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NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Dexter R. Matthews, Director

Division of Waste Management

Michael F. Easley, Governor

William G. Ross Jr., Secretary

September 20, 2004

Mr. Jerry Johnson
Waste Industries USA, Inc.
3301 Benson Drive
Suite 601
Raleigh, NC 27609

RE: Black Bear Disposal LLC, Proposed Black Bear Disposal Facility, Camden County, NC, Corporate Structure Related to Permitting Questions.

Dear Mr. Johnson.;

A permit application for the Black Bear Disposal Facility, a municipal solid waste landfill, proposed for location in Camden County, North Carolina has been submitted on behalf of Black Bear Disposal LLC, by the consultant Camp Dresser and McKee, Inc. (CDM), of Raleigh, NC.

In accordance with N.C.G.S. 150A-294(b2), the Division of Waste Management (Division) may require the applicant for any solid waste management permit to satisfy the Division that the applicant, and any parent, subsidiary, or other affiliate of the applicant or parent:

- (1) Is financially qualified to carry out the activity for which the permit is required and
- (2) Has substantially complied with the requirements applicable to any solid waste management activity in which the applicant has previously engaged and has been in substantial compliance with federal and state laws, regulations, and rules for the protection of the environment.

The purpose of this letter is to determine the relationship between Waste Industries USA, Inc. and Black Bear Disposal LLC, and if the applicant desires that Waste Industries USA, Inc. be a party to the solid waste permit application and any permit which may be issued for the proposed facility, or if Black Bear Disposal LLC will be the sole party to the solid waste permit application and any subsequent solid waste permit which may be issued by the Division. The information that the Section will request will be determined by the anticipated permit relationship, and will be provided to you under separate cover after the Section has received and evaluated your response to this letter.

1646 Mail Service Center, Raleigh, North Carolina 27699-1646
Phone 919-733-0692 \ FAX 919-733-4810 \ Internet <http://wastenotnc.org>

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For your information, the Division may consider the financial qualifications of Waste Industries USA Inc. to design, construct, operate, close and maintain the proposed municipal solid waste landfill, pursuant to N.C.G.S. 130A-294(b2) and (b3), provided that Waste Industries USA, Inc. is the permit applicant in addition to Black Bear Disposal LLC.

However, if Black Bear Disposal LLC. remains the *sole* applicant for the permit, the Division cannot consider any of Waste Industries' assets or other financial qualifications as a demonstration of the financial qualification of Black Bear Disposal LLC, pursuant to N.C.G.S. 130A-294(b2)(1).

The North Carolina Limited Liability Act, Chapter 57C of the General Statutes, insulates members, managers, directors and executives of a limited liability company from liability for the obligations of the limited liability company. See N.C.G.S. 57C-3-30. Subsection (b) of that statute further provides that a member of a limited liability company is not a proper party to proceedings by or against a limited liability company except where the proceeding is to enforce a member's own right against or liability to the limited liability company.

Accordingly, the information that the Section will request will be dependent upon the relationship of the parties and the applicants and eventual owners of the solid waste permit. Please provide a response at your earliest convenience if you have any questions please contact us at 919.733.0692, x 343.

Sincerely,



Edward Mussler
Environmental Engineer
Solid Waste Section

Cc: James C Coffey, Chief, Solid Waste Section
D. Jim Barber, Head, Permitting Branch
✓ Nancy Scott, Asst. Attorney General