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1/7/98  
To: NCPC  
Re: ZC 96-5

Proposed Zoning Regulations in DC Zoning Case 96-5 will allow garbage and trash transfer stations anywhere in any of the District of Columbia's Wards 4, 5, 7 or 8 light industrial and heavy commercial districts (zoned as M or C-M districts). If the Zoning Commission wanted to require each quadrant of the city to house a garbage and trash transfer station it could do so by amending the zoning map to designate specific spaces in each quadrant as eligible for garbage and trash transfer station activity. Unlike Wards 1, 2, 3 and 6, a large majority of the residents, investors, business owners and employees in wards 4, 5, 7 and 8 of the city where garbage and trash transfer station activity will be legal, are racial minorities who will disproportionately suffer the burden of the public health and public nuisance costs arising from these privately owned garbage and trash transfer stations. Instead of developing strict site location, design, operation and other standards to minimize this disproportionate impact on racial minorities, the proposed regulations adopt vague and weak standards to allow any site in M and C-M site to be used if it passes through the weak filter of these weak regulations. The regulations' main weakness is the failure to limit and locate these activities to a specially approved and deliberately designated site in the city for waste transfer. Just as DC lacks an airport because it lacks the land needed to properly run an airport, so must garbage and trash transfer stations be located on a large enough and properly located land area to protect those nearby from the adverse effects of the activity. Engineering expert Larry Schapper's Chapter 9 in the McGraw Hill Handbook on Solid Waste at pages 197 and 198 describes why in his opinion transfer stations receiving 1,000 tons a day of Municipal Solid Waste should be a minimum of more than 7 acres and preferably 15 acres. No one in the Office of Planning, the Zoning Commission, the Department of Public Works or the National Capitol Planning Commission has recognized the need for minimum standards of size and direct ingress and egress to major highways as an essential element of any garbage and trash transfer station in an urban center such as DC. The

**industry giants are using sites in DC without any regard to capacity standards published in the EPA's 1995 publication "Decision Maker's Guide to Solid Waste Management, Volume II." DC's Office of Planning is not going to review or be guided by such publications because the Zoning Commission has not told them to do so, according to Mr. Colby.** 70% of the 1,000 tons a day **at the** commercial, private transfer stations **in DC** comes from Maryland, Virginia and elsewhere because DC is an efficiently located central hub well positioned to become the garbage can for the DC Baltimore Richmond corridor. Harvey Gantt, FAIA, a North Carolina resident and U.S. Senate candidate, is chairperson of the NCPC. His staff's report if followed by the Commission will brand DC with the legacy of becoming "Gantt's garbage can". For four years these private garbage and trash transfer stations have shown that they escape governmental protections for the environment and public health and continually harm the health and property values of those around them. No government agency has shown any ability to cope with these garbage and trash powerhouses, such as BFI, Waste Management or USA Waste.

These proposed amendments add sections to the city's municipal regulations found at 11 DCMR 802.4 through 802.9, which require a public hearing and approval from the Board of Zoning Adjustment for each such site. The dynamic set in motion by these regulations guarantees BZA approval in each case because the regulations lack high and clear standards to protect public health and property values. Unlike other jurisdictions, the proposed zoning regulations fail to require the applicant to pay for independent and objective experts to evaluate each application and to report to the community and to the BZA of the problems with each proposed site and the ways these problems will affect the health and property values of others. Consequently, the disorganized community surrounding each site is forced to be the sole advocate using only their own money to hire expensive experts to try to present evidence at these future hearings to protect the health and property values of those near each proposed site.

The National Capitol Planning Commission initially directed the DC Zoning Commission to not allow any garbage and trash transfer

stations in the District of Columbia unless they were either state of the art and located equally throughout the city, two possible sites in each quadrant of the city, or were located in a previously designated and chosen area of the city designated for waste transfer and able to use all of the best advantages of site location and proximity to major roads, etc. The National Capitol Planning Commission stated that non residential uses as well as residential uses needed to be protected from these sites and that a 300 foot buffer should separate all nearby properties from any of the buildings, places, storage areas used for transferring garbage and trash. The City Council was on record calling for a 500-foot buffer.

The following is a section by section analysis of the proposed Zoning Commission regulations, which the NCPC staff recommends endorsing. An NCPC hearing on January 8, 1998 at 12:30 will hear testimony

The first cited section (802) amends and allows transfer stations in the commercial-manufacturing districts where light industry is allowed and the second cited section (822) amends and allows transfer stations the heavy industrial sections of the District of Columbia.

**1. Section 802.4(a) and 822.3(a):**

No portion of the facility, including any structure, loading dock, truck bay, storage container, transfer equipment, or any other processing equipment or operation, shall be located within three hundred feet of a property in a residential district used for residential purposes or shall be located within fifty feet of any adjacent property. (One immediately obvious loophole is that this language using the word "located" allows trucks to temporarily park for indefinite periods of time or to stop at weigh stations on the land within the 300 feet or within the 50 feet boundary, provided the truck is not "located" at the spot, but only temporarily using it.

**2. Section 802.4(b) and 822.3(b)**

No entrance to the site used for truck access or egress shall be located within fifty feet of any adjacent property. (Many of the long haul trucks require more than 50 feet to make their turns into the narrow entrances to these sites, so the 50 feet from the entrance is quickly bridged by the trucks which are much too big for the street

and traffic next to the entrance and therefore encroach onto neighboring property.

3. Section 802.4(c ) and 822.3(c)

**"The use shall not have adverse impacts on the character of the neighborhood due to the noise, traffic, parking, odors, rodents and other vectors, dust, litter, fire hazard, decomposition gases, vehicle pollution and other pollution, or other hazards or objectionable conditions. In particular, inadequacy of site size shall not contribute significantly to any of the above conditions."**

**(This is a totally amorphous, vague and unmeasurable standard sure to be ignored and useless universally. None of the operative words have definition or clear significance. One person's "adverse impact" is another person's production. What is the "character of the neighborhood?" That is what is being protected, not the health of nearby workers or the public. Who determines the "character of the neighborhood?" The words "character of the neighborhood" are totally subjective and are not measurable and are meaningless and clearly invite any such governmental action to be challenged as unconstitutionally vague and arbitrary. This is a standard designed to mislead and to be useless. Instead, the standard should be that "the use shall not produce any noise greater than 70 decibels at its source, nor cause any vehicles to be parked on public property, nor allow any arriving or departing vehicles to cross the mid section of the street used by these vehicles to enter or exit the site, nor cause any waiting vehicles to queue on public or private land not owned or leased by the transfer station, nor cause any measurable dust, particulate or other foreign substances including gases or odors to enter the public air or to escape into the public air beyond the property boundaries of the site, nor shall the use allow any hazardous materials to be brought to the site by the arriving trucks nor to be transferred at the site. The proposed standard uses meaningless terms such as "inadequacy of site size". Instead, the regulation has to draw the line and declare a size below a certain size to be "inadequate and unacceptable". Such a standard could require that no site shall allow the discharge and tipping of the garbage and trash to occur on a tipping floor smaller than 2,500 square feet for every 100 tons transferred each day, so that a transfer tipping floor for a site licensed or approved to transfer 1,000 tons a day shall not be any smaller than 25,000 square feet. That will be the minimum allowable and will ensure that there is sufficient and safe space to protect against workers being injured**

by trucks and to avoid collisions between vehicles and to allow sufficient space to spread material in the event it catches on fire, and to spread material in the event of hazardous spills. The transfer shall occur only in a fully enclosed, air locked building, such as the one in Biddeford, Maine where the entrance and the exit of the arriving and departing trucks is controlled by double sets of doors which include an inner set and an outer set of doors, one of which is at all times closed, and which open and close in a way which protects the community air to the greatest extent possible from accidental or intentional mixing with the air on the tipping floor. The tipping floor shall have a raised, metal lip ensuring that any leaks of fluids shall be contained within the area surrounded by the raised metal lip and not allowed to escape into the public sewers or public areas. The air in each tipping area shall be filtered and scrubbed and constantly monitored and recorded so that the public and the government shall at all times have the right to receive copies of the reports showing the various types of substances in the air of the transfer station, including but not only all gases, dusts, particulate, emissions, microbes, molds, bacteria and other substances which can be measured by the most sophisticated state of the art measuring devices available.

4. Section 802.4(d) and 822.3(d)

An architect or engineer licensed in DC produces a certified statement that "the facility as sited and designed to the best of his/her professional knowledge and belief is capable of complying with these Zoning regulations and all other applicable regulations of the DC government..." and produce "any additional information to support such certification." Any such certification creates a "rebuttable presumption of compliance with "all laws and regulations applicable to solid waste handling facilities." This replaces facts and proof with bold conclusions and shifts all of the cost and need for expertise on to the community to prove the negative when the positive has not been proved, i.e. the community has to produce the proof, expert testimony, facts, measurements, etc. to prove that the bold conclusions of the applicant's expert were not true, even though that expert has not first produced even one fact to support his or her conclusion. The BZA can require "any additional information" to support such certification, but is not required to require any information. The BZA lacks funding or staff needed to evaluate any technical information, so even if it was produced, the BZA would not be able to understand, analyze,

check, verify or disprove the information, unless the system includes the applicant posting and paying funds needed to produce independent reviews and studies by independent technical experts.

**5. Section 802.4(e) and 822.3(e)**

The applicant is to provide "creditable" (credible?) evidence to the BZA to "demonstrate" the facility's ability to comply with all applicable regulations, including an "indication" of the site and a "description" of land uses within a quarter of a mile of the site, plus a "site plan" showing the layout of the proposed facility, main building(s), fences, screens, access to rail, street access, parking, queuing areas, and functional diagram indicating proposed use of the site; and an "operating plan" which "indicates" the types of waste accepted, estimates of the volume and number of trips of incoming and outgoing materials daily and during peak periods; a "plan" for preventing and controlling offensive odors, rodents, and other vectors; and a "traffic study" indicating truck routes to and from the facility which somehow "demonstrates" that the facility will not significantly diminish the quality of the working or living environment in the area of the solid waste handling facility."

Again, there is nothing measurable and the words used are totally arbitrary and subjective and fail to set any standard or objective level which has to be met to "qualify" an applicant. This entire exercise is clearly an illusion. An example of this farce is the 1996 submittals from Waste Management and Mike Perkins in response to the environmental disclosure form used in the bogus Interim Operating Permit process. The statements were totally self-serving and the government lacked any standards or staff capable of distinguishing between meaningful and meaningless statements by the applicant.

**6. Section 802.4(f) and 822.3(f)**

It makes no sense for this section to call for each facility to be designed to have access to a railway siding or spur since it also says that no one has to use rail if the Department of Public Works concurs in writing and the applicant can show by substantial evidence four points:

- (1) that the use of rail at the site is not practical, economic or physically feasible. DPW will have to issue the written concurrence in every case because there are no standards

controlling when it can and cannot issue the written concurrence. The very low standard of proving physical unfeasibility can be satisfied anytime a site lacks rail access.

- (2) Next, the applicant simply has to show that the solid waste "can be" transported from the facility solely on streets that do not abut residentially zoned districts and without causing excessive vibration or disturbance to abutting property." There is no definition of "abutting property". Twice as many trucks transport the waste to the facility as take it away, so why does the regulation ignore the routes taken by those twice as many trucks bringing the waste to the site. What in the world does "excessive vibration or disturbance" mean? Excessive to whom, how often, when, in what way? Again, all of this is verbiage, which will never have any significance because it cannot be measured and is deliberately designed to be vague so that it cannot have any restrictive impact on these foul sites.
- (3) Any road base of a road to be used has a road base capable of withstanding anticipated loads. The BZA lacks staff capable of understanding or analyzing any claims on this point and the proposed regulations do not require the applicant to fund any such independent study.
- (4) The truck traffic will not cause undue congestion. What is "undue" congestion? The vague language favors the operator and means that the regulation means nothing. The history of these sites shows clear evidence of undue congestion. The congestion is first of caused by the small site, the small and narrow streets these sites are located on, the huge trucks coming to these sites, the rapidity of the arriving and departing trucks at peak periods, the other uses of the roads in questions, the cumulative impact of similar uses nearby, the design of the traffic patters, the need for left turns across an abutting road into the site, the narrow entrance and egress which force the trucks to cross into oncoming traffic when leaving the site or to run onto the sidewalk or to constantly interrupt ongoing traffic every six minutes or less, or to surprise oncoming traffic at the bottom of a hill or after some other traffic obstacle.

## 7. Section 802.4(g) and 822.3(g)

This contains meaningless platitudes about not obstructing traffic and has no teeth or enforcement mechanism. It prohibits

access from "residential streets" which the office of planning has testified has a very subtle meaning quite different from its common sense meaning. Where is that subtle definition? What is the "public right of way" from which all vehicles are banned from parking, standing or queuing for the facility? There are no design standards assuring that none of this occurs. These platitudes are meaningless since at the BZA hearing the applicant will simply mouth good intentions when in reality these standards will be deliberately broken every day with impunity, as they are now. What is a "road base capable of withstanding anticipated load limits?" Again, BZA has no staff capable of determining that information, nor does the Office of Planning or the Zoning Commission or the Department of Public Works. If so, where are the studies and why are the technical standards not used instead of these generalized statements which are totally debatable.

**8. Section 802.4 (h) and 822.3(h)**

Although these regulations say the existing 11 DCMR Section 804 applies the "Standards of External Effects" as well as the D.C. Noise Control Act and standards, neither of these provisions have proven to offer anyone significant protection against these foul nuisances. There is no case on record that shows that this section has ever successfully been used to control any "external effect". The city lacks the staff and funding needed to define, measure and prosecute these violations and the language of these sections is notoriously vague and unmeasurable.

**9. Section 802.4(I) and 822.3(I)**

This section requires that "all solid waste handling activities, including depositing, processing, separation and loading must be within a fully enclosed (air locked) building." If this were clearly defined and coupled with state of the art siting, design and operating standards, this could be a pillar of a worthwhile and effective public policy regulation leading to state of the art sites in DC. The Commission of Public Health submitted testimony citing Biddeford Maine and recommending the requirement of such a fully enclosed, air locked building using double entry, alternative opening doors controlling a vestibule where the outside door would open, allow a truck to enter, close, and only then the inner door would open, allowing the truck to enter the tipping floor. Once

finished, the truck would exit through another identical set of doors so that the truck would first enter the vestibule which would then have a door close to shut out the air in the building from the outside, and only then would the outer door open. This system was designed by an engineering firm in Timonium Maryland and uses available technology. The regulations need to spell out the meaning of "fully enclosed (air locked) building. That system should be coupled with a gravity drop system whereby the waste leaving the truck falls or is pushed down one floor level into departing trucks, all of which helps to increase efficiency and decrease the dust and particulate in the air as well as the time of the waste on the floor and at the transfer station. It has to be made clear that the words "fully enclosed (air locked) means totally and fully and solidly closed and sealed with four walls and ceiling and not just surrounded on three sides or surrounded by a fence.

**8. Section 802.4(j) and 822.3(j)**

This section calls for a 10-foot opaque fence or wall to "enclose" a facility. This must be distinguished from (I), which called for a "fully enclosed (air locked) building.

**10. Section 802.4(k) and 822.3(k)**

On site parking and queuing requirements in this section are weak and ineffective, particularly where the regulations only require that all parking and queuing space shall be provided on-site to accommodate projected peak demand where the site serves the public. Such accommodations should be required of every site whether it serves the public or not. Also, it makes no sense to use the word "may" instead of "must" in (k)(4) which allows that the BZA may instead of must require additional parking, truck maneuvering and queuing space after considering the applicant's analysis of such needs and the reports from DPW and OP. DPW and the Office of Planning have no expertise, funds or staff to provide the expertise needed to analyze the hypothetical and actual parking and queuing patterns in garbage and trash transfer stations. History at these sites show that trucks at the site constantly need to maneuver and must often leave the site and drive into the middle of the abutting street in a perpendicular fashion and then back again into the site to park somewhere at the site as part of a queue or for temporary storage purposes. Backing up and maneuvering is

**also one of the causes of workers' deaths at these sites, since the trucks are huge, the quarters are cramped and the workers and walking around, picking up tools, hand separating materials, etc. Each site should have to undergo an independent working economic and safety study to be verified as safe for the public as well as for the workers as a precondition to the application to the BZA.**

**11. Section 802.5 and 822.4**

**This aims to allow the BZA to adopt specific operating hour requirements to protect only "residential uses adjacent to a facility" without defining the word "adjacent". Again that vagueness defeats the regulation and invites no enforcement as a cheaper price to pay than the cost of trying to litigate a meaning into a totally vague term. These regulations ignore the need to protect nearby businesses from the adverse impacts of these nuisances. These transfer stations are not "light" industry. They involve 150 trucks a day for every 1,000 tons a day, which is about one truck every six minutes for ten hours, and in fact it is sometimes a truck a minute during the peak periods. These trucks take over nearby streets and bring all commerce to a halt so that all other businesses now must follow the clock of the transfer station whose arriving and departing trucks act as if they "own" the street. Nearby businesses lose loyal workers who develop asthma and allergy problems because of the dust and allergens these sites produce and pollute the air with. Employees leave to avoid the offensive odors or the constant dust, which covers and damages their cars. Others refuse to work for these companies to avoid these problems. Buyers refuse to buy these properties. One million-dollar properties lose a third of their value in one year. Rental values drop by sixty percent. Workers refuse to work outside in businesses near these sites and others develop swollen arms from mosquito bites and refuse to risk returning to work. No one has verified that the air is safe or that the disease carrying vectors are not actively threatening the health of the nearby workers. No one has any quality control on the hazardous wastes, which are arriving every day in the solid waste stream, which could at any time produce a significant health threat to all of the workers of nearby businesses as well as to those at the site.**

**12. Section 802.6 and 822.5**

**This allows the BZA to adopt greater protections "to protect adjacent property" especially residential property from excessive noise and traffic. This is poorly stated and conceived. Property does not hear. Property can be damaged by vibrations from traffic. Property value can drop because of nuisances such as transfer stations. People, no matter if they are home or at work in nearby businesses, need protection much more than property. Garbage and Trash Transfer Stations are predominantly health problems for humans exposed to the many hazards and dangers they pose for their neighbors in the business and residential areas. People need the protection much more than property, but the people most exposed are the workers in nearby businesses. These regulations are manifestly weak in their failure to protect nearby workers in other businesses from the adverse effects caused by garbage and trash transfer station activity.**

**13. Section 802.7 and 822.7**

**These sections direct the BZA to not consider the fact that a site has had an interim operating permit when determining whether it is entitled to receive a special exception to allow it to operate legally. This section should read that the record of the problems and complaints about the way the site has been chosen and used in the past should be given great weight by the BZA in deciding to deny the application for a special exception because of the long standing principle that a thing's operation discloses the nature of a thing and that a company's failure to be responsible and legal from the very beginning and in the past four years demonstrates that the applicant will tend to not be responsible or legal in the future. This would also place applicants on a more equal footing because while the three sites of BFI, Waste Management and USA Waste were illegally begun and operated and been protected by the interim operating permits issued by DCRA, other applicants have been denied the right to receive interim operating permits and have been shut out of the market which has been monopolized with the help of the city government by these illegal operators.**

**14. Section 802.8 and 822.7**

**This declares that if the BZA denies a special exception to an operator and holder of an interim operating permit, "the continued operation of the facility shall be unlawful." The regulation should go on and declare that any such continued operation must**

**immediately stop upon the oral decision by the BZA to deny the application for a special exception and if it continues shall be a public and private nuisance and that corporation counsel or any nearby owner, employee or other person acting as a "private attorney general" can collect attorney fees and daily fines of \$10,000 a day against the site, its operators and users in the event that the corporation counsel or any such person successfully petitions a court of competent jurisdiction to enforce this provision and to stop the site from operating as a garbage and trash transfer station. The entire purpose here is to terminate the operation of the site as a garbage and trash transfer station during any appeal of the BZA denial of the special exception and to prevent the applicant from profiting at the community's expense during the delay and time used to hear the appeal of the denial of the special exception. This returns the system to the usual status by which a use cannot occur until it has been approved and the fact that the interim operating permits were always understood to not include an approval of the use, but only as a convenience to get the administrative ball rolling after the users and site owners had illegally begun and tied up the city in litigation the city wanted to bypass at that time.**

**15. Sections 802.9 and 822.8**

**Solid waste is defined to not include "hazardous waste in any form."**

**The intent here was apparently to prevent what has been designated as "hazardous waste" from being transferred at garbage and trash transfer stations under the nomenclature of "solid waste". However, by definition and in fact, the solid waste stream in the commercial waste stream includes many types and object, which are in fact "hazardous waste". They may be in the stream illegally, but nothing in the collection or transfer system effectively protects or cleans the stream of waste from containing hazardous waste. That is one important reason why these regulations are dramatically weak. The commercial solid waste stream must be regulated and handled from a risk management point of view as containing hazardous waste and protections such as 500 foot buffers, negative air systems, spill controls, sewer protections, vacuum systems, etc. should all be essential parts and protections controlling these operations.**

**Finally, it appears that construction and debris transfer stations are now included in these proposed regulations and come under the term of "solid waste transfer stations". That is not clear. It should be clearly stated that they are either banned from the city or are subject to these regulations in toto.**

**These are preliminary comments subject to addition upon further reflection.**

**Sincerely,**

**Myles Glasgow**