

**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 September 19, 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 Motion in Limine**, copies of which are attached and served upon you.

Dated: September 19, 2023

Respectfully Submitted,



\_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I, Ricardo Meza, an attorney, certify that I have served the attached: **Protect West Chicago's Motion in Limine**, on the below-named parties (Service List) by delivering the document to them via electronic mail on September 19, 2023 and via the PCB's Clerk's Office electronic filing system.



\_\_\_\_\_  
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ENVIRONMENTAL RACISM,	)	
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	)	(Third-Party Pollution Control Facility
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**PROTECT WEST CHICAGO’S MOTION IN LIMINE**

NOW COMES the Petitioner, Protect West Chicago, (“PWC”), by and through its attorneys, Meza Law, and for its *Motion in Limine*,<sup>1</sup> seeks the admission of Exhibits PWC-808 and PWC-812, and, in support thereof states as follows:

**I. INTRODUCTION**

The Illinois Pollution Control Board (“IPCB”) should admit Exhibits PWC-808 and PWC-812.<sup>2</sup> Both exhibits are public records,<sup>3</sup> thus bearing their own indicia of authenticity and

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<sup>1</sup>Objections to exhibits are due September 21, 2023. However, in light of the upcoming hearing and out of an abundance of caution, PWC is filing this motion at this time.

<sup>2</sup> An index of exhibits that are referenced in this Motion precedes the exhibits attached to this Motion.

<sup>3</sup>PWC Exhibit 808 is available on the Moline’s website at: <https://www.moline.il.us/1779/Lakeshore-Recycling-System-proposed-tran>. Exhibit PWC-812 is available on the website of Ancel Glink at: <https://ancelglink.com/Attorney>.

reliability, and both are relevant to the proceedings now before the IPCB. Exhibit PWC-808 is the Report and Findings of Fact and Conclusions of Law issued by Dennis Walsh who served as the City of Moline's independent hearing officer, in which he recommended approval of Lakeshore Recycling Systems LLC's ("Lakeshore") City of Moline Application for a waste transfer station. Mr. Walsh made the substantive recommendation while also serving as Special Counsel for West Chicago in regards to Lakeshore's Application for a waste transfer station in West Chicago.

Exhibit PWC-812 is a webpage from the law firm Ancel Glink's "People" page. This exhibit identifies Ancel Glink equity members, two of which are Derke Price and David Silverman. Ancel Glink, through Derke Price, served as West Chicago's independent hearing officer in which he recommended approval of Lakeshore's West Chicago waste transfer station. Ancel Glink, through Mr. Silverman, also served as corporate counsel for the City of Moline in regard to Lakeshore's Application for a waste transfer station in Moline. **See Exhibit PWC-808.** These exhibits, along with other facts (*including that West Chicago's hired subject matter expert, Aptim, also served as Lakeshore's subject matter expert for Lakeshore's Application for a waste transfer station in the City of Moline – at the same time,*) are relevant, and support PWC's Amended Petition that there exists (or existed) an inherent bias in favor of Lakeshore and support PWC's claim of lack of fundamental fairness. Thus, the IPCB should allow admission of these exhibits in order to prevent Lakeshore from making a mockery of the entire process.

## **II. FACTUAL BACKGROUND**

### **a. West Chicago's history of Opposing A Second Waste Transfer Station for valid reasons which have not changed since the initial application in 2003: 2003 Resolution and Proposed Findings of Fact and Conclusions of Law**

On August 7, 2003, the City of West Chicago passed a resolution setting forth various reasons it opposed a second waste transfer station within blocks of the facility which is the subject of the Lakeshore Application, noting at the time:



- Powis Road north of Illinois Route 64 [was][not constructed in a manner to accommodate the type and volume of truck traffic being proposed;
- Cornerstone Lakes, one of West Chicago's newest subdivisions containing 730 plus homes housing over 2,500 residents, is located less than 3,800 feet from the proposed transfer station;
- children and families [living in the area would] [] be most impacted by the siting of such a facility;
- the vacant land immediately to the west [] was incompatible [] with the proposed transfer station;
- children and families living throughout the City use Powis Road to participate in and attend sporting events at this park and will be impacted by the truck traffic and environmental byproducts of such a facility;
- granting of siting approval violates the terms of [West Chicago's Plan] by placing two transfer stations within the same community's planning area;
- granting of siting approval for the proposed transfer station will have many serious and adverse consequences on the residents of the City of West Chicago;
- the proposed transfer station will result in additional permanent, offensive odor permeating the area surrounding the proposed transfer station, including an elementary school, as well as all areas downwind of the proposed site; and,
- the proposed transfer station will increase the likelihood that insects, rodents, and other vermin will be attracted to the site and adjoining properties, beyond the risks now associated with the DuKane Transfer Station. **See Exhibit M1.**

In 2003, however, West Chicago not only passed a formal Resolution opposing a second waste transfer station, it also retained independent counsel to actively represent the city in its opposition. On their behalf, counsel for West Chicago submitted Proposed Findings of Fact and Conclusions of Law setting forth factual and legal reasons for opposing the second waste transfer station (an obvious marked departure from the current series of events here concerning a very, very similar transfer station proposal within blocks of each other). **See Exhibit PWC-M2.** In West Chicago's 2003 Proposed Findings of Fact and Conclusions of Law, among other reasons, West Chicago factually opposed the second waste transfer station because the "Hispanic population of West Chicago [was][ 48.6 percent of the total, while it [was] [] only 9.96 percent of the service area"

and that, as a matter of law, West Chicago argued that the proposed facility would thus “*burden Hispanic Americans.*” See Exhibit PWC-M2. (Emphasis Added). Today, the Hispanic population of West Chicago is in excess of 50%.<sup>4</sup> See Exhibit PWC-702.

**b. West Chicago and Lakeshore’s Host Agreement**

On April 1 2019, the City of West Chicago (“West Chicago”) and Lakeshore entered into a Host Agreement. See Exhibit PWC-6. As set forth in the 2019 Host Agreement, Lakeshore informed West Chicago of its plan to file a request for site location approval for the construction and operation of a new waste transfer facility in West Chicago. Id.

In 2019, at the time West Chicago entered into the Host Agreement with Lakeshore vis-à-vis Lakeshore’s imminent Application for a waste transfer station, and as noted above, West Chicago had, in the past, opposed the construction and operation of a pollution control facility that would have been adjacent to West Chicago city limits and would have been located on the same street (Powis Street) that Lakeshore sought to construct its new waste transfer station. In fact, the prior waste transfer station would have been located about 1.1 miles just north of Lakeshore’s proposed waste transfer station, and unlike the previously proposed waste transfer station, Lakeshore’s facility would be located within the city limits of West Chicago.<sup>5</sup>

**c. West Chicago Retains Special Counsel Dennis Walsh and Subject Matter Expert Consultant Aptim to Provide In-depth Substantive Assistance with the Imminent Lakeshore Application**

In light of West Chicago’s April 2019 decision to enter into a Host Agreement with Lakeshore, West Chicago hired Special Counsel Dennis Walsh to serve as counsel for them vis-à-

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<sup>4</sup> Thus, the burden on Hispanics is even greater today.

<sup>5</sup> Lakeshore’s proposed West Chicago waste transfer station is to be located at 1655 Powis Road. The prior waste transfer station would have been located at 3N555 Powis Road. Exhibit PWC-M1. According to Mapquest the two locations are about 1.1 miles apart but both are located on the Powis street. <https://www.mapquest.com/directions/list/1/from/us/illinois/west-chicago/60185/3n551-powis-rd-41.9243,-88.23721/to/us/illinois/west-chicago/60185-1668/1655-powis-rd-41.91124,-88.23565>.

vis Lakeshore's imminent application for a waste transfer station.<sup>6</sup> Then, on May 6, 2019, slightly over a month after executing the Host Agreement with Lakeshore, West Chicago retained the services of subject matter experts, Aptim Environmental and Infrastructure LLC ("Aptim"), to assist the city. **See Exhibit PWC-7.** The agreement between West Chicago and Aptim set forth the nature of the services Aptim was to provide to West Chicago. Specifically, Aptim, as a subject matter expert, was hired to help West Chicago determine whether Lakeshore's Application for a waste transfer station met all of the criteria set forth in the Illinois Environmental Protection Act, 415 ILCS 5/39.2. In other words, the contract between the parties made clear that Aptim was to represent the interests of West Chicago and West Chicago intended that decision would rely upon whether Aptim believed that Lakeshore had met all the necessary criteria.

**d. FOIA Litigation Regarding Lakeshore's Application For a Waste Transfer Station and Production of Documents West Chicago Attempted to Conceal**

On January 13, 2021, an interested citizen named Olga Rivera issued a Freedom of Information Act request to the City of West Chicago pursuant to 5 ILCS 140 ("FOIA"). Ms. Rivera's FOIA request sought documents relating to Lakeshore's proposed waste transfer station and included a request for communications between city officials and representatives of Lakeshore. **See Exhibit 28.** Ms. Rivera then submitted a second condensed FOIA request on February 10, 2021, limiting the scope of her initial request to a specific two-year time period. **Id.** Once again, however, West Chicago officials refused to fully comply with Ms. Rivera's request.

On May 3, 2021, because of West Chicago's refusal to fully comply with the Illinois Freedom of Information Act, Ms. Rivera sued West Chicago in DuPage Circuit Court. As a result of the lawsuit, and at the direction of the court, West Chicago produced thousands and thousands of pages of documents relating to Lakeshore's Application for a waste transfer station in West

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<sup>6</sup> PWC is unaware of the exact date West Chicago hired Special Counsel Dennis Walsh.

Chicago. The documents included email communications between West Chicago officials and Lakeshore, as well as between Lakeshore and Aptim and other third parties, such as counsel for Lakeshore and Aptim regarding factors Lakeshore was required to meet in order to comply with the requirements under the Illinois Environmental Protection Act, such as the 1,000-foot setback and criteria (i) referred to as the “needs” criterion. **See Exhibit PWC-12**

**e. FOIA Documents Reveal Lakeshore’s Contacts With Aptim**

The FOIA documents West Chicago produced revealed that less than one month after Aptim was retained by West Chicago as its expert (which occurred on May 6, 2019) Lakeshore’s West Chicago waste transfer station representative named KJ Loerop, communicated directly with Aptim. At the time, there is no dispute that Lakeshore was aware of Aptim’s role in regard to Lakeshore’s West Chicago application as evidenced by an email that was produced, wherein Mr. Loerop wrote the following:

This is the consultant that we are contemplating using to add Wildlife Management for the Airport. Have you heard of this company? Is there anyone you would recommend? ***Can your firm manage the Wildlife Management Plan that is agreed upon once the site becomes operational.*** **See Exhibit PWC-8** (emphasis and underlining added).

It is unclear how many additional communications Lakeshore had with Aptim regarding the Wildlife Management Plan for West Chicago; however, what is now clear, is that Lakeshore did hire Aptim to serve as their (Lakeshore’s) subject matter expert for Lakeshore’s Application for a waste transfer station in Moline. In fact, Exhibit PWC-808, which West Chicago Special Counsel Dennis Walsh drafted recommending approval of Lakeshore’s Moline waste transfer station, discusses the testimony of Aptim Experts Phillip Kowalski and Devin Moose, who both testified at the Moline public hearings. Devin Moose was one of Aptim’s experts for West Chicago.

As set forth below, sometime in 2020, Special Counsel Dennis Walsh became aware of Aptim's relations with Lakeshore and sought to take steps on behalf of West Chicago regarding their relationship. An email obtained from the FOIA litigation reveals the steps Mr. Walsh took.

**f. FOIA Documents Reveal that Special Counsel Dennis Walsh Learned of (and was Concerned About) Lakeshore and Aptim's On-Going Relationship**

As noted above, sometime in 2020, Special Counsel Walsh became aware of the relationship between Lakeshore and Aptim. Thus, in light of Aptim's contractual relationship with West Chicago vis-à-vis Lakeshore's Application for a waste transfer station in West Chicago, and because of the obvious critical importance of having Aptim's undivided loyalty during the course of Lakeshore's pre-application review process, Special Counsel Walsh communicated with Aptim regarding this conflict of interest.

On February 11, 2020, on behalf of West Chicago and in order to confirm that Lakeshore's decision to hire Aptim to work at other sites would not interfere with or compromise West Chicago's earlier decision to hire Aptim, in order to evaluate Lakeshore's West Chicago Application and whether a conflict of interest existed, West Chicago Special Counsel Walsh sent Aptim a detailed communication. See Exhibit PWC-14. In the communication, Mr. Walsh first thanked Aptim for sending him an email about *Aptim's "possible involvement in two confidential environmental development projects outside of northeastern Illinois" involving Lakeshore*. (Emphasis Added). Special Counsel Walsh apparently knew that one of the projects was for a *"new transfer station to be located over 100 miles from the City of West Chicago* and the other for a new landfill to be located in northwestern Illinois." (Emphasis added). **Id.** In addition, in his email, Mr. Walsh continued by stating that he understood that "one or more of those projects may be done *on behalf of or in collaboration with Lakeshore Recycling Systems, LLC, ("LRS") who is currently an expected applicant for local siting for a transfer station in the City of West*

*Chicago.*” (Emphasis added). Of further significant note, as set forth in the email from Mr. Walsh to Aptim which he sent “on behalf of the City of West Chicago,” Mr. Walsh also reminded Aptim (and emphasized) that Aptim was:

- “[C]onducting professional engineering and review services with regard to LRS’s anticipated application requesting local siting approval for the development of a transfer station on Powis Road in West Chicago”;
- that “as part of the work for the City of West Chicago, Aptim is undertaking a ‘pre-file’ review of LRS’s draft application”;
- that “[t]he pre-file review is intended to provide a qualitative review of the draft application to establish general consistency with the City of West Chicago Pollution Control Facility Siting Ordinance, identify gross inconsistencies, and to determine if proposed facility design and operations generally conforms to Best Management Practices for modern transfer station facilities”;
- that “Aptim’s pre-file review began with a site visit to LRS’S facilities”;
- that “Aptim will also attend meetings with the City and LRS representatives as necessary in order to discuss the application contents and findings of the pre-file review.”;
- that “Aptim may be providing the City with technical assistance through the local siting hearings”;
- that “after the filing of an application, Aptim could assist the City in reviewing the application to determine whether a technical basis has been established demonstrating the statutory criteria have been met”; and,
- that “[t]his may include conducting additional research and analysis as necessary and you may assist the City in preparing questions for the applicant during the public hearings.” **Id.**

In his email, Mr. Walsh continued by noting that “[t]his communication addresses the potential conflict of interest and Aptim’s expressed representation that its involvement in the two confidential development projects, (whether they include LRS or not), will not impact its ability to provide the City of West Chicago with sound guidance on its current review services for the proposed transfer station in West Chicago.” **Id.**

Then getting to the heart of the email, Mr. Walsh wrote Aptim the following:

“In addition, you provided Aptim’s assurance that it always look out for the best interests of its clients and *for the health, safety, and welfare of the public and nothing in your representation of LRS in the other proposed development projects, will interfere with Aptim’s ability to execute the agreement it has with the City of West Chicago*. It is the City’s understanding from your representations that any relationship Aptim has, or will have with LRS, will not in any way interfere with or limit Aptim’s ability (now or in the future) to *fully represent the City of West Chicago against any competing interests of the LRS or others*, if such competing interests should arise.” **Id.** (Empasis added).

And if the above was not clear enough or to the point, Mr. Walsh also wrote that:

“Certainly, *one of the issues that is of great importance to the City of West Chicago* is the City’s ability to rely upon Aptim to *represent the City’s interest* not only as to the pre-filing review, but if needed, at the siting hearing and in *any appeal* process that may occur in the future. Any and all of this, of course, could very well place the City of West Chicago in an adversarial position with the LRS. In any event, it certainly is our view that one of Aptim’s obligations is to *zealously represent the interests of the City of West Chicago*, as may be needed, at the siting hearing and in the event of a future appeal.” **Id.** (Empasis added).

After making himself clear, Mr. Walsh then wrote that “[i]f our understanding in this regard is in any way different from yours, please let me know that immediately. It is imperative to the City of West Chicago that Aptim remain ready, willing and able to defend the Village’s interest against all those who would oppose it (including LRS) in any setting or form that would require it.” **Id.**

Mr. Walsh also asked Aptim to “confirm that this understanding is correct and that there are, in fact, no limitations placed on Aptim’s ability to represent the City of West Chicago in this matter.”

**Id.** Moreover, Mr. Walsh further wrote to Aptim, that:

“*[i]f, on the other hand, it is Aptim’s position that its relationship with LRS, now or in the future, or Atim’s involvement in the two confidential environmental development projects does indeed place or could place some limitations on its ability to act as the City’s representative on the pre application review, or in the hearing or in any appeals involving LRS*, please specifically identify with specificity exactly what each one of those are.” **Id.** (Emphasis added).

In response to Mr. Walsh’s email, Aptim wrote as follows:

Dennis,

This is to confirm that any relationship Aptim has, or will have, with LRS will not in any way interfere with, or limit, Aptim's ability to *fully represent the City of West Chicago* in the matter of their desire to site a transfer station on Powis Road in the City. This includes pre-application review, any needed hearing testimony, or in assistance with any appeals.

Thank you,

Marty

**Id.** (emphasis added). There is no indication if Mr. Walsh responded any further.

**g. FOIA Documents Reveal Aptim's Initial Damning Comments Vis-à-vis Lakeshore's Pre-Application Submissions**

In its review of more than one of Lakeshore's pre-filing draft applications, Aptim identified a significant number of deficiencies in Lakeshore's Application. For example, in a memo dated August 27, 2020, Aptim identified numerous issues including the following:

- missing information required by siting ordinance
- residential zoning setback issues
- plan consistency issues
- stormwater issues
- push wall design
- tipping floor capacity and operation issues
- building column placement
- sensitivity of throughput analyses
- required SSR storage quantity
- tarping issues
- proximity to airport related issues
- inconsistency with FAA circulars
- criterion 5 and fire department coordination
- parking, traffic, ceiling on throughput issues
- queuing issues
- Lakeshore's plan to nullify its existing 22.38 permit
- land use compatibility and property value impact related issues

During the course of the public hearings, a number of concerns Aptim raised appeared to have been ignored.

**h. Lakeshore's West Chicago Application and the Public Hearings**

On September 16, 2022, Lakeshore submitted its Pre-Filing Notice, informing West Chicago of its intent to submit an Application for approval of a waste transfer station. The proposed Lakeshore facility was to be located at 1655 Powis Road, West Chicago, IL.



At the time of Lakeshore's Application, West Chicago was a "minority-majority" community with a population that is 51.8% Latino according to the U.S. Census. **See Exhibit PWC-702 (IPCB Record at C004133-C004176)**. And, as more fully described in PWC's Offer of Proof, PWC's expert testified that he used:

"EJ START to determine whether the proposed LRS waste transfer station facility is in or impacting an 'area of EJ concern,' and that based on my review of the EJ START, the proposed facility is approximately 1,300 feet from an area determined by the IEPA to have minority population greater than twice the statewide average,"

and therefore, Lakeshore's waste transfer station would be within an "area of EJ Concern." **Id.**

**i. West Chicago Public Hearings and Ancel Glink**

The City of West Chicago then appointed the law firm of Ancel Glink to serve as the independent hearing officer. Specifically, Ancel Glink attorney Derke Price was tasked with serving as hearing officer and, as set forth below, later recommended to West Chicago that it approve Lakeshore's Application in West Chicago.

Ancel Glink and the City of West Chicago scheduled a series of public hearings to consider Lakeshore's Application, as well as objections to that Application by PWC and PODER. Specifically, the hearings were set on January 3, 4, 5, 10, 12, 16, and 19, 2023. And, despite the large Latino population in West Chicago, neither Ancel Glink nor West Chicago made arrangements to have any Spanish-Language interpreters at any of the public hearings.

At the public hearings, and as alleged in PWC's Amended Petition before the IPCB, Ancel Glink (Derke Price) failed to render impartial rulings on the evidence and specifically prevented PWC from cross-examining Lakeshore's expert on environmental-justice related issues and even went so far as to prevent PWC from asking its own expert about environmental justice related issues, all under the guise that issues relating to potential adverse impacts on minority or disadvantaged communities were not "relevant." On Friday, February 24, 2023, at 11:18 a.m.,

Hearing Officer Derke Price forwarded to all parties his “Report Findings and Conditions” from his Ancel Glink email. In the February 24, 2023 Report, Ancel Glink distinguished away numerous long-established legal siting requirements, and ultimately recommended that West Chicago approve Lakeshore’s Application. **See Exhibit PWC-M16.**

**j. West Chicago City Council Meets February 27, 2023 in Closed Session**

On February 27, 2023, the West Chicago City Council met in private and in closed session for nearly two (2) hours to presumably review and deliberate on Lakeshore’s Application. No public comment or scrutiny was allowed, nor were any of the City Council deliberations conducted in public that day. West Chicago’s subject matter experts, Aptim, who Mr. Walsh had reminded that they were retained to “*zealously represent the interests of the City of West Chicago,*” did not attend the February 27, 2023 West Chicago City Council closed session meeting.<sup>7</sup> **See Exhibit PWC-M17 (Response to Interrogatory #1).**

In any event, whatever was said during the closed session is still unknown, but what is known, is that the following day (February 28, 2023 at 6:00 p.m.), the West Chicago City Council met in an open meeting for all of five (5) minutes and voted to approve Lakeshore’s Application through Ordinance 23-O-0006. PWC later discovered that Ordinance 23-O-0006 was drafted in its entirety by Special Counsel Walsh sometime prior to February 28, 2023 at 12:45 p.m., which is the time when West Chicago City Manager Michael Guttman distributed it to West Chicago Alderman. **See Exhibit PWC-806.**

On February 28, 2023, at 6:00 p.m., in the five-minute open session meeting of the West Chicago City Council, West Chicago Alderman James E. Beifuss stated in open meeting that he

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<sup>7</sup> Despite PWC’s request to produce the closed session recording, West Chicago has refused to produce this recording and thus PWC has requested an Opinion from the Illinois Attorney General’s Public Access Counselor.

did not believe that Lakeshore had met Criteria #1, 2 or 8. **See Exhibit PWC-M16.** In the same five-minute open meeting, Alderman Matthew Garling stated that he did not believe Lakeshore had met Criteria #1 and 3. **Id.**

In addition, West Chicago Alderman Lori Chassee testified as follows during her deposition taken during the course of these proceedings before the Illinois Pollution Control Board concerning that same five-minute meeting:

- that she had not seen the Ordinance before she voted on it. **See PWC-810 (Chassee Tr. 38, L. 21-23);**
- that “per direction of law, we needed to vote in favor of this based on criteria and evidence presented not on individual opinions.” **Id at. Tr. 33, L. 17-19;** and,
- that “we were charged with following the criteria provided by law *as directed by our attorneys* who had explained the criteria, and that it was – we needed to follow the evidence and the criteria or we could be held to a liability *if we base things on our own opinions.*” **Id at. Tr. 34, L. 22-24 & 35, L. 1-3.** (Emphasis added).

The series of events that occurred between February 24, 2023 and February 28, 2023 reveal that the decision to approve Lakeshore’s Siting Application was based on and prompted by comments from Ancel Glink and Special Counsel Walsh and that the decision to approve Lakeshore’s Application may not have been the decision of the West Chicago City Council, as it is so required under the law.

In fact, based on the fact that West Chicago City Manager Michael Guttman confirmed that the Ordinance was drafted by Dennis Walsh and was distributed to Alderman before any vote was taken confirms that the full deliberations of the City Council were not considered and that the decision to approve Lakeshore’s Application was pre-ordained.

**k. PWC Appeal’s West Chicago’s Approval of Lakeshore’s Application**

On March 28, 2023, PWC filed its initial Petition pursuant to Section 40.1 of the Illinois Environmental Protection Act, 415 ILCS 5/401.1 (“Act”), in accordance with Sections 107.200

through 107.208 of the PCB procedural rules, 35 Ill Admin. Code §§ 107.200-208. On April 6, 2023, the Illinois Pollution Control Board issued an Order accepting PWC's petition for hearing.

On April 14, 2023, PWC filed its Amended Petition is filed pursuant to Section 40.1 of the Illinois Environmental Protection Act, 415 ILCS 5/401.1 ("Act"), in accordance with Sections 107.200 through 107.208 of the PCB Procedural Rules, 35 Ill Admin. Code §§ 107.200-208.

**I. PWC Discovers that Dennis Walsh served as the City of Moline's Independent Hearing Officer, Aptim served as Lakeshore's Subject Matter Expert and Ancel Glink served as the City of Moline's Corporate Counsel in Lakeshore's Application for a Waste Transfer Station in Moline**

During the course of these proceedings, PWC discovered that in March of 2023, Lakeshore had filed its Application to construct a waste transfer station in the City of Moline, Illinois. PWC also discovered that Aptim had prepared Lakeshore's Application well in advance of March 2023, and then later testified on behalf of Lakeshore in Lakeshore's Application for a waste transfer station during the City of Moline public hearings. PWC also discovered that the City of Moline's corporate counsel was Ancel Glink (West Chicago Hearing Officer Derke Price's firm) and that West Chicago's Special Counsel Dennis Walsh served as the City of Moline's independent hearing officer in the public hearings held to consider Lakeshore's Application to construct a waste transfer station in the City of Moline. It should be noted that by operation of law, Lakeshore's Moline Application would have been prepared and on file no less than ninety (90) days prior to the March 2023 public hearing and about the same time hearings were being held in West Chicago on Lakeshore's Application there.

PWC thus seeks to admit the Report and Findings issued by West Chicago Special Counsel Dennis Walsh into the public hearing set for September 28, 2023 and the exhibit reflecting counsel for Ancel Glink because both exhibits support PWC's allegation of a lack of Fundamental Fairness.

### III. PROTECT WEST CHICAGO ALLEGATIONS RELATING TO A LACK OF FUNDAMENTAL FAIRNESS

In its April 14, 2023, Amended Petition, PWC alleged that there was pre-adjudication in favor of approving Lakeshore's Application in multiple ways, *some of which are not currently totally known*, rendering the entire local siting review process fundamentally unfair, including the fact that:

- a. 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.
- b. 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.
- c. West Chicago officials sought to conceal information which related directly to criticisms leveled by the City's own consultant (Aptim) during the Pre-Filing Application Review process leading to the filing of a FOIA lawsuit.
- d. The action(s) of West Chicago officials prior to submission of Lakeshore's Application, including the November 2020 action of Mayor Ruben Pineda in which he sent a local member of the clergy (Father Josh) a text 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 which was to curb and inhibit negative comment on Lakeshore's proposal.
- e. Actions of West Chicago officials in submitting letters in support of the Lakeshore's Application on West Chicago letterhead and then editing the letter to make it more favorable to the Applicant, all at the express request (and direction) of Lakeshore's expert John Hock.
- f. The February 27, 2023, decision of the West Chicago City Council to approve, in a private closed session, Lakeshore's Application.
- g. The action 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 and risk of being sued.

- h. The events leading up to the decision to approve Lakeshore's Application which 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, after which the City Council voted and approved a 13-page single-spaced (previously-prepared) Ordinance, together with a 20-page Recommendation by the Hearing Officer, which as PWC has now learned was drafted entirely by Special Counsel Dennis Walsh sometime prior to 12:45 p.m. on Tuesday, February 28, 2-23.

In addition to the above, in its Amended Petition, PWC also alleged that West Chicago's Hearing Officer (Ancel Glink) failed to render impartial rulings on the evidence and specifically:

- a. Prevented PWC from cross-examining Applicant's expert on environmental justice related issues which go directly to certain of the criteria set forth at 415 ILCS §5/39.2(a);
- b. Prevented PWC from asking its own expert about environmental justice-related issues, all under the guise that issues relating to minority or disadvantaged communities were not "relevant,"; and,
- c. Prevented PWC from presenting evidence regarding environmental justice concerns, requiring PWC to submit an Offer of Proof, which directly related to the proposed facility's impact on air pollution and its negative effects on the West Chicago community, specifically the majority-minority population which is in violation of Section 9(a) of the IEPA (415 ILCS 5/9), which grants the Illinois Environmental Protection Agency the power and duty to address environmental justice concerns and enforce environmental laws and regulations.

Thus, Exhibits **PWC-808** and **PWC-812** are evidence that is relevant and supports PWC allegations of a lack of fundamental fairness because these exhibits, coupled with other evidence confirm that "a disinterested observer might conclude that the local siting authority adjudged both the facts and the law before hearing the case." *See County of Kankakee v. Illinois Pollution Control Board*, 396 Ill. App.3d 1000 (2009).

#### IV. LEGAL STANDARDS

##### a. Relevant Evidence is Admissible

In Illinois, relevant evidence has been defined by the Supreme Court 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. Relevant evidence is admissible.

In a siting decision appeal, relevant evidence 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). (Emphasis added).

##### b. Fundamental Fairness Standards

In regard to fundamental fairness of the procedures used in a proceeding under Section 39.2, the IPCB has 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, 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). Moreover, 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). Thus, the admission of evidence should be allowed if it is evidence establishing bias or “prejudgment in the decision-making process” such that “a disinterested observer might conclude that the local siting authority adjudged both the facts and the law before hearing the case.” *Cnty. of Kankakee v. Illinois Pollution Control Bd.*, 396 Ill. App. 3d 1000, 1014, 955 N.E.2d 1, 14 (3d Dist. 2009), as corrected (Jan. 26, 2010)

**c. United States Supreme Court Fair Hearings Standard**

The United States Supreme Court has set the tone for the importance of fair hearings in *Commonwealth Coatings Corp. v. Continental Casualty Co.*, 393 U.S. 145, 89 S. Ct. 337, 21 L. Ed. 2d 301, reh’g denied, 393 U.S. 1112, 89 S. Ct. 848, 21 L. Ed. 2d 812 (1969), disapproved on other grounds, *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 825-26, n.3, 106 S. Ct. 1580, 89 L. Ed. 2d 823 (1986). The *Commonwealth Coatings Corp.* ruling arose under the Federal Arbitration Act. In that case, a claim was made against the sureties on a prime contractor’s bond to collect money due for work done on a construction job. However, unbeknownst to the claimant (because it was not disclosed), the person selected as a neutral served as an occasional consultant to the prime contractor, including the rendering of services on the project involved in the lawsuit. In a very brief Opinion, the Court reversed an order declining to vacate the award.

The *Commonwealth Coatings Corp.* majority Opinion, written by Justice Black, applied rules of both judicial and arbitration ethics for the proposition that it could not have been the purpose of Congress “to authorize litigants to submit their cases and controversies to arbitration boards *that might reasonably be thought biased against one litigant and favorable to another.*” *Id.* at 150. (Emphasis added). A concurrence by Justices White and Marshall did not rely on judicial ethics and recognized that a prospective arbitrator need not provide the parties “with his complete and unexpurgated business biography,” but “where the arbitrator has a substantial interest in a firm *which has done more than trivial business with a party*, that fact must be disclosed.” (Emphasis



added). As set forth below, the proposed exhibits will be used at the hearing by PWC and involve issues of Fundamental Fairness.

**d. Fundamental Fairness Standard as Applied by the IPCB in the Matter Titled: In *John Ash v. Iroquois County Board***

In *John Ash v. Iroquois County Board*, the Illinois Pollution Control Board while applying Supreme Court precedent underscored the critical importance of avoiding conflicts of interest within adjudicatory processes. This emphasis arose due to concerns surrounding Dale Carley's participation in the proceedings, which raised significant worries about potential bias and conflicts of interest. Initially appointed as a County Board member to the Committee tasked with conducting hearings on the Ash application, Mr. Carley declined the appointment, citing his own bias against the application. This bias stemmed from his ownership of a farm and a private lake in close proximity to the proposed landfill site, leading him to believe that the landfill would negatively impact his property's value. Despite initially refusing the appointment, Mr. Carley later chose to participate in the hearings, expressing a commitment to maintain a more open-minded approach.

Within the legal context, this case served as a vehicle through which the IPCB emphasized the imperative of avoiding conflicts of interest during adjudicatory processes. The IPCB referred to established principles articulated by the Illinois Supreme Court, emphasizing that individuals with personal interests, whether financial or otherwise, should recuse themselves when there exists a potential for their impartiality to be compromised. Specifically, the board cited Illinois case law to emphasize that "A personal interest need not be solely pecuniary; it must only be an interest that can be perceived as potentially undermining the impartiality of the decision maker." *The Board of Education of Niles Township High School District No. 219, Cook County v. The Regional Board of School Trustees of Cook County*, 127 Ill. App. 3d 210, 213 (1st Dist. 1984), citing *International Harvester Co. v. Bowling*, 72 Ill. App. 3d 910, 914 (1st Dist. 1979).

Mr. Carley's involvement in the proceedings in this instance raised genuine concerns about the fairness of the process, given the inherent difficulty in determining whether his bias had an undue influence on the final decision. This case serves as a reminder of the necessity of maintaining a clear separation between personal interests and the duty to impartially assess and make decisions on matters. Failure to uphold this separation can tarnish the entire process, potentially rendering the actions taken voidable, as demonstrated by previous legal precedents of the IPCB.

As the IPCB has clearly established, a personal interest need not be limited solely to financial matters; it includes any interest that could potentially compromise the impartiality of the decision-maker. In the case of Aptim's position as a neutral decision-maker for Lakeshore's Application, it becomes evident that Aptim's impartiality was compromised due to their concurrent personal interest as an employee or consultant of Lakeshore in Moline.

## V. ANALYSIS

### a. **Exhibits PWC-808 and PWC-812 are Relevant Evidence which, Together with Other Evidence in this Matter, Reveal that Aptim, West Chicago's Internal Consultant was not Conflict Free**

Exhibits PWC-808 and PWC-812 should be admitted because both exhibits point to the potential of prejudgment of adjudicative facts by multiple non-conflict free individuals or entities. In regard to Lakeshore's Application for a waste transfer station in West Chicago, multiple exhibits have revealed there were numerous contacts occurring between the various parties prior to and during the pre-filing of Lakeshore's Application in West Chicago. Admitting PWC-808 (West Chicago Special Counsel Dennis Walsh's Findings of Fact and Conclusions of Law for Lakeshore's Application to the City of Moline for construction of a waste transfer station) is thus relevant to the allegations in this matter.

In addition, Exhibit PWC-808, coupled with PWC-812 also supports PWC's claim of a lack of fundamental fairness vis-à-vis ruling of the independent hearing officer because these exhibits reveal that Ancel Glink, the law firm that served as independent hearing officer for West Chicago and issued a report recommending approval of Lakeshore's West Chicago Application also served as counsel for the City of Moline at the same time and was the recipient of a letter from Dennis Walsh in which Mr. Walsh asked to be appointed independent hearing officer in Moine. In his letter, Mr. Walsh informed Ancel Glink that he had:

[S]uccessfully represented the Village of Rockdale on appeals to the Illinois Pollution Control Board ("PCB") and the Illinois Appellate Court, and in connection with a petition filed with the Illinois Supreme Court in a recent challenge to its siting decision (which I drafted) where I was able to convince the PCB and Appellate Court that the proposed facility was necessary under criterion (i) without a transfer capacity analysis of the transfer stations in the area being completed.<sup>8</sup> *Needless to say, I have a full understanding of the "needs" criterion which I suspect will be an issue of contention in any hearing involving a transfer station proposed by LRS*, given that Waste Connections and Republic Services both have landfills in Rock Island County. **See Exhibit 1 to this Motion.** (Emphasis added).

To be sure, Mr. Walsh later recommended approval of Lakeshore's Application in Moline based on expert review by Aptim, the same expert West Chicago hired to represent its interests and the same expert who Mr. Walsh took great steps in an email (seeking to ensure that Aptim would be conflict free, when he (Mr. Walsh) discovered that Lakeshore had also hired them for the Moline project during the pendency of the West Chicago proceeding.

**b. Exhibit PWC-808 and PWC-812 Are Evidence that the City of West Chicago Siting Hearing Was Fundamentally Unfair**

The Illinois Pollution Board is undoubtedly aware that evaluating applications related to siting requests can often involve complex technical aspects. In many instances, local city and county boards find it necessary to seek the guidance of experts or consultants to ensure a thorough

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<sup>8</sup> As it turns out, the "needs" analysis issue, which Mr. Walsh discussed in his letter to Ancel Glink, was also a critical issue in dispute in West Chicago and as will be set forth in its final briefing of the matter before the Illinois Pollution Control Board, PWC does not believe that Lakeshore satisfied the "needs" criteria of 39.2.

understanding of these technical nuances. This expert input is essential in enabling siting authorities to make informed decisions when it comes to voting on such applications. For this very reason, the City of West Chicago took the step of hiring Aptim, relying on its advanced technical expertise to assess whether Lakeshore met the essential criteria. This evaluation was then pivotal in approval of the facility.

Thus, in this case, where city officials relied heavily on the technical experts' conclusions, the evident bias in the technical experts' opinions fundamentally compromised the fairness of the proceedings, thus violating the Act. This was exemplified by a relevant instance in West Chicago, where Alderwoman Chassee's testimony vividly underscores the City's dependency on Aptim's expert guidance. In this specific case, the aldermen were entrusted with making decisions founded upon the criteria and Lakeshore's application, as reviewed by its contracted experts (Aptim). The expert comments provided by Aptim played a pivotal role in this decision-making process. In fact, Mr. Walsh recognized this himself in 2020 when he informed Aptim that it was "imperative to the City of West Chicago that Aptim remain ready, willing and able to defend the Village's interest against all those who would oppose it (including LRS) in any setting or form that would require it." **Exhibit PWC-14**. Specifically, during the deposition of West Chicago Alderman Lori Chassee, she stated that although she had not seen the Ordinance before she voted on it (**see PWC-810 (Chassee Tr. 38, L. 21-23)**), that:

- "per direction of law, we needed to vote in favor of this based on criteria and evidence presented not on individual opinions." **Id at. Tr. 33, L. 17-19**; and,
- that "we were charged with following the criteria provided by law *as directed by our attorneys* who had explained the criteria, and that it was – we needed to follow the evidence and the criteria or we could be held to a liability if we base things on our own opinions." **Id at. Tr. 34, L. 22-24 & 35, L. 1-3**. (Emphasis added).

In simpler terms, the experts retained by West Chicago essentially functioned as a crucial part of the adjudication process, as they were responsible for determining whether Lakeshore had met the criteria.

It is not uncommon for decision-making bodies to place significant reliance on their own tribunal-appointed experts, rather than experts selected by the parties involved. This occurs when adjudicators are confronted with exceptionally intricate technical matters. A noteworthy illustration of this practice can be observed within the domain of arbitration. Indeed, this is the reason why the majority of arbitration institutions emphasize the crucial importance of impartiality and independence when it comes to tribunal-appointed experts. In fact, they go to such lengths that they incorporate the requirement of having impartial and independent experts directly into their institutional rules.<sup>9</sup> These safeguards are of utmost importance as they are vital in preserving the neutrality and integrity of a judicial process, especially when the decision-maker relies heavily on the expert opinion provided by the tribunal, as was the case with the West Chicago Aldermen in this instance.

In fact, it is a fundamental principle of jurisprudence that anyone with a personal interest in the subject matter of a case should not preside over that case. In this instance, Aptim has effectively presided over a case in which it possesses an indirect financial interest, serving as a paid client, consultant, or employee of Lakeshore in a simultaneous proceeding. As noted above,

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<sup>9</sup> ICC Rules,[1] impose a duty of impartiality and independence on Tribunal-appointed experts. For example, Articles 21.1 and 21.2 of the LCIA Arbitration Rules state that:

“The Arbitral Tribunal, after consultation with the parties, may appoint one or more experts to report in writing to the Arbitral Tribunal and the parties on specific issues in the arbitration, as identified by the Arbitral Tribunal. Any such expert shall be and remain impartial and independent of the parties; and he or she shall sign a written declaration to such effect, delivered to the Arbitral Tribunal and copied to all parties.”

Similarly, Article 29(2) of the UNCITRAL Arbitration Rules (as revised in 2010) states that:

The expert shall, in principle before accepting appointment, submit to the arbitral tribunal and to the parties a description of his or her qualifications and a statement of his or her impartiality and independence.

Fundamental Fairness is a requirement anchored in Section 40.1 of the Act governing these proceedings and thus statutory due process is required, which has been construed as requiring the application of adjudicative due process in regional pollution control facility site location suitability proceedings. *E & E Hauling, Inc. v. Pollution Control Board*, 116 Ill. App. 3d 586, 596, 451 N.E.2d 555, aff'd, 107 Ill. 2d 33, 481, N.E.2d 664 (1985). The proceedings held to evaluate applications for new regional pollution control facilities are quasi-judicial in character and, therefore, must include the attendant due process safeguards.

In interpreting the supreme court rules on a decision makers' conduct; courts have held that the appearance of bias or prejudice can be as damaging to the public confidence as actual bias or prejudice. *People v. Bradshaw* (1988), 171 Ill. App. 3d 971, 976, 525 N.E.2d 1098, 121 Ill. Dec. 791. Inherent in the rules is the concept that a judge who has a personal interest in a case cannot act fairly in that case. Thus, any interest, the probable and natural tendency of which is to create a bias in the mind of the decision maker for or against a party to the suit, is sufficient to disqualify. *Bd. of Educ. of Niles Twp. High Sch. Dist. 219, Cook Cnty. v. Reg'l Bd. of Sch. Trustees of Cook Cnty.*, 127 Ill. App. 3d 210, 214, 468 N.E.2d 1247 (1st Dist. 1984). The Illinois Supreme Court has been clear that the principle of jurisprudence that one with a personal interest in the subject matter of decision in a case may not act as judge in that case is applicable not just to judges, but to administrative agents, commissioners, referees, masters in chancery, or other arbiters of questions of law or fact not holding judicial office. *In re Heirich*, 10 Ill. 2d 357, 384, 140 N.E.2d 825 (1956).<sup>10</sup> A duty to recuse oneself will be applied to an arbiter of facts or law in an adversary proceeding when he has a financial interest in the subject matter. *Heirich*, 10 Ill. 2d at 385.

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<sup>10</sup>Courts have also added that even if one member of an administrative body is not disinterested, his or her participation infects the action of the whole body and makes it voidable. *Board of Education*, 127 Ill. App. 3d at 213. *See also, Rock Island & Alton Railroad Co. v. Lynch*, 23 Ill. 645 (1860); *Winans v. Crane*, 36 N.J. Law 394 (Sup. Ct. 1873). (Holding that matters involving an interested adjudicator infect the action of the whole body and make it voidable.)

Given the circumstances, Aptim should have recused itself from participating in and offering its assessment of the application due to a disqualifying conflict of interest. Aptim's role extended beyond delivering an impartial and unbiased evaluation of whether Lakeshore met the requirements in West Chicago. Aptim also entered into a paid consultancy arrangement with Lakeshore for another project, creating a financial relationship between the two parties. This raises concerns regarding impartiality and the presence of a potential conflict of interest.

The reasons courts draw such a "bright line" in situations like the aforementioned one is because it is nearly impossible to probe an adjudicator's mind, after the fact, as to whether he was unfairly influenced by a conflict of interest. Moreover, as the Illinois Supreme Court and U.S. Supreme Court have stated in, *Naperville v. Wehrle*, 340 Ill 579, 173 N.E. 165, 167 (1930) quoting *Crawford v. US*, 212 U.S. 183:

Modern methods of doing business and modern complications resulting there from have not wrought any change in human nature itself, and therefore, have not lessened or altered the general tendency among men, recognized by the common law, to look somewhat more favorably, though perhaps frequently unconsciously, upon the side of the person or corporation that employs them, rather than upon the other side. Bias or prejudice is such an elusive condition of the mind that it is most difficult, if not impossible, to always recognize its existence, and it might exist in the mind of one (on account of his relations with one of the parties) who was quite positive that he had no bias, and said that he was perfectly able to decide the question wholly uninfluenced by anything but the evidence. The law, therefore, most wisely says that, with regard to some of the relations which may exist between the juror and one of the parties, bias is implied, and evidence of its actual existence need not be given.

Indeed, as wisely acknowledged by the Supreme Court, it is a common aspect of human nature to subconsciously lean towards favoring the side of the person or corporation that employs them. In this specific case, Aptim, being an employee or consultant of Lakeshore, likely had an inherent bias that predisposed it to view Lakeshore more positively. The concern over the potential for biased decision-making has compelled courts to broaden the application of these essential and impartial standards, extending them not only to Article III judges but to the majority of decision-

makers as well. Courts have been unequivocal in emphasizing that the significance of impartial and equitable hearings applies to most decision-makers. “[I]t is indeed a well-settled principle of law that concepts of due process apply to administrative hearings, and the parties are guaranteed the right to a fair and impartial tribunal.” *Girot v. Keith*, 212 Ill. 2d 372, 380, 818 N.E.2d 1232, 289 Ill. Dec. 29 (2004) (reversing decision of electoral board which refused to grant a motion to disqualify a member who was a material witness), *citing Anderson v. McHenry Township*, 289 Ill. App. 3d 830, 832, 682 N.E.2d 1133, 225 Ill. Dec. 56; *Sindermann v. Civil Service Commission*, 275 Ill. App. 3d 917, 923, 657 N.E.2d 41, 212 Ill. Dec. 346 (1995); *Collura v. Board of Police Commissioners*, 113 Ill. 2d 361, 369, 498 N.E.2d 1148, 101 Ill. Dec. 640 (1986). These principles apply to a broad range of cases including administrative review of charges of employee misconduct heard before a city's board of fire and police commissioners, amongst others. *Mank v. Board of Fire and Police Commissioners* (1972), 7 Ill. App. 3d 478, 484, 288 N.E.2d 49. Cases have been extended to cover most decision makers particularly when financial relationships exist. For example, the trend of authority is to exclude from juries all persons who by reason of their business or social relations, past or present, with either party, could be suspected of possible bias. (*Marcin v. Kipfer* (1983), 117 Ill. App. 3d 1065, 1068, 454 N.E.2d 370, 73 Ill. Dec. 510, *quoting* R. Hunter, Trial Handbook for Illinois Lawyers, sec. 15.14 (5th ed. 1983).)<sup>11</sup>

In *Bender v. Board of Fire and Police Commissioners of Dolton*, 254 Ill. App. 3d 488, 491, 627 N.E.2d 49, 193 Ill. Dec. 890 (1993), the Board of Fire and Police Commissioners of Dolton,

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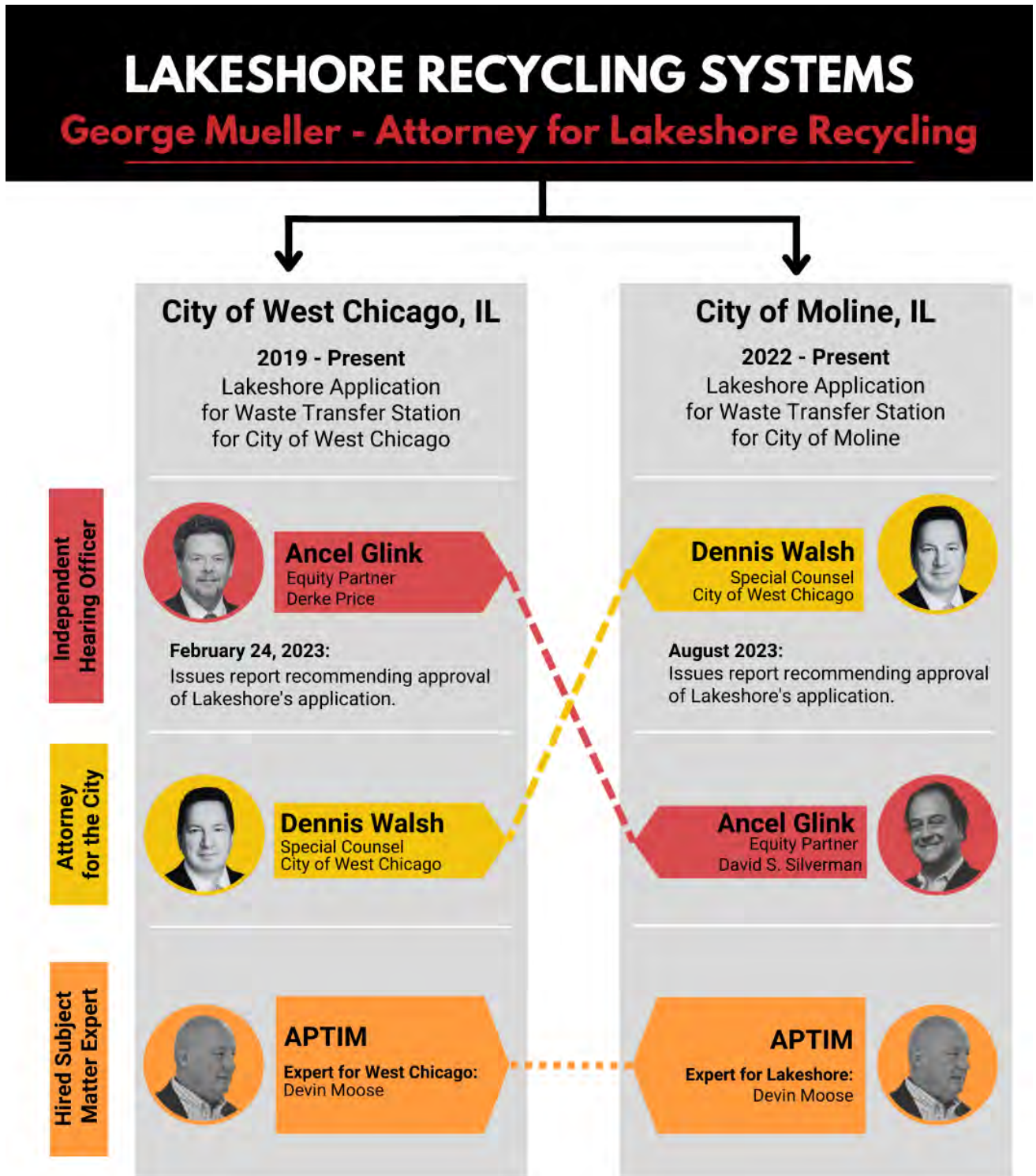
<sup>11</sup> In *People v. Green* (1990), 199 Ill. App. 3d 927, 930, 557 N.E.2d 939, 145 Ill. Dec. 960, the appellate court found that the trial court should have excused a juror for cause because she was a secretary in the State's Attorney's office, even though she said that her employment would not affect her ability to be fair. Similarly, for judges, “recusal is required when, at the very time \* \* \* [of] trial before a judge, he is in negotiation \* \* \* with a lawyer or law firm or party in the case over his future employment.” (*Pepsico, Inc. v. McMillen* (7th Cir. 1985), 764 F.2d 458, 461.) The actual employment relationship with a party, not merely his attorney, is yet stronger grounds for finding a person disqualified for possible bias.



Illinois (the Board), discharged David Bender, and he sued for administrative review. There, the decision maker Commissioner Clayton was employed in a position subordinate to Chief Pfothenauer, who was both a party and a witness in the case against Bender. The court reasoned that the employment relationship would be sufficient grounds to exclude Clayton from serving as a decision maker in this case. Therefore, Clayton's participation in this case in a quasi-judicial capacity required reversal for rehearing by the Board. Additionally, the court there held that plaintiffs' complaint stated a cause of action because it sufficiently alleged the appearance of impropriety by defendant, who, as a commissioner, was required to avoid such an appearance. Here, in this context, the same standard is imperative in this quasi-judicial proceeding because the employment relationship had indeed compromised the integrity of the proceedings, leading to a manifest conflict of interest.

In this case as well, the sole technical decision-maker upon whom the council relied for its decision was simultaneously providing advice and serving as a technical expert for one of the parties (Lakeshore) in an unrelated legal matter. As a result, the presence of a conflict of interest here is not surprising; in fact, it is quite obvious.

The below demonstrative depicts the various parties involved in this matter and their roles:



Therefore, the introduction of Exhibit PWC-808 (Mr. Walsh's Report and Findings of Fact and Conclusions of Law) is of utmost importance because we are already aware that Mr. Walsh drafted West Chicago Ordinance 23-O-0006 which approved Lakeshore's Application for a waste transfer station in West Chicago, prior to the City Council voting on the approval. By comparing Dennis Walsh Findings of Fact and Conclusions of Law with those made by Derke Price, the IPCB will be able to understand a full picture of the curious roles and relationships of each party that acted on behalf of the City.

As noted above, the fact that Alderman James E. Beifuss, and Alderman Matthew Garling stated that they believed certain criteria had not been met prior to approving the Lakeshore application is further indication of pre-adjudication. Specifically, the fact that their questioning in the final open session deliberations did not lead to any substantive changes of the draft ordinance that Dennis Walsh had pre-written, demonstrates that the outcome was likely already decided. The IPCB has previously held that such circumstances may be indicative of lack of fundamental fairness and may be evidence that statutory criteria had not been met. *Citizens Opposed To Additional Landfills and Harvey Pitt v. Greater Egypt Regional Environmental Complex*, 1996 WL 742747, at \*13 ("the fact that the County had questions unanswered after the completion of the record tends to indicate that G.E.R.E. may not have demonstrated that the statutory criteria were met at the close of the record"). In essence, under the guidance of legal counsel, the aldermen were instructed to restrict their decision-making process to a mere vote, obligatory, confirmation of their legal counsel's opinion that the nine criteria set forth by Lakeshore had been met. This essentially reduced their role to that of rubber-stamping the fulfillment of these criteria. Consequently, the primary decision-maker in this scenario were a combination of Aptim, Dennis Walsh, and Ancel Glink.

**VI. CONCLUSION**

Accordingly, the IPCB should allow PWC to introduce PWC-808, namely Dennis Walsh's Report and Findings of Fact and Conclusions of Law in the Moline pollution control siting facility because the evidence goes directly towards the most important issue on appeal, that of fundamental fairness. The IPCB should allow PWC to introduce PWC-812 as that exhibit also helps explain the relationship of other parties involved in this matter.

WHEREFORE, PWC moves for an Order admitting Exhibits PWC-808 and PWC-812, and such further relief as the Board deems appropriate.

Date: September 19, 2023

Respectfully Submitted,



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**PWC's Motion in Limine Exhibit Index**

- Exhibit 1: Dennis Walsh letter to Ancel Glink Re Moline
- PWC-6: 2019 West Chicago/ Lakeshore Host Agreement
- PWC-7: Aptim Contact/Proposal to West Chicago
- PWC-8: KJ Loerop email to Aptim Re: Wildlife Plan
- PWC-12: George Mueller email to Aptim Re: 1,000 foot setback
- PWC-14: Dennis Walsh Conflict of Interest Email to Aptim
- PWC-28: Olga Rivera lawsuit
- PWC-702: PWC's Offer of Proof
- PWC-806: February 28, 2023 Michael Guttman email with Ordinance
- PWC-808: Dennis Walsh Report and Findings in Moline
- PWC-810: Alderman Lori Chassee Transcripts excerpts
- PWC-812: Ancel Glink "People" page
- PWC-M1: West Chicago 2003 Resolution
- PWC-M2: West Chicago 2003 Findings of Fact and Conclusions of Law
- PWC-M16: Feb. 27-28 West Chicago Minutes and Ordinance 23-O-0006
- PWC-M17: West Chicago Interrogatory Responses

# Exhibit 1



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October 17, 2022

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**VIA ELECTRONIC MAIL**

**DSilverman@ancelglink.com**

Mr. David S. Silverman  
Ancel Glink  
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Chicago, Illinois 60603

Re: Potential Employment as Hearing Officer

Dear David:

I am writing to offer my services for the position of Hearing Officer to the City of Moline, Illinois, in connection with the anticipated filing of an application by Lakeshore Recycling Systems, LLC ("LRS") for site application approval of a proposed waste transfer station. I have conducted a conflict check, and I am clear to serve in that capacity.

By way of background, I am the President and Managing Partner of Klein, Thorpe and Jenkins, Ltd. I have been providing assistance in environmental law to the firm's private and public sector clients and other attorneys since I joined the firm in 1986. I have been involved in waste facility siting decisions since 1998. For all of the pollution control facility applications in which I and the firm have been involved, we have worked for the host unit of government and not for any waste hauler or pollution control facility operator. Although my experience to date has not been in the capacity of a hearing officer, per se, I can certainly act in that role as I understand the legal, scientific and sometimes political hurdles that must be navigated to reach a legally sound siting decision. Over the years, I have served as hearing counsel for the host community's Corporate Authorities and advised the County of Will as special siting counsel on the Application of Waste Management of Illinois, Inc. to develop and operate the Prairie View Recycling and Disposal Landfill Facility within the former Joliet Army Ammunition Plant; the Village of Maywood relating to the application and hearing for local siting approval for the Greenwood Transfer Facility filed by Greenwood Transfer, LLC.; and the Village of Rockdale regarding the siting proceedings on the application of Environmental Recycling and Disposal Services, Inc. to develop and operate a new municipal waste transfer station on its property at 2277 Moen Avenue, Rockdale, Illinois. I am currently advising the City of West Chicago on the application that was filed by LRS for a transfer station with a hearing to be held in January, 2023, for the Lakeshore Recycling System, LLC's West DuPage Recycling and Transfer Station.

I have drafted the ultimate siting decisions including the development of conditions on the grant of siting approval, to ensure long term safe operations. I successfully represented the Village of Rockdale on appeals to the Illinois Pollution Control Board ("PCB") and the Illinois Appellate Court, and in connection with a petition filed with the Illinois Supreme Court in a

David S. Silverman  
October 17, 2022  
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recent challenge to its siting decision (which I drafted) where I was able to convince the PCB and Appellate Court that the proposed facility was necessary under criterion (i) without a transfer capacity analysis of the transfer stations in the area being completed. Needless to say, I have a full understanding of the “needs” criterion which I suspect will be an issue of contention in any hearing involving a transfer station proposed by LRS, given that Waste Connections and Republic Services both have landfills in Rock Island County. I would expect that in addition to the issue of “need,” consistency with the County Plan (criterion (viii)) may also be highly contested in this hearing.

I have also drafted ordinances and rules and regulations to implement the siting statute and have advised on and negotiated host community agreements. In addition, I have done siting work for the City of Aurora and the Village of Lombard but the anticipated applications, ultimately were not filed. I have trained clerks and other staff on how to implement the siting process and advised on the applications. Our firm’s rate for Hearing Officer services in connection with pollution control facilities is \$350.00 per hour for my time. We do not charge mileage for travel but do charge for other reimbursable expenses such as courier, electronic research and copying. Should I require the use of one of our paralegals to assist me, the rate for paralegal work will be \$175.00 per hour. Associates would be billed at \$250.00 per hour.

I am grateful for the opportunity to be considered for appointment to the position of Hearing Officer, and if you think I can be of assistance to the City, I would be pleased to discuss this matter further with you. Thank you for thinking of me. I wish you and the City all the best as you go forward.

Very truly yours,

KLEIN, THORPE AND JENKINS, LTD.



Dennis G. Walsh



**PWC-6**



RESOLUTION NO. 19-R-0016

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A HOST COMMUNITY BENEFIT AGREEMENT BETWEEN THE CITY OF WEST CHICAGO AND LAKESHORE RECYCLING SYSTEMS, LLC FOR A SOLID WASTE TRANSFER FACILITY

BE IT RESOLVED by the City Council of the City of West Chicago, in regular session assembled, that Mayor is hereby authorized to execute a Host Community Benefit Agreement between the City of West Chicago and Lakeshore Recycling Systems, LLC for a Solid Waste Transfer Facility in substantially the form attached hereto and incorporated herein as Exhibit "A".

APPROVED this 1st day of April, 2019

AYES: 11
NAYES: 2
ABSTAIN:
ABSENT:
PRESENT

Handwritten signature of Mayor Ruben Pineda

ATTEST:

Handwritten signature of Nancy M. Smith, City Clerk

**HOST COMMUNITY BENEFIT AGREEMENT BETWEEN  
THE CITY OF WEST CHICAGO, DUPAGE COUNTY, ILLINOIS,  
AND LAKESHORE RECYCLING SYSTEMS, LLC  
FOR A SOLID WASTE TRANSFER FACILITY**

This HOST BENEFIT COMMUNITY AGREEMENT ("Agreement") is made as of the 1<sup>st</sup> day of April, 2019, between the CITY OF WEST CHICAGO, DuPage County, Illinois ("City") and LAKESHORE RECYCLING SYSTEMS, LLC ("Company").

**RECITALS**

**WHEREAS**, the Company currently operates a solid waste management facility, which receives, sorts/ separates, recycles and transfers Construction or Demolition Debris (hereinafter referred to as the C&D Recycling Facility) on the premises legally described in Exhibit A attached hereto and consisting of approximately 27.81 acres (hereinafter referred to as the "Subject Property"); and

**WHEREAS**, the Company plans to file with the City a request for site location approval for the construction and operation of a new Transfer Facility with sufficient capacity to receive and transfer to landfills an annual average of 1,500 tons per day of non-hazardous Municipal Waste and Hydro Excavation Waste (as those terms are defined below) with ancillary truck parking and storage and maintenance facility combined ("Transfer Facility"); and

**WHEREAS**, the Company desires to construct the Transfer Facility on the Subject Property and operate the Transfer Facility in conjunction with the C&D Recycling Facility; and

**WHEREAS**, the City is authorized by State of Illinois law, pursuant to Section 39.2 of the Illinois Environmental Protection Act (415 ILCS 5/39.2) to, among other things, receive, hold hearings, and decide an application for the site location of a pollution control facility proposed to be located in the City of West Chicago; and

**WHEREAS**, the City Council of the City of West Chicago ("City Council") adopted Pollution Control Facility Site Approval Procedures consistent with Section 39.2 of the Illinois Environmental Protection Act, for the purpose of preparing a comprehensive approach to the site location review process of a solid waste pollution control facility in the City of West Chicago; and

**WHEREAS**, Section 39.2 of the Illinois Environmental Protection Act acknowledges a local government's power to negotiate and enter into a host community benefit agreement with an applicant for site location of a pollution control facility; and

**WHEREAS**, the Company desires to provide certain environmental protection and compensation to the City with respect to the Transfer Facility, if the Transfer Facility obtains all required approvals and commences operation; and



**WHEREAS**, the City is desirous of obtaining such environmental protections and compensation, provided that the City shall have no obligation to grant site location approval of the Transfer Facility unless and until, through the local site location review process, it finds that the Transfer Facility meets or exceeds all criteria required by 415 ILCS 5/39.2. Regardless of whether site location approval is granted, this Agreement survives the local site location review process; and

**WHEREAS**, the City has not consented to, concurred in or objected to the proposed plans of the Company to develop the Transfer Facility, and nothing in this Agreement shall be deemed by the Company, the City, other public agencies, or the public to indicate that the City has heretofore adopted any position on the potential development of the Transfer Facility; and

**WHEREAS**, if the City grants site location approval of the Transfer Facility, and if thereafter the Illinois Environmental Protection Agency issues permits for the development and operation of the Transfer Facility, the Company is willing to pay a host community benefit fee, as hereinafter set forth, to the City to assist the City in meeting the costs associated with the Transfer Facility and for other general revenue needs of the City as the City may deem appropriate.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth, the City and the Company agree as follows:

**ARTICLE 1**  
**DEFINITIONS AND TERM OF AGREEMENT**

**Section 1.1 Definitions**

"Act" as used in these definitions and this Agreement, shall mean the Illinois Environmental Protection Act, as amended from time to time (415 ILCS 5/1, et seq.).

"Construction or Demolition Debris" whether or not capitalized, means "clean construction or demolition debris" as defined by Section 5/3.160(b) of the Act (415 ILCS 5/3.160(b)), or "general construction or demolition debris," as defined by Section 5/3.160(a) of the Act (415 ILCS 5/3.160(a)).

"Food Scrap" whether or not capitalized and used in any of its grammatical forms, means "food scrap" as defined in Section 5/3.197 of the Act (415 ILCS 5/3.197).

"Hydro Excavation Wastes" means solid/liquid waste such as hydro/vacuum excavation muds, underground excavation material, drilling muds, and other similar materials.

"IAC" as used in these definitions and this Agreement, shall mean the Illinois Administrative Code.

"IEPA" means the Illinois Environmental Protection Agency.

"IPCB" means the Illinois Pollution Control Board.



"Landscape Waste" whether or not capitalized and in any of its grammatical forms, means "landscape waste" as defined by Section 5/3.270 of the Act.

"Municipal Waste" whether or not capitalized and used in any of its grammatical forms, means "municipal solid waste", as defined by Section 5/3.290 of the Act (415 ILCS 5/3.290), except that such waste does not include Construction or Demolition Debris, Recyclables, Unacceptable Waste, or Landscape Waste.

"Recyclables" whether or not capitalized and used in any of its grammatical forms, means any material, which would otherwise be disposed of or discarded, which is separated from Municipal Waste or Construction or Demolition Debris at the source of generation so as to render it useable in a process, or alone, such that it can be returned to the economic mainstream in the form of raw materials or products. Examples of recyclables are newspaper, glass bottles, high density, polyethylene containers, aluminum food and beverage containers, chipboard, and corrugated containers. Recyclables do not include any materials removed or separated from, or containing Unacceptable Wastes.

"Regular Business Hours" of the Transfer Facility shall mean 4:00 a.m. to 12:00 a.m. on weekdays and 4:00 a.m. to 12:00 p.m. on Saturdays, with no operation on Sundays or the six major Federal holidays (New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas), provided that on the Saturday following any Federal holiday Regular Business Hours may be extended by the Company to 12:00 a.m. The Regular Business Hours for accepting Municipal and Hydro Excavation Waste may be extended but only upon the prior approval of the City, such approval being in writing.

"Solid Waste" whether or not capitalized, means Municipal Waste, Landscape Waste, Food Scrap, , and Construction or Demolition Debris, including those materials in these classifications that have received a Beneficial Use Determination (BUD) designation by the IEPA, as those terms are defined in this Section.

"Transfer Facility" whether or not capitalized, means, "Transfer Station" as defined by 5/3.83 of the Act (415 ILCS 5/3.83), including the property on which the Transfer Station is located, and specifically references the Transfer Facility the Company desires to construct and operate located on approximately 27.81 acres at 1655 Powis Road, Illinois, permanent parcel #01-32-101-004 and #01-32-200-001, at the property described on Exhibit A.

"Unacceptable Waste" whether or not capitalized and used in any of its grammatical forms, means (a) "hazardous waste" as defined by Section 5/3.15 of the Act (415 ILCS 5/3.15) or by 35 IAC 721.03; (b) "industrial process waste" as defined by Section 5/3.235 of the Act (415 ILCS 5/3.235), except allowable special waste and such industrial process waste which poses no present or potential threat to human health or the environment and which has no inherent properties which makes its disposal in a landfill difficult to manage by normal means, and which has been specifically approved by the IEPA; (c) "pollution control waste" as defined by Section 5/3.335 of the Act (415 ILCS 5/3.335); (d) "sludge" as defined by Section 5/3.465 of the Act (415 ILCS 5/3.465); (e) "potentially infectious medical waste" as defined by Section 5/3.360 of the Act; (f)



"special waste" as defined by Section 5/3.475 of the Act; (g) "polychlorinated byphenyls" as defined in the Toxic Substances Control Act, 15 U.S.C. Section 2601-2692, or regulations promulgated thereunder; (h) source, special or byproduct nuclear materials, radioactive waste, high-level or low-level radioactive waste, or transuranic waste as defined in the Atomic Energy Act, 42 U.S.C. Sections 2014, et seq., or regulations promulgated thereunder; or (i) "asbestos" as defined in 40 CFR 763.83, except that Unacceptable Waste does not include Hydro Excavation Waste.

**Section 1.2 Term**

This Agreement commences on the date executed and continues in force and effect until the Transfer Facility ceases to operate and is no longer permitted by the IEPA to accept Muncipal Waste and/or Hydro Excavation Waste. In addition, the City may terminate this Agreement if the Company is in default of this Agreement as provided in Section 4.2. The terms of this Agreement that are specifically extended beyond termination (i.e., as provided in Sections 2.1, 2.2, 2.3, 4.1, 4.6, 4.7, 4.8, 4.9, and 5.2), survive this term provision. The Company, in turn, may, at its sole discretion, terminate this Agreement if it determines that it is no longer economically desirable to operate the Transfer Facility and it rescinds its IEPA permit to operate. The Company agrees that, should this Agreement be terminated, the Company will immediately remove all Muncipal Waste and/or Hydro Excavation Waste from the Transfer Facility and stop its operations and receipt and acceptance of Muncipal Waste and/or Hydro Excavation Waste.

**ARTICLE 2**  
**ENVIRONMENTAL PROTECTIONS**

**Section 2.1 Compliance with Laws**

The Company shall comply at all times, in connection with the development and operation of the Transfer Facility, with: all laws, ordinances, and final and non-appealable conditions of this site location (should it be approved by the City); conditions and requirements of any permit that is issued for development or operation of the Transfer Facility; modified or amended rules and regulations and ordinances of any Federal, State or local governmental agency or authority relating to the development, operation, monitoring, remediation, or closure of the Transfer Facility; and, this Agreement. In addition, should the Company obtain approval from the City, pursuant to Section 39.2 of the Act, but contest on appeal, one or more conditions, if any, placed on such approval, the Company agrees that, with respect to such contested condition(s), it will not commence permitting, development, construction or operation of the Transfer Facility, until a final decision has been entered by the IPCB . With respect to the closing of the Transfer Facility, the Company agrees to comply with any government ordinance, rule, law or directive as to post-closure requirements and pay the entire costs associated therewith. This Section 2.1 survives the termination of this Agreement.

**Section 2.2 Waste Acceptability**

The Company shall only allow Solid Waste and/or Hydro Excavation Waste to be intentionally accepted at, transported to, stored at, or otherwise present at the Transfer Facility. All



Municipal Waste and/or Hydro Excavation Waste, except when being transported to or from the Transfer Facility, must be kept inside (i.e., within a fully enclosed area of) the Transfer Facility. Unacceptable Waste accepted at, transported to, stored at, or otherwise present at, on, or in the Transfer Facility shall be properly removed within 24 hours. Willful violation of this prohibition of Unacceptable Waste is a material breach of this Agreement and enforceable by injunction, or any other legal theory, and the enforceability of this provision survives the termination of this Agreement.

The Company agrees that it shall not receive at the Transfer Facility more than 1,500 tons of Municipal Waste and/or Hydro Excavation Waste per day (calculated on a rolling twelve (12) month average, based on 5.5 days per week), except with the prior written approval of the City. The parties may at any time by mutual agreement modify this provision, and such modification shall not be considered an event which triggers the requirement of local siting approval.

### **Section 2.3 Defense and Indemnification and Insurance**

The Company covenants and agrees at Company's sole cost and expense to defend, indemnify and hold harmless the City, individual members of the City Council, and any and all employees, agents, officers, or representatives of the City (collectively "City Affiliates"), from and against all claims, suits, actions, administrative enforcement proceedings, losses, damages of all kinds, costs, expenses, fines and penalties, attorneys' fees and expenses of litigation, of any nature whatsoever, relating in any way directly or indirectly to the Transfer Facility where the same are caused by the Company's negligence, willful misconduct or breach of this Agreement. This includes, but is not limited to, any condition or occurrence, or any release, discharge or emission at, onto, above, under, through or from the Transfer Facility; or the Company's execution, performance, or non-performance of this Agreement or of any conditions placed on siting (should the facility be approved or the operations of the Company conducted at the Transfer Facility). This includes, but is not limited to, any claims of injury to any person (including, but not limited to death) or property for violation of or non-compliance with any law, ordinance, rule or regulation (including without limitation any environmental, health, antitrust, civil rights, employment or trade law, or statutory or common law obligation or liability). The Company shall with the advice and consent of the City (which consent shall not be unreasonably withheld, conditioned or delayed) assume the defense of all suits, administrative proceedings and disputes of any description with all persons, entities, political subdivisions or government agencies arising out of the matters to be indemnified under this Agreement. In the event of a written offer to settle such matter on monetary terms only, and the Company wishes to accept and pay the same, but the City does not agree to such settlement, the Company shall pay the amount to the City and the City shall assume the further defense of the matter, and Company shall have no further liability for defense or indemnification, provided however, that the foregoing shall not apply to any non-monetary terms of an offer, such as where consent to an injunction is stated as a term in the offer to settle. In the event that the City or any of the City Affiliates is/are named as a defendant(s) in any lawsuit arising out of the matters to be indemnified under this Agreement, the Company shall have the right to choose the attorney(s) who represent(s) them in said lawsuit, and the reasonable costs, expenses and fees associated with said attorney(s) in relation to said lawsuit shall be paid by the Company pursuant to the indemnification provisions herein. City shall have the right to reject said choice in the event of actual conflict of interest or if the attorney has a family relationship to any City employee, officer,



or official, and in any event, the City shall have the right to participate at its own expense in any proceeding, claim, suit or action. Company shall pay, promptly upon entry, any nonappealable order, judgment or other final resolution of any claim or dispute arising out of the matters to be indemnified under this Agreement and shall pay promptly when due any fines, penalties or agreed settlements arising out of the matters to be indemnified under this Agreement. In the event that such payment is not made, the City or any City Affiliate, at their sole discretion, may proceed to file suit against the Company to compel such payment. The City Affiliates shall give reasonable notice of the service of any suit upon them to the Company, and shall give reasonable notice of any claim, action, administrative proceeding, loss or other damages. In the event of a claim or suit against Company arising out of the sole negligence, willful misconduct or breach of this Agreement by the City or any City Affiliate, City shall be obligated to defend and indemnify Company on the terms set forth in this section.. The City shall be responsible on the same terms as the Company's responsibility is based for indemnification of any injury or damage to the extent the same results from the sole negligence, willful misconduct or breach of this Agreement by the City or any City Affiliate. In addition, nothing in this Agreement shall be construed as a waiver of any common law or statutory immunity the City may have to such liability. This Section 2.3 survives termination of this Agreement.

Nothing in this Section shall be construed as a waiver of any rights either party may have with regard to contesting its alleged obligation for defense and indemnification by way of Declaratory Judgment or otherwise.

Further, any defense and indemnity provided herein is independent of and shall not be limited by reason of the enumeration of any insurance coverage which the Company has obtained. In that regard, Company shall purchase and maintain the following types of insurance with the following aggregate coverage limits: (a) General Liability - \$5,000,000; (b) Automobile Liability - \$5,000,000; and (c) Workers Compensation - \$3,000,000. Such insurance shall include the City of West Chicago as an additional insured, except for workers' compensation insurance, on a non-contributory primary basis and, if such coverage is commercially available, shall include "Occurrence" basis wording or provide for other substantially similar coverage that protects the City against the equivalent risks issued by a company or companies qualified to do business in the State of Illinois . A Certificate of Liability Insurance in substantially the form of the sample Certificate of Liability Insurance attached as Exhibit C shall be filed with the City, and this Certificate of Liability Insurance and the insurance policies required by this Section shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice (ten (10) days in the case of nonpayment of premium) has been given to the City. Company assures the City that a valid Certificate of Insurance will be in the City's possession at all times.

### **ARTICLE 3** **HOST FEES**

#### **Section 3.1 Purpose**



In consideration of the additional fees and costs to be incurred by the City, should the West Chicago City Council approve the Transfer Facility site location and should the Company build the Transfer Facility and begin accepting Municipal Waste and/or Hydro Excavation Waste, the Company agrees to pay the City the following fees.

**Section 3.2 Quantity Based Fees**

The Company shall pay to the City a base fee as provided below for each ton of Municipal Waste and/or Hydro Excavation Waste, except landscape waste and recyclables, received at the Transfer Facility (whether received in the same or separate vehicles) from the first date Municipal Waste and/or Hydro Excavation Waste is received through the termination of this Agreement. In the event the Transfer Facility accepts Food Scraps either in dedicated truckloads or commingled with Landscape Waste, the Company agrees to pay the per ton fee provided for in this section on the Food Scraps accepted at the Transfer Facility. The parties agree to work together to track and implement the mechanisms needed to assure the City payment on Food Scraps. The parties agree that the initial concept for implementing such a program may but need not necessarily be as the following language which is included herein for illustrative purposes only: "in order to determine the amount of Food Scrap accepted at the Transfer Facility that has been commingled with Landscape Waste from residential sources, the Company shall annually weigh and track the amount of Food Scrap it receives during the months of January, February and March when Food Scrap is not commingled with Landscape Waste. The Company shall determine a monthly average based on these three months and shall pay the City the per-ton fee on Food Scraps for those three months and for the remaining nine months of the calendar year based on the monthly average computed for that calendar year. If the Company receives Food Scraps from non-residential sources, for example grocery stores, restaurants and food processing firms, the Company shall pay the City the per ton fee on those Food Scraps based on the actual weights received. The Company shall provide the City with the data and calculations used to compute the monthly average by April 10 of each year and the City shall either accept or reject the monthly average proposed by the Company by April 20 of each year." Beginning on January 1, 2021, the annual increase provision in Section 3.3 will be used to determine the per-ton fee.

**Per Ton Fee**

The Company shall pay the City a Host Benefit Fee equal to two dollars and forty-five cents (\$2.45) per ton of Municipal Waste and/or Hydro Excavation Waste received at the Transfer Facility. Per-ton fees shall be payable only if, as and when waste is received and accepted at the Transfer Facility.

If the Company is awarded the City contract for curbside and/or alley collection and disposal of refuse, recyclable, and yard waste from all present and future single-family residences and multiple family dwellings of four (4) or less residential dwelling units in the City, the Company shall pay the City a separate Collection Fee of \$0.40 for each ton of Municipal Waste received at the Transfer Facility. The Collection shall be paid from the first date Municipal Waste is received at the Transfer Facility pursuant to the City contract through the termination of the City contract.

**Section 3.3: Annual Increase**



Beginning as of January 1, 2021, and as of each January 1 thereafter, the per-ton fees described in Section 3.2 above will be adjusted from the per-ton fees of the previous year by the percentage change during the previous year in the Revised Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Department of Labor – Statistics for the Chicago-Gary-Kenosha area, provided, however, that at no time shall the increase be less than 0% or greater than 4%. If the Consumer Price Index for All Urban Consumers shall cease to be published in the time frame described above, the City and Company shall designate a comparable time frame or index, which shall then be used for determining the annual rate of adjustment.

#### **Section 3.4 Identification and Weight of Receipts**

The Company shall weigh all receipts of Solid Waste and/or Hydro Excavation Waste on a certified scale, which is inspected at least once each calendar year by the Company, and a copy of said inspection shall be provided to the City upon request. In addition, the Company shall identify for the City, in writing, a listing of all receipts categorized by date, type of Solid Waste and/or Hydro Excavation Waste and other material in each receipt (if not Solid Waste and/or Hydro Excavation Waste), and weight of Solid Waste and/or Hydro Excavation Waste (or other material if not Solid Waste and/or Hydro Excavation Waste) in each receipt, so that the City can determine by its review of these records the number of incoming vehicles, the type of vehicle and identification of the hauling entity or person (in the case of an individual rather than business hauler), the load weight and total weight of each vehicle, and the type of waste or material contained on each vehicle received at the Transfer Facility each calendar day.

Further, the Company shall keep records of outgoing Solid Waste and/or Hydro Excavation Waste, such that the City can determine by its review of these records the number of outbound vehicles, the type of vehicle, the destination of each vehicle, and the type of waste contained on each vehicle leaving the Transfer Facility each calendar day. In addition, should the City request records concerning the load weight and total weight of each outbound vehicle, the Company agrees to provide that information, from weights measured at the Transfer Facility or at the destination of the vehicles leaving the Transfer Facility, from the time the Company receives the City's request on moving forward basis for any time period(s) designated by the City.

#### **Section 3.5: Auditing**

The Company shall keep complete and accurate books and records relating to the determination of the fees described in Article 3, in an auditable form, including those records described in Section 3.4. No more than once per year, the Company shall permit the City and its designated representatives access to such books and records (paper and electronic version) for inspection and copying. In the event that such inspection reveals any underpayment(s) of the fees described in Sections 3.2 and 3.3, the Company shall promptly pay the City the amount(s) of such underpayment(s), and if such underpayment is in excess of \$1,500.00, shall reimburse the City for its reasonable costs and expenses of such inspection and, if necessary, collection, including any professional and technical fees (including attorneys' fees) in connection therewith. If any inspection reveals an underpayment in excess of \$1,500, the City may inspect again within six months. In the event that such inspection reveals any overpayment(s) of the subject fees, the



Company may credit the amount of such overpayment(s) against the payments of the subject fees in subsequent quarters. The City shall give the Company at least seven (7) days notice before incurring such costs and expenses but nothing in this Agreement or this Section shall limit the City's right and ability to review, inspect, copy and audit the Company's books and records as set forth in this Section.

**Section 3.6: Payment Schedule for Fees**

The fees described in this Article shall be paid on a quarterly basis. The quarterly payments shall be calculated on a calendar-year basis; that is, they shall be calculated for the three-month periods ending on the last day of March, June, September and December of each year during the term of this Agreement and any extension thereof. The payment shall be made not later than forty-five (45) days after the last day of the preceding quarter and shall be limited to the Solid Waste transferred during the quarter to which it applies. Past due payments of the fees shall be subject to a late charge of one-and-one-half percent (1½ %) per month or fraction of a month for which the payment is late. Payment of such interest shall not otherwise excuse or cure any default by the Company under this Agreement.

**Section 3.7: Inspection and Enforcement**

If the Company is charged by the City with having violated any City enforceable law, ordinance, rule or regulation, or any of the Company's permit or site location approval conditions, the Company will be given a corrective notice along with a deadline to comply. If the Company fails to come into compliance and correct the violation, the City will proceed to issue a citation that requires the Company to appear at an Administration Adjudication hearing or the City will proceed through the court process. If the Company is found by a court or through the Administration Adjudication process to be guilty of such violation, or if the Company admits guilt or pleads no contest to such violation, the Company shall reimburse the City for all reasonable fees and costs associated with the City's investigation and prosecution of such violation, including, but not limited to, attorneys' fees. Additionally, Company agrees to pay upon a finding or admission of guilt or a plea of no contest to the City \$500.00 per day as liquidated damages, for each day after notice of such violation was received until the violation is cured, for the Company's violation of the provisions of this Agreement which require compliance with any City enforceable law, ordinance, rule or regulation, or any of the Company's permit or site location approval conditions or requirements, or siting conditions (such as conditions concerning tarping or untarping of vehicles, pick-up or clean-up of litter, noise control, odor control, vector control, dust control, or random load inspections),. The \$500.00 liquidated damages provision shall increase annually, pursuant to the manner and method set forth in Section 3.3 of this Agreement.

**ARTICLE 4**  
**MISCELLANEOUS**

**Section 4.1: Assignment**

The Company shall not assign or attempt to sublet this Agreement or any interest in this Agreement or any right or privilege appurtenant to this Agreement without first obtaining the City's written consent, which consent shall not be unreasonably withheld, conditioned or delayed: provided, however, that the Company may assign or transfer its interest in this Agreement to an affiliate of the Company without consent in the event that the affiliate is more than 50% owned by the Company. In addition, no transfer of any ownership or other interest in the Transfer Facility may be made without the prior written approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed. The right to seek assignment or approval may occur only if all payments to the City by the Company have been made and if the Company is not otherwise in default in connection with obligations under this Agreement. If the Company requests the City's consent to an assignment of this Agreement or approval of a transfer of ownership or other interest in the Transfer Facility, the Company shall submit written notice containing at least the following information, plus any information required by the City's ordinance pertaining to such assignment request, should such an ordinance be in existence at the time of the request:

- (a) The name of the proposed assignee;
- (b) The terms of the proposed assignment except that Company is not required to disclose consideration, price or payment terms
- (c) The nature of business of the proposed assignee and the proposed use by the assignee; and
- (d) Information relating to the financial responsibility and general reputation in the solid waste field of the proposed assignee that City may require.

In the event of the City's agreement to assignment, the proposed assignee shall agree to the following:

- (e) To assume all obligations and duties of the Company under this Agreement and any conditions placed on the site location approval by the City;
- (f) To be bound as an original party to this Agreement; and
- (g) To make any and all payments due under this Agreement and/or assignment to City directly at its offices, as such payments become due; and

Subject to the provisions of this Agreement limiting the right to assign this Agreement shall be binding on and inure to the benefit of the parties and their heirs and successors. Furthermore, in the event of an approved assignment or transfer, the Company shall remain primarily responsible for all obligations and liabilities of this Agreement which accrue prior to the execution of any approved assignment or transfer. Transfer of a fifty-percent (50%) or greater interest in the Company to another owner or owners shall be deemed an unpermitted transfer under this Section, unless made with the approval of the City. The City may require an additional written commitment from the assignee or transferee to assume and comply with the duties and obligations of this



Agreement. The City shall not unreasonably withhold, condition or delay approval of a proposed assignment or transfer. This Section 4.1 survives termination of this Agreement.

**Section 4.2: Default**

The occurrence of any one or more of the following constitutes a “default” by the Company under this Agreement. Should the Company be in default of this Agreement, the City may, at its sole discretion, terminate this Agreement.

- (a) The failure by the Company to pay any fee due and payable under this Agreement; if the Company does not cure such failures within thirty (30) days after notice thereof from the City to the Company;
- (b) The failure by the Company to observe or perform in any material respect pursuant to Section 2.1 of this Agreement or any other provision of this Agreement, if the Company does not cure such failure within thirty (30) days after notice thereof from the City to the Company. In the event such failures cannot reasonably be cured within thirty (30) days, the Company must, before the thirtieth day: notify the City that it cannot complete its cure, present the City with a plan and timeline (which meets with the reasonable approval of the City) for completing the cure and implementing a plan to prevent the same or a similar failure from occurring again, and diligently continue to cure such failures during the initial thirty (30) day cure time period and any additional period beyond the thirty (30) days approved by the City. However, to the extent the Company’s default under this Agreement concerns its failure to comply with Section 2.2 (Waste Acceptability), the more restrictive provision (this or Section 2.2) shall control in determining whether the Company is in default of this Agreement;
- (c) The Company admits in writing its inability to pay its debts as they mature and makes an assignment for the benefit of creditors or applies for or consents to the appointment of a trustee or receiver for the Company or a major part of its property;
- (d) A trustee or receiver is appointed for the Company or for a major part of its property, and it is not discharged within ninety (90) days after such appointment; or
- (e) Bankruptcy, reorganization arrangement, insolvency or liquidation proceedings or other proceedings for relief under any bankruptcy law, or similar law, for the relief of debtors are instituted by or against the Company and, if instituted against the Company, are allowed against it or are not dismissed within 180 days after such institution.

**Section 4.3: Notice**

Any notice to be given hereunder by either party to the other shall be in writing and be sent by personal delivery, by overnight delivery service or by registered or certified mail, postage

prepaid, return receipt requested, and shall be deemed communicated when delivered or three (3) business days from the date of mailing, whichever is earlier. Notices shall be addressed as set forth below, but each party may change its address by written notice to the other in accordance with this Section:

To the City, notice shall be sent to both the City and the City's Attorney at the following addresses:

**TO THE CITY AT:**

Attention: Michael Guttman, City Administrator  
Address: West Chicago City Hall  
475 Main Street  
West Chicago, Illinois 60185

**WITH COPY TO THE CITY'S ATTORNEYS AT:**

Attention: Dennis G. Walsh, Esq.  
Address: Klein, Thorpe and Jenkins, Ltd.  
20 N. Wacker Drive - Suite 1660  
Chicago, Illinois 60606-2903

To the Company, notice shall be sent to the Company at the following addresses:



**TO THE COMPANY AT:**

Attention: Alan Handley  
Address: Lakeshore Recycling Systems, LLC  
6135 Oakton Street  
Morton Grove, Illinois 60053

**Section 4.4: Agreement Controls**

This Agreement constitutes the entire understanding of the parties hereto relating to the subject matter contained herein, except that it does not, in any way, constitute the City's agreement or obligate the City to approve the Company's site location application. If such application is filed with the City and if such application is approved by the City, this Agreement is to be read as an additional obligation and not as superseding the Company's obligation to comply with any conditions of the City's site location approval and any laws, ordinances, rules or regulations applicable to the site or Transfer Facility.

**Section 4.5: Captions**

Captions of the Articles, Sections and paragraphs of this Agreement are for convenience or reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**Section 4.6: Enforcement of Siting Conditions**

The Company agrees that, should the Transfer Facility receive site location approval pursuant to Section 39.2 of the Act from the City of West Chicago, that any final and non-appealable conditions imposed on the Transfer Facility or Company as part of such approval are enforceable by the City against the Company, in the same manner in which the City's ordinances or this Agreement are enforceable, or pursuant to a City ordinance, should one be in effect at the time of the enforcement. Section 4.6 survives the termination of this Agreement.

**Section 4.7: Governing Law and Forum for Litigation**

This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. Any litigation filed by the Company or the City against the other party and involving this Agreement shall be filed in the Circuit Court of DuPage County, Illinois. Section 4.7 survives the termination of this Agreement.

**Section 4.8: Severability**

The provisions of this Agreement shall be deemed to be severable, and the invalidity or unenforceability of any provision shall not affect the validity and enforceability of the other provisions hereof. Section 4.8 survives the termination of this Agreement.

**Section 4.9: Binding Effect**

This Agreement shall inure to the benefit of and be binding upon the respective parties hereto, their successors and assigns. However, nothing in this Section should be construed to allow the Company to assign its interest in this Agreement unless done pursuant to Section 4.1 of this Agreement. Section 4.9 survives the termination of this Agreement.

**Section 4.10: Force Majeure**

Neither party hereto shall be deemed to be in default or to have breached any provision of this Agreement as a result of any delay, failure in performance or interruption of services resulting directly or indirectly from acts of God, acts of civil or military authority, civil disturbance, or war or labor strikes or interruptions, which are beyond the control of such non-performing party.

**Section 4.11: No Third-Party Beneficiaries**

Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties and their respective successors and assigns, nor shall any provision give any third persons any right or rights of action against any party to this Agreement.

**Section 4.12: Legal and Related Expenses**

The Company shall pay the City within 45 days after receiving the appropriate documentation, the reasonable and necessary costs incurred by the City in the pre-filing review process, including, but not limited to, staff review time, engineering and other consultant fees and expenses and attorneys' fees and expenses. The Company shall reimburse the City, within 45 days after receiving the appropriate documentation, for such pre-filing review costs. The City agrees that the pre-filing review costs to be reimbursed by the Company will not exceed \$35,000 without prior written agreement from the Company.

The Company agrees to reimburse the City, within 45 days after receiving the appropriate documentation, for the reasonable and necessary fees and costs (including, but not limited to consulting and attorneys' fees and costs and City staff costs) incurred in connection with the drafting and negotiation of this Agreement. The City agrees that the host agreement drafting and negotiation costs to be reimbursed by the Company will not exceed \$15,000 without prior written agreement from the Company.

**Section 4.13: Records**

In addition to those records described in Sections 3.4 and 3.5, above, the Company shall provide to the City, upon the City's request, free of charge and in a timely manner, copies of all of the following documents in any manner connected with the Transfer Facility:



1. Documents submitted or received by the Company, its representatives, agents, attorneys, employees, or consultants to or from any State or Federal government, or any regulatory or administrative agency, including:

- (a) those documents and/or records that are to be submitted by the Company and/or its agents, representatives or consultants to any state and/or federal environmental regulatory/compliance agency including but not limited to documents and/or records which involve changes to the construction or operation of the Transfer Facility;
- (b) correspondence and/or other communications of any type, kind or sort with any state and/or federal environmental regulatory/ compliance agency;
- (c) those documents not otherwise subject to attorney client privilege or work product privilege, and/or records filed with or received from any state or federal regulatory agency relevant to investigations, inquiries, charges, complaints, citations or notices of violations made and/or issued by any such governmental authority with respect to the Company's conduct and/or activity on or related to the Transfer Facility. Draft settlement decrees and orders, shall not be subject to disclosure to the City.

All such documents and/or records described herein shall be provided to the City prior to, if reasonably possible, or otherwise contemporaneously with their anticipated submittal by the Company and/or its agents and consultants to any state and/or local federal regulatory agency, and the City shall have a reasonable opportunity to review such anticipated submittals and make comments and/or suggested changes and modifications to the same, which the Company is neither required to respond to or accept. The Company shall provide the City with any documents and/or records received by the Company from any state, local and/or federal regulatory agency within ten (10) days of receipt thereof.

2. . Subject to the limitation in Section 4.13 (1)(c), documents not otherwise subject to attorney client privilege of work product privilege submitted or received by the Company, its representatives, agents, employees, or consultants to or from any citizen pertaining to the development or operations of the Transfer Facility, particularly comments or complaints concerning such development or operations and including but not limited to the inbound or outbound vehicles to the Transfer Facility.

3. The Company shall maintain on a daily basis books and records pertaining to the weight and volume of Solid Waste at the Transfer Facility and the daily traffic count of vehicles utilizing the Transfer Facility (setting forth the truck number of each vehicle, the weight of waste each vehicle contains, the classification of waste and its origin). The City, its authorized agents and representatives shall be permitted to inspect such books and records which the Company shall maintain. The City shall also be permitted to inspect any and all books, records, data, documents and reports maintained by the Company concerning compliance with any and all applicable federal, state and local laws, statutes, regulations, rules and/or ordinances relating to the operation of the Transfer Facility and the waste handling/disposal activities described herein.



The Company shall maintain a true and accurate copy of any and all books, records, data, information, documents and reports noted herein at the Transfer Facility.

**Section 4.14: Access**

The Company shall allow any agent duly authorized by the City:

- (a) Except in case of emergency, all entries under this 4.14 shall be upon at least one day notice, and all City representatives entering shall be escorted at all times by designated Company personnel. Entries pursuant to 4.14(f) shall be only upon probable cause, as set forth in written notice of the proposed entry, to believe that a material term of this Agreement has been or is being violated; provided, however, nothing in this section or this Agreement shall limit in any way the City's rights under any of its codes and/or ordinances, including but not limited to any rights of inspection.
- (b) To enter the Transfer Facility at reasonable times. For purposes of this Section, "reasonable times" means any time during Regular Business Hours and any time not during Regular Business Hours when persons are at the Transfer Facility and/or operations are being conducted and/or the City wants to assure that any siting conditions, local ordinances or contractual provisions between the Company and City are not being violated during non-operational hours (e.g., if there is a siting condition or law or regulation prohibiting overnight storage of waste and the Transfer Facility stops operating at 6:00 p.m., the Company must provide access for the City to enter the Transfer Facility at any time after 6:00 p.m., if the City desires to verify the Company's compliance with the overnight storage restriction);
- (c) To have access to and copy at reasonable times any records required to be kept under the terms and conditions of this Agreement or any local ordinance
- (d) To inspect no more than four times per year during Regular Business Hours of equipment constructed or operated under this Agreement or pursuant to a siting condition. If such inspection reveals any violation of this Host Agreement or a siting condition, the City may inspect again within two weeks;
- (e) To obtain and remove no more than once per year during Regular Business Hours samples of any discharge or emission of contaminants or suspected contaminants. As used in this Section "contaminants" is defined pursuant to Section 3.06 of the Act (415 ILCS 5/3.06). Any samples obtained shall be split samples and shared with the Company;
- (f) To enter at reasonable times and utilize any photographic, recording, testing, monitoring or other equipment for the purpose of preserving, testing, monitoring, or recording any activity, discharge, or emission authorized or prohibited by this Agreement.



**Section 4.15 City's Use of Transfer Facility**

Subject to the force majeure provisions of this Agreement, upon written request of the City, the Company shall arrange for disposal capacity for all of the residential waste generated within the City's boundaries which Company is permitted to receive for storage and transfer. The Company's obligation to secure disposal capacity shall extend only to residential waste which is initially abandoned or discarded within the City.

The Company agrees that its charges to the City or its contractor for storage, transfer and off-site treatment, recycling and/or disposal of Municipal Waste will be no greater than the lowest charges the Company charges any other non-affiliated, non-trans-load, non-swap solid waste customer with similar volume. If requested by the City, the Company agrees to demonstrate to the City's satisfaction that the Company has and is complying with this Section 4.15 including providing access to all documents and/or records, which may be redacted to avoid disclosure of customer identities, reflecting the amounts and types of waste accepted by the Transfer Facility as well as any and all documents, which may be redacted to avoid disclosure of customer identities, affecting charges assessed to customers and/or users of the Transfer Facility. The City acknowledges that this is proprietary information and will not disclose the same to any other person or entity except as required by law.

In addition, upon issuance of an operating permit by the IEPA for the Transfer Facility and upon the Transfer Facility beginning to accept Municipal Waste and for a period extending through the term of this Agreement for as long as the Transfer Facility continues to accept Municipal Waste, City employees may dump up to 2,500 tons per year of the following items: Municipal Waste (maximum of 800 tons); wood chips, stumps and logs; Construction or Demolition Debris, and cement or asphalt materials at the Transfer Facility at no cost to the City.

Contractor shall annually provide up to a total of twenty (20) 1-1/2 cubic yard dumpsters or up to sixty (60) 90 gallon carts (or a combination of dumpsters and carts up to the total proportionate amounts) for one-time pick up each at special events and/or City use, at no cost where ease and frequency of collection is deemed to be in the best interest of the City.

**Section 4.16 Preference for City Residents and Firms**

The Company agrees that it shall give preference to suitably skilled applicants residing in the City before hiring applicants residing in other communities for work at the Transfer Facility, to the extent that such preference does not violate any state or federal employment, civil rights or similar laws, or union contracts, but the ultimate decision will be left with the Company. Further, the Company agrees that, for all work performed at the Transfer Facility, it shall require its contractors to give preference to hiring new employees from suitably skilled applicants residing in the City before hiring applicants residing elsewhere. The Company further agrees that it shall give preference to firms and businesses located in the City which provide a competitive price or bid



(where bidding is required) and which are capable of performing the required work before contracting with or otherwise retaining firms and businesses headquartered elsewhere.

The Company, at the written request of the City, will notify the City promptly of each job opening and contract opportunity at the Transfer Facility, and shall use reasonable efforts to provide such notice not less than forty-eight (48) hours before the Company publicly announces such opening or opportunity.

The Company agrees to incorporate a courtesy drop-off area into the facility design, for the convenient use and benefit of the citizens of the City. The drop-off area will accept, at no charge to the residents of the City subject to providing proof of residency at the time of drop off, up to two discarded electrical or electronic devices per household per year commonly known as electronic waste or e-waste, excluding CRT monitors or big screen televisions. CRT monitors or big screen televisions would be accepted for a fee of \$35 per item. If the Company is awarded the City contract for curbside and/or alley collection and disposal of refuse, recyclable, and yard waste from all present and future single-family residences and multiple family dwellings of four (4) or less residential dwelling units in the City, CRT monitors and big screen televisions shall be accepted at no charge subject to the two devices per household per year limitation and subject to providing proof of residency at the time of drop off. The acceptance of the CRT monitors and big screen televisions for free shall occur from the first date Municipal Waste is received at the Transfer Facility pursuant to the City contract through the termination of the City contract.

#### **Section 4.17 Traffic Control**

All transfer trailer truck traffic entering and existing this site must utilize Powis, Kress and Roosevelt Roads and North Avenue (IL 64). Site plan and off-site road improvements are subject to final engineering approval of the Public Works Department and must meet all applicable codes and ordinances in affect at the time of permitting.

#### **Section 4.18 Transfer Facility Control Measures**

The Company shall seek to prevent any waste, litter or debris from being discarded onto public traveled roads due to the Company's operation of the Transfer Facility and shall abide by a litter control plan as approved by the City as a result of the siting process. Should the waste, litter or debris from such operation pose a problem in the reasonable opinion of the City, the City, at its option, may require the Company to sweep or otherwise clean Powis Road in the City of West Chicago, as needed. The Company shall keep the Transfer Facility and all buildings and other improvements built or utilized by the Company in good condition and repair for the term of this Agreement. In addition:

- a. All tipping of Municipal Waste at the Transfer Facility shall be on the tipping floor inside the transfer building, and, except as provided in Subsection b. below, the Company shall have the tipping floor free of waste and cleaned with a mechanical street sweeper by the end of each operating day;



- b. No Municipal Waste shall be left on the tipping floor inside the transfer building or outside the transfer building on the Transfer Facility property overnight, except:
  - i. In transfer trailers, provided that such trailers are suitably covered and staged at least 500 feet from Powis Road right-of-way;
  - ii. In the event of an emergency, the IEPA or person previously appointed by the City Council or, in the absence of such an appointment, the Mayor has given prior approval of temporary overnight storage on the tipping floor inside the transfer building; and
- c. Empty waste collection containers and empty transfer trailers may be stored outside the transfer building at least 500 feet from Powis Road right-of-way;
- d. The Company shall conduct all operations in a manner that is protective of the public health, safety, welfare, groundwater resources and the environment. The Company shall comply with all City ordinances and all applicable laws, ordinances, rules and regulations, including but not limited to IPCB regulations and the City code.
- e. At a minimum, the Company shall provide a street sweeper to remove mud, dirt and dust tracked on to hard surfaces inside and outside the Transfer Facility property including onto Powis Road within three-fourths (3/4) mile of the Transfer Facility property on an as needed basis, but not less frequently than daily except during severe weather conditions (e.g., heavy rains, winter conditions when salt has been applied to the roadway). All access drives, parking areas, storage areas and vehicle maneuvering areas of the Transfer Facility property shall be paved and swept with a street sweeper as needed, but not less frequently than daily;
- f. The Transfer Facility and any area used for the outdoor storage of any material or equipment will be fenced and visually screened from viewing from off the Transfer Facility property by means of said fence and appropriate landscaping as approved by the City.
- g. For odor control the Company agrees to the following.
  - i. conduct all Municipal Waste handling and transfer operations completely indoors.
  - ii. Municipal Waste will be delivered primarily in enclosed vehicles, and tarps will be required on all non-enclosed loads.
  - iii. Unloading, transferring, and loading operations for Municipal Waste will be performed within the building.
  - iv. Municipal Waste will be removed from the tipping floor with a frequency adequate to greatly minimize the generation of odors.
  - v. The Municipal Waste tipping floor areas will be cleaned with a pressure washer as needed.
  - vi. If malodors are detected off-site, the source of odor generation will be removed from the Site, and the off-site condition will be monitored by Transfer Facility



personnel to insure against reoccurrence. If a continuous source of odorous materials is identified, the generator will be contacted and advised that the materials must be effectively treated for odor control or the service will be discontinued and the materials no longer brought to the Transfer Facility.

Nothing in this subsection shall limit the Company's ability to implement new odor control technologies.

- h. The Company agrees to keep the truck doors to the Transfer Facility closed, except for emergencies and to allow trucks to enter and exit the facility, during Regular Business Hours.

#### **Section 4.19 Community Relations/Complaint Resolution**

As of the date of commencement of development of the Transfer Facility, and for the balance of the operating life of the Transfer Facility, the Company shall assign and designate a telephone number and representative which shall be responsible for receipt of inquiries, complaints and calls which may arise from the public relative to the operation of the Transfer Facility as outlined in this Agreement. This telephone number will be answered by a person employed or retained by the Company during Regular Business Hours. The Company shall also provide a voice mail telephone number and a website for public inquiries and complaints. All complaints shall be initially investigated by the Company within forty-eight (48) hours. All such complaints and inquiries received from the public shall be responded to and addressed promptly. The Company shall also keep a log of the date and time such complaint, inquiry or communication was received, the nature of the complaint, inquiry or communication, the name of the person initiating such contact, the date and time which response was made to such complaint, inquiry or communication, as well as the method in which any such complaint, inquiry or communication was addressed and or resolved. The Company shall supply the same information as from time to time requested by the City. In addition, the Company shall provide the City with an emergency telephone number for contacting the Transfer Facility Manager after Regular Business Hours in the event of an emergency.

#### **Section 4.21 Site Location Decision**

The City has not, by entering into this Agreement with the Company, predetermined whether it will grant or deny site location approval for the Transfer Facility or whether the Company can (or cannot) establish any of the criteria related to site location approval. The City shall review the Company's application for site location approval for the Transfer Facility on the Transfer Facility Site in accordance with the criteria set forth by Illinois law as provided for in 415 ILCS 5/39.2.

#### **Section 4.22 Siting Application and Pre-Filing Review**

The Company shall provide a siting application consistent with the terms of this Agreement and the requirements of Section 39.2 of the Act and the City of West Chicago's Siting Procedures. Prior to filing the siting application with the City the Company agrees to provide the City an

opportunity to conduct a pre-filing review of the siting application. The pre-filing review shall consist of the Company submitting a final draft of the siting application to the City for its review and comment. The Company agrees to reimburse the City for its pre-filing review costs in accordance with Section 4.12 of this Agreement.

**Section 4.23 Green Building Principles**

The Company shall consider utilizing green building principles in the design and operation of the Transfer Facility. These green building principles used for the design and operation of the Transfer Facility shall be documented to the City in a memorandum as part of the Pre-Filing review to be conducted pursuant to Section 4.22 of this Agreement.

City and Company acknowledge that solid waste hauling, transfer and disposal are subject to possible improvements due to ongoing technological developments. Company agrees to monitor technological developments relevant to its business, and the parties will periodically discuss the feasibility and cost effectiveness of incorporating such developments into the Transfer Facility.

**Section 4.24 Fees**

The Fee, as described in Article VII, Section 14-93(a)(3) of the City's Code of Ordinances must be paid by the Applicant at the time an application is filed and additional payments must be made as required by Article VII, Section 14-93(a)(3) of the City's Code of Ordinances, before the application may be considered



**ARTICLE 5**  
**AUTHORITY AND GUARANTY OF PAYMENT**

**Section 5.1: Authority to Enter Into Agreement**

The Company hereby represents and warrants that it is a valid and existing Illinois corporation, in good standing, authorized to do business in the State of Illinois, and that individuals executing this Agreement have been duly authorized by the Company to act on its behalf and enter into this Agreement. In addition, the Company agrees to provide the City, at the time of execution of the Agreement, with a copy of the corporate resolution authorizing the execution of this Agreement.

The Company, by its signature on this Agreement, certifies that it has not been barred from contracting with a unit of local government as a result of a violation of Section 33E-3 or 33E-4 of the Illinois Criminal Code (720 ILCS 5/33E-3, 5/33E-4).

**Section 5.2: Guaranty of Payment**

As additional consideration for and assurance of performance of this Agreement, the Company and \_\_\_\_\_ tender to the City and the City accepts, the Guaranty of Performance and Payment attached to this Agreement as Exhibit B. This Guaranty of Performance and Payment survives termination of this Agreement.

**Section 5.3: Covenants Run with the Land**

The parties agree that the covenants, agreements and understandings contained in this Agreement, which expressly survive its termination touch and concern the Subject Property, and that such covenants, agreements and understandings shall run with the Subject Property. The Company agrees that the City may prepare, and the Company shall promptly execute duplicate originals of an instrument, in recordable form, which will constitute a memorandum of Host Community Benefit Agreement, attaching an executed copy of this Agreement as an exhibit, and record such Memorandum in the Office of the DuPage County, Illinois Recorder of Deeds.


**Section 5.4: Financial Assurance**

The Company shall to provide, if reasonably feasible, a minimum of six (6) months notice to the City prior to ceasing operations at the Transfer Facility. Regardless of the foregoing, the Company shall provide to City within seven (7) days notice of any final internal decision to close the facility. Not less than three (3) months prior to ceasing operations, the Company, at its sole cost, shall provide to the City financial assurance, in a form reasonably acceptable to the City, sufficient (as agreed to by the Parties) to cover the costs of properly closing the Transfer Facility, which financial assurance shall be maintained until the Transfer Facility has been closed in accordance with all applicable legal requirements. Such financial assurance shall be in the form of a letter of credit, escrow account, policy of insurance or a guaranty from a creditworthy guarantor.

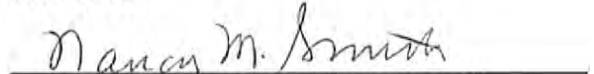


IN WITNESS WHEREOF, the parties hereto have executed this instrument on the day and year first written above.


THE CITY OF WEST CHICAGO,  
DuPage County, Illinois

By:   
Name: Ruben Pineda  
Title: Mayor

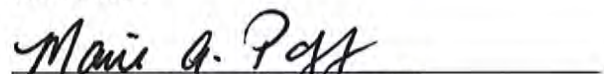
ATTEST:

  
Name: Nancy M. Smith  
Title: CITY CLERK

LAKESHORE RECYCLING SYSTEMS, LLC

By:   
Name: Brian T Handley  
Title: COO

ATTEST:

  
Name: Marie A. Poff  
Title: EXECUTIVE ASSISTANT

**Exhibit A**

**LEGAL DESCRIPTION**

**Exhibit B**

**GUARANTY OF PERFORMANCE AND PAYMENT**

\_\_\_\_\_, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does for itself and its successors and assigns, hereby unconditionally guaranty the full and prompt performance of each and every covenant, condition, agreement and obligation to be performed and observed by \_\_\_\_\_, including the payment by \_\_\_\_\_, of all sums due and owing to the City Of West Chicago, DuPage County, Illinois, in and by that certain Host Community Benefit Agreement entered into between \_\_\_\_\_ and the City of West Chicago on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_. \_\_\_\_\_ hereby waives notice of default, nonpayment, non-performance or non-observance by the City of West Chicago, and proof, notice or demand to charge \_\_\_\_\_ under this Guaranty of Performance and Payment. \_\_\_\_\_ hereby consents to each and every extension of time that the City of West Chicago may grant to \_\_\_\_\_ under the said Host Community Benefit Agreement. \_\_\_\_\_ expressly agrees that the validity of this Guaranty of Performance and Payment shall in no way be terminated, affected or impaired by reason of the assertion by the City of West Chicago against \_\_\_\_\_ of any of the rights or remedies reserved to the City of West Chicago pursuant to the provisions of the said Host Community Benefit Agreement. \_\_\_\_\_ further covenants and agrees that this Guaranty of Performance and Payment shall remain and continue in full force and effect as to any renewal, modification or extension of the said Host Community Benefit Agreement.

\_\_\_\_\_ hereby represents and warrants that it is a valid and existing corporation organized under Illinois law, in good standing. Additionally, \_\_\_\_\_ hereby represents and warrants that the individual executing this Guaranty of Performance and Payment has been duly authorized by \_\_\_\_\_ to act on its behalf and enter into this Guaranty of Performance and Payment. Further, \_\_\_\_\_ agrees to provide the City, at the time of execution of this Guaranty of Performance and Payment, with a copy of the resolution authorizing the execution of this Guaranty of Performance and Payment. Further, \_\_\_\_\_ agrees that this Guaranty of Performance and Payment shall be governed by and construed in accordance with the laws of the State of Illinois. Any litigation filed by the City or \_\_\_\_\_ against the other party and involving this Guaranty of Performance and Payment or the Host Community Benefit Agreement to which this Guaranty of Performance and Payment relates, shall be filed in the Circuit Court of DuPage County, Illinois. \_\_\_\_\_ further covenants and agrees that in any action or proceeding brought by the City of West Chicago or \_\_\_\_\_, on any matters whatsoever arising out of, under or by virtue of the terms of the said Agreement or this Guaranty of Performance and Payment, \_\_\_\_\_ shall and hereby does waive trial by jury.

\_\_\_\_\_, by its signature on this Guaranty of Performance and Payment, certifies that it has not been barred from contracting with a unit of local government as a result of a violation of Section 33E-3 or 33E-4 of the Illinois Criminal Code (720 ILCS 5/33E-3, 5/33E-4).

\_\_\_\_\_ agrees to pay all expenses, including reasonable attorney's fees, incurred by the City of West Chicago in enforcing this Guaranty of Performance and Payment.

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

And

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_



Certificate

The undersigned, \_\_\_\_\_, hereby certifies that he is the duly elected, qualified and acting \_\_\_\_\_ of \_\_\_\_\_, a corporation duly organized and existing under the laws of the State of Illinois (the "Corporation"); that as such officer, he is in charge of the Minute Book and other corporate records of said Corporation; that the following is a full, true and correct copy of the resolutions appearing in the records of the Corporation, and that said resolutions were adopted by a legal majority of the Board of Directors of said Corporation, at a meeting thereof duly and regularly held on \_\_\_\_\_; and the undersigned further certifies that as of the date hereof, said resolutions have not been rescinded or modified and are in full force and effect.

**Resolved**, that any two officers of the Company be, and hereby are, authorized upon such terms and conditions as they shall deem proper to execute and deliver for and on behalf of the Company such guaranty agreements and other instruments or written obligations of the Company as may be desired or required in connection with the Guarantees containing such terms and conditions as may be acceptable or agreeable to any two of said officers, such acceptance and agreement to be conclusively evidenced by any two of said officers' execution and delivery thereof;

**Further Resolved**, that the Company's execution of any guaranty agreements and other instruments or written obligations in connection with Guarantees, in the judgment of the Board of Directors, may reasonably be expected to benefit, directly or indirectly, the Company;

**Further Resolved**, that any two of said officers, are hereby authorized in the name of an on behalf of the Company to take such further action and to do all things that may appear in the discretion of any of them to be necessary in connection with renewals, extensions for any period, rearrangements, retirements or compromises of the indebtedness, obligations and liability of the Company or Affiliates to the Lenders arising out of Guarantees or any other indebtedness, obligations and liabilities of the Company or Affiliates owing to the Lenders;

**Further Resolved**, that any two of said officers are authorized and empowered to do or cause to be done all such acts or things and to sign and deliver, or cause to be signed and delivered, all such documents, instruments and certificates (including, without limitation, any and all requests, notices, and certificates required or permitted to be given or made to Lenders under the terms of any of the instruments executed on behalf of the Company in connection with the

Guarantees), in the name and on behalf of the Company as any two of said officers, in their discretion, may deem necessary, advisable or appropriate to effectuate or carry out the purposes and intent of the foregoing Resolutions and to perform the obligations of the Company under all instruments executed on behalf of the Company in connection with the Guarantees;

**Further Resolved**, that the execution by any of said officers, of any document authorized by the foregoing Resolutions or any document executed in the accomplishment of any action or actions so authorized, is (or shall become upon delivery) the enforceable and binding act and obligation of the Company, without the necessity of the signature or attestation of any other officer of the Company or the affixing of the corporate seal;

**Further Resolved**, that all acts, transactions, or agreements undertaken prior to the adoption of these Resolutions by any of said officers or representatives of the Company in its name and for its account in connection with the foregoing matters are hereby ratified, confirmed and adopted by the Company; and

**Further Resolved**, that the Secretary, Assistant Secretary, or other appropriate officer of the Company is hereby authorized to certify these Resolutions.

Dated at \_\_\_\_\_, Illinois, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Exhibit C

CERTIFICATES OF LIABILITY

**PWC-7**





APTIM  
1607 East Main Street  
St Charles, Illinois 60174  
Tel: +1 630 762 1400  
Fax: +1 30 762 1402  
www.aptim.com

May 6, 2019

Mr. Michael Guttman  
Administrator  
City of West Chicago  
475 Main Street  
West Chicago, IL 60185

**Subject: Proposal to Provide Municipal Waste Transfer Station  
Siting Application Review Services to the City of West Chicago**

Dear Mr. Guttman:

Aptim Environmental & Infrastructure, LLC (Aptim) is pleased to provide the City of West Chicago with this proposal to conduct professional engineering and review services with regard to an anticipated application requesting local siting approval for the development of a transfer station in West Chicago. Based upon our extensive experience participating in local siting proceedings the following discusses the proposed scope of services and budget.

### **Scope of Services**

As an initial step, Aptim will conduct a "pre-file" review of the draft application. The pre-file review is intended to provide a qualitative review of the draft application to establish general consistency with the City of West Chicago Pollution Control Facility Siting Ordinance, identify gross inconsistencies, and to determine if proposed facility design and operations generally conforms to Best Management Practices for modern transfer station facilities. It is envisioned that the pre-file review will begin with a site visit and will culminate with the provision of one (1) marked up copy of the draft application. We will also attend one meeting with the City and applicant to discuss the findings of the pre-file review.

Subsequently, and after filing of an application, Aptim will assist the City in reviewing the application to determine whether a technical basis has been established demonstrating the statutory criteria have been met. We will conduct additional research and analysis as necessary and within reason in order to verify the information provided by the applicant, and we will assist the City's legal counsel in preparing questions for the applicant during the public hearings. Our proposal assumes attendance at one meeting with the City after review of the filed application and attendance at up to two days of hearings.

### **Limitations**

As you are aware, the process of siting a transfer station is a complex and dynamic process, requiring the expertise of many technical disciplines. As such, the actual cost to conduct these services depends on several variables. Some of these variables include the type and quantity of information provided within the application, the level of organization and consistency of the application. Without knowing the extent or quality of the application it is difficult to provide an accurate estimate of the level of effort that will be required. Should the application be incomplete or of poor technical quality, a larger level of effort may be necessary than what was assumed in preparation of this proposal.



Furthermore, the pre-file review is meant to be a qualitative third party review and is not intended to be an exhaustive validation of material submitted in the draft application. As such, the following will not be tendered as a part of the scope of services:

- Conducting independent field or research studies to verify or validate findings or conclusions tendered by the Applicant.
- Proposing remedies to inconsistencies or deficiencies identified within the draft application.

### **Budget**

Aptim recommends a budget of \$40,000 for this project, of which \$36,000 is estimated to be required by Aptim and \$4,000 is estimated to be required for the participation of Walter Willis in review of the Plan Consistency component of the application and for his attendance at the above referenced meeting and hearing. While part of the project team, it is proposed that Mr. Willis will submit invoices directly to the City. In addition to the involvement of Mr. Willis, Aptim may make a recommendation for a traffic consultant to assist in the review process if deemed necessary upon initial evaluation. This effort has not been included in this proposal and it is assumed that any necessary traffic consultant would also contract directly with the City under an additional scope of service.

All services will be provided on a time and material basis, and we will only bill for time actually spent on the project. Any additional services requested by the City will also be conducted on a time and material basis in accordance with our attached 2019 Fee Schedule (refer to Attachment 1). Attachment 2 contains a Professional Services Agreement. Résumés of key team members, including that of Mr. Willis are provided in Attachment 3.

We look forward to having an opportunity to work with the City of West Chicago on this project. If the terms and conditions are acceptable, please sign and return of the Professional Service Agreement in Attachment 2 to and return it to my attention. Meanwhile, if you have any questions, feel free to contact me at (630) 762-1400.

Sincerely,  
**Aptim Environmental & Infrastructure, LLC**

A handwritten signature in black ink, appearing to read "Devin A. Moose", written over the typed name.

Devin A. Moose, P.E., DEE  
Director

# ATTACHMENT 1

## 2019 Fee Schedule



**APTIM Environmental & Infrastructure, LLC  
2019 Fee Schedule**

<u>Title</u>	<u>Rate</u>
Principal	\$215.00
Engineer / Geologist / Environmental Scientist	
Planner	
Designer	
Project Administrator	
Project Manager IV	\$180.00
Engineer / Geologist / Environmental Scientist	
Planner	
Designer	
Project Administrator	
Project Manager III	\$160.00
Engineer / Geologist / Environmental Scientist	
Planner	
Designer	
Project Administrator	
Project Manager II	\$140.00
Engineer / Geologist / Environmental Scientist	
Planner	
Designer	
Project Administrator	
Project Manager I	\$125.00
Engineer / Geologist / Environmental Scientist	
Planner	
Designer	
Project Administrator	
Professional Level III	\$105.00
Engineer / Geologist / Environmental Scientist	
Planner	
Designer	
Project Administrator	
Professional Level II	\$95.00
Engineer / Geologist / Environmental Scientist	
Planner	
Designer	
Project Administrator	
Professional Level I	\$80.00
Engineer / Geologist / Environmental Scientist	
Planner	
Designer	
Project Administrator	
Technician	
Level IV	\$70.00
Level III	\$60.00
Level II	\$50.00
Level I	\$40.00
Administrative Assistant	\$56.00

Depositions and expert witness testimony, including preparation time, will be charged at 1.5 times the above rates.





**APTIM Environmental & Infrastructure,  
Inc. 2018 Fee Schedule**

<u>Title</u>	<u>Rate</u>
Vehicle (day) plus gas	\$75.00
Vehicle Expense (Cost +15%)	Cost 15%
Disposable Bailers (2")	\$8.00
Disposable Bailers (1")	\$7.00
Misc. Sampling Supplies (day)	\$45.00
Groundwater Sampling Tubing (foot)	\$0.35
Caution Tape (roll)	\$18.00
Encore Sampler (each)	\$8.00
QED 0.45 Micron Disposal Filters (each)	\$18.00
Steel Well Lock (each)	\$8.00
2" Grippers (each)	\$25.00
Disposable Camera (each)	\$10.00
Laptop Computer (day)	\$75.00
LCD Projector (day)	\$100.00
Projection Screen (day)	\$25.00
Digital Camera (day)	\$20.00
Camcorder (day)	\$15.00
Tripod (day)	\$15.00
Soil Probe (day)	\$25.00
Interface Probe (day)	\$45.00
Water Level Indicator (day)	\$45.00
Infrared Thermometer (day)	\$10.00
PID (day)	\$90.00
Slug Test Equipment (day)	\$125.00
Nasal Ranger Scentometer (day)	\$75.00
Air Compressor Controller Sampling System (day)	\$160.00
Cond./Temp/pH Meter (day)	\$35.00
Multi-Parameter Water Quality Meter (day)	\$80.00
GEM-500 (day)	\$125.00
Drager Bellows Pump (day)	\$10.00
Water Purge Pump (day)	\$30.00
Lo-Flow Sampling Pump (Peristaltic Type) (day)	\$95.00
4-Gas Meter (day)	\$20.00
Tyvek Suit (Jump suit, gloves, boots) (day)	\$35.00
Hand Auger (day)	\$25.00
Sludge Judge (day)	\$35.00
Laser Level (day)	\$45.00
Field Boat (day)	\$50.00
Reimbursables, (Cost +15%)	Cost 15%
Communication/Shipping/Routine Copying	+ 3% of total gross labor

Fee Schedule Rates are subject to change without notice.

Monthly invoices are to be paid according to the contract.  
Interest will be charged on late payments.

# ATTACHMENT 2

## Professional Services Agreement

**APTIM ENVIRONMENTAL & INFRASTRUCTURE, LLC  
PROFESSIONAL SERVICES AGREEMENT  
TIME AND MATERIALS BASIS**

**1. SERVICES:** Aptim Environmental & Infrastructure, LLC ("APTIM") a Louisiana corporation, agrees to perform for the undersigned CLIENT professional environmental, health and safety, consulting and/or analytical services ("Services") described in attached Proposal No. \_\_\_\_\_ dated May 6, 2019 and/or as follows:  
for siting application review  
services

\_\_\_\_\_ ,  
all in accord with the following terms and conditions.

**2. FEES, INVOICES AND PAYMENTS:** The Services will be performed on a time and materials basis, with compensation due for all goods and Services provided by APTIM, computed in accord with currently-in-effect APTIM rates for Time & Material work. APTIM's particular applicable T & M Rate Sheet for the Services will be attached hereto. Invoices will be submitted by APTIM no more frequently than every two weeks, with payment due upon CLIENT'S receipt of invoice. Payment shall be in U.S. Dollars. CLIENT shall be responsible for payment (without deduction or offset from the total invoice amount) of any and all sales, use, value added, gross receipts, franchise and like taxes, and tariffs and duties, and all disposal fees and taxes, levied against APTIM or its employees by any government or taxing authority. A service charge equal to one and one-half percent (1 ½ %) per month, or the maximum rate permitted by law, whichever is less, will be added to all accounts which remain unpaid for more than thirty (30) calendar days beyond the date of the invoice. Should there be any dispute as payments to be made on a percent complete basis to any portion of an invoice, the undisputed portion shall be promptly paid.

In the event APTIM is requested or authorized by CLIENT, or is required by government regulation, subpoena, or other legal process to produce documents or personnel as witnesses with respect to the Services performed under this Agreement, CLIENT agrees, so long as APTIM is not a party to the proceeding in which the information is sought, to reimburse APTIM for its professional time and expenses, as well as the fees and expenses of counsel, incurred in responding to such requests.

**3. CLIENT'S COOPERATION:** To assist APTIM in performing the Services, CLIENT shall (i) provide APTIM with relevant material, data, and information in its possession pertaining to the specific project or activity, (ii) consult with APTIM when requested, (iii) permit APTIM reasonable access to relevant CLIENT sites, (iv) ensure reasonable cooperation of CLIENT's employees in APTIM's activities, and (v) notify and


report to all regulatory agencies as required by such agencies.

**4. CONFIDENTIALITY:** In the course of performing Services, to the extent that CLIENT discloses to APTIM, business or technical information that CLIENT clearly marks in writing as confidential or proprietary, APTIM will exercise reasonable efforts to avoid the disclosure of such information to others. Nonetheless, CLIENT shall treat as confidential all information and data furnished to it by APTIM in connection with this Agreement including, but not limited to, APTIM's technology, formulae, procedures, processes, methods, trade secrets, ideas, inventions, and/or computer programs; and CLIENT shall not disclose such information to any third party.

Nothing herein is meant to prevent nor shall be interpreted as preventing either party from disclosing and/or using any information or data (i) when the information or data are actually known to the receiving party before being obtained or derived from the transmitting party, (ii) when information or data are generally available to the public without the receiving party's fault at any time before or after it is acquired from the transmitting party; (iii) where the information or data are obtained or acquired in good faith at any time by the receiving party from a third party who has the same in good faith and who is not under any obligation to the transmitting party in respect thereto; (iv) where a written release is obtained by the receiving party from the transmitting party; (v) three (3) years from the date of receipt of such information; or (vi) when required by process of law; provided, however, upon service of such process, the recipient thereof shall use reasonable efforts to notify the other party and afford it an opportunity to resist such process.

CLIENT shall obtain APTIM's prior consent and cooperation with the formulation and release of any public disclosure in connection with this Agreement or work performed hereunder, before issuing a news release, public announcement, advertisement, or other form of publicity.

**5. RIGHT TO USE INFORMATION AND DOCUMENTS:** CLIENT may use any final reports of findings, feasibility studies, industrial hygiene and safety, engineering work or other work performed or prepared by APTIM under this Agreement for its internal purposes in connection with the project and/or location indicated in the Services for which such work was prepared, but APTIM reserves all other rights with respect to such documents and all other documents produced in performing the Services. CLIENT shall obtain prior written consent from APTIM for any other use, distribution, or publication of such reports or work

APTIM  CLIENT \_\_\_\_\_

results. Unless otherwise expressly agreed to in writing, nothing in this Agreement shall be interpreted to prevent APTIM from application and use of any information learned by it from the services (subject to the provisions of Section 4). All reports will be delivered subject to APTIM's then current limitations and disclaimers.

**6. PATENTS AND CONFIDENTIAL INFORMATION:** APTIM shall retain all right and title to all patentable and unpatentable inventions including confidential know-how developed by APTIM hereunder. However, APTIM hereby grants to CLIENT a royalty-free, nonexclusive, nonassignable license as to such inventions and know-how to use the same in any of CLIENT's facilities. Information submitted to CLIENT by APTIM hereunder is not intended nor shall such submission constitute inducement and/or contribution to infringe any patent(s) owned by a third party, and APTIM specifically disclaims any liability therefor.

**7. DELAYS AND CHANGES IN CONDITIONS:** If APTIM is delayed or otherwise in any way hindered or impacted at any time in performing the Services by (i) an act, failure to act or neglect of CLIENT or CLIENT's employees or any third parties; (ii) changes in the scope of the work; (iii) unforeseen, differing or changed circumstances or conditions including differing site conditions, acts of force majeure (such as fires, floods, riots, and strikes); (iv) changes in government acts or regulations; (v) delay authorized by CLIENT and agreed to by APTIM; or (vi) any other cause beyond the reasonable control of APTIM, **then** 1) the time for completion of the Services shall be extended based upon the impact of the delay, and 2) APTIM shall receive an equitable compensation adjustment.

**8. INSURANCE:** APTIM is presently protected by Worker's Compensation Insurance as required by applicable law and by General Liability and Automobile Liability Insurance (in the amount of \$1,000,000 combined single limit) for bodily injury and property damage. Insurance certificates will be furnished to Client on request. If the CLIENT requires further insurance coverage, APTIM will endeavor to obtain said coverage, and CLIENT shall pay any extra costs therefor.

**9. RISK ALLOCATION** - CLIENT hereby agrees that: (1) there are risks inherent to the Services, many of which cannot be ascertained or anticipated prior to or during the course of the Services; (2) due to the inherently limited nature and amount of the data resulting from environmental investigation methods, complete analysis of conditions is not always possible, and, therefore, conditions frequently vary from those anticipated earlier; and (3) technology, methods, accepted professional standards as well as law and policy, are undefined and/or constantly changing and evolving. In light of all of the foregoing and considering APTIM's lack of responsibility for creating the conditions requiring the Services, as a material inducement to and consideration for APTIM's

agreement to perform the Services on the terms and at the price herein provided for, CLIENT SPECIFICALLY AGREES THAT APTIM'S LIABILITY SHALL BE STRICTLY LIMITED AS PROVIDED IN SECTIONS 10 THROUGH 12 OF THIS AGREEMENT.

**10. WARRANTY:** APTIM is an independent contractor and APTIM's Services will be performed, findings obtained, and recommendations prepared in accordance with generally and currently accepted professional practices and standards governing recognized firms in the area engaged in similar work. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES EITHER EXPRESSED OR IMPLIED.

**11. INDEMNITIES:** APTIM shall defend, indemnify and hold harmless CLIENT from and against loss or damage to tangible property, or injury to persons, to the extent arising from the negligent acts or omissions or willful misconduct of APTIM, its subcontractors, and their respective employees and agents acting in the course and scope of their employment; provided, however, APTIM shall indemnify CLIENT from and against any loss or damage in the handling or management of any hazardous or radioactive material, or any pollution, contamination, or release of hazardous or radioactive materials, only to the extent resulting from APTIM's gross negligence or willful misconduct. CLIENT shall defend, indemnify and save harmless APTIM (including its parent, subsidiary, and affiliated companies and their officers, directors, employees, and agents) from and against, and any indemnity by APTIM shall not apply to, loss, damage, injury or liability arising from the (i) acts or omissions of CLIENT, its contractors, and their respective subcontractors, employees and agents, or of third parties; (ii) any allegations that APTIM is the owner, operator, manager, or person in charge of all or any portion of a site addressed by the services, or arranged for the treatment, transportation, or disposal of, or owned or possessed, or chose the treatment, transportation or disposal site for, any material with respect to which Services are provided, and (iii) any pollution, contamination or release of hazardous or radioactive materials, including all adverse health effects thereof, except for any portion thereof which results from APTIM's gross negligence or willful misconduct.

**12. LIMITATIONS OF LIABILITY:**

**a. GENERAL LIMITATION** - CLIENT'S SOLE AND EXCLUSIVE REMEDY FOR ANY ALLEGED BREACH OF WARRANTY BY APTIM SHALL BE TO REQUIRE APTIM TO RE-PERFORM ANY DEFECTIVE SERVICES. APTIM'S LIABILITY AND CLIENT'S REMEDIES FOR ALL CAUSES OF ACTION ARISING HEREUNDER WHETHER BASED IN CONTRACT, WARRANTY, NEGLIGENCE, INDEMNITY, OR ANY OTHER CAUSE OF ACTION, SHALL NOT EXCEED IN THE CUMULATIVE AGGREGATE (INCLUDING ANY INSURANCE PROCEEDS) WITH RESPECT TO ALL



CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHATEVER MINIMUM AMOUNT MAY BE REQUIRED BY LAW OR, IF NONE, THE LESSER OF THE AMOUNT OF COMPENSATION FOR SUCH SERVICES, OR \$100,000 (WHICH AMOUNT INCLUDES ANY FEES AND COSTS INCURRED IN RE-PERFORMING SERVICES). THE REMEDIES IN THIS AGREEMENT ARE CLIENT'S SOLE AND EXCLUSIVE REMEDIES. ALL CLAIMS, INCLUDING THOSE FOR NEGLIGENCE OR ANY OTHER CAUSE WHATSOEVER SHALL BE DEEMED WAIVED UNLESS SUIT THEREON IS FILED WITHIN ONE (1) YEAR AFTER THE EARLIER OF (1) APTIM'S SUBSTANTIAL COMPLETION OF THE SERVICES OR (2) THE DATE OF APTIM'S FINAL INVOICE. FURTHER, APTIM SHALL HAVE NO LIABILITY FOR ANY ACTION INCLUDING DISCLOSURE OF INFORMATION WHERE IT BELIEVES IN GOOD FAITH THAT SUCH ACTION IS REQUIRED BY PROFESSIONAL STANDARDS OF CONDUCT FOR THE PRESERVATION OF PUBLIC HEALTH, SAFETY OR WELFARE, OR BY LAW.

**b. CONSEQUENTIAL DAMAGES:** FURTHER AND REGARDLESS OF ANY OTHER PROVISION HEREIN, APTIM SHALL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFITS, DECLINE IN PROPERTY VALUE, REGULATORY AGENCY FINES, LOST PRODUCTION OR LOSS OF USE) INCURRED BY CLIENT OR FOR WHICH CLIENT MAY BE LIABLE TO ANY THIRD PARTY OCCASIONED BY THE SERVICES OR BY APPLICATION OR USE OF REPORTS OR OTHER WORK PERFORMED HEREUNDER.

**c. ALL CLAIMS AGAINST APTIM, ITS INSURERS, EMPLOYEES, AGENTS, DIRECTORS OR OFFICERS AND ALL OTHER PERSONS FOR WHOM APTIM IS LEGALLY LIABLE, SHALL BE DEEMED WAIVED UNLESS AND TO THE EXTENT CLIENT SHALL BRING SUIT THEREFOR AGAINST APTIM WITHIN ONE (1) YEAR AFTER APTIM'S SUBSTANTIAL COMPLETION OF THE PARTICULAR SERVICES WITH RESPECT TO WHICH THE CLAIM IS MADE**

**13. GOVERNING LAWS:** This Agreement shall be governed and construed in accordance with the laws of the State in which the site to which the Services are performed is located.

**14. TERMINATION:** Either party may terminate this Agreement with or without cause upon twenty (20) days' written notice to the other party. Upon such termination, CLIENT shall pay APTIM for all Services performed hereunder up to the date of such termination. In addition, if CLIENT terminates, CLIENT shall pay

APTIM all reasonable costs and expenses incurred by APTIM in effecting the termination, including, but not limited to non-cancelable commitments and demobilization costs.


**15. ASSIGNMENT:** Neither APTIM nor CLIENT shall assign any right or delegate any duty under this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the Services may be performed by any subsidiary, parent or affiliate of APTIM or other person designated by APTIM, and, APTIM may, upon notice to CLIENT, assign, pledge or otherwise hypothecate the cash proceeds and accounts receivable resulting from the performance of any Services or sale of any goods pursuant to this Agreement.

**16. MISCELLANEOUS:**

**a. ENTIRE AGREEMENT, PRECEDENCE, ACCEPTANCE MODIFICATIONS:** The terms and conditions set forth herein constitute the entire understanding of the Parties relating to the provisions of the Services by APTIM to the CLIENT. All previous proposals, offers, and other communications relative to the provisions of these Services by APTIM, oral or written, are hereby superseded, except to the extent that they have been expressly incorporated by reference herein. In the event of conflict, the four pages of this Agreement shall govern. CLIENT may accept these terms and conditions by execution of this Agreement or by authorizing APTIM to begin work. Any modifications or revision of any provisions hereof or any additional provisions contained in any purchase order, acknowledgement or other document issued by the CLIENT is hereby expressly objected to by APTIM and shall not operate to modify the Agreement.

**b. DISPUTES, ATTORNEY FEES –** Any dispute regarding this Agreement or the Services shall be resolved first by exchange of documents by senior management of the parties, who may be assisted by counsel. Any thereafter unresolved disputes shall be litigated in the state whose law governs under Section 13 hereunder. In any litigation, the Prevailing Party shall be entitled to receive, as part of any award or judgment, eighty percent (80%) of its reasonable attorneys' fees and costs incurred in handling the dispute. For these purposes, the "Prevailing Party" shall be the party who obtains a litigation result more favorable to it than its last formal written offer (made at least twenty calendar days prior to the formal trial) to settle such litigation.

**c. WAIVER OF TERMS AND CONDITIONS -** The failure of APTIM or CLIENT in any one or more instances to enforce one or more of the terms or conditions of this Agreement or to exercise any right or privilege in the Agreement or the waiver by APTIM or CLIENT of any breach of the terms or conditions of this

APTIM  CLIENT \_\_\_\_\_

Agreement shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no such failure to enforce had occurred.

**d. NOTICES** – Any notices required hereunder may be sent by orally confirmed US Mail, courier service (e.g. FedEx), orally confirmed telecopy (fax) or orally confirmed email (further confirmed by US Mail) to the addresses set forth below.

**e. SEVERABILITY AND SURVIVAL** - Each provision of this Agreement is severable from the others. Should any provision of this Agreement be found invalid or unenforceable, such provision shall be ineffective only to the extent required by law, without

invalidating the remainder of such provision or the remainder of this Agreement.

Further, to the extent permitted by law, any provision found invalid or unenforceable shall be deemed automatically redrawn to the extent necessary to render it valid and enforceable consistent with the parties' intent. For example, if the gross negligence standard in Section 11 is unenforceable under an applicable "anti-indemnity" statute, but a sole negligence standard is enforceable, the sole negligence standard shall be automatically substituted therefor. The terms and conditions set forth herein shall survive the termination of this Agreement.

CLIENT and APTIM agree to the foregoing **(INCLUDING THE LIMITATIONS ON LIABILITY IN SECTIONS 9-12)** and have caused this Agreement to be executed by their duly authorized representatives as of the date set forth below.

Executed on \_\_\_\_\_, 20\_\_

**CLIENT**

Client Name: \_\_\_\_\_

By (Sign): \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_


Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

**APTIM ENVIRONMENTAL & INFRASTRUCTURE, LLC**

By (Sign): 

Print Name: Devin Moose

Title: Director

Address: 1607 E Main St. Suite E. St. Charles, IL 60174

Phone: 630 762 1400

Fax: 630 762 1402

E-mail: devin.moose@aptim.com

# ATTACHMENT 3

## Project Team Résumés



## **Devin A. Moose, P.E., D.E.E.**

### **Director**

#### **Education**

- B.S., Civil Engineering, University of Missouri-Rolla

#### **Highlights**

- Total years of related experience: 33
- Directed solid waste management and recycling facility design, permitting and due diligence for over 45 sites
- Supervised the development, completion and initial implementation of solid waste management plans for over 60 units of government, representing more than 9 million people.
- Participated in over 20 Brownfield redevelopment projects

#### **Registrations**

- Registered Professional Engineer in 9 States and Mexico
- Diplomat of the American Academy of Environmental Engineers

#### **Professional Affiliations**

- American Academy of Environmental Engineers
- American Society of Civil Engineers
- Solid Waste Assoc. of North America
- National Society of Professional Engineers
- Illinois Society of Professional Engineers
- Association of Engineering Geologists
- National Groundwater Association
- Illinois Recycling Association

### **Professional Qualifications**

Mr. Moose is a Diplomat of the American Academy of Environmental Engineers and the National Director of Solid Waste Operations for Aptim.

Mr. Moose routinely designs and permits solid waste management facilities, including landfills,

transfer stations, recycling centers, and composting facilities. His experience includes building and process system design, containment system engineering, environmental monitoring system development, and geotechnical analyses.

Mr. Moose also assists clients with development and implementation of regional solid waste management plans; procurement of solid waste services and RFP responses; contract negotiation expertise for host community agreements and solid waste facility development and operating contracts; economic impact studies, engineers' cost estimates; facility business plans; public presentations for solid waste plans and solid waste facilities; and provision of expert witness testimony.

In addition to his solid waste work, Mr. Moose oversees environmental remediation and Brownfield redevelopment projects.

### **Select Project Experience**

#### **Development of Local, State and Federal Permit Applications**

Supervised development of comprehensive local, state and federal permit applications for construction of landfills, balefills, and compost facilities. Siting and permitting activities include facility design and analyses, preparation of operating and closure plans, and interaction with permitting agencies, elected officials and members of the public. Supervised development of engineering due diligence reports for landfill acquisitions. Provided expert witness testimony and assists units of local government reviewing facilities for compliance with applicable regulations, supervised remedial action plans for numerous landfill facilities.

#### **Site Location Studies**

Managed the development of site locations studies for regional solid waste facilities and recycling centers. Studies included transportation analyses, development of siting criteria, public consensus building and site identification.



**Expert Testimony**

Expert testimony on solid waste related facilities and studies. Expert witness testimony experience at over 50 proceedings. Development of public education programs, including information booklets, videos, power point presentations, graphics, public presentations, and field trips.

**Solid Waste Management Plans**

Mr. Moose has supervised the development, completion and initial implementation of solid waste management plans for over 60 units of government, representing more than 9 million people. The needs assessment components of the plans included determining existing and future waste generation and recycling rates, and conducting curbside weighing programs and waste composition studies. The solid waste management plans included extensive evaluation and design of waste minimization and recycling programs. Final reports included evaluation of alternate disposal technologies and recommendation of a final integrated system for future solid waste management. The plans have received awards from the American Planning Association and the Consulting Engineers Council.

**Economic Performance Studies**

Mr. Moose has directed development of economic performance studies for solid waste facilities including landfills, recycling centers, transfer stations, collection vehicles, construction demolition debris recycling facilities, and recycling drop-off facilities. Analyses included waste stream analyses, market area assessments, system construction cost estimates, operating cost estimates, and calculation of financing costs. System studies included review of existing solid waste facilities, analyses and recommendations for improvement as well as comprehensive waste audits.

**Contract Negotiations**

Mr. Moose has prepared supporting data and participated in contract negotiations for solid waste facilities. Work scopes have included host community benefit agreements, negotiation of special conditions for landfill and transfer station siting approval, contracts for construction and

operation of waste and recycling facilities, drafting local ordinances governing landfills and transfer stations, as well as other solid waste related facilities.

**Geotechnical and Hydrogeological Analyses**

Managed geotechnical and hydrogeological analyses for design of solid waste landfills, containment features, groundwater monitoring systems, foundations, pavements, retaining walls, dewatering systems, slope stability analysis, monitoring well construction, field permeability testing and groundwater modeling.

**Construction Quality Control / Quality Assurance and Materials Testing**

Overall division manager providing construction quality control/quality assurance and materials testing. Trained nuclear density device and windsor probe operator. Certified by Illinois Department of Transportation in bituminous and Portland cement concrete proportioning, documentation, bridge structure foundations and traffic safety in construction zones. Experienced in Subtitle D landfill QA/QC procedures, including geomembranes, test liners, boutwell and sealed double-ringed infiltrometers. Significant experience in dewatering and geotechnical related construction projects.

**Environmental Compliance Program Evaluation**

Project officer for development of Exelon Nuclear's Excellence Plans. Project included site inspections and evaluation to determine the gaps in the environmental compliance programs of all Exelon Nuclear facilities, as well as the Kennett Square and Warrenville Corporate offices. In addition, gap analyses and environmental excellence plans for each of these nuclear facilities and corporate offices, were developed.

## Selected Additional Project Experience

### Transfer Station/MRF/Processing Facility Design/Permitting Reviews

City of Batavia	Lake Transfer Station
Bluff City Transfer Facility	Los Alamos
Brooks Transfer	Loop Transfer Station \ 64th Street
Calumet (Liberty) Transfer	Loop Transfer Station \ Laflin
Carroll Street Transfer Station	City of Metropolis Transfer Station
Chicago Disposal Transfer Station	Midtown (Hoving) Transfer Station
Clearing Disposal Transfer Station	Midwest Compost Transfer Station
Cloverleaf Transfer Station	Norton Mixed Waste Processing Facility
Crown Disposal MRF/Transfer Station	Onyx Batavia Transfer Station
DuKane Transfer Station	Onyx Evanston Transfer Station
DuPage Co. Recycling Drop-off Centers	Planet Recovery (National)
DuPage Yard Waste Facility	Rolling Meadows Transfer Station
City of Freeport Transfer Station	Solid Waste Authority of Central Ohio
Ellis Street Station Transfer Station	Speelman Transfer Station
Evanston Material Recovery Center	Virginia Road Transfer Facility
Fullerton Station Transfer Station	West DuPage Transfer Station
Greenwood Transfer Facility	Wheeling Township Transfer Station
Groot Industries MRF/Transfer Station	Various Permit Application Reviews for the City of
Homewood Disposal Transfer Station	Chicago Dept. of Environment

### Solid Waste Management Planning

Boone County Iowa	Jo Daviess County
Carroll County	Kankakee County
Central Illinois Municipal Joint Action Agency	Lawrence County
City of Freeport	Lee County
City of Orlando	Livingston County
Coles County Regional Planning Comm.	Los Alamos County, New Mexico
Crawford County	Mason County
DeKalb County	Menard County
DeWitt County	Ogle County
DuPage County	Richland County
East Central Solid Waste Commission	Solid Waste Agency of N. Cook County
Grundy County	West Central Illinois Regional Solid Waste
Henry County	Consortium
Iowa Department of Natural Resources	Will County

### Economic and Performance Studies

Brickyard Disposal Pro Forma Business Plan, Private Transfer Station	Nord MRF Business Plan
City of Chicago Anaerobic Digestion	Peoria City/County Landfill
Peoria City/County Landfill	SWANCC Transfer Station No. 1
DuPage County Drop-off Centers	SWANCC/Northwest Cook County Balefill Feasibility Analysis
Essex Windsor	SWANCC Wheeling Township Transfer Station
Evanston MRF Business Plan	West Cook County Solid Waste Agency Regional Disposal Project
Groot Industries Transfer Station/MRF	Will County Arsenal Site
LandComp Corporation	
Los Alamos County	

Landfill Design, Permitting, and Due Diligence

Amoco Chemical Landfill  
 Belvidere Municipal Landfill No. 2  
 Benton County  
 Brickyard Disposal Landfill  
 CC Landfill  
 Clinton Landfill No. 3  
 Clinton Chemical Waste Unit  
 Coles County Landfill  
 Congress Development Landfill  
 Community Landfill  
 Davis Junction Landfill  
 Five Oaks Landfill  
 Fox Moraine Landfill  
 Freeport  
 Greene Valley Landfill  
 Herrin Municipal Landfill  
 H&L Landfill  
 Indian Creek Landfill No. 2  
 Kankakee Regional Landfill  
 Lake County C & D  
 LandComp Corporation Landfill  
 Land & Lakes 122nd Street  
 Lawrence County Disposal Centre Inc.  
 Lee County Landfill  
 Livingston Landfill  
 Los Alamos County

Mallard Lake Landfill  
 Marathon Oil Landfill  
 Midway Landfill  
 Morris Community Landfill  
 Newton County Landfill  
 Northwest Cook County Balefill  
 Peoria City/County Landfill  
 Pheasant Run Landfill  
 Prairie Hills Landfill  
 Rhodes Landfill  
 Rochelle Landfill  
 Rochelle Waste Disposal  
 Saline County Landfill  
 Sangamon Valley Landfill  
 Settlers Hill Landfill  
 Spoon Ridge Landfill  
 Streator Area Landfill  
 Taylor Ridge Landfill  
 Tazewell RDF Landfill  
 Various Permit Application Reviews for the City of  
 Chicago Department of Environment  
 Willow Ranch Landfill  
 Winnebago Landfill  
 Winnetka Landfill  
 Woodland II Landfill  
 Veolia ES Landfill

Contract Negotiation and Procurement

Bond County Landfill Siting Review  
 City of Batavia Host Community Agreement  
 City of Chicago Dept. of Environment Rules and  
 Regulations  
 City of Freeport Contract Procurement  
 City of Freeport Hauling Lease and Host Agreements  
 Coles County Landfill Siting Review  
 Crystal Lake Transfer Station  
 DeWitt County Host Community Agreement  
 Douglas Co. Waste Disposal Agreement  
 Greenwood Transfer Facility  
 Henry County Host Community Agreement  
 Jackson Co. Host Community Agreement  
 Jackson Co. Landfill Siting Review  
 Land Purchase Negotiations for Wheeling Township  
 Transfer Station  
 LaSalle Co. Host Community Agreement  
 Lawrence Co. Host Community Agreement

Lawrence Co. Landfill Siting Review  
 Lee Co. Landfill Ordinance  
 Livingston Co. Host Community Agreement  
 Livingston Co. Landfill Siting Review  
 Livingston Co. Landfill Ordinance  
 Ogle Co. Host Community Agreement  
 Ogle Co. Landfill Siting Review  
 Ogle Co. Landfill Ordinance  
 Operating Contract for Wheeling Township Transfer  
 Station  
 Peoria City/County Landfill  
 Regional Disposal Project, West Cook County Solid  
 Waste Agency  
 Richland Co. Host Community Agreement  
 West Cook Co. Solid Waste Agency Regional Disposal  
 Project  
 Will County Landfill Siting Review  
 Village of Lyons Annexation Agreement



**Martin N. Fallon, P.G.**

**Project Manager**

**Education**

- B.B.A., Business Administration, St. Norbert College
- B.S., Geology, St. Norbert College

**Registrations**

- Licensed Professional Geologist – Illinois and Indiana

**Highlights**

- 19 years of solid waste management experience
- Responsible for overseeing development of numerous solid waste management and diversion facilities
- Conducts feasibility studies, compliance evaluations, and reviews existing operations for best management practices

**Professional Qualifications**

Mr. Fallon has over 19 years of experience in the planning, siting, design, and permitting of solid waste management and recycling facilities.

As a Project Manager, he is responsible for overseeing numerous solid waste development projects, transfer stations, waste diversion facilities, and landfills. These projects routinely require the direction of multi-disciplined teams of planners, engineers, attorneys, real estate appraisers, and contractors.

Mr. Fallon also conducts feasibility studies for new transfer stations and recycling facilities, evaluates candidate sites for compliance with local, state and federal regulations, and reviews existing facilities and operations for best management practices and regulatory compliance.

As a hydrogeologist, Mr. Fallon has also planned and managed numerous hydrogeologic investigations for greenfield landfills and expansions of existing landfill facilities.

**Select Project Experience**

**Round Lake Park, Lake Transfer Station and Eco-Campus, Illinois**

Managed the siting and permitting of a new 3.9 acre non-special municipal waste transfer facility and 14 acre Eco-Campus within the Village of Round Lake Park. The transfer facility provides capacity for transfer of up to 900 tons of solid waste on a daily basis. The Eco-Campus facility was designed to process and divert up to 500 tons per day of construction materials such as wood, concrete, shingles, cardboard, metals and plastic from landfilling. This facility is one of the first fully integrated construction and demolition debris recycling facilities permitted in the State of Illinois.

**WillCo Green, Design and Permitting of a C&D Recycling Facility, Illinois**

Managed the design, permitting, and provided construction oversight for a new 1,000 ton per day construction and demolition debris (C&D) sorting and recycling facility on a reclaimed limestone aggregate quarry in Plainfield, Illinois.

Development of the C&D facility included construction of a material receiving building, scalehouse/administration building, and grading and paving as necessary to establish operating and stockpile areas at the facility.

Prior to facility development, the former quarry was filled with over 150 feet of clean construction and demolition debris to achieve approximate pre-quarry grades. Due to this significant thickness of random fill beneath the site, the materials receiving building needed to be designed with a floating floor that is able to move independently from the walls, and includes a lattice-mat foundation in order to reduce the potential for floor failure due to differential settlement. The building design also incorporated a truss-arch and fabric roof structure on top of the building foundation/push-walls.



**Bridgewater Resources, Inc., Market Analysis, New Jersey**

Assisted with a comprehensive evaluation of the solid waste market within the States of New Jersey and New York in order to evaluate existing and future market conditions, and the financial projections and assumptions used in developing a project proforma for the BRI Transfer Station. The market analysis included evaluation of population trends, waste generation and recycling rates, political and competitive forces, and transportation and service area constraints. This effort was performed in support of a debt refinancing effort, the proceeds of which were to be used to restructure existing debt and pay for proposed capital improvements to the transfer station. Improvements were to include extension of a rail spur into the facility to transfer MSW via intermodal rail container and C&D via gondola cars.

**Boone County, C&D Processing Feasibility, Iowa**

Supported a comprehensive analysis on the feasibility of developing a construction and demolition debris processing facility as a waste diversion technique.

**Los Alamos County, Landfill Solar Feasibility, New Mexico**

Assisted with an evaluation of landfill cover alternatives to support proposed end-uses for the Los Alamos County Landfill, including a solar project and expanded recycling activities. The purpose of the study was to identify alternative cap designs that are more conducive to solar projects based on research into other solar projects, and based on general engineering, environmental and cost considerations.

**Midwest Compost, LLC, Landscape and Food Scrap Transfer Facility Permitting, Illinois**

Project Manager responsible for the preparation of an IEPA permit application for a landscape and food waste transfer station located in suburban Chicago. Application included facility design and operating plan which were developed in compliance with applicable location standards. Food scrap is delivered to the facility in source separated loads from food processing operations,

or comingled with incoming landscape waste deliveries.

**City of Plano, Transfer Station Evaluation and Permitting, Illinois**

Conducted a pre-file review of a siting application for a new municipal solid waste transfer station to be located within the City of Plano (filed by PLC, LLC). Provided recommendations and assistance to City staff prior to, and during, public hearings. Prepared a development permit modification application upon purchase of the facility by Groot Industries, Inc. The design of this facility was modified in order to optimize the site plan, building design, ancillary facilities (e.g. scale and scalehouse), and interior traffic flow patterns.

**Stearns Quarry Landfill, Post-Closure Monitoring, Inspection, and Maintenance, Illinois**

Performed long-term post-closure monitoring, inspection, and maintenance at the now closed Stearns Quarry landfill. The former limestone quarry was used as a landfill for clean C&D debris and incinerator ash in the 1970s. The facility was converted to a park in 2009, including a fishing pond, interpretive wetlands, preserved quarry walls, trails, an athletic field, a running track, and a hill that offers dramatic views. Although converted to a beautiful green space, routine maintenance and inspection of the landfill cover, on-site wetlands, retaining walls, and a leachate dewatering-well continue.

**Republic Services, Inc., Review of Composting Operations, Indiana**

Conducted reviews of two composting operations in order to address operational inefficiencies that had resulted from composting of recycling process residuals (trommel fines which are primarily biodegradable but are very dense and exhibit a high moisture content). Based on his site visits and operational reviews, Mr. Fallon provided recommendations on adjustments that could be made to existing operations. These recommendations included changes to the ratio of bulking agent to feedstock, turning frequency, addition of enzymes to enhance metabolization, modifications to pile geometry, and modifications to monitoring frequencies and parameters.

**Delta Institute, Bioremediation Feasibility, Illinois**  
Assisted with performance of a feasibility study on bioremediation of non-hazardous contaminated soils in compliance with applicable local, state, and federal requirements.

**Congress Development Company Landfill, High Temperature and Pressure Investigation, Illinois**  
Responsible for designing an investigation and managing a team to determine the cause of high temperatures and pressures within the Congress Development Company landfill. Prepared a report describing findings.

**Site Location Studies, Multiple Sites**  
Managed the development of site locations studies for regional solid waste facilities and recycling centers. Studies included transportation analyses, development of siting criteria, public consensus building and site identification.

**Hydrogeologic Investigation Planning, Management, and Implementation, Multiple Sites**

Responsible for planning and management of numerous hydrogeologic investigations for siting greenfield landfills and expansions of existing landfill facilities. These facilities have included:

- Kankakee Regional Landfill
- Lee County Landfill Expansion
- Winnebago Landfill Expansions (two)
- Peoria City/County Landfill Expansion
- Hickory Ridge Landfill Expansion
- County Line Landfill Expansion
- Newton County Landfill Expansions (three)
- Fox Moraine Landfill
- Indian Creek Landfill Expansion

These investigations have included logging of continuously sampled borings, installation of monitoring wells, evaluation of downhole geophysical data, borehole sonar results, shallow surface seismic surveys, subsidence modeling, and characterization of the regional and site specific geology and hydrogeology.

Ultimately, the hydrogeologic investigations culminated with reports that included detailed

discussions of all of the field data, along with investigation findings.

**Contaminant Transport Modeling and Groundwater Monitoring Plan Development, Multiple Sites**

Prepared contaminant transport models, groundwater impact assessments, environmental monitoring plans for landfill facilities.

Contaminant transport modeling experience has included use of groundwater modeling software (MIGRATE and POLLUTE), and development of groundwater impact assessment models to evaluate facility design parameters and how they work adjacent hydrogeologic systems.

Mr. Fallon also has significant experience in the modeling of groundwater monitoring networks at waste disposal facilities, and is well practiced with the statistical analyses required to develop monitoring objectives and in the detailed evaluation of monitoring results.

**Public Meetings and Expert Testimony, Multiple Sites**

Have designed and orchestrated public meetings in advance of new facility development, including development of presentations, videos, brochures, graphics, and field trips. Have also provided expert testimony at public hearings for landfill development projects in support of hydrogeologic investigations, groundwater impact evaluations, and environmental monitoring programs.

**Walter S. Willis**  
366 Grove Avenue  
Hampshire, IL 60140  
630/621-0736  
[Willis-walter@sbcglobal.net](mailto:Willis-walter@sbcglobal.net)

### **EDUCATION**

Masters in Public Administration  
Southern Illinois University, 1986

Bachelor of Arts, Political Science  
Southern Illinois University, 1982

### **PROFESSIONAL EXPERIENCE**

#### *Solid Waste Agency of Lake County, Executive Director, 2007 – present*

Executive Director of a Municipal Joint Action Agency representing 41 Lake County municipalities and the County of Lake (nearly 700,000 people). Supervises four employees with an annual budget of nearly \$1.2 million. Oversees the operation of SWALCO's permanent household chemical waste transfer facility. Other duties include: 1) updating and implementing the Lake County Solid Waste Management Plan, 2) providing solid waste consulting services to SWALCO members and assisting them with residential and commercial hauling franchises, 3) implementing a comprehensive public education program, and 4) developing and implementing programs to divert more materials from final disposal.

#### *Shaw Environmental, Inc., Senior Project Manager, 2004-2007*

Duties included: Managing multi-discipline teams of planners, engineers and geologists on solid waste planning and facility development projects, including solid waste planning studies, public education and outreach, facility and hauler procurement, host community agreement negotiations, market research studies for facility acquisitions, and facility siting.

Significant projects included: 1) the first siting of a pollution control facility (transfer station in Crystal Lake) in McHenry County, IL including the negotiation of four host community agreements, public education and consensus building, and expert witness testimony for local siting hearing; 2) alternative technology (MSW conversion technologies) procurement and project implementation for the City of Orlando, FL; and 3) multi-discipline training project for the Commonwealth of The Bahamas, including development of manuals and conducting workshops on recycling, composting, public education, and finance and administration.

#### *Lee County, IL, Solid Waste Coordinator, 1997-2004*

Duties included: Implementation of the Lee County Solid Waste Management Plan and plan updating; overseeing the privately owned and operated Lee County Landfill and the Solid Waste Management Agreement with Allied Waste Industries; developing and administering a drop-off

recycling program; planning for and implementing one-day collection events for used oil, tires, household hazardous waste, and electronics; performing public education activities; and responding to citizens' questions and concerns.

Engineering Solutions, Senior Planner, 1996-1997

Duties included: Managing and executing studies related to solid waste generation, collection, management and recycling; preparing reports for landfill and transfer station siting applications and providing expert witness testimony at siting hearings; assisting local units of government review siting applications, assisting with questions for expert witnesses and preparing findings of fact; developing public education/public involvement programs, business plans and waste audit reports; assisting in host community contract negotiations, and hauler/facility procurement (i.e., bid specs and analysis); and assisting with the preparation of local ordinances and grant writing. Also was responsible for human resource duties, including the development of hiring guidelines, employee recruitment, employee development, employee review procedures and employee benefit programs.

Patrick Engineering, Inc., Senior Planner and Branch Office Manager, 1988-1996

Duties included: Developing and implementing solid waste management plans in 38 counties in Illinois; negotiating host community agreements for eight units of local government with total expected revenues exceeding \$100 million; developing local siting studies, including working with interest groups to select and rank siting criteria for ultimate site selection; and developing need and plan consistency reports for siting applications, providing expert witness testimony, and assisting units of local government review siting applications (worked on approximately 20 siting cases under Illinois' SB 172 siting process).

Opened Springfield, IL branch office in 1989 and was assigned branch manager. By 1996 the office had grown from 3 employees to 9, with annual revenues exceeding \$1 million. As branch manager I was responsible for all personnel, marketing and budgeting decisions.

Illinois Environmental Protection Agency, Project Manager, 1986-1988

As project manager in the Solid Waste Management Section, Bureau of Land, responsible for evaluating solid waste planning and enforcement grant applications and subsequent planning and enforcement efforts. Assigned to task force to update SB 172 siting decisions and prepared report documenting siting efforts in Illinois. Assisted with preparation of first annual disposal capacity report. Section expert on municipal waste incineration, and helped research and prepare report on IEPA's guidelines on municipal waste incineration.



# PWC-8



From: [Moose, Devin](#)  
To: [Fallon, Martin](#)  
Subject: FW: Wildlife Hazard Management Services  
Date: Tuesday, May 28, 2019 2:15:44 PM  
Attachments: [image315640.png](#)  
[image308600.png](#)  
[image638346.png](#)  
[image965638.png](#)  
[image658855.png](#)  
[image757665.png](#)  
[image001.png](#)

**From:** KJ Loerop <KLoerop@LRSrecycles.com>  
**Sent:** Tuesday, May 28, 2019 1:36 PM  
**To:** Moose, Devin <Devin.Moose@aptim.com>  
**Subject:** FW: Wildlife Hazard Management Services

**EXTERNAL SENDER**

This is the consultant that we are contemplating using to add Wildlife Management for the Airport. Have you heard of this company? Is there anyone you would recommend?

Can your firm manage the Wildlife Management Plan that is agreed upon once the site becomes operational.

I really think that having a third party verifying that all of the necessary precautions are being taken to keep the site in compliance is extremely important.

KJ Loerop  
*Vice President Of Temporary Services*  
**Lakeshore Recycling Systems**  
1655 Powis Road  
West Chicago, IL 60185  
630-377-7000 (Phone)



Follow us on the below social media pages to learn about innovative industry trends, creating a sustainable lifestyle and exciting LRS news.



**From:** Hock, John <[jhock@cecinc.com](mailto:jhock@cecinc.com)>  
**Sent:** Thursday, May 23, 2019 6:36 PM  
**To:** KJ Loerop <[KLoerop@LRSrecycles.com](mailto:KLoerop@LRSrecycles.com)>  
**Cc:** Rich Golf <[RGolf@LRSRecycles.com](mailto:RGolf@LRSRecycles.com)>; Lee, Chastity <[clee@cecinc.com](mailto:clee@cecinc.com)>  
**Subject:** Wildlife Hazard Management Services

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KJ,

Per our discussion, CEC suggests contracting with Loomacres ([www.loomacres.com](http://www.loomacres.com)) to perform the following services for the West DuPage Recycling and Transfer Facility.

- Conduct site visit of the facility and surrounding area. (This would be a three-day visit and include surveys, interviews, and general observations of the facility and review of the proposed project.) Note: a “wildlife hazard site visit” differs from a “Wildlife Hazard Assessment”. A WHSV is much smaller in scope (3days) vs. a WHA (12 months).
- Produce a Wildlife Hazard Site Visit Report. The report will bring together information gathered during the site visit, interviews, and additional research. It will also make recommendations that will be used in the development of the plan.
- Develop a proposed Wildlife Hazard Management Plan for the facility using the information from the report. The objective of the plan will be to document the procedures the site will take to ensure the proposed facility will not be attractive to wildlife at the time of development and through the life of the facility.

The information would be used during the local siting process for the MSW operations to help address potential bird and other wildlife concerns. We could also then contract with Loomacres to perform follow up monitoring after operations commence. The cost estimate to perform the site visit and report is \$12,100 lump sum (3-day site visit), and Wildlife Hazard Management Plan is \$3,810 lump sum. The estimated schedule for both is 2 months from notice to proceed. Please let us know your thoughts.

**John Hock, P.E.** / Vice President  
Civil & Environmental Consultants, Inc.  
1230 East Diehl Road, Suite 200 · Naperville, Illinois 60563  
Toll-Free: 877-963-6026 · Fax: 630-963-6027  
Mobile: 630-291-6026 · <http://www.cecinc.com>  
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# PWC-12



**From:** [Fallon, Martin](#)  
**To:** [Villanueva, Nicholas](#)  
**Subject:** FW: West Chicago  
**Date:** Thursday, January 9, 2020 9:45:00 AM

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FYI

**MARTIN N. FALLON, P.G.**  
Project Manager  
**APTIM** | Solid Waste Services  
O 630 762 3322  
E [martin.fallon@aptim.com](mailto:martin.fallon@aptim.com)

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**From:** Moose, Devin <[Devin.Moose@aptim.com](mailto:Devin.Moose@aptim.com)>  
**Sent:** Wednesday, January 8, 2020 3:57 PM  
**To:** Fallon, Martin <[Martin.Fallon@aptim.com](mailto:Martin.Fallon@aptim.com)>  
**Subject:** FW: West Chicago

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**From:** George Mueller <[george@muelleranderson.com](mailto:george@muelleranderson.com)>  
**Sent:** Wednesday, January 8, 2020 3:20 PM  
**To:** Moose, Devin <[Devin.Moose@aptim.com](mailto:Devin.Moose@aptim.com)>  
**Subject:** West Chicago

**EXTERNAL SENDER**

Devin, see below regarding the residential setback non-issue.

As to exceptions from the residential setback requirement, the Caseyville Transfer Station case has what I think is the answer. The following is a discussion in the PCB decision which found that there was no setback problem:

“Petitioners argue that the residential setback requirement of Section 22.14 of the Act has not been met. Rox. Br. at 5. This is because there are four parcels of property zoned Single Family District - Manufactured Home District, and two parcels of property zoned Manufactured Home Park District, located within 1,000 feet of the Site. Id. The Application includes a description of land uses surrounding the Site. R. at A-0016, A-0031-32. Further, Application Figure 2 shows land uses within 1,000 feet of the Site. See Area Land Use Map (App. Fig. 2). The Application also includes a list of parcels located within 1,000 feet of the Site, including owners and land use. See List of Parcels Within 1,000 Feet (App. Exh. I). Regarding the parcels zoned for residential use, CTS states in the Application that those parcels were purchased by St. Clair County under a Federal Emergency Management Agency (FEMA) buy-out program and that the parcels are encumbered by permanent deed restrictions

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prohibiting any future residential land use. R. at A-0016, citing Deeds of Parcels within 1,000 Feet of Site (App. Exh. J). The warranty deeds state that the Grantee “agree to conditions which are intended to restrict the use of the land to open space in perpetuity” and that the Grantee “agrees that no new structures or improvements shall be erected on the premises other than a restroom or a public facility that is open on all sides and functionally related to the open space use.” R. at A-0957-58.

ROXANA LANDFILL, INC., PETITIONER v. VILLAGE BOARD OF THE VILLAGE OF CASEYVILLE, ILLINOIS; VILLAGE OF CASEYVILLE, ILLINOIS; AND CASEYVILLE TRANSFER STATION, L.L.C., RESPONDENTS VILLAGE OF FAIRMONT CITY, ILLINOIS, PETITIO, 2014  
WL [12740295](#) (Ill.Pol.Control.Bd.), 29

In an unpublished opinion, the appellate court affirmed:

“With regard to residential setback provisions of section 22.14 of the Act (415 ILCS 5/22.14 (West 2014)), the IPCB noted that the permanent deed restrictions in the parcels purchased by St. Clair County under the FEMA buy-out program provided that the grantee “agree[d] to conditions which [were] intended to restrict the use of the land to open space in perpetuity” and that the grantee “agree[d] that no new structures or improvements shall be erected on the premises other than a restroom or a public facility that [was] open on all sides and functionally related to the open space use.”  
Roxana Landfill, Inc. v. Illinois Pollution Control Bd., 2016  
WL [4005892](#) (Ill.App. 5 Dist.), 11 (Ill.App. 5 Dist.,2016)

The City agreed and offered the following language, which puts us squarely within the Caseyville exception:

“RE: Residential-zoned property located east of 1655 Powis Road, West Chicago, Illinois

To Whom It May Concern:

The Union Pacific Railroad line runs east of the subject property within Union Pacific Right of Way (ROW). While the ROW is zoned ER, Estate Residential, as an active rail line there can be no residential development within this corridor. Furthermore, there is insufficient room for a legally-sized series of Estate Residential lots including access to those lots. Finally, the ER zoning designation for the corridor is a remnant classification from the time it was annexed to the City of West Chicago.

As such, the City believes Section 22.14(a) 1,000 foot setback requirement is not applicable.”

**George Mueller**

Mueller Anderson & Assoc., PC

PO Box 781

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Ottawa, Il. 61350

[630-235-0606](tel:630-235-0606) cell

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# PWC-14



**From:** [Dennis G. Walsh](#)  
**To:** [Fallon, Martin](#); [Moose, Devin](#)  
**Cc:** [Michael Guttman \(MGuttman@westchicago.org\)](mailto:MGuttman@westchicago.org)  
**Subject:** RE: City of West Chicago  
**Date:** Wednesday, February 12, 2020 8:54:03 AM

**EXTERNAL SENDER**

Thank you Marty

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**From:** Fallon, Martin [mailto:Martin.Fallon@aptim.com]  
**Sent:** Wednesday, February 12, 2020 8:47 AM  
**To:** Dennis G. Walsh; Moose, Devin  
**Cc:** Michael Guttman (MGuttman@westchicago.org)  
**Subject:** RE: City of West Chicago

Dennis,

This is to confirm that any relationship Aptim has, or will have, with LRS will not in any way interfere with, or limit, Aptim's ability to fully represent the City of West Chicago in the matter of their desire to site a transfer station on Powis Road in the City. This includes pre-application review, any needed hearing testimony, or in assistance with any appeals.

Thank you,

Marty

**MARTIN N. FALLON, P.G.**  
Project Manager  
**APTIM** | Solid Waste Services  
O 630 762 3322  
E [martin.fallon@aptim.com](mailto:martin.fallon@aptim.com)

---

**From:** Dennis G. Walsh <DGWalsh@KTJLAW.com>  
**Sent:** Tuesday, February 11, 2020 3:33 PM  
**To:** Fallon, Martin <Martin.Fallon@aptim.com>; Moose, Devin <Devin.Moose@aptim.com>  
**Cc:** Michael Guttman (MGuttman@westchicago.org) <MGuttman@westchicago.org>  
**Subject:** RE: City of West Chicago

**EXTERNAL SENDER**

Marty,

Thank you for your email regarding Aptim Environmental & Infrastructure, LLC's ("Aptim") possible involvement in two confidential environmental development projects outside of northeastern Illinois. One is for a new transfer station to be located over 100 miles from the City of West Chicago and the other for a new landfill to be located in northwestern Illinois. Aptim's work on those projects may include site identification, siting, design, and permitting of the facilities. One or more of those projects may be done on behalf of or in collaboration with Lakeshore Recycling Systems, LLC, ("LRS") who is currently an expected applicant for local siting for a transfer station in the City of West Chicago. Toward that end, on behalf of the City of West Chicago, Aptim is conducting professional engineering and review services with regard to LRS's anticipated application requesting local siting approval for the development of a transfer station on Powis Road in West Chicago. As part of the work for the City of West Chicago, Aptim is undertaking a "pre-file" review of LRS's draft

application. The pre-file review is intended to provide a qualitative review of the draft application to establish general consistency with the City of West Chicago Pollution Control Facility Siting Ordinance, identify gross inconsistencies, and to determine if proposed facility design and operations generally conforms to Best Management Practices for modern transfer station facilities. Aptim's pre-file review began with a site visit to LRS's facilities. Aptim will also attend meetings with the City and LRS representatives as necessary in order to discuss the application contents and findings of the pre-file review. In addition, Aptim may be providing the City with technical assistance through the local siting hearings. Toward that end, after the filing of an application, Aptim could assist the City in reviewing the application to determine whether a technical basis has been established demonstrating the statutory criteria have been met. This may include conducting additional research and analysis as necessary and you may assist the City in preparing questions for the applicant during the public hearings.

This communication addresses the potential conflict of interest and Aptim's expressed representation that its involvement in the two confidential development projects, (whether they include LRS or not), will not impact its ability to provide the City of West Chicago with sound guidance on its current review services for the proposed transfer station in West Chicago. In addition, you provided Aptim's assurance that it always look out for the best interests of its clients and for the health, safety, and welfare of the public and nothing in your representation of LRS in the other proposed development projects, will interfere with Aptim's ability to execute the agreement it has with the City of West Chicago. It is the City's understanding from your representations that any relationship Aptim has, or will have with LRS, will not in any way interfere with or limit Aptim's ability (now or in the future) to fully represent the City of West Chicago against any competing interests of the LRS or others, if such competing interests should arise.

Certainly, one of the issues that is of great importance to the City of West Chicago is the City's ability to rely upon Aptim to represent the City's interest not only as to the pre-filing review, but if needed, at the siting hearing and in any appeal process that may occur in the future. Any and all of this, of course, could very well place the City of West Chicago in an adversarial position with the LRS. In any event, it certainly is our view that one of Aptim's obligations is to zealously represent the interests of the City of West Chicago, as may be needed, at the siting hearing and in the event of a future appeal. If our understanding in this regard is in any way different from yours, please let me know that immediately. It is imperative to the City of West Chicago that Aptim remain ready, willing and able to defend the Village's interest against all those who would oppose it (including LRS) in any setting or form that would require it. Please confirm that this understanding is correct and that there are, in fact, no limitations placed on Aptim's ability to represent the City of West Chicago in this matter..

If, on the other hand, it is Aptim's position that its relationship with LRS, now or in the future, or Aptim's involvement in the two confidential environmental development projects does indeed place or could place some limitations on its ability to act as the City's representative on the pre application review, or in the hearing or in any appeals involving LRS, please specifically identify with specificity exactly what each one of those are. Until then, the City of West Chicago is proceeding forward with and relying upon its understanding that there is no such limitation on Aptim's current and future representation of the City of West Chicago as it relates to the proposed application and transfer station on Powis Road. Thank you again on behalf of the City of West Chicago. Dennis

---

**From:** Fallon, Martin [<mailto:Martin.Fallon@aptim.com>]

**Sent:** Tuesday, February 11, 2020 1:48 PM

**To:** Dennis G. Walsh; Moose, Devin

**Cc:** Michael Guttman ([MGuttman@westchicago.org](mailto:MGuttman@westchicago.org))

**Subject:** RE: City of West Chicago

The projects are both confidential, but they are development projects outside of northeastern Illinois. One is for a new transfer station to be located over 100 miles from West Chicago and the other for a new landfill to be located in northwestern Illinois. Our work may include site identification, siting, design, and permitting of these facilities. However, our involvement in these projects would not impact our ability to provide West Chicago with sound guidance on our current review services for the proposed transfer station on Powis Road in West Chicago. We always look out for the best interests of our clients and for the health, safety, and welfare of the public.

**MARTIN N. FALLON, P.G.**

Project Manager

**APTIM** | Solid Waste Services

**O** 630 762 3322

**E** [martin.fallon@aptim.com](mailto:martin.fallon@aptim.com)

---

**From:** Dennis G. Walsh <[DGWalsh@KTJLAW.com](mailto:DGWalsh@KTJLAW.com)>

**Sent:** Tuesday, February 11, 2020 11:07 AM

**To:** Moose, Devin <[Devin.Moose@aptim.com](mailto:Devin.Moose@aptim.com)>; Fallon, Martin <[Martin.Fallon@aptim.com](mailto:Martin.Fallon@aptim.com)>

**Cc:** Michael Guttman ([MGuttman@westchicago.org](mailto:MGuttman@westchicago.org)) <[MGuttman@westchicago.org](mailto:MGuttman@westchicago.org)>

**Subject:** City of West Chicago

### **EXTERNAL SENDER**

Devin or Marty, Would you please send me an e-mail that details the two matters that you discussed with the City Administrator as to the potential projects that may involve LRS and another matter. I want to make sure I have a clear understanding of them and the potential for a conflict in APTIM's representation of the City of West Chicago. Thanks, Dennis

**PWC-28**

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
DuPAGE COUNTY, ILLINOIS  
CHANCERY DIVISION

Candice Adams  
e-filed in the 18th Judicial Circuit Court  
DuPage County  
ENVELOPE: 13178709  
2021MR000449  
FILEDATE: 5/3/2021 3:45 PM  
Date Submitted: 5/3/2021 3:45 PM  
Date Accepted: 5/3/2021 4:04 PM  
JK

OLGA RIVERA, )  
)  
)  
Plaintiff, )  
)  
v. ) 2021MR000449  
)  
CITY OF WEST CHICAGO, )  
)  
Defendant. )

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF  
UNDER THE FREEDOM OF INFORMATION ACT**

NOW COMES the Plaintiff, OLGA RIVERA, by and through her attorneys, LUETKEHANS, BRADY, GARNER & ARMSTRONG, LLC and the Citizen Advocacy Center, and complains of the Defendant as follows:

1. Plaintiff, Olga Rivera, is an individual who resides in DuPage County, Illinois.
2. Defendant, City of West Chicago, is a municipal corporation with its principal office located in West Chicago, DuPage County, Illinois.
3. Defendant maintains public records subject to inspection and copying by the public pursuant to the Illinois Freedom of Information Act (5 ILCS 140/1, *et seq.*) (the "Act").
4. On January 13, 2021, Plaintiff caused to be delivered to Defendant an electronic request for public records pursuant to the Act (the "First Request"). A copy of the First Request is attached hereto as Exhibit A and made a part hereof.
5. On February 10, 2021, Plaintiff caused to be delivered to Defendant a new and revised electronic request for public records pursuant to the Act and again sought information



redacted in the First Response (the “Revised Request”). A copy of the Revised Request is attached hereto as Exhibit B and made a part hereof.

6. On or about March 3, 2021, Defendant responded to the Revised Request (the “First Response”). A copy of the First Response is attached hereto as Exhibit C and made a part hereof.

7. On or about March 22, 2021, Defendant further responded to the Revised Request (the “Second Response”). A copy of the Second Response is attached hereto as Exhibit D and made a part hereof.

8. In the Revised Request, Plaintiff requested the unredacted name of the person who submitted a handwritten letter to the City of West Chicago dated April 27, 2020 (the “April 27, 2020 Letter”). *See* Exhibit B.

9. Defendant refused to provide the unredacted name of the person who submitted the April 27, 2020 Letter, citing 5 ILCS 140/7(1)(b). *See* Exhibit C.

10. 5 ILCS 140/7(1)(b) provides an exemption for private information. 5 ILCS 140/7(1)(b).

11. However, names are not considered private information under 5 ILCS 140/7(1)(b). *See Lieber v. Bd. of Trustees of S. Illinois Univ.*, 176 Ill. 2d 401, 412, 680 N.E.2d 374, 379 (1997) (private information does not include basic identification); Ill. Att’y Gen. Pub. Acc. Op. No. 18-002, issued February 14, 2018 (a person’s name is not private information).

12. In the Revised Request, Plaintiff also requested “[a]ny and all electronic messages, including texts and emails from personal devices or personal emails, that are responsive to the January 13, 2021 FOIA request as set forth in paragraph 2, including subparagraphs 2(a), 2(b), and 2(c)” (the “Correspondence”). *See* Exhibit B.

13. Defendant also refused to provide the Correspondence, stating such documents are not “public records” and cited Ill. Att’y Gen. Pub. Acc. Op. No. 11-006, issued November 15, 2011 and *City of Champaign v. Madigan*, 2013 IL App (4th) 120662 (2013). *See* Exhibit C.

14. However, personal texts and emails from city council members can be considered public documents under FOIA. *See City of Champaign v. Madigan*, 2013 IL App (4th) 120662, ¶¶ 42–43, 992 N.E.2d 629, 640 (city council members’ communications from personally owned electronic devices regarding public business were subject to disclosure under FOIA); *Better Gov’t Ass’n v. City of Chi. Office of Mayor*, 2020 IL App (1st) 190038, ¶ 19, 2020 WL 4515997 at \*4 (many communications other than those sent or received during a meeting “are prepared for or eventually used by the public body”); Ill. Att’y Gen. Pub. Acc. Op. No. 16-006, issued August 9, 2016 (communications pertaining to the transaction of public business that were sent or received on city employees’ personal email accounts were discoverable under FOIA).

15. Finally, Plaintiff requested Defendant provide certain information regarding the proposed waste transfer station. *See* Exhibit B.

16. Plaintiff requested “[a]ny and all documents, generated or received within the last two years, related to any development, including but not limited to a waste transfer station, proposed or developed at 1655 Powis Road, West Chicago, Illinois” (the “Development Documents”). *See* Exhibit B.

17. Defendant failed to provide the Development Documents due to an alleged exemption, citing 5 ILCS 140/7(1)(k). *See* Exhibit D.

18. 5 ILCS 140/7(1)(k) provides that “[a]rchitects’ plans, engineers’ technical submissions, and other construction related technical documents for projects not constructed or developed in whole or in part with public funds and the same for projects constructed or developed

with public funds, including but not limited to power generating and distribution stations and other transmission and distribution facilities, water treatment facilities, airport facilities, sport stadiums, convention centers, and all government owned, operated, or occupied buildings, *but only to the extent that disclosure would compromise security.*” 5 ILCS 140/7(1)(k) (emphasis added).

19. All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt. 5 ILCS 140/1.2.

20. Plaintiff has not and cannot demonstrate by clear and convincing evidence that releasing the Development Documents would compromise security. *See* Ill. Att’y Gen. Pub. Acc. Op. No. 20-009, issued December 29, 2020 (in opinion reviewing similar statutory language, Attorney General found FOIA officer did not meet its burden when a request was denied without explanation as to how disclosure of a report would interfere with pending proceedings).

21. Defendant’s refusal to provide the information sought in the Revised Request constituted a denial of the Revised Request. 5 ILCS 140/3(d).

22. There is no legal basis for Defendant to deny Plaintiff access to these public records.

23. Pursuant to the Act, the Court may enjoin Defendant from withholding the records requested by Plaintiff and may order Defendant to produce the records requested by Plaintiff. 5 ILCS 140/11(d).

24. Pursuant to the Act and due to Defendant’s failure to comply with or deny the Revised Request, Defendant is prohibited from charging Plaintiff for the cost to duplicate the public records requested in the Revised Request. 5 ILCS 140/3(d).

25. Plaintiff is entitled to their attorney’s fees and costs in filing this action to compel Defendant’s compliance with the Act. 5 ILCS 140/11(i).

WHEREFORE, Plaintiff, OLGA RIVERA, prays this Honorable Court:

- A. declare that the Defendant's refusal to produce the requested public records and information is unlawful;
- B. enjoin Defendant from withholding the requested public records;
- C. order Defendant to immediately produce the public records requested by Plaintiff for inspection and copying;
- D. declare that the production of the requested public records is in the public interest;
- E. enjoin the Defendant from charging the Plaintiff for the cost of reproducing the requested public records;
- F. award the Plaintiff reasonable attorney's fees and costs in this action; and
- G. grant Plaintiff such other and further relief as this Court deems equitable and just.

/s/ Phillip A. Luetkehans  
Phillip A. Luetkehans, One of the Attorneys  
for Plaintiff, OLGA RIVERA

Phillip A. Luetkehans  
[pal@lbgalaw.com](mailto:pal@lbgalaw.com)  
Jessica G. Nosalski  
[jgn@lbgalaw.com](mailto:jgn@lbgalaw.com)  
LUETKEHANS, BRADY, GARNER  
& ARMSTRONG, LLC  
105 E Irving Park Road,  
Itasca, IL 60143  
Tel: 630/773-8500 | Fax: 630/773-1006  
Attorney No. 8500

Ben Silver  
[bsilver@citizenadvocacycenter.org](mailto:bsilver@citizenadvocacycenter.org)  
CITIZEN ADVOCACY CENTER  
188 Industrial Drive, Ste. 106  
Elmhurst, IL 60126  
Tel: 630/833-4080

# EXHIBIT A



January 13, 2021

*Via Electronic Mail*  
[vperez@westchicago.org](mailto:vperez@westchicago.org)

Valeria Perez  
Deputy City Clerk/FOIA Officer  
West Chicago City Hall  
475 Main Street  
West Chicago, IL 60185

Dear Ms. Perez:

Pursuant to the Freedom of Information Act (5 ILCS 140), I am requesting the following documents:

- 1) Any and all documents related to any development, including but not limited to a waste transfer station, to be located at 1655 Powis Road, West Chicago, Illinois.
- 2) Any and all documents related to any waste transfer station in the City of West Chicago, including but not limited to electronic and hardcopy communications sent and received within the last two years:
  - a) Between any employees, between any elected officials, and/or between employee(s) and any elected official(s) of the City of West Chicago.
  - b) Between any employee(s) and/or any elected official(s) of the City of West Chicago and any non-City of West Chicago public official.
  - c) Between any employee(s) and/or any elected official(s) of the City of West Chicago and any third-party (including but not limited to Lakeshore Recycling Systems) or consultants related to any waste transfer station.

I understand that the Act permits a public body to charge a reasonable copying fee not to exceed the actual cost of reproduction and not including the costs of any search or review of the records (5 ILCS 140/6). I am willing to pay fees for this request up to a maximum of \$50. If you estimate that the fees will exceed this limit, please inform me first. I look forward to hearing from you in writing within five working days, as required by the Act (5 ILCS 140/3).

Thank you for considering and responding to this request.



---

Ms. Olga Rivera

# EXHIBIT B

February 10, 2021

Valeria Perez  
Deputy City Clerk/FOIA Officer  
West Chicago City Hall  
475 Main Street  
West Chicago, IL 60185

Dear Ms. Perez:

Thank you for your response to my Freedom of Information Act (“FOIA”) request dated January 13, 2021. Per your suggestion, I would like to clarify/amend one of my prior requests (Request #1) which you said was unduly burdensome by narrowing the request to a two-year period as set forth below:

1. Any and all documents, generated or received within the last two years, related to any development, including but not limited to a waste transfer station, proposed or developed at 1655 Powis Road, West Chicago, Illinois.

I would also like to note that you redacted information in some of the documents you produced which should not have been redacted and specifically:

- the **name of the person** who submitted his handwritten letter dated April 27, 2020 received by the City of West Chicago (See attachment A);
- Certain **information** in an email of November 19, 2020 from Michael Guttman to Noreen Ligino-Kubiski and Ruben Pineda (See attachment B).
- Certain **information** in an email of April 23, 2020 from Ruben Pineda (See attachment C).

In addition, I would like to mention that I do not believe the following has been complied with per my prior FOIA and would ask that you produce the following documents:

Any and all electronic messages, including texts and emails from personal devices or personal emails, that are responsive to the January 13, 2021 FOIA request as set forth in paragraph 2, including subparagraphs 2(a), 2(b) and (2)(c).

I am asking for the above information because I have been made aware that at least some officials, including Ruben Pineda, have communicated with persons via text about the proposed waste transfer station and thus these communications should be available to the public under FOIA.

Finally, please accept this letter as an additional FOIA request in which I am also asking for the following documents:

- a) Any and all communications including but not limited to hardcopy communications electronic messages, including texts and emails from personal devices or personal emails, sent or received in the last two years between the City of West Chicago's consultant, Aptim Environmental & Infrastructure, LLC, and any third-party or West Chicago elected official or employee related to a waste transfer station, proposed or developed at 1655 Powis Road, West Chicago, Illinois.
- b) Any and all notes or memos relating to meetings or conversations (whether via phone or in person) that occurred in the last two years between the City of West Chicago's consultant, Aptim Environmental & Infrastructure, LLC, and any third-party or West Chicago elected official or employee, related to a waste transfer station proposed to be developed at 1655 Powis Road, West Chicago, Illinois.

Thank you for again checking your records, producing the unredacted copies of the information set forth above and for producing the documents identified under a) and b) above.

Sincerely,



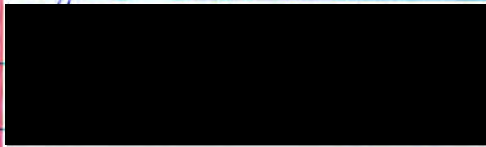
Ms. Olga Rivera

# Attachment A



Michael Guttmann  
City Administrator  
475 Main Street  
West Chicago, IL 60185

April 27, 2020



I am a West Chicago resident living at [REDACTED]. My husband Bob, and I raised our two daughters on a homestead farm passed down through 5 generations of hard working, civic minded farmers, the McCabe's. My daughter and brother, both veterinarians for Du Wayne Animal Clinic also located on property original to the farm. My sister and brother in law have since moved into the farmhouse circa 1845 on the passing of our mother, Eleanor McCabe daughter of Francis McCabe farm.

My concern and objection is to the question of why West Chicago should become home to the Lakeshore Recycling System Waste Handling expansion? West Chicago homeowners value their property, as I do, and desire to keep it beautiful, historic, and peaceful; free of unnecessary stress and confusion. Let us maintain the same serenity as local neighbouring towns enjoy.

Respectfully Submitted



# Attachment B



**Mark Domagalski**

---

**From:** Michael Guttman  
**Sent:** Thursday, November 19, 2020 3:12 PM  
**To:** Remote Noreen Ligino-Kubinski; Ruben Pineda  
**Subject:** RE: Neighbors for a Cleaner West Chicago

**From:** Remote Noreen Ligino-Kubinski <noreenward7@comcast.net>  
**Sent:** Thursday, November 19, 2020 3:08 PM  
**To:** Michael Guttman <MGuttman@westchicago.org>; Ruben Pineda <RPineda@westchicago.org>  
**Subject:** Fwd: Neighbors for a Cleaner West Chicago

FYI. The following is first letter from Cornerstone Lakes. Do we need to respond? Thank you Nor

Sent from my iPhone

Begin forwarded message:

**From:** Rick Trost [REDACTED]  
**Date:** November 19, 2020 at 4:05:11 PM EST  
**To:** [rpineda@westchicago.org](mailto:rpineda@westchicago.org), [jbeifuss@westchicago.org](mailto:jbeifuss@westchicago.org), [lchasse@westchicago.org](mailto:lchasse@westchicago.org), [jsheahan@westchicago.org](mailto:jsheahan@westchicago.org), [hbrown@westchicago.org](mailto:hbrown@westchicago.org), [ahallett@westchicago.org](mailto:ahallett@westchicago.org), [mferguson@westchicago.org](mailto:mferguson@westchicago.org), [mbirch@westchicago.org](mailto:mbirch@westchicago.org), [sdimas@westchicago.org](mailto:sdimas@westchicago.org), [cswiatek@westchicago.org](mailto:cswiatek@westchicago.org), [ngarling@westchicago.org](mailto:ngarling@westchicago.org), [jshort@westchicago.org](mailto:jshort@westchicago.org), [bstout@westchicago.org](mailto:bstout@westchicago.org), [nligino-kubinski@westchicago.org](mailto:nligino-kubinski@westchicago.org), [jjakabcsin@westchicago.org](mailto:jjakabcsin@westchicago.org)  
**Subject:** Neighbors for a Cleaner West Chicago

Dear West Chicago City Council Member,

When I first learned of the proposal to construct another garbage waste transfer station in West Chicago, I was concerned about the negative impact it would have on our communities.

I recently learned that some residents were notified that Lakeshore Recycling Systems would be officially filing its application on October 19th then ended up not following through. Now I'm even more concerned that something is being hidden. Residents of West Chicago, St. Charles, Wayne and Geneva deserve to know what is in the application and why Lakeshore Recycling Systems is stalling.

Our communities will suffer if Lakeshore Recycling Systems is allowed to construct another garbage waste transfer station here. It would mean more litter, increased odors, more traffic resulting in wear and tear on our roads, lowering our property values and hurting our environment.

West Chicago is already the only community in DuPage County with a garbage waste transfer station within its borders. If Lakeshore Recycling Systems' proposal is approved, West Chicago

# Attachment C

**Mark Domagalski**

---

**From:** Rosemary Mackey [REDACTED]  
**Sent:** Thursday, April 23, 2020 2:30 PM  
**To:** Ruben Pineda  
**Subject:** Re: Neighbors for a Cleaner West Chicago

Thanks, I don't see a link in the message?

Sent from my iPhone

On Apr 23, 2020, at 2:03 PM, Ruben Pineda <rpineda@westchicago.org> wrote:

Respectfully,  
Ruben Pineda  
Mayor  
City of West Chicago

---

**From:** Joanna [REDACTED]  
**Sent:** Thursday, April 23, 2020 12:12 PM  
**To:** Ruben Pineda; James Beifuss; Lori Chassee; Jayme Sheahan; Heather Brown; Al Hallett; Michael Ferguson; Melissa Birch; Sandy Dimas; Christopher Swiatek; Matt Garling; Jeanne Short; Becky Stout; Noreen Ligino-Kubinski; John Jakabcsin  
**Subject:** Neighbors for a Cleaner West Chicago

Dear West Chicago City Council Member,

We're proud of our community in West Chicago. We know that this is a great place to live, work, and raise our kids. However, I am worried that our community will suffer if the Lakeshore Recycling Systems transfer station expansion is approved by the City of West Chicago.

This expansion would bring over 300 additional trucks to our street every day. That means more litter, increased odors, more traffic resulting in wear and tear on our roads, lowering our property values and hurting our environment.

West Chicago should not be the Chicagoland's dumping ground!

I am very concerned that this proposal has been considered without the proper involvement of affected residents like myself. That's why I oppose the expansion of the Lakeshore Recycling



# EXHIBIT C

## West Chicago Public Records

### **A message was sent to you regarding record request #21-95:**

Dear Ms. Rivera,

Part of the response to the FOIA submitted on February 11, 2021 is ready to be viewed.

In regards to:

- The name of the person who submitted his handwritten letter dated April 27, 2020 received by the City of West Chicago (See attachment A);

The City of West Chicago redacted this section for the following reason:

(5 ILCS 140/7) sec. 7 (1) (b): Information provided would disclose private information.

The signature was blacked out (redacted). Page 12 of the Illinois Attorney General's "Frequently Asked Questions By Public Bodies" packet states private information is exempt from disclosure.

In regards to:

- Certain information in an email of November 19, 2020 from Michael Guttman to Noreen Ligino-Kubiski and Ruben Pineda (See attachment B).
- Certain information in an email of April 23, 2020 from Ruben Pineda (See attachment C).

The City redacted attorney-client privileged information pursuant to section 7(1)(m) of FOIA.

Section 7(1)(m) of FOIA provides for the exemption to the public disclosure of:

Communications between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation, and materials prepared or compiled by or for a public body in anticipation of a criminal, civil or administrative proceeding upon the request of an attorney advising the public body, and materials prepared or compiled with respect to internal audits of public bodies.

In regards to:

Any and all electronic messages, including texts and emails from personal devices or personal emails, that are responsive to the January 13, 2021 FOIA request as set forth in paragraph 2, including subparagraphs 2(a), 2(b) and (2)(c).

If a public official sent or received communications on a personal electronic device during a public meeting, and those communications pertain to the transaction of public business, then those communications are "public records" subject to the requirements of FOIA. Ill. Att'y Gen. Pub. Acc. Op. No. 11-006, issued November 15, 2011; *City of Champaign v. Madigan*, 2013 IL App (4th) 120662 (2013).

Therefore, the City has no documents responsive to this section of your request.

Should you believe any portion of your request to be improperly denied, I am advising you pursuant to 5 ILCS 140/9(a) that I, the undersigned, am responsible for this response to your request.

You have a right to have the denial of your request reviewed by the Public Access Counselor (PAC) at the Office of the Illinois Attorney General. 5 ILCS 140/9.5(a). You can file your Request for Review with the PAC by writing to:

Public Access Counselor

Office of the Attorney General

500 South 2nd Street

Springfield, Illinois 62706

Fax: 217-782-1396

E-mail: [publicaccess@atg.state.il.us](mailto:publicaccess@atg.state.il.us)

You also have the right to seek judicial review of your denial by filing a lawsuit in the State circuit court. 5 ILCS 140/11.

If you choose to file a Request for Review with the PAC, you must do so within 60 calendar days of the date of this denial letter. 5 ILCS 140/9.5(a). Please note that you must include a copy of your original FOIA request and this denial letter when filing a Request for Review with the PAC.

Finally, in regards to:

Any and all communications including but not limited to hardcopy communications electronic messages, including texts and emails from personal devices or personal emails, sent or received in the last two years between the City of West Chicago's consultant, Aptim



Environmental & Infrastructure, LLC, and any third-party or West Chicago elected official or employee related to a waste transfer station, proposed or developed at 1655 Powis Road, West Chicago, Illinois.

Any and all notes or memos relating to meetings or conversations (whether via phone or in person) that occurred in the last two years between the City of West Chicago's consultant, Aptim Environmental & Infrastructure, LLC, and any third-party or West Chicago elected official or employee, related to a waste transfer station proposed to be developed at 1655 Powis Road, West Chicago, Illinois.

The City has no documents responsive to this section of your request.

The remaining response to your request will be provided on or before March 10, 2021.

Best,

Valeria Perez

FOIA Officer

**[View Request 21-95](#)**

<http://westchicago.nextrequest.com/requests/21-95>

# EXHIBIT D

West Chicago Public Records

**A message was sent to you regarding  
record request #21-95:**

Dear Ms. Rivera,

Attached is the response to a FOIA submitted on February 11, 2021.

The City of West Chicago is partially denying your request by redacting certain information from the documents provided for the following reason:

(5 ILCS 140/7) sec. 7 (1) (b): Information provided would disclose private information.

Signatures have been blacked out (redacted). Page 12 of the Illinois Attorney General's "Frequently Asked Questions By Public Bodies" packet states private information is exempt from disclosure.

The City of West Chicago is denying your request by not providing them for the following reason:

5 ILCS 140/7. Sect 7 (1)(K): Engineering plans are exempt.

***Architects' plans, engineers' technical submissions, and other construction related technical documents for projects not constructed or developed in whole or in part with public funds and the same for projects constructed or developed with public funds, including but not limited to power generating and distribution stations and other transmission and distribution facilities, water treatment facilities, airport facilities, sport stadiums, convention centers, and all government owned, operated, or occupied buildings, but only to the extent that disclosure would compromise security.***

Should you believe any portion of your request to be improperly denied, I am advising you pursuant to 5 ILCS 140/9(a) that I, the undersigned, am responsible for this response to your request.

You have a right to have the denial of your request reviewed by the Public Access Counselor (PAC) at the Office of the Illinois Attorney General. 5 ILCS 140/9.5(a). You can file your Request for Review with the PAC by writing to:

Public Access Counselor

Office of the Attorney General

500 South 2nd Street

Springfield, Illinois 62706

Fax: 217-782-1396

E-mail: [publicaccess@atg.state.il.us](mailto:publicaccess@atg.state.il.us)

You also have the right to seek judicial review of your denial by filing a lawsuit in the State circuit court. 5 ILCS 140/11.

If you choose to file a Request for Review with the PAC, you must do so within 60 calendar days of the date of this denial letter. 5 ILCS 140/9.5(a). Please note that you must include a copy of your original FOIA request and this denial letter when filing a Request for Review with the PAC.

Best,

Valeria Perez

FOIA Officer

**[View Request 21-95](#)**

<http://westchicago.nextrequest.com/requests/21-95>



**PWC-702**



BEFORE THE CITY OF WEST CHICAGO CITY COUNCIL

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

Protect West Chicago's Offer of Proof
Relating to the Testimony of James Powell

In light of the Hearing Officer's decision and/or ruling to exclude the testimony of James Powell relating to Environmental Justice concerns and in order to preserve its rights on appeal, Protect West Chicago hereby submits this offer of proof and specifically avers that if allowed to continue to testify, in addition to the testimony that has been admitted into the record, Mr. Powell would also testify that:

1) The Illinois Environmental Protection Act (the "Act") requires that a pollution control facility, such as the transfer station that is the subject of this Application, be so designed, located, and proposed to be operated that the public health, safety, and welfare will be protected, and the potential impacts associated with the proposed facility be minimized.

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

3) That pursuant to Section 39 of the Act, a waste transfer station, including the proposed LRS facility, is a facility that requires a permit approved by the state.

4) That a Commission on Environmental Justice has been established in the state which includes individuals with varying backgrounds and expertise, including members of the general public who have an interest or expertise on environmental justice.

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

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

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

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

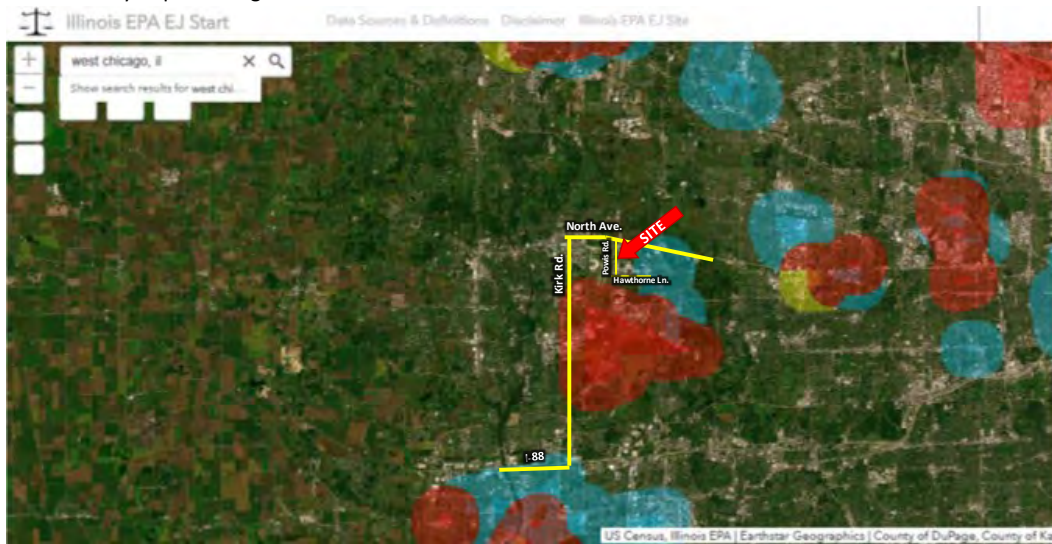
9) That I used EJ START to determine whether the proposed LRS waste transfer station facility is in or impacting an “area of EJ concern,” and that based on my review of the EJ START, the proposed facility is approximately 1,300 feet from an area determined by the IEPA to have minority population greater than twice the statewide average, and therefore within an “area of EJ Concern.”

10) That I also used EJ START to determine whether the proposed LRS waste transfer station’s proposed trash transfer-trailer route travels through an “area of EJ concern,” and that

based on my review of the EJ START, I found that if LRS transfer-trailers leaving the LRS facility on Powis Road travel North on Powis Road and then proceed West on North Avenue and then South on Kirk Road (as depicted by the yellow line on slide 31), all LRS transfer-trailers leaving the LRS facility would travel through numerous “areas of EJ concern,” that are located along Kirk Road South from Batavia to I-88 and would include the area of West I-88 at Aurora and North Aurora communities, as depicted by the blue and red portions along the proposed route in slide 31, which I have also set forth below:

### Transfer Trailer Route and Communities Impacted

Regional community impact along Kirk Road South from Batavia to I-88 and the Area of West I-88 at Aurora and North Aurora.



1/12/2023

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11) That environmental hazards can result in adverse health effects for the general population in West Chicago, a majority of which (namely 51.85%) is Latino based on United States census information

and as set forth below:

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

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

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

13) That the National Environmental Justice Advisory Council – Waste and Facility Siting Subcommittee Waste Transfer Station Working Group also found that waste transfer stations “can cause environmental concerns associated with poor air quality (from idling diesel-



fueled trucks and from particulate matter such as dust and glass) and disease-carrying vectors such as rodents and roaches.”

14) That according to the EPA, and as set forth in Exhibit PWC-49 titled: Waste Transfer Stations: A Manual for Decision Making (June 2002), steps should be taken “to ensure that siting decisions are not imposing a disproportionate burden upon low-income or minorities” and that therefore, it is appropriate to determine whether the siting of the proposed LRS facility in West Chicago, which is majority Latino, does or does not impose a disproportionate burden on the Latino community of West Chicago.

15) That based on my review of the EJ START map, as well as the information from the EPA and Illinois Environmental Protect Act, the proposed facility route for departing trash transfer-trailers does impose an adverse impact on various areas of EJ concern as depicted in slide 31 and the image above.

 1.12.2023  
James Powell Date

Respectfully Submitted,

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**Certificate of Service**

The undersigned certifies that on \_\_\_\_\_, he caused a copy of Protect West Chicago's Offer of Proof to be personally served upon all counsel of record in this matter.

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth above are true and correct.

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**PWC-806**

FW: Ordinance



Michael Guttman <MGuttman@westchicago.org>

To: Michael Guttman

Cc: Dennis G. Walsh

[Reply](#) [Reply All](#) [Forward](#)

Tue 2/28/2023 12:16 PM

Ordinance approving the application for Local Siting Approval with Exhibit A.pdf  
16 MB

Attached please find the Ordinance for tonight's meeting.



**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE CONDITIONALLY APPROVING THE APPLICATION FOR LOCAL SITING APPROVAL OF LAKESHORE RECYCLING SYSTEMS, LLC FOR WEST DUPAGE RECYCLING AND TRANSFER STATION**

**WHEREAS**, on September 16, 2022, Lakeshore Recycling Systems, LLC. (“Applicant”) filed an application with the City of West Chicago for siting approval of a new pollution control facility within West Chicago, Illinois, for the development of a new transfer station as defined by Section 3.500 of the Illinois Environmental Protection Act located at 1655 Powis Road (“the Facility”), pursuant to Section 39.2 of the Illinois Environmental Protection Act (415 ILCS 5/39.2) (“Act”); and

**WHEREAS**, the waste accepted for transfer will be general municipal solid waste, hydro excavation waste, recyclables and construction or demolition debris generated by residential, commercial and industrial sources; and

**WHEREAS**, the proposed Facility falls within the definition of a “pollution control facility” under the Illinois Environmental Protection Act and, as such, requires site location approval by the municipality in which the proposed Facility will be located pursuant to 415 ILCS 5/39.2; and

**WHEREAS**, the City of West Chicago, DuPage County, Illinois, is the municipality in which the proposed Facility will be located if approved and Article VII of the City of West Chicago’s Code of Ordinances (the “Siting Ordinance”) enacted by the City Council of the City of West Chicago, establishes a procedure for pollution control facility site approval in the City of West Chicago, DuPage County, Illinois; and

**WHEREAS**, following notice, the City of West Chicago held public hearings on January 3, 2023, January 4, 2023, January 5, 2023, January 10, 2023, January 12, 2023, January 16, 2023, and January 19, 2023, pursuant to the Act and West Chicago’s Siting Ordinance; and

**WHEREAS**, the Applicant, Protect West Chicago, People Opposing DuPage Environmental Racism and the City of West Chicago staff are parties that appeared at the public hearings. Protect West Chicago by and through counsel moved to dismiss the application asserting that the City of West Chicago lacked jurisdiction due to fatal defects in the pre-filing notice required by 415 ILCS 5/39.2, and argued that since the application fails to comply with the 1,000 foot set-back requirement of 415 ILCS 5/22.14 concerning the setback from property zoned primarily for residential uses, the siting approval must be denied. The Applicant filed a response in opposition to the Motion to Dismiss and a memorandum explaining why the 1,000 foot residential setback does not apply to this Facility due to impossibility.

**WHEREAS**, the Hearing Officer appointed to preside over the public hearing has made his report and recommendation regarding the Motion to Dismiss the residential setback issue and regarding conditional siting approval to the City Council of the City of West Chicago, based upon



the siting application, notifications, hearings, exhibits, public comment and the record, which includes the following determinations, subject to the decision of this City Council:

1. The Applicant complied with all pre-filing notice requirements of Section 39.2(b) of the Act and the pre-hearing notice requirements of Section 39.2(c) of the Act;
2. The City has jurisdiction to consider the Application;
3. Section 5/22.14 of the Act does not bar this proposed Facility;
4. The siting proceedings herein, both procedurally and substantively, complied with the requirements of fundamental fairness;
5. The Applicant has demonstrated that the proposed Facility meets Criterion 1: “the facility is necessary to accommodate the waste needs of the area it is intended to serve....;”
6. The Applicant has not demonstrated that the proposed Facility meets Criterion 2; however, with the imposition of and compliance with the special conditions provided below, the proposed Facility meets Criterion 2: “the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;”
7. The Applicant has demonstrated that the proposed Facility meets Criterion 3: “the facility is so located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property;”
8. The Applicant has demonstrated that the proposed Facility meets Criterion 4: “for a facility other than a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100 year floodplain or the site is flood-proofed”;
9. The Applicant has not demonstrated that the proposed Facility meets Criterion 5; however, with the imposition of and compliance with the special conditions provided below, the proposed Facility meets Criterion 5: “the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents;”
10. The Applicant has demonstrated that the proposed Facility meets Criterion 6: “the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows;”
11. The Applicant demonstrated that the facility will not be accepting hazardous waste and therefore demonstrated that Criterion 7 is not applicable;
12. The Applicant has demonstrated that the proposed Facility meets Criterion 8: “...where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan ....;”

13. The Applicant demonstrated that the Facility is not located within a regulated recharge area and therefore Criterion 9 is not applicable;

14. The Applicant's operating history demonstrates that the Applicant is qualified to operate the Facility safely and properly and provides no basis to deny the Application;

15. The proposed Facility, when developed and operated in compliance with the special conditions, is consistent with all appropriate and relevant location standards, including airport setback requirements, wetlands standards, seismic impact zone standards, and residential setback requirements; and

16. The Applicant has agreed to comply and approval is conditioned upon compliance with all terms of the Host Community Benefit Agreement between the City of West Chicago and Lakeshore Recycling Systems, LLC, dated April 1, 2019; the Secondary Host Community Benefit Agreement between DuPage County and Lakeshore Recycling Systems, LLC, dated March 10, 2020; and the Airport Agreement.

**WHEREAS**, the City Council of the City of West Chicago met on February 27, 2023 to deliberate, and to review and consider the hearing record in light of each of the Criterion established for consideration of siting of pollution control facilities in Section 39.2, and to the extent applicable, the provisions of the Siting Ordinance; and

**WHEREAS**, Section 39.2 allows the City Council of the City of West Chicago, in granting siting approval, to impose such conditions as may be reasonable and necessary to accomplish the purposes of Section 39.2 and as are not inconsistent with Illinois Pollution Control Board regulations; and

**WHEREAS**, during the above deliberations, the City Council of the City of West Chicago found that the Applicant complied with all the pre-filing notice requirements of Section 39.2(b) of the Act, and the pre-hearing notice requirements of Section 39.2(c) of the Act and that the City of West Chicago has jurisdiction to consider the application and found further that the Applicant met Criterion (1), (3), (4), (6), (7), (8) and (9) of Section 39.2 without conditions, and that the Applicant met Criterion (2) and (5) of Section 39.2 subject to the special conditions provided below; and

**WHEREAS**, after careful review and consideration, the City Council of the City of West Chicago desire to adopt the Hearing Officer's Findings as the basis of their decision as to a whether the Applicant met the Criterion under Section 39.2.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF WEST CHICAGO, DU PAGE COUNTY, ILLINOIS**, pursuant to its home rule powers as provided by Article VII, Section 6 of the Illinois Constitution and the authority under Section 39.2 of the Illinois Environmental Protection Act (415 ILCS 5/39.2), that the Report of Hearing Officer Recommended Findings of Fact and Recommended Conditions of Approval, attached hereto as Exhibit A, is adopted by the City Council of the City of West Chicago.

**BE IT FURTHER RESOLVED**, that the City Council of the City of West Chicago has jurisdiction and hereby determines that Lakeshore Recycling Systems, LLC. has satisfied the applicable criteria, subject to the special conditions provided below; and

**BE IT FURTHER RESOLVED**, that the City Council of the City of West Chicago conditionally approves the request of Lakeshore Recycling Systems, LLC. for site approval of its proposed municipal solid waste transfer station, provided that the special conditions are not inconsistent with regulations of the Pollution Control Board or the terms of any development or operating permits approved by the Illinois Environmental Protection Agency.

**SECTION 1:** The preceding “Whereas” clauses are hereby incorporated into this Ordinance as if they were fully set forth herein.

**SECTION 2:** The City Council of the City of West Chicago denies Protect West Chicago’s Motion to Dismiss the Application for lack of jurisdiction due to fatal defects in the notice required by 415 ILCS 5/39.2(b) and due to the restrictions of 415 ILCS 5/22.14 concerning the setback from property zoned primarily for residential uses and finds that it has jurisdiction to consider the application.

**SECTION 3:** The City Council of the City of West Chicago hereby adopt the Report of Hearing Officer Recommended Findings of Fact and Recommended Conditions of Approval and Proposed Findings of Fact and Conclusions of Law in its entirety, as attached hereto as Exhibit A and incorporated as if fully set forth herein, and by so doing, the City Council of the City of West Chicago expressly adopts, in expansion of, but not in limitation of the foregoing, the introduction, all findings of fact, all conclusions of law, citations, recommendations, analysis, references and incorporations made in the Report of Hearing Officer Recommended Findings of Fact and Recommended Conditions of Approval and Proposed Findings of Fact and Conclusions of Law as its own to the same extent as though fully set forth herein. The City Council of the City of West Chicago further find, in expansion of, but not in limitation of the foregoing, that it has proper jurisdiction to hear the Application, that all notices required by law were duly given, that the procedures outlined in Section 39.2 and the Siting Ordinance were duly followed, and such procedures were fundamentally fair to the Applicant, all parties, and all participants involved.

**SECTION 4:** Based on the Application, expert testimony and record, we find the following:

The determination of Criterion 2 is primarily a matter of assessing the credibility of expert witnesses. *Fairview Area Citizens Taskforce v. Illinois Pollution Control Board*, 198 Ill.App.3d 541, 552, 555 N.E.2d 1178, 1185 (3d Dist. 1990); *CDT Landfill Corp. v. City of Joliet*, 1998 WL 112497 (Ill. Pollution Control Board). In the City Council’s opinion, Mr. Hock’s testimony was the more thorough and credible testimony on this issue. Accordingly, we find that the Applicant has met its burden of proof as to Criterion 2 of Section 39.2, the Transfer Station Facility is designed, located and proposed to be operated so that the public health, safety and welfare will be protected, provided that the Applicant operates the Facility in accordance with the following special conditions:

1. The maximum tonnage per day that may be received by the Facility shall not exceed 1,950 tons per day, of which up to 650 tons per day may be municipal solid waste (MSW), up to 300 tons per day may be hydro excavation waste, up to 750 tons per day may be construction and demolition debris (C&D) and up to 250 tons per day may be single stream recyclables (SSR).
2. The Applicant shall keep the truck doors to the transfer Facility closed, except for emergencies and to allow trucks to enter and exit the Facility, during regular business hours. The doors shall be equipped with sensors such that they will open and close automatically as vehicles enter and exit the transfer building. Alternatively, an employee may open and close the doors when trucks access and exit the transfer Facility.
3. The push walls in the transfer Facility shall be designed to ensure to the satisfaction of the City that there will be no buildup of waste behind the walls which could result in fire, odor, or harborage for vectors. In addition, the Applicant shall provide a certification from a licensed structural engineer that the push walls will be capable of withstanding impact from waste loading equipment at 5 mph without shearing the beams or compromising the integrity of the building's walls.
4. All transfer vehicles utilizing the Facility shall be equipped with auto tarping systems, and all loaded transfer trailers shall be tarped inside of the transfer building prior to exit.
5. The Applicant shall continue to operate the C&D recycling portions of the Facility in accordance with the requirements of 415 ILCS 5/22.38 for so long as the current permit (2015-124-OP) remains in effect. If the current permit (2015-124-OP) is discontinued, replaced or terminated, the following conditions, as modified, shall remain in effect:
  - a) The Facility shall be designed and constructed with roads and traffic flow patterns adequate for the volume, type and weight of traffic using the Facility including, but not limited to hauling vehicles, emergency vehicles, and on-site equipment. Sufficient area shall be maintained to minimize traffic congestion, provide for safe operation, and allow for queuing of waste hauling vehicles.
  - b) The operator shall provide adequate parking for all vehicles and equipment used at the Facility and as necessary for queued hauling vehicles.
  - c) Roadways and parking areas on the Facility premises shall be designed and constructed for use in all weather, considering the volume, type and weight of traffic and equipment at the Facility.
  - d) The Facility shall be designed and constructed so that site surface drainage will be diverted around or away from the recycling and waste transfer areas. Surface drainage shall be designed and controlled so that adjacent property owners encounter no adverse effects during development, operation and after closure of the Facility.
  - e) Run-off from roadways and parking areas shall be controlled using storm sewers or shall be compatible with natural drainage for the site. Best management practices (e.g., design features, operating procedures, maintenance procedures, prohibition of certain practices and treatment) shall be used to ensure that run-off from these areas does not carry wastes, debris or constituents thereof, fuel, oil or other residues to soil, surface water or groundwater.
  - f) The Facility, including, but not limited to, all structures, roads, parking and recycling areas, shall be designed and constructed to prevent malodors, noise, vibrations, dust and exhaust from creating a nuisance or health hazard during development, operation and

closure of the Facility. Facility features (e.g., berms, buffer areas, paving, grade reduction), best available technology (e.g., mufflers, machinery enclosures, sound absorbent materials, odor neutralizing systems, air filtering systems, misting systems), and building features (e.g., enclosed structures, building orientation) shall be among the measures to be considered to achieve compliance.

- g) The Facility shall be designed and constructed to prevent litter and other debris from leaving the Facility property. Facility features (e.g., windbreaks, fencing, netting, etc.) shall be among the measures considered to ensure that the debris does not become wind strewn and that no other provisions of the Act are violated.
- h) No regulated air emissions shall occur from these facilities, except as authorized by a permit from the Illinois Environmental Protection Agency (IEPA) Bureau of Air (BOA). No process discharge to Waters of the State or to a sanitary sewer shall occur from these facilities, except as authorized by a permit from the IEPA Bureau of Water (BOW).
- i) The Facility shall be designed and constructed with a water supply of adequate volume, pressure, and in locations sufficient for cleaning, firefighting, personal sanitary facilities, and as otherwise necessary to satisfy operating requirements (e.g., dust suppression, wheel washing) and the contingency plan.
- j) The Facility shall be designed and constructed with exterior and interior lighting for roadways, and waste handling areas adequate to perform safely and effectively all necessary activities.
- k) The Facility shall be designed and constructed with truck wheel curbs, guard rails, bumpers, posts or equivalents to prevent backing into fuel storage tanks, equipment, and other structures.
- l) The Facility shall be designed and constructed with adequate shelter, sanitary facilities, and emergency communications for employees.
- m) The Facility operator shall install fences and gates, as necessary, to limit entry. Except during operating hours, the gates shall be securely locked to prevent unauthorized entry.
- n) The Facility may receive general construction and demolition debris at the site Monday through Saturday, 24 hours a day. The Facility shall be closed on Sunday and the six major federal holidays (New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day). When the Facility is operated before sunrise or after sunset, adequate lighting shall be provided. If it is required for the Facility to be open beyond normal operating hours to respond to emergency situations, a written record of the date, time and reason the Facility was open shall be maintained in Facility operating records. The IEPA's Regional Office and the county authority responsible for inspection of the Facility, per a delegation agreement with the IEPA, must be notified and must grant approval each day that the operating hours need to be extended. No later than 10:00 a.m. of the first operating day after the operating hours have been extended, the Applicant shall send a written report by email to the City Administrator, which describes the length of the extension of the operating hours and the reason for the extension.
- o) The Facility may receive and transfer MSW, hydro excavation waste and SSR from 4:00 a.m. to 12:00 a.m. Monday through Friday and from 4:00 a.m. to 12:00 p.m. on Saturday, with no operation on Sunday or the six major federal holidays (New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day), provided that on the Saturday following a major federal holiday, regular business hours

may be extended to 12:00 a.m. If it is required for the Facility to be open beyond normal operating hours to respond to emergency situations, a written record of the date, time and reason the Facility was open shall be maintained in Facility operating records. The City of West Chicago must be notified by email to the City Administrator each day that the operating hours need to be extended. The IEPA's Regional Office and the county authority responsible for inspection of the Facility, per a delegation agreement with the IEPA, must be notified and must grant approval each day that the operating hours need to be extended.

- p) Fire safety equipment (fire extinguishers) shall be maintained in accordance with recommended practice.
- q) Non-recyclable waste may be kept temporarily in covered containers or transfer trailers for no more than 24 hours (except on weekends and holidays), provided that loaded or partially loaded trailers intended to be stored overnight or that will not be picked up and transported the same operating day are stored indoors and suitably covered.
- r) Piles of general construction or demolition debris shall be covered or wetted to prevent air-borne dust.
- s) The Facility shall be designed and constructed to prevent unauthorized access to recycling areas, storage areas for unauthorized wastes, salvaged and recycled materials, and staging areas where loaded site equipment or vehicles may be parked. Facility features such as fences and gates shall be provided.
- t) Waste handling areas shall be designed and constructed to prevent exposure of wastes and recyclable materials to run-off and flooding.
- u) The sorting areas shall be properly graded and compacted to prevent ponding from forming leachate during storms.
- v) Records shall be maintained on-site at the Facility office for each operating day. The operator shall record operating hours, load ticket information, load inspections, daily processing time, volume processed per day, transfer load out and waste disposition details.
- w) The operator shall, within 48 hours of receipt of the general construction or demolition debris at the Facility, sort the general construction or demolition debris. The operator shall separate the recyclable general construction or demolition debris from nonrecyclable general construction or demolition debris and dispose of the non-recyclable general construction or demolition debris, in accordance with Section 22.38(b)(1) of the Act.
- x) The operator must place wood, tires, and other unacceptable materials in covered dumpsters or vehicles adequate to prevent the release of leachate.
- y) All non-recyclable general construction or demolition debris, and unacceptable material shall be moved to the waste transfer Facility on the same day it is received, and disposal of such material shall be handled in accordance with all applicable federal, State, and local requirements and with these conditions.
- z) The operator shall transport all non-putrescible recyclable general construction or demolition debris for recycling or disposal within 6 months of its receipt at the Facility, in accordance with Section 22.38(b)(4) of the Act.
- aa) In accordance with Section 22.38(b)(6) of the Act, the operator shall employ tagging and record keeping procedures to identify the source and transporter of C&D material accepted by the Facility.



- bb) The operator shall use load tickets to control the site activities and comply with the tagging and record keeping procedures. These load tickets shall identify the source of the C&D material delivered to the site. The operator shall use these tickets to identify the location in the yard or in the covered dumpsters and the length of time stored at the site to achieve compliance.
- cc) The operator is prohibited from receiving hazardous and asbestos containing materials.
- dd) The operator may separate clean concrete and clean soil from the general construction or demolition debris as recyclable materials for use in construction. The operator is permitted to store recyclable concrete and clean soil for a maximum period of 3 months.
- ee) The operator may store the steel separated from concrete or other construction or demolition debris for a maximum period of 6 months. After six months, the steel must be sent offsite for disposal or recycling.
- ff) The operator shall ensure that site surface drainage, during development, during operation and after the site is closed, shall be such that no adverse effects are encountered by adjacent property owners.
- gg) The best available technology (mufflers, berms and other sound shielding devices) shall be employed to minimize equipment noise impacts on property adjacent to the site during both development, operation and during any applicable post-closure care period.
- hh) Management of Unauthorized Waste by the operator
  - i. Landscape waste found to be mixed with general construction and demolition debris shall be removed the same day and transported to a facility that is operating in accordance with the Illinois Environmental Protection Act (Act), Title V, Sections 21 and 39 (415 ILCS 5/21 and 39).
  - ii. Lead-acid batteries mixed with general construction and demolition debris shall be removed the same day and transported either to a drop-off center handling such waste, or to a lead-acid battery retailer.
  - iii. Special wastes including hazardous waste, non-hazardous special waste, and potentially infectious medical waste mixed with general construction and demolition debris shall be containerized separately and removed from the property no later than five hours after receipt by a licensed special waste hauler. Special wastes shall be transported to a licensed special waste management facility that has obtained authorization to accept such waste. The operator shall maintain a contract with haulers so that the immediate removal is ensured. The operator shall develop an emergency response/action plan for such occurrences.
  - iv. Asbestos debris from general construction and demolition debris shall be managed in accordance with the National Emission Standards for Hazardous Air Pollutants (NESHAPS) regulations.
  - v. Tires found to be mixed with general construction and demolition debris shall be removed and managed in accordance with Section 55 of the Act [415 ILCS 5/55].
  - vi. White good components mixed with general construction and demolition debris shall be removed and managed in accordance with Section 22.28 of the Act [415 ILCS 5/22.28].
  - vii. No person may knowingly mix liquid used oil with general construction and demolition debris.
  - viii. After the unauthorized waste has been removed from the Facility, a thorough cleanup of the affected area shall be made according to the type of unauthorized waste

managed. Records shall be kept for three years and will be made available to the IEPA upon request. In addition, the Applicant shall provide an annual written report to the City of West Chicago not later than January 31 of each year, which report shall: list the types, quantities and dates of receipt of all unauthorized waste; the generators of such waste; and the sites to which the wastes were delivered for disposal, processing or handling.

- ix. The following wastes shall not be accepted at the Facility:
- Hazardous substances (as defined by Section 3.215 of the Illinois Environmental Protection Act);
  - Hazardous waste (as defined by Section 3.220 of the Illinois Environmental Protection Act);
  - Potentially infectious medical wastes (as defined by the Illinois Environmental Protection Act in Section 3.84);
  - Universal waste (as defined by Title 35 of the Illinois Administrative Code Part 733 including batteries, pesticides, mercury-containing equipment and lamps);
  - Regulated asbestos containing materials;
  - Polychlorinated biphenyl wastes;
  - Used motor oil;
  - Source, special or by-product nuclear materials;
  - Radioactive wastes (both high and low level);
  - Sludge;
  - White goods (incidental white goods received at the proposed transfer station will be segregated and stored for pickup by an off-site recycler);
  - Lead-acid automotive batteries (incidental automotive batteries received at the transfer station will be segregated and stored for pickup by an off-site recycler);
  - Used tires (incidental tires received at the transfer station will be segregated and stored for pickup by an off-site recycler); and
  - Landscape waste.
- ii) Special wastes generated at the site for disposal, storage, incineration or further treatment elsewhere shall be transported by the operator to the receiving facility utilizing the IEPA's Special Waste Authorization system and manifest system.

6. Upon receiving final, non-appealable siting approval pursuant to 415 ILCS 5/39.2 to construct and operate the Facility, and upon receiving an IEPA development permit, LRS shall, prior to commencing operation of the waste transfer Facility, 1) execute and grant to the DuPage Airport Authority ("DAA") a new avigation easement, which is Exhibit A to the Agreement Between the DuPage Airport Authority, Oscar (IL) LLC, and Lakeshore Recycling Systems, LLC, dated January 19, 2022 ("Airport Agreement"), 2) LRS shall reduce the roof height of its existing transfer building so as to stay below all critical elevations in the new avigation easement, and 3) LRS shall not allow any penetrations whatsoever to the new avigation easement.

7. All improvements installed on and offsite by the Applicant shall be funded by and solely at the expense of the Applicant.

8. The tipping floor of the waste transfer building shall be cleaned and free of waste at the end of each operating day. Except as set forth in Condition 5, no waste or other material shall be left on the floor inside the transfer building or outside the transfer building overnight or when the Facility is not operating.

9. The Applicant shall control litter by discharging and loading all waste within the enclosed portion of the Transfer Facility. After unloading, any remaining loose waste shall be removed or contained in the vehicle prior to exiting the site. The Applicant shall use its best efforts to assure that vehicles, hauling waste to or removing waste from the Transfer Facility, shall be suitably covered to prevent waste from leaving the vehicles. A fence to aid in the interception of any blowing litter shall surround the Transfer Facility. The Applicant shall diligently patrol the Subject Property during hours of operation to collect any litter. At a minimum the Applicant shall diligently patrol and remove litter from: the Subject Property; all property owned or controlled by the Applicant; and, before 10:00 a.m. each operating day, Powis Road between Hawthorne Lane and Route 64 (North Avenue) as well as Powis Court. In addition, the Applicant shall, at a minimum, patrol and remove litter from private property within 500 feet of the aforesaid public streets and corresponding rights-of-way with the written permission of the owner of said properties, which permission the Applicant shall diligently attempt to obtain. The Applicant shall provide the City of West Chicago the names, addresses, telephone numbers and email addresses of such owners granting permission. The Applicant shall also post on the company's website the name and email address of an employee of the company to whom any owner of property along Powis Court or Powis Road between Route 64 (North Avenue) and Hawthorne Lane may report litter from the Facility or trucks using the Facility, in which case the Applicant shall remove the litter with the written permission of the owner within two hours of receiving notification of the litter concern. Upon written request, logs showing the private owner, the property address for the request for litter removal, the time such was received and the time the concern was abated shall be available to the City and provided within one business day. Also, the Applicant shall diligently seek the written approval of the DuPage County Forest Preserve District to remove litter, which is visible from Route 64 (North Avenue), from the portion of the Pratts Wayne Woods Forest Preserve that is located within the City of West Chicago. If permission is granted, litter removal from the Forest Preserve shall occur not less than monthly; the City shall be provided written notice of each occurrence within one business day of such being completed.

10. The Applicant shall provide a street sweeper to remove mud and dust tracked onto hard surfaces inside and outside the Transfer Facility, on property owned or controlled by the Applicant as well as Powis Court and Powis Road between Hawthorne Lane and Route 64 (North Avenue) on an as needed basis, but not less frequently than daily.

11. The Applicant shall retain a pest control service on an on-going basis to address the potential for infestation by rodents and other vectors. Such service shall inspect the Transfer Facility on an as needed, but no less than monthly, basis.

12. Transfer trailers entering and exiting the Subject Property shall use only the following roads: Powis Road (between the Facility entrance and Route 64 (North Avenue)), Route 64 (North Avenue), Kirk Road and Interstate 88. Except for waste collection trucks servicing property within the City of West Chicago, waste collection trucks entering and exiting the Subject Property shall use only the following streets within the City and no others: Powis Road south of Route 64, Route 64 (North Avenue), Route 38, and Kress Road. The Applicant shall have installed within City right-of-way to the satisfaction of the City, license plate readers in each of the following locations: Hawthorne Lane between Route 59 and Powis Road; Smith Road between Powis Road and Route 64; and Powis Road between Smith Road and Route 64. The license plate readers shall provide remote access to the City of West Chicago to be used for any lawful purpose. The specific make and model of license plate readers and the specific locations for installation of the license plate readers shall be subject to the written approval/direction of the West Chicago Police Chief, and may be relocated for operational need

at the expense of the City; the initial and any annual costs associated with the license plate readers shall be at the Applicant's sole cost and expense. The Applicant shall be responsible for maintaining and, if necessary, replacing the license plate readers when in disrepair or at the end of their useful lives as determined by the City through documentation from the vendor. The Applicant shall also provide a set of certified portable scales to the City at its sole cost and expense, which thereafter shall be maintained and replaced by the City.

13. Trucks transporting hydro excavation waste shall be water-tight. Dump style trucks transporting solidified hydro excavation waste shall include liners that are sufficient to prevent leakage onto roads and other surfaces.

14. All incoming hydro excavation waste loads shall be accompanied by a completed/signed manifest and shall be pre-approved using a waste profile sheet and other supporting documentation as necessary. These materials shall be reviewed to verify that the waste is nonhazardous as defined in Title 35 Illinois Administrative Code Part 722.111. Pre-approved waste streams and such profile packets shall be kept on file at the Facility, shall accurately characterize the accepted material, and may not be more than one year old.

15. The Facility shall be maintained with a negative pressure condition such that the ventilation system provides a minimum of 6 air changes per hour. The Facility design shall include an ozone system to treat the ventilation air prior to exhaust. The Facility shall also be equipped with a misting system that will assist in mitigation of dust and odors above the tipping floor.

16. The Facility shall otherwise be constructed and operated in substantial conformance with the plans and operating procedures specified in the siting application.

17. Approval is further conditioned upon compliance with all terms of the Host Community Benefit Agreement between the City of West Chicago and Lakeshore Recycling Systems, LLC, dated April 1, 2019; the Secondary Host Community Benefit Agreement between DuPage County and Lakeshore Recycling Systems, LLC, dated March 10, 2020; and the Airport Agreement.

**SECTION 5:** To meet Criterion 5, the Applicant must show that there is a plan of operation designed to minimize the danger. As in any industrial setting, the potential exists for harm both to the environment and the residents. *Industrial Fuels & Resources v. Illinois Pollution Control Board*, 227 Ill.App.3d 533, 547, 592 N.E.2d 148, 157-58 (1<sup>st</sup> Dist. 1992). The key to this criterion is minimization. *Id.*, citing *Wabash and Lawrence Counties Taxpayers and Water Drinkers Assoc.*, 198 Ill.App.3d 388, 394, 555 N.E.2d 1081, 1086 (5<sup>th</sup> Dist. 1990). “There is no requirement that the applicant guarantee no accidents will occur, for it is virtually impossible to eliminate all problems. *Id.* Guaranteeing an accident-proof facility is not required.” *Industrial Fuel*, 227 Ill.App.3d at 547, 592 N.E.2d at 157-58. As such, the City Council of the City of West Chicago find that the Applicant has met its burden of proof as to Criterion 5 of Section 39.2, provided that the Applicant operates the Facility in accordance with the following special conditions:

1. All transfer vehicles utilizing the Facility shall be equipped with auto tarping systems, and all loaded transfer trailers shall be tarped inside of the transfer building prior to exit.

2. Upon receiving final, non-appealable siting approval pursuant to 415 ILCS 5/39.2 to construct and operate the Facility, and upon receiving an IEPA development permit, LRS shall, prior to commencing operation of the waste transfer Facility, 1) execute and grant to the DuPage Airport Authority ("DAA") a new avigation easement, which is Exhibit A to the Agreement Between the DuPage Airport Authority, Oscar (IL) LLC, and Lakeshore Recycling Systems, LLC, dated January 19, 2022 ("Airport Agreement"), 2) LRS shall reduce the roof height of its existing transfer building so as to stay below all critical elevations in the new avigation easement, and 3) LRS shall not allow any penetrations whatsoever to the new avigation easement.

3. The Applicant shall control litter by discharging and loading all waste within the enclosed portion of the Transfer Facility. After unloading, any remaining loose waste shall be removed or contained in the vehicle prior to exiting the site. The Applicant shall use its best efforts to assure that vehicles, hauling waste to or removing waste from the Transfer Facility, shall be suitably covered to prevent waste from leaving the vehicles. A fence to aid in the interception of any blowing litter shall surround the Transfer Facility. The Applicant shall diligently patrol the Subject Property during hours of operation to collect any litter. At a minimum the Applicant shall diligently patrol and remove litter from: the Subject Property; all property owned or controlled by the Applicant; and, before 10:00 a.m. each operating day, Powis Road between Hawthorne Lane and Route 64 (North Avenue) as well as Powis Court. In addition, the Applicant shall, at a minimum, patrol and remove litter from private property within 500 feet of the aforesaid public streets and corresponding rights-of-way with the written permission of the owner of said properties, which permission the Applicant shall diligently attempt to obtain. The Applicant shall provide the City of West Chicago the names, addresses, telephone numbers and email addresses of such owners granting permission. The Applicant shall also post on the company's website the name and email address of an employee of the company to whom any owner of property along Powis Court or Powis Road between Route 64 (North Avenue) and Hawthorne Lane may report litter from the Facility or trucks using the Facility, in which case the Applicant shall remove the litter with the written permission of the owner within two hours of receiving notification of the litter concern. Upon written request, logs showing the private owner, the property address for the request for litter removal, the time such was received and the time the concern was abated shall be available to the City and provided within one business day. Also, the Applicant shall diligently seek the written approval of the DuPage County Forest Preserve District to remove litter, which is visible from Route 64 (North Avenue), from the portion of the Pratts Wayne Woods Forest Preserve that is located within the City of West Chicago. If permission is granted, litter removal from the Forest Preserve shall occur not less than monthly; the City shall be provided written notice of each occurrence within one business day of such being completed.

4. The Applicant shall provide a street sweeper to remove mud and dust tracked onto hard surfaces inside and outside the Transfer Facility, on property owned or controlled by the Applicant as well as Powis Court and Powis Road between Hawthorne Lane and Route 64 (North Avenue) on an as needed basis, but not less frequently than daily.

5. The Applicant shall retain a pest control service on an on-going basis to address the potential for infestation by rodents and other vectors. Such service shall inspect the Transfer Facility on an as needed, but no less than monthly, basis.

6. Trucks transporting hydro excavation waste shall be water-tight. Dump style trucks transporting solidified hydro excavation waste shall include liners that are sufficient to prevent leakage onto roads and other surfaces.

7. The Facility shall be maintained with a negative pressure condition such that the ventilation system provides a minimum of 6 air changes per hour. The Facility design shall include an ozone system to treat the ventilation air prior to exhaust. The Facility shall also be equipped with a misting system that will assist in mitigation of dust and odors above the tipping floor.

8. The Facility shall otherwise be constructed and operated in substantial conformance with the plans and operating procedures specified in the siting application.

**SECTION 6:** That all ordinances or parts of ordinances conflicting with any of the provisions of this Ordinance shall be and the same is hereby repealed.

**SECTION 7:** That the Executive Assistant is hereby directed to publish this Ordinance in pamphlet form.

**SECTION 8:** That this Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

PASSED this \_\_\_\_ day of \_\_\_\_\_, 2023.

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

APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Mayor Ruben Pineda

ATTEST:

\_\_\_\_\_  
Executive Assistant

PUBLISHED: \_\_\_\_\_



**STATE OF ILLINOIS  
CITY OF WEST CHICAGO  
BEFORE THE CORPORATE AUTHORITIES**

***In Re:***

**APPLICATION OF  
LAKESHORE RECYCLING SYSTEMS, LLC  
FOR SITING APPROVAL UNDER 415 ILCS 5/39.2  
OF A NEW POLLUTION CONTROL FACILITY**

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**REPORT OF HEARING OFFICER  
RECOMMENDED FINDINGS OF FACT AND  
RECOMMENDED CONDITIONS OF APPROVAL**

**INTRODUCTION**

Lakeshore Recycling Systems, LLC (“Applicant”) has applied for local siting approval of a new municipal waste transfer station on its property at 1655 Powis Road, West Chicago, Illinois. The Applicant owns the real property (the “Property”) upon which the proposed pollution control facility (“Facility”) is to be located. The Property is located within the corporate limits of the City. The Application was filed on September 16, 2022. The City is to render a decision on the Application in accordance with the criteria and procedures set forth in Section 39.2 of the Illinois Environmental Protection Act (415 ILCS 5/39.2) (the “Act”) and its own Code of Ordinances establishing rules and procedures for pollution control facility siting. Among the procedures set forth in the Act and the Code of Ordinances is the requirement that the City conduct a public hearing on the Application, accept public comment, and make a formal decision on the Application within 180 days of the date of filing (March 15, 2023). The City opened the public hearing on January 3, 2023.

In accordance with the procedures and other terms and provisions of the Act and the Code of Ordinances, I reviewed the Application and initial filings. The following parties appeared at the Hearing by and through counsel:

The Applicant (“LRS”), represented by George Mueller;

Protect West Chicago (“PWC”) represented by Ricardo Meza and Phil Luetkehans;

“P.O.D.E.R.” represented by Robert A. Weinstock;

The City of West Chicago Staff (“City”), represented by Gerald Callaghan; and

The City of West Chicago Corporate Authorities (“Council”), represented by its corporate counsel, Dennis Walsh.

During the hearing, I admitted the Application, the Host Agreement, and testimony and exhibits from witnesses called by the Applicant in support of the Application. I also admitted exhibits and testimony from witnesses called by PWC and PODER in opposition to the Application. I also ruled some proffers of proof by PWC and PODER on “environmental justice related issues” to be irrelevant; an offer of proof on those issues was entered into the record. Further, PODER presented witnesses that testified as to their observations at the existing facility; however, I ruled that they were not experts and that they lacked a proper foundation for some of their offered testimony.

As discussed below, PWC filed a Motion to Dismiss the Application for Lack of Jurisdiction due to fatal defects in the Notice required by 415 ILCS 5/39.2(b) and due to the restrictions of 415 ILCS 5/22.14 concerning the setback from property zoned primarily for residential uses. The Applicant filed Responses in opposition to the Motion.

In addition to evidence and testimony, oral public comment was received throughout the hearing proceedings and written public comment has been received by the City from September

16 through (and including) February 18, 2023. “Comment” is distinguished from “testimony” in that “comment” is not provided under oath and is not subject to cross examination and therefore entitled to less weight than testimony.

I declared the hearing closed on January 19, 2023. In accordance with the Act, written comment was then received by the City for an additional 30 days (i.e., through 11:59:59 p.m. CDST on February 18, 2023, including any written comment post-marked on or before February 18, 2023). Substantial public comment was received in support of the Application; and there was public comment filed from various residents and PODER opposing the application. Notably, public comment was also offered after the close of the hearing by the Applicant including a letter from the Canadian National Railway. As indicated above, public comment is entitled to less weight because it is not subject to being tested by the opportunity for cross examination. I have not relied upon the public comment filed by the Applicant in reaching my findings of fact or conclusions of law.

I received proposed conditions of approval from City Staff; I received argument in favor of siting approval and proposed findings of fact and law from the Applicant; I received argument in opposition to siting approval as well as proposed findings of fact and conclusions of law from PWC; and argument in opposition to approval as well as proposed findings of fact, conclusions of law, and alternatively proposed special conditions from PODER.

### **RECOMMENDED ACTIONS**

It is my recommendation that the City Council vote separately on the three propositions:

1) Whether to grant PWC’s motion to dismiss for failure to effectuate proper notice under Section 39.2(b).

2) Whether to grant PWC's motion to dismiss claiming the Facility violates the 1,000 foot setback under Section 22.14.

3) Whether the Proposed Facility (with any special conditions imposed by the City Council) satisfies the siting criteria of Section 39.2.

For the reasons set forth below, my recommendation to the City is to deny the Motion to Dismiss under Section 39.2(b).

For the reasons set forth below, my recommendation to the City is to deny the Motion to Dismiss under Section 5/22.14.

For the reasons set forth below, my recommendation to the City is to impose Special Conditions (appended to my proposed Findings of Fact and Conclusions of Law) and with those Special Conditions approve the Application as satisfying the siting criteria of Section 39.2. More specifically, I find that the application as filed, and the testimony concerning the application as filed, did not establish that the proposed Facility satisfies all of the criteria for local siting approval set forth in Section 39.2 of the Act; however, I further find that, with the imposition of special conditions (and compliance by the Applicant with those conditions), the proposed Facility does satisfy all of the criteria for local siting approval.

### **MOTION TO DISMISS**

#### **Motion to Dismiss Under Section 39.2(b)**

Whether the applicant provided proper notice under section 39.2(b) of the Act is a threshold question in the pollution control siting. *Maggio v. Pollution Control Board*, 2014 IL App (2d) 130260, ¶ 15. Compliance with the pre-filing Notice requirements of Section 39.2 is jurisdictional and substantial compliance is not sufficient. See, *Daubs Landfill v. Pollution*

*Control Board*, 166 Ill.App 3<sup>rd</sup> 778 (5<sup>th</sup> Dist, 1998). However, as *Daubs* indicates, perfection in providing the Notice is not the standard.

Section 39.2(b) requires, in relevant part, that the applicant shall cause written notice of its request for site approval “to be served either in person or by registered mail, return receipt requested, on the owners of all property within the subject area not solely owned by the applicant, and on the owners of all property within 250 feet in each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of the County in which such facility is to be located...”). PWC has challenged whether the Applicant fulfilled this requirement with respect to the railroad property putatively owned by the Elgin, Joliet and Eastern Railway.

The evidence concerning the authentic tax records of DuPage County is as follows:

The records placed in evidence by PWC indicate that the owners of the railroad properties within 250 feet of the Facility are, for one parcel, the Union Pacific Railroad Company and, variously and alternatively for the second parcel, the “Elgin, Joliet & Eastern Railway,” and/or the “Wisconsin Central, Ltd. (EJ&E Line) Company.”

The DuPage County, Illinois 2022 Real Estate Tax Assessment Parcels Map placed in evidence by the Applicant indicates that the second parcel is owned by the “Canadian National Railway.”

It is not disputed that the Applicant caused written notice of its request for site approval to be served by registered mail return receipt requested upon the Union Pacific Railroad Company. It is also not disputed that the Applicant did not cause notice of its request for site approval to be served on the Elgin, Joliet & Eastern Railway or on the Wisconsin Central, Ltd.



The publicly available information – of which I take judicial notice – is that the Elgin, Joliet & Eastern Railway was merged into the Wisconsin Central, Ltd. in December of 2012 and, further, that the Wisconsin Central, Ltd. is wholly owned by the Canadian National Railway.

It is not disputed that the Applicant did not serve the Canadian National Railway by personal service nor by registered mail return receipt requested. Instead, the Applicant caused written notice of the Applicant's request for site approval to be delivered via paid courier to the Canadian National Railway at the corporate offices of the Canadian National Railway in Montreal, Quebec, Canada, and that the Applicant's courier secured the signature of a representative of the Canadian National Railway documenting that delivery.

After reviewing the briefing concerning "service" under Illinois law filed by both PWC and the Applicant, I find that the Applicant's use of a paid courier to deliver written notice of the Applicant's request, where the paid courier documented the delivery, was sufficient to satisfy the requirements of Section 39.2(b) of the Act and that strict compliance with the requirements of formal service is not required as a matter of law where, as here, actual notice has been documented. See, e.g., *Waste Management of Illinois v. Illinois Pollution Control Board*, 365 Ill.App.3d 229 (3d Dist. 2005) (difference in delivery method not of "pivotal importance" when delivery method documents that the addressee received the letter); see also, *Olin Corp. v. Bowling*, 95 Ill.App.3d 1113, 1116-17 (5<sup>th</sup> Dist. 1981)).

#### **Motion to Dismiss Under Section 5/22.14**

Section 415 ILCS 5/22.14 states, in relevant part, that "no person may establish any pollution control facility for use as a garbage transfer station, which is located less than 1000 feet from the nearest property zoned for primarily residential uses or within 1000 feet of any



dwelling...” It is undisputed that no dwelling is within 1000 feet of the proposed Facility. However, the railroad properties are zoned ER-1 in the City and are located within 1000 feet of the proposed Facility. It is not disputed that property zoned “ER-1” in the City of West Chicago is property zoned primarily for residential uses. PWC’s Motion to Dismiss asserts that Section 5/22.14 bars the Applicant from proceeding with this proposed Facility.

The Applicant argues that the size and the active use of the railroad properties make residential development of the parcels in compliance with ER-1 requirements improbable (and therefore the set-back requirement a nullity with respect to the railroad properties). The Applicant has submitted the testimony of John Hock and the August 23, 2022 letter of Tom Dabareiner, City Community Development Director and Zoning Administrator for the City of West Chicago, to support a finding that, due to the requirements of the ER-1 zoning (minimum lot area, minimum lot width, minimum setbacks, physical features of the property, the lack of access) it is not reasonably possible to develop the railroad properties for residential uses.

Conversely, PWC called Joe Abel, a planning expert, who testified that the Application does not meet the setback requirements of Section 5/22.14. He further testified that if the railroad properties at issue were abandoned by the railroads, and if the railroad properties were then assembled with other adjacent properties, and if those assembled properties were then rezoned to a residential zoning district, then the railroad properties could be put to residential uses.

No evidence was introduced that the conditions recited by Joe Abel as preconditions to residential use of the railroad properties are probable--or even potentially contemplated--for the foreseeable future.

The statutory language of Section 22.14 protects any existing dwelling within 1,000 feet of the facility (regardless of underlying zoning for that dwelling) and properties for which there is a reasonable expectation of future residential use and dwellings based initially upon the zoning designation. The PCB has taken a pragmatic approach to enforcement of Section 22.14. Where actual residential use of property (even though it is zoned for residential uses and even though homes exist on the properties) is not reasonably probable, Section 22.14 will not bar the facility. Although not a binding opinion, the Appellate Court agreed with the PCB's interpretation of Section 22.14 in *Roxana Landfill, Inc. v. Illinois Pollution Control Board*, 2016 WL 4005892, (Ill. App. 5 Dist. 2016).

Here, the proposed facility is not within 1,000 feet of any existing dwelling nor within 1,000 feet of any property zoned for residential use where such actual residential use is reasonably probable in the foreseeable future. Based upon the PCB's decision (ultimately affirmed in *Roxana*), Section 22.14 does not prohibit the siting of the facility in this case nor make the proposed facility incompatible with the character of the area.

#### **JURISDICTION**

The record, the statutes, and the case law discussed above establish that the Applicant owns the real property upon which the proposed pollution control facility will be located and that the property and the Facility are wholly located within the City of West Chicago. I have discussed the requirements of 415 ILCS 5/39.2(b) above and, over the objections and motions of PWC and PODER, found that the Applicant fulfilled these requirements. I have also discussed the application of Section 5/22.14 and found that in this case, Section 5/22.14 does not bar the proposed Facility.

I further find that the Applicant complied with all notice requirements of Section 39.2(c) concerning the notice requirements prior to the hearing on the Application. No objections were filed concerning compliance with Section 39.2(c).

Likewise, no objections were filed concerning compliance with the City Code of Ordinances. I find that the Applicant complied with all requirements of the City of West Chicago.

Accordingly, I find that the City has jurisdiction to consider the statutory criteria of Section 39.2.

#### **SECTION 39.2 CRITERIA**

These proceedings are governed by Section 39.2 of the Environmental Protection Act (“the Act”), 415 ILCS 5/39.2, which sets forth the exclusive siting procedures for pollution control facilities in Illinois. Section 40.1 of the Act and case law require that siting proceedings and the decision making be conducted in accordance with the requirements of fundamental fairness. The application (or request) must contain sufficient details of the proposed facility demonstrating that it satisfies each of the nine criteria by a preponderance of the evidence. *Land & Lakes Co. v. Illinois Pollution Control Board*, 319 Ill.App.3d 41, 743 N.E.2d 188, 191 (3d Dist. 2000.) If the applicant fails to establish any one of the criteria, the application should be denied. *Waste Management v. Pollution Control Board*, 175 Ill.App.3d 1023, 520 N.E.2d 682, 689 (2d Dist. 1988).

The Act requires that the Applicant for local siting approval prove compliance with each of nine different criteria (or alternatively demonstrate that they do not apply) and local siting approval shall be granted if the proposed facility meets each of those criteria. As a matter of

law, once an applicant makes a *prima facie* case on a criterion, the burden of proof shifts to the opponents to rebut the applicant's case. *People v. Nuccio*, 43 Ill.2d 375, 253 N.E. 2d 353 (1969). In order to rule against an applicant on any criterion, the decision maker (the City Council in this case) must find competent rebuttal or impeachment evidence in the record. *Industrial Fuels and Resources v. Illinois Pollution Control Board*, 227 Ill.App.3d 553, 592 N.E. 2d 148 (1st Dist. 1992).

The Applicant called expert witnesses to offer evidence as to the statutory siting criteria. Counsel for PWC and PODER, as well as counsel for the City Staff, cross-examined the witnesses. PWC and PODER also called witnesses in rebuttal. The basis and rationale for my findings on each criterion is set forth below.

**1. *The Facility is necessary to accommodate the waste needs of the area it is intended to serve.***

This Criterion is contested by PWC and PODER. I find that Criterion 1 is satisfied.

Criterion 1 has been the subject of litigation and the Courts have provided guidance as to its requirements. For example, to prove criterion 1, the courts have previously held the Applicant must show that the proposed Facility is reasonably required by the waste needs of the service area, taking into consideration the waste production of the area and the waste disposal capacity available to it. *Waste Management of Illinois, Inc. v. Pollution Control Board*, 175 Ill.App.3d 1023, 1031, 530 N.E.2d 682, 689 (2d Dist. 1988). Although a petitioner need not show absolute necessity, it must demonstrate that the new facility would be expedient as well as reasonably convenient. *Waste Management of Illinois, Inc. v. Pollution Control Board*, 234 Ill.App.3d 65, 69, 600 N.E.2d 55, 57 (1<sup>st</sup> Dist. 1992). The petition must show that the landfill is reasonably required by the waste needs of the area it is intended to serve, including the area's waste production and disposal capabilities. *Id.*

PWC and PODER both focused on the available transfer station disposal capacity for the area to be served (including facilities outside of, but still serving, the area intended to be served) and they argue that the existing excess capacity—which is not contested by the Applicant—means that the proposed Facility is not necessary and therefore does not satisfy Criterion 1.

However, in *Will County v. Village of Rockdale*, 2018 IL. App (3d) 160463, 121 N.E.2d 468, 484 (3d Dist. 2018), our Appellate Court held that Criterion 1 is not determined exclusively by reference to capacity analysis. Indeed, in *Rockdale*, the applicant submitted no capacity analysis at all. Instead, the Appellate Court agreed with Village and the Applicant that the “waste needs of the area” could include other factors such as improving competition, benefits through the host agreements, operational concerns and hours, and positive environmental impacts.

In this case, the Applicant called John Hock from Civil and Environmental Consultants, Inc. to testify on this criterion. Mr. Hock acknowledged the existing available capacity at other transfer stations but testified that the need for this Facility is found in the need to increase competition in the hauling market (through further vertical integration of disposal from curb-to-transfer station-to landfill, this facility will increase competition for the hauling of waste in the area); in reduced environmental impacts (less diesel exhaust as a result of shorter travel distances); in increased recycling; in the meeting the need for the handling of hydro-wastes; and in operational benefits (hours of operation). Cross-examination focused on the available capacity and questioned the competitive impacts but did not overcome the substantive proof on the benefits to which Mr. Hock testified.

PODER focused on the premise that there are positive environmental impacts, arguing just the opposite that the added operations at this Property will necessarily increase diesel



emissions in the community. But PODER has offered no competent evidence to contradict the demonstrated savings in overall emissions as testified to by the Applicant concerning hauling and disposal activities presently (i.e., before siting) and the amount of reduced emissions from the availability of this transfer station. Moreover, a premise of PODER's analysis is that there would be no other new industrial uses of the Applicant's property of any kind that would involve diesel engines. No evidence was offered to support the validity of such a premise.

PWC called John Lardner. Mr. Lardner focused on the available capacity at transfer stations in and around the area. But Mr. Lardner also admitted that Criterion 1 now considers environmental factors, impacts on competition, and operational concerns--and Mr. Lardner further admitted that he has so opined in other siting proceedings—although he did not consider competitive or environmental matters in reaching his conclusions in this case. Mr. Lardner further admitted that there is a need for a transfer station to handle hydro-excavation waste.

**2. *The Facility is so designed, located, and proposed to be Operated that the Public Health, Safety and Welfare will be Protected.***

This Criterion is contested by PWC and PODER. I find that Criterion 2 is satisfied through the imposition of--and compliance by the Applicant with--special conditions.

Like Criterion 1, Criterion 2 has been the subject of litigation and guidance is available from the Courts. To prove criterion 2, the Applicant must demonstrate that the proposed Facility is designed, located and proposed to be operated to protect the public health, safety and welfare. 415 ILCS 5/39.2 (a) (ii). This includes a demonstration that the facility is not flawed from a public safety standpoint and that its proposed operations are neither substandard nor unacceptably risky. Industrial Fuels and Resources, Inc. v. Illinois Pollution Control Board, 227 Ill.App.3rd 533, 592 N.E.2d. 148, 157 (1st Dist. 1992).



Mr. Hock testified that the Application met the location standards (wetlands, archeological sites, threatened species, wild and scenic rivers and the airport). PWC questioned Mr. Hock extensively on airport safety related issues and particularly operations in the Runway Protection Zone. The record also contains a letter from the DuPage Airport Authority in which LRS agreed to comply with several conditions and actions required of LRS by the Airport Authority to safeguard airport operations. Imposition and compliance with these conditions are essential to a finding that Criterion 2 can be satisfied. With the imposition of the conditions set forth in that letter, the Airport Authority concluded that proposed Facility did not pose a threat to the safety of the Airport. No expert testimony was introduced that challenged that determination by the Airport Authority.

Mr. Hock also described the proposed site plan and the proposed operations. The Facility as proposed will handle a maximum of 1950 tons of material per day composed of 650 tons of municipal solid waste, 300 tons per day of hydro-excavation waste, 750 tons per day of construction or demolition debris (for which the site is already permitted), and 250 tons per day of single-stream recyclables.

Mr. Hock testified as to the fact that the transfer building will be a “fully enclosed” facility (which is an important requirement to protect the airport) and testified as to the truck movements on site, the number and function of “spotters,” the operation of the entrance doors, the movements and operations of the transfer trailers, and the movements and operations of the front-loaders on the tipping floor. Mr. Hock testified as to the anticipated sources of business and the equipment that is anticipated to be used by LRS to bring that equipment to the Facility. Mr. Hock described the stormwater management plan for the proposed facility and testified that

the stormwater management has been approved by DuPage County and the City. There was no substantive challenge to the stormwater management plan in place.

PWC challenged whether the Facility, as proposed, was “fully enclosed” and entered videos of a different LRS facility in the record to challenge the Applicant on whether the facility would, in practice, actually operate as described. Mr. Hock responded that timing and operational differences shown in the video is a consequence of the different sources of material (and equipment bringing that material) from that which is anticipated at the Facility.

PWC also raised issues concerning litter control and tarping of the trailers, as well as the speed and the efficiency of the movements of the front loaders as used in Mr. Hock’s modeling and calculations. Based on an early pre-filing review of the design performed by the City’s engineering consultant, PWC (and subsequently the City Staff) also raised questions about the design of the building, push walls and other structural elements. Under PWC’s cross examination, and then again under cross examination by City Staff, Mr. Hock admitted that the imposition of certain special conditions would improve the Facility and add protections for public health, welfare and safety.

PODER called Steve DeLaRosa who raised concerns about employee safety and, particularly, the proposed use of ozone by the Applicant. There was no evidence, however, that what the Applicant was proposing did not comply with the applicable OSHA regulations.

PODER also inquired into the potential use of exclusively electric powered vehicles. The evidence, however, is that currently the technology does not exist to require the Applicant to use an exclusively electric-powered fleet of vehicles or equipment.

The application, modeling evidence, and testimony – with the special conditions in place -- demonstrated that the Facility could safely handle the proposed maximum tonnages per day.

The special conditions are appended to the Proposed Findings of Fact and Conclusions of Law.

**3. *The Facility is located so as to minimize incompatibility With the Character of the Surrounding Area and to Minimize the Effect On the Value of Surrounding Property.***

This Criterion is contested by PWC and PODER. I find that Criterion 3 is satisfied.

The Application sets out the land uses in the vicinity and manner in which the proposed Facility relates to the character of the area. Applicant called Dale Kleszynski, a licensed Illinois real estate appraiser and member of the Appraisal Institute. He testified to the historical use of the subject property and surrounding area--which includes current and historical uses related to the management and disposal of waste—and characterized the area as “industrial in character.” The area is also segregated from other uses, especially residential uses.

In addition to concluding that the location minimizes incompatibility with uses in the surrounding area, Mr. Kleszynski also concluded that the Facility is located to minimize the effect on the value of surrounding property. Mr. Kleszynski submitted a highest and best use analysis of the subject property for purposes of analyzing impact on the values of surrounding property. He opined that this highest and best use analysis is related to the statutory siting criterion in that highest and best use of property is the use which would, by definition, minimize any deleterious effect on the values of the surrounding property. After reviewing the traditional criteria used to analyze highest and best use, he testified that development as a solid waste transfer station would fit within the highest and best use of the property.

In rebuttal, PWC called Kurt Kielisch who rendered the opinion that the highest and best use analysis employed by Mr. Kleszynski did not accurately determine the effect the Facility

would have on surrounding property values. Mr. Kielisch is not a licensed Illinois appraiser, has never previously testified in a Section 39.2 siting hearing, and further testified that he is not knowledgeable about the siting process. He testified that a matched pairs analysis (rather than a highest and best use analysis) should be used to determine “the least intrusive use of the property” and whether the proposed use would have “positive impact on the surrounding property values.” He further admitted that such an analysis of sales would not be possible here due to the 20-year existence of the nearby Groot transfer station.

Because of his lack of familiarity with the actual siting criterion, the testimony of Mr. Kielisch was of no probative value. Criterion 3 requires an analysis as to whether the location minimizes incompatibility with the character of the surrounding area and minimizes the (obviously assumed negative) impact on property values--not (as he opined) whether the proposed use has a positive impact. The analysis relevant to Criterion 3 is simply not that to which Mr. Kielisch testified (he also offered no opinion on the character of the uses in the area). Contrary to Mr. Kielisch’s opinion, the use of the highest-and-best use methodology as an analytical tool for determining the magnitude of potential impact of the proposed facility on surrounding property values has been recognized by the PCB as an appropriate methodology for expert opinions concerning Criterion 3.

***4. The Facility is located outside the Boundary of the 100 Year Floodplain.***

I find that the Applicant demonstrated that the Facility meets Criterion 4.

The testimony and other evidence entered in the Record at the Hearing supports the finding that the Facility meets this Criterion. No challenge to this Criterion has been filed.

**5. *The Plan of Operations for the Facility is designed to Minimize the Danger to the surrounding Area from Fire, Spills and Other Operational Accidents.***

I find that the Applicant demonstrated that the Facility meets Criterion 5 but I also find that the testimony of Mr. Hock, under cross examination, and the testimony of Colin Hale concerning existing litter problems with the current operations at the Property all support the imposition of and compliance with special conditions to further improve the Plan of Operations and minimize dangers to the surrounding area. In particular, I find that the testimony concerning where, when and how transfer trailers will be tarped and the handling of hydro-wastes will be improved to further minimize the danger to the surrounding area from litter or spills by the imposition of special conditions. No formal challenge to this Criterion has been filed.

**6. *The Traffic Patterns to and from the Facility Are So Designed as to Minimize the impact on Existing Traffic Flow.***

I find that the Applicant demonstrated that the proposed Facility meets Criterion 6.

The Applicant called Michael Werthmann, a registered professional engineer and certified professional traffic operations engineer, with more than 25 years of traffic engineering experience for both the private and public sectors. Mr. Werthmann testified that he used standard methodology used by transportation planning officials. Mr. Werthmann testified he studied traffic volumes, distributions and movements at the site entrance and the potentially affected intersections. He described the local roadway system and detailed present and future improvements on that system. He testified that the location, existing operations, and proposed route for the transfer trailers all minimized the impact on existing traffic flows. No challenge to this Criterion has been filed; however, both the City and PODER proposed a special condition concerning the traffic routes and



such is included in the Special Conditions appended to the Findings of Fact and Conclusions of Law.

**7. *Hazardous Waste Emergency Plan***

Per the Application and the Testimony of John Hock, the Facility will not be treating, storing or disposing of Hazardous Waste. This Criterion is therefore not applicable and therefore deemed satisfied. No challenge to this Criterion has been filed.

**8. *If the Facility is to be Located in a County Where The County Board has adopted a Solid Waste Management Plan Consistent With The Planning Requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, The Facility is Consistent with that Plan.***

This Criterion is contested by PWC and PODER. I find that Criterion 8 is satisfied.

John Hock reviewed the contents of the DuPage County Solid Waste Management Plan from its adoption to its most recent update. He reviewed the provisions concerning pollution control facilities in that plan including the recognized need for additional transfer stations, additional recycling and additional competition. On cross-examination by PWC, Mr. Hock agreed that the 2007 Plan Update recommended that an additional transfer station should be located in the “southern portion” of the County and that West Chicago is not in the southern portion of the County. However, he further testified that such a recommendation concerning the location of additional transfer stations did not appear in subsequent plan updates.

Mr. Hock also testified as to the secondary host agreement executed between LRS and DuPage County in which the County stated the proposed Facility appears to be consistent with the County’s plan. PWC’s witness, John Lardner, testified that “appears to be consistent” is not the same as “is consistent” and opined that the Facility is in fact not consistent with the County’s



Plan. Tardner did acknowledge that the County's Plan does call for more transfer stations, more recycling, and more competition.

I find the PCB decision in *Rockdale* is again instructive. As in this case, both the PCB (and the court) in *Rockdale* found that the very existence of a secondary host agreement approved by the County weighs heavily in favor of a finding that Facility is consistent with the County's plan (as it is the County's plan to interpret and administer). Because the County approved the secondary host agreement for this Facility, I find the proposal to be consistent with the County's plan.

**9. Recharge Area**

Per the Application and the testimony of John Hock, the Facility is not located in a regulated recharge area. This Criterion is therefore not applicable and therefore deemed satisfied. No challenge to this Criterion has been filed.

**10. Consideration of Previous Operating Experience**

The Act permits the Corporate Authorities to consider the previous operating experience of an applicant. Specifically, the Act permits the City to consider the "past record of convictions or admissions of violations of the Applicant...". Here, the record contains no past convictions of violations by LRS nor admissions of violations by LRS, which favors approval of the Application.

PWC did enter videos showing actual operations at different LRS facility and PODER called witnesses about the current operations at the Property raising litter and air quality concerns and that testimony serves as the basis for the imposition of some special conditions, but that testimony did include any evidence of any actual violations of the regulatory standards and

therefore is not a sufficient basis to find the proposed Facility does not satisfy the criteria of Section 39.2.

### **PUBLIC COMMENTS**

In addition to the public comment (oral and written) received during the Hearing, the City Clerk received written public comments after the hearing closed. The public comment supporting the Application focused on the benefits that the Facility would bring to the City. PODER, the Applicant, and persons associated with both also filed comment after the hearing closed. I found that the public comment, while important to understand the context of the application, was not focused on the statutory criteria in a relevant and “probative” way or, alternatively, lacked sufficient evidence about the sources cited (i.e., an evidentiary foundation) as required by the statute and case law and therefore the comment, neither singly nor collectively, caused any change in how I weighed the evidence received from the Application, the admitted exhibits, and the admitted testimony.

### **PROPOSED FINDINGS OF FACT**

My proposed findings of fact are attached.

Respectfully submitted,



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Derke J. Price

Ancel Glink, PC  
140 South Dearborn, 6<sup>th</sup> Floor  
Chicago, Illinois 60603

4828-0676-7394, v. 1

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. On September 16, 2022, Lakeshore Recycling Systems, LLC (“Applicant”) applied to the City of West Chicago (“City”) for local siting approval of a new municipal waste transfer station on its 27.66 acre parcel of real estate at 1655 Powis Road, West Chicago, Illinois, 60185 (as legally described in the application and hereafter referred to as the “Property”).
2. The Applicant owns the Property upon which the proposed pollution control facility (“Facility”) is to be located.
3. The Property is located within the corporate limits of the City, is the subject of a Host Community Benefit Agreement between the Applicant and the City, and the City has jurisdiction to consider the Application.
4. The public hearing on the application was opened on January 3, 2023.
5. The hearing closed on January 19, 2023.
6. In accordance with the Act, written comment was then received by the Office of the City Manager acting as City Clerk for and additional 30 days after the close of the Hearing (i.e., through 11:59:59 p.m. CDST on February 20, 2023, including any written comment post-marked on or before February 18, 2023).
7. Concerning the pre-filing notice requirements of Section 39.2(b) (which states, in relevant part, that the applicant shall cause written notice of its request for site approval “to be served either in person or by registered mail, return receipt requested, on the owners of all property within the subject area not solely owned by the applicant, and on the owners of all property within 250 feet in each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of the County in which such facility is to be located...”):
  - A) with respect to all properties within 250 feet of the proposed facility, other than railroad properties, the applicant caused written notice of its request for site approval to be served by registered mail return receipt requested upon all such owners;
  - B) with respect to the railroad properties within 250 feet of the proposed facility, the owners as appears from authentic—and in some cases conflicting--tax records of DuPage County, are the Union Pacific Railroad Company and, variously and alternatively, the Elgin, Joliet & Eastern Railway, the Wisconsin Central, Ltd. (EJ&E Line) Company, and, per the DuPage County, Illinois 2022 Real Estate Tax Assessment Parcels Map, the Canadian National Railway;
  - C) the Applicant caused written notice of its request for site approval to be served by registered mail return receipt requested upon the Union Pacific Railroad Company;
  - D) the Applicant did not cause notice of its request for site approval to be served on the Elgin, Joliet & Eastern Railway;
  - E) the Elgin, Joliet & Eastern Railway was merged into the Wisconsin Central, Ltd. in December of 2012;

F) the Applicant did not cause notice of its request for site approval to be served on the Wisconsin Central, Ltd.;

G) the Wisconsin Central, Ltd. is a wholly owned subsidiary of the Canadian National Railway;

H) the Applicant caused written notice of the Applicant's request for site approval to be delivered via paid courier to the Canadian National Railway at the corporate offices of the Canadian National Railway in Montreal, Quebec, Canada;

I) the Applicant's courier secured the signature of a representative of the Canadian National Railway for that delivery;

J) the Applicant's use of the paid courier to deliver written notice of the Applicant's request, together with the documentation from the courier of that delivery, is sufficient to effectuate delivery of the request for site approval to the ultimate corporate parent/owner of the railroad property (not owned by the Union Pacific Railroad) and thereby satisfy the requirements of Section 39.2(b) of the Act.

8. Concerning 415 ILCS 5/22.14 (which states, in relevant part, that "no person may establish any pollution control facility for use as a garbage transfer station, which is located less than 1000 feet from the nearest property zoned for primarily residential uses or within 1000 feet of any dwelling"):

A) no dwelling is within 1000 feet of the proposed facility;

B) the railroad properties are zoned ER-1 in the City and are located within 1000 feet of the proposed facility;

C) property zoned "ER-1" in the City of West Chicago is property zoned primarily for residential uses;

D) the size and the active use of the railroad properties make residential development of the parcels in compliance with ER-1 requirements improbable as a practical and pragmatic matter (see August 23, 2022 letter of Tom Dabareiner, City Community Development Director and Zoning Administrator);

E) in applying Section 22.14 restrictions, the Pollution Control Board (and at least one Appellate Court) has interpreted and enforced Section 22.14 so as to protect actual residences or properties where residential development is probable (at least as an initial matter of zoning) (see, *Roxana Landfill, Inc. v. Illinois Pollution Control Board*, 2016 WL 4005892, (Ill. App. 5 Dist. 2016) (a Rule 23 opinion affirming the PCB which allowed siting even though actual housing structures and residentially zoned properties were within 1,000 feet of the facility because the residential properties were now vacant and deed restrictions against residential use had been recorded against the properties, making actual residential use improbable, though not impossible);

F) Accordingly, Section 22.14 does not bar this proposed facility.

9. The Applicant complied with all pre-filing notice requirements of Section 39.2(c) of the Act.

10. The siting proceedings herein, both procedurally and substantively, complied with the requirements of fundamental fairness:

A) PWC and PODER interposed an objection to the failure to make the Pre-Filing Notice available on the City's website in Spanish; however, the Act itself does not require that



the Pre-Filing Notice in these proceedings be made available in a language other than English and no case has applied language access requirements to a Section 39.2 Siting Hearing nor the Section 39.2 filings.

B) PWC and PODER interposed objections to the lack of a Spanish-language translator for the hearing proceedings; however, neither the Act itself does nor any other statute or case requires that Language Access Services be made available for a Section 39.2 Siting Hearing (compare 725 ILCS 140/1 requiring such services in the criminal law context).

C) PWC and PODER filed objections to the exclusion of proffered evidence concerning “environmental justice related issues;” however, the State of Illinois has not amended the Environmental Protection Act to add “environmental justice related issues” to the Section 39.2 criteria and neither the Pollution Control Board nor any Court has held that “environmental justice related issues” is now a part of any criterion under Section 39.2.

D) In the absence of a defined statutory criteria concerning “environmental justice related issues,” testimony proffered about such issues is not relevant to the siting decision.

11. Based on the understanding of Criterion 1 as articulated by the Pollution Control Board and affirmed by the Illinois Appellate Court for the Third District in *Will County v. Village of Rockdale*, 121 N.E.3d 468 (3d Dist. 2018), the Applicant demonstrated that the proposed Facility meets Criterion 1: “the facility is necessary to accommodate the waste needs of the area it is intended to serve....”

12. The Applicant did not demonstrate that the Facility--as proposed in the Application--meets Criterion 2; however, with the imposition of the special conditions proposed by City Staff (and compliance therewith by the Applicant) which are attached hereto as Exhibit A, the proposed Facility does meet Criterion 2: “the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;”

13. The Applicant demonstrated that the proposed Facility meets Criterion 3: “the facility is so located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property;”

14. The Applicant demonstrated that the proposed Facility meets Criterion 4: “for a facility other than a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100 year floodplain or the site is flood-proofed;”

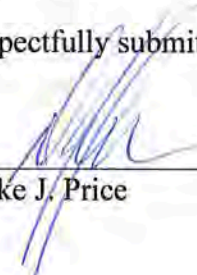
15. The Applicant did not demonstrate—as proposed in the Application--that the Facility meets Criterion 5; however, with the imposition of the special conditions proposed by City Staff (and compliance therewith by the Applicant) which are attached hereto as Exhibit A, the proposed Facility does meet Criterion 5: “the plan of operations for the is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents;”

16. The Applicant demonstrated that the proposed Facility meets Criterion 6: “the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows;

17. The Applicant demonstrated that the facility will not be accepting hazardous waste and therefore demonstrated that Criterion 7 is not applicable.
18. Based on the analysis of Criterion 8 as articulated by the Pollution Control Board and affirmed by the Illinois Appellate Court for the Third District in *Will County v. Village of Rockdale*, 121 N.E.3d 468 (3d Dist. 2018), the Applicant demonstrated that the proposed Facility meets Criterion 8: "...where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan; ..."
19. The Applicant demonstrated that the facility is not located within a regulated recharge area and therefore Criterion 9 is not applicable.
20. The Applicant's operating history demonstrates that the Applicant is qualified to operate the Facility safely and properly and provides no basis to deny the Application.
21. The proposed Facility, when developed and operated in compliance with the special conditions, is consistent with all appropriate and relevant location standards, including airport setback requirements, wetlands standards, seismic impact zone standards, and residential setback requirements.
22. The Applicant has agreed to comply and approval is conditioned upon compliance with all terms of the Host Community Benefit Agreement between the City of West Chicago and Lakeshore Recycling Systems, LLC, dated April 1, 2019; the Secondary Host Community Benefit Agreement between DuPage County and Lakeshore Recycling Systems, LLC, dated March 10, 2020; and the Airport Agreement.

With the imposition of and compliance by the Applicant with the Special Conditions set forth above, the evidence demonstrates that the Application complies with each of the nine siting criteria in Sec. 39.2(a) of the Act and therefore the City should grant siting approval.

Respectfully submitted,



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Derke J. Price



**EXHIBIT A**

**Special Conditions**

1. The maximum tonnage per day that may be received by the facility shall not exceed 1,950 tons per day, of which up to 650 tons per day may be municipal solid waste (MSW), up to 300 tons per day may be hydro excavation waste, up to 750 tons per day may be construction and demolition debris (C&D) and up to 250 tons per day may be single stream recyclables (SSR).
2. The Applicant shall keep the truck doors to the transfer facility closed, except for emergencies and to allow trucks to enter and exit the facility, during regular business hours. The doors shall be equipped with sensors such that they will open and close automatically as vehicles enter and exit the transfer building. Alternatively, an employee may open and close the doors when trucks access and exit the transfer facility.
3. The push walls in the transfer facility shall be designed to ensure to the satisfaction of the City that there will be no buildup of waste behind the walls which could result in fire, odor, or harborage for vectors. In addition, the Applicant shall provide a certification from a licensed structural engineer that the push walls will be capable of withstanding impact from waste loading equipment at 5 mph without shearing the beams or compromising the integrity of the building's walls.
4. All transfer vehicles utilizing the facility shall be equipped with auto tarping systems, and all loaded transfer trailers shall be tarped inside of the transfer building prior to exit.
5. The Applicant shall continue to operate the C&D recycling portions of the facility in accordance with the requirements of 415 ILCS 5/22.38 for so long as the current permit (2015-124-OP) remains in effect. If the current permit (2015-124-OP) is discontinued, replaced or terminated, the following conditions, as modified, shall remain in effect:
  - *The facility shall be designed and constructed with roads and traffic flow patterns adequate for the volume, type and weight of traffic using the facility including, but not limited to hauling vehicles, emergency vehicles, and on-site equipment. Sufficient area shall be maintained to minimize traffic congestion, provide for safe operation, and allow for queuing of waste hauling vehicles.*
  - *The operator shall provide adequate parking for all vehicles and equipment used at the facility and as necessary for queued hauling vehicles.*
  - *Roadways and parking areas on the facility premises shall be designed and constructed for use in all weather, considering the volume, type and weight of traffic and equipment at the facility.*
  - *The facility shall be designed and constructed so that site surface drainage will be diverted around or away from the recycling and waste transfer areas. Surface drainage shall be designed and controlled so that adjacent property owners encounter no adverse effects during development, operation and after closure of the facility.*
  - *Run-off from roadways and parking areas shall be controlled using storm sewers or shall be compatible with natural drainage for the site. Best management practices (e.g., design features, operating procedures, maintenance procedures, prohibition of certain practices and treatment)*

*shall be used to ensure that run-off from these areas does not carry wastes, debris or constituents thereof, fuel, oil or other residues to soil, surface water or groundwater.*

- *The facility, including, but not limited to, all structures, roads, parking and recycling areas, shall be designed and constructed to prevent malodors, noise, vibrations, dust and exhaust from creating a nuisance or health hazard during development, operation and closure of the facility. Facility features (e.g., berms, buffer areas, paving, grade reduction), best available technology (e.g., mufflers, machinery enclosures, sound absorbent materials, odor neutralizing systems, air filtering systems, misting systems), and building features (e.g., enclosed structures, building orientation) shall be among the measures to be considered to achieve compliance.*
- *The facility shall be designed and constructed to prevent litter and other debris from leaving the facility property. Facility features (e.g., windbreaks, fencing, netting, etc.) shall be among the measures considered to ensure that the debris does not become wind strewn and that no other provisions of the Act are violated.*
- *No regulated air emissions shall occur from these facilities, except as authorized by a permit from the Illinois Environmental Protection Agency (IEPA) Bureau of Air (BOA). No process discharge to Waters of the State or to a sanitary sewer shall occur from these facilities, except as authorized by a permit from the IEPA Bureau of Water (BOW).*
- *The facility shall be designed and constructed with a water supply of adequate volume, pressure, and in locations sufficient for cleaning, firefighting, personal sanitary facilities, and as otherwise necessary to satisfy operating requirements (e.g., dust suppression, wheel washing) and the contingency plan.*
- *The facility shall be designed and constructed with exterior and interior lighting for roadways, and waste handling areas adequate to perform safely and effectively all necessary activities.*
- *The facility shall be designed and constructed with truck wheel curbs, guard rails, bumpers, posts or equivalents to prevent backing into fuel storage tanks, equipment, and other structures.*
- *The facility shall be designed and constructed with adequate shelter, sanitary facilities, and emergency communications for employees.*
- *The facility operator shall install fences and gates, as necessary, to limit entry. Except during operating hours, the gates shall be securely locked to prevent unauthorized entry.*
- *The facility may receive general construction and demolition debris at the site Monday through Saturday, 24 hours a day. The facility shall be closed on Sunday and the six major federal holidays (New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day). When the facility is operated before sunrise or after sunset, adequate lighting shall be provided. If it is required for the facility to be open beyond normal operating hours to respond to emergency situations, a written record of the date, time and reason the facility was open shall be maintained in facility operating records. The IEPA's Regional Office and the county authority responsible for inspection of the facility, per a delegation agreement with the IEPA, must be notified and must grant approval each day that the operating hours need to be extended. No later than 10:00 a.m. of the first operating day after the operating hours have been extended, the Applicant shall send a written report by email to the City Administrator, which describes the length of the extension of the operating hours and the reason for the extension.*
- *The facility may receive and transfer MSW, hydro excavation waste and SSR from 4:00 a.m. to 12:00 a.m. Monday through Friday and from 4:00 a.m. to 12:00 p.m. on Saturday, with no*

*operation on Sunday or the six major federal holidays (New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day), provided that on the Saturday following a major federal holiday, regular business hours may be extended to 12:00 a.m. If it is required for the facility to be open beyond normal operating hours to respond to emergency situations, a written record of the date, time and reason the facility was open shall be maintained in facility operating records. The City of West Chicago must be notified by email to the City Administrator each day that the operating hours need to be extended. The IEPA's Regional Office and the county authority responsible for inspection of the facility, per a delegation agreement with the IEPA, must be notified and must grant approval each day that the operating hours need to be extended.*

- *Fire safety equipment (fire extinguishers) shall be maintained in accordance with recommended practice.*
- *Non-recyclable waste may be kept temporarily in covered containers or transfer trailers for no more than 24 hours (except on weekends and holidays), provided that loaded or partially loaded trailers intended to be stored overnight or that will not be picked up and transported the same operating day are stored indoors and suitably covered.*
- *Piles of general construction or demolition debris shall be covered or wetted to prevent air-borne dust.*
- *The facility shall be designed and constructed to prevent unauthorized access to recycling areas, storage areas for unauthorized wastes, salvaged and recycled materials, and staging areas where loaded site equipment or vehicles may be parked. Facility features such as fences and gates shall be provided.*
- *Waste handling areas shall be designed and constructed to prevent exposure of wastes and recyclable materials to run-off and flooding.*
- *The sorting areas shall be properly graded and compacted to prevent ponding from forming leachate during storms.*
- *Records shall be maintained on-site at the facility office for each operating day. The operator shall record operating hours, load ticket information, load inspections, daily processing time, volume processed per day, transfer load out and waste disposition details.*
- *The operator shall, within 48 hours of receipt of the general construction or demolition debris at the facility, sort the general construction or demolition debris. The operator shall separate the recyclable general construction or demolition debris from nonrecyclable general construction or demolition debris and dispose of the non-recyclable general construction or demolition debris, in accordance with Section 22.38(b)(1) of the Act.*
- *The operator must place wood, tires, and other unacceptable materials in covered dumpsters or vehicles adequate to prevent the release of leachate.*
- *All non-recyclable general construction or demolition debris, and unacceptable material shall be moved to the waste transfer facility on the same day it is received, and disposal of such material shall be handled in accordance with all applicable federal, State, and local requirements and with these conditions.*
- *The operator shall transport all non-putrescible recyclable general construction or demolition debris for recycling or disposal within 6 months of its receipt at the facility, in accordance with Section 22.38(b)(4) of the Act.*



- *In accordance with Section 22.38(b)(6) of the Act, the operator shall employ tagging and record keeping procedures to identify the source and transporter of C&D material accepted by the facility.*
- *The operator shall use load tickets to control the site activities and comply with the tagging and record keeping procedures. These load tickets shall identify the source of the C&D material delivered to the site. The operator shall use these tickets to identify the location in the yard or in the covered dumpsters and the length of time stored at the site to achieve compliance.*
- *The operator is prohibited from receiving hazardous and asbestos containing materials.*
- *The operator may separate clean concrete and clean soil from the general construction or demolition debris as recyclable materials for use in construction. The operator is permitted to store recyclable concrete and clean soil for a maximum period of 3 months.*
- *The operator may store the steel separated from concrete or other construction or demolition debris for a maximum period of 6 months. After six months, the steel must be sent offsite for disposal or recycling.*
- *The operator shall ensure that site surface drainage, during development, during operation and after the site is closed, shall be such that no adverse effects are encountered by adjacent property owners.*
- *The best available technology (mufflers, berms and other sound shielding devices) shall be employed to minimize equipment noise impacts on property adjacent to the site during both development, operation and during any applicable post-closure care period.*
- *Management of Unauthorized Waste by the operator*
  - *Landscape waste found to be mixed with general construction and demolition debris shall be removed the same day and transported to a facility that is operating in accordance with the Illinois Environmental Protection Act (Act), Title V, Sections 21 and 39 (415 ILCS 5/21 and 39).*
  - *Lead-acid batteries mixed with general construction and demolition debris shall be removed the same day and transported either to a drop-off center handling such waste, or to a lead-acid battery retailer.*
  - *Special wastes including hazardous waste, non-hazardous special waste, and potentially infectious medical waste mixed with general construction and demolition debris shall be containerized separately and removed from the property no later than five hours after receipt by a licensed special waste hauler. Special wastes shall be transported to a licensed special waste management facility that has obtained authorization to accept such waste. The operator shall maintain a contract with haulers so that the immediate removal is ensured. The operator shall develop an emergency response/action plan for such occurrences.*
  - *Asbestos debris from general construction and demolition debris shall be managed in accordance with the National Emission Standards for Hazardous Air Pollutants (NESHAPS) regulations.*
  - *Tires found to be mixed with general construction and demolition debris shall be removed and managed in accordance with Section 55 of the Act [415 ILCS 5/55].*
  - *White good components mixed with general construction and demolition debris shall be removed and managed in accordance with Section 22.28 of the Act [ 415 LCS 5/22.28].*

- *No person may knowingly mix liquid used oil with general construction and demolition debris.*
- *After the unauthorized waste has been removed from the facility, a thorough cleanup of the affected area shall be made according to the type of unauthorized waste managed. Records shall be kept for three years and will be made available to the IEPA upon request. In addition, the Applicant shall provide an annual written report to the City of West Chicago not later than January 31 of each year, which report shall: list the types, quantities and dates of receipt of all unauthorized waste; the generators of such waste; and the sites to which the wastes were delivered for disposal, processing or handling.*
- *The following wastes shall not be accepted at the facility:*
  - *Hazardous substances (as defined by Section 3.215 of the Illinois Environmental Protection Act);*
  - *Hazardous waste (as defined by Section 3.220 of the Illinois Environmental Protection Act);*
  - *Potentially infectious medical wastes (as defined by the Illinois Environmental Protection Act in Section 3.84);*
  - *Universal waste (as defined by Title 35 of the Illinois Administrative Code Part 733 including batteries, pesticides, mercury-containing equipment and lamps);*
  - *Regulated asbestos containing materials;*
  - *Polychlorinated biphenyl wastes;*
  - *Used motor oil;*
  - *Source, special or by-product nuclear materials;*
  - *Radioactive wastes (both high and low level);*
  - *Sludge;*
  - *White goods (incidental white goods received at the proposed transfer station will be segregated and stored for pickup by an off-site recycler);*
  - *Lead-acid automotive batteries (incidental automotive batteries received at the transfer station will be segregated and stored for pickup by an off-site recycler);*
  - *Used tires (incidental tires received at the transfer station will be segregated and stored for pickup by an off-site recycler); and*
  - *Landscape waste.*
- *Special wastes generated at the site for disposal, storage, incineration or further treatment elsewhere shall be transported by the operator to the receiving facility utilizing the IEPA's Special Waste Authorization system and manifest system.*

6. Upon receiving final, non-appealable siting approval pursuant to 415 ILCS 5/39.2 to construct and operate the West DuPage RTS, and upon receiving an IEPA development permit, LRS shall, prior to commencing operation of the waste transfer facility, 1) execute and grant to the DuPage Airport Authority ("DAA") a new aviation easement, which is Exhibit A to the Agreement Between the DuPage Airport Authority, Oscar (IL) LLC, and Lakeshore Recycling Systems, LLC, dated January 19, 2022 ("Airport Agreement"), 2) LRS shall reduce the roof height of its existing transfer building so as to stay below all critical elevations in the new aviation easement, and 3) LRS shall not allow any penetrations whatsoever to the new aviation easement.

7. All improvements installed on and offsite by the Applicant shall be funded by and solely at the expense of the Applicant.
8. The tipping floor of the waste transfer building shall be cleaned and free of waste at the end of each operating day. Except as set forth in Condition 5, no waste or other material shall be left on the floor inside the transfer building or outside the transfer building overnight or when the facility is not operating.
9. The Applicant shall control litter by discharging and loading all waste within the enclosed portion of the Transfer Facility. After unloading, any remaining loose waste shall be removed or contained in the vehicle prior to exiting the site. The Applicant shall use its best efforts to assure that vehicles, hauling waste to or removing waste from the Transfer Facility, shall be suitably covered to prevent waste from leaving the vehicles. A fence to aid in the interception of any blowing litter shall surround the Transfer Facility. The Applicant shall diligently patrol the Subject Property during hours of operation to collect any litter. At a minimum the Applicant shall diligently patrol and remove litter from: the Subject Property; all property owned or controlled by the Applicant; and, before 10:00 a.m. each operating day, Powis Road between Hawthorne Lane and Route 64 (North Avenue) as well as Powis Court . In addition, the Applicant shall, at a minimum, patrol and remove litter from private property within 500 feet of the aforesaid public streets and corresponding rights-of-way with the written permission of the owner of said properties, which permission the Applicant shall diligently attempt to obtain. The Applicant shall provide the City of West Chicago the names, addresses, telephone numbers and email addresses of such owners granting permission. The Applicant shall also post on the company's website the name and email address of an employee of the company to whom any owner of property along Powis Court or Powis Road between Route 64 (North Avenue) and Hawthorne Lane may report litter from the facility or trucks using the facility, in which case the Applicant shall remove the litter with the written permission of the owner within two hours of receiving notification of the litter concern. Upon written request, logs showing the private owner, the property address for the request for litter removal, the time such was received and the time the concern was abated shall be available to the City and provided within one business day. Also, the Applicant shall diligently seek the written approval of the DuPage County Forest Preserve District to remove litter, which is visible from Route 64 (North Avenue), from the portion of the Pratts Wayne Woods Forest Preserve that is located within the City of West Chicago. If permission is granted, litter removal from the Forest Preserve shall occur not less than monthly; the City shall be provided written notice of each occurrence within one business day of such being completed.
10. The Applicant shall provide a street sweeper to remove mud and dust tracked onto hard surfaces inside and outside the Transfer Facility, on property owned or controlled by the Applicant as well as well Powis Court and Powis Road between Hawthorne Lane and Route 64 (North Avenue) on an as needed basis, but not less frequently than daily.
11. The Applicant shall retain a pest control service on an on-going basis to address the potential for infestation by rodents and other vectors. Such service shall inspect the Transfer Facility on an as needed, but no less than monthly, basis.



12. Transfer trailers entering and exiting the Subject Property shall use only the following roads: Powis Road (between the facility entrance and Route 64 (North Avenue), Route 64 (North Avenue), Kirk Road and Interstate 88. Except for waste collection trucks servicing property within the City of West Chicago, waste collection trucks entering and exiting the Subject Property shall use only the following streets within the City and no others: Powis Road south of Route 64, Route 64 (North Avenue), Route 38, and Kress Road. The Applicant shall have installed within City right-of-way to the satisfaction of the City, license plate readers in each of the following locations: Hawthorne Lane between Route 59 and Powis Road; Smith Road between Powis Road and Route 64; and Powis Road between Smith Road and Route 64. The license plate readers shall provide remote access to the City of West Chicago to be used for any lawful purpose. The specific make and model of license plate readers and the specific locations for installation of the license plate readers shall be subject to the written approval/direction of the West Chicago Police Chief, and may be relocated for operational need at the expense of the City; the initial and any annual costs associated with the license plate readers shall be at the Applicant's sole cost and expense. The Applicant shall be responsible for maintaining and, if necessary, replacing the license plate readers when in disrepair or at the end of their useful lives as determined by the City through documentation from the vendor. The Applicant shall also provide a set of certified portable scales to the City at its sole cost and expense, which thereafter shall be maintained and replaced by the City.

13. Trucks transporting hydro excavation waste shall be water-tight. Dump style trucks transporting solidified hydro excavation waste shall include liners that are sufficient to prevent leakage onto roads and other surfaces.

14. All incoming hydro-excavation waste loads shall be accompanied by a completed/signed manifest and shall be pre-approved using a waste profile sheet and other supporting documentation as necessary. These materials shall be reviewed to verify that the waste is non-hazardous as defined in Title 35 Illinois Administrative Code Part 722.111. Pre-approved waste streams and such profile packets shall be kept on file at the facility, shall accurately characterize the accepted material, and may not be more than one year old.

15. The facility shall be maintained with a negative pressure condition such that the ventilation system provides a minimum of 6 air changes per hour. The facility design shall include an ozone system to treat the ventilation air prior to exhaust. The facility shall also be equipped with a misting system that will assist in mitigation of dust and odors above the tipping floor.

16. The facility shall otherwise be constructed and operated in substantial conformance with the plans and operating procedures specified in the siting application.

17. Approval is further conditioned upon compliance with all terms of the Host Community Benefit Agreement between the City of West Chicago and Lakeshore Recycling Systems, LLC, dated April 1, 2019; the Secondary Host Community Benefit Agreement between DuPage County and Lakeshore Recycling Systems, LLC, dated March 10, 2020; and the Airport Agreement.

**PWC-808**

**STATE OF ILLINOIS  
CITY OF MOLINE  
BEFORE THE CORPORATE AUTHORITIES**

*In Re:*

**APPLICATION OF  
LAKESHORE RECYCLING SYSTEMS, LLC  
FOR SITING APPROVAL UNDER 415 ILCS 5/39.2  
OF A NEW POLLUTION CONTROL FACILITY**

**REPORT OF HEARING OFFICER  
RECOMMENDED FINDINGS OF FACT AND  
RECOMMENDED CONDITIONS OF APPROVAL**

**INTRODUCTION**

Lakeshore Recycling Systems, LLC ("Applicant" or "LRS") has applied for local siting approval of a new municipal waste transfer station on approximately 10 acres in an industrial area located on 47<sup>th</sup> Street north of the intersection of 78<sup>th</sup> Avenue and 47<sup>th</sup> Street within the corporate limits of the City of Moline, Illinois (the "Property"). The Property upon which the proposed pollution control facility (the "Facility") is to be located is owned by the Metropolitan Airport Authority of Rock Island County (the "Authority") but the Applicant controls the Property under a 50 year lease agreement with the Authority and will operate the Facility. The Facility is anticipated to operate during the term of the lease or longer. The Application was filed on March 3, 2023. The Corporate Authorities of the City of Moline (the "City") is to render a decision on the Application in accordance with the criteria and procedures set forth in Section 39.2 of the Illinois Environmental Protection Act (415 ILCS 5/39.2) (the "Act") as supplemented by its own General Ordinance No. 3002-2023, enacting a new Article V in Chapter 15 entitled "Pollution Control Facility Siting" (the "City's Ordinance") establishing rules and procedures for pollution control facility siting. Among

the procedures set forth in the Act and the City's Ordinance is the requirement that the City conduct a public hearing ("Hearing") on the Application, accept public comment, and make a formal decision on the Application within 180 days of the date of filing (by August 30, 2023). The City opened the Hearing on the Application on June 27, 2023, and it continued on June 28, 2023. In accordance with the procedures and other terms and provisions of the Act and the City's Ordinance, I reviewed the Application and initial filings. The following parties appeared at the Hearing by and through counsel:

The Applicant ("LRS"), represented by George Mueller;

Group O, which is a nearby business, represented by Brett Marshall;

The City of Moline Staff ("City Staff"), represented by Ann Zwick; and

The City of Moline Corporate Authorities ("City Council"), represented by its corporate counsel, David Silverman.

During the Hearing, I admitted the Application and testimony and exhibits from expert witnesses called by the Applicant in support of the Application. I also admitted exhibits and the testimony from a witness called by Group O in opposition to the Application.<sup>1</sup> The Hearing was transcribed by a court reporter and is part of the record.

In addition to evidence and testimony, oral public comment was received during the Hearing proceedings, and written public comment has been received by the City for an additional 30 days, from March 3, 2023 through (and including) July 28, 2023. All timely-filed public

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<sup>1</sup> The only witness called by Group O was its CEO of 18 months, Kevin Kotecki who is not an expert relevant to any of the nine siting criteria set forth in the Act. He testified that he has never even visited a transfer station. Although I gave him a lot of leeway in his testimony, it was mostly personal opinions and pure speculation from a lay person's perspective with very few relevant facts and no substantive analysis regarding any of the nine siting criteria. In fact, it was apparent that he did not even understand how to properly evaluate the nine criteria. He did not nor did he have the expertise to impeach or rebut any of the testimony of the Applicant's experts. I find that his testimony and his personal opinions carry no evidentiary weight in the analysis and in the evaluation of compliance or noncompliance with any of the nine siting criteria and further find the Applicant's highly qualified expert witnesses to be far more thorough, credible and persuasive. In conducting the Hearing and providing this Report, I weighed the evidence, assessed the credibility of the witnesses, and I resolved all conflicts in the testimony in favor of the Applicant.

comments are also part of the record herein and have been reviewed by me. "Comment" is distinguished from "testimony" in that "comment" is not provided under oath and is not subject to cross examination and, therefore, entitled to less weight than testimony. There was public comment received in support of and opposing the Application.

I declared the Hearing closed on June 28, 2023.

I received proposed Conditions of Approval from City Staff along with City Staff's proposed Findings of Fact and Conclusions of Law. I received argument in favor of siting approval and Proposed Findings of Fact and Law from the Applicant; I received argument in opposition to siting approval as well as Proposed Findings of Fact and Conclusions of Law from Group O.

#### **RECOMMENDATION**

For the reasons set forth below, I find that the City of Moline has jurisdiction over the Application, and my recommendation to the City is to impose Special Conditions (appended to my proposed Findings of Fact and Conclusions of Law as Exhibit A) and with those Special Conditions approve the Application as satisfying the siting criteria of Section 39.2. More specifically, I find that the Application as filed, and the testimony concerning the Application as filed, has established that the proposed Facility satisfies all of the criteria for local siting approval set forth in Section 39.2 of the Act provided that the Applicant complies with the Special Conditions and with the compliance by the Applicant with those conditions, the proposed Facility does satisfy all of the criteria for local siting approval.



## JURISDICTION

I find that the Applicant complied with all notice requirements of Section 39.2 (b) and (d) of the Act and Section 15-5102 of the City's Ordinance concerning the notice requirements prior to the Hearing on the Application. No objections were filed concerning compliance with Section 39.2 (b) or (d) or Section 15-5102. There was no evidence to the contrary, and no objections were filed concerning compliance with the City's Ordinance, and I find that the Applicant complied with all applicable requirements of the City of Moline.<sup>2</sup>

Accordingly, I find that the City has jurisdiction to consider the statutory criteria of Section 39.2.

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<sup>2</sup> Section 15-5100 (8) of the City's Ordinance defines a "Pollution Control Facility" broadly to encompass "any waste storage site, sanitary landfill, waste disposal site, waste transfer station or waste treatment facility but in no event will a Pollution Control Facility include any type of hazardous waste facility or waste incinerator facility."

Under Section 15-5105, the content of the Application for a Pollution Control Facility shall contain under subsection (i) "a description of the geologic and hydrogeologic character of the site including, but not limited to, soil boring samples obtained, groundwater flow data, identification of the uppermost aquifer, and groundwater monitoring plans" and under subsection (j) a site plan showing details of the proposed Facility including, but not limited to:

- (1) Cross sections for a Pollution Control Facility;
- (2) All existing wells within 1,320 feet of the footprint of the site for a Pollution Control Facility; and
- (4) Soil boring sample locations on or within 200 feet of the site for a Pollution Control Facility.

This type of information is generally germane when the Pollution Control Facility is a landfill or disposal facility and is not applicable when the Pollution Control Facility is a solid waste transfer station, and it was not included in the Application filed by LRS. As such, pursuant to Section 15-5108 of the City's Siting Ordinance, I find good cause to and hereby waive the requirement for those items and any others unique to disposal sites to be a part of the Application.

### THE SECTION 39.2 CRITERIA

These proceedings are governed by Section 39.2 of the Environmental Protection Act, 415 ILCS 5/39.2, which sets forth the exclusive siting procedures for pollution control facilities in Illinois. Section 40.1 of the Act and case law require that siting proceedings and the decision making be conducted in accordance with the requirements of fundamental fairness. The Application must contain sufficient details of the proposed facility demonstrating that it satisfies each of the nine criteria by a preponderance of the evidence. *Land & Lakes Co. v. Illinois Pollution Control Board*, 319 Ill.App.3d 41, 743 N.E.2d 188, 191 (3d Dist. 2000). If the Applicant fails to establish any one of the criteria, the Application should be denied. *Waste Management v. Pollution Control Board*, 175 Ill.App.3d 1023, 520 N.E.2d 682, 689 (2d Dist. 1988).

The Act requires that the Applicant for local siting approval prove compliance with each of nine different criteria (or alternatively demonstrate that they do not apply) and local siting approval shall be granted if the proposed facility meets each of those criteria. As a matter of law, once an Applicant makes a *prima facie* case on a criterion, the burden of proof shifts to the opponents to rebut the Applicant's case. *People v. Nuccio*, 43 Ill.2d 375, 253 N.E. 2nd 353 (1969). In order to rule against an Applicant on any criterion, the decision maker (the City Council in this case) must find competent rebuttal or impeachment evidence in the record. *Industrial Fuels and Resources v. Illinois Pollution Control Board*, 227 Ill.App.3d 553, 592 N.E. 2d 148 (1st Dist. 1992).

The Applicant called expert witnesses to offer evidence as to the statutory siting criteria. Counsel for Group O, as well as counsel for the City Staff, were allowed to cross-examine witnesses and present its own evidence. As noted previously, Group O called one witness who

was not an expert witness in opposition. City Staff cross-examined some of the witnesses but did not present any of its own. Public comment was allowed at the conclusion of the evidence on June 28, 2023. No one wishing to give oral public comment was denied or restricted. There was no objection about the way the Hearing was conducted.

The basis and rationale for my findings on each criterion is set forth below.

**1. *The Facility is necessary to accommodate the waste needs of the area it is intended to serve.***

The first criterion found in Section 39.2(a)(i) of the Act is that “the facility is necessary to accommodate the waste needs of the area it is intended to serve.” Section 39.2(a)(i), however, does not provide a specific formula or test to establish whether a facility is necessary. Case law has provided some guidance as to its requirements and makes it clear that under this standard, a transfer station does not have to be necessary in absolute terms, and the Applicant is not required to show absolute necessity in order to satisfy Criterion 1. *Waste Management of Illinois, Inc. v. Pollution Control Board*, 234 Ill.App.3d 65, 69, 600 N.E.2d 55, 57 (1st Dist. 1992). In addition, transfer stations are not like landfills, and the determination of (and the proof to support) whether they are needed is fundamentally different. The Applicant must show that the transfer station is reasonably required by the waste needs of the area it is intended to serve, including the area's waste production and disposal capabilities. *Id.*

It is well settled that the Applicant defines the intended service area. *See, Metropolitan Waste Systems, Inc. v. Pollution Control Board*, 201 Ill.App.3d 51, 55 (3<sup>rd</sup> Dist. 1990). In this case, the proposed service area for the Moline Transfer Station consists of a 15-mile radius around the Facility and all of Rock Island County. This service area generally encompasses the Quad Cities metropolitan area and, in addition to Rock Island County, includes portions of Henry

County, Mercer County, Muscatine County (Iowa) and Scott County (Iowa). No one has objected to the intended service area as defined by LRS.

The Applicant presented the testimony of Phillip Kowalski who is a senior planner with Aptim Environmental & Infrastructure, LLC (“Aptim”) and has over 35 years’ experience in the solid waste industry. Mr. Kowalski has participated in needs assessments for approximately 40 solid waste facilities and worked on approximately 50 solid waste management plans in Illinois and throughout the country. Mr. Kowalski gave a description of the overall Facility, the proposed service area that will be served by the Transfer Station, the quantities of waste generated in the service area, the service area solid waste facilities and their capacity. His needs analysis calculated the amount of waste generated by the service area and that requires disposal. In order to estimate the amount of waste that will be disposed, he provided an analysis of historical population and landfill disposal quantities (as reported by landfills to regulatory agencies). For Illinois counties, historical disposal data was available for the period 1996 through 2021. For Iowa Counties, historical disposal data was available for the period 1999 to 2021. He explained that the service area disposes of large quantities of waste and that disposal quantities have been increasing at a faster rate than population which means that per capita disposal rates have generally increased. He reviewed the location and life expectancy of existing landfills within the service area and in neighboring and proximate counties to the service area. There are two active landfills located within Rock Island County (Rock Island County had three operating landfills until 1999) with a combined 23 years of capacity, one of which will reach capacity within 11 years. The third landfill located in the service area is located in Scott County, Iowa, which has 52 years of remaining landfill capacity, but the tipping fees at Iowa landfills are higher than at Illinois landfills, as evidenced by the large quantities of Iowa waste that are imported into Illinois landfills, and no

Illinois waste is being disposed of in this Iowa landfill. On average, it takes nine years to develop new landfill capacity for a landfill that successfully obtains local siting approval, which is no guarantee. All other landfills in the general region would require transfer stations to access.

In 2021, the service area disposed of 358,000 tons of waste. The landfills in the service area are also allowed to import waste from outside the service area, and in 2021, they imported a total of 449,000 tons of waste. The Chicago metropolitan area also has decreasing landfill capacity and is exporting significant quantities of waste to other regions of Illinois, including IEPA Region 3 which includes Henry, Mercer and Rock Island counties. Regional landfills serving the Chicago metro area have only 12 years of remaining capacity. Demand for solid waste handling capacity in the service area is thus growing due to increasing waste disposal rates and continued importation of waste.

Mr. Kowalski testified that while population in the proposed service area is projected to be generally flat, the number of households is projected to grow over the next 40 years, and historical trends indicate that the amount of waste disposal has been growing faster than population, and that disposal quantities in downstate Illinois counties and Iowa counties have been steadily increasing over time. There are no transfer stations in the proposed service area, and a transfer station would be needed to access landfills outside the proposed service area. In Mr. Kowalski's opinion, the Moline Transfer Station will ensure that the City of Moline, county, and entire service area will have access to additional landfills to manage their waste in the future.

Group O attempted to refute Mr. Kowalski's testimony by pointing to a Rock Island County Solid Waste Management Agency ("RICWMA") Resolution which was adopted at its meeting on April 26, 2023 ("Resolution") which stated that the proposed Moline Transfer Station is not consistent with the Rock Island County Solid Waste Management Plan's requirement of a need for

Rock Island County due to "sufficient, existing landfill capacity."<sup>3</sup> Mr. Kowalski testified, and the RICWMA April 26, 2023 meeting minutes indicate, that the City of East Moline had submitted a letter to the RICWMA on April 25, 2023 stating that there is adequate landfill disposal capacity with the existing facilities in the region when considering expansion land capacity at the Upper Rock Island County Landfill, which could be expanded to 85 years or the year 2108. In Mr. Kowalski's opinion, the potential expansion capacity of the Upper Rock Island County Landfill and adjacent, dormant landfill owned by the City of East Moline cannot be considered because siting approval has not been applied for or obtained, and any additional capacity would be speculative. Mr. Kowalski also testified that he attended the RICWMA April 26, 2023 meeting, and there was no discussion on the merits of the siting Application or extensive discussion of the facts contained in the Application. Consistent with Mr. Kowalski's testimony, there is no indication in the minutes of the RICWMA April 26, 2023 meeting that the RICWMA performed any type of needs analysis or heard sworn testimony in making its determination. Group O presented no expert witnesses and no one from the RICWMA testified at the Hearing.

Mr. Kowalski testified that the RICWMA Resolution is inconsistent with his testimony and the evidence in the siting Application, which supports a need for the Facility. He observed that, in fact, the April 25, 2023 letter from the City of East Moline to the RICWMA opposing LRS's Application actually supports the need for the Moline Transfer Station. East Moline's opposition to the Transfer Station is predicated on a "potential" expansion of the Upper Rock Island County Landfill, which is located in East Moline and which is running short of capacity. The fact that the City of East Moline is contemplating a possible expansion of the landfill indicates that East

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<sup>3</sup> It should be noted that the RICWMA Resolution was filed with the City Clerk similar to other public comments, but it was never admitted into evidence at the hearing. Minutes of the meeting adopting the Resolution were admitted as Group O Exhibit #4.



Moline concurs with LRS that there is a need for additional solid waste handling capacity in Rock Island County and the service area. Mr. Kowalski noted that any demonstration of need for an expansion of the landfill would necessarily rely on many of the same market factors which underlie the need for the Moline Transfer Station.

As noted, Mr. Kowalski was the only expert who conducted an independent needs analysis in the service area. I find his testimony credible and give little weight to the RICWMA Resolution and the public comments referenced by Group O in the Proposed Findings of Fact and Conclusions of Law with respect to the issue of need. Furthermore, the Resolution is not in evidence, and it is not a finding of fact but rather a recommendation on the transfer station siting proposal, and it is not binding on the City. Simply put, a Resolution filed with the Clerk's office which is devoid of facts and analysis is not sufficient in the opinion of the Hearing Officer to counter the well reasoned and credible findings and opinions of Mr. Kowalski that a need for the transfer station exists.

Moreover, although Group O alleges that LRS failed to prove that the service area lacks capacity, a point I disagree with, Group O did not address the other relevant factors and variables in the need calculus.

In *Will County v. Village of Rockdale*, 2018 IL. App (3d) 160463, 121 N.E.2d 468, 484 (3d Dist. 2018), the Appellate Court held that Criterion 1 is not determined exclusively by reference to the traditional capacity versus waste generation analysis but that the "waste needs of the area" could include other relevant factors such as improving competition, benefits through the host agreements, operational concerns and hours, and positive environmental impacts.

Mr. Kowalski testified about transfer station economics and the efficiencies that the Facility will provide. He explained how this Facility will enhance competition for solid waste services. Mr. Kowalski explained that among the main benefits of transfer stations is reducing the environmental impact of garbage collection. The well-known purpose of consolidating waste from collection vehicles into more efficient transfer trailers is to accomplish more economical shipment to distant disposal sites. Consolidating small loads from the collection vehicle into larger transfer vehicles reduces hauling costs by enabling collection crews to spend less time traveling to and from landfills and more time collecting waste from residents and businesses. This also reduces the cost to operate the collection vehicles because compared to landfills, collection vehicles can get in and out of a transfer station faster to tip which will reduce fuel consumption and collection vehicle maintenance costs, plus produces less overall traffic, air emissions and road wear. In addition, the transfer station will provide access to lower cost disposal to haulers such as LRS who can run a smaller collection fleet to collect the same amount of waste and less wear and tear on the vehicles. The Facility will also enhance competition for solid waste services within the market, which is considered to be a highly concentrated market according to U.S. Department of Justice guidance. He explained that the transfer station will generate new revenue for the City of Moline in the form of host fee payments, and it will provide a host fee payment to the Metropolitan Airport Authority of Rock Island County. He noted that a citizen drop-off facility will be provided at the transfer station to service City residents and that the facility will be available at no cost to the City as a location for the City to host special collection events for household hazardous waste and electronics waste. In addition, the transfer station and associated hauling yard will provide up to 31 new jobs which will add to the local economy.

There is no question that these interrelated factors of transportation, environmental and economic matters are appropriate for the City Council to consider in its assessment of LRS's needs analysis and that they are completely germane to Criterion 1. *See, Waste Management of Illinois, Inc. v. Pollution Control Board*, 123 Ill.App.2d 1075 at 1087-88 (2nd Dist. 1984); *Waste Management of Illinois, Inc. v. IEPA*, 122 Ill.App.3d 639 (3rd Dist. 1984). Promoting competition is also part of the needs evaluation. *See, Gallatin National Company, Petitioner v. The Fulton County Board and The County of Fulton, Respondents*, 1992 WL 142713 (Ill.Pol.Cont. Bd.), 16. The testimony of Mr. Kowalski that the remaining capacity at the Upper Rock Island landfill is only two (2) years greater than the typical time to bring new disposal capacity online shows the urgent need for the new Facility, and his testimony demonstrated the reasonable convenience of establishing it.

Other than Mr. Kowalski, no other expert witness provided testimony as to whether the proposed Facility is necessary to accommodate the waste needs it is intended to serve. Group O argues that Mr. Kowalski's testimony should not be relied upon by the City Council because Mr. Kowalski is not a credible witness. However, instead of attempting to find areas where Mr. Kowalski was mistaken or deceitful in this hearing, Group O spends its time arguing that because he testified a certain way in other past hearings, he will always find that a transfer station is needed. On the contrary, I find that his testimony was highly credible, supported by the facts and essentially un rebutted by any other competent evidence. His analysis was clear and persuasive, and I find no reason to determine that his testimony in this hearing was untrue or deceitful.

In this case, there was more than enough merit in the Application, testimony and public comments to support a decision that the Applicant met its burden of proof of demonstrating that

the transfer station is reasonably required by the waste needs of the proposed service area, including consideration of its waste production and disposal capabilities. I find that Criterion 1 is satisfied.

**2. *The Facility is so designed, located, and proposed to be Operated that the Public Health, Safety and Welfare will be Protected.***

I find that Criterion 2 is satisfied through the imposition of--and compliance by the Applicant with--Special Conditions which are appended to the Proposed Findings of fact and Conclusions of Law as Exhibit A.

Like Criterion 1, Criterion 2 has been the subject of litigation and guidance is available from the courts. To prove Criterion 2, the Applicant must demonstrate that the proposed Facility is designed, located and proposed to be operated to protect the public health, safety and welfare. 415 ILCS 5/39.2 (a) (ii). This includes a demonstration that the Facility is not flawed from a public safety standpoint and that its proposed operations are neither substandard nor unacceptably risky. *Industrial Fuels and Resources, Inc. v. Illinois Pollution Control Board*, 227 Ill.App.3d 533, 592 N.E.2d 148, 157 (1st Dist. 1992).

Devin Moose, who planned and designed the Facility, is a professional engineer with 40 years of experience in solid waste engineering testified for LRS on this criterion. He is a diplomat of the American Academy of Environmental Engineers who has served as lead engineer for over 20 transfer station siting proceedings in Illinois, representing both the public and private sectors. He is very highly qualified and well regarded.

Mr. Moose provided a detailed explanation of the proposed Transfer Station's location, design, and operational features. He pointed out that the local siting Hearing is only the first in a lengthy series of regulatory steps that an applicant must successfully complete. These include

getting an Illinois Environmental Protection Agency (“IEPA”) developmental permit, local building permits, and finally an IEPA operating permit. Only then can the facility start to receive and transfer waste.

The siting Application addressed the site’s design, providing drawings and tables. Although Section 22.14 (a) of the Act prohibits locating transfer stations within 1,000 feet of any dwelling or property zoned for residential use, it is not one of the siting criteria, and the Application explicitly stated there is no such properties or dwellings. On this basis, the site is sufficiently distant from a residential-zoned site and from a dwelling.

Mr. Moose testified that the Application met the location standards (wetlands, archeological or historic sites, threatened or endangered species, wild and scenic rivers and the airport). The site is outside the 100-year floodplain as defined by the Federal Emergency Management Agency, with no documented wetlands (other than wetlands surrounding Case Creek on the southwest side of the Property which will not be disturbed in the development of the Facility). There is no significant historic, architectural or archaeological resources located within the area of the proposed Facility. There are no threatened or endangered species, or protected natural areas that will be adversely impacted by the proposed Facility, and there are no rivers designated for the protection of the Wild and Scenic Rivers Act within the proposed Facility watershed.

Due to its proximity to the Quad City International Airport (2,614 feet from the nearest runway), the Facility was reviewed to ensure that it is compatible with airport operations. The Federal Aviation Administration (FAA) Advisory Circular 150/5200-33C ("AC") provides guidance on certain land uses that have the potential to attract hazardous wildlife on or near public-use airports. Under Section 2.2.4 of the AC, fully enclosed trash transfer stations that are

not located on airport property or within the Runway Protection Zone ("RPZ") are considered compatible with safe airport operations. The Facility's design and plan of operations meets the FAA definition of a fully enclosed trash transfer station. The Facility is not located on airport property or within the RPZ. The Application demonstrates that the proposed transfer station building will not penetrate the most restrictive imaginary airspace surface above the site. As such, the proposed Facility will not exceed obstruction standards and would not be a hazard to air navigation. The proposed Facility design and operations, including the bird control plan, have been reviewed by the Quad Cities International Airport. Correspondence indicating that the proposed Facility is compatible with AC No. 150/5200-33C and safe airport operations is provided in the Application in Appendix K. LRS has agreed to comply with the Siting Conditions, including that the Moline Transfer Station shall meet the Federal Aviation Administration's definition of a fully enclosed transfer station per FAA Advisory Circular (AC) No. 150/5200-33C and shall otherwise be operated in accordance with all applicable FAA Advisory Circulars. Imposition and compliance with these Special Conditions are essential to a finding that Criterion 2 can be satisfied. With the imposition of the conditions set forth in that letter, the Airport Authority concluded that the proposed Facility did not pose a threat to the safety of the Airport. No expert testimony was introduced that challenged that determination by the Airport Authority.

Mr. Moose also described the proposed site design and the proposed operations. The Facility as proposed will handle a maximum of 520 tons of material per day composed of 400 tons of municipal solid waste, 80 tons per day of hydro-excavation waste, 25 tons of source-separated recyclables and 15 tons of landscape waste. While the Facility is proposed to be sited and permitted to accept landscape waste and source separated recyclables, it is not anticipated that



the Facility will initially accept either stream of waste. Construction and demolition debris may also be accepted, though it will be considered and treated as municipal solid waste.

Mr. Moose testified as to the fact that the transfer building will be a "fully enclosed" Facility (which, as noted, is an important requirement to protect the airport) and testified as to the truck movements on site, the number and function of "spotters," the operation of the entrance doors, the movements and operations of the transfer trailers, and the movements and operations of the front-loaders on the tipping floor. Mr. Moose showed a computer animated video showing portions of the Facility in operation.

Mr. Moose described the stormwater management plan for the proposed Facility and testified that the stormwater will be managed in accordance with the City of Moline Stormwater Ordinance. Prior to development of the transfer station, demonstration will be made to the City of Moline that the proposed development will function in accordance with the City of Moline Stormwater Ordinance and authorization will be obtained from the City. The stormwater management features may be modified, as requested, based on comments from the City of Moline during permitting. There was no substantive challenge to the stormwater management plan in place or other location, design and operational plans except for the imposition of certain special conditions proposed by City Staff which would improve the Facility and add protections for public health, welfare and safety. The Applicant has agreed to each of those Special Conditions.

The Application and Mr. Moose's testimony also established that the plan of operations for the Facility includes waste acceptance, load checking and waste handling procedures; site access and interior traffic circulation; nuisance control procedures (litter, odor, vector, dust, noise); staffing and equipment requirements; cleaning procedures; fueling procedures;

recordkeeping procedures; community relations and complaint resolution procedures; wastewater generation and handling procedures; and a closure plan. In addition, the Facility will only accept non-hazardous municipal solid waste, hydro-excavation waste, source separated recyclables, and landscape waste, and the Facility will implement hauler pre-approval, waste screening procedures and random load checking to detect and prevent the acceptance of unauthorized wastes. Ingress and egress from the Facility will be provided by two, one-way access drives located on the east side of the property along 47<sup>th</sup> Street. Interior vehicular circulation will follow a counterclockwise circular pattern to reduce internal traffic conflict. No personal vehicles shall be permitted west of the transfer station building.

The transfer station building includes automatic overhead doors to allow vehicular access to and from the tipping floor. The automatic overhead doors will be kept closed, except for emergencies and to allow vehicles to enter and exit the building. The overhead doors are high-speed automated doors that open and close in about 10-15 seconds. All waste collection vehicle unloading and transfer trailer loading operations will occur within the transfer station building. All transfer trailers will be tarped inside the transfer station building. All waste will be removed from the tipping floor by the end of the operating day. The transfer station building will maintain negative air pressure and ozone will be used to treat/filter the exhaust ventilation to eliminate the odors. All hydro excavation waste solidification unloading and loading operations will occur within the hydro excavation solidification building. All hydro excavation waste solidification materials will be stored inside the hydro excavation waste solidification building.

Other than Mr. Moose, no other expert witness provided testimony as to whether the proposed Facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected.

I find Mr. Moose's testimony at the Hearing, where he rendered an expert opinion that the proposed Facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected from an engineering and operating standpoint to be well reasoned, thorough, persuasive and largely un rebutted. The cross examination on behalf of Group O did not undermine any of Mr. Moose's conclusions or the information contained in the Application. I find that the Application and testimony, with the Special Conditions in place, and compliance with the requirements set forth in the Host Community Agreement, demonstrated that the Facility could safely handle the proposed maximum tonnages per day. The Special Conditions are appended to the Proposed Findings of Fact and Conclusions of Law as Exhibit A. The Host Community Agreement in Appendix C of the Application.

**3. *The Facility is located so as to minimize incompatibility with the Character of the Surrounding Area and to Minimize the Effect on the Value of Surrounding Property.***

The Applicant called Carrie Hansen, Director of Planning and Government Services at Schoppe Design Associates, Inc ("SDA"), who testified that SDA was retained by LRS to perform an independent analysis to determine if the proposed Moline Transfer Station satisfies the requirements of Criterion 3 of Section 39.2(a) of the Act, such that the Transfer Station is located as to minimize incompatibility with the character of the surrounding area. Ms. Hansen has over 35 years' experience in land use and transportation planning for both public and private sectors. She is an expert in the field of land use planning and has prepared and overseen the preparation of numerous comprehensive plans and zoning ordinance updates. Her testimony at the Hearing was credible.

The study performed by SDA evaluated the various planning issues that are commonly utilized to make determinations of the land use compatibility. Land use and zoning were evaluated

within a one-and-one-half-mile general study area, and a second more targeted  $\frac{1}{2}$ -mile study area was analyzed to focus on uses related to the Quad City International Airport. The documents and research material supporting the work of SDA includes aerial photography and the zoning ordinances, zoning maps, and comprehensive plans for the City of Moline, the Village of Milan, and Rock Island County. Current Rock Island County GIS information and the City of Moline Airport South District Development Plan were also reviewed and evaluated. SDA conducted field investigations and took photographs of the Subject Site and its environs in the Spring of 2021 and 2022 to confirm land uses and become familiarized with the site and its surrounding area. A detailed site investigation was made within the  $\frac{1}{2}$ -mile context of the airport related uses near the proposed site and in the general context of the one-and-one-half-mile study area.

The proposed Facility is located on a 10-acre parcel within the Moline Business Park Redevelopment Project Tax Increment Financing (TIF) District for the Moline Business Park Redevelopment Area, adjacent to the Quad Cities International Airport in the I-2 General Industrial Zoning District.

In addition to land use and zoning, SDA also reviewed the design, engineering, and operational features of the proposed Facility as the effective utilization of these elements contributes to minimizing incompatibility of the use with the character of the surrounding area.

In the preparation of its report, SDA analyzed zoning maps, zoning ordinances, land use patterns, aerial photographs, site photographs and surveyed land uses within the study areas to determine the character and trend of land development in the area surrounding the proposed Facility.

Based on these reviews and her expertise, experience and the land use analysis and findings, it is the expert opinion of Ms. Hansen that the proposed Lakeshore Recycling Systems

Moline Transfer Station minimizes the impact on the character of the surrounding area and, therefore, satisfies the first part of Criterion 3 of Section 39.2(a) of the Act. I concur. Group O's cross-examination did not, in my opinion, challenge or undermine any of the conclusions or the opinion of Ms. Hansen in any meaningful way.

The Applicant called Michael S. MaRous, a licensed Illinois real estate appraiser (and in five other states) and a member of the Appraisal Institute (and past president of its Chicago chapter) to testify regarding Criterion 3 as it pertains to minimizing the effect on the value of surrounding property. There is no question that Mr. MaRous is a highly regarded expert in the field of real estate appraisal who has received a number of honors and advanced designations. He has vast experience who has done numerous market impact studies, including several involving waste facilities.

Mr. MaRous submitted a Market Impact Analysis of the proposed transfer station for purposes of analyzing impact on the values of surrounding property. He testified that he took into consideration the nature of the immediate area, including industrial land values in the area. Utilizing a matched pairs analysis, he also reviewed and has analyzed data regarding sales of industrial buildings and sites that are located proximate to a transfer station located just west of Chicago O'Hare International Airport and has compared them to sales of industrial buildings and sites that are located in the same area, but that are not located proximate to the transfer station.

Based upon the analysis of the three matched pairs he presented, neither improved nor land values are negatively affected based upon proximity to the transfer and recycling Facility located on the east side of Busse Road in the far northwest area of Chicago, just west of Chicago O'Hare International Airport. Therefore, he concluded that assuming the siting request and other necessary approvals were to be obtained, the proposed Moline transfer station, which similarly will be sited

within an industrial park adjacent to the Quad City International Airport, will be located so as to minimize the effect on the value of surrounding property.

He opined that as a result of the market impact analyses undertaken, it is his opinion that the proposed transfer station minimizes the effect, if any, on the market value of the properties located in this area. In this regard, he took into consideration (1) the industrial nature of the immediate area surrounding the proposed transfer station site, which includes Quad City International Airport, which has existed in the area for a significant period of time and is anticipated to remain in use for the foreseeable future; several light-industrial uses; and vacant, industrial-zoned parcels that are being utilized for agricultural purposes; (2) the limited demand for new industrial development in the Illinois portion of the Quad Cities industrial market generally and in the Quad City Industrial Airpark more specifically; and (3) the proposed transfer station, including in regard to design, to location, and to operation, *e.g.*, unloading and loading of the tarped vehicles will take place within the fully enclosed transfer station, which will feature automatic doors that will open and close as vehicles enter and leave; access drives and “interior circulation routes” will be paved in order to minimize the generation of dust; and several odor protocols will be implemented.

In his testimony at the Hearing, Mr. MaRous rendered an expert opinion that the proposed Facility is so located as to minimize the effect on the value of the surrounding property; that the proposed Facility will have no negative property value impact on properties in the immediate area or on the neighboring properties; that the proposed Facility will have a positive effect on industrial property values in the area; that the proposed Facility is the highest and best use of the site; and that the proposed Facility would be a significant positive for the development of new business in the area.



Other than Ms. Hansen and Mr. MaRous, no other expert witness provided testimony as to whether the proposed Facility is so located as to minimize in compatibility with the character of the surrounding area and to minimize the effect on the value of surrounding property.

The cross examination by Group O of the Applicant's two expert witnesses did not undermine their credibility or any of the conclusions reached by them. I found both of those experts to be very credible and persuasive, and I find that Criterion 3 is satisfied.

Group O presented no expert witness and provided nothing in the way of contradicting or impeaching evidence. Instead, Kevin Kotecki, the CEO of Group O, gave testimony on his personal feelings about the proposed Facility and what he perceives the negative impact will be on Group O's business and personal property by the siting of such a Facility. It was mostly pure speculation on his part with unsupported conclusions. In any event, as noted earlier, Mr. Kotecki is not an expert, and he did not produce any empirical data to support his testimony, and he did nothing to rebut the testimony of the Applicant's experts other than to conclude that he questioned and/or did not believe their testimony. He loosely referred to the "experts" that supposedly advised him on the potential loss to his "property value" but he refused to name even one of them or to give any details of the actual amount of the potential loss or how it was calculated which further diminishes his own credibility. Mr. Kotecki admitted Group O does not own the property where its corporate headquarters is located and there are intervening lots between the proposed Facility and the Group O parcels.<sup>4</sup> I find that his testimony has no probative value on this siting criteria.

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<sup>4</sup> The public comments by Ben Leischner, the executive Director of the Metropolitan Airport Authority of Rock Island County who owns the property Group O leases should be noted here. He admitted to being skeptical at first and dismissive of transfer stations, but he said he asked questions, did research and satisfied himself that an indoor transfer station does not pose any risk to aviation and that LRS is a quality operator. Mr. Leischner said he relied on the data, he consulted experts, and now that he has done research, he is comfortable with the proposal.

**4. *The Facility is located outside the Boundary of the 100 Year Floodplain.***

I find that the Applicant demonstrated that the Facility meets Criterion 4.

The testimony of Devin Moose and other uncontradicted evidence entered in the Record supports the finding that the Facility meets this Criterion. No challenge to this Criterion has been filed.

**5. *The Plan of Operations for the Facility is designed to Minimize the Danger to the surrounding Area from Fire, Spills and Other Operational Accidents.***

Devin Moose also testified on this criterion as it is closely related to Criterion 2. Mr. Moose is also a highly regarded expert in the field of solid waste transfer station operations. Other than Mr. Moose, no other expert witness provided testimony as to whether the proposed plan of operations for the proposed Facility is designed to minimize the danger to the surrounding area from fire, spills or other operational accidents. Mr. Moose's testimony at the Hearing on this Criterion was not rebutted and no evidence was submitted to the contrary. He referred to the detailed Health and Safety Plan provided in Appendix O of the Application that includes procedures that will be implemented to minimize the danger to the surrounding area from fire, spills or other operational accidents, and addresses fire control and prevention measures, spill control and prevention measures, accident prevention, employee training, risk management and operational contingency plan. Based upon his experience and testimony, plus the more detailed procedures contained in the Application, Mr. Moose rendered an expert opinion that the proposed plan of operations for the proposed Facility is designed to minimize the danger to the surrounding area from fire, spills or other operational accidents.

I find that the Applicant demonstrated that the Facility meets Criterion 5 but I also find that the testimony of Mr. Moose and the detail procedures contained in the siting Application support

the imposition of and compliance with Special Conditions to further improve the Plan of Operations and minimize dangers to the surrounding area.

**6. *The Traffic Patterns to and from the Facility Are So Designed as to Minimize the impact on Existing Traffic Flow.***

I find that the Applicant demonstrated that the proposed Facility meets Criterion 6 but also find that the Siting Application and testimony support the imposition of and compliance with the Special Conditions.

This criterion does not relate to traffic noise or dust, nor does it relate to the possible negligence of truck drivers. *File v. D & L Landfill, Inc.*, 219 Ill.App.3d 897, 905 (5<sup>th</sup> Dist. 1991). “The operative word is ‘minimize’ and it is recognized that it is impossible to eliminate all problems.” *Id.*

The Applicant called Michael A. Werthmann of Kenig, Lindgren, O’Hara, Aboona, Inc. (KLOA, Inc.), who is a registered professional engineer and certified professional traffic operations engineer with more than 33 years of traffic engineering experience for both the private and public sectors. Mr. Werthmann has testified on over 25 solid waste related projects. Mr. Werthmann is an expert in the field of traffic engineering, and his testimony was highly credible. In his testimony, Mr. Werthmann rendered an expert opinion that the traffic patterns to and from the Facility are so designed to minimize the impact on existing traffic flow. He performed a three-phase traffic study. First, he looked at existing conditions, including physical and operating characteristics of the nearby roadway system. Secondly, he looked at Facility traffic characteristics, and determined the type and volume of traffic generation by the Facility. Then he analyzed the impact of the Facility generated traffic on the roadway system.

The area roadways include 78th Avenue (Indian Bluff Road), which is generally an east-west, collector road that has one lane in each direction. At its signalized intersection with Rock Island-Milan Parkway, 78<sup>th</sup> Avenue has a separate left-turn lane, a through lane, and a separate right-turn lane on both approaches. At its signalized intersection with U.S. Route 150, 78<sup>th</sup> Avenue has a separate left-turn lane, a through lane, and a separate right-turn lane on the eastbound approach and a shared left-turn/through/right-turn lane on the westbound approach. At its unsignalized intersection with 47<sup>th</sup> Street, 78<sup>th</sup> Avenue has a shared left-turn/through/right-turn lane on the eastbound approach and a shared left-turn/through lane and a separate right-turn lane on the westbound approach. At its unsignalized intersection with 50<sup>th</sup> Street, 78<sup>th</sup> Avenue has a shared left-turn/through/right-turn lane on the eastbound and westbound approaches. Between Rock Island-Milan Parkway and U.S. Route 150, 78<sup>th</sup> Avenue is under the jurisdiction of the Rock Island County Highway Department, has an Average Annual Daily Traffic (AADT) volume of 4,450 vehicles (Illinois Department of Transportation [IDOT] 2020), and has a posted speed limit that varies between 45 and 55 mph. Rock Island-Milan Parkway is generally a north-south, arterial road that has two lanes in each direction divided by a barrier median. At its signalized intersection with 78<sup>th</sup> Avenue, Rock Island-Milan Parkway has a separate left-turn lane, two through lanes, and a separate right-turn lane on both approaches. Rock Island-Milan Parkway is under the jurisdiction of the Illinois Department of Transportation (IDOT), has an AADT volume of 18,000 vehicles (IDOT 2020) north of 78<sup>th</sup> Avenue and 10,600 vehicles (IDOT 2020) south of 78<sup>th</sup> Avenue, and has a posted speed limit of 55 mph.

U.S Route 150 is generally a north-south, local road that has one lane in each direction. At its unsignalized intersection with 78<sup>th</sup> Avenue, 47<sup>th</sup> Street has a shared left-turn/through/right-turn lane that is under stop sign control on both approaches. At its unsignalized intersection with 77<sup>th</sup>

Avenue, 47<sup>th</sup> Street has a shared left-turn/through/right-turn lane on the northbound and southbound approaches. North of 78<sup>th</sup> Avenue, 47<sup>th</sup> Street serves an industrial park and is under the jurisdiction of the City of Moline. South of 78<sup>th</sup> Avenue, 47<sup>th</sup> Street serves a residential area, is under the jurisdiction of the Blackhawk Road District, and has a posted seven-ton weight limit between March 15 and June 15.

77<sup>th</sup> Avenue is an east-west, local road that extends between 47<sup>th</sup> Street and 50<sup>th</sup> Street and is aligned opposite an access drive at its intersection with 47<sup>th</sup> Street. It has one lane in each direction. 77<sup>th</sup> Avenue is under the jurisdiction of the City of Moline.

Next, Mr. Werthmann conducted traffic counts at the relevant intersections near the proposed Facility, including counts for the turning movements. Traffic counts were conducted from 6 a.m. to 6 p.m. on September 27, 2022, at the following intersections: 78<sup>th</sup> Avenue with Rock Island-Milan Parkway; 78<sup>th</sup> Avenue with US Route 150; 78<sup>th</sup> Avenue with 47<sup>th</sup> Street; 78<sup>th</sup> Avenue with 50<sup>th</sup> Street; and, 77<sup>th</sup> Avenue with 47<sup>th</sup> Street.

The peak hour for morning traffic was 7:15 a.m. to 8:15 a.m. and the evening peak hour was 3:30 p.m. to 4:30 p.m. Those are the two peak hours on the roadway system. They represent the commuter peak periods. As traffic engineers they look at these volumes. If the roadway system can accommodate these volumes, it can accommodate the volumes of traffic any other hour of the day because the volumes are much lower.

Access to the Facility will be provided via two, one-way access drives located on the west side of 47<sup>th</sup> Street at the north and south ends of the Property. The north access drive will be restricted to inbound access only and the south access drive will be restricted to outbound access only. Wider lanes and larger radii will be provided at the access drives in order to accommodate the turning truck traffic. LRS will also pay for increasing the radius in the northwest corner of the 78<sup>th</sup>

Avenue, 47<sup>th</sup> Street intersection. Additionally, LRS will be responsible for its share of road repair and maintenance costs for the approximately 1,600 feet of 47<sup>th</sup> Street from the north boundary of the site to 78<sup>th</sup> Avenue

All outbound transfer trailers will travel to a distant landfill using the following route: south on 47<sup>th</sup> Street to westbound 78<sup>th</sup> Avenue to northbound Rock Island-Milan Parkway to Airport Road to I-280. No transfer stations leaving the Facility will travel eastbound on 78<sup>th</sup> Avenue .

Mr. Werthmann projected morning peak hour inbound traffic at 12 vehicles, 5 of which are employee passenger vehicles. Outbound traffic for the same morning peak hour will be 7 vehicles. Inbound traffic during the afternoon peak hour will be 11 vehicles and outbound traffic will be 26 vehicles, 15 of which are employee passenger vehicles. Mr. Werthmann also projected the growth in background traffic through 2028.

The traffic analysis was then performed using the Highway Capacity Software. It showed that the two signalized intersections, and the critical movements at the stop sign controlled intersection currently operate at a good level of service, and are projected to continue to operate at a good level of service (service level B or C). Mr. Werthmann, therefore, concluded that the existing roadway system has sufficient reserve capacity to accommodate the additional traffic to be generated by the Transfer Station. Additionally, Mr. Werthmann performed a gap study at the intersection of 78<sup>th</sup> Avenue with 47<sup>th</sup> Street that demonstrates that there are sufficient gaps available in the 78<sup>th</sup> Avenue traffic stream to accommodate the anticipated traffic turning to and from 47<sup>th</sup> Street. Other than the radius improvements at the 78<sup>th</sup> Avenue/47<sup>th</sup> Street intersection to accommodate the turning truck traffic, no additional roadway improvements or traffic control modifications are required to accommodate the Transfer Station traffic. The roads in the Industrial Park have been designed to accommodate this type of truck traffic.



Based on the foregoing and his extensive experience as a traffic engineer, Mr. Werthmann concluded that the proposed Transfer Station has been designed to minimize the impact on existing traffic flows.

On cross examination by City Staff, Mr. Werthmann agreed that a condition prohibiting transfer trailers from making a left turn from the north leg of 47<sup>th</sup> Street onto east-bound 78<sup>th</sup> Avenue is acceptable. He also agreed that LRS would cooperate in seeking striping on the westbound deceleration lane on 78<sup>th</sup> Avenue as it approaches 47<sup>th</sup> Street. LRS will also pay for that striping. He also testified that he did not see any traffic issues associated with the citizen drop-off area at the Facility.

Cross examination by Group O focused mainly on the willingness of LRS to contribute its share of road maintenance costs, regardless of who has jurisdiction over the roads and LRS agreed to a special condition that it will do its proportionate share of maintenance and repair which is set forth in the Special Conditions.

Mr. Werthmann confirmed through questioning by Mr. Silverman that at a maximum of 520 tons of waste per day, the maximum number of trucks using the Facility would be about 137 trucks and that the roadway system is designed to handle them. Also, the fact that LRS will be parking trucks on the site actually reduces the amount of traffic on the roadway system, improves capacity and reduces the wear and tear on the roadways. All of the roadways are designed to accommodate the type of truck traffic that is contemplated here.

Other than Mr. Werthmann, no other expert witness provided testimony as to whether the traffic patterns to and from the Facility are so designed as to minimize the impact on existing traffic flow. The conclusions of Mr. Werthmann, with regard to the traffic criterion were unchallenged and un rebutted.

7. ***Hazardous Waste Emergency Plan***

Per the Application and the testimony of Devin Moose, the Facility will not be treating, storing or disposing of Hazardous Waste. This Criterion is therefore not applicable and therefore deemed satisfied. No challenge to this Criterion has been filed.

8. ***If the Facility is to be Located in a County Where The County Board has adopted a Solid Waste Management Plan Consistent With The Planning Requirements of the Local Solid Waste Disposal Act or The Solid Waste Planning and Recycling Act, The Facility is Consistent with that Plan.***

This Criterion is contested by Group O by relying solely on the RICWMA Resolution. For the reasons set forth below, I find that Criterion 8 is satisfied.

Phillip Kowalski, who is also a well-respected expert in the analysis of solid waste management plans reviewed the contents of the solid waste management plan adopted by Rock Island County, and with the five-year plan updates subsequently adopted by the County's delegated solid waste planning authority, the Rock Island County Waste Management Agency. In his testimony at the Hearing, Mr. Kowalski rendered an expert opinion that the proposed Facility is consistent with the solid waste management plan adopted by Rock Island County as updated by the RICWMA. Mr. Kowalski's testimony at the Hearing was credible. Other than Mr. Kowalski, no other expert witness provided testimony as to whether the proposed Facility is consistent with the Plan and no one from the RICWMA was called to testify under oath to rebut Mr. Kowalski's opinion.

The Illinois Solid Waste Planning and Recycling Act (415 ILCS 15/1 *et seq.*) requires every county in Illinois to adopt a 20-year plan for managing its waste. Mr. Kowalski testified that in 1989, Rock Island County joined with Henry County and five counties in Iowa (Cedar, Clinton, Jackson, Muscatine, and Scott) to jointly develop the required solid waste management

plan, which was prepared by the Bi-State Metropolitan Planning Commission on behalf of the participating counties.

Rock Island County adopted the Bi-State Regional Comprehensive Solid Waste Management Plan (hereinafter the “Plan”) on February 19, 1991. In 1992, the County and eleven municipalities within the County formed the RICWMA, a municipal joint action agency, through an intergovernmental agreement. Pursuant to authority provided in the Illinois Solid Waste Planning and Recycling Act, the County delegated solid waste planning authority to RICWMA. Subsequently, the RICWMA has prepared five-year updates to the 1991 Plan in 1996, 2001, 2006, 2011, 2017 and 2022. The 1996 Plan Update contemplated the potential siting of a transfer station in the County.

Each of the seven counties that participated in the 1991 Plan have subsequently pursued implementation of their solid waste systems as individual counties or agencies. The 1996 Plan Update and the others that followed contained four recommendations pertaining to solid waste disposal and the siting of pollution control facilities with the 1996 Plan Update containing the most detailed description of the policies underlying the four recommendations. As noted, each of these four basic policy recommendations were reaffirmed in all subsequent 5-year updates: (1) the disposal system remain a “laissez-faire system” with any interested party having the right to apply for siting of a regional pollution control facility (Section 4.3); (2) all applicants for siting approval must “prove the facility is necessary to accommodate the solid waste needs of Rock Island County” (Section 4.5); (3) RICWMA’s role in siting a pollution control facility: RICWMA shall review each siting application for consistency with the plan and offer a “recommendation” to the siting authority concerning consistency with the plan; each applicant shall submit a copy of the siting application to RICWMA at the time of submission to the siting authority and RICMWA “will meet

to consider a recommendation concerning consistency with the plan” no later than 30 days before the siting Hearing; and financial arrangements involving siting applications remain the “purview of the applicant and appropriate siting body” and it is “recommended RICWMA be included as a party in discussions of financial arrangements” (Section 4.6); and (4) there is no prohibition on the receipt of out-of-county or out-of-state waste. Mr. Kowalski concluded that the Moline Transfer Station represents a significant milestone in the continued implementation of the County’s solid waste management plan, and that the Proposed Transfer Station is consistent with the solid waste management plan adopted by Rock Island County, as updated by RICWMA. Group O presented no expert testimony to rebut that opinion.

Mr. Kowalski testified that, consistent with the first recommendation (Section 4.3 of the Plan), LRS, a private company, applied for the siting of the proposed Facility. Mr. Kowalski testified that, consistent with the second recommendation (Section 4.5 of the Plan), the proposed Facility is necessary to accommodate the waste needs of Rock Island County plus portions of four other counties located within a 15-mile radius of the Facility, which encompass the proposed service area. Mr. Kowalski testified that, consistent with the third recommendation (Section 4.6 of the Plan), LRS provided a copy of the siting Application to each RICWMA member and the RICWMA office on the date the siting Application was filed with the City. Mr. Kowalski testified that, consistent with the third recommendation (Section 4.6 of the Plan), the RICWMA met to consider a recommendation concerning consistency with the Plan no later than 30 days before the scheduled siting Hearing. Mr. Kowalski testified that, consistent with the third recommendation (Section 4.6 of the Plan), LRS met with representatives of the City to discuss a host community agreement, which included payment of host fees, and the Chairman of the RICWMA was present at the meeting, and the sharing of host fee revenues between the City and the RICWMA was

discussed during the meeting. Mr. Kowalski testified that, consistent with the fourth recommendation (Section 4.8 of the Plan), the proposed service area for the proposed Facility includes out-of-county and out-of-state waste.

Cross-examination did not really challenge any of Mr. Kowalski's conclusions, but focused instead on the weight, if any, to be given to the RICWMA Recommendation. I set forth earlier in this Report what I think are the deficiencies in the RICWMA Resolution, its process and its recommendation. In my view, the Resolution which contains only broad and inadequate legal conclusions without any supporting factual averment or substantive analysis is unpersuasive and the fact that it is not in evidence and the bases for its conclusions are not explained or supported by any testimony subject to cross-examination, negatively affects the credibility of those conclusions and the Resolution as a whole. I attach little evidentiary value to it. As noted previously, Mr. Kowalski testified that the RICWMA Resolution is inconsistent with the evidence in the siting Application, which supports a need for the Moline Transfer Station. Mr. Kowalski pointed out some clearly erroneous statements at the April 26<sup>th</sup> RICWMA meeting, and he emphasized that when those recommendations are based on conjecture and misinformation, rather than fact, they should not be given any weight by the siting authority. I agree, and it is well accepted that a local Hearing body is not free to disregard unrebutted expert testimony. *See, Industrial Fuels and Resources v. Illinois Pollution Control Board*, 227 Ill.App.3d 533 (1<sup>st</sup> Dist. 1992).

In my opinion, Mr. Kowalski's testimony and Aptim's report contained in LRS's Application provided a demonstration of plan consistency by the proposed Facility with the recommendations as initially specified in the 1996 Plan Update and reaffirmed in the subsequent updates, and I agree with the unrebutted expert opinion that the proposed Moline Transfer Station

is consistent with the solid waste management plan adopted by Rock Island County and as updated by the RICWMA.

9. *Recharge Area*

Per the Application and the testimony of Devin Moose, the Facility is not located in a regulated recharge area. This Criterion is therefore not applicable and therefore deemed satisfied. No challenge to this Criterion has been filed.

10. *Consideration of Previous Operating Experience*

The Act permits the Corporate Authorities to consider the previous operating experience of an Applicant. Specifically, the Act permits the City to consider the “past record of convictions or admissions of violations of the Applicant...”. Here, the record contains no past convictions of violations by LRS nor admissions of violations by LRS, which favors approval of the Application.

**PUBLIC COMMENTS**

In addition to the public comment received during the Hearing, the City Clerk received written public comments after the Hearing closed. I found that the public comment was not focused on the statutory criteria in a relevant and “probative” way and, therefore, the comment, neither singly nor collectively, caused any change in how I weighed the evidence received from the Application, the admitted exhibits, and the admitted testimony.



**PROPOSED FINDINGS OF FACT**

My Proposed Findings of Fact are attached.

Respectfully submitted,



---

Dennis G. Walsh, Hearing Officer

Klein, Thorpe & Jenkins, Ltd.  
15010 S. Ravinia – Suite 10  
Orland Park, IL 60462  
(708) 349-3888

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. On March 3, 2023, Lakeshore Recycling Systems, LLC (“Applicant” or “LRS”) applied (the “Application”) to the City of Moline (“City”) for local siting approval of a new municipal waste transfer station consisting of approximately 10 acres located on 47<sup>th</sup> Street north of the intersection of 78<sup>th</sup> Avenue and 47<sup>th</sup> Street within the corporate limits of the City of Moline, Illinois (as legally described in the application and hereafter referred to as the “Property”);
2. The Property upon which the proposed pollution control facility (the “Facility”) is to be located is owned by the Metropolitan Airport Authority of Rock Island County (the “Authority”) but the Applicant controls the Property under a 50 year lease agreement with the Authority and will operate the Facility. The Facility is anticipated to operate during the term of the lease or longer;
3. The Property is located within the corporate limits of the City, is the subject of a Host Community Agreement between the Applicant and the City, and the City has jurisdiction to consider the Application;
4. The Hearing on the Application was opened on June 27, 2023;
5. The Hearing closed on June 28, 2023;
6. In accordance with the Illinois Environmental Act (the “Act”), written comment was then received by the Office of the City Clerk for an additional 30 days after the close of the Hearing (i.e., through 11:59:59 p.m. CDST on July 28, 2023, including any written comment post-marked on or before July 28, 2023);
7. The Applicant served written notice of its intent to file the Application (“Filing Notice”) in person or by certified mail, return receipt requested, on the owners of all property within the subject area not owned by LRS and on the owners of all property within 250 feet in each direction of the lot line of the Property, excluding roads, said owners being such persons or entities which appear from the authentic tax records of Rock Island County. LRS further served the Filing Notice in person or certified mail, return receipt requested, on the members of the General Assembly from the legislative district in which the proposed Facility is to be located. LRS further caused the Filing Notice to be published in a newspaper of general circulation published in Rock Island County;
8. The Applicant provided evidence that the Filing Notice was served and published within the prescribed time period in accordance with the requirements of Section 39.2(b) of the Illinois Environmental Protection Act (“Act”) and Section 15-5102 of the City of Moline General Ordinance No. 3002-2023, enacting a new Article V in Chapter 15 entitled “Pollution Control Facility Siting” (“Ordinance”);
9. The Application contains all the information required by Section 39.2(c) of the Act and Section 15-5105 of the Ordinance applicable to a solid waste transfer station;

10. LRS paid the requisite filing fee to the City, pursuant to Section 15-5104 of the Ordinance, on March 3, 2023;

11. Prior to commencement of the Hearing, the Applicant caused notice of the Hearing on its Application (“Hearing Notice”) to be served by certified mail, return receipt requested, on the members of the General Assembly from the legislative district in which the proposed Facility is to be located, the IEPA, the governing authority of each municipality contiguous to the proposed Facility or contiguous to the City of Moline and the county board of the county where the proposed Facility is to be located. LRS caused the Hearing Notice to be published in a newspaper of general circulation published in Rock Island County on June 9, 2023;

12. LRS provided evidence that the Hearing Notice was served and published within the prescribed time periods in accordance with the requirements of Section 39.2(d) of the Act and Section 15-5107 of the Ordinance;

13. Given the Applicant’s compliance with the pre-filing notice requirements and the compliance with the Hearing Notice requirements of the Act, the City Council has jurisdiction under Section 39.2 of the Act to approve, approve with conditions, or deny the Application;

14. Following notice, the City held Hearings on June 27 and June 28, 2023, pursuant to the Ordinance;

15. The Applicant, the City of Moline staff (“City Staff”) and Group O are parties that appeared at the Hearings;

16. Members of the general public were permitted at the Hearing to make unsworn public comment which, pursuant to the Ordinance, shall not be given the evidentiary weight of sworn testimony subject to cross-examination;

17. No complaints regarding access to and availability of the Application have been received;

18. No objections regarding participation, Hearing procedures or public comment were made by any participant, would be participant or member of the public;

19. The siting proceedings herein, both procedurally and substantively, complied with the requirements of fundamental fairness;

20. There were no amendments to the Application;

21. No prehearing motions were filed by any of the Parties;

22. Based on the record, the Facility is not located within 1,000 feet from the nearest property zoned for primarily residential uses or within 1,000 feet of any dwelling;

23. The Applicant has demonstrated that the proposed Facility meets Criterion 1: “the facility is necessary to accommodate the waste needs of the area it is intended to serve...;

24. The Applicant has demonstrated that the proposed Facility does meet Criterion 2: “the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;” with the imposition of the special conditions proposed by City Staff (and compliance therewith by the Applicant) which are attached hereto as Exhibit A,

25. The Applicant has demonstrated that the proposed Facility meets Criterion 3: “the facility is so located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property;

26. The Applicant has demonstrated that the proposed Facility meets Criterion 4; “for a facility other than a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100 year floodplain or the site is flood-proofed;”

27. The Applicant has demonstrated the proposed Facility does meet Criterion 5: “the plan of operations for the Facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents;” with the imposition of the special conditions proposed by City Staff (and compliance therewith by the Applicant) which are attached hereto as Exhibit A;

28. The Applicant has demonstrated that the proposed Facility meets Criterion 6: “the traffic patterns to or from the Facility are so designed as to minimize the impact on existing traffic flows” with the imposition of the special conditions proposed by City Staff (and compliance therewith by the Applicant) which are attached hereto as Exhibit A;

29. The Applicant has demonstrated that the Facility will not be accepting hazardous waste and, therefore, demonstrated that Criterion 7 is not applicable;

30. The Applicant has demonstrated that the proposed Facility meets Criterion 8: “...where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan ...;”

31. The Applicant has demonstrated that the Facility is not located within a regulated recharge area and, therefore, Criterion 9 is not applicable;

32. The Applicant’s operating history demonstrates that the Applicant is qualified to operate the Facility safely and properly and provides no basis to deny the Application;

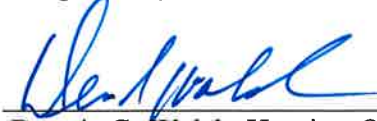
33. The Applicant has agreed to comply and approval is conditioned upon compliance with all terms of the Host Community Agreement between the City of Moline and Lakeshore Recycling Systems, LLC, dated February 13, 2023;

34. With the imposition of and compliance by the Applicant with the special conditions which are attached hereto as Exhibit A, the evidence demonstrates that the Application complies

with each of the nine siting criteria in Sec. 39.2(a) of the Act and, therefore, the City Council should grant siting approval; and

35. The special siting conditions attached hereto as Exhibit A are recommended by the Hearing Officer to be imposed on the Facility as conditions to obtaining siting approval and have been agreed to by the Applicant. The City Council is free to accept or reject these conditions, in whole or in part, or to the extent reasonable, supported by the record and consistent with the Act and the Illinois Pollution Control Board, impose additional conditions.

Respectfully submitted,



---

Dennis G. Walsh, Hearing Officer

Klein, Thorpe & Jenkins, Ltd.  
15010 S. Ravinia – Suite 10  
Orland Park, IL 60462  
(708) 349-3888

**EXHIBIT A**

**Siting Conditions**

1. The final design of the Moline Transfer Station shall be stamped by a licensed professional structural engineer. The final design shall include an analysis of the loading conditions that are unique to an operating transfer station building including, but not limited to: horizontal dynamic loading on the push walls, retaining wall design for the loading bays and high volume and heavy weight truck traffic on the tipping floor.
2. The design of the hydro excavated mixing pits shall include a reinforced concrete floor with a high-density polyethylene geomembrane liner or equivalent material to provide redundant protection to shallow groundwater. The geomembrane liner shall be protected from the underlying stone. A geomembrane puncture analysis shall be performed and the final results shall be implemented in the final design of the hydro excavated mixing pits.
3. No hydro-excavation solidification material shall be stored outdoors.
4. If a fueling station is installed at the Moline Transfer Station, a spill kit containing spill response equipment shall be located at the fueling station.
5. Valves or other equivalent shutoff devices shall be installed on the stormwater discharge/outlet device for the stormwater basin prior to operation of the Moline Transfer Station.
6. On an annual basis, no later than June 1 of each year, the Moline Transfer Station operator shall submit updated contact information for the Transfer Station Manager, Emergency Response Coordinator and Alternate Response Coordinator to the following entities:
  - a. City of Moline, Attn: City Clerk
  - b. Moline Fire/Rescue Department
  - c. Moline Police Department
7. The Moline Transfer Station operator shall invite and host, at least annually, the City of Moline police, fire and other first responders to the transfer station for a safety and education program(s) for responding to fire, spills, and other operational accidents.
8. The following materials, which are considered unauthorized waste shall not be accepted at the Moline Transfer Station:
  - a. Regulated hazardous waste;
  - b. Regulated and manifested special wastes, with the exception of hydro excavation waste, which will only be accepted in the separate hydro excavation waste solidification building;
  - c. Soils;
  - d. Industrial process wastes;



- e. Sludge;
  - f. Used motor oil;
  - g. Pollution control wastes;
  - h. Regulated PCB wastes;
  - i. Potentially infectious medical wastes;
  - j. Liquid wastes (including bulk liquids), with the exception of hydro excavation waste, which will only be accepted in the separate hydro excavation waste solidification building;
  - k. Universal wastes (as defined by 35 IAC 733);
  - l. Regulated asbestos-containing materials;
  - m. Source, special or by-product nuclear materials
  - n. Regulated radioactive or low-level radioactive waste (as defined by the Atomic Energy Act, U.S.C. 201 1, et seq. or the Illinois Low-Level Radioactive Waste Management Act, 420 ILCS 20/3, et seq. or the implementing regulations of either);
  - o. Transuranic wastes;
  - p. Lead-acid (automotive) batteries;
  - q. White goods; and
  - r. Bulk loads of whole tires (incidental tires received shall be segregated and stored for pickup by an off-site recycler).
9. All unauthorized wastes, except for white goods, tires and lead-acid batteries, shall be removed from the transfer station within 24 hours of discovery. White goods, tires and lead-acid batteries shall be segregated and stored in containers dedicated to these materials within the transfer station building, and shall be removed from the transfer station when the containers reach capacity.
10. Within 60 days of submitting its IEPA operating permit application, the Moline Transfer Station operator shall establish a dedicated webpage for the facility. The webpage shall include the facility telephone number, contact email address, hours of operation and types of material accepted.
11. The Moline Transfer Station operator shall diligently patrol and remove litter during the operating day from 47<sup>th</sup> Street and corresponding right of-way, and along 78<sup>th</sup> Avenue from Rock Island-Milan Parkway and corresponding right-of-way, and extending to a point 1,500 feet east of 47<sup>th</sup> Street. In addition, the Moline Transfer Station operator shall patrol the facility periodically throughout the operating day to collect any litter and prevent it from escaping the site.
12. All loaded transfer trailers shall be fully tarped inside the transfer station building prior to exit using a Gorilla mesh side roll transfer trailer kit or equivalent, and using current (i.e., at the time of implementation) best management practices (BMPs). After the transfer trailer has been tarped and has exited the building, the tarp may be secured outside, as needed to prevent interference with loading of subsequent vehicles.

13. The tipping floor of the transfer station building shall be cleared of waste and mechanically swept at the end of each operating day.
14. The overhead doors along the western and eastern sides of the transfer station building (excluding the maintenance building) shall be kept closed, except for emergencies and to allow vehicles to enter and exit the building. The doors shall be equipped with sensors such that they will open and close automatically as collection and transfer vehicles enter and exit the building.
15. All mud and dust tracked onto the site shall be removed with a street sweeper on a daily basis, including all public roads and rights-of-way within a quarter of a mile of the facility.
16. The Moline Transfer Station shall be designed and operated with the design and operational odor control procedures as described in Section 2.4 of the Siting Application, or equivalent, and using current (i.e., at the time of implementation) best management practices (BMPs).
17. Outbound waste/recyclables shall be transported from the transfer station to a final disposal facility utilizing the following route: south on 47<sup>th</sup> Street to westbound 78<sup>th</sup> Avenue to northbound Rock Island-Milan Parkway to Airport Road. Transfer trailers leaving the facility shall be prohibited from traveling eastbound on 78<sup>th</sup> Avenue from the north leg of 47<sup>th</sup> Street. In the event of an emergency or temporary condition that requires use of an alternate entrance by transfer trailers, the Moline Transfer Station operator shall notify the City within 48 hours of said event, which notice shall include an explanation of the reason the alternate transfer trailer route is needed.
18. Signage shall be installed near the entrance to the transfer station directing citizens to the citizen convenience drop-off area and to then exit the site. Personal vehicles and small trucks or trailers delivering materials to the citizen convenience drop-off area shall be restricted from traveling or maneuvering west of the transfer station building. The citizen's convenience drop-off area shall be continuously monitored via security cameras with live feed. Internal vehicular traffic movements shall be subject to approval by the City during the final site plan review.
19. The Moline Transfer Station operator shall be responsible for its proportional share of road repair and maintenance costs for the approximately 1600 feet of 47<sup>th</sup> Street from the north boundary of the transfer station property to 78<sup>th</sup> Avenue. Proportional share shall be based upon usage of the same area of roadway by other tenants of the Quad-City Industrial Airpark.
20. Within 60 days of submitting its IEPA operating permit application, the Moline Transfer Station operator shall contact and request the Rock Island County Highway Department stripe the westbound right-turn deceleration lane on 78<sup>th</sup> Avenue at 47<sup>th</sup> Street and shall fund any such striping.

21. The Moline Transfer Station operator shall demonstrate to the City that the proposed development meets the City of Moline Stormwater Ordinance (Ordinance) and shall seek authorization from the City under the Ordinance by no later than submittal of a building permit application.
22. The Moline Transfer Station operator shall implement the Bird Control Plan contained in Appendix K of the Siting Application.
23. The Moline Transfer Station's design and operations shall meet the Federal Aviation Administration's ("FAA") definition of a fully enclosed transfer station per FAA Advisory Circular ("AC") 15/5200-33C and shall otherwise be operated in accordance all applicable FAA ACs.
24. The Moline Transfer Station shall be constructed and operated in substantial conformance with the plans and operating procedures contained in the Siting Application, and using current (i.e., at the time of implementation) best management practices (BMPs).

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**PWC-810**

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT - LAW DIVISION

PROTECT WEST CHICAGO, )

)

Petitioners, )

)

vs. ) PCB No. 23-107

)

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. )

)

The discovery deposition of  
LORI CHASSEY, taken under oath on July 31, 2023, at  
the hour of 4:00 p.m., at City Hall Building, 475  
Main Street, West Chicago, Illinois, pursuant to  
the Rules of the Supreme Court of Illinois and the  
Illinois Code of Civil Procedure, before Deborah A.  
Duffy, CSR, RPR, pursuant to notice.



Page 2

1 APPEARANCES:  
 2 MEZA LAW  
 BY: Mr. Ricardo Meza  
 3 542 S. Dearborn  
 Chicago, Illinois 60605  
 4 312-802-0336  
 rmeza@meza.law  
 5  
 appeared on behalf of the Plaintiffs;  
 6  
 7 KLEIN, THORPE & JENKINS, LTD.  
 BY: Mr. Dennis G. Walsh  
 8 15010 S. Ravinia Ave.  
 Orland Park, Illinois 60462-5353  
 9 708-349-3888  
 dgwalsh@ktjlaw.com  
 10  
 appeared on behalf of the Defendant,  
 11 West Chicago;  
 12  
 MUELLER AND ANDERSON  
 13 BY: Mr. George Mueller  
 1S123 Gardener Way  
 14 Winfield, Illinois 60190  
 (815) 431-1500  
 15 george@muelleranderson.com  
 16 Appeared on behalf of the Defendant,  
 Lakeshore Recycling;  
 17  
 18 MR. ROBERT W. WEINSTOCK  
 19 Director, Environmental Advocacy Center  
 Northwestern Pritzker School of Law  
 20 375 E. Chicago Avenue  
 Chicago, Illinois 60611  
 21 robert.weinstock@law.northwestern.edu  
 22 Appeared telephonically.  
 23  
 24 \* \* \* \* \*

Page 4

1 (witness sworn.)  
 2 LORI CHASSEE  
 3 called as a witness herein, having been first  
 4 duly sworn, was examined and testified as follows:  
 5 EXAMINATION  
 6 BY MR. MEZA:  
 7 Q. Could you state your name for the  
 8 record?  
 9 A. Lori Chassee.  
 10 Q. Can you spell your last name for the  
 11 court reporter?  
 12 A. C-H-A-S-S-E-E.  
 13 Q. Miss Chassee, have you ever been deposed  
 14 before?  
 15 A. Yes, I have.  
 16 Q. Was that in relation to your previous  
 17 employer?  
 18 A. Yes.  
 19 Q. You've testified at trial before, right?  
 20 A. Yes.  
 21 Q. So you know that it helps to wait until  
 22 the question is complete to provide an answer, and  
 23 to provide an oral answer?  
 24 A. Yes.

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1 INDEX  
 2 WITNESS  
 3 LORI CHASSEE  
 4 EXAMINATION PAGE  
 5 BY MR. RICARDO MEZA 4  
 6  
 7 EXHIBITS MARKED FOR IDENTIFICATION  
 8 EXHIBIT PAGE  
 9 EXHIBIT 1 57  
 EXHIBIT 2 62  
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1 Q. Good.  
 2 If you have any questions about the  
 3 question I ask you, you don't understand it, just  
 4 say you don't understand it.  
 5 A. Yes, sir, I will.  
 6 Q. Okay. Now, you've lived in West Chicago  
 7 for about 34 years; is that correct?  
 8 A. 37.  
 9 Q. And are you an elected official?  
 10 A. Yes, I am.  
 11 Q. What is your position?  
 12 A. Alderman for the First Ward.  
 13 Q. And we are actually sitting in the First  
 14 Ward; is that right?  
 15 A. Correct.  
 16 Q. Do they refer to them at councilman too  
 17 or not?  
 18 A. Alderman.  
 19 Q. What are your duties and  
 20 responsibilities as an Alderman?  
 21 A. To be a liaison with the community, to  
 22 the City and its services and to provide policy  
 23 direction to city staff.  
 24 Q. And before I forget, I think your



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1 A. 28th meeting? No, I do not. Let me  
2 look. I assume it is here somewhere. 6:00 PM.  
3 Q. Okay. And these are the official  
4 minutes that you and the Alderman approve after  
5 having the February 28th, 2023 meeting; is that  
6 correct?  
7 A. Yes.  
8 Q. You weren't there in person; is that  
9 correct?  
10 A. That is correct.  
11 Q. So the meeting started at 6 o'clock.  
12 Can you tell me what time the meeting adjourned?  
13 It is on the next page.  
14 A. 6:05 p.m.  
15 Q. So the open meeting lasted five minutes;  
16 is that correct?  
17 A. That is correct.  
18 Q. Now you were, I think I just asked you  
19 this. You were not there in person; is that  
20 correct?  
21 A. Correct.  
22 Q. At that meeting; do you recall that  
23 Alderman James, B-E-I-F-U-S-S, stated that he did  
24 not believe that Criteria 1 and 2 had been met?

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1 A. Yes.  
2 Q. Did he provide the reasons for that?  
3 A. Likely.  
4 Q. And do you recall what those reasons  
5 were?  
6 A. No.  
7 Q. Are those reasons set forth in Ordinance  
8 23-0-0006?  
9 A. I'm sorry. What are you asking me? If  
10 Mr. Buifuss comments are in the ordinance?  
11 Q. Yes. I asked you if Mr. Buifuss had  
12 stated that he believed that Criteria 1, 2 or 8 had  
13 not been met and you said yes; is that correct?  
14 A. That was his position, yes.  
15 Q. And then I asked you, did he provide  
16 reasons for that?  
17 A. Likely.  
18 Q. And are those reasons set forth in the  
19 Ordinance 23-0-006?  
20 A. I don't believe so, no. I would have to  
21 read the entire ordinance.  
22 Q. Well, you can go ahead and reason read  
23 it if you want.  
24 A. Okay. Yes.

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1 Q. Yes, what?  
2 A. Yes, the ordinance indicates initial had  
3 not demonstrated, but with the compliance of the  
4 special conditions provided that it would be  
5 Criteria 2.  
6 That is what I'm reading here. Are  
7 Alderman Buifuss comments included in here? No.  
8 Q. Yes. That was the question. Alderman  
9 Buifuss' comments as to why he did not think the  
10 applicant met Criteria 1, 2 or 8 included in the  
11 ordinance?  
12 A. No.  
13 Q. Now, Alderman Matthew Garland also  
14 stated he didn't believe Criteria 1 and 3 had been  
15 met; is that correct?  
16 A. Yes.  
17 Q. This is on February 28th, 2023, the  
18 5-minute meeting?  
19 A. Yes.  
20 Q. Do you recall whether or not he gave any  
21 reasons why he did not think it was met?  
22 A. I don't recall.  
23 Q. And, none of the -- if either Alderman  
24 Buifuss or Garland provided reasons, those are not

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1 included in the minutes, are they?  
2 MR. WALSH: Are you speaking of the minutes as  
3 part of that exhibit?  
4 MR. MEZA: Yes.  
5 THE WITNESS: No. The reasons are not listed  
6 in the Minutes.  
7 BY MR. MEZA:  
8 Q. Now did you state that you believe that  
9 the applicant met all the citing criteria?  
10 A. Yes, I did.  
11 Q. You also made additional statements;  
12 isn't that true?  
13 A. Yes.  
14 Q. What else did you say when you were on  
15 the phone?  
16 A. I couldn't recall to a direct quote, but  
17 what I indicated was that, per direction of law, we  
18 needed to vote in favor of this based on criteria  
19 and evidence presented not on individual opinions.  
20 Q. And did you say anything about placing  
21 the City or city officials at risk of being sued?  
22 A. I said it would hold us to a liability  
23 if we did not follow the criteria requirements as  
24 provided to us.

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1 Q. Okay. Now, are those -- is that  
2 reasoning that you discussed on February 28th, is  
3 that set forth in Ordinance 23-0-0006?  
4 A. No, sir.  
5 Q. Okay. Do you know why it wasn't  
6 included?  
7 A. Alderman comments are generally not  
8 included in our ordinances.  
9 Q. So the ordinance, in fact, isn't a  
10 written decision setting forth your determinative  
11 reason, is it?  
12 MR. WALSH: Objection. You're asking for a  
13 legal opinion, which she is not a lawyer.  
14 BY MR. MEZA:  
15 Q. Does Ordinance 23-0-0006 have any of the  
16 determinative reasoning that you considered in  
17 voting in favor of this ordinance?  
18 MR. WALSH: Objection to the extent you are  
19 asking for a new legal analysis --  
20 MR. MEZA: No. I'm asking you for a fact.  
21 MR. WALSH: You're asking her about the Open  
22 Meetings Act, and whether or not they complied with  
23 it based on your question. She is not a lawyer.  
24 MR. MEZA: She can answer the question. If

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1 she doesn't know, then that is fine.  
2 THE WITNESS: Can we go back to what the  
3 question to me is, please?  
4 BY MR. MEZA:  
5 Q. Sure. You made some statements on  
6 February 28th when you were on the phone. Do you  
7 remember that?  
8 A. Yes.  
9 Q. You made a number of statements  
10 regarding what the lawyers had said and risks; is  
11 that correct?  
12 MR. WALSH: No. Objection that is not what  
13 she said.  
14 MR. MEZA: Well, it is in the record, but  
15 okay.  
16 BY MR. MEZA:  
17 Q. What did you say on February 28th when  
18 you were on the phone?  
19 A. I don't recall my exact words.  
20 Q. What do you recall to the best of your  
21 recollection?  
22 A. That I said that we were charged with  
23 following the criteria provided by law as directed  
24 by our attorneys who had explained the criteria,

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1 and that it was -- we needed to follow the evidence  
2 and the criteria or we could be held to a liability  
3 if we base things on our own opinions.  
4 Q. Did you know that the City Council -- it  
5 was the role of the City Council to decide whether  
6 or not the criteria were met?  
7 A. I know that we had to review the  
8 evidence and make a determination, yes.  
9 Q. Right. But you knew that it was the  
10 role of the City Council to make that  
11 determination, not the role of the lawyers; is that  
12 correct?  
13 A. Based on the evidence that was presented  
14 at the hearings, yes.  
15 Q. Right. And you were told by the hearing  
16 officer, that in his opinion, the evidence was met;  
17 is that correct?  
18 A. Yes.  
19 Q. But you know that that was supposed to  
20 be your opinion, whether it was met; is that  
21 correct?  
22 MR. WALSH: Object to the form of the  
23 question, counsel.  
24 The hearing officer gave his

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1 written recommendation to the City Council and the  
2 City Council reviewed it and made a decision.  
3 BY MR. MEZA:  
4 Q. Is that what happened?  
5 A. Yes. It was one of the many documents  
6 we reviewed. No one document was the determining  
7 factor.  
8 Q. How many votes did you take in relation  
9 to Ordinance 23-0-0006?  
10 A. On the 28th?  
11 Q. Or the 27th.  
12 A. There were no votes in executive  
13 session. There was one vote on the 28th.  
14 Q. So you only took one vote; is that  
15 correct?  
16 A. That is correct.  
17 Q. Do you know when this ordinance was  
18 drafted, the date?  
19 A. No, I do not.  
20 Q. Do you know who drafted the ordinance?  
21 A. No, I do not.  
22 Q. When was the first time you saw the  
23 ordinance?  
24 A. When we received the packet for this

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1 meeting.  
2 Q. And that -- when you say this meeting,  
3 are you talking about February 27th or 28th  
4 meeting?  
5 A. 28th meeting.  
6 Q. And what time did you receive the packet  
7 for the 28th meeting?  
8 A. There were -- I don't recollect when we  
9 received it. There were ordinances prepared in  
10 both positions.  
11 Q. So you received two sets of ordinances?  
12 A. Now as I sit here, I don't recall if we  
13 received them or if we were told and then based on  
14 the vote they would send out the appropriate  
15 ordinance.  
16 I don't remember when we got it.  
17 I'd have to look at my computer.  
18 Q. But do you --  
19 A. I knew there were ordinances prepared in  
20 either alternative.  
21 Q. But you had not seen them before you  
22 voted?  
23 A. No.  
24 Q. So when you voted on February 28th, do

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1 you know what you were voting on?  
2 A. Yes.  
3 Q. What were you voting on?  
4 A. On three -- okay. That is what they  
5 did. It was yes or no on the approval. So if the  
6 vote had gone against, then the ordinance wasn't  
7 necessary, obviously.  
8 Q. Okay. So what does that mean?  
9 A. That means we went into the meeting. A  
10 motion was made. I don't recall by who. I'm sure  
11 I can find it.  
12 The motion was made on this  
13 ordinance and then the vote was yes or no.  
14 Q. When did you first see this ordinance?  
15 A. I don't remember.  
16 Q. Did you see it before you voted?  
17 A. I don't remember.  
18 Q. Did you receive an e-mail with a packet  
19 prior to 6:00 p.m. on February 28th, 2023?  
20 A. I don't remember.  
21 Again, I was not physically present  
22 nor was I home, so I don't know.  
23 Q. I understand. But you did have e-mail;  
24 right?

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1 A. I don't use my personal e-mail for City  
2 e-mails so, no. I did not have access to e-mail  
3 that day as I was not in the City of West Chicago.  
4 Q. Right. But my question is, if you would  
5 have received a packet prior to the meeting, you  
6 would have received it in your work e-mail; is that  
7 correct?  
8 A. Yes.  
9 Q. Do you remember -- looking at M16, which  
10 is the ordinance, do you remember reading that  
11 before you took a vote?  
12 A. I don't remember.  
13 Q. Do you understand what information is  
14 included in Ordinance 23-0-0006?  
15 MR. WALSH: I'm just going to object to the  
16 form of the question on what information is.  
17 There is a lot of information and  
18 it speaks for itself. So if you want to ask her a  
19 specific question about some section of it, maybe  
20 that makes sense.  
21 BY MR. MEZA:  
22 Q. Have you ever read this ordinance?  
23 A. Yes.  
24 Q. When did you first read the ordinance?

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1 A. I don't remember.  
2 Q. So you don't remember if you read it  
3 before you voted; is that correct?  
4 A. I don't remember.  
5 Q. Now, are you familiar with any of the  
6 ordinances in the City of West Chicago, code of  
7 ordinances?  
8 A. Yes.  
9 Q. Okay. Did you know that Article 7 of  
10 the City of West Chicago Code of Ordinances  
11 establishes a procedure for pollution control  
12 facility site approval in the City of West Chicago?  
13 A. I don't recall.  
14 Q. Can you look at Page C-006040? The  
15 number would be on the top right, 6040.  
16 A. Yes.  
17 Q. Top right where it says "Whereas the  
18 City of West Chicago is the municipality in which  
19 proposed facility is located, and if approved, in  
20 Article 7 of the City of West Chicago's Code of  
21 Ordinances City Council, establishes a procedure  
22 for pollution control facility site approval?  
23 A. Yes.  
24 Q. Did you know that when you voted to

PWC-812



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# PWC-M1



RESOLUTION NO. 03-R-0034

A RESOLUTION OPPOSING THE SITING OF A TRANSFER STATION ALONG POWIS ROAD - WEST DUPAGE RECYCLING AND TRANSFER

WHEREAS, the County of DuPage (the "COUNTY") has previously adopted a Solid Waste Management Plan (the "PLAN") that called for the siting of five (5) waste transfer stations to be located throughout the COUNTY; and,

WHEREAS, the DuKane Transfer Station was the first pollution control facility of its kind sited in accordance with the PLAN, over overwhelming community opposition; and,

WHEREAS, despite the annual tipping fees received from the facility, the residents and businesses in the CITY have had to live with the offensive odors emanating from the DuKane Transfer Station throughout the year and an average of 350 more trucks per day driving through the CITY using Powis Road; and,

WHEREAS, the CITY, having become the siting authority upon annexation of the DuKane Transfer Station, reluctantly approved an amendment to the siting application on October 15, 2001, to increase the annual daily average to 2,500 tons in an effort to meet the needs of the facility, address the wishes of the COUNTY and Chairman Schillerstrom and only after assurances from the owners that the problems with odors and uncontained garbage would be addressed; and,

WHEREAS, in October 2002, the CITY learned that an unknown property owner was researching the feasibility of operating a new waste transfer station within the City's planning area; and,

WHEREAS, in December 2002, the City administration was approached by Ken Hoving (the "OWNER") of West DuPage Recycling and Transfer (the "PROPOSED TRANSFER STATION") about a plan to apply for siting approval from the COUNTY for a transfer station which would run in conjunction with his construction and demolition debris recycling facility; and,

WHEREAS, on March 10, 2003, the OWNER presented computer-generated drawings and a site plan which are attached hereto as Exhibit "A" and clearly show that the visual impact on the adjoining neighborhood will be severe; and,

WHEREAS, the OWNER indicated that his siting application contemplates an annual daily average of 1,000 tons of waste, which is a net average of 800 tons per day as his present operation processes, on average, 200 tons of waste per day; and,

WHEREAS, the OWNER further indicated that his truck volume would increase from 50 to 200 trucks per day, which amounts to a daily increase of 300 vehicle trips, an increase of three hundred (300) percent; and,





WHEREAS, on March 12, 2003, the City of West Chicago received a certain Notice of Intent to File a Request for New Pollution Control Facility Siting Approval from the COUNTY from the OWNER of the PROPOSED TRANSFER STATION; and,

WHEREAS, the COUNTY is authorized by State of Illinois law, pursuant to Section 39.2 of the Illinois Environmental Protection Act (the "ACT") to, among other things, receive, hold hearings, and render a decision on an application for the site location of a pollution control facility proposed to be located in unincorporated DuPage County; and,

WHEREAS, the ACT specifically sets forth nine (9) criteria for the granting of such local siting approval with respect to each new pollution control facility, including waste transfer stations; four of those criteria are as follows:

(1) The facility is necessary to accommodate the waste needs of the area it is intended to serve.

(3) The facility is located so as to minimize incompatibility of the character of the surrounding area and to minimize the effect on the value of the surrounding property.

(6) The traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic.

(8) The facility is to be located in the County where the County Board has adopted a Solid Waste Management Plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with the plan; and,

WHEREAS, the PROPOSED TRANSFER STATION is located at 3N551Powis Road which is adjacent to, but not within, the CITY'S corporate boundaries; and,

WHEREAS, the PROPOSED TRANSFER STATION is located less than 1,500 feet from the existing DuKane Transfer Station; and,

WHEREAS, the DuKane Transfer Station is the only waste transfer station in the entire 334 square miles of territory of the COUNTY; and,

WHEREAS, the DuKane Transfer Station is currently only operating at seventy-two (72) percent of capacity, processing only 1,900 of the permitted 2,500 average tons per day; and,



WHEREAS, the PROPOSED TRANSFER STATION is seeking to increase an average of 800 tons of day, of which there is already an available capacity of 600 tons per day at the DuKane Transfer Station, thereby clear evidence that there is not a need for a second transfer station in this area; and,

WHEREAS, another area solid waste collection company, Onyx, has filed a host agreement with the City of Batavia and is beginning the siting process for a transfer station on Hunter Road, east of Kirk Road which is only 6.6 miles from the PROPOSED TRANSFER STATION; and,

WHEREAS, Powis Road north of Illinois Route 64 is not constructed in a manner to accommodate the type and volume of truck traffic being proposed by the OWNER; and,

WHEREAS, Cornerstone Lakes, one of West Chicago's newest subdivisions containing 730 plus homes housing over 2,500 residents, is located less than 3,800 feet from the PROPOSED TRANSFER STATION and the Elm Road Neighborhood is located less than 3,200 feet from the PROPOSED TRANSFER STATION, and their children and families will be most impacted by the siting of such a facility; and,

WHEREAS, the vacant land immediately to the west is zoned either as Airport or ORI and depicted in the CITY's Comprehensive General Plan as business park, both of which are incompatible land uses with the PROPOSED TRANSFER STATION; and

WHEREAS, Community School District #303 is building an elementary school along Smith Road which is scheduled to open in August 2003 that is located less than 2,800 feet from the PROPOSED TRANSFER STATION which is being built for 600 children; and,

WHEREAS, the West Chicago Park District has invested over \$100,000 in the Cornerstone Lakes Park that is located less than 3,200 feet from the PROPOSED TRANSFER STATION; children and families living throughout the CITY use Powis Road to participate in and attend sporting events at this park and will be impacted by the truck traffic and environmental byproducts of such a facility; and

WHEREAS, granting of siting approval violates the terms of the PLAN by placing two transfer stations within the same community's planning area ; and,

WHEREAS, the granting of siting approval for the PROPOSED TRANSFER STATION by the COUNTY will have many serious and adverse consequences on the residents of the City of West Chicago for the reasons set forth above, and hence fails to meet the required criteria for siting approval as established by the ACT and as adopted by the COUNTY; and,

WHEREAS, the PROPOSED TRANSFER STATION will result in additional permanent, offensive odor permeating the area surrounding the PROPOSED TRANSFER STATION, including an elementary school, as well as all areas downwind of the proposed site, beyond those now associated with the DuKane Transfer Station; and,

WHEREAS, the PROPOSED TRANSFER STATION will increase the likelihood that insects, rodents, and other vermin will be attracted to the site and adjoining properties, beyond the risks now associated with the DuKane Transfer Station; and,

WHEREAS, the substantial and continuous traffic, offensive odors and other negative effects of locating the PROPOSED TRANSFER STATION so close to a residential area, elementary school and viable land zoned for office would seriously affect the health, safety and welfare of the residents, students and potential business people near the site; and,

WHEREAS, the quality of life of all of the residents of West Chicago and non-resident employees who work in this great CITY would be adversely affected by the additional PROPOSED TRANSFER STATION.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of West Chicago, DuPage County, Illinois, as follows:

Section 1. That the recitals set forth above are incorporated herein in their entirety.

Section 2. That all of the criteria necessary for the granting of siting approval for the PROPOSED TRANSFER STATION have clearly not been satisfactorily met as follows:

- (1) The facility is not necessary to accommodate the waste needs of the area it is intended to serve.
- (2) The facility's location is incompatible with the character of the surrounding area and to minimize the effect on the value of the surrounding property.
- (3) The traffic patterns to or from the facility will severely impact on existing traffic.
- (4) The facility is not consistent with the PLAN adopted by the COUNTY.

Section 3. That the Mayor and City Council stand in strong opposition to the siting of the PROPOSED TRANSFER STATION, and will join the residents of Cornerstone Lakes, Willow Creek and all other citizens of West Chicago and surrounding communities in their fight to have the COUNTY deny siting approval, and will lend what support it can to assist in lobbying efforts.

Section 4. That the Mayor and City Council strongly urge the COUNTY Board to deny the siting request for the PROPOSED TRANSFER STATION.

Section 5. That the Mayor and City Council demand that the COUNTY adhere to the PLAN and site such facilities throughout the COUNTY.

Section 6. That the Mayor and City Council authorize the City Administrator to spend up to twenty-five thousand dollars (\$25,000.00) from the Public Benefit Fund to pursue all means necessary to oppose the PROPOSED TRANSFER STATION.

Section 7. That this Resolution shall be in full force and effect upon its passage and approval in accordance with law.

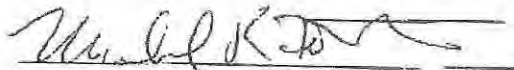
ADOPTED this 7<sup>th</sup> day of April, 2003.


AYES: 10

NAYS: 0

ABSTAIN: 0

ABSENT: 0

  
\_\_\_\_\_  
Mayor

ATTEST:   
\_\_\_\_\_  
City Clerk



**PWC-M2**



BEFORE THE DUPAGE COUNTY BOARD

IN RE: )
APPLICATION OF WEST DUPAGE )
RECYCLING & TRANSFER, INC. )
FOR SITING APPROVAL FOR A )
WASTE TRANSFER STATION )

CITY OF WEST CHICAGO'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOW COMES THE CITY OF WEST CHICAGO (hereinafter the "City"), by and through its attorneys, Bond, Dickson & Associates, P.C., and presents the following Proposed Findings of Fact and Conclusions of Law relative to the West DuPage Recycling & Transfer, Inc.'s (hereinafter "Applicant") Request for Siting Approval.

PROPOSED FINDINGS OF FACT

- 1. There is only one waste transfer station currently operating in DuPage County. Exhibit 55.
2. The one waste transfer station is the DuKane Waste Transfer Station located in the City of West Chicago, Illinois.
3. The City of West Chicago is a community of 25,000 residents.
4. The DuKane Waste Transfer Facility has a permit from the Illinois Environmental Protection Agency to handle a maximum of 3,000 tons of waste per day. See Correspondence from the Illinois Environmental Protection Agency, dated September 29, 2003.
5. The DuKane Waste Transfer Facility does not currently operate at full capacity. PHT, p. 1335, Exhibit 55.
6. On April 4, 2003, the Applicant filed its Application for Local Siting Approval with the County Clerk of DuPage County. Exhibit 1.



7. The Application was filed in conformance with the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.*(hereinafter the "Act") and with Ordinances adopted by DuPage County which set forth the filing procedure for siting a new pollution control facility in unincorporated DuPage County. WDR&T00006.

8. The Applicant seeks siting approval for a waste transfer facility in unincorporated DuPage County, to be located on Powis Road, just north of North Avenue. WDR&T0001.

9. The proposed facility is planned to serve an area of 17 Townships, covering basically the eastern half of Kane County, the western half of DuPage County and a few townships located in Cook County. WDR&T00054, 000057.

10. The proposed facility is within one-half mile of Norton Creek Elementary School. PHT, p. 2647-48.

11. The proposed facility is within one-half mile of the existing DuKane Waste Transfer Facility located in the City of West Chicago, and operated by Groot Industries.

12. The service area of the proposed facility is identical to that of the existing DuKane Waste Transfer Facility.

13. The Applicant seeks to process up to 1000 tons of waste per day. WDR&T00007, 00009.

14. The Applicant currently operates from this site a construction and demolition debris recycling facility. WDR&T00006.

15. The Applicant intends to continue to use the site for construction and demolition debris recycling. WDR&T0006.

16. Section 39.2(c) of the Act mandates that an applicant include in its request

(i) the substance of the applicant's proposal and (ii) all documents, if any, submitted as of that date to the Agency pertaining to the proposed facility, except



trade secrets as determined under Section 7.1 of this Act. All such documents or other materials on file with the county board. . . shall be made available for public inspection at the office of the county board . . and may be copied upon payment of the actual cost of reproduction. . . .

17. The DuPage County Board adopted Ordinance No. SW-ORD-001-86, which was subsequently amended by Ordinance Nos. OSW-001-95 and OSW-001-02, which set procedures to be followed concerning the siting of a new pollution control facility in unincorporated DuPage County.

18. Ordinance OSW-001-02, requires an applicant for siting approval "provide full and complete answers to all questions on the application form (Figure A) in the Application." OSW-001-02.

19. Section 39.2(e) of the Act allows for just one amendment to an application for local siting approval.

20. Pursuant to the Act, Section 39.2, an application for local siting approval "shall be granted only if the proposed facility meets the following criteria:

- (i) the facility is necessary to accommodate the waste needs of the area it is intended to serve;
- (ii) the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;
- (iii) the facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of surrounding property;
- (iv)(A) for a facility other than a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100 year flood plain or the site is flood-proofed; (B) for a facility that is a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100-year floodplain, or if the facility is a facility described in subsection (b)(3) of Section 22. 19a, the site is flood-proofed;



(v) the plan of operation for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operation accidents;

(vi) the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows;

(vii) if the facility will be treating, storing or disposing of hazardous waste, an emergency response plan exists for the facility which includes notification, containment and evacuation procedures to be used in case of an accidental release;

(viii) if the facility is to be located in a county where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act of the Solid Waste Planning and Recycling Act, the facility is consistent with that plan; and

(ix) if the facility will be located within a regulated recharge area, any applicable requirements specified by the Board for such areas have been met.

21. The County has entered into a Host Agreement with the Applicant. Exhibit E.

22. Section 39.2(d) of the Act requires that the County conduct at least one public hearing as to the Application.

23. For purposes of the conduct of the public hearing, DuPage County appointed attorney Phillip Luetkehans as its hearing officer.

24. On July 2, 2003, the Applicant filed an amendment to its original Application, submitting for the first time, information relative to the fire suppression plan for the proposed facility. Group Exhibit 18.

24. On July 24, 2003, the Applicant submitted an Amendment to its original Application, pursuant to the provisions of Section 39.2(e) of the Act.

25. The amendment principally was to provide a new survey, amending that which was contained in Appendix C of the Application. The new survey also necessitated amending various related drawings contained in the Application.

26. In accordance with the Act, and County Ordinance, the Applicant at that time, paid the required \$50,000.00 fee for amendment of the Application. Exhibit 46A.
27. The July 24, 2003 amendment was the second amendment to the Application, and is thus, improper and not allowed.
28. Public comment at the siting hearing is governed by DuPage County Ordinance No. OSW-001-02. Section 25-55(m) of the Ordinance provides:
  - (m) Any Participant who wishes to present unsworn oral comment may present it to the County Board, following the close of the later of the Participant's case, or rebuttal evidence if any is allowed by the Hearing Officer, as provided in Sections 25-55(k) and (l).
29. Section 25-49 of the Ordinance authorizes the Hearing Officer to establish reasonable limits on the duration of public hearing consistent with the Act and this Ordinance, including but not limited to the reasonable limitation of sworn testimony, unsworn oral comment, direct and cross-examination of any witnesses; the limitation of repetitive or cumulative testimony and questioning; and the exclusion of irrelevant, immaterial, incompetent, or unduly repetitious testimony or other evidence.
30. Section 25-18 of County Ordinance OSW-001-02 authorizes staff participation in the review and public hearing process. Such participation is eligible for reimbursement from the Applicant. *Id.* The staff is also authorized to retain consultants to analyze the Application and participate in the hearing process. *Id.*
31. The DuKane Waste Transfer Facility is not operating at its permitted capacity. PHT, p. 2530.
32. On July 2, 2003, West Chicago enacted Resolution No. 03R0064, authorizing the DuKane Facility to process up to 3,000 tons per day. Exhibit 58.
33. DuPage County Ordinance OSW-001-02 requires the Applicant to identify the waste generation rate in its application.

34. The method for determining "need" is to take the amount of waste generated, and subtract from this figure the amount of recycling or other waste reduction. Exhibit 55, PHT, p. 1685.

35. In 1997, Applicant consultant Phil Kowalski determined that waste in need of disposal in the current service area was 3,309 tons per day. Exhibit 68.

36. The Applicant's consultant, Phil Kowalski, verified that the current disposal rate for Cook, DuPage and Kane Counties were 5.7, 5.5 and 4.7 pcd, respectively, in February 2003. Exhibit 69.

37. The waste in need of disposal is currently being met by the two transfer stations located within the service area, *i.e.*, Speedway and DuKane. PHT, pp.1728-29, Exhibit A.

38. Speedway has a disposal capacity of 500 tons per day capacity. PHT, p. 1063.

39. The northern and eastern areas of the service area are within the stated service areas of at least three other transfer stations located east of the Applicant's service area: Rolling Meadows Transfer Station, Groot/Chicago Transfer Station in Elk Grove, and the Onyx Melrose Park Transfer Station. Exhibit 72, PHT, pp. 1730-34.

40. Approximately 90,000 tons of waste are hauled from Hoffman Estates to the SWANCC Wheeling Township transfer station, nearly 30 miles from the centroid stated by the Applicant. Exhibit 72, PHT, pp. 1730-34.

41. Up to 782 tons per day exit the Applicant's proposed service area to the Cook County transfer stations. PHT, p. 1172-73.

42. The application to operate the DuKane Transfer Facility was approved by the IEPA, with an operational limit of "not to exceed 3,000 tons per day." Exhibit A.

43. The annual weekday average throughput of 2500 tons at the DuKane Waste Transfer Facility would not have impacted the size of the facility and therefore is not a condition of the permit." Exhibit A.

44. The Act allows the county board or governing body of the municipality to impose additional conditions to accomplish the purpose of (the Act). Exhibit A.

45. The proposed facility is located on Powis Road just north of North Avenue in unincorporated DuPage County. WDR&T00085.

46. The facility consists of 3.77 to 3.78 acres. *Id.*

47. A portion of the site is currently operated as a construction and demolition debris recycling transfer station. *Id.*

48. The operating plan calls for the facility to continue to accept 200 tons per day of demolition and construction debris, and supplement it with 800 tons per day of municipal solid waste. PHT, p. 718.

49. The proportions of the split accepted will be dictated by the market. PHT, p. 719.

50. The Applicant proposes construction a 21,000 square foot industrial building on the site. WDR&T00090.

51. A 6,000 square foot vehicle maintenance and administration building will be preserved for use on site. *Id.*

52. The proposed facility is planned (except in case of specific emergency) to operate twenty-four hours per day from 12:01 a.m. on Monday through 2 p.m. on Saturday. WDR&T00100.

53. Vehicle access to the proposed transfer station will be from Powis Road. WDR&T00090.

54. It is designed to allow a total of 16 vehicles to be on site at any one time. PHT, p. 622. The total time any vehicle will stay on site is estimated at 17 minutes. WDR&T00104.
55. The proposed facility would not have a positive impact on surrounding business park development. PHT, p. 2056.
56. Applicant consultant J. Christopher Lannert did not take into account traffic issues related to the site, or odors which could emanate from the site, PHT, p. 227.
57. Mr. Lannert did not take into account the hours of operation of the site. *Id.* at p. 236.
58. Zoning of surrounding property is an important factor in determining whether the proposed facility is compatible. PHT, p. 187.
59. Within one-half mile of the site are residential uses, an elementary school and park district property. PHT, p. 96.
60. Approximately 20 percent of the existing land use within one-half mile of the site is residential in use. PHT, p. 99.
61. Residential uses are not compatible with siting a transfer station. PHT, p. 179.
62. Park uses are not compatible with siting a transfer station. *Id.* at p. 180.
63. Mr. Lannert did not know, nor did he take into account the fact that airport zoning contains three zones. PHT, pp. 125, 183.
64. Mr. Lannert did not know the specific uses which could be located within a commercially-zoned property in the City of West Chicago. *Id.* at 126-127.
65. Applicant consultant Gary DeClark testified that such a facility would have no impact on property values. *Id.* at p. 385-86.
66. Mr. DeClark relied on data from no later than March 12, 2002. *Id.* at p. 311.

67. Mr. DeClark's evaluation consisted of looking at four transfer station sites (while there are 81 in the State of Illinois), and comparing the rate of appreciation with the surrounding properties, with those not surrounding the site. *Id.* at pp. 311, 314, 386.
68. Mr. DeClark's report did not contain pre-facility siting and post-facility siting sales. *Id.* at pp. 430, 431, 448.
69. Backup data to Mr. DeClark's study and conclusions were available for only two comparable sites. *Id.* at p. 427.
70. The lack of necessary back-up data prevents anyone from actually analyzing the sales. *Id.* at pp. 427, 428.
71. Mr. DeClark did not evaluate any market data with respect to the value of industrial properties to the south of the site, nor did he assess the trends of development north and south of North Avenue. *Id.* at p. 321.
72. Mr. DeClark did not take into consideration the planned development of the airport area north of North Avenue. *Id.*
73. Mr. DeClark did not consider whether traffic generated from the site would impact on value. *Id.* at p. 325.
74. Mr. DeClark did not consider the impact of noise from the site, nor did he compare hours of operation of the sites. *Id.* at pp. 319, 326, 434.
75. Mr. MaRous testified that none of Mr. DeClark's comparables were actually comparable. *Id.* at p. 2062-65, 68.
76. Good land planning must include considerations of trend of development, traffic, and buffers. PHT, pp. 2196, 2200.

77. To determine compatibility one must consider hours of operation of the facility. *Id.* at p. 2201.
78. The 24-hour per day operation of the proposed facility, is inconsistent with surrounding land uses. *Id.*
79. Perception also plays a key role in determining compatibility. *Id.* at p. 2203.
80. The Applicant never discussed, or sought comment on its fire suppression plan from the West Chicago Fire Protection District. PHT, pp. 1463, 1465, 1428, 1473.
81. Because the proposed facility lacks a connection to a public water supply, water service is expected to be provided by improving an on-site water system, which relies on a groundwater well. WDR&T00093.
82. The building's fire control system will be by overhead sprinkler system augmented with localized fire extinguishers. WDR&T00097.
83. The proposed facility does not meet the Fire Code. PHT, pp. 1455, 1457.
84. The proposed facility is not connected to any public water supply. PHT, p. 1425.
85. The Applicant does not state the size of the fire pump and does not give its GMP, PHT, p. 1426
86. The Applicant does not provide any real information regarding specifications for the proposed reservoir. *Id.* at p. 1427.
87. The proposed reservoir would not be adequate to satisfy the water requirements of 3,000 to 5,000 gallons per minutes, which is required by Code. PHT, pp. 1421-22, 1445.
88. The water flow requirements as provided by the Applicant do not meet the Ordinance requirements of the District. PHT, p. 1421.



89. The facility is expected to generate approximately 398 total truck trips per day. PHT, p. 897.
90. The facility will generate additional traffic caused by employees working at the facility. *Id.*, at p. 898.
91. The current facility already generates 80 to 100 trips per day. *Id.* at p. 899.
92. The additional traffic generated by the proposed facility will reduce the functional life of Powis Road, *Id.* at p. 936.
93. The proposed facility will add traffic to intersections which already are rated as in unacceptable conditions. PHT, p. 987.
94. The Applicant failed to provide any stacking analysis relative to internal truck movement. *Id.* at p. 916.
95. The Applicant's traffic plan lacks documentation as to queuing and stacking on the site, other than a very short one or two sentence opinion that it would work. *Id.*
96. The Applicant failed to present any information relative to the suitability of using Powis Road north of North Avenue. *Id.*
98. There was no contact with the City of West Chicago to determine whether access permits would be granted, or if improvement permits would be available. *Id.*
99. The increase of 400 trucks in the area will have a tendency to have a detrimental impact with respect to wear and tear on the road system, and that there are deficiencies in the traffic study analysis as to whether the segment of Powis Road in the area is capable of handling the truck traffic the proposed facility will generate. *Id.* at p. 1965-66.
100. The County engaged its traffic engineer to perform field reconnaissance to measure sight distances. *See Exhibit 81, PHT, p. 2414.*

101. The County's consultant confirmed that the sight distance looking north from the facility is a problem. *Id.*, and at 2422.

102. The sight distance concern can be met by moving the exit, and working with the neighboring land owner. *Id.* at p. 2418.

103. In 1996, the DuPage County Board adopted a Solid Waste Plan, designed and implemented to address the solid waste needs of the County. Exhibit 26.

104. The Solid Waste Plan was subsequently updated in 2001, and thereafter adopted in final form by the DuPage County Board. Exhibit 27.

105. Both the 1996 Solid Waste Plan and the 2001 Solid Waste Plan state that the "location of transfer stations at selected sites throughout the County will serve the management of solid waste generated within the County and may further assist in keeping down costs associated with long distance hauling of waste." See Exhibits 26 and 27.

106. Building a second waste transfer station within one-half mile of an existing transfer station is not consistent with the Solid Waste Plans' dictate that such sites be located "throughout" the County. PHT, p. 1643.

107. The Solid Waste Plan requires that a facility be located on from 5 to 25 acres. Exhibit 26.

108. The Hispanic population of West Chicago is 48.6 percent of the total, while it is only 9.96 percent of the service area. PHT. September 26, 2003 correspondence from Mr. Gerald P. Callaghan, contained in the Post-Hearing Public Comment.

#### CONCLUSIONS OF LAW

1. Participants in siting hearings are entitled to procedures which comport with fundamental fairness. *Fairview Area Citizens Task Force v. Illinois Pollution Control Bd.*, 198

Ill. App. 3d 541, 555 N.E.2d 1178 (3d Dist.), *app. denied*, 133 Ill. 2d 554, 561 N.E.2d 689 (1990).

2. A fair administrative hearing “must include the opportunity to be heard, the opportunity to cross-examine witnesses, and impartial rulings on the evidence.” *Daly v. Pollution Control Board*, 264 Ill. App. 2d 968, 637 N.E.2d 1153 (1994).

3. Only one amendment to an application for siting approval may be made. 415 ILCS 5/39.2(e), *Turlek et al v. Village of Summit and West Suburban Recycling and Energy Center*, 1994 WL 185708, PCB 94-19 (1994); *Leroy Brown & Sons, Inc. v. County Board of McDonough County*, 1993 WL 46789, PCB 92-132 (1993).

4. The Applicant bears the burden of satisfying all of the statutory criteria for siting before the DuPage County Board can grant siting approval. *Waste Management of Illinois, Inc. v. County Board of Kane County, Illinois*, PCB 01-104, 2003 WL 21512770; *Concerned Adjoining Owners v. Pollution Control Bd.*, 288 Ill. App. 3d 565, 680 N.E.2d 810 (5<sup>th</sup> Dist.), *app. denied* 174 Ill. 2d 557, 686 N.E.2d 1159 (1997).

5. The County Board must analyze the evidence concerning each of the criteria, and base its decision as to whether the Applicant satisfied each criterion, based on the preponderance of the evidence. *CDT Landfill Corporation v. City of Joliet*, PCB 98-60, 1998 WL 112497 023.

6. Even if the Application satisfied all nine criteria, the County Board could still deny the Application based on other legislative-type considerations. *Southwest Energy Corp. v. Illinois Pollution Control Bd.*, 275 Ill. App. 3d 84, 655 N.E.2d 304 (4th Dist. 1995).

7. The Applicant must establish that the facility is reasonably required by the waste needs of the service area, including consideration of waste protection and disposal capabilities. *Waste Management of Illinois, Inc. v. pollution Control Bd.*, 234 Ill. App. 3d 65, 600 N.E.2d 55

(1<sup>st</sup> Dist. 1992); *File v. D&L Landfill, Inc.*, 219 Ill. App. 3d 897, 579 N.E.2d 1228 (5<sup>th</sup> Dist. 1991)(“need” must not be absolute, but must be “urgent” and for “reasonable convenience.”)

8. The Applicant failed to present evidence required to satisfy the criteria for siting approval.

9. The applicant failed to present evidence that the proposed facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected.

10. Whether the Applicant presented sufficient evidence that it proposed facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected is “purely a matter of assessing the credibility of expert witnesses.” *File v. D&L Landfill, Inc.*, 219 Ill. App. 3d 897, 579 N.E.2d 1228 (5<sup>th</sup> Dist. 1991); *Fairview Area Citizens Taskforce v. Illinois pollution Control Bd.*, 198 Ill. App. 3d 541, 555 N.E.2d 1178 (3d Dist.), *app. denied* 133 Ill. 2d 554, 561 N.E.2d 689 (1990).

11. The applicant failed to present evidence that the proposed facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of surrounding property.

12. The applicant failed to present evidence that the plan of operations for the proposed facility is designed to minimize the danger to surrounding area from fire, spills, or other operational accidents.

13. The applicant failed to present evidence that the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows


14. The applicant failed to present evidence that the proposed facility is consistent with the dupage county solid waste plan

15. The facility will burden Hispanic Americans

16. Petitions and letters are not entitled to the same weight as testimony submitted by experts under oath and cross examination. They receive a lesser weight. *CDT Landfill Corporation v. City of Joliet*, 1998 WL 112497.

Respectfully Submitted,

CITY OF WEST CHICAGO

By:   
Mary E. Dickson, One of Its Attorneys

BOND, DICKSON & ASSOCIATES, P.C.  
203 E. Liberty Drive  
Wheaton, Illinois 60187  
630/681-1000

# PWC-M16

CITY OF  
**WEST CHICAGO**

WHERE HISTORY & PROGRESS MEET

**CITY COUNCIL SPECIAL MEETING  
MONDAY, FEBRUARY 27-28, 2023 - 6:00 P.M.  
475 MAIN STREET, WEST CHICAGO, ILLINOIS**

**AGENDA**

February 27, 2023 Agenda

1. **Call to Order**
2. **Pledge of Allegiance to the Flag**
3. **Roll Call and Establishment of a Quorum**
4. **Executive Session (Roll Call Vote)**
  - a. **5 ILCS 120/2 (C) (4) – Evidence or testimony presented in open hearing or in closed hearing where specifically authorized by law, to a quasi adjudicative body, as defined in this Act, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning**
5. **Roll Call to Return to Open Session**
6. **Continue the Meeting to February 28, 2023 at 6:00 p.m. at Community High School**

February 28, 2023 Agenda Continued

7. **Call to Order**
8. **Roll Call and Establishment of a Quorum**
9. **Adoption of an Ordinance relating to the APPLICATION FOR LOCAL SITING APPROVAL FOR LAKESHORE RECYCLING SYSTEMS, LLC, FOR THE WEST DUPAGE RECYCLING AND TRANSFER STATION, 1655 POWIS ROAD, WEST CHICAGO.**
10. **Public Participation (three minutes per speaker)**
11. **Adjournment**



475 Main Street  
West Chicago, Illinois  
60185

T (630) 293-2200  
F (630) 293-3028

Ruben Pineda  
Nancy M. Smith

Michael L. Guttman



These minutes were approved at the 3/20/23 City Council meeting with no changes  
CITY OF WEST CHICAGO – 475 Main Street  
CITY COUNCIL MINUTES  
Special Meeting  
February 27-28, 2023

The Special City Council meeting of February 27-28, 2023, was held partly remote (via Zoom) and partly in person.

**1. Call to Order.** Mayor Ruben Pineda (in person) called the meeting to order at 6:00 p.m. on February 27, 2023. The Mayor said that he determined that fully in person meetings are not practical and prudent at this time.

**2. Pledge of Allegiance.** Alderman Morano led all in the Pledge of Allegiance.

**3. Roll Call and Establishment of a Quorum.**

Roll call found Lori Chassee, James E. Beifuss, Jr., Jayme Sheahan, Rebecca Stout, Melissa Birch Ferguson, Jeanne Short, Sandy Dimas, Christine Dettmann, Heather Brown, Matthew Garling, Joseph C. Morano, John E. Jakabcsin, Alton Hallett, and Christopher Swiatek present. Aldermen Brown and Garling were present via Zoom. The Mayor announced a quorum.

Also in attendance were City Administrator Michael Guttman and Special Legal Counsel Dennis Walsh and Dan Bourgault from Klein, Thorpe & Jenkins, and Derke Price, from Ancel Glink.

**4. Executive Session (Roll Call Vote).**

a. **5 ILCS 120/2 (C) (4)** – Evidence or testimony presented in open hearing or in closed hearing where specifically authorized by law, to a quasi adjudicative body, as defined in this Act, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning.

At 7:03 p.m., Alderman Swiatek made a motion, seconded by Alderman Chassee, to go into Executive Session.

Voting Aye by Roll Call Vote: Chassee, Beifuss, Stout, Birch Ferguson, Short, Dimas, Dettmann, Morano, Garling, Sheahan, Hallett, Brown, Jakabcsin and Swiatek. Motion carried.

**5. Roll Call to Return to Open Session.** At 8:50 p.m., Alderman Dimas made a motion, seconded by Alderman Birch Ferguson, to return to Open Session.

Voting Aye by Roll Call Vote: Chassee, Beifuss, Stout, Birch Ferguson, Short, Dimas, Dettmann, Morano, Garling, Sheahan, Hallett, Brown, Jakabcsin and Swiatek. Motion carried.

**6. Continue to February 28, 2023 at 6:00 p.m. at Community High School.** Alderman Chassee made a motion, seconded by Alderman Short, to continue the meeting to February 28, 2023 at Community High School.

Voting Aye by Roll Call Vote: Chassee, Beifuss, Stout, Birch Ferguson, Short, Dimas, Dettmann, Morano, Garling, Sheahan, Hallett, Brown, Jakabcsin and Swiatek. Motion carried.

**February 28, 2023 Agenda Continued**

The Special City Council meeting of February 28, 2023, was held partly remote (via Zoom) and partly in person.

**7. Call to Order.** Mayor Ruben Pineda (in person) called the meeting to order at 6:00 p.m. on February 28, 2023. The Mayor said that he determined that fully in person meetings are not practical and prudent at this time.

**8. Roll Call and Establishment of a Quorum**

Roll call found Lori Chassee, James E. Beifuss, Jr., Jayme Sheahan, Rebecca Stout, Melissa Birch Ferguson, Jeanne Short, Sandy Dimas, Christine Dettmann, Heather Brown, Matthew Garling, Joseph C. Morano, John E. Jakabcsin, Alton Hallett, and Christopher Swiatek present. Aldermen Chassee and Garling were present via Zoom. The Mayor announced a quorum.

Also in attendance were Director of Community Development Tom Dabareiner, City Administrator Michael Guttman and Special Legal Counsel Dennis Walsh.

**9. Adoption of an Ordinance relating to the APPLICATION FOR LOCAL SITING APPROVAL FOR LAKESHORE RECYCLING SYSTEMS, LLC, FOR THE WEST DUPAGE RECYCLING AND TRANSFER STATION, 1655 POWIS ROAD, WEST CHICAGO.**

City of West Chicago  
Regular City Council Meeting  
February 27-28, 2023  
Page 2

Alderman Dimas made a motion, seconded by Alderman Swiatek, to approve Ordinance No. 23-O-0006 approving the siting application for Lakeshore Recycling Systems.

Alderman Beifuss stated that the applicant has not met Criteria #1, 2 or 8. Alderman Garling expressed that he feels that Criteria #1 and 3 have not been met. Alderman Chassee conveyed that she believes the applicant has met all of the Siting Criteria.

Voting Aye by Roll Call Vote: Chassee, Stout, Birch Ferguson, Short, Dimas, Dettmann, Morano, Sheahan, Hallett, Brown, and Swiatek. Alderman Beifuss, Garling and Jakabcsin voted Nay. Motion carried.

**10. Public Participation (three minutes per speaker)**  
None

**11. Adjournment**

At 6:05 p.m., Alderman Stout made a motion, seconded by Alderman Dimas, to adjourn the meeting. All Aldermen voted aye by Roll Call Vote.

Respectfully submitted,

Michael Guttman  
City Administrator

CITY OF  
**WEST CHICAGO**

WHERE HISTORY & PROGRESS MEET

NOTICE OF A MEETING OF THE CITY COUNCIL OF THE CITY WEST CHICAGO

Notice is hereby given to all interested parties pursuant to the Illinois Open Meetings Act, that a majority of a quorum of the City Council for the City of West Chicago may be attending the public hearings relating to the Lakeshore Recycling Systems, LLC, Application for Site Location for the West DuPage Recycling and Transfer Station located at 1655 Powis Road in West Chicago.

At the following public hearing dates, times, and locations have been set but not all dates may be necessary to conclude the public hearings and/or more dates may be added for the public hearing:

Tuesday, January 3 from 6:00 p.m. to 10:00 p.m. at Wheaton Academy  
(900 Prince Crossing Road)

Wednesday, January 4 from 6:00 p.m. to 10:00 p.m. at Wheaton Academy  
(900 Prince Crossing Road)

Thursday, January 5 from 6:00 p.m. to 10:00 p.m. at Wheaton Academy  
(900 Prince Crossing Road)

Tuesday, January 10 from 6:00 p.m. to 10:00 p.m. at Wheaton Academy  
(900 Prince Crossing Road)

Thursday, January 12 from 6:00 p.m. to 10:00 p.m. at the West Chicago Community  
High School (326 Joliet Street)

There will be no agenda for this meeting of the members of the City Council but public comments regarding the Application will be allowed on the last day of the public hearings.

Electronic Filing: Received, Clerk's Office 09/14/2023

Electronic Filing: Received, Clerk's Office 04/19/2023 C006039

**CITY OF WEST CHICAGO**

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**ORDINANCE NO. 23-O-0006**

**AN ORDINANCE CONDITIONALLY APPROVING THE APPLICATION FOR  
LOCAL SITING APPROVAL OF LAKESHORE RECYCLING SYSTEMS, LLC  
FOR WEST DUPAGE RECYCLING AND TRANSFER STATION**

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**ADOPTED BY THE  
CITY COUNCIL  
OF THE  
CITY OF WEST CHICAGO  
February 28, 2023**

Published in pamphlet form by the authority of the City Council of the City of West Chicago, DuPage County, Illinois, on the 1<sup>st</sup> day of March, 2023.

**ORDINANCE NO. 23-O-0006**

**AN ORDINANCE CONDITIONALLY APPROVING THE APPLICATION FOR LOCAL SITING APPROVAL OF LAKESHORE RECYCLING SYSTEMS, LLC FOR WEST DUPAGE RECYCLING AND TRANSFER STATION**

**WHEREAS**, on September 16, 2022, Lakeshore Recycling Systems, LLC. (“Applicant”) filed an application with the City of West Chicago for siting approval of a new pollution control facility within West Chicago, Illinois, for the development of a new transfer station as defined by Section 3.500 of the Illinois Environmental Protection Act located at 1655 Powis Road (“the Facility”), pursuant to Section 39.2 of the Illinois Environmental Protection Act (415 ILCS 5/39.2) (“Act”); and

**WHEREAS**, the waste accepted for transfer will be general municipal solid waste, hydro excavation waste, recyclables and construction or demolition debris generated by residential, commercial and industrial sources; and

**WHEREAS**, the proposed Facility falls within the definition of a “pollution control facility” under the Illinois Environmental Protection Act and, as such, requires site location approval by the municipality in which the proposed Facility will be located pursuant to 415 ILCS 5/39.2; and

**WHEREAS**, the City of West Chicago, DuPage County, Illinois, is the municipality in which the proposed Facility will be located if approved and Article VII of the City of West Chicago’s Code of Ordinances (the “Siting Ordinance”) enacted by the City Council of the City of West Chicago, establishes a procedure for pollution control facility site approval in the City of West Chicago, DuPage County, Illinois; and

**WHEREAS**, following notice, the City of West Chicago held public hearings on January 3, 2023, January 4, 2023, January 5, 2023, January 10, 2023, January 12, 2023, January 16, 2023, and January 19, 2023, pursuant to the Act and West Chicago’s Siting Ordinance; and

**WHEREAS**, the Applicant, Protect West Chicago, People Opposing DuPage Environmental Racism and the City of West Chicago staff are parties that appeared at the public hearings. Protect West Chicago by and through counsel moved to dismiss the application asserting that the City of West Chicago lacked jurisdiction due to fatal defects in the pre-filing notice required by 415 ILCS 5/39.2, and argued that since the application fails to comply with the 1,000 foot set-back requirement of 415 ILCS 5/22.14 concerning the setback from property zoned primarily for residential uses, the siting approval must be denied. The Applicant filed a response in opposition to the Motion to Dismiss and a memorandum explaining why the 1,000 foot residential setback does not apply to this Facility due to impossibility.

**WHEREAS**, the Hearing Officer appointed to preside over the public hearing has made his report and recommendation regarding the Motion to Dismiss the residential setback issue and regarding conditional siting approval to the City Council of the City of West Chicago, based upon



the siting application, notifications, hearings, exhibits, public comment and the record, which includes the following determinations, subject to the decision of this City Council:

1. The Applicant complied with all pre-filing notice requirements of Section 39.2(b) of the Act and the pre-hearing notice requirements of Section 39.2(c) of the Act;
2. The City has jurisdiction to consider the Application;
3. Section 5/22.14 of the Act does not bar this proposed Facility;
4. The siting proceedings herein, both procedurally and substantively, complied with the requirements of fundamental fairness;
5. The Applicant has demonstrated that the proposed Facility meets Criterion 1: "the facility is necessary to accommodate the waste needs of the area it is intended to serve....;"
6. The Applicant has not demonstrated that the proposed Facility meets Criterion 2; however, with the imposition of and compliance with the special conditions provided below, the proposed Facility meets Criterion 2: "the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;"
7. The Applicant has demonstrated that the proposed Facility meets Criterion 3: "the facility is so located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property;"
8. The Applicant has demonstrated that the proposed Facility meets Criterion 4: "for a facility other than a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100 year floodplain or the site is flood-proofed";
9. The Applicant has not demonstrated that the proposed Facility meets Criterion 5; however, with the imposition of and compliance with the special conditions provided below, the proposed Facility meets Criterion 5: "the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents;"
10. The Applicant has demonstrated that the proposed Facility meets Criterion 6: "the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows;"
11. The Applicant demonstrated that the facility will not be accepting hazardous waste and therefore demonstrated that Criterion 7 is not applicable;
12. The Applicant has demonstrated that the proposed Facility meets Criterion 8: "...where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan ...;"

13. The Applicant demonstrated that the Facility is not located within a regulated recharge area and therefore Criterion 9 is not applicable;

14. The Applicant's operating history demonstrates that the Applicant is qualified to operate the Facility safely and properly and provides no basis to deny the Application;

15. The proposed Facility, when developed and operated in compliance with the special conditions, is consistent with all appropriate and relevant location standards, including airport setback requirements, wetlands standards, seismic impact zone standards, and residential setback requirements; and

16. The Applicant has agreed to comply and approval is conditioned upon compliance with all terms of the Host Community Benefit Agreement between the City of West Chicago and Lakeshore Recycling Systems, LLC, dated April 1, 2019; the Secondary Host Community Benefit Agreement between DuPage County and Lakeshore Recycling Systems, LLC, dated March 10, 2020; and the Airport Agreement.

**WHEREAS**, the City Council of the City of West Chicago met on February 27, 2023 to deliberate, and to review and consider the hearing record in light of each of the Criterion established for consideration of siting of pollution control facilities in Section 39.2, and to the extent applicable, the provisions of the Siting Ordinance; and

**WHEREAS**, Section 39.2 allows the City Council of the City of West Chicago, in granting siting approval, to impose such conditions as may be reasonable and necessary to accomplish the purposes of Section 39.2 and as are not inconsistent with Illinois Pollution Control Board regulations; and

**WHEREAS**, during the above deliberations, the City Council of the City of West Chicago found that the Applicant complied with all the pre-filing notice requirements of Section 39.2(b) of the Act, and the pre-hearing notice requirements of Section 39.2(c) of the Act and that the City of West Chicago has jurisdiction to consider the application and found further that the Applicant met Criterion (1), (3), (4), (6), (7), (8) and (9) of Section 39.2 without conditions, and that the Applicant met Criterion (2) and (5) of Section 39.2 subject to the special conditions provided below; and

**WHEREAS**, after careful review and consideration, the City Council of the City of West Chicago desire to adopt the Hearing Officer's Findings as the basis of their decision as to a whether the Applicant met the Criterion under Section 39.2.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF WEST CHICAGO, DU PAGE COUNTY, ILLINOIS**, pursuant to its home rule powers as provided by Article VII, Section 6 of the Illinois Constitution and the authority under Section 39.2 of the Illinois Environmental Protection Act (415 ILCS 5/39.2), that the Report of Hearing Officer Recommended Findings of Fact and Recommended Conditions of Approval, attached hereto as Exhibit A, is adopted by the City Council of the City of West Chicago.



**BE IT FURTHER RESOLVED**, that the City Council of the City of West Chicago has jurisdiction and hereby determines that Lakeshore Recycling Systems, LLC. has satisfied the applicable criteria, subject to the special conditions provided below; and

**BE IT FURTHER RESOLVED**, that the City Council of the City of West Chicago conditionally approves the request of Lakeshore Recycling Systems, LLC. for site approval of its proposed municipal solid waste transfer station, provided that the special conditions are not inconsistent with regulations of the Pollution Control Board or the terms of any development or operating permits approved by the Illinois Environmental Protection Agency.

**SECTION 1:** The preceding "Whereas" clauses are hereby incorporated into this Ordinance as if they were fully set forth herein.

**SECTION 2:** The City Council of the City of West Chicago denies Protect West Chicago's Motion to Dismiss the Application for lack of jurisdiction due to fatal defects in the notice required by 415 ILCS 5/39.2(b) and due to the restrictions of 415 ILCS 5/22.14 concerning the setback from property zoned primarily for residential uses and finds that it has jurisdiction to consider the application.

**SECTION 3:** The City Council of the City of West Chicago hereby adopt the Report of Hearing Officer Recommended Findings of Fact and Recommended Conditions of Approval and Proposed Findings of Fact and Conclusions of Law in its entirety, as attached hereto as Exhibit A and incorporated as if fully set forth herein, and by so doing, the City Council of the City of West Chicago expressly adopts, in expansion of, but not in limitation of the foregoing, the introduction, all findings of fact, all conclusions of law, citations, recommendations, analysis, references and incorporations made in the Report of Hearing Officer Recommended Findings of Fact and Recommended Conditions of Approval and Proposed Findings of Fact and Conclusions of Law as its own to the same extent as though fully set forth herein. The City Council of the City of West Chicago further find, in expansion of, but not in limitation of the foregoing, that it has proper jurisdiction to hear the Application, that all notices required by law were duly given, that the procedures outlined in Section 39.2 and the Siting Ordinance were duly followed, and such procedures were fundamentally fair to the Applicant, all parties, and all participants involved.

**SECTION 4:** Based on the Application, expert testimony and record, we find the following:

The determination of Criterion 2 is primarily a matter of assessing the credibility of expert witnesses. *Fairview Area Citizens Taskforce v. Illinois Pollution Control Board*, 198 Ill.App.3d 541, 552, 555 N.E.2d 1178, 1185 (3d Dist. 1990); *CDT Landfill Corp. v. City of Joliet*, 1998 WL 112497 (Ill. Pollution Control Board). In the City Council's opinion, Mr. Hock's testimony was the more thorough and credible testimony on this issue. Accordingly, we find that the Applicant has met its burden of proof as to Criterion 2 of Section 39.2, the Transfer Station Facility is designed, located and proposed to be operated so that the public health, safety and welfare will be protected, provided that the Applicant operates the Facility in accordance with the following special conditions:

1. The maximum tonnage per day that may be received by the Facility shall not exceed 1,950 tons per day, of which up to 650 tons per day may be municipal solid waste (MSW), up to 300 tons per day may be hydro excavation waste, up to 750 tons per day may be construction and demolition debris (C&D) and up to 250 tons per day may be single stream recyclables (SSR).
2. The Applicant shall keep the truck doors to the transfer Facility closed, except for emergencies and to allow trucks to enter and exit the Facility, during regular business hours. The doors shall be equipped with sensors such that they will open and close automatically as vehicles enter and exit the transfer building. Alternatively, an employee may open and close the doors when trucks access and exit the transfer Facility.
3. The push walls in the transfer Facility shall be designed to ensure to the satisfaction of the City that there will be no buildup of waste behind the walls which could result in fire, odor, or harborage for vectors. In addition, the Applicant shall provide a certification from a licensed structural engineer that the push walls will be capable of withstanding impact from waste loading equipment at 5 mph without shearing the beams or compromising the integrity of the building's walls.
4. All transfer vehicles utilizing the Facility shall be equipped with auto tarping systems, and all loaded transfer trailers shall be tarped inside of the transfer building prior to exit.
5. The Applicant shall continue to operate the C&D recycling portions of the Facility in accordance with the requirements of 415 ILCS 5/22.38 for so long as the current permit (2015-124-OP) remains in effect. If the current permit (2015-124-OP) is discontinued, replaced or terminated, the following conditions, as modified, shall remain in effect:
  - a) The Facility shall be designed and constructed with roads and traffic flow patterns adequate for the volume, type and weight of traffic using the Facility including, but not limited to hauling vehicles, emergency vehicles, and on-site equipment. Sufficient area shall be maintained to minimize traffic congestion, provide for safe operation, and allow for queuing of waste hauling vehicles.
  - b) The operator shall provide adequate parking for all vehicles and equipment used at the Facility and as necessary for queued hauling vehicles.
  - c) Roadways and parking areas on the Facility premises shall be designed and constructed for use in all weather, considering the volume, type and weight of traffic and equipment at the Facility.
  - d) The Facility shall be designed and constructed so that site surface drainage will be diverted around or away from the recycling and waste transfer areas. Surface drainage shall be designed and controlled so that adjacent property owners encounter no adverse effects during development, operation and after closure of the Facility.
  - e) Run-off from roadways and parking areas shall be controlled using storm sewers or shall be compatible with natural drainage for the site. Best management practices (e.g., design features, operating procedures, maintenance procedures, prohibition of certain practices and treatment) shall be used to ensure that run-off from these areas does not carry wastes, debris or constituents thereof, fuel, oil or other residues to soil, surface water or groundwater.
  - f) The Facility, including, but not limited to, all structures, roads, parking and recycling areas, shall be designed and constructed to prevent malodors, noise, vibrations, dust and exhaust from creating a nuisance or health hazard during development, operation and

closure of the Facility. Facility features (e.g., berms, buffer areas, paving, grade reduction), best available technology (e.g., mufflers, machinery enclosures, sound absorbent materials, odor neutralizing systems, air filtering systems, misting systems), and building features (e.g., enclosed structures, building orientation) shall be among the measures to be considered to achieve compliance.

- g) The Facility shall be designed and constructed to prevent litter and other debris from leaving the Facility property. Facility features (e.g., windbreaks, fencing, netting, etc.) shall be among the measures considered to ensure that the debris does not become wind strewn and that no other provisions of the Act are violated.
- h) No regulated air emissions shall occur from these facilities, except as authorized by a permit from the Illinois Environmental Protection Agency (IEPA) Bureau of Air (BOA). No process discharge to Waters of the State or to a sanitary sewer shall occur from these facilities, except as authorized by a permit from the IEPA Bureau of Water (BOW).
- i) The Facility shall be designed and constructed with a water supply of adequate volume, pressure, and in locations sufficient for cleaning, firefighting, personal sanitary facilities, and as otherwise necessary to satisfy operating requirements (e.g., dust suppression, wheel washing) and the contingency plan.
- j) The Facility shall be designed and constructed with exterior and interior lighting for roadways, and waste handling areas adequate to perform safely and effectively all necessary activities.
- k) The Facility shall be designed and constructed with truck wheel curbs, guard rails, bumpers, posts or equivalents to prevent backing into fuel storage tanks, equipment, and other structures.
- l) The Facility shall be designed and constructed with adequate shelter, sanitary facilities, and emergency communications for employees.
- m) The Facility operator shall install fences and gates, as necessary, to limit entry. Except during operating hours, the gates shall be securely locked to prevent unauthorized entry.
- n) The Facility may receive general construction and demolition debris at the site Monday through Saturday, 24 hours a day. The Facility shall be closed on Sunday and the six major federal holidays (New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day). When the Facility is operated before sunrise or after sunset, adequate lighting shall be provided. If it is required for the Facility to be open beyond normal operating hours to respond to emergency situations, a written record of the date, time and reason the Facility was open shall be maintained in Facility operating records. The IEPA's Regional Office and the county authority responsible for inspection of the Facility, per a delegation agreement with the IEPA, must be notified and must grant approval each day that the operating hours need to be extended. No later than 10:00 a.m. of the first operating day after the operating hours have been extended, the Applicant shall send a written report by email to the City Administrator, which describes the length of the extension of the operating hours and the reason for the extension.
- o) The Facility may receive and transfer MSW, hydro excavation waste and SSR from 4:00 a.m. to 12:00 a.m. Monday through Friday and from 4:00 a.m. to 12:00 p.m. on Saturday, with no operation on Sunday or the six major federal holidays (New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day), provided that on the Saturday following a major federal holiday, regular business hours

may be extended to 12:00 a.m. If it is required for the Facility to be open beyond normal operating hours to respond to emergency situations, a written record of the date, time and reason the Facility was open shall be maintained in Facility operating records. The City of West Chicago must be notified by email to the City Administrator each day that the operating hours need to be extended. The IEPA's Regional Office and the county authority responsible for inspection of the Facility, per a delegation agreement with the IEPA, must be notified and must grant approval each day that the operating hours need to be extended.

- p) Fire safety equipment (fire extinguishers) shall be maintained in accordance with recommended practice.
- q) Non-recyclable waste may be kept temporarily in covered containers or transfer trailers for no more than 24 hours (except on weekends and holidays), provided that loaded or partially loaded trailers intended to be stored overnight or that will not be picked up and transported the same operating day are stored indoors and suitably covered.
- r) Piles of general construction or demolition debris shall be covered or wetted to prevent air-borne dust.
- s) The Facility shall be designed and constructed to prevent unauthorized access to recycling areas, storage areas for unauthorized wastes, salvaged and recycled materials, and staging areas where loaded site equipment or vehicles may be parked. Facility features such as fences and gates shall be provided.
- t) Waste handling areas shall be designed and constructed to prevent exposure of wastes and recyclable materials to run-off and flooding.
- u) The sorting areas shall be properly graded and compacted to prevent ponding from forming leachate during storms.
- v) Records shall be maintained on-site at the Facility office for each operating day. The operator shall record operating hours, load ticket information, load inspections, daily processing time, volume processed per day, transfer load out and waste disposition details.
- w) The operator shall, within 48 hours of receipt of the general construction or demolition debris at the Facility, sort the general construction or demolition debris. The operator shall separate the recyclable general construction or demolition debris from nonrecyclable general construction or demolition debris and dispose of the non-recyclable general construction or demolition debris, in accordance with Section 22.38(b)(1) of the Act.
- x) The operator must place wood, tires, and other unacceptable materials in covered dumpsters or vehicles adequate to prevent the release of leachate.
- y) All non-recyclable general construction or demolition debris, and unacceptable material shall be moved to the waste transfer Facility on the same day it is received, and disposal of such material shall be handled in accordance with all applicable federal, State, and local requirements and with these conditions.
- z) The operator shall transport all non-putrescible recyclable general construction or demolition debris for recycling or disposal within 6 months of its receipt at the Facility, in accordance with Section 22.38(b)(4) of the Act.
- aa) In accordance with Section 22.38(b)(6) of the Act, the operator shall employ tagging and record keeping procedures to identify the source and transporter of C&D material accepted by the Facility.



- bb) The operator shall use load tickets to control the site activities and comply with the tagging and record keeping procedures. These load tickets shall identify the source of the C&D material delivered to the site. The operator shall use these tickets to identify the location in the yard or in the covered dumpsters and the length of time stored at the site to achieve compliance.
- cc) The operator is prohibited from receiving hazardous and asbestos containing materials.
- dd) The operator may separate clean concrete and clean soil from the general construction or demolition debris as recyclable materials for use in construction. The operator is permitted to store recyclable concrete and clean soil for a maximum period of 3 months.
- ee) The operator may store the steel separated from concrete or other construction or demolition debris for a maximum period of 6 months. After six months, the steel must be sent offsite for disposal or recycling.
- ff) The operator shall ensure that site surface drainage, during development, during operation and after the site is closed, shall be such that no adverse effects are encountered by adjacent property owners.
- gg) The best available technology (mufflers, berms and other sound shielding devices) shall be employed to minimize equipment noise impacts on property adjacent to the site during both development, operation and during any applicable post-closure care period.
- hh) Management of Unauthorized Waste by the operator
  - i. Landscape waste found to be mixed with general construction and demolition debris shall be removed the same day and transported to a facility that is operating in accordance with the Illinois Environmental Protection Act (Act), Title V, Sections 21 and 39 (415 ILCS 5/21 and 39).
  - ii. Lead-acid batteries mixed with general construction and demolition debris shall be removed the same day and transported either to a drop-off center handling such waste, or to a lead-acid battery retailer.
  - iii. Special wastes including hazardous waste, non-hazardous special waste, and potentially infectious medical waste mixed with general construction and demolition debris shall be containerized separately and removed from the property no later than five hours after receipt by a licensed special waste hauler. Special wastes shall be transported to a licensed special waste management facility that has obtained authorization to accept such waste. The operator shall maintain a contract with haulers so that the immediate removal is ensured. The operator shall develop an emergency response/action plan for such occurrences.
  - iv. Asbestos debris from general construction and demolition debris shall be managed in accordance with the National Emission Standards for Hazardous Air Pollutants (NESHAPS) regulations.
  - v. Tires found to be mixed with general construction and demolition debris shall be removed and managed in accordance with Section 55 of the Act [415 ILCS 5/55].
  - vi. White good components mixed with general construction and demolition debris shall be removed and managed in accordance with Section 22.28 of the Act [415 ILCS 5/22.28].
  - vii. No person may knowingly mix liquid used oil with general construction and demolition debris.
  - viii. After the unauthorized waste has been removed from the Facility, a thorough cleanup of the affected area shall be made according to the type of unauthorized waste

managed. Records shall be kept for three years and will be made available to the IEPA upon request. In addition, the Applicant shall provide an annual written report to the City of West Chicago not later than January 31 of each year, which report shall: list the types, quantities and dates of receipt of all unauthorized waste; the generators of such waste; and the sites to which the wastes were delivered for disposal, processing or handling.

- ix. The following wastes shall not be accepted at the Facility:
- Hazardous substances (as defined by Section 3.215 of the Illinois Environmental Protection Act);
  - Hazardous waste (as defined by Section 3.220 of the Illinois Environmental Protection Act);
  - Potentially infectious medical wastes (as defined by the Illinois Environmental Protection Act in Section 3.84);
  - Universal waste (as defined by Title 35 of the Illinois Administrative Code Part 733 including batteries, pesticides, mercury-containing equipment and lamps);
  - Regulated asbestos containing materials;
  - Polychlorinated biphenyl wastes;
  - Used motor oil;
  - Source, special or by-product nuclear materials;
  - Radioactive wastes (both high and low level);
  - Sludge;
  - White goods (incidental white goods received at the proposed transfer station will be segregated and stored for pickup by an off-site recycler);
  - Lead-acid automotive batteries (incidental automotive batteries received at the transfer station will be segregated and stored for pickup by an off-site recycler);
  - Used tires (incidental tires received at the transfer station will be segregated and stored for pickup by an off-site recycler); and
  - Landscape waste.
- ii) Special wastes generated at the site for disposal, storage, incineration or further treatment elsewhere shall be transported by the operator to the receiving facility utilizing the IEPA's Special Waste Authorization system and manifest system.

6. Upon receiving final, non-appealable siting approval pursuant to 415 ILCS 5/39.2 to construct and operate the Facility, and upon receiving an IEPA development permit, LRS shall, prior to commencing operation of the waste transfer Facility, 1) execute and grant to the DuPage Airport Authority ("DAA") a new aviation easement, which is Exhibit A to the Agreement Between the DuPage Airport Authority, Oscar (IL) LLC, and Lakeshore Recycling Systems, LLC, dated January 19, 2022 ("Airport Agreement"), 2) LRS shall reduce the roof height of its existing transfer building so as to stay below all critical elevations in the new aviation easement, and 3) LRS shall not allow any penetrations whatsoever to the new aviation easement.

7. All improvements installed on and offsite by the Applicant shall be funded by and solely at the expense of the Applicant.

8. The tipping floor of the waste transfer building shall be cleaned and free of waste at the end of each operating day. Except as set forth in Condition 5, no waste or other material shall be left on the floor inside the transfer building or outside the transfer building overnight or when the Facility is not operating.



9. The Applicant shall control litter by discharging and loading all waste within the enclosed portion of the Transfer Facility. After unloading, any remaining loose waste shall be removed or contained in the vehicle prior to exiting the site. The Applicant shall use its best efforts to assure that vehicles, hauling waste to or removing waste from the Transfer Facility, shall be suitably covered to prevent waste from leaving the vehicles. A fence to aid in the interception of any blowing litter shall surround the Transfer Facility. The Applicant shall diligently patrol the Subject Property during hours of operation to collect any litter. At a minimum the Applicant shall diligently patrol and remove litter from: the Subject Property; all property owned or controlled by the Applicant; and, before 10:00 a.m. each operating day, Powis Road between Hawthorne Lane and Route 64 (North Avenue) as well as Powis Court. In addition, the Applicant shall, at a minimum, patrol and remove litter from private property within 500 feet of the aforesaid public streets and corresponding rights-of-way with the written permission of the owner of said properties, which permission the Applicant shall diligently attempt to obtain. The Applicant shall provide the City of West Chicago the names, addresses, telephone numbers and email addresses of such owners granting permission. The Applicant shall also post on the company's website the name and email address of an employee of the company to whom any owner of property along Powis Court or Powis Road between Route 64 (North Avenue) and Hawthorne Lane may report litter from the Facility or trucks using the Facility, in which case the Applicant shall remove the litter with the written permission of the owner within two hours of receiving notification of the litter concern. Upon written request, logs showing the private owner, the property address for the request for litter removal, the time such was received and the time the concern was abated shall be available to the City and provided within one business day. Also, the Applicant shall diligently seek the written approval of the DuPage County Forest Preserve District to remove litter, which is visible from Route 64 (North Avenue), from the portion of the Pratts Wayne Woods Forest Preserve that is located within the City of West Chicago. If permission is granted, litter removal from the Forest Preserve shall occur not less than monthly; the City shall be provided written notice of each occurrence within one business day of such being completed.
10. The Applicant shall provide a street sweeper to remove mud and dust tracked onto hard surfaces inside and outside the Transfer Facility, on property owned or controlled by the Applicant as well as Powis Court and Powis Road between Hawthorne Lane and Route 64 (North Avenue) on an as needed basis, but not less frequently than daily.
11. The Applicant shall retain a pest control service on an on-going basis to address the potential for infestation by rodents and other vectors. Such service shall inspect the Transfer Facility on an as needed, but no less than monthly, basis.
12. Transfer trailers entering and exiting the Subject Property shall use only the following roads: Powis Road (between the Facility entrance and Route 64 (North Avenue), Route 64 (North Avenue), Kirk Road and Interstate 88. Except for waste collection trucks servicing property within the City of West Chicago, waste collection trucks entering and exiting the Subject Property shall use only the following streets within the City and no others: Powis Road south of Route 64, Route 64 (North Avenue), Route 38, and Kress Road. The Applicant shall have installed within City right-of-way to the satisfaction of the City, license plate readers in each of the following locations: Hawthorne Lane between Route 59 and Powis Road; Smith Road between Powis Road and Route 64; and Powis Road between Smith Road and Route 64. The license plate readers shall provide remote access to the City of West Chicago to be used for any lawful purpose. The specific make and model of license plate readers and the specific locations for installation of the license plate readers shall be subject to the written approval/direction of the West Chicago Police Chief, and may be relocated for operational need

at the expense of the City; the initial and any annual costs associated with the license plate readers shall be at the Applicant's sole cost and expense. The Applicant shall be responsible for maintaining and, if necessary, replacing the license plate readers when in disrepair or at the end of their useful lives as determined by the City through documentation from the vendor. The Applicant shall also provide a set of certified portable scales to the City at its sole cost and expense, which thereafter shall be maintained and replaced by the City.

13. Trucks transporting hydro excavation waste shall be water-tight. Dump style trucks transporting solidified hydro excavation waste shall include liners that are sufficient to prevent leakage onto roads and other surfaces.

14. All incoming hydro excavation waste loads shall be accompanied by a completed/signed manifest and shall be pre-approved using a waste profile sheet and other supporting documentation as necessary. These materials shall be reviewed to verify that the waste is nonhazardous as defined in Title 35 Illinois Administrative Code Part 722.111. Pre-approved waste streams and such profile packets shall be kept on file at the Facility, shall accurately characterize the accepted material, and may not be more than one year old.

15. The Facility shall be maintained with a negative pressure condition such that the ventilation system provides a minimum of 6 air changes per hour. The Facility design shall include an ozone system to treat the ventilation air prior to exhaust. The Facility shall also be equipped with a misting system that will assist in mitigation of dust and odors above the tipping floor.

16. The Facility shall otherwise be constructed and operated in substantial conformance with the plans and operating procedures specified in the siting application.

17. Approval is further conditioned upon compliance with all terms of the Host Community Benefit Agreement between the City of West Chicago and Lakeshore Recycling Systems, LLC, dated April 1, 2019; the Secondary Host Community Benefit Agreement between DuPage County and Lakeshore Recycling Systems, LLC, dated March 10, 2020; and the Airport Agreement.

**SECTION 5:** To meet Criterion 5, the Applicant must show that there is a plan of operation designed to minimize the danger. As in any industrial setting, the potential exists for harm both to the environment and the residents. *Industrial Fuels & Resources v. Illinois Pollution Control Board*, 227 Ill.App.3d 533, 547, 592 N.E.2d 148, 157-58 (1<sup>st</sup> Dist. 1992). The key to this criterion is minimization. *Id.*, citing *Wabash and Lawrence Counties Taxpayers and Water Drinkers Assoc.*, 198 Ill.App.3d 388, 394, 555 N.E.2d 1081, 1086 (5<sup>th</sup> Dist. 1990). "There is no requirement that the applicant guarantee no accidents will occur, for it is virtually impossible to eliminate all problems. *Id.* Guaranteeing an accident-proof facility is not required." *Industrial Fuel*, 227 Ill.App.3d at 547, 592 N.E.2d at 157-58. As such, the City Council of the City of West Chicago find that the Applicant has met its burden of proof as to Criterion 5 of Section 39.2, provided that the Applicant operates the Facility in accordance with the following special conditions:

1. All transfer vehicles utilizing the Facility shall be equipped with auto tarping systems, and all loaded transfer trailers shall be tarped inside of the transfer building prior to exit.

2. Upon receiving final, non-appealable siting approval pursuant to 415 ILCS 5/39.2 to construct and operate the Facility, and upon receiving an IEPA development permit, LRS shall, prior to commencing operation of the waste transfer Facility, 1) execute and grant to the DuPage Airport Authority ("DAA") a new aviation easement, which is Exhibit A to the Agreement Between the DuPage Airport Authority, Oscar (IL) LLC, and Lakeshore Recycling Systems, LLC, dated January 19, 2022 ("Airport Agreement"), 2) LRS shall reduce the roof height of its existing transfer building so as to stay below all critical elevations in the new aviation easement, and 3) LRS shall not allow any penetrations whatsoever to the new aviation easement.
3. The Applicant shall control litter by discharging and loading all waste within the enclosed portion of the Transfer Facility. After unloading, any remaining loose waste shall be removed or contained in the vehicle prior to exiting the site. The Applicant shall use its best efforts to assure that vehicles, hauling waste to or removing waste from the Transfer Facility, shall be suitably covered to prevent waste from leaving the vehicles. A fence to aid in the interception of any blowing litter shall surround the Transfer Facility. The Applicant shall diligently patrol the Subject Property during hours of operation to collect any litter. At a minimum the Applicant shall diligently patrol and remove litter from: the Subject Property; all property owned or controlled by the Applicant; and, before 10:00 a.m. each operating day, Powis Road between Hawthorne Lane and Route 64 (North Avenue) as well as Powis Court. In addition, the Applicant shall, at a minimum, patrol and remove litter from private property within 500 feet of the aforesaid public streets and corresponding rights-of-way with the written permission of the owner of said properties, which permission the Applicant shall diligently attempt to obtain. The Applicant shall provide the City of West Chicago the names, addresses, telephone numbers and email addresses of such owners granting permission. The Applicant shall also post on the company's website the name and email address of an employee of the company to whom any owner of property along Powis Court or Powis Road between Route 64 (North Avenue) and Hawthorne Lane may report litter from the Facility or trucks using the Facility, in which case the Applicant shall remove the litter with the written permission of the owner within two hours of receiving notification of the litter concern. Upon written request, logs showing the private owner, the property address for the request for litter removal, the time such was received and the time the concern was abated shall be available to the City and provided within one business day. Also, the Applicant shall diligently seek the written approval of the DuPage County Forest Preserve District to remove litter, which is visible from Route 64 (North Avenue), from the portion of the Pratts Wayne Woods Forest Preserve that is located within the City of West Chicago. If permission is granted, litter removal from the Forest Preserve shall occur not less than monthly; the City shall be provided written notice of each occurrence within one business day of such being completed.
4. The Applicant shall provide a street sweeper to remove mud and dust tracked onto hard surfaces inside and outside the Transfer Facility, on property owned or controlled by the Applicant as well as Powis Court and Powis Road between Hawthorne Lane and Route 64 (North Avenue) on an as needed basis, but not less frequently than daily.
5. The Applicant shall retain a pest control service on an on-going basis to address the potential for infestation by rodents and other vectors. Such service shall inspect the Transfer Facility on an as needed, but no less than monthly, basis.
6. Trucks transporting hydro excavation waste shall be water-tight. Dump style trucks transporting solidified hydro excavation waste shall include liners that are sufficient to prevent leakage onto roads and other surfaces.

7. The Facility shall be maintained with a negative pressure condition such that the ventilation system provides a minimum of 6 air changes per hour. The Facility design shall include an ozone system to treat the ventilation air prior to exhaust. The Facility shall also be equipped with a misting system that will assist in mitigation of dust and odors above the tipping floor.

8. The Facility shall otherwise be constructed and operated in substantial conformance with the plans and operating procedures specified in the siting application.

**SECTION 6:** That all ordinances or parts of ordinances conflicting with any of the provisions of this Ordinance shall be and the same is hereby repealed.

**SECTION 7:** That the Executive Assistant is hereby directed to publish this Ordinance in pamphlet form.

**SECTION 8:** That this Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

PASSED this 28<sup>th</sup> day of February, 2023.

Alderman Beifuss	<u>Nay</u>	Alderman Chassee	<u>Aye</u>
Alderman Sheahan	<u>Aye</u>	Alderman Brown	<u>Aye</u>
Alderman Hallett	<u>Aye</u>	Alderman Dettmann	<u>Aye</u>
Alderman Birch-Ferguson	<u>Aye</u>	Alderman Dimas	<u>Aye</u>
Alderman Swiatek	<u>Aye</u>	Alderman Garling	<u>Nay</u>
Alderman Stout	<u>Aye</u>	Alderman Short	<u>Aye</u>
Alderman Jakabcsin	<u>Nay</u>	Alderman Morano	<u>Aye</u>

APPROVED this 28<sup>th</sup> day of February, 2023.

  
Mayor Ruben Pineda

ATTEST:

Valeria Pineda  
Executive Assistant

PUBLISHED: March 1, 2023



**STATE OF ILLINOIS  
CITY OF WEST CHICAGO  
BEFORE THE CORPORATE AUTHORITIES**

*In Re:*

**APPLICATION OF  
LAKESHORE RECYCLING SYSTEMS, LLC  
FOR SITING APPROVAL UNDER 415 ILCS 5/39.2  
OF A NEW POLLUTION CONTROL FACILITY**

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**REPORT OF HEARING OFFICER  
RECOMMENDED FINDINGS OF FACT AND  
RECOMMENDED CONDITIONS OF APPROVAL**

**INTRODUCTION**

Lakeshore Recycling Systems, LLC (“Applicant”) has applied for local siting approval of a new municipal waste transfer station on its property at 1655 Powis Road, West Chicago, Illinois. The Applicant owns the real property (the “Property”) upon which the proposed pollution control facility (“Facility”) is to be located. The Property is located within the corporate limits of the City. The Application was filed on September 16, 2022. The City is to render a decision on the Application in accordance with the criteria and procedures set forth in Section 39.2 of the Illinois Environmental Protection Act (415 ILCS 5/39.2) (the “Act”) and its own Code of Ordinances establishing rules and procedures for pollution control facility siting. Among the procedures set forth in the Act and the Code of Ordinances is the requirement that the City conduct a public hearing on the Application, accept public comment, and make a formal decision on the Application within 180 days of the date of filing (March 15, 2023). The City opened the public hearing on January 3, 2023.

In accordance with the procedures and other terms and provisions of the Act and the Code of Ordinances, I reviewed the Application and initial filings. The following parties appeared at the Hearing by and through counsel:

The Applicant ("LRS"), represented by George Mueller;

Protect West Chicago ("PWC") represented by Ricardo Meza and Phil Luetkehans;

"P.O.D.E.R." represented by Robert A. Weinstock;

The City of West Chicago Staff ("City"), represented by Gerald Callaghan; and

The City of West Chicago Corporate Authorities ("Council"), represented by its corporate counsel, Dennis Walsh.

During the hearing, I admitted the Application, the Host Agreement, and testimony and exhibits from witnesses called by the Applicant in support of the Application. I also admitted exhibits and testimony from witnesses called by PWC and PODER in opposition to the Application. I also ruled some proffers of proof by PWC and PODER on "environmental justice related issues" to be irrelevant; an offer of proof on those issues was entered into the record. Further, PODER presented witnesses that testified as to their observations at the existing facility; however, I ruled that they were not experts and that they lacked a proper foundation for some of their offered testimony.

As discussed below, PWC filed a Motion to Dismiss the Application for Lack of Jurisdiction due to fatal defects in the Notice required by 415 ILCS 5/39.2(b) and due to the restrictions of 415 ILCS 5/22.14 concerning the setback from property zoned primarily for residential uses. The Applicant filed Responses in opposition to the Motion.

In addition to evidence and testimony, oral public comment was received throughout the hearing proceedings and written public comment has been received by the City from September



16 through (and including) February 18, 2023. "Comment" is distinguished from "testimony" in that "comment" is not provided under oath and is not subject to cross examination and therefore entitled to less weight than testimony.

I declared the hearing closed on January 19, 2023. In accordance with the Act, written comment was then received by the City for an additional 30 days (i.e., through 11:59:59 p.m. CDST on February 18, 2023, including any written comment post-marked on or before February 18, 2023). Substantial public comment was received in support of the Application; and there was public comment filed from various residents and PODER opposing the application. Notably, public comment was also offered after the close of the hearing by the Applicant including a letter from the Canadian National Railway. As indicated above, public comment is entitled to less weight because it is not subject to being tested by the opportunity for cross examination. I have not relied upon the public comment filed by the Applicant in reaching my findings of fact or conclusions of law.

I received proposed conditions of approval from City Staff; I received argument in favor of siting approval and proposed findings of fact and law from the Applicant; I received argument in opposition to siting approval as well as proposed findings of fact and conclusions of law from PWC; and argument in opposition to approval as well as proposed findings of fact, conclusions of law, and alternatively proposed special conditions from PODER.

#### **RECOMMENDED ACTIONS**

It is my recommendation that the City Council vote separately on the three propositions:

- 1) Whether to grant PWC's motion to dismiss for failure to effectuate proper notice under Section 39.2(b).

2) Whether to grant PWC's motion to dismiss claiming the Facility violates the 1,000 foot setback under Section 22.14.

3) Whether the Proposed Facility (with any special conditions imposed by the City Council) satisfies the siting criteria of Section 39.2.

For the reasons set forth below, my recommendation to the City is to deny the Motion to Dismiss under Section 39.2(b).

For the reasons set forth below, my recommendation to the City is to deny the Motion to Dismiss under Section 5/22.14.

For the reasons set forth below, my recommendation to the City is to impose Special Conditions (appended to my proposed Findings of Fact and Conclusions of Law) and with those Special Conditions approve the Application as satisfying the siting criteria of Section 39.2. More specifically, I find that the application as filed, and the testimony concerning the application as filed, did not establish that the proposed Facility satisfies all of the criteria for local siting approval set forth in Section 39.2 of the Act; however, I further find that, with the imposition of special conditions (and compliance by the Applicant with those conditions), the proposed Facility does satisfy all of the criteria for local siting approval.

### **MOTION TO DISMISS**

#### **Motion to Dismiss Under Section 39.2(b)**

Whether the applicant provided proper notice under section 39.2(b) of the Act is a threshold question in the pollution control siting. *Maggio v. Pollution Control Board*, 2014 IL App (2d) 130260, ¶ 15. Compliance with the pre-filing Notice requirements of Section 39.2 is jurisdictional and substantial compliance is not sufficient. See, *Daubs Landfill v. Pollution*

*Control Board*, 166 Ill.App 3<sup>rd</sup> 778 (5<sup>th</sup> Dist. 1998). However, as *Daubs* indicates, perfection in providing the Notice is not the standard.

Section 39.2(b) requires, in relevant part, that the applicant shall cause written notice of its request for site approval “to be served either in person or by registered mail, return receipt requested, on the owners of all property within the subject area not solely owned by the applicant, and on the owners of all property within 250 feet in each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of the County in which such facility is to be located...”). PWC has challenged whether the Applicant fulfilled this requirement with respect to the railroad property putatively owned by the Elgin, Joliet and Eastern Railway.

The evidence concerning the authentic tax records of DuPage County is as follows:

The records placed in evidence by PWC indicate that the owners of the railroad properties within 250 feet of the Facility are, for one parcel, the Union Pacific Railroad Company and, variously and alternatively for the second parcel, the “Elgin, Joliet & Eastern Railway,” and/or the “Wisconsin Central, Ltd. (EJ&E Line) Company.”

The DuPage County, Illinois 2022 Real Estate Tax Assessment Parcels Map placed in evidence by the Applicant indicates that the second parcel is owned by the “Canadian National Railway.”

It is not disputed that the Applicant caused written notice of its request for site approval to be served by registered mail return receipt requested upon the Union Pacific Railroad Company. It is also not disputed that the Applicant did not cause notice of its request for site approval to be served on the Elgin, Joliet & Eastern Railway or on the Wisconsin Central, Ltd.

The publicly available information – of which I take judicial notice – is that the Elgin, Joliet & Eastern Railway was merged into the Wisconsin Central, Ltd. in December of 2012 and, further, that the Wisconsin Central, Ltd. is wholly owned by the Canadian National Railway.

It is not disputed that the Applicant did not serve the Canadian National Railway by personal service nor by registered mail return receipt requested. Instead, the Applicant caused written notice of the Applicant's request for site approval to be delivered via paid courier to the Canadian National Railway at the corporate offices of the Canadian National Railway in Montreal, Quebec, Canada, and that the Applicant's courier secured the signature of a representative of the Canadian National Railway documenting that delivery.

After reviewing the briefing concerning "service" under Illinois law filed by both PWC and the Applicant, I find that the Applicant's use of a paid courier to deliver written notice of the Applicant's request, where the paid courier documented the delivery, was sufficient to satisfy the requirements of Section 39.2(b) of the Act and that strict compliance with the requirements of formal service is not required as a matter of law where, as here, actual notice has been documented. See, e.g., *Waste Management of Illinois v. Illinois Pollution Control Board*, 365 Ill.App.3d 229 (3d Dist. 2005) (difference in delivery method not of "pivotal importance" when delivery method documents that the addressee received the letter); see also, *Olin Corp. v. Bowling*, 95 Ill.App.3d 1113, 1116-17 (5<sup>th</sup> Dist. 1981)).

#### **Motion to Dismiss Under Section 5/22.14**

Section 415 ILCS 5/22.14 states, in relevant part, that "no person may establish any pollution control facility for use as a garbage transfer station, which is located less than 1000 feet from the nearest property zoned for primarily residential uses or within 1000 feet of any

dwelling....” It is undisputed that no dwelling is within 1000 feet of the proposed Facility. However, the railroad properties are zoned ER-1 in the City and are located within 1000 feet of the proposed Facility. It is not disputed that property zoned “ER-1” in the City of West Chicago is property zoned primarily for residential uses. PWC’s Motion to Dismiss asserts that Section 5/22.14 bars the Applicant from proceeding with this proposed Facility.

The Applicant argues that the size and the active use of the railroad properties make residential development of the parcels in compliance with ER-1 requirements improbable (and therefore the set-back requirement a nullity with respect to the railroad properties). The Applicant has submitted the testimony of John Hoek and the August 23, 2022 letter of Tom Dabareiner, City Community Development Director and Zoning Administrator for the City of West Chicago, to support a finding that, due to the requirements of the ER-1 zoning (minimum lot area, minimum lot width, minimum setbacks, physical features of the property, the lack of access) it is not reasonably possible to develop the railroad properties for residential uses.

Conversely, PWC called Joe Abel, a planning expert, who testified that the Application does not meet the setback requirements of Section 5/22.14. He further testified that if the railroad properties at issue were abandoned by the railroads, and if the railroad properties were then assembled with other adjacent properties, and if those assembled properties were then rezoned to a residential zoning district, then the railroad properties could be put to residential uses.

No evidence was introduced that the conditions recited by Joe Abel as preconditions to residential use of the railroad properties are probable--or even potentially contemplated--for the foreseeable future.

The statutory language of Section 22.14 protects any existing dwelling within 1,000 feet of the facility (regardless of underlying zoning for that dwelling) and properties for which there is a reasonable expectation of future residential use and dwellings based initially upon the zoning designation. The PCB has taken a pragmatic approach to enforcement of Section 22.14. Where actual residential use of property (even though it is zoned for residential uses and even though homes exist on the properties) is not reasonably probable, Section 22.14 will not bar the facility. Although not a binding opinion, the Appellate Court agreed with the PCB's interpretation of Section 22.14 in *Roxana Landfill, Inc. v. Illinois Pollution Control Board*, 2016 WL 4005892, (Ill. App. 5 Dist. 2016).

Here, the proposed facility is not within 1,000 feet of any existing dwelling nor within 1,000 feet of any property zoned for residential use where such actual residential use is reasonably probable in the foreseeable future. Based upon the PCB's decision (ultimately affirmed in *Roxana*), Section 22.14 does not prohibit the siting of the facility in this case nor make the proposed facility incompatible with the character of the area.

#### JURISDICTION

The record, the statutes, and the case law discussed above establish that the Applicant owns the real property upon which the proposed pollution control facility will be located and that the property and the Facility are wholly located within the City of West Chicago. I have discussed the requirements of 415 ILCS 5/39.2(b) above and, over the objections and motions of PWC and PODER, found that the Applicant fulfilled these requirements. I have also discussed the application of Section 5/22.14 and found that in this case, Section 5/22.14 does not bar the proposed Facility.



I further find that the Applicant complied with all notice requirements of Section 39.2(c) concerning the notice requirements prior to the hearing on the Application. No objections were filed concerning compliance with Section 39.2(c).

Likewise, no objections were filed concerning compliance with the City Code of Ordinances. I find that the Applicant complied with all requirements of the City of West Chicago.

Accordingly, I find that the City has jurisdiction to consider the statutory criteria of Section 39.2.

#### SECTION 39.2 CRITERIA

These proceedings are governed by Section 39.2 of the Environmental Protection Act ("the Act"), 415 ILCS 5/39.2, which sets forth the exclusive siting procedures for pollution control facilities in Illinois. Section 40.1 of the Act and case law require that siting proceedings and the decision making be conducted in accordance with the requirements of fundamental fairness. The application (or request) must contain sufficient details of the proposed facility demonstrating that it satisfies each of the nine criteria by a preponderance of the evidence. *Land & Lakes Co. v. Illinois Pollution Control Board*, 319 Ill.App.3d 41, 743 N.E.2d 188, 191 (3d Dist. 2000.) If the applicant fails to establish any one of the criteria, the application should be denied. *Waste Management v. Pollution Control Board*, 175 Ill.App.3d 1023, 520 N.E.2d 682, 689 (2d Dist. 1988).

The Act requires that the Applicant for local siting approval prove compliance with each of nine different criteria (or alternatively demonstrate that they do not apply) and local siting approval shall be granted if the proposed facility meets each of those criteria. As a matter of

law, once an applicant makes a *prima facie* case on a criterion, the burden of proof shifts to the opponents to rebut the applicant's case. *People v. Nuccio*, 43 Ill.2d 375, 253 N.E. 2d 353 (1969). In order to rule against an applicant on any criterion, the decision maker (the City Council in this case) must find competent rebuttal or impeachment evidence in the record. *Industrial Fuels and Resources v. Illinois Pollution Control Board*, 227 Ill.App.3d 553, 592 N.E. 2d 148 (1st Dist. 1992).

The Applicant called expert witnesses to offer evidence as to the statutory siting criteria. Counsel for PWC and PODER, as well as counsel for the City Staff, cross-examined the witnesses. PWC and PODER also called witnesses in rebuttal. The basis and rationale for my findings on each criterion is set forth below.

***1. The Facility is necessary to accommodate the waste needs of the area it is intended to serve.***

This Criterion is contested by PWC and PODER. I find that Criterion 1 is satisfied.

Criterion 1 has been the subject of litigation and the Courts have provided guidance as to its requirements. For example, to prove criterion 1, the courts have previously held the Applicant must show that the proposed Facility is reasonably required by the waste needs of the service area, taking into consideration the waste production of the area and the waste disposal capacity available to it. *Waste Management of Illinois, Inc. v. Pollution Control Board*, 175 Ill.App.3d 1023, 1031, 530 N.E.2d 682, 689 (2d Dist. 1988). Although a petitioner need not show absolute necessity, it must demonstrate that the new facility would be expedient as well as reasonably convenient. *Waste Management of Illinois, Inc. v. Pollution Control Board*, 234 Ill.App.3d 65, 69, 600 N.E.2d 55, 57 (1<sup>st</sup> Dist. 1992). The petition must show that the landfill is reasonably required by the waste needs of the area it is intended to serve, including the area's waste production and disposal capabilities. *Id.*

PWC and PODER both focused on the available transfer station disposal capacity for the area to be served (including facilities outside of, but still serving, the area intended to be served) and they argue that the existing excess capacity—which is not contested by the Applicant—means that the proposed Facility is not necessary and therefore does not satisfy Criterion 1.

However, in *Will County v. Village of Rockdale*, 2018 IL. App (3d) 160463, 121 N.E.2d 468, 484 (3d Dist. 2018), our Appellate Court held that Criterion 1 is not determined exclusively by reference to capacity analysis. Indeed, in *Rockdale*, the applicant submitted no capacity analysis at all. Instead, the Appellate Court agreed with Village and the Applicant that the “waste needs of the area” could include other factors such as improving competition, benefits through the host agreements, operational concerns and hours, and positive environmental impacts.

In this case, the Applicant called John Hock from Civil and Environmental Consultants, Inc. to testify on this criterion. Mr. Hock acknowledged the existing available capacity at other transfer stations but testified that the need for this Facility is found in the need to increase competition in the hauling market (through further vertical integration of disposal from curb-to-transfer station-to landfill, this facility will increase competition for the hauling of waste in the area); in reduced environmental impacts (less diesel exhaust as a result of shorter travel distances); in increased recycling; in the meeting the need for the handling of hydro-wastes; and in operational benefits (hours of operation). Cross-examination focused on the available capacity and questioned the competitive impacts but did not overcome the substantive proof on the benefits to which Mr. Hock testified.

PODER focused on the premise that there are positive environmental impacts, arguing just the opposite that the added operations at this Property will necessarily increase diesel

emissions in the community. But PODER has offered no competent evidence to contradict the demonstrated savings in overall emissions as testified to by the Applicant concerning hauling and disposal activities presently (i.e., before siting) and the amount of reduced emissions from the availability of this transfer station. Moreover, a premise of PODER's analysis is that there would be no other new industrial uses of the Applicant's property of any kind that would involve diesel engines. No evidence was offered to support the validity of such a premise.

PWC called John Lardner. Mr. Lardner focused on the available capacity at transfer stations in and around the area. But Mr. Lardner also admitted that Criterion 1 now considers environmental factors, impacts on competition, and operational concerns--and Mr. Lardner further admitted that he has so opined in other siting proceedings—although he did not consider competitive or environmental matters in reaching his conclusions in this case. Mr. Lardner further admitted that there is a need for a transfer station to handle hydro-excavation waste.

**2. *The Facility is so designed, located, and proposed to be Operated that the Public Health, Safety and Welfare will be Protected.***

This Criterion is contested by PWC and PODER. I find that Criterion 2 is satisfied through the imposition of--and compliance by the Applicant with--special conditions.

Like Criterion 1, Criterion 2 has been the subject of litigation and guidance is available from the Courts. To prove criterion 2, the Applicant must demonstrate that the proposed Facility is designed, located and proposed to be operated to protect the public health, safety and welfare. 415 ILCS 5/39.2 (a) (ii). This includes a demonstration that the facility is not flawed from a public safety standpoint and that its proposed operations are neither substandard nor unacceptably risky. Industrial Fuels and Resources, Inc. v. Illinois Pollution Control Board, 227 Ill.App.3rd 533, 592 N.E.2d. 148, 157 (1st Dist. 1992).

Mr. Hock testified that the Application met the location standards (wetlands, archeological sites, threatened species, wild and scenic rivers and the airport). PWC questioned Mr. Hock extensively on airport safety related issues and particularly operations in the Runway Protection Zone. The record also contains a letter from the DuPage Airport Authority in which LRS agreed to comply with several conditions and actions required of LRS by the Airport Authority to safeguard airport operations. Imposition and compliance with these conditions are essential to a finding that Criterion 2 can be satisfied. With the imposition of the conditions set forth in that letter, the Airport Authority concluded that proposed Facility did not pose a threat to the safety of the Airport. No expert testimony was introduced that challenged that determination by the Airport Authority.

Mr. Hock also described the proposed site plan and the proposed operations. The Facility as proposed will handle a maximum of 1950 tons of material per day composed of 650 tons of municipal solid waste, 300 tons per day of hydro-excavation waste, 750 tons per day of construction or demolition debris (for which the site is already permitted), and 250 tons per day of single-stream recyclables.

Mr. Hock testified as to the fact that the transfer building will be a "fully enclosed" facility (which is an important requirement to protect the airport) and testified as to the truck movements on site, the number and function of "spotters," the operation of the entrance doors, the movements and operations of the transfer trailers, and the movements and operations of the front-loaders on the tipping floor. Mr. Hock testified as to the anticipated sources of business and the equipment that is anticipated to be used by LRS to bring that equipment to the Facility. Mr. Hock described the stormwater management plan for the proposed facility and testified that

the stormwater management has been approved by DuPage County and the City. There was no substantive challenge to the stormwater management plan in place.

PWC challenged whether the Facility, as proposed, was “fully enclosed” and entered videos of a different LRS facility in the record to challenge the Applicant on whether the facility would, in practice, actually operate as described. Mr. Hock responded that timing and operational differences shown in the video is a consequence of the different sources of material (and equipment bringing that material) from that which is anticipated at the Facility.

PWC also raised issues concerning litter control and tarping of the trailers, as well as the speed and the efficiency of the movements of the front loaders as used in Mr. Hock’s modeling and calculations. Based on an early pre-filing review of the design performed by the City’s engineering consultant, PWC (and subsequently the City Staff) also raised questions about the design of the building, push walls and other structural elements. Under PWC’s cross examination, and then again under cross examination by City Staff, Mr. Hock admitted that the imposition of certain special conditions would improve the Facility and add protections for public health, welfare and safety.

PODER called Steve DeLaRosa who raised concerns about employee safety and, particularly, the proposed use of ozone by the Applicant. There was no evidence, however, that what the Applicant was proposing did not comply with the applicable OSHA regulations.

PODER also inquired into the potential use of exclusively electric powered vehicles. The evidence, however, is that currently the technology does not exist to require the Applicant to use an exclusively electric-powered fleet of vehicles or equipment.



The application, modeling evidence, and testimony - with the special conditions in place -- demonstrated that the Facility could safely handle the proposed maximum tonnages per day. The special conditions are appended to the Proposed Findings of Fact and Conclusions of Law.

**3. *The Facility is located so as to minimize incompatibility  
With the Character of the Surrounding Area and to Minimize the Effect  
On the Value of Surrounding Property.***

This Criterion is contested by PWC and PODER. I find that Criterion 3 is satisfied.

The Application sets out the land uses in the vicinity and manner in which the proposed Facility relates to the character of the area. Applicant called Dale Kleszynski, a licensed Illinois real estate appraiser and member of the Appraisal Institute. He testified to the historical use of the subject property and surrounding area--which includes current and historical uses related to the management and disposal of waste—and characterized the area as “industrial in character.” The area is also segregated from other uses, especially residential uses.

In addition to concluding that the location minimizes incompatibility with uses in the surrounding area, Mr. Kleszynski also concluded that the Facility is located to minimize the effect on the value of surrounding property. Mr. Kleszynski submitted a highest and best use analysis of the subject property for purposes of analyzing impact on the values of surrounding property. He opined that this highest and best use analysis is related to the statutory siting criterion in that highest and best use of property is the use which would, by definition, minimize any deleterious effect on the values of the surrounding property. After reviewing the traditional criteria used to analyze highest and best use, he testified that development as a solid waste transfer station would fit within the highest and best use of the property.

In rebuttal, PWC called Kurt Kielisch who rendered the opinion that the highest and best use analysis employed by Mr. Kleszynski did not accurately determine the effect the Facility

would have on surrounding property values. Mr. Kielisch is not a licensed Illinois appraiser, has never previously testified in a Section 39.2 siting hearing, and further testified that he is not knowledgeable about the siting process. He testified that a matched pairs analysis (rather than a highest and best use analysis) should be used to determine “the least intrusive use of the property” and whether the proposed use would have “positive impact on the surrounding property values.” He further admitted that such an analysis of sales would not be possible here due to the 20-year existence of the nearby Groot transfer station.

Because of his lack of familiarity with the actual siting criterion, the testimony of Mr. Kielisch was of no probative value. Criterion 3 requires an analysis as to whether the location minimizes incompatibility with the character of the surrounding area and minimizes the (obviously assumed negative) impact on property values--not (as he opined) whether the proposed use has a positive impact. The analysis relevant to Criterion 3 is simply not that to which Mr. Kielisch testified (he also offered no opinion on the character of the uses in the area). Contrary to Mr. Kielisch's opinion, the use of the highest-and-best use methodology as an analytical tool for determining the magnitude of potential impact of the proposed facility on surrounding property values has been recognized by the PCB as an appropriate methodology for expert opinions concerning Criterion 3.

**4. *The Facility is located outside the Boundary of the 100 Year Floodplain.***

I find that the Applicant demonstrated that the Facility meets Criterion 4.

The testimony and other evidence entered in the Record at the Hearing supports the finding that the Facility meets this Criterion. No challenge to this Criterion has been filed.

5. ***The Plan of Operations for the Facility is designed to Minimize the Danger to the surrounding Area from Fire, Spills and Other Operational Accidents.***

I find that the Applicant demonstrated that the Facility meets Criterion 5 but I also find that the testimony of Mr. Hock, under cross examination, and the testimony of Colin Hale concerning existing litter problems with the current operations at the Property all support the imposition of and compliance with special conditions to further improve the Plan of Operations and minimize dangers to the surrounding area. In particular, I find that the testimony concerning where, when and how transfer trailers will be tarped and the handling of hydro-wastes will be improved to further minimize the danger to the surrounding area from litter or spills by the imposition of special conditions. No formal challenge to this Criterion has been filed.

6. ***The Traffic Patterns to and from the Facility Are So Designed as to Minimize the impact on Existing Traffic Flow.***

I find that the Applicant demonstrated that the proposed Facility meets Criterion 6.

The Applicant called Michael Werthmann, a registered professional engineer and certified professional traffic operations engineer, with more than 25 years of traffic engineering experience for both the private and public sectors. Mr. Werthmann testified that he used standard methodology used by transportation planning officials. Mr. Werthmann testified he studied traffic volumes, distributions and movements at the site entrance and the potentially affected intersections. He described the local roadway system and detailed present and future improvements on that system. He testified that the location, existing operations, and proposed route for the transfer trailers all minimized the impact on existing traffic flows. No challenge to this Criterion has been filed; however, both the City and PODER proposed a special condition concerning the traffic routes and

such is included in the Special Conditions appended to the Findings of Fact and Conclusions of Law.

**7. *Hazardous Waste Emergency Plan***

Per the Application and the Testimony of John Hock, the Facility will not be treating, storing or disposing of Hazardous Waste. This Criterion is therefore not applicable and therefore deemed satisfied. No challenge to this Criterion has been filed.

**8. *If the Facility is to be Located in a County Where The County Board has adopted a Solid Waste Management Plan Consistent With The Planning Requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, The Facility is Consistent with that Plan.***

This Criterion is contested by PWC and PODER. I find that Criterion 8 is satisfied.

John Hock reviewed the contents of the DuPage County Solid Waste Management Plan from its adoption to its most recent update. He reviewed the provisions concerning pollution control facilities in that plan including the recognized need for additional transfer stations, additional recycling and additional competition. On cross-examination by PWC, Mr. Hock agreed that the 2007 Plan Update recommended that an additional transfer station should be located in the "southern portion" of the County and that West Chicago is not in the southern portion of the County. However, he further testified that such a recommendation concerning the location of additional transfer stations did not appear in subsequent plan updates.

Mr. Hock also testified as to the secondary host agreement executed between LRS and DuPage County in which the County stated the proposed Facility appears to be consistent with the County's plan. PWC's witness, John Lardner, testified that "appears to be consistent" is not the same as "is consistent" and opined that the Facility is in fact not consistent with the County's

Plan. Lardner did acknowledge that the County's Plan does call for more transfer stations, more recycling, and more competition.

I find the PCB decision in *Rockdale* is again instructive. As in this case, both the PCB (and the court) in *Rockdale* found that the very existence of a secondary host agreement approved by the County weighs heavily in favor of a finding that Facility is consistent with the County's plan (as it is the County's plan to interpret and administer). Because the County approved the secondary host agreement for this Facility, I find the proposal to be consistent with the County's plan.

**9. Recharge Area**

Per the Application and the testimony of John Hock, the Facility is not located in a regulated recharge area. This Criterion is therefore not applicable and therefore deemed satisfied. No challenge to this Criterion has been filed.

**10. Consideration of Previous Operating Experience**

The Act permits the Corporate Authorities to consider the previous operating experience of an applicant. Specifically, the Act permits the City to consider the "past record of convictions or admissions of violations of the Applicant...". Here, the record contains no past convictions of violations by LRS nor admissions of violations by LRS, which favors approval of the Application.

PWC did enter videos showing actual operations at different LRS facility and PODER called witnesses about the current operations at the Property raising litter and air quality concerns and that testimony serves as the basis for the imposition of some special conditions, but that testimony did include any evidence of any actual violations of the regulatory standards and



therefore is not a sufficient basis to find the proposed Facility does not satisfy the criteria of Section 39.2.

**PUBLIC COMMENTS**

In addition to the public comment (oral and written) received during the Hearing, the City Clerk received written public comments after the hearing closed. The public comment supporting the Application focused on the benefits that the Facility would bring to the City. PODER, the Applicant, and persons associated with both also filed comment after the hearing closed. I found that the public comment, while important to understand the context of the application, was not focused on the statutory criteria in a relevant and "probative" way or, alternatively, lacked sufficient evidence about the sources cited (i.e., an evidentiary foundation) as required by the statute and case law and therefore the comment, neither singly nor collectively, caused any change in how I weighed the evidence received from the Application, the admitted exhibits, and the admitted testimony.

**PROPOSED FINDINGS OF FACT**

My proposed findings of fact are attached.

Respectfully submitted,

  
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Derke J. Price

Ancel Glink, PC  
140 South Dearborn, 6<sup>th</sup> Floor  
Chicago, Illinois 60603

4828-0676-7394, v. 1



**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. On September 16, 2022, Lakeshore Recycling Systems, LLC ("Applicant") applied to the City of West Chicago ("City") for local siting approval of a new municipal waste transfer station on its 27.66 acre parcel of real estate at 1655 Powis Road, West Chicago, Illinois, 60185 (as legally described in the application and hereafter referred to as the "Property").
2. The Applicant owns the Property upon which the proposed pollution control facility ("Facility") is to be located.
3. The Property is located within the corporate limits of the City, is the subject of a Host Community Benefit Agreement between the Applicant and the City, and the City has jurisdiction to consider the Application.
4. The public hearing on the application was opened on January 3, 2023.
5. The hearing closed on January 19, 2023.
6. In accordance with the Act, written comment was then received by the Office of the City Manager acting as City Clerk for and additional 30 days after the close of the Hearing (i.e., through 11:59:59 p.m. CDST on February 20, 2023, including any written comment post-marked on or before February 18, 2023).
7. Concerning the pre-filing notice requirements of Section 39.2(b) (which states, in relevant part, that the applicant shall cause written notice of its request for site approval "to be served either in person or by registered mail, return receipt requested, on the owners of all property within the subject area not solely owned by the applicant, and on the owners of all property within 250 feet in each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of the County in which such facility is to be located...");
  - A) with respect to all properties within 250 feet of the proposed facility, other than railroad properties, the applicant caused written notice of its request for site approval to be served by registered mail return receipt requested upon all such owners;
  - B) with respect to the railroad properties within 250 feet of the proposed facility, the owners as appears from authentic—and in some cases conflicting--tax records of DuPage County, are the Union Pacific Railroad Company and, variously and alternatively, the Elgin, Joliet & Eastern Railway, the Wisconsin Central, Ltd. (EJ&E Line) Company, and, per the DuPage County, Illinois 2022 Real Estate Tax Assessment Parcels Map, the Canadian National Railway;
  - C) the Applicant caused written notice of its request for site approval to be served by registered mail return receipt requested upon the Union Pacific Railroad Company;
  - D) the Applicant did not cause notice of its request for site approval to be served on the Elgin, Joliet & Eastern Railway;
  - E) the Elgin, Joliet & Eastern Railway was merged into the Wisconsin Central, Ltd. in December of 2012;

F) the Applicant did not cause notice of its request for site approval to be served on the Wisconsin Central, Ltd.;

G) the Wisconsin Central, Ltd. is a wholly owned subsidiary of the Canadian National Railway;

H) the Applicant caused written notice of the Applicant's request for site approval to be delivered via paid courier to the Canadian National Railway at the corporate offices of the Canadian National Railway in Montreal, Quebec, Canada;

I) the Applicant's courier secured the signature of a representative of the Canadian National Railway for that delivery;

J) the Applicant's use of the paid courier to deliver written notice of the Applicant's request, together with the documentation from the courier of that delivery, is sufficient to effectuate delivery of the request for site approval to the ultimate corporate parent/owner of the railroad property (not owned by the Union Pacific Railroad) and thereby satisfy the requirements of Section 39.2(b) of the Act.

8. Concerning 415 ILCS 5/22.14 (which states, in relevant part, that "no person may establish any pollution control facility for use as a garbage transfer station, which is located less than 1000 feet from the nearest property zoned for primarily residential uses or within 1000 feet of any dwelling"):

A) no dwelling is within 1000 feet of the proposed facility;

B) the railroad properties are zoned ER-1 in the City and are located within 1000 feet of the proposed facility;

C) property zoned "ER-1" in the City of West Chicago is property zoned primarily for residential uses;

D) the size and the active use of the railroad properties make residential development of the parcels in compliance with ER-1 requirements improbable as a practical and pragmatic matter (see August 23, 2022 letter of Tom Dabareiner, City Community Development Director and Zoning Administrator);

E) in applying Section 22.14 restrictions, the Pollution Control Board (and at least one Appellate Court) has interpreted and enforced Section 22.14 so as to protect actual residences or properties where residential development is probable (at least as an initial matter of zoning) (see, *Roxana Landfill, Inc. v. Illinois Pollution Control Board*, 2016 WL 4005892, (Ill. App. 5 Dist. 2016) (a Rule 23 opinion affirming the PCB which allowed siting even though actual housing structures and residentially zoned properties were within 1,000 feet of the facility because the residential properties were now vacant and deed restrictions against residential use had been recorded against the properties, making actual residential use improbable, though not impossible);

F) Accordingly, Section 22.14 does not bar this proposed facility.

9. The Applicant complied with all pre-filing notice requirements of Section 39.2(c) of the Act.

10. The siting proceedings herein, both procedurally and substantively, complied with the requirements of fundamental fairness:

A) PWC and PODER interposed an objection to the failure to make the Pre-Filing Notice available on the City's website in Spanish; however, the Act itself does not require that

the Pre-Filing Notice in these proceedings be made available in a language other than English and no case has applied language access requirements to a Section 39.2 Siting Hearing nor the Section 39.2 filings.

B) PWC and PODER interposed objections to the lack of a Spanish-language translator for the hearing proceedings; however, neither the Act itself does nor any other statute or case requires that Language Access Services be made available for a Section 39.2 Siting Hearing (compare 725 ILCS 140/1 requiring such services in the criminal law context).

C) PWC and PODER filed objections to the exclusion of proffered evidence concerning "environmental justice related issues;" however, the State of Illinois has not amended the Environmental Protection Act to add "environmental justice related issues" to the Section 39.2 criteria and neither the Pollution Control Board nor any Court has held that "environmental justice related issues" is now a part of any criterion under Section 39.2.

D) In the absence of a defined statutory criteria concerning "environmental justice related issues," testimony proffered about such issues is not relevant to the siting decision.

11. Based on the understanding of Criterion 1 as articulated by the Pollution Control Board and affirmed by the Illinois Appellate Court for the Third District in *Will County v. Village of Rockdale*, 121 N.E.3d 468 (3d Dist. 2018), the Applicant demonstrated that the proposed Facility meets Criterion 1: "the facility is necessary to accommodate the waste needs of the area it is intended to serve...."

12. The Applicant did not demonstrate that the Facility--as proposed in the Application--meets Criterion 2; however, with the imposition of the special conditions proposed by City Staff (and compliance therewith by the Applicant) which are attached hereto as Exhibit A, the proposed Facility does meet Criterion 2: "the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;"

13. The Applicant demonstrated that the proposed Facility meets Criterion 3: "the facility is so located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property;"

14. The Applicant demonstrated that the proposed Facility meets Criterion 4; "for a facility other than a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100 year floodplain or the site is flood-proofed;"

15. The Applicant did not demonstrate—as proposed in the Application--that the Facility meets Criterion 5; however, with the imposition of the special conditions proposed by City Staff (and compliance therewith by the Applicant) which are attached hereto as Exhibit A, the proposed Facility does meet Criterion 5: "the plan of operations for the is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents;"

16. The Applicant demonstrated that the proposed Facility meets Criterion 6: "the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows;



17. The Applicant demonstrated that the facility will not be accepting hazardous waste and therefore demonstrated that Criterion 7 is not applicable.

18. Based on the analysis of Criterion 8 as articulated by the Pollution Control Board and affirmed by the Illinois Appellate Court for the Third District in *Will County v. Village of Rockdale*, 121 N.E.3d 468 (3d Dist. 2018), the Applicant demonstrated that the proposed Facility meets Criterion 8: "...where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan; ..."

19. The Applicant demonstrated that the facility is not located within a regulated recharge area and therefore Criterion 9 is not applicable.


20. The Applicant's operating history demonstrates that the Applicant is qualified to operate the Facility safely and properly and provides no basis to deny the Application.

21. The proposed Facility, when developed and operated in compliance with the special conditions, is consistent with all appropriate and relevant location standards, including airport setback requirements, wetlands standards, seismic impact zone standards, and residential setback requirements.

22. The Applicant has agreed to comply and approval is conditioned upon compliance with all terms of the Host Community Benefit Agreement between the City of West Chicago and Lakeshore Recycling Systems, LLC, dated April 1, 2019; the Secondary Host Community Benefit Agreement between DuPage County and Lakeshore Recycling Systems, LLC, dated March 10, 2020; and the Airport Agreement.

With the imposition of and compliance by the Applicant with the Special Conditions set forth above, the evidence demonstrates that the Application complies with each of the nine siting criteria in Sec. 39.2(a) of the Act and therefore the City should grant siting approval.

Respectfully submitted,

  
\_\_\_\_\_  
Derke J. Price  
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**EXHIBIT A**

**Special Conditions**

1. The maximum tonnage per day that may be received by the facility shall not exceed 1,950 tons per day, of which up to 650 tons per day may be municipal solid waste (MSW), up to 300 tons per day may be hydro excavation waste, up to 750 tons per day may be construction and demolition debris (C&D) and up to 250 tons per day may be single stream recyclables (SSR).
2. The Applicant shall keep the truck doors to the transfer facility closed, except for emergencies and to allow trucks to enter and exit the facility, during regular business hours. The doors shall be equipped with sensors such that they will open and close automatically as vehicles enter and exit the transfer building. Alternatively, an employee may open and close the doors when trucks access and exit the transfer facility.
3. The push walls in the transfer facility shall be designed to ensure to the satisfaction of the City that there will be no buildup of waste behind the walls which could result in fire, odor, or harborage for vectors. In addition, the Applicant shall provide a certification from a licensed structural engineer that the push walls will be capable of withstanding impact from waste loading equipment at 5 mph without shearing the beams or compromising the integrity of the building's walls.
4. All transfer vehicles utilizing the facility shall be equipped with auto tarping systems, and all loaded transfer trailers shall be tarped inside of the transfer building prior to exit.
5. The Applicant shall continue to operate the C&D recycling portions of the facility in accordance with the requirements of 415 ILCS 5/22.38 for so long as the current permit (2015-124-OP) remains in effect. If the current permit (2015-124-OP) is discontinued, replaced or terminated, the following conditions, as modified, shall remain in effect:
  - *The facility shall be designed and constructed with roads and traffic flow patterns adequate for the volume, type and weight of traffic using the facility including, but not limited to hauling vehicles, emergency vehicles, and on-site equipment. Sufficient area shall be maintained to minimize traffic congestion, provide for safe operation, and allow for queuing of waste hauling vehicles.*
  - *The operator shall provide adequate parking for all vehicles and equipment used at the facility and as necessary for queued hauling vehicles.*
  - *Roadways and parking areas on the facility premises shall be designed and constructed for use in all weather, considering the volume, type and weight of traffic and equipment at the facility.*
  - *The facility shall be designed and constructed so that site surface drainage will be diverted around or away from the recycling and waste transfer areas. Surface drainage shall be designed and controlled so that adjacent property owners encounter no adverse effects during development, operation and after closure of the facility.*
  - *Run-off from roadways and parking areas shall be controlled using storm sewers or shall be compatible with natural drainage for the site. Best management practices (e.g., design features, operating procedures, maintenance procedures, prohibition of certain practices and treatment)*

*shall be used to ensure that run-off from these areas does not carry wastes, debris or constituents thereof, fuel, oil or other residues to soil, surface water or groundwater.*

- *The facility, including, but not limited to, all structures, roads, parking and recycling areas, shall be designed and constructed to prevent malodors, noise, vibrations, dust and exhaust from creating a nuisance or health hazard during development, operation and closure of the facility. Facility features (e.g., berms, buffer areas, paving, grade reduction), best available technology (e.g., mufflers, machinery enclosures, sound absorbent materials, odor neutralizing systems, air filtering systems, misting systems), and building features (e.g., enclosed structures, building orientation) shall be among the measures to be considered to achieve compliance.*
- *The facility shall be designed and constructed to prevent litter and other debris from leaving the facility property. Facility features (e.g., windbreaks, fencing, netting, etc.) shall be among the measures considered to ensure that the debris does not become wind strewn and that no other provisions of the Act are violated.*
- *No regulated air emissions shall occur from these facilities, except as authorized by a permit from the Illinois Environmental Protection Agency (IEPA) Bureau of Air (BOA). No process discharge to Waters of the State or to a sanitary sewer shall occur from these facilities, except as authorized by a permit from the IEPA Bureau of Water (BOW).*
- *The facility shall be designed and constructed with a water supply of adequate volume, pressure, and in locations sufficient for cleaning, firefighting, personal sanitary facilities, and as otherwise necessary to satisfy operating requirements (e.g., dust suppression, wheel washing) and the contingency plan.*
- *The facility shall be designed and constructed with exterior and interior lighting for roadways, and waste handling areas adequate to perform safely and effectively all necessary activities.*
- *The facility shall be designed and constructed with truck wheel curbs, guard rails, bumpers, posts or equivalents to prevent backing into fuel storage tanks, equipment, and other structures.*
- *The facility shall be designed and constructed with adequate shelter, sanitary facilities, and emergency communications for employees.*
- *The facility operator shall install fences and gates, as necessary, to limit entry. Except during operating hours, the gates shall be securely locked to prevent unauthorized entry.*
- *The facility may receive general construction and demolition debris at the site Monday through Saturday, 24 hours a day. The facility shall be closed on Sunday and the six major federal holidays (New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day). When the facility is operated before sunrise or after sunset, adequate lighting shall be provided. If it is required for the facility to be open beyond normal operating hours to respond to emergency situations, a written record of the date, time and reason the facility was open shall be maintained in facility operating records. The IEPA's Regional Office and the county authority responsible for inspection of the facility, per a delegation agreement with the IEPA, must be notified and must grant approval each day that the operating hours need to be extended. No later than 10:00 a.m. of the first operating day after the operating hours have been extended, the Applicant shall send a written report by email to the City Administrator, which describes the length of the extension of the operating hours and the reason for the extension.*
- *The facility may receive and transfer MSW, hydro excavation waste and SSR from 4:00 a.m. to 12:00 a.m. Monday through Friday and from 4:00 a.m. to 12:00 p.m. on Saturday, with no*



*operation on Sunday or the six major federal holidays (New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day), provided that on the Saturday following a major federal holiday, regular business hours may be extended to 12:00 a.m. If it is required for the facility to be open beyond normal operating hours to respond to emergency situations, a written record of the date, time and reason the facility was open shall be maintained in facility operating records. The City of West Chicago must be notified by email to the City Administrator each day that the operating hours need to be extended. The IEPA's Regional Office and the county authority responsible for inspection of the facility, per a delegation agreement with the IEPA, must be notified and must grant approval each day that the operating hours need to be extended.*

- *Fire safety equipment (fire extinguishers) shall be maintained in accordance with recommended practice.*
- *Non-recyclable waste may be kept temporarily in covered containers or transfer trailers for no more than 24 hours (except on weekends and holidays), provided that loaded or partially loaded trailers intended to be stored overnight or that will not be picked up and transported the same operating day are stored indoors and suitably covered.*
- *Piles of general construction or demolition debris shall be covered or wetted to prevent air-borne dust.*
- *The facility shall be designed and constructed to prevent unauthorized access to recycling areas, storage areas for unauthorized wastes, salvaged and recycled materials, and staging areas where loaded site equipment or vehicles may be parked. Facility features such as fences and gates shall be provided.*
- *Waste handling areas shall be designed and constructed to prevent exposure of wastes and recyclable materials to run-off and flooding.*
- *The sorting areas shall be properly graded and compacted to prevent ponding from forming leachate during storms.*
- *Records shall be maintained on-site at the facility office for each operating day. The operator shall record operating hours, load ticket information, load inspections, daily processing time, volume processed per day, transfer load out and waste disposition details.*
- *The operator shall, within 48 hours of receipt of the general construction or demolition debris at the facility, sort the general construction or demolition debris. The operator shall separate the recyclable general construction or demolition debris from nonrecyclable general construction or demolition debris and dispose of the non-recyclable general construction or demolition debris, in accordance with Section 22.38(b)(1) of the Act.*
- *The operator must place wood, tires, and other unacceptable materials in covered dumpsters or vehicles adequate to prevent the release of leachate.*
- *All non-recyclable general construction or demolition debris, and unacceptable material shall be moved to the waste transfer facility on the same day it is received, and disposal of such material shall be handled in accordance with all applicable federal, State, and local requirements and with these conditions.*
- *The operator shall transport all non-putrescible recyclable general construction or demolition debris for recycling or disposal within 6 months of its receipt at the facility, in accordance with Section 22.38(b)(4) of the Act.*

- *In accordance with Section 22.38(b)(6) of the Act, the operator shall employ tagging and record keeping procedures to identify the source and transporter of C&D material accepted by the facility.*
- *The operator shall use load tickets to control the site activities and comply with the tagging and record keeping procedures. These load tickets shall identify the source of the C&D material delivered to the site. The operator shall use these tickets to identify the location in the yard or in the covered dumpsters and the length of time stored at the site to achieve compliance.*
- *The operator is prohibited from receiving hazardous and asbestos containing materials.*
- *The operator may separate clean concrete and clean soil from the general construction or demolition debris as recyclable materials for use in construction. The operator is permitted to store recyclable concrete and clean soil for a maximum period of 3 months.*
- *The operator may store the steel separated from concrete or other construction or demolition debris for a maximum period of 6 months. After six months, the steel must be sent offsite for disposal or recycling.*
- *The operator shall ensure that site surface drainage, during development, during operation and after the site is closed, shall be such that no adverse effects are encountered by adjacent property owners.*
- *The best available technology (mufflers, berms and other sound shielding devices) shall be employed to minimize equipment noise impacts on property adjacent to the site during both development, operation and during any applicable post-closure care period.*
- *Management of Unauthorized Waste by the operator*
  - *Landscape waste found to be mixed with general construction and demolition debris shall be removed the same day and transported to a facility that is operating in accordance with the Illinois Environmental Protection Act (Act), Title V, Sections 21 and 39 (415 ILCS 5/21 and 39).*
  - *Lead-acid batteries mixed with general construction and demolition debris shall be removed the same day and transported either to a drop-off center handling such waste, or to a lead-acid battery retailer.*
  - *Special wastes including hazardous waste, non-hazardous special waste, and potentially infectious medical waste mixed with general construction and demolition debris shall be containerized separately and removed from the property no later than five hours after receipt by a licensed special waste hauler. Special wastes shall be transported to a licensed special waste management facility that has obtained authorization to accept such waste. The operator shall maintain a contract with haulers so that the immediate removal is ensured. The operator shall develop an emergency response/action plan for such occurrences.*
  - *Asbestos debris from general construction and demolition debris shall be managed in accordance with the National Emission Standards for Hazardous Air Pollutants (NESHAPS) regulations.*
  - *Tires found to be mixed with general construction and demolition debris shall be removed and managed in accordance with Section 55 of the Act [415 ILCS 5/55].*
  - *White good components mixed with general construction and demolition debris shall be removed and managed in accordance with Section 22.28 of the Act [ 415 LCS 5/22.28].*

- *No person may knowingly mix liquid used oil with general construction and demolition debris.*
- *After the unauthorized waste has been removed from the facility, a thorough cleanup of the affected area shall be made according to the type of unauthorized waste managed. Records shall be kept for three years and will be made available to the IEPA upon request. In addition, the Applicant shall provide an annual written report to the City of West Chicago not later than January 31 of each year, which report shall: list the types, quantities and dates of receipt of all unauthorized waste; the generators of such waste; and the sites to which the wastes were delivered for disposal, processing or handling.*
- *The following wastes shall not be accepted at the facility:*
  - *Hazardous substances (as defined by Section 3.215 of the Illinois Environmental Protection Act);*
  - *Hazardous waste (as defined by Section 3.220 of the Illinois Environmental Protection Act);*
  - *Potentially infectious medical wastes (as defined by the Illinois Environmental Protection Act in Section 3.84);*
  - *Universal waste (as defined by Title 35 of the Illinois Administrative Code Part 733 including batteries, pesticides, mercury-containing equipment and lamps);*
  - *Regulated asbestos containing materials;*
  - *Polychlorinated biphenyl wastes;*
  - *Used motor oil;*
  - *Source, special or by-product nuclear materials;*
  - *Radioactive wastes (both high and low level);*
  - *Sludge;*
  - *White goods (incidental white goods received at the proposed transfer station will be segregated and stored for pickup by an off-site recycler);*
  - *Lead-acid automotive batteries (incidental automotive batteries received at the transfer station will be segregated and stored for pickup by an off-site recycler);*
  - *Used tires (incidental tires received at the transfer station will be segregated and stored for pickup by an off-site recycler); and*
  - *Landscape waste.*
- *Special wastes generated at the site for disposal, storage, incineration or further treatment elsewhere shall be transported by the operator to the receiving facility utilizing the IEPA's Special Waste Authorization system and manifest system.*

6. Upon receiving final, non-appealable siting approval pursuant to 415 ILCS 5/39.2 to construct and operate the West DuPage RTS, and upon receiving an IEPA development permit, LRS shall, prior to commencing operation of the waste transfer facility, 1) execute and grant to the DuPage Airport Authority ("DAA") a new avigation easement, which is Exhibit A to the Agreement Between the DuPage Airport Authority, Oscar (IL) LLC, and Lakeshore Recycling Systems, LLC, dated January 19, 2022 ("Airport Agreement"), 2) LRS shall reduce the roof height of its existing transfer building so as to stay below all critical elevations in the new avigation easement, and 3) LRS shall not allow any penetrations whatsoever to the new avigation easement.



7. All improvements installed on and offsite by the Applicant shall be funded by and solely at the expense of the Applicant.
8. The tipping floor of the waste transfer building shall be cleaned and free of waste at the end of each operating day. Except as set forth in Condition 5, no waste or other material shall be left on the floor inside the transfer building or outside the transfer building overnight or when the facility is not operating.
9. The Applicant shall control litter by discharging and loading all waste within the enclosed portion of the Transfer Facility. After unloading, any remaining loose waste shall be removed or contained in the vehicle prior to exiting the site. The Applicant shall use its best efforts to assure that vehicles, hauling waste to or removing waste from the Transfer Facility, shall be suitably covered to prevent waste from leaving the vehicles. A fence to aid in the interception of any blowing litter shall surround the Transfer Facility. The Applicant shall diligently patrol the Subject Property during hours of operation to collect any litter. At a minimum the Applicant shall diligently patrol and remove litter from: the Subject Property; all property owned or controlled by the Applicant; and, before 10:00 a.m. each operating day, Powis Road between Hawthorne Lane and Route 64 (North Avenue) as well as Powis Court . In addition, the Applicant shall, at a minimum, patrol and remove litter from private property within 500 feet of the aforesaid public streets and corresponding rights-of-way with the written permission of the owner of said properties, which permission the Applicant shall diligently attempt to obtain. The Applicant shall provide the City of West Chicago the names, addresses, telephone numbers and email addresses of such owners granting permission. The Applicant shall also post on the company's website the name and email address of an employee of the company to whom any owner of property along Powis Court or Powis Road between Route 64 (North Avenue) and Hawthorne Lane may report litter from the facility or trucks using the facility, in which case the Applicant shall remove the litter with the written permission of the owner within two hours of receiving notification of the litter concern. Upon written request, logs showing the private owner, the property address for the request for litter removal, the time such was received and the time the concern was abated shall be available to the City and provided within one business day. Also, the Applicant shall diligently seek the written approval of the DuPage County Forest Preserve District to remove litter, which is visible from Route 64 (North Avenue), from the portion of the Pratts Wayne Woods Forest Preserve that is located within the City of West Chicago. If permission is granted, litter removal from the Forest Preserve shall occur not less than monthly; the City shall be provided written notice of each occurrence within one business day of such being completed.
10. The Applicant shall provide a street sweeper to remove mud and dust tracked onto hard surfaces inside and outside the Transfer Facility, on property owned or controlled by the Applicant as well as well Powis Court and Powis Road between Hawthorne Lane and Route 64 (North Avenue) on an as needed basis, but not less frequently than daily.
11. The Applicant shall retain a pest control service on an on-going basis to address the potential for infestation by rodents and other vectors. Such service shall inspect the Transfer Facility on an as needed, but no less than monthly, basis.

12. Transfer trailers entering and exiting the Subject Property shall use only the following roads: Powis Road (between the facility entrance and Route 64 (North Avenue), Route 64 (North Avenue), Kirk Road and Interstate 88. Except for waste collection trucks servicing property within the City of West Chicago, waste collection trucks entering and exiting the Subject Property shall use only the following streets within the City and no others: Powis Road south of Route 64, Route 64 (North Avenue), Route 38, and Kress Road. The Applicant shall have installed within City right-of-way to the satisfaction of the City, license plate readers in each of the following locations: Hawthorne Lane between Route 59 and Powis Road; Smith Road between Powis Road and Route 64; and Powis Road between Smith Road and Route 64. The license plate readers shall provide remote access to the City of West Chicago to be used for any lawful purpose. The specific make and model of license plate readers and the specific locations for installation of the license plate readers shall be subject to the written approval/direction of the West Chicago Police Chief, and may be relocated for operational need at the expense of the City; the initial and any annual costs associated with the license plate readers shall be at the Applicant's sole cost and expense. The Applicant shall be responsible for maintaining and, if necessary, replacing the license plate readers when in disrepair or at the end of their useful lives as determined by the City through documentation from the vendor. The Applicant shall also provide a set of certified portable scales to the City at its sole cost and expense, which thereafter shall be maintained and replaced by the City.

13. Trucks transporting hydro excavation waste shall be water-tight. Dump style trucks transporting solidified hydro excavation waste shall include liners that are sufficient to prevent leakage onto roads and other surfaces.

14. All incoming hydro-excavation waste loads shall be accompanied by a completed/signed manifest and shall be pre-approved using a waste profile sheet and other supporting documentation as necessary. These materials shall be reviewed to verify that the waste is non-hazardous as defined in Title 35 Illinois Administrative Code Part 722.111. Pre-approved waste streams and such profile packets shall be kept on file at the facility, shall accurately characterize the accepted material, and may not be more than one year old.

15. The facility shall be maintained with a negative pressure condition such that the ventilation system provides a minimum of 6 air changes per hour. The facility design shall include an ozone system to treat the ventilation air prior to exhaust. The facility shall also be equipped with a misting system that will assist in mitigation of dust and odors above the tipping floor.

16. The facility shall otherwise be constructed and operated in substantial conformance with the plans and operating procedures specified in the siting application.

17. Approval is further conditioned upon compliance with all terms of the Host Community Benefit Agreement between the City of West Chicago and Lakeshore Recycling Systems, LLC, dated April 1, 2019; the Secondary Host Community Benefit Agreement between DuPage County and Lakeshore Recycling Systems, LLC, dated March 10, 2020; and the Airport Agreement.

STATE OF ILLINOIS     )  
COUNTY OF DU PAGE    )

***CERTIFICATE***

I, Valeria Perez, Certify that I am the Executive Assistant of the City of West Chicago, DuPage County, Illinois.

I further certify that on February 28, 2023 the Corporate Authorities of such municipality passed and approved Ordinance No. 23-O-0006 entitled:

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**AN ORDINANCE CONDITIONALLY APPROVING THE APPLICATION FOR  
LOCAL SITING APPROVAL OF LAKESHORE RECYCLING SYSTEMS, LLC  
FOR WEST DUPAGE RECYCLING AND TRANSFER STATION**

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Which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 23-O-0006 including the ordinance and a cover sheet hereof was prepared, and a copy of such ordinance posted in the municipal building, commencing on March 1, 2023 continuing for at least ten days thereafter. Copies of such ordinance were also available for public inspection upon request in the Office of the City Administrator.

Dated at West Chicago, Illinois, this 28<sup>th</sup> of February, 2023.

SEAL

*Valeria Perez*

\_\_\_\_\_  
Valeria Perez, Executive Assistant



**PWC-M17**



**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
CITY OF WEST CHICAGO and	)	Siting Appeal)
LAKESHORE RECYCLING SYSTEMS,	)	
LLC,	)	(Consolidated)
	)	
Respondents.	)	

**RESPONDENT CITY OF WEST CHICAGO'S OBJECTIONS AND ANSWERS TO PETITIONER'S FIRST SET OF INTERROGATORIES**

Respondent, City of West Chicago ("Respondent"), by and through Dennis G. Walsh and Daniel W. Bourgault of Klein, Thorpe and Jenkins, Ltd., its attorneys, answers Petitioner Protect West Chicago's ("Petitioner") First Set of Interrogatories as follows:

**GENERAL OBJECTIONS**

1. The Respondent objects to Petitioner's instructions and definitions insofar as those instructions and definitions purport to impose obligations to supplement or modify that exceed the obligations contained in the Illinois Code of Civil Procedure and the Illinois Supreme Court

Rules and the Board's discovery rules. The Respondent recognizes its obligations under the applicable rules, but objects to any attempt to expand those obligations beyond that required by law.

2. The Respondent objects to the Petitioner's definitions and instructions to the extent they demand production or identification of information, materials and documents that would be protected from disclosure in the courts of Illinois under statute, Supreme Court Rules or common law.

3. The Respondent objects to Petitioner's several instructions and definitions stating how to identify persons, entities and documents. Such instructions are overbroad, burdensome and call for more detail than is necessary or useful. The delay and burden imposed by such instructions would outweigh any legitimate or useful purpose to which Petitioner could put such information. The Respondent will make any necessary identifications with sufficient specificity to avoid confusion but will not undertake to follow Petitioner's full checklist of identification and other instructions.

4. Respondent objects to Petitioner's instructions regarding documents and/or information to be disclosed about privileged or immune information to the extent that such instructions would require disclosure of privileged or immune information or require the description of any such information in more detail than reasonably necessary to clearly identify the information and the basis on which it was withheld.

5. The Respondent objects to any instructions, definitions and requests concerning information belonging to a third party. The Respondent will respond on its behalf and on its behalf alone.

6. The Respondent objects to Petitioner's discovery requests to the extent the requests would require disclosure of any information that is subject to the attorney-client privilege, the doctrine of attorney work product immunity, or other applicable privileges or immunities. If any privilege or work product immune information is disclosed, except pursuant to a specific written agreement covering such information, such disclosure is inadvertent and is not intended to waive or prejudice any applicable privilege or immunity, either as to the disclosed information, or as to any other information.

7. In order to expedite discovery rather than oppose disclosure, the Respondent may disclose information covered by an objection in this response or in other discovery responses. Such disclosure is not intended to waive the Respondent's objections generally, nor to enlarge the scope of discovery, nor to waive or prejudice the Respondent's rights to object should Petitioner seek additional information of the same type.

8. The Respondent objects to the Petitioner's requests to the extent they seek information not in its possession, custody or control and/or which is already in Petitioner's possession, custody or control through a Freedom of Information Act response, contained in the Record of Proceedings, or otherwise.

9. These General Objections apply to and are incorporated into each specific answer herein, whether or not expressly incorporated by reference in such individual answer.

#### INTERROGATORIES

1. Identify all persons who attended the City of West Chicago City Council closed/executive session held on February 27, 2023.

**ANSWER:** Mayor Ruben Pineda, Aldermen Lori Chassee, James E. Beifuss, Jr., Jayme Sheahan, Rebecca Stout, Melissa Birch Ferguson, Jeanne Short, Sandy Dimas, Christine Dettmann, Heather Brown, Matthew Garling, Joseph C. Morano, John E. Jakabcsin,

Alton Hallett, and Christopher Swiatek. City Administrator Michael Guttman and Special Counsel Dennis Walsh from Klein, Thorpe & Jenkins, Ltd., Attorney Daniel Bourgault, from Klein, Thorpe & Jenkins, Ltd. and Hearing Officer/Attorney Derke Price, from Ancel Glink, P.C.

2. State the time the City of West Chicago City Council closed/executive session started and ended on February 27, 2023.

**ANSWER:** 6:00 p.m. – 8:40 p.m.

3. Identify all non-City of West Chicago City Council members who spoke at or otherwise participated or communicated in the February 27, 2023 closed meeting/session.

**ANSWER:** City Administrator Michael Guttman , Special Counsel Dennis Walsh and Hearing Officer/Attorney Derke Price

4. Identify all documents shown to the City of West Chicago City Council members or documents otherwise referred to during or at the February 27, 2023 closed/executive session.

**ANSWER:** The following documents were present and made available to the entire City Council at the February 27, 2023 closed session meeting:

- (1) The Siting Application
- (2) The City's Siting Ordinance
- (3) The Public Hearing Transcripts
- (4) The Public Hearing Exhibits
- (5) The Notice of Participation by Oral Public Comments
- (6) The Written Public Comments
- (7) Notice of Intent to File a Request for Local Siting Approval of a New Pollution Control Facility with the City of West Chicago, Illinois
- (8) Notice of Participation as a Party by Phillip A. Leutkehans of Leutkehans, Brady, Garner & Armstrong, LLC. and Ricardo Meza of Meza Law on behalf of Protect West Chicago
- (9) Notice of Participation as a Party by Julieta Alcantara Garcia on behalf of People Opposing DuPage Environmental Racism

Electronic Filing: Received, Clerk's Office 09/14/2023

Electronic Filing: Received, Clerk's Office 06/21/2023

(10) Notice of Participation as a Party by Julieta Alcantara Garcia and Cristobal Cavazos on behalf of People Opposing DuPage Environmental Racism

(11) Waste Transfer Station Hearing Request by Noreen LiginoKubinski

(12) Notice of filing Traffic Report Review Letter By Gerald P. Callaghan

(13) Protect West Chicago Motion to Dismiss Applicant's Request For Local Siting Approval of a Transfer Station For Inadequate Notice

(14) Applicant's Response to Motion to Dismiss-Notice

(15) Applicant's Memorandum entitled The 1000 Foot Residential Zoning Setback Does Not Apply to This Project Due to Impossibility

(16) Notice of Withdrawal of Luetkehans, Brady, Garner & Armstrong of its representation of Protect West Chicago

(17) Letter from Canadian National to John Hock dated February 2, 2023 filed by Applicant

(18) Letter from Associated Property Counselors, Ltd to LRS c/o George Mueller dated February 16, 2023 filed by Applicant

(19) Public Comments of PODER-Immigrant Solidarity DuPage in Opposition to the Application for Local Siting Approval submitted by Lakeshore Recycling Systems, LLC.

(20) Notice of Filing Proposed Conditions and Siting Conditions proposed by City Staff

(21) Applicant's Proposed Findings of Fact and Law

(22) Protect West Chicago's Proposed Combined Findings of Fact and Conclusions of Law

(23) People Opposing DuPage Environmental Racism's Proposed Combined Findings of Fact and Conclusions of Law

(24) The Host Agreements

(25) The Report of Hearing Officer Recommended Findings of Fact and Recommended Conditions of Approval

5. Identify the person(s) who drafted or otherwise participated in the formation of City of West Chicago Ordinance No. 23-O-0006 and the date(s) when he/she drafted the Ordinance.



**ANSWER:** Special Counsel Dennis Walsh was the only person who drafted the Ordinance. The Ordinance was sent to the City Administrator Michael Guttman on February 28, 2023.

6. State what edits, if any, were made to City of West Chicago Ordinance No. 23-O-0006 and the basis (reasons) for the requested edits prior to the time the City of West Chicago City Council members signed Ordinance No. 23-O-0006 on February 28, 2023.

**ANSWER:** After receiving the draft on February 28, 2023, City Administrator Michael Guttman made some formatting changes only and assigned an Ordinance number to the Ordinance.

7. If there were any edits made to the City of West Chicago Ordinance No. 23-O-006 (referenced in interrogatory No. 6 above) please provide the dates and times of those requested edits as well as the person(s) who so requested the edits.

**ANSWER:** City of West Chicago Ordinance No. 23-O-006 is not the correct Ordinance number for An Ordinance Conditionally Approving the Application For Local Siting Approval of Lakeshore Recycling Systems, LLC For West DuPage Recycling and Transfer Station which is Ordinance No. 23-O-0006. With that being said, City Administrator Michael Guttman made some formatting changes only to Ordinance No. 23-O-0006 and assigned an Ordinance number to it in the afternoon of February 28, 2023.

8. State whether Ordinance No. 23-O-0006 was shared with anyone (either in draft or final form/version) prior to the February 27, 2023 closed/executive session.

**ANSWER:** No

9. If the answer to Interrogatory No. 8 is in the affirmative, set forth the date and person with whom Ordinance 23-O-006 was shared.

**ANSWER:** Not applicable

10. State whether Lakeshore Recycling, LLC reimbursed the City of West Chicago \$9,109.00 in attorney fees and \$352.91 in costs for the City of West Chicago's failure to comply with the Freedom of Information Act request in cause number 2021 MR 449 and as set forth in the attached exhibit PWC-31.

**ANSWER:** Objection. See Hearing Officer's Order dated June 12, 2023.

11. State what if any action the City of West Chicago took to obtain Spanish-Language interpreters either prior to the start of the public Siting Hearings in January 2023 or after Mr. Steve De La Rosa publicly informed the City of West Chicago, during the siting hearing that there was "no Spanish language translation here for people from the community in a minority-majority community that have an interest in this along with the rest of the people of West Chicago." *See* Siting Hearing Transcript at p. 939.

**ANSWER:** Objection. See Hearing Officer's Order dated June 12, 2023.


12. State what if any action the City of West Chicago took to translate Lakeshore Recycling LLC's September 16, 2022 Siting Application materials from English to Spanish.

**ANSWER:** Objection. See Hearing Officer's Order dated June 12, 2023.

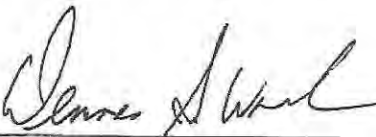
13. Identify all person(s) who communicated with Tom Dabareiner in relation to the two letters he prepared dated October 15, 2019 and August 24, 2022 identified at Exhibits PWC-13A and PWC-34 and attached hereto, as well as the date(s) of such communications.

**ANSWER:** John Hock communicated by phone (date unknown but prior to the date of the filing of the Application) and by e-mail on August 24, 2022 and August 25, 2022.

For the Answers

  
\_\_\_\_\_  
Michael Guttman, City Administrator  
City of West Chicago

For the Objections


  
\_\_\_\_\_  
Dennis G. Walsh, Attorney

Electronic Filing: Received, Clerk's Office 09/14/2023

Electronic Filing: Received, Clerk's Office 06/21/2023

Respectfully submitted,

CITY OF WEST CHICAGO,  
Respondent

By:   
\_\_\_\_\_  
One of Respondent's Attorneys

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