BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

APPEAL OF EASTERN TRANS-WASTE OF MARYLAND, INC., 1315 First Street, S.E. (Square 703, Lot 54)	)	BZA Appeal No. 17288
	)	Hearing Date: March 15, 2005

PRE-HEARING BRIEF OF APPELLANT EASTERN TRANS-WASTE OF MARYLAND, INC.

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Dated: February 25, 2005

CASE # 17288

BZA
Case No. 17288
Exhibit No. 21

Board of Zoning Adjustment
District of Columbia
CASE NO. 17288
EXHIBIT NO. 21

INTRODUCTION

Appellant Eastern Trans-Waste of Maryland, Inc. ("Appellant" or "ETW") respectfully requests that the Board reverse the decision of the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA") not to grant Appellant's October 10, 2003 application for a construction permit to make minor internal repairs and improvements to its solid waste transfer facility at 1315 First Street, N.E., Square 703, Lot 54 (the "Facility"). DCRA's decision was arbitrary and capricious because it was based on a factual determination – that the proposed repairs and improvements would result in an enlargement of the Facility – that was: (1) not based on any evidence in the record before the agency, and (2) directly contrary to the undisputed evidence in the record before the agency.

In its November 3, 2004 memorandum referring ETW's application to the Board, DCRA characterized the planned project as a "proposed enlargement to an existing non-conforming use" at the Facility. Appeal Ex. 4. This statement was erroneous for two reasons:

(1) First, DCRA's characterization of the current use of the Facility as a "non-conforming" use was incorrect because of the D.C. Zoning Commission's determination that the continuation of industrial uses in areas that were zoned M Industrial prior to recent zoning amendments to effectuate the Capitol Gateway Overlay initiative are a deemed to be "conforming" uses. *See* 52 D.C. Reg. 63, 78 (Jan. 5, 2005) ("A commercial or industrial use that is first permitted in the CM or M Zone Districts and that is in existence with a valid Certificate of Occupancy *as of the date the provisions of this Chapter first became effective* shall be deemed a conforming use, but shall not be entitled to expand"); *see also* 11 D.C.M.R. 1605.1. Prior to the effective date of the Capitol Gateway Overlay zoning changes, the Facility was operating under a valid Certificate of Occupancy in an M Zone District.

(2) Second, there is no evidence in the agency record that the repairs and improvements proposed by ETW would result in an "enlargement" of the current Facility. Nothing in the proposed work would have increased the square footage of the Facility. Furthermore, in its Environmental Impact Screening Form ("EISF") dated March 30, 2004 (Appeal Ex. 3), ETW made it clear that following completion of the construction phase there would be "no change to existing operations." EISF, at 2. DCRA issued no findings to support its apparent conclusion that the changes would enlarge the Facility. However, DCRA apparently acted upon the incorrect information it received from the District of Columbia Office of Planning in a memorandum to DCRA dated May 3, 2004 (Appeal Ex. 5). The Office of Planning erroneously characterized the proposed changes as resulting in the addition of "approximately 10 new employees with between three to five additional vehicles." Ex. 5, at 1. However, as the District of Columbia Office of the Attorney General has conceded, the Office of Planning report was erroneous. Ex. 12 to Appeal (submitted on February 17, 2005). It was clearly arbitrary and capricious for the DCRA to base its findings on a conclusion that was not only unsupported in the record, but was directly contrary to the undisputed facts in the record.

As set forth above, the Zoning Commission has stated that an industrial use that was permitted within an M Zone and was in existence with a valid Certificate of Occupancy as of the date that the Capitol Gateway Overlay provisions became effective "shall be deemed a conforming use, but shall not be entitled to expand." 52 D.C. Reg. at 78; *see also* 11 D.C.M.R. 1605.1. There is nothing in the record before the DCRA to indicate that it concluded that the proposed changes would result in an expansion of the Facility. However, even if such a conclusion could be implied from the DCRA's apparent decision that the proposed changes would "enlarge" the Facility, that decision would be clearly erroneous. Under well-settled case

law the types of repairs and improvements proposed by ETW would not constitute an "expansion" of the Facility.

STATEMENT OF FACTS

The Facility

The Facility is located at 1315 First Street, S.E. Since at least the early 1990's it has operated as a solid waste transfer facility at that site. ETW possesses a Certificate of Occupancy (No. B 162503) issued on March 17, 1992 for the purposes of "Warehouse (Waste & Rec.)." For at least a decade while ETW was operating the Facility, it was zoned M for Industrial.

The Construction Permit Application

After determining that it desired to make some minor internal repairs and improvements to the Facility, ETW on October 10, 2003, submitted to DCRA a construction permit application for these changes (the "Application"). Appeal Ex. 1. The "Contract Agreement" with the vendor selected to perform the work (enclosed within the Application) described the work as: "Construction of weight scale replace/repair: weight scale, structural steel, roof, siding, concrete floor, overhead doors, bathroom, scale house." The cost estimate was $400,000. The environmental intake form stated that the project was solely an interior renovation with no change in the use or capacity of the structure being renovated. The project would not increase the square footage of the Facility.

The Environmental Impact Screening Form

The DCRA initially approved the Application for zoning purposes. Appeal Ex. 1, at 1. However, on January 12, 2004, DCRA sent a letter to ETW which stated that "Based on a review of the building plans and associated application, and pursuant to the DC Environmental Policy Act, it has been determined that the proposed work is substantial, requiring the submission of an Environmental Impact Statement (EIS) to DCRA. Unless and until there is a finding of no

adverse effect, or an adverse effect is identified but a determination is made that the public health, safety or welfare is not imminently and substantially endangered, DCRA cannot issue the building permit, as requested." Appeal Ex. 2. On March 30, 2004, ETW submitted an Environmental Impact Screening Form "at the request of Ms. Lorraine Bennett, and Mr. Denzil Noble of the D.C. Department of Consumer and Regulatory Affairs." Appeal Ex. 3, at 1.

The EISF described the "Project Definition" as follows:

> "Construction of one weight scale: Install one new 50' weight scale in addition to existing scales. State, Federal Laws and Business procedures require that trucks entering and leaving this facility must be weighed. Scales can frequently get stuck, break or become unreliable. Currently, no back-up scale is causing many customer complaints. When a scale is not operational, back-up's occur and customers must endure long waiting times. The physical size of the building is a limited factor to any increase or growth in business operations. This additional scale is a responsible business decision, and has no potential to have any environmental impact."
>
> "Repair/Replace Existing Structural Steel: Due to the age, damage from snowstorm of 2002/2003, no engineering data and physical damage. The steel needs replacement."
>
> "Existing Weight Scale: Due to age this scale is due for replacement. See picture number one."
>
> "Existing Roof Structure: Due to age, damage from snowstorm of 2002/2003, a portion of the roof and sub-structure has failed requiring immediate replacement. See picture number two."
>
> "Existing Siding: Due to age, damage from the snowstorm of 2002/2003, vehicular damage, mixed construction materials, replace approximately 212 linear feet of brick, metal, grates, masonry with material that matches the existing. . . "
>
> "Existing Concrete Floor: Replace damaged existing concrete floor in limited area."
>
> "Existing Overhead Doors: Existing doors are damaged/unsuitable/removed. Replacement is required."
>
> "Existing Scalehouse and Bathrooms: Services need replacement. . . ."

Appeal Ex. 3, at 2.

The EISF stated that "None of the proposed changes will 'substantially alter' the facility. They will not make any physical modification to the facility which will increase or decrease by more than 10% per year the facility's maximum annual capacity, as indicated in any applicable solid waste facility permit. Nor will the proposed changes in any way alter or modify the method by which the waste is processed or disposed, or increase the amount of any air pollutant not previously emitted." *Id.* at 1. The EISF further stated:

> Permit Application #59B is for renovations to a small portion of the existing building with the exception of one new scale. . . . none of the work . . . will result in significant adverse environmental impacts. The '**Construction Phase**' will result in ten (10) +/- additional people with three to five vehicles on site. Delivery of construction materials will be minimal, approximate average of two deliveries per day. The '**Operational Phase**' will result in no change to existing operations.

Id. at 2 (emphasis in original). ETW also stated that:

> In addition, none of the proposed changes will "substantially alter" the facility. They will not make any physical modification to the facility which will increase or decrease by more than 10% per year the facility's maximum annual capacity, as indicated in any applicable solid waste facility permit. Nor will the proposed changes in any way alter or modify the method by which the waste is processed or disposed, or increase the amount of any air *pollutant* not previously emitted.

Id. The EISF also repeatedly stated that the project "will not alter or change existing conditions" *Id.* at 5-6.

The Office of Planning Memorandum

In a memorandum to DCRA dated May 3, 2004 (Appeal Ex. 5), the Office of Planning characterized the repairs and improvements proposed by ETW in its Application as a "full reconstruction of the facility." Ex. 5, at 1. This conclusion followed from the Office of Planning's factual assumption that "[a]fter completion of the renovation project, approximately 10 new employees with between three to five additional vehicles will be added to the site. The proposed renovation project will substantially alter the facility." *Id.* (emphasis in original).

The Office of Planning's finding that the project would result in the addition of ten new employees and three to five vehicles was a blatant mischaracterization of the record. As set forth above, the EISF had clearly stated that although the "construction phase" would result in approximately ten additional people and three to five vehicles on site, the "operational phase" "will result in no change to existing operations." Appeal Ex. 3, at 2.

The Department of Health Memorandum to DCRA

In a memorandum to DCRA dated September 14, 2004, the D.C. Department of Health ("DOH") reported it found "no apparent significant adverse impact or likelihood of substantial negative impact on the environment as a result of the proposed project. Therefore, the Department of Health does not recommend preparation of an Environmental Impact Statement (EIS) for this project." Appeal Ex. 11 (submitted February 17, 2005).

The October 12, 2004 Memorandum from DCRA

In a memorandum dated October 12, 2004 DCRA stated that EISF "Reports have been received from all reviewing agencies, the District Department of Transportation, the Department of Health, the DC Water and Sewer Authority, the Department of Public Works and the Office of Planning." Appeal, Ex. 10 (submitted February 11, 2005). DCRA stated that "None of the reports, except that submitted by the Office of Planning, indicates that the project will result in a substantial negative impact on the environment." *Id.* The DCRA memorandum failed to acknowledge the fact that the Office of Planning's recommendation to DCRA was subject to the Office of Planning's erroneous characterization of the impact of the work on the Facility.

The November 3, 2004 Referral to the Board

In a memorandum to the BZA dated November 3, 2004, DCRA characterized the proposed repairs and improvements as effecting an "enlargement to an existing non-conforming

use." Appeal Ex. 4, at 1. DCRA specifically stated that to grant the Application it was necessary for the Board to issue a:

> Variance pursuant to Section 2002.4 to allow proposed **enlargement to an existing non-conforming use** as "warehouse-waste and recycling" structure and from Section 3202.5(b) for filing this project after the Zoning Commission made a decision on the amendment of the Commercial Residential CR Zone District Classification. (Second 3103.2)

Id. (emphasis added).

The Notice of Final Rulemaking for the Capitol Gateway Overlay Zoning Amendments

On January 5, 2005, the Zoning Commission published in the D.C. Register a Notice of Final Rulemaking and Order No. 97, Z.C. Case No. 96-3/89-1, for the Capitol Gateway Overlay zoning amendments. 52 DC Reg. 63. The final rulemaking implemented the following new section in 11 DCMR:

> **1605 EXISTING INDUSTRIAL USES**
>
> 1605.1 A commercial or industrial use that is first permitted in the CM or M Zone Districts and that is in existence with a valid Certificate of Occupancy *as of the date the provisions of this Chapter first became effective* shall be deemed a conforming use, but shall not be entitled to expand."

52 DC Reg. at 78. In enacting this amendment, the Commission explained:

> 2. Existing Industrial Uses
>
> The advertised text would have recognized existing industrial uses as conforming. The Zoning Commission concluded that the existing commercial or industrial uses that are first permitted in a CM or M industrial zone should not be permitted to expand, because the uses are inconsistent with the intent of these map and text amendments, and the Commission's vision for the Overlay area. The Commission recognized the importance of the uses to the District, but concluded that allowing the expansion of such uses would be contrary to the efforts to change the character of the area and stimulate redevelopment of the Overlay area as a residential and commercial mixed-use community. Therefore, the Zoning Commission modified the advertised language to deem existing industrial uses conforming, but to prohibit their expansion.

Id. at 66-67.

STANDARD OF REVIEW

Under the D.C. Administrative Procedure Act, agency decisions may not be 1) "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 2) made "without observance of procedure required by law," or 3) "unsupported by substantial evidence in the record . . . ." D.C. Code § 2-510(a)(3)(A), (D), and (E). Among other things the agency decision must be based on a "consideration of all the relevant factors."[1] The agency must examine all relevant data and articulate a rational explanation for its action. *Eagle-Picher Industries, Inc. v. United States*, 759 F.2d 905 (D.C. Cir. 1985); *National Wildlife Federation v. FERC*, 801 F.2d 1505 (9th Cir. 1986) (agency decisions must consider important aspects of the problem, and offer an explanation for a decision that is contrary to evidence before agency).

ARGUMENT

I. THE DCRA ACTED ARBITRARILY AND CAPRICIOUSLY IN DETERMINING THAT A VARIANCE IS NECESSARY FOR THE WORK PROPOSED IN ETW'S PERMIT APPLICATION.

DCRA's determination that a variance from the Board is necessary for Appellant's construction permit Application to be granted was arbitrary and capricious because it was based on a factual predicate – that the proposed work would result in an "enlargement" of the Facility – that was not based on any evidence in the record, and was directly contrary to the undisputed evidence before the agency.

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[1] *Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Auto Ins. Co.*, 463 U.S. 29 (1983); *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402 (1971); *National Treasury Employees Union v. Helfer*, 53 F.3d 1289 (D.C. Cir. 1995).

In its November 3, 2004 referral memorandum to the Board, the DCRA characterized the proposed work as resulting in an "**enlargement** to an existing **non-conforming use** . . . ." Appeal Ex. 4, at 1 (emphasis added). This characterization was erroneous for two reasons. First, under the Zoning Commission's final rulemaking for the Capitol Gateway Overlay amendments, ETW's continued use of the Facility as a solid waste transfer station constitutes a "conforming use" rather than a "non-conforming use." Second, there is no support in the record for concluding that the proposed work would enlarge the Facility. To the contrary, the undisputed evidence is that the Facility would not be enlarged as a result.

A. The Continued Use of the Facility as a Solid Waste Transfer Station is a "Conforming Use."

DCRA's characterization of the Facility as a "non-conforming use" in its referral memorandum (Appeal Ex. 4) was erroneous because the Zoning Commission has stated that a "commercial or industrial use that is first permitted in the CM or M Zone Districts and that is in existence with a valid Certificate of Occupancy *as of the date the provisions of this Chapter first became effective* shall be deemed a conforming use . . . ." 52 D.C. Reg. at 78; 11 DCMR 1605.1. Since 1992 ETW has possessed a valid Certificate of Occupancy for the Facility. This predated the effective date of the Capitol Gateway Overlay amendments by at least 10 years. Thus ETW's continued use of the property for a solid waste transfer station is a "conforming use." Accordingly, DCRA's reference to 11 DCMR 2002.4 in its November 3, 2004 referral memorandum (Appeal Ex. 4) was erroneous. Section 2002.4 is part of 11 DCMR 2002, entitled "Nonconforming Uses within Structures." Clearly section 2002.4 can have no application here.

B. DCRA's Conclusion that the Proposed Work would Enlarge the Facility is Unsupported in the Evidence before the Agency and Contrary to the Undisputed Evidence before the Agency.

The conclusion of DCRA in its November 3, 2004 referral memorandum that the proposed work would enlarge the facility (Appeal Ex. 4) is not expressly tied to any evidence in the record before the agency. For this reason alone, the conclusion is arbitrary and capricious.

Moreover, the conclusion is contrary to the undisputed evidence from Appellant that the proposed changes would not enlarge the Facility. Nothing in the proposed work was going to increase the square footage of the Facility. Moreover, as set forth above, the EISF stated that following construction there "will result in no change to existing operations." Appeal Ex. 3, at 2. None of the proposed changes will "substantially alter" the facility. *Id.* "They will not make any physical modification to the facility which will increase or decrease by more than 10% per year the facility's maximum annual capacity, as indicated in any applicable solid waste facility permit. Nor will the proposed changes in any way alter or modify the method by which the waste is processed or disposed, or increase the amount of any air *pollutant* not previously emitted." *Id.*

DCRA's conclusion that the proposed work would enlarge the Facility appears to be based on the Office of Planning's erroneous finding that "[a]fter completion of the renovation project, approximately 10 new employees with between three to five additional vehicles will be added to the site." Appeal Ex. 5, at 1. This was a blatant mischaracterization of the EISF, which actually stated that "The 'Construction Phase' will result in ten (10) +/- additional people with three to five vehicles on site. . . . The 'Operational Phase' will result in no change to existing operations." Appeal Ex. 3, at 2. The Office of the Attorney General for the District of Columbia has acknowledged the error of the Office of Planning. *See* Appeal Ex. 12 (submitted February 17, 2005) ("OP in its EISF report on [ETW's] proposed project dated May 3, 2004, **erroneously**

noted that the project would add 'approximately 10 new employees' and 'three to five additional vehicles' to the site") (emphasis added).

It was arbitrary and capricious for the DCRA to base its conclusion that the proposed work would enlarge the Facility on the erroneous factual determination made by the Office of Planning.

Even if the erroneous determination of the Office of Planning is not considered, it is clear that the DCRA's conclusion that the proposed construction would enlarge the Facility is incorrect. In *Hot Shoppes, Inc. v. Clouser*, 231 F. Supp. 825 (D.D.C. 1964), *aff'd*, 346 F2d 834(D.C. Cir. 1965), the court reversed the Board's refusal to issue a building permit based on the Board's determination that the proposed construction would effect an "enlargement" of the non-conforming use of a drive-in service area adjacent to a restaurant. As a result of a zoning change, the drive-in service could continue, but the area could not be enlarged.

Part of the original structure was a storage area, enclosed on two sides by a basket weave wooden fence. This fenced-in area was adjacent to the main building. Plaintiff stored "commissary carts" in that area. These were carts were an enclosed metal cabinet in which food supplies were transported from the Hot Shoppes' commissary to various Hot Shoppe outlets. After delivery, the carts were placed in storage until picked up and returned to the commissary. The carts were thus part of plaintiff's general operations in transporting food to its various retail outlets. They were not used to transport food to cars, but were used to bring food to the restaurant itself, thus furthering the conforming uses (counter and table services) and nonconforming use (drive-in service) of plaintiff's restaurant.

In deciding that the case needed to be remanded to the BZA, the court stated:

> The Board determined that the proposed new structure constitutes "an enlargement," and as such is barred by the Zoning Act . . . . There is no

> substantial evidence to support this finding. Uncontradicted evidence presented to the Board in the form of an affidavit by the district manager of Hot Shoppes, Inc. stated that "the area to be occupied by the altered structure is enclosed on two sides by a roofless structure, consisting of a high basket-wave type wooden fence.," thus indicating that the floor area of the new structure would be the same size as the floor are of the fenced in area. It was further stated in the affidavit that 'the proposed alteration will not increase the volume of business.' This statement also stands uncontradicted in the record before the Board. . . . There is thus no evidence suggesting that the proposed structure would constitute an "enlargement" of the nonconforming use – namely, the restaurant's curb service. All of the evidence is to the contrary. The Board therefore committed error in finding that the proposed structure was an enlargement; such finding is not supported by substantial evidence and is arbitrary and capricious.

Id. at 830-31.

Similarly here, the DCRA's conclusion that the proposed construction would effect an "enlargement" of the Facility is arbitrary and capricious. It is not supported by evidence in the record and is contrary to the uncontradicted evidence that is in the agency record.

II. THE PROPOSED PROJECT WOULD NOT EXPAND THE PREEXISTING "CONFORMING USE" OF THE FACILITY AS A SOLID WASTE TRANSFER STATION.

As set forth above, the Zoning Commission determined that even following the effective date of the Capitol Gateway Overlay zoning amendments, a "commercial or industrial use that is first permitted in the CM or M Zone Districts and that is in existence with a valid Certificate of Occupancy *as of the date the provisions of this Chapter first became effective* shall be deemed a conforming use but shall not be entitled to expand." 52 D.C. Reg. at 78; 11 DCMR 1605.1. There is no finding in the record below that the construction proposed by ETW in its Application would result in an expansion of the current use of the Facility as a solid waste transfer station. Accordingly, no variance is required and the Application should be granted.

However, even assuming, *arguendo*, that the agency's conclusion that the proposed construction would result in an "enlargement" of the Facility (Appeal Ex. 4, at 1) could be construed as a determination that the work would effect an "expansion," such a determination is legally erroneous pursuant to well-established case law defining the term "expansion" for purposing of zoning regulations.

As set forth in the EISF, "[n]one of the proposed changes will 'substantially alter' the facility. They will not make any physical modification to the facility which will increase or decrease by more than 10% per year the facility's maximum annual capacity, as indicated in any applicable solid waste facility permit. Nor will the proposed changes in any way alter or modify the method by which the waste is processed or disposed, or increase the amount of any air pollutant not previously emitted." Appeal Ex. 3, at 1.

However, even assuming, *arguendo*, that the additional weight scale and/or any of the other improvements would allow ETW to increase the amount of business at the Facility, the law is clear that a "mere increase in the amount of business done pursuant to a nonconforming use is not an illegal expansion of the original use." *Helicopter Associates, Inc. v. City of Stamford,* 201 Conn. 700, 716, 519 A.2d 49, 57 (1986); *see also Salerni v. Scheuy*, 140 Conn. 566, 571, 102 A.2d 528, 530 (1954) ("Ordinarily a mere increase in the amount of business done in pursuance of a nonconforming use, or a change in the equipment used, does not constitute a change of the use itself"); *Vermont Brick & Bloc, Inc. v. Village of Essex Junction*, 135 Vt. 481, 484, 380 A.2d 67, 69 (1977) ("An enlargement or expansion of a nonconforming use, rather than a mere increase in business, is indicated where new facilities or a new product is involved"; "manufacturing of concrete . . . in . . . trucks" was "far different . . . prior nonconforming use of on-premises manufacture of concrete bricks and blocks and sale of building materials"); *Village*

of Lake Villa v. Fargo Ice & Sons, Inc., 90 Ill. App. 3d 545, 546, 413 N.E.2d 532, 533 (1980) ("mere increase in the volume of business is not a prohibited expansion"; "Nor can we agree . . . that since the operation has changed from the manufacture of ice on the premises to the purchase of ice from outside sources and storage on the premises, there is a new and different use"). As one authority has stated:

> It is the general rule that the employment of modern and more effective instrumentalities, not previously used, in a nonconforming business or use or in connection with a nonconforming building does not constitute a prohibited expansion or enlargement of the business, use or building. In short, an owner can modernize facilities and employ improved instrumentalities in connection with a nonconforming building or use. However, the instrumentalities must be ordinarily and reasonably adapted to make the use in question available to the owner, and, moreover, the original nature and purpose of the undertaking must remain unchanged. Thus, for example, in mining, quarrying and similar types of uses, the introduction of new, mechanized devices and equipment is not an enlargement or extension of the use, but merely a more effective method of carrying it on.

8A McQuillin, Municipal Corporations, § 25.210. (3d ed. 1965 Rev.).

Similarly here, the proposed repairs and improvements would not expand the Facility. Rather they would merely assist the Facility in conduct a more efficient and effective operation.

Finally, the proposed changes are intended to help ETW continue to perform the conforming use. The proposed renovation and repair of the structure is consistent with the Zoning Commission's recognition of the "importance of the [conforming industrial] uses to the District." 52 D.C. Reg. at 67.

CONCLUSION

For the reasons set forth above, Appellant respectfully requests that the Board reverse the decision of the DCRA which refused to grant the construction permit Application unless a variance was issued by the Board.

Respectfully submitted:

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Dated: February 25, 2005

CERTIFICATE OF SERVICE

I certify that on February 25, 2005 a true and accurate copy of the foregoing Pre-Hearing Brief of Appellant Eastern Trans-Waste of Maryland, Inc. was served via First Class U.S. Mail, postage prepaid, on the following person:

Julie Lee, Esquire
General Counsel
District of Columbia Department of Consumer and Regulatory Affairs
941 North Capitol Street, NE, Suite 9400
Washington, DC 20002

Roy Goldberg

1

Robbie's copy

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
PERMIT SERVICE CENTER

BUILDING PERMIT CONTROL BATCH SHEET

Date: 10/10/03 Take Time: 11:34 ☒AM ☐PM	LOG NO. 03 - Time At Engr's. Counter: ☐AM ☐PM	Review Completion Date: ☐AM ☐PM
Address Including Lot & Square: 1315 First st, SE		Time Received: ☐AM ☐PM
Owner of Building or Property:	Owner Address of Property:	Phone: Work:
Agent for Owner (if applicable):	Agent for Owner Address:	Phone: Work:

Type of Proposed work : New Building * Addition* Alt. & Repair * Raze * Retaining Wall * Fence* Shed * Awning* Garage * Open

REQUIRED REVIEWS (Checked boxes only)	REVIEWER	TIME	REVIEW STATUS
PUBLIC SPACE	S.	IN 12-11-03 ☐AM ☐PM OUT ☐AM ☐PM	☒ Approved ☐ HFC ☐ Ref. to DPW ☐ Conf. w/ Applicant
ZONING 10/11/03		IN ☐AM ☐PM OUT ☐AM ☐PM	☒ Approved ☐ HFC ☐ Ref. to BZA ☐ Ref. to Zoning Administrator ☐ Conf. w/ Applicant
SOIL EROSION STORMWATER MGMT.		IN ☐AM ☐PM OUT ☐AM ☐PM	☐ Approved ☐ HFC ☐ Ref. to DOH ☐ Conf. w/ Applicant
AIR QUALITY ☐ EIS		IN ☐AM ☐PM OUT ☐AM ☐PM	☐ Approved ☐ HFC ☐ Ref. to DOH ☐ Conf. w/ Applicant
WATER AND SEWER		IN ☐AM ☐PM OUT ☐AM ☐PM	☐ Approved ☐ HFC ☐ Ref. to WASA ☐ Conf. w/ Applicant
MECHANICAL/PLUMBING		IN ☐AM ☐PM OUT ☐AM ☐PM	☐ Approved ☐ HFC ☐ Conf. w/ Applicant
HEALTH (Food & Medical)		IN ☐AM ☐PM OUT ☐AM ☐PM	☐ Approved ☐ HFC ☐ Conf. w/ Applicant
ELECTRICAL		IN ☐AM ☐PM OUT 11/4/03 ☐AM ☐PM	☐ Approved ☐ HFC ☐ Conf. w/ Applicant N/A
ELEVATOR		IN ☐AM ☐PM OUT ☐AM ☐PM	☐ Approved ☐ HFC ☐ Conf. w/ Applicant
FIRE PROTECTION	MTQ	IN ☐AM ☐PM OUT 11/4/03 ☐AM ☐PM	☐ Approved ☐ HFC ☐ Conf. w/ Applicant
STRUCTURAL		IN ☐AM ☐PM OUT ☐AM ☐PM	☐ Approved ☐ HFC ☐ Conf. w/ Applicant

Str: ① provide Str. Certification

② provide D.C Surveyor plat.

P: - Submit plumbing plans + sanitary flow diagram.

- Also submit make-up air + exhaust + heater in bathrooms

NEED TO GO TO #51-N-STREET NE

NEED EROSION CONTROL PLANS

(J) APPROVALS (DO NOT WRITE ON THIS PAGE; OFFICIAL USE ONLY):

A. PERMIT CONTROL

1. Fine Arts by: _____ Date: _____
2. Historic by: _____ Date: _____
3. PADC by: _____ Date: _____
4. Cap. Gateway by: _____ Date: _____
5. W.H / Obs. Precinct by: _____ Date: _____
6. Flood Control by: _____ Date: _____
7. WMATA by: _____ Date: _____
8. Condem. by: _____ Date: _____
9. RLA by: _____ Date: _____
10. Rental Accom. by: _____ Date: _____
11. Chinatown Distr. by: _____ Date: _____
12. Utility Clearance by: _____ Date: _____
13. General Liability Ins. Policy Clearance by: _____ Date. _____

B. CLEARANCE TO FILE PLANS

1. Zoning by: _____ Date: _____
2. DPW — Permit and Records Division
   Access to Parking Street ☐ Street ☐ Alley
   Cleared by: _____ Date _____
3. DPW - Consumer Engineer
   Cleared by: _____ Date _____
4. ERA - Erosion Control
   Cleared by: _____ Date 12/11/03

Restrictions of the Permit:
Need FHS fm 10/10/03
Private Property only

SEPARATE ELECTRICAL, PLUMBING AND MECHANICAL INSTALLATION PERMITS ARE REQUIRED

TO REPORT WASTE, FRAUD, OR ABUSE BY ANY D.C. GOVERNMENT OFFICE OR OFFICIAL, CALL THE D.C. INSPECTOR GENERAL AT 1-800-521-1639

C. PLANS AND APPLICATION APPROVAL

1. ☑ Information Counter by: TD Date: 10-10-03
2. ☐ Information Center by: _____ Date: _____
   - (a) ABC Board by: _____ Date: _____
   - (b) Noise Control by: _____ Date: _____
   - (c) Industrial Safety by: _____ Date: _____
   - (d) Vector Control by: _____ Date: _____
   - (e) D.C. Animal by: _____ Date: _____
   - (f) Police Dept. by: _____ Date: _____
3. ☑ Zoning by: [signature] Date: 10/11/03
   Zoning Update by: _____ Date: _____
4. ☑ DPW - Permit and Records Division/Deposit #
   Sidewalk Deposit $_____ Driveway Deposit $_____
   by: SLa Date: 12-11-03
5. ☐ Water/Sewer Design Branch
   Consumer Eng. by: _____ Date: _____
6. ☑ Environmental Regulation Administration
   - ☐ Environmental Policy Review
     Control No.: _____
     by: _____ Date: _____
   - ☑ Erosion Control by: _____ Date. _____
   - ☐ Storm Water Mgmt. by: _____ Date _____
     Plan No: _____
7. ☑ Mechanical Eng. Review by: _____ Date: _____
8. ☑ Plumbing Eng. Review by: _____ Date: _____
9. ☑ Electrical Eng. Review by: [signature] Date: 11/3/03
10. ☐ Health Plan Review
    - (a) Food Plan Review by: _____ Date _____
    - (b) Medical X-ray Plan Rev. by: _____ Date: _____
11. ☐ D.C. Fire Dept. (Fire Prevention Plan Review Section) by _____ Date: _____
12. ☐ Elevator Plan Rev Sec. by: _____ Date: _____
13. ☐ Plumbing Insp Rev by: _____ Date _____
14. ☐ Construction Insp. Branch (Field Check) by _____ Date _____
15. ☐ Historic Pres. Div. by: _____ Date _____
16. ☑ Structural Eng. by _____ Date: _____
17. ☐ *Permit and Certificate Issuance Counter* By _____ Date: _____
18. ☑ Q.C. By _____ Date: _____

ZONING

of O Number B16503 Date 3/17/98
Existing Use(s) Warehouse (Wastes)

☐ New bldg
☐ P.U.D
☐ File in room 329

BZA Case No: _____ PUD Order No: _____

DPW — PUBLIC SPACE

Street Name: _____
Street Width: _____
Road Width: _____
Sidewalk Width: _____
Parking _____
Restrictions: _____

1974 ed-375

tect's Name:	29. Lic. No:	30. Architect's Address: *(include Zip)*	31. Phone:
[redacted] Name: J. Walkley	33. Lic. No.: H009787	34. Engineer's Address: *(include Zip)* 2000 Clipper Park Rd Baltimore MD 21211	35. Phone: 410 889 7700
ing Contractor's Name: Steel Structures	36A. Lic. No.: 033491	37. Contractor's Address: Box 403 Manchester MD 21111	38. Phone: 410 239 3000

of Construction ☐ Steel ☐ Other:	40. Fire Suppression: ☑ Fully Sprinklered ☐ Standpipe System ☐ Partially Sprinklered ☐ None ☑ Other: Water Mist	41. Booster Pump: ☐ New ☐ Existing ☑ None	42. Total Lot Area 53680 ± sq. ft.	43. Breakdown of Lot Area (= 100%): a. Building 53,680 % b. Paved Area % c. Greenery. %

ent Gross Floor Area of 53,680 ± sq. ft.	45. Proposed Gross Floor Area of Bldg: No Change sq. ft.	46. Floors involved in this permit: ☐ All ☐ Floors Single Floor 20'	47 Projection beyond building line? ☐ Yes, answer q. 48-52 ☑ No, SKIP q. 48-52

ber and type of projection: /e	49. Distance of projection:	50. Width of projection:	51. Width of building frontage: ft.	52. Signature of Owner (projection only):

er or Sewer avation? Yes No	54. Driveway Construction? ☐ Yes ☑ No	55. Sheeting/Shoring Necessary? ☐ Yes ☑ No	56. Elevators involved? ☐ Yes, answer q. 57 ☑ No, SKIP q. 57	57 No. and type of elev.:	58. Plans Certified by Engineer? ☑ Yes, cert. is attached ☐ No	

imated Cost of Work: w/Add: $ Rep. $ 400 000 ⁰⁰ otal: $ 400 000 ⁰⁰	OFFICIAL USE ONLY						
	Alter/Repair FEE	New Const. FEE	Filing Fee	TOTAL PERMIT FEE			
	$	$	$	$			
lume of New Bldg. or Addition: [redacted]000 cubic ft.	By:	Date:	By:	Date:	By:	Date:	By:	Date:

(C) RAZING A BUILDING (COMPLETE ITEMS 61 THRU 83)

ze Contractor's Name:	62. Contractor's Address: *(include Zip)*					63. Phone:	
surance Company.	65 Policy or Certif No:	66. Expir. Date:	67 Raze Method:				
uilding Material:	69. Raze Entire Building? ☐ Yes ☐ No	70. Building Condemned? ☐ Yes ☐ No	70A. Building Vacant? ☐ Yes ☐ No	71. Public Space Vault? ☐ Yes ☐ No	72. Disconnect Water and/or Sewer? ☐ Yes ☐ No	73. Size of Water Connection: in	

lumber's Name:	75 Lic. No.	76. Length: ft	77. Width: ft	78 Height: ft	79. Volume: cu. ft.	80. Party Wall? ☐ Yes ☐ No	

sbestos in the Building? lo ☐ Yes, Location	82. Raze Contractor Signature	OFFICIAL USE ONLY		
	83. Owner's Signature:	FEE $	By:	Date:

(D) RETAINING WALL (COMPLETE ITEMS 84 THRU 93)

Cost of Work.	85. Material:	86 Height: ft	87. Color:	88. Location ☐ Entirely on Owner's Land ☐ Party Line with Adjacent Neighboring Land*

* If party wall, the owner of the adjoining property must agree to the erection of the retaining wall and this application

Signature of Adjoining Owner	90 Phone Work Home	OFFICIAL USE ONLY	
ress of Adjoining Owner:	92 Lot	93. Square:	FEE / By: / Date:

Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration - Permit Service Center
941 N. Capitol St. N.E. Rm 2300
Washington D.C. 20002
Tel. 202-442-4547 Fax. 202-442-4867

Building Permit Application Filing Fee Receipt DATE 10-Oct-03

D.C. TREASURER

File Job No:		Address of Project:	1315 First ST SE		
[ ] Historic [ ] Fine Arts [ ] BZA	[ ] Other	Lot:	15,16	Square:	703
Contact Person: Mark Reynolds		Tel. No.			
Contact Address:				**Filing Fee**	
Assigned By: LEON				**$400.00**	
Pay to D.C. Treasurer	Credit BLRA Acct #3012			**File Job No:**	

TO: THE DIRECTOR, DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS, WASH., D.C.

DATE 11-18-03

I hereby request that the plans filed in your office under the name of Mack Reynolds
Durable Steel Structures to (erect) (alter) the following structur
1315 First St. S.E Lot 15-16 Square 703
premises: be processed as provide
in Section 111.5.1.1 of the D.C. Construction Codes Supplement of 1992, as amended, upon certification of the plan
by Michael J. Walkley, P.E., who, to the best of my knowledge, is a professiona
engineer, practicing in the field of structural engineering, and validly registered in the District of Columbia.

Date 11-18-03 Signature David Florence VP-Sec (Owner)

STRUCTURAL CERTIFICATION

I, Michael J. Walkley P.E., certify that I am a Professional Engineer practicing in the field of structural engineering and duly registered in accordance with the provisions of Public Law 789 of the 81st Congress, approved September 18, 1950, and that such registration is in full force and effect and has not been suspended or revoked, and I do further certify that to the best of my knowledge and belief the structural portion of the attached plans pertaining to the above inscribed structure complies in every respect with the applicable requirements of BOCA Basic National Building Code/1996, as amended by the DC Construction Codes Supplement of 2002 with particular reference to strength, stresses, loads, stability and type of materials.

Signature
Registered Professional Engineer

Reg. No. 749009787

DISTRICT OF COLUMBIA
MICHAEL J. WALKLEY
No. 749009787
REGISTERED
PROFESSIONAL ENGINEER

ACKNOWLEDGEMENT

I, Linda S Zimmerman, a Notary Public in and for W.S.T. do hereby certify that David Florence the person(s) who signed the foregoing certificate, personally appeared before me in said X, the said be personally well known to me as the person who signed the said certificate, and acknowledged the same to be his/her act and deed.

Given under my hand and seal this 18 day of N to 2003

Notary Public

My Commission Expires 4/6/07 (Seal)

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Linda S. Zimmerman, Notary Public
Hopewell Twp., Cumberland County
My Commission Expires Sept. 6, 2007
Member, Pennsylvania Association Of Notaries

TO: THE DIRECTOR, DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS, WASH., D.C.
Application has been made to (erect) (alter) the above mentioned structure. Plans have been filed in accordance with the procedure outlined in your instructions, and a directive as to whether these plans described above should be processed without a structural check as provided in Section 111.5.1.1 of the D.C. Construction Codes Supplement of 1992 is requested.

NOTED AND APPROVED FOR THE DIRECTOR,
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Structural Engineer

SEE REVERSE SIDE FOR INSTRUCTIONS

No.B 162503

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

March 17, 1992
(date)

Permission is hereby granted to EASTERN TRANS-WASTE OF MARYLAND, INC.
to use suite(s) _____ on the FIRST floor(s)
of the building located on lot(s) 15-16 square 703
known as premises 1329 1st Street, S.E. for the following
purpose(s) Warehouse (Waste & Rec.)
Not sexually oriented [ ]

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 $ 38.20

Donald G. Murray, Director
By: _____
Designee

OFFICE COPY

BERA INC

CONTRACT AGREEMENT

[redacted] of Contractor/Owner Double Steel Structures Contractor's License No. 03313491

Address of Contractor/ Owner PO Box 403 Mankato Md. 21111 Date: 9-4-03

ADDRESS OF PROPOSED WORK
1315 First St. S.E.

LOT 15-16
SQUARE 703

OWNER OF BUILDING OR BUSINESS
George Dausch

PHONE No
410 239 3000

DESCRIPTION OF PROPOSED WORK Construction of Weight Scale
Replace/Repair: Weight Scale, Structural Steel, Roof, Siding, Concrete floor, Overhead doors, Bathroom, Scale house

COST ESTIMATE

CONSTRUCTION e.g drywall, cabinets, framing, carpentry etc.	$ 400,000.00	
ELECTRICAL By Separate Permit	$ 0.0	
MECHANICAL By Separate Permit	$ 0.0	
PLUMBING By Separate Permit	$ 0.0	
REPROTECTION e.g sprinkler system, fire alarm system, generator etc By Separate Permit	$ 0.0	
DEMOLITION	$ 0.0	
OTHER (please specify)	$ 0.0	
TOTAL	$ 400,000 00	

e labor and material costs of counter tops, kitchen cabinets, floor coverings, tile work, caulking, patching and plaster repair, painting other than fire retardant paint, ters and downspouts, not more than 160 square feet of gypsum board shall not be included in the cost estimate for permitting purposes. The entire list can be seen in e 1999 D C Building Supplement Chapter 1 Section 107.3

e foregoing terms, specifications and conditions are satisfactory and hereby agreed to You are authorized to work as specified and payment will be made as the ount as outlined Upon signing this agreement, the owner represents and warrants that he or she is the owner or the authorized agent of the owner of the aforesaid erties and that he or she has read this agreement.

CONTRACTOR [redacted] Date 9-15-03
GEORGE P. DAUSCH JR, PRES.
Signature & print

OWNER OF BUILDING/BUSINESS [redacted] Mark E. Harlacker Date 9-15-03
Signature & print Mgr. Gr. Tr. Mgr.

on signing this document, the owner and contractor declare that the cost of construction as specified above for the referenced project is true and correct to the best of eir knowledge

ase fill out this agreement form in accordance with D.C Construction Code Supplement 1999, Chapter 1 Section 112 1

[redacted]

Scope of the Project	Yes	No	Instructions
12 Is an exemption claimed from the requirement to submit an Environmental Impact Screening Form pursuant to Title 20, Sec. 7202 that is not referred to in this form? If yes, describe the exemption and cite the relevant section of the regulations on an attachment			If yes, describe on an attachment and submit to EIS Coordinator, DCRA.
13 Does the total cost of the project exceed $1 42 million, including site preparation and construction?			If yes, and no exemption claimed, Environmental Impact Screening Form (EISF) required. If no, indicate actual project cost _____
14 Is the cost of this project $1 42 million or less? If yes, please answer all of the following questions			If yes, complete A through G.
A Does the project site contain any species of plant or animal that is identified as threatened or endangered?			If yes, EISF required.
B Are any streams, lakes, ponds, springs or wetlands within 100 feet of the project site?			If yes, EISF required.
C Will the project result in an emission of odorous or other air pollutants from any source, including VOCs?			If yes, EISF required.
D Will this action involve the use, production or disposal of hazardous substances as defined in 20 DCMR 7299?			If yes, EISF required.
E Will construction be on land where the depth to the water table is less than 3 feet?			If yes, EISF required.
F Will blasting occur as part of the project?			If yes, EISF required.
G Will the project generate medical, infectious, radioactive or hazardous waste?			If yes, EISF required.

I certify that all of the statements on this application are true and complete to the best of my knowledge and belief. I agree to comply with all applicable laws and regulations of the District of Columbia. The making of false statements on this application is punishable by criminal penalties. (DC Code Sec. 22-2514)

M.K. [illegible] 10.10.03

Signature of Owner/Authorized Agent — Date

OFFICIAL USE ONLY

Environmental Impact Screening Form required: Yes _____ No X Referred to EIS Coordinator _____

DCRA Reviewer _____ Date 10/10/03

If yes, submit to EIS Coordinator
Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration

Comments _____

_____

NOTE: APPROVAL OF A BUILDING PERMIT IS NOT SYNONYMOUS WITH APPROVAL OF AN ACTION OR ENTIRE PROJECT UNDER THE ENVIRONMENTAL POLICY ACT OF 1969. IF THE APPLICANT BUILDS ON THE SAME, ADJACENT OR ABUTTING PROPERTY OR EXPANDS UPON THE WORK DESCRIBED IN THE INSTANT APPLICATION OR PLANS AND SPECIFICATIONS WITHIN THREE YEARS, AN ENVIRONMENTAL IMPACT SCREENING FORM MAY BE REQUIRED FOR THE ENTIRE PROJECT, INCLUDING THE PORTION ENCOMPASSED BY THIS APPLICATION AND PERMIT APPROVAL. FURTHER, IF THE ACTION IS IN VIOLATION OF ANY FEDERAL OR DISTRICT LAWS PERTAINING TO THE ENVIRONMENT, AN EISF CAN BE REQUIRED.

TO REPORT WASTE, FRAUD, OR ABUSE BY ANY DC GOVERNMENT OFFICE OR OFFICIAL, CALL THE INSPECTOR GENERAL ON 1- 800- 521-1639

DEPARTMENT OF CONSUMER & REGULATORY AFFAIRS
Building and Land Regulation Administration
941 North Capitol Street NE, Suite 2000
Washington DC 20002

ENVIRONMENTAL INTAKE FORM

Project Name:	Project Address: 1315 1ST St. SE. Lot: 15-16 Square: 703
Filed Job Application # (if applicable):	Project Description: Replace / Repair

Owner: Eastern Trans-Waste of Maryland Inc. Date: 9.4.03

Owner's address and phone #: 1315 1st St SE. Washington D.C. 20003

Authorized agent: Durable Steel Structures / Mark Reynolds

Address and Phone # of authorized agent: PO Box 403 Mardela Md. 21111

Scope of the Project	Yes	No	Instructions
1 Does the owner of this site own adjacent or abutting property?		✓	If yes, submit a site plan to EIS Coordinator, DCRA. If no plan exists, submit written explanation to EIS Coordinator, DCRA.
2 Does the owner of this site plan to acquire property that is adjacent to or abutting this site within the next three years?		✓	If yes, submit a site plan to EIS Coordinator, DCRA. If no plan exists, submit written explanation to EIS Coordinator, DCRA.
3 Is additional activity planned by the applicant for this site or any site within the same square during the next three years that requires a permit?		✓	If yes, submit a site plan to EIS Coordinator, DCRA. If no plan exists, submit written explanation to EIS Coordinator, DCRA.
4 Is this a residential project within the R-1 through R-5-A zoning districts?		✓	If yes, skip to signature line.
5 Is this project a single-family residence that is not in conjunction with the building of two or more units?		✓	If yes, skip to signature line.
6 Is this project an accessory structure such as a garage, patio, swimming pool or fence?		✓	If yes, skip to signature line.
7 Is the project solely an interior renovation with no change in the use or capacity of the structure being renovated?	✓		If yes, skip to signature line.
8 Is the project located in an Economic Development Zone, as defined in DC Code 5-1401 et seq (DC Law 7-177)?			If yes, skip to signature line.
9 Is the project located within the Central Employment Area as defined in DC Zoning Regulations? (Title 11DCMR)			If yes, skip to signature line.
10 Does the project involve only the operation, repair, maintenance, or minor alteration of public structures, facilities, mechanical equipment, or topographical features and involve negligible or no expansion of use beyond that previously existing?			If yes, skip to signature line.
11 Has an Environmental Impact Statement (EIS) been prepared pursuant to the National Environmental Policy Act of 1969 (NEPA), or a determination made that no EIS is needed, or has the functional equivalent of an EIS been prepared?			If yes, submit documentation to EIS Coordinator, DCRA.

-OVER-

304.063
175.067
54
304.063
1ST
STREET

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., November 19, 2003

Plat for Building Permit of SQUARE 703 LOT 54

Scale: 1 inch = 40 feet Recorded in Book 187 Page 9

Receipt No. 06129

Furnished to: M. REYNOLDS

Surveyor, D.C.

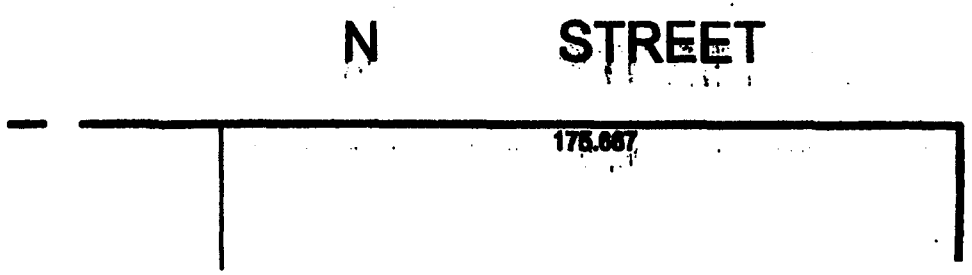
By: L.M.A.

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat;and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: 12 · 11 · 03

(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.



For Official Solicitation Use Only

PERMIT REQUIRED — YES ☐ NO ☐ Reviewed By: X522805

ENVIRONMENTAL HEALTH ADMINISTRATION

CONSTRUCTION PERMIT APPLICATION – SUPPLEMENTAL FORM – ENVIRONMENTAL QUESTIONNAIRE

ADDRESS: 1315 1st St SE LOT: 15-16 SQUARE: 703

JECT DESCRIPTION: Construction of Night Scale

Replace / Repair: Structual Steel, Night Scale, Roof Siding, Concrete Floor, Overhead Doors, Scale house, Bathroom,

please answer all 12 questions in the questionnaire, by checking either column "Yes" or "No" for each question. If you answer "Yes" to any of the ons, you should contact the corresponding office(s) indicated in column 'contact person/office' as soon as possible. Until this application is reviewed and ved by the concerned office(s), the permit will not be issued.

SCOPE OF PROJECT	YES	NO	CONTACT PERSON/OFFICE	OFFICE USE (Initial/Date)
Will the proposed use involve the construction of a facility for the handling, transfer, storage, disposal or treatment of solid waste, medical waste, or recyclable materials?	✓	✓	2[illegible]-N STREET, NE (202) 535-2280, EIS Coordinator, EHA <1/million 3rd Floor 2	12/11/2003
Will the work to be performed involve the assessment or clean-up of soils associated with the release of materials from an underground storage tank (UST)?		✓	(202) 535-2525, Underground Storage Tank Division, EHA (202) 535-2250, Air Quality Division, EHA	
Will the work to be performed involve the assessment or clean-up of groundwater associated with the release of materials from an underground storage tank (UST)?		✓	(202) 535-2525, Underground Storage Tank Division, EHA (202) 535-2190, Water Quality Division, EHA (202) 535-2250 Air Quality Division, EHA	
Will the proposed project involve the installation or drilling of wells other than for the purposes stated in questions 3 and 4?		✓	(202) 535-2190, Water Quality Division, EHA	
Will the proposed project involve the generation, treatment, storage, disposal or transportation of chemicals or other substances which may be considered hazardous?		✓	(202) 535-2290, Hazardous Waste Division, EHA No Recycling	12/11/2003
Will the proposed project involve construction that will disturb sediment in rivers, streams or wetlands?		✓	(202) 535-2190, Water Quality Division, EHA	
Will the work to be performed involve the installation, removal, abandonment, or repair of an underground storage tank (UST) system?		✓	(202) 535-2525, Underground Storage Tank Division, EHA	
Will the proposed project result in the discharge into the air of gases, dust, or the creation of any objectionable odors?		✓	(202) 535-2250, Air Quality Division, EHA	
Will the proposed project involve the removal, handling, transportation, disposal, or encapsulation of asbestos? *Please bring with you a copy of your asbestos survey, ten-day notification form, and asbestos abatement permit fee		✓	(202) 535-2250, Air Quality Division, EHA	
Was the building built before 1978? (Lead paint may be present.)		✓	If you answer "Yes" to this question, please answer the questions and follow the instructions on the "Lead Hazard Control Questionnaire" to determine if you need a permit to conduct a Lead Abatement Project	

AFFIDAVIT

eby certify that I have the authority of the owner of the property to make this application. I declare that the answers to the above questions in this tionnaire are complete and correct to the best of my knowledge.

ature Mark Reynolds Name (print) Mark Reynolds

ress PO Box 402 Marlboro MD 20773 Date 12-10-03 Phone 410 239 3000

OFFICE USE ONLY

MENTS AND PERMIT RESTRICTIONS:

(USE REVERSE IF NECESSARY)

EHA Form # 00-1300 – Revised 03/01

Scope of the Project	Yes	No	Instructions
12 Is an exemption claimed from the requirement to submit an Environmental Impact Screening Form pursuant to Title 20, Sec. 7202 that is not referred to in this form? If yes, describe the exemption and cite the relevant section of the regulations on an attachment			If yes, describe on an attachment and submit to EIS Coordinator, DCRA.
13 Does the total cost of the project exceed $1 42 million, including site preparation and construction?			If yes, and no exemption claimed, Environmental Impact Screening Form (EISF) required. If no, indicate actual project cost _____.
14 Is the cost of this project $1 42 million or less? If yes, please answer all of the following questions			If yes, complete A through G.
A Does the project site contain any species of plant or animal that is identified as threatened or endangered?			If yes, EISF required.
B Are any streams, lakes, ponds, springs or wetlands within 100 feet of the project site?			If yes, EISF required.
C Will the project result in an emission of odorous or other air pollutants from any source, including VOCs?			If yes, EISF required.
D Will this action involve the use, production or disposal of hazardous substances as defined in 20 DCMR 7299?			If yes, EISF required.
E Will construction be on land where the depth to the water table is less than 3 feet?			If yes, EISF required.
F Will blasting occur as part of the project?			If yes, EISF required.
G Will the project generate medical, infectious, radioactive or hazardous waste?			If yes, EISF required.

I certify that all of the statements on this application are true and complete to the best of my knowledge and belief. I agree to comply with all applicable laws and regulations of the District of Columbia. The making of false statements on this application is punishable by criminal penalties. (DC Code Sec. 22-2514)

[signature] 10.10.03

Signature of Owner/Authorized Agent — Date

OFFICIAL USE ONLY

Environmental Impact Screening Form required: Yes _____ No X Referred to EIS Coordinator _____

DCRA Reviewer [signature] Date 10/10/03

If yes, submit to EIS Coordinator
Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration

Comments _____

NOTE: APPROVAL OF A BUILDING PERMIT IS NOT SYNONYMOUS WITH APPROVAL OF AN ACTION OR ENTIRE PROJECT UNDER THE ENVIRONMENTAL POLICY ACT OF 1989. IF THE APPLICANT BUILDS ON THE SAME, ADJACENT OR ABUTTING PROPERTY OR EXPANDS UPON THE WORK DESCRIBED IN THE INSTANT APPLICATION OR PLANS AND SPECIFICATIONS WITHIN THREE YEARS, AN ENVIRONMENTAL IMPACT SCREENING FORM MAY BE REQUIRED FOR THE ENTIRE PROJECT, INCLUDING THE PORTION ENCOMPASSED BY THIS APPLICATION AND PERMIT APPROVAL. FURTHER, IF THE ACTION IS IN VIOLATION OF ANY FEDERAL OR DISTRICT LAWS PERTAINING TO THE ENVIRONMENT, AN EISF CAN BE REQUIRED.

TO REPORT WASTE, FRAUD, OR ABUSE BY ANY DC GOVERNMENT OFFICE OR OFFICIAL, CALL THE INSPECTOR GENERAL ON 1-800-521-1639

5/2002

Material and Type:	95. Height: ft.	96. Color:	97. Location: ☐ Entirely on Owner's Land ☐ Party Line with Adjacent Neighboring Land*

* If party fence, the owner of the adjoining property must agree to the erection of the fence and this application.

Signature of Adjoining Owner.	99. Phone: Work Home	
Address of Adjoining Owner:	101. Lot*	102. Square:

(F) SHED OR GARAGE (COMPLETE ITEMS 103 THRU 113)

Number:	104 Length: ft	105. Width: ft.	106. Area. sq. ft.	107 Height: ft.	108 Volume: cu. ft	109. Estimated Cost of Work: $
Material of Roof:	111. Material of Sides:	112. Wall thickness: ☐ External ( ) inches ☐ Party ( ) inches			113 Color.	

(G) AWNING (COMPLETE ITEMS 114 THRU 123)

Number:	115. Color	116. Type: ☐ Folding ☐ Fixed	117. Projections: Beyond bldg. line ____ in. Beyond pt. of attachm. ____ in	118 Height of lowest part of awning: (a) ____ ft above sidewalk (b) ____ ft above parking (c) ____ ft above grade	
Material of Frame:	120. Material of Covering	121. Lettering on Awning? ☐ Yes ☐ No	122. Fixed posts? ☐ Yes ☐ No	123 Over sidewalk cafe? ☐ Yes ☐ No	

(H) SIGN (COMPLETE ITEMS 124 THRU 144)

Number:	125. Electric Signs? ☐ Yes, answer q. 126-132 ☐ No, SKIP q. 126-132	126 Type ☐ Incandes. ☐ Fluoresc. ☐ Neon	127 Power ____ VA	128 Electrical Contractor Lic No

Address of Electrical Contractor *(include Zip)*	130 Signature of Licensed Electrician	131 Phone	132. License No

Height relative to building and ground: ____ ft ____ in above sidewalk ____ ft ____ in above roof ____ ft ____ in is bldg height ____ ft ____ in above projection or window ____ ft ____ in from roof to sign's bottom	134. Material of Sign	135. Type of Sign	136. Color:
	137 Width: ft.	138 Length ft	139 Area of Sign: sq. ft.
			140 Width of Business Frontage ft.

C of O Number for Building:	142 Sign Contractor Lic No
Sign Contractor's Address:	144 Phone

OFFICIAL USE ONLY					
Sign FEE		Elect. FEE		Total FEE	
$		$		$	
By:	Date:	By:	Date:	BY:	Date:

(I) APPLICANT'S SIGNATURE:

A **OWNER:** I hereby certify that I am the owner of the property; that the application and plans are complete and correct to the best of my knowledge; and that if a permit (or permits) is issued, the construction will conform to the D.C Construction Codes, the Zoning Regulations, and other applicable laws and regulations of the District of Columbia.

Signature of Owner: _____ Address _____ Date: _____

B. **AGENT:** I hereby certify that I have the authority of the owner to make this application. I declare that the application and plans are complete and correct to the best of my knowledge. The owner has assured me that if a permit (or permits) is issued, the construction will conform to the D.C. Construction Codes, the Zoning Regulations, and other applicable laws and regulations of the District of Columbia.

Signature of Agent: Mark Reynolds Address: PO Box 423 Hamilton Md 21811 Date: 10-10-02

2

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Building and Land Regulation Administration
Office of the Administrator

January 12, 2004

Robert Sochovka
Eastern Trans-Waste of Maryland Inc.
1315 First Street SE
Washington DC 20003

Dear Mr. Sochovka:

The Department of Consumer and Regulatory Affairs (DCRA) has reviewed your application for a building permit for 1315 First Street SE submitted on October 10, 2003. The application describes the existing use of the building as a waste and recycling warehouse.

The DC Environmental Policy Act (Title 8 DC Code 109.11) states that "...a full EIS shall be required for the construction of any new solid waste facility or the substantial modification of an existing structure presently used as, or intended to be used as, a solid waste facility, as the term "solid waste facility" is defined in Chapter 10 of Title 8, regardless of the cost or construction or modification "

Based on a review of the building plans and associated application, and pursuant to the DC Environmental Policy Act, it has been determined that the proposed work is substantial, requiring the submission of an Environmental Impact Statement (EIS) to DCRA. Unless and until there is a finding of no adverse effect, or an adverse effect is identified but a determination is made that the public health, safety or welfare is not imminently and substantially endangered, DCRA cannot issue the building permit, as requested.

The requirements and process for preparation and submission of an EIS are described in 20 DCMR, Chapter 72, 7206.1 (enclosed). You may call me at 442-4455 if you have any questions.

Sincerely,

Denzil Noble
Administrator

cc: David Clark
Theresa Lewis
Sinclair Long
Mark Reynolds, Durable Steel Structures

Enclosure

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DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF FINAL RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs, pursuant to § 10 of the District of Columbia Environmental Policy Act of 1989, D.C. Law 8-36, effective October 18, 1989, D.C. Code § 6-989, and Mayor's Order 92-151 (December 1, 1992) hereby gives notice of the adoption of the following new Chapter 72 ("Environmental Policy Act Regulations") of Title 20 DCMR, ("Environment"). These rules were adopted on July 11, 1995 and will implement the Environmental Policy Act.

On April 22, 1994, the Director of the Department of Consumer and Regulatory Affairs ("DCRA") published in the District of Columbia Register ("D.C. Register") for notice and comment proposed rules to implement the District of Columbia Environmental Policy Act of 1989, D.C. Law 8-36 (41 DCR 2251 (April 22, 1994))

Section 10 of Law 8-36 requires the Mayor to submit the proposed rules to the District of Columbia Council (the "Council") for review during a review period consisting of 45 days, excluding Saturdays, Sundays, legal holidays, and days of Council recess. (D.C. Code § 6-989(a) (1995)). In accordance with that requirement, the Mayor and DCRA submitted the proposed rules to the Council on October 15, 1994. Also submitted to the Council with the proposed rules was a report responding to citizens comments received in response to the April 22, 1994 Notice of Proposed Rulemaking. This report recommended several changes in the proposed rules, including changes to Sections 7201, 7202, 7203, 7205, 7206, 7209, and 7212. Section 10 of the Act further provides that "if the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved."

The Council took no action on the proposed rules or the recommended changes to the proposed rules, and by letter dated March 2, 1995, Council Chairman Clarke stated that by virtue of the Council having taken no action to disapprove it, Proposed Resolution PR10-724, entitled "District of Columbia Environmental Policy Act Proposed Rulemaking Approval Resolution of 1994", was deemed approved on February 18, 1995.

These final rules take effect immediately upon publication of this notice in the D.C. Register.

At the same time as the publication of this Notice of Final Rulemaking, DCRA is also publishing a Notice of Proposed Rulemaking which addresses citizen comments on the April 22, 1994 Proposed Rulemaking and proposes amendments to the sections listed above.

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CHAPTER 72 ENVIRONMENTAL POLICY ACT REGULATIONS

7200 GENERAL PROVISIONS

7200.1 Before an agency, board, commission, or authority of the District of Columbia government shall approve any major action, or issue any lease, permit, license, certificate, or other entitlement or permission to act for a proposed major action, the environmental impact of the action must be adequately considered and reviewed by the District government, as provided in these regulations.

7200.2 Agencies, boards, and commissions under the Mayor's authority shall integrate, and agencies, boards and commissions not under the Mayor's authority shall be requested to integrate the Environmental Impact Statement (EIS) process with other planning processes at the earliest stages of their planning for major actions they intend to propose, when the widest range of feasible alternatives is open for consideration, and before there has been any irretrievable commitment of resources, in order to ensure that planning and decisions reflect environmental values, in order to avoid delays later in the process, and to head off potential conflicts.

7201 MAJOR ACTIONS FOR WHICH ENVIRONMENTAL IMPACT SCREENING FORMS ARE REQUIRED

7201.1 An Environmental Impact Screening Form (EISF) shall be prepared for any action that would cost over one million dollars ($1,000,000) based on 1989 dollars adjusted annually according to the Consumer Price Index and that may have a significant impact on the environment.

7201.2 An action costing $1 million or more may have significant impact on the environment and, thus, may be a major action subject to the EISF requirement of § 7201.1 if any of the following conditions are met:

(a) The action might have a significant adverse effect on a rare or endangered species of animal or plant, or the habitat of the species;

(b) The action might violate published national or local standards relating to hazardous waste, solid waste or litter control;

(c) The action might significantly deplete or degrade ground water resources;

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(d) The action might significantly interfere with ground water recharge;

(e) The action might induce significant growth or concentration of population;

(f) The action might cause significant flooding, erosion or sedimentation;

(g) The action might extend a sewer trunk line with capacity to serve new development;

(h) The action might significantly diminish habitat for fish, wildlife or plants;

(i) The action might disrupt or divide the physical arrangement of an existing community;

(j) The action might create a potential public health hazard or would involve the use, production or disposal of materials that pose a hazard to people, animal or plant populations in the area;

(k) The action might violate any ambient air quality standard, contribute significantly to an existing or projected air quality violation, or expose sensitive receptors to significant pollutant concentration;

(l) The action might cause significant adverse change in existing surface water quality or quantity;

(m) The action might cause a significant adverse change in the use and conservation of energy resources, including an adverse impact on quantity or type of energy used;

(n) The action might cause significant adverse change in the existing level of noise in the vicinity of the action;

(o) The action might result in the exceedance of any Federal or District standards regarding electric and magnetic fields (EMF), if and when such standards are promulgated.

(p) The action, together with other actions proposed concurrently by the applicant, might have a cumulative impact that would be significant under the criteria described in § 7201.2(a)-(o).

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7201.3 An EISF shall be prepared for any action that would cost less than 1 million dollars ($1,000,000) based on 1989 dollars adjusted annually according to the Consumer Price Index, if the action imminently and substantially affects the public health, safety, or welfare.

7201.4 A project imminently and substantially affects the public health, safety, or welfare if any of the following conditions are met:

(a) The action would violate Federal or District standards relating to hazardous waste, energy resources, air pollution, surface and ground water pollution, soil erosion, storm water, and flooding;

(b) The action would negatively affect a rare or endangered species of animal or plant, or the habitat of that species;

(c) The action would contaminate a public water supply;

(d) The action would create a public health hazard under applicable District regulations; or

(e) The action would involve the use, production or disposal in the affected area of hazardous substances as defined in § 7299.1 of these regulations in violation of federal or District environmental regulations.

7202 **ACTIONS FOR WHICH NO ENVIRONMENTAL IMPACT SCREENING FORM IS REQUIRED**

7202.1 No agency shall require that an EISF or an EIS be prepared for the following actions:

(a) Any action that costs less than 1 million dollars ($1,000,000) based on 1989 dollars adjusted annually according to the Consumer Price Index, unless that action meets the criteria of §§ 7201.3 and 7201.4 of these rules;

(b) Any action for which an Environmental Impact Statement ("EIS") has been prepared in accordance with the National Environmental Policy Act of 1969, approved January 1, 1970 (83 Stat.852; 42 U.S.C. § 4321 et seq.) (NEPA) and its implementing regulations, or a determination has been made under NEPA and its implementing regulations that

no impact statement is required due to a finding of no significant impact or a finding that the proposed action is categorically excluded from consideration;

(c) Any action for which a request has been made for the authorization or allocation of funding that involves only a feasibility or a planning study for a possible future action that has not been approved, adopted or funded. The study, however, shall include consideration of environmental factors;

(d) Any action whose impact on the environment has been or is considered in the functional equivalent of an EIS, where equivalency is determined by the lead agency;

(e) Any action that reached a critical stage of completion prior to October 18, 1989, and the cost of altering or abandoning the action for environmental reasons outweighs the benefits derived from the action;

(f) Any action of an environmentally protective regulatory nature;

(g) Any action within the Central Employment Area as defined in the Zoning Regulations of the District of Columbia; and

(h) Any action for which a lease, permit, certificate, or any other entitlement or permission to act by a District government agency has been approved before December 31, 1989.

7202.2 In addition to the actions listed in § 7202.1, no agency shall require that an EISF or EIS be prepared for the following classes of actions:

(a) Class 1. Operation, repair, maintenance, or minor alteration of existing public structures, facilities, mechanical equipment, or topographical features, including replacement of roofs, HVAC, electrical, plumbing, elevator, sprinkler or other systems, plus interior work to common areas and individual units, involving negligible or no expansion of use beyond that previously existing;

(b) Class 2. Replacement, renovation, or reconstruction of existing structures and facilities, where the new or renovated structure

meets the requirements of the Zoning Regulations, is located on the same site as the structure replaced, renovated, or reconstructed, will have substantially the same purpose and capacity as the structure replaced, renovated, or reconstructed, and will not exceed the density of that structure;

(c) Class 3. Construction and location of limited numbers of small facilities or structures; installation of new equipment in small structures, including replacement of HVAC, electrical, plumbing, elevator, sprinkler or other systems; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. This class includes, but is not limited to:

(1) Single family residences not in conjunction with the building of two or more such units;

(2) Small commercial structures not involving the use of significant amounts of hazardous substances;

(3) Water main, sewage, electrical, and other utility extensions of reasonable length to serve such construction; and

(4) Accessory structures such as garages, patios, swimming pools, and fences;

(d) Class 4. Minor public or private alterations in the condition of land, water, or vegetation which do not involve the removal of mature, healthy trees. This class includes, but is not limited to:

(1) Grading on land with a slope of less than ten percent (10%), except in waterways, wetlands, or officially designated scenic areas;

(2) New gardening, landscaping or planting of trees or other vegetation;

(3) Temporary use of land having negligible permanent effects, such as carnivals, fairs, and sales of Christmas trees; and

(4) The creation of bicycle lanes on existing rights-of-way;

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(e) Class 5. Minor alterations in land use limitation in areas with an average slope of less than twenty percent (20%), which do not result in any changes in land use or density. This class includes, but is not limited to:

(1) Minor lot line adjustments, side yard and set back variances; and

(2) Issuance of minor encroachment permits;

(f) Class 6. Actions taken by District agencies as authorized by law or regulation to assure the maintenance, restoration, or enhancement of a natural resource or the environment, where the regulatory process involves procedures for protection of the environment. This includes basic data collection, research, experimental management and resource evaluation activities which do not result in a serious or major disturbance to the environment and activities limited entirely to inspections to check for performance of an operation, or the quality, health or safety of a project;

(g) Class 7. Construction or placement of minor structures accessory to existing commercial, industrial, or institutional facilities. This class includes, but is not limited to:

(1) On-premise signs;

(2) Small parking lots (fewer than 50 vehicles); and

(3) Placement of seasonal or temporary use items such as mobile food units, portable restrooms, or similar items in generally the same locations from time to time in publicly owned parks, stadiums, or other facilities designed for public use;

(h) Class 8. Action in the nature of a response to an emergency as determined by the Mayor;

(i) Class 9. Action in the nature of remedial actions related to leaking underground storage tanks, removal of PCB equipment, hazardous substances, or other environmental contaminants pursuant to all lawfully required and issued permits;

(j) Class 10. Actions related to the removal of asbestos pursuant to all lawfully required and issued permits;

(k) Class 11. Residential structure projects, or portions of projects, within the R-1 through R-5-A zoning districts, as defined under Chapters 2 and 3 of Title 11, DCMR (Zoning);

(l) Class 12. Actions within Development Zones as defined pursuant to the District of Columbia Economic Development Zone Incentives Act of 1988 (D.C. Law 7-177).

7202.3 An applicant may submit an existing environmental description and analysis of a proposed action to the lead agency, which must make a written determination within thirty (30) days of receipt of the document as to whether or not (i) the environmental description and analysis qualifies as a functional equivalent of an EIS, and (ii) the action is exempt under § 7202.1.

7203 DESIGNATION AND RESPONSIBILITIES OF LEAD AND REVIEW AGENCIES

7203.1 The lead agency responsible for the coordination of the preparation and review of the EISF, and the EIS if necessary, shall be as follows:

(a) For any major action proposed by an applicant that would require any license, permit, certificate of occupancy or other approval from a District agency prior to implementation, the District agency responsible for the first District government authorization of the project shall be the lead agency;

(b) For any major action proposed by the District government, the agency proposing the project shall be the lead agency.

7203.2 For any public or private major action for which the lead agency is an agency other than DCRA, the lead agency shall submit any EISF and EIS to the DCRA, as review agency, for review, and shall consider the recommendations of DCRA in determining whether to request additional information on environmental impacts pursuant to § 7203.4 and in decisions concerning the major action that is the subject of the EISF or EIS.

7203.3 DCRA shall submit its recommendations concerning the need for an EIS to the lead agency within fourteen (14)

days of receipt of the submission of the EISF from the lead agency. DCRA shall submit its recommendations concerning any EIS to the lead agency by the end of the period for public comment on the EIS.

7203.4 The lead agency may request relevant information from the applicant concerning impact, costs, benefits, and alternatives that it reasonably determines to be necessary in evaluating the proposed major action. If the lead agency has not received any response to the request for information within ninety (90) calendar days, the lead agency shall deny approval of the project.

7203.5 For District government projects, DCRA may request relevant information from the lead agency concerning impact, costs, benefits, and alternatives that it reasonably determines to be necessary in evaluating the proposed major action. If DCRA has not received any response to the request for information within ninety (90) calendar days, DCRA shall deny approval of the project.

7203.6 No agency shall issue any license, permit, certificate, or authorization until completion of the environmental impact review process by the lead agency.

7204 PREPARATION OF ENVIRONMENTAL IMPACT SCREENING FORM

7204.1 The lead agency or the applicant shall complete an EISF for major actions that are not exempted by § 7202.1 or § 7202.2.

7204.2 The applicant for a permit for a major action shall file an EISF and five (5) copies with the lead agency for review and determination of whether an EIS is required.

7204.3 Along with the EISF, the applicant shall submit a project description and any other available information relative to the environmental impacts of the proposed major action, including, but not limited to, environmental assessments, traffic analyses, computer analyses and any other reports which will assist the lead agency in making its determination.

7204.4 Upon the request of the lead agency, the applicant shall provide any additional information requested to complete or clarify the description of the proposed major action and potential environmental impacts. If the applicant has not responded to the request for

information within ninety (90) calendar days, the lead agency shall deny approval of the project.

7205 REVIEW OF ENVIRONMENTAL IMPACT SCREENING FORM

7205.1 The lead agency shall make a written determination, within thirty (30) working days of the submission by an applicant of a complete EISF pursuant to §§ 7204.2 and 7204.3 for a major action that is not exempt under § 7202.1 or 7202.2, whether or not the action is likely to have substantial negative impact on the environment, and whether an EIS is required.

7205.2 If the lead agency determines that an EIS is required, no lease, permit, license, certificate, or other entitlement shall be issued by the District government until the EIS has been prepared consistent with these regulations and the Environmental Policy Act, has been reviewed and approved by the District government, and all applicable fees have been paid.

7205.3 If the lead agency determines that an EIS is not required for a major action that is likely to involve the creation, use, storage, transportation, or disposal of a hazardous substance, the lead agency shall prepare within ten (10) days of such determination, a written explanation of why an EIS is not required.

7205.4 The lead agency shall make the written determination required by § 7205.3 available to the public by publishing a notice in the D.C. Register and transmit a copy to the Council of the District of Columbia prior to granting or issuing of any applicable lease, permit, license, certificate, entitlement, or permission to act.

7206 PREPARATION OF THE ENVIRONMENTAL IMPACT STATEMENT

7206.1 For major actions proposed by an applicant, the applicant shall be responsible for the preparation of the EIS.

7206.2 The EIS shall include the following information and will describe and, where appropriate, analyze the following:

(a) The goals and nature of the proposed major action and its environment;

(b) The relationship of the proposed major action to the goals of the adopted Comprehensive Plan, requirements as promulgated by the Zoning

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Commission, and any District or federal environmental standards;

(c) Any adverse environmental impact that cannot be avoided if the proposed major action is implemented;

(d) Alternatives to the proposed major action, including alternative locations and the adverse and beneficial effects of the alternatives;

(e) Any irreversible or irretrievable commitment of resources involved in the implementation of the proposed major action;

(f) Mitigation measures proposed to minimize any adverse environmental impact;

(g) The impact of the proposed major action on the use of energy resources, if applicable and significant;

(h) The cumulative impact of the major action when considered in conjunction with other proposed actions;

(i) The environmental effect of future expansion or action, if expansion or action is a reasonably foreseeable consequence of the initial major action and the future expansion or action will likely change the scope or nature of the initial major action or its environmental effects;

(j) Responses to comments on the EIS provided by the Council, any affected Advisory Neighborhood Commission, and interested members of the public; and

(k) Any additional information that the Mayor or a board, commission, or authority determines to be helpful in assessing the environmental impact of any proposed major action and the suggested alternatives.

7206.3 For any given major action covered by this Chapter, only one EIS shall be required.

7207 RESERVED

7208 PUBLIC REVIEW OF ENVIRONMENTAL IMPACT STATEMENTS

7208.1 The lead agency shall transmit a copy of the completed EIS to the Council of the District of Columbia, any District agency that has responsibility for implementing the major action or that has special expertise with respect to any environmental impact involved, and any affected Advisory Neighborhood Commission.

7208.2 The lead agency shall publish in the D.C. Register a notice of the availability of the EIS for a forty-five day (45) public comment period.

7208.3 The lead agency shall make available to the public for inspection a copy of the EIS, by providing a copy of the EIS in its main office and in the M.L. King Public Library.

7209 PUBLIC HEARING REQUIREMENT

7209.1 The lead agency shall hold a public hearing on an EIS within forty-five (45) calendar days of any request made during the public comment period by twenty-five (25) registered voters in a single member district, or if there is significant public interest in the action that is the subject of the EIS.

7209.2 The hearing shall provide an opportunity for the citizens affected by the environmental impacts of the proposed major action and other interested parties to present written and oral comments.

7209.3 The applicant shall be given an opportunity to respond to all verbal or written public comments. Comments shall be addressed both individually and collectively and shall be responded to by:

(a) Supplementing, improving or modifying the analyses in the original EIS;

(b) Making factual corrections to the original EIS;

(c) Explaining why the comments do not warrant further response, by citing the sources, authorities, or reasons which support the position, and if appropriate, indicating those circumstances which would trigger agency reappraisal or further response; and

(d) By attaching to the response all comments received, whether or not the comment is thought to merit individual discussion and response.

7209.4 All written and oral comments, and responses to those comments, become part of the record and shall be considered by the lead agency in deciding whether the EIS identifies an adverse effect and that the public health, safety or welfare is imminently and substantially endangered by the action.

7210 **FINDING AS TO ENVIRONMENTAL IMPACT**

7210.1 The lead agency shall make a written finding, taking into account written and oral public comments, and the responses to those comments, that the EIS either:

(a) Identifies no adverse effect;

(b) Identifies an adverse effect, but the public health, safety, or welfare is not imminently and substantially endangered; or

(c) Identifies an adverse effect and the public health, safety, or welfare is imminently and substantially endangered.

7210.2 The lead agency shall make a finding as to the environmental impact of the proposed major action within thirty (30) working days after completion of a public hearing, if one is required, or within thirty (30) working days of the close of the public comment period, if no public hearing is required.

7210.3 If the lead agency makes a finding that the EIS identifies an adverse effect and that the public health, safety, or welfare is imminently and substantially endangered, the lead agency shall disapprove the project unless the lead agency or applicant submits mitigating measures or substitutes a reasonable alternative to avoid the danger.

7210.4 If the lead agency makes a finding that the final EIS identifies no adverse effect, or identifies an adverse effect and the public health safety or welfare is not imminently and substantially endangered, the proposed action shall be approved with respect to the requirements of Law 8-36.

7210.5 The lead agency's written finding shall be published in the D.C. Register.

7211 REQUIREMENTS FOR A SUPPLEMENTAL EIS

7211.1 The lead agency or applicant shall prepare a supplemental EIS if:

(a) The lead agency or applicant makes or proposes a substantial change in the proposed major action that is relevant to environmental concerns and not addressed in the EIS;

(b) There are significant new circumstances or information relevant to environmental concerns that affect the proposed action or the impact of the proposed action; or

(c) The lead agency determines for any action exempted from the EIS process pursuant to § 7202.1(b) (an action subject to the federal EIS requirements under NEPA), or § 7202.1(d) (an action for which a EIS functional equivalent has been prepared), that a substantial and relevant question remains with regard to the impact of the action on the environment that would otherwise be addressed in an EIS prepared in accordance with these regulations.

7211.2 The supplemental EIS shall be prepared, transmitted, funded and reviewed in accordance with the requirements of §§ 7206.1, 7206.3, 7208, 7209 and 7210.

7212 FEES

7212.1 The lead agency shall charge the applicant a fee for the review of the EIS.

7212.2 The EIS review fee is forty dollars ($40) per hour.

7212.3 For any EIS, the total review fee shall not exceed one percent (1.0%) of the total project cost of the proposed major action.

7213 PROJECT COSTS

7213.1 The total project cost of a proposed action shall include the cost of supplying utility service to the project, the cost of site preparation, the cost of labor and material, the cost of any process equipment required by the project, and the cost of installation of any process equipment.

7213.2 The cost of site preparation shall include both pre- and post-construction site work, including clearing of trees and vegetation, grading and excavation, implementation of soil erosion and sedimentation control plans, installation of storm water management facilities, and the post-construction replacement of trees and vegetation and other landscaping.

7213.3 Site preparation costs shall not include the costs of any remediation actions taken to remove contaminated soils or to treat contaminated soils or ground water on site.

7299 DEFINITIONS

7299.1 When used in this chapter of this title, the following terms shall have the meanings ascribed:

Act - The District of Columbia Environmental Policy Act of 1989 (34 DCMR 5741).

Action - (i) a new project or activity directly undertaken by an agency, board, commission, or authority of the District government, or (ii) a project or activity that involves the issuance of a lease, permit, license, certificate, or other entitlement, or permission to act by an agency of the District government.

Adverse effects - any effect from a proposed action which has a significant negative environmental impact on the public health, safety, or welfare.

Affected ANC - the ANC within which the proposed action will be implemented and ANCs directly adjacent to that ANC.

ANC - Advisory Neighborhood Commission

Applicant - non-governmental party, institution, or corporation which applies to the District of Columbia government for a lease, permit, license, certificate, or other entitlement or permission to act.

Council - the Council of the District of Columbia

Critical stage - that phase of a proposed action where the cost of altering or abandoning the action outweighs the benefits to the environment.

DCRA - the District of Columbia Department of Consumer and Regulatory Affairs.

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EISF - Environmental Impact Screening Form

EIS - Environmental Impact Statement

Emergency - any immediate threat to the public health, safety, or welfare, or the quality of the environment for which an immediate response is required by the public or private sector.

Environment - the physical conditions that will be affected by a proposed action, including but not limited to, the land, air, water, minerals, flora, and fauna.

Functional Equivalent - the full and adequate description and analysis of the environmental impact of a proposed action by an agency, board, commission, or authority of the District government that examines or imposes environmental controls under procedures that provide for notice, opportunity for public comment, and the creation of a reviewable record, where the description and analysis discusses impacts on the environment, as defined in these regulations, and includes information concerning, at a minimum, (1) the relationship of the proposed action to any applicable District or federal environmental standards; (2) any potential unavoidable adverse environmental impact from the project, if implemented; (3) any irreversible and irretrievable commitment of resources involved in the implementation of the project; (4) any significant impact on the use and conservation of energy resources; and (5) the cumulative impact of the project on the environment when considered in conjunction with other actions proposed concurrently by the applicant.

Hazardous substance - any solid, liquid, gaseous, or semisolid form or combination that, because of its nature, concentration, physical, chemical, or infectious characteristic, as established by the agency, may:

(a) Cause or significantly contribute to an increase in mortality or an increase in a serious irreversible or incapacitating reversible illness; or

(b) Pose a substantial hazard to human health or the environment if improperly treated, stored, transported, disposed of, or otherwise managed, including substances that are toxic, carcinogenic, flammable, irritants, strong sensitizers, or that

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generate pressure through decomposition, heat, or other means, and containers and receptacles previously used in the transportation, storage, use, or application of hazardous substances.

Lead agency - the District government agency designated by the Mayor to have primary responsibility for coordinating the preparation of an Environmental Impact Statement.

Major Action - any action that costs over 1 million dollars and that under § 7201.2 may have a significant impact on the environment, or any action that costs less than 1 million dollars and that under § 7201.4 imminently and substantially affects the public health, safety, or welfare.

Public Structure - any government-owned building, roadway, bridge, alley, sidewalk, curb, gutter, or utility, including structures and equipment related to the pumping or distribution of water, sanitary sewage, storm water, or combination of storm water and sanitary sewage.

Review Agency - the Department of Consumer and Regulatory Affairs (DCRA).

Significant - the degree to which an action has a major impact on public health, safety, or welfare, or the quality of the environment.

Significant Negative Impact - any impact, which when considered in its entirety will result in a significant degradation of the environment.

3

ENVIROMENTAL IMPACT SCREENING FORM (E.I.S.F.)

PREPARED BY:
MARK REYNOLDS
DURABLE STEEL STRUCTURES

March 30, 2004

This form and information is provided at the request of Ms. Lorraine Bennett, and Mr. Denzil Noble of the D.C. Department of Consumer and Regulatory Affairs. There is no "major action" that will result in significant adverse environmental impacts either during the "construction" or "operation" phase of a "project". The following is provided as conclusive documentation in this matter. Please release permit application #59B.

In addition, none of the proposed changes will "substantially alter" the facility. They will not make any physical modification to the facility which will increase or decrease by more than 10% per year the facility's maximum annual capacity, as indicated in any applicable solid waste facility permit. Nor will the proposed changes in any way alter or modify the method by which the waste is processed or disposed, or increase the amount of any air pollutant not previously emitted.

Project Definition
As listed on Permit Application #59B

Construction of one weight scale; Replace/Repair; Structural Steel, Weight Scale, Roof, Siding, Concrete Floor, Overhead Doors, Scalehouse and Bathrooms.

- **Construction of one weight scale**: Install one new 50' weight scale in addition to existing scales. State, Federal Laws and Business procedures require that trucks entering and leaving this facility must be weighed. Scales can frequently get stuck, break or become unreliable. Currently, no back-up scale is causing many customer complaints. When a scale is not operational, back-up's occur and customers must endure long waiting times. The physical size of the building is a limiting factor to any increase or growth in business operations. This additional scale is a responsible business decision, and has no potential to have any environmental impact.

- **Replace/Repair Existing Structural Steel**: Due to the age, damage from snowstorm of 2002/2003, no engineering data and physical damage. The steel needs replacement.

- **Existing Weight Scale**: Due to age this scale is due for replacement. See picture number one.

- **Existing Roof Structure**: Due to age, damage from snowstorm of 2002/2003, a portion of the roof and sub-structure has failed requiring immediate replacement. See picture number two.

- **Existing Siding**: Due to age, damage from the snowstorm of 2002/2003, vehicular damage, mixed construction materials, replace approximately 212 linear feet of brick, metal, grates, masonry with material that matches the existing. See pictures three and four.

- **Existing Concrete Floor**: Replace damaged existing concrete floor in limited area.

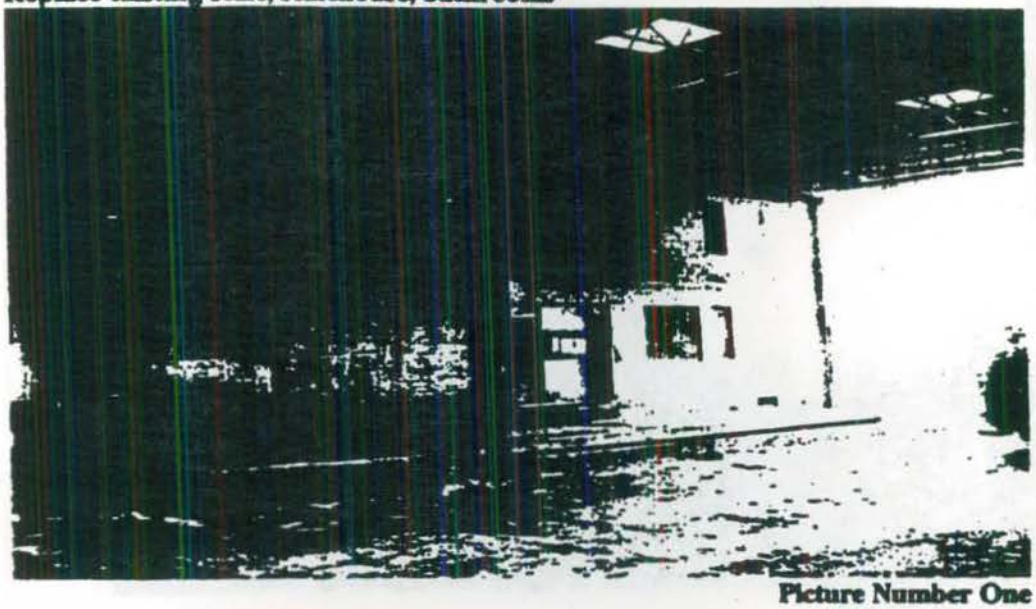
- **Existing Overhead Doors**: Existing doors are damaged/unusable/removed. Replacement is required.

- **Existing Scalehouse and Bathrooms**: Services need replacement. See picture number one.

In conclusion, Permit Application #59B is for renovations to a small portion of the existing building with the exception of one new scale. To answer the first paragraph of the EISF none of the work described above will result in significant adverse environmental impacts. The "Construction Phase" will result in ten (10) +/- additional people with three to five vehicles on site. Delivery of construction materials will be minimal, approximate average of two deliveries per day. The "Operational Phase" will result in no change to existing operations.

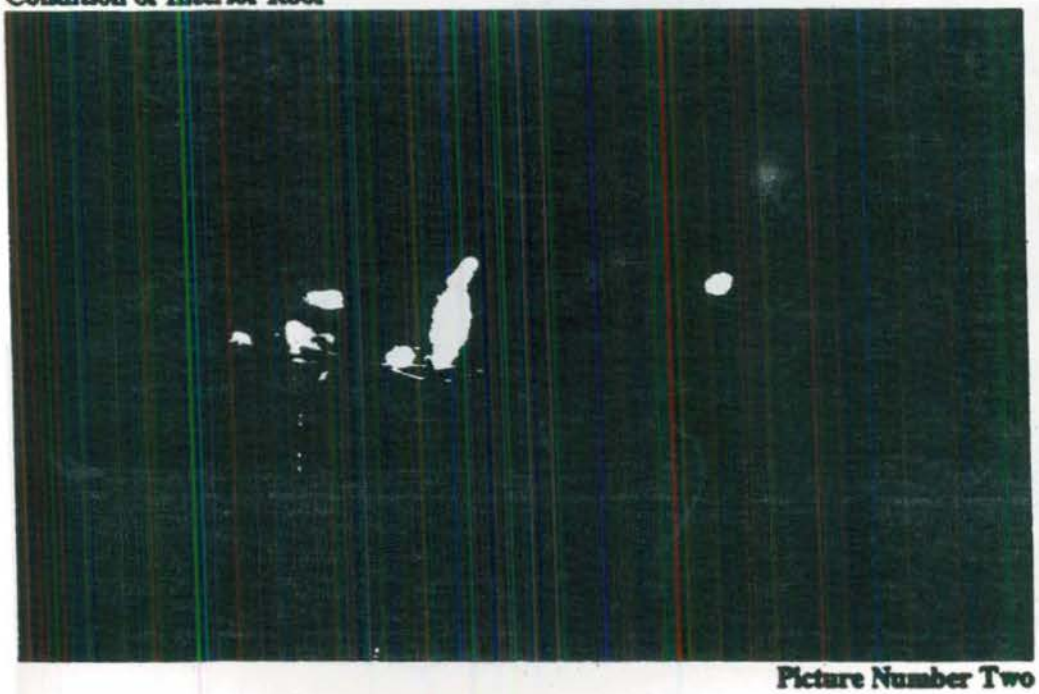
In addition, none of the proposed changes will "substantially alter" the facility. They will not make any physical modification to the facility which will increase or decrease by more than 10% per year the facility's maximum annual capacity, as indicated in any applicable solid waste facility permit. Nor will the proposed changes in any way alter or modify the method by which the waste is processed or disposed, or increase the amount of any air pollutant not previously emitted.

Replace existing scale, scalehouse, bathrooms



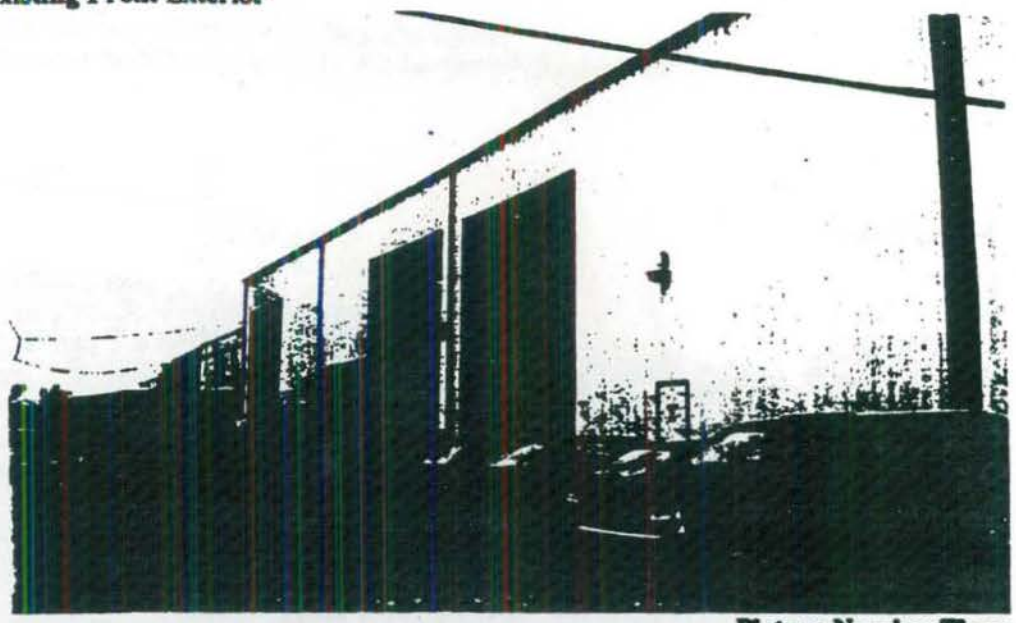
Picture Number One

Condition of Interior Roof



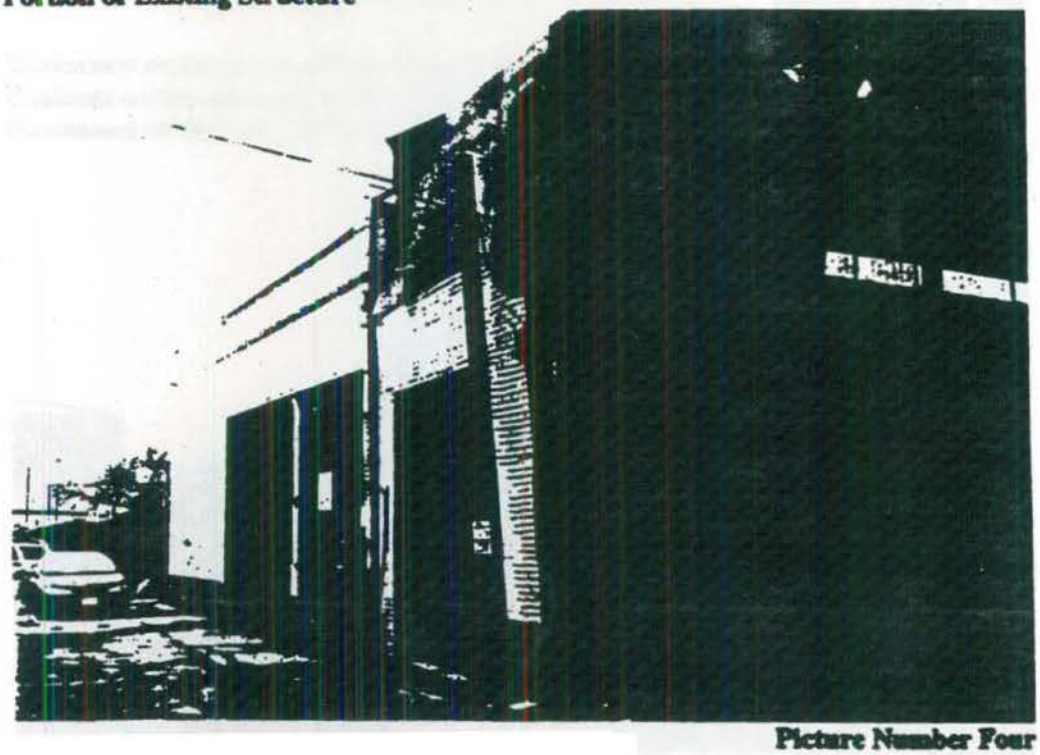
Picture Number Two

Existing Front Exterior



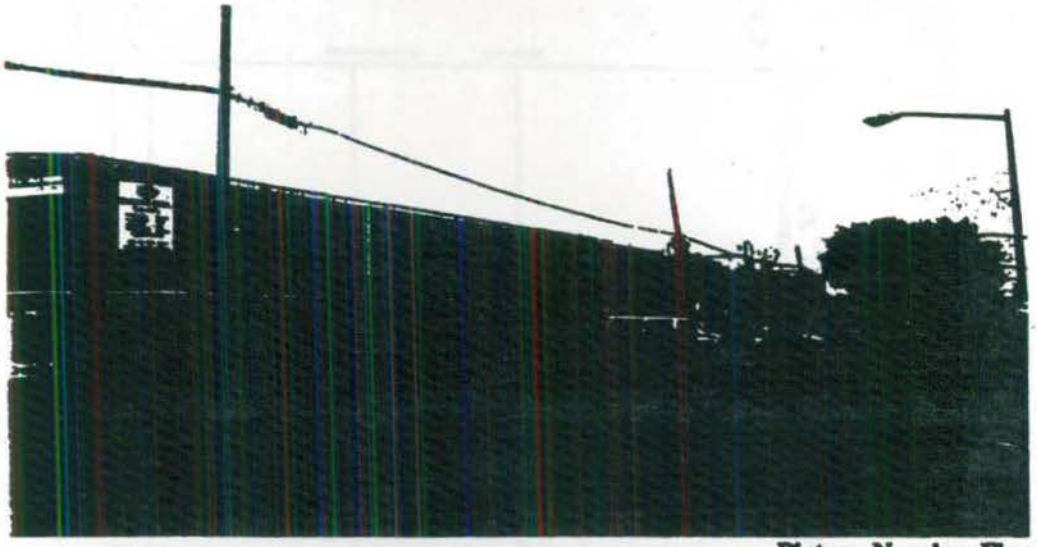
Picture Number Three

Portion of Existing Structure



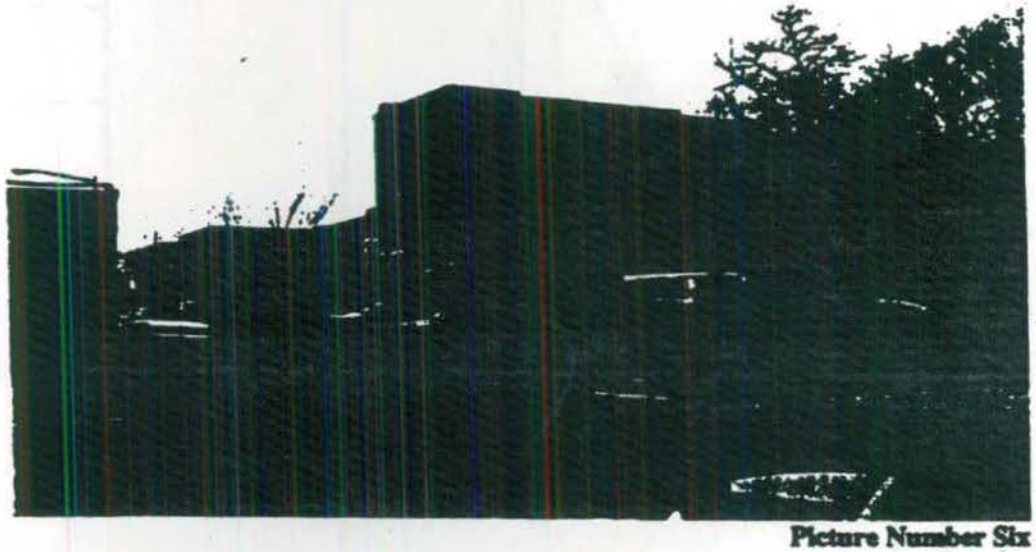
Picture Number Four

Back Adjacent Properties
ABC Salvage Corp. – Recycling Company
Masonry building in distance is a barrel recycling company

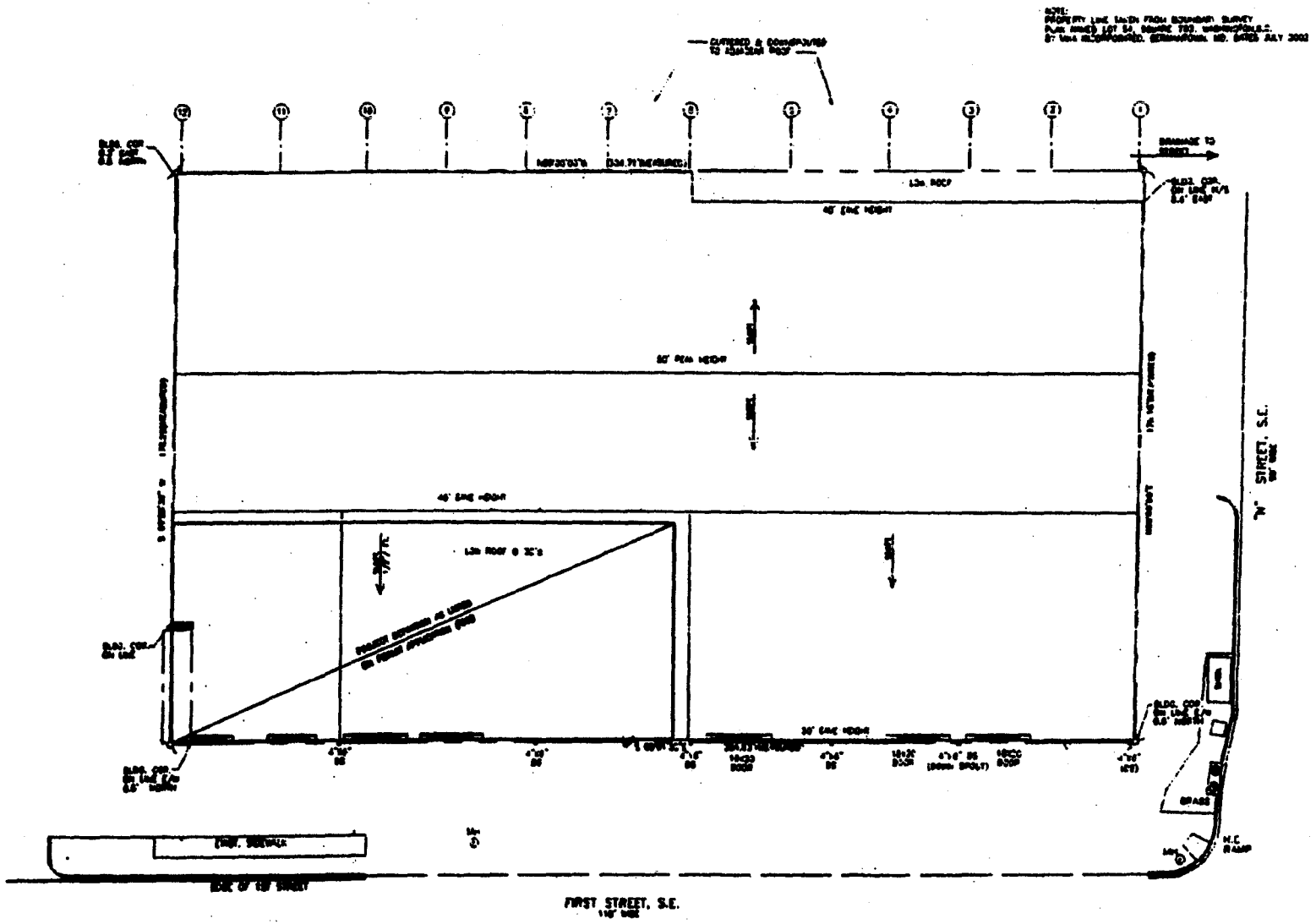


Picture Number Five

Businesses on the north side of street include repair shops and recycling companies.
Business on the south side of street is a bus parking lot, (no picture available).
Businesses on the east side of street (front) are government buildings.



Picture Number Six



SITE PLAN–
PROPOSED CONDITIONS

POTOMAC
ANACOSTIA
CHANNEL
WOODLAND

DISTRICT OF COLUMBIA GOVERNMENT
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION
941 North Capitol Street NE, Suite 2000
Washington DC 20002

ENVIRONMENTAL IMPACT SCREENING FORM (EISF)

The Environmental Impact Screening Form (EISF) is designed to help applicants and District government agencies to determine whether or not a major action, as defined in DC Law 8-36, (District of Columbia Environmental Policy Act of 1989), would likely result in significant adverse environmental impacts, either during the construction or operational phase of a project. The EISF review process provides an orderly and comprehensive procedure that permits the introduction of information that is tailored to the specific project or actions proposed. **Please note that, pursuant to the Environmental Policy Act Regulations (Chapter 72, Title 20 DCMR), no agency is permitted to issue a license, permit, certificate or authorization until the environmental impact review process is completed.**

The Department of Consumer and Regulatory Affairs will transmit your EISF and supporting documents to other agencies for their review, including the Department of Health, the Department of Public Works, the Office of Planning and the DC Water and Sewer Authority. To expedite review of your submission, it is important that the information you provide is as complete and comprehensive as possible.

In addition to the EISF, your submission must include:

1. 19 copies of a vicinity map of approximately a one-mile radius, showing neighborhood names, institutional uses, shopping centers, fire and police stations, metro stations, parks and public space.
2. One copy of a site plan (24" x 36") showing existing conditions, with a narrative that describes existing topographic and drainage conditions, including location and names of any wetlands, streams and water courses on and/or adjacent to the property.
3. 19 copies of a detailed site plan..
4. One copy of a separate plan (24" x 36") showing conceptual erosion and sediment control measures for the project, including proposed grading and total square footage of disturbed earth.
5. One copy of a separate plan (24" x 36") showing conceptual storm water management measures and their location(s), including drainage layout. No storm water management computations are required for this initial phase. N/A Project Will Not Alter or Change Existing Conditions.
6. 19 copies of a brief written summary of the project (one page is sufficient)

You may attach additional information that will assist you to accurately describe your project. This information could be in the form of a narrative description of the project, brochures describing the project or processing equipment, geotechnical reports, soil surveys, phase one and phase two environmental assessments, traffic surveys, air quality analyses, or any other information, which may assist reviewing agencies.

Submit 19 copies of the completed EISF and supporting documents to the Department of Consumer and Regulatory Affairs (DCRA), Building and Land Regulation Administration (BLRA). Do not submit bound documents. **Unsigned submissions will not be accepted.**

Each applicant will be notified regarding DCRA's findings within 30 business days of receipt of an EISF, unless additional information has been requested by a reviewing agency. DCRA's findings will indicate whether or not the proposed project is likely to have substantial negative impact on the community, and whether or not an Environmental Impact Statement (EIS) is required.

I. PROJECT INFORMATION

Name of Project: EASTERN TRANS WASTE OF MARYLAND, INC.		
Location of Project (Street Address): 1315 1ST STREET, SE. WASHINGTON DC 20003	Lot: 54	Square: 703
Name of Applicant: MARK REYNOLDS	Telephone: (410) 239-3000	
Email Address: MREYNOLDS@DURABLESTEEL.COM	Fax: 410-374-1624	
Mailing Address: P.O. BOX 403		
City: MONKTON	State: MARYLAND	Zip: 21111
Name of Authorized Agent: MARK REYNOLDS	Telephone: (410) 239-3000	Fax: (410) 374-1624
Mailing Address: P.O. BOX 403		
City: MONKTON	State: MARYLAND	Zip: 21111
Name of Owner: EASTERN TRANS WASTE OF MARYLAND, INC	Telephone	Fax
Mailing Address: 1315 1ST STREET, S.E.		
City: WASHINGTON	State: D.C.	Zip: 20003

Please complete each question – indicate N/A if not applicable

II. EXISTING CONDITIONS

1. Present land use:
   a. Industrial X
      Commercial ___
      Residential ___
      Public/Institutional ___
      Other _____
   b. Percent of impervious area 100 %
   c. Floor Area Ratio 1.0 Gross Floor Area 63,680 +/- Building Height 40' +/-
   d. Number and type of dwelling units N/A
2. What is the current zoning classification of the site? INDUSTRIAL
3. Have any zoning conditions been placed on the site? NO If yes, cite case number _____
4. What are the predominant land uses and zoning classifications within a ¼ mile radius of the project site? INDUSTRIAL
5. Total size of project land area: 63,680 +/- (square feet/acres)
6. What is the predominant soil type on the project site? 100% CONCRETE PAVEMENT / N/A
7. Is there any contaminated soil within the project limits? Yes ____ No X
8. What is the Federal Emergency Management Administration (FEMA) flood designation for the project? ZONE C - AREA OF MINIMAL FLOODING, PANEL NO. 110001 0030C, MAP DATE 11-15-1985

9. Approximate percentage of slopes on project site:
   0-10% X
   11-15% _____
   greater than 15% ____

10. List all adjacent properties with description of current use of each:
ABC Salvage Recycling; Barrell Recycling Company; Bus Parking Lot
See Pictures Five and Six

11. List any adjacent properties or buildings that are listed on the National Register of Historic Places:
N/A - None

12. What is the depth of the water table in feet at the project site, if known? Not Known
Provide source of data (e.g. soil boring on-site monitoring well data on adjacent property, etc.)

13. Does the project site contain any species of plant or animal that is identified as threatened or endangered? Yes ____ No X if yes, identify each species _____

14. Are any streams within 100 feet of the project site? Yes ____ No X If yes, name the stream and the river to which it is a tributary _____

15. Are any lakes, ponds, springs or wetlands within 100 feet of the project site? Yes ____ No X If yes, provide name and size

16. Is the site served by existing public utilities? Gas X Electric X Water X Sanitary Sewer X Storm Sewer X
Combined Sewer ____

17. Do you plan to connect to existing water, sanitary, storm and combined sewers? If so, what size?
No, All utilities are existing

18. What are the existing average and peak sewage flows generated by the existing facilities? * (GPM) - Very little - 1 Bathroom
* Unknown. Water meter has been inoperable. Awaiting this permit to repair.

19. What are the distances from the property line to the public water, sanitary, storm and combined sewers?
Twenty Feet +/-

20. Has the site ever been used as a landfill, construction fill or for the disposal of solid waste?
Yes ____ No X

21. What are the pre-development peak storm water runoff flows for a 2-year and 15-year storm event?
N/A - No new development proposed

III. PROJECT DESCRIPTION

1. Proposed land use:
   Industrial X
   Commercial ___
   Residential ___
   Public/Institutional ___
   Other _____

2. Project area to be developed: None (sq. ft./acres)
   Project area to remain undeveloped: _____ (sq. ft./acres)
   Dimensions of proposed structure: height _____ width _____ length _____
   Gross floor area of proposed structure: _____ sq. ft.
   Depth of any excavation: average _____ (ft) maximum _____ (ft)
   Percent of impervious cover after development _____ %

3. Does the proposed action require a planning or zoning decision? Yes___ No X
   If yes, indicate decision required:
   - Zoning variance ___
   - Special exception ___
   - Special use permit ___
   - Subdivision large tract review ___
   - Historic Preservation Review Board ___
   - Other ___

4. Number and type of dwelling units, if any: NONE

5. If commercial, office or institutional use, the number of employees N/A - INDUSTRIAL

6. Provide the modal split of residents, employees and daily customers/visitors (i.e., how many would be expected to arrive by automobile/mass transit/walking/bicycle) PROJECT WILL NOT ALTER OR CHANGE EXISTING CONDITIONS.

7. Provide the estimated number of peak hour morning (6:30 AM – 9:30 AM) and evening (4:30 PM – 6:30 PM) vehicular trips into and out of the property PROJECT WILL NOT ALTER OR CHANGE EXISTING CONDITIONS.

7. Provide the location of parking entry, drop off areas and pedestrian entry PROJECT WILL NOT ALTER OR CHANGE EXISTING CONDITIONS.

8. Cite the number of daily deliveries by truck, if any, and location of loading area, if any PROJECT WILL NOT ALTER OR CHANGE EXISTING CONDITIONS

9. Will the proposed project contain residential premises, apartment dwellings, a subdivision or other housing complex designed to house 50 or more families? Yes ___ No X

10. Will the proposed project provide 50 or more new parking spaces? Yes ___ No X

11. Will the proposed project consist of shopping and /or commercial facilities having 50,000 or more square feet of gross floor space? Yes___ No X

12. Will the proposed project consist of entertainment and /or recreational facilities, including but not limited to theaters, auditorium, sports stadiums, bowling alleys, etc. having the capacity to accommodate more than 400 persons at one time? Yes ___ No X

14. Will the proposed project increase traffic volume, which would result in a street volume – to capacity ratio? of 0.90, or greater (Street Level-of- Service E or F)? Yes ___ No X

15. Will the proposed project increase traffic volume that would result in a vehicle delay of 55 or more? seconds at any signalized intersection? (Intersection Level- of – Service E or F) Yes ___ No X

NOTE: If you answered yes to any of questions 10 through 15, you are required to submit three copies of an air quality analysis of emissions (in pounds or tons of pollutants per day) of Carbon Monoxide (CO), volatile organic compounds (VOCs), and nitrogen oxide (NOx) resulting from the operation of mobile sources associated with the proposed project. The most current version of the U.S. Environmental Protection Agency's (EPA's) " MOBILE " emission factor model must be used in deriving the emission estimates. In addition, an analysis of the impact from mobile sources on CO concentrations (in parts per million) in the vicinity of the proposed project must also be provided. This analysis, at a minimum, must be conducted in accordance with the procedures identified in the Department of Health's "Guidance on the Review of Air Quality Studies Performed as a Result of the EISF" using an approved dispersion model (the default model is the latest version of CALOCHRS posted on the EPA regulatory model website) and must include a comparison of the resulting air quality of the resulting air quality with both the one (1) hour average and eight (8) hour average National Ambient Air Quality Standards (NAAQS) for CO.

16. Will the proposed project result in an emission into the atmosphere of odorous or other air pollutants from any source, in any quality and of any characteristic and duration which is or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life and property?
    Yes ___ No X if yes, describe: ___

17. How much natural material (rock, earth, etc.) will be removed from the site? 0 (tons/cubic yards)

18. How much vegetation will be removed from the site? 0 (sq. ft./acres)

19. Will any mature trees or other locally important vegetation be removed from the site? Yes ___ No X

20. Will construction be on land where the depth to the water table is less than 3 feet? Yes ___ No X

21. What are the projected average and peak sewage flows to be generated by this project? PROJECT WILL NOT ALTER OR CHANGE EXISTING CONDITIONS.

22. What water demand for peak domestic and peak fire protection will result from this project?
PROJECT WILL NOT ALTER OR CHANGE EXISTING CONDITIONS.

23. What are the peak storm flows for a 2-year and 15-year event that will result from this project?
PROJECT WILL NOT ALTER OR CHANGE EXISTING CONDITIONS.

24. Will pumping of ground water be required at the site during and/or after the project is completed?
Yes ___ No X
    a. If yes, explain the purpose (e.g. sump for dewatering; continuous for industrial use)
    b. The expected pumping rate is _____ gallons per day

25. Will construction be on land where the bedrock is exposed or is within 3 feet of the existing ground surface? Yes ___ No X

26. Will the construction disturb more than 5,000 square feet of soil? Yes ___ No X

27. Will contaminated soil be disturbed by the construction of pipelines? Yes ___ No X

28. Will the disturbed area be reclaimed? Yes ___ No X
    a. If yes, for what intended purpose is the site being reclaimed? _____

29. If the project is single-phased, provide the length of construction: 6 months (including demolition)

30. If the project is multi-phased: NO
    a. Total number of phases anticipated: _____
    b. Anticipated date of commencement of Phase1: month _____ year _____
    c. Anticipated date of completion of final phase: month _____ year _____
    d. Is Phase 1 functionally dependent on subsequent phases? Yes ___ No ___

31. Will blasting occur during construction? Yes ___ No X

32. Will the surface area of an existing water body be increased or decreased by the project?
Yes ___ No X If yes, explain _____

33. Will the proposed project interfere with ground water recharge? Yes ___ No X

34. Will the proposed project adversely affect existing surface water quality? Yes ___ No X

35. Is the project or any portion of the project in a 100-year flood plain? Yes ___ No X

36. Will liquid waste be generated, either during construction or afterwards? Yes ___ No X
    a. If yes, indicate type of waste (chemical, industrial, sewage, etc.) and amount:
    b. How will this waste be disposed of?

37. Will the project generate solid, medical, infectious, radioactive or other hazardous waste? Yes X No __
    a. If yes, what is the type and amount per month?
       type: Construction Debris
       amount: 50 Tons Total
    b. Will any existing waste disposal facility be used? Yes X No ___
       name of facility Eastern Plain Waste
       location: 1315 First St. SE
    c. Will any waste not go into a waste disposal facility? Yes X No ___
       If Yes, explain Metal To Scrap Recycler

38. Will the project produce odors? Yes ___ No X
    If yes, describe source of odor and duration _____

39. Will the project produce noise during construction that is above the allowable level (80db)? Yes ___ No X

40. Will the operating noise level exceed the allowable decibel level for that zone? Yes ___ No X

41. Will a pile driver be used during construction? Yes ___ No X

42. Where will the A/C unit be located? N/A

43. Will the project operation maintain an emergency generator? Yes ___ No X If yes, where will the generator be located?

44. Where will other motor driven equipment be located? N/A

45. Will the project operation have frequent deliveries by large vehicles? Yes ___ No X

46. Will any underground storage tanks be installed? Yes X No ___
    a. If yes, how many tanks will be installed? ONE
    b. Contents: EMERGENCY CONTAINMENT OF ANY LIQUID SPILLS
    c. Capacity: 1,000- (gallons)

47. Will pesticides (herbicides, insecticide, etc.) be used? Yes ___ No X If yes, indicate the type of pesticide and provide the name of the licensed applicator who will apply the pesticide

48. Will any other substances that will adversely change existing surface and ground water quality be handled at the site either during or after construction? Yes ___ No X If yes, attach pollution prevention plan.

49. Will the proposed project require the issuance of any permits or other approvals (Certificate of Occupancy, Public Space Permit, Raze Permit, Air Pollution Permit, Storm water Management Permit, Pretreatment Permit, etc.) from the District Government in addition to a Building Permit? Yes ___ No X If yes, list all required permits:

50. Will the proposed project require the issuance of any permits or other approvals (NPDES, Section 404 Degree and Fill Permit, etc.) from the Federal Government? Yes ___ No X.
    If yes, list all required permits:

51. How will solid waste (trash, garbage, debris) generated by occupants of the project be managed? N/A

52. How will recyclable materials generated by occupants of the project be managed? N/A

53. What plans will be implemented to maintain the abutting public space free of litter and debris during construction and post-occupancy? DAILY PERSONNEL MONITORING

IV. VERIFICATION

I certify that all of the statements on this application are true and complete to the best of my knowledge and belief. I agree to comply with all applicable laws and regulations of the District of Columbia. The making of false statements on this application is punishable by criminal penalties (DC Code Ann. Sec. 22-2514)

Applicant/Authorized Agent (Signature) Mark Reynolds

Name (Print) Mark Reynolds Date 3.26.04

Company Durable Steel Structures Title Project Manager

Address PO Box 403 Monkton Md. 21111

TO REPORT WASTE, FRAUD, OR ABUSE BY ANY DC GOVERNMENT OFFICE OR OFFICIAL, CALL THE INSPECTOR GENERAL ON 1-800-521-1639

2/2004

4

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Building and Land Regulation Administration
Office of the Zoning Administrator

November 3, 2004

MEMORANDUM

TO: Board of Zoning Adjustment

FROM: Faye Ogunneye, Chief
Zoning Review Branch

SUBJECT: Proposed Alteration/Repair and Replacement to an Existing Non-Conforming Use as a "Warehouse –Waste Recycling" Structure located at premises 1315 1st Street, S.E., Lot(s) 54, in Square 703, Zoned CG/CR

Review of plans for the proposed alteration/repair and replacement to an existing non-conforming use as a "Warehouse, Waste and Recycling" structure at the above subject premises indicates that the Board of Zoning Adjustment approval is required as follows:

1. Variance pursuant to Section 2002.4 to allow proposed enlargement to an existing non-conforming use as "warehouse – waste and recycling" structure and from Section 3202.5(b) for filing this project after the Zoning Commission made a decision on the amendment of the Commercial Residential CR Zone District Classification. (Section 3103.2)

Fo/xm/ee

941 North Capitol Street, N.E., Suite 2000 Washington, D.C. 20002 Phone: (202) 442-4576 Fax: (202) 442-487

5

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

★ ★ ★

TO: Denzil L. Noble
Acting Administrator
Building and Land Regulation Administration

FROM: Andrew Altman, Director
Office of Planning

DATE: May 3, 2004

SUBJECT: Eastern Trans Waste of Maryland – 1315 First Street, S.E.
Environmental Impact Screening Form BLRA No. 04-00156

Pursuant to Chapter 71, Title 20, *Environmental Policy Act Regulations*, the Office of Planning has reviewed Part 2, Item 14 *Impact on the Growth Character of the Community or Neighborhood* as outlined in the Environmental Impact Screening Form.

Conclusion: Under these regulations, the Office of Planning concludes that the reconstruction and expansion could result in significant negative impacts on the area.

The Office of Planning notes that the application appears to be a full reconstruction of the facility. The Zoning Commission rezoned the property to the CG/CR zone district in October 2002. The Capitol Gateway (CG) Overlay states that *existing industrial uses with valid Certificates of Occupancy shall be deemed conforming but are not entitled to expand.* After completion of the renovation project, approximately 10 new employees with between three to five additional vehicles will be added to the site. The proposed renovation project will substantially alter the facility.

Description of Property:
The Eastern Trans Waste facility is in the southwestern quadrant of the District, located at 1315 First Street, S.E. The 53,680 square foot site is in Square 703, and consumes all of Lot 54. N Street generally bounds the site to the north, N Place to the south, First Street to the east and Half Street is to the west. Square 703 is mostly developed with industrial uses. The property is located in the Commercial Residential (CR)) District and the Capitol Gateway (CG) Overlay. The purpose of the mixed-use district is to encourage a diversity of compatible land uses that may include a mixture of residential, office, retail, recreational, light industrial, and other miscellaneous uses.

The surrounding area is primarily developed with older light manufacturing or industrial uses. ABC Salvage Corporation, a recycling company is west of the site, there are repair shops and recycling companies north of the site and a bus garage south of the site. The Southeast Federal Center Complex is east of the facility and was zoned in 2003 for a mixture of residential, recreational and commercial uses.

Background:
Due to the age and/or damage, much of the equipment at the facility is in need of repair or replacement. The applicant is proposing to renovation the following sub portions of the facility:

- Install an additional 50' weight scale.
- Replace/repair existing structural steel.
- Replace a portion of the roof.
- Replace existing siding, including approximately 212 linear feet of brick, metal, grates, and masonry.
- Replace portions of the existing concrete floor.
- Replace existing overhead doors.
- Replace existing scale house and bathrooms.

OP concludes this to be significant the Zoning Commission may not permit reconstruction as a matter of right but subject to approval.

Comprehensive Plan

The Generalized Land Use Map generally designates the subject property and surrounding area as Mixed Use. Combinations of land use categories are depicted in areas where a variety of uses are to be encouraged. Mixed-use areas include existing commercial areas proposed for significant land use changes. The subject site and the surrounding areas have historically been used for industrial purposes. However, the entire southeast water front area was included in the recently completed Anacostia Waterfront Initiative (AWI). As a result of the AWI, the waterfront area has been rezoned by Zoning Commission Order #ZC 04-02 from M (Manufacturing) and C-M to CR (Commercial Residential). Under this rezoning a commercial or industrial use that is first permitted in the CM or M districts and that is in existence with a valid Certificate of Occupancy before the Order is published in the DC Register, shall be deemed a conforming use, but shall not be entitled to expand.

Item 14. OP analysis on whether the proposed project will disrupt or divide the physical arrangement of an existing community that might adversely impact the environment; and/or might induce significant growth or concentration of population that might adversely impact the environment:

	Will proposed project adversely impact the growth and character of the community or neighborhood?	
	Yes:	No:
Create a new source of significant light or shadow which would adversely impact other properties.	[ ]	[x]
Substantially degrade or obstruct any scenic view or vista now observed from public areas.	[ ]	[x]
Conflict with any applicable land use plan, (CG/CR zone district and AWI) policy or regulation of an agency with jurisdiction over the project (including but not limited to the Comprehensive Plan), which was adopted for the purpose of avoiding or mitigating environmental effect.	[x]	[ ]

Induce significant growth or concentration of a population that might adversely impact the environment.	[ ]	[x]
Create a demand for additional community services (schools, police fire. recreational facilities, etc.)	[ ]	[x]

Overall Finding: In review of cumulative adverse impacts of Item 14, the Office of Planning concludes that the proposed project is not zoned CM industrial but is within the CR Mixed use zone and the Capitol Gateway Overlay (CG/CR), and could result in significant negative impacts on the area.

Cc: Faye Ogunneye

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS



Building and Land Regulation Administration
Office of the Administrator

July 14, 2004

Mark Reynolds
Project Manager
Durable Steel Structures
PO Box 403
Monkton MD 21111

Dear Mr. Reynolds:

The DC Department of Health (DOH) has asked that the Department of Consumer and Regulatory Affairs (DCRA) convey to you the following comments and questions regarding the Environmental Impact Screening Form (EISF) for Eastern Trans Waste (ETW) at 1315 1st Street SE. DOH indicates that it will be unable to complete its report on this EISF without the information that is stated below. Please note that on May 21, 2004 in an e-mail communication, your representative Cathy Gestido, was advised by Loraine Bennett of DCRA to contact DOH regarding additional information that had been requested.

Air Quality Division (AQD):
Two inspectors from AQD visited the site on June 4, 2004 and determined that ETW intends to create a larger open space by demolishing existing rooms and walls inside the facility. In addition, ETW is planning to replace an old weight scale with a new one and to cover the dirt floor inside the facility with a concrete floor. Furthermore, AQD feels that the proposed work will expand the capacity to store trash. **As a result, AQD is requesting the applicant to (1) obtain an asbestos survey before demolishing commences; and, because of the potential for odorous emissions (2) submit a plan for the control of odor that could include the installation of control equipment.**

Water Quality Division (WQD):
The WQD has determined that the information contained in the EISF submission was insufficient to complete the review. Since the facility is located within a separate storm sewer system area and in close proximity to the Anacostia River, WQD is requesting that ETW adequately respond to the following concerns:

(1) **The applicant's response to Part III. 2 of the EISF indicates that there will be no excavation, but Part III.46 states that there will be a 1,000-gallon underground storage tank installed. This needs to be clarified.**

2) **If a tank is installed to collect fluid from a liquid spill as indicated in Part III.46, then the answer to Part III.48 should be "yes", and a pollution prevention plan should be provided.**

Please contact Ibrahim Bullo (DOH) at 535-2506, Stanley Tracy (AQD) at 535-2990 or Brian Wallace (WQD) at 535-1726 should you have any questions about this request.

Sincerely,

Denzil Noble
EIS Coordinator

cc: John Drann
Loraine Bennett
Ibrahim Bullo, DOH
EISF File

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Durable Steel Structures

July 28, 2004

Mr. Denzil Noble
Government of the District of Columbia
Department of Consumer and Regulatory Affairs
941 North Capitol Street, NE
Washington, DC 20002
Via Facsimile: (202) 442-4863

RE: Response to July 14, 2004 Letter
EISF Request for Response – ETW of Maryland
1315 1st Street, S.E., Washington, D.C.
DSS Job #P223

Dear Mr. Noble:

Below is our response to your letter dated July 14, 2004. Based upon discussions with the various agencies and departments involved in this process, it is our understanding that the issues raised in your letter are the final issues to be resolved prior to issuance of the permit. Applicant's responses, including its willingness to undertake certain activities, are based on such understanding.

Air Quality Division (AQD):

Request No. 1: DCRA requests tha the applicant "obtain an asbestos survey before demolishing commences."

Applicant's Response: While applicant believes that such a survey is unnecessary, the applicant will obtain an asbestos survey prior to demolition activities and will remove and dispose of any asbestos in accordance with applicable laws and regulations. However, because an asbestos suvey would be a waste of applicant's money if the application is denied, applicant will obtain such survey after the building permit is issued.

Request No. 2: DCRA requests that, based upon AQD's assumption that the project will expand the facility's capacity to store trash, "the applicant submit a plan for control of ordor that could include installation of control equipment."

Applicant's Response: The proposed work will not expand the facility's capacity to store trash and, thus, does not increase the likelihood of odorous emissions. The building space and layout will remain unchanged. The proposed work will not increase the area within the facility used to handle trash. Rather, the proposed work will (i) provide for a more efficient means of current operation, and (ii) return the floor to its pre-existing condition.

The facility does not have a dirt floor. The entire facility's floor is, and has been, concrete. The inspectors observed a small portion of the floor that had been damaged and has been prepared for repair. Prior to being damaged, this area was used for waste handling. Applicant has installed temporary barriers around this area and has suffered hardship due to the inability to use this space.

Water Quality Division (WQD):

Request No. 1: DCRA requests that the applicant address a perceived inconsistency between applicant's response to Part 111.2 of the EISF and is response to Part 111.46 of the EISF.

Applicant's Response: Part 111.2 of the EISF refers to the "Project area to be developed." The sub-parts make clear that Part 111.2 relates only to undeveloped areas. Applicant answered "None" because the project area is already developed.

Thus, applicant's response to Part 111.2 is correct and is not inconsistent with applicant's response to Part 111.46.

Durable Steel Structures

Response to July 14, 2004 Letter
EISF Request for Response – ETW of Maryland
1315 1st Street, S.E., Washington, D.C.
DSS Job #P223

Request No. 2: DCRA requests that if a tank is installed to collect fluid from a liquid spill, the answer to Part 111.48 should be yes and a pollution prevention plan should be provided.

Applicant's Response: A pollution prevention plan is not necessary. Part 111.48 must be viewed in context. First, Part 111.47 questions whether pesticides, herbicides or insecticides will be used. Second, Part 111.48 states "Will any other substances that will adversely change existing surface and ground water quality be handled at the site either during or after construction?" Applicant's answer to Part 111.48 s appropriately "no" for the reason that no substances of any sort will reach existing surface or ground water. When repairs are complete, the concrete floor will be impermeable. The proposed tank will also be impermeable and will not be connected to any sewer or storm water systems. The tank will be emptied as necessary be a licensed disposal service.

Importantly, the tank will be used only to collect water and any moisture in the solid waste being handled at the facility. The water is left by wet trucks accessing the facility during rain and snow events. Applicant's experience is that the solid waste handled at the facility is quite dry and leaves no moisture. Applicant used the phrase "liquid spill" due to space limitations on the EISF and apologizes for any confusion that the use of this phrase may have caused.

Should the tank continue to be a matter that delays issuance of the permit, please let us know immediately.

As the above responses clarify the concerns of the agency, we respectfully request our permit be released immediately. Although the applicant was told there would be a thirty day window for the decision, this EISF process has now consumed 120 days since it began. Your July 14, 2004 letter marks the first written responsive action from your office since the process began.

Sincerely,

Mark Reynolds
Project Manager

DSS Contracting Corporation T/A Durable Steel Structures
PO Box 403, Monkton, Maryland 21111 (410)-239-3000 (410)-374-1624 FAX

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS



Building and Land Regulation Administration
Office of the Administrator

July 29, 2004

Mark Reynolds
Project Manager
Durable Steel Structures
PO Box 403
Monkton MD 21111

Ref: ETW
1315 1st Street SE
Washington DC 20003

Dear Mr. Reynolds:

I am in receipt of your letter dated July 28, 2004, in which you respond to questions posed by the Department of Health (DOH) as part of the agency's review of the Environmental Impact Screening Form that was submitted for this project. Your response is being forwarded to DOH for its consideration; however I would strongly encourage you, as we have done frequently in the past, to communicate directly with DOH staff on these matters. You may call Ibrahim Bullo at 535-2506, Stanley Tracey (Air Quality) at 535-2990 at Brian Wallace (Water Quality) at 535-1726.

Sincerely,

Denzil Noble
EIS Coordinator

cc: John Drann
Loraine Bennett
Ibrahim Bullo, DOH
EISF File

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Community Refuse Service, Inc.
WSI-Harrisburg Hauling, Inc.
620 Newville Road
Newburg, PA 17240
Phone: 717-423-5917
Fax: 717-423-5690

WSI-Sandy Run Landfill, Inc.
WSI-Altoona Hauling, Inc.
995 Landfill Road
Hopewell, PA 16650
Phone: 814-928-5001
Fax: 814-928-0123

WSI
North East Waste Services Company

Mos...er Landfill, Inc.
WSI-Somerset Hauling, Inc.
7095 Glades Pike
Somerset, PA 15501
Phone: 814-444-0112
Fax: 814-444-0127

Eastern Trans-Waste
of Maryland, Inc.
1315 First Street S.E.
Washington, DC 20003
Phone: 202-863-2528
Fax: 202-863-0514

Robert P. Sochovka P.G
North East Waste Service
Capital Project Manager

Phone: 717-423-5917 Ext 21
Cell: 717-729-5227
Fax Office: 717-423-5690
Fax Home: 717-586-2349

To: Ibrahim Bullo From: Rob Sochovka
ETIV

Fax# 202-535-2881 Pages:

Comments:

Mr. Bullo

Per my Phone conversation with you today Monday 8-2-2004, I am Faxing you a copy of Denzil Noble's Letter Dated July 29th 2004. upon contacting water Quality and Air Quality For their review of our Response to DCRA's on July 28th I would then like to set a call up with myself and our building contractor (Mark Reynolds) Durable steel. To Discuss any unresolved Issues your department may have.

Thanks you For time.

Rob Sochovka.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Building and Land Regulation Administration
Office of the Administrator

July 29, 2004

Mark Reynolds
Project Manager
Durable Steel Structures
PO Box 403
Monkton MD 21111

Ref: ETW
1315 1st Street SE
Washington DC 20003

Dear Mr. Reynolds:

I am in receipt of your letter dated July 28, 2004, in which you respond to questions posed by the Department of Health (DOH) as part of the agency's review of the Environmental Impact Screening Form that was submitted for this project. Your response is being forwarded to DOH for its consideration; however I would strongly encourage you, as we have done frequently in the past, to communicate directly with DOH staff on these matters. You may call Ibrahim Bullo at 535-2506, Stanley Tracey (Air Quality) at 535-2990 at Brian Wallace (Water Quality) at 535-1726.

Sincerely,

Denzil Noble
EIS Coordinator

cc: John Drann
Loraine Bennett
Ibrahim Bullo, DOH
EISF File

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Building and Land Regulation Administration
Office of the Administrator

October 12, 2004

Robert P. Sochovka
Capital Projects Manager
WSI
135 Vaughn Road
Shippensburg PA 17257

Dear Mr. Sochovka:

Reference is made to our meeting on September 23, 2004 regarding the ETW facility at 1315 1st Street SE. During the meeting, I promised to provide you with the following:

- A letter of referral to the Board of Zoning Adjustment (BZA) - Sent under separate cover.

- A statement regarding the reduced scope of work at this location that would not require BZA approval.
  If plans were submitted that did not include an increase in machinery or equipment and did not increase the square footage of the operation, BZA approval would probably not be required. DCRA can only respond to this question in a definitive manner once new plans have been submitted and reviewed.

- The status of reports from reviewing agencies regarding the Environmental Impact Screening Form (EISF) submitted for this project.
  Reports have been received from all reviewing agencies, the District Department of Transportation, the Department of Health, the DC Water and Sewer Authority, the Department of Public Works and the Office of Planning. None of the reports, except that submitted by the Office of Planning, indicates that the project will result in a substantial negative impact on the environment. As discussed during our meeting, the Office of Planning's report will be reconsidered if the zoning issue is resolved.

Sincerely,

Deborah Noble
Acting Zoning Administrator

cc: Theresa Lewis
Andrew Saindon
Loraine Bennett
Roy Goldberg

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Health
Environmental Health Administration

Office of Enforcement, Compliance & Environmental Justice



MEMORANDUM

TO: Denzil Noble
Deputy Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
Attn: MarQuette Sanders

THROUGH: Kendolyn Hodges-Simons
Interim Chief, Office of Enforcement, Compliance & Environmental Justice

FROM: Ibrahim Bullo
DOH Environmental Review Coordinator

DATE: September 14, 2004

SUBJECT: Environmental Assessment: Eastern Trans Waste of Maryland Project

Attached is an environmental assessment of the subject project. The Department of Health has reviewed the Environmental Impact Screening Form (EISF) and related documents for this project, with regard to our areas of concern as specified in the attached document. In summary, we find no apparent significant adverse impact or likelihood of substantial negative impact on the environment as a result of the proposed project. Therefore, the Department of Health does not recommend preparation of an Environmental Impact Statement (EIS) for this project.

Please contact me at 535-2506 should you have any questions about this assessment.

Attachment

Copy via e-mail:
David A. Clark, Acting Director, DCRA
Doreen Thompson, Interim Senior Deputy Director
Environmental Health Administration, DOH
Attn: Lisa Davis
Kenneth Campbell, General Counsel, DOH

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EASTERN TRANS-WASTE OF MARYLAND, INC., Plaintiff, v. DISTRICT OF COLUMBIA, *et al.*, Defendants.	Civil Action No. 05-0032 (PLF)

DEFENDANTS' MOTION TO DISMISS OR,
IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

Pursuant to Fed. R. Civ. P. 12(b)(6) and 56(b), defendants District of Columbia, D.C. Department of Consumer and Regulatory Affairs, Denzil Noble, and Andrew Altman hereby move this Honorable Court to dismiss the complaint based on plaintiff's failure to state a claim upon which relief can be granted or, in the alternative, for summary judgment.

The grounds and the reasons are set forth more fully in the accompanying Memorandum of Points and Authorities and alternative proposed Orders. As required by LCvR 56.1, a Statement of Material Facts As to Which There is No Genuine Issue has been provided.

DATE: February 15, 2005

Respectfully submitted,

ROBERT J. SPAGNOLETTI
Attorney General, D.C.

GEORGE C. VALENTINE
Deputy Attorney General, D.C.
Civil Litigation Division

/s/ Richard S. Love
RICHARD S. LOVE, D.C. Bar No. 340455
Chief, Equity I
441 Fourth Street, N.W., 6th Floor South
Washington, D.C. 20001
Telephone: (202) 724-6635
Facsimile: (202) 727-0431

/s/ Andrew J. Saindon
ANDREW J. SAINDON, D.C. Bar No. 456987
Assistant Attorney General
Equity I
441 Fourth Street, N.W., 6th Floor South
Washington, D.C. 20001
Telephone: (202) 724-6643
Facsimile: (202) 727-0431
andy.saindon@dc.gov

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EASTERN TRANS-WASTE OF MARYLAND, INC., Plaintiff, v. DISTRICT OF COLUMBIA, *et al.*, Defendants.	)	Civil Action No. 05-0032 (PLF)

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS OR,
IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

Defendants,[1] pursuant to Fed. R. Civ. P. 12(b)(6) and 56(b), have moved this Court to dismiss the complaint or, in the alternative, for summary judgment. This memorandum of points and authorities is provided in support of the defendants' dispositive motion in accordance with LCvR 7.1(a). As required by LCvR 56.1, a Statement of Material Facts As to Which There is No Genuine Issue ("SMF") has been provided.

The Court should deny the requested relief because plaintiff's claims are substantively meritless and entirely local in character. This complaint reflects either a profound misunderstanding of eminent-domain law or, more likely, a willful and cynical ploy for financial

[1] Plaintiffs have named as defendants in this case the District of Columbia, the D.C. Department of Consumer and Regulatory Affairs ("DCRA"), Denzil Noble (Acting Administrator of the Building and Land Regulation Administration of DCRA), and Andrew Altman (formerly Director of the D.C. Office of Planning) (collectively, "the District"). Defendants Noble and Altman are named individually and in their official capacities.

Plaintiff requested and was granted a meeting with DCRA officials, on January 27, 2004, to challenge DCRA's initial determination that the proposed work would amount to a "substantial modification." DEx. 3. On or about April 1, 2004, plaintiff submitted not an EIS, but an Environmental Impact Screening Form ("EISF"), for construction projects that have the potential of negative environmental impacts. DEx. 4; SMF ¶ 4; *see* The D.C. Environmental Policy Act, *codified as amended* at D.C. Official Code §§ 8-109.01 *et seq.* (2001 ed.) The EISF, as its name indicates, is a preliminary step taken to capture information that will assist various District agencies in making an informed decision as to whether, for any given project, the more-detailed EIS should be required. No permit or license for a proposed project may be issued until the required environmental impact review is completed. 20 DCMR § 7203.6.

DCRA, pursuant to established procedure, circulated plaintiff's EISF to the various agencies that regularly review proposed construction projects for potential negative environmental impacts: the Department of Public Works ("DPW"), the Department of Transportation, the Water and Sewer Authority, the Department of Health ("DOH"), and the Office of Planning ("OP"). *See* 20 DCMR § 7203 (DCRA is "lead agency" for purposes of EISF review).

OP in its EISF report on plaintiff's proposed project dated May 3, 2004, erroneously noted that the project would add "approximately 10 new employees" and "three to five additional vehicles" to the site. DEx. 5; Complaint ¶ 34. In fact, those changes would be, according to plaintiff, temporary, *i.e.*, only for the duration of the construction. Complaint ¶ 29 (citing EISF). The OP report noted correctly, however, that the location of the site had been rezoned almost three years ago to the "Capitol Gateway (CG) Overlay" district. DEx. 5 at 1; SMF ¶ 5; *see also*

52 D.C. Reg. 63–78 (Jan. 7, 2005) (Notice of Final Rulemaking and Zoning Commission Order No. 971).[3]

The OP report concluded that, as a result of the rezoning, "existing industrial uses with valid Certificates of Occupancy shall be deemed conforming but are not entitled to expand." DEx. 5 at 1; SMF ¶ 7; *see also* 52 D.C. Reg. 66–67, *codified as amended at* 11 DCMR § 1605.1.[4]

By memo dated July 12, 2004, DOH notified DCRA that, after an inspection at the site, DOH required more information from ETW on their proposed construction, and requested that DCRA have ETW contact DOH directly. DEx. 6. By letter dated July 14, 2004, DCRA passed this request to ETW's agent. DEx. 7.

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[3] The referenced rezoning was first proposed, and public hearings held, in November of 1996. *See* 52 D.C. Reg. at 63. The Zoning Commission "re-advertised the case on June 15, 2001, and an additional public hearing was held on September 20, 2001." *Id.* Pursuant to District law, applications for building permits received after a proposed zoning change has been "set down" (*i.e.*, after the Zoning Commission has decided to hold a public hearing on the proposed change) are processed according to the proposed rezoning. 11 DCMR § 3202.5(b); SMF ¶ 7. *See also* 52 D.C. Reg. at 69 (rezoning made permanent by publication of final order had been in place since August 15, 2001, the date of the advertisement of the revised notice of proposed rulemaking).

[4] *Id.*:

> The Zoning Commission concluded that the existing commercial or industrial uses that are first permitted in a CM or M industrial zone should not be permitted to expand, because the uses are inconsistent with the intent of these map and text amendments, and the Commission's vision for the Overlay area. The Commission recognized the importance of the uses to the District, but concluded that allowing the expansion of such uses would be contrary to the efforts to change the character of the area and stimulate redevelopment of the Overlay area as a residential and commercial mixed-use community. Therefore, the Zoning Commission modified the advertised language to deem existing industrial uses conforming, but to prohibit their expansion.

Although DCRA had notified ETW's agent to contact DOH directly, the agent responded by letter to DCRA on July 28, 2004, purportedly addressing DOH's concerns. DEx. 8. By letter dated the next day—July 29—DCRA again "strongly encourage[d]" ETW's agent to communicate directly with DOH staff. DEx. 9.

By memorandum dated September 14, 2004, DOH ultimately determined that there would be no apparent significant adverse impact or likelihood of substantial negative impact on the environment as a result of the proposed project. DEx. 10; SMF ¶ 8. On September 23, 2004, representatives of ETW met with DCRA to discuss the status of the project. DEx. 11; SMF ¶ 9. At that time, ETW was told that the project could not proceed (*i.e.*, DCRA could not issue the building permit) until the zoning issues raised by OP were resolved. DEx. 11; SMF ¶ 9. ETW was informed then that it would have to seek a variance from the Board of Zoning Adjustment ("BZA"), in light of the rezoning of the site. DEx. 11; SMF ¶ 9. DCRA officially referred the matter to the BZA on or about October 15, 2004. DEx. 12; SMF ¶ 9. ETW has appealed DCRA's denial of its building permit application, and a hearing on the appeal has been scheduled by the BZA for March 15, 2005. DEx. 13; SMF ¶ 10. ETW's appeal at the BZA appears to be based solely on OP's erroneous conclusion regarding ETW's EISF, and not on DCRA's stated reason for denial of the application—the underlying zoning change, which mandates a variance. *See* DEx. 14 (copy of ETW's brief to the BZA).

As of the date of the instant motion, neither ETW nor any other party has legally challenged the rezoning of the area in the Capital Gateway Overlay. SMF ¶ 11.[5]

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[5] Despite this fact, plaintiff here "disputes" the referenced rezoning by the Zoning Commission. *See* Complaint ¶ 15 ("ETW does not accept that this attempt [sic] change is either effective or legal . . . .").