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February 19, 2002

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VIA HAND DELIVERY

Board of Zoning Adjustment for the
District of Columbia
441 4th Street, N.W., Suite 210-S
Washington, D.C. 20001

Re: BZA Appeal No. 16239
USA Waste of D.C., Inc.

Dear Members of the Board:

On behalf of USA Waste of D.C., Inc. (formerly L.G. Industries, Inc.), we are filing herewith fifteen copies of its pre-hearing statement in connection with the above-referenced appeal case. The hearing on this matter is scheduled for March 5, 2002.

Respectfully submitted,

HOLLAND & KNIGHT LLP

Carolyn Brown

Carolyn Brown

Enclosure

cc: Advisory Neighborhood Commission 6A
Olutoye Bello, Acting Zoning Administrator
Institute For Public Representation

BZA
Case No. 16239
Exhibit No. 27

Board of Zoning Adjustment
District of Columbia
CASE NO.16239
EXHIBIT NO.27

BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

USA Waste of D.C., Inc. (formerly L.G. Industries, Inc.) 1140 3rd Street, N.E. Square 748, Lots 8, 9, 10, 11, 42, 43, 809, 810, 811 and 812	)	**Hearing Date: March 5, 2002** **ANC 6A**
Appeal of the Zoning Review Branch's Decision Denying Issuance of a Certificate of Occupancy for Shipping, Freight and Cargo, Transfer Station, Warehousing, Trucking, Carting/Hauling Terminal or Yard, Processing Establishment, and Solid Waste Handling Facility	)	**BZA Appeal No. 16239**

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STATEMENT OF THE APPELLANT

I.
NATURE OF THE APPEAL

This statement is submitted on behalf of USA Waste of D.C., Inc., formerly known as L.G. Industries, Inc.,[1] ("LGI/USA Waste") in support of its appeal from the Zoning Review Branch's denial of USA Waste's application for a Certificate of Occupancy ("C of O") to use the property located at 1140 3rd Street, N.E. (Square 748, Lots 8, 9, 10, 11, 42, 43, 802, 808, 809, 810, 811 and 812) as a transfer station, and for other lawful purposes. In his letter served on February 4, 1997, denying issuance of a new C of O, the Chief of the Zoning Review Branch erred in failing to: (i) recognize the existing valid C of O for the property, despite a request by LGI/USA Waste to do so, or (ii) issue a new C of O for the requested lawful uses under the regulations in effect at the time the application was filed. Accordingly, LGI/USA Waste

[1]On April 23, 1998, L.G. Industries, Inc. changed its name to USA Waste of D.C., Inc.

respectfully requests the Board of Zoning Adjustment ("Board" or "BZA") to reverse the 1997 Zoning Review Branch decision and find that LGI/USA Waste holds a valid C of O to operate a lawful transfer station at 1140 3rd Street, N.E. In the alternative, LGI/USA Waste requests the Board to find that the Zoning Review Branch wrongfully withheld issuance of a new C of O for the permitted uses listed on the C of O application, in accordance with the regulations in effect at the time the application was made.

II.
JURISDICTION OF THE BOARD

The Board has authority to hear these appeals pursuant to D.C. Code § 6-641.07(f) (2001 ed.). In exercising this authority, the Board may reverse or affirm, in whole or part, or modify any decision or determination of the Zoning Review Branch, and shall have all the powers of the offices of the Zoning Administrator from which the appeal is taken. *See* D.C. Code § 6-641.07(g)(4).

III.
FACTUAL BACKGROUND

A. Description of Property

LGI/USA Waste is the owner of the property located at 1140 3rd Street, N.E. (Square 748, Lots 8, 9, 10, 11, 42, 43, 802, 808, 809, 810, 811 and 812). The site is bounded on the north by M Street, on the west by 2nd Street and the railroad tracks emanating from Union Station to the south, and on the east by 3rd Street. Congress Street dead ends into the southern portion of the property. The site consists of approximately 2.36 acres of land area. Real estate plats and maps of the property are attached hereto as Exhibit A.

The site is improved with the former Washington Coliseum, a large one-story building with a height of approximately 50 feet. For a period of 49 years, the property was located in the

Manufacturing (M) District. In 1997, it was rezoned to the C-M-3 District. A copy of the Zoning Map is attached hereto as Exhibit B. The property is presently used as a solid waste transfer station, in accordance with C of O No. B169096, issued July 14, 1994.

B. The 1994 Certificate of Occupancy

On June 16, 1994, LGI/USA Waste applied for a C of O to change the use of the property at 1140 3rd Street, N.E., from its prior use as a public hall for the Mirage Faith Center[2] to a transfer station and for other purposes. The application was circulated to the various offices within the Building and Land Regulation Administration ("BLRA") for review and approval, in general accordance with the Procedures Manual for Certificate of Occupancy Processing and Recordkeeping, dated October 20, 1982. The Zoning Review Branch approved the proposed uses on June 16, 1994, pending inspections of the site. Thereafter, the application was forwarded to the Inspection Branch for review. Inspections were scheduled on June 30, 1994, and as a result of those inspections, the application was approved.

On July 14, 1994, the Zoning Division of BLRA issued C of O No. B169096 to L.G. Industries to use the property for the following purposes: "Shipping, Freight & Cargo, Transfer Station, Warehouse & Trucking (not sexually oriented.)." A copy of the 1994 C of O is attached hereto as Exhibit C. In reliance on this C of O, LGI/USA Waste has been operating a solid waste transfer station at the site since that time, in compliance with all applicable rules and regulations. The 1994 C of O is still in effect and has not been questioned by the District.

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[2]The previous uses authorized for the property were a public hall, parking lot, manufacture of ice, storage and garage. *See* application form accompanying C of O No. B169096; *see also* C of O No. B87520 dated January 16, 1974.

C. The Solid Waste Handling Facility Act

Shortly after LGI/USA Waste obtained its 1994 C of O, the District moved to regulate the construction and operation of private solid waste transfer stations, initially through the Recycling Fee and Illegal Dumping Emergency Enforcement Act of 1994, the Solid Waste Permit Emergency Act of 1994, and the Solid Waste Facility Permit Temporary Act of 1994. Thereafter, on December 18, 1995, the D.C. Council passed and the Mayor signed D.C. Act 11-117, the Solid Waste Facility Permit Act of 1995 (the "1995 Act"). The 1995 Act became effective February 27, 1996. Among other things, the 1995 Act authorized the District government to issue regulations to impose several obligations on privately-owned transfer stations, including the obligation to comply with all applicable health and safety-related measures. On April 17, 1996, the Department of Consumer and Regulatory Affairs ("DCRA") issued twenty-five pages of detailed emergency regulations to implement the permit program and other requirements for solid waste transfer stations under the 1995 Act.[3]

Under the emergency regulations, DCRA was not to issue a final transfer station permit unless the facility had a C of O "which plainly describes the use of the facility as a *solid waste handling facility*, or such other description as may be required by the Zoning Commission or the Board of Zoning Adjustment."[4] (Emphasis added). However, DCRA would not deny such a permit for an existing transfer station provided the operator of such a facility had submitted an application to obtain a C of O which would satisfy the descriptive requirement and such application was pending before the BZA. By letter dated May 22, 1996, the Administrator of

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[3]Mayor's Order 96-51, dated April 12, 1996, delegated authority to DCRA to promulgate regulations to implement the 1995 Act. See 43 *D.C Reg.* 2448 (May 10, 1996).

[4]Through a series of successive legislative acts, the emergency regulations were adopted in final form with essentially the same requirements. *See* 21 DCMR §§ 731 *et seq.*

BLRA informed LGI/USA Waste of its obligations under the implementing regulations. It stated that:

> The interim operating permit will require LG Industries to apply for a "solid waste handling facility" certificate of occupancy with an accompanying external effects statement. This must be done within thirty days of the issuance of the interim operating permit. As a procedural matter, because the Zoning Administrator has determined that solid waste handling facilities must be approved by the Board of Zoning Adjustment ("BZA"), LG Industries's certificate of occupancy application will automatically be denied. The BLRA will advise LG Industries to apply to the BZA for a variance. The company will then have an additional thirty days to apply for a variance with the BZA. If LG Industries does not seek BZA approval within the required time, or the BZA denies the company's variance application, the Department [of Consumer and Regulatory Affairs] will propose to deny the company's application for a solid waste handling facility permit.

Letter from BLRA Administrator to LG Industries, Inc., May 22, 1996, at 2. A copy of the letter is attached hereto as Exhibit D.

On August 2, 1996, the District issued LGI/USA Waste an Interim Operating Permit. In accordance with the terms of the Interim Permit, LGI/USA Waste was directed to file within thirty days an application for a new C of O for a "solid waste handling facility" with the BLRA. The Interim Permit further stated that if BLRA were to deny its application, LGI/USA Waste must file an appeal of that denial with thirty days to the BZA.

D. The 1996 C of O Application

On September 3, 1996, under protest and compulsion, LGI/USA Waste filed an application for a new C of O to comply with the directives of the May 22, 1996 letter and the terms of the Interim Operating Permit.[5] The application identified the following proposed uses: "Shipping, Freight and Cargo, Transfer Station, Warehousing, Trucking, Carting or Hauling

[5]In submitting the new C of O application, LGI/USA Waste specifically reiterated that is was operating pursuant to a duly issued certificate of occupancy and did not waive its right to continue to do so.

Terminal or Yard, Processing Establishment, Solid Waste Handling Facility that will be used for the receipt, loading, compacting, process, and transfer for final disposal outside the District of Columbia of solid waste and/or construction or demolition debris (all materials nonhazardous)." A copy of the 1996 C of O application is attached hereto as Exhibit E. Together with this application, LGI/USA Waste filed a letter objecting to the requirement that a new C of O be issued for the facility and preserving its rights to its existing 1994 C of O. LGI/USA Waste specifically stated that it

> does not concede that its existing CO ["C of O"] is invalid or in any way deficient, or that it is not fully authorized to operate a solid waste transfer station under its current CO. Nor does LGI concede that any CO issued as a result of this application in any way impacts the continued validity of its existing CO, and LGI will not accept any CO that in any way may impact the continued validity or viability of its existing CO, without LGI's prior express agreement in writing.

Letter from McGuire, Woods, Battle & Booth, LLP, to Patricia Montgomery, Administrator, BLRA, September 3, 1996, at 3; *see* copy of letter attached as Exhibit F.

The same day the application was filed, DCRA solid waste permitting officials walked LGI/USA Waste through the BLRA application process, which resulted in an indication that the application would be denied. By letter dated December 17, 1996, but not served on LGI/USA Waste until February 4, 1997, BLRA's Zoning Review Branch disapproved the 1996 C of O Application due to need for BZA approval. A copy of the December 17, 1996, letter is attached hereto as Exhibit G.

The letter erroneously advised LGI/USA Waste to seek special exception relief under the proposed Solid Waste Handling Facility Text Amendments, then pending in Z.C. Case No. 96-5. Presumably, the Zoning Review Branch mistakenly applied the provisions of 11 DCMR § 3203.7, which state that if a building permit or C of O application is made when the Zoning

Commission has pending "a proceeding to consider an amendment of the zone district classification of the site," the most restrictive provision of either the existing or proposed zone district classification will apply. However, the proposed Solid Waste Handling Facility provisions only amended the text of the Zoning Regulations and did not propose to change the zone district classification of the site. Thus, section 3203.7 did not apply to the 1996 C of O application and the application should have been processed under existing regulations.

E. Appeal of the Denied C of O to the BZA

On February 21, 1997, LGI/USA Waste made a timely appeal of the denial of its 1996 C of O application. On the BZA appeal form, LGI/USA Waste maintained that "it is presently operating under a valid certificate of occupancy, and that the decision to not reissue is both legally and administratively improper". A copy of the 1997 appeal submission is attached hereto as Exhibit H.

F. Zoning Text Amendments Regulation for Solid Waste Handling Facilities

During the time that the District was enacting emergency and temporary laws and regulations governing the operation of solid waste transfer stations, and while LGI/USA Waste was attempting to comply with those regulations, the Zoning Commission was examining its own regulations to address solid waste handling facilities. The Office of Planning ("OP") filed a petition on May 3, 1996, to amend the text of the Zoning Regulations to create a separate category for solid waste transfer stations. The Zoning Commission recognized the need and propriety of transfer stations, and after a series of hearings and multiple revisions to the proposed text, the Zoning Commission took final action in Z.C. Order No. 842. On March 27, 1998, the Solid Waste Handling Facility regulations under section 802.4 of the Zoning Regulations took

effect. The regulations allow solid waste handling facilities in the C-M and M Districts with BZA approval through the special exception process.

G. Related Lawsuit Before the D.C. Superior Court

On January 19, 1996, LGI/USA Waste filed suit against the District in D.C. Superior Court challenging as unconstitutional and otherwise illegal the Solid Waste Facility Permit Act and its implementing regulations. The District answered the complaint on March 22, 1996, and included a counterclaim requesting a declaratory judgment that the 1994 C of O did not permit the operation of a trash transfer facility. Various motions, amended complaints, answers, discovery requests and status reports were filed between 1996 and 1998, many of which addressed the changing emergency and temporary legislation being introduced by the D.C. Council on solid waste facilities. In August 1998, DCRA issued eleven infractions to LGI/USA Waste charging LGI/USA Waste with operating its transfer station without a valid C of O. Because these infractions were directly related to the issues being litigated in Superior Court, the trial judge issued a temporary restraining order and injunction against the District enjoining any administrative enforcement or criminal proceedings against LGI/USA Waste with respect to the eleven infractions, or issuing new infractions related to the C of O issue.

The District appealed the stay to the D.C. Court of Appeals, claiming that the BZA had primary jurisdiction over the question of the validity of the 1994 C of O. The Court of Appeals agreed and reversed the decision of the trial court. *See District of Columbia Department of Public Works v. L.G. Industries, Inc.*, 758 A.2d 950 (D.C. 2000). The question of the validity of the 1994 C of O is now squarely before the BZA in this appeal.

III.
ARGUMENT

A. Summary

LGI/USA Waste holds a valid certificate of occupancy issued in 1994 to operate a trash transfer station at 1140 3rd Street, N.E. The C of O has never been challenged by the District and it has no expiration date. Consequently, the Chief of the Zoning Review Branch erred in failing to recognize the validity of the 1994 C of O in his February 4, 1997, letter to LGI/USA Waste and wrongfully instructed the applicant to seek special exception relief under pending text amendments. Accordingly, the Board should overturn the decision of the Chief of the Zoning Review Branch and recognize the validity of the 1994 C of O. Alternatively, the Board should issue a new C of O for a solid waste handling facility and other enumerated uses, based on the 1996 application and in conformance with the regulations in effect at the time the application was made.

B. The Zoning Review Branch Erred in Failing to Recognize the 1994 C of O.

1. LGI/USA Waste Asserted the Continuing Validity of the 1994 C of O in its 1996 Application for a New C of O.

In issuing its February 4, 1997, letter of denial, the Zoning Review Branch chose to ignore, without any basis in fact or in law, the validity of the 1994 C of O that allows LGI/USA Waste to operate a transfer station at 1140 3rd Street, N.E. In its September 3, 1996, cover letter filing for a new C of O, LGI/USA Waste stated that its operations were in full compliance with the 1994 C of O and all applicable rules and regulations. It further reserved all rights to continue to operate under the 1994 C of O, and stated that the new C of O application was only being filed under threat of having its interim operating permit revoked and its facility closed. Despite these clear and forceful statements, the Zoning Review Branch nevertheless

refused to acknowledge the validity of the 1994 C of O, and in fact, failed to make any mention of the 1994 C of O at all. Had the Zoning Review Branch made the proper inquiries, it would have found that the 1994 C of O was validly issued and obviated the need for a new C of O.

2. The 1994 C of O Was Validly Issued.

a. The Term "Transfer Station" Adequately Described the Proposed Use of the Property.

The 1994 C of O Application was issued to LGI/USA Waste in full compliance with all of the District's law and regulations, and with actual knowledge by the District as to the proposed new use. The application fully disclosed that the property would be used as a "transfer station" and the District was clear as to the meaning of that term.

The term "transfer station" is not defined in the Zoning Regulations. In such instances, the Zoning Regulations require that words that are not otherwise defined shall have the meaning given in *Webster's Unabridged Dictionary*. The compound word "transfer station," however, likewise is not defined in *Webster's Unabridged Dictionary*.

Nevertheless, by 1994, "transfer station" was understood to mean a location at which small collection vehicles deposit trash for transfer to an ultimate disposal site. Numerous sources available to and/or used by the District in 1994 defined the term. The Solid Waste Management Glossary, published by the U.S. Environmental Protection Agency in 1972, defined a transfer station as "a site at which solid waste is concentrated and then taken to a processing facility or sanitary landfill." *See* Exhibit I, attached hereto. The 1987 edition of the Random House Dictionary of the English Language identified a transfer station as "a place where residential garbage and commercial wastes are compressed, baled and loaded on vehicles for moving to a disposal site, as for a landfill." *See* Exhibit J. The District government itself used

the term "transfer station" to identify its own facility at Fort Totten, known as the "Fort Totten Transfer Station," which was operational prior to the issuance of the 1994 C of O. Additionally, the District's Preliminary Draft Comprehensive Solid Waste Management Plan prepared by Gershman, Brickner & Bratton, Inc. (the "GBB Report") in October 1994, is replete with references to transfer stations and their operation in the District. Its glossary defined "transfer stations" as a "collection point where solid waste is taken by collection vehicles to be processed (typically compressed or shredded), and transferred to larger vehicles for transportation to another location for disposal or recycling." *See* Exhibit K, attached hereto. An earlier version of the draft report was circulated in 1993 throughout the District government, including DCRA, evidencing a clear understanding of how the term "transfer station" was used when LGI/USA Waste applied for its C of O in 1994.

More importantly, the actual approval process for the 1994 C of O application explicitly revealed the intended use of the site. Because LGI/USA Waste proposed a change in use of the property, inspection requirements were triggered by the C of O Branch. Plumbing Inspector Franklin Gaines conducted an inspection of the site prior to issuance of the C of O and "observed a trash guy, trucks, people all over the place.... People and trash trucks, people dumping trash."[6] *See* Exhibit L attached hereto. Thus, LGI/USA Waste made complete disclosure of how it intended to use the property, with the full knowledge and consent of the District.

b. A Transfer Station Is a Permitted Use in the M District.

At the time the 1994 and 1996 C of O applications were filed, there was no prohibition against a transfer station in the heavy industrial M District under sections 821, 822 or 823 of the

[6]*See* Sworn Deposition Testimony of Franklin Gaines, October 19, 1998, taken in connection with the D.C. Superior Court proceedings, Case Nos. 96-CA-418 and 97-CA-423, a copy of which is included in Exhibit L hereto.

Zoning Regulations. Nor does a transfer station fall within the catch-all provision of section 823.1(o), which prohibits "any other use with objectionable characteristic similar to those listed in this subsection." The District has explicitly endorsed the existence of transfer stations through its operation of its own facilities at Ft. Totten and Benning Road. Moreover, the Zoning Commission subsequently found transfer stations to be appropriately located in the C-M and M Districts through special exception relief. Thus, transfer stations cannot be characterized as prohibited uses.

In issuing the 1994 C of O, the Zoning Branch of DCRA similarly concluded that the transfer station was a "like use" permitted in the M District. According to deposition testimony given by Mr. Edgar Nunley, Chief of the Zoning Review Branch in 1994, while the Zoning Regulations delineate specific uses, there is no requirement an applicant use those specific words on the C of O application. All that is required is that the proposed use be sufficiently described to inform the zoning technician. *See Kalorama Citizens Ass'n v. District of Columbia Board of Zoning Adjustment*, 640 A.2d 179 (D.C. 1994) (use of the term "rooming house" on a C of O application adequately described use of the property as a bed and breakfast, even if the word "inn" would have been more accurate). By checking the box marked "approved" on the C of O application, the zoning technician indicated that he understood the proposed use, knew the zoning in the area, and believed it was a permitted use under the regulations.[7]

[7]*See* Deposition Testimony of Edgar T. Nunley, Chief, Zoning Review Branch, January 27, 1999, in connection with D.C. Superior Court Case Nos. 96-CA-418 and 97-CA-423, attached hereto as Exhibit M, 32-34.

c. The C of O Application Was Complete When Filed.

The signature by the zoning technician also indicates that the C of O application was accepted for processing as complete.[8] In his sworn deposition testimony given in connection with the law suit in Superior Court, Mr. Edgar Nunley, Chief of the Zoning Review Branch at the time the 1994 C of O application was processed, confirmed that he had reviewed the application file and found that everything appeared to be in order and that the application was accepted as complete.[9]

d. The District is Estopped from Rejecting the 1994 C of O.

Even if the District now asserts that the 1994 C of O should not have been approved, the District is estopped from claiming that the C of O is invalid at this late date. Because the District accepted LGI/USA Waste's filing as complete, the District may not go back in time and retroactively decide that something else was required.

Even if the application could not be viewed as somehow incomplete, the law in the District of Columbia is well-settled that the government may be estopped from enforcing zoning regulations if a party has relied on the affirmative acts of municipal officials to his detriment. In circumstances very similar to those found in the instant case, the D.C. Court of Appeals ruled in *District of Columbia v. Cahill*, 54 F.2d 453 (D.C. 1931), that the District could not revoke a certificate of occupancy for a garage when the owner had relied on that certificate to make improvements to his property. In *Cahill*, a property owner requested permission in 1926 to continue the use of a garage constructed in 1911. Although in continuous use a garage since that time, new zoning regulations effectuated in 1920 that placed the garage in a residential zone

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[8] *Id.* at 20-21.

[9] *Id.* at 52-53.

rendered the building a non-conforming use. In accordance with the new regulations, the building official determined that the non-conforming use was allowed to continue. In reliance upon that ruling, the owner secured building permits to make improvements to the garage, expended over $6000 without objection from the neighbors, and the District issued a certificate of occupancy. Six months later, neighbors protested. After a hearing, the building inspector determined that the certificate was issued on a "mistake of fact" and should be revoked or cancelled. On appeal, the court held otherwise, stating that when a party acting in good faith under affirmative acts of the city has made such expensive and permanent improvements, the doctrine of equitable estoppel will be applied.

The D.C. Court of Appeals examined the doctrine of equitable estoppel again in *Rafferty v. District of Columbia Zoning Commission,* 583 A.2d 169 (D.C. 1990). There, the court held that the District will be estopped from enforcing zoning regulations when a party shows:

> (1) expensive and permanent improvements, (2) made in good faith, (3) in justifiable and reasonable reliance upon, (4) affirmative acts of the District government, (5) without notice that the improvements might violate the zoning regulations, and (6) equities that strongly favor the petitioners.

Rafferty, 583 A.2d at 175 (internal citations and quotations omitted).

In the instant case, plaintiff meets each requirement. LGI/USA Waste has expended in good faith more than $648,000.00 in improvements to the facility. The District affirmatively accepted and issued the C of O, and LGI/USA Waste relied upon those affirmative acts. There was no notice to LGI/USA Waste that the C of O application was in any way incomplete. The combination of plaintiff's expenditures and good faith reliance on the District's affirmative acts in granting the 1994 C of O, coupled with the failure of the District to enforce purported deficiencies on the application makes the equities weigh heavily in favor of LGI/USA Waste.

Thus, the District is estopped from arguing almost seven and one-half years later that the 1994 C of O application was somehow incomplete.

e. Transfer Station Use May Continue Even After the Zoning Commission Has Created a New Use Category.

The fact that the Zoning Commission has created a new use category that encompasses previously undefined categories does not restrict the continuation of the previous use. Section 3203.8 provides that:

> Any use which is authorized by a certificate of occupancy may be established and continued pursuant to the terms of the certificate and the provisions of this title in effect on the date that the certificate is issued....

11 DCMR § 3203.8.

Thus, for example, prior to July 26, 1985, fast food restaurants such as McDonald's or Burger King received certificates of occupancy identifying them as restaurants. When text amendments went into effect creating a new "fast food" category (*see* Z.C. Order No. 440), the existing certified uses were allowed to continue operations under their previously issued C of O. Similarly, nursery schools and kindergartens did not need to reapply for "child development center" certificates when that new use category was created in November 1982 (*see* Z.C. Order 377). Nor did uses classified as telephone exchanges need to upgrade to "electronic equipment facilities" in 2001 (*see* Z.C. Order 929-A), or certain offices need to reapply as "international agencies" when that category was created in 1977.

Section 3203.8 applies with equal force to transfer stations. While this use is now encompassed in a new category known as "solid waste handling facilities" under the provisions of section 802.4 adopted March 27, 1998, trash transfer stations or processing facilities in existence prior to that date may continue to operate under their previously issued certificates of

occupancy. Thus, the Zoning Review Branch erred in directing LGI/USA Waste to apply under a new use category when it already held a valid C of O for a previously certified transfer station use.

f. Even if the Transfer Station Constituted a Non-Conforming Use It Would be Allowed to Continue.

Even if the Board found that the transfer station no longer constituted a permissible use under current zoning regulations, it would nevertheless be allowed to continue operations as a non-conforming use. The Zoning Act specifically provides that:

> The lawful use of a building or premises as existing and lawful at the time of the original adoption of any regulation heretofore adopted under the authority of § 6-621.01 [the Zoning Commission], or in the case of any regulation adopted after June 20, 1938, under this subchapter at the time of such adoption, may be continued although such use does not conform with the provisions of such regulation....

D.C. Code § 6-641.06a (2001 ed.); *accord Cahill, supra.* Thus, if the solid waste handling provisions of section 802.4 adopted March 27, 1998, could be construed as supplanting the existing transfer station use, LGI/USA Waste's transfer station would be a "grandfathered" use and allowed to continue because of its validly issued 1994 C of O. *Hagans v. District of Columbia*, 97 A.2d 922 (D.C. 1953) ("if a party can show a prior non-conforming use, he is entitled to a certificate of occupancy" *citing Cahill*, 54 F.2d 453).

C. The Zoning Review Branch Erred in Withholding a New C of O Given the Regulations in Effect at the Time of the Application.

Alternatively, the Zoning Review Branch should have approved the 1996 C of O application based on the regulations in effect at the time the application was made. Instead, the

Zoning Review Branch erroneously stated that the LGI/USA Waste had to seek special exception relief from the Board under text amendment that were not yet in effect.

The Zoning Regulations, however, did not then and do not now allow for such relief. The only instance where *pending* regulations are allowed to govern the processing of applications for building permits and certificates of occupancy is when an amendment to the Zoning Map has been proposed. Section 3203.7 provides that:

> If an application for a certificate of occupancy is filed when the Zoning Commission has pending before it a proceeding to consider an amendment of the *zone district classification* of the site of the proposed use, the processing of the application and the establishment of the occupancy shall be governed as follows:
>
> (a) If the application is filed on or before the date on which the Zoning Commission makes a decision to hold a hearing on the amendment, the processing of the application and completion of the work shall be governed by §3203.8;
>
> (b) Except as otherwise provided in §3203.11, if the application is filed after the date on which the Zoning Commission has made a decision to hold a hearing on the amendment, the application may be processed, and any use authorized by the certificate of occupancy may be established and maintained, only in accordance with the most restrictive provision of the *zone district classifications of the site* pursuant to the final decision of the Zoning Commission in the proceeding;

11 DCMR § 3203.7(a) and (b).

The Zoning Commission considered a giving similar provisional effect to pending text amendments in 1987-88, but rejected that concept in Z.C. Order No. 588. The Commission determined

> not [to] adopt a provision to restrict the vesting of occupancy or construction rights during the pendency of a text amendment case before the Commission; the reason for not adopting this rule is that text amendments, which are ordinarily considered for general application throughout the District, are inherently more complex than map amendment rulemaking cases, which ordinarily apply to a relatively smaller area; this is generally so, even though it is the case that text

> amendments are involved in certain map amendments, such as those which involve overlay provisions; the greater the complexity renders it administratively impractical to restrict development and business activity while such cases are pending; moreover, it is inherently more difficult to project the approximate ultimate decision in such cases....

Z.C. Order No. 588 (Case No. 87-2), September 15, 1988, at 3-4.

Because the solid waste handling facility amendments introduced in 1996 only proposed to amend the text of the Zoning Regulations, and not the Zoning Map, LGI/USA Waste vested its rights to the regulations in effect at the time its second C of O application was made. The 1996 regulations expressly allowed warehouses, carting or hauling terminals or yards, and processing establishments in the M District. And although transfer stations and solid waste handling facilities were not explicitly listed in the regulations in 1996, there was not any prohibition against them, either. The District itself was operating two transfer stations in the District. Thus, they were permitted as a matter of right in the M District, and the Zoning Review Branch erred in not approving the 1996 C of O application.

IV.
EXHIBITS

The following exhibits are submitted in support of this appeal:

Exhibit A	Real Estate Plats and Maps of the Subject Property
Exhibit B	Zoning Map of the Subject Property
Exhibit C	C of O No. B169096 issued July 14, 1994
Exhibit D	Letter from Patricia Montgomery, Administrator, BLRA, on Requirements for a New Solid Waste Handling Facility C of O, dated May 22, 1996
Exhibit E	1996 C of O Application
Exhibit F	Letter to Patricia Montgomery, Administrator, BLRA, accompanying 1996 C of O Application, dated September 3, 1996

Exhibit G	Letter from DCRA's Zoning Review Branch dated December 17, 1996, Denying the 1996 C of O Application
Exhibit H	BZA Form 1 and Related Exhibits Appealing Denial of 1996 C of O Application
Exhibit I	Portion of the EPA Solid Waste Management Glossary, 1972
Exhibit J	Random House Unabridged Dictionary Definition of "Transfer Station"
Exhibit K	Portions of GBB Draft Preliminary Solid Waste Management Plan
Exhibit L	Portion of Deposition Testimony of Plumbing Inspector F. Gaines in connection with the 1994 C of O
Exhibit M	Portion of Deposition Testimony of Edgar T. Nunley, Chief, Zoning Review Branch, related to the 1994 C of O
Exhibit N	Outlines of Witness Testimony

V.
WITNESSES

The following witnesses may be called to testify in support of this appeal:

A. Steven E. Sher, Director of Land Use and Zoning Services
Holland & Knight LLP

B. Representative of USA Waste of D.C., Inc.

VI.
CONCLUSIONS

Based on the foregoing documentary evidence and long-standing interpretations of the Zoning Regulations, the Chief of the Zoning Review Branch erred in failing to recognize the validity of the 1994 C of O in his February 4, 1997 letter to LGI/USA Waste and wrongfully instructed the applicant to seek special exception relief under pending text amendments. Had the Zoning Review Branch properly applied the regulations in effect at the time of the 1996 C of O

application, the C of O would have been issued. Accordingly, the Board should overturn the decision of the Chief of the Zoning Review Branch and recognize the validity of the 1994 C of O. Alternatively, the Board should order the issuance of a new C of O based on the 1996 application in conformance with the regulations in effect at the time the application was made.

Respectfully submitted,

HOLLAND & KNIGHT LLP

Whayne S. Quin, Esq.

Mary Carolyn Brown, Esq.

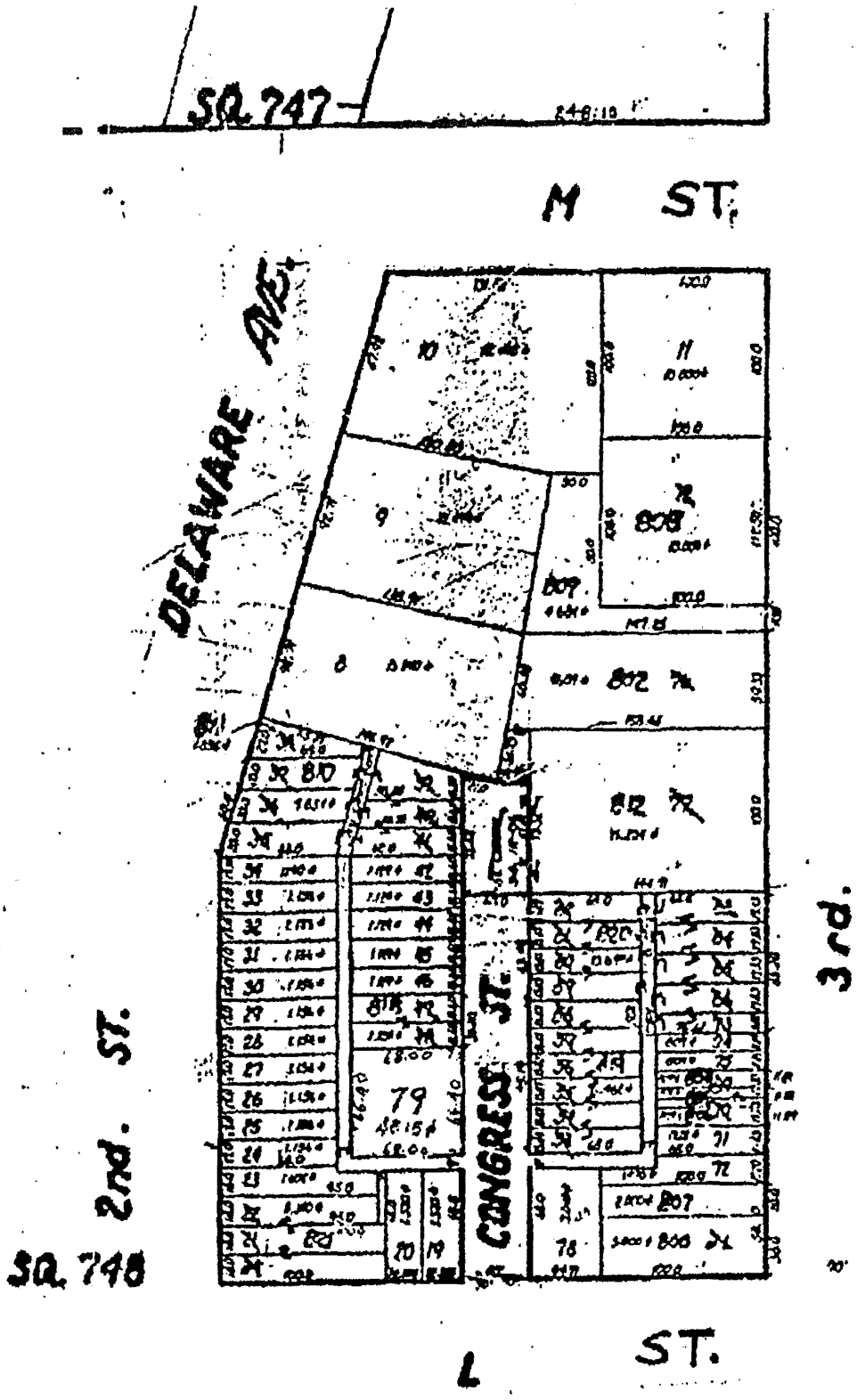
February 19, 2002

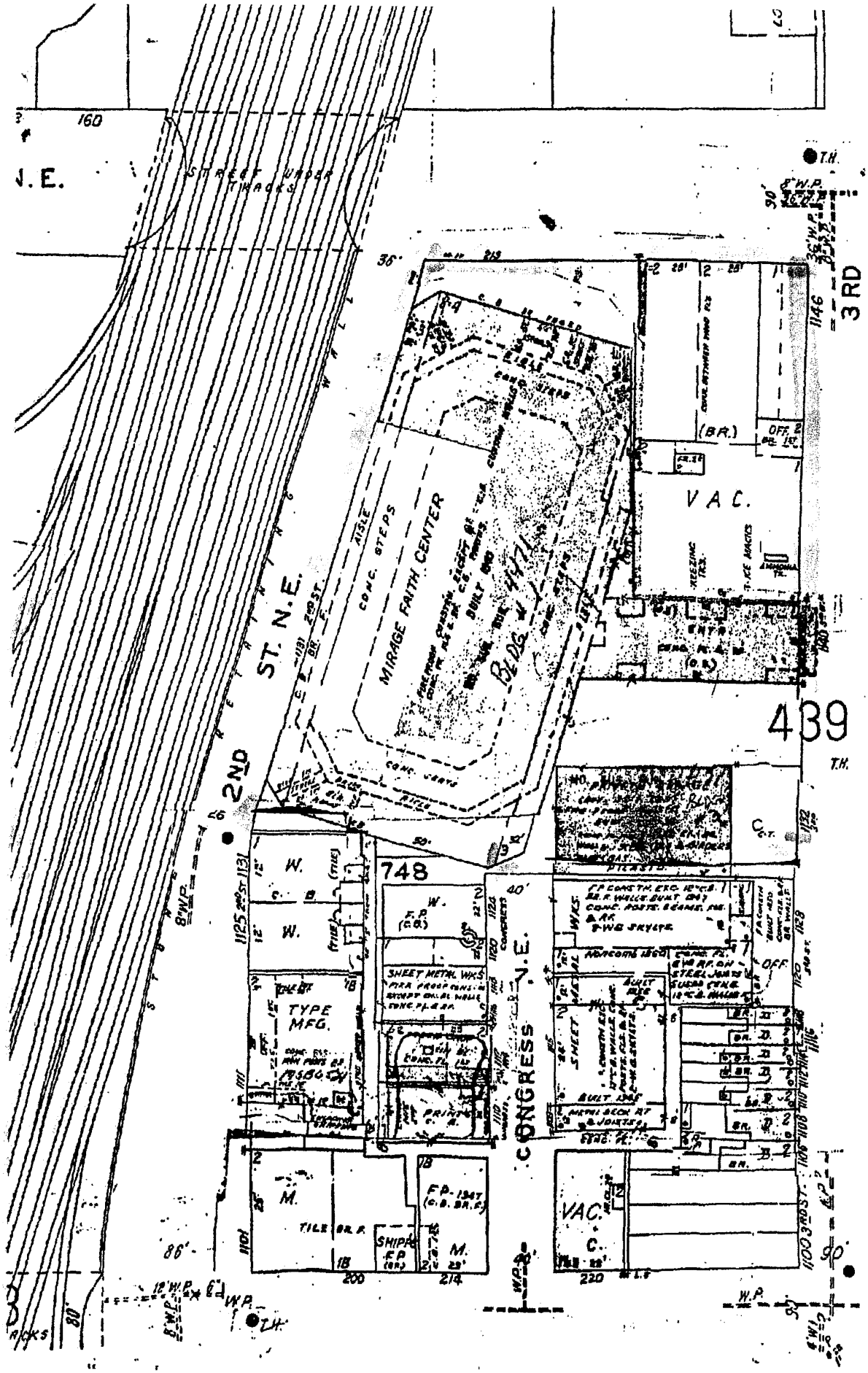
WAS1 #1059673 v1



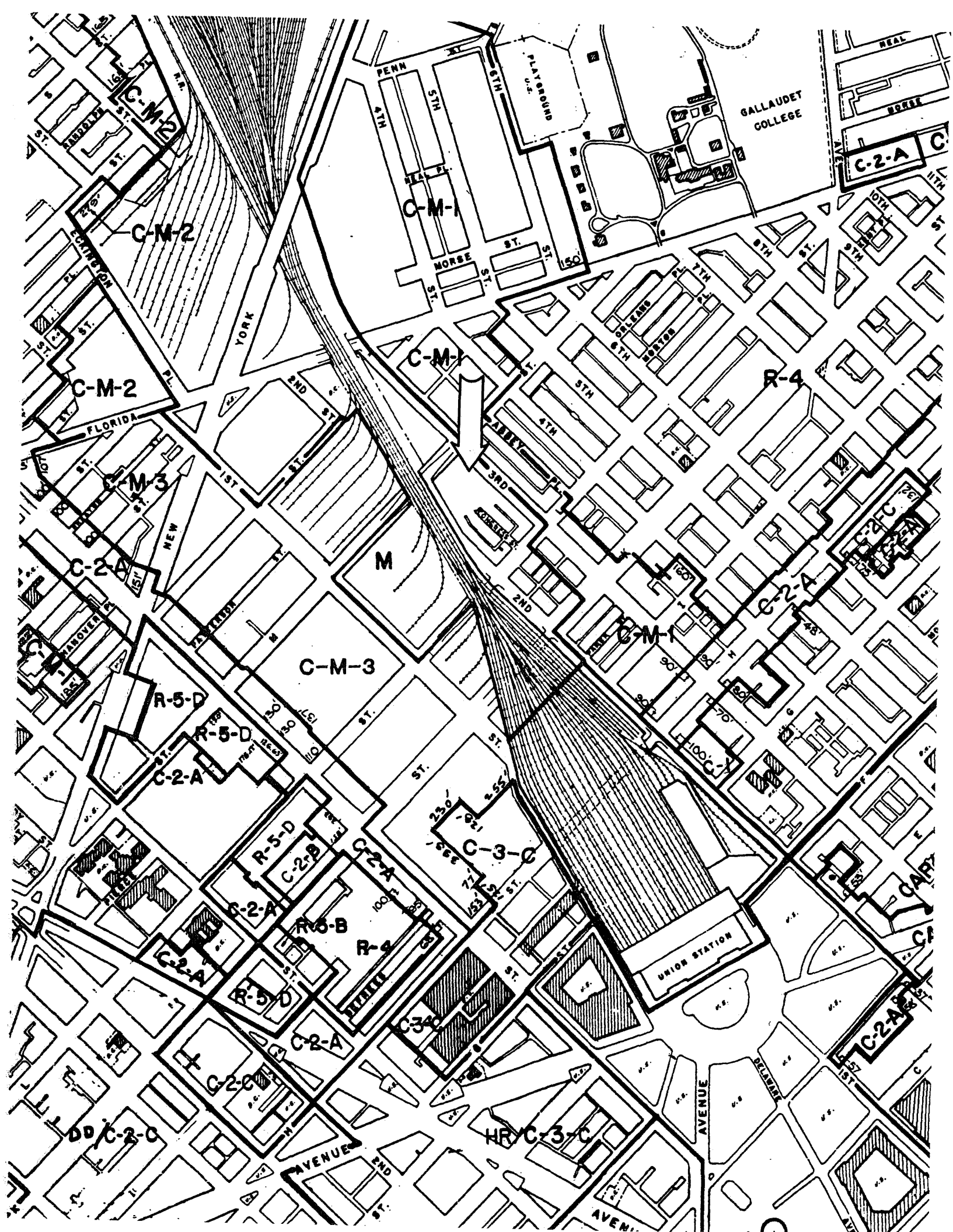
cc: Jim Stone, USA Waste of D.C., Inc.
John Skoutelas, Esq., USA Waste of D.C., Inc.
Troy Cooper, Esq., USA Waste of D.C., Inc.
Heinz Koebke, USA Waste of D.C., Inc.
Ron Adolph, TAC Consultants, Inc.
Whayne S. Quin, Esq., Holland & Knight LLP
Steven E. Sher, Holland & Knight LLP

WAS1 #1059992 v1


SQ. 747
M ST.
DELAWARE AVE.
CONGRESS ST.
2nd. ST.
3rd.
SQ. 748
L ST.
79
808
809
802
812
807
806
70
78


J.E.
STREET UNDER TRACKS
160
T.H.
3RD
1146
(B.R.)
OFF. 2
VAC.
ICEING TKS.
ICE MACHS
ENTR.
MIRAGE FAITH CENTER
CONC. STEPS
AISLE
ST. N.E.
2ND
439
T.H.
748
W.
TYPE MFG.
SHEET METAL WKS
CONGRESS
N.E.
1125 2nd ST.
1100 3RD ST.
M.
TILE
SHIPG.
VAC.
C.
200
214
220
86'
80'
8" W.P.
12" W.P.
6" W.P.
T.H.




C-M-2
C-M-1
C-M-3
M
C-2-A
C-2-B
C-2-C
C-3-C
R-5-D
R-5-B
R-4
C-2-4
HR/C-3-C
DD/C-3-C
PENN
4TH
5TH
6TH
PLAYGROUND
GALLAUDET COLLEGE
MORSE
NEAL
YORK
FLORIDA
NEW
ABBEY
ORLEANS
BOSTON
UNION STATION
DELAWARE
AVENUE
1ST
2ND
3RD
7TH
8TH
9TH
10TH
11TH

C

No. B 169096

★ ★ ★

BLRA 17
(Rev. 11/91)

District of Columbia Government
Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration Zoning Division
P.O. BOX 37200 -- Washington, D.C. 20013-7200

CERTIFICATE OF OCCUPANCY

July 14, 1994
(date)

Permission is hereby granted to LG INDUSTRIES, INC.
to use suite(s) on the first floor(s)
of the building located on lot(s) 8-9-10-11-42-43-802-808-809-810-811-812 square 748
known as premises 1140 Third Street, N.E. for the following
purpose(s) Shipping, Freight & Cargo, Transfer Station, Warehouse & Trucking (Not sexually oriented.) [su]

BZA #: EXPIRATION DATE:

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, ONLY for the premises, or part thereof, and for the purpose(s), indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be obtained.

ZONE M FEE $ 219.00

Aubrey H. Edwards, Director

By _____
Designee

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer and Regulatory Affairs

APPLICATION FOR CERTIFICATE OF OCCUPANCY

CRA-5
Rev. 8/20/83

APPLICATION FEE
$20.00
NON-REFUNDABLE

ISSUANCE FEE
(see fee schedule)

Date June 16-94

(22) Receipt # 5557
(23) Trans. # 061X030

INFORMATION ON PROPOSED BUSINESS

(1) Address of Business 1140 THIRD STREET N.E WASHINGTON DC 20002 Suite/Room # N/A
(2) Telephone No. of Business (202) 554-2440 Lot 8-9-10-11-42-43-802-808 809-810-811-812 Square 748
(3) Trade Name of Business LG INDUSTRIES INC.
(4) Is Business Incorporated? ☐ No ☒ Yes (Attach Letter of Good Standing and complete Line 5)
(5) President LEONCIO GUTIERREZ Vice President JOHN VENNERS Secretary/Treasurer LEONCIO G GUTIERREZ
(6) Is Business a Partnership? ☒ No ☐ Yes
(7) Business Owner LG INDUSTRIES INC (See instructions) (202) 554-2440 Tel. No. (days)
(8) Business Owner's Home Address 1000 HALF STREET S.E. WASHINGTON DC Zip Code 20003

INFORMATION ON OCCUPANCY

(9) ☐ Ownership Change ☐ Partial Occupancy ☐ New Bldg. ☒ Use Change ☐ Load Change BZA No. ☐
(10) Proposed Use of Business SHIPPING, FREIGHT & CARGO, TRANSFER STATION, WAREHOUSING & TRUCKING.
(11) Is Business Sexually Oriented According to D.C. Zoning Regulations? ☒ No ☐ Yes
(12) Proposed Occupancy Load N/A Square Feet Occupied N/A
(13) Which Floors to be Occupied (ONE LEVEL) 1ST Basement? N/A
(14) Prior Use Public Hall, Parking Lot, Manufacture of Ice, Storage and Garage

INFORMATION ON ENTIRE BUILDING

(15) Building Owner Coliseum Washington Associates Tel. No. (days) (301) 585-880
(16) Building Owner's Address 8605 Cameron St. Suite 316 Silver Spring MD Zip Code 20910
(17) Materials of Building BRICK, BLOCK AND CONCRETE
(18) Square Feet Occupied 63375 No. of Floors ONE Basement? NO

ATTESTATION AND SIGNATURE

I certify that all of the statements on this application are true to the best of my knowledge and belief. I agree to comply with all applicable laws and regulations of the District of Columbia.

(19) IF OWNER OF BUSINESS — Signature — Date June 16-94

IF AUTHORIZED AGENT FOR OWNER OF BUSINESS (Attach Authorization)

(20) Name of Agent — PRINT CLEARLY — Signature — Date
(21) Address of Agent — Zip Code

OFFICE USE ONLY

INFORMATION DESK 2nd Fl

(24) Premises Condemned ☐ No ☐ Yes Cleared By — Date 6/16/94
(25) Building in Res. Zone ☐ No ☐ Yes Cleared By — Date 6/16/94
(26) Rat Control ☐ No ☐ Yes Smoke Det. Info. Given By — Date 6/16/94

LICENSE BRANCH 1st Fl

(27) License Required
(28) Reviewed By — Date 6/16/94

ZONING OFFICE 2nd Fl

(29) Zone M BZA No.
(30) Prior Use 1st Public Hall / Parking Lot
(31) Certificate # 25752 Date Issued 1/16/74 BZA No. ☒ Approved ☐ Disapproved
(32) Accepted for Filing by — Date 6/16/94

EXAMINER'S USE

(33) Prior Use Code — Proposed Use Code
(34) Use Change ☐ No ☑ Yes Inspect. Required ☐ No ☐ Yes By — Date
(35) Inspection Fee $ — Issuance Fee $
(36) Approved for Issuance by — Date

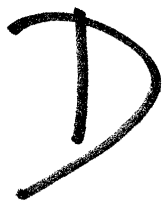
INSPECTION BRANCH

(37) Date of Scheduled C/O Inspections Thurs June 30, 1994 AM
(38) Inspection Status Approved ☐ Disapproved ☐ By — Branch — Date
(39) Inspector's Signature — Printed Name Henry Carter
(40) Reason for Disapproval

OCCUPANCY PERSONNEL

(41) ☐ Approved ☐ Denied ☐ Cancelled
By
(42) Reason for Cancellation/Denial
(43 Certificate of Occupancy No. — Date of Issuance
(44) Bldg. — Elec. — Plumb. — Fire — Zoning

84—OP176 wd87 WHITE—CRA CANARY—Fire Department PINK—Applicant



GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

MAY 22 1996

Mr. Leo Gutierrez, Sr., President
LG Industries, Inc.
1140 3rd Street, N.E.
Washington, DC 20002

MESSENGERED TO:

Sharon K. Tucker, Esq.
McGuire Woods Battle & Boothe
The Army and Navy Club Building
1627 Eye Street, N.W.
Washington, DC 20006-4007

Re: Solid Waste Handling Facility Application
1140 3rd Street, N.E.

Dear Mr. Gutierrez:

This letter provides important information regarding the application filed on behalf of LG Industries, Inc. ("LG Industries") for a solid waste handling facility permit at 1140 3rd Street, N.E.

Mayor's Order 96-51, issued on April 12, 1996, delegated the authority to implement and administer the Solid Waste Facility Permit Act of 1995, D.C. Code §6-3451 et seq. (the"Act"), to the Director of the Department of Consumer and Regulatory Affairs (the "Department"). Pursuant to that authority the Director issued emergency regulations effective April 17, 1996, governing permit application procedures for solid waste handling facilities (copy enclosed). Therefore, subject to the Act, and all other applicable statutes and regulations, the Department and other agencies will begin inspecting facilities as authorized. In addition, the Department will issue LG Industries an interim operating permit subject to the conditions set forth herein.

To obtain an interim operating permit, LG Industries must: 1) update the solid waste handling facility permit application previously submitted to the Department, or provide the Department with a notarized statement that the application does not require updating within ten business days of the date this letter is delivered; and 2) re-submit the application fee of $10,000 in the form

required by the Act within ten business days of the date this letter is delivered. The check, Nation's Bank #4334638, previously submitted to the Department is attached hereto. All submissions specified above shall be addressed to Patricia Montgomery, Administrator, Building and Land Regulation Administration ("BLRA"), Department of Consumer and Regulatory Affairs, 614 H Street, N.W., Room 312, Washington, D.C. 20001.

In addition, the interim operating permit will require LG Industries to apply for a "solid waste handling facility" certificate of occupancy with an accompanying external effects statement. This must be done within thirty days of the issuance of the interim operating permit. As a procedural matter, because the Zoning Administrator has determined that solid waste handling facilities must be approved by the Board of Zoning Adjustment ("BZA"), LG Industries's certificate of occupancy application will automatically be denied. The BLRA will advise LG Industries to apply to the BZA for a variance. The company will then have an additional thirty days to apply for a variance with the BZA. If LG Industries does not seek BZA approval within the required time, or the BZA denies the company's variance application, the Department will propose to deny the company's application for a solid waste handling facility permit.

While LG Industries's solid waste handling facility certificate of occupancy application is pending before the BZA, the Department will allow the company to operate the solid waste handling facility at its application address so long as the company is in compliance with the terms of the interim operating permit and all other laws and regulations governing solid waste handling facilities. Once LG Industries's interim operating permit is issued, the Department and other D.C. government agencies will inspect the facility as required by the Act and other applicable laws and regulations.

If LG Industries has any questions or needs additional information, please contact Miriam Jones, Esq., Chief, Office of Compliance, on (202) 727-7140.

Sincerely,

Patricia Montgomery
Administrator



GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer and Regulatory Affairs

APPLICATION FOR CERTIFICATE OF OCCUPANCY

Date 9/3/96

APPLICATION FEE $ 25.00 NON-REFUNDABLE

ISSUANCE FEE (see fee schedule)

(22) Receipt # 512228

(23) Trans. # 2186025

INFORMATION ON PROPOSED BUSINESS

(1) Address of Business 1140 Third Street, N.E. Washington D.C 20002 Suite/Room #

(2) Telephone No. of Business 202-544-3355 Lot 8,9,10,11,42, Square 748

(3) Trade Name of Business LG Industries, Inc. 43,802,808,809,810,811,812

(4) Is Business Incorporated? ☐ No ☒ Yes (Attach Letter of Good Standing and complete Line 5)

(5) President Leoncio Gutierrez Vice President Leo Gutierrez, Jr. Secretary/Treasurer Leo Gutierrez, Jr.

(6) Is Business a Partnership? ☒ No ☐ Yes

(7) Business Owner LG Industries, Inc.

(8) Business Owner's Home Address (See instructions) 1000 Half Street, S.E. Washington D.C. Tel. No. (days) Zip Code 20003

INFORMATION ON OCCUPANCY

(9) ☐ Ownership Change ☐ Partial Occupancy ☐ New Bldg. ☒ Use Change ☐ Load Change BZA No. C

(10) Proposed Use of Business "Shipping, Freight and Cargo, Transfer Station, Warehousing, Trucking, Carting or Hauling Terminal or Yard, Processing Establishment, (see attached

(11) Is Business Sexually Oriented According to D.C. Zoning Regulations? ☒ No ☐ Yes

(12) Proposed Occupancy Load N/A Square Feet Occupied 103,500

(13) Which Floors to be Occupied 1st Floor Basement?

(14) Prior Use Public Hall, Parking Lot, Manufacture, Offices, Garage, Transfer Station (Solid Waste)

INFORMATION ON ENTIRE BUILDING

(15) Building Owner Coliseum Washington Associates Tel. No. (days) 301-585-8804

(16) Building Owner's Address 8605 Cameron St., Suite 316; Silver Spring MD Zip Code 20910

(17) Materials of Building Brick, Block and Concrete

(18) Square Feet Occupied 103,500 No. of Floors 1 Basement? NO

ATTESTATION AND SIGNATURE

I certify that all of the statements on this application are true to the best of my knowledge and belief. I agree to comply with all applicable laws and regulations of the District of Columbia.

(19) IF OWNER OF BUSINESS [signature] Signature 8-29-96 Date

IF AUTHORIZED AGENT FOR OWNER OF BUSINESS (Attach Authorization)

(20) Name of Agent PRINT CLEARLY Signature Date

(21) Address of Agent Zip Code

OFFICE USE ONLY

INFORMATION DESK

(24) Premises Condemned ☒ No ☐ Yes Cleared By [signature] Date 9-3-96

(25) Building in RLA Zone ☒ No ☐ Yes Cleared By [signature] Date 9-3-96

(26) Residential ☒ No ☐ Yes Smoke Det. Info. Given By [signature] Date 9/3/96

LICENSE BRANCH

(27) Licenses Required Trucking license required

(28) Reviewed By [signature] Date 9/3/96

BZA ZONING OFFICE

(29) Zone M BZA No.

(30) Prior Use St Shipping, Freight & Cargo Transfer station Warehouse & Trucking

(31) Certificate # B169096 Date Issued 7/14/94 BZA No. 16210 ☐ Approved ☒ Disapprov

(32) Accepted for Filing by [signature] Date 9/3/96

EXAMINER'S USE

(33) Prior Use Code Proposed Use Code

(34) Use Change ☐ No ☐ Yes Inspect. Required ☐ No ☐ Yes By Date

(35) Inspection Fee $ Issuance Fee $

(36) Approved for Issuance by Date

INSPECTION BRANCH

(37) Date of Scheduled CAO Inspection AM/

(38) Inspection Status Approved ☐ Disapproved ☐ By Branch Date

(39) Inspector's Signature Printed Name

(40) Reason for Disapproval

OCCUPANCY PERSONNEL

(41) ☐ Approved ☐ Denied ☐ Cancelled By

(42) Reason for Cancellation/Denial

(43) Certificate of Occupancy No. Date of Issuance

(44) Bldg. Elec. Plumb. Fire Zoning

8+—DP176 web WHITE—CRA CANARY—Fire Department PINK—Applicant

MARK OUTS AND WHITE OUTS ARE NOT ACCEPTABLE.

(continuation of Line 10 of LG Industires, Inc., September 3, 1996 application for a Certificate of Occupancy for 1140 Third Street, N.E.):

Solid Waste Handling Facility that will be used for the receipt, loading, compacting, processing, and transfer for final disposal outside the District of Columbia of solid waste and/or construction or demolition debris (all material nonhazardous)."

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION
ZONING DIVISION

CERTIFICATE OF OCCUPANCY BRANCH
(202) 727-7010

AUTHORIZATION FORM TO ACT ON BEHALF OF THE OWNER

TO THE DIRECTOR, DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS:

THIS IS TO CERTIFY THAT I, Leoncio Guiterrez, President
(Print Name of: sole owner, general partner, or corporate officer)

AM THE TRUE OWNER OF THE BUSINESS DESCRIBED BELOW:

Proposed address of business you intend to occupy:

1140 Third Street, N.E. Washington, D.C. 20002

Type of business you intend to operate:
"Shipping, Freight and Cargo, Transfer Station, Warehousing, Trucking, Carting (see attached)

I FURTHER CERTIFY THAT THE PERSON(S) NAMED BELOW IS/ARE AUTHORIZED TO ACT ON MY BEHALF IN EXECUTING AND PROCESSING AN APPLICATION FOR A DISTRICT OF COLUMBIA CERTIFICATE OF OCCUPANCY RELATING TO THE AFFORESTED BUSINESS ESTABLISHMENT.

Name of Person to act on behalf of owner:

Neal J. Cabral, Esquire

Address of Person to act on behalf of owner:

McGuire, Woods, Battle & Boothe

1627 Eye Street, N.W. Washington, D.C. 20006

Leoncio Guiterrez *

(Signature of Business Owner)

8-29-96
(Date)

Notary: District of Columbia)ss:

Sworn to before me this 29th day of August 1996

My Commission Expires: 11-14-97

Barbara J. Malloy

NOTICE: APPLICATIONS MUST BE ACCOMPANIED BY AN AUTHORIZATION FORM IF SOMEONE OTHER THAN THE OWNER APPLIES FOR THE CERTIFICATE OF OCCUPANCY.

BARBARA J. MALLOY
NOTARY PUBLIC FOR DISTRICT OF COLUMBIA

F

McGuireWoods
Battle & Boothe LLP

The Army and Navy Club Building
1627 Eye Street, N.W.
Washington, DC 20006-4007
Telephone/TDD (202) 857-1700 • Fax (202) 857-1737

September 3, 1996

Patricia Montgomery
Administrator
District of Columbia Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration
614 H Street, N.W.
Washington, D.C. 20001

Re: Application for a Solid Waste Handling Facility Certificate of Occupancy

Dear Ms. Montgomery:

This letter describes the terms and conditions under which LG Industries, Inc. (LGI) hereby files, under protest,[1] an application for a new certificate of occupancy (CO) for a "solid waste handling facility" and related uses at LGI's 1140 3rd Street, N.E. location. This cover letter and attached "statement of external effects" are hereby incorporated into the attached CO application.

1. Introduction

On July 14, 1994, The District of Columbia Department of Consumer and Regulatory Affairs (DCRA) issued a CO to LGI to operate, among others listed uses, a "transfer station." In reliance on that CO, LGI has operated a solid waste transfer station since that time, in compliance with all applicable rules and regulations. LGI believes it is entitled to continue to so operate and hence files this request under protest.

Furthermore, at the time LGI received its CO, the District had no solid waste regulations applicable to the construction or operation of transfer stations. Hence, LGI generally followed Maryland's solid waste regulatory requirements, including totally enclosed operations, concrete floors, leachate collection, dust suppression and odor control systems.

Shortly after LGI obtained its CO, the District moved to regulate the construction and operation of private solid waste transfer stations, initially through the "Solid Waste Facility Permit Emergency Act of 1994", and its pertinently identical successor temporary Act. On May 22, 1995, the District issued emergency regulations to implement the permitting program required under the Acts. On June 21, 1995, the District issued LGI a permit application form, which LGI completed and timely submitted on June 30, 1995. This application described how LGI's transfer station would comply with the design, operation and maintenance requirements of the emergency solid waste facility regulations.

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[1]LGI is operating pursuant to a duly issued certificate of occupancy and does not waive its right to continue to do so. Hence this filing is under protest.

Assumedly, as a result of litigation in Eastern Trans-Waste et. al. v. District of Columbia, et. al. (Civil Action No. 95-5312, July 7, 1995), the District never issued permits under that regulatory program.

Notwithstanding the claims asserted in the Eastern Trans-Waste lawsuit, the District passed the "Solid Waste Facility Permit Emergency Act of 1995" on October 23, 1995. The District subsequently passed pertinently identical Temporary and Permanent Acts. Several transfer stations, including LGI, filed court challenges to these statutes. These actions are currently pending. On April 17, 1996, DCRA adopted emergency regulations establishing a permit program for private solid waste transfer stations in the District. See 43 D.C. Reg. 2232 (April 26, 1996). These regulations require existing facilities to submit permit applications describing how they will comply with the design, operation and maintenance requirements established in the regulations.

LGI filed a timely application under the regulations, and received an interim permit, dated August 2, 1996, from DCRA. The interim permit states that it is effective when LGI obtains an environmental closure bond. The interim permit also is specifically conditioned on LGI filing within thirty days of issuance an application to the Building and Land Regulation Administration for a certificate of occupancy that, at minimum, describes the use of LGI's facility as a "solid waste handling facility." In other words, LGI was instructed to make this CO filing on pain of interim operating permit revocation, and facility closure. This requirement of the interim permit parallels § 731.18 of the emergency regulations. That provision states that any solid waste facility permit application will be denied if the applicant does not have a CO that states the use as a "solid waste facility handling operation," provided that an application of an existing facility will not be denied for failure to have a properly worded CO if the applicant timely files a CO application that would meet this requirement. LGI is filing this application to meet this condition. If an applicant ultimately does not receive a revised CO, DCRA has taken the position it will not issue a final operating permit or will revoke a final operating permit, if one has already been issued.

LGI filed extensive comments on DCRA's proposed and emergency regulations (hereby incorporated), including the requirement that all existing facilities apply for new COs that state the use as a "solid waste handling facility." In those comments LGI pointed out, inter alia, that DCRA was without authority to condition issuance or retention of a solid waste permit on obtaining a new CO, particularly in the case where LGI already had a valid CO. Such action is beyond the scope of DCRA's authority under the statue, and if effective results in an unpromulgated zoning requirement issued by an agency without authority to promulgate zoning regulations. The District has neither responded to LGI's comments, nor issued final regulations. The emergency regulations expired on August 15, 1996. Once the District issues final regulations, LGI will take any additional action that is appropriate.

2. Protest and Reservation of Rights

LGI makes the enclosed request for a new CO at the District's described request only. LGI does not waive any right or claim by making this filing in compliance with the requirements imposed by DCRA. LGI makes this submission under protest and without prejudice to any claims that as a matter of law or equity the Solid Waste Facility Acts, and any or all regulations or permits issued thereunder now or in future, including the requirement that LGI file this application, are invalid. Moreover, by this filing LGI does not concede that its interim operating permit remains in force in light

of the expiration of the emergency regulations or that this application is actually required at this time, and indeed believes the opposite to be the case. Finally, by this application, LGI does not concede that its existing CO is invalid or in any way deficient, or that it is not fully authorized to operate a solid waste transfer station under its current CO. Nor does LGI concede that any CO issued as a result of this application in any way impacts the continued validity of its existing CO, and LGI will not accept any CO that in any way may impact the continued validity or viability of its existing CO, without LGI's prior express agreement in writing.

3. Enclosed Application

LGI has enclosed an Application for a Certificate of Occupancy with respect to the use of 1140 3rd Street, N.E. as, inter alia, a carting or hauling terminal or yard, a warehouse, or a processing establishment, and specifically as a solid waste handling facility that will be used for the receipt, loading, compacting, and transfer for final disposal outside the District of Columbia of municipal solid waste and/or construction and demolition debris (all material nonhazardous). Attached to this application are: (i) three copies of a site plan as required by D.C. Mun. Regs. tit. 11, §805; (ii) three copies of information indicating that the use complies with the standards for external effects set forth in D.C. Mun. Regs. tit. 11, §§ 804 and 825[2]; (iii) a Certificate of Good Standing for LGI from the District of Columbia; (iv) and a check payable to the D.C. Treasurer in the amount of $25 to cover the application fee.

4. Actions Requested and Bases Therefore

A. Introduction. Under the conditions and reservations listed above, LGI requests that the District issue it a new CO for the uses specified in the application, including a solid waste handling

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[2] LGI submits this statement of external effects only because this was called for by the District under the solid waste interim permit issued to LGI, as well as its emergency regulations and correspondence related thererto. Indeed, LGI believes that a statement of external effects is not required for an application for a certificate of occupancy for an existing facility. The external effects requirement is only intended to apply to building permits for new construction. D.C. Mun. Regs. tit. 11, § 805.1 requires information regarding external effects to be submitted by an applicant "[w]hen filing an **application for a permit** for a use permitted under § 801.7....." (emphasis added). Thus, these regulations contemplate filing external effects statements in the context of permit applications, which can only refer to building permit applications. The District's well-established past pattern of practice supports this interpretation of the regulations. The Zoning Administrator has never before required any entity to file external effects statements with CO applications. The Zoning Administrator has only applied this requirement to issuance of building permits. The regulations themselves, as well as the District's well-established past pattern of practice establish that no external effects statement is required with CO applications. Moreover, if the District chooses to reinterpret its own regulations to require external effects statements for CO applications, it may only do so prospectively. See e.g. General Electric v. EPA, 53 F.3d 1324, 1329 (D.C. Cir. 1995)(while agency has discretion to interpret a regulation in a certain manner, it may not find a violation of the regulation and impose liability on the basis of this new, unannounced interpretation without proper notice to affected parties). Nor, of course, may the District require only transfer stations to file external effects statements, while allowing every other proposed use to avoid that requirement..

facility. The Property is currently the subject of a down zoning initiative that, if enacted, would reclassify the site from an "M" to a "CM" designation (Case No. 95-4: Rezoning of Area North of Union Station). While LGI has no reason to believe the Property will in fact be down zoned, particularly since an M designation is the most appropriate one for the site, LGI cannot be sure of this result. Since the Property might or might not be down zoned, LGI specifically requests that its CO application be considered separately under applicable M and CM criteria.

B. LGI Is Legally Entitled to Issuance of the Certificate of Occupancy Applied For As A Matter of Right In An M District. Under the District's zoning regulations, any "lawful use " is permitted in an M zone, provided it is not regulated by § 822 (dealing with massage parlors) or prohibited by § 823 (banning certain specified uses, and any other uses with "similar objectionable characteristics"). D.C. Mun. Regs. tit. 11, §§ 821.2 and 821.3. The prohibited "objectionable" uses listed in § 823 include slaughter houses, ammunition and explosive manufacture and storage, rock quarry or commercial rock excavation, steel or blast furnaces and curing, tanning or storage of hides and similar high-impact or inherently unsafe uses. Unless a transfer station presents "similar objectionable characteristics" to these listed uses, the transfer station use is permitted as a matter of right in an M district.

Apart from the District's very questionable authority to completely ban any legitimate uses, see, e.g., Exton Quarries, Inc. v. Zoning Board of Adjustment, 228 A.2d 169, 179 (Pa. 1967)("a zoning ordinance which totally excludes a particular business from an entire municipality must bear a more substantial relationship to the public health, safety, morals and general welfare than an ordinance which merely confines that business to a certain area in the municipality."), it is relatively easy to conclude that the District has no basis at all to declare that transfer stations are a prohibited use under the zoning regulations. DCRA's position that the zoning regulations prohibit the operation of solid waste transfer stations directly conflicts with the legislature's decision to regulate transfer stations through a permit program.

The District has, by statute, at least since 1994, regulated the use and operation of transfer stations. See, e.g., D. C. Act No. 10-398, "the Solid Waste Facility Permit Emergency Act of 1994". Since the District has enacted legislation to permit (and tax) the operation of solid waste transfer stations, the District could not have intended to read its own zoning regulations (including § 823) as prohibiting them. In essence, by enacting legislation to regulate the operation of transfer stations, the District has ratified that they are permissible uses. A contrary conclusion by DCRA here would have the effect of rendering the statutes regulating transfer stations enacted by the governing body of the District null and void since there would be no authorized transfer station uses to regulate. Nullifying District legislation is a power that DCRA does not possess and a result no court will uphold. See, e.g., Hessey v. District of Columbia Board of Elections, 601 A.2d 295, 298 (D.C. App. 1991)(court will not presume D.C. Council enacted meaningless legislation; courts are to construe statutes in a way which presumes the legislature has acted logically and reasonably); State v. Bricker, 581 A.2d 9 (Md. App. 1990)(court presumes legislature acted with knowledge of prior legislation and intended statues that effect the same subject matter to blend into a consistent and harmonious body of law); Barter Systems, Inc. v. Rosner, 494 A.2d 964, 970 (Md. App. 1985)(if there are two constructions that can be placed on a statute, one that results in its effectiveness, and another which will make it nugatory, court must construe statute so as to render it effective); State v. White, 602 A.2d

295, 298 (N.J. Supr. Ct.1991)(legislature is presumed to be fully conversant with legislation, and courts are to avoid constructions that make statutory provisions redundant or meaningless)

Under these authorities, DCRA may not interpret the zoning regulations to prohibit the operation of solid waste transfer stations, because that interpretation would render the District's solid waste transfer station permit legislation meaningless. Indeed, the issue of whether transfer stations are prohibited due to "objectionable characteristics" is not a decision which DCRA has discretion to make. It has already been decided as a matter of law by the D.C. Council's decision to regulate rather than prohibit the use. Three is no reasonable basis for any contrary result by DCRA. Therefore, the certificate of occupancy applied for herein should be issued without delay to authorize LGI to operate a transfer station in an M district.

C. LGI is Legally Entitled to Issuance of a Certificate of Occupancy Applied to Operation of a Solid Waste Transfer Station as a Processing Operation as a Matter of Right Under Applicable DCRA and Judicial Rulings.

1. The Property is used for processing, which is permitted as a matter right in a C-M District.

The certificate of occupancy applied for in the application should immediately be granted. The uses set forth in the application clearly are permitted in a C-M district. The property use that LGI seeks to continue through the application should be permitted as a matter of right, and without referral to the BZA.

The applicable zoning regulations with respect to C-M districts provide, in part:

> (C-M) districts shall be intended to provide sites for heavy commercial and light manufacturing activities employing large numbers of people and requiring some heavy machinery under controls that would minimize any adverse effects on other nearby, more restrictive districts.
>
> Heavy truck traffic and loading and unloading operations shall be expected to be characteristic of C-M districts.

D.C. Mun. Regs. tit. 11, §§ 800.1, 800.2. Included in the uses "permitted as a matter of right in a C-M district, subject to the standards of external effects set forth in §804 . . . . is: "Any light manufacturing, processing, fabricating, or repair establishment. . . ." D.C. Mun. Regs. tit. 11, § 801.7 (j).

The applicable regulations do not define the term "processing." The zoning regulations require that words that are not otherwise defined in the zoning regulations "shall have the meanings given in Webster's Unabridged Dictionary." D.C. Mun. Regs. tit. 11, § 199.2(g); see Concerned Citizens of Brentwood v. D.C. Bd. of Zoning Adjustment, 634 A.2d 1234, 1242-43 (D.C. App. 1993). As noted by Senior Administrative Law Judge Sharon T. Nelson in her ruling on proceedings in connection with a Notice of Proposed Revocation of the processing certificate of occupancy issued to the Perkins transfer station on Queens Chapel Road, N.E., Webster's Encyclopedic Unabridged Dictionary of the English Language defines the verb "process" in part as follows:

> n. 1. a systematic series of factions directed to some end: to devise a process for homogenizing milk. 2. a continuous action, operation, or series of changes taking place in a definite manner: the process of decay. --v.t. 9. to treat or prepare by some particular process, as in manufacturing. 10. to handle (papers records, etc.) by systematically organizing them, recording or making notations on them, following up with appropriate action, or the like . . . . 12. to convert (an agricultural commodity) into marketable form by some special process. . . .

DCRA v. Perkins, OAD No. 94-029-M, at 10-11 (Nov. 21, 1994). Based in part on that definition, Administrative Law Judge Nelson ruled that the use of the Perkins property for a solid waste transfer facility was in compliance with the existing certificate of occupancy, which indicated that the use consisted of "Light Manufacturing, Processing, Fabricating, & Warehousing Steel Products and Office and Retail Construction Industrial Supplies; All Material Non-Hazardous; Not Sexually Oriented." Id. at 5, 17.

Likewise, the D.C. Court of Appeals has upheld as reasonable the BZA's interpretation of the District's zoning regulations to permit the construction and operation of a solid waste recycling center, without a variance, on property zoned C-M. Concerned Citizens of Brentwood v. D.C. Bd. of Zoning Adjustment, 634 A.2d 1234, 1242-43 (D.C. App. 1993). [3] The BZA had concluded that a solid waste recycling facility that collects, sorts, compacts, and ships recyclable solid waste readily fit into the permitted use of "processing." Id. The definition of "process" relied upon in Concerned Citizens of Brentwood, states: "to subject to a particular method, system, or technique of preparation, handling, or other treatment designed to effect a particular result; . . . to prepare for market, manufacture, or commercial use by subjecting to some process . . . to make useable by special treatment . . . (for example) processing waste material . . . ." 634 A.2d at 1238.

It is impossible to rationally distinguish between the processing functions that a solid waste recycling facility performs, and the processing functions that a solid waste transfer station performs. In both cases the facilities receive components of the solid waste stream, sort them and repackage them for shipment out of the jurisdiction. Thus, it is clear that the certificate of occupancy applied for in the processing application should be issued without delay or referral to the BZA.

2. The Property is used as a carting or hauling yard, which is permitted as a matter of right in a C-M district.

Also included in the list of uses permitted as a matter of right in a C-M district, subject to the external effects standard is: "carting, express, moving, or hauling Terminal or yard . . . ." D.C. Mun. Regs. tit. 11, § 801.7 (a). As is the case with the term processing, the applicable regulations do not define the terms "carting," "hauling," or "terminal," so reference to Webster's Unabridged Dictionary is required. D.C. Mun. Regs. tit. 11, § 199.2(g). In addition, the term "yard," as defined in D.C. Mun. Regs. tit. 11, § 199 appears to refer merely to open spaces located on real property, and is thus

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[3] The requirement for BZA approval of Intermediate Materials Recycling Facilities in a C-M zone was added to the zoning regulations in 1994, after the Court of Appeals decision the Brentwood case.

probably inappropriate for use in the context of Section 801.7(a). The definitions of those terms set forth in Webster's Unabridged Dictionary are set forth in part below.

> **cart** vb -ed/-ing/-s . . . vt 1: to carry or convey in or as if in a cart . . . to drive a cart esp. in transporting freight: follow the business of a carter
>
> **haul** \hol\vb -ed\ing-s . . . vt la: to change the course of (a ship) esp. so as to sail closer to the wind - often used with directional adverb . . . 2a (1): to exert traction on: PULL . . . often followed by directional adverb . . . (2): to take by drawing in or up (as with a net) . . . c: to transport from one place to another in a vehicle: CART <-passengers> <- coal from the mines> <cattle are -ed by rail> . . . to carry from one place to another: furnish transportation <nominal care for -ing> . . . 4a: an act of transporting <a rail - meant that several hundred expensive . . . cars would have to be brought - N.M Clark>
>
> **terminal** . . . 1a: of or relating to an end, extremity, boundary, or terminus < - pillar> b: growing at the end of a branch or stem <-bud> - compare LATERAL c: of or relating to either end of a transport line <airport> <freight pickup is - service> <- charge> . . . .
>
> **yard** . . . 1a: a small usu. walled and often paved vacant area open to the sky and adjacent to a building; COURT b: the grounds of a public building or group of buildings <inn ->; specif: CAMPUS 1 <college-> c: a usu. high-walled open air exercise area for prisoners <prison> 2 a: the grounds immediately surrounding a house and usu. comprising lawn, shrubbery and other plantings, recreation and service areas <front-> b: an area devoted to the cultivation of crops: GARDEN, FIELD 3a(1): an enclosure for poultry or livestock <chicken-> (2): a group of beehives kept together and managed as a unit b(1): an area set aside for a particular business or activity (2): an assembly or storage area <rows of snowplows in the city -s>; specif.: LANDING 2b c: a system of tracks and sidings usu. at a railroad terminal used and maintenance of cars and making up trains . . . .

(Emphasis added.)

Thus, the existing and proposed use of the Property by LGI also qualifies as a carting or hauling terminal or yard. Solid waste is carried or conveyed to and from the Property, which is within the definition of the term "cart." Equally true, the solid waste is "transport[ed] from one place to another in a vehicle," which is within the definition of "haul." The Property then serves an "end of a transport line," thus falling within the definition of "terminal." Finally, the definition of "yard" also contemplates the solid waste transfer activities to be carried on at the Property in that the Property serves as both "an area set aside for a particular business or activity" and a temporary "storage area" for a solid waste.[4]

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[4] The use of the terms carting ;and hauling to refer to the collection and transportation of solid waste is not only consistent with the above-cited dictionary definitions, it is in fact quite common. Examples of solid waste collection and transportation businesses using such names in the District of Columbia Yellow Pages under the category "Rubbish and Garbage Removal" include: Ed's Hauling, General Trash and Hauling Service, Hughes Trash & Hauling Service, Jones Express, Leo Randall

(continued...)

Accordingly, LGI is entitled to the issuance of a certificate of occupancy for the Property as a "[c] carting, express, moving, or hauling terminal or yard" in response to the this application as a matter of right.

In evaluating whether to issue the certificate of occupancy applied for this application, DCRA should be mindful that the issue of granting certificates of occupancy to similar facilities has recently been addressed by both administrative and judicial tribunals. In each circumstance, the decision has made it clear that such uses occur as a matter of right in a C-M district. In this connection, recent attempts by the District of Columbia government to invoke legal obstacles to the permitting of solid waste transfer facilities have been struck down in the courts. See D.C.R.A. v. Perkins, OAD No. 94-029-M, at 13 (describing Perkins v. D.C., No. 94-CA-6736 (D.C. Sup. 1994)).

As indicated in the above cases, the property use that LGI seeks to continue through this application should be permitted as a matter of right, and without referral to the BZA.

Please feel free to call me if you wish to discuss the above matters.

Sincerely

Neal J. Cabral

NJC:ctr

cc: Hampton Cross
Mitchell Berger
Miriam Jones

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[4](...continued)
General Hauling, Stevenson Bros. Trash & Hauling Service, U Call We Haul, and Wilburn Hauling. In addition, it is relevant to note that a local trade association for solid waste collection businesses is the District of Columbia Haulers Association, Inc. Thus, members of the public would be expected to be aware that if hauling is a use permitted as a matter of right in a C-M district, such use would include the hauling of solid waste.

bcc: Earl Mikolitch
Elaine Chotlos
Steve Walton

X:\LGCOAPP.WPD

6

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

December 17, 1996

Leoncio Gutierrez, President
1000 Half Street, S.E.
Washington, D.C. 20003

Re: 1140 3rd Street, N.E.
Square: 748 Lot(s): 8, 9, 10, 11, 42, 43 and 809 thru 812
(First Floor)
Zoned: M

Dear Mr. Gutierrez:

Your certificate of occupancy application #512228 filed on behalf of LG Industries, Inc.to use the subject premises as "Shipping, Freight and Cargo, Transfer Station, Warehousing, Trucking, Carting or Hauling Terminal or Yard and Processing Establishment" is disapproved due to the need for Board of Zoning Adjustment approval.

You will be required to obtain a special exception under the provisions of DCMR Title 11, proposed Section 822.3 (Z.C. Case #96-5) Section 822.3 to establish your use in the M Zone.

The Board of Zoning Adjustment has authority to grant special exception under provisions of DCMR Title 11, Section 3108.1.

This letter must be presented to the Office of the Board of Zoning Adjustment, Room 210, 441 4th Street, N.W., when filing for the hearing. If your request is granted, a new certificate of occupancy application must be filed.

Sincerely,

Edgar T. Nunley, Chief
Zoning Review Branch

PERSONALLY SERVED THIS 4th DAY OF Feb, 1997
AT 614 H St N.W. ON 2:03 p.m.
BY ME
Chris Bell Gwen Epps
CONSUMER & REGULATORY AFFAIRS
ZONING REGULATION DIVISION

December 17, 1996

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1000 Half Street, S.E.
Washington, D.C. 20003

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(First Floor)
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Sincerely,

Edgar T. Nunley, Chief
Zoning Review Branch

H

BZA Form 1
(Revised 7/17/95)

Docket No. 16239

Kgw

BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

APPEAL

NOTE: See reverse side of this form for filing instructions, filing fees and information required by the Board.

DO NOT MAIL — DO NOT MAIL

TO THE BOARD OF ZONING ADJUSTMENT:

Pursuant to Sections 3105 and 3106 of the Zoning Regulations of the District of Columbia, an appeal is hereby taken from the administrative decision of Edgar T. Nunley, Chief Zoning Review Branch
(Name of administrative officer and title)

made on February 4, 1997, to the effect that LG Industries
(Date of decision)

would not be reissued a Certificate of Occupancy for its Transfer Station.

Premises affected are located at 1140 3rd Street NE DC 20002
(Street Address)

Lot(s) 8, 9, 10, 11, 42, 43 and 809 through 812, Square(s) 748

in the District of Columbia, in Zoning District M.

Present Use of Property: Transfer Station.

Proposed Use of Property: Transfer Station.

Owner of Property: LG Industries, Inc.

Address of Owner: 1140 3rd. Street, NE DC. 20002

Name and address of appellant, if other than owner: _____

State manner in which appellant is aggrieved by administrative decision: Applicant seeks to challenge the Zoning Review Branches denial of its Certificate of Occupancy. [Please see attached]

State briefly the allegations of error in administrative decision:

Applicant maintains that it is presently operating under a valid certificate of occupancy and that the decision to not reissue is both legally and administratively improper.

Relevant Sections of the Zoning Regulations: 11 DCMR § 821; 801.7

Date: February 21, 1997 Signature: Chris Bell
(Appellant)*

*If appeal is filed by agent of the appellant, Form 1 (notice of appeal) shall be accompanied by a letter signed by the appellant authorizing the agent to act on his behalf in this appeal.

TO BE NOTIFIED OF HEARING AND DECISION:

Name: Mitchell Gabral

Address: McGuire Woods, Battle & Boothe, 1627 Eye Street, NW

Zip Code: Washington, DC 20006-4007 Phone No. (202) 857-1727

APPEAL THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED.

DISTRICT OF COLUMBIA ZONING COMMISSION
97 FEB 21 P 3:59

McGuireWoods
Battle & Boothe LLP

The Army and Navy Club Building
1627 Eye Street, N.W.
Washington, DC 20006-4007
Telephone/TDD (202) 857-1700 • Fax (202) 857-1737

Neal J. Cabral
Attorney at Law
Phone: (202) 857-1727
Fax: (202) 857-1737
email: njcabral@mwbb.com

'97 FEB 21 P4:15

February 21, 1997

Board of Zoning Adjustment
441 4th Street, N.W.
Suite 210
Washington D.C. 20001

VIA HAND DELIVERY

Re: Board of Zoning Adjustment Application
LG Industries - 1140 3rd Street, N.E.

Dear Board of Zoning Adjustment:

On behalf of the applicant in the above referenced matter, it is my pleasure to submit this appeal to the denial of a certificate of occupancy to the Board of Zoning Adjustment (the "BZA"). In particular, you will note that this application contains the following:

1. an application on BZA Form 2;

2. a detailed statement of existing and intended use;

3. a plat drawn by a certified engineer showing the boundaries and dimensions of the existing buildings and accessory buildings; and plans and elevations in sufficient detail to clearly illustrate any proposed building to be erected or altered;

4. four (4) photographs showing front, rear and sides, to the extent possible;

5. the names and mailing addresses of the owners of all property within 200 feet in all directions from all boundaries of the property involved in the application;

6. names and mailing addresses of any persons who lease with the owner all or part of the property (not applicable);

16239

7. documentation or a copy of the Certificate of Occupancy showing the last authorized use;

8. a memorandum from the zoning administrator directing the applicant to the BZA prior to filing this application.[1]

9. a check covering the filing fee in accordance with the BZA Schedule of Fees

Please feel free to call me or Christopher D. Bell (703-712-5441) upon receipt if you have any questions or require any additional information.

Sincerely,

Neal J. Cabral

Enclosures

cc: Leo Gutierrez, Sr., President LG Industries, Inc.
Sharon K. Tucker, Esquire
Christopher D. Bell, Esquire

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[1]LG Industries, Inc. (LGI) never received a signed copy of the Zoning Review Branch's Letter denying the application. LGI called Mitch Burger of DCRA who had Edgar T. Nunley reexecute a copy of the letter on February 4, 1997. This executed copy was personally served on Christopher D. Bell on that date. Pursuant to Mr. Burger, the thirty (30) day period for filing an appeal of this denial that is included in LGI's interim solid waste permit began to run from that date.

DETAILED STATEMENT OF EXISTING AND INTENDED USE

LG Industries, Inc. (the "Applicant") has filed this appeal to the Board of Zoning Adjustment (the "BZA") based on the denial of its Certificate of Occupancy Application #512228. The denial letter was executed by Mr. Edgar T. Nunley of the Zoning Review Branch on February 4, 1997, and personally served on Mr. Christopher D. Bell on that date. This letter indicated that it would be necessary to obtain a special exception under the provisions of the DCMR Title 11 in order to obtain this requested use in an M Zone. As indicated in its September 3, 1996 letter to the Buildings and Land Administration, the Applicant filed its application under protest and compulsion in order to comply with provisions of its August 2, 1996, "Interim Solid Waste Permit."

The Applicant had requested the certificate with the intended purpose of using its premises at 1140 3rd Street, N.E. for "Shipping, Freight and Cargo, Transfer Station, Warehousing, Trucking, Carting or Hauling Terminal or Yard, Processing Establishment, Solid Waste Handling Facility that will be used for the receipt, loading, compacting, processing, and transfer for final disposal outside the District of Columbia of solid waste and/or construction or demolition debris (all material nonhazardous)." The Applicant had previously received a Certificate of Occupancy dated July 14, 1994 for the same location. On this certificate, the facility had been approved to be used for "*Shipping, Freight & Cargo, Transfer Station, Warehouse & Trucking.*" Applicant believes its 1994 Certificate of Occupancy validly authorizes it to conduct its current transfer station activities. Applicant applied for the new Certificate solely because it was required to do so under the terms of its Interim Permit.

The facility is leased and operated by the Applicant. The facility has been operational since 1994. The facility serves as a transfer station for municipal solid waste to Lorton and other landfills. Only municipal solid waste is handled at the facility. No chemical or hazardous material is processed at the facility. The facility serves many solid waste contractors who collect waste from commercial properties throughout the District. The facility serves as an economic engine for its host community. The facility itself employs eleven (11) people, while its business supports the activities of twenty (20) businesses and

#11 16234

approximately sixty (60) people.

The Applicant has attempted to operate its facility in a way that reconciles the competing demands of the solid waste industry with that of area residents who live in close proximity with the facility. The Applicant has gone through considerable expense in modifying the building to accommodate the needs of a transfer station and area residents. Towards this end, the Applicant has undertaken noise, dust, odor, and pest control measures. The Applicant maintains a misting operation within the facility, has controls on the amount of organic solid waste that can be delivered to the facility, operates a quality air filtration system, and requires that the floors of the facility be washed down at night with a special preparation that kills germs. The Applicant also regularly polices the premises to remove trash buildup and to prevent illegal dumping.

The Applicant has attempted to operate its facility so that much of the actual business activity takes place in the building and/or away from neighborhood residences. All trucks are required to cover their loads and are hosed down frequently. Additionally, air from the facility is vented away from residences. The Applicant has sought to conduct its transfer station in a way that is efficient for drivers, while minimizing the impact to the industrial area and its residents. In this regard, trucks are told not to travel on residential routes and are "staged" in a non-residential area prior to coming to the facility to reduce queuing. The Applicant has made many efforts to ensure that residents are spared, to the extent feasible, the inconvenience of truck noise and congestion. It should also be noted that the Applicant has met with area residents to address their concerns and undertaken initiatives to benefit the community in this regard.

Applicant maintains that it has been improperly denied this Certificate of Occupancy. The recent Zoning Commission hearings on the Text Amendment 96-5 reflected the concern of the community at large with respect to the operation of transfer stations. While the Applicant is sympathetic to concerns of area residents, the Applicant believes that neither the text amendments nor the outright denial of its Certificate of Occupancy will serve to broker a resolution to this complex issue or advance the interests of the District as a whole. Transfer stations are a necessary part of the urban infrastructure. Many successful urban communities have found ways to promote the needs of transfer

stations within urban confines. Consequently, more attention should be devoted to policy initiatives that integrate health and safety options for these facilities, rather than promote burdensome government regulations that stifle business opportunity. Myopic, piecemeal government intervention will not bring about answers that are needed to this problem. Instead, such interventions will promote market upheavals that do not advance the interests of area residents, but have the unintended affect of undermining the economic viability of transfer stations. Given the expected increases that are anticipated for municipal solid waste for the District, the District can ill-afford poorly designed regulatory approaches that impede social goals in this area.

The District's trash needs compel the existence of transfer stations so that it can effectively manage it trash generation. Failure to properly plan and prepare for transfer stations can produce harmful consequences. For example, poor policy initiatives can raise the cost of trash service to District residents. As the operation costs for transfer stations increase, these costs are passed on to commercial and residential consumers. Additionally, high trash costs and perceived problems of service delivery and execution can negatively impact the business climate and make new businesses and residents more apt to locate in surrounding suburban areas, thereby denying the District of needed tax revenues. Therefore, the regulatory framework that is ultimately adopted must harmonize competing residential and economic visions of prosperity for the District.

The Applicant is aware that its transfer station has been a source of concern for some individuals. The Applicant has attempted to address these concerns in a timely and forthright manner. Despite its well-intentioned efforts, the Applicant realizes that some detractors of the facility will never be satisfied with any effort by the Applicant to respond to resident concerns. Nonetheless, the Applicant is confident that this facility is a quality facility that is being run in a responsible manner. The Applicant's transfer station performs a vital service to the District. Although the benefits of the transfer station are dispersed over a large group, the Applicant is aware that the area residents feel that they bear a disproportionate share of the costs. In this regard, the Applicant would like to continue dialogue with community activists, area residents, and government officials to promote a harmonious relationship of peaceful coexistence.

The Applicant strongly maintains that it has the legal right to operate this transfer station. The terms of the original Certificate of Occupancy provided that a transfer station would be allowed. The Applicant has sought to operate this facility in a professional manner with due regard for area residents and business concerns. Consequently, the Applicant should be granted the relief requested herein so that it can continue its operations. In so doing, the Applicant can continue its business in the area while trying to reach meaningful compromise that advances and respects the interests of all parties involved.

Signed: _____ Date: 2/21/97
Agent for Applicant

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LGI INDUSTRIES, INC. STATEMENT OF BASES FOR ACTION SOUGHT IN THIS APPEAL TO THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

This action involves an appeal by LG Industries, Inc. (LGI) from a decision by the Zoning Review Branch denying LGI's application for a certificate of occupancy (CO) for a "solid waste handling facility," as well as related uses, for its operations at 1140 Third Street, N.E. The facts surrounding LGI's CO application are set forth in detail in LGI's September 3, 1996 application cover letter to the Building and Land Regulation Administration (BLRA)(attached). LGI currently operates a solid waste transfer station at 1140 Third St., N.W. under an existing CO issued in 1994, and authorizing, among other related uses, operation of a "transfer station." The regulations applicable to solid waste transfer stations issued by the D.C. Department of Consumer and Regulatory Affairs (DCRA) on an emergency basis in April 1996, and since finalized on December 20, 1996, 43 D.C. Reg. 6816, as well as a "Solid Waste Handling Facility Interim Operating Permit" (copy attached), dated August 2, 1996, and issued to LGI by DCRA pursuant to those regulations, required that LGI, as a condition to maintaining its interim solid waste permit, file an application with BLRA for a new CO, and that that new application use the words "solid waste handling facility" in its description of the uses to be authorized by a new CO. See 21 DCMR § 731.15 (c). That interim permit also authorizes LGI to apply to the Board of Zoning Adjustment should the BLRA deny LGI's newly required CO application. Pursuant to these provisions, and under protest and compulsion, LGI applied for the new CO in September 1996, and BLRA has recently denied it. As required, and under protest and compulsion, LGI hereby appeals that denial.

The bases for LGI's appeal are as follows: (i) BLRA's stated basis for denying LGI's CO application is invalid and unlawful because CO applicants are not subject to a pending proceeding by the Zoning Commission to establish a special exception for the proposed use, and even if LGI is subject to such a pending proceeding, LGI is grandfathered from those requirements as an existing use; (ii) BLRA has no other lawful basis to deny LGI's application; (iii) the requirements and procedures established by DCRA to compel LGI to seek a new CO are without basis in law or regulation and are therefore invalid and unlawful; (iv) LGI is operating lawfully by right under a valid CO at its existing facility and that CO has never been found invalid; and (v) all members of the Executive Branch of the District of Columbia government, including DCRA and BLRA, are precluded from asserting in any forum that a solid waste transfer use is prohibited in all districts under the District's zoning regulations.

Wherefore, LGI requests this Board to grant the following relief: (i) declare that DCRA may not, de facto or de jure, annul LGI's exiting CO through its solid waste regulations or permits issued thereunder; (ii) declare that DCRA's requirement that LGI obtain a new CO as a condition of maintaining its solid waste transfer station permit is invalid and unlawful; (iii) declare that this Board has no jurisdiction to hear these issues; (iv) declare that LGI's existing solid waste transfer station is grandfathered from any and all requirements that the Zoning Commission might adopt pursuant to its pending special exception case; (iv) declare that the existence of any pending Zoning Commission special use case is an unlawful and invalid basis for denying a certificate of occupancy application; (v) declare that the Executive Branch agencies of the District of Columbia may not take the position in any forum, including this one, that solid waste transfer stations are not an authorized use as a matter of right in applicable districts under the District's zoning code; (vi) issue LGI the certificate of occupancy requested; and (vii) grant all such other relief as is just, fair and equitable.

16239

Board of Zoning Adjustment
441 4th Street, N.W.
Suite 210
Washington D.C. 20001

Re: Board of Zoning Adjustment Application
LG Industries - 1140 3rd Street, N.E.

Dear Board of Zoning Adjustment:

As the owner of the above-referenced property, I hereby consent to, and authorize McGuire, Woods, Battle & Boothe, L.L.P. to act as my agent for the above-referenced Board of Zoning Adjustment application.

By: Heinz Koebke
Name: HEINZ KOEBKE
Title: PLANT MANAGER

DISTRICT OF COLUMBIA, to-wit:

The foregoing instrument was acknowledged before me this 31st day of January, 1997, by Heinz Koebke.

Notary Public

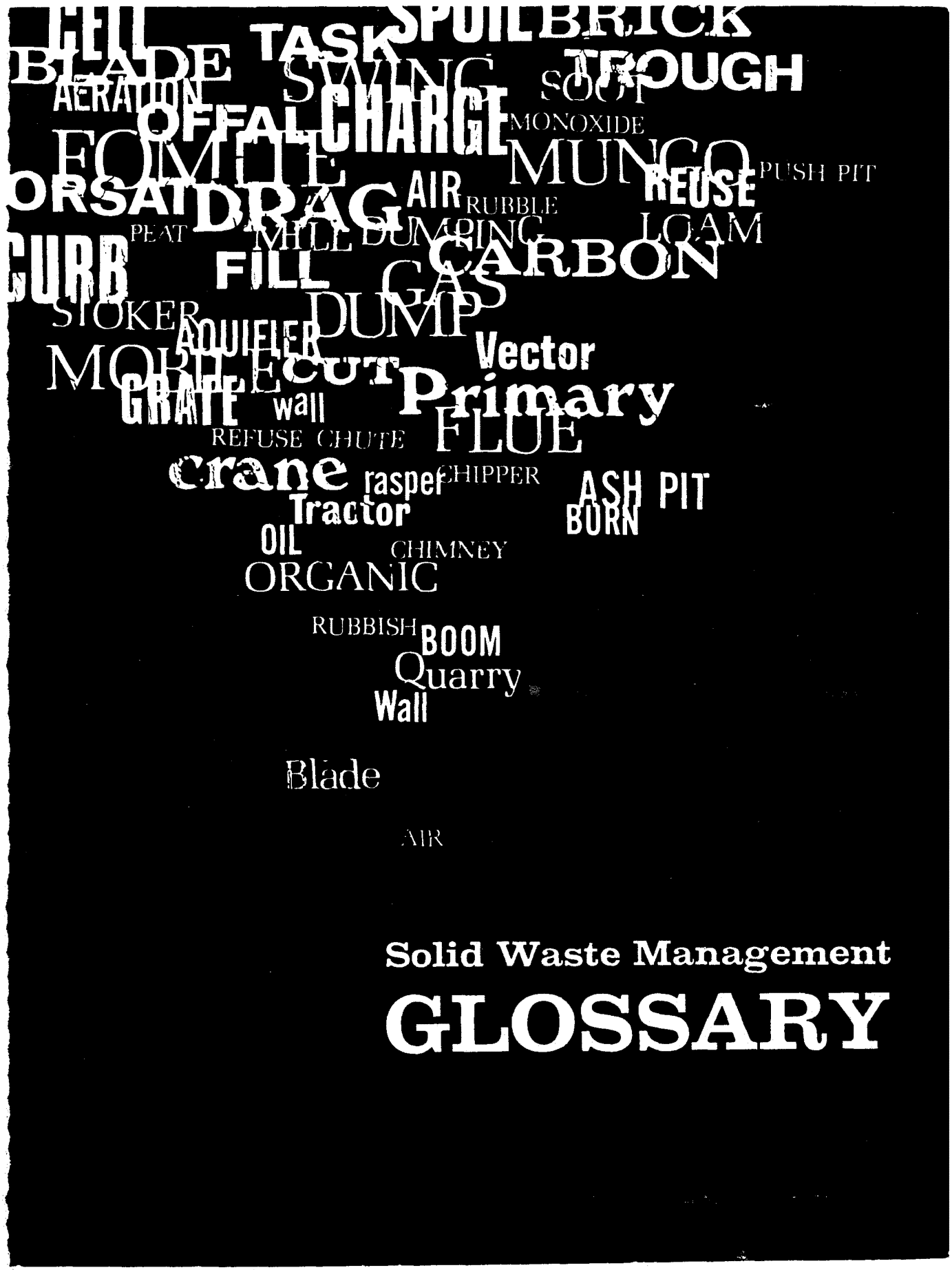
My commission expires: 1 March 1998

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Solid Waste Management

GLOSSARY

Solid Waste Management

GLOSSARY

This publication (SW-108ts)
was prepared by the Federal solid waste management program

U.S. ENVIRONMENTAL PROTECTION AGENCY
1972

FOREWORD

Solid waste management is interdisciplinary. It incorporates, for example, the specialized efforts of engineers, planners, earth scientists, labor managers, economists, lawyers, and psychologists, as well as businessmen in a variety of service trades and industries. Each group has its own specialized and ever-expanding nomenclature. Not unexpectedly, therefore, confusion exists regarding certain terms in everyday use. Perhaps the most common instance is the way community officials and others often refer to *dumps* when they mean *sanitary landfills* and vice versa. The blurring of the clearcut distinction between the two terms has been a serious problem in communicating to citizens the need for better solid waste disposal.

There is need, then, for a glossary to standardize the concepts in frequent use. This publication is also needed for terms that are coming into use in the literature of solid waste management and may be less well known to government officials and members of the industries involved. This glossary represents an attempt to perform both services.

Whenever possible, modifying terms are listed beneath the noun modified. The choice of terms to be defined and many of the definitions themselves have benefitted from the investigations and reports undertaken under the Solid Waste Disposal Act of 1965, as amended. In preparing training manuals, staff personnel of the Office of Solid Waste Management Programs concerned with this activity have of necessity developed standard sets of terms, and the present glossary has drawn from their work. The U.S. Environmental Protection Agency also gratefully acknowledges the contributions made by many individuals in the Federal solid waste management program, other Federal agencies, State and local governments, private industry, and universities. We will welcome suggestions from users for additional or better definitions that could be included in future editions of the glossary.

—SAMUEL HALE, JR.
Deputy Assistant Administrator
for Solid Waste Management

Traveling Grate · A stoker that is essentially a moving chain belt carried on sprockets and covered with separated small metal pieces called keys. The entire top surface can act as a grate while moving through the furnace but can flex over the sprocket wheels at the end of the furnace, return under the furnace, and reenter the furnace over sprocket wheels at the front.

STORAGE · The interim containment of solid waste, in an approved manner, after generation and prior to ultimate disposal.

STORAGE PIT · A pit in which solid waste is held prior to processing.

STREET REFUSE · Material picked up when streets and sidewalks are swept manually and mechanically.

SUBSIDENCE · Settling or sinking of the land surface due to many factors such as the decomposition of organic material, consolidation, drainage, and underground failures.

SUBSOIL · That part of the soil beneath the topsoil; usually does not have an appreciable organic matter content.

SULFUR OXIDES (SO_n) · Compounds of sulfur combined with oxygen that have a significant influence on air pollution.

SURFACE COMPACTION · Increasing the dry density of surface soil by applying a dynamic load.

SURFACE CRACKING · Discontinuities that develop in the cover material at a sanitary landfill due to the surface drying or settlement of the solid waste. (These discontinuities may result in the exposure of solid waste, entrance or egress of vectors, intrusion of water, and venting of decomposition gases.)

SURFACE DUMP *See* DUMP.

SWILL · Semiliquid waste material consisting of food scraps and free liquids.

TAILINGS · Second grade or waste material derived when raw material is screened or processed.

TEEPEE BURNER *See* BURNER, Conical.

TEMPERING AIR *See* AIR, Cooling.

TERMINAL VELOCITY *See* SETTLING VELOCITY.

THERMAL CONDUCTIVITY · The specific rate of heat flow per hour through refractories or other substance expressed in Btu per sq ft of area, for a temperature difference of one degree Fahrenheit, and for a thickness of one inch expressed as Btu per sq ft per hour in degrees Fahrenheit and inches.

THERMAL EFFICIENCY · The ratio of heat used to total heat generated.

THERMAL SHOCK RESISTANCE · The ability of a material to withstand sudden heating or cooling or both without cracking or spalling.

THERMOCOUPLE · Two lengths of wire, made from different kinds of homogeneous metals, that are connected to form a complete electric circuit; they develop an electromotive force when one junction is at a different temperature than the other.

TIDAL MARSH · Low flat marshlands traversed by interlaced channels and tidal sloughs and subject to tidal inundation; normally, the only vegetation present is salt-tolerant bushes and grasses.

TIPPING FLOOR · Unloading area for vehicles that are delivering solid waste to an incinerator or other processing plant.

TOE · The bottom of the working face at a sanitary landfill.

TOPSOIL · The topmost layer of soil; usually refers to soil that contains humus and is capable of supporting good plant growth.

TOPOGRAPHIC MAP · A map indicating surface elevations and slopes.

TOTAL COST BIDDING · A method of establishing the purchase price of movable equipment; the buyer is guaranteed that maintenance will not exceed a set maximum amount during a fixed period and that the equipment will be repurchased at a set minimum price when the period ends.

TOTE BARREL *See* CONTAINER, Carrying.

TRANSFER STATION · A site at which solid waste is concentrated and then taken to a processing facility or sanitary landfill.

TRANSPORT · The movement of solid waste subsequent to collection.

TRASH *See* RUBBISH.

TROMMEL *See* SCREEN, Rotary.

TUYERES · Openings or ports in a grate through which air can be directed to improve combustion.

UNDERFIRE AIR · Any forced or induced air, under control as to quantity and direction, that is supplied beneath a grate and passes through a fuel bed.

Dedicated to the memory of
Jess Stein

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transferred or removed, as from one place to another. **2.** *Law.* a person to whom a transfer is made, as of property. [1730–40; TRANSFER + -EE]

trans•fer•ence (trans fûr′əns, trans′fər əns), *n.* **1.** the act or process of transferring. **2.** the fact of being transferred. **3.** *Psychoanal.* **a.** the shift of emotions, esp. those experienced in childhood, from one person or object to another, esp. the transfer of feelings about a parent to an analyst. **b.** displacement (def. 7). [1675–85; < NL *trānsferentia*. See TRANSFER, -ENCE]

transfer′ence num′ber, *Physical Chem.* that fraction of the total electric current that anions and cations carry in passing through an electrolytic solution. Also called **transport number.** [1895–1900]

trans•fer•en•tial (trans′fə ren′shəl), *adj.* of, pertaining to, or involving transference. [1885–90; < NL *trānsferentiā(a)* TRANSFERENCE + -AL¹]

trans′fer fac′tor, *Immunol.* a lymphocyte product that, when extracted from T cells of an individual with immunity to a particular antigen, can confer that immunity when administered to another individual of the same species. [1955–60]

trans′fer mold′ing, a method of molding thermosetting plastic in which the plastic enters a closed mold from an adjoining chamber in which it has been softened. [1935–40]

trans′fer of train′ing, *Psychol.* transfer (def. 19).

trans•fer•or (trans fûr′ər), *n. Law.* a person who makes a transfer, as of property. [1870–75; TRANSFER + -OR²]

trans′fer or′bit, the flight path of a space vehicle moving from a nearly circular orbit to one with different parameters.

trans′fer pay′ment, **1.** any payment made by a government for a purpose other than that of purchasing goods or services, as for welfare benefits. **2.** any money received that is neither a payment for goods or services nor investment income. [1940–45]

trans•fer•ral (trans fûr′əl), *n.* transferal.

trans•fer•rin (trans fer′in), *n. Biochem.* a plasma glycoprotein that transports dietary iron to the liver, spleen, and bone marrow. [1947; TRANS- + L *ferr(um)* iron + -IN²]

transfer RNA, *Genetics.* a small RNA molecule, consisting of a strand of nucleotides folded into a clover-leaf shape, that picks up an unattached amino acid within the cell cytoplasm and conveys it to the ribosome for protein synthesis. *Abbr.:* tRNA [1960–65]

trans′fer sta′tion, a place where residential garbage and commercial wastes are compressed, baled, and loaded on vehicles for moving to disposal sites, as for landfill.

trans•fig•u•ra•tion (trans′fig yə rā′shən, trans fig′-), *n.* **1.** the act of transfiguring. **2.** the state of being transfigured. **3.** (*cap.*) the supernatural and glorified change in the appearance of Jesus on the mountain. Matt. 17:1–9. **4.** (*cap.*) the church festival commemorating this, observed on August 6. [1325–75; ME *Transfiguracion* < L *trānsfigūrātiōn-* (s. of *trānsfigūrātiō*) change of shape. See TRANSFIGURE, -ATION]

trans•fig•ure (trans fig′yər *or, esp. Brit.,* -fig′ər), *v.t.,* **-ured, -ur•ing.** **1.** to change in outward form or appearance; transform. **2.** to change so as to glorify or exalt. [1250–1300; ME *transfiguren* < L *trānsfigūrāre* to change in shape. See TRANS-, FIGURE] —**trans•fig′ure•ment,** *n.*

—**Syn. 1.** transmute, renew.

trans•fi•nite (trans fī′nit), *adj.* **1.** going beyond or surpassing the finite. —*n.* **2.** See **transfinite number.** [1900–05; TRANS- + FINITE]

transfi′nite num′ber, *Math.* an infinite cardinal or ordinal number. [1900–05]

trans•fix (trans fiks′), *v.t.,* **-fixed** or **fixt, fix•ing.** **1.** to make or hold motionless with amazement, awe, terror, etc. **2.** to pierce through with or as if with a pointed weapon; impale. **3.** to hold or fasten with or on something that pierces. [1580–90; < L *trānsfixus* (ptp. of *trānsfigere* to pierce through), equiv. to *trāns-* TRANS- + *fig(ere)* to pierce + *-sus,* var. of *-tus* ptp. suffix] —**trans•fix•ion** (trans fik′shən), *n.*

—**Syn. 1.** fascinate, spellbind, engross, captivate, enthrall.

trans•form (*v.* trans fôrm′; *n.* trans′fôrm), *v.t.* **1.** to change in form, appearance, or structure; metamorphose. **2.** to change in condition, nature, or character; convert. **3.** to change into another substance; transmute. **4.** *Elect.* **a.** to increase or decrease (the voltage and current characteristics of an alternating-current circuit), as by means of a transformer. **b.** to decrease (the voltage and current characteristics of a direct-current circuit), as by means of a transformer. **5.** *Math.* to change the form of (a figure, expression, etc.) without in general changing the value. **6.** *Physics.* to change into another form of energy. —*v.i.* **7.** to undergo a change in form, appearance, or character; become transformed. **8.** *Math.* [illegible]

< L *trānsfōrmāre* to change in shape. See TRANS-, FORM] —**trans•form′a•ble,** *adj.* —**trans•form′a•tive,** *adj.*

—**Syn. 1.** transfigure. TRANSFORM, CONVERT mean to change one thing into another. TRANSFORM suggests changing from one form, appearance, structure, or type to another: *to transform soybeans into oil and meal by pressure.* CONVERT suggests so changing the characteristics as to change the use or purpose: *to convert a barn into a house.*

trans•for•ma•tion (trans′fər mā′shən), **1.** the act or process of transforming. **2.** the state of being transformed. **3.** change in form, appearance, nature, or character. **4.** *Theat.* a seemingly miraculous change in the appearance of scenery or actors in view of the audience. **5.** *Logic.* Also called **transform.** one of a set of algebraic formulas used to express the relations between elements, sets, etc., that form parts of a given system. **6.** *Math.* **a.** the act, process, or result of transforming or mapping. **b.** function (def. 4a). **7.** *Ling.* **a.** See **transformational rule. b.** the process by which deep structures are converted into surface structures using transformational rules. **8.** *Genetics.* the transfer of genetic material from one cell to another resulting in a genetic change in the recipient cell. **9.** a wig or hairpiece for a woman. [1400–50; late ME < LL *trānsfōrmātiōn-* (s. of *trānsfōrmātiō*) change of shape. See TRANS-, FORMATION] —**trans′for•ma′tion•al,** *adj.*

trans•for•ma′tion•al-gen′e•ra•tive gram′mar (trans′fər mā′shə nl jen′ər ə tiv, -ə rā′tiv), a grammar that combines the principles of generative grammar and transformational grammar. [1975–80]

transforma′tional gram′mar, a system of grammatical analysis, esp. a form of generative grammar, that posits the existence of deep structure and surface structure, using a set of transformational rules to derive surface structure forms from deep structure; a grammar that uses transformations to express the relations between equivalent structures. [1960–65]

trans•for•ma•tion•al•ist (trans′fər mā′shə nl ist), *n.* a person who follows or promotes the theories of transformational grammar. [1960–65; TRANSFORMATIONAL (GRAMMAR) + -IST] —**trans′for•ma′tion•al•ism,** *n.*

transforma′tional rule′, *Ling.* a rule of transformational grammar that relates two phrase markers in the course of a derivation from the deep to the surface syntactic representation of a sentence, as by reordering, inserting, or deleting elements; a rule that converts deep structures into surface structures.

trans•for•ma•tion•ist (trans′fər mā′shə nist), *n.* transformist. [1885–90; TRANSFORMATION + -IST]

transforma′tion point′, *Metall.* a temperature at which the transformation of one microconstituent to another begins or ends during heating or cooling. Also called **transforma′tion tem′perature.**

transforma′tion range′, *Metall.* the temperature range within which austenite forms when a ferrous metal is heated, or within which it disappears when the metal is cooled.

trans•form•er (trans fôr′mər), *n.* **1.** a person or thing that transforms. **2.** *Elect.* an electric device consisting essentially of two or more windings wound on the same core, which by electromagnetic induction transforms electric energy from one set of one or more circuits to another set of one or more circuits such that the frequency of the energy remains unchanged while the voltage and current usually change. [1595–1605; TRANSFORM + -ER¹]

trans′form fault′, *Geol.* a strike-slip fault that offsets a mid-ocean ridge in opposing directions on either side of an axis of seafloor spreading. Cf. **fracture zone.** [1970–75]

trans•form•ism (trans fôr′miz əm), *n. Biol.* **1.** the doctrine of gradual transformation of one species into another by descent with modification through many generations. **2.** such transformation itself. **3.** any doctrine or instance of evolution. [1875–80; TRANSFORM + -ISM, modeled on F *transformisme*]

trans•form•ist (trans fôr′mist), *n.* an adherent of transformism. [1790–1800; TRANSFORM + -IST, modeled on F *transformiste*] —**trans′form•is′tic,** *adj.*

trans•fuse (trans fyōōz′), *v.t.,* **-fused, -fus•ing.** **1.** to transfer or pass from one to another; transmit; instill: *to transfuse a love of literature to one's students.* **2.** to diffuse into or through; permeate; infuse. **3.** *Med.* **a.** to transfer (blood) into the veins or arteries of a person or animal. **b.** to inject, as a saline solution, into a blood vessel. **4.** *Archaic.* to pour from one container into another. [1375–1425; late ME *transfusen* < L *trānsfūsus,* ptp. of *trānsfundere* to transfer by pouring. See TRANS-, FUSE²] —**trans•fus′er,** *n.* —**trans•fus′i•ble, trans•fus′a•ble,** *adj.* —**trans•fu•sive** (trans fyōō′siv, -ziv), *adj.*

trans•fu•sion (trans fyōō′zhən), *n.* **1.** the act or process of transfusing. **2.** *Med.* the direct transferring of blood, plasma, or the like into a blood vessel. [1570–80; < L *trānsfūsiōn-* (s. of *trānsfūsiō*) decanting, intermingling, equiv. to *trānsfūs(us)* (see TRANSFUSE) + *-iōn-*

trans•gres•sion (trans gresh′ən, tranz-), *n.* an act transgressing; violation of a law, command, etc.; si [1400–50; late ME < L *trānsgressiōn-* (s. of *trānsgressi* a stepping across. See TRANSGRESS, -ION]

—**Syn.** See **breach.**

tran•ship (tran ship′), *v.t., v.i.,* **-shipped, -ship•pin** transship. —**tran•ship′ment,** *n.* —**tran•ship′per,** *n.*

trans•hu•mance (trans hyōō′məns *or, often,* yōō tranz-), *n.* the seasonal migration of livestock, and th people who tend them, between lowlands and adjacer mountains. [1900–05; < F, equiv. to *transhum(er)* shift ground (modeled on Sp *trashumar;* see TRANS HUMUS) + *-ance* -ANCE] —**trans•hu′mant,** *adj.*

tran•sience (tran′shəns, -zhəns, -zē əns), *n.* transien state or quality. Also, **tran′sien•cy.** [1735–45; TRAN SI(ENT) + -ENCE]

tran•sient (tran′shənt, -zhənt, -zē ənt), *adj.* **1.** no lasting, enduring, or permanent; transitory. **2.** lastin only a short time; existing briefly; temporary: *transien authority.* **3.** staying only a short time: *the transier guests at a hotel.* **4.** *Philos.* transeunt. —*n.* **5.** a perso or thing that is transient, esp. a temporary gues boarder, laborer, or the like. **6.** *Math.* **a.** a function tha tends to zero as the independent variable tends to inf nity. **b.** a solution, esp. of a differential equation, havin this property. **7.** *Physics.* **a.** a nonperiodic signal c short duration. **b.** a decaying signal, wave, or oscillatior **8.** *Elect.* a sudden pulse of voltage or current. [1590 1600; < L *transi(ēns)* (nom. sing.), prp. of *transire* to pas by, lit., go across + -ENT; see TRANSEUNT] —**tran′sient ly,** *adv.* —**tran′sient•ness,** *n.*

—**Syn. 2.** fleeting, flitting, flying, fugitive, evanescen See **temporary.** —**Ant. 2.** permanent.

tran′sient ische′mic attack′, *Pathol.* a brief vas cular spasm in which a partially blocked artery impede blood flow to the brain, resulting in symptoms such a impaired vision, dizziness, numbness, or unconscious ness. *Abbr.:* TIA

tran′sient modula′tion, *Music.* a modulation of temporary nature. Also called **passing modulation.**

tran•sig•ni•fi•ca•tion (tran sig′nə fi kā′shən), *n. Theol.* (in the Eucharist) a change in the significance o the bread and wine to symbolize the body and blood o Christ. Cf. **transubstantiation.** [1965–70; TRAN(S)- SIGNIFICATION]

tran•sil•i•ent (tran sil′ē ənt, -sil′yənt), *adj.* leaping o passing from one thing or state to another. [1805–15; < L *trānsilient-* (s. of *trānsiliēns*), prp. of *trānsilire* to leap across, equiv. to *trāns-* TRANS- + *-sili-* (comb. form o *salire* to leap) + *-ent-* -ENT] —**tran•sil′i•ence,** *n.*

trans•il•lu•mi•nate (trans′i lōō′mə nāt′, tranz′-), *v.t.* **-nat•ed, -nat•ing.** **1.** to cause light to pass through. **2** *Med.* to throw a strong light through (an organ or part as a means of diagnosis. [1885–90; TRANS- + ILLUMI NATE] —**trans′il•lu′mi•na′tion,** *n.* —**trans′il•lu′mi na′tor,** *n.*

tran•sis•tor (tran zis′tər), *n.* **1.** *Electronics.* a semiconductor device that amplifies, oscillates, or switches the flow of current between two terminals by varying the current or voltage between one of the terminals and a third: although much smaller in size than a vacuum tube, it performs similar functions without requiring current to heat a cathode. **2.** *Informal.* a transistorized radio. —*adj.* **3.** *Informal.* transistorized: *a transistor radio.* [1945–50; TRANS(FER) + (RES)ISTOR]

tran•sis•tor•ize (tran zis′tə rīz′), *v.t.,* **-ized, -iz•ing.** *Electronics.* to equip with or convert to a circuit employing transistors. Also, *esp. Brit.,* **tran•sis′tor•ise′.** [1950–55; TRANSISTOR + -IZE]

tran•sit (tran′sit, -zit), *n., v.,* **-sit•ed, -sit•ing.** —*n.* **1.** the act or fact of passing across or through; passage from one place to another. **2.** conveyance or transportation from one place to another, as of persons or goods, esp. local public transportation: *city transit.* Cf. **mass transit. 3.** a transition or change. **4.** *Astron.* **a.** the passage of a heavenly body across the meridian of a given location or through the field of a telescope. **b.** the passage of Mercury or Venus across the disk of the sun, or of a satellite or its shadow across the face of its primary. **c.** See **meridian circle. 5.** *Astrol.* the passage of a planet in aspect to another planet or a specific point in a horoscope. **6.** *Survey.* **a.** Also called **transit instrument.** an instrument, as a theodolite, having a telescope that can be transited, used for measuring horizontal and sometimes vertical angles. **b.** a repeating transit theodolite. **7.** (*cap.*) *U.S. Aerospace.* one of a series of satellites for providing positional data to ships and aircraft. —*v.t.* **8.** to pass across or through. **9.** *Survey.* to turn (the telescope of a transit) in a vertical plane in order to reverse direction; plunge. **10.** *Astron.* to cross (a meridian, celestial body, etc.). —*v.i.* **11.** to pass over or through something; make a transit. **12.** *Astron.* to make a transit across a meridian, celestial body, etc. [1400–50; late ME (n. and v.) < L *trānsitus* a going across, passage, equiv. to *trānsi-,* var. s. of *trānsire* to cross (*trāns-* TRANS- + *-ire* to go) + *-tus* suffix of v. action]

tran•sit•a•ble [illegible]



DISTRICT OF COLUMBIA

COMPREHENSIVE SOLID WASTE MANAGEMENT PLAN

Preliminary Draft

DC Library

Prepared by:

Gershman, Brickner & Bratton, Inc.
2735 Hartland Road
Falls Church, Virginia 22043

In cooperation with:

C. C. Johnson & Malhotra, Inc.

and

District of Columbia
Solid Waste Management Administration

October 1994

	waste, and other similar non-hazardous waste material intended for disposal. Not included are RCRA-defined hazardous waste, and Infectious or other defined Medical Waste. Also excludes Recyclable Material source separated from the waste stream specifically for recycling.
Refuse-Derived Fuel (RDF).	Processed and shredded Refuse sold as a fuel to either a dedicated RDF boiler or as a supplementary fuel for utility or industrial boilers. See Incinerator and Waste-to-Energy.
Roll-Off Container.	A large, stationary, steel box used to store MSW that can be rolled onto a truck and taken to a processing, transfer, or disposal site, then returned to the original or another site.
Rubber.	A natural or synthetic elastic material comprised of polymers. Used for shoes, insulation, etc. See also Tires.
Secondary Material.	Material recovered from the waste stream, processed to meet specifications for use as a manufacturing feedstock.
Sewage Sludge.	The product of sewage treatment plant processes, consisting of settled sewage solids and water. Usually semi-liquid (about 20 percent solids). Considered part of the MSW stream for recycling calculations under D.C. Law 7-226. Now referred to by the U.S. EPA and others as Biosolids.
Side Loader Collection Truck.	A solid waste collection truck in which the material is loaded into the side of the body, either manually or by utilizing a mechanical lift for containers, and the material is compacted using a hydraulic system.
Solid Waste.	Same as Municipal Solid Waste.
Source Reduction.	Reduction of the amount of waste disposed by a generator and/or reduction in the toxicity of the discarded material.
Source Separation.	The segregation of recyclable materials into designated containers at the point of generation.

Steel.	An iron alloy containing carbon and other metals such as nickel, chromium, manganese, etc. See Ferrous Metal.
Supercan.	A 90-gallon wheeled solid waste container utilized for storage and collection of residential waste.
Textiles.	Cloth made from natural and man-made fibers.
Tin.	A silvery metal used to coat other metals to prevent corrosion, and as part of numerous alloys.
Tipping Fee.	A fee, usually dollars per ton, charged for the unloading or dumping of waste at a Landfill, Transfer Station, Drop-off Center, Material Recovery Facility, or Waste-to-Energy Facility.
Tipping Floor.	The area designated within a Transfer Station, Waste-to-Energy Facility, or Material Recovery Facility for the unloading of Refuse and Recyclable Material.
Tires.	Rubber tires from automobiles, trucks, farm machinery, etc.
Ton.	Net ton, or 2,000 pounds.
Tons Per Day (TPD) or Tons Per Year (TPY).	Refers to the generation rate of solid waste materials or capacity of a facility or process over a period of time.
Transfer Station.	A collection point where solid waste is taken by collection vehicles to be processed (typically compressed or shredded), and transferred to larger vehicles for transportation to another location for disposal or recycling.
Trash.	See Municipal Solid Waste.
Unit Pricing.	A charge to individual households, commercial establishments, etc. for solid waste collection and disposal services based on the amount of waste set out for collection. Charges may be determined by the size of container requested by the generator, weight of materials collected, special tags or

	disposal bags purchased by the generator, etc. See also Variable Can Rate.
Variable Can Rate.	Another term for Unit Pricing.
Waste.	See Municipal Solid Waste.
Waste Reduction.	See Source Reduction.
Waste-to-Energy.	An Incinerator with an attached boiler equipped to generate steam and/or electricity.
White Goods.	Discarded large appliances such as refrigerators and stoves.
Yard Waste.	Grass cuttings, sod, gravel, tree trimmings, stumps, leaves, limbs, and similar waste material.

control contaminant concentrations in the wastewater discharge. The pre-treatment system was required to have been installed by December 1992. Although the acquisition of SWRC #1's pre-treatment system was begun, it has not been installed, as procurement of parts for installation is still being awaited. With combustion operations ceasing in April 1994, this procurement and upgrading will be terminated.

2.5.1.4 Fort Totten Transfer Station

Approximately 550 tons per day of MSW is compacted at the Fort Totten Transfer Station currently compacts and transferred to the I-95 Complex. This Transfer Station receives waste from the District's collection vehicles (supercan, manual, and bulk collection programs), District residents (self-haulers), and a few private commercial collection vehicles. The facility was constructed in the early 1970s, and no subsequent equipment upgrades have been made. Currently, the District uses 16 ton-capacity trailers for transfer of the compacted waste to the I-95 Complex facilities (i.e., the I-95 Landfill and the E/RRF). DPW does not charge itself for use of the Fort Totten Transfer Station. However, commercial haulers are required to pay $64.39 per ton (i.e., $32.80 disposal fee plus $31.59 recycling surcharge) to deliver solid waste to the Transfer Station.

The Fort Totten Transfer Station has been in service for approximately twenty years. The solid waste handling capacity of this facility has decreased as the mechanical equipment has aged; instead of handling 900 TPD as designed, the Transfer Station now has a maximum waste-handling capacity of only 550 TPD. The compaction equipment is no longer as efficient. The age and condition of the compactor and transport fleet also presents problems at times. The transport tractors range in age from eight to 12 years; the transport trailers range in age from three to 16 years. A minimum of 17 trailers are required each day to transport waste from the Transfer Station to the I-95 Complex. Periodically, the transport trucks are overloaded, and mechanical breakdowns occur, resulting in loaded vehicles becoming stranded. Repairs often require that the refuse be transferred to another vehicle prior to being repaired.

The Fort Totten facility current capacity is only 60 percent of its design capacity.

IV. TRANSFER STATION OPTIONS

The transfer of solid waste from collection vehicles to larger transport vehicles for hauling to a disposal site is facilitated by use of a transfer station. This provides savings in vehicle miles and travel time because a smaller fleet of large transfer trucks haul waste to the disposal site rather than a larger fleet of smaller collection trucks. A transfer station is economically viable when these transportation savings exceed the cost of building and operating the transfer station.

In addition to economic benefits, use of transfer stations can ensure that all waste collected within a given service area is disposed of at a designated site. The efficiency of collection operations is improved by reducing the potential for unanticipated traffic delays during collection-vehicle trips to the disposal site. Truck traffic to the disposal site can be shifted to off-peak hours. Lastly, transfer stations can be designed to allow for material recovery (i.e., dump and pick), thus reducing the amount of waste delivered to the disposal site.

The District currently operates one transfer station within its borders. The Fort Totten Transfer Station currently processes approximately 550 tons per day (TPD), which is 60 percent of its original 900-TPD design capacity. Collection trucks deliver compacted waste which is transferred to 20-ton transport vehicles and hauled to the I-95 complex in Lorton, Virginia.

A. TRANSFER STATION SYSTEMS

This section describes the basic equipment and operations associated with two types of transfer stations: those with transfer-only capabilities, and those that include a material-recovery operation prior to transfer.

1. Transfer Only

There are two basic transfer methods: the direct dump system or the pit/tipping floor system. Each of these systems can be designed with varying degrees of sophistication,

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IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

LG INDUSTRIES, INC.	*	
	*	
Plaintiff	*	Case Nos.:
	*	
v.	*	96-CA-418
	*	97-CA-423
DISTRICT OF COLUMBIA, et al.	*	
	*	Judge Graae
	*	Calendar No. 3
Defendants	*	

* * * * * * * * *

VOLUME 1

Pursuant to Notice, the deposition of FRANKLIN GAINES was taken Monday, October 19, 1998, commencing at 10:30 a.m. at the law offices of Rubin, Winston, Diercks, Harris & Cooke, LLP, 10th Floor, 1333 New Hampshire Avenue, N.W., Washington, D.C. 20036, before Richard D. Baker, Notary Public.

APPEARANCES:

Joseph B. Espo, Esquire
on behalf of the Plaintiff

Lisa A. Bell, Esquire
Grace Perry-Gaiter, Esquire
on behalf of the Defendants

ALSO PRESENT: Mitchell Berger, Esquire

Reported by: Richard D. Baker, Jr.

A I work at 614 H Street, N.W, Washington, D.C., Department of Consumer Regulatory Affairs.

Q What do you do there?

A I'm a plumbing inspector.

Q How long have you worked there?

A 12 years.

Q That would be since 1975 --

A About '86.

Q '86, I'm sorry. How old are you?

A 57.

Q In the 12 years that you've been there at DCRA have you had the same job?

A Yes.

Q And as plumbing inspector for DCRA what do you do?

A I inspect private homes, commercial buildings.

Q What do you inspect them for?

A Plumbing codes and inspect to make sure everything is done right.

Q When you say plumbing codes, is it that

MR. ESPO: He can take as much time as he needs.

(Discussion held off the record.)

Q You've now had the opportunity to review this with counsel?

A Yes.

Q With your counsel?

A Yes.

Q Before we get into that, you normally wear glasses, sir?

A Yes.

Q You don't have them with you today?

A No, I forgot them. I walked out without them.

Q I take it you require them for reading?

A Yes, only.

Q Have you had an opportunity to review this document?

A Yes.

Q Do you know, first from your independent memory, whether you ever inspected the building

that is the subject of this application?

A Yes.

Q And have you inspected that building?

A Yes.

Q On how many occasions?

A Once.

Q Do you know from your independent memory when that was?

A No.

Q Does the document reflect when you inspected that building?

A No.

Q Is there something missing from the document?

A I don't remember the date. I remember going to the building and doing the inspection but that's all I remember.

Q Okay. I'm asking you a slightly different question, which is is there a space on the document that is Exhibit 3 where the date of the inspection is normally written in.

LG INDUSTRIES, INC.	*	IN THE
	*	
Plaintiff	*	SUPERIOR COURT
	*	
v.	*	FOR THE
	*	
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS and DEPARTMENT OF PUBLIC WORKS	*	DISTRICT OF COLUMBIA CIVIL DIVISION
	*	
	*	CASE NO. 96-CA-418
	*	CASE NO. 97-CA-423
	*	
Defendants	*	

* * * * * * * * *

VOLUME 2

Pursuant to Notice, the deposition of FRANKLIN GAINES was taken on Tuesday, October 27, 1998, commencing at 10:20 a.m., at the law offices of Rubin, Winston, Diercks, Harris & Cooke, 1333 New Hampshire Avenue, Northwest, Suite 1000, Washington, DC, before Kirk A. Sturges, a Notary Public.

Reported by: Kirk A. Sturges

FRANKLIN GAINES.

was resumed as a witness, and after having been first previously duly sworn by the Notary, was examined and testified as follows:

EXAMINATION BY MR. ESPO:

Q Good morning.

A Good morning.

Q The same ground rules apply today as --

A Yes.

Q -- last time when we were here. If you need a break, please, let me know.

A All right.

Q Do you have your glasses today?

A Yes.

Q Good. I'm not 100 percent certain precisely where we left off, but I know you were beginning to examine what has previously been marked as exhibit number three. If you would, take a few minutes and look at that and I'm going to then ask you some questions about it, okay?

A Okay.

Q Are you ready?
A Yes.
Q Do you recognize what this document that we are looking at is?
A Yes.
Q It's a certificate of occupancy application?
A Yes.
Q The first thing I wanted to ask you is can you tell from looking at this whether this is a complete document?
A As far as I could see, yes.
Q Okay. Does your name appear on here anywhere?
A No.
Q Did you inspect 1140 Third Street in connection with the application for certificate of occupancy that is in front of you?
A Okay. I'm not sure about what it read in here as far as what it was going to be, at this time. (Indicating.)

Q Did you enter into the sort of big high-ceilinged portion of the building?

A I walked right in the truck entrance because the door was up.

Q Okay.

A Because it was easier, I just walked right in there.

Q What did you observe when you went in?

A I observed a trash guy, trucks, people all over the place.

Q I'm sorry?

A People and trash trucks, people dumping trash.

Q Okay. So the use seemed to have already begun.

A As soon as I identified myself I just went right to the bathroom and started looking around. That's the procedure. We just go in and start looking around.

Q But you said you saw trash trucks, people dumping trash?

A Yes.

Q Could you see what was being done with the trash that was being dumped?

A No. No. I didn't pay no attention to that.

Q But it appeared that operations in the building had already begun.

A Yes.

Q Where did you go in the building to perform your inspection?

A I remember going in and turning to the left where the bathrooms was.

Q Okay. And you inspected a bathroom --

A Yes.

Q -- or bathrooms?

A Yes. A bathroom.

Q I'm sorry. One?

A Yes, one bathroom.

Q Did it meet your approval?

A Yes.

Q Did you so indicate on some document?

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ORIGINAL

LG INDUSTRIES, INC.,		*	IN THE
	Plaintiff	*	SUPERIOR COURT
v.		*	FOR THE
DISTRICT OF COLUMBIA, et al.,		*	DISTRICT OF COLUMBIA
	Defendants	*	Case No.: 96-CA-418
		*	97-CA-423
		*	JUDGE GRAAE CALENDAR NO. 3

* * * * * * * * * *

Pursuant to Notice, the deposition of EDGAR T. NUNLEY was taken on Wednesday, January 27, 1999, commencing at 10:35 a.m., at the law offices of Rubin, Winston, Diercks, Harris & Cooke, LLP, Tenth Floor, 1333 New Hampshire Avenue, N.W., Washington, DC, before Richard D. Baker, Jr. a Notary Public.

Reported by: Richard D. Baker, Jr.

EDGAR T. NUNLEY,

called for examination, having been duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

EXAMINATION BY MR. ESPO:

Q State your name for the record, please, sir.

A Edgar T. Nunley.

Q Mr. Nunley, my name is Joe Espo. I represent the plaintiff in this case, USA Waste of DC, Incorporated. I'm going to be asking you some questions today. If you don't understand my question, please, let me know. If you need a break at any time, please, let me know that as well. Your counsel may from time to time object. If she does so after she states her objection, unless she instructs you not to answer the question, you should go ahead and answer. Do you understand that?

A Yes, I do.

Q The other thing is that the court

* * *

sorry, that the contact representative prepares so that the applicant may pay the filing fee.

Q So the applicant actually gets a receipt for the application?

A That's correct.

Q And then gets a money receipt somewhere else for when actually having paid?

A That's correct.

Q Is there actually, is there a duplicate of the receipt kept somewhere?

A I believe it's kept in the occupancy branch.

Q Do you know if it's kept in the address file or is there some other file?

A I believe it's currently kept in the address file. I don't know how it was kept in 1994.

Q What is it that the counter person indicates by signing or initialing on line 23?

A That the applicant has returned with the receipt stamped paid by the Department of Finance

and Revenue.

Q And what is it, I believe you said the counter person would also sign or initial line 26; is that correct?

A That's correct.

Q What is it that is indicated by signing line 26?

A That they have or have not advised the person of the residential smoke detector laws if it's a residential use.

Q Exhibit 3, each of those lines is initialed by a counter person; is it not?

A Line 26 shows signature. Lines 22 and 23 show an indication of payment.

Q And that means to you that the application was accepted; isn't that correct?

A Yes, for filing.

Q What does it mean when an application is accepted for filing?

A That the contact representative has deemed the application complete and that the

applicant has paid the initial filing fee.

Q Okay. After the contact representative does his or her work on the application, what happens next?

A The applicant is directed to what's now called the information counter to determine whether the premises is condemned.

Q What was it called in 1994?

A I'm not sure.

Q What is the RLA?

A Rehabilitation Land Agency.

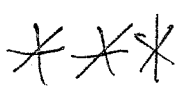
Q What is its function?

A The RLA regulated properties in what were considered urban renewal zones. Those properties were considered unzoned for purposes of DCMR 11.

Q Is there a spot on the application to, where it is determined whether the property is in an RLA zone?

A Yes, line 25.

Q And at what stage in the process would





some examples.

A A restaurant where the applicant was unable to show proof of parking at the time of application.

Q Would applicants whose applications were being held for lack of information get letters specifying exactly what's missing?

A Sometimes.

Q In what circumstances would they get such letters?

A If the communication at the public counter was not enough to let them know what was missing. Most often the communication at the counter is enough.

Q These applications are all filed in person, correct?

A That's correct.

Q So there is somebody hand walking the application around?

A That's correct.

Q And that somebody, whether it is the

owner or some agent of the owner, is available to answer questions to each of the desks; isn't that correct?

A That's correct.

Q And in cases where there is something that is unclear, isn't it the case that the counter people are encouraged to try to find out what the answer is?

A That's correct.

Q So that if, to use your example, if the application came in with insufficient, unable to show proof of parking, somebody would tell the applicant standing there and if it was the fact that the applicant had that, whatever proof was required, and just hasn't showed it, the applicant could then show it?

A That's correct. That's reasonable.

Q And it would just go on from there?

A Yes.

Q And if the application is not marked as held for lack of information, it's the case, isn't

it, that each person along the way believed that there was enough information on the application for him or her to make his or her decision?

A Yes.

Q Okay. And doesn't that also mean that the counter person at the zoning desk, by signing on his line, indicated that he understood the proposed use?

A It indicates that he believed that the proposed use was consistent with the zoning of that property.

Q Now, in order to come to that conclusion he would have to know what the zoning was of the property, correct?

A That's correct.

Q And he would have to know what the proposed use was?

A That's correct.

Q Okay. So by indicating that it is consistent, he indicates, does he not, that he knows what the zoning is?

A Yes.

Q And that he knows what the proposed use is?

A The proposed use is stated on line 10, so yes.

Q And if he's unsure about the proposed use listed on line 10, there's somebody standing in front of him to whom he can address the question?

A If he has a question, yes.

Q If he has a question. And if the individual standing in front of him for whatever reason is unable to answer the question, there's a process by which the zoning office can put a hold on the application?

A That's correct.

Q To ultimately get from the applicant the information the zoning technician needs; is that correct?

A Correct.

Q And dealing with Exhibit 3, which is the application for certificate of occupancy for 1140

Third Street, Northeast, that application was approved at each step of the process, was it not?

A Yes.

Q There is no indication on it that the zoning technician was unsure of the proposed use; isn't that correct?

A That's correct.

Q And by signing the application, the zoning technician concluded that the proposed use listed on line 10 was consistent with the zoning; isn't that correct?

A That is correct.

Q Now, after an application is signed off at the various counters and comes back, where does it end up immediately before the certificate of occupancy is issued?

A At the occupancy branch.

Q And then what happens?

A The contact representative in the occupancy branch prepares the certificate of occupancy and the receipt for payment of the final

* * *

* * *

Q Which contact representative?

A In the occupancy branch, I'm sorry.

Q By name?

A I believe I asked Larry Dericott. I don't know how to spell it. I think it's D-E-R-I-C-O-T-T but I'm not sure.

Q Are these documents kept in a locked file cabinet?

A No.

Q In your review of the application file, did you see any indication that there was anything amiss about the process by which LG Industries received its certificate of occupancy?

A No.

Q Everything appeared to be in order?

A Yes.

Q Correct signatures were on the correct lines?

A Yes.

Q The application was accepted as complete?

A Yes.

Q The certificate was issued?

A Yes.

Q Do you have any -- strike that.

Have you ever discussed the MG zoning, LG Industries certificate of occupancy with Mr. Olutoye Bello?

A Not that I recall.

Q Do you recall discussing a certificate of occupancy of LG Industries with anybody else other than today?

A Yes.

Q With whom?

A With the attorneys from our agency, Mr. Snyder.

Q You're pointing to the new lawyer at the end of the table, Mr. Saindon?

A Yes, we only met twice.

Q Mr. Snyder?

A I'm sorry. Mr. Berger. I had some dealings with Mr. Snyder a while ago.

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Outline of Testimony
before the Board of Zoning Adjustment

Steven E. Sher
Director of Zoning and Land Use Services
Holland & Knight LLP

I. Introduction

II. Property has a validly issued certificate of occupancy and is entitled to continue the use under that certificate

- A. C of O No. B169096, issued July 14, 1994
- B. Has not been revoked
- C. Use now authorized by the certificate of occupancy continues to be a use permitted as a matter-of-right in the C-M District
- D. Use is permitted to continue under §3203.8
- E. Even a nonconforming use is allowed to continue (see §2000.4)
- F. Use may continue under existing c of o even though Zoning Commission has created a new use category

III. Basis for denying application for new certificate of occupancy was incorrect

- A. Letter cites need for BZA approval due to "proposed amendments"
- B. Vesting provisions are contained in Chapter 32
- C. §§3202.5 and 3203.7 apply to applications for permits when the Zoning Commission has pending "a proceeding to consider an amendment of the zone district classification of the site;" i.e., a zoning map amendment case (the "set-down rule")
- D. Specific proposal to make the set-down rule applicable to text amendment cases was rejected by the Zoning Commission
- E. Accordingly, [Nunley] erred in applying a proposed text amendment that did not become final for more than a year after the ruling

IV. Conclusion

- A. There is an existing valid certificate of occupancy for the use

B. The use may be continued in accordance with that c of o

C. The Zoning Review Branch incorrectly applied a proposed regulation that had no legal effect or standing at the time

D. If the Zoning Review Branch had applied the regulations in effect at the time, the c of o would have been issued

E. The proposed use must be allowed to continue, the Department of Consumer and Regulatory Affairs was wrong to require the operator to request a new certificate of occupancy and the Zoning Review Branch was wrong in any event in denying the application based on a proposed regulation

Outline of Testimony of
Representative of USA Waste of D.C., Inc.

I. Establishment of Transfer Station Use

II. Interaction with the District of Columbia

III. Improvements to Site

IV. Reliance on the 1994 C of O

V. 1994 C of O Never Revoked

EXHIBIT N