

**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 October 16, 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 Hearing Exhibits and Certification of Hearing Exhibits*, copies of which are attached and served upon you.

Dated: October 16, 2023

Respectfully Submitted,



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

Ricardo Meza  
Meza Law  
542 S. Dearborn, 10<sup>th</sup> Floor  
Chicago, IL 60605  
(312) 802-0336  
[rmeza@meza.law](mailto:rmeza@meza.law)

**CERTIFICATE OF SERVICE**

I, Ricardo Meza, an attorney, certify that I have served the attached: *Protect West Chicago's Hearing Exhibits and Certification of Hearing Exhibits*, on the below-named parties (Service List) by delivering the document to them via electronic mail on October 16, 2023 and via the PCB's Clerk's Office electronic filing system.



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Ricardo Meza

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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**PROTECT WEST CHICAGO’S HEARING EXHIBITS  
AND CERTIFICATION OF HEARING EXHIBITS**

NOW COMES the Petitioner, Protect West Chicago, (“PWC”), by and through its attorneys, Meza Law, and hereby files its Hearing Exhibits and Certification of Hearing Exhibits, And in support states as follows:

- 1) The attached exhibits are accurate reproductions of exhibits PWC moved into the record during the September 28, 2023, hearing in the above-captioned matters.
- 2) At the September 28, 2023 public hearing, the Hearing Officer admitted into the record the attached exhibits offered by PWC.
- 3) The below chart identifies the admitted exhibits, as well as the Transcript Page and Line in which those exhibits were admitted.

<b>Exhibit</b>	<b>Description</b>	<b>Transcript Page:Line</b>
Pineda – M8	November 14, 2020 Ruben Pineda Text – Father Josh	142:12
Pineda – M10	August 24, 2022 Email John Hock – Tom Dabareiner	237:12
Pineda – M11	PWC-34 August 24, 2022 letter - Tom Dabareiner Re Setback Issue	237:23
Pineda – M12	West Chicago Pollution Control Facility Site Approval Procedures – Ordinance	106:10
Pineda – M13	December 4, 2022 Email	162:17
Pineda – M17	Respondent City of West Chicago’s Objections and Answers to Petitioner’s First Set of Interrogatories	125:6
PWC – 7	West Chicago Contract with Aptim	101:7
PWC – 14	February 12, 2020 Email	173:22
PWC – 28	Rivera v. West Chicago complaint	157:20
PWC – 800	August 24, 2022 Dabareiner email to Guttman email	181:4
PWC – 806	February 28, 2023 12:16 pm Email from Guttman to City Council	128:19

The undersigned counsel hereby certifies, pursuant to Board Rule 101.627(c), that each copy of the exhibits attached hereto is an accurate reproduction of the corresponding exhibit offered and admitted at the hearing.

Dated: October 16, 2023

Respectfully Submitted,

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Ricardo Meza  
Attorney for Protect West Chicago

Ricardo Meza  
Meza Law  
542 S. Dearborn, 10<sup>th</sup> Floor  
Chicago, IL 60605  
(312) 802-0336  
[rmeza@meza.law](mailto:rmeza@meza.law)

# Exhibit

# PWC M8

Saturday, November 14, 2020

We need to talk next week. You're pushing propaganda. Please get all information prior to posting on social media. Thanks in advance.

7:39 AM



Ok, sorry that was not my intent.  
Yes, let's talk next week.

11:39 AM



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# Exhibit

# PWC M10



**Cindy Yates**

---

**From:** Hock, John <jhock@cecinc.com>  
**Sent:** Wednesday, August 24, 2022 6:55 PM  
**To:** Tom Dabareiner  
**Subject:** RE: Letter regarding Railroad Property  
**Attachments:** Revised Rail letter for LRS project r1.docx

Tom,

Thank you for the updated letter. We suggest the attached clarifications to the letter (shown in track changes). Please let us know of any questions or if it would be helpful to discuss.

**John E. Hock, P.E. | Vice President**  
Civil & Environmental Consultants, Inc.  
1230 East Diehl Road, Suite 200, Naperville, Illinois 60563  
**direct** 630.541.0612 **office** 630.963.6026 **mobile** 630.291.6026  
www.cecinc.com

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**From:** Tom Dabareiner <TDabareiner@westchicago.org>  
**Sent:** Wednesday, August 24, 2022 3:21 PM  
**To:** Hock, John <jhock@cecinc.com>  
**Subject:** RE: Letter regarding Railroad Property

**From:** Hock, John <jhock@cecinc.com>  
**Sent:** Wednesday, August 24, 2022 11:12 AM  
**To:** Tom Dabareiner <TDabareiner@westchicago.org>  
**Cc:** Renwick, Brad <brenwick@cecinc.com>  
**Subject:** Letter regarding Railroad Property

Tom,

Per our discussion, attached is the 2019 letter regarding the railroad property zoned ER-1 that is directly east of the LRS facility at 1655 Powis Road. As discussed, we are requesting that the letter be updated to reference both the Union Pacific Railroad Company property and the Canadian National Railway property. Both are adjacent to the LRS facility and we understand that they have separate PINs and ownership. Thank you for your assistance and please let us know of any questions.

**John E. Hock, P.E. | Vice President**  
Civil & Environmental Consultants, Inc.



1230 East Diehl Road, Suite 200, Naperville, Illinois 60563  
**direct** 630.541.0612 **office** 630.963.6026 **mobile** 630.291.6026  
[www.cecinc.com](http://www.cecinc.com)

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August 24, 2022

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

To Whom It May Concern:

Both the Union Pacific Railroad and the Canadian National Railroad operate parallel tracks on land running northwest to southeast, east of and adjacent to the subject property. The right-of-way for these rail lines carries a remnant zoning classification of Estate Residential, which is the classification assigned upon annexation. No effort was made to reclassify the property.

As an active rail corridor, there can be no residential development. Furthermore, there is insufficient room to construct homes on one-acre minimum lots and no convenient way to access what would be a narrow string of properties. Residential development on this property is physically impossible.

As such, the City concludes that the ~~believes Section 22.14(a)~~ 1,000-foot setback requirement in 415 ILCS 5/22.14(a) is not applicable.

Please contact me if you have any questions.

Sincerely,

Tom Dabareiner AICP  
Community Development Director and Zoning Administrator

# Exhibit

PWC M11



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**APPENDIX 2-D2**

**LETTER FROM WEST CHICAGO**

---



CITY OF  
**WEST CHICAGO**

WHERE HISTORY & PROGRESS MEET

August 24, 2022

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

To Whom It May Concern:

Both the Union Pacific Railroad and the Canadian National Railroad operate parallel tracks on land running northwest to southeast, east of and adjacent to the subject property. The right-of-way for these rail lines carries a remnant zoning classification of Estate Residential, which is the classification assigned upon annexation. No effort was made to reclassify the property.

As an active rail corridor, there can be no residential development. Furthermore, there is insufficient room to construct homes on one-acre minimum lots and no convenient way to access what would be a narrow string of properties. Residential development on this property is physically impossible.

As such, the City concludes that the 1,000-foot setback requirement in 415 ILCS 5/22.14(a) is not applicable.

Please contact me if you have any questions.

Sincerely,



Tom Dabareiner AICP  
Community Development Director and Zoning Administrator

475 Main Street  
West Chicago, Illinois  
60185

T (630) 293-2200  
F (630) 293-3028  
[www.westchicago.org](http://www.westchicago.org)

Ruben Pineda  
MAYOR  
Nancy M. Smith  
CITY CLERK

Michael L. Guttman  
CITY ADMINISTRATOR

# Exhibit

# PWC M12



ARTICLE VII. - POLLUTION CONTROL FACILITY SITE APPROVAL PROCEDURES

Sec. 14-90. - Definitions.

The following words, terms and phrases when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Act* means the Illinois Environmental Protection Act, as amended from time to time. (415 ILCS 5/1, et seq.)

*Applicant* means any person, firm or partnership, association, corporation, company, limited liability company or organization of any kind proposing to obtain site location approval and IEPA permits for a new pollution control facility within the city's jurisdiction, and includes the fee owner of such site, the proposed operator, and any other party with an interest in the site, such as a lessee, contract purchaser or land trust beneficiary.

*West Chicago's jurisdiction* refers to the corporate boundaries of the City of West Chicago.

*Board* refers to the Illinois Pollution Control Board.

*City* refers to the City of West Chicago, Illinois.

*City council* refers to City Council of West Chicago, Illinois.

*County* refers to the county in which the new pollution control facility is proposed to be located.

*Hazardous waste disposal site* means a site at which hazardous waste is to be managed, i.e., treated, stored or disposed. Hazardous waste is waste so defined in the Act.

*Hearing officer* refers to a person appointed by the mayor, with the advice and consent of the city council to conduct a public hearing and make findings of fact, conclusions of law and recommendations to the city council as provided by this article.

*IEPA* refers to the Illinois Environmental Protection Agency.

*Operator* means any person, firm or partnership, association, corporation, company, limited liability company or organization of any kind engaging in the activity of operating a pollution control facility within the city's jurisdiction.

*PCF* refers to a pollution control facility as defined in the Act. PCF includes a new pollution control facility and a transfer station as defined by the Act.

*Rules and procedures* refers to the "Rules and Procedures - Pollution Control Facility Siting - City of West Chicago, Illinois", established by the city council pursuant to section 14-97 this Code.

All other terms used in this article and defined in the Act shall have the same definitions and meanings as found in said Act, including, but not limited to those terms defined in Section 3, thereof. (415 ILCS 5/3)

(Ord. No. 12-O-0030, § 2, 8-20-2012)

Sec. 14-91. - City approval of pollution control facilities.

No site location approval for the development or construction of a new PCF within West Chicago's jurisdiction may be granted by the city council unless an application is filed for approval of such site and is submitted for consideration to said city council in accordance with this article, the Act and the rules and procedures.

(Ord. No. 12-O-0030, § 2, 8-20-2012)

Sec. 14-92. - Pollution control facility siting hearing officer.

- (a) Within fourteen (14) days following the receipt of the request for site location approval, the mayor, with the advice and consent of the city council, shall appoint a hearing officer to serve during any public hearing concerning an application for site location approval. The hearing officer shall serve at the pleasure of the mayor. Compensation for the services of the hearing officer shall be



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agreed upon between the hearing officer and the city before the public hearing commences and shall be considered an expense for which the city may be reimbursed from the filing fee deposit. The duties of the hearing officer shall be as provided for herein and in the Rules and Procedures.

(b) All meetings and hearings on the siting application shall be at the call of the hearing officer at such times as may be required.

(Ord. No. 12-O-0030, § 2, 8-20-2012)

Sec. 14-93. - Procedure for filing an application for approval of a pollution control facility.

- (a) (1) To request siting approval for a new PCF within West Chicago's jurisdiction, an applicant must file an application with the city clerk, with a minimum of one original and three (3) paper copies of the application showing sufficient details describing the proposed facility to demonstrate compliance with the Act and applicable regulations. The application shall include all site plans, engineering (including calculations), exhibits and maps, and all documents, if any, to be submitted to the IEPA as of the date of filing the application. At a minimum, the application shall comply with this article and the Rules and Procedures incorporated herein. The applicant shall also produce thirty (30) copies of the entire application in .pdf or other searchable electronic format so that the application may be uploaded to the city website and so that read-only copies of the application may be provided to the city council, city staff, participants, interested parties, and members of the public that request same.
- (2) A copy of the application and all related documents or other materials on file with the city council shall be made available for public inspection in the office of the city clerk during normal business hours. Members of the public shall be allowed to obtain a copy of said application or any part thereof upon payment of the actual cost of reproduction as outlined in the Illinois Freedom of Information Act (5 ILCS 140/1, et seq.). A read-only copy of the application shall be made available on the city's website.
- (3) In addition to the foregoing, the applicant shall deposit with the city clerk at the time of filing the application for site location approval of a new PCF a filing fee deposit in the form of a certified or cashier's check of one hundred thousand dollars (\$100,000.00), except that a filing fee deposit of two hundred fifty thousand dollars (\$250,000.00) is required if said proposed facility is a landfill, is designed as a hazardous waste disposal site, or if the disposal or volume reduction of any waste will be by incineration or burning. If the applicant elects to file an amended application for site location approval for any PCF in accordance with this article, such filing shall be accompanied by payment of a supplemental fee of fifty thousand dollars (\$50,000.00). The amount of the deposit may be reduced if prior to filing the application, such a request is approved by the city council.

The applicable filing fee is intended to defray the reasonable and necessary costs of processing the application, including, but not limited to: Costs of site inspection, clerical expenses, copying costs, space rental, hearing officer compensation, court reporter expenses, transcription costs, public notice expenses, staff review time, if any, city attorney and city consultants (such as qualified professional engineers, planners, appraisers, environmental counsel, etc.) (including tests, exhibits, and testimony, if any, provided by said consultants), and other relevant costs incident to the consideration of an application, the costs incident to preparing the record for appeal, and the cost of representing the city on appeal in case of an appeal of a city council decision (collectively, and non-exclusively, the "city costs"). Should the city incur any additional costs in excess of the applicable filing fee deposit, the applicant shall bear any and all such additional costs and shall promptly pay over such additional amount to the city upon request or demand. If at any time the funds deposited by the applicant are reduced below twenty-five thousand dollars (\$25,000.00), the applicant shall deposit an additional twenty-five thousand dollars (\$25,000.00) within fourteen (14) days from when the city provides written notice.

If there are funds remaining in the filing fee deposit after payment of the city costs and the conclusion of the application process (including any appeals), such amount shall be refunded to the applicant upon the final resolution of the application process (including appeals to the Illinois Pollution Control Board, appellate court, Illinois Supreme Court, federal courts, and administrative review in the courts, if any).

- (4) The application must contain all site plans, exhibits, maps and documents required by this article, the Act and by the Rules and Procedures. The date that the applicant files a complete application in proper form, together with the applicable filing fee deposit, with the city clerk shall be considered the official filing date for all time limit purposes. The applicant remains solely responsible to demonstrate that the location approval criteria are all met.

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At any time prior to completion by the applicant of the presentation of the applicant's factual evidence and an opportunity for cross-examination by the hearing officer, city representatives and any registered parties, the applicant may file not more than one (1) amended application upon payment of additional fees pursuant to Section 39.2(k) of the Act and this subsection. Provided, however, that the time limitation for final action set forth in Section 39.2(e) of the Act and subsection 14-96(b) shall be extended for an additional period of ninety (90) days.

- (5) In the event a host agreement has been entered into between the city and the applicant, fees and costs will be paid in accordance with the host agreement in lieu of subsection (3) above. If, prior to making a final local siting decision, the city has negotiated and entered into a host agreement with the applicant, the terms and conditions of the host agreement, whether written or oral, shall be disclosed and made a part of the hearing record for that local siting proceeding. In the case of an oral agreement, the disclosure shall be made in the form of a written summary jointly prepared and submitted by the city and the applicant and shall describe the terms and conditions of the oral agreement.
- (b) Applications shall include a written petition on recycled 8½" × 11" paper (except engineering plans and other drawings and plans) setting forth or including the following as may be applicable:
  - (1) The identification of the applicant, owner of the subject property and the proposed operator of the PCF, which should also indicate for each whether the applicant, the landowner and the operator is an individual, partnership, limited liability company, corporation, trust or unit of government.
    - a. If the subject property is owned in a trust, then also identify the beneficiary(ies) of the trust(s).
    - b. In the case of an individual, list his or her address.
    - c. In the case of a partnership, submit the names of all partners.
    - d. In the case of a limited liability company, submit the names and addresses of all members and managers and attach a certificate of good standing for the LLC from the Secretary of State's office.
    - e. In the case of a corporation, submit the names and addresses of all officers and directors, and the names and addresses of all shareholders owning ten (10) percent or more of the capital stock of the corporation; together with certified copies of the articles of incorporation in the State of Illinois or, if not incorporated in the State of Illinois, its certificate of authority to do business in the State of Illinois.
  - (2) The legal description of the proposed site of the PCF and a street address or some other reasonable description of where the facility is to be located.
  - (3) A description of the proposed PCF, its operation and the anticipated longevity thereof.
  - (4) The area to be served by the proposed PCF and a statement of the needs in such area for such a PCF.
  - (5) The expected types, amounts and methods of management, treatment or storage of all wastes proposed for the site and the origins of these wastes.
  - (6) The monitoring plan (including background analyses) for ground water and the procedure by which surface water and air will be monitored (including procedure by which the applicant will establish background levels).
  - (7) The plans for closure of the site and continued monitoring thereafter.
  - (8) Proof of notice pursuant to Section 39.2(b) of the Act.
  - (9) Site plans showing details of the proposed PCF.
  - (10) A detailed topographic survey of the subject property and the surrounding area— within five hundred (500) feet of the property line—indicating: topographical variations in no greater than two-foot intervals for the subject property and USGS data for the property within five hundred (500) feet of the property line (unless otherwise required); existing land uses; existing zoning; and, if applicable, the boundary of any floodway or floodplain. For all purposes related to any siting application, "floodway" and "floodplain" shall mean the regulatory "floodway" and regulatory "floodplain" as defined by the Federal Emergency Management Agency (FEMA). These features may shown on one or more exhibits.
  - (11) A statement of the plan of operation for the proposed PCF including, but not limited to, the following as applicable:
    - a. Method of storage, landfilling, incineration, composting, resource recovery or other process;
    - b. Hours of operation;

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- c. Management personnel and their training;
  - d. Litter, vector, dust and odor control;
  - e. Surface drainage and erosion control (this information shall include proof of compliance with the DuPage County Countywide Stormwater and Floodplain Ordinance and/or the U.S. Clean Water Act);
  - f. Fire control;
  - g. Corrective actions for spills and other operational accidents; and
  - h. Coordination of operations with any other regional pollution control facility and/or recycling facility operated on, adjacent to, or within five hundred (500) feet of the PCF.
- (12) A report analyzing the projected traffic impacts attributable to the proposed PCF and describing how the proposed PCF has been designed to minimize the impacts on existing traffic flows. The report shall include, but not be limited to the following as applicable:
- a. Description of the anticipated number, type, size, origin, routing and expected distribution of arrival and departure times of all vehicles accessing the PCF site. If any of these factors are expected to vary significantly over the expected life of the PCF, details of the expected variance shall be presented along with the anticipated peak traffic data;
  - b. Description of any changes in traffic volumes or patterns to or from any existing development on the site that may be altered as a result of construction of the PCF;
  - c. Description of the roadway network adjacent to and surrounding the proposed PCF, including number of lanes, turning lanes at intersections, traffic controls, and vehicle turning and classification counts at the site entrances and exits, all signalized intersections and significant unsignalized intersections along principal routes of access. The area of detailed study shall extend along principal routes of access until the site traffic represents an insignificant percentage of the overall traffic stream. Traffic counts shall be taken during the expected daily peak periods of operation of the proposed PCF as well as the existing peak traffic periods on the surrounding roadways.
  - d. Descriptions of any traffic concerns identified by roadway jurisdictions within the area of detailed study;
  - e. Operational capacity analysis during peak periods at principal intersections within the area of detailed study for a minimum of two scenarios: (1) existing traffic volumes, and (2) with the addition of site traffic. If projected traffic volumes are analyzed, the report shall include the basis for the projections and the analysis should consider both build and no-build scenarios;
  - f. Analysis of vehicle accidents at intersections within the area of detailed study;
  - g. Detailed analysis of anticipated traffic at the entrance(s) and exit(s) to and from the proposed PCF, including either a traffic signal warrant analysis or gap study, and an intersection design study meeting the requirements of the agency having jurisdiction over the route providing access to the proposed PCF. This information should include information on traffic for all regional pollution control facility and/or recycling facility located on, adjacent to or within five hundred (500) feet of the PCF.
- (13) A written commitment (by Host Agreement or otherwise) to obtain certificates of insurance from companies having a Best rating of A VI or better that shall, at such time as the PCF is permitted, cover accidents such as fires, explosions, nonsudden accidental occurrences and pollution impairment.
- (14) If the site is a proposed hazardous waste PCF, a copy of the Resource Conservation and Recovery Act Contingency Plan.
- (15) A statement describing the past operating experience of the applicant and, if different, the operator in the field of solid or hazardous waste management. Also include a statement describing the past operating experience of subsidiaries of the parent corporation operating or licensed in Illinois in the field of solid or hazardous waste management.
- (16) A statement setting forth a complete record of actual or alleged violations from the last ten (10) years of the applicant and any proposed operator with environmental laws and regulations governing solid or hazardous management operations or activities. Said statement shall include, but not be limited to, a citation of the applicable statute or ordinance violated or alleged to be violated and a brief written summary of the activities or operations giving rise to the actual or alleged violations and the ultimate outcome of the matter, including whether any fines or penalties were imposed.
- (17) PCF construction quality assurance and quality control program.

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(18) Personnel requirements for PCF operation and the training requirements for those personnel.

(c) It is the applicant's duty to comply with all notice requirements set forth in the Act. The applicant shall:

- (1) No later than fourteen (14) days prior to filing an application for site location approval with the city clerk, cause written notice of such application 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 two hundred fifty (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 the facility is to be located; provided, that the number of all feet occupied by public roads, streets, alleys and other public ways shall be excluded in computing the two hundred fifty (250) feet requirement; provided further, that in no event shall this requirement exceed four hundred (400) feet, including public streets, alleys and other public ways.
- (2) The applicant shall serve such written notice upon each member of the general assembly from the legislative district in which the proposed facility is to be located, and this notice shall also be published in a newspaper of general circulation in the county in which the site is located.
- (3) The applicant shall state in such notice the name and address of the applicant, the location of the proposed site, the nature and size of the development, the nature of the activity proposed, the probable life of the proposed activity, the date when the request for site approval will be submitted to the city clerk, a description of the right of persons to comment on such request as hereafter provided, and any other information as may be required by the Rules and Procedures and the Act.
- (4) The applicant shall include in the application proof of compliance with all pre-filing notice requirements, including verified or certified copies of those pre-filing notices required by Section 39.2(b) of the Act.

(Ord. No. 12-O-0030, § 2, 8-20-2012)

Sec. 14-94. - Procedure for filing written comments to an application for site location approval for a PCF.

- (a) Any person may file written comments with the city clerk concerning the appropriateness of the proposed site for its intended purpose. The hearing officer shall consider any comment received or postmarked from the date of the application through and until thirty (30) days after the date of the last public hearing in making a final determination. Said written comments shall be mailed or delivered to the West Chicago City Clerk, 475 Main Street, West Chicago, Illinois 60185. Said written comments shall clearly designate reference to the PCF application to which they refer to ensure their consideration by the hearing officer. Upon receipt, the city clerk shall date stamp the comments and refer them to the hearing officer.
- (b) The above-mentioned written comments shall become part of the record of the proceedings.

(Ord. No. 12-O-0030, § 2, 8-20-2012)

Sec. 14-95. - Hearings on applications.

- (a) At least one (1) public hearing shall be held by the hearing officer no sooner than ninety (90) days but no later than one hundred twenty (120) days from and after the receipt of the application for PCF site location approval. Any city council member may attend such hearings and a transcript shall be made and retained of all portions of the public hearing. A quorum of the city council need not be present at any hearing.
- (b) The applicant shall cause to be published in a newspaper of general circulation in the county of the proposed site and in a newspaper of general circulation in West Chicago a notice of such public hearing not later than fourteen (14) days prior to said hearing.

The applicant shall also serve written notice of such hearing by certified mail, return receipt requested, on all members of the Illinois General Assembly from the district in which the proposed site is located, to the governing authority of every municipality contiguous to the proposed site or contiguous to the municipality in which the proposed site is to be located, to the county board of the county where the proposed site is to be located and to the IEPA. The applicant shall file with the city clerk copies of each notice with proof of service of such notice prior to the commencement of said public hearing. Such evidence of notice shall become a part of the record on the application for PCF local site approval.

- (c) The hearing officer shall notify the applicant in writing of the date and location of the public hearing at least twenty-one (21) days

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prior to such hearing.

- (d) Members or representatives of the governing authority of any municipality contiguous to the proposed site or contiguous to the municipality in which the proposed site is to be located and members or representatives of the county board of the county in which the proposed site is to be located may appear at and participate in the public hearings, but must register in the same manner provided for other participants or parties.
- (e) The public hearing shall develop a record sufficient to form the basis of appeal of the decision in accordance with Section 40.1 of the Act. During the course of the public hearing before the hearing officer, the hearing officer shall receive testimony from the applicant and witnesses whom the applicant may call in support of the application, any city witnesses, any objectors, and any other witnesses having relevant information, and shall recommend approval only if the proposed facility meets the following criteria (or such amended criteria as may be set forth from time to time in the Act).
  - (1) That the facility is necessary to accommodate the waste needs of the area that it is intended to serve; and
  - (2) That the facility is so designed, located, and proposed to be operated that the public health, safety and welfare will be protected; and
  - (3) That 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 the surrounding property; and
  - (4) (A) 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; (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 [of the Act], the site is flood-proofed;
  - (5) That the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents; and
  - (6) That traffic patterns to or from the facility are so designed to minimize the impact on existing traffic flows; and
  - (7) That 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; and
  - (8) That 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; and
  - (9) That if the facility will be located within a regulated recharge area, any applicable requirements specified by the Illinois Pollution Control Board for such areas have been met.

The hearing officer and the city council may also consider as evidence the previous operating experience and past record of convictions or admissions of violations of the applicant (and any subsidiary or parent corporation of the applicant) in the field of solid waste management when considering criteria (2) and (5). The applicant shall affirmatively present oral testimony fairly showing the previous operating experience and past record of convictions or admissions of violations of the applicant (and any subsidiary or parent corporation of the applicant) in the field of solid waste management.

- (f) A transcript shall be kept of all proceedings before the hearing officer. The hearing officer shall preside at the public hearing and shall make any decisions concerning the admission of evidence and the manner in which the hearing is conducted subject to this article and the Rules and Procedures. However, the hearing officer shall make all rulings and decisions in accordance with fundamental fairness. No ruling of the hearing officer concerning admissibility of evidence or procedural issues at the public hearing shall be appealable to the city council. Issues of jurisdiction shall be finally determined by the city council.
- (g) The applicant for site location approval shall have the burden of proof and the burden of going forward with evidence. The testimonial evidence introduced by the applicant may not exceed the scope of the application. Such oral testimony may only explain and clarify the application, not expand, supplement or amend the application except as otherwise provided in this article for an amendment to the application.
- (h) All persons desiring to provide public comment during the hearing, including members of the public, must submit written notification of said intent to the city clerk before the first day of the public hearing or register with the hearing officer on the first day of the hearing. Any person so appearing at such public hearing shall have the right to present public comment relating to the

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pending application. No advance written notification shall be required to present written comment in the manner described in section 14-94.

- (i) Each person desiring to present evidence in the hearing and/or to cross-examine witnesses shall register as a party to the proceeding not less than ten (10) days prior to the commencement of the hearing. Any person registered as a party shall have the right to present their own personal testimony, to be represented by an attorney and, through such attorney, to present the testimony of other persons or to cross-examine witnesses. The city shall be deemed a participant and a party to all proceedings and shall proceed last with its case and cross-examination.
- (j) All hearings shall be conducted in a manner which is consistent with the Act, this article and the Rules and Procedures.
- (k) The recommendation of the hearing officer on the application shall be in writing, specifying the reason(s) for the decision, in accordance with subsection (e) above. The hearing officer shall submit a report to the city council as soon as practicable, but in no event earlier than the end of the thirty-day comment period.
- (l) The siting approval procedures and criteria provided for in the Act, in this article and the Rules and Procedures for new PCF's shall be the exclusive siting procedures. Local zoning or other local land use requirement shall not be applicable to such siting decisions.

(Ord. No. 12-O-0030, § 2, 8-20-2012)

### Sec. 14-96. - Decisions.

- (a) Once the hearing officer has made a recommendation and reduced it to writing, the written recommendation shall be submitted to the city council for its decision as to the ultimate approval or disapproval of the proposed site location. Thirty (30) copies of the record of the public hearing in .pdf or other searchable electronic format shall also be made available to the city council as soon as the transcript becomes available.
- (b) The city council shall make a decision based on the record from the public hearing and review of the recommendation of the hearing officer. The decision of the city council shall be by resolution in writing, specifying the reasons for the decision, such reasons to be in conformity with Section 39.2(a) of the Act. In granting site location approval, the city council may impose such conditions as may be reasonable and necessary to accomplish the purposes of the Act to the extent that said conditions are not inconsistent with the Act and the regulations promulgated by the Illinois Pollution Control Board. Such decisions shall be available for public inspection at the office of the city clerk and may be copied upon payment of the cost of reproduction. If there is no final action by the city council within one hundred eighty (180) days after the filing of the application for site location approval, the applicant may deem the application approved unless the time for approval has been extended for an additional period of ninety (90) days pursuant to the Act and this article.
- (c) An applicant may not file an application for site location approval that is substantially the same as a request which was disapproved, pursuant to a finding against the applicant under any criteria in subsections 14-95(e)(1) through (9), above, and of Section 39.2(a) of the Act, within two (2) years.
- (d) Siting approval obtained pursuant to this article is transferable and may be transferred to a subsequent owner or operator. In the event that siting approval has been transferred to a subsequent owner or operator, that subsequent owner or operator assumes and takes subject to any and all conditions imposed upon the prior owner or operator by the city. However, any such conditions imposed pursuant to this section may be modified by agreement between the subsequent owner or operator and the city. Further, in the event that siting approval obtained pursuant to this section has been transferred to a subsequent owner or operator, that subsequent owner or operator assumes all rights and obligations and takes the facility subject to any and all terms and conditions of any existing host agreement between the prior owner or operator and the city.
- (e) A local siting approval granted under this section shall expire at the end of two (2) calendar years from the date upon which it was granted, unless the local siting approval granted under this section is for a sanitary landfill operation, in which case the approval shall expire at the end of three (3) calendar years from the date upon which it was granted, and unless within that period the applicant has made application to the agency for a permit to develop the site. In the event that the local siting decision has been appealed, such expiration period shall be deemed to begin on the date upon which the appeal process is concluded.

(Ord. No. 12-O-0030, § 2, 8-20-2012)

### Sec. 14-97. - Rules and procedures.

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The rules and procedures set forth herein may be amended by resolution of the city council from time to time, provided that any amendment which occurs following the filing date on an application for local site approval must be made in a manner which preserves fundamental fairness.

(Ord. No. 12-O-0030, § 2, 8-20-2012)

## Sec. 14-98. - Administration of fees and costs.

- (a) All expenses incurred by the city, as described in section 14-93(2) and otherwise in managing or reviewing of the request for site approval, conducting the public hearing, arriving at the site approval decision, and any appeals from the city council decision shall be paid from the filing fee deposit as provided in section 14-93. The filing fee deposit shall be placed in an account in the name of the city, with rights of withdrawal limited to the city.
- (b) The city's cost of providing the services of city employees in the receipt, review, processing of and response to the application shall be reimbursed to the city at the rate of twenty-five (25) percent of the direct cost of such professional fees and costs as shall actually be incurred by the city, in the event that the city, in its sole and exclusive discretion, determines that it is necessary or desirable to obtain professional services, including, but not limited to, attorneys, engineers, planners, architects, surveyors, traffic, drainage or other consultants, and/or to incur costs related to any required notices or recordations, in connection with the application for site approval.
- (c) Upon termination of proceedings (including appeals), a final accounting and summary of all authorized expenditures and reimbursements shall be presented to the city council by the city administrator or his designee.
- (d) Any portion of the filing fee deposit not required for payment of costs or expenses incurred by the city hereunder shall be returned to the applicant within a reasonable time. Should there be costs and/or expenses in excess of the amount paid by the applicant in the costs deposit, the applicant shall pay any and all additional costs within a reasonable time of presentment of a statement from the city.
- (e) In order to expedite payment of all bills incurred as a result of administering the hearing process, all bills and questions concerning billing should be directed to the city administrator or his designee.

(Ord. No. 12-O-0030, § 2, 8-20-2012)

## Sec. 14-99. - Ex-parte communication prohibited.

In recognition of the quasi-judicial role of the mayor and each member of the city council, and the city attorney, ex-parte communications with the mayor, council members or the city attorney concerning the application are prohibited between the date of filing and the date of the final decision of the city council (or the 180<sup>th</sup> day after the date of filing).

(Ord. No. 12-O-0030, § 2, 8-20-2012)

## Sec. 14-100. - Records.

- (a) The city clerk shall be responsible for keeping the records of said hearing. The records shall consist of the following:
  - (1) The application and all amendments thereto;
  - (2) Proofs of the required notices;
  - (3) Notices of participation and registration of parties;
  - (4) Written comments filed by the public (either received by the city clerk's office or postmarked between the date of filing and thirty (30) [days] after the close of the hearing);
  - (5) All reports, studies, exhibits, documents or statements received in evidence at the public hearing;
  - (6) The transcript of the public hearing;
  - (7) Any motions filed during the public hearing;
  - (8) All transcripts, when available, or disclosures of meetings, other than the public hearings held pursuant to this article, at which the mayor or a city council member was in attendance and the application was discussed.

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(9) The hearing officer's proposed findings of fact and recommendations to the city council (including any conditions of approval).

(10) The resolution containing the final decision of the city council.

(b) The city clerk shall be responsible for certifying all copies of the record of the public hearing.

(Ord. No. 12-O-0030, § 2, 8-20-2012)



# Exhibit

## PWC M13

**Michael Guttman**

---

**From:** Michael Guttman  
**Sent:** Sunday, December 4, 2022 7:14 AM  
**To:** Michael Guttman  
**Subject:** Weekly Update  
**Attachments:** CMAP-DMMC Local Forecast ON TO 2050 update 10-2022.xlsx; DOC016.pdf

**COVID in WC**

From November 16<sup>th</sup> through November 30<sup>th</sup>, there were 82 new cases; the DCHD is no longer updating the stats daily

**Unemployment Rate**

The Unemployment Rate for WC rose slightly to 3.1% in October 2022. This begins our historically slight to moderate increases over the winter months until the spring.

**Phone Upgrade Project**

New phones have been installed at the Water Treatment Plant and City Hall. Work has been scheduled for the remaining City buildings.

**City's Role in the Transfer Station Review Process**

This document has been translated into Spanish and posted to the City's website.

**Becoming Current with Water Bills**

We are down to only 29 customers who fall into the category of paying very little toward their back-billed balances; they will be receiving late notices, with no late fees. A shut-off notice will follow should the outstanding balance not be paid.

**FOP Contract**

The parties have come to an agreement on the principles for a new three year contract; the language details are now being drafted and will soon be ready for ratification by the Union and then approval by the CC; the terms meet the previous direction provided by the City Council.

**Frosty Fest Grant**

The City was awarded a \$2,500 grant by ComEd through the [Powering the Holidays Grant Program](#).

**Cannabis Operation in Unincorporated West Chicago**

The DuPage County Zoning Board of Appeals is scheduled to review a rezoning request from E-R to B-2 on a parcel of land immediately east of the former Planters' Palette property. The owner wants to establish a marijuana dispensary, and have a cultivation center in the rear of the property.

**Population Projection**

Please take a look at the attached population projections by CMAP as they show WC dropping below 25,000 people in 2030, which means we would lose our home rule status. This should be kept in mind as land use and density decisions are made in the future.

**Central Receiving Center**

Attached is a copy of a letter of support for the Central Receiving Center requested by the DuPage County Health Department. While there likely be a future request for local government financial contributions, such is not part of the mix now.

**Infrastructure Projects**

**2022 Sidewalk and Curb Maintenance Program**

- Construction Budget is \$135,000.00
- The program was advertised for bid on August 12, 2022. The bid opening was held on August 26, 2022, with Schroeder & Schroeder, In. Concrete Contractors, being the low bidder with a bid amount of \$174,266.00.
- The project was presented to Infrastructure Committee on 9/1/22 and City Council for award on 9/19/22. The award will be within the budgeted amount of \$135,000.



# Exhibit

# 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

- (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.

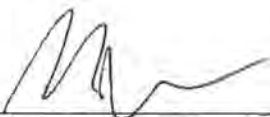
12. State what if any action the City of West Chicago took to translate Lakeshore Recycling LLC's September 16, 2022 Siting Application materials from English to Spanish.

**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

Respectfully submitted,

CITY OF WEST CHICAGO,

Respondent

By:   
\_\_\_\_\_  
One of Respondent's Attorneys

Dennis G. Walsh  
Daniel W. Bourgault  
KLEIN, THORPE AND JENKINS, LTD.  
20 North Wacker Drive, Suite 1660  
Chicago, Illinois 60606  
Ph: 312-984-6400  
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[dgwalth@ktjlaw.com](mailto:dgwalth@ktjlaw.com)  
[dwbourgault@ktjlaw.com](mailto:dwbourgault@ktjlaw.com)

# Exhibit

## 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 indented 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

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

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 Chicago Dept. of Environment
Homewood Disposal Transfer Station	

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 Consortium
Henry County	Will County
Iowa Department of Natural Resources	

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	

# Electronic Filing: Received, Clerk's Office 10/16/2023

## 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

## Electronic Filing: Received, Clerk's Office 10/16/2023

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.



# Exhibit

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

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**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)

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**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

# Exhibit

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,



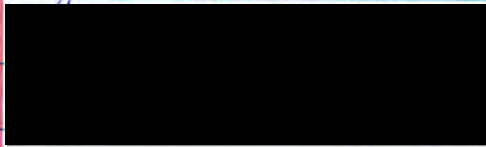
Ms. Olga Rivera

# 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 Frances McCabe Row.

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**

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**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>

# Exhibit

PWC – 800



EXHIBIT

PWC - 800

exhibitsticker.com

**Michael Guttman**

---

**From:** Tom Dabareiner  
**Sent:** Wednesday, August 24, 2022 2:58 PM  
**To:** Michael Guttman  
**Subject:** RE: LRS voicemail message

He wants a new letter about the ER-zoned rail lines. The reason is the original letter assumed it was a Union Pacific line. However, Canadian National also has a parallel line there. Both need to be listed in the letter, which I will prepare as I did the first letter.

**From:** Michael Guttman <MGuttman@westchicago.org>  
**Sent:** Tuesday, August 23, 2022 1:11 PM  
**To:** Tom Dabareiner <TDabareiner@westchicago.org>  
**Subject:** LRS voicemail message

Would you please return Mr. Hock's call? Thank you.

# Exhibit

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.

EXHIBIT

PWC - 806

exhibitsticker.com

**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.

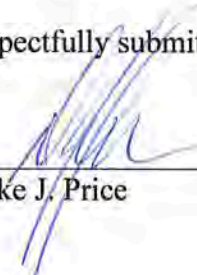
20. The Applicant's operating history demonstrates that the Applicant is qualified to operate the Facility safely and properly and provides no basis to deny the Application.

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.*

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- *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.