11/5/01

IN RE: PETITION FOR SPECIAL HEARING
S/S Carroll Island Road, 840' E
centerline of Beach Drive
15th Election District
5th Councilmanic District
(10001 Carroll Island Road)

Constellation Power Source Generation, Inc.
Petitioner

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* CASE NO. 02-098-SPH
*

* * * * * * * * * * *

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Special Hearing filed by the legal owners of the subject property, Constellation Power Source Generation, Inc. The Petitioner has filed a special hearing for property located at 10001 Carroll Island Road, requesting approval to amend a previously approved Special Exception and Variance Case Nos. 4077 and 74-102-ASPH. The Petitioner is seeking to modify their site plan in order to construct a slag processing facility on the subject property.

Appearing at the hearing on behalf of the special hearing request were Dick Ransom, Jim Andercyk, Bonnie Johansen and Jim Burkman, all appearing on behalf of Constellation Power Source. John Burns, the owner and operator of Virginia Material, appeared on behalf of the operator of the proposed slag facility. Zacharia Fisch appeared on behalf of FSH Associates, the engineers who prepared the site plan of the property. The Petitioner was represented by G. Scott Barhight, attorney at law. There were no others in attendance.

Testimony and evidence indicated that the property, which is the subject of this special hearing request, consists of 6.83 acres, more or less, zoned RC.5. The subject property is the site of the Crane Power Plant, which is a well known power generation facility located at the end of Carroll Island Road in the Bowleys Quarters area of Baltimore County. The subject property is operated by Constellation Power Source Generation for the purpose of producing electricity for

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Date 11/5/01
By D. Grundy

the Baltimore metropolitan area. In the course of the production of electricity, the power plant generates a bi-product known as slag. At the present time, the slag produced by this power plant is trucked to Norfolk, Virginia in order for it to be processed and reused in different manufacturing and industrial settings. Mr. John Burns owns and operates Virginia Material, which is the company that currently processes the slag produced from this facility. However, Mr. Burns, as well as Constellation Power Source, is interested in constructing a slag processing facility on this property so that the slag produced by this power plant does not have to be trucked to Norfolk, Virginia. This will enable the Petitioner to operate a much more efficient facility, given that the material that is recycled can be done on site thereby reducing traffic in and out of the property.

In addition to processing the slag produced at this power plant, the Petitioner also requested permission to allow some additional slag to be brought onto the property for processing. This would only occur when times dictate that there is not enough slag bi-product produced by this power plant to keep the slag facility running at full operation. The Petitioner indicated that any slag brought onto the property for processing would be transported by way of freight trains and not trucked to the facility over the neighboring roadways. There currently are railroad lines that service the subject property. Bringing slag onto the property in order to process it would pose no problem, so long as the material is brought to the site by way of the railroad lines that service this property.

After considering all of the testimony and evidence offered at the hearing, I find that the Petitioner's special hearing request to amend their previously approved site plan shall be granted. The Petitioner shall be permitted to construct this slag processing facility on the property which

ORDERED By The Zoning Commissioner for Baltimore County this 11/5/01 day of ... S. Gamerson

will benefit not only the owner of the property, but also the surrounding community in that it will lessen the amount of truck traffic servicing the site.

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship would result if the relief requested in the special hearing were not granted. It has been established that the requirements from which the Petitioner seeks relief would unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the relief requested will not be detrimental to the public health, safety and general welfare.

Pursuant to the advertisement, posting of the property and public hearing held on the Petition and for the reasons given above, I believe that the special hearing request should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 5th day of November, 2001, that the Special Hearing Request to amend a previously approved Special Exception and Variance Case Nos. 4077 and 74-102-ASPH, be and is hereby GRANTED.

IT IS FURTHER ORDERED, that the Petitioner's request to modify their site plan in order to construct a slag processing facility on the subject property, be and is hereby GRANTED.

IT IS FURTHER ORDERED, that any appeal of this decision must be made within thirty (30) days of the date of this Order.

Timothy Kotroco

TIMOTHY M. KOTROCO
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

TMK:raj

ORDER RECEIVED FOR FILING
Date 11/5/01
By T. Jamison

| | | |
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| IN THE MATTER OF | * | BEFORE THE |
| THE APPLICATION OF | | |
| CONSTELLATION POWER SOURCE | * | COUNTY BOARD OF APPEALS |
| GENERATION, INC. –LEGAL OWNER FOR | | |
| A SPECIAL HEARING ON PROPERTY | * | OF |
| LOCATED ON THE S/S CARROLL ISLAND | | |
| ROAD, 840' E OF C/L BEACH DRIVE | * | BALTIMORE COUNTY |
| (10001 CARROLL ISLAND ROAD | | |
| 15TH ELECTION DISTRICT | * | Case No. 02-098-SPH |
| 5TH COUNCILMANIC DISTRICT | | |

* * * * * * * * *

## ORDER OF DISMISSAL OF PETITION

This case comes to the Board on appeal filed by Peter Max Zimmerman, People's Counsel for Baltimore County, and Carole S. Demilio, Deputy People's Counsel, from the November 5, 2001 Order of the Deputy Zoning Commissioner in which the subject Petition for Special Hearing was granted.

**WHEREAS**, the Board is receipt of a letter of withdrawal of the Petition for Special Hearing filed March 25, 2003 by G. Scott Barhight, Esquire, on behalf of Constellation Power Source Generation, Inc., Petitioner (a copy of which is attached hereto and made a part hereof); and

**WHEREAS**, said Counsel for Petitioner requests that the Petition for Special Hearing filed in the above-referenced matter be withdrawn, without prejudice, as of March 27, 2003,

**IT IS THEREFORE**. this 9th day of April, 2003, by the County Board of Appeals of Baltimore County

**ORDERED** that said Petition for Special Hearing filed in Case No. 02-098-SPH is **WITHDRAWN AND DISMISSED**, and that the Deputy Zoning Commissioner's Order of November 5, 2001, including any and all relief granted therein, is rendered **null and void.**

**COUNTY BOARD OF APPEALS**
**OF BALTIMORE COUNTY**

Charles L. Marks

Lawrence S. Wescott

C. Lynn Barranger

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

April 9, 2003

Peter M. Zimmerman, People's Counsel
for Baltimore County
Carole S. Demilio, Deputy People's Counsel
Room 47, Old Courthouse
400 Washington Avenue
Towson, MD 21204

RE: *In the Matter of: Constellation Power Source Generation, Inc. – Legal Owners*
Case No. 02-098-SPH /Withdrawal of Petition

Dear Counsel:

Enclosed please find a copy of the Order of Dismissal of Petition issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Very truly yours,

Kathleen C. Bianco

Kathleen C. Bianco
**Administrator**

Enclosure

c: G. Scott Barhight, Esquire
Dick Ransom /Constellation Power
Jim Andercyk /Bonnie Johansen /Jim Burkman
John Burns /Virginia Material
Zacharia Y. Fisch / FSH Associates
Bernard Wagner
Herman F. Lenzenweger
Bowleys Quarters Improvement Assn., Inc.
c/o M Vivirito, President
Michael Vivirito
Lawrence E. Schmidt /Zoning Commissioner
Pat Keller, Planning Director
Arnold Jablon, Director /PDM

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12/3/02

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|---|---|---|
| IN RE: PETITION FOR SPECIAL HEARING<br>S/S Carroll Island Road, 840' E of centerline<br>Of Beach Drive, 15th Election District<br>5th Councilmanic District<br>(1001 Carroll Island Road) | * | BEFORE THE<br><br>COUNTY BOARD OF<br><br>APPEALS FOR |
| Constellation Power Source Generation, Inc.<br>Petitioner | * | BALTIMORE COUNTY |
| | * | Case No. 02-098-SPH |

* * * * * * * * * * * *

**People's Counsel's Reply Memorandum Relating to Its *Motion to Dismiss***

People's Counsel's replies to Petitioner's response on the meaning of "public utility" and associated issues, as follows:

**I. Under Baltimore County Zoning Law, Petitioner Is Not a Public Utility**

1. The key point under the Webster's Dictionary definition cited in both memoranda is that a "public utility" usually has monopoly privileges, and so is subject to comprehensive rate regulation. The one-time BGE monopoly over production, distribution, and retail sale in the Baltimore area has disappeared under State law. The newly formed Constellation Energy, with various parts, now operates in a competitive environment under State law. It is not a misstatement when the Court of Appeals, trade journals, or newspapers speak of deregulation under the recent Maryland statute, the Electric Customer Choice and Competition Act of 1999 (also "the 1999 Act).

2. Whether or not Petitioner is subject to some regulation under pre-existing federal law is not determinative. To be sure, the electric power industry has

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traditionally had a local monopoly structure associated with the public utility concept. This structure was a state law structure overseen by state public service commissions. So, in 1935, when the federal government passed the Federal Power Act, to regulate some aspects of power under its authority to regulate interstate commerce, it was not thereby establishing electric power companies as public utilities. It was adding some regulation to companies, which then were public utilities under state law. Similarly, in 1978, when the federal government sought to *impose some competitive requirements* on local monopolies, which were then "public utilities," it named the Act the Public Utility Regulatory Policy Act in recognition of their status under state law.

The Federal Power Act preamble cited by Petitioner observes that "...such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States." While there is still federal regulation, it operates in a different environment. No longer is there the local monopoly structure, which gave rise to the "public utility" concept.

The federal regulatory structure is not comparable. The Federal Energy Regulatory Commission has not replaced the state public service commissions. That was never its intent. Indeed, the problems associated with Enron, and with interstate power producers and power marketers in the middle of the California energy crisis, were subject to federal regulation. But no one classifies them as public utilities. There is now a competitive environment, with less regulation; that is why the current trend is commonly and correctly described as deregulation.

3. Whether or not federal (or state) law considers an industry to be affected with a public interest does not determine of status as a public utility. Many industries are "affected with a public interest." Many industries are regulated, and regulation usually involves economic factors. The twentieth century witnessed the growth of administrative law to deal with matters affected with a public interest.

The Federal Communications Commission regulates in detail the broadcast spectrum, including allocation and sale of radio and television stations. The Federal Aviation Administration regulates the airline industry, often involving routes and/or affecting rates. The Securities and Exchange Commission regulates the securities industry. The United States Department of Agriculture administers an array of economic regulations to control agricultural production. The United States Department of Commerce administers export and import controls affecting various industries. These regulated industries are affected with a public interest. Otherwise, they would not be regulated. That does not make them public utilities.

Similarly, at the State level, many industries are subject to economic regulation. Real estate, banking, insurance, commercial lending, and agriculture are obvious examples. The proposed sale of Care First/Blue Cross/Blue Shield is subject to government approval, much of which involves economic factors. Hospitals come under close scrutiny in Maryland under a new commission empowered to review costs. Recognition of a public interest in all of these industries, whether long-standing or recent, does not turn them into public utilities.

At the local level, there are many matters affected with a public interest subject to regulation, but which are not public utilities. Local zoning is here because land use involves public interests.

Correspondingly, whether or not Petitioner has gotten, or still may require, a certificate of convenience or need for certain operations, does not determine and does not trigger public utility status. Numerous industries must get certificates of public convenience or meet need standards for facilities or operations at various levels of government. Examples include, federal approval of airline routes, Maryland certificates of need for health care facilities, projects and services under Md. Annotated Code Health Care General Art., § 19-123 and Maryland certificates of public necessity for hazardous waste facilities under Md. Annotated Code Environmental Art., § 7-405. See attached exhibits. These are all industries where legislatures have found it makes economic sense to place limits on private industry in order to assure provision of service to the public. It does not turn them into public utility industries.

At the local level, there are several areas where proof of public need is critical to zoning or licensing approval. The CBA is familiar with the need standards in connection with fuel service station special exceptions, BCZR 405.3; the need standards for all special exceptions in the C.R. District, BCZR 259.3 E.1, see Seven Kids v. Theater Kingsville Civic Association, Court of Special Appeals No. 490, September Term, 2001, attached; and the need standards for towing

licenses under County Code Sec. 24-229, attached, see Pollard's Towing v. Berman's Body Frame & Mechanical 137 Md. App. 277 (2001).

The concept of "public utility" developed in a few industries where the provision of services essential to the public were deemed best provided with a "natural monopoly" structure. The telephone and energy industries were the most obvious examples. State public service commissions administered these industries to insure that the monopolies had fair rates and provided the essential public service. For various reasons, in the late twentieth century, government and industry have determined that the traditional structure no longer is necessary or appropriate. There has been a sea change in this industry.

4. The Maryland Court of Appeals and Court of Special Appeals have recognized this sea change. A full review of Delmarva Power & Light Co. v. Public Service Commission 370 Md. 1 (2002) and Mid-Atlantic Power Supply Association v. Public Service Commission 143 Md. App. 419 (2002) demonstrate this change. The Courts no longer regard power producers as public utilities because the law no longer gives them that status. The Constellation Energy website does not call its power producer or power marketer subsidiaries "public utilities". Rather, they have entrepreneurial names more suitable to the competitive, capitalist environment in which they hope to increase profits. In this "name game," it is convenient for the purpose of this zoning case for the Petitioner to hang on to the "public utility" label which it has shed for the purpose of its main business.

5. Petitioner relies heavily on the testimony of David Perlman, Esq.. He is Chief Energy Counsel for Constellation Energy Group called to provide testimony which serves his employer. His testimony should be disregarded for a number of reasons.

a) He is an attorney called to give a legal conclusion. That usurps the function of the County Board of Appeals.

b) He is not an independent and neutral expert. Rather, he is Petitioner's in-house counsel. He could serve as co-counsel with Petitioner's local zoning counsel. His testimony is indistinguishable from argument. Indeed, it is incorporated as argument in Petitioner's memorandum.

c) He may be familiar with federal energy law, but he could not describe the specific provisions of the Electric Customer Choice and Competition Act of 1999. He did not know the key cases of Mid-Atlantic Power Supply Association v. Public Service Commission 143 Md. App. 419 (2002) and Delmarva Power & Light Co. v. Public Service Commission 370 Md. 1 (2002) other than to say that he thought one of them involved "stranded costs." He did not know local zoning law, or the relevant Webster's dictionary definition. In short, he came to argue that Petitioner is a "public utility" under federal law. Had he analyzed local zoning law, it would still have been argument. He did admit that the Petitioner no longer functions as a monopoly in the Baltimore region. That

is more important to public utility status under state and local law then the rest of his testimony.

d) In its response, Petitioner put a gloss on Mr. Perlman's testimony to give it a relationship to local zoning law that it does not possess. Judge Moylan's advice in People's Counsel v. Beechwood Limited Partnership 107 Md. App. 627, 650-58 (1995) is instructive. There, in rejecting planning testimony of an independent witness called by Petitioner, he wrote:

> A self-evident reason for rejecting as an effective catalyst an expert opinion … is the fact that the opinion is merely conclusory or is, at best, quasi-conclusory. Illustrative of the principle that the opinion of an expert is of little or no weight in the absence of strong supporting facts is Mayor & Council of Rockville v. Stone…:
>
> * * *
>
> These naked declarations, unsubstantiated by facts, are insufficient to overcome the presumption of correctness, which attaches with the adoption of a comprehensive zoning plan.
>
> * * *
>
> There have been numerous occasions when the Court of Appeals has held that the testimony of expert witnesses that there had been a mistake was not sufficient to generate a fairly debatable issue with respect to mistake. 107 Md.App. at 650-51.

Here, the question of whether Petitioner is, or is not, a "public utility" is primarily a legal issue in the context of undisputed facts associated with deregulation. As an issue of law, it is for the County Board of Appeals to decide, subject to judicial review. See People's Counsel for Baltimore County v. Maryland Marine Mfg. Co. 316 Md. 491, at 496-97 (1989); Annapolis Market Place v. Parker 369 Md. 689, 703-04 (2002).

e) For these reasons, the CBA must disregard Mr. Perlman's testimony as conclusory or quasi-conclusory; as a usurpation of the CBA's function; as immaterial to this zoning case; as not based on adequate facts and sound reasons; and as from a source who is not independent.

6. Petitioner refers to Exhibit 25, its letter to Vince Metallo, signed off by Raymond Wisnom. It refers to Petitioner as an "electric utility" under the County Electrical Code. It is a self-serving letter which does not acknowledge the true impact of deregulation. Mr. Wisnom is not an expert on deregulation. There was no hearing. There was no discussion of the 1999 Act and the case law. The issues presented here were not reviewed or litigated. The use of the term "electric utility" is a holdover and linguistic artifact. Whether or not the County Electrical Code has any bearing here, Mr. Wisnom's letter amounts to no more than acceptance of a "conclusory" or "quasi-conclusory" opinion of Petitioner's staff, well below that which Judge Moylan adjudged legally insufficient.

7. Cassidy v. County Board of Appeals 218 Md. 418 (1958) is consistent with our position. In 1958, when BGE had a vertically integrated monopoly in its essential public service, its steam electric generating plant was a public utility use. The "related facilities" at that time were incidental to or part of that use.

But the legal and economic structure and environment have changed. The electric power industry is now just one of many regulated industries. The nomenclature "public utility" is a holdover from a bygone era. As the reins of the Public Service Commission have loosened, Constellation Energy enjoys benefits

of the competitive market place and can set its own prices for energy it produces. It is no more a "public utility" than any other regulated sector of the economy.

8. In this context, People's Counsel does not argue that deregulation means "unregulation," as Petitioner suggests. Our argument is that deregulation under the 1999 Act, illustrated in the Mid-Atlantic Power Supply and Delmarva cases, eliminated the core elements which made the predecessor Baltimore Gas & Electric Company (or BGE) a public utility. It is hard to think of any industry in our society which is "unregulated" at some level of government, if not several levels. The public interest in regulation does not make an industry a public utility. The remaining regulation of the electric power industry at the state and federal levels does not perpetuate public utility status. Enron has been a major player in the electric power industry. It is not a public utility. The energy producers who sold through Enron were not acting as public utilities. The power that Constellation Power Source Generation, Inc. produces can be sold nationally. It can be sold through Constellation's power marketer arm or through some other power marketer. To be sure, there is regulation. Enron was subject to state and federal regulation, too, just not very effective regulation.

9. The BCZR special exception in the R.C. 5 zone for underground interstate and intercontinental pipelines is not determinative. It comes from a time, 1975, when the power industry was considered, in general, to involve a public utility structure and process. Whether or not pipelines were regulated only at the federal level, they carried the aura of being part of the vertically integrated, natural

monopoly structure. The inclusion of this R.C. 5 special exception proves nothing about the current status of the electric power industry.

**I. The Slag Processing Facility Is an Independent Use, Not a "Continuation"**

10. Virginia Materials operates its slag processing facility at various locations around the country. It is an independent operation. It is no less independent if it moves to the Crane Power Plant site.

11. Petitioner abuses the word "continuation" to imply that there is no separation or boundary between the plant and the slag processing facility. According to this theory, the sale of gasoline at the local gas station would be a kind of "continuation" of a process which began with drilling in Alaska, the Gulf of Mexico, or the Persian Gulf states, involves transportation to processing refineries in Louisiana, New Jersey, or elsewhere, and continues with transportation and distribution at the local level. With globalization, sale of clothing in Baltimore would arguably be a "continuation" of a process that began with manufacturing in China. National and international economies involve all sorts of interrelationships and "continuations." That does not merge different processes in the context of land use regulation. Whether or not a corporation decides to outsource its manufacturing or processing operations or do them locally, the question is the nature and function of the use. Here, the substantial and independent slag processing use can be located anywhere.

## III. The Crane Power Plant Special Exception Has Not Survived Rezoning

12. Petitioner tries to slide by this problem by merging the "A" classification, the R.6 zone, the R.D.P. zone, and the R.C. 5 zone as functionally identical residential zoning classifications. Once again, Petitioner avoids the legal establishment of boundaries.

13. Each of these zones had different purposes and statements of legislative intent. A special exception depends on a finding under BCZR 502.1, among other things, that the use is consistent with the spirit and intent of the zoning law. The establishment of the Resource Conservation zones, especially, involved a sea change from the urban residential zones, such as R.6 (which was the predecessor of the current D.R. 5.5 zone). The R.C. 5 zone (Rural – Residential) is a far cry from the old R.6 zone. Consistency with the spirit and intent of the latter does not necessarily translate to the new zone.

At best, the Crane Power Plant has a nonconforming use. Its R.6 special exception belongs to a zone eliminated in 1970. And, as explained above, its public utility status belongs to the era before deregulation.

## IV. The Slag Processing Facility Is Not an Accessory Use

14. Accessory uses are inherently subordinate uses associated inextricably with their principal uses. In residential zones, including R.C. zones, common examples are small garages, carports, sheds, swimming pools, tennis courts, gazebos and other such uses.

15. For the accessory garage/wine cellar/storage area in Cromwell v. Ward 102 Md. App. 691 (1995), the property owner requested a height variance to 21 feet instead of the maximum of 15 feet under BCZR 400. A review of accessory use standards for residential zones under BCZR confirms that the law intends these accessory uses to be small structures in small areas with modest setbacks.

16. There has never been in Baltimore County, to our recollection, a claim of accessory use for anything close to a processing facility which stands by itself on a 6 acre site; can exist independently (and already does) elsewhere without the alleged "*principal use*"; *receives slag both from the adjacent site and elsewhere;* and has a large and imposing structure, towering at its highest point almost 100 feet. In contrast, a residential garage, swimming pool, or gazebo does not stand independently, without the house to which it is subordinate. Indeed, the BCZR 400 height restriction of 15 feet would apply here if this were truly an accessory use.

17. In dealing with the County Department of Environment (DEPRM), Petitioner's representatives treated the slag processing facility as a separate site. In the Chesapeake Bay Critical Area, Section 26-452 of the County Code requires a 10% pollutant reduction. In communicating with DEPRM, Petitioner urged that the reduction apply only to the "area to be redeveloped" with the slag processing facility, not to the entire 98-acre power plant site. See Pet. Ex. 20A, 20B and 21. So, they treated the slag processing facility as a separate operation. This reflects the independent nature of the use. If they seriously thought this was an accessory

use, they would honorably have offered to reduce the pollutant loading 10% for the entire 98 acre site.

18. In fact, this slag processing facility is a principal use. The problem is that it is not permitted in the R.C. 5 zone. It is an industrial use permitted generally in an industrial zone, as discussed in our motion.

19. The case law --- Smith v. Miller, St. Clair v. Colonial Pipeline Co., Arundel Supply Co. v. Cason, Maurer v. Snyder, and the national cases cited in our motion does support our position. They stand for the proposition that property owners may not improperly override boundaries or blur distinctions in use delineations in order to impose their own desires. The setting of boundaries, by regulations and maps, by uses and territories, is the essential function of zoning.

20. Petitioner has been unable to cite a single case where a facility of the independent character and function, and size and scale such as this one has been approved as an "accessory use."

21. Legal analysis depends on calling of things by their right name. The law is a great classification system. Zoning is one subset of that system. Maintaining clear distinctions is essential to its integrity. A breakdown in any one case weakens the entire structure. The CBA must guard against the chameleon-like abuse of the name game.

## Conclusion

For these threshold reasons, and those in our motion, the Board should dismiss this petition, as a matter of law, so that it is unnecessary to go further into the merits of the special exception and other issues raised during the proceedings.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

CAROLE S. DEMILIO
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(410) 887-2188

## Certificate of Service

I hereby certify that on this 3rd day of December, 2002, a copy of the People's Counsel's Reply Memorandum Relating to Its Motion to Dismiss was sent, via first class mail, to:

G. Scott Barhight
Jennifer R. Busse
Whiteford, Taylor & Preston, LLP
210 W. Pennsylvania Avenue
Towson, Maryland 21204

Peter Max Zimmerman
Peter Max Zimmerman

11/18/02

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| IN RE: PETITION FOR SPECIAL HEARING<br>S/S Carroll Island Road, 840' E of centerline<br>Of Beach Drive, 15th Election District<br>5th Councilmanic District<br>(1001 Carroll Island Road) | * | BEFORE THE<br>COUNTY BOARD OF<br>APPEALS FOR |
| Constellation Power Source Generation, Inc.<br>Petitioner | * | BALTIMORE COUNTY |
| | * | Case No. 02-098-SPH |

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**PETITIONER'S RESPONSE TO PEOPLE'S COUNSEL'S MOTION TO DISMISS**

Petitioner, Constellation Power Source Generation, Inc., by and through its attorneys, G. Scott Barhight, Esq. and Whiteford, Taylor & Preston, L.L.P., hereby submits this Response to People's Counsel's Motion to Dismiss.

Petitioner herein responds to each of the Questions Presented identified in People's Counsel's Motion, in the order so listed.

**I. <u>Constellation Power Source Generation, Inc. Is A Public Utility :</u>**

People's Counsel asserts that, due to Maryland's electric restructuring in 1999, the Petitioner, Constellation Power Source Generation, Inc. ("CPSG"), is no longer regulated by the Maryland Public Service Commission, and thus is no longer a public utility. People's Counsel has offered no expert testimony in support of these assertions. On the other hand, Mr. David M. Perlman, Esq., who testified on behalf of the Petitioner as an expert in the field of public utility law at the hearing in this matter on October 17, 2002, made it abundantly clear that, based a variety of federal and state laws, CPSG is indeed a public utility within the meaning of the Baltimore County Zoning Regulations ("BCZR").

Since no definition of the term "public utility" is provided within Section 101 of the BCZR, that Section mandates that the definition within *Webster's Third New International Dictionary of the English Language, Unabridged* be utilized. That definition is as follows:

> Public utility n 1: a business organization deemed by law to be vested with public interest usu. because of monopoly privileges and so subject to public regulation such fixing of rates, standards of service and provision of facilities.

*See*, *Webster's Third New International Dictionary* at p. 1836, a copy of which was attached to People's Counsel's Motion.

Mr. Perlman, in uncontradicted testimony, testified that CPSG fits under this definition. Specifically, he testified that CPSG is an organization "deemed by law to be vested with public interest and so subject to public regulations." *See*, transcript from 10/17/02 hearing (hereinafter referred to as "T2") at p. 12, attached hereto as **Exhibit A**. On cross-examination, Mr. Perlman further testified, without the benefit of having the definition before him, that:

> [T]he one dictionary definition [of a public utility] I believe is relevant to the zoning laws of Baltimore County … did talk about having regulation of rates, et cetera, provisions of facilities, etc cetera, again, which are characteristic of the regulations that Constellation Power Source Generation currently is subject to.

Exhibit A, T2 at pp. 19-20.

More specifically, Mr. Perlman noted that, at the federal level, CPSG is currently regulated as a public utility by the Federal Energy Regulatory Commission ("FERC") under the Federal Power Act of 1935 ("FPA").[1] Exhibit A, T2 at pp. 9-10, 19-20 and 22. Mr. Perlman further noted that the FPA incorporates the "vested with the public interest" concept found within the *Webster's* definition of "public utility." Exhibit A, T2 at pp. 9-10. Mr. Perlman was referring to Section 201(a) of the FPA, where Congress declared that:

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[1] Federal regulation of the electric industry has continued to evolve since the adoption of the Federal Power Act in 1935. For example, the Public Utility Regulatory Policy Act of 1978 imposes requirements for competitive generation. *See*, Exhibit A, T2 at pp. 25-27, 30.

> ... the business of transmitting and selling electric energy for ultimate distribution to the public is *affected with a public interest*, and that Federal regulation of matters relating to generation to the extent provided in this Part and the Part next following and of that part of such business which consists of the transmission of electric energy in interstate commerce and *the sale of such energy at wholesale in interstate commerce* is *necessary in the public interest*, such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States. Section 201(a). (Emphasis added.)

Congress defined the term "public utility" to mean "any person who owns or operates facilities subject to the jurisdiction of the Commission ...." FERC precedent clearly identifies companies such as CPSG (which sell energy at wholesale in interstate commerce) as public utilities. As such, CPSG is subject to FERC regulation of its rates and charges, must request FERC approval prior to disposition of jurisdictional assets, and must comply with FERC's reporting requirements. See, e.g., *Baltimore Gas and Electric Company, et al.*, 90 FERC ¶ 62,222 (2000), *reh'g denied* 92 FERC ¶ 61,043 (2000); *AmerGen Vermont, LLC*, 90 FERC ¶ 61,307 (2000), *reh'g denied subnom.*, 91 FERC ¶ 61,270 (2000).[2]

Without making any reference to this longstanding federal law, People's Counsel incorrectly asserts that Maryland's Electric Customer Choice and Competition Act of 1999 (the "Electric Customer Choice and Competition Act") resulted in owners of power plants being governmentally unregulated. People's Counsel's Motion at p.6. Mr. Perlman corrected People's Counsel's misunderstanding of the impact of the Electric Customer Choice and Competition Act as follows:

> Q: Isn't the function of the new Maryland law or the Electric Customer Choice and Competition Act, one of the functions of it, to phase out control of wholesale prices and establish a competitive environment for different companies to charge different prices?

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[2] The applicant's name was subsequently changed to Constellation Power Source Generation, Inc. See, *Constellation Power Source Generation, Inc.*, FERC Docket No. ER00-2918-000 (unpublished delegated letter order issued August 3, 2000).

A: No. The wholesale prices since 1935 in interstate commerce have been regulated by the federal energy regulatory commission. That statute has not been amended.

In fact the only way that the generation components of rates was regulated at the state level was that it was part of a vertical integration of distribution, which is the wires that come to your home, transmission, which is the high voltage line you see, and the generation together, all in one entity. When you separate those, I guess, legally, from one entity into separate entities, it changes. *Not whether they are regulated, but it changes who the regulator is.*

*So that's what happened. The state of Maryland could not and has not phased out wholesale regulation.*

Exhibit A, T2 at pp. 22-23. (Emphasis added.)

Mr. Perlman further explained that even at the state level, when the General Assembly enacted the Electric Customer Choice and Competition Act, it chose to retain PSC control over the siting and modification of electric generation facilities through the Certificate of Public Convenience and Necessity process. Public Utility Companies Article §§7-205 and 7-207.[3] Exhibit A, T2 at pp. 10 and 17.

Mr. Perlman added that Baltimore County has confirmed that CPSG constitutes an "electric utility" within the meaning of the County Electrical Code, as evidenced by the signature of Mr. Raymond ("Rick") S. Wisnom Jr., Chief of Code Inspections and Enforcement, on a letter dated September 23, 2002, submitted as Petitioner's Exhibit 25. Exhibit A, T2 at pp. 10-11.

People's Counsel asserts that *Delmarva Power & Light Co. v. Public Service Commission*, 370 Md. 1 (2002) supports his position that CPSG is not a public utility. Yet, nowhere in the *Delmarva* opinion does the Court state that CPSG, or any power generation affiliate, is unregulated and not a public utility. In all of the instances in which the terms

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[3] The Certificate of Public Convenience and Necessity modification issued by the PSC in 1981, as amended in 1983, which permitted a switch in the fuel used at the Crane Power Plant from oil to coal, remains in full force and effect. *See*, Petitioner's Exhibit 3.

"unregulated" and "non-regulated" are used in the *Delmarva* opinion (except in one instance where a statute is being quoted), the Court is referring to pre-1999 proceedings discussing non-generation affiliates of Baltimore Gas and Electric Company ("BGE"), such as those involved in merchandise and appliance sales and service and the brokering of natural gas. *Delmarva*, *supra*, at pp. 9-14.

On page 6 of his Motion, People's Counsel argues that in *C&P v. Maryland/Delaware Cable*, 310 Md. 553 (1987), the Court "did not tolerate a stretch to arguable related uses." The *C&P* case was about whether the PSC had "jurisdiction to regulate "pole attachment" agreements between utility companies and cable television companies." *Id.* at 555. The Court explained that the Federal Communications Commission ("FCC") had been given jurisdiction over pole attachment agreements, and that in June of 1985, the PSC attempted to "wrest jurisdiction" from the FCC. *Id.* at 557. The Court noted that "the PSC is empowered to regulate the use of ... poles [of electric and telephone utility companies] to ensure reliable service and to protect the public safety". *Id.* at 561. What the Court found to be outside the PSC's jurisdiction was "the regulation of the *rates* of pole attachment agreements". *Id.* (emphasis in the original).

The Court correctly stated that, in the narrow context of the state statute governing the operation of the PSC, "'public utility services' are limited to those services that a utility company provides under 'the privileges granted to [it] by the State.'" The Court had to reach this result, because it was interpreting the scope of the regulatory authority granted to the PSC under State law. In contrast, under the *Webster's* definition of the term "public utility" that applies in the instant zoning case, there is a broad reference to "regulation" that is not limited to the regulations of any particular level of government. Thus, the FERC regulation of CPSG as a "public utility" under the Federal Power Act is highly relevant to the interpretation of "public

utility" in the zoning context. Furthermore, although the parties in *C&P* agreed that the "PSC Law does not grant the PSC power to directly regulate cable television companies" (*Id.* at 560), the PSC has directly regulated and continues to directly regulate the siting and modification of power plants.

*People's Counsel's statement on page 6 of his Motion that "electric power deregulation* ...has gone so far that the law requires a separate corporate structure" is not true. While the Electric Customer Choice and Competition Act called for the PSC to require "functional, operational, structural or legal separation between the electric company's regulated businesses and its nonregulated businesses or nonregulated affiliates," and it provided that 'an electric company *may* transfer any of its ... generation assets to an affiliate," it specified that 'the Commission may not require an electric company to divest itself of a generation asset." Public Utility Companies Article §§7-505(b)(9) and (10)(iii) and 7-508(a). Rather, the Public Service Commission approved such transfers pursuant to a voluntary Settlement Agreement between BGE and numerous parties. Re: *Baltimore Gas and Electric Company*, 90 Md. PSC 197 (1999).

## II. The Crane Power Plant Is Still A Public Utility Use:

People's Counsel insinuates that "steam power plants" are not "public utilities" within "the zoning law", and points to *Cassidy v. County Board of Appeals*, 218 Md. 418 (1958) in support. *See*, People's Counsel's Motion, p. 7. To the contrary, the *Cassidy* case explained that steam power plants are public utility uses.

> It cannot seriously be argued that "a steam electric generating plant and related facilities" operated by a public utility company for the benefit of the public are not "public utility uses". If a steam generating plant is to be excluded from the phrase "public utility uses", what other uses are also to be excluded and what are to be considered as included, without clarifying language to guide us? We think it clear that the regulations, in express terms, authorize a special exception to

> public utility companies in R.6 Zones for the operation of steam generating plants and related facilities.

*Cassidy*, *supra* at 427-28.

The *Cassidy* court went on to clarify that in the M.H. zone, since the regulations there allow public utility uses and then additionally allow steam power plants (if at least 300' from any residence or 200' from any business zone), the possible inference that the phrase "public utility uses" was intended to mean "such uses other than steam power plants" was negated. *Id.* at 428.

On March 26, 1958, the Board of Appeals issued its Opinion granting BGE's petition for Special Exception, stating:

> We reiterate our contention that relief by Special Exception is afforded to public utilities to allow us the latitude to afford them the facilities needed to serve the public need without encroaching upon the neighborhood and inviting the creeping paralysis of misplaced industrialization.

*See*, People's Counsel's Exhibit No. 2, Case No. 4077, at p. 7.

On page 7 of his Motion, People's Counsel argues that the Board, in its 1958 Order, disapproved a private industrial use at the 98 acre site where the Crane Power Plant is now located (the "Property"). BGE never requested approval for a private industrial use on the Property. The Board did explain that it desired to restrict "misplaced industrialization." The Power Plant and its related facilities, which the Board approved, were not identified as examples of "misplaced industrialization". Instead, the plant and its related facilities were approved as a public utility use.

*A. Both CPSG And The Crane Power Plant Are Still Regulated*

People's Counsel asserts that the Crane Power Plant is no longer a public utility use based on People's Counsel's claim that CPSG is an unregulated company. Neither of these arguments is true. As explained above, CPSG is both a public utility and a regulated company.

While the Electric Customer Choice and Competition Act may have changed the manner in which public utilities are regulated, and thus the term "deregulation", this is very different from *unregulation*. Basically, a better name for the Electric Customer Choice and Competition Act is the Restructuring Act, the name used for Subtitle V of Title VII of the Public Utility Companies Article, where the Electric Customer Choice and Competition Act is codified. As mentioned above, CPSG is still classified and regulated as a public utility under the Federal Power Act of 1935, and modifications to the Crane Power Plant still require the issuance by the PSC of a Certificate of Public Convenience and Necessity to the extent provided in Sections 7-205 and 7-207 of the Public Utility Companies Article. Neither CPSG nor the Crane Power Plant is *unregulated*.

Furthermore, the proposed Slag Processing Facility fits within the Board's intention, explained in its 1958 Order approving the Special Exception, of allowing "facilities needed to serve the public need without encroaching upon the neighborhood", since the Slag Processing Facility allows for a decrease in the existing truck traffic needed to remove the slag from the Plant. By processing the slag on site, the truck traffic will decrease substantially.

*B.* *A Public Utility Use, As Defined By The BCZR, Does Not Have To Be Regulated On The State Level*

People's Counsel's arguments lead one to believe that the BCZR only allows for public utility uses which are regulated on the state level. However, the BCZR specifically allows underground interstate and intercontinental pipelines ("UIIPs") as a public utility use via special exception in the R.C. 5 zone. *See*, BCZR § 1A04.2.B.12. UIIPs are not regulated on the state and local levels; rather, they are regulated only on the federal level. The classification in the BCZR of UIIPs as a public utility use provides conclusive evidence that the Baltimore

County Council does not require a public utility use to be regulated at the state level in order to meet the BCZR definition of a public utility use.

*C.* *The Slag Processing Facility Is Simply A Continuation Of The Power Plant Use*

Petitioner's witness, Mr. John L. Jeffcoat, is a senior generation analyst whose "largest duty in that position is to find beneficial re-use of coal combustion products, which includes flyash and bottom ash." *See*, transcript from 6/5/02 hearing (hereinafter referred to as "T1"), p. 29, attached hereto as **Exhibit B**.

Mr. Jeffcoat, who previously served as a construction administrator at the Crane Power Plant for four years, explained the process whereby coal is burned for fuel and results in the bottom ash (also known as slag) and fly ash byproducts. Exhibit B, T1 at pp. 47-54. Mr. Jeffcoat testified that CPSG has implemented "an ash management policy from an environmental standpoint" regarding the slag byproduct, and has employed people such as Mr. Jeffcoat to "find beneficial uses for [slag]."[4] Exhibit B, T1 at p. 58. As explained by Petitioner's witness, Mr. John W. Burns, one of the owners of Virginia Materials, coal slag can be used for ice control on roads, as a component of roof shingles, as a sandblasting abrasive, and as a component in manufacturing brown beer bottles. Exhibit B, T1 at pp. 105-106.

As explained by Mr. Jeffcoat, currently, when the slag from the Crane Power Plant is transported to Virginia, it is only "in the middle of its processing". Exhibit B, T1 at p. 53. After the coal is burned to create the steam necessary to produce electricity, the bottom ash is partially dried and crushed inside the Crane Power Plant. Exhibit B, T1 at pp. 50, 52-53. CPSG contracts with Virginia Materials to complete the processing of the slag, since Virginia

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[4] As noted by Mr. Maguire, accepted as an expert in the fields of surveying, planning and zoning, public utility responsibility has expanded to include "the recognized need to not just toss byproduct materials generated by power plants out the window or somewhere on [the plant] site … environmental recognition, that you need to make the best use of product such as this". Exhibit B, T1 at p. 196.

Materials has expertise in that area. Exhibit B, T1 at p. 61. Currently, this requires that the partially processed slag be trucked from the Crane Power Plant to Havre de Grace, where it is loaded onto barges for shipment to Virginia Materials' facility in Norfolk, Virginia. There, the slag processing is completed. *Id.* at pp. 53, 105.

Mr. Jeffcoat further testified that CPSG removes approximately 40,000 tons of slag each year from the Crane Power Plant. *Id.* at pp. 55, 58-59. With regard to the truck traffic required to remove the slag, Mr. Jeffcoat testified that CPSG utilizes "approximately seven to eight trucks per day on a seven-day basis, pretty much every day of the year". *Id.* at p. 55. Mr. Burns has testified that the proposed Slag Processing Facility will significantly reduce this truck traffic. Exhibit B, T1 at p. 113.

In sum, the Slag Processing Facility will simply allow for the slag processing that begins within the Crane Power Plant to be completed on site.

## III. The Special Exception Survived The Property's Rezoning:

The Special Exception for the 98 acre Property on which the Crane Power Plant is situated was obtained in 1958 through Case # 4077, and is still valid. People's Counsel claims that the rezoning of the Property to its current R.C. 5 zoning somehow caused the Special Exception to evaporate. The facts and the law do not support this argument.

In 1945, when zoning was first instituted in Baltimore County, the Property was zoned "A" - Residence Zone (Cottage). In 1955, the Zoning Regulations were revised and the "A" – Residence Zone became the R.6 zone. *See*, BCZR Section 100.3. When the existing Special Exception was obtained in 1958, the Property was zoned R.6. In 1970, the R.D.P. Zone (Residential Deferred Planning) was enacted through Bill 100-1970, and the 1971 Zoning Map shows the Property was zoned R.D.P. In 1975, Bill 98-1975 enacted the R.C. zones. On the

1976 CZMP Maps, which was the first time the R.C. Zones were applied, the Property is shown as zoned R.C. 5.

Therefore, the Property has always had residential zoning. The "A", R.6, R.D.P. and R.C. 5 zones are all residential zoning classifications. Furthermore, public utility uses have always been allowed via special exception in these zones. The Property's zoning designation has simply naturally evolved. None of the Property's previous zoning classifications exist anymore. Each time the Property was rezoned, the Property's then existing zoning classification was being replaced or phased out.

Finally, the Property's Special Exception was properly utilized pursuant to BCZR Section 502.3. Construction on the power plant commenced promptly following the approval in Case # 4077 and was pursued to completion with reasonable diligence. The Plant has continually been in operation (subject to customary planned and unplanned outages) ever since. *See*, Exhibit A, T2 at p. 46, and Exhibit B, T1 at p. 47.

## IV. The Slag Processing Facility Qualifies As An Accessory Use To The Power Plant:

The Slag Processing Facility will be located on the same Property as the power plant, the same land on which the existing Special Exception applies. The Slag Processing Facility is intended to process the slag produced at the Crane Power Plant, so that the slag does not have to be transported to Virginia for processing.[5]

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[5] CPSG has asked permission to bring slag produced elsewhere on site in the event that the annual slag output from the Crane Power Plant falls below 40,000 tons. Deputy Zoning Commissioner Kotroco's Order provides that slag will only be brought onto the Property for processing "when times dictate that there is not enough slag bi-product produced by this power plant to keep the slag facility running at full operation." *See*, Kotroco Order, p. 2. In actuality, that would allow CPSG to bring slag on site, if the Crane output falls below 150,000 tons, and is more latitude than CPSG is seeking. *See*, Exhibit B, T1 at 85, 119-21, and 139 regarding discussion on this issue.

*A.* *The Slag Processing Facility Qualifies As An Accessory Use*

The Slag Processing Facility qualifies as an accessory use to the previously approved Special Exception on the Property. BCZR § 1A04.2.A.11 provides that accessory uses or structures are allowed by right in the R.C. 5 zone. The exact language of § 1A04.2.A.11 is :

> 11. Accessory uses or structures, *including, but not limited to,* the following :
> a. Excavations, uncontrolled. ...

*See*, BCZR § 1A04.2.A.11 (emphasis added).

While § 1A04.2.A.11 goes on to list a total of seven (7) examples of accessory uses or structures which are thereby allowed, the regulation explicitly provides that this list is not exclusive.

People's Counsel, on page 9 of his Motion, points out that a Slag Processing Facility does not qualify as any of the items specifically listed within §1A04.2.A.11. a–g. People's Counsel's argument fails as a matter of law, however, since §1A04.2.A.11 states that accessory uses that are allowed by right include, *but are not limited to*, the uses listed within a-g.

Section 101 of the BCZR provides a definition for an "accessory use or structure". That definition, in relevant part, is as follows:

> A use or structure which:
> (a) is customarily incident and subordinate to and serves a principal use or structure;
> (b) is subordinate in area, extent or purpose to the principal use or structure;
> (c) is located on the same lot as the principal use or structure served; and
> (d) contributes to the comfort, convenience or necessity of occupants, business or industry in the principal use or structure served.

The Slag Processing Facility meets this definition and thereby qualifies as an accessory use. The Crane Power Plant is a wet bottom cyclone boiler. Exhibit B, T1 at pp. 47-48. John Burns, part owner of Virginia Materials, testified that he has researched the number and location of wet bottom cyclone boilers throughout North America since his company buys slag from these types of power plants. *Id.* at p. 113. Mr. Burns stated that there are only twenty

such boilers in the United States, and that they all produce slag. *Id.* at pp. 113-114. Mr. Burns further explained that out of these twenty plants, twelve of them process the slag on site in the same fashion that Virginia Materials proposes at the Crane Power Plant. *Id.* at p. 114. Finally, Mr. Burns testified that the Slag Processing Facility that is proposed for the Crane Power Plant is typical and customary in the slag processing industry. *Id.*

The Slag Processing Facility will be comprised of equipment which is clearly subordinate in area, extent and purpose to the wet cyclone boiler and its related facilities. Mr. Jeffcoat testified as to the number of related facilities on the Property and the size of the facilities. Exhibit B, T1 at pp. 38-46. Mr. James Burkman, who is employed as an environmental scientist by Constellation Energy Group, Inc., gave additional testimony concerning the respective heights of the facilities comprising the Crane Power Plant. Exhibit A, T2 at pp. 35-36, 41-45. Mr. Burns provided comparable testimony as to the number and size of the facilities comprising the Slag Process Facility. Exhibit B, T1 at pp. 107-110, 128-129, 142-149. The photographs submitted as exhibits also show that the Slag Processing Facility will be subordinate to the Crane Power Plant facilities.

Further, the Slag Processing Facility will be located on the same 98 acre site as the wet cyclone boiler and the other related facilities. Finally, as explained above, the Slag Processing Facility will simply allow for a continuation of the slag processing which is already part of the existing use. Therefore, the Slag Processing Facility will certainly contribute to the convenience and necessity of the plant.

*B.* *People's Counsel's Analogy to Sludge Processing Fails As A Matter Of Law*

People's Counsel asserts that Slag Processing is analogous to sludge processing. This argument fails as a matter of law. Sludge is a defined term within the BCZR. In fact, there are no fewer than eight (8) definitions relating to sludge within BCZR §101. Clearly, sludge is

highly regulated in Baltimore County. Slag does not meet the definition of sludge, because none of the sludge definitions refers to byproducts of the coal burning process. The argument asserted by People's Counsel is not on point.

*C.* *The Case Law Cited By People's Counsel Fails To Support His Position*

In *Smith v. Miller*, 249 Md. 390 (1968), the applicant sought approval for a sawmill in a Harford County agricultural zone by arguing that the provision for a conditional use for the "processing of dairy products and farm products" applied to his sawmill. The court held that the sawmill was too remotely connected to the processing of farm products, and noted that the ordinance confined sawmills, flour and grain mills, grain drying and poultry feed manufacturing, meat packing, sauerkraut and sausage manufacturing and poultry slaughterhouses to a general industrial district. *Id.* at pp. 393-94. The Court relied on the fact that sawmills were specifically identified within the ordinances relating to the industrial / manufacturing zones in denying the request.

The Court in *Smith* explained that a similar question was raised in *St. Clair v. Colonial Pipeline Co.*, 235 Md. 578. In that case, the relevant Harford County ordinance specifically prohibited fuel line storage facilities in the agricultural district. Therefore, it was not difficult for the Court to find that such storage facilities did not qualify as fitting within the ordinance's definition for "public utility structures".

Unlike the facts in both the *Smith* and *St. Clair* cases, Slag Processing is not defined anywhere in the BCZR. It is not prohibited by any section of the BCZR. People's Counsel attempts to analogize slag processing to other uses. The case law People's Counsel cites, however, is neither supportive nor instructive.

The *Arundel Supply Corp. v. Cason* case, 265 Md. 371 (1972), which People's Counsel also relies upon, dealt with a situation where the ordinance specifically prohibited retail uses

from being classified as accessory uses to permitted uses. Arundel Supply owned a 16 acre tract on which it began mining sand and gravel in 1946 as a permitted use. In 1947, Arundel began washing and screening the gravel extracted from the property. After "a year or two, when that supply was exhausted, Arundel began to fetch to the property materials mined at other locations." *Id.* at 373. Between 1942 and 1949, Arundel "sold at retail, from the property, large quantities of sand and gravel to the ultimate consumer." *Id.* at p. 378.

Importantly, in 1949, the ordinance changed to state that a special exception for the extraction of sand and gravel did not permit washing or other processing. *Id.* at p. 374. Arundel Supply argued that when the 1949 ordinance was enacted, its use of the property was a legal non-conforming use, and the washing and screening procedures were accessory uses incident to the permitted use. The court declined to analyze whether the washing and screening of the sand and gravel *extracted* from the site was an accessory use prior to the enactment of the more detailed 1949 ordinance. *Id.* at p. 378.

Nevertheless, the section authorizing accessory uses excluded anything involving the conduct of a "retail business", and Arundel Supply sold the sand and gravel at retail from 1942 through 1949. *Id.* at p. 378. Therefore, Arundel's use of the Property could not qualify as a legal non-conforming use.

As summed up by the Court of Special Appeals in the case of *County Commissioners of Carroll County v. Zent*, 86 Md.App. 745, 759 (1991), the Court of Appeals in *Arundel* "stated that washing, screening, and batching were not accessory uses of a nonconforming gravel pit, because a 1949 ordinance specifically required a special use permit for such activities."[6]

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[6] Importantly, the Court of Special Appeals in *Zent* notes that "*Arundel* appears never to have been subsequently cited in respect to its 'accessory use' finding." *Id.* Nowhere in its Motion to Dismiss does People's Counsel mention the *Zent* case, which set out to "extensively review the cases and authorities" regarding "accessory uses and their relationship with legal primary uses, whether the primary uses be permitted uses or legal nonconforming uses." *Id.*

The *Arundel* case is easily distinguishable from this present matter, since it dealt with a nonconforming use and an ordinance that specifically prohibited the use for which approval was sought. Additionally, after the gravel pit's supply of sand and gravel was exhausted, a year of two after the mining began in 1946, Arundel's washing and screening plant only processed materials mined at other locations. *Arundel*, *supra*, at p. 373. Therefore, the washing and screening activities really ceased being accessory to the gravel pit when the gravel pit's supply of these materials was exhausted. In contrast, the slag that is currently processed at the Crane Plant is a byproduct of the coal combustion process. Its supply cannot, therefore, be exhausted.

Finally, the case of *Maurer v. Snyder*, 199 Md. 551 (1952), is also inapposite to the instant matter, and is not comparable to this accessory use issue. The relevant definition of 'home occupation' involved something "customarily incident to the use of the premises as a dwelling." *Id.* at 561. In finding that a weekend crabbing and fishing business does not fit into the home occupation definition in a residential zone, the Court noted that "the sale of fish has no necessary relation to 'home' life in an 'cottage residence' community." *Id.* at 562.

Unlike the facts in the *Maurer* case, the processing of slag has everything to do with the power plant. The slag is a byproduct of the coal burning process. No matter what the outcome of this case, slag will continue to be produced by the plant. The current procedures at the plant already include partial slag processing. The proposed Slag Processing Facility will simply provide for the continuation of that process.

## CONCLUSION

For the foregoing reasons, Petitioner respectfully requests this Board deny People's Counsel's Motion to Dismiss.

Respectfully Submitted,

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## Certificate of Service

I hereby certify that on this 18th day of November, 2002, a copy of Petitioner's Response to People's Counsel's Motion to Dismiss was sent, via first class mail, to :

Peter Max Zimmerman
Carole S. DeMilio
People's Counsel for Baltimore County
Old Courthouse, Room 47
400 Washington Ave.
Towson, MD 21204

G. Scott Barhight, Esq.

*267241*

10/17/02

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| IN RE: PETITION FOR SPECIAL HEARING<br>S/S Carroll Island Road, 840' E of centerline<br>Of Beach Drive, 15th Election District<br>5th Councilmanic District<br>(1001 Carroll Island Road) | * | BEFORE THE<br>COUNTY BOARD OF<br>APPEALS FOR |
| Constellation Power Source Generation, Inc.<br>Petitioner | * | BALTIMORE COUNTY |
| | * | Case No. 02-098-SPH |

* * * * * * *

**People's Counsel for Baltimore County's Motion to Dismiss**

Petitioner seeks a special hearing to amend a special exception and add a slag processing facility to a steam electric generating station. The property is zoned R.C. 5, Rural-Residential. Petitioner contends the slag processing facility comes under the rubric of "public utility" use permitted by special exception in the R.C. 5 zone, or that it is embraced within the scope of "related facilities" sought in the original special exception.

This motion presents threshold legal issues concerning permissibility of the use. These compel dismissal of the petition at the conclusion of Petitioner's case. Because of these fundamental problems, it is not necessary for the defense to present its case, or for the Board to reach the merits of the special hearing and/or amended special exception.

Other than "public utility" use, there is no other listed use permitted by right or special exception in the R.C. 5 zone which arguably or conceivably applies here. Therefore, if the existing power plant no longer qualifies as a public utility, and/or if the new slag facility does not so qualify, the use is prohibited as a matter of law. BCZR 102.1; Kowalski v. Lamar 25 Md. App. 493 (1975).

**Questions Presented :**

1. In the context of restructuring of the Maryland electric power industry, is new Petitioner Constellation Power Source Generation, Inc. a public utility company?
2. If the answer to question one is no, then is the existing steam electric generating station any longer a "public utility" use, or is it now a nonconforming use which may not be expanded?
3. Did the original special exception for a steam electric generating station in an R.6 zone survive the rezoning of the property ultimately to the more restrictive R.C. 5 zone? If not, must this petition be treated anyway as an entirely new petition under BCZR 502.1?
4. Is a new privately operated slag processing facility a "public utility", in any event, or is it actually an addition of a principal industrial use, in combination with the existing use.

In raising these fundamental use issues, we do not waive any other objections to the special exception. Nor do we waive any objections to the merits of the requested height variance, or particular legal issues related to it: whether it is needed, and whether there is any jurisdiction to review it in the absence of a proper petition and notice.

**Background: Zoning Case History**

On March 26, 1958 in Case No. 4077, this Board originally granted to the Baltimore Gas & Electric Company (BGE) a special exception for a public utility use. BGE petition for a Steam Electric Generating Station and related facilities in the then R.6

residential zone. The Board Ordered that "... a Special Exception for a Steam Electric Generating Station is granted; subject, however, to the conditions and restrictions set forth in the Opinion." Opinion, Page 7. The Opinion listed eight conditions. Page 6. In concluding that the use was, in fact, a public utility, the Board confined its discussion to steam electric generating stations. Page 4. There was no mention or allowance of other types of uses under the umbrella of "related facilities."

Indeed, in declining to grant to BGE an accompanying petition for reclassification to M.H. (Manufacturing, Heavy), the Board wrote:

> In any event, we do not reach the questions going to justification of a reclassification. In our opinion, a reclassification to M.H. would open up the entire area to private commercialization, and such is not to the welfare of the locality. We reiterate our contention that relief by Special Exception is afforded to public utilities to allow us the latitude to afford them the facilities need to serve the public need without encroaching upon the neighborhood and inviting the creeping paralysis of misplaced industrialization.

The Court of Appeals affirmed in Cassidy v. County Board of Appeals 218 Md. 418 (1958). The Court wrote:

> It cannot seriously be argued that 'a steam electric generating plant and related facilities' operated by a public utility company for the benefit of the public are not 'public utility uses.'

Public utility uses were allowed not only by special exception in the residential zone, but also in the M.L.R., M.L. and M.H. zones. At the same time, it observed that "...such [steam power] plants other than those of a public utility" were explicitly permitted only in the M.H. zone.

BGE subsequently requested and obtained an amendment to the special exception, in Case No. 74-102-ASPH (1973), including height variances for stacks used in the power plant.

## I. Electric Power Industry Restructuring; Transfer of Ownership; Consequences: Petitioner Is Not a Public Utility.

To facilitate the restructuring and deregulation of the electric power industry, the General Assembly passed the Electric Customer Choice and Competition Act of 1999, Secs. 7-501 of the Public Utility Companies Article of the Maryland Code Annotated. In brief, this Act has led to the deregulation of the production sectors of the industry, while retaining government control of pricing and service in the transmission and distribution sectors. The Court of Special Appeals recently reviewed aspects of BGE's electric restructuring plan in Mid-Atlantic Power Supply Association v. Public Service Commission 143 Md. App. 419 (2002). Judge Krauser wrote:

> The Maryland electric industry provides three main services: 1) the generation of electricity; 2) the transmission of electricity to distribution networks; and 3) the distribution of electricity to customers. The Act deregulates the generation of electricity but not the transmission and distribution of electricity. Under the Act, customers will be able to choose their electricity supplier, while the transmission and distribution of electricity will still be provided by their local utilities. The purpose of the Act, is to '(1) *establish customer choice of electricity supply ...;* (2) *create competitive retail electricity supply ...*; (3) *deregulate the generation, supply, and pricing of electricity*; (4) provide economic benefits for all customer classes; and (5) ensure compliance with federal and State environmental standards. 143 Md. App. at 427-28, emphasis supplied.
>
> * * *
>
> To achieve these goals, the Act creates a comprehensive legal framework for restructuring the electrical industry with, among other things, price protection mechanisms, *provisions for the transfer of generating assets to unregulated affiliates*, and rules governing the treatment of transition costs associated with deregulation. 143 Md. App. at 428, emphasis supplied.

As part of its plan, approved in a Public Service Commission "Settlement Order November, 10, 1999, BGE would "unbundle" or separate the rates it charges for generating electricity from the rates charged for transmitting and distributing electricity. 143 Md. App. at 429. Subsequently, the Commission issued a Letter Order dated June 19,

2000, "...approving the transfer of BGE's generating assets to its unregulated affiliates. 143 Md. App. at 431.

This Letter Order is in evidence in the present case as Petitioner's Exhibit 6. In its Letter Order, the Commission approved the transfer of fossil assets to Constellation Generation, Inc., subsidiary to Constellation Enterprise. The Order identifies Constellation Power Source, Inc, as the "power marketer." 143 Md. App. at 460. Constellation Power Source Generation, Inc. thus combines generating and marketing functions. The Constellation Energy website lists the Constellation Generation Group and Constellation Power Source as the constituents of the merchant energy business. P.C. Exh. 4. It is separate from the remains of BGE, which operates the energy delivery business. The Constellation witness, John Jeffcoat, confirmed Petitioner's corporate status and function as a competitive market participant in the deregulation era.

The Court of Appeals reviewed deregulation of electric power in Delmarva Power & Light Co. v. Public Service Commission 370 Md. 1,16 (2002). Judge Wilner described the statutory requirement of "among other factors, functional, operational, structural, or legal separation between the electric company's regulated businesses and its nonregulated businesses or nonregulated affiliates." The Court also discussed aspects of the Commission's Settlement Agreement which deal with the separation of the BGE "GENCO" (generating company) from the retail marketing affiliate. In sum, the generating and power marketing companies (or non-regulated affiliates), parts of Constellation Energy's "merchant energy group", are not public utilities.

The Delmarva court, in an enlightening discussion of the history of the electric /power industry and the trend to diversification, referred to C & P v. Maryland Delaware

Cable 310 Md. 553 (1987) for its analysis of the scope of "public utility services" subject to Commission regulation. That Court wrote:

> We find that 'public utility services' are limited to those services that a utility company provides under 'the privileges granted to [it] by the State. With regard to the utility companies involved in the instant case, the electric companies have franchises to produce and deliver electricity, which the telephone company has a franchise to produce telephonic service. These are the 'public utility services' that the PSC must regulate to protect the public. Providing excess pole space for cable television line attachment is not a 'public utility service.' Instead, it is a 'service' unrelated to a utility company's primary function. 310 Md. at 562.

The Court approached the definition of public utility with a specific focus on the public franchise, granted to the traditional regulated monopoly. It did not tolerate a stretch to arguable related uses. Indeed, the issue in C & P presented a more difficult question than the one here.

A key element of electric power deregulation is the detachment of power generation from its former status as part of a regulated franchise. It has gone so far that the law requires a separate corporate structure. BGE has participated in this process and both agreed to and implemented the establishment of unregulated generating and marketing companies. These are not public utilities, and do not retain the perquisites or burdens of their former status as part of a vertically integrated public utility.

Constellation Power Source Generation, Inc. is a creature of deregulation. It is in no way, shape, or form a public utility. It is a private business in the marketplace, removed from the regulatory framework associated with public utilities.

## II. The Crane Power Plant Is No Longer a Public Utility Use

The listing in the Baltimore County Zoning Regulations of a "public utility" use corresponds to the status of a use in the regulatory scheme supervised by the Maryland Public Service Commission. The county council perceived that vertically integrated

regulated utilities served a distinct public function, distinct even from companies which provided similar services on a more limited private basis. As a result, the zoning law differentiated "public utilities" from "steam power plants." The Court of Appeals locked in on this point in the Cassidy case.

There is no definition of "public utility" in BCZR 101. This brings into play Webster's Third New International Dictionary. It provides, at page1836, attached:

> **Public utility** n **1:** a business organization deemed by law to be vested with public interest usu. because of monopoly privileges and so subject to public regulation such fixing of rates, standards of service and provision of facilities **2** a stock or bond issued by a public utility.

In the autumn of 2001, BGE deeded the Crane Power Plant property to this Petitioner, a "nonregulated affiliate." As a result, the Crane Power Plant is no longer a public utility use. It is now a "steam power plant", allowed in the M.H. zone under BCZR 256.2 with specified setbacks from residences and business zones. Its status is that of an ordinary private industrial use, such as this Board disapproved for this neighborhood in its 1958 opinion when it denied the reclassification to M.H.

As such, it is a nonconforming use in the R.C. 5 zone. A nonconforming use may not be expanded except under the narrow limits provided in BCZR 104.2. This does not include the addition of a major slag processing facility. The law does not favor the continuation or expansion of nonconforming uses. Prince George's County v. E.I. Gardner 293 Md. 259 (1982). See, e.g. Wegner Auto Co. v. Ballard 353 N.W. 2d 57 (S.D. 1984), shredding, compacting, and recycling of beer cans not allowed as expansion of nonconforming wholesale beer operation.

**III. The 1958 Special Exception in the R.6 Zone Does Not Carry Over to the R.C. 5 Zone; The Special Exception, therefore, must be Treated as a New Case for the Entire Use**

A special exception is subject to review to determine whether it is in harmony with the comprehensive zoning plan. Schultz v. Pitts 291 Md. 1 (1981); Board of County Comm'rs v. Holbrook 314 Md. 210 (1986); People's Counsel v. Mangione 85 Md. App. 738 (1991). BCZR 502.1g, requires a special exception in Baltimore County to be consistent with the purposes of the property's zoning classification and the spirit and intent of the zoning law. BCZR 502.1a's requirement that there be no detriment to the locality must be examined in the context of the zoning map. On top of this, the Council in Bill 74-2000 added BCZR 502.1i, compelling a broad environmental review in R.C. 2, R.C. 4, R.C. 5, and R.C. 7 zones.

In or after 1976, the Council rezoned the property to R.C. 5. The 1958 special exception was approved in the R.6 zone, an urban/suburban residential zone. It simply does not survive the rezoning to R.C.5, a very different zone with different purposes. See BCZR 1A04. It also is subject to new BCZR 502.1 criteria. This is another reason why the entire Crane Power Plant is now a nonconforming use.

The entire power plant would thus ordinarily have to be reviewed anew to qualify for a special exception. It is not just a matter of adding a slag processing facility. The more intractable problem, however, is that the plant is no longer a public utility and does not fit within any other permitted use category. Therefore, it is not eligible for special exception review under current law.

## IV. A Slag Processing Facility Is Not, In any Event, a Public Utility Use

Even if the power plant itself could still qualify as a public utility, the slag processing facility clearly does not qualify. The proposed facility is a separate industrial venture. It competes like any other business, is not subject to public service commission control of rates and standards, and does not serve directly the public at large. It fits neither the Webster's dictionary definition of "public utility" nor the description of "public utility" given by the Court of Appeals.

A separate Virginia company, Virginia Materials, will own and operate the slag processing facility. It will lease land adjoining the Crane Power Plant, but could operate at any suitable industrial site. Recently, the company has operated this modular facility at Chesapeake, Virginia. It operates similar facilities in Norfolk (Va.), New Orleans (La.), Madison (Ind.), and New York. They are substantial and independent principal uses.

Even when operating in combination with a power plant, Virginia Materials may accept slag from other sources and is free to deliver the processed material to customers with whom the company chooses to do business.

Slag processing is an industrial use not listed as a principal use by right or by special exception in the R.C. 5 zone. BCZR 1A04.2.A, B. The R.C. 5 zone also identifies and allows certain accessory uses, but none of them apply: excavations, farmers' roadside stands, home occupations, parking spaces, piers, swimming pools and other home-related structures, signs, continuing care facilities, commercial film production, and transit facilities. BCZR 1A04.2.A. 11. These are not industrial operations.

Slag processing is a use allowed in the M.H. zone. It is a mechanical process involving the use of machinery to dry, sort, and batch slag. It is akin to sand and gravel processing, permitted by right in the M.H. zone under BCZR 256.2, subject to minimum distance requirements. See Arundel Supply Corp. v. Cason 265 Md.371 (1972). If it cannot be classified literally as a sand and gravel processing facilities, it nevertheless comes under the umbrella of BCZR 256.3, which permits:

> Any other industrial or manufacturing use, except those listed in Section 256.4 [special exception uses], when located at least 1000 feet from any residential zone and at least 500 feet from any B.L., B.M., or B.R. zone.

In addition, BCZR 256.4 allows sludge disposal facilities by special exception. Slag processing is analogous to sludge processing, both in language and substance.

Slag processing is thus outside the ambit of enumerated R.C. 5 permitted uses. There is no category in which it arguably fits. Even were there some R.C. 5 category to stretch, the argument would fail because of the specific fit in the M.H. zone. See Smith v. Miller 249 Md. 390 (1968). Smith involved a sawmill, which the property owner claimed was a permissible "farm product processing facility." The Court wrote:

> The provisions of the ordinance must be considered as an entirety, and we do not think the Board could rely on a conditional use provision to permit in an agricultural district a use which the Ordinance manifestly intended to confine to a general industrial district.

The Court warned that any attempt to define creatively a use in order to place it a less intense, more restricted zone than where it is intended would disrupt the zoning scheme. There, it would "render meaningless the provision of the Ordinance which attempts to confine sawmills [and other manufacturing operations] to a general industrial district.

The Smith court also drew from St. Clair v. Colonial Pipeline Co. 235 Md. 578 (1964), rejected a similar attempt to stretch "public utility" use to include a pipeline company's above-ground petroleum storage and delivery facilities.

* * *

Likewise, slag processing cannot slide into the "accessory use" category. As noted, it does not fit any of the BCZR 1A04.2.A.11 listed accessory uses in the R.C. 5 zone. Nor does it fit as customarily incident and subordinate to the principal use under the accessory use definition under BCZR 101. It is not, by its nature, an incidental and subordinate use. Rather, it is a sizable and substantial independent use which may stand on its own or be combined with other uses. It is a mechanized industrial operation allowed in the M.H. zone, and compares with sand and gravel operations subject to minimum setbacks from residential zones. In this context, it would erode the integrity of a residential zone such as R.C. 5 to allow invasion by such an incompatible use.

This Board of Appeals in its 1958 decision recognized the danger of "creeping paralysis of misplaced industrialization" when it rejected reclassification to M.H. To allow a slag processing facility would subvert that intent and allow indirectly what the CBA rejected directly. The County Council, moreover, has declined to place industrial zoning on this land during the last half century despite many opportunities to do so.

The Court of Appeals decision in Arundel Supply Corp. v. Cason, *supra*, supports our position. There, a landowner seeking approval for a sand and gravel processing operation -- screening, washing, and batching – in a residential zone argued it was accessory to a non-conforming gravel pit. But the Court rejected this argument. It found the operation "inconsistent with the residential use" and declared:

> We do not think, however, that the washing, screening, and batching of material 'trucked in' from other places was an accessory use and we so hold. 265 Md. at 378.

In reaching this conclusion, the Court observed that the dictionary definition of "gravel pit" does not include washing, batching, and screening. It then said this about the "accessory use" argument:

> But, says Arundel, the 1942 ordinance made washing and screening an accessory use. We are not persuaded that this is so any more than we could be persuaded that a commercial bakery in an agricultural zone could be said to be accessory to the raising of wheat. 265 Md. at 377-78.

The proposed slag processing facility here is more substantial and independent than the washing and screening use rejected in Arundel Supply. Moreover, its relationship to power generation is much more tenuous.

The decision in Maurer v. Snyder 199 Md. 551 (1952) is also instructive. There, the issue was whether a weekend crabbing and fishing business could fit into the home occupation definition in a residential zone. It was comparable to the accessory use issue here because its resolution depended on whether the use was "customarily incident to the use of the premises as a dwelling." In reversing the trial court's approval, the Court of Appeals pointed out that "the sale of fish has no necessary relation to 'home' life in a 'cottage residence' community." By analogy, as the Court said:

> If an owner wishes to use her residence as a beauty parlor, ... or a funeral parlor, the properties so used are none the less a beauty parlor or a funeral parlor, because also used as a residence, and within express prohibition of such uses in a residential district. ... In construing 'home occupation we see no difference, in principle, between a general prohibition of commercial uses and a specific prohibition of a beauty parlor, a funeral parlor, or a 'public garage.'
>
> The provision in the regulation relating to 'home occupation' does not broaden but narrows the definition of 'home occupation.' It does not include as a 'home occupation' any commercial enterprise which can be conducted on a lot 565 feet deep without 'usurping' the primary use of the dwelling. If it could be so

> construed, the residential character of a 'cottage residence' district would have little meaning or legal protection.

Similarly, the proposed property use here is nonetheless a principal industrial use, a slag processing facility, even if combined with public utility use (whether conforming or nonconforming). Nationally, there are similar results: Paramount Rock v. County of San Diego 180 Cal. App. 2d 217, 228 (1960), operation of rock crusher not accessory to sand pit and pre-mixing plant, nor integral to concrete ready-mixing business; Missoula County v. American Asphalt 701 P.2d 990 (Mont. 1985), stone crushing not permitted as accessory to excavation.

**Conclusion**

Based on the above threshold issues of law alone, the CBA should dismiss the petition. There are other factual and legal issues, but they are beyond the scope of this motion. They will be addressed later in the event the Board denies this motion.

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. DeMilio
CAROLE S. DEMILIO
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of October 2002 a copy of the foregoing Motion to Dismiss Petition for a Special Hearing was hand delivered to G Scott Barhight, Esq., WHITEFORD, TAYLOR & PRESTON, 210 W. Pennsylvania Avenue, Suite 400, Towson, Maryland 21204 Attorney for Petitioner(s)

Peter Max Zimmerman

PETER MAX ZIMMERMAN

Baltimore County
Zoning Commissioner

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386
Fax: 410-887-3468

November 5, 2001

G. Scott Barhight, Esquire
Whiteford, Taylor & Preston, LLP
210 W. Pennsylvania Avenue
Towson, Maryland 21204

Re: Petitions for Special Hearing
Case No.: 02-098-SPH
Property: 10001 Carroll Island Road

Dear Mr. Barhight:

Enclosed please find the decision rendered in the above-captioned case. The petition for special hearing has been granted in accordance with the enclosed Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days from the date of the Order to the Department of Permits and Development Management. If you require additional information concerning filing an appeal, please feel free to contact our appeals clerk at 410-887-3391.

Very truly yours,

Timothy M. Kotroco
Deputy Zoning Commissioner

TMK:raj
Enclosure



Printed with Soybean Ink
on Recycled Paper

Copies to:

Dick Ransom
Constellation Power
111 Market Place, Suite 200
Baltimore, MD 21202

Jim Andercyk
1000 Brandon Shores Road
Baltimore, MD 21226

Bonnie Johansen
1000 Brandon Shores Road
Baltimore, MD 21226

Jim Burkman
1000 Brandon Shores Road
Baltimore, MD 21226

Zacharia Fisch
FSH Associates
8318 Forrest Street
Ellicott City, MD 21043

John Burns
Virginia Material
3306 Peterson Street
Norfolk, VA 23509

CRITICAL AREA

# Petition for Special Hearing

## to the Zoning Commissioner of Baltimore County

**for the property located at** 10001 Carroll Island Road
**which is presently zoned** RC5

**This Petition shall be filed with the Department of Permits and Development Management.** The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

PLEASE SEE ATTACHED

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Special Hearing, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

***Contract Purchaser/Lessee:***

N/A
Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

***Attorney For Petitioner:***

G. Scott Barhight/
Jennifer R. Busse
Name - Type or Print

Signature

Whiteford, Taylor & Preston L.L.P.
Company

210 W. Pennsylvania Ave. 410-832-2077
Address Telephone No.

Towson MD 21204
City State Zip Code

***Legal Owner(s):***

Constellation Power Source Generation, Inc.
Name - Type or Print

By: Wayne O Seifert
Signature

WAYNE O SEIFERT
Name - Type or Print

Signature

210 W PENNSYLVANIA AVE
Address Telephone No.

TOWSON 21204
City State Zip Code

***Representative to be Contacted:***

Jennifer R. Busse, Esquire
Name

210 W. Pennsylvania Ave. 410-832-2077
Address Telephone No.

Towson MD 21204
City State Zip Code

ORDER RECEIVED FOR FILING
Date 11/15/01
By D Jamison

**Case No.** 02-098-SPH

2nd 9/15/98

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By BM Date 9/7/01

Language to Accompany Petition for Special Hearing :

Petition for Special Hearing to approve an Amendment to a previously approved Special Exception and Variance in Cases #4077 and 74-102-ASPH.

**FSH** Associates
Engineers Planners Surveyors

Description of a 6.83 acre parcel for an amendment to a special exception and variance in an R.C.5 Zone to allow for construction of a slag recycling facility.

Beginning for the same in the centerline of Carroll Island Road at a point situate 850 feet, more or less, southeasterly measured along the centerline of Carroll Island Road from the intersection of the said centerline of Carroll Island Road with the centerline of Beach Drive, thence leaving said place of beginning and running and binding along said centerline of Carroll Island Road, the 11 following courses and distances, viz: [1] South 74 degrees 57 minutes 00 seconds East 30.00 feet to a point of curve, thence [2] Southeasterly by a line curving to the right with a radius of 1800.00 feet for a distance of 99.64 feet (the arc of which is subtended by a chord bearing South 73 degrees 21 minutes 51 seconds East 99.63 feet) to the end of said curve, thence [3] South 71 degrees 46 minutes 42 seconds East 113.43 feet to a point of curve, thence [4] Southeasterly by a line curving to the left with a radius of 1800.00 feet for a distance of 92.88 feet (the arc of which is subtended by a chord bearing South 73 degrees 15 minutes 24 seconds East 92.87 feet) to the end of said curve, thence [5] South 74 degrees 44 minutes 05 seconds East 159.09 feet, thence leaving the centerline of Carroll Island Road and running the 6 following courses and distances, viz: [6] South 20 degrees 58 minutes 05 seconds West 139.45 feet, thence [7] South 43 degrees 22 minutes 01 seconds West 119.92 feet, thence [8] South 26 degrees 02 minutes 35 seconds West 153.41 feet, thence [9] South 65 degrees 48 minutes 24 seconds West 328.88 feet, thence [10] North 50 degrees 34 minutes 55 seconds West 419.52 feet, thence [11] North 43 degrees 48 minutes 00 seconds East 504.39 feet to the place of beginning.

Containing 6.83 acres of land, more or less.

This description has been prepared for zoning purposes only and is not intended to be used for conveyance.




C. Brooke Miller
Registered Property Line Surveyor

8318 Forrest Street · Ellicott City, Maryland 21043 · 410.750.2251 · 410.750.7350 FAX · email: FSHAssociates@cs.com

#098

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: #02-098-SPH
10001 Carroll Island Road
S/S Carroll Island Road, 840' E centerline Beach Drive
15th Election District
5th Councilmanic District
Legal Owner(s): Wayne Seifert
Constellation Power Source Generation Inc.
**Special Hearing:** to approve an amendment to a previously approved Special Exception and Variance, Ir Cases #4077 and 74-102-ASPH.
**Hearing: Wednesday, October 24, 2001 at 11:00 a.m. In Room 407, County Courts Building, 401 Bosley Avenue.**

LAWRENCE E. SCHMIDT
Zoning Commissioner for Baltimore County
NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.
(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.
JT/10/677 Oct9 C498777

# CERTIFICATE OF PUBLICATION

10/11, 2001

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 10/9/, 2001.

- [X] The Jeffersonian
- [ ] Arbutus Times
- [ ] Catonsville Times
- [ ] Towson Times
- [ ] Owings Mills Times
- [ ] NE Booster/Reporter
- [ ] North County News

P. Wilkinson

LEGAL ADVERTISING

**BALTIMORE COUNTY, MARYLAND**
**OFFICE OF BUDGET & FINANCE**
**MISCELLANEOUS RECEIPT**

No. 5730

DATE 9/7/01 ACCOUNT R001-006-6150

AMOUNT $ 250.00

RECEIVED FROM: Gilmore & Taylor, P.A.

FOR: Special Hearing

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

Total 098

PAID RECEIPT

| PAYMENT | ACTUAL | TIME |
|---|---|---|
| 9/10/2001 | 9/07/2001 | 14:09:44 |

REG W503 CASHIER R003 LRB DRAWER 3
RECEIPT # 207077 DFLN
Dept 5 528 ZONING VERIFICATION
CR NO. 005730

| | |
|---|---|
| Recpt Tot | 250.00 |
| 250.00 CK | .00 CA |

Baltimore County, Maryland

CASHIER'S VALIDATION

**BALTIMORE COUNTY, MARYLAND**
**OFFICE OF BUDGET & FINANCE**
**MISCELLANEOUS RECEIPT**

No. 10624

DATE 9/26/02 ACCOUNT R001 006 6150

AMOUNT $ 40.00

RECEIVED FROM: VIC. MATERIALS

FOR: SIGN LETTER

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

| BUSINESS | ACTUAL | TIME |
|---|---|---|
| 9/26/2002 | 9/26/2002 | 09:29:53 |

REG W502 WINKEN JEVA JEE DRAWER 2
RECEIPT # 226107 9/26/2002 DFLN
Dept 5 528 ZONING VERIFICATION
CR NO. 016826

| | |
|---|---|
| Recpt Tot | $40.00 |
| .00 CK | 40.00 CA |

Baltimore County, Maryland

CASHIER'S VALIDATION

# CERTIFICATE OF POSTING

RE: Case No.: 02-098-SPH

Petitioner/Developer: Wayne Seifert

Date of Hearing/Closing: 10/24/01

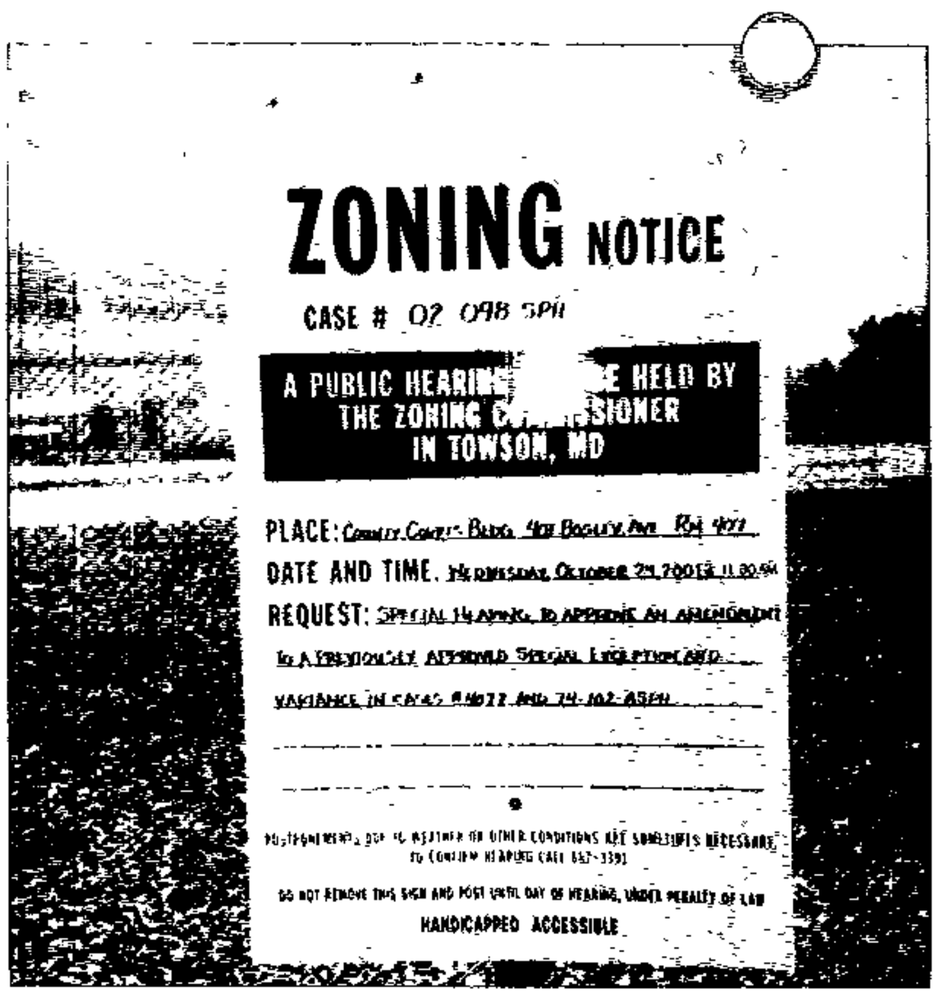
Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, MD 21204

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at 10001 Carroll Island Rd. Baltimore, MD 21220

The sign(s) were posted on October 4, 2001
(Month, Day, Year)




Sincerely,

Stacy Gardner 10/4/01
(Signature of Sign Poster and Date)

Stacy Gardner
(Printed Name)

SHANNON-BAUM SIGNS INC.
105 COMPETITIVE GOALS DR.
ELDERSBURG, MD 21784
1-800-368-2295
(Address)

(City, State, Zip Code)

410-781-4000
(Telephone Number)

# APPEAL SIGN POSTING REQUEST

CASE NO. 02-098-SPH

CONSTELLATION POWER SOURCE GENERATION, INC. – Legal Owners

10001 Carroll Island Road
S/S Carroll Island Road, 840' E of centerline Beach Drive

15th Election District

Appealed: 11/30/01

Attachment – (Plat to accompany Petition -
Petitioner's Exhibit No.1)

**********COMPLETE AND RETURN BELOW INFORMATION**********

## *CERTIFICATE OF POSTING*

TO: Baltimore County Board of Appeals
400 Washington Avenue, Room 49
Towson, Maryland 21204

Attention: Kathleen Bianco
Administrator

RE: Case No. 02-098 SPH
Petitioner/Developer:
CONSTELLATION POWER

This is to certify that the necessary appeal sign(s) was posted conspicuously on

property located at 10001 CARROLL ISLAND RD.

The sign(s) was posted on JANUARY 14, 2002.

By Gary C. Freund
(Signature of Sign Poster)

GARY C. FREUND
(Printed Name)

# APPEAL SIGN RE-POSTING REQUEST

CASE NO.: 02-098-SPH

Constellation Power Source Generation, Inc. - LEGAL OWNERS

10001 Carroll Island Road
S/S Carroll Island Road, 840' E of centerline Beach Drive

15th ELECTION DISTRICT APPEALED: 11/30/01

***ATTACHMENT*** – (Plan to accompany Petition – Petitioner's Exhibit No. 1)

**********COMPLETE AND RETURN BELOW INFORMATION*****

# CERTIFICATE OF POSTING

TO: Baltimore County Board of Appeals
400 Washington Avenue, Room 49
Towson, Maryland 21204

Attention: Kathleen Bianco
Administrator

RE: Case No.:_____

Petitioner/Developer:

_____

This is to certify that the necessary appeal sign was posted conspicuously on the property located at:

_____

The sign was posted on _____, 2002

By: _____
(Signature of Sign Poster)

_____
(Printed Name)

BGE Crane Power Plant has been reposted.

Gary Freund
PDM
(410)887-3352

Baltimore County
Department of Permits and
Development Management

Director's Office
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
410-887-3353
Fax: 410-887-5708

September 27, 2001

# NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 02-098-SPH
10001 Carroll Island Road
S/S Carroll Island Road, 840' E centerline Beach Drive
15th Election District – 5th Councilmanic District
Legal Owner: Wayne Seifert, Constellation Power Source Generation Inc

Special Hearing to approve an amendment to a previously approved Special Exception and Variance in Cases # 4077 and 74-102-ASPH.

HEARING: Wednesday, October 24, 2001 at 11:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Arnold Jablon GDZ
Director

C: Jennifer R. Busse, Whiteford Taylor & Preston, 210 W Pennsylvania Ave, Towson 21204
Wayne Seiefert, Constellation Power Source Generation Inc, 210 W Pennsylvania Ave, Towson 21204
G. Scott Barhight, Whiteford Taylor & Preston, 210 W Pennsylvania Ave, Towson 21204

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, OCTOBER 9, 2001.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

Printed with Soybean Ink on Recycled Paper

TO. PATUXENT PUBLISHING COMPANY
Tuesday, October 9, 2001 Issue – Jeffersonian

Please forward billing to:
Jennifer Busse
Whiteford Taylor & Preston
210 W Pennsylvania Ave
Towson MD 21204

410-832-2077

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## NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 02-098-SPH
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S/S Carroll Island Road, 840' E centerline Beach Drive
15th Election District – 5th Councilmanic District
Legal Owner: Wayne Seifert, Constellation Power Source Generation Inc

Special Hearing to approve an amendment to a previously approved Special Exception and Variance in Cases # 4077 and 74-102-ASPH.

HEARING: Wednesday, October 24, 2001 at 11:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Lawrence E. Schmidt

LAWRENCE E. SCHMIDT GDZ
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

# DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
# ZONING REVIEW

## ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

**OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.**

---

**For Newspaper Advertising:**

Item Number or Case Number: 02-098-SPH

Petitioner: Constellation Energy

Address or Location: 1001 Carroll Island Rd

PLEASE FORWARD ADVERTISING BILL TO:

Name: Jennifer Busse, Esq. c/o Whiteford, Taylor & Preston

Address: 210 W Pennsylvania Ave., 4th Floor
Towson, MD 21204

Telephone Number: 410 832 2077

Revised 2/20/98 - SCJ

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

*** **HEARING ROOM** – ***Room 48*** ***
Basement –Old Courthouse
400 Washington Avenue

# APPEAL HEARINGS SCHEDULED FOR THE WEEK OF **JUNE 03, 2002**

**TUESDAY** **6/04** **10:00 am** **Case No.: 01-506-XA** **/HEARING**

*In the Matter of:*
*Albert Bierman – Mark McAllister – Legal Owner*
*1627 Eastern Boulevard, SE/s Eastern Boulevard and*
*SW/S Seversky Court*
*15th Election District / 5th Councilmanic District*

*RE: To approve service garage per § 230.13 BCZR; VAR – rear yd setback; existing fences/ screening*

---

**WEDNESDAY** **6/05** **9:00 am** **Case No.: 02-328-SPHXA** **/HEARING**

*In the Matter of:*
*Patricia F. MacDonald – Legal Owner/Petitioner*
*105 Sudbrook Lane*
*3rd Election District; 2nd Councilmanic District*

*RE: Rehab and use of existing dwelling w/proposed bldg / Class B Office Building; SE – Class B office building; VAR – buffers and sign*

**6/05** **10:00 am** **Case No.: 02-098-SPH** **/HEARING**

*In the Matter of:*
*Constellation Power Source Generation, Inc.*
*S/s Carroll Island Road, 840' E of c/l Beach Drive*
*10001 Carroll Island Road*
*15th Election District; 5th Councilmanic District*

*RE: Approval to amend previously approved SE and variance Case Nos. 4077 and 74-102-ASPH in order to construct a slag processing facility on property*

---

**THURSDAY** **6/06** **10:00 am** **Case No.: 02-057-SPH** **/HEARING**

*In the Matter of:*
*Jack Antwerpen – Legal Owner*
*3636 Brenbrook Drive*
*2nd Election District; 2nd Councilmanic District*

*RE: To allow sale of used automobiles in B.M. zone*

RECEIVED
MAY 29 2002

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c: Executive Office
Law Office
Director /PDM

People's Counsel
Planning Office
Court Info. Desk

County Council
Board Members
Court Reporter

# County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182


Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

March 18, 2002

**NOTICE OF ASSIGNMENT**

**CASE #: 02-098-SPH**

**IN THE MATTER OF:** ***Constellation Power Source Generation, Inc.***
- Legal Owner /Petitioner 10001 Carroll Island Road
15th Election District; 5th Councilmanic District

11/05/2001 – D.Z.C.'s Order in which Petition was GRANTED.

**ASSIGNED FOR:** **WEDNESDAY, JUNE 5, 2002 at 10:00 a.m.**

**NOTICE:** **This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.**

***Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.***

**IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).**

**If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.**

**Kathleen C. Bianco**
**Administrator**

---

c: Appellant : Office of People's Counsel

Counsel for Petitioner /Legal Owner : G. Scott Barhight, Esquire
Petitioner /Legal Owner : Dick Ransom /Constellation Power

*Jim Andercyk /Bonnie Johansen /Jim Burkman*

John Burns /Virginia Material
Zacharia Y. Fisch / FSH Associates

Bowleys Quarters Improvement Assn., Inc.
c/o M Vivirito, President
Michael Vivirito
Lawrence E. Schmidt /Zoning Commissioner
Pat Keller, Planning Director
Arnold Jablon, Director /PDM

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on Recycled Paper

# County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182


Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

June 6, 2002

**NOTICE OF ASSIGNMENT /Day #2**

**CASE #: 02-098-SPH**

**IN THE MATTER OF:** ***Constellation Power Source Generation, Inc.***
- Legal Owner /Petitioner 10001 Carroll Island Road
15th Election District; 5th Councilmanic District

**Day #2 from 6/05/02**

11/05/2001 – D.Z.C.'s Order in which Petition was GRANTED.

**ASSIGNED FOR:** **THURSDAY, OCTOBER 17, 2002 at 10:00 a.m.**

**NOTICE:** **This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.**

**Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.**

**IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).**

**If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.**

**Kathleen C. Bianco**
**Administrator**

---

c: Appellant : Office of People's Counsel

Counsel for Petitioner /Legal Owner : G. Scott Barhight, Esquire
Petitioner /Legal Owner : Dick Ransom /Constellation Power

Jim Andercyk /Bonnie Johansen /Jim Burkman

John Burns /Virginia Material
Zacharia Y. Fisch / FSH Associates

Bowleys Quarters Improvement Assn., Inc.
c/o M Vivirito, President
Michael Vivirito
Lawrence E. Schmidt /Zoning Commissioner
Pat Keller, Planning Director
Arnold Jablon, Director /PDM

cc: Bernard Wagner
Herman F. Lenzenweger

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County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

Day #3 - 3/04/03 County closed - 2/18/03 - snow

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

October 17, 2002

**NOTICE OF ASSIGNMENT /Days #3 and 4**

**CASE #: 02-098-SPH**

**IN THE MATTER OF: *Constellation Power Source Generation, Inc.***
- Legal Owner /Petitioner 10001 Carroll Island Road
15th Election District; 5th Councilmanic District

**Day #3 from 10/17/02**

11/05/2001 – D.Z.C.'s Order in which Petition was GRANTED.

**ASSIGNED FOR:** ~~**TUESDAY, FEBRUARY 18, 2003 at 10:00 a.m. /Day #3 and**~~ Co. closed - snow
***TUESDAY, MARCH 4, 2003 at 10:00 a.m.*** */Day ~~#4~~ 3*

**NOTICE:** **This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.**

**Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.**

**IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).**

**If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.**

**Kathleen C. Bianco**
**Administrator**

---

c: Appellant : Office of People's Counsel

Counsel for Petitioner /Legal Owner : G. Scott Barhight, Esquire
*Petitioner /Legal Owner* : Dick Ransom /Constellation Power

Jim Andercyk /Bonnie Johansen /Jim Burkman

John Burns /Virginia Material
Zacharia Y. Fisch / FSH Associates

Bernard Wagner
Herman F. Lenzenweger
Bowleys Quarters Improvement Assn., Inc.
c/o M Vivirito, President
Michael Vivirito
Lawrence E. Schmidt /Zoning Commissioner
Pat Keller, Planning Director
Arnold Jablon, Director /PDM

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County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

**Hearing Room – Room 48**
**Old Courthouse, 400 Washington Avenue**

February 19, 2003

**NOTICE OF REASSIGNMENT /Day #3**

**CASE #: 02-098-SPH**

**IN THE MATTER OF:** ***Constellation Power Source Generation, Inc.***
- Legal Owner /Petitioner 10001 Carroll Island Road
15th Election District; 5th Councilmanic District

**Day #3 from 10/17/03**

11/05/2001 – D.Z.C.'s Order in which Petition was GRANTED.

NOTE: As Baltimore County Offices were closed on 2/18/03 (originally scheduled for Day #3), 3/04/03 (formerly Day #4) will now serve as Day #3 in this matter, with an additional date to be assigned as needed when the parties convene on 3/04/03 for hearing.

**ASSIGNED FOR:** **TUESDAY, MARCH 4, 2003 at 10:00 a.m.** **/Day #3**

**NOTICE:** **This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.**

**Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.**

**IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).**

**If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.**

**Kathleen C. Bianco**
**Administrator**

c: Appellant : Office of People's Counsel

Counsel for Petitioner /Legal Owner : G. Scott Barhight, Esquire
Petitioner /Legal Owner : Dick Ransom /Constellation Power

Jim Andercyk /Bonnie Johansen /Jim Burkman
John Burns /Virginia Material
Zacharia Y. Fisch / FSH Associates

Bernard Wagner
Herman F. Lenzenweger
Bowleys Quarters Improvement Assn., Inc.
c/o M Vivirito, President
Michael Vivirito
Lawrence E. Schmidt /Zoning Commissioner
Pat Keller, Planning Director
Arnold Jablon, Director /PDM

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County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

**Hearing Room – Room 48**
**Old Courthouse, 400 Washington Avenue**

March 4, 2003

**NOTICE OF ASSIGNMENT /DAY #4**

**CASE #: 02-098-SPH**

**Day #4 from 3/04/03**

**IN THE MATTER OF:** ***Constellation Power Source Generation, Inc.***
- Legal Owner /Petitioner 10001 Carroll Island Road
15th Election District; 5th Councilmanic District

11/05/2001 – D.Z.C.'s Order in which Petition was GRANTED.

This notice is provided to document that a date for day #4 was agreed to by all parties at the conclusion of day #3 on 3/04/03; and has been

**ASSIGNED FOR:** **FRIDAY, MARCH 7, 2003 at 9:15 a.m.** **/Day #4**

**NOTICE:** **This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.**

**Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.**

**IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).**

**If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.**

**Kathleen C. Bianco**
**Administrator**

---

c: Appellant : Office of People's Counsel

Counsel for Petitioner /Legal Owner : G. Scott Barhight, Esquire
Petitioner /Legal Owner : Dick Ransom /Constellation Power

Jim Andercyk /Bonnie Johansen /Jim Burkman
John Burns /Virginia Material
Zacharia Y. Fisch / FSH Associates

Bernard Wagner
Herman F. Lenzenweger
Bowleys Quarters Improvement Assn., Inc.
c/o M Vivirito, President
Michael Vivirito
Lawrence E. Schmidt /Zoning Commissioner
Pat Keller, Planning Director
Arnold Jablon, Director /PDM

FILE

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County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

Dismissed 3/25/03
Petition W/D by Appellant

March 10, 2003

**NOTICE OF DELIBERATION**

**IN THE MATTER OF:**

***CONSTELLATION POWER SOURCE GENERATION, INC.***
**Case No-02-098-SPH**

Having heard this matter over four days of hearing (6/05/02; 10/17/02; 3/04/03; and 3/07/03), public deliberation has been scheduled for the following date /time:

**DATE AND TIME** : **THURSDAY, APRIL 17, 2003 at 10:00 a.m.**

**LOCATION** : **Hearing Room 48, Basement, Old Courthouse**

**NOTE: Memos due from Counsel on MONDAY, MARCH 31, 2003**
**ORIGINAL AND THREE [3] COPIES**

**Kathleen C. Bianco**
**Administrator**

c: Appellant : Office of People's Counsel

Counsel for Petitioner /Legal Owner : G. Scott Barhight, Esquire
Petitioner /Legal Owner : Dick Ransom /Constellation Power

Jim Andercyk /Bonnie Johansen /Jim Burkman
John Burns /Virginia Material
Zacharia Y. Fisch / FSH Associates

Bernard Wagner
Herman F. Kenzenweger
Bowleys Quarters Improvement Assn., Inc.
c/o M Vivirito, President
Michael Vivirito
Lawrence E. Schmidt /Zoning Commissioner
Pat Keller, Planning Director
Arnold Jablon, Director /PDM

**FYI copy: C.B.S.**

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Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

October 19, 2001

G. Scott Barhight
Whiteford Taylor & Preston LLP
210 W Pennsylvania Avenue
Towson MD 21204

Dear Mr. Barhight:

RE: Case Number: 02-098-SPH, 10001 Carroll Island Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on September 7, 2001.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards, Jr.

W. Carl Richards, Jr. GDZ
Supervisor, Zoning Review

WCR: gdz

Enclosures

c: Wayne Seiefert, Constellation Power Source Generation Inc,
210 W Pennsylvania Avenue, Towson 21204
Jennifer R Busse, Esquire, 210 W Pennsylvania Avenue,
210 W Pennsylvania Avenue, Towson 21204
People's Counsel



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# BALTIMORE COUNTY, MARYLAND

## INTER-OFFICE CORRESPONDENCE

**TO:** Arnold Jablon, Director
Department of Permits and
Development Management

**DATE:** October 4, 2001

**FROM:** Arnold F. 'Pat' Keller, III
Director, Office of Planning

**SUBJECT:** 10001 Carroll Island Road

**INFORMATION:**

**Item Number:** 02-098

**Petitioner:** Constellation Power Source Generation, Inc.

**Zoning:** RC 5

**Requested Action:** Special Hearing

**SUMMARY OF RECOMMENDATIONS:**

The Office of Planning supports the request to amend an existing special exception to allow the onsite processing of slag.

**Prepared by:** Marlo A Cunningham

**Section Chief:** Jeffrey W. Long

AFK:MAC:

W:\DEVREV\ZAC\02-098.doc

Baltimore County
Fire Department

700 East Joppa Road
Towson, Maryland 21286-5500
410-887-4500

September 27, 2001

Department of Permits and
Development Management (PDM)
County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

ATTENTION: Gwen Stephens

RE: Property Owner: SEE BELOW

Location: DISTRIBUTION MEETING OF SEPTEMBER 24, 2001

Item No.: See Below

Dear Ms. Stephens:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

8. The Fire Marshal's Office has no comments at this time, IN REFERENCE TO THE FOLLOWING ITEM NUMBERS:

086, 087, 088, 089, 090, 091, 092, 093, 094, 095, 096, 097, 098, 099, AND 100

REVIEWER: LIEUTENANT JIM MEZICK, Fire Marshal's Office
PHONE 887-4881, MS-1102F

cc: File

RECEIVED
OCT 1 2001
DEPT OF PERMITS AND
DEVELOPMENT MANAGEMENT



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Sign
10/24

**BALTIMORE COUNTY, MARYLAND**

**INTEROFFICE CORRESPONDENCE**

**TO:** Arnold Jablon, Director
Department of Permits & Development Mgmt

**DATE:** October 25, 2001

**FROM:** Robert W. Bowling, Supervisor
Bureau of Development Plans Review

**SUBJECT:** Zoning Advisory Committee Meeting
For October 1, 2001
Item Nos. 086, 087, 088, 089, 090, 092,
093, 094, 095, 096, 098, and 099

The Bureau of Development Plans Review has reviewed the subject zoning items, and we have no comments.

RWB:HJO:jrb

cc: File

*ZAC-10-1-2001- NO COMMENT ITEMS-10252001*

# BALTIMORE COUNTY, MARYLAND

## INTER-OFFICE CORRESPONDENCE

**TO:** Arnold Jablon, Director
Department of Permits and
Development Management

**DATE:** October 4, 2001

**FROM:** Arnold F. 'Pat' Keller, III
Director, Office of Planning

**SUBJECT:** 10001 Carroll Island Road

**INFORMATION:**

**Item Number:** 02-098

**Petitioner:** Constellation Power Source Generation, Inc

**Zoning:** RC 5

**Requested Action:** Special Hearing

**SUMMARY OF RECOMMENDATIONS:**

The Office of Planning supports the request to amend an existing special exception to allow the onsite processing of slag

**Prepared by:** Marlo A Cunningham

**Section Chief:** Jeffrey W. Long

AFK:MAC

W:\DEVREV\ZAC\02-098.doc

**Maryland Department of Transportation**
*State Highway Administration*

Parris N. Glendening
Governor

John D. Porcari
Secretary

Parker F. Williams
Administrator

Date: 10-1-01

Ms. Ronnay Jackson
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 058 BR

Dear. Ms. Jackson:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration projects.

Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

K. A. McDonald

Kenneth A. McDonald Jr., Chief
Engineering Access Permits Division

My telephone number is _____

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

**Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717**
**Street Address: 707 North Calvert Street • Baltimore, Maryland 21202**

| | | |
|---|---|---|
| RE: PETITION FOR SPECIAL HEARING<br>10001 Carroll Island Road, S/S Carroll Island Rd,<br>840' E of c/l Beach Dr<br>15th Election District, 5th Councilmanic | * | BEFORE THE |
| | * | ZONING COMMISSIONER |
| | * | FOR |
| Legal Owner: Constellation Power Source Generation, Inc.<br>Petitioner(s) | * | BALTIMORE COUNTY |
| | * | Case No. 02-98-SPH |

* * * * * * * * * * * * * *

**ENTRY OF APPEARANCE**

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order. **All parties should copy People's Counsel on all correspondence sent/ documentation filed in the case.**

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 2nd day of October, 2001 a copy of the foregoing Entry of Appearance was mailed to G. Scott Barhight, Esq., Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Suite 400, Towson, MD 21204, attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN

Baltimore County
Department of Permits and
Development Management

Director's Office
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
410-887-3353
Fax: 410-887-5708

December 19, 2001

G. Scott Barhight
Whiteford Taylor & Preston
210 W Pennsylvania Avenue
Towson MD 21204

Dear Mr. Barhight:

RE: Case No. 02-098-SPH, 10001 Carroll Island Road

Please be advised that an appeal of the above-referenced case was filed in this office on November 30, 2001 by Peter M. Zimmerman, People's Counsel for Baltimore County. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to call the Board at 410-887-3180.

Sincerely,

Arnold Jablon GDZ
Director

AJ: gdz

c: People's Counsel

01 DEC 20 AM 11:10

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on Recycled Paper

# APPEAL

*Petition For Special Hearing*
10001 Carroll Island Road
S/S Carroll Island Road, 840' E of centerline Beach Drive
15th Election District – 5th Councilmanic District
Constellation Power Source Generation, Inc. - Legal Owner
Case No.: 02-098-SHP

Petition for Special Hearing (dated 09/07/01)

Zoning Description of Property

Notice of Zoning Hearing (dated 09/27/01)

Certification of Publication (The Jeffersonian issue 10/09/01)

Certificate of Posting (dated 10/04/01 posted Stacy Gardner)

Entry of Appearance by People's Counsel (dated 10/02/01)

Petitioner(s) Sign-In Sheet
(1 page)

Protestant(s) Sign-In Sheet
(none)

Citizen(s) Sign-In Sheet

Zoning Advisory Committee Comments

Petitioners' Exhibits:
(none)

Protestants' Exhibits:
(none)

Miscellaneous (Not Marked as Exhibits):

- Plans to Accompany Petition for Special Hearing to Amend Special Exception and Variance dated 09/07/01

Deputy Zoning Commissioner's Order (dated 11/05/01 - GRANTED)

Notice of Appeal received on 11/30/01 from Peter M. Zimmerman, People's Counsel for Baltimore County

c: G. Scott Barhight, Whiteford Taylor & Preston, 210 W Pennsylvania Avenue, Towson 21204
People's Counsel of Baltimore County, MS #2010
Timothy Kotroco, Deputy Zoning Commissioner
Arnold Jablon, Director of PDM

# APPEAL

*Petition For Special Hearing*
10001 Carroll Island Road
S/S Carroll Island Road, 840' E of centerline Beach Drive
15th Election District – 5th Councilmanic District
Constellation Power Source Generation, Inc. - Legal Owner
Case No.: 02-098-SHP

✓ Petition for Special Hearing (dated 09/07/01)

✓ Zoning Description of Property

✓ Notice of Zoning Hearing (dated 09/27/01)

✓ Certification of Publication (The Jeffersonian issue 10/09/01)

✓ Certificate of Posting (dated 10/04/01 posted Stacy Gardner)

✓ Entry of Appearance by People's Counsel (dated 10/02/01)

✓ Petitioner(s) Sign-In Sheet
(1 page)

Protestant(s) Sign-In Sheet
(none)

Citizen(s) Sign-In Sheet
(None)

✓ Zoning Advisory Committee Comments

Petitioners' Exhibits:
(none)

Protestants' Exhibits:
(none)

✓ Miscellaneous (Not Marked as Exhibits):

- Plans to Accompany Petition for Special Hearing to Amend Special Exception and Variance dated 09/07/01

✓ Deputy Zoning Commissioner's Order (dated 11/05/01 - GRANTED)

✓ Notice of Appeal received on 11/30/01 from Peter M. Zimmerman, People's Counsel for Baltimore County

c: G. Scott Barhight, Whiteford Taylor & Preston, 210 W Pennsylvania Avenue, Towson 21204
People's Counsel of Baltimore County, MS #2010
Timothy Kotroco, Deputy Zoning Commissioner
Arnold Jablon, Director of PDM

ADD TO FILE (two addresses – one for BQIA and one for Mr. Vivirito)
Michael Vivirito, President, Bowleys Quarters Improvement Assn., Inc., PO Box 18051, Baltimore MD 21220
Michael Vivirito, 3619 Bay Drive, Middle River, MD 21220

# *Baltimore County, Maryland*

OFFICE OF PEOPLE'S COUNSEL
Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

(410) 887-2188


November 30, 2001


PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel


Arnold Jablon, Director
Department of Permits and
Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

Hand-delivered

Re: PETITION FOR SPECIAL HEARING
10001 Carroll Island Road, S/S Carroll Island Rd
840' E of c/l Beach Drive
15th Election Dist., 5th Councilmanic
**Constellation Power Source Generation, Inc.,**
**Petitioner**
**Case No.: 02-98-SPH**

Dear Mr. Jablon:

Please enter an appeal of the People's Counsel for Baltimore County to the County Board of Appeals from the Findings of Fact and Conclusions of Law dated November 5, 2001 of the Baltimore County Deputy Zoning Commissioner in the above-entitled case.

Please forward copies of any papers pertinent to the appeal as necessary and appropriate.

Very truly yours,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/caf

cc: G. Scott Barhight, Esq. and Jennifer R. Busse, Esq., Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Suite 400, Towson, MD 21204, Attorneys for Petitioner

Case No. 02-098-SPH

SPH – To approve amendment of previously approved SE and variance case No. 4077 and 74-102-ASPH in order to construct a slag processing facility on subject property.
11/30/2001 – D.Z.C.'s Order in which request was GRANTED.

---

1/29/02 – T/C from Mike Vivirito, President of Bowley's Quarters Improvement Assn – requesting that they be notified of hearings, etc. He will send letter by FAX verifying mailing address, etc. (home address: 3619 Bay Drive, Middle River 21220; BQIA address: PO Box 18051, Baltimore 21220).

---

1/30/02 – FAX from Mr. Vivirito – requesting that his name be added to file (confirmation of above T/C). File noted.

---

3/18/02 – Notice of Assignment sent to following; assigned for hearing on Wednesday, June 5, 2002 at 10 a.m.:

Office of People's Counsel
G. Scott Barhight, Esquire
Dick Ransom /Constellation Power
Jim Andercyk /Bonnie Johansen /Jim Burkman
John Burns /Virginia Material
Zacharia Y. Fisch / FSH Associates
Bowleys Quarters Improvement Assn., Inc.
c/o M Vivirito, President
Michael Vivirito
Lawrence E. Schmidt /Zoning Commissioner
Pat Keller, Planning Director
Arnold Jablon, Director /PDM

---

6/05/02 – Board convened for hearing (Marks, Worrall, Barranger); concluded hearing day #1; upon verification with counsel, to be reassigned to 10/17/02 for day #2; notice to be sent.

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6/06/02 – Notice of Assignment /Day #2 sent to parties; assigned for Thursday, October 17, 2002 at 10 a.m.

---

7/18/02 – Letter from S. Barhight – enclosing "copy of 'Secretarial Letter Order' discussed during the hearing in this matter that took place on June 5, 2002, and referenced in the Deeds submitted as Petitioner's Exhibit 5. During the haring, it was decided that this Secretarial Letter Order will be Petitioner's Exhibit 6." Upon confirmation with Chairman – will mark as such and include same in Exhibits entered in this matter on 6/05/02.

---

10/17/02 – Board convened for hearing (Marks, Barranger and Worrall). Board recessed for lunch; reconvened for afternoon session; participation of VPC and possible appearance of conflict addressed; decision of Board to halt hearing at this point; to reconvene on day #3 (2/18/03); two of three members to remain; third to be replaced. Counsel agreed to proceed in this fashion with new third member reading transcript of hearing to date.

-- Motion to Dismiss filed by Office of People's Counsel; response to same to be filed by S. Barhight by 11/18/02.

-- Notice of Assignment, Days 3 and 4 sent this date; assigned for Tuesday, February 18, 2003 and Tuesday, March 4, 2003 at 10:00 a.m. Added Bernard Wagner and Herman F. Lenzenweger to Notice.

---

10/24/02 – Letter from Scott Barhight enclosing Exhibits 5 and 24 (as indicated on Exhibit sheet).

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11/18/02 – Petitioner's Response to People's Counsel's Motion to Dismiss filed by G. Scott Barhight, Esquire, and Jennifer Busse, Esquire, on behalf of Petitioner.

---

12/03/02 – People's Counsel's Reply Memorandum Relating to Its Motion to Dismiss filed by P. Zimmerman.

---

12/04/02 – Copies of Petitioner's Response and PC Reply forwarded to C.B.S. (Wescott replacing Worrall as third member of this panel).

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---

2/11/03 – Rule 8 papers received from Michael Vivirito /Bowley's Quarters Improvement Association.

---

2/13/03 – Letter from Jennifer Busse, Equire, Whiteford – transmitting copy of transcript to date for review and study by Mr. Wescott (replacing M. Worrall as third member of panel in this matter). Forwarded to L. Wescott this date.

---

2/19/03 – COUNTY OFFICES CLOSED ON 2/18/03 DUE TO INCLEMENT WEATHER; ALL HEARINGS CANCELLED /POSTPONED.

-- Notice of Reassignment sent this date to all parties and FYI copy to Board panel; date previously held for Day #4 will now serve as day #3; reassigned day #3 to Tuesday, March 4, 2003 at 10:00 a.m., with additional date to be assigned on 3/04/03 as needed.

---

3/04/03 – Board convened for Day #3 and concluded same (C.S.B.); to reconvene for day #4 on the agreed-upon date of Friday, March 7, 2003 at 9:15 a.m.; notice hand-delivered to People's Counsel this date; copy via FAX to Mr. Barhight and Mr. Vivirito; copies sent via U.S. mail to all parties.

---

3/05/03 – Letter from Jennifer Busse, Esquire -- enclosing copy of Bowleys Quarters Community Action Plan 2000 – which had been entered as Petitioner's Exhibit No. 24 (replaces letter from M. Vivirito which had been previously submitted as exhibit 24 in error). People's Counsel is aware of this substitution and in fact requested that it be made in that Mr. Vivirito's letter was not the document entered as Petitioner's Exhibit #24 at the 6/05/02 hearing. Letter and exhibit placed with Petitioner's Exhibits.

---

3/07/03 – Day #4 concluded (C.S.B.); memos due 3/31/03; deliberation to be scheduled for 4/17/03; notice to be sent.

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3/10/03 – Notice of Deliberation sent to parties; assigned for Thursday, April 17, 2003 at 10:00 a.m.; FYI copy to *Marks, Wescott and Barranger.*

---

3/25/03 – Letter from G. Scott Barhight, Esquire, counsel for Petitioners; Petitioner, CPSG, entering withdrawal of Petition for Special Hearing by Petitioner; hence, no filing of briefs will be necessary nor deliberation. Board to issue Order of Dismissal.

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3/28/03 – Letter from P. Zimmerman and C. Demilio written in response to Mr. Barhights letter of withdrawal of petition. Provided copies for C.S.B.

---

4/08/03 – Letter to P. Zimmerman – Dismissal will be signed by Panel Members and the matter simply dismissed; Board's rules are silent as to withdrawal of Petition; prerogative of Petitioner to withdraw Petition before any final decision is made by the Board. Copy to S. Barhight and L. Stahl.

---

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

April 8, 2003

Peter Max Zimmerman
People's Counsel for Baltimore County
Room 47, Old Courthouse
Towson, MD 21204

RE: *In the Matter of: Constellation Power Source Generation, Inc.* / Case #: 02-098-SPH

Dear Mr. Zimmerman:

The Board is appreciative of the remarks expressed in your letter of March 28, 2003 relative to the withdrawal by "Constellation" of its Petition for Special Hearing.

While the rules governing procedures before the Zoning Commissioner require that "Any petitioner who desires to have his request...dismissed without prejudice must do so in writing at least ten business days prior to the hearing date...any time thereafter...will be dismissed with prejudice..." (BCZR Appendix G, Rule 2F), the rules of the Board are silent as to the withdrawal of a case. In addition, BCZR 500.12 relates to special exceptions and the 18-month rule. The instant case involved a Petition for Special Hearing, so the application of that rule would not have been appropriate here, even if heard before the Zoning Commissioner.

However, in the absence of specific authority contained within the Rules of the Board, as authorized and approved by the County Council (such as the rules governing the procedures of the Zoning Commissioner), this Board is not willing to legislate, by Board Order, the authority we do not presently possess. That remains exclusively within the province of the Baltimore County Council.

What you express as reasons why a Petitioner would desire to withdraw from a case which has been heard on the merits may or may not be factual. Any comments on my part, or any other member of the Panel, would be purely speculative, and the Board will go no further. It is always the prerogative of the Petitioner to withdraw his or her Petition before any final decision is made by the Board that heard the case. In this matter, there has been no public deliberation, nor have the panel members expressed any opinion concerning the outcome with many issues to be deliberated.

ıted with Soybean Ink
ɔn Recycled Paper

The Board understands your concerns and does not discount them. However, the dismissal order will be signed by the Panel Members and the matter simply dismissed. Whether or not the Board should seek to amend its rules and request Council action is another matter. Chairman Stahl may wish to have the matter discussed at the Board's next staff meeting. For that reason, a copy of your letter and my response has been directed to his attention.

Sincerely,

Charles L. Marks
**Panel Chair**
**Case No. 02-098-SPH**

c: Carole S. Demilio
Deputy People's Counsel
G. Scott Barhight, Esquire
Lawrence M. Stahl

*Baltimore County, Maryland*
OFFICE OF PEOPLE'S COUNSEL
Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

(410) 887-2188

RECEIVED
MAR 2 8 2003
BALTIMORE COUNTY
BOARD OF APPEALS

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

March 28, 2003

Charles Marks, Chairman
County Board of Appeals
of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204

Re: In the Matter of: Constellation Power Source Generation, Inc
Case No.: 02-098-SPH

Dear Mr. Marks:

We are in receipt of the March 25, 2003 letter, which reports that Petitioner has decided to withdraw its petition for special hearing. The letter asserts that "This withdrawal is being entered without prejudice to the rights of any party." We disagree.

The case is scheduled for public deliberation April 17, 2003. The trial ended on March 7. There have been four days of hearing on a *de novo* appeal. Many citizens have prepared, appeared, and testified.

The Board has heard from well-qualified experts, Paul J. Solomon and John J. Dillon, Jr. Several issues have been the subjects of legal memoranda. Final memoranda are scheduled to be filed March 31. Ours is complete. We are prepared to file it as scheduled.

Petitioner's withdrawal at this juncture logically appears tantamount to a concession that its position on the merits is not sustainable. Whatever Petitioner's reason, if the case is to terminate voluntarily, the timing of the withdrawal warrants a dismissal with prejudice, and a denial for the purpose of BCZR 500.12.

Unless there are consequences to this withdrawal on the eve of decision, the Petitioner may try its case, assess the probability of success, and, upon a unilateral assessment, withdraw the case, so that it may re-file for another try. That is contrary to the fair and efficient administration of justice. The issue is of importance to this case as well as future cases.

The Zoning Commissioner rules provide that a dismissal without prejudice must be made "...in writing ten business days prior to the hearing date." Otherwise, "... it will be dismissed with prejudice...." (See BCZR Appendix G, Rule 2F)

The Board rules do not specifically address this issue, but the Board has dismissed other cases with prejudice that have came before it. In the absence of a rule, the Board has discretion, which should be exercised reasonably.

This is also consistent with procedure in the Circuit Courts. Maryland Rule 2-506 gives the trial court judge discretion with respect to any voluntary dismissal after the case is at issue. After that, unless there is a stipulation, a case may be voluntarily dismissed only by order of court, and "upon such terms and conditions, as the court deems proper." Rule 2-506(b). Scheve v. Shudder. 328 Md. 363 (1992).

Otherwise stated, the Board rules do not allow a Petitioner the absolute right to withdraw the petition without prejudice at any time. Such a rule should not be engrafted in an *ad hoc* way in this case. It would enable Petitioners to exercise arbitrary and capricious control of the proceedings. Furthermore, it enables Petitioners to ascertain the opponents' case, and reduce the CBA hearing to an administrative "discovery" process, in preparation for a second hearing at Petitioners' discretion. Additionally, it encourages "forum shopping."

Before this case is considered officially over, there should be an Order by this Board. If the case is to be withdrawn, it should be entered as a dismissal with prejudice and a denial. This is the only outcome which assures fairness to the participating citizens and our office. It is the only outcome which protects the authority of the Board to manage its cases to promote justice.

The Board's disposition of this withdrawal is of great importance to this case and future cases. We ask the Board for careful consideration.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio

Carole S Demilio
Deputy People's Counsel for Baltimore County
Old Courthouse
400 Washington Avenue, Rm 47
Towson, MD 21204

PMZ\rmw

cc: G. Scott Barhight, Esquire

**BALTIMORE COUNTY, MARYLAND**
**Board of Appeals of Baltimore County**
***FAX COVER SHEET***

***DATE:*** March 4, 2003

| | | |
|---|---|---|
| ***TO:*** | G. Scott Barhight, Esquire | ***FAX*** : 410-832-2015<br>***TELEPHONE*** : 410-832-2000 |
| | Michael Vivirito | ***FAX*** : 410-335-5887 |
| ***FROM:*** | Kathi Bianco | ***TELEPHONE:*** 410-887-3180<br>***FAX*** : 410-887-3182 |

***RE:*** Notice of Assignment – Day #4
*In the Matter of: Constellation Power Source Generation, Inc.*

Attached is a copy of the Notice of Assignment for Day #4 (assigned by agreement for Friday, March 7, 2003 at 9:15 a.m.). Please note agreed-to **early start time of 9:15 a.m.**

Copies of this Notice have been sent via U.S. Mail to all parties as listed.

***Number of pages including this page:*** Two (2)

***Original copy to follow*** : Yes __X__ No ___

**BALTIMORE COUNTY, MARYLAND**
**Board of Appeals of Baltimore County**
***Interoffice Correspondence***

***DATE:*** December 4, 2002

***TO:*** *** C. Marks
L. Barranger
S. Wescott

***FROM:*** Kathi

***SUBJECT:*** Case No. 02-098-SPH */In the Matter of: Constellation Power Source Generation, Inc.* - Petitioner's Response and People's Counsel's Reply thereto

A Motion to Dismiss was filed by the Office of People's Counsel on hearing day #2, with a response due from Scott Barhight on December 18, 2002.

The subject case is scheduled for hearing day #3 on Tuesday, February 18, 2003. For your review prior to that date, the following documents are attached:

1. Petitioner's Response to People's Counsel's Motion to Dismiss; and

2. People's Counsel's Reply Memorandum Relating to Its Motion to Dismiss.

As you'll recall, Margaret originally was on this panel; however, Larry Wescott is now sitting as the third panel member (now comprised of Chuck, Lynn and Larry). Therefore, attached with Larry's material is a copy of People's Counsel's Motion to Dismiss as well as the above documents.

Upon review of the attached, a scheduling determination can then be made relative to a Motion only hearing to be held prior to the scheduled date of February 18, 2003 for day #3.

Should you have any questions, please call me.

Kathi

Attachments:
C. Marks and L. Barranger (2)
L. Wescott (3)

*** Copies to C and S – in office 12/04/02
Copy to B via US mail 12/04/02

FILE

**BALTIMORE COUNTY, MARYLAND**
Board of Appeals of Baltimore County
*Interoffice Correspondence*

DATE: May 16, 2003

TO: Arnold Jablon, Director
Permits & Development Management
Attn.: David Duvall

FROM: Theresa R. Shelton
Board of Appeals

SUBJECT: **CLOSED APPEAL CASE FILES**

The following case(s) have been finalized and the Board of Appeals is closing the copy of the appeal case file(s) and returning the file(s) and exhibits (if applicable) attached herewith.

| **BOARD OF APPEALS CASE NUMBER** | ***PDM FILE NUMBER*** | **NAME** | **LOCATION** |
|---|---|---|---|
| 02-098-SPH | ***02-098-SPH*** | CONSTELLATION POWER SOURCE GENERATION, INC. | 10001 CARROLL ISLAN ROAD |

Attachment: SUBJECT FILE(S) ATTACHED

Baltimore County Government
Department of Permits and
Development Management

111 West Chesapeake Avenue
Towson, MD 21204

410-887-3335

March 4, 2002

Whiteford Taylor & Preston
210 W. Pennsylvania Avenue
Towson, MD 21204

RE: Constellation Power Slag Processing
1001 Carroll Island Road
DRC Number 021102D, Dist. 15C5

Dear Sir or Madam:

Pursuant to Article 25A, Section 5 (U) of the Annotated Code of Maryland, and as provided in Section 602 (d) of the Baltimore County Charter, and Section 26-132 of the Baltimore County Code, this letter constitutes an administrative order and decision on the request for issuance, renewal, or modification of a license, permit, approval, exemption, waiver, or other form of permission you filed with this department.

Your request has been submitted for careful review and consideration to the Development Review Committee (DRC), which is composed of representatives from each of those departments involved in land-use decisions. These representatives are designees of the directors of these departments. The purpose of the DRC is to ensure compliance with Section 26-171 and Section 26-211 of the Baltimore County Code and to make recommendations to the Director, Department of Permits and Development Management (PDM).

The DRC has, in fact, met in an open meeting on February 11, 2002, and made the following recommendations:

The DRC has determined that your project meets the requirements of a limited exemption under Section 26-171 (A) (2).

A copy of this letter must be presented when submitting engineering/construction plans to this office, and/or when applying for a permit with the Permits and Licenses Section.

Be advised that Phase 2 review fees may apply, depending on the amount of site disturbance, and/or the requirement of a Public Works Agreement.

I have reviewed the recommendations carefully, and I have determined to adopt the recommendations set forth above. It is this 4th day of March 2002, ordered and decided that the recommendations of the DRC are hereby adopted.

Should you submit an application for any permits that may be required for this project, your application will be processed subject to the conditions set forth above and any plans, securities, or non-county permits that may be required in accordance with County, State, or Federal regulations.

Sincerely,

Arnold Jablon
Director

AJ:DTR:dak

c: File

**BALTIMORE COUNTY, MARYLAND**
**Board of Appeals of Baltimore County**
***Interoffice Correspondence***

***DATE:*** February 13, 2003

***TO:*** S. Wescott

***FROM:*** Kathi

***SUBJECT:*** Case No. 02-098-SPH */In the Matter of: Constellation Power Source Generation, Inc.* - **Copy of Transcript of Case to Date**

Larry:

Attached is a complete copy of the Transcript in the Constellation matter (you are scheduled to sit on this for hearing day #2 on Tuesday, February 18, 2003 at 10:00 a.m.).

This copy was provided today by Jennifer Busse at Whiteford – as I'm sure you'll recall, you've replaced Margaret on this case.

If you have any questions, please call me. Since Monday is a holiday (Presidents' Day) and our offices are closed, if you need to talk with me before Tuesday, February 18th, please call me at home (410-893-7747).

Kathi

FILE

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

20 COLUMBIA CORPORATE CENTER
10420 LITTLE PATUXENT PARKWAY
COLUMBIA, MARYLAND 21044-3528
TELEPHONE 410 884-0700
FAX 410 884-0719

JENNIFER R. BUSSE
DIRECT NUMBER
410 832-2077
jbusse@wtplaw.com

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FAX 202 331-0573

1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

February 12, 2003

RECEIVED
FEB 13 2003
BALTIMORE COUNTY
BOARD OF APPEALS

Ms. Kathleen C. Bianco
Administrator
County Board of Appeals of Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

**Re: In the Matter of: *Constellation Power Source Generation, Inc.***
**Baltimore County Case No. 02-098-SPH**
**Petition for Special Hearing to Amend Previously Approved Special Exception and Variance**

Dear Ms. Bianco:

In anticipation of Mr. Wescott joining the panel of Board of Appeals members hearing the above-referenced matter on Tuesday, February 18, 2003, enclosed please find a copy of the complete transcript as of this date. Please forward this on to Mr. Wescott.

Thank you for your cooperation in this matter. Please contact me with any questions.

Sincerely,

Jennifer R. Busse

JRB:sll
Enclosure
cc: Peter Max Zimmerman, Esquire
Richard A. Ransom, Esquire

*257766v3*

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gbarhight@wtplaw.com

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TELEPHONE 703 836-5742
FAX 703 836-0265

March 25, 2003

***DELIVERY BY HAND***

Mr. Charles Marks
County Board of Appeals of Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

**Re: In the Matter of: *Constellation Power Source Generation, Inc.***
**Case No. 02-098-SPH**
**Withdrawal of Petition**

Dear Mr. Marks:

Your Petitioner, Constellation Power Source Generation, Inc., has decided to withdraw its Petition for Special Hearing in the above-referenced matter. This withdrawal is being entered without prejudice to the rights of any party. Given this action, this office will not be filing a brief and it is my understanding that there will not be a public deliberation or a decision on the merits.

On behalf of this office, as well as Constellation Power Source Generation, Inc., and Virginia Materials, I wish to express our sincere appreciation for the many hours of effort expanded by the Board of Appeals in this case. Should you have any questions or comments, please feel free to contact me.

Sincerely,

G. Scott Barhight

GSB:sll
cc: Peter Max Zimmerman, Esquire *(delivery by hand)*
Ms. Kathleen C. Bianco *(delivery by hand)*
Constellation Power Source Generation, Inc.
Virginia Materials

*257766v5*

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TELEPHONE 703 836-5742
FAX 703 836-0265

July 17, 2002

Ms. Kathleen C. Bianco
Administrator
County Board of Appeals of Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

**Re: In the Matter of: *Constellation Power Source Generation, Inc.***
**Baltimore County Case No. 02-098-SPH**

Dear Ms. Bianco:

Enclosed please find a copy of the "Secretarial Letter Order" discussed during the hearing in this matter that took place on June 5, 2002, and referenced in the Deeds submitted as Petitioner's Exhibit 5. During the hearing, it was decided that this Secretarial Letter Order will be Petitioner's Exhibit 6.

Please feel free to contact me with any questions or concerns. Thank you for your cooperation in this matter.

Sincerely,

G. Scott Barhight

GSB:sll
cc: Richard A. Ransom, Esquire
Mr. James F. Burkman
Ms. Bonnie Johansen
Mr. John Burns
Michael T. Maguire, P.E.
Mr. John L. Jeffcoat
Mr. David Perlman
Peter Max Zimmerman, Esquire

257766

Original TO Exhibits
7-22-02

COMMISSIONERS

GLENN F. IVEY
CHAIRMAN

CLAUDE M. LIGON
SUSANNE BROGAN
CATHERINE I. RILEY
J. JOSEPH CURRAN, III

STATE OF MARYLAND

# PUBLIC SERVICE COMMISSION

SUSAN S. MILLER
GENERAL COUNSEL

FELECIA L. GREER
EXECUTIVE SECRETARY

GREGORY V. CARMEAN
EXECUTIVE DIRECTOR

RECD JUN 2 0 2000

**#13, 6/7/00 AM; ML#s 69971, 71269, 72563 and 72664**

June 19, 2000

Lisa M. Decker, Esquire
Baltimore Gas and Electric Company
P.O. Box 1475
Baltimore, Maryland 21203-1475

***Re: Baltimore Gas and Electric Company's Application for Transfer of its Generating Assets and for Exempt Wholesale Generator Status Determinations***

Dear Ms. Decker:

On December 22, 1999, Baltimore Gas and Electric Company ("BGE" or "Company") filed an Application for Transfer of its Generating Assets and for Exempt Wholesale Generator ("EWG") Status Determinations. The Application requests that the Commission approve the transfer of its generating assets to its affiliates pursuant to the terms of a Settlement Agreement entered into by BGE and numerous parties on June 29, 1999, which Settlement was approved by the Commission in Order No. 75757, issued on November 10, 1999. Among the terms of the Settlement, the generation function of BGE was to be deregulated following implementation of full customer choice for all classes, and BGE was required to transfer some or all of its generation assets to either affiliated or non-affiliated entities, with transfer to affiliates occurring at book value. In the Commission Order accepting the Settlement, the Commission directed BGE to file the application for transfer by December 31, 1999. Accordingly, BGE filed the instant application, stating it will transfer its non-nuclear generating plants and certain related transmission facilities to a special-purpose, wholly-owned indirect subsidiary of Constellation Energy Group, Inc. ("Constellation"), BGE's parent holding company, and the Calvert Cliffs Nuclear Power Plant will be transferred to another special-purpose, wholly-owned indirect subsidiary of Constellation.

BGE requests approval of the transfers from the Commission, consistent with the Electric Customer Choice and Competition Act[1] ("1999 Act") enacted during the 1999

[1] Section 7-501, *et seq.*, of the *Public Utility Companies Article* ("PSC" Article).

legislative session, and further requests the Commission make certain determinations that are required for the generating stations to obtain EWG status from the Federal Energy Regulatory Commission ("FERC"), which status would exempt the stations from certain requirements of the Public Utility Holding Company Act of 1935 ("PUHCA").[2]

Comments in support of the Application were filed by the Office of People's Counsel ("OPC") and Commission Staff, in addition to the Company. OPC also specifically requests that the Commission order the Company to file the actual transaction accounting information when the transfers are complete.

Staff has recommended that the Commission accept the Application for filing and issue the determinations necessary for EWG status. Staff initially recommended a hearing be docketed to allow comment on the proposed transfer and the EWG certification be contingent on BGE providing the Commission confidential notice of transactions that exceed five percent of the total assets of the Company and its consolidated subsidiaries. However, in subsequent comments, dated May 24, 2000, Staff indicates that BGE has supplied sufficient information so that the Commission may determine the transfer of generating assets to unregulated affiliates is in the public interest, and also recommends the Commission provide the requested EWG determinations. This approval would be contingent only upon informational filings made by BGE upon the transfer of assets.

The Mid-Atlantic Power Supply Association ("MAPSA") opposes the application and requests the Commission reject the transfer of generating assets and the request for determinations to allow BGE to obtain EWG status. In the alternative, MAPSA requests holding the application in abeyance and convening of hearings. In its opposition filed on March 20, 2000, MAPSA contends the application violates the 1999 Act, violates the Code of Conduct adopted in Case No. 8797, and constitutes an exploitation of the retail service market. In its argument, MAPSA objects to the transfers at book value and argues the Commission expressly reserved authority in the Settlement Order (No. 75757) under §§ 7-508 and 7-509 of the PSC Article that would allow either further hearing or rejection of the application in this case. Shell Energy, LLC ("Shell"), also filed comments, dated May 2, 2000, in opposition to the proposed transfer of assets by BGE, noting its opposition to the restructuring Settlement as well. Shell also requests hearings be instituted.

The Company opposes the requests for further hearing and alleges MAPSA is seeking to relitigate and effectively stay Order No. 75757. As to the development of a competitive market, BGE notes the Commission has full power, under § 7-514, to investigate the market for retail electricity supply and electricity supply services.

This matter was commented upon by the various interested parties during the Commission's Administrative Meeting held on June 7, 2000. During the course of the

---

[2] To obtain EWG status from FERC, each generator must be an "eligible facility," and state commissions having jurisdiction over rates or charges for electric energy must make a specific determination that allowing such facility to be an eligible facility will benefit consumers, is in the public interest, and does not violate state law.

Administrative Meeting, BGE provided an updated accounting of the proposed transfer to accomplish a total $1.1 billion dollar debt offset[3] and also noted that transfers of assets approved by FERC would be provided to the Commission.

In accordance with § 7-508(c)(2) of the 1999 Act, the Commission may review the transfer of assets for the purpose of determining:

> (i) that the appropriate accounting has been followed;
> (ii) that the transfer does not or would not result in an undue adverse effect on the proper functioning of a competitive electricity supply market; and
> (iii) the appropriate transfer price and ratemaking treatment.

The transfer of generation assets is governed not only by § 7-508, but also by the Settlement Agreement approved in Order No. 75757 on November 10, 1999. Paragraph 6 of the approved settlement states:

> Following the implementation of full customer choice for all customer classes, the generation function of BGE shall be deregulated and BGE shall transfer, sell... or otherwise dispose or encumber some or all of its generation assets to either affiliated or non-affiliated entities.... Any transfer of a generation asset from BGE to an affiliate shall occur at book value.... The transfer of generation assets shall be reflected on the books of the affiliate by removing from the books of BGE and recording on the books of the affiliate the amounts shown on the books of BGE as of the date of transfer.... Nothing in Paragraphs 6, 7, or 8 shall impair the operation of Code Sections 7-508 and 7-509.

The settlement also incorporates a Code of Conduct that binds BGE and the affiliates to certain standards that are designed to ensure that transactions between them are conducted at arm's length.

Upon consideration of the arguments and comments of the parties, the Commission finds that the proposed transfer of assets and requests for certain determinations relating to EWG status are in conformance with § 7-508 and with the approved Settlement, and accordingly the application will be granted.

BGE anticipates transferring generation assets with a net book value of approximately $2.05 billion. Fossil assets will be transferred to Constellation Generation, Inc. ("CGI"), a subsidiary of Constellation Enterprise. Nuclear-related assets will be transferred to Calvert Cliffs, Inc. ("CCI"), a subsidiary of Constellation Nuclear Group,

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[3] *See*, Letter from Thomas E. Ruszin, Jr., Treasurer, Baltimore Gas and Electric Company dated June 12, 2000.

LLC. When the transfer is finalized, approximately $2.714 billion in assets will be removed from electric rate base.

BGE's outstanding debt obligations are comprised of $278 million in pollution control debt related to electric generating stations, approximately $819 million in Medium Term Notes (MTNs) and approximately $1.3 billion in First Mortgage Bonds. The pollution control debt will be transferred to the affiliates because this debt specifically relates to the operation of the plants. However, the mortgage bonds and MTNs cannot be assigned, meaning they cannot be assumed by the affiliate. Therefore, subject to Internal Revenue Service ruling, BGE anticipates that the utility will receive a note from the affiliates for approximately $426 million with a maturity not to exceed one year. An additional debt offset will be provided to BGE, to achieve a total $1.1 billion debt removal. The Commission determines that the proposed accounting is both reasonable and appropriate.

The Commission also finds that the proposed transfer will not have an adverse effect on the competitive electricity supply market at this time. Both CCI and CGI will be engaged primarily in wholesale power trading. Constellation Power Source, Inc. ("CPSI") a subsidiary that owns no electric generation, transmission or distribution facilities, will be the power marketer that will supply BGE with the electric power necessary to provide Standard Offer Service to its customers during the transition period in conformity with the approved settlement. BGE seeks EWG status for CCI and CGI, who will control the generation assets but will not directly market power to BGE. CPSI will provide wholesale electric power to BGE through wholesale electric sales agreements approved by the Federal Energy Regulatory Commission. The Commission determines that the restrictions discussed above, as well as the Code of Conduct contained in the approved Settlement, prevent BGE from exploiting an unfair competitive advantage in the retail electric supply market. The protections provided by the Code of Conduct in the approved Settlement, including the prohibition against marketing Standard Offer Service or competitive supply service, and the sale of the output of the transferred generating assets to the wholesale market on a non-discriminatory basis, minimize the likelihood that BGE will be capable of exerting market power.

With regard to the appropriate transfer price, the approved Settlement provides that these generating assets should be transferred at book value. With respect to the opposition of MAPSA and Shell, their objections to the transfers at book value are essentially a reiteration of prior arguments in opposition to the Settlement, which Settlement provided for transfers to affiliates at book value. The Commission finds that these proposed transfers do not violate the 1999 Act, and further finds that the transfers conform with the approved Settlement. Also, the record indicates the Commission will be apprised of transfers approved by FERC, and the Commission hereby directs the Company to file the actual transaction accounting information when transfers are complete to assure proper accounting of the transfers. The information provided shall include actual data regarding assets and debt obligations that are assumed by the affiliates as well as the journal entries that the utility will record to its books for transactions related to asset transfer.

Finally, with regard to the ratemaking treatment of the asset transfer, the Commission notes as an initial matter that pursuant to the approved Settlement, ratepayers will be protected from any rate effects of the proposed transfer since rates will be frozen for a period of years. However, the Commission hereby determines that this Order shall not be construed in any manner as approval of a particular capital structure for ratemaking purposes.

On a related matter, in its application, BGE seeks EWG status for CCI and CGI. The Public Utility Holding Company Act of 1935 ("PUHCA") is administered by the Securities and Exchange Commission ("SEC"). The purpose of PUHCA is to prevent financial abuses, *See*, 15 USC § 79(a). Absent an exemption, a public utility holding company, as well as its public utility and non-utility subsidiaries, are subject to PUHCA. EWG status provides an exemption from PUHCA for eligible facilities that are exclusively in the business of owning and/or operating and selling electric energy at wholesale. An eligible facility either uses the electric generation for sale at wholesale or leases it to one or more public utility companies. 15 USCS § 79z-5a(a)(2). An electric utility is prohibited from entering into a contract to purchase electric power from an EWG that is an affiliate unless FERC grants an exemption from this prohibition. 15 USCS § 79z-5a(k). Thus, EWG status prohibits retail sales by these entities and requires that the energy produced by such entities be marketed solely in the wholesale market. The Commission finds that such action is in the public interest and benefits consumers since EWG status requires the generation output of CCI and CGI to be exclusively available to the wholesale market and, thereby, enhances competition in the retail electric market. Furthermore, this result is consistent with paragraph 44 of the approved Settlement and the 1999 Act. Thus, granting EWG status to CCI and CGI is not contrary to State law.

In conclusion, we find the Application furthers the Settlement previously approved by the Commission and comports with § 7-508 of the 1999 Act. We further find that allowing the generating facilities involved to be eligible facilities for EWG status will benefit consumers, is in the public interest, and does not violate State law.

For the reasons set forth above, BGE's Application for transfer of its generating assets and for certain determinations regarding EWG status is hereby approved.

By Direction of the Commission,

Felecia L. Greer
Executive Director

FLG/grm

cc: All Parties of Record in Case Nos. 8794/8804

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October 22, 2002

RECEIVED
OCT 23 2002
BALTIMORE COUNTY
BOARD OF APPEALS

Ms. Kathleen C. Bianco
Administrator
County Board of Appeals of Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

**Re: In the Matter of: *Constellation Power Source Generation, Inc.***
**Baltimore County Case No. 02-098-SPH**

Dear Ms. Bianco:

Enclosed please find three (3) copies of two of Petitioner's Exhibits from the hearing in this matter that took place on June 5, 2002 and October 17, 2002. Specifically, enclosed please find Petitioner's Exhibits 5 and 24. Exhibit 5 is a Deed dated July 1, 2002 by and between BGE and Constellation Power Source Generation, Inc. Exhibit 24 is a letter of support from the Bowley's Quarters Improvement Association.

Please feel free to contact me with any questions or concerns. Thank you for your cooperation in this matter.

Sincerely,

G. Scott Barhight /sb

G. Scott Barhight

GSB:sll
cc: Richard A. Ransom, Esquire
Peter Max Zimmerman, Esquire, w/enclosures

*257766v2*

**The Bowleys Quarters Improvement Association, Inc.**
P.O. Box 18051 Baltimore, Maryland 21220 (410) 335-9802

January 12, 2002

Constellation Power Source Generation
Carroll Island
Middle River, MD. 21220

To Whom It May Concern:

The Bowleys Quarters Improvement Association is writing you in support of the proposed slag/bottom ash recycling plant located on the C.P. Crane power plant property.

Representatives from Constellation Power Source Generation (CPSG) met with our community on October 11, 2001 at the Association Hall. At the meeting the company discussed that slag, which is a natural by-product of burning coal, is recycled for use as blasting grit and in the manufacture of roofing shingles. It is understood that currently Crane produces approximately 42,000 tons of slag per year, which is trucked to Virginia for processing by Virginia Materials. It is dried and sized and then shipped back to the Baltimore area where their customers are located. It is our understanding that Virginia Materials and CPSG would like to have this operation on site so they can operate more efficiently by not trucking the material to Virginia. We understand that the structure is planned to be small, less than 5000 square feet, and the operation will utilize 5-7 acres of existing infrastructure located within the 100 acre Crane site.

CPSG estimates that the truck traffic will be cut in half and the recycled material will be dry instead of wet. From the communities perspective relocating this operation makes sense. We expect that CPSG will continue to work with the community to keep us informed of issues at the plant.

Very Truly Yours,

Michael Vivirito
President

Petitioner's
EXHIBIT
24

MARYLAND COMMERCIAL TITLE COMPANY
22 LIGHT STREET - SUITE 450
BALTIMORE, MARYLAND 21202

0 4557 453

# DEED

**THIS DEED** is made as of July 1, 2000, by and between **BALTIMORE GAS AND ELECTRIC COMPANY, a Maryland corporation,** party of the first part, "BGE" or "Grantor", and **CONSTELLATION POWER SOURCE GENERATION, INC., a Maryland corporation,** party of the second part, "CPS Generation" or "Grantee".

## BACKGROUND

BGE is a combination electric and gas utility which provides retail service subject to the jurisdiction of the Maryland Public Service Commission ("PSC"). BGE is a wholly-owned subsidiary of Constellation Energy Group, Inc. ("Constellation Energy"), a Maryland corporation which is a public utility holding company exempt from registration under Section 3(a)(1) of the Public Utility Holding Company Act, 15 U.S.C. § 79c(a)(1).

Maryland's Electric Customer Choice and Competition Act of 1999 (the "Electric Restructuring Act" or "Act") provides for the deregulation of electric power in Maryland. On November 10, 1999, the PSC issued Order No. 75757 (the "Settlement Order") approving a settlement among BGE and certain other parties regarding the implementation of the Electric Restructuring Act. In furtherance of the Act and the Settlement Order, BGE adopted a plan to transfer its ten electric generating stations in Maryland to certain affiliated entities. On June 19, 2000, the PSC issued a Secretarial Letter Order approving BGE's plan for the transfer of the generating stations.

BGE's generating stations include the C. P. Crane Generating Station (the "Station") in Baltimore County, Maryland. The affiliated entity that will acquire title to the nine fossil-fired electric generating stations, including the Station, is CPS Generation. CPS Generation is currently a wholly-owned direct subsidiary of BGE. The transfer of the nine fossil-fired electric generating stations to CPS Generation is part of a tax-free reorganization under Section 368(a) of the Internal Revenue Code in which the outstanding shares of CPS Generation will be transferred from BGE to Constellation Energy.

Although BGE is transferring to CPS Generation fee simple title to the land, buildings and other improvements comprising the Station, BGE will continue to own, operate and maintain certain electric transmission, electric distribution, electric substation, telecommunications and/or gas facilities at the Station (collectively the "Associated Utility Facilities") pursuant to the Utility Facilities Easement Agreement between BGE and CPS Generation of even date herewith that pertains to the Station and is intended to be recorded among the Land Records immediately following the recording of this Deed (the "Utility Facilities Easement Agreement").

**NOW THEREFORE,** as part of, and in consideration of the consummation of, the aforesaid Section 368(a) tax-free reorganization, and in partial satisfaction of the requirements of the aforesaid PSC Orders, the said party of the first part hereby grants and conveys to the party of



Petitioners EXHIBIT 5

the second part, its successors and/or assigns, in fee simple, all those parcels of land in Baltimore County, State of Maryland, which are described as follows:

SEE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT A.

**TOGETHER WITH** (except as excepted and reserved to Grantor in the next paragraph) the buildings thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining (such parcels of land, buildings and appurtenant rights being herein called the "Fee Simple Property").

**EXCEPTING AND RESERVING** unto Grantor (1) the "Company's Easement Facilities", as such term is defined in the Utility Facilities Easement Agreement, and (2) the landlord's (reversionary) interest in any and all existing leases of (a) "Communications Facilities", as such term is defined in the Utility Facilities Easement Agreement, and/or (b) space for Communications Facilities upon the Fee Simple Property.

**SUBJECT TO** (1) any and all easements, restrictions and other matters of record which affect title to the Fee Simple Property, and (2) the Utility Facilities Easement Agreement.

**TO HAVE AND TO HOLD** the Fee Simple Property to Grantee, its successors and/or assigns, in fee simple.

**GRANTOR** hereby covenants that it has not done or suffered to be done any act, matter or thing whatsoever to encumber the Fee Simple Property, except as provided in EXHIBIT B attached hereto; that it will warrant specially the Fee Simple Property; and that it will execute such further assurances of the same as may be requisite.

**GRANTOR** certifies that the above conveyance is part of a tax-free reorganization under Section 368(a) of the Internal Revenue Code, and therefore the above conveyance is exempt from State recordation and transfer taxes and County transfer taxes pursuant to Sections 12-108(p)(2), 13-207(a)(9) and 13-405(c), respectively, of the Tax-Property Article of the Annotated Code of Maryland.

**GRANTOR** further certifies that this conveyance is not part of a transaction in which there is a sale, lease, exchange or other transfer of all or substantially all the property and assets of the said corporate grantor.

**IN WITNESS WHEREOF,** Grantor has caused this Deed to be executed under seal as of the day and year herein first written.

**WITNESS:**

**BALTIMORE GAS AND ELECTRIC COMPANY, a Maryland corporation**

By: _____(SEAL)
Name:
Title:

**STATE OF MARYLAND**

**CITY/~~COUNTY~~ OF** Baltimore, to wit:

**I HEREBY CERTIFY,** That on this 21st day of June 2000, before me, the subscriber, a Notary Public of the State aforesaid, personally appeared Gregory C. Martin who acknowledged himself to be a Vice President of Baltimore Gas and Electric Company, a Maryland corporation, and that he, as such Vice President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such President.

**IN WITNESS WHEREOF,** I hereunto set my hand and official seal.

_____ Notary Public
MARGUERITE F. STROBEL
MY COMMISSION EXPIRES
JANUARY 1, 2003

My Commission Expires: _____

**THIS IS TO CERTIFY** that the within instrument has been prepared by or under the supervision of the undersigned Maryland attorney.

_____(SEAL)
Richard A. Ransom
Attorney for Grantor
Baltimore Gas and Electric Company

RAR:PP Crane Deed 1
06/20/00

EXHIBIT "A"

PARCEL I

BEGINNING for the same at the intersection of the center line of the road leading from Carroll Island Road to the dwelling house now belonging to Francis W. Asher, with the north side of the Carroll Island Road, said place of beginning being at the distance of 1053 feet, south 70 degrees 27 minutes east from a stone heretofore planted on the northeast side of Carroll Island Road, where the same is intersected by the first line of the land which by a deed dated July 25, 1918 and recorded among the Land Records of Baltimore County in Liber W.P.C. No. 506, folio 12, was conveyed by The Bengies Ducking Club to Francis W. Asher and wife, and running thence bounding on the center of the aforesaid road leading to the dwelling house now belonging to Francis W. Asher, north 03 degrees 30 minutes east 539 feet, thence south 81 degrees 15 minutes east 13 feet to a large walnut tree; thence still south 81 degrees 15 minutes east 125.80 feet to the center of a drain ditch; thence bounding on the center of said ditch, north 41 degrees 32 minutes east 375 feet to the head of a marsh; thence through said marsh, the two following courses and distances, viz: north 29 degrees 28 minutes east 180 feet and north 16 degrees east 120 feet to the waters of Salt Peter Creek; thence bounding on the waters of said Creek, the twelve following courses and distances, viz: north 72 degrees 10 minutes east 88 feet, south 76 degrees 38 minutes east 111 feet, north 80 degrees 08 minutes east 284.50 feet, south 76 degrees 48 minutes east 183.70 feet, north 66 degrees 52 minutes east 336 feet, south 15 degrees 39 minutes east 21 feet, south 48 degrees 33 minutes west 181 feet, south 10 degrees 49 minutes east 100 feet, south 40 degrees 11 minutes east 330 feet, south 32 degrees 23 minutes east 100 feet, south 05 degrees 38 minutes east 220 feet and south 70 degrees 26 minutes east 190 feet, more or less, to intersect the division line between the land now being described and the land now owned by the United States of America; thence bounding on said division line, approximately south 31 degrees west 850 feet, more or less, to intersect the outline of a tract of land called "Scott's Improvement"; thence binding on the outline of said tract of land, now marked by a fence, north 75 degrees 14 minutes west 1490 feet, more or less, to the place of beginning. Containing 43.20 acres of land, more or less.

CLERK'S NOTATION

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PARCEL II

BEGINNING for the same at a point in the first or north 79 degrees west 290 perches line of Clonish Carrolls' Island Resurveyed under special warrant dated January 8th, 1851, at the end of the south 09 degrees 15 minutes east 44 perches line of the land described in a Deed from Stephen A. Wilkinson and wife to Benjamin W. Jenkins, dated November 2nd, 1869, and recorded among the Land Records of Baltimore County in Liber E.H.A. No. 64, folio 206, said point being distant south 74 degrees 57 minutes east 434 feet from the end of said north 79 degrees west 290 perches line and running thence binding reversely on said first line of Clonish Carrolls' Island Resurveyed, as now surveyed, south 74 degrees 57 minutes east 2558.7 feet to intersect the westernmost outline of a Reservation of United States of America, as indicated by Stone No. 125 and Stone No. 124, heretofore planted at a point distant north 31 degrees east 101.2 feet from said Stone No. 125; thence binding on said westernmost outline, south 31 degrees west 1784.4 feet to intersect the south 39 degrees east 74 perches line of Clonish Carrolls' Island Resurveyed, thence binding reversely on said south 39 degrees east 74 perches line, as now surveyed, north 34 degrees 48 minutes west 443.4 feet to the shore of Seneca Creek at a point distant south 34 degrees 48 minutes east 115.5 feet from a stone heretofore planted at the end of the second line of Clonish Carrolls' Island Resurveyed and at the beginning of Chestnut Neck; thence binding on the shore of Seneca Creek, as now surveyed, the seventeen following courses and distances, to wit: south 82 degrees 46 minutes west 79.3 feet, south 56 degrees 42 minutes west 300.2 feet, south 47 degrees west 160.1 feet, south 28 degrees 51 minutes west 151.3 feet, south 46 degrees 50 minutes west 83.4 feet, south 88 degrees 59 minutes west 305 feet, north 63 degrees 57 minutes west 337 feet, north 15 degrees west 78 feet, north 05 degrees 30 minutes east 132 feet, north 54 degrees west 80 feet, north 44 degrees 45 minutes west 40 feet, north 81 degrees west 97 feet, north 44 degrees 15 minutes west 140 feet, north 37 degrees west 65 feet, north 12 degrees west 125 feet, north 22 degrees east 65 feet and north 44 degrees 53 minutes east 59.3 feet to the end of the third or north 48 degrees 15 minutes west 61.4 perches line of the land described in a Deed from Stephen A. Wilkinson to Benjamin W. Jenkins, dated May 17, 1869, and recorded among said Land Records in Liber E.H.A. No. 62, folio 394; thence running with and binding on part of the fourth line of the land described in said last mentioned deed, north 03 degrees 02 minutes east 674.67 feet to a stone heretofore planted in a marsh at the end of the second or south 45 minutes west 31.4 perches line of the land described in the first mentioned deed from Stephen A. Wilkinson to Benjamin W. Jenkins; thence running with the outlines thereof the three following courses and distances, to wit: north 61 degrees 07 minutes west 231.83 feet to a stake, north 16 degrees 40 minutes east 495 feet to a stone heretofore planted and north 42 degrees 11 minutes west 508.56 feet to a stake at a point distant south 47 degrees 12 minutes west 20 feet from a stone heretofore planted in a line of Chestnut Neck at the end of the first or north 79 degrees west 290 perches line of Clonish Carrolls' Island Resurveyed hereinbefore mentioned; thence north 31 degrees 45 minutes west 315.17 feet to the center line of Carrolls' Island Road at a point distant north 31 degrees 45 minutes west 16 feet from a stone heretofore planted; thence binding on the center line of Carrolls' Island Road, the five following courses and distances, to wit: south 66 degrees 34 minutes east 323.3 feet, south 71 degrees east 99 feet, south 53 degrees 53 minutes east 66 feet, south 36 degrees 33 minutes east 69.25 feet and south 26 degrees 24 minutes east 187.25 feet to a point in the south 10 degrees east 54 perches line of the land described in a Deed from T. T. Gibbons and wife to Thomas Wilkinson and S. A. Wilkinson, dated October 14th, 1852, and recorded among said Land Records in Liber H.M.F. No. 3, folio 182, at a point distant south 05 degrees 34 minutes east 47.2 feet from a stone heretofore planted in said line; and thence running with and binding on said last mentioned line, south 05 degrees 34 minutes east 53.75 feet to the place of beginning. Containing a total area of 95.2 acres of land, of which 6.8 acres is submerged land, leaving 88.4 acres of fast land. The within description and the acreage hereinabove set forth are based on a Survey dated December 14, 1928, prepared by Sutton-Britcher & Co.

CLERK'S NOTATION
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EXHIBIT "A"
(CON'T) -

PARCEL III

BEGINNING for the same in the center of the Carroll's Island Road, as now located and traveled, and at a point in the sixth or South 73 degrees 16 minutes East 150 feet line of a parcel of land which by a Deed dated April 2nd, 1925 and recorded among the Land Records of Baltimore County in Liber W.P.C. No. 610, folio 354, was conveyed by Alma Frayder and husband, et al, to Mary M. Hughes, et al, said point being distant South 80 degrees 07 minutes East 110.45 feet, measured along said sixth line from the beginning thereof and running thence with and binding on the outlines of said parcel of land and binding on or near the center of the Carroll's Island Road, as now located and traveled, the ten following courses and distances viz: South 80 degrees 07 mimites East 39.55 feet, South 82 degrees 37 minutes East 285.00 feet, South 74 degrees 52 mimites East 250.00 feet, South 78 degrees 52 minutes East 100.00 feet, North 88 degrees 48 minutes East 275.00 feet, North 81 degrees 39 minutes East 150.00 feet, North 87 degrees 48 minutes East 100.00 feet, South 78 degrees 42 minutes East 100.00 feet, South 68 degrees 02 minutes East 150.00 feet and South 62 degrees 32 minutes East 66.00 feet, thence leaving said Carroll's Island Road and running with and binding on a part of the sixteenth or South 18 degrees 00 minutes West 1401 feet line of said parcel of land which was conveyed by Frayser to Hughes, South 11 degrees 00 minutes 30 seconds West 323.01 feet to a concrete monument now set in said line, said sixteenth line being the common boundary between the herein named Grantor and Rena P. Wilkinson et al, thence leaving said outlines and running for lines of division, now made the four following lines, viz: North 81 degrees 51 minutes 50 seconds West 213.27 feet to a concrete monument now set, North 70 degrees 20 minutes 28 seconds West 532.28 feet to a concrete monument now set, westerly by a line curving toward the left having a radius of 686.00 feet, for a distance of 273.51 feet (the chord of said arc bearing North 81 degrees 45 minutes 47 seconds West 271.70 feet) to a concrete monument now set and South 86 degrees 48 minutes 54 seconds West 141.50 feet to a concrete monument now set on the east side of the Proposed Relocation of Seneca Park Road, 70 feet wide, thence binding on the east side of said Proposed Relocation of Seneca Park Road, Southerly by a line curving toward the right having a radius of 751.00 feet for a distance of 185.81 feet (the chord of said arc bearing South 6 degrees 11 minutes 33 seconds West 185.34 feet), thence North 76 degrees 43 minutes 10 seconds West 35.00 feet to a point in the center of said Proposed Relocation of Seneca Park Road and also in the center of the existing location of Seneca Park Road, thence still North 76 degrees 43 minutes 10 seconds West 35.00 feet to a point on the West side of said Proposed Relocation of Seneca Park Road, 70 feet wide, thence binding on the West side of said Proposed Relocation of Seneca Park Road, the two following lines viz: Northerly by a line curving toward the left having a radius of 681.00 feet for a distance of 267.14 feet (the chord of said arc bearing North 2 degrees 02 minutes 33 seconds East 265.43 feet) and North 9 degrees 11 minutes 44 seconds West 142.69 feet to the corner formed by the intersection of the west side of the Proposed Relocation of Seneca Park Road with the South side of the Proposed Relocation of Carroll's Island Road, 70 feet wide, thence binding on the South side of the Proposed Relocation of Carroll's Island Road, 70 feet wide, Westerly by a line curving toward the right having a radius of 751.00 feet, for a distance of 200.82 feet ( the chord of said arc bearing North 88 degrees 51 minutes 45 seconds West 200.23 feet) and thence North 8 degrees 47 minutes 53 seconds East 38.02 feet to the place of beginning.

CONTAINING 6.031 Acres of land, more or less.

THE courses in the above description are referred to the True Meridian as established in a survey made by Edward V. Coonan and Company of Property of the Baltimore Gas and Electric Company to be known as "Charles P. Crane Station" on Carroll's Island.

CLERK'S NOTATION

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EXHIBIT "A"
(CON'T)

PARCEL IV

BEGINNING for the same at station 75 + 03.67 of the line established as the center line of a proposed railroad siding of the Pennsylvania Railroad Company to be known as the Charles P. Crane Station railroad siding, said Station 75 + 03.67 being located at the point of intersection of said line established as the center line of said railroad siding with the 32nd or South 29 degree 44 minute West 1294.5 foot line of a parcel of land which by a Deed dated February 7th, 1928 and recorded among the Land Records of Baltimor County, in Liber W.H.M. No. 654, folio 282, was conveyed by Stephen A. Wilkinson and wife to The Real Estete Trustee, Incorporated, said point of intersection being distant North 22degrees 57 minutes 30 seconds East 753.43 feet measured reversely along said 32nd line and 33rd line from the center of Carroll's Island Road, and thence running from said place of beginning and running with and binding on a part of said 32nd line, South 22 degrees 57 minutes 30 seconds West 132.16 feet to intersect a line established as the center line of an electrical transmission line right of way, thence continuing to run with and bind on a part of said 32nd line South 22 degrees 57 minutes 30 seconds West 68.11 feet, said 32nd line being the common boundary between the herein named Grantors and John H. Norris and wife, thence leaving said outline and running for a line of division now made parallel with the center line of said electrical transmission line right of way and distant 60 feet, southwesterly therefrom, measured at a right angle thereto, South 19 degrees 57 minutes 40 seconds East 518. 75 feet, thence still running for a line of division now made, South 23 degrees 07 minutes 01 seconds East 198.03 feet to a point in the center of Carroll's Island Road as now located and traveled, thence running with and binding on part of the 3rd and on the 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th and 12th lines of said parcel of land and binding in the center of Carroll's Island Road as now located and traveled the 10 following courses and distances, South 80 degrees 07 minutes East 39.55 feet South 82 degrees 37 minutes East 285.00 feet, South 74 degrees 52 minutes East 290.00 feet, South 78 degrees 52 minutes East 100.00 feet, North 88 degrees 48 minutes East 275.00 feet, North 81 degrees 39 minutes East 150.00 feet, North 87 degrees 48 minutes East 100.00 feet, South 78 degrees 42 minutes East 100.00 feet, South 68 degrees 02 minutes East 150.00 feet, and South 62 degrees 32 minutes East 66.00 feet, thence leaving said Carroll's Island Road and running with and binding on a part of the 13th line of said parcel of land South 11 degrees 00 minutes 30 seconds West 323.01 feet to a concrete monument now set in said line, said 13th line being the common boundary between the herein named grantors and Cecille S. Garrison, thence leaving said outline and running for lines of division the two following courses and distances, South 81 degrees 51 minutes 50 seconds East 691.44 feet to a concrete monument now set and South 57 degrees 52 minutes 49 seconds East 599.38 feet to a concrete monument now set in the 20th or North 16 degree 31 minute East 495 foot line of the aforesaid parcel of land which was conveyed by Stephen A. Wilkinson and wife to The Real Estate Trustee, Incorporated, thence running with and binding on part of said 20th line and on the 21st and 22nd line of said parcel of land and also running with and binding on the outlines of a parcel of land which by a Deed dated November 26th, 1956 and recorded among the Land Records of Baltimore County, in Liber G.L.B. No. 3061, folio 309, was conveyed by The Guarantee Title Holding Corp., to the Bankers Trust Company and the Baltimore Gas and Electric Company, the three following courses and distances, North 9 degrees 21 minutes East 85.21 feet to a concrete monument heretofore set at the end of said 20th line, North 49 degrees 30 minutes West 508.56 feet to a concrete monument heretofore set and North 39 degrees 04 minutes West, passing over a concrete monument heretofore set near the South side of the Carroll's Island Road, 315.17 feet to a point within the right of way of said Road, thence binding within the right of way of said Carroll's Island Road and running with and binding on the 23rd line of the aforesaid parcel of land which was conveyed by Wilkinson to The Real Estate Trustee, Incorporated, North 86 degrees 07 minutes East 323.30 feet to a point in the center line of the Carroll's Island Road, thence leaving said Carroll's Island Road, as now located and traveled, and running for lines

CLERK'S NOTATION
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photographic reproductions

PARCEL IV (CON'T)

of division, the twelve following lines, North 7 degrees 38 minutes 06 seconds East 45.00 feet, North 82 degrees 21 minutes 54 seconds West 1114.54 feet, thence binding on the North side of the proposed relocation of Carroll's Island Road 80 feet wide, North 70 degrees 43 minutes 16 seconds West 427.12 feet, thence continuing to bind on the North side of the proposed relocation of Carroll's Island Road 80 feet wide, northwesterly by a line curving to the left having a radius of 761 feet for a distance of 472.73 feet (the chord of said arc bearing North 88 degrees 31 minutes 01 seconds West 465.16 feet) thence North 64 degrees 41 minutes 05 seconds West 96.69 feet, thence parallel with the aforesaid line established as the center line of said proposed railroad siding and distant 90 feet northeasterly therefrom, (measured at a right angle thereto, North 42 degrees 45 minutes West 175.58 feet, thence parallel with and 30 feet distant measured radially in a Northeasterly direction from said center line, Northwesterly by a line curving towards the right having a radius of 1243.57 feet for a distance of 445.79 feet (the chord of said arc bearing North 32 degrees 28 minutes 49 seconds West 443.41 feet) thence North 67 degrees 47 minutes 22 seconds East 10.00 feet, thence parallel with and 40 feet distant measured radially in a Northeasterly direction from said center line, Northwesterly by a line curving towards the right having a radius of 1233.57 feet, for a distance of 48.43 feet, (the chord of said arc bearing North 21 degrees 05 minutes 09 seconds West 48.43 feet) thence parallel with the center line and distant 40 feet Northeasterly therefrom measured at a right angle thereto, North 19 degrees 57 minutes 40 seconds West 200.00 feet, thence South 70 degrees 02 minutes 20 seconds West 10.00 feet, thence parallel with said center line and distant 30 feet northeasterly therefrom measured at a right angle thereto, North 19 degrees 57 minutes 40 seconds West 46.68 feet, to intersect the aforesaid 32nd line, thence running with and binding on a part of said line, South 22 degrees 57 minutes 30 seconds West 44.06 feet to the place of beginning.

CONTAINING 17.791 acres of land, more or less.

THE courses in the above description are referred to the True Meridian as established in a survey of the above referred to property which was conveyed by the Guarantee Title Holding Corporation to the Bankers Trust Company, and the Baltimore Gas and Electric Company, as made by Edward V. Coonan and Company and dated October 22nd, 1956.

Being the same lot of ground conveyed to Baltimore Gas and Electric Company and Bankers Trust Company by Deed dated November 26, 1956 and recorded among the Land Records of Baltimore County in Liber 3061, folio 306; Deed dated November 26, 1956 and recorded as aforesaid in Liber 3061, folio 309; Deed dated October 5, 1959 and recorded in Liber 3608, folio 218; and Deed dated October 5, 1959 and recorded in Liber 3608, folio 228.

CLERK'S NOTATION
Document submitted for record in a condition not permitting satisfactory photographic reproduction.

## EXHIBIT "B"

1. Subject to Right of Way contained in Deeds dated October 5, 1959 and recorded as aforesaid in Liber 3608, folio 218, by and between Cecille S. Garrison, Bankers Trust Company and Baltimore Gas and Electric Company and Liber 3608, folio 228, by and between Rena P. Wilkinson, Thomas A. Frayser and Edna May Frayser; Bankers Trust Company; and Baltimore Gas and Electric Company.

2. Subject to terms and provisions contained in a Deed of Easement dated October 6, 1965 and recorded as aforesaid in Liber 4536, folio 151, between Baltimore Gas and Electric Company and Baltimore County, Maryland.

3. Subject to terms and provisions contained in a Deed of Easement and Partial Release of Mortgage dated April 18, 1979 and recorded as aforesaid in Liber 6031, folio 849, by and between Baltimore Gas and Electric Company; Bankers Trust Company; and The United States of America.

4. Subject to the legal operation and effect of original Indenture dated February 1, 1919 and recorded as aforesaid in Liber WPC No. 555, folio 1 and twenty-three (23) Supplemental Indentures thereto.

0014557 462

# State of Maryland Land Instrument Intake Sheet

☐ Baltimore City ☒ County: MC-3559

*Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office only.*

(Type or Print in Black Ink Only—All Copies Must Be Legible)

IMP FD SURE $ 5.00
RECORDING FEE 20.00
TOTAL 25.00
Rcpt# BA01 Rcpt # 68156
SM SR Blk # 2267
Jun 28, 2000 12:24 PM

**1 Type(s) of Instruments** (☐ Check Box if Addendum Intake Form is Attached.)

| ☒ Deed | ☐ Mortgage | ☐ Other | ☐ Other |
|---|---|---|---|
| ☐ Deed of Trust | ☐ Lease | | |

**2 Conveyance Type** Check Box

| ☐ Improved Sale Arms-Length [1] | ☐ Unimproved Sale Arms-Length [2] | ☐ Multiple Accounts Arms-Length [3] | ☐ Not an Arms-Length Sale [9] |
|---|---|---|---|

**3 Tax Exemptions (If Applicable)** Cite or Explain Authority

Recordation Sec T.P. Art 12-108(g)(2), 13-207(g)(9)
State Transfer & 13-405(c)
County Transfer PAYMENT TO SUBSIDIARY

**4 Consideration and Tax Calculations**

| Consideration Amount | |
|---|---|
| Purchase Price/Consideration | $ |
| Any New Mortgage | $ |
| Balance of Existing Mortgage | $ |
| Other: | $ |
| Other: | $ |
| Full Cash Value | $ |

| Finance Office Use Only | |
|---|---|
| **Transfer and Recordation Tax Consideration** | |
| Transfer Tax Consideration | $ |
| X ( ) % = | $ |
| Less Exemption Amount – | $ |
| Total Transfer Tax = | $ |
| Recordation Tax Consideration | $ |
| X ( ) per $500 = | $ |
| TOTAL DUE | $ |
| Agent: | |
| Tax Bill: | |
| C.B. Credit: | |
| Ag. Tax/Other: | |

**5 Fees**

| Amount of Fees | Doc. 1 | Doc. 2 |
|---|---|---|
| Recording Charge | $ | $ |
| Surcharge | $ | $ |
| State Recordation Tax | $ | $ |
| State Transfer Tax | $ | $ |
| County Transfer Tax | $ | $ |
| Other | $ | $ |
| Other | $ | $ |

**6 Description of Property**

SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).

| District | Property Tax ID No. (1) | Grantor Liber/Folio | Map | Parcel No. | Var. LOG (5) |
|---|---|---|---|---|---|
| 15 | 15 02 0001271 | 0306/0309 | | | |

| Subdivision Name | Lot (3a) | Block (3b) | Sect/AR(3c) | Plat Ref. | SqFt/Acreage (4) |
|---|---|---|---|---|---|
| | | | | | |

Location/Address of Property Being Conveyed (2)
58.4 AC ± See Attached

Other Property Identifiers (if applicable)
See Attached

Water Meter Account No.

Residential ☐ or Non-Residential ☒ Fee Simple ☐ or Ground Rent ☐ Amount:

Partial Conveyance? ☐ Yes ☒ No Description/Amt. of SqFt/Acreage Transferred:

If Partial Conveyance, List Improvements Conveyed:

**7**

| Doc. 1 - Grantor(s) Name(s) | Doc. 2 - Grantor(s) Name(s) |
|---|---|

CP CANAL

| | | |
|---|---|---|
| 15-02-001277 | 88.4 Ac | SS CARROLL ISLAND LA |
| 15-02-001278 | 43.20 Ac | NES KEENERS RD |
| 15-02-001306 | 17.791 Ac | N+SS CARROLL ISLAND LA |
| 15-02-001307 | 8.031 Ac | SWS CARROLL ISLAND LA |

**The Bowleys Quarters Improvement Association, Inc.**
P.O. Box 18051 Baltimore, Maryland 21220 (410) 335-9802

January 12, 2002

Constellation Power Source Generation
Carroll Island
Middle River, MD. 21220

To Whom It May Concern:

The Bowleys Quarters Improvement Association is writing you in support of the *proposed slag/bottom ash recycling plant located on the C.P. Crane power plant* property.

Representatives from Constellation Power Source Generation (CPSG) met with our community on October 11, 2001 at the Association Hall. At the meeting the company discussed that slag, which is a natural by-product of burning coal, is recycled for use as blasting grit and in the manufacture of roofing shingles. It is understood that currently Crane produces approximately 42,000 tons of slag per year, which is trucked to Virginia for processing by Virginia Materials. It is dried and sized and then shipped back to the Baltimore area where their customers are located. It is our understanding that Virginia Materials and CPSG would like to have this operation on site so they can operate more efficiently by not trucking the material to Virginia. We understand that the structure is planned to be small, less than 5000 square feet, and the operation will utilize 5-7 acres of existing infrastructure located within the 100 acre Crane site.

CPSG estimates that the truck traffic will be cut in half and the recycled material will be dry instead of wet. From the communities perspective relocating this operation makes sense. We expect that CPSG will continue to work with the community to keep us informed of issues at the plant.

Very Truly Yours,

Michael Vivirito
President

Petitioner's
EXHIBIT
24

Raymond J. Piechocki
Pamela S. Rurka
824 Seneca Park Road
Baltimore, Maryland 21220

RECEIVED POST-HEARING
DAY ONE

RECEIVED
OCT 16 2002
BALTIMORE COUNTY
BOARD OF APPEALS

October 14, 2002

County Board of Appeals
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

Dear Board of Appeals,

As residents of the community immediately surrounding the Crane Power Plant located on Carroll Island Road, we are writing to you to voice our opposition to Case #02-098-SPH allowing further private industrial operators in a residential zone. Our reasons for our opposition are as follows:

- Public notification of the initial zoning hearing by the owner was not in accordance with the spirit and intent of Baltimore County's rules and regulations for such notification. The signs for the hearing were posted in an obscure area at the end of a dead end road. This area is only frequented by fisherman from outside the area who have no interest in what is going on in this community. Further, it is my understanding that the notice of hearing was not advertised in any of the newspapers specific to this community. This is the reason there were no community representatives at the initial hearing.

- The special exception granted to the Baltimore Gas and Electric Co., a public utility company, is now in the hands of Constellation Power Source Generation, Inc., a private, for profit corporation with profit centers in many different areas. Constellation, being part of a "national grid" of energy providers, is free to sell its energy to anyone willing to pay their prices. Therefore, the energy being generated at this plant has no direct benefit to this community who must put up with this daily nuisance.

- As a private corporation with high profit motivation, it should not be allowed to expand it industrial use on highly restrictive RC zoned land. Further, this land falls within the highly restrictive Critical Bay area. The initial special exception was granted in the 1950's prior to the creation of RC zoning and Critical Bays legislation. We see no reason for any heavy industrial use such as a power plant to continue its operation, let alone to further increase its industrial use of this land without addressing all the rules and regulations of these restrictions. There is not a private, for profit, company in this world that would be allowed to put any kind of industrial use on this land today, so why should Constellation be allowed to expand their use of this land. While I cannot confirm this, we believe that this land was zoned agricultural at the time the special exception was granted.

RECEIVED POST-HEARING
DAY ONE

- The "special" privileges granted to a public utility should not automatically transfer to a private, unregulated, for profit company. Why this has happened is most likely buried somewhere in the deregulation process. Since, we the public, has one pulled over on us with deregulation, there is no reason to continue this charade by granting further industrial use of this property.

- Since this property abuts various rural conservation and residential zones, Constellation should be made to comply with "transitional" zoning rules, set back requirements and "screening" of their uses. This should apply to both current and proposed use.

- Constellation states that there will be less traffic on Carroll Island Road. They have never produced actual and proposed trip counts, so what is "less"? Further, Carroll Island Road is a "substandard" two lane, secondary, deteriorating road with no shoulders or curbs. The road is in bad need of repair, particularly at the traffic signal

at Bowley's Quarters Road where heavy trucks must brake which curls up the roadway. While their trips may be "fewer", the trucks will be larger and will further exacerbate the current situation.

- Rail traffic in and out of this community is another problem. When traffic occurs, the train "parks" across Carroll Island Road, thus blocking off a portion of the community without prior notification. There are no crossing gates, flashing lights, adequate street lighting or adequate identification of the blocked road. In some cases, there are unmarked black coal cars sitting in the unlit road in the nighttime. This practice is extremely dangerous and Constellation suggests that they will be "helping" the community by increasing train traffic. They also state that there will be no interference with the safety of the community. A train parked across the road prohibits access to private homes by emergency vehicles and also does not allow the residents who live beyond this crossing to come and go freely.

- Constellation states that they want to construct this slag operation to better handle the by-products of energy manufacturing. We fail to understand the benefit to the community since the business arrangement with Virginia Materials, a for-profit company, and Constellation, another for-profit corporation, has not been adequately explained. Constellation states that, if the by-product used by Virginia Materials falls below a certain level, Virginia Materials can bring product in from other areas. We are vehemently opposed to this. Constellation uses both coal and natural gas to fuel its operation. Constellation controls the slag production. This controls the amount of by-product production. If by some chance you should agree to grant this amendment to a special exception, severe limitations should be installed to prevent importing by-product to maintain Virginia Material's production goals.

- Allowing this expanded industrial use of RC zoned land can only lead to a further industrialization of the man acres of land owned by Constellation. Constellation claims that reprocessing by-product is a natural extension of their already permitted use. We disagree. If slag processing by a separate industrial manufacturer is an extension, than what other related activities might be allowed? Can we expect truck repairs and storage of vehicles; train repairs and further expansion of the rail yards; increased quantities of coal storage to be used elsewhere; further expansion of road and rail use; boat and barge storage and repairs; equipment storage and repair, etc. Where does it stop? It should stop right here with the question, "should Constellation be allowed to further industrialize this Rural Conservation land?" Our answer is **no** and so should yours be.

We bought into this community fifteen years ago knowing full well that the power plant existed. We understand the importance of our power needs and accepted its existence. We do not accept the expanded industrial use of this facility to further enhance the profit picture for Constellation.

We thank you for your time and offer our availability to further discuss the impact of this facility on our community.

Sincerely,

Raymond J. Piechocki

Raymond J. Piechocki

Pamela S. Rurka

Pamela S. Rurka

RECEIVED
OCT 15 2002
BALTIMORE COUNTY
BOARD OF APPEALS

RECEIVED POST-HEARING
DAY ONE

County Board of Appeals
Old Courthouse, Room 49
400 Washington Ave.
Towson, Maryland 21204
September 30, 2002

Case # 02-98-SPH

I am opposed to the permit to construct a coal slag processing plant at 1001 Carroll Island Road Baltimore Maryland 21220.

The area surrounding the proposed site is zone residential and rural. There are vast parcels of undeveloped land adjacent to the proposed site consisting of woods and wetlands. There are residential homes less than one-fourth mile from The Crane Power Plant and the proposed slag coal plant. The area residents are already impacted by the air pollution stemming from the power plant. While the emissions from the power plant may be in compliance with current air quality control regulations, there are visible emissions with particulate matter that is visible on outside structures, boats, and furniture. State law allows the continued emission of nitrogen oxides that contribute to ground ozone levels and smog.

In addition to the air pollution, the Crane Power Plant discharges material into the water creating gray/white foam that contributes to the pollution of the Chesapeake Bay. To allow additional industry with the associated emissions and dust in a residential area is not appropriate. Although Constellation Power Source and Virginia Materials maintain there will be no pollution from the slag facility, I question whether "no pollution" means any dust or emissions, or no pollution under the current state regulations. Allowing a coal slag processing plant will likely increase pollution in the area, which will have a negative impact on area residents. The quality of life in a residential area will be adversely affected.

RECEIVED POST-HEARING
DAY ONE

The proposed slag plant will create additional noise. There is already an adverse noise factor from the front-end loaders that transports coal to the conveyer. Freight trains add additional noise, often making deliveries during late night hours.

In addition to the above noted concerns, further industry would likely increase large truck traffic as well as rail traffic in a residential community. This is particularly true in view of the variance that allows additional slag to be brought on to the property by freight trains.

The residents of the surrounding communities already contend with excessive pollution from the Crane Power Plant. Increased industrialization of this area would exacerbate the problem with pollution in an environmentally sensitive area.

Lastly, the proposed slag processing facility does not produce energy, but processes a by-product for industrial purposes. Virginia Materials is not a utility provider and should not be entitled to a special exception variance.

Please take these concerns under consideration prior to issuing final approval to Constellation Power Source and Virginia Materials to construct a slag coal processing plant at 1001 Carroll Island Road.

Thank you,

Herman F Lengenweger

Please take these concerns under consideration prior to issuing final approval to Constellation Power Source and Virginia Materials to construct a slag coal processing plant at 1001 Carroll Island Road.

Thank you,

Muriel Brigouleix

Muriel Brigouleix
3921, New Section Rd
Middle River, MD 21220

RECEIVED POST-HEARING
DAY ONE

RECEIVED
SEP 24 2002
BALTIMORE COUNTY
BOARD OF APPEALS

September 23, 2002

County Board of Appeals
Old Courthouse, room 49
400 Washington Ave.
Towson, MD 21204

Re; Case 02-98-SPH

As a resident of Seneca Park I am opposed to the permit to construct a coal slag processing plant at 1001 Carroll Island Road Baltimore Maryland 21220. The coal slag plant is next to The Crane Power Plant at the same location.

The area surrounding the proposed site is zone residential and rural. There are vast parcels of undeveloped land adjacent to the proposed site consisting of woods and wetlands. There are residential homes less than one-fourth mile from The Crane Power Plant and the proposed slag coal plant. The area residents are already impacted by the air pollution stemming from the power plant. While the emissions from the power plant may be in compliance with current air quality control regulations, there are visible emissions with particulate matter that is visible on outside structures, boats, and furniture. There is a frequent cloud of yellow/brown emission that is visible over the surrounding area. Allowing additional industry would compound the problems that already exist.

The initial request for a zoning change sign was not posted in an area visible to area residents. The sign was posted at the end of Carroll Island Road in front of one entrance to the power plant. This location is beyond all roads and entrances to the residential community. If Constellation Energy Group had really wanted to inform the impacted community, the sign could have been placed at the main entrance to the power plant where it would have been visible to the community residents.

In addition to the above noted concerns, further industry would increase large truck traffic as well as rail traffic in a residential community.

In the report from the deputy zoning commissioner regarding the initial granting of the variance, it is stated that the slag processing facility will benefit the community in that it will reduce the amount of truck traffic in the community. In my opinion, this will not necessarily be correct. The end product would still be shipped out of the facility by trucks.

The zoning variance allows additional slag to be brought onto the property. It is further stated that this additional slag will be transported by way of freight trains. Any increase on train traffic will create additional hardship for the community not only in terms of noise, but certain residents will be blocked from entering or leaving their residences.

Trains entering and leaving the Crane Power Plant block a public road while the train cars change tracks or when the contents of the cars are unloaded. The time frame for this may be 15-30 minutes. During that time residents are blocked from there homes. Additionally, emergency vehicles are blocked from entering the community as well. This poses major safety concerns. I have enclosed a map highlighting the specific area that is impacted by blocking the roads.

The proposed slag processing plant does not produce energy, but treats the slag to form an industrial product for profit. I would question whether it is reasonable and necessary to impose the above noted hardship on the community in the name of profit, not energy production.

Constellation Energy Group indicates that additional slag will be brought in only when times dictate that there is not enough slag produced by the power plant to keep the slag facility running at full operation. I have two concerns regarding this issue. One, who would monitor whether the power plant is producing sufficient slag by-product? I would assume Constellation Power Group would monitor this. Are we to trust this corporation to be forthcoming when they made the decision not to inform the impacted community of their request for a zoning variance to construct a slag processing facility. Second, is it reasonable and necessary to subject the residents to additional hardship so that the processing facility may operate at full capacity?

An additional issue is to determine the rate of slag that is currently produced by The Crane Power Plant, and whether that current rate is sufficient to meet the needs of the proposed slag processing facility. The proposed facility indicates their capacity would be up to 35-tons per hour. Is the Crane Power Plant currently able to meet these proposed capacities?

Please take these concerns under consideration prior to issuing final approval to Virginia Materials to construct a slag coal processing plant at 1001 Carroll Island Road.

Sincerely,

Sharon Parrish
812 Seneca Park Road
Baltimore, MD 21220

I'm sending this letter again since I realized I had forgotten to enclose the map as I had stated I would in my first letter.
Sorry

RECEIVED
SEP 2 7 2002
BALTIMORE COUNTY
BOARD OF APPEALS

RECEIVED POST-HEARING
DAY ONE

CRANE POWER PLANT

RESIDENTIAL AREA

FARMLAND WOODED AREA

21220

2

3

4

5

6

7

8

9

10

B

C

D

E

F

G

H

J

K

Shining Star Baptist

Shiloh United Meth

DUNDEE VILLAGE

WILLIAMS ESTATES

SHADY OAKS

CARROLLWOOD

CARROLLWOOD MANOR

SENECA PARK BEACH

BOWLEYS QUARTERS

LONG BEACH ESTATES

MIAMI BEACH

Bengies Yacht Basin

Carroll Island Plaza

Edwards Boat Yard Inc

Brigadoon Marine Facility

Tradewinds

Matthew

Maryland

Bowleys Quarters Co 210

Beacon Light

Seneca Park

Long Beach

Goose Harbor Boatyard

Miami Beach Park

Strathmarry Pt

Galloway Pt

Galloway Creek

Marshy Pt

Sandy Pt

Joins Map 39

EASTERN AVE

BENGIES RD

NEW BENGIES RD

EARLS AVE

MAIN AVE

POINT RD

MARSHY POINT RD

CLARKS POINT RD

CARROLL ISLAND RD

REDGROVE RD

CHESTER RD

GALLOWAY RD

CHESTNUT RD

SENECA RD

BURKE RD

GOOSE HARBOR RD

COLD SPRINGS RD

CHESAPEAKE AVE

MIDDLE RIVER

SUSQUEHANNA AVE

PATAPSCO AVE

QUARTERS RD

DUNDEE VILLAGE CIR

HARALSON CT

HAWLEY CT

GOLDCREST CT

GALETTA CT

FALLWINE CT

COLTON CT

COBAN CT

CHENANGO CT

CELLINI CT

BLEDSOE CIR

ALBERGE LA

BRAMLEY CT

KINGSLEY CT

CAMEL CT

ROCK CT

COLLAMER CIR

BOMONT CT

ORTLEY CT

ORENCA CT

WILDEN CT

LAWFAM CT

KEETOSH CIR

CROWLEY CT

REFINER CIR

REED LA

WHITE PINE RD

STARWOOD CT

SCHMIDT RD

SENECA GARDENS RD

AVALON FARM RD

RED ROSE FARM RD

BEACH RD

THALER RD

FROG MORTAR RD

BENGIES RD

REVOLEA RD

MIDDLE RD

CHESTER RIVER RD

LONG BEACH RD

ROSALIE AVE

JEANETTE AVE

TURKEY POINT RD

BOWLEYS QUARTERS RD

CHESAPEAKE BAY DR

LEIS AVE

HOLLY TREE RD

MIAMI BEACH RD

BAY AVE

ANCHOR CHAIN CT

MAINYARD CT

FOREGROUND CT

STARBOARD CT

HEADSAIL CT

SPINNAKER PL

NANNETTE CT

SENECA PARK RD

BEACH RD

CARROLL ISLAND

CARROLLWOOD

SEAWAY

KITTENDALE CIR

KITTYHAWK CT

GOOSE BAY CT

LUTHARDT RD

SIDEWOOD RD

DUNDEE CREEK

SENECA CREEK

CROWS NEST NECK

CPCRANE

FALLS

STAKE

PARK

Dundee

Marshy Pt

Sandy Pt

ABERDEEN

PROVING GROUNDS

BOWLEY'S QUARTER IMPROVEMENT ASSOCIATION

**RESOLVED:** That the position of the B.Q.I.A. Association as adopted by the (Board of Directors) (Zoning Committee) on the zoning matter known as:

CONSTELLATION POWER SOURCE GENERATION, INC.

is that: 1. THE HEIGHT AND SIZE OF THE FACILITY
2. TRAFFIC IN THE AREA
3. AIR POLLUTION
4. WATER POLLUTION
5. PROBLEMS FOR MARINA'S IN THE AREA
6. GENERAL COMPATABILITY TO THE RESIDENTIAL AREA CLOSE TO THE FACILITY
7. THE MAJOR PROBLEM IS OFF SITE MATERIAL BEING MOVED BY RAILCARS.
8. WE DO NOT WANT TO SEE ANY MATERIAL BEING BARGED IN OR OUT BY WATER.

**AS WITNESS OUR HANDS AND SEAL THIS** 9th day of JANUARY, 2003.

**ATTEST:**

B.Q.I.A. **Association**

H. Andrew Jones
**Secretary**

Michael Smith
**President**

RECEIVED
MAR 04 2003
BALTIMORE COUNTY
BOARD OF APPEALS

BOWLEY'S QUARTER IMPROVEMENT **ASSOCIATION**

**RESOLVED: That at the** GENERAL **meeting of the** B.Q.I.A. **Association held on** JANUARY 9, 2003 **[DATE], it was decided by the Association that responsibility for review and action on all zoning matters for the period** JANUARY 2003 FORWARD TO 2004 **be placed in the (Board of Directors) (Zoning Committee) consisting of the following members, each of whom is hereby authorized to testify on behalf of the Association before the County Board of Appeals or other duly constituted zoning agency, body, or commission:**

FRED CONRAD
JOHN SCHMIDT
DONALD HANSEN
MICHAEL VIVIRITO

**AS WITNESS OUR HANDS AND SEAL THIS** 9TH **day of** JANUARY, 2003

**ATTEST:** B.Q.I.A. **Association**

H. Andrew Jones
**Secretary**

Michael Vivirito
**President**

# AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY, SS:

TO WIT:

I hereby swear upon penalty of perjury that I am currently a duly elected member of the (Board of Directors) (Zoning Committee) of the Bowley's Quarter Improvement Association.

ATTEST: B.Q.I.A. Association

A. Andrew Jones
Secretary

Michael Hinds
President

DATE: 1/9/03

RECEIVED
OCT 18 2002
BALTIMORE COUNTY
BOARD OF APPEALS

October 16, 2002

County Board of Appeals
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204

RE: Case # 02-98-SPH

To Whom It May Concern:

As a lifetime resident of Seneca Park I am opposed to the construction of a coal slag processing plant at 1001 Carroll Island Road in Baltimore County. Our home is approximately one-fourth mile from the power plant on the water and I feel that we would be exposed to the additional pollution and noise created by the addition of more industry on this property. We are also concerned about the harm that this will do our wildlife. Surely, anyone who is familiar with the Chesapeake Bay knows the importance of protecting our beautiful wildlife that makes this area its home. Additional pollution in our waters will have a devastating affect on them as well as the fish.

After having gone to several community meetings and hearing the concerns of my neighbors I became more aware of the problems that a slag processing plant could have not only on us now but even more so for our children who will be living in this area in the future.

It is my hope that after hearing the many concerns of the citizens of the area surrounding the power plant, kind consideration will be made to protect the environment around our homes and the beautiful Seneca Creek.

Sincerely,

James and Katherine Williams
930 Seneca Park Road
Baltimore, MD 21220

**The Bowleys Quarters Improvement Association, Inc.**
P.O. Box 18051 Baltimore, Maryland 21220 (410) 335-9802

January 12, 2002

Constellation Power Source Generation
Carroll Island
Middle River, MD. 21220

To Whom It May Concern:

The Bowleys Quarters Improvement Association is writing you in support of the proposed slag/bottom ash recycling plant located on the C.P. Crane power plant property.

Representatives from Constellation Power Source Generation (CPSG) met with our community on October 11, 2001 at the Association Hall. At the meeting the company discussed that slag, which is a natural by-product of burning coal, is recycled for use as blasting grit and in the manufacture of roofing shingles. It is understood that currently Crane produces approximately 42,000 tons of slag per year, which is trucked to Virginia for processing by Virginia Materials. It is dried and sized and then shipped back to the Baltimore area where their customers are located. It is our understanding that Virginia Materials and CPSG would like to have this operation on site so they can operate more efficiently by not trucking the material to Virginia. We understand that the structure is planned to be small, less than 5000 square feet, and the operation will utilize 5-7 acres of existing infrastructure located within the 100 acre Crane site.

CPSG estimates that the truck traffic will be cut in half and the recycled material will be dry instead of wet. From the communities perspective relocating this operation makes sense. We expect that CPSG will continue to work with the community to keep us informed of issues at the plant.

Very Truly Yours,

Michael Vivirito
President

County Board of Appeals
Old Courthouse, Rm 49
400 Washington Ave
Towson, MD 21204

RECEIVED POST-HEARING
DAY ONE

October 11, 2002
Case # 02-98-SPH
To whom it may concern:

My name is Terry Covington. I was born and raised on Seneca Park Road. I currently live in the house that my father built **before** the power plant was built. I have put up with all the negatives of the power plant like loud train whistles in the middle of the night, people using the loud PA system to make jokes and act silly day and night, things constantly being covered with black soot, and being trapped down Keeners Lane for 20-30 minutes while the train waits to get into the plant. Then there is the problem with the trucks. They speed down Carroll Island and when they make the turn onto Seneca Park Road they swing so far that you have to drive off the road to avoid being hit. When they leave the plant they don't stop at the stop sign at the main entrance. They just pull out and again you have to be the defensive driver to avoid being hit.

These concerns I am sure you have heard before. I am not writing
To reiterate the same concerns that other neighbors have already listed. My true reason is to tell you about the environment. I am a Naturalist for Baltimore County Recreation and Parks. I have been working at a brand new nature center called Marshy Point that is located between Dundee and Saltpeter Creeks since they opened May 2000.

Back in 1982 local environmentalists got several boats of politicians together and gave them a tour of Dundee, Saltpeter, Carroll Island, Pool's Island, and Graces Quarters. They were astounded that there was this much marshland left in Baltimore County that had not been disturbed by man. They immediately put some money together and bought as much land as they could. They are still trying to negotiate with the Myers and the Johnson's to acquire even more land.

RECEIVED POST-HEARING
DAY ONE

The County purchased Wisekittel's property, Altenburg's farm, Zelinski's farm, and Wikenson's property. The State owns Gunpowder State Park. Aberdeen designated Graces Quarters, Carroll Island, and Pool's Island as wildlife sanctuaries. Between the three agencies there are 3,000 connected acres protected for wildlife. As you probably know our number one problem with the environment is lose of habitat. We have the responsibility of trying to save what is left. A wetland marsh is more productive then a tropical rainforest! I can't stress how important this area is to the environment and

you want to put an industry right smack dabs in the middle of this protected land. You can say all you want about your plant being environmentally safe and you probably meet the state standards for pollution controls. We all know that the state standards are not tough enough. Regardless of how environmentally sound your plant is it will still have an **IMPACT** on the delicate marshes around the plant. I implore you to reconsider the location of this plant. Why not put it in an area that is already industrialized. We have enough problems with the power plant now. Please don't add to our personal problems and definitely don't add to our environmental problems. By the way even with the tougher pollution controls we still get black soot. The ashes constantly stain our front porch that faces the power plant. In past years, 1970's, the power plant use to pay us money to clean our houses and boats.

I personally have talked to people who work or worked at the power plant and they have told me some real horror stories. I don't want another industry invading my home.

Sincerely,

Terry Covington

Terry Covington
989 Seneca Park Road
Baltimore, MD 21220
(410) 335-4025

RECEIVED
OCT 15 2002
BALTIMORE COUNTY
BOARD OF APPEALS

JOANNE NADEAU

854 Seneca Park Road
Baltimore Maryland 21220

RECEIVED
SEP 16 2002
BALTIMORE COUNTY
BOARD OF APPEALS

September 12, 2002

County Board of Appeals
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

Dear Board of Appeals,

I am writing concerning the appeal to overturn an amendment to the zoning order to build a Slag Processing Facility at the Crane Power Plant on Carroll Island Road. Case # 02-98-SPH.

I am very much opposed to allowing additional industry in a residential community. The area surrounding the Crane Power Plant and the proposed slag facility is zoned residential. Residential housing is less than a fourth mile from the proposed site.

At the time of the initial hearing requesting approval to amend a previously approved Special Exception and Variance Case # 4077 and 74-102-ASPH in 2001, there were no representatives present to voice opposition to the proposed zoning request. The reason there was no opposition was that the impacted community was not aware of the proposal. The sign posted regarding the zoning request was not posted in an area visible to area residents. The sign was posted at the end of Carroll Island Road in front of one entrance to the Crane Power Plant. This location is beyond all roads and entrances to the residential community of Seneca Park. While the location of the sign may have been legal, it could have been placed at the main entrance to Crane Power Plant where it would have been visible to the residents of Seneca Park. The written notification was placed in a newspaper not generally read by residents of Eastern Baltimore County. If one of the elements of requesting a zoning change is to inform the public, and in particular, an impacted community, this element was not met. In my opinion, a good faith effort was not made to notify the impacted community of Seneca Park.

I can assure you that there is intense opposition to the proposed zoning modification by the residents of Seneca Park and the Beach Road community.

Constellation Energy Group indicates that truck traffic would be reduced on Carroll Island Road. I find this questionable in that the processed end product will need to be transported in some fashion

The petitioner of the zoning modification has also requested permission to bring in additional slag to the site by way of freight trains on railroad lines that service the property. Apparently the Deputy Zoning Commissioner opined hat this would "pose no problem". Constellation Power Source may not have indicated to the zoning commission that two residential communities are severely impacted by increased rail traffic. Currently the trains entering and leaving the Crane Power Plant may block a public road from approximately 15-30 minutes. Therefore, certain residents are blocked from leaving or entering their community during this time frame. This includes emergency vehicles as well. While vehicles obviously stop at railroad crossings when trains are crossing the track, I am not aware of any other instance where a road is blocked, and residents are unable to access their homes while the train unloads or changes tracks. Therefore, increased rail traffic poses an additional hardship on the impacted community, and may pose safety issues.

Constellation Power Source and Virginia Material have requested a zoning modification to construct a slag processing facility that would result in the processing of slag from the Crane Power Plant The end product would be recycled into material that is sold for profit. Virginia Materials is not a utility provider, and therefore should not be entitled to a Special Exception variance. To apply for industrial expansion for profit, under the guise of energy production is false and misleading.

In my opinion unreasonable hardship is placed on the impacted residential community. The community would be exposed to increased rail traffic, truck traffic, noise and potential pollution. Industrial zoning would reduce property values as well. To approve zoning modification that allow industry for profit to be located in an environmentally sensitive residential community is not appropriate.

Please take these concerns under consideration when making your decision on the requested zoning modification proposed by Constellation Power Source Generation, Inc.

Sincerely,

JoAnne Nadeau

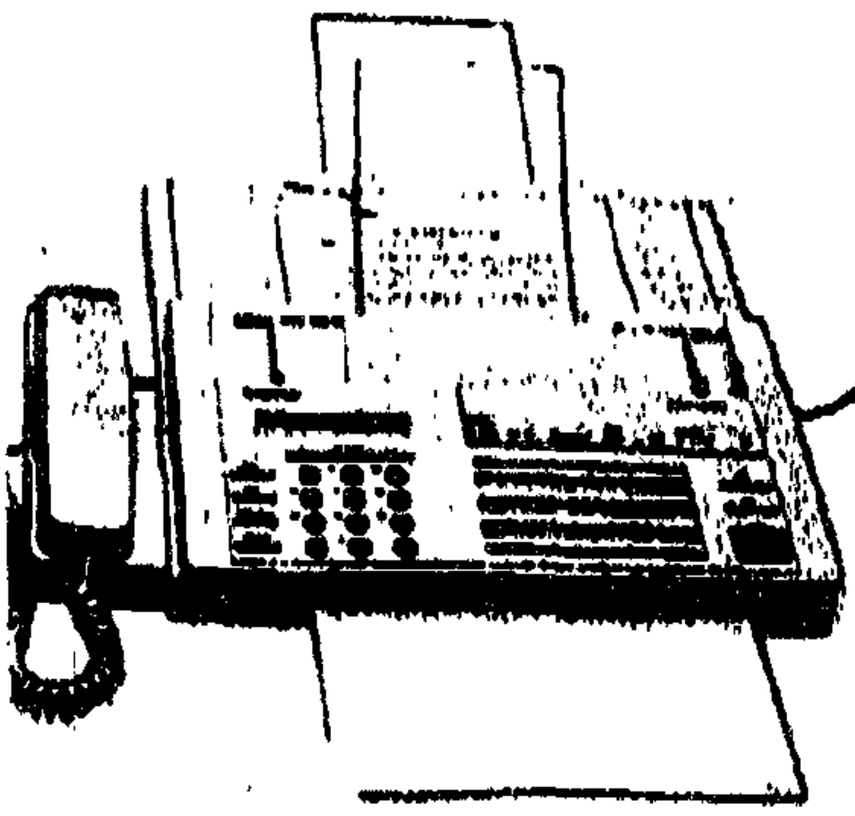


LOCAL 2101

**Communications Workers of America** AFL-CIO

5405 YORK ROAD, 2nd Floor — BALTIMORE, MARYLAND 21212
(410) 435-3900

# FAX COVER LETTER



DATE: 1-30-02

TO: Mr. KATHLEEN BIANCO

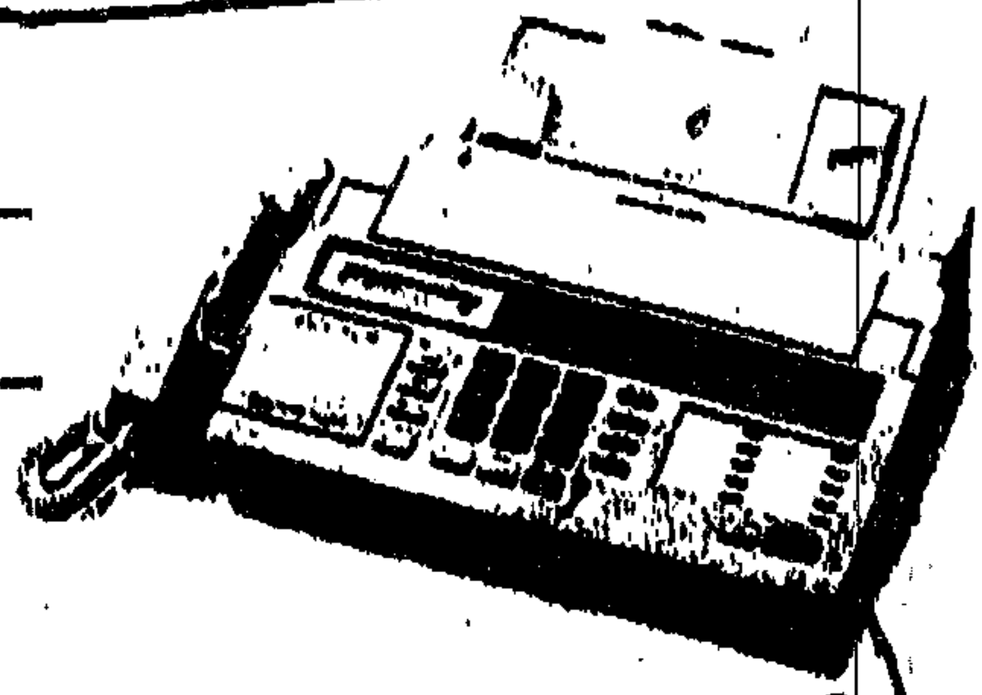
OF: BRD. OF APPEALS

TIME: _____

FROM: MICHAEL VIVIRITO
PRES. B. Q. I. ASSOC. INC

PAGES (INCLUDING COVER): 1

FAX #: (410) 435-0664



COMMENTS: PLEASE PLACE MY NAME IN THE CASE # 02-98-SPH. I WOULD LIKE TO BE PRESENT AT THE HEARING. THANKS

3619 BAY DR.
MIDDLE RIVER, MD. 21220 410-335-3371

ontact for
2/01/02

# VIRGINIA MATERIALS

Phone (757) 855-0155 ~ Fax (757) 857-5631
Virginia Materials, Inc.
3306 Peterson Street
Norfolk, Virginia 23509-2415
email: jburns@sandblaster.com

SPH
Case # 02-098

August 20, 2002

Mr. Arnold Joblon
Director of PDM
111 West Chesapeake Ave.
Towson, MD 21204

Dear Sir,

Please accept this letter for approval as a "Spirit of Intent" change letter for the substitution of the oil tank and dike drawing that was inadvertently left off the original drawing in Exhibit One at our Zoning hearing, which was approved and is now under appeal. As soon as it was discovered the hearing officer approved the drawing substitution and noted such in the file, which I understand that you must now approve and this letter of request is needed. I have attached 3 copies of Exhibit One from the hearing showing the oil tank and dike in red that was omitted in error. I have further enclosed copies of the Building Permits that have already been issued as well as the correct drawing showing the proper location of the oil tank and dike.

Thank you in advance for your consideration.

Very truly yours,

John Burns

Vice President

RECEIVED
[redacted] 2002
02-3951
DEPT. OF PERMITS AND
DEVELOPMENT MANAGEMENT

Enclosure

The above request is approved by:

_____ Date:_____

# BALTIMORE COUNTY, MARYLAND

**DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT**
**TOWSON, MARYLAND 21204**

DIRECTOR

BUILDINGS ENGINEER

## BUILDING PERMIT

PERMIT #: B484220 CONTROL #: C- DIST: 15 PREC: 01
DATE ISSUED: 05/29/2002 TAX ACCOUNT #: 1502001277 CLASS: 08

PLANS: CONST 2 PLOT 9 R PLAT 0 DATA 3 ELEC NO PLUM NO
LOCATION: 1021 CARROLL ISLAND RD
SUBDIVISION:

OWNERS INFORMATION
NAME: CONSTELLATION POWER SOURCE GENERATION INC
ADDR: 39 W LEXINGTON ST BALTO MD 21201-3940

**THIS PERMIT EXPIRES ONE YEAR FROM DATE OF ISSUE**

TENANT:
CONTR: TBD
ENGNR: MICHAEL J WALKLEY
SELLR:
WORK: CONSTRUCT FOUNDATION FOR & ERECT FIVE (5) SILOS FOR SLAG FACILITY.
(A-2 EXEMPTION) 12' DIA X 60'HT
CBCA FLOOD ZONE: C

BLDG. CODE:
RESIDENTIAL CATEGORY: OWNERSHIP: PRIVATELY OWNED

PROPOSED USE: FIVE (5) SILOS
EXISTING USE: VACANT LOT

TYPE OF IMPRV: NEW BULDING CONTRUCTION
USE: OTHER - NON-RESIDENTIAL
FOUNDATION: CONCRETE BASEMENT:
SEWAGE: PUBLIC EXIST WATER: PUBLIC EXIST

LOT SIZE AND SETBACKS

SIZE: 68.4AC
FRONT STREET:
SIDE STREET:
FRONT SETB:
SIDE SETB:
SIDE STR SETB:
REAR SETB:

**PLEASE REFER TO PERMIT NUMBER WHEN MAKING INQUIRIES.**

# BALTIMORE COUNTY, MARYLAND

## DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

## TOWSON, MARYLAND 21204

DIRECTOR

BUILDINGS ENGINEER

~ GRADING ~

BUILDING PERMIT

PERMIT #: B484620 CONTROL #: GRC-- DIST: 15 PREC: 01
DATE ISSUED: 05/21/2002 TAX ACCOUNT #: 1502001277 CLASS: 08

PLANS: CONST 00 PLOT 8 R PLAT 0 DATA 0 ELEC NO PLUM NO
LOCATION: 1021 CARROLL ISLAND RD
SUBDIVISION:

OWNERS INFORMATION
NAME: CONSTELLATION POWER SOURCE GENERATION INC
ADDR: 39 W LEXINGTON ST BALTO MD 21201-3940

TENANT:
CONTR: TBD
ENGNR:
SELLR:
WORK: GRADE 9000SF OF DISTURBED AREA FOR SILOS SEE B484220C. PERMIT EXPIRES 2 YEARS FROM DATE OF ISSUE. (A-2 EXEMPTION)
CBCA FLOOD ZONE: C

BLDG. CODE:
RESIDENTIAL CATEGORY: OWNERSHIP: PRIVATELY OWNED

PROPOSED USE: SAME & GRADING
EXISTING USE: SLAG FACILITY/SILOS B484220

TYPE OF IMPRV: OTHER
USE: OTHER - NON-RESIDENTIAL
FOUNDATION: BASEMENT:
SEWAGE: PUBLIC EXIST WATER: PUBLIC EXIST

LOT SIZE AND SETBACKS

SIZE: 88.4AC
FRONT STREET:
SIDE STREET:
FRONT SETB: NC
SIDE SETB: NC/NC
SIDE STR SETB:
REAR SETB: NC

PLEASE REFER TO PERMIT NUMBER WHEN MAKING INQUIRIES.

Baltimore County
Department of Environmental Protection
and Resource Management

Storm Water Engineering

401 Bosley Avenue, Suite 416
Towson, Maryland 21204

410 887-3768
FAX 410 887-4804

June 27, 2001

Mr. James F. Burkman
Constellation Energy Group
PO Box 1475
Baltimore, Maryland 21203-1475

RE: C.P CRANE POWER PLANT (BGE) SLAG PROCESSING FACILITY, Stormwater Management Exemption, Gunpowder River
**Project I.D. S920108**

Dear Mr. Burkman:

This office has reviewed the information submitted and finds that an exemption from the requirement to provide storm water management quantity control can be granted for this project under Section 14-155 (b) (3) of Article V of the Baltimore County Code. Section 14-155 (b) (3) exempts developments which do not disturb over 5,000 square feet of land area. As long as this requirement is met, the project is exempt from stormwater management. If there are any questions, please contact Ed Schmaus at 410 887-3768.

Very truly yours,

R. A. Smith

For Thomas L. Vidmar, PE, Deputy Director
Department of Environmental Protection and Resource Management

TLV:pms

c: Storm Drain Design, Dept. of Public Works
Environmental Impact Review, Dept. of Environmental Protection & Resource Management

Bge crane power



Printed with Soybean Ink on Recycled Paper

#02-098-SPH

PLEASE PRINT CLEARLY

## PETITIONER(S) SIGN-IN SHEET

| NAME | ADDRESS |
|---|---|
| G. Scott Barbright | 210 W. Pennsylvania Ave, Towson 21204 |
| Dick Ransom | Constellation Power 111 Market Place Suite 200 Baltimore, MD 21202 |
| Zachary Y. Fisch | 8318 Forrest St. Ellicott city MD 21043 |
| Jim Andercyk | 1000 Brandon Shores Rd Balto. 21226 |
| Bonnie Johansen | 1000 brandon shores Rd. balto 21226 |
| Jim Burkman | 1000 BRANDON SHORES ROAD BALTO 21226 |
| John Burns | Virginia Material, 3306 Peterson St. Norfolk, VA 23509 |

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on Recycled Paper

| | | |
|---|---|---|
| IN RE: PETITION FOR SPECIAL HEARING<br>S/S Carroll Island Road, 840' E of centerline<br>Of Beach Drive, 15th Election District<br>5th Councilmanic District<br>(1001 Carroll Island Road)<br><br>Constellation Power Source Generation, Inc.<br>Petitioner | * | BEFORE THE<br><br>COUNTY BOARD OF<br><br>APPEALS FOR<br><br>BALTIMORE COUNTY<br><br>Case No. 02-098-SPH |

* * * * * *

## Errata Sheet

Testimony of David M. Perlman before the Board of Appeals hearing on October 17, 2002.

| | |
|---|---|
| Page 9 – Line 20 | Replace "or" with "for". |
| Page 10 - Line 1 | Replace "effective" with "affected". |
| Page 10 - Lines 7 and 8 | Replace "federal and regulatory commission" with "Federal Energy Regulatory Commission". |
| Page 17 – Line 8 | Replace "under state" with "in interstate". |
| Page 20 – Line 10 | Delete "of". |
| Page 20 - Line 14 | Replace "rain-making" with "rate-making". |
| Page 21 - Line 21 | Delete "abroad". |
| Page 22 - Line 7 | Replace "commercial" with "commerce". |
| Page 22 - Line 10 | Replace "The fact" with "In fact". |
| Page 25 - Lines 16 and 17 | Replace "Public Utilities relaxed the policy act" with "Public Utility Regulatory Policy Act". |
| Page 26 - Line 12 | Replace "Commission" with "Commissions". |

Date: 11/18/02

Signature

266904

Multi-Page™



| | |
|---|---|
| IN THE MATTER OF: | * BEFORE THE |
| CONSTELLATION POWER SOURCE | * COUNTY BOARD OF APPEALS |
| GENERATION, INC. - Legal Owner/ | * OF |
| Petitioner | * BALTIMORE COUNTY |
| 10001 Carroll Island Road | * Case No. 02-098-SPH |
| 15th Election District | * October 17, 2002 |
| 5th Councilmanic District | * |

* * * * *

The above-entitled matter came on for hearing before the Cunty Board of Appeals of Baltimore County at the Old Courthoue, 400 Washington Avenue, Towson, Maryland 21204, at 10 o'clock a.m., October 17, 2002.

Reported by:

C.E. Peatt

BOARD MEMBERS:

CHARLES MARKS, Acting Chairman
LYNN BALLANGER
MARGARET WORRALL

APPEARANCES:

G. SCOTT BARHIGHT, Esquire
RICHARD A. RANSOM, Esquire
On behalf of Petitioner

PETER MAX ZIMMERMAN, Esquire
People's Counsel
and
CAROLE S DEMILIO, Esquire
Deputy People's Counsel
On behalf of Baltimore County



PROCEEDINGS

* * * * *

THE CHAIRMAN: Let the record reflect the County Board of appeals for Baltimore County is in its regularly scheduled session for today, October 17, 2002, relative to Case No. 02-098-SPH, in the matter of Constellation Power Source Generation, Inc., the legal owner and petitioner, 10001 Carroll Island Road, relative to a Deputy Zoning Commissioner's order in which petition was granted in an opinion and order dated November 5, 2002.

This is day two of the public hearings, having been continued from June 5, 2002. Will counsel please state their representation, please.

MR. BARHIGHT: Good morning. Scott Barhight, Whiteford, Taylor and Preston, with offices here in Towson, as well as Richard Ransom, also a member of the State Bar, who's with Constellation Power, on behalf of the petition for Constellation Power Source Generation, Inc.

MR. ZIMMERMAN: Peter Max Zimmerman, People's Counsel for Baltimore County. Carole Demilio, Deputy People's Counsel, will be joining me in a few minutes.



THE CHAIRMAN: We left off back in June, my notes indicate, Mr. Dillon was in the audience, and I think Mr. Barhight questioned why he was here, and I believe Mr. Zimmerman indicated he was not here as a representative of the Valleys Planning Council, but as a planning expert. Is that correct?

MR. ZIMMERMAN I think what I can say now, both. I don't recall the exact wording, what I said the last time.

THE CHAIRMAN: That's fine.

MR. ZIMMERMAN: I think we reserved, and I think he's here today in both capacities.

THE CHAIRMAN: Had you finished, Mr. Barhight?

MR. BARHIGHT: No, I had not yet rested my case in chief, and Mr Zimmerman and I had an opportunity to speak yesterday about our case, so I'd like to call my next witness.

THE CHAIRMAN: That's fine.

MR. BARHIGHT: I call Mr. Dave Perlman to the stand, please.



DAVID PERLMAN,

having been called as a witness, was duly sworn and testified as follows:

THE CHAIRMAN: Do you have copies of Exhibit 5 and 24 you were going to provide?

MR. BARHIGHT: I thought it was done, but we'll check and make sure. Sorry.

THE CHAIRMAN: Thank you.

MR. ZIMMERMAN: We did receive, I think, Petitioner's 6, the letter and order, I think you, Mr. Barhight, mailed.

THE CHAIRMAN: The only ones we had a question on are 5 and 24.

MR. BARHIGHT: Five is the deed.

MS. BARRANGER: We can check off the record to make sure.

THE CHAIRMAN: Why don't we proceed.

DIRECT EXAMINATION

BY MR. BARHIGHT:

Q. Could you please state your full name and business address, for the record?

Page 6

A. David M. Perlman, 750 East Pratt Street, Baltimore, Maryland.

Q. Mr. Perlman, the HVAC system that blows air in the middle of the room, the folks in the back cann't hear the witnesses unless they speak up. The microphone system does not work, unfortunately, so all the witnesses today will need to speak up, or the folks in the back of the room won't be able to hear.

A. Can you hear me in the back? Will do.

Q. Mr. Perlman, where are you employed?

A. I am employed by the Constellation Energy Group.

Q. What is your title is there?

A. My title is Chief Energy Counsel.

Q. What are your duties as Chief Energy Counsel?

A. To provide legal advise and handle specific legal issues related to the overall energy related business lines of the Constellation Energy Group.

Q. Does the Energy Group include Constellation Power Source Generation, Inc?

A. Yes, it does.

Q. Could you please, briefly, for the Board,

Page 7

describe your educational background?

A. Yes. I have a Bachelor's degree from the University of Maryland, a juris doctorate degree from the University of Baltimore.

Q. Are you licensed to practice law in the State of Maryland?

A. Yes, I am.

Q. Do you have an area of specialty?

A. Energy and public utility law.

Q. Could you please describe your work related background in those areas?

A. Yes, sir. While I was in law school, I worked for an organization called Office of People's Counsel which practiced for the Maryland Public Service Commission in the utility rate and regulatory matters.

From there, upon graduation from law school and becoming a member of the Bar, I worked for the Federal Energy Regulatory Commission from 1980 to 1984 in various capacities associated with public utility issues and regulations.

In late 1984, I became employed by the Baltimore

Page 8

County Gas and Electric Company in the rates and regulatory area, ultimately becoming the associate general counsel of that area in the early nineties.

In the mid-nineties, I went to become the general counsel of the organization called Constellation Power Source which was a power marketer and public utility in the wholesale power market which was also a subsidiary of Baltimore Gas and Electric Company at that time.

I later became the managing director of legal for something called Constellation Power Source Holding, which included Constellation Power Source Generation, and recently have become the chief energy counsel.

Q. Thank you.

MR. BARHIGHT: At this time, I'd like to request Mr. Perlman be accepted as an expert in the field of public utility law, and offer him for voir dire.

THE CHAIRMAN: Mr. Zimmerman?

MR. ZIMMERMAN: No objection.

THE CHIARMAN: He'll be so accepted.

Q. Mr. Perlman, are you familiar with the Crane Power Plant?

Page 9

A. Yes.

Q. Are you generally familiar with the slag processing facility which is the subject matter of this hearing here today?

A. Yes, I am.

Q. Are you familiar with the public utility laws both at the federal and state basis?

A. Yes, I am.

Q. Is Constellation Power Source Generation, Inc. a public utility?

A Yes.

MR. ZIMMERMAN: Objection.

THE CHAIRMAN: No. I will overrule. He can answer.

A. Yes, it is.

Q. Could you please explain your answer?

A. Constellation Power Source Generation is regulated first at the federal level as a public utility under the Federal Power Act as a seller of power at wholesale, which is a sale or resale in interstate commerce. The Federal Power Act defines the entity so

doing such an activity as being effective with the public interest and then subject to the regulations under Section 205, et cetera, of the Federal Power Act as a public utility.

As a result, it's regulated with respect to rates, terms, conditions of service and other ancillary regulatory requirements of the federal and regulatory commission.

In addition, at the state level, the power plants in the State of Maryland that meet the definition in the statute, as this one does, that requires a Certificate of Public Convenience and Necessity in today's world to be built, and for modifications to that plant, modifications associated with public convenience, a Certificate of Public Convenience and Necessity is also required.

I am also aware of correspondence between the county electrical code administrators for Baltimore County and Constellation Power Source Generation in which the county has agreed with the company that Constellation Power Source Generation is a public utility for their purposes.



Q. Do you have a copy of that here today?

A. Yes, I do.

Q. I'm showing you a letter dated September 23, 2002, to a gentleman by the name of Mr. James Mettalo, from Constellation Generation Group LLC which, is also signed off by Mr. Wisnom, who's chief of the code inspection and enforcement. Is this the letter you referred to in reliance upon your testimony here today?

A. Yes, it is.

MR BARHIGHT: I'd like to offer that as the next petitioner's exhibit, which I believe is --

THE CHAIRMAN: Twenty-five.

MR. BARHIGHT: Thank you.

THE CHAIRMAN: Any objection?

MR. ZIMMERMAN: No objection.

THE CHAIRMAN: Admitted.

MR. ZIMMERMAN: Well, let me, if I may, reserve objection for the record as to relevance, but I don't think the legal conclusion here is relevant to the legal conclusion for the purpose of the zoning law.

THE CHIARMAN: I understand. So noted.



Q. Mr. Perlman, is Constellation Power Source Generation, Inc. an existing organization deemed by law to be vested with public interest and so subject to public regulations?

MR. ZIMMERMAN: Objection.

THE CHAIRMAN: No. I think he's qualified. Overruled.

A. Yes, sir.

Q. Again, the reason for that answer?

A. Generally, the reasons that I previously provided, specifically, the Federal Power Act states as such with respect to its regulated entities, and Constellation Power Source Generation meets those requirements.

MR. BARHIGHT: No other questions of this witness at this time. Thank you.

THE CHAIRMAN: Mr. Zimmerman?

CROSS EXAMINATION

BY MR. ZIMMERMAN:

Q. Mr. Perlman, in your testimony, did you mention any particular recent state legislation concerning



deregulation of the electric power industry in Maryland?

A. No, I did not.

Q. Was there a statute passed in 1990 concerning deregulation of the electric power industry in the Maryland?

A. I would characterize it differently than deregulation. There was a statute passed, yes.

Q. What was the name of the statute?

A. I don't recall.

Q. If I mention a statute called Electric Customer Choice and Competition Act, does that refresh your recollection?

A. I believe that's correct.

Q. Do you know when it was passed?

A. I believe it was in 2000.

Q. If it were in 1999, is that possible?

A. Yes.

Q. Do you know where that statute is found in the Maryland code?

A. No, I don't.

Q. Do you know which article it's found in?

Page 14

A. I don't know, specifically. I think it may be in Article 78.
Q. Is Article 78 currently -- does Article 78 currently contain law related to public utilities in Maryland?
A. I'm not certain. I know that the law is recodified.
Q. Do you know whether or not there have been any cases in the Maryland Court of Appeals or Maryland Court of Special Appeals in the last two years concerning the aspect of the law related to the electric power industry?
A. Could you be more specific?
Q. Do you know whether there have been any cases in the Maryland Court of Appeals or Maryland Court of Special Appeals concerning the interpretation or implementation of the Electric Customer Choice and Competition Act of 1999?
A. I'm not aware of any.
Q. Would you agree with the statement that one of the purposes of the Electric Customer Choice and Competition Act is to deregulate the generation applied in pricing of electricity?

Page 15

A. I would characterize it differently, to say it changed the regulation from the previous methodology of regulation and evolved to a different type of regulation more principally at the federal level.
Q. You would not agree then with the statement or the premise of my question?
A. Within the context of the state law, it did have an effect of that nature to some degree, but it did not deregulate the activity of power generation which is regulated.
Q. For the purpose of state law, would you agree that that Act has the effect of, or function, to deregulate the generation applied in pricing of electricity?
A. I wouldn't go so far as to say deregulate.
Q. Do you have any observation as to whether or not the Electric Customer Choice and Competition Act of 1999 made provisions for the transfer of generating assets of electric power companies to unregulated affiliates?
A. It did permit such transfer. And, again, I don't believe the affiliates are unregulated.

Page 16

Q. Is Constellation Power Source -- what is the relationship of Constellation Power Source, Inc. to Constellation Power Source Generation, Inc.?
A. They are sister affiliates.
Q. Is Constellation Power Source, Inc. commonly known as a power marketer?
A. Yes.
Q. Would you agree that Constellation Power Source, Inc. as well as Constellation Generation Group are constituents of the merchant energy business of Constellation Enterprise?
A. The only reason I am pausing is Constellation Enterprises is an entity, and I'm just trying to remember whether they are within the holding company structure that holds Constellation Enterprise. Constellation Enterprise holds subsidiaries, but they are in the merchant generation of business.
Q. Merchant energy business?
A. Yes.
Q. Could you comment on whether or not the Electric Customer Choice and Competition Act of 1999 provides for,

Page 17

among other things, functional, operational, structural or legal separation between the electric companies regulated businesses and its non-regulated businesses or non-regulated affiliates?
A. I don't recall specifically, but I believe it does. And, again, all of the entities within the Constellation Energy Group that undertake power sales for resale under state commerce are public utilities and are regulated.
Q. You're speaking of the context of federal law now?
A. That's correct. And all the power plants that are owned by Constellation Power Source Generation within the State of Maryland are subject to the Public Service Commission's regulations with respect to modification under the Certificate of Public Convenience and Necessity which was not affected by the statute.
Q. Do you have any familiarity with a case entitled Mid-Atlantic Power Supply Association versus Public Service Commission?
A. Yes, I do.

Q. Do you have any familiarity with a case called Delmarva Power and Light Company versus Public Service Commission?

A. If that case is related to the affiliate rules, then I do. I don't remember the caption.

Q. Do you know whether the Mid-Atlantic Power Supply case discusses the interpretation and implementation of the Electric Customer Choice and Competition Act of 1999?

A. The real issue in that case is related to the propriety of the Public Service Commisssion accepting a settlement associated with the calculation of stranded (phonetic) costs and other aspects of processing, of factors that would be implemented under that act to permit the rate of regulated results that would come about in the separation of the generation portions of the company and distribution of the company. I'm sure there was, as some background, there was discussion, but the focus of the case was the propriety of the Commission in accepting a contested settlement that the Mid-Atlantic Power Supply Association did not agree to.

Q. Could you recall specifically whether or not the



case discussed the aspect of deregulation of the electric power industry under Maryland state law?

A. I believe it did discuss that as sort of context for the determination with respect to the settlement issues.

Q. Have you reviewed any dictionary definition of public utility for the purpose of your testimony today?

A. I did look at the one dictionary definition I believe is relevant to the zoning laws of Baltimore County.

Q. What definition is that?

A. I don't have that before me at the moment, but I -- if you would like to show it to me, I can tell you if it's the one I looked at.

Q. Do you remember what the main points of that definition are that you looked at?

A. Again, if you have it, I'd appreciate you showing it to me, but it did talk about having regulation of rates, et cetera, provisions of facilities, et cetera, again, which are characteristic of the regulations that Constellation Power Source Generation currently is subject



to.

Q. Isn't one of the aspects of Maryland law now to deregulate or decontrol the pricing of generation of power and allow competition between various generators?

A. Well, let's come back and talk about that because, frankly, since 1935, wholesale transactions of power have been regulated at the federal level, and so the regulatory scheme that was in place previously and today is unchanged with respect to that regulation.

What happened in that act was the power of generating facilities that have been previously vertically integrated into one company and ultimately had all the uses and services subject to the Public Service Commission rain-making authority were broken into pieces. Sales by those entities to, let's say, the Baltimore Gas and Electric Company to sell power to its customers are subject to the regulations of the federal energy regulatory commission as they would have been prior to that time. The sales of retail electric power by the Baltimore Gas and Electric Company pursuant to the settlement we talked about are still regulated by the



Public Service Commission as a result of that settlement. What happened under that statute was to recognize there was to be a competitive, hopefully, a competitive choice for customers if they chose to select suppliers other than the Baltimore Gas and Electric Company that no longer had generation assets, and addressed how those entities would have their prices regulated, if at all.

Generally, the companies that would sell power to end-use retail customers abroad do not own generation. They buy, as the Baltimore Gas and Electric Company does, power at the wholesale level from suppliers that are regulated by the federal regulatory commission by contract, and then resell to retail customers in the State of Maryland.

So when you say generators, I think it's unlikely the entity that will be making those retail sales would be generators. I think Constellation Power Source Generation is really a separate category than the entities that would be the most likely sellers of electricity to retail uses.

Q. I preface my next question, not talking about sales to retail customers. I'm talking about wholesale

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level. Isn't the function of the new Maryland law or the Electric Customer Choice and Competition Act, one of the functions of it, to phase out control of wholesale prices and establish a competitive environment for different companies to charge different prices?

A. No. The wholesale prices since 1935 in interstate commercial have been regulated by the federal energy regulatory commission. That statute has not been amended.

The fact the only way that the generation components of rates was regulated at the state level was that it was part of a vertical integration of distribution, which is the wires that come to your home, transmission, which is the high voltage line you see, and the generation together, all in one entity. When you separate those, I guess, legally, from one entity into separate entities, it changes. Not whether they are regulated, but it changes who the regulator is.

So that's what happened. The state of Maryland could not and has not phased out wholesale regulation. In fact, the Supreme Court recently has decided the retail

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provision of transmission is also to be regulated by the federal energy regulatory commission if it's found in the public interest to do so, even if there is continued vertical integration, and the federal regulatory commission has proposed a rule in July 31st of this year to, in fact, do that.

Q. So if the Maryland courts say that one of the functions of state law is to deregulate the generation supply and pricing of electricity, they don't understand the law, is that it?

A. I don't know what they understand. I can tell you that the the wholesale supply of electricity is regulated.

Let me give you an example. I'm sure you have heard about these activities going on in the State of California, and there's a lot of controversy associated with that.

Those activities are subject to the federal energy regulatory commission's regulation of materials, conditions and service. Notwithstanding the fact that they provided effectively an opportunity for sellers to

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sell power to the state bodies, they have come back and said, subject to our regulations, we are going to evaluate whether these rates are adjusted reasonably or appropriate under the statute, and potentially order refunds, and undertake our regulatory function and maintain our regulatory control over sales at the wholesale level. And they have not seded that authority, cannot sede that authority. And that is the type of regulation that the wholesale entity Constellation Power Source Gencration is subject to at the federal level.

Q. Do you know whether or not essentially one of the functions of the recent state law is to eliminate monopoly privileges that the Baltimore Gas and Electric Company previously essentially had and require the establishment of new corporations such as Constellation Power Source Generation, Inc., which did not have more monopoly privileges?

A. Baltimore Gas and Electric Company maintains its franchise and its obligation to provide distribution services to all of the customers living within that franchise service territory.

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So, in that context, it is a monopoly service and has continued to be a monopoly service.

Q. It's at the retail level?

A Retail level and at the wholesale -- there is no wholesale distribution service. That is, again, a retail service, and is wholly subject to the state's authority.

Q. The distribution at the customer level, there's still a monopoly?

A. That's a monopoly on the transmission level. I would say that has been, in effect, integrated in the region. Your current region is New Jersey, Maryland, Delaware, PJM region. Where there is integrated planning of the transmission system and where it may be owned by various owners, it is a single system and operated only as one system, so in that sense, it's a monopoly.

Ever since the Public Utilities relaxed the policy act of 1978, there has been no monopoly on generation. In fact, the Public Service Commission has, prior to the enactmeant of the statute you have been discussing, required that the Baltimore Gas and Electric Company, other Maryland companies, issue a request for

price from other competitive generation entities to come into the marketplace and try to provide generation by contract at prices that may be better than further investment in construction of utilities and generating plants.

So prior to the statute that I discussed, the purpose statute in 1978, there was competition and no statutory monopoly of generation. Certainly, after that, it was clearly federal policy there would be competition and additional generation activities, and starting in the nineties, late eighties and nineties, the Public Service Commission around the country, including the Maryland Public Service Commission, have further taken steps to enhance the competition at the generation level.

Q. In any event, you would agree that Constellation Power Source Generation, Inc., the petitioner here, does not have monopoly privileges in connection with this generation of power?

A. Yes. And I, frankly, I don't think Baltimore Gas and Electric Company had those privileges either. Just to be clear, if the Public Service Commission determined it



would be appropriate for a competitive supplier, other than Baltimore Gas and Electric Company prior to the creation of affiliates, that that competitive supplier be the entity that would develop and build and sell the output of generation facilities to the Baltimore Gas and Electric Company for resale to its customers, that would have been what had happened.

There were several processes to do that throughout the late eighties and throughout the nineties. As a result of one of them, there was a significant contract entered into between Baltimore Gas and Electric Company and Philadelphia Electric Company.

There was a project called AES North Shore that was to be built by AES Corporation in lieu of utility generation facilities. There was very significant litigation before the Public Service Commission brought by a complaint by a competitive supplier that wanted to have its project built. So, again, I don't think there was a monopoly previously, as there is not today.

Q. Did Baltimore Gas and Electric Company ever have any kind of monopoly privileges granted by the statute?



A. Yes. Again, the Baltimore and and Electric Company is a franchise public utility. The franchise is granted by -- not by the statute, actually -- but was originally granted by the various localities, and the franchises, as I am sure you know, to operate various real property areas to put the distribution and transmission facility of the company, to provide power to the customers. Ultimately, there became a statute that enacted franchises to do that. That monopoly is really related to the distribution of electricity.

Q. When Baltimore Gas and Electric Company was a vertically integrated company providing generation, distribution and sales to customers, it had a monopoly on, at least some aspect, if not all aspects, of its functions, would you agree with that?

A. I don't think -- again, I think that the power plant that the company built -- let me back up and give you some examples.

In the late eighties, early nineties, there was a process called integrated resource planning undertaken at the Public Service Commission level, that they would look



forward and say we have obviously, on the distribution level, we need to build whatever infrastructure we need to serve the customer. On the transmission level, we need to do the same thing.

But at the resource level, we need to consider all the various and most cost effective way to provide power supply. That could be conservation. It could be other types of demand site management. It could be utility built power plants. Or it could be competitive procured power.

That whole integrated resource planning process looked at it from a technical and resource based portfolio, and it looked at the most economical way to procure power.

If that procurement was most economical through competitive suppliers to a contract from a neighboring utility that had the capacity to provide power at a lower price, the Public Service Commission would have not permitted the utility to say I have a monopoly and I will build a power plant and I will charge my customers for it. It's inprudent, inappropriate, and not permitted to occur.

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So it's an evolution. There may have been a time prior to the late seventies when things were more of that nature, but starting with the public utility regulatory policy act, an entire competitive power industry was born.

Q. If I understand you correctly, you would agree prior to the seventies, at least, BGE had a monopoly that at some point in the seventies and eighties there was some move under federal law towards some form of deregulation and, in any event, but now, certainly, the separate company, Constellation Power Source Generation, Inc. does not have a monopoly in its sphere of operation?

MR. BARHIGHT: Objection. I think there's three questions.

THE CHAIRMAN: Break them down into component parts.

Q. Essentially, prior -- at least prior to the 1970s, Baltimore County Gas and Electric Company had a monopoly, do you agree with that?

A. I'm not sure about that. What I'm saying, the competitive aspects of it accellerated with that statute.

Q. Which statute?

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A. The Public Utility Regulatory Policy Act of '78. Could be seven --

Q. In the Carter administration?

A. Yes. In 1956, in our region of the country, the Pennsylvania/New Jersey, Maryland interconnection was created, and that overall process took all of the remaining utilities and effectively combined them into one big generation utility.

And in doing so, the utilities shared, in effect, their generation resources. So there's always been a broader, less monopoly-oriented aspect of power generation.

Q. Currently, you would agree Constellation Power Source Generation, Inc. does not have a monopoly in its sphere of operation?

A. Yes.

Q. If anything, over the years, the trend has been to more competition, not less?

A. Yes.

MR. ZIMMERMAN: Thank you. That's all I have.

MR. BARHIGHT: No other questions of this

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witness.

THE CHAIRMAN Thank you.

MR. BARHIGHT: May Mr. Perlman be excused?

THE CHAIRMAN: Yes.

MR. BARHIGHT: I'd like to call Mr. James Burkman to the stand.

J A M E S B U R K M A N,

having been called as a witness, was duly sworn and testified as follows.

DIRECT EXAMINATION

BY MR. BARHIGHT:

Q. Mr. Burkman, could you please state your full name and business address, for the record.

A. Certainly. My name is James F. Burkman. My business address is 1005 Brandon Shores Road, Baltimore, 21226.

Q. Where are you employed, Mr. Burkman?

A. I am employed at the Constellation Energy Group.

Q. How does the Constellation Energy Group relate to the applicant here today, Constellation Power Source Generation, Inc?

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A. Constellation Power Source Generation, Inc. is a wholly owned subsidiary of Constellation Energy Group.

Q. What is your title at Constellation Energy group?

A. Environmental scientist.

Q. What are your duties?

A. I have a broad range of duties related to the environmental field. My primary responsibilites would be to acquire permits for our plants in Baltimore and Calvert County.

Q. Would you please describe your educational background?

A. I have an associate's degree in accounting. I am working towards a Certificate of Environmental Science at Johns Hopkins University.

Q. How long have you worked for either Constellation Energy Group or BGE or one of the affiliates?

A. About twenty-nine years.

Q. How long have you been working in the permitting area?

A. Ten years.

Q. Has it been the last ten years?

A. The last ten years.
Q. Can you please describe a little bit further the activities that you engage in as part of your work in the permitting area?
A. Certainly. When a project is identified in the company, I will be approached by a project engineer or technician to investigate what they need to do to make that project happen, a number of environmental impacts, zoning issues, conservation, things like general construction activities, what do I need to do to get my project permitted and built.
Q. Are you familiar with the Crane Power Plant?
A. Very much so.
Q. Have you been involved in the permitting at the Crane Power Plant?
A. Yes.
Q. Are you familiar with proposed slag processing facility?
A. Yes, I am.
Q. As part of your responsibilities, do you ordinarily review Baltimore County permits and zoning



records?
A. Yes, I do.
Q. How often do you do that kind of activity?
A. It averages different times, but say over the last few years, it's two to four times a month that I'll be at the county.
Q. Is it fair to say that you are very familiar with those records?
A. Oh, yes.
Q. Have you had an opportunity to review the Baltimore County records with regard to the permitting and zoning approvals for the subject property that's the subject matter of this hearing today?
A. Yes, I have.
Q. Is there a limestone silo on the site?
A. Yes, there is.
Q. Did you obtain the building permit for the approval of the limestone silo?
A. I did.
Q. Would you please describe that silo, using whatever photographs or exhibits you think appropriate?



Before you do that, I'll pull them out and I will show them to counsel, but with regard to the limestone silo.
A. I will start with the product I referenced, which is a photograph of the silo.
Q. It's just been handed down and you have given this to me, photographs of something. Could you please describe that photograph?
A. Certainly. It's a photograph taken of a silo I permitted for the Crane Station in August of 2000. Basically. It's in the coal yard. Limestone is mixed with coal for burning. The combustion process, basically. The silo is sixty-four feet tall by twenty foot in diameter.
MR. BARHIGHT: I'd like to introduce this as the next petitioner's exhibit. I believe it's 26.
THE CHAIRMAN: Correct. Admitted in. Are there going to be more photos, Mr. Barhight?
MR. BARHIGHT: Later, but not with regard to this.
THE CHAIRMAN: Separately, No. 26.



Q. Mr. Burkman, I believe you indicated you were directly involved in the permitting of this silo?
A. That is correct.
Q. Do you have a copy of the permit application itself?
A. Yes. There are actually two applications and two issued permits, the initial application dated August 15, 2000, was for the foundation of the silo. That's permit No. B425348, issued by the county in August, again, 15, 2000.
I had a copy of the permit application that worked its way through the county through the approval process as well as a copy of the issued permit.
Q. You said there was another permit as well?
A. Yes.
Q. Plese describe that, for the record.
A. August 31, 2000, I went in with the silo itself for the permit for this. I can read a brief description.
Q. Briefly.
A. Basically to construct a fabricated steel limestone silo sixty-four feet tall by twenty foot

diameter, 314 square feet foundation, approved under Permit B425348, which was the first permit I referenced for the foundation.

MR. BARHIGHT: I have shown these documents to Mr. Zimmerman and would like to introduce these as all the same exhibit with A, B, C and D.

MS. BARRANGER: 27A would be the foundation.

Q. Showing you what will be introduced as Exhibit 27A, what is that?

A. That would represent Permit B425348, which was issued August 15, 2000. That was for the foundation of the silo.

MR. ZIMMERMAN: Application for permit?

THE WITNESS: This is the application for the permit with the county signature indicated in the lower right-hand corner.

MR. BARHIGHT: I have three copies for the Board of Petitioner's 27A.

MR. ZIMMERMAN: Mr. Chairman, on this series of documents, we won't object. We'll reserve argument to the legal weight and relevance.



THE CHAIRMAN: I understand.

Q. With regard to what's being introduced as Petitioner's Exhibit 27B, can you please describe what that is to the Bord?

A. Certainly. This is the end product of that application. Again, this is the permit issued, B425348, for the installation of the foundation which was for the silo.

MR. BARHIGHT: Thank you. I am giving you three copies of 27B.

Q. I am now showing you what is being introduced as Petitioner's 27C. Would you please, briefly, describe this to the Board?

A. Certainly. This is the copy of the permit application that was made on August 31st. The lower right-hand corner indicates the county agencies I interviewed to get county permission.

MR. BARHIGHT: 27C.

THE CHAIRMAN: The application for a permit again?

THE WITNESS: Yes, for the silo itself.



MR. ZIMMERMAN: 427044?

MR. BARHIGHT: He no longer has it in front of him.

THE WITNESS: It would be the higher number.

MR. BARHIGHT: Off the record.

(Discussion held off the record.)

Q. What would be 27D be?

A. That would be the permit issued, the permit that came after the permit application was approved, B427044, dated August 31, 2000.

MR. BARHIGHT: I'd like to introduce that as Petitioner's 27D, please.

THE CHAIRMAN: Accepted.

Q. Please feel free to refer to any copy of exhibits, if you need to.

A. Thank you.

Q. In both those permit applications, did the zoning officer sign off?

A. Yes, they have.

Q. Did the zoning office ever request that you file a height variance for this silo?



A. No.

Q. Are there any other silos currently on the site?

A. Yes, there are.

Q. Could you please describe them, using whatever photographs or drawings you think are appropriate.

A. Certainly.

Q. Why don't you say what they are, and I will show the document to Mr. Zimmerman.

A. There's a series of eight coal silos that the coal yard feeds the coal from the coal fields up to the silos. Those silos are approximately 150 feet tall. There is also a silo for flyash which is approximately 135 feet tall. And, again, these are all very much within the plant.

Q. Do you have a series of photographs and drawing which depict those silos you have just described?

A. I certainly do.

Q. Let me show a copy of those to Mr. Zimmerman before you begin. Mr. Burkman, we are going to describe these in further detail, but I am handing to the Board and I've already given Mr. Zimmerman the drawing that's on the

board, and then photographs that we are going to discuss in just a moment.

Mr. Burkman, it might be easier if you step down --

A. Certainly.

Q. -- from the witness stand. I am going to place these two photographs on the board as well so you can refer to them. I don't know whether you can do it without turning your back on the audience.

Could you please describe, first, the drawing that has been placed on the board?

A. Certainly. It's the overall layout of our coal handling system as exists at Crane Station. I can step you through the process as the coal comes in.

Q. We have already heard that in great detail from Mr. Jeffcoat who went over that in great detail at the last hearing. If you could, just generally.

A. The coal basically comes in, fed out on belts up to a series of eight silos marked here. Those silos are depicted in the top picture here. They are somewhat lost, if you would, in some of the plant's superstructure, but



as they are identified here, there are four silos for one unit and four silos for two units. Obviously, Crane is a two station unit, so it requires eight silos.

Q. I believe you indicated also a flyash silo which is in the photograph which is at the bottom?

A. Yes. I apologize for standing in front. It's the large white cylinder right here. The silo is kind of pretty predominant right there, sticks out, and that's all part of the original plant construction.

Q. Do these photos fairly and accurately depict the power plant?

A. Yes.

MR. BARHIGHT: I'd like to introduce first the drawing as Petitioner's Exhibit No. 28.

MR. ZIMMERMAN: No objection.

THE CHAIRMAN: Admitted.

MR. BARHIGHT: I would like to introduce the two photographs as 29A and B, and suggest "A" should be the view with the land in the foreground and the water in the background, and that "B" would be with the water in the foreground and the power plant in the background, and I



will go ahead and mark these copies as well.

THE CHAIRMAN: Any objection?

MR. ZIMMERMAN: No objection.

THE CHAIRMAN: Admitted.

Q. Mr. Burkman, in your zoning research for this site, is there any evidence to indicate that a variance was requested, required, or obtained for any of these silos?

A. No.

Q. You have to speak up?

A. No. I'm sorry. No.

MR. BARHIGHT: No other questions of this witness at this time.

THE CHAIRMAN: Mr. Burkman, when were these pictures taken, approximately?

THE WITNESS: The fact that the -- there's a propane facility there tells me they are probably ten years old. Eight to ten years old.

MR. BARHIGHT: If Mr. Zimmerman doesn't mind --

Q. (MR. BARHIGHT) With regard to Petitioner Exhibit 29A, you referenced a propane facility. Is the propane



facility in the bottom left-hand corner of that photograph with a tall tank there?

A. It is.

Q. Is that the tank that enjoys the height variance?

A. It is.

Q. Has that tank been removed?

A. It has.

Q. Is that in the general vicinity of the slag processing facility today?

A. It is.

MR. BARHIGHT: Just to get you all oriented.

THE CHAIRMAN: Fine.

MR. BARHIGHT: I thank you for that, even though I already said I had no questions.

THE CHAIRMAN: Mr. Zimmerman?

MR. ZIMMERMAN: Yes.

CROSS EXAMINATION

BY MR. ZIMMERMAN:

Q. So I understand, there was a height variance requested in the 1970s in connection with a propane facility?

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A. That is correct.
Q. That's the only height variance ever requested?
A. That is correct.
Q. The eight main silos and the flyash silo, you said those were built in connection with the original construction of the plan?
A. That is correct.
Q. When was that, approximately?
A. Approximately 1961.
Q. Do you know what the zoning was on the site in 1961?
A. R-6.
Q. Do you know when the property was rezoned to R.C. 5?
A. That, I don't know.
Q. Do you know when the R.C. 5 regulations came into effect?
A. I suppose when I got involved in permitting, early 19 -- late '92, early '93, I believe Crane enjoyed R.C. 5 zoning at that time. I could be wrong on that, but I seem to recall it had been R.C. 5.

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Q. Do you know what the height regulation is for the R.C. 5 zone?
A. The height regulation for the R.C?
Q. Yes, the limit, the standard.
A. Currently, with exceptions, I believe it's thirty-five feet.
Q. So in the year 2000, you applied for a permit for another silo?
A. That is correct.
Q. Did you discuss with the zoning office the fact that the proposal was for a silo sixty-four feet high, which the regulations limited you to thirty-five feet?
A. It wasn't necessary, because silos are exempt from that height variance.
Q. Under what regulation?
A. I don't have the code with me, but there's a citation, I believe, I am sure, in the Baltimore County zoning regulations that allow silos basically not to be held to that thirty-five foot restriction.
Q. Is that for farms, or anything, in your opinion?
A. Silos.

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Q. Did you bring that regulation with you?
A. No. As I recall, though, when it talks about the structures, if you would, that are exempt from that thirty-five foot height restriction, it's almost like a grouping.
It mentions barns, and has commas in place that almost separate what is and what is not attached to, say, an agricultural connection. And silos, I believe, are by themselves.
It sort of led me to believe I had every right to come in with a building permit without the need for a variance.
Q. Can you state whether or not the petitioner currently is asking for a height variance for anything in connection with the slag processing facility?
A. I believe there's a special hearing that's been filed to modify the special exception, and I believe may be some connection to the fact we had a variance for the 110-foot propane tank there.
Q. In connection with the slag processing that's proposed?

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A. Yes.
Q. That's not a silo?
A. No. No. The tank was, obviously, a tank, and that's why we had to get a variance for that back in the seventies.
Q. I'm talking about in connection with this petition. Do you know whether or not there's a request for a variance or not, a height variance?
A. I believe it's -- I believe it's part of a special hearing request.
Q. What is the nature of the height issue, do you know, in connection with the proposed slag processing facility?
A. I believe to have a silo that's approximately ninety feet.
Q. Is it part of your responsibility to be involved, to be familiar, with environemntal issues?
A. Yes. If an engineer or tech would come to me and say they want to build a certain structure a certain place, I would have to advise them if they are in the Chesapeake Bay critical area, if they're within a certain

distance to wetlands or sensitive areas, things like that. So it's a broad range of responsibilities. The ultimate goal is to see if the project is feasible.

Q. Are there any particular requirements under the zoning regulations for zoning petitions in the Chesapeake Bay critical area?

A. If you're developing in the Chesapeake Bay critical area, you have to meet the ten percent rule.

Even though this proposed slag planning was built on existing impervious surface, we had to show that we were creating no new impervious service. It's been built on existing concrete.

But because we were in the critical area, we had to mitigate for that construction. Even though we weren't creating additional impervious surface, we had to show that we were reducing pollutants from existing impervious surface.

We worked with the Department of Environmental Protection and Resource Management and came up with a plan to put in a grass strip that was -- I think it was the south side of the site -- part of the site that was



contiguous with the line of woods. It seemed to be the best fit, from an environmental standpoint, if you're going to put a grass buffer in, that it would be more beneficial to be next to a series of woods.

So, in effect, this project is actually greening the site. We are not decreasing the impervious area. We are increasing the pervious area because of the critical area regulations.

Q. That ten percent regulation you're speaking of has to do with the requirement of reduction in pollutant loading, is that correct?

A. That is correct.

Q. You did that calculation based on the slag procesing facility section of the site, not the whole site?

A. That is correct.

Q. And that was in correspondence that the petitioner introduced at the last hearing, do you recall that?

A. I wasn't at the last hearing, but I was involved in correspondence. I assume it was introduced.



Q. It was Mr. Kelly, do you recall?

A. I worked with Keith Kelly and Pat Farr, yes.

Q. So at least for that purpose, the slag processing facility area -- can you say how many acres, is it five or six?

A. It's six acres and some change.

Q. But for that purpose, that six acres was considered separate from the rest of the power plant site?

A. That is correct. I think that's a typical approach for development of that sort.

Q. Are there any other relevant regulations that you can tell the Board about with respect to particularly zoning petitions in the Chesapeake Bay critical area that came to the fore in your work on this site?

A. Certainly from the zoning standpoint, we were out of the buffer area, which is the most sensitive, which is one hundred foot from any water bodies, so we weren't -- if we had been in the first hundred feet, we would have had more -- what's the word I would like to look for? -- it would be more involved.

But the fact that we were out of the hundred foot



buffer, but still within the thousand feet, led us to the path we took, meeting with DEPRM, coming up with a plan to mitigate for this project.

But I'm not aware of any other zoning regulations at the time. We addressed stormwater management with the county as well, but from a zoning standpoint, I'm not aware of any.

Q. Do you know where that ten percent pollutant loading requirement is found exactly in the county law?

A. I don't have the code with me. I recited it, but without the book --

Q. Do you know if it's in the county code?

A. It's in the county code. I think it's Section 426, but I couldn't --

Q. Is it part of Title 26, do you know that?

A. I believe it is. I cover zoning regulations for many jurisdictions, so we have plans in other areas.

Q. So what you talked about so far is the extent of your coverage of the county code and the zoning regulations for the purpose of this project?

A. Yes.

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MR. ZIMMERMAN: Thank you. That's all I have.
THE CHAIRMAN: Mr. Barhight?
MR. BARHIGHT: No further questions.
THE CHAIRMAN: Thank you, Mr. Burkman. Let's take a five-minute break.
(A recess was taken.)
THE CHAIRMAN: We can go back on the record. Mr. Barhight, we are ready.
MR. BARHIGHT: The petitioner rests its case in chief. Thank you.
THE CHAIRMAN: Mr. Zimmerman?
MR. ZIMMERMAN: Mr. Chairman, before we begin our testimony, we wish to file a motion which, in fairness, although we call it a Motion to Dismiss, and believe the case, for reasons I will express in just a moment in outline, should be dismissed at this stage, we would suggest the Board provide the petitioner an opportunity to respond, and that the Board reserve on the motion and we not interrupt the case today in the interest of expediting, but we felt it was fair to alert both the Board and the petitioner in detail as to the reasons why

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we believe under state law and county zoning law the proposed slag processing facility is not a permitted use. We don't think it is a legitimate accessory use to the power plant. We don't think it's a public utility use.
THE CHAIRMAN: That's a legal issue.
MR. ZIMMERMAN: It's a legal issue. And we also don't believe under state law and county zoning law that the power plant itself is still a public utility, notwithstanding the comment about federal law and the opinion testimony that was given this morning by Mr. Perlman.
We also do not believe that whatever public utility special exception was granted by this Board in 1958 to the Baltimore Gas and Electric Company in the R. 6 zone survived the rezoning of the property to R.C. 5.
We think that's becomes a different issues as to whether a special exception is appropriate once the zoning changes.
THE CHAIRMAN: Do you want to file a motion?
MR. ZIMMERMAN: We will file this motion and provide a copy to Mr. Barhight.

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THE CHAIRMAN: And he'll have an opportunity to respond, obviously.
MR. ZIMMERMAN: And I would suggest that the Board -- since this case is not apparently going to conclude today, and since we believe at least these are legal issues -- that the Board set a time for petitioner to respond.
And that if the Board thinks it's appropriate, the Board may rule on these legal issues the next time, or reserve for the conclusion of the case.
In any event, in this case, we are alerting the Board and the petitioner in detail to legal argument on this part of the case.
There are other issues in the case, but we thought these were significant enough to deserve a separate review.
MR. BARHIGHT: Before I respond, I forgot to ask, may Mr. Burkman be excused?
THE CHAIRMAN: Yes.
MR. BARHIGHT: Thank you.
MR. ZIMMERMAN: We have an original and three for

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the Board.
THE CHAIRMAN: Mr. Barhight?
MR. BARHIGHT: As Mr. Zimmerman indicated, I have not yet had an opportunity to review the motion, so I would not be prepared to respond in any way at this point in time, and would only ask the Board direct me with how you would like me to respond.
Would you like for us to respond in writing in the intervening period, or wait and wrap these issues into the final brief? Whatever the Board's pleasure, I will be happy to do.
THE CHAIRMAN: The Board would like for you to respond in writing to us, giving Mr. Zimmerman a copy, and we are going to take it under advisement and continue with the case.
What we will do is, at the conclusion of the case, the full case, we'll give an opportunity for both counsel to argue on the merits, the legal issues involved, in memorandum, and the reply memorandum, and then what we'll do is schedule the public deliberation.
MR. BARHIGHT: With regard to the opportunity to

argue later, I'd like to respectfully suggest we do so in the form of briefs, rather than oral argument.

Given the complexity of this case, oral argument in this kind of case could take quite a long period of time.

THE CHAIRMAN: Let me check with the other panel members. Do you have any objection?

MR. ZIMMERMAN: No.

THE CHAIRMAN: We think that the best course of action, some of this is very technical, the Board members are going to have to individually review it and discuss it at the public deliberation and decide whether or not the motion should or should not be granted.

MR. BARHIGHT: Thank you very much.

THE CHAIRMAN: Mr. Zimmerman?

MR. ZIMMERMAN: Mr. Chairman, members of the panel, as you can see, there are a number of citizens present today and, as we usually do, we have an attendance sheet so that those who are here may be recognized.

THE CHAIRMAN: Why don't you pass it around, and also the folks on this side should also sign it.



MR. BARHIGHT: No objection.

THE CHAIRMAN: We'll take it in as an exhibit for i.d. purposes when you're finished.

MR. ZIMMERMAN: We have no objection to petitioner having their own sign-in sheet.

THE CHAIRMAN: We'll circulate them about. Mr. Barhight can circulate one with his folks on this side of the aisle before he leaves.

MR. BARHIGHT: Bonnie Joe Hannson is here and John Burns is here. You do know Mr. Maquire, a witness earlier. You have seen the other two witness, and you know Mr. Ransom.

THE CHAIRMAN: I think most of your folks are already in the transcript, if there's going to be one available.

MR. BARHIGHT: Yes. Thank you.

MR. ZIMMERMAN: We'll submit Petitioner's Exhibit 7. Excuse me. People's Counsel. Excuse my misstatement.

THE CHAIRMAN: Admitted.

MR. ZIMMERMAN: In the interest of expediting, we have a number of documentary exhibits, maps and public records, and I would propose to introduce them in a series.



I think that would take less time than interrupting the testimony at each point.

As People's Counsel Exhibit 8, I have the ADC road map excerpt with a marking in yellow the general road system in the area.

MR. BARHIGHT: No objection.

THE CHAIRMAN: Admitted.

MR. ZIMMERMAN: As People's Counsel Exhibit 9, we have the standard Department of Assessments tax map information that's available from the internet. This was actually printed out April 15, 2002, and it has tax maps with various zoom levels to show close-ups larger areas as well as the information on four parcels including the parcel that's the subject of this zoning petition specifically that are owned by Constellation Power Source Generation, shows the date of acquisition, October 5, 2001, from Baltimore Gas and Electric Company, and not arm's length transaction. I have provided a copy to Mr. Barhight.



MR. BARHIGHT: No objection.

THE CHAIRMAN: Admitted.

MR. ZIMMERMAN: We have a zoning map, the scale one inch to a thousand feet, which has actually been colored, and the yellow areas are R.C. 5, the orange is R.C. 20, the green is R.C. 50, and the subject property itself being R.C. 5 is in yellow, and is also approximately outlined in red, just to show the location, and it's not meant to be the exact metes and bounds.

MR. BARHIGHT: No objection.

THE CHAIRMAN: Admitted. That's No. 10?

MR. ZIMMERMAN: Right, ten. There's been obtained also a postal Rural Legacy Area map that's currently used by the Department of Environmental Protection and Resource Management -- off the record a minute.

(Discussion held off the record.)

MR. ZIMMERMAN: Petitioner's 11, or People's Counsel 11, is the Coastal Rural Legacy area map. This came from the Department of Environmental Protection and Resource Management.

Actually, one of the witnesses who will testify, Bonnie Jasinski, obtained the map, and I think Mr. Jack Dillon will also corroborate this is the map that's currently in use.

MR. BARHIGHT: No objection.

THE CHAIRMAN: Admitted. No. 11.

MR. ZIMMERMAN We also have an aerial photo brought by Ms. Covington, Terry Covington, who I understand is a naturalist and has access to various maps of the area based on her work, so she has an aerial photo.

This one happens to be early 1980s, and Ms. Covington has marked off, based on her knowledge, certain county and state areas in green cross hatched areas, certain other areas in green, as well as the subject site, and property owned by Constellation Power outlined in red.

THE CHAIRMAN: The lady who will be testifying?

MR. ZIMMERMAN: Ms. Covington will testify, but I thought it would be quicker just to get all the maps in.

MR. BARHIGHT: With regard to the exhibit with regard to the notation, I respectfully suggest it be marked for i.d. purposes and then properly admitted at the



appropriate time.

MR. ZIMMERMAN: That would be No. 12.

MR. BARHIGHT: That's i.d. only at the moment?

MR. ZIMMERMAN: Right.

THE CHAIRMAN: No. 12 for i.d. at this point.

MR. ZIMMERMAN: Mr. John Dillon took a number of photographs on five sheets of paper, two each per sheet, so we would suggest those be People's Counsel 13, and we'll mark each photograph from A through, I think, J.

MR. BARHIGHT: Mr. Dillon took these?

MR. ZIMMERMAN: Yes.

MR. BARHIGHT: No objection.

MR. ZIMMERMAN: These were taken May 29, 2002.

MR. BARHIGHT: People's Counsel A through J?

MR. ZIMMERMAN: Yes. While those are being marked, we have a number of photographs taken by one of the citizens, Rick Kammen, and these were taken --

MR. KAMMERN: Monday afternoon.

MR. ZIMMERMAN -- October 14th.

THE CHAIRMAN: He'll be testifying?

MR. ZIMMERMAN: He'll be testifying. These were



just provided to me a few minutes ago. They are eighteen photographs. These would be People's Counsel Exhibit 14, and I would suggest that during, or at the appropriate time, we can mark them with A, B, C letters.

MR. BARHIGHT: I figure i.d. only at this point so I don't have to go through all eighteen at the moment?

THE CHAIRMAN: THAT's fine.

MR. ZIMMERMAN: Mr. Dillon may wish to refer to some of those. But with that, we'll call Mr. John J. Dillon, Jr,

JOHN J. DILLON,

having been called as a witness, was duly sworn and testified as follows.

DIRECT EXAMINATION

BY MR. ZIMMERMAN:

Q. Please state your full name and address.

A. My full name us John J. Dillon, Jr. I prefer Jack Dillon. My office address is 207 Courtland Avenue, here in Towson.

Q. Mr. Dillon, are you here both as a planning expert as well as in the capacity relating to your current



employment?

A. Yes, I am.

Q. What is that current employment?

A. I am Executive Director of the Valleys Planning Council.

Q. In that connection, has the Valleys Planning Council filled out the Rule 8, so-called Rule 8 materials, to allow you to appear in a representative capacity?

A. In May of this year, yes.

Q. Mr. Dillon, I am going to show you three documents, a resolution and affidavit, and -- actually, two resolutions and an affidavit?

A. Yes.

MR. ZIMMERMAN: We'll provide a copy to Mr. Barhight in a moment. We would submit these materials as People's Counsel Exhibit 15.

MR. BARHIGHT: No objection. A through C?

MR. ZIMMERMAN: Yes.

THE CHAIRMAN: Three documents, 15A through C, People's Counsel.

MR. BARHIGHT: Do we know which is which?

MS. BARRANGER: 15A will be the resolution of their opposition, 15B is their resolution of Mr. Dillon to allow him to speak, and 15C is the affidavit.

MR. ZIMMERMAN: Showing Mr. Dillon is currently Executive Director?

MS. BARRANGER: Yes, correct.

MR. BARHIGHT: Thank you.

Q. Mr. Dillon, did you also bring with you a resume or curriculum vitae?

A. Yes, I did.

Q. Is this the document, that CV?

A. Yes, it is.

MR. BARHIGHT: No objection.

THE CHAIRMAN: Admitted.

MR. ZIMMERMAN: People's Counsel 16.

THE CHAIRMAN: Admitted.

Q. Mr. Dillon, is the information in the three-page resume, People's Counsel Exhibit 16, accurate?

A. Yes, I believe it is.

Q. Can you mention several of the cases in the last several years in which you have testified before the



County Board of Appeals in zoning matters, planning and zoning matters?

A. Yes. I recently testified in a slag processing -- I'm sorry. I mean a mulch case on Pulaski Highway; the infamous Martin Grass case, the helicopter case, a couple years ago. Gee, it's been so many, I can't think of them all now.

Q. Do you recall whether or not you testified in any rezoning cases on Carroll Island Road some years ago across from the Carroll Island Shopping Center?

A. Yes. I was involved with a request for rezoning for a pawn shop in the area. It wasn't Carroll Island Road. I think it was down Back River Neck Road.

Q. On Carroll Island Road, do you recall whether or not you were in that one as well?

A. I don't recall that one, offhand.

Q. As part of your experience, were you the area planner for the east side of Baltimore County?

A. Yes. My last two years prior to retirement from Baltimore County, I was the planner for that part of Baltimore County.



Q. Have you had any experience with respect to the development of the resource conservation zones and implementation of programs in connection with any of the resourse conservation zones?

A. Yes. In 1975, when I transferred from the zoning office into the Office of Planning and the Division of Environmental Planning -- I'm sorry -- Division of Comprehensive Environmental Planning, my assignment was to work on the development and drafting of the R.C. zones, and I have been involved with those zones pretty much ever since.

Q. Have you testified before the County Board of Appeals as an expert in any cases concerning aspects of the resource conservation zones?

A. Yes, I have.

Q. Would you describe, briefly, your work as administrator of the county agricultural land preservation program?

A. Yes, in 1979-80, when the legislature created the agricultural land preservation program and it was incorporated into Baltimore County as an active program, I



was the first administrator for that program in Baltimore County, and it still is an active ongoing program.

Q. Have you also been on the faculty of any university with respect to planning or zoning?

A. I was an adjunct faculty member at Towson State University for a number of years teaching courses on zoning and planning implementation. I also taught at Catonsville Community College and have lectured at the University of Maryland and Morgan and Goucher at different times.

MR. ZIMMERMAN: We would submit Mr. Dillon should be recognized and, in fact, has been recognized in the past by this Board as an expert in planning and zoning with particular concentration in the resource conservation zones.

THE CHAIRMAN: Any voir dire?

MR. BARHIGHT: No voir dire, and I apologize for having my ear turned away from Mr. Zimmerman who was speaking. If I could respectfully ask that he repeat the areas of expertise? I apologize.

MR. ZIMMERMAN: Planning and zoning with a

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particular concentration or particular expertise in the resource conservation zones.

MR. BARHIGHT: No objection.

THE CHAIRMAN: The Board has recognized Mr. Dillon in this capacity on many occasions. We'll accept him.

MR. BARHIGHT: May I respectfully request counsel approach, off the record?

THE CHAIRMAN: Sure.

(Discussion held at Bench, off the record.)

THE CHAIRMAN: Back on the record. Just so the record is preserved, Mr. Barhight has pointed out to the Board, and the Board is aware of the fact, that one of the associates on the panel, Ms. Worrall, was formerly an Executive Director of the Valleys Planning Council.

And so, therefore, he's indicated that perhaps he would like to question Mr. Dillon concerning the activity of the Valleys Planning Council and their involvement in the case, and then determine whether or not he should, for the record, object to Ms. Worrall's participation on the Board.

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And at that time, I will give Ms. Worrall an opportunity to express her opinion. So if that's acceptable to counsel, we can proceed.

MR. BARHIGHT: Thank you very much. My understanding from Mr. Dillon, that he's here in two capacities, one is as an expert witness, and he's just been accepted by this panel, and also, second, as a representative of the Valleys Planning Counsel. Is that correct?

THE WITNESS: That's correct.

MR. BARHIGHT: In order to make the record clear and to provide not only this body, but also later bodies, as well as the entire public, all the litigants, an opportunity to have the same knowledge that the Board has, it's my understanding in an off-record conversation that Ms. Worrall has indicated that she's not currently a member of the Valleys Planning Council?

MS. WORRALL: No. I said we are members as a family, because we still live in the Valleys Planning Council area, which is not this area under discussion today.

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MR. BARHIGHT: I apologize. I misunderstand. I thought you said you were not a member. I apologize.

MS. WORRALL: No. I said we are members as a family.

MS. BARRANGER: That the Worrall family, including Ms. Worrall, is a member of the Valleys Planning Counsel, but does not hold office.

MS. WORRALL: Nor have I participated in any of the Valleys Planning Council's decisions in any way.

MR. BARHIGHT: I guess, in order to properly create the record and protect my client, with all due respect, I know Ms. Worrall, I must, for the record at least, object to that.

One of the parties, one of the litigants in the case here today is also affiliated with a member of the Board.

I don't think, for the record, I don't think anyone in this room or on the panel anticipated this, and also, in an off-the-record discussion, it was clear none of the panel members anticpated this issue coming up.

And I guess, for the record, I must state an

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objection, because Ms. Worrall is a member of the Valleys Planning Council, which is a litigant in the matter before you here today.

I apologize for having to do that, but given the circumstances of the record, I would be remiss in representing my clients if I didn't properly bring that to the Board's attention.

THE CHAIRMAN: The Board will take note of Mr. Barhight's objection. I will simply state that there have been prior occasions when myself, for example, was a member of an an improvement association, have been involved in situations, but the Board members take an oath that they will judge each case on an individual basis, based on the testimony and evidence that's received, in a fair and objective manner.

I am sure Ms. Worrall, in this case, as she has in the past, will do the same thing. So we'll note Mr. Barhight's objection, and we'll move forward.

MR. BARHIGHT: Thank you.

MR. ZIMMERMAN: May I have a moment or two?

THE CHAIRMAN: Off the record.

(Discussion held off the record.)
THE CHAIRMAN: We'll break for lunch.
(A luncheon recess was taken.)
THE CHAIRMAN: Mr. Zimmerman?
MR. ZIMMERMAN: Mr. Chairman, we asked for a recess at the time we did to further consider the problem that occurred before lunchtime, the question of Mr. Barhight's objection to Ms. Worrall's participation in light of membership in the Valleys Planning Council and the Valleys Planning Council being present as a party.
We did not anticipate that objection and we were not actually aware that Ms. Worrall was still a member of the Valleys Planning Council.
We are not sure what the law is on this situation in terms of its ramifications, but as officers of the court, we are a little concerned that the proceeding not only be fair, but appear to all the parties to be fair, including the petitioner.
So if the petitioner is concerned there is an appearance of a problem, even that concerns us, because we want the proceedings to be fair for everyone, and appear



to be fair.
So we discussed it during the break, and I also actually spoke with Mr. Barhight briefly to alert him that I would be making some observations.
Number one, after I spoke with Mr. Dillon, he informed me that the Valleys Planning Council requests leave to withdrw its appearance in the case and withdraw what's been marked as People's Counsel Exhibit 15, the Rule 8 papers, and that Mr. Dillon would would not appear in a representative capacity for the Valleys Planning Council, and no further reference would be made to the Valleys Planning Council, and we would be content to have the Valleys Planning Council stricken as a party from the record.
Mr. Dillon is sitting right here, and I think what I said is accurate. I would hope with that, that Mr. Barhight would consider the appearance issue resolved.
If he does not consider it resolved, then we have some other suggestions, but I would, first of all, ask the Board to grant leave for the Valleys Planning Council to withdraw.



THE CHAIRMAN: Mr. Dillon, are you in agreement with that?
MR. DILLON: Yes, I am.
THE CHAIRMAN: Mr. Barhight, do you want to respond?
MR. BARHIGHT: I'm not sure what it is you would like for me to say?
THE CHAIRMAN: Well, preferably, nothing. I mean, People's Counsel --
MR. ZIMMERMAN: If I wasn't clear enough --
THE CHAIRMAN: Mr. Zimmerman is withdrawing Mr. Dillon, and we haven't gotten into the evidentiary portion of his testimony, simply taken in some exhibits, which Mr. Zimmerman is withdrawing.
So I have to assume the matter is moot as far as his appearing an behalf of the Valleys Planning Council.
MR. BARHIGHT: Well, unfortunately, the record is what the record is, and the facts are what the facts are, and what occurred happened. We can't change, any of us, the past. With happened, happened.
THE CHAIRMAN: I understand the nature of your



objection to preserve the record, as any good counsel would do that.
Ms. Worrall has indicated she has no pre-conceived notion of anything and there's no bias and no prejudice, and certainly she's exhibited this in many, many cases that I've sat on with her.
Mr. Zimmerman is perfectly within his rights to withdraw Mr. Dillon as a representative of the Valleys Planning Council, and the evidence that has been submitted thus far, the record will speak for itself, so my suggestion would be that we move on and put Mr. Dillon back on, if that's your wish.
MR. ZIMMERMAN: Well, this is my concern. If Mr. Barhight is maintaining his objection -- and, incidentally, we assume that the Board has granted the request for the Valleys Planning Council to withdraw?
THE CHAIRMAN: That's correct.
MR. ZIMMERMAN: And Exhibit 15, we are withdrawing from the evidence. I understand Mr. Barhight is still maintaining his objection, at least that's what I understand his position would be.

I don't know what a court would do with this situation. If the petition is denied for whatever reason, the legal reasoning that we had given, or other reason, that will be briefed, and then if the petitioner appeals to the court and complains that the proceedings are tainted or unfair or have the appearance of unfairness, I don't know what the answer is, in all candor.

We are not conceding, but I don't know that. Also, I am concerned that all the parties feel that they get a fair shake. And I don't question Ms. Worrall's actual ability to be fair, but the appearance is an issue.

So I would suggest, or request, in light of Mr. Barhight's continuing objection, that the Board consider having a substitute member to review the transcript to date and proceed from there, and that is a procedure which I think would be fair to everyone. While petitioner's direct examination would simply be in the transcript, our cross examination would also be in the transcript. The other option is to start the case over.

So whatever it takes to remove the appearance of unfairness, you know, we certainly are on that side, and



it seems like the most expeditious thing to do would be to have a substitute member which would read the transcript.

We would not lose much time today, unless all parties agreed to go ahead with testimony with two members today, and that might be awkward, so we wouldn't lose that much time today if the Board were so inclined to do that.

But my main concern is that there not really be anyone who has any feeling that there is an appearance of unfairness, and it would be best to do whatever it takes to remove that issue.

And, certainly, the Court of Special appeals recently has, in the Country Ridge case, and previously in the Prosser case, approved situations where there were changes in membership of the Board, and some of the Board members read the transcript on remand.

So this wouldn't be necessarily all that different. So we are doing whatever we can to alleviate and resolve this concern that the petitioner has.

THE CHAIRMAN: Okay. Ms. Worrall?

MS. WORRALL: I understand the concern about the appearance of fairness and I think that is something that



is very, very important to the process.

But I would also be concerned about your idea of a substitute who had not heard any of the petitioner's case, even if they were to read it. That strikes me as being very difficult.

And although I am perfectly willing to step down, it strikes me that the case should be heard from the beginning, would be my opinion.

THE CHAIRMAN: Mr. Barhight?

MR. BARHIGHT: We are all at a disadvantage here because none of us, the Board, the parties, the litigants, have anticipated this in the fashion that would allow us to fully research and actually understand the ramifications.

Notwithstanding that, People's Counsel, and certainly my office, are familiar with the Country Ridge case and I am familiar with the Prosser case. I was counsel in the Prosser case. I understand the basic principles there.

I think it's clear the Court has made it an available tool to a board for whatever purpose to



substitute members, and so I don't share Ms. Worrall's concern about that. I think the Court of Special Appeals has spoken on that issue.

But with all that said, Mr. Zimmerman and Ms. Demilio did take the opportunity off the record before or during the recess to raise this second concept with me, and at that time I did not have a response.

Since that time, even though it was a short period of time, about three to five minutes, I had an opportunity to discuss it with the folks of Constellation who are present today. We have not been able to go beyond that, but we would certainly find that acceptable.

Again, the appearance of impropriety is an important part of the credibility of the Board of Appeals. It's something that as members of the Bar we strive to achieve.

It's clear that my client Constellation Power Source Generation, Inc. has concerns about the appearance of impropriety, with all due respect to all members of the Board, but I think that it would certainly alleviate any objection that we would have if Ms. Worrall was willing to

step down and be replaced by a Board member who could then read the transcript and catch up, so to speak.

I don't think that we would be in position to be able to say that that was an inappropriate action by this Board.

I think the case law, from what I understand, is consistent with Mr. Zimmerman's belief of the case law, and that we would not be able to object in that case.

That's my understanding of that case, and I think that's what Mr. Zimmerman's understanding is of those cases as well.

THE CHAIRMAN: I am familiar with the Country Ridge case because I served in that case throughout the many different stages and, obviously, I read the decision that came back from the Court of Special Appeals.

I didn't agree with it. I took a minority position at that time because I think when you lose a member of a board who has been here for the entire proceeding, you have a difficulty because one of the analysis the Board has to determine in the public deliberation is the demeanor of the witnesses, the quality



of their testimony, and how things were observed and perceived.

I think that when you have a substitute Board member, they lose that aspect of the case.

My own opinion was, in that case, that happened in Country Ridge, although, again, I was a minority position in that case.

My own position -- we are going to publicly deliberate this in a few minutes -- my own position is that we should terminate the proceeding and we should start anew, but, again, I will ask for my associates to see what they want to do.

MS. WORRALL: I would agree with you.

MR. BARHIGHT: May be heard, briefly? That's a new issue. I thought we were discussing the issue whether there should be a substitute.

I haven't addressed that issue. Obviously, all the litigants here would be greatly disadvantaged if this were further delayed.

We'd began these proceedings in June. It's October. We're talking about having to come back to even



complete this case in February and March.

I think it's clear that that would be a prejudice to my client to have to now basically delay virtually for an entire year, and that's why I said that I'd agree with Mr. Zimmerman's characterization of the Country Ridge case and Prosser case, that a substitution would cure the deficiency.

MR. ZIMMERMAN: I would simply concur with Mr. Barhight. And while it's not a perfect world and we are obviously not in a perfect situation here, since the court has approved this kind of process, and I think all of the parties would not like to start over, it would be the right thing and the reasonable thing to do, so we do concur with the parties on this point since it is, at least, consistent with what the courts have said.

THE CHAIRMAN: I understand what you are saying, Mr. Zimmerman. And while I don't agree with the decision that came down from the Court of Special Appeals, nevertheless, by law, I am bound to respect them.

If both counsel are willing to proceed on the basis that a substitute panel member will be substituted



for Ms. Worrall, we can do that.

The next question is, do we continue this proceeding along the same basis, or do we stop here and then pick it up the next day so the new Board member is here to again observe the entire proceeding?

MR. ZIMMERMAN: I should think we should stop now.

MR. BARHIGHT: That would be agreeable.

THE CHAIRMAN: If that's agreeable to both counsel, that is agreeable to Board members.

MS. BARRANGER: I agree. I just have one thing to say. I am a little disappointed because, on June 5th, it was asked of Mr. Dillon why he was here, and he stated very clearly that he was appearing for the Valleys Planning Council who authorized him to participate and testify, and it had never been brought up.

If you want to go to -- in my words -- the point of having a substitute Board member, the step had been taken in between, you know, all we had from Mr. Dillon as of today -- and there's been that time lapse until today -- he's Executive Planning Director of the Valleys

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Planning Council, he put in Rule 8 papers, but he has not put any testimony, there's no evidence put on the record.

There's nothing to prejudice us with the Valleys Planning Council's opinion. Mr. Dillon has testified before us as an expert on planning and zoning in the past, and Ms. Worrall has sat on cases.

She heard them as a valued Board member, and I really just am having a very hard time wondering why we have gone from the point of withdrawing the evidence, and I mean, the only thing that came in was the Rule 8 papers. Withdrawing that, withdrawing his position as, you know, Valleys Planning Council, and going forward from that point, because no evidence has come in to date except for the statement, I am a little confused, to be honest, as to why we are going to this extreme.

THE CHAIRMAN: The real issue -- Mr. Barhight has a copy of the transcript -- towards the end, I know there was some mention made of Mr. Dillon's presence and the Board -- the question came up from you, I believe, as to his capacity as a county planner, retired, his expertise in zoning, in R.C. zones, or whether or not he was also

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here as a representative of the Valleys Planning Council. And if you have the transcript of that?

MR. BARHIGHT: I would respond -- I don't know whether the Board has the benefit of the transcript or not. I think with an extra copy, perhaps you can read that on page 210, I'd like to indicate we did have a conversation off the record prior to my making the objection, and during that time, Mr. Marks indicated that he believed that Mr. Dillon was coming back only to testify as a land planner, not to testify on behalf of the Valleys Planning Council, at least that was the impression that Mr. marks was left with. Is that fair to say, Mr. Marks.

THE CHAIRMAN: As a planning expert.

MR. BARHIGHT: I was curious myself about the circumstances and had asked the question, the answer at the top of pge 210 that he was authorized to participate, which didn't mean he was going to take a position on their behalf. Authorized to participate.

And, later, Mr. Zimmerman said, We are reserving our opportunity to have Mr. Dillon testify as a planning

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expert, and that is our office's main interest, actually.

I was left with the impression he was coming back to testify as a planning expert, which he has done many times before, and because he's the Executive Director of the Valleys Planning Council does not in and of itself disqualify him as being able to testify as a planning expert. It would only go to bias and credibility. It would not disqualify him outright.

So that's why in previous cases I have never objected for that particular purpose.

I never had a circumstance where I had the facts of this case which had Mr. Dillon testifying on behalf of the Valleys Planning Council and also have Ms. Worrall here as a member of the Valleys Planning Council, and she was previously the Executive Director for the Valleys Planning Council.

That fact pattern has never happened to me, and I don't believe any of us in the room, nor counsel in the room did not anticipate that problem, and I believe that we all indicated that during our off-the-record conversation.

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So I believe we are all caught, to a degree, by surprise. And, further -- I mean, I have to put it all on the record -- during the off-the-record conversation, my upstanding was that Ms. Worrall was no longer a member of the Valleys Planning Council, and I was prepared at that point to indicate that I did not have an objection.

It wasn't until Ms. Worrall corrected my misunderstanding, it wasn't until that moment, that I decided that I needed, in order to protect the interest of my client, and, in fact, the credibility of this Board, to make the proper objection, to put it all on the record, because I was not going to object. Ms. Demilio is agreeing that that's what happened.

MS. DEMILIO: That's the issue. We are in agreement with Mr. Barhight.

MR. ZIMMERMAN: The fact that member Worrall was Executive Director ten years ago does have no bearing. We had some misunderstanding that she was no longer a member.

And I am not sure what a court would do with that. They might end up saying that that's not a problem, but they might end up saying it is a problem.

So for that reason, ironically, what I said at the last hearing, our main interest is having Mr. Dillon testify as an expert, and we were not really particularly interested in having him as representing the Valleys Planning Council.

However, the Valleys Planning Council, back in May of this year, before this Board even convened, decided to take a position on this case, and I didn't feel like like I could sensor that at the beginning of today's proceeding.

But with everything that's happened, it's unfortunately, I think it's the fair thing to do, to go with a substitute member. Hindsight is twenty-twenty.

THE CHAIRMAN: Mr. Barhight, anything further?

MR. BARHIGHT: One other issue Ms. Barranger raised with regard to lack of evidence.

In fact, evidence has been introduced of the position of the Valleys Planning Council, introduced as part of the record of these proceedings, and that's sufficient evidence.

It wasn't until that that I asked for the panel



to recess briefly so we could approach the Bench.

You are all obviously very sensitive to all these issues. I'm not happy making this objection, and I apologize, but I feel compelled to do so in the interest of representing my client, as I am pledged to do.

THE CHAIRMAN: I understand. Well, my own personal feeling is that the situation can be very clearly defined and outlined in any opinion and order that comes from the Board appropriately.

Since both counsel seem to indicate they are willing to go forward with the substitute panelist, I don't have any objection.

I apologize to the folks that are here today, that came to testify, or do whatever, but it does seem like we have reached the point that, since counsel are willing to proceed, to go forward, that we will do that.

We will select an alternate panel member for the next meeting of this hearing.

So I really feel we shouldn't go any further in the case, that we should continue the case at this point, and at the next hearing, another panelist will be selected



from the Board and we can proceed at that time.

Unfortunately -- I think I gave the date to you folks -- the next day available is February 18th?

MS. DEMILIO: Yes.

THE CHAIRMAN: That was the date acceptable to counsel. Off the record.

(Discussion held off the record.)

THE CHAIRMAN: Okay.

MR. BARHIGHT: I thank you for your indulgance.

THE CHAIRMAN: Okay. Anything else?

MR. BARHIGHT: Do you want on the record thirty days to respond?

THE CHAIRMAN: Make it on a Monday. Off the record.

(Discussion held off the record.)

THE CHAIRMAN: Anything else?

MR. BARHIGHT: Thank you. Again, we understand the interest and concerns and appreciate the opportunity to be heard.

It's not an easy issue and we appreciate the time you have given to it.



MR. ZIMMERMAN: Thank you very much.

THE CHAIRMAN: I thank you all for your attendance.

(Hearing adjourned.)

* * * * *

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STATE OF MARYLAND )
)ss
COUNTY OF BALTIMORE )

I, Carolyn E. Peatt, a Notary Public of the State of Maryland, County of Baltimore, do hereby certify that the aforegoing proceeding was recorded stenographically and this transcript is a true record of the proceedings.

I further certify that I am not of counsel to any of the parties, nor in any way interested in the outcome of this action.

As witness my hand and notarial seal this 29th day of October 2002.

_____

Carolyn E. Peatt
Notary Public

My Commission expires June 4, 2002.

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| | |
|---|---|
| IN THE MATTER OF: | * BEFORE THE |
| CONSTELLATION POWER SOURCE | * COUNTY BOARD OF APPEALS |
| GENERATION, INC. - Legal Owner/ | * OF |
| Petitioner | * BALTIMORE COUNTY |
| 10001 Carroll Island Road | * Case No. 02-098-SPH |
| 15th Election District | * June 5, 2002 |
| 5th Councilmanic District | * |

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, at 10 o'clock a.m., June 5, 2002.

* * * * *

Reported by:

C.E. Peatt

BOARD MEMBERS:

CHARLES MARKS, Acting Chairman
LYNN BALLANGER
MARGARET WORRALL

APPEARANCES:

G. SCOTT BARHIGHT, Esquire
RICHARD A. RANSOM, Esquire
On behalf of Petitioner

PETER MAX ZIMMERMAN, Esquire
People's Counsel
On behalf of Baltimore County



PROCEEDINGS

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THE CHAIRMAN: Let the record show that the Board of Appeals for Baltimore County is in its regularly scheduled session for today, Wednesday, June 5, relative to Case No. 02-098-SPH, in the matter of Constellation Power Source Generation, Inc., legal owner/petitioner 10001 Carroll Island Road, relative to an appeal from a Deputy Zoning Commissioner's order in which a petition was granted by opinion and order dated November 5, 2001.

For the record, will counsel please state their appearance and their representation, please.

MR. BARHIGHT: Good morning. Scott Barhight, law firm of Whiteford, Taylor, Preston, on behalf of Constellation Power Source Generation, Inc, your petitioner here today, as well as Richard Ransom, who's an employee of Constellation Power Source Generation, Inc., and a member of the Maryland State Bar.

MR. ZIMMERMAN: Good morning. Peter Max Zimmerman, People's Counsel, for Baltimore County. And we also have in attendance a number of citizens, and, preliminarily, I'd ask those who wish to sign an attendance sheet so we have a record of who's here, I think it would be helpful to submit that to the Board.



MR. BARHIGHT: No objection, and we have done the same.

THE CHAIRMAN: We've done that before. We'll take it in for i.d. purposes.

MR. ZIMMERMAN: I think Mr. Barhight has a list as well.

THE CHAIRMAN: Mr. Barhight's will be Petitioner's No. 1 and People's Counsel will be People's Counsel 1.

MR. BARHIGHT: Thank you.

THE CHAIRMAN: Does Ms. Bianco has Mr. Ransom's full name and telephone number, for the record?

MR. BARHIGHT: I don't know that she does, but we can provide that now.

MR. RANSOM: Richard A. Ransom, Constellation Power, Inc. 111 Market Place, Suite 500, Baltimore, Maryland 21202. My telephone number is 410-468-2581.

THE CHAIRMAN: If you would also give Ms. Bianco one of your cards, please?



MR. RANSOM: Sure.

THE CHAIRMAN: Are there any preliminary matters, counsel? Okay. Mr. Barhight, opening?

MR. BARHIGHT: If can, I'd like to begin with a brief opening comment that would be appropriate before I put on my first witness.

THE CHAIRMAN: Sure.

MR. BARHIGHT: Obviously, we are here today and I am here on behalf of Constellation Power Source Generation, Inc., who's a petitioner today in the petition for special hearing.

The petition for special hearing relates to property located at 10001 Carroll Island Road in Baltimore County, Maryland.

The petition is for a special hearing to approve an amendment to a previously approved special exception and variance in two cases, the first Case No. 4077 and the second is Case No. 74-102-SPHA, and I will talk about those both very briefly in my opening comments.

The petition before you today relates to a 6.83

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acre portion of the overall ninety-eight acres that relates to the previously approved special exception. This portion is zoned R.C. 5 and is a portion of the property known as the Crane plant. The Crane plant is a steam generating plant and related facilities special exception which was approved back in 1958 in Case No. 4077 that is referenced in the line for the petition for special hearing.

Interestingly enough, that case was also taken to the Court of Appeals and resulted in a record opinion at 218 Md. 418, which I'd like to provide a copy to the Board and ask you take judicial notice of. I am also providing a copy as well to People's Counsel.

I don't think there's any need to indicate this as an exhibit. I'm asking you to take judicial notice of the action of the Court of Appeals of the State of Maryland.

THE CHAIRMAN: We'll do that.

MR. BARHIGHT: Just to give you some background and history on the matter in this case, they make it clear that a special exception was properly approved, and they

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have identified the special exception, as I have so identified, as a steam generating plant and related facilities. And I think that's important as we move forward today to understand it's a special exception for a steam generating plant and related facilities.

Moving forward, in 1971 and in 1973, and, of course, in 2001, the instant case, moving forward, there have been three cases on the site. I will discuss briefly each of those two cases which are already, I believe, referenced in the materials in the Board's files, and obviously ask you to take judicial notice of those previous actions by various agencies of the county.

The first one was 1971. That was a petition for variance in Case No. 72-41-A, and that was granted. That was to permit a structure to extend a certain distance beyond the mean low tide and permit a structure to extend beyond the width of the waterway. That particular variance is not really at issue today in the sense we are not seeking to amend anything that's related to that variance, but it is a part of the history of this site and in this case.

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The second issue relates to a 1973 case which was a special hearing and variance for a propane storage facility on the subject site, the 6.83 acres, which is the site that is before you today, obviously, a part of the Crane steam generating plant and related facilities special exception.

The 1973 case was a petition for special hearing to amend the previously approved special exception to permit construction of a propane storage facility and to interpret the propane storage facility as properly includable within the existing special exception. That was granted.

The variance was with the permit to construct to a storage tank 110 ten feet in height in lieu of the permitted height of thirty-five feet within the R.C. 5 zone. You will hear testimony later from a representative of Constellation Power Source Generation that that propane storage facility has been removed and that the storage tank has been removed, and in its place we are suggesting the petitions that are before you today, again, a petition for special hearing to amend the

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previous special exception and the previous variance, so we are here today basically relative to the special exception and the variance.

We would also like you to take judicial notice of the fact that Constellation Power Source Generation has received a Certificate of Public Convenience and Necessity from the Public Service Commission. I have provided documentation that we believe provides about as full a history of the PSC activities regarding this site. They occurred primarily in the early eighties, and the reason I am providing that to you is not only to create the full record, but I ask you to take judicial notice of this information.

Again, I don't think you need to have this necessarily be an exhibit, but they are actions of a body of the State of Maryland, decisions that I would like to introduce with the supporting background information so that you can understand them, so that you can take judicial notice of that CPCN.

THE CHAIRMAN: Do you any objection, Mr. Zimmerman?

MR. ZIMMERMAN: I was just handed the packet of papers this morning. Our office, interestingly enough, participated approximately twenty years ago in the proceeding regarding the Crane Power Plant and air pollution issues.

I'm not certain of the relevance of this material to today's case.

MR. BARHIGHT: I will be happy to explain.

THE CHAIRMAN: It's public record, so we'll take judicial notice of it.

MR. ZIMEMRMAN: It is public record.

MR. BARHIGHT: I guess, for ease of reference, in the event, unfortunately, that there may be any appeal, why don't we, at least for identification purposes, introduce the Cassidy case as an exhibit so we can mark it the same way we did the sign-in sheets, and also perhaps for identification purposes reference the other packet for judicial notice so we can have a reference point in the proceeding for identification purposes.

THE CHAIRMAN: We'll take the case as Petitioner's No. 2 and the other documents that were given



to us by Mr. Barhight as Exhibit No. 3.

MR. BARHIGHT: Thank you very much. The plant that is off of Carroll Island Road today is what is known as a wet bottom cyclone boiler. A wet bottom cyclone boiler.

You will hear today a great deal about the fuel for that boiler, which is coal. You're going to hear a lot today about the processes that are applied to that coal from the moment that it crosses by rail onto the site until it leaves the site. Currently, it leaves the site in trucks, and we are proposing to continue to leave the site in trucks and by rail.

The information you receive today, you will actually see some of the coal along the stages of the process. The coal is delivered to the site on board rail cars. The rail cars are actually tipped and dumped, and there are conveying systems and elevator systems that move the coal around the yard before it enters the plant. There are conveying systems of the coal that go into the plant. There are systems that crush the coal before it enters the actual boiler itself where the heat is applied



and the coal burns.

When the coal is burned, there are two byproducts that are created. You have probably heard of both of them. One is called flyash, the other is call bottom ash. The bottom ash also goes by another name, slag, and you will be hearing those two terms used interchangeably today, bottom ash and slag.

The slag processing facility which is at issue today only deals with one of those two byproducts. It does not in any way process the flyash. It only processes the bottom ash, or the slag.

You will hear testimony that relates to what happens to the coal in the boiler and, believe it or not -- and I had an opportunity to tour the plant -- it's very interesting, the coal, as it burns, ends up looking like lava and flows out of the bottom of these cyclone boilers in a form that you would think of as lava, very hot, liquidy, bright, white fluid, and enters into quenching tanks, and this process by Constellation Power Source Generation, you will hear more detail about that, you will see samples of some of the process. We couldn't



deliver to you today the product as it leaves the boiler, it's not able to be handled, obviously, it's white, hot lava, but you will see different pieces of this coal as it moves through the process to a point in the process where currently the slag is picked up by a company at the moment called Virginia Materials and taken off site to a facility in Virginia where it is further processed, and the finishing or completion of the process occurs currently off site, and you will hear information that this slag is basically utilized in its entirety for beneficial purposes.

You will hear it is used in beer bottles. It is used as road grit. It is used as the grit that is placed on shingles for roofs. And it's also primarily a material used as sandblasting material as opposed to silicant materials, which create health issues. This material does not. You will hear information about all of that.

We have three witnesses here today that we are going to want to proceed with. The first is Mr. Jeffcoat who's from Constellation Power Source Generation who will talk about that entire process and familiarize you with

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the Crane plant, some of the changes that occur at the plant, some of the activities at the plant.

The next witness will be Mr. Burns, who's the owner of Virginia Materials. He will describe the facility that's currently being used in Virginia and what is proposed at this site to complete the processing of the coal.

And you will also hear from Mike Maguire, an expert surveyor and expert in planning and zoning previously qualified before the Zoning Commissioner, who will testify with regard to some of the zoning issues that arise out of this petition today.

One thing I need to state on the record -- and this is in answer to Mr. Zimmerman's question about the relevance of the CPCN, and why I would like you to take judicial notice, it is that we are reserving all rights regarding preemption that might arise out of the fact of the issuance of the CPCN.

This petition is in the nature of a pleading in the alternative, and we do not waive any rights to assert preemption by appearing here today, and I want to make

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that clear on the record in the event that we might need to make further argument about preemption at an appropriate period of time, either in these proceedings or others.

Today, there are a series of zoning regulations that I think you're going to need to focus on. I'd like to point those out to you. First are the particular provisions of the R.C. 5 zone as they exist currently today.

The first section relates to the use provisions of the R.C. 5 zone, specifically the special exception provisions, and that is Section 1A04.2.B.12, which is a special exception in the R.C. 5 zoning for public utility uses not permitted as of right including underground interstate and intercontinental pipelines.

A public utility was the nature of the special exception use that was enacted back in 1958 in the original proceeding. Coincidentally, and happily, for the ease of the understanding of this case, a public utility was the special exception that was granted in the first place, and the steam generating plant and related

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facilities was determined to be a public utility in that initial case, and that was one of the principle issues that was decided in the Cassidy case.

Another section of the law we believe you should review and apply in this case is Section 300.1. Article 3 relates to exception to height and area requirements. Section 300 relates to height exceptions and 300.1A relates specifically to the applicability of certain height limitations.

Although we have filed a petition to amend the previously approved zoning variance, which was previously approved in allowing a tank of 110 feet, we are also asserting that we, in fact, don't need a variance, and that the application of 300.1A, if applied correctly in our asssertion, would indicate that we don't need a variance.

However, it is obviously an issue of law for the Board to decide, and we have filed a petition for variance in the alternative, again, in the nature of a pleading in the alternative, so that if the Board determines we do not properly interpret Section 300.1A and its applicability

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and we do need a height variance, we'll be introducing evidence into the record to support that variance and be able to make the argument in the alternative that if 300.1 does not apply, as we assert, that we should be able to obtain a height variance for the features of the slag processing facility.

The other section of law that is important for you today is Section 411 regarding public utility uses and basically applies in addition to the provision of Section 502. That's what it indicates in Section 411. It goes without being said that Section 307 and 502.1 both apply to an extent in this case, subject to my earlier comment. 307 relates to variances and, of course, 502.1 relates to the special exception requirements.

After you have heard all the evidence from the witnesses and viewed the documentary evidence and other evidence that we are going to be providing, we believe you will find the petition should be granted.

We believe you ultimately will find the slag processing facility is a proper activity under the previously approved special exception for a steam

generating plant and related facilities.

We believe that you will also either find that our assertion is right, we do not need height variances, or that the height variances are appropriate in this case.

I hope this has been helpful to make a brief opening statement to work through what the think the proper sections of the code are and the issues are as a result of our petition and to identify the witnesses and the general idea we are going to try and convey.

So I think if my opening generates any questions, or Mr. Zimmerman would like to have an opening, or reserve for later?

THE CHAIRMAN: Thank you very much.

MR. ZIMMERMAN: I would like to have an opening.

THE CHAIRMAN: Mr. Zimmerman.

MR. ZIMMERMAN: Yes. We also looked at the history of this case including the Board of Appeal's decision in Cassidy, and we thought it was helpful to have the original Board of Appeals case, dated March 26, 1958. It's not often we get a chance to go back that far.

I'd like to make this a People's Counsel Exhibit.



It may be the Board can take judicial notice of its own record.

MR. BARHIGHT: No objection.

THE CHAIRMAN: For purpose of appeal, if it's necessary, do you want to identify it specifically? We'll take it in as People's Counsel No. 2.

MR. BARHIGHT: Again, no objection.

MR. ZIMMERMAN: I think it's helpful to highlight at that time the owner of the property was Baltimore Gas and Electric Company. That's not the same owner of the property we have now. It was a different owner, namely, Constellation Power Source Generation, and I think we'll look at that at the end of the case and to evaluate what difference that may make.

The petition in 1958 also included a request for rezoning from R. 6 to M.H. Now, R. 6 was a residential zone that more or less the predecessor of the D.R. 5.5 zones. The rezoning was denied for reasons stated in the Board of Appeal's opinion, but the special exception was granted.

As far as the steam generating plant and related



facilities that were exactly proposed at that time, that was not an open-ended invitation for automatic approval for any facilities that a petitioner might claim is related.

Now, our office appealed this case, and the initial issue that was significant to us is whether or not the proposed use is permitted in the R.C. 5 zone. At some point, the zoning on this property changed from R. 6 probably to D.R. 5.5 because R. 6 went out of existence in 1971.

But at some point in 1976, or later -- and we haven't gone back and identified the exact year -- the property was rezoned to R.C. 5.

The change of the zone is something we'll also consider at the end of the case and what impact, if any, it had on the existing special exception. We know that public utility uses are allowed by special exception in the D.R. 5 zone, but it is a different zone.

Over and above that, however, is the point that what we now have is a slag processing facility, and we do not see that as part of a public utility use approved by



the Board in the 1950s. We don't see it as part of a public utility use now.

So this is one of those cases where, in the end, the Board is going to be asked to make a fundamental decision and legal analysis and interpretation as to identify what this use is and whether or not it fits within the zone.

So the nature of this facility, the size of the facility, how it works, will be relevant in just determining what to call it. And as I say, we now have a situation where the zoning is different, the ownership is different, and we have a use that's, as far as we are concerned, is quite different, and by the end of the case I think that we'll have the facts to explore that in more detail.

As far as the height goes, I think the R.C. 5 has a height limit of thirty-five feet. As I understand the site plan, and I have seen essentially a site plan which doesn't give a schematic drawing, unless I have missed something, that is to show the height of the facility. The request is for seventy-five feet in height. That

certainly would require a variance, and I don't think Section 300.1 avoids that necessity.

I have to say I did not see in the Zoning Commissioner's decision in this case, or should I say the Deputy Zoning Commissioner's decision, any reference to a requested height variance. And it may be I have overlooked it, but I didn't see that actually being requested.

Perhaps Mr. Barhight will correct or clarify that point. In any event, we don't see any justification for a height variance.

Now, I think we need to take say something initially about the area, to give the Board a snapshot. I showed Mr. Barhight the GIS map yesterday, which we will introduce later, but we are talking about the Carroll Island area.

This one of those peninsulas that appear in the tributaries to the Cheasapeake Bay and eastern side of Baltimore County, more or less off Eastern Avenue extended. Carroll Island Road goes to the end of this peninsula down by Seneca Creek and Saltpeter Creek. And



the county GIS map information systems, they have a nice aerial photo -- I understand the petitioner also has some photographs -- basically, we are dealing with a relatively environmentally sensitive area.

The power plant is readily visible in the photograph, near the waterways. There are some residential homes up Beach Drive and Asher Road to the north, northwest, and several of the citizens in attendance today are from that area.

There's a good bit of woodland in the area. There's a fishing bridge to the east of the site, and across the bridge is part of Aberdeen Proving Ground, so you can see that vacant area to the east.

There's also another residential area more or less to the west and south of Carroll Island Road, I should say south of Carroll Island Road and west of the facility called Seneca Park, and a number of people here today are from Seneca Park. There's a rail line, and then Carroll Island Road is visible in the photograph.

I just wanted to give the Board a sense right at the outset of a picture of the site. We also took the



opportunity to get the zoning maps which we'll introduce later, Northeast 4L, Northeast 3L, and it shows the property with the R.C. 5 zoning. To the the west is Seneca Park. The residential area appears at 3.4, low density, and then there's a substantial amount of R.C. 20 zoning to the north and west of the area owned by Constellation Power.

I haven't attempted to determine whether any part of Constellation Power's property is zoned R.C. 20. I'm assuming it's not.

In any event, these zoning maps will give the Board a sense of the area. R.C. 20 is a very protective zone that was enacted relatively recently, in 1988, if my memory serves me, in addition to the basic R.C. zones, so that gives the Board some sense. There's a park in the area across the creek, Dundee Saltpeter Creeks Park, so that would be part of our introduction to give the Board a sense of where we are.

Now, if the use is permitted by special exception, then I think the concerns would include several of the Section 502.1 issues that deal with the public



safety, health and welfare. And I know from reviewing the record and from speaking with the citizens that there are environmental issues that concern the citizens and concern our office, there are traffic issues that the citizens have raised, and the question of whether the slag facility fits in this particular neighborhood.

We understand there is already a power plant there, but one can take a different point of view as to the impact of the existence of the power plant.

Their power plant was built before the environmental movement occurred and in full force. It predated the Maryland Wetlands Act. It's doubtful or questionable whether or not a plant, a new plant, would be appropriate at this site in 2002.

So the fact that the plant is already there does not necessarily mean that we should view the land as already so intensely developed that anything should be added on at anytime by special exception or otherwise.

So, to sum up, I guess the threshhold issue which really drew our attention, is this use allowed in the R.C. 5 zone, and there could be a variety of factors that go

into that analysis.

And, separately, if allowed by special exception, under the Schultz V. Pritz analysis, what are the particular adverse impacts to the neighborhood.

And, separately, assuming a height variance has been requested -- and we think definitely there's a height problem -- you know, is that warranted under the law?

Those are the issues that seem to be the main ones. Others, I think, will come up in the course of the hearing that may relate to traffic, the environment, so on. Thank you.

THE CHAIRMAN: Thank you. Mr. Barhight?

MR. BARHIGHT: Before I call my first witness, I wanted to take Mr. Zimmerman's offer up and briefly respond to the inquiry he made about the Deputy Zoning Commissioner's decision, which I believe is in your file

THE CHAIRMAN: It's in the file.

MR. BARHIGHT: On page three of that order, in his order, he specifically grants the special hearing request to amend the previously approved special exception and variance cases, and references those cases with



particularlity. Also on page three in the first full paragraph, he makes the appropriate findings regarding practical difficulty or unreasonable hardship.

So even though this is a de novo hearing, in answer to his question, I thought it wise to point out to you he has done that which we have requested.

He's approved the amendment to the previous variance and the previous special exception cases in accordance with the site plan that was presented, but you're here to do this de novo, and you will do what you do and decide what you decide.

THE CHAIRMAN: That is correct.

MR. BARHIGHT: If I could have one quick movement before I put on my first witness to make sure I understand an issue here.

THE CHAIRMAN: Certainly.

MR. BARHIGHT: I'd like to call Mr. Jeffcoat to the stand, please.

JOHN L. JEFFCOAT,

having been called as a witness, was duly sworn and testified as follows:



DIRECT EXAMINATION

BY MR. BARHIGHT:

Q. State your full name and address, for the record, please.

A. My name is John Jeffcoat, and my business address is Constellation Power Source Generation, Inc., 2030 Brandon Shores Road, Baltimore Maryland 21226.

THE CHAIRMAN: Can everybody hear Mr. Jeffcoat?

VOICE: I can't hear too well.

THE CHAIRMAN: You can move up to the front.

Q. Mr. Jeffcoat, I have, prior to the hearing, provided Mr. Zimmerman with a copy of your resume and also provided the three Board members with a copy of your resume, but I will ask you first to identify to them, is this a copy of the resume you presented to me to identify your work history and background?

A. Yes, sir.

MR. BARHIGHT: I'd like to introduce that as the next petitioner's exhibit.

MS. BARRANGER: Petitioner's No. 4.

MR. ZIMMERMAN: No objection.



THE CHAIRMAN: Admitted.

Q. Mr. Jeffcoat, I assume you are employed by Constellation Power Source Generation, Inc.?

A. Yes, sir.

Q. Could you please, briefly, explain your current duties to the Board?

A. Presently, my position is a senior generation analyst, and my largest duty in that position is to find beneficial re-use of coal combustion products, which includes flyash and bottom ash.

Q. Are you familiar with the operation of the plant at the Crane plant?

A. Yes, I am. I worked at the Crane plant specifically as a construction administrator for approximately four years.

Q. So you have actually worked on the site, you're familiar with all the facilities?

A. I've worked on the site. As part of being a construction administrator, I handled all contractors that came on site, doing maintenance work in the plant, major outage work, and also major rebuilds and modifications to

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all the facilities on the site.
Q. As a part of your job in terms of focusing on the beneficial re-use of the coal combustion byproducts, does that involve an understanding of the processes that occur from the time the coal comes onto the site to the time when both the byproducts leave the site?
A. Yes, it does.
Q. Briefly, what is your educational background, for the Board?
A. I have a BS in management and business studies from the University of Maryland. I have an AS degree from the State University of New York. And I also graduated from a two-year engineering school strictly for marine engineering.
Q. I'm going to ask you a series of questions now that relate specifically to the Crane plant and the slag processing facility.
Where is the plant located, generally? And feel free to use, to the extent you think appropriate -- if I might, Mr. Zimmerman? -- the aerials that have been provided by Mr. Zimmerman.

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MR. ZIMMERMAN: Could we identify --
THE CHAIRMAN: Why don't we put it in as an exhibit? People's Counsel No. 3.
MR. ZIMMERMAN: It was produced by Baltimore by the County GIS Services Unit. The title is Carroll Island. I think we can all concur it was flown within the last several years. I don't see a year on it. It's an aerial photo of the site and includes the peninsulas and surrounding properties.
MR. BARHIGHT: Obviously, no objection. I wanted to make use of it.
THE CHAIRMAN: Accepted.
Q. Generally speaking, although Mr. Zimmerman and I have already talked about the plant location, what we say is not evidence.
We actually have to have someone say where it is. If you could generally locate the facility?
A. The facility is located in 10001 Carroll Island Road, which is at the end of Carroll Island peninsula, boarded by Saltpeter and Seneca Creeks.
Q. That's located in Baltimore County?

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A. Baltimore County.
MR. BARHIGHT: I wanted to also indicate that Mr. Jeffcoat could authenticate the fact that -- and you have already taken judicial notice -- the Crane plant does enjoy a CPCN -- Certificate of Public Utility, Convenience and Necessity -- at that location.
Q. Is that correct?
A. Yes, we do.
MR. BARHIGHT: There are a couple aerial photographs I'd like to use as well that are a little bit smaller in size, but perhaps a little easier to see the details that I have shown Mr. Zimmerman prior to the hearing.
MR. ZIMMERMAN: Could we get a date on the Certificate of Public Convenience?
MR. BARHIGHT: I think it's in the documentation, in the 1980s.
MR. ZIMMERMAN: Could we take a moment and find the date?
MR. BARHIGHT: Can we go off the record for a moment?

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THE CHAIRMAN: Sure.
(Discussion held off the record.)
MR. BARHIGHT: Can we go back on the record?
THE CHAIRMAN: Yes.
MR. BARHIGHT: In answer to Mr. Zimmerman's question, the last section of the Public Service Commission documentation, working from the back, the face sheet is dated February 22, 1983. There is, in the very last sheet of that, a paragraph that says Proposed Order of the Hearing Examiner, issued on April 2, 1981, was adopted by the Public Service Commission in the order as numbered on May 4, 1981, and shall remain in full force and effect.
So the Hearing Examiner's Order was April 2, 1981, and the Public Service Commission order was dated May 4, 1981.
MR. ZIMMERMAN: Let me just say, as a public record, I have no objection to the Board reviewing it, but I think I need to note this order was issued to the Baltimore Gas and Electric Company, not the Constellation Power Source, and whether or not it apparently applies is

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a question that we'll reserve.

MR. BARHIGHT: While we're on the issue, I don't know if you want to take these out of order, but on June 19, 2000, the Public Service issued a Secretarial Letter Order approving BGE's plans for the transfer of the generating stations to Constellation Power Source Generation, Inc.

That's referenced in the deed dated July 1, 2000, by and between Baltimore Gas and Electric Company and Constellation Power Source Generation, Inc., both Maryland corporations, and the deed is at Liber 14557, Folio 453.

I have the original. I didn't anticipate this issue would arise. I thought it was, on its face, obvious. But if we need to provide this documentation, we can do so, as well as the Secretarial Letter Order. If the Board would like, we'd be happy to provide it.

THE CHAIRMAN: Since Mr. Zimmerman has raised the question, why don't we take it in as your exhibit now, and you can supply Mr. Zimmerman and the Board with copies. That will take care of the name change.

MR. ZIMMERMAN: We don't dispute that Baltimore

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Gas and Electric Company sold this property to Constellation Power Source. We don't dispute the Public Service Commission. They have issued a Letter Order approving that sale.

But what we will be reviewing in this case is the status of Constellation Power Source, whether or not it has the same public utility status that Baltimore Gas and Electric Company has, and I will just say that.

THE CHAIRMAN: That's a separate and distinct legal issue. Right now, we'll take it in as Mr. Barhight's exhibit and he'll provide copies for everybody, so we can move forward.

MS. BARRINGER: So we're making this Petitioner's 5. Could you give me, the folio number?

MR. BARHIGHT: Yes. The deed is dated July 1, 2000. The Liber reference is 14557. The page is 453. I believe this is the photocopy.

THE CHAIRMAN: This is a photo copy, and if we can mark this as the next petitioner's exhibit --

MR. BARHIGHT: Petitioner's No. 5. We'll make the appropriate copies for everyone. I apologize. We did

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not anticipate this issue.

THE CHAIRMAN: No problem.

MR. BARHIGHT: Would you also like a copy of the Secretarial Letter Order approving BGE's plan by the CPCN referenced in the deed, in addition to the deed?

THE CHAIRMAN: We better take it all in as a separate exhibit. Any objection?

MR. ZIMMERMAN: No.

MR. BARHIGHT: We do not have a copy of that on the premises, but we'll provide you with one, if we can go ahead, and that will be Petitioner's No. 6. That would be a June 19, 2000 PSC -- this is actually in all caps -- a SECRETARIAL LETTER ORDER -- of that date.

THE CHAIRMAN: Petitioner's No. 6.

MR. BARHIGHT: Thank you.

Q. Back to the question. I'd like to ask you to review these two photographs I have shown previously to Mr. Zimmerman.

A. Uh-huh.

Q. Are these aerial photographs of the Crane plant?

A. Yes, they are.

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MR. BARHIGHT: I'd like to have these introduced.

Q. Do these photographs fairly and accurately depict -- with some comments you're going to make because as of the date of the photographs there's some facilities there that are not there any longer -- but subject to that, do they fairly and accurately depict the Crane plant?

A. Yes, they do.

MR. BARHIGHT: I'd like to offer these as the next two petitioner's exhibits.

MR. ZIMMERMAN: No objection.

THE CHAIRMAN: 7A and 7B. Do you have a date?

MR. BARHIGHT: No, we could not find a specific date. They were taken around 1996, but there was not a date on the back. Just says "Kodak."

Q. Mr. Jeffcoat utilizing those photographs and the photograph on the board, People's Counsel Exhibit No. 3, feel free to make any reference to that as I ask you a series of questions.

Could you please describe the existing features of the facility? Perhaps the best thing to do would be to

step down from the witness stand, give those two photographs to the Board members so they can look at them, and you can use the corresponding photograph that's on the board, and please point out some of these different facilities to the Board.

If you can show us where this boiler is I have referenced and some of the other facilities, like the bag house, the silos, et cetera, do a walk-through, that would be much appreciated.

A. I'll start with the main facility. Of course, this here takes in that entire area.

Q. For the record, the witness is outlining basically the boundaries of the Constellation Power Source Generation site.

A. The main boiler house which houses the boilers and the turbines and main pumps and facilities are located in these two structures here.

Q. You're referencing the two square blocks in the middle of the plant itself?

A. Which has the red and white smokestacks on top of them.



MR. ZIMMERMAN: If some of the citizens want to see the photograph, if they want to see what's going on with the the photographs, there's room up here to see, without interfering with the testimony.

A. This dark spot here is the coal storage pile. The area just adjacent to it is the facility that used to be the propane facility and will be, hopefully, the slag plant.

The rest of the facility here adjacent to the boilers are the bag houses, which are a little shadow here, but the bag house is here for number one unit and here for number two unit. Right here in the middle of those two is the flyash silo where we collect the flyash from the combustion product.

Back here is the wastewater treatment facilities, clarifiers. We have some oil tanks over here on this side.

Q. Near the water to the east?

A. Correct. Number two oil and lube oil tanks and two city water tanks and a demineralizer tank. The parking lot.



There's a footprint here where the number six oil tanks used to be. They're no longer there, but these three circular foundations are still there from the tanks being there. This facility over here is the warehouse facility.

Q. Identifying a facility that's to the west, actually westernmost facility to the south of Carroll Island Road?

A. Correct.

Q. Making reference to the photographs that are Petitioner's Exhibit 7A and B, would you approach Mr. Marks and point out to the Board those facilities that are in those photographs that are no longer currently actually existing on the site?

A. Presently, the propane facility, which is this tank, these horizontal tanks here, this building, this small storage tank, are all gone.

THE CHAIRMAN: Why don't you circle that area for us?

THE WITNESS: (Indicating).

MR. BARHIGHT: For the record, the witness on



Petitioner's 7B is outlining the area of --

THE WITNESS: The propane facility.

MR. BARHIGHT: -- the propane facility which has been removed from the site.

THE CHAIRMAN: This is completely vacant?

THE WITNESS: As a matter of fact, you can see that in this picture here. Also, here, there were three number six oil tanks at this location which were forty-foot high and I think 220 foot in diameter, used for storing number six oil, when the plant burned number six oil. It was fourty foot high and approximately 220 foot in diameter.

Q. Mr. Jeffcoat, I'd like you to give us some heights on a number of these different facilities you have identified so we can use them for comparative purposes later.

The core facility, the boiler house that houses the boiler as well as the turbines, not including the smokestacks, what is the height of that facility?

A. That facility is about 153 feet.

Q. And the bag houses, which I think you identified,

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could you point those out again on Exhibits 7A and B, and identify the height of those bag houses?

A. This is the -- let me back up a minute. This is the boiler house. That's 153 feet. The bag houses here and here, and actually here, they are 180 feet.

THE CHAIRMAN: Speak up.

Q. They're 180 feet.

MR. ZIMMERMAN: Can the witness describe by description, rather than saying "here"? Anyone reading the transcript is not going to understand.

THE CHAIRMAN: Do we have a different color pen we can use to outline that? Why don't we just draw a circle around those, and over here, identify them on your right-hand side of the photograph.

MR. BARHIGHT: He's going to identify them by number.

THE CHAIRMAN: So the record is clear, Mr. Jeffcoat, why don't you go back and tell us one, two, three and four as you put these on Exhibit 7B.

THE WITNESS: Number one is the old propane facility, which is now removed. Number two is the bag

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house for number two unit. Number three is the bag house for number one unit. Number four is the boiler house proper. And I would imagine you want to go to the smokestacks?

Q. The smokestacks, do they come out of the boiler house proper?

A. Yes.

Q. What is the height of the smokestacks?

A. 325 foot from the ground.

Q. I believe you have identified the location of the wastewater treatment facility. I think that's pretty obvious from the photographs without labeling that. That's the southernmost element of the peninsula. The wastewater facility is not on this photograph No. 7B, but it is shown on number 7A.

THE CHAIRMAN: Have the witness identify that.

MS. BARRANGER: I hate to clarify, but because there was a lot of back and forth on Petitioner's 7B, on areas one through five, could we go through the height of the identified ones?

MR. BARHIGHT: Certainly. Be happy to.

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Q. Again, Mr. Jeffcoat, the height of the boiler that contains the turbine houses without the smokestacks included in the height?

A. That would be identified as number four and the boiler proper house is 153 foot.

Q. How about the bag houses?

A. The bag houses are approximately 180 foot.

Q. I believe you also indicated the location of the storage silos for the flyash?

A. Yes, sir.

Q. What is the height of those?

A. The flyash silo, approximately 130 foot.

Q. The stacks?

A. The stacks are 325 foot.

MR. BARHIGHT: Of course, there are other questions about other heights. Feel free to ask them on cross-examination, but those are the taller facilities on the site.

Q. Now, while we are talking about the Crane plant proper, you're familiar with the operation, you have been able to walk around the site in the general vicinity while

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operating?

A. Yes, sir.

Q. If I could direct your attention, let put pull out the petitioner's site plan that was in your file. Let me put that up on the board.

Prior to these proceedings today, by agreement with Mr. Zimmerman, I believe we were going to agree to allow this document to be introduced, and I guess authenticate by agreement, that this is the document that was filed with the original petition that depicts the plan to accompany Petition for Special Hearing as requested by your petitioner here today, and I'd like to introduce it, subject to Mr. Zimmerman's comment, as the next petitioner's exhibit.

MS. BARRANGER: Petitioner's No. 8.

MR. ZIMMERMAN: We don't object to it being admitted. We are not stipulating to its legal sufficiency.

THE CHAIRMAN: I understand.

Q. Mr. Jeffcoat, if you could turn this way, if I can ask you to identify this site plan relative to its

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location in the other photographs just to make sure the Board knows where the slag processing facility is that's proposed relative to the Crane plant itself.

A. This is the site plan for the proposed slag facility, and it is showing it on this -- what do you call this? -- GIS map, the overhead photograph, and the facility is located right here, which is northwest of the main plant, just south of Carroll Island Road.

Q. Now, you have had an opportunity to walk the entire site of the Crane facility including the area of the proposed slag processing facility?

A. Yes sir.

Q. Is there a public road, Carroll Island Road, that appears adjacent to and north of the Crane plant proper, including the slag processing facility?

A. Yes, sir.

Q. If I am to understand, when you have stood on Carroll Island Road at the location of the entrance to what was the propane facility, which will be the entrance to the slag facility, can you hear the operation of the Crane plant itself?

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A. Yes.

Q. Staying focused on that issue for just a moment, you're familiar with the hearing protection that may be required for visitors and workers to the plant itself? For instance, the boiler area?

A. We have a mandatory hearing protection policy that everybody will wear hearing protection when they are inside the boilers.

Q. Moving on to another issue, could you describe the evolution of the source of the fuel for this facility from coal to oil and then back to coal? I understand there's ben a change. If you could briefly describe to the Board how we have gone from coal to oil and then back to coal?

A. In the 1960s, it was originally designed to run using coal as a fuel. In the 1972 to '73 time frame, it was converted to oil. In the 1983 time frame, it was converted back to coal, and it's still running on coal today.

Q. I indicated in my opening this is now what's called a wet bottom cyclone boiler. Is that the proper

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characterization of this kind of plant?

A. Correct.

Q. Could you briefly explain to the board what that means, what wet bottom cyclone boiler means?

A. Cyclone boilers are very unique in the way they burn coal. And what happens in the cyclone, the temperatures are high enough that the actual ash, most of the ash will melt, or the the bottom ash will melt and come out of the bottom of the boiler as a molten liquid.

Q. It might look like, to an uneducated observer such as myself, as dripping lava?

A. Yes. If you have seen where they poured steel and seen the bright red material flowing out of a crucible, that's exactly what it looks like.

Q. Mr. Jeffcoat, I'd like you to describe the process that takes the coal from the delivery to the site into the boiler, and then as it's created into flyash and bottom ash, I'd like you to walk the Board through that process, without going through all the chemistry, but basically here's what happened at each stage.

And please feel free to use any of the aerial

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photographs to depict areas where different activities might occur. Let's start off by the coal arrives on the property by rail?

A. That is correct.

Q. Why don't you take it from there?

A. Okay. I'm going to use this aerial photograph. The coal arrives by rail which comes parallel to Carroll Island Road, down to a yard, a marshalling yard where the train is broken down into so many cars per track. The cars are taken, put in a dumper house, turned upside down, and actually dumped out, which drops into hoppers that are underground.

The hoopers have a conveying belt system underneath them which allows the coal to be fed out into this stackout tower. The stackout tower actually puts the coal on the storage pile.

We have bulldozers on the storage pile that move the coal from underneath the stackout tower to fill the entire coal stockpile area. From that point, we have underground feeders, and actually a conveyor belt that runs from the coal pile all the way up to the top of the

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boiler house. The material is dropped in the hooper there, and through various ways of feeding it, it is run through a crusher, crushed down to a size of a quarter inch, or smaller, and blown into the boiler where it's burned.

At that point, of course, all the hydrocarbons go off the coal. What's left is your flyash and bottom ash. The flyash goes through the boiler, comes out of the back of the boiler with the flue gas, through the bag houses, where it's collected. And then, at that point, it goes into a flyash silo. The bottom ash melts, flows down into the bottom of the boiler, drops into a tank, which we call a slag tank, or squelch tank, where it's actually cooled.

At that process, it gets cold and actually cracks. Some of the material is a pretty good size at that point, and it cracks into some smaller material, it's crushed again. It's sleushed (phonetic) out by water. It's crushed again at that point and sent to a hydrobin or dewatering bin.

In the dewatering bin, we basically take the water off it, and some of the fines are separated out of

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it, and that goes to the wastewater treatment plant.

Underneath the dewatering bins are truck load-out facilities where it's loaded out and sent to a slag facility like Mr. Burns.'

Q. Let's talk about that for a moment, first as to the flyash, and then as to the slag. I indicated in my opening that bottom ash is also called slag. Is that correct?

A. Correct.

Q. Let's take the flyash first. The flyash is put into the bag houses. What happens to the flyash from there?

A. The flyash actually -- the bags themselves are filters, more or less, and the air that's carrying the flue gas goes through the bag and out the stack. The flyash is captured there, drops down in hoppers, and then vacummed to the flyash silo.

The flyash silo is all dry systems. We have a truck load-out facility underneath that, and we actually mix flyash with water, and then we take it to an industrial fill site which we developed, industrial

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property, and use it for fill material.

Q. So, currently, Constellation Power Source Generation itself is finishing or completes the process of procesing the flyash and delivers it to an off-site end user, namely an industrial facility?

A. That is correct, or to our own site.

Q. Now, currently, not what's proposed, but currently -- let's go back to the slag -- what happens to the slag from the point that it leaves the boiler as this molten lava form, what happens to that, and what do you do with it at the moment?

A. When the slag comes out of the boiler, of course, it's in a molten state, very, very hot. It drops into what we call the slag tank or quench tank. That tank is full of water and has water cycling through it all the time and actually fractures that material as it comes down.

It cools it and it actually fractures it into smaller pieces. If you didn't, you would have, once it's cold, you'd have one big glob that you wouldn't be able to do much with.

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Once it's quenched and it fractures, it's sleushed out of the bottom of that tank into a crusher where it's crushed down to a fine particle, say a quarter, maybe an eighth of an inch, and smaller.

That material is sleushed by water into the hydrobin. The hydrobin's water is decantered off it and some of the fines are removed. That water and those fines are sent to our wastewater treatment facility for further processing.

At that point, the slag is in the middle of its processing, I should say, and from there it goes on to being loaded on trucks, gets loaded on trucks, hauled to, I'm going to say, Havre de Grace, where it is trans-loaded to a barge.

At that point, the barge is taken to Norfolk Virginia, where it's unloaded at a facility and transferred back to trucks, and then those trucks deliver to Virginia Materials.

Q. Do they complete the processing of the slag?

A. They do at that point, in his facility. They dry it. They finish crushing it into a finer particle and

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segregate it into sizes.
Q. Let's go back to the beginning of the process and get some additional details into the record.
Let's talk about how we get the coal to the site. Approximately how many tons of coal arrive at this facility each year?
A. Crane burns approximately 850,000 tons of coal a year on an average. All of the coal is delivered to Crane by train in 100-ton hopper cars, which equates to about 8,500 cars a year.
Typically, we like to have a levelized delivery schedule of two to three trains per week. Each train is composed of eight-five to 130 cars.
Q. Now, let's go back to the end of the process as it currently exists. When you're about halfway through the process of dealing with the slag, are you familiar with the truck traffic that removes this partially processed slag away from the site?
A. Yes.
Q. Could you describe the number of trucks and the tonnage that occurs on the average basis to remove the

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slag from the site?
A. On an average, we move approximately 40,000 tons a year off site. That's all moved by tandem axle or triaxle dumptrucks now.
Q. About how many trucks a day did that work out to on an average?
A. Approximately seven to eight trucks per day on a seven-day basis, pretty much every day of the year.
Q. You can go ahead and sit down for the next series of questions I have to ask you.
How many fossil fuel power plants does Constellation Power Source Generation operate in Maryland?
A. In Maryland, we operate nine plants.
Q. How many of these nine fossil fuel power plants operated by Constellation Power Source Generation are located in Baltimore County?
A. In Baltimore County, we have three power plants, fossil power plants.
Q. Could you please name those three and give a general location, just for background information for the Board?

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A. The first plant is Crane Station, which is at the Carroll Island facility. The second facility would be the Riverside facility which is located at the north end of the Key Bridge and the Turner Station area. And the other plant is a Philadelphia Road plant which is -- I'm not sure how to describe --
Q. Is that called Notch Cliff?
A. Oh. I'm sorry. I'm thinking -- no. Let me back up a minute. Notch Cliff is the third plant, which is in northern Baltimore County.
Q. How many of the nine fossil fuel power plants operated by Constellation Poewr Source Generation are coal-fired? You have nine fossil fuel, which I assume means oil and coal. How many of those nine are coal-fired?
A. There's actually three. One is the Crane Power Plant. The second one is the Wagner Power Plant. The third one would be the Brandon Shores facility.
Q. Do all three of these coal-fired power plants have related facilities to convey and process the fuel into the boilers and then somehow deal with the combustion

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product on the back end?
A. Yes, they do. Typically, the type of systems used are very typical and in any of the coal plants. The differences is in the actually delivery. The Wagner and Brandon Shores delivery is done by water, but from that point forward, it's pretty much the same.
Q. So all three of these coal-fired plants produce what are characterized as coal combustion byproducts which are known as flyash and bottom ash?
A. Correct.
Q. Is the management of these coal combustion byproducts, namely bottom ash and flyash, part of the steam generating plant?
MR. ZIMMERMANM: Objection. Leading.
MR. BARHIGHT: It's not a leading question.
THE CHAIRMAN: Rephrase.
MR. BARHIGHT: I have a definition. I can ask him whether these operations are integral or not.
Q. Are these operations to manage these byproducts integral to the plant?
MR. ZIMMERMAN: Objection.

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THE CHAIRMAN: I will let him answer.
A. Yes.
Q. Why?
A. We have a -- management has dictated to us we need an ash management policy from an environmental standpoint. And that's particularly my job, to make sure we do this, find beneficial uses for these products.
We have had, for instance, at Brandon Shores, we have a facility that processes flyash, takes the carbon out of the flyash, and then it's sent to be used in the concrete world. We use flyash in the making of cement, flowable fill products and other structural fill.
Q. If the Crane plant was operating at full capacity, approximately how many tons of bottom ash would be created on an annual basis, if it was full capacity every day?
A. Approximately 70,000 tons.
Q. In terms of the average that you're familiar with over the last several years, what, in fact, has been the average tonnage created of slag by the Crane plant?
A. The average tonnage produced at Crane have been

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around 40,000 tons for slag.
Q. Do you have any samples of any of these materials that we can take a look at, to bring us a little bit to conclusion?
A. Yes, I do.
Q. Why don't you pull out what's the closest, even to where it arrives at the site first --
MR. BARHIGHT: And I'll ask Mr. Zimmerman to approach and take a look at the coal, if he'd like.
A. What I have here, this is an actual sample of the coal. It won't bite.
MR. BARHIGHT: It's not going to hurt you, Pete.
A. This is dug out of the ground, loaded on trains, and delivered.
MR. BARHIGHT: I'd like to introduce this as the next petitioner's exhibit. Petitioner's 9.
THE CHAIRMAN: Exhibit 9 is the coal as it arrives on the site, is that correct?
MR. BARHIGHT: That's correct.
MS. BARRANGER: Petitioner's Exhibit No. 9
Q. The next exhibit, what is the next sample that

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you have brought that's along the process?
A. The next exhibit is an actual piece of slag, a couple pieces of slag that came out of the quench tank before it went to the crushers.
Q. It comes out as molten lava. The first step is to quench it. It's taken out of the quench tank, and this is what it looks like when it comes out of the quenching tanks?
A. Correct.
MS. BARANGER: Petitioner's No. 10.
Q. What is the last sample you have there, Mr. Jeffcoat?
A The last sample is a sample of the material after being crushed and sent to the hydrobins.
Q. So if I pull my truck up underneath the hydrobins and pulled the lever, that's what would come out?
A. Yes, sir. After being crushed.
Q. Is this the product that comes out after the hydrobins?
A. This is the product that's after the hydrobins. This is the coal combustion slag product.

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Q. This is further processed off site currently, and we propose to further process it on site?
A. Correct.
MS. BARRANGER: Petitioner's No. 11.
MR. BARHIGHT: Mr. Burns has other samples that relate to the completion of the process, but we are getting ahead of ourselves.
Q. Mr. Jeffcoat, we have talked a little bit about and you have used the phrase, this is the middle of the process when it comes out of the hydrobin. Could Constellation Power Source Generation complete the process, could it do what Virginia Materials does today, if it so chose?
A. Yes.
Q. Why don't you do that?
A. We prefer to leave that up to the experts such as Virginia Materials to do that processing and finish it and take it to the market.
Q. Mr. Jeffcoat, the last series of questions, are there other third parties like Virginia Materials who are independent contractors, independent of Constellation

Power Source Generation, who also perform functions at the Crane plant site?

A. Yes.

Q. Could you please, very briefly, describe some of those functions? Not the name of the company, but just briefly describe some of those functions that third parties, other than Constellation Power Source Generation, do at this location as part of this plant activity?

A. Yes. First of all, our coal deliveries are done by others. We have maintenance personnel that we hire for doing mechanial work, scaffolding work, insulation work. We do hire all kinds of contractors for snow removal, landscaping. Our guards are outside companies.

Q. How about the trucking activities that occur?

A. Yes, sir, that's correct. The trucking, the flyash and the slag are both trucked by -- we use contractors' trucks to haul that stuff off site.

MR. BARHIGHT: One moment, please. No other questions of this witness at this time. Thank you very much.

THE CHAIRMAN: Mr. Zimmerman.



CROSS EXAMINATION

BY MR. ZIMMERMAN:

Q. Mr. Jeffcoat, you worked for Baltimore Gas and Electric company at one time?

A. Yes, sir.

Q. When did you change over to Constellation Power Source Generation?

A. That's a very tough question to answer. It's been changing. Let's see. It's probably 1999.

Q. Does Baltimore Gas and Electric Company still exist?

A. Yes.

Q. What is its function, currently?

A. Currently, its function is -- it does the transmission and distribution of electricity.

Q. And the prices are regulated on that by the Public Service Commission, are they not?

A. I believe so, yes.

Q. Do you know why Constellation Power source was created?

A. I don't think I am qualified to answer that question.



Q. Is this part of the deregulation aspects of power in Maryland?

A. Yes, in general.

Q. Do you know whether or not Constellation Energy Group has a web page?

A. Yes.

Q. Have you seen it?

A. Yes.

Q. Mr. Jeffcoat, I'm going to show you a two-page Constellation Energy Group website entitled, About Constellation Energy Group, that we got off the internet. Do you recognize this?

A. I haven't looked at it in awhile, but I have seen it prior to this time.

MR. ZIMMERMAN: I'm going to ask this be marked as People's Counsel Exhibit 4, and I will have copies made.

MR. BARHIGHT: No objection. I understand the implication. If Mr. Zimmerman can indicate he pulled this from the website, I have no objection.



THE CHAIRMAN: Submitted.

MR. BARHIGHT: The print doesn't identify it, but I trust him when he said what he did.

MR ZIMMERMAN: I'm going to ask the witness questions about it.

Q. Would you take a look at it for a moment, and I will ask you a couple questions.

MR. BARHIGHT: May I read over my witness's shoulder?

MR. ZIMMERMAN: Sure.

THE CHAIRMAN: Yes.

Q. I'm ready to go. Do you recognize the statement about creation of three lines of business, namely, Merchant Energy, Energy Delivery, and other non-regulated businesses?

A. I'm sorry?

Q. Are you familiar with the division of the businesses -- first of all, do you know what Constellation Energy Group is?

A. Yes.

Q. What is it?

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A. Constellation Energy Group is the parent corporation for Baltimore Gas and Electric, Constellation Power Source, Constellation Power Source Generation, Inc, and there's several others, BG&E Home, and several other companies which I cannot remember at this time.
Q. To the best of your knowledge, is the information provided in this website page and a half correct in describing the business overview of Constellation Energy Group?
A. Based on reading it here, it appears to be.
Q. You work for Constellation Power Source Generation?
A. Yes.
Q. Is that a separate corporation, do you know?
A. Yes, I think so.
Q. And do you know whether it is considered part of the Merchants Energy section of the Constellation Energy Group business?
A. Yes. According to this, it should be. We're part or under the Constellation Generation Group.
Q. With the Generation Group, what's the

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relationship between Constellation Power Source and Constellation Generation Group? Do each have their own plant, according to the website?
A. The Merchants Energy business has Constellation Generation Group, which are the fossil and nuclear plants, and Constellation Power Source is characterized as the marketing and trading, I think.
Q. Does Constellation Power Source operate the Crane Power Plant at this point?
A. I'm sorry?
Q. Does Constellation Power Source, does that operate the power plant?
A. No. Constellation Power Source Generation, Inc., operates the power plant.
Q. Why is Constellation Power Source involved in this case relating to the power plant operated by the Constellation Generation Group? If Constellation Generation Group operates the power plant --
MR. BARHIGHT: Objection. That's not what the witness stated. It is Constellation Power Source Generation, Inc. who operates the power plant. That's my

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client and the petitioner.
MR. ZIMMERMAN Excuse me?
MR. BARHIGHT: That's the petitioner here today.
MR. ZIMMERMAN: Excuse me. I misunderstood.
Q. Constellation Power Source Generation, Inc. operates the power plant and is also involved in the request today, have I got that right?
A. Correct.
Q. Now, is Constellation Power Source, Inc. divided into two sections? In other words, Constellation Generation Group and Constellation Power Source? Do you know the answer to that?
A. Let me see if -- Constellation Generation Group is -- Constellation Power Source Generation, Inc. is a part of Constellation Generation Group. Constellation Power Source is a different company than Constellation Power Source Generation.
Q. So Constellation Power Source is not involved directly in the present case?
A. Correct.
Q. Is that correct?

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A. Correct.
Q. Constellation Generation Group is, which is part of Constellation Power Source Generation, Inc. --
MR. BARHIGHT: The other way around.
A. Reverse it and you will have it.
Q. Say it in your own wards.
A. Starting from the top, Constellation Generation Group is our parent. Constellation Power Source Generation, Inc. is a company within that group.
Q. What are the other --
A. Or division.
Q. What are the other divisions?
A. Constellation Power Source is another division or group in that Constellation Energy or Constellation Generation Group.
Q. In any event, are these part of the merchant energy line of business, because this signifies that you're in a deregulated business environment?
MR. BARHIGHT: Objection. I think that calls for a legal conclusion.
THE CHAIRMAN: I don't think he's qualified to

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answer that. I will sustain the objection.
Q. Do you know whether or not the production or generation of energy is now, the supply of energy, is now subject to competition?
As a staff person with experince at the company, do you know whether or not you're now in a situation of competition?
A. I know that we are in deregulation, but we are now presently under a PSC order still, and that I'm not sure -- I cannot answer that, whether that makes us regulated, deregulated.
Q. In any event, you are aware there's Maryland legislation that deregulates aspects of the energy business?
A. Yes.
Q. And do you know whether or not the transfer of the Crane Power Plant from Baltimore Gas and Electric Company to Constellation Power was part of a deregulatory process?
A. Yes, I believe it was.
Q. And as far as the proposed facility, you have it

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as occupying about 6.83 acres, is that correct?
A. Yes, that is correct.
Q. But the main or the general area of the power plant is much larger than that, correct?
A. Correct.
Q. Is it about eighty acres or ninety acres? Can you give a number?
A. No, not really. I really don't know. I never really thought about it.
Q. In any event, for the purpose of this case, you -- I say you -- the preparer of the site plan has outlined something a little under seven acres?
A. That's correct.
Q. Do you know -- well, there's a drawing of a proposed, what appears to be a proposed slag processing facility on the site plan, looks like three silos, portable bagging, raised concrete ramps, hopper, dryer, so on, is that your understanding of the schematic from looking down on the site two-dimensionally of what this proposed facility will appear in terms of a shape?
A. Yes.

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Q. Is there any drawing from a view from the side or any three-dimensional model that you have of this proposed facility?
A. Yes. There are some of like facilities, but none -- I don't believe there's any of this specific facility.
Q. Do you know what the length of this facility would be from one end to the other in various sections?
A. No, sir.
Q. Not even approximately?
A. No sir.
Q. Do you know whether it's shown on the site plan what the length of the facility is, or any of its sections?
A. No, sir, I don't know.
Q. The same is true of the width?
A. That is correct.
Q. Is it your understanding the maximum height is seventy-five feet as listed on the site plan?
A. Yes.
Q. What part is seventy-five feet high, do you know?

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A. My understanding, that the hopper, the top of the hopper with the -- what is actually the storage of the finished product.
Q. How high are the silos?
A. Seventy-five foot, I believe.
Q. Proposed?
A. Correct.
Q. Seventy-five feet silos?
A. Which silos are you speaking of?
Q. There are three silos?
A. Yes. I believe they are seventy-five feet.
Q. And the portable bagging, what's the height of that?
A. I'm not really sure.
Q. The conveyor belt area, how high does that go? To the top of the silos?
A. Which conveyor belt?
Q. The conveyor belt that's identified next -- it looks like -- it says a screen deck. Do you know what that is? Am I reading that correctly?
A. Sounds correct.

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Q. Do you know how high that is?
A. Specifically, no. But it's nowhere near the height of the silo.
Q. This area is currently vacant?
A. Yes, sir.
Q. Is there a roadway in this area, or state exactly what this area looks like now where the facility is proposed?
A. Presently, that area has a paved roadway in and out of it where -- which was put in for the propane facility to be able to have trucks pull in and turn around and go back out.
Q. This area of the property, relatively speaking, is both adjacent to Carroll Island Road and closer to the residential area along Beach Drive and Asher road than the main part of the plant to the south, would you agree with that?
A. Yes, sir.
Q. Do you know whether any of the other coal-fired power plants in Maryland -- strike that.
Are there coal-fired power plants operated by any

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other companies other than Constellation Power, such as Potomac Electric, for example, or any other companies operating coal?
A. Excuse me. Can you repeat that?
Q. Are there any other companies which operate coal-fired power plants in Maryland?
A. Yes. Potomac Electric. I believe Allegheny Electric.
Q. Do you know how many, approximately?
A. I couldn't answer that.
Q. Do you know whether any of them have slag processing facilities on site such as a Virginia Materials facility?
A. No, none of them do, because they do not have the type boilers that we have at Crane.
Q. In any event, they don't have them?
A. Correct.
Q. So they truck their slag out, as far as you know?
A. They don't make slag, specifically. They do have bottom ash, but not slag.
Q. Excuse me. Bottom ash is slag? Bottom ash is

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slag as has been described as the same thing earlier today? Have I missed somether there?
A. Yes. Sorry.
Q. I thought flyash was something else, but bottom ash was essentially treated as slag?
A. When the bottom ash comes out of the bottom of the boiler as a liquid, it's typically referred to as slag. When it does not, when it comes out as a particle, not liquid, it's usually called bottom ash.
A. Okay. Well, this zoning case has come in as a slag processing facility request. Is that an accurate term? Or should we be calling it bottom ash?
A. Slag processing.
Q. You're saying facilities operated by -- other coal-fired facilities operated by other companies produce bottom ash, but not slag?
A. Correct.
Q. What do they do with their bottom ash?
A. I don't have a clue.
Q. What does your company do with the bottom ash?
A. Our bottom ash at other facilities than Crane, we

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actually sell some to the block making companies. We have sent it to cement manufacturing plants and it's been used in the cement making process.
We have used it for fill material on structural fill, on structural fill jobs. One specific area we used it was the 695 extension from the Key Bridge. We use it for building bridge abutments, as select fill, so to speak.
Q. And in those processes or in what you're doing there, do you truck the material out, or somebody picks it up?
A. We have done both, trucked it out ourselves and had other people come in and pick it up, and we have had subcontractors truck for us.
Q. Your other coal-fired power plant, namely, Brandon Shores and -- was it Wagner?
A. Yes, sir.
Q. Do they produce slag?
A. No, sir.
Q. Do they produce bottom ash?
A. Yes.

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Q. And that's trucked out in the same manner?
A. Yes.
Q. That you just described?
A. Yes.
Q. So that I can be sure I understand correctly, is this the only plant of the three that produces slag?
A. Correct.
Q. Are there other plants around the United States, to the best of your knowledge, that produce slag?
A. Yes, sir, there are.
Q. Coal-fired power plants?
A. Yes. There's approximately twenty that produce slag.
Q. Do you know whether or not they truck their slag out to places like Virginia Materials?
A. Most of them do. I don't know specifically, but most of them do.
Q. Do you know whether Virginia Materials is a free-standing facility that is not on the site of a power plant in Norfolk, or whatever it is in Virginia at the present time? Do they have their own facility independent

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of some power plant?
A. In Virginia?
Q. Yes.
A. Yes.
Q. Are there other facilities similar to that around the country, to the best of your knowledge, whether it be Iowa or Oregon or Florida?
A. Yes.
Q. Generally speaking, do they exist on their own sites?
A. I don't know.
Q. Of the twenty coal-fired power plants or so that produce slag, do you know whether any of them have a slag processing facility similar to what's proposed here on site?
A. I have not -- I know of them, but I have not seen any of them.
Q. There are a few?
A. Yes.
Q. Two?
A. I don't know how many.

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Q. But the great majority truck the slag out at the present time to places like Virginia Material, or dispose of it in other ways?
A. I don't know.
Q. If for some reason this proposal for a slag facility here were denied, would the Crane Power Plant continue to function?
A. Yes.
Q. The Crane Power Plant's existence does not depend on the approval or disapproval of this proposal, you would agree with that?
A. Yes.
Q. Do you know why seven acres or so, 6.3 acres, are necessary to allocate for this proposal?
A. Can you repeat your question?
Q. Why is it necessary to set aside seven acres or so for the proposed slag processing facility?
A. Based on the facility, the storage needed, and the trucking going in an out, I think it was just established that that's about the approximate amount of land that they they needed.

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Q. And that will serve this particular facility?
A. Yes.
Q. Those roads?
A. Yes.
Q. Are the access roads shown on the site plan for the facility?
A. I can't tell from here. If you look at the aerial photograph -- are you talking about on the facility?
Q. Is that going to be modified, the paving that's there now?
A. No.
Q. And is there a dike shown on this site plan?
A. I can't tell from here. Can I look at it?
Q. Yes. To the east side of the property?
A. Yes.
Q. Do you know what the area of the dike will be, approximately?
A. No, sir, I do not.
Q. Does it extend almost from Carroll Island Road to the southern end of the property? Can the Board see?

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There appears to be a trapezoidal section of the property, and there's a reference to dike drains, existing gravel to remain, and other references.

So do you know whether that dike is for storage of slag, or what the purpose is? Or is someone else a better person to ask?

A. There's someone else, a better person to ask. I'm not really sure.

Q. Do you know what the height of the dike is to be?

A. This is existing.

Q. But as proposed, you don't know what it will be in the future, if it's approved?

A. This is showing an existing dike. This is not going to be put in as part of the project. It's already there. It's right here.

Q. Are you saying that dike will remain unchanged, or you're not sure?

A. I'm pretty certain it's not going to change. There is nothing that I know of a reason to change.

Q. What is it doing now, do you know, that dike?

A. I'm not really sure.

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MR. ZIMMERMAN: Give me one moment, please, Mr. Chairman.

Q. Are you still studying it, Mr. Jeffcoat, or do you want to add to your answer?

A. I'm sorry? Can I sit down now?

Q. Yes.

A. Thank you.

Q. There's been some reference to a changeover from coal to oil to coal in the history of the Crane Power Plant.

Do you recall whether the changeover changed back from oil to coal, was in the wake of the oil crisis in the seventies?

A. Yes. I think it was the Oil Embargo Act that promulgated changing that facility back to coal. I believe there was a time period where there were environmental issues that had to be settled, and eventually we changed back in 1983.

Q. Do you know whether one of the main environmental issues to be dealt with in coal facilities is generation of air pollultants?

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A. Correct.

Q. Would you agree that Crane, as an older facility, predates the Clean Air Act?

A. I couldn't answer that.

MR. BARHIGHT: Objection. Calls for a legal conclusion.

THE CHAIRMAN: Sustained.

Q. I ask you, do you know whether or not with the current, whatever air pollutions are currently at Crane, whether that plant could be built as a new plant in compliance with the Clean Air Act?

MR. BARHIGHT: Objection.

A. I could not answer.

Q. You're not an environmental expert, are you?

A. That is correct.

Q. Do you know whether or not the facility as proposed would be available to handle slag from any other sources besides the Crane Power Plant?

A. The slag facility?

Q. Yes.

A. Yes.

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Q. Under what circumstances and conditions could it handle slag from other sources?

A. In the event we had an emergency and we could not produce slag at the plant, we could bring slag in. We have talked about that being allowed in our contract.

Q. In your contract with Virginia Materials?

A. Correct.

Q. Where would slag come from in that event? What are the possible sources of slang, aside from the Crane Power Plant?

A. Other cyclone boiler locations, and I'm not exactly sure where they are. I know there's a couple in New Jersey and the mid-west.

Q. And if it proved that Virginia Materials has the capacity consistently to handle more than the output at Crane, would your company then consider, from a business point of view, having slag bought in on a consistent basis from New Jersey, or wherever?

A. No.

Q. How do you know that point of view would not change in a year or two?

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A. I don't think I can answer that.
Q. I mean, what is to prevent this from being a regional slag processing facility, just as Virginia Materials?
A. We would prefer not to have the compettion in our area. You have to market this stuff. So, you know, it's subject to how far you can transport it.
So we wouldn't want others in this area marketing that material, and we do not want -- at the present time, like I said, we do not want somebody else's material in there. We are doing this to take care of our problems and other issues from the standpoint of the environment and in redoing this stuff, getting it back into a market it can be used.
Q. So Virginia Materials currently operates, you would agree, a regional sort of facility, and they accept material from Maryland -- Virginia Materials accepts your material from Maryland?
A. Correct.
Q. Do you know whether or not they accept it from other locations?

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A. I'm not positive, no.
Q. Can you indicate why slag is not transported by train?
A. I'm not sure I understand your question.
Q. You say the slag basically is transported by truck and barge, correct?
A. Correct.
Q. Coal comes in on trains?
A. Correct.
Q. What underlies the decision to transport the slag by truck, rather than train?
A. It's Virginia Materials. They're the ones that provide the transportation.
Q. Is that a business decision, whether or not to transport by train or truck?
A. You'd have to talk to Virginia Materials.
Q. And you don't know why Constellation now sends the slag out on trucks, rather than trains? That's Virginia Materials' problem?
A. Virginia Materials handles that portion. He handles everything from the hyudrobin out. It's up to him

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to find transportaion for the material taken out of the plant.
Q. So if Virginia Materials told you they wanted to transport by train, you could do that?
A. I don't know that I could do it.
Q. I mean the company.
A. Virginia Materials, I guess if he says he can do it, he would be able to do it.
Q. But as far as sending out the processed material, if this petition is approved, could that be done by train or truck, either way?
A. Sending processed --
Q. Processed material, is that practical by train as well, or only by truck?
A. By truck presently is the way the majority of the material would go out.
Q. Could it be done by train?
A. It's a possibility.
Q. The process by which the slag -- I call the molten material the bottom ash -- the process by which it goes from the boiler through the quench tank to the

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crusher to the hydrobin, could that be characterized as the process of separation and drying of the material? Is there a general description of what that involves?
A. The tank quenches the material with water. Then it goes through a crusher, then into the hydrobin. It's sleushed through the hydrobin using water as a transport median inside the pipes. When it gets to the hydrobins, it is actually being dewatered. I'm not sure whether you classify that as drying or -- it could be.
Q. It then involves, to some extent, a mechanical separation process to crush the material into finer particles?
A. Correct.
Q. Are you familiar with sand and gravel processing?
A. Somewhat.
Q. Are there any similarities in general between their process mechanically and a sand and gravel processing?
A. They crush. They crush rock.
Q. Do you know whether there's any dewatering involved in sand and gravel processing?

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A. No. I couldn't answer that.
Q. They both involve some crushing?
A. Correct.
Q. Do you know whether or not the equipment used in sand and gravel processing resembles in anyway the equipment proposed here?
A. No.
Q. You don't know?
A. No, I don't know.
Q. Do you know when slag processing facilities first became technicological possible?
A. No, sir. I've been around a long time, before Virginia Materials, when we actually had a local company process that. So they have been doing it for ever since I can remember we have been involved with the power plant, which has been twenty-one years.
Q. What was the prior processing company?
A. Used to be Genstar.
Q. Did they get out of the business?
A. Correct. That's when we wound up getting a contract with Virginia Materials.

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Q. Do you know whether any other facility is closer to Baltimore than Virginia Materials at the present time?
A. No.
Q. You don't know?
A. No, I don't know.
MR. ZIMMERMAN: Thank you, Mr. Chairman. I have no further questions.
THE CHAIRMAN: Mr. Barhight?
MR. BARHIGHT: Yes. In fact. I need to ask some --
MR. ZIMEMRMAN: With the Board's indulgance, could I ask a couple more questions?
MR. BARHIGHT: I have no objection.
CONTINUED EXAMINATION
BY MR. ZIMMERMAN:
Q. What was the location or is the location of the Genstar plant, if you know?
A. I don't know where it was.
Q. With reference to the Wagner and Brandon Shores, the two other power plants --
A. Yes.

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Q. -- do you know what their zoning is?
A. No, sir.
Q. I think you have indicated they do not produce slag?
A. Correct.
Q. Dealing with bottom ash would be a different process than what's prepared here?
A. It's similar. It just does not come out as a molten liquid. It's quenched, slueshed to a hydrobin, dewatered. We put it on the stockpile, separate it, or screen it, depending what we use it for.
Q. And for those facilities at the present time, you send out the material after you do what you just described, correct?
You don't have a bottom ash slag or slag -- let me start again. You don't have a seven-acre facility at Riverside or Wagner?
A. Brandon Shores and Wagner, we have a site there. I'm not sure how many acres, but that's where all our bottom ash goes, and then it's processd from there.
Q. You don't know the zoning at that site?

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A. No, sir.
Q. Do you know if it's an industrial area?
A. I couldn't answer that.
Q. Talking about Wagner or -- I'm sorry -- or Riverside, which is?
A. Wagner, Brandon Shores, are adjacent sites. They are geographically close to each other.
Q. Isn't that an industrial area of Baltimore City or Anne Arundel County, Curtis Bay?
A. I can't answer that as far as the zoning is concerned. I don't know.
MR. ZIMMERMN: Thank you. That's all I have.
THE CHAIRMAN Mr. Barhight?
MR. BARHIGHT: I'd like to approach off the record, if I could?
THE CHAIRMAN: Sure.
(Discussin held at Bench, off the record.)
MR. ZIMMERMAN: With the Board's indulgance?
Q. (MR. ZIMMERMAN) With reference to the coal sample you produced, do you know whether or not sometimes the coal comes in much smaller pieces than in your sample?

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A. It can be smaller, yes.
Q. Do you know whether the processing of smaller pieces of coal or the use of smaller pieces coal in the power plant can produce more problems in the way of dust and air pollution?
A. No, because coal this size get crushed down to small particles, smaller than a quarter inch before it goes into the boiler.
It's at this size until it goes into a confined container, let's say, which is the hopper in the plant. Once it goes in the hopper, it's contained until it's put into the boiler.
Now, I'm sure there is something on the coal pile, when it's on the coal pile, if the wind is blowing real hard, to pick the particle up off the coal pile, there could be something there.
Q. If the coal is on a pile and, obviously, the smaller the piece of coal in the coal pile, the more likely it's going to be picked up and blown by wind, you would agree with that?
A. Correct.

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Q. One other thing. If this request is approved, what is the process for transporting the slag or bottom ash, either one, from the main plant to the slag processing facility?
A. My understanding is we are going to move it from the plant in a dump truck type truck through the facility to the propane facility on site.
Q. If you know, what, if any, environmental controls have to be done to minimize any adverse environmental problems related to that?
A. To the transportation? None that I know of.
Q. Are you the expert on that subject?
A. We transport it now in in covered trucks.
Q. Off to Virginia?
A. Correct.
MR. ZIMMERMAN: Thank you. That's all I have.
MR. BARHIGHT: Before I start my redirect examination, I want to put on the record the essence of the conversation we had off the record with Mr. Holzer (sic) at the Board --
MR. ZIMMERMAN: Holzer?

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MR. BARHIGHT: What did I say?
THE CHAIRMAN: Holzer.
MR. BARHIGHT: I apologize, and not because I mean anything negative. I apologize for forgetting your name. Mr. Zimmerman. I know who you are. Anyway, I apologize. Leave it in there. That's fine. Leave it in there. That's fine.
Anyway, with regard to the conversation we had off the record with Mr. Zimmerman at the Bench with the Board, during the cross-examination of the witness I realized that the plan that's on the board doesn't correspond to the plan that was filed.
You will note there are X-d out areas on the plan. It does not reflect the actual plan which was the Amended Petitioner's Exhibit No. 1, of which I have a copy before me right now that I have a specific recollection of having filed with the Deputy Zoning Commissioner at the hearing -- his name was Kotrocco -- and the amended Petitioner's No. 1 one which I have before me.
Pursuant to conversation off the record, I have

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marked with a dot in front of each of the areas -- I can make them more discernable and I would be happy to do that --
THE CHAIRMAN: They are identifiable in yellow.
MR. BARHIGHT: The changes --
MR. ZIMMERMAN: It's hard to see.
THE CHAIRMAN: Why don't you put them in the record.
MR. ZIMMERMAN: It's hard for me to see.
MR. BARHIGHT: The changes under paragraph 1A, Paragraph 2A, B, C, D, H, and I, the zoning hisotry of the 1971, 72-41- A is referenced in teh paragraph on the site plan itself. There are two notations to the westernmost corner of the zoning description area, noted to show the proposed rail track and area to show existing fence to be removed. There is also a slight reconfiguration change in the orientation of the two silos which indicate the silos in a horizontal rather than vertical position as it is noted on the original plan. This is a copy of the plan which we presented to the Deputy Zoning Commissioner. I note that not only this exhbit, but other exhibits are not

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in the Board's file. We also provided in much smaller quantities some samples of the slag material at different points along the process. We did not provide the Deputy Zoning Commissioner with any samples of coal. All the samples we provided to him were of slag from various points along the process, if I remember correctly, two different points in the process. That's for the record and I'd like to introduce this -- this should be part of your file --

MR. ZIMMERMAN: I need to respond. Obviously, our office looks at the file in these cases. We have not seen the amended petition.

I think I have to state the concern that, assuming it was submitted below at the Commissioner level, still, when the case was originally filed, and I don't know if was actually a petition for variance filed, I haven't seen one, but even assuming there were, the initial plan had seventy-five feet height, but if a citizen who was interesed in the case or other public in general took the trouble to look at the site plan filed, they would have seen seventy-five feet in height.

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Now, among other things, the proposal is ninety feet in height, and there really was no public notice of a request at ninety feet in height.

And that is not necessarily a trivial difference, so I don't know what jurisdiction the Commissioner has to consider this, assuming, you know, it was submitted.

THE CHAIRMAN: Why don't we take it in, Mr. Zimmerman. Your can leave your concerns for legal argument in your brief.

MR. BARHIGHT: Just to make it clear, the hearing that we had before the Deputy Zoning Commissioner was -- I hope this is in the file -- properly advertised and properly posted.

There was a public hearing that was held. I attended it. There were no citizens in attendance at that public hearing.

It was public, however, and I will state for the record that I filed this Amended Petitioner's No. 1 along with some other documents, two other exhibits that are not contained in the Board's files. The Board can either believe me or not, or Mr. Zimmerman can believe me or not.

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THE CHAIRMAN: We'll check with the Commissioner's office to see if they have the complete file and we'll take in advisement your comments.

MR. ZIMMERMN: I am assuming what Mr. Barhight says is correct.

What my concern was was more than that, what jurisdiction is to consider an expanded request, and I am still not sure there was any jurisdiction.

THE CHAIRMAN: Again, that would be legal argument.

MS. BARRANGER: Petitioner's No. 12.

MR. BARHIGHT: Thank you very much.

MR. ZIMMERMAN: Is there a date on that?

MR. BARHIGHT: Same date. The date was not changed. September 7, 2001. I have no questions of this witness.

THE CHAIRMAN: Anything further, Mr. Zimmerman?

MR. ZIMMERMAN: Excuse me?

THE CHAIRMAN: Any additional questions?

MR. ZIMMERMAN: No, there is none.

THE CHAIRMAN: Off the record.

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(Discussion held off the record.)

THE CHAIRMAN: Let's recess for lunch and we'll come back at 1:15.

(Discussion held off the record.)

THE CHAIRMAN: Let's go back an the record.

Q. (MR. BARHIGHT) Pursuant to the conversation that we just held at the Bench among counsel and the Board, Mr. Jeffcoat, we'd like for you to create a diagram of the process from the time the coal reaches the site until the hydrobin, which is the current last step of the process for the material.

If you could create that after you leave the bench today, you don't have to do it as you sit there, and we'll provide a copy to Mr. Zimmerman, subject to further examination if he has any questions that arise as a result of the document, but would you be willing and able to do that?

A. Yes, I can.

MR. BARHIGHT: Thank you.

THE CHAIRMAN: We will take a lunch break and come back at 1:20.

MR. BARHIGHT: Thank you very much.

* * * * *

AFTERNOON SESSION

THE CHAIRMAN: Let's go back on the record. Mr. Barhight.

MR. BARHIGHT: We call Mr. Burns.

J O H N W. B U R N S,

having been called as a witness, was duly sworn, and testified as follows:

DIRECT EXAMINATION

BY MR. BARHIGHT:

Q. Can you please state your full name and business address, for the record.

A. My name is John William Burns. I am located at 3306 Peterson Street in Norfolk, Virginia.

Q. Is this a copy I have of your resume prepared for for these proceedings?

A. Yes, sir.

MR. BARHIGHT: I have already provided one to Mr. Zimmerman. This is four copies -- I was reminded during the break that I was supposed to provide four -- and I



have four. I'd like to offer that as the next petitioner's exhibit, please. No. 13?

MS. BARRANGER: Yes it is.

Q. Mr. Burns, can you briefly describe to us your current employment and situation with Virginia Materials?

A. Yes. I'm part-owner of Virginia Materials as well as several other subsidiaries of Virginia Materials. I've owned it for approximately fifteen years now.

We produce and manufacture coal slag, garnet, and another byproduct called econoblast, which is basically made from crushed glass.

Q. What's your educational background?

A. I'm a chemical engineer by degree. I worked for Oxidental Petroleum and American Can most of my life, as well as several smaller companies, American GAF, which is a roofing company.

Q. Could you please describe your work-related background as it has any involvement generally relative to slag?

A. Yes. Basically, the background I would have is that some of the things we made were coatings, which slag



is used to prepare services by sandblasting, for coatings. The other thing is in GAF, we were involved in producing roof products, the shingles that are on homes. That's probably the two most related areas.

Q. Could you please be more specific about your actual duties and activities yourself at Virginia Materials. What do you do at Virginia Materials?

A. A little bit of everything. We're not a monstrous company. We have only fifteen people at the Norfolk plant.

But, basically, I am involved in the management and the operation of that plant as well as the New Orleans plant, the Madison plant, and the New York plant.

Q. Getting to more specific questions about the subject matter here, how are you familiar with the Crane plant and the other facilities that are on that site?

A. I have been involved with Crane for the last five and a half years. Previous to that, there was another contractor that was dealing with them, which was Genstar, and we were dealing through Genstar to purchase some of the raw material from the Crane plant.



Q. Does Virginia Materials currently operate a slag processing facility that services any of the slag that is created by the Crane plant?

A. Ask that again? I'm sorry.

Q. Does Virginia Materials currently operate a slag processing facility that processes in any way the slag that is from the Crane plant?

A. Yes. Our plant in Norfolk and also our plant in Chesapeake, which has recently been shut down and gotten ready to be moved up here, those two operations were using the raw material or coal slag from the Crane plant.

MR. BARHIGHT: I'm sorry. Off the record? I was hearing some kind of device.

THE CHAIRMAN: If anybody has any pagers or cell phones, would you please turn them off.

(Discussion held off the record.)

THE CHAIRMAN: You can just disconnect it, appreciate it.

MR. BARHIGHT: Thank you.

Q. Can you please describe the nature of the customers and the nature of the uses for the coal

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combustion byproduct which we are describing here today as slag?

A. Yes. There are number of uses for coal slag. Some are as simple as what we call ice control that we put down on roads, because in the wintertime, because it's black in color and absorbs the heat from the sun, it melts ice as good or better than sand will.

The other uses are in roof granules, to put on shingles, on most shingle homes. And then the other big use is in the abrasive market for a sandblasting abrasive, particularly for Navy vessels in shipyards, as well as for bridges, tanks, and anything that needs to be sandblasted, prepatory for paint.

Then the third item that we produce or use it for is actually to make beer bottles brown. The material has the right chemistry so that we can send it to the bottle manufacturers and they can actually use it with siliceous sand to produce a brown beer bottle.

Q. Mr. Burns, I'm showing you a photograph and I ask you to identify that photograph.

A. This is the Cheasapeake Virginia plant that

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produces coal slag that I was referring to that we are in the process of moving up here at this point in time.

Q. Is this then a photograph of the plant you would like to move to the Crane plant site?

A. That is correct.

MR. BARHIGHT: I'd like to have this introduced as the next petitioner's exhibit, please.

MS. BARRANGER: Petitioner's 14.

Q. Mr. Burns, I'd like to ask you to step down from the witness stand, if you don't mind, and come to the board -- let's get the right one up -- Petitioner's exhibit No. 12.

If you could turn so that your back is not to the Board, if you could please describe to the Board the operation of the proposed slag facility. Basically, if you could begin from the -- what's the name of the --

A. The hydrobins.

Q. The hydrobins. Where you pick up the material with the trucks, how are you going to take it from there to the plant, and describe the features of the plant, if you will, utilizing this exhibit, and to the extent you

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deam appropriate, Petitioner's No. 14, the photograph.

A. Okay. The hydrobins in relation to this drawing, this is a drawing of just the previous gas facility, the plan of the previous gas facility, that the power plant had and was utilizing. The hydrobins are located probably about here, if we were to have it to scale.

And what we'll do is pick that up by dump truck, as it is now picked up, and move it in the plant, all within the plant, over to what we call the stockpile.

The material would be dumped on the ground at that point. This is done every day, seven days a week, because these hydrobins, they only have the capacity to hold one day's slag in them, and they have two bins, one you run one day and one you run the next day, so we'd be picking up material every day of the week, just like we do now, and bring it over to the stockpile.

Then we would run, by using a front end loader, load it into the wet hopper, which is at the front end of the plant here. You simply just dump it in what we call the wet hopper because the material is still wet from when we get it from the power plant. We dump it into the wet

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hopper, which feeds by a feeder underneath it to the dryer. The dryer basically is fed by either oil or gas and it dries the material to the dry state, and then it's conveyed again through a conveyor to a screen deck.

The screen deck basically is making the preliminary separation of the product. You've got the top deck. Everything that comes off the top deck is what we called oversized. It goes back down to the crusher and gets crushed and goes back up to the screen deck.

The material in the middle, which is the product that -- and we have the proper size screens in there -- when you're sandblasting, you need different size materials to give you different profiles in the steel to make the paint adhere properly, so we sell numerous size products. In this particular case, we are talking about we'd be selling three differnt size products here, and that's why you have three silos.

But, basically, you have different size products. The good material -- I call it good. It's all good. But we call the prime product that you're looking for comes off between the lower deck and the upper deck screen, and

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it goes in an elevator up to the proper silo.

The undersized from that product is basically picked up and put in bins, and that's the material that we sell to the beer bottle people. It's also sold as fill material. It can be sold -- it's totally innocuous, non-toxic, non-hazardous in any way. That's why they use it for sandblasting, because it's so safe to use. You can breathe and it doesn't hurt you, or anything like that. It's not like a siliceous sand.

That's the basic operation of the plant. Then you put the finished property that you're making in these silos. When the trucks come in, these are the pneumatic tankers in most cases, they come in, drive in through the front gate, go up around the circle, come up on a scale, and the silos are up over top of it. He pulls underneath of these. These pneumatic truckers are a closed truck. He opens up his hatch. You fill the tanker. From there, the tanker gets its finished weight. You make out his paperwork, and he leaves. And that's basically the process that we would use.

There's a small sideline business -- not sideline

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business -- but another way of shipping it and that's in bags, and that's what this bagging trailer does. It's a small bagging operation where you bag the material in fifty or a hundred pound bags generally for smaller sandblasting people who would use that. The larger blast people such as bridges, shipyards, the Coast Guard, who are all our customers now, they all take it in pneumatic tankers.

Q. Is this the same operation that Virginia Materials is doing at the plant in Virginia that's in the Exhibit No. 14?

A. Yes. All plants that make this product pretty well do it the exact same way. You basically are drying it, crushing it, and screening it Those are your three unit operations.

Q. Staying with the plan that's on the board, Petitioner's No. 12, could you please identify and describe any of the facilities that would be permanently affixed to the plant that are higher than thirty-five feet in height?

A. It would be your silos, the silos that you load

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the finished product into the tanker trucks.

Q. Could you please describe the proposed truck traffic for removal of this slag from the proposed plant to any of your off site customers? What is your estimated number of trucks per day that you think will leave the plant that's proposed?

A. Basically, the slag is produced from the power plant on a very continuous basis, and fairly uniform basis. It varies anywhere from six to eight truckloads a day, seven days a week.

The way our product would be sold would not be on a real uniform basis, because it depends on what the jobs are going on.

For instance, in the wintertime, it's fairly slow. You don't sell as much of it, obviously, because you can't do sandblasting. Or if a ship is in, like, for instance, we are getting ready to do one at BMI where they use 1200 tons in less than seven days, so you're talking about you use a large quantity. And most of these jobs, that's the way they are, very cyclic. You either use a lot or you don't use any for awhile.

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I won't say that you don't sell it, but if we were to average it out, we would be taking out about, where we're now taking now seven to nine loads a day, seven days a week, if we were average it out, we'd be taking out three and a half truckloads a day with this plant.

Q. Are you familiar with the wet bottom cyclone boiler coal combustion power plants in other locations throughout the country?

A. Yes, sir.

Q. Approximately how many plants are you particularly familiar with?

A. At this point in time, the only ones that I know of -- and I have done a lot of research on it because that's obviously our business, because we buy slag from other sources as well, and we also process at power plants other places, but there's only twenty boilers in the United States, none in Canada, none in Mexico.

Q. Do all these plants produce a coal combustion byproduct that we are referring to today as slag?

A. Yes. The only type of boiler that produces slag

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is what they call a Babcock-Wilcox cyclone wet bottom boiler.

Q. Of these twenty plants of which you're aware, how many process the slag in the fashion that Virginia Materials is proposing to do here on site, on their site?

A. There's at least twelve that I know of. Some of them, I do not know. But I know of twelve that do it on site, similar to what we are proposing here.

Q. One of the questions that we asked Mr. Jeffcoat earlier in the day related to the potential as well as the average creation of slag tonnage by the Crane facility. I believe he indicated the average for the year was about 40,000 tons maximum, being approximately 70,000 tons. Would this facility be able to handle whatever the Crane plant would create?

A. Yes.

Q. Is the processing plant that Virginia Materials operates today in Virginia and proposes to operate here typical and customary in the industry?

A. Yes. They are all pretty much identical.

Q. One of the concerns the Board might have relates

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to the particulate matter, or the creation of dust.

Would you describe to the Board the protective measures that are taken to reduce or contain any dust or particulate matters that might be created as a result of the operation that you propose on the site?

A. Yes. The materials that come to us is wet or damp, if you want to use a word. It contains about five to seven percent moisture. It never dries. Even if you go through, let it sit out in the air for months, it will only dry down to three or four inches below that, and then everything else is damp, so it stays damp all the time.

You're handling it in a wet form which, obviously, keeps the dust level down. It's a very heavy product. It weighs ninety-five pounds a cubic foot, whereas a product like coal only weighs about sixty-five pounds a cubic foot, so it's much heavier in density.

But once it's dried through our dryer system, we have a dust collector on the dryer which is basically removing dust and whatnot from the drying operation. We also have a dust collector at the top of the silos which removes dust from the free fall that may be generated when

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it drops into the silos. And there's a dust collector at the loadup. And everything else is basically in a container, just like the tanker trucks are contained, so on.

Q. Have you applied for an air quality permit with the Maryland Department of Environment?

A. Yes.

Q. Are you familiar with the requirements imposed by MDE for these air quality permits?

A. Yes.

Q. Did you meet or exceed those requirements?

A. Yes, sir.

Q. Did you also, with the plant that you're currently operating in Virginia that you're going to move here, does Virginia also require air quality permits?

A. Yes.

Q. Do you have air quality permits for the Virginia operation.

A. Yes, for this plant as well as the one we have down there still.

Q. One of the other issues the Board may want to

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consider is odor. Does this material have any odor?

A. No. It's totally monocuous. If you open a bag and smell it, I don't think anybody will smell it. I've never smelled anything from it.

Q. Noise may also be an issue. Dose the Virginia Materials plant have to meet all OSHA requirements for sound?

A. Yes.

Q. Do your workers ever have to use any kind of ear protection for your facility?

A. No. This plant is very simple. It's a fairly small plant. It's basically almost like a portable plant. The noise level, from the outside of the perimeter, you'd never even know the plant was running, unless you looked up and see the motors turning, or something of that nature.

But the plant is -- in the inside of the plant, the people have to wear no type of hearing protection. We are well below the eighty-five decibel limit.

Q. The plant that you propose to move here is situated in Virginia, correct?

A. Part of it is actually here already.
Q. But it was operational in Virginia?
A. Yes, it was.
Q. Do you know how far that plant was to the nearest public road?
A. Yes. We were approximately 200 feet from the public road, the dryer portion. It extended away from the road. But the noisier portion would be the dryer itself, and that was approximately 200 feet.
Q. How far would that portion be from the Carroll Island Road here, closer or further way?
A. Probably even further. That's about 280 or 300, is the way I measured it.
Q. When the Virginia plant was operating that you're moving here, when you're standing at the public roadbed that's approximately 200 feet away, could you hear the plant operating?
A. No.
Q. Did you, in your Virginia plant, ever have any complaints regarding noise from anyone?
A. No. We never had a complaint of noise from any



of our plants.
Q. Could you please also describe the fire suppression operation of the proposed plant?
A. Basically, the product itself is totally non-combustible because it's already been combusted basically when it was burned in the boilers.
The only thing that you would have any potential fire from is in the dryer itself, and they're all kinds of safety relays built into it, like all dryers and furnaces, if you want to use the word, where they have high temperatures cutoffs, low pressure cutoffs. I can't even think of them all, but there are numerous cutoffs built into the burner section itself as part of the commercially available burner. It's all done by computer.
Q. The Deputy Zoning Commissioner in his order permitted you to, under certain circumstances, and I'll refresh your memory about that, allow for you to bring slag onto the property in order to process it.
Is that still something that you would like to be able to consider here today?
A. Yes, sir. Mainly because you've got customer



bases and they depend on you, and it would be very hard and not a very good marketing tool to your customers to tell them you're not going to give them the material they need to run with, if something happened to the Crane plant.
Q. Now, the limitations that the Deputy Zoning Commissioner imposed would be that would only occur when times dictated there's not enough slag byproduct being produced by the power plant to keep the slag facility running. Is that a limitation that you're willing to live with as proposed by the Deputy Zoning Commissioner?
A. Yes.
Q. Another limitatian was that in order to bring that slag onto the property, it would have to be brought by way of railroad lines to the property. Would you be willing to live with that limitation also imposed by the Deputy Zoning Commissioner?
A. Yes, sir.
Q. How many rail cars a year would you estimate is the maximum number of rail cars that might bring slag onto the site in those conditions?



A. The worst case scenario would probably be one of the boilers would go down, which would mean half the capacity, which would be 20,000 tons, and it would have to be down for a whole year, but you're looking at 20,000 tons would be the equivalent of 200 rail cars, or a rail car every other day, basically, but far smaller than the number they bring in in coal.
Q. You understand the Board is reviewing all these questions and may or may not make a limitatian equal to or beyond what Mr. Kotrocco did?
A. Yes, sir.
Q. Do you have a sample of any of the products for the Board to be able to review here today?
A. Yes, sir. I have a bag of our medium grade which the key to sandblasting abrasive. It has to be very dry because it has to flow through a metering valve.
And the other is thing is the sizing. This happens to be the medium, which is our biggest seller, but we also sell four other grades of product beside this.
When you sandblast on a surface, you actually put little tiny indents in the surface if you look under a

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microscope. That's called a profile. And the distance between the peak and the valley is called the profile measurement that you're measuring.

This particular product gives you a three mil profile on steel when you blast with it. It's probably one of the more common of them all, but there are other profiles. Depending on the type coating you're using, you use different profile material. So this is just one of four different products that we can produce. We can produce an unlimited number, but four normally fits the requirements.

MR. BARHIGHT: I'l like to introduce this as the next petitioner's exhibit, please.

MS. BARRANGER: Petitioner's No. 15.

MR. ZIMMERMAN: That's processed material?

THE WITNESS: Yes, that's processed material. That actuallyk went to New York City for the George Washington Bridge. That's a retained sample tht we kept and I pulled off the shelf.

Q. Mr. Burns, did there come a point in time in general to the issuance of the initial Deputy Zoning

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Commissioner's order where you sought what's called a spirit and intent approval to add an oil tank to the subject facility?

A. Yes, sir.

Q. Why did you do that?

A. Originally, there was an existing propane line that existed going off the property down to some point where the power company felt they could tie in and bring natural gas back to us.

After looking into it, their gas people found out they could not use that line because it had been out of service too long and they felt it was unsafe.

So we really didn't have a source of gas, so we went back to using oil. That's why we needed it, to add the oil tank to the system.

Q. Is this a copy of the plan that indicates the spirit and intent approval by the Deputy Zoning Commissioner with the addition of the oil tank shown to the center west of the facility marked with a dike and oil tank?

A. Yes, sir.

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MR. BARHIGHT: I'd like to introduce this as the next exhibit for the petitioner.

MR. ZIMMERMAN: Objection. This was approved by the Commissioner based on a submission by petitioner not at a public hearing, but subsequent to a public hearing, without any notice to anyone of the public. I don't think that's a valid process.

MR. BARHIGHT: I understand Mr. Zimmerman's concerns about the process. When I discovered this was not in the Zoning Commissioner's file, or the Deputy Zoning Commissioner's file yesterday, I provided him with a copy.

It is reflective of an actual event which occurred, although administrative in nature. It does reflect in addition to the site plan we are seeking from the Board, and I want to make sure it is brought to the Board's attention, in fact, I think it's important for me to bring to the Board's attention, the fact this did occur.

MR. ZIMMERMAN: My point is that it amounts to an exparte process which the Zoning Commissioner was involved

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here in approving -- do we have the date on that?

MR. BARHIGHT: Yes, sir. February 14, 2000.

MR. ZIMMERMAN: I think there's no dispute that this is not a public hearing. I think the decision of the deputy was -- is it signed by the Zoning Commissioner or the Deputy Zoning Commissioner?

MR. BARHIGHT: The Deputy is the gentleman who signed the original order.

MR. ZIMMERMAN: The date of the decision is November 5, 2001. So, evidently, this amended plan was presented either informally or by correspondence, I don't know, but Mr. Barhight can give us the details, but it was without notice to the public.

My objection, I am concerned about it, as much for all cases -- I am told this happened often. I don't know. I think I have seen it happen occasionally in the past. But if it is happening often, I think it is time for the Board of Appeals to address the issue.

THE CHAIRMAN: What we'll do is take it in as an exhibit, and in your briefs, you both will mention it in your briefs.

And at the time of the public deliberation, the Board will deliberate that particular item and determine whether it is proper or not, and it will be part of the opinion.

MR. BARHIGHT: Let me further proffer, in terms of a response to Mr. Zimmerman's comment, that the Department of Permits and Development Management as well as the Zoning Commissioner's office entertains regularly administratively what are called spirit and intent approvals, or spirit and intent letters.

There are lot of changes that are made to previously approved plans, many of which those two bodies determine do not need to have a public hearing.

Whether they make that decision appropriately or not, the Board may or may not want to comment on. I am just telling you what happened.

It's a regular process that Permits and Development Management does, a regular process that the Zoning Commissioner's office does, and we availed ourselves of that administrative process.

The next publicly scheduled hearing for this



matter was today, and we are bringing it to your attention not only to tell you the facts of what actually occurred, because these are the facts of what occurred, but also to achieve your concurrence that the addition of that oil tank is within the spirit and intent and should be allowed to be a part of this application as well.

THE CHAIRMAN: As I said before, it's a legally interpretative subject, and we'll take it in. You both will mention it in your briefs pro and con, and at the time of the public deliberation, the Board will have an opportunity to express their observations either pro or con and accept it or not as far as the weight of the evidence as to whether or not it was proper.

MS. BARRANGER: Petitioner's No. 16.

MR. ZIMMERMAN: I want to say it's a problem that occurred and a problem with no notice to the public.

THE CHAIRMAN: I understand, Mr. Zimmerman. You can cover those points in your brief.

MS. BARRANGER: This will the be January 18, 2002 site plan; the spirit and intent comments.

MR. BARHIGHT: Thank you.



Q. Mr. Burns, with reference to petitioner's exhibit regarding the oil tanks, could you please comment further on the nature of the tank, how high it will be and the size of it, the dimensions, et cetera?

A. It's basically a 10,000 gallon tank, it's eight feet in diameter and twenty-five feet tall. It's a vertical stainless steel tank with a dike around it to contain, if there happened to be any leakage, which you're required to have.

It's fairly simple. Not much different than what you have in the house, except it's little bigger.

Q. Are you familiar with the dike that's currently at the location which previously served the tanks that were there for the propane facility?

A. Yes.

Q. Is that dike going to be altered in any way to facilitate the operation of your processing?

A. No. We are not going to use that area, per se. It was there, it was existing, and we don't really need it.

At this moment, we don't see any use for it. We



may cut -- and it shows on the drawing -- cut a hole in the dike so that we'll have easily passage for our dumptrucks going through the plant itself. We are not even sure of that. We found a different route that we are using which works easier for us.

Q. Mr. Burns, I'm showing you a series of sheets I'd like for you to identify for the Board.

A. This first one is MSDS -- Material Safety Data Sheet -- it basically is a OSHA requirement that we have as a tool, tells all the good and bad features of the particular product.

If you look at it, you'll notice in particular it's very innocuous. There is nothing really dangerous with the product. There's no free Silica in it. It has no real high percentage of heavy metals. Well below the one percent that's even reportable.

If you put your hand or you breathe the dust and all that, it's not something to give you a problem, and that's what it tells you on this sheet.

It's basically a safety sheet that you give to customers in order to look at and find out how to handle

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the product properly.

The second sheet is a listing of our standard side products. And if you notice, the one I submitted was medium, which is the second one in. It gives you the size gradation. All the physical and chemical properties are always the same.

It's really go to do with strictly mil profile is what you're looking for there, based on what product you're using in the sandblaster. It's very critical to get the right mil profile.

On the third page, it's basically an explanation page, tells what each of these products are used for, generally. And, again, this is made mainly for sandblsting abrasives. Doesn't have anything to do with the roof granules or with the bottle people, for instance.

Q. Do these three sheets together fairly describe the nature of the material that you produce?

A. Yes.

MR. BARHIGHT: I'd like to introduce this as the next petitioner's exhibit.

MS. BARRANGER: Petitioner's 17.

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MR. ZIMMERMAN: No objection.

THE CHAIRMAN: Accepted.

MR. BARHIGHT: No other questions of this witness at this time. Thank you very much.

THE CHAIRMAN: Mr. Zimmerman?

MR. ZIMMERMAN: Yes.

CROSS EXAMINATION

BY MR. ZIMMERMAN:.

Q. Mr. Burns, are you from the Boston area? I have to ask.

A. Thirty-five years ago. Yeah. You may hear it somewhere. Back in New Hampshire. It's been thirty-five years, and I have not lost my accent.

Q. Your company Virginia Materials has been in business for how long?

A. I have owned it for the last fifteen years, but Virginia Materials has existed for probably thirty-five years.

Q. It's a private corporation, is it not?

A. Well, it's actually part of a public corporation any longer.

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Q. So you're on the Stock Exchange?

A. Toronto Stock Exchange, and the -- don't ask me. I'm not that involved in that end of it. I'm a partner with some other people at this point in time with a public company.

Q. What would you describe as the main purpose and function of the company?

A. We take and manufacture some abrasives. We also buy and resell abrasives from other people. For instance, things you probably never thought of. Copper braclets, walnut shells for bracelets, glass beads, aluminum oxide, garnet, steel grit. You know, there's a long list of things used for abrasives in this country, but by far the biggest one is coal slag.

It is second in the United States only to siliceous sand, and there's a lot of impetus being on to eliminate siliceous sand because it gets into your lungs and causes silicosis, similar to black lung disease or even asbestosis. It's a very similar product.

If coal slag gets into your lungs, your lungs can actually expell them. Whereas silica, they cannot. It

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stays in there and damages your lungs for life.

Q. So is slag processing just one of your parts of your business?

A. It's by far the biggest one.

Q. Is your business national in scope?

A. We have plants in other locations, yes. We have a plant in New Orleans, Madison, Indiana, and a plant in New York and the plant here. Well, hopefully, here. And a plant in Norfolk, Virginia.

Q. Five, including the Chesapeake one which you hope to move?

A. Right.

Q. Are they each about the same size?

A. Yes. They all produce pretty similar -- well, first, the plant in New York is only a garnet operation. It doesn't produce coal slag.

The one in New Orleans is a smaller operation, actually only produces about half the quantity of what this one does.

Q. Are each of those operations by themselves -- in other words, not on this property owned by a company with

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a power plant?
A. No. The Madison plant is sitting on Madison Electric Power power's plant.
Q. What's the zoning on that site?
A. I don't know, to be honest with you.
Q. Do you know if it's in an industrial area?
A. Madison is a very small rural community, and I doubt they even have an industrial area. I don't know.
Q. You don't know?
A. I don't know, that's true.
Q. If it's an industrial park?
A. No.
Q. You don't know if it's industrially zoned?
A. Right.
Q. What about New Orleans?
A. New Orleans is at the Port Authority.
Q. New York, where is that?
A. New York is in an industrial park.
Q. How large are your other sites? About three acres? Five acres? Ten acres?
A. New York is five acres, five and a half acres.

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The site in Madison, I'm not sure we even have a defined site. We pay a dollar a year for rent, and nobody has ever defined what our acreage is, but we have a very large, several hundred acres there, owned by the power company. Then the other plant in New Orleans is on a four and a half acre site.
Q. Do they all --
A. By the way, the plant in Virginia is a twelve-acre site??
Q. In Norfolk?
A. In Norfolk.
Q. And Chesapeke --
A. Chesapeake is on a five-acre site.
Q. Do all these facilities look similar to the one in Chesapeake, or are they different sizes?
A. Similar. Some have more storage capacity and some have less storage capacity. Not the New York plant. The New York plant is a totally different animal.
Q. Are you in come competition with other companies that also process slag?
A. Yes, unfortunately.

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Q. Your pricing is dependent on the market and your choice as to what to charge to your customer?
A. Correct..
Q. Your company itself is not a public utility, is it?
A. No.
Q. If this is approved, you will be an independent contractor to Constellation Power Source Generation? You will have a contract with them?
A. Yes, I will be under contract with them. I am under contract with them now.
Q. Will you lease any part of the property?
A. Yes.
Q. Do you have a lease presently?
A. Not now. We have done business together for six years, and there hasn't been that kind of issue.
Q. Do you expect to have a long-term lease?
A. Yes.
Q. In terms of the potential processing of slag from other than the Crane Power Plant, will that be a business judgment you will make depending on how much slag you're

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getting from Crane and how much is demanded by your customers?
A. Well, the key as long as we are getting enough from Crane, which we'll probably still be taking material off site to sell to other places, we have that potential still to move some of it to our Norfolk facility, so not all of it necessarily will be used locaslly. It's dependent on the marketplace.
For example, if we end up being able to land the contract for GAF -- which is a local company, roofing company locally here -- you're looking at they can use almost everything that we can produce from that power plant.
But if we don't, and we are having to sell to smaller users like the Coast Guard, Baltimore Marine, all those bridge jobs that are blasting with it, and I'm not sure, I can't answer what will happen, because we don't know the market.
Q. My point is, if you do become particularly successful, you want to get as much business as you can to maximize the profits for your company?

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A. Of course. Everybody wants to maximize profits.
Q. So if you're particularly successful, there may come a time when you'd have more customers than the slag from Crane can serve?
A. That's a possibility. It would be a good possibilityi. It probably won't happen because, you've got to remember, it becomes, really, a geographical thing.
In the Norfolk area, the reason why there were two plants down there, because at one time the Norfolk area had a 700 ship Navy. Today, we have 350 ships in our Navy.
The amount of slag has gone from 120,000 tons a year down to less than 40,000 tons a years used in the Norfolk market.
What happens, you try to move it out, freight becomes a very big issue, and you can't afford to ship it that far. And there are other alternates they try to find in order to utilize it.
That's one of the reasons right now we're spending the money to move it down and then move it back up here, to sell to the local market. They're paying a

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lot more locally now than they should be paying, because there isn't a producer locally.
Q. So you're saying you're probably not going to run into a situation where the demand for your slag is more than the Crane --
A. It definitely wouldn't be more than the 70,000 tons that they can provide.
Q. In that event, you should not object to a condition that you should handle absolutely no slag from anywhere else but the Crane Power Plant?
A. The problem comes in, sir, if the power plant does go down for major overhauls, it's down for three and four months for overhauls. What do you do in that period of time for slag to your customers?
Do you tell them you're not going to supply them? I think what they would do is somebody else.
Q. So, in that event, if that is the main thing that you're concerned about, then the condition should be you could accept slag from elsewhere only when the power plant is down?
A. That's basically the condition we have already

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accepted in the original hearing, is that it would only be brought in under emergency conditions.
Q. That's not the way that condition reads. It's not that clear.
A. I'll be honest with you, I thought it was. That was our intent. That's my intent, I'll put it that way.
Q. Your other facility such as Norfolk, they accept material regionally? Obviously, they take material from Maryland. How many other states?
A. Three.
Q. Maryland --
A. Maryland, Ohio, and Indiana.
Q. Plus Virginia?
A. No, there's no coal slag produced in Virginia. But Virginia, being it's a very big shipyard market, has a very large usage of slag. Most of the markets are in the midwest, and some in the south.
Q. Where's Indiana handle? What states do they take slag from?
A. Only Indiana.
Q. What about New Orlens?

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A. New Orleans actually comes from Indiana.
Q. Are these -- you mentioned the Babcock and Wilcox generator? What's the word?
A. No. They are steam boilers. They produce steam which basically drives a generator to produce electricity.
Q. And they're only twenty of those in the country?
A. Twenty locations left in the country.
Q. Are these obsolete? I mean, they're being phased out?
A. No. It's just that they're not that many left any longer.
Q. Why don't they produce them any longer?
A. They have boilers that produce more pounds of steam per pound of coal, I believe is the big reason. And, again, I'm not a boiler expert by any means.
Q. These pneumatic tankers that take the slag, processed slag out, how big are those?
A. Well, you see them all over the road. They are used for moving sugar, flour. You know, they're aluminum bodies, basically.
Q. Are they 18-wheelers?

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A. Yes, they're a tractor trailer.
Q. How wide are they?
A. Oh, less than eight feet. They have to be under eight feet to be road worthy.
Q. How wide is Carroll Island Road?
A. I have no idea, but a dump truck is the same width as a tractor trailer.
Q. Carroll Island Road has some curbs. I mean, have you considered -- have you seen any tankers driving Carroll Island Road?
A. Sure. They bring them in right now for their lime storage at the power plant.
Q. Do you know whether they create any problems for any of the citizens in the area?
A. I've not heard of any, and I'm sure they would have told me if there were any, but they have been bringing them in for lime.
Q. What is, if you can answer this, the length of the facility?
A. It's approximately two tractor trailers long, which would be about 125 feet long, probably.

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Q. Is that shown on the site plan?
A. Can I show you here?
Q. Is it to scale?
A. If you scale that off, you could actually -- I don't have a ruler, but basically the tractor trailer fits right underneath here when it comes in.
Q. What's the length?
A. Of the tractor trailer?
Q. No. The length of your proposed processing facility?
A. It's approximately two tractor trailers long, which is approximately 120 feet long.
Q. Does that that include the ramp?
A. No, it doesn't include this little ramp over here, because the scale is elevated, and you have to go down a ramp, and you have another ramp on this end.
Q. Including the ramp, what is the length of the facility?
A. I don't have the exact dimensions, but maybe 170 feet long. Maybe 200, to say safely. I mean, if I had a scale, I could show you.

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Here we could go. It tells you -- your scale is one inch equals fifty feet --
Q. From the hopper to the end of the --
A. From the hopper to the end of the ramp, you're talking about?
Q. Yes.
A. I'd say this shows 250 feet.
Q. Close to the length of a football field?
A. Correct.
Q. Not quite?
A. No, not quite. 300 feet in a football field.
Q. Right. The width, at maximum, would that include the portable bagging?
A. Well, actually, this is just a trailer, is all that is.
Q. So, mainly, it's a long, relatively narrow facility?
A. Very long, narrow facility, because that's the way the product flows.
Q. And the parts of the facility that are higher than thirty-five feet, are they shown in Exhibit 14?

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A. Yes. The three silos, and the silos here.
Q. The structure that -- the silos are the cylendrical structures?
A. Yes.
Q. You call them silos?
A. Yes.
Q. They're not used for agriculture in this facility, are they?
A. I don't know. What is agricultural to you? You can call it whatever you want. You can use it for anything you want. These were actually a grainery.
Q. But they're not ---
A. This site is actually on a grainery, an ex-grainery, and these were here already.
Q. But there's no farm use at the site, would you agree?
A. No, we're not doing farming, we're not raising vegetables.
Q. The tall structures that are connected to the silos, do you have a name for them?
A. It's called an elevator.

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MR. ZIMMERMAN: Can the Board see the photographs?

Q. Does each silo have an elevator connected to it?

A. No. Actually, one elevator services three silos. Well, three in one case and two in the other. I'm sorry.

Q. If we can look at the Chesapeake Virginia photo, the silo on the left has --

A. It's actually three silos here in a row.

Q. It's hard --

A. You have one elevator going up, and this is a dust collector that's on the roof of the silo right there, the one I'm pointing to. And this goes down. And from the elevator, you have a shoe with a valve that goes down and feeds each one of the silos. Over here, you have the same thing, except you only have two silos.

Q. So in this photo, because of the angle, you cannot see all the silos?

A. Yes. Three's three of them. See the short one right here? You can see one there. And these two are exactly the same height.

Q. What is the diameter of the silos?

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A. Twelve feet.

Q. All of them?

A. Yes. These might be ten. These are twelve.

Q. In the left of the photo, it looks broader?

A. It might be perception, because they are set back your further. I think they are all twelve. I'm not positive. May be ten.

Q. What is the height of the elevator?

A. Ninety-five foot.

Q. That's even higher than the ninety feet that was mentioned earlier?

A. Well, it was ninety foot plus, because we didn't know what elevation we would have for the foundations at our new site, so you've got to adjust your site based on what your finished conrete --

Q. So it's not going to be a hundred feet?

A. No, sir. Definitely not.

Q. The elevator would be the highest of the structures, is that correct?

A. The top of the elevator would be the very highest, but that's part of the silo itself. It's an integral part of the silo.

I mean, without the elevator, you don't have a silo. You got to get the material up to it. It's just like a farmer. The farmer across the way, he has the exact same thing.

Q. Well, it's still an elevator?

A. Well, it's called an elevator, yeah.

Q. The top of the silo, is it drying? What did you call it?

A. A dust collector. It captures any dust that may be formed when the product drops into the silo.

Q. How high is the dust collector?

A. It's approximately nine feet tall from the top of the silo.

Q. The silo is up to what, eighty-five?

A. Eighty-four, I think it is.

Q. So the dust collector is close to ninety-five feet also?

A. Not quite, no. The highest point is the elevator.

Q. Are there any other high structures other than

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the ones shown in Exhibit 14?

A. No. That's it.

Q. How close to Carroll Island Road will the silos and elevators be?

A. I have to come down.

Q. Here's your ruler.

A. Carroll Island Road is right here. Actually, their boundary ends here. So I don't know whether you want to do the middle of road?

Q. Sure. Take the middle of the road.

A. To the middle of silos is 300 feet.

Q. About a football field?

A. Right.

Q. Thank you. With respect to the marketing of the processed slag, did I understand your direct testimony to indicate that sometimes you're much more intense than others? You may have some down times and then times of great activity?

A. Absolutely.

Q. At times of peak activity, what would your estimate be of the number of either rail cars or trucks,

whichever you're using?
A. I'm not sure I can answer that honestly. It would vary, because some customers take it on rail, some customers take it in trucks.
The worst case scenario, if everything went out in trucks, you'd be looking at roughly half the number of trucks that we now send out. If everything went out in trucks.
Q. You say now send out?
A. Now we're sending out approximately 3000 trucks. I'm talking about when we are hauling it to Havre de Grace, to move it down to me, we are sending approximately 3000 trucks a year in and 3000 dump trucks a year out. Under our new proposal, it will be approximately 1600 truck maximum going out.
Q. But mostly tankers?
A. Yes.
Q. Where now you're using dump trucks?
A. Correct. Now we are using tandem and triaxle dump trucks.
Q. And dump trucks, I presume, are much smaller than



the tankers?
A They're shorter, but the exact same width. They haul less material because they're over a shorter span.
Q. Are you familiar with sand and gravel processing?
A. No, not particularly. I mean, I have obviously seen them, but I don't know that much about them.
Q. You don't know whether there's any resemblance of any of the aspects of processing sand and gravel?
A. Most of those are on a wet system. We are on a dry system. So I don't think it would be a lot of similarities.
I mean, their crushers are monstrous crushers. Our crusher is only five foot square, a very small piece equipment.
We are only crushing just the oversized that are in the product, so it's a much different operation. They're taking big chunks of stone. And I'm taking -- if you notice what he gave you -- my product, I'm actually changing it very little from what they give me.
Q. You're still doing some crushing?
A. Absolutely. About ten percent of the product I



get has to be crushed.
Q. You still have to do some drying?
A. All the product has to be dried. That's the only way you can sell it to people who use for sandblasting or roofing or for blast.
MR. ZIMMERMAN: One moment, Mr. Chairman.
Q. With reference to water use, how does your facility operate?
A. We are not going to be using any water. We don't have any intent to bring water on. We are using their bathroom facilities and office facilities. They have given us an area right next to the coal and dumping area. We are not using any water.
Q. You don't use any water in your process?
A. Correct. We are actually drying the product, to dry it off, actually.
MR. ZIMMERMAN: Thank you. That's all I have, Mr. Chairman.
MR. BARHIGHT: One quick question.
REDIRECT EXAMINATION
BY MR. BARHIGHT:



Q. During the cross-examination, Mr. Zimmerman asked you whether you were a public utility, and I believe you indicated that you were not a public utility.
That potentially has a lot of different legal meanings. What did you men when you indicated that you were not a public utility?
A. I don't produce electricity, is what my definition of being a public utility is. If you're asking do I produce electricity, no, I don't. I assume that's what the question meant.
MR. BARHIGHT: No other questions.
RECROSS EXAMINATION
BY MR. ZIMMERMAN:
Q. To follow up, Is your pricing regulated by any Public Service Commission, the prices you charge for your processed slag?
A. No.
Q. Are you regulated by any other governmental body?
A. No.
Q. Do you have a monopoly on slag processing in the United States or any other relative market?

A. You don't usually get a monopoly in the whole United States. You might get it in a particular area. In Norfolk, I do have a monopoly.

Q. Because you're the only one?

A. Exactly right. The closest one to me is up in New Jersey, or all the way down in South Carolina and out into West Virginia. Those are the closest plants to where we are going to be here in Baltimore.

Q. If somebody else wanted to put a plant in Norfolk, there is nothing to prevent them?

A. There's nothing to stop them, that's correct, if they could get all the permits and whatnot.

Q. You're operating as an in entrepreneur in this American traditional capitalist system?

A. Yes, sir.

MR. ZIMMERMAN: Thank you. That's all I have, Mr. Chairman.

MR. BARHIGHT: Nothing further. Call Mr. Maguire to the stand.

M I C H A E L M A G U I R E,

having been called as a witness, was duly sworn and



testfied as follows:

DIRECT EXAMINATION

BY MR. BARHIGHT:

Q. Mr. Maguire, could you please state your full name and address, for the record.

A. My full name is Michial T. Maguire. My address is 1223 Southview -- that's one word -- Road, Baltimore, Maryland 21218.

Q. I'm showing you a copy of a document which I believe is your resume. Is this the resume you provided to me prior to these proceedings?

A. Yes, it is.

MR. BARHIGHT: I think I provided one to Mr. Zimmerman earlier.

MR. ZIMMERMAN: Yes.

MR. BARHIGHT: I'd like to provide you with four copies of Mr. Maguire's resume and introduce those as the next petitioner's exhibit.

MS. BARHIGHT: Petitioner's No. 18

Q. Mr. Maguire, working from that resume, can you please briefly describe your educational background to the



Board?

MR. ZIMMERMAN: If it will help, I will estimate.

MR. BARHIGHT: That would be great. We were to offer him as an expert in the fields of surveying, planning and zoning.

THE CHAIRMAN: Accepted.

MR. BARHIGHT: Thank you.

Q. A couple background questions, quickly. Have you had an opportunity to visit the site, Mr. Maguire?

A. I have, Scott.

Q. Have you visited the general vicinity?

A. I have.

Q. This is an interesting annecdote. When did you first become familiar with the Crane plant?

A. In 1973, the company that I was employed by at that time, Evans, Hagen, Holddeffer were engaged to do both a platting and descriptive work to support the variance petition at the time and special exception petition at the time, and I was engaged as a field surveyor and I spent time in the field staking out the 110 foot tall propane tank foundation. That was my first



visit that I recall to the site.

Q. So you have been familiar with this facility over an extended period of time?

A. Yes.

Q. I'm not sure everybody can hear you, so if you could please speak up?

A. Yes.

Q. You're like me, you're a little soft-spoken, so you have to force it out a little bit and make sure you can be heard.

A. More recently, I have returned to the site May 16 and, again, yesterday, actually.

Q. If I could have you step down and using People's Counsel Exhibit No. 3, or the two aerials that are petitioner's exhibits, or the Petitioner's Exhibit No. 12 -- face the Board, please -- if you could please describe the existing zoning of the site and the surrounding area?

MR. ZIMMERMAN: At this point, since we haven't identified it yet, it would be a nice opportunity to identify the zoning map and make then exhibit.

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MR. BARHIGHT: Oh, we haven't done that. I'm sorry.

MR. ZIMMERMAN: As we customarily do, our office obtained the current 2000 comprehensive zoning map, and it turns out that it was helpful to have two of the maps, sheet northeast 4L, Saltpeter Creek, and in northeast 3L, Seneca Park. These are to scale, one inch to 200 feet, with the County Council's official signature.

THE CHAIRMAN: People's Counsel 5 and 6.

MR. BARHIGHT: No objection.

A. The northeast 3L zoning map illustrates the full extent, certainly, of the ninety-eight acre special exception parcel of which the 6.83 acre piece that we we're working with today is a part of the illustration. It's illustrates it being zoned R.C. 5.

The bulk of the remaining land, about 132 acres in total, is controlled by the utility at this location, is also zoned R.C. 5, although I believe a portion is in the R.C. 20 zoning classification.

The land to the northwest is zoned R.C. 20. There's land directly west, again R.C. 20, and then R.C.

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5, is repeated down on the waterfront, on Seneca Creek closest to the plant site.

Q. Could you please describe, using any of the documents before you, the existing conditions, generally?

A. Well, over and above the land that's currently improved with the power generating facility and related facilities, there's agricultural and woodland immediately adjoining the plant proper, beyond which are relatively low density residential uses.

There is some concentration of the residential uses along the waterfronts of both Saltpeter and Seneca Creek.

Q. Could you please briefly explain the zoning history of the site? I know I related it during my opening comment and there's a zoning history identified on Petitioner's No. 12, but if you could briefly relate to the Board the zoning history of the subject site?

A. Again, as you said, the property was zoned R. 6 in 1958 at the time the first special exception was granted, and subsequently it was rezoned to RDP. It was the subject of a variance petition for some facilities

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that extended out into the waterway. Variances for both relative and absolute relief for distances out into the waterway to, I believe, provide for facilities for the oil that the plant needed when it changed over at the time of the approval, the '71 approval.

There was then the later grant of a special hearing that recognized the propane tank as being properly located within the special exception site and the variance granted at that time for the height of the propane tank.

Q. Are you familiar with the proposal that you have heard a few witnesses talk about here today?

A. I have become familiar with it, yes.

Q. You heard all the witnesses that were here in the courtroom today?

A. That is correct.

Q. Are you familiar with the different other approvals other than the special hearing approval that was obtained as part of the approvals for this use, the other approvals that have gone through the various different agencies of Baltimore County?

A. I have seen a letter of approval from the

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Development Review Committee recognizing that the proposed development qualified for a limited exemption under the development regulations. An A7 limited exception was granted.

There's been a grading permit that's been issued for the site. There have been waivers of peak management or quantity management for stormwater managment that's been approved under a letter from Baltimore County.

There's also been an agreement reached with respect to water quality treatment that needed to be applied to the land use as a part of the critical areas considerations for the proposed development.

MR. ZIMMERMAN: I move to strike unless these documents are produced.

MR. BARHIGHT: We'll be happy to produce them.

THE CHAIRMAN: I will overrule the objection, provided Mr. Barhight does provide us copies.

MR. BARHIGHT: You're testing me, aren't you?

THE CHAIRMAN: Do you want to show them to Mr. Zimmerman?

MR. BARHIGHT: Oh, I'm sorry.

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MR. ZIMMERMAN: Mr. Barhight has just shown me a number of documents. We are not going to object to the admission of the documents, but we don't concede they are legally sufficient or necessarily the opinions expressed with reference to them have any weight.

THE CHAIRMAN: Well, they speak for themselves.

MR. ZIMMERMAN: We are not conceding that they qualify under the Maryland law as having probative value.

THE CHAIRMAN: We'll take them in as exhibits and give them whatever weight the Board members want to assign.

MR. BARHIGHT: I am responding to an objection. I am asked to produce these documents. I'd like it produce the grading permit as the next exhibit.

MS. BARRANGER: Petitioner's No. 19.

MR. ZIMMERMAN: Off the record.

(Discussion held off the record.)

MR. BARHIGHT: If I could suggest between 20A and 20B, that 20A would be the June 4th letter from Keith Kelley, Natural Resource Specialist with the Environmental Impact Review Division of the Baltimore County Department

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of Protection and Resource Management, and the November 8, 2001 letter agreement would be 20B. They go hand in hand.

MR. ZIMMERMAN: June 4, 2001, since we are now June 5, 2002, *today*.

MS. BARRANGER: You didn't say what year.

MR. BARHIGHT: I apologize. June 4, 2001. And then the response is November 8, 2001. Then the next one is the stormwater management waiver.

THE CHAIRMAN: No. 21.

MR. BARHIGHT: That was indicated in the letter dated June 27, 2001.

THE CHAIRMAN: Petitioner's 21,

MR. BARHIGHT: From Mr. Vidmar to Mr. Burkman, from Constellation. I think the final document that was referenced -- I apologize that I do not have four copies, but I will be happy to provide them -- it's a letter signed by Mr. Jablon dated March 4, 2002, which indicates that an (A)(2) limited exemption was granted.

MS. BARRANGER: Petitioner's No. 22.

MR. ZIMMERMAN: We don't object to the admission of the county public records, but we don't necessarily

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concede their correctness.

THE CHAIRMAN: I understand.

MR. BARHIGHT: Off the record?

(Discussion held off the record.)

THE CHAIRMAN: We are back on the record.

MR. BARHIGHT: Thank you very much.

Q. Mr. Maguire, have you had the opportunity -- well, one of the things that I believe you indicated you did in anticipation of the hearing was to review the Master Plan and any commuity plans that might relate to this property. What did that review disclose?

A. I looked at the 1989-2000 Baltimore County Master Plan and also the Master Plan 2010, both of which indicated the proposed land use at the eastern end of the Carroll Island peninsula as being an industrial land use.

And then I further looked at the subject plan, the community plan, the Bowley's Quarters, adopted by the County Council, I believe in February 2001, that identified both graphically within the plan that the proposed land use at the eastern end of the peninsula would continue to be industrial use, and then, again, it

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discussed as being the accepted use for that portion of the peninsula.

Q. With regard to the community plan, was there any participation noted in that plan document by any community representatives?

A. There are a number of workgroup members who were identified in the introductory portion of the community plan. Bowley's Quarter Community Action Plan 2000, Community Advisory Committee, about ten or twelve names.

MR. ZIMMERMAN: What's the name of the community plan?

THE WITNESS: It's the Bowley's Quarter Community Action Plan 2000 as adopted by the Baltimore County Council February 20, 2001.

MR. ZIMMERMAN: I will reserve for cross examination.

Q. Mr. Maguire, I'm going to ask you a series of questions that relate to the zoning requirments for this site, and I'm going to ask you to, in responsing to the question, not only answer with your opinions, but also to provide a basis or justification for your opinion in each

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of these cases, so I don't have to say that twenty-five times. That's what I would hope I would elicit from you.

A. Do my very best.

Q Do you believe the grant of the special hearing would result in any harm to the surrounding area and to the general public?

A. No, I don't believe that it will. And the way that I looked at this site --

Q. You might be seated.

A. I tried to understand both the geography, if you will, of the location, the site itself, and the proposed use, and tried to understand the context in which the plant has operated for over forty years, and the recognition by the community of this as a principle element, if you will, of the community plan.

And looking at both at recognition or setting that as a context for this, and then the proposed use which has as a backdrop the plant that has existed there more than forty years, and understanding as best I could the extranalities (phonetic) that might be associated with the operation of the plant with respect to emission,

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noises, visibility, and the various other issues that might be considered in that regard, I am unable to find the level of impact that would suggest that this use is not appropriate at the given location.

Q. Will the activities proposed by the special hearing seriously impair the use of any neighboring properties?

A. Well, there, again, in trying to understand what the impacts might be on adjoining properties, the answer to your question is to say no.

And trying to understand the potential impacts, again, the issues that comes to my mind, particularly environmentally related issues, using environmental and global germs, the things one would be concerned with having to do with any type of emissions that may come from the plant -- and I don't think we talked about it previously -- but the plant is subject to state regulations in terms of emissions, and there have been applications made for permits that would recognize this use and fitting within the regulatory envelope for this type use.

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And so far, the understanding I have, is that the state has not seen fit to call for a hearing or otherwise suggest that this is not an appropriate use for the given location.

The other impact that I have looked at on adjoining properties has to do with a shadowing effect, trying to understand whether there would be any limitation on light and air on the property from the proposed use. The shadow effect from a hundred foot tall facility, if it went to that level, would be less than 200 feet, and shadows would fall within the property that's under control of BG&E.

The winds that might send, potentially send particulates, not odor, but particulates on the site, the wind is generally out of the north and northwest according to the NOA records that are maintained for this jurisdiction, suggest that the surrounding areas would not be impacted by the proposed use at this location.

We talked about the reduction in traffic has been a less of impact on the community, be it perhaps larger trucks, but less frequent trips, I think can be seen as a

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lessening of a traffic impact on the surrounding property.

Q. Would you please estimate for me the distance from the Crane plant proper where the large central plant is located with the cyclone boiler is to the nearest residential structures? What's the approximate distance?

A. The approximate distance is about 1200 feet in a southwesterly direction across the branch of Seneca Creek.

Q. Could you please estimate the distance to the nearest residential structure from the proposed slag processing facility?

A. About 1100 feet from the center mass, if you will, of the proposed slag processing facility to the nearest residential use that's on the west side of Beach Road.

Q. Are there any kind of vegetation or other forms or features that would serve to limit in any way the viewshed of the slag facility from the nearest residential structure?

A. No. One of the purposes of my trip yesterday was to try to be sure that I was able to answer that question, and try to take some photographs, to see if I could

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capture the site from some of the off-site properties.

And what I found is as I went through the Seneca Park community, in looking back, again, I'm sitting on the public road. I didn't go on private property. So I am in my vehicle trying to capture a snapshot looking between buildings, and I find in the direction from the community to the proposed slag facility site -- and I grant you a tower, electrical tower, I believe, marks generally the direction I should be heading in -- I find that there's a woodline, a fairly substantial wooded condition between my viewpoint and where the proposed facility will be.

And then, looking back from Beach Drive -- again, I just parked the car in front of the closest residential structure and looked towards the site -- and while I am able to see the coal pile, I believe that the line of sight from there directly to where the silos will be for the proposed facility, again, that view at this time of the year is blocked by the woods that are on the BGE property, and I assume will remain on the BGE property. In fact, you can't see the 300 foot tall smokestacks sitting in the driver's seat of a van looking towards the

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site. It's blocked by the trees.

Q. Do you have an opinion as to whether the proposed use will tend to create congestion in the roads, streets or alleys greater than or above and beyond the congestion inherent with such a use regardless of its location anywhere in Baltimore County in the same zone?

A. It will not create such congestion as described in your question.

Q. Why?

A. Based on the information that I have available, I guess firsthand experience, firsthand knowledge of driving Carroll Island Road a couple times in the recent past, looking for evidence of existing use of the roadway and looking at the comments that are available from the State Highway Administration that were issued at the time of the original zoning hearing, while Carroll Island road is not a state road, it's a county road, my understanding, there was no indication that the traffic use that was proposed at the time of the hearing would in any way cause a concern for state highways for impact from this use to their roadway system.

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And, in fact, again, just on the logic of the fact of reducing the total number of truck trips over whatever time, a year's time, whatever, seems to me to be a clear indication that the traffic impact would be lessened by vehicles that are operated under normal driving conditions.

Q. Could you please state your opinion as to whether the proposed use will create potential hazards from fire, panic or other dangers greater than or above and beyond the potential hazards normally inherent with such a use in the zone regardless of its location?

A. I believe that the use will not have such an impact based, again, first, on comments received from the fire marshal in Baltimore County with respect to fire related hazards, there's virtually no comments in the letter from the fire marshall.

It's a low density area to begin with, and so that the chance of interaction between any activity on this site and the population is very limited.

And, in fact, certainly because of the safety guidelines that would be satisfied and followed through

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the operation of the plant, that there will not a negative impact here greater than elsewhere, if the use were located elsewhere in the county.

Q. Could you please state your opinion as to whether the proposed use will tend to overcrowd the land and cause undue concentratiaon of the population greater than or above and beyond the adverse effects normally inherent with such a use regardless of its location within the zone elsewhere in Baltimore County?

A. I believe it will not tend to overcrowd the land or cause undue concentration of population. Based on an understanding of the site itself, again, we are talking about a seven-acre site, using only a very small portion of a seven-acre site within a ninety-eight acre special exception parcel that's situated within a 132 land holding aggregation of the utility.

The likelihood of any overcrowding of that site certainly is remote, if possibly at all. And I don't locally see where the industrial nature of this use will have any effect on crowding or concentration of population.

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Q. Would you please state your opinion whether the proposed would interfere with adequate provisions for schools, parks, water and sewerage and transportation greater than or above and beyond the adverse effects normally inherent with such a use regardless of its location elsewhere in the zone Baltimore County?

A. I believe it will not have such an impact. Again, the land here has been laid out for more than forty years in anticipation of this use, or related uses.

Any land that might be needed for water and sewerage has already been provided, and transportation systems have been provided and are existing in that area.

There is only low density residential land use that's anticipated in the surrounding area, so I don't see where it would have a negative impact.

Q. Do you have opinion and could you please state your opinion as to whether the proposed use will interfere with adequate light and air above and beyond the effects normally inherent with such a use regardless of its location elsewhere within the zone in Baltimore County?

A. I don't believe it will exceed those effects, and

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as I have indicated, we have, at least from the general population standpoint, favorable wind conditions here, again from the NOA records, indicating the wind that we do have comes out of the north, northwest, so that our facility is not blocking anything but perhaps the Aberdeen Proving Grounds. Carroll Island is to the east of us.

And with respect to light, the shadow calculations done indicate that there's really very little likelihood of the shadows affecting any off site properties at all.

Q. Would you please state your opinion as to whether the proposed use is consistent with the purposes of the zoning classification and the spirit and intent of the zoning regulations?

A. I believe that it is within the spirit and intent of the zoning regulations. Even though R.C. 5 zoning classifications are primary for low density, rural residential uses, they clearly recognize the need to provide for public utilities within the zone, and that's the approval that we are asking for here.

And zoning is intended to segregate appropriate

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uses and create zones that allow people, allow orderly development of a community, and I think that's what is operating here in adding this type of facility to the proposed location.

Q. Would you please state your opinion as to whether the proposed is consistent with the impermeable surface and vegetative retention provisions of the zoning regulations?

A. I believe that the use is consistent with those requirements. We are actually adding no new impervious surfaces to the proposed site.

In fact, the impervious surfaces are being lessened under the requirements of the Critical Areas considerations here. A vegetative strip is being substituted for currently impervious land area, and there's no new vegetation that's going to be removed from the site.

Q. Would you please state your opinion whether the proposed use will be detrimental to the environmental and natural resources of the site of the vicinity. Including forest, streams, wetland, aquifers and floodplains in this

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R.C. 5 zone?

MR. ZIMMERMAN: Objection. I don't think this witness is qualified to comment on what.

MR. BARHIGHT: Only to the extent of his expertise as stated.

THE CHAIRMAN: I will allow it.

A. Well, the question relates to the impact on the environmental and natural resources, and there's specifically identified environmental and natural resources here. There are no foresta on the site that will be impacted by the proposed use. There are no wetlands on the site, no streams.

The aquifers, while I don't have any specific migration information on the soils type here and whether, in fact, aquifers exist, we have heard that the material itself is inert, that there's no contaminant that's associated with it, even if water were to move through it and if an aquifer, even if one exists at this location.

Floodplains. The plans shows that we're in a flood zone beyond -- above the elevation of the hundred year flood.

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Q. Would you please state your opinion -- this is the summary question that I finally get to. I apologize for having to go through this, but it's the requirements of the law, so you've got to do what you've got to do.

Would you please state your opinion as to whether or not the proposed use will have a detrimental effect on the health, safety and general welfare of the locality involved than would be normally expected of such a use regardless of its location elsewhere within the zone in Baltimore County?

A. I don't believe that it will have a greater effect here than it would regardless of its location anywhere in Baltimore County.

Again, we are looking at a use that will be safely run within a regulatory framework for air quality and other state-regulated activities.

We have no concern from our fire marshal with respect to causing unsafe conditions, the site will be operated under OSHA regulations, so that meets the requirements for a safe operation.

There is nothing that I have seen in any of the

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description of the proposed uses of the site. In fact, the folks out there on the fishing pier both of my visits seemed to be very happy with the site, the way it's operated. And, you know, I see this as fitting in with the community plan.

Q. Thank you. I'd like to redirect your attention away from the special hearing with regard to amendments as it relates to the special exception and try to redirect your focus on the variance issues that arise out of this amendment request.

I assume that you're familiar with the slag processing plant. You have been here for all the descriptions of the various types and the utilization of same, and you have seen the photographs prior to the hearing today?

A. Yes, I have.

Q. Could you please indicate whether in your opinion we even need a height variance?

A. Well, it was a question that came to mind when I first was asked to participate as to why we would need one under the Section 300.1 of the exceptions to height.

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Reading that on its face, it suggested to me very strongly that a silo doesn't seem to be a qualified use of a silo, but a silo is one of the specific exceptions to the height regulations in the county.

And all of the plans that I have seen, the facilities that are tallest of the proposed use of this land are indicated as silos as there are associated mechanisms to allow the silos to operate properly, the elevator mechanism, that sort of thing.

But I'm not sure, again, you can have a silo without having some device to mechanically lift the material from the ground surface or wherever it exists up to the top of the facility. So it seems to me that there was really a question whether the variance was required at all.

Q. Let's assume for a moment that the zoning regulations are not interpreted by the Board in the fashion you just described, but instead they determine a variance is required for anything above thirty-five feet, regardless of its characterization.

Are you familiar with the variance sections of

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the Baltimore County Section 307 as well as the height restriction for the zone being thirty-five feet?

A. Yes.

Q. Are you familiar with the requirement as artfully stated in Cromwell versus Ward case?

A. Yes, I am.

Q. Let's go through this analysis with you and ask you these questions. Could you please describe how the site is unique or unusual in some manner?

MR. ZIMMERMAN: Objection.

THE CHAIRMAN: Overruled. We might as well have the record complete. I will let Mr. Barhight continue with his line of questioning.

MR. BARHIGHT: I think that's a legal conclusion for the Board.

THE CHAIRMAN: We are going to have to ultimately decide the question, but if we decide it is, he's got to get into Cromwell versus Ward, so why don't you proceed?

MR. BARHIGHT: On the record, Mr. Zimmerman and I have talked about this, there's a variety of ways you can can look at this, but the Board has always allowed these

kind of witnesses to go ahead and express their opinions, and counsel is left with making the legal argument, whatever they might be, based upon all the evidence in the record, and that's what the Board is left with as well. To the extent this might be of any help or assistance at all in the tradition that the Board has displayed in the past --

THE CHAIRMAN: You can continue, Mr. Barhight.

MR. BARHIGHT: Thank you.

Q. Let me rephrase the question. Mr. Macguire, could you please describe in your opinion how the site might be unique or unusual in any manner?

A. In making my evaluation of the site, I looked at the geography of the site, I looked at the land form and its location. This is a peninsula of land we are talking about formed by the south shore of Saltpeter Creek and north shore of Seneca Creed. The BGE plant occupies the easternmost extremity of this peninsula of land.

Most of their holdings are waterfront. This contributes to a sense of isolation for this particular facility and use. The isolation of the facility and its



waterfront which for the existing use provides both cooling water and appropriate water body for discharge of waters that have gone through the turbines themselves, I believe contributed to the selection of the site back in the late '50s for the sighting of a steam electric generating plant and the resulting facilities, and I do find that to be a contributing factor that sets this apart from other properties in the community.

As I indicated, the land is recognized in the county Master Plan and the local community plan as an industrial use. And, again, I see that as a unique and a separate identity upon the Carroll Island peninsula.

Q. What practical difficulty would result if this project was forced to comply with the height regulations of Baltimore County, namely, the thirty-five foot height regulations of the R.C. 5 zone?

A The operation of the plant has been described to me by Mr. Burns. To squash these silos down to a height to meet the ordinary height limitation in the zone, you would -- it would cause a complete -- a need to completely redesign the silo structures themselves. You'd have to



talk about things like the angle of repose of this particular material, and we'd end up with a silo that was a mile wide and an inch deep. That really exaggerates the results, but you'd have a very oddly shaped, oddly configured, presumably oddly operated storage facility if it were required to comply where the thirty-five foot height limitation.

Q. If the variances are granted, would they be within the spirit and intent of the Baltimore County zoning regulations?

A. I believe that they would be. Again, I've sort of alluded to the fact that the thirty-five foot height limitation as I see it is primarily designed to control the uses that are, I'll say, normally anticipated in R.C. 5 zonea as residential type use, and that the public facility use, I think, appropriately, would enjoy and I think the zoning regulations say, that you are allowed to enjoy this kind of relief from the height restrictions.

Q. Again, if the variances were granted, would there be any adverse impact on the general health, safety and welfare of the locality involved?



A. I believe it will not have an adverse effect on the locality. It will allow the safe and practical operation of the facility at the proposed location.

Q. The last question relates to the Office of Planning. You have so far already mentioned in your comments each of the different Zoning Advisory Committee comments that I believe are in the Board's files. I hope are. We should check before I rest my case in chief. But is there an Office of Planning comment with regard to this proposal?

A. Yes. There is a written comment that was provided at the time of the original hearing where they supported the proposed use at this location.

Q. One moment, please.

A. There's an inter-office memo from the Office of Planning. It says, The Office of Planning supports the request to amend the existing special exception to allow the on-site processing of slag. It's signed by a Marla Cummingham and authored by Jeff Long.

MR. ZIMMERMAN His name is Mark, Mark Cunningham. Can we get a copy as an exhibit?

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MR. BARHIGHT: Why don't I move each of the Zoning Advisory Committee Comments be the next series of petitioner's exhibit, whatever number we're on, A, B, C.

MS. BARRANGER: That would be Petitioner's Exhibit 23.

THE CHAIRMAN: Why don't we admit the whole file as we have it constituted, which would include the various comments.

MR. BARHIGHT: That would be fine. If there's no objection, I'd be happy to do that.

MS. BARRANGER: Petitioner's No. 23.

Q. One other clarifying comment. I believe, Mr. Macquire, during your testimony, that you continued to make reference to BGE. I don't know whether you meant to make reference to Constellation Power Source Generation, Inc?

A. Yes, absolutely.

Q. We all have a tendency to do that.

A. I apologize.

MR. BARHIGHT: No other questions of this witness at this time. Thank you.

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THE CHAIRMAN: Mr. Zimmerman.

CROSS EXAMINATION

BY MR. ZIMMERMAN:

Q. When were you hired to work on this case?

A. About the middle of May.

Q. This year, 2002?

A. Yes.

Q. Less than three weeks ago?

A. That sounds right.

Q. Are you a specialist in air pollution?

A. No.

Q. Are you a specialist in water pollution control?

A. No.

Q. Are you a traffic engineer?

A. No.

Q. Have you ever testified before the County Board of Appeals?

A. No.

Q. Did you review the entire Zoning Commissioner's file or the file as it came up to the Board of Appeals?

A. I did my review from the records that Scott

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provided to me, Mr. Barhight provided to me, and from other records at the county office.

Q. You didn't look at the Board of Appeals's file?

A. No, I didn't.

Q. Did you look at the comprehensive zoning map prior to today?

A. Yes.

Q. The exhibits that we have there?

A. Actually, I got a digital copy of them from the county and looked at them.

Q. Do you know when the property zoning classification became R.C. 5?

A. No, I don't.

Q. That's rural residential zone, correct?

A. Yes.

Q. What is the main feature of the R.C. 20 zone, do you know?

A. The main feature?

Q. Yes. Describe the R.C. 20?

A. It's a resource conservation area for the critical areas. It's, I guess, it's the protected area.

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It's the most restrictive of the critical area division of land use in the county or under the state critical area legislation, has one density unit per twenty acres, I believe.

Q. And that's the predominant zoning in this vicinity around the subject site?

A. Yes, immediately adjoining.

Q. Is this property in the Chesapeake Bay Critical Area?

A. Yes, I believe it is.

Q. Is the Master Plan advisory or mandatory?

A. It's advisory, I believe.

Q. You mentioned that the County Master Plan indicates industrial use for the area of the the subject property, is that correct?

A. Yes, it's mapped that way.

Q. In the land use map that's in the plan?

A. Yes, sir.

Q. Where, if anywhere, is there a segment in the Bowley's Quarter plan that has an industrial use for this area?

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A. It's mapped on the propoed land use map. As I read it, the industrial classification, this vertical hatching that's been provided, that's on the full extent of the eastern end of the peninsula. And, in effect, it identifies the Baltimore Gas and Electric Crane Power Station as the only major industrial facility located in the community as the BGE Crane Power Station located at the mouth of Seneca Creek. It talks about the twenty years of history of the property. At times, there have been problems associated with the use, but the community has worked with the business to create an open door relationship regarding how to solve reported problems.

There have been problems, spills on the site that have been remediated, recognized the deregulation of the electric power in Maryland, and the need to maintain an open door relationship, that being important to the important. Dialogue with new owners must occur to ensure that residents and the environment are not impacted.

Q. Now, you're reading from the map which is page 13, or is this an unnumbered page?

A. I can't say. I copied excerpts, not the entire

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page.

Q. Could you provide us with copies of the excerpts that you just read from?

A. Sure.

MR. BARHIGHT: In fact, we'll provide the entire document. I'd like to introduce as Petitioner's No. 24, the Bowley's Quarters Community Plan, and we'll provide you with the entire document.

Q. May I look at page 14?

A. Sure.

Q. In any event, would you agree the Bowley's Quarters Plan essentially recognizes the existence of the, at that point, the Baltimore Gas and Electric Crane Power Station?

A. Both existing and the potential for change.

Q. It also recognizes, mentions, deregulation of electric power in Maryland is likely?

A. And, presumably it anticipates potential changes in operation as a result of that.

Q. And do you have the date of this plan?

A. The adoption date is on the front. February of

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2001.

MR. ZIMMERMAN: February 20, 2001. Okay. I understand that Mr. Barhight will supply a copy of the plan.

MR. BARHIGHT: I'll be happy to.

Q. So in your view, both the Master Plan in 2010, the land use map and the Bowley's Quarter Plan, support the idea of industrial use at this end of the peninsula, correct?

A. They certainly recognize that as being the use there.

Q. Ordinarily, you would agree, industrial uses are not allowed in the R.C. 5 zone?

A. I would agree.

Q. You have mentioned several times in your direct testimony, if I'm not mistaken, that the existing use is a public utility use?

A. It was approved as a public utility at the time of the special exception, and it's continued to be recognized that way.

Q. Recognized by whom?

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A. I believe by the zoning office and the Zoning Commissioner in his various actions over the years.

Q. Your view that this is recognized as a public utility is important to your opinions on the special exception, is it not?

A. I would say so, yes.

Q. Are you an expert on deregulation of the electric power industry in Maryland?

A. No.

Q. So if it turns out Constellation Power Source Generation, Inc. and its activities at the Crane Power Plant are no longer generally a public utility use, that would affect your opinion, would it not?

MR. BARHIGHT: Objection. The reason I need to make this objection, I believe that Mr. Zimmerman's question is unfair and unfounded, because there are different definitions of public utility, depending on whether you are reading the zoning regulations which has its own definition of public utility, or whether you're reading the various types of description of public utilities that are held within the Maryland State law.

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So I think if he's going to ask that question, in fairness, he needs to ask whether it's a public utility as defined in the zoning regulations or a public utility as defined by the Public Service Commission and the various other state laws that might govern Constellation Power Source Generation.

THE CHAIRMAN: Do you want to qualify your question, Mr. Zimmerman?

Q. What is your assumption to the meaning of public utility when you call this use that's already there a public utility?

A. Well, I was unable to find a definition of a public utility in the definition section of the Baltimore County zoning regulations.

I did not have the designated dictionary that one is referred to when one lacks the definition in the zoning ordinance.

I did look at my Webster's 3rd Collegiate Dictionary for public utility, and I don't think I wrote down the definition, but it has to do with providing services to satisfy the public need or necessity, and that

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may be subject to governmental regulations. I think that's an "may be," not an absolute part of the definition.

Q. Well, ninety-nine percent of the businesses in Maryland are subject to governmental regulations?

A. Well, they may or may not be providing services that are deemed to be public need.

Q. Ninety-nine percent of the businesses provide some kind of public need?

MR ZIMMERMAN: In any event, Mr. Chairman, we'll brief the point on the public utility question.

Q. Can you state whether or not, from what Mr. Burns has testified, his operation in Virginia is currently a public utility?

A. I have no knowledge of that.

Q. Would you agree that, at least traditionally, public utilities were in the area of water, sewer, electricity in this country, those would be the main ones?

A. And interstate and intercontinental underground utility lines.

Q. Contribute gas or electric?

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A. Uh-huh.

Q. Plant processing is not a traditional public utility in the United States of America, would you agree with that?

A. I would say, in response to that, that as I prepared myself for this and looked at and tried to understand what the state of public utility responsibility has become today, some of the things that struck me were the recognized need to not just toss byproduct materials generated by power plants out the window or somewhere on your site, that there was a stronger and stronger recognition, sort of total environmental recognition, that you need to make the best use of product such as this, and so that I think there is an evolving definition of the responsibility of the public utilities that in this case will include, properly includes, the slag processing.

Q. Can you state whether or not slag processing has ever been regulated by any public service commission in this country?

A. I can't answer the question. I don't have any knowledge.

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Q. Can you state whether or not in this country, traditionally, public utilties are considered subject to regulation by some sort of state public service commission?

A. I guess, in a general sense, the Public Service ommission is there to regulate providers of power sources, yes.

Q. And public utilities, traditionally, are considered natural monopolies in the areas of which they serve? Would you agree with that?

A. Would you ask the question again?

Q. Public utilities, traditionally, had a natural monopoly in the area which they serve? Baltimore Gas and Electric --

A. Yes, they tend to have a natural monopoly, yes.

Q. With reference to your mention of the state air quality permit, has one been issued for this facility?

A. No. As I understand the process, there's an application made, and Virginia Materials, Incorporated, made that application.

And then there's a, I believe, there is an open

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period of ten days, I believe, for public response to that, and that I believe we just got word yesterday that the response period has been closed, but a final determination has not yet been made by MDE as to whether a hearing will be held on this application or not.

Q. With reference to the winds in the area, did you communicate with any of the citizens in the area as to their experience as to how the winds are blowing and the impact of the facility?

A. I did an on line search at the NOAA website, the National Oceanographic and Atmospheric Administration, to try to find some historic data, and I found a published document on the website that talked about, I think, a ten or twenty year period, and they gave me average wind direction and average wind speed in the Baltimore area, so I didn't get anymore local than in the Baltimore area.

Q. When you got get an average wind direction, there can be varition?

A. Yes, there can. Yes, there can.

Q. It there's a problem two or three days a week, it may not be within the average, but it could still be a

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significant problem?

A. It could be perceived as one.

Q. Do you know whether or not there's any Rural Legacy areas in this peninsula?

A. I haven't encountered that, no.

Q. Do you know with the Rural Legacy Program is?

A. Just very generally.

Q. What is it?

A. I assume it has to do with recognizing -- well, no. I will say I can't answer you question.

Q. Resource conservation zoning is really not your specialty, is it?

A. No.

Q. With reference to the comments on the variance, did you find any petition for variance in the file, or have you seen one something called Petition for Variance?

A. I say it recognized in the Order, saw the variance recognized in the Order.

Q. Have you ever seen a form used in Baltimore County called, Petition for Variance?

A. Yes.

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Q. Have you seen one in reference to this case?

A. I have.

Q. Now, with reference in any event to the variance, if this variance is denied, the Crane Power Plant is going to continue to exist, right?

A. Yes.

Q. It's still going to be a use of the property?

A. There's going to be a use of the property. There's still going to be a waste stream, a byproduct stream that needs to be managed.

Q. Let me see if I understood your comments on the height of the silos and/or elevators.

You're saying if this facility would have to comply with the thirty-five foot height requirement in the R.C. 5 zone, they'd have to redesign the silos?

A. That's right. Obviously, to get below the height ceiling. So you will spread them out, they'll be much wider in dimension than they are proposed right now.

Q. But it could be done?

A. Yes.

Q. There's enough room there to do it?

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A. I think there is probably room there to do it. Is it practical --

Q. Practical for what --

A. -- to do it?

MR. BARHIGHT: Excuse me. If he could allow the witness to complete the answer. He hadn't finished his sentence.

Q. Excuse me if I interrupted you. I apologize. Go ahead.

A. I'm talking about the practicality of redesigning something for this use to satisfy the height regulations.

We have a -- it's sort of an off the shelf commodity that's in limited demand, that where there are both existing design and existing implementation of the design that provides for an efficient use and deemed to be an efficient way to handle this product and this type application, I think it would be impractical to be forced to redesign this product, this facility, for a single location.

Q. So the product design is more important than the law, is that correct?

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MR. BARHIGHT: Objection.
THE CHAIRMAN Sustained.
Q. But in any event, as far as you know, it could be done? It would just take some work to do it?
A. You know, I will say that anything, you know, you can solve almost any problem with time and money, so I guess it could be done with adequate time and adequate money.
Q. I have a question on Petitioner's Exhibit 20A, that's the letter dated June 4, 2001, from Keith Kelley to James Burkman.
A. The June 4, 2001 letter, I have that.
Q. Have you spoken to Mr. Kelley?
A. No, I have not.
Q. Did you read this letter before today?
A. I think I saw it yesterday for the first time.
Q. With reference to the three numbered, quote, unquote, following decisions made, number one refers to existing uses in the hundred foot buffer to tidal waters. Can you identify what that is?
A. Under the Critical Areas legislation, the area of

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most restricted activity is the first hundred feet landward of the mean high water line.
Q. Where's that area on this site? Where's that hundred foot buffer area they are talking about?
A. I'm not really sure that it actually occurs on the site itself. I haven't seen it delineated on this map. And whether there -- it would be that the comment refers to the hundred foot of the entire ninety-eight acre parcel which would be subject to that buffering.
Q Just so we are clear, you're differentiating the seven acres here from the entire ninety-eight --
A. Ninety-eight special exception.
Q. Ninety-eight acres that were originally within the 1958 special exception?
A. Yes.
Q. Where would those existing uses be on the ninety-eight acres that are within the hundred foot buffer to tidal water, do you know?
A. I haven't mapped it.
Q. Do you have any idea?
A. Well, it could be the hundred foot strip that

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abuts the bulkheaded waterfront or the mean high water line. Are you asking me which particular facilities occur within the hundred foot strip?
Q. Yes. If you know.
A. I don't know. You know, I haven't laid out a scale looking for the hundred foot strip. I haven't done it.
Q. In any event, your focus here would be on the seven acres, not the ninety-eight acres?
A. Yes. I mean, my interest, the special exception that we are working with here was first granted for the entire ninety-eight acre parcel, but our focus today is on the seven acre portion of that. It's the subject of the Zoning Commissioner's recent zoning hearing.
Q. The site plan actually refers to 6.83 acres?
A. You used seven.
Q. I know. I wasn't criticizing you. We'll take seven.
A. Okay.
Q. The site plan refers to approximately seven acres, correct?

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A. Correct.
Q. Commenting on the absence of a buffer area within a hundred feet of tidal waters, you're referring to the seven acres; where the ninety-eight acres, there would be a buffer area?
A. I believe that there is land, that the waterfront portion of the ninety-eight acres, if the critical area rules are applied, would have a hundred foot strip that would be the potential subject of administrative variance for activities within the strip.
Q. So for the purpose of the environmental issue, without making you an expert on pollution control, or whatever, the focus is on the seven acres, not the ninety-eight acres?
A. I'm sorry. Ask your question again.
Q. Let me put it this way. Do you know of any logical reason, or is there any stated reason for allowing the petitioner to avoid applying for an administrative variance --
MR. BARHIGHT: Objection. The document speaks for itself.

Q. -- for uses within the hundred foot buffer?

THE CHAIRMAN I'm inclined to agree with you. I will sustain the objection. We need to take a short break.

(A recess was taken.)

THE CHAIRMAN: We can go back on the record.

MR. ZIMMERMAN: I think I can kind of wind it up quickly.

Q. Mr. Maguire, since you just saw this letter yesterday, you haven't had an opportunity to find out what, if any, legal reason there was for the three decisions that are identified in Petitioner's Exhibit 20A? You haven't attempted to find out the basis, the reasoning for this?

A. I accepted it on its face.

Q. In any event, it does appear that in this letter, DEPRM, or Mr. Kelley, is focusing on the seven acres or so where the slag processing facility is proposed, rather than on the ninety-eight acres for the purpose of their review?

A. It does say the site is approximately seven acres



of a hundred percent impervious surfaces. That seems to be their focus.

MR. ZIMMERMAN: One moment, Mr. Chairman. Thank you. That's all I have.

THE CHAIRMAN: Mr. Barhight?

MR. BARHIGHT: No questions. Thank you very much.

THE CHAIRMAN: Okay. I gave you a list of the possible dates. Do you want to check with your office, Mr. Barhight?

MR. BARHIGHT: I will be happy to do so. Before I rest my case in chief, obviously, there's a number of documents that through Mr. Zimmerman and through the Board I have been asked to provide, and I will do so.

I will wait until I have provided those before I technically rest my case in chief.

The last thing is that I can't help but noticing Mr. Dillon has been assisting Mr. Zimmerman in his presentation here today, and for the purpose of the record, I would like to have Mr. Dillon indicate whether he's here in a representative capacity for any



organization, or whether he's here as Mr. Dillon associated with no organization.

MR. ZIMMERMAN: I'm not sure what the relevance would be at this time.

MR. BARHIGHT: When anyone appears before the Board and participates in the proceeding, I think I have a right -- I mean, I can call him to the stand right now and ask him the questions. I'd just like to know why he's here.

There was a sign-in sheet handed in, and his name does not appear on the sign-up sheet prepared by People's Counsel indicating the organization that a person may or may not be representing. I'm just curious and prefer to ask the question.

THE CHAIRMAN: He really hasn't testified in any sense, and People's Counsel is certainly free to ask for advice or guidance.

MR. ZIMMERMAN: We were thinking of making that clear when he testified. That would be clear when he testified.

MR. BARHIGHT: I'd like to call Mr. Dillon to the



stand real quickly, please.

MR. ZIMMERMAN: Then petitioner is making Mr. Dillon part of his case?

MR. BARHIGHT: Yes, I am, absolutely.

JOHN J. DILLON,

having been called as a witness, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. BARHIGHT:

Q. State your full name and business address, please, for the record. I take that back. Please just state your full name.

A. Jack Dillon, or John J. Dillon, Jr., but I prefer Jack Dillon.

Q. Mr. Dillon, are you appearing here today under any subpoena?

A. No.

Q. I assume you're appearing here today voluntarily?

A. Yes.

Q. Are you appearing here today on behalf of any organization?

A. I have been authorized by the Valleys Planning Council to participate and testify in this matter.

MR. BARHIGHT: No other questions. Thank you.

THE CHAIRMAN: Thank you, Mr. Dillon. So your case is still open? You're not closing your case in chief?

MR. BARHIGHT: I'm not closing my case in chief. There are other documents -- I'd like to beg the Board's indulgance. It looks like we're going to go to another day.

MR. ZIMMERMAN: I ought to mention on the record that we are reserving our opportunity to have Mr. Dillon testify as a planning expert, and that is our office's main interest, actually.

THE CHAIRMAN: We'll resolve that when the occasion arises. Mr. Dillon will be back for the next day, I assume.

MR. ZIMMERMAN: Yes.

THE CHAIRMAN: Okay. If counsel would just make sure, the documents, we need to complete our file. And, Mr. Barhight, check with your office. All those dates are



satisfactory to Mr. Zimmerman.

MR. ZIMMERMAN: They'll have to be.

MR. BARHIGHT: Off the record.

(Discussion held off the record.)

THE CHAIRMAN: Let's go back on the record. The case will be continued, and by mutual agreement both counsel have agreed that the case will be reset for Thursday, October 17th, beginning at 10 a.m., due notice of which will be given to all interested parties.

MR. ZIMMERMAN: May I say I will attempt to contact the various citizens who were here today and hopefully those who wish to be present and perhaps testify. If somebody has a major problem, perhaps we can get them in at another point, but I would certainly hope we can finish the case on that day.

MR. BARHIGHT: My hope would be that we perhaps could find a day that's not four months away to complete the hearing, so we'll try to work with your office. But, certainly, for the record, October 17th is good on our calendar.

THE CHAIRMAN: Okay. This meeting is hereby



adjourned. Thank you for your participation and attendance.

MR. BARHIGHT: Thank you very much.

(Hearing adjourned.)

* * * * *



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STATE OF MARYLAND )
)ss
COUNTY OF BALTIMORE )

I, Carolyn E. Peatt, a Notary Public of the State of Maryland, County of Baltimore, do hereby certify that the aforegoing proceeding was recorded stenographically and this transcript is a true record of the proceedings.

I further certify that I am not of counsel to any of the parties, nor in any way interested in the outcome of this action.

As witness my hand and notarial seal this 10th day of June, 2002.

Carolyn E. Peatt
Notary Public

My Commission expires June 4, 2003.

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(2000)

ing for the Health Care Commission and for the purposes authorized under this Act."

Section 7, ch. 702, Acts 1999, provides that "any balance remaining in the Health Resources Planning Commission Fund, as provided in § 19-122 of the Health-General Article at the end of September 30, 1999 shall be transferred to the Health Care Access and Cost Fund, as established under § 19-1515 of the Health-General Article."

## § 19-123. Certificate of need — Health care facilities.

(a) *Definitions.* — (1) In this section the following words have the meanings indicated.

(2) "Limited service hospital" means a health care facility that:

(i) Is licensed as a hospital on or after January 1, 1999;

(ii) Changes the type or scope of health care services offered by eliminating the facility's capability to admit or retain patients for overnight hospitalization;

(iii) Retains an emergency or urgent care center; and

(iv) Complies with the regulations adopted by the Secretary under § 19-307.1 of this title.

(3) (i) "Health care service" means any clinically related patient service.

(ii) "Health care service" includes a medical service.

(4) "Medical service" means:

(i) Any of the following categories of health care services:

1. Medicine, surgery, gynecology, addictions;
2. Obstetrics;
3. Pediatrics;
4. Psychiatry;
5. Rehabilitation;
6. Chronic care;
7. Comprehensive care;
8. Extended care;
9. Intermediate care; or
10. Residential treatment; or

(ii) Any subcategory of the rehabilitation, psychiatry, comprehensive care, or intermediate care categories of health care services for which need is projected in the State health plan.

(b) *Application fee.* — The Commission may set an application fee for a certificate of need for health care facilities not assessed a user fee under this subtitle.

(c) *Rules and regulations.* — The Commission shall adopt rules and regulations for applying for and issuing certificates of need.

(d) *Determination of circumstances under which application required.* — The Commission may adopt, after October 1, 1983, new thresholds or methods for determining the circumstances or minimum cost requirements under which a certificate of need application must be filed.

(e) *Certificate required.* — (1) A person shall have a certificate of need issued by the Commission before the person develops, operates, or participates in any of the following health care projects for which a certificate of need is required under this section.

(2) A certificate of need issued prior to January 13, 1987 may not be rendered wholly or partially invalid solely because certain conditions have been imposed, if an appeal concerning the certificate of need, challenging the power of the Commission to impose certain conditions on a certificate of need, has not been noted by an aggrieved party before January 13, 1987.

(f) *Same — New health care facility.* — Except as provided in subsection (g) (2) (iii) of this section, a certificate of need is required before a new health care facility is built, developed, or established.

(g) *Same — Relocation.* — (1) A certificate of need is required before an existing or previously approved, but unbuilt, health care facility is moved to another site.

(2) This subsection does not apply if:

(i) The Commission adopts limits for relocations and the proposed relocation does not exceed those limits;

(ii) The relocation is the result of a partial or complete replacement of an existing hospital or related institution, as defined in § 19-301 of this title, and the relocation is to another part of the site or immediately adjacent to the site of the existing hospital or related institution;

(iii) Subject to the provisions of subsections (i) and (j) of this section, the relocation is of an existing health care facility owned or controlled by a merged asset system and is to:

1. A site within the primary service area of the health care facility to be relocated if:

A. The proposed relocation is not across county boundaries; and

B. At least 45 days prior to the proposed relocation notice is filed with the Commission;

2. A site outside the primary service area of the health care facility to be relocated but within the primary service area of the merged asset system if:

A. At least 45 days prior to the proposed relocation notice is filed with the Commission; and

B. The Commission in its sole discretion, and in accordance with the criteria adopted by regulation, finds that the relocation is in the public interest, is not inconsistent with the State health plan, and will result in the more efficient and effective delivery of health care services; or

3. For a limited service hospital, a site within the immediate area as defined in regulation by the Commission; or

(iv) The relocation involves moving a portion of a complement of comprehensive care beds previously approved by the Commission after January 1, 1995 for use in a proposed new related institution, as defined in § 19-301 of this title, but unbuilt on October 1, 1998 if:

1. The comprehensive care beds that were originally approved by the Commission in a prior certificate of need review were approved for use in a proposed new related institution to be located in a municipal corporation within Carroll County in which a related institution is not located;

2. The comprehensive care beds being relocated will be used to establish an additional new related institution that is located in another municipal corporation within Carroll County in which a related institution is not located;

3. The comprehensive care beds not being relocated are intended to be used to establish a related institution on the original site; and

4. Both the previously approved comprehensive care beds for use on the original site and the relocated comprehensive care beds for use on the new site will be used as components of single buildings on each site that also offer independent or assisted living residential units.

(3) Notwithstanding any other provision of this subtitle, a certificate of need is not required for a relocation described under paragraph (2) (iv) of this subsection.

(h) *Same — Bed capacity.* — (1) A certificate of need is required before the bed capacity of a health care facility is changed.

(2) This subsection does not apply to any increase or decrease in bed capacity if:

(i) For a health care facility that is not a hospital, during a 2-year period the increase or decrease would not exceed the lesser of 10 percent of the total bed capacity or 10 beds;

(ii) 1. The increase or decrease would change the bed capacity for an existing medical service; and

2. A. The change would not increase total bed capacity;

B. The change is maintained for at least a 1-year period; and

C. At least 45 days prior to the change the hospital provides written notice to the Commission describing the change and providing an updated inventory of the hospital's licensed bed complement;

(iii) 1. At least 45 days before increasing or decreasing bed capacity, written notice of intent to change bed capacity is filed with the Commission;

2. The Commission in its sole discretion finds that the proposed change:

A. Is pursuant to the consolidation or merger of 2 or more health care facilities, or conversion of a health care facility or part of a facility to a nonhealth-related use;

B. Is not inconsistent with the State health plan or the institution-specific plan developed by the Commission;

C. Will result in the delivery of more efficient and effective health care services;

D. Is in the public interest; and

3. Within 45 days of receiving notice, the Commission shall notify the health care facility of its finding; or

(iv) The increase or decrease in bed capacity is the result of the annual licensed bed recalculation provided under § 19-307 of this title.

(i) *Same — Bed capacity of hospitals located in counties with three or more hospitals.* — (1) Except as provided in paragraph (2) of this subsection, for a hospital located in a county with three or more hospitals, a certificate of need is not required before the bed capacity is increased or decreased if the change:

(i) Occurs on or after July 1, 2000;

(ii) Is between hospitals in a merged asset system located within the same health service area;

(iii) Does not involve comprehensive or extended care beds; and

(iv) Does not occur earlier than 45 days after a notice of intent to reallocate bed capacity is filed with the Commission.

(2) A hospital may not create a new health care service through the relocation of beds from one county to another county pursuant to this subsection.

(j) *Same — Change in services.* — (1) A certificate of need is required before the type or scope of any health care service is changed if the health care service is offered:

(i) By a health care facility;

(ii) In space that is leased from a health care facility; or

(iii) In space that is on land leased from a health care facility.

(2) This subsection does not apply if:

(i) The Commission adopts limits for changes in health care services and the proposed change would not exceed those limits;

(ii) The proposed change and the annual operating revenue that would result from the addition is entirely associated with the use of medical equipment;

(iii) The proposed change would establish, increase, or decrease a health care service and the change would not result in the:

1. Establishment of a new medical service or elimination of an existing medical service;

2. Establishment of an open heart surgery, organ transplant surgery, or burn or neonatal intensive health care service;

3. Establishment of a home health program, hospice program, or freestanding ambulatory surgical center or facility; or

4. Expansion of a comprehensive care, extended care, intermediate care, residential treatment, psychiatry, or rehabilitation medical service, except for an expansion related to an increase in total bed capacity in accordance with subsection (h) (2) (i) of this section; or

(iv) 1. At least 45 days before increasing or decreasing the volume of 1 or more health care services, written notice of intent to change the volume of health care services is filed with the Commission;

2. The Commission in its sole discretion finds that the proposed change:

A. Is pursuant to the consolidation or merger of 2 or more health care facilities, the conversion of a health care facility or part of a facility to a nonhealth-related use, or the conversion of a hospital to a limited service hospital;

B. Is not inconsistent with the State health plan or the institution-specific plan developed and adopted by the Commission;

C. Will result in the delivery of more efficient and effective health care services; and

D. Is in the public interest; and

3. Within 45 days of receiving notice under item 1 of this subparagraph, the Commission shall notify the health care facility of its finding.

(3) Notwithstanding the provisions of paragraph (2) of this subsection, a certificate of need is required:

(i) Before an additional home health agency, branch office, or home health care service is established by an existing health care agency or facility;

(ii) Before an existing home health agency or health care facility establishes a home health agency or home health care service at a location in the service area not included under a previous certificate of need or license;

(iii) Before a transfer of ownership of any branch office of a home health agency or home health care service of an existing health care facility that separates the ownership of the branch office from the home health agency or home health care service of an existing health care facility which established the branch office; or

(iv) Before the expansion of a home health service or program by a health care facility that:

1. Established the home health service or program without a certificate of need between January 1, 1984 and July 1, 1984; and

2. During a 1-year period, the annual operating revenue of the home health service or program would be greater than $333,000 after an annual adjustment for inflation, based on an appropriate index specified by the Commission.

(k) *Same — Capital expenditures.* — (1) A certificate of need is required before any of the following capital expenditures are made by or on behalf of a health care facility:

(i) Any expenditure that, under generally accepted accounting principles, is not properly chargeable as an operating or maintenance expense, if:

1. The expenditure is made as part of an acquisition, improvement, or expansion, and, after adjustment for inflation as provided in the regulations of the Commission, the total expenditure, including the cost of each study, survey, design, plan, working drawing, specification, and other essential activity, is more than $1,250,000;

2. The expenditure is made as part of a replacement of any plant and equipment of the health care facility and is more than $1,250,000 after adjustment for inflation as provided in the regulations of the Commission;

3. The expenditure results in a substantial change in the bed capacity of the health care facility; or

4. The expenditure results in the establishment of a new medical service in a health care facility that would require a certificate of need under subsection (i) of this section; or

(ii) Any expenditure that is made to lease or, by comparable arrangement, obtain any plant or equipment for the health care facility, if:

1. The expenditure is made as part of an acquisition, improvement, or expansion, and, after adjustment for inflation as provided in the rules and regulations of the Commission, the total expenditure, including the cost of each study, survey, design, plan, working drawing, specification, and other essential activity, is more than $1,250,000;

2. The expenditure is made as part of a replacement of any plant and equipment and is more than $1,250,000 after adjustment for inflation as provided in the regulations of the Commission;

3. The expenditure results in a substantial change in the bed capacity of the health care facility; or

4. The expenditure results in the establishment of a new medical service in a health care facility that would require a certificate of need under subsection (i) of this section.

(2) A certificate of need is required before any equipment or plant is donated to a health care facility, if a certificate of need would be required under paragraph (1) of this subsection for an expenditure by the health care facility to acquire the equipment or plant directly.

(3) A certificate of need is required before any equipment or plant is transferred to a health care facility at less than fair market value if a certificate of need would be required under paragraph (1) of this subsection for the transfer at fair market value.

(4) A certificate of need is required before a person acquires a health care facility if a certificate of need would be required under paragraph (1) of this subsection for the acquisition by or on behalf of the health care facility.

(5) This subsection does not apply to:

(i) Site acquisition;

(ii) Acquisition of a health care facility if, at least 30 days before making the contractual arrangement to acquire the facility, written notice of the intent to make the arrangement is filed with the Commission and the Commission does not find, within 30 days after the Commission receives notice, that the health services or bed capacity of the facility will be changed;

(iii) Acquisition of business or office equipment that is not directly related to patient care;

(iv) Capital expenditures to the extent that they are directly related to the acquisition and installation of major medical equipment;

(v) A capital expenditure made as part of a consolidation or merger of 2 or more health care facilities, or conversion of a health care facility or part of a facility to a nonhealth-related use if:

1. At least 45 days before an expenditure is made, written notice of intent is filed with the Commission;

2. Within 45 days of receiving notice, the Commission in its sole discretion finds that the proposed consolidation, merger, or conversion:

A. Is not inconsistent with the State health plan or the institution-specific plan developed by the Commission as appropriate;

B. Will result in the delivery of more efficient and effective health care services; and

C. Is in the public interest; and

3. Within 45 days of receiving notice, the Commission shall notify the health care facility of its finding;

(vi) A capital expenditure by a nursing home for equipment, construction, or renovation that:

1. Is not directly related to patient care; and

2. Is not directly related to any change in patient charges or other rates;

(vii) A capital expenditure by a hospital, as defined in § 19-301 of this title, for equipment, construction, or renovation that:

1. Is not directly related to patient care; and

2. Does not increase patient charges or hospital rates;

(viii) A capital expenditure by a hospital as defined in § 19-301 of this title, for a project in excess of $1,250,000 for construction or renovation that:

1. May be related to patient care;

2. Does not require, over the entire period or schedule of debt service associated with the project, a total cumulative increase in patient charges or hospital rates of more than $1,500,000 for the capital costs associated with the project as determined by the Commission, after consultation with the Health Services Cost Review Commission;

3. At least 45 days before the proposed expenditure is made, the hospital notifies the Commission and within 45 days of receipt of the relevant financial information, the Commission makes the financial determination required under item 2 of this subparagraph; and

4. The relevant financial information to be submitted by the hospital is defined in regulations adopted by the Commission, after consultation with the Health Services Cost Review Commission; or

(ix) A plant donated to a hospital as defined in § 19-301 of this title, which does not require a cumulative increase in patient charges or hospital rates of more than $1,500,000 for capital costs associated with the donated plant as determined by the Commission, after consultation with the Health Services Cost Review Commission that:

1. At least 45 days before the proposed donation is made, the hospital notifies the Commission and within 45 days of receipt of the relevant financial information, the Commission makes the financial determination required under this subparagraph; and

2. The relevant financial information to be submitted by the hospital is defined in regulations adopted by the Commission after consultation with the Health Services Cost Review Commission.

(6) Paragraph (5) (vi), (vii), (viii), and (ix) of this subsection may not be construed to permit a facility to offer a new health care service for which a certificate of need is otherwise required.

(7) Subject to the notice requirements of paragraph (5) (ii) of this subsection, a hospital may acquire a freestanding ambulatory surgical facility or office of one or more health care practitioners or a group practice with one or more operating rooms used primarily for the purpose of providing ambulatory surgical services if the facility, office, or group practice:

(i) Has obtained a certificate of need;

(ii) Has obtained an exemption from certificate of need requirements; or

(iii) Did not require a certificate of need in order to provide ambulatory surgical services after June 1, 1995.

(8) Nothing in this subsection may be construed to permit a hospital to build or expand its ambulatory surgical capacity in any setting owned or controlled by the hospital without obtaining a certificate of need from the Commission if the building or expansion would increase the surgical capacity of the State's health care system.

(l) *Same — Closing of hospital.* — A certificate of need is not required to close any hospital or part of a hospital as defined in § 19-301 of this title if:

(1) (i) Except as provided in paragraph (2) of this subsection, at least 45 days before the closing or partial closing of a hospital, including a State hospital, a person proposing to close all or part of the hospital files notice of the proposed closing or partial closing with the Commission; and

(ii) Within 30 days after receipt of the notice of intent to close, the hospital, in consultation with the Commission, holds a public informational hearing in the county where the hospital is located; or

(2) (i) For a hospital located in a county with fewer than three hospitals, at least 45 days before the closing or partial closing of the hospital, a person proposing to close all or part of the hospital files notice of the proposed closing or partial closing with the Commission; and

(ii) The Commission finds that the closing:

1. Is in the public interest; and

2. Is not inconsistent with:

A. The State health plan; or

B. An institution-specific plan developed by the Commission under § 19-122 of this subtitle.

(m) *Consolidation and merger.* — In this section the terms "consolidation" and "merger" include increases and decreases in bed capacity or services among the components of an organization which:

(1) Operates more than one health care facility; or

(2) Operates one or more health care facilities and holds an outstanding certificate of need to construct a health care facility.

(n) *Special needs and circumstances.* — (1) Notwithstanding any other provision of this section, the Commission shall consider the special needs and circumstances of a county where a medical service, as defined in this section, does not exist; and

(2) The Commission shall consider and may approve under this subsection a certificate of need application to establish, build, operate, or participate in a health care project to provide a new medical service in a county if the Commission, in its sole discretion, finds that:

(i) The proposed medical service does not exist in the county that the project would be located;

(ii) The proposed medical service is necessary to meet the health care needs of the residents of that county;

(iii) The proposed medical service would have a positive impact on the existing health care system;

(iv) The proposed medical service would result in the delivery of more efficient and effective health care services to the residents of that county; and

(v) The application meets any other standards or regulations established by the Commission to approve applications under this subsection. (1982, ch. 108, § 1; 1984, chs. 255, 681; 1985, chs. 107, 108; ch. 109, § 2; 1986, ch. 693, §§ 1, 2; chs. 730, 827; 1987, ch. 8; ch. 11, § 1; 1988, ch. 6, § 1; chs. 688, 767; 1989, ch. 5, § 1; 1995, ch. 3, § 1; ch. 499, § 3; 1996, ch. 466; 1998, ch. 782; 1999, ch. 34, § 7; ch. 678; ch. 702, § 2.)

**Effect of amendments.** — Chapter 678, Acts 1999, effective Oct. 1, 1999, inserted present (a) (2) and redesignated the remaining paragraphs in (a) accordingly; in present (a) (3), inserted the subparagraph designations, substituted "clinically related" for "clinically-related," deleted "including" following "patient service," inserted " 'Health care service' includes," and deleted "under paragraph (3) of this subsection" at the end; inserted "health care" in (b); in (d), deleted the paragraph (d) (1) designation, deleted the second sentence of former (d) (1), and deleted former (d) (2); inserted present (g) (2) (iii) and redesignated former (g) (2) (iii) as (g) (2) (iv); substituted "paragraph (2) (iv)" for "paragraph (2) (iii)" in (g) (3); added "For a health care facility that is not a hospital" at the beginning of (h) (2) (i); redesignated former (h) (3) as (h) (2) (iii) 3; added (h) (2) (iv); inserted present (i) and redesignated the remaining subsections accordingly; in present (j) (2) (iv) 2 A, substituted "the conversion of a health care facility" for "or conversion of a health care facility" and added "or the conversion of a hospital to a limited service hospital" at the end; and rewrote present (l).

Chapter 702, Acts 1999, effective October 1, 1999, deleted "§ 19-122 of" preceding "this subtitle" in (b); and substituted "adopted by" for "promulgated by" in the sub-subparagraphs designated herein as (k) (5) (viii) 4 and (k) (5) (ix) 2.

**Editor's note.** — Section 2, ch. 678, Acts 1999, effective Oct. 1, 1999, provides that "the Maryland Institute for Emergency Medical Services System shall develop standard procedures in accordance with the State Emergency Medical Services Plan for the transport of individuals in need of emergency or urgent care to limited services hospitals."

Section 2, ch. 702, Acts 1999, effective Oct. 1, 1999, redesignated former § 19-115 of this article to be present § 19-123 of this article, and redesignated former § 19-123 of this article to be § 19-130.

**Maryland Law Review.** — For article, "Survey of Developments in Maryland Law, 1986-87," see 47 Md. L. Rev. 739 (1988).

**Applied** in Fort Wash. Community Hosp. v. Southern Md. Hosp. Ctr., 66 Md. App. 480, 505 A.2d 117 (1986), aff'd, 308 Md. 323, 519 A.2d 727 (1987); U.S. ex rel. Joslin v. Community Home Health of Maryland, Inc., 984 F. Supp. 374 (D. Md. 1997).

**Quoted** in Sinai Hosp. v. Maryland Health Resources Planning Comm'n, 306 Md. 472, 509 A.2d 1202 (1986).

**Stated** in Doctors' Hosp. v. Maryland Health Resources Planning Comm'n, 65 Md. App. 656, 501 A.2d 1324 (1986); Southern Md. Hosp. Ctr. v. Fort Wash. Community Hosp., 308 Md. 323, 519 A.2d 727 (1987); Adventist Healthcare Midatlantic, Inc. v. Suburban Hosp., 350 Md. 104, 711 A.2d 158 (1998).

**Cited** in Maryland Gen. Hosp. v. Maryland Health Resources Planning Comm'n, 103 Md. App. 525, 653 A.2d 1029 (1995), cert. denied, 339 Md. 355, 663 A.2d 72 (1995).

## § 19-124. Same — Health maintenance organizations.

(a) *Definition.* — In this section, "health maintenance organization" means a health maintenance organization under Subtitle 7 of this title.

(b) *When certificate required.* — (1) A health maintenance organization or a health care facility that either controls, directly or indirectly, or is controlled by a health maintenance organization shall have a certificate of need before the health maintenance organization or health care facility builds, develops, operates, purchases, or participates in building, developing, operating, or establishing:

(i) A hospital, as defined in § 19-301 of this title, or an ambulatory surgical facility or center, as defined in § 19-114 (b) of this subtitle; and

(ii) Any other health care project for which a certificate of need is required under § 19-123 of this subtitle if that health care project is planned for or used by any nonsubscribers of that health maintenance organization.

(2) Notwithstanding paragraph (1) (i) of this subsection, a health maintenance organization or a health care facility that either controls, directly or indirectly, or is controlled by a health maintenance organization is not required to obtain a certificate of need before purchasing an existing ambulatory surgical facility or center, as defined in § 19-114 (b) of this subtitle.

(c) *Approval.* — An application for a certificate of need by a health maintenance organization or by a health care facility that either controls, directly or

(2001 Supp)



(2) Is not inconsistent with those sections of the State health plan or those sections of the institution-specific plan that govern hospitals, as defined in § 19-301 of this title, and ambulatory surgical facilities or centers, as defined in § 19-114 (b) of this subtitle, or health care projects for which a certificate of need is required under subsection (b) (1) (ii) of this section. (1982, ch. 108, § 1; 1987, ch. 420; 1988, ch. 6, § 1; ch. 658; 1989, ch. 5, § 1; 1992, ch. 20; 1995, ch. 3, § 22; 1999, ch. 702, § 2; 2001, ch. 565, §§ 1, 2.)

**Effect of amendments.** — Section 1, ch. 565, Acts 2001, effective July 1, 2001, substituted "§ 19-120" for "§ 19-123" in (b) (1) (ii).

**Editor's note.**

Section 2, ch. 565, Acts 2001, effective July 1, 2001, redesignated former § 19-121 of this article to be present § 19-118 of this article and redesignated former § 19-124 of this article to be present § 19-121.

## § 19-122. Same — Domiciliary care projects.

A certificate of need is not required to delete, expand, develop, operate, or participate in a health care project for domiciliary care. (1985, ch. 108; 1999, ch. 702, § 2; 2001, ch. 565, § 2.)

***Editor's note.***

Section 2, ch. 565, Acts 2001, effective July 1, 2001, redesignated former § 19-122 of this article to be present § 19-119 of this article and redesignated former § 19-125 of this article to be present § 19-122.

## § 19-123. Same — Continuing care community exemption; direct admissions into nursing facility.

Notwithstanding the provisions of § 19-114 (d) (2) (ii) of this subtitle, a continuing care community does not lose its exemption from certificate of need requirements when the continuing care community admits an individual directly to a nursing facility within the continuing care community if:

(1) The admittee's spouse or relative is admitted at the same time under a joint contract to an independent living unit or assisted living unit within the continuing care community; or

(2) An individual having a long-term significant relationship with the admittee is admitted at the same time under a joint contract to an independent living unit or assisted living unit within the continuing care community. (1999, ch. 626; ch. 702, § 5; 2000, ch. 61, § 1; 2001, ch. 29, § 5; ch. 565, § 2.)

**Editor's note.**

Section 5, ch. 29, Acts 2001, approved Apr. 10, 2001, and effective from date of enactment, provides that "any reference in the Annotated Code of Maryland rendered obsolete by an Act of the General Assembly of 2001 shall be corrected by the publisher of the Annotated Code, in consultation with and subject to the approval of the Department of Legislative Services, with no further action required by the General Assembly. The publisher shall adequately describe any such correction in an editor's note following the section affected." Pursuant to § 5 of ch. 29, appropriate changes have been made in the introductory language.

Section 2, ch. 565, Acts 2001, effective July 1, 2001, redesignated former § 19-123 of this article to be present § 19-120 of this article and redesignated former § 19-125.1 of this article to be present § 19-123.

## § 7-405. Certificates of public necessity — In general.

(a) *Issued by Board pursuant to subtitle; exemptions.* — (1) Subject to the provisions of this subtitle, the Board shall issue certificates of public necessity:

(i) For the siting of hazardous waste facilities; and

(ii) For the siting of low-level nuclear waste facilities.

(2) A certificate under this subtitle is not required if a site and facility are otherwise authorized by law.

(3) A certificate is not required for a facility used for receipt, transfer, recovery, or disposal of nonhazardous or nonradioactive residential, commercial, or industrial waste.

(b) *Factors to be considered.* — In deciding whether to issue a certificate, the Board shall consider but not be limited to the following:

(1) Environmental, social, technical, and economic factors as they apply to a particular proposed site; and

(2) The need for and problems associated with the comprehensive statewide disposal of hazardous and low-level nuclear waste.

(c) *State environmental, health, and safety restrictions.* — The design, construction, and operation of a facility on a site for which a certificate has been issued, and the associated transportation of hazardous or low-level nuclear waste to and from the facility, shall be subject to all environmental, health, and safety restrictions that may be imposed by State regulatory agencies under applicable law and regulation.

(d) *Exemption from regulation, ordinance, etc., of political subdivision.* — (1) The issuance of a certificate of public necessity for a site exempts the site, the design, construction, and operation of the facilities on the site, and the transportation of hazardous or low-level nuclear waste to and from the facilities on the site from any regulation, policy, law, or ordinance, including zoning, of any political subdivision of this State, and from any State law or regulation that requires approval of any political subdivision of this State.

(2) The Board may not issue a certificate of public necessity for the purpose of extending or expanding any hazardous waste landfill in operation on or before July 1, 1980 that was permitted by this State under Subtitle 2 of this title and § 9-204 of this article.

(3) (i) In paragraph (2) of this subsection, the following words have the meanings indicated.

(ii) "Extending" includes any proposed disposal capacity to be established by the lateral development of the landfill facility or site or of any noncontiguous acreage within one-half mile from the perimeter of the landfill site boundary.

(iii) "Expanding" includes any proposed disposal capacity to be established by a material alteration of the landfill facility or site through an increase in the height of any landfill cell or otherwise.

(e) *Approval of county or municipality not required; local plans to be consistent with certificate.* — The issuance of a certificate does not require the approval of any county or municipal council, board, authority, or unit. Any

plan for management of liquid, solid, hazardous, or low-level nuclear waste adopted by any subdivision of the State shall be consistent with the terms of the certificate.

(f) *Contents of certificate.* — The certificate shall contain a statement of the purpose for which it is issued and a description of the site and proposed facility, and shall indicate the locations on the site of all facilities, all buffer and security areas, and all areas to be used for appurtenant functions.

(g) *Scope of certificate.* — A certificate is valid only for the site and facility for which it is issued.

(h) *Material changes.* — (1) A person may not make any material change that, as to a facility or the use of a site, is contrary to the purpose or conditions for which a certificate was issued, unless:

(i) The person first submits the proposed change to the Board for reconsideration of the certificate; and

(ii) The Board approves the change.

(2) An application for reconsideration shall be made by an applicant and processed by the Board in accordance with the same requirements, procedures, and restrictions that are applicable to an initial application for a certificate under this subtitle. (1980, ch. 528; 1981, ch. 550; 1982, ch. 785, § 2; 1987, ch. 306, § 15; ch. 612, § 2; 1988, ch. 6, § 11; 1993, ch. 149, §§ 1, 2.)

**This section expressly preempts local legislation** on the subject of hazardous waste transportation and disposal if the operator of a disposal site obtains a State-issued Certificate of Public Necessity. Browning-Ferris, Inc. v. Anne Arundel County, 292 Md. 136, 438 A.2d 269 (1981).

**Stated** in Carrier v. Crestar Bank, 316 Md. 700, 561 A.2d 227 (1989).

## § 7-406. Same — Application; issuance.

(a) *Contents of application for certificate.* — Each application for a certificate submitted to the Board shall contain a report with information of the type, quality, and detail that will permit adequate consideration of the environmental, social, technical, and economic factors involved in the establishment and operation of the proposed facilities. The applicant shall make the report available to affected subdivisions and to the public.

(b) *Copy of application to Department of Health and Mental Hygiene; facility permit application under this article.* — (1) On receipt of the application for a certificate the Board shall forward a copy of that application to the Department. The Department shall consider the application for a certificate as an application for the facility permit that is required under this article.

(2) On receipt of any application for a facility permit that is required under this article, the Department shall forward a copy of the facility permit application to the Board.

(c) *Contents of applicant's report.* — (1) The portion of the applicant's report dealing with environmental and social assessments shall contain, but not be limited to:

(i) The potential impact of the method and route of transportation of hazardous or low-level nuclear waste to the site and the potential impact of

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UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 490

September Term, 2001

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SEVEN KIDS, LLC et al.

v.

GREATER KINGSVILLE CIVIC ASSOCIATION, INC., et al.

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Eyler, James R.,
Adkins,
Wenner, William W.
(Ret., specially assigned),

JJ.

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Opinion by Wenner, J.

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Filed: November 13, 2002

#3C009923

99-199-X

This case involves a zoning petition for a special exception filed by appellants, Seven Kids, L.L.C. and Cloverland Farms Dairy, Inc., to permit the construction of a Royal Farm convenience store with fuel pumps on property located in Baltimore County. On 30 April 1999, the Deputy Zoning Commissioner for Baltimore County approved appellants' application for a special exception. Appellees, the Greater Kingsville Civic Association, the Long Green Valley Community Association, and other individual property owners, appealed to the Baltimore County Board of Appeals (hereinafter referred to as the "CBA"). The CBA held nine days of hearings on the special exception. On 31 August 2000, the CBA denied the special exception. The Circuit Court for Baltimore County affirmed the decision of the CBA, and this timely appeal followed.

The sole question presented for our consideration is whether the CBA incorrectly interpreted the statutory concept of "need" in the applicable zoning laws.

**FACTUAL BACKGROUND**

The subject property is located in Fork at the intersection of Harford Road and Sunshine Avenue. The property is zoned BL-CR (a commercial rural district in a business, local zone). Appellant Cloverland Farms, the contract purchaser of the subject property, is the largest dairy in Baltimore County. It operates numerous Royal Farm stores in Maryland, Delaware, and Virginia. Cloverland sought to develop the subject property as a 3,113

square foot Royal Farm store with five fuel pump islands and ten fueling spaces. The proposed use is permitted in a BL-CR zone only by special exception. To that end, appellants filed an application for a special exception, which was approved, with conditions, by the Deputy Zoning Commissioner for Baltimore County on 30 April 1999.[1] Appellees appealed to the CBA.

The CBA held nine days of hearings on the special exception beginning on 30 September 1999 and ending on 5 April 2000. On 31 August 2000, the CBA issued a written opinion and order denying appellants' petition for a special exception stating, in part, as follows:

> In the present case, the Board finds that the studies on the traffic population presented by the Petitioners do not support the need for an additional gas station at the proposed site. The study by Mr. Cronyn indicates that in 1995 the State Highway Administration conducted a study which showed that there were 8,775 trips per day on Harford Road. There were no counts available for Sunshine Avenue/Fork Road. The study conducted by Traffic Concepts in 1998 indicated that there were approximately 12,000 trips per day on Harford Road and

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[1] On 11 June 1999, the Director of the Department of Permits & Development Management ("DPDM") approved a limited exemption for appellants' original plan with fuel pumps. Shortly thereafter, the DPDM approved an alternate plan without fuel pumps. These approvals were also appealed by appellees to the CBA, which consolidated all of the matters. Arguments on all of the matters were presented at the hearing that began on 30 September 1999. Although the CBA denied the special exception that is the subject of the instant appeal, it upheld the grants by the DPDM of the limited exemptions. The limited exemptions are not at issue in this appeal.

another 5,000 to 6,000 on Sunshine Avenue/Fork Road.

Protestants introduced an exhibit (Protestants' Exhibit No. 1) which consisted of a traffic study of Harford Road conducted by Petitioner's expert, Kenneth Schmid, at the Harford County line on September 20, 1999. This exhibit was a compilation of traffic statistics gathered over a 48-hour period. It showed that traffic was almost non-existent during the middle of the night and was heavy during a 1½-hour morning and evening rush hour. This document showed that the highest number of trips on one day was 9,110.

The study presented by Mr. Cronyn (Petitioner's Exhibit No. 6) indicated that, within a radius of 1.5 miles of the subject site, the population between 1990 and the projected date of 2003 would increase by 81 people. The number of households in the area during the same time period was projected to increase by 48.

Protestants submitted a petition through witness, Carol Shaw, indicating opposition of individuals in the surrounding area to the construction of the proposed Royal Farm Store. Ms. Shaw had done an analysis of the petition and testified that within a one-mile radius around the proposed site approximately 664 adults lived in the area and 223 of them had pro-actively opposed the project by signing the petition.

The Board recognizes that the stifling of competition is no basis for denying a special exception with respect to the question of "need." However, the Board feels that the evidence shows a lack of need for either a convenience store or a gas station at the proposed site. Given the slight increase in the population of the surrounding area, and even assuming an increase of 3,225 trips per day on Harford Road between 1995 and 1998, the Board considers that there is

> no "need" established at the proposed site. This Board feels that the intent of the C.R. overlay district is to "provide opportunities for convenience shopping and personal services that are customarily and frequently needed by the rural residential and agricultural population and tourists." Although, in the course of our deliberations, one of the panel espoused some concern as to whether those commuting past the site could be likened to "tourists" and thereby included in the definition of "need," the Board unanimously agrees that "commercial centers within C.R. districts are not intended to be regional facilities providing specialty goods to a population outside of the rural area." We, therefore, cannot conclude that there is sufficient need shown in the transient population to warrant the granting of this special exception.

Appellants appealed to the circuit court, arguing that the CBA erred as a matter of law in failing to take into consideration commuter traffic on Harford Road in assessing the need for the granting of the special exception. The circuit court rejected this argument, holding that there was substantial evidence in the record to show that the CBA was not persuaded that there was a need for the proposed project. The circuit court wrote:

> Petitioners suggest that the Court should find legal error in the determination by the CBA that commuter traffic should not be part of the equation of need-generating traffic considerations, particularly in view of the apparent split on this issue disclosed during the public deliberation phase of the case. However, the CBA addresses this apparent dichotomy in its Opinion, wherein it determines unanimously that it cannot

> conclude that there is sufficient need shown in the transient population to warrant the granting of the Special Exception. This Court believes that the CBA did consider the existence of commuter traffic, but felt that it should not weigh it heavily in determining need. The CBA's findings of fact and inferences with respect to the absence of need were at the very least, reasonable and are entitled to some deference. The fact that the CBA chose to draw a distinction between commuters and tourists cannot be said to amount to an error of law. The CBA reasonably was not persuaded by the Petitioners, who bore the burden to persuade its members affirmatively of the existence of demonstrable need for the proposed project at the site.

**STANDARD OF REVIEW**

In *Eastern Outdoor Adver. Co. v. Mayor & City Council of Baltimore*, 128 Md. App. 494, 514-15(1999), *cert. denied*, 358 Md. 163 (2000), we set forth the standard of review applicable to appeals from the decisions of an administrative agency:

> [C]ourts recognize two standards of review of a decision of a zoning board: one for the board's conclusions of law and another for the board's findings of fact or conclusions of mixed questions of law and fact. When reviewing the board's legal conclusions, the court "must determine whether the agency interpreted and applied the correct principles of law governing the case and no deference is given to a decision based solely on an error of law." When reviewing findings of fact and conclusions regarding mixed questions, however, [we] "cannot substitute [our] judgment for that of the agency and must accept the agency's conclusions if they are based on substantial evidence and if reasoning minds could reach the same conclusion based on the record." If a court

> finds no substantial or sufficient evidence to support the factual findings of the Board, the Board's decision will be reversed because it was arbitrary and illegal.

(Citations omitted). Recently, in *Lucas v. People's Counsel for Baltimore County*, ___ Md. App. ____, No. 156, Sept. Term 2001, Slip Op. (filed September 26, 2002), after setting forth the above-quoted standard of review, we discussed further our role in reviewing the grant or denial of a special exception:

> The substantial evidence test is an "assessment of whether the record before the Board contained at least 'a little more than a scintilla of evidence' to support the Board's scrutinized action." *Friends of the Ridge v. Baltimore Gas & Elec. Co.*, 120 Md. App. 444, 466, 707 A.2d 866 (1998), *vacated in part*, 352 Md. 645, 724 A.2d 34 (1999)(citation omitted). The existence of such substantial evidence "pushes the Board's decision into the unassailable realm of a judgment call, one for which we may not substitute our own exercise of discretion." *Friends of the Ridge*, 120 Md. App. at 466.

Because we repeat the reviewing task of the circuit court, this Court reevaluates, under the same standards, the decision of the agency, not that of the circuit court. *Carriage Hill-Cabin John, Inc. v. Maryland Health Resources Planning Comm'n*, 125 Md. App. 183, 211, 724 A.2d 745 (1999). The Court of Appeals has set out the applicable standard of review of the grant or denial of a special exception use:

> "The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority

to allow enumerated uses which the legislature has determined to be permissible *absent any fact or circumstance negating the presumption*. The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal."

*Schultz [v. Pritts*, 291 Md. 1, 11 (1981)](citations omitted; emphasis in original); see also *Eastern Outdoor [Adver. Co. v. Mayor & City Council of Baltimore*, 2002 Md. App. LEXIS 149, *32-34 (Sept. 6, 2002)].

**DISCUSSION**

We begin our analysis by examining the relevant statutory provisions. Section 259.2 of the Baltimore County Zoning

Regulations, ("BCZR") explains the C.R. (Commercial, Rural) District that is at issue in the instant case:

> 1. The C.R. District is established to provide opportunities for convenience shopping and personal services that are customarily and frequently needed by the rural residential and agricultural population and tourists. It is intended that the C.R. District be applied only to areas where such facilities are not available within a reasonable distance, where sewerage treatment and a potable water supply can be provided without an adverse effect on the environment and neighboring uses, and where public roads are capable of handling the anticipated increase in traffic without adverse impacts on surrounding areas. The commercial centers within C.R. Districts are not intended to be regional facilities providing specialty goods to a population outside of the rural area.

BCZR 259.3.E provides additional requirements for the granting of a special exception in a C.R. District. It states that:

> In addition to the requirements generally imposed in the issuance of special exceptions by Section 502.1, the following requirements shall apply to the granting of special exceptions in C.R. Districts:
>
> 1. The petitioner shall document the need for the development at the proposed location.

"Need" has been defined to mean "expedient, reasonably convenient and useful to the public." *Neuman v. City of Baltimore*, 251 Md. 92, 98-99 (1968); *Baltimore County Licensed Beverage Ass'n v. Kwon*, 135 Md. App. 178, 193-94 (2000).

Appellants' contend that the CBA's refusal to consider the

project's convenience and usefulness to commuter traffic at the proposed location constitutes a legal mistake. Our review of the facts presented to the CBA, and the CBA's decision, leads us to conclude that the CBA did consider commuter traffic. We, therefore, reject appellants' contention.

It is clear from the above-quoted regulations that the requirement of showing need in order to obtain a special exception in a CR district was set forth to limit unnecessary growth in rural areas. Even assuming that the CBA declined to consider commuter traffic in determining need, that decision would have been a reasonable interpretation of legislative intent that would be accorded due deference. We need not linger over the issue of the CBA's interpretation of the zoning regulations, however, because the record clearly demonstrates that the CBA did consider commuter traffic.

In rendering its decision, the CBA specifically commented on the traffic and population studies presented by appellants. That evidence included testimony by Joseph Cronin, a real estate consultant and real estate economist, who testified as an expert in real estate market analysis and economic impact related to real estate. He testified that there are two levels of analysis with respect to whether there was a consumer need for the proposed project -- (1) "the residential market surrounding the particular site" and (2) "the commuter traffic along Harford

Road, which is going to be a major contributor to the retail development site."

Cronin testified that he defined the market area of the proposed project to be a ring about a mile and a half in radius around the proposed site of the convenience store and gas station. According to Cronin, in 1998 there were 2,181 people and 788 households living in that market area. The projected growth between 1998 and 2003 was only 22 households.

Cronin testified about the traffic along Harford Road. In support of his testimony, he relied upon a study conducted in 1998 by Traffic Concepts which indicated there were approximately 11,800 commuter trips a day on Harford Road in front of the proposed site. That study also indicated there were close to 6,000 trips going east and west across Sunshine Avenue and Fork Road in front of the proposed site. Cronin also referenced a 1995 traffic count performed by the State Highway Administration which indicated there were 8,775 trips per day through the intersection.

When asked whether the proposed convenience store and fuel service would be feasible, Cronin testified:

> The conclusions basically are that in the local market area that there's going to be [$]671,000, to $810,000 worth of sales per year from household residents within the market area that we defined. Assuming that we split the market with the existing retailers.

> Then that combined with the $3.7 million in sales that the commuter traffic is likely to generate really make the store work from a financial point of view. There's reasonable customer demand for the site to keep it operating properly, generate the sales volumes that we need.

The evidence presented by Cronin was disputed by several witnesses. Kenneth Schmid, an expert in traffic engineering, testified that Harford Road is a commuter-oriented roadway and that most of the traffic through the subject intersection is commuter traffic. During Schmid's cross-examination, evidence of traffic data collected over a 48-hour period during September 1999 was introduced. That data showed that traffic at the Harford County line of Harford Road was very light except during the morning and evening rush hours.

In addition to this evidence, there was testimony presented by Rozanne DiFonzo to show that the businesses in the immediate area were sufficient to serve the needs of the community. She testified that there is a Citgo gas station and mini-mart on the northeast corner of Harford Road and Sunshine Avenue, and a High's dairy, the Fork Deli and Bakery, and a pizza shop called Johnny Ryan's on the northwest corner of the intersection. DiFonzo also testified about an existing Wa-Wa convenience store and another one that has been approved for development, both located north of the subject site.

Carol Shaw also testified about the two Wa-Wa convenience

stores, stating that both are open twenty-four hours, both sell gasoline, and both have large convenience stores and ATM's. In addition, Shaw conducted a comparison of items sold in four area Royal Farms stores and items sold at the Highs, Fork Deli, Johnny Ryan's, and the Citgo located at the subject intersection. She concluded that there was no degree of difference between the High's store and the four Royal Farms stores she visited. In addition, Shaw testified that there were two other gas and convenience stores available to the immediate population. She identified Petersen's, a combination gas station, convenience store, and liquor store, and a 24-hour Shell gas station and mini-mart. According to Shaw, there are 11 convenience stores and five gas stations within a three-mile radius of the subject site. Shaw further testified that, within a five-mile radius of the subject site, there exist 54 convenience stores, 11 of which operate 24-hours a day, and 30 gas stations, 10 of which operate 24-hours a day.

All of this evidence and the written opinion of the CBA demonstrate that the CBA considered commuter traffic in reaching its conclusion. The evidence presented demonstrates that the issue of need was fairly debatable. There was substantial evidence to support the CBA's conclusion, and reasonable minds could reach the same conclusion, namely, that there was no need for either a convenience store or a gas station at the proposed

site. This determination by the CBA was a factual one which was clearly supported by more than a scintilla of evidence. Accordingly, we shall affirm.

**JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANTS.**

### Sec. 24-186. Contents; maximum term; extension of term.

Permits issued under this article shall bear the name and address of the person making the solicitation, the number of the permit, the date issued, the dates within which the permittee may solicit, and a statement that the permit does not constitute an endorsement by the county or any of its departments, officers, or employees of the purpose of the solicitation or of the person conducting the solicitation. All permits shall be signed by the director of permits and licenses. No permit may be granted for longer than ninety (90) days from its date; except that the director of permits and licenses may extend such time for not more than ninety (90) additional days upon a showing of unnecessary hardship.
(Code 1978, § 14-16)

### Sec. 24-187. To be carried by solicitor; exhibition upon request.

Each person shall, at all times while so soliciting within the county, carry upon his person the permit certificate, and the same shall be exhibited by such permittee whenever he is requested to do so by any police officer or by any person being solicited.
(Code 1978, § 14-17)

### Sec. 24-188. Revocation.

(a) A permit, once granted, may be revoked by the director of the department of permits and licenses upon any one of the following grounds:

(1) For any of the grounds set forth in section 24-185 of this Code.

(2) That further activity by the permittee would operate to defraud the public.

(3) That any promoter, agent, or solicitor of the permittee has misrepresented the purpose of the solicitation.

(4) That the permittee has violated any of the provisions of this article.

(b) After notice and hearing, the director of permits and licenses may revoke a permit whenever he finds there exists any ground for revocation under this section. The director shall make his decision within ten (10) days after the hearing. Notice of such decision shall be served upon the applicant. In the event of a revocation, such notice shall state the reasons for revocation.
(Code 1978, § 14-18)

### Sec. 24-189. Suspension.

Without a hearing, the director of permits and licenses may suspend a permit for a period not to exceed ten (10) days whenever he makes a preliminary finding that there exists any ground for revocation under section 24-181 of this Code, provided that the notice of suspension also contains a notice of a hearing date to revoke the permit, which hearing date shall be set within ten (10) days after service of such notice.
(Code 1978, § 14-20)

### Sec. 24-190. Solicitation after suspension or revocation of permit prohibited.

No permittee or applicant and no person acting on behalf of such applicant or permittee shall solicit contributions for any charitable or religious purpose, nor shall they solicit funds from door-to-door within the county while the permit required under section 24-181 of this Code remains suspended or revoked.
(Code 1978, § 14-21)

### Secs. 24-191—24-220. Reserved.

## ARTICLE VI. TOWING BUSINESSES*

### Sec. 24-221. Declaration of policy.

For the purpose of protecting the general welfare and public interests of the community; safeguarding the public interests against fraud, discrimination, deception, and similar abuses; and eliminating the retarding of traffic, unnecessary street congestion, unnecessary delays, and traffic hazards; the towing of a vehicle disabled by colli-

*Cross reference—Motor vehicles and traffic, tit. 21.

State law reference—Towing or removal of vehicles from parking lots, Ann. Code of Md., Transportation article, § 21-10A-01 et seq.

sion or other accidents shall be subject to supervision and administrative control in the county.
(Code 1978, § 17-57)

**Sec. 24-222. Definitions.**

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

*Disabled vehicle* means a motor vehicle which has been damaged or rendered inoperative as the result of a collision or accident and not as a result of wear and tear or mechanical failure.

*License* means a license to engage in towing disabled vehicles from the streets of the county, issued pursuant to this article.

*Regular business day* means that period between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday.

*Towing* means the moving or removing or the preparation thereof of a disabled vehicle by another vehicle for which service charge is made, either directly or indirectly. A charge made indirectly refers to dues or other charges of bona fide clubs or associations which provide towing services.
(Code 1978, § 17-56)

**Cross reference**—Definitions and rules of construction generally, § 1-2.

**Sec. 24-223. Rules and regulations.**

The department of permits and licenses shall have the power to make and enforce any and all reasonable regulations to effectuate the purposes of this article.
(Code 1978, § 17-66)

**Sec. 24-224. Penalty; revocation and suspension of licenses.**

Any person who shall violate any of the provisions of this article shall be guilty of a misdemeanor and shall be subject to a fine of not more than one hundred dollars ($100.00) for each such offense, recoverable with costs. In addition, the department of permits and licenses shall have the power to revoke or suspend the license of any person licensed to engage in the towing business who shall violate any of the provisions of this article or any rules and regulations promulgated pursuant hereto or who shall fail to comply with any of the provisions and terms of any towing agreement executed pursuant to this article or who shall be convicted by a court of competent jurisdiction of the crimes of perjury, bribery, or impersonating a police officer or of any felony.
(Code 1978, § 17-70)

**Sec. 24-225. Rights to appeal.**

Any person who is aggrieved by a decision of the department of permits and licenses shall have the right to file an appeal within thirty (30) days thereafter for a hearing in the matter by the board of appeals.
(Code 1978, § 17-71)

**Sec. 24-226. License required to engage in towing business; storage facilities required.**

(a) It shall be unlawful for any person to engage in towing disabled vehicles from the scene of a motor vehicle accident occurring within the county without first having obtained a license from the department of permits and licenses to do so as hereinafter provided or during the suspension or revocation thereof.

(b) Applications shall be made on forms to be furnished by the department of permits and licenses. The applicant shall pay a filing fee of thirty dollars ($30.00) when the application is made, which fee shall be retained by the department of permits and licenses to cover initial examination and inspection costs, and, if the application is approved, shall pay the further sum of twenty dollars ($20.00) covering the license for the then current calendar year and thereafter shall pay each year the sum of twenty dollars ($20.00) for a renewal of the license. A certified copy of the license must be carried in each towing vehicle when in use, and such copies may be obtained without additional cost.

(c) No licensee shall change the location of his business unless such relocation is occasioned by a substantial casualty loss of such location, including acts of God, without notifying the department of permits and licenses at least sixty (60) days in advance of such change. The new location

must meet all requirements of this article, or the license will be canceled.

(d) No license shall be issued or renewed unless the applicant has provided secure fenced-in storage facilities for ten (10) or more vehicles on the premises shown on the license or within sight of the premises shown on the license. Towing vehicles are to be dispatched from the premises shown on the license or from the fenced-in storage lot. Such storage facilities shall also comply with the county zoning regulations and the fencing requirements of the county building code, if such location is located in the county.
(Code 1978, § 17-58)

### Sec. 24-227. Insurance coverage.

Before any license shall be issued or renewed to any person to conduct a towing business, such person shall be required to give evidence to the county of comprehensive general liability insurance coverage in the minimum limits of one hundred thousand dollars ($100,000.00) per individual, three hundred thousand dollars ($300,000.00) per occurrence and one hundred thousand dollars ($100,000.00) property damage on each vehicle, in a company licensed to do business in the state.
(Code 1978, § 17-69)

### Sec. 24-228. Investigation and findings on application for license.

(a) The department of permits and licenses, after receipt of an application for license, shall forward same to the chief of police or his designee for investigation and inspection of the following, after zoning regulations of the county have been complied with by the applicant:

(1) The applicant has facilities to provide towing services when requested on a twenty-four-hour basis.

(2) The towing vehicles of the applicant are in good mechanical condition, equipped with necessary towing gear and safety apparatus, and are registered as commercial hauling vehicles with the department of motor vehicles.

(b) The chief of police or his designee shall promptly report his findings to the department of permits and licenses. If the applicant shall be denied any license based upon such findings, such decision shall be appealable as provided in section 24-225.

(c) All records maintained by licensed towing companies shall be open to inspection by authorized police agencies, during normal business hours.
(Code 1978, § 17-62)

### Sec. 24-229. Approval of new license towers; location requirements.

(a) New license towers shall be approved by the department of permits and licenses based upon the need for additional service. If the need does not exist, the application will not be approved. The transfer of an existing license shall be treated in the same manner as a new license, and any such transfer shall be subject to all provisions applicable thereto.

(b) No licensee shall dispatch a tow vehicle from any location other than what is indicated on his license or from fenced-in storage facilities within view of the business shown on license. Each licensee shall have only one (1) business telephone number at his place of business but may have an extension of such telephone in his home or at any other location where he may be contacted.
(Code 1978, § 17-63)

### Sec. 24-230. Chief of police to keep list of licensed towing operators; manner of dispatching towing operators.

The chief of police shall retain a current list of all duly licensed towing operators. Whenever the services of a towing vehicle shall be required and request is made to the police department for the providing of such services, the police department shall call the licensed towing operator located in the county whose place of business is closest to the scene of the accident, except when an owner requests a specific licensed towing company; provided that such tow company can respond within a reasonable time. If the vehicle is a traffic hazard or obstructing traffic and the company cannot re-

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EXECUTIVE DIRECTOR

**#13, 6/7/00 AM; ML#s 69971, 71269, 72563 and 72664**

June 19, 2000

Lisa M. Decker, Esquire
Baltimore Gas and Electric Company
P.O. Box 1475
Baltimore, Maryland 21203-1475

*Re: Baltimore Gas and Electric Company's Application for Transfer of its Generating Assets and for Exempt Wholesale Generator Status Determinations*

Dear Ms. Decker:

On December 22, 1999, Baltimore Gas and Electric Company ("BGE" or "Company") filed an Application for Transfer of its Generating Assets and for Exempt Wholesale Generator ("EWG") Status Determinations. The Application requests that the Commission approve the transfer of its generating assets to its affiliates pursuant to the terms of a Settlement Agreement entered into by BGE and numerous parties on June 29, 1999, which Settlement was approved by the Commission in Order No. 75757, issued on November 10, 1999. Among the terms of the Settlement, the generation function of BGE was to be deregulated following implementation of full customer choice for all classes, and BGE was required to transfer some or all of its generation assets to either affiliated or non-affiliated entities, with transfer to affiliates occurring at book value. In the Commission Order accepting the Settlement, the Commission directed BGE to file the application for transfer by December 31, 1999. Accordingly, BGE filed the instant application, stating it will transfer its non-nuclear generating plants and certain related transmission facilities to a special-purpose, wholly-owned indirect subsidiary of Constellation Energy Group, Inc. ("Constellation"), BGE's parent holding company, and the Calvert Cliffs Nuclear Power Plant will be transferred to another special-purpose, wholly-owned indirect subsidiary of Constellation.

BGE requests approval of the transfers from the Commission, consistent with the Electric Customer Choice and Competition Act[1] ("1999 Act") enacted during the 1999

[1] Section 7-501, *et seq.*, of the *Public Utility Companies Article* ("PSC" Article).

legislative session, and further requests the Commission make certain determinations that are required for the generating stations to obtain EWG status from the Federal Energy Regulatory Commission ("FERC"), which status would exempt the stations from certain requirements of the Public Utility Holding Company Act of 1935 ("PUHCA").[2]

Comments in support of the Application were filed by the Office of People's Counsel ("OPC") and Commission Staff, in addition to the Company. OPC also specifically requests that the Commission order the Company to file the actual transaction accounting information when the transfers are complete.

Staff has recommended that the Commission accept the Application for filing and issue the determinations necessary for EWG status. Staff initially recommended a hearing be docketed to allow comment on the proposed transfer and the EWG certification be contingent on BGE providing the Commission confidential notice of transactions that exceed five percent of the total assets of the Company and its consolidated subsidiaries. However, in subsequent comments, dated May 24, 2000, Staff indicates that BGE has supplied sufficient information so that the Commission may determine the transfer of generating assets to unregulated affiliates is in the public interest, and also recommends the Commission provide the requested EWG determinations. This approval would be contingent only upon informational filings made by BGE upon the transfer of assets.

The Mid-Atlantic Power Supply Association ("MAPSA") opposes the application and requests the Commission reject the transfer of generating assets and the request for determinations to allow BGE to obtain EWG status. In the alternative, MAPSA requests holding the application in abeyance and convening of hearings. In its opposition filed on March 20, 2000, MAPSA contends the application violates the 1999 Act, violates the Code of Conduct adopted in Case No. 8797, and constitutes an exploitation of the retail service market. In its argument, MAPSA objects to the transfers at book value and argues the Commission expressly reserved authority in the Settlement Order (No. 75757) under §§ 7-508 and 7-509 of the PSC Article that would allow either further hearing or rejection of the application in this case. Shell Energy, LLC ("Shell"), also filed comments, dated May 2, 2000, in opposition to the proposed transfer of assets by BGE, noting its opposition to the restructuring Settlement as well. Shell also requests hearings be instituted.

The Company opposes the requests for further hearing and alleges MAPSA is seeking to relitigate and effectively stay Order No. 75757. As to the development of a competitive market, BGE notes the Commission has full power, under § 7-514, to investigate the market for retail electricity supply and electricity supply services.

This matter was commented upon by the various interested parties during the Commission's Administrative Meeting held on June 7, 2000. During the course of the

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[2] To obtain EWG status from FERC, each generator must be an "eligible facility," and state commissions having jurisdiction over rates or charges for electric energy must make a specific determination that allowing such facility to be an eligible facility will benefit consumers, is in the public interest, and does not violate state law.

Administrative Meeting, BGE provided an updated accounting of the proposed transfer to accomplish a total $1.1 billion dollar debt offset[3] and also noted that transfers of assets approved by FERC would be provided to the Commission.

In accordance with § 7-508(c)(2) of the 1999 Act, the Commission may review the transfer of assets for the purpose of determining:

(i) that the appropriate accounting has been followed;
(ii) that the transfer does not or would not result in an undue adverse effect on the proper functioning of a competitive electricity supply market; and
(iii) the appropriate transfer price and ratemaking treatment.

The transfer of generation assets is governed not only by § 7-508, but also by the Settlement Agreement approved in Order No. 75757 on November 10, 1999. Paragraph 6 of the approved settlement states:

> Following the implementation of full customer choice for all customer classes, the generation function of BGE shall be deregulated and BGE shall transfer, sell... or otherwise dispose or encumber some or all of its generation assets to either affiliated or non-affiliated entities.... Any transfer of a generation asset from BGE to an affiliate shall occur at book value.... The transfer of generation assets shall be reflected on the books of the affiliate by removing from the books of BGE and recording on the books of the affiliate the amounts shown on the books of BGE as of the date of transfer.... Nothing in Paragraphs 6, 7, or 8 shall impair the operation of Code Sections 7-508 and 7-509.

The settlement also incorporates a Code of Conduct that binds BGE and the affiliates to certain standards that are designed to ensure that transactions between them are conducted at arm's length.

Upon consideration of the arguments and comments of the parties, the Commission finds that the proposed transfer of assets and requests for certain determinations relating to EWG status are in conformance with § 7-508 and with the approved Settlement, and accordingly the application will be granted.

BGE anticipates transferring generation assets with a net book value of approximately $2.05 billion. Fossil assets will be transferred to Constellation Generation, Inc. ("CGI"), a subsidiary of Constellation Enterprise. Nuclear-related assets will be transferred to Calvert Cliffs, Inc. ("CCI"), a subsidiary of Constellation Nuclear Group,

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[3] *See*, Letter from Thomas E. Ruszin, Jr., Treasurer, Baltimore Gas and Electric Company dated June 12, 2000.

LLC. When the transfer is finalized, approximately $2.714 billion in assets will be removed from electric rate base.

BGE's outstanding debt obligations are comprised of $278 million in pollution control debt related to electric generating stations, approximately $819 million in Medium Term Notes (MTNs) and approximately $1.3 billion in First Mortgage Bonds. The pollution control debt will be transferred to the affiliates because this debt specifically relates to the operation of the plants. However, the mortgage bonds and MTNs cannot be assigned, meaning they cannot be assumed by the affiliate. Therefore, subject to Internal Revenue Service ruling, BGE anticipates that the utility will receive a note from the affiliates for approximately $426 million with a maturity not to exceed one year. An additional debt offset will be provided to BGE, to achieve a total $1.1 billion debt removal. The Commission determines that the proposed accounting is both reasonable and appropriate.

The Commission also finds that the proposed transfer will not have an adverse effect on the competitive electricity supply market at this time. Both CCI and CGI will be engaged primarily in wholesale power trading. Constellation Power Source, Inc. ("CPSI") a subsidiary that owns no electric generation, transmission or distribution facilities, will be the power marketer that will supply BGE with the electric power necessary to provide Standard Offer Service to its customers during the transition period in conformity with the approved settlement. BGE seeks EWG status for CCI and CGI, who will control the generation assets but will not directly market power to BGE. CPSI will provide wholesale electric power to BGE through wholesale electric sales agreements approved by the Federal Energy Regulatory Commission. The Commission determines that the restrictions discussed above, as well as the Code of Conduct contained in the approved Settlement, prevent BGE from exploiting an unfair competitive advantage in the retail electric supply market. The protections provided by the Code of Conduct in the approved Settlement, including the prohibition against marketing Standard Offer Service or competitive supply service, and the sale of the output of the transferred generating assets to the wholesale market on a non-discriminatory basis, minimize the likelihood that BGE will be capable of exerting market power.

With regard to the appropriate transfer price, the approved Settlement provides that these generating assets should be transferred at book value. With respect to the opposition of MAPSA and Shell, their objections to the transfers at book value are essentially a reiteration of prior arguments in opposition to the Settlement, which Settlement provided for transfers to affiliates at book value. The Commission finds that these proposed transfers do not violate the 1999 Act, and further finds that the transfers conform with the approved Settlement. Also, the record indicates the Commission will be apprised of transfers approved by FERC, and the Commission hereby directs the Company to file the actual transaction accounting information when transfers are complete to assure proper accounting of the transfers. The information provided shall include actual data regarding assets and debt obligations that are assumed by the affiliates as well as the journal entries that the utility will record to its books for transactions related to asset transfer.

Finally, with regard to the ratemaking treatment of the asset transfer, the Commission notes as an initial matter that pursuant to the approved Settlement, ratepayers will be protected from any rate effects of the proposed transfer since rates will be frozen for a period of years. However, the Commission hereby determines that this Order shall not be construed in any manner as approval of a particular capital structure for ratemaking purposes.

On a related matter, in its application, BGE seeks EWG status for CCI and CGI. The Public Utility Holding Company Act of 1935 ("PUHCA") is administered by the Securities and Exchange Commission ("SEC"). The purpose of PUHCA is to prevent financial abuses, *See*, 15 USC § 79(a). Absent an exemption, a public utility holding company, as well as its public utility and non-utility subsidiaries, are subject to PUHCA. EWG status provides an exemption from PUHCA for eligible facilities that are exclusively in the business of owning and/or operating and selling electric energy at wholesale. An eligible facility either uses the electric generation for sale at wholesale or leases it to one or more public utility companies. 15 USCS § 79z-5a(a)(2). An electric utility is prohibited from entering into a contract to purchase electric power from an EWG that is an affiliate unless FERC grants an exemption from this prohibition. 15 USCS § 79z-5a(k). Thus, EWG status prohibits retail sales by these entities and requires that the energy produced by such entities be marketed solely in the wholesale market. The Commission finds that such action is in the public interest and benefits consumers since EWG status requires the generation output of CCI and CGI to be exclusively available to the wholesale market and, thereby, enhances competition in the retail electric market. Furthermore, this result is consistent with paragraph 44 of the approved Settlement and the 1999 Act. Thus, granting EWG status to CCI and CGI is not contrary to State law.

In conclusion, we find the Application furthers the Settlement previously approved by the Commission and comports with § 7-508 of the 1999 Act. We further find that allowing the generating facilities involved to be eligible facilities for EWG status will benefit consumers, is in the public interest, and does not violate State law.

For the reasons set forth above, BGE's Application for transfer of its generating assets and for certain determinations regarding EWG status is hereby approved.

By Direction of the Commission,

Felecia L. Greer
Executive Director

FLG/grm

cc: All Parties of Record in Case Nos. 8794/8804

APR 14 1987

# Webster's Third New International Dictionary

## OF THE ENGLISH LANGUAGE UNABRIDGED

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SPRINGFIELD, MASSACHUSETTS, U.S.A.

**pu·ber·u·lent** \pyü'ber(y)ələnt\ *adj* [*puber* grown up, adult, downy + E *-ulent* (as in *pulverulent*)] *biol* : minutely downy : covered with fine pubescence
**pu·ber·u·lic acid** \-lik-\ *n* [NL *puberulum* (specific epithet of *Penicillium puberulum*, fr. L *puber* grown up, adult, downy + *-ulum*, neut. of *-ulus*, dim suffix) + E *-ic*] : a crystalline cyclic keto acid $(HO)_3(C_7H_2O)COOH$ related to tropolone that is a metabolic product of several molds of the genus *Penicillium* and that exhibits some germicidal activity against gram-positive bacteria
**pu·ber·u·lon·ic acid** \pyü,beryə'länik-\ *n* [blend of *puberulic* and *-one*] : a crystalline compound $(HO)_3C_7HO(CO)_2O$ that is the anhydride of a dicarboxylic acid related to tropolone, is formed from molds along with puberulic acid, and exhibits mild germicidal activity against gram-positive bacteria
**pu·ber·u·lous** \pyü'ber(y)ələs\ *adj* [L *puber* + E *-ulous*] : PUBERULENT
**pu·bes** \'pyü,bēz\ *n, pl* **pubes** [L; akin to L *puber, pubes* grown-up, adult — more at PUBERTY] **1** : the hair that appears upon the lower part of the hypogastric region at the age of puberty **2** : the lower part of the hypogastric region : the pubic region
**pu·bes·cence** \pyü'bes'n(t)s\ *n* -s [ML *pubescentia*, fr. L *pubescent-, pubescens* + *-ia* -y] **1** : the quality or state of being pubescent; *esp* : pubertal development of genital hair **2 a** : an epidermal covering of soft short hairs or down (as on the surfaces of leaves and stems or the bodies of insects) **b** : FUZZINESS **syn** see YOUTH
**pu·bes·cent** \-nt\ *adj* [L *pubescent-, pubescens*, pres part of *pubescere* to reach puberty, fr *puber* grown up, adult + *-escere* (suffix forming inchoative verbs) — more at PUBERTY] **1** : arriving at or having reached puberty : characteristic of or relating to this state — compare ADOLESCENT **2** : having a fuzzy surface; *specif* : covered with fine soft short hairs — compare HIRSUTE, HISPID, LANATE, SERICEOUS, TOMENTOSE, VILLOUS
**pu·bic** \'pyübik, -bēk\ *adj* [*pubes* + *-ic*] : of, relating to, or lying in the region of the pubes or the pubis
**pubic arch** *n* : the arch formed at the front of the pelvis by the conjoined pubic bones
**pubic bone** *n* : PUBIS
**pubic crest** *n* : the border of the pubis between the pubic tubercle and the pubic symphysis
**pubic louse** *n* : CRAB LOUSE
**pubic symphysis** *n* : the rather rigid articulation of the two pubic bones in the midline of the lower anterior part of the abdomen
**pubic tubercle** *also* **pubic spine** *n* : a rounded eminence on the upper margin of each pubic bone near the symphysis
**pubio-** *comb form* [NL, fr. *pubis*] : pubis
**pu·bi·ot·o·my** \,pyübē'ädəmē\ *n* -ES [ISV *pubio-* + *-tomy*] : surgical division of the pubic bone esp to facilitate delivery
**pu·bis** \'pyübəs\ *n, pl* **pu·bes** \-,bēz\ [NL (*os*) *pubis*, fr L *os* bone + *pubis* of the groin, gen. of *pubes* pubes, groin — more at PUBES] : the ventral and anterior of the three principal bones composing either half of the pelvis, in man consisting of two branches or rami diverging posteriorly, the superior branch extending to the acetabulum, of which it forms a part, and uniting there with the ilium and ischium, and the inferior branch uniting with the ischium below the obturator foramen — compare PREPUBIS, POSTPUBIS
**publ** *abbr* **1** public **2** publication **3** published; publisher; publishing
**1pub·lic** \'pəblik, -lēk\ *adj* [ME *publique*, fr. MF *public, publique*, fr L *publicus*, prob. alter. (influenced by *puber, pubes* grown up, adult) of *populicus*, fr. *populus* people + *-icus* -ic — more at PUBERTY, PEOPLE] **1 a** : of, relating to, or affecting the people as an organized community : CIVIC, NATIONAL ⟨~ affairs⟩ ⟨~ holiday⟩ ⟨~ authority exists primarily to regulate . . . social and economic life —M.S.Kendrick⟩ — compare PUBLIC LAW **b** : of or relating to the international community or to mankind in general : COMMON, UNIVERSAL ⟨~ philosophy has . . . always been a political ideology —H.J.Morgenthau⟩ **c** : authorized or administered by or acting for the people as a political entity : GOVERNMENT ⟨~ expenditures⟩ ⟨~ subsidy⟩ ⟨~ agency⟩ ⟨~ prosecutor⟩ **d** : provided for, used by, or containing the records of a government agency ⟨the post office and other ~ buildings⟩ ⟨~ documents⟩ **2** *Brit* : of, relating to, or representing a university as a whole rather than one of its colleges or departments ⟨the office of . . ~ Orator —*Cambridge Univ. Cal.*⟩ **3 a** : of or relating to business or community interests as opposed to private affairs : SOCIAL, IMPERSONAL ⟨~ morality⟩ ⟨leading from these private confessions of his poetry . . . toward a more ~ form of expression —Hans Meyerhoff⟩ **b** : of, relating to, or in the service of the community or nation ⟨an eminent figure in ~ life⟩ ⟨housewives volunteering for ~ work in charitable institutions⟩; *specif* : holding political office ⟨~ official⟩ **c** : devoted to the general or national welfare : PATRIOTIC, HUMANITARIAN ⟨debt the legal profession . . . owe to the publishers for their ~ spirit in producing these records —Norman Birkett⟩ ⟨all Greek thinkers were ~ men —C.P.Rodocanachi⟩ **4 a** : accessible to or shared by all members of the community ⟨~ hearing⟩ ⟨~ park⟩ ⟨~ water supply⟩ ⟨tourist passengers enjoy 16 ~ rooms aboard the magnificent new . . . flagship —*N.Y.Times*⟩ **b** : supported by or for the benefit of the people as a whole ⟨~ education⟩ ⟨~ welfare agencies⟩ **c** : COMMON 2d **d** : of, by, for, or directed to the people : GENERAL, POPULAR ⟨~ sentiment⟩ ⟨~ spokesman⟩ ⟨~ address⟩ ⟨a book which increases ~ awareness —L.S.Turniss b 1918⟩ ⟨effective use of the property in the ~ interest —C.V.Shields⟩ ⟨philanthropic activities keep him in the ~ eye⟩ **e** : providing services to the people on a business basis under some degree of civic or state control ⟨wrote with force on . . . railroads as ~ agents —W.C.Ford⟩ ⟨right of women to smoke in restaurants and other ~ places —Frances Perkins⟩ **5 a** : exposed to general view : CONSPICUOUS, OPEN ⟨a rather too ~ affair with another woman —William Sansom⟩ **b** : WELL-KNOWN, PROMINENT ⟨stage stars and ~ figures —James Dowdall⟩ **c** : of an observable or perceptible nature : EXTERNAL, MATERIAL ⟨belief in tables and chairs existing as ~ . . . objects independently of his sense impressions of them —F.S.C.Northrop⟩ ⟨the conventional or ~ aspect of language can encroach upon the . . . symbolical aspect —R.M.Weaver⟩
**2public** \"\ *n* -S [ME *publique*, fr. *publique*, adj] **1** : a place accessible or visible to all members of the community — usu. used in the phrase *in public* ⟨resent the . . attempt to usurp in private the authority she could never assert in ~ —Edith Wharton⟩ **2 a** : an organized body of people : COMMUNITY, NATION ⟨the western European statesmen and ~s alike seem equally agreed that the slightest infringement of their national sovereignty is . . . abhorrent —Patrick McMahon⟩ **b** : the people as a whole : POPULACE, MASSES ⟨the ~ . . . in many cities have become apathetic to hit-and-run accidents —Ray Ashworth⟩ **3** : a group of people distinguished by common interests or characteristics ⟨protecting movie stars from their ~s —*New Yorker*⟩ ⟨two books . . . different in scope, and aimed at different ~s —T.C.Bergin⟩ ⟨places before farmers, homemakers, and the rural ~ information on currently important agricultural situations —*U.S. Govt. Manual*⟩ **4** *Brit* : PUBLIC HOUSE
**public accountant** *n* : an accountant whose services are available to the public — compare CERTIFIED PUBLIC ACCOUNTANT
**public accounting** *n* : accounting performed by a public accountant
**public account system** *n* : a system under which the state buys raw materials for processing in prison factories and sells the products in the open market — compare CONVICT LABOR SYSTEM
**public act** *n* : PUBLIC LAW
**public-address system** \'--,--\ *n* : an apparatus including one or more microphones or other pickup devices, an audio-frequency amplifier, and one or more loudspeakers used for broadcasting speech, music, or other sounds to a large audience (as in an auditorium or out of doors) — called also *PA system*
**public administration** *n* : a branch of political science dealing primarily with the structure and workings of agencies charged with the administration of governmental functions
**administrator** *n* **1** *in many jurisdictions* : an officer appointed to administer the estate of a decedent where there is no one else entitled and willing to act — compare GENERAL ADMINISTRATOR **2** *in some states* : the custodian of an estate pending settlement of a dispute or doubt as to the person entitled to letters
**publically** *var of* PUBLICLY
**pub·li·can** \'pəblikən, -lēk-\ *n* -S [ME, fr. MF *publicain, publican*, fr. L *publicanus*, fr *publicum* public revenue (fr. neut. of *publicus* public) + *-anus* -an — more at PUBLIC] **1 a** : a Jewish tax collector for the ancient Romans ⟨~s were outcasts among the Jews, because, having accepted the office under the Roman government . . they were regarded as traitors —F.W. Robertson⟩ **b** : one estranged from the church ⟨I firmly believe this church . . . has power to exclude him and to hold him as a ~ and heathen —A.C.McGiffert⟩ **c** : any collector of taxes or tribute ⟨outrages and exactions such as have, in every age, made the name of ~ a proverb for all that is most hateful —T.B.Macaulay⟩ **2** *chiefly Brit* : the keeper of a public house ⟨the local ~ produced trays of foaming stout —E.J.Gates⟩
**public assistance** *n* : aid provided to the needy aged, dependent children, and blind and disabled persons under the federal Social Security Act of the U.S.
**pub·li·cate** \'pəblə,kāt\ *vt* -ED/-ING/-S [L *publicatus*, past part. of *publicare* — more at PUBLISH] *archaic* : PUBLISH
**pub·li·ca·tion** \,pəblə'kāshən, -blē'-\ *n* -S [ME *publicacioun*, fr. MF *publication*, fr. LL *publication-, publicatio*, fr. L *publicatus* (past part. of *publicare* to announce, proclaim, publish) + *-ion, -io* -ion — more at PUBLISH] **1** : communication (as of news or information) to the public : public announcement : PROCLAMATION ⟨radio is a . . . great method of communication and ~ —G.C.Chandler⟩; *specif* : legal notification **2 a** : the act or process of issuing copies (as of a book, photograph, or musical score) for general distribution to the public ⟨the firm is engaged in the ~ of text books⟩ ⟨the date of ~⟩ ⟨prior to the first general ~ the owner of the common law copyright . . . may enjoy the benefit of a restricted publication —R.R.Shaw⟩ **b** : a published work ⟨study of . . . the journals of social science, the ~s of the learned generally —B.N. Cardozo⟩ ⟨among his many ~s was a volume of light verse⟩ **3** : the distribution in print esp. in technical journals of a taxonomic name (as of a species or genus) together with such descriptive or illustrative material as will characterize and distinguish the organism or group named
**public bill** *n, sometimes cap P&B* : a legislative bill affecting the community (as a nation or state) at large ⟨the First Reading of a *public bill* . . is usually a formality —*Brit. Parliament*⟩ — compare PRIVATE BILL
**public bond** *n* : a bond issued by a government (as a nation or state) or by a subsidiary incorporated governmental authority or by a municipality
**public charge** *n* : one that is supported at public expense
**public corporation** *n* **1** : MUNICIPAL CORPORATION **2** : a government-owned corporation organized to carry on a particular governmental activity, managed according to business principles by an appointed board, and often to some extent financially independent of the government — called also *government corporation*
**public day** *n* **1** : a day when a private institution is opened to the public or when an official devotes himself to hearing direct public business **2** : HOLIDAY 3a
**public debt** *n* : NATIONAL DEBT
**public defender** *n* : a lawyer usu. holding public office whose duty is to defend accused persons unable to pay for legal assistance
**public domain** *n* **1** : land owned or controlled by the U.S. government ⟨on this *public domain* the national government, as proprietor, can lease grazing lands —F.A.Ogg & P.O Ray⟩ **2** : the realm embracing property rights belonging to the community at large, subject to appropriation by anyone; *specif* : status unprotected by copyright or patent
**public enemy** *n* : one that constitutes a menace to society; *specif* : a criminal whose crimes have so aroused the police or public as to result in an intensive effort to apprehend him with the aid of wide publicity
**public funds** *n pl* : FUND 4d
**public health** *n* : the art and science dealing with the protection and improvement of community health by organized community effort and including preventive medicine and sanitary and social sciences
**public highway** *n* : HIGHWAY 1a
**public house** *n* **1** : INN, HOSTELRY **2** *chiefly Brit* : a licensed saloon or bar
**public housing** *n* : low-rent housing owned, sponsored, or administered by a government
**pu·bli·ci ju·ris** \,pəblə,sī'jūrəs, -jůr-\ *adj* [L] : belonging to the public : subject to a right of the public to enjoy
**pub·li·cist** \'pəblə,sist\ *n* -S [F *publiciste*, fr. *public* + *-iste* -ist] **1 a** : an expert in international law ⟨judicial decisions of the most highly qualified ~s of the various nations —*Basic Facts about the U.N.*⟩ **b** : an expert or commentator on public affairs : political pundit ⟨the self-constituted party of property owners, ~s, and professional men that framed the Federal Constitution —S.E.Morison & H.S.Commager⟩ ⟨cocksure materialist at whom . contemporary ~s are wont to fling their dialectical brickbats —Aldous Huxley⟩ **2** : one that publicizes ⟨effective ~ of the slum problem —J.G.Hill⟩ ⟨task of the scientist as ~ to make sure that science is science, and not magic, to the public at large —Irwin Edman⟩; *specif* : PRESS AGENT ⟨something more lasting than a pretty face, attractive figure or a persuasive ~ —J.K.Newnham⟩
**pub·lic·i·ty** \(,)pə'blisəd-ē, -sətē, -ī\ *n* -ES *often attrib* [F *publicité*, fr *public* + *-ité* -ity] **1** : the quality or state of being obvious or exposed to the general view : accessibility to the public ⟨wide open ranks . . . of desks kept everyone working by mere ~ —Christopher Morley⟩ ⟨the ~ of the courtroom —*Saturday Rev.*⟩ **2 a** : an act or device designed to attract public interest ⟨regards a whistle-stop tour as good ~⟩; *specif* : information with news value issued as a means of gaining public attention or support ⟨his job is producing ~ for child welfare organizations⟩ ⟨the flood of ~ and promotional material that now overloads the desk of everybody in the news business —Elmer Davis⟩ **b** : the dissemination of information or promotional material esp by the press and other mass media ⟨felt that the recent wave of ~ on her work . . . had hurt her professionally —*Time*⟩ **c** : paid advertising ⟨the object of all commercial ~ is to persuade someone to exchange his money for what the advertiser has for sale —H.H.Smith⟩ **d** : public attention or acclaim ⟨~ came . unsought; he was a man who attracted attention —V.G.Heiser⟩ ⟨received considerable ~ because of their refusal to accept a . . grant for school purposes —*Amer. Guide Series, Pa.*⟩ **e** : the practice or profession of producing promotional material ⟨~ is a one-way street; public relations, a two-way street —E.L.Bernays⟩
**syn** BALLYHOO, PROMOTION, PROPAGANDA: PUBLICITY refers to any effort to attract public attention whether by furnishing information for dissemination through regular news channels or by paid advertising ⟨recipients of this announcement are requested to give it immediately the widest possible *publicity* —*Amer. Council of Learned Soc. Scholars*⟩ ⟨"*publicity*" was not mainly an art for causing the world to take notice of, and think well of, goods, or of policies which the makers of goods wished to make popular. The word was coming to be synonymous with advertising —Mark Sullivan⟩ ⟨actresses bathing in champagne and other *publicity* stunts⟩ BALLYHOO may refer to sensational, strident, or noisy publicity ⟨the patient blindly follows the *ballyhoo* of the medical charlatan —*Police Gazette*⟩ PROMOTION suggests concentrated efforts to publicize something new or persuade the public to accept it ⟨attractive *promotions* of spring clothing helped to allay the usual post-Easter drop in retail volume —*Dun's Rev.*⟩ PROPAGANDA, the strongest term, usu. carries the suggestion of manipulation of public opinion whether through acceptable educational processes or by direct and coercive indoctrination ⟨*propaganda* means the planned use of all kinds of communications to influence the actions of other peoples —*Combat Forces Jour.*⟩
**pub·li·cize** \'pəblə,sīz\ *vt* -ED/-ING/-S [*public* + *-ize*] : to bring to the attention of the public : give publicity to : ADVERTISE
**public land** *n* : land owned by a government, esp a national government, *specif* : that part of the U.S. public domain subject to sale or disposal under the homestead laws
**public law** *n* **1 a** : an enactment of a legislature affecting the public at large throughout the entire territory (as state or nation) subject to the jurisdiction of the legislature : GENERAL LAW — called also *public act, public statute* **b** : an enactment of a legislature (as a municipal charter) affecting the public at large within a particular subdivision of the legislative jurisdiction **2** : the division of law that adjusts the relations of individuals with the state and regulates the organization and conduct of the machinery of government — contrasted with *private law* **3** : international law regulating the relations among sovereign states or nations as distinguished from private international law
**public liability insurance** *n* : insurance to protect businessmen (as owners or landlords) against loss due to legal liability for injury or damage to the persons or property of the public
**public library** *n* : a nonprofit library maintained for public use and usu supported in whole or in part by local taxation
**pub·lic·ly** \'pəblikl̄ē, -lēk-, -li\ *also* **pub·li·cal·ly** \-lik(ə)l̄ē, -lēk-, -li\ *adv* **1** : in public : in a manner observable by or a place accessible to the public : OPENLY, OBVIOUSLY ⟨claims that many of them are privately on his side, but cannot support him ~ —*Time*⟩ ⟨attributes . directly and ~ observable —C.G.Hempel⟩ **2** : by the public : by the people generally : COMMUNALLY ⟨every corporation is deemed ~ held unless 10 or fewer shareholders own stock —*U.S. Code*⟩; *specif* : by a government ⟨~ provided medical care starts with the school medical service —Moses Abramovitz & Vera Ehasberg⟩
**public member** *n* : a member (as of a labor relations board) not representing the special interest groups involved
**pub·lic·ness** *n* -ES : the quality or state of being public
**public nuisance** *n, law* : a nuisance (as obstructing a highway) that causes harm or annoyance to persons in a particular locality in violation of their rights as members of the community — compare MIXED NUISANCE, PRIVATE NUISANCE
**public officer** *n* : a person holding a post to which he has been legally elected or appointed and exercising governmental functions
**public official bond** *n* : a surety bond providing indemnity for failure of a public official to perform faithfully the duties of his office
**public opinion** *n* **1** : the predominant attitude of a community : the collective will of the people ⟨a fluctuation in *public opinion* may redirect national policy⟩ **2** : a summation of public expression regarding a specific issue or event ⟨*public opinion* on racial segregation falls into two main categories⟩
**public policy** *n* **1** : the governing policy within a community as embodied in its legislative and judicial enactments which serve as a basis for determining what acts are to be regarded as contrary to the public good **2** : the principle of law by virtue of which acts contrary to the public good are held invalid
**public prints** *n pl* : newspapers and periodicals ⟨led to much talk in the *public prints*⟩
**public prosecutor** *n* : a public official charged with the investigation and prosecution of punishable acts on behalf of the state or an international commission
**public record** *n* : a record required by law to be made and kept **a** : a record made by a public officer in the course of his legal duty to make it **b** : a record filed in a public office and open to public inspection
**public relations** *n pl but usu sing in constr* **1** : the promotion of rapport and goodwill between a person, firm, or institution and other persons, special publics, or the community at large through the distribution of interpretative material, the development of neighborly interchange, and the assessment of public reaction ⟨*public relations* are designed . . . to give a business a good reputation with the public —A.W.Page⟩ ⟨*public relations* of a resort may be only a portion of the duties of the . . . general manager —*Jour. Amer. Med. Assoc.*⟩ ⟨if the officer is civil . . , he gets a lot more done, both in correcting the driver and in doing good *public relations* for his town —Fred Sharpe⟩ ⟨took a pioneering step in *public relations* by asking . , brokers to report the various attitudes toward the exchange they encountered generally —*Newsweek*⟩ **2 a** : the degree of understanding and goodwill achieved between an individual, organization, or institution and the public ⟨little favors, a helping hand, a brief visit, a kindly word, all add up to good *public relations* —S.I.Stuber⟩ ⟨in a sense *public relations* is the measure of the extent to which an organization has adapted itself . to society —I.A. Cunningham⟩ **b** : application of the techniques for achieving this relationship ⟨persuaded the President that it would be bad *public relations* to stay away from his White House desk more than two weeks at a time —*New Republic*⟩ **3 a** : the art or science of developing reciprocal understanding and goodwill ⟨universities offered courses in *public relations* —E.L.Bernays⟩ **b** : the professional staff entrusted with this task ⟨*public relations* collects, prepares and distributes information to . . the consuming public —*Preview of Amer. Viscose Corp.*⟩ ⟨why do the Air Forces Group people in *public relations* fire that upstairs when they don't know whether it's true or not —J.G. Cozzens⟩
**public rights** *n pl* : the rights under law of the state over the subject and of the subject against the state
**publics** *pl of* PUBLIC
**public sale** *n* : AUCTION 1
**public school** *n* **1 a** : any of various endowed secondary boarding schools in Great Britain offering a classical curriculum and preparing boys esp for the ancient universities or for public service **b** : a similar school for girls **2 a** : a tax-supported school controlled by a local governmental authority; *specif* : an elementary or secondary school in the U.S. providing free education for the children of residents of a specified area **b** : the building housing a public school
**public servant** *n* **1** : a holder of public office **2** : an individual or corporation (as a bus company) rendering a public service
**public service** *n* **1 a** : a publicly or privately owned enterprise (as a waterworks, railway, telephone company) conducted for the benefit of the community as a whole **b** : a service rendered in the public interest ⟨the program is not sponsored but is presented by the network as a *public service*⟩ **2** : governmental employment; *esp* : CIVIL SERVICE ⟨first appointment to the *public service* is usually on a temporary basis —*Employment Opportunities in the Civil Service*⟩
**public-service corporation** *n* : a corporation providing services essential to the general public convenience or safety
**public speaker** *n* : one skilled in public speaking
**public speaking** *n* **1** : the act or process of making speeches in public **2** : the art or science of effective oral communication with an audience ⟨took a course in *public speaking*⟩
**public-spirited** \'--,--\ *adj* : motivated by devotion to the general or national welfare ⟨the trustees of our American universities are, as a class, *public-spirited* citizens . . trying to promote the public good —M.R.Cohen⟩ — **public-spiritedness** *n* -ES
**public statute** *n* : PUBLIC LAW 1
**public store** *n* : a warehouse where dutiable goods are appraised or held under bond
**public time** *n* : OBJECTIVE TIME
**public utility** *n* **1** : a business organization deemed by law to be vested with public interest usu because of monopoly privileges and so subject to public regulation such as fixing of rates, standards of service and provision of facilities **2** : a stock or bond issued by a public utility
**public vessel** *n* : a ship belonging to a government and not engaging in trade
**public warehouse** *n* : a privately owned warehouse for public use
**public waters** *n pl* : waters open of right to the use of the general public; *specif* : navigable waters
**public way** *n* : any passageway (as an alley, road, highway, boulevard, turnpike) or part thereof (as a bridge) open as of right to the public and designed for travel by vehicle, on foot, or in a manner limited by statute (as by excluding pedestrians or commercial vehicles) — compare PRIVATE WAY
**public works** *n pl* : fixed works (as schools, highways, docks) constructed for public use or enjoyment esp when financed and owned by the government; *specif* : government sponsored public improvements (as parks or playgrounds) as distinguished from work of a routine nature such as the grading and lighting of streets

Verified 3/07/03 Verified 6/05/02 Verified 10/17/02

EXHIBITS

POSITIONS

02-098-SPH CONSTRUCTION POWER SOURCE JUNE 5, 02

PET V 1 V SIGN-IN SHEET

PET 2(ID) V CASSIDY V. BOARD

PET 3(ID) V VARIOUS CPCN BILLS #'s

PET 4 V JOHN L. JEFFCOAT C.V.

PET 5 V DATED JULY 1, 2000 LIBER 14557 PG 453

PET 6 V JUNE 19, 2000 PSC SECRETARIAL LETTER ORDER

PET 7A V AERIAL PHOTOS @ 1996

PET 7B V " " "

PET 8 V SITE PLAN TO ACCOMPANY SP. HEARING.

PET 9 V CORL AS IT ARRIVES

PET 10 V SLAG AFTER QUENCH TANK

PET 11 V SLAG AFTER CRUSH - HYDRO BIN [redacted] [redacted] Box in closet

PET 12 V AMENDED SITE PLAN TO ACCOMPANY SP. HEARING SEPT 7, 2001

PET 13 V JOHN W. BURNS C.V.

PET 14 V PHOTO OF VA SLAG PLANT

PET 15 V MEDIUM GRADE FINAL PRODUCT OF SLAG Box in closet

PET 16 V JAN 18, 2002 SITE PLAN W/ SPIRIT & INTENT COMMENTS

PET 17 V MSD SHEETS

PET 18 V MICHAEL T. MAGUIRE C.V.

PET 19 GRADING PERMIT 5/21/01

PET 20A V JUNE 4, 2001 KOTIT KORLA DOPRM LETTER

20B V NOV 8, 2001 EXPLORATION RESOURCES LETTER

PET 21 V JUNE 27, 2001 THOMAS VIDMAR DOPRM LETTER

PET 22 V A 2 EXEMPTION

PET 23 V COUNTING FILES TO INC. AGENCY COMMENTS

PET 24 V BONZOS QUARTERS COMMUNITY PLAN V OK/KCB

PET 25 V SEPT 23, '02 LETTER TO COUNTY ELECTRICAL CODE PREM CONSTRUCTION

PET 26 V LIMESTONE SILO ~~PERMIT~~ APPLICATION & SIGNED APPROVAL

PET 27A V FOUNDATION ~~PERMIT~~ 425348 ISSUED PERMIT

PET 27B V ~~SILO PERMIT~~ 425348

PET 27C V SILO APPLICATION & SIGNED APPROVAL #427044

PET 27D V ISSUED PERMIT #427044

CONSTELLATION POWER SOURCE

02-098-SPH PETITIONERS EXHIBITS OCT 17 '02

PET 28 ✓ COAL HANDLING DRAWING

PET 29R ✓ PHOTO OF SICOS - WATER IN BKG @ 10 YRS OLD

PET 29B ✓ " " " " " " FOREGROUND @ 10 YRS OLD

(3-4-03)

PET 30 ✓ STATE OF MD CONSTRUCTION PERMIT 11/20/02

PET 31 ✓ JAN 12, '02 BOWLEYS QUARTERS IMP ASSOC TO CONSTELLATION

• PET 32 ✓ ZONING COMMISSIONERS DECISION 1973 VARIANCE FOR PROPANE CASE 74-102-A-SPH

(BANNIGER HAS US MAKING COPIES)

P&T 1

6/5/02 02-018 PSH

Constellation Power

Petitioner sign in sheet

| | |
|---|---|
| G. Scott Barhight | WTP |
| Richard A Ransom | Constellation Power Source Generation, Inc. |
| Michael T. Maguire | |
| Bonnie Johansen | Constellation Energy Group. |
| Jordan Karp | Constellation Power Source Generation, Inc. |
| John Burns | Virginia Materials |
| John Jeffcoat | Constellation Power Source Generation, Inc. |

P&T 1

suit to take possession of a trust fund from those entitled to it and fails, has no right to reimbursement of his expenses out of the trust fund.

The chancellor found that the instant case was in the nature of an interpleader. We agree. But, instead of being paid out of the fund paid into court, the costs and fees in an interpleader proceeding are generally payable by the defendant who has made the litigation necessary. *Hopkins v. Easton Nat. Bank,* 171 Md. 130, 187 A. 874 (1936). See also 4 Pomeroy *Equity Jurisprudence* § 1328 (5th ed. 1941); 30 Am. Jur. *Interpleader* § 28.

We think the costs should be paid out of a fund only in those proceedings in which the parties have a common interest or when the fund itself benefits from the action. When there is an adversary proceeding, such as this, to determine who is entitled to the fund in dispute, the losing party should pay the costs in the trial court and on appeal. In this instance the plaintiff-appellant should pay the costs in both courts.

Having arrived at the conclusion that the proceeds of the policy of insurance are payable to the estate of the insured and that the widow should pay the costs in the lower court and on this appeal, it is not necessary to consider whether the admission of the testimony of the widow was contrary to the provisions of Art. 35 § 3, *supra.*

*Order affirmed, the appellant to pay the costs in the trial court and on this appeal.*

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## CASSIDY ET AL. *v.* BALTIMORE COUNTY BOARD OF APPEALS ET AL.

[No. 125, September Term, 1958.]

ADMINISTRATIVE LAW—*Proper Notice of Hearing, Required by Law—Failure to Give, Fatal to Jurisdiction.* The failure of an administrative official or a board to give a proper notice of



a hearing, required by law, is fatal to the jurisdiction of the official or the board to conduct the hearing. pp. 421-422

ZONING—*Baltimore County—Notice Referring to Petition for Reclassification Only, and Not Mentioning Special Exception, Was Sufficient to Confer Jurisdiction to Grant Special Exception.* A notice of a hearing upon a petition for a reclassification of property in Baltimore County substantially complied with the County Zoning Regulations and the law to confer jurisdiction to grant a special exception, even though no application had been made for a special exception and the notice did not specifically mention a request for one, but stated only that a reclassification was sought. The notice notified the public that the petitioner was seeking a reclassification of its property to the lowest (the least restricted) zoning category, and thus apprised the public "clearly of the character of the action proposed and enough of the basis upon which it rest(ed) to enable" them "to intelligently prepare for the hearing". Anyone who attended the hearing prepared to defeat the request for a reclassification would likewise have been prepared to defeat the granting of a special exception. In reaching this conclusion, the Court noted that the regulations do not explicitly require the notice to contain the words "special exception" in order to authorize the granting of one, and stressed the closeness with which the regulations deal with petitions for reclassifications and for special exceptions; the fact that the method of notice required for each is identical; and, among other things, that the recognized practice in Baltimore County is that a petition for each may be filed at the same time and a joint hearing held thereon.

pp. 421-426

ZONING — *Baltimore County — Special Exception to Public Utility for Steam Generating Plants and Related Facilities in R.6 Zones.* The Baltimore County Zoning Regulations, in express terms, authorize a special exception to public utility companies for the operation in R.6 (residential) zones of steam generating plants and related facilities. pp. 427-428

ZONING — *Baltimore County — Special Exception to Public Utility for Steam Generating Station and Related Facilities in Residential Zone—Board's Decision to Grant, Fairly Debatable—*

Syllabus. [218 Md.

*Board Dealt with Requirements of Regulation—Other Matters.* In deciding to grant a special exception (subject to certain conditions and restrictions) to a public utility for the construction of a steam electric generating station and related facilities in an R.6 (residential) zone in Baltimore County, the County Board of Appeals directly and specifically dealt with the requirements of Sec. 411.1 of the County Zoning Regulations that "(t)he use must be needed for the proper rendition of the public utility's service and the location thereof shall not seriously impair the use of neighboring property". There was substantial evidence upon which the Board based its findings that the above requirements of Sec. 411.1 were met, and its decision, being fairly debatable, was affirmed. While it was claimed that public utilities were accorded "favored" treatment, the evidence was ample to justify the granting of a special exception without resort to any principle of preferred treatment of the public utility. The requirement in Sec. 411.1 that the "use (of the land) must be needed" does not mean that an individual piece of property must be needed to the exclusion of all others. The land in question being outside the Metropolitan District of Baltimore County, Secs. 411.2 and 411.3 had no applicability.

pp. 428-433

J. E. B.

*Decided December 22, 1958.*

Appeal from the Circuit Court for Baltimore County (RAINE, J.).

Petition by the Baltimore Gas and Electric Company for the reclassification of a tract of land in Baltimore County from Residential (R.6) to Heavy Manufacturing. The Zoning Commissioner of Baltimore County granted a special exception, subject to certain conditions and restrictions, for the construction of a steam electric generating station and related facilities, and the Board of Appeals affirmed his action. Edward T. Cassidy, and others, protestants, applied to the Circuit Court for a writ of *certiorari,* and from an order affirming the decision of the Board, the protestants now appeal.

Affirmed, with costs.



418] Opinion of the Court.

The cause was argued before BRUNE, C. J., and HAMMOND, PRESCOTT and HORNEY, JJ.

*James N. Phillips,* with whom were *Leonard A. Vadala* and *Fletcher Krause* on the brief, for the appellants.

*Wilmer H. Driver,* with whom were *John Grason Turnbull* and *Paul S. Clarkson* on the brief, for the appellees.

PRESCOTT, J., delivered the opinion of the Court.

This is an appeal from a decree of the Circuit Court for Baltimore County, filed June 13, 1958, affirming an order of the County Board of Appeals of Baltimore County (Board) granting the appellee, Baltimore Gas and Electric Company, (hereinafter referred to as the "Gas and Electric Company" or the "Company") a special exception subject to certain conditions and restrictions, which authorized the construction of a steam electric generating station and related facilities on Carroll Island Neck between Saltpeter and Seneca Creeks, in the 15th Election District of Baltimore County.

I

The first, and one of the principal, contentions of the appellant is an attack upon the jurisdiction of the Zoning Commissioner (Commissioner) who originally granted a special exception upon an application for reclassification, and the jurisdiction of the subsequent tribunals that considered the case. They argue that neither the Commissioner nor the Board of Zoning Appeals had authority, express or implied, to grant a special exception when no application had been made therefor, and when the petitioner had applied only for a change of classification and the notice to the public did not specifically mention a request for a special exception, but stated only that a reclassification was sought. Counsel for all parties concede that they have been unable to find a case wherein this exact question has been decided, and we have found none.

It has been stated so frequently and so generally that the failure of an administrative official or board to give a proper

notice of a hearing, required by law, is fatal to the jurisdiction of the official or the board to conduct the hearing that it requires no citation of authority to support the proposition;[1] hence, we must examine the notice and the proceedings to determine whether the Commissioner and the Board lacked jurisdiction to grant the special exception.

No question is raised concerning the enabling legislation, a discussion of which will be found in *Huff v. Bd. of Zoning Appeals,* 214 Md. 48, 133 A. 2d 83; so, we shall confine our consideration in this case to the notice and the Zoning Regulations.

The notice given by the Commissioner was as follows:

> "Pursuant to petition filed with the Zoning Commissioner of Baltimore County for change or reclassification from a R.6 Zone to a M. H. Zone of the property hereinafter described, the Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Room 108, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland:
>
> "On Wednesday, May 8, 1957, at 10:00 A.M.
> "to determine whether or not the following mentioned and described property should be changed or reclassified as aforesaid for Manufacturing Heavy to wit: (here followed a detailed description of the property)
>
> "Containing 138 acres of land, more or less, of which 6.8 acres is submerged land, as shown on

1. There is, however, authority to the effect that lack of constructive notice, in accordance with technical statutory requirements, is waived by a party's appearance at, and participation in, the proceedings. *Carson v. Board of Appeals of Lexington,* 75 N. E. 2d 116, 118, 119, (Mass.); *Hirsch v. Zoning Bd. of Pawtucket,* 187 A. 844, (R. I.); *Harrison v. Zoning Bd.,* 59 A. 2d 361, 365, (R. I.); *Wilson v. Union Township,* 9 A. 2d 771, 772, (N. J.); *De Luca v. Board of Supervisors,* 286 P. 2d 395, 398, (Cal.).



> plat plan filed with the Zoning Department, being property of Baltimore Gas and Electric Company.
>
> By Order of
> WILSIE H. ADAMS
> Zoning Commissioner of
> Baltimore County."

No claim is made against the sufficiency of the publication of the notice; the attack is based only upon the fact that the notice did not specifically name a request for a special exception.

Section 500.2 of the Zoning Regulations provides, in part, as follows:

> "500.2—In cases in which the permit applied for shall be for a use not permitted under regulations then in effect, the Zoning Commissioner may entertain a petition for the reclassification of such property. Such petition shall be filed by the legal owner of such property on forms adopted by the Zoning Commissioner. * * * Upon filing of such petition, the Zoning Commissioner shall set a time for public hearing thereon and shall give notice of the time and place of such hearing by advertisement in a newspaper of general circulation in Baltimore County for at least fifteen days prior to the date of such hearing, and shall cause the property sought to be reclassified to be posted with an appropriate notice of such petition and the time and place of such hearing."

And section 500.5 states:

> "500.5—In cases of petitions for Special Exceptions under Section 502 of these regulations, the Zoning Commissioner shall receive such petitions in such form as he may prescribe. He shall hold a public hearing thereon after giving public notice of such hearing as above provided with respect to petition for reclassification. After such a hearing he shall pass his Order granting or refusing such Special Exception."

Thus it is seen that the notice required in cases of petitions for special exceptions is identical with that required for petitions for reclassification; and, nowhere in the regulations is it explicitly prescribed that the notice must contain the words "special exception," in order to authorize the Commissioner to grant one. Professor Merrill has this to say concerning the sufficiency of notice in administrative procedure:

> "In the first place, I think we may say that the notification, to be effective, must clearly apprise the noticee that he is to defend his interests with respect to action yet to be taken rather than create in him the impression that appearance on his part is futile because a final decision already has been achieved. But, the monition must be read by the noticee in the light of the provisions of the law under which it is given, and in that light statements may appear clearly to relate to contemplated action despite some awkwardness of phrase.
>
> "In the second place, the notification must indicate the authority under which the administration is acting and the facts which bring the matter within its jurisdiction. A monition of a proceeding of one character may not be used as the foundation for action of a different sort, though it may bear some relation to the subject of the original hearing. The notification is adequate if it fairly informs the noticee of the nature of the proceedings and the capacity in which he is required to appear and answer.
>
> "Finally, and here is the heart of the requirement of notification in administrative proceedings, the noticee should be apprised clearly of the character of the action proposed and enough of the basis upon which it rests to enable him intelligently to prepare for the hearing. If this minimum requirement is met, the notification is adequate, no matter how much it may fall short of the standards of pleading in judicial contests."

2 Merrill, *Notice*, Sec. 796.



The Board, in its able opinion, in answering the protestants' argument that different standards of proof apply to petitions of reclassification than do to special exceptions and that constitutional requirements concerning notice, therefore, had not been met by advertising and posting for a reclassification, pointed out that all matters of proof which must appear to support a special exception case, plus either a showing of error in the original zoning or a substantial change in neighborhood conditions, must be established in a reclassification case. It cited as authority the case of *Price v. Cohen*, 213 Md. 457, 132 A. 2d 125, where a reclassification was denied because a situation detrimental to public safety and welfare existed. The Board, therefore, held that the notice of the attempt to reclassify was sufficient to meet the constitutional need of notice, as well as that required by Sec. 500.5 for granting the special exception. It stated, however, that it would not make a similar ruling if the situation were in reverse, namely, had the notice been for a special exception and a reclassification granted.

Judge Raine held likewise, and pointed out, from a practical point of view, that everybody properly before his court had ample and adequate notice of what the Board was to consider, calling attention to the fact that the hearings before the Board extended over many months.

We agree. We think the notice in this case was, at least, a substantial compliance with the requirements of all of the Zoning Regulations and those enumerated by Professor Merrill, *supra*. We can see no logical reason for, or salutary purpose to be served by, holding that upon a hearing of a petition for a reclassification of property, after proper notice, the Commissioner is limited to either a granting or denial of the reclassification. The notice in this case notified the public that the petitioner was seeking a reclassification of its property to the lowest, *i.e.*, the least restricted, category of zoning in Baltimore County. This certainly apprised the public "clearly of the character of the action proposed and enough of the basis upon which it rest(ed) to enable" them to "intelligently prepare for the hearing." Anyone who attended

the hearing prepared to defeat the above request would likewise have been prepared to defeat the grant of a special exception, as pointed out by Judge Raine and the Board. As the matter is not before us, we express no opinion on the statement of the Board that had the petition been for a special exception and a reclassification granted, its decision would have been different.

We are fortified in this conclusion by the closeness with which petitions for reclassification and special exceptions are dealt with in the Zoning Regulations; that the method of notice required for each is identical; that it is the recognized practice in Baltimore County and conceded in this case that a petition for each may be filed at the same time and a joint hearing held thereon; and in *Tyrie v. Baltimore County,* 215 Md. 135, 137 A. 2d 156, we held that where a petition for a reclassification was denied, the Commissioner could not entertain a petition for a special exception under Sec. 500.12 until eighteen months had expired. Moreover, had the Commissioner granted the petition for a reclassification and the protestants appealed to the Board, it is certain that under the provisions of Section 501.7,[2] the Board would have had the power to have granted the special exception; thus, we would have ended with the same result from the same notice.

The cases of *Smith v. F. W. Woolworth Co.,* 111 A. 2d 552 (Conn.), and *Kane v. Board of Appeals,* 173 N. E. 1 (Mass.), cited and relied upon by the appellants, did not pass upon the question here presented. In the *Smith* case, the notice stated that a hearing would be held on an appeal from a decision denying the petitioner a "permit for the construction of an addition" to its present building, when, in fact, the hearing was on a petition to grant a variance which, as granted, materially affected the protestant's rights. In the *Kane* case, the petition was that the board vary the application of the ordinance in order that the landowner might erect a gasoline fill-

2. This section provides: "The decision and order of the Board * * * may affirm or reverse in whole, or in part, any decision or order of the Zoning Commissioner, or may modify the Order appealed from and direct the issuance of a permit for such modified use as it may deem proper * * *."



ing station on his lot, property zoned for residential purposes. The notice declared that the petitioner was "asking for a variance" of the ordinance, not a variance of its application. and that the request of the petition was for such "variance * * * as applied to the erection or alterations in a proposed building." It was held that the notice was defective: that from it, alone, one could not determine with reasonable certainty whether the petition was to the end that a new building be permitted to be erected or an old one altered; and it contained no intimation of the use which the building, new or altered, was to be put.

Since the appellants contest the jurisdiction of the Commissioner or the Board to grant the special exception, we shall examine the regulations to see if they exceeded their authority. At this time, we will limit our consideration to the question as to whether the regulations permit the granting of a special exception for a "steam generating plant and related facilities" to a public utility in a R.6 Zone, Residence, One and Two Families, under any circumstances. Section 502 authorizes the Commissioner, subject to an appeal to the Board, to grant permission for "uses (of land) listed as Special Exceptions." Section 209.3 permits the granting of special exceptions in R.6 zones for "public utility uses other than those noted in section 200.11." (The public utility services listed in 200.11 are such as telephone and telegraph lines, electric light and power lines, which are permitted in residential zones without special exceptions.) Thus it is seen that the plain, comprehensive and express language of the regulations permits the issuance of special exceptions in R.6 Zones for "public utility uses" (other than those already permitted without a special exception). The language is broad and no limitations are placed thereon. It cannot seriously be argued that "a steam electric generating plant and related facilities" operated by a public utility company for the benefit of the public are not "public utility uses." If a steam generating plant is to be excluded from the phrase "public utility uses," what other uses are also to be excluded and what are to be considered as included, without clarifying language to guide us? We think it clear that the regulations, in express

terms, authorize a special exception to public utility companies in R.6 zones for the operation of steam generating plants and related facilities. Cf. *Dunham v. Zoning Board,* 26 A. 2d 614 (R. I.), a case in which a public utility plant was permitted in a residential zone by way of a special exception.

Section 256 lists the uses permitted in a Manufacturing Heavy zone. Section 256.1 says that uses permitted in Manufacturing or Restricted zones by Sec. 250.6 and Manufacturing Light zones by Sec. 253.4 are permitted in Manufacturing Heavy zones. Both Sec. 250.6 and Sec. 253.4 list "public utility uses" as permitted. The fact that the regulations thus specifically include "public utility uses" as permissible in Manufacturing Heavy zones, shows clear legislative intent that by "steam power plants" (which Sec. 256.2 allows in a Manufacturing Heavy zone at least 300 feet from any residence, or 200 feet from any business zone) is meant such plants other than those of a public utility. The inclusion of both "public utility uses" and "steam power plants" as permissible in a Manufacturing Heavy zone negates any possible inference that might otherwise arise that the phrase "public utility uses," whenever used in the regulations, was intended to mean such uses other than steam power plants.

II

Section 502.1 provides that before any special exception shall be granted it must be made to appear that the use for which the special exception is requested will not be detrimental to the locality involved in certain specifically enumerated ways. Section 411 provides that for public utility uses permitted only by special exceptions in addition to the provision of section 502 (including 502.1 above) other regulations shall apply; and section 411.1 states that "the use must be needed for the proper rendition of the public utility's service and the location thereof shall not seriously impair the use of neighboring property."

The appellants state their second point in this fashion:

> "Even a cursory reading of the decision of the Board of Appeals and the Circuit Court will reveal



> that they felt that the only tests that the petitioner had to meet were those set forth in Section 502.1 of the regulations. Yet Section 411 says:
>
> 'For public utility uses permitted only by Special Exceptions in addition to the provisions of Section 502, the following regulations shall apply:
>
> '411.1—The use must be needed for the proper rendition of the public utility's service *and* the location thereof shall *not seriously impair* the *use* of neighboring property.' (Emphasis added.)
>
> "The record shows that the utility offered *no* evidence on this point beyond the specific questions referred to in Section 502.1; it will also show that efforts on the part of the Protestants to show impairment of use and value were discouraged and disregarded by the Board and Court."

The easiest and most direct manner of answering the contention is by simply quoting from the Board's opinion wherein this specific question was considered and decided:

> "A tremendous amount of technical and other expert testimony has been produced by the Petitioner, which has used its considerable resources to prove with great precision that the use is needed for the proper rendition of its services.
>
> "Mr. Penniman, its Vice President in charge of Electric Power, testified with great clarity and at great length as to this present need for expansion, based on scientifically computed projections of future need. He stated that the estimated 1961 load will be over 1,250,000 kilowatts and that present peak capacity is now 1,108,800 kilowatts. He further explained that maintenance and overhaul make it impossible to operate at the theoretical capacity.
>
> "The Protestants, understandably, were unable to produce any evidence to contravert the general question of need, so we must find that the requested use is, in fact, needed within the meaning of the first part of Section 411.1 of the Regulations.

"While the Protestants impliedly admit the need, they strenuously maintain, and attempt to show both by cross examination and direct testimony, that the need can be adequately met in a more appropriate location; further, that the last part of Section 411.1, which provides that the location of the public utility use shall not seriously impair the use of neighboring property, prohibits the installation at this location.

"The Petitioner's testimony, mostly by Mr. Penniman and Dr. Christie, indicates that nearly four years were spent searching for the best site to meet its purposes. Several locations, including Bush River, Back River, and Garrett Island in the Susquehanna River, were studied and compared with the Carroll Island site. The choice narrowed to Garrett Island v. Carroll Island, Bush River having been eliminated because of inadequate water circulation and Back River because the effect of pollution on the condensing equipment would cause tubes to blow and make operations prohibitively expensive.

* * *

"A careful inspection of voluminous notes taken during the extended hearings plus verifications and augmentation by spot inspections of the record, indicates to us that the proposed use will not seriously impair the use of neighboring property, nor will it be detrimental to the health, safety, or general welfare of the locality involved, nor will it tend to create congestion in roads, streets or alleys therein, nor will it cause any other conditions which the application of Section 502.1 of the Regulations would prohibit."

It is thus seen that this contention is without merit: the Board, directly and specifically, dealt with the subject that the appellants claim that it did not, and there was substantial evidence upon which the Board based its findings.

The appellants also claim that the Board failed to apply sections 411.2 and 411.3. It will be noted that these sections



apply to the Metropolitan District of Baltimore County. The property involved herein is located outside of said Metropolitan District; consequently, these sections have no applicability.

III

The appellants urge as their last assignment of error that "the appellee did not fulfill the burden imposed upon it by law." Under this heading, they seem to rely principally upon what they claim to have been "favored" treatment of public utilities; that Section 411.1 requires that the "use (of the land) must be needed" which they argue means the use of this *particular* piece of land must be needed; and the test that the use of the property will not seriously injure the use of neighboring properties for residential purposes should have been resolved in their favor. Most of this was considered and answered in II.

While much may be said concerning the difference between restrictions upon private undertakings and those which are clothed with a public interest and must have access to the centers of population in order to properly perform their public functions, we find it unnecessary to consider the matter in this case. The Board did not base its holdings upon any preferential treatment to be accorded to public utilities; and we think the evidence produced by the Gas and Electric Company was ample to justify the granting of the special exception without resort being had to any principle of preferred treatment for the public utility. In fact, a careful reading of the record discloses a rather strong case in favor of the reclassification requested.

The appellants do not question the general need of the Gas and Electric Company to add to its generating capacity, but insist that the use of this particular piece of land must be "needed." This contention that the requirement in Section 411.1 that the use of the land must be needed means that an individual piece of property must be needed to the exclusion of all others is untenable. If this were sound and there were two or more pieces of property available for the use needed, none could receive a special exception merely because the others were available, which would mean that the use, al-

though in fact needed, could not be effectuated. The record is replete with testimony that not only does the Company require additional generating facilities, but such a station is needed at this site. The testimony of Mr. Penniman and Dr. Christie detailed the unique advantages of this particular location for supplying the load in the adjacent area, and explained the critical deficiencies in topography, water supply and efficiency, not to mention the burden upon all rate-payers (in one case over $40,000,000 of additional expense) of the other sites considered.

We shall not unduly prolong this opinion by reviewing any great amount of the testimony to demonstrate that the Board had substantial evidence before it in making its determination that the use permitted by the special exception would not seriously impair the use of neighboring properties for residential purposes, particularly under the conditions and restrictions actually imposed by the Board. We pointed out under II that much time was consumed and thorough preparations made in selecting the site. We have also intimated above that the testimony makes out a rather strong case even to have granted the reclassification. Mr. Penniman, a man with 47 years of experience in the construction of generating plants, testified that the new plant would satisfy each of the six standards of Section 502.1, and, in addition, there would be no dust, no traffic hazards and little increase in traffic, no noise, no fly-ash, no water pollution, no smoke, no odor and no danger to the public using water near the plant. Dr. Christie testified generally to the same effect. J. Walter Jones, a real estate appraiser and developer, testified, after visiting the proposed plant site and after observing the operation and appearance of the comparable Wagner plant and the neighboring residential properties a few hundred feet away, that in his opinion the construction of the proposed plant would have no adverse effect on residential properties in the area. Mr. Gavrelis, the Deputy Director of Planning and Zoning of Baltimore County, testified his office approved the use of the site for a generating station and recommended that the necessary zoning be granted. In addition to the above, there was much more evidence upon the immediate subject under



consideration before the Board; but what has been stated seems enough to show that there was sufficient and substantial evidence adduced upon the issue so as to render the decision of the Board thereon fairly debatable. When this occurs, the action of the Board must be affirmed. *Missouri Realty Inc. v. Ramer,* 216 Md. 442, 140 A. 2d 655.

*Decree affirmed, with costs.*

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## THOMPSON *v.* UPTON

[No. 71, September Term, 1958.]

LIBEL—*Not Per Se—Must Allege Special Damages.* If a publication is not libellous *per se,* the declaration must allege special damages in order to withstand a demurrer. p. 437

LIBEL—*Whether Per Se—May Be Determined upon Demurrer.* The question of whether or not a publication is libellous *per se,* and therefore actionable at law, may be determined by the court upon demurrer, since the demurrer admits only the publication, but not that it is libellous. p. 437

LIBEL—*Broader Than Slander—Publication Tending to Expose One to Public Scorn, Etc., or Imputing Incapacity to Fill Position.* The scope of libel is wider than that of slander. While not an all-inclusive definition, libel includes any unprivileged (*i. e.,* a publication not having an absolute privilege), false and malicious publication, which by printing, writing, signs or pictures, tends to expose a person to public scorn, hatred, contempt or ridicule; it also embraces any such publication that relates to a person's office, trade, business or employment, if the publication imputes to him some incapacity or lack of due qualifications to fill the position, or some positive past misconduct which will injuriously affect him in it. p. 437

LIBEL—*Letter to Police Officer's Superior, Relating to Ticketing of Automobiles, Held Libellous Per Se.* In this suit the de-

| Bates Numbers | Date | Description | Comments |
|---|---|---|---|
| C 7 00001 | | Answer to question | |
| C 7 00002 | | Enclosures | |
| C 7 00003 – C 7 00066 | 5/9/80 | (PSC Case No. 7443) Application for approval of the conversion of the C.P. Crane Units | |
| C 7 00067 – C 7 00070 | 12/18/80 | (PSC Case 7443) Request for interim approval of the installation of bag-house foundation and steel structure | |
| C 7 00071 – C 7 00075 | 2/27/81 | (PSC Order No. 65143 in Case No. 7443 | |
| C 7 00076 – C 7 00103 | 4/2/81 | Proposed Order approving 5/9/80 application for the conversion of the units to use coal as a primary fuel | |
| C 7 00104 – C 7 00107 | 5/4/81 | PSC Order No. 65256 in Case No. 7443 | |
| C 7 00108 – C 7 00115 | 12/27/82 | Application for approval to use refuse-derived fuel (RDF) as an auxiliary to the burning of coal | |
| C 7 00116 – C 7 00119 | 2/22/83 | PSC Order No. 66115 in Case No. 7443 | |

DGT 3
(1D)

**EPA 114 Request**
**Reference 3AP12**
**Dated August 3, 2000**

**For Plant:**
**C.P. Crane**

**QUESTION NO. 7:**

For each coal fired boiler at each plant identified above, provide copies of all PSD/NSR permit applications submitted to the state regulatory agency with a description of the modifications, and all subsequent correspondence with the state regulatory agency regarding the permit application. Also, provide copies of all PSD/NSR permits that were issued for each coal fired boiler at each plant identified above.

**ANSWER TO QUESTION NO. 7:**

The facility does not have "PSD/NSR" permits. Under Maryland law, the Public Service Commission (PSC) authorizes the construction and modification of electric generating stations. This authorization serves as the PSD/NSR permit for the facility.[1]

The PSC process includes a consolidated public hearing before the PSC during which testimony and/or documentation is presented by various affected Maryland agencies, including the Maryland Department of the Environment (MDE), the Department of Natural Resources (DNR) and the Maryland Energy Administration (MEA). EPA Region III is consulted during the development of particular permit conditions and requirements, including PSD/NSR requirements. The Company is not submitting herewith the entire record of PSC proceedings, but only the applications, orders and related correspondence, if any.

The PSC process under Maryland law includes broad consideration of environmental issues, beyond those associated with PSD/NSR permits. The Company is submitting herewith only such applications and orders and related correspondence, if any, as relate to issues which may otherwise be subject to the PSD/NSR process.

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1 This statutory process is part of Maryland's State Implementation Plan (SIP), and was formally approved by EPA as a revision to Maryland's SIP on February 23, 1982. See 47 Federal Register 7834. In addition, this statutory process has been upheld by Maryland's Court of Appeals. See Baltimore Gas and Electric Company v. Department of Health and Mental Hygiene, 284 Md. 216, 395 A.2d 1174 (1979). See also the new Public Utilities Companies Article that was added as part of electric utility restructuring legislation in Maryland effective October 1, 1998, which reaffirms much of the PSC's process.

**EPA 114 Request**
**Reference 3AP12**
**Dated August 3, 2000**

**For Plant:**
**C.P. Crane**

Enclosed are following documents:

- May 9, 1980 Application for approval of the conversion of the C. P. Crane Units to use coal as a primary fuel. (PSC Case No. 7443)

- December 18, 1980 Request for interim approval of the installation of bag-house foundation and steel structure prior to issuance of final order. (PSC Case No. 7443)

- February 27, 1981 PSC Order No. 65143 in Case No. 7443 authorizing the construction of the bag-house structure subject to the conditions of a final order.

- April 2, 1981 Proposed Order approving of the May 9, 1980 application for the conversion of the units to use coal as a primary fuel. (The Proposed Order noted that: "On June 30, 1975, the Federal Energy Administration ["FEA"] issued Prohibition Orders on the Company, pursuant to the Federal Energy Supply and Environmental Coordination Act of 1974 ["ESECA"]).

- May 4, 1981 PSC Order No. 65256 in Case No. 7443 approving the corrections recommended in an April 23, 1981 letter and final approval of April 2, 1981 proposed order.[2]

- December 27, 1982 Application for approval to use refuse-derived fuel (RDF) as an auxiliary to the burning of coal.

- February 22, 1983 PSC Order No. 66115 in Case No. 7443 approving the use of refuse-derived fuel.

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2 After diligent search, we have been unable to locate a copy of the April 23, 1981 letter requesting correction of the proposed order.

10. 7/11/79

78 5/9/80

| | | |
|---|---|---|
| IN THE MATTER OF THE APPLICATION OF BALTIMORE GAS AND ELECTRIC COMPANY FOR APPROVAL FOR THE MODIFICATION TO PERMIT THE USE OF SOLID FUEL AND THE INSTALLATION OF DUST-COLLECTING EQUIPMENT AT THE CHARLES P. CRANE GENERATING STATION NEAR CARROLL ISLAND ROAD IN SOUTHEASTERN BALTIMORE COUNTY, MARYLAND | * | BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND |
| | | Case No. |

* * * * * * * * *

APPLICATION FOR APPROVAL OF
MODIFICATION TO
CHARLES P. CRANE GENERATING STATION

THE HONORABLE, THE PUBLIC SERVICE COMMISSION OF MARYLAND:

BALTIMORE GAS AND ELECTRIC COMPANY (hereinafter referred to as "Applicant") hereby submits this Application for approval of modifications to the Charles P. Crane generating station, Units Nos. 1 and 2, for the purpose of converting such units to the use of coal as a primary fuel and constructing dust-collecting equipment and ancillary structures necessary for such purpose, all pursuant to the provisions of Article 78, Section 54H, of the Annotated Code of Maryland, and respectfully shows:

1. That the Applicant is Baltimore Gas and Electric Company, a Maryland corporation, engaged, inter alia, in the generation, transmission and distribution of electricity to the general public in the City of Baltimore and in all or portions of nine counties in Central Maryland, the address of its principal business office being P. O. Box 1475, Baltimore, Maryland 21203.

2. That the name, title and address of the person authorized to receive notices and communications with reference to this Application is

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James A. Biddison, Jr., Esquire, General Counsel of the Applicant, P. O. Box 1475, Baltimore, Maryland 21203. The public may inspect a map showing in detail the present site and improvements and the modifications to be made at the offices of the Applicant, G&E Building, Lexington and Liberty Streets, Mezzanine, Baltimore, Maryland 21201, and in Baltimore County at the Baltimore Gas and Electric Company Appliance Store, 7826 Eastpoint Mall, Baltimore, Maryland 21224.

3. That the general description of the Charles P. Crane generating station, prior to its modification, is as follows:

The Charles P. Crane generating station consists of two oil-fired, steam electric generating units with a rated capacity of 192 megawatts of electricity, each. Each unit discharges exhaust gases by a separate stack and is equipped with identical opposed-fired cyclone furnaces. The plant and its facilities, including a propane storage area, are bounded by Seneca Creek on the south and southeast and Saltpeter Creek on the north. It adjoins Carroll Island, a United States military reservation, on the east. The facilities occupy a land area of 164.22 acres owned in fee by the Applicant, Baltimore Gas and Electric Company. The area is served by both highway and rail. A description of the plant, its operation and coal-handling equipment is shown in Appendix 4 attached hereto.

4. That the Charles P. Crane units were constructed to burn coal as a primary fuel. From 1963 to 1970, both units burned coal, but in 1970 they were converted to burn No. 6 residual fuel oil with one percent or less sulfur content. Unit No. 2 of the plant has now been converted to

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accommodate a test-burn of coal, pursuant to Article 43, Section 698A of the Annotated Code of Maryland, and Section 110(a) of the Federal Clean Air Act, and refuse-derived fuel (RDF) to determine the types, kinds and qualities of solid fuel which may be burned in cyclone furnaces and to prepare for the eventual conversion to coal in both units, which is the subject of this Application.

5. That in 1974 the Congress of the United States enacted PL93-319, "The Energy Supply and Environmental Coordination Act of 1974" (hereinafter referred to as "ESECA"). Section 2 of ESECA, entitled "Coal Conversion and Allocation," authorizes the Federal Energy Administration (hereinafter referred to as "FEA") to prohibit any power plant from burning natural gas or petroleum products as its primary energy source if that power plant has the capability of burning coal and can meet certain other requirements, including those imposed by the Clean Air Act.

6. That pursuant to ESECA, FEA, on June 30, 1975, issued Prohibition Orders in effect prohibiting the Crane units from burning oil or natural gas as their primary fuel. ESECA requires the Environmental Protection Agency (hereinafter referred to as "EPA") to certify to FEA the date by which any power plant subject to the prohibition order can burn coal in compliance with all applicable requirements of the Clean Air Act (42 U.S.C., Section 1857, et seq.).

7. That on October 28, 1975, a plan of compliance was submitted by the Applicant to the EPA for Units Nos. 1 and 2 of the Charles P. Crane generating station. However, no environmental impact analysis was performed and no Notice of Effectiveness of the Prohibition Orders has yet been issued.

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8. That on January 28, 1980, the State of Maryland, through Air Quality Programs of the Department of Health and Mental Hygiene, approved a change requested by the Applicant in the State Implementation Plan which would relax sulfur limitations from current levels to 3.5 pounds of oxides of sulfur per million Btu actual heat input for solid fuels at the Charles P. Crane generating station. This relaxation became effective Maryland law on March 31, 1980, and is now under consideration for approval by the EPA.

9. That upon such State Implementation Plan approval by EPA, the Applicant will submit a revised plan of compliance for State and Federal acceptance.

10. That the current estimated cost of the modification, which consists primarily of the installation of new dust collecting equipment, or "bag houses," and induced-draft fans is Fifty-Five Million Dollars ($55,000,000.00). This cost is based on commercial operation of both Crane units by mid-1983.

11. That the project will continue to be financed by internally-generated funds, short-term borrowings and the issuance of securities and pollution control bonds, the nature and amount of which are not now known and will depend upon market conditions and other factors in existence at the time.

12. That the estimated effect of the project will be to increase the Applicant's average annual operating, maintenance and depreciation expenses and taxes (other than income taxes) as set forth in Appendix 1

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attached hereto and made part hereof. The effect of the change from oil to solid fuel will result in a significant and continuing savings in the costs of generation (Appendix 1-A).

13. That installation of the dust-collecting equipment will permit the burning of coal or other solid fuel in full compliance with current particulate emission standards as detailed in Appendix 2 attached hereto and made part hereof.

14. That the particulate control equipment and associated structures are detailed in Appendix 3 attached hereto.

15. That Local, State or Federal agencies having requirements which must be met in connection with the modification are as follows:

A. Baltimore County Agency:

(1) Department of Permits and Licenses

B. State of Maryland Agencies:

(1) Maryland Port Administration

(2) Maryland Department of Natural Resources

(3) Maryland Department of Health and Mental Hygiene

C. Federal Agencies:

(1) U. S. Department of the Army, Corps of Engineers

(2) U. S. Department of Transportation, U. S. Coast Guard

(3) U. S. Department of Energy

(4) U. S. Environmental Protection Agency

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The Applicant seeks issuance, by the Commission, of an Order approving modification of the Charles P. Crane generating station, including any necessary related permits. The Applicant will obtain the remainder of the necessary permits, authorizations and approvals required by Local, State and Federal agencies and will conform to all laws and regulations of such agencies as construction progresses.

16. Certain elements normally included in an application for Certificate of Public Convenience and Necessity, pursuant to Order No. 60673 in Case No. 6215 of the Public Service Commission, are not specifically addressed herein inasmuch as Article 78, Section 54-H, applies solely to air quality impacts occasioned by plant modifications. The Charles P. Crane plant was constructed in 1963, originally burned coal until 1970, and was, therefore, not subject to the certification process.

I7. The mandated conversion to solid fuel use in Units Nos. 1 and 2 of Charles P. Crane generating station makes necessary the proposed change. Without such change in fuel, the units would be prohibited from continuing operation. Without both Crane units, Applicant would not be able to meet its capacity requirements as shown in Appendix 5 attached hereto.

James A. Biddison, Jr.

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W. Robert Buchanan

Charles A. Herndon, Jr.
P. O. Box 1475
Baltimore, Maryland 21203
234-5605

Attorneys for Applicant
Baltimore Gas and Electric Company

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of May, 1980, a copy of the foregoing Application was mailed to the following persons and agencies:

Honorable Donald P. Hutchinson
Baltimore County Executive
Mezzanine
County Courts Building
Towson, MD 21204

Baltimore County Council
Second Floor
County Courts Building
Towson, MD 21204

Baltimore County Office
of Planning and Zoning
New Courts Building
Fourth Floor
401 Bosley Avenue
Towson, MD 21204

Baltimore County Department of
Permits and Licenses
New Courts Building
Fourth Floor
401 Bosley Avenue
Towson, MD 21204

Baltimore County Department
of Health
New Courts Building
Fourth Floor
401 Bosley Avenue
Towson, MD 21204

Baltimore County Department
of Public Works
Third Floor
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Maryland State Aviation Administration
Herbert R. O'Conor State Office
Building
301 West Preston Street
Baltimore, MD 21201

The State Clearing House
Maryland Department of State Planning
Herbert R. O'Conor State Office
Building
301 West Preston Street
Baltimore, MD 21201 (ten copies)

Maryland Department of Economic
and Community Development
2525 Riva Road
Annapolis, MD 21401

U. S. Department of Energy
1000 Independence Avenue
Washington, DC 20585

U. S. Environmental Protection Agency
401 M Street, S.W.
Washington, DC 20460

U. S. Department of Interior
Office of the Secretary
Washington, DC 20240

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Maryland Department of Health
and Mental Hygiene
Herbert R. O'Conor State Office
Building
201 West Preston Street
Baltimore, MD 21201

Maryland Port Administration
32 South Street
Baltimore, MD 21202

Maryland Department of
Natural Resources
Tawes Office Building
C-4
Annapolis, MD 21401 (six copies)

Maryland State Board of
Public Works
Tawes Office Building
Annapolis, MD 21401

Maryland State Highway
Administration
Herbert R. O'Conor State
Office Building
300 West Preston Street
Baltimore, MD 21201
Attention: Nolan H. Rogers, Esq.

Maryland Historical Trust
Box 1704
Annapolis, MD 21404

Federal Energy Regulatory Commission
825 North Capitol Street, N.E.
Washington, DC 20426

Federal Aviation Administration
Chief, Air Traffic Branch
Eastern Regional Office
J. F. Kennedy International Airport
Federal Building
Jamaica, NY 11430

U. S. Department of the Army
Baltimore District
Corps of Engineers
Federal Building
Baltimore, MD 21203

U. S. Department of Agriculture
Soil Conservation Service
100 Chinquapin Round Road
Annapolis, MD 21401

U. S. Department of Transportation
U. S. Coast Guard
Commander
Fifth Coast Guard District
Federal Building
431 Crawford Street
Portsmouth, VA 23701

Attorney for Applicant
Baltimore Gas and Electric Company

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# ESTIMATED ANNUAL INCREASE IN EXPENSES AND TAXES AS A RESULT OF THE C. P. CRANE CONVERSION PROJECT ($000)

| | |
|---|---|
| Operating Expense (Excluding Depr. Exp. and Taxes Other Than Income Taxes) | ~~$21,700~~ 10,900 |
| Depreciation Expense | 1,703 |
| Taxes Other Than Income Taxes | ~~1,269~~ 1,307 |
| Total | ~~$24,672~~ $17,810,000 |

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Estimate of Economic Impact
Coal

| II. Types of Economic Impacts. | Revenue(+) Expense(-) | Magnitude |
|---|---|---|
| A. On issuing agency: | None | |
| B. On other State or local agencies affected: | (+) | Additional property taxes; annually ranging from 0 to $1.4 million in first 5 years. |

| | Benefit(+) Cost(-) | Magnitude |
|---|---|---|
| C. On regulated industries or trade groups: | | |
| 1. Ability to use higher sulfur fuels. | (+) | Annually, ranging from $60 to $90 million, for first 5 years, which will be passed-on to customers through the Fuel Rate (E.2). |
| 2. Need for new particulate control equipment and for other equipment required for burning coal in generating stations, plus additional production operation and maintenance expense. | (-) | Annually, ranging from $19 to $25 million, for first 5 years, which will be passed-on to customers through increased Base Rates (E.2). |
| D. On other industries or trade groups affected: | | |
| 1. Fuel oil suppliers. | None | Availability, for sale to others, of over 2.3 million barrels of low sulfur oil in the first year and over 3 million barrels in the fifth year. |
| 2. Coal producers and coal transporters. | (+) | Additional annual requirements of about 921,000 tons of coal in the first year costing about $44 million; in the fifth year, requirements are about 977,000 tons costing about $63 million. |

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| | | |
|---|---|---|
| 3. Vendors of particulate control equipment and other equipment needed for coal burning in generating stations. | (+) | One-time sale of about $55 million. |
| 4. Industries requiring low sulfur residual oil. | (+) | After the first year, annual availability of over 3 million barrels of residual oil having 1% sulfur or less. Specific benefit cannot be determined. |
| E. Direct and indirect effects on public: | | |
| 1. Increase in ambient levels of suspended particulate and sulfur dioxide. | (-) | Amended State ambient air quality standards will not be violated. Specific cost cannot be determined. |
| 2. Lower electricity costs to utility customers. | (+) | A net reduction of about ~~$41~~ 60 million in first year to about ~~$65~~ million in fifth year will be a direct benefit to customers. These net reductions result from a reduction in Fuel Rate of about ~~$60~~ 90 million (C.1) and an increase in Base Rates of about ~~$19~~ 25 million (C.2) in the first year; and in the fifth year a reduction in Fuel Rate of about $90 million (C.1) and an increase in Base Rates of about ~~$25~~ million (C.2). |
| 3. Lower costs to the consumer for certain products and services. | (+) | A net reduction in the energy-related cost of finished products and of services (E.2), with a flow-through of these benefits to the ultimate consumer. Specific benefit cannot be determined. |
| 4. Higher income in coal producing and transporting areas. | (+) | Additional annual requirements of about 921,000 tons of coal in the first year, and about 977,000 tons in the fifth year will have to be mined and transported. Specific benefit cannot be determined. |

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III. Assumptions. (Identified by Impact Letter and Number from Section II):

B. Assumes increase in personal property tax base of about $55 million.

C.1. Assumes that, in generating units #1 and #2 at the C. P. Crane Station, Baltimore Gas and Electric Company will burn coal which does not exceed 3.5 pounds of oxides of sulfur per million Btu (1.6 kilograms per gigajoule) actual heat input per hour, instead of oil with 1%, or less, sulfur; this will result in a system-wide reduction in fuel cost amounting to $60 million in the first year and $90 million in the fifth year of such operation.

2. Assumes that annual expenses of new particulate control equipment and other equipment required for burning coal in generating units #1 and #2 at the C. P. Crane Station, plus additional annual system-wide production operation and maintenance expenses, will be $19 million in the first year and $25 million in the fifth year.

D.1. Assumes that the equivalent of the 3+ million barrels of the 1% sulfur, or less, residual oil burned in generating units #1 and #2 at the C. P. Crane Station in 1978 will not be burned when generating units #1 and #2 at C. P. Crane Station burn coal; also assumes a market for that low sulfur oil.

2. Assumes that coal producers, intra-State or extra-State, will supply coal of a suitable grade and that coal transporters will transport the coal, with a resulting delivered cost of $47.77 per ton in the first year and $64.48 per ton in the fifth year.

3. Assumes the installation at C. P. Crane Station of particulate control equipment and other equipment, such as ducts, fans and ash handling systems, which are needed in order to burn coal in electric generating stations.

4. Assumes that the equivalent of the 3+ million barrels of the 1% sulfur, or less, residual oil burned in generating units #1 and #2 at the C. P. Crane Station in 1978 will not be burned when generating units #1 and #2 at C. P. Crane Station burn coal; also assumes a market for that low sulfur oil.

E.1. Assumes that any increase in the ambient levels of air pollution is associated with increased costs. However, the expected levels will not exceed the National Ambient Air Quality Standards and will meet all applicable regulations of the Federal Clean Air Act.

2. Assumes that the Electric Fuel Rate will serve as a vehicle to pass fuel savings to customers; also assumes the addition to Electric Base Rates of the annual expenses of new particulate control equipment and other equipment, such as ducts, fans and ash handling systems, which are needed in order to burn coal in electric generating stations, plus additional annual system-wide operation and maintenance expenses in generating stations.

3. Assumes that manufacturers of goods and vendors of services will pass the net savings in energy costs (E.2) to the ultimate consumer by way of reduced charges for the goods and services.

4. Assumes fuller utilization of existing mining work forces, or an expansion of those forces, to meet the continuing requirement for additional coal. Also assumes fuller utilization of existing transportation work forces or an expansion of those forces.

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# AIR QUALITY IMPACT DUE TO RECONVERSION OF THE C. P. CRANE STATION

## Table of Contents


1. Introduction
2. Air Quality Regulations
   - 2.1 National Ambient Air Quality Standards
   - 2.2 Applicable Emission Limits
   - 2.3 Prevention of Significant Deterioration (PSD) Regulations
   - 2.4 Nonattainment
3. Plant and Site Descriptions
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   - 3.1.1 C. P. Crane Before Reconversion
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   - 3.2 Ambient Air Quality
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   - 3.2.3 Total Suspended Particulates
   - 3.3 Meteorology
   - 3.4 Topography
4. Methodology
5. Results
   - 5.1 Predicted Increase to Ambient $SO_2$ Levels
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   - 5.3 Predicted Increase to Ambient $NO_2$ Levels
6. Conclusions


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# 1. Introduction

The purpose of this study was to determine the air quality effects of the reconversion of C. P. Crane Station back to coal. The change from oil to coal will increase the emission rates of sulfur dioxide, total suspended particulates and nitrogen dioxide from the plant. To determine the effects of these changes, air quality modeling was performed to simulate the increase in ground-level concentrations. Simulation of sulfur dioxide ($SO_2$), total suspended particulates (TSP) and nitrogen dioxide ($NO_2$) concentrations was accomplished through the use of the Environmental Protection Agency's (EPA) single-source CRSTER model. The model was developed by EPA and is recommended for this type of air quality study.(1) The single-source CRSTER model is designed to calculate the contribution from multiple elevated stack emissions at a single plant location to ambient air quality levels, defined in the same averaging times as the National Ambient Air Quality Standards (NAAQS). The model calculated pollutant concentrations hourly using five years of hourly meteorological data as input. Model outputs included the highest and second-highest 1-hour, 3-hour and 24-hour averages, as well as annual mean concentration for each of the five years. These results were then used to determine whether the reconversion of Crane from oil back to coal would maintain the National Ambient Air Quality Standards, the requirements of the Federal Clean Air Act and the requirements of the Maryland State Implementation Plan.

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Section 2 of this Report discusses the air quality regulations governing the C. P. Crane Station. Section 3 describes the generating facilities studied and the surrounding environmental setting which were used as input to the analyses. Section 4 documents the methodology of the dispersion analysis, while the results of the modeling and conclusions of the study are presented in Sections 5 and 6 respectively.

## 2. Air Quality Regulations

Air quality regulations affect C. P. Crane by limiting both the amount of certain pollutants discharged from it and the level of pollutants which are permitted to exist in the ambient air.

### 2.1 National Ambient Air Quality Standards

The National Ambient Air Quality Standards (NAAQS) are a set of limits for various pollutants found in the ambient air which are designed to protect the public health and welfare. Table 2-1 shows the NAAQS[2] for sulfur dioxide, nitrogen dioxide and particulates. Maintenance of the standards is required and this study projects that emissions from C. P. Crane will not violate or make any significant contribution to any violation of the NAAQS. Section 5 will discuss this in greater detail.

### 2.2 Applicable Emission Limits

In addition to the requirement of maintaining the NAAQS, C. P. Crane must meet all applicable emission limits. The applicable emission limits are shown in Table 2-2.[3] It should be noted that although the State recently changed the allowable emission rate for $SO_2$ to 3.5 pounds per MM BTU while burning coal (old limit was 1% sulfur coal) and has submitted it to EPA as a

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TABLE 2-1 National Ambient Air Quality Standards

| | Primary | Secondary |
|---|---|---|
| **Sulfur Dioxide** | | |
| Annual | 80 $\mu g/m^3$ | |
| 24-Hour* | 365 $\mu g/m^3$ | |
| 3-Hour* | | 1300 $\mu g/m^3$ |
| **Nitrogen Dioxide** | | |
| Annual | 100 $\mu g/m^3$ | |
| **Total Suspended Particulates** | | |
| Annual (Geometric Mean) | 75 $\mu g/m^3$ | 60 $\mu g/m^3$ ** |
| 24-Hour* | 260 $\mu g/m^3$ | 150 $\mu g/m^3$ |

* Can be exceeded no more than once per year.

** Guideline

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TABLE 2-2 Applicable Emission Limits

Maryland Emission Standards

| | Oil | Coal |
|---|---|---|
| Sulfur Dioxide | 1% sulfur | 3.5 lbs/MM BTU* |
| Particulates | .02 grains/SCFD | .03 grains/SCFD |
| Opacity | No Visible | No Visible |

* Approved by the State on 1/30/80 and is awaiting EPA approval as a SIP Revision.

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State Implementation Plan (SIP) revision,[4] it is still awaiting EPA approval.

2.3 Prevention of Significant Deterioration (PSD) Regulations.

PSD regulations are not applicable to C. P. Crane because it is exempt from being considered a modification as defined in the regulations.[5] The plant qualifies for this exemption for two reasons: 1) it received a Prohibition Order pursuant to the Energy Supply and Environmental Coordination Act of 1974 on June 30, 1975[6] and 2) it was capable of burning coal prior to the promulgation of PSD regulations.[7] Although C. P. Crane is exempt from PSD regulations, the increase in ground-level concentrations of $SO_2$ and TSP resulting from the reconversion may consume a portion of the PSD increments for those pollutants.[8] The uncertainty of whether or not the plant will be charged with any "consumption of the PSD increment" is because EPA has proposed changes to PSD regulations[9] and they are not expected to be finalized until June 1980. For the purpose of this study, consumption of PSD increment is based on existing regulations.

C. P. Crane Station is located in a Class II designated area[10] and therefore the Class II increments for $SO_2$ and TSP are applicable (see Table 2-3).

The modeling results which are discussed in Section 5 indicate the PSD increments will not be exceeded.

2.4 Nonattainment

Figure 2-1 shows the location of C. P. Crane in relation to the Baltimore Nonattainment Area for particulates.[11] However, C. P. Crane is not expected to significantly impact the nonattainment area. The levels of significance as defined by EPA[12] are shown in Table 2-4. Again, the results of this study are presented in greater detail in Section 5.

TABLE 2-3 PSD Increments

| | Class I | Class II** | Class III |
|---|---|---|---|
| Sulfur Dioxide | | | |
| Annual | 2 | 20 | 40 |
| 24-Hour Average* | 5 | 91 | 182 |
| 3-Hour Average* | 25 | 512 | 700 |
| Particulate Matter | | | |
| Annual | 5 | 19 | 37 |
| 24-Hour Average* | 10 | 37 | 75 |

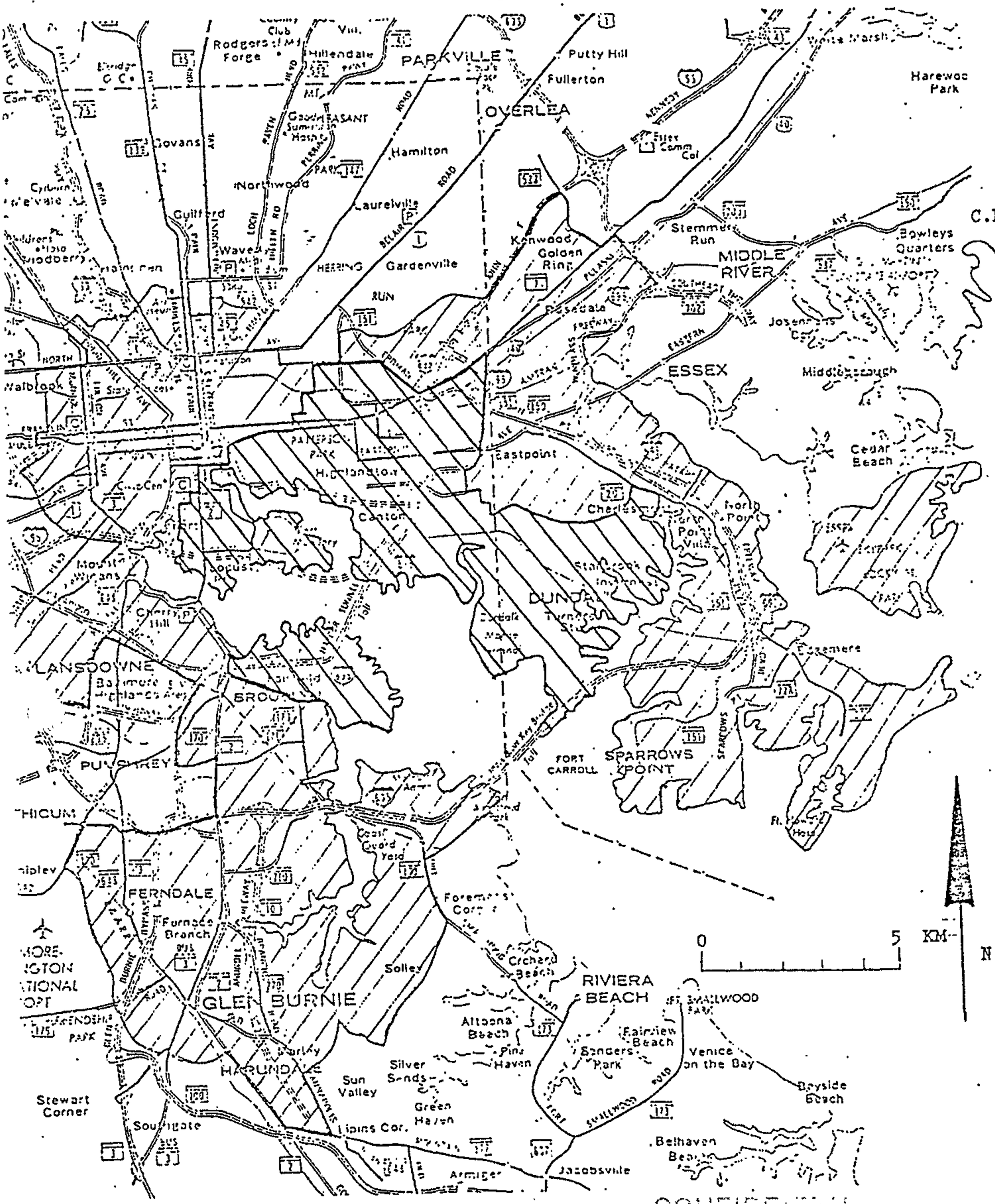
* Can be exceeded no more than once per year.

** C. P. Crane is located in a Class II area.

TABLE 2-4 Levels of Significant Impact

| | Concentration |
|---|---|
| Sulfur Dioxide | |
| Annual | 1 $\mu g/m^3$ |
| 24-Hour Average | 5 |
| 3-Hour Average | 25 |
| Nitrogen Dioxide | |
| Annual | 1 |
| Total Suspended Particulate | |
| Annual | 1 |
| 24-Hour Average | 5 |

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# 3. Plant and Site Descriptions

Station operating and emission parameters, air quality and meteorological data which were used as input to diffusion analysis are presented in this section. The operating parameters for the Crane Station under present and proposed fuel-firing modes are detailed in Section 2.1. The air quality and meteorological data as well as the topographic features in the vicinity of the plant are discussed in Sections 3.2, 3.3 and 3.4, respectively.

## 3.1 Plant Description

The C. P. Crane Station has a combined capacity of approximately 384 MW. Operating and stack parameters for the plant, as well as emission data for each of the fuel-firing configurations under consideration, are presented in the following subsections.

### 3.1.1 C. P. Crane before Reconversion

Currently, the C. P. Crane Station consists of two residual oil-fired steam electric units each with a rated capacity of 192 megawatts of electricity. However, units 1 and 2 were originally coal-fired units when they went into commercial service in 1961 and 1963. They were converted to oil in the early 1970's.

Each unit discharges exhaust gases via separate stacks. The residual oil used at the plant has a sulfur content of one percent by weight. Table 3-1 lists the full-load operating conditions, stack parameters and emission data for both units.

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TABLE 3-1 Full Load Operating and Emission Parameters

For the C. P. Crane Station - Existing Plant Characteristics

| Unit | Fuel | Stack Hgt (m) | Stack ID (m) | Exit Vel. (m/s) | Exit Temp. (°K) | Emissions (g/s) $SO_2$ | $NO_2$* | TSP |
|---|---|---|---|---|---|---|---|---|
| 1 | oil | 108. | 3.33 | 29 | 422 | 227 | 162 | 9 |
| 2 | oil | 108. | 3.33 | 29 | 422 | 227 | 162 | 9 |

TABLE 3-2 Full Load Operating and Emission Parameters

For the C. P. Crane Station - After Reconversion

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 1 | coal | 108. | 3.33 | 29 | 422 | 756 | 451 | 13 |
| 2 | coal | 108. | 3.33 | 29 | 422 | 756 | 451 | 13 |

* Derived using Compilation of Air Pollutant Emmision Factors, AP-42, EPA, 4/77.

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3.1.2 C. P. Crane after Reconversion

After converting C. P. Crane back to coal the most significant change will be the change in emission rates. The allowable $SO_2$ emission rate will be up to 3.5 lbs of $SO_2$ per MM BTU. Also, there will be some changes in emissions of particulates and nitrogen oxides. The allowable emission rate for particulates while burning coal is .03 grains/SCFD. Table 3-2 lists the full-load operating conditions, stack parameters and emission data expected after reconversion.

3.2 Ambient Air Quality

The ambient air quality levels for sulfur dioxide and nitrogen dioxide are better than the National Ambient Air Quality Standards. However, a small portion of the Baltimore Metropolitan Area exceeds both the Primary and Secondary Standards for total suspended particulates.(13) Section 3.2.1 describes the monitoring data compiled by the State of Maryland for sulfur dioxide while Sections 3.2.2 and 3.2.3 describe the data for nitrogen dioxide and particulates, respectively.(14)

3.2.1 Sulfur Dioxide.

Table 3-2.1 lists ten $SO_2$ monitoring stations recording $SO_2$ concentrations in the greater Baltimore area. Their locations are indicated in Figures 3-1. The sites utilized either the continuous flame photometric method or the pulse flourescence method to measure $SO_2$ levels. Table A-1 in Appendix A lists the highest and second-highest 3-hour and 24-hour averages. Table A-2 lists the maximum 24-hour averages recorded for both the first and second quarters of 1979.

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TABLE 3-2.1 $SO_2$ Monitoring Stations

1. Glen Burnie, Anne Arundel County*
2. Linthicum, Anne Arundel County*
3. Riviera Beach, Anne Arundel County*
4. AIRMON 1 (Green and Lombard Sts.), Baltimore City
5. AIRMON 2 (Calvert & 22nd Sts.), Baltimore City
6. 200 Read St., Baltimore City
7. Sun and Chesapeake Sts., Baltimore City
8. Essex, Baltimore County
9. Garrison, Baltimore County
10. Towson Trailer, Baltimore County

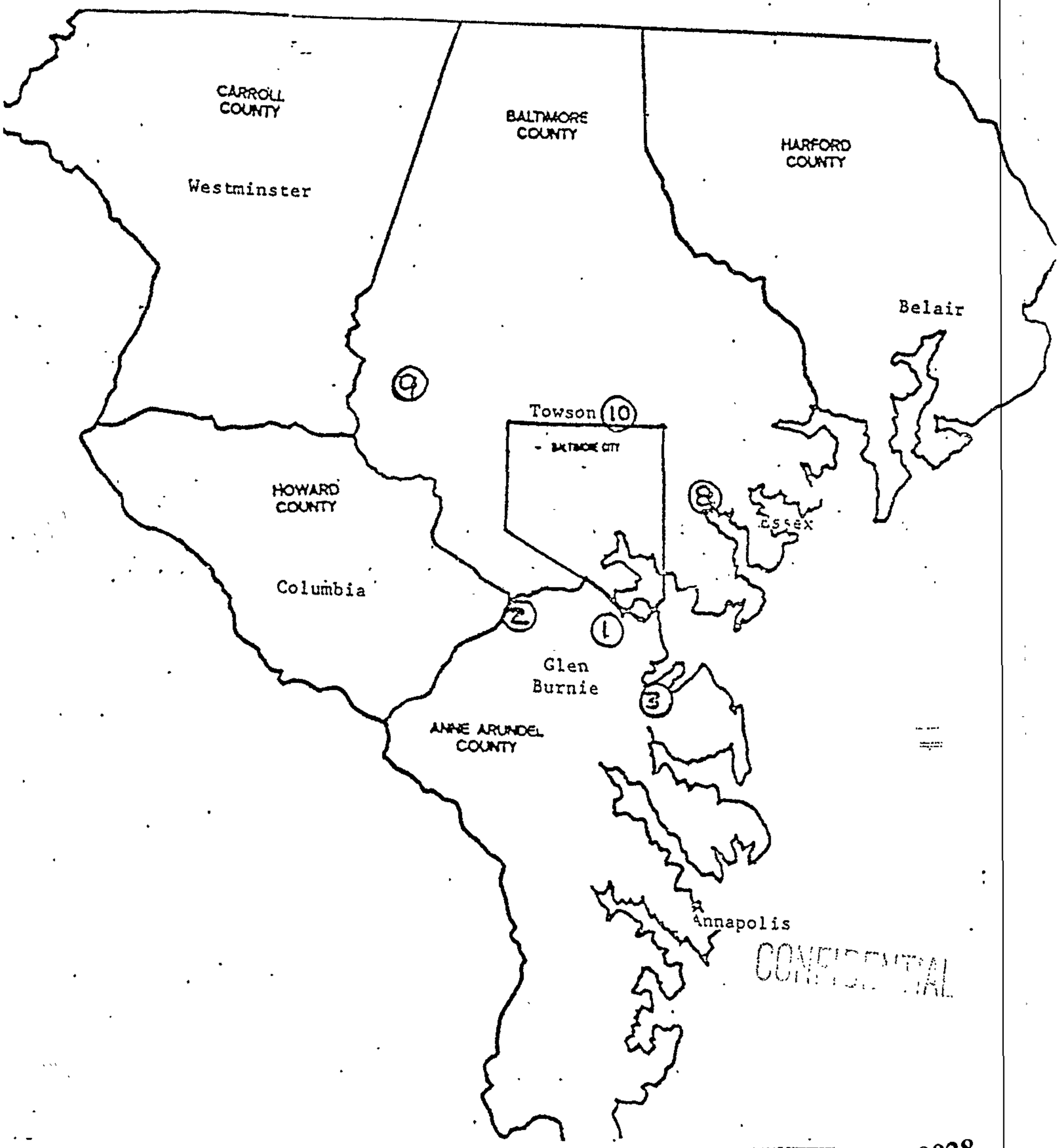
* Pulse Fluorescence Method

TABLE 3_2.2 $NO_2$ Monitoring Stations

1. Glen Burnie, Anne Arundel County
2. Linthicum, Anne Arundel County
3. Riviera Beach, Anne Arundel County
4. AIRMON 1, Baltimore City
5. AIRMON 2, Baltimore City
6. 200 Read Street, Baltimore City
7. Sun and Chesapeake Sts., Baltimore City

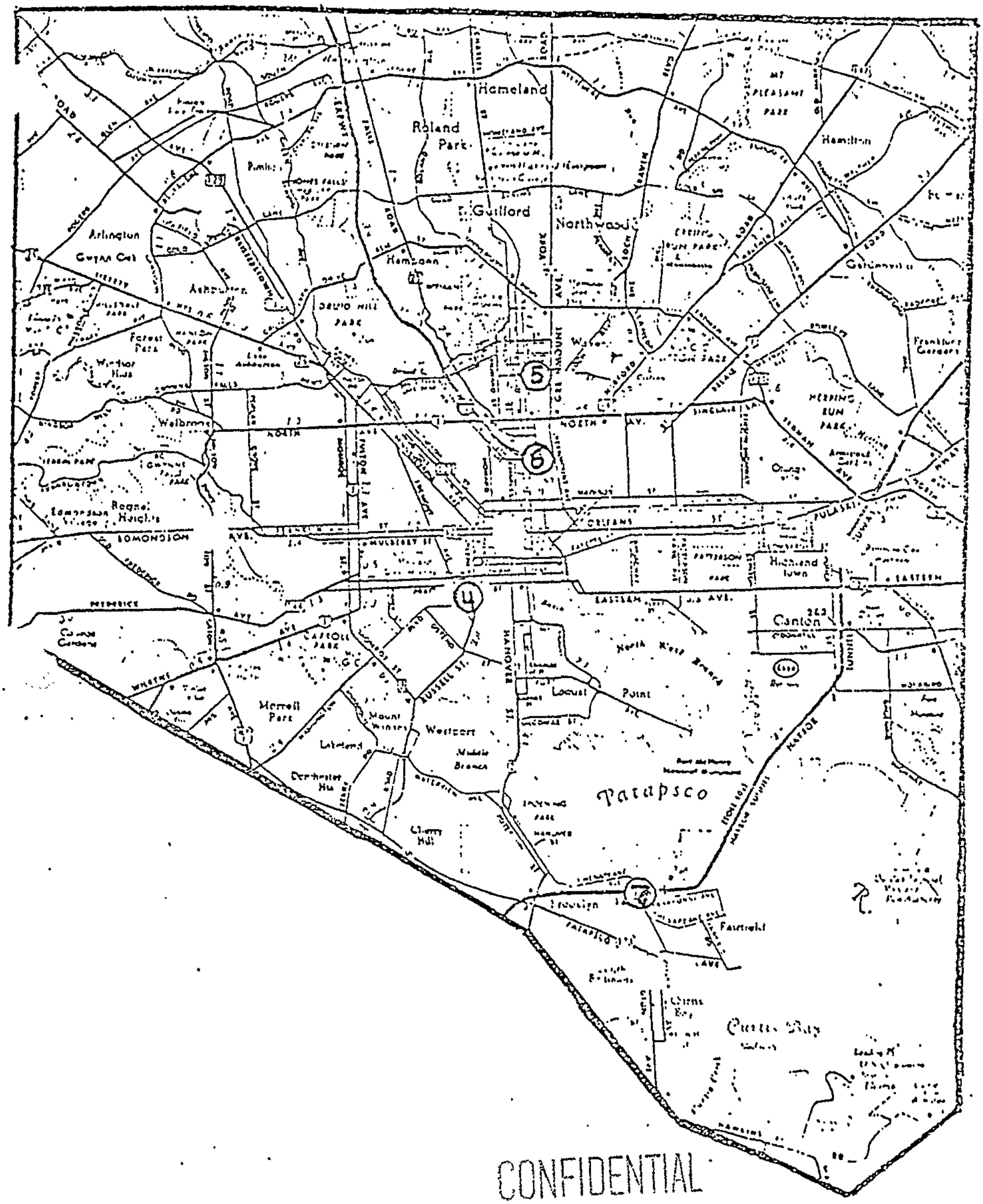
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Figure 3-1




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The maximum 3-hour and 24-hour averages, 506 $\mu g/m^3$ and 257 $\mu g/m^3$ respectively, for 1978 were recorded at the Sun and Chesapeake station. These values are substantially less than their corresponding standards of 1300 $\mu g/m^3$ for the 3-hour average and 365 $\mu g/m^3$ for 24-hour average. Thus far for 1979, the maximum 24-hour average recorded was 210 $\mu g/m^3$ at the 200 Read St. station. The maximum annual average for 1978 was 47 $\mu g/m^3$ and was recorded at 200 Read St. This too is less than the standard which is 80 $\mu g/m^3$.

3.2.2 Nitrogen Dioxide

Table 3-2.2 lists the $NO_2$ monitoring stations while their locations are shown in Figures 3-1. Nitrogen dioxide was continuously monitored by the chemiluminescent method. Table B-1 in Appendix B lists the annual mean concentrations recorded for 1978.

The maximum annual average was recorded at 200 Read St. station which is located in the inner business district of Baltimore. This high concentration was most likely the result of heavy vehicular traffic in the city. Automobiles are known to be large sources of nitrogen oxides.(15)

3.2.3 Total Suspended Particulates

The National Ambient Air Quality Standards for particulates were exceeded at several monitoring stations in the Baltimore Metropolitan Area. Table 3-2.3 and Figures 3-2 show the monitoring stations and their locations recording particulate concentrations. Table C-1 in Appendix C lists the highest and second-highest 24-hour TSP averages and annual geometric average. Table C-2 lists the maximum 24-hour averages for the first two quarters of 1979.

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TABLE 3.2-3 TSP Monitoring Stations

For Figure 3-2:

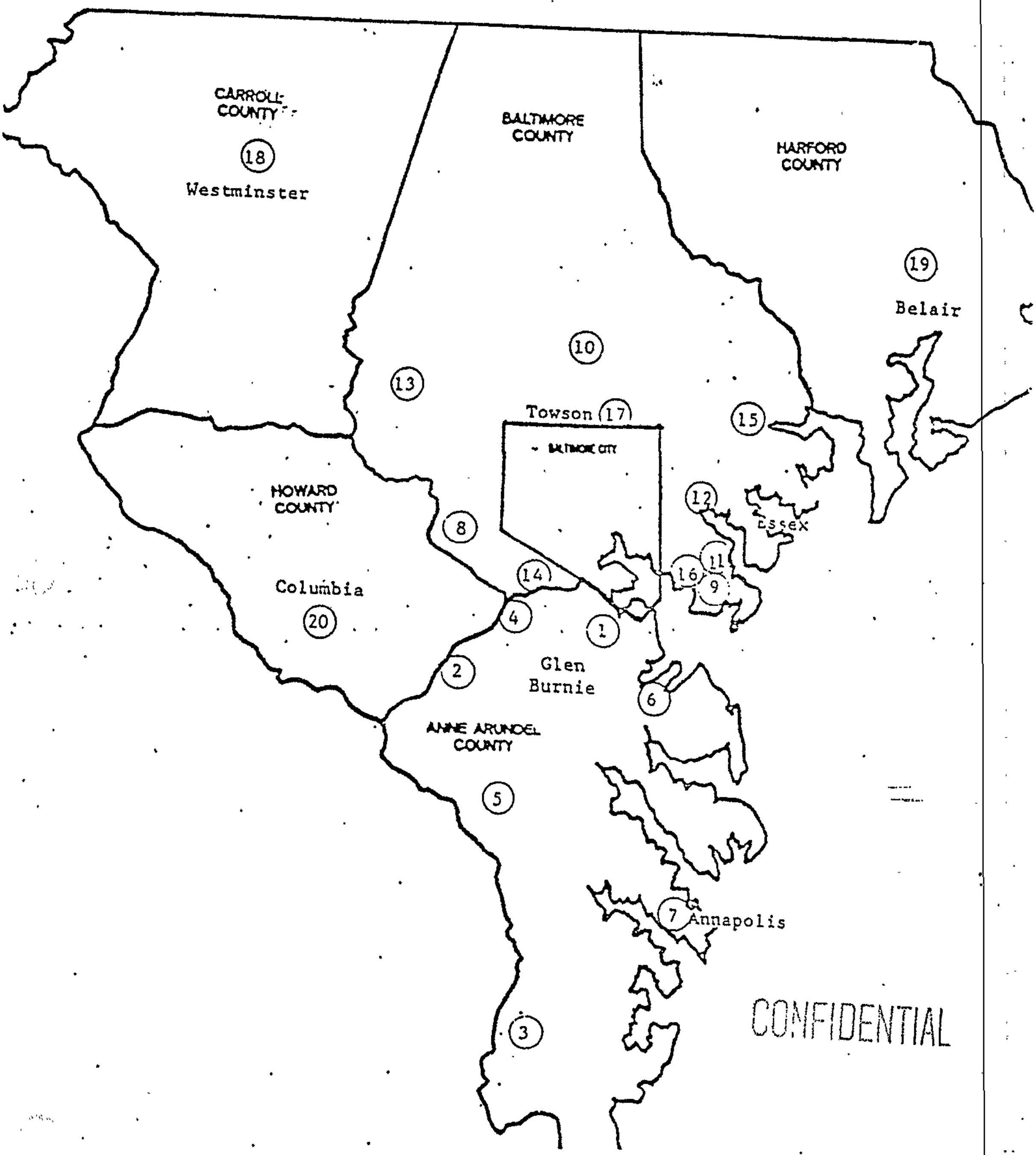
1. Glen Burnie
2. Harmons
3. Harwood
4. Linthicum
5. Odenton
6. Riviera Beach
7. St. Johns College
8. Catonsville
9. Chesapeake Terrace Elementary
10. Cockeysville Police
11. Edgemere Fire Station
12. Essex
13. Garrison
14. Lansdowne
15. Middle River-Martin
16. Sollers Point
17. Towson Trailer
18. Westminster
19. Bel Air
20. Simpsonville

For Figure 3-2.1:

1. AIRMON 1
2. AIRMON 2
3. Fire Department Headquarters
4. Fire Dept. No. 10
5. Fire Dept. No. 22
6. Fire House No. 50
7. Fire House No. 57
8. Fort McHenry National Park
9. Northeast Police Station
10. Northwest Police Station
11. Patapsco STP
12. 200 Read Street
13. Southeast Police Station
14. Southwest Police Station
15. Sun and Chesapeake

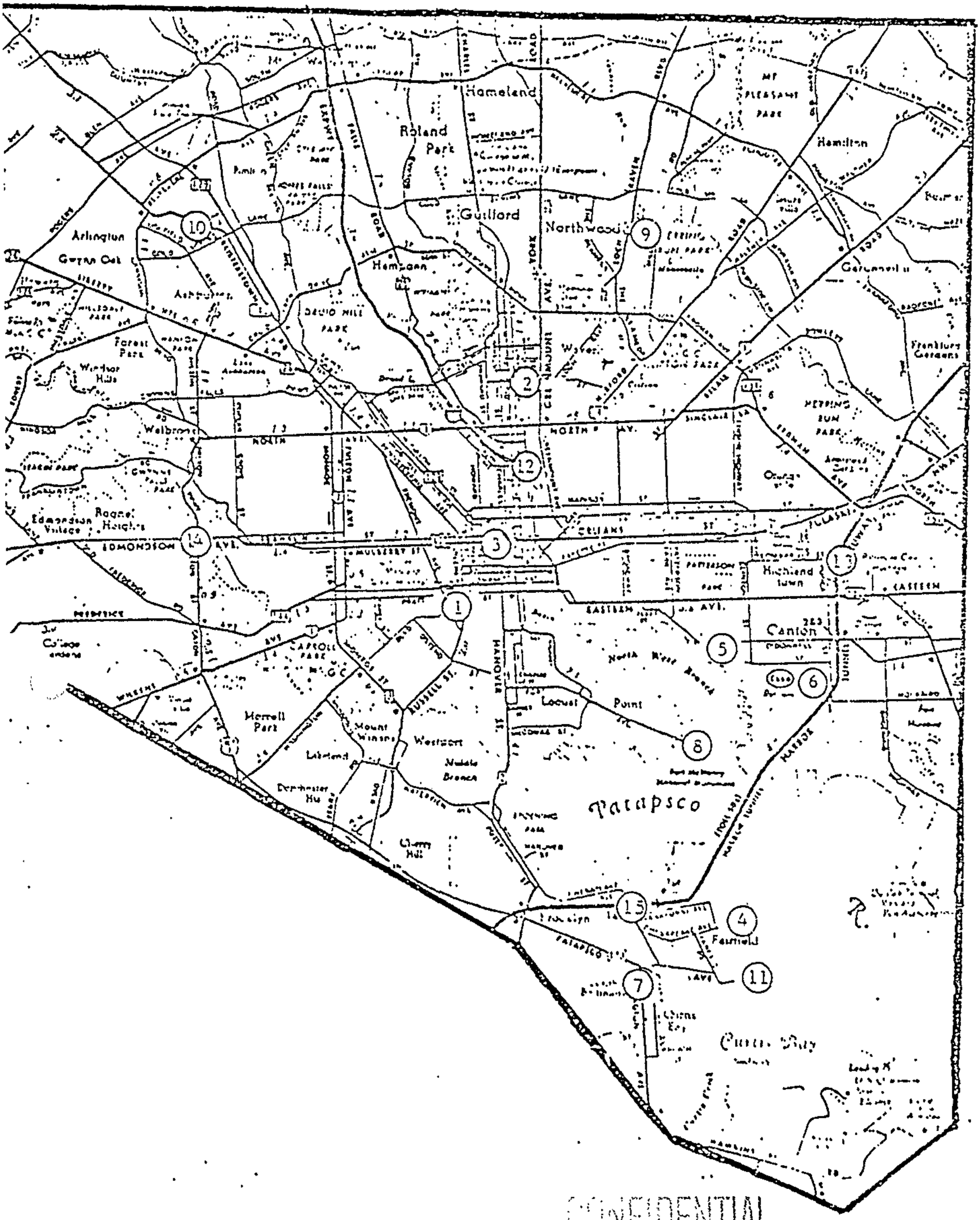
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Figure 3-2




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For 1978 the maximum geometric mean was 119 $\mu g/m^3$ while the maximum 24-hour average was 355 $\mu g/m^3$ and they were recorded at Fire House 50 and Fire Department #10, respectively. Thus far for 1979, the 24-hour average has been exceeded at two locations with the highest average of 604 $\mu g/m^3$ being recorded at Fort McHenry.

3.3 Meteorology

The model used in this analysis requires hourly meteorological data as input. Climatological data from Baltimore Weshington International (BWI) Airport adequately describes the meteorology of the study area due to its close proximity (20 mi. southwest of the plant). Therefore, 5 years of meteorological data was obtained from the National Climatic Center for the years 1964-1968. Five years is recommended by EPA as an adequate meteorological data base.(16)

Mixing height data, which also is an input requirement, was obtained for the same period from the National Climatic Center. The data was derived from radiosonde data taken twice daily (0000 and 1200 Greenwich Mean Time) at Dulles International Airport which is the closest source of mixing height data to the study area. Mixing height data for intermediate hours was derived using an interpolation scheme found in the dispersion program.

3.4 Topography

The Crane Station is situated at an elevation of approximately 10 feet above mean sea level, on the relatively flat Atlantic Coastal Plain near the western bank of the Chesapeake Bay. Moving westward, the relief gradually rises to gently rolling terrain. For this study the assumption of flat terrain was made due to small elevation differences near the plant which should have no significant effect on the modeling results.

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## 4. Methodology

This section presents the methodology employed in the modeling of the C. P. Crane Station. A significant feature of the modeling is the simulation of the temporal and spatial distribution of $SO_2$, $NO_2$ and TSP concentrations utilizing hourly meteorological observations as input. The model then calculates hourly concentrations of the pollutants.

The single-source CRSTER model (see Appendix D for a more detailed description of the model) was used to calculate concentrations for the same averaging periods as those of the National Ambient Air Quality Standards and PSD Class II increments (see Tables 2-1 and 2-3). Model inputs included plant and stack parameters for each power plant which was discussed in Section 3. Data for short-term and long-term projections are based on continuous peak load plant operations, which produces a conservative element in calculating ground-level concentrations.

Model output included concentration tables for the highest and second-highest concentrations at each receptor for the 1-hour, 3-hour and 24-hour averaging periods, in addition to the annual mean concentration at each receptor for each of the 5 years. Thirty-six receptors representing every ten degrees on a compass were located on each ring surrounding the source. Rings were chosen for every one kilometer interval from the plant out to a distance of 10 kilometers. From that point, rings representing intervals of 2.5 kilometers were chosen out to a distance of 25 kilometers.

The increase in emissions were modeled to determine the additional impact on the ambient air in the vicinity of the plant. Predicted additional concentrations of $SO_2$, $NO_2$ and TSP resulting from the reconversion were determined out to 25 kilometers (16 miles) from the plant. The following section discusses the results of the modeling.

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## 5. Results

The predicted increase to ground-level concentrations resulting from the operation of C. P. Crane on coal were estimated utilizing EPA's single-source CRSTER model. Inputs used consisted of source parameters including the increase in emission rates. The model was then run using 5 years of meteorological data recorded at BWI and Dulles International Airports. The predicted increases to the $SO_2$, $NO_2$ and TSP ambient concentrations were then added to the highest concentration recorded during 1978 and the first half of 1979. This value was then compared to the corresponding NAAQS which would give a very conservative estimate of whether or not the plant would cause or (in the case of particulates) contribute significantly to a violation of the NAAQS.

### 5.1 Predicted Increase to Ambient $SO_2$ Levels

The maximum predicted increase to the ambient $SO_2$ levels using meteorological data from the years 1964-1968 are summarized in Table 5-1. EPA guidelines recommend using the highest, second-highest concentrations when comparing short-term averages with the NAAQS and PSD increments.(17) Table 5-1.1 lists the predicted increase for each of the averaging times, the PSD increments and the percent of increment consumed. Those values noted by the asterisks are most likely overestimations of pollutant concentrations.(18) The overestimations are due to the way the CRSTER model treats calm wind conditions. The model assumes a persistent wind direction based on the previous non-calm reporting hour and a low wind speed of 1.0 meters per second. Also, if the low wind speeds should occur during the mid-day period during the late spring or early summer when the sun is high in the sky, very unstable stability classifications will be calculated. Thus, if a series of calm conditions should

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TABLE 5-1 Predicted Increase to Ambient $SO_2$ Levels

| | 1964 | 1965 | 1966 | 1967 | 1968 |
|---|---|---|---|---|---|
| Annual Average | 4.5 (-,10,7) | 4.5 (-,10,9) | 4.0 (-,11,7) | 4.1 (-,11,5) | 4.9 (-,10,6) |
| Highest 24-Hour Ave. | 80.5 (181,10,2)* | 71.5 (251,9,3) | 135.0 (175,15,2) | 67.1 (241,10,3) | 88.0 (157,20,2)* |
| | (76.4 (212,19,2)) | | | | (74.1 (198,12,3)) |
| 2nd Highest 24-Hour Ave. | 68.1 (198,10,2) | 63.7 (225,9,3) | 71.9 (236,14,2) | 59.7 (275,9,3) | 61.2 (183,9,2) |
| | (62.1 (96,27,3)) | | | | |
| Highest 3-Hour Ave. | 463.6 (125,27,1) | 319.5 (112,19,2) | 433.2 (174,6,1) | 341.0 (243,9,3) | 658.2 (157,20,2)* |
| | | | | | (500.8 (221,25,1)) |
| 2nd Highest 3-Hour Ave. | 299.1 (172,5,2) | 273.8 (185,33,3) | 295.7 (175,15,2) | 265.9 (137,4,2) | 346.8 (228,19,2) |
| | | | | | (323.9 (187,26,1)) |

Note: Units - $\mu g/m^3$ (Julian Day, Receptor Direction in ten's of degrees, Receptor Distance in kilometers)

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TABLE 5-1.1 Consumption of PSD Increments for $SO_2$

| | Predicted Increase | PSD Increment | Percentage |
|---|---|---|---|
| Annual | 5 | 20 | 25% |
| 2nd Highest 24-Hour | 72 | 91 | 79% |
| 2nd Highest 3-Hour | 347* (324) | 512 | 68%* (63%) |

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occur during this time period, a series of persistent meteorological conditions will be generated leading to the overestimation of the pollutant concentrations. To determine a more reasonable estimate, the models were run again for 1965 and 1968 minus the day in question. The new values are shown in parenthesis.

The largest increase to the annual average is approximately 5 $\mu g/m^3$. This increase will not lead to violation of the NAAQS and represents a 25% consumption of the annual PSD increment. This is a conservative estimate since the plant was modeled at maximum load throughout the year.

The highest, second-highest increase to the 24-hour $SO_2$ level was predicted during the year 1966. The value was approximately 72 $\mu g/m^3$ and it occurred 2 km from the plant. The highest values for the 24-hour average all occurred approximately 2-3 km from the plant under light to moderate wind speeds with relatively persistent wind direction and unstable atmospheric conditions. The predicted increase should not cause any violation of the 24-hour $SO_2$ NAAQS and would consume approximately 79 percent of the 24-hour $SO_2$ increment. Although a significant portion of increment is consumed near the plant, its impact decreases rapidly with distance with only 50 percent or less of the increment being consumed at distances greater than 6 km.

The highest, second-highest increase to the 3-hour $SO_2$ level is approximately 347 $\mu g/m^3$. However, this is most likely an overestimation due to reasons explained earlier. A more reasonable estimate is 324 $\mu g/m^3$ and this value is still substantially greater than the values predicted in the other 4 years. The maximum increase again occurs very close to the plant within approximately 1-2 kms and under unstable atmospheric conditions. As was the case for the over averaging times, the predicted increase should not violate the

NAAQS. Approximately 63 to 68 percent of the 3-hour $SO_2$ increment would be consumed depending which highest, second-highest concentration is used. Again increment consumption decreases rapidly with distance, with less than 50% of increment consumed at distances greater than 4 kms.

5.2 Predicted Increase to the Ambient TSP Levels.

The predicted increases to the ambient TSP levels are shown in Table 5-2. All of the values are below the significant levels defined by EPA, therefore no significant impact is anticipated in the nonattainment area nor anywhere else.

5.3 Predicted Increases to Ambient $NO_2$ Levels.

The predicted increases to $NO_2$ levels are shown in Table 5-3. It can be readily seen that predicted increase to the $NO_2$ annual average is very small, less than 3 $\mu g/m^3$. This increase should not cause any violation of the NAAQS for $NO_2$.

## 6. Conclusions

The following are conclusions drawn from this modeling study of the reconversion of the C. P. Crane Station.

* Predicted increase to ambient levels of $SO_2$, TSP and $NO_2$ indicates the NAAQS will not be violated.

* The predicted increase to ambient TSP levels in the Baltimore Nonattainment Area are not significant.

* The PSD increments for $SO_2$ and TSP will not be exceeded.

* Consumption of the PSD increments will be relatively small except within a small area in close vicinity to the plant.

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TABLE 5-2 Maximum Predicted Increase to Ambient TSP Levels.

| | 1964 | 1965 | 1966 | 1967 | 1968 |
|---|---|---|---|---|---|
| Annual Average | <.1 | <.1 | <.1 | <.1 | <.1 |
| Highest 24-Hour Average | .7* (.6) | .6 | 1.1 | .6 | .7 (.5) |
| 2nd Highest 24-Hour Average | .6* (.5) | .5 | .6 | .5 | .5 |

Note: Units - $\mu g/m^3$

Date and Location are the same as those shown for $SO_2$.

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TABLE 5-3 Maximum Predicted Increase to Ambient $NO_2$ Levels.

| | 1964 | 1965 | 1966 | 1967 | 1968 |
|---|---|---|---|---|---|
| Annual Average | 2.7 | 2.5 | 2.2 | 2.2 | 2.7 |

Note: Units - $\mu g/m^3$

Location is the same as shown for $SO_2$ and TSP.

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## APPENDIX A

The $SO_2$ concentrations recorded at stations located in Maryland State Air Quality Control Area III, using either the flame photometry method or pulse fluorescence method for 1978, are shown in Table A-1. The table contains the following: Station's name, location, the annual average, the 24-hour maximum and second-highest averages, and the 3-hour maximum and second-highest averages.

### TABLE A-1

### AMBIENT $SO_2$ LEVELS

| | Annual | 24-Hour | | 3-Hour | |
|---|---|---|---|---|---|
| | | Max. | 2nd Highest | Max. | 2nd Highest |
| Anne Arundel | | | | | |
| Glen Burnie | 19 | 138 | 85 | 384 | 261 |
| Linthicum | 30 | 103 | 96 | 314 | 244 |
| Riviera Beach | 28 | 139 | 123 | 340 | 288 |
| Baltimore City | | | | | |
| Airmon 1 | 18 | 117 | 83 | 244 | 244 |
| Airmon 2 Calvert & 22nd | 9 | 68 | 50 | 122 | 104 |
| 200 Read St. | 47 | 141 | 135 | 296 | 279 |
| Sun & Chesapeake | 44 | 257 | 113 | 506 | 357 |
| Baltimore County | | | | | |
| Essex | 20 | 126 | 110 | 235 | 218 |
| Garrison | 4 | 64 | 52 | 165 | 157 |
| Towson Trailer | 27 | 220 | 196 | 375 | 348 |

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TABLE A-2

Quarterly Maximum 24-Hour $SO_2$ Averages for 1979

| | First Quarter | Second Quarter |
|---|---|---|
| **Baltimore City** | | |
| Airmon 1 | 79 | 79 |
| Airmon 2 Calvert & 22nd | 131 | 52 |
| 200 Read St. | 210 | 105 |
| Sun & Chesapeake | 104 | 52 |
| **Baltimore County** | | |
| Essex | 105 | 26 |
| Garrison | 79 | 0* |
| Padonia | 105 | 52 |
| **Anne Arundel County** | | |
| Glen Burnie | M | 79 |
| Linthicum | | 157 |
| Riviera Beach | | 26 |

M = Missing

* Listed value is believed to be inaccurate.

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# APPENDIX B

## TABLE B-1

## Annual Mean $NO_2$ Concentrations for 1978

| | |
|---|---|
| **Anne Arundel County** | |
| Glen Burnie | 60 |
| Linthicum | 49 |
| Riviera Beach | 21 |
| **Baltimore City** | |
| Airmon 1 | 40 |
| Airmon 2 | 40 |
| 200 Read St. | 96 |
| Sun & Chesapeake | 58 |

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## APPENDIX C

The total suspended particulate concentrations recorded in 1978 at stations located in Maryland State Air Quality Control Area III using a Hi-Vol sampler are presented in Table C-1. The table contains the name of the station, location, the annual geometric mean, and the 24-hour maximum and second-highest averages.

### TABLE C-1

### AMBIENT TSP LEVELS

| Station | Geometric Mean | 24-Hour Max. | 24-Hour 2nd Highest |
|---|---|---|---|
| **Anne Arundel County** | | | |
| Glen Burnie | 62 | 215 | 151 |
| Harwood | 37 | 82 | 76 |
| Linthicum | 51 | 126 | 111 |
| Odenton | 43 | 107 | 86 |
| Riviera Beach | 52 | 132 | 98 |
| St. Johns | 43 | 83 | 78 |
| **Baltimore City** | | | |
| Airmon 2 - Calvert & 22nd | 64 | 153 | 105 |
| Fire Dept. HQ. | 74 | 192 | 192 |
| Fire Dept. #10 | 115 | 355 | 311 |
| Fire Dept. #22 | 85 | 228 | 213 |
| Fire House 50 | 119 | 304 | 302 |
| Fire House 57 | 78 | 306 | 224 |
| Ft. McHenry Nat. Park | 88 | 263 | 213 |
| NE Police Station | 44 | 110 | 95 |
| NW Police Station | 63 | 158 | 149 |
| Patapsco STP | 94 | 256 | 217 |

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TABLE C-1 (cont)

AMBIENT TSP LEVELS

| Station | Geometric Mean | 24-Hour Max. | 24-Hour 2nd Highest |
|---|---|---|---|
| Baltimore City (cont.) | | | |
| SE Police Station | 72 | 218 | 202 |
| SW Police Station | 61 | 207 | 195 |
| Baltimore County | | | |
| Catonsville | 45 | 153 | 100 |
| Chesapeake Terr. Elem. | 59 | 187 | 156 |
| Cockeysville Police | 45 | 121 | 100 |
| Edgemere Fire Station | 57 | 146 | 130 |
| Essex | 59 | 139 | 127 |
| Garrison | 42 | 82 | 82 |
| Lansdowne | 56 | 226 | 120 |
| Middle River-Martin | 38 | 108 | 92 |
| Sollers Point Voca. | 69 | 167 | 139 |
| Towson Trailer | 46 | 121 | 101 |
| Carroll County | | | |
| Westminster | 40 | 130 | 95 |
| Harford County | | | |
| Bel Air | 51 | 211 | 120 |
| Howard County | | | |
| Simpsonville | 41 | 88 | 87 |

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TABLE C-2

Quarterly Maximum 24-Hour TSP Averages for 1979

| | First Quarter | Second Quarter |
|---|---|---|
| Anne Arundel County | | |
| Glen Burnie | 91 | 120 |
| Harwood | 147 | 93 |
| Linthicum | 86 | 113 |
| Odenton | 59 | 85 |
| Riviera Beach | 69 | 114 |
| St. Johns | 71 | 95 |
| Baltimore City | | |
| Airmon 2 | 135 | 138 |
| Fire Dept. HQ | 223 | 277 |
| Fire Dept. #10 | 292 | 275 |
| Fire Dept. #22 | 257 | 197 |
| Fire House 57 | 182 | 163 |
| Ft. McHenry Nat. Park | 604 | 146 |
| NE Police Station | 103 | 97 |
| NW Police Station | 136 | 201 |
| SE Police Station | 172 | 226 |
| SW Police Station | | 88 |
| Baltimore County | | |
| Catonsville | 68 | 96 |
| Chesapeake Terr. Elem. | 80 | 80 |
| Cockeysville | 117 | 97 |
| Edgemere Fire Station | 132 | 162 |

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TABLE C-2 (cont.)

Quarterly Maximum 24-Hour TSP Averages for 1979

| | First Quarter | Second Quarter |
|---|---|---|
| Baltimore County (cont.) | | |
| Essex | 113 | 123 |
| Garrison | 70 | 115 |
| Herford | | 83 |
| Lansdowne | 97 | 118 |
| Middle River-Martin | 124 | 129 |
| Padonia | 105 | 111 |
| Sollers Point Voca. | 149 | 132 |
| Carroll County | | |
| Westminster | 98 | 101 |
| Harford County | | |
| Bel Air | 85 | 101 |
| Howard County | | |
| Simpsonville | 71 | 87 |

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## APPENDIX D

### Description of the Single-Source (CRSTER) Model

The Single-Source (CRSTER) Model was developed by the Environmental Protection Agency and is part of their User's Network for Applied Modeling of Air Pollution (UNAMAP) Package. Below is a brief description of the model taken from the User's Manual For Single-Source (CRSTER) Model, EPA, July 1977. (A more detailed description is contained in the Manual).

The Model is based on a modified version of the Gaussian plume equation. The model assumes a continuous emissions source, steady-state downwind plume, and a Gaussian distribution for concentrations of pollutants within the plume in both the crosswind and vertical directions. Plume rise is estimated using Briggs plume rise equations for hot, buoyant plumes.

As the plume expands due to eddy diffusion, it is diluted and transported downwind by the mean wind. The rate of expansion is characterized by a series of empirical dispersion coefficients which are dependent on the stability of the atmosphere, as determined in studies made by Pasquill and Gifford, and reported by Turner. The modifications made to the basic Gaussian plume equation are the following: i) trapping of the plume between the top of the mixing layer and the ground surface, ii) uniform vertical mixing of the plume in the mixing layer beyond a critical distance, and iii) exclusion of any ground-level impacts from plumes released above the mixing layer.

The input data requirements can be broadly classified as source factors, site factors, and meteorological factors. Source factors are related to the location and operating characteristics of the pollutant emission sources, while site factors include the effect of terrain and the location of sensitive receptors relative to the emission sources. Meteorological factors represent the dispersion properties of the lower atmosphere at any particular time in terms of the joint occurrence of specific conditions of atmospheric stability, mixing depth and winds.

The Model provides a representation of the time-averaged spatial distribution of pollutant concentrations. The concentration tables printed out by the Model include tables for each averaging time of the highest and second highest concentrations at each receptor point, and tables of the 50 highest concentrations for the entire year for each averaging time (except the annual).

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1. Guideline on Air Quality Models, EPA-450/2-78-027, QAQPS. No. 1.2-080, April 1978, p 20.

2. 40 CFR 50.4-.7 NAAQS for $SO_2$, $NO_2$ and TSP.

3. COMAR 10.18.04.01-.04 MD State Emission Limits.

4. Maryland Register, February 22, 1980, p 347.

5. 40 CFR 51.24 (2) PSD, Def. of Modification.

6. Docket Nos. OFU-038 and OFU-039, June 30, 1975.

7. 40 CFR 51.24(2)(c)+(d) PSD, Def. of Modification (Exemption).

8. 40 CFR 51.24 PSD Regulations.

9. 44 FR 51924 Proposed Changes to PSD Regulations.

10. 40 CFR 5124(c) PSD Increments.

11. 40 CFR 81 Subpart C, Section 107 Attainment Status Designations.

12. 40 CFR 5 Appendix S Significant Impact on Nonattainment Area.

13. Maryland State Yearly Air Quality Data Report 1978, State of Maryland OHMH, Environmental Health Administration, March 1979. (also 1st and 2nd Quarters of 1979)

14. Ibid., 13.

15. Air Pollution, Stern, A. C., Third Edition 1976, pp. 55-60.

16. Guideline on Air Quality Models, EPA-450/2-78-027, QAQPS, No. 1.2-080, April 1978, p 32.

17. Ibid., 16, p 8.

18. User's Manual For Single-Source (CRSTER) Model, EPA-450/2-77-013, July 1977, p. 2-31.

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APPENDIX 3

DESIGN, SPECIFICATIONS AND GENERAL OPERATING DESCRIPTION

FABRIC FILTER FLYASH-COLLECTING DEVICE (ENVIROTECH)
PROPOSED FOR INSTALLATION AT CHARLES P. CRANE GENERATING STATION

Design Information

| | |
|---|---|
| Type: | Buell Model No. 10-522-12-35 |
| Overall Dimensions: | 87'-8"W x 133'-9"L x 76'-0"H |
| Flue Gas Flow: | 835,000 ACFM at 300°F |
| Air/Cloth Ratio: | 1.98:1 |
| No. of Compartments: | 10 |
| No. of Bags/Compartment: | 522 |
| Size of Bags: | 12" Diameter x 35' |
| Bag Material: | Fiberglass with Acid-Resistant Coating |
| Cleaning Method: | Reverse Air |
| Performance: | Guaranteed 0.008 gr/ACF |

Equipment Description

The following numbered items describe one (1) fabric filter dust collector.

1. Fabric Filters

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a. Casings

Compartment walls, dividing partition walls, roof and tube sheet will be constructed of ASTM A-36 steel plate of 3/16" thickness. Each compartment will be designed for ± 30" W.C. design pressure. Adequate stiffeners will be provided to withstand the design pressure, wind, seismic, live, dust and snow loadings. Each compartment will have three (3) access doors at the tube sheet level and three (3) at upper bag suspension level. All doors will be quick-opening, interlocked access doors.

b. Hoppers

Each fabric filter compartment will be furnished with 1/4" thickness ASTM A-36 steel, welded construction hopper. All hoppers will be suitably reinforced to carry loads applied by

flyash. The hopper valley angles will slope a minimum of 55° measured from the horizontal. Each hopper will be provided with a 12", 150 lb. ANSI flanged discharge opening at the bottom of the hopper for connection to the dust removal system. Each hopper will be equipped with vibrators, modular electric heaters, two (2) capped 4" poke holes, four (4) strike plates, and nuclear type level indicator. One (1) 20" diameter quick-opening, interlocked access door will be provided.

c. Internal Walkways

Internal walkways will be the Buell standard for compartmental fabric filters. Internal walkways will be provided at the tube sheet level and the bag suspension level. Tube sheet level walkways will be flat and will be incorporated into the tube sheet. Upper level walkways will utilize grating and toe plate.

2. Bags*

a. Bag Filter Parameters

| | |
|---|---|
| No. of Compartments | 10 |
| No. of Bags per Compartment | 522 |
| Total Number of Bags per Fabric Filter (includes 10% spare) | 5,742 |

*Bags should be precoated with lime or flyash before start-up. About 1 lb. of coating material per 10 square feet of bag area.

3. Valves and Operators

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a. Inlet and Outlet Valves

Each compartment will have two (2) inlets and two (2) outlets, 66" diameter poppet type isolation valves. Each poppet valve will have valve plate, valve shaft of cold-rolled steel, shaft guides, spiders, and packing glands. Design velocity of these poppet dampers is 1758 FPM (all compartments on line) and 2198 FPM (net defined as [2] compartments out of service). These valves are required to be closed for cleaning and maintenance activities only. Reinflation barrel will be included with outlet poppet valves.

b. Reverse Air and Reverse Air Relief Valves

The reverse air system has been designed to clean the bags with a volume of 92,044 CFM. Sixty-inch diameter poppet type reverse air valves (two per compartment) and reverse air relief valves

(two per unit) will be furnished. This volume can be adjusted to reach the proper cleaning level. Each reverse air poppet valve is required to be closed during normal operation and maintenance activities.

The purpose of a reverse air relief valve is to dump air back into the outlet manifold when no compartment is cleaning. This ensures near-steady state conditions so that reverse air fans will not operate at near zero flow conditions.

c. Bypass Isolation Valves

BG&E intends to bypass the fabric filter as a result of excessive temperature (above 500 F), insufficient temperature (below 240 F), excessive pressure or boiler fuel trip-out, start-up and oil-burning conditions. If, for example, an abnormal condition caused a pressure drop approaching design limits, then the bypass damper would be activated to relieve the situation thus minimizing the impact on the I.D. fans. When bypassing the fabric filter (e.g. start-up) the existing precipitators will be energized for particulate removal.

One (1) double parallel louver type zero leakage damper will be provided.

All above valves will have pneumatic operators with solenoids, flow control valves and limit switches.

4. Reverse Air Fan and Motor

One (1) reverse air fan, Model No. 6000 RT Chicago Blower, or its equivalent, with arrangement 8S1, running at 1180 RPM requiring 276 BHP at 300 F at sea level and 12" W.G. will be provided.

5. Fluework

Inlet, outlet, reverse air manifold and bypass duct will be furnished. All fluework will be fabricated from 3/16" A-36 steel plate, suitably reinforced with adequate stiffeners.

6. Electrical Controls and Motor Control Center

Electrical controls will include:

a. Motor Control Center

1) Size 1 FVNR Combination Starters (Hopper Vibrators)
2) Size 2 FVNR Combination Starters (Hopper Heaters)
3) Size 3 FVNR Combination Starters (Damper Blowers)
4) 120 Volt Distribution Transformer and Panel

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b. Fabric filter control damper with control panel includes programmable controller, recorders, pressure indicators, lights and switches.

c. All relays, switches and other hardware necessary to operate the fabric filter.

7. Expansion Joints

Expansion joints will be furnished for reverse air manifolds. Expansion joints will be Series 300, Style 8400 Garlock or their equivalent. Any expansion joint needed between customer-supplied duct and Buell-supplied inlet and outlet manifold will be supplied by others.

8. Access Facilities

Stairs, platforms and walkways will be furnished for proper access.

9. Slide Plates

Seventeen (17) slide plates and suitable attachment hardware will be provided to allow unrestricted but controlled and equalized expansion of the equipment from an identified anchor point. The arrangement will, also, provide for complete recovery of movement due to normal thermal contractions.

10. Safety Key Interlock System

Fabric filter will be equipped with a sequential key interlock system to prevent access into on-line compartments. The interlocks will be manufactured by Kirk or its equivalent.

Performance Guarantees

1. Collection Efficiency

Based upon the conditions specified and with those instructions as issued by Buell, Buell guarantees that each fabric filter system will collect 99.58% by weight of the suspended solids contained in the gases entering the fabric filter; however, an outlet loading of 0.003 gr/ACF shall constitute fulfillment of this guarantee with 8 compartments in service, with one compartment out of service for maintenance and one compartment in the cleaning mode.

Guarantee fulfillment is to be determined by a test to be made in accordance with EPA test methods as described by EPA in the Codes of Federal Regulations, Title 40, Protection of Environment, Part 60, revised as of July 1, 1978.

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2. Opacity

Buell guarantees, during the performance testing time period that the particulate opacity of emissions from the fabric filter, under normal operating conditions, will be no visible emission (7% opacity or less) except during start-up and initial operations. This guarantee does not apply when abnormal process conditions yield abnormal particulate size distribution or abnormal particulate quantities. Inasmuch as the fabric filter can collect only particulates present at the inlet, Buell cannot guarantee the opacity of nonparticulates, such as condensibles, or the opacity of particulates formed after the fabric filter. Determination of opacity shall be by Lear Siegler opacity monitors, or their equivalent, located in the stack.

3. Bag Replacement

Buell will replace any failed bag, originally supplied in the fabric filter, for three calendar years from date of initial installation. This guarantee excludes failures due to improper operation or maintenance of the fabric filter. Bag replacement is voided if the bags are subject to flyash from oil burning or to temperatures outside range of 240 F to 500 F.

4. Pressure Loss

Buell guarantees that during cold gas pressure test the pressure shall not drop more than 1" W.G. from the initial test pressure during an interval of one (1) minute. Test procedures and methods will be as described in Fabric Filter Compartment Leakage Testing Procedure.

Operating Features

1. Bag Cleaning Cycle

The bag cleaning system employs reverse air flow. The design basis for the reverse air flow rate will be 1.75 FPM. The resultant required flow rate is 92,044 ACFM.

The Buell bag cleaning control system will incorporate a programmable controller in which all operational events can be varied over extremely wide ranges. These events will include valve operational time, null periods, reverse air cleaning events, valve operational overlaps (if desired) and transcompartment periods.

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A typical bag cleaning cycle is expected to be:

a. Compartment ready to clean; outlet valve closes (7 seconds).

b. Adjustable null period begins (typically 15 seconds).

c. Reverse air valve opens (7 seconds).

d. Reverse air cleaning event begins (typically 30 seconds).

e. Reverse air valve closes (7 seconds).

f. Adjustable null period begins (typically 90 seconds).

g. Reinflation barrel opens to reinflate the bags to prevent popping (20 seconds).

h. About 8 seconds after the reinflation barrel has opened, outlet valve opens (7 seconds).

When the compartment has been cleaned and returned to service, an adjustable period follows between compartment cleaning, typically 120 seconds.

The typical complete cleaning cycle for ten (10) compartments would be approximately 50 minutes.

Bag cleaning may be initiated on either a timed cycle or on pressure differential.

2. Bag Hanging Method

The method of bag support and attachment will utilize the Buell bag tensioning device wherein bag replacement, adjustment and/or tensioning can be accomplished in minimum time. All bag attachment hardware is reusable.

The method of bag handling is as follows:

a. The limp bag with cap installed is raised and connected to the "J" hook incorporated in the Buell tensioning device mechanism.

b. The limp bag, now connected at the top, is fitted over the bag thimble at the tube sheet level. The bag is secured by a quick release bag clamp and preliminarily tensioned to a "zero" slack condition.

c. Proper bag tension is insured by utilizing the Buell bag tensioning device. No measuring or additional adjustment is required due to the Buell spring lever mechanism.

Rows of bags are supported through rows of channel beams structurally connected to the fabric filter casing.

3. Operating Modes of Dampers

| Damper | Normal Operating | Compartment During Cleaning | Fabric Filter Start-Up | Compartment During Maintenance |
|---|---|---|---|---|
| Pneumatic Inlet Poppet Valves | Open | Open | Closed | Locked Closed |
| Pneumatic Outlet Poppet Valves | Open | Closed | Closed | Locked Closed |
| Pneumatic Reverse Air Poppet Valves | Closed | Open | Closed | Locked Closed |
| Pneumatic Reverse Air Relief Butterfly Valves | Open | Closed | Closed | Locked Closed |
| Double Louver Bypass Isolation Valves | Closed | Closed | Closed | Closed |

4. Reinflation of Bags

Bags are reinflated by automatic opening of reinflation barrel included with outlet poppet valves. This barrel will provide gentle reinflation of bags to prevent "bag popping" and subsequent potential of early failure.

Installation of Induced-Draft Fans

To compensate for the additional pressure drop caused by the Fabric Filter Flyash-Collecting Device (bag house), two (2) induced-draft (I.D.) fans will be added to each unit. This will allow balanced draft operation. Although a necessary ancillary to the installation of the

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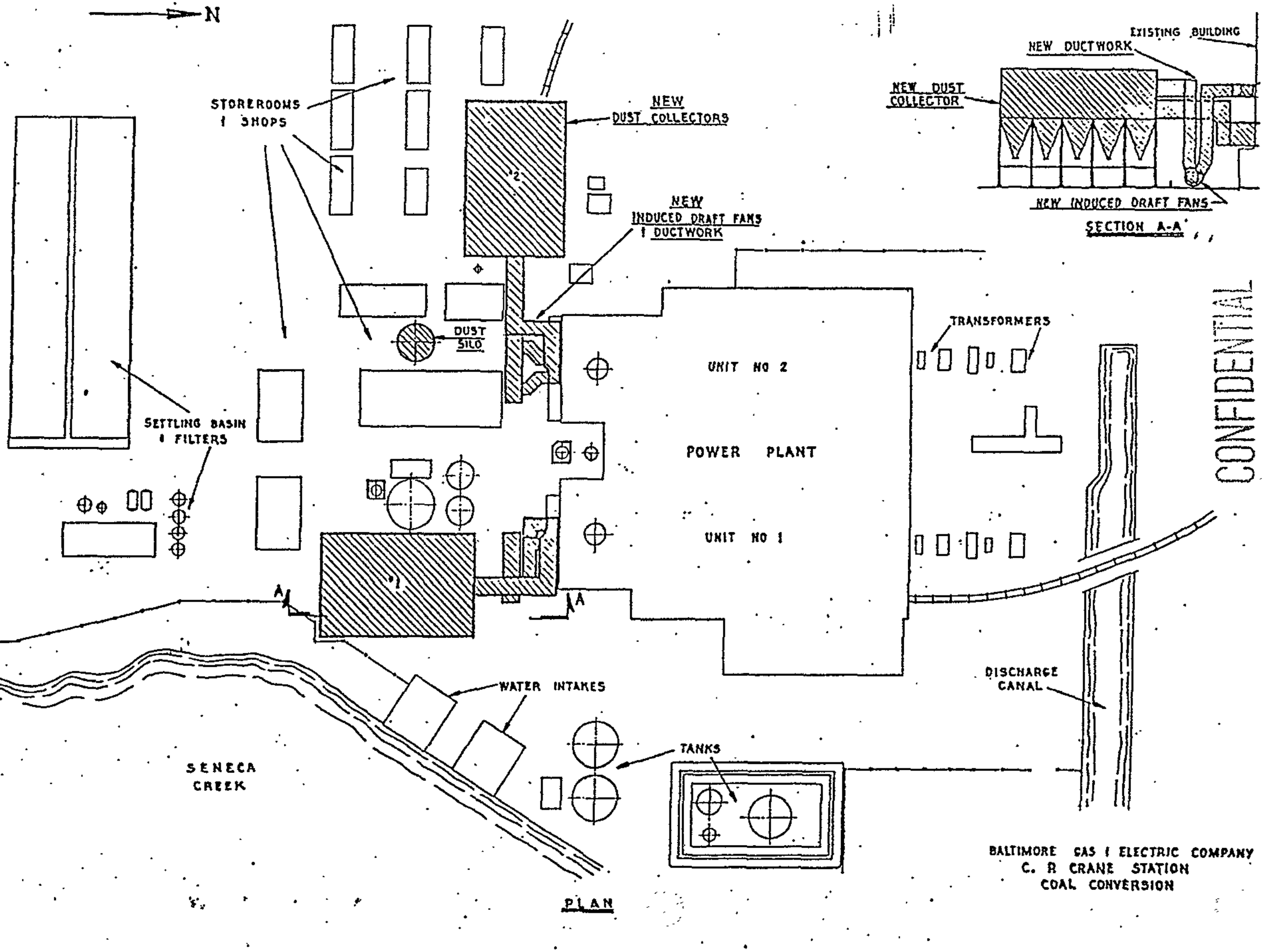
bag house, the final and detailed specifications for this duct work have not been formulated at this time. Those structures, although necessary to the installation of the bag house, do not themselves affect the quality of emissions. If it is determined that any such details and specifications are necessary to the consideration of the Application, they will be supplied within ninety (90) days of the filing hereof.

See Illustration 1 attached showing proposed location of structures in relation to existing plant.

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BALTIMORE GAS & ELECTRIC COMPANY
C. R CRANE STATION
COAL CONVERSION

APPENDIX 4

DESCRIPTION OF CHARLES P. CRANE
OPERATION AND COAL HANDLING

## Boiler

The Charles P. Crane plant consists of two semi-outdoor pressurized boilers operating at subcritical pressure and fired by four 10-ft. diameter horizontally-opposed cyclone furnaces. It is designed for a maximum continuous rating of 1,357,000 pounds per hour of steam at 2475 psig and 1050 F at the superheater outlet, with single reheat to 1000 F. There are two forced-draft fans, and each fan supplies air for one pair of cyclones. Induced-draft fans will be installed to compensate for the pressure drop caused by installation of the Fabric Filter Flyash-Collecting Device. (See Illustration A attached)

Total combustion air normally is maintained in the 110-115 percent range. If excess air is too high, the slag tends to chill and will not tap freely, and if it is too low, iron will separate from the coal and deposit in the cyclone. As load is reduced, the slag also tends to become more viscous and the furnace tap-hole opening becomes smaller.

## Turbine Generator

The 192,000 kw reheat-type, tandem-compound, triple-flow turbine is designed for 2400 psig, 1050 F throttle conditions and is provided with 23-inch long last-stage buckets. The generator, rated 224,000 kV at 45 psig hydrogen pressure, is of conductor-cooled design with hydrogen-cooled rotor windings and oil-cooled stator windings.

## Coal Handling

Coal for the plant arrives by rail, is unloaded by a rotary car dumper and delivered to the lot storage pile by a belt-conveyor system. A portion of the storage pile is located over reclaiming hoppers and constitutes an "active" storage pile from which coal is automatically conveyed to the four silos in the plant.

After delivery to the plant silos, coal flows from each silo to its associated cyclone by means of a volumetric coal feeder, a rotary seal and a coal crusher.

The rotary seal acts both as a furnace-gas seal and as a feeder to pass coal to the crusher. (See Illustration B attached.)

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Coal Pile Runoff

The industrial waste water treatment facilities installed in 1976 included a coal pile runoff control system. The runoff is pumped into the IWWT and is processed to meet Maryland State effluent standards and those of the Environmental Protection Agency. This includes reduction of suspended solids to below 30 PPM, the maintenance of pH between 6.0 and 9.0, and a reduction of iron to less than 1 PPM.

Coal Supply

Tests on 16 separate coals from Maryland and other states are now being run at Crane to determine the best base-line coal and the feasibility of other acceptable solid fuels. These will be burned either alone or in a mix with the base-line coal, and they include refuse-derived fuel. Until the test is completed, the precise mix available for permanent use will not be known in detail. However, the kinds of coals sought and the data already available on some of them indicate that there is available at this time at least one-base-line coal which meets all environmental and mechanical standards for use in the cyclone furnaces of the Crane generating station. It is also known that this coal is presently available to Baltimore Gas and Electric Company from a source capable of supplying all plant needs for over a period of at least 30 years. Once all tests have been made, there will be no difficulty in entering long-term supply contracts with producers under acceptable economic terms assuring adequate supply for the life of the plant. If further documentation is necessary, it will be furnished upon completion of the first portion of the test-burn now underway.

Fugitive Dust

The potential of fugitive dust from coal handling and storage can be variously controlled. A study of this area of possible environmental concern by Enviroplan has been commissioned by the Company and will be available for examination within sixty (60) days.

Coal Transportation

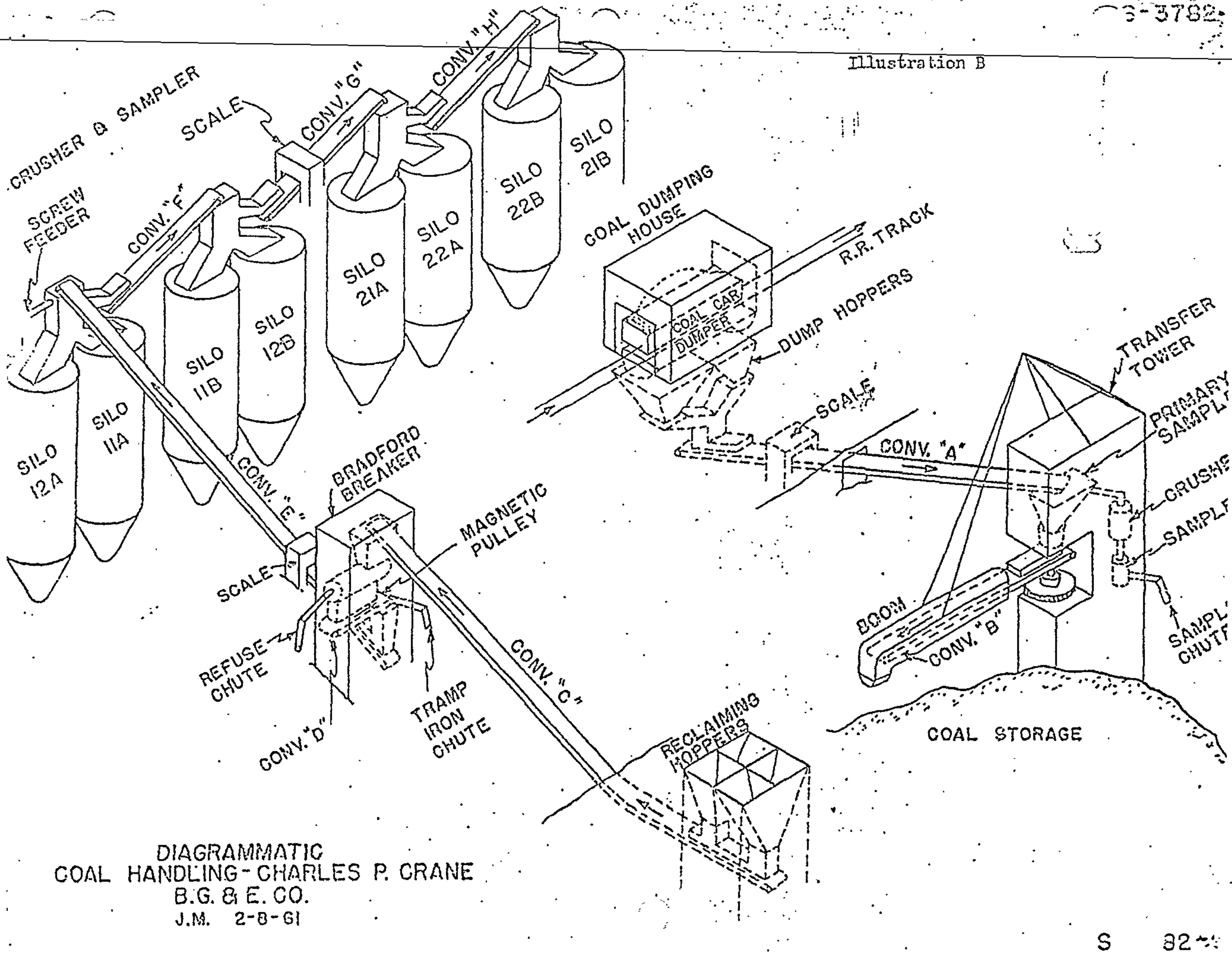
The conversion of the Crane units to coal would result in the delivery of two to three unit trains of coal (7,000 tons per train) per week.

Ash disposal would be off-site and would result in less than 20 trucks daily. It is assumed that 60 percent of the ash (bottom ash) is marketable, and 40 percent (flyash) will be transported to an off-site disposal area.

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Illustration B

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DIAGRAMMATIC
COAL HANDLING - CHARLES P. CRANE
B.G. & E. CO.
J.M. 2-8-61

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APPENDIX 5

## NEED FOR CRANE 1 AND CRANE 2 UNITS

Baltimore Gas and Electric Company plans for future generation needs are based upon current forecasts of load growth and the need to maintain the integrity of the system, pursuant to industry standards, operating practices and existing agreements between the Company and the Pennsylvania-Jersey-Maryland Interconnection (PJM).

The generation of Charles P. Crane is, therefore, not to be considered as a new source of electric power but rather the maintenance of an existing source generating the same volume of electricity at greatly reduced cost. Presently, the capacity reserve requirement of Baltimore Gas and Electric Company is 15 percent of the forecast annual peak. This requirement is necessary to provide for capacity outages and the uncertainties of forecasting as determined by PJM and allocated as the Company's equitable share.

As evident from the attached load and capacity forecasts, the loss of capacity represented by Crane Units Nos. 1 and 2 (at 192 MW each) would mean that Baltimore Gas and Electric Company would fall short of its capacity requirements within the next three (3) years.

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BALTIMORE GAS & ELECTRIC COM LOAD AND CAPACITY FORECAST

Summer Peak Conditions

| Year | Contract Load (MW) | Capacity Requirements* (MW) | With Crane Units: Installed Capacity (MW) | With Crane Units: Reserve (%) | With Crane Units: Excess (MW) | Without Crane Units: Installed Capacity (MW) | Without Crane Units: Reserve (%) | Without Crane Units: Excess (MW) |
|---|---|---|---|---|---|---|---|---|
| 1980 | 3800 | 4499 | 5010 | 32 | 511 | 4626 | 22 | 127 |
| 1981 | 3950 | 4559 | 5010 | 27 | 451 | 4626 | 17 | 67 |
| 1982 | 4110 | 4727 | 4959 | 21 | 232 | 4575 | 11 | -152 |
| 1983 | 4270 | 4911 | 4959 | 16 | 48 | 4575 | 7 | -336 |
| 1984 | 4430 | 5095 | 5579 | 26 | 484 | 5195 | 17 | 100 |
| 1985 | 4580 | 5267 | 5579 | 22 | 312 | 5195 | 13 | - 72 |
| 1986 | 4740 | 5451 | 5704 | 20 | 253 | 5320 | 12 | -131 |
| 1987 | 4900 | 5635 | 5646 | 15 | 11 | 5262 | 7 | -373 |
| 1988 | 5060 | 5819 | 6266 | 24 | 447 | 5882 | 16 | 63 |
| 1989 | 5230 | 6015 | 6266 | 20 | 251 | 5882 | 12 | -133 |
| 1990 | 5410 | 6222 | 6598 | 22 | 376 | 6214 | 15 | - 8 |
| 1991 | 5580 | 6417 | 6598 | 18 | 181 | 6214 | 11 | -203 |
| 1992 | 5750 | 6613 | 6746 | 17 | 133 | 6362 | 11 | -251 |
| 1993 | 5930 | 6820 | 7041 | 19 | 221 | 6657 | 12 | -163 |
| 1994 | 6110 | 7027 | 7041 | 15 | 14 | 6657 | 9 | -370 |
| 1995 | 6290 | 7234 | 7441 | 18 | 207 | 7057 | 12 | -177 |

Based on November, 1979 Expansion.

*Capacity requirement set by PJM Agreement for 1980-81; forecast at 15% reserve for later years.

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| IN THE MATTER OF THE APPLICATION OF BALTIMORE GAS AND ELECTRIC COMPANY FOR APPROVAL FOR THE MODIFICATION TO PERMIT THE USE OF SOLID FUEL AND THE INSTALLATION OF DUST-COLLECTING EQUIPMENT AT THE CHARLES P. CRANE GENERATING STATION NEAR CARROLL ISLAND ROAD IN SOUTHEASTERN BALTIMORE COUNTY, MARYLAND | * | BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND |
| | | Case No. 7443 |

* * * * * * * * * * *

APPLICATION BY BALTIMORE GAS AND ELECTRIC COMPANY
FOR INTERIM APPROVAL OF MODIFICATION PENDING
RESOLUTION OF PROPOSED CONDITIONS AND FINAL ORDER

Pursuant to Article 78, Section 54-H of the Annotated Code of Maryland, the Applicant, Baltimore Gas and Electric Company, on May 9, 1980 filed an Application for Approval of Modification to its Charles P. Crane Generating Station. The modifications detailed therein are to be made for the purpose of converting both Units 1 and 2 at the Crane Generating Station to the use of coal as a primary fuel. The proposed conversion includes installation of dust-collecting equipment, primarily bag-houses and ancillary structures.

Pre-filed testimony was submitted by both the Applicant and Power Plant Siting Programs of the Department of Natural Resources, and hearings were held, the last being on December 15, 1980.

Accompanying this testimony were certain proposed conditions of Power Plant Siting Programs. These have been addressed by the Applicant and Intervenors. Baltimore Gas and Electric Company, pending a negotiated resolution of those conditions which remain in dispute, has also requested a

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further possible hearing for the presentation of rebuttal testimony. Resolution of the suggested conditions, or others anticipated from Baltimore County People's Counsel, will not materially change or place in peril final approval of the conversion.

The most significant change to the Crane Plant will be the installation of bag-houses. Details of these structures have already been submitted to and approved by Air Quality Programs. However, if construction of them must await a final Order of the Commission, the projected start-up date of Summer, 1983 could be significantly delayed. Erection of the bag-house itself must begin by August of 1981. To meet that date work on fabric filter foundations must start no later than March 1, followed by structural steel supports.

Testimony has indicated, without significant reservation, that it is both environmentally and economically feasible to burn coal as a primary fuel at the Crane Plant (pre-filed direct testimony of Dr. Roig, page 2, question 6). The proposed conditions attached to that testimony are presently under concentrated discussion between Power Plant Siting Programs and the Applicant and will pose no permanent obstacle to completion of the conversion. Of the five proposed, only two are strongly questioned by the Applicant because of their potential adverse effect on operation.

Under the circumstances of this case, no rights of intervenors or the public would be prejudiced by the issuance of an Interim Approval of Modification under Article 43, Section 54-H. Such an Order would ultimately be superseded by a final Order embodying whatever conditions may be determined necessary.

Wherefore the Applicant respectfully requests that an Interim Order be executed pending final determination of the conditions necessary,

UNREDACTED

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permitting the Applicant, at its own risk, to proceed with foundation and steel erection for the bag-house structure at its Charles P. Crane Generating Station.

Respectfully submitted,

James A. Biddison, Jr.

W. Robert Buchanan

Charles A. Herndon, Jr.
17th Floor Gas and Electric Building
P.O. Box 1475
Baltimore, Maryland 21203
234-5995

Attorneys for
Baltimore Gas and Electric Company

cc: Mr. Ronald E. Hawkins
Mr. Frank J. Wasowicz
All Parties

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PUBLIC SERVICE COMMISSION
OF MARYLAND

ORDER NO. 65143 ; ENTERED: February 27, 1981

| | | |
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| IN THE MATTER OF THE APPLICATION OF BALTIMORE GAS AND ELECTRIC COMPANY FOR APPROVAL FOR THE MODIFICATION TO PERMIT THE USE OF SOLID FUEL AND THE INSTALLATION OF DUST-COLLECTING EQUIPMENT AT THE CHARLES P. CRANE GENERATING STATION NEAR CARROLL ISLAND ROAD IN SOUTHEASTERN BALTIMORE COUNTY, MARYLAND. | * | BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND<br><br>CASE NO. 7443 |

## INTERIM PROPOSED ORDER OF HEARING EXAMINER

Appearances:

Peter Max Zimmerman, for People's Counsel for Baltimore County.

Michael J. Scibinico, II, for the Maryland Power Plant Siting Program.

Charles A. Herndon, Jr. and W. Robert Buchanan, for Baltimore Gas and Electric Company.

During the course of proceedings in the above-captioned matter, Baltimore Gas and Electric Company, (Company) on December 18, 1980, filed an Application for Interim Approval of Modification Pending Resolution of Proposed Conditions and Final Order for permission to proceed with foundation and steel erection for the bag-house structure. The Company claims that if construction must await the Commission's final order, the projected start-up date of Summer 1983 could be significantly delayed and consequently, to meet the start-up date, foundations for the bag-house must start no later than March 1, 1981.

By letters dated January 16, 1981, the Company requested and was granted, as well as the other parties, opportunity to prepare and file a brief in reply to the initial briefs and in view of the time constraints, further requested a hearing

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on this Application for interim approval. Such hearing was held on January 23, 1981, in Baltimore, Maryland, at which time oral argument was presented.

The Company is of the opinion that the proposed preliminary recommendations submitted by the Power Plant Siting Program (PPSP), of the Maryland Department of Natural Resources, will pose no permanent obstacle and under the circumstances, no rights of intervenors or the public would be prejudiced by the issuance of an Interim Proposed Order approving the modification (construction of the bag-house structure), particularly since Air Quality Programs of the Maryland Department of Health and Mental Hygiene has reviewed and approved the details of the structure. The Company recognizes that any Interim Proposed Order authorizing the said modification and construction could ultimately be superseded by a final order and would be at the Company's own risk.

People's Counsel for Baltimore County had no objection to the Company's request. Similarly, Counsel for the Power Plant Siting Program did not oppose the issuance of a limited Interim Proposed Order and, in fact, stated that he is in the process of obtaining signatures of the several Secretaries of affected State agencies to a letter recommending that the requested authority be granted.

This proceeding is in accordance with the provisions of Section 54H, which, in part, states that, "An electric company may not commence any modification to an electric generating station after January 1, 1980, without prior approval by the Public Service Commission in accordance with the provisions of Sections 54A and 54B of this article...".

One of the provisions of Sections 54A and 54B allows affected State agencies and the local governing bodies 15 days after conclusion of the hearing to modify their initial recommendations. Because the hearings will not be concluded until February 6, 1981, upon the filing of reply briefs, a final order cannot be issued before the construction date of March 1, 1981. Thus, the question is one of

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practicality which can be answered under the broad powers conferred upon the Commission as embodied in Section 1,[1] particularly since none of other parties questioned the adequacy of the Company's plans for the bag house. Precedent for similar early authority was established in Case No. 6984 where by Order No. 63265, entered on August 3, 1978, the Commission, while remanding the case to a Hearing Examiner for resolution of certain issues raised on appeal, did grant to two joint electric company applicants a certificate of public convenience and necessity to enable the applicants to begin land acquisition for a transmission line.

In order for the Company to meet its schedule in providing service to the public and in expediting conversion to a less costly fuel, upon consideration I determine and conclude that the Company should be granted authority to begin the modification and construction of the bag-house structure. This granting of authority, however, should not be considered or construed in any way as deciding any of the issues and questions raised in this proceeding and shall possibly be subject to rescission, modification, and/or incorporation by and into a full final order of the Commission. In other words, the Company may proceed at its own risk, pending a final order.

IT IS, THEREFORE, this 28th day of January, in the year Nineteen Hundred and Eighty-one,

ORDERED: (1) That Baltimore Gas and Electric Company, at its own risk, is hereby permitted and authorized to commence the modification and construction of the bag-house structure at its Charles P. Crane electric generating station located in Baltimore County, Maryland.

(2) That this Interim Proposed Order of Hearing Examiner and the authorization granted in Ordered Paragraph (1) above, shall be subject to

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[1] Md. Ann. Code art. 78, (1980 Cum. Supp.).

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either rescission, modification, and/or incorporation by and/or into a final order of the Commission to be issued in this proceeding.

(3) That this Interim Proposed Order shall be and become final on February 27, 1981 unless an appeal is noted with this Commission by any party to this proceeding, as provided in Section 20(c) of The Public Service Commission Law, or unless the Commission exercises the provision of Section 86(d) of The Public Service Commission Law.

Frank J. Wasowicz

Frank J. Wasowicz
Hearing Examiner
Public Service Commission of Maryland

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OF MARYLAND



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PUBLIC SERVICE COMMISSION
OF MARYLAND

ORDER NO. _____; ENTERED: _____

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| IN THE MATTER OF BALTIMORE GAS AND ELECTRIC COMPANY FOR APPROVAL FOR THE MODIFICATION TO PERMIT THE USE OF SOLID FUEL AND THE INSTALLATION OF DUST-COLLECTING EQUIPMENT AT THE CHARLES P. CRANE GENERATING STATION NEAR CARROLL ISLAND ROAD IN SOUTH-EASTERN BALTIMORE COUNTY, MARYLAND. | * | BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND<br><br>CASE NO. 7443 |

PROPOSED ORDER OF HEARING EXAMINER

Appearances:

Thomas C. Gorak, Assistant People's Counsel.

Charles A. Herndon, Jr. and W. Robert Buchanan, for Baltimore Gas and Electric Company.

Michael J. Scibinico, II, for the Power Plant Siting Program, Department of Natural Resources.

Peter Max Zimmerman, Deputy People's Counsel for Baltimore County.

On May 9, 1980, Baltimore Gas and Electric Company ("B G & E" or the "Company" or "Applicant") filed with the Commission an application for approval of modifications to the Charles P. Crane Generating Station ("Crane") located in southeastern Baltimore County, Maryland. The proposed modification would allow B G & E to convert two generating units at Crane to use coal in lieu of oil as the primary fuel by the construction of dust-collecting equipment and auxiliary structures necessary for this purpose.

After newspaper publication of notice in Baltimore County and Baltimore City by the Company, a prehearing conference was held on July 30, 1980, in Towson, Baltimore County, Maryland, at which time the Power Plant Siting Program of the Maryland Department of Natural Resources, the People's Counsel

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for Baltimore County, and the Office of People's Counsel, Public Service Commission, were admitted as parties in this proceeding. The governing body of Baltimore County was invited to participate but declined to do so. After further newspaper publication of notice, evidentiary hearings were held on October 27 and 28, November 24 and December 15, 1980, in Towson, Maryland. All of the parties filed initial briefs on January 16, 1981, and the Company on February 6, 1981, filed a reply brief.

The Company, on December 18, 1980, filed an Application for Interim Approval of Modification Pending Resolution of Proposed Conditions and Final Order. Because the proceedings became protracted, the Company, on January 6, 1981, requested a hearing on its Application for Interim Approval of Modification. This was held on January 23, 1981, at which time the parties presented oral arguments. On January 28, 1981, the Hearing Examiner issued an Interim Proposed Order which became final on February 27, 1981, and was assigned Order No. 65143, wherein the Company was permitted and authorized to commence the modification and construction, at its own risk, of the bag-house structure, subject to rescission, modification, and/or incorporation by and into a final Order to be issued in this proceeding by the Commission.

Pursuant to the provisions of Section 54B of The Public Service Commission Law ("PSC Law"),[1] the Power Plant Siting Program ("PPSP") filed a letter dated January 19, 1981, and signed by the Secretaries of the six affected State agencies, recommending that a certificate be granted but subject to four final recommendations. The Baltimore County governing body did not submit any recommendations. In the initial Briefs, People's Counsel for Baltimore County and the Office of People's Counsel recommended a number of additional conditions for consideration.

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[1] Md. Ann. Code art. 78 (1980 Repl. Vol.).

The following Company witnesses testified: Chris H. Poindexter, Vice President of Engineering and Construction; John E. Ringsdorf, Jr., Supervisor of Plant Accounting Records; John M. Ross, Senior Buyer in the Purchasing and Stores Department - Fuels and Lubricants; Ronald W. Lowman, Principal Engineer and Supervisor of Mechanical Engineering Unit and also Project Director of the Crane coal conversion; and John B. Hattrup, Meteorologist with the Environmental Engineering Section of the Electric Generating Department. In addition, testifying on behalf of the Company was Dr. Howard M. Ellis, President of Enviroplan, Inc.

Dr. Randy A. Roig, PPSP Administrator of the Impact Assessment Program, testified. Also testifying on behalf of the PPSP were Dr. Jeffrey E. Weill, Senior Scientist in the Mechanics Department and Roger P. Brower, Associate Scientist, both in the Environmental Center of Martin Marietta Corporation. No one from the public attended any of the hearings.

Written initial comments on the application were submitted by the Maryland Departments of Transportation ("DOT"), Natural Resources ("DNR"), Economic and Community Development ("DECD"), Environmental Health Administration ("EHA") of Health and Mental Hygiene, State Planning ("DSP"), and Baltimore County indicating that the project is not inconsistent with their plans and programs. DECD, in supporting the application, further indicated that the conversion would have a positive effect on rate prices and that emission increases would not significantly impede future industrial expansion in the area, as the projected ambient air impacts would be localized and not in violation of the National Ambient Air Quality Standards ("NAAQS"). EHA suggested changes to the atmospheric dispersion model ("CRSTER") and stated that an adequate ambient air monitoring system will have to be placed around

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the generating station. DNR, through the Power Plant Siting Program, noted that several issues deserve more consideration, specifically the impacts from coal and ash dust sources resulting from transport, storage and disposal of the coal and flyash, and the CRSTER model utilized by the Company to determine atmospheric dispersion.

The parties agreed that the filing of any reply briefs on February 6, 1981, constituted the conclusion of these proceedings and hearings. All of the evidence presented has been carefully and fully reviewed and considered in deciding all of the issues.

## Discussion

This Application comes to the Commission in fulfillment of Section 54H of the PSC Law, effective July 1, 1979. Section 54H reads as follows:

> "§54H. Modification to electric generating station.
>
> (a) An electric company may not commence any modification to an electric generating station after January 1, 1980, without prior approval by the Public Service Commission in accordance with the provisions of §§ 54A and 54B of this article, except that:
>
> (1) Unless the Commission otherwise orders, the application shall be filed not less than 180 days prior to the date at which the modification is to commence, and the Commission shall render its decision not later than 150 days after the filing of the application.
>
> (2) The applicant shall provide all information relating to the modification, including detailed plans and specifications, and all information relating to the impact of the modification on air quality, to the Commission and to the Department of Health and Mental Hygiene, not later than 180 days prior to the date on which any modification is to commence.

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In this section, "modification" means any physical alteration or replacement of, or other change to, the facilities at an electric generating station, or the change in the fuel used by the station, which could result in any change of air emissions from the station or from any generating unit of the station. The term "modification" does not include routine maintenance or repairs of the facilities of an electric generating station or any change which would result in ambient air quality levels less than or equal to those levels which were a basis for the issuance of a certificate of public convenience and necessity previously issued under § 54A of this article.

(b) Notwithstanding the provisions of this section, modifications to electric generating stations involving the short-term inability to obtain the type of fuel normally used by the station shall be subject to Article 43, § 698A."

The essential facts are not in dispute. The PPSP determined the proposed conversion at Crane to be economically and environmentally feasible, and as noted before, the Secretaries of the six State agencies, therefore, recommended approval, subject to four conditions to which the Company had no objection. Public Service Commission People's Counsel adopted the position of PPSP but raised concerns over rate-making issues surrounding the proposed project modifications. Similarly, People's Counsel for Baltimore County did not oppose the project, but presented several recommendations, which the Company contests.

The Crane Generating Station consists of two oil-fired, steam electric generating units, with each unit having a rated capacity of 192 megawatts. Each unit discharges exhaust gases by a separate stack and is equipped with opposed-fired furnaces. The Crane units were constructed to burn coal as a primary fuel, and one or both did so from 1961 to 1972. In 1970, they were converted to burn No. 6 residual fuel oil with 1 percent

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or less sulphur content. Unit No. 2 was converted to accomodate a test-burn of coal and refuse-derived fuel to study burning of solid fuel in cyclone furnaces and both units were prepared for eventual conversion to coal.

On June 30, 1975, the Federal Energy Administration ("FEA") issued Prohibition Orders on the Company, pursuant to the Federal Energy Supply and Environmental Coordination Act of 1974 ("ESECA"),[2] which would prohibit the Crane units from burning oil or natural gas as their primary fuel if that power plant has the capability of burning coal.

B G & E has submitted to the Environmental Protection Agency ("EPA") a plan of compliance with the Clean Air Act, and because certain compliance coal is no longer available, there is now pending before the EPA a request for approval of a State Implementation Plan which would relax sulfur limitations to 3.5 pounds of oxides of sulfur per million Btu actual heat input for solid fuels at Crane. This relaxation of sulfur standards was previously approved by the Air Quality Programs of the Maryland Department of Health and Mental Hygiene.

The proposed modifications at Crane consist primarily of the installation of new dust-collecting equipment ("bag houses") and induced-draft fans. The estimated capital cost is $55,000,000, based on commercial operation of both units by mid-1983 with construction to begin no later than March 1, 1981. B G & E states that Commission approval of the modification is necessary to allow Crane to continue operation, and conversion to coal will also result in substantial savings in fuel costs which will inure to the benefit of the customers.

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[2]U.S. Public Law 93-319.



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The conversion is estimated to effect savings of about $67,000,000 in 1983, which would increase in succeeding years, and by 1999, the net savings to customers on an annual basis is expected to reach $200,000,000, as well as assuring reliability of generation into the foreseeable future. The estimated additional annual operating, maintenance and depreciation expenses and taxes other than income attributable to the proposed conversion is estimated at $17,810,000.

The conversion is to be financed as an integral part of the Company's total construction program in the same general manner as other Company facilities are financed. This will include internally generated funds, short-term borrowings, and the issuance of securities, with the latter dependent on market conditions. While Congress has been deliberating bills which would provide grants and low-interest loans to electric utilities under Federal order to convert from oil to coal, the status of the bills is not known nor is it known if the Company would be eligible. For the benefit of customers served by utilities compelled to convert by Federal action, it is hoped that some bill is enacted to aid those utilities in ameliorating the conversion costs. Even if such Federal assistance does not become available, the evidence shows that the Company's rate payers will still experience substantial benefits resulting from the use of lower cost fuel. In addition, national dependency on imported oil will be diminished.

Suppliers have assured the Company that there will be sufficient coal for the life of the plant and in compliance with the amended State Implementation Plan now before EPA for its approval. While B G & E will be able to market bottom ash to the local building materials industry, B G & E states that the market potential for flyash is indeterminate at this time, but it will be suitable for landfill.



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Meteorological evaluation by the Company of the impact due to stack emission of sulphur dioxide and particulates indicates no violation of ambient air quality standards or the Prevention of Significant Deterioration ("PSD") increment. While questioning the accuracy of the Company's modelling procedures, PPSP on the basis of its own model, also determined that no violations would occur. According to PPSP, no foreseeable problems appear, assuming that the present variance for sulphur dioxide emissions is approved by the United States Environmental Protection Agency.

Because its conclusion of no violations was based on computer modelling which, by necessity, incorporates various assumptions on stack height and exit temperature velocity, PPSP recommended a condition to insure that the assumed values will actually occur during plant operations. I find this condition to be reasonable and acceptable.

Some concerns were expressed over adequacy of measures to control fugitive emissions arising from the handling and storage of coal at the plant. Dr. Ellis, a witness for the Company, performed a study of the possible impact of coal and dust emissions on the surrounding area and as a result, he concluded that total suspended particles ("TSP") concentrations will be in compliance with NAAQS and within permissible PSD increments, upon the installation of bag filters on the rotary car dumper house, boom tower and breaker house, the installation of a water spray system for the loading of coal into a pile, and extending the time for movement of the same amount of coal.

PPSP, after review of the Company's evidence, stated that the proposed control measures will be adequate to meet all air quality requirements. However, as in the case of stack emissions, this conclusion was based on computer modelling using various assumptions as to the types of control equipment and their respective efficiencies and PPSP recommends a condition to assure,

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as much as possible, that the assumed conditions will exist in actual operation. A substantial portion of the proceedings revolved around the impact and control of fugitive coal and dust emissions. The modelling used to predict the impact is relatively new and considered to be somewhat insufficient, but it is the "state-of-the-art". Accordingly, I find that the condition proposed by PPSP listing the control equipment and efficiencies to be reasonable and will be accepted.

The third condition recommended by PPSP is to require review by the Air Quality Program of the Department of Health and Mental Hygiene of the specifications of any equipment which discharge pollutants into the ambient air and is to insure that controls on stack and fugitive emissions are being met prior to construction. This is deemed to be reasonable and will be accepted.

The fourth and last PPSP's recommended conditions relates to fly-ash transportation by truck from the plant. Depending on operations, 20 to 30 covered trucks, five days a week, will transport wetted flyash from the plant. The condition is a limitation on the hours of transport in order to minimize possible objectionable noise in the neighborhood. This is certainly a reasonable condition and will be accepted.

In his initial Brief, PSC People's Counsel argues that the Company has internal, specific plans for rate treatment of the conversion costs, as evidenced by People's Counsel's Exhibit No. 1. This exhibit is the Company's response to a data request and contains an answer that the Company intends to capitalize construction costs as "Construction Work In Progress" and thus become a part of the rate base. People's Counsel believes that rate treatment of the conversion costs is not an issue in this Section 54H proceeding and, therefore, recommends that the Hearing Examiner adopt and

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include in his order a condition that, in essence, any approval or authority that may be granted does not constitute in any way rate-making treatment of the costs.

I agree that this is a Section 54H proceeding involving prior approval of modifications to an electric generating station only (emphasis supplied). Clearly, rate making is not the issue here, for there is no authority in the Hearing Examiner to so decide. Any statements made by the Company in this regard are, at best, gratuitous and appear to be hopeful expectations. As People's Counsel contends, any rate-making treatment of conversion costs should be and will be considered by the Hearing Examiner as the subject matter of another proceeding. Accordingly, there is no need to include in the order any of the conditions recommended by People's Counsel in this regard.

As stated before, B G & E experimented with refuse-derived fuel at Crane. Because of severe problems with the disposal of solid wastes facing the local political subdivisions, B G & E is encouraged to continue its efforts in the hope that a feasible and economical solution to this major problem can be reached. However, there are concerns surrounding long-term and large volumetric usage of such fuel not considered in this proceeding and any approval or authority that may be granted to B G & E should not cover the use of refuse-derived fuel. If use of this fuel is deemed workable by the affected interests, it may be that further proceedings are necessary. The point is that the Company should not be precluded from continuing to pursue a satisfactory resolution of solid waste disposal.

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In his Brief, People's Counsel for Baltimore County ("PC-BC") cites court language[3] that B G & E witnesses in its successful zoning efforts for the Crane Station, testified that ". . . there would be no dust, no traffic hazards and little increase in traffic, no noise, no flyash, no water pollution, no smoke, no odor and no danger to the public using water near the plant" and then argues that because the Commission is now in this proceeding being asked to approve the emmission of dust, flyash and smoke from Crane, the protection of adjacent neighborhoods requires and deserves the strictest safeguards and conditions, which should be attached to any authority that may be granted. The safeguards and conditions recommended by PC-BC to be imposed upon the Company are, in essence, as follows:

1. Comply with the criteria of the PSD program.

2. Conduct a pre- and post-conversion monitoring program of particulate and sulphur dioxide emissions.

3. Prepare a contingency plan stating its action to correct any air quality violations shown by the above-monitoring program.

4. Apply, at a minimum, the technologies for the control of fugitive coal emissions as contained in its study report.

5. Continue to make reasonable efforts in resource recovery, particularly the marketing of flyash.

6. Comply with national ambient air quality standards.

7. Acknowledge the powers of the Department of Health and Mental Hygiene and the Power Plant Siting Program and its representatives, and the jurisdiction of the Public Service Commission.

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[3] Cassidy v. Baltimore County Board of Appeals, 218 Md. at 432.

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8. Recognize the continuing jurisdiction of the Commission with reference to enforcement and adjustment of conditions and to take remedial action as is necessary and appropriate.

B G & E, in its Reply Brief, contested the imposition of any of these eight conditions, while stating that it has accepted and will not contest the four conditions recommended by PPSP. Discussion of each of the eight conditions follows.

Conditions Nos. 1, 3, 6, 7 and 8.

At the outset, the Hearing Examiner will include conditions, while self-evident but consistent with prior decisions, expressing the Commission's continued jurisdiction and requiring the Company to comply with applicable Federal and State air quality laws, regulations and requirements. It is the Federal and State agencies that have the authority and responsibility to administer and enforce air quality programs, not this Commission. Furthermore, these agencies have the means and remedies to enforce compliance should violations occur. Accordingly, these five conditions will not be accepted for adequate controls and protection are already in existence.

Condition No. 4.

The Company has accepted the final condition recommended by PPSP and has been accepted also by the Hearing Examiner as discussed before. It establishes minimum design efficiencies of various equipment to control fugitive coal emissions. Consequently, Condition No. 4 is not necessary.

Condition No. 5.

It should go without expression that it would be to the advantage of the Company to develop commercial markets for the waste products, particularly flyash, emanating from the Crane Station. Pursuance of this management objective is not a subject within the Commission's authority under the PSC Law. Unquestionably, the purpose of this condition is meritorious and B G & E should be encouraged to pursue this objective.

Condition No. 2.

This condition, calling for a program of pre- and post-conversion monitoring of particulate and sulphur dioxide emissions, has been reserved to the last, for it has merit and warrants further consideration.

PC-BC argues that this case is particularly appropriate to test the effect of the conversion against the modelling predictions since the Crane Station is the only significant air pollution source of particulate matter and sulphur dioxide in the locale. The locations of at least six monitors were suggested, with the details to be developed between the Company and PPSP and submitted for Commission approval, following opportunity for comment by all interested parties.

B G & E contends that it would have no objection to any qualified agency doing the monitoring if considered to be worthwhile and points out that the appropriate agencies with the expertise have not recommended it. The Company further maintains that the purpose of Section 54H of the PSC Law is to resolve problems associated with modifications affecting the air quality

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in advance and to require monitoring would have the effect of no finality in the permitting process, thus becoming a precedential adjunct to all Section 54H determinations.

During the hearings, considerable concern was expressed as to the accuracy of the computer modelling techniques used to predict the dispersion and concentration of particulate matter and sulphur dioxide emitted from the stack and from coal handling.

For stack emissions, B G & E used the standard CRSTER model which has the approval of EPA. However, EPA requested PPSP to use not only the standard CRSTER model, but also the "semi-shift A" CRSTER model and to use the highest value in this proceeding, even though the shifted model does not have EPA's sanction. The shifted model showed concentrations higher than those developed by the Company's technique. Fortunately, all models predict no violations of air quality standards. But while dispersion techniques and accuracy are improving, they have been the subject of wide disagreement in past proceedings and could again be a source of contention in the future. It is, therefore, the Hearing Examiner's opinion and conclusion that a monitoring scheme should be developed and instituted for a period of time to refine the predictive accuracy and suitability of models, recognizing that results are site-specific.

The problem of fugitive dust and coal emissions caused by on-site coal handling and movement is of recent vintage and appears to need much study. In contradistinction to emissions from a stack which is a single point, coal and dust emissions arise from numerous site activities and are non-point. For these emissions, the state-of-the-art is the Industrial Source Complex ("ISC") model, which has the sanction of EPA and was used by B G & E here.

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Crucial to the accuracy of this model is the choice of the emission factors for each step of coal handling and of the efficiency factors of equipment and methods used to control the emissions. Dr. Ellis, a witness for B G & E, testified that he chose conservative values and Dr. Roig, for PPSP, stated that while he had some reservations, the chosen factors were within generally-accepted ranges and were relatively appropriate. Dr. Ellis further noted that to the best of his knowledge, there has not been a study to validate the ISC model. Even though B G & E has accepted PPSP's recommended condition establishing minimum control efficiencies, it is believed to be important, for possible future situations, that a scheme for monitoring fugitive emissions be developed and implemented, in order to refine the state-of-the-art and to provide a better base for future regulatory decision.

Having concluded that monitoring is desirable, an appropriate scheme for implementation needs to be determined. Since enforcement of air quality standards resides with the State Air Quality Program, it would appear to be that Agency's responsibility to establish such necessary and additional off-site monitoring stations. But any approval granted to B G & E can be conditioned to require monitors on Company property, as well as off-site.

Stack emissions are controlled at that point and are currently monitored for opacity and, thus, particulate matter. Sulphur dioxide emissions will be controlled by the use of coal containing a maximum emission of sulphur of 3.5 pounds per one million Btu's. Consequently, there is less need for ground level monitoring of these pollutants than for particulates as fugitive dust and coal emissions. B G & E has operated one monitor on the site for 10 years and intends to continue, but it has three other stations at unspecified

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off-site locations that it will operate until April 1981. Air Quality Program operates a station in Essex, approximately 12 km (7.5 miles) west of Crane. PC-BC recommends at least six off-site monitors. It is significant that PPSP did not recommend any monitoring, apparently an indication of confidence in the accuracy of its dispersion models and in the close proximity of Air Quality Program's Essex Station. I, therefore, determine that B G & E should establish one off-site monitor to measure particulates and sulfur dioxide as being sufficient and located approximately one mile west of the plant, adjacent to the residential area along Carroll Island Road. In addition, B G & E should have at least three monitors at plant boundaries and strategically located to measure fugitive emissions, with two such on-site stations located westerly-southwesterly from the plant. These monitoring stations shall sample for at least two years immediately before the completion of the conversion and at least two years after conversion, and the results and analysis should be reported to the parties in this proceeding and the Commission, with particular emphasis on comparison with modelled predictions. This program should be coordinated with Air Quality Program and its data incorporated into B G & E's monitoring data.

Some question arises whether or not this proceeding requires the issuance of a certificate of public convenience and necessity ("certificate"). B G & E, in its application, requests approval under Section 54H of the modifications to the Crane Station, enabling conversion from oil to coal use. On the other hand, the six Secretaries of State agencies recommend that the certificate be granted, but subject to four conditions. Also, counsel for PPSP, in his Brief, frequently refers to the issuance and the granting of a certificate. This certainly raises the inference, in the eyes of PPSP at least, that a certificate is necessary. But this legal question was not raised

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or argued during the proceedings. Consequently, the Hearing Examiner requested comments or a memorandum from the parties. These were submitted on February 23, 1981.

PPSP, while admitting that Section 54H language calling for prior approval in accordance with the provisions of Sections 54A and 54B, could be read as calling only for the use of the procedures outlined in those two Sections, nevertheless contends that a certificate is necessary because of the language at the end of Section 54B(a), which reads:

> ". . . In addition, the certificate shall also constitute registration and a permit, as required under Article 43, § 706 for the air emissions, if any, resulting from the operation of the plant."

This language is construed as requiring a certificate in this proceeding in order for the Commission to exercise its statutory air quality permitting function, which is the primary focus of Section 54H and the approval thereunder must be accomplished by the issuance of a certificate. PPSP further argues that the Commission should approach decisions under Section 54H from the same perspective as an original certification of a new plant, in view of the environmental and community impacts resulting from coal conversion modifications. Finally, PPSP does not foresee any adverse consequences or substantial problems by issuing a certificate, which would authorize the exercise of eminent domain powers and also constitute wetlands and water appropriation permits.

B G & E argues that the Crane facility is exempt from certification under the plain language of Section 54H, which presupposes a prior and continued existence of a power such as Crane and which makes no allusion or mention of "certification". The statute's exclusive purpose is to require

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"approval" of the modification and only insofar as air quality considerations are involved. In substance, Sections 54A and 54B deal only with preconstruction review of proposed new, unbuilt generating stations with their attendant transmission lines. With Crane having been constructed in 1963, and in continuous operation since then, B G & E states that it is not a ne generating station and, therefore, outside the ambit of Sections 54A and 54B, which were enacted subsequent to Crane's construction.

In further support, B G & E opines that 54H cannot operate to revise the substantive elements of 54A and 54B and to do so would subject any generating station which changes its emissions to a complete certification procedure, thus thwarting the intent of 54H for the expedited determination of a single, narrow issue. 54H imposes a short time frame, while the certification process is lengthy and expensive.

B G & E states that the reference to Sections 54A and 54B was made for incorporation of procedural purposes only, and should it introduce an element of ambiguity, proper statutory construction would reach the same conclusion. The Company cites several Maryland decisions which hold that statutory interpretations should not lead to absurd results or to results that are unreasonable or inconsistent with common sense. Requiring certification under 54A and 54B of modifications would be an ex post facto requirement of lengthy proceedings over plants built before their enactment and that this was not intended.

As to the argument that under 54B the granting of a certificate constitutes a permit as required by Article 43, Section 706, B G & E advances the contention that this is an example of overly excessive legal refinement,

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making 54H ineffective or nothing more than an amendment to 54A and 54B which could have been easily accomplished by the Legislature rather than the enactment of 54H.

It is worthwhile to recite relevant language of Section 706(a),[4] which requires any person, before building, erecting, operating, using, etc., any source specified by regulation, the use of which may cause or control emissions into the air, to obtain a permit to do so or register with the Department of Health and Mental Hygiene. This provision, however, exempts generating stations constructed by electric companies. Furthermore, the Secretary of Health and Mental Hygiene, upon notification from the Public Service Commission of an application for a certificate of public convenience and necessity, shall prepare a recommendation in connection with the required registration and permit and shall present such recommendation at the hearing required under Section 54A of Article 78.

The Court, in 1978, had the occasion to construe this statute, which was originally enacted in 1970. The 1980 amendment thereto deleted a few words, without changing intent or purpose. In that case,[5] the Department, in interpreting the law, requested B G & E to submit applications for permits to operate "all /of its/ fuel burning equipment." The Company asserted that its generating stations are exempt from the permit requirements and sought a declaratory judgment in the courts. The lower Court held the exclusionary provision to be ambiguous, but that the Department did have permit authority over existing plants, but not over new facilities and that any change or modifications are subject to Department approval. The Company appealed

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[4] Md. Ann. Code art. 43 (1980 Repl. Vol.).

[5] Baltimore Gas and Electric Company v. Department of Health and Mental Hygiene, 284 Md. 216.

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and the Court of Appeals granted certiorari. The Court reversed and found, after extensive review of various statutes and their background, Section 706 to be ambiguous and in construing it, held that it did not vest the Department with control over generating stations constructed by electric companies, after consideration of the power vested in the Public Service Commission, and legislative scheme, and the flat and unambiguous exemption from permit requirements.

The Court did not distinguish between generating plants constructed before and after the enactment of 54A and 54B. Since the Department has no power to require a permit, particularly over a facility that has been certificated under Sections 54A and 54B, does Section 54H by reason of incorporating the provisions of 54A and B require the modifications to Crane to be approved by way of a certificate in order to acquire a permit for air emissions, as set forth in Section 54B(a)? Absent 54H, a reasonable deduction in this proceeding would be that a certificate (permit) or approval would not be necessary from the Commission, since Crane was constructed prior to the effective dates of 54A and B. To require certification for all 54H modifications could impose inordinate demands on electric companies by way of costly and lengthy certification proceedings, no matter how insignificant the modification.

Subsequent to the above-Court decision, Section 54H was passed in 1979. It requires an electric company to obtain from the Commission prior approval, in accordance with the provisions of 54A and 54B, before commencing any modification to an electric plant. "Modification" is defined as any physical alteration or replacement of, or other change to, the electric station facilities, or the change in the fuel used by the station,

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which could result in any change of air emissions from the station. This definition clearly covers changes only to existing power stations. Modifications to a new proposed station would come within the purview of 54A and B requiring a certificate or an amendment to one. By 54A, an electric company cannot begin construction of a generating station without first obtaining from the Commission a certificate, and "construction" is meant as any clearing of land, excavation, etc., affecting the site's natural environment. 54A "construction" is clearly different from 54H modification and presupposes work, ab initio, for a new station.

Another clear distinction between 54H and 54A and B is in the time constraints between them. 54H, unless the Commission otherwise orders, states that the application must be filed not less than 180 days before commencing the modification and the Commission must render its decision no later than 150 days after the application is filed. On the other hand, there must be at least a two-year period between the filing of an application for a certificate and the beginning of construction of a new electric station, unless waived by the Commission. This difference clearly indicates legislative intent to expedite modifications and not to require lengthy, expensive certification procedure under 54B, which does not specify a deadline for the Commission to render a decision after the filing of an application. If the intent was to require a certificate, the legislature, in 54H, could have used instead of "prior approval", the words "obtaining a certificate of public convenience and necessity" in accordance with the provisions of 54A and 54B and not include the severe time constraints for a Commission decision.

Further support of the proposition that a certificate is required only for new stations can be found in Section 706(a), of Article 43. There,

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the Secretary of Health and Mental Hygiene is to present his recommendation at a hearing held under 54A whenever there is an application filed for a certificate of public convenience and necessity. In the instant case, an application was filed for approval of modifications to an existing station, not for a certificate, and it would be incongruous to import the certificate requirement of 54A into only the approval necessity of 54H. B G & E apparently recognized the distinction between certificated and noncertificated generating stations when in Case No. 6516, which is still pending before the Commission, it filed an application under 54A, 54B and 54H for an amendment to its certificate in order to use coal as the primary source of energy (conversion from oil to coal as in the instant case) at its Brandon Shores generating plant.

If 54H is to be considered as compelling the issuance of a certificate, the process of its acquisition may not be as difficult as B G & E envisions, if the instant case is a reasonable indicator. As to the position that a certificate would be necessary in order to exercise powers of eminent domain for 54F modifications, electric companies already have that power even absent 54A and 54B. (See William Fell Johnson, et al. v. Consolidated Gas, Electric Light & Power Co. of Baltimore, 187 Md. 454, 1946.) Thus, 54A and 54B do not confer the rights of eminent domain by way of a certificate, but only delay the exercise of these rights until the document is granted by the Commission.

The Hearing Examiner is of the opinion that the applicable provisions of 54A and 54B in a 54H proceeding are those dealing with procedures, hearings, consideration of need, economic, environmental and other specified matters, opportunity to be heard, and others, but exclusive of certification. I, therefore, conclude that a granting of a certificate is not necessary in this proceeding.

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Since this is the first case to be decided under 54H, and because reasonable men do and have differed opinions, it is deemed to be prudent that as a precaution, any approval of modifications here shall also constitute as a certificate of public convenience and necessity. This inclusion is for the purpose of forestalling any possible litigation on this question so as not to delay the benefits of conversion to the ratepayers and the national interests. It is suggested that removal of any ambiguity in the statutes can best be accomplished by clarifying legislative action.

As noted previously, the Hearing Examiner issued an Interim Proposed Order in this proceeding which became final on February 27, 1981, permitting and authorizing B G & E to commence the construction of the bag house before the issuance of a final Commission Order and subject to rescission, modification and/or incorporation by and into the final Order to be issued. The parties had no objections to the issuance of this Interim Proposed Order and no issue as to the adequacy of the bag house was raised in the briefs. Consequently, the authority granted by that Interim Order will continue to be effective and will be incorporated into any authority or approval granted in this Proposed Order.

In conclusion, the evidence shows, and I determine, that the proposed modifications to the Crane generating station, currently under a Federal order to convert from the burning of oil to the use of coal, will assure reliability of generation, will provide substantial economic benefit to the ratepayers, and will not violate air and water quality standards.

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Findings and Conclusions

After careful review and consideration of the evidence and record and recommendations filed in this proceeding, I find and conclude that the modifications to the Crane station as applied for by B G & E should be approved, subject to the conditions discussed before and contained hereafter, with such approval incorporating the interim approval granted the Company in Order No. 65143, issued on February 27, 1981, in this case for the construction of bag houses.

IT IS, THEREFORE, this 2nd day of April, in the year Nineteen Hundred and Eighty-one,

ORDERED: (1) That Baltimore Gas and Electric Company is hereby granted approval for the modifications to its Charles P. Crane electric generating station for the conversion from the use of oil to coal, as applied for in this proceeding, with this granting of approval constituting as a Certificate of Public Convenience and Necessity, as may be deemed necessary, subject to the following conditions:

A. The Public Service Commission will retain jurisdiction over the fuel conversion modifications at the Charles P. Crane generating station and may require such additional equipment and protection as may be required by statute or regulation necessary for the public health, safety and welfare or for the protection of the environment.

B. The Charles P. Crane electric generating station shall, when burning solid fuel as its primary fuel, be subject to the following conditions:

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1. The stack temperature shall be no less than 422K and exit stack velocity shall be no less than 35mm/sec at 100 percent load.

2. The Company shall design for the following partial load conditions:

a. Stack exit temperature shall not be less than

389K at 75 percent load,
389K at 50 percent load.

b. Stack exit velocity should not be less than

24.4m/sec at 75 percent load,
16.8m/sec at 50 percent load.

3. The stack height shall not be less than 108m.

4. The particulate and sulphur dioxide emissions from the stack shall meet the emission standards promulgated by the Air Quality Program, Department of Health and Mental Hygiene.

C. The emission control equipment listed below shall be installed on the coal handling equipment at the Charles P. Crane station and shall not have less than the specified design control efficiency:

| | Source | Control Method | Efficiency |
|---|---|---|---|
| (1) | Rotary Car Dumper | enclosure & bag house | 99% |
| (2) | Conveyors (underground) | enclosure | 90% |
| (3) | Conveyors (above ground) | enclosure | 70% |
| (4) | Boom Tower | enclosure & bag house | 99% |
| (5) | Boom Tower Conveyor | enclosure | 70% |
| (6) | Inactive Stockpile | crusting agent | 95% |
| (7) | Active Pile Load-In | chute & water suppression | 75% |
| (8) | Active Pile Reclaim | gravity feed system | 85% |
| (9) | Breaker House | enclosure & bag house | 99% |
| (10) | Coal Bunkers | enclosure | 70% |
| (11) | Fly Ash Storage | enclosure & bag house | 99% |
| (12) | Fly Ash Handling | wet suppression | 95% |

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D. The Baltimore Gas and Electric Company shall not erect in place at the Crane station any equipment, the use of which would result in the discharge of emissions into the ambient air, until the Department of Health and Mental Hygiene, Air Quality Program, has reviewed the specifications covering such equipment and has submitted such recommendations to the Public Service Commission and the Company as it deems reasonably necessary to meet the State's emission control regulations and the conditions listed herein, provided such recommendations are received by the Commission and the Company within 20 (twenty) working days from the date on which the Air Quality Program receives such specifications from the Baltimore Gas and Electric Company for review.

E. Normal flyash transport operations shall be restricted to daylight hours and shall meet all requirements of the regulations promulgated by the Maryland Department of Health and Mental Hygiene, relating to atmospheric emissions and discharge from materials handling.

F. The modifications necessary to convert the Crane station to use coal shall meet all applicable laws, regulations and requirements of the Federal government, the Air Quality Program of the Maryland Department of Health and Mental Hygiene, and any other governmental agency having statutory authority and jurisdiction in the matter.

G. Baltimore Gas and Electric Company shall obtain all necessary permits required by law and regulations from Federal, State and local agencies having statutory authority and jurisdiction in the matter.

H. Baltimore Gas and Electric Company shall install, in coordination with Air Quality Program, Department of Health and Mental Hygiene, the off- and on-site stations discussed herein to monitor

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particulate matter and sulfur dioxide for at least two years immediately before the Crane station begins operation as a converted plant and for at least two years after Crane begins operation as a converted station, and shall thereafter submit a report to the parties in this proceeding and the Commission, analyzing the results with respect to air quality standards and dispersion modelling techniques, particularly the model used to predict fugitive emissions.

(2) The interim approval previously granted to Baltimore Gas and Electric Company for the construction of bag houses under Order No. 65143, entered on February 27, 1981 in this proceeding, is hereby merged and incorporated into the authority granted in Ordered Paragraph One, above.

(3) That the approval granted to Baltimore Gas and Electric Company in Ordered Paragraph One, above, shall not cover the use of refuse-derived fuel as a source of energy but the Company shall not be precluded from continuing efforts to find a satisfactory resolution of the problem of solid waste disposal.

(4) That all motions not specifically acted upon in this proceeding are hereby denied.

(5) That this Proposed Order shall be and become final on May 4, 1981, unless an appeal is noted with the Commission by any party to this proceeding, as provided in Section 20(c) of The Public Service Commission Law, or unless the Commission exercises the provision of Section 86(d) of The Public Service Commission Law.

CONFIDENTIAL

Frank J. Wasowicz

Frank J. Wasowicz
Hearing Examiner
Public Service Commission of Maryland

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APR 2 1981
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OF MARYLAND



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PUBLIC SERVICE COMMISSION
OF MARYLAND

ORDER NO. 65256

| | | |
|---|---|---|
| IN THE MATTER OF THE APPLICATION OF BALTIMORE GAS AND ELECTRIC COMPANY FOR APPROVAL FOR THE MODIFICATION TO PERMIT THE USE OF SOLID FUEL AND THE INSTALLATION-OF DUST-COLLECTING EQUIPMENT AT THE CHARLES P. CRANE GENERATING STATION NEAR CARROLL ISLAND ROAD IN SOUTHEASTERN BALTIMORE COUNTY, MARYLAND. | * | BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND<br><br>CASE NO. 7443 |

On April 2, 1981, the Hearing Examiner issued his Proposed Order in this proceeding, granting Baltimore Gas and Electric Company approval of modifications to its Charles P. Crane electric generating station for the conversion from the use of oil to coal, but subject to enumerated conditions. The Company, by letter of April 23, 1981, advised the Commission of two problems in the conditions and requested correction before the order becomes final.

Ordered Paragraph (1) B.1 on Page 25 contains a typographical error in that the exit stack velocity should read as not less than "35m/sec" instead of "35mm/sec" as shown. Ordered Paragraph (1) H on Page 27 calls for a monitoring program "for at least two years immediately before the Crane station begins operation as a converted plant . . . ." The Company relates that while the start-up of commercial operation is mid-1983, the coal-firing of Unit 1 will be in February 1983 and then followed by the firing of Unit 2 in May 1983. Furthermore, three to four months will be required to place and then operate the ordered monitors. The Company, therefore, states that it would be impossible to strictly comply with this Condition H which could be construed to delay plant start-up, a situation certainly not intended by the Hearing Examiner.

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Accordingly, under the provisions of Section 86(d) of The Public Service Commission Law, the Commission, upon its own motion, has conducted further proceedings and upon consideration of the evidence and the request of the Company, determines and concludes that the corrections are reasonable and proper and the Proposed Order of Hearing Examiner should be accordingly amended.

IT IS, THEREFORE, this 4th day of May, in the year Nineteen Hundred and Eighty-one, by the Public Service Commission of Maryland,

ORDERED: (1) That Ordered Paragraph (1) B.1, contained in the Proposed Order of Hearing Examiner issued in this proceeding on April 2, 1981, is hereby amended to read as follows:

> "(1) The stack temperature shall be no less than 422K and exit stack velocity shall be no less than 35m/sec at 100 percent load."

(2) That Ordered Paragraph (1) H contained in the said Proposed Order of Hearing Examiner is hereby amended to read as follows:

> "H. Baltimore Gas and Electric Company shall install, in coordination with Air Quality Program, Department of Health and Mental Hygiene, the off- and on-site stations discussed herein to monitor particulate matter and sulfur dioxide for as long a time period as possible before the Crane Station begins operation as a converted plant and for at least two years after Crane begins operation as a converted station, and shall thereafter submit a report to the parties in this proceeding and the Commission, analyzing the results with respect to air quality standards and dispersion modelling techniques, particularly the model used to predict fugitive emissions."

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(3) That in all other respects, the said Proposed Order of Hearing Examiner shall be and remain in full force and effect.

Commissioners

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| IN THE MATTER OF BALTIMORE GAS AND ELECTRIC COMPANY FOR APPROVAL FOR THE MODIFICATION TO PERMIT THE USE OF SOLID FUEL AND THE INSTALLATION OF DUST-COLLECTING EQUIPMENT AT THE CHARLES P. CRANE GENERATING STATION NEAR CARROLL ISLAND ROAD IN SOUTHEASTERN BALTIMORE COUNTY, MARYLAND | * | BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND |
| | * | CASE NO. 7443 |

* * * * * * * * * * *

APPLICATION FOR
MODIFICATION TO ORDER IN CASE NO. 7443
RE: CHARLES P. CRANE GENERATING STATION

THE HONORABLE, THE PUBLIC SERVICE COMMISSION OF MARYLAND:

BALTIMORE GAS AND ELECTRIC COMPANY (hereinafter referred to as "Applicant") hereby requests modification to Paragraph (3) of the Hearing Examiner's Order No. 65256 in Case No. 7443, Titled "In the matter of Baltimore Gas and Electric Company for approval for the modification to permit the use of solid fuel and the installation of dust-collecting equipment at the Charles P. Crane Generating Station near Carroll Island Road in southeastern Baltimore County, Maryland.", for the purpose of using refuse-derived fuel (RDF) as an auxiliary to the burning of coal and pursuant to the provisions of Article 78, Section 54H, of the Annotated Code of Maryland.

1. That the Applicant is a Maryland corporation engaged, among other things, in the generation, transmission and distribution of electricity to the general public in the City of Baltimore and in all or portions of nine counties in Central Maryland. The mailing address of its principal business office is P. O. Box 1475, Baltimore, Maryland 21203.

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2. That the name, title and address of the person authorized to receive notices and communications with reference to this Application is James A. Biddison, Jr., Esquire, General Counsel of the Applicant, P. O. Box 1475, Baltimore, Maryland 21203.

3. That a description of the Charles P. Crane generating station, which is now undergoing modification to accommodate the burning of solid fuel, is as follows:

The station consists of two oil-fired, steam electric generating units each with a rated capacity of 192 megawatts of electricity. Exhaust gases are discharged through separate stacks venting opposed-fired cyclone furnaces. The plant property is bounded by Seneca Creek on the south and southeast and Saltpeter Creek on the north. It adjoins Carroll Island, a United States military reservation, on the east. The facilities occupy a land area of 164.22 acres owned in fee by the Applicant, Baltimore Gas and Electric Company. The area is served by both highway and rail. The Charles P. Crane units were constructed in 1963 to burn either oil or coal as a primary fuel. From 1963 to 1970, both units burned coal and, since 1970, No. 6 residual fuel oil with no more than one percent sulfur content. Unit No. 2 will be converted to accommodate both coal and RDF. Unit No. 1 will burn coal only. A pictorial description of the plant facilities, including a proposed RDF receiving facility is detailed in Appendix I attached hereto.

4. That pursuant to the Energy Supply and Environmental Coordination Act of 1974 (ESECA), the Federal Energy Administration on June 30, 1975, issued Prohibition Orders which, when made effective, will prohibit the Crane units from burning oil or natural gas as a primary fuel.

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5. That on January 28, 1980, the State of Maryland, through the Maryland Air Management Administration of the Department of Health and Mental Hygiene, approved a change in the State Implementation Plan which raised sulfur limitations for solid fuels to 3.5 pounds of oxides of sulfur per million Btu actual heat input at the Charles P. Crane generating station. This relaxation became Maryland law on March 31, 1980, and was approved by the United States Environmental Protection Agency as a change in the State Implementation Plan effective October 5, 1981.

6. That on May 4, 1981, final approval for conversion to the use of coal as Applicant's primary fuel was granted by this Honorable Commission but a determination on the use of RDF was specifically reserved:

> "(3) That the approval granted to Baltimore Gas and Electric Company in Ordered Paragraph One, above, shall not cover the use of refuse-derived fuel as a source of energy but the Company shall not be precluded from continuing efforts to find a satisfactory resolution of the problem of solid waste disposal." (Proposed Order of Hearing Examiner, p. 27)

7. That the Petitioner, Baltimore Gas and Electric Company and Maryland Environmental Services have entered into a lease to accommodate construction of the proposed RDF receiving station (Appendix 2), and an Agreement of Sale (Appendix 3) to govern the mutual benefits and obligations involved in and resulting from the herein-proposed use of RDF as auxiliary solid fuel at Crane Unit #2.

8. That the anticipated result of the proposed project will be to provide an economical and environmentally sound method for Baltimore County refuse disposal while diminishing the generation costs attributable to coal use (Appendix 4). All costs of constructing, operating and maintaining the RDF receiving station and

transport of the processed fuel will be borne by MES. Additional expenditure by the Petitioner is expected to be minimal.

9. That the dust-collecting equipment now being installed at Crane Unit #2 can accommodate the injection of RDF without increasing the particulate emissions. Analysis of emissions indicates no increase from that submitted and approved in Case No. 7443 (Appendix 5). Fugitive emissions from RDF at the site will be controlled by a bag-house supplied as part of the receiving station (Appendix 6).

10. That transportation of RDF will have minimal impact on traffic movement or upon properties along the proposed route (Appendix 7).

11. That Local, State or Federal agencies to be notified and who may have an interest in the modification are as follows:

A. Baltimore County Agency:

(1) Department of Permits and Licenses

B. State of Maryland Agencies:

(1) Maryland Port Administration

(2) Maryland Department of Natural Resources

(3) Maryland Department of Health and Mental Hygiene

C. Federal Agencies:

(1) U. S. Department of the Army, Corps of Engineers

(2) U. S. Department of Transportation, U. S. Coast Guard

(3) U. S. Department of Energy

(4) U. S. Environmental Protection Agency

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Therefore, the Applicant seeks issuance of a Commission Order modifying said paragraph. The Applicant will obtain the remainder of any necessary permits, authorizations and approvals required by Local, State and Federal agencies and will conform to all laws and regulations of such agencies.

James A. Biddison, Jr.

Charles A. Herndon, Jr.
P. O. Box 1475
Baltimore, Maryland 21203
301-234-5605

Attorneys for Applicant
Baltimore Gas and Electric Company

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of December, 1982, a copy of the foregoing Application was mailed to the following persons and agencies:

Honorable Donald P. Hutchinson
Baltimore County Executive
Mezzanine
County Courts Building
Towson, MD 21204

Baltimore County Council
Second Floor
County Courts Building
Towson, MD 21204

Baltimore County Office
of Planning and Zoning
New Courts Building
Fourth Floor
401 Bosley Avenue
Towson, MD 21204

Baltimore County Department of
Permits and Licenses
New Courts Building
Forth Floor
401 Bosley Avenue
Towson, MD 21204

Baltimore County Department
of Health
New Courts Building
Fourth Floor
401 Bosley Avenue
Towson, MD 21204

Baltimore County Department
of Public Works
Third Floor
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Maryland State Aviation Administration
Herbert R. O'Conor State Office
Building
301 West Preston Street
Baltimore, MD 21201

The State Clearing House
Maryland Department of State Planning
Herbert R. O'Conor State Office
Building
301 West Preston Street
Baltimore, MD 21201 (ten copies)

Maryland Department of Economic
and Community Development
2525 Riva Road
Annapolis, MD 21401

U. S. Department of Energy
1000 Independence Avenue
Washington, DC 20585

U. S. Environmental Protection Agency
401 M Street, S.W.
Washington, DC 20460

U. S. Department of Interior
Office of the Secretary
Washington, DC 20240

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Maryland Department of Health
and Mental Hygiene
Herbert R. O'Conor State Office
Building
201 West Preston Street
Baltimore, MD 21201

Maryland Port Administration
32 South Street
Baltimore, MD 21202

Maryland Department of
Natural Resources
Tawes Office Building
C-4
Annapolis, MD 21401 (six copies)

Maryland State Board of
Public Works
Tawes Office Building
Annapolis, MD 21401

Maryland State Highway
Administration
Herbert R. O'Conor State
Office Building
300 West Preston Street
Baltimore, MD 21201
Attention: Nolan H. Rogers, Esq.

Maryland Historical Trust
Box 1704
Annapolis, MD 21404

Federal Energy Regulatory Commission
825 North Capitol Street, N.E.
Washington, DC 20426

Federal Aviation Administration
Chief, Air Traffic Branch
Eastern Regional Office
J. F. Kennedy International Airport
Federal Building
Jamaica, NY 11430

U. S. Department of the Army
Baltimore District
Corps of Engineers
Federal Building
Baltimore, MD 21203

U. S. Department of Agriculture
Soil Conservation Service
100 Chinquapin Round Road
Annapolis, MD 21401

U. S. Department of Transportation
U. S. Coast Guard
Commander
Fifth Coast Guard District
Federal Building
431 Crawford Street
Portsmouth, VA 23701

Attorney for
Baltimore Gas and Electric Company

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Wm. Yeidenbaum

COMMISSIONERS

FRANK O. HEINTZ
CHAIRMAN
WILLIAM A. BADGER
LILO K. SCHIFTER
'AYNE B. HAMILTON
-KELL N. ARNOLD

STATE OF MARYLAND

JAMES A. PINE
GENERAL COUNSEL

RONALD E. HAWKINS
EXECUTIVE SECRETARY

GLORIA M. JIMENEZ
EXECUTIVE DIRECTOR

# PUBLIC SERVICE COMMISSION

AMERICAN BUILDING
231 E. BALTIMORE STREET
BALTIMORE, MARYLAND 21202
(301) 659-6000

TTY FOR DEAF: BALTO. AREA 383-7555
D.C. METRO 565-0451

February 22, 1983

In the matter of the Application of Baltimore Gas and Electric Company for approval for the modification to permit the use of solid fuel and the installatin of dust-collecting equipment at the Charles P. Crane Generating Station near Carroll Island Road in Southeastern Baltimore County, Maryland. * Case No. 7443

** ***** **

To All Parties in Case No. 7443:

Enclosed, please find an Attested copy of an Order this day passed by the Commission in the above-entitled matter, together with form for admission of service, which please fill out, sign and return.

Sincerely,

Ronald E. Hawkins

Ronald E. Hawkins
Executive Secretary

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Enclosures

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STATE OF MARYLAND
PUBLIC SERVICE COMMISSION

ORDER NO. 66115

| | | |
|---|---|---|
| IN THE MATTER OF THE APPLICATION OF BALTIMORE GAS AND ELECTRIC COMPANY FOR APPROVAL FOR THE MODIFICATION TO PERMIT THE USE OF SOLID FUEL AND THE INSTALLATION OF DUST-COLLECTING EQUIPMENT AT THE CHARLES P. CRANE GENERATING STATION NEAR CARROLL ISLAND ROAD IN SOUTHEASTERN BALTIMORE COUNTY, MARYLAND. | * | BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND<br><br>CASE NO. 7443 |

On December 27, 1982, Baltimore Gas and Electric Company (BG&E), pursuant to Article 78, Section 54H, of the Annotated Code of Maryland, filed an Application with the Commission requesting modification to Ordered Paragraph (3) in the Proposed Order of Hearing Examiner issued April 2, 1981, which was adopted by the Commission on May 4, 1981, in Order No. 65256, for the purpose of using refuse-derived fuel as an auxiliary to the burning of coal.

Specifically, BG&E requested that Ordered Paragraph (3) of the Proposed Order of Hearing Examiner, adopted by the Commission in Order No. 65256, which now reads as follows:

> "(3) That the approval granted to Baltimore Gas and Electric Company in Ordered Paragraph One, above, shall not cover the use of refuse-derived fuel as a source of energy but the Company shall not be precluded from continuing efforts to find a satisfactory resolution of the problem of solid waste disposal."

be amended for the purpose of allowing the use of refuse-derived fuel as an auxiliary to the burning of coal. Specifically, the proposed amended language would read:

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"(3) That the approval granted to Baltimore Gas and Electric Company in Ordered Paragraph One, above, shall also cover the use of refuse-derived fuel as a source of energy."

Pursuant to Section 54H, BG&E distributed copies of the proposed modification to the Charles P. Crane Generating Station to all concerned agencies and elicited their comments. All appropriate agencies that were contacted affirmed by letter their satisfaction with the proposed changes. By memorandum dated January 11, 1983, the Commission's technical staff recommended that the Application to modify be approved.

After consideration of the Application to modify, the Commission is of the opinion and finds that the proposed modification to Ordered Paragragh (3) in the Proposed Order of Hearing Examiner, issued on April 2, 1981, and adopted by the Commission on May 4, 1981, in Order No. 65256, is in the public interest and that the request to modify should be granted.

IT IS, THEREFORE, this 22nd day of February, in the year Nineteen Hundred and Eighty-three, by the Public Service Commission of Maryland,

ORDERED: (1) That Ordered Paragraph (3) in the Proposed Order of Hearing Examiner, issued on April 2, 1981, and adopted by the Commission in Order No. 65256, is hereby modified to read as follows:

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"(3) That the approval granted to Baltimore Gas and Electric Company in Ordered Paragraph One, above, shall also cover the use of refuse-derived fuel as a source of energy."

(2) That Baltimore Gas and Electric Company shall submit a full report to the Commission one year after use of refuse-derived fuel commences at the Charles P. Crane Generating Station.

(3) That in all other respects, the Proposed Order of Hearing Examiner, issued on April 2, 1981, and adopted by Order No. 65256 on May 4, 1981, shall remain in full force and effect.

By Direction of the Commission,

/s/ RONALD E. HAWKINS

Ronald E. Hawkins
Executive Secretary

TRUE COPY - TEST:

Ronald E. Hawkins
Secretary

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**JOHN LINDSAY JEFFCOAT**
867 Generals Hwy.
Millersville, Maryland 21108
Home (410) 729-2560
Office (410) 787-5471

**WORK EXPERIENCE:**

**Constellation Power Source Generation** **Dates Employed: 03/2002 – Present**
**2030 Brandon Shores Road**
**Baltimore, Maryland 21226**

**Senior Generation Analysis**
Develop and manage key strategies for the disposal of coal combustion products. Provide direction to operations for the placement of products in an environmental and economic sound manner. Implement strategies necessary to improve marketability and sales of coal combustion products. Develop budget and cost control measures for capital improvements and operations of coal combustion product areas. Provide project management for construction of capital and maintenance improvements. Responsible for maintaining docks in proper repair, maintaining channels to provide a safe berth at bulk handling terminal facilities.

**Constellation Power Source Generation** **Dates Employed: 01/2001 – 03/2002**
**2030 Brandon Shores Road**
**Baltimore, Maryland 21226**

**Site Modification and Maintenance Administrator**
Coordinate and direct company mobile forces and contractor forces to meet planned outage schedules and project deadlines. Provide planning/scheduling and management of major plant outages. Provide cost control and tracking of all outage projects and balance of plant work. Write specifications and work request for capital improvement and maintenance projects. Provide estimating/bid evaluation services for plant capital improvement and maintenance projects. Provide strategic planning for major projects and outages. Review construction claims and recommend contract settlements. Make recommendations to improve productivity and utilization, for company and contractor resources. Resolve work related conflicts during outages.

**Baltimore Gas and Electric Company and** **Dates Employed: 01/1998 – 01/2001**
**Constellation Power Source Generation**
**2030 Brandon Shores Road**
**Batimore, Maryland 21226**

**Engineering Analyst**
Develop and manage key strategies for the disposal of coal combustion products. Provide direction to operations for the placement of products in an environmental and economic sound manner. Implement strategies necessary to improve marketability and sales of coal

combustion products. Assist in the development of budget and cost control measures for capital improvements and operations of coal combustion product areas. Provide project management for new capital ventures. Develop budgets for ash placement. Develop and implement cost control measures.

**Baltimore Gas & Electric Company** **Dates Employed: 12/1993 – 01/1998**
**Crane Power Station**
**Carroll Island Road**
**Baltimore, Maryland**

**Construction Administrator**
Provide contract management of all contractors working in power plant facilities. Direct and control all phases of construction, field installation, and operations for major projects and major maintenance. Ensure adherence to safety requirements, contractual specifications and housekeeping. Supervise construction inspection forces necessary to monitor contract forces. Review and recommend approval of budgets and provide forecast of construction expenditures as required.

**Baltimore Gas & Electric Company** **Dates Employed: 07/1985 –12/1993**
**Riverside Power Station**
**Dundalk, Maryland**

**Assistant General Supervisor**
Directly responsible for management of the marine transportation and fuel handling operations. Established and implement policies and procedures for all operations. Developed budgets and implemented cost control measures. Recommended and implemented actions necessary in organizational structures to met changing demands in work processes. Ensured operational compliance of with all U.S. Coast Guard, state and local jurisdictional rules and regulations. Conducted employment interviews, made recommendations for hiring, merit increases, promotions, and disciplinary measures.

**Baltimore Gas & Electric Company** **Dates Employed: 12/1983 –07/1985**
**Riverside Power Station**
**Dundalk, Maryland**

***Fuel Operations Planner***
Planned and coordinated activities of the Fuel Operations and the Marine Transportation Units in operating and maintaining marine equipment, and oil terminal facilities to ensure adequate supplies of fossil fuels at waterfront stations. Prepared specifications for and scheduled routine maintenance and annual dry-docking of marine equipment. Performed inspections and surveys on all marine equipment.

**Baltimore Gas & Electric Company** **Dates Employed: 10/1982 – 12/1993**
**Fort Smallwood Road**
**Baltimore, Maryland 21226**

**Fuels Coordination Assistant**
Assisted Fuels Coordinator in the purchasing, inventory control, and quality control of all

fossil fuels required for operating department. Monitored consumption and receipts to maintain inventory levels and payment authorization. Arranged coal shipping schedules and rail transportation to transshipment points.

**Baltimore Gas & Electric Company** **Dates Employed: 08/1981 – 10/1982**
**Riverside Power Station**
**Dundalk, Maryland**

**Chief Engineer**
Chief Engineer on board Company tugboats. Duties included efficient, safe, and economical operation of all mechanical and electrical equipment. Additional duties included coordinating operation and preventive maintenance activities, maintaining logs and records, and coordinating activities during shipyard periods.

**Hartford Steam Boiler Inspection & Insurance Company**
**Pennsylvania Avenue**
**Towson, Maryland** **Dates Employed: 11/1978 – 08/1981**

**Supervisor Boiler & Electrical Inspectors**
Trained and managed a field inspection staff to conduct accident investigations, risk evaluations, and various inspection service activities. Developed salary budgets and expense budgets. Served as liaison between management, field inspection personnel, and insured. Major areas of responsibility were chemical, fertilizer, refinery, and small utility plants.

**Hartford Steam Boiler Inspection & Insurance Company**
**Pennsylvania Avenue**
**Towson, Maryland** **Dates Employed: 11/1975 – 11/1978**

**Boiler & Electrical Inspector**
Worked with limited supervision in an assigned field territory. Exercised independent judgment in evaluating risks, investigating accidents, and making engineering recommendations to prevent equipment failure. Provided loss control management for major accounts. Inspected boilers and pressure vessels for compliance to A.S.M.E. requirements during construction and for compliance to jurisdictional laws for operation, repair, and/or alterations.

**Oles Electric Company** **Dates Employed: 9/1974 – 11/1975**
**Alco Place**
**Landsdowne, Maryland**

**Equipment Operator**
Operate and maintain heavy equipment used in underground and overhead electrical utility work. Equipment included cranes up to 25 tons, backhoes, trenchers, and front-end loaders.

**Sonny Hilton Company** **Dates Employed: 12/1973 –09/1974**
**Jefferson Davis Hwy.**
**Woodbridge, Virginia**

**Foreman Underground Utilities**
Directed the installation of underground piping for domestic water systems, sanitary sewer systems, and storm water drainage projects. Made certain all installations were completed to plans and engineering specifications and complied with all county and state requirements.

**Tri-C, Inc.** **Dates Employed: 10/1971 – 12/1973**
**Belmount Ave**
**Baltimore, Maryland**

**Assistant Foreman**
Supervise utility pipe crews to install underground piping in accordance with project plans and specifications. Directly supervise equipment operators, pipe-layers, grade foreman and laborers. Responsible for maintaining production of crew at acceptable levels during daily activities.

**Merchant Marine Services** **Dates Employed: 09/1970 – 10/1971**

**Marine Engineer**
Worked for various shipping companies as Engineer Officer in charge of engineering watch on board steam and motor vessels up to 15,000 H.P. Ensured at all times, the safe and efficient operation and upkeep of all machinery affecting the operation of the ship, including the main propulsion units, boilers, generators, and auxiliary systems used in support of engine department operations.

**OTHER PROFESSIONAL EXPERIENCE**

**Jan. 1972 - July 1980 Warrant Officer**
**U.S. Army Reserves**

Served as Chief Engineer on-board U.S. Army vessels, responsible for the management of the engine department. Duties included the safe, efficient, and economical operation of the engine department. Specifically, this included coordination with the deck department for operation and maintenance of vessel. Supervised engine department, established and maintained logs, records, and reports for operations, repairs, and preventive maintenance schedules.

**EDUCATION:**

- Bachelors of Science - Management & Business Studies
  University of Maryland University College
- Associate of Science Degree
  University of the State of New York
- Marine Engineering – US Merchant Marine Engineering Officers License, Graduated
  Calhoon Marine Engineering School
- Numerous Management and Technical Courses including:
  - Executive Quality College
  - Dupont Safety Audit Training

- Behavioral Based Safety Training
- Managing Personal Growth
- National Association of Marine Surveyors, Vessel Survey & Inspection
- Developing and Coaching Employees
- Effective Team Building Skills
- Numerous computer skill-building classes.

**CERTIFICATIONS**

- U.S. Coast Guard License
  - Master Inland Steam and Motor Vessels
  - Chief Engineer Motor Vessels - 2000 H.P.
  - Operator Un-inspected Passenger Vessel - Near Coastal Routes
- National Board of Boiler and Pressure Vessel Inspectors Commission
  Reciprocal commissions in the following states: North Carolina, Virginia, Maryland, District of Columbia, Ohio, and Pennsylvania.
- Commercial Drivers License Class B N Endorsement
- PADI Certified Diver

**CAPABILITIES**

- Manage, direct, and supervise various work groups in different organizations.
- Experienced with electrical utility plant operations, marine transportation operations, inspection activities, quality assurance, and multi-disciple field construction activities.
- Develop budgets and cost control measures for operations, maintenance, and capital improvements.
- Ensure compliance with classification societies and regulatory agencies, such as U.S. Coast Guard, American Bureau of Shipping, American Society of Mechanical Engineers and Environmental Protection Agency.
- Negotiate and administer contracts for major utility projects, (new construction and major maintenance), transportation and vessel chartering, shipyard repairs, quality assurance and inspection services
- Extensive experience in project management and construction administration in marine, utility, and industrial environments.
- Proficient in preparing specifications, supervising contract repairs, and negotiating settlements.
- Extensive experience performing risk evaluations, loss control management, inspections, and failure analysis on pressure vessels, mechanical and electrical equipment associated with marine vessel equipment, industrial and utility power plant equipment.
- Computer literate using various software packages. (Spreadsheets, databases, project management, and word-processing)

**JOB-RELATED HONORS, AWARDS, MEMBERSHIPS, ETC.:**

- Award-Vietnam Service Bar from Department of Transportation
- Presented the Maryland Recyclers Coalition "Best Marketing Development Program" for Ash Operations and Marketing.
- Past Member of Baltimore Harbor Mutual Assistance Group (Oil Spill Response)

- Past Member of the Maryland ad Hoc Committee on Oil Spill Legislation.
- Past Member of Baltimore Gas and Electric Company's Legislative Review Committee.
- Past Member of the Preventative Maintenance Procedure Review Task Force

MARYLAND COMMERCIAL TITLE COMPANY
22 LIGHT STREET - SUITE 450
BALTIMORE, MARYLAND 21202

0014557 453

# DEED

**THIS DEED** is made as of July 1, 2000, by and between **BALTIMORE GAS AND ELECTRIC COMPANY, a Maryland corporation,** party of the first part, "BGE" or "Grantor", and **CONSTELLATION POWER SOURCE GENERATION, INC., a Maryland corporation,** party of the second part, "CPS Generation" or "Grantee".

## BACKGROUND

BGE is a combination electric and gas utility which provides retail service subject to the jurisdiction of the Maryland Public Service Commission ("PSC"). BGE is a wholly-owned subsidiary of Constellation Energy Group, Inc. ("Constellation Energy"), a Maryland corporation which is a public utility holding company exempt from registration under Section 3(a)(1) of the Public Utility Holding Company Act, 15 U.S.C. § 79c(a)(1).

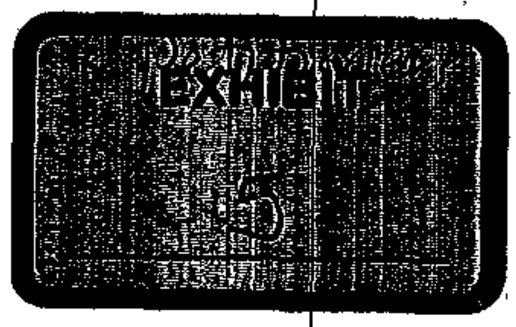
Maryland's Electric Customer Choice and Competition Act of 1999 (the "Electric Restructuring Act" or "Act") provides for the deregulation of electric power in Maryland. On November 10, 1999, the PSC issued Order No. 75757 (the "Settlement Order") approving a settlement among BGE and certain other parties regarding the implementation of the Electric Restructuring Act. In furtherance of the Act and the Settlement Order, BGE adopted a plan to transfer its ten electric generating stations in Maryland to certain affiliated entities. On June 19, 2000, the PSC issued a Secretarial Letter Order approving BGE's plan for the transfer of the generating stations.

BGE's generating stations include the C. P. Crane Generating Station (the "Station") in Baltimore County, Maryland. The affiliated entity that will acquire title to the nine fossil-fired electric generating stations, including the Station, is CPS Generation. CPS Generation is currently a wholly-owned direct subsidiary of BGE. The transfer of the nine fossil-fired electric generating stations to CPS Generation is part of a tax-free reorganization under Section 368(a) of the Internal Revenue Code in which the outstanding shares of CPS Generation will be transferred from BGE to Constellation Energy.

Although BGE is transferring to CPS Generation fee simple title to the land, buildings and other improvements comprising the Station, BGE will continue to own, operate and maintain certain electric transmission, electric distribution, electric substation, telecommunications and/or gas facilities at the Station (collectively the "Associated Utility Facilities") pursuant to the Utility Facilities Easement Agreement between BGE and CPS Generation of even date herewith that pertains to the Station and is intended to be recorded among the Land Records immediately following the recording of this Deed (the "Utility Facilities Easement Agreement").

**NOW THEREFORE,** as part of, and in consideration of the consummation of, the aforesaid Section 368(a) tax-free reorganization, and in partial satisfaction of the requirements of the aforesaid PSC Orders, the said party of the first part hereby grants and conveys to the party of





the second part, its successors and/or assigns, in fee simple, all those parcels of land in Baltimore County, State of Maryland, which are described as follows:

SEE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT A.

**TOGETHER WITH** (except as excepted and reserved to Grantor in the next paragraph) the buildings thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining (such parcels of land, buildings and appurtenant rights being herein called the "Fee Simple Property").

**EXCEPTING AND RESERVING** unto Grantor (1) the "Company's Easement Facilities", as such term is defined in the Utility Facilities Easement Agreement, and (2) the landlord's (reversionary) interest in any and all existing leases of (a) "Communications Facilities", as such term is defined in the Utility Facilities Easement Agreement, and/or (b) space for Communications Facilities upon the Fee Simple Property.

**SUBJECT TO** (1) any and all easements, restrictions and other matters of record which affect title to the Fee Simple Property, and (2) the Utility Facilities Easement Agreement.

**TO HAVE AND TO HOLD** the Fee Simple Property to Grantee, its successors and/or assigns, in fee simple.

**GRANTOR** hereby covenants that it has not done or suffered to be done any act, matter or thing whatsoever to encumber the Fee Simple Property, except as provided in EXHIBIT B attached hereto; that it will warrant specially the Fee Simple Property; and that it will execute such further assurances of the same as may be requisite.

**GRANTOR** certifies that the above conveyance is part of a tax-free reorganization under Section 368(a) of the Internal Revenue Code, and therefore the above conveyance is exempt from State recordation and transfer taxes and County transfer taxes pursuant to Sections 12-108(p)(2), 13-207(a)(9) and 13-405(c), respectively, of the Tax-Property Article of the Annotated Code of Maryland.

**GRANTOR** further certifies that this conveyance is not part of a transaction in which there is a sale, lease, exchange or other transfer of all or substantially all the property and assets of the said corporate grantor.

**IN WITNESS WHEREOF,** Grantor has caused this Deed to be executed under seal as of the day and year herein first written.

**WITNESS:**

**BALTIMORE GAS AND ELECTRIC COMPANY, a Maryland corporation**

By: _____(SEAL)
Name:
Title:

**STATE OF MARYLAND**

**CITY/~~COUNTY~~ OF** Baltimore, to wit:

**I HEREBY CERTIFY,** That on this 21st day of June 2000, before me, the subscriber, a Notary Public of the State aforesaid, personally appeared Gregory C. Mattis who acknowledged himself to be a Vice President of Baltimore Gas and Electric Company, a Maryland corporation, and that he, as such Vice President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such President.

**IN WITNESS WHEREOF,** I hereunto set my hand and official seal.

_____ Notary Public
MARGUERITE F. STROBEL
MY COMMISSION EXPIRES
JANUARY 1, 2003

My Commission Expires: _____

**THIS IS TO CERTIFY** that the within instrument has been prepared by or under the supervision of the undersigned Maryland attorney.

_____(SEAL)
Richard A. Ransom
Attorney for Grantor
Baltimore Gas and Electric Company

RAR:PP Crane Deed 1
06/20/00

EXHIBIT "A"

PARCEL I

BEGINNING for the same at the intersection of the center line of the road leading from Carroll Island Road to the dwelling house now belonging to Francis W. Asher, with the north side of the Carroll Island Road, said place of beginning being at the distance of 1053 feet, south 70 degrees 27 minutes east from a stone heretofore planted on the northeast side of Carroll Island Road, where the same is intersected by the first line of the land which by a deed dated July 25, 1918 and recorded among the Land Records of Baltimore County in Liber W.P.C. No. 506, folio 12, was conveyed by The Dengies Ducking Club to Francis W. Asher and wife, and running thence bounding on the center of the aforesaid road leading to the dwelling house now belonging to Francis W. Asher, north 03 degrees 30 minutes east 539 feet; thence south 81 degrees 15 minutes east 13 feet to a large walnut tree; thence still south 81 degrees 15 minutes east 125.80 feet to the center of a drain ditch; thence bounding on the center of said ditch, north 41 degrees 32 minutes east 375 feet to the head of a marsh; thence through said marsh, the two following courses and distances, viz: north 29 degrees 28 minutes east 180 feet and north 16 degrees east 120 feet to the waters of Salt Peter Creek; thence bounding on the waters of said Creek, the twelve following courses and distances, viz: north 72 degrees 10 minutes east 88 feet, south 76 degrees 38 minutes east 111 feet, north 80 degrees 08 minutes east 284.50 feet, south 76 degrees 48 minutes east 183.70 feet, north 66 degrees 52 minutes east 336 feet, south 15 degrees 39 minutes east 21 feet, south 48 degrees 33 minutes west 181 feet, south 10 degrees 49 minutes east 100 feet, south 40 degrees 11 minutes east 330 feet, south 32 degrees 23 minutes east 100 feet, south 05 degrees 38 minutes east 220 feet and south 70 degrees 26 minutes east 190 feet, more or less, to intersect the division line between the land now being described and the land now owned by the United States of America; thence bounding on said division line, approximately south 31 degrees west 850 feet, more or less, to intersect the outline of a tract of land called "Scott's Improvement"; thence binding on the outline of said tract of land, now marked by a fence, north 75 degrees 14 minutes west 1490 feet, more or less, to the place of beginning. Containing 43.20 acres of land, more or less.

CLERK'S NOTATION

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PARCEL II

BEGINNING for the same at a point in the first or north 79 degrees west 290 perches line of Clonish Carrolls' Island Resurveyed under special warrant dated January 8th, 1851, at the end of the south 09 degrees 15 minutes east 4.4 perches line of the land described in a Deed from Stephen A. Wilkinson and wife to Benjamin W. Jenkins, dated November 2nd, 1869, and recorded among the Land Records of Baltimore County in Liber E.H.A. No. 64, folio 206, said point being distant south 74 degrees 57 minutes east 434 feet from the end of said north 79 degrees west 290 perches line, and running thence binding reversely on said first line of Clonish Carrolls' Island Resurveyed, as now surveyed, south 74 degrees 57 minutes east 2558.7 feet to intersect the westernmost outline of a Reservation of United States of America, as indicated by Stone No. 125 and Stone No. 124, heretofore planted at a point distant north 31 degrees east 101.2 feet from said Stone No. 125; thence binding on said westernmost outline, south 31 degrees west 1784.4 feet to intersect the south 39 degrees east 74 perches line of Clonish Carrolls' Island Resurveyed, thence binding reversely on said south 39 degrees east 74 perches line, as now surveyed, north 34 degrees 48 minutes west 443.4 feet to the shore of Seneca Creek at a point distant south 34 degrees 48 minutes east 115.5 feet from a stone heretofore planted at the end of the second line of Clonish Carrolls' Island Resurveyed and at the beginning of Chestnut Neck; thence binding on the shore of Seneca Creek, as now surveyed, the seventeen following courses and distances, to wit: south 82 degrees 46 minutes west 79.3 feet, south 56 degrees 42 minutes west 300.2 feet, south 47 degrees west 160.1 feet, south 28 degrees 51 minutes west 151.3 feet, south 46 degrees 50 minutes west 83.4 feet, south 88 degrees 59 minutes west 305 feet, north 63 degrees 57 minutes west 337 feet, north 15 degrees west 78 feet, north 05 degrees 30 minutes east 132 feet, north 54 degrees west 80 feet, north 44 degrees 45 minutes west 40 feet, north 81 degrees west 97 feet, north 44 degrees 15 minutes west 140 feet, north 37 degrees west 65 feet, north 12 degrees west 125 feet, north 22 degrees east 65 feet and north 44 degrees 53 minutes east 59.3 feet to the end of the third or north 48 degrees 15 minutes west 61.4 perches line of the land described in a Deed from Stephen A. Wilkinson to Benjamin W. Jenkins, dated May 17, 1869, and recorded among said Land Records in Liber E.H.A. No. 62, folio 394; thence running with and binding on part of the fourth line of the land described in said last mentioned deed, north 03 degrees 02 minutes east 674.67 feet to a stone heretofore planted in a marsh at the end of the second or south 45 minutes west 31.4 perches line of the land described in the first mentioned deed from Stephen A. Wilkinson to Benjamin W. Jenkins, thence running with the outlines thereof the three following courses and distances, to wit: north 61 degrees 07 minutes west 231.83 feet to a stake, north 16 degrees 40 minutes east 495 feet to a stone heretofore planted and north 42 degrees 11 minutes west 508.56 feet to a stake at a point distant south 47 degrees 12 minutes west 20 feet from a stone heretofore planted in a line of Chestnut Neck at the end of the first or north 79 degrees west 290 perches line of Clonish Carrolls' Island Resurveyed hereinbefore mentioned; thence north 31 degrees 45 minutes west 315.17 feet to the center line of Carrolls' Island Road at a point distant north 31 degrees 45 minutes west 16 feet from a stone heretofore planted; thence binding on the center line of Carrolls' Island Road, the five following courses and distances, to wit: south 66 degrees 34 minutes east 323.3 feet, south 71 degrees east 99 feet, south 53 degrees 53 minutes east 66 feet, south 36 degrees 33 minutes east 69.25 feet and south 26 degrees 24 minutes east 187.25 feet to a point in the south 10 degrees east 54 perches line of the land described in a Deed from T. T. Gibbons and wife to Thomas Wilkinson and S. A. Wilkinson, dated October 14th, 1852, and recorded among said Land Records in Liber H.M.F. No. 3, folio 182, at a point distant south 05 degrees 34 minutes east 47.2 feet from a stone heretofore planted in said line; and thence running with and binding on said last mentioned line, south 05 degrees 34 minutes east 53.75 feet to the place of beginning. Containing a total area of 95.2 acres of land, of which 6.8 acres is submerged land, leaving 88.4 acres of fast land. The within description and the acreage hereinabove set forth are based on a Survey dated December 14, 1928, prepared by Sutton-Britcher & Co.

CLERK'S NOTATION

Document submitted for record in a condition not permitting satisfactory photographic reproduction.

EXHIBIT "A"
(CON'T) -

PARCEL III

BEGINNING for the same in the center of the Carroll's Island Road, as now located and traveled, and at a point in the sixth or South 73 degrees 16 minutes East 150 feet line of a parcel of land which by a Deed dated April 2nd, 1925 and recorded among the Land Records of Baltimore County in Liber W.P.C. No. 610, folio 354, was conveyed by Alma Frayser and husband, et al, to Mary M. Hughes, et al, said point being distant South 80 degrees 07 minutes East 110.45 feet, measured along said sixth line from the beginning thereof and running thence with and binding on the outlines of said parcel of land and binding on or near the center of the Carroll's Island Road, as now located and traveled, the ten following courses and distances viz: South 80 degrees 07 mimites East 39.55 feet, South 82 degrees 37 minutes East 285.00 feet, South 74 degrees 52 mimites East 250.00 feet, South 78 degrees 52 minutes East 100.00 feet, North 88 degrees 48 minutes East 275.00 feet, North 81 degrees 39 minutes East 150.00 feet, North 87 degrees 48 minutes East 100.00 feet, South 78 degrees 42 minutes East 100.00 feet, South 68 degrees 02 minutes East 150.00 feet and South 62 degrees 32 minutes East 66.00 feet, thence leaving said Carroll's Island Road and running with and binding on a part of the sixteenth or South 18 degrees 00 minutes West 1401 feet line of said parcel of land which was conveyed by Frayser to Hughes, South 11 degrees 00 minutes 30 seconds West 323.01 feet to a concrete monument now set in said line, said sixteenth line being the common boundary between the herein named Grantor and Renn P. Wilkinson et al, thence leaving said outlines and running for lines of division, now made the four following lines, viz: North 81 degrees 51 minutes 50 seconds West 213.27 feet to a concrete monument now set, North 70 degrees 20 minutes 28 seconds West 532.28 feet to a concrete monument now set, westerly by a line curving toward the left having a radius of 686.00 feet, for a distance of 273.51 feet (the chord of said arc bearing North 81 degrees 45 minutes 47 seconds West 271.70 feet) to a concrete monument now set and South 86 degrees 48 minutes 54 seconds West 141.50 feet to a concrete monument now set on the east side of the Proposed Relocation of Seneca Park Road, 70 feet wide, thence binding on the east side of said Proposed Relocation of Seneca Park Road, Southerly by a line curving toward the right having a radius of 751.00 feet for a distance of 185.81 feet (the chord of said arc bearing South 6 degrees 11 minutes 33 seconds West 185.34 feet), thence North 76 degrees 43 minutes 10 seconds West 35.00 feet to a point in the center of said Proposed Relocation of Seneca Park Road and also in the center of the existing location of Seneca Park Road, thence still North 76 degrees 43 minutes 10 seconds West 35.00 feet to a point on the West side of said Proposed Relocation of Seneca Park Road, 70 feet wide, thence binding on the West side of said Proposed Relocation of Seneca Park Road, the two following lines viz: Northerly by a line curving toward the left having a radius of 681.00 feet for a distance of 267.14 feet (the chord of said arc bearing North 2 degrees 02 minutes 33 seconds East 265.43 feet) and North 9 degrees 11 minutes 44 seconds West 142.69 feet to the corner formed by the intersection of the West side of the Proposed Relocation of Seneca Park Road with the South side of the Proposed Relocation of Carroll's Island Road, 70 feet wide, thence binding on the South side of the Proposed Relocation of Carroll's Island Road, 70 feet wide, Westerly by a line curving toward the right having a radius of 751.00 feet, for a distance of 200.82 feet ( the chord of said arc bearing North 88 degrees 51 minutes 45 seconds West 200.23 feet) and thence North 8 degrees 47 minutes 53 seconds East 38.02 feet to the place of beginning.

CONTAINING 8.031 Acres of land, more or less.

THE courses in the above description are referred to the True Meridian as established in a survey made by Edward V. Coonan and Company of Property of the Baltimore Gas and Electric Company to be known as "Charles P. Crane Station" on Carroll's Island.

CLERK'S NOTATION

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EXHIBIT "A"
(CON'T)

PARCEL IV

BEGINNING for the same at station 75 + 03.67 of the line established as the center line of a proposed railroad siding of the Pennsylvania Railroad Company to be known as the Charles P. Crane Station railroad siding, said Station 75 + 03.67 being located at the point of intersection of said line established as the center line of said railroad siding with the 32nd or South 29 degree 44 minute West 1294.5 foot line of a parcel of land which by a Deed dated February 7th, 1928 and recorded among the Land Records of Baltimor County, in Liber W.H.M. No. 654, folio 282, was conveyed by Stephen A. Wilkinson and wife to The Real Estete Trustee, Incorporated, said point of intersection being distant North 22degrees 57 minutes 30 seconds East 753.43 feet measured reversely along said 32nd line and 33rd line from the center of Carroll's Island Road, and thence running from said place of beginning and running with and binding on a part of said 32nd line, South 22 degrees 57 minutes 30 seconds West 132.16 feet to intersect a line established as the center line of an electrical transmission line right of way, thence continuing to run with and bind on a part of said 32nd line South 22 degrees 57 minutes 30 seconds West 68.11 feet, said 32nd line being the common boundary between the herein named Grantors and John H. Norris and wife, thence leaving said outline and running for a line of division now made parallel with the center line of said electrical transmission line right of way and distant 60 feet, southwesterly therefrom, measured at a right angle thereto, South 19 degrees 57 minutes 40 seconds East 518. 75 feet, thence still running for a line of division now made, South 23 degrees 07 minutes 01 seconds East 198.03 feet to a point in the center of Carroll's Island Road as now located and traveled, thence running with and binding on part of the 3rd and on the 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th and 12th lines of said parcel of land and binding in the center of Carroll's Island Road as now located and traveled the 10. following courses and distances, South 80 degrees 07 minutes East 39.55 feet South 22 degrees 37 minutes East 285.00 feet, South 74 degrees 52 minutes East 250.00 foot, South 78 degrees 52 minutes East 100.00 foot, North 88 degrees 48 minutes East 275.00 feet, North 81 degrees 39 minutes East 150.00 feet, North 37 degrees 48 minutes East 100.00 feet, South 78 degrees 42 minutes East 100.00 feet, South 68 degrees 02 minutes East 150.00 feet, and South 62 degrees 32 minutes East 66.00 feet, thence leaving said Carroll's Island Road and running with and binding on a part of the 13th line of said parcel of land South 11 degrees 00 minutes 30 seconds West 323.01 feet to a concrete monument now set in said line, said 13th line being the common boundary between the herein named grantors and Cecille S. Carrison, thence leaving said outline and running for lines of division the two following courses and distances, South 81 degrees 51 minutes 50 seconds East 691.44 feet to a concrete monument now set and South 57 degrees 52 minutes 49 seconds East 599.38 feet to a concrete monument now set in the 20th or North 16 degree 31 minute East 495 foot line of the aforesaid parcel of land which was conveyed by Stephen A. Wilkinson and wife to The Real Estate Trustee, Incorporated, thence running with and binding on part of said 20th line and on the 21st and 22nd line of said parcel of land and also running with and binding on the outlines of a parcel of land which by a Deed dated November 26th, 1956 and recorded among the Land Records of Baltimore County, in Liber G.L.B. No. 3061, folio 309, was conveyed by The Guarantee Title Holding Corp., to the Bankers Trust Company and the Baltimore Gas and Electric Company, the three following courses and distances, North 9 degrees 21 minutes East 86.21 feet to a concrete monument heretofore set at the end of said 20th line, North 49 degrees 30 minutes West 508.56 feet to a concrete monument heretofore set and North 39 degrees 04 minutes West, passing over a concrete monument heretofore set near the South side of the Carroll's Island Road, 315.17 feet to a point within the right of way of said Road, thence binding within the right of way of said Carroll's Island Road and running with and binding on the 23rd line of the aforesaid parcel of land which was conveyed by Wilkinson to The Real Estate Trustee, Incorporated, North 86 degrees 07 minutes East 325.30 feet to a point in the center line of the Carroll's Island Road, thence leaving said Carroll's Island Road, as now located and traveled, and running for lines

CLERK'S NOTATION
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PARCEL IV (CON'T)

of division; the twelve following lines, North 7 degrees 38 minutes 06 seconds East 45.00 feet, North 82 degrees 21 minutes 54 seconds West 1117.54 feet, thence binding on the North side of the proposed relocation of Carroll's Island Road 80 feet wide, North 70 degrees 43 minutes 16 seconds West 427.12 feet, thence continuing to bind on the North side of the proposed relocation of Carroll's Island Road 80 feet wide, northwesterly by a line curving to the left having a radius of 761 feet for a distance of 472.73 feet (the chord of said arc bearing North 88 degrees 31 minutes 01 seconds West 465.16 feet) thence North 64 degrees 41 minutes 05 seconds West 96.89 feet, thence parallel with the aforesaid line established as the center line of said proposed railroad siding and distant 30 feet northeasterly therefrom, (measured at a right angle thereto, North 42 degrees 45 minutes West 175.58 feet, thence parallel with and 30 feet distant measured radially in a Northeasterly direction from said center line, Northwesterly by a line curving towards the right having a radius of 1243.57 feet for a distance of 445.79 feet (the chord of said arc bearing North 32 degrees 28 minutes 49 seconds West 443.41 feet) thence North 67 degrees 47 minutes 22 seconds East 10.00 feet, thence parallel with and 40 feet distant measured radially in a Northeasterly direction from said center line, Northwesterly by a line curving towards the right having a radius of 1233.57 feet, for a distance of 48.43 feet, (the chord of said arc bearing North 21 degrees 05 minutes 09 seconds West 48.43 feet) thence parallel with the center line and distant 40 feet Northeasterly therefrom measured at a right angle thereto, North 19 degrees 57 minutes 40 seconds West 200.00 feet, thence South 70 degrees 02 minutes 20 seconds West 10.00 feet, thence parallel with said center line and distant 30 feet northeasterly therefrom measured at a right angle thereto, North 19 degrees 57 minutes 40 seconds West 46.68 feet, to intersect the aforesaid 32nd line, thence running with and binding on a part of said line, South 22 degrees 57 minutes 30 seconds West 44.06 feet to the place of beginning.

CONTAINING 17.791 acres of land, more or less.

THE courses in the above description are referred to the True Meridian as established in a survey of the above referred to property which was conveyed by the Guarantee Title Holding Corporation to the Bankers Trust Company, and the Baltimore Gas and Electric Company, as made by Edward V. Coonan and Company and dated October 22nd, 1956.

Being the same lot of ground conveyed to Baltimore Gas and Electric Company and Bankers Trust Company by Deed dated November 26, 1956 and recorded among the Land Records of Baltimore County in Liber 3061, folio 306; Deed dated November 26, 1956 and recorded as aforesaid in Liber 3061, folio 309; Deed dated October 5, 1959 and recorded in Liber 3608, folio 218; and Deed dated October 5, 1959 and recorded in Liber 3608, folio 228.

CLERK'S NOTATION
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## EXHIBIT "B"

1. Subject to Right of Way contained in Deeds dated October 5, 1959 and recorded as aforesaid in Liber 3608, folio 218, by and between Cecille S. Garrison, Bankers Trust Company and Baltimore Gas and Electric Company and Liber 3608, folio 228, by and between Rena P. Wilkinson, Thomas A. Frayser and Edna May Frayser; Bankers Trust Company; and Baltimore Gas and Electric Company.

2. Subject to terms and provisions contained in a Deed of Easement dated October 6, 1965 and recorded as aforesaid in Liber 4536, folio 151, between Baltimore Gas and Electric Company and Baltimore County, Maryland.

3. Subject to terms and provisions contained in a Deed of Easement and Partial Release of Mortgage dated April 18, 1979 and recorded as aforesaid in Liber 6031, folio 849, by and between Baltimore Gas and Electric Company; Bankers Trust Company; and The United States of America.

4. Subject to the legal operation and effect of original Indenture dated February 1, 1919 and recorded as aforesaid in Liber WPC No. 555, folio 1 and twenty-three (23) Supplemental Indentures thereto.

0014557 462

# State of Maryland Land Instrument Intake Sheet

☐ Baltimore City ☒ County: MC3884

*Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office only.*

(Type or Print in Black Ink Only—All Copies Must Be Legible)

IMPFD SURE $ 5.00
RECORDING FEE 20.00
TOTAL 25.00
Rec# BA01 Rcpt # 68154
SM SR Blk # 2267
Jun 28, 2000 12:24 PM

**1 Type(s) of Instruments** (☐ Check Box if Addendum Intake Form is Attached.)

| ☒ Deed | ☐ Mortgage | ☐ Other | ☐ Other |
|---|---|---|---|
| ☐ Deed of Trust | ☐ Lease | | |

**2 Conveyance Type Check Box**

| ☐ Improved Sale Arms-Length [1] | ☐ Unimproved Sale Arms-Length [2] | ☐ Multiple Accounts Arms-Length [3] | ☐ Not an Arms-Length Sale [9] |
|---|---|---|---|

**3 Tax Exemptions (if Applicable)** Cite or Explain Authority

Recordation Sec. T.P. Art 12-108(g)(2), 13-207(g)(9)
State Transfer & 13.405(c)
County Transfer PARENT TO SUBSIDIARY

**4 Consideration and Tax Calculations**

| Consideration Amount | |
|---|---|
| Purchase Price/Consideration | $ |
| Any New Mortgage | $ |
| Balance of Existing Mortgage | $ |
| Other: | $ |
| Other: | $ |
| Full Cash Value | $ |

| Finance Office Use Only | |
|---|---|
| **Transfer and Recordation Tax Consideration** | |
| Transfer Tax Consideration | $ |
| X ( ) % = | $ |
| Less Exemption Amount – | $ |
| Total Transfer Tax = | $ |
| Recordation Tax Consideration | $ |
| X ( ) per $500 = | $ |
| TOTAL DUE | $ |
| Agent: | |
| Tax Bill: | |
| C.B. Credit: | |
| Ag. Tax/Other: | |

**5 Fees**

| Amount of Fees | Doc. 1 | Doc. 2 |
|---|---|---|
| Recording Charge | $ | $ |
| Surcharge | $ | $ |
| State Recordation Tax | $ | $ |
| State Transfer Tax | $ | $ |
| County Transfer Tax | $ | $ |
| Other | $ | $ |
| Other | $ | $ |

**6 Description of Property**

SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).

| District | Property Tax ID No. (1) | Grantor Liber/Folio | Map | Parcel No. | Var. LOG (5) |
|---|---|---|---|---|---|
| 15 | 15-02-001277 | 03061/0309 | | | ☐ |

| Subdivision Name | Lot (3a) | Block (3b) | Sect/AR(3c) | Plat Ref. | SqFt/Acreage (4) |
|---|---|---|---|---|---|
| | | | | | |

Location/Address of Property Being Conveyed (2)
58.4 AC +/- See Attached

Other Property Identifiers (if applicable)
See Attached

Water Meter Account No.

Residential ☐ or Non-Residential ☒ Fee Simple ☐ or Ground Rent ☐ Amount:

Partial Conveyance? ☐ Yes ☒ No Description/Amt. of SqFt/Acreage Transferred:

If Partial Conveyance, List Improvements Conveyed:

**7**

| Doc. 1 - Grantor(s) Name(s) | Doc. 2 - Grantor(s) Name(s) |
|---|---|

CP CLAIMS

| | | |
|---|---|---|
| 15-02-001277 | 88.4 Ac | SS CARROLL ISLAND LA |
| 15-02-001278 | 43.20 Ac | NES KEENERS RD |
| 15-02-001306 | 17.791 Ac | N & SS CARROLL ISLAND LA |
| 15-02-001307 | 8.031 Ac | SWS CARROLL ISLAND LA |

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

20 COLUMBIA CORPORATE CENTER
10420 LITTLE PATUXENT PARKWAY
COLUMBIA, MARYLAND 21044-3528
TELEPHONE 410 884-0700
FAX 410 884-0719

G. SCOTT BARHIGHT
DIRECT NUMBER
*410 832-2050*
gbarhight@wtplaw com

WHITEFORD, TAYLOR & PRESTON
L.L.P.

210 WEST PENNSYLVANIA AVENUE
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1025 CONNECTICUT AVENUE, NW
WASHINGTON, D C 20036-5405
TELEPHONE 202 659-6800
FAX 202 331-0573

1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

July 17, 2002

Ms. Kathleen C. Bianco
Administrator
County Board of Appeals of Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

**Re: In the Matter of: *Constellation Power Source Generation, Inc.***
**Baltimore County Case No. 02-098-SPH**

Dear Ms. Bianco:

Enclosed please find a copy of the "Secretarial Letter Order" discussed during the hearing in this matter that took place on June 5, 2002, and referenced in the Deeds submitted as Petitioner's Exhibit 5. During the hearing, it was decided that this Secretarial Letter Order will be Petitioner's Exhibit 6.

Please feel free to contact me with any questions or concerns. Thank you for your cooperation in this matter.

Sincerely,

G. Scott Barhight

GSB:sll
cc: Richard A. Ransom, Esquire
Mr. James F. Burkman
Ms. Bonnie Johansen
Mr. John Burns
Michael T. Maguire, P.E.
Mr. John L. Jeffcoat
Mr. David Perlman
Peter Max Zimmerman, Esquire

*257766*

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COMMISSIONERS

GLENN F. IVEY
CHAIRMAN

CLAUDE M. LIGON
SUSANNE BROGAN
CATHERINE I. RILEY
J. JOSEPH CURRAN, III

RECD JUN 2 0 2000

STATE OF MARYLAND

# PUBLIC SERVICE COMMISSION

SUSAN S. MILLER
GENERAL COUNSEL

FELECIA L. GREER
EXECUTIVE SECRETARY

GREGORY V. CARMEAN
EXECUTIVE DIRECTOR

**#13, 6/7/00 AM; ML#s 69971, 71269, 72563 and 72664**

June 19, 2000

Lisa M. Decker, Esquire
Baltimore Gas and Electric Company
P.O. Box 1475
Baltimore, Maryland 21203-1475

***Re: Baltimore Gas and Electric Company's Application for Transfer of its Generating Assets and for Exempt Wholesale Generator Status Determinations***

Dear Ms. Decker:

On December 22, 1999, Baltimore Gas and Electric Company ("BGE" or "Company") filed an Application for Transfer of its Generating Assets and for Exempt Wholesale Generator ("EWG") Status Determinations. The Application requests that the Commission approve the transfer of its generating assets to its affiliates pursuant to the terms of a Settlement Agreement entered into by BGE and numerous parties on June 29, 1999, which Settlement was approved by the Commission in Order No. 75757, issued on November 10, 1999. Among the terms of the Settlement, the generation function of BGE was to be deregulated following implementation of full customer choice for all classes, and BGE was required to transfer some or all of its generation assets to either affiliated or non-affiliated entities, with transfer to affiliates occurring at book value. In the Commission Order accepting the Settlement, the Commission directed BGE to file the application for transfer by December 31, 1999. Accordingly, BGE filed the instant application, stating it will transfer its non-nuclear generating plants and certain related transmission facilities to a special-purpose, wholly-owned indirect subsidiary of Constellation Energy Group, Inc. ("Constellation"), BGE's parent holding company, and the Calvert Cliffs Nuclear Power Plant will be transferred to another special-purpose, wholly-owned indirect subsidiary of Constellation.

BGE requests approval of the transfers from the Commission, consistent with the Electric Customer Choice and Competition Act[1] ("1999 Act") enacted during the 1999

[1] Section 7-501, *et seq.*, of the *Public Utility Companies Article* ("PSC" Article).



Petitioner's Exh. #6

legislative session, and further requests the Commission make certain determinations that are required for the generating stations to obtain EWG status from the Federal Energy Regulatory Commission ("FERC"), which status would exempt the stations from certain requirements of the Public Utility Holding Company Act of 1935 ("PUHCA").[2]

Comments in support of the Application were filed by the Office of People's Counsel ("OPC") and Commission Staff, in addition to the Company. OPC also specifically requests that the Commission order the Company to file the actual transaction accounting information when the transfers are complete.

Staff has recommended that the Commission accept the Application for filing and issue the determinations necessary for EWG status. Staff initially recommended a hearing be docketed to allow comment on the proposed transfer and the EWG certification be contingent on BGE providing the Commission confidential notice of transactions that exceed five percent of the total assets of the Company and its consolidated subsidiaries. However, in subsequent comments, dated May 24, 2000, Staff indicates that BGE has *supplied sufficient information so that the Commission may determine the transfer of* generating assets to unregulated affiliates is in the public interest, and also recommends the Commission provide the requested EWG determinations. This approval would be contingent only upon informational filings made by BGE upon the transfer of assets.

The Mid-Atlantic Power Supply Association ("MAPSA") opposes the application and requests the Commission reject the transfer of generating assets and the request for determinations to allow BGE to obtain EWG status. In the alternative, MAPSA requests holding the application in abeyance and convening of hearings. In its opposition filed on March 20, 2000, MAPSA contends the application violates the 1999 Act, violates the Code of Conduct adopted in Case No. 8797, and constitutes an exploitation of the retail service market. In its argument, MAPSA objects to the transfers at book value and argues the Commission expressly reserved authority in the Settlement Order (No. 75757) under §§ 7-508 and 7-509 of the PSC Article that would allow either further hearing or rejection of the application in this case. Shell Energy, LLC ("Shell"), also filed comments, dated May 2, 2000, in opposition to the proposed transfer of assets by BGE, noting its opposition to the restructuring Settlement as well. Shell also requests hearings be instituted.

The Company opposes the requests for further hearing and alleges MAPSA is seeking to relitigate and effectively stay Order No. 75757. As to the development of a competitive market, BGE notes the Commission has full power, under § 7-514, to investigate the market for retail electricity supply and electricity supply services.

This matter was commented upon by the various interested parties during the Commission's Administrative Meeting held on June 7, 2000. During the course of the

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[2] To obtain EWG status from FERC, each generator must be an "eligible facility," and state commissions having jurisdiction over rates or charges for electric energy must make a specific determination that allowing such facility to be an eligible facility will benefit consumers, is in the public interest, and does not violate state law.

Administrative Meeting, BGE provided an updated accounting of the proposed transfer to accomplish a total $1.1 billion dollar debt offset[3] and also noted that transfers of assets approved by FERC would be provided to the Commission.

In accordance with § 7-508(c)(2) of the 1999 Act, the Commission may review the transfer of assets for the purpose of determining:

(i) that the appropriate accounting has been followed;
(ii) that the transfer does not or would not result in an undue adverse effect on the proper functioning of a competitive electricity supply market; and
(iii) the appropriate transfer price and ratemaking treatment.

The transfer of generation assets is governed not only by § 7-508, but also by the Settlement Agreement approved in Order No. 75757 on November 10, 1999. Paragraph 6 of the approved settlement states:

> Following the implementation of full customer choice for all customer classes, the generation function of BGE shall be deregulated and BGE shall transfer, sell... or otherwise dispose or encumber some or all of its generation assets to either affiliated or non-affiliated entities.... Any transfer of a generation asset from BGE to an affiliate shall occur at book value.... The transfer of generation assets shall be reflected on the books of the affiliate by removing from the books of BGE and recording on the books of the affiliate the amounts shown on the books of BGE as of the date of transfer.... Nothing in Paragraphs 6, 7, or 8 shall impair the operation of Code Sections 7-508 and 7-509.

The settlement also incorporates a Code of Conduct that binds BGE and the affiliates to certain standards that are designed to ensure that transactions between them are conducted at arm's length.

Upon consideration of the arguments and comments of the parties, the Commission finds that the proposed transfer of assets and requests for certain determinations relating to EWG status are in conformance with § 7-508 and with the approved Settlement, and accordingly the application will be granted.

BGE anticipates transferring generation assets with a net book value of approximately $2.05 billion. Fossil assets will be transferred to Constellation Generation, Inc. ("CGI"), a subsidiary of Constellation Enterprise. Nuclear-related assets will be transferred to Calvert Cliffs, Inc. ("CCI"), a subsidiary of Constellation Nuclear Group,

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[3] *See*, Letter from Thomas E. Ruszin, Jr., Treasurer, Baltimore Gas and Electric Company dated June 12, 2000.

LLC. When the transfer is finalized, approximately $2.714 billion in assets will be removed from electric rate base.

BGE's outstanding debt obligations are comprised of $278 million in pollution control debt related to electric generating stations, approximately $819 million in Medium Term Notes (MTNs) and approximately $1.3 billion in First Mortgage Bonds. The pollution control debt will be transferred to the affiliates because this debt specifically relates to the operation of the plants. However, the mortgage bonds and MTNs cannot be assigned, meaning they cannot be assumed by the affiliate. Therefore, subject to Internal Revenue Service ruling, BGE anticipates that the utility will receive a note from the affiliates for approximately $426 million with a maturity not to exceed one year. An additional debt offset will be provided to BGE, to achieve a total $1.1 billion debt removal. The Commission determines that the proposed accounting is both reasonable and appropriate.

The Commission also finds that the proposed transfer will not have an adverse effect on the competitive electricity supply market at this time. Both CCI and CGI will be engaged primarily in wholesale power trading. Constellation Power Source, Inc. ("CPSI") a subsidiary that owns no electric generation, transmission or distribution facilities, will be the power marketer that will supply BGE with the electric power necessary to provide Standard Offer Service to its customers during the transition period in conformity with the approved settlement. BGE seeks EWG status for CCI and CGI, who will control the generation assets but will not directly market power to BGE. CPSI will provide wholesale electric power to BGE through wholesale electric sales agreements approved by the Federal Energy Regulatory Commission. The Commission determines that the restrictions discussed above, as well as the Code of Conduct contained in the approved Settlement, prevent BGE from exploiting an unfair competitive advantage in the retail electric supply market. The protections provided by the Code of Conduct in the approved Settlement, including the prohibition against marketing Standard Offer Service or competitive supply service, and the sale of the output of the transferred generating assets to the wholesale market on a non-discriminatory basis, minimize the likelihood that BGE will be capable of exerting market power.

With regard to the appropriate transfer price, the approved Settlement provides that these generating assets should be transferred at book value. With respect to the opposition of MAPSA and Shell, their objections to the transfers at book value are essentially a reiteration of prior arguments in opposition to the Settlement, which Settlement provided for transfers to affiliates at book value. The Commission finds that these proposed transfers do not violate the 1999 Act, and further finds that the transfers conform with the approved Settlement. Also, the record indicates the Commission will be apprised of transfers approved by FERC, and the Commission hereby directs the Company to file the actual transaction accounting information when transfers are complete to assure proper accounting of the transfers. The information provided shall include actual data regarding assets and debt obligations that are assumed by the affiliates as well as the journal entries that the utility will record to its books for transactions related to asset transfer.

Finally, with regard to the ratemaking treatment of the asset transfer, the Commission notes as an initial matter that pursuant to the approved Settlement, ratepayers will be protected from any rate effects of the proposed transfer since rates will be frozen for a period of years. However, the Commission hereby determines that this Order shall not be construed in any manner as approval of a particular capital structure for ratemaking purposes.

On a related matter, in its application, BGE seeks EWG status for CCI and CGI. The Public Utility Holding Company Act of 1935 ("PUHCA") is administered by the Securities and Exchange Commission ("SEC"). The purpose of PUHCA is to prevent financial abuses, *See*, 15 USC § 79(a). Absent an exemption, a public utility holding company, as well as its public utility and non-utility subsidiaries, are subject to PUHCA. EWG status provides an exemption from PUHCA for eligible facilities that are exclusively in the business of owning and/or operating and selling electric energy at wholesale. An eligible facility either uses the electric generation for sale at wholesale or leases it to one or more public utility companies. 15 USCS § 79z-5a(a)(2). An electric utility is prohibited from entering into a contract to purchase electric power from an EWG that is an affiliate unless FERC grants an exemption from this prohibition. 15 USCS § 79z-5a(k). Thus, EWG status prohibits retail sales by these entities and requires that the energy produced by such entities be marketed solely in the wholesale market. The Commission finds that such action is in the public interest and benefits consumers since EWG status requires the generation output of CCI and CGI to be exclusively available to the wholesale market and, thereby, enhances competition in the retail electric market. Furthermore, this result is consistent with paragraph 44 of the approved Settlement and the 1999 Act. Thus, granting EWG status to CCI and CGI is not contrary to State law.

In conclusion, we find the Application furthers the Settlement previously approved by the Commission and comports with § 7-508 of the 1999 Act. We further find that allowing the generating facilities involved to be eligible facilities for EWG status will benefit consumers, is in the public interest, and does not violate State law.

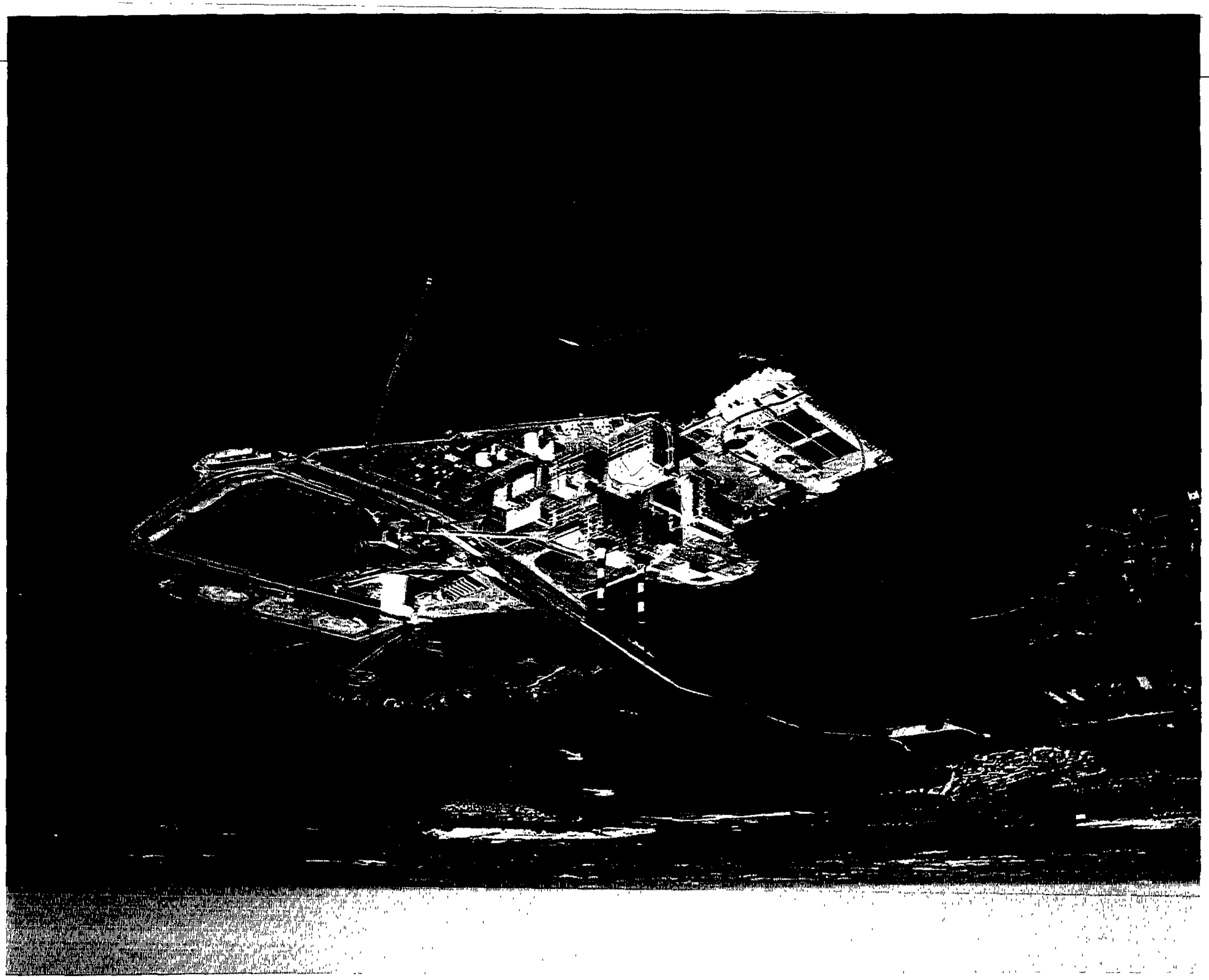
For the reasons set forth above, BGE's Application for transfer of its generating assets and for certain determinations regarding EWG status is hereby approved.

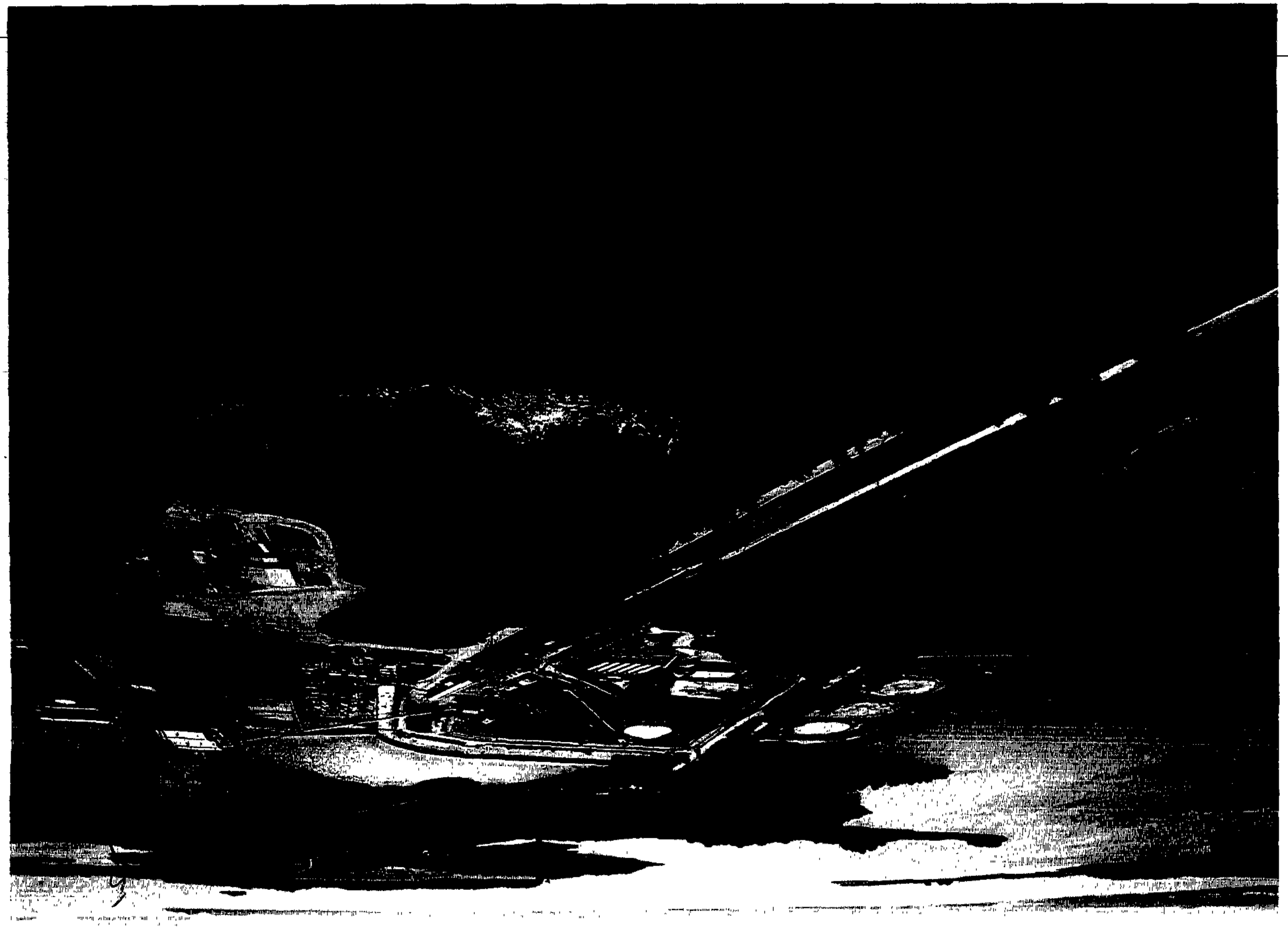
By Direction of the Commission,

Felecia L. Greer
Executive Director

FLG/grm

cc: All Parties of Record in Case Nos. 8794/8804





3306 Peterson Street
Norfolk, VA 23509
Email:jburns@sandblaster.com

757-855-8150
757-857-8631 – Fax

# Resume of John W. Burns

**Professional Experience:**

November 2000 to Present – International Garnet, Manufacturer of Garnet

Position Held: **Owner/President**

I purchased this company from an ailing owner and I have continued its manufacturing operation. International Garnet has continued to maintain its growth under my management in the abrasive, water filtration, and waterjetting markets.

October 1989 to Present – Virginia Materials, John Burns Company, and Midwestern Coal Slag Company – Manufacturer & supplier of Sandblasting Abrasives

Position Held: **Owner/President/Vice President**

I purchased Virginia Materials out of bankruptcy as an outdated abrasive manufacturer. Under my leadership Virginia Materials has become one of the leading abrasive manufacturers and suppliers in the United States and either as owner or partner of all the above companies we now have five manufacturing plants in the US today.

December 1985 to Present – Burns Holding Company – Residential, Industrial & Commercial Real Estate Holding Company

Position Held: **Owner/President**

Burns Holding Company consists of Residential, Industrial, and Commercial properties owned and managed by myself, my wife, and two sons.

June 1979 to April 2000 – U.S. Building Service, Inc. – Contracting Business

Position Held: **Owner/President**

I was the owner and operator of this medium sized contracting firm that offered services in sandblasting, painting, waterblasting, caulking, waterproofing, and arial work. I was responsible for the managing of 10 to 30 employees year round.

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Our company dealt mainly with large commercial and industrial corporations. I eventually sold the company to an employee.

June 1978 to December 1980 - Murro Chemical Company, Murport Chemical Company and Masdale, Inc. (A division of Jacob Stern & Sons, Inc.) – Manufacturer of Soap Based Products

Position Held: **General Manager**

I managed all aspects of the three corporations each being involved in different product areas. This included but was not limited to all sales, marketing, production, maintenance, engineering, purchasing, and accounting.

April 1977 to May 1978 - GAF Corporation – Supplier of Surfactants, Coloriformers, Pesticides, Roofing, Recovered Silver, and Iron Powder

Position Held: **Manager of Plant Engineering & Maintenance** for Three Locations

I managed all aspects of maintenance, engineering, and utilities at all three plant locations.

May 1975 to March 1977 – American Can, M & T Chemical Division – Organo-tin Chemicals, Coatings, and Ink

Position Held: **Plant Engineer**

I managed all aspects of both the chemicals and coatings plants maintenance, capital expenditures, utilities, and energy conservation, janitorial and yard crews, storeroom, and receiving functions as well as all state, federal, OSHA, Air, Water, and Landfill compliance requirements.

June 1971 to May 1975 & May 1968 to August 1969 – Occidental Petroleum, Hooker Chemical Division

Position Held: **Maintenance Superintendent** (12/73 – 5/75)

I managed all maintenance, technical, and supervisory personnel totaling 80 full time employees.

Position Held: **Department Supervisor** (12/72 – 12/73)

I was responsible for all plant services, stores, receiving, purchasing and inventory of over 20,000 different items.

Position Held: **Senior Staff Engineer** (6/71 – 12/72)

I was responsible for the direction of all phases of projects from conception until after start-up and operator training. This entailed working with sales, operations, purchasing, contractors, and maintenance personnel.

Position Held: **Chemical Engineer** (5/68 – 8/69)

I initially worked with assisting in the set-up of lubrication/vibration program.

August 1969 to June 1971 – United States Army, Aberdeen Proving Ground at Edgewood Arsenal - Chemical Warfare Items

Position Held: **Production Engineer**

I was drafted into the Army S & E Program with Top-Secret security clearance. Utilizing an existing pilot facility, a full-scale production line was developed.

June 1963 to June 1968 – Bronze Craft Corporation

Position Held: **Maintenance**

I worked summers and second shift maintenance during college to earn 100% of my college expenses.

**Education:**

September 1980 to May 1981 – Old Dominion University

Courses towards my MBA in Graduate Studies

January 1978 to May 1978 – Rutgers University

Business courses towards my MBA

September 1970 to January 1971 – George Washington University

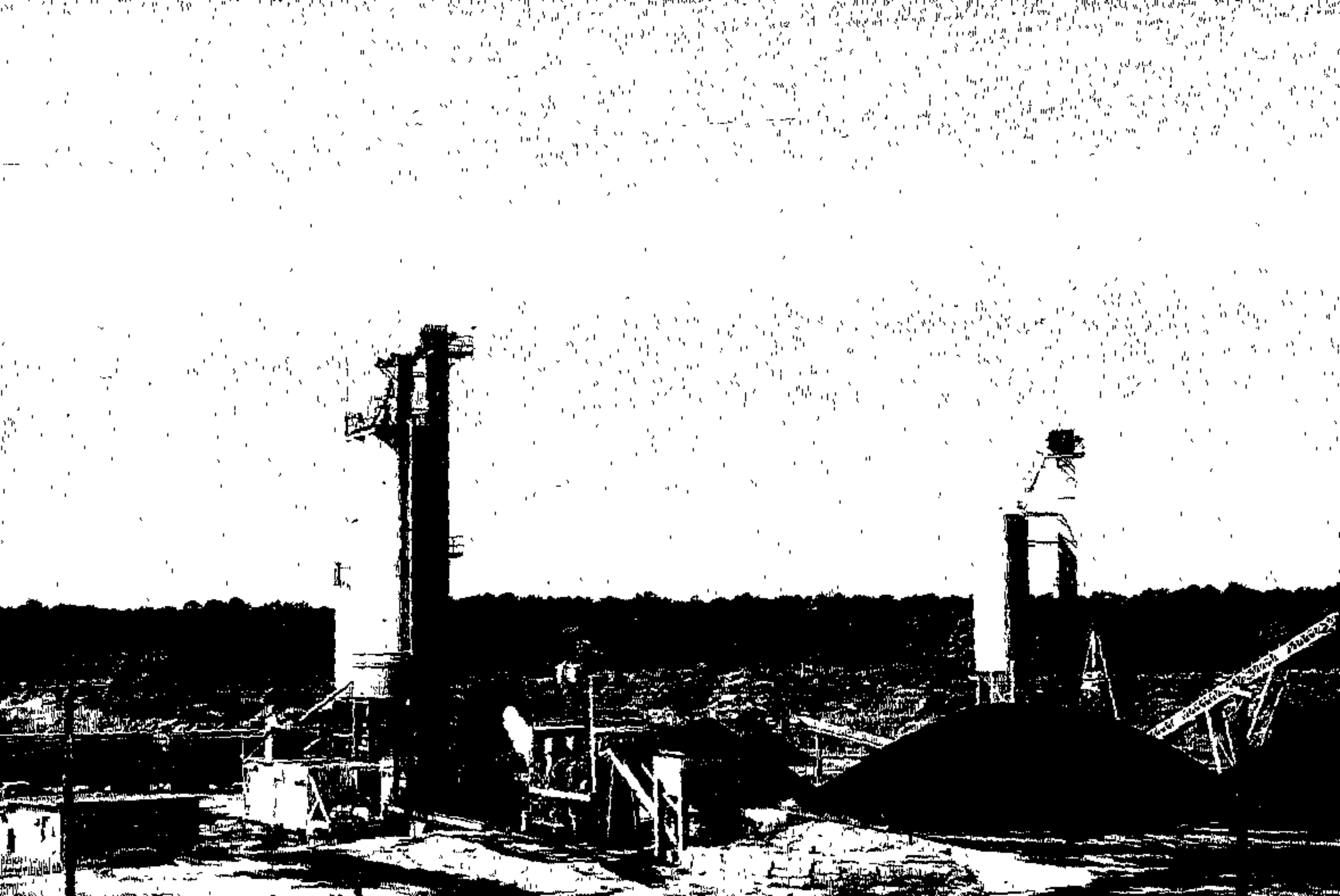
Credits towards my MBA

September 1963 to May 1968 – Lowell Technological Institute

BS in Chemical Engineering

**Personal:** I am married with two children, who currently work in management positions at Virginia Materials.

**Special Competencies** – Member in good standing in the SSPC, Secretary/Treasurer of the Woodstock Condominium Association



**Virginia Materials, Inc.**
3306 Peterson Street~Norfolk, VA 23509
Phone (757) 855-0155~ Fax (757) 857-5631
Email jb@sandblaster.com

## Material Safety Data Sheet
## (Complies with 29 CFR 1910.1200)

**Section I - General**
Virginia Materials, Inc.
T/A Virginia Materials
3306 Peterson Street
Norfolk, VA 23509
**EMERGENCY TELEPHONE NUMBERS:**
(757) 855-0155
(800) 793-0094

**Product Name:** "Black Blast" Abrasives

**CAS Number:** 68476-96-0
Particles not otherwise **regulated**
**Common Name:** Slag, Coal
**Date:** May 1995

**SECTION II - Ingredients**

Slag, Coal 99% - 100%

| | | OSHA *PEL | ACGIH *TLV |
|---|---|---|---|
| Nuisance Dust | | | |
| Total Dust | : | 15 | 10 |
| Respirable Dust | : | 5 | 5 |

*Values Expressed as mg/M3

**SECTION III - Physical Data**
**Physical Form:** Solid (angular granules)
**Vapor Pressure/Density:** N/A
**Water Solubility:** Negligible
**Boiling Temperature:** N/A
**Evaporation Rate:** N/A
**Color:** Black
**Melting Point:** Greater than 2300 F
**Specific Gravity:** 2.7 g/cc (typical)
**Odor:** None

**SECTION IV - Fire and Explosion Data**
Product is nonflammable and nonexplosive.

**SECTION V - Reactivity Data**
Product is stable under normal conditions of use, storage and transportation.

**SECTION VI - Health Hazard Data**
Low health risk by inhalation. Treat as a nuisance dust. Typical free silica less than 0.1%. This material is not a recognized carcinogen or cocarcinogen. Human toxic response has not been demonstrated for any route of entry Mechanical irritation may occur to eyes, skin or respiratory tract. Pre-existing health conditions may be aggravated.
Carcinogenicity: NTP - no; IARC Monographs - no; OSHA Regulated - no.

**FIRST AID:**
In case of:
1. Eye contact - Immediately flush eyes thoroughly with water or an opthalmic saline solution.
2. Skin contact - Wash skin with soap and water if irritation occurs.
3. Inhalation - Remove affected person(s) to fresh air source.
4. Oral Intake - Rinse mouth with water.

**IF SYMPTOMS PERSIST CONTACT PHYSICIAN OR OTHER MEDICAL PERSONNEL.**

**SECTION VII - Spill, Leak and Disposal Procedures**
No special procedures required for clean-up. Wetting with water will reduce airborne dust. Uncontaminated product does not exceed Toxicity Characteristic Leaching Procedure (TCLP) limits and may be disposed of as an inert material in an appropriate solid waste landfill according to applicable Federal, State and Local regulations.

**SECTION VIII - Control Measures**
Use appropriate NIOSH certified respiratory protection when exposure limits may be exceeded. Maintain sufficient ventilation to allow visual contact with work surfaces. Appropriate abrasive blaster's protective equipment is required, which may also include gloves, hood with protective lens, safety glasses and hearing protection.

**SECTION IX - Special Precautions**
Keep product dry and free of all contamination to assure free flow. Use an appropriate safety screen over fill hatch of blasting pot. Respirable dust may be generated during pressure abrasive cleaning operations.

**NOTE**

The opinions expressed herein are those of qualified experts within Virginia Material, Inc. believes that the information contained herein is current and accurate for the normal and intended use of this product as of the date of the Material Safety Data Sheet. Since the use of this information and of those opinions or the conditions of use

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# VIRGINIA MATERIALS

Phone (757) 855-0155 ~ Fax (757) 857-5631
Virginia Materials, Inc.
3306 Peterson Street
Norfolk, Virginia 23509-2415
email: jburns@sandblaster.com
www.sandblaster.com

3/1/02

## *SPECIFICATION SHEET FOR BLACK BLAST (COAL SLAG)*

***WITH NEWEST GRADES ADDED***

### BLACK BLAST NORMAL GRADATIONS AS % RETAINED

| US Screen Sizes | (8-40) Utility | (12-40) Medium | (20-40) Med/Fine | (30-60) Fine | (50-150) Extra Fine |
|---|---|---|---|---|---|
| No. 4 | -0- | | | | |
| No. 6 | 0-2 | -0- | | | |
| No. 8 | 5-15 | 0-2 | | | |
| No. 12 | 20-65 | 5-25 | -0- | | |
| No. 16 | 10-40 | 15-45 | 0-8 | -0- | |
| No. 20 | 5-30 | 20-50 | 5-40 | 0-10 | -0- |
| No. 30 | 0-20 | 10-35 | 15-50 | 5-50 | 0-10 |
| No. 40 | 0-10 | 0-15 | 15-40 | 10-60 | 5-25 |
| No. 50 | 0-5 | 0-10 | 0-20 | 5-40 | 10-30 |
| No. 70 | | | | 0-20 | 15-70 |
| No. 100 | | | | | 15-70 |
| PAN | 0-5 | 0-5 | 0-10 | 0-15 | 10-50 |
| Min. Nozzle Size | 3/8 or #6 | 5/16 or #5 | 3/16 or #3 | 1/8 or #2 | 1/16 or #1 |
| Normal Profile Produced | 3.5-5.5 mil | 2.5-4 mil | 2-3.5 mil | 1-2.5 mil | .5-1.5 mil |

Gradations can vary from time to time depending on raw material being produced from the boilers.

**TYPICAL CHEMICAL ANALYSIS**

Silicon Dioxide ($Si O_2$) 50%-65%
Amorphous Silica 50%-65%
Crysltaline Silica <1%

Aluminum Oxide ($Al_2 O_3$) 10%-30%

Iron Oxide ($Fe_2 O_3$) 5%-25%

Calcium Oxide (Ca O) 1%-2%

Iron (Fe) 1%-15%

**PHYSICAL PROPERTY**

Shape: Angular

Color: Black

Bulk Density: 75-95lbs

Hardness: 6-7 Mohs

Melting Point: $2500^0$ F

Loss on Ignition (LOI) 0 – 1%

**Note:** Coal slag abrasives are produced under several trade names: Black Blast, Black Magnum, Black Beauty, Black Diamond, and Black Jack are similar.

# VIRGINIA MATERIALS

Phone (757) 855-0155 ~ Fax (757) 857-5631
Virginia Materials, Inc.
3306 Peterson Street
Norfolk, Virginia 23509-2415
email: jburns@sandblaster.com
www.sandblaster.com

Revised 3/1/02

## BLACK BLAST TECHNICAL DATA

Black Blast abrasives physical characteristics make it a unique and versatile abrasive. The granule consistency and angular shape give it a wide range of applications in the sandblasting field.

Black Blast comes from fresh water washed coal slag which is crushed, dried and screened under inflexible quality control assuring you of a consistent product. Its hardness and angular shape make it the blasting industry standard.

With less than 0.1% free silica, Black Blast is classified as "Low Dusting," and "Silica Free" which makes it EPA, OSHA, and NIOSH's choice for an expandable abrasive. It is Navy QPL approved for Mil-A-22262B (SH) - for use as a ship hull abrasive and CARB certified by California Air Resource Board as low dusting.

## SPECIAL GRADES BY REQUEST

Black Blast is manufactured in five standard grades to cover the whole range of blasting:

**UTILITY** : BB 8/40 - Coarse grade Black Blast, used for tough blasting jobs, when a rough profile is required, or for special applications; HEAVY RUST, THICK & TOUGH COATINGS, MASTICS, TANK LININGS, SHIPS & BARGES, CONCRETE, AND FLAME SPRAY REMOVAL.

**MEDIUM** : BB 12/40 - Medium grade Black Blast, used for general purpose repair and maintenance blasting; REMOVAL OF PAINT AND RUST, GENERAL PURPOSE, STRUCTURAL STEEL, MEDIUM TO HEAVY MILL SCALE, AGGREGATE EXPOSURE.

**MEDIUM/FINE** : BB 20/40 - Medium/Fine grade Black Blast, used for new construction, light paint and rust removal, and for special maintenance applications requiring reduced profiles; BRIDGE & WATER TANK MAINTENANCE, MEDIUM TO LIGHT MILL SCALE, PAINT & RUST, STRUCTURAL STEEL.

**FINE** : BB 30/60 - Fine grade Black Blast, used to clean surfaces and create a smooth finish, Brush-Off Blast, or in a high pressure water blast system. Is excellent for fine mil scale removal on new steel and light rust; AUTO BODIES, EQUIPMENT, LIGHT METALS, WOOD CLEANING, LIGHTLY RUSTED OR THIN MILL SCALE ON METAL.

**EXTRA FINE**: BB 50/100 – Extra fine Black Blast used to clean very thin surfaces with no paint and to create a very smooth surface. Good for Fiberglass, Glass Etching, and where a very fine smooth surface is required. GLAVINIZED SHEET METAL, WOOD, FIBERGLASS, GLASS, AND SMOKE DAMAGE

**Michael T. Maguire, P.L.S.**

1223 Southview Road
Baltimore, MD 21218-1454

Phone 410-243-6276
Email Maguiremt@aol.com
Fax 410-243-2913

May 15, 2002

## WORK HISTORY

1998-Present ***Independent land use consultant***

Provide special project support on land use, planning and zoning and land development issues for select clients while attending Towson University.

1984-1998 ***President and COO, Daft McCune Walker, Inc.***

This demanding position with an 85 person multi-discipline consulting firm required organizational leadership and development skills, business development, problem solving and problem avoidance, financial overview and management. Led reorganization of work teams. Implemented cross discipline design review and quality control procedures.

Prior positions include **Senior Vice President** and **Principal Surveyor**

As Senior Vice President, provided project management and strategic direction for land development clients including residential, commercial, institutional, industrial and retail developers. Provided expert witness testimony concerning land development regulations in zoning and approval hearings in various jurisdictions. Made public presentations on behalf of clients. Secured entitlements for land development projects through local approval process.

Principal Surveyor's responsibilities were comprehensive with respect to establishment and development of surveying capability of company. Assembled a premier professional workforce and established quality based procedures for work efforts and products. Led successful adaptation to and use of technology based equipment including GPS survey procedures.

1971-1984 ***Director of Surveying, Evans, Hagan and Holdefer, Inc.***

Building from an entry level field position to become senior manager of a 45 person surveying group required dedicated performance and exceptional professional accomplishment. Established quality control procedures, professional standards and an unrivaled reputation for accepting the most challenging assignments that were successfully completed due to the competence and ability of staff.

## EDUCATION

- M.A. Geography and Environmental Planning, Towson University, expected December 2002
- B.S. Geography, Towson University, December 2000
  - Concentration in land use planning, urban studies and applied technology including GIS, Computer Mapping and Remote Sensing
  - Conducted two GPS workshops for math and science teachers as part of an independent study project – Summer, 2000
- AA, Surveying Technology, Catonsville Community College, 1978
- Financial Management for Design Firms -Harvard GSD -- 1997
- Mid Size Firm Management - Harvard GSD – 1996

## PROFESSIONAL LICENSE

- Maryland Licensed Property Line Surveyor No. 235, 1983

## PROFESSIONAL AND CIVIC ACTIVITIES

- Board Member - Towson Development Corporation 1998-2001
- Member - Baltimore County Economic Forum 1992-present
- Chairman - Board of Trustees - Woodbourne Center 1992-94
- Member - Maryland Society of Surveyors (MSS) 1983-present
- President – MSS- 1988-1989
- Legislative Committee Chairman - MSS- 1988-93
- Board Member Citizens Planning and Housing Association - 1988-92
- Member - American Congress on Surveying and Mapping 1983-present
- Member – Urban and Regional Information System Association - 2001

# BALTIMORE COUNTY, MARYLAND

**DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT**

**TOWSON, MARYLAND 21204**

DIRECTOR

BUILDINGS ENGINEER

~ GRADING ~

BUILDING PERMIT

PERMIT #: B484620 CONTROL #: GRC- DIST: 15 PREC: 01
DATE ISSUED: 05/21/2002 TAX ACCOUNT #: 1502001277 CLASS: 0B

PLANS: CONST 00 PLOT S R PLAT 0 DATA 0 ELEC NO PLUM NO
LOCATION: 1021 CARROLL ISLAND RD
SUBDIVISION:

OWNERS INFORMATION
NAME: CONSTELLATION POWER SOURCE GENERATION INC
ADDR: 39 W LEXINGTON ST BALTO MD 21201-3940

TENANT:
CONTR: TBD
ENGNR:
SELLR:
WORK: GRADE 9000SF OF DISTURBED AREA FOR SILOS SEE
B484220C. PERMIT EXPIRES 2 YEARS FROM DATE OF
ISSUE. (A-2 EXEMPTION)
CBCA FLOOD ZONE: C

BLDG. CODE:
RESIDENTIAL CATEGORY: OWNERSHIP: PRIVATELY OWNED

PROPOSED USE: SAME & GRADING
EXISTING USE: SLAG FACILITY/SILOS B484220

TYPE OF IMPRV: OTHER
USE: OTHER - NON-RESIDENTIAL
FOUNDATION: BASEMENT:
SEWAGE: PUBLIC EXIST WATER: PUBLIC EXIST

LOT SIZE AND SETBACKS

SIZE: 88.4AC
FRONT STREET:
SIDE STREET:
FRONT SETB: NC
SIDE SETB: NC/NC
SIDE STR SETB:
REAR SETB: NC

DGT 19

Baltimore County
Department of Environmental Protection
and Resource Management

401 Bosley Avenue, Suite 416
Towson, Maryland 21204

June 4, 2001

Mr. James Burkman
Constellation Energy Group
7609 Energy Parkway, Suite 101
Baltimore, MD 21226

Re: Crane Power Plant-Preliminary Assessment
600 Seneca Park Drive

Dear Mr. Burkman:

The Department of Environmental Protection and Resource Management (DEPRM) has received and reviewed your request for a preliminary assessment on the above referenced property. The purpose of the request is to determine the feasibility of redeveloping the old propane plant on the premises.

I met with you out at the site on May 9, 2001. The site is approximately 7 acres of 100% impervious surfaces. Redevelopment shall use best management practices which reduce pollutant loading by 10% of the on-site level prior to redevelopment.

In a subsequent meeting at this office with you and Ms. Patricia M. Farr, program supervisor of Environmental Impact Review (EIR), the following decisions were made:

1. No Critical Area Administrative Variance would be required for the continuance of existing uses in the 100 foot buffer to tidal waters;

2. The natural resources (streams, wetlands, forest, etc.) on the property will not need to be delineated or recorded as a Critical Area Easement;

3. The 10% calculations will be based on the area to be redeveloped and not the entire acreage of the property.

If you have any questions regarding this matter, please call me at 410-887-3980.

Sincerely,

Keith Kelley
Natural Resource Specialist
Environmental Impact Review

Kdk#12/cranepp



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DOT 20 A

**Exploration Research, Inc.**
*Environmental Consultants*

November 8, 2001

**Mr. Keith Kelley**
**Baltimore County**
**Department of Environmental Protection and**
**Resource Management**
**Environmental Impact Review**
**401 Bosley Avenue, Suite 416**
**Towson, Maryland 21204**

Re: Crane Power Plant Slag Recycling Facility

Dear Mr. Kelley:

In response to your letter dated June 4, 2001 to Mr. James Burkman regarding environmental review requirements for the proposed coal slag recycling facility at Crane Power Plant, we wish to address the 10% pollutant loading requirements you mentioned.

As you specified in your letter, we have calculated the 10% reduction using the "Worksheet A" from the Applicants Guide to the 10% rule compliance in the Chesapeake Bay Critical Area. The redevelopment area used is simply the footprint area of the slag recycling equipment which amounts to some 5,979 sq. ft. or 0.14 Ac.

Since the entire site is paved with asphalt or gravel, pollutant reduction would be achieved by simply converting some of this impervious area to pervious cover. With this in mind; we propose to provide a grass filter strip, 10' x 150', as a BMP to filter the sheet flow before it leaves the site. This filter strip will require excavation and removal of gravel/asphalt paving, placement of topsoil and revegetation with warm season grasses such as bermuda grass.
Filter strips have a total phosphorous removal rate of 7% and the calculated pollutant removal exceeds 10% with this practice.

Attached are the "Worksheet A" calculations, and site plan exhibits showing the location of the equipment, the drainage area and proposed filter strip location.

I trust this information is sufficient to meet your review needs. Should you have any questions, please contact me at 410-750-1150.

Sincerely,
**Exploration Research Inc.**

Stephen L. Huber, RPF
Sr. Environmental Specialist

cc: Jack Burns, Virginia Materials
Jim Burkman, CPSG
James Andercyk, CPSG

*8318 Forrest Street • Historic Ellicott City, Maryland 21043*
*(410) 750-1150 • 1-800-776-5417 • FAX (410) 750-7350*

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DET 208

Applicant's Guide to 10% Rule Compliance

# Worksheet A: Standard Application Process

Calculating Pollutant Removal Requirements*

## Step 1: Project Description

### A. Calculate Percent Imperviousness

1. Site Acreage = 0.14 acres (Area Affected)
2. Site Imperviousness, existing and proposed, (*See Table 1.0 for details)*

| | (a) Existing (acres) | (b) Post-Development (acres) |
|---|---|---|
| rooftop | | |
| roads | | |
| sidewalks | | |
| parking lots | | |
| pool/ponds | | |
| decks | | |
| other | Gravel/Asphalt (0.14) | Foundations (0.14) |
| | | |

Impervious Surface Area: 0.14 Acres * 0.14 Acres

Impervious

Existing Impervious Surface Area/Site Area = (Step 2a) / (Step 1) = 0.14/0.14

Post-Development Impervious Surface Area / Site Area = (Step 2b) / (Step 1) = 0.14/0.14

### A. Define Development Category (circle)

1) Re-development: Existing impervious greater than 15% (Go to Step 2A)
2) New development: Existing imperviousness less than 15% (Go to Step 2B)
3) Single Lot Residential: Single lot being developed or improved; single family residential; and more than 250 square feet being disturbed. (Go to Page 27 - *Single Lot Residential. Sheet for remaining steps).*

***NOTE: All acreage used in this worksheet refer to areas within the IDA of the critical area only.**

## Step 2: Calculate the Pre-Development Load (L pre)

### A. Redevelopment

$L_{pre}$ = (Rv)(C)(A)8.16
$R_v$ = 0.05 + 0.009($L_{pre}$)
$L_{pre}$ = ( 0.95 )( 1.08 )( 0.14 )8.16
= 1.17 lbs P/year

where:

$R_v$ = runoff coefficient, which expresses the fraction of rainfall which is converted into runoff.
$L_{pre}$ = site imperviousness (i.e., I=75 if site is 75% impervious)
C = flow-weighted mean concentration of the pollutant in urban runoff (management/1).
C = 0.26 if pre-development I <20%
C = 1.08 if pre-development I >=20%
= area of the development site (acres in the Critical Area).
A = area of the development site (acres in the Critical Area).
8.16 = includes regional constants and unit conversions factors.

**OR**

### B. New Development

$L_{pre}$ = 0.5 lbs/year * A
= (0.5)( )
= _____ lbs P/year

## Step 3: Calculate the Post-Development Load (L Post)

### A. New Development and Redevelopment:

$L_{post}$ = (Rv)(C)(A)8.16
$R_v$ = 0.05 + 0.009($I_{post}$)
= 0.05 + 0.009( 100 ) = 0.95

$L_{post}$ = ( 0.95 )( 1.08 )( 0.14 )8.16
= 1.17 lbs P/year

where:

$R_v$ = runoff coefficient, which expresses the fraction of rainfall which is converted into runoff.
$I_{post}$ = site imperviousness (i.e., I=75 if site 75% impervious)
C = flow-weighted mean concentration of the pollutant in urban runoff (management/1).
C = 0.26 if pre-development I <20%

C = 1.08 if pre-development I >=20%
A = area of the development site (acres).
8.16 = includes regional constants and unit conversion factors.

## Step 4: Calculate the Pollutant Removal Requirement (RR)

RR = $L_{post} - (0.9)(L_{pre})$
= ( 1.17 ) - (0.9)( 1.17 )
= 0.12 lbs P/year

## Step 5: Identify Feasible Urban BMP

Select BMP Options using the screening tools and pollutant removal rates listed in the Applicant's Guide *Tables 5.0, 5.1, 5.2, and 5.4.* Calculate the load removed for each option.

| BMP Type | (Removal Efficiency x [use 0.50 or 50%]) | | (Fraction of Drainage x Area Served) | | ( L Post ) | | Load Removed |
|---|---|---|---|---|---|---|---|
| Filter Strip | 0.07 (filter strip) | x | 100 | x | 1.17 | = | 8.19 lbs P/year |
| | | x | | x | | = | |
| | | x | | x | | = | |
| | | x | | x | | = | |

If the Load Removed is equal to or greater than the pollutant removal requirement (RR) calculated in Step 4, then on-site BMP option complies with the 10% Rule. (*See Table 5.3, page 16)* for submittal requirements for each BMP option.

**Table D.4.8** TP Removal Rates for BMPs Not on the List

| BMP LIST | TP% |
|---|---|
| Detention Facility - 2 | 10 |
| Dry ED Pond - 7 | 20 |
| Open Channels - 7 | -15 |
| Biofilter - 2 | 25 |
| Dry Well | Nd |
| Catchbasin - 1 | 5 |
| Filterstrip - 1 | 7 |
| Water Quality Inlets - 1 | 0 |

Source: Brown and Schueler, 1997, National Pollutant Removal Database for Stormwater BMPs

STEP 6: Define Off-Site Compliance

In the event that on-site BMPs cannot fully meet the pollutant removal requirement and on-site design cannot be changed, an option exists for off-site mediation, otherwise known as an Offset Project. Of primary concern is that the project be associated with pollutant removal or water quality protection for water bodies within the same sub-watershed as the development project. Similarly, off-site projects should be designed to minimize maintenance requirements. In such cases where this is not feasilbe, a maintenance agreement should be established so as to insure long-term water quality protection. Table D.4.9 provides a prioritized list of potential offset projects.

Baltimore County
Department of Environmental Protection
and Resource Management
Storm Water Engineering

401 Bosley Avenue, Suite 416
Towson, Maryland 21204

410 887-3768
FAX 410 887-4804

June 27, 2001

Mr. James F. Burkman
Constellation Energy Group
PO Box 1475
Baltimore, Maryland 21203-1475

RE: C.P CRANE POWER PLANT (BGE) SLAG PROCESSING FACILITY, Stormwater Management Exemption, Gunpowder River
**Project I.D. S920108**

Dear Mr. Burkman:

This office has reviewed the information submitted and finds that an exemption from the requirement to provide storm water management quantity control can be granted for this project under Section 14-155 (b) (3) of Article V of the Baltimore County Code. Section 14-155 (b) (3) exempts developments which do not disturb over 5,000 square feet of land area. As long as this requirement is met, the project is exempt from stormwater management. If there are any questions, please contact Ed Schmaus at 410 887-3768.

Very truly yours,

R. A. Smith

For Thomas L. Vidmar, PE, Deputy Director
Department of Environmental Protection and Resource Management

TLV:pms

c: Storm Drain Design, Dept. of Public Works
Environmental Impact Review, Dept. of Environmental Protection & Resource Management

Bge crane power



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DOT 21

Baltimore County Government
Department of Permits and
Development Management

111 West Chesapeake Avenue
Towson, MD 21204

410-887-3335

March 4, 2002

Whiteford Taylor & Preston
210 W. Pennsylvania Avenue
Towson, MD 21204

RE: Constellation Power Slag Processing
1001 Carroll Island Road
DRC Number 021102D, Dist. 15C5

Dear Sir or Madam:

Pursuant to Article 25A, Section 5 (U) of the Annotated Code of Maryland, and as provided in Section 602 (d) of the Baltimore County Charter, and Section 26-132 of the Baltimore County Code, this letter constitutes an administrative order and decision on the request for issuance, renewal, or modification of a license, permit, approval, exemption, waiver, or other form of permission you filed with this department.

Your request has been submitted for careful review and consideration to the Development Review Committee (DRC), which is composed of representatives from each of those departments involved in land-use decisions. These representatives are designees of the directors of these departments. The purpose of the DRC is to ensure compliance with Section 26-171 and Section 26-211 of the Baltimore County Code and to make recommendations to the Director, Department of Permits and Development Management (PDM).

The DRC has, in fact, met in an open meeting on February 11, 2002, and made the following recommendations:

The DRC has determined that your project meets the requirements of a limited exemption under Section 26-171 (A) (2).

ADOPT
22

A copy of this letter must be presented when submitting engineering/construction plans to this office, and/or when applying for a permit with the Permits and Licenses Section.

Be advised that Phase 2 review fees may apply, depending on the amount of site disturbance, and/or the requirement of a Public Works Agreement.

I have reviewed the recommendations carefully, and I have determined to adopt the recommendations set forth above. It is this 4th day of March 2002, ordered and decided that the recommendations of the DRC are hereby adopted.

Should you submit an application for any permits that may be required for this project, your application will be processed subject to the conditions set forth above and any plans, securities, or non-county permits that may be required in accordance with County, State, or Federal regulations.

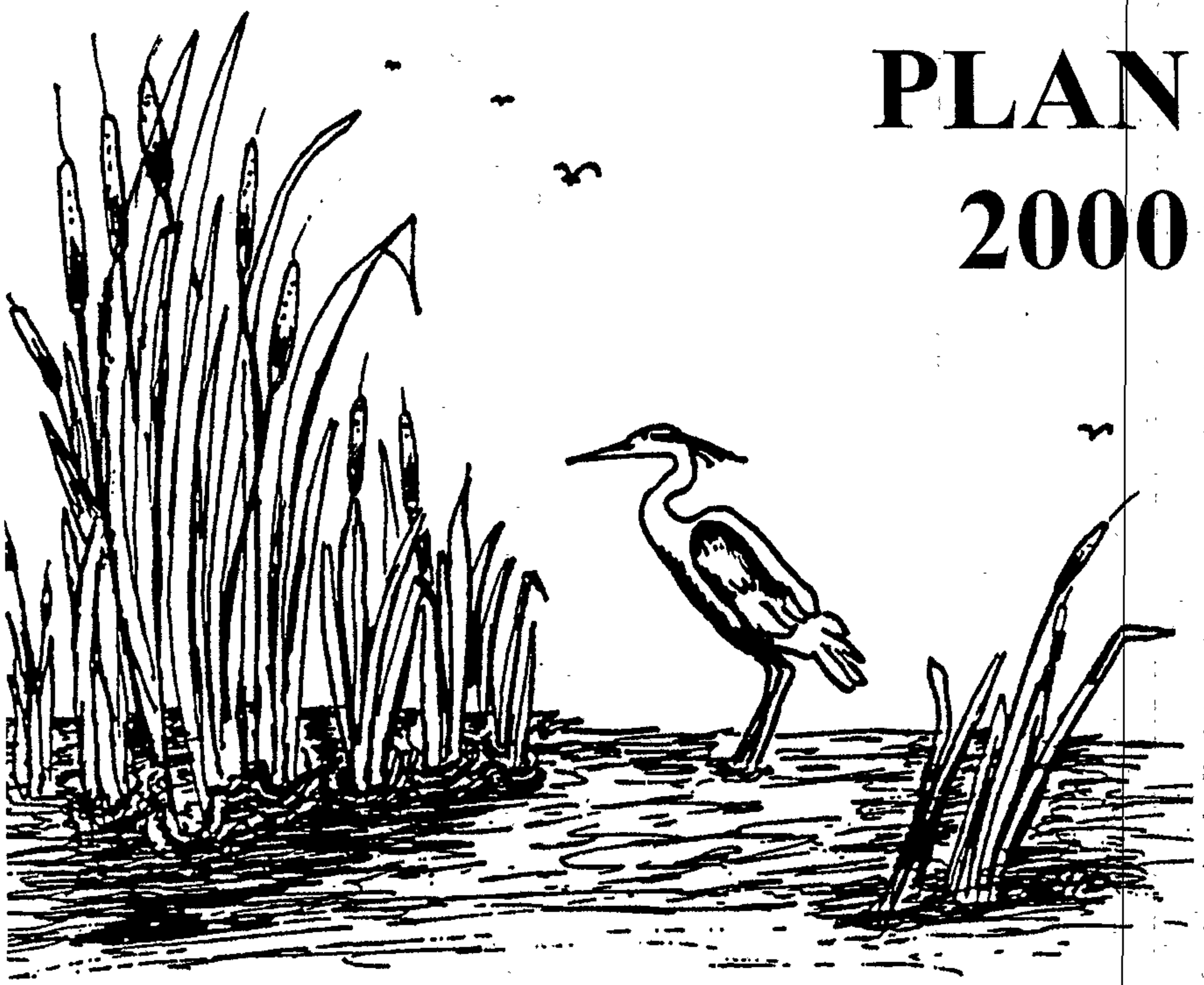
Sincerely,

Arnold Jablon
Director

AJ:DTR:dak

c: File

# BOWLEYS QUARTERS COMMUNITY ACTION PLAN 2000



**As Adopted by the Baltimore County Council**
**February 20, 2001**

DGF
24

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2001, Legislative Day No. 4

Resolution No. 21-01

Mr. Vincent J. Gardina, Councilman

By the County Council, February 20, 2001

A RESOLUTION of the Baltimore County Council to adopt the Bowleys Quarters Community Action Plan 2000 as part of the Baltimore County Master Plan 2010.

WHEREAS, the Baltimore County Council adopted the Baltimore County Master Plan 2010 on February 22, 2000; and

WHEREAS, the Master Plan advocates the development and use of community plans for the established neighborhoods in the County; and

WHEREAS, the Bowleys Quarter Community Action Plan was originally adopted by the County Council on November 2, 1992; and

WHEREAS, changing conditions in the area, including the installation of a public sewerage system, require an update of the Plan; and

WHEREAS, changes to the Plan were prepared by a committee of area residents, property and business owners, community organizations, and County agencies; and

WHEREAS, the Plan was the subject of a public hearing by the Planning Board on September 9, 1999 and was adopted by the Board on September 23, 1999; and

WHEREAS, the County Council held a public hearing on the recommended Bowleys Quarters Community Action Plan 2000 on December 4, 2000.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that the Bowleys Quarters Community Action Plan 2000, a copy of which is attached hereto and made a part hereof, be and it is hereby adopted and incorporated into the Baltimore County Master Plan 2010 to be a guide for the development of the Bowleys Quarters community, subject to such further modifications as deemed advisable by the County Council.

READ AND PASSED this 20th day of February, 2001.

BY ORDER

Thomas J. Peddicord, Jr.
Secretary

ITEM: Res. 21-01

Baltimore County
Planning Board

401 Bosley Avenue
Towson, Maryland 21204
(410) 887-3495
Fax: (410) 887-5862

# RESOLUTION
## Adopting and Recommending the BOWLEYS QUARTERS COMMUNITY ACTION PLAN 2000

**WHEREAS** the *Baltimore County Master Plan 1989-2000* advocates strong actions for conserving and enhancing the County's established communities, including the preparation of detailed local plans for certain designated areas; and

**WHEREAS** an Advisory Committee of residents and business persons in the Bowleys Quarters area, with staff assistance from the County, prepared a *Bowleys Quarters Community Action Plan*, which was adopted by the Baltimore County Council on November 2, 1992; and

**WHEREAS** changing conditions in the Bowleys Quarters peninsula, especially the development pressures resulting from the installation of the public sewerage system, caused the community to recognize the need for review and up-date of its Plan; and

**WHEREAS** a broadly-representative Advisory Committee has worked energetically since 1998, with assistance from County agencies, to draft the proposed *Bowleys Quarters Community Action Plan 2000*; and

**WHEREAS** a general community input meeting on the draft of the plan was held on June 10, 1999; and

**WHEREAS** the draft plan, as presented to the Planning Board on July 22, 1999, was the subject of a public hearing by the Board on September 9, 1999, and discussion on September 23, 1999;

**NOW, THEREFORE, BE IT RESOLVED**, pursuant to Section 26-81 of the Baltimore County Code, 1988, that the Baltimore County Planning Board hereby adopts the *Bowleys Quarters Community Action Plan 2000*, as amended on September 23, 1999, to constitute a part of and an amendment to the *Baltimore County Master plan 1989-2000*; and

**BE IT FURTHER RESOLVED**, that the *Bowleys Quarters Community Action Plan 2000*, shall be transmitted to the Baltimore County Council for adoption in accordance with Section 523(a) of the Baltimore County Charter.

**DULY ADOPTED** by vote of the Planning Board this 23rd day of September 1999

Arnold F. 'Pat' Keller, III
Secretary to the Planning Board

M:\PLANBRD\Bowleys Qurts Resl.doc

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# Bowleys Quarters Community Action Plan

(Adopted by County Council on November 2, 1992)

Community Advisory Committee

Mr. Phil Edwards –Ch.
Ms. Lynn Carmody
Mr. Bob Deurer
Ms. Cecile Myrick
Mr. Bob Eurice
Mr. Jim Hock
Mr. Roy Johnson
Mr. Andy Jones
Ms. Bette Moore
Mr. John Schmidt
Mr. Tommy Raschka
Mr. Milt Rehbein

Coordinator: Mr. Ian Forrest – Baltimore County Department of Environmental Protection and Resource Management

**Affiliations:**

Small and large property owners
Local Realtors
Restaurant owners
Watermans' Association
Marine Trades Association
Chambers of Commerce
Bowleys Quarters Improvement Association

# Bowleys Quarters Community Action Plan 2000

Community Advisory Committee

Mr. Dennis Faroul-Ch.
Mr. Jim Hock
Mr. Malcom Wood
Mr. Byron Livingston
Mr. Tom Lehner
Mr. Allen Robertson
Mr. Joseph Elkenberg
Mr. Milt Rehbein
Mr. Chuck LaHatte
Mr. Phil Edwards
Mr. Robert Palmer
Ms. Jane Bisell

Coordinator: Ms. Karin Brown – Baltimore County Office of Planning

**Affiliations:**

Small and large property owners
Marine Trades Association
Bowleys Quarters Improvement Association

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# I. INTRODUCTION

## Background

During the summer of 1989 concerns were expressed by the Bowleys Quarters Improvement Association's (BQIA) Water Quality Committee regarding the safety of the recreational waters in and around Seneca Creek for swimming purposes.

In order to alleviate the existing problems caused by the overflowing private sewage systems, Baltimore County initiated a 1989 engineering study for the extension of public sewerage. The community reaction to the possible extension of public sewerage generated a more comprehensive discussion of other issues in the Bowleys Quarters area. Attention became focused on population growth, zoning, adequate facilities, traffic issues, the Martin State Airport, environmental concerns, etc. As a result, an advisory committee was formed consisting of representatives of BQIA, local marinas, Watermans' Association, area Realtors Chamber of Commerce, large and small property owners and restaurant owners, to coordinate with the Baltimore County Department of Environmental Protection and Resource Management (DEPRM) in the development of an Action Plan for the Bowleys' Quarters Community.

## 1999 Revisions to the Bowleys Quarters Community Action Plan

Construction of public sewer in the Bowleys Quarters peninsula instantly spurred new residential development. The number of new development proposals generated community concerns. Residents were also concerned about the quality of new housing stock and its impact on their property values. Additional concerns were raised about the rapid new growth in the upper portions of Bowleys Quarters and whether this would exhaust capacity before public sewer could reach the existing homes in the lower portion of the peninsula. In addition, many owners of developable lots were anxious to build.

Residents became aware that the 1992 Bowleys Quarters Community Action Plan no longer addressed their concerns. In December of 1998 a recommendation was made to review and revise the plan. A committee was formed and the Plan was revised to reflect the communities current concerns and issues.

This plan represents the desire of the Bowleys' Quarters community to accept reasonable growth and still maintain its' rural, waterfront atmosphere and protect the environment.

This plan is the result of the combined efforts and input from the Advisory Committee and various departments within Baltimore County government and the private sector. Without the many hours of work and cooperation by all involved, this document could not have been produced.

# Bowleys Quarters Community Plan

Eastern Ave

Carroll Island Rd

Bowleys Quarters Rd

Susquehanna Ave

Bowleys Quarters Rd

N

W E

S

Plan Boundary

Major and Secondary Roads

Local Roads

1000 0 1000 2000 Feet

## II. COMMUNITY LOCATION AND DESCRIPTION

Bowleys Quarters is located in southeast Baltimore County on the Chesapeake Bay. It consists of Middle River Neck extended northwest to Eastern Avenue and north to Carroll Island Road. The peninsula is bounded by Frog Mortar Creek, Middle River, Chesapeake Bay, and Seneca Creek. (See Fig.1).

The topography is relatively flat with poorly defined drainage patterns. Most elevations are less than 10 feet. Geology of the area consists of alternate layers of silt, clay and unconsolidated sand and gravel. Most undeveloped areas are wooded, covering hydra and other wet soils. Approximately 85 % of the community is within the Chesapeake Bay Critical Area. There are over 18 miles of shoreline on the peninsula offering quality recreational activity for community residents.

The development pattern consists of waterfront homes originally constructed many years ago, often as summer residences. Most are currently served by private septic disposal systems. Much of the peninsula interior is farmland or forested. Newer development is concentrated on the upper peninsula along Eastern Avenue, Carroll Island Road and the east side of Bowleys Quarters Road at Seneca Gardens Road. Development in these areas consists of both single unit and multi-unit dwellings served by public sewerage. Miami Beach County Park is located on the Bay at the southeast tip of the peninsula.

Commercial development generally consists of restaurants, bars, fast food restaurants, gas stations and the Carroll Island Shopping Center, all concentrated on the upper peninsula, and more than a dozen marinas on the rivers and creeks. In addition to being responsive to customers, it is essential that businesses also be responsive to the citizens of the community. This means working in partnership with residents and local authorities in ways that are beneficial to the community.

A proposed County sewerage system will cover the entire peninsula utilizing a gravity system and a limited number of grinder pumps on the upper peninsula and a grinder pump pressure system on the lower peninsula.

Outside influences having a direct impact on the community are:

- -Martin State Airport.
- -Baltimore Gas and Electric (BGE) Crane Power Plant.
- -The Eastern Boulevard/Avenue corridor.
- -Proposed MD Route 43.
- -Future development of the A. V. Williams tract.
- -Hart-Miller Island disposal site.
- -The types of recreational and commercial water use and the biological and chemical quality of surrounding waters.

Note: While revising the plan, it became apparent that the land area which served as the geographic area for the data in the 1992 version of the Bowleys

Quarters Plan did not correspond to the area shown as the community boundary in the beginning of that plan. Instead, the area used as a data source corresponds to the census tract for Bowleys Quarters, minus the area within census block #9. (Census block #9 corresponds to Carroll Island, which is part of Aberdeen Proving Ground, a military training facility).

The advisory committee had to decide whether to use the same area that served as the data source in 1992, or to change the area to correspond to the community boundary. The committee recommends using the same area as a data source as was used in The Bowleys Quarters Community Action Plan of 1992. The rationale for this decision is that utilizing the same base area facilitates comparisons between the data presented in the original plan and data obtained for the revised plan.

Some of the discrepancies between the 1992 data and the 1999 data may be due to differences in technology. That is, today's data is computer generated, whereas the original data was arranged manually.

## III. COMMUNITY OBJECTIVE

"The community is dedicated to preserving the beauty, tranquillity, and recreational atmosphere of Bowleys Quarters and to encourage residents and businesses to be a vital part of the community."

Goals:

1. To promote growth in property values.

2. To present an image of a progressive and environmentally conscious community with conservation in mind.

3. To form a partnership between residents, businesses and County agencies for the purpose of implementing the actions recommended in this plan.

4. To support the implementation of major County projects affecting the peninsula such as the Route 43 extension, public sewerage, Dundee recreational/sports facilities, and a commercial project on Dark Head Creek, etc.

5. To support quality development of single family detached homes.

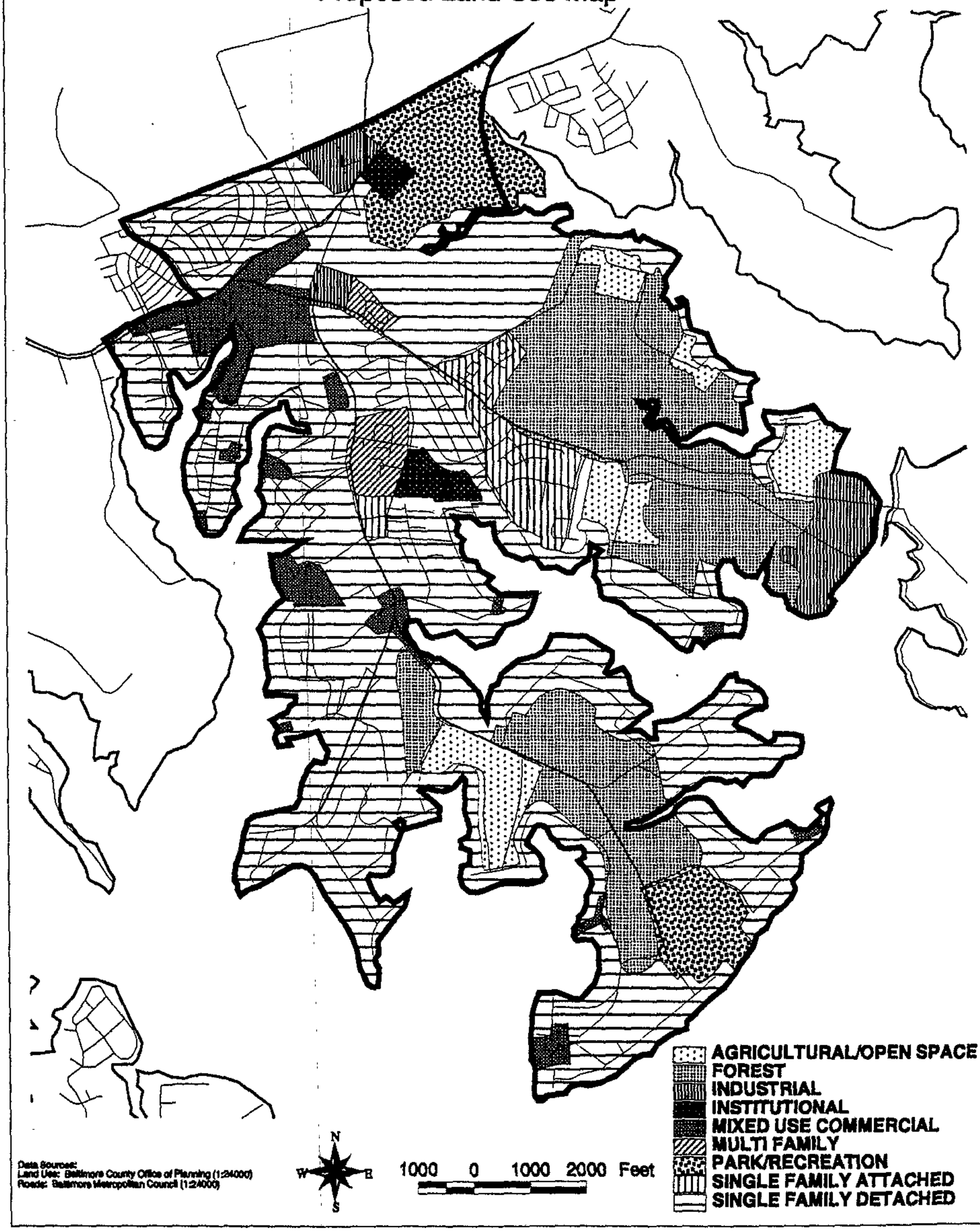
6. To prevent additional townhouse development in the community.

7. To recommend zoning changes that are consistent with the goal statements listed in 5 and 6 above.

8. To communicate to potential developers/builders the desires of the community.

# Bowleys Quarters Community Plan

## Proposed Land Use Map




Data Sources:
Land Use: Baltimore County Office of Planning (1:24000)
Roads: Baltimore Metropolitan Council (1:24000)

## IV. LAND USE ANALYSIS

Note: The most up-to-date existing land use map adopted by the Baltimore County Council is dated 1993. That land use map served as the basis for this analysis.

**Table 1**

**Existing Land Use 1993**
**Bowleys Quarters Study Area**

| Land Use | Acres | Percent of Study Area |
|---|---|---|
| Single family detached | 1131.3 | 40.1 |
| Single family attached | 94.6 | 3.4 |
| Multi family | 44.9 | 1.6 |
| Single family attached pipeline | 5.6 | 0.2 |
| **Total Residential** | **1276.3** | **45.3** |
| | | |
| **Mixed use commercial** | **125.8** | **4.5** |
| | | |
| Industrial | 71.8 | 2.5 |
| Industrial pipeline | 9.0 | 0.3 |
| **Total Industrial** | **80.8** | **2.9** |
| | | |
| **Institutional** | **68.3** | **2.4** |
| | | |
| **Park and Recreation** | **100.4** | **3.6** |
| | | |
| **Agricultural/Open Space** | **142.2** | **5.0** |
| | | |
| **Forest** | **555.0** | **19.7** |
| | | |
| **Undeveloped** | **470.1** | **16.7** |
| | | |
| **Total** | **2819.0** | **100.0** |

### a. Land Use Distribution

The total study area consists of 2,819 acres. The dominant land use is residential totaling 1,131.3 acres or 40.1% of the study area, which is consistent with the development pattern in Bowleys Quarters. Of that total, 1,276.3 acres or 45.3% are designated single family detached, 94.6 acres or 3.4% are designated single family attached and 44.9 acres or 1.6% are designated multi-family.

Forest land followed by undeveloped land make up the next largest land use categories. The former consists of 555 acres or 19.7%, the latter of 470.1 acres or 16.7%. Agricultural/open space comprises 142.2 acres or 5%, while 100.4 acres or 3.6% of land are designated for recreation and parks.

Commercial land uses account for 125.8 acres or 4.5% of the study area. Much of the commercial land uses are concentrated on the upper portion of the peninsula at the Carroll Island Shopping Center.

Industrial land uses amount to 80.8 acres or 2.9%. They are located in two areas, 1) the intersection of Carroll Island Road and Bowleys Quarters Road and 2) the Baltimore Gas and Electric Crane Power Plant site.

The smallest land use category is institutional uses. The 68.3 acres or 2.4% of the study area which are classified institutional, accommodate two elementary schools, Seneca Elementary and Chase Elementary School, and several community churches.

Note: The data in Table 1, on page 6, Existing Land Use 1993, does not correspond to the graphic representation of land use shown on the Proposed Land Use Map on page 5. The existing land use map, which was adopted by County Council, has not been updated since 1993. Since that time, the County has more than doubled the land use for park and recreation (the acquisition of the Eastern Regional Park site being responsible for this change). The Proposed Land Use Map, which is consistent with the Land Use Map proposed for the Master Plan 2010, reflects the change in the park and recreation category. Additional changes show a slightly amplified total in the mixed use commercial category and a corresponding decrease in the residential land use category. The change is due to an increase in the number of marinas designated as commercial uses.

**b. Population Projections**

Availability of public sewerage is expected to result in accelerated growth. The projections presented below use transportation zones to estimate population growth. In the case of the Bowleys Quarters community, transportation zone #445 served as the primary data base. That zone consists of approximately the same land area as census tract 4518.02, which functioned as the basis for the Land Use and Zoning Analysis.

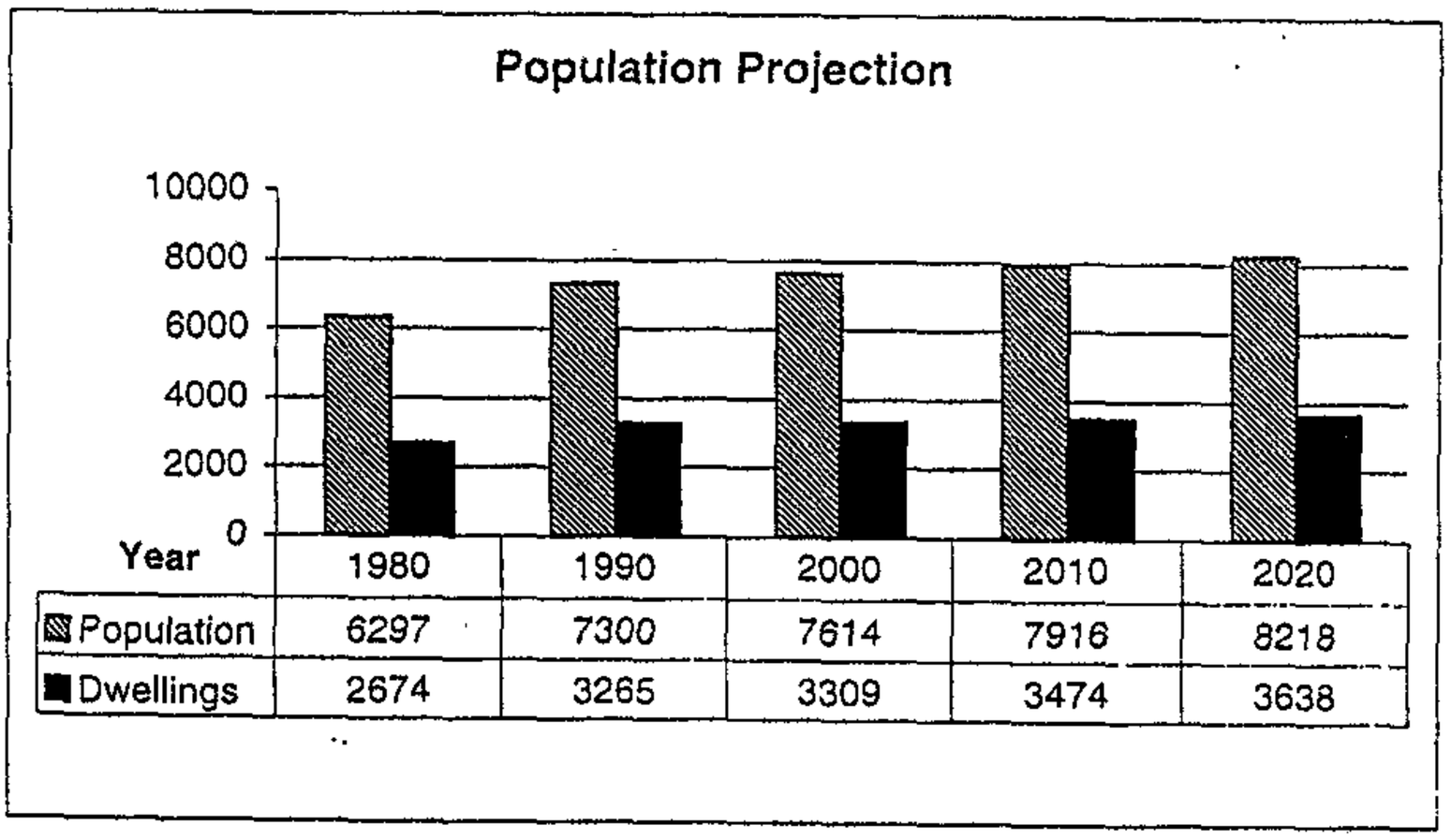
The following methodology was used to obtain the population projections presented below. The amount of vacant land in 1993 was calculated. The maximum density of the vacant sites was determined to be 920 new dwelling units. Because the potential build-out rarely matches the historical trend of occupancy permits issued, due to environmental constraints and County requirements, the number for each transportation zone must be reduced to reflect a realistic estimate of development activity.

There may be some inaccuracies based on the unique situation in the Community where the average age is decreasing. Existing dwellings are being expanded. Older homeowners are being replaced by younger, new owners and renters with larger families. This may be offset by environmental constraints reducing the effective density. Also, the projections, which were conducted in 1993, did not anticipate the growth caused by the availability of public sewer.

Issue: Accuracy of population growth projections.

Action: County will update figures when the year 2000 census data becomes available.

Fig. 2

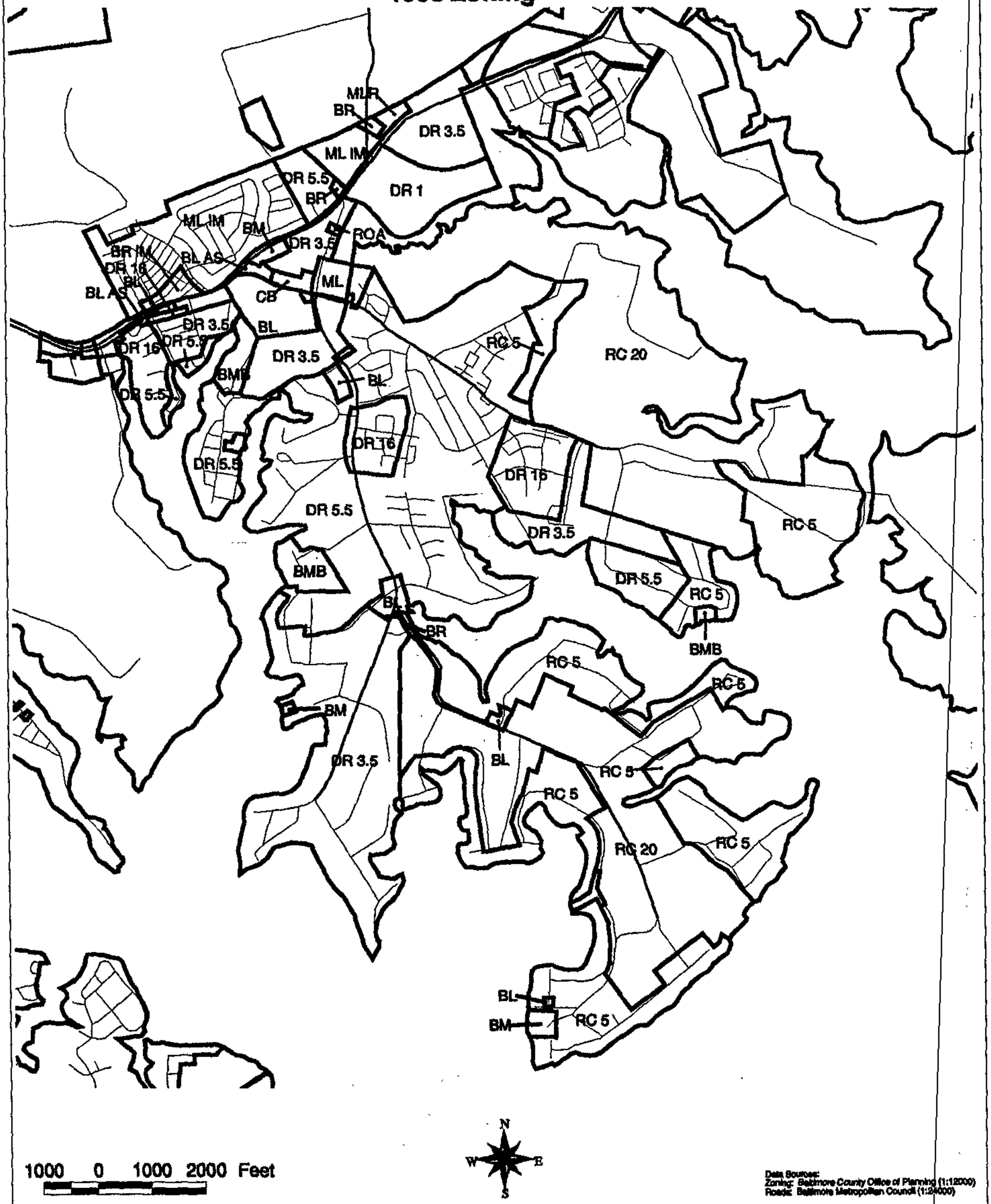



| Year | 1980 | 1990 | 2000 | 2010 | 2020 |
|---|---|---|---|---|---|
| Population | 6297 | 7300 | 7614 | 7916 | 8218 |
| Dwellings | 2674 | 3265 | 3309 | 3474 | 3638 |

Table 2
Existing Zoning, 1999
Bowleys Quarters Study Area

| ZONING | ACRES | PERCENT OF STUDY AREA |
|---|---|---|
| Business Zoning | | |
| BL | 54.6 | 1.9 |
| BLR | 6.0 | 0.2 |
| BM | 12.2 | 0.4 |
| BMB | 37.3 | 1.3 |
| BR | 5.0 | 0.2 |
| CB | 5.1 | 0.2 |
| **Total Business** | **120.2** | **4.3** |
| | | |
| Residential Zoning | | |
| DR 1 | 57.9 | 2.1 |
| DR 16 | 112.7 | 4.0 |
| DR 3.5 | 431.0 | 15.3 |
| DR 5.5 | 594.1 | 21.1 |
| **Total Residential** | **1195.8** | **42.4** |
| | | |
| Industrial Zoning | | |
| MH IM | 3.2 | 0.1 |
| ML | 211.8 | 7.5 |
| MLR | 8.2 | 0.3 |
| **Total Industrial** | **223.3** | **7.9** |
| | | |
| Resource Conservation Zoning | | |
| RC 20 | 781.4 | 27.7 |
| RC 5 | 497.5 | 17.6 |
| **Total Resource Conservation** | **1,278.9** | **45.4** |
| | | |
| Office Zoning | | |
| ROA | 0.8 | 0.0 |
| | | |
| **Total** | **2819.0** | **100.00** |

# Bowleys Quarters Community Plan
## 1998 Zoning



## c. Zoning

The study area consists of a mix of residential, resource conservation, commercial and industrial zoning classifications.

During the 1996 Comprehensive Zoning Map Process (CZMP), a considerable amount of land was rezoned in response to the community's request to reduce the overall residential density. The most dramatic change is apparent in the DR. 5.5 zoning category. DR 5.5 is a residential zone that allows 5.5 units per acre. It permits townhouse development only if the Baltimore County Hearing Officer finds it is compatible with the neighborhood. Between 1991 and 1996 the percentage of DR 5.5 zoned land changed from 43.4% to 21.1%. Much of the DR 5.5 zoned land was rezoned to DR 3.5, a residential zoning category which allows only single family detached housing at a density of 3.5 units per acre.

Much of the commercial zoning in Bowleys Quarters is located in the northernmost portion of the peninsula. It includes the Carroll Island Shopping Center and the commercial parcels along Carroll Island Road and Bowleys Quarters Road. Prior to 1996, several parcels were zoned Business Roadside (BR) and Business Major (BM). These zoning categories permit uses such as nightclubs, used car dealerships, and striptease businesses. During the 1996 CZMP, several commercial properties which were unimproved, or which did not use their property to the fullest extent possible, were rezoned to Business Local (BL), Business Local Restricted (BLR), or Community Business (CB). The former is the least permissive among the traditional commercial zoning categories. The latter two are performance based business zones, which not only prohibit uses that potentially could be detrimental to a community, such as pawnshops, cash checking facilities, nightclubs and bail bondsman businesses, but also provide performance standards that assure high quality development.

Another significant zoning change since 1992 is that the Business Maritime Boatyard (BMB) classification was applied to most of the local marinas and boatyards. Within the study area 37.3 acres or 1.3% are zoned for maritime uses. Prior to 1992, most marinas and boatyards operated by special exception on residentially zoned land.

The study area contains 223.3 acres, or 7.9% of land with industrial zoning. Most of the industrially zoned land is concentrated in two areas. One area is at the intersection of Carroll Island Road and Bowleys Quarters Road, the other is the Baltimore Gas and Electric Crane Power Plant.

Almost half of the study area has resource conservation zoning. Approximately 781.4 acres or 27.7% are zoned RC 20 and 497.5 acres or 17.6% are zoned RC 5. Combined, the land with resource conservation zoning encompasses 1,279.7 acres or 45.4% of the study area. RC 20 is applied to much of the forested land in the interior of the lower portion of the Bowleys Quarters peninsula. While it allows one dwelling per 20 acres, it is not intended for residential

development. Instead, it functions as an important tool to protect the Chesapeake Bay.

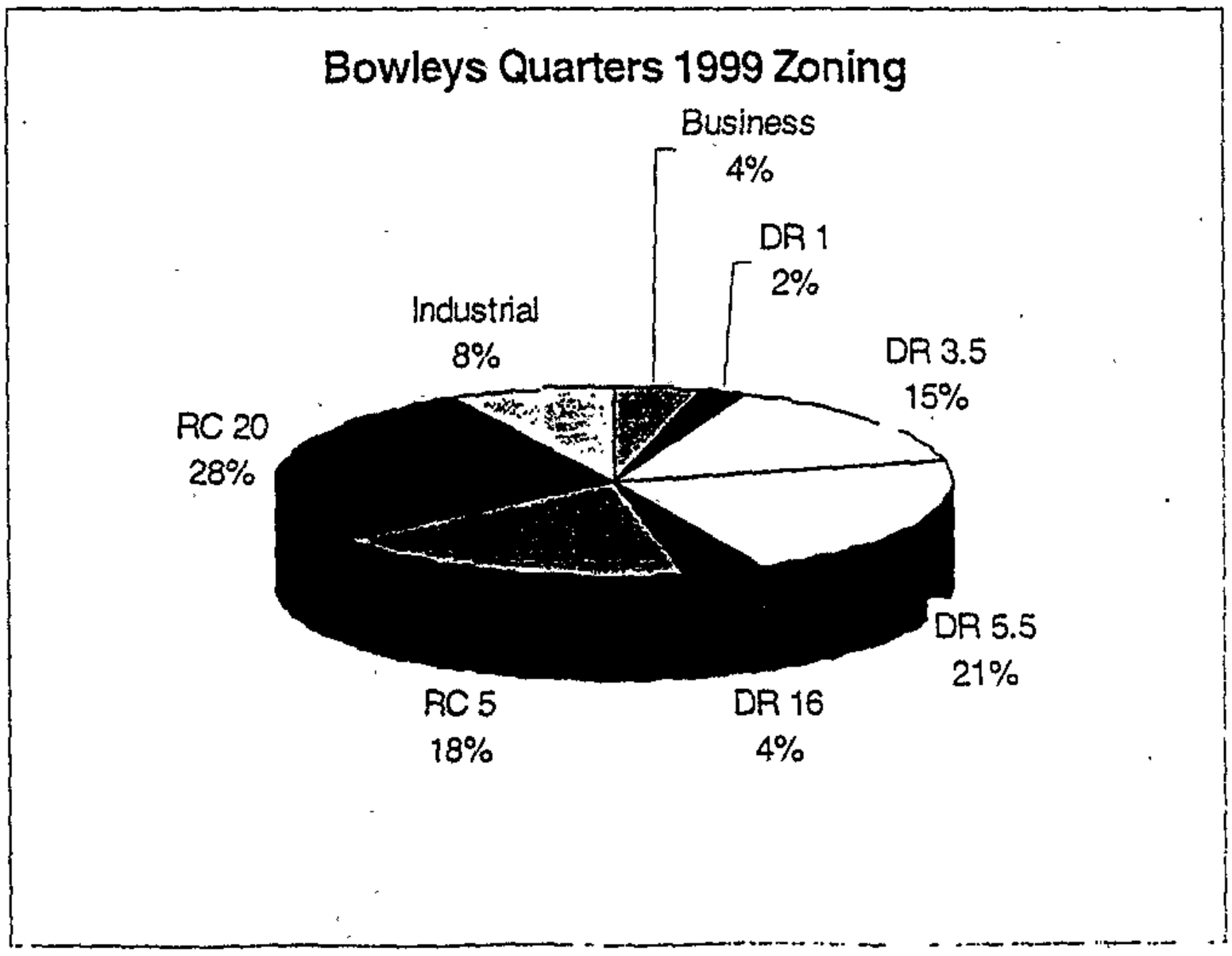
As far as residential development is concerned, RC 5 zoned properties pose the biggest challenges. RC 5 zoning is intended to accommodate residential development at a rate of 0.667 dwellings per acre. Minimum lot size in the RC 5 zone is one acre. Many of the unimproved parcels can not meet this minimum lot size requirement. With the advancement of public sewer toward the lower necks, where most of the RC 5 zoning is mapped, pressure to develop these undersized lots is mounting.

Issue: Residents support single family detached residential development. This does not include residential townhouse developments. Bowleys Quarters is not a designated growth area. New residential subdivisions should be consistent with the community's existing development pattern of single family detached homes. Additional zoning changes may be necessary to achieve this goal.

Action: During the 2000 Comprehensive Zoning Map Process the BQIA will request that the Planning Board and the County Council consider the rezoning of all remaining DR 5.5 zoned parcels to lower the existing zoning classification.

Fig. 3

**d. Public areas:**



Existing marina expansions, new marinas and Miami Beach County Park result in summertime peaks of water oriented visitors to the community. The seasonal increases in vehicle traffic for boating and swimming may have a negative impact on traffic flow and the environment. Projected population growth will further aggravate this problem.

Issue: Seasonal peaks in vehicular traffic due to boating, swimming and other recreational activities could slow down the response time of emergency vehicles.

Action: The BQIA will monitor growth and work with County agencies for any additional "public facilities" such as boat launch ramps, swimming beaches, fishing areas, etc. (continuous).

**e. Martin State Airport:**

The 1989 Airport Noise Zone Certification established a 65 Loud Noise Zone over part of the Long Beach Estates area of the lower peninsula (see Fig. 4). New development in this area is limited.

The airport will remain a "general aviation" facility serving all non-commercial aircraft. Maryland Aviation Administration (MAA) will discourage scheduled service or cargo operations in favor of BWI where they are more appropriate and can be better accommodated. The MAA will continue to lease facilities to the MD Air National Guard, flight schools, businesses, police, medivac helicopters etc. The current 6:15 am through 9:45 p.m. tower operations are not expected to be extended.

1988 was the peak traffic year with 175,000 operations (landings and takeoffs). Long range forecasts, using essentially the present facilities, indicate a 43% increase to 250,000 operations. This number is somewhat inflated by the "touch and go" training operations of the flight schools. It is essential that specified flight patterns be enforced. Approximately 2,200 trees were planted along airport perimeters in 1990, including along Frog Mortar Creek, in order to help reduce ground level noise.

Issue: Objectionable noise levels, air and runoff pollution and safety are major concerns to the Community.

Action: The MAA will enforce residential development regulations in the 65 Loud Noise Zone. (As required)

Action: The MAA will advise local elected officials and the community of any operational changes (Maryland Air National Guard change of aircraft type, etc.). Changes will not exceed noise levels of 1990 aircraft types.

Action: The current size of the noise zone and noise levels will not be increased without written notification to the County administration, the County Council, and surrounding neighborhood. Every effort should be made through improving technology to reduce the noise zones and noise levels. (MAA continues).

Action: The community will request the airport management to notify all aircraft customers to refrain from operating aircraft between the hours of 8:00 pm through 7:00 am.

Action: The community to request the airport management to notify all aircraft customers to avoid flying over Bowleys Quarters community, if the aircraft they are operating has the maneuverability to do so.

The Maryland Department of Transportation (MDOT) and the MAA are proceeding with a $25 million improvement to Glen L. Martin State Airport. Major improvements include repairs to the runway, a new control tower and building with the existing tower to remain as a historical structure.

New taxi ways and site preparation for additional hanger space of 60,000 square feet is now being built to house additional corporate jets. In order for the MD Air National Guard to be in compliance with FAA standards, the MAA is studying the plan to fill in a section of Frog Mortar Creek up to 200 feet to create a safety barrier.

Issue: The filling in of Frog Mortar Creek.

Action: The community, including marina owners, oppose an action to fill in Frog Mortar Creek. The BQIA will represent the community on this position at appropriate agency hearings/meetings.

Action: The BQIA will encourage using alternatives acceptable to the FAA which would prevent the filling in of Frog Mortar Creek.

Issue: The flight of airplanes, which under the FAA description are of acrobatic flight, that occur over residential areas.

Action: The MAA will file a written report with the FAA with a copy sent to the BQIA that occurs as a result of a community resident complaint.

**f. Baltimore Gas and Electric Crane power station:**

The only major industrial facility located in the community is the BGE Crane Power Station, which is located at the mouth of Seneca Creek. During the last 20 years

various environmental problems associated with the operation have been reported. However, in recent years the company's ability to work with community organizations has created an "open door" relationship regarding efforts to solve reported problems. The facility has two major effluent discharges into community waters and stack gasses into the atmosphere. All of these are regulated through State of Maryland permits. There exists at the present time a major underground oil spill, which is being remedied.

Deregulation of electric power in Maryland is likely since neighboring states have already deregulated. Deregulation may cause some power plants to be sold and thus have new owners. Maintaining the open door relationship that has been experienced with BGE is important to the community. A dialogue with any new owners must occur to ensure that residents and the environment are not impacted.

Issues: Environmental problems associated with the operation of the BGE Crane Power plant.

Action: DEPRM will monitor the facility to assure protection of the environment and will make all pertinent data available to the community.

Action: Any new potential owners of the plant will be invited to community meetings to review their plans for the facility utilization and for developing a close working relationship.

**g. A.V. Williams Properties**

1. A.V. Williams Tract:

The 1,016 acre, A. V. Williams tract is located northwest of the community, between White Marsh and Middle River. The site is the largest tract of unimproved land with industrial zoning in Baltimore County and is designated as an "opportunity area" in the Eastern Baltimore County Revitalization Strategy. Over the past years, the site was considered for several development projects, such as an international trade center and theme park complex, an automobile assembly plant and a speedway. None of these projects were developed. Community concerns regarding traffic, air and noise pollution, the lack of adequate facilities such as water, sewerage and roads remained important issues. The site has environmental constraints, which pose a challenge to potential developers. Nevertheless, a key reason previous development proposals were abandoned, was inadequate access. Efforts are under way to extend MD 43 to Eastern Avenue. This would provide the site with the necessary access.

The BQIA supports the development of this parcel and endorses the efforts made by the County government to pursue State and Federal funding for the construction of a road that would open up this last major tract of industrially zoned land in Baltimore County. The BQIA has been actively involved and has voiced its

opinion to both county and state governments regarding issues concerning the A. V. Williams site.

Issue: Assess the impact of the development of the A. V. Williams tract on the community.

Action: The BQIA will review any proposals to develop this site, and work to ensure that development plans are consistent with the goals of this plan.

2. Williams Estates – A Manufactured Home Community:

The BQIA has worked with the Pascal Turner Group for many years to ensure that community interests and concerns were known to the Williams Estates community. The BQIA has had very good communication over the years and found their representatives responsive to the concerns of Bowleys Quarters' residents. Improvements completed by Williams Estates have impressed the Bowleys Quarters community and future plans have always been communicated to BQIA representatives for review. The BQIA appreciates the business practice of working with the surrounding communities and supports future plans of Williams Estates to further enhance their development. The major projects planned for this community are:

- Further enhancements to the property fronting on Eastern Boulevard.
- Continuation of the upgrading of manufactured homes available in the Peppermint Woods portion of the development.
- Development of a small shopping "strip center" intended to primarily serve nearby residents.

Issue: Monitor development of the proposed community shopping center to ensure that build-out is within the scope of plans agreed to by the BQIA.

Action: Work with the Pascal-Turner Group to ensure that the shopping area is built according to the agreements reached at the time the development was proposed.

**h. Hart-Miller Island disposal site**

Hart-Miller Island is a regional dredging material disposal site operated by Maryland State Environmental Services and the Maryland Port Administration. It is utilized by all major dredging contractors in the rechannelization of the Chesapeake Bay and the Baltimore Harbor. Space has been reserved at the facility to accommodate materials from dredging projects. A major recreational

beach facility, which is utilized by the public, is located on the leeward side of the island. Starting in 1980, 30,000 cubic yards of sand were replenished on the recreational beach. Offshore stone breakwaters and revetments were constructed for the long-term erosion control of the recreational area. For the most part, during its 20 year operation, the facility has operated according to specifications. Periodic discharges, laden with sediment and other pollutants, have created concern to community residents regarding the quality of the surrounding waters. Concern has also been expressed about the effect of the normal discharge of the facility on the fish life in the area.

The South Cell environmental restoration plan, a portion of Hart Miller Island, is scheduled for completion in 1999. The study determined that the materials in the South Cell can be used to create wetlands and shallow water habitat. The South Cell area will serve as habitat for migratory shorebirds, nesting Least Terns and migratory songbirds. Construction is scheduled to begin in 2000.

Issue: Monitoring of the water quality problems associated with the operation of the Hart-Miller disposal site.

Action: The Hart Miller Island Oversight Committee will continue monitoring operation to assure protection of the environment and make all pertinent data available to the community. A representative from the community will attend the State meetings to obtain first hand information on the status of this site and report back to the community (continuous).

## i. Marinas

Thirteen marinas employing approximately 100 people represent the community's major "industry." Five have Business Maritime Boatyard (BMB) zoning, two have Business Major (BM) zoning, one has Business Roadside (BR) zoning and five operate under a special exception in a residential zone. All marinas in Bowleys Quarters are surrounded by residential areas. The marinas rely on and have a major impact on the "public domain" waters surrounding the community. Strong regulation is required to protect the residential areas, the marinas and the environment.

In 1998, the Department of Natural Resources posted restricted speed limits in Sue Creek and Middle River.
In 1999, marinas have approximately 2370 wet storage slips and 200 rack storage dry slips.

Five marinas have launch facilities for transient, trailered boats. In addition, each waterfront property could support up to four slips. On summer weekends this activity brings several thousand cars into the community. Some boaters continue to ignore noise and speed limits, safe boating practices, litter and pollution regulations.

Issue: Marina expansion within residential areas.

Action: Enforce zoning, Critical Area regulations and other legislation designed to protect residential areas and the environment. (OP, DEPRM)

Issue: Environmental impact.

Action: See environmental issues.

Rack storage has evolved from dry, winter storage of summer wet slip stored boats to full time "dry slip" storage. Rack storage can dramatically increase marina boat storage capacity and impact the surrounding residential areas and waterways. The County has adopted regulations for dry slip storage.

Issue: Assess the negative impact of rack storage on residential areas.

Action: Monitor and provide feedback to the county on regulation violations. (BQIA)

Action: All rack storage, dry storage and expected trailer launched boats to be indicated in proposals for expansions and new marinas. (OP)

The storage of recreational boats for profit on private residential lots is commonly referred to as an "illegal" or "bootleg" marina. Illegal marinas frequently generate additional traffic, parking, litter and noise from boaters, which affects the quality of life of adjacent property owners. In 1993, Baltimore County enacted regulations that limited the number of boats a person can store on a residential pier. The processing of zoning violations is generally complaint driven. In response to valid citizen complaints the County issues a violation notification to the property owner in question. If the zoning violation is not corrected voluntarily, a citation is issued and the defendant is taken to court.

Issue: "Bootleg" Marinas

Action: The BQIA will communicate requirements to residents and will encourage residents to notify either the BQIA or the County about existing "bootleg" marinas in the community. If necessary the BQIA will notify the County anonymously of resident complaints.

## V. COMMUNITY IMAGE

There is a desire by the community to improve its identity and to emphasize the Critical Area environment of the community. The BQIA furnished the sign that is near the intersection of Bowleys Quarters and Carroll Island Roads. The County furnished and installed the Critical Area signs throughout the community. These

were completed as part of an action that was completed in 1991.
The community image is initially established by the appearance of the businesses located on Eastern Avenue, Carroll Island Road and Bowleys Quarters Road. There are violations of local regulations with outdoor displays and sales, temporary establishments (tent sales), storage of equipment and derelict buildings, etc. Other businesses may not be in direct violation of County codes, but convey an overall lack of pride in the appearance of the properties. In some cases the surface of the parking area is filled with potholes, weeds grow from crevices and lawns are poorly maintained. Landscaping is often minimal or non-existing.

Private residential property owners can also be in violation of zoning regulations. Some use their property for the storage of abandoned vehicles or discarded tires and appliances.

Issue: Upgrade the appearance of area businesses, some private properties and compliance with zoning regulations.

Action: Encourage business owners and residents to maintain or improve the appearance of their property. Educate the community about the most common zoning violations.

Action: The BQIA will conduct an annual survey and will notify business and private property owners that are not in compliance with the zoning regulations.

Action: If deemed necessary the BQIA will request that the Baltimore County Division of Code Inspection and Enforcement conduct a "sweep", which notifies property owners of all code violations. If the violation is not corrected within a specified time, the County will initiate legal action.

Issue: Signs should be in compliance with zoning regulations.

Action: If deemed necessary the BQIA will request that the Baltimore County division of Code Inspection and Enforcement conduct a "sweep" and will notify owners not in compliance with the sign regulations. If the violation is not corrected within a specified time, the County will initiate legal action.

## VI. ENVIRONMENTAL ISSUES

In the early 1990s, representatives of the Baltimore County Department of Environmental Protection and Resource Management (DEPRM) had several meetings with the community to explain the significance of the microbiological and chemical quality of Seneca Creek and Frog Mortar Creek.

Residents were advised that approximately 80% of the more than 1,200 private

sewage disposal systems on the Bowleys Quarters peninsula were failing. These failing systems either discharged directly into the creeks and ground water or indirectly into storm drain system. As a result, the upper reaches of Seneca Creek and Frog Mortar Creek were considered unsafe for swimming since the water quality did not meet the microbiological standards established in state regulations. Records maintained by DEPRM indicate that these waters have been unsafe for recreational contact since 1965. However, the main channel and mouth of Seneca Creek which enters Chesapeake Bay has acceptable water quality.

The peninsula is undergoing the installation of a public sewage system to replace the marginal and failing private septic systems throughout the community. The public sewerage projects, once fully implemented, should reduce the health hazard and improve the water quality in Frog Mortar, Seneca and Galloway Creeks as well as Middle River and ultimately the Chesapeake Bay. However, the improvements should not be offset by over development of the area.

The Bowleys Quarters community desires to maintain the rural atmosphere that is enjoyed by residents, businesses, organizations and visitors. To achieve this, new residential structures should consist of high quality single family dwellings, built with open spaces surrounding the structures. Any reforestation requirements must be fulfilled within the Bowleys Quarters peninsula.

**a. Sewerage**

Failing private septic systems have contributed to the pollution of the surrounding waters. In some areas, pollution levels constitute a health hazard. On November 2, 1992, the Baltimore County Council adopted The Bowleys Quarters Community Action Plan which states; the proposed sewage collection systems will cover the entire community, utilizing gravity sewers on the upper peninsula and "grinder pump" pressure systems on the lower peninsula. The project, which initially was expected to be completed in 1997, is designed and constructed in stages. The first phase of construction started in April 1996, and the target date for the last phase of construction to begin, is October 2000.

Connections and "grinder pumps" if required, for unimproved properties will be subject to the requirements and standards of the 1999 growth management legislation. Right-of-way easements for force mains, collection laterals, pumping stations, individual "grinder pump" stations, etc. will be purchased from property owners by the County. The County will own and maintain the entire system. Property owners will pay for their "grinder pump" electrical power. "Grinder pump" stations will include alarms to alert the homeowner to call the County for service.

Issue: The failing private sewage disposal systems present a health hazard.

Action: The BQIA will support County efforts to have all existing dwellings connected by 2002.

In order to justify the system and monitor its performance, pollution levels of the surrounding waters must be continuously monitored and results made available to the community.

Issue: Water quality monitoring.

Action: DEPRM will continue water quality testing for bacteria during the recreational season and provide the results to the community.

Reliable grinder pumps will still require occasional maintenance. The project design and operation must encompass a reliable maintenance program with backup units and spare parts, where priority response is given to requests for service.

Issue: Quick response by the County to calls for service

Action: The County will monitor the cost of the grinder pumps and will perform a study to see if additional grinder pump suppliers will be allowed.

Action: The Department of Public Works will communicate the maintenance and response service program to the community and individual residents.

Project costs will be determined by contractor bids for each phase of the project. The County will finance the project by the sale of bonds and recover these costs from the community as follows:

One time "connection fee" of $1,425 at time of hookup to the system.

Annual front foot "benefit assessment" for all improved and unimproved properties.

One time "deficit charge" for all improved and unimproved properties. These charges represent the property owners share of 50% of the total project cost not recovered by the front foot benefit assessment and other funding sources.

One time permit and plumbing costs of connecting the house to the system as negotiated between the homeowner and a plumber at the time of connection to the system.

Quarterly sewer service charge based on " actual water usage."

The connection fee, deficit charges, permit and plumbing costs can be spread over 40 years with a 4% annual interest charge. At the time of property transfer they continue on to the new owner, until fully paid. Low income property owners, as

defined by their County taxes, can fully defer these costs. At the time of transfer the new owner is responsible for the costs.

Issue: Installation costs to residents for public sewer service.

Action: DEPRM will investigate alternative financing through Federal, State and County grants.

**b. Boater Pollution**

The growing number and expansion of marinas represent a potential major pollution source. A joint effort by marina owners, BQIA, DNR and DEPRM is required to constantly alert boat owners of their legal and moral obligation to avoid disposal of litter and wastes into the waters. All marinas have boat holding tank pump out facilities.

Issue: Boater pollution.

Action: BQIA, DEPRM, DNR, and the Chesapeake Bay Foundation will meet with local marina owners to encourage adoption of the Maryland Clean Marina Guide. Invite local marina owners to come to a community meeting to discuss what they are doing to protect the environment. (BQIA).

Action: Yearly inspection of marinas by the County is recommended with additional follow up as required. (DEPRM/DNR).

Action: Maryland Department of the Environment (MDE) will continue to implement a marina pump-out program. State cost share funding is available.

**c. Litter**

Dumping by non-licensed haulers is a constant problem at wooded areas located in Bowleys Quarters. The majority of this illegal dumping takes place at night away from witnesses. Everything possible must be done to prevent this illegal activity.

Issue: Litter from illegal dumping.

Action: The BQIA will discourage residents from using non-licensed haulers.

Action: The BQIA will publish a list of phone numbers and legal locations to dispose of trash for community awareness.

Action: The BQIA will encourage property owners to place gates across private dirt roads to discourage the illegal use of these sites.

Action: The BQIA will work with County agencies to have the area cleaned of trash.

Action: DEPRM will coordinate community clean-ups upon request. (Periodically)

**d. Storm Water Management/Sediment Control**

Runoff is a major non-point source of pollution that will not be alleviated by proposed sewerage. County storm drains, commercial and agricultural runoff represent the largest sources. It is essential that this problem be given increased priority.

In response to actions recommended in the initial Bowleys Quarters Community Action Plan, DEPRM has initiated programs that will improve the control of non-point source pollution caused by storm drains and commercial and agricultural runoff.

The Carrolwood Manor water quality retrofit on Nollmeyer Road was completed in 1995. Additionally, DEPRM has identified storm drain outfall locations and storm drain outfall locations and storm water management facility locations.

Issue: Non-point source pollution caused by storm drains, commercial and agricultural runoff.

Action: DEPRM will enforce storm water management and sediment control requirements. (Continuous)

Action: DEPRM will complete the Middle River Water Quality Management Plan. The plan will include the watershed pollution loading model and a three dimensional hydrodynamic and estuarine water quality model.

**e. Chesapeake Bay Critical Area**

The Chesapeake Bay Critical Area Law, enacted in 1984, is the most far-reaching piece of legislation to address the adverse impacts that result from the use of land surrounding the Chesapeake Bay. The fundamentally conserving philosophy of the entire Critical Area Program is expressed by the three (3) basic goals in the Critical Area Law:

1. Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances that have run off from surrounding lands.

2. Conserve fish, wildlife and plant habitat.

3. Establish land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create environmental impacts.

The Baltimore County Chesapeake Bay Critical Area Program is not intended to prevent all future development. However, it is designed to protect the Chesapeake Bay by strictly regulating future growth so that harmful effects on water quality and plant, fish and wildlife habitats are prevented or reduced.

The framework for controlling future development or redevelopment is directly associated with the following three (3) Critical Area Classifications:

1. IDA - Intense Development Area

2. LDA - Limited Development Area

3. RCA - Resource Conservation Area

The Chesapeake Bay Critical Area Program provides the definitions, states the purpose and provides the maps for supporting and identifying the location of these three (3) classifications in the Critical Area. Approximately 85% of the Bowleys Quarters community is within the Chesapeake Bay Critical Area.

The mechanism for implementation of the Critical Area Program is provided by regulations that concern the following:

1. Zoning

2. Forestry

3. Development

4. Land Use

5. Grading and Sediment Control

The specific regulations that directly influence development in the study area are: strict buffer and setback requirements, restrictions on tree removal and restrictions on construction within the tidal and non-tidal wetlands and habitat protection areas.
It is also the policy of Baltimore County through the Baltimore County Master Plan to continue implementing the Chesapeake Bay Critical Area Program.

In order to protect or enhance the urban, rural land use, plant and wildlife habitats and water quality, the Bowleys Quarters Community Action Plan supports the following to the fullest extent:

1. Chesapeake Bay Critical Area Law

2. Chesapeake Bay Critical Area Criteria

3. Baltimore County Chesapeake Bay Critical Area Program

4. Baltimore County Master Plan

   Issue: Critical Area - County Growth Allocation Process

   Action: BQIA will monitor Growth Allocation applications and will submit testimony in cases not consistent with the goals of this plan. (Continuous)

   Action: BQIA will request enforcement of all Critical Area regulations. (Continuous)

## VII ADEQUATE FACILITIES

### a. Traffic issues within the Bowleys Quarters peninsula

Bowleys Quarters Road is the primary means of access to the Bowleys Quarters Peninsula, while Carroll Island Road performs the same function in Carroll Island. Although traffic levels do not currently justify major projects within the Community, the population increase, that is likely to result because of the provision of public sewer, and the rapid deterioration of both main roads and side streets will require significant improvements during the time span of this plan.

The Bowleys Quarters community also experiences a significant increase in seasonal traffic. More than a dozen marinas, a large private picnic area and Miami Beach County Park are primarily responsible for the increased traffic volume during the summer months. In addition, the installation of public sewer is likely to result in patched and uneven roads.

Within the Community there are three immediate issues:

1. Emergency access to the lower peninsula.
2. Physical condition of the roads.
3. Pedestrian traffic on the upper peninsula.

Bowleys Quarters Road and Susquehanna Avenue are presently the single access routes to the two arms of the lower peninsula. Bowleys Quarters Road beginning at the intersection with Susquehanna Avenue is a potential "choke

point". Bowleys Quarters Road and Susquehanna Avenue are two lane roads without shoulders. Any serious vehicle accident, traffic tie up, utility pole or tree down would effectively isolate the lower peninsula, including Miami Beach County Park from emergency vehicles. (Medical, Fire, Police, etc.)

Issue: Emergency access to the lower peninsula.

Action: Analyze the feasibility of a second means of access to the lower peninsula. The study would examine adding shoulders on Bowleys Quarters Road from Susquehanna Avenue to Galloway Road and/or the construction of Chester Road between Susquehanna Avenue and Galloway Road. The analysis would also examine a realignment of Susquehanna Avenue at Bowleys Quarters Road. Designs should be consistent with the rural atmosphere of the community.

Poor soil sub-base conditions, age of roads and minimum repairs, other than pot hole patching, has resulted in generally poor condition of community roads. Proposed sewer construction, increased traffic and age will exacerbate this condition. Major replacements will be required within the time span of this plan. The Department of Public Works surveys all County roads annually. The roads are classified according to the condition of the road by percentage. Roads that are in very poor condition overall are the first to be resurfaced.

Issue: Poor physical condition of existing roads.

Action: The Department of Public Works will conduct a study of all community roads and develop an upgrade plan. This plan will be coordinated with any construction affecting roads. Major improvements to be programmed into County Capital Improvement Program.

Increased development throughout the peninsula is likely to further aggravate the dangers to pedestrian movement. Without shoulders or sidewalks, there is no place to walk or bicycle throughout the community. Sidewalks or walkways should be provided for all new development projects to facilitate personal safety. To maintain safety after sunset, these areas should be lighted with aesthetically pleasing streetlights such as lighting fixtures similar to those in Seneca Park. A sidewalk program exists in Baltimore County. However, the program is generally used where right-of-ways have been donated by property owners.

Issue: Pedestrian traffic throughout the Bowleys Quarters Peninsula.

Action: All new development in the Bowleys Quarters area will require sidewalks or impervious walkways.

Action: The County, where feasible, should construct sidewalks along all roads within the Bowleys Quarters study area.

Although not within the boundaries of Bowleys Quarters, the Eastern Avenue traffic corridor has a direct impact on access to and from the community. The three most important issues are:

1. Intersection of Eastern Avenue and Stemmers Run Road.

2. Intersection of Eastern Avenue and Carroll Island Road.

3. Proposed Route 43 access to Eastern Avenue.

**b. Traffic issues along Eastern Boulevard and Eastern Avenue**

Eastbound traffic turning right onto Stemmers Run Road and Route 702 face major backups which extend into the through lanes. Heavy traffic exits from the corner service station onto both Eastern Avenue and Stemmers Run Road which is also a major school crossing. Traffic is regulated by a signal and several school crossing guards. Several automotive service businesses and used car lots use the shoulder for continuous storage of vehicles, boats, tow trucks, etc. They are parked side by side, two deep, immediately adjacent to the traffic lanes. Access to these businesses is directly from the right hand traffic lane, without use of the congested shoulder. The resulting congestion at this intersection is dangerous and causes delays.

The original Bowleys Quarters Community Action Plan, adopted by the County Council in 1992 recommended the following actions to alleviate traffic problems along Eastern Boulevard and Eastern Avenue: 1.) To modify the existing ramp that leads into MD 702, 2.) to eliminate parking and vehicle storage on the shoulders of Eastern Boulevard, and 3.) to upgrade both Stemmers Run Road approaches to provide increased intersection capacity. All of these actions have either been completed or will be addressed as part of the Eastern Boulevard Streetscape project. This project, which will enhance the section of Eastern Boulevard between Selig Avenue and Martin Boulevard, is scheduled to begin construction in the spring of 2000.

**c. Traffic issues concerning the intersection of Carroll Island Road and Eastern Avenue**

The "Y" intersection of westbound Eastern Avenue and Carroll Island Road is potentially dangerous. Traffic is controlled by a traffic signal. However, ingress and egress from two fast food restaurants, a drive in theater and service stations directly at the intersection causes hazardous conditions. With the assurance of a green light drivers are surprised by sudden stops as vehicles enter and exit these businesses from unexpected locations. This condition will be further aggravated by seasonal peaks and the addition of a major marina on Carroll Island Road, between Eastern Avenue and Bowleys Quarters Road, and further development of strip shopping centers on both sides of Carroll Island Road.

The original Bowleys Quarters Community Action Plan raised the intersection of Carroll Island Road and Eastern Avenue as an issue and recommended two actions to address the problem. One of the requested actions was to conduct a study of that intersection. A traffic study was performed in February 1999. The intersection was classified as Level-of-Service "A". The outcome of the study makes it difficult to justify any public expenditures at this time.

Another dangerous traffic condition concerns left hand turns into the Carroll Island Shopping Center. The shopping center is located at the corner of Carroll Island Road and Bowleys Quarters Road. At both entrance ways, the respective roads are single lanes. Vehicles following a car making a left turn must wait until the maneuver is successfully completed. During peak traffic hours, traffic tends to become congested or vehicles are forced onto the dirt shoulder to circumvent the waiting automobile.

The approach to the traffic light at the intersection of Bowleys Quarters Road and Carroll Island Road had a left hand turn signal implemented (1992). This could be extended back to the Shopping Center entrance. The entrance to the Shopping Center on Carroll Island Road would require the addition of a left turn lane.

Issue: Eliminate traffic congestion at the entrance ways into the Carroll Island Shopping Center

Action: The BQIA will request the Department of Public Works to study the left turns into the Shopping Center.

**d. Middle River Employment Center Access Study (MRECAS)**

The increased traffic that will justify the construction of the proposed MD 43 may increase congestion on Eastern Avenue. The location of the Eastern Avenue and the MD 43 intersection is critical. It should be located to have the least impact on already congested intersections such as Carroll Island Road and Eastern Avenue. While there are environmental constraints that must be overcome, the impact on residents of the area must be given equal consideration. The BQIA considers this designation as crucial to the continued revitalization of the community. The BQIA will remain actively involved and is on record as preferring either of two different sites exiting near the Martin State Airport as the only valid locations for the exit of MD 43 into Eastern Avenue.

Issue: Proposed intersection of MD 43 and Eastern Avenue/Boulevard.

Action: The County should consider community views when making a decision on the location for MD 43 (the community preferring to see it located opposite Martin State Airport). The location of

MD 43 should help minimize traffic impact and critical volumes going through the Eastern Boulevard and Carroll Island intersection.

Issue: Designation of the Middle River Employment Center Access Study (MRECAS) formerly known as MD 43 extended.

Action: The BQIA will monitor the progress with the Middle River Employment Center Access Study to ensure that the correct alignment is recommended for this road. The BQIA will continue to participate and voice the opinion that the only alternatives acceptable to the community are F and D modified, or alternative D as shown in the MRECAS update proposal dated Spring 1999. Each of these alternatives shows the MRECAS and Eastern Boulevard intersection at, or near the Martin State Airport area.

**e. Schools**

The population growth pattern projected on Fig. 2 may not follow County trends. As sewerage becomes available and development constraints are removed, there will be an initial population surge of largely younger families with school age children. To ensure that school facilities are adequate, it is essential that the Board of Education monitor growth patterns and forecast cumulative school population projections.

Issue: Impact of growth on area schools and recreation centers.

Action: The Board of Education and the Department of Recreation and Parks will review development applications with the Planning Office to project cumulative impact on school populations. When projections indicate future overloading, programs will be implemented to insure adequate facilities are available. Consideration needs to be given to the following:

a) Class size of 24 or less for elementary schools.
b) Sidewalks for students who walk.
c) Magnet school for environmental sciences (elementary & middle schools).
d) Bus stop shelters.
e) Recreation center with indoor fields similar to Allender Road.
f) Bicycle path/jogging path.
g) Outdoor track.

**f. Emergency Services:**

Police: The community is currently protected by one patrol car, which serves about

3000 households. The present countywide ratio is one patrol car for every 3,519 households. This "protection ratio" should be the "adequate facility" requirement for the future development in the community. As boat traffic and the number of marinas increase, additional water based police protection will be required. This will require modification to the Strawberry Point facility, which houses the Marine and Aviation unit.

Issue: Impact of growth on adequate police protection.

Action: Police Department will monitor cumulative effect of development to plan additional protection of the community. (Annually)

Action: The precinct commander and area traffic commander should be involved in all future meetings involving planning and zoning for this community.

Action: Any modification to the Strawberry Point facility should involve community input.

## VIII. DESIGN GUIDELINES FOR NEW DEVELOPMENT

Accessibility of public sewer has generated interest in the development of previously undevelopable sites in Bowleys Quarters. Residents are not opposed to the development of additional single family detached homes. The community is, however, concerned that some new subdivisions may be of inferior quality, which in turn may undermine the property value of existing homes. To assure optimal quality, all new major subdivisions (3 or more lots) should meet the standards outlined below to the greatest extent possible.

1. Residential lots in all subdivisions should uphold the minimum area requirements of their respective zoning classification as specified in Section 1B02.3.C.1 of the Baltimore County Zoning Regulations.
2. Light posts should be of a traditional design.
3. Pedestrian walkways should be provided
4. Environmentally sensitive curbing/street edging should be provided.
5. Housing exteriors should be constructed of quality materials such as brick, stone, wood or premium vinyl.
6. Roofing should be constructed of quality materials such as architectural shingle.Subdivisions greater than fifteen units should provide usable open space. Such open space should provide amenities such as tot-lots, tennis courts or swimming pools.
7. Forestation requirements should be fulfilled within the site in question. If mitigation is required, the planting area should be within the Bowleys Quarters community.

8. All utilities should be buried.

Issue: Quality of new residential development

Action: Baltimore County should require that the above referenced standards be met to the greatest extent possible.

## IX CAPITAL IMPROVEMENT PROJECTS

Yearly, the County establishes the Capital Projects to be accomplished throughout the County. Communities present their requests for such projects as roads, schools, parks, dredging, etc. to the Planning Board. In order to maintain the quality of life in a manner that assures that public facilities are adequate and safe, the Bowleys Quarters community needs to develop and present their requests for Capital Improvement Projects to the Planning Board.

Issue: In the past the community has not participated in the County Planning Board's CIP Community Input Meeting.

Action: The community, should become educated about the CIP process, including the format and timetable in which requests for capital projects should be submitted.

Action: The County should support the community's requests for becoming educated about the CIP process.

Action: A committee is to be formed yearly to develop and present a capital improvement needs assessment to the Planning Board.

## X. DESIGN GUIDELINES FOR NEW CONSTRUCTION AND RECONSTRUCTION OF SINGLE LOTS OR MINOR SUBDIVISIONS.

The installation of public sewerage will allow the owners of unimproved lots or outdated homes to build new housing or renovate their property. The community is concerned about the quality of this new construction. This deprives neighboring property owners of the opportunity to review plans for the proposed development or redevelopment of single lots or minor subdivisions. It is therefore important to provide guidelines that inform owners of such lots about the community's goals for new development or redevelopment.

New construction should conform with the guidelines in the Comprehensive Manual of Development Policies (CMDP) for minor subdivisions and single lots in the designated waterfront areas. The community is opposed to mobile homes. The following list of requirements are those that the community deems appropriate:

1. All new homes will be single family detached dwellings. Each dwelling should have a minimum living space of 2000 square feet subject to the requirements for critical areas.

2. Housing exteriors should be constructed of quality materials such as brick, stone, wood or premium vinyl.

3. Quality roofing such as architectural shingle, copper or slate.

Issue: The community is concerned that if the County permits the construction of housing that is of inferior quality, the property values of existing homes may be negatively impacted.

Action: The County should attempt to enforce the above guidelines to the greatest extent possible.

## XI. IMPLEMENTATION

Implementation of the recommendations of the Bowleys Quarters Community Action Plan is a vital element to assure the plans continued usefulness. It is recognized that, with the limited resources of the County agencies, creative partnership arrangements will be needed between businesses, county personnel and residents to achieve results. Prioritization of the recommendations and setting of yearly goals should be performed by the community. This will promote community cohesiveness by bringing residents, organizations, and local business people together to work towards a common goal. The Community Action plan is a living document which needs to reflect the character, appearance, and desires of the community as times change.

Recommendation:

The community should create a Plan Implementation Group each year to work with County agencies on the implementation of the recommended actions.

The community should prioritize their recommendations and select achievable yearly projects.

Periodically the community should perform a review of the Community Action Plan and initiate a revision if required.

Committee Note: We wish to thank the members of the Committee, the Office of Planning, the Department of Environmental Protection and Resource Management and all of the other State and County agencies and Councilman Gardina and his office for their patience and cooperation in helping to develop this plan.

# Table 3

## Implementation Program

| Recommended Action | Responsibility for Implementation |
|---|---|
| <u>Zoning</u><br>Rezone remaining DR 5.5 to a lower zoning classification | Community<br>Office of Planning |
| <u>Martin State Airport</u><br>Communicate all changes in operations of airport facility | Maryland Aviation Administration |
| <u>Community Image</u><br>Maintain and improve the appearance of business and private properties and assure compliance with zoning regulations. | Community<br>Permits and Development Management. Division of Code Inspection and Enforcement |
| <u>Sewerage</u><br>Implement public sewerage system and connect all existing dwellings | Department of Public Works |
| <u>Environment</u><br>Continue water quality testing | Department of Environmental Protection and Resource Management |
| **Litter**<br>Discourage residents from using unlicensed haulers | Community |
| Publish list of legal trash disposal sites | Community |
| Coordinate community clean-up | Department of Environmental Protection |
| **Road Traffic Issues**<br>Upgrade Bowleys Quarters Road | Department of Public Works |
| Eliminate traffic congestion at the entrance ways of Carroll Island shopping Center | |
| **Schools**<br>Reduce class size | Board of Education |
| Create magnet school for environmental sciences | |
| **Design**<br>Enforce the design guidelines for new construction | Office of Planning |

Appendix A – List of Zoning Definitions

| | |
|---|---|
| RC-5: | Resource Conservation (Rural Residential) |
| RC-20: | Resource Conservation (Critical Area) |
| DR-3.5 | Density Residential (3.5 units per acre) |
| DR-5.5: | Density Residential (5.5 units per acre) |
| DR-16 | Density Residential (16 units per acre) |
| BL, BM, BR, CB | Business |
| BMB | Boatyard |
| ML | Light Manufacturing |

Baltimore County
Office of Planning
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

*http://www.co.ba.md.us*

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

20 COLUMBIA CORPORATE CENTER
10420 LITTLE PATUXENT PARKWAY
COLUMBIA, MARYLAND 21044-3528
TELEPHONE 410 884-0700
FAX 410 884-0719

JENNIFER R. BUSSE
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TELEPHONE 202 659-6800
FAX 202 331-0573

1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

March 5, 2003

RECEIVED
MAR 05 2003
BALTIMORE COUNTY
BOARD OF APPEALS

***DELIVERY BY HAND***

Ms. Kathleen C. Bianco
Administrator
County Board of Appeals of Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

**Re: In the Matter of: *Constellation Power Source Generation, Inc.***
**Baltimore County Case No. 02-098-SPH**
**Petitioner's Exhibit 24**

Dear Ms. Bianco:

Enclosed please find a copy of the Bowleys Quarters Community Action Plan 2000. According to the transcript from the hearing in this matter on June 5, 2002, Petitioner's Exhibit 24 is a copy of the Bowleys Quarters Community Action Plan 2000. Previously, I forwarded to you what I thought was Petitioner's Exhibit 24, a letter from Mike Vivirito on behalf of the Bowleys Quarters Community Association. I apologize for this confusion.

Please do not hesitate to contact me with any questions or concerns.

Sincerely,

Jennifer R. Busse

JRB:sll
Enclosure
cc: Peter Max Zimmerman, Esquire (delivery by had)
G. Scott Barhight, Esquire

*257766v3*

OCT 08 2002

**Constellation**
Generation Group, LLC

*A Member of the*
*Constellation Energy Group*

**DANIEL BATTA, JR., ELECTRICAL CONSULTANT**
**FT. SMALLWOOD RD. OFFICE BUILDING**
**CONSTELLATION GENERATION GROUP, LLC**
**1005 BRANDON SHORES ROAD**
**BALTIMORE, MD 21226**

telephone: (410) 787-5278
fax: (410) 787-5299
e-mail: Daniel.Batta@constellation.com

September 23, 2002

Mr. Vince Metallo
Baltimore County Electrical Code Inspections
111 West Chesapeake Avenue, Room G21
Towson, MD 21204

**SUBJECT:** County Electrical Code Exemption

Dear Mr. Metallo:

Constellation Power Source Generation, Inc. ("CPSG") operates and maintains generating stations at three locations in Baltimore County.

1. C. P. Crane Generating Station located on Carroll Island Road.
2. Notch Cliff Generating Station located on Old Harford Road.
3. Riverside Generating Station located on Broening Highway.

Prior to July 2000, these three generating stations were owned by Baltimore Gas and Electric Company ("BGE"). Since Baltimore County exempts the generating facilities of electric utilities from its Electrical Code (see Section 90.2B(5)(c) of the National Electrical Code), and since BGE was by all accounts an electric utility, such facilities were exempt from the County Electrical Code and county electrical inspections were not performed there.

In July 2000, in connection with the deregulation of electric power in Maryland, BGE transferred its electric generating facilities to its sister corporation, CPSG. Both companies were at that time, and still are, owned by Constellation Energy Group, Inc. The purpose of this letter is to establish that CPSG's generating stations remain exempt from the County Electrical Code.

The term "electric utility" is not defined in the National Electrical Code or in the County Electrical Code. However, Webster's Third New International Dictionary, Unabridged ("Webster's") sheds some light on the meaning of this term. Although Webster's does not define "electric utility", it does define "public utility" as "a business organization deemed by law to be vested with public interest, usu. because of monopoly privileges and so subject to public regulation such as fixing of rates, standards of service and provision of facilities."

Under this definition, both CPSG and BGE constitute "public utilities", and thus, "electric utilities", as well. CPSG produces the electric commodity at its generating stations, and BGE provides a service by delivering that commodity through its transmission and distribution lines to the public. Notwithstanding "electric deregulation", both companies remain subject to a variety of regulations that are specific to the electric industry. Although CPSG is regulated differently by the Maryland Public Service Commission ("PSC") than BGE is, CPSG is still required to obtain a Certificate of Public Convenience and Necessity from the PSC before it can build a new generating plant or make certain modifications to its existing generating plants. (See Section 7-207 of the Public Utility Companies Article of the Annotated Code of Maryland.) CPSG is also subject to numerous other federal and state laws and regulations, and some of the most important of those laws and regulations refer to CPSG as a "utility" or similar term. For example, CPSG is classified and regulated as a "public utility" under Section 201(e) of the Federal Power Act, which subjects CPSG to regulation by the Federal Energy Regulatory Commission ("FERC").

DGT
2.5

CPSG sells electricity pursuant to a "market based rates" tariff approved by FERC, and is also subject to FERC's reporting requirements. When CPSG participates in power pools, such as the PJM Interconnection, it does so subject to FERC-approved tariffs and the standards of service of the pool.

CPSG is also classified and regulated as a "utility" under the Acid Rain regulations promulgated by the U.S. Environmental Protection Agency under the Federal Clean Air Act primarily to regulate the emissions of generating stations (see 40 CFR §72.2). Similarly, each of the active generating units at each CPSG generating station is classified and regulated as a "utility unit" under the Acid Rain regulations.

Since CPSG is a regulated entity that produces the electric commodity; and since it is often classified as a "utility" in many of the most important regulations to which it is subject, we believe that CPSG qualifies as an "electric utility" within the meaning of Section 90.2B(5)(c) of the National Electrical Code, and its generating stations remain exempt from the County Electrical Code for the same reason.

Nevertheless, CPSG remains subject to the National Electrical Safety Code, the requirements imposed upon generating stations by the Pennsylvania-New Jersey-Maryland Interconnection ("PJM"), the requirements imposed by BGE for transmission access, and CPSG's own high standards for operations and maintenance.

If your office agrees that CPSG's generating facilities are exempt from the County Electrical Code pursuant to Section 90.2B(5)(c) of the National Electrical Code, please have the enclosed copy of this letter countersigned by an authorized official, and return the countersigned copy to me. If you have any questions or concerns about the matter discussed above, please give me a call at (410) 787-5278. I would be happy to discuss this further, either by phone or in person. I look forward to your favorable response.

Sincerely yours,

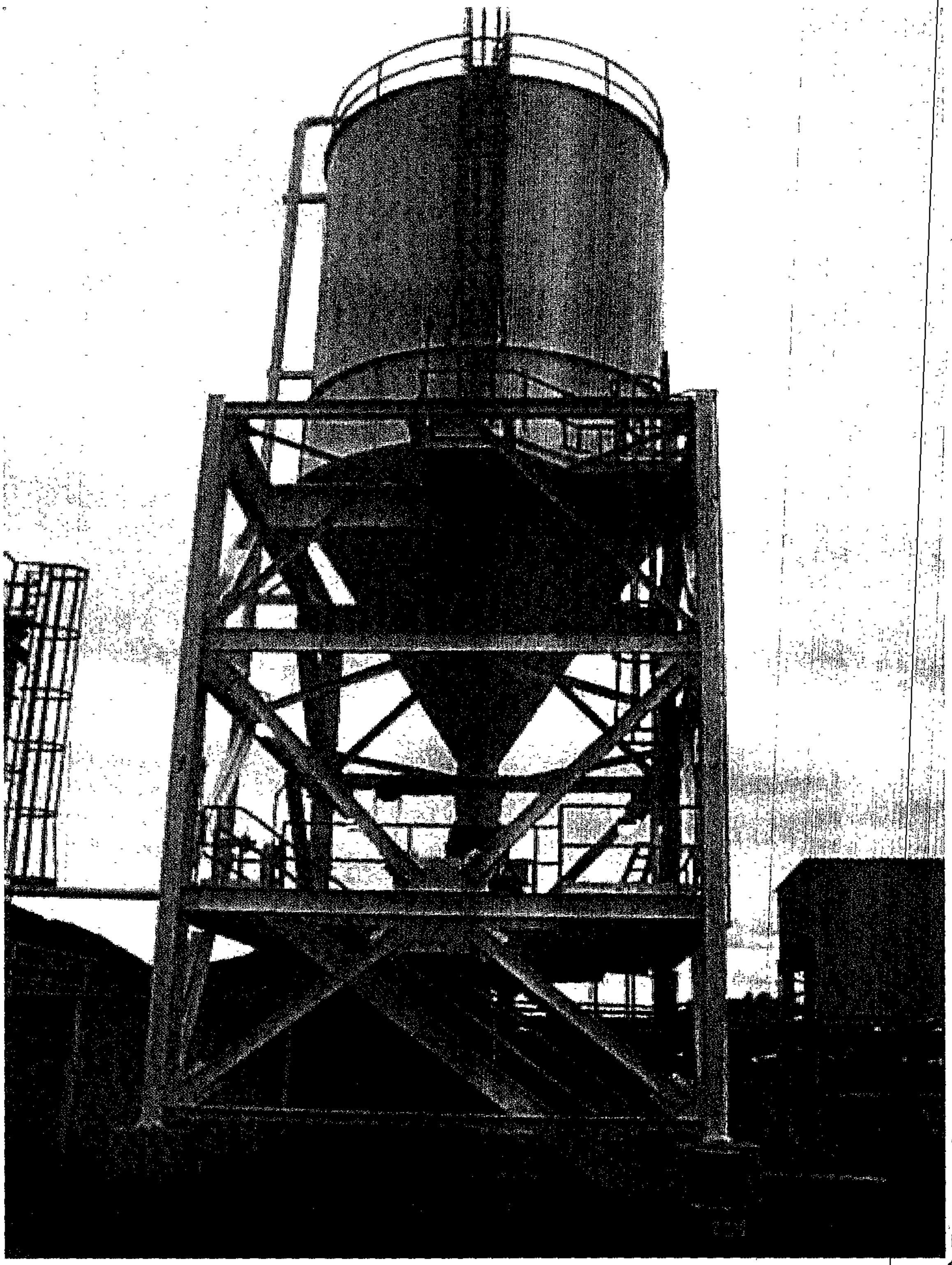
Daniel Batta, Jr.
Electrical Consultant
Electrical/Controls Engineering Unit

P. J. Buote
Manager
Generation Services Department

Accepted and Agreed Upon By:

Baltimore County Department of
Permits and Development Management

By: Raymond L. Wiseman 10/1/02
Name:
Title: Chief, Code Inspections and Enforcement



DOT 26 A

# APPLICATION FOR PERMIT
BALTIMORE COUNTY MARYLAND
DEPARTMENT OF PERMITS & DEVELOPMENT MANAGEMENT
TOWSON, MARYLAND 21204

DATE: 8/15/00

OEA: SMP

HISTORIC DISTRICT/BLDG. ☐ YES ☐ NO ☐ DO NOT KNOW

DISTRICT/PRECINCT 15 11

PERMIT #: B 925378
RECEIPT #: A 413178
CONTROL #: C -
XREF #:

FEE: $110.00
PAID:
PAID BY:
INSPECTOR:

I HAVE CAREFULLY READ THIS APPLICATION AND KNOW THE SAME IS CORRECT AND TRUE, AND THAT IN DOING THIS WORK ALL PROVISIONS OF THE BALTIMORE COUNTY CODE AND APPROPRIATE STATE REGULATIONS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT AND WILL REQUEST ALL REQUIRED INSPECTIONS.

BUILDING 1 or 2 FAM.
CODE CODE
BOCA CODE 9140

PROPERTY ADDRESS 601 SENECA PARK RD.
SUITE/SPACE/FLOOR
SUBDIV:
TAX ACCOUNT #: 150200 1278
OWNER'S INFORMATION (LAST,FIRST)
NAME: CONSTELLATION POWER SOURCE INC.
ADDR: 1000 BRANDON SHOALS ROAD

DOES THIS BLDG. HAVE SPRINKLERS YES — NO —

APPLICANT INFORMATION
NAME: JAMES F. BURKMAN
COMPANY: CONSTELLATION ENERGY GROUP
STREET 7609 ENERGY CITY SUITE 101
CITY,ST,ZIP BALTIMORE MD. 21226
PHONE #: (410) 787-5130 MHIC LICENSE #:
APPLICANT SIGNATURE: J F Burkman DRC#
PLANS: CONST 2 PLOT PLAT DATA 3 Cy EL 2 PL 2
TENANT
CONTR: TBD
ENGNR:
SELLR: Kelso Gray Elec

DESCRIBE PROPOSED WORK: Panel 455 of 575(455)-Zone C.
~~Erect~~, INSTALL PILES AND PILE CAPS for FOUNDATION only to support future CIMFLEDGE Silo. 45'x45' area (As per plans) ~~to be~~ ~~feet~~ on coal yard.
Separate permit req'd for silo bldg. Issuance of this permit does not guarantee issuance of subsequent permits by Balto Co.

TYPE OF USE

RESIDENTIAL
01. ___ ONE FAMILY
02. ___ TWO FAMILY
03. ___ THREE AND FOUR FAMILY
04. ___ FIVE OR MORE FAMILY (ENTER NO UNITS)_____
05. ___ SWIMMING POOL
06. ___ GARAGE
07. ___ OTHER

NON-RESIDENTIAL
08. ___ AMUSEMENT, RECREATION, PLACE OF ASSEMBLY
09. ___ CHURCH, OTHER RELIGIOUS BUILDING
10. ___ FENCE (LENGTH HEIGHT)
11. ___ INDUSTRIAL, STORAGE BUILDING
12. ___ PARKING GARAGE
13. ___ SERVICE STATION, REPAIR GARAGE
14. ___ HOSPITAL, INSTITUTIONAL, NURSING HOME
15. ___ OFFICE, BANK, PROFESSIONAL
16. ___ PUBLIC UTILITY
17. ___ SCHOOL, COLLEGE, OTHER EDUCATIONAL
18. ___ SIGN
19. ___ STORE ___ MERCANTILE ___ RESTAURANT SPECIFY TYPE
20. ___ SWIMMING POOL SPECIFY TYPE
21. ___ TANK, TOWER
22. ___ TRANSIENT HOTEL, MOTEL (NO. UNITS
23. ___ OTHER

TYPE FOUNDATION
1. SLAB
2. BLOCK
3. CONCRETE

BASEMENT
1. FULL
2. PARTIAL
3. NONE

TYPE OF CONSTRUCTION
1. ___ MASONRY
2. ___ WOOD FRAME
3. ___ STRUCTURE STEEL
4. ___ REINF. CONCRETE

TYPE OF HEATING FUEL
1. ___ GAS 3. ___ ELECTRICITY
2. ___ OIL 4. ___ COAL

TYPE OF WATER SUPPLY
1. ___ PUBLIC SYSTEM ___ EXISTS ___ PROPOSED
2. ___ PRIVATE SYSTEM ___ EXISTS ___ PROPOSED

TYPE OF SEWAGE DISPOSAL
1. ___ PUBLIC SEWER ___ EXISTS ___ PROPOSED
2. ___ PRIVATE SYSTEM
___ SEPTIC ___ EXISTS ___ PROPOSED
___ PRIVY ___ EXISTS ___ PROPOSED

CENTRAL AIR: 1. 2.
ESTIMATED COST: $
OF MATERIALS AND LABOR

PROPOSED USE: Power Plant with Cimfuse Silo
EXISTING USE: Power Plant

OWNERSHIP
1. ___ PRIVATELY OWNED 2. ___ PUBLICLY OWNED 3. ___ SALE 4. ___ RENTAL

RESIDENTIAL CATEGORY: 1. DETACHED 2. SEMI-DET. 3. GROUP 4. TOWNHSE 5. MIDRISE 6. HIRISE
#EFF: #1BED: #2BED: #3BED: TOT BED: TOT APTS/CONDOS:
1 FAMILY BEDROOMS
GARBAGE DISPOSAL 1. Y 2. N BATHROOMS CLASS B
POWDER ROOMS KITCHENS LIBER FOLIO

BUILDING SIZE
FLOOR 0
WIDTH 45
DEPTH 45
HEIGHT
STORIES
LOT #'S
CORNER LOT
1. ___ YES 2. ___ N

LOT SIZE AND SETBACKS
SIZE 43.20 AC.
FRONT STREET
SIDE STREET
FRONT SETBK 2000
SIDE SETBK 1090/1300
SIDE STR SETBK
REAR SETBK 990'
ZONING

APPROVAL SIGNATURES — DATE

| | | |
|---|---|---|
| BLD INSP | | |
| BLD PLAN | J Burkman for | 8-15-2000 |
| FIRE | J Burkman for | 8-15-2000 |
| SEDI CTL | Hold for Sheet Metal roof behind | 8/15/00 |
| ZONING | Hold for Forbes FINAL | 8/15/00 |
| PUB SERV | | 8/15/00 |
| ENVRMNT | Hold for Final Approval | 8/15/00 |
| House # | OK | 8/15/00 |
| PERMITS | | |

MAKE CHECKS PAYABLE TO BALTIMORE COUNTY MARYLAND -- NO PERMIT FEES REFUNDED

PUT 7A

# BALTIMORE COUNTY, MARYLAND

**DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT**

**TOWSON, MARYLAND 21204**

DIRECTOR

BUILDINGS ENGINEER

## BUILDING PERMIT

PERMIT #: B425348 CONTROL #: C- DIST: 15 PREC: 11
DATE ISSUED: 08/15/2000 TAX ACCOUNT #: 1502001278 CLASS: 08

PLANS: CONST 02 PLOT 1 R PLAT 0 DATA 3 ELEC NO PLUM NO
LOCATION: 601 SENECA PARK RD
SUBDIVISION:

OWNERS INFORMATION
NAME: CONSTELLATION POWER SOURCE INC
ADDR: 1000 BRANDON SHORES RD

TENANT:
CONTR: TBD
ENGNR:
SELLR:
WORK: INSTALL PILES AND PILE CAPS FOR FOUNDATION ONLY
OF FUTURE LIMESTONE SILO, 45'X45'AREA=2025SF
IN COAL YARD AREA.SEPARATE PERMIT REQ'D FOR TO
COMPLETE SILO.ISSUANCE OF THIS PERMIT DOES NOT
GUARANTEE ISSUANCE OF SUBSEQUENT PERMITS BY
BALTO COUNTY,CBCA ZONE C, AS PER PLANS
BLDG. CODE: BOCA CODE
RESIDENTIAL CATEGORY: OWNERSHIP: PRIVATELY OWNED

PROPOSED USE: POWER PLANT & FOUNDATION
106,000 EXISTING USE: POWER PLANT

TYPE OF IMPRV: NEW BULDING CONTRUCTION
USE: OTHER - NON-RESIDENTIAL
FOUNDATION: BASEMENT:
SEWAGE: PUBLIC EXIST WATER: PUBLIC EXIST

LOT SIZE AND SETBACKS

SIZE: 43.20AC
FRONT STREET:
SIDE STREET:
FRONT SETB: 2000
SIDE SETB: 1090/1300
SIDE STR SETB:
REAR SETB: 490

THIS PERMIT
EXPIRES
YEAR FROM DATE
OF ISSUE

DET
27B

PLEASE REFER TO PERMIT NUMBER WHEN MAKING INQUIRIES

APPLICATION FOR PERMIT
BALTIMORE COUNTY MARYLAND
DEPARTMENT OF PERMITS & DEVELOPMENT MANAGEMENT
TOWSON, MARYLAND 21204

DATE: 8-31-00

OEA: K/W

HISTORIC DISTRICT/BLDG.

PERMIT #: B477044
RECEIPT #: H411435
CONTROL #: C-
XREF #:

FEE: 20.
PAID:
PAID BY: App
INSPECTOR:

I HAVE CAREFULLY READ THIS APPLICATION AND KNOW THE SAME IS CORRECT AND TRUE, AND THAT IN DOING THIS WORK ALL PROVISIONS OF THE BALTIMORE COUNTY CODE AND APPROPRIATE STATE REGULATIONS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT AND WILL REQUEST ALL REQUIRED INSPECTIONS.

BUILDING 1 or 2 FAM.
CODE CODE ____
BOCA CODE ✓

TYPE OF IMPROVEMENT
1. ✓ NEW BLDG CONST
2. ____ ADDITION
3. ____ ALTERATION
4. ____ REPAIR
5. ____ WRECKING
6. ____ MOVING
7. ____ OTHER

TYPE OF USE

RESIDENTIAL

01. ___ ONE FAMILY
02. ___ TWO FAMILY
03. ___ THREE AND FOUR FAMILY
04. ___ FIVE OR MORE FAMILY (ENTER NO UNITS)____
05. ___ SWIMMING POOL
06. ___ GARAGE
07. ___ OTHER

TYPE FOUNDATION
1. SLAB
2. BLOCK
3. CONCRETE

BASEMENT
1. FULL
2. PARTIAL
3. NONE

PROPERTY ADDRESS 601 SENECA PARK ROAD ☐ YES ☐ NO
SUITE/SPACE/FLOOR ☐ DO NOT KNOW
SUBDIV:
TAX ACCOUNT #: 1502001278 DISTRICT/PRECINCT
OWNER'S INFORMATION (LAST,FIRST) 15 11
NAME: CONSTELLATION POWER SOURCE GENERATION, INC.
ADDR: 1000 CAMDEN STREET ROAD

DOES THIS BLDG. HAVE SPRINKLERS
YES ___ NO ___

APPLICANT INFORMATION
NAME: JAMES J. BURKMAN
COMPANY: CONSTELLATION ENERGY GROUP
STREET 7160 ENERGY PKY SUITE 101
CITY,ST,ZIP BALTIMORE MD 21226
PHONE #: (410) 787-5130 MHIC LICENSE #:
APPLICANT SIGNATURE: DRC#
PLANS: CONST 2 PLOT 6 PLAT ____ DATA ____ EL 2 PL 2
TENANT
CONTR: TBD
ENGNR:
SELLR:

DESCRIBE PROPOSED WORK: Fabricated
CONSTRUCT A STEEL LIMESTONE SILO 64' TALL
x 20' Diameter. 3140 ft
(FOUNDATION PERMIT B423348)
1 SET OF SEALED PLANS TO BE KEPT AT JOB SITE. PLANS WAIVED

NON-RESIDENTIAL

08. ___ AMUSEMENT, RECREATION, PLACE OF ASSEMBLY
09. ___ CHURCH, OTHER RELIGIOUS BUILDING
10. ___ FENCE (LENGTH HEIGHT )
11. ___ INDUSTRIAL, STORAGE BUILDING
12. ___ PARKING GARAGE
13. ___ SERVICE STATION, REPAIR GARAGE
14. ___ HOSPITAL, INSTITUTIONAL, NURSING HOME
15. ___ OFFICE, BANK, PROFESSIONAL
16. ___ PUBLIC UTILITY
17. ___ SCHOOL, COLLEGE, OTHER EDUCATIONAL
18. ___ SIGN
19. ___ STORE ___ MERCANTILE ___ RESTAURANT SPECIFY TYPE
20. ___ SWIMMING POOL SPECIFY TYPE
21. ___ TANK, TOWER
22. ___ TRANSIENT HOTEL, MOTEL (NO. UNITS )
23. ✓ OTHER Power Plant

NO DRC REQD PER VERBAL 5-19-00-DAN APPLIC.

TYPE OF CONSTRUCTION
1. ___ MASONRY
2. ___ WOOD FRAME
3. ___ STRUCTURE STEEL
4. ___ REINF. CONCRETE

TYPE OF HEATING FUEL
1. ___ GAS 3. ___ ELECTRICITY
2. ___ OIL 4. ___ COAL

TYPE OF WATER SUPPLY
1. ✓ PUBLIC SYSTEM ___ EXISTS ___ PROPOSED
2. ___ PRIVATE SYSTEM ___ EXISTS ___ PROPOSED

TYPE OF SEWAGE DISPOSAL
1. ___ PUBLIC SEWER ___ EXISTS ___ PROPOSED
2. ___ PRIVATE SYSTEM
___ SEPTIC ___ EXISTS ___ PROPOSED
___ PRIVY ___ EXISTS ___ PROPOSED

CENTRAL AIR: 1. 2. ✓
ESTIMATED COST: $300,000.
OF MATERIALS AND LABOR
PROPOSED USE: Power Plant + Silo
EXISTING USE: Power Plant

OWNERSHIP
1. ✓ PRIVATELY OWNED 2. ___ PUBLICLY OWNED 3. ___ SALE 4. ___ RENTAL

RESIDENTIAL CATEGORY: 1. ___ DETACHED 2. ___ SEMI-DET. 3. ___ GROUP 4. ___ TOWNHSE 5. ___ MIDRISE 6. ___ HIRISE
#EFF: #1BED: #2BED: #3BED: TOT BED: TOT APTS/CONDOS:
1 FAMILY BEDROOMS
GARBAGE DISPOSAL 1. Y 2. N BATHROOMS CLASS 08
POWDER ROOMS KITCHENS LIBER FOLIO

BUILDING SIZE
FLOOR 314
WIDTH 20'
DEPTH 20'
HEIGHT 64'
STORIES
LOT #'S
CORNER LOT 1. ___ YES 2. ___ N

LOT SIZE AND SETBACKS
SIZE 43,20
FRONT STREET
SIDE STREET
FRONT SETBK 2000
SIDE SETBK 1090 / 1300
SIDE STR SETBK
REAR SETBK 440'
ZONING

| APPROVAL SIGNATURES | | DATE |
|---|---|---|
| BLD INSP | | |
| BLD PLAN | 120 Days Beyond Final | 8-31-2000 |
| FIRE | 120 Days Beyond Final | 8-3-2000 |
| SEDI CTL | Waiver Letter Issued | 8/31/00 |
| ZONING | 120 Days Beyond Final | 8-31-00 |
| PUB SERV | | |
| ENVRMNT | 410NC Final Kelly | 8/31/00 |
| | | |
| PERMITS | Appl | |

MAKE CHECKS PAYABLE TO BALTIMORE COUNTY MARYLAND -- NO PERMIT FEES REFUNDED

PDT
27 C

# BALTIMORE COUNTY, MARYLAND

## DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

## TOWSON, MARYLAND 21204

DIRECTOR

BUILDINGS ENGINEER

BUILDING PERMIT

PERMIT #: B427044 CONTROL #: C- DIST: 15 PREC: 11
DATE ISSUED: 08/31/2000 TAX ACCOUNT #: 1502001278 CLASS: 08

PLANS: CONST 0 PLOT 0 R PLAT 0 DATA 0 ELEC NO PLUM NO
LOCATION: 601 SENECA PARK RD
SUBDIVISION:

OWNERS INFORMATION
NAME: CONSTELLATION POWER SOURCE GENERATION, INC
ADDR: 1000 BRANDON SHORE RD 21226

TENANT:
CONTR: TBD
ENGNR:
SELLR:
WORK: CONSTRUCT A FABRICATED STEEL LIMESTONE SILO
64' TALL X20' DIAMETER. 314SF (FOUNDATION
APPROVED UNDER PERMIT B425348) 1 SET OF SEALED
PLANS TO BE KEPT AT JOB SITE. PLANS WAIVED
PER JB.

BLDG. CODE: BOCA CODE
RESIDENTIAL CATEGORY: OWNERSHIP: PRIVATELY OWNED

PROPOSED USE: POWER PLANT & SILO
300,000.00 EXISTING USE: POWER PLANT

TYPE OF IMPRV: NEW BULDING CONTRUCTION
USE: OTHER - NON-RESIDENTIAL
FOUNDATION: BASEMENT:
SEWAGE: PUBLIC EXIST WATER: PUBLIC EXIST

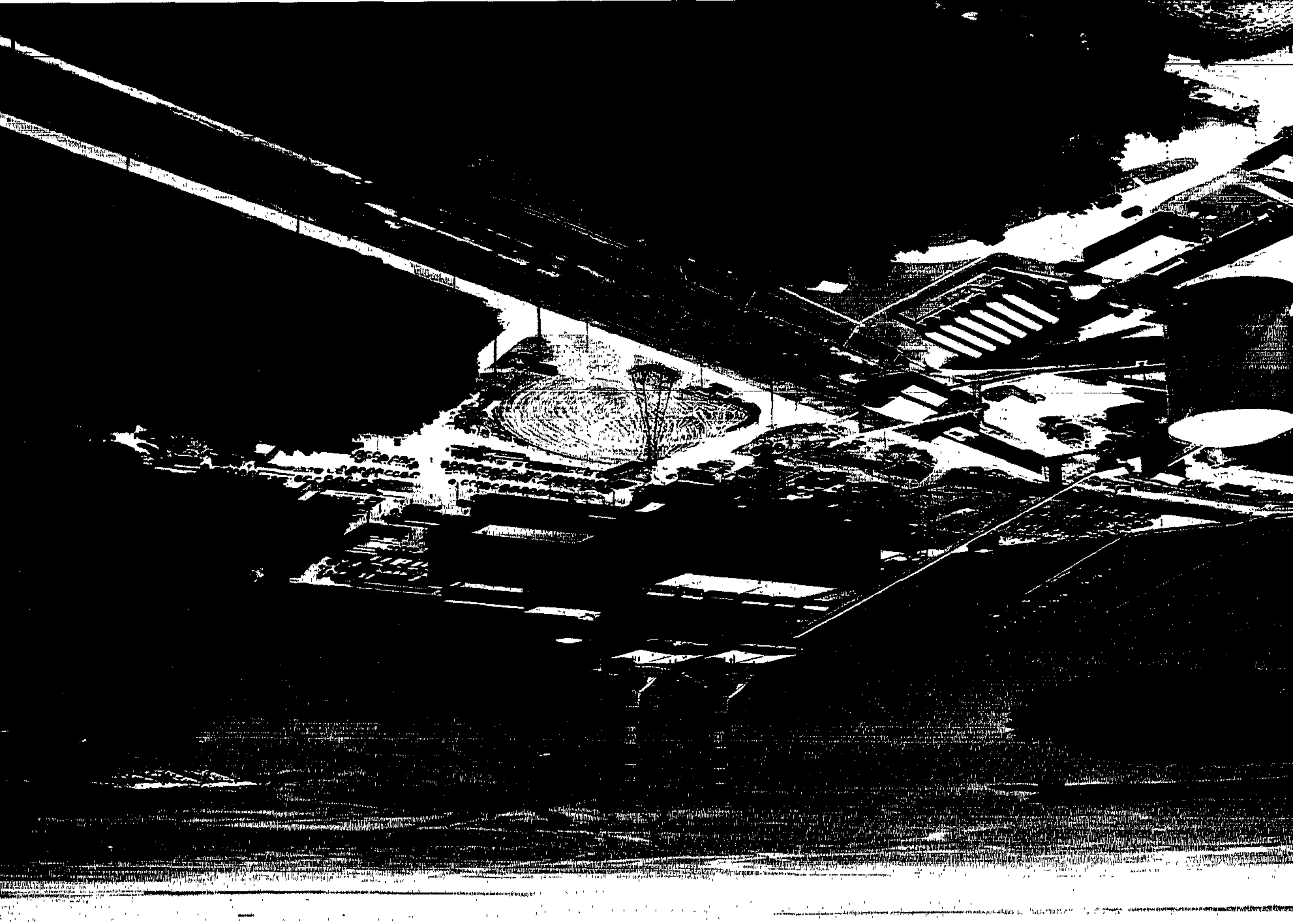
LOT SIZE AND SETBACKS

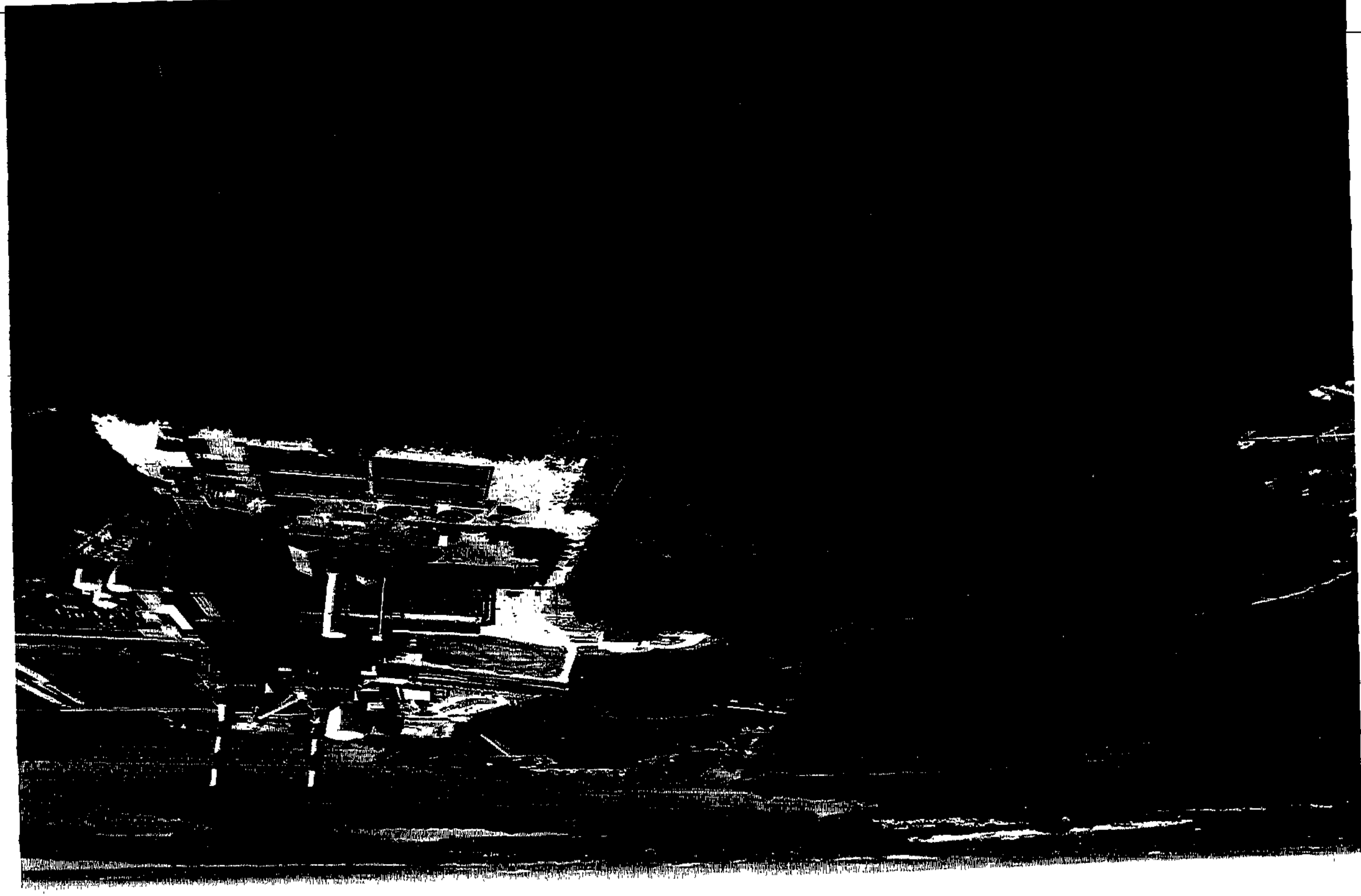
SIZE: 43.20
FRONT STREET:
SIDE STREET:
FRONT SETB: 2000
SIDE SETB: 1090/1300
SIDE STR SETB:
REAR SETB: 440'

THIS PERMIT
EXPIRES ONE
YEAR FROM DATE
OF ISSUE

DCT
27D

PLEASE REFER TO PERMIT NUMBER WHEN MAKING INQUIRIES





KEEP PERMIT AT SITE

CONTROL NO. 09762

State of Maryland

STATE OF MARYLAND
DEPARTMENT OF THE ENVIRONMENT
1800 WASHINGTON BOULEVARD
BALTIMORE MD 21230

Parris N. Glendening
*Governor*

Richard F. Pecora
*Secretary*

[X] Construction Permit [ ] Operating Permit

PERMIT NO. 005-6-2703 N

Date Issued November 20, 2002

PERMIT FEE $1200.00 (Paid)

Expiration Date In accordance with COMAR 26.11.02.04B

LEGAL OWNER & ADDRESS

Virginia Materials, Inc.
3306 Peterson St.
Norfolk VA 23509
John Burns
Vice President

SITE

Virginia Materials, Inc.
1001 Carroll Island Road
Baltimore MD 21220
Baltimore County
Premises # 2476

SOURCE DESCRIPTION

Installation of a coal slag processing plant for the production of sand blast abrasives, consisting of a crusher, a dryer, and a screen, rated at 35 tons per hour of throughput.

This source is subject to the conditions described on the attached pages.



Program Manager

Director, Air and Radiation Management Administration

AMA-1 (Rev. 10-1-89)

PBT 30

(NOT TRANSFERABLE)

**VIRGINIA MATERIALS, INC. (Premises # 005-2476)**
**PERMIT TO CONSTRUCT CONDITIONS**
**PERMIT NUMBER 005-6-2703 N**

## PART A - GENERAL REQUIREMENTS

(1) The Application for Processing or Manufacturing Equipment (AMA-5), for the installation of a coal slag processing plant consisting of a rotary kiln dryer, crusher, and a screen, received December 5, 2001, and supplements to the application received March 8th and March 26th of 2002, are incorporated by reference in this permit.

If there are any discrepancies between the permit and the application, the conditions on the permit will take precedence. In the application, estimates of dimensions, volumes, emissions rates, operating rates, feed rates and hours of operation are not deemed to constitute enforceable numeric limits except to the extent that they are necessary to make a determination of compliance with applicable regulations.

(2) Inspectors from the Department and the Baltimore County Department of Environmental Protection and Resource Management shall be afforded access to the Permittee's property at any reasonable time for the purpose of:

(a) inspecting construction authorized under the permit;

(b) sampling any materials stored or processed on site, or any waste or discharge into the environment to determine compliance with the permit;

(c) inspecting any monitoring equipment required by the permit;

(d) having access to or copying any records relevant to the Department's determination of compliance with an air pollution control requirement including all documents required to be kept by the permit; and

(e) obtaining any photographic documentation and evidence to determine compliance with the permit.

(3) Prior to any increase in the quantities and/or change in the types of materials stated in the application or limited by the permit, notification shall be provided to the Department. If the Department determines that the increase or change constitutes a modification, the Permittee shall obtain a permit to construct prior to the modification.

(4) Nothing in this permit authorizes the violation of any rule or regulation nor the creation of a nuisance or air pollution.

(5) If any provision of this permit is determined to be invalid for any reason, to the extent reasonable, the remaining provisions shall remain in full force and effect, and such invalid provisions shall be considered severed and deleted from the permit.

## PART B - APPLICABLE REGULATIONS

(1) This source is subject to all applicable federally enforceable air pollution control requirements including, but not limited to, the following:

(a) COMAR 26.11.01.07, which requires the Permittee to report to the Department any excess emissions;

(b) COMAR 26.11.02.09A, which requires the Permittee to obtain a permit to construct if an installation is modified in such a manner that there is a change in the quantity, nature, or characteristics of emissions from the source from those provided in this permit;

(c) COMAR 26.11.06.02C(2) – Visible Emissions: which states "In Areas III and IV a person may not cause or permit the discharge of emissions from any installation or building, other than water in an uncombined form, which is visible to human observers;

(d) COMAR 26.11.06.03B(2)(a) - Particulate Matter from Confined Sources: "A person may not cause or permit to be discharged into the outdoor atmosphere from any other installation, particulate matter in excess of 0.03 gr/SCFD (68.7 mg/dscm)."

(e) COMAR 26.11.06.03D - Particulate Matter from Materials Handling and Construction: A person may not cause or permit any material to be handled, transported, or stored, or a building, its appurtenances, or a road to be used, constructed, altered, repaired, or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne. These reasonable precautions shall include, but not be limited to, the following when appropriate as determined by the control officer:

1) Use of water or chemicals for control of dust in the demolition of existing buildings or structures, construction operations, the grading of roads, or the clearing of land.

2) Application of asphalt, oil, water, or suitable chemicals on dirt roads, materials stockpiles, and other surfaces, which can create airborne dusts.

3) Installation and use of hoods, fans, and dust collectors to enclose and vent the handling of dusty materials. Adequate containment methods shall be employed during sandblasting of buildings or other similar operations.

4) Covering, at all times when in motion, open-bodied vehicles transporting materials likely to create air pollution. Alternate means may be employed to achieve the same results, as would covering the vehicles.

5) The paving of roadways and their maintenance in clean condition.

6) The prompt removal from paved streets of earth or other material, which has been transported there by trucks, or earth moving equipment or erosion by water.

(f) COMAR 26.11.06.05C - Sulfur Compounds from Other than Fuel-Burning Equipment:

1) A person may not cause or permit the discharge into the atmosphere from installations other than fuel-burning equipment of gases containing more than 500 ppm of sulfur dioxide.

2) A person may not cause or permit the discharge into the atmosphere from installations other than fuel-burning equipment of gases containing sulfuric acid, sulfur trioxide, or any combination of them, greater than 35 milligrams per cubic meter reported as sulfuric acid.

(2) This source is subject to all applicable State-only air pollution control requirements including, but not limited to, the following regulations:

(a) COMAR 26.11.02.13A(19) & (21), which requires the Permittee to obtain a State permit to operate from the Department.

(b) COMAR 26.11.02.19C & D, which requires the Permittee to maintain records necessary to support the emissions certification and to certify the actual emissions of regulated pollutants from the screening plant; and

(c) COMAR 26.11.06.08 and 26.11.06.09, which generally prohibit the discharge of emissions beyond the property line in such a manner, that a nuisance or a condition of air pollution is created.

## PART C - CONSTRUCTION

(1) Except as otherwise provided in this part, the coal slag processing plant shall be constructed in accordance with the specifications contained in the application.

(2) The baghouse shall be equipped with a pressure sensor and recorder to continuously measure and record the differential pressure drop across the baghouse.

## PART D - OPERATING CONDITIONS

(1) Except as otherwise provided in this part, the coal slag processing plant shall be operated in accordance with the application and operating procedures that were specified in the application by the equipment vendors.

(2) The Permittee shall maintain and operate all installations with potential to cause air pollution, and any associated air pollution control equipment, in such a manner as to ensure full and continuous compliance with all applicable regulations.

(3) The Permittee shall properly maintain, and keep in good working condition, all control panel instrumentation and monitoring devices that the Permittee uses to determine if the air pollution control equipment is operating as designed.

(4) Fugitive dust from plant roads, loading operations, transfer points, and stockpiles shall be controlled by applying water and/or chemical dust suppressants or an equivalent method as necessary.

(5) The Permittee shall be subject to using and discharging only materials listed in the permit to construct application.

## PART E - TESTING, MONITORING, REPORTING, AND RECORD KEEPING

(1) The Permittee shall report any excess emissions in accordance with COMAR 26.11.01.07.

(2) Records of the monthly amount of slag processed and hours of plant operation shall be kept on site for at least five years and made available to the Department upon request:

(3) Visible emissions observations on the baghouse outlet shall be conducted, when the plant is operating, in accordance with US EPA Reference Method 9 at least once a quarter and the results logged.

(4) Records of the pressure drop across the baghouse shall be kept on site and made available to the Department upon request.

(5) The Permittee shall certify the actual emissions of regulated pollutants from that source.

(a) Certification shall be on a form obtained from the Department and shall be submitted to the Department not later than April 1 of the year following the year for which certification is required.

(b) The individual making the certification shall certify that the information is accurate to the individual's best knowledge. The certifying individual shall be:

(i) Familiar with each source for which the certification form is submitted; and

(ii) Responsible for the accuracy of the emission information.

(6) The Permittee shall maintain the following records and information necessary to support the emission certification:

(a) The total amount of excess emissions of each regulated pollutant and the total of all regulated pollutants;

(b) An explanation of the methods used to quantify the emissions and the operating schedules and production data that were used to determine emissions, including significant assumptions made;

(c) Amounts and types of all fuels used;

(d) Identification, description, and use records of all air pollution control equipment and compliance monitoring equipment including:

(i) Significant maintenance performed,

(ii) Malfunctions and downtime, and

(iii) Episodes of reduced efficiency of all equipment;

(e) Limitations on source operation or any work practice standards that significantly affect emissions; and

(f) Other relevant information as required by the Department.

(7) The logs and other records of information required by this permit shall be retained for a period of at least five years and made available to the Department upon request.

(8) The Permittee shall submit an operating permit application for the by no later than 60 days from the date of issuance of this permit to construct.

(9) All notifications and reports required by this Permit to Operate shall be submitted to:

Air Quality Compliance Program Administrator
Air and Radiation Management Administration
Maryland Department of the Environment
1800 Washington Blvd.
Baltimore, MD 21230

## PART F - TEMPORARY OPERATING PERMIT CONDITIONS

(1) This permit allows the Permittee to operate the coal processing plant for a period of 180 days after the issue of this permit to construct. This period shall be used to demonstrate compliance with applicable air quality regulations and permit to construct conditions. If the Permittee is unable to complete the compliance demonstration during this period, the Permittee shall submit to the Department a written request for an extension to the start-up period at least 30 days before the end of the period. The request should include a completed permit to operate application.

(2) The Permittee shall maintain and operate all installations with potential to cause air pollution, and any associated air pollution control equipment, in such a manner as to ensure full and continuous compliance with all applicable regulations.

(3) The Permittee shall properly maintain, and keep in good working condition, all control panel instrumentation and monitoring devices that the Permittee uses to determine if the air pollution control equipment is operating as designed.

(4) Except as otherwise provided in this part, the crushing and screening plant shall be operated in accordance with the application and operating procedures that were specified in the application by the equipment vendors.

(5) Fugitive dust from plant roads and stockpiles shall be controlled by applying water and/or chemical dust suppressants.

(6) The coal slag processing plant shall not process more than 35 tons per hour.

**The Bowleys Quarters Improvement Association, Inc.**
P.O. Box 18051 Baltimore, Maryland 21220 (410) 335-9802

January 12, 2002

Constellation Power Source Generation
Carroll Island
Middle River, MD. 21220

To Whom It May Concern:

The Bowleys Quarters Improvement Association is writing you in support of the proposed slag/bottom ash recycling plant located on the C.P. Crane power plant property.

Representatives from Constellation Power Source Generation (CPSG) met with our community on October 11, 2001 at the Association Hall. At the meeting the company discussed that slag, which is a natural by-product of burning coal, is recycled for use as blasting grit and in the manufacture of roofing shingles. It is understood that currently Crane produces approximately 42,000 tons of slag per year, which is trucked to Virginia for processing by Virginia Materials. It is dried and sized and then shipped back to the Baltimore area where their customers are located. It is our understanding that Virginia Materials and CPSG would like to have this operation on site so they can operate more efficiently by not trucking the material to Virginia. We understand that the structure is planned to be small, less than 5000 square feet, and the operation will utilize 5-7 acres of existing infrastructure located within the 100 acre Crane site.

CPSG estimates that the truck traffic will be cut in half and the recycled material will be dry instead of wet. From the communities perspective relocating this operation makes sense. We expect that CPSG will continue to work with the community to keep us informed of issues at the plant.

Very Truly Yours,

Michael Vivirito
President

PGT
31

Petitioner's
EXHIBIT
24

# PETITION FOR SPECIAL HEARING

#4103-ASPH (Item No. 64)

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

Baltimore Gas and Electric Company

~~Petitioner~~, _____ legal owner____ of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing Under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve an amendment to the special exception to permit the construction of a propane storage facility and to interpret this proposed use as properly includable within existing special exception.

| | |
|---|---|
| MAP: | |
| ELECTION DISTRICT: | 15 |
| DATE: | 9/12/73 |
| TYPE HEARD: | |
| BY: | |
| FINAL: | |
| BY: | |

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Special Hearing advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

~~Contract Purchaser~~
John B. Howard
409 Washington Avenue
~~Address~~ Towson, Maryland 21204

William E. Colburn
~~Petitioner~~'s Attorneys
Gas and Electric Building
Address Baltimore, Maryland 21203

Baltimore Gas and Electric Company
By: W. J. Witte
W. J. Witte Legal Owner
Vice President
Address Gas and Electric Building
Baltimore, Maryland 21203

Protestant's Attorney

ORDERED By the Zoning Commissioner of Baltimore County, this 11th day of September, 196~~x~~73, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 17th day of October 196~~x~~73, at 1:00 o'clock P. M.

SEP 11 '73 AM

Zoning Commissioner of Baltimore County

(over)

rec. 4097
72~~44~~47

Pursuant to the advertisement, posting of property, and public hearing on the above Petition and it appearing that by reason of the following finding of facts that the requirements of Section 500.7 of the Baltimore County Zoning Regulations having been met, and the health, safety, and general welfare of the community not being adversely affected,

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the ~~above~~ Special Hearing ~~for~~ to amend the Special Exception to permit the con-

~~by reason of~~

struction of a propane storage facility and to interpret this proposed use as properly includable within the existing Special Exception should be granted.

~~should be granted.~~

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 31st day of October, 196 73, that the herein Petition for Special Hearing should be and the same is Granted, from and after the date of this Order, to amend the Special Exception to permit the construction of a propane storage facility and to interpret this proposed use as properly includable within the existing Special Exception, subject to the approval of a site plan by the Department of Public Works and the Office of Planning and Zoning.

Zoning Commissioner of Baltimore County

Pursuant to the advertisement, posting of property and public hearing on the above petition and it appearing that by reason of

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the above Special Hearing should NOT BE GRANTED.

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this _____day of_____, 196__, that the above Special Hearing be and the same is hereby DENIED.

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Zoning Commissioner of Baltimore County

Pursuant to the advertisement, posting of property, and public hearing on the above Petition and it appearing that by reason of the following finding of facts that strict compliance with the Baltimore County Zoning Regulations would result in practical difficulty and unreasonable hardship upon the Petitioner,

the ~~above~~ Variance should be had; and it further appearing that by reason of the granting of the Variance requested not adversely affecting the health, safety, and general welfare of the community, a Variance to permit the construction of a storage tank one hundred and ten (110) feet in height instead of the permitted height of thirty-five (35) feet should be granted.

~~a Variance should be granted~~

IT IS ORDERED by the Zoning Commissioner of Baltimore County this 31st day of October, 197 3, that the herein Petition for a Variance should be and the same is Granted, from and after the date of this Order, to permit the construction of a storage tank one hundred and ten (110) feet in height instead of the permitted height of thirty-five (35) feet, subject to the approval of a site plan by the Department of Public Works and the Office of Planning and Zoning.

Zoning Commissioner of Baltimore County

Pursuant to the advertisement, posting of property and public hearing on the above petition and it appearing that by reason of

the above Variance should NOT BE GRANTED.

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this _____ day of _____, 197 __, that the above Variance be and the same is hereby DENIED.

Zoning Commissioner of Baltimore County

RECEIVED
JUN 07 1977
RECORD SERVICES

Verified 6/05/02 Verified 10/17/02 PROPOSER'S COUNSEL

02-098-SPH CONSTRUCTION POWER SOURCES JUNE 5 '02

PC 1 ✓ SIGN-IN SHEET JUNE 5 '02

PC 2(ID) ✓ BOA OPINION #4077

PC 3 ✓ GIS CARROLL ISLAND

PC 4 ✓ CONSTRUCTION WOB PROD

PC 5 ✓ 2000 CZMP SCALE 200:1 NO 4 L SALT PONDS CHOM

PC 6 ✓ " " SCALE 200:1 NO 3 L

PC 7 ✓ SIGN-IN SHEET OCT 17 '02

PC 8 ✓ ADC ROAD MAP - AREA ROAD SYSTEM

PC 9 ✓ DEPT OF ASSESSMENTS TAX MAP APR '02 PKG 15 PGS

PC 10 ✓ 1000' SCALE ZONING MAP

PC 11 ✓ COASTAL RURAL LEGACY MAP - DEPRM ISSUED

(ID) PC 12 ✓ AERIAL PHOTO 1980'S - Rolled exhibit in Blue Box

PC 13 A-J ✓ PHOTO SERIES 5/29/02 (DILLON)

(ID) PC 14 A-R ✓ PHOTO SERIES (KAMMONS)

PC 15 ~~ACTING~~ & VALLEY'S PLANNING - W/DRAWN

PC 16 ✓ CV JACK DILLON

(8/4/03) (ID) PC 17 ✓ SIGN IN SHEET

PC 18 ✓ MAP OF COASTAL RURAL LEGACY AREA

PC 19 ✓ GIS DATA MAP

PC 20 ✓ BOWLEYS QUARTERS COM. ACTION PLAN 2000

PC 21 A ✓ SOUTH PARK H.A. RESOLUTION

21 B ✓ " " " - ZONING COM

21 C ✓ " " " AFFIDAVIT

PC 22 ✓ TAX MAP 91 200 SCALE

PC 23 ✓ CONSTRUCTION LETTER TO RESIDENTS W/FACT SHEET

(ID) PC 24 ✓ PETITION & SIGNATURES-

PC 25 ✓ EXPLORATION RESEARCH 3/26/02 - LETTER

(IN W/P.C 14A-L ADMITTED) PC 26 ✓ A-L PHOTO'S TAKEN BY KAMMON TAKEN VARIOUS TIMES THROUGHOUT '02

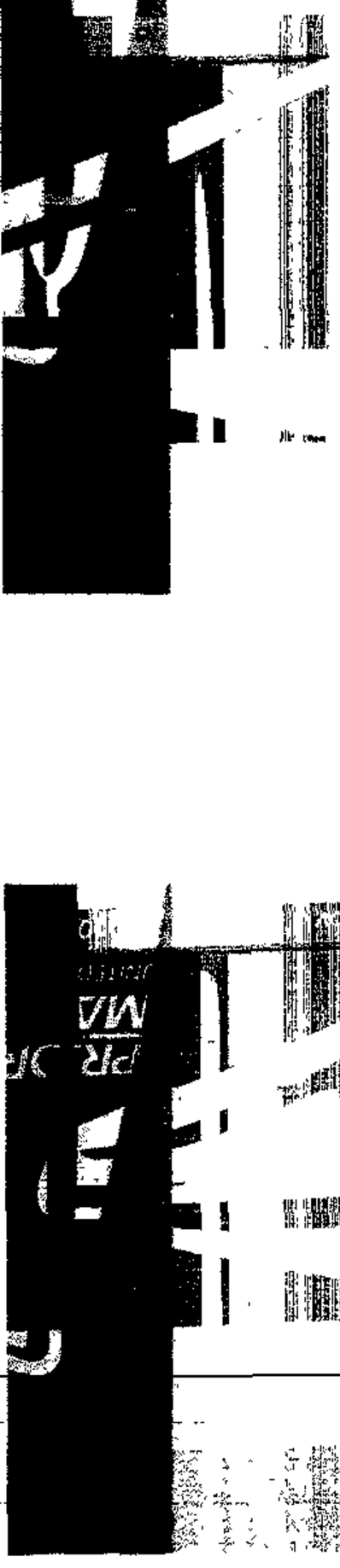
PC 27 ✓ A-C RULE 8 PAPERS

(missing PC 28 A and 2 B and 2 C)

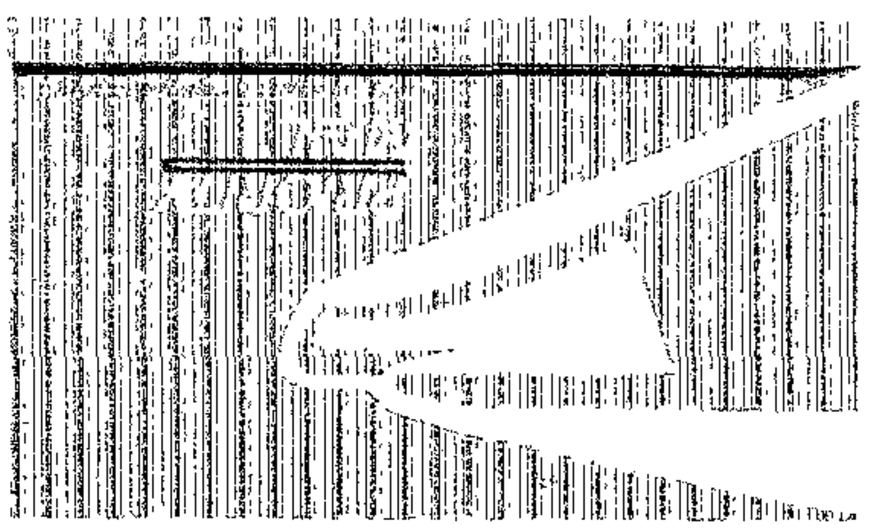
(ID) PC 28 ✓ SIGN IN SHEET

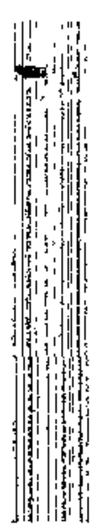
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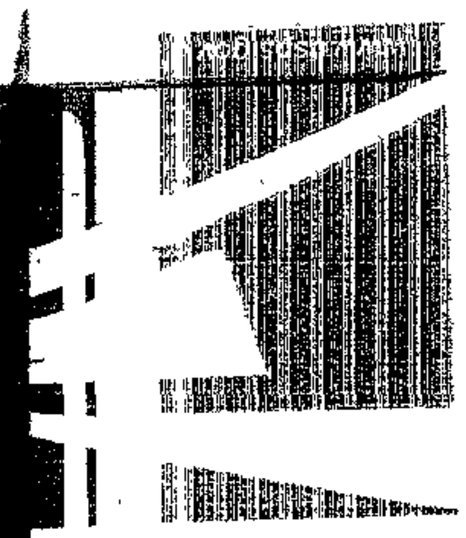
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# #02-098-SPH

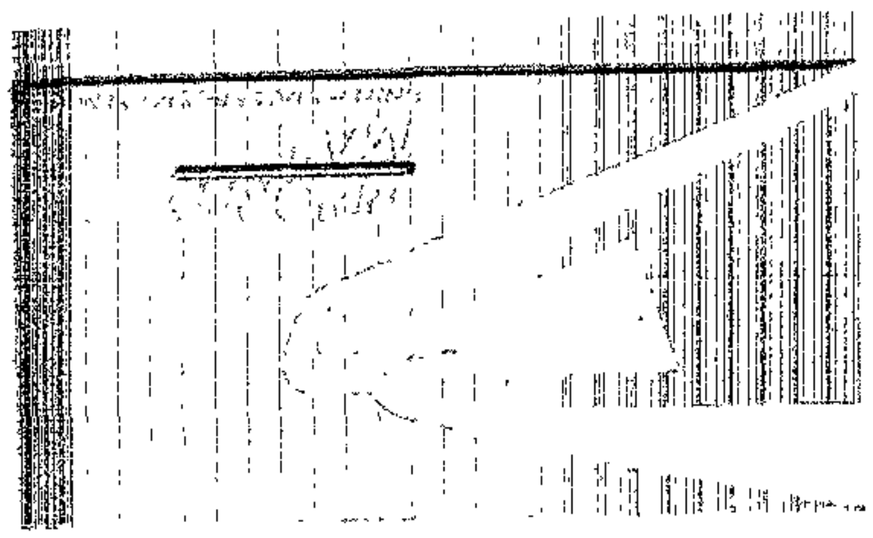


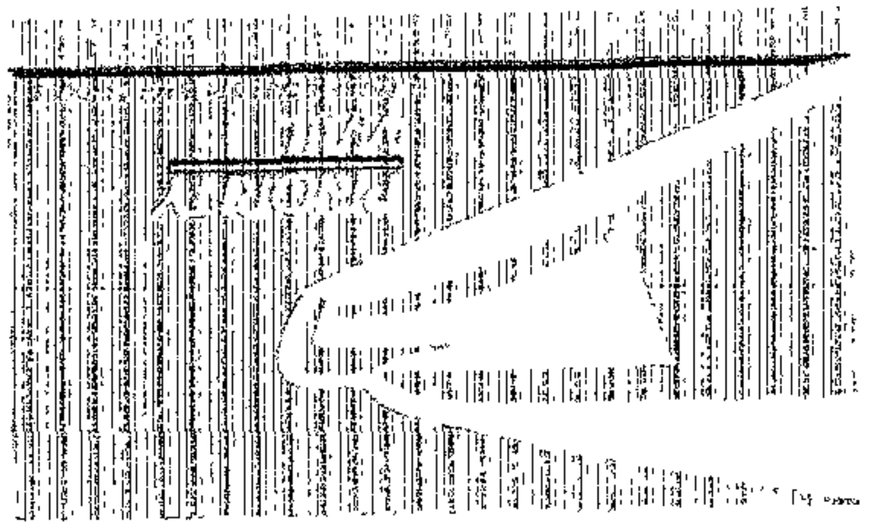












DATE: 6/5/02

**PEOPLE'S COUNSEL'S SIGN-IN SHEET**

**CASE NAME:** CONSTELLATION POWER SOURCE GENERATION

**CASE NO.:** 02-98-SPH

The Office of People's Counsel was created by the County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns, whether they have their own attorney or not. If you wish to be assisted by People's Counsel, please sign below.

| Check if you wish to testify | Name / Address Phone Number | Community Group You Represent / Basis of Your Concerns |
|---|---|---|
| | John + Brenda Goldian<br>848 Seneca park Rd<br>410-344-0742 | Seneca Park |
| | HERMAN F LENZENWEGER<br>850 SENECA PARK RD<br>410 335-5335 | SENECA PARK V.P. SP HA |
| | RUTH + BERNIE WAGENER<br>837 SENECA PKRD 21220 | (410) 335-6051<br>HEALTH HAZARDS |
| | Bob + Shirley Radcliffe<br>989 Seneca Park Rd 21220 | 410-335-4025<br>" |
| residents in neighborhood | Jo Anne Radcliffe<br>854 Seneca Pk. Rd | Seneca Park<br>410-335-5206 |
| ✓ | LEROY SENNETT | (BACKRIVER NECK PENNI. COMM. ASSO.<br>1716 BEACHWOOD AVE |
| | Ann Gunning | 712 Asher Road<br>Bengies Farm |
| ✓ | WILLIAM L. ROMINE<br>524 Beach Dr. 410335-7172 | Resident |
| ✓ | RICHARD RAMMANN<br>718 Asher Rd 4103355120 | Resident 22yrs |
| ✓ | DOUGLAS RHODES<br>716 ASHER RD. 410-877 4181 | 714-716 ASHER RD.<br>BENGIES FARM |
| ✓ | JACKIE NICKEL<br>761 Rockaway Bch.<br>410 7086-1358 | Back River Neck Peninsula Comm. Assn. - Impact |
| | MIKE VIVIRITO - 3619 BAY DR. 21220<br>410-335-3371 | BOWLEY'S QUARTERS IMP. ASSOC. |

PC 1

4077

RE: PETITION FOR RECLASSIFICATION : BEFORE
FROM an R.6 Zone to an M.H. :
Zone - Carroll Island Rd. : COUNTY BOARD OF APPEALS
between Seneca Creek & Salt :
Peter Creek - 15th Dist., : OF BALTIMORE COUNTY
Baltimore Gas & Electric Co., :
Petitioner. : # 4077
:
:
: : : : : : : : : :

MAP

## OPINION

The Petitioner herein seeks to have reclassified from an R.6 Zone to a M.H. Zone, a 98 acre tract of land abutting on the westernmost portion of the U.S. Government property at the end of Carroll Island Neck, and lying roughly between Seneca Creek and Salt Peter Creek, both being estuaries of Middle River. The original request covered 138 acres, but was amended with the consent of the Board to conform with the description and maps which comprise Petitioner's Exhibit #20, offered and received without objection during the course of the hearing. The purpose of the Petition is to allow the erection of a Steam Electric Generating Station and related facilities.

Several legal points were raised by the Protestants immediately prior to the hearing on the merits and, after argument upon same by counsel, the Board made rulings for the record, which rulings, because of the present and future importance of certain of the questions, should be restated and augmented in this Opinion.

On October 25, 1957, after the time for appeal from the Zoning Commissioner's decision had expired, the Protestants filed with him a Petition for Special Hearing, which alleged in substance that the Commissioner's Order of July 9, 1957, which denied the reclassification sought but granted in lieu thereof a Special Exception for a Steam Electric Generating Station and related facilities, was illegal. This Special Hearing Petition sought to have the Commissioner reopen the proceeding and declare his Order of July 9, 1957 null, void, and of no further legal force and effect. After consideration

PC. 2 (A)

of the Petition and consultation with the Solicitor's Office, the Zoning Commissioner passed an Order denying the relief sought, and the Protestants entered an appeal therefrom. We shall first consider the appeal from the Commissioner's denial of the Petition for Special Hearing.

The cases of Board of Zoning Appeals vs McKinney, 174 Md. 564 and Maryland Clothing Manufacturing Company vs Baltimore, 207 Md. 165, limit the power of a Zoning Board to reopen terminated proceedings to instances involving fraud, surprise, mistake, or inadvertence. The sound reasoning behind these rulings, relating to the evils of lack of finality, can be logically extended to apply to decisions by a Zoning Commissioner as well as by a Zoning Board. Therefore, fraud and the other factors specifically excepted in the appellate decisions being admittedly absent, we find that the Petition for Special Hearing was properly denied.

The Protestants then verbally raised, and counsel argued, the following two questions as part of this appeal:

1. In acting upon a Petition for a Reclassification only, does the Zoning Commissioner have the power and authority to deny the reclassification but grant a Special Exception in lieu thereof;
2. Is a Steam Electric Generating Station and its related facilities a public utility use within the meaning and scope of Baltimore County Zoning Regulations 209.3 and 206.2, which, when read together, appear to allow public utility uses by Special Exception in an R.6 Zone.

As to the first point, the Protestants strongly argue that a reclassification is separate and distinct from a Special Exception, and that in this case, the Commissioner had no power to do other than grant or deny the reclassification requested. They further argue that different standards of proof apply, and contend that notice of a hearing on a reclassification is not necessarily notice of a hearing on a Special Exception.

We indicated orally our feeling that Section 501.7 of the Regulations, allowing the Board the power to modify, infers the right to upgrade, and we further indicated that we felt that the right to upgrade, or grant more restrictive zoning than is sought, by implication and past administrative interpretation, also applied to the Zoning Commissioner. We believe the power to grant more restrictive zoning applies not only within the various categories of reclassification, but also extends to Special Exceptions, Use Permits, or any lesser relief than that requested.

The case of Tyrie vs Baltimore County, 137 A 2nd 156, which dealt with the statutory minimum time limit between filings, would seem to indirectly support our thinking in that, where a reclassification is petitioned for, it makes the eighteen month waiting period applicable to a Special Exception as well as a new attempt at reclassification, and vice versa. Under this reasoning, the instant Petitioner, and in fact any Petitioner applying for zoning which can be granted either by Special Exception or Reclassification, would have to file for both concurrently to protect himself from the bar of the eighteen month waiting period in the event he guessed wrong in evaluating how much the Commissioner or Board would grant him. The net effect of this would be to stimulate a fear of requesting the less restrictive zoning unless the more restrictive were also and at the same time applied for as a "hedge". We do not believe such needless duplication of costs and administrative effort was ever intended by the adoptors of the Regulations.

Answering the Protestant's argument that different standards of proof apply to reclassifications than do to Special Exceptions, and that the constitutional requirement of notice has not, therefore, been met by advertising and posting for a reclassification, we maintain that all matters of proof which must appear to support a Special Exception case, plus either a showing of error in original zoning or a substantial change in neighborhood conditions, must be proved in a reclassification case. ( Price vs Cohen, 213 Md. 457, where a reclassification was denied because a situation detrimental

to the public safety and welfare existed). Therefore, notice of the attempt to reclassify was, in our opinion, sufficient to meet the constitutional need of notica for granting the Special Exception. We would not, however, similarly find if the reverse situation applied, to wit: that the notice had been for a Special Exception and a Reclassification were granted.

But regardless of the propriety or impropriety of the Commissioner's Order, a general appeal was taken therefrom, by which the Protestants voluntarily submitted to the jurisdiction of this Board to entertain the matter "de novo". Had such Order denied the Petitioner any relief whatever, as the Protestants contend it should have done, the Petitioner would have appealed and the case would have still come before this Board without delay. To deny a public utility the right to be heard expeditiously on the merits in a matter vital to the welfare of a sizeable portion of the County, would be a mockery of justice for the sake of questionable technicality.

As to the second question, verbally raised by the Protestants, we find that under Section 209.3 and 206.2 of the Regulations, all public utility uses, except those covered by Section 209.1 and 200.11, are permitted by Special Exception in an R.6 Zone. The uses covered by Sections 209.1 and 200.11 are permitted without a Special Exception in an R.6 Zone. The Protestants contend that we should read into the Regulations the word "peculiar", so that if a use is not unique to utilities, it does not fall within those permitted. We do not agree, and we see no reason to exclude Steam Electric Generating Stations, which are certainly common public utility uses in this age of electricity, even if not completely peculiar to public utilities. Had the intention been to except them, they would have been specifically excepted. We believe the intention was to include such public utility uses to allow us the necessary latitude to serve the public welfare without the obligation to grant similar uses to private interests similarly situated.

Having unanimously disposed of the legal questions, we move now to a determination on the merits by the majority members.

A tremendous amount of technical and other expert testimony has been produced by the Petitioner, which has used its considerable resources to prove with great precision that the use is needed for the proper rendition of its services.

Mr. Penniman, its Vice President in charge of Electric Power, testified with great clarity and at great length as to this present need for expansion, based on scientifically computed projections of future need. He stated that the estimated 1961 load will be over 1,250,000 kilowatts and that present peak capacity is now 1,108,800 kilowatts. He further explained that maintenance and overhaul make it impossible to operate at the theoretical capacity.

The Protestants, understandably, were unable to produce any evidence to contravert the general question of need, so we must find that the requested use is, in fact, needed within the meaning of the first part of Section 411.1 of the Regulations.

While the Protestants impliedly admit the need, they strenuously maintain, and attempt to show both by cross examination and direct testimony, that the need can be adequately met in a more appropriate location; further, that the last part of Section 411.1, which provides that the location of the public utility use shall not seriously impair the use of neighboring property, prohibits the installation at this location.

The Petitioner's testimony, mostly by Mr. Penniman and Dr. Christie, indicates that nearly four years were spent searching for the best site to meet its purposes. Several locations, including Bush River, Back River, and Garrett Island in the Susquehanna River, were studied and compared with the Carroll Island site. The choice narrowed to Garrett Island vs Carroll Island, Bush River having been eliminated because of inadequate water

circulation and Back River because the effect of pollution on the condensing equipment would cause tubes to blow and make operations prohibitively expensive.

Much testimony follows on the comparison of costs between Carroll Island and Garrett Island. It appeared from the testimony that due to the increased distribution distance, (9.8 miles for Carroll against 25.8 miles for Garrett), topography variation on Garrett, trackage difficulties, bridge construction, and the lack of rail facilities; four units at Garrett Island would cost $40,958,000 more than four units at Carroll Island. Further, that Garrett Island operating expense for four units would be about $270,000 more annually than Carroll Island operating costs.

However, regardless of the unsuitability of other locations, the second part of Section 411.1 must still apply, and the Petitioner must show that the use requested will not seriously impair the use of neighboring property. This proof we think has been adequately met. The preponderance of testimony shows that, through modern scientific control, gases, fly ash, and coal dust will not adversely affect the neighborhood. That noise will not be a factor is admitted by Protestant's own witness.

The Protestants claim that wild fowl and fish will be harmed by the proposed installation, but present no expert testimony to refute Petitioner's testimony that the requirements of the Water Pollution Law have been met and that the slight temperature increases are more attractive then repulsive to wild fowl and fish.

A careful inspection of voluminous notes taken during the extended hearings plus verifications and augmentation by spot inspections of the record, indicates to us that the proposed use will not seriously impair the use of neighboring property, nor will it be detrimental to the health, safety, or general welfare of the locality involved, nor will it tend to create congestion in roads, streets or alleys therein, nor will it cause any other conditions which the application of Section 502.1 of the Regulations would prohibit.

It is contended by the Petitioner that substantial changes have occurred in the neighborhood since the adoption of the present map in 1945, and also contended that the original zoning of R.6 was residual and is erroneous. In support of these contentions, it produces evidence that the elevation of the property makes its use for residences prohibitive in cost, about $8,000 to $6,500 per acre being required to fill. A witness of the Protestants disagrees; he says it will cost only $25,00 to fill 30 acres.

In any event, we do not reach the questions going to justification of a reclassification. In our opinion, a reclassification to M.H would open up the entire area to private commercialization, and such is not to the welfare of the locality. We reitterate our contention that relief by Special Exception is afforded to public utilities to allow us the latitude to afford them the facilities needed to serve the public need without encroaching upon the neighborhood and inviting the creeping paralysis of misplaced industrialization.

As the minority members of the Court of Appeals said in the case of Kahl vs Gas and Electric Company 60 A 2nd 754, "..... there is a vast difference between restrictions upon private undertakings and those clothed with public interest which must have access to the centers of population if they are to perform their public function. In weighing the reasonableness.... the harm to property owners in the immediate vicinity must be balanced against the benefit to all the users of electrical power in the whole urban area".

We, therefore, grant the Special Exception and exercise the rights given us by Section 503.2 by placing the following restrictions upon the use of the subject property.

1. This Special Exception shall apply only to the property petitioned for as amended by Petitioner's Exhibit #20.
2. No more than four power producing units shall be constructed on the subject property.

3. The temperature of the water at the point of expulsion in Salt Peter Creek shall at no time exceed 95° 80° farenheit.

4. The requirements of the Maryland Water Pollution Control Law will at all times be met.

5. An adequate sewage disposal plant shall be constructed and maintained.

6. Bulkheading will be done where necessary to prevent erosion of neighboring property.

7. Coal will be dumped within buildings only, and coal piles will be oiled when necessary to prevent leiching of sulphur, so as not to create acidity in the surrounding water.

8. No more than one shipment of coal per day per unit shall be received.

O R D E R

For the reasons set forth in the aforegoing Opinion, a Special Exception for a Steam Electric Generating Station is granted; subject, however, to the conditions and restrictions set forth in the Opinion. The said Special Exception is granted only on the 98 acre property particularly described in Petitioner's Exhibit #20, said description being attached hereto and made a part of this Order.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Jesse J. Bryant

Nathan N. Kaufman, Jr.

DATE 5-26-67

# Business Overview

To best focus on our core merchant energy and energy delivery businesses, we've created three lines of business:

Merchant Energy
Constellation Generation Group – Michael J. Wallace, President
Constellation Power Source – Thomas V. Brooks, President

Energy Delivery
Baltimore Gas and Electric Co. – Frank O. Heintz, President & CEO

Other Non-Regulated Businesses
*Reporting to Thomas F. Brady, Vice President of Corporate Strategy & Development, Constellation Energy Group*
BGE HOME – William H. Munn, President
Constellation Energy Source – Gregory S. Jarosinski, President

**Merchant Energy**
Our merchant energy business includes both generation and wholesale power marketing.

Constellation Generation Group owns and operates our power plants, generating the megawatts we sell to the wholesale market. We manage a balanced portfolio of fuels ranging from coal to nuclear to alternatives and renewables such as geothermal, solar, and hydropower.

Today, Constellation Generation Group controls over 9,000 megawatts of electricity, and will own and operate more than 12,000 megawatts by the end of 2003.

Constellation Power Source oversees our wholesale power marketing, origination, and risk management operations, and is responsible for selling and managing the associated risk of every megawatt Constellation Generation Group produces.

Constellation Power Source serves distribution utilities, co-ops, municipalities and other large, load-serving companies that operate in deregulated U.S. energy markets. We focus on long-term, high-value sales of energy capacity and related products to distribution companies. This market segment requires disciplined analysis — and our team has proven itself in this area.

**Energy Delivery**

Baltimore Gas and Electric Company (BGE) delivers energy to more than 1.1 million electric customers and 600,000 gas customers throughout Central Maryland. This regulated utility has been providing quality gas and electric service for more than 180 years, and is clearly focused on remaining a premier utility service provider in Maryland. BGE has embarked on significant initiatives to enhance financial and operational performance while increasing customer satisfaction, reliability, productivity and reducing costs. We are committed to providing safe and reliable service to our customers.

P.C. 4

**Other Non-Regulated Businesses**

BGE HOME is our home products, commercial buildings, and electric and gas retail marketing business. It offers a wide range of efficient and cost-effective solutions to meet residential customers' home comfort needs. Its platform of products and services include electric and gas commodities, appliance and home electronics sales and service, home improvement, heating and air conditioning sales and service, and much more. Its subsidiary, BGE Commercial Building Systems, is a full-service mechanical systems company specializing in total building solutions and energy commodities for the commercial market.

Constellation Energy Source provides customized energy solutions exclusively to commercial and industrial customers, primarily in the Mid-Atlantic region. It has completed hundreds of customized projects, including services for heavy industry, health care, higher education, government, and property management. Among its impressive list of customers are the U.S. operations of McCormick & Co., the more than 250 properties of The Rouse Company, the national malls of the Mills Corp, and the new Pittsburgh Steelers' football stadium.

TOP

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*All rights reserved*

DATE: 10/17/02

**PEOPLE'S COUNSEL'S SIGN-IN SHEET**

**CASE NAME:** CONSTELLATION POWER SOURCE GENERATION INC

**CASE NO.:** 02-098-SPH

The Office of People's Counsel was created by the County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns, whether they have their own attorney or not. If you wish to be assisted by People's Counsel, please sign below.

| Check if you wish to testify | Name / Address Phone Number | Community Group You Represent / Basis of Your Concerns |
|---|---|---|
| | Ruth Trageser | Seneca Park Rd |
| | Bernard Trageser | Seneca Park Rd |
| | Charles Buchanan 848 Seneca Park Rd 21220 Middle River, MD 410-335-6034 | Seneca Park |
| ✓ | Bonny Jacinski | Seneca Park |
| ✓ | JACK DILLON | The Valleys Planning Council |
| ✓ IF YOU NEED ME TO | MICHAEL VIVIRITO | PRES. BOWLEYS QUARTER IMP. ASSOC. |
| ✓ | Jackie Nickel | Beech River Neck PCA |
| ✓ | Leroy Sennett | " " " " |
| | Ray Reuter | 7410 Greenbay Rd 21220 |
| ✓ | LINDA JOHNSON PETRUSH | 4366 Keeners Rd. 21220 |
| ✓ | Richard E. Fox | 1139 Seneca Rd Balto. MD 21220 |
| | Audrey Carpenter | Avenue News |
| | RAY PIECHOCKI | 824 SENECA PARK RD. |

PC7

DATE: 10/17/02

**PEOPLE'S COUNSEL'S SIGN-IN SHEET**

**CASE NAME:** CONSTELLATION POWER SOURCE GENERATION, INC.

**CASE NO.:** 02-098-SPH

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| Check if you wish to testify | Name / Address Phone Number | Community Group You Represent / Basis of Your Concerns |
|---|---|---|
| K | James Nadeau 335-5206<br>854 Seneca Pk. Rd.<br>John C. Nadeau<br>854 SENECA PARK Rd PHO: 335-5206 | Seneca Park - As adjacent property owners<br>SENECA PARK |
| V | Terry Covington<br>989 Seneca Park Rd 335-4025 | " " |
| | Bob + Shirley Maddox<br>989 Seneca Park Rd 335-4025 | " " |
| | Nancy Hubers 335-3234 | " " |
| V | Joe Driscoll, Jr. | " " |
| | Arthur + Arlene Smith<br>850 Seneca Park Rd. | " " |
| | Ed Jasinski + WIFE BOZENA | " " |
| | Dana Powell | " " |
| | Bernie Lutinski | " " |
| | Muriel Brigonelix (410 344-1717)<br>3921 New Section Rd | Bowleys Quarters Improvement Ass |
| | Herman F Jennings<br>850 SENECA PK RD | Seneca Pk Improvement Assoc |
| | ~~828~~ SENECA PARK RD<br>Donald J Klose | 828 Seneca Park Improvement Assoc |
| | Curt Argent<br>4366 Keeners Rd | Effort Saltpeter Creek |
| | 812 Seneca Pk Rd<br>Stephen Lenarsky | Seneca Pk Assoc. |
| | Charles A Stoltz Jr. | Seneca Pk Asso. |
| | Richard Kamm | 716 Asher Rd |


970,000 FT
Joins Map 30
76°22'30"
A
B
C
D
E
F
G
H
J
21037
21220
21221
Holly Hill Mem Gardens
Windlass Run
Bird River Beach Rd
Lenin Rd
New Bengies Rd
Earls Rd
Shining Star Baptist
Shiloh St United Meth
Chase ES
Bengies Chase MS (Site)
Bengies Dairy Ln
Bengies Rd
Eastern Ave
Martin Arpt (MARC)
Middle River Baptist Church
Oakdale
Pine Grove Village
Millers Island Rd
Chesapeake Yacht Ctr
Carroll Island Plaza
Shady Oaks
Carrollwood
Carrollwood Manor
Tradewinds
Edwards Boat Yard Inc
Gibbadon Marine Facility
Seneca ES
Seneca Pointe
Saint Matthews Evangelical Luth
Seneca Harbor
Glenn L. Martin State Airport
Frog Mortar Creek
Bowleys Quarters
Maryland
Clarks Point Rd
Seneca Dark Beach
Seneca Creek
Bowleys Quarters Co 210
Beacon Light
Stansbury Estates
Wilson Point
Long Beach
Long Beach Estates
Strawberry Pt
Wilson Pt
Galloway Pt
Barren Pt
Cape May Pt
Loy Pt
Galloway Creek
Bowleys Yacht Basin
Marina Co
Bowley Pt
Turkey Point
Turkey Pt
Rockaway Beach Co 240
Sue Creek
Chesapeake Boating Ctr of Baltimore
Sue Creek Park
Rockaway Beach
Goose Harbor Boatyard
Miami Beach Park
Miami Beach
Dundee Park
Saltpeter
Gunpowder State
Tidewater VH
Chesapeake Bay
River

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MWD W. GARRISON 640/264 40.14 A.

P. 138

THOMAS A. WILKINSON 6658/683 f/o P. 136 2 of 3

BALTIMORE G&E & ELECTRIC C 3061/309 88.48 A.

P. 141

SENECA PARK BEACH 8.48

P139

SENE

13 TAX MAP 7

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SALTPETER CREEK

SENECA CREEK

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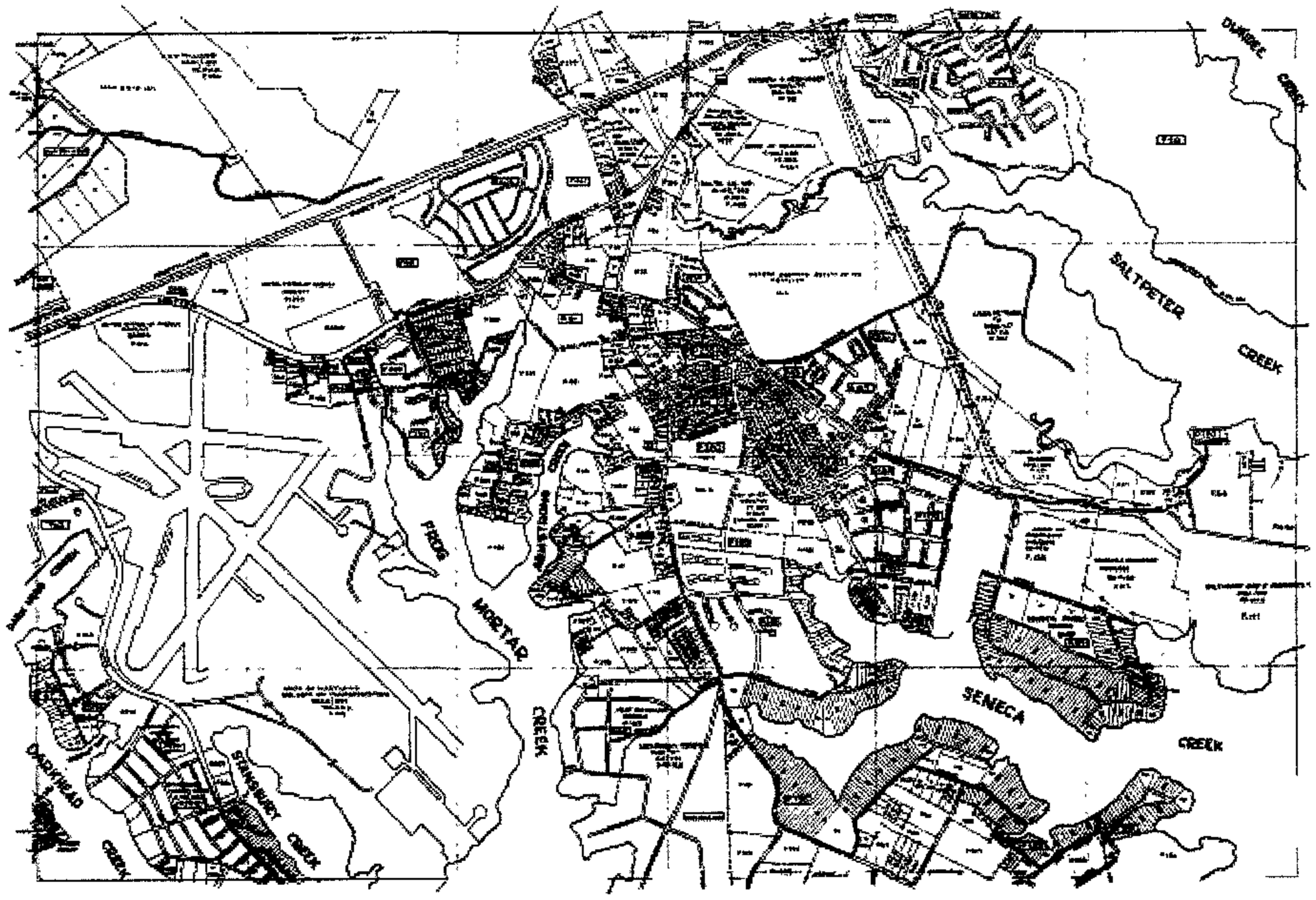
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Page 1 of 1

**Maryland Department of Assessments and Taxation**
**BALTIMORE COUNTY**
**Real Property Data Search**

Go Back
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New Search

**Account Identifier:** **District -** 15 **Account Number -** 1502001277

## Owner Information

| | | | |
|---|---|---|---|
| **Owner Name:** | CONSTELLATION POWER SOURCE GENERATION INC | **Use:** | INDUSTRIAL |
| | | **Principal Residence:** | NO |
| **Mailing Address:** | 39 W LEXINGTON ST<br>BALTIMORE MD 21201-3940 | **Deed Reference:** | 1) /14557/ 453<br>2) |

## Location & Structure Information

| Premises Address | Zoning | Legal Description |
|---|---|---|
| CARROLL ISLAND LA | RC5 | 88.4 AC SS<br>CARROLL ISLAND RD |

| Map | Grid | Parcel | Subdivision | Section | Block | Lot | Group | Plat No: |
|---|---|---|---|---|---|---|---|---|
| 91 | 18 | 141 | | | | | 82 | Plat Ref: |

**Special Tax Areas** **Town** **Ad Valorem** **Tax Class**

| Primary Structure Built | Enclosed Area | Property Land Area | County Use |
|---|---|---|---|
| 0000 | | 88.39 AC | 08 |

| Stories | Basement | Type | Exterior |
|---|---|---|---|

## Value Information

| | Base Value | Value As Of 01/01/2000 | Phase-in Assessments As Of 07/01/2001 | As Of 07/01/2002 |
|---|---|---|---|---|
| **Land:** | 2,855,280 | 0 | | |
| **Improvements:** | 0 | 0 | | |
| **Total:** | 2,855,280 | 0 | 0 | 0 |
| **Preferential Land:** | 0 | 0 | 0 | 0 |

## Transfer Information

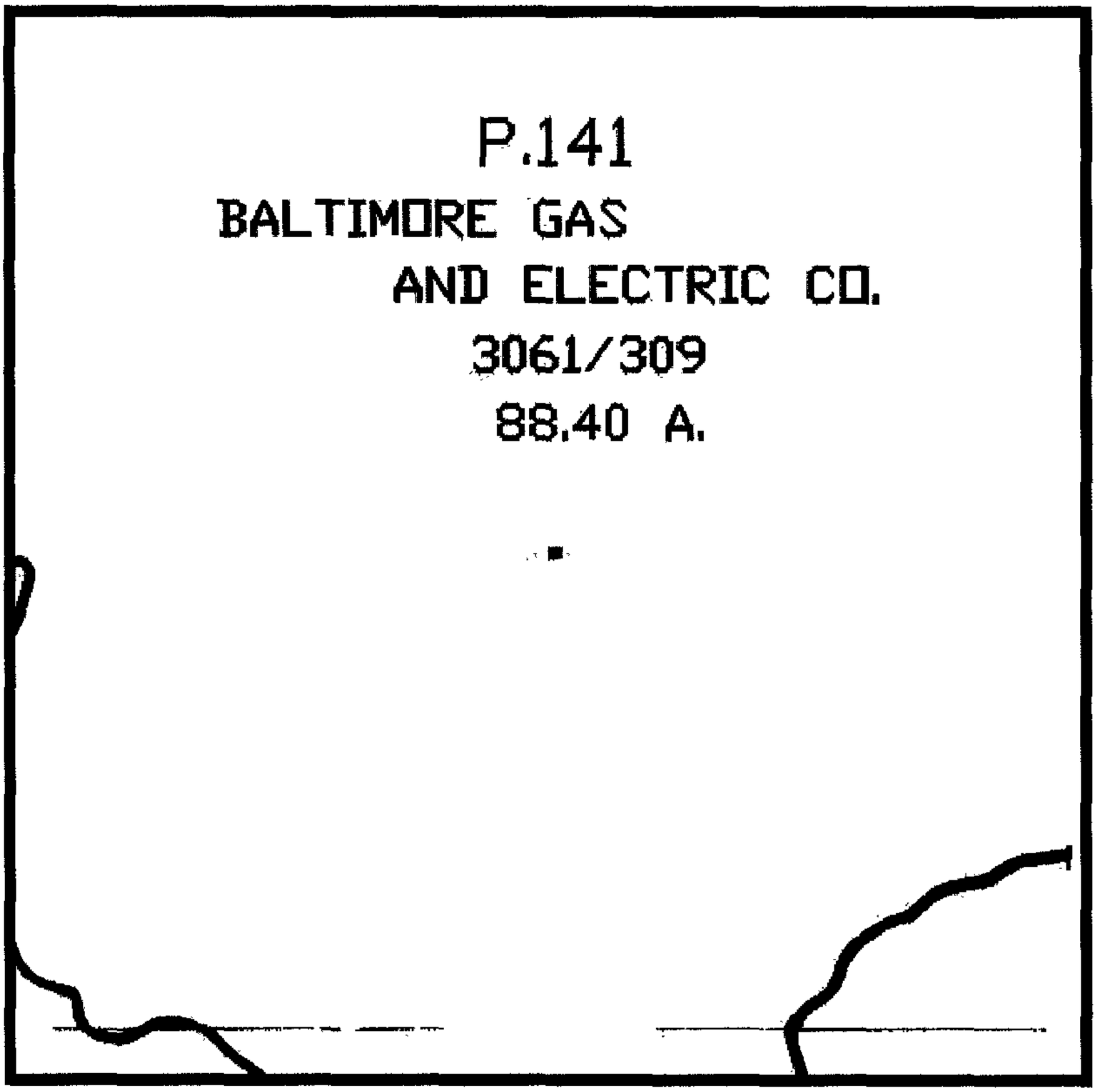
| | | | | | |
|---|---|---|---|---|---|
| **Seller:** | BALTIMORE GAS & ELECTRIC CO | **Date:** | 10/05/2001 | **Price:** | $0 |
| **Type:** | NOT ARMS-LENGTH | **Deed1:** | /14557/ 453 | **Deed2:** | |
| **Seller:** | | **Date:** | | **Price:** | |
| **Type:** | | **Deed1:** | | **Deed2:** | |
| **Seller:** | | **Date:** | | **Price:** | |
| **Type:** | | **Deed1:** | | **Deed2:** | |

## Exemption Information

**Maryland Department of Assessments and Taxation**
**BALTIMORE COUNTY**
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**District** - 15 **Account Number** - 1502001277




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For more information on electronic mapping applications, visit the Maryland Department of Planning web site at www.mdp.state.md.us

**Maryland Department of Assessments and Taxation**
**BALTIMORE COUNTY**
**Real Property Data Search**

Go Back
View Map
New Search

**Account Identifier:** **District -** 15 **Account Number -** 1502001278

## Owner Information

| | | | |
|---|---|---|---|
| **Owner Name:** | CONSTELLATION POWER SOURCE GENERATION INC | **Use:** | INDUSTRIAL |
| | | **Principal Residence:** | NO |
| **Mailing Address:** | 39 W LEXINGTON ST<br>BALTIMORE MD 21201-3940 | **Deed Reference:** | 1) /14557/ 453<br>2) |

## Location & Structure Information

| Premises Address | Zoning | Legal Description |
|---|---|---|
| KEENERS RD | RC5 | 43.20 AC NES KEENERS |

| Map | Grid | Parcel | Subdivision | Section | Block | Lot | Group | Plat No: |
|---|---|---|---|---|---|---|---|---|
| 91 | 12 | 140 | | | | | 82 | Plat Ref: |

**Special Tax Areas** **Town** **Ad Valorem** **Tax Class**

| Primary Structure Built | Enclosed Area | Property Land Area | County Use |
|---|---|---|---|
| 0000 | | 43.20 AC | 08 |

| Stories | Basement | Type | Exterior |
|---|---|---|---|

## Value Information

| | Base Value | Value As Of 01/01/2000 | Phase-in Assessments As Of 07/01/2001 | As Of 07/01/2002 |
|---|---|---|---|---|
| **Land:** | 1,944,000 | 0 | | |
| **Improvements:** | 0 | 0 | | |
| **Total:** | 1,944,000 | 0 | 0 | 0 |
| **Preferential Land:** | 0 | 0 | 0 | 0 |

## Transfer Information

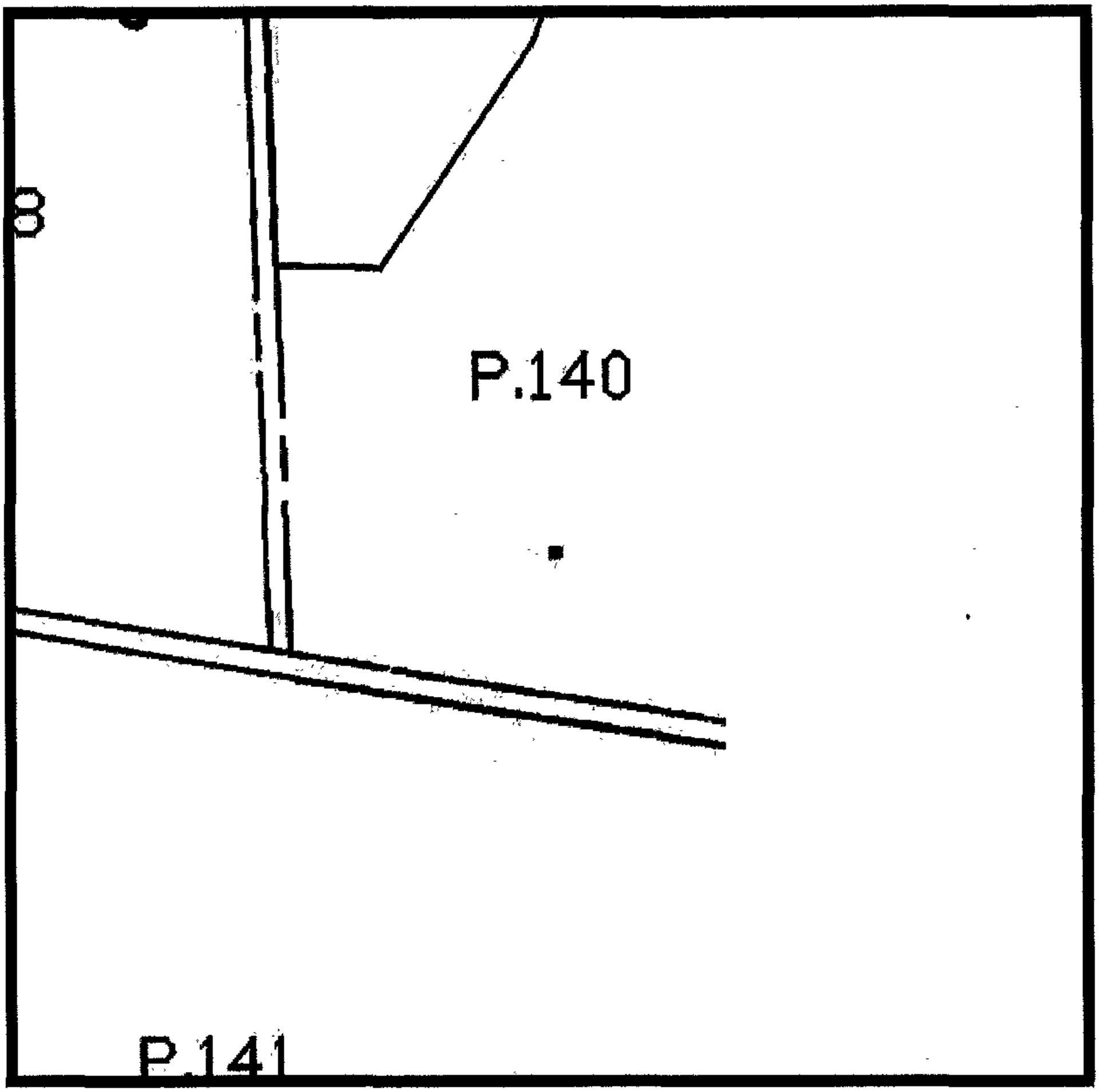
| | | | | | |
|---|---|---|---|---|---|
| **Seller:** | BALTIMORE GAS & ELECTRIC CO | **Date:** | 10/05/2001 | **Price:** | $0 |
| **Type:** | NOT ARMS-LENGTH | **Deed1:** | /14557/ 453 | **Deed2:** | |
| **Seller:** | | **Date:** | | **Price:** | |
| **Type:** | | **Deed1:** | | **Deed2:** | |
| **Seller:** | | **Date:** | | **Price:** | |
| **Type:** | | **Deed1:** | | **Deed2:** | |

## Exemption Information

**Maryland Department of Assessments and Taxation**
**BALTIMORE COUNTY**
**Real Property Data Search**

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New Search

**District** - 15 **Account Number** - 1502001278




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**Maryland Department of Assessments and Taxation**
**BALTIMORE COUNTY**
**Real Property Data Search**

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**Account Identifier:** **District -** 15 **Account Number -** 1502001307

## Owner Information

| | | | |
|---|---|---|---|
| **Owner Name:** | CONSTELLATION POWER SOURCE GENERATION INC | **Use:** | INDUSTRIAL |
| | | **Principal Residence:** | NO |
| **Mailing Address:** | 39 W LEXINGTON ST<br>BALTIMORE MD 21201-3940 | **Deed Reference:** | 1) /14557/ 453<br>2) |

## Location & Structure Information

| Premises Address | Zoning | Legal Description |
|---|---|---|
| CARROLL ISLAND LA | RC5 | 8.031 AC SWS<br>CARROLLS ISLAND RD |

| Map | Grid | Parcel | Subdivision | Section | Block | Lot | Group | Plat No: |
|---|---|---|---|---|---|---|---|---|
| 91 | 17 | 155 | | | | | 82 | Plat Ref: |

**Special Tax Areas** **Town** **Ad Valorem** **Tax Class**

| Primary Structure Built | Enclosed Area | Property Land Area | County Use |
|---|---|---|---|
| 0000 | | 8.03 AC | 08 |

| *Stories* | *Basement* | *Type* | *Exterior* |
|---|---|---|---|
| | | | |

## Value Information

| | Base Value | Value As Of 01/01/2000 | Phase-in Assessments As Of 07/01/2001 | As Of 07/01/2002 |
|---|---|---|---|---|
| **Land:** | 56,210 | 0 | | |
| **Improvements:** | 0 | 0 | | |
| **Total:** | 56,210 | 0 | 0 | 0 |
| **Preferential Land:** | 0 | 0 | 0 | 0 |

## Transfer Information

| | | | | | |
|---|---|---|---|---|---|
| **Seller:** | BALTIMORE GAS & ELECTRIC CO | **Date:** | 10/05/2001 | **Price:** | $0 |
| **Type:** | NOT ARMS-LENGTH | **Deed1:** | /14557/ 453 | **Deed2:** | |
| **Seller:** | | **Date:** | | **Price:** | |
| **Type:** | | **Deed1:** | | **Deed2:** | |
| **Seller:** | | **Date:** | | **Price:** | |
| **Type:** | | **Deed1:** | | **Deed2:** | |

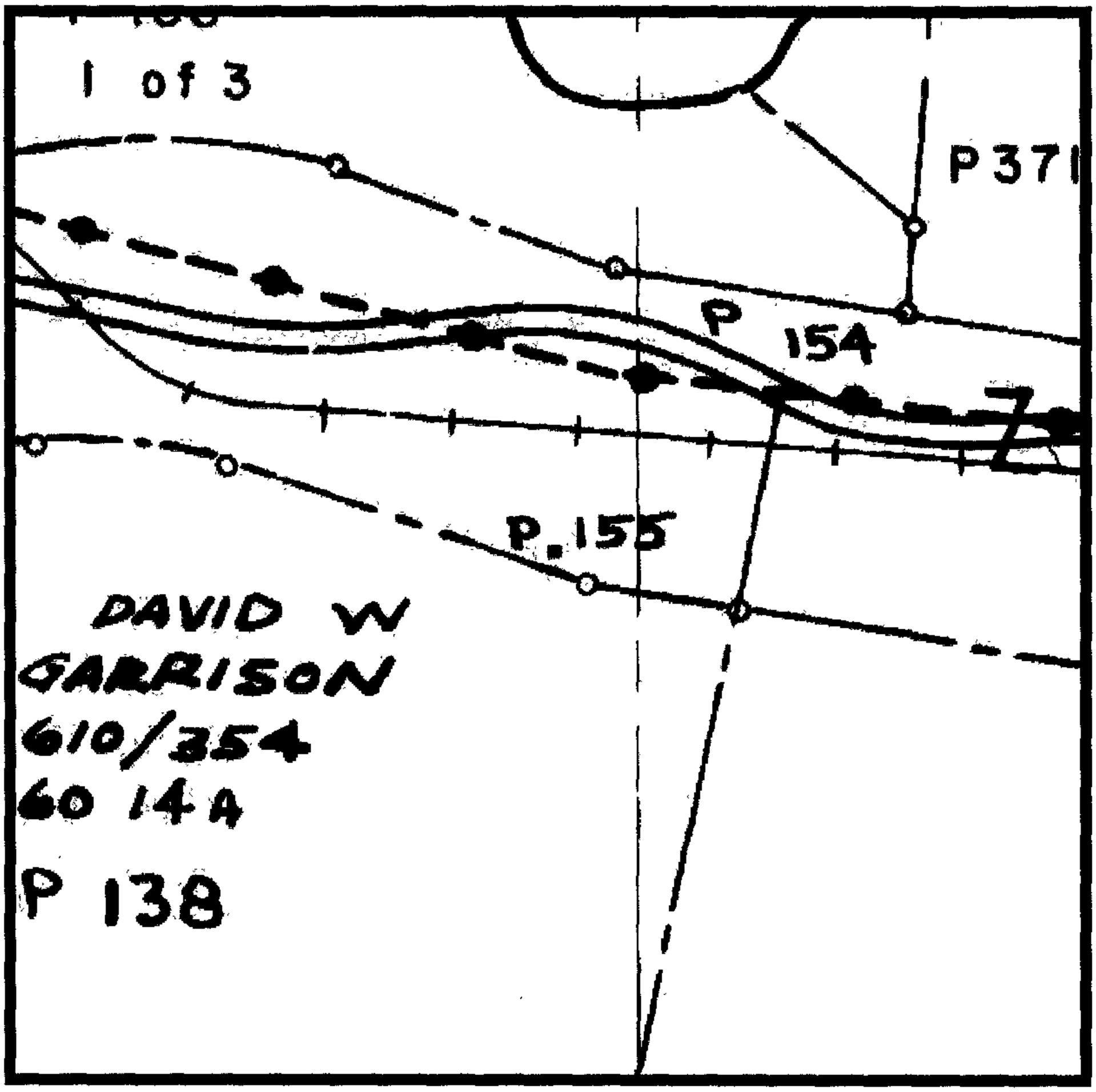
## Exemption Information

| Partial Exempt Assessments | Class | 07/01/2001 | 07/01/2002 |
|---|---|---|---|
| **County** | 000 | 0 | 0 |
| **State** | 000 | 0 | 0 |
| **Municipal** | 000 | 0 | 0 |

**Maryland Department of Assessments and Taxation**
**BALTIMORE COUNTY**
**Real Property Data Search**

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**District** - 15 **Account Number** - 1502001307




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**Maryland Department of Assessments and Taxation**
**BALTIMORE COUNTY**
**Real Property Data Search**

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New Search

**Account Identifier:** **District -** 15 **Account Number -** 1502001306

## Owner Information

| | | | |
|---|---|---|---|
| **Owner Name:** | CONSTELLATION POWER SOURCE GENERATION INC | **Use:** | INDUSTRIAL |
| | | **Principal Residence:** | NO |
| **Mailing Address:** | 39 W LEXINGTON ST<br>BALTIMORE MD 21201-3940 | **Deed Reference:** | 1) /14557/ 453<br>2) |

## Location & Structure Information

| Premises Address | Zoning | Legal Description |
|---|---|---|
| CARROLL ISLAND RD | RC5 | 17.791 AC N&SS<br>CARROLL ISLAND RD |

| Map | Grid | Parcel | Subdivision | Section | Block | Lot | Group | Plat No: |
|---|---|---|---|---|---|---|---|---|
| 91 | 18 | 154 | | | | | 82 | Plat Ref: |

**Special Tax Areas** **Town** **Ad Valorem** **Tax Class**

| Primary Structure Built | Enclosed Area | Property Land Area | County Use |
|---|---|---|---|
| 0000 | | 17.79 AC | 08 |

| Stories | Basement | Type | Exterior |
|---|---|---|---|
| | | | |

## Value Information

| | Base Value | Value As Of 01/01/2000 | Phase-in Assessments As Of 07/01/2001 | As Of 07/01/2002 |
|---|---|---|---|---|
| **Land:** | 165,530 | 0 | | |
| **Improvements:** | 0 | 0 | | |
| **Total:** | 165,530 | 0 | 0 | 0 |
| **Preferential Land:** | 0 | 0 | 0 | 0 |

## Transfer Information

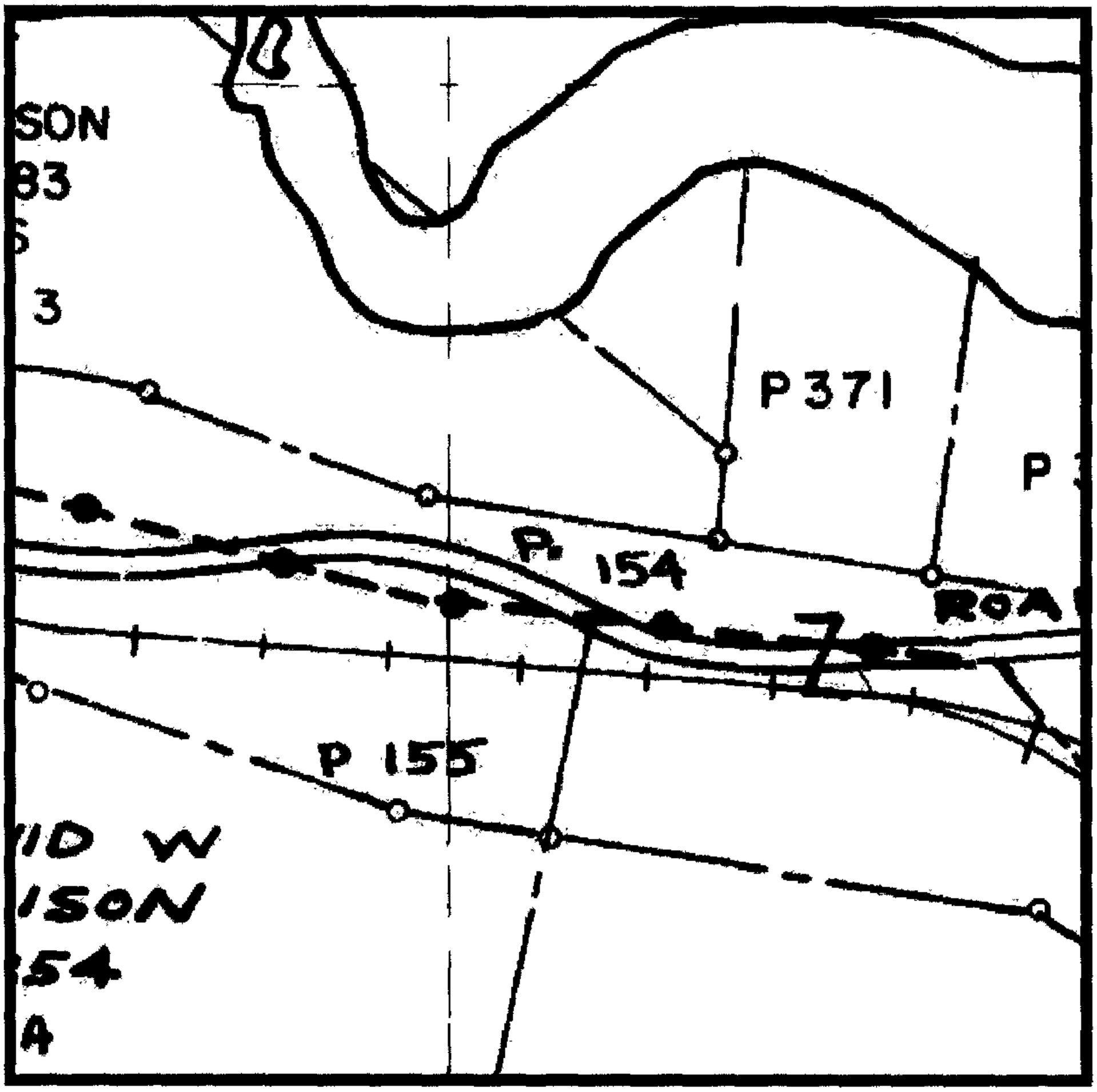
| | | | | | |
|---|---|---|---|---|---|
| **Seller:** | BALTIMORE GAS & ELECTRIC CO | **Date:** | 10/05/2001 | **Price:** | $0 |
| **Type:** | NOT ARMS-LENGTH | **Deed1:** | /14557/ 453 | **Deed2:** | |
| **Seller:** | | **Date:** | | **Price:** | |
| **Type:** | | **Deed1:** | | **Deed2:** | |
| **Seller:** | | **Date:** | | **Price:** | |
| **Type:** | | **Deed1:** | | **Deed2:** | |

## Exemption Information

**Maryland Department of Assessments and Taxation**
**BALTIMORE COUNTY**
**Real Property Data Search**

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**District** - 15 **Account Number** - 1502001306




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Increase your market

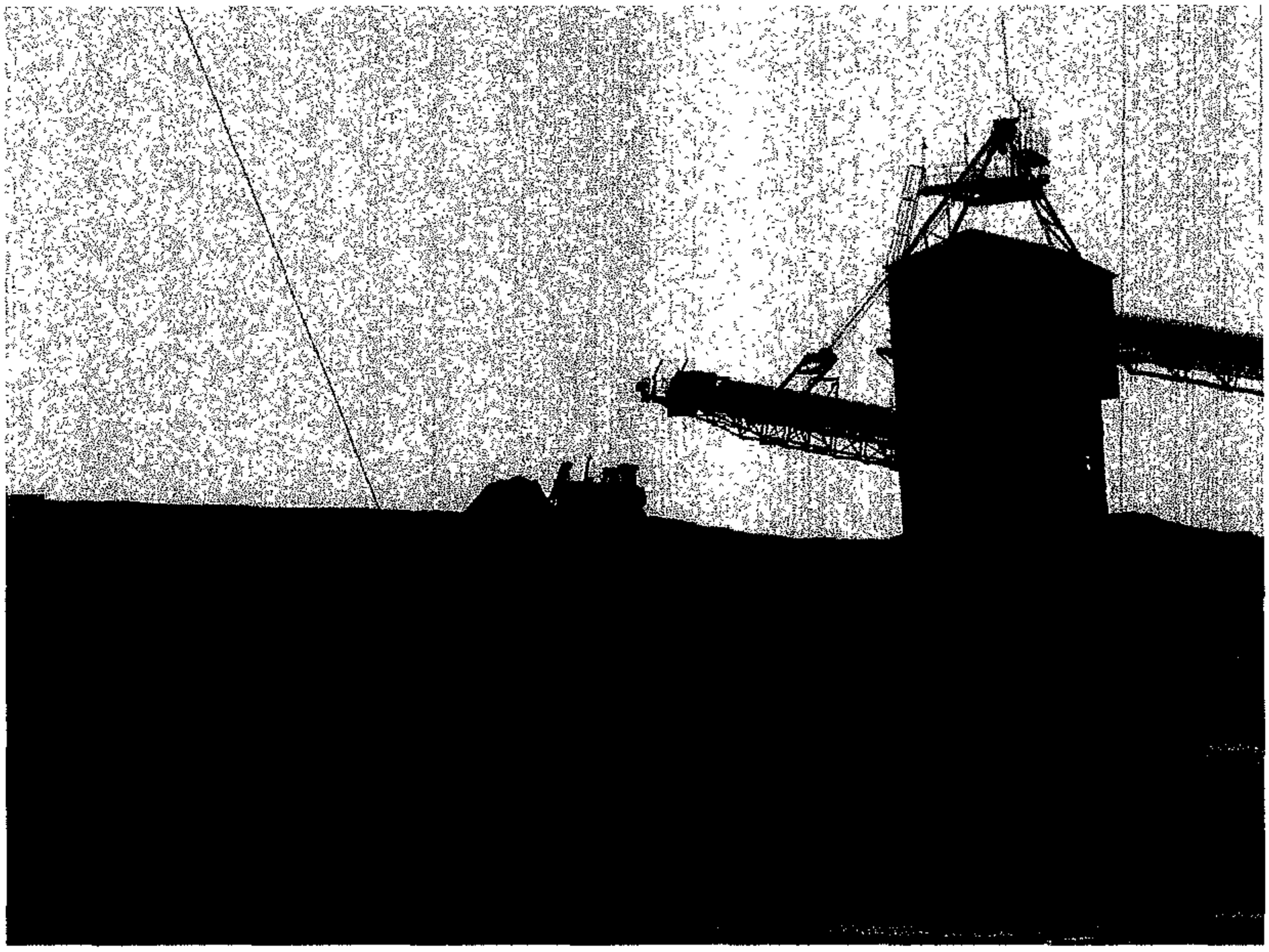
**Maryland Department of Assessments and Taxation**
**BALTIMORE COUNTY**
**Real Property Data Search**

Go Back
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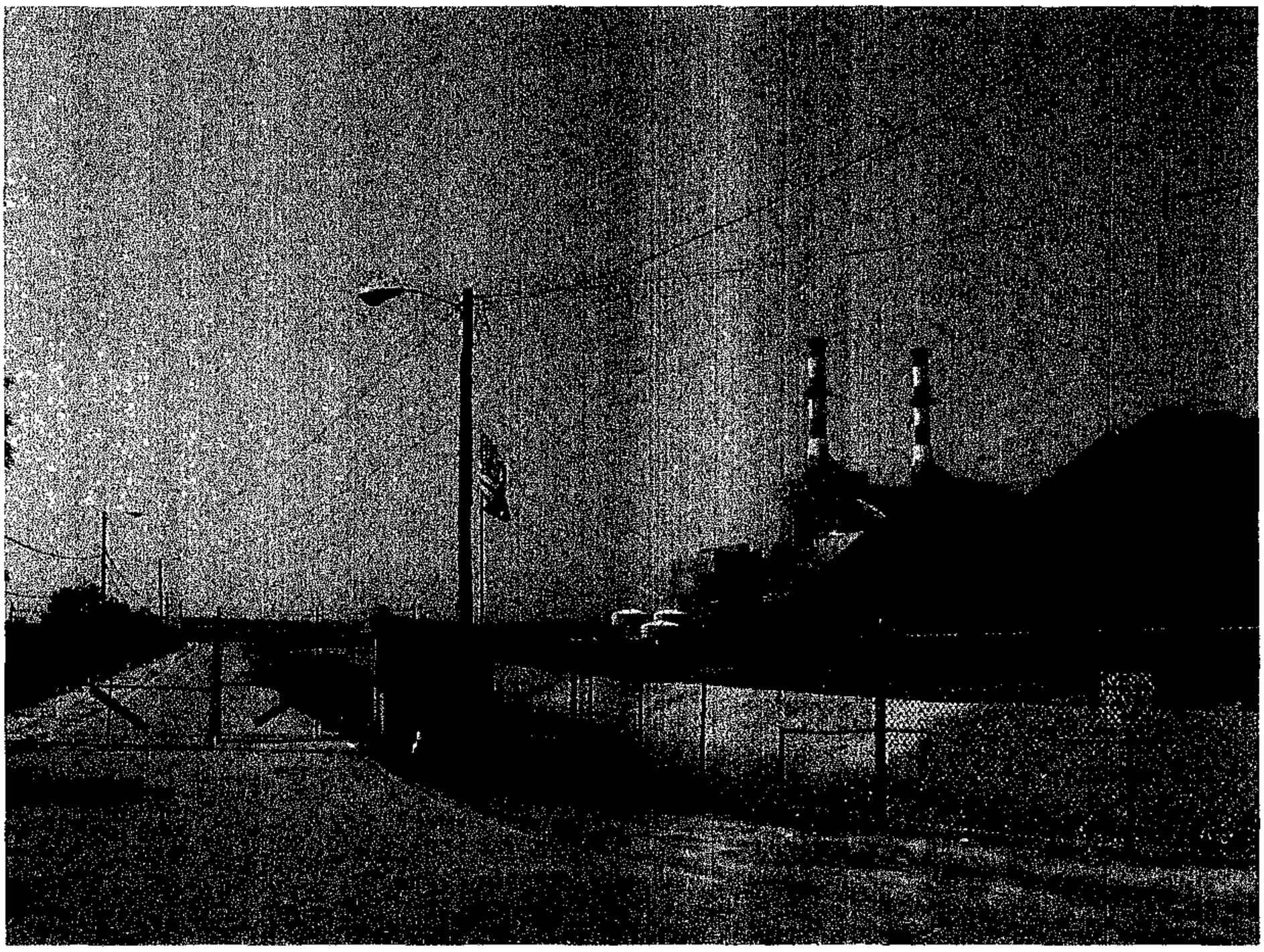
**Page 1 of 1**

| Name | Account | Street | OWN OCC | Map | Parcel |
|---|---|---|---|---|---|
| BALTIMORE COUNTY | 15 1502190166 | CARROLL ISLAND RD | N | 91 | |
| BALTIMORE COUNTY | 15 1523503111 | CARROLL ISLAND RD | N | 91 | 136 |
| BALTIMORE GAS & E | 15 1502001300 | CARROLL ISLAND LA | N | | |
| BALTIMORE GAS & E | 15 1502001301 | CARROLL ISLAND LA | N | | |
| BALTIMORE GAS & E | 15 1502001292 | CARROLL ISLAND RD | N | 91 | 203 |
| BALTIMORE HOMES L | 15 1600007696 | CARROLL ISLAND RD | N | 91 | 400 |
| BAPTIST CONVENTIO | 15 1503003620 | CARROLL ISLAND RD | N | 91 | 75 |
| CANATELLA PAUL | 15 2000011466 | CARROLL ISLAND RD | N | 91 | 20 |
| CARROLL CREST HOM | 15 1800002014 | CARROLL ISLAND RD | N | 91 | 43 |
| CARROLL CREST HOM | 15 1800008237 | CARROLL ISLAND RD | N | 91 | 104 |
| CARROLL ISLAND | 15 1600009325 | CARROLL ISLAND RD | N | 91 | 70 |
| CARROLL ISLAND AS | 15 1501920100 | CARROLL ISLAND RD | N | 91 | 57 |
| CARROLL ISLAND AS | 15 1600013399 | CARROLL ISLAND RD | N | 91 | 61 |
| COMES ROBERT W | 15 1503475690 | CARROLL ISLAND LA | N | 91 | 371 |
| CONSTELLATION POW | 15 1502001277 | CARROLL ISLAND LA | N | 91 | 141 |
| CONSTELLATION POW | 15 1502001306 | CARROLL ISLAND RD | N | 91 | 154 |
| CONSTELLATION POW | 15 1502001307 | CARROLL ISLAND LA | N | 91 | 155 |
| COX ROLAND L | 15 1503475680 | CARROLL ISLAND RD | N | 91 | 372 |
| DAVIS JOSEPH F | 15 1800013893 | CARROLL ISLAND RD | N | 91 | 431 |
| HUBERS DANIEL W | 15 1503003000 | CARROLL ISLAND LA | N | 91 | 19 |
| MEYERS OSCAR A | 15 1513401691 | CARROLL ISLAND RD | N | 91 | 261 |
| NORRIS JOHN HENRY | 15 1514650450 | CARROLL ISLAND RD | N | 91 | 194 |
| NORRIS JOHN HENRY | 15 1600008956 | CARROLL ISLAND RD | N | 91 | 402 |
| ROMAN ROBERT | 15 1510452350 | CARROLL ISLAND RD | N | 91 | 18 |
| SECURITY MANAGEME | 15 1519710430 | CARROLL ISLAND RD | N | 91 | 309 |
| UNIVERSAL HOUSING | 15 1800002015 | CARROLL ISLAND RD | N | 91 | 43 |
| PARLIER EDWARD E | 15 1502370280 | 1 CARROLL ISLAND RD | N | 91 | 4 |
| DEVCON IV ASSOCIA | 15 1508551563 | 6 CARROLL ISLAND RD | N | 91 | 56 |
| WAGNER STEVEN MAR | 15 1501920101 | 9 CARROLL ISLAND RD | N | 91 | 8 |
| AMOCO OIL COMPANY | 15 1508800120 | 15 CARROLL ISLAND R | N | 91 | 9 |

| | | | | | |
|---|---|---|---|---|---|
| AMOCO OIL CO | 15 1513200930 | 17 CARROLL ISLAND R | N | 91 | 11 |
| AMOCO OIL COMPANY | 15 1513200931 | 17 CARROLL ISLAND R | N | 91 | 10 |
| CARROLL ISLAND AS | 15 1511670410 | 18 CARROLL ISLAND R | N | 91 | 58 |
| CARROLL ISLAND AS | 15 1505000470 | 20 CARROLL ISLAND R | N | 91 | 59 |
| CARROLL ISLAND AS | 15 1501920110 | 24 CARROLL ISLAND R | N | 91 | 60 |
| CARROLL ISLAND AS | 15 1501920111 | 24 CARROLL ISLAND R | N | 91 | 60 |
| JONES ORVILLE M | 15 1800012951 | 100 CARROLL ISLAND | N | 91 | 427 |
| PRUETT LARRY W | 15 1513552610 | 106 CARROLL ISLAND | H | 91 | 327 |
| THORPE RAYMOND D | 15 1519391450 | 200 CARROLL ISLAND | N | 91 | 247 |
| LIBERTYSOUTH CORP | 15 1519610920 | 204 CARROLL ISLAND | N | 91 | 246 |
| SEENVERT JOHN D | 15 1600002455 | 210 CARROLL ISLAND | H | 91 | 74 |
| WHEATLEY BRUCE D | 15 1600002454 | 212 CARROLL ISLAND | H | 91 | 391 |
| KLEMAN CHARLES P2 | 15 1513200932 | 223 CARROLL ISLAND | H | 91 | 69 |
| RAYMAN NORMAN J | 15 1900007894 | 311 CARROLL ISLAND | H | 91 | 441 |
| KAMOWSKI JOHN C | 15 1511001610 | 318 CARROLL ISLAND | H | 91 | 235 |
| SMITH ROBERT C | 15 1519511900 | 320 CARROLL ISLAND | H | 91 | 235 |
| BOCKLAGE WILLIAM | 15 1511351493 | 322 CARROLL ISLAND | H | 91 | 235 |
| MCLEAN MARK R | 15 1514101340 | 324 CARROLL ISLAND | H | 91 | 235 |
| MEYERS OSCAR A | 15 1513401690 | 325 CARROLL ISLAND | N | 91 | 96 |
| REED LEAH L | 15 1512591260 | 326 CARROLL ISLAND | H | 91 | 235 |
| MICHAEL SANDRA L | 15 1513400100 | 401 CARROLL ISLAND | H | 91 | 235 |
| DISETA RICHARD E | 15 1700006081 | 414 CARROLL ISLAND | H | 91 | 107 |
| MCCULLAH DOUGLAS | 15 1700006080 | 418 CARROLL ISLAND | H | 91 | 107 |
| SAMPSON WILLIAM C | 15 1700006079 | 420 CARROLL ISLAND | H | 91 | 107 |
| EADS DAVID P | 15 1700006078 | 422 CARROLL ISLAND | H | 91 | 107 |
| ICHNIOWSKI VICTOR | 15 1700006077 | 424 CARROLL ISLAND | H | 91 | 107 |
| BEAVERS JAY VJR | 15 1700006076 | 426 CARROLL ISLAND | H | 91 | 107 |
| JONES ALAN TJR | 15 1700006075 | 428 CARROLL ISLAND | H | 91 | 107 |
| APPEL ERNEST V | 15 1700006074 | 430 CARROLL ISLAND | H | 91 | 107 |
| YORK WILLIAM C | 15 1525450310 | 611 CARROLL ISLAND | H | 91 | 45 |
| SUGARMAN DAVID S | 15 1512400080 | 613 CARROLL ISLAND | N | 91 | 269 |
| BAUER LOUIS FJR | 15 1600007949 | 639 CARROLL ISLAND | H | 91 | 401 |
| NORRIS JOHN HENRY | 15 1514650460 | 643 CARROLL ISLAND | H | 91 | 340 |
| DAVIS JOSEPH F | 15 2300007170 | 1018 CARROLL ISLAND | D | 91 | 218 |
| DAVIS LOUIS GJR | 15 1800013892 | 1020 CARROLL ISLAND | H | 91 | 430 |
| ARCHER PAUL E | 15 1514400580 | 3407 CARROLL ISLAND | N | 91 | 66 |



PC13A



PC13B



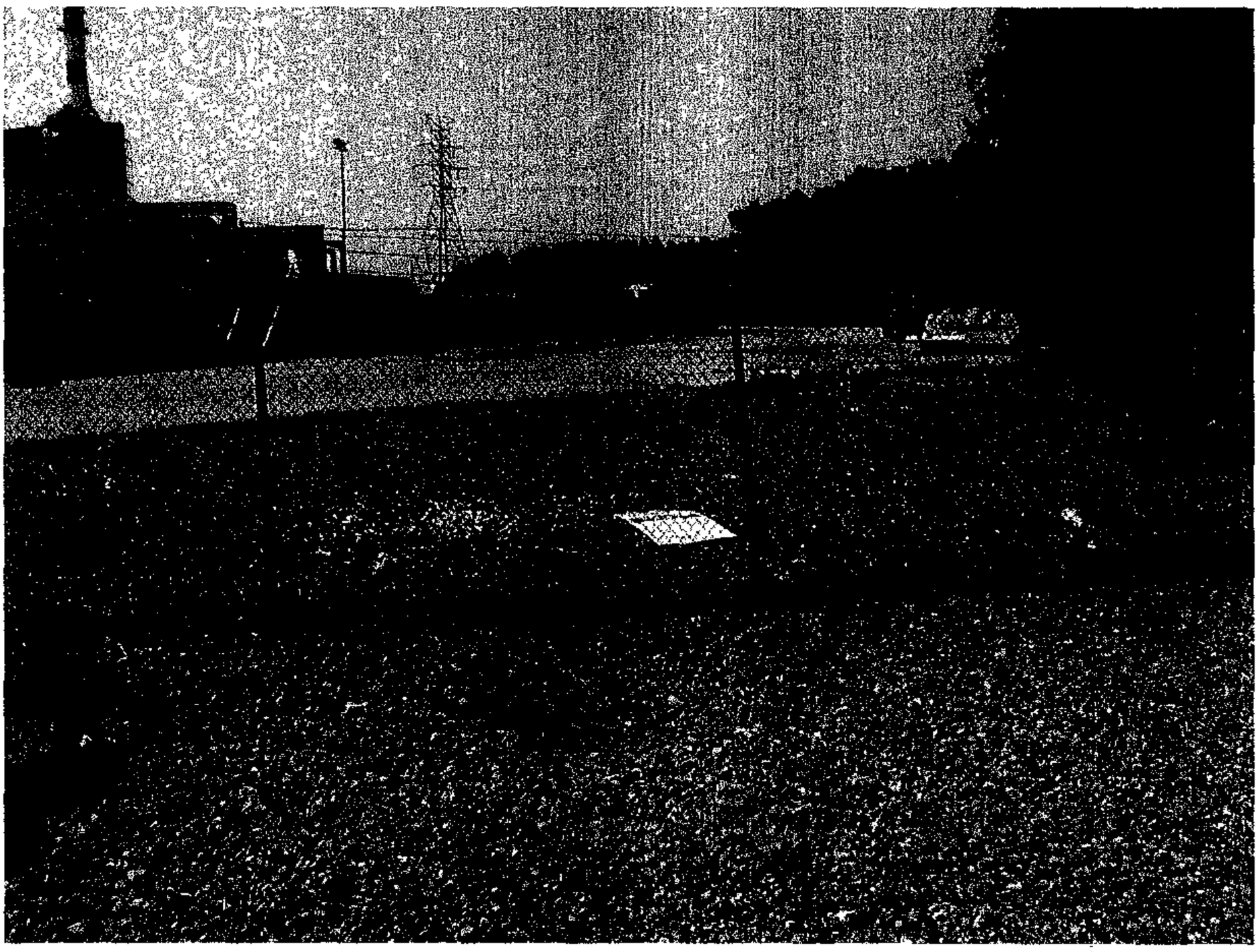
PC13 C



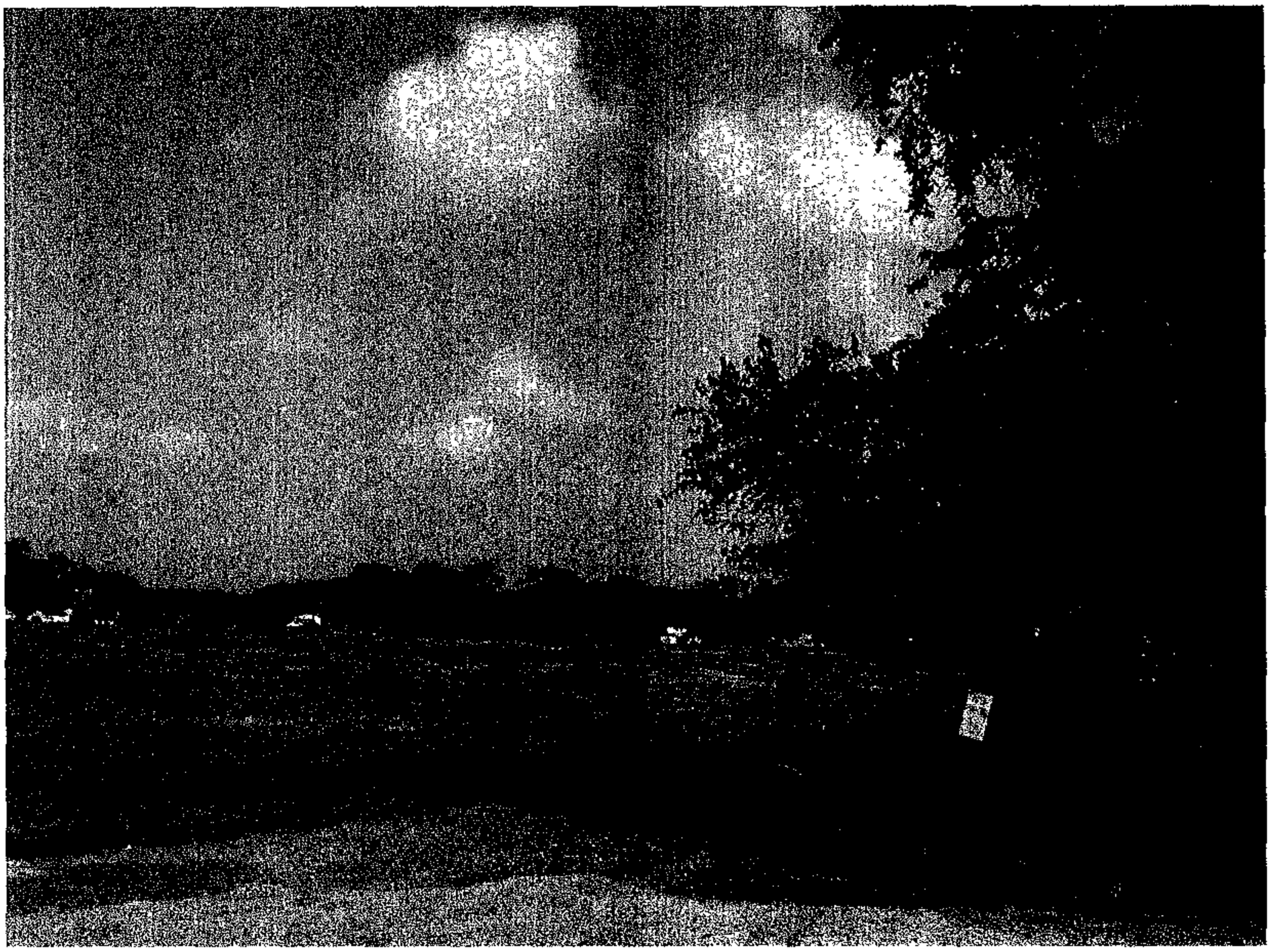

PC 13 D



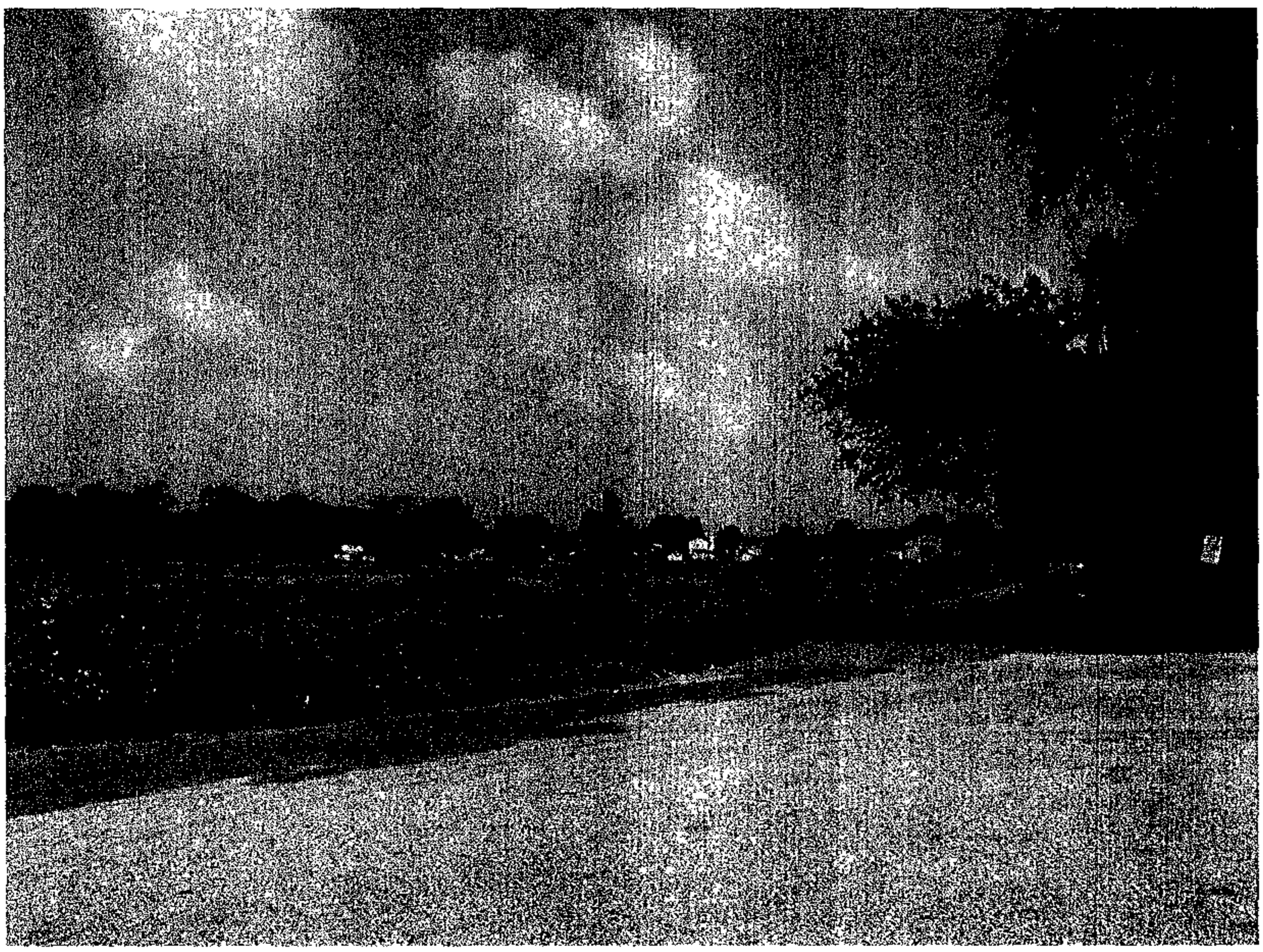
PC13E



PC13F



PC
13 6



PC
13 4



PC13 I



PC 13 J

**Jack Dillon**
**543 Park Avenue**
**Towson, Maryland 21204**
**(410) 321-0021**

**PROVIDE PROFESSIONAL PLANNING AND ZONING ASSISTANCE IN THE AREAS OF LAND USE, LAND USE ANALYSIS, SITE EVALUATION AND DESIGN.**

**EMPLOYMENT HISTORY**

**THE VALLEYS PLANNING COUNCIL, Inc.**
EXECUTIVE DIRECTOR
MAY 1997 - PRESENT

**PRIVATE CONSULTANT**
MARCH 1996 - PRESENT

**BALTIMORE COUNTY, MARYLAND**
Office of Planning, Community Planning Division,
Senior Planner and Deputy Division Chief
Rural and 3rd District and 5th District Planner
August 1987 - February 1996 (retired)

Office of Planning, Community Planning Division
Planner II – 2nd and 3rd District Area Planner
June 1981 – August 1987
Administrator of Baltimore County Agricultural Land Preservation Program (1979-1981)

Office of Planning, Comprehensive Planning Division, Environmental
Studies Section
Planner II – Environmental Planner
October 1974 - June 1981

Prior to October 1974 was with the Baltimore County Zoning Office
June 1967 - September 1974 and February 1962 - May 1967
I was with the Department of Public Works assigned to special projects at the Johns Hopkins University and The Baltimore City / County Analyzer Office.

**EDUCATION:**

MORGAN STATE UNIVERSITY
Graduate Program in Landscape Architecture
1992 - 1994 (not complete)

UNIVERSITY OF MARYLAND
Graduated Para Legal
1978

UNIVERSITY OF BALTIMORE
Graduated B.S. Degree in Business Management
Planning Courses At Johns Hopkins University
1969

PC
16

## ADDITIONAL EDUCATION

DUNDALK COMMUNITY COLLEGE
Media/TV Production
1984-1986

UNIVERSITY OF BALTIMORE SCHOOL OF LAW
1969 - 1970

GEORGIA INSTITUTE OF TECHNOLOGY
Institute in Urban Planning
1969

JOHNS HOPKINS UNIVERSITY
Appraisal of Real Estate
1975

## OTHER PROFESSIONAL EXPERIENCE

CATONSVILLE COMMUNITY COLLEGE
Visiting Lecturer - Zoning and Subdivision Design
Spring 1991

UNIVERSITY OF MARYLAND, SCHOOL OF SOCIAL WORK AND URBAN PLANNING
Visiting Lecturer - Use of Video in the Art of Planning
February 1987

TOWSON STATE UNIVERSITY
Department of Geography and Environmental Planning
Instructor of Two Three Credit Courses Entitled Principals of Zoning
And Planning Implementation
February 1972 - December 1981

Member of The American Planning Association

## SIGNIFICANT PROFESSIONAL ACCOMPLISHMENTS

Planner and Author/CO Author of a variety of Reports and Planning Studies, Including:

The Enduring Rural Landscape – VPC, September 2001
The Essex/Middle River Community Assessment 1995
The Owings Mills Open Space Concept Plan 1995
Hanover Pike Corridor Plan 1993
Hereford A Preliminary Analysis 1987
The Reisterstown Road Corridor Study 1987
Plan for Owings Mills, Maryland 1984
The Old Court Road Corridor Study 1984
Site Selection for The Northwest Area Multipurpose Center 1982

Proposed Amendment To Baltimore County Zoning Regulations - Sludge
Disposal in Baltimore County 1982
Areas of Critical of State Concern in Baltimore County 1979
Planner responsible for the organization and administering the Agricultural Land Preservation Program for
Baltimore county 1979 - 1981
Primary Draftsman of The Four Resource Conservation Zones for
Baltimore County, which have become the basis for controlling growth
In rural Baltimore County, 1975
Development and Adminstration of the Video Production unit within The office of
Planning.
Producer of Video "The Grove" which won a National
Association of Counties Award in 1993.

Court and Agency Proceedings:

Since 1965 I have provided testimony as an expert witness before the Baltimore County
Planning Board, various Legislative Sub-Committees in Annapolis, The Baltimore County
Council, The Baltimore County Zoning Commissioner, The Baltimore County Board of Appeals, The
Calvert County Board of Appeals, The District Court of Maryland and The Circuit Court of Maryland, and
I have presented testimony before the Planning Commission For The Town of Ocean City, and the
Dorchester County Board of Appeals.

October, 2001

DATE: March 4, 2003

**PEOPLE'S COUNSEL'S SIGN-IN SHEET**

**CASE NAME:** Constellation Energy

**CASE NO.:** 02-098-SPH

The Office of People's Counsel was created by the County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns, whether they have their own attorney or not. If you wish to be assisted by People's Counsel, please sign below.

| Check if you wish to testify | Name / Address Phone Number | Community Group You Represent / Basis of Your Concerns |
|---|---|---|
| | 837 Seneca Ruth Wagener (410) 335-6051 | Seneca Pk. Improv. Assoc. |
| ✓ | TERRY Covington 989 Seneca Park Rd 21220 | Seneca Park Improv. Assoc. (410) 335-4025 |
| | Shirley Maddox 989 Seneca Park Rd 21220 | Seneca Park Improv. Assoc. (410) 335-4025 |
| | Robert Maddox 989 Seneca Park Rd. 21220 | Seneca Park Improv. Assoc. (410) 335-4025 |
| | HERMAN F LENZENWEGER 850 SENECA PK RD | SENECA PARK IMPROV ASSOC 410-665-4374 |
| | Helen A Lenzenweger 850 Seneca Pk Rd | Seneca Park Improvement Assoc 410-665-4374 |
| ✓ | MICHAEL VIVIRITO-410-335-3321 36 BAY DR. 21220 | PRES. BOWLEY'S QUARTERS IMP. ASSOC. |
| ~~✓~~ | BERNARD WAGENER 838 SENECA PK RD | CONCERNED RESIDENT |
| ~~2nd~~ | Sharon Savage 842 Seneca Pk Rd | " " " |
| | John Schmidt 3833 Clarks H. Rd | Bowleys QTRS Imp. Assoc |
| ✓ (prin 4/10 12:30) | LINDA Johnson Petrush Azalea Keeners Rd | (410) 256-5602 Keeners Association |
| | Edward Jasinski | Seneca Pk Imp. |
| | JOE Remsky 964 Seneca Pk Rd 410-335-5266 | Seneca Pk Imp. |
| | Jackie Nickel | Back River Neck Pen. Con. Ens |
| | Curt O-gant 4105292286 4366 Keelers Rd 21220 | |
| | Richard Kammann 718 Asher Rd 21220 | |
| ✓ | Bonny Jasinski 838 Seneca Pk Rd 21220 | Seneca Park Improvement Assoc. PC [redacted] (10) |

17

DATE: March 4, 2003

**PEOPLE'S COUNSEL'S SIGN-IN SHEET**

**CASE NAME:** Constellation Energy

**CASE NO.:** 02-098-SPH

The Office of People's Counsel was created by the County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns, whether they have their own attorney or not. If you wish to be assisted by People's Counsel, please sign below.

| Check if you wish to testify | Name / Address Phone Number | Community Group You Represent / Basis of Your Concerns |
|---|---|---|
| | Audrey Carpenter | The Avenue Newspapers |
| | | |
| | | |
| | |




# Section of the Coastal Rural Legacy Area
# Baltimore County, Maryland

2000 0 2000 Feet

Prepared by Geographic Information Systems
Baltimore County Department of Environmental Protection and Resource Management

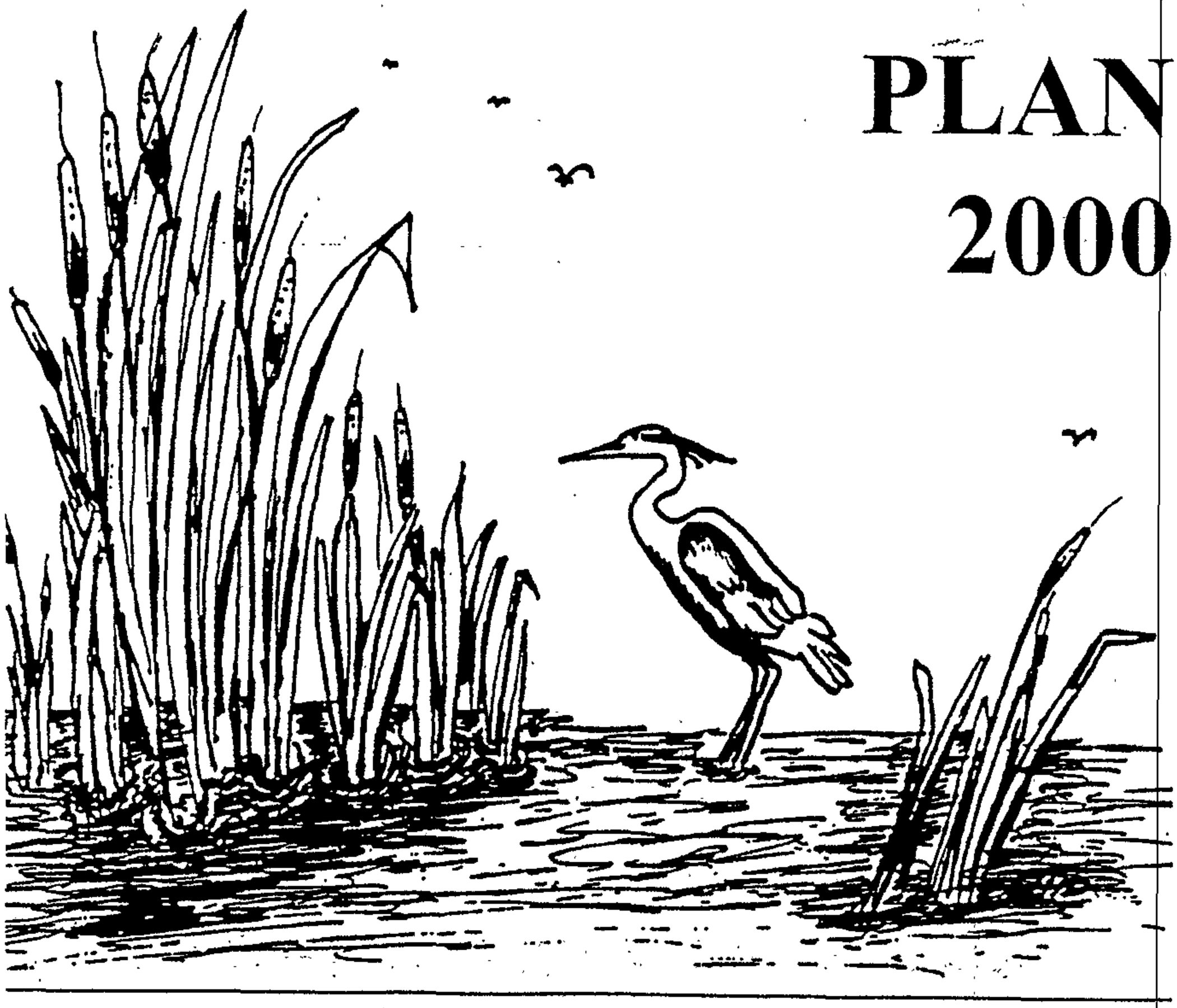
Pc 18


2000 0 2000 Feet
Data Sources:
Roads, Buildings:
Baltimore County OIT/GIS Services Unit
1:2400
Zoning
Baltimore County Planning Office
1:2400
Note:
This map is for display purposes only. Land use decisions involving zoning designations should be verified with the zoning office.
Strctures
Roads
Zoning
DR1, DR2, DR 3.5
DR 5.5
DR 10.5, DR 16
BL, BM, BR, BMB, BMM, BMYC, CB
MH, ML, MLR, MR
SE, OT, OR 1, OR 2, O 3, RO, ROA,
RC 2
RC 3, RC 4
RC 5
RC 6
RC 7
RC 20
RC 50
RCC
N
W
E
S

PC 19

PC 19

# BOWLEYS QUARTERS COMMUNITY ACTION PLAN 2000



**As Adopted by the Baltimore County Council**
**February 20, 2001**

DC 20

Baltimore County
Planning Board

401 Bosley Avenue
Towson, Maryland 21
(410) 887-3495
Fax: (410) 887-5862

# RESOLUTION
## Adopting and Recommending the BOWLEYS QUARTERS COMMUNITY ACTION PLAN 2000

**WHEREAS** the *Baltimore County Master Plan 1989-2000* advocates strong actions for conserving and enhancing the County's established communities, including the preparation of detailed local plans for certain designated areas; and

**WHEREAS** an Advisory Committee of residents and business persons in the Bowleys Quarters area, with staff assistance from the County, prepared a *Bowleys Quarters Community Action Plan*, which was adopted by the Baltimore County Council on November 2, 1992; and

**WHEREAS** changing conditions in the Bowleys Quarters peninsula, especially the development pressures resulting from the installation of the public sewerage system, caused the community to recognize the need for review and up-date of its Plan; and

**WHEREAS** a broadly-representative Advisory Committee has worked energetically since 1998, with assistance from County agencies, to draft the proposed *Bowleys Quarters Community Action Plan 2000*; and

**WHEREAS** a general community input meeting on the draft of the plan was held on June 10, 1999; and

**WHEREAS** the draft plan, as presented to the Planning Board on July 22, 1999, was the subject of a public hearing by the Board on September 9, 1999, and discussion on September 23, 1999;

**NOW, THEREFORE, BE IT RESOLVED**, pursuant to Section 26-81 of the Baltimore County Code, 1988, that the Baltimore County Planning Board hereby adopts the *Bowleys Quarters Community Action Plan 2000*, as amended on September 23, 1999, to constitute a part of and an amendment to the *Baltimore County Master plan 1989-2000*; and

**BE IT FURTHER RESOLVED**, that the *Bowleys Quarters Community Action Plan 2000*, shall be transmitted to the Baltimore County Council for adoption in accordance with Section 523(a) of the Baltimore County Charter.

**DULY ADOPTED** by vote of the
Planning Board this 23rd day of
September 1999

Arnold F. 'Pat' Keller, III
Secretary to the Planning Board

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# Bowleys Quarters Community Action Plan
(Adopted by County Council on November 2, 1992)

Community Advisory Committee
Mr. Phil Edwards –Ch.
Ms. Lynn Carmody
Mr. Bob Deurer
Ms. Cecile Myrick
Mr. Bob Eurice
Mr. Jim Hock
Mr. Roy Johnson
Mr. Andy Jones
Ms. Bette Moore
Mr. John Schmidt
Mr. Tommy Raschka
Mr. Milt Rehbein

Coordinator: Mr. Ian Forrest – Baltimore County Department of Environmental Protection and Resource Management

Affiliations:
Small and large property owners
Local Realtors
Restaurant owners
Watermans' Association
Marine Trades Association
Chambers of Commerce
Bowleys Quarters Improvement Association

# Bowleys Quarters Community Action Plan 2000

Community Advisory Committee
Mr. Dennis Faroul-Ch.
Mr. Jim Hock
Mr. Malcom Wood
Mr. Byron Livingston
Mr. Tom Lehner
Mr. Allen Robertson
Mr. Joseph Elkenberg
Mr. Milt Rehbein
Mr. Chuck LaHatte
Mr. Phil Edwards
Mr. Robert Palmer
Ms. Jane Bisell

Coordinator: Ms. Karin Brown – Baltimore County Office of Planning

Affiliations:
Small and large property owners
Marine Trades Association
Bowleys Quarters Improvement Association

## II. COMMUNITY LOCATION AND DESCRIPTION

Bowleys Quarters is located in southeast Baltimore County on the Chesapeake Bay. It consists of Middle River Neck extended northwest to Eastern Avenue and north to Carroll Island Road. The peninsula is bounded by Frog Mortar Creek, Middle River, Chesapeake Bay, and Seneca Creek. (See Fig.1).

The topography is relatively flat with poorly defined drainage patterns. Most elevations are less than 10 feet. Geology of the area consists of alternate layers of silt, clay and unconsolidated sand and gravel. Most undeveloped areas are wooded, covering hydra and other wet soils. Approximately 85 % of the community is within the Chesapeake Bay Critical Area. There are over 18 miles of shoreline on the peninsula offering quality recreational activity for community residents.

The development pattern consists of waterfront homes originally constructed many years ago, often as summer residences. Most are currently served by private septic disposal systems. Much of the peninsula interior is farmland or forested. Newer development is concentrated on the upper peninsula along Eastern Avenue, Carroll Island Road and the east side of Bowleys Quarters Road at Seneca Gardens Road. Development in these areas consists of both single unit and multi-unit dwellings served by public sewerage. Miami Beach County Park is located on the Bay at the southeast tip of the peninsula.

Commercial development generally consists of restaurants, bars, fast food restaurants, gas stations and the Carroll Island Shopping Center, all concentrated on the upper peninsula, and more than a dozen marinas on the rivers and creeks. In addition to being responsive to customers, it is essential that businesses also be responsive to the citizens of the community. This means working in partnership with residents and local authorities in ways that are beneficial to the community.

A proposed County sewerage system will cover the entire peninsula utilizing a gravity system and a limited number of grinder pumps on the upper peninsula and a grinder pump pressure system on the lower peninsula.

Outside influences having a direct impact on the community are:

- -Martin State Airport.
- -Baltimore Gas and Electric (BGE) Crane Power Plant.
- -The Eastern Boulevard/Avenue corridor.
- -Proposed MD Route 43.
- -Future development of the A. V. Williams tract.
- -Hart-Miller Island disposal site.
- -The types of recreational and commercial water use and the biological and chemical quality of surrounding waters.

Note: While revising the plan, it became apparent that the land area which served as the geographic area for the data in the 1992 version of the Bowleys

Quarters Plan did not correspond to the area shown as the community boundary in the beginning of that plan. Instead, the area used as a data source corresponds to the census tract for Bowleys Quarters, minus the area within census block #9. (Census block #9 corresponds to Carroll Island, which is part of Aberdeen Proving Ground, a military training facility).

The advisory committee had to decide whether to use the same area that served as the data source in 1992, or to change the area to correspond to the community boundary. The committee recommends using the same area as a data source as was used in The Bowleys Quarters Community Action Plan of 1992. The rationale for this decision is that utilizing the same base area facilitates comparisons between the data presented in the original plan and data obtained for the revised plan.

Some of the discrepancies between the 1992 data and the 1999 data may be due to differences in technology. That is, today's data is computer generated, whereas the original data was arranged manually.

## III. COMMUNITY OBJECTIVE

"The community is dedicated to preserving the beauty, tranquillity, and recreational atmosphere of Bowleys Quarters and to encourage residents and businesses to be a vital part of the community."

Goals:

1. To promote growth in property values.

2. To present an image of a progressive and environmentally conscious community with conservation in mind.

3. To form a partnership between residents, businesses and County agencies for the purpose of implementing the actions recommended in this plan.

4. To support the implementation of major County projects affecting the peninsula such as the Route 43 extension, public sewerage, Dundee recreational/sports facilities, and a commercial project on Dark Head Creek, etc.

5. To support quality development of single family detached homes.

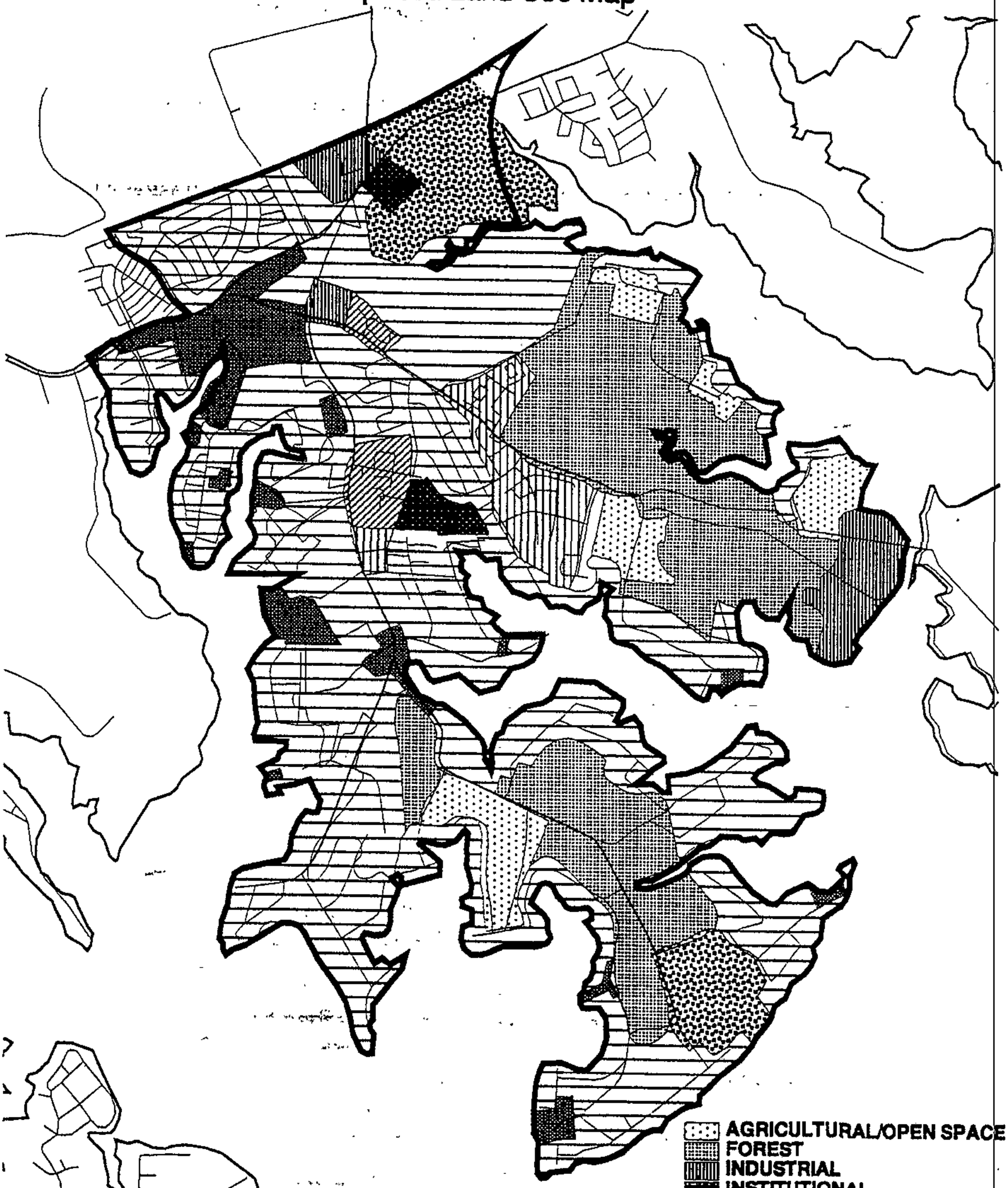
6. To prevent additional townhouse development in the community.

7. To recommend zoning changes that are consistent with the goal statements listed in 5 and 6 above.

8. To communicate to potential developers/builders the desires of the community.

# Bowleys Quarters Community Plan

## Proposed Land Use Map




Data Sources:
Land Use: Baltimore County Office of Planning (1:24000)
Roads: Baltimore Metropolitan Council (1:24000)

Action: The current size of the noise zone and noise levels will not be increased without written notification to the County administration, the County Council, and surrounding neighborhood. Every effort should be made through improving technology to reduce the noise zones and noise levels. (MAA continues).

Action: The community will request the airport management to notify all aircraft customers to refrain from operating aircraft between the hours of 8:00 pm through 7:00 am.

Action: The community to request the airport management to notify all aircraft customers to avoid flying over Bowleys Quarters community, if the aircraft they are operating has the maneuverability to do so.

The Maryland Department of Transportation (MDOT) and the MAA are proceeding with a $25 million improvement to Glen L. Martin State Airport. Major improvements include repairs to the runway, a new control tower and building with the existing tower to remain as a historical structure.

New taxi ways and site preparation for additional hanger space of 60,000 square feet is now being built to house additional corporate jets. In order for the MD Air Naticnal Guard to be in compliance with FAA standards, the MAA is studying the plan to fill in a section of Frog Mortar Creek up to 200 feet to create a safety barrier.

Issue: The filling in of Frog Mortar Creek.

Action: The community, including marina owners, oppose an action to fill in Frog Mortar Creek. The BQIA will represent the community on this position at appropriate agency hearings/meetings.

Action: The BQIA will encourage using alternatives acceptable to the FAA which would prevent the filling in of Frog Mortar Creek.

Issue: The flight of airplanes, which under the FAA description are of acrobatic flight, that occur over residential areas.

Action: The MAA will file a written report with the FAA with a copy sent to the BQIA that occurs as a result of a community resident complaint.

**f. Baltimore Gas and Electric Crane power station:**

The only major industrial facility located in the community is the BGE Crane Power Station, which is located at the mouth of Seneca Creek. During the last 20 years

various environmental problems associated with the operation have been reported. However, in recent years the company's ability to work with community organizations has created an "open door" relationship regarding efforts to solve reported problems. The facility has two major effluent discharges into community waters and stack gasses into the atmosphere. All of these are regulated through State of Maryland permits. There exists at the present time a major underground oil spill, which is being remedied.

Deregulation of electric power in Maryland is likely since neighboring states have already deregulated. Deregulation may cause some power plants to be sold and thus have new owners. Maintaining the open door relationship that has been experienced with BGE is important to the community. A dialogue with any new owners must occur to ensure that residents and the environment are not impacted.

Issues: Environmental problems associated with the operation of the BGE Crane Power plant.

Action: DEPRM will monitor the facility to assure protection of the environment and will make all pertinent data available to the community.

Action: Any new potential owners of the plant will be invited to community meetings to review their plans for the facility utilization and for developing a close working relationship.

**g. A.V. Williams Properties**

1. A.V. Williams Tract:

The 1,016 acre, A. V. Williams tract is located northwest of the community, between White Marsh and Middle River. The site is the largest tract of unimproved land with industrial zoning in Baltimore County and is designated as an "opportunity area" in the Eastern Baltimore County Revitalization Strategy. Over the past years, the site was considered for several development projects, such as an international trade center and theme park complex, an automobile assembly plant and a speedway. None of these projects were developed. Community concerns regarding traffic, air and noise pollution, the lack of adequate facilities such as water, sewerage and roads remained important issues. The site has environmental constraints, which pose a challenge to potential developers. Nevertheless, a key reason previous development proposals were abandoned, was inadequate access. Efforts are under way to extend MD 43 to Eastern Avenue. This would provide the site with the necessary access.

The BQIA supports the development of this parcel and endorses the efforts made by the County government to pursue State and Federal funding for the construction of a road that would open up this last major tract of industrially zoned land in Baltimore County. The BQIA has been actively involved and has voiced its

# SENECA PARK IMPROVEMENT ASSOCIATION

RESOLVED: That the position of the Seneca Park Improvement Association as adopted by the Zoning Committee on the zoning matter known as Constellation Power Source Generation, Inc. - 10001Carroll Island Road - Case # 02-098-SPH is that:

a. We are opposed to allowing additional industry in our environmentally sensitive, residential community which is zoned primarily resource conservation.

b. Construction of a slag plant conflicts with the goals of the Baltimore County Coastal Rural Legacy Plan (to provide a greenbelt of preserved land to buffer the Bay from encroaching urban development). The Rural Legacy Plan has acquired two plats of property bordering the Constellation Power Plant property.

c. It conflicts with the goals of the Master Plan 2010, specifically Part 5 - Resource Preservation Areas.

d. We are opposed to additional air and water pollution. We are already exposed to the following emissions from the power plant: nitrogen dioxide, sulfur dioxide, PM2.5, PM10, CO2 and VOCs, all of which have been linked to many respiratory problems including asthma, bronchitis, and emphysema. The elderly and young children are especially susceptible.

e. We are opposed to additional noise created by the crushing and grinding of the slag and also the drying process.

f. We are opposed to the possibility of additional train traffic which creates potential hazard from fire and medical emergencies to two communities: Keeners Road community and Beach Drive community which conflicts with the Baltimore County Zoning Regulations, specifically subsection 502.1.

g. We are opposed to Virginia Materials receiving a special exception variance under the guise of energy production, when the end product will be sold for profit.

AS WITNESS OUR HANDS AND SEAL THIS 27TH day of January, 2003.

ATTEST:

Janet Keatley
Secretary

Seneca Park Improvement Association

Herman F. Langenegger
Acting President

Sharon Lamik Commission
Expires 4/1/06

DC 21-A

# SENECA PARK IMPROVEMENT ASSOCIATION

RESOLVED: That at the first meeting of the year of the Seneca Park Improvement Association held on Monday, January 27, 2003, it was decided by the Association that responsibility for review and action on all zoning matters for the period of one year be placed in the Zoning Committee consisting of the following members, each of whom is hereby authorized to testify on behalf of the Association before the County Board of Appeals or other duly constituted zoning agency, body, or commission:

Bonny Jasinski
Joanne Nadeau
John Nadeau
Bernard Wagener, Jr.

AS WITNESS OUR HANDS AND SEAL THIS 27TH day of January, 2003

ATTEST:

Seneca Park Improvement Association

Janet Keatley
Secretary

Norman F. Langenwalter
Acting President

Sharon Lamit
Commission Expires 4/1/06

PC 21 B

# AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY, SS:

TO WIT:

I hereby swear upon penalty of perjury that I, Bonny Jasinski, am currently a duly elected member of the Zoning Committee of the Seneca Park Improvement Association.

ATTEST:

Janet Keatley
Secretary

Seneca Park Improvement Association

Herman F. Langenmeyer
Acting President

Bonny Jasinski
Bonny Jasinski,
Zoning Committee

Date: January 27, 2003

Sharon Lamb
Commission Expires 4/1/06

PC 21C

TAX MAP 91
1"=200'

SALTPETER CREEK

MEYERS BROTHERS REALTY CO. INC.
4295/194
P.2

LINDA PETRUSH, TR.
9100/127
137.11A.
P.362

WEISKITTEL PROP. 449:141

P.70 · P.75 · P.261 · P.235 · P.94 · P.236 · P.43 · P.104 · P.221 · P.193 · P.194 · P.269 · P.309 · P.451 · P.401 · P.402 · P.340 · P.282 · P.281 · P.107 · P.134 · P.1233 · P.1234 · P.260 · P.453 · P.278 · P.259 · P.105 · P.112 · P.330 · P.118 · P.344 · P.395 · P.135 · P.349 · P.342 · P.456 · P.351 · P.164 · P.137 · P.139 · P.141 · P.140 · P.218 · P.280 · P.431 · P.430 · P.371 · P.372 · P.155 · P.154 · P.136 · P.138 · P.1 · P.2

KEENERS RD. · CARROLLWOOD · WHITE PINE RD. · SENECA POINTE · BLUE HERON CT. · SENECA GARDENS · CUTTER COVE CT. · WINWARD WAY · KETCH KAY CT. · SMUG LAGOON CT. · GARDEN RD. · MAINSAIL CT. · MAINMAST CT. · SCHOONER PASS CT. · SPINNAKER CT. · CARROLLWOOD BLVD. · BAYVILLE RD. · KITTENDALE CIRCLE · CUTTY SARK RD. · CUTTY SARK CT. · SPRINGSIDE CT. · TIDEWOOD RD. · HUNTING CT. · SUNWAY CT. · PHILLIPS RD. · LUTHARDT RD. · CARROLLWOOD MANOR · LOVERS LANE · PARK · BEACH · ROAD

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(SENECA CREEK ELEM.)

DAVID W. GARRISON
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THOMAS A. WILKINSON
6658/683
P/O P.136
2 of 3

Balto Co.
WILKINSON
6658/683
P.136
1 of 3

BALTIMORE GAS & ELECTRIC CO.
3061/309
88.40A.

SENECA PARK BEACH
8:45

PC 22

**John Strawbridge**
Plant General Manager
Constellation Generation Group, LLC

C.P. Crane Power Plant
1001 Carroll Island Road
Baltimore, Maryland 21220

**Constellation Energy Group**

October 11, 2002

Dear Neighbor,

We are writing to inform you about the proposed slag facility to be operated by Virginia Materials on the property of C.P. Crane. An amendment to Crane's special exemption is required. We are aware of rumors and misinformation and thought we should communicate directly with you.

The Charles P. Crane Power Plant is located on 157 acres at the end of Carroll Island Rd on Seneca Creek. Crane began operation in the early 1960's. It has two generating units, each with a generating capacity of 188 megawatts. It uses coal; America's most abundant energy resource, to produce power in an efficient and environmentally sensitive manner.

Coal combustion products are naturally occurring by-products of burning coal. Two types of coal combustion ash are produced at Crane Station, (1) fly ash, and (2) bottom ash or slag. Slag is collected at the bottom of the boiler, then put through a cooling, crushing and drying process. Neither fly ash nor slag is classified as a hazardous substance.

It is the goal of the company to find beneficial uses for all coal combustion products. Fly ash is used in products, such as concrete substitute, and as a structural foundation material. Slag is used in blasting grit, roof shingles and brown bottles.

The attached fact sheet describes an outsourcing arrangement by which Virginia Materials (VM) will complete the processing of the slag begun in the Crane Power Plant before the slag is shipped off-site.

If you have any questions, please call Bonnie Johansen at 410-787-6519. We would be happy to meet with you and other members of the community to discuss these matters further.

Sincerely,

John Strawbridge 682-9701

John Strawbridge
Plant Manager, C.P. Crane

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C.P. Crane Power Plant

# Slag Processing Facility Fact Sheet

October 2002

## Background

- The Crane Power Plant is owned and operated by Constellation Power Source Generation, Inc. (CPSG)
- Slag is a naturally occurring by-product of burning coal at Crane.
- The goal of CPSG is to find beneficial uses for all coal combustion by-products.
- Slag is used in blasting grit, roof shingles and brown glass bottles.
- For the past five years, slag has been trucked from Crane to a barge facility and shipped to the Virginia Materials plant in Norfolk for processing.
- Some customers for the slag products are located in this area and north of Maryland.
- The operation of a slag facility at Crane will eliminate the need to ship raw slag to Norfolk and return finished slag back to Baltimore.

## Slag Processing Facility

- The slag facility will complete the crushing and drying process begun in the power plant. The slag then will be sorted for size.
- The slag facility will be located on Crane property near the coal pile in the old propane area.
- The slag facility will cover approximately 6.8 acres.
- The slag will be stored in silos not more than 95 feet high.
- In comparison, the heights of the power plant stacks are 325 feet.
- The finished slag will be shipped to customers in enclosed tank trucks.
- Each truck will carry about 26 tons.
- The slag facility is designed to produce no odors and to control dust.
- Crane produces about 40,000 tons of slag on average each year with the maximum potential capacity of 70,000 tons of slag.
- The amount of slag produced by Crane is driven by the demand for electricity.
- If Crane's slag output falls below the average of 40,000 tons, VM can make-up the difference by bringing in slag from an outside facility.
- Any such "makeup" slag can be brought in by railcars.
- VM will not be permitted to bring in off-site slag under any other circumstances.

what about Noise?

who will monitor this?

## Advantages to the community of moving the slag operation to Crane

- Less truck traffic on Carroll Island Road.
- Tank trucks carrying slag are enclosed.

## Zoning Process

- Initial meeting with Baltimore County staff—2/01
- Met with Bowleys Quarters Community Association—Fall 01
- Signs posted at site —10/9/01
- Zoning Hearing before Deputy Zoning Commissioner—10/24/01
- No opposition
- Favorable Decision—11/5/01
- Appealed by People's Counsel of Baltimore County on 11/30/01
- First Hearing before County Board of Appeals—6/5/02
- Next Hearing—10/17/02 at 10:00 a.m. in Room 48, Old Courthouse, 400 Washington Ave., Towson, Maryland.

*Constellation Generation Group is a member of Constellation Energy Group.*

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RE: Case #: 02-098-SPH
IN THE MATTER OF: *Constellation Power Source Generation, Inc.*
- Legal Owner/Petitioner – 10001 Carroll Island Road
  15th Election District; 5th Councilmanic District

We, the undersigned, are opposed to the construction/addition of a Slag Processing Facility at the Constellation Power Plant located on Carroll Island Road for the following reasons:

1. The communities of Bowley's Quarters and Seneca Park are beautiful, rural residential neighborhoods set on peninsulas on the Seneca Creek and mouth of the Chesapeake Bay. The people of these communities enjoy the recreational aspects of the Chesapeake Bay i.e., boating, fishing, swimming and we have a large number of commercial crabbers and fisherman that live on the Creek. We are very concerned about the health of the Seneca Creek and the Chesapeake Bay. From the 2001 Chesapeake Bay Foundation State of the Bay Report, the Bay's health on a scale from 0 to 100 rates a 27, one point less than it scored in CBF's 2000 State of the Bay Report. The bay remains a system dangerously out of balance, operating at barely more than one-fourth of its potential. The Chesapeake is also on the Environmental Protection Agency's list of impaired waters. We are very concerned about how additional construction/pollution at the Constellation Power Plant will affect the water quality.

2. Additional development/pollution conflicts with the goal of the Baltimore County Coastal Rural Legacy Plan to preserve large blocks of forest and wetland areas along the Chesapeake Bay to create a system of environmental reserves along the Bay given the importance the state has given to the protection and restoration of the Chesapeake Bay. In addition, the Rural Legacy Plan seeks to also preserve critical wildlife habitat, protect rural communities and protect scenic open space.

   In the Executive Summary of the Baltimore County Coastal Rural Legacy Plan the upper western shore of the Chesapeake Bay is described as among the richest resource areas within the county and the most threatened by development. The necks, peninsulas and shoreline areas are rich in resource attributes and provide critical environmental value to the protection of the Chesapeake Bay. The Coastal area is one of the most threatened areas in the state. The fragility of the resources, especially the forest and wetlands, exacerbates the threats because these resources will lose ecological value with even moderate levels of development.

3. There has been more emphasis on the study of the effects of air pollution on the Chesapeake Bay. At a lecture, Tom Horton, the author of Turning the Tide – Restoring The Chesapeake Bay, talked about bay restoration. One of the things he discussed was the effect of air pollution on water quality. As much as 32% of the bays problem comes from cars and power plants. "While the bay watershed is 64,000 square miles, the air shed is much bigger," he said. "The Clean Air Act is not geared for water." We don't want more air and water pollution.

PC 24

4. There has also been more emphasis on the study of the effects of air pollution to humans. Studies have proven that burning fossil fuels for electricity generation is the single greatest source of air pollution in the United States. Fossil fuel combustion produces many pollutants including nitrogen oxides, sulfur oxides, hydrocarbons, and particulates. These pollutants can cause serious health problems including asthma, irritation of the lungs, bronchitis, pneumonia, decreased resistance to respiratory infections, and early death. In fact, a study published in the March 2002 Journal of American Medical Association found people living in the most polluted areas have a 12% increased risk of dying from lung cancer. Adding the proposed Slag Processing Facility will prolong the life of an already objectionable facility.

5. Additional construction creates excessive industrialization of our rural, environmentally sensitive community.

6. The addition of the Slag Processing Facility could possibly bring in more traffic with deliveries of bottom ash from other power plants to be processed. The deliveries would be transported in large tanker-type trucks which would also degrade our roadways. This concept was apparently already researched by company representatives although the power plant manager, John Strawbridge is quoted as saying "Virginia Materials wants to build a batch plant on site which would reduce the number of trucks carrying the bottom ash away." We feel once the plant is operational it will only be a matter of time before they begin receiving shipments from other plants to make the plant more economically viable.

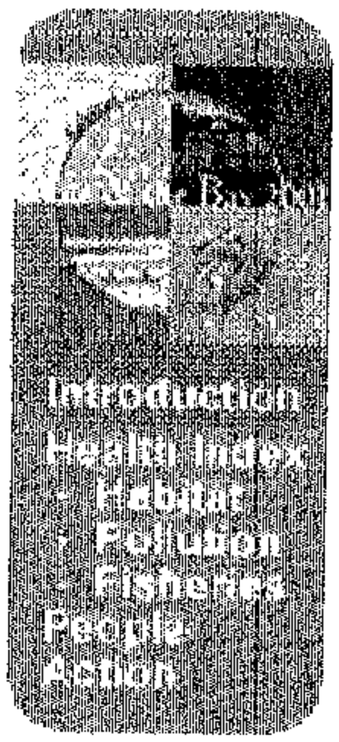
7. We are concerned about additional noise created during the drying process of the slag in the tumblers. We already contend with train deliveries, announcements over the PA system and extremely loud noises when the high pressure valve lets off steam and pressure.

In conclusion, while the representatives of the Constellation Power Plant see this addition as a positive addition, we feel we contend with too much pollution (air and water) and its negative effects and feel that any addition to the current plant only exacerbates the current problems.

| Name | Address | Phone # |
|---|---|---|
| D. EDWARD VOGEL | 3417 EASTERN BLVD. | 410 686-4521 |
| JANET KOHAJDA | 1624 Hollytree Rd | 410 366-4125 |
| JOHN MOHR | 1350 GOOSENECK RD | 410 335-3784 |
| Marsha Nyms | 1027 Cold Spring Rd | 410-335 7973 |
| Karen Jones | 1026 Susquehanna | 410-335-5775 |
| Ginger Schmidt | 3833 Clarks Pt. Rd | 410-335-4943 |

(6)

## Poor Water Quality Inhibits Chesapeake Bay Improvements in 2001




**"How's the Chesapeake Bay doing?"**

It's a question we are frequently asked. Our answer is that the Bay remains a system dangerously out of balance. The Chesapeake operates at barely more than one-fourth of its potential because water pollution, primarily from excess nitrogen and phosphorus, inhibits overall improvements to the system.

In the past year, continued poor water quality, the accelerating rate of land development, and threats to the Bay's crab population contributed to an overall decline in the health of the Chesapeake Bay. Shad and forested buffers showed slight improvements. But on a scale of 0 to 100, the Bay's health rates a 27, one point less than it scored in CBF's 2000 State of the Bay Report.

"The State of the Bay Report illustrates how interconnected the Bay's components are," says CBF President William C. Baker. "Unless we dramatically reduce nutrient and sediment pollution, additional gains in underwater grasses will be impossible. Restoring underwater grasses by improving water quality is critical to bringing back the Bay's blue crab population."



**How we create our report**

The health of the Chesapeake relies on intricate natural systems that filter water and provide habitat for diverse and abundant life. CBF scientists measure its health by observing key components of these systems. They examine the best available historical and current information for factors in three categories: pollution, habitat, and fish and shellfish. Although they seek advice from other Bay scientists, ultimately the best professional judgment of CBF scientists determines the value assigned each factor.

The Bay we know today is measured against the healthiest Chesapeake we can describe - the rich and balanced Bay that Captain John Smith recounted in his exploration narratives of the early 1600s. Smith explored the Chesapeake when clear water revealed meadows of underwater grasses, prodigious oyster reefs that posed a threat to navigation, and abundant fish. Modern science confirms many of Smith's observations. Smith's Bay rates 100 and is our benchmark.

**A blueprint for Bay improvement**

When CBF first asked the citizens of the watershed to help save the Bay 35 years ago, our estuary was in trouble. Even as we worked to make improvements, the Bay's health declined, bottoming out in1983 with a rating of 23. The work of public agencies, private groups, and tens of thousands of volunteers has improved the system slightly since then. But progress is far too slow. If the Bay is to be removed from the Environmental Protection Agency's list of impaired waters by the year 2010, dramatic action must be taken to reduce the nutrients that pollute the Chesapeake. **The Chesapeake Bay Foundation's immediate top priority is to help the Bay achieve a score of 40 by 2010.**

Chesapeake 2000, the new Chesapeake Bay Agreement signed in June 2000, provides a strong blueprint to raise the Bay's score significantly over the next two decades. CBF is building a diverse coalition and working with federal, state, and local officials to secure $8.5 billion in federal, state, and local funding to implement the agreement. As this report demonstrates, real Bay-saving progress occurs slowly. But if Bay states and the public unite to turn the agreement's promises into action, the Bay's health has the potential to improve dramatically.

The State of the Bay Report provides a reference for how far we have fallen from Smith's Bay and how far we must go to reach a "saved" Bay. A saved Bay is resilient enough to withstand the storms of nature and of humankind, and rich enough to nurture diverse cultures and contribute abundantly to

our economy. We will never again see the Chesapeake restored to its pristine state of four centuries ago, but we believe a Bay with an index of 70 is achievable by 2050. We must remember how rich our Chesapeake Bay was, even 40 years ago, and not settle for a small fraction of what we know it can be.

| Habitat | Fisheries | Pollution |
|---|---|---|
| Wetlands 42 | Crabs 42 | Toxics 30 |
| Forested Buffers 54 | Rockfish 75 | Water Clarity 15 |
| Underwater Grasses 12 | Oysters 2 | Phosphorus 15 |
| Resource Lands 30 | Shad 6 | Nitrogen 15 |
| | | Dissolved Oxygen 15 |

**Average 27**

**Health Indices**

- Habitat
- Fisheries
- Pollution

# Baltimore County Coastal Rural Legacy Plan

## *Executive Summary*

The Coastal Area of Baltimore County encompasses 15,340 acres of forests, wetlands, marshes and farmlands lands along the shoreline of the Upper Western Shore of Chesapeake Bay. It is among the richest resource areas within the County and the most threatened by development.

The preservation of large blocks of forest and wetland areas along the Chesapeake Bay to create a system of environmental reserves along the Chesapeake Bay is a particularly important goal given the importance the State has given to the protection and restoration of the Chesapeake Bay. Although there has been significant progress in the protection of the Chesapeake Bay since the passage of the Critical Area Law and Chesapeake Bay Agreement, it is also clear that other efforts such as preservation of key environmental lands is needed. The most recent Chesapeake Bay Agreement has adopted land preservation as one of its goals to foster the protection of the Chesapeake Bay.

In addition to the protection of the Chesapeake Bay, this Rural Legacy Plan seeks to also preserve critical wildlife habitat, provide opportunities for environmental education and recreation, protect rural communities, protect scenic open space, and foster rural economies in the area. The plan proposes to continue efforts to protect documented forest habitat for interior forest dwelling birds. The Coastal Area provides recreational and environmental opportunities to over 300,000 people. The majority of the County's fisheries industry is located in this area and a substantial portion of the vegetable industry is as well. The area was also where some of the earliest settlements occurred in Baltimore County.

This request to expand the area will enable the Sponsors to proceed with accomplishing the overall preservation goal of protecting the system of rural reserves through utilizing the strategy that has proved to be successful on the Back River/Holly Neck Peninsula Since designation of the Coastal Rural Legacy Area in 1998, five properties totaling 728 acres have been preserved in the designated Coastal Rural Legacy Area. Three of these properties form a contiguous block that includes County parkland that totals over 1000 acres of preserved land on the Back River Neck Peninsula.

The FY2002 application proposes to protect 954 acres with County and State funds. County funds have already been committed to preserve 438 acres. The Sponsors are requesting $2,260,441 to preserve an additional 516 acres.

The northern boundary of the Coastal Area begins at the end of tidal influence in the Gunpowder Falls in Baltimore County. It follows the shoreline around the Gunpowder Delta Marsh/Day's Cove section of Gunpowder Falls State Park, across the mouth of Bird River, and along the sinuous forested shorelines of Carroll Island and Middle and Back River Necks. The area continues to the east of Rocky Point, the boundary diverges to encircle Hart-Miller Island, and further west, to include the marshes and forests of North Point State Park, before continuing back across Lower Back River to Back River Neck. The landward side of the Coastal Area approximately follows the edge of the densely populated areas of eastern Baltimore County back to the Gunpowder Delta, just upstream of the headwaters of Seneca, Saltpeter, and Dundee Creeks, and Bird River.

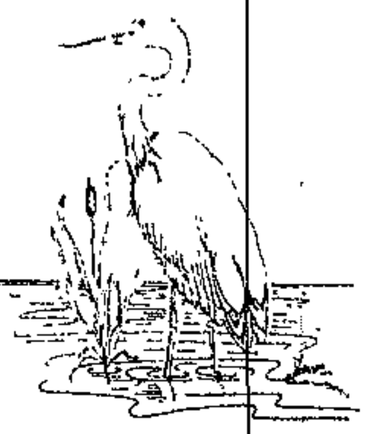
The necks, peninsulas and shoreline areas in the Coastal Rural Legacy Area are rich in resource attributes and provide critical environmental value to the protection of the Chesapeake Bay. The 109 miles of Coastal Area shoreline function as the land/Chesapeake Bay interface, and serve as an essential buffer area between the urbanized portions of Baltimore County and the Bay. The 15,340 acres of the Coastal Area contains 7,368 acres of forest, 2,730 acres of wetland, and 2,015 acres of farmland. The forested areas provide for rare forest reserves for forest interior dwelling birds and other wildlife and plants that require large contiguous forested areas.

The Coastal Area is one of the most threatened areas in the State. Despite the County's highly protective development regulations for this area, the immediate access to major roads, proximity of high density development, the extension of sewer to serve failing septic systems, and the desire for development on the Chesapeake Bay create a tremendous amount of pressure for development of the area. The fragility of the resources, especially the forest and wetlands, exacerbates the threats because these resources will lose ecological value with even moderate levels of development.

Changes in zoning in the 2000 Comprehensive Zoning Map Process made evident the concerns that have been raised in past applications. Zoning is not permanent. It is subject to change. And even with the protective zoning, there is still a considerable threat of development with this existing zoning. There are 5,788 acres of undeveloped land within the Coastal Area. The best way to protect the rural and environmental values of the area is through easements and in-fee acquisitions.

The necessary components for the successful implementation of this 2002 Coastal Rural Legacy Area Proposal are all in place. Significant progress has been made with the preservation and if the support continues the long-term goal of protecting 11,700 acres can be achieved.

**Exploration Research, Inc.**
*Environmental Consultants*



March 25, 2002

**Mr. Michael T. Hassan, PHE**
**Combustion and Metallurgical Division**
**Air Quality Permits Program**
**Air and Radiation Management Administration**
2500 Broening Highway
Baltimore, MD. 21224

**Re: Permit-to-Construct application**
**Virginia Materials, Inc.**
**Coal Slag Processing Plant**
**1001 Carroll Island Road, Baltimore, MD.**

Dear Mr. Hassan;

On behalf of our client. Virginia Materials, Inc. of Norfolk, VA. we are submitting these additional materials as per your letter, received by our office on February 14, 2002. Enclosed you will find the specifications for the plant as provided by the manufacturer. Additionally you will find a plan to illustrate the location of the proposed plant in relation to the surrounding area, including Baltimore County Zoning Maps, and Chesapeake Bay Critical Area map. Also please find copies of letters from Baltimore County and Whiteford, Taylor and Preston, L.L.P. regarding the approved Special Exception and Variance for the proposed plant, and the accompanying DRC Plan sheet.

The proposed plant will be used to recycle coal slag, a byproduct of the coal burning process from the adjacent Crane Power Plant. Additional coal slag may be brought in from other locations for processing at this plant. The plant will dry, screen, and crush in a small 5-foot diameter vertical shaft impactor the oversize portion only, creating a product commercially known as "Black Blast" used in blast cleaning operations. This product is chemically inert and resembles glass and is known in some areas as "Black Beauty". Silos will store the processed material, whilst the raw material is stored in piles on site. The Drying plant and operating storage silos will be serviced by baghouse emissions control devices. It is expected that the plant will be able to operate continuously, 24 hours a day, 7 days a week. but the need for this would be infrequent.

The additional information you requested will be sent directly from Virginia Materials, including the permit processing fee.

If you have any questions regarding the enclosed information please feel free to call me at 410-750-1150.

Sincerely,
**Exploration Research Inc.**

R Andrew Berlett Jr.
Environmental Planner.

PC 25

*8318 Forrest Street • Historic Ellicott City, Maryland 21043*
*(410) 750-1150 • 1-800-776-5417 • FAX (410) 750-7350*

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BOWLEY'S QUARTER IMPROVEMENT **ASSOCIATION**

**RESOLVED:** **That the position of the** B.Q.I.A. _____ **Association as adopted by the (Board of Directors) (Zoning Committee) on the zoning matter known as:**

CONSTELLATION POWER SOURCE GENERATION, INC.

**is that:** 1. THE HEIGHT AND SIZE OF THE FACILITY
2. TRAFFIC IN THE AREA
3. AIR POLLUTION
4. WATER POLLUTION
5. PROBLEMS FOR MARINA'S IN THE AREA
6. GENERAL COMPATABILITY TO THE RESIDENTIAL AREA CLOSE TO THE FACILITY
7. THE MAJOR PROBLEM IS OFF SITE MATERIAL BEING MOVED BY RAILCARS.
8. WE DO NOT WANT TO SEE ANY MATERIAL BEING BARGED IN OR OUT BY WATER.

**AS WITNESS OUR HANDS AND SEAL THIS** 9th **day of** JANUARY, 2003.

**ATTEST:** B.Q.I.A. **Association**

H. Andrew Jonas
**Secretary**

Michael Smith
**President**

RECEIVED
MAR 04 2003
BALTIMORE COUNTY
BOARD OF APPEALS

P.C. 27A

BOWLEY'S QUARTER IMPROVEMENT ASSOCIATION

RESOLVED: That at the GENERAL meeting of the B.Q.I.A. Association held on JANUARY 9, 2003 [DATE], it was decided by the Association that responsibility for review and action on all zoning matters for the period JANUARY 2003 FORWARD TO 2004 be placed in the (Board of Directors) (Zoning Committee) consisting of the following members, each of whom is hereby authorized to testify on behalf of the Association before the County Board of Appeals or other duly constituted zoning agency, body, or commission:

FRED CONRAD
JOHN SCHMIDT
DONALD HANSEN
MICHAEL VIVIRITO

AS WITNESS OUR HANDS AND SEAL THIS 9TH day of JANUARY, 2003

ATTEST: B.Q.I.A. Association

H. Andrew Jones
Secretary

Michael Viviriti
President

PC 27B

# AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY, SS:

TO WIT:

I hereby swear upon penalty of perjury that I am currently a duly elected member of the (Board of Directors) (Zoning Committee) of the Bowley's Quarter Improvement Association.

ATTEST: B.Q.I.A. Association

A. Andrew Jones
Secretary

Michael Hecht
President

DATE: 1/9/03

DC
27C

DATE: March 7, 2003

**PEOPLE'S COUNSEL'S SIGN-IN SHEET**

**CASE NAME:** Constellation Energy

**CASE NO.:** 02-098-SPH

The Office of People's Counsel was created by the County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns, whether they have their own attorney or not. If you wish to be assisted by People's Counsel, please sign below.

| Check if you wish to testify | Name / Address Phone Number | Community Group You Represent / Basis of Your Concerns |
|---|---|---|
| ✓ | 410-335-3311 3619 BAYDR. MIKE VIVIRITO 21220 | BQIFIA PRES. |
| ✓ | 410 335-4025 989 Seneca Park Rd Terry Covington | Seneca Park Improv. Association |
| | 410 335-4025 989 Seneca Park Rd. ~~Terry Covington~~ Shirley Maddox | " " " |
| | 410 335-4025 989 Seneca Park Rd Bob Maddox | " " " |
| | HERMAN F. LENZENWEGER 410 665 850 SENECA PK RD H374 | " " " |
| | Helen A Lenzenweger 850 Seneca Pk Rd 410 665-4374 | " " " |
| | RUTH WAGENER 837 SENECA PK RD #21220 | " " " |
| | BERNARD WAGENER 837 SENECA PK RD #21220 | " " " |
| ✓ | John SCHMIDT 3833 CLARKS PT. Rd | Bowleys QTRS Imp. Assoc |
| ✓ | Jackie Nickel Ave. 721 Rockaway Beach | Back River Neck Pen. Comm. Assn. |
| | JOE REMSKY 410-335-5266 964 SENECA PK Rd | SENECA PK IMPROV. ASSOC. |

Back River Neck Pen. Comm. ASSOCIATION

RESOLVED: That at the 1st Jan. 21 meeting 2003 meeting of the Back River Neck Pen. Comm. Association held on Jan. 21, 2003 [DATE], it was decided by the Association that responsibility for review and action on all zoning matters for the period Jan. 1, 2003 - Dec. 31, 2003 be placed in the (Board of Directors) (Zoning Committee) consisting of the following members, each of whom is hereby authorized to testify on behalf of the Association before the County Board of Appeals or other duly constituted zoning agency, body, or commission:

Jackie Nickel, Pres.
Leroy Sennett, Zoning Chair

AS WITNESS OUR HANDS AND SEAL THIS 21 day of January, 2003

ATTEST:

Back River Neck Pen. Comm. Association

Marion E. MacLachan
Secretary

Jackie Nickel
President

PC 29A

# AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY, SS:

TO WIT:

I hereby swear upon penalty of perjury that I am currently a duly elected member of the (Board of Directors) (Zoning Committee) of the Back River Neck Pen. Comm. Association.

ATTEST: Back River Neck Pen. Com Association

Marion E. Markelonis
Secretary

Jackie Nickel
President

DATE: 1/21/03

PC
29B

Back River Neck Peninsula Comm. ASSOCIATION

RESOLVED: That the position of the Back River Neck Peninsula Comm. Association as adopted by the (Board of Directors) (Zoning Committee) on the zoning matter known as: Constellation - Slag Processing

is that: BRNPCA is opposed to the plan on the grounds of zoning, air and water quality, traffic and Master Plan 2010.

AS WITNESS OUR HANDS AND SEAL THIS 21 day of January, 2003.

ATTEST: Back River Neck Pen. Comm. Association,

Marion E. Mackichan
Secretary

Jackie Nickel
President

DC
29C

ESSEX • MIDDLE RIVER • PERRY HALL • WHITE MARSH • CARNEY

# The Avenue News

YOUR COMMUNITY NEWSPAPER SINCE 1974 **FEBRUARY 20, 2002** AUDITED WEEKLY CIRCULATION 73,592 40 PAGES • PRICE 10c

# Tom Horton talks about bay restoration

By JEAN A. FLANAGAN

THE AVENUE NEWS STAFF

ROSEDALE — More than one million people have moved into the Chesapeake Bay watershed over the past decade. And it's people, more than anything, that are responsible for polluting the Chesapeake Bay. In 1991, *Baltimore Sun* columnist Tom Horton wrote "Turning The Tide - Restoring The Chesapeake Bay," where he described the fragile nature of the bay and the efforts in place to reverse its decline.

Last year, the tenth anniversary of the book's publication, Horton looked to update his work. "I wanted to look back at the last decade, and more importantly, look forward to the next ten years," he said.

Horton spoke to a group of more than 60 people at the Rosedale Library last Tuesday. His lecture, and the question and answer session that followed, were sponsored by the Greater Baltimore Group of the Sierra Club.

While there are some reasons to be pleased with our progress in Chesapeake Bay restoration; both Maryland and Virginia are creating and restoring wetlands faster than they are destroying them; Smart Growth, which Horton said is "pretty smart" has taken hold in Maryland; even with the increased population, sewage treatment plants have reduced the amount of nitrogen and phosphorus pollution they are releasing into the bay; there is still much work to be done. "We have run very hard just to stay in place," Horton said.

"The root problem is, the bay is overfed, like most humans. It is stuffed with nutrients; nitrogen and phosphorus."

See **HORTON, 28** ▶



PHOTO BY JEAN FLANAGAN

Efforts to restore the Chesapeake Bay have made some progress over the last 10 years, but conservationists have a long way to go before it's pristine.

# Restoration of the Chesapeake Bay will take limitations on population in the watershed

▶ HORTON, from 1

To make his point, Horton used a yardstick. "A yardstick is 36 inches," he said. "If each inch represents 10 million pounds, it equals the amount of nitrogen entering the bay in 1985.

"Over the past 17 years, we have reduced the amount to 30 inches, a decrease of 60 million pounds. We need to get to 15 inches on the yardstick. It's not like we're even close."

One of the things he pointed to is the effect of air pollution on water quality. As much as 32 percent of the bay's problem comes from cars and power plants. "While the bay watershed is 64,000 square miles, the airshed is much bigger," he said. "The Clean Air Act is not geared for water."

Also somewhat underestimated, is the effect of storm water runoff on water quality. While there have been significant gains in wetland restoration, statewide, the increase in storm water runoff is offsetting those gains. "If ten pounds of nitrogen falls on the pavement, ten pounds of nitrogen runs into the bay," Horton said. "If ten pounds of nitrogen falls on a forest, only one pound runs into the bay."

The new question, Horton said, is how to make the next decade better. Horton said his biggest fear is that the next generation will not remember what a healthy bay is. He said he can remember catching shad in the rivers when he was a boy, but his kids won't have that memory because the shad stopped coming up into the rivers years ago. "How can you miss something you never had?

"First you need to convince people it's a problem. Restoration is not on the national agenda. And it's unrealistic to talk about restoration until you talk about stabilizing the population."

But subjects like immigration and fertility rates are not popular topics, Horton said. People tend to think economic prosperity of an area is linked to increased population. "Even if we could stop the population growth, we would still have a tremendous task."

Technology has been of some benefit. The new generation of automobiles will cut nitrogen emissions over 90 percent and new sewage treatment plants can reduce nitrogen between 50 and 90 percent. "But it's not realistic to use technology to surmount population growth," he said.

Changes in lifestyle would be helpful. "If the world population would follow a Mediterranean diet — not meatless, but less meat — we would use 40 to 50 percent less fertilizer."

The cost of bay restoration is "not cheap, but affordable," Horton said. The pricetag is somewhere near $12 billion over the next 10 years, which works out to about 25 cents per person per day. "Majority of that would go to take farmland out of production and plant it back in trees."

All-in-all, Horton said he is "hopeful, not optimistic. I'm hopeful because we see ways to do it. It won't be cheap, but it's affordable. And we know what our mistakes were."

In response to a question from the audience regarding commercial boating, Horton said he would like to see the Maryland Port Authority abandon the C&D Canal as a deep draft channel. The Port of Baltimore will still need to be dredged, and the problem of what to do with the spoils will remain. "The trend is to build artificial islands," he said. "But how many artificial islands do we want in the bay?"

He said Hurricane Agnes, in 1972 "pu more sediment in the bay than it would get in 40 years."

When another audience member asked about buffer capacity, Horton said, "That crashed in the 70s when we went from a half-million acres to 60,000 acres of sea grass.

"When we complain about losing a quarter-acre of wetlands — and I still see calls for environmental groups to be reasonable — that we have to balance environmental concerns and economic development — if you consider its a quarter-acre of the last 27 percent of wetlands, it puts it in a different perspective."

# environhealthaction

a place where the health community can learn and take action



Toxics and Health

Children's Environmental Health

Air Pollution and Health

Climate Change and Health

Chronic Disease and the Environment

Safe Drinking Water

Land Use and Public Health

Vulnerable Populations

## Air Pollution and Health

In This S

» Health Eff
» Power Pla
» Fuel Emis
» Outdoor A
» Indoor Air
» Energy ar

Articles

» The Hous bill, HR4, introduce Senate Ap

Air pollution is a general term for a variety of substances and gases in our air that pose risks to health. Pollutants include nitrogen oxides, sulfur dioxide, carbon dioxide, particulate matter, volatile organic compounds (VOCs), and some naturally occurring substances such as pollen. The combination of nitrogen oxides and VOCs in the presence of sunlight forms ozone, the major constituent of smog. Ozone has been shown to exacerbate asthma and cause shortness of breath and lung damage.

Most air pollution comes from human-made sources such as fossil fuel combustion, transportation, power plant emissions and emissions from other industrial processes. Burning fossil fuels for electricity generation is the single greatest source of air pollution in the United States. Fossil fuel combustion produces many pollutants including nitrogen oxides, sulfur oxides, hydrocarbons, and particulates. These pollutants can cause serious health problems including asthma, irritation of the lungs, bronchitis, pneumonia, decreased resistance to respiratory infections, and early death.

Some pollutants also cause certain environmental conditions, such as acid rain and climate change. Carbon dioxide emissions are a primary contributor to climate change. According to climate scientists, if carbon dioxide levels continue to increase, the planet will become warmer in the next century. Increases in temperature will most likely result in a variety of impacts including more heat-related illness, more severe weather events such as floods and droughts and resulting damage, and an increase in cases of vector-borne and water-borne diseases, and sea-level rise. Nitrogen oxides and sulfur oxides are important constituents of acid rain, which destroys lakes and rivers, diminishes crop yields, and deteriorates buildings.

Some air pollutants are toxic. Also known as hazardous air pollutants, these pollutants are known or suspected to cause cancer or other serious health effects, such as reproductive effects or birth defects, or adverse environmental effects. Examples of toxic air pollutants include VOCs such as

benzene, which is found in gasoline, persistent organic compounds such as dioxin, and metals such as mercury and lead.

In the United States, air pollution is regulated by the Environmental Protection Agency under authority given by Congress in the Clean Air Act. Health based standards are set for criteria pollutants. Areas that are out of compliance with these standards are known as non-attainment areas.

**To learn more, please visit:**

EPA: Office of Air and Radiation

EPA: Air Pollution Concentrations in the United States

American Lung Association: Air Quality Page



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Washington, DC, 20009

**Factsheets**

**available factsheets...**

Alzheimer's Disease

Amyotrophic Lateral Sclerosis

Asthma

Birth Defects

Cancer

Childhood Cancer

Chronic Diseases Affect Minorities Disproportionately

Developmental Disabilities

Lead Poisoning

Mercury Exposure

Multiple Sclerosis

Parkinson's Disease

PCBs and Dioxins

Pesticide Exposure

Your Health and the Environment

# Your Health and the Environment

The environment has a significant impact on our health. Environmental factors ca the risk of chronic diseases like cancer, asthma, and birth defects. Recent studies relationship between the environment and a variety of chronic diseases. But we r health information to better prevent these illnesses.

## Chronic Diseases And Conditions Linked To Air Pollution

*Air Pollution and Cancer*

- Increasing evidence suggests that long-term exposure to air pollution incre risk of lung cancer. In fact, a study published in the March 2002 Journal of American Medical Association found people living in the most polluted meti areas have a 12% increased risk of dying from lung cancer compared to pe polluted areas.
- The study's authors said exposure to tiny particles of soot and sulfates is c to second-hand smoke effects.

*Air Pollution and Birth Defects*

- Increasing evidence also suggests that air pollution may play a role in caus birth defects. In fact, a study published in the American Journal of Epidemi January 2002 found that pregnant women living in areas with higher levels and carbon monoxide pollution are three times more likely to have babies birth defects.

*Air Pollution and Asthma*

- Improved air quality has been linked to a drop in acute asthma cases. Duri Atlanta Olympic Games, reduced downtown traffic resulted in a 28% drop pollution levels. During the same time period, asthma-related medical eme among children dropped more than 40%, according to researchers at the ( Disease Control and Prevention. Their findings were published in the Journ American Medical Association in February 2001.

## Pesticides Increase Risk Of Chronic Disease

- Children are 5-6 times more likely to develop leukemia and brain cancer if

families use pesticides at home, according to a network of pediatric epiden known as the Children's Cancer Group Epidemiology Program, which is prir funded by the National Institutes of Health.

- Research presented at the American Academy of Neurology meeting in 20( published in the Journal of the American Medical Association found exposu pesticides in homes and gardens may significantly increase the risk of Park disease.

**Environmental Factors, Not Genetics, Explain Most Cancers**

- Most types of cancer are explained mainly by environmental factors, such a
  - Alcohol
  - Radiation
  - Dietary habits
  - Toxic chemicals
  - Viral infection
  - Tobacco Smoke

- Many chemicals present in the environment have been shown to cause can exposure levels. The effects at low levels and the role of multiple exposure are not as clear but are potentially worrisome.
- An estimated 73% of the causation of breast cancer is environmental, acc( study of twins published in The New England Journal of Medicine in July 20
- The same study concluded that the "environment has the principal role in ( sporadic cancer."

**Lead Exposure Related To Alzheimer's**

- People who have worked in jobs with high levels of lead exposure are abou more likely to develop Alzheimer's disease, according to a study by scientis Western Reserve University and University Hospitals, which was presented meeting of the American Academy of Neurology.

**A Nationwide Health Tracking Network Is An Essential Step Toward Disea Prevention**

Chronic diseases are the number one killer of Americans, accounting for seven ou deaths each year. While we know that the number of Americans suffering from m illnesses has risen, we do not have enough information to know why. Tracking wh when these diseases occur and their possible links to environmental factors is the preventing future illnesses. A nationwide health tracking network to track chronic and associated environmental factors would help provide communities and health with the information they need to help prevent these deadly diseases.

Congress has made a down payment on this network, providing $17.5 million in F 2002 for state-level pilot programs. A nationwide network would cost $275 millio less than one dollar per American, and substantially less than the $325 billion tha diseases cost our society each year. Preventing disease starts with better health i A nationwide health tracking network is common sense, cost-effective and long o

P.C. 14 A-R
(18 photos)

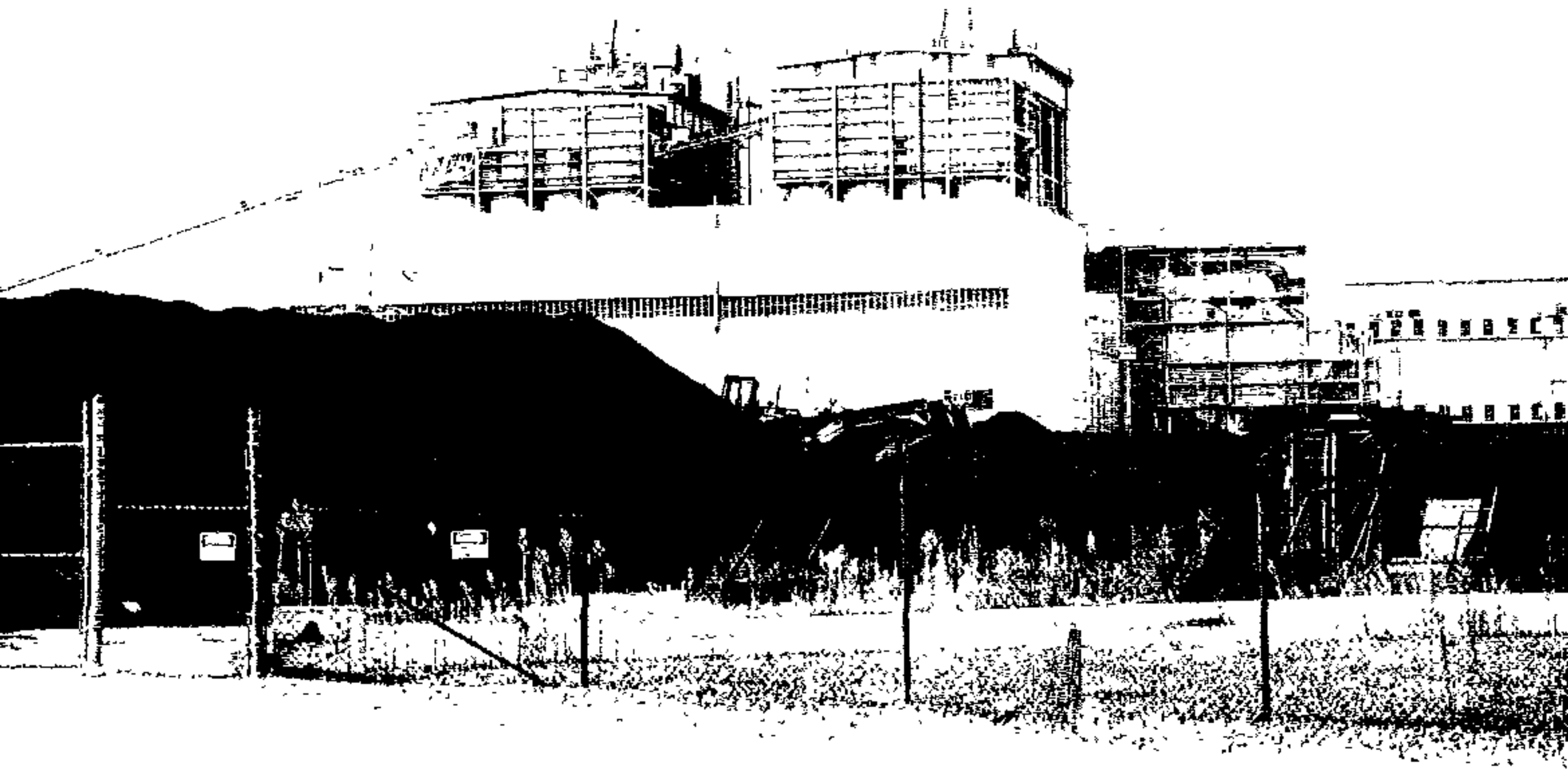
02-098-SPH
Constellation PSG Inc

DC 26 A-L

(A) View from End of Asher Rd

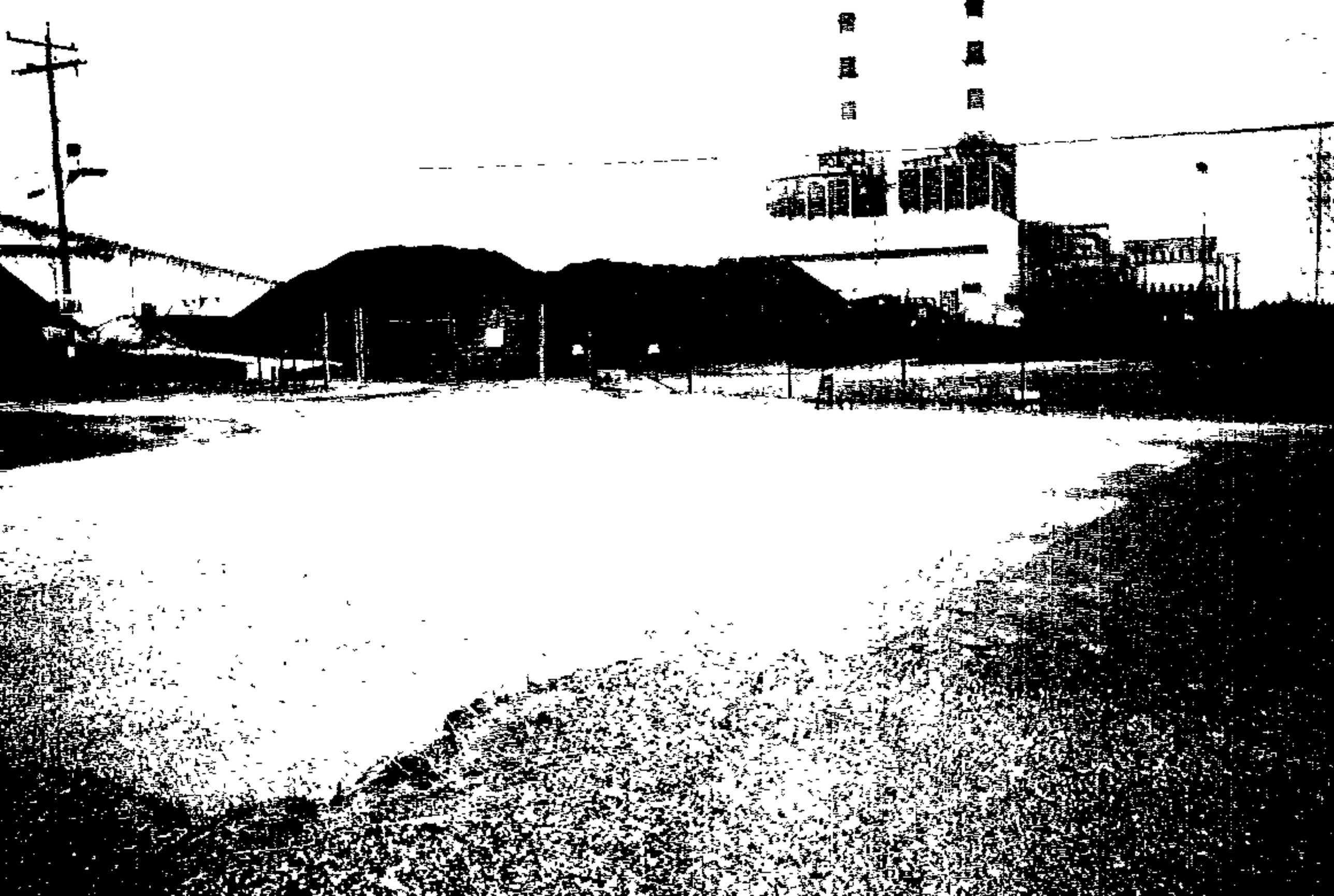
(B) View from 1ST house on Beach Dr -

PC 2B B



(c) View of Site at Entrence @ Carroll Is Rd

PC 26 C



(D) View of Site from Far Side of Carroll Is Rd

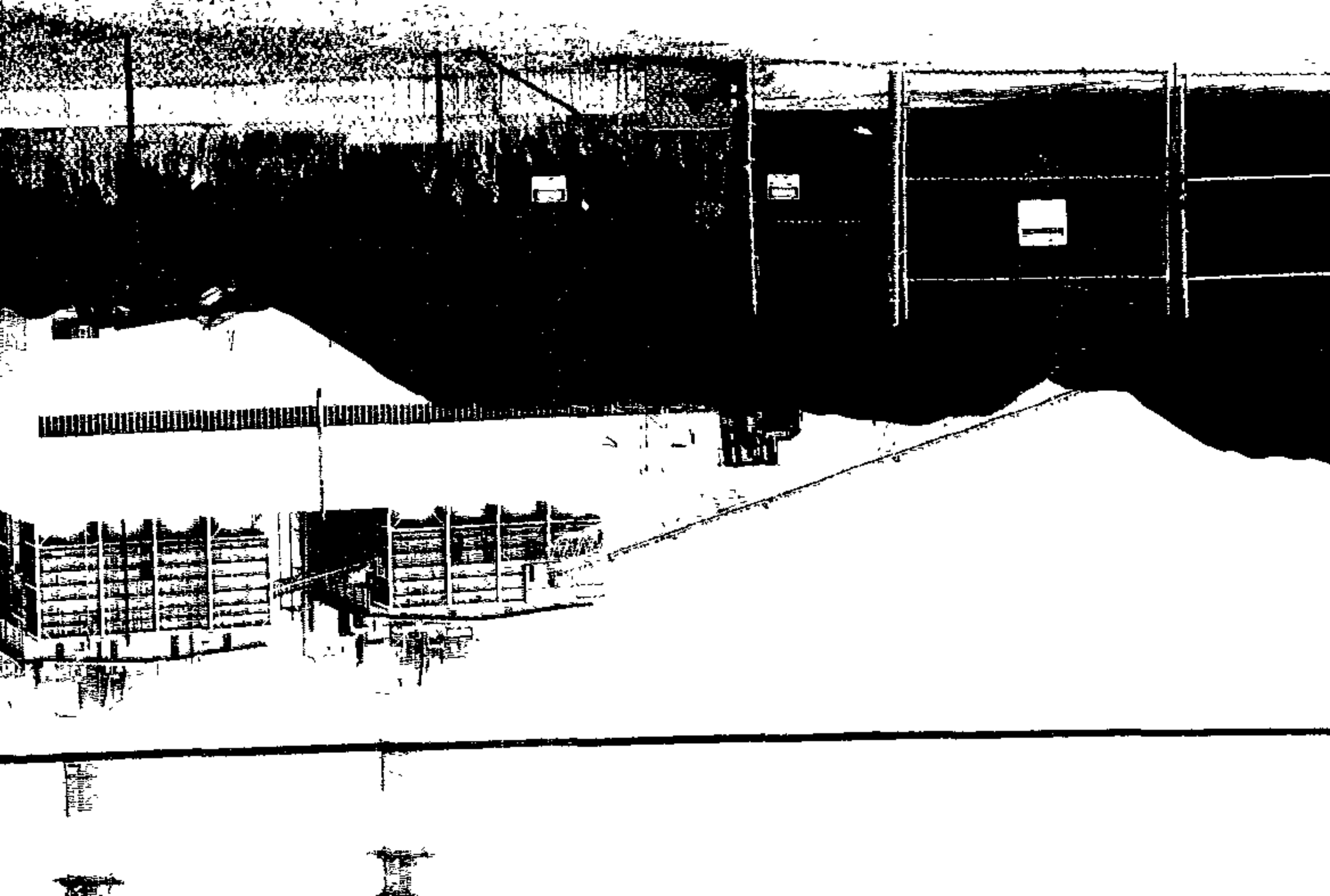
PC 26 D

(1) View of Site from Carroll Jo. Rd.

PC 276

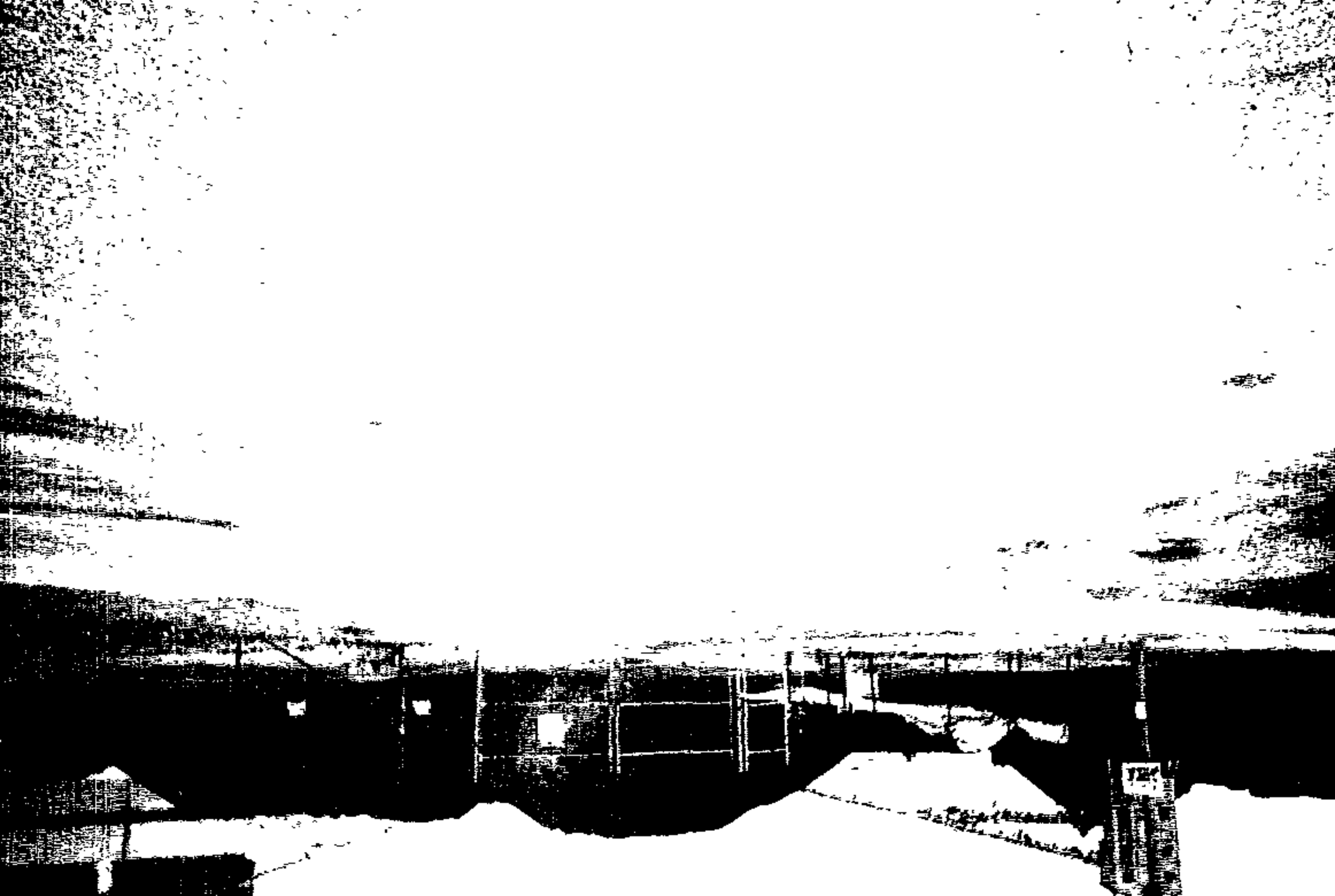
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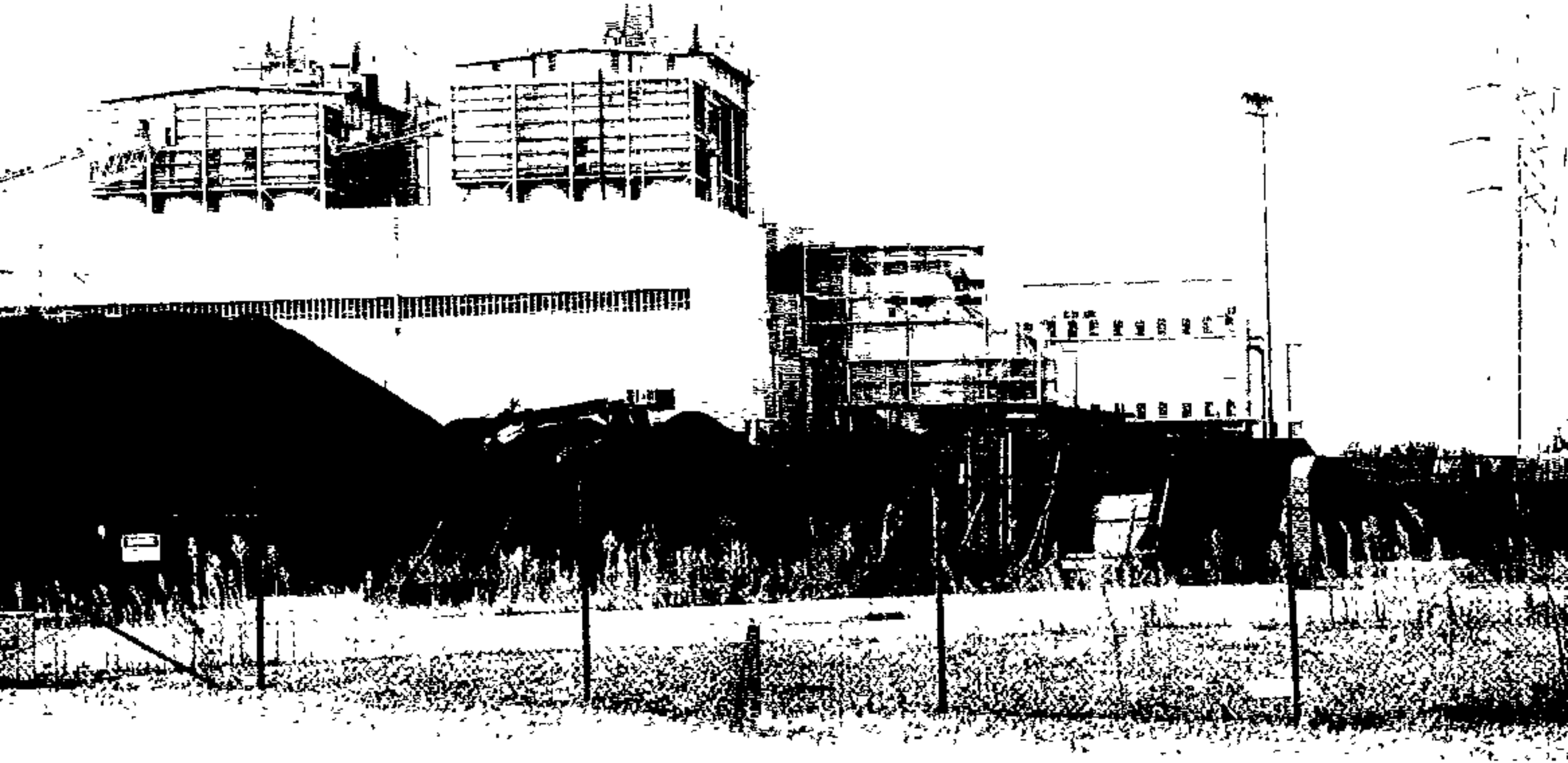
CAT



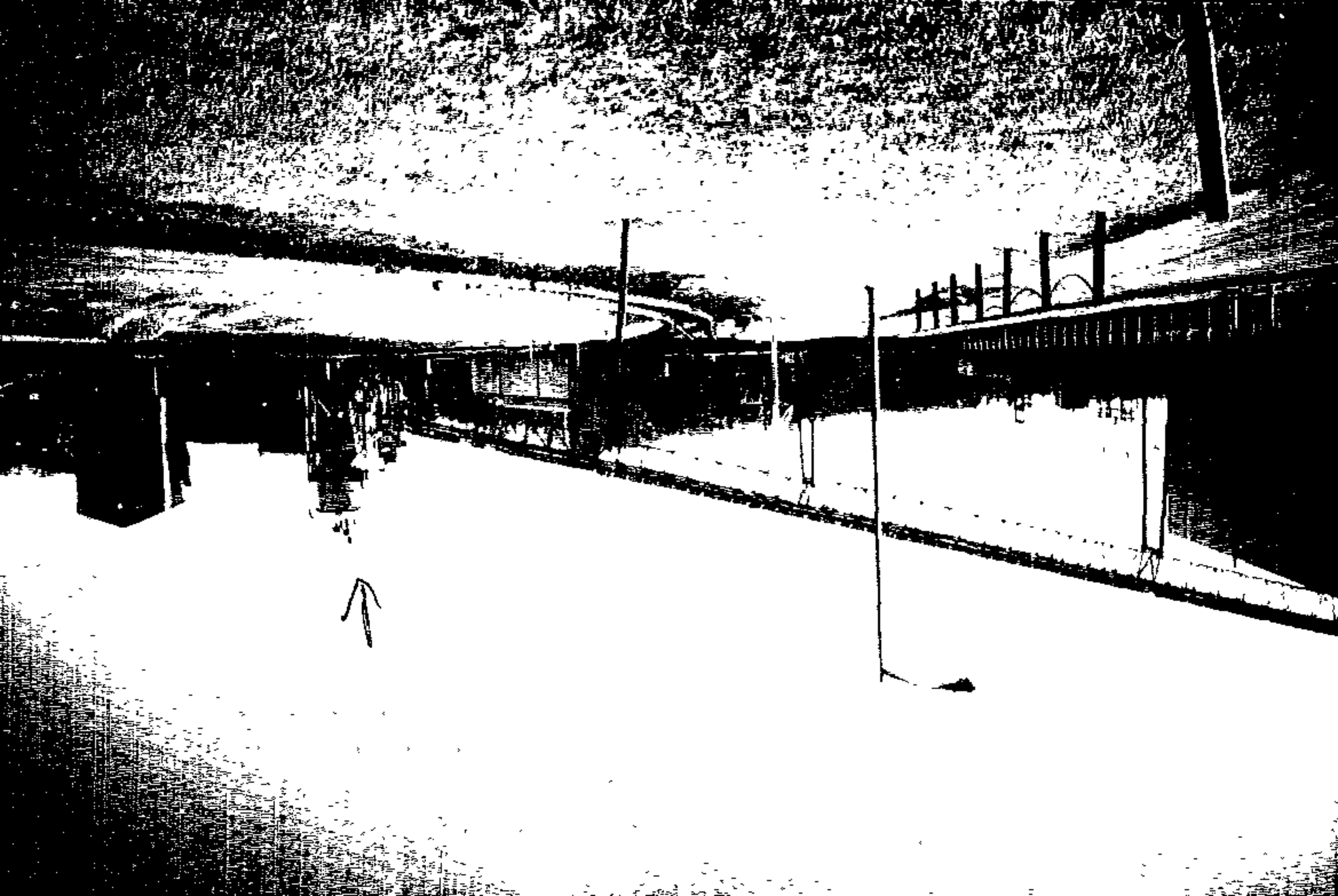
(1) Dirt on Rd. from Trucks

PC26 I





(K) Equipment placed @ site



(D) Silo in plant - cannot Be seen from outside property due to other plant Buildings

PC26L

PC 14 A

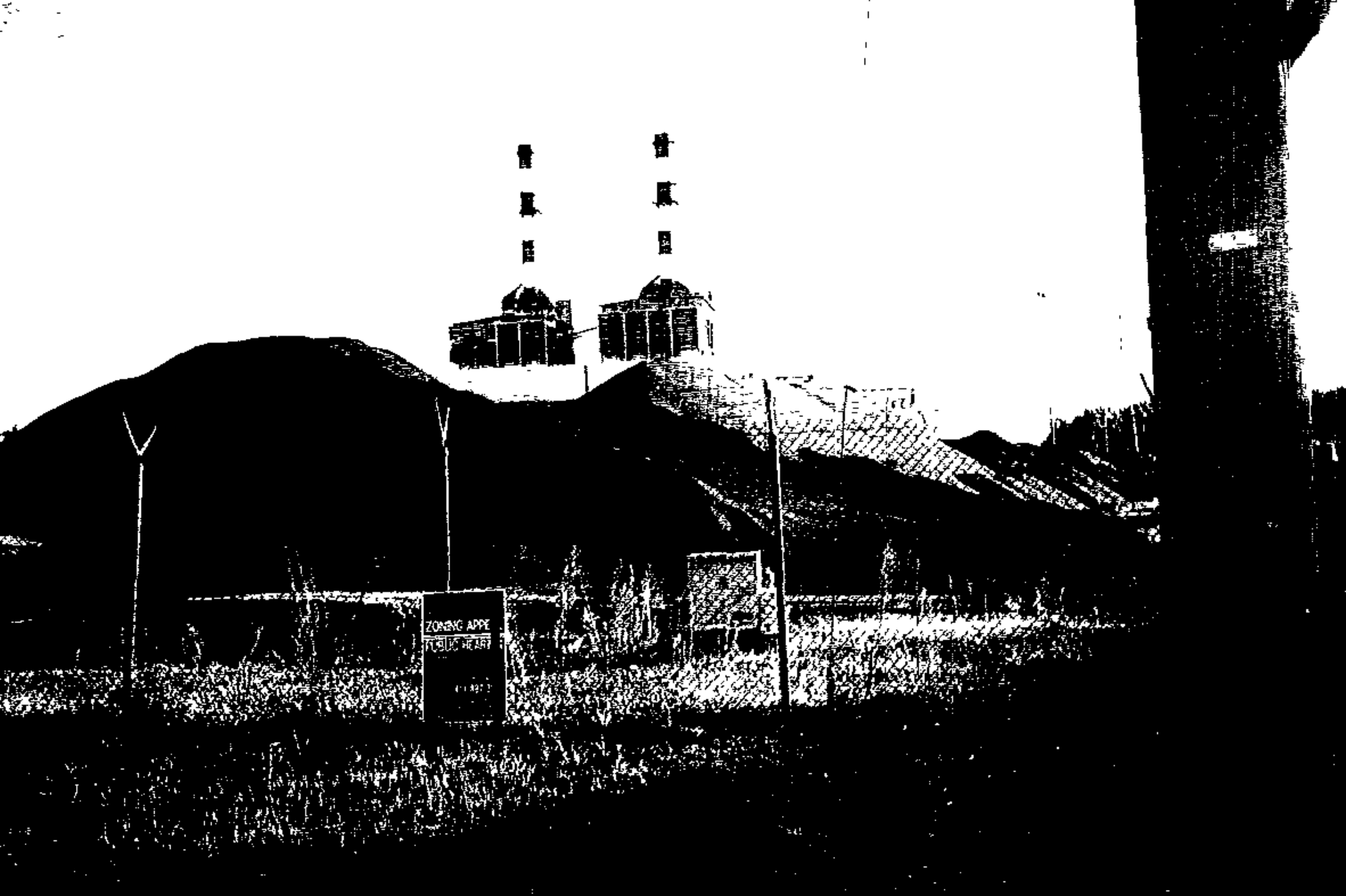


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Copy of 2020 CD Submitted by Chairman Re: 2020-21 Budget

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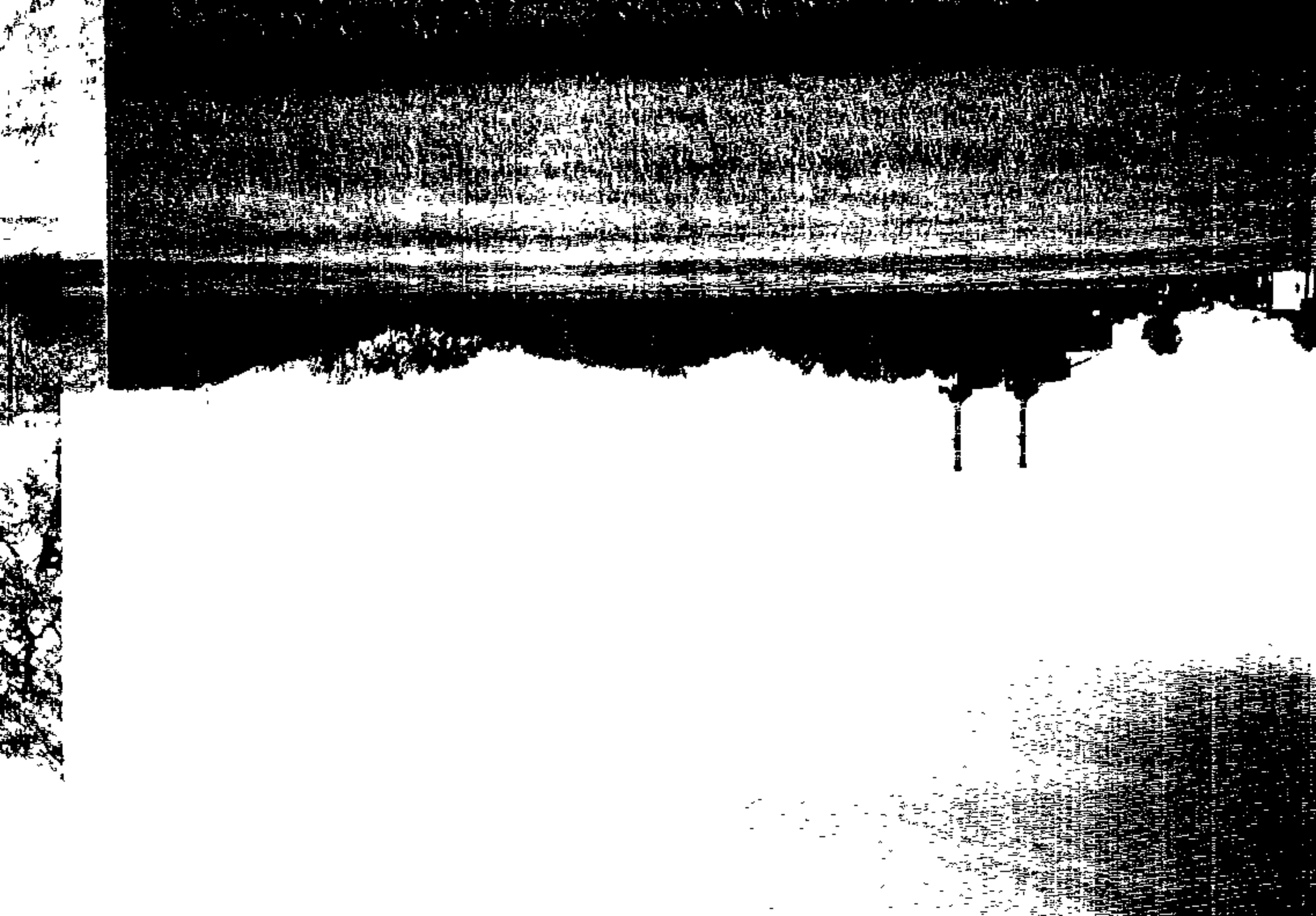
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Oct 25 2004 08:24 FR

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CASE: 2021-0500 EXHIBIT: 2
SUBMITTED BY: [illegible]
DATE: [illegible]

PC 14

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14 M

Oct. 1, 1957 D. SCHWARTZ 2,807,921
SPRING-BIASED SLIDE FASTENER
Filed Dec. 26, 1956

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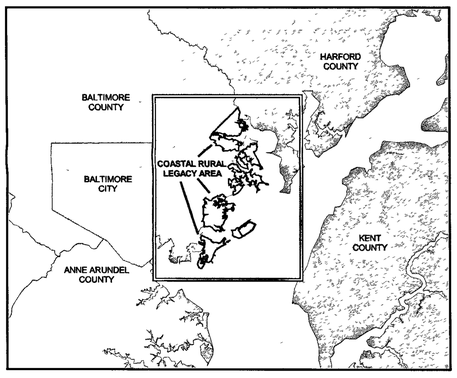


220-030-800 ENGLISH NEWS

PC
14 R

# The Coastal Rural Legacy Area
# Baltimore County, Maryland

## Location Map







## Legend

- Rural Legacy Easements
- Other Protected Land
- Streams
- Roads

Note: Approximately half of the land in the Coastal Rural Legacy Area is now protected through public ownership or as a result of having an easement placed upon it. Work to protect an even greater area is currently under way.

Sources

COASTAL LEGACY BOUNDARY AND PARTICIPANTS
Coastal Rural Legacy Sponsors
Scale Of Data-1 7 200
Date Of Data -3.00

PUBLIC LANDS
Balto County Planning/Zoning
Scale of Data-1 24 000
Date Of Data-1995

HISTORIC SITES
Balto County Planning/Zoning
Scale Of Data-1 24 000
Date Of Data- 1994

ROADS
Baltimore Metropolitan Council
Scale Of Data -1 24 000
Date Of Data -7 97

STREAMS
Baltimore County DEPRM
Scale Of Data-1 2,400
Date Of Data-1994

Due to scale variations the locations of features on the map may be shifted from their true ground positions

N

0.5 0 0.5 1 1.5 Miles



BALTIMORE COUNTY MARYLAND

PC. # 11

8:\wtkgrns\deprm\projects\admn\wally\coast2000.apr

PC 11

K L M N O

8 7 6 5 4 3 2 1

(SHEET 5C)

B-I-R-D R-I-V-E-R

11th District

15th District

RC 50 GUNPOWDER FALLS STATE PARK

RC 2

RC 3

RC 20

RC 5

RC 50

MH-/M

ML-/M

MLR-/M

MLR

DR 5.5

DR 3.5

DR 2

DR 1

DR 16

BL

BM

BR

BMB

HAREWOOD PARK

RAILROAD CREEK

BIRD RIVER BEACH

WOODS AT BAY COUNTRY

CUNNINGHILL COVE

OLIVER BEACH LS

HERITAGE

DUNDEE CREEK

DUNDEE SALTPETER CREEKS NATURAL ENVIRONMENT AREA

SALTPETER CREEK

CARROLLWOOD MANOR

SENECA ELEM SCH

SENECA PARK

SENECA CREEK

BOWLEYS QUARTERS

MIAMI BEACH PARK

GALLOWAY CREEK

MIDDLE RIVER

CHESAPEAKE BAY

GUNPOWDER RIVER

HARFORD COUNTY

PROVING GROUNDS

ASBERDEEN

CARROLL ISLAND

HAWTHORN COVE

HART MILLER ISLAND

SWAN POINT

HAWK COVE

PLEASURE ISLAND

SANDY PT

MARSHY PT

BENSIES PT

BATTERY PT

WHITE OAK PT

BRIER PT

LOWER ISLAND PT

BOWLEY PT

LOG PT

CUCKOLD PT

CARROLL PT

BOODY PT

SCALE 1"= 1000'

0 1/4 1/2 3/4 1 MILES

0 1000 3000 5000 FEET

MAP INDEX

INSET

EXTENSION OF SHEET 4A

HART AND MILLER ISLAND

CHASE - BOWLEYS QTRS.

BALTIMORE COUNTY BASE MAP SERIES

# BALTIMORE COUNTY OFFICE OF PLANNING

REVISED DATE SEP '94

5B

PC EXH 6

(SHEET N.E. 4-L)

N12,000 E66,000 E67,500 E69,000 E70,500 E72,000

N11,000

N10,000

N 9,000

N 8,000

(SHEET N.E. 3-K)

(SHEET N.E. 3-M)

(SHEET N.E. 2-L)

R.C. 20

R.C. 5

D.R. 16

D.R. 3.5

D.R. 3.5

D.R. 3.5

R.C. 20

R.C. 20

R.C. 20

R.C. 5

R.C. 5

R.C. 5

R.C. 5

R.C. 5

SENECA PARK

SENECA CREEK

BMB

ROAD

PRIVATE RD

PRIVATE ROAD

SENECA PARK ROAD

CARROLL ISLAND ROAD

BEACH RD

TT 56

LUTHARDT ROAD

NANNETTE

SENECA LANE

PARK

CHESTNUT ROAD

PIERS

PIER

WALL

MILITARY RESERVATION BOUNDARY (APPROXIMATE)

N 545,000

N 542,000

N 538,000

E 570,000

E 580,000

2000 COMPREHENSIVE ZONING MAP
ADOPTED by
THE BALTIMORE COUNTY COUNCIL
OCTOBER 10, 2000
Bills Nos. 87-00, 88-00, 89-00, 90-00, 91-00, 92-00, 93-00,

Jamie Boutelle
Chairman, County Council

Z - SW
Z - NW

THIS MAP HAS BEEN REVISED IN SELECTED AREAS
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY BUCHART-HORN, INC BALTIMORE, MD 21210

# BALTIMORE COUNTY
## OFFICE OF PLANNING AND ZONING
# OFFICIAL ZONING MAP

| SCALE | LOCATION | SHEET |
|---|---|---|
| 1" = 200'± | SENECA PARK | N.E. 3-L |
| DATE OF PHOTOGRAPHY JANUARY 1986 | | |

NE 3L

PC 6

PC EXH 5

(SHEET NE 5-L)

N 16,000

E 66,000 E 973,000

E 67,500

E 69,000

E 70,500

E 72,000 E 1,165,000

N 545,000

N 15,000

N 14,000

N 13,000

N 12,000

(SHEET NE 4-M)

(SHEET NE 4-M)

(SHEET NE 3-L)

R.C. 20

R.C. 50

R.C. 5

D.R. 5.5

D.R. 16

DUNDEE

SALTPETER

CREEKS

PARK

SALTPETER CREEK

KEENERS ROAD

KEENERS RD

MARSHY POINT RD

ASHER RD

CARROLL ISLAND RD

BEACH RD

PIER

PIERS

WALL

2000 COMPREHENSIVE ZONING MAP
ADOPTED by
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OCTOBER 10, 2000
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Joseph Bartenfelder
Chairman, County Council

THIS MAP HAS BEEN REVISED IN SELECTED AREAS
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY BUCHART-HORN, INC BALTIMORE, MD 21210

Z-NW

# BALTIMORE COUNTY
# OFFICE OF PLANNING AND ZONING
# OFFICIAL ZONING MAP

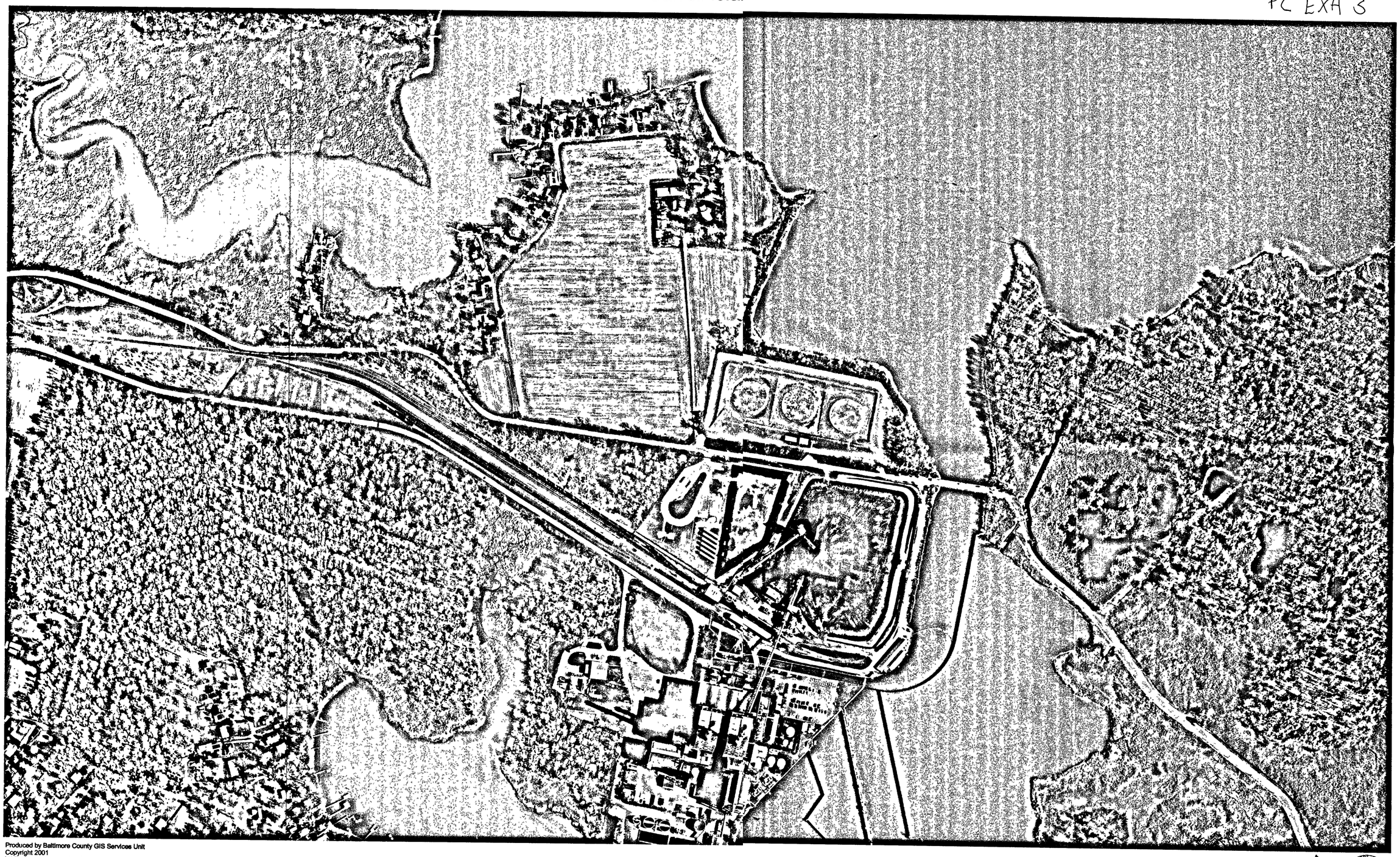
| SCALE | LOCATION | SHEET |
|---|---|---|
| 1" = 200'± | SALTPETER CREEK | N.E. 4-L |
| DATE OF PHOTOGRAPHY JANUARY 1986 | | |

NE 4L

PC5

PC EXH 3

# Carroll Island



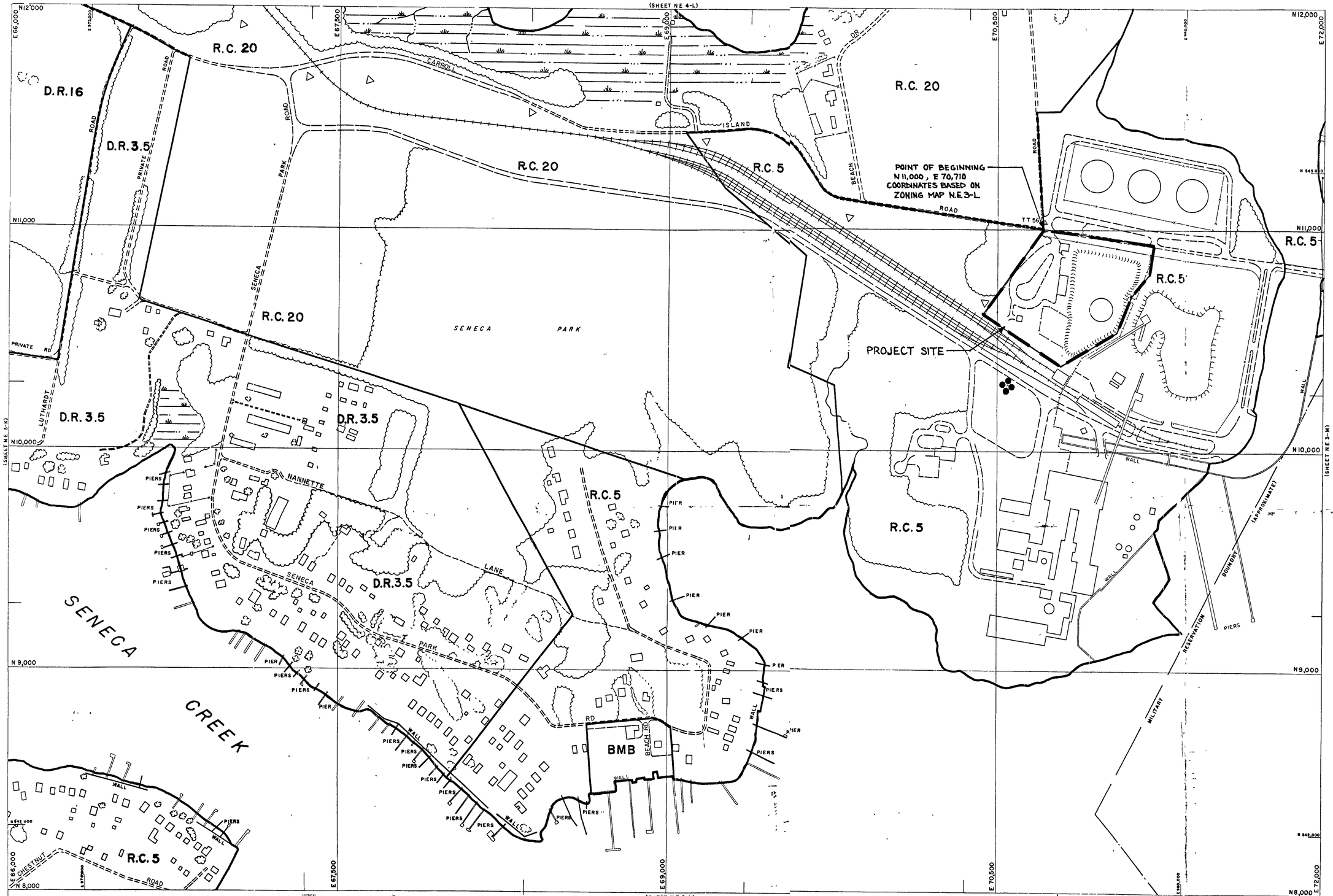
Produced by Baltimore County GIS Services Unit
Copyright 2001
VARGIS LLC Herdon, Virginia
All Rights Reserved

Scale: 1" = 200'

200 0 200 400 600 800 Feet

N

PC 3.




Z - SW

Z - NW

THIS MAP HAS BEEN REVISED IN SELECTED AREAS
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY BUCHART-HORN, INC BALTIMORE, MD 21210

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ADOPTED by
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OCTOBER 10, 2000
Bills Nos. 87-00, 88-00, 89-00, 90-00, 91-00, 92-00, 93 00.

Joseph Bartenfelder
Chairman, County Council

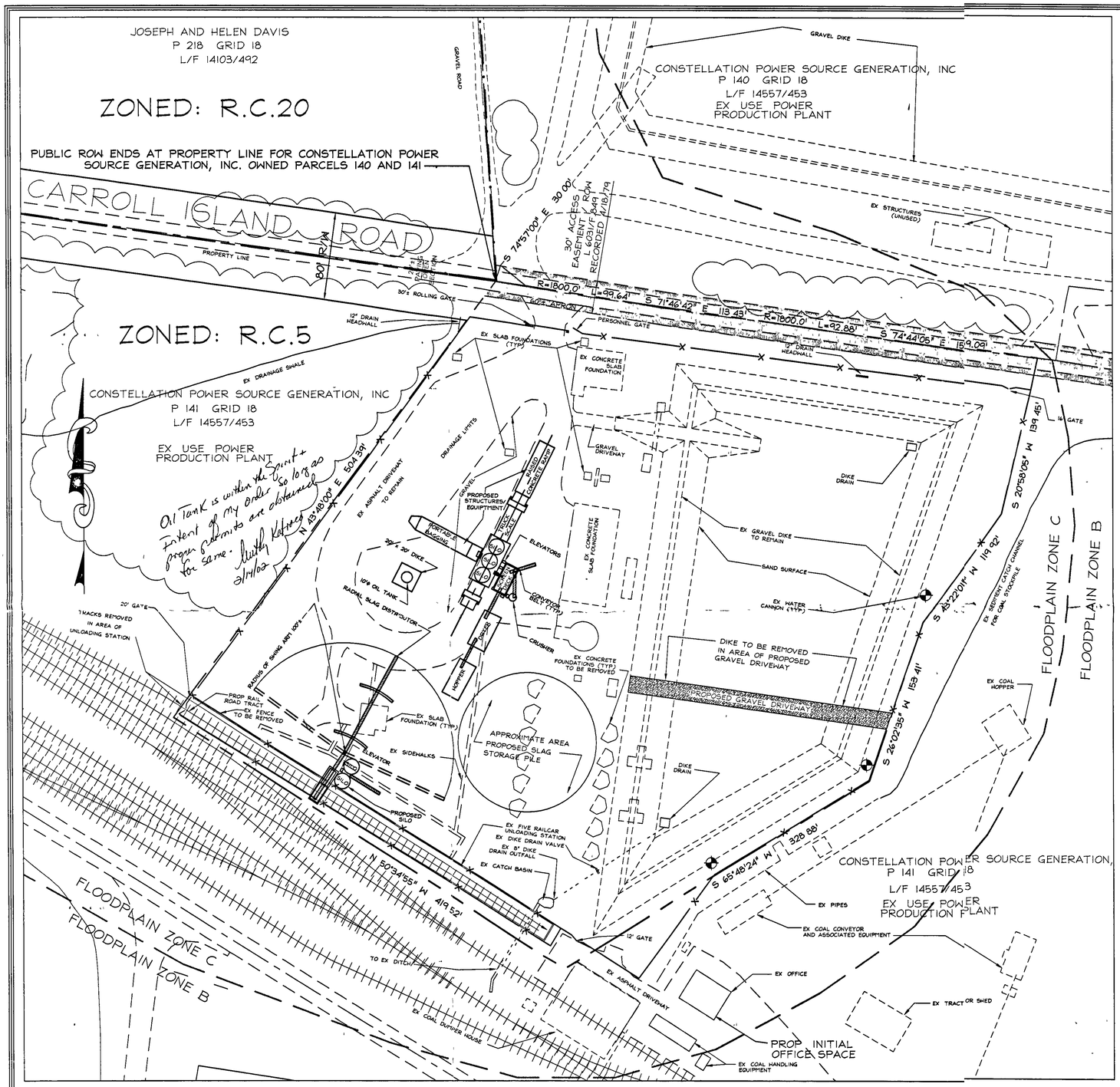
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|---|---|---|
| 1" = 200'± | SENECA PARK | N.E 3-L |
| DATE OF PHOTOGRAPHY JANUARY 1986 | | |

NE 3 L

#098

ml_mandwg Layout: 01/22/02 12:13:36 PM




OWNER
CONSTELLATION POWER SOURCE GENERATION, INC.
111 MARKET PLACE SUITE 200
BALTIMORE, MD 21202

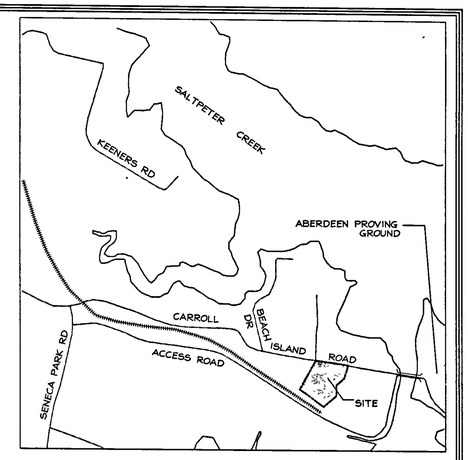
PLAN
SCALE 1"=50'

LEGEND
- SITE BOUNDARY
- ZONING AREA BOUNDARY
- FLOODPLAIN ZONE BOUNDARY
- EXISTING ROAD CENTERLINE
- EXISTING TREE LINE

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- I) PREVIOUS PERMIT NUMBER a) 1432-73 b) B-163077

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VICINITY MAP
SCALE 1"=1000'

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3) October 31, 1973 Special Hearing and Variance for a propane storage facility on 6 83 AC at C P Crane Power Generating Station, Petition No 74-102-A5PH, The Petition for Special Hearing to amend the previously approved Special Exception to permit the construction of a propane storage facility and to interpret the propane storage facility as properly includable within the existing Special Exception was granted, and the Petition for Variance to permit the construction of a storage tank 110' in height in lieu of the permitted height of 35' was granted

4) November 5, 2001 Case No 02-098-SPH - Special Hearing to amend a previously approved Special Exception and Variance in Cases Nos 4077 and 74-102-A5PH The Special Hearing to amend the previously approved Special Exception and Variance was granted, and the Petitioner's request to modify the site plan in order to construct a slag processing facility was granted On November 30, 2001, the People's Council for Baltimore County appealed this matter to the Baltimore County Board of Appeals A hearing date for this appeal has not yet been scheduled.

STATE OF MARYLAND · BENJAMIN YOSEF FISCH · 22418 · PROFESSIONAL ENGINEER
Benjamin Yosef Fisch

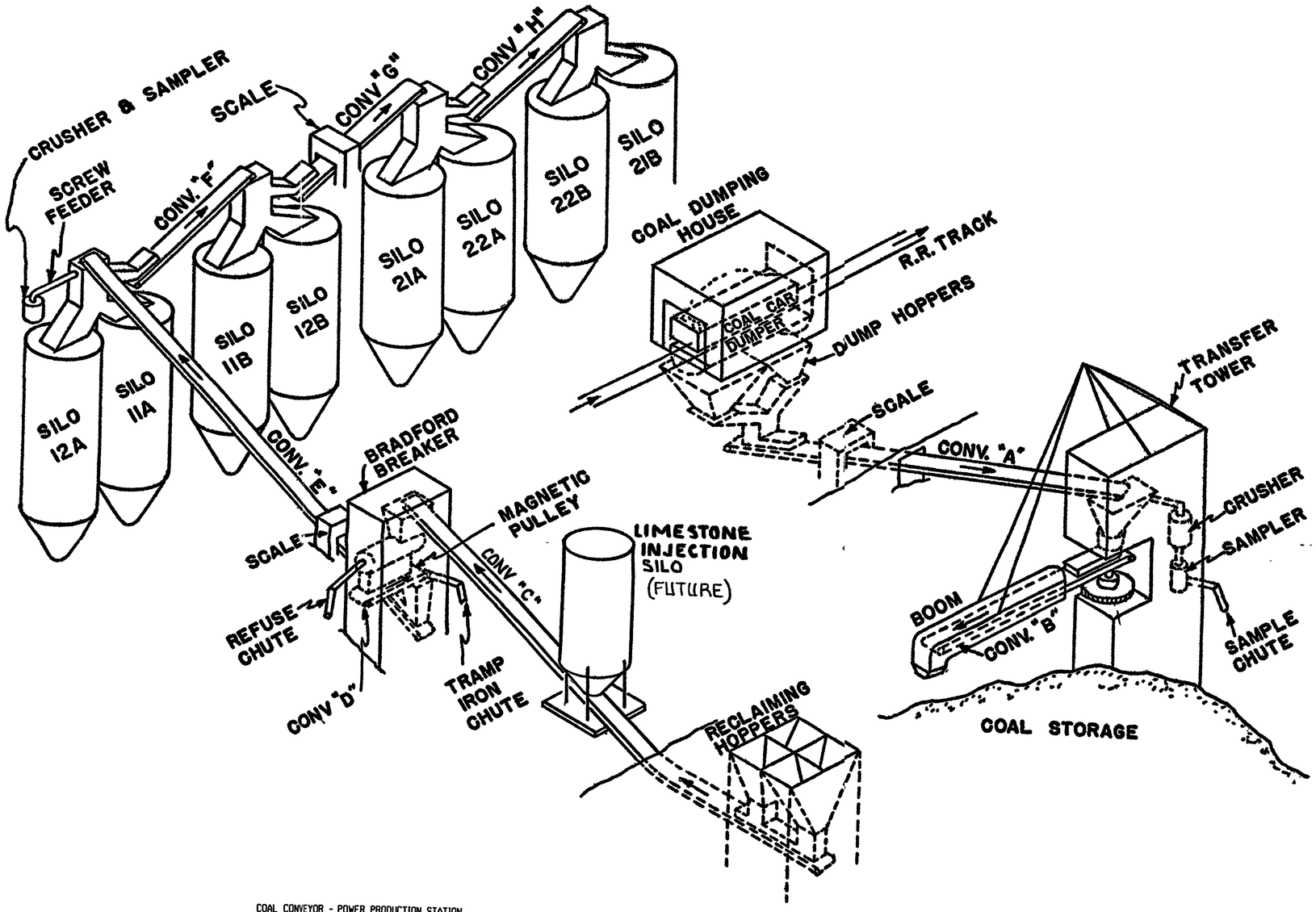
FSH Associates
Engineers Planners Surveyors
8318 Forrest Street Ellicott City, MD 21043
Tel 410-750-2251 Fax 410-750-7350
E-mail FSHAssociates@cs com

EXPLORATION RESEARCH, INC
ENVIRONMENTAL CONSULTANTS
8318 FORREST STREET
ELLICOTT CITY MARYLAND 21043
TEL (410) 750-1150
FAX (410) 750-7550

DRC PLAN
1001 CARROLL ISLAND ROAD
CRANE POWER PLANT
SLAG FACILITY

TAX MAP 91 GRID 18 PART OF PARCEL 141
15TH ELECTION DISTRICT BALTIMORE COUNTY, MARYLAND
5TH COUNCILMANIC DISTRICT

DESIGN BY: RAB
DRAWN BY: RAB
CHECKED BY: ZYF
SCALE: 1"=50'
DATE: JAN 18, 2002
W O No : 3083
SHEET No 1 OF 1




COAL CONVEYOR - POWER PRODUCTION STATION

| | CONVEYOR | | | | | | | | | | BELTING | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | LENGTH | | RISE | | SPEED | CAPACITY | | | (A) | | | |
| | CONVEYOR | C TO C PULLEY | | | | | | | | FABIC | FABIC | COVER INCHES | COVER INCHES |
| | NO.1 | FEET | INCHES | FEET | INCHES | TPH | TPH | LENGTH | WIDTH | FEIGHT | PLY | TOP | BOTTOM |
| DUMPER TO TOWER | A | 469 | 1 15/16 | 115 | 0 | 400 | 1200 | 990'-0" | 54" | CR 70 | 5 | 3/16 | 1/16 |
| TOWER TO PILE | B | 90 | 3 1/2 | +/- 24 | 0 | 400 | 1200 | 215'-0" | 54" | CR 45 | 5 | 3/16 | 1/16 |
| PILE TO BREAKER | C | 290 | 9 | 58 | 0 | 250 | 200 | 615'-0" | 30" | CR 35 | 4 | 1/8 | 1/16 |
| BREAKER TO 'F' | D | 20 | 0 | FLAT | - | 250 | 200 | 52.5'-0" | 30" | CR 35 | 4 | 1/8 | 1/16 |
| 'D' TO SILO | E | 602 | 0 | 150 | 6 | 400 | 200 | 1248'-0" | 24" | CR 40 | 5 | 1/8 | 1/16 |
| SILO 11A & 12A TO 11B & 12B | F | 39 | 0 | 10 | 0 | 400 | 200 | 101'-0" | 24" | CR 35 | 4 | 1/8 | 1/16 |
| SILO 11A & 12A TO 21A & 22A | G | 94 | 6 5/16 | 21 | 1 7/16 | 400 | 200 | 206'-0" | 24" | CR 35 | 4 | 1/8 | 1/16 |
| SILO 21A & 22A TO 21B & 22B | H | 39 | 5 5/16 | 10 | 1 1/16 | 400 | 200 | 96'-0" | 24" | CR 35 | 4 | 1/8 | 1/16 |
| | | | | | | | | | | | | | |
| (A) - CR - COTTON RAYON | | | | | | | | | | | | | |

FOLD LINE

FOLD LINE
49-503-D

THIS IS A CAD DRAWING. DO NOT REVISE MANUALLY. CADD: 373984.edm

| DESCRIPTION | BY | DATE | APPD. |
|---|---|---|---|
| AS BUILT | | | |
| 1 | D BARR | 9-19-01 | CHK. |
| | | | DWN. |
| REV | DATE | | |

ENGINEERING — DATE
CIVIL
ELEC.
MECH.
I & C
RESP ENGR.
PROJ. ENGR.
SUPV. ENGR.

DESIGN & DRAFTING — DATE
DESIGNED
DRAWN DD 7-18-00
CHECKED

DIAGRAMMATIC
COAL HANDING DRAWING

POWER PRODUCTION PLANT

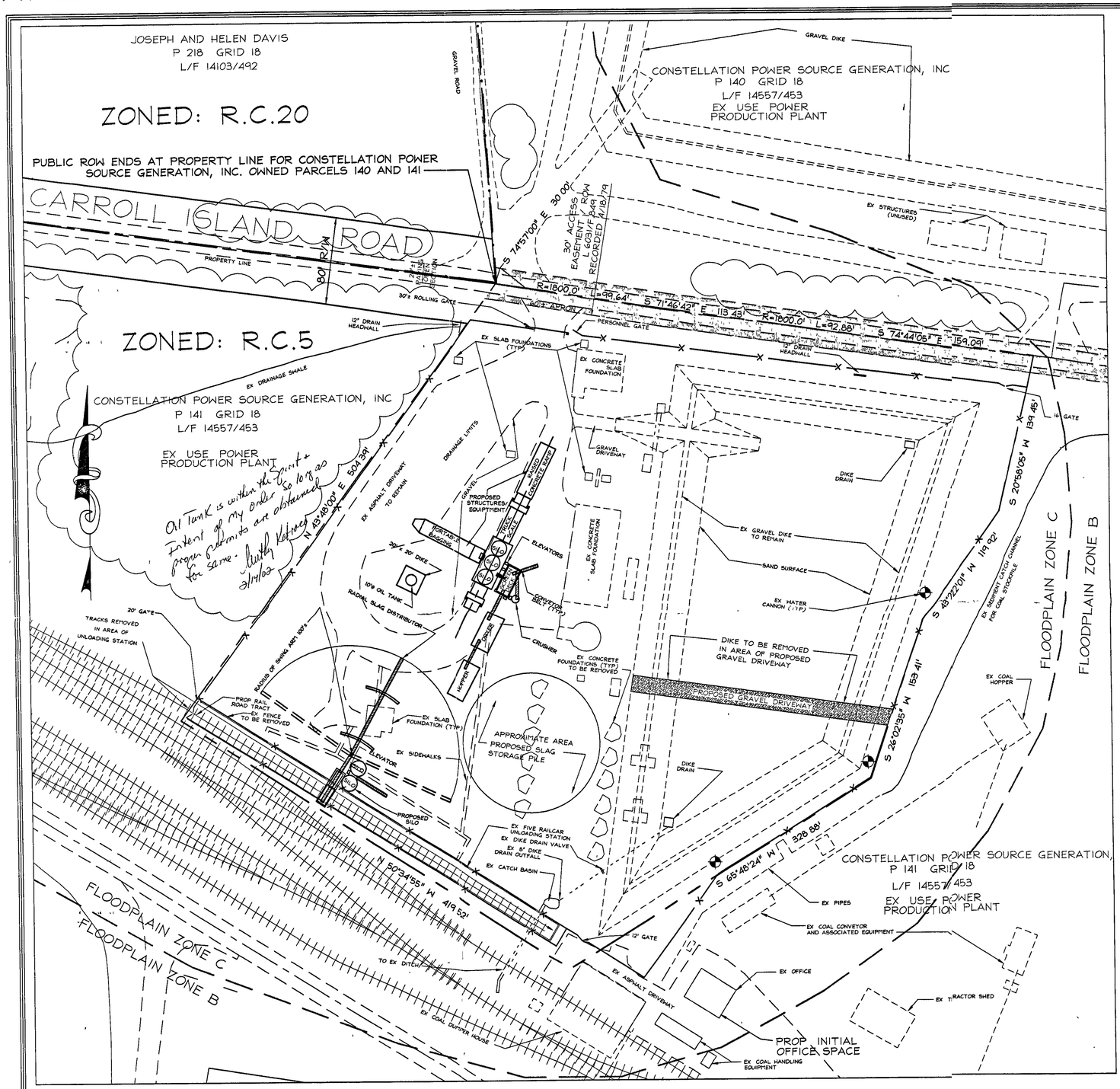
C. P. CRANE — UNIT NO. 1 & 2

CONSTELLATION
POWER SOURCE GENERATION

| FILE | SCALE | REV. |
|---|---|---|
| MICROFILMED ORIG. ☐ REV ___ | DWG. NO. 49-503-D | 1 |

SYSTEM NO'S

DST 2.8




PLAN
SCALE 1"=50'

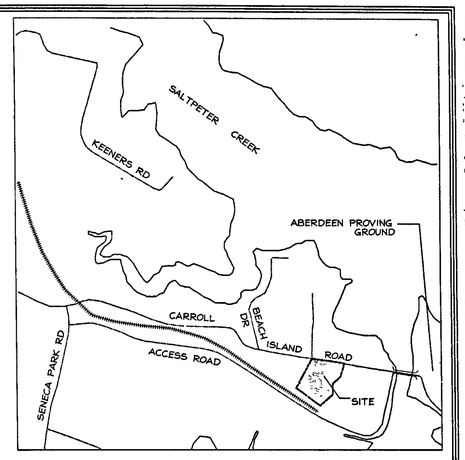
LEGEND
- SITE BOUNDARY
- ZONING AREA BOUNDARY
- FLOODPLAIN ZONE BOUNDARY
- EXISTING ROAD CENTERLINE
- EXISTING TREE LINE

OWNER
CONSTELLATION POWER SOURCE GENERATION, INC.
111 MARKET PLACE SUITE 200
BALTIMORE, MD 21202

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ZACHARIA YOSEF FISCH
22418
PROFESSIONAL ENGINEER

FSH Associates
Engineers Planners Surveyors
8318 Forrest Street Ellicott City, MD 21043
Tel 410-750-2251 Fax 410-750-7350
E-mail FSHAssociates@cs com

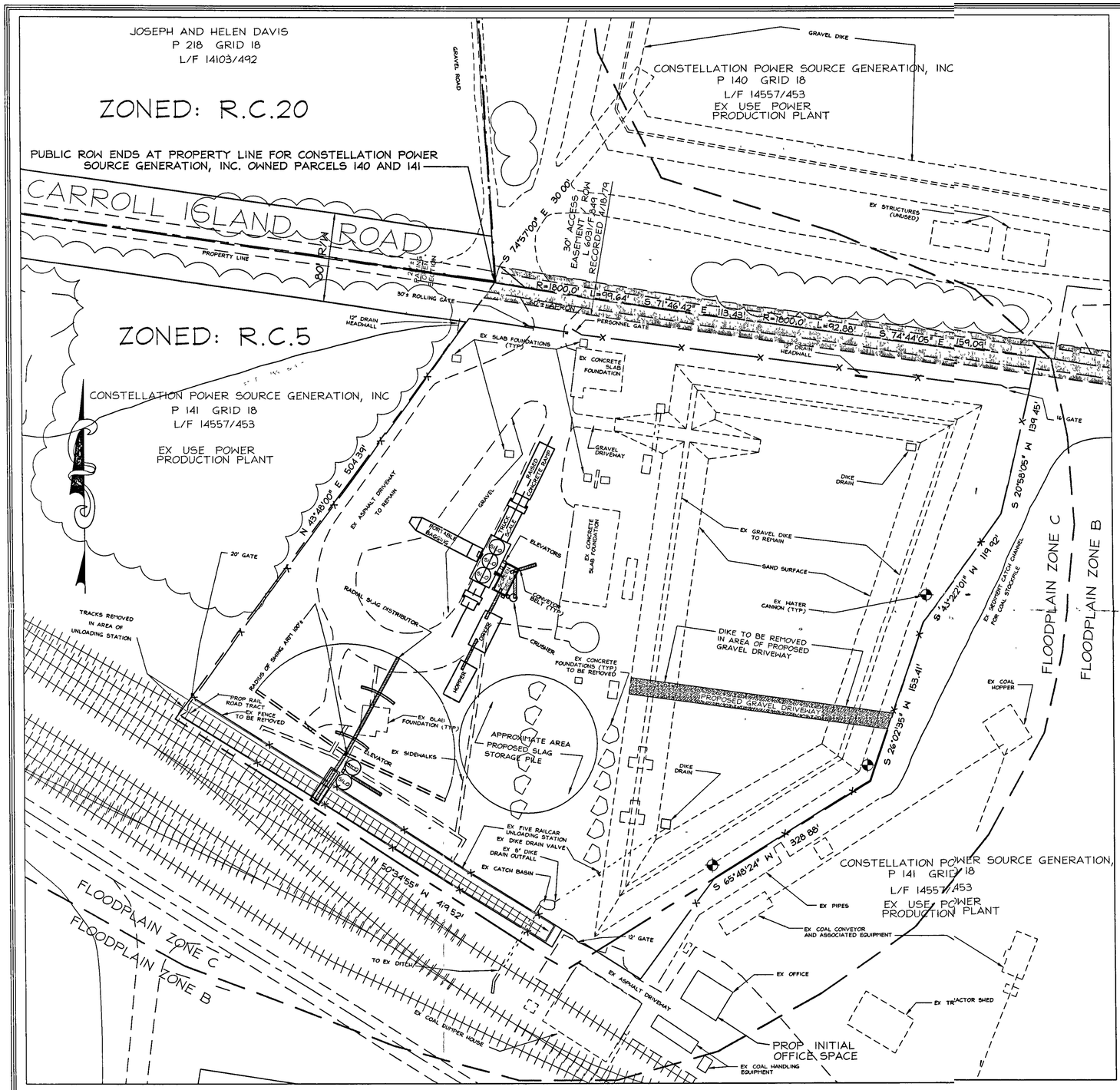
EXPLORATION RESEARCH, INC
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8318 FORREST STREET
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DRC PLAN
1001 CARROLL ISLAND ROAD
CRANE POWER PLANT
SLAG FACILITY
TAX MAP 91 GRID 18 PART OF PARCEL 141
1ETH ELECTION DISTRICT BALTIMORE COUNTY, MARYLAND
5TH COUNCILMANIC DISTRICT

DESIGN BY: RAB
DRAWN BY: RAB
CHECKED BY: ZYF
SCALE: 1"=50'
DATE: JAN 18, 2002
W O No : 3083
SHEET No 1 OF 1

PDT 16

amended Pet # 1



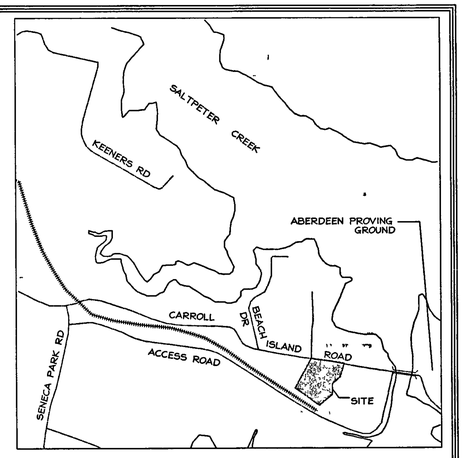

PLAN
SCALE: 1"=50'

LEGEND
- SITE BOUNDARY
- ZONING AREA BOUNDARY
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OWNER
CONSTELLATION POWER SOURCE GENERATION, INC.
111 MARKET PLACE SUITE 200
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VICINITY MAP
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(5) An adequate sewage disposal plant shall be constructed and maintained
(6) Dredging ~~like do~~ where necessary to prevent erosion of neighboring property
(7) Coal will be dumped within buildings only, and coal piles will be oiled when necessary to prevent leaching of sulfur.
(8) No more than one shipment of coal per day per unit shall be received

- September 7, 1971 · Petition for Variance in Case# 72-41-A was granted to permit a structure (dock and sheet piling) to extend approximately 642' beyond mean low tide in lieu of 300', and to permit a structure (dock and sheet piling) to extend approximately 1/2 the width of the waterway in lieu of not more than 1/3 the width of the waterway.

October 31, 1973 Special Hearing and Variance for a propane storage facility on 6 83 AC at C P Crane Power Generating Station; Petition No 74-102-ASPH, The Petition for Special Hearing to amend the previously approved Special Exception to permit the construction of a propane storage facility and to interpret the propane storage facility as properly includable within the existing Special Exception was granted, and the Petition for Variance to permit the construction of a storage tank 110' in height in lieu of the permitted height of 35' was granted.

# ZONING RELIEF REQUESTED

Petition for Special Hearing to approve an Amendment to a previously approved Special Exception and Variance in cases #4077 and 74-102-ASPH.

STATE OF MARYLAND · MOHAMMAD YOSEF FSH · 22418 · PROFESSIONAL ENGINEER

FSH Associates
Engineers Planners Surveyors
8316 Forrest Street Ellicott City, MD 21043
Tel 410-750-2251 Fax 410-750-7350
E-mail FSHAssociates@cs com

EXPLORATION RESEARCH, INC
ENVIRONMENTAL CONSULTANTS
8318 FORREST STREET
ELLICOTT CITY MARYLAND 21043
TEL. (410) 750-1150
FAX (410) 750-7350

PLANS TO ACCOMPANY PETITION FOR SPECIAL HEARING TO AMEND SPECIAL EXCEPTION AND VARIANCE
1001 CARROLL ISLAND ROAD
CRANE POWER PLANT
SLAG FACILITY
TAX MAP 91 GRID 18 — PART OF PARCEL 141
15TH ELECTION DISTRICT — BALTIMORE COUNTY, MARYLAND
5TH COUNCILMANIC DISTRICT

DESIGN BY: RAB
DRAWN BY: RAB
CHECKED BY: ZYF
SCALE: 1"=50'
DATE: SEPT 7, 2001
W O No : 3083
SHEET No 1 OF 1

PET 12

| Name | Address | Phone # |
|---|---|---|
| DAVID CAHLAND JR | 218 STEVENS Rd | 687-5988 |
| Robert J Palmer | 412 ARMSTRONG RD 21220 | 410 335-7000 |
| Janet Walker | 1123 Chester Rd 21220 | 410-335-7968 |
| Ron Walker | 1123 Chester Rd 21220 | 410-335-7968 |
| Robert Biscotti | 19 Flaxleaf Ct. 21221 | 410-574-5348 |
| Sandra Biscotti | 19 Flaxleaf Ct 21221 | 4105743348 |
| Barbara Schroder | 856 Seneca Pk Rd 21221 | 4103352119 |
| Tony Kupsky | 1 HAYLOCK CT 21236 | 410-256-9022 |
| Merry Krumphaly | 1 Haylock Ct. 21236 | 4102569022 |
| Barbara Butt | 2127 Red Thorn Rd 21220 | 410 [illegible]5-34 |
| Karen Biscotti | 7169 Olivia Rd | 410-335-5635 |
| Nick Biscotti | " " " | " " |
| Georganne Kroen | 29 Clearwater Ct. 21220 | 410-335-5813 |
| Rodney Tyger | 29 Clearwater Ct 21220 | 410-335-5813 |
| Jim Massaker | 31 Clearwater 21220 | 410-335-8275 |
| George Massaker | 31 Clearwater Ct 21220 | 410-335-8275 |
| Andrew Barraco | 861 Seneca Pk Rd. | 443-604-6634 |
| Elizabeth Martin | 710 Asher Rd | 410 335-7961 |
| Charles Buchanan | 848 Seneca Park Rd. | 410-335-6034 |
| Bob Meurer | 3834 New Section Rd. | 410 335-8888 |
| B Wagener | 837 Seneca Pk RD | 410 335-6051 |
| [illegible] | 827 Seneca Park Rd | 410 344-1317 |
| Vicki Wescolowski | 8612 SAXON Cir | 410-931-3535 |
| Tammy Dye | 20 Bellgate Way | 410-529-2830 |
| Kathy Vasilatis | 732 Annatam Dr. | 410-803-1452 |
| Betty Lou Walsh | 3B Brookfarm Ct | 410-529-5281 |
| Helene Smith | 950 Seneca Park Rd | 410 335-6615 |
| Ed Smith | 950 Seneca Park Rd | 410-335 6615 |
| | | |

4. There has also been more emphasis on the study of the effects of air pollution to humans. Studies have proven that burning fossil fuels for electricity generation is the single greatest source of air pollution in the United States. Fossil fuel combustion produces many pollutants including nitrogen oxides, sulfur oxides, hydrocarbons, and particulates. These pollutants can cause serious health problems including asthma, irritation of the lungs, bronchitis, pneumonia, decreased resistance to respiratory infections, and early death. In fact, a study published in the March 2002 Journal of American Medical Association found people living in the most polluted areas have a 12% increased risk of dying from lung cancer. Adding the proposed Slag Processing Facility will prolong the life of an already objectionable facility.

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| Name | Address | Phone # |
|---|---|---|
| (Rev.) Walter M. Emala<br>Rev. WALTER EMALA | 617 SENECA GARDENS Rd. | 335-2725 |
| TRUDY MARTIN | 3321 CHOPTANK AVE | — |
| LOWELL MARTIN | 3321 ChopTank AVE | — |
| CRAIG MARTIN | 3321 Choptank Ave | — |
| GEORGE S TRISTON | 3702 PATAPSCO AVE | |
| Roy P. Elder III | P.O. Box 5075<br>Balt MD. 21220 | |

6

| Name | Address | Phone # |
|---|---|---|
| Roy P. Elder Jr. | 3716 SENECA GARDENS Rd BALTO. MD 21220 | |
| KARL J. KIDD | 1221 Chesapeake Ave BALTO MD 21220 | |
| LIL RULE | 3704 PATAPSCO AVE BALTO MD 21220 | |
| DORIS KIDD | 1221 CHESAPEAKE AVE BALTO MD 21220 | |
| STEPHEN M CLAY SR | 1219 SENECA RD BALTO MD 21220 | |
| JOHN A. HAYDEN SR | 716 Bowleys Quarters RD | 410-335-4884 |
| ELIZABETH C. CLAY | 7856 Harold Rd Balto MD 21222 | |
| JOSEPH M BESCHE | 600 B CARROLLWOOD RD | |
| Lloyd Lee Jenkins II | 3730 Holly Grove Rd | 443-386-6019 |
| ALLEN JOSEPH DUFOUR JR | 7324 Chesapeake Rd Balto MD | 410-916-3705 |
| Jamie Lynn Mazan | 3730 Hollygrove Rd Balto. 21220 | 410-335-8595 |
| ERIC BRYANT | 1224 Susquehanna Ave | |
| Max L Long | 423 Carrollwood Rd | 410-335-3713 |
| Bert Rappert | 412 Crosfield Rd | 410-335-7625 |
| William Rappert | 412 Crosfield Rd. | |
| Douglas Rappert | 412 Crosfield Rd. | |
| Joann Wahlenmaier | 811 Nanette Lane Balto MD 21220 | 410 335-2464 |
| Michele Bethey | 811 Nanette Ln 21220 | 410-335-2466 |
| Marleen Morris | 859 Seneca Park Rd | |
| Claude M. Morris | 859 Seneca Park Rd | |
| Katherine Boscatti | 31 Clearlake Ct 21234 | |
| James Hughes | 854 Seneca Pk. 21220 | |
| John C Madeira | 854 SENECA PARK. 21220 | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

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| Name | Address | Phone # |
|---|---|---|
| Crystal Carey | 8810 Fearnehve. | 643-2125 |
| Krysty Ulrscher | 336 Miles Rd | |
| Martha Kramer | 4033 Brear Pt. Rd. | 410-335-7636 |
| Erwin Kramer | 4033 Brear Pt. Rd. | 410-335-7636 |
| Emma Hubal | 204 MIDLASS DRIVE | |
| Ord J. Hka | 116 COVERED WAGON ROAD | 410-419-1151 |

| Name | Address | Phone # |
|---|---|---|
| Kay Fasold | | |
| Evelyn Benson | 1707 Middleborough Pl | |
| Dorothy Duncan | 1707 Middlesex Way | |
| Marty R Watson | 1623 GAIL Rd APT | 391-4717 |
| Linda & M Bellamy | 219 ORVILLE Rd 21221 | 686-4576 |
| M Lafferan | 2506 Wagon Train Ct | 344-1365 |
| Patty Ewert | 1218 D Sugarwood Ct. | 687-1734 |
| Steven M Hemp | 3609 Beaumont | 687-7181 |
| Connie Seib | 4 Punte La | 686-7669 |
| Fred Dietes | 4 Punte Lane | 686-7669 |
| Jeff Ely | 758 LANGE ST | 282-7251 |
| Henry Riehl | 7603 AVONDALE | 256-3961 |
| Eden Schweitzer | 1909 Old Turkey Pt Rd | 687-5920 |
| Sue Schroeder | 159 Scarwall Rd | 238-2277 |
| Tiffany Wanke | 711 Rockaway Beach Ave | 687-4611 |
| Cathy Beck | 3972 MISTY VIEW | 335-6506 |
| Patty Simmons | 2202 Silver Ln | |
| Jean Simmons | 2202 Silverlane Rd | 574-0954 |
| Fran Cerenze | 13 Cardinal Rd | (410) 682-2388 |
| Sharon Pelz | 718 Arnoldale Rd | |
| K Clapp | 1908 Towson Ave | 4102848796 |
| Marvin Doffner | 752 Maple Court Drive | |
| Ina Hansen | 6708 Beech Ave. | 410-426-8579 |
| Janet Burdick | 304 Maple Ave | |
| David Wills | 551 Welbrook Rd | 410 574-2588 |
| Robert Nuttall | Apt 1-F Eddystone Pl | 410 391-9574 |
| David Miller | 533 Becklow Ave | 410 410-0721 |
| Sherry Snyder | 601 Aldworth Rd | |
| Bernard Kulikowski | 10014 CRANE LANE | 410-687-9485 |

| Name | Address | Phone # |
|---|---|---|
| Carol Sones | 315 Capitol Ct. | 410-918-1158 |
| Lisa Sampson | 429 VA Ave | 410-574-0607 |
| Joseph LaFlame | 921 Frog Mortar Rd | 410-335-2625 |
| Sharon LaFlame | 921 Frog Mortar Rd | 335-2627 |
| LISA DIAZ | 3 Douglas Rd | 410-971-2771 |
| Leah Ellingson | 800-D WPR | 410 780-7029 |
| Gary Fry | 3833 Annapolis Rd | 410 477 0576 |
| Jackie Seitz | 111 Maee Ave | 410 686 1252 |
| WM. Hord | 5 Woody RD | 410-687-8491 |
| Barb Wills | 10 Riverside MD | |
| Katherine Lawton | 1: 14 Hopewell Cir | 410-687-8541 |
| Kevin May, Jr. | 202 Claremont Dr | 217-428-0550 |
| Robert Dehl | 218 Oberle Ave | 410-682-5493 |
| Robin Sewell | 314 Lance Ave | 410-682-6143 |
| Shelly Pruitt | 7019 Gough St | 4102885739 |
| Steven Boucher | 204 Taylor Ave 21221 | 410-686-4855 |
| Darlene Shaw | 1534 Nicolay Way | 687-4250 |
| Thomas Hahn | 29m Dunn Rd | 410-635-7177 |
| Thomas Phenix | 934/56 Marlyn Ave | 410 341 2085 |
| Pat Ruth | 7207 Belair Rd | 665-2528 |
| Peggy Sadowski | 3403 Lyster Ct | 668-2407 |
| Diane Sauer | " | " |
| Linda Viel | 956 Middlesex Rd | 410 682 4357 |
| [illegible] | 332 Nicholson Rd | |
| Mikey Mouse | 1234 | 410-000-0000 |
| Sue Mullin | PO Box 44372 #1236 | 410 285 4250 |
| Rachel Jones | 1509 Lange St Apt B | 410 282 5278 |
| Mr & Mrs Polin | 7809 LIBERTY RD | 410-248-0414 |
| Betty Kulakowski | 1001 Crane Lane | 410-687-9485 |

| Name | Address | Phone # |
|---|---|---|
| John Laesny | 1817 HILLTOP AVE | 410-574-2516 |
| DENNIS GILPIN | 26 Left Arleron Dr | 410-391-7657 |
| Jamie Kilpatrick | 1302 Old Eastern | 410-903-0612 |
| Carl Maina | 7602 Berkshire Rd | 4102882246 |
| Ken Cynthia Ramhogan | 3831 Schmidt Rd Baltimore | 410-344-1636 |
| Denise Rapacki | 315 Cornwall St | 410 633-5227 |
| Amy Aikens | 7815 DENTON AVE | 410-477-3223 |
| Helen Lugo | 939 Pedmen Ave | 410 483-2124 |
| Mary Seibel | 843 Seneca PKRD | 410 335-4447 |
| Arthur Seibel | 843 Seneca PK Rd | 410 335-4447 |
| Brenda Rowan | 14 Langley Rd | 410-391-2356 |
| Ed Miller | 41 Robin Hood Rd | 410 944-0386 |
| Glen | 1486 Wright Rd | 4102870361 |
| Smith | 4043 FNT | 4104223213 |
| Frances Gregory | 1725 Langley RD | 410 574-1044 |
| Barbara Gilligan | 1000 Todd Ave. #J307 | |
| Ruby Ross | 1613 Francis 21221 | 410 686 1877 |
| Est Phil Ryder | 1203 Bayside Rd | |
| Elsie Byers | 1303 Brookdale | 4106877859 |
| Shelly O'Hara | 903 GARDEN DR | 410-574-7290 |
| WAYNE HAGAN | 903 GARDEN DR | 410 574 7290 |
| Cheryl Hewitt | 6715 Harlenoak Rd | |
| Mary Rider | 16 E. Hichon Rd. | |
| Mary Rider | 11 Brendale Rd. | |
| Lynn Cage | 11 MacDill Rd. | 410 687-8419 |
| William and Lisa Buckler | 8222 Longpoint RD | 410 282-3311 |
| [illegible] | 235 Hammond Ave | |
| VETT PRINGLE | 2410 SCHOOL | 391134 |
| Jessica Stefany | Brookfield Rd | 21227 |

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| Name | Address | Phone # |
|---|---|---|
| Josephine Maka | 3922 New Section Rd | 410 335-5980 |
| John McCallin | 3950 New Section Rd. | 410-335-2249 |
| Thomas Greene Jr | 3946 New Section Rd. | 410-335-4639 |
| Maxine W Wagner | 3942 New Section Rd | 410 335-8521 |
| Ruth Callin | 3940 New Section Rd | 410-335-3990 |
| James Scott | 3928 New Section | 410-335-6832 |

| Name | Address | Phone # |
|---|---|---|
| Lorrie Kramer | 3916 New Section Rd 21220 | 410-335-3847 |
| Shirley A. Whaley | 3908 New Section Rd 2122 | 410-335[illegible] 8949 |
| Nancy Galbierz | 3904 New Section Rd | 4103355805 |
| Bob Galbierz | " " | " " |
| Bob Deuro | 3834 New Section Rd | (410) 335-8888 |
| Joan Deuro | 3834 New Section Rd | 410-335[illegible] |
| Patricia Carter | 3832 New Section Rd | 410 335-0953 |
| Mark G Deuro | 3832 New Section Rd | 410-335-0953 |
| Adrain Beninger | 3830 New Section Rd | 410 335-1720 |
| W. S Ley | 3828 " " | 338-2255 |
| Mary Snyder | 3824 NEW SECTION RD | 410-344-0578 |
| Anita Phelps | 3822 New Section Rd | (410) 335-7282 |
| Bob Seibert | 3820 New Section Rd | 410 335 8794 |
| Ellen Brockmyer | 3818 New Section Rd | 410-335-[illegible] |
| Ellen Hamm | 3816 New Section Rd | 410-335-7601 |
| Joe Hamm | " " | " |
| Harriet Chard | 3808 New Section Rd | 410 335-8747 |
| Anthony Jensen | 3800 New Section Rd. | 410 335-4481 |
| Sylvia Fischer | 3812 New Section Rd | 410-335-7637 |
| Betty Mox | 3902 New Section Rd | 410 335-2894 |
| Marian Voris | 945 Bowleys Quarters Rd | 410-335-8647 |
| Jay Voris | 947 Bowleys Quarters RD | 410 335 2271 |
| Kenneth D. Horn | 949 Bowley's Quarter Rd | 410/344-0399 |
| Jerry Wacawske | 3924 New Section Rd | 410/335-2657 |
| Ken Wasneka | 1225 Seneca Rd | 410/335-5324 |
| [illegible] | 1205 Seneca Rd. | 410/334-6076 |
| [illegible] | 1203 Seneca Rd. | 410/344-0526 |
| Darlene Lewis | 1200 Seneca Rd | 410/335-7371 |
| Nancy B. Burkheimer | 1161 Seneca Rd | 410/335-4181 |

| Name | Address | Phone # |
|---|---|---|
| Grace M. Pebley | 1167 Seneca Rd | 335-4037 |
| T. I Saul | 1144 SENECA RD. | 410 335-6618 |
| M. Eileen Baird | 1144 SENECA RD | 410 335-6618 |
| Mary Ann Rollyson | 1138 Seneca Rd | 335-1327 |
| Denise R Baird | 1144 Seneca Rd | 410 335-66[illegible] |
| Joe Rollyson | 1138 Seneca Road | 410 335-2320 |
| Stephen Rollyson | 1146 Seneca RD | 410 335-8532 |
| [illegible] | 1131 SENECA RD | 410-335-9424 |
| Michael Mask | 1131 SENECA RD | 410 335 3443 |
| [illegible] | 1131 SENECA RD | 410 335-3443 |
| [illegible] | 1130 Seneca Rd | 410 335-1083 |
| John Kemp | 1116 Seneca Rd. | 410-335-4806 |
| Marjorie Blakeslee | 1110 Seneca Rd. | 410 335-5283 |
| Pat Stachowski | 1106 Seneca RD | 410-335-4748 |
| Barbara L Pine | 4016 Chestnut Rd | 410-335-2326 |
| Taylor M Pine | 4016 Chestnut Rd | 410-335-2326 |
| Judy Pine | 4022 Chestnut Rd | 410-335-5737 |
| Barbara Matsyeuski | 4020 Chestnut Rd | 410-335-5610 |
| Dale Harrison | 4042 Chestnut Rd. | 410-335-0947 |
| Arthur G. Perdue III | 430 Braxwell Rd. | 410-335-7231 |
| Norma H. Bankard | 3506 GALLOWAY RD | 410-335-4407 |
| [illegible] | 1007 Cold Spring 21229 Rd | 410-335-4304 |
| Bill Bankard | 4009 Bay Dr. | 410-335-0998 |
| Jan Bissell | 4009 Bay Dr | " " |

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| Name | Address | Phone # |
|---|---|---|
| Ralph M Kable | 734 Seneca Pk Rd | 667-0253 |
| Thelma Kable | 902 Seneca Park Rd | 335-5631 |
| Earl E. Kable | 902 Seneca Park Rd | 335-5631 |
| William M. Ennis | 718 SENECA PK RD | 335-3749 |
| | 720 SENECA PK Rd | 335-0578 |
| Robert Collins | 504 Beach Drive | 335-3102 |

| Name | Address | Phone # |
|---|---|---|
| Lynn Warner | 700 Asher Rd | 410-335-2408 |
| Richard A. Hyde | 538 Beach Drive | 410-327-6407 |
| Alice Lamar | 704 Asher Rd | 410-335-8098 |
| Elizabeth Martin | 710 Asher Rd | 410 335-7961 |
| Donna Mannington | 714 Asher Rd. | 410 335-7513 |
| Linda Cavanaugh | 801 Seneca Pk Rd | 410 335-7863 |
| Bob Murphy | 801 Seneca Pk Rd | 410-335-7863 |
| Richard W. Homan | 823 Seneca Park Rd | 410-335-1454 |
| Beverly Homan | 823 Seneca Park Rd | 410 335 1454 |
| Robert Bellorell | 804 SENECA PARK RD | 410-335-6757 |
| Rae C. Jewell | 833 SENECA RD | 335 8876 |
| Herman F. Feyerweger | 850 SENECA PK RD | 335-3335 |
| Richard A. Simon | 738 Seneca Park Road | 410-335-8677 |
| Christine Vogel | 738 Seneca Park RD | |
| * Kathleen Lamar | 718 Asher Road | 410 335-5920 |
| Doug Davis | 716 ASHER RD. | 410 877 4181 |
| Helen C. Davis | 1020 Carroll Island Rd | 410-335-8324 |
| Richard Lamar | 718 Asher Rd | 410-335-5920 |
| Robert Decker | 972 Seneca Pk Rd | 410-335-8531 |
| Sara Decker | " " | " " |
| Katherine Stellwagen | 930 Seneca Park Road | 410 335-8879 |
| Jim Williams | 930 Seneca Park Road | 410 335-8879 |
| James T. Lurcher | 830 Seneca Park Rd | 410-335-9381 |
| Donald J Kline | 828 Seneca Park Rd | 410 335-6312 |
| Lynda Kline | 828 Seneca Park Rd | 410-335-6312 |
| Gene Boyce | 936 Seneca Park Rd | 410 335-2866 |
| Roger Parrish | 812 SENECA PARK RD. | (410) 335-3521 |
| Bob Cover | 800 SENECA PARK Rd | 410-335-4464 |
| Ed Tutin | 1634 Bowleys Qtrs. Rd. | 410-335-8997 |

19

| Name | Address | Phone # |
|---|---|---|
| Kim Tutin | 1634 Bowleys Qtrs | 410 335-8997 |
| Dorothy Tutin | 808 Seneca Park Rd | 410-335-4045 |
| Diana Miller | 2208 Cedar Lane | 410 676-0657 |
| Barbara Tutin | 606 B Teaberry Ave | 410-679-4170 |
| Jason Miller | 2208 Cedar Lane | 410-676-0657 |
| Crystal Greene | 606 B Teaberry Ave | 410-679-4170 |
| | | |
| | | |
| | |

| Name | Address | Phone # |
|---|---|---|
| Michael Maddox | 12906 EASTERN AVE BALTO MD 21220 | 410 335-4360 |
| Robert L Maddox | 4608 Keeners Rd. 21220 | 410 335-4025 |
| LON GEBHARDT | 8211 PHILA. RD Keeners | 410 886-5753 |
| KEN ALLISON | 540 N. WOODLYN Keeners Rd. | 410-686-9048 |
| Don Dewley | 7929 GOUGH ST. Keeners | 410-285-1163 |
| Beth Crickenberger | 302 Palmetto Dr. Keeners | 410-676-4152 |
| Gary Adams | 3211 Hilltop Drive Keeners | 410-242-3730 |
| Glenn Hess | 3211 Hilltop Drive Keeners | 410 242 3730 |
| Cathy Hess | 586 Doefield Ct Keeners | (410) 515-3233 |
| Barbara Jose | 2853 Westminster St. Keeners | (410) 239-4692 |
| Lauren Rogers | 586 Doefield Ct. Keeners | (410) 515-3233 |
| Norma Hellen | 4007 Ridgeview Rd, Balto 21220 | 410-335-2161 |
| John wife | 213 Kriders Church Rd. Keeners | 410-596-0735 |
| Ruby Z Lynch | 213 Kriders Church Rd Keeners | 410-239-4692 |
| Donna Pattison | 4354 KEENERS Rd Keeners | 410 335 0185 |
| Diana McCabie | 4324 Keeners Rd | 410-335-8752 |
| Renee Miller | 7123 Oliver Beach Keeners 21220 | 410-335-8730 |
| Betty Bolling | 7202 Greenbank Rd Keeners 21220 | 410-335-4374 |
| Harry McCabie | 4324 Keeners Rd Balt Md 21220 | 410 335 8752 |
| Jennifer McCabie | 4324 Keeners Rd Balto Md 21220 | 410 335 8752 |
| Richard A. Miller | 7123 Oliver Beach Rd 21220 | 410-335-8730 |
| Crystal McCabie | 4324 Keeners Rd 21220 | 410-335-8752 |
| Melvin E Flynn | 4322 KEENERS RD 21220 | 410-335-2639 |
| Myrtle V. Flynn | 4322-KEENERS RD-21220 | 410-335-2639 |
| Linda Schaffhausen | 711 Carrollwood Rd 21220 | 410-335-2514 |
| Patty M, Kautz | 9 Clearcreek Ct 21220 | 410-335-1231 |
| Jared Keatley | 991 Seneca Park Rd 21220 | 410-335-6239 |
| Richard J. Simmons | 12505 Eastern Ave 21220 | 410-335-1834 |
| | | |

4. There has also been more emphasis on the study of the effects of air pollution to humans. Studies have proven that burning fossil fuels for electricity generation is the single greatest source of air pollution in the United States. Fossil fuel combustion produces many pollutants including nitrogen oxides, sulfur oxides, hydrocarbons, and particulates. These pollutants can cause serious health problems including asthma, irritation of the lungs, bronchitis, pneumonia, decreased resistance to respiratory infections, and early death. In fact, a study published in the March 2002 Journal of American Medical Association found people living in the most polluted areas have a 12% increased risk of dying from lung cancer. Adding the proposed Slag Processing Facility will prolong the life of an already objectionable facility.

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| Name | Address | Phone # |
|---|---|---|
| H. ROESNER | 925 BOWLEYS QT. RD 21220-4012 | 410-335-4966 |
| MARY E VENEMANN | 924 BOWLEYS QT. RD BALTO MD. 21220 | 410-335-5147 |
| Mark B Myers | 3727 Red Grove Rd Balto Md 21220 | 410 285-2427 |
| Beth A Myers | 3727 Red Grove Rd 21220 | 410-335-7427 |
| T, C, VENEMANN | 929 BOWLEYS QTRS Rd | 410-335-5147 |
| R.A. Schafer | 718 Nollmeyer Rd. | 410 335 0659 |

| Name | Address | Phone # |
|---|---|---|
| MIKa DACHILLE | 3826 Clarks pt rd | 410 335-2490 |
| Dawn Topper | 3832 Clarks Point Rd | 410 335-8862 |
| Bette L Moore | 3819 Clarks Point Rd | 410-335-8862 |
| Peggy MAZUREK | 3810 CLARKSPOINT RD | 410.335-2729 |
| CALVIN GILBERT | 3715 Clarks Point Rd | 4103352670 |
| DARLENE GOEBLER | 1403 CHESAPEAKE AVE | 410-335-8342 |
| E. Christina Boedel | 3719 Clarks Point Rd. | 410-335-6100 |
| Joan Eisminger | 3835 Clarks Point Rd | 410-335-2198 |
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| Name | Address | Phone # |
|---|---|---|
| Richard Logan | 913 Seneca Park Rd | 410-335-6289 |
| [illegible] | 918 Seneca Pk Rd | 410-335-6563 |
| [illegible] | 918 Seneca Pk Rd. | 410-256-0245 |
| [illegible] | 918 Seneca Park Rd | 410 335 6408 |
| Cindy Wolf | 918 Seneca Park Rd | 410-879-0081 |
| John D. Stephardt | 980 Seneca Park Rd. | 410-335-2269 |

| Name | Address | Phone # |
|---|---|---|
| Thomas 2 Como | 979 SENECA PARK | 410-686-1633 |
| Susan Allio | 979 Seneca Park Rd. | 410-335-6979 |
| Audrey Gephardt | 980 Seneca Park Rd | 335-2269 |
| Crystal Hernandez | 979 Seneca Park Rd. | 335-0979 |
| E [illegible] | 960 SENECA PARK RD | 335-1891 |
| Rick Mcmahon | 945 SENECA PARK R.D | 574-1956 |
| Sandy Arasal | 959 SENECA PARK RD | 410.335.0049 |
| Linda Remsky | 964 Seneca Park Rd. | 410-335-5266 |
| Theresa Covington | 989 Seneca Park Rd. | 410 335-4025 |
| Clara Boyd | 987 Seneca PK Rd. | 410.335.0831 |
| Bernard Fitzpatrick | 987 SENECA PARK Rd. | 410-335-0831 |
| Robert Wilkinson | 11 Schooner Bay Ct | 410-335-1715 |
| Rebecca Dillon | 15 Schooner Bay Ct | 410-335-9403 |
| Ellen Mikolajunas | 14 Schooner Bay Ct. | 410-335-1434 |
| Andrea Cameron | 9 Schooner Bay Ct | 410-335-0899 |
| Richard Owens | 711 Wimmer Rd | 410-761-7906 |
| Robert Wilkinson | 11 SCHOONER BAY CT | 410-335-1715 |
| Diane Sullivan | 16 Schooner Bay Ct. | 4103359631 |
| Victor Jones | 12 Schooner Bay Ct. | 410 335-2683 |
| Kim Jones | 12 Schooner Bay | " " |
| JOHN KOLICH | 10 SHOONER BAY CT | 410.344-1651 |
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| Name | Address | Phone # |
|---|---|---|
| Richard A Barnett | 20 Bleachlake Lane | 410-335-7655 |
| Jennifer Shaw Thompson | 12336 32ND ST ZIP 37 | 410-Bleeo-8414 |
| Jon A Hoyt | 716 Bowley's Qtrs Rd | 410-335-4884 |
| Roxann M Snyder | 621 Kittendale Cir Balt. MD 21220 | 410-335-0583 |
| Joe Traad III | 959 SENECA PARK Rd | 410-335-0049 |
| Rose Zimmerman | 805 Bowleys Quarters Rd. | 410 335-4590 |

| Name | Address | Phone # |
|---|---|---|
| Clifton Smith | 954 Seneca Park RD BALTO MD 21220 | (410) 419-0250 |
| Clare & Dave Hash | 3804 Chestnut Rd 21220 | 410 335 6288 |
| Thomas Foor Thomas Foor | 3817 Clarks Point Rd 21220 | 410 335 4866 |
| Brook Zimmerman | 805 Bowley's Quarters RD | 410 335 4590 |
| Christal Fennell | 613 Kittendale Rd | 4103354168 |
| Raymond Pudvish | 824 Seneca Park Rd | 410-335-6995 |
| Pamela L Rinker | 824 Seneca Park Rd | 410-335-6995 |
| John C. Nadeau | 854 SENECA PARK RD | 410-335-5206 |
| Robert M Little | 12432 Garrison Forest Rd | 410 356-7440 |
| Leah Reed | 326 Carroll Island Rd | 410-344-1771 |
| Asia Johnson | 326 Carroll Island Rd | 410-344-1771 |
| Aeneal Johnson | 326 Carroll Island Rd | 410-344-1771 |
| Dennis Swindell | 503 F BOWLEY'S QTRS RD | 443-286 9441 |
| Richard Yeldman | 823 SENECA PARK RD | 410 335 1454 |
| Joshua Jamison | 8 Hidden Cove Ct | 410-574-5816 |
| STANLEY POWELL SR. | 2057 GOUGH ST. | 410-675-8850 |
| MISE REMSKY | 337 S. CHESTNUT ST | 410 342-5698 |
| STEVEN W. MCCHASKEY | 813 SENECA PARK RD. | 410-335-8274 |
| Jessica McCluskey | 813 Seneca Park RD | 410-335-8274 |
| Dennis C. Warwick | 526 CASFIELD RD 21220 | 410-335-3790 |
| ~~BOB GOLLIN~~ | ~~3804 NEW STRAND RD~~ | ~~335-5515~~ |
| Donna Harris | 432 Carroll Island Rd | 335-9333 |
| Joe Harris | 432 Carroll Island Rd | 335-9333 |
| Lil Lockabell | 977 Seneca Park Rd | 335-3903 |
| Don Lockabell | 977 Seneca Park Rd | 335-3903 |
| Dona Eads | 430 Machias Place | 335-9489 |
| Barbara Bohle | 3726 Chestnut Rd. | 335-7901 |
| Bryce Sabo | 3626 Chestnut Rd | 335-7901 |
| Richard E. Cyr | 1139 Seneca Rd. 21220 | 335-9326 |

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| Name | Address | Phone # |
|---|---|---|
| Lori Marie Eroff | 1139 Seneca Rd. | 335-9326 |
| Sharon Lamb | 812 Seneca Rd | 410-335-3521 |
| [redacted] | [redacted] | [redacted] |
| Barbara Mitchell | 946 Seneca Park Rd. | 410 866-8107 |
| Earl Mitchell | 946 Seneca Park Rd. | 410 866-8107 |
| Wm. Brown | 984 Seneca Park Rd | 4103352246 |
| PAT SCHECK | 985 Seneca Park Rd | 4103353070 |
| John Schecky | 3827 Hughes Pk Rd 21220 | 4103444231 |
| Charles A Lupton | 816 SENECA PK RD 21220 | 410-335-8898 |
| JOE Ramsey Remsky | 964 SENECA PK Rd | 410-335-5266 |
| **Deborah Lapinski** | **3908 Hunt Harbor Rd** | **410-335-0140** |
| Sue Mitchell | 3736 Chestnut Rd | 3353121 |
| Earl Mitchell | " " | " " |
| Raymond Hubler | 3714 Lambson Rd | 335-9154 |
| Ben Sloan | 823 Seneca Park | 335-1412 |
| Jane F. Mitchell | 946 Seneca Park | 335-9347 |
| MARY C. WHELAN | 500 Chesfield Rd | 335-5594 |
| Marie Martini | 909 Seneca Park Rd | 335-2853 |
| Anthony J. Martini Jr | 909 Seneca Park Rd | 410-335-2853 |
| Carol A. Rupert | 712 Carndlwood Rd | 410-344-1553 |
| Kimberly Ann Davis | 429 Kosciusko Rd | 410-335-2935 |
| John V. Goldean | 848 Seneca Park Rd | 410-344-0742 |
| Brenda Goldean | 848 Seneca Park Rd | 410-344-0742 |
| Edward Jasinski | 956 SENECA PK Rd. | 410 335 8306 |
| Lonnie L. Knox | 1106 Susquehanna Ave | 410 335 4066 |
| Bob & Shirley Maddox | 989 Seneca Park Rd | 410 335-4025 |
| James A Rowberry | [redacted] 8-E Stagwood Ct. | (443) 257-5654 |
| Ray J. Miller | 3827 Bayville Rd. | 410-335-6807 |
| Bertha A. Miller | " " " | " " " |

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| Name | Address | Phone # |
|---|---|---|
| [illegible] | 3904 HUNT HARBOR RD. | 410-344-0256 |
| C M McCrobie | 4324 Keeneys Rd | No |
| Nancy West | 988 Seneca Park Rd | 410-335-1614 |
| Joseph Tosunke | 988 Seneca Park Rd | 410-335-1618 |
| Rosemarie L Lehn | 1004 SUSQUEHANNA AVE. BALTIMORE, MD 21220 | 410-335-0013 |
| Robert A Schuman | 810 Cold Spring Rd. | 410-335-4302 |
| John M. Bunich | 966 SENECA PARK RD | 410 344 0158 |
| Robert A Bartosch | 3933 Cutty Sark Rd | 410-335-5089 |
| Amy P. Bartosch | 3933 Cutty Sark Rd. | 410-335-5089 |
| Edward Orefice | 4015 RUSTICO Rd | 410-335-7890 |
| Lisa E Adams | 1338 Goose Neck Rd. | 410-335-6886 |
| George A. Adams | 1338 Goose Neck Rd | 410-335-6886 |
| Delegate Nancy Hubers - 800 Cold Spring Rd - 410-335-3234 | | |
| Tom Lehner | 1004 SUSQUEHANNA AVE | 410 537 0013 |
| A. Taylorson | 728 Nollenger Rd | 410 335 4949 |
| Jim Taylorson | 728 Nollenger Rd | 410 335 4949 |
| LINDA YULCNA | 845 Chesterton Rd | — |
| MATTHEW YULCNA | 845 Chesterton Rd | — |
| SCHUYER YULCNA | 845 Chesterton Rd | — |
| Victoria Amend | 408 Crisfield Rd. | 410 335 1655 |
| Susanne M. Davis | 870 SENECA PARK RD | 410 344-1934 |
| Joseph Giese | 836 Luthardt Road | 410-852-6951 |
| Cheryl Giese | 836 Luthardt Rd | 410 480 6540 |
| Carla Giese | 836 Luthardt Rd | — |
| Robin Harford | 3827 Clarks Pt. Rd | 410-344-1231 |
| Brian Butcher | 3733 BAY DRIVE | 410 335-2219 |
| Sandra Whitt | 528 BEACH DRIVE | 410 335-3791 |
| Donald Whitt | 528 BEACH DRIVE | 11 |
| Nellie B. Reavis | 3308 Chesapeake Ave. | 410 335-4163 |

| Name | Address | Phone # |
|---|---|---|
| MR + MRS R. TAWNEY | 516 BOWLEYS QTRS RD | 410-335-7871 |
| MRS ANN PELTZER | 3500 GLENWOOD RD | 410-335-5953 |
| Mr. & Mrs Dan HACHE | 5 CUTTER COVE COURT | 410-530-0849 |
| GREG BUSCEMI | 3738 SENECA GARDEN Rd | 410-335-4950 |
| Pamela Schultz | 3738 Seneca Garden Rd | 410-335-4950 |
| Rebekah Miller | 7123 Oliver Beach Rd | 410-335-8730 |
| Brian Moran | 14 Alberge Ln | 410-335-8730 |
| Linda King | 4123 Carrollwood Rd | 410-335-3713 |
| John Vincent | 35 Clearwater Ct | 410-344-9017 |
| Brian Jasinski | 838 Seneca Pk. Rd | 410-335-3255 |
| Katherine Nicholas | 517 Crisfield Rd. 21220 | 410-335-2593 |
| Herman L Nicholas | 517 Crisfield Rd 21220 | 410-335-2593 |
| Donna Hoffman | 3703 LAMBSON Rd | 410-335-2716 |
| Deborah Bull | 3926 New Section Rd | 335-5562 |
| Hazel Hawkins | 125 BEACHES RD. | 335-2535 |
| DOROTHY BEALE | 10 DRAKER PLACE | 335-5755 |
| Rebecca Wallace | 526 Crisfield Rd | 335-1091 |
| Edgar Hurley | 408 WAGNER LANE | 335-3131 |
| James Mills | 2835 Eastern Ave | 335-2893 |
| Sharon L. Williams | 4310 Keeners Rd | 335-0271 |
| Robert C. Williams | 4310 Keeners Rd. | 335-0271 |
| Harry D. McCrobie | 4324 Keeners Rd. | 335-8752 |
| Diand L. McCrobie | 4324 Keeners Rd. | 335-8752 |
| Jennifer L. McCrobie | 4324 Keeners Rd. | 335-8752 |
| Crystal M. McCrobie | 4324 Keeners Rd | 335-8752 |
| Ray Hinchman | 7132 Crandall Rd | 661-8921 |
| Sylvia Davis | 136 Roundup Rd | 335-1104 |
| Barbara Warren | 526 Crisfield Rd | 335-3790 |
| DANIEL DACHILLE | 3828 CLARKS POINT RD | 335-2255 |

| Name | Address | Phone # |
|---|---|---|
| Leonarda Dachelle | 3828 Clarks Quest Rd. | 410-335-2255 |
| JOHN FRASCA | A/6 NOLLMEYER RD | 410 335-5415 |
| Kara Williams | 677 Kittendale Cr | 410 344-1998 |
| Chris Bolch | SAME ↑ | SAME ↑ |
| Monica Y McCall | 932 Seneca Pk. Rd | 410 335 3871 |
| Annie E. Wright | 932 Seneca Pk Rd | 410 335-4714 |
| Brandon R. Parks | 3815 Dunsmuir Cir | 410-335-2264 |
| Jenelle M. Parks | 3815 Dunsmuir Cir | 410-335-2264 |
| LINDA EADS | 7138 OLIVIA RD. | |
| Jim Tolson | 409 Canfield RD | |
| Joyce Glowacki | 409 Canfield Rd. | |
| Nicole Florian | 3905 Cutty Sark Rd | 410-335-8904 |
| Benjamin Florian Jr | 3905 Cutty Sark Rd | 410-335-8904 |
| Ben Florian Sr. | 3905 Cutty Sark Rd | 410 335-8926 |
| Justin Florian | 3905 Cutty Sark Rd | 410 335-8926 |
| Brian H. Riscott Jr | 976 Seneca Pk Rd | 410 335-3904 |
| Charles Lukoski | 4048 ISSACS RD | 410 344-1924 |
| Raymond MULLANEY | 7184 CUNNING CIRCLE | 410-335-0579 |
| Juanita Mullaney | 7184 Cunning Circle | 410 335-0579 |
| James Gerhold | 8D Starwood Ct | 410-344-0749 |
| Anna M Gerhold | 8D Starwood Ct | 410-344-0749 |
| Laura Phillips | 8D Starwood Ct | 410-344-0749 |
| Michael E Oliver | 1107 Old Spring Rd | 410 335-2078 |
| William Earl Niebergall | 3628 Bay Drive | 410 335-5449 |
| Muriel C. Brigouleix | 3921 New Section Rd | 410-344-1717 |
| Chris L Brigouleix | 3921 New Section Rd | 410-844-1717 |
| Edward B. Boyle, Jr | 900 Seneca Pk. Rd. | 410-788-7588 |
| Angelic Hall | 309-B Bowley's Quarters Rd | 410-335-1493 |
| Taffy Wagner | 300 Upper Landing rd | 410-574-4030 |

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| Name | Address | Phone # |
|---|---|---|
| Justin Baird | 10 Spinnaker reef Ct | 410-335-5755 |
| Sharon Baird | 10 Spinnaker reef Ct | 410-335-5755 |
| Pauline Giese | 834 Lulhardt Rd | 410-3357088 |
| Kim Butcher | 3733 Bay Drive 21220 | 410-335-2219 |
| Scott Cassidy | 618 Waterside Ct | 410-335-8854 |
| KARL SARPALIS | 3509 BAY DRIVE | 410-335-4478 |
| EVELYN SIMMONS | 4111 Cutty Sark RD | not Hooked up yet. |
| Myrtle Elliott | 732 SENECA PARK RD | 3354758 |
| ELLEN ALLIO | 981 SENECA PARK Rd | 410-335-4518 |
| LARRY ALLIO | 981 SENECA PARK Rd | 410-335-4518 |
| Blaine Smith, M.D. | 3727 Clarks Point Rd. | 410-335-7465, 410-925-0076 |
| GENE PONDO | 508 CRISFIELD RD | 410-335-7570 |
| JAMES WHITENER | 507 CRISFIELD Rd | 410 3357595 |
| Leonard MAUCK | 517 Holly Hunt Rd | 410-344-1566 |
| Virginia Elliott | 732 SENECA PARK RD | 3354758 |
| Cheryl Hall | 3915 Misty View Rd | 335-2362 |
| Kim MAUCK | 517 Holly Hunt Rd | 410-344-1566 |
| Lauren MAUCK | 517 Holly Hunt Rd | 344-1566 |
| Michael Newlon | 517 Holly Hunt Rd | 344-1566 |
| Jacob Newlon | 517 Holly Hunt Rd | 344-1566 |
| Kevin Newlon | 517 Holly Hunt Rd | 344-1566 |
| Ronald Ripperger | 870 Seneca Park Rd. | 410 335-5124 |
| Kristin Wager | 538 Apt. E Carrollwood rd. | 410-335-1906 |
| Dalvey Bergstrom | 540 Apt. E Carrollwood rd. | 410-335-5162 |
| Brenda Stitt | 3731 Apt. B White Pine rd. | 410-344-0340 |
| Donna Dougherty | 13 Commissioners Ct | 410-335-3911 |
| BILL TRACEY | 3725 BAY Dr. | 410-335-9515 |
| Jacque Geary | 3804-G Dunmoor Cir | 410-335-5491 |
| Mary Delucey | 874 Seneca Park Rd | 410 335-4846 |

| Name | Address | Phone # |
|---|---|---|
| GARY HOUCK | 3501 BEACH RD. | |
| Debbie Houck | 350. Beach Rd | |
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| Melanie Lee | 59 Alberg la | 410-344-9212 |
| Jamie Lee | 59 Alberg la | 410-344-9212 |
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| Name | Address | Phone # |
|---|---|---|
| SHERMAN C. NICHOLS | 7341 GREENBANK RD 21220 | 410-335-3167 |
| Phil E ANDERberg | 7341 Greenbank Rd 21220 | 410-335-3167 |
| Edward L Peppler | 7342 Greenbank Rd 21220 | 410-335-8088 |
| Karla L Peppler | 7342 Greenbank Rd 21220 | 410-335-8088 |
| Ruby Oakley | 13108 miles Rd 21220 | |
| Kathie Sweeney | 13122 EASTERN AVE 21220 | |

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| Name | Address | Phone # |
|---|---|---|
| Frank Orzolek | 7237 Gunpowder Rd. Baltimore, MD 21220 | 410-344-9463 |
| Noreen Honeycutt | 7237 Gunpowder Rd. Baltimore, MD 21220 | 410-344-9463 |
| Doris Lukowski | 7301 Gunpowder Rd Balto Md. 21220 | 410 335 2430 |
| Robert Burgoyne | 7342 Chesapeake Rd. Balto., Md. 21220 | 410-335-0567 |
| Gregory Boothe | 13107 Eastern Ave 21220 | 410-335-7061 |
| Ruth Boothe | 13107 Eastern Ave 21220 | 410 335-7061 |
| Kay Reiner | 7410 Greenback Rd 21220 | 410-335-5834 |
| Byron Walters | 7317 Gun Powder | 410-335-4775 |
| Joseph J. Trott | 7315 GUNPOWDER RD | 410-335-2154 |
| Frank Brusk | 7420 GREENBANK RD 21220 | 410-335-3655 |
| Vera Reiner | 7410 GREENBAINK R 21220 | 410 335 5834 |
| Deborah Roberson | 1301 Tredavon Rd | 410 335 6870 |
| Mike Spinnel | 7246 Gunpowder Rd 21220 | 410 335 0835 |
| Barbara Krein | 7246 Gunpowder Rd 21220 | 410-335-0835 |
| Wally Garlock | 7301 GUNPOWDER RD | 410 335 2430 |
| Claire Romano | 524 Beach Dr. 21220 | 410-335-7172 |
| William Romano | 524 Beach Dr. 21220 | 410-335-7172 |
| Evelyn Woodard | 13200 Chapter 21220 | 410-335-6366 |
| Katherine Van Rossum | 13127 E. Greenbank Rd 21220 | 410-335-5021 |
| Lou Van Rossum | " " " | " " |
| Marilyn M Davis | Greenbank Rd | |
| Pauline Thomas | Greenbank Rd | |
| Donna Ashman | 7340 Greenbank Rd | 410-335-8155 |
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In conclusion, while the representatives of the Constellation Power Plant see this addition as a positive addition, we feel we contend with too much pollution (air and water) and its negative effects and feel that any addition to the current plant only exacerbates the current problems.

| Name | Address | Phone # |
|---|---|---|
| William L. MARQUEZ | 4010 Cutty Sark Rd 21220 | 410 344 0905 |
| Edward DeCosmo | 4014 Cutty Sark CT | 410-960-0492 |
| JIM TRABING | 815 COLD SPRING RD 21220 | 410-335-1306 |
| Joseph Lamantia | 3313 Appleton Ave 34 | 410-661-3569 |
| John Lamantia | 3719 Bay Dr 21220 | 410-335-6673 |
| Charles Jr Schmitt | 74 GINWOOD LANE 21221 | 410-574-5478 |

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| Name | Address | Phone # |
|---|---|---|
| George Letso | 115 Lariat Rd | 410-335-3526 |
| JIMMIE SLEEN | 113 LARIOT RD | 410-335-0290 |
| Frank Furgat | 134 Lariat Rd | 410-335 3236 |
| Theodide Davidson Jr. | 1611 Jerome Ave. | 410-256-7779 |
| Anthony A. Lisicek | 44 Chandelle Ct. Balto 21209 | 410-687-5265 |
| Keith Cullupsion | 3611 Rod Rose Fr | 335-7050 - |
| Homer Alexander | 21 Compression Ct. | 687-8238 |
| Ray Joyner | 152 Cowhide Cir 21220 | 335-2391 |
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4. There has also been more emphasis on the study of the effects of air pollution to humans. Studies have proven that burning fossil fuels for electricity generation is the single greatest source of air pollution in the United States. Fossil fuel combustion produces many pollutants including nitrogen oxides, sulfur oxides, hydrocarbons, and particulates. These pollutants can cause serious health problems including asthma, irritation of the lungs, bronchitis, pneumonia, decreased resistance to respiratory infections, and early death. In fact, a study published in the March 2002 Journal of American Medical Association found people living in the most polluted areas have a 12% increased risk of dying from lung cancer. Adding the proposed Slag Processing Facility will prolong the life of an already objectionable facility.

5. Additional construction creates excessive industrialization of our rural, environmentally sensitive community.

6. The addition of the Slag Processing Facility could possibly bring in more traffic with deliveries of bottom ash from other power plants to be processed. The deliveries would be transported in large tanker-type trucks which would also degrade our roadways. This concept was apparently already researched by company representatives although the power plant manager, John Strawbridge is quoted as saying "Virginia Materials wants to build a batch plant on site which would reduce the number of trucks carrying the bottom ash away." We feel once the plant is operational it will only be a matter of time before they begin receiving shipments from other plants to make the plant more economically viable.

7. We are concerned about additional noise created during the drying process of the slag in the tumblers. We already contend with train deliveries, announcements over the PA system and extremely loud noises when the high pressure valve lets off steam and pressure.

In conclusion, while the representatives of the Constellation Power Plant see this addition as a positive addition, we feel we contend with too much pollution (air and water) and its negative effects and feel that any addition to the current plant only exacerbates the current problems.

| Name | Address | Phone # |
|---|---|---|
| Steven J. Merkel | 540 F Carrollwood RD Balt. MD 21220 | 410-335-1350 |
| Melvin Lee Knight | 4025 BRIAR PT RD Balto MD 21220 | 410 344-0753 |
| Gabriel Clapsaddle | 1338 Rude Rd 21220 | 410 335-8448 |
| Lee Severns | 124 Carroll Boland Rd. 21220 | 410-335-5434 |
| Pat Severns | 124 Carroll Bo. Rd | 410-335 5434 |
| Dick Wallace | 612B Carrollwood Rd. | 410-335-0197 |

| Name | Address | Phone # |
|---|---|---|
| Ken Hoffman | 124 Carroll Island Rd | 410-335-5934 |
| Lewis Bowman | 324 S. Collington Ave | 410-327-8233 |
| Kevin Arnold | 210 Bowlys Quarters Rd. | 410-335-1189 |
| Jim Congdon | 11601 Seneca Rd | 410 335 4187 |
| Scott Shaughnessy | 102 Riverview Rd | 410 218 9710 |
| Bessie J Russell | 7021-Manley Pl Rd | 410-335-8122 |
| Margaret Saffell | 611 Seneca Garden Rd. | 410-335-4519 |
| George Dorn | 3637 Bay Dr | 410 335 2585 |
| MARY Dorn | 3637 Bay Dr | 11 |
| George Kueby | 105 BENGIE'S Rd | 410 355 7880 |
| Naomi Hofstetter | 7320 Greenbank Rd. | 410-335-3550 |
| Janet Watts | 1 Brett Court apt 320 | 410-238-0240 |
| Velda Roland. | 5 Brett Court apt 315 | 410-391-7171 |
| AL Emkey | 1678 Poles Rd | 4106965080 |
| Don McNeil | 502 Nollmeyer | 410 335 0430 |
| BRUCE WHEATLEY | 212 CARROLL ISLAND RD. | 410-335-2910 |
| Mike Hewett | 11515 EASTERN AVE | —— |
| Nina VanVest | 805 Seneca Park Rd | —— |
| Gary Patton | 25 Lockett Court | —— |
| Frank Andreasik | 2031 Cunning Circle | —— |
| David Pickle | 7222A OLIVER BEACH RD | 410-335-3051 |
| Karen Adkins | 4048 Rustico Rd | 410-335-2413 |
| M. G. Hance | 3716 White Pine Rd. | —— |
| George Tabb J. | 3716 WHITE PINE RD | 410 538-3322 |
| Clyde Hancy J. | 8 Pine Cy Ct. | 410-335-7561 |
| Bonnie Hess | Austin Gas Rd | —— |
| ELIZABETH HOWE | 1311 CHERWIN AV | —— |
| STEVEN HOWE | PO BOX 22 | —— |
| Robert Dunham JR | 3716 white Pine Rd | —— |

| Name | Address | Phone # |
|---|---|---|
| Christina Wojik | 124 Carroll island rd | 410 335-5434 |
| [redacted] | [redacted] | [redacted] |
| Ron White | 3831 Bayville Rd | 410-335-7969 |
| Don White | 13115 Ratliffe Rd | 410-335-0580 |
| Stephanie Soper WOC | 3912 Tidewood Rd | 410 335-1016 |
| Anthony Silvani | 553 Kingston Rd | 410 687-4230 |
| Melvin Bauerfeind | 3737 Bay Drive Balto 21220 | 410-335-2485 |
| Blaise R. Karpiak | 916 Apt 2B Garden Drive Essex MD 21221 | 410-918-0873 |
| ROBERT BAYNES | 1047 Bowleys Quarters Rd | 410 335 6975 |
| JAMES DILLEY | 422 13217 Miller Ave | 410 574 0186 |
| Theresa Gloch | 145 Coachside Cir | 410-335-3490 |
| [illegible] | 916 FROG MORTAR RD | 410-335-465[illegible] |
| John C Hayman | 3916 Bayville Rd | 410-335-6760 |
| Dick Gilchrist | 918 STEVENS RD | 410-687-5888 |

| Name | Address | Phone # |
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| Howard Frank | 320 GREYHOUND Rd 21221 | 410-686-5752 |
| CHARLES J. REED | 610 GREYHOUND RD 21221 | 410-682-5735 |
| JOHN LINZ | 3 WINDEMERE Pkg 21131 | 410-592-9400 |
| GLORIA LINZ | " " | " |
| WARREN & CAROL WILHIDE | 923 SUE GROVE RD. | 410-686-5951 |
| Ryan & Renee Ross | 2208 Turkey Point Rd | 410-238-0172 |
| William Woutila | 711 Rockaway Beach Ave | 410 687 7461 |
| John HESSION | 2415 BEACH AVE. | 410-687-2944 |
| Charles Krug | 1310 Cherry GARDEN RD | 410 780 7760 |
| Tom Kettler | 2312 Poplar Rd. | 410-391-2950 |
| RICH WEBER | 4 FREEDOM CT. | 410-335-1979 |
| Andy Striker | 2330 SENECA RD | 410 574 5653 |
| Ludair Mullaney | 2330 Seneca Rd | 410-391-6024 |
| J. Patrick Brennan | 2302 BAUERNSCHMIDT Dr | 410-686-1908 |
| R.D. Wagner | 2330 Seneca | 410-299-8089 |
| | 2330 SENECA | 410-661-9060 |
| | 2330 Seneca Rd | 410-569-0370 |
| | 2330 SENECA RD | 703-481-6585 |
| Catherine J. Bagnner | 2330 Seneca Rd. | 410-6618665 |
| | 2330 Seneca Rd | 410 355 3555 |
| | 2330 SENECA RD | 410 355-3555 |
| Walt Rupp | 2330 Seneca Rd | 410 355 3555 |
| | 2330 SENECA RD | 686-355-3555 |
| | 2330 Seneca Rd. | 410-461-5192 |
| | 2330 Seneca Rd | 410-665-3287 |
| Josh Laberry | 2330 Seneca Rd | 686-355-3555 |
| Michelle Saint Ruig | 2330 Seneca Rd | 443-655-0823 |
| Anita Collingsi | 2330 Seneca Rd. | 4439961690 |
| Charlene Paulus | 2330 Seneca Rd | 410-530-5479 |
| Ken Condenable | 2330 Seneca Rd | 410-530-5479 |
| Ron Ritter | 2330 Seneca Rd. | 410-569-0370 |

| Name | Address | Phone # |
|---|---|---|
| Irene French | 320 Greyhound Rd | 410-686-5752 |
| Evelyn Reed | 6102 Greyhound Rd | 410 682-5135 |
| Carole Ledley | 2304 Turkey Pt. Rd | 410 391-0166 |
| Joe Coughlin | 852 Sue Grove Rd | 410.238.2129 |
| Robert Hennessy | 2342 Turkey Pt Rd | 4106874175 |
| Howard Hennessy | 2342 Turkey Pt Rd | 410-682-4175 |
| Sharon Miller | 601 Rockaway Beach Ave | 410-391-2251 |
| Edward Floyd | 1912 OLD TURKEY POINT RD | 410-687-8768 |
| Henry Miller | 601 ROCKAWAY BEACH Ave | 410-391-2251 |
| Joe Dutt | 2330 Seneca Rd | 410-686-3555 |
| Mary Lou Hession | 2415 Beach Ave | 410-687-2944 |
| Barbara Mayotte | 1917 OLD TURKEY PT. RD | 410-780-0728 |
| John M Hession | 2415 BEACH AVE | 410-687-2944 |
| William Wentela | 711 Rockaway Beach Ave | 410-687-4611 |
| Ryan + Renee Ross | 2208 Turkey Point Rd | 410-288-0728 |
| Jackie Nickel | 721 ROCKaway Bch Ave. | 686-1358 |

| Name | Address | Phone # |
|---|---|---|
| Tom Potter | 2330 Seneca Rd | 686 3555 |
| Bob Kuhl | 11 Hatky Rd | 391-0343 |
| Henry Henry | 2330 Seneca Rd. | 824-2182 |
| Thea Coker | 2330 Seneca Rd. | 665-1732 |
| Janice McVeigh | 2330 Seneca Road | 686-3555 |
| Julie Pugh | 2330 Seneca Rd | 686-3555 |
| Brian Morris | 2330 Seneca Rd | 686 3555 |
| Peter Pete | " " " | 686 3556 |
| James Peterson | 2330 Seneca Rd | 323-8088 |
| Michael Rogers | 2330 Seneca Rd | 410-357-5080 |
| Gregory Mabile | 2330 Seneca Rd | 410-435-4471 |
| Scott Penn | 2330 Seneca Rd | 9106863553 |
| Donald Olkowski | 2330 Seneca Rd | (410) 780-4749 |
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| Name | Address | Phone # |
|---|---|---|
| FRANK JONES | 864 SENECA PK RD | 335-4747 |
| Charles Sanders | 862 Seneca Pk. RD. | 335-9249 |
| Joe Durand Jr | 866 Seneca PK Rd | 335-3627 |
| Bonny Gasinski | 838 Seneca PK Rd. | 335-3255 |
| Brian A. Jasek | 838 Seneca Pk. RD | 335-3255 |
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| Name | Address | Phone # |
|---|---|---|
| L.L.W. | 835 SENECA PARK RD | 335-6484 |
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| Name | Address | Phone # |
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| | | |
| Bob Weelsan | 6020 Fak Rd. | 4105929229 |
| Carol Lee Carey | 502 Dollmayer Rd. | 410-335-0430 |
| Robert Stinchcomb | 3807 Clarks Point Rd | 410-335-6504 |
| Jennifer Lee | 104 Bang Ct | 3353341 |
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