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TO: BZA

FAX NUMBER: 727-6072

FROM: L. Goldman
Institute for Public Representation

COMMENT: Please attach this letter as exhibit 1 (Attachment 1) to IPR's response to USA Waste's September 16 status report, recently faxed to your office.

If document is illegible or incomplete, please telephone us at (202) 662-9535

THANK YOU

BZA
Board of Zoning Adjustment
District of Columbia
CASE NO.16239
EXHIBIT NO.49

Case No. 16239
Exhibit No. 49

GEORGETOWN UNIVERSITY LAW CENTER

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October 7, 2002

Mr. David Clark
Director, Department of Consumer and Regulatory Affairs
941 North Capitol Street, NE
Washington, DC 20002

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Dear Mr. Clark:

The Institute for Public Representation ("IPR") submits this letter, on behalf of the Near Northeast Neighborhood Task Force ("NNNTF"), to urge you to continue to enforce the provisions of the Solid Waste Facility Permit Act ("SWFPA") and the June 7, 2002 Stipulation of Settlement and Consent Order ("Settlement Agreement" or "Agreement") against the trash transfer facility ("Facility") owned by USA Waste in the former Uline Arena.

Between the months of May and December 2001, DCRA issued citations in the amount of $271,000 against USA Waste for 23 separate infractions of the SWFPA. None of these citations was ever enforced against USA Waste; instead, DCRA agreed to dismiss certain citations and stay the remaining citations upon execution of the Settlement Agreement. This Agreement, which was executed under the assumption that USA Waste would close permanently by August 31, 2002, imposed certain conditions on USA Waste in exchange for the dismissal and suspension of the above citations.

Under the Settlement Agreement, USA Waste agreed to bring the Facility into compliance with the SWFPA in the following areas: (1) storage containers; (2) queuing and backing onto public streets; (3) hours of operation; (4) rodent control measures; and (5) air quality controls. USA Waste also agreed to hold a Spring Clean-Up Day and to provide air conditioners or air filtration units to a number of residents living near the Facility.

In exchange for USA Waste's affirmative commitments, DCRA agreed to dismiss with prejudice those citations relating to queuing and backing, storage containers, and tracking of waste, in the amount of $183,500. DCRA also agreed to suspend the remaining citations in the amount of $87,500, with the understanding that it would dismiss these citations with prejudice

upon proof that USA Waste had complied with its commitments regarding rodent control and air quality in paragraphs 6 and 7 of the Agreement.

Finally, DCRA agreed to refrain from issuing or serving any new infractions after the date of the Consent Order (June 7, 2002), provided that USA Waste complied with the terms of the Agreement. The Agreement also allows DCRA to begin issuing infractions for any new violations of the SWFPA or its implementing regulations occurring after September 30, 2002, if the facility has not closed by that time.

Based on the testimony of NNNTF residents living adjacent to the Facility, IPR believes that USA Waste has not complied with the terms of the Settlement Agreement. For instance, residents informed IPR that on Thursday, September 12, the Facility was open until 8:30 PM. This violates paragraph 5 of the Agreement, which requires USA Waste to comply with the hours of operation set forth in the SWFPA. *See* 21 DCMR § 732(d)(1) (providing that facilities located within 300 feet of a residential property line must close between the hours of 7:00 PM and 6:00 AM Monday through Saturday).

The residents have also informed IPR that the Facility was emitting copious amounts of dust on September 12 and has continued to emit dust since then. In fact, one asthmatic neighbor was actually having difficulty breathing as a result of the dust. This suggests that USA Waste has not complied with the terms of the Settlement Agreement governing air quality controls (¶ 7). Specifically, the Agreement required USA Waste to "install appropriate filters to collect dust, particulate matter and odors on the three (3) window fans located on the west wall of the Facility, and on the five (5) window fans located on the south wall of the Facility." The fact that the Facility continues to emit large amounts of dust suggests that such filters have not been installed. Even if these filters have been installed, they have not been effective in reducing the amount of dust coming from the Facility, which may also be escaping through the open bay doors.

In light of the above-noted violations of the Settlement Agreement, IPR urges DCRA to inspect the Facility for further infractions. Such inspections are not barred under the terms of the Settlement Agreement. Paragraph 11 of this Agreement provided that DCRA would not issue or serve any new infractions before September 30, 2002 *if* USA Waste complied with the Agreement. However, IPR has already demonstrated that USA Waste has *not* complied with this Agreement. Moreover, paragraph 11 provides that if the facility does not close by September 30, 2002, as is evidently the case, DCRA may issue new citations for violations of the SWFPA occurring after September 30.

In addition, although paragraph 8 of the Agreement gives USA Waste five days to cure any alleged violations after notification by DCRA, this requirement is expressly exempted for violations of legal operating hours, backing and queuing, and placing containers on public space. *See* ¶ 8. Therefore, DCRA can inspect the Facility and immediately issue citations for any violations of the legal operating hours.

IPR firmly believes that there is no reason for DCRA to refrain from inspecting the Facility and issuing and *enforcing* further citations, even while negotiations to close the facility

are pending. Although DCRA has observed numerous infractions at the Facility beginning over a year ago, it has continually delayed enforcement of its citations against USA Waste on the assumption that the Facility would soon be shut down. Contrary to USA Waste's representations, the Facility has not yet shut down and does not appear to be reducing its operations in any way. Regardless of the status of the settlement agreements and the nearness of a possible closing, the residents in the Uline area are continuing to suffer, as they have for years, from the noxious effects of the Facility's operation. There appears to be no incentive for USA Waste to comply with the SWFPA and the Settlement Agreement absent pressure by the DCRA in the form of citations and enforcement of the Settlement Agreement. IPR encourages DCRA to inspect the Facility immediately and to take steps to enforce the SWFPA against USA Waste.

Please contact Lisa Goldman at 202-662-9549 with any questions or response. We look forward to hearing from you very soon.

Sincerely,

Hope M. Babcock
Senior Attorney/Director

Lisa B. Goldman
Graduate Fellow/Staff Attorney

cc: Laurie Gilbert, DCRA