

**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.	)	

**NOTICE OF FILING**

To: **See Attached Service List**

PLEASE TAKE NOTICE that on November 13, 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: *Brief In Support of Amended Petition to Reverse Decision of the City of West Chicago's City Council Granting Site Location Approval to Lakeshore Recycling Systems, LLC.*, copies of which are attached and served upon you.

Dated: November 13, 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: *Brief In Support of Amended Petition to Reverse Decision of the City of West Chicago's City Council Granting Site Location Approval to Lakeshore Recycling Systems, LLC*, on the below-named parties (Service List) by delivering the document to them via electronic mail on November 13, 2023 and via the PCB's Clerk's Office electronic filing system.



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Ricardo Meza

**SERVICE LIST**

George Mueller, Attorney at Law  
1S123 Gardener Way  
Winfield, IL 60190  
[630-235-0606](tel:630-235-0606) cell  
[gmueller21@sbcglobal.net](mailto:gmueller21@sbcglobal.net)  
[george@muelleranderson.com](mailto:george@muelleranderson.com)

Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
60 E. Van Buren Street, Suite 630  
Chicago, IL 60605  
[Brad.Halloran@illinois.gov](mailto:Brad.Halloran@illinois.gov)

Dennis G. Walsh  
Klein, Thorpe & Jenkins, Ltd.  
20 North Wacker Drive, Suite 1660  
Chicago, IL 60606-2903  
[dgwalth@KTJlaw.com](mailto:dgwalth@KTJlaw.com)

Robert A. Weinstock  
Director, Environmental Advocacy Center  
Northwestern Pritzker School of Law  
375 E Chicago Ave  
Chicago, IL 60611  
[robert.weinstock@law.northwestern.edu](mailto:robert.weinstock@law.northwestern.edu)

Karen Donnelly  
Karen Donnelly Law  
501 State St.  
Ottawa, IL 61350  
(815) 433-4775  
[Donnellylaw501@gmail.com](mailto:Donnellylaw501@gmail.com)

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**PROTECT WEST CHICAGO’S BRIEF IN SUPPORT OF  
AMENDED PETITION TO REVERSE DECISION OF THE CITY  
OF WEST CHICAGO’S CITY COUNCIL GRANTING SITE LOCATION  
APPROVAL TO LAKESHORE RECYCLING SYSTEMS, LLC**

NOW COMES Petitioner, Protect West Chicago, (“PWC”), by and through its attorneys, Meza Law, and for its *Brief In Support of Amended Petition to Reverse Decision of the City of West Chicago’s City Council Granting Site Location Approval to Lakeshore Recycling Systems, LLC*, states as follows:

**I. INTRODUCTION**

The Illinois Pollution Control Board (“IPCB”) has no choice but to reverse the decision of the City of West Chicago’s City Council (“City Council”) approving Lakeshore Recycling Systems, LLC’s (“LRS”) Application for construction of a pollution control facility (waste transfer station) in West Chicago. As set forth below, LRS’s Application fails to meet the statutory notice

requirement and violates the state's site location criteria. In addition, the evidence reveals that there was pre-adjudication in favor of LRS's Applications, and that the Siting Hearing did not comport with the dictates of fundamental fairness in a multitude of important ways. Finally, the evidence reveals that LRS's Application does not satisfy criteria 1, 2, 3 and 8 of the Illinois Environmental Protection Act (the "Act"). 415 ILCS §5/39.2

## II. FACTUAL BACKGROUND<sup>1</sup>

### *a. In April 2019, the City of West Chicago Enters into a Host Agreement with Lakeshore Recycling Systems, LLC*

On April 1, 2019, West Chicago's City Council met in an Open Meeting and engaged in "extensive discussion," regarding the pros and cons of entering into a Host Agreement with LRS. C005983-C005987. At that time, West Chicago Alderman James E. Biefuss and Matthew Garling expressed concern about entering into the Host Agreement. C005987. Their concerns included the fact that this would be the second waste transfer station in West Chicago and that odors would impact existing businesses. *Id.* Further, Alderman Biefuss noted that "[i]t looks like they can be moving more waste than the City of Chicago," and more importantly, that "**[o]nce the Agreement is signed it is done.**" *Id.* (Emphasis added). Ultimately, Alderman Biefuss and Garling voted against entering into the Host Agreement with LRS. C005988. All of the other Alderman (other than Alderman Brown who voted present) voted in favor of entering into the 2019 Host Agreement

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<sup>1</sup> The Illinois Pollution Control Board record in this matter consists of the following:

- 1) The April 19, 2023 documents the City of West Chicago submitted and identified by bate stamp numbers: C000001 through C006399 (Document 108000 and Document 108141). *Cited as: **R at C00***.
- 2) The April 21, 2023 documents the City of West Chicago inadvertently failed to include in the Record, namely PWC Exhibit #39 and PWC Exhibit #51, attached to the City's April 21, 2023 filing (Document 108025) as Exhibit A. *Cited as: **PWC Exhibit 39 or PWC Exhibit 51.***
- 3) The PODER exhibits moved and admitted into the record during the Sept. 28, 2023, public hearing and filed on Oct. 12, 2023 (Document 109137). *Cited as: **PODER Exhibit***.
- 4) The PWC exhibits moved and admitted into the record during the Sept. 28, 2023, public hearing and filed on Oct. 16, 2023 (Document 109147). *Cited as: **PWC Exhibit***.
- 5) The Sept. 28, 2023 Public Hearing Transcript (Document 109139). *Cited as: **Tr. at***.
- 6) The public comments submitted after the September 28, 2023 Illinois Pollution Control Board Hearing.

with LRS. C005988. Coincidentally, on February 28, 2023, the same two Alderman (Mr. Beifuss and Mr. Garling), along with Alderman John Jackabscin (who was not an Alderman in 2019) were the only Aldermen who voted against approving LRS's Application, with the remaining Aldermen voting in favor. C006006. In other words, as predicted by Alderman Beifuss, once the Host Agreement was signed, approval was a done deal.

***b. West Chicago Hires Subject Matter Expert Aptim to Assist them to Evaluate Lakeshore Recycling Systems, LLC's Application for a Waste Transfer Station***

On May 6, 2019, after entering into the Host Agreement with LRS, the City of West Chicago (the "City" or "West Chicago") retained the services of subject matter expert consultant Aptim Environmental and Infrastructure LLC ("Aptim"). See Exhibit PWC-7. The agreement between West Chicago and Aptim provided that Aptim would assist West Chicago with a pre-file review of LRS's draft Application and that, after LRS's Application filing, Aptim would assist West Chicago in determining whether LRS's Application met all nine criteria set forth in the Act.

During the January 2023 Siting Hearings in West Chicago, and because of the FOIA lawsuit disclosed below, it was revealed that Aptim had identified a significant number of serious deficiencies in LRS's Application vis-à-vis the criteria required under the Act. C003589-C003617.

***c. A Citizen Uncovers West Chicago's Efforts to Conceal Communications and Documents Between Itself and Lakeshore Recycling Systems, LLC under the Freedom of Information Act***

On January 13, 2021, interested citizen Olga Rivera submitted a Freedom of Information Act ("FOIA") request to West Chicago seeking documents relating to LRS's proposed waste transfer station and communications between West Chicago officials and LRS representatives. **See PWC Exhibit 28 (attached).** West Chicago officials first refused to produce documents based on scope, so on February 10, 2021, Ms. Rivera limited her request to a two-year time period. **Id.** West Chicago officials, however, continued to refuse to comply with the lawful FOIA request.

On May 3, 2021, Ms. Rivera sued West Chicago in DuPage Circuit Court. As a result of the lawsuit and upon order of the court, West Chicago was forced to produce thousands of pages of documents relating to LRS's Application. See Exhibit PWC-12. The documents included, *inter alia*, email communications between West Chicago officials and LRS, as well as emails between LRS and Aptim regarding LRS's Application deficiencies involving one or more of the nine criteria of the Act. **Id.**

***d. Lakeshore Recycling Systems, LLC Submits Its Application for Construction of a Pollution Control Facility (Waste Transfer Station) in West Chicago***

On August 26, 2022, LRS filed a Pre-Filing Notice of its intent to submit an Application for construction of a waste transfer station. C000997-C001025. On September 16, 2022, LRS did submit its Application for a new pollution control facility.

***e. West Chicago Appoints a Hearing Officer and Schedules Public Hearings on Lakeshore Recycling Systems, LLC's Application in January 2023***

After LRS submitted its Application, West Chicago appointed Derke Price to serve as the Siting Hearing Officer. Mr. Price then scheduled a series of Siting Hearings to consider LRS's Application. The hearings were held on January 3, 4, 5, 10, 12, 16, and 19, 2023.

At the time of LRS's Application, West Chicago was a "majority-minority" community with a population consisting of 51.8% Latino, according to the U.S. Census. See Exhibit PWC-702 (C004133-C004138). In addition, West Chicago was also an area of Environmental Justice Concern because "...the proposed facility is approximately 1,300 feet from an area determined by the IEPA to have minority population greater than twice the statewide average...". C004134. However, despite the majority Latino population in West Chicago, neither Mr. Price nor any West Chicago official made any arrangements to have Spanish-Language interpreters at any of the Siting Hearings. On Friday, February 24, 2023, after the public hearings were concluded, Mr. Price forwarded his "Report Findings and Conditions" to all parties. In his report, Mr. Price used

tortured and contorted reasoning to attempt to distinguish numerous long-established legal siting requirements and recommend that West Chicago approve LRS's Application. C006053-C006083.

*f. West Chicago's City Council Meets in Private to "Deliberate" Lakeshore Recycling Systems, LLC's Application, and Then in a Five-Minute Open Meeting Approves the Application*

On February 27, 2023, West Chicago's City Council met in private (closed session) for nearly two hours to review and "deliberate" concerning LRS's Application. C006005. No public scrutiny was allowed at the closed meeting. Moreover, although West Chicago had retained subject matter expert Aptim to advise it on LRS's application, and despite the fact that Aptim has identified numerous deficiencies in LRS's Application, Aptim was neither invited nor did they attend the closed session meeting.<sup>2</sup> **See Exhibit PWC-M17 attached (Response to Interrogatory #1).**

On February 28, 2023, at 6:00 p.m., West Chicago's City Council reconvened in an open meeting that lasted five minutes. **See Exhibit PWC-M16 attached (C006004 to C006007 and C006039 to C006084).** At this five-minute meeting, other than attendance and roll call, only three Alderman spoke:

- Alderman James E. Beifuss stated that the applicant had not met Criteria #1, 2 or 8.
- Alderman Matthew Garling expressed that Criteria #1 and 3 had not been met.
- For curious reasons she alluded to, Alderman Lori Chassee conveyed that she believes the applicant has met all of the Siting Criteria. **Id.**

After the five-minute open meeting, West Chicago voted and passed Ordinance 23-O-0006. **Id.**

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<sup>2</sup> PWC asked West Chicago to produce the closed session recording but they refused. Thus, PWC sought an Opinion from the Illinois Attorney General's Public Access Counselor, which as of this writing is still pending.

PWC later discovered that Ordinance 23-O-0006 was drafted in its entirety by Special Counsel Dennis Walsh sometime prior to February 28, 2023 at 12:45 p.m., which is when West Chicago City Administrator Michael Guttman distributed it to Alderman. See Exhibit PWC-806.

### III. PUBLIC COMMENTS

After the January 2023 Siting Hearings, numerous West Chicago citizens submitted written comments regarding LRS's Application. Of the 164 persons (or entities) that submitted written comment to the West Chicago, only three were in favor of a second waste transfer station.<sup>3</sup> In other words, about 98.1% of persons submitting written public comments *opposed* a second waste transfer station in West Chicago. C005758 through C005960.

Moreover, a multitude of the written actually cited the lack of "need" for a (second) waste transfer station in West Chicago as the basis for their opposition.<sup>4</sup> However, in his report titled: *Report of Hearing Officer Recommended Findings of Fact and Recommended Conditions of Approval (C006053-C006083)*, Hearing Officer Derke Price disregarded public comment because, in his words, the public comment was "not focused on the statutory criteria in a relevant and 'probative' way." *Id.* at C006702. Hence, by adopting Mr. Price's "Findings," in Ordinance 23-

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<sup>3</sup> Of the three letters in favor, one of them incorrectly noted that the "plan [was] not for a landfill or waste dump. It is an expansion of existing services on the property." C005761. However, as the Illinois Pollution Control is fully aware, a waste transfer station is considered a Pollution Control Facility that is required to undergo review pursuant to the Illinois Environmental Act and is not just an "expansion" of services.

<sup>4</sup> Some of the public comments involving the lack of "need" included the following:

- Though garbage transfer stations are needed, seems responsible for this to be shared between communities instead of being centered in one town. C005872.
- Why is West Chicago the only city in DuPage County to have a waste transfer station and why does this community need to have two? C005760.
- Now their grand scheme to bring in revenue is to build a 2nd transfer station. It's almost fitting that other communities need to dump all their garbage here since we frequent their establishments. C005782.
- We don't need another auto parts, vape shop or resale shop as well as another waste station in our area. C005786.
- West Chicago already has one waste transfer we do not need a 2<sup>nd</sup>. C005798.
- There is no proven need for another station, neither for capacity nor competition. C005810.



O-0006, West Chicago's City Council also completely disregarded these very relevant public comments. C006043.

The trend of public opposition to the facility continued when additional public comments were submitted after the September 28, 2023 hearing before the IPCB. In fact, one citizen who wrote to the Illinois Pollution Control Board stated that “[i]f approved there would only be two waste transfer stations in all of DuPage County and both would be in West Chicago, the community with the highest Latino population in the county.” **See Exhibit 1 attached (Public Comment #10).** This same West Chicago citizen also referenced the lack of fundamental fairness and pre-adjudication in favor of approving LRS's Application when she noted that “our city council chose not to listen to residents who strongly oppose this and were not swayed by the lack of evidence that this would create ‘no harm.’” **Id.**

#### **IV. PROTECT WEST CHICAGO APPEALS TO THE ILLINOIS POLLUTION CONTROL BOARD**

On March 28, 2023, PWC appealed to the IPCB pursuant to Section 40.1 of the Illinois Environmental Protection Act, 415 ILCS 5/401.1. On April 6, 2023, the IPCB issued an Order accepting PWC's Petition and on April 14, 2023, PWC Amended its Petition alleging:

- *First*, that LRS's Pre-Filing Notice did not comply with 415 ILCS §5/39.2(b);
- *Second*, that LRS's proposed facility would be located within 1,000-feet of property zoned residential, thus would not comply with the provisions of the Illinois Environmental Protection Act, 415 ILCS §5/22.14(a);
- *Third*, that the Siting Hearing did not comport with the dictates of Fundamental Fairness in a multitude of ways, and as set forth in greater detail below;
- *Fourth*, that LRS failed to meet 39.2 Criterion 1, 2, 3 and 8; and,
- *Fifth*, that LRS's improperly sought to submit hearing evidence, in the form of two documents, after the close of evidence, under the guise of “public comment.”

The above allegations form the basis of this appeal.

**V. ILLINOIS POLLUTION CONTROL BOARD'S PUBLIC HEARING**

***a. The September 28, 2023 Illinois Pollution Control Board's Public Hearing***

On September 28, 2023, an IPCB public hearing on PWC and PODER's appeal was held. At the hearing, PODER representative Ms. Julieta Alcantar offered a public statement and was subjected to cross-examination by LRS counsel. In addition, PWC called four witnesses, namely Mayor Ruben Pineda, West Chicago City Administrator Michael Guttman, West Chicago Alderman Lori Chassee and West Chicago Community Development Director Tom Dabareiner.

***b. Testimony of Mayor Ruben Pineda Regarding Lakeshore Recycling Systems LLC's Application and West Chicago Ordinance 23-O-0006***

At the September 28, 2023, public hearing, Mayor Ruben Pineda stated he has been Mayor of the City of West Chicago for 11 years (Tr. 85:11-13) and that prior to that time, he had been a member of the City Council for 14 years. Tr. 86:9-11. Mayor Pineda said he supervises all City staff including City Administrator Michael Guttman (Tr. 88:14-19) who reports to him on a daily basis. Tr. 91:10-12. When asked about the April 1, 2019 West Chicago City Council Host Agreement discussions, Mayor Pineda was initially unable to recall what had been discussed; however, after being shown the meeting meetings for the April 1, 2019 City Council meeting, he confirmed there had been extensive discussion about the Host Agreement. Tr. 94:10-16.

In regard to LRS's impending Application for development of a pollution control facility, Mayor Pineda stated that he was unsure whether a member of the City's staff would have had the ability, knowledge or expertise to review LRS's Application to determine if it met the standards of the siting ordinance. Tr. 96:15-24. Specifically, Mayor Pineda said he did not know if any member of West Chicago staff could determine if LRS's Application included gross inconsistencies. Tr. 97:1-98:7. Thus, West Chicago decided to hire an expert (Aptim) to review LRS's Application. Tr. 98:9-19. Mayor Pineda also testified, incredulously, that he was unsure if it was their expert's

(Aptim), City Administrator Michael Guttman's, or any City employees' role to help LRS obtain approval for their Application. Tr. 103:1-17. In addition, Mayor Pineda said:

- He was unsure whose responsibility it was to make sure that LRS's application met the criteria (Tr. 104:5-8) despite the existence of a West Chicago Ordinance which clearly stated that it was the Applicant's responsibility;<sup>5</sup>
- He was unaware that West Chicago's Community Development Director Tom Dabareiner had submitted a letter to LRS, but later became aware of the existence of the letter (Tr. 107:10-22) despite the fact that Mr. Dabareiner's letter was submitted in LRS's Application as an exhibit;
- He was unaware that the letter Mr. Dabareiner had initially submitted and provided to LRS had been changed to say that the City "concludes" Section 22.14 is not applicable, rather that the City "believes" Section 22.14 is not applicable. Tr. 108:14-18.<sup>6</sup>
- He was unaware that Hearing Officer Derke Price relied on Mr. Dabareiner's letter in coming to the conclusion that Section 22.14 does not apply (Tr. 110:9-13) despite the fact that he voted for Ordinance 23-O-0006 approving LRS's Application, which made clear that Mr. Price did rely on such letter;
- He was unaware if City officials made an official determination of whether Section 22.14 applied prior to LRS even submitting its Application (Tr. 114:19-115:2) despite the fact that Ordinance 23-O-0006 approving LRS's Application found it did not apply;
- He was unaware that the City of West Chicago's expert, Aptim, noted that properties near the site being zoned residential posed serious risks to LRS's Application until reading this information in an exhibit for the first time. Tr. 118:21-119:2; and
- He was unaware that West Chicago's own expert, Aptim, had recommended the area (next to the proposed pollution control facility site) be rezoned before an application was modified in order to be able to meet the 1,000-foot zoning requirement. Tr. 119:3-8.

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<sup>5</sup> Mayor Pineda, however, did later testify that he was aware that LRS was responsible for demonstrating that the site location approval criteria for the proposed pollution control facility was met. Tr. 107:3-7.

<sup>6</sup> Mayor Pineda, however, did say he understood the difference in language of the two letters, one is a belief and the other is a conclusion. Tr. 109:12-22. Mr. Dabareiner, on the other hand, did not think there was a difference in the language between the two letters. Tr. 235:1 – 236:8.

At the hearing, Mayor Pineda also stated that he did not even know whether West Chicago's City Council even knew of issues their expert (Aptim) had identified within LRS's Application. Tr. 115:18-22. According to Mayor Pineda, City Administrator Michael Guttman did not provide him with regular updates on issues Aptim identified (with LRS's Application), nor did Mayor Pineda at any time contact Mr. Guttman about any issues or concerns related to LRS's Application. Tr. 115:6-17.<sup>7</sup>

***c. Testimony Relating to the February 27 and 28, 2023 West Chicago City Council Closed and Open Meetings***

At the September 28, 2023 Pollution Control Board hearing, the testimony elicited about West Chicago's closed City Council meeting of February 27, 2023, was inconsistent. For example, Mayor Pineda stated that he did not recall who put items on the City Council agenda, whose decision it was to go into Executive Session, or whether there was a discussion related to going into Executive Session. Tr. 122:2-24. Mayor Pineda also stated that he did not know that they would go into closed session on February 27, 2023, (123:18-21) who drafted Ordinance 23-O-0006 (approving of LRS's Application), (Tr. 127:5-7) nor when he would have first seen or read Ordinance 23-O-0006. Tr. 129:9-21.

On the other hand, directly contrary to Mayor Pineda's testimony, West Chicago Administrator Michael Guttman testified that Mayor Pineda was the one who made the decision to hold a meeting on February 27 and February 28, 2023 and that Mayor Pineda's decision was made after conversation with Special Counsel (Dennis Walsh), who suggested it. Tr. 164:10-15, 16-22. In fact, Mr. Guttman also testified Mayor Pineda was the one who also decided that no decision would be made on February 27, 2023 and Mayor Pineda decided the format for the

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<sup>7</sup> This testimony likely explains why Mayor Pineda also did not even know whether West Chicago's City Council was responsible for ensuring Section 22.14 is actually followed. Tr. 116:14-17.

February 27 and 28, 2023 meetings, after consultation with only Mr. Guttman and counsel, and that West Chicago's City Council was not involved in these decisions. Tr. 164:23-165:2, 166:1-13.

In any event, there is no dispute that during the February 27, 2023 closed session, the City Council did not vote or make any determination as to the sufficiency of the Application, nor that West Chicago's City Council made any findings of fact to support a decision on the Application. Tr. 130:7-16.<sup>8</sup> At the hearing, Alderman Lori Chassee confirmed that West Chicago's City Council made no decisions on the February 27, 2023 (Tr. 210:6-12), including whether Section 22.14 barred the application (Tr. 210:13-16), whether the hearings complied with fundamental fairness (210:17-20), whether any of the nine criteria were met (Tr. 211:5-11), nor whether to adopt the Hearing Officer's Findings, Tr. 211:12-15, even though all these specific "Findings" were included in Ordinance 23-O-0006.

Mayor Pineda said that the City Council made its findings of fact on February 28, 2023 when the City Council took its one and only vote in rendering its decision on the Application that took less than five months. Tr. 130:17-22, 131:22-24. However, the meeting minutes reveal that there was no actual discussion about whether the nine criteria were met; rather, on February 28, 2023, there was only one vote taken in extremely perfunctory and abbreviated fashion, to either summarily approve or reject Ordinance 23-O-0006. Tr. 218:2-4, 132:12-14. In fact, when asked about the specifics of Ordinance 23-O-0006, Mayor Pineda testified that:

- He did not know whether Ordinance 23-O-0006 adopted the Hearing Officer's Findings of Fact and Conclusions of Law (Tr. 132:21-23), even though the Ordinance clearly states that it does;
- He was not aware of who made the Findings of Fact contained in Ordinance 23-O-0006, (Tr. 133:12-14), even though the Ordinance clearly notes that it was the City Council that supposedly adopted Mr. Price's findings; and,

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<sup>8</sup> Mr. Guttman also confirmed that at the February 27, 2023 meeting, no decisions were made, no votes were taken, no findings were made, and no credibility determinations were made. Tr. 191:4-18. However, at that closed Session meeting, Mr. Price was present and answered questions at the February 27, 2023 meeting. Tr. 191:19-21.

- He did not know whether the 25 documents<sup>9</sup> were made available at the closed session (Tr. 140:21-141:1), even though it was represented that the documents were made available to West Chicago's City Council on February 27, 2023.

Nonetheless, Mayor Pineda was able to at least confirm that West Chicago's attorney drafted Ordinance 23-O-0006. 133:15-17. Also, since Ordinance 23-O-0006 identified and included multiple case citations,<sup>10</sup> Mayor Pineda was asked if those cases were provided to him during the closed February 27, 2023 City Council meeting; in response, he stated he could not recall.<sup>11</sup> Tr. 134:16-22.

In regard to who attended the closed February 27, 2023 City Council meeting, Mr. Guttman said that it was he who suggested to Mayor Pineda that Hearing Officer Derke Price attend (Tr. 167:8-13, 168:14-19) and that since Mayor Pineda generally accepts his recommendations, Mr. Price attended the closed session. Tr. 168:20-24. In contrast, subject-matter expert Aptim did not attend, because, according to Mr. Guttman, the initial contract with Aptim required Aptim to represent West Chicago and Aptim had a separate agreement to help the West Chicago's city staff. 170:1-8. Although a separate contract was never produced, Mr. Guttman claimed that it was approved separately and that he did not inform West Chicago's City Council that Aptim had (allegedly) been hired separately because he did not deem it relevant. Tr. 170:9-13, 171:3-8.

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<sup>9</sup> In response to interrogatory questions, West Chicago listed 25 documents which they represented were available to City Council members during the closed session meeting. **See Exhibit PWC M-17 (attached)(Response to Interrogatory No. 4).**

<sup>10</sup> For example, cases cited and referenced in Ordinance 23-O-0006 included *Fairview Area Citizens Taskforce v. Illinois Pollution Control Board*, 198 Ill. App. 3d 541 (3<sup>rd</sup> Dist. 1990) and *CDT Landfill Corp. v. City of Joliet*, 1998 WL 112497 (Ill. Pollution Control Board). C006043.

<sup>11</sup> Interestingly, the cases were not identified in the list of 25 documents purportedly made available to West Chicago Aldermen in closed session. Thus, the inclusion of the cases and reference to same in Ordinance 23-O-0006 was clearly the work of Special Counsel Dennis Walsh, who drafted Ordinance 23-O-0006. **See Exhibit PWC-16 (attached).**

*d. Testimony Relating to Pre-Application Contacts Between Mayor Ruben Pineda and Father Josh Ebener*

At the IPCB hearing, Mayor Pineda was asked about November 2020 communications he had with a local West Chicago pastor named Father Josh Ebener. At the hearing, Mayor Pineda admitted that on November 14, 2020, he sent Father Josh a text in response to information Father Josh had posted on social media opposing LRS's waste transfer station. Tr. 139:11-14. Mayor Pineda confirmed he texted Father Josh the following:

“We need to talk next week. You're pushing propaganda. Please get all information prior to posting on social media. Thanks in advance.” **Exhibit PWC M-8 (attached)**.

Mayor Pineda testified that when he sent the November 14, 2020 text to Father Josh, he did not know whether or not he would have to be the tiebreaking vote on the approval of the waste transfer station, stating that it was possible that he could have been. Tr. 137:5-23; 139:16-18.

*e. Testimony Relating to West Chicago's Letter of Support for Lakeshore Recycling System LLC's Application and West Chicago's Decision to Not Produce Documents Under the Freedom of Information Act*

At the September 28, 2023 public hearing, Michael Guttman said that as the City Administrator for West Chicago, over 115 employees report to him, (Tr. 143:20-24) including Tom Dabareiner and the FOIA officer. Tr. 144:3-7. Mr. Guttman said he was supervised by the West Chicago City Council (Tr. 144:14-13), whom he reports to either in formal meetings or via weekly email updates. Tr. 144:18-22.

Mr. Guttman was asked about a West Chicago letter Tom Dabareiner had drafted for LRS on West Chicago official letterhead, **see Exhibit 2 attached (C000466)**, which LRS had submitted the West Chicago letter as part of its Application. The letter had concluded that the “1,000-foot setback requirements in 415 ILCS 5/22.14(a)” were inapplicable to LRS's Application. Mr. Guttman testified that he was unaware of the existence of the Tom Dabareiner letter but, nevertheless, said that Mr. Dabareiner did not need his authority to send it. Tr. 176:1-3. According

to Mr. Guttman, he did not ask Mr. Dabareiner to withdraw the letter because he did not believe that it was necessary (Tr. 176:4-12) even though he (Mr. Guttman) knew that Section 22.14 (the 1,000-foot setback issue) was an issue that LRS's expert (John Hock) was dealing with. Tr. 177:1-6. In fact, Mr. Guttman testified that he knew that Mr. Hock wanted a new letter [in which Mr. Dabareiner changed language from the City "believes" to the City "concludes" the 1,000-foot setback requirement was met] based on email correspondence. Tr. 180:13-16. In any event, Mr. Guttman knew that LRS did submit Mr. Dabareiner's letter in support of their Application. Tr. 183:23-184:2.

At the hearing, Mr. Guttman was also asked about the FOIA requests made regarding the waste transfer station in January 2021 (Tr. 146:4-6) which requested West Chicago produce:

*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.*

Despite this very clear and specific FOIA request, West Chicago represented to Ms. Rivera that: ***The City has no documents responsive to this section of your request. See Exhibit PWC-28<sup>12</sup> (attached)***. When asked about this FOIA response, Mr. Guttman said that West Chicago did not produce any documents [despite their existence] because incredulously he did not believe the FOIA was referring to the memos from Aptim regarding the waste transfer station, nor did he believe that the FOIA referred to communications between Aptim and city officials. Tr. 148:13-20.<sup>13</sup> Mr. Guttman said he had decided that West Chicago had no responsive documents to the FOIA request.

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<sup>12</sup> This response can be found at "Exhibit C" of Exhibit PWC-28.

<sup>13</sup> Mr. Guttman also stated that the documents were not initially turned over was because he believed that draft documents did not need to be turned over and he was not aware of the ongoing communication between Aptim and LRS. 154:22-155:19.



Tr. 149:2-8. After the DuPage Circuit Court order, however, Mr. Guttman said that West Chicago did produce responsive documents. Tr. 154:3-15.

*f. Testimony Relating to Lakeshore Recycling System LLC's Email to West Chicago's Subject Matter Expert Aptim*

At the September 28, 2023 hearing, Mr. Guttman was shown an email in which LRS asked Aptim whether Aptim could “manage the Wildlife Management Plan that is agreed upon once the site becomes operational.” Tr. 174:1-12. Mr. Guttman was asked if he knew why LRS had written “once the site becomes operational,” in regard to LRS’s Application for a waste transfer station. Mr. Guttman testified that he was unaware of this communication. Tr. 174:13-16.

**VI. LEGAL STANDARD**

*a. Illinois Pollution Control Standard of Review*

The standard of review to be applied to an administrative agency’s decision varies depending on whether the question raised is a question of law, a question of fact, or a mixed question of law and fact. *See City of Belvidere*, 181 Ill.2d at 204, 229 Ill. Dec. 522, 692 N.E.2d at 302. If a question of law is raised, the standard of review is de novo, with no deference to be given to the determination made by the underlying administrative agency. *City of Belvidere*, 181 Ill.2d at 205, 229 Ill. Dec. 522, 692 N.E.2d at 302. If a question of fact is raised, the standard of review is the manifest weight standard and the agency’s determination will not be reversed unless it is against the manifest weight of the evidence. *City of Belvidere*, 181 Ill.2d at 205, 229 Ill. Dec. 522, 692 N.E.2d at 302; *Fox Moraine*, 2011 IL App (2d) 100017, ¶ 59, 356 Ill. Dec. 21, 960 N.E.2d 1144. And, if a mixed question of law and fact is raised, the agency’s decision is subject to a clearly erroneous standard of review. *City of Belvidere*, 181 Ill.2d at 205, 229 Ill. Dec. 522, 692 N.E.2d at 302. The “clearly erroneous” standard lies between the deferential manifest-weight-of-the-

evidence standard and the de novo standard. *Fox Moraine*, 2011 IL App (2d) 100017, ¶ 59, 356 Ill. Dec. 21, 960 N.E.2d 1144.

***b. Fundamental Fairness Standards***

Whether siting proceedings were fundamentally fair is a mixed question of law and fact, and thus a court will apply the “clearly erroneous” standard. *Fox Moraine*, 2011 IL App (2d) 100017, ¶ 59, 356 Ill. Dec. 21, 960 N.E.2d 1144 (citing *Peoria Disposal Co. v. Illinois Pollution Control Board*, 385 Ill.App.3d 781, 796, 324 Ill. Dec. 674, 896 N.E.2d 460 (2008)). In regard to the fundamental fairness of the procedures used in a proceeding under Section 39.2, the IPCB has held that Pre-filing contacts may be probative of prejudgment of adjudicative facts, which is an element to be considered in assessing a fundamental fairness allegation. *American Bottom Conservancy (ABC) v. Village of Fairmont City*, PCB 00-200, slip op. at 6 (Oct. 19, 2000). Illinois courts have indicated that fundamental fairness refers to the principles of adjudicative due process, and that a conflict of interest itself could be a disqualifying factor in a local siting proceeding if the bias violates standards of adjudicative due process. *E & E Hauling v. PCB*, 116 Ill. App. 3d 586, 596, 451 N.E.2d 555, 564 (2nd Dist. 1983), aff’d 107 Ill. 2d 33, 481 N.E.2d 664 (1985).

Finally, the manner in which the hearing is conducted, the opportunity to be heard, whether *ex parte* contacts existed, prejudgment of adjudicative facts, and the introduction of evidence are important, but not rigid, elements in assessing fundamental fairness. *Hediger v. D & L Landfill, Inc.*, PCB 90-163, slip op. at 5 (Dec. 20, 1990). See *Timber Creek Homes, Inc. v. Village of Round Lake Park et.al.*, PCB 14-199 (Apr. 3, 2014).

**ARGUMENT**

**VI. LAKESHORE RECYCLING SYSTEMS, LLC FAILED TO MEET THE JURISDICTIONAL NOTICE REQUIREMENTS**

An application for siting approval must comply with all statutory provisions. Specifically, the Siting Statute requires applicants to serve written notice of intent (the “Pre-Filing Notice”) on all owners of property within 250 feet in each direction of the lot line of the Subject Property (the “Subject Area Radius”), as determined by the authentic tax records of the county in which the facility is to be located. 415 ILCS §5/39.2(b). The Pre-Filing Notice is the critical document that provides all statutory stakeholders with adequate notice of what is being proposed in their community. *Kane Cnty. Defs., Inc. v. Pollution Control Bd.*, 139 Ill. App. 3d 588, 593, 487 N.E.2d 743, 746 (2d Dist. 1985).

Under the statute, notice can be satisfied in only one of two ways: (1) Personal Service; or (2) Registered Mail, Return Receipt Requested. This notice requirement is jurisdictional, and the burden of proof rests with the Applicant to show that all procedural requirements relating to issuance and service of the Pre-Filing Notice have been met. *Cnty. of Kankakee v. Illinois Pollution Control Bd.*, 396 Ill. App. 3d 1000, 1008, 955 N.E.2d 1, 9 (3<sup>rd</sup> Dist. 2009) (citing *Waste Mgmt. of Illinois v. Illinois Pollution Control Bd.*, 356 Ill. App. 3d 229, 234, 826 N.E.2d 586 (3d Dist. 2005)).

Under the Act, “authentic tax records” determine to whom and where the Pre-Filing Notice must be sent. 415 ILCS §39.2(b). In Illinois, the County Treasurer, the County Clerk and the Assessor each have a role in the keeping of the authentic tax records. *Bishop v. Pollution Control Bd.*, 235 Ill. App. 3d 925, 932, 601 N.E.2d 310, 315 (5th Dist. 1992); *Scott v. City of Chicago*, 2015 IL App (1st) 140570, ¶ 6, 29 N.E.3d 592, 594-595. In *Scott*, the court held that *Bishop* requires that one look to all three offices when determining the proper entities and locations to send notice based on the authentic tax records. *Scott v. City of Chicago*, ¶ 12, 29 N.E.3d at 596.

In this matter, the record below clearly demonstrated that railroads own two parcels of land (PIN 01-32-505-011 and 01-32-506-001) within the Subject Area Radius (the “Railroad Parcels”). C001009. As also established in the record below, this information can easily be accessed in a matter of a few minutes if one merely attempts to put forth any effort.

In Illinois, Railroad tax assessments are only made by the Department of Revenue, and local assessors have no role. *See* 35 ILCS §200/8-5; 35 ILCS §200/11-70(b) and (d); 35 ILCS §20/11-80. Thus, LRS was required to look specifically at the authentic tax records contained in the offices of the DuPage County Treasurer and the DuPage County Clerk for the Railroad Parcels. Here, both the DuPage County Treasurer, Gwen Henry, and the DuPage County Clerk, Jean Kaczmarek, confirmed that the authentic DuPage County tax records of DuPage County clearly showed that there are six railroads (including those owning the Railroad Parcels), clearly identified by name, address, city, state, and zip code included in the authentic DuPage County tax records. *See* C006116-C006128; C006129-6150. Specifically, PIN 01-32-506-001 belonged to EJ&E as confirmed by the DuPage County Clerk’s certified record. *See* C006109-C006115; C006129-6150. Thus, LRS was required, as a clear matter of law, to serve pre-filing notice on EJ&E.

In its Application LRS included Appendix 2-J, described as “Applicant’s Affidavit of Compliance With 415 ILCS §5/39.2(b),” as well as the related exhibits which depicted copies of notices and receipts. C006151-C006185. LRS also included a chart reflecting the identity of the entities it served and addresses. *See* C006165. Absent from this service list was EJ&E. **Id.**

LRS said it attempted service of its Pre-Filing Notice upon Canadian National Railway for PIN 01-32-506-001; however, as noted above, there is no indication whatsoever in the authentic tax records that Canadian National Railway is the property owner identified by PIN 01-32-506-001. *See* C006129-C006185. At the Siting Hearing, LRS’s expert (Mr. John Hock) admitted that he never contacted anyone at DuPage County to ask them whether the online map he relied on to

determine that Canadian National Railway was the owner of PIN 01-32-506-001 was in fact an “authentic tax record” of DuPage County. C002160-C002163. In other words, and of dispositive significance, Mr. Hock took no steps to confirm with any taxing authority that the map he claimed was an authentic tax record was an actual authentic tax record of DuPage County, nor did he confirm where or to whom the authentic tax records are sent for the owner of PIN 01-32-506-001. C002034-C002035, C002037-C002039 and C002160-C002163.<sup>14</sup>

No tax records, *let alone the authentic tax records of the County*, reflect that Canadian National Railway received any tax bills or paid any taxes entitling or requiring that they receive tax notices for PIN 01-32-506-001, or any other PIN in DuPage County. Rather, the only proper party and location to serve for PIN 01-32-506-001 was EJ&E at 17641 S. Ashland Avenue, Homewood, IL, where authentic tax bills are sent. *See* C006116-C006128. That notice was never served.

Mr. Hock also tried to justify his jurisdictional blunder and casual approach to this critical jurisdictional requirement by stating that Canadian National Railway is the owner and parent company of EJ&E. C002148-C002149. However, even if Canadian National Railway does own the EJ&E and/or Wisconsin Central Ltd., it would still not save LRS’s jurisdictional failure, because Canadian National is not the entity listed on the authentic tax records in question. Illinois courts have taken a very strict view on the entities that must be served the Pre-Filing Notice; those being the “Owners” set out in the authentic tax records of a county. *Waste Mgmt. of Illinois, Inc. v. Illinois Pollutions Control Bd.*, 356 Ill. App. 3d 229, 234, 826 N.E.2d 586, 591-92 (3rd Dist. 2005). *Actual notice is insufficient* to cure notices not served by the statutory method or to the

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<sup>14</sup>Entered into the hearing record were certified copies of actual DuPage County real estate tax records and bills for the Railroad Parcel at issue. *See* Exhibits 2 and 3 of PWC’s Motion to Dismiss.

correct person or entity. *Id.* at 592. (Emphasis added). Moreover, each corporation is its own legal entity under Illinois law, and one cannot consider service on a parent company as service on its subsidiary. *See Wissmiller v. Lincoln Trail Motorsports, Inc.*, 195 Ill. App. 3d 399, 403, 552 N.E.2d 295, 298 (4th Dist. 1990) (“mere existence of a parent-subsidiary relationship is insufficient to establish close ties necessary” for proper service of process).

In addition to the above, LRS’s service of the Pre-Filing Notice on Canadian National Railway via overnight express mail at its Canada address also fails. That is because the Illinois Appellate Court has adopted the “Plain Language Doctrine” and, in doing so, has adopted a very strict interpretation as to how and whom must be served the Pre-filing Notice, as set forth in Section 39.2(b). *Waste Mgmt. of Illinois v. Illinois Pollution Control Board*, 356 Ill. App. 3d 229, 234, 826 N.E. 2d 586, 591-92 (3d Dist. 2005). The Court in *Waste Management* determined that the General Assembly clearly provided only two methods by which an applicant could satisfy the Pre-Filing Notice service requirements set forth within the Siting Statute, personal service or registered mail, return receipt requested, to the address appearing on the authentic tax records of the county. *Id.* at 591. In other words, LRS’s form of service (via overnight express mail) was also fatally defective under the Siting Statute.

Here, for the reasons set forth above, service of the Pre-Filing Notice is clearly fatally flawed and insufficient as a matter of law. Further, the method of service of Applicant’s Pre-Filing Notice also fails to comply with the notice requirements of the Siting Statute. Accordingly, West Chicago lacked jurisdiction to consider LRS’s Application.

**VII. LAKESHORE RECYCLING SYSTEMS, LLC'S APPLICATION DOES NOT COMPLY WITH 415 ILCS §5/22.14(A)**

To obtain local siting approval of a new pollution control facility, the proposed facility location must comply with 415 ILCS §5/22.14(a) (the "Set-Back Provision") which requires a setback of 1,000 feet from property zoned residential. In its Application, LRS confirmed and conceded that two residentially zoned properties (ER-1) are located within 1,000 feet of the proposed waste transfer station. C002383; C000317. This admission also dooms LRS's Application.

The IPCB has previously held in favor of strict compliance with Section 22.14(a). *C&S Recycling, Inc. v. Illinois Environmental Protection Agency*, 1996 WL 419477, at \*3 (PCB 95-100, July 18, 1996). C&S Recycling filed an application for a permit to develop and operate a municipal waste transfer station. *Id.* at \*1. The Agency denied the application because it failed to demonstrate that the proposed facility was located at least 800 feet from the nearest residence or property zoned for primarily residential uses as required by Section 22.14 of the Act, and Section 39(1) of the Act prohibits the issuance of a permit for a facility located within the boundaries of any setback zone established by the Act. *Id.* at \*2. The Board agreed and concluded its decision with the following language "Further, even if the Board found in favor of C&S Recycling on these arguments, without a legislative change in the Act, issuance of the permit would still result in a violation of the Act." *Id.* at \*3. (Emphasis Added).

Like in *C&S Recycling*, the Applicant has conceded that the facility is within 1,000 feet of a property zoned for residential use. Thus, without a legislative change in the Act, West Chicago cannot read exceptions into the statute in favor of the Applicant, because the issuance of the permit would still result in a violation of the Act.

***a. The Rules of Statutory Construction Do Not Support Lakeshore Recycling Systems LLC's Position***

The plain language of the statute at issue shows that no waste transfer station can legally be sited at the proposed location because there are two properties zoned primarily for residential use within 1,000 feet of the proposed facility. “No” means exactly that, and LRS is not authorized to declare that the legislature did not mean what it clearly wrote in order to obtain the outcome it seeks. *See Zahn v. N. Am. Power & Gas, LLC*, 2016 IL 120526, ¶ 15, 410 Ill. Dec. 947, 72 N.E.3d 333, 337 (“No rule of construction authorizes us to declare that the legislature did not mean what the plain language of the statute imports, nor may we rewrite a statute to add provisions \*\*\* the legislature did not include.”).

When presented with an issue of statutory construction, a court’s primary objective is to ascertain and give effect to the intent of the legislature. *Murphy-Hylton v. Lieberman Mgmt. Services, Inc.*, 2016 IL 120394, ¶ 25, 72 N.E.3d 323, 329. Hence, the most reliable indicator of legislative intent is the language of Section 22.14(a), which must be given its plain and ordinary meaning. *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 479, 639 N.E.2d 1282, 1287 (1994). Courts should not depart from the plain language of the Act by reading into the Act exceptions, limitations, or conditions that conflict with the express legislative intent. *Alternate Fuels, Inc. v. Dir. of Illinois E.P.A.*, 215 Ill. 2d 219, 238, 830 N.E.2d 444, 455 (2004).

Here, the statute is clear: no facility may be constructed within 1,000 feet of residentially zoned property. The current zoning classification of the two parcels is, then, dispositive. By including residentially zoned properties in the 1,000-foot Set-Back Provision, the legislature made a clear choice to include parcels that had the ability to be utilized in the future as residential, even if currently vacant or used in a different manner.



***b. The Adjacent Rail Lines Could Be Used in A Residential Manner***

In an attempt to avoid the plain language of the statute, LRS argues that the rail lines could never be developed in a residential manner. This argument is legally and factually false.

PWC's expert Joe Abel, (C003002-C003006) testified unequivocally that: (1) properties are consolidated and re-zoned on a regular basis (C0030007-C003008); (2) numerous rail lines in DuPage County have been vacated during his career and utilized in other ways, including as parts of other developments (C003000-C003002, C003016 and C003030-C003031); and (3) the adjacent vacant property currently being farmed could be legally re-zoned and consolidated with the Railroad Parcels and the adjacent farmland to develop and use in a residential manner. C003009-C003011 and C003018-C003020. None of Mr. Abel's testimony in this regard was contradicted.

***c. The Roxana Decision Does Not Help Applicant***

LRS also hinges its hope to survive the Set-Back Provision on *Roxana Landfill, Inc. v. Illinois Pollution Control Bd.*, 2016 IL App (5<sup>th</sup>) 150096-U. *Roxana*, however, is inapplicable and is distinguishable because the property in question in *Roxana* was foreclosed in perpetuity by a deed restriction from ever being utilized for residential purposes.<sup>15</sup> The same is not true for the Railroad Parcels in this matter. As evidenced via Mr. Abel's testimony, nothing legally or factually prohibits the residentially zoned Railroad Parcels from ever being combined with the farm parcels to the east and being redeveloped. In short, the *Roxana* decision does not allow LRS to circumvent the clear language set forth in Section 22.14(a).

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<sup>15</sup> The *Roxana* applicant asserted in its waste transfer station application that there were no residential land uses within 1,000 feet of the site. The applicant therein noted, however, that property approximately 1,000 feet to the southeast of the site previously contained residential dwellings but that St. Clair County had acquired these properties under a Federal Emergency Management Agency (FEMA) buy-out program, which included permanent deed restrictions prohibiting any future residential use of the parcels. In other words, residential buildings were forever banned from being located on the land.

Moreover, *Roxana* is not binding in this case because it was issued under Supreme Court Rule 23, and while it may be cited as persuasive, it *may not* be cited as binding precedent by any party except in the limited circumstances allowed under Rule 23(e)(1). This case is not one of those limited circumstances. Thus, neither the Hearing Officer nor West Chicago should have relied on this decision.

***d. The Tom Dabareiner Letter Does Not Modify the Requirements of §22.14(a)***

LRS also attempts to circumvent the clear language of the Act by relying on the August 24, 2022 letter issued by City staff member Tom Dabareiner (the “Dabareiner Letter”). C000466. LRS’s expert (John Hock) used Mr. Dabareiner’s letter to argue that West Chicago has determined “that the 1,000-foot set-back does not apply to those railroad properties.” C002385. However, PWC’s Mr. Abel’s uncontradicted expert testimony refutes the basis of Mr. Dabareiner’s unsupported conclusion that “residential development on this property is physically impossible.” C003004-C003034.

Moreover, at the siting hearing, and during the September 28, 2023 hearing before the Illinois Pollution Control Board, it became clear that the version of the Dabareiner Letter included in LRS’s Application (the August 24, 2022 letter - C000466) was not the same as an initial version of the letter Mr. Dabareiner had authored and executed on October 15, 2019. C003838. In fact, the final letter contained revisions made only as a result of at LRS’s request. C002468-C002472.

Revisions to Mr. Dabareiner’s initial letter that Mr. Hock suggested (and which were accepted) were not insignificant or minor. C002471-C002473. For example, in the initial letter of October 15, 2019, Mr. Dabareiner never included language stating that “residential development on this property is physically impossible.” *Compare* C000466 *with* C003838; C002469. In addition, in the final letter, Mr. Dabareiner stated that the City “concluded” that the 1,000-foot setback did not apply, whereas in his initial letter Mr. Dabareiner wrote, “as such, the City believes

Section 22.14(a) 1,000 foot setback requirement is not applicable.” *Compare* C000466; C002469.

Then, at the hearing, Mr. Dabareiner testified that he did not think there was a difference between “believes” and “concludes.” Below is the colloquy exchange relating to this portion of his testimony:

Q: In there you say, “The City concludes”; is that correct?

A: Correct.

Q: When did you conclude? What did you do to conclude to make that finding?

A: I adopted the language because I felt that it reached the same conclusion.

[ \* \* \* ]

Q: Did you inform Mr. Guttman that, in fact, you had changed your opinion to conclude?

MR. WALSH: Objection to the form of that question. It suggests it changes his opinion.

BY MR. MEZA:

Q: Well, did you change your opinion from belief to conclude?

A: No.

Q: So those two letters mean the same thing that the City believes versus the City concludes?

A: Yes.

Q: *It's the same thing?*

A: *Yes.*

See Tr. 235:1 – Tr. 236:8 (emphasis added). In short, LRS’s reliance on a West Chicago staff letter and the City’s decision to allow Mr. Dabareiner to submit this letter confirm the existence of pre-adjudication in favor of LRS’s Application.

In any event, a West Chicago staff member’s conjecture or speculation regarding the availability of property for a particular future use is not the standard created by 415 ILCS §5/22.4(a). This standard is confirmed and reinforced by the last paragraph of Section 39.2(a),

which provides: “If the facility is subject to the location restrictions in Section 22.14 of this Act, *compliance with that section shall be determined as of the date of filing of the application for siting approval*”. (Emphasis added). In this case, as of the date that the siting application was filed, (as well as to today), the parcel in question is zoned “Residential.” This ends any further inquiry.

Mr. Dabareiner also has no authority to determine whether LRS’s Application complies with the Set-Back Provisions of an Illinois statute and LRS cannot rely upon representations made by a municipal official to argue that it has satisfied the provisions of the Act. Accordingly, neither a West Chicago staff member nor its corporate authorities have the authority to create “whole cloth” exceptions in or to the clear and unequivocal mandate included in both Section 22.14(a) and the last paragraph of Section 39.52(a). Thus, since LRS’s Application squarely fails to comply with the 1,000-foot Set-Back Provision of 415 ILCS §5/22.14(a), siting approval for this proposed pollution control facility must fail.

#### **VIII. LACK OF FUNDAMENTAL FAIRNESS**

In PWC’s April 14, 2023 Amended Petition before the IPCB, PWC alleged that there was pre-adjudication in favor of approving LRS’s Application in multiple ways, *some of which are not currently totally known*, rendering the entire local siting review process fundamentally unfair. The underlying evidence in this matter, including the testimony from the September 28, 2023 IPCB hearing, confirms that there was pre-adjudication in favor of approving LRS’s Application and a lack of fundamental process.

*a. First, the 2019 Conduct of Mayor Pineda Prior to the Submission of LRS’s September 2022 Siting Application—Reveals Pre-Adjudication in Favor Of Lakeshore Recycling Systems, LLC’s Application*

The action(s) of West Chicago officials prior to submission of LRS’s Application reveal pre-adjudication in favor of approving LRS’s Application. This is best exemplified by the November 14, 2020 text message Mayor Ruben Pineda sent a local pastor (Father Josh) wherein

he wrote: “We need to talk next week. *You’re pushing propaganda*. Please get all information prior to posting on social media. Thanks in advance.” Although West Chicago sought to conceal this text message, thanks to Ms. Rivera and the DuPage Circuit Court, Mayor Pineda’s intent and active role (as an advocate for the project - and not an objective neutral – from the beginning) was uncovered, and reveals the blatant pre-adjudication in favor of approving LRS’s Application years before LRS had even submitted its Application.

At the September 28, 2023 hearing, Mayor Pineda sought to downplay his text message despite not knowing (or more likely, actually knowing) that he may have to be a tie breaker. In other words, as early as November 2020, it was clear that Mayor Pineda was taking action to stop community members from voicing any opposition because he had already decided to support LRS’s Application.

***b. Second, the Conduct and Action of West Chicago Officials, Including Deliberately Concealing Documents and Drafting Letters in Support of Lakeshore’s Application — Reveals Pre-Adjudication in Favor of Lakeshore Recycling Systems, LLC’s Application and a Lack of Fundamental Fairness***

The conduct of West Chicago officials to improperly conceal the opinions of its own expert (Aptim) during the Pre-Filing Application Review process leading to the filing of a FOIA lawsuit, also reveals pre-adjudication in favor of approving LRS’s Application and is further evidence of a lack of fundamental fairness.

Specifically, the deliberate and intentional decision of West Chicago officials to draft, edit and submit a letter in support of the LRS’s Application cannot be overstated. Further, West Chicago officials took this action and the specific language included at the direction of LRS. West Chicago officials then placed this opinion on West Chicago letterhead. This conduct is further evidence that West Chicago was clearly in favor of approving LRS’s Application. In fact, despite the fact that West Chicago’s Siting Ordinance requires the applicant to meet all siting requirements,

West Chicago Staff changed the language in their letter from “West Chicago believes” Section 22.14 does not apply to “West Chicago concludes” that Section 22.14 does not apply.

Moreover, the efforts of West Chicago to deliberately conceal documents and not produce them after a proper FOIA request had been made is also extremely telling. As noted above, despite a very direct and clear FOIA request seeking communications between LRS and West Chicago officials, Mr. Guttman incredibly responded that none existed. The decision to conceal publicly-available documents speaks volumes. Why hide documents? Well, it has become clear why West Chicago sought to conceal these documents: their very own experts (Aptim) who were not invited into the February 27, 2023 closed meeting, had previously concluded in writing that LRS’s Application was deficient, could not meet various of the criteria, and was not in compliance with the Set-Back Provisions of the law.

***c. Third, the Lack of Spanish Language Interpreters—Reveals a Lack of Fundamental Fairness***

The Siting Hearing also did not comport with even basic standards of fundamental fairness and revealed a clear bias against West Chicago’s Latino community.

During the January 2023 public hearings, Hearing Officer Derke Price was informed that there was no Spanish language interpretation at the Hearing, and that certain participants’ primary language was Spanish. C002868; C003160. This information, however, fell completely on deaf ears, even though the right to understand what is being said is obviously essential to ensuring meaningful participation in a truly “public” hearing.

There is no dispute that there were no steps taken to initially ensure reasonable access to or availability of hearing proceedings in Spanish, despite the majority-minority Latino population in West Chicago. Further, no steps were taken to ensure reasonable access or availability of hearing proceedings in Spanish, even after both West Chicago officials and the Hearing Officer were

informed that a very significant number of West Chicago's residents' primary language was Spanish.

Moreover, the statutory Pre-Filing Notice was also not made available on the City's website in Spanish. This, despite the fact that West Chicago is a community where more than 52% of residents over the age of five speak a language other than English, and nearly 21% have limited English Proficiency ("LEP").<sup>16</sup> Here, West Chicago's 21% LEP population is four times the 5% threshold set by the Federal Government for requiring language access measures for LEP residents.

This critical omission of statutory notice in Spanish denied LEP West Chicago residents their fundamental right to receive notice and meaningful access to critical information.<sup>17</sup> The standard of meaningful participation was established by the landmark case, *Lau v. Nichols*, where the U.S. Supreme Court found that by receiving no instruction or English only language instruction, "Chinese speaking children" were denied the opportunity for meaningful participation in the same education available to English speaking children. *Lau v. Nichols*, 414 U.S. 563, 568, 94, S. Ct. 786, 789, 39 L. Ed. 2d 1 (1974). *In Lau*, the Supreme Court ruled that the school district had discriminated against these Chinese students, as a result of their national origin, a protected category under Title VI of the Civil Rights Act of 1964. *Id.* The exact same thing occurred in West Chicago; however, in the context of the "public" hearings.

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<sup>16</sup> See American Community Survey 2021 5-Year Estimates: Language Spoken at Home Tables at <https://data.census.gov/table?q=West+Chicago+&t=Language+Spoken+at+Home&tid=ACSST5Y2021.S1601>.

<sup>17</sup> Any local government entity receiving federal funds is required to provide meaningful access to information and services to residents with LEP<sup>17</sup> under Title VI of the Civil Rights Act of 1964, Executive Order 13166 (2000). See <https://www.lep.gov/executive-order-13166>; Executive Order 13985 (2021; 2023); and Strengthen Racial Equity and Support for Underserved Communities Through the Federal Government at <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/02/16/executive-order-on-further-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

Moreover, although West Chicago relied on the Google translation feature on their website to provide access to Spanish language information on the siting process, this free Google feature is deemed unreliable and has been rejected by the courts “as simply not reliable enough where rights are on the line.” See *United States v. Ramirez-Mendoza*, 2021 WL 4502266, at \*6 (M.D. Pa. Oct. 1, 2021) (court not convinced that Google Translate accurately translated [the] request for consent into Spanish. . . . Precision is important, particularly in this context, and the Court believes that more was needed to establish the accuracy of Google Translate).

***d. Fourth, the Hearing Officer’s Failure to Render Impartial Rulings — Reveals a Lack of Fundamental Fairness***

During the January 2023 public hearings, Hearing Officer Derke Price failed to render impartial rulings on the evidence. Specifically, Mr. Price prevented PWC from cross-examining LRS’s expert on environmental justice related issues which go directly to of the criteria set forth at 415 ILCS §5/39.2(a). Mr. Price prevented cross-examination under the guise that issues relating to minority or disadvantaged communities were not “relevant.” This, despite the fact that the United States Environmental Protection Agency’s 2002 Manual titled “Waste Transfer Stations: A Manual for Decision-Making (C002632-C002633) states that “Environmental Justice Considerations” should be taken into consideration during “the site selection process, [and] steps should be taken to ensure that siting decisions are not imposing a disproportionate burden upon low-income or minority communities.” C003709.

In rejecting PWC’s ability to use this document to question LRS’s expert on whether they took any steps to ensure that the siting decision did not impose a disproportionate burden on West Chicago’s minority community, Hearing Officer Price not only failed to make impartial rulings on the evidence, but he also inexplicably questioned whether a 20-year-old document was still relevant—which of course it is. In fact, during the January 2023 public hearings, Hearing Officer



Price said that “The manual is not the criteria. The criteria are set forth in the statute. We’re not here to see if we comply with a 20-year-old U.S. EPA document. It’s 39.2. Let’s stay focused.” C002635. However, environmental justice-related issues go to protection of public health, safety, welfare and the environment, and are thus directly relevant in siting proceedings and may be even more relevant today than they were 20 years ago. Mr. Price also prevented PWC from presenting evidence regarding environmental justice concerns,<sup>18</sup> thus PWC was forced to submit an Offer of Proof, which directly related to the proposed facility’s impact on air pollution and its negative effects on the West Chicago community, specifically the majority-minority population which is in violation of Section 9(a) of the IEPA (415 ILCS 5/9).

Mr. Price also prevented PWC from asking questions regarding emissions and environmental justice related issues, which denied members of the community from hearing relevant testimony, which among other things, would have revealed that:

- the Illinois EPA defines “area of EJ concern” as a census block group or areas within one mile of a census block group with income below poverty and/or minority population greater than twice the statewide average.
- the Illinois EPA has developed a Geographic Information System (GIS) mapping tool call EJ START to identify census block groups and areas within one mile of census block groups meeting the EJ demographic screening criteria.
- EJ START is publicly available and can be found on the Illinois EPA’s EJ webpage at the following location: <http://epagisportal.illinois.gov/portal/apps/webappviewer/index.html?id=414d804241e94c51809f08f3644c37d9>.

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<sup>18</sup> As recent as January 13, 2023, the United States EPA Cumulative Impacts Addendum to EJ Legal Tools, noted that: Addressing cumulative impacts is also an inextricable component of federal environmental justice and equity policy, and integral to protecting civil rights. Executive Order 12898, which lays the foundation for federal environmental justice policy, directs federal agencies to identify “multiple and cumulative exposures” in environmental human health analyses, whenever practicable and appropriate. 13 Executive Order 14008 further directs agencies to “make achieving environmental justice part of their missions by . . . address[ing] the disproportionately high and adverse . . . climate-related and *other cumulative impacts on disadvantaged communities*.” See <https://www.epa.gov/system/files/documents/2022-12/bh508-Cumulative%20Impacts%20Addendum%20Final%202022-11-28.pdf>. (Emphasis Added).

- he (PWC's expert) used EJ START to determine whether the proposed LRS waste transfer station facility is in or impacting an "area of EJ concern," and that based on his review of the EJ START, the proposed facility is approximately 1,300 feet from an area determined by the IEPA to have minority population greater than twice the statewide average, and therefore within an "area of EJ Concern."
- environmental hazards can result in adverse health effects for the general population in West Chicago, a majority of which (namely 51.85%) is Latino based on United States census information and as set forth below:
- based on his review of the EJ START map, as well as the information from the EPA and Illinois Environmental Protect Act, the proposed facility route for departing trash transfer-trailers does impose an adverse impact on various areas of EJ concern as depicted in slide 31 and the image above.

See Exhibit PWC-702 (James Powell Offer of Proof) C004133-C004176. These facts reveal that Mr. Price did not render impartial rulings and did not properly allow testimony related to the nine criteria and the public safety, health & welfare of the Latino community.

*e. **Fifth, the Actions of the West Chicago City Council and their Decision to Proceed to Closed Session — Reveals Pre-Adjudication in Favor of Lakeshore Recycling Systems, LLC's Application and a Lack of Fundamental Fairness***

The February 27, 2023, decision of the West Chicago City Council to approve, in a private closed session, LRS's Application further reveals that there was pre-adjudication in favor of approving LRS's Application and is evidence of a lack of fundamental fairness.

The IPCB is no doubt aware that evaluating applications related to siting requests can often involve complex technical aspects. Thus, local city and county boards often find it necessary to seek the guidance of experts or consultants to ensure a thorough understanding of these technical nuances. This expert input is essential in enabling siting authorities to make informed decisions when it comes to voting on such applications. For this very reason, the City took the step of hiring Aptim.

However, even though West Chicago hired Aptim to serve as its subject-matter expert, Aptim was not invited to the February 27, 2023 closed meeting of the West Chicago City Council.

And, thanks to the FOIA documents, we now know why. Aptim did not believe that LRS's Application complied with state law; thus, West Chicago officials decided to keep them out of the so-called deliberation. In other words, the most important and critical expert hired by West Chicago was excluded and excluded intentionally. This further smacks of pre-adjudication in favor of LRS's Application.

Moreover, the fact that Alderman James E. Beifuss, and Alderman Matthew Garling stated that they believed certain criteria had not been met, yet there is no indication or reference in Ordinance 23-O-0006 of these facts is further telling of pre-adjudication. All witnesses testified that during the September 27, 2023 closed meeting, no action and no vote had been taken. So, if that is the case, then how did Special Counsel Dennis Walsh know what the West Chicago City Council members relied upon, considered or agreed on, as set forth in the final version of Ordinance 23-O-0006. The vote taken on February 28, 2023 took less than one minute and was a rote, mechanical "Thumbs Up" or "Thumbs Down" vote for Ordinance 23-O-0006. Yet, Ordinance 23-O-0006 contains all sorts of language about what the West Chicago City Council purportedly reviewed, considered, believed and decided. In other words, the pre-crafting and pre-designing of Ordinance 23-O-0006 by Special Counsel Walsh is further evidence of pre-adjudication in favor of LRS's Application. The siting decision had been made long before any deliberations were held, and to the extent there were any deliberation, the conclusion had obviously already been determined.

**IX. STATUTORY CRITERIA — LAKESHORE RECYCLING SYSTEMS LLC HAS FAILED TO COMPLY WITH STATUTORY CRITERION 1, 2, 3 AND 8**

***a. Criterion 1: The facility is necessary to accommodate the waste needs of the area it is intended to serve***

LRS failed to meet Criterion 1 because the proposed facility is clearly not necessary to accommodate the waste needs of the area it is intended to serve. LRS's Application, as well as the

Siting Hearing testimony, is undisputed—there is more than enough waste transfer station capacity to handle the current and future waste needs of the proposed LRS Service Area. C002041 and C002745-C002746. In fact, the waste transfer stations currently serving the proposed LRS Service Area have capacity that is almost double the amount of waste currently being generated by the Service Area. C002745-C002746. In addition, the existing transfer station in the Service Area (the “Groot Facility”) is operating a few blocks away at less than fifty percent (50%) of capacity. C002043.

Instead of arguing that the area physically needs a new facility, LRS argues that the proposed facility is necessary solely from a competition standpoint stating, “if you’re going to be able to effectively compete in the market, you need to be fully integrated in that market.” C001998. Applicant continues and by arguing that it needs vertical integration in both trucking and transfer stations (C001989-C001993) in order to have the “ability to compete on a level playing field.” C002014. However, while making this assertion, Applicant concedes that: (a) it is currently the third largest waste provider in Illinois (C001983); (b) it has admittedly been able to obtain over 100 franchise agreements with municipalities (C001961); and (c) it is currently operating a landfill in Atkinson, Illinois (C001987). In other words, LRS already has the vertical integration it claims to need via the proposed waste transfer station, including a number of portions of its proposed Service Area. (C002062 and C003762).

While LRS may not have a waste transfer station within the proposed Service Area, there are clearly numerous waste transfer stations surrounding the proposed Service Area and of those, LRS owns five waste transfer stations in the Chicagoland area. C002066-C002067. In his testimony, Applicant’s engineer confirmed that fifteen miles around the proposed Service Area was a reasonable distance to the Service Area for needs analysis purposes. C002055-C002056. And, within the fifteen miles of the Service Area, Applicant has three waste transfer stations, at least

two of which receive waste from the Service Area. C002055-C002056, C002062-C002063 and C002069. Further, the Applicant is not the only large waste hauler that does not have “vertical integration” in the Service Area that actually competes in that Service Area. C002063.

Most importantly, Criterion 1’s analysis hinges on accommodating the waste needs of the area it is intended to serve – not the economic and market development needs of a specific waste company. LRS’s alleged need for vertical integration is irrelevant to the plain language in Criterion 1, and no case has been cited or found that holds otherwise.

In further arguing that Criterion 1 has been satisfied, LRS states that this criterion is satisfied because there is a general need for more competition in the Service Area. This statement should be disregarded because LRS provided no documentation, no data, no reports and no studies to support its otherwise wholly self-serving conclusory contention. C002071-C002074. On the other hand, the evidence revealed that nowhere in the proposed Service Area is there an actual lack of competition. In fact, every portion of the Service Area was currently served by at least two, and sometimes up to six different waste transfer stations and companies. C002743 and C002748-C002749. These facts, in and of themselves, totally belie LRS’s conclusion of a lack of competition.

In reality, LRS is already successfully competing on a daily basis with the remainder of the waste hauling industry in the Chicagoland area, including in the Counties in the Service Area as it currently holds eight municipal waste contracts in those Counties. *See* C000032-C000033; C002064-C002065. To say otherwise is disingenuous, as LRS is clearly competitive in obtaining municipal waste contracts within DuPage and Kane Counties. *See* C000032-C000033.

LRS exclusively relies on *Will Cty. v. Vill. of Rockdale*, 2018 IL App (3d) 160463, 121 N.E.2d 468. to argue that all it has to do to satisfy Criterion 1 is argue that an additional pollution control facility will add competition to the market. However, LRS’s reliance on the *Rockdale*

decision is misplaced and grossly oversimplified. The *Rockdale* ruling does not hold that anytime you add competition you satisfy Criterion 1. If that were the case, then every additional pollution control facility would automatically satisfy Criterion 1 because it would add competition.

In any event, an actual close review of the *Rockdale* decision reveals that it was decided on a very specific set of factual circumstances that do not exist in this Application. Of note, in *Rockdale*, the court found that the only waste station in the service area that accepted solid waste was beyond capacity. *Rockdale*, ¶ 63, 121 N.E.3d at 485. Here, the evidence is very clear that the other transfer stations receiving waste from the Service Area, including the Groot Facility down the street, have more than enough capacity to service the proposed Service Area. In fact, LRS expert John Hock admitted the Groot Facility is only utilizing approximately 1,000 tons of its 3,000-ton per day capacity. C002043-C002044.

In *Rockdale*, because the only other waste transfer station in the service area was beyond capacity, the court found the need for more competition to accommodate the needs of the Service Area in that specific instance; as noted in the decision, the other waste transfer stations in the Service Area were:

- “cutting off trucks waiting in line” at the end of the service day and not allowing those trucks to dump their waste;
- allowing up to “30 loads of waste” to remain overnight and on the tipping floor until the beginning of the facility’s operational day;
- allowing “discharged loads of waste [to remain][ ] partially outside the building;” and;
- one of the waste transfer stations in the Service Area was receiving double the amount of its average volume of waste and “had been observed operating beyond its capacity.”

*Id.* ¶ 58-63. In the current Application, there is no evidence that any of the above *Rockdale* conditions or factors, or anything similar, exist or are occurring at the waste transfer stations currently in the Service Area or receiving waste from the Service Area. *See* C002043-C002045.

Specifically, the *Rockdale* court, also specifically stated that to meet Criterion 1, an applicant needs to show an “urgent need” for the facility. In sum, no case (including *Rockdale*) has ever found that adding competition to a service area without anything more, is sufficient to satisfy Criterion 1. In fact, as noted above, the only decision that relied on a the theory of competition to satisfy need, actually relied on the fact that the current facilities were not able to properly handle the amount of waste currently being generated in the service area – not that evidence of additional competition in an already properly-served area was sufficient to meet the “urgent need” finding required. Here, LRS wholly failed to introduce evidence of lack of waste transfer service capacity or that any of the problems found in *Rockdale* existed in the Service Area; because, as LRS’s own expert confirmed, the other facility located within the Service Area, and down the street, is operating well under capacity.

Therefore, *Rockdale* actually supports PWC’s position that LRS has woefully failed to meet Criterion 1. *Rockdale* requires a showing of urgent need – not just the fact that another transfer station would add competition. Here, no urgent need, or need of any kind, has been shown. As admitted by LRS’s expert, John Hock, there is more than enough capacity in the Service Area to meet the waste needs of the Service Area. Accordingly, the “urgent need” required by the court in *Rockdale* has not been shown, and Applicant has failed to meet its burden of proof as to Criterion 1. To hold otherwise, would effectively (and improperly) remove Criterion 1 from future Section 39.2 analysis.

***b. Criterion 2: The facility is so designed, located, and proposed to be operated that the public health, safety, and welfare will be protected***

LRS has failed to meet Criterion 2 because the proposed facility is not so designed to be operated that the public health, safety, and welfare will be protected. The determination of whether Criterion 2 is met “is purely a matter of assessing the credibility of expert witnesses.” *File v. D & L Landfill, Inc.*, 219 Ill. App. 3d 879, 907 579 N.E.2d, 1228, 1236 (5th Dist. 1991), *citing Fairview*, 198 Ill. App. 3d at 552. In this case, LRS’s expert has not shown that the operations of the proposed facility can be operated in a safe manner because LRS does not rely on proper data and because the City of West Chicago’s expert questioned whether the proposed facility’s proximity to the DuPage Airport Authority was properly addressed.

First, there is no dispute that it is important to know whether or not this facility can accept all of the waste that it’s going to be sited for in order to make sure there’s going to be enough room in the facility to unload, leave and then load the transfer trailer. C002485. In its Application, LRS relied on data to arrive at peak hours (C002486), yet LRS’s peak hours changed and its expert Mr. Hock was conveniently unable to “remember” or provide a reason for the change. C002488-C002489.

In addition, to operational issues relating to peak truck traffic hours, LRS’s proposed waste transfer station “Tipping Floor Stockpiling Capacity” inexplicably changed from one draft to another and was ultimately deleted altogether from the body of the final version of the Application. C002495-C002507.

West Chicago’s own expert, Aptim, also raised a number of serious questions regarding the facility and its proximity to the DuPage Airport Authority. C002597. Hazards relating to the DuPage Airport Authority are predominately related to birds. C002599. In its Application, LRS confirmed that the FAA Advisory Circular indicates that waste handling facilities should not be



located within the Runway Protection Zone commonly referred to as an RPZ. C000320-C000321. At the Siting Hearing, Exhibit PWC-43 was shown which depicted the Runway Protection Zone. After being shown the depiction of the RPZ, Mr. Hock was shown PWC-38, namely a diagram depicting a portion of the proposed facility's operation which clearly revealed that those operations were directly intruding on the RPZ. C002615-C002616. After reviewing PWC-38, Mr. Hock did confirm that a portion of the operations would be located within the RPZ and specifically identified spotters as being in that zone and specifically stated, "[y]eah, that portion of our facility is within the runway protection zone. Absolutely." C002618.

In other words, LRS has failed to meet Criterion 2 because the proposed facility has not been shown to be so designed to be operated that the public health, safety, and welfare will be protected, especially as it relates to the RPZ operations, which area critically impacts air safety concerns.

***c. Criterion 3: The facility is located so as to minimize incompatibility with the character of the surrounding areas and to minimize the effect on the value of the surrounding property***

1. Minimizing incompatibility with character of the surrounding area.

LRS has the burden of showing that it meets both prongs of Criterion 3. *Peoria Disposal Company v Peoria Cnty. Bd.*, 2007 WL 1816891, at \*24. The first prong requires LRS to show that the "facility is located so as to minimize incompatibility with the character of the surrounding area." Sec. 39.2. Here, LRS relied on the testimony and report of an appraiser, Dale Kleszynski, to attempt to show its proposed facility meets the first prong of Criterion 3.

However, Mr. Kleszynski has not provided any of the information necessary to meet this prong, nor is he qualified to do so. Mr. Kleszynski testified only to the "highest and best use" of the subject property, which is in an appraisal practice that is essentially focused only on determining what use of the property brings the highest sale price. C002271-C002272. Underlying

that analysis was simply Mr. Kleszynski's review of the zoning statute of the subject property and the surrounding area but nothing more. However, nothing Mr. Kleszynski did established that the facility is located so as to minimize incompatibility with the surrounding area, which is the required standard. There was little or no testimony in Mr. Kleszynski's presentation related to how this use was located as to minimize the effect on surrounding properties, other than that the zoning in the area was generally consistent with the proposed use.

The problem with this analysis, however, is that Mr. Kleszynski is not qualified to discuss proper zoning and compatible uses. As he admitted, he has no experience in zoning or land planning. C002207-C002211. He is not, nor has he ever been, a land planner. C002207- C002208. He has never drafted a zoning ordinance nor land use plan, and admitted he had never previously testified in any land planning capacity. C002208- C002210.<sup>19</sup>

Probably because of this lack of experience, Mr. Kleszynski failed to take into account that West Chicago had already legislatively determined that all land owned by the DuPage Airport in this area, which owns land contiguous to this proposed facility on two sides, was not an appropriate use for any pollution control facility. C002255-C002259, C003481-C003512. This determination is a strong indication of what West Chicago has historically believed is an appropriate use for this portion of its boundaries.

Mr. Kleszynski also admitted on cross-examination that he had not done any analysis on mitigation or minimizing the effect of the proposed waste transfer station on any of the surrounding properties because that was not "within his area of expertise." C002282. His lack of "expertise" explains why he never looked at ways to minimize the effect the proposed facility would have on

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<sup>19</sup> It is interesting to note that PWC's appraiser, Kurt Kielisch, admitted that he did not perform an analysis of the first prong of Criterion 3 because as a licensed appraiser practicing in over 21 states, even with 39 years of experience, he was not qualified to give an opinion on compatibility. C002849-C002850 and C002860-C002861.

surrounding property or whether proper screening could be used to protect nearby properties, even though he did acknowledge that zoning ordinances often use screening techniques to minimize effect of uses on surrounding properties. C002220-C002223 and C002227-C002228. His total failure to consider any mitigation measures further shows analyzing the first prong of Criterion 3 was clearly not within his expertise. Thus, LRS has wholly failed to meet its burden of proof as to the first prong of Criterion 3.

2. Minimizing effect on the value of surrounding property.

LRS also relied on Mr. Kleszynski's testimony as its evidence to attempt to satisfy the second prong of Criterion 3. Here as well, Mr. Kleszynski failed to do any substantive analysis to support his conclusion and, accordingly, provides no actual analysis or evidence that can be relied upon.

Mr. Kleszynski's opinion basically was that the highest and best use of the subject property was as a waste transfer station; hence, by definition, that use standing alone, somehow minimized effect on surrounding property values. C002266 and C002479. While no one disputes Mr. Kleszynski's ability to opine about highest and best use, his very novel theory went like this:

- If the property is used at its highest and best use, then it avoids obsolescence. C002266.
- If the property does not become obsolete, then presumably it will not negatively affect surrounding property values. C002266.

However, and importantly, while Mr. Kleszynski's report never even mentions the word "obsolescence." C001030-C001092; C002476. Nor does his report or testimony ever cite to any particular authoritative source for his theory that lack of obsolescence somehow equals minimization of the effect on surrounding property values.

However, PWC's appraisal expert, Kurt Kielisch, pointed out, that highest and best use and minimizing effect on property values are not at all related. C002855-C002856. In fact, it is

nonsensical to say that a property utilized to its highest and best use automatically minimizes the effect on surrounding property values. The driving reason to determine the highest and best of a property is to in turn determine the highest value one can obtain for the property. C002271-C002272. Every definition of highest and best use posed to Mr. Kleszynski on cross-examination was based on obtaining the highest value for the property. C002270-C002278. None of the definitions mentioned or even relate to the effect of the use on surrounding property values. *Id.* In fact, when asked to provide authority for his statement that there was a correlation between minimizing effect on property values and the highest and best use, Mr. Kleszynski was totally unable to cite any authority. C002279-C002280. Although LRS's attorney claimed during his cross-examination of Mr. Kielisch that authority existed where the IPCB approved highest and best use as a factor in Criterion 3 (C002888-C002889), and while the IPCB has been asked to consider highest and best use analyses in relation to Criterion 3, an exhaustive search of IPCB decisions by PWC counsel found no IPCB decisions where an expert based his entire Criterion 3 opinion on the mere fact that a pollution control facility was the highest and best use – however, that is exactly (and only) what Mr. Kleszynski did in this matter.

Despite Mr. Kleszynski's conclusory, unsupported opinion, a property being utilized at its highest and best use and not becoming obsolete does not in any way ensure that it will not negatively affect surrounding property values. C002855-C002858. As Mr. Kielisch aptly pointed out, a hog farm may be the highest and best use in rural areas and may be in use for the next two hundred years and not face obsolescence because it brings in the highest return on value, but it is an enormous leap to say that the hog farm will not affect property values of neighboring farms or other uses. C002858.

Mr. Kielisch went even further and noted that without further studies and sales analysis, Mr. Kleszynski's opinion could not be used to determine whether the subject property was located

so as to minimize the effect on surrounding property values. C002861. In order to properly determine whether a facility or use would negatively affect surrounding property values, an appraiser would have to go much deeper, and do a very different analysis than what Mr. Kleszynski performed. C002862-C002867. One of those possible analyses would have been to perform a “Matched Pair” analysis. C002863-C002864. Another one would have been to do a “Before and After” study. C002864. However, Mr. Kleszynski admitted he did neither. C002264-C002281. Therefore, Applicant has wholly failed to meet the second prong of Criterion 3 as well.

***d. Criterion 8: The Facility is Inconsistent with the Solid Waste Management Plan Enacted by the County of DuPage***

The DuPage County Board is the legislative body that enacted and approved the Solid Waste Management Plan (the “SWMP”) at issue in this matter. C002717. In 1996, the SWMP was updated (the “1996 Update”) to state that there should be three to five waste transfer stations “*throughout* the County.” C002925. (Emphasis Added). As the court in *Cnty. of Kankakee v. Illinois Pollution Control Bd*, 396 Ill. App. 3d 1000, 1020-23, 955 N.E.2d 1, 19-21 (3d Dist. 2009) held, the cardinal rule of statutory construction when looking at a SWMP is to give effect to the intent of the County that drafted it. Here, the County gave a clear indication of what the intent of the words “throughout the County” was in the early 2000’s.

In 2003, a second DuPage County transfer station was proposed (the “2003 Facility”) just blocks from the existing Groot Facility. C002927. After a siting hearing, the County of DuPage specifically relied upon its own 1996 Update language in specifically finding that transfer stations should be located “throughout the County” to deny siting the 2003 Facility within blocks of the Groot Facility because it failed to comply with the SWMP. C002927. The County Board of DuPage made it crystal clear that “throughout the County” did not mean two transfer stations within blocks of each other when it specifically found that the 2003 Facility did not meet Criterion

8 “in that the proposed facility was inconsistent with the solid waste disposal plan of DuPage County because the proposed location is within ¼ mile of another transfer station; and fails to reduce wear on roads, reduces overall truck miles traveled and decrease truck air emissions.” PWC Ex. 3. C004214-C004216.<sup>20</sup> The clear mandate that two transfer stations not be in close proximity remains in full force and effect today.

This “throughout the County” language in the 1996 Update has never been repealed by any of the later updates that occurred in 2007, 2012 or 2017. If the County later disagreed with its construction of this SWMP related to the 2003 Facility, its failure to amend or supersede that language denotes its express embracing of that prior interpretation. *See Village of Vernon Hills v. Heelan*, 2015 IL 118170, ¶ 19, 39 N.E.3d, 937, 941 (statutes that have been interpreted but not amended create a presumption that the legislature has acquiesced in the interpretation). Accordingly, this language requires that the proposed facility be denied for the exact same reason that 2003 facility was denied – its close proximity to the still existing Groot Facility.

The later SWMP updates only serve to further solidify the requirement that new waste transfer stations should not be sited near existing ones.<sup>21</sup> The 2012 update to the SWMP followed that reasoning when it articulated that “future conditions may necessitate a new facility *in the southern portion* of the County.” C002931; C001866-C001867(Emphasis Added). Of significant note, that same 2012 update did not mention or seek the establishment of a new facility in the northwest portion of DuPage County. Applicant’s Ex. 1, Appendix 8-G. Going further, and bringing us to the present, nothing in the 2017 SWMP update superseded or repealed this language either. C002272; C001878-C001897.

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<sup>20</sup>Interestingly, the City of West Chicago agreed with this interpretation in 2003 as it adopted its own Resolution opposing the siting of the 2003 Facility. C004214-C004241.

<sup>21</sup>Both the proposed facility and the Groot Facility are in the northwest corner of DuPage County. C002714.

Applicant's expert, John Hock, relied heavily in his testimony regarding Criterion 8 upon a letter provided by Joy Hinz, an Environmental Specialist with the County of DuPage, stating that the "facility *appears* to be consistent with the ... DuPage Solid Waste Management Plan Five Year Update (2017)." Applicant Ex. 1, Appendix 8-1 (the "Hinz Letter") (Emphasis Added) (Hinz Letter not in Record). However, the Hinz Letter opinion is of no real value to the Applicant. First of all, the Hinz letter is not under oath and was not subject to further examination by the participants in the proceeding. Further, the letter is ambiguous in that it only states that the facility proposed here "appears" to be consistent with SWMP. *Id.* C002717. Ms. Hinz never saw the application for the proposed facility before issuing her letter, and her letter was issued over two years before the Application was completed. Applicant Ex. 1, Appendix 8-1(Hinz Letter not in Record); C002714. More importantly, it is the intent of the legislative body that enacted the SWMP (not a staff member with unknown authority) that is most important in determining the actual meaning of the SWMP. *Cnty. of Kankakee v. Illinois Pollution Control Bd*, 396 Ill. App. 3d at 1020-23, 955 N.E.2d at 19-21; *Murphy-Hylton v. Lieberman Mgmt. Services, Inc.*, 2016 IL 120394, ¶ 25, 72 N.E.3d 323, 329 (primary objective is to ascertain and give effect to the intent of the enacting body). Here, the County Board made its intent clear in when it previously found that the proposed 2003 Facility violated the SWMP because of its proximity to the Groot Facility.

Hence, the proposed facility is not consistent with the requirements of the Solid Waste Management Plan Enacted by the County of DuPage and thus fails to meet Criterion 8.

***e. Applicant's Post Hearing Submissions***

On February 18, 2023, at 9:48 a.m., counsel for LRS sent Derke Price an email in which he wrote: "Attached hereto are a letter from Canadian National and a supplemental report from Dale Kleszynski. These are filed by LRS as post hearing public comment." Attached to the email were in fact the following two documents: (1) A letter dated February 2, 2023 from K.T. Donahue,

State and Local Affairs Manager of the Canadian National Rail directed to John Hock; and (2) A letter dated February 16, 2023 from Dale J. Kleszynski, President of Associated Property Counselors, Ltd. Directed to John Hock.

Counsel for LRS is fully aware that the manner to submit post hearing comments is clearly set forth on the City of West Chicago's website and can be submitted in only one of two ways, either via email or by writing to the City of West Chicago at 475 Main Street. Thus, the manner in which counsel for Applicant submitted a proposed "public comment," is inconsistent and inappropriate and should be rejected. Notably, this submission further proves that LRS has consistently shown a deliberate disregard for the proper methods of submitting its documentation.

*f. The February 2, 2023 Canadian National Letter*

The February 2, 2023 letter from Canadian National to John Hock is not a public comment and it specifically states so in the body of the letter. In his letter to Mr. Hock, Mr. Donahue wrote that Canadian National does "*not have any comments* regarding the proposed West DuPage Recycling and Transfer Station." (Emphasis Added). Thus, LRS's efforts to convert this letter into a "post hearing comment" is disingenuous and should be summarily rejected. In any event, the Canadian National letter actually supports PWC's position because it states that the EJ&E Railroad Line is a viable railroad line and that the "Leighton sub is part of the old Elgin Joliet & Eastern Railway (EJ&E) which was purchased by CN in 2009 *and it is doing business as the Wisconsin Central LTD which is a wholly owned subsidiary* of Canadian National Railway." (Emphasis Added). Thus, the February 2, 2023 CN letter confirms in definitive fashion that PWC is and was correct in its Motion to Dismiss—the EJ&E is an active, fully-functioning entity that should have received Pre-Filing Notice pursuant to 415 ILCS §5/39.2(b).



*g. The Dale Kleszynski Letter*

LRS also submitted a letter from Dale Kleszynski to John Hock in which Mr. Kleszynski wrote that the letter was his “response to the testimony of Mr. Kielisch as found on pages 919 thru 940 of the record of the January 12, 2023 hearing.” First, the letter is not a public comment; rather, it is a rebuttal, and serves as an attempt by LRS to introduce through the back-door what it should have introduced during rebuttal at the hearing. The time to have raised these would have been at the Siting Hearing, not weeks after the close of the evidence. Counsel’s improper efforts must be rejected. *Second*, as with the Canadian National letter, the letter was not submitted in the appropriate method as set forth on the City of West Chicago website.

Unlike the numerous LRS employees who provided public comment in support of their employer (LRS), at the Siting Hearing, Mr. Kielisch, on the other hand, was identified as an expert who provided specific expert testimony regarding Criterion 3. He was then subject to cross-examination. The time to challenge that testimony would have been at the Siting Hearing when the Hearing Officer offered LRS an opportunity to present rebuttal testimony (Tr. 1315), not weeks later after he has had time to review and digest the Hearing transcript. Providing what is clearly rebuttal evidence and testimony days before Findings of Fact and Conclusions of Law are due, smack of nothing other than additional Fundamental Fairness irregularities. These sort of tactics by counsel for Applicant are unbecoming, inappropriate and should be rejected.

**X. CONCLUSION**

Against that backdrop, LRS's Application is fatally flawed in numerous respects. As such, PWC respectfully requests the Illinois Pollution Control Board to reverse the decision of West Chicago to approve LRS's Application for development of a second waste transfer station in West Chicago.

Date: November 13, 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 1

**From:** [Sara Phalen](#)  
**To:** [Brown, Don](#)  
**Subject:** [External] West Chicago Waste Transfer-Opposition Pollution  
**Date:** Wednesday, November 1, 2023 9:58:06 PM

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Dear Mr. Brown,

The West Chicago community has long been seen as a less than community in DuPage County. If approved there would only be two waste transfer stations in all of DuPage County and both would be in West Chicago, the community with the highest Latino population in the county. Other more affluent communities have fought off such projects, but our city council chose not to listen to residents who strongly oppose this and were not swayed by the lack of evidence that this would create "no harm."

West Chicago is already home to a superfund site and has long struggled with environmental racism. This Waste Transfer station will bring more trucks, more air pollution and more contaminants into the air. As a home owner and business owner in West Chicago and a member of the Mexican American community here, I strongly oppose this expansion. As a mother whose children play in the area directly to the west of this expansion, I strongly oppose this expansion. West Chicago has one of the highest levels of childhood obesity and chronic health problems in the entire county. Adding more pollution to our town further negatively impacts our already disadvantaged community. Please help us have a fighting chance of health and wellness for ourselves and our children.

Sara Phalen, J.D.  
West Chicago resident, 787 Hickory Lane, West Chicago, IL

# Exhibit 2

# 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

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





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

# Exhibit

# PWC M-16

CITY OF  
**WEST CHICAGO**

WHERE HISTORY & PROGRESS MEET

**CITY COUNCIL SPECIAL MEETING  
MONDAY, FEBRUARY 27-28, 2023 - 6:00 P.M.  
475 MAIN STREET, WEST CHICAGO, ILLINOIS**

**AGENDA**

February 27, 2023 Agenda

1. **Call to Order**
2. **Pledge of Allegiance to the Flag**
3. **Roll Call and Establishment of a Quorum**
4. **Executive Session (Roll Call Vote)**
  - a. **5 ILCS 120/2 (C) (4) – Evidence or testimony presented in open hearing or in closed hearing where specifically authorized by law, to a quasi adjudicative body, as defined in this Act, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning**
5. **Roll Call to Return to Open Session**
6. **Continue the Meeting to February 28, 2023 at 6:00 p.m. at Community High School**

February 28, 2023 Agenda Continued

7. **Call to Order**
8. **Roll Call and Establishment of a Quorum**
9. **Adoption of an Ordinance relating to the APPLICATION FOR LOCAL SITING APPROVAL FOR LAKESHORE RECYCLING SYSTEMS, LLC, FOR THE WEST DUPAGE RECYCLING AND TRANSFER STATION, 1655 POWIS ROAD, WEST CHICAGO.**
10. **Public Participation (three minutes per speaker)**
11. **Adjournment**

These minutes were approved at the 3/20/23 City Council meeting with no changes  
CITY OF WEST CHICAGO – 475 Main Street  
CITY COUNCIL MINUTES  
Special Meeting  
February 27-28, 2023

The Special City Council meeting of February 27-28, 2023, was held partly remote (via Zoom) and partly in person.

**1. Call to Order.** Mayor Ruben Pineda (in person) called the meeting to order at 6:00 p.m. on February 27, 2023. The Mayor said that he determined that fully in person meetings are not practical and prudent at this time.

**2. Pledge of Allegiance.** Alderman Morano led all in the Pledge of Allegiance.

**3. Roll Call and Establishment of a Quorum.**

Roll call found Lori Chassee, James E. Beifuss, Jr., Jayme Sheahan, Rebecca Stout, Melissa Birch Ferguson, Jeanne Short, Sandy Dimas, Christine Dettmann, Heather Brown, Matthew Garling, Joseph C. Morano, John E. Jakabcsin, Alton Hallett, and Christopher Swiatek present. Aldermen Brown and Garling were present via Zoom. The Mayor announced a quorum

Also in attendance were City Administrator Michael Guttman and Special Legal Counsel Dennis Walsh and Dan Bourgault from Klein, Thorpe & Jenkins, and Derke Price, from Ancel Glink.

**4. Executive Session (Roll Call Vote).**

a. **5 ILCS 120/2 (C) (4)** – Evidence or testimony presented in open hearing or in closed hearing where specifically authorized by law, to a quasi adjudicative body, as defined in this Act, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning.

At 7:03 p.m., Alderman Swiatek made a motion, seconded by Alderman Chassee, to go into Executive Session.

Voting Aye by Roll Call Vote: Chassee, Beifuss, Stout, Birch Ferguson, Short, Dimas, Dettmann, Morano, Garling, Sheahan, Hallett, Brown, Jakabcsin and Swiatek. Motion carried.

**5. Roll Call to Return to Open Session.** At 8:50 p.m., Alderman Dimas made a motion, seconded by Alderman Birch Ferguson, to return to Open Session.

Voting Aye by Roll Call Vote: Chassee, Beifuss, Stout, Birch Ferguson, Short, Dimas, Dettmann, Morano, Garling, Sheahan, Hallett, Brown, Jakabcsin and Swiatek. Motion carried.

**6. Continue to February 28, 2023 at 6:00 p.m. at Community High School.** Alderman Chassee made a motion, seconded by Alderman Short, to continue the meeting to February 28, 2023 at Community High School.

Voting Aye by Roll Call Vote: Chassee, Beifuss, Stout, Birch Ferguson, Short, Dimas, Dettmann, Morano, Garling, Sheahan, Hallett, Brown, Jakabcsin and Swiatek. Motion carried.

**February 28, 2023 Agenda Continued**

The Special City Council meeting of February 28, 2023, was held partly remote (via Zoom) and partly in person.

**7. Call to Order.** Mayor Ruben Pineda (in person) called the meeting to order at 6:00 p.m. on February 28, 2023. The Mayor said that he determined that fully in person meetings are not practical and prudent at this time.

**8. Roll Call and Establishment of a Quorum**

Roll call found Lori Chassee, James E. Beifuss, Jr., Jayme Sheahan, Rebecca Stout, Melissa Birch Ferguson, Jeanne Short, Sandy Dimas, Christine Dettmann, Heather Brown, Matthew Garling, Joseph C. Morano, John E. Jakabcsin, Alton Hallett, and Christopher Swiatek present. Aldermen Chassee and Garling were present via Zoom. The Mayor announced a quorum.

Also in attendance were Director of Community Development Tom Dabareiner, City Administrator Michael Guttman and Special Legal Counsel Dennis Walsh.

**9. Adoption of an Ordinance relating to the APPLICATION FOR LOCAL SITING APPROVAL FOR LAKESHORE RECYCLING SYSTEMS, LLC, FOR THE WEST DUPAGE RECYCLING AND TRANSFER STATION, 1655 POWIS ROAD, WEST CHICAGO.**

City of West Chicago  
Regular City Council Meeting  
February 27-28, 2023  
Page 2

Alderman Dimas made a motion, seconded by Alderman Swiatek, to approve Ordinance No. 23-O-0006 approving the siting application for Lakeshore Recycling Systems.

Alderman Beifuss stated that the applicant has not met Criteria #1, 2 or 8. Alderman Garling expressed that he feels that Criteria #1 and 3 have not been met. Alderman Chassee conveyed that she believes the applicant has met all of the Siting Criteria.

Voting Aye by Roll Call Vote: Chassee, Stout, Birch Ferguson, Short, Dimas, Dettmann, Morano, Sheahan, Hallett, Brown, and Swiatek. Alderman Beifuss, Garling and Jakabcsin voted Nay. Motion carried.

**10. Public Participation (three minutes per speaker)**  
None

**11. Adjournment**

At 6:05 p.m., Alderman Stout made a motion, seconded by Alderman Dimas, to adjourn the meeting. All Aldermen voted aye by Roll Call Vote.

Respectfully submitted,

Michael Guttman  
City Administrator



WHERE HISTORY & PROGRESS MEET

NOTICE OF A MEETING OF THE CITY COUNCIL OF THE CITY WEST CHICAGO

Notice is hereby given to all interested parties pursuant to the Illinois Open Meetings Act, that a majority of a quorum of the City Council for the City of West Chicago may be attending the public hearings relating to the Lakeshore Recycling Systems, LLC, Application for Site Location for the West DuPage Recycling and Transfer Station located at 1655 Powis Road in West Chicago. At the following public hearing dates, times, and locations have been set but not all dates may be necessary to conclude the public hearings and/or more dates may be added for the public hearing:

Tuesday, January 3 from 6:00 p.m. to 10:00 p.m. at Wheaton Academy  
(900 Prince Crossing Road)

Wednesday, January 4 from 6:00 p.m. to 10:00 p.m. at Wheaton Academy  
(900 Prince Crossing Road)

Thursday, January 5 from 6:00 p.m. to 10:00 p.m. at Wheaton Academy  
(900 Prince Crossing Road)

Tuesday, January 10 from 6:00 p.m. to 10:00 p.m. at Wheaton Academy  
(900 Prince Crossing Road)

Thursday, January 12 from 6:00 p.m. to 10:00 p.m. at the West Chicago Community  
High School (326 Joliet Street)

There will be no agenda for this meeting of the members of the City Council but public comments regarding the Application will be allowed on the last day of the public hearings.

**CITY OF WEST CHICAGO**

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**ORDINANCE NO. 23-O-0006**

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

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**ADOPTED BY THE  
CITY COUNCIL  
OF THE  
CITY OF WEST CHICAGO  
February 28, 2023**

Published in pamphlet form by the authority of the City Council of the City of West Chicago, DuPage County, Illinois, on the 1<sup>st</sup> day of March, 2023.

**ORDINANCE NO. 23-O-0006**

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PASSED this 28<sup>th</sup> day of February, 2023.

Alderman Beifuss	<u>Nay</u>	Alderman Chassee	<u>Aye</u>
Alderman Sheahan	<u>Aye</u>	Alderman Brown	<u>Aye</u>
Alderman Hallett	<u>Aye</u>	Alderman Dettmann	<u>Aye</u>
Alderman Birch-Ferguson	<u>Aye</u>	Alderman Dimas	<u>Aye</u>
Alderman Swiatek	<u>Aye</u>	Alderman Garling	<u>Nay</u>
Alderman Stout	<u>Aye</u>	Alderman Short	<u>Aye</u>
Alderman Jakabcsin	<u>Nay</u>	Alderman Morano	<u>Aye</u>

APPROVED this 28<sup>th</sup> day of February, 2023.

  
Mayor Ruben Pineda

ATTEST:

Valeria Perez  
Executive Assistant

PUBLISHED: March 1, 2023

STATE OF ILLINOIS  
CITY OF WEST CHICAGO  
BEFORE THE CORPORATE AUTHORITIES

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

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

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

**9. Recharge Area**

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

**10. Consideration of Previous Operating Experience**

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

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

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

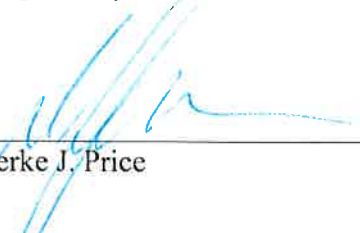
**PUBLIC COMMENTS**

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

**PROPOSED FINDINGS OF FACT**

My proposed findings of fact are attached.

Respectfully submitted,



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Derke J. Price

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

4828-0676-7394, v. 1



**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. On September 16, 2022, Lakeshore Recycling Systems, LLC (“Applicant”) applied to the City of West Chicago (“City”) for local siting approval of a new municipal waste transfer station on its 27.66 acre parcel of real estate at 1655 Powis Road, West Chicago, Illinois, 60185 (as legally described in the application and hereafter referred to as the “Property”).
2. The Applicant owns the Property upon which the proposed pollution control facility (“Facility”) is to be located.
3. The Property is located within the corporate limits of the City, is the subject of a Host Community Benefit Agreement between the Applicant and the City, and the City has jurisdiction to consider the Application.
4. The public hearing on the application was opened on January 3, 2023.
5. The hearing closed on January 19, 2023.
6. In accordance with the Act, written comment was then received by the Office of the City Manager acting as City Clerk for and additional 30 days after the close of the Hearing (i.e., through 11:59:59 p.m. CDST on February 20, 2023, including any written comment post-marked on or before February 18, 2023).
7. Concerning the pre-filing notice requirements of Section 39.2(b) (which states, in relevant part, that the applicant shall cause written notice of its request for site approval “to be served either in person or by registered mail, return receipt requested, on the owners of all property within the subject area not solely owned by the applicant, and on the owners of all property within 250 feet in each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of the County in which such facility is to be located...”):
  - A) with respect to all properties within 250 feet of the proposed facility, other than railroad properties, the applicant caused written notice of its request for site approval to be served by registered mail return receipt requested upon all such owners;
  - B) with respect to the railroad properties within 250 feet of the proposed facility, the owners as appears from authentic—and in some cases conflicting--tax records of DuPage County, are the Union Pacific Railroad Company and, variously and alternatively, the Elgin, Joliet & Eastern Railway, the Wisconsin Central, Ltd. (EJ&E Line) Company, and, per the DuPage County, Illinois 2022 Real Estate Tax Assessment Parcels Map, the Canadian National Railway;
  - C) the Applicant caused written notice of its request for site approval to be served by registered mail return receipt requested upon the Union Pacific Railroad Company;
  - D) the Applicant did not cause notice of its request for site approval to be served on the Elgin, Joliet & Eastern Railway;
  - E) the Elgin, Joliet & Eastern Railway was merged into the Wisconsin Central, Ltd. in December of 2012;

F) the Applicant did not cause notice of its request for site approval to be served on the Wisconsin Central, Ltd.;

G) the Wisconsin Central, Ltd. is a wholly owned subsidiary of the Canadian National Railway;

H) the Applicant caused written notice of the Applicant's request for site approval to be delivered via paid courier to the Canadian National Railway at the corporate offices of the Canadian National Railway in Montreal, Quebec, Canada;

I) the Applicant's courier secured the signature of a representative of the Canadian National Railway for that delivery;

J) the Applicant's use of the paid courier to deliver written notice of the Applicant's request, together with the documentation from the courier of that delivery, is sufficient to effectuate delivery of the request for site approval to the ultimate corporate parent/owner of the railroad property (not owned by the Union Pacific Railroad) and thereby satisfy the requirements of Section 39.2(b) of the Act.

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

A) no dwelling is within 1000 feet of the proposed facility;

B) the railroad properties are zoned ER-1 in the City and are located within 1000 feet of the proposed facility;

C) property zoned "ER-1" in the City of West Chicago is property zoned primarily for residential uses;

D) the size and the active use of the railroad properties make residential development of the parcels in compliance with ER-1 requirements improbable as a practical and pragmatic matter (see August 23, 2022 letter of Tom Dabareiner, City Community Development Director and Zoning Administrator);

E) in applying Section 22.14 restrictions, the Pollution Control Board (and at least one Appellate Court) has interpreted and enforced Section 22.14 so as to protect actual residences or properties where residential development is probable (at least as an initial matter of zoning) (see, *Roxana Landfill, Inc. v. Illinois Pollution Control Board*, 2016 WL 4005892, (Ill. App. 5 Dist. 2016) (a Rule 23 opinion affirming the PCB which allowed siting even though actual housing structures and residentially zoned properties were within 1,000 feet of the facility because the residential properties were now vacant and deed restrictions against residential use had been recorded against the properties, making actual residential use improbable, though not impossible);

F) Accordingly, Section 22.14 does not bar this proposed facility.

9. The Applicant complied with all pre-filing notice requirements of Section 39.2(c) of the Act.

10. The siting proceedings herein, both procedurally and substantively, complied with the requirements of fundamental fairness:

A) PWC and PODER interposed an objection to the failure to make the Pre-Filing Notice available on the City's website in Spanish; however, the Act itself does not require that

the Pre-Filing Notice in these proceedings be made available in a language other than English and no case has applied language access requirements to a Section 39.2 Siting Hearing nor the Section 39.2 filings.

B) PWC and PODER interposed objections to the lack of a Spanish-language translator for the hearing proceedings; however, neither the Act itself does nor any other statute or case requires that Language Access Services be made available for a Section 39.2 Siting Hearing (compare 725 ILCS 140/1 requiring such services in the criminal law context).

C) PWC and PODER filed objections to the exclusion of proffered evidence concerning “environmental justice related issues;” however, the State of Illinois has not amended the Environmental Protection Act to add “environmental justice related issues” to the Section 39.2 criteria and neither the Pollution Control Board nor any Court has held that “environmental justice related issues” is now a part of any criterion under Section 39.2.

D) In the absence of a defined statutory criteria concerning “environmental justice related issues,” testimony proffered about such issues is not relevant to the siting decision.

11. Based on the understanding of Criterion 1 as articulated by the Pollution Control Board and affirmed by the Illinois Appellate Court for the Third District in *Will County v. Village of Rockdale*, 121 N.E.3d 468 (3d Dist. 2018), the Applicant demonstrated that the proposed Facility meets Criterion 1: “the facility is necessary to accommodate the waste needs of the area it is intended to serve....”

12. The Applicant did not demonstrate that the Facility--as proposed in the Application--meets Criterion 2; however, with the imposition of the special conditions proposed by City Staff (and compliance therewith by the Applicant) which are attached hereto as Exhibit A, the proposed Facility does meet Criterion 2: “the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;”

13. The Applicant demonstrated that the proposed Facility meets Criterion 3: “the facility is so located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property;”

14. The Applicant demonstrated that the proposed Facility meets Criterion 4; “for a facility other than a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100 year floodplain or the site is flood-proofed;”

15. The Applicant did not demonstrate—as proposed in the Application--that the Facility meets Criterion 5; however, with the imposition of the special conditions proposed by City Staff (and compliance therewith by the Applicant) which are attached hereto as Exhibit A, the proposed Facility does meet Criterion 5: “the plan of operations for the is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents;”

16. The Applicant demonstrated that the proposed Facility meets Criterion 6: “the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows;

17. The Applicant demonstrated that the facility will not be accepting hazardous waste and therefore demonstrated that Criterion 7 is not applicable.

18. Based on the analysis of Criterion 8 as articulated by the Pollution Control Board and affirmed by the Illinois Appellate Court for the Third District in *Will County v. Village of Rockdale*, 121 N.E.3d 468 (3d Dist. 2018), the Applicant demonstrated that the proposed Facility meets Criterion 8: "...where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan; ..."

19. The Applicant demonstrated that the facility is not located within a regulated recharge area and therefore Criterion 9 is not applicable.

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

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

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

With the imposition of and compliance by the Applicant with the Special Conditions set forth above, the evidence demonstrates that the Application complies with each of the nine siting criteria in Sec. 39.2(a) of the Act and therefore the City should grant siting approval.

Respectfully submitted,



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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)(l) of the Act.*
- *The operator must place wood, tires, and other unacceptable materials in covered dumpsters or vehicles adequate to prevent the release of leachate.*
- *All non-recyclable general construction or demolition debris, and unacceptable material shall be moved to the waste transfer facility on the same day it is received, and disposal of such material shall be handled in accordance with all applicable federal, State, and local requirements and with these conditions.*
- *The operator shall transport all non-putrescible recyclable general construction or demolition debris for recycling or disposal within 6 months of its receipt at the facility, in accordance with Section 22.38(b)(4) of the Act.*

- *In accordance with Section 22.38(b)(6) of the Act, the operator shall employ tagging and record keeping procedures to identify the source and transporter of C&D material accepted by the facility.*
- *The operator shall use load tickets to control the site activities and comply with the tagging and record keeping procedures. These load tickets shall identify the source of the C&D material delivered to the site. The operator shall use these tickets to identify the location in the yard or in the covered dumpsters and the length of time stored at the site to achieve compliance.*
- *The operator is prohibited from receiving hazardous and asbestos containing materials.*
- *The operator may separate clean concrete and clean soil from the general construction or demolition debris as recyclable materials for use in construction. The operator is permitted to store recyclable concrete and clean soil for a maximum period of 3 months.*
- *The operator may store the steel separated from concrete or other construction or demolition debris for a maximum period of 6 months. After six months, the steel must be sent offsite for disposal or recycling.*
- *The operator shall ensure that site surface drainage, during development, during operation and after the site is closed, shall be such that no adverse effects are encountered by adjacent property owners.*
- *The best available technology (mufflers, berms and other sound shielding devices) shall be employed to minimize equipment noise impacts on property adjacent to the site during both development, operation and during any applicable post-closure care period.*
- *Management of Unauthorized Waste by the operator*
  - *Landscape waste found to be mixed with general construction and demolition debris shall be removed the same day and transported to a facility that is operating in accordance with the Illinois Environmental Protection Act (Act), Title V, Sections 21 and 39 (415 ILCS 5/21 and 39).*
  - *Lead-acid batteries mixed with general construction and demolition debris shall be removed the same day and transported either to a drop-off center handling such waste, or to a lead-acid battery retailer.*
  - *Special wastes including hazardous waste, non-hazardous special waste, and potentially infectious medical waste mixed with general construction and demolition debris shall be containerized separately and removed from the property no later than five hours after receipt by a licensed special waste hauler. Special wastes shall be transported to a licensed special waste management facility that has obtained authorization to accept such waste. The operator shall maintain a contract with haulers so that the immediate removal is ensured. The operator shall develop an emergency response/action plan for such occurrences.*
  - *Asbestos debris from general construction and demolition debris shall be managed in accordance with the National Emission Standards for Hazardous Air Pollutants (NESHAPS) regulations.*
  - *Tires found to be mixed with general construction and demolition debris shall be removed and managed in accordance with Section 55 of the Act [415 ILCS 5/55].*
  - *White good components mixed with general construction and demolition debris shall be removed and managed in accordance with Section 22.28 of the Act [ 415 LCS 5/22.28].*



- *No person may knowingly mix liquid used oil with general construction and demolition debris.*
- *After the unauthorized waste has been removed from the facility, a thorough cleanup of the affected area shall be made according to the type of unauthorized waste managed. Records shall be kept for three years and will be made available to the IEPA upon request. In addition, the Applicant shall provide an annual written report to the City of West Chicago not later than January 31 of each year, which report shall: list the types, quantities and dates of receipt of all unauthorized waste; the generators of such waste; and the sites to which the wastes were delivered for disposal, processing or handling.*
- *The following wastes shall not be accepted at the facility:*
  - *Hazardous substances (as defined by Section 3.215 of the Illinois Environmental Protection Act);*
  - *Hazardous waste (as defined by Section 3.220 of the Illinois Environmental Protection Act);*
  - *Potentially infectious medical wastes (as defined by the Illinois Environmental Protection Act in Section 3.84);*
  - *Universal waste (as defined by Title 35 of the Illinois Administrative Code Part 733 including batteries, pesticides, mercury-containing equipment and lamps);*
  - *Regulated asbestos containing materials;*
  - *Polychlorinated biphenyl wastes;*
  - *Used motor oil;*
  - *Source, special or by-product nuclear materials;*
  - *Radioactive wastes (both high and low level);*
  - *Sludge;*
  - *White goods (incidental white goods received at the proposed transfer station will be segregated and stored for pickup by an off-site recycler);*
  - *Lead-acid automotive batteries (incidental automotive batteries received at the transfer station will be segregated and stored for pickup by an off-site recycler);*
  - *Used tires (incidental tires received at the transfer station will be segregated and stored for pickup by an off-site recycler); and*
  - *Landscape waste.*
- *Special wastes generated at the site for disposal, storage, incineration or further treatment elsewhere shall be transported by the operator to the receiving facility utilizing the IEPA's Special Waste Authorization system and manifest system.*

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

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

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

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

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

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

12. Transfer trailers entering and exiting the Subject Property shall use only the following roads: Powis Road (between the facility entrance and Route 64 (North Avenue), Route 64 (North Avenue), Kirk Road and Interstate 88. Except for waste collection trucks servicing property within the City of West Chicago, waste collection trucks entering and exiting the Subject Property shall use only the following streets within the City and no others: Powis Road south of Route 64, Route 64 (North Avenue), Route 38, and Kress Road. The Applicant shall have installed within City right-of-way to the satisfaction of the City, license plate readers in each of the following locations: Hawthorne Lane between Route 59 and Powis Road; Smith Road between Powis Road and Route 64; and Powis Road between Smith Road and Route 64. The license plate readers shall provide remote access to the City of West Chicago to be used for any lawful purpose. The specific make and model of license plate readers and the specific locations for installation of the license plate readers shall be subject to the written approval/direction of the West Chicago Police Chief, and may be relocated for operational need at the expense of the City; the initial and any annual costs associated with the license plate readers shall be at the Applicant's sole cost and expense. The Applicant shall be responsible for maintaining and, if necessary, replacing the license plate readers when in disrepair or at the end of their useful lives as determined by the City through documentation from the vendor. The Applicant shall also provide a set of certified portable scales to the City at its sole cost and expense, which thereafter shall be maintained and replaced by the City.

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

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

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

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

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

STATE OF ILLINOIS        )  
COUNTY OF DU PAGE     )

***CERTIFICATE***

I, Valeria Perez, Certify that I am the Executive Assistant of the City of West Chicago, DuPage County, Illinois.

I further certify that on February 28, 2023 the Corporate Authorities of such municipality passed and approved Ordinance No. 23-O-0006 entitled:

---

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

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Which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 23-O-0006 including the ordinance and a cover sheet hereof was prepared, and a copy of such ordinance posted in the municipal building, commencing on March 1, 2023 continuing for at least ten days thereafter. Copies of such ordinance were also available for public inspection upon request in the Office of the City Administrator.

Dated at West Chicago, Illinois, this 28<sup>th</sup> of February, 2023.

SEAL

*Valeria Perez*  
\_\_\_\_\_  
Valeria Perez, Executive Assistant

# 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.

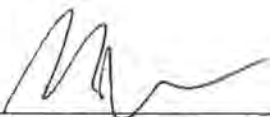
12. State what if any action the City of West Chicago took to translate Lakeshore Recycling LLC's September 16, 2022 Siting Application materials from English to Spanish.

**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

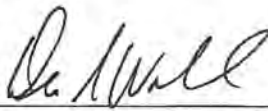
For the Objections

  
\_\_\_\_\_  
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  
Fax: 312-984-6444  
[dgwalth@ktjlaw.com](mailto:dgwalth@ktjlaw.com)  
[dwbourgault@ktjlaw.com](mailto:dwbourgault@ktjlaw.com)

# 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.



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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.



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Ms. Olga Rivera

# EXHIBIT B

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

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.

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

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

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

Sincerely,



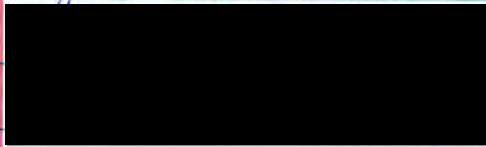
Ms. Olga Rivera



# Attachment A

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

April 27, 2020



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

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

Respectfully Submitted



# Attachment B



**Mark Domagalski**

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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**

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**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

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**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.

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

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Best,

Valeria Perez

FOIA Officer

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

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