

**CITY OF WEST CHICAGO
DUPAGE COUNTY, ILLINOIS**

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

**PEOPLE OPPOSING DUPAGE ENVIRONMENTAL RACISM'S
PROPOSED COMBINED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

I. INTRODUCTION

People Opposing DuPage Environmental Racism (PODER), a committee of Immigrant Solidarity DuPage (ISD), opposes Lakeshore Recycling System (LRS)'s application to site a waste transfer station at 1655 Powis Road, West Chicago, Illinois (LRS's application), and proposes that the Hearing Officer recommend that the City Council deny LRS's application.

LRS applied for siting approval from the City Council of West Chicago on September 16, 2022, under 415 ILCS 5/39.2 and public hearings on LRS's application were held in January 2023. After reviewing LRS's application and the record from the public hearings, PODER concludes that LRS has not met its burden under the statute. Among other requirements, section 39.2 of the Illinois Environmental Protection Act (the Act) requires that LRS's application establish that its proposal satisfies nine statutory criteria. 415 ILCS §5/39.2(a). Most problematically from PODER's perspective, LRS has failed to carry its burden and establish that it's proposed expansion will be designed and operated so as to protect public health and public welfare. Inequitably and inconsistent with a proper reading of the statute, LRS's application touts benefits to the broader region while failing to even address significant pollution harms on public health and welfare that will be borne by the relatively less wealthy and less white community of West Chicago that would host LRS's proposed, expanded facility.

Accordingly, PODER respectfully requests that the Hearing Officer recommend that the City Council deny LRS's application for four reasons: (1) because LRS failed to provide sufficient information relating to protecting public health, safety and welfare of West Chicago from the diesel truck air pollution its proposed facility will create, *infra* Section III.A; (2) because of the compounding health and welfare impacts the proposed facility would have in concert with existing pollution burdens borne by the community of West Chicago comprised of many people who are Latinx, Spanish-speaking, or immigrants, *infra* Section III.B; (3) because LRS's application is inconsistent with DuPage County's Solid Waste Management Plan, *infra* Section III.C; and (4) because the proceeding to review LRS's application was fatally flawed by fundamental unfairness, *infra* Section IV.

In the event the Hearing Officer nonetheless concludes that LRS's application should be approved by the City Council, PODER respectfully submits that such approval must be conditional, as contemplated by section 39.2(e). 415 ILCS §5/39.2(e). As explained in context below, those conditions should require that LRS: (1) ensure that all trucks driving to or from the proposed facility drive exclusively along the routes specified in the application, (2) ensure all trucks using the proposed facility are electric vehicles as soon as possible by reviewing and utilizing technical and financial support from ComEd's forthcoming Beneficial Electrification plan, and (3) submit and implement updated plans for employee safety. To be clear, PODER submits that LRS's application should be denied, full-stop. However, conditions related to truck routes in West Chicago, truck fleet electrification, and employee safety conditions, should, at least, be mandated to reduce the inequitable failures to protect public health and welfare that will follow from City Council approval of LRS's proposed expansion.

II. STANDARD OF REVIEW

LRS bears the burden of demonstrating compliance with each of the nine criteria in section 39.2. Under section 39.2 of the Act, the City Council of West Chicago, as the governing body of the municipality, has the power to grant or deny approval of applications for the siting of pollution control facilities. 415 ILCS §5/39.2(a). Section 39.2 both describes the procedures for evaluating such an application and lists the nine criteria that the City Council must use to assess substantively whether to approve or deny the application. *Id.*

To merit City Council approval, LRS must “submit sufficient details describing the proposed facility and evidence to demonstrate compliance” with each of the nine criteria. *Id.* If LRS has not demonstrated with “sufficient details” that its proposed facility meets each and every one of the nine criteria, then the City of West Chicago must deny the application because a “negative decision as to one of the criteria is sufficient to defeat an application for site approval.” § 39.2(a); *Town & Country Utilities, Inc. v. Illinois Pollution Control Bd.*, 225 Ill. 2d 103, 109 (2007); see also *Will Cnty. v. Vill. of Rockdale*, 2018 Ill. App. 3d 160463, ¶ 55 (“Although the board is required to review all criteria, the application is insufficient when one criterion has not been met.”) The City Council weighs the evidence in the record to resolve conflicts in the evidence and evaluate witness credibility. *Concerned Adjoining Owners*, 288 Ill. App. 3d 565, 576 (1970); see also *Land & Lakes Co. v. Illinois Pollution Control Bd.*, 319 Ill. App. 3d 41, 53 (2000); *Fairview Area Citizens Taskforce v. Illinois Pollution Control Bd.*, 198 Ill. App. 3d 541, 550 (1990); *Tate v. Illinois Pollution Control Bd.*, 188 Ill. App. 3d 994, 1022 (1989).

Additionally, where the City Council identifies ways in which the application fails to meet statutory criteria as it is proposed, the City Council may impose conditions as part of an approval to bring the proposal into compliance with the section 39.2 criteria. 415 ILCS

§5/39.2(e). “In granting approval for a site[,] the county board or governing body of the municipality may impose such conditions as may be reasonable and necessary to accomplish the purposes of this Section and as are not inconsistent with regulations promulgated by the Board.” 415 ILCS §5/39.2. Conditions can be requirements the applicant must implement immediately or can create ongoing operational, reporting, or other going-forward obligations. For example, in *Will County, Illinois v. Village of Rockdale, Board of Trustees of Village of Rockdale and Environmental Recycling and Disposal Services, Inc.*, the hearing officer recommended, and the village adopted, conditions for a waste transfer station that included a subsequent final review of the stormwater management system and ongoing requirements for load checking, daily throughput, and continued compliance with operational descriptions in the application. 2018 IL App (3d) 160463, ¶¶ 28; 29.

Finally, the City Council can only approve an application under section 39.2 if the proceeding to review that application was fundamentally fair. The Pollution Control Board reviews local siting decisions on appeal and will reverse a municipality’s approval if the proceeding was not fundamentally fair. 415 ILCS §5/40.1. Fundamental fairness “incorporate[es] minimal standards of procedural due process, including the opportunity to be heard, the right to cross-examine adverse witnesses, and impartial rulings on the evidence.” *Fox Moraine, LLC*, 2011 Ill. App. 2d 100017, ¶ 60. No matter the outcome of the substantive evaluation of the nine criteria under section 39.2, fundamental fairness of the proceedings must still be evaluated and an approval will not survive appeal if the municipal proceeding was fundamental unfair.

III. LRS HAS FAILED TO CARRY ITS BURDEN TO ESTABLISH THAT ITS PROPOSAL MEETS EACH SECTION 39.2 CRITERIA.

LRS's application must be denied because LRS has failed to establish that its proposal meets each of the nine criteria under section 39.2. While LRS's application appears deficient as to a number of the section 39.2 criteria,¹ PODER will focus upon the most important of those deficiencies from the perspective of the community in West Chicago: LRS's failure to establish that its proposal is "designed, located and proposed to be operated" such that "public health, safety and welfare will be protected," as required by Criterion 2. 415 ICLS § 5/39.2(a)(ii). PODER will also address LRS's failure to meet its burden to show consistency with the county solid waste management plan, per Criterion 8, as it relates to the inequitable proposed location of the county's second environmentally burdensome waste transfer station in West Chicago, already the host of the County's only existing such facility.. 415 ICLS § 5/39.2(a)(viii).

A. LRS Failed to Provide Sufficient Evidence that "Public Health, Safety and Welfare" Will be Protected and Therefore Fails Criterion 2.

Section 39.2(a)(ii): the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected.

LRS has not submitted sufficient evidence to demonstrate that its proposed facility is "is so designed, located and proposed to be operated that the public health, safety and welfare will be protected," and, therefore, the Hearing Officer should conclude that LRS has not met its burden as required under § 39.2(a)(ii). 415 ICLS § 5/39.2(a)(ii). As explained in the following subsections, there are four central flaws with LRS's application with respect to Criterion 2. First, the phrase "public health, safety, and welfare" requires that the Criterion 2 analysis focus on the

¹ PODER's silence as to any particular section 39.2 criterion does not indicate that PODER's position is that LRS has met its burden as to that criterion. To the contrary, PODER's position is that LRS has failed to carry its burden under the statute, full-stop, and PODER notes, in particular, that LRS appears to have failed to carry its burden to establish that its proposal satisfies criteria 1, 2, 3 and 8. PODER, however, is a grassroots community organization with limited resources and, therefore, will focus those limited resources on the criteria on which LRS's application fails in ways that most directly harm PODER's constituents' interests.

specific municipality wherein LRS proposes to expand its facility. In this case, that community is West Chicago. Second, LRS failed to address in any way the local air quality harms that will be experienced in West Chicago as a result of its proposed operations that would increase diesel truck traffic into and out of its expanded facility. Third, LRS failed to assess the viability of potential means to mitigate those local air quality impacts, namely by requiring that trucks using its proposed facility be powered by electric, rather than diesel, engines. Fourth, LRS's application fails to include sufficient detail or reflect sufficient plans to assure employee safety with respect to indoor air quality in its proposed operations. For these reasons, LRS has not shown that its facility is designed, located and proposed to be operated to protect public health, safety, and welfare and LRS fails to meet its burden under Criterion 2.

1. LRS Failed to Consider the “Public,” as that Term is Used in Criterion 2, by Failing to Assess Its Proposed Impacts with a Focus on the Municipality of West Chicago.

The LRS application is fatally flawed because it relies on a construction of “public” that sacrifices the interests of West Chicagoans to benefit the broader region. LRS focused on purported public benefits it asserts will be enjoyed throughout the county and beyond, and LRS failed to consider the specific health and welfare of the public of West Chicago. Therefore, LRS did not meet its burden of showing that the “*public* health safety, and welfare” will be protected.

The term “public” in section 39.2(a)(ii) refers to the specific community represented by the local decisionmaker reviewing an application for compliance with Criterion 2. The purpose of section 39.2, as a whole, as illustrated in subsection (c), is to ensure that the siting of a pollution control facility in a particular community is overseen by the elected governing body of either the county or municipality in which the facility is proposed to be located. 415 ICLS § 5/39.2(a),(c). This ensures that local elected leaders, presumably accountable to the electorate in

their unit of government, will make the decision on the application in the first instance. *See, e.g., Fox Moraine, LLC v. United City of Yorkville*, 2011 IL App (2d) 100017, ¶¶ 4, 54, 60 (finding “quasi-legislative and quasi-adjudicative” role of local siting authority supported finding of fundamental fairness even where council members who voted to deny siting application were elected on anti-facility platform in election held between section 39.2 hearing and council vote); *Sw. Energy Corp. v. Illinois Pollution Control Bd.*, 275 Ill. App. 3d 84, 92 (1995) (“We construe [the language of the Act] as demonstrating the General Assembly’s understanding that it has called upon locally elected officeholders on municipal or county boards—not judges—to adjudicate whether the siting criteria set forth in section 39.2(a) of the Act are present in a given case.”) (citations omitted). Section 39(c) also expressly grants *local* control over the application process: “the appropriate...governing body of the municipality shall be...the governing body of the municipality *in which the facility is to be located.*” (Emphasis supplied) 415 ICLS § 5/39.2(c). “Public” means the citizens who elect the governing body reviewing the application, not some broader geographic abstraction.

Others of the nine criteria under section 39.2(a) use different statutory terms to instruct siting authorities to consider broader, more malleable geographic scopes tailored to those different standards. Other criteria are concerned distinctly with the particular commercial needs, 415 ICLS § 5/39.2(a) (i); character, 415 ICLS § 5/39.2(a)(iii); geography, 415 ICLS § 5/39.2(a)(iv), (a)(x); and sensitivity, 415 ICLS § 5/39.2(a)(v), (a)(vi), (a)(vii), of the location of the proposed facility. Because each criterion addresses a different substantive concern, each uses different specific terms to delineate the geographic scope of the analysis required in order to best serve the specific purpose of the individual criterion. Criterion 1 uses the phrase “area intended to be served” because it is concerned with the commercial market the facility will serve, and, in

some situations like the instant case, the service area proposed is larger than the municipality where the facility is located. Criteria 3 and 5 use the phrase “surrounding area,” which is a flexible, but narrower, spatial term because the facility impacts at issue in those criteria may affect a smaller or larger area depending on circumstances. Other criteria in section 39.2(a) use specific, well-defined terms to reference particular physical areas for consideration, i.e. the “100 year floodplain” in Criterion 4; the “county” in Criterion 8; and the “regulated recharge area” in Criterion 9. Each of these criteria describes a geographic scope that is precisely relevant to the specific substantive inquiry: if one is to analyze flood risk, look at the established floodplain.

The word “public” in Criterion 2 must be interpreted in the context of the purpose of that specific criterion and, therefore, as referencing the municipal subdivision where the facility is proposed to be sited, which generally has control over decisions affecting the “public welfare” of the citizens who live there. In this context, “public health, safety and welfare” does not encompass the whole proposed service territory, county, state, or nation, but rather West Chicago. Even if Criterion 2 is not read as requiring an *exclusive* geographic focus on the host municipality, at a minimum, the term “public” must be read to require *some* specific consideration of the host municipality. The regulatory scheme here—placing authority in the elected leaders of the municipality— and the use of specific geographic terms tailored to the substance of each criteria, supports reading “public” in Criterion 2 to require a specific focus on public welfare within the host municipality, as distinct from the welfare of broader areas.

LRS did not consider in either its application or its testimony how the health, safety, and welfare of people in West Chicago specifically would—or would not—be protected under its proposal. LRS focused on how its facility would provide benefits to residents of its proposed service area in the form of cheaper prices and more readily available waste disposal and

recycling. Criterion 1: Narrative, Figures, & Tables at 1-1. LRS also claimed that truck traffic will be reduced by building a new waste transfer station, but LRS also admits that it does not know *where* that traffic will be reduced. Tr. At 166 (Day 1). LRS’s witness Hock’s testimony suggests that reductions in truck traffic would result from reducing traffic in other regions of the service area as trucks are routed instead to and through West Chicago. *See* Tr. at 75-76 (Day 1) (stating that the current situation requires LRS to drive waste to the Batavia Transfer Station that would come to the proposed expansion in West Chicago, and that the logistical burdens of that transfer include increased road mileage). While the “public” of the larger service area more generally might benefit from reduced traffic in their communities, the “public” of West Chicago will suffer additional traffic for those region-wide improvements. West Chicago is the relevant scope for the “public” under section 39.2(a)(ii), and LRS has not offered sufficient evidence that the City and residents will be protected from increased truck traffic.

Considering the facts in the record, LRS’s position as to Criterion 2 boils down to the proposition that “public health, safety and welfare” are protected because purported benefits to the broader area outweigh any harms to West Chicago. That callous calculus is impermissible under a proper reading of the statutory term “public,” but is unconscionable when viewed in context of the demographic reality. As described further below, *infra* Section III.C., the demographics of West Chicago are different from the county at large. In its testimony at the public hearings, PODER submitted data from the 2021 U.S. Census that summarizes the demographics of West Chicago. PODER Exhibit 1. West Chicago is a majority non-white community. Specifically, Hispanic or Latino people make up 48.9% of the population of West Chicago, and 32.1% of West Chicago residents were born in a different country. More than half of West Chicago residents speak a different language at home. *Id.* DuPage County is majority

white and only 15% of the county is Hispanic or Latino. *Id.* West Chicago has lower median household incomes and per capita incomes than DuPage County as a whole and West Chicago has a higher percentage of residents living in poverty. *Id.* West Chicago has a higher percentage of immigrants, people of color, and non-English speakers than DuPage County. *Id.* West Chicago has a higher percentage of immigrants, people of color, and non-English speakers than DuPage County. *Id.*

PODER asks the Hearing Officer to conclude as a matter of law that “public” in Criterion 2 refers to the municipality in which the proposed facility will be located, West Chicago, and not some ambiguous reference to a larger area or to the proposed service area. LRS’s application did not analyze Criterion 2 from the perspective of West Chicago at all, and, as explained further in the following sections, did not address specific public health and welfare problems that will harm West Chicago for the purported benefit of the broader region. Evaluated with a proper reading of “public” in the statute, LRS has failed to provide sufficient evidence to meet its burden that the facility will protect “public health, safety and welfare” of West Chicago.

2. LRS Failed to Submit any Data or Testimony Regarding Increases in Air Pollution in West Chicago, and Therefore Failed to Meet its Burden under Criterion 2.

LRS has the burden of demonstrating that the design and operation of its proposed facility will protect public health, safety and welfare. “Public health, safety and welfare” is a broad term that must be read to include air quality concerns. Indeed, as explained below, there are readily-applicable federal standards promulgated by the United States Environmental Protection Agency (USEPA) that establish levels of particular air pollutants in the ambient air above which the “public health and welfare” is insufficiently protected. LRS made no effort to assess whether its proposed operations would cause or contribute to exceedances of such “public health and welfare”-based standards and there is evidence in the record indicating they will. As

such, LRS's application is doomed by its callous failure to even assess whether and how its proposed expansion will harm public health and welfare in West Chicago through the deleterious impacts on local air quality of the substantial increase in local diesel emissions inherent in its proposed operations.

The operations of LRS's proposed waste transfer would rely on daily visits by diesel garbage trucks to transfer waste. Criterion 1: Narrative, Figures, & Tables at 1-2. LRS claims that the proposed facility will "reduce environmental impacts to the City of West Chicago and the area by decreasing the travel distance...of collection vehicles." Criterion 1: Narrative, Figures, & Tables at 1-3. LRS also claims that "the use of the [proposed waste transfer station] is estimated to eliminate approximately 16.0 million heavy truck miles on area roads, reduce fuel consumption by over 4.5 million gallons, and reduce the carbon footprint by over 100 million pounds of CO₂ emissions." Criterion 1: Narrative, Figures, & Tables at 1-49.

As explained in the previous section, LRS improperly focuses on increased efficiency of truck routes over the broader "area," but there is no dispute that if LRS's application is approved, more diesel trucks will drive through West Chicago than do so today. Criterion 1: Narrative, Figures, & Tables at 1-48; Tr. at 68 (Day 1). Indeed, LRS provided a table summarizing the "[p]rojected [i]ncrease in [t]raffic," it foresees in the form of *additional* daily truck trips along West Chicago roads to come into and out of its proposed facility. Criterion 6: KLOA Report & Appendix at 15, Table 4.

There can be no reasonable dispute that diesel trucks emit pollutants that are detrimental to human health, such as nitrogen oxides, sulfur compounds, and other hazardous air pollutants, including particulate matter with a diameter of 2.5 micrometers or smaller ("PM 2.5"). *See, e.g.,* USEPA, *Particulate Matter (PM 2.5) Trends* (Aug. 1, 2022), <https://www.epa.gov/air->

trends/particulate-matter-pm25-trends. USEPA, About Diesel Fuels (Apr. 11, 2022), <https://www.epa.gov/diesel-fuel-standards/about-diesel-fuels>.² USEPA has determined that PM 2.5 is an air pollutant under the Clean Air Act, and is therefore subject to National Ambient Air Quality Standards (“NAAQS”). USEPA has set specific NAAQS limits for PM 2.5 at levels where the PM 2.5 “may reasonably be anticipated to endanger public health or welfare.” 42 U.S.C.A. § 7408. The current primary NAAQS for PM 2.5 is 12 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) of ambient air. 40 CFR § 50.18. However, USEPA is currently proposing to reduce that limit for PM 2.5 to 9 $\mu\text{g}/\text{m}^3$ —or potentially even lower. US EPA, *Proposed Decision for the Reconsideration of the National Ambient Air Quality Standards for Particulate Matter (PM)* (Feb. 3, 2023), <https://www.epa.gov/pm-pollution/proposed-decision-reconsideration-national-ambient-air-quality-standards-particulate>.

Even though a central feature of LRS’s proposed operations would be increased use of pollution emitting trucks, LRS’s application did not address the effects of associated increases in PM 2.5 pollution. LRS did not submit any data about local air quality impacts in its application materials for Criterion 2. *See, generally* Criterion 2: Narrative, Figures, & Tables. In its narrative document for Criterion 2, LRS stated that because their proposed facility does not feature any “regulated air emission sources,” it did not plan to monitor air quality. Criterion 2: Narrative, Figures, & Tables at 2-35. However, the facility as a building is not the only source of air emissions—the proposed *operations* of the facility rely on the use of diesel trucks; Criterion 2 requires specific consideration of impacts from the applicant’s “proposed operations.” The

² PODER requests that the Hearing Officer take notice of these government agency websites and others cited elsewhere in this filing, as is common practice in Illinois. *See, e.g., Leach v. Dep’t of Emp. Sec.*, 2020 IL App (1st) 190299, ¶ 44, 156 N.E.3d 1158, 1172–73 (taking judicial notice of Illinois Job Link website registration); *Kopnick v. JL Woode Mgmt. Co., LLC*, 2017 IL App (1st) 152054, ¶ 26, 76 N.E.3d 105, 116 (information on the City of Chicago’s website was appropriate for judicial notice).

closest LRS comes to addressing local air pollution is to assert that the expanded facility will “reduce fuel consumption by over 4.5 million gallons, and reduce the carbon footprint by over 100 million pounds of CO2 emissions.” Criterion 1: Narrative, Figures, & Tables at 1-49. LRS fails to describe the PM 2.5 or other pollutant levels at issue, only projecting gallons of fuel its fleet will save. When describing actual air pollutants, LRS focuses only on greenhouse gasses, which, by definition, have global effects, and LRS makes no mention of particulate matter emissions that damage local public health and welfare. Tr. at 80, l:1-18 (Day 1). That LRS’s proposal might marginally reduce LRS’s contribution to global warming is fine; it does nothing to ameliorate or even acknowledge LRS’s proposed contribution to local respiratory health burdens.

Even though a central feature of LRS’s operations is the use of pollution emitting trucks, LRS’s application also failed to address how air quality in West Chicago would be affected by its expanded facility. LRS claimed that the facility will allow for decreased truck mileage overall by reducing the number of truck trips by its vehicles. Criterion 1: Narrative, Figures, & Tables, at 1-48 – 1-49. This information conspicuously fails to specify *where* any of these overall reductions would occur. *Id.* Indeed, LRS’s expert witness Mr. Hock acknowledged that he did not assess where the reduced mileage would be occurring and could not say that West Chicago would experience decreased mileage by trucks. Tr. at 166, l. 8-13 (Day 1). In fact, in the Criterion 6 application document, LRS acknowledged that daily diesel truck traffic at the facility would increase after expansion. Criterion 6: KLOA Report & Appendix at 15, Table 4.

During the public hearing, LRS witness Hock was asked about air quality data on cross-examination and admitted LRS did not conduct modeling to determine if air emissions would increase or decrease after the expansion. Tr. at 166 (Day 1). He also admitted that “emissions

don't have municipal boundaries...[and] will go where they go." Tr. at 165, 1:17-19 (Day 1). PODER raised additional issues related to where emissions will go, seeking information about public health impacts driven by wind patterns in West Chicago, since diesel emissions are not confined to the column of air in which it exited a truck. Tr. at 1254-55 (Day 6). LRS did not address how wind patterns might contribute to air quality impacts from its trucks either in its application or testimony. LRS's testimony at the hearing did nothing to address the lack of any discussion of local air quality in its application.

On the other hand, witnesses for both Protect West Chicago (PWC) and PODER did address air quality impacts in West Chicago. PWC's expert witness, Mr. Powell, used LRS's claims about capacity and truck traffic to create air quality models that evaluated potential emissions. Tr. at 1160 (Day 6). When asked on cross-examination by PODER if it would have "strengthened your analysis to have monitoring of air quality right at the current LRS facility," Mr. Powell replied affirmatively. Tr. at 1177, 1:7-10 (Day 6). Subsequently, PODER presented air quality data that demonstrated that the levels of PM 2.5 in the ambient air outside the LRS facility as it is currently operated were already above USEPA limits for PM 2.5.

Ms. Julieta Alcantar-Garcia, a member of PODER, used the commercially-available HabitatMap AirBeam sensor to measure PM 2.5 outside of the current LRS facility on seven separate occasions and outside the nearby Groot waste transfer station on five separate occasions. Tr. at 1257 (Day 6). The AirBeam sensor, which Ms. Alcantar-Garcia was trained to use, communicates particulate matter measurements to the AirCasting application which can be downloaded on smartphones. Tr. at 1256-1259 (Day 6). These measurements were exported from the AirCasting application and summarized in a table presented at the public hearing and admitted into evidence as PODER Exhibit 5. *Id.* At 1265-1272; PODER Exhibit 5. The data

collected are in the same units as and therefore can be compared directly to the NAAQS established by USEPA. That comparison shows that the particulate matter outside both the LRS and Groot facilities on Powis Road already exceeds the current NAAQS of 12 $\mu\text{g}/\text{cm}^3$. Outside the LRS facility, PM 2.5 readings ranged from 12 $\mu\text{g}/\text{m}^3$ to 43 $\mu\text{g}/\text{m}^3$ and outside the Groot facility, PM 2.5 readings ranged from 14 $\mu\text{g}/\text{m}^3$ to 49 $\mu\text{g}/\text{m}^3$. PODER Exhibit 5. For all but one data point, the air quality outside these facilities exceeded the NAAQS.

The data for each facility is alarming on its own, but it also highlights that there is a serious issue of cumulative impacts that LRS ignored. LRS's proposed expansion is not coming to a blank slate in West Chicago—in addition to LRS's own current operations, there is already one waste transfer station just up the road and other sources of diesel emissions like interstate highways and railroad operations beyond that. Air pollution is inherently mobile and cumulative and LRS failed to account for or study the larger context of the current situation in West Chicago. In other words, LRS's failure to present evidence on local air quality is twofold: Not only did LRS present no information regarding the anticipated local air quality impacts of truck traffic created by its proposed facility on its own, but LRS also failed to assess what overall levels of diesel pollution would threaten public health and welfare once its proposed truck traffic was added to existing sources of pollution already impacting the public.

As explained above, Illinois courts have held, on appeal of section 39.2 siting application decisions, that the local siting authority must the evidence offered on specific factual issues to determine whether an applicant has met Criterion 2. In many cases, the local siting authority therefore weighs the credibility of the witnesses offered on the specific aspects of “public health, safety, and welfare” being disputed by the parties. *Town & Country Utilities, Inc. v. Illinois Pollution Control Bd.*, 225 Ill. 2d 103, 123-24 (2007) (affirming municipal decision that

Criterion 2 was not met based on relative weighing of competing testimony on and paucity of applicants' data with respect to specific technical issue of characterizing underlying bedrock).

The question becomes, what evidence is on each side of the scale to be weighed? LRS offered no expert testimony as to local air quality impacts; LRS did nothing to directly measure or indirectly model air quality impacts of its proposal on West Chicago. The only direct measurements of air quality on the record were those presented by PODER. Admittedly, Ms. Alcantar-Garcia was not tendered as an expert on air quality and the commercially-available technology she used has not been endorsed in published judicial opinions. Tr. 1273 (Day 6). Nonetheless, the balance to be weighed here on air quality issues is between *no evidence whatsoever* offered by the applicant in contrast to *some expert opinion testimony from PWC witness Powell and direct evidence offered by Ms. Alcantar-Garcia* on the opposing side of the scale. The local siting authority is empowered to weigh competing evidence; it cannot, however, conclude that “no evidence” is of greater weight than “some evidence.”

By failing to address local air quality impacts of additional diesel truck traffic in West Chicago, and by failing to address such impacts in the context of actual information regarding existing local air quality, LRS has failed to offer any evidence as to a crucial dimension of the public health and welfare effects of its proposed facility. As LRS's application failed to address a necessary component of protection public health, safety and welfare, LRS has not met its burden under Criterion 2, and therefore its application must be denied.

Should the Hearing Officer nonetheless recommend finding that the LRS application could meet Criterion 2, any approval must contain conditions to ensure local air quality impacts are limited to protect public health and welfare. The emissions and routes taken by its diesel trucks fall squarely within the location and operation of the facility as a waste transfer station.

Since the scant discussion of truck impacts that LRS provided relied on the assumption that trucks using the proposed facility will drive a particular route. *See* Tr. 739-740 (elaborating on routes to be used by trucks as described in *Criterion 6: KLOA Report & Appendix* at 12). LRS should be held accountable to ensure all trucks using its facility do adhere to that specific route. This could be done by LRS being required to monitor by GPS the routes traveled by its trucks, to report regularly on compliance with the route specified, and to explain any deviations from that route. LRS should also be required to investigate any complaints of LRS trucks or third-party trucks traveling through the community off of the presumed route, and to reject any truckload that appears to have traveled to the facility along any other route than that set forth in the application. Although increased emissions are not acceptable, LRS should be required to monitor drivers' routes to prevent emissions from occurring directly within residential neighborhoods.

3. Requiring LRS to Fulfill its Public Declaration to be at the “Forefront of the Transition” to Electric Garbage Trucks Could Address Some Air Quality Concerns.

Switching to an all-electric fleet of garbage and container trucks could alleviate some of the air pollution that would otherwise be caused by an increase in diesel truck traffic at LRS's proposed expanded facility. Both PWC and LRS made statements on the record regarding the benefits of electric trucks and their availability in Illinois. Mr. Powell, PWC's expert witness, testified that “electric vehicles wouldn't have any of these [diesel] emissions” and disagreed with LRS's assertion that electric vehicles were not readily available in Illinois. Tr. at 1174, 1:10-11; 1188, 1:6-8 (Day 6). During public comment later that day, LRS responded directly to Mr. Powell. LRS's Training and Community Partner, Joy Rifkin, whose described her job at LRS as to “lead...sustainability, diversity, equity, and inclusion and social impact partnerships across the communities [LRS] serve[s],” stated in no uncertain terms that “[w]hen electric trucks are readily

available, environmentally sound, and have a longer battery life, LRS will be at the forefront of that transition.” Tr. at 1333, l:14-17; 1336, l:16-18 (Day 6). So there seems no dispute that electric trucks are superior to diesel trucks in terms of avoiding the air pollution that will be created by the diesel trucks LRS currently plans as central to the operation of the proposed facility.

The dispute, it seems, is regarding whether electric trucks are a “readily available” now. Indeed, because an LRS corporate representative put on the record in this proceeding a commitment to be “at the *forefront* of that transition” to electric trucks, the real question is whether such trucks are *beginning to be* a readily available option in Illinois. Fortunately, a state agency in Illinois with jurisdiction both over our electricity system and to implement statutory requirements to electrify vehicle fleets is poised to answer that question in the affirmative in the coming weeks.

Right now, ComEd—the electric utility that serves West Chicago—is awaiting approval of its proposed Beneficial Electrification plan by the Illinois Commerce Commission in ICC Docket Nos. 22-0432 & 0442. *ComEd Beneficial Electrification Plan*, ICC Docket Nos. 22-0432 & 0442 (Docket No. 22-3; ComEd Ex. 1.01) *available at* <https://www.icc.illinois.gov/docket/P2022-0432/documents/325766>. The Commerce Commission faces a statutory deadline to make its decision on ComEd’s Beneficial Electrification plan by March 28, 2023. *Verified Petition for Approval of Statutory Beneficial Electrification Plan and Additional Charging Delivery Classes*, ICC Docket Nos. 22-0432 & 0442 (Docket No. 22-1) *available at* <https://www.icc.illinois.gov/docket/P2022-0432/documents/325766> at 12 (explaining that ICC approval is required 270 days after petition, citing 20 ILCS 627/45(d)).

ComEd’s proposed Beneficial Electrification plan offers support in the form of rebates and fleet assessment services to assist with the electrification of medium- and heavy-duty trucks. *See generally, ComEd Beneficial Electrification Plan*, ICC Docket Nos. 22-0432 & 0442 (Docket No. 22-3; ComEd Ex. 1.01) *available at* <https://www.icc.illinois.gov/docket/P2022-0432/documents/325766> at 34-40 (pages 37-43 of the PDF, laying out programs that will be available for commercial vehicle fleets). The amount of funding a facility can receive depends on the location of the facility and the size of the trucks. For commercial and industrial (“C&I”) customers such as LRS, ComEd proposes to provide active technical assistance through third-party fleet electrification assessments, in addition to financial incentives. *See id.* at 40 (PDF page 43). The third-party vendor will analyze fleet operations to determine electrification opportunities, costs, and benefits and help to develop an electrification plan.

Should the Hearing Officer conclude, despite PODER’s arguments, that the application could meet Criterion 2, PODER requests that the Hearing Officer recommend approval only on the condition that LRS investigate and pursue funding under the ComEd Beneficial Electrification plan to rapidly transition its fleet to electric trucks. In particular, LRS’s application should only be approved on the condition that LRS be required to investigate potential opportunities for electrification of its fleet of trucks and report its proposed course of action to the City Council within a reasonable time not to exceed six months after final Commerce Commission approval of ComEd’s Beneficial Electrification plan. Because LRS acknowledged that it can impose equipment requirements on all haulers that will use its proposed facility,³ LRS should include in its report a proposed date by which to prohibit diesel trucks entirely from its facility.

³ LRS stated that it was capable of requiring and enforcing specific equipment on and characteristics of all trucks that enter its proposed facility, specifically in the context of requiring particular auto-tarping equipment. Tr. at 710, l.12-20 (Day 4).

If LRS is to fulfill its promise to be at “the forefront of the transition,” it should already be planning to be first in line for the forthcoming ComEd technical and financial assistance to electrify its fleet. Any approval of LRS’s application should hold it to this commitment. Switching from diesel to electric trucks would decrease emissions of harmful pollutants like PM 2.5, which is important to reduce the facility’s negative impact on the air quality, and thereby better protect the public health, safety, and welfare of West Chicago.

4. LRS Failed to Submit Sufficient Evidence to Establish that Employee Safety Will be Adequately Protected.

LRS has not demonstrated that its proposed facility will protect employee health, safety, and welfare. While LRS’s application materials for Criterion 2 did address some training and operating practices, LRS did not include any information that specifically addressed the health and safety of the workers in the proposed facility. Criterion 2: Narrative, Figures, & Tables at 2-24–2-25. In a section of its application titled “Facility Staffing and Training,” LRS gave descriptions of the duties two types of employees: facility managers and equipment operators. Criterion 2 pdf, section 2.4.2. For each of those employee categories, LRS provided an identical one-sentence statement about training requirements: “training will include operating requirements, safety and emergency response, record keeping and reporting, and identification of unacceptable wastes/load inspections. *Id.* at 2-25. LRS’s application focuses far more on what the employees will do for LRS than how LRS will protect their employees.

During the public hearing, PODER member Steve De La Rosa testified on employee safety. Mr. De La Rosa based his testimony on his professional experiences as a manager in food processing facilities, as having worked with ozone filtration, as an employee volunteer fireman at M&M Mars, and as a mechanic. PODER Exhibit 7; Tr. at 1293-97 (Day 6). He completed special training on employee safety, including an OSHA 300 certification course. Tr.

at 1299, 1:1-9 (Day 6). While Mr. De La Rosa was not tendered as an expert witness, he based his testimony on his significant and relevant professional experience and his review of LRS's application materials, including observing relevant portions of LRS's hearing presentation. Tr. at 1292-93 (Day 6). Mr. De La Rosa was subjected to adversarial cross-examination by LRS's attorney, including efforts to impeach the experiential and training bases of his testimony. While LRS's counsel did not probe the relevance of Mr. De La Rosa's experience to the issues in this proceeding, Mr. De La Rosa even correctly answered scientific questions of marginal relevance that LRS's counsel found it necessary to ask. Tr. at 1310, 1:12-16 (Day 6).

Mr. De La Rosa expressed concern, in his professional opinion, that LRS had not sufficiently addressed in its application how it would protect its employees. He noted that LRS plans to have diesel garbage trucks running their engines indoors with the garage doors shut while they transfer their loads. Tr. at 1304-05, 1307-08 (Day 6). Mr. De La Rosa expressed concern, in his professional opinion, that LRS's proposed ventilation and filtration system. *Id.*; Criterion 2: Narrative, Figures, & Tables at 2-32 – 2-35. He also pointed out that the facility manager also carries responsibilities as a safety officer, an inherent conflict of interest that does not represent best practices for staffing. Criterion 2: Narrative, Figures, & Tables at 2-24 (“The facility manager is responsible for supervision of all activities at the site, including safety and emergency response coordination[.]”); Tr. at 1307-08 (Day 6). Finally, Mr. De La Rosa observed that the application lacked sufficient information about maintaining occupational safety logs. Tr. at 1308, 1:5-10 (Day 6). The only reference to recordkeeping that was relevant to employees directly was “training records” and “personnel. Criterion 2: Narrative, Figures, & Tables at 2-35.

LRS has not met its burden to demonstrate that the health, safety, and welfare of its employees will be protected. Although LRS did submit some information in its application about employees, it failed to demonstrate that its employees will be protected from poor indoor air quality and inadequate safety practices, as section 39.2 requires under the rubric of “public health, safety and welfare.” PODER asks the Hearing Officer to reject LRS’s application for failure to meet the burden of Criterion 2 due to this deficiency among those described in other sections herein. In the alternative, if the Hearing Officer recommends approval of the application, it should be approved only on the condition that LRS submit more detailed plans about employee safety in the facility that address employee safety, indoor air quality, and related recordkeeping, and that such plans include the specific designation of a safety officer independent from the facility manager.

B. Excluding Considerations of Environmental Justice under Criterion 2 Erroneously Results in Improperly Ignoring the Cumulative Health and Welfare Impacts of LRS’s Application that will be Borne Disproportionately on the Basis of Race, National Origin, and Income Level.

Environmental justice includes the principle, set forth in state statute, “that no segment of the population, regardless of race, national origin, age, or income, should bear disproportionately high or adverse effects of environmental pollution.” 415 ILCS §155/5. The State Legislature has recognized explicitly the connection between environmental justice and public “health,” declaring that such “environmental hazards can cause long-term health effects.” *Id.* The State Legislature has recognized explicitly that “certain communities in the State may suffer disproportionately from environmental hazards related to facilities with permits approved by the State,” *id.*, and local siting approvals under section 39.2 are such “order[s] issued under title X, governing ‘permits,’” *see Town & Country Utilities, Inc.*, 225 Ill. 2d at 119. Environmental justice, therefore, provides an essential lens rooted in state statutory text, through which to

interpret the text of section 39.2 and to analyze whether LRS’s proposed facility sufficient protects the public health, safety, and welfare of West Chicago under Criterion 2. PODER therefore objects to, and requests reversal of, the Hearing Officer’s decision to exclude any evidence or testimony about “environmental justice.” Tr. at 1167-68 (Day 6).

Rejecting any consideration of environmental justice in this proceeding contributes to an impermissibly narrow interpretation of the statutory phrase “public health, safety, and welfare,” as described above in Section III.A. As a matter of statutory interpretation, the plain meaning of the phrase public health, safety, and welfare is broad and capacious. Various combinations of these words are used frequently throughout the broader Illinois Environmental Protection Act to describe rationales for statutory requirements and the terms are meant to be widely inclusive of different types of harm and impacts.⁴ The phrase must be read to require a contextual analysis because assessing “public” “health” is necessarily focused on the particular “public” whose “health” will be impacted; “public health” is community-oriented, in contrast to traditional medicine focused on individual patient. The needs and sensitivities of communities are relevant to public health, safety, and welfare and must be included in any analysis of those terms. To speak of “environmental justice” in this context—which the Hearing Officer forbade—is simply to acknowledge that it is necessary to consider the needs and sensitivities of the particular community whose “welfare” and “health” will be impacted by the proposed facility to determine if the proposal will protect “public health, safety and welfare.”

⁴ Most relevantly, the Act specifically announces that air pollution—like that from diesel engine emissions—harms public health and welfare. 415 ILCS § 5/8 (finding air pollution constitutes a menace to public health and welfare). *See also*, 415 ILCS § 5/2 (finding hazardous wastes pose a threat to *public health, safety and welfare*); 415 ILCS 5/3.545 (finding water pollution is harmful to *public health, safety and welfare*); 415 ILCS § 5/9.4 (finding that air pollution from municipal waste incineration may constitute a threat to *public health, welfare* and the environment); 415 ILCS § 5/9.5 (finding *public health and welfare* may be endangered by the release of toxic contaminants into the air which are injurious to humans or the environment); 415 ILCS § 5/20 (finding excessive quantities of waste and improper methods of waste disposal is a hazard to *public health and safety*); 415 ILCS § 5/25b-1 (finding that emissions of toxic chemicals are a chronic threat to *public health*).

During the public hearing, both PODER and PWC attempted to introduce evidence and testimony about environmental justice analyses and disproportionate impacts on West Chicago. Tr. at 1167-68, 1170-72, 1274-75. The Hearing Officer chose to exclude all consideration of “environmental justice,” stating “I’m not going to hear testimony about environmental justice, I’m not going to have testimony about if this were to impact on persons of whether it’s color, income. None of that is relevant to 39.2.” Tr. at 1171-72. Accordingly, the Hearing Officer held, “I’m going to sustain the objection that environmental justice is not relevant to [] [section] 39.2 . . . it is not relevant criteria testimony.” Tr. at 1168, 1:14-19. He also stated that “IEPA has not defined ‘environmental justice,’ except to say that all people are entitled to a safe environment.” Tr. at 1170, 1:19-21.

However, the *Legislature has* defined “environmental justice” in the Environmental Justice Act, most recently amended in 2017, which “requires that no segment of the population, regardless of race, national origin, age, or income,[] bear disproportionately high or adverse effects of environmental pollution.” Environmental justice is defined in state statute as relevant to public health, 415 ILCS §155/5, and statutes on related topics must be read harmoniously. *See, e.g., In re Craig H.*, 2022 IL 126256, ¶ 26, *reh'g denied* (Nov. 28, 2022) (“We presume that statutes relating to the same subject are governed by a single spirit and policy and that they are intended to be consistent and harmonious. Therefore, even when statutes appear to conflict, they must be construed in harmony if reasonably possible”).

Section. 39.2 must be read harmoniously with the Legislature’s express dictate on environmental justice and, therefore, it is relevant to this proceeding that the “adverse effects of environmental pollution” arising from LRS’s proposed operations will be borne disproportionately and inequitably by the less wealthy and less white community of West

Chicago. West Chicago is a predominantly minority community with a painful history of environmental harm. PODER Exhibit 1; *Public Comments of PODER - Immigrant Solidarity DuPage in Opposition to the Application for Local Siting Approval submitted by Lakeshore Recycling Systems, LLC*, at 4-6 (Feb. 17, 2023) (submitted via email, per City instructions). As such, the needs and sensitivities of the specific public of West Chicago will necessarily impact how future harms from LRS's proposed expansion will be borne by that community.

Environmental justice demands that this context is incorporated when evaluating public health, safety, and welfare because the exclusion of these factors would lead, and indeed have led, to compounded and disproportionate harm to certain communities. PODER respectfully requests the Hearing Officer reconsider his decision and conclude that applying Criterion 2 must include an evaluation of environmental justice considerations. Applying that proper understanding of the law, LRS did not consider environmental justice in its application or its testimony and therefore has not met its burden under Criterion 2.

C. LRS Has Not Met Its Burden to Demonstrate Its Application is Consistent with the DuPage County SWMP and, Therefore, Fails Criteria 8.

Section 39.2(a)(viii): if the facility is to be located in a county where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan; for purposes of this criterion (viii), the "solid waste management plan" means the plan that is in effect as of the date the application for siting approval is filed.

LRS has failed to show that its proposed facility is consistent with DuPage County's Solid Waste Management Plan (SWMP), and therefore has not provided sufficient evidence to meet the requirements of Criterion 8. The Illinois Solid Waste Planning and Recycling Act requires that certain counties in the state of Illinois adopt a 20-year plan for managing solid waste, to be updated every five years. 415 ILCS §15/4(a); 415 ILCS §15/5(e). DuPage County adopted its SWMP in 1991, with updates provided roughly every five years in 1996, 2001, 2007, 2012, and 2017.

Criterion 8: Narrative & Appendices, Appendix 8-H at 3. For the purposes of Criterion 8, these updates are included in the SWMP. See 415 ILCS § 39.2(a)(viii) (“solid waste management plan” means the plan that is in effect as of the date the application for siting approval is filed”). The SWMP is interpreted according to general rules of statutory interpretation. See *Cnty. of Kankakee v. Illinois Pollution Control Bd.*, 396 Ill. App. 3d 1000, 1020–21(2009), *as corrected* (Jan. 26, 2010) (applying rules of statutory interpretation to county’s Solid Waste Management Plan).

West Chicago is currently the home to the only other similar waste transfer station in DuPage County and approving a second waste transfer station in West Chicago would be inconsistent with DuPage County’s SWMP and five-year updates. Read together and most naturally, the SWMP and updates explain that if any additional transfer stations are needed in the county, they would be needed in the southern portion of the county, not its northwest corner. DuPage County’s original SWMP stated that “the size of DuPage County was shown to not necessarily require the provision of two waste disposal facilities for reasons of local transport effectiveness.” *Criterion 8: Narrative & Appendices*, Appendix 8-A at 3-45. The original SWMP went on to conclude that “the placement of just one transfer facility in the county would appear to offer no significant disadvantage from a local waste transport standpoint.” *Id.* Future five-year updates to the SWMP would contemplate additional transfer stations, but explicitly stated that an additional transfer station would be appropriate only in the southern portion of the county. For example, the 2012 update to the SWMP, in its discussion of a potential need for another transfer station, explained that “[f]uture conditions may necessitate a new facility in the southern portion of the County.” *Criterion 8: Narrative & Appendices*, Appendix 8-G at 5. In addition, the 2007 update to the SWMP relied on an analysis that concluded that “the only areas that might benefit from a waste transfer station are located in the southern portion of the County.” *Criterion 8:*

Narrative & Appendices, Appendix 8-F at 3. Reviewed together, the SWMP and its updates show the County’s plan to site any new waste transfer station in the portion of the county with the least access to a waste transfer station, specifically the southern portion.

LRS erroneously claims that the 2017 update to the SWMP implicitly overrides the explicit preference in earlier updates for a waste transfer in the southern portion of the county by stating that the County will review applications for new waste transfer stations on a case-by-case basis. *See Criterion 8: Narrative & Appendices*, at 8-14 – 8-16. However, LRS misreads the text of the SWMP updates and ignores important explicit context. The 2017 update states that “[l]arge regions of the County are not optimally served due to the lengthy transportation routes which lead to increased costs and air emissions. To address this the County of DuPage will consider new or expanded facilities handling, treating and recycling waste on a case by case basis.” *Criterion 8: Narrative & Appendices*, Appendix 8-H at 16. While the 2017 update does not state specifically which “large regions of the County” suffer from long transportation routes and would benefit from an additional waste transfer station, the previous updates did: the southern portion of the county. *See Criterion 8: Narrative & Appendices*, Appendix 8-F at 3 (“[T]he only areas that might benefit from a waste transfer station are located in the southern portion of the County.”); *Criterion 8: Narrative & Appendices*, Appendix 8-G at 5 (“Future conditions may necessitate a new facility in the southern portion of the County.”) As such, DuPage County’s 2017 update to the SWMP shows only that the County was consistently focused on areas in the County without a nearby existing transfer station. Previous updates identify such areas as the southern part of the County. It is inconsistent with that clear and express intent of the SWMP and its updates to now locate a second waste transfer stations in

West Chicago, the specific municipality in the County in which “lengthy transportation routes” to a transfer station is most obviously not an issue.

“The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature (here, the County Board).” *Cnty. of Kankakee v. Illinois Pollution Control Bd.*, 396 Ill. App. 3d 1000, 1020, as corrected (Jan. 26, 2010). As an initial matter, that precedent forecloses LRS’s suggested reliance on an ambiguous letter drafted by a county employee, who has neither authority nor knowledge to speak on what the County Board intended in 1991, 2007 or 2012. Applicant Ex. 11 at 28 (Slide 55, on page 30 of the PDF file); Tr. 785-789 (Day 4). In this case, the intent of DuPage County in its SWMP is clear from the text the County used: any additional waste transfer stations should be located so as best to serve the southern portions of DuPage County. As West Chicago is in the northern part of the county and already hosts the County’s only such facility, the siting of a waste transfer station in West Chicago would be inconsistent with the SWMP, read with its updates. LRS cannot meet its burden to show its application is consistent with the SWMP under Criterion 8.

IV. Approval of LRS’s Application is Foreclosed Because the Proceedings Were Not Fundamentally Fair to PODER or Other Citizens of West Chicago.

The proceedings were fundamentally unfair to PODER and other residents of West Chicago because the proceedings were not fully and equally accessible to Spanish speakers, and because PODER’s evidence was improperly and unfairly impeached outside the context of cross-examination and based on extra-record material.

The City Council can only approve an application if the proceeding to review it was fundamentally fair. On any appeal of the City Council’s siting decision, the Illinois Pollution Control Board will reverse approval if the municipality’s review proceeding was not fundamentally fair. 415 ILCS §5/40.1. Fundamental fairness “incorporate[es] minimal standards

of procedural due process, including the opportunity to be heard, the right to cross-examine adverse witnesses, and impartial rulings on the evidence.” *Fox Moraine, LLC v. United City of Yorkville*, 2011 Ill. App. 2d 100017, ¶ 60. No matter what the City Council’s decision is on the merits of the nine criteria under section 39.2, the fundamental fairness of the proceedings must still be evaluated under section 40.1, and an approval will not stand on appeal if the approval process was fundamentally unfair.

At the outset of this discussion, PODER wishes to acknowledge and appreciate the ways in which the Hearing Officer accommodated its participation in this proceeding. PODER was allowed to register as a party at a time when it did not have legal counsel and to participate during the hearing as a party without counsel. Once PODER was able to secure the undersigned counsel for the purpose of assisting in their direct testimony, the Hearing Officer welcomed counsel to the proceeding, provided procedural information, and permitted counsel to participate to the extent feasible under the circumstances.

Nonetheless, there are specific and crucial respects in which the proceedings were not conducted in accordance with fundamental fairness.

First, as explained by PODER’s witness, the proceedings failed to provide access and opportunity for participation by Spanish speakers, even though 53% of West Chicago residents do not speak English at home. Tr. 1230-31; 1279-81 (Day 6); PODER Exhibit 1. PODER recognizes that the City maintained a Spanish translation of the website it created to post information about the LRS application process. That is a necessary step, and appreciated, but does not come close to ensuring Spanish-speaking citizens had a meaningful and equal opportunity to participate. While the website itself had an option to translate into Spanish, none of the application materials were translated into Spanish, making meaningful review for Spanish-

speakers impossible. Without the ability to actually review LRS’s application, Spanish speakers were deprived any real chance at providing meaningful testimony or public comment, with the result of preventing a large portion of West Chicago from effectively participating.

Further, outreach to the Spanish-speaking community was insufficient. This was particularly true of the opaque process requiring members of the public to register weeks in advance if they wished to provide brief oral comments during the hearing. Indeed, when counsel for PODER communicated a request from individual West Chicagoans to be added to the list of public commenters for a subsequent hearing session, the Hearing Officer denied that request citing the necessity for strict compliance with the City’s website’s instructions. *See* Email Correspondence from D. Price to R. Weinstock, dated January 12, 2023, at 2:20 p.m. (“My records indicate that none of the persons listed below timely completed the registration for public comment—and accordingly, they will not be permitted to give oral comment.”) Even if a West Chicagoan discovered the pre-registration requirement weeks in advance, there was no option to register or make comments in Spanish that would be translated for the audience.⁵

Finally, and most fundamentally unfairly, the public hearing was conducted entirely in English and there were no translation services available, despite the fact that 53% of West Chicagoans do not speak English at home, PODER Exhibit 1, and 43% of West Chicagoans over

⁵ Relatedly, PODER lodges here its objection to the submission to the Hearing Officer made by counsel for LRS on February 18, 2023, over a month after LRS closed evidence on its case. Even if this applicant submission of what appear to be proposed exhibits could somehow be considered a “public comment,” LRS’s counsel’s email to the Hearing Officer failed to comply with the express City website instructions as to how to submit public comments. Public Comment, The City of West Chicago, (Feb. 20, 2023, 4:16) <https://westchicago.org/transfer-station/#participate> (“Public comments may be submitted in writing by delivering to the West Chicago City Hall at 475 Main Street, or by email at aadm@westchicago.org.”) Fundamental fairness cannot sustain allowing LRS to introduce information that can only be described as testimony or hearing exhibits a month after the hearing was closed, with no opportunity for cross-examination. The opportunity to cross-examine witnesses is a core requirement of a fundamentally fair hearing. See *Cnty. of Kankakee v. Illinois Pollution Control Bd.*, 396 Ill. App. 3d 1000, 1014, 955 N.E.2d 1, 14 (2009), as corrected (Jan. 26, 2010). Fundamental fairness certainly cannot sustain requiring strict compliance with website instructions of community members while allowing the applicant and its seasoned counsel to ignore the same source of City instructions.

the age of five speak Spanish at home and 21% are considered to have limited English proficiency, 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=ACSSST5Y2021.S1601>. One PODER witness, Ms. Julieta Alcantar-Garcia, was forced to testify in her second language, which is a direct and avoidable barrier to her right and ability to communicate her testimony as easily and effectively as witnesses whose first language was English or if she had been able to testify in Spanish. Tr. at 1231, 1:2-6.

Throughout this process, Spanish speakers were denied equal access or an equally meaningful opportunity to contribute to the proceedings.

Second, direct testimony from PODER’s witness, Ms. Alcantar-Garcia, was met with improper impeachment based on external material by the Hearing Officer. As discussed above, Ms. Alcantar-Garcia testified to explain how she used commercially-available air quality sensor to record levels of particulate matter outside the existing LRS and Groot facilities on Powis Road. Tr. at 1256. LRS’s Counsel objected to Ms. Alcantar-Garcia’s testimony regarding her perception of that data, without explanation, and the Hearing Officer sustained the objection. Tr. at 1273, 1:3-5. When PODER’s counsel asked why the testimony was excluded, the Hearing Officer said:

You may not ask why, but I’ll tell you why. She’s not a trained scientist. The app has not been recognized by any court in the land. I just did a search. None of this is scientifically relevant. I appreciate the effort. She did what she did. I can’t stop it from coming in as comment or, in this case, testimony. But she is not qualified to talk about—she doesn’t even know how the app works. She said so. You just laid that foundation. And she’s not shown to be an expert in any of these things.

Tr. at 1273, 1:8-19. While the precise legal ramifications of this statement are somewhat unclear—there was no explanation for the reference to a “scientifically relevant” standard and the Hearing Officer did explicitly admit that he “c[ould]n’t stop” the data itself from “coming in” as “testimony”—the practical ramifications of this episode in terms of fundamental fairness are

apparent. In this statement, the Hearing Officer explained that he sustained LRS's counsel's unexplained objection based on the Hearing Officer's independent research, conducted while Ms. Alcantar-Garcia was testifying, and without producing that independent research or any evidence of the credibility of those external sources. Indeed, after this, counsel for LRS chose not to cross-examine Ms. Alcantar-Garcia regarding her air quality data at all, leaving no opportunity for PODER to elicit testimony on re-direct examination regarding the relevance of Ms. Alcantar-Garcia's understanding of the air quality data she provided. PODER was entitled to "impartial rulings on the evidence," *Fox Moraine, LLC*, 2011 Ill. App. 2d 100017, ¶ 60; it was fundamentally unfair for the Hearing Officer to conduct and make evidentiary ruling based on independent outside research conducted during Ms. Alcantar-Garcia's direct testimony.

V. CONCLUSION

PODER respectfully asks the Hearing Officer recommend denial of LRS's application West Chicago because LRS failed to meet its burden under section 39.2 to provide "sufficient details" and "evidence to demonstrate compliance" with every one of the nine statutory criteria. From PODER's perspective, the deficiencies in LRS's application are particularly pernicious with respect to Criteria 2 and 8. For Criterion 2, LRS's refusal to address at all the local air quality harms that will indisputably flow from its proposed fleet of diesel trucks renders it impossible for LRS to demonstrate the proposed facility is "designed, located and proposed to be operated" such that "public health, safety and welfare will be protected." LRS failed to consider viable means to mitigate those harms, through truck electrification, and failed to provide sufficient detail regarding employee safety. Additionally, LRS's failure to apply the State Legislature's definition of "environmental justice" to the Criterion 2 analysis compounded these shortcomings. LRS fails on Criterion 8 because its proposal is inconsistent with the plain language of DuPage County's Solid Waste Management Plan and its updates contemplating the

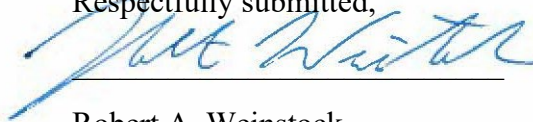
diversification in county waste transfer locations—not a concentration of such facilities as LRS proposes. Finally, the proceedings were not fundamentally fair to Spanish-speaking citizens of West Chicago and unfairly deprived PODER of impartial rulings on its evidence.

PODER requests that LRS’s application be denied for any and all of the reasons above enumerated. In order to reduce the inequitable harm stemming from a failure to protect public health, safety and welfare in the event that the Hearing Officer recommends approval nonetheless, such approval should include conditions requiring that LRS (1) ensure that all truck drivers using the proposed facility comply with the driving routes through West Chicago as specified in the application; (2) review and propose utilization of ComEd’s Beneficial Electrification plan for its diesel truck fleet; and (3) submit updated plans for employee safety at the facility as described above. However, these conditions would not fully mitigate the long-term inequality and health and welfare harms to which West Chicagoans will be subjected if LRS’s application is approved, and PODER thus asks the Hearing Officer to recommend denial.

At bottom, LRS seeks approval even though it cannot demonstrate that its proposal will not amount to sacrificing the health and welfare of the more largely Latinx, more foreign-born, and lower-income community of West Chicago for benefits spread among the broader area, which is far wealthier, whiter, and less burdened by existing environmental threats. Because LRS has failed to carry its burden under the statute, neither the Hearing Officer nor the City Council should endorse that perpetuation of environmental injustice and inequity based on race, national origin, and income.

Dated: February 21, 2023

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Robt Weinstock", written over a horizontal line.

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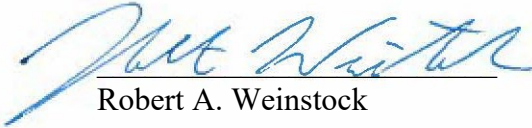
**Ms. Ticknor-Swanson is a law-clerk, not
admitted to practice law in Illinois or any
other state, who contributed to this filing
under the direct supervision of attorneys.*

**CITY OF WEST CHICAGO
DUPAGE COUNTY, ILLINOIS**

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

CERTIFICATE OF SERVICE

Under penalty of perjury as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that on February 21, 2023, a copy of the foregoing People Opposing DuPage Environmental Racism's Proposed Combined Findings of Fact and Conclusions of Law was served on the individuals listed below via electronic mail before 5:00 p.m.


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