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February 26, 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 -- Appeal of USA Waste of DC, Inc. (formerly known as L.G. Industries, Inc.)

To whom it may concern:

On behalf of the Near Northeast Neighborhood Task Force (NNNTF), the Institute for Public Representation files herewith one original and ten (10) copies of its Motion to Postpone the Hearing and Expedite the Rescheduling of the Postponed Hearing in connection with the Appeal No. 16239, which is currently scheduled for March 5, 2002.

Copies of this Motion were sent today, via first class mail, postage pre-paid, to the appellant, the Office of Corporation Counsel, and Advisory Neighborhood Commission 6A.

Please contact Lawrence Levine at (202) 662-9549 with any question about this filing.

Sincerely,

Hope M. Babcock (by L.M.L.)
Hope M. Babcock, Esq.
Counsel for NNNTF

Enclosure

BZA
Case No. 16239
Exhibit No. 31

Board of Zoning Adjustment
District of Columbia
CASE NO.16239
EXHIBIT NO.31

+ Practice Supervised by Members of the D.C. Bar
* Admitted to the Minnesota Bar only ** Application to the D.C. Bar pending *** Admitted to the Massachusetts Bar only

BEFORE THE
BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

In the Matter of:	)	
	)	
Appeal of USA Waste of DC, Inc.	)	**Hearing Date: March 5, 2002**
(formerly known as L.G. Industries, Inc.),	)	**ANC 6A**
pursuant to 11 D.C.M.R. §§ 3100 and 3101,	)	
from the administrative decision of the Zoning	)	
Administrator to withhold the issuance of a	)	**BZA Appeal No. 16239**
certificate of occupancy for a trash transfer station	)	
in the C-M-1 and C-M-3 Districts (the subject	)	
property was zoned M at the time that the	)	
application was filed) at premises	)	
1140 3rd Street, NE (Square 748,	)	
Lots 8, 9, 10, 11, 42, 43, 809 through 812).	)	
	)	

MOTION OF INTERVENOR NEAR NORTHEAST NEIGHBORHOOD TASK FORCE TO POSTPONE THE HEARING AND EXPEDITE THE RESCHEDULING OF THE POSTPONED HEARING

Intervenor, the Near Northeast Neighborhood Task Force ("NNNTF"), hereby moves the Board of Zoning Adjustment ("BZA") to postpone its hearing in this appeal by USA Waste of DC, Inc. (formerly L.G. Industries, Inc.) ("LGI/USA Waste") only until Advisory Neighborhood Commission 6A ("ANC 6A") holds its public meeting to address this issue.

As grounds for this motion, NNNTF respectfully states as follows:

For the past seven years, LGI/USA Waste has operated a solid waste transfer facility ("SWTF") at 1140 Third Street, N.E., pursuant to a Certificate of Occupancy ("CO") allowing the property's use as "Shipping, Freight & Cargo, Transfer Station, Warehousing and Trucking." Throughout this period, members of NNNTF have reported foul odors of rotting garbage, large amounts of dust leading to reparatory distress, and an increase in rodents and other vermin, each of which the residents attribute to the SWTF. This appeal, which concerns the validity of the 1994 CO, has now been pending for five and a half years.

In 1996, at the direction of the Department of Consumer and Regulatory Affairs ("DCRA"), LGI/USA Waste filed a new application for a CO, explicitly identifying the facility as a "solid waste handling facility," which DCRA's Building and Land Regulation Administration ("BLRA") subsequently denied. *See District of Columbia Department of Public Works, v. L.G. Industries, Inc.*, 758 A.2d 950, 951-55 (D.C. 2000) (describing the procedural history of this case). LGI/USA Waste filed an appeal with the BZA, asserting that it was already operating with a valid CO issued in 1994. *Id.* at 952. In a separate D.C. Superior Court case between LGI/USA Waste and the District, both parties raised the validity of the 1994 CO. On September 21, 1998, the trial judge issued an order staying all administrative proceedings regarding the validity of the 1994 CO, including this proceeding before the BZA. *Id.* at 953. The District appealed the stay, and, on August 31, 2000, the D.C. Court of Appeals reversed, holding that the trial court lacked jurisdiction to stay the administrative proceedings. *Id.* at 956.

Although, the Court of Appeals found that BZA had primary jurisdiction in August 2000, *id.*, the BZA did not adopt a schedule for this appeal until January 2002. After this delay of over a year, the BZA mistakenly notified ANC 6B of the hearing schedule for the appeal, instead of ANC 6A. Because of BZA's clerical error, ANC 6A did not have sufficient notice to be able to hold a meeting to gather information from both the community and the appellant.[1] *See* Letter from Daniel M. Pernell III, Vice Chairman ANC 6A to Geoffrey H. Griffs, Chairman BZA of 2/20/02.

The BZA should postpone the March 5, 2002 hearing until the ANC holds a meeting to hear the issue. *See* 11 D.C.M.R. 3115.1 (2001) (entitling ANC to submit a recommendation to the BZA after hearing from the appellants and community). However, the members of NNNTF

[1] In addition to BZA's clerical error in notifying the ANC, NNNTF understands that the schedule of the Corporation Counsel attorney assigned to this appeal conflicts with the March 5, 2002 hearing date.

are entitled to have the years'-long dispute over the validity of the 1994 CO resolved promptly. NNNTF understands that ANC 6A intends to consider this case and adopt a formal position at its next monthly meeting, which will take place on March 7, 2002. Therefore, the BZA need only postpone this appeal by one week in order to mitigate the impact of the improper notice of the hearing and allow the ANC to fully participate in the case. While NNNTF recognizes that the BZA's schedule is currently full until May, NNNTF respectfully requests that the BZA adjust its schedule, or schedule an additional day of hearings, prior to May, to hear the appeal. For example, because the BZA has only recently returned to meeting once a week, the BZA should consider, for this case only, returning to its recent practice of meeting on Thursdays and schedule this appeal for March 14, 2002, the Thursday following the ANC meeting.

Seven years have passed since LGI/USA Waste's SWTF began operating; for five and one-half of those years, this appeal had been pending before the BZA. The residents living adjacent to the facility, including the members of NNNTF, now face the possibility of another summer of offensive and unhealthy odors from the SWTF, which only gets worse as temperatures rise. Due to the time required, following a hearing, for the BZA to reach a final decision on this matter, postponing this hearing beyond April would mean that the residents will almost certainly have to suffer through another summer without the opportunity to receive any meaningful relief under the Zoning Code. In light of the long history of court and administrative proceedings regarding the SWTF, the members of NNNTF deserve to have this dispute resolved promptly.

For all the foregoing reasons, NNNTF requests the BZA to postpone the hearing in this case and expedite its rescheduling for as soon as possible after March 7, 2002.

Respectfully submitted,

Hope M. Babcock (by L.M.L.)

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Dated: February 26, 2002