

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



Statement of Emma Simson
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Before the Committee on the Judiciary & Public Safety
and the Committee on Public Works & Operations
The Honorable Brooke Pinto and The Honorable Brianne Nadeau, Chairpersons

Public Hearing on
B25-135, the Illegal Dumping Enforcement Amendment Act of 2023
Tuesday, June 27, 2023
Virtual Hearing via Zoom

Good evening, Chairwoman Pinto, Chairwoman Nadeau, Councilmembers, and Council staff. My name is Emma Simson, and I serve as Senior Counsel to Attorney General Brian Schwalb at the Office of the Attorney General for the District of Columbia (OAG). With me today is Wesley Rosenfeld, an attorney in our Public Advocacy Division who focuses on enforcing the District's environmental-protection laws.

On behalf of OAG, thank you for holding a hearing on B25-135, the Illegal Dumping Enforcement Amendment Act of 2023. We also want to thank Councilmember Gray for his partnership in moving this bill forward. Illegal dumping is a persistent problem that imposes environmental, health, and economic harms on District residents, especially residents in communities of color. By giving OAG authority to file civil lawsuits against those who violate the District's illegal-dumping prohibition, this bill will strengthen the District's ability to combat illegal dumping and, in turn, will advance environmental justice and equity. OAG therefore urges the Council to quickly pass this legislation into law.

Currently, D.C. Code §8-902 prohibits the disposal of solid waste, medical waste, and hazardous waste in places that are not authorized for waste disposal. It also prohibits individuals and businesses from causing or permitting illegal dumping to occur. Those who violate the illegal-dumping prohibition can face administrative fines or criminal enforcement. Specifically, the Department of Public Works (DPW) can issue administrative fines, and OAG and the U.S. Attorney's Office can bring misdemeanor or felony charges, depending on the nature of the offense. Notably, however, OAG does not currently have statutory authority to bring civil-enforcement actions against those who violate D.C. Code §8-902.

Under the current legal structure, illegal dumping remains far too common. Each year, District 311 receives thousands of service requests related to illegal dumping. In 2022 *alone*, District 311 received nearly 14,000 service requests related to illegal dumping.¹ Dozens of newspaper articles and community blog posts further underscore that illegal dumping remains a common and persistent problem in our city.²

Illegal dumping is also not a mere annoyance or eye sore. It can impose significant environmental, public-health, and economic harms. For instance, discarded items can release environmentally hazardous substances—like lead paint and gasoline—into soil and groundwater and negatively affect plant and animal life. Discarded items can also attract rodents, mosquitos, and other pests, which can then pose risks to human health. And illegal dumpsites can adversely affect property values and economic investment and impose significant clean-up costs on the government.

These harms are also not borne equally. Low-income communities and communities of color are often most affected by illegal dumping and its associated harms. Notably, in the District, in 2022,

¹ See Open Data DC, 311 City Service Requests in 2022, <https://opendata.dc.gov/datasets/DCGIS::311-city-service-requests-in-2022/explore> (last visited June 20, 2023).

² See, e.g., Justin Moyer, '*Environmental Racism*' and the Mysterious Cars Rusting in D.C. Woods, Wash. Post (Jan. 19, 2023), <https://www.washingtonpost.com/dc-md-va/2023/01/19/dc-ward-8-abandoned-cars-environmental-racism/>; Scott MacFarlane, Rick Yarborough, Steve Jones, and Jeff Piper, *Complaints About Illegal Trash Dumping Spike During the Pandemic*, NBCWashington.com (Apr. 27, 2021), <https://www.nbcwashington.com/investigations/complaints-about-illegal-trash-dumping-spike-during-the-pandemic/2653763/>; Jess Arnold, *DC Neighbors Fed Up After Illegal Dumping Incidents*, WUSA9.com (Jan. 3, 2020), [tinyurl.com/bd78r955](https://www.tinyurl.com/bd78r955).

there were six zip codes that had more than 1,000 illegal-dumping-related service requests—the residents in five of those six are predominantly people of color. Additionally, children are especially vulnerable to the hazards posed by illegal dumping. In general, children tend to absorb a greater proportion of environmental contaminants than do adults, and play and exploration can bring them into closer physical proximity to pollutants.³

This bill, which is simple and straightforward, will advance the District’s efforts to address illegal dumping in two important ways. First, it will amend the definition of “solid waste” to expressly include tires and appliances. Although these items are already covered by the definition of solid waste, and thus businesses and individuals can already be held liable for dumping these items, the bill will expressly include these items in the solid-waste definition to eliminate any question that they are covered.

Second, the bill will grant OAG authority to file civil lawsuits for damages, civil penalties, clean-up costs, reasonable attorneys’ fees, and injunctive relief against those who violate the District’s illegal-dumping prohibition. Civil lawsuits are a critically important enforcement tool—in fact, every other major environmental statute in the D.C. Code grants OAG civil enforcement authority. Closing this enforcement gap in the illegal-dumping statute will help ensure that businesses and individuals who engage in illegal dumping do not escape accountability where criminal prosecution may be inappropriate or infeasible or where administrative fines may be insufficient to address the harms and deter future misconduct. Notably, injunctive relief can be a particularly useful tool for curbing wrongdoing moving forward. OAG could, for instance, seek to require a company to fence a property that acts as an illegal dumpsite or require a company to change policies that encourage employees or contractors to engage in illegal dumping. Where OAG obtains injunctive relief, it can also more quickly and easily seek judicial redress when businesses or individuals continue to engage in harmful practices. In short, granting OAG civil enforcement authority will enhance the District’s ability to tamp down on illegal dumping, and OAG looks forward to working closely with DPW and the Metropolitan Police Department’s Environmental Crimes Unit to identify and pursue appropriate civil cases that will not only seek redress for wrongdoing but deter future misconduct.

Finally, the bill codifies a 2019 D.C. Court of Appeals decision that entrusted OAG with prosecuting misdemeanor violations of the illegal-dumping statute. The provisions codifying that decision are intended to promote clarity and transparency in the D.C. Code.

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In closing, this bill will strengthen the District’s ability to hold individuals and businesses accountable for illegal dumping and the considerable harms it causes. On behalf of OAG, I want to thank you for your consideration of this bill. Mr. Rosenfeld and I are happy to answer any questions you may have.

³ See generally, National Institute of Environmental Health Sciences, *Children’s Environmental Health*, <https://www.niehs.nih.gov/health/topics/population/children/index.cfm> (last visited June 22, 2023).