

BEFORE THE POLLUTION CONTROL BOARD

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

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


NOTICE OF FILING

TO: See attached Service List

PLEASE TAKE NOTICE that on September 21, 2023, LAKESHORE RECYCLING SYSTEMS, LLC electronically filed with the Office of the Clerk of the Illinois Pollution Control Board its **Response to Protect West Chicago's Motion in Limine**, a copy of which is hereby served upon you.

Respectfully submitted,

LAKESHORE RECYCLING SYSTEMS, LLC,
Respondent

BY: 

 Karen Donnelly
 One of Respondent's Attorneys

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PROTECT WEST CHICAGO,)	
)	
Petitioner,)	NO.: PCB 2023-107
	)	(Pollution Control Facility Siting Appeal)
v.)	
)	
CITY OF WEST CHICAGO, WEST)	
CHICAGO CITY COUNCIL, and)	
LAKESHORE RECYCLING SYSTEMS,)	
LLC,)	
)	
Respondents.)	

PEOPLE OPPOSING DUPAGE)	
ENVIRONMENTAL RACISM,)	
)	
Petitioner,	)	NO.: PCB 2023-109
	)	(Third-Party Pollution Control Facility
v.	)	Siting Appeal)
)	
CITY OF WEST CHICAGO and)	
LAKESHORE RECYCLING SYSTEMS,)	
LLC,)	
)	
Respondents.)	

RESPONDENT LAKESHORE RECYCLING SYSTEMS, LLC'S RESPONSE TO PROTECT WEST CHICAGO'S MOTION IN LIMINE

Now comes the Respondent, LAKESHORE RECYCLING SYSTEMS, LLC, by and through its attorneys, George Mueller and Karen Donnelly, and for its Response to PROTECT WEST CHICAGO'S Motion in Limine states as follows:

1. On the afternoon of September 19, 2023, PWC filed a 317 page so-called Motion in Limine. Sans exhibits, the text to the Motion is 30 pages. On September 21, 2023, the PCB Hearing Officer ordered that the other parties file a Response by 4:30 today. Lakeshore objects to that Order because it does not allow sufficient time to

comprehensively respond to the Motion, and this Response is made without waiving said objection.

2. The essence of the Motion is that the special counsel to the CITY OF WEST CHICAGO in the underlying proceeding herein served as hearing officer in a subsequent siting proceeding in the City of Moline, and that an attorney from the same law firm as the attorney who served as hearing officer in the underlying siting proceeding herein served as the City attorney for Moline in that subsequent siting proceeding.
3. The Motion does not allege actual bias or conflict on the part of any of the attorneys, although it does allege that Derke Price, the hearing officer in the West Chicago proceeding, made incorrect rulings with regard to environmental justice questions. The resolution of that issue in this appeal does not depend upon Mr. Price's relationship with any other person or party. The Motion is essentially smoke and mirrors, hinting at a conspiracy theory based on otherwise unrelated facts -- in this case the participation of some individuals in a subsequent, unrelated proceeding. The QAnon members who dreamed up the Pizzagate conspiracy would be proud.
4. The factual allegations in PWC's motion are all innocent and normal procedure in a specialized subject matter area, where many of the same individuals are frequently involved in multiple proceedings, often in different roles.
5. PWC begins its Motion with the observation that 20 years ago West Chicago opposed a second transfer station in the area. Of course, PWC does not include any discussion of the respective similarities and differences of the two siting applications or the respective similarities and differences of economic and other conditions at the time of

the two applications. The sole purpose of this allegation is obviously to create prejudice.

6. Next, PWC alleges that the CITY OF WEST CHICAGO and LAKESHORE entered into a host agreement. Host agreements are a well accepted part of the larger siting process. As the Board has previously held: “Next, the Board agrees with the assessment of the County and Waste Management that all of the contacts of which STMD complains between County Board Members that occurred prior to the filing of the application-filings were permissible under prior Board precedent. They were not, by definition, *ex parte* contacts. The Ordinance authorized the County to negotiate a Host Agreement.” *Stop the Mega-Dump v. DeKalb County*, PCB 10-103, March 17, 2011.
7. PWC references the FOIA litigation, which occurred years prior to the local siting hearing. This litigation allowed PWC to discover written comments made by Aptim Engineering during their pre-filing review of an early draft of the siting application. Pre-filing review is a well-established practice that has been affirmed in multiple PCB reviews of local decisions. Some of Aptim’s pre-filing review comments were critical, a fact that PWC relied upon heavily in their cross examination of LAKESHORE’S experts at the siting hearing. It is, therefore, quite surprising that PWC now claims, without additional facts and with no compelling legal authority, that Aptim had an actual conflict of interest based upon Aptim’s representation of LAKESHORE in a SUBSEQUENT proceeding. The significance of experts and their reports in local siting hearings has been extensively litigated. Expert and staff reports are not evidence. *Fairview Area Citizens Taskforce v. Illinois Pollution Control Bd.*,

198 Ill.App.3d 541, 548, 555 N.E. 2d 1178, 144 Ill. Dec. 659, 663 (Ill. App. 3 Dist., 1990). It is undisputed that a hearing officer in proceedings before the County Board is not a decision maker. *Citizens Against Regional Landfill v. Pollution Control Bd.*, 255 Ill.App.3d 903, 907, 627 N.E.2d 682, 685, 194 Ill. Dec. 345, 348 (Ill. App. 3 Dist., 1994). A Village Board is free to select from multiple reports and recommendations it may receive from different parties and sources in making its own findings. *Timber Creek Homes, Inc., Petitioner v. Village of Round Lake Park, Round Lake Park Village Board and Groot Industries, Inc., Respondent* 2014 WL 4249954 (Ill. Pol. Control. Bd.), 69.

8. Next, PWC suggests, again without any evidence, that Dennis Walsh, the attorney for West Chicago must have been biased because he was the hearing officer at a subsequent siting proceeding. However, PWC's motion notes that Walsh early on questioned the relationship between Lakeshore and Aptim, something he must have done in his exercise of due diligence and out of an abundance of caution. The Motion failed to mention that Aptim was forthright in explaining the relationship and reemphasizing their professional impartiality.
9. Derke Price served as the hearing officer. He is a partner in a large law firm which concentrates in municipal practice. The insinuation that he was corrupted by the fact that one of his partners is the city attorney for Moline, Illinois, is a stretch, even by QAnon standards. See paragraph seven above for authority on the proposition that hearing officers are not decision makers.
10. PWC, in an apparent attempt to insert more prejudice into their argument, points out that the City deliberated on the Siting Application in closed session. Once again, this

is an innocent and well accepted practice. *Citizens Opposed to Additional Landfills v. Greater Egypt Environmental Complex*, PCB 97-233, Nov. 6, 1997.

11. In its ongoing attempt to insert prejudice and muddy the waters, PWC has filed this 11th hour Motion suggesting a conspiracy and throwing in everything but the kitchen sink. Nothing alleged comes anywhere close to meeting the standard for proving bias and unfairness. “We additionally note that administrative officials are presumed to be objective and able to fairly judge a controversy, and a party challenging a tribunal's impartiality must overcome the presumption that the members are fair and honest.” *Turcol v. Pension Board of Trustees of Matteson Police Pension Fund*, 359 Ill. App. 3d 795, 804, 295 Ill. Dec. 909, 834 N.E.2d 490 (2005). “A personal interest or bias can be pecuniary or any other interest that may have an effect on the impartiality of the decisionmaker.” *Huff v. Rock Island County Sheriff's Merit Comm'n*, 294 Ill. App. 3d 477, 481, 228 Ill. Dec. 738, 689 N.E.2d 1159 (1998). **There is, however, a strong presumption of honesty and integrity in the decisions of adjudicators.** To overcome that presumption, an applicant must prove that the proceedings were “tainted by dishonesty or contained an unacceptable risk of bias against the app[licant].” (Internal quotation marks omitted.) *Scott v. Department of Commerce & Community Affairs*, 84 Ill. 2d 42, 56, 48 Ill. Dec. 560, 416 N.E.2d 1082 (1981); see also *Goodwin v. McHenry County Sheriff's Office Merit Comm'n*, 306 Ill. App. 3d 251, 256–57, 239 Ill. Dec. 287, 713 N.E.2d 818 (1999); *Huff*, 294 Ill. App. 3d at 481, 228 Ill. Dec. 738, 689 N.E.2d 1159. Furthermore, “[i]f one decision maker on an administrative body is not completely disinterested, his participation infects the action of the whole body” and renders the resulting decision unsustainable.” (Internal

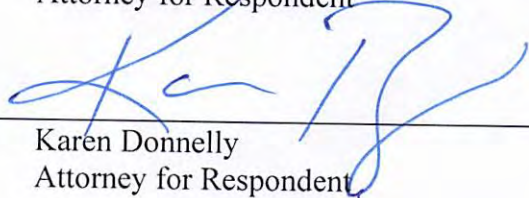
quotation marks omitted.) *Kramarski*, 402 Ill. App. 3d at 1047, 341 Ill. Dec. 954, 931 N.E.2d 851. *Naden v. Firefighters' Pension Fund of Sugar Grove Fire Prot. Dist.*, 2017 IL App (2d) 160698, ¶ 10, 96 N.E.3d

For the foregoing reasons, PWC's Motion in Limine should be denied.

Respectfully submitted,

LAKESHORE RECYCLING SYSTEMS, LLC.,
Respondent

BY: /s/ George Mueller
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Attorney for Respondent

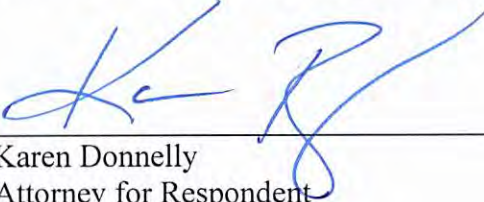
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AFFIDAVIT OF SERVICE

I, the undersigned, on oath state that I have served the attached **Notice of Filing and Respondent Lakeshore Recycling Systems, LLC's Response to Protect West Chicago's Motion in Limine**, on behalf of LAKESHORE RECYCLING SYSTEMS, LLC upon the following persons to be served via email transmittal from 501 State Street, Ottawa, Illinois 61350, this 21st day of September, 2023.



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Attorney for Respondent

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