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October 7, 2002
VIA FACSIMILE

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D.C. OFFICE OF ZONING
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Board of Zoning Adjustment
441 4th Street, N.W., Suite 210-S
Washington, D.C. 20001

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

Dear Board Members:

The Institute for Public Representation ("IPR") submits this letter on behalf of our client, the Near Northeast Neighborhood Task Force ("NNNTF"), intervenor in the above-referenced case, in response to USA Waste's September 16, 2002 status report on the settlement negotiations with the District.

In its status report, USA Waste asserts that it and the District are finalizing the language in a Solid Waste Transfer Station Service and Settlement Agreement ("Agreement"). USA Waste further states that the Agreement should be signed by the first week of October 2002, and that the facility at 1140 3rd Street, N.E. ("Facility") will close ten business days after the effective date of the Agreement. USA Waste also indicated that it is planning to withdraw its appeal before the BZA, currently set to be heard on November 12, 2002.[1]

Although USA Waste has promised for months that a settlement agreement will be reached, the Facility has remained open and continues to affect adversely NNNTF residents living nearby. Complaints by NNNTF members indicate that the Facility is operating in violation of the legal operating hours set forth under the Solid Waste Facility Permit Act ("SWFPA"), 21 DCMR § 732(d)(1), and that it has also violated the terms of the June 7, 2002 Stipulation of Settlement and Consent Order executed between USA Waste and the District's

[1] In its status report, USA Waste mistakenly indicates that the hearing date is November 17.

BZA
Case No. 16239
Exhibit No. 51

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

Board of Zoning Adjustment
District of Columbia
CASE NO.16239
EXHIBIT NO.51

Department of Consumer and Regulatory Affairs (DCRA). *See* IPR's October 3, 2002 Letter to DCRA (Attachment 1).

In light of these violations, and the fact that no agreement to close the Facility has yet been reached, IPR urges BZA to continue to schedule a November 12 hearing on USA Waste's appeal, despite the inference that may be drawn from the status report that this hearing should be cancelled. BZA has already postponed this hearing several times in light of USA Waste's representations that the Facility would soon close. This has allowed the Uline facility to continue to operate despite DCRA's determination that the Facility does not qualify for a Certificate of Occupancy.

In addition, even if an agreement is reached prior to the November hearing, this may not obviate the need for a BZA hearing. As IPR stated in its July 15 response to the status report filed by USA Waste that same day, this case may not become moot, if the agreement lacks explicit, enforceable terms that permanently waive USA Waste's claims of entitlement under the Zoning Regulations to operate a solid waste transfer station at 1140 3rd Street, NE. Until an agreement containing such terms has been signed, IPR urges BZA to proceed with the November 12 hearing.

Respectfully submitted,

Hope M. Babcock
Senior Attorney/Director

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Graduate Fellow/Staff Attorney

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TRANSMITTAL SHEET

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NUMBER OF PAGES, INCLUDING THIS SHEET: 3

TO: BZA

FAX NUMBER: 727-6072

FROM: L. Goldman
Institute for Public Representation

COMMENT: Please find enclosed IPR's response to the September 16 status report submitted by USA Waste.

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

THANK YOU