Act for at least one or more of the following reasons:

- 1) Because of the attendance at the closed session of Hearing Officer Derke Price, a third-party attorney who does not represent the City, the attorney-client privilege *does not apply*.
- 2) Because the February 28, 2023 open meeting statements Alderman Chasse made, in which she stated the City's approval was based on the comments of *two* attorneys, one of whom was likely Mr. Price, reveal that City Council members' deliberation were not based on Hearing "Evidence or testimony presented in open hearing," but, rather, on attorney recommendations or comments that Hearing Officer Price or another attorney made in favor of Lakeshore's Siting Application, thus Open Meetings Act exemption 5 ILCS 120/2 (C) (4) *does not apply*.
- 3) Because the February 28, 2023 open meeting Ordinance that approved Lakeshore's Siting Application (Ordinance 23-O-0006) makes no reference to why City Council Alderman James E. Beifuss did not believe the applicant had not met Criteria #1, 2 or 8, thus the City has not "prepare[d] and ma[de] available for public inspection a written decision setting forth

its determinative reasoning,” and thus the Open Meetings Act exemption 5 ILCS 120/2 (C) (4) *does not apply*.

- 4) Because the February 28, 2023 open meeting Ordinance that approved Lakeshore’s Siting Application (Ordinance 23-O-0006) makes no reference to why Alderman Matthew Garling did not believe the Applicant had not met Criteria #1 and 3, the City has not “prepare[d] and ma[de] available for public inspection a written decision setting forth its determinative reasoning,” and thus the Open Meetings Act exemption 5 ILCS 120/2 (C) (4) *does not apply*.
- 5) Because the February 28, 2023 open meeting Ordinance that approved Lakeshore’s Siting Application (Ordinance 23-O-0006) makes no reference to any information that any attorney provided the City Council during their deliberations and thus the City has not “prepare[d] and ma[de] available for public inspection a written decision setting forth its determinative reasoning,” and thus the Open Meetings Act exemption 5 ILCS 120/2 (C) (4) *does not apply*.

In addition, PWC further alleges and asserts that the Open Meetings Violations, as well as the actions leading up to and including the proceedings that occurred in closed session on February 27, 2023, and the actions that occurred after the closed session meeting further support the claim that the proceedings relating to the approval of Lakeshore’s Application were fundamentally unfair.

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.

**PWC SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 18:**

- **Objection, premature.**

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.

**PWC SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 19:**

- **Objection, premature.**
- **Without waiving any objections set forth above and as alleged in the Amended Petition and notwithstanding: 1) the fact that discovery is ongoing; 2) the fact that depositions are scheduled for July 31, 2023; 3) the fact that the City of West Chicago**

has not produced the February 27, 2023 closed session meeting audio record; 4) the outstanding Illinois Attorney General Public Access Counselor request alleging that the City of West Chicago's February 27, 2023 closed meeting violated the Illinois Open Meetings Act, below are a list of potential witnesses that Petitioner may call at a hearing:

- |                        |                            |
|------------------------|----------------------------|
| 1) Tom Dabareiner      | 11) Melissa Birch-Ferguson |
| 2) Ruben Pineda        | 12) Sandy Dimas            |
| 3) Lori Chassee        | 13) Christopher Swiatek    |
| 4) John Hock           | 14) Jeanne Short           |
| 5) Devin Moose         | 15) Rebecca Stout          |
| 6) Michael Guttman     | 16) Joseph Morano          |
| 7) Jayme Sheahan       | 17) James Beifuss          |
| 8) Heather Brown       | 18) John Jakabcsin         |
| 9) Alton Hallett       | 19) Matthew Garling        |
| 10) Christine Dettmann |                            |

For the Answers:

  
\_\_\_\_\_  
Nicholas Dzierzanowski

For the Objections:

  
\_\_\_\_\_  
Ricardo Meza

Dated: July 26, 2023

Respectfully Submitted,



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