

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Energy and Environment

COMMENT RECONCILIATION MEMORANDUM

TO: File

FROM: Stephen S. Ours, P.E. *SSO*
Chief, Permitting Branch

SUBJECT: Comment Reconciliation Memorandum - Challenger Cab LLC

DATE: September 9, 2020

BACKGROUND

On December 12, 2015, the Air Quality Division (“AQD”) of the Department of Energy and Environment (“DOEE” or “the Department”) received a permit renewal request for Challenger Cab LLC to continue to operate an automotive paint spray booth at 2626 Evarts Street NE, Washington DC 20018. An updated application was received June 2, 2016. A draft permit was issued for public review on April 26, 2019 and a public hearing was held on May 28, 2019.

Several public comments were received, both in writing during the comment period, and verbally during the public hearing.

These public comments are addressed in the following table.

In addition to addressing the public comments, AQD has made a revision to the permit based on the results of an enforcement settlement agreement entered on May 7, 2019 with the District of Columbia Office of Administrative Hearings (OAH). This settlement required that the applicant request an amendment to their permit to allow painting operations to proceed only on Monday through Friday between 8:00 AM and 5:00 PM. In fact, by an email of May 28, 2019, Mr. Eskinder Wondwossen, representing Challenger Cab LLC, requested that the permit limit operating hours to Monday through Friday between 10:00 AM and 5:00 PM, in order to be responsive to the concerns of neighbors. This limitation has been placed in the permit (Conditions I(k) and III(i)), as requested.

COMMENT RECONCILIATION MEMORANDUM

Challenger Cab LLC

Permit No. 6616-R1 to Operate an Automotive Paint Spray Booth at 2626 Evarts Street NE

September 9, 2020

Page 2 of 11

AIR QUALITY DIVISION RESPONSES TO COMMENTS

Comment No.	Commenter	Comment or Comment Summary	AQD Response
MW-1	Marchant Wentworth of Wentworth Green Strategies	<p>Summary: The commenter referenced a series of complaints submitted to DOEE regarding “objectionable odors coming from this facility”, including 16 during the 1st quarter of 2016. He also referenced the findings resulting from inspections on January 19 and 24, 2018 and November 19, 2018 which resulted in an enforcement settlement agreement between DOEE and Challenger Cab LLC. The commenter described aspects of the terms of the settlement agreement. The commenter asserted that the violations were “based on storage issues – not the emissions from the facility that are harming the health and well-being of the neighbors.”</p> <p>The commenter asserts the following:</p> <p>“The history of the conduct of Challenger Cab indicates a complete disregard for the terms of the permit. Indeed, after Challenger agreed to the settlement, Challenger conducted paint operations at 1:30 pm on May 10 with the facility emitting fumes in direct violation of the</p>	<p>The commenter’s assertion that the violations were “based on storage issues – not the emissions from the facility that are harming the health and well-being of the neighbors” is not an accurate statement. The referenced settlement agreement filed with the District of Columbia Office of Administrative Hearings on May 7, 2019 settled two previously issued enforcement actions citing Challenger Cab LLC for 1) emitting an odorous air pollutant; 2) having visible emission from its paint booth stack; 3) failing to comply with certain record keeping requirements in the facility’s permit; and 4) failing to store coating components in closed containers. Only the last of these is a storage issue, while the first and the second of these citations address emissions directly (odorous and visible, respectively).</p> <p>Challenger Cab LLC admitted liability for these violations as part of the Settlement Agreement and actions were taken to address these issues and to prevent future, similar violations. As has been done in the past, as exemplified by these enforcement actions, DOEE will enforce the requirements of the District’s air quality regulations and the facility’s permit.</p>

COMMENT RECONCILIATION MEMORANDUM

Challenger Cab LLC

Permit No. 6616-R1 to Operate an Automotive Paint Spray Booth at 2626 Evarts Street NE

September 9, 2020

Page 3 of 11

Comment No.	Commenter	Comment or Comment Summary	AQD Response
		<p>terms of the settlement. On the face of the permit itself, language is clear that emissions that are ‘likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of like [sic] or property is prohibited. (20DCMR 903.1)’</p> <p>The commenter then states: “How the Department intends to enforce this provision and the other provisions of the permit are less than clear given the difficulties some have expressed about getting inspectors on the site in a timely manner.”</p> <p>The commenter concludes that: “...given the past behavior at the site, coupled with the proximity of facility to residential homes, that the Department should deny the permit to conduct an auto painting facility at this site.”</p>	<p>While numerous complaints have been received over the years related to this site, only a few violations have been identified as a result of DOEE investigations of these complaints despite a large number of inspections of the site, both of a proactive nature and in response to complaints. With respect to the specific May 10th complaint referenced in the comment, a DOEE inspector responded to this complaint the same afternoon that it was received. The inspector did not observe any evidence that painting had taken place that afternoon and the commenter was notified of these inspection results by email on May 14th.</p> <p>DOEE has not found that emissions from the site are “likely to be injurious to the public health or welfare” or to “interfere with the reasonable enjoyment of life or property”. These standards do not prohibit all detectable odors, only those that rise to the nuisance level.</p> <p>As such, DOEE has concluded that it is not appropriate to deny the permit application, but to rather issue an updated permit with stringent conditions that can enhance the ability of DOEE to respond to any possible violations of air quality regulations.</p>

COMMENT RECONCILIATION MEMORANDUM

Challenger Cab LLC

Permit No. 6616-R1 to Operate an Automotive Paint Spray Booth at 2626 Evarts Street NE

September 9, 2020

Page 4 of 11

Comment No.	Commenter	Comment or Comment Summary	AQD Response
			<p>It should be noted that, among the requirements of the new permit are additional requirements such as the requirement to limit active painting operations to 10:00 AM – 5:00 PM Monday through Friday to better ensure that reasonable enjoyment of life and property is not interfered with.</p>
EP-1	Ewan Plant, Resident, 2724 28th St NE	<p>Summary: The commenter references “on-going complaints that have been registered by neighbors”, including himself. He asserts that one neighbor “sold her house because of the impact on her quality of life.”</p> <p>Similar to the previous commenter, Mr. Plant references the enforcement actions that have been taken by DOEE and asserts that Challenger Cab LLC has not changed the way they operate the paint booth.</p> <p>The commenter cites these issues as bases for denying the permit renewal pursuant to 20 DCMR § 202.2.</p>	<p>The points made in this comment are very similar to those made in Comment MW-1 by Mr. Wentworth. While some past violations have been identified and addressed, many complaints have not been substantiated. While enforcement actions have been warranted in certain cases (and have been taken), DOEE has determined that the past compliance history does not warrant revoking (or denying the renewal of) the facility’s operating permit.</p> <p>The commenter is correct, however, that 20 DCMR § 202.2 provides DOEE with the authority to revoke a permit should it be determined that violations are substantial enough or pervasive enough to warrant that action.</p> <p>Similar to the response to Comment MW-1, issuing a more stringent permit will provide better direction to the facility and stronger enforcement options, should they be necessary.</p>

COMMENT RECONCILIATION MEMORANDUM

Challenger Cab LLC

Permit No. 6616-R1 to Operate an Automotive Paint Spray Booth at 2626 Evarts Street NE

September 9, 2020

Page 5 of 11

Comment No.	Commenter	Comment or Comment Summary	AQD Response
EP-2	Ewan Plant, Resident, 2724 28th St NE	The commenter states: “The DOEE has given Challenger Cab LLC several opportunities to demonstrate their ability to operate as a responsible business. After Challenger Cab LLC initially constructed the venting system in the paint booth and started painting without appropriate permits the DOEE worked with them to grant the permits and advised them on upgrading the venting stack. This was done even though the building did not meet current zoning requirements. Challenger Cab LLC also attempted to add onto the paint booth without appropriate permits in 2018. When this was brought to the attention of the District, the construction was removed.”	<p>It is DOEE’s understanding that the property is properly zoned for the automotive painting operation at the site. If a law or regulation, other than the air quality regulations, prohibited an activity at a site, and DOEE were aware of such prohibition, DOEE would not issue a permit in conflict with such a determination. However, in this case, DOEE is not aware of any such conflict.</p> <p>DOEE consulted with the DC Office of Planning and the Department of Consumer and Regulatory Affairs (DCRA) Zoning Administrator in response to this comment. Current zoning requirements do not allow “Enameling, plating, or painting (except an artist’s studio), as a principal use” on a property within 100 feet of a residential zone (Subtitle U, Section 803.2(f). However, because the painting operation was active before this provision was included in the zoning regulations in 2016, the operations at this site are “grandfathered” for zoning compliance purposes, and, as such, this operation is not a zoning violation.</p>
SF-1	Evelyn Sarah Fraser, Resident, 2724 28th St NE	Summary: The commenter asserts that the painting operation interferes with enjoyment of property in the neighborhood, specifically citing the need to “abruptly cancel parties and other	DOEE has received numerous complaints about odors, and occasional complaints about visible emissions from the facility. DOEE consistently investigates these complaints and has, on a few occasions identified violations. However, the

COMMENT RECONCILIATION MEMORANDUM

Challenger Cab LLC

Permit No. 6616-R1 to Operate an Automotive Paint Spray Booth at 2626 Evarts Street NE

September 9, 2020

Page 6 of 11

Comment No.	Commenter	Comment or Comment Summary	AQD Response
		<p>gatherings when the paint booth is in operation”. She referenced the varying times of operation as well as the duration of operations, indicating that some events last hours. She referenced health effects in the form of headaches. She referenced a neighbor who shared a property line with Challenger Cab LLC moving out of the area as a result of the problems.</p>	<p>violation findings have been very limited compared to the number of site visits and inspections performed. On several occasions, odors have been identified, but have not risen to the level of a nuisance odor. On other occasions there has been no indication of recent painting at the facility when inspectors respond to complaints.</p> <p>Regarding the times of operation, as discussed in the body of the memorandum above, the permit is being amended to limit operating hours to between 10:00 AM and 5:00 PM, Monday through Friday. This should provide a higher level of predictability to the neighborhood.</p>
SF-2	Evelyn Sarah Fraser, Resident, 2724 28th St NE	<p>The commenter referenced the Air Quality Amendment Act of 2014 stating that this act “seemed to give DOEE an enormous new mandate to control these noxious behaviors.”</p>	<p>The relevant portion of the Air Quality Amendment Act of 2014 states:</p> <p>“In determining interference with reasonable enjoyment of life and property under paragraph (1)(F) of this subsection, the Mayor shall consider:</p> <ul style="list-style-type: none">(A) The frequency, duration, and intensity of the source;(B) The number of complaints filed about the source;(C) The number of distinct complaints filed about the source;

COMMENT RECONCILIATION MEMORANDUM

Challenger Cab LLC

Permit No. 6616-R1 to Operate an Automotive Paint Spray Booth at 2626 Evarts Street NE

September 9, 2020

Page 7 of 11

Comment No.	Commenter	Comment or Comment Summary	AQD Response
			<p>(D) The zoning classification of the affected area; and (E) The source’s ability to prevent complaints.”</p> <p>As required by this act, DOEE has considered these criteria. With reference to Criterion A, despite numerous inspections, AQD inspectors have seldom identified an odor attributed to this facility, and when identified, they have generally described it as not being intense. With reference to Criterion B, a large number of complaints have been received, but only a relatively small percentage of them have been substantiated. With reference to Criterion C, the vast majority of complaints in recent years have come from a single household, though they have generally been about different reported incidents. With regard to Criterion D, the affected area is an industrial zone that permits moderate density commercial and production uses. (https://dcoz.dc.gov/page/summary-zone-districts). The operation of a paint booth appears to be consistent with this classification, and is one of several paint booths in the vicinity. The emissions are therefore not uncharacteristic for the area. With regard to Criterion E, one would expect some minimal level of odor from any painting operation. There are limited options for</p>

COMMENT RECONCILIATION MEMORANDUM

Challenger Cab LLC

Permit No. 6616-R1 to Operate an Automotive Paint Spray Booth at 2626 Evarts Street NE

September 9, 2020

Page 8 of 11

Comment No.	Commenter	Comment or Comment Summary	AQD Response
			controlling odors from such operations due to the high flow rate of exhaust gas and low concentration of odorous compounds in the exhaust gas. However, as shown by past inspections and enforcement actions, DOEE is committed to enforcing appropriate requirements. Due, in large part, to the commenters concerns about this particular facility, the updated permit will contain stringent requirements that go beyond the default regulatory requirements and will provide DOEE with enhanced enforcement opportunities. These special requirements consist of a limit on operating hours to week days between 10:00 AM and 5:00 PM, a high outlet stack height, and a requirement to use carbon filters in addition to the standard particulate matter filters.
SF-3	Evelyn Sarah Fraser, Resident, 2724 28th St NE	The commenter alleged persistent violations of “the new standards”: as follows: 1) Painting with high-VOC paint; 2) Failing to log painting; 3) Evacuating particulate through their vent stack; and 4) Spray painting vehicles in the evenings and on weekends when inspectors are not available.	DOEE inspectors have not identified any violations of the new (2015) VOC content requirements. It should be noted that removal of VOC does not necessarily equate to removal of odorous compounds. Some organic compounds that are volatile, but not photochemically reactive, such as acetone, are not defined as VOCs, but do have odors and are common components in automotive coatings. As noted previously, DOEE has identified some

COMMENT RECONCILIATION MEMORANDUM

Challenger Cab LLC

Permit No. 6616-R1 to Operate an Automotive Paint Spray Booth at 2626 Evarts Street NE

September 9, 2020

Page 9 of 11

Comment No.	Commenter	Comment or Comment Summary	AQD Response
			<p>record keeping violations and has taken appropriate enforcement action when they have been identified. Similarly, DOEE has identified instances of visible emissions occurring and has taken appropriate enforcement actions including temporary shutdown of the source.</p> <p>With regard to painting on evenings and weekends, there is currently no air quality regulation that limits the time of such operations. A limit has been proposed by the facility for inclusion in the permit, but will only be enforceable after the permit renewal has been issued. This will limit active painting operations to between 10:00 AM and 5:00 PM, and will limit operations to weekdays only.</p> <p>DOEE will continue to enforce the District’s air quality regulations as well as the terms of the new permit, once that permit has been issued.</p>
ZFP-1	Zeke Fraser-Plant, Resident, 2724 28th St NE	The commenter repeated several of the earlier comments. He specifically asserted that the permit should be denied due to “fumes” entering the yards of 224. 2722, 2720, and 2725 28 th Street NE. He referenced a neighbor who moved as a result of the fumes and different neighbors who experience headaches.	<p>As noted previously, both as a result of complaints and proactive inspections, this facility has been inspected numerous times, with violations only identified in rare cases.</p> <p>DOEE has determined that there is no current basis for denying the permit. DOEE also notes that issuing the new permit will place additional</p>

COMMENT RECONCILIATION MEMORANDUM

Challenger Cab LLC

Permit No. 6616-R1 to Operate an Automotive Paint Spray Booth at 2626 Evarts Street NE

September 9, 2020

Page 10 of 11

Comment No.	Commenter	Comment or Comment Summary	AQD Response
			limitations on the operations of the facility and enhance the ability of DOEE to enforce regulatory requirements.
EW-1	Eskinder Wondwossen, Business Manager, Challenger Cab LLC	Summary: The commenter expressed sympathy for the neighbors and indicated that he has interacted with them as well as a representative of the councilperson’s office (Kelly Cislo of Councilmember Kenyan McDuffie’s office).	DOEE encourages Challenger Cab LLC to continue to interact with residents of the nearby neighborhood and appropriate elected representatives.
EW-2	Eskinder Wondwossen, Business Manager, Challenger Cab LLC	The commenter stated: “...we feel like among various other paint shops they’re singling us [out] because of the proximity. And that the inspectors [that] have been showing up there, haven’t found us in violation at various times, that they have not pinpointed our shop to be the cause of the complaint, and the fumes weren’t coming from our shop.”	DOEE notes that there are other nearby facilities that use paints and coatings similar to those used by Challenger Cab LLC that could be the cause of odors attributed to the Challenger Cab LLC facility at times. AQD inspectors regularly investigate other nearby sources when responding to complaints in the area, and will continue to do so in the future, should such complaints occur in the future.
EW-3	Eskinder Wondwossen, Business Manager, Challenger Cab LLC	Summary: The commenter cited his willingness to allow witnesses to observe the paint shop while active the day of the hearing. He also offered “to have any kind of testing done to pinpoint whether it’s from our shop or from somebody else that these fumes are supposedly coming from.”	DOEE notes that Challenger Cab LLC has historically cooperated with efforts to allow for the observation of their operations by DOEE inspectors and occasionally by other entities. DOEE appreciates the willingness to participate in future testing if warranted. Additionally, there is a regulatory requirement under 20 DCMR § 502.1 that is applicable to the facility, which requires the Permittee to conduct

COMMENT RECONCILIATION MEMORANDUM

Challenger Cab LLC

Permit No. 6616-R1 to Operate an Automotive Paint Spray Booth at 2626 Evarts Street NE

September 9, 2020

Page 11 of 11

Comment No.	Commenter	Comment or Comment Summary	AQD Response
			and allow the Department access to conduct tests of air pollution emissions from any source as requested. As such, this requirement has been added to the final permit as Condition IV(r). Note that, pursuant to 20 DCMR § 502.1, DOEE “shall not require the owner or operator to conduct tests with unreasonable frequency”, but because this is a limit on the Department, rather than the Permittee, it is not included as permit language, but remains as a limit on the Department’s authority.

RECOMMENDATIONS

Based on the above comment evaluation, I recommend prompt issuance of Permit No. 6616-R1, as amended pursuant to this memorandum.

SSO