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HUFF, POOLE & MAHONEY, P.C.
ATTORNEYS & COUNSELLORS

Paul R. Schmidt, Esq.

Direct Dial: 757/518-2380
Email: pschmidt@hpmlaw.com

Reply to:
Virginia Beach

November 23, 2005

Mr. Dexter Matthews, Division Director
Department of Environmental and Natural Resources
Division of Waste Management
DWM Central Office
401 Oberlin Road, Suite 150
Raleigh, NC 27605

Re: The City of Chesapeake/Camden County Landfill Matter
Our File No.: 13696.000105

Dear Mr. Matthews:

Enclosed please find a copy of the Notice of Citizen Suit served by the City of Chesapeake on November 21, 2005. As this suit involves the parcel of property currently being proposed by Black Bear Disposal, LLC for determination of site suitability by the North Carolina Department of Environment and Natural Resources, Solid Waste Division, I ask that you include this Notice in your permitting file for the Black Bear project.

Please feel free to contact this office should you have any questions.

Very truly yours,

HUFF, POOLE & MAHONEY, P.C.

By

Paul R. Schmidt

PRS/tg
Enclosure
cc/enc: James A. Coffey, Section Chief
Ed Mussler, Branch Head
Nancy Scott, Assistant Attorney General
Randell Woodruff, County Manager

RECEIVED NOV 2005

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION
No.:___:_____-CV-_____(_)

CITY OF CHESAPEAKE, VIRGINIA Plaintiff, v. BLACK BEAR DISPOSAL, L.L.C. Serve: c/o Stephen D. Grissom, Registered Agent 3301 Benson Drive, Suite 601 Raleigh NC 27609 and UNITED STATES OF AMERICA Defendants. Serve: Hon. Alberto R. Gonzalez Attorney-General of the United States of America U.S. Department of Justice 950 Pennsylvania Avenue, NW Washington, DC 20530-0001 Hon. Donald H. Rumsfeld Secretary of the United States Department of Defense 1000 Defense Pentagon Washington, DC 20301-1000 Hon. Francis J. Harvey Secretary of the United States Army 101 Army Pentagon Washington, DC 20310-0101	) Notice of) Citizen Suit) 33 U.S.C.) § 1365(b)(2)

Lieutenant General Carl A. Strock)
Commander and Chief of Engineers)
United States Army Corps of Engineers)
HQ US Army Corps of Engineers)
ATTN: CEAO-ZA)
441 G Street, NW)
Washington, DC 20314-1000)
)
Colonel John Pulliam)
District Engineer, Wilmington District)
United States Army Corps of Engineers)
69 Darlington Avenue)
Wilmington, NC 28403)
)
Stephen L. Johnson)
Administrator)
United States Environmental Protection Agency)
Ariel Rios Building)
1200 Pennsylvania Avenue, N.W.)
Washington, DC 20460)
)
James I. Palmer, Jr.)
Regional Administrator)
United States Environmental Protection Agency)
Region 4)
Sam Nunn Atlanta Federal Center)
61 Forsyth Street, SW)
Atlanta, GA 30303)

NOTICE OF CITIZEN SUIT

NOW COMES the Plaintiff, the City of Chesapeake, Virginia, a duly incorporated municipality and political subdivision of the Commonwealth of Virginia, and pursuant to 33 U.S.C. § 1365(b)(2), gives notice of its intent to file a Citizen Suit as authorized by 33 U.S.C. § 1365(a)(2), and in accordance with the requirements of 40 C.F.R. part 135, states as follows:

1. The City of Chesapeake ("Chesapeake") is a Virginia municipal corporation and political subdivision of the Commonwealth of Virginia.

2. The United States Army Corps of Engineers ("ACOE") is a division of the Department of the Army ("DoA"), a division of the Department of Defense ("DoD"), which reports to the Secretary of Defense, and in turn, to the Executive Branch of the Federal Government.

3. The United States Environmental Protection Agency ("EPA") is an independent agency under the control of the Executive Branch of the Federal Government.

4. The EPA and the ACOE share responsibility for enforcing portions of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387, commonly referred to as the "Clean Water Act" ("CWA").

5. Specifically, the ACOE is responsible for enforcing and issuing permits pursuant to 33 U.S.C. § 1344 [CWA § 404], which prohibits the discharge of dredged or fill materials in the waters of the United States without a permit. The EPA retains concurrent jurisdiction to enforce § 404 of the CWA and prosecute violations of same. These permitting and enforcement responsibilities are not discretionary.

6. The CWA authorizes "any citizen" to commence a civil action against the Administrator of the EPA for a failure to perform any non-discretionary act required under the CWA. 33 U.S.C. § 1365(a)(2) [CWA § 505(a)(2)].

7. CWA § 505(g) defines a "citizen" as "a person or persons having an interest which is or may be adversely affected."

8. Chesapeake is a "person" as defined by 33 U.S.C. § 1362(5) [CWA § 502(5)].

9. The ACOE issued on September 26, 2002 an Approved Jurisdictional Determination ("AJD"), a true copy of which is attached hereto and incorporated herein as Exhibit "A", purporting to cover a parcel of land ("the Site") located in the extreme northern corner of Camden County, North Carolina ("Camden"). The Site is further identified in the AJD as "[a]pprox. 793.3 acres of PC cropland located 7 miles N of South Mills, off of Hwy 17N, adjacent to the Dismal Swamp Canal."

10. The AJD states, in pertinent part;

> There are no waters of the U.S., to include wetlands present on the above described project area which are subject to the permit requirements of Section 404 of the Clean Water Act (33 USC 1344). Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.

The AJD sets forth its "Basis for Determination" as follows: "USDA-FSA records show that tract No. 9197 has been drained and cultivated continuously before 12/23/85 and currently under soybean production."

11. The September 26, 2002, AJD was signed by Ms. Laura D. Toler, Corps Regulatory Officer, and constitutes a final agency action for which Chesapeake has exhausted its administrative remedies available from the ACOE and EPA.

12. The AJD was subsequently submitted to the North Carolina Department of Environment and Natural Resources ("DENR") as part of an application for a

determination of Site Suitability for the construction and operation of a 490-acre municipal solid waste landfill proposed by Defendant Black Bear Disposal, L.L.C. ("Black Bear"), a necessary party to the instant Citizen Suit pursuant to Fed. R. Civ. P. 19(a) and 20(a). *See, Pamlico-Tar River Fdtn. v. U.S. Army Corps of Engineers*, 329 F.Supp.2d 600, 603 (E.D.N.C. 2004).

13. This project contemplates a change in the use of the Site from agricultural production to a municipal solid waste landfill, and the construction of the landfill liner system on the land surface will necessitate filling of the drainage ditches currently crossing the Site.

14. The drainage ditches run primarily North-South, and discharge into two primary East-West ditches which are in free communication with, and discharge into, the Great Dismal Swamp Canal ("GDS Canal"), a "navigable in fact" waterway and a part of the Intercoastal Waterway.

15. The jurisdictional reach of the CWA is co-terminous with the term "waters of the United States," which is defined in the ACOE's regulations at 33 C.F.R. § 328.3(a) to include "(1) All waters which are currently used [. . .] in interstate or foreign commerce [. . .] and (5) tributaries of waters identified in paragraphs (a)(1) - (4) of this section."

16. Fill material is defined by the ACOE as "materials placed in the waters of the United States where the material has the effect of replacing any portion of a

water of the United States with dry land; or changing the bottom elevation of any portion of a water of the United States." 33 C.F.R. § 323.2(e)(1).

17. "The term discharge of fill material means the addition of fill material into the waters of the United States. The term generally includes . . . placement of fill material for construction or maintenance of any liner, berm, or other infrastructure associated with solid waste landfills." 33 C.F.R. § 323.2(f).

18. The September 26, 2002 AJD issued by the ACOE is a final agency action for purposes of the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706, and is ripe for review pursuant to § 706 of the APA.

19. The ACOE has actual knowledge of the proposed landfill project to be constructed at the Site.

20. Subsequent to the issuance of the AJD, the Fourth Circuit Court of Appeals issued two seminal decisions clarifying and defining the Corps' interpretation of its regulations and the jurisdictional reach of the CWA pursuant to the 33 C.F.R. § 328.3(a)(5) "tributaries" definition in the *Newdunn* and *Deaton* decisions. *Treacy v. Newdunn Assoc., L.L.P.*, 344 F.3d 407 (4th Cir. 2003); *United States v. Deaton*, 332 F.3d 698 (4th Cir. 2003).

21. The *Newdunn* Court summarized its holding as follows:

> In the present case, the Corps asserts jurisdiction over navigable waters (33 C.F.R. § 328.3(a)(1)), tributaries of navigable waters (§ 328.3(a)(5)), and "[w]etlands adjacent to waters (other than waters that are themselves wetlands) ..." (§ 328.3(a)(7)). The Corps defines "adjacent" to mean, "bordering, contiguous, or

neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are 'adjacent wetlands.' " 33 C.F.R. § 328.3(c). This circuit has recently concluded that, pursuant to these regulations, the Corps intends to assert jurisdiction over "any branch of a tributary system that eventually flows into a navigable body of water." *United States v. Deaton*, 332 F.3d 698, 711 (4th Cir.2003). In *Deaton*, the Corps claimed authority to regulate wetlands bordering a "roadside ditch" that took "a winding, thirty-two mile path to the Chesapeake Bay." *Id.* at 702. Along the way to the Bay, water flowed from the Deaton's wetlands to the roadside ditch, and then into a "culvert" on the other side of the road. *Id.* Water from the culvert drained into a second ditch, which flowed into Beaverdam Creek. Beaverdam Creek was "a direct tributary of the Wicomico River, which [was] navigable." *Id.* The distance from the Deaton's wetlands to a navigable-in-fact river was approximately eight miles. The *Deaton* court upheld the Corps' exercise of jurisdiction over all of these waters, finding that "the Corps's regulatory interpretation of the term 'waters of the United States' as encompassing nonnavigable tributaries of navigable waters does not invoke the outer limits of Congress's power or alter the federal-state framework." *Id.* at 708. In dismissing a Commerce Clause challenge to the Corps' regulations, the *Deaton* court summarized Congress' well-articulated purpose for crafting the CWA and concluded, "The Corps has pursued this goal by regulating nonnavigable tributaries and their adjacent wetlands. This use of delegated authority is well within Congress's traditional power over navigable waters." *Id.* at 707. In sum, the Corps' unremarkable interpretation of the term "waters of the United States" as including wetlands adjacent to tributaries of navigable waters is permissible under the CWA because pollutants added to any of these tributaries will inevitably find their way to the very waters that Congress has sought to protect.

To the extent that Newdunn challenges the Corps' decision to label the manmade, I-64 ditch a

"tributary," that argument has also been foreclosed by *Deaton*. The *Deaton* court recognized that the Corps has defined the word "tributary" to include "the entire tributary system," including roadside ditches. *Id.* at 710. As explained above, *Deaton* deferred to the Corps' definition of "tributary" because "discharges into nonnavigable tributaries and adjacent wetlands have a substantial effect on water quality in navigable waters." *Id.* at 712. That the I-64 ditch at issue in the present case is a manmade rather than a natural watercourse is an irrelevant distinction. As the Corps has explained:

> The discharge of a pollutant into a waterway generally has the same effect downstream whether the waterway is natural or manmade. Indeed, given the extensive human modification of watercourses and hydrologic systems throughout the country, it would be difficult to identify a principled basis in this case for distinguishing between natural watercourses and watercourses that are wholly or partly manmade or modified. (Br. for the United States at 48-49.)

This observation is particularly meaningful in the present case, where the United States has extensively documented the connection between the Newdunn Property's wetlands and the navigable waters, both before and after the construction of I-64. Because of this longstanding connection, it would be illogical to conclude that, prior to the existence of I-64, the Newdunn Wetlands would have been within the ambit of the Corps' regulations, but that now, with the construction of the highway, the wetlands are no longer jurisdictional.

As stated before, the CWA's primary objective is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a) (2002). If this court were to conclude that the I-64 ditch is not a "tributary" solely because it is manmade, the CWA's chief goal would be subverted. Whether man-made or natural, the tributary flows into traditional, navigable waters. Accordingly, the Corps may permissibly

> define that tributary as part of the "waters of the United States." *See* 33 U.S.C. § 1362(7). *Treacy v. Newdunn Assoc., L.L.P.*, 344 F.3d 407, 416-7 (4th Cir. 2003).

22. Based upon *Deaton* and *Newdunn*, the Fourth Circuit has upheld the ACOE's interpretation of its "tributaries" jurisdiction pursuant to 33 C.F.R. § 328.3(a)(5), and has validated and expanded the jurisdictional reach of the CWA claimed by the ACOE in *Deaton* to include the drainage ditches crossing the Site.

23. Furthermore, the Eastern District of North Carolina has recently cited to and expounded upon the impact of the *Deaton* case on the jurisdictional reach of the CWA in the case of *North Carolina Shellfish Growers Assoc. v. Holly Ridge Assoc.*, 278 F.Supp.2d 654 (E.D.N.C. 2003). Discussing similar ditches, the *Shellfish Growers* Court held;

> Plaintiffs contend that a number of ditches on the Morris Landing Tract are tributaries under the CWA because these ditches flow into other covered waters. Specifically, Plaintiffs claim that Ditches 2, 9/10, and 11/12 are tributaries of Cypress Branch because discharges from these ditches reach the waters of Cypress Branch. *See* Lea Dep. at 97-98, 116; Mitchell Dep. at 159-63. Based on the Fourth Circuit's decision in *Deaton*, the Court concludes that any ditches flowing into Cypress Branch, a nonnavigable tributary of a navigable water, are tributaries subject to regulation under the CWA. *Id.* at 672.

24. Based upon these 2003 cases, the state of the law regarding the jurisdictional reach of the CWA has changed to include non-navigable and man-made tributaries of navigable waters as being included within the definition of the term "waters of the United States."

25. Pursuant to the *Deaton*, *Newdunn*, and *Shellfish Growers* decisions, the ditches crossing the Site are "waters of the United States" and fall under the jurisdiction of the CWA.

26. Because the law has changed, the AJD, by its own terms, may no longer be relied upon by Black Bear for five years from date of issuance for CWA purposes.

27. The ACOE has failed to rescind its AJD, and Black Bear is awaiting the issuance of its site suitability determination and construction permit, and upon receipt of same, will commence filling of the drainage ditches crossing the property.

28. The filling of the ditches constitutes a discharge of fill material to the waters of the United States, and is prohibited without a duly issued § 404 permit from the ACOE.

29. The ACOE, by failing to rescind the AJD, has failed to require Black Bear to submit to the federal permitting process, a non-discretionary duty of the ACOE, as delegated by the EPA, and/or an independent duty of the EPA.

30. The discharge of fill material to the waters of the United States present on the Site will have a detrimental effect on the water quality of the GDS Canal, which flows North to Chesapeake, Virginia. The discharge will also affect water draining from the Site to the Northwest River over a series of ditches to which Black Bear has gained a drainage easement which is set forth in the Deed transferring the Site to Black Bear, attached hereto and incorporated herein as

Exhibit "B", and other environmental and aesthetic impacts to Chesapeake and the historic GDS Canal.

31. Upon information and belief, the discharge of fill material to the waters of the United States present on the Site will result in the deposition of sediment and other pollutants, in violation of CWA § 402, and fill materials to ditches crossing a parcel of land adjacent to the Site, and owned by Chesapeake ("the Adjacent Parcel"). The anticipated discharge of fill material will have an adverse effect on Chesapeake's use and enjoyment of its Adjacent Parcel.

32. Upon information and belief, the agricultural fields present on the Site are improperly categorized by the ACOE and/or the USDA as "prior converted" or "PC" cropland; rather, they meet the inundation and other requirements of "farmed wetlands" as that term is defined by the United States Department of Agriculture ("USDA") in its regulations found at 7 C.F.R. § 12.2(a)(4), and subject to the permitting requirements of the CWA.

33. The ACOE's "Basis for Determination" in the AJD is premised upon the USDA's "PC cropland" designation pursuant to the "SwampBuster" provisions of the Food Security Act of 1985, 16 U.S.C. §§ 3801-3862.

34. The ACOE relied upon wetlands delineations and PC cropland designations performed by the USDA to comply with SwampBuster, pursuant to a January 6, 1994 Memorandum of Agreement (MoA) between the USDA, ACOE, EPA, and Department of the Interior, wherein the ACOE would use USDA PC Cropland

designations in lieu of ACOE-performed § 404 wetlands delineations for CWA permitting purposes.

35. In January of 2005, the DoA and the USDA withdrew from the MoA, and PC cropland designations can no longer be used for CWA permitting purposes if a change in use of the proposed property is contemplated, i.e. from agricultural production to municipal solid waste landfill.

36. In a Memorandum to the Field dated February 25, 2005, attached hereto and incorporated herein as Exhibit "C", the ACOE discussed how this withdrawal from the 1994 MoA would effect § 404 permitting procedures. "If the land changes to a non-agricultural use, the PC determination is no longer applicable and a new wetland determination is required for CWA purposes. Specific guidance will be provided by the Corps in the near future addressing how the Corps will treat PC designations for land that changes from agricultural to non-agricultural use." Exhibit "C" at 4.

37. Given this change in ACOE procedures and regulations, as well as the change in the state of the law described above, the ACOE's failure to rescind the AJD is both a failure to perform a non-discretionary act and a final agency action that is arbitrary and capricious and has an adverse affect on Chesapeake, thus triggering an independent right to judicial review pursuant to § 702 of the APA.

38. This Notice is given by:

City of Chesapeake, Virginia, by counsel:

J. Bryan Plumlee, Esq.
(NC State Bar # 23447)
LR 83.1 Counsel
Paul R. Schmidt, Esq.
(Va. State Bar # 45840)
HUFF, POOLE & MAHONEY, P.C.
4705 Columbus Street
Virginia Beach, VA 23462-6749
(757) 499-1841
Fax (757) 552-6016

39. Counsel for Plaintiff:

J. Bryan Plumlee, Esq.
(NC State Bar # 23447)
LR 83.1 Counsel
Paul R. Schmidt, Esq.
(Va. State Bar # 45840)
HUFF, POOLE & MAHONEY, P.C.
4705 Columbus Street
Virginia Beach, VA 23462-6749
(757) 499-1841
Fax (757) 552-6016

This 21st day of November 2005.

CITY OF CHESAPEAKE, VIRGINIA

By: _____
Of Counsel

J. Bryan Plumlee, Esq.
(NC State Bar # 23447)
LR 83.1 Counsel
Paul R. Schmidt, Esq.
(Va. State Bar # 45840)
HUFF, POOLE & MAHONEY, P.C.
4705 Columbus Street
Virginia Beach, VA 23462-6749
(757) 499-1841
Fax (757) 552-6016

CERTIFICATE OF SERVICE

I certify that pursuant to 33 U.S.C. § 1365(b)(2) and 40 C.F.R. part 135, I have sent, via certified mail, a copy of the foregoing Notice of Citizen Suit to:

Hon. Alberto R. Gonzalez
Attorney-General of the United States of America
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Hon. Donald H. Rumsfeld
Secretary of the United States
Department of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Hon. Francis J. Harvey
Secretary of the United States Army
101 Army Pentagon
Washington, DC 20310-0101

Lieutenant General Carl A. Strock
Commander and Chief of Engineers
United States Army Corps of Engineers
HW US Army Corps of Engineers
ATTN: CEAO-ZA
441 G. Street, NW
Washington, DC 20314-1000

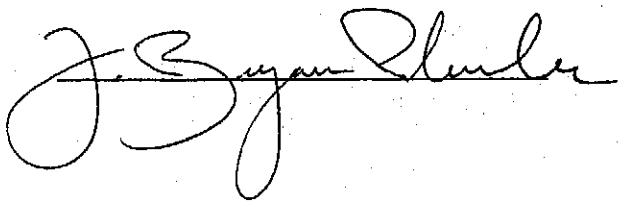
Colonel John Pulliam
District Engineer, Wilmington District
United States Army Corps of Engineers
69 Darlington Avenue
Wilmington, NC 28403

Stephen L. Johnson
Administrator
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

James I. Palmer, Jr.
Regional Administrator
United States Environmental Protection Agency
Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303

Black Bear Disposal, LLC
% Stephen D. Grissom, Registered Agent
3301 Benson Drive, Suite 601
Raleigh, NC 27609

this 21st day of November, 2005



U.S. ARMY CORPS OF ENGINEERS
WILMINGTON DISTRICT

Action ID 200211083 County Camden

NOTIFICATION OF JURISDICTIONAL DETERMINATION

Property Owner/Agent: Frank T. Williams Farms
Address: Post Office Box 7100
Virginia Beach, Virginia 23457
Telephone No.: (757)426-6465
Size and location of property (waterbody, highway name/number, town, etc.) Approx 793.3 acres of PC cropland located 7 miles N of South Mills, off of US Hwy17N, adjacent to the Dismal Swamp Canal.

Indicate Which of the Following Apply:

_ There are waters of the U.S. and/or wetlands, on the above described property which we strongly suggest should be delineated and surveyed. The surveyed wetland lines must be verified by our staff before the Corps will make a final jurisdictional determination on your property.

_ Because of the size of your property and our present workload, our identification and delineation of your wetlands cannot be accomplished in a timely manner.. You may wish to obtain a consultant to obtain a more timely delineation of the wetlands. Once the consultant has flagged a wetland line on the property, Corps staff will review it, and, if it is accurate, we strongly recommend that you have the line surveyed for final approval by the Corps. The Corps will not make a final jurisdictional determination on your property without an approved survey.

_ The waters of the U.S. and/or wetlands, on your property have been delineated, and the limits of the Corps jurisdiction have been explained to you. Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.

X There are no waters of the U.S., to include wetlands, present on the above described project area which are subject to the permit requirements of Section 404 of the Clean Water Act (33 USC 1344). Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.

_ The property is located in one of the 20 Coastal Counties subject to regulation under the Coastal Area Management Act (CAMA). You should contact the Division of Coastal Management in Washington, NC, at (252) 946-6481 to determine their requirements

Placement of dredged or fill material in Waters of the US and/or wetlands on this property without a Department of the Army permit may constitute a violation of Section 301 of the Clean Water Act (33 USC 1311). A permit is not required for work restricted entirely to existing non-wetland area. If you have any questions regarding this determination and/or the Corps of Engineers regulatory program, please contact Laura D. Toler at (252)975-1616 ext.28.

Basis For Determination: USDA-FSA records show that tract No. 9197 has been drained and cultivated continuously before 12/23/85 and currently under soybean production.

Property Owner/Authorized Agent Signature _____

Corps Regulatory Official Laura D. Toler
Date 9/26/02 Expiration Date 9/26/07

SURVEY PLAT OR FIELD SKETCH OF THE DESCRIBED PROPERTY AND THE WETLAND DELINEATION FORM MUST BE ATTACHED TO THE FILE COPY OF THIS FORM

RECEIVED
OCT - 1 2002

EXHIBIT
tabbies
A

Issued Oct 04 2004
$13,700.00
State of North Carolina Camden County
Real Estate Excise Tax

FILED in Camden County, NC
on Oct 04 2004 at 02:58:51 PM
by: Peggy C. Kight
Register of Deeds
BOOK 200 PAGE 819

NORTH CAROLINA EXCISE STAMPS
ATTACHED AND CANCELLED $13,700.00
$2.00 per 1000 value

NORTH CAROLINA SPECIAL WARRANTY DEED

Excise Tax: $13,700.00
PIN: 01-7082-00-26-3513

Parcel Identifier No _____ Verified by 360-05-LSA County on the 4th day of October, 2004
By: 6,507,500 - 65,075 taxes pd. LSA

Mail/Box to: Jeffrey J. Johnson, Esq. Wyrick Robbins Yates & Ponton LLP, 4101 Lake Boone Trail, Suite 300, Raleigh, NC 27607

This instrument was prepared by: Joseph T. McFadden, Jr., Kaufman & Canoles, P.C., P.O. Box 3037, Norfolk, VA 23514

Brief description for the Index: _____

THIS DEED made this 1st day of October, 2004, by and between

GRANTOR	GRANTEE
F.T.W. & SONS FARMS, a Virginia limited partnership 5021 Morris Neck Road Virginia Beach, VA 23457	BLACK BEAR DISPOSAL, LLC, a North Carolina limited liability company 3301 Benson Drive, Suite 601 Raleigh, NC 27609

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in the South Mills Township, Camden County, North Carolina and Moyock Township, Currituck County, North Carolina and more particularly described as follows:

> That certain tract of land containing 1,059.99 acres, more or less, composed of one (1) contiguous parcel, located in South Mills Township, Camden County, North Carolina and in Moyock Township, Currituck County, North Carolina; and bounded, now or formerly, by natural boundaries and/or lands owned by and/or in possession of persons as follows:
>
> On the north by the Sawyer land, on the east by the lands of Jarvis and Williams and Halifax Timber Company, on the south by the lands of Lewis Farms, Inc. and Weyerhaeuser Company and on the west by U.S. Highway No. 17; said tract lying approximately 6.4 miles north from the Town of South Mills.

EXHIBIT
tabbies
B

Being the same property acquired by Grantor by instruments recorded at Book 72, Page 335 and Book 102 Page 405, Camden County Registry and in Book 168, Page 429 and book 324, page 434, Currituck County Registry and as shown on that certain plat recorded at Plat Book 32, Page 328A, Camden Country Registry (the "1974 Plat"), provided, however, that with respect to the 16.10 acres of land shown on the plat in the easternmost portion of the property, Grantor makes no warranties of title and quitclaims such 16.10 acres to Grantee.

Grantor also conveys to Grantee the right to drain surface water over the existing ditch and channel system on other lands of the Grantor located between the property described above and the outfall at the Northwest River in Chesapeake, Virginia.

A map showing the above described property is recorded in Plat Book 32 page 328A in the Camden County Registry of Deeds.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor has done nothing to impair such title as Grantor received, and Grantor will warrant and defend the title against the lawful claims of all persons claiming by, under or through Grantor, other than the following exceptions:

1. Anything shown on the Boundary Survey entitled "BOUNDARY SURVEY FOR WASTE INDUSTRIES, INC, CURRENT OWNER: F.T.W. & SONS FARMS, SOUTH MILLS TOWNSHIP, CAMDEN COUNTY, NORTH CAROLINA" dated July 16, 2004 and prepared by Surveying Solutions, P.C. including, but not limited to the following:
   a. Perpetual easement for highway purposes on the west
   b. Three (3) foot wire fence located along highway right of way on the west
   c. Overhead utilities on the west and north lines
   d. Thirty (30) foot easement for 30' lane known as Ponderosa Drive located on the north
   e. 16.11 acre area of overlap on the east
   f. Various ditches and canals
   g. 100 year Flood Hazard Area on the east
   h. Various soil paths located on and crossing property
2. Camden County and Currituck County ad valorem taxes for tax years 2005 and following.
3. Agreement with Albemarle Electric Membership Corporation recorded in Book 71, at page 199, Camden County Registry.
4. Easement to Department of Transportation recorded in Deed Book 70, at page 161, Camden County Registry.

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

F.T.W. & SONS FARMS, a Virginia limited partnership
Entity Name

By: [signature]
Title: General Partner

By: _____
Title: _____

By: _____
Title _____

USE BLACK INK ONLY

_____ (SEAL)

_____ (SEAL)

_____ (SEAL)

_____ (SEAL)

USDA-Natural Resources Conservation Service
Office of the Chief
Washington, D.C. 20250

United States Department of the Army
Office of the Assistant Secretary of the Army (Civil Works)
Washington, D.C. 20310-0103

COPY

February 25, 2005

MEMORANDUM TO THE FIELD

SUBJECT: Guidance on Conducting Wetland Determinations for the Food Security Act of 1985 and Section 404 of the Clean Water Act.

We are pleased to distribute the enclosed Joint Guidance on conducting wetland determinations for the Clean Water Act and the Food Security Act. This guidance provides procedures for use by the Natural Resources Conservation Service (NRCS) and the Army Corps of Engineers (COE) personnel. This procedure replaces the coordination procedures between COE and NRCS that are outlined in the 1994 Memorandum of Agreement between the Departments of Agriculture, Interior, Army, and the Environmental Protection Agency concerning wetland delineations.

We encourage COE Districts and NRCS State offices to develop local partnerships to provide the most timely and accurate information to the public, and to address other wetland issues. We are strongly committed to protecting wetlands, and this guidance will allow us to do that while ensuring that Federal wetland programs are administered in a manner that minimizes their impacts on affected landowners.

Please feel free to call your respective Headquarters wetlands and regulatory program contacts with any questions.

BRUCE I. KNIGHT
Chief
Natural Resources Conservation Service

GEORGE S. DUNLOP
Deputy Assistant Secretary of the Army
(Policy and Legislation)

Attachment

EXHIBIT
C

February 25, 2005

JOINT GUIDANCE FROM THE NATURAL RESOURCES CONSERVATION SERVICE (NRCS) AND THE ARMY CORPS OF ENGINEERS (COE) CONCERNING WETLAND DETERMINATIONS FOR THE CLEAN WATER ACT AND THE FOOD SECURITY ACT OF 1985

I. INTRODUCTION

On January 6, 1994, the Departments of Agriculture (USDA), the Interior, the Army, and the Environmental Protection Agency entered into a Memorandum of Agreement (MOA), concerning the delineation of wetlands for the purposes of Section 404 of the Clean Water Act (CWA) and Subtitle C of the Food Security Act (FSA). The MOA was developed to streamline the wetland delineation process on agricultural lands, to promote consistency between CWA and FSA, and to provide predictability and simplification for USDA program participants. In January 2005, the Department of the Army and the Department of Agriculture withdrew from the MOA.

This joint guidance reaffirms our commitment to ensuring that Federal wetlands programs are administered in a manner that minimizes the impacts on affected landowners consistent with the important goal of protecting wetlands. We will continue to strive to minimize duplication between the FSA Wetland Conservation Provisions, which are referred to as 'Swampbuster,' and the CWA Section 404 Program, while recognizing the inherent differences in the purpose and statutory language of those laws.

Because of the differences now existing between CWA and FSA on the jurisdictional status of certain wetlands (e.g., prior converted or isolated wetlands may be regulated by one agency but not the other), it is frequently impossible for one lead agency to make determinations that are valid for the administration of both laws. The following guidance will apply to cases where sufficient overlap exists to enable the wetland delineation made by one agency to be accepted for determining the jurisdiction of the other.

II. DEFINITIONS

Agricultural commodity means any crop planted and produced by annual tilling of the soil, including tilling by one-trip planters, or sugarcane.

Agricultural use refers to open land planted to an agricultural crop, used for the production of food or fiber, used for haying or grazing, left idle per USDA programs, or diverted from crop production to an approved cultural practice that prevents erosion or other degradation.

Approved jurisdictional determination means a COE document stating the presence or absence of waters of the United States on a parcel, or a written statement and map identifying the limits of waters of the United States on a parcel. Approved jurisdictional determination is clearly

designated appealable actions, and will include a basis of jurisdictional determination with the document.

Certified wetland determination means a wetland determination made by the Natural Resources Conservation Service (NRCS) that is of sufficient quality to make a determination of ineligibility for program benefits under the Food Security Act of 1985.

Jurisdictional determination (JD) means a written COE determination that a wetland and/or waterbody is subject to regulatory jurisdiction under Section 404 of the Clean Water Act (33 U.S.C. 1344), or a written determination that a waterbody is subject to regulatory jurisdiction under Section 9 or 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 et seq.). Additionally, the term includes a written reverification of expired JDs and a written reverification of JDs where new information has become available that may affect the previously written determination. For example, such geographic JDs may include, but are not limited to, one or more of the following determinations: the presence or absence of wetlands; the location(s) of the wetland boundary, ordinary high water mark, mean high water mark, and/or high tide line; interstate commerce nexus for isolated waters; and adjacency of wetlands to other waters of the United States. All JDs will be in writing and will be identified as either preliminary or approved. JDs do not include determinations that a particular activity requires a DA permit.

Preliminary Jurisdictional Determinations are written indications that there may be waters of the United States on a parcel, or indications of the approximate location(s) of waters of the United States on a parcel. Preliminary JDs are advisory in nature and may not be appealed. Preliminary JDs include compliance orders that have an implicit JD, but no approved JD.

III. PROCEDURES

A. Wetland Determinations and Delineations:

1. NRCS Responsibility

(a) Wetland determinations on land for participants, or persons intending to become participants, in USDA programs when the proposed activity involves draining, dredging, filling, leveling or otherwise manipulating the land, as defined in the FSA, for the purpose of, or to have the effect of making possible the production of an agricultural commodity. This includes alteration of the land necessary to enable or maintain agricultural production (e.g., ditching and mechanized land clearing). This does not include new or ongoing silvicultural activities or other activities undertaken for a purpose that does not make production of an agricultural commodity possible. Persons who intend to become participants in USDA programs must submit USDA Form AD-1026, *Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification* to the Farm Service Agency.

(b) NRCS will inform landowners that wetland determinations performed by NRCS may not be valid for CWA jurisdiction and permitting requirements. NRCS will include the following language in all written wetland determinations provided to the

landowner: "This certified wetland determination/delineation has been conducted for the purpose of implementing the wetland conservation provisions of the Food Security Act of 1985. This determination/delineation may not be valid for identifying the extent of the COE's Clean Water Act jurisdiction for this site. If you intend to conduct any activity that constitutes a discharge of dredged or fill material into wetlands or other waters, you should request a jurisdictional determination from the local office of the COE prior to starting the work."

(c) This guidance pertains to compliance with the Food Security Act for USDA program participants. Policy concerning NRCS technical and financial assistance and the protection of wetlands is located in the NRCS General Manual at Title 190, Part 410.26, and is not applicable to the joint guidance. States are encouraged to work with the applicable COE Districts to develop guidance for wetland delineations made for other purposes.

2. COE Responsibility

(a) Wetland determinations solely for CWA purposes, including determinations on forest lands.

(b) Determining the geographic scope of COE jurisdiction over other waters, besides wetlands, located on agricultural land (e.g., rivers, streams, lakes, artificial waters, channelized waters, ditches, etc).

(c) COE will inform the landowner, or person requesting a jurisdictional determination, that wetland determinations performed by COE on land which the landowner or requesting person intends to convert for agricultural production, may not be valid for FSA determinations. COE will include the following language in all written wetland determinations: "This delineation/determination has been conducted to identify the limits of COE's Clean Water Act jurisdiction for the particular site identified in this request. This delineation/determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service, prior to starting work."

3. Coinciding Responsibilities. In cases where both agencies need to make separate determinations of the extent of wetlands or waters on a site, the agencies will promptly consult with each other and attempt to conduct joint onsite determinations, or provide both determinations in the same time frame so that a landowner receives determinations that cover all waters on the site. When this cannot be accomplished in a timely manner, each agency will advise the person receiving its determination that the determination does not apply for the other agency or include the extent of that agency's jurisdiction.

4. Reliance on Responsible Agency's Wetland Determinations. To the maximum extent permissible by current statute and regulation, NRCS and COE will rely on each other's wetland determinations. If there are areas on the site that are not included in the responsible agency's delineation, yet may be regulated by the other agency (e.g., isolated wetlands, abandoned prior-converted cropland or other waters), the responsible agency will inform the landowner in writing and the other agency (to the extent allowed by law) that additional areas on the site may also be under Federal jurisdiction.

5. Prior-Converted Cropland. Prior-converted cropland (PC) is identified for the purpose of implementing the FSA, and refers to wetlands that were converted from a non-agricultural use to cropland prior to December 23, 1985. While a PC area may meet the wetland hydrology criterion, production of an agricultural commodity or maintenance or improvement of drainage systems on the PC area, is exempt from the swampbuster provisions. A certified PC determination made by NRCS remains valid as long as the area is devoted to an agricultural use. If the land changes to a non-agricultural use, the PC determination is no longer applicable and a new wetland determination is required for CWA purposes. Specific guidance will be provided by the Corps in the near future addressing how the Corps will treat PC designations for land that changes from agricultural to non-agricultural use.

6. Expiration of Wetland Determinations. Certified wetland determinations made by NRCS remain valid for swampbuster purposes as long as the land is devoted to agricultural use or until such time as the person affected by it requests review of the certification. A certified wetland determination made by NRCS that is determined valid for CWA purposes by COE will be effective for CWA purposes for a period of five years from the date it is final, in accordance with COE Regulatory Guidance Letter 94-01, unless new information warrants its revision before the expiration date.

B. Enforcement. Per the Food Security Act, USDA is required to make onsite determinations of noncompliance prior to withholding benefits from a landowner. In addition, the activities that result in a violation of the CWA and swampbuster may differ (e.g., per the CWA, a violation involves an unauthorized and non-exempt discharge of dredged or fill material into waters of the U.S. regardless of the purpose, whereas a swampbuster violation occurs only if the conversion is for the purpose of or makes possible the production of an agricultural commodity). Therefore, potential enforcement and/or compliance cases must be independently evaluated by each agency. The agencies will, however, coordinate their site visits as much as possible to minimize delay and inconvenience to the landowner and will attempt to make both determinations concurrently. Each agency will make a reasonable effort to inform the other agency of any significant actions taken to resolve a noncompliance or violation. The agencies will also explicitly state in any written correspondence to the landowner that actions taken to resolve a violation or noncompliance for that agency may not resolve the violation or noncompliance for the other agency.

C. Local Agreements. NRCS State offices and COE District offices are encouraged, in coordination with and approval from the Agencies' Headquarters, to develop local agreements to further refine these procedures, define Federal agency lead roles for wetland determinations that differ from those above to the extent practicable, or address other concerns or interests that will improve service to the public. Such local agreements shall seek to provide landowners with a single point of Federal contact and shall provide for technically accurate, consistent and timely determinations.

D. Methods of Conducting Wetland Determinations.

1. On-Site Determinations and Documentation. In most cases, wetland determinations will require an on-site assessment. Where available, data collected off-site, such as relevant satellite and low-altitude photography, will be used to supplement on-site methods in accordance with jointly approved mapping conventions. In all cases, the data and analyses used in the wetland determination will be documented sufficiently to demonstrate clearly the basis for the determination and the boundaries of the wetland, both for the person who requested the determination and to provide for interagency review, if appropriate.

2. The agencies will use the appropriate procedures in the current National Food Security Act Manual or the current COE or Federal wetland delineation manual applicable to the region, including current national guidance, to make wetland determinations.

E. Notification. Landowners will be notified in writing of all final wetland determinations. The written wetland determination will include the language provided in Part III. A. (1) and (2), above.

F. Appeals and/or Litigation: Wetland determinations conducted for FSA purposes may be appealed through the USDA appeals process. When an appeal or litigation results in a change to a wetland determination prepared by NRCS, NRCS will so notify the local COE District, and shall advise the landowner in writing that changes in the wetland determination resulting from the appeal or litigation are not valid for CWA purposes until accepted by COE. COE will determine whether the change in wetland status is valid for CWA purposes and advise the landowner and NRCS in writing of their conclusion. For the purposes of the CWA and COE Administrative Appeals Regulations, NRCS certified wetland determinations on agricultural lands, where COE has not verified the wetland boundary onsite, will be considered Preliminary Jurisdictional Determinations, as defined in 33 CFR §331.2.

G. Training. The agencies agree to continue to provide joint training opportunities for their field personnel involved in wetland determinations and delineations. This will include training in the wetland delineation methods of the National Food Security Act Manual, the current COE or Federal wetland delineation manual, wetland plant identification, hydrology tools for wetland delineation, and hydric soils identification.

H. Technical Assistance. The agencies agree to continue to provide appropriate technical assistance for all field personnel involved in wetland determinations and delineations.

IV. DISPUTE RESOLUTION

The agencies will make every reasonable effort to resolve any concerns or disputes related to these procedures at the local or regional level. Issues that cannot be resolved at the local or regional level, however, should be elevated to the appropriate headquarters office by the NRCS State Conservationist or COE District Engineer.

V. GENERAL

A. The policy and procedures contained within this guidance do not create any rights, either in substance or procedure, that are enforceable by any party. Deviation or variance from the administrative procedures included in this guidance will not constitute a defense for violators or others concerned with any CWA enforcement action.

B. As noted above, nothing in this guidance is intended to diminish, modify, or otherwise affect statutory or regulatory authorities of either the Corps or NRCS

C. Nothing in this guidance is intended, in any way, to affect the authority of a State or tribe to delineate or regulate wetlands pursuant to an approved Section 402 or Section 404 program. States and Tribes are encouraged to develop similar agreements for their programs to ensure clear and reliable determinations for both CWA and Swampbuster purposes.

D. Nothing in this guidance will be construed as indicating a financial commitment by NRCS or COE for the expenditure of funds except as authorized in specific appropriations.

E. Duration. This guidance remains effective unless revised or rescinded by the Corps or NRCS, upon written notice to the other agency.

COUNTY OF CURRITUCK

County Manager's Office
Post Office Box 39
Currituck, North Carolina 27929-0039
Telephone (252) 232-2075 / Fax (252) 232-3551
State Courier # 10-69-17

BOARD OF COMMISSIONERS
Paul R. Martin, Chairman
S. Paul O'Neal, Vice-Chairman
Ernie Bowden
Eldon L. Miller, Jr.
J. Owen Etheridge

DANIEL F. SCANLON II, CPA
County Manager
KATHERINE F. McKENZIE
County Attorney
GWEN H. KEENE, CMC
Clerk to the Board

November 22, 2005

Mr. Phillip S. Letsinger
NFIP State Coordinator
Floodplain Management Branch
NC Emergency Management
4713 Mail Service Center
Raleigh, NC 27699-4713

Re: Black Bear Disposal, LLC

Dear Mr. Letsinger:

I am writing on behalf of my client, Currituck County, regarding a landfill proposed to be constructed in Camden County by Black Bear Disposal, LLC. Currituck County is concerned about the potential harmful effects of the landfill on the County's water resources and its citizens. I am unsure as to whether you have heard about the project, so I will give you some information. Camden County has entered into an agreement with Black Bear Disposal, LLC, to construct a landfill near the North Carolina/Virginia border in Camden County. The landfill, buffers, and support facilities will occupy 704 acres of land, while the landfill will be comprised of a 490-acres disposal footprint. The landfill will provide waste disposal capacity for a service area that extends from U.S. Interstate 75 (I-75) to the east coast. The franchise describes the volume of the waste to be disposed in the landfill as an average of 10,000 tons per day over a period of useful life which exceeds thirty years.

I am writing to you for an interpretation of North Carolina General Statute Section 143-215.54 entitled "Regulation of flood hazard areas; prohibited uses." Subsection (c) of that statute states that "[n]ew solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities are prohibited in the 100-year floodplain except as authorized under G.S. 143-215.54A(b)." According to our planning department, the actual footprint of the landfill is outside the floodplain. However, the legal description for the property owned by Black Bear includes land in both Camden and Currituck Counties beyond the actual footprint. All of the land in Currituck County, fifty-five acres, is in the flood zone, as well as ninety-two acres in Camden County.

Our request of you is an interpretation as to whether the statute cited above would define "solid waste disposal facilities" as all of the property on which a landfill is located or just the actual footprint of the landfill. As stated above, Currituck County is concerned about the potential harmful effects of the landfill on the County's water resources and its citizens. The County would like to be assured that all laws and regulations are being followed.

The County thanks you in advance for your consideration of this issue. If there is any further information I can provide, please contact me at 252-232-2075 ext. 276 .

Sincerely,

Katherine F. McKenzie

Katherine F. McKenzie
County Attorney

cc: Ms. Cheryl Perry
Assistant Attorney General
North Carolina Attorney General's Office
9001 Mail Service Center
Raleigh, NC 27699-9001

Board of Commissioners
Dan Scanlon, County Manager

WYRICK
ROBBINS
YATES
& PONTON
LLP

ATTORNEYS AT LAW

The Summit
4101 Lake Boone Trail
Suite 300
Raleigh, NC 27607.7506

PO Drawer 17803
Raleigh, NC 27619

ph 919.781-4000
fax 919.781-4865
www.wyrick.com

GRADY L. SHIELDS
glshields@wyrick.com

November 16, 2005

VIA HAND DELIVERY

Received
NOV 2005
Waste
Management

Mr. Robert Lutfy
North Carolina Department of Environment
and Natural Resources
Solid Waste Section
Division of Waste Management
401 Oberlin Road
Suite 150
Raleigh, NC 27605

Re: Black Bear Disposal, LLC—Camden County Landfill Permit
Our File 5941.531

Dear Mr. Lufty:

This firm represents Black Bear Disposal, LLC ("Black Bear" or "the Company"), as well as Black Bear's parent company, Waste Industries USA, Inc. We understand that DENR has been contacted by representatives for the City of Chesapeake, Virginia, raising questions about an alleged drainage system from the Company's proposed Landfill site in Camden County ("the Landfill") to an outfall of the Northwest River within the City of Chesapeake. The City may be taking the position that such a drainage system would be an "appurtenance" to the Landfill, such that the City of Chesapeake's local-government approval would have been required by N.C. Gen. Stat. § 130A-294(b1)(4). As detailed below, there will be no such drainage system. Rather, the City is misconstruing easement language in the real estate documents relating to the Company's acquisition of the larger property, of which the Landfill will take up only a portion. The Company has never planned to use the easement for a drainage system from the Landfill.

As you know, N.C. Gen. Stat. § 130A-294(b1)(4) provides that an applicant for a new permit for a sanitary landfill "*shall request each local government having jurisdiction over any part of the land on which the sanitary landfill* ***and its appurtenances are located or to be located*** *to issue a determination as to whether the local government has in effect a franchise, zoning, subdivision, or land-use planning ordinance applicable to the sanitary landfill and whether the*

proposed sanitary landfill . . . would be consistent with the applicable ordinances (emphasis applied). Section 130A-294(b1)(4) by its terms applies only to any part of the land on which the Landfill will be located and appurtenances to the Landfill. **The Facility Plan makes clear that the easement will not be used for a drainage system for the Landfill. Further, the easement does not extend all the way to the outfall at the Northwest River. Additional easements would be needed for any such connection, and the Company has never acquired and does not plan to acquire the additional easements.**

By the way of background, the easement language is included in two documents relating to the Landfill site. The Option and Agreement for the property where the Landfill will be built, recorded at Book 158, Page 872 of the Camden County Registry ("the Option"), contains a covenant that the seller, F.T.W. & Sons Farms, will also convey *"a perpetual easement (the "Easement") for secondary drainage of the property over the existing ditch and canal system (the "Secondary Drainage System") in other lands of Seller (the "Easement Property") that connects the Secondary Drainage System of the Property to an outfall at the Northwest River in the City of Chesapeake, Virginia."* By deed recorded at Book 200, Page 819 of the Camden County Registry ("the Deed"), the seller, F.T.W. & Sons Farms, conveyed the involved property, together with *"the right to drain surface water over the existing ditch and channel system on other lands of the grantor located between the property described above and the outfall at the Northwest River in Chesapeake, Virginia."* Copies of the Option and Deed are enclosed. It is important to note that the Landfill will occupy only a portion of the involved property, and that none of the property is in the City of Chesapeake.

While the Facility Plan describes the Landfill in detail, including its buffers and support facilities, and indicates that they will together occupy 704 of the 1037 acres owned by the Company, there is no reference in the Facility Plan to either the easement or to a Secondary Drainage System. The Company simply has no plans to use the easement or any such secondary Drainage System for the Landfill. The Company does plan other uses for the remaining 333 acres of property, including 50 acres for future commercial development and 91 acres for future light industrial, and agreed to the indicated easement language thinking that such an easement might be useful in connection with these other activities. Again, the Company never planned to build a drainage system from the Landfill to the Northwest River, and will not do so. If the Company's plans ever changed in this regard, the Company would expect to have to seek Chesapeake's approval.

Further, the Option and Deed do not establish an unbroken easement from the property to the River. A Secondary Drainage System was not specifically described (or located) in either the Option or the Deed. The Option described a Primary Drainage System as *"through an existing ditch along the north side of the Property running from east to west to Route 17"* and a Secondary Drainage System is noted as *"crossing through property of others (the "Adjacent Property") before it reaches the Easement Property"*. Clearly, in order to utilize the easement for drainage purposes, additional easements would have to be obtained from the adjacent property owners to provide a continuous easement from the Landfill to the outfall in the City of Chesapeake. Again, a Secondary Drainage System is not used in the Facility Plan, and the

Company has not pursued additional easements to connect to the outfall in the City of Chesapeake and has no plans to do so.

Sincerely,

WYRICK ROBBINS YATES & PONTON LLP

Grady L. Shields

GLS/sj
Enclosures
cc: Ven Poole (via facsimile)
John Gardner (via facsimile)

Issued Oct 04 2004
$13,700.00
State of North Carolina Camden County
Real Estate Excise Tax

FILED in Camden County, NC
on Oct 04 2004 at 02:56:51 PM
by: Peggy C. Kight
Register of Deeds
BOOK 200 PAGE 819

NORTH CAROLINA EXCISE STAMPS
ATTACHED AND CANCELLED $13,700.00
$2.00 per 1000 Value

Received
NOV 2005
Waste Management

NORTH CAROLINA SPECIAL WARRANTY DEED

Excise Tax: $13,700.00
PIN: 01-7082-00-26-3513

Parcel Identifier No _____ Verified by 360-05-LSA County on the 4th day of October, 2004
By: 6,507,500- 65,075 taxes pd. LSA

Mail/Box to: Jeffrey J. Johnson, Esq. Wyrick Robbins Yates & Ponton LLP, 4101 Lake Boone Trail, Suite 300, Raleigh, NC 27607

This instrument was prepared by: Joseph T. McFadden, Jr., Kaufman & Canoles, P.C., P.O. Box 3037, Norfolk, VA 23514

Brief description for the Index: _____

THIS DEED made this 1st day of October, 2004, by and between

GRANTOR	GRANTEE
F.T.W. & SONS FARMS, a Virginia limited partnership 5021 Morris Neck Road Virginia Beach, VA 23457	BLACK BEAR DISPOSAL, LLC, a North Carolina limited liability company 3301 Benson Drive, Suite 601 Raleigh, NC 27609

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in the South Mills Township, Camden County, North Carolina and Moyock Township, Currituck County, North Carolina and more particularly described as follows:

> That certain tract of land containing 1,059.99 acres, more or less, composed of one (1) contiguous parcel, located in South Mills Township, Camden County, North Carolina and in Moyock Township, Currituck County, North Carolina; and bounded, now or formerly, by natural boundaries and/or lands owned by and/or in possession of persons as follows:
>
> On the north by the Sawyer land, on the east by the lands of Jarvis and Williams and Halifax Timber Company, on the south by the lands of Lewis Farms, Inc. and Weyerhaeuser Company and on the west by U.S. Highway No. 17; said tract lying approximately 6.4 miles north from the Town of South Mills.

Being the same property acquired by Grantor by instruments recorded at Book 72, Page 335 and Book 102 Page 405, Camden County Registry and in Book 168, Page 429 and book 324, page 434, Currituck County Registry and as shown on that certain plat recorded at Plat Book 32, Page 328A, Camden Country Registry (the "1974 Plat"), provided, however, that with respect to the 16.10 acres of land shown on the plat in the easternmost portion of the property, Grantor makes no warranties of title and quitclaims such 16.10 acres to Grantee.

Grantor also conveys to Grantee the right to drain surface water over the existing ditch and channel system on other lands of the Grantor located between the property described above and the outfall at the Northwest River in Chesapeake, Virginia.

A map showing the above described property is recorded in Plat Book 32 page 328A in the Camden County Registry of Deeds.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor has done nothing to impair such title as Grantor received, and Grantor will warrant and defend the title against the lawful claims of all persons claiming by, under or through Grantor, other than the following exceptions:

1. Anything shown on the Boundary Survey entitled "BOUNDARY SURVEY FOR WASTE INDUSTRIES, INC, CURRENT OWNER: F.T.W. & SONS FARMS, SOUTH MILLS TOWNSHIP, CAMDEN COUNTY, NORTH CAROLINA" dated July 16, 2004 and prepared by Surveying Solutions, P.C. including, but not limited to the following:
   a. Perpetual easement for highway purposes on the west
   b. Three (3) foot wire fence located along highway right of way on the west
   c. Overhead utilities on the west and north lines
   d. Thirty (30) foot easement for 30' lane known as Ponderosa Drive located on the north
   e. 16.11 acre area of overlap on the east
   f. Various ditches and canals
   g. 100 year Flood Hazard Area on the east
   h. Various soil paths located on and crossing property
2. Camden County and Currituck County ad valorem taxes for tax years 2005 and following.
3. Agreement with Albemarle Electric Membership Corporation recorded in Book 71, at page 199, Camden County Registry.
4. Easement to Department of Transportation recorded in Deed Book 70, at page 161, Camden County Registry.

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

F.T.W. & SONS FARMS, a Virginia limited partnership
Entity Name

By: [signature]
Title: General Partner

By: _____
Title: _____

By: _____
Title _____

USE BLACK INK ONLY

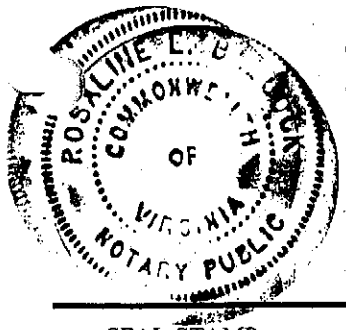
_____ (SEAL)

_____ (SEAL)

_____ (SEAL)

_____ (SEAL)

SEAL-STAMP



USE BLACK INK ONLY

Commonwealth of Virginia – At Large

I, the undersigned Notary Public for the Commonwealth of Virginia At Large, certify that Frank T. Williams, as General Partner of FTW & Sons Farms, a Virginia limited partnership, personally appeared before me this day in the City of Norfolk, Virginia, and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 1st day of October, 20 04.

My Commission Expires: 11/30/05 Rosaline B. Babcock
Notary Public

SEAL-STAMP

USE BLACK INK ONLY

State of North Carolina - County of _____

I, the undersigned Notary Public of the County and State aforesaid, certify that _____ _____personally came before me this day and acknowledged that _____he is the _____ of _____, a North Carolina or _____ corporation/limited liability company/general partnership/limited partnership (strike through the inapplicable), and that by authority duly given and as the act of such entity, _____he signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal this _____ day of _____, 20____.

My Commission Expires: _____ _____
Notary Public

SEAL-STAMP

USE BLACK INK ONLY

State of North Carolina - County of _____

I, the undersigned Notary Public of the County and State aforesaid, certify that _____

Witness my hand and Notarial stamp or seal this _____ day of _____, 20____.

My Commission Expires: _____ _____
Notary Public

The foregoing Certificate(s) of Rosaline B. Babcock a Notary Public of the Commonwealth of VA is/are certified to be correct.
This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

Peggy C. Knight Register of Deeds for Camden County

By:_____ Deputy/Assistant - Register of Deeds

#939164 v3

FILED in Camden County, NC
on Jun 17 2002 at 03:33:26 PM
by: Peggy C. Kight
Register of Deeds

OPTION AND AGREEMENT

THIS OPTION AND AGREEMENT, made as of this 1st day of December, 2001, among F.T.W. & SONS FARMS, a Virginia limited partnership ("Seller"), and CAMDEN LAND DEVELOPMENT, LLC and/or assigns ("Buyer") and PIONEER TITLE (the "Escrow Agent");

W I T N E S S E T H:

That for and in consideration of the sum of Ten Thousand Dollars ($10,000), by check in hand paid to Escrow Agent to be deposited in an interest-bearing account; such deposit, together with the interest earned thereon (the "Initial Deposit"), and other good and valuable consideration, the receipt of which is hereby acknowledged, Seller does hereby grant unto Buyer the sole and exclusive option (the "Option") to purchase, at the price and upon the terms, provisions and conditions hereinafter set forth, the following described property (the "Property"), to- wit:

> All those certain lots, pieces or parcels of land, together with all improvements constructed thereon and all appurtenances thereunto belonging situated, in part, in South Mills Township, Camden County, North Carolina, and situated, in part, in Currituck County, North Carolina, known as the Baird Farm as to the portion in Camden County and the Gilbert Tract as to the portion in Currituck County, containing a total of approximately 1,039 acres and more particularly shown on the plat entitled "G.A. Baird and Ruby L. Baird" labeled as Exhibit A and attached to, and made a part of, this Agreement. The portion of the land located in Camden County (approximately 986 acres) is described as parcel no. 01-7082-00-26-3513 in the Camden County real estate tax records. The portion of the land located in Currituck County (approximately 53 acres) is designated as parcel no. 0001-000-0008-0000 in the Currituck County real estate tax records.

The Property shall also include, if Seller has the legal authority to grant it, and subject to existing liens, a perpetual easement (the "Easement") for secondary drainage of the Property over the existing ditch and canal system (the "Secondary Drainage System")

in other lands of Seller (the "Easement Property") that connects the Secondary Drainage System of the Property to an outfall at the Northwest River in the City of Chesapeake, Virginia. Buyer acknowledges that (a) the primary drainage for the Property is through an existing ditch along the north side of the Property running from east to west to Route 17 (the "Primary Drainage System"), (b) the Secondary Drainage System crosses through property of others (the "Adjacent Property") before it reaches the Easement Property and that Seller has no legal right to grant Buyer easement over the Adjacent Property and (c) Seller has undertaken the responsibility of maintaining the Secondary Drainage System from the Easement Property through the Adjacent Property to the Property.

The Easement will provide that (a) at all times, the owner or owners of the Property will comply with all Environmental Laws, as defined below, relating to discharges into public waters and, further, for the indemnification of the owner or owners of the Easement Property against loss or resulting from any drainage to or discharge from, the Property on, over or through the Easement Property and (b) the owner or owners of the Property shall reimburse Seller for 1/4 of the reasonable costs of maintaining the Secondary Drainage System in the Easement Property and all costs of maintaining the Secondary Drainage System in the Adjacent Property (unless Buyer undertakes the responsibility therefor in a written agreement with the owner or owners of the Adjacent Property) and (c) Buyer will maintain the Primary Drainage System.

1. Duration of Option; Extension. The initial period during which the Option may be exercised (the "Initial Option Period") shall commence upon the execution by Buyer and Seller of this Agreement (the "Effective Date") and end on the last day of the sixth (6th) full

month thereafter. The Initial Option Period may be extended by Buyer for two successive 6 month periods (each an "Extended Option Period"), by written notice from Buyer to Seller given prior to the end of the Initial Option Period or the first Extended Option Period. Buyer shall pay directly to Seller an additional Twenty-Five Thousand Dollars ($25,000) for each Extended Option Period (each an "Extension Fee"). The Extension Fee for each Extended Option Period shall be payable with the notice of extension given by Buyer. If Buyer fails to give notice of the extension of the Initial Option Period or the first Extended Option Period or to pay the Extension Fee with the notice, then, unless the Option has been exercised, the Option shall automatically expire at the end of Initial Option Period or the first Extended Option Period and none of the parties hereto shall have any further rights against or obligations or liabilities to the other. If the Option is not exercised during the Initial Option Period, the Initial Deposit will be returned to Buyer. If the first Extended Option Period is exercised, the Initial Deposit will be non-refundable, except as otherwise provided in this Agreement.

Anything to the contrary in this Agreement notwithstanding, if Buyer does not file with Currituck County and/or Camden County applications for rezoning and a conditional use permit (collectively the "Applications") to allow the operation on the Property of a sanitary landfill ("Buyer's Intended Use") on or before June, 15, 2002 or, if the Applications are denied and such denial becomes final, then in either case, Seller may terminate this Agreement by written notice to Buyer and the Initial Deposit shall be returned to Buyer. Seller agrees to cooperate with Buyer, without expense to Seller, in Buyer's efforts to obtain the rezoning and conditional use permit described above and to execute the Applications and other documents as requested by Buyer in connection with the rezoning and conditional use permit.

status

2. Exercise of Option. The Option may be exercised by Buyer by giving written notice to Seller, at any time within the Initial Option Period or either Extended Option Period. Such notice shall be accompanied by an additional non-refundable deposit of $100,000 payable to Escrow Agent that shall also be deposited in an interest-bearing account (such additional deposit, together with the interest earned thereon are referred to collectively as the "Additional Deposit"); (the Initial Deposit and the Additional Deposit, are referred to collectively as the "Deposits"). If the Option is not exercised, this Agreement shall terminate, and none of the parties hereto shall have any further rights against or obligations or liabilities to the other parties.

3. Contract upon Exercise of Option. If the Option is exercised as above provided, a contract (the "Contract") shall thereupon exist between Seller and Buyer pursuant to which Seller agrees to sell, and Buyer agrees to buy, the Property, upon the terms, provisions and conditions hereinafter set forth.

4. Access to Property. At all times when the Option is exercisable and during the period after Buyer exercises the Option and prior to the Closing, as defined below, Buyer, its agents and representatives shall have the right to enter upon the Property to perform such tests, inspections and examinations as Buyer deems advisable, including, without limitation, all such tests and examinations as Buyer deems necessary or advisable to determine whether the Property is suitable for Buyer's Intended Use and to make investigations with regard to the title, matters of survey, utility availability, the feasibility of Buyer's Intended Use, and other matters with regard to the Property and other uses thereof. Buyer shall take reasonable precautions not to materially damage the Property. Buyer shall hold Seller harmless from any loss caused by any negligent or other wrongful acts or omissions by Buyer or its contractors in connection with Buyer's

investigation. Seller shall provide Buyer with copies of information in its possession relating to the Property, specifically requested in writing, by Buyer.

5. Purchase Price. The purchase price of the Property shall be Six Million ~~Seven~~ EIGHT Hundred Fifty Thousand Dollars ($6,850,000) to be paid in the following manner:

$ 10,000	by Deposit
$100,000	by Additional Deposit.
$6,740,000	approximately, in cash or other immediately available funds payable to the Escrow Agent at Closing.
$6,850,000	Total

6. Title.

(a) At Closing, Seller shall convey to Buyer fee simple title in and to the Property, which shall be (i) good and marketable, of record and in fact; (ii) insurable by Escrow Agent at standard rates; (iii) free of any liens, mortgages, security interests, leases, options or claims or possessory rights of others, and (iv) free of restrictions, easements, covenants, and conditions, except for the "Permitted Exceptions" (defined below). After the Effective Date and prior to Closing, Seller shall not cause or permit the recordation or imposition of any new items which affect title, unless such items are removable by the payment of a sum certain (less than the amount of proceeds otherwise payable to Seller at Closing) at or before Closing.

(b) Within thirty (30) days after the date on which Buyer exercises the Option (the "Exercise Date"), Buyer shall order a title insurance commitment (the "Commitment") from Escrow Agent, together with copies of all documents which are the basis of exceptions to coverage under the Commitment and, if Buyer so elects, a physical survey (the "Survey"). Buyer

shall have until the expiration of ninety (90) days after the Exercise Date within which to notify Seller, in writing, of Buyer's disapproval of any exceptions shown in the Commitment or any matter of survey, and any requirements shown on Schedule B, Section 1 of the Commitment which Buyer requests Seller to satisfy (the "Requirements"). Any exceptions shown on the Commitment or on the Survey to which Buyer does not object within the period provided shall be "Permitted Exceptions," and Seller shall not have any obligation to satisfy any requirements which Buyer does not request Seller to satisfy. In the event that Buyer disapproves any exceptions shown in the Commitment, or matters of survey, Seller, at Seller's option, shall have a period not to exceed thirty (30) days within which to attempt to eliminate any such disapproved exceptions from the Commitment and cure such matters of survey. Seller shall notify Buyer in writing not later than five (5) days after the end of the thirty (30) day period which title exceptions and matters of survey it has cured and for which Requirements it has accepted the responsibility to satisfy. If any disapproved exceptions or matters of survey are not eliminated or cured within such thirty (30) day period following Seller's good faith attempt to do so, or Seller elects not to cure any such matter, or if Seller does not, within such thirty (30) day period, accept responsibility to satisfy all of the Requirements then Buyer shall have the option of either (i) waiving its objection to the disapproved exceptions and survey matters and agreeing that Seller shall have no responsibility to satisfy the Requirements which Seller has declined to accept, in which event the disapproved exceptions and survey matters shall become Permitted Exceptions and Seller shall have no obligation to satisfy the Requirements which it has declined to accept, or (ii) terminating this Option by written notice to Seller within five (5) days after receipt of written notice from Seller that the disapproved exceptions or matters of survey cannot be eliminated or that Seller has elected not to cure such matters or, if later, the expiration of

Seller's cure period. If Buyer exercises its termination right set forth in the preceding sentence all Option payments made by Buyer to Seller shall be promptly refunded by Seller to Buyer. Notwithstanding the foregoing to the contrary, Seller shall be obligated to cure any objections to title or satisfy any Requirements which may be satisfied by the payment of a sum certain, including the satisfaction of any deeds of trust or other monetary liens, and such payment may be made at Closing.

7. Existing Improvements; Farming Operations; Easement. The Property contains a brick residence (the "Residence") and a hog facility (the "Facility").

(a) Seller shall have the option to move the Residence to a place of its choosing, within 180 days after Closing, failing which, Seller shall have no further rights with respect to the Residence. Seller shall clean up any trash or debris and repair any damage to the Property caused by the removal of the Residence.

(b) At Closing, Buyer shall grant Seller a lease of the Facility (the "Facility Lease") at an annual rental of $1, and further grant Seller and Seller's subleasee and its agents and employees reasonable access to the Facility. Such Facility Lease shall automatically renew from year to year until terminated, as provided below. Seller shall reimburse Buyer for any estate or similar taxes imposed on the Property with respect to the Facility. ~~Buyer~~ Seller shall cause the Facility and any hog operation conducted therein to be in material compliance with all applicable Environmental Laws. Buyer shall have the right to terminate the Facility Lease 60 days after the date Buyer notifies Seller that any subdivided parcel of the Property has been sold and that a building permit has been obtained by the purchaser of such subdivided parcel for the construction of a residential or commercial building.

no other right to terminate

(c) At Closing, Buyer shall grant Seller a farming lease (the "Farming Lease") for an initial period of one year commencing on the date of Closing at an annual rental of $1 to continue its farming operations on any portion of the Property not utilized by Buyer or its transferees for other purposes. The Farm Lease shall automatically renew from year to year unless Buyer terminates the lease as provided in the following sentence. Buyer shall have the right to terminate such lease on all or any part of the Property to be used by Buyer as a sanitary landfill or when Buyer notifies Seller that any subdivided parcel of the Property has been sold and that a building permit has been obtained by the purchaser of such subdivided parcel for the construction of a residential or commercial building. Such termination will be effective after the then growing crop on such part of the Property is harvested. No new crops shall be planted after Buyer gives Seller a notice of termination. Seller agrees to conduct its farming operations on the Property in a husband-like manner and to keep and maintain the ditches and fences and other improvements in as good repair as they are as of the Closing Date, ordinary wear and tear excepted. Seller agrees to conduct its farming operations in material compliance with the laws of all local, state and federal governmental authorities having jurisdiction, including without limitation, environmental laws.

(d) Buyer acknowledges that, before Closing, Seller will grant W.W. Realty, an affiliate of Seller, by deed of easement, a non-exclusive perpetual appurtenant easement to utilize the existing road on the north side of the Property for vehicular access to and from the property owned by W.W. Realty located to the north of the Property (and on which a borrow pit is operated) to Route 17.

8. Seller's Representations And Warranties. Seller warrants and represents (which shall survive Closing) as follows:

(a) That it has the power and authority to enter into this Agreement and perform its obligations hereunder;

(b) That it owns marketable fee simple title to the Property;

(c) That, except for any leases of the Residence (which shall be terminated by Seller prior to Closing) and the Facility, there are no service or other contracts. which affect the Property and which would be binding on the Property or Buyer following Closing. Any lease for the Facility shall be modified before Closing to reflect termination provisions provided for in paragraph 7(c);

(d) Seller has no knowledge of (i) any zoning, condemnation or other proceedings or action which in any way adversely affects the Property, or (ii) any litigation or other proceeding or action which in any way adversely affects the Property; and

(e) To the best of Seller's knowledge and belief, except in the ordinary course of farming and hog operations, (i) no Hazardous Materials have been used, stored, manufactured or processed on the Property, (ii) there has been no disposal, release, or threatened release of Hazardous Materials to or from the Property, and (iii) the Property is not in violation of any Environmental Law and the Seller has not received any notice of alleged violation of any Environmental Law. Seller represents, to the best of its knowledge and belief, that the storage and use of Hazardous Materials on the Property in the ordinary course of farming and hog operations have been in material compliance with all Environmental Laws. Environmental Law means any applicable statute, code, enactment, ordinance, rule, regulation, permit, consent, approval, authorization, license, judgement, order, writ, common law rule (including the common law of nuisance and tortious liability), decree, injunction, or other requirement having

the force and effect of law at any time relating to: (1) emissions, discharges, spills, releases or threatened releases of Hazardous Materials into ambient air; surface water, groundwater, watercourses, publicly or privately owned treatment works, sewer systems, drains, septic systems or onto land; (2) the use, treatment, storage, disposal, handling, manufacturing, transportation and shipment of Hazardous Materials, (3) the regulation of storage tanks, or (4) otherwise relating to the pollution or the protection of human health or the environment. Hazardous Materials means: (1) all substances, wastes, pollutants, contaminants, and materials regulated, defined or designates as hazardous, extremely or imminently hazardous, dangerous or toxic, under any Environmental Law; (2) petroleum and petroleum products including crude oil and any fraction thereof; (3) asbestos; and (4) natural gas, synthetic gas, and any mixture thereof.

9. Closing. Closing ("Closing") shall be at the Buyer's attorney's office on or before forty (40) days after the Option is exercised, allowing, however, a reasonable extension of time to correct any title defects or deficiencies placed of record following the date and time of the Commitment; provided, however, that closing shall not be extended beyond thirty (30) additional days.

10. Prorations; Closing Costs. Real estate taxes and service contracts or other contracts shall be prorated as of the date of Closing. Seller and Buyer shall each pay their own attorney's fees and shall each pay other closing costs, including, without limitation, recording or other fees and taxes, in accordance with local custom.

11. Risk of Loss. All risk of loss or damage to the Property by fire, windstorm, casualty, or other cause is assumed by the Seller until Closing. In the event of substantial loss or damage to the Property (and not the improvements located on the Property) before Closing, the

Buyer shall have the option of either (i) terminating this Agreement and recovering the Deposits or (ii) affirming this Agreement, in which event Seller shall assign to Buyer all of Seller's right under any policy or policies of insurance applicable to the improvements on the Property. In the event that any condemnation proceedings are instituted, or notice of intent to condemn is given, (a) with respect to all or any substantial portion of the Property that would, in Buyer's judgment, reasonably exercised, preclude or substantially impair or diminish Buyer's Intended Use, Seller shall promptly notify Buyer thereof, in which event Buyer shall have the option to terminate this Agreement and receive a prompt refund of the Deposits, or (b) with respect to any portion of the Property that would not, in Buyer's judgment, reasonably exercised, preclude or substantially impair or diminish Buyer's Intended Use, Buyer shall consummate the purchase of the Property without reduction of the Purchase Price and Seller shall assign to Buyer at Closing the right to collect any condemnation award or compensation for such condemnation and Seller shall not agree to or accept any compromise or condemnation award without obtaining Buyer's written approval thereof.

12. Default. In the event Buyer fails to settle in accordance herewith, and the contingencies and conditions contained in this Agreement have been met or waived, and title is marketable as set forth herein, the Seller shall, at its sole remedy, receive the Deposits as liquidated damages and retain any Extension Fees made by Buyer, and both Seller and Buyer shall be relieved and released from any and all liability under this Agreement. In the event Seller shall default in the performance of Seller's obligations hereunder, for any reason whatsoever other than Buyer's default or as otherwise permitted hereunder, then Buyer shall have the option (i) to purchase the Property notwithstanding such default pursuant to the remaining terms and provision of this Agreement, in which event such default shall be deemed waived, (ii) to

terminate this Agreement, in which event Buyer shall be entitled to the return of the Deposits and all Extension Fees, or (iii) to bring a suit in equity seeking specific performance for delivery of the deed.

13. Notices. All notices and communications hereunder, including change of address, shall be in writing and shall be deemed to have been duly given when delivered or deposited at the U.S. Postal Service by registered or certified mail, first class postage prepaid:

SELLER:	F.T.W. & Sons Farms Attention: Frank T. Williams 5021 Morris Neck Road Virginia Beach, VA 23457
With a copy to:	Frederick T. Stant, III, Esquire Williams, Mullen, Clark & Dobbins, P.C. 900 One Columbus Center Virginia Beach, VA 23462
BUYER:	Camden Land Development, LLC c/o Richard Browner P.O. Box 6363 Virginia Beach, VA 23456
With a copy to:	Vincent J. Mastracco, Jr., Esq. Kaufman & Canoles, P.C. Suite 2000 One Commercial Place Norfolk, VA 23510

14. Conditions Precedent to Buyer's Obligations. Buyer's obligation to settle on its purchase of the Property is subject to the following conditions:

(a) That all representations and warranties of Seller are true and correct as of the date of Closing as though such representations and warranties were made as of such date. Notwithstanding that certain of Seller's representations and warranties may be limited to the

extent of Seller's knowledge of the facts stated therein, it shall be a condition precedent to Buyer's obligation to settle that the facts stated in all such representations and warranties shall be true and correct in all material respects as of the date of Closing; and

(b) That Seller has performed all of its obligations under this Agreement.

15. Seller's Covenants Pending Closing. Seller shall:

(a) Cooperate with Buyer's rezoning of the Property to Buyer's Intended Use, including without limitation, the signing of the application for rezoning and all other documents necessary or, in Buyer's reasonable opinion, advisable in connection with the rezoning. Seller shall not be required to incur any expense with respect to any such rezoning of the Property.

(b) Not initiate or consent to any action to change the present zoning of the Property or any of the conditions applicable to the Property pursuant to such zoning without Buyer's prior written consent; and

(c) Not change the character of the Property in any material respect;

16. Escrow Agent. The following provisions shall be applicable to the Deposits and the Escrow Agent:

(a) Escrow Agent's sole duty and responsibility shall be to perform the acts and duties imposed upon it as Escrow Agent by the terms and conditions of this Agreement. Escrow Agent acts hereunder as a depository only, and assumes no responsibility or liability whatsoever for the sufficiency, correctness, genuineness or validity of any notice which Escrow Agent shall receive or with respect to the substance or the form or the execution of any such

notice, or the authority or the rights of any person executing the same. Escrow Agent may rely absolutely on the genuineness and authorization of the signature or purposed signature of any party fixed to any instruction, notice, release, receipt or other document delivered to it pursuant to this Escrow Agreement, and may conclusively rely upon the receipt of any notices that all events have occurred which give to any person the right to give such notices.

(b) Escrow Agent shall have the right to seek advice of counsel of its own selection, before the performance on its part of any of the acts and duties imposed upon it as Escrow Agent if, for any reason, and in its sole discretion, such advice is required or deemed advisable. All reasonable counsel fees for any such advice shall be reimbursed by Seller and Buyer equally. Escrow Agent shall have the right to be governed by and act in accordance with the written advice of such counsel, and by so doing, in good faith, it shall be considered to have acted or not to have acted, as the case may be, in good faith and with due diligence, and shall not be liable to either Buyer or Seller or either of them because of so acting or not acting, as the case may be.

(c) In the event a dispute arises under this Agreement resulting in the instituting of an action or proceeding requiring the appearance of Escrow Agent in court and/or in the employment of counsel by Escrow Agent, or in the event a dispute arises under this Agreement making it advisable for the Escrow Agent to institute an action or proceeding for the determination of matters and issues over which the differences have arisen, of which necessity the Escrow Agent shall be the sole judge, then Seller and Buyer, jointly and severally, shall indemnify Escrow Agent and shall hold Escrow Agent harmless against all expenses (including reasonable counsel fees) and costs incurred by Escrow Agent.

(d) Furthermore, Seller and Buyer, jointly and severally, shall indemnify Escrow Agent and hold Escrow Agent harmless against all liability, costs and expenses (including, without limitation, reasonably attorneys' fees) arising out of, or related in any way, to Escrow Agent's acting as Escrow Agent hereunder except as a result of the gross negligence or willful misconduct of Escrow Agent.

(e) Buyer and Seller acknowledge that insurance on bank accounts by the Federal Deposit Insurance Corporation (FDIC) is limited to the maximum amount of One Hundred Thousand Dollars ($100,000) for each individual deposit or for all of such depositor's accounts at the same or a related institution. Escrow Agent assumes no responsibility for, and Seller and Buyer agree not to hold Escrow Agent liable for, any loss arising from the fact that the amount of the Deposit may exceed or may cause the aggregate amount of any individual depositor's amounts to exceed One Hundred Thousand Dollars ($100,000) with the result that the excess amount is not insured by FDIC or arising from the fact that Buyer and Seller direct Escrow Agent to deposit or invest the Deposit in an account or investment not insured by FDIC or another federal agency.

17. Rollback Taxes. Any rollback or similar tax imposed on the Property as a result of any change in zoning or use by Buyer (or its successors, transferees or assigns) shall be paid by Buyer and Buyer shall hold Seller harmless from any liability therefrom.

18. Entire Agreement. This Agreement constitutes the entire agreement among the parties and may not be modified or changed except by written instrument executed by all of the parties.

19. Governing Law. This Agreement shall be construed, interpreted, and applied according to the law of Virginia, and it shall be binding upon and shall inure to the benefit of the heirs, personal representatives, successors and assigns of the parties.

20. Commission. Seller shall pay a cash commission at Closing to Brunt Properties, Inc. (the "Broker") in accordance with the terms of a separate agreement. In the event any claim for brokerage commission, finders' fees or other compensation arising out of the transactions contemplated by this Agreement is asserted by anyone other than the Broker, the party hereto whose action directly or indirectly gave rise to such claim shall be responsible for payment thereof, and shall indemnify and hold the other party harmless from and against all expenses and damages (including reasonable attorneys' fees) incurred as a result thereof. Seller agrees to pay the compensation due to Broker with respect to this Agreement in accordance with the terms of a separate agreement.

21. Time of Essence. TIME IS OF THE ESSENCE with respect to this Agreement.

22. Assignment. This Agreement may be assigned by Buyer.

23. Survival. Seller's representatives and warranties shall survive settlement.

24. Attorneys' Fees. In the event of a dispute between Buyer and Seller with respect to this Agreement, which results in litigation, either between Seller and Buyer or involving the Escrow Agent that results in liability of Buyer and Seller for fees and costs incurred by Escrow Agent, as described in paragraph 16, the attorneys' fees and other costs of the prevailing party shall be paid by the other party.

WITNESS the following duly authorized signatures and seals:

BUYER:

CAMDEN LAND DEVELOPMENT, LLC

By: W. Gordon Dillon
W. Gordon Dillon, Manager

DATE: ~~September~~ DECEMBER 8, 2001

WGD
F.T.W.

SELLER:

F.T.W. & SONS FARMS

~~By:~~ Frank T Williams
Name: Frank T. Williams
Title: General Partner

DATE: ~~September~~ DECEMBER 1, 2001

ESCROW AGENT:

PIONEER TITLE

By:
Name: Robert C. Hufhere
Title: Manager

DATE: ~~September~~ JAN 23, 2002

#312303 v9 - Option and Agreement - Camden Land

COMMONWEALTH OF VIRGINIA,
CITY OF Virginia Beach, to-wit:

I, a Notary Public in the City and State aforesaid, hereby certify that Frank T. Williams, General Partner of F.T.W. & Sons Farms, a Virginia limited partnership, personally came before me this day and acknowledged that he signed the foregoing instrument this 15th day of June, 2002.

Sandra P. Mulkey
Notary Public

My commission expires: 6-30-05

COMMONWEALTH OF VIRGINIA,
CITY OF Norfolk, to-wit:

I, a Notary Public in the City and State aforesaid, hereby certify that Gordon W. Dillon, Manager of Camden Land Development, LLC a Virginia limited liability company, personally came before me this day and acknowledged that he signed the foregoing instrument this 17th day of June, 2002.

Joy E. Greene
Notary Public

My commission expires: 11/30/03

#769724 v2

NORTH CAROLINA, CAMDEN COUNTY

The foregoing certificate(s) of Sandra P. Mulkey & Joy E. Greene Notary Public(s) of the Commonwealth of Virginia is(are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

Peggy C. Knight
REGISTER OF DEEDS

KAUFMAN & CANOLES
| A Professional Corporation |
Attorneys and Counselors at Law

Charles E. Land
757/ 624-3131

150 West Main Street
P.O. Box 3037
Norfolk, VA 23514
757 / 624-3000
fax: 757 / 624-3169
celand@kaufcan.com

January 13, 2003

VIA FEDERAL EXPRESS

Mr. Ven Poole
Vice President, Corporate Development
Waste Industries, LLC
3301 Benson Drive, Suite 601
Raleigh, NC 27609

Re: Camden Land Development, LLC with Waste Industries, LLC
Our Matter No. 69408

Dear Ven:

Enclosed is a copy of the Option Agreement dated December 1, 2001, together with the Amendment to Option Agreement dated June 1, 2002. I will forward a draft of the Agreement to Mr. Johnson as soon as I prepare it.

Very truly yours,

Charles E. Land

CEL:ku
Enclosure
cc: Jeffrey J. Johnson, Esq. (VIA FEDERAL EXPRESS)
#816772 v1

COMMONWEALTH of VIRGINIA

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

Department of Game and Inland Fisheries

Colonel W. Gerald Massengill
Interim Director

November 9, 2005

Dr. Clarence V. Cuffee, City Manager
City of Chesapeake
PO Box 15225
Chesapeake, VA 23328-5225

RE: Proposed Black Bear Landfill
Camden County, NC
ESSLog# 21392

Dear Dr. Cuffee:

We received a copy of a letter addressed to you from the Region 5 office of the U.S. Fish and Wildlife Service (USFWS) regarding the proposed Black Bear Landfill sited for development in Camden County, NC. After reading that letter and information regarding this project received from the USFWS, we offer the following comments. The Department of Game and Inland Fisheries (VDGIF), as Virginia's wildlife and freshwater fish management agency, exercises enforcement and regulatory jurisdiction over those resources, inclusive of state or federally endangered or threatened species, but excluding listed insects. We are a consulting agency under the U.S. Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.), and we provide environmental analysis of projects or permit applications coordinated through the Virginia Department of Environmental Quality, the Virginia Marine Resources Commission, the Virginia Department of Transportation, the U.S. Army Corps of Engineers, the Federal Energy Regulatory Commission, and other state or federal agencies. Our role in these procedures is to determine likely impacts upon fish and wildlife resources and habitats, and to recommend appropriate measures to avoid, reduce, or compensate for those impacts.

Waste Industries USA, Inc. proposes to develop a 490-acre landfill along U.S. Route 17 South, less than 0.5 mile south of the Virginia / North Carolina state line and less than 1.0 mile from the southeastern boundary of the Great Dismal Swamp National Wildlife Refuge (Refuge). The landfill as proposed would service 21 states, reach a height of 280 feet, and be visible from a distance of 20 miles or more. This project raises a number of concerns with respect to its potential impacts upon Virginia's fish and wildlife resources, as outlined below:

- It appears that leachate and runoff from the landfill may drain toward the Northwest River watershed north of the project site, and also that stormwater runoff will be directed into the Dismal Swamp Canal at the eastern border of the Refuge. The Great Dismal Swamp, the largest intact wetland in Virginia, supports a number of imperiled wildlife

species including the Federally Threatened / State Threatened bald eagle, State Endangered canebrake rattlesnake, and State Threatened Dismal Swamp southeastern shrew; as well as many nonlisted amphibians, reptiles, resident and migratory birds, and other wildlife species. VDGIF, in cooperation with our partners, has been working to protect and restore wetlands in the Northwest River watershed to enhance these habitats for waterfowl and other native wildlife. Further degradation of water quality in this watershed would significantly hamper these efforts and adversely impact our native wildlife communities.

- Likely aggregation of gulls, vultures, and other birds at the proposed landfill may create nuisance wildlife situations, increase incidence of wildlife diseases, and otherwise adversely impact native wildlife populations in southeastern Virginia.

- Landfills, especially one as large as this proposal, tend to attract black bears. Not only may this facility draw bears from adjacent forests within the Northwest River Watershed, but increased bear activity at the landfill will likely increase human/bear interactions and the need for nuisance wildlife intervention.

- Ecotourism and the Watchable Wildlife industry are very important to Virginia's economy and to fostering stewardship of our natural resources. VDGIF and our partners plan to extend loops of the Virginia Birding and Wildlife Trail in the Northwest River drainage and along U.S. Route 17. This effort is being planned in conjunction with the above-mentioned wetland restoration projects and proposed improvements to U.S. Route 17. Development of a 490-acre landfill, viewable from 20 miles away, may detract from use of the Birding and Wildlife Trail by Virginia residents and tourists to the Commonwealth.

In summary, we concur with your interest in fully evaluating the potential impacts of this proposed project upon Virginia's natural resources and wildlife, especially with regard to potential impacts upon the Northwest River basin and the Dismal Swamp National Wildlife Refuge. Thank you for considering these comments, and please contact Amy Martin, Environmental Services Biologist, or me if we may be of further assistance regarding this project.

Sincerely,

Amy Martin
For

Raymond T. Fernald, Manager
Nongame and Environmental Programs

CC: John Kleopfer, VDGIF
David Whitehurst, VDGIF
Bob Duncan, VDGIF
Todd Engelmeyer, VDGIF

Ellie Irons, VDEQ
Bridgett Costanzo, USFWS
Danielle Pender, NCWRC

Jim Coffey

Waste Management

North Carolina General Assembly
House of Representatives
State Legislative Office Building
300 N. Salisbury Street Room 635
Raleigh, North Carolina 27603-5925

#7155

REPRESENTATIVE BILL OWENS
FIRST DISTRICT: CAMDEN, CURRITUCK, PASQUOTANK, TYRRELL
TELEPHONE: (919) 733-0010
(919) 834-1814 FAX
EMAIL: billo@ncleg.net
HOME ADDRESS: PO BOX 537
ELIZABETH CITY, NC 27907

COMMITTEES:
APPROPRIATIONS, CHAIR
COMMERCE, VICE CHAIR
ENVIRONMENT AND NATURAL RESOURCES
JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATIONS
LOCAL GOVERNMENT I
RULES, CALENDAR, AND OPERATIONS OF THE HOUSE

November 8, 2005

RECEIVED
OFFICE OF THE SECRETARY
NOV 14 2005
ENVIRONMENT AND NATURAL RESOURCES
ROUTED TO

Mr. Bill Ross, Jr., Secretary
NC Department of Environment and
Natural Resources
1601 Mail Service Center
Archdale Building
Raleigh, NC 27699-1601

Dear Secretary Ross:

I am sure you are aware of the proposed Black Bear LLC landfill in Camden County and the issues related to this landfill. I wish to call you attention to this and the importance of making sure all statutes, policies, procedures, and regulations are adhered to for all permits issued from your agency for this landfill.

If you have any questions or wish to discuss this matter, please feel free to contact me. Thank you for your attention to this matter.

Sincerely,

Bill Owens

Bill Owens
Representative

Nov. 18, 2005

Dear Rep. Owens:
Thank you for your letter. Our department's efforts, led by our Division of Waste Management, are aimed at doing precisely what you suggest. If you need information about this [illegible] please call [illegible]

BO:lj

Cc: Dempsey Benton
Chief Deputy Secretary, DENR

cc:
Sexter Matthews,
Div's of Waste Mgmt
Dempsey Benton

HPM
HUFF, POOLE & MAHONEY, P.C.
ATTORNEYS & COUNSELLORS

Reeves W. Mahoney, Esq.

Direct Dial: 757/552-6032
Email: rmahoney@hpmlaw.com

Reply to:
Virginia Beach

October 28, 2005

VIA UPS OVERNIGHT
Mr. Dexter Matthews, Division Director
Department of Environmental and Natural Resources
Division of Waste Management
DWM Central Office
401 Oberlin Road, Suite 150
Raleigh, NC 27605

Re: Proposed Black Bear Landfill/Camden County
Our File No.: 13696.000105

Dear Mr. Matthews:

On October 27, 2005, a Special Meeting of the Camden County Board of Commissioners occurred. This meeting was scheduled to discuss the enclosed letter dated October 25, 2005 from Mr. Richard Whisnant, which had evaluated DENR's letter dated October 6, 2005 to Camden County regarding the proposed Black Bear Disposal landfill.

In addition to Mr. Whisnant's letter, I have enclosed a copy of the DVD of last night's special meeting for your review.

With regards, I am

Very truly yours,

Reeves W. Mahoney

RWM/
Enclosures

cc: Mr. James C. Coffey, Section Chief, Solid Waste Section (w/ enc)
Mr. Edward Mussler, Permitting Branch, Solid Waste Section (w/ enc)
Ms. Nancy Scott, North Carolina Assistant Attorney-General (w/ enc)

BOARD OF COMMISSIONERS

MELVIN J. JERALDS, Chairman
CLAYTON D. RIGGS, Vice-Chairman
JEFFREY B. JENNINGS
CAROLYN O. RIGGS
MICHAEL E. ANDREWS

RANDELL K. WOODRUFF
County Manager

AVA MURGIA
Clerk to the Board/
Assistant to the Manager

October 28, 2005

Received
NOV 2005
Waste
Management

North Carolina Dept. of Environment & Natural Resources
Division Waste Management
ATTN: James C. Coffey, Chief, Solid Waste Section
1646 Mail Service Center
Raleigh, NC 27699-1646

Dear Mr. Coffey:

Thank you for your letter of October 6, 2005 requesting input from Camden County regarding the approval process that Black Bear Disposal, LLC Landfill is undergoing with your agency.

The Camden County Board of Commissioners met on October 27, 2005, at a duly advertised public meeting and voted affirmatively, approving each of the requests that have been made by North Carolina Department of Environment and Natural Resources regarding approval of Black Bear Disposal, LLC permits.

Regarding the threefold purpose of your letter, this response is to confirm in a positive manner regarding the decision of the Camden County Board of Commissioners. In a more detailed manner, the Commissioners of Camden County do find that the latest revised facility plan is consistent with the franchise regarding certain items of the franchise, which are mandatory by NCGS Section 130A-294(b1)(3). Secondly, the Camden County Board of Commissioners do confirm that the condition in the 2002 Board of County Commissioners minutes was met by the applicant, Black Bear Disposal, LLC. In response to your third inquiry as to whether the county was agreeable to Waste Industries USA, Inc. being a co-permittee, this is also agreeable with the Camden County Board of Commissioners.

P.O. Box 190 • 117 North 343 • Camden, North Carolina 27921 • Telephone (252) 338-1919 • Fax (252) 333-1603
www.camdencountync.gov

This letter does not go into detail regarding the various concerns of the solid waste section of the North Carolina Department of Environment and Natural Resources. I can further explain or clarify for you any of those issues; however, I do not at this time feel that is necessary, unless you should.

Should you need other or further information, please let me hear from you.

With Kindest Regards, I remain,

Sincerely Yours,

Melvin J. Jeralds, Chairman
Camden County Board of Commissioners

HPM
HUFF, POOLE & MAHONEY, P.C.
ATTORNEYS & COUNSELLORS

Reeves W. Mahoney, Esq.

Direct Dial: 757/552-6032
Email: rmahoney@hpmlaw.com

Received
OCT 2005
Solid Waste Section

Reply to: Virginia Beach

October 27, 2005

VIA UPS OVERNIGHT
Mr. Dexter Matthews, Division Director
Department of Environmental and Natural Resources
Division of Waste Management
DWM Central Office
401 Oberlin Road, Suite 150
Raleigh, NC 27605

Re: Proposed Black Bear Landfill/Camden County
Our File No.: 13696.000105

Dear Mr. Matthews:

Enclosed please find a copy of the DVD of the Camden County Board of Commissioners meeting that occurred on October 17, 2005.

With regards, I am

Very truly yours,

Reeves W. Mahoney

RWM/
Enclosure

cc: Mr. James C. Coffey, Section Chief, Solid Waste Section (w/ enc)
Mr. Edward Mussler, Permitting Branch, Solid Waste Section (w/ enc)
Ms. Nancy Scott, North Carolina Assistant Attorney-General (w/ enc)

UNC
SCHOOL OF GOVERNMENT

THE UNIVERSITY
of NORTH CAROLINA
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Richard_Whisnant@unc.edu
www.sog.unc.edu

Board of Commissioners of Camden County
Mr. Melvin J. Jeralds, Chairman
P.O. Box 190
117 North NC 343
Camden, NC 27921

October 25, 2005

Re: Franchise for proposed landfill in Camden County

Dear Mr. Jeralds and Commissioners:

Through correspondence from your clerk, you asked me to review several documents pertaining to your solid waste landfill franchise ordinance and franchise agreement with Black Bear Disposal, LLC ("Black Bear"), and I have done so. This letter contains my conclusions from that review.

The documents include a set of Board minutes (July 1, 15, 29; August 5; September 3, 16 25; October 7, 21; November 4, 18; all in 2002); a Franchise Agreement dated as of November 4, 2002 (the "Franchise Agreement"); Section 7 of a Facility Plan dated January 12, 2005; and a resolution dated June 20, 2005 from Currituck County requesting federal review of the landfill proposal. After receiving these documents, I also received calls, requests for opinions and additional documents from Board members, attorneys representing various parties interested in the landfill, and the press. Among these additional documents was a copy of a letter dated October 6 to the Board from James C. Coffey of the Department of Environment and Natural Resources ("DENR") asking for information from the Board about the franchise.

As I mentioned to your clerk and to you by phone, we here at the School and Institute of Government normally respond best to particular legal questions within our field that do not involve detailed factual investigations about matters such as this, believing that city and county attorneys are almost always in the best position to understand the many considerations that go into decisions by a local government board to enter into agreements and to negotiate the terms of those agreements. I mention this so you and the Board will understand that I am not giving legal advice to you in the sense that your county attorney will give you advice; I have not done the requisite factual investigation, nor have I attempted to educate myself on all the policy and strategic considerations that might go into decisions you make about the landfill. I will, however, give you my opinion as to the answers to particular legal questions posed to me. I also believe it is important to make sure the Board understands some basic facts about franchises, and about exclusive solid waste disposal franchises under North Carolina law. The Board needs this understanding both to carry out its important, ongoing role in the regulation of solid waste, and to appreciate why it is being asked the questions DENR raised in the October 6 letter.

So I have set out in this letter some important background information on the nature of local government franchises in general, on exclusive franchises, and on solid waste disposal franchises. I have been asked about the procedures Camden County followed in entering into the franchise ordinance, as well as about the terms of the Franchise Agreement itself and the county's and franchisee's views of the county role in regulating solid waste.

Particular questions I have addressed below include:

1. Does the county retain the legal authority over the landfill?
2. Do the NC General Statutes allow the county to set the rates for solid waste disposal at the landfill or change the rates based on a vote by the Board of Commissioners at any time after the permit is granted?
3. Can the board of commissioners set the rates on an annual basis?
4. How can Waste Industries be added to the Franchise Agreement without a public meeting and a vote?
5. If the Ordinance 2002-10-01 Section Three requires the Franchise agreement to include the exact statement (regarding indemnification of the county) and the agreement does not contain that statement is the agreement void?

The Board's continuing role in solid waste regulation and franchise oversight

A governmental franchise is a contract with an important twist: the twist is that the contract is for carrying out a governmental function, a function involving some responsibility within the power of a governmental unit to control. Here the governmental unit is a county, and North Carolina counties are given broad authority to regulate solid waste collection and disposal within the county limits. When the county enters a franchise, then, it is contracting with another entity (here a private company) to carry out an important governmental function. The governmental franchise is thus different from a contract for goods or services of a purely private nature. There is an important and significant public interest in the subject of the franchise; it is not just about making goods or delivering services in a private market. The usefulness of such franchises has long been recognized: there are many things important to the public, such as solid waste collection and disposal, that may be more efficiently or effectively carried out by a private entity than by a governmental unit, under the right circumstances. However, because the subject of the franchise is a public matter, you need to recognize that there are important, ongoing roles for the Board of County Commissioners in ensuring that the franchise is operated properly. No matter what the Franchise Agreement says, the Board of Commissioners is still ultimately responsible for some aspects of solid waste collection and disposal in Camden County, and the Board is an important part of the regulatory system that ensures that solid waste is collected and disposed of properly under the Franchise Agreement.

Courts have long recognized that governmental franchises are awarded subject to the governmental unit's police powers.[1] This means that, no matter what is in the Franchise Agreement, the Camden Board of Commissioners retains the right and the obligation to protect the health, safety and welfare of the citizens of Camden County, and no matter what is in the Franchise Agreement, the Board can and should pass any ordinances and take any other lawful steps necessary to protect health, safety and public welfare. This is not an excuse to interfere unnecessarily with the contractual rights or business of the franchisee, Black Bear. Actions that the Board takes to regulate solid waste collection and disposal should be (a) consistent with the franchise ordinance and agreement, or if they are not, they should be (b) necessary to protect public health, safety or welfare and reasonably tailored to accomplish that protection. If there is any language in the Franchise Agreement that conflicts with this basic duty of county government, then either that language is void and legally unimportant or the entire Agreement is void.[2]

In the case of the Franchise Agreement, there are some provisions that appear on their face to require the county to take this or that step or to refrain from taking this or that step. For example, Article III, Administration, Maintenance, Disposal and Operations, requires the county to "perform in a timely manner any County functions that may be required...." etc. etc. However, the very first clause in this article reads "To the extent allowed by State or Federal law and subject to North Carolina General Statute 153A-136...." In my opinion, the Board should understand that this first clause both keeps the article from being void and also acts as an important limitation on the county responsibilities laid out in the following paragraph.

For example, when the Board is told in a letter from Benjamin N. Thompson, counsel for Black Bear, dated Oct. 19, 2005, that the county has a "clear obligation" to do this or that and "will be in breach of the Franchise Agreement if it fails to do so," the Board should understand that any such obligations are secondary to the Board's primary obligation to protect the health, safety and welfare of Camden County citizens, and that actions taken or not taken by the Board based on a good faith, reasoned concern to protect public health, safety or welfare are in fact not a breach of the Franchise Agreement, but are actually a proper carrying out of the Board's role as regulator and as the public entity ultimately responsible for solid waste collection and disposal in the county.

In this sense, the answer to the first question posed above, "Does the county retain the legal authority over the landfill?" is "yes, but the county can take actions inconsistent with the Franchise Agreement only if they are genuinely necessary to protect public health, safety or welfare in accordance with the traditional police powers or express statutory powers of North Carolina local governments. Otherwise, the county should honor the terms of the Franchise Agreement, since it is a contract, or risk facing damages for breach of contract."

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[1] For the benefit of attorneys who may read this letter, I am including legal references in footnotes. *See, e.g.*, Atlantic Coast Line Railroad Company v. Goldsboro, 232 U.S. 548, 558 (1913) (The power to regulate affairs in the county concerning health, safety, good order, comfort or the welfare of the community cannot be bargained away, even by express contract. All contract and property rights are held subject to the lawful exercise of this, the 'police' power, of the state. The uncompensated enforcement of this police power is not a taking requiring compensation or due process.)

[2] The Franchise Agreement contains a severability clause, Art. XII(11), that would likely ensure that the entire Agreement would not be voided by problems in a particular provision.

Exclusive franchises and monopolies: why the Board retains control over rates

Camden County has awarded an *exclusive* franchise to Black Bear. Exclusive franchises are historically justified when there is a large capital investment required to carry out a governmental function, such as building and operating lined solid waste landfills, and there is also a desire by the government body with jurisdiction to attract private investment and expertise to manage the function. There are some services that are so capital-intensive that society recognizes the benefits of a "natural monopoly." That is, we feel there are economic benefits from private capital investment in these services that make it worthwhile to protect the investment through an exclusive franchise.

However, there are special dangers in exclusive franchises. These dangers were recognized very early in this country and they are of equal or greater concern today. As Chief Justice of the United States Supreme Court Roger Taney noted in a very famous 1837 case involving bridges over the Charles River in Boston:

> The continued existence of a government would be of no great value if . . . it was disarmed of the powers necessary to accomplish the ends of its creation; and the functions it was designed to perform transferred to the hands of privileged corporations.[3]

In other words, exclusive governmental franchises raise the concern that the public's interest will be harmed by private monopolies. Private monopolies necessarily and appropriately care more about ensuring return for their investors than about the public interest. The North Carolina Constitution recognizes this concern by forbidding monopolies.[4] When does an exclusive franchise become a monopoly? In my opinion, it is when there is insufficient governmental regulation of the franchisee's activities, especially its prices.[5] In your case, "prices" means the fees charged for solid waste collection and disposal.

North Carolina's statute authorizing county solid waste franchises provides a way around this problem of monopolies by <u>requiring</u> that a county retain ultimate authority over solid waste collection and disposal fees:

> A county may by ordinance:
>
> ....
>
> (3) Grant a franchise to one or more persons for the exclusive right to commercially collect or dispose of solid wastes within all or a defined portion of the county and prohibit any other person from commercially collective or disposing of solid wastes in that area...[N]o franchise may be granted for a period exceeding

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[3] Charles River Bridge v. Warren Bridge, 36 U.S. 420 (1837).

[4] N.C. Const. Art. 1 § 34 ("Perpetuities and monopolies are contrary to the genius of a free state and shall not be allowed").

[5] *Compare* Thrift v.Elizabeth City, 122 N.C. 31 (1898) (striking down an exclusive franchise for a water company in Elizabeth City as a monopoly) *with* American Motors Sales Corp. v. Peters, 311 N.C. 311 (1984) (upholding statute providing for exclusive sales territory and noting that, among other characteristics of a monopoly, the monopolist controls prices).

> 30 years, nor may any franchise by its terms impair the authority of the board of commissioners to regulate fees as authorized by this section.
>
> (4) Regulate the fees, if any, that may be charged by licensed or franchised persons for collecting or disposing of solid wastes.[6]

The important thing about this language for your Franchise Agreement is that, no matter what the terms of that agreement, nothing can impair the Board's ultimate authority to regulate fees for solid waste collection and disposal in the county. The Franchise Agreement can (and I believe should) set out initial prices and a process for reviewing and adjusting those prices, but it cannot completely delegate price-setting to the discretion of Black Bear.

Thus to answer questions two and three above, about the Board's continuing authority to regulate rates for solid waste collection within the county and solid waste disposal at a county-franchised facility, the answer, under North Carolina law, is "yes", the Board has continuing authority to regulate rates charged at the landfill. This appears to conflict with certain provisions of the Franchise Agreement, such as article V(1) ("The Company will have the right to establish, charge, collect and retain any and all fees and charges the Company deems appropriate..."), but once again, this paragraph is qualified by the phrase "to the extent allowed by state and federal law." If that phrase were not included, then in my opinion, the Franchise Agreement would be void (as violating G.S. § 153A-136, and possibly also the North Carolina Constitution, Art. I, § 34).[7]

There are provisions in the Franchise Agreement (Exhibit B) setting rates for in-county solid waste disposal, and those provisions appear perfectly appropriate to me. But, as required by G.S. § 153A-136, they do not impair the ultimate authority of the county to regulate rates for any and all waste disposed of under the county's franchise. I find nothing in state or federal law that limits the county's authority over rates charged by its franchisee to in-county waste. In my opinion, the Board would be within its rights and would be responsibly discharging its duty as the Board of commissioners to pass an ordinance changing and setting out the rates to be charged at the landfill and/or creating a process for revising those rates annually, even after the Franchise Agreement and after any permit is issued to the franchisee.[8]

To be sure, the Board could not act arbitrarily in setting rates and would have to have a process for reviewing franchisee financial information; setting and following criteria for rates, including that rates not be discriminatory based on where the waste was generated; giving notice and an opportunity to be heard to the franchisee and ratepayers; and ultimately setting rates that were "just and reasonable" in the eyes of a reviewing court. Borrowing from the long experience with utilities regulation, I expect the Board would want to determine what expenses of the franchisee were counted in the "rate base" and then allocate an appropriate and reasonable rate of

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[6] N.C. Gen. Stat. § 153A-136(a) (emphasis added).

[7] *Cf.* Southern Utilities Co. v. Palatka, 268 U.S. 232 (1925) (Holmes, J.) (contract not void because rates could be reduced).

[8] For solid waste franchises, the Board of Commissioners is in a similar regulatory role to the Utilities Commission with respect to public utilities. *Cf.* State ex rel Utilities Commission v. Virginia Electric & Power Co., 285 N.C. 398 (1974) (Utilities Commission can adjust rates set in contracts between cities and power companies).

return to this "rate base." The franchisee is asked to make a substantial investment under the Franchise Agreement and it would be inappropriate for the county to set rates that do not honor this investment. Rate setting, in other words, is not a matter to be undertaken lightly. But it is important to understand that the text of the Franchise Agreement as it now stands is not the final word on how rates are set, because North Carolina law reserves that final word for the county (Board of Commissioners), which is, after all, the source of the franchise.

Assignments and New Franchisees

The fourth question asks how Waste Industries USA can be added to the Franchise Agreement without a public hearing. The answer is that the Franchise Agreement (Art. VIII) provides for the assignability of Black Bear's rights and obligations, provided certain financial criteria are met. Whatever the policy wisdom of such free assignability without county approval, I know of no legal impediment to the enforceability of this clause in the Franchise Agreement.

DENR may have a different interpretation of public hearing requirements under the solid waste statutes.[9] Once a permit is issued, any "substantial amendment" (including any change that in the discretion of DENR is "substantial") may trigger the requirement for a public hearing. DENR may argue that the language in the solid waste statutes[10] requires that a new franchise be obtained whenever there is a substantial amendment to a permit, including a new permittee. DENR is entitled to some deference in interpretation of its own statute. But, in my opinion, at this stage in Camden County, before any permit has yet issued, there is no requirement of which I am aware that an assignment of the permit triggers a public hearing. If the Board of Commissioners believed there was some significant public health, safety or welfare concern raised by an assignment to Waste Industries USA, then, in my opinion, the Board would be within its rights to pass an amendment to its franchise ordinance or otherwise act to address that concern.[11]

Consistency with the Franchise Ordinance and Procedural Issues

I have received copies of various letters and memos raising questions about many aspects of the procedures Camden County followed in the summer and fall of 2002 when it enacted its franchise ordinance and entered into the Franchise Agreement. The record of the Board's actions set out in the minutes is not crystal clear; it is conceivable to me that a reviewing court would find something objectionable in those proceedings. However, I do not find anything that I believe voids the agreement.

Among the matters that are not crystal clear is the status of the franchise ordinance (October 7, 2002) requirement for a complete indemnity of the county, without exception, against losses of any kind relating to the landfill, in contrast to the indemnity provision ultimately included in the Franchise Agreement, which contains several exceptions allowing for county liability. It is possible that a court would hold the original provision to be a condition precedent to any valid franchise agreement and thus find the ultimate Franchise Agreement void. I believe it is more likely that a court would find the later ordinances, including by reference the

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[9] N.C. Gen. Stat. § 130A-294.

[10] In particular, N.C. Gen. Stat. § 130A-294(b1)(3).

[11] *See supra* pp. 2-3.

Franchise Agreement, to have implicitly amended this original ordinance requirement. I cannot say for certain, because there is little or no North Carolina case law to date on questions of variation between a franchise ordinance and a subsequent franchise agreement. My understanding is that it is a relatively recent practice in North Carolina local government for there to be separate franchise ordinances and agreements, so the question has, to my knowledge, not yet been presented to the courts.

Similarly, there was a condition put on the resolution passing the Franchise Agreement ordinance to the effect that written findings be made before the agreement was executed by the county. I see no evidence of those findings having been made. However, I understand Black Bear to argue that the condition was satisfied by its timely submission of a zoning application and the county's having taken action on that application. On the basis of my review, I cannot say that this condition, even if it was not fulfilled, would render the agreement void. It might mean that the county signed the agreement without proper authority to do so, but I do not know whether that was the case, and I believe Black Bear would be entitled to presume the Chairman of the Board of Commissioners had at least apparent authority to enter the agreement.

Conclusion

I believe the most important thing about this Franchise Agreement is that the Board understand that it has not and cannot contract away its ultimate responsibility for oversight of solid waste handling in the county. It is bound by this Franchise Agreement, but that does not mean that it is bound to accept anything the franchisee or its assignees want to do. In particular, the Board retains its police powers, to ensure that the health, safety and welfare of the citizens of Camden County are protected, and to pass any ordinances or take other action required to ensure that protection. In addition, it retains the ultimate power to regulate rates charged by the franchisee. This last matter is so fundamental to the successful operation of a solid waste enterprise that it should, in my opinion, prompt some discussion among the Board and with the franchisee and other stakeholders about how and whether further rate regulation should take place. The Board should be realistic and fair about its ability to regulate rates. Perhaps a component of the fees charged at the landfill could be a surcharge passed through to the county to assist with county monitoring and review of the landfill's finances.

If you have further questions about these matters, I would be happy to help research and provide you advice about them.

Very truly yours,

Richard Whisnant

Digitally signed by Richard Whisnant
DN: CN = Richard Whisnant, C = US, OU = UNC School of Government
Reason: I am the author of this document
Date: 2005.10.25 14:06:54 -04'00'

Richard Whisnant
Assoc. Prof. of Public Law and Government
UNC School and Institute of Government

C: Herbert Mullen, Esq., County Attorney

North Carolina Coastal Federation
3609 Highway 24 (Ocean) Newport, NC 28570
Northern Office: P.O. Box 475 Manteo, NC 27954

Received
OCT 2005
Waste Management

October 24, 2005

Dexter Matthews
NC Division of Solid Waste Management
Mail Service Center 1646
Raleigh, NC 27699-1646

Dear Mr. Matthews,

On behalf of the North Carolina Coastal Federation (NCCF), I am writing to express serious concerns about the proposed operation of a municipal solid waste landfill by Black Bear Disposal, LLC, in the unstable soils of prior converted wetlands in Camden County. NCCF is a non-profit environmental group with a statewide membership of 8,000 people. Our mission is to protect the water quality of the 20 coastal counties.

The soils of prior converted wetlands retain wetland characteristics, with some underlying soils being more stable than others. In addition, the groundwater table on this site has been shown to be at the surface. The combination of unstable soils and high groundwater level clearly makes this site unsuitable for a landfill of this magnitude.

Regulations for a Subtitle D landfill require that there be four feet of separation between the groundwater table and municipal solid waste. The applicant proposes to meet this regulation by trucking in approximately 26,500,000 tons of fill, enough to create a 12- to 15-foot berm and to serve as daily cover. In addition, according to the application, plans for the landfill call for 102,400,000 cubic yards (82,500,000 tons; up to 10,000 tons a day) of waste to be accepted over the facility's 27-year life span. The footprint of the waste pile would be approximately 490 acres; the fill would reach a height of 260 to 280 feet. We are concerned that the combined weight of the soil fill and the waste will contribute to unstable settling in the wetlands soils and place unreasonable stress on the HDPE liner. Any rips or tears in the liner would cause leachate to escape and lead to groundwater contamination. Leakages from isolated tears in the liner would likely go undetected for years.

We are not alone in these concerns. Dr. G. Fred Lee and Dr. Anne Jones-Lee, waste industry consultants in El Macero, California, have published several papers documenting failure by the kinds of monitoring wells proposed for this facility. As Dr. Lee and Dr. Jones-Lee note, in many cases groundwater contamination initially occurs as finger-like

plumes from holes or tears in the flexible landfill liner. Monitoring wells set several hundred feet apart, as proposed for this facility, are highly unlikely to detect these plumes. Pollutants may continue to leak out until enough accumulates to be detected by the monitoring system or a massive failure of the liner system occurs. (See Lee, G.F, and Jones-Lee, A., "Geosynthetic Liner Systems for Municipal Solid Waste Landfills: An Inadequate Technology for Protection of Groundwater Quality." *Waste Management & Research*, 11:354-360. Also see Lee, G.F., Detecting Failure of Subtitle D Landfill Liner Systems, G.F. Lee & Associates, El Macero, CA, 1999.)

We are also quite concerned about Black Bear Disposal's proposed plan to collect leachate and recycle it back through the waste pile. This practice may present an elevated threat to the integrity of the liner. Through this procedure the liquid produced by the disposal of trash would be poured back through the landfill, increasing the moisture level and accelerating decomposition of waste. However, the hastened decomposition rate also increases unstable settlement of the waste pile, as components in the landfill decompose at different rates. (See Jones-Lee, A. and Lee, G. F., "Groundwater Pollution by Municipal Landfills: Leachate Composition, Detection and Water Quality Significance," *Proc. Sardinia '93 IV International Landfill Symposium*, Sardinia, Italy, pp. 1093-1103, October, 1993.) This unstable settlement places more pressure on the HDPE liner and may compromise its integrity. The inconsistent settling of waste may also cause fissures to open in the final cover layer placed on the landfill. If the cover material is unsound, rainfall will enter the landfill and place further stress the liner.

Leachate recycling is a relative novelty within the industry, and we are concerned that it is not adequately regulated. The web site for the U.S. Environmental Protection Agency cites a series of "special considerations" that need further investigation before effective regulatory measures can be adopted for bioreactor or leachate recycling operations. These include "physical instability of waste mass due to increased moisture and density," "instability of liner systems," and "surface seeps." Again, we would be wary if such practices were proposed for any landfill on any parcel. But to propose such a large facility with leachate recycling for a patch of prior converted wetlands strikes us as foolhardy.

Our concerns about protecting water quality are shared by officials at the U.S. Fish and Wildlife Service. In a letter to Chesapeake City officials, Marvin E. Moriarty, regional director of the service in Hadley, Massachusetts, writes, "Water quality could be degraded if the site is not constructed and managed to the highest standards. The site does not appear ideal from a hydrogeologic standpoint. Although most of the site is characterized as 'prior converted' wetlands by the applicant, this area still provides important wetlands functions and values (including aquifer recharge, wildlife habitat, flood storage capacity, and water quality maintenance) for which potential impacts should be considered (undated letter to Dr. Clarence V. Cuffee, in response to Dr. Cuffee's correspondence of August 3, 2005).

The hydrology of this site is quite similar to the site proposed for the Riegel Ridge Municipal Solid Waste Landfill in Columbus County. The Division is on record as having serious concerns about the suitability of that site. In a December 7, 2001, letter to William Dreitzler, consultant for Riegel Ridge, James Coffey of the Solid Waste Section wrote, " . . . It is clear that if the site is ever determined to be suitable for a MSWLF, it would be marginally suitable at best. Site conditions which raise questions concerning suitability of the site include high ground-water table, compression and consolidation of soils creating stability and settlement issues, questionable onsite soil resources, and potential operational impacts on adjacent and nearby environmentally-sensitive features such as wetlands, flood plains, and state nature and historic preserves. The site would require extensive engineering design to resolve serious construction and operational concerns." The same concerns exist at the Camden County site. However, because of the sheer size of the proposed facility, any problems will be magnified several times.

We are further concerned about the possibility of a recycling center being added to the facility in the future, as allowed by the county franchise, because of the likelihood that it will accept Chromated Copper Arsenate (CCA)-treated wood products. CCA wood is commonly chipped for resale or use as cover material on landfill sites. These products pose additional threats to groundwater and surface water quality.

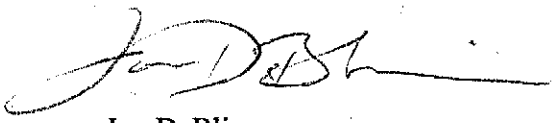
CCA-treated lumber is no longer allowed for use in residential structures; a ban was placed on the material in 2004. Nonetheless, it remains the most popular wood building product throughout the United States, and thousands of tons of CCA treated wood are expected to find their way into landfills in the next 20 years. Black Bear Disposal's Facility Plan states that Construction and Demolition (C&D) debris will be accepted at the facility. This type of waste includes building materials such as wood and wood scraps from construction, remodeling, or the repair of buildings and other structures. The plan also states that C&D debris will not be separated from other municipal solid waste. Numerous studies have shown that landfills containing CCA-treated wood leach arsenic, chromium, and copper at concentrations exceeding EPA standards. The toxic leaching intensifies when leachate is recycled back through the waste pile.

We understand that the Division has questions about the financial viability of Black Bear Industries to take responsibility for cleaning up any pollution from the facility. As a Limited Liability Corporation, Black Bear should under no circumstances be allowed to operate a landfill of this magnitude alone. Black Bear is a subsidiary of Waste Industries. The parent company should be held responsible for any problems caused by a facility operated by Black Bear or any other of its subsidiaries.

Landfills of any size are not suitable for sites that have been carved from wetlands or have a high water table. For the reasons listed above, as well as the sheer size of the facility, we urge you to find the proposed Camden County site unsuitable for the municipal solid waste landfill proposed by Black Bear Disposal, LLC.

Please feel free to contact me with questions. My email is hatteraskeeper@nccoast.org, and my phone is (252) 473-1607.

Sincerely,



Jan DeBlieu
Cape Hatteras COASTKEEPER®

Cc: Bill Ross, DENR
Ed Mussler, DWM

WYRICK
ROBBINS
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& PONTON
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ATTORNEYS AT LAW

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FACSIMILE TRANSMISSION COVER LETTER

Date: October 19, 2005 Client No.:

Please deliver the following pages to:

cc	Name / Company	Fax No.	Phone No.
	Melvin J. Jeralds, Chairman; Randell Woodruff	252-333-1603	
	Herbert Mullen, Esq.;	252 335-2788	

From: Benjamin N. Thompson Total # of pages, including this cover page:

If you do not receive all pages, please call: Fran Hummel at (919) 781-4000

☐ Original to follow by mail. ☐ Original to follow by overnight delivery. ☐ Original will not follow.

Comments:

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ROBBINS
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October 19, 2005

VIA FACSIMILE (252-333-1603)
ORIGINAL VIA FEDERAL EXPRESS

Board of Commissioners of Camden County
Attention: Melvin J. Jeralds, Chairman
Post Office Box 190
117 North NC 343
Camden, North Carolina 27921

Re: Black Bear Disposal, LLC; October 6, 2005 Letter from James C. Coffey, Chief, Solid Waste Section, Division of Waste Management, NC Department of Environment and Natural Resources

Chairman Jeralds:

As the Board is aware, this firm represents Black Bear Disposal, LLC ("Black Bear" or "the Company") and Black Bear's parent, Waste Industries USA, Inc. We are writing to address the requests set forth in Mr. Coffey's October 6 letter to the Board.

As an initial matter, please note our concern that both representatives of Black Bear and Waste Industries USA, Inc., and I were present at the Board's October 17 meeting prepared to address Mr. Coffey's requests, but we were not given the opportunity to speak. Had we been given such opportunity, we believe that we could have addressed any concerns the Board might have had and the process would not have been delayed any further. Because we were not given the opportunity to speak, we have detailed below that the Revised Facility Plan is in all respects consistent with the November 2002 Franchise Agreement, and the County and Board are required to confirm this to Mr. Coffey pursuant to Section III of the Franchise Agreement.

Identity of Land

With respect to the "Identity of Land" Section of Mr. Coffey's letter, N.C. Gen. Stat. § 130A-294(b1)(3) requires only that an applicant for a landfill permit have "a franchise for the operation of the sanitary landfill from each local government having jurisdiction over any part of the land on which the sanitary landfill and its appurtenances are located or to be located." This Section does not require a metes and bounds property description.

As noted in Mr. Coffey's letter, the Revised Facility Plan calls for construction of the Landfill on the Company's 1037 acre tract in the northeast corner of Camden County. A diagram identifying the property covered by the Revised Facility Plan is enclosed with the original of this letter, coming by Federal Express, as Attachment A. There can be no doubt that the November 4, 2002 Franchise Agreement between the County and Black Bear covers the Company's proposed Landfill property. Exhibit A to the Franchise Agreement identifies the Landfill's "primary property" by Tax Parcel Number (No. 01-7082-00-26-3513) and by identifying the parcel on a diagram contained within Exhibit A. This "primary parcel" is the same Company-owned tract identified in the Revised Facility Plan, as is demonstrated by the diagram included with the original of this letter as Attachment B. Indeed, Mr. Coffey's letter expressly acknowledges that "[t]he 1037 acres owned generally corresponds with the 'primary parcel'." Thus, there can be no doubt that the Franchise Agreement covers the tract identified in the Revised Facility Plan.

Section III of the Franchise Agreement requires that the County confirm for Mr. Coffey the fact that the Company's property is covered by the Franchise Agreement:

> . . . the County agrees to perform in a timely manner any County functions that may be required for the Company to obtain, modify, expand or maintain the required State permits . . . including, without limitation . . . providing the State with documentation that the Landfill operation (as described in Exhibit A) is consistent with the County's zoning, that the Franchise is valid <u>and that the Franchise is applicable to the Landfill property</u>, or re-zoning the Landfill property.

(emphasis added). We thus view the request for the County to confirm the fact that the Company's property is covered by the Franchise Agreement as a clear obligation on the part of the County and the County will be in breach of the Franchise Agreement if it fails to do so.

<u>Area and Population to be Served</u>

The inclusion of an estimate of the population to be served is not a term or limitation within the Franchise. Rather, N.C. Gen. Stat. § 130A-294(b1)(3) requires only that the applicant for the Landfill permit have a franchise that includes "a statement of a population to be served, including a description of the geographic area." Mr. Coffey notes, correctly, that Section III, Paragraph (3) of the Franchise Agreement contains such a description. Paragraph (3) defines the Landfill's proposed Service Area as including "the area located east of Interstate Highway 75," indicating that the area has a "current estimated population" of 82,000,000. The Paragraph further notes that "the Company may accept waste from outside the Service Area."

As noted in Mr. Coffey's letter, the Revised Facility Plan provides that the proposed Landfill "will provide Waste Disposal Capacity for a service area that extends from U.S. Interstate 75 (I-75) to the east coast." Thus, the Revised Facility Plan's geographic description of the service area is essentially the same as that of the Franchise Agreement. The only difference between the Franchise Agreement and Revised Facility Plan appears to be that the Franchise Agreement references an

estimated population of 82,000,000 while the Revised Facility Plan references an estimated population of 108,900,000.

As noted in the Revised Facility Plan and in Mr. Coffey's letter, the 108,900,000 estimate in the February 28, 2005 Revised Facility Plan is based on the 2001 Census, which was not available at the time of the negotiation and execution of the 2002 Franchise Agreement. Rather, the estimate contained in the Franchise Agreement was based upon 1991 Census information. In January of 2005, DENR asked that a more detailed definition of service area and actual census population be included in the Facility Plan. The consultant preparing the Revised Facility Plan, CDM, simply used the 2001 Census data to comply with DENR's request. Further, the Franchise Agreement specifically authorizes the Company to serve even a population beyond that in the proposed Service Area, so that the County expressly agreed that the Company could serve more than 82,000,000 people. Since the population estimate is simply a disclosure and not a limit or term of the Franchise Agreement, the Revised Facility Plan is completely consistent with the terms of the Franchise Agreement, and the County needs to certify this fact to Mr. Coffey pursuant to Section III of the Franchise Agreement. Indeed, the Board's February 10, 2005 Resolution 2005-02-01 expressly acknowledged the 108,900,000 population estimate. Again, we believe the County will be in breach of the Franchise Agreement if it fails to make the required certification to Mr. Coffey.

Volume of Waste

N.C. Gen. Stat. § 130A-294(b1)(3) requires that a landfill applicant have a franchise that includes "a description of the volume and characteristics of the waste stream." Section III, Paragraph (2) of the Franchise Agreement contains this description, noting that:

> The waste stream accepted for disposal may include, but is not limited to, non-hazardous MSW, industrial waste ("IW"), C&D debris, land clearing and inert debris ("LCID") and other non-hazardous solid wastes that may be approved by the Division. The Company projects that the volume of waste delivered to the Company landfill will average 10,000 tons per day.

Thus, the Franchise Agreement contains the waste stream description required by Section 130A-294(b1)(3).

Sections 7.3.1.1 of the Revised Facility Plan tracks the Franchise Agreement's description of waste stream and notes that the stream is subject to the terms of the Franchise Agreement:

> The proposed landfill will accept only wastes permitted by the North Carolina Department of Environment and Resources and in accordance with the Franchise Agreement with Camden County. These wastes include, but are not limited to, non-hazardous MSW, industrial waste (IW), C&D debris, land cleaning (sic) and inert debris ("LCID") and other non-hazardous wastes that may be approved by the Division

> that are generated within the east coast service area described in . . . this Facility Plan.

Section 7.3.1.2 of the Revised Facility Plan provides that the Landfill will have "an average daily disposal rate of 10,000 tpd (tons per day) for each day of operation," which is exactly the same estimate as is in the Franchise Agreement. Accordingly, the Revised Facility Plan is consistent with the Franchise Agreement with respect to its description of the waste stream, and the County will be in breach of the Franchise Agreement should it fail to confirm this to Mr. Coffey pursuant to Section III of the Franchise Agreement.

Projected Useful Life

N.C. Gen. Stat. § 130A-294(b1)(3) requires that a permit applicant's franchise agreement include "a projection on the useful life of the landfill." Section III, Paragraph (2) of the Franchise Agreement provides the required estimate, indicating that "based on 10,000 tons per day, the Landfill's estimated life will exceed the Franchise term of thirty (30) years." Mr. Coffey's letter correctly notes that the Revised Facility Plan references a projected useful life of 27 years. It is important to note, however, that the Franchise Agreement was signed effective November 4, 2002, and will expire 30 years later, in 2032. The Revised Facility Plan is dated January 28, 2005, almost 3 years later. 27 years from the date of the Revised Facility Plan would also fall in 2032. Further, if the Landfill opens as planned on January 1, 2007, the 27-year projection extends beyond the 30-year term of the Franchise Agreement, just as forecast in the Franchise Agreement.

The Revised Facility Plan also specifically notes that the Landfill's useful life may well exceed the 30-year term of the Franchise Agreement:

> The active life of the facility may be extended beyond 27 years due to ramping up of operations when the landfill opens, fluctuations in daily disposal rates, improved compaction, leachate recirculation, and other variables. Extension of the active life of the landfill beyond the duration of the 30-year franchise agreement with Camden County dated November 4, 2002, will require a new franchise agreement with the County.

The Revised Facility Plan is completely consistent with the Franchise Agreement with respect to the projected use of the Landfill, and the County will be in breach of Section III of the Franchise Agreement if it fails to confirm this fact to Mr. Coffey.

Condition in the 2002 Minutes

As noted in Mr. Coffey's letter, the County's November 4, 2002 minutes indicate that the Board approved the franchise Ordinance "for a second reading with the condition that the Chairman and Clerk may not sign or otherwise execute the Ordinance or the Franchise Agreement until the County Manager has made written findings that the Franchise applicant has, on or before December 4,

2002, submitted a completed zoning permit application in a form, manner and content that can be approved by the county." The Company filed its zoning permit application with the County by November 18, 2002, at which point the application became a matter of public record. The zoning inspector requested minor modifications to the Company's drawings, which were re-submitted on December 3, 2002. The zoning permit application was granted by the County on December 5, 2002, which we understand was prior to Chairman Rountree's execution of the Franchise Agreement. Thus, any requirement of written findings that the zoning permit application had been filed in a form that "can be approved" was met by the County's actual approval of the application and grant of the zoning permit prior to the execution of the Franchise Agreement (while the Franchise Agreement is dated effective November 4, 2002, the date of approval of the Second reading, the Agreement was not actually executed by Chairman Rountree until later). The Company later submitted a revised zoning permit application and received a new zoning permit in January 2005, which zoning permit corresponded to the Facility Plan submitted for County review and the public hearing on February 8, 2005. This Board's February 10, 2005 Resolution 2005-02-01 confirms that the condition was met. Accordingly, pursuant to Section III of the Franchise Agreement, the County will be in breach of the Franchise Agreement if it fails to confirm to Mr. Coffey that the Company's Revised Facility Plan is consistent with the County's Franchise Ordinance and Agreement.

Permittee Issues

Last, as alluded to in Mr. Coffey's letter, DENR is considering whether to ask that Waste Industries USA, Inc. join Black Bear as a co-permittee on the landfill permit. We believe that adding Waste Industries USA, Inc. as a co-permittee would be consistent with the terms of the Franchise Agreement. Section VIII of the Franchise Agreement expressly provides that:

> The County agrees that the Company will have the right to assign this Agreement and all rights and obligations of the Company hereunder to any corporation or other person or entity upon written notice to the County, subject to County's right to require that the proposed designee be as financially viable as the Company.

Case law also makes clear that franchises are property rights that can be assigned. See, e.g., City of Owensboro v. Cumberland Telephone & Telegraph Co., 230 U.S. 58 (1913).

There is no doubt that Waste Industries USA, Inc. is as financially viable as Black Bear. As shown by the most recent 10-Q for Waste Industries USA, Inc., filed with the Securities and Exchange Commission as provided to the Board on Monday, October 17, Waste Industries USA, Inc. has over $124,000,000 in stockholder equity and over $352,000,000 in assets. Further, it is well-established that the power to assign all of a contract or other right includes the right to assign some portion of that contract or right. Accordingly, the County needs to confirm to Mr. Coffey that the County would view the inclusion of Waste Industries USA, Inc. as a co-permittee to be consistent with the terms of the Franchise Agreement.

As detailed above, Section III of the Franchise Agreement requires the County to "perform in a timely manner any County functions that may be required" with respect to the permitting process, including "providing the State with documentation required . . . that the Landfill operation . . . is consistent with the County's zoning, that the Franchise is valid and that the Franchise is applicable to the Landfill property, or re-zoning the Landfill Property." The property identified in the Revised Facility Agreement is covered by the Franchise Agreement, and the service area, waste stream and projected useful life descriptions from the Revised Facility Plan are fully consistent with those contained in the Franchise Agreement. The condition contained in the Board's November 4, 2002 Minutes was more than satisfied by the actual issuance of the zoning permit application prior to execution of the Franchise Agreement, and the Franchise Agreement expressly provides for an assignment of the franchise to a financially viable entity, which would certainly include Waste Industries USA, Inc. Accordingly, we expect, and have every reason to believe that the County and its Board will respond in the affirmative with respect to each of the inquiries contained in Mr. Coffey's letter. We have never had any reason to question the integrity of the County or the Board, and trust this confidence will remain in place. However, as you know, Black Bear has invested more than $9,000,000 to date in this project based on the Franchise Agreement and subsequent actions of the Board, so if the County and Board fail to honor their legal commitments, we believe that we will have no choice but to take appropriate action to protect our client's rights.

We trust that the County, and its Board, will continue to meet their obligations under the Franchise Agreement, and we can move this project forward.

Sincerely,

WYRICK ROBBINS YATES & PONTON LLP

Benjamin N. Thompson

GLS/sj
cc: Herbert Mullen, Esq. (via facsimile)
Randell Woodruff, County Manager (via facsimile 252-333-1603)
Richard B. Whisnant, Esq. (via e-mail)

A, Pls cc: Robin, Mary Penny, Dexter, Aron + me. Orig to mapts
Tim B

?

City of Virginia Beach

Received
OCT 2005
Waste Management

VBgov.com

MEYERA E. OBERNDORF
MAYOR

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(757) 427-4581
FAX (757) 426-5699
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#7083

RECEIVED
OFFICE OF THE SECRETARY
OCT 24 2005
ENVIRONMENT
AND NATURAL RESOURCES
REFERRED TO

October 18, 2005

The Honorable Mark R. Warner
Governor
Commonwealth of Virginia
Governor's Office
Virginia Capital, Third Floor
Richmond, Virginia 23219

Dear Governor Warner:

Our neighboring City of Chesapeake has been dealing with an issue of major significance for some time now. It is the proposed construction of a 490 acre landfill immediately south of the North Carolina – Virginia line in Camden County, North Carolina. This landfill is being proposed by Black Bear Disposal, L.L.C., a wholly owned subsidiary of Waste Industries, USA, Inc. I have reviewed information from Waste Industries' website concerning the proposed project. I have had the opportunity to review the resolution adopted by the Chesapeake City Council dated April 12, 2005. I have also reviewed the letter to you from the City of Chesapeake dated April 28, 2005 voicing opposition to the proposed landfill (copies enclosed). Additionally, I have reviewed the resolution adopted by Currituck County, North Carolina, dated June 20, 2005 (copy enclosed).

Based upon this review, I feel compelled to write to you as Mayor of the City of Virginia Beach. Before final North Carolina and Camden County approvals are granted for construction of the proposed project, I urge that the Commonwealth of Virginia officially advise the State of North Carolina that it has serious concerns about the proposed project. I also urge the Commonwealth to advise North Carolina that the applicant be required to prepare an Environmental Impact Statement (EIS). This statement would address a wide range of issues associated with the proposed project. I am aware that earlier this summer Congressman Randy Forbes requested that the federal Environmental Protection Agency (EPA) require the preparation of an EIS for the proposed project. This request was rejected by EPA Region III Administrator Donald S. Welsh. However, this project is located within the northeasternmost jurisdiction of EPA Region IV. The jurisdiction has

apparently not yet weighed in on this issue officially. This discrepancy points out a major issue, which has not been addressed to date. The proposed project is located virtually on the dividing line between a host of federal (and obviously state) environmental agencies. These agencies include the U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service, in addition to EPA. This sets up a scenario rendering it easier for the proposed project to fall between the cracks. It lacks the responsibility of any clear parties having the interests of the entire area in mind. The natural resources of the area are not bound by such artificial boundaries. In fact, the area of the proposed landfill has been identified as a central portion of the Roanoke-Tar-Neuse-Cape Fear Ecosystem Complex. It is considered to be one of the most ecologically significant and threatened ecosystems on the eastern seaboard. A multi-party major resource conservation initiative has been underway for this area for some time. Accordingly, protection of unique natural resources and mitigation of development impacts should be managed for this area as an integrated unit. This will allow these resources to be sustained for future generations to enjoy, while accommodating sound economic development. The Great Dismal Swamp and Back Bay National Wildlife Refuges, Northwest River and North Landing River Natural Area Preserves, False Cape State Park – all of these special resource areas are parts of this larger natural and national treasure on the Virginia side of the line. On the North Carolina side of the line, there are many others. They include ten National Wildlife Refuges besides a portion of the Great Dismal Swamp National Wildlife Refuge, and numerous state parks and natural areas.

In part, because of this uniqueness, the Cities of Virginia Beach and Chesapeake have been involved in the development of a cooperative natural resource management strategy. This strategy involves the Department of Environmental Quality, other state agencies, the Hampton Roads Planning District Commission and federal agencies. It culminated in the Southern Watershed Special Area Management Program (SWAMP), receiving extensive funding from the Virginia Coastal Resources Management Program. Recommendations from the studies that devised a strategy for protecting this unique area in southern Chesapeake and Virginia Beach, and the studies themselves, have been incorporated into each of our adopted Comprehensive Plans as guides to future development of this area. Recently, the Hampton Roads region and our two cities have received funding from the Albemarle Pamlico National Estuarine Program being coordinated in North Carolina. This funding continues the SWAMP program efforts and expands coordination with adjoining North Carolina localities.

Recent press announcements that the proposed project has the support and potential partnership of the Southeastern Public Service Authority, without the full disclosure of such to the member jurisdictions, including Chesapeake and Virginia Beach, gives me pause as well. I recognize and understand that further studies and evaluation of impacts for potential alternative locations which may meet the long term solid waste disposal

requirements of the greater south Hampton Roads region need to be seriously considered. In fact, I believe that all affected parties in south Hampton Roads as well as northeastern North Carolina should be part of such a comprehensive evaluative process. However, this process has to be one that is subject to full public participation and disclosure along the way. Absent such a participatory process, I cannot support reaching a conclusion on what may be being suggested as the so-called best alternative for our region which has been decided in a closed manner. A true EIS may document that the evaluation of alternatives, cumulative and individual impacts shows that the proposed project is indeed a safe, viable and environmentally sound proposal. However, until such objective analysis has been conducted with adequate public participation in the entire process for the entire greater region, I cannot recommend that this project be approved. I fully support the efforts of our neighbors in Chesapeake and Currituck County to hold the proposal to a higher level of accountability and scrutiny.

As Mayor of the City of Virginia Beach, I thank you for allowing me the opportunity to express these views. Please contact me if I may be of assistance in helping to bring about a more open and comprehensive evaluation of this issue.

Sincerely,

Meyera E. Oberndorf

Meyera E. Oberndorf
Mayor

Enclosures

MEO/RRM/clb

CC: James K. Spore, Virginia Beach City Manager
Virginia Beach City Council Members

Clarence V. Cuffee, Chesapeake City Manager
Chesapeake City Council Members

Daniel F Scanlon, Currituck County Administrator
Currituck County Board of Supervisors

Virginia Beach and Chesapeake State Legislature Delegation

The Honorable George Allen, U.S. Senator, Virginia
The Honorable John W. Warner, U.S. Senator, Virginia
The Honorable Thelma D. Drake, U.S. Representative, Virginia
The Honorable J. Randy Forbes, U.S. Representative, Virginia

The Honorable Elizabeth Dole, U.S. Senator, North Carolina
The Honorable Richard Burr, U.S. Senator, North Carolina
The Honorable G.K. Butterfield, U.S. Representative, North Carolina
The Honorable Walter B. Jones, U.S. Representative, North Carolina

The Honorable W. Tayloe Murphy, Jr., Virginia Secretary of Natural Resources

The Honorable Michael F. Easley, Governor, North Carolina
The Honorable William G. Ross, Jr., North Carolina Secretary of the Department of Environment and Natural Resources

John Hadfield, Southeastern Public Service Authority

Arthur L. Collins Hampton Roads Planning District Commission

Colonel Yvonne Prettyman-Beck, Norfolk District Corps of Engineers
Colonel John Pulliam, Wilmington District Corps of Engineers

J.I. Palmer, Jr., EPA Region IV Administrator
Donald S. Welsh, EPA Region III Administrator

CC
BOB M.

CITY OF CHESAPEAKE

OFFICE OF THE MAYOR
306 CEDAR ROAD
CHESAPEAKE, VA 23322

PHONE 1-757-382-6462
FAX 1-757-382-6678
PHONE MAIL 1-757-382-6974

July 5, 2005

VIA FAX

RECEIVED
JUL - 6 2005
OFFICE OF THE CITY MANAGER
CITY OF VIRGINIA BEACH

The Honorable Meyera E. Oberndorf
City of Virginia Beach
2401 Courthouse Drive
Room 234
Virginia Beach, VA 23456

Dear Mayor Oberndorf:

I hope this letter finds you well. I am writing to follow up on a suggestion by Delegate Suit requesting the City of Virginia Beach join the City of Chesapeake in opposing the proposed Black Bear, LLC landfill in Camden County, North Carolina and requesting that an Environmental impact Statement (EIS) under the National Environmental Policy Act (NEPA) be required. I am enclosing the Resolution adopted by City Council during their April 12, 2005 meeting.

The City of Chesapeake is very concerned about water quality due to the site's location within the Northwest River watershed and potential of surface water flows to the Northwest River, which supplies approximately 60% of our drinking water. As you may be aware, the proposed "mega" landfill would serve a population of approximately 110 million, representing all states east of I-75. The height of the landfill is proposed to be 280 feet and could be seen from as far as 20 miles away. The anticipated increase of 1,600 trucks represents a 100% increase of truck traffic on US RT 17 and a 50% increase on Dominion Boulevard. Of region-wide significance is that these slow moving trucks will certainly exacerbate congestion on I-64 in proximity of the "high-rise" bridge over the Southern Branch of the Elizabeth River. In addition, the landfill is proposed to be located within the City's watershed as well as adjacent to a highly environmentally significant area in Chesapeake for which the Commonwealth of Virginia and The Nature Conservancy have expended over $5 million to conserve 4,000 acres.

It is inconceivable that a project of this magnitude, impacting as many environmentally significant issues, would not undergo the thorough public examination provided under the Federal NEPA. I would be most appreciative of your consideration of this request.

Sincerely,

Dalton S. Edge
Mayor

c: The Honorable Harry Blevins
The Honorable Terrie Suit
The Honorable Members of Chesapeake City Council
Dr. Clarence V. Cuffee
Mr. James K. Spore

RESOLUTION OPPOSING THE PROPOSAL OF BLACK BEAR DISPOSAL, L.L.C. TO OPERATE A 490 ACRE MUNICIPAL WASTE LANDFILL IN CAMDEN COUNTY, NORTH CAROLINA IN CLOSE PROXIMITY TO ROUTE 17, THE GREAT DISMAL SWAMP AND THE CHESAPEAKE BOUNDARY.

WHEREAS, on November 4, 2002, Camden County, North Carolina, granted a franchise agreement to Black Bear Disposal, L.L.C. ("Black Bear"), a wholly owned subsidiary of Waste Industries USA, Inc., for a 490 acre municipal waste landfill on a 1,060 acre parcel, located approximately 3,000 feet from the center line of U.S. Route 17; and

WHEREAS, the City of Chesapeake has not received notice of the landfill from Camden County or the North Carolina Department of Environment and Natural Resources, with the exception of a general request from a land use consultant for technical review of the County's Comprehensive Land Use Plan, said request having been made two years after the County granted the franchise to Black Bear; and

WHEREAS, the proposed landfill is to be constructed near the headwaters of the Northwest River, which includes the intake structure for the City's primary source of drinking water for the residents of Chesapeake; and

WHEREAS, preliminary information indicates that the surface water run-off from the landfill will be discharged to the Great Dismal Swamp Canal, a navigable waterway and historic site; and

City Attorney's Office
City of Chesapeake
Municipal Center
306 Cedar Road
Chesapeake, Virginia
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WHEREAS, in addition to concerns regarding the potential for contaminated surface water run-off to the Northwest River and the Great Dismal Swamp Canal, the City of Chesapeake also fears contamination of ground water and knows of no infallible system that will offer citizens complete protection against degradation of ground water quality; and

WHEREAS, because Southern Chesapeake is not served with public water, the residents and businesses in the area, including military personnel residing at the Naval Support Activity, Norfolk-Northwest Annex, depend on wells as their sole source of drinking water and would be put at serious risk if ground water quality is degraded by leachate, hog waste or any other unhealthy substance; and

WHEREAS, the City is also concerned about the proximity of the landfill to the 111,000 acre U.S. Fish and Wildlife Service, Great Dismal Swamp National Wildlife Refuge ("Wildlife Refuge") and the potential for adverse impact on this important public resource; and

WHEREAS, not only may the Wild Life Refuge be under potential threat but any contamination of the Great Dismal Swamp waters may be spread by sheet flow during significant storm events, as occurred in 1999 during back-to-back Hurricanes Floyd and Dennis; and

WHEREAS, the potential for contaminated sheet flow is a serious endangerment of the public health, safety and welfare; and

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WHEREAS, throughout the past two years and longer, Chesapeake and Camden County have been working together in trust on joint land use planning and eco-tourism proposals, without notice to Chesapeake representatives that a large landfill should be factored into such plans and proposals; and

WHEREAS, on February 14, 2002 and again on February 27, 2003, representatives of Chesapeake and Camden County met to discuss joint economic development efforts and based in part on these discussions, without knowledge of the proposed landfill, Chesapeake expended approximately $200,000 for an Urban Land Institute Development Strategy to help determine the most beneficial use and development of 4,000 acres of land located along U.S. Route 17 and bordering Camden County; and

WHEREAS, Chesapeake and Camden County also have been working closely for the last five years in developing the U.S. Route 17 corridor in both states as a tourist destination based on environmental attributes, such as open space, wetlands, wildlife habitats, and the historic Great Dismal Swamp Canal; and

WHEREAS, some of the key components to developing an eco-tourism corridor include the proposed construction of a Visitor's Center for the Great Dismal Swamp National Wildlife Refuge, groundbreaking for a new state park in Camden County, and a joint multi-purpose trail to be created, in part, by converting the existing U.S. Route 17 right-of-way to a recreation trail upon relocation of the highway; and

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WHEREAS, Congressman Randy Forbes was able to secure $1.75 million in federal appropriations to construct the recreation trail, which when combined with state funds, resulted in over $2 million in government expenditures; and

WHEREAS, the public benefit and enjoyment of the recreation trail and other ecological attractions may be severely hindered by the proximity of the 490 acre municipal waste landfill; and

WHEREAS, throughout sessions of joint land use planning and discussion of shared goals, Chesapeake officials and representatives were not informed of the proposed landfill; and

WHEREAS, the trucks transporting waste to the landfill are expected to primarily travel through Virginia on U.S. Route 17, which is not only undergoing relocation but expansion and is expected to be completed as early as the Fall of 2005; and

WHEREAS, the expansion was intended to increase public safety on a road that has endured high fatality rates, rather than to serve primarily as a haul route for municipal waste; and

WHEREAS, the construction design for relocated U.S. Route 17 did not anticipate the predicted volume of heavy trucks that will serve the landfill; and

WHEREAS, the trucks delivering municipal waste are most likely to reach U.S. Route 17 by taking Interstate 64 to Dominion Boulevard, which has a low level moveable bridge with frequent openings over the Intracoastal Waterway and

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which carries over 40,000 vehicles per day and operates at the lowest Level of Service for roads in Chesapeake.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Chesapeake, Virginia, that the City Manager and the City Attorney take necessary action to oppose the Black Bear landfill proposed for Camden County, North Carolina, such action to include without limitation:

1. Assert standing as an interested and affected party to the permit proceedings for the landfill being conducted by Camden County and the North Carolina Department of Environment and Natural Resources ("DENR").

2. Request Camden County and DENR to provide Chesapeake with formal notice of all proceedings and to re-conduct all public hearings for the landfill which have taken place without notice to the City.

3. Seek an environmental impact statement for the landfill project under the National Environmental Policy Act to determine the likelihood and extent of adverse impact on federal lands; discharge of contaminated run-off into federal waters; contaminated surface and sheet water flow into the Northwest River, a source of drinking water for Chesapeake; degradation of potable ground water serving as a source of drinking water for residents and military personnel; and negative impact on the public use of federally funded projects, such as the expansion of U.S. Route 17, the establishment of a new Visitor's Center at the

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Wildlife Refuge, and the development of the Great Dismal Swamp Canal recreation trail.

4. Seek the support and aid of the U.S. Congress in protecting and promoting Chesapeake's vital interests in the location of the proposed Black Bear landfill, as well as important federal interests in preserving the historic Great Dismal Swamp Canal, the environmentally sensitive Wildlife Refuge, and endangered species.

5. Seek the support, aid and intervention of the Governor of Virginia, the Virginia General Assembly and the Secretary of Natural Resources in protecting Chesapeake and the Commonwealth from potential adverse impact from the landfill and promoting the health, safety and welfare of the residents of Virginia.

6. Challenge adverse decisions of Camden County and DENR to the extent allowed by law and supported by fact.

7. Require Black Bear to demonstrate to DENR, Camden County and the City of Chesapeake that it will construct and operate an infallible system for the absolute protection of ground water aquifers serving Chesapeake residents and surface water flows into the Northwest River.

8. Consider whether public emergency services are adequate to respond in case of an emergency generated by the landfill, such as spill or fire.

9. Ensure the safety of motorists traveling on Dominion Boulevard and residents and businesses located along and U.S. Route 17 in light of the volume of

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heavy trucks that will use these roads on protect and a daily basis to serve the landfill.

10. Any other action that will promote the best interests of the City of Chesapeake and its citizens.

ADOPTED by the Council of the City of Chesapeake, Virginia, this 12th day of April, 2005.

APPROVED:

Mayor

ATTEST:

Clerk of the Council

TRUE COPY

Deputy CITY CLERK

ty Attorney's Office
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Section 7
Facility Plan

7.1 Introduction

This Facility Plan has been prepared for the development of a Subtitle D landfill in Camden County, North Carolina. The proposed Black Bear Solid Waste Facility will be owned and operated by Black Bear Disposal, LLC, a wholly-owned subsidiary of Waste Industries USA, Inc. As of November 1, 2004, Black Bear Disposal, LLC owns 1,037 acres of land located in the northeast corner of Camden County, North Carolina which will be developed into a variety of end uses. The landfill, buffers and support facilities will occupy 704 of those acres. The Subtitle D landfill will be comprised of a 490-acre disposal footprint that will be developed in five phases and will be located a minimum of 3,000 feet from the centerline of U.S. Highway 17 in accordance with the franchise agreement. The proposed land use for the remainder of the 1,037 acres include 50 acres future commercial, 91 acres future light industrial, and 192 acres wildlife conservation/wetlands. The future commercial areas may be used for borrow material in support of landfill operations.

The Black Bear Solid Waste Facility is a comprehensive solid waste facility that will accept only wastes permitted by the North Carolina Department of Environmental and National Resources and in accordance with the franchise agreement with Camden County. The current plans for the Black Bear Solid Waste Facility do not include a separate C&D landfill, but will include a 20-acre tire chip storage area. A recycling facility may be constructed at the landfill site as allowed in the franchise agreement with Camden County. If the recycling facility is constructed, it shall be permitted and operated according North Carolina Department of Environment and Natural Resources (NCDENR) requirements.

Rule .1618 (c)(6) of the North Carolina Solid Waste Management Rules requires that a conceptual plan for the development of the facility including drawings and a report be prepared which incorporates the summary findings for the geologic and hydrogeologic report as set forth in Subparagraph (a)(13) of Rule .1623 and includes drawings and reports described in Rule .1619 (d)(1), (d)(2), (e)(1), (e)(2), (e)(3), and (e)(5). The facility plan includes the following drawings and reports:

- Site development drawings, Rule .1619 (d)(1): The Site Development drawings shall delineate landfill units, leachate facilities, and locate all solid waste management facilities and facility infrastructure;
- Landfill Construction, Rule .1619 (d)(2): The Landfill Construction drawings shall delineate the limits of grading, stockpile areas, define the phases of development, propose base grades for the units, delineate the location of access roads, sediment basins, leachate pipelines and storage, and other structures related to its operation, and propose final contours and facility features for closure;

- Waste Stream, Rule .1619 (e)(1): The report shall include the types of waste specified for disposal, average monthly disposal rates and estimates of variance, area served by the facility, procedures for segregated management at different on site facilities, and equipment requirements;
- Landfill Capacity, Rule .1619 (e)(2): The facility plan report shall include an analysis of landfill capacity and soil resources. The analysis will provide accurate volumetric estimates of the following:

  1. Total operating capacity;
  2. Operating capacity for each phase of development;
  3. In-place ratio of waste to soil;
  4. Available soil resources from on site or specific off site sources;
  5. Required quantities of soil for landfill construction, operation, and closure;
  6. The estimated operating life of all MSWLF units in years.

- Containment and environmental control systems: Rule .1619 (e)(3), A general description of the systems designed for proper landfill operation, system components, and corresponding functions shall be provided.
- Special engineering features, Rule .1619 (e)(5).

7.2 Facility Drawings

Rule .1619 (d): A set of facility drawings have been prepared in compliance with Rule .1619 (d). These drawings include conceptual site development and landfill construction sheets.

7.2.1 Site Development

Two drawings were prepared on topographic maps representative of existing site conditions. The first drawing, SD-1, provides existing topographic and structural features of the proposed Subtitle D landfill property. Drawing SD-1 provides information on delineated wetlands, existing piezometers, and on site easements. Drawing SD-2 illustrates the proposed development plan for the property. The perimeter access road; cell locations, and leachate storage facilities are shown on SD-2. A phase development table has been provided, on Drawing SD-2, to depict the planned progression for construction and operation of the Subtitle D landfill. The conceptual design allows for the landfill to be developed in four lateral phases. After 24 years of operation, the landfill will be fully developed from the standpoint of cell, construction. However, an additional 3 years of capacity will be provided by vertically expanding to the proposed final contours. The location restrictions and buffer requirements are indicated on SD-2.

7.2.2 Landfill Construction

All on site grading activities related to the construction and operation of the MSWLF units are shown on the landfill construction drawings. These grades are conceptual, and are subject to change based on information obtained for the Design Hydrogeologic Report. The proposed base grades are shown on Drawings LC-1 through LC-4. The cell grades shown inside the liner limits represent ground elevation at the bottom of the clay liner. Grades shown outside the liner limits represent final grade. Stormwater control measures include thirty-seven sedimentation basins, drop inlets and pipes, and a perimeter access road ditch. The components of the leachate management system, which include collection pipes, pump stations, and storage tanks, are identified on Drawings LC-1 through LC-4. All material required for landfill construction will be obtained from off site sources. Generally, stockpile locations will be located within the landfill footprint; however, specific locations will be identified once the operational plan has been completed. The final closure grades are provided on Drawing LC-5.

7.3 Facility Report

This facility report contains discussions of the characteristics of the waste stream to be received at the landfill facility, the landfill capacity, containment and environmental control systems, and special engineering features as required by Rule .1619(e).

7.3.1 Waste Stream

This section contains a discussion of the characteristics of wastes received at the facility and facility specific management plans in accordance with Rule .1619(e) (1).

7.3.1.1 Types of Wastes Accepted

The proposed landfill will accept only wastes permitted by the North Carolina Department of Environmental and National Resources and in accordance with the franchise agreement with Camden County. These wastes include, but are not limited to, non-hazardous MSW, industrial waste (IW), C&D debris, land cleaning and inert debris (LCID) and other non-hazardous wastes that may be approved by the Division that are generated within the east coast service area described in paragraph 7.3.1.3 of this Facility Plan. Some wastes having appropriate properties may be used as alternate daily cover. These materials may consist of petroleum soils, sludges, foundry sands, and other materials suitable for use as daily cover. Waste hauling vehicles will be directed from the scale house to the landfill working face for disposal of all wastes accepted at the landfill.

7.3.1.2 Average Disposal Rates

The Black Bear Solid Waste Disposal Facility is anticipated to operate 308 days per year with an average daily disposal rate of 10,000 tpd for each day of operation. This is equivalent to an average yearly disposal rate of 3,080,000 tpy and an average monthly disposal rate of 257,000 tpm. Disposal rates may vary due to the ramping up of operations when the landfill opens, changing market conditions, seasonal

influences, and lower than expected waste volumes. Typically, average monthly disposal rates are not anticipated to fluctuate more than 25 percent from 257,000 tpm.

7.3.1.3 Area Served by Facility

The Subtitle D landfill will provide waste disposal capacity for a service area that extends from U.S. Interstate 75 (I-75) to the east coast. The population of the service area is over 108,900,000 based on 2001 Census Bureau data. The population number only includes the population in those counties located east of I-75 where the interstate passes through states. The proposed service area is shown in Attachment 7-1.

7.3.1.4 Procedures for Segregated Management

All waste accepted at the Black Bear Solid Waste Facility will be disposed of within the 490-acre landfill, therefore waste segregation will not be required. A 20-acre tire chip storage area will be used to store processed tire chips prior to their use in landfill operations. Wastes shall not be placed within the tire chip storage area. The franchise agreement with the Camden County states that a recycling facility may be established at the landfill site. If Black Bear Disposal, LLC elects to construct such a facility, recyclables will be segregated from waste and all waste materials will be disposed within the landfill in accordance with Division Rules and permit requirements.

7.3.1.5 Landfill Equipment

Standard landfill equipment will be used at the proposed facility. This may include, but not be limited to, equipment such as:

- Trash Compactors
- Dozers
- Graders
- Excavators
- Water truck
- Backhoes
- Fuel truck
- Pick up trucks
- Dump trucks
- Transfer Trailer Tippers

7.3.2 Landfill Capacity

The estimated gross capacity (waste, daily cover and final cover) of the landfill will be approximately 102,400,000 cubic yards (cy) of which approximately 2,400,000 cy will be used for the construction of final cover over the landfill. The remaining

100,000,000 cy is available for waste and daily cover. The estimated gross capacity of the landfill is subject to revision during final design and permitting.

It is anticipated that an in-place ratio of waste to cover material will be 11 to 1. This translates to 8,333,000 cy of cover material necessary for daily cover and 91,667,000 cy available for waste disposal. For an in-place waste density of 1,800 lb/cy, typical for landfill operations, the landfill will have capacity for approximately 82,500,000 tons of waste.

Using the anticipated average daily disposal rate of 10,000 tpd for 308 days of operation per year, or 3,080,000 tpy, the expected active life of the landfill is approximately 27 years. The active life of the facility may be extended beyond 27 years due to ramping up of operations when the landfill opens, fluctuations in daily disposal rates, improved compaction, leachate recirculation, and other variables. Extension of the active life of the landfill beyond the duration of the 30-year franchise agreement with Camden County, dated November 4, 2002, will require a new franchise agreement with the County. The operating capacity for each phase shown on sheets LC 1 is:

Phase	Gross Capacity (yd^3)	Anticipated Phase Life
1	21,845,000	6 years
2	24,891,000	6 years
3	24,067,000	6 years
4	23,659,000	6 years
5	7,938,000	3 years
Total	102,400,000	27 years

Approximately 3,200,000 cubic yards of clay and drainage materials will be required to construct the base liner system. Perimeter access road and berm construction and preparation of the cell base grades (clay liner subgrade) will require 9,824,000 cubic yards of backfill material. Due to the lack of historical site data the seasonal high ground water elevation is conservatively assumed to be the same as existing ground elevation. In order to meet the 4-foot separation requirement, the base liner system is currently shown to be constructed a minimum of 4 feet above existing grade. Therefore, the landfill construction may not require excavation. However, as additional ground water data is collected during additional site investigation work

for the Permit to Construct application and during the operation of the landfill, the base grades for Phase I and future phases will be revised if it is determined that the seasonal high ground water elevation is lower than existing grade.

The amount of fill material required for cell base grade construction is based upon estimates of foundation settlement for the maximum height of the landfill. The preliminary settlement analysis estimates approximately six feet of settlement in the center of the landfill (the location of the greatest depth of waste) and no settlement along the limits of waste. It should be noted that this estimate is based on very conservative assumptions regarding the compressibility of the foundation soils. A more detailed settlement analysis will be performed for each phase of landfill construction based on more extensive subsurface investigation prior to final design.

The majority of fill material will be provided from off site sources. Approximately 26,500,000 cubic yards of fill material will be needed to construct the landfill structures, provide daily and intermediate cover, and install a final cover. This estimate does not account for the use of alternative cover materials that will be employed by Black Bear Disposal, LLC, therefore it is considered to be an upper limit estimate.

7.3.3 Containment and Environmental Control Systems

Base Composite Liner System

A base composite liner system will be designed and constructed to capture leachate generated by the landfill. The composite liner will consist of a prescriptive Subtitle D liner system (i.e.; compacted subgrade, 24-inches of compacted soil with a maximum permeability of 1x10-7 cm./sec., and a 60 mil textured high-density polyethylene (HDPE) liner) or an equivalent alternative liner system as allowed by State rules.

Leachate Collection and Storage

A leachate collection system will be designed and installed above the base liner. This system will ensure that the hydraulic head on the base liner does not exceed 12-inches. The collection system will be composed of a 24-inch sand drainage layer with a minimum permeability of 1x10-3 cm/sec, a drainage net layer, and perforated collection pipes installed in aggregate trenches. The base grades of the landfill will be designed with a minimum, post settlement cross slope of two percent. Leachate will flow vertically through the sand drainage layer and laterally through the drainage net layer to the collection pipes. Modeling of the system will be performed to account for additional capacity requirements due to the recirculation of leachate.

The collection pipes will transport leachate by gravity flow at a minimum post settlement slope of 0.5 percent. The collection pipes will penetrate the liner system and connect to a header pipe system located within the containment berm fill slope that will transport leachate to sixteen designated pump stations around the perimeter of the landfill. The pump stations will feed a force main which will deliver the

leachate to the three onsite leachate storage tanks. The operating goal for Black Bear Disposal, LLC is to recirculate 100% of the generated leachate.

Closure Cap System

A closure cap will be designed and constructed to reduce the infiltration of precipitation into the landfill. The composition of the closure cap will be 18-inches of protective cover soil with a maximum permeability of 1x10-3 cm./sec underlain by geocomposite drainage net and 30-mil linear low-density polyethelyne (LLDPE) liner. A 6-inch layer of soil with sufficient organic content to sustain vegetative growth will be placed above the protective cover. The closure cap will have a maximum constructed side slope grade of three horizontal to one vertical (3:1), and, a minimum top slope of five percent. An alternative cap demonstration will be provided with the permit to Construct Application for Division approval of the 3:1 closure slopes.

Sedimentation and Erosion Control

Prior to construction of the landfill facility, a Sedimentation and Erosion Control Plan will be submitted to the Department of Environmental Management, Land Quality Section for approval. During construction of the facility, and during landfill operations, stormwater runoff will be routed to sedimentation basins. Internal stormwater berms will be utilized to minimize the amount of stormwater that comes in contact with waste. Stormwater collected within the landfill cells will be pumped to the perimeter access road drainage ditch and conveyed to one of the eight sedimentation basins. Once each portion of the landfill has reached final grade and received the closure cap, the storm water runoff will be directed to the same sedimentation ponds as described above. Temporary erosion control measures, such as silt fences, fast germinating vegetation, rock check dams, etc. will be installed as necessary to reduce the amount of sedimentation and erosion during construction activities.

Landfill Gas Management

A landfill gas collection system will be installed to control the migration of methane and ensure that the methane levels at the landfill boundary are kept below the lower explosive limit (L.E.L). This system, in conjunction with the base liner and cap systems will also prevent the accumulation of methane in onsite structures. As part of the final closure procedures, landfill gas extraction wells will be installed in the landfill closure cap at a density of approximately one per acre. The captured gas will either be scrubbed and used as a fuel should an economical end user be found or it will be flared.

7.3.4 Special Engineering Features

Black Bear Disposal, LLC intends to practice leachate recirculation at the Black Bear Solid Waste Facility as the primary means of leachate management. Bioreactor operation which entails addition of liquids other than leachate generated at the facility may be implemented in the future if or when appropriate State or federal regulations allow such activity. Leachate recirculation and bioreactor operation have

the potential of extending the operational life of the landfill. Extension of the active life of the landfill beyond the 30-year term of the franchise agreement will require a new franchise agreement with Camden County.

Chesapeake VIRGINIA

City of Chesapeake

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April 28, 2005

The Honorable Mark R. Warner
Governor's Office
Virginia State Capital, Third Floor
Richmond, Virginia 23219

Dear Governor Warner:

During its meeting of April 12, 2005, City Council approved the enclosed Resolution opposing the proposed landfill in Camden County, North Carolina. Camden County has purportedly entered into a Franchise Agreement with Black Bear Disposal, L.L.C., a wholly owned subsidiary of Waste Industries USA, Inc., to construct a 490 acre "mega" landfill along US Route 17 South, located less than one-half mile south of the Virginia/North Carolina State line. While the bases underlying the City's very strong opposition to the landfill are many, among the most significant is the environmental impact on this sensitive area, including water and air quality.

Specifically, the City requests a comprehensive review of all impacts being undertaken through the preparation of an Environmental Impact Statement ("EIS") pursuant to the National Environmental Policy Act due to the impending impact on the City's drinking water quality and the surrounding fragile ecosystem cited in the Resolution as well as those impacts which will remain unidentified absent an EIS. Any assessment should analyze the landfill's effect on regional air quality and cultural resources. By its Resolution, the City claims standing in the North Carolina permitting process.

The City questions the sufficiency of Camden County's local permitting process as it pertains to public notice and the approval procedures set forth in North Carolina's Solid Waste Management Act and the federal acts governing landfill construction. Regardless, Camden County has issued what it claims to be

"The City of Chesapeake adheres to the principles of equal employment opportunity. This policy extends to all programs and services supported by the City."

an appropriate landfill approval to Black Bear Disposal, L.L.C. The North Carolina Department of Environment and Natural Resources (DENR) has relied upon Camden County's claimed approval and will soon issue a site suitability determination.

The City was not provided with appropriate notice of the landfill approval process or any of the applications filed by Black Bear Disposal, L.L.C., with Camden County, DENR or the State of North Carolina. Having begun our research, it appears the landfill, if constructed, will imperil the natural resources of the City. As stated above, one of the City's primary concerns is water quality. The proposed landfill site is within the watershed of the Northwest River, one of the City's main sources of drinking water.

Preliminary information indicates the surface water run-off from the landfill will be ditched to the Great Dismal Swamp Canal, resulting in a degradation of the federally owned and maintained Great Dismal Swamp National Wildlife Refuge. As Camden County, the City cherishes this national treasure and, in fact, has been working with Camden County for the last several years to develop a recreational trail, a visitor's center and other recreational amenities that are expected to increase eco-tourism in both states. Not only will the potential for contamination of the Refuge jeopardize these cooperative efforts but more importantly, contaminated waters may be spread by sheet flow during significant storms, as was the case in 1998 during the back-to-back Hurricanes Floyd and Dennis, posing a serious threat to the public health, safety and welfare in Virginia. In addition to the concerns regarding surface water run-off into the Northwest River and the Great Dismal Swamp Canal, the City fears contamination of its ground water. Though Black Bear Disposal, L.L.C. claims its leachate containment and processing system will not allow leakage, it proposes to build the largest landfill in North Carolina history. A landfill of this size and design has never been tested in the sensitive Mid-Atlantic Coastal Plain palustrine environment and Great Dismal Swamp environs.

Given Southern Chesapeake is not served with public water, residents and businesses depend on wells as their sole source of drinking water. If the ground water is polluted by leachate or otherwise, our residents, including military personnel living within the Northwest Naval Support Activity Annex, will be in danger from water quality degradation.

As stated above, the City has many other concerns about the landfill and does not waive objections not specifically mentioned in this correspondence. The City's omission from the permitting process, in spite of direct adverse impact upon its residents, raises concern in and of itself. Should you have any questions whatsoever, please contact Ms. Mary Ann Saunders, Assistant to the City Manager, or me.

Thanking you for your attention to this most pressing matter, I am

Sincerely,

Dr. Clarence V. Cuffee
City Manager

Enclosure

CVC:MAS:pme

c: Ronald Hallman, City Attorney
Mary Ann Saunders, Assistant to the City Manager

bc: Jan Proctor, Assistant City Attorney
John D. Runkle
Lars Simonsen
J. Bryan Plumlee, Esq.

Camden County Proposed Landfill
April 28, 2005
Letters were also addressed to the following:

The Honorable Harry B. Blevins
The Honorable Louise Lucas
The Honorable Yvonne B. Miller
The Honorable Frederick M. Quayle
The Honorable John A. Cosgrove
The Honorable Johnny S. Joannou
The Honorable S. Chris Jones
The Honorable Kenneth R. Melvin
The Honorable Algie Howell
The Honorable Lionell Spruill, Sr.
The Honorable Terrie Suit
The Honorable W. Tayloe Murphy, Jr.
The Honorable Judith Williams Jagdmann
The Honorable Michael F. Easley NC Gov
Secretary William G. Ross, Jr.
James C. Coffey
Jim Barber
Attorney General Roy A. Cooper Add Nancy Scott
The Honorable Elizabeth Dole
The Honorable Richard Burr
The Honorable Walter B. Jones
The Honorable George Allen
The Honorable John W. Warner
The Honorable J. Randy Forbes
Robert G. Burnley
Daniel B. Horne
John Hadfield
SPSA Board of Directors
Randell Woodruff
Melvin Jeralds
Daniel F. Scanlon
Richard C. Olson
Randy Keaton
Herbert T. Mullen, Jr.
Colonel Yvonne Prettyman-Beck

ENR

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

JUN 23 2005

The Honorable J. Randy Forbes
U.S. House of Representatives
Washington, DC 20515

Dear Representative Forbes:

Thank you for your May 4, 2005 letter regarding the Black Bear Disposal, L.L.C. Landfill proposal in Camden County, North Carolina. Your letter requests our assistance in determining whether an Environmental Impact Statement (EIS) would be required under the National Environmental Policy Act (NEPA) for the Black Bear Disposal Landfill project.

Under NEPA, an EIS is required for major Federal actions significantly affecting the quality of the human environment. Major Federal actions are defined as activities, projects and programs entirely or partly financed, assisted, conducted, regulated or approved by Federal agencies. Each Federal agency independently determines which of its NEPA applicable actions may require preparation of an EIS.

This project will be permitted and operated according to North Carolina Department of Environment and Natural Resources (NCDENR) requirements. Any environmental concerns you have can be directed to Mr. Ed Mussler at 919-508-8510 or Mr. Jim Barber at 919-508-8495 of the NCDENR Division of Waste Management. Their mailing address is North Carolina Department of Environment and Natural Resources, Division of Waste Management, 1646 Mail Service Center, Raleigh, NC 27699-1646.

In addition, since the proposed project site is in the state of North Carolina, it falls within the jurisdiction of EPA's Atlanta Regional Office. The EPA Region IV NEPA contact is Mr. Heinz Mueller, who can be reached at 404-562-9611.

If you have any questions, please do not hesitate to contact me or have your staff contact Ms Stephanie Branche, Virginia Liaison, at 215-814-5556.

Sincerely,

Donald S. Welsh

Donald S. Welsh
Regional Administrator

cc: Mr. James Palmer, Jr.
EPA Region IV Regional Administrator

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

JUN 23 2005

The Honorable J. Randy Forbes
U.S. House of Representatives
Washington, DC 20515

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This project will be permitted and operated according to North Carolina Department of Environment and Natural Resources (NCDENR) requirements. Any environmental concerns you have can be directed to Mr. Ed Mussler at 919-508-8510 or Mr. Jim Barber at 919-508-8495 of the NCDENR Division of Waste Management. Their mailing address is North Carolina Department of Environment and Natural Resources, Division of Waste Management, 1646 Mail Service Center, Raleigh, NC 27699-1646.

In addition, since the proposed project site is in the state of North Carolina, it falls within the jurisdiction of EPA's Atlanta Regional Office. The EPA Region IV NEPA contact is Mr. Heinz Mueller, who can be reached at 404-562-9611.

If you have any questions, please do not hesitate to contact me or have your staff contact Ms Stephanie Branche, Virginia Liaison, at 215-814-5556.

Sincerely,

Donald S. Welsh

Donald S. Welsh
Regional Administrator

cc: Mr. James Palmer, Jr.
EPA Region IV Regional Administrator

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Chesapeake VIRGINIA

City of Chesapeal

Office of the City Manag
Post Office Box 152:
Chesapeake, Virginia 23328-52:
Office: (757) 382-61(
Fax: (757) 382-65(
TDD: (757) 382-821

April 28, 2005

The Honorable Mark R. Warner
Governor's Office
Virginia State Capital, Third Floor
Richmond, Virginia 23219

Dear Governor Warner:

During its meeting of April 12, 2005, City Council approved the enclosed Resolution opposing the proposed landfill in Camden County, North Carolina. Camden County has purportedly entered into a Franchise Agreement with Black Bear Disposal, L.L.C., a wholly owned subsidiary of Waste Industries USA, Inc., to construct a 490 acre "mega" landfill along US Route 17 South, located less than one-half mile south of the Virginia/North Carolina State line. While the bases underlying the City's very strong opposition to the landfill are many, among the most significant is the environmental impact on this sensitive area, including water and air quality.

Specifically, the City requests a comprehensive review of all impacts being undertaken through the preparation of an Environmental Impact Statement ("EIS") pursuant to the National Environmental Policy Act due to the impending impact on the City's drinking water quality and the surrounding fragile ecosystem cited in the Resolution as well as those impacts which will remain unidentified absent an EIS. Any assessment should analyze the landfill's effect on regional air quality and cultural resources. By its Resolution, the City claims standing in the North Carolina permitting process.

The City questions the sufficiency of Camden County's local permitting process as it pertains to public notice and the approval procedures set forth in North Carolina's Solid Waste Management Act and the federal acts governing landfill construction. Regardless, Camden County has issued what it claims to be

"The City of Chesapeake adheres to the principles of equal employment opportunity. This policy extends to all programs and services supported by the City."

an appropriate landfill approval to Black Bear Disposal, L.L.C. The North Carolina Department of Environment and Natural Resources (DENR) has relied upon Camden County's claimed approval and will soon issue a site suitability determination.

The City was not provided with appropriate notice of the landfill approval process or any of the applications filed by Black Bear Disposal, L.L.C., with Camden County, DENR or the State of North Carolina. Having begun our research, it appears the landfill, if constructed, will imperil the natural resources of the City. As stated above, one of the City's primary concerns is water quality. The proposed landfill site is within the watershed of the Northwest River, one of the City's main sources of drinking water.

Preliminary information indicates the surface water run-off from the landfill will be ditched to the Great Dismal Swamp Canal, resulting in a degradation of the federally owned and maintained Great Dismal Swamp National Wildlife Refuge. As Camden County, the City cherishes this national treasure and, in fact, has been working with Camden County for the last several years to develop a recreational trail, a visitor's center and other recreational amenities that are expected to increase eco-tourism in both states. Not only will the potential for contamination of the Refuge jeopardize these cooperative efforts but more importantly, contaminated waters may be spread by sheet flow during significant storms, as was the case in 1998 during the back-to-back Hurricanes Floyd and Dennis, posing a serious threat to the public health, safety and welfare in Virginia. In addition to the concerns regarding surface water run-off into the Northwest River and the Great Dismal Swamp Canal, the City fears contamination of its ground water. Though Black Bear Disposal, L.L.C. claims its leachate containment and processing system will not allow leakage, it proposes to build the largest landfill in North Carolina history. A landfill of this size and design has never been tested in the sensitive Mid-Atlantic Coastal Plain palustrine environment and Great Dismal Swamp environs.

Given Southern Chesapeake is not served with public water, residents and businesses depend on wells as their sole source of drinking water. If the ground water is polluted by leachate or otherwise, our residents, including military personnel living within the Northwest Naval Support Activity Annex, will be in danger from water quality degradation.

As stated above, the City has many other concerns about the landfill and does not waive objections not specifically mentioned in this correspondence. The City's omission from the permitting process, in spite of direct adverse impact upon its residents, raises concern in and of itself. Should you have any questions whatsoever, please contact Ms. Mary Ann Saunders, Assistant to the City Manager, or me.

Thanking you for your attention to this most pressing matter, I am

Sincerely,

Dr. Clarence V. Cuffee
City Manager

Enclosure

CVC:MAS:pme

c: Ronald Hallman, City Attorney
Mary Ann Saunders, Assistant to the City Manager

bc: Jan Proctor, Assistant City Attorney
John D. Runkle
Lars Simonsen
J. Bryan Plumlee, Esq.

Camden County Proposed Landfill
April 28, 2005
Letters were also addressed to the following:

The Honorable Harry B. Blevins
The Honorable Louise Lucas
The Honorable Yvonne B. Miller
The Honorable Frederick M. Quayle
The Honorable John A. Cosgrove
The Honorable Johnny S. Joannou
The Honorable S. Chris Jones
The Honorable Kenneth R. Melvin
The Honorable Algie Howell
The Honorable Lionell Spruill, Sr.
The Honorable Terrie Suit
The Honorable W. Tayloe Murphy, Jr.
The Honorable Judith Williams Jagdmann
The Honorable Michael F. Easley NC Gov
DENR
Secretary William G. Ross, Jr.
James C. Coffey
Jim Barber
Attorney General Roy A. Cooper Add Nancy Scott
The Honorable Elizabeth Dole
The Honorable Richard Burr
The Honorable Walter B. Jones
The Honorable George Allen
The Honorable John W. Warner
The Honorable J. Randy Forbes
Robert G. Burnley
Daniel B. Horne
John Hadfield
SPSA Board of Directors
Randell Woodruff
Melvin Jeralds
Daniel F. Scanlon
Richard C. Olson
Randy Keaton
Herbert T. Mullen, Jr.
Colonel Yvonne Prettyman-Beck

COUNTY OF DARE

Office of the Board of Commissioners
P.O. Box 1000, Manteo, North Carolina 27954

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Vice-Chairman

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Virginia Tillett
Cheryl Byrd
Mac Midgett
Mike Johnson

(252) 475-5700
Fax (252) 473-6312

Frances W. Harris
Clerk to the Board

Norma Mills
County Attorney

October 13, 2005

Mr. Bill Ross, Jr., Secretary
Department of Environment and Natural Resources
1601 Mail Service Center
Raleigh, NC 27699-1601

Re: Camden County/Waste Industries Disposal Site
Proposed Hyde County Chicken Farm

Dear Secretary Ross:

I am writing to you on behalf of the Dare County Board of Commissioners concerning the projects referenced above. The Dare County Board of Commissioners recognizes Camden and Hyde Counties' desire for these projects to succeed and the economic boost that these projects will give to their respective counties.

I am writing at this time, not to meddle in the affairs of other counties or to oppose or support these projects. However, as the last county down stream from these projects, citizens in our community have asked questions and voiced concerns which we cannot answer. Our citizens are concerned that these projects may result in negative impacts to the clean water and beaches that are necessary for our tourist- based economy, to the clean waters in our sounds that are necessary for our commercial fishing industry and to the aquifers from which we receive our drinking water. These concerns are particularly in the forefront given the significant environmental disaster that has occurred in the Gulf states from Hurricane Katrina.

This letter is not to suggest that either of these counties or your agency is unmindful of these concerns. While I am sure that your agency has addressed these concerns, we are not in a position to answer the questions of our citizens. So that we can be better informed, please provide me with a list of the review processes for each of these projects, let me know what steps have been taken to address both the surface and subsurface water concerns, and any other information that you believe will be helpful to the Board to inform our citizenry. It is our hope and our intention to inform the public that these projects have no negative impacts to Dare County; however we cannot do so without this information.

I am copying this letter to both the Hyde and Camden County Board of Commissioners. Any information that they could provide would also be helpful so that we can reassure our citizens that these projects will not result in negative impacts to our community.

Sincerely,

Stan M. White, Chairman
Dare County Board of Commissioners

cc: Hyde County Board of Commissioners
Camden County Board of Commissioners
Dare County Board of Commissioners
Terry Wheeler, Dare County Manager

COUNTY OF CURRITUCK

BOARD OF COMMISSIONERS
Paul R. Martin, Chairman
S. Paul O'Neal, Vice-Chairman
Ernie Bowden
Eldon L. Miller, Jr.
J. Owen Etheridge

County Manager's Office
Post Office Box 39
Currituck, North Carolina 27929-0039
Telephone (252) 232-2075 / Fax (252) 232-3551
State Courier # 10-69-17

DANIEL F. SCANLON II, CPA
County Manager
KATHERINE F. McKENZIE
County Attorney
GWEN H. KEENE, CMC
Clerk to the Board

October 12, 2005

Mr. Dexter Matthews, Division Director
Division of Waste Management
Department of Environment and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, NC 27605

Received
OCT 2005
Waste Management

Re: Black Bear Disposal, LLC

Dear Mr. Matthews:

I am writing on behalf of my client, Currituck County, regarding the landfill proposed to be constructed in Camden County by Black Bear Disposal, LLC. I understand Black Bear is now in the site suitability stage of the permitting process, and I was hoping you could give my client an opinion as to whether or not Black Bear is required to receive a franchise from Currituck County. Upon review of information provided to me by the attorney for Chesapeake, Virginia, it seems the best option is to receive an opinion from the Department.

North Carolina General Statute Section 130A-290(31) defines "sanitary landfill" as "a facility for disposal of solid waste on land in a sanitary manner in accordance with the rules concerning sanitary landfills adopted under this article." North Carolina General Statute Section 130A-294(b1)(3) requires an applicant for a permit for a sanitary landfill to obtain a franchise from every "local government having jurisdiction over any part of the land on which the sanitary landfill and its appurtenances are located or to be located." In looking to the Administrative Code, 15A NCAC 13B .1602 defines "landfill facility" as "all contiguous land and structures, other appurtenances, and improvements on the land within the legal description of the site included in or proposed for the Solid Waste Permit. Further 15A NCAC 13B .1618 states that a site study must be conducted for the Division to review. The site is the land which is proposed for the landfill facility, and the applicant must receive approval of the Board of Commissioners having authority in the County in which the site is located.

The title policy Black Bear received from Investors Title Insurance Company describes the land on which the landfill will be located. Currituck County land is contained in that legal description; therefore, the question arises as to whether Black Bear is required to receive a franchise and approval from the County to proceed. Does the legal description in the title policy mean that Currituck is part of the landfill facility as defined in the Administrative Code? Black Bear has stated that it does not need the permission of Currituck County because the landfill

facility is not going to be located in Currituck. However, if you look at the definition of landfill facility under your regulations, it would seem Black Bear should have to follow the procedures in Currituck County that it did in Camden County. In addition, the regulations suggest that the site study must be referenced to the legal description of the entire tract of land. The legal description of the entire tract of land includes land in Currituck County.

Again, I hereby respectfully request that your Department issue an opinion to Currituck County based on the statutes and regulations as to whether Currituck's approval is needed for Black Bear to receive a permit. If you should need any further information from Currituck County in order to render this opinion, please contact me at 252-232-2075 ext. 276.

Thank you in advance for your assistance and guidance.

Sincerely,

Katherine F. McKenzie

Katherine F. McKenzie

cc: Mr. Jim Barber, Branch Head
Permitting Branch
Solid Waste Section
NCDENR
401 Oberlin Road, Suite 150
Raleigh, NC 27605

Ms. Nancy Scott
North Carolina Attorney General's Office
9001 Mail Service Center
Raleigh, NC 27699-9001

Currituck County Board of Commissioners

HUFF, POOLE & MAHONEY, P.C.
ATTORNEYS & COUNSELLORS

J. Bryan Plumlee, Esq.

Direct Dial: 757/518-6615
Email: bplumlee@hpmlaw.com

Reply to:
Virginia Beach

October 10, 2005

Via UPS Overnight Mail

Jim Barber, Branch Head
Permitting Branch
Solid Waste Section – NCDENR
401 Oberlin Road, Suite 150
Raleigh, NC 27605

Re: FREEDOM OF INFORMATION ACT REQUEST
Our File Number: 13696.000105

Dear Mr. Barber:

This law firm represents the City of Chesapeake, Virginia. Pursuant to the Freedom of Information Act, we request a certified copy of any and all correspondence between Camden County Board of Commissioners and N.C. Department of Environmental and Natural Resources, Division of Waste Management, from September 2005 to the present.

We would be happy to reimburse you for all copying costs. Please contact me at my direct dial number above with any questions.

With kind regards, I am

Very truly yours,

HUFF, POOLE & MAHONEY, P.C.

By

J. Bryan Plumlee

JBP/tlr

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NCDENR

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

October 6, 2005

Board of Commissioners of Camden County
Care of Melvin J. Jeralds, Chairman
P.O. Box 190
117 North NC 343
Camden, NC 27921

Re: Franchise for proposed Black Bear Disposal, LLC landfill

Pursuant to N.C. General Statute §130A-294(b1)(3) and §153A-136, Camden County issued a franchise, dated November 4, 2002, for a municipal solid waste landfill to Black Bear Disposal, LLC. The franchise incorporates a Franchise Agreement between the County and Black Bear Disposal, LLC.

In April, 2004, Black Bear Disposal, LLC submitted a permit application for the proposed landfill to the Solid Waste Section of the Division of Waste Management.

In February, 2005 Black Bear Disposal, LLC submitted a revised permit application, which included a resolution of "Local Government Approval" by the Camden County Board of Commissioners dated February 10, 2005. The Solid Waste Section notes that the Board on February 10, 2005 resolved that the then proposed facility plan is consistent with the franchise that was published.

In March, 2005, Black Bear Disposal, LLC submitted a Revised Facility Plan for inclusion in the permit application.

The purpose of this letter is threefold: **I.** to request confirmation from the Board of Commissioners that the latest Revised Facility Plan is consistent with the franchise regarding certain terms of the franchise which are mandated by N.C. General Statutes §130A-294(b1)(3) and §153A-136; **II.** to request confirmation that a condition in the 2002 minutes relating to the franchise has been met; and **III.** to inquire whether the County is agreeable to Waste Industries, U.S.A., Inc.'s being a co-permittee.

1646 Mail Service Center, Raleigh, North Carolina 27699-1646
Phone 919-508-8400 \ FAX 919-733-4810 \ Internet http://wastenotnc.org

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I. Consistency with Franchise Terms

N.C.G.S. §130A-294(b1)(3) requires that a franchise identify all of the land on which a landfill and its appurtenances are to be located, and that the franchise include the following:

a. A statement of the population to be served, including a description of the geographic area
b. A description of the volume and characteristics of the waste stream.
c. A projection on the useful life of the landfill.

Identity of Land

The franchise is subject to the Company's acquisition and ownership of the "Landfill Property" described in Exhibit A to the Franchise Agreement. Exhibit A, incorporated in the Agreement, includes a "primary parcel" of 1003 acres, plus 17 contiguous parcels, provided that "the area of the landfill to be covered by the waste disposal cells and associated slopes (the 'Landfill Footprint'), and the Landfill entrance, remain a minimum of three thousand (3000) feet from the centerline of U..S. Highway 17." There is no acreage stated for the 17 contiguous parcels; on the drawing in Exhibit A the area of the contiguous parcels appears to comprise approximately three times the acreage of the primary parcel.

In the Revised Facility Plan received March 2005, the proposed property boundary for landfill is described as follows:

> As of November 1, 2004, Black Bear Disposal LLC. owns 1037 acres of land located in the northeast corner of Camden County, North Carolina which will be developed in a variety of end uses. The landfill, buffers and support facilities will occupy 704 of those acres. The Subtitle D landfill will be comprised of a 490-acre disposal footprint that will be developed in five phases and will be located a minimum of 3000 feet from the centerline of U.S. Highway 17 in accordance with the franchise agreement.

The 1037 acres owned generally corresponds with the "primary parcel".

The Section requests that the Board confirm that the information submitted in the March, 2005 Revised Facility Plan is consistent with the franchise issued by the County.

Population to be Served

Section III, ¶ (3) of the Franchise Agreement describes the "Service Area" as "the area located east of Interstate Highway 75. The current estimated population within the Service Area is 82,000,000."

In the Revised Facility Plan, the statement of the population to be served, including a description of the geographic area is described as follows:

> The Subtitle D landfill will provide waste disposal capacity for a service area that extends from U.S. Interstate 75(I-75) to the east coast. The population of the service area is over 108,900,000 based on the 2001 Census Bureau data. The population number only includes the population in those counties located east of I-75 where the interstate passes through states. The proposed service area is shown in Attachment 7-1.

The Section requests that the Board confirm that the information submitted in the March, 2005 Revised Facility Plan is consistent with the franchise issued by the County.

Volume of Waste

The franchise describes the volume of the waste to be disposed in the landfill as an average of 10,000 tons per day over a period of useful life which exceeds thirty years.

In the Revised Facility Plan received March 2005, the volume of the waste stream is described as follows:

> The estimated gross capacity (waste, daily cover and final cover of the landfill) will be approximately 102,400,000 cubic yards--- For an in-place density of 1800 lb/cy, typical for landfill operations, the landfill will have a capacity for approximately 82,500,000 tons of waste.

In the Revised Facility Plan, the volume of the waste is computed from the disposal rate of 10,000 tons per day for 308 days of operation per year, or 3, 080,000 tons per year over a useful life of 27 years. The Revised Facility Plan also states that the proposed landfill will accept only wastes permitted by the State of North Carolina Department of Environment and Natural Resources and in accordance with the franchise agreement with Camden County.

The Section requests that the Board confirm that the information submitted in the March, 2005 Revised Facility Plan is consistent with the franchise issued by the County.

Projected Useful Life

Section III. (2) of the Franchise Agreement states that based upon an average waste disposal rate of 10,000 tons per day, "the Landfill's estimated life will exceed the franchise term of 30 years." Section 3 of the franchise provides: "Black Bear Disposal LLC is hereby granted an exclusive franchise for a Sanitary Solid Waste Landfill during the term of the Black Bear Franchise Agreement, but not to exceed thirty (30) years from the date of adoption of this Ordinance." N.C.G.S. §153A-136 limits a franchise for a sanitary landfill to a term of 30 years.

The Revised Facility Plan (March 2005) (Section 7 of the Permit Application) projects that the useful life of the landfill to be located on the primary parcel will be approximately 27 years with an average waste disposal rate of 10,000 tons per day.

The Section requests that the Board confirm that the information submitted in the March, 2005 Revised Facility Plan is consistent with the franchise issued by the County.

II. Condition in the 2002 minutes

The minutes of the November 4, 2002 meeting of the Camden County Board of Commissioners reflect that the Board approved the franchise Ordinance No. 2002-10-02 "for a second reading with the condition that the Chairman and Clerk may not sign or otherwise execute the Ordinance or the Franchise Agreement until the County Manager has made written findings that the franchise applicant has, on or before December 4, 2002, submitted a completed zoning permit application in a form, manner and content that can be approved by the county." The Solid Waste Section asks that the Board confirm that these conditions were satisfied.

III. Permittee Issues

If the Solid Waste Section determines that Waste Industries U.S.A., Inc. is a necessary co-permittee with Black Bear Disposal, LLC, does the Board of Commissioners view the addition of Waste Industries U.S.A., Inc. to be encompassed within the terms of the franchise? Waste Industries U.S.A., Inc.

has authorized us to tell you that it is agreeable to being a co-permittee in this circumstance.

If the answer to the foregoing question is "no", would the Board view an assignment of all or a portion of the franchise to Waste Industries U.S.A. to be an acceptable, non-objectionable assignment within the meaning of Paragraph VII of the Franchise Agreement?

Very truly yours,

James C. Coffey,
Chief, Solid Waste Section

C. Ven Poole, Vice President
Waste Industries USA, Inc.

BLACK BEAR DISPOSAL
LANDFILL PROPERTY
CAMDEN COUNTY, NORTH CAROLINA

PRIMARY PARCEL

LEGAL DESCRIPTION FOR PARCEL IDENTIFICATION NO: 01-7082-26-3513:*

Beginning at a new cotton spindle set in the asphalt of an access lane near the center of U.S. Highway 17, said point having N.C. Grid Coordinates (NAD 83) of N(Y) 1,026,805.88 E(X) 2,771,805.04 Derived using a combined scale factor of 0.99984598 and static GPS observations; thence N77°25'05"E 188.96' to a computed point in a canal and on the eastern right-of-way of U.S. Highway 17, said point being located S22°44'21"E 60.97' from an existing iron pipe and S22°44'21"E 754.74' from an existing iron stake, both located on the eastern right-of-way of U.S. Highway 17; thence along the southern side of a 30' lane shown on a survey titled "Sawyer State Line Farm", recorded in plat cabinet "A" Page 231 of the Camden County Register of Deeds N77°25'05"E 3,397.64' to an existing iron stake on the north edge of a canal, said point being a survey control corner having NC Grid Coordinates (NAD83) of N(Y) 1,027,587.04 E(X) 2,775,304.98; thence along the southern side of said lane, N88°28'19"E 16,063.23' to a point on the Camden County/Currituck County line; thence S46°35'05"E 2,932.21' to a marble monument labeled "RCW JLRC 1917" on the north side of a canal and on the Currituck County/Camden County line; thence S87°44'13"W 12,794.68' to an existing iron pin on the south side of a canal, thence S87°44'13"W 8,025.58' to a computed point on the eastern right-of-way of U.S. Highway 17; thence S87°44'13"W 198.54' to a new iron pipe set in the median of U.S. Highway 17; thence N22°44'21"W 1,773.49' to the point of beginning containing a total of 1,009.623 acres, more or less, all according to a survey by Surveying Solutions, P.C. titled "Boundary Survey for Waste Industries, Inc", dated July 16, 2004.

*** Purchased by Black Bear Disposal, LLC on October 4, 2004.**

Received
OCT 2005
Solid Waste Section

CONTIGUOUS PARCELS

LEGAL DESCRIPTION FOR PARCEL IDENTIFICATION NO. 01-7082-00-28-4871:

BEING all of that certain tract of land designated as "C-3" on that certain map or plat entitled "Sawyer State Line Farm, South Mills Township, Camden County, N.C.," and having been prepared by Andrew W. Pearce, Registered Surveyor, and dated 22 October 1979 as recorded in Deed Book 72, Page 5, Camden County Registry. See deed recorded in Book 150, Page 209, Camden County Registry.

LEGAL DESCRIPTION FOR PARCEL IDENTIFICATION NO. 01-7082-00-38-6842:

BEING all of that certain tract of land described in deed recorded in Book 150, Page 211, Camden County Registry, as further described as being that parcel shown and designated as "C-4" on a plat prepared by Andrew W. Pearce, Registered Land Surveyor (RLS L729) entitled "Sawyer State Line Farm, South Mills Township, Camden County, N.C., Plat Revision Black 'A', March 1979, January 1974, December 1976, January 1977, January and February, 1978, Scale 1" = 1000," which plat is attached to deed dated October 3, 1979 by and between Lydia Jones Sawyer, widow, et al of record in Book 72, Page 5, of the Camden County Registry with said plat being expressly of record in Book 72 at Page 6-A of said Registry. Said tract also being Tract C on the Plat of record in Plat Cabinet 3, Slide 100B of the Camden County Registry.

LEGAL DESCRIPTION FOR PARCEL IDENTIFICATION NO. 01-7082-00-22-4578:

Being known as a part of the Tadmore Swamp and beginning at a point in the Richmond Cedar Works line standing south 85° 8' east 85.34 chains from a stone monument--Richmond Cedar Works and John L. Roper Lumber Company's corner in the United States Government's line of its Dismal Swamp Canal or Inland Waterway right-of-way line--which said monument stands 175 feet at right angles from the center line of the Dismal Swamp Canal, formerly the canal of the Lake Drummond Canal & Water Company, also said monument stands 4634.52 feet southeastwardly parallel with the center line of said canal from a granite monument on the new State line between North Carolina and Virginia; and running thence from said point south 15° 30' east 60 chains; thence north 85° 8' west 85.34 chains to a point in the right-of-way line abovementioned, said point being 175 feet at right angles from the center line of the said canal; thence with the said right-of-way line parallel with the center of the said canal south 15° 30' east 20.40 chains to the line of the 100 acre tract reserved by C.T. Hodges in the deed of conveyance by him to John L. Roper Lumber Company; thence with the line of the said 100 acre tract north 74° east 35.36 chains to a juniper, a corner of said 100 acre tract; thence with the line of said 100 acre tract again, south 17° 30' east 25.45 chains to a railroad iron marker sitting in a gum stump in the line of the said 100 acre tract; thence south 75° 30' east 83.30 chains practically following the edge of the swamp, to a corner; thence north 62° 45' east 82 chains; thence north 64° 5' east 130.60 chains to a stone monument--Richmond Cedar Works' corner in the line between the counties of Camden and Currituck, State of North Carolina; thence north 85° 8' west 50 chains; thence the same course north 85° 8' west 181.76 chains to the beginning, containing 1407.5 acres, more or less. See deed recorded in Book 58, Page 289, Camden County Registry.

LEGAL DESCRIPTION FOR PARCEL IDENTIFICATION NO. 01-7082-00-18-7729:

BEGINNING at an iron pipe situated on the North side of a 30 ft. wide lane, which iron pipe is further situated at the Southwest corner of Lot C-3 as shown on map of Sawyer's State Line Farm, which map is attached to that certain Deed of record in Deed Book 72 at Page 5 in the Camden County Registry, and running thence from said point of beginning along the North side of said 30 ft. wide land South 88 deg. 29 min. West 304 feet to a point, cornering; thence North 23 deg 35 min. West 2,201.3 feet, more or less, to the North Carolina-Virginia boundary line; thence along the North Carolina-Virginia boundary line North 88 deg. 28 min. 53 sec. East 304 feet to the Northwest corner of Lot C-3 as shown on the aforementioned plat; thence along the West boundary line of Lot C-3 South 23 deg. 35 min. East 2,201.3 feet to the iron pipe at the point of beginning, containing 14.24 acres, more or less, being a portion of Lot C-2b of the Sawyer's State Line Farm as shown on the plat above mentioned. See deed recorded in Book 89, Page 785, Camden County Registry.

LEGAL DESCRIPTION FOR PARCEL IDENTIFICATION NO. 01-7072-00-53-9446:

BEGINNING at a monument on the east side of US Highway No. 17, which said monument stands South 14° 45' West 78 chains from the old Virginia-North Carolina line ditch and South 14° 45' West 70.12 chains from a granite monument on the new State line between Virginia and North Carolina, and said monument stands 175 feet at right angles from the centerline of the Dismal Swamp Canal, said monument being the northwest corner of the property herein conveyed and the southwest corner of Soukup property, and the said beginning point being identified on the map hereinafter referred by the Figure "1", and running thence from said beginning point and along the Soukup line South 84° 23' East 85.34 chains to a corner of the McPherson property; thence with the McPherson lines South 14° 45' East 60.00 chains to a corner; thence North 84° 23' West 85.34 chains to US Highway No. 17; thence with US Highway No. 17 North 14° 45' West 60.00 chains to the point of BEGINNING, containing 479.2 acres, more or less. See deed recorded in Book 94, Page 159, Camden County Registry.

LEGAL DESCRIPTION FOR PARCEL IDENTIFICATION NO. 01-7072-00-68-2569:

BEING all of that certain tract of land described in deed recorded in Book 121, Page 818, Camden County Registry, as more particularly described as Parcel B-3a (42.797 acres) as shown on a map entitled in part "Sawyer State Line Farm" which map is attached to deed recorded at Deed Book 72, Page 5 of the Camden County Registry.

LEGAL DESCRIPTION FOR PARCEL IDENTIFICATION NO. 01-7072-00-88-8651:

Parcels B-4, B-3b, and C-1 as shown on a map entitled in part "Sawyer State Line Farm" which map is attached to deed recorded at Deed Book 72, Page 5 of the Camden County Registry and to which map reference is made for a more complete description. See deed recorded in Book 81, Page 296, Camden County Registry.

LEGAL DESCRIPTION FOR PARCEL IDENTIFICATION NO. 01-7072-00-48-9555:

Being all of Parcel B-2 containing 77.94 acres, more or less, as shown on a map entitled in part "Sawyer State Line Farm" which map is attached to deed recorded at Deed Book 72, Page 5 of the Camden County Registry. See deed recorded in Book 72, Page 5, Camden County Registry.

LEGAL DESCRIPTION FOR PARCEL IDENTIFICATION NO. 01-7082-00-08-9772:

Parcel C-2a as shown on a map entitled in part "Sawyer State Line Farms" which map is attached to deed recorded in Deed Book 72, Page 5 of the Camden County Registry. Also conveyed hereby for the benefit of Parcel C-2a is a permanent easement for ingress, egress and regress to and from the respective parcel, in common with owners of property delineated on the aforesaid plat, over and along that certain 30 foot wide lane situated along the South line of the above described tract, as shown on said plat, incorporated herein by reference. Parcel C-2a being more particularly described according to the plat herein referenced as follows:

Beginning at a point marked by the Southeast corner of Parcel C-1 and further marking the Southwest corner of the lot herein described; thence from said point of beginning North 23° 35' 00" West 2,201.4 feet to a point, said point being the Northeast corner of Parcel C-1 as shown on the plat herein referenced; thence North 88° 30' 07" East 126.0 feet to a point; thence North 88° 28' 53" East 482.0 feet to a point, said point being the Northwest corner of Parcel C-2b as shown on the plat herein referenced; thence South 23° 35' 00" East, 2,201.3 feet to a point in the Northern margin of the 30 foot lane above referred to and further being the Southwest corner of Parcel C-2b; thence from said point South 88° 29' 00" West 608.00 feet to the point and place of beginning. Same further being a portion of Tract Two as set forth in deed dated April 14, 1985 from Charles Ralph Sawyer and wife debtors-in-possession to W.W. Realty of record in Book 81, Page 296 of the Camden County Registry. See deed recorded in Book 121, Page 516, Camden County Registry.

LEGAL DESCRIPTION FOR PARCEL IDENTIFICATION NO. 01-7082-00-48-6337:

BEGINNING at an iron pipe which is situated on the North side of a 30 ft. wide lane, and which iron pipe is further situated at the Southeast corner of Lot C-4 as shown on Map of Sawyer's State Line Farm, which Map is attached to that certain Deed of record in Deed Book 72 at Page 5 in the Camden County Registry, and running thence from said point of beginning, along the center of a ditch, North 23 deg. 35 min. West 2,201.3 feet to an iron pipe in the center of another ditch which divides the property herein conveyed from the property of the George Washington Hunt Club; thence along the center of said last mentioned ditch North 88 deg. 29 min. East 258.85 feet to an iron pipe, cornering; thence South 23 deg. 35 min. East 2,201.3 feet to another iron pipe at the North side of said 30 ft. wide lane; thence along the North side of said 30 ft. wide lane South 88 deg. 29 min. West 258.85 feet to the iron pipe at the point of beginning, containing 12.122 acres, more or less, and being a portion of Lot D-1 as shown on said Map of Sawyer's State Line Farm. See deed recorded in Book 89, Page 596 Camden County Registry.

LEGAL DESCRIPTION FOR PARCEL IDENTIFICATION NO. 01-7082-00-48-7750:*

Beginning at an iron pipe which is situated on the North side of a 30 ft. wide lane, which iron pipe is further situated South 88 deg. 29 min. West a distance of 640.57 feet from the Southwest corner of Lot D2 as shown on Map of Sawyer's State Line Farm, which Map is attached to Deed of record in Deed Book 72 at Page 5 in the Camden County Registry, and running thence from said point of beginning North 23 deg. 35 min. West 2,201.3 feet to an iron pipe in the center of a ditch which divides the property herein described from the George Washington Hunt Club; thence along the center of said ditch South 88 deg. 29 min. West 320.28 feet to an iron pipe, cornering; thence South 23 deg. 35 min. East 2,201.3 feet to an iron pipe at the North side of said 30 ft. wide lane; thence along the North side of said 30 ft. wide lane North 88 deg. 29 min. East 320.28 feet to the iron pipe at the point of beginning, containing 15 acres, and being a portion of Lot D1 as shown on said Map of Sawyer's State Line Farm. See deed recorded in Book 88 Page 402, Camden County Registry.

*** Purchased by Waste Industries Landco, LLC on October 17, 2003.**

LEGAL DESCRIPTION FOR PARCEL IDENTIFICATION NO. 01-7082-00-49-2340:

Beginning at an iron pin situated on the west side of a ditch, which iron pin may be located as follows: Starting at an existing iron pin situated on the northern right of way line of an existing 30' wide lane, which last mentioned existing iron pin is further situated a distance of 2.5 miles eastwardly from U.S. Highway 17, and thence North 23° 35' 00" West 2,201.36 feet to the iron pin which marks the point of beginning of the tract herein conveyed; and running thence from said point of beginning along the west side of the aforesaid ditch North 23° 35' 00" West 1,089.79 feet to a point at the North Carolina/Virginia State Line; thence along said State line as it borders property now or formerly owned by the George Washington Hunt Club North 88° 28' 53" East 258.77 feet to a point, cornering; thence South 23° 35' 00" East 17.59 feet to an existing iron pin; thence continuing South 23° 35' 00" East 1, 071.98 feet to an existing iron pin, cornering; thence South 88° 29' 00" West 258.85 feet to the iron pin at the point of beginning, containing 6 acres and being identified as "Parcel A" on that certain plat prepared by Edward T. Hyman, Jr., Registered Surveyor, of record in Plat Cabinet 3, Slide 25-B in the Office of the Register of Deeds of Camden County, NC and incorporated herein by reference. See deed recorded in Book 127, Page 153, Camden County Registry.

LEGAL DESCRIPTION FOR PARCEL IDENTIFICATION NO. 01-7082-00-58-2741:

BEGINNING at an iron pipe which is situated on the North side of a 30 ft. wide lane, and which iron pipe is further situated at the Southwest corner of Lot D2 as shown on map of Sawyer's State Line Farm, which map is attached to that certain Deed of record in Deed Book 72 at Page 5 in the Camden County Registry, and running thence from said point of beginning along the North side of said 30 ft. wide lane South 88 deg. 29 min. West 640.57 feet to an iron pipe in the line of property now or formerly owned by Stewart Lee Sawyer and wife, Virginia C. Sawyer; thence along said Sawyer line North 23 deg. 35 min. West 2,201.3 feet to an iron pipe in the center of a ditch which divides the property herein conveyed from the property of the George Washington Hunt Club; thence along the center of said ditch North 88 deg. 29 min. East 640.57 feet to an iron pipe situated at the Northwest corner of said Lot D2; thence along the East edge of a ditch South 23 deg. 35 min. East 2,201.3 feet to the iron pipe at the point of beginning, containing 30 acres, and being a portion of Lot D1 as shown on said map of Sawyer's State Line Farm. See deed recorded in Book 89, Page 407, Camden County Registry.

LEGAL DESCRIPTION FOR PARCEL IDENTIFICATION NO. 01-7082-00-19-2165:

BEGINNING AT A POINT marked by a set iron rod marking the northeast corner of property conveyed by deed of even date from Grantor to William E. Knowles and further located N 23 deg 35 min 00 sec W, 1,407.73 feet along a ditch marking the west line of the property now or formerly belonging to Martha A. and John F. Knowles, Sr. (Book 89, Page 785 of the Camden County Registry) from a set iron rod marking the southeast corner of other properly belonging to Grantor in the north right-of-way line of Ponderosa Drive (30' R/W); thence from said point of beginning and set iron rod S 88 deg 29 min 00 sec W, 266.24 feet along the north line of the said William E. Knowles property to a point marked by a set iron rod in the east margin of a thirty-five (35) foot easement; thence from said point and set iron rod N 23 deg 35 min 00 sec W, 353.09 feet along the east margin of the thirty-five foot easement to a point marked by a set iron rod; thence from said point and set iron rod S 88 deg 29 min 00 sec W, 266.24 feet along the south line of other property belonging to Grantor; thence from said point and set iron rod S 23 deg 35 min 00 sec E, 353.09 feet along the west line of property now or formerly belonging to Martha A. and John F. Knowles, Sr. (Book 89, Page 785 of the Camden County Registry) to the set iron rod and POINT OF BEGINNING. See deed recorded in Book 137, Page 63, Camden County Registry.

LEGAL DESCRIPTION FOR PARCEL IDENTIFICATION NO. 01-7082-00-18-4811:

BEGINNING AT A POINT marked by a set iron rod marking the northeast corner of property conveyed by deed of an even date from Grantor to Beverly Knowles Compton and further located N 23 deg 35 min 00 sec W, 1,054.64 feet along a ditch marking the west line of the property now or formerly belonging to Martha A. and John F. Knowles, Sr. (Book 89, Page 785 of the Camden County Registry) from a set iron rod marking the southeast corner of other properly belonging to Grantor in the north right-of-way line of Ponderosa Drive (30' R/W); thence from said point of beginning and set iron rod S 88 deg 29 min 00 sec W, 266.24 feet along the north line of the said Compton property to a point marked by a set iron rod in the east margin of a thirty-five (35) foot easement; thence from said point and set iron rod N 23 deg 35 min 00 sec W, 353.09 feet along the east margin of the thirty-five foot easement to a point marked by a set iron rod; thence from said point and set iron rod S 88 deg 29 min 00 sec W, 266.24 feet along the south line of property conveyed by deed of an even date herewith from Grantor to Deborah Knowles Hogan; thence from said point and set iron rod S 23 deg 35 min 00 sec E, 353.09 feet along the west line of property now or formerly belonging to Martha A. and John F. Knowles, Sr. (Book 89, Page 785 of the Camden County Registry) to the set iron rod and POINT OF BEGINNING. See deed recorded in Book 137, Page 60, Camden County Registry.

LEGAL DESCRIPTION FOR PARCEL IDENTIFICATION NO. 01-7082-00-18-5449:

BEGINNING AT A POINT marked by a set iron rod marking the northeast corner of other property belonging to Grantor and further located N 23 deg 35 min 00 sec W, 701.55 feet along a ditch marking the common property line of Grantor and the property now or formerly belonging to Martha A. and John F. Knowles, Sr. (Book 89, Page 785 of the Camden County Registry) from a set iron rod marking the southeast corner of Grantor's property in the north right-of-way line of Ponderosa Drive (30' R/W); thence from said point of beginning and set iron rod S 88 deg 29 min 00 sec W, 266.24 feet along the north line of property belonging to Grantor to a point marked by a set iron rod in the east margin of a thirty-five (35) foot easement; thence from said point and set iron rod N 23 deg 35 min 00 sec W, 353.09 feet along the east margin of the thirty-five foot easement to a point marked by a set iron rod; thence from said point and set iron rod S 88 deg 29 min 00 sec W, 266.24 feet along the south line of property conveyed by deed of an even date herewith from Grantor to William E. Knowles; thence from said point and set iron rod S 23 deg 35 min 00 sec E, 353.09 feet along the west line of property now or formerly belonging to Martha A. and John F. Knowles, Sr. (Book 89, Page 785 of the Camden County Registry) to the set iron rod and POINT OF BEGINNING. See deed recorded in Book 137, Page 57, Camden County Registry.

LEGAL DESCRIPTION FOR PARCEL IDENTIFICATION NO. 01-7082-00-18-3720:

BEGINNING at a point situated on the North side of a 30 ft. wide lane, which beginning point is further situated South 88 deg. 29 min. West a distance of 304 feet from an iron pipe at the Southwest corner of Lot C-3 as shown on that certain map of Sawyer's State Line Farm, which map is attached to the Deed of record in book 72 at Page 5 in the Camden Registry, and running thence from said point of beginning along the North side of said 30 ft. wide lane South 88 deg. 29 min. West 304 feet to a point, cornering; thence North 23 deg. 35 min. West 2,201.3 feet to a point in the North Carolina-Virginia boundary line; thence along said boundary line North 88 deg. 28 min. 53 sec. East 304 feet to a point, cornering; thence South 23 deg. 35 min. East 2,201.3 feet, more or less, to the point of beginning, containing 14.24 acres, more or less, and being a portion of Lot C-2b of the Sawyer's State Line Farm as shown on the aforesaid map. See deed recorded in Book 89, Page 787, Camden County Registry.

WYRICK ROBBINS YATES & PONTON LLP

POST OFFICE DRAWER 17803
RALEIGH, NORTH CAROLINA 27619

4101 LAKE BOONE TRAIL
RALEIGH, NORTH CAROLINA 27607-7506

PHONE: 919/781-4000
FAX: 919/781-4865
email:jyates@wyrick.com

MEMORANDUM

Via Hand Delivery

TO: Jim Gulick, Kathleen Waylett, Nancy Scott, Lauren Clemmons, Jim Coffey

CC: Jim Perry, Steve Grissom, Ven Poole, Don Vaughan, Grady Shields

FROM: Jimmy Yates

RE: Revised Guaranty and Financial Assurance

DATE: September 26, 2005

Received
SEP 2005
Solid Waste Section

Attached please find a revised, proposed Guaranty and Financial Assurance in furtherance of our recent discussions for your review and comment. The blacklined copy has been marked to show all changes from the previous draft submitted to you. I apologize for the delay in getting this to you but we did want to obtain lenders' prior approval of the proposed form of the Guaranty and Financial Assurance, which approval was obtained Friday afternoon.

I acknowledge at the end of our meeting we were discussing the possible concept of a "capital contribution agreement" between Waste Industries USA, Inc. ("Waste"), as the parent corporation, and Black Bear Disposal, LLC ("Black Bear"), as the wholly-owned subsidiary. However, in discussing the nuances between a capital contribution agreement and a guaranty agreement, Waste felt that a guaranty provided more flexibility to it as far as, for example, whether or not to make a direct capital infusion into Black Bear so as to enable Black Bear to satisfy its obligations set forth in Section 1 of the Guaranty or to make payments directly by Waste to a third party on behalf of Black Bear to satisfy the obligations under section 1 of the Guaranty. We have attempted to address this further in Section 9(b).

We also understood from our recent meeting that as originally submitted DENR really did not want to be put in the position of having to enforce the Guaranty. Accordingly, we have changed the structure so that the Guaranty is directly for the benefit of Black Bear, but we have included DENR as an express third-party beneficiary so that it has standing to enforce the Guaranty if for whatever reason Black Bear fails to do so. Therefore, DENR has the right to enforce as and when needed, but is not put in the position of being the sole or primary enforcer.

With respect to Jim's concern that certain provisions in N.C.G.S. 26-9 are not waivable, we do not believe in the context of this particular situation that will be an issue because that issue only seems to apply where there has been an extension of time for payment. Since there is no promissory note or financial instruments with specific times for payments in our situation, we

don't think that will be an issue. We are enclosing an internal memo that we have done on this issue as it has arisen in recent opinion letters that we have had to give. Please take a look at this memo and let us know if you disagree with our conclusion here.

It has been our intention in this revised draft to give Black Bear and DENR the same economic substance, benefits and rights that it would have received in a capital contribution agreement while preserving flexibility for Waste. We have added the representations in Section 9 to hopefully give you more comfort as to the binding nature and enforceability of the Guaranty and well as Waste representing that it will at all times have sufficient cash available to satisfy its obligation under the Guaranty whether in the form of capital contributions or otherwise (for example, a direct payment on behalf of Black Bear to satisfy Waste's obligations under the Guaranty).

The only other substantive item is in Section 1(b) where I clarified that such obligation should remain in effect so long as Waste owns, directly or indirectly, a majority interest in Black Bear. I believe this language tracks the "majority interest" language in N.C.G.S. 130-A-309.27(a).

As soon as you have had the opportunity to review and discuss this revised Guaranty and Financial Assurance, please direct any initial comments or concerns to me, hopefully in advance of our October 3rd meeting, so that we can attempt to have your issues and concerns addressed prior to that meeting.

I have also attached an explanation of why Waste is required under its North Carolina bond financings (which it used to finance Sampson County Landfill and which it intends to use to finance the Black Bear Landfill) requires Waste's subsidiaries to be organized as LLCs versus corporation. It is a technical point under the Internal Revenue Code relating to the tax-free status of the income derived from the bond payments.

Best regards.

Enclosures (4)

GUARANTY AND FINANCIAL ASSURANCE

THIS GUARANTY AND FINANCIAL ASSURANCE (this "Guaranty") is made and entered into this ___ day of _____, 2005 by WASTE INDUSTRIES USA, INC., a North Carolina corporation ("Guarantor"), in favor of BLACK BEAR DISPOSAL, LLC, a North Carolina limited liability company ("Black Bear"), and also for the express benefit of the NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES ("DENR").

RECITALS

A. Guarantor owns all of the equity ownership and membership interests in Black Bear.

B. Black Bear has applied to DENR for a permit to construct (the "Permit to Construct") a municipal solid waste landfill in Camden County, North Carolina on real property owned by Black Bear (the "Landfill").

C. Upon completion of the construction of the Landfill, Black Bear will apply to DENR for a permit to operate the Landfill (the "Permit to Operate").

D. Guarantor has offered to provide this Guaranty as a financial enhancement to further enable Black Bear to demonstrate that it is financially qualified to carry out the activities under the Permit to Construct and the Permit to Operate within the meaning of N.C.G.S. 130A-294(b2) and (b3), upon the terms and conditions set forth herein.

AGREEMENTS

NOW, THEREFORE, in consideration of the Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Guarantor, Guarantor hereby agrees as follows:

1. **Guaranty**. Guarantor hereby absolutely, unconditionally and irrevocably guarantees the due and punctual payment and performance of: (a) all financial obligations incurred by Black Bear in connection with the design, construction and operation of the Landfill, including, without limitation, all costs and expenses of site investigation, purchasing the land, design of the facility, engineering, professional, construction, personnel, equipment, insurance and bonding, and capital expenditures, until the fifth anniversary date of the issuance of the Permit to Construct by DENR; and (b) those obligations that would have been statutorily imposed on Guarantor pursuant to N.C.G.S. 130A-309.27(a) and (b) if Black Bear had been organized as a corporation rather than as a limited liability company so long as Guarantor owns directly or indirectly a majority interest in Black Bear. As further clarification of the guaranty described in Section 1(b), for purposes of this Guaranty, N.C.G.S. 130A-309.27(a) and (b) would be deemed to read as follows:

(a) As used in this section:

(1) "Owner or operator" means, in addition to the usual meanings of the term, any owner of record of any interest in land on which a landfill is or has been sited, i.e., Black Bear Disposal, LLC, and any person or corporation, i.e., Waste Industries USA, Inc., which owns a majority interest in such owner or operator of a landfill.

(2) "Proceeds" means all funds collected and received by the Department, including interest and penalties on delinquent fees.

(b) Black Bear Disposal, LLC and Waste Industries USA, Inc. are jointly and severally liable for the improper operation and closure of the landfill, as provided by law.

The foregoing may sometimes hereinafter be referred to individually as a "Guaranteed Obligation" and collectively as the "Guaranteed Obligations".

2. **Guaranty of Payment and Not of Collection.** This Guaranty is a guaranty of payment and not of collection. Guarantor waives any right, including, without limitation, those rights set forth in N.C.G.S. 26-7 through 26-9, (with the exception of any right that Guarantor is prohibited from waiving under applicable law) to require that any action be brought against Black Bear or to require that resort be had to any security, and DENR will not be obliged before enforcing this Guaranty against Guarantor: (a) to take any action in any court against Black Bear, (b) to make any claim in a liquidation or bankruptcy of Black Bear, or (c) to make demand in respect of the Guaranteed Obligations.

3. **Liability of Guarantor Absolute.** The Guaranteed Obligations of Guarantor hereunder will be absolute and unconditional and will not be impaired, modified, released or limited by any occurrence or condition whatsoever, including without limitation: (a) any change in, modification or amendment of this Guaranty; (b) any acceleration, compromise, settlement, surrender, exchange, release, waiver, renewal, extension, indulgence, change in or modification of any of the Guaranteed Obligations; (c) the assertion or exercise by Black Bear or DENR or their successors or assigns of any rights or remedies with respect to the Guaranteed Obligations or under this Guaranty or the delay in or failure to assert or exercise any such rights or remedies; and (d) any impairment, modification, release or limitation of the liability of Black Bear or any security for the Guaranteed Obligations or any remedy for the enforcement thereof, resulting from the operation of any present or future provision of the Federal Bankruptcy Code or other statute or from the decision of any court.

4. **Waiver.** Guarantor hereby waives notice of acceptance hereof or any presentment, demand, protest or notice of any kind under this Guaranty and any other act or thing or omission or delay to do any other act or thing which might in any manner or to any extent vary the risk of Guarantor under this Guaranty or which might otherwise operate as a discharge of Guarantor under this Guaranty.

5. **Reinstatement of Guaranteed Obligations**. Guarantor confirms that this Guaranty will continue to be effective or be reinstated, as the case may be, if at any time payment of any of the Guaranteed Obligations is rescinded or must otherwise be restored by Black Bear or DENR, as applicable, upon the bankruptcy or reorganization of Black Bear or Guarantor or otherwise.

6. **Payments Free and Clear**. All sums payable by Guarantor hereunder will be paid in full, without set-off or counterclaim or any deduction or withholding whatsoever, or, in the event that Guarantor is required by law to make any such deduction or withholding, Guarantor will pay to Black Bear or DENR, as applicable, such additional amount as will result in the receipt by Black Bear or DENR, as applicable, of the full amount payable hereunder.

7. **Rights Under Statute**. Notwithstanding anything in this Guaranty to the contrary, with respect to the Guaranteed Obligation set forth in Section 1(b), Guarantor will have all rights and defenses under N.C.G.S. 130A-309.27 as if such statute applied to Guarantor. None of the waivers set forth herein waives any of Guarantor's rights under such statute. Furthermore, if Black Bear is ultimately determined not to be liable for any portion of the Guaranteed Obligations, then Guarantor's liability under this Guaranty with respect to such portion of the Guaranteed Obligations is deemed fulfilled.

8. **Additional Obligations of Guarantor**. In addition to the Guaranteed Obligations hereunder, Guarantor hereby agrees to provide guarantees if and when required with respect to Black Bear's obtaining any required performance bonds or form of financial assurance or any insurance that may be required for the construction and/or operation of the Landfill. Furthermore, Guarantor agrees to provide any necessary guaranty in connection with the issuance of revenue bonds, if any, issued to finance the acquisition of the real property for the Landfill and for the construction of the Landfill. The guarantees described in this Section 8 would be made for the benefit of the party issuing any such bond, financial assurance, insurance and/or revenue bonds.

9. **Representations.**

(a) Guarantor represents and warrants to each of Black Bear and DENR that it has full power and authority to enter into this Guaranty and to perform its obligations hereunder in accordance with the provisions hereof, that this Guaranty has been duly authorized, executed and delivered by Guarantor and that this Guaranty constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and by general principles of equity.

(b) Guarantor represents and warrants to Black Bear and DENR that it will have available to it cash in such amounts and at such times as are required to comply with its obligations under this Guaranty, and will make such cash amounts available to or for the benefit of Black Bear so as to enable Guarantor to satisfy the Guaranteed Obligations hereunder, whether in the form of capital contributions or otherwise.

10. Governing Law. This Guaranty will be construed and enforced in accordance with, and the rights of the parties will be governed by, the laws of the State of North Carolina.

11. Waiver of Remedies. No delay or failure on the part of Black Bear or DENR in the exercise of any right or remedy will operate as a waiver thereof, and no single or partial exercise by Black Bear or DENR of any right or remedy will preclude other or further exercise thereof or the exercise of any other right or remedy.

12. DENR as Third-Party Beneficiary. Each of Guarantor and Black Bear hereby acknowledges and agrees that this Guaranty (including, without limitation, the terms and provisions of Section 1 hereof) is being made and entered into for the express benefit of DENR, and DENR is an express third-party beneficiary of each of the terms and provisions of this Guaranty, that DENR may specifically enforce each term or provision of this Guaranty to the same extent as if it was a party hereto without regard to whether or not Guarantor or Black Bear will have taken any independent action to enforce this Guaranty and without any requirement that Guarantor or Black Bear participate in, or be joined in, any action by DENR to enforce this Guaranty.

13. Successors and Assigns. Each reference herein to Guarantor and Black Bear is deemed to include Guarantor's and Black Bear's successors and assigns, upon whom this Guaranty will also be binding. DENR may not assign its rights under this Guaranty to any person or entity that is not a division or department of the State of North Carolina.

14. Notices. All notices and other communications under this Guaranty will be in writing and will be deemed to have been given one (1) day after being entrusted to a reputable commercial overnight delivery service for overnight delivery, or when sent by confirmed telecopy addressed to the party to which such notice is directed at its address determined as provided in this Section 14. All notices and other communications under this Guaranty will be given to the parties hereto at the following addresses:

If to Guarantor:

Waste Industries USA, Inc.
3301 Benson Drive, Suite 601
Raleigh, NC 27609
Attention: Chief Executive Officer
Telephone: (919) 325-3000
Facsimile: (212) 325-4040

If to Black Bear:

Black Bear Disposal, LLC
3301 Benson Drive, Suite 601
Raleigh, NC 27609
Attention: Manager
Telephone: (919) 325-3000
Facsimile: (212) 325-4040

with a copy to:

Wyrick Robbins Yates & Ponton LLP
4101 Lake Boone Trail, Suite 300
Raleigh, North Carolina 27607
Attention: James M. Yates, Jr., Esq.
Telephone: (919) 781-4000
Facsimile: (919) 781-4865

If to DENR:

North Carolina Department of
Environment and Natural Resources
Division of Waste Management
401 Oberlin Road, Suite 150
Raleigh, NC 27605
Attention : Chief, Solid Waste Section
Division of Waste Management
Telephone: (919) _____
Facsimile: (919) _____

with a copy to:

North Carolina Department of Justice
114 W. Edenton Street
9001 Mail Service Center
Raleigh, NC 27699-9001
Attention: _____
Telephone: (919) _____
Facsimile: (919) _____

15. Amendments. This Guaranty may not be amended or waived except in a writing signed by Guarantor, Black Bear and DENR.

16. Payments. All payments made by Guarantor pursuant to this Guaranty will be made in the lawful currency of the United States, in immediately available funds to the account of Black Bear or DENR, as applicable, as directed by Black Bear or DENR, as applicable, at the time request for payment is made or directly to any third party in the discretion of Guarantor. All notices or demands to Guarantor will be in writing and will be given as set forth in Section 14.

17. Severability. In case any provision of this Guaranty is deemed invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby and Guarantor will use its best efforts to replace such provision.

18. Counterparts; Headings. This Guaranty may be executed in several counterparts, each of which will be deemed an original, but such counterparts will together constitute but one and the same agreement. This Guaranty may be executed and delivered in counterpart signature pages executed and delivered via facsimile transmission, and any such counterpart executed and delivered via facsimile transmission will be deemed an original for all intents and purposes. Section headings used in this Guaranty are for convenience only and will not affect the construction of this Guaranty.

[The next page is the signature page.]

IN WITNESS WHEREOF, Guarantor has duly executed and delivered this Guaranty as of the date and year first written above.

WASTE INDUSTRIES USA, INC.

By: _____
Name: _____
Title: _____

ACKNOWLEDGED AND ACCEPTED:

BLACK BEAR DISPOSAL, LLC

By: _____
Name: _____
Title: _____

NORTH CAROLINA DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES

By: _____
Name: _____
Title: _____

GUARANTY AND FINANCIAL ASSURANCE

THIS GUARANTY AND FINANCIAL ASSURANCE (this "Guaranty") is made and entered into **this ___ day of _____, 2005** by WASTE INDUSTRIES USA, INC., a North Carolina corporation ("Guarantor"), in favor of ~~THE~~**BLACK BEAR DISPOSAL**, LLC, a North Carolina limited liability company (**"Black Bear"), and also for the express benefit of the** NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES ("DENR"~~), this ___ day of September, 2005.~~.

RECITALS

A. Guarantor~~'s wholly-owned subsidiary,~~ **owns all of the equity ownership and membership interests in** Black Bear ~~Disposal, LLC, a North Carolina limited liability company ("BBD"),~~.

B. **Black Bear** has applied to DENR for a permit to construct (the "Permit to Construct") a municipal solid waste landfill in Camden County, North Carolina on real property owned by ~~BBD~~**Black Bear** (the "Landfill").

~~B.~~ **C.** Upon completion of the construction of the Landfill, ~~BBD~~**Black Bear** will apply to DENR for a permit to operate the Landfill (the "Permit to Operate").

~~B~~**D**. ~~DENR has required Guarantor to provide this Guaranty as a condition to the issuance of~~ the Permit to Construct ~~to BBD for operation of the Landfill.~~ ~~C. Guarantor is willing~~ to provide this Guaranty ~~to DENR~~**Guarantor has offered** to provide this Guaranty **as a financial enhancement to further enable Black Bear to demonstrate that it is financially qualified to carry out the activities under** the Permit to Construct **and the Permit to Operate within the meaning of N.C.G.S. 130A-294(b2) and (b3),** upon the terms and conditions set forth herein.

AGREEMENTS

NOW, THEREFORE, in consideration of ~~DENR issuing the Permit to Construct to BBD~~**the Recitals**, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Guarantor, Guarantor hereby agrees as follows:

1. **Guaranty**. Guarantor hereby absolutely, unconditionally and irrevocably guarantees the due and punctual payment and performance of: (a) all financial obligations incurred by ~~BBD~~**Black Bear** in connection with the design, construction and operation of the Landfill, including, without limitation, all costs and expenses of site investigation, purchasing the land, design of the facility, engineering, professional, construction, personnel, equipment, insurance and bonding, and capital expenditures, until the fifth anniversary **date** of the issuance of the Permit to Construct by DENR; and (b) those obligations that would have been statutorily imposed on Guarantor pursuant to ~~Section~~**N.C.G.S.** 130A-309.27(a) and (b) ~~of the North~~

~~Carolina General Statutes ("NCGS") if BBD~~**if Black Bear** had been organized as a corporation rather than as a limited liability company **so long as Guarantor owns directly or indirectly a majority interest in Black Bear**. As further clarification of the guaranty described in Section 1(b), for purposes of this Guaranty, ~~NCGS Sections~~**N.C.G.S.** 130A-309.27(a) and (b) would be deemed to read as follows:

(a) As used in this section:

(1) "Owner or operator" means, in addition to the usual meanings of the term, any owner of record of any interest in land on which a landfill is or has been sited, i.e., Black Bear Disposal, LLC, and any person or corporation, i.e., Waste Industries USA, Inc., which owns a majority interest in such owner or operator of a landfill.

(2) "Proceeds" means all funds collected and received by the Department, including interest and penalties on delinquent fees.

(b) Black Bear Disposal, LLC and Waste Industries USA, Inc. are jointly and severally liable for the improper operation and closure of the landfill, as provided by law.

The foregoing may sometimes hereinafter be referred to individually as a "Guaranteed Obligation" and collectively as the "Guaranteed Obligations".

2. **Guaranty of Payment and Not of Collection.** This Guaranty is a guaranty of payment and not of collection. Guarantor waives any right, including, without limitation, those rights set forth in ~~NCGS Sections~~**N.C.G.S.** 26-7 through 26-9, (with the exception of any right that Guarantor is prohibited from waiving under applicable law) to require that any action be brought against ~~BBD~~**Black Bear** or to require that resort be had to any security, and DENR will not be obliged before enforcing this Guaranty against Guarantor: (a) to take any action in any court against ~~BBD~~**Black Bear**; (b) to make any claim in a liquidation or bankruptcy of ~~BBD~~**Black Bear**, or (c) to make demand in respect of the Guaranteed Obligations.

3. **Liability of Guarantor Absolute**. The Guaranteed Obligations of Guarantor hereunder will be absolute and unconditional and will not be impaired, modified, released or limited by any occurrence or condition whatsoever, including without limitation: (a) any change in, modification or amendment of this Guaranty; (b) any acceleration, compromise, settlement, surrender, exchange, release, waiver, renewal, extension, indulgence, change in or modification of any of the Guaranteed Obligations; (c) the assertion or exercise by ~~BBD~~**Black Bear** or ~~its~~**DENR or their** successors or assigns of any rights or remedies with respect to the Guaranteed Obligations or under this Guaranty or the delay in or failure to assert or exercise any such rights or remedies; and (d) any impairment, modification, release or limitation of the liability of ~~BBD~~**Black Bear** or any security for the Guaranteed Obligations or any remedy for the enforcement thereof, resulting from the operation of any present or future provision of the Federal Bankruptcy Code or other statute or from the decision of any court.

4. **Waiver.** Guarantor hereby waives notice of acceptance hereof or any presentment, demand, protest or notice of any kind under this Guaranty and any other act or thing or omission or delay to do any other act or thing which might in any manner or to any extent vary the risk of Guarantor under this Guaranty or which might otherwise operate as a discharge of Guarantor under this Guaranty.

5. **Reinstatement of Guaranteed Obligations.** Guarantor confirms that this Guaranty will continue to be effective or be reinstated, as the case may be, if at any time payment of any of the Guaranteed Obligations is rescinded or must otherwise be restored by **Black Bear or** DENR**, as applicable,** upon the bankruptcy or reorganization of ~~**BBD**~~**Black Bear** or Guarantor or otherwise.

6. **Payments Free and Clear.** All sums payable by Guarantor hereunder will be paid in full, without set-off or counterclaim or any deduction or withholding whatsoever, or, in the event that Guarantor is required by law to make any such deduction or withholding, Guarantor will pay to **Black Bear or** DENR**, as applicable,** such additional amount as will result in the receipt by **Black Bear or** DENR**, as applicable,** of the full amount payable hereunder.

7. **Rights Under Statute.** Notwithstanding anything in this Guaranty to the contrary, with respect to the Guaranteed Obligation set forth in Section 1(b), Guarantor will have all rights and defenses under ~~**NCGS Section**~~**N.C.G.S.** 130A-309.27 as if such statute applied to Guarantor. None of the waivers set forth herein waives any of Guarantor's rights under such statute. Furthermore, if ~~**BBD**~~**Black Bear** is ultimately determined not to be liable ~~**to DENR**~~ for any portion of the Guaranteed Obligations, then Guarantor's liability under this Guaranty with respect to such portion of the Guaranteed Obligations is deemed fulfilled.

8. **Additional Obligations of Guarantor.** In addition to the Guaranteed Obligations hereunder, Guarantor hereby agrees to provide guarantees if and when required with respect to ~~**BBD**~~**Black Bear**'s obtaining any required performance bonds or form of financial assurance or any insurance that may be required for the construction and/or operation of the Landfill. Furthermore, Guarantor agrees to provide any necessary guaranty in connection with the issuance of revenue bonds, if any, issued to finance the acquisition of the real property for the Landfill and for the construction of the Landfill. The guarantees described in this Section 8 would be made for the benefit of the party issuing any such bond, financial assurance, insurance and/or revenue bonds.

9. **Representations.**

(a) Guarantor represents and warrants to each of Black Bear and DENR that it has full power and authority to enter into this Guaranty and to perform its obligations hereunder in accordance with the provisions hereof, that this Guaranty has been duly authorized, executed and delivered by Guarantor and that this Guaranty constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and by general principles of equity.

(b) Guarantor represents and warrants to Black Bear and DENR that it will have available to it cash in such amounts and at such times as are required to comply with its obligations under this Guaranty, and will make such cash amounts available to or for the benefit of Black Bear so as to enable Guarantor to satisfy the Guaranteed Obligations hereunder, whether in the form of capital contributions or otherwise.

10. **Governing Law.** This Guaranty will be construed and enforced in accordance with, and the rights of the parties will be governed by, the laws of the State of North Carolina.

~~10.~~11. **Waiver of Remedies.** No delay or failure on the part of Black Bear or DENR in the exercise of any right or remedy will operate as a waiver thereof, and no single or partial exercise by Black Bear or DENR of any right or remedy will preclude other or further exercise thereof or the exercise of any other right or remedy.

12. DENR as Third-Party Beneficiary. Each of Guarantor and Black Bear hereby acknowledges and agrees that this Guaranty (including, without limitation, the terms and provisions of Section 1 hereof) is being made and entered into for the express benefit of DENR, and DENR is an express third-party beneficiary of each of the terms and provisions of this Guaranty, that DENR may specifically enforce each term or provision of this Guaranty to the same extent as if it was a party hereto without regard to whether or not Guarantor or Black Bear will have taken any independent action to enforce this Guaranty and without any requirement that Guarantor or Black Bear participate in, or be joined in, any action by DENR to enforce this Guaranty.

~~11.~~13. **Successors and Assigns.** Each reference herein to Guarantor and Black Bear is deemed to include Guarantor's and Black Bear's successors and assigns, upon whom this Guaranty will also be binding. DENR may not assign its rights under this Guaranty to any person or entity that is not a division or department of the State of North Carolina.

14. Notices. All notices and other communications under this Guaranty will be in writing and will be deemed to have been given one (1) day after being entrusted to a reputable commercial overnight delivery service for overnight delivery, or when sent by confirmed telecopy addressed to the party to which such notice is directed at its address determined as provided in this Section 14. All notices and other communications under this Guaranty will be given to the parties hereto at the following addresses:

If to Guarantor:

Waste Industries USA, Inc.
3301 Benson Drive, Suite 601
Raleigh, NC 27609
Attention: Chief Executive Officer
Telephone: (919) 325-3000
Facsimile: (212) 325-4040

If to Black Bear:

Black Bear Disposal, LLC
3301 Benson Drive, Suite 601
Raleigh, NC 27609
Attention: Manager
Telephone: (919) 325-3000
Facsimile: (212) 325-4040

with a copy to:

Wyrick Robbins Yates & Ponton LLP
4101 Lake Boone Trail, Suite 300
Raleigh, North Carolina 27607
Attention: James M. Yates, Jr., Esq.
Telephone: (919) 781-4000
Facsimile: (919) 781-4865

If to DENR:

North Carolina Department of
Environment and Natural Resources
Division of Waste Management
401 Oberlin Road, Suite 150
Raleigh, NC 27605
Attention: Chief, Solid Waste Section
Division of Waste Management
Telephone: (919) _____
Facsimile: (919) _____

with a copy to:

North Carolina Department of Justice
114 W. Edenton Street
9001 Mail Service Center
Raleigh, NC 27699-9001
Attention: _____
Telephone: (919) _____
Facsimile: (919) _____

~~12.~~15. **Amendments**. This Guaranty may not be amended or waived except in a writing signed by ~~DENR and~~ Guarantor, Black Bear and DENR.

~~13.~~16. **Payments**. All payments made by Guarantor pursuant to this Guaranty will be made in the lawful currency of the United States, in immediately available funds to the account of Black Bear or DENR, as applicable, as directed by Black Bear or DENR, as applicable, at the time request for payment is made or directly to any third party ~~who has standing to enforce~~

~~the applicable Guaranteed Obligation~~in the discretion of Guarantor. All notices or demands to Guarantor will be in writing and will be ~~telecopied, mailed or hand delivered to the address for Guarantor~~given as set forth ~~below.~~in Section 14.

17. **Severability**. In case any provision of this Guaranty is deemed invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby and Guarantor will use its best efforts to replace such provision.

~~15.~~ ~~Headings.~~18. **Counterparts; Headings. This Guaranty may be executed in several counterparts, each of which will be deemed an original, but such counterparts will together constitute but one and the same agreement. This Guaranty may be executed and delivered in counterpart signature pages executed and delivered via facsimile transmission, and any such counterpart executed and delivered via facsimile transmission will be deemed an original for all intents and purposes.** Section headings used in this Guaranty are for convenience only and will not affect the construction of this Guaranty.

[The next page is the signature page.]

IN WITNESS WHEREOF, Guarantor has duly executed and delivered this Guaranty as of the date and year first written above.

WASTE INDUSTRIES USA, INC.

By: _____
Name: _____
Title: _____

ACKNOWLEDGED AND ACCEPTED:

BLACK BEAR DISPOSAL, LLC

By:
Name:
Title:

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

By:
Name:
Title:

Document comparison done by DeltaView on Monday, September 26, 2005 11:27:11 AM

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Document 1	PowerDocs://DOCS/414258/3
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Rendering set	Standard

Legend:	
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Inserted cell	
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Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	116
Deletions	39
Moved from	3
Moved to	3
Style change	0
Format changed	0
Total changes	161

WYRICK
ROBBINS
YATES
& PONTON
LLP

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Raleigh, NC 27619

ph 919.781.4000
fax 919.781.4865
www.wyrick.com
jcobb@wyrick.com

MEMORANDUM

To: Jimmy Yates

From: Jim Cobb

Re: Instances in which Guaranties Can and Cannot be Waived Under North Carolina Law

Date: September 26, 2005

North Carolina General Statutes § 26-7(a) provides that after a debt becomes due and payable, a guarantor of the debt may require the creditor to use all reasonable diligence to recover against the debtor and any collateral held to secure the debt, before seeking recourse from the guarantor. If the creditor does then not promptly proceed against the debtor or the collateral, NCGS § 26-9 provides that the guarantor will be discharged from its obligation.

However, North Carolina courts and the Fourth Circuit, have determined that a guarantor's defenses under these statutes can be waived under certain circumstances.

In *Borg-Warner Acceptance Corp. v. Johnston*, 97 N.C. App. 575, 389 S.E.2d 429 (1990), the North Carolina Court of Appeals found that a guarantor had expressly agreed not to assert or take advantage of any defense based on lack of diligence by a lessor in collecting or realizing upon collateral securing the lease. Therefore, in a relatively brief section of the opinion, the court concluded that the guarantor had expressly waived its rights under NCGS § 26-7(a) to require the lessor to first "use all reasonable diligence to recover against the principal and to proceed to realize upon any securities which he [the lessor] holds for the obligation."

A year later, in *Community Bank & Trust Co. v. Copses*, 953 F.2d 133 (4th Cir. 1991), the Fourth Circuit Court of Appeals followed and somewhat distinguished and expanded upon the North Carolina court's decision in *Borg-Warner*. The Fourth Circuit held that a guarantor may take advantage of NCGS §§ 26-7 and 26-9 to require a creditor to first exhaust its remedies against the debtor before proceeding against the guarantor when the guaranty only states the rights of the creditor and the guarantor does not expressly waive its defenses. For example, if the guaranty states only that, upon a debtor's default, the creditor can require payment from the guarantor before proceeding against the debtor and is not required to first go against collateral, then the guarantor may still take advantage of its rights under NCGS §§ 26-7 and 26-9. But the court held that when the guarantor has expressly waived its rights to all notices, defenses and claims, including the right

to require the creditor first to pursue its remedies or seek payment from another person before seeking payment from the guarantor, then the guarantor has waived its rights under NCGS § 26-7 to make the creditor first proceed against the debtor and any collateral, and therefore will not be discharged from its obligations under NCGS § 26-9 if the creditor does not do so.

Interestingly, the Fourth Circuit did state that where a creditor has allowed the debtor an extension of time for payment, NCGS § 26-9(b) provides that a guarantor cannot waive its rights to any defenses it has under NCGS §§ 26-7 and 26-9. While the court did not provide an example of an extension of time for payment that would preserve a guarantor's defenses, this appears to mean that if a creditor allows a debtor an extension of time for payment on a guaranteed debt, presumably without obtaining the consent and the continued guaranty of the guarantor, then upon the debtor's default, the guarantor may give the creditor notice under NCGS § 26-7 to proceed first against the debtor and collateral and, if the creditor does do so not within 30 days, as required under NCGS § 26-9, the guarantor will be discharged from the guaranty, notwithstanding the fact that the guarantor may have expressly waived such defenses.

A year later, Judge Greene, in a concurring opinion in *Gregory Poole Equipment Co. v. Murray*, 105 N.C. App. 642, 414 S.E.2nd 563 (1992), further distinguished *Borg-Warner* by holding that a guarantor is a type of "debtor" such that a guarantor's pre-default waiver of notice of a foreclosure sale under Article 9 – specifically NCGS § 25-9-501(3) (now NCGS § 25-9-602) – is unenforceable and cannot be waived under Article 9.

Please let me know if you have any questions or if you need any additional research or information.

Explanation of NC Bond Financing in Place

The Sampson County Industrial Facilities and Pollution Control Financing Authority issued bonds for the benefit of Sampson County Disposal, LLC ("Borrower"), a wholly-owned subsidiary of Waste Industries USA, Inc. ("Parent"). The two issuances totaled $40.4M and are due after 2020. These bond offerings are tax-exempt adjustable mode environmental facilities revenue bonds, the issuances of which were approved by the NC Local Government Commission and the allocations of which were approved by the North Carolina Federal Tax Reform Allocation Committee. In order for bond counsel to opine that the interest paid on the bonds will be federal income tax-free to the recipients, Parent must represent that none of the bond proceeds will be used to purchase or otherwise invest in "securities" or other "investment-type property", which is deemed to include property **that is directly or indirectly pledged to secure the bonds.** The bonds are secured by a letter of credit from Parent's lenders under Parent's credit facility, which in turn is secured by Parent's obligation to repay the lenders and Parent's pledge of assets (including equity interests in subsidiaries) to those lenders. Accordingly, the bond tax rules treat the property pledged to the lenders as indirectly securing the bonds.

At this time, there is no exclusion from this definition for stock or securities of wholly-owned, operating subsidiaries of Parent – they are included within the definition of securities or investment-type property. However, because a single-member limited liability company is disregarded for federal income tax purposes, ownership by Parent of LLCs is permissible and will not jeopardize the tax-free financing if the membership interests of the LLC are pledged to secure the Parent's obligations, as long as the LLC has not elected to be taxed as a corporation for income tax purposes. Conversely, equity interests in subsidiaries that are corporations, partnerships, or multi-member LLCs cannot be pledged as collateral to secure Parent's obligations to its lenders because repayment of the proceeds from any bond offering may not be secured directly or indirectly by "securities" or other "investment-type property" that is pledged as collateral. It is highly likely, if not a certainty, that Parent's lenders will require a pledge of Black Bear Disposal, LLC's membership interest since the lenders have required a pledge of the membership interests of all other landfills owned and operated by a subsidiary LLC of Parent to secure the obligations of Parent and its subsidiaries, as co-borrowers, under its credit facilities.

Bank of America

September 16, 2005

Mr. James C. Coffey
North Carolina Department of Environment and Natural Resources
Division of Waste Management
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

Reference: Black Bear Disposal, LLC

Dear Mr. Coffey;

The purpose of this letter is to provide you with information regarding the financial resources of Black Bear Disposal, LLC and its parent company Waste Industries USA, Inc. Bank of America serves as Administrative Agent for the $200 million Waste Industries USA, Inc revolving credit facility which is funded through a syndication of six (6) banks; Bank of America, Wachovia, RBC, BB&T, Comerica and LaSalle. Subject to customary borrowing conditions, the revolving credit facility provides up to $200 million in credit capacity which may be utilized in the form of cash borrowings and/or Letters of Credit.

As of today, September 16, 2005, the balance outstanding under the facility is $156.7 million. The company has informed us that they intend to request advances under the credit facility to develop the Black Bear landfill. The company's projected expenditures for Black Bear are consistent with acceptable use of proceeds under the credit facility.

Bank of America has over sixteen years of experience financing waste management companies. The bank has provided credit to Waste Industries USA, Inc for six years and we consider the company to be fiscally conservative and highly reputable in the waste industry.

Please call me at 617-434-9689 if you have any questions.

Sincerely,

Timothy M. Laurion
Managing Director
Bank of America; Environmental Services
100 Federal Street, MA5-100-09-07
Boston, MA 02110
tel 617.434.9689
fax 617.434.2160
timothy.laurion@bankofamerica.com

Cc: Steve Grissom, CFO Waste Industries USA, Inc.

USA
2000-2004
US Olympic Teams

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WASTE INDUSTRIES
3301 Benson Drive, Suite 601 Raleigh, NC 27609
Bus: (919) 325-3000 Fax: (919) 325-3013 www.waste-ind.com

January 23, 2005

RECEIVED
JAN 26 2005
By

Mr. John Hadfield, P.E.
Executive Director
Southeastern Public Service Authority (SPSA)
723 Woodlake Drive, Chesapeake, Virginia 23320

Dear Mr. Hadfield;

Please find a status report on our Black Bear landfill project in Camden County. We appreciate SPSA's interest in a joint venture and look forward to further discussions should your board find the opportunity as compelling as we do.

In November of 2002, the Camden County Board of Commissioners granted Black Bear Disposal, LLC an exclusive Franchise to build own and operate a regional solid waste landfill on 1,060 acres of property located adjacent to the Virginia state line at US 17. Black Bear Disposal, LLC is a wholly owned subsidiary of Waste Industries USA, Inc. a 35 year old publicly traded waste company based in Raleigh, North Carolina (NASD:WWIN). Among other things, the Franchise established a service area including the entire eastern seaboard of the US (east of I-75), an average daily volume of 10,000 tons and a useful life of 30 years corresponding to the Franchise term. The Franchise Agreement also established a host community benefits package comparable to other Regional landfills in North Carolina. This Franchise has been in place for over 2 years and is fully binding on the parties.

Site suitability studies began immediately and have now been substantially completed and submitted to the NC Department of Natural Resources, Division of Waste Management. As described in the attached facility plan, the landfill has an expected life of 27 years and can hold 100,000,000 cubic yards of waste. Over the course of the past two years, the company has acquired the land (1,060 acres), conducted a detailed site and geological evaluation, conducted public information meetings and invested substantial capital. The company is currently in negotiations with 4 major waste generators in order to establish the baseline volume which will make the venture viable. Our goal is to build relationships with a few (3-5) waste generators that meet high standards of integrity, financial strength and commitment.

Procedurally, the State is prepared to issue the Site Suitability determination but the County must confirm by vote that the Facility plan is consistent with the Franchise (which it is). The County is scheduled to hold a public meeting February 8th to review the Facility plan and will either vote to confirm at that meeting or shortly thereafter. This

vote should be procedural in nature and theoretically should not be delayed. The Franchise Agreement specifically requires the County to confirm the compliance and to do so in a timely manner. Once the Site Suitability Permit is issued, we will submit the construction plans for review. This work is also substantially complete and was developed in close coordination with the State, so we would expect a fairly fast review and approval process. Our goal is to receive the Permit to Construct this spring, so we can build the landfill during the summer construction season and be open for business in the fall. As with all Landfill projects there are many potential delays, so realistically we are planning on being operational in early 2006.

I hope this provides you with the information you seek with which to evaluate the joint venture opportunity. I have also included a copy of the facility plan and will forward our basic financial projections later today. Please feel free to contact me if you have any questions. This information is of course confidential, so please limit its dissemination to people on a need to know basis.

Sincerely,

Ven

Ven Poole
Vice President, Corporate Development

Joint Venture Framework

Southeast Public Service Authority (SPSA) is a public authority that provides solid waste disposal services to municipalities, residents and businesses within the SPSA service area commonly referred to as the "Southside" through a network of transfer stations, a landfill in Suffolk County, a Refuse Derived Fuel processing facility (RDF) and waste to energy facility (WTE). SPSA provides disposal services for the municipalities through various interlocal agreements. SPSA's landfill in Suffolk is nearing capacity and SPSA is currently seeking alternative disposal capabilities for non-processible waste (NPW) delivered into its system. The WTE system requires a certain waste volume and flow to maintain optimum operating efficiency. SPSA also requires a disposal option for ash and other non-hazardous by-pass waste created through its WTE system

Waste Industries USA, Inc. (WWIN) is a non-hazardous solid waste management company headquartered in Raleigh, North Carolina and operating through a family of subsidiaries in the southeast United States. Common shares of WWIN are traded publicly on the NASDAQ stock exchange and are subject to regulation by the US Securities and Exchange Commission.

Black Bear Disposal, LLC (BB) is a North Carolina corporation and wholly-owned subsidiary of Waste Industries USA, Inc (WWIN) Black Bear owns 1036 acres of land in the far northern portion of Camden County North Carolina adjacent to US highway 17. In 2002, the Camden Count Board of Commissioners (County) granted BB an exclusive Franchise to dispose of solid waste in the landfill. The Franchise allows BB to dispose of up to 10,000 tons per day of non-hazardous solid waste from a service area that includes the SPSA service area. The landfill is designed to provide 90,000,000 cubic yards of disposal capacity with an estimated life of more than 25 years. BB's permit application is currently in process with the NC DENR, Division of Waste Management. The landfill will be financed through direct investment by its parent WWIN and through Solid Waste Facility or Industrial Revenue bonds.

Reliable Waste, LLC (Reliable) is a solid waste collection, recycling and disposal company serving municipalities, Federal agencies, Military bases and businesses in the Greater Tidewater area including the SPSA service area as well as the area commonly referred to as the Peninsula. Reliable is a wholly-owned subsidiary of WWIN. Reliable is currently contracted with SPSA to deliver all processible waste to the SPSA system through June of 2006.

SPSA wishes to enter into a joint venture agreement (JVA) whereby SPSA will obtain priority rights and preferential pricing for alternative long term low cost disposal capacity for non-hazardous solid waste delivered to or created by its system. WWIN is willing to enter into the JVA in order to obtain a long term commitment of waste volume to BB's

landfill and to accelerate its recovery of capital invested in BB. Reliable is willing to enter into the JVA in order to obtain preferred pricing for solid waste disposal services within the SPSA service area. The following terms shall provide a framework for further discussion between the parties and is not binding on the parties. The information contained herein is confidential and may not be disclosed by either party except as require by law.

BB will charge the parties a **JVA Rate** of $18.00 per ton which shall be adjusted by ½ of the CPI annually. This rate shall be exclusive of federal, state and local taxes, fees or assessments.

BB and its affiliated companies will have sole responsibility and authority to market and sell disposal services to other parties outside the SPSA service area and within the landfill service area.

SPSA will have the non-exclusive right to market disposal services to customers within the SPSA service area at a rate no less than the **JVA Rate.**

SPSA will accelerate the completion and closure of the Suffolk landfill no later than December 31, 2005 and agrees not to develop a new landfill for so long as it is a party to the JVA. To the extent waste volumes from the Reliable transfer station are not contractually bound to be delivered to another landfill, Reliable will transport its NPW to the Suffolk landfill to assist with the acceleration and will pay the **JVA Rate** for the waste it delivers.

SPSA, BB and Reliable will assist a Shipping and/or Stevedore operator (to be determined) with the siting, permitting, construction and operation of an intermodal (shipping, rail and barge) facility (IF) in Chesapeake for the purpose of attracting waste streams that can be transported to the landfill from areas within the landfill service area. The parties may or may not elect to invest in said facility individually at their sole discretion.

BB will contract with waste generators and transporters to deliver waste volume to the landfill through rail, barge or truck. BB and SPSA agree to divert waste loads periodically to SPSA facilities in order to optimize SPSA's facility operations, but they will only do so once the waste volume coming into BB exceeds 4,000 tons per day.

Reliable agrees to deliver approximately 60% of its waste stream to the SPSA system based on the most efficient and cost effective routing of its trucks so that its customers will receive the most cost effective collection and disposal cost. Reliable will pay SPSA the **JVA Rate** for waste delivered to the RDF plant and $24.00 for waste delivered to any SPSA transfer station.

Waste Industries USA, Inc and its affiliates will have a priority right to 70% of the daily capacity of BB. SPSA will have a 30% priority right to the landfill's daily capacity.

minimum of

Upon closure of the Suffolk landfill, SPSA agrees to deliver 350,000 tons per year of waste to BB (60% of Suffolk landfill tons). If necessary to deliver this waste volume, SPSA will construct a transfer station at the Suffolk landfill and divert waste from other transfer stations within its system.

In consideration of the disposal rights and other covenants contained in the JVA, SPSA will loan WWIN $30,000,000. Amortization of the principal and interest will be paid as defined below. The loan shall be subordinate to the WWIN bank syndicate and shall be secured solely by the disposal rights contained in the JVA.

The loans will accrue interest of 3% payable upon availability of funds from BB after tax profits less capx. SPSA will be entitled to receive 30% of BB profits after tax and capital expenses for ongoing permitting and construction which shall be applied first to interest with the remaining portion applied to principal. ?

The term of the JVA will be for the life of the BB landfill. The loans shall be convertible to a 30% member interest in BB upon mutual agreement of the parties or mutually after 5 years at SPSA sole discretion as long as SPSA is not in default under the JVA. The loans shall convert automatically to a 30% member interest in BB in 2025.

If SPSA should become insolvent or otherwise cease to be a viable enterprise, SPSA will be deemed to be in default of the JVA. member contract to be not renew

NONDISCLOSURE AGREEMENT

This NONDISCLOSURE AGREEMENT (the "Agreement") is made on the 22 day of November, 2004, between Waste Industries USA, Inc., a North Carolina corporation, on behalf of itself and its subsidiaries and affiliates (collectively, the "Company"), and the Southeastern Public Service Authority of Virginia ("SPSA").

1. **Purpose.** The Company and SPSA wish to explore a possible business transaction relating to the development, financing, operation, delivery of waste to, and access to disposal capacity of, a landfill in Camden County, North Carolina (the "Transaction") pursuant to which the Company may disclose certain Confidential Information to SPSA.

2. **Definition.** "Confidential Information" means any and all information, technical data or know-how, including, but not limited to, that which relates to research, product plans, products, services, customers, markets, software, developments, inventions, processes, designs, drawings, engineering, hardware configuration information, marketing or finances, which Confidential Information (1) is related to the Transaction, (2) is otherwise designated by the Company to be confidential or proprietary or (3) which, under the circumstances surrounding disclosure, should be treated as confidential. "Confidential Information" does not include information, technical data or know-how that prior or after the time of disclosure becomes part of the public knowledge or literature, not as a result of any inaction or action of SPSA or its Representatives (as defined below), or is approved by the Company, in writing, for release. Without limiting the generality of the foregoing, Confidential Information includes any reports or documents created by SPSA or its Representatives that include, summarize or refer to the Confidential Information disclosed hereunder.

3. **Nondisclosure of Confidential Information.** SPSA, on behalf of itself, its affiliates, members, directors, officers, employees, advisors, agents, representatives or "controlling persons" (within the meaning of the Securities Exchange Act of 1934, as amended) (collectively, "Representatives"), agrees not to use any Confidential Information disclosed to it by the Company for its own use or for any purpose except to carry out discussions concerning, and the undertaking of, the possible Transaction with the Company. SPSA and its Representatives will not disclose any Confidential Information of the Company to their employees, except employees who are required to have the information in order to carry out the discussions of the contemplated business. SPSA and its Representatives will not disclose any Confidential Information to third parties without the prior written approval of the Company, which may include having such third parties sign a nondisclosure agreement in content substantially similar to this Agreement. SPSA and its Representatives will take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of the Company in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized hereunder to have any such information, which measures shall include the highest degree of care that SPSA and its Representatives utilize to protect their own Confidential Information of a similar nature. SPSA will notify the Company in writing of any misuse or misappropriation of Confidential Information of the Company that may come to its attention. SPSA shall be responsible for any breach of this Agreement by its Representatives. Notwithstanding any of the foregoing to the contrary, disclosure restrictions shall be lifted to the extent required by the Virginia Freedom of Information Act; provided, however, prior to any such required disclosure, SPSA will provide the Company with notice and give the Company a

(original to Purchasing for file)

reasonable opportunity to interpose an objection, obtain a protective order and/or redact sensitive information.

4. **Return of Materials.** At such time as the possible Transaction has been terminated or otherwise concluded, any materials or documents that have been furnished by the Company to SPSA and its Representatives will be promptly returned, accompanied by all copies of such documentation, and all notes, memoranda and other materials prepared by such party which reflect, include or are derived from Confidential Information will be promptly destroyed.

5. **No License.** Nothing in this Agreement is intended to grant any rights to SPSA or its Representatives under any patent or copyright, nor shall this Agreement grant SPSA or its Representatives any rights in or to the Confidential Information, except the limited right to review such Confidential Information solely for the purposes of determining whether to enter into the proposed business relationship between the parties.

6. **Nonsolicitation of Employees.** For a period of eighteen (18) months from the date hereof, SPSA and its Representatives shall not, directly or indirectly, solicit for purposes of employment, offer to hire, entice away, or offer to enter into any contract with any employee of the Company, or otherwise solicit, induce or otherwise encourage any such person to discontinue, cancel or refrain from entering into any relationship (contractual or otherwise) with the Company (other than through general advertising or other general solicitation not targeted to the Company's employees) without the Company's prior written consent. The foregoing does not prohibit SPSA from hiring Company employees who seek employment other than through the restricted manners set forth above.

7. **Noncontravention of Transaction.**

(a) So long as discussions are ongoing with respect to the Transaction, and for a period of one hundred eighty (180) days thereafter, SPSA and its Representatives shall not, directly or indirectly, and shall cause any person or entity controlled by them not to, propose, discuss, negotiate or enter into a transaction with any party other than the Company or its affiliates using a business or ownership plan or model, or a plan or model substantially similar to any business or ownership plan model, discussed by the Company with respect to the Transaction.

(b) For a period of eighteen (18) months from the date hereof, SPSA and its Representatives shall not, directly or indirectly, and shall cause any person or entity controlled by them not to, solicit specific customers that are discussed or disclosed by Company during the course of discussions contemplated by this Agreement. The requirements of this paragraph (b) shall not apply to Global Environmental Strategies, American Refuels, their parents, affiliates, or controlled entities, or to waste delivered by any source or customer originating in any of the Virginia cities of Chesapeake, Franklin, Norfolk, Portsmouth, Suffolk or Virginia Beach or counties of Isle of Wight and Southampton.

(c) For a period of eighteen (18) months from the date hereof, SPSA and its Representatives shall not, directly or indirectly, and shall cause any person or entity controlled by them not to interfere with or oppose the Company's plans to site and permit a landfill in Camden County, North Carolina and a port facility in the Tidewater area.

8. **Term.** Either party may terminate the discussions contemplated by this Agreement at any time and without further obligation to the other party by providing written notice to the other party specifying the date of discontinuation (the "Termination Date"). Except as otherwise provided herein, the commitments under this Agreement shall survive any termination of discussions between the parties, and shall continue for a period of five (5) years following the Termination Date.

9. **Miscellaneous.** This Agreement shall be binding upon and for the benefit of the undersigned parties, their successors and assigns, provided that Confidential Information of the Company may not be assigned without the prior written consent of the Company. Failure to enforce any provision of this Agreement shall not constitute a waiver of any term hereof.

10. **Governing Law; Jurisdiction.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Virginia.

11. **Remedies.** SPSA, on behalf of itself and its Representatives, agrees that its obligations hereunder are necessary and reasonable in order to protect the Company and the Company's business; and expressly agrees that monetary damages would be inadequate to compensate the Company for any breach of any covenants and agreements set forth herein. Accordingly, SPSA agrees and acknowledges that any such violation or threatened violation will cause irreparable injury to the Company and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the Company shall be entitled to injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages and shall waive, and cause its Representatives to waive, any requirement for the security or posting of any bond in connection with such remedy.

12. **No Obligation to Provide Confidential Information.** This Agreement does not constitute or create any obligation of the Company to provide any Confidential Information or other information to SPSA, but merely defines the duties and obligations of SPSA and its Representatives with respect to the Confidential Information to the extent it may be disclosed or made available. Under no circumstances is the Company obligated to disclose or make available any information, including Confidential Information, which in its sole and absolute discretion determines not to disclose. SPSA understands and acknowledges that the Company is not making any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information or any other information provided by the Company to SPSA Neither the Company nor its affiliates, directors, officers, employees, advisors, agents, representatives or "controlling persons" (within the meaning of the Securities Exchange Act of 1934, as amended) shall be liable to SPSA or any other person (including, without limitation, any of SPSA's Representatives) resulting from SPSA's use of the Confidential Information.

13. **Counterparts.** For the convenience of the parties, any number of counterparts of this Agreement may be executed by the parties hereto. Each such counterpart shall be, and shall be deemed to be, an original instrument, but all such counterparts taken together shall constitute one and the same Agreement.

[THE NEXT PAGE IS THE SIGNATURE PAGE.]

IN WITNESS WHEREOF, the parties have executed this Nondisclosure Agreement as of the date first set forth above.

"COMPANY"

WASTE INDUSTRIES USA, INC.

By: _____
Name: HARRY M. HARRIS
Title: COO

"SPSA"

SOUTHEASTERN PUBLIC SERVICE AUTHORITY OF VIRGINIA

By: _____
Name: JOHN D. HADFIELD
Title: EXECUTIVE DIRECTOR

SOUTHEASTERN PUBLIC SERVICE AUTHORITY

SPSA

Regional Office
723 Woodlake Drive, Chesapeake, VA 23320
phone: (757) 420-4700 fax: (757) 420-4177
www.spsa.com

BOARD OF DIRECTORS

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VICE CHAIRMAN

VIRGINIA BEACH
Michael J. Hansen

EXECUTIVE DIRECTOR
John S. Hadfield, P.E.
SPSA

March 25, 2005

Mr. Michael Patrick
Branch Manager
Waste Industries
3821 Cook Boulevard
Chesapeake, VA 23323

Dear Mr. ~~Patrick~~ Mike

At its meeting on March 23, 2005, the SPSA Board of Directors approved, for your consideration, an amendment to our "Commercial Disposal Contract." That contract was originally executed in July 2001 and will continue until June 30, 2006. I have enclosed two copies of the approved amendment.

This amendment relates to the "swap waste" provision of the contract. Your acceptance of the amendment is entirely voluntary on your part. However, if you wish to amend the contract by this approved amendment, please sign both copies, returning them to me for execution. I will return a fully executed copy to you. The amendment, if you choose to accept it, will become effective on the later of April 1, 2005, or the date on which you and I execute the amendment.

No other amendments to the contract have been considered and approved by SPSA's Board of Directors.

Please contact me if you have any questions.

Sincerely,

John S. Hadfield, P.E.
Executive Director

Enclosures

C:\MS2HROS ISE CORRES\Michael Patrick 03-23-05.doc

P.O. Box 1146
Chesapeake, VA 23320-1146

Printed on recycled paper using soy based inks

AMENDMENT TO COMMERCIAL DISPOSAL CONTRACT

THIS AMENDMENT TO CONTRACT ("Amendment") is made the ____ day of _____, 2005 by and between the **SOUTHEASTERN PUBLIC SERVICE AUTHORITY OF VIRGINIA ("SPSA")**, a political subdivision of the Commonwealth of Virginia, and _____ ("Contractor"), or their respective permitted assigns (together, the "Parties"). Unless otherwise defined herein, the capitalized terms used in this Amendment shall have the meaning given to them in the Commercial Disposal Contract between SPSA and Contractor dated _____ ____ ____, 2001 (the "Contract").

RECITALS:

A. SPSA and the Contractor entered into the Contract for the purposes described therein and subject to the terms and conditions set forth therein.

B. SPSA and Contractor have agreed to amend certain provisions dealing with Swap Waste as provided herein.

NOW, THEREFORE, in consideration of the promises contained herein and their mutual obligations, the Parties hereby agree as follows:

1. Section 4(b) of the Amendment is amended to provide that in lieu of SPSA's obligation to provide all or any portion of the prescribed amount of Swap Waste, SPSA may elect to pay by credit to Contractor within forty five (45) days following the end of the month an amount equal to the deficiency tonnage multiplied by the difference between the CPW rate for the Contractor then in effect and $16.00. This amount shall be credited against the Contractor's next invoice. This payment is not a damage payment, but rather a payment that may be made by SPSA instead of providing Swap Waste to the Contractor. In order to confirm the amendment set forth in this paragraph 1 of the Amendment, the Parties agree that the sentence in Section 4(b) of the Contract beginning with the words "For purposes of ascertaining Contractor's damages" and ending with the words "in effect and $16.00." is hereby deleted.

2. Section 4(b) is further amended to provide that the amount of the Hauling Fee shall be increased to $132.00 effective _____ 1, 2005 and there shall be no adjustment for changes in the Consumer Price Index during the remaining term of the Contract. In view of the fact that no adjustment in the Hauling Fee is required, the Parties agree that the six sentences in Section 4(b) beginning with the sentence that starts with the words "The Hauling Fee set forth above (the "Initial Rate")" and ending with the sentence that concludes with the words "from $150.00 to $142.50, commencing July, 2004." are hereby deleted in their entirety.

3. All of the terms of the Contract as amended hereby are hereby ratified and confirmed and remain in full force and effect. In the event of a conflict between the terms, conditions and provisions of the Contract and this Amendment, the terms, conditions and provisions of this Amendment shall prevail. This Amendment is executed under seal and the designation "(SEAL)" next to the signature line of the person executing this Amendment shall be as effective as the affixing of a seal physically hereto.

WITNESS the following signatures and seals:

Date

SOUTHEASTERN PUBLIC SERVICE AUTHORITY OF VIRGINIA

By:_____(SEAL)
John S. Hadfield
Executive Director

723 Woodlake Drive
Chesapeake, VA 23320
Telecopier/Fax #: 757-424-4133

Date

CONTRACTOR

By:_____(SEAL)
Name:
Title:_____

ADDRESS:
Telecopier/Fax #:_____

F:\CM\Documents\Private Haulers Contract Amendment 03-25-05.DOC

1-636609.1
03/25/2005

SOUTHEASTERN PUBLIC SERVICE AUTHORITY

SPSA

Regional Office
721 Woodlake Drive, Chesapeake, VA 23320
phone: (757) 420-4700 fax: (757) 424-4133
www.spsa.com

BOARD OF DIRECTORS

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Dillon O. Jones

SUFFOLK
Leroy Bennett
SECRETARY/TREASURER

VIRGINIA BEACH
Michael J. Hartz

EXECUTIVE DIRECTOR
John S. Hadfield, P.E.
SPSA

June 13, 2005

Mr. Mike Patrick
Branch Manager
Waste Industries, Inc.
3821 Cook Boulevard
Chesapeake, Virginia 23323

Dear Mr. Patrick:

SPSA has prepared its budget for next year, which begins July 1, 2005. Many of the fees SPSA charges will be changing. This is to advise you that, in accordance with your contract with SPSA, your tipping fee rate for Commercial Processable waste will increase on July 1, 2005. The new rate will be $42 per ton, which is 5% greater than the current rate.

If you have any questions, please advise me.

Sincerely,

John S. Hadfield, P.E.
Executive Director

P.O. Box 1146
Chesapeake, VA 23320-1146

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Subject: Update
From: "Ven Poole" <ven@waste-ind.com>
Date: Thu, 15 Sep 2005 09:24:01 -0400
To: <JAMES.C.COFFEY@NCMAIL.NET>

Mr. Coffey,

Good to see you on Tuesday. I know we all look forward to finding a mutually acceptable resolution to the issue of financial qualification on Monday. As you know there still remains a great deal of engineering and design work to be done. We would like to make significant progress on the financial qualifications issue so that your team will feel confident enough of an ultimate solution to move forward with any final site suitability analysis that remains. As it has been some time since we've had any communication on the engineering side of the process, we'd appreciate a formal update at Monday's meeting on any application information or analysis that your people need. If there is **anything** we can be working on today, we'd really like to know about it after Monday's meeting.

Upon further review of the Narrative portion of our financial qualifications submittal, I found a couple of typographical errors and a minor modification that didn't make it into the notebook. If you don't mind, please print the attached revision and replace it in your notebook. There was nothing major, but we would like the public record to be clean and clear. Thank you in advance for your help on this item. As requested, I provided a copy of the notebook to Mr. Jim Gulick in the Attorney General's office. I believe I left the copy of our SEC 10Q report out of the cover pocket of one of the notebooks. Please let me know if you received yours, so I can make sure the proper party receives that missing document.

In closing, I would like to encourage you and your team not to wait until Monday if you have any questions or need clarification on any items submitted. We would like to bring additional answers/results or documents to the meeting if at all possible. So, if anything is not clear or you would like additional detail or clarification, please go ahead and call me or our attorney Jimmy Yates at Wyrick Robbins Yates and Ponton.

My direct dial numbers are:

877-7533 office
868-2899 cell

Jimmy can be reached at 781-4000 or jyates@wyrick.com

Thanks again,

Ven Poole
Vice President Corporate Development
Waste Industries USA, Inc.

NARRATIVE ONLY.doc **Content-Type:** application/msword
Content-Encoding: base64

HUFF, POOLE & MAHONEY, P.C.
ATTORNEYS & COUNSELLORS

Paul R. Schmidt, Esq.

Direct Dial: 757/518-2380
Email: pschmidt@hpmlaw.com

Reply to:
Virginia Beach

September 15, 2005

Received
SEP 20
Solid Waste
Section

Via UPS Overnight Mail

Jim Barber, Branch Head
Permitting Branch
Solid Waste Section – NCDENR
401 Oberlin Road, Suite 150
Raleigh, NC 27605

Re: FREEDOM OF INFORMATION ACT REQUEST
Our File Number: 13696.000105

Dear Mr. Barber:

This law firm represents the City of Chesapeake, Virginia. Pursuant to the Freedom of Information Act, we request a certified copy of any and all documents pertaining to financial qualifications submitted by either Black Bear Disposal, LLC or Waste Industries, Inc. in connection with an application for site suitability determination for a proposed landfill to be located in the extreme northwest corner of Camden County, North Carolina.

We would be happy to reimburse you for all copying costs. Please contact me at my direct dial number above with any questions.

With kind regards, I am

Very truly yours,

HUFF, POOLE & MAHONEY, P.C.

By

Paul R. Schmidt

PRS/tg

North Carolina
Department of Environment and Natural Resources

Division of Waste Management

Michael F. Easley, Governor
William G. Ross Jr., Secretary
Dexter R. Matthews, Director

NCDENR
NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

FAX COVER SHEET

DIVISION OF WASTE MANAGEMENT
SOLID WASTE SECTION

DATE: 9/8/05

TO: Ven Poole, Waste Industries, Inc

FAX NO: 919.325.3013

FROM: Ed Mussler

PAGES (INCLUDING THIS COVER SHEET) 5

Ven,
Per your email request of September 8, 2005, here is a copy of the corporate guarantees as follows:

1. April 2004 between Waste Management, Inc. and DENR
2. December 2003 between Waste Management of Carolina's, Inc. and DENR

As I explained in my email, there are more documents in Riegelridge permit file. Official files are kept at the central office here in Raleigh and are available for public review.

Let me know if there is anything else
ED

1646 Mail Service Center, Raleigh, North Carolina 27699-1646
Phone: 919-508-8400 \ FAX: 919-715-3605 \ Internet: www.wastenotnc.org
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FAX RESPONSE NUMBER (919) 733-4810

1/5

GUARANTY AND ASSURANCE OF WASTE MANAGEMENT, INC.

This Guaranty and Assurance of Waste Management, Inc. ("Guaranty") is executed as of April ___, 2004 by **WASTE MANAGEMENT, INC.**, a Delaware corporation ("Guarantor") in favor of the **NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES** ("DENR");

WITNESSETH:

WHEREAS, Riegel Ridge, LLC ("Subsidiary") is an indirect, wholly owned subsidiary of Guarantor;

WHEREAS, Subsidiary's principal business purpose is the development and permitting of a solid waste landfill in Columbus County, North Carolina to be owned and operated by Subsidiary (the "Landfill");

WHEREAS, Subsidiary has submitted to DENR an application for the permits needed to construct and operate the Landfill ("Permit");

WHEREAS; Subsidiary has not operated a landfill or similar facility;

WHEREAS, Subsidiary does not currently, on its own, have sufficient assets to permit and develop the Landfill and meet all other requirements inherent in, and expected to be imposed in connection with, the permitting and development of the Landfill;

WHEREAS, DENR has sought assurances regarding the ability of Subsidiary to provide any necessary financial capability and assurances in regard to the Permit for the Landfill, which must be provided prior to initiation of any construction of, or disposal operations at, the Landfill;

WHEREAS, Guarantor provides this Guaranty to DENR as an assurance and inducement to the granting of the Permit and any other necessary permits, certifications, or other approvals needed for the Landfill and, to that end, hereby guarantees the provision by and performance of Subsidiary of any and all financial assurance requirements and any other obligations pursuant to any applicable DENR regulations or permit conditions or comparable and related federal requirements;

NOW THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Guarantor agrees as follows:

1. Guarantor hereby unconditionally guaranties the performance and provision of the following obligations of Subsidiary (collectively, the "Obligations"):

(a) any financial assurance or performance instruments required by any applicable DENR regulation or permit condition, including those state and/or federal requirements appropriately incorporated into the permits or other necessary approvals granted to the Landfill;

(b) any requirements imposed by 33 U.S.C. §§ 1251, et seq. (the "Clean Water Act"), including any water quality requirements imposed under Clean Water Act §401 or related certifications, if any, including any water quality certifications pursuant to 15A NCAC 2H .0500;

(c) N. C. Gen. State §§ 130A-294(b2)(1) and (b3);

(d) 15A NCAC 13B .1628 and other applicable rules promulgated pursuant to N. C. Gen. State §§ 130A-294(j); and

(e) N. C. Gen. State §§ 143-215.1 and 15A NCAC 2H .0100

2. DENR shall have the right at any time and from time to time, to (i) accept partial payments on account of any of the Obligations, and (ii) grant extensions or renewals of all or any part of any of the Obligations without affecting Guarantor's obligations to DENR under this Guaranty.

3. This Guaranty may not be assigned by DENR without the prior written consent of Guarantor.

4. This Guaranty shall continue in force as long as any of the Obligations are outstanding.

5. Guarantor will repay to DENR all monies, including but not limited to attorneys' fees, paid by DENR in defense of any action asserted against DENR by a trustee in Bankruptcy for Subsidiary in a proceeding brought under 11 U.S.C. §547 of the United States Bankruptcy Code for the recovery of monies received by DENR from Subsidiary in payment or satisfaction of the Obligations.

6. DENR's rights hereunder shall be reinstated and revived, and this Guaranty shall be fully enforceable, with respect to any amount at any time paid on account of the Obligations which thereafter shall be required to be restored or returned by DENR upon the bankruptcy, insolvency or reorganization of Subsidiary or the Guarantor all as though such amount had not been paid.

7. No postponement or delay on the part of DENR in the enforcement of any right hereunder shall constitute a waiver of such right.

8. This Guaranty is governed by the laws of the State of North Carolina. It is enforceable by DENR in the courts of North Carolina.

IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of April ___, 2004.

WASTE MANAGEMENT, INC.

By: Chris C Rice
Vice President and Treasurer

By: Jay Clark
Assistant Treasurer

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GUARANTY AND ASSURANCE OF PARENT CORPORATION

This Guaranty and Assurance of Parent Corporation ("Guaranty") is executed as of December 2nd, 2003 by **WASTE MANAGEMENT OF CAROLINAS, INC.**, a North Carolina corporation ("Guarantor"), in favor of the **NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES** ("DENR");

WITNESSETH:

WHEREAS, Riegel Ridge, LLC ("Subsidiary") is a wholly-owned subsidiary of Guarantor;

WHEREAS, Subsidiary's principal business purpose is the development and permitting of a solid waste landfill in Columbus County, North Carolina to be owned and operated by Subsidiary (the "Landfill");

WHEREAS, Subsidiary has submitted to DENR an application for the permits needed to construct and operate the Landfill ("Permit");

WHEREAS; Subsidiary has not operated a landfill;

WHEREAS, Subsidiary does not currently, on its own, have sufficient assets to permit and develop the Landfill and meet all other requirements inherent in, and expected to be imposed in connection with, the permitting and development of the Landfill;

WHEREAS, DENR has sought assurances regarding the ability of Subsidiary to provide any necessary financial assurances in regard to the Permit for the Landfill, which must be provided prior to initiation of any construction of, or disposal operations at, the Landfill;

WHEREAS, Guarantor provides this Guaranty to DENR as an assurance and inducement to the granting of the Permit and any other necessary permits, certifications, or other approvals needed for the Landfill and, to that end, hereby guarantees the provision by and performance of Subsidiary of any and all financial assurance requirements and any other obligations pursuant to any applicable DENR regulations or permit conditions or comparable and related federal requirements;

NOW THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Guarantor agrees as follows:

1. Guarantor hereby unconditionally guaranties the performance and provision by Subsidiary of the following obligations of Subsidiary (collectively, the "Obligations"):

(a) any financial assurance or performance instruments required by any applicable DENR regulation or permit condition, including those state and/or federal requirements appropriately incorporated into the permits or other necessary approvals granted to the Landfill;

(b) any requirements imposed by 33 U.S.C. §§ 1251, et seq. (the "Clean Water Act"), including any water quality requirements imposed under Clean Water Act §401 or related certifications, if any, including any water quality certifications pursuant to 15A NCAC 2H .0500;

(c) N. C. Gen. State §§ 130A-294(b2)(1) and (b3);

(d) 15A NCAC 13B .1628 and other applicable rules promulgated pursuant to N. C. Gen. State §§ 130A-294(j); and

(e) N. C. Gen. State §§ 143-215.1 and 15A NCAC 2H .0100

2. DENR shall have the right at any time and from time to time, to (i) accept partial payments on account of any of the Obligations, and (ii) grant extensions or renewals of all or any part of any of the Obligations without affecting Guarantor's obligations to DENR under this Guaranty.

3. This Guaranty may not be assigned by DENR without the prior written consent of Guarantor.

4. This Guaranty shall continue in force as long as any of the Obligations are outstanding.

5. Guarantor will repay to DENR all monies, including but not limited to attorneys' fees, paid by DENR in defense of any action asserted against DENR by a trustee in Bankruptcy for Subsidiary in a proceeding brought under 11 U.S.C. §547 of the United States Bankruptcy Code for the recovery of monies received by DENR from Subsidiary, if any, including as a result of the Guarantor's obligations hereunder. Guarantor further agrees to repay any monies paid by DENR in settlement of any such action or in satisfaction of any judgment rendered against DENR in such an action.

6. DENR's rights hereunder shall be reinstated and revived, and this Guaranty shall be fully enforceable, with respect to any amount at any time paid on account of the Obligations which thereafter shall be required to be restored or returned by DENR upon the bankruptcy, insolvency or reorganization of Subsidiary or the Guarantor all as though such amount had not been paid.

7. No postponement or delay on the part of DENR in the enforcement of any right hereunder shall constitute a waiver of such right.

8. This Guaranty is governed by the laws of the State of North Carolina. It is enforceable by DENR in the courts of North Carolina.

IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of December 2nd, 2003.

WASTE MANAGEMENT OF CAROLINAS, INC.

By: _____
Gary Brotherton, as Vice-President

State of North Carolina
Department of Justice

ROY COOPER
Attorney General

114 W. Edenton Street
9001 Mail Service Center
Raleigh, NC 27699-9001

jgulick@ncdoj.com
Phone: (919) 716-6940
Fax: (919) 716-6767

6

September 1, 2005

Received
SEP 2005
Waste
Management

Donald R. Vaughan, Esq.
612 West Friendly Avenue
Greensboro, NC 27401

Via facsimile to 336-273-1445

Re: Black Bear Disposal, LLC Municipal Solid Waste Landfill in Camden County

Dear Don:

I am writing to confirm that representatives of our client, Division of Waste Management (DWM), and we will meet with you and your clients on September 19, 2005, at 1:30 P.M. in conference room 301 on the third floor of the Attorney General's offices in the Old Education Building in Raleigh. Let me know if you or your clients need further directions.

The purpose of the meeting will be to discuss how Black Bear Disposal, LLC (the current applicant) and Waste Industries USA, Inc. (parent of the current applicant) propose to demonstrate that they are financially qualified, within the meaning of N.C.G.S. § 130A-294(b2)(1), to carry out the activities associated with a permit to construct and operate a municipal solid waste landfill in Camden County. Pursuant to N.C.G.S. § 130A-294(b3), the applicant for a permit must satisfy DWM that the applicant has met the requirements of § 130A-294(b2) before DWM is required to otherwise review the application.

DWM has confirmed that as of today's date it has not received any of the information requested in its letters to Mr. D. Steve Grissom, dated April 5, 2005, and June 29, 2005. We are informed that this information is needed in order to resolve outstanding financial qualification issues. Black Bear Disposal, LLC, as permit applicant, must be able to demonstrate that it now has, and will continue to have, unencumbered capital sufficient to cover each of the undertakings and assurances outlined in the guidance document. As that guidance document shows, DWM has determined that the demonstration should be based on a realistic projection of costs for each of the items in the guidance document provided on April 5, 2005, taking into account the projected size, scope and environmental setting of the proposed landfill. In other words, our client needs specifics with respect to

the various items listed in the guidance document. In order for the September 19 meeting to be productive, we and especially our client really need this information by September 12 at the latest.

As I indicated when we talked, if your clients would like DWM to consider a corporate guaranty as part of the financial package assembled by Black Bear Disposal, LLC and Waste Industries USA, Inc. to demonstrate their financial qualification to carry out the proposed permitted activities, they should submit a draft guaranty document to DWM for review prior to our meeting. I understand that our client reconfirmed today that they have not received a draft guaranty document. Again, it would be most helpful if a draft could be delivered to DWM, with a courtesy copy to our office, no later than September 12 and preferably by September 5. Otherwise, we cannot have a meaningful discussion of it on September 19.

Please call me if you have any further questions. We look forward to meeting you on the 19th.

Sincerely,

Jim

James C. Gulick
Senior Deputy Attorney General

cc: James C. Coffey
Chief, Solid Waste Section
Division of Waste Management

2/2

State of North Carolina
Department of Justice
9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

ROY COOPER
ATTORNEY GENERAL

Reply to:
Nancy E. Scott
Environmental Division
Phone: (919) 716-6978
Fax: (919) 716-6939

July 27, 2005

MEMORANDUM

TO: James Coffey, Section Chief
James Barber, Permitting Branch Head
Solid Waste Section, Division of Waste Management

FROM: Nancy Scott, Assistant Attorney General NES

RE: Letter from Chesapeake, Virginia, City Attorney regarding proposed Black Bear Disposal, LLC, Landfill in Camden County, North Carolina

I am forwarding to you by cover of this memorandum a letter dated July 20, 2005 (received July 25) from Ronald S. Hallman, City Attorney for Chesapeake, Virginia. The letter formally states the City's position that N.C.G.S. § 130A-294(b1)(3) requires that Black Bear also obtain a franchise from Chesapeake because appurtenances of the landfill will be located within the boundary of the City. The City bases its opinion upon the easement acquired by Black Bear for drainage of the landfill property through a series of man-made ditches traversing the property of Frank Williams in Camden County, North Carolina and Chesapeake, Virginia. Water collected in the ditches discharges into the Northwest River within the City of Chesapeake.

Attachment

Chesapeake
VIRGINIA

City of Chesapeake

Office of the City Attorney
306 Cedar Road
Chesapeake, Virginia 23322
(757) 382-6586
FAX (757) 382-8749

NORTH CAROLINA
ATTORNEY GENERAL'S OFFICE
JUL 25 2005
ENVIRONMENTAL DIVISION
RECEIVED

July 20, 2005

Nancy Scott, Esquire
Environmental Division
Office of the Attorney General
Post Office Box 629
Raleigh, North Carolina 27602

Dear Ms. Scott:

Thank you again for taking time out of your busy schedule to consider concerns of the City of Chesapeake relating to the proposed landfill in Camden County. I recall at our meeting with the North Carolina Department of Environment and Natural Resources that you asked whether the appurtenant drainage ditches in Virginia are physically connected to the ditches running from the state line southerly to the landfill site. Based on aerial photography, topographic maps and field observations, the Chesapeake City Engineer believes that the ditches in Virginia and North Carolina are connected and could serve to carry run-off from the landfill into Chesapeake and the Northwest River Watershed. The Chesapeake City Engineer has specifically concluded that:

> [T]he northern portion of the [landfill] property drains to the state line east-west ditch, flowing westward. The flow continues westward to the north-south ditch on the Frank Williams Farm and then northward into the Northwest River.

Based on this finding, the ditches in Virginia over which Black Bear, L.L.C. owns easements are "appurtenances" of the landfill. Thus, City of Chesapeake approval is required by North Carolina (N.C.G.S. § 130A-294(b1)(3)) law due to the location and proposed use of the ditches to carry stormwater run-off from the landfill into Virginia.

"The City of Chesapeake adheres to the principles of equal employment opportunity. This policy extends to all programs and services supported by the City."

Please feel free to contact me, Bryan Plumlee, or Reeves Mahoney, if you wish to discuss this issue further. Thank you for your kind consideration.

Very truly yours,

Ronald S. Hallman
City Attorney

RSH/dsh

cc: Reeves Mahoney, Esquire
Bryan Plumlee, Esquire
Mary Ann Saunders, Assistant to the City Manager

ROY COOPER
ATTORNEY GENERAL

State of North Carolina

Department of Justice
9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

Reply to:
Nancy E. Scott
Environmental Division
Phone: (919) 716-6978
Fax: (919) 716-6600

July 27, 2005

Ronald S. Hallman, Esquire
City Attorney
City of Chesapeake
306 Cedar Road
Chesapeake, Virginia 23322

Re: Proposed Black Bear Disposal, LLC landfill in Camden County, N.C.

Dear Mr. Hallman:

Thank you for your letter dated July 20, 2005, which I received on July 25. The letter formally states the City's position that N.C.G.S § 130A-294(b1)(3) requires that Black Bear Disposal, LLC obtain a franchise from the City. The position is based upon the conclusion that man-made drainage ditches in which Black Bear has acquired an easement for drainage from the landfill property are "appurtenances" of the landfill. Some of the ditches are located in the City of Chesapeake, and water collected in the ditches discharges into the Northwest River within the City.

I am today forwarding your letter to my clients in the Solid Waste Section for consideration. If the City has additional facts regarding this matter, please forward them to the attention of the Solid Waste Section, Division of Waste Management, N.C. Department of Environment and Natural Resources, 401 Oberlin Road, Suite 150, Raleigh, N.C. 27705.

Very truly yours,

Nancy E. Scott

Nancy E. Scott,
Assistant Attorney General

C. James Coffey
James Barber

State of North Carolina
Department of Justice
9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

ROY COOPER
ATTORNEY GENERAL

Reply to:
Nancy E. Scott
Environmental Division
Phone: (919) 716-6978
Fax: (919) 716-6939

July 28, 2005

MEMORANDUM

TO: James Coffey, Section Chief
James Barber, Permitting Branch Head
Solid Waste Section, Division of Waste Management

FROM: Nancy Scott, Assistant Attorney General NES

RE: Letter from attorney Reeves Mahoney, retained by City of Chesapeake, Virginia, regarding the Army Corps of Engineers determination for the proposed Black Bear Disposal, LLC, Landfill in Camden County, North Carolina

I am forwarding to you by cover of this memorandum a letter dated July 21, 2005 from Reeves Mahoney, attorney retained by the City of Chesapeake, Virginia. The letter contains a timeline prepared by Mr. Mahoney relating to the proposed Black Bear Disposal Landfill in Camden County. Also attached is a copy of the Corps determination which was included in the site study application by Black Bear. The City, through Mr. Mahoney, questions the determination by the Corps that it has no jurisdiction over the Frank Williams Farm land because it is "prior converted cropland". The determination was made on 9/27/2002, at the request of Mr. Williams, who sold the land to Black Bear two years later. Mr. Mahoney also cites case law decided in 2003 which he believes may indicate that the Corps has jurisdiction over the property proposed for the landfill.

Attachments

HPM
HUFF, POOLE & MAHONEY, P.C.
ATTORNEYS & COUNSELLORS

Reeves W. Mahoney, Esq.

Direct Dial: 757/552-6032
Email: rmahoney@hpmlaw.com

Reply to:
Virginia Beach

July 21, 2005

VIA FACSIMILE & MAIL
Ms. Nancy Scott, Esq.
North Carolina Assistant Attorney-General
9001 Mail Service Center
Raleigh, NC 27699-9001

Re: Proposed Black Bear Disposal, L.L.C. Landfill
Our File No.: 13696.000105

Dear Nancy:

Below please find an issues specific time line for your review prior to our telephone call this afternoon:

1.	9/27/02	USACE makes a Jurisdictional Determination of "No waters of the United States, to include wetlands" on Frank T. Williams Farms tract No. 9197.
2.	10/4/02	Black Bear Disposal, L.L.C., a North Carolina Limited Liability Corporation of perpetual duration is formed.
3.	10/21/02	First Vote on Franchise Agreement by the Camden County Board of Commissioners.
4.	11/2/02	Second Vote on Franchise Agreement by the Camden County Board of Commissioners, and execution of same by Chairman despite condition precendent not being met.
5.	12/3/02	Earliest date on which Black Bear could have submitted a zoning permit application. (Site Plan Dated December 3, 2002).
6.	12/4/02	Date on which written findings were to be presented to Camden County Board of Commissioners to fulfill condition precedent to execution of Franchise Agreement. No written findings were made.
7.	12/5/02	First Zoning Permit issued to Black Bear.

8. 7/23/03 Judge Boyle of the Eastern District of North Carolina issues his Opinion in *North Carolina Shellfish Growers Assoc. v. Holly Ridge Assoc., L.L.C.*, 278 F.Supp.2d 654 (E.D.N.C. 2003).

9. Sept. 04 Site Study submitted to NCDENR.

10. 10/1/04 Black Bear Disposal buys landfill site from Frank Williams.

With regards, I am

Very truly yours,

Reeves W. Mahoney

RWM/keb
cc: Ronald H. Hallman, Esq., City Attorney, City of Chesapeake

U.S. ARMY CORPS OF ENGINEERS
WILMINGTON DISTRICT

Action ID 200211083 County Camden

NOTIFICATION OF JURISDICTIONAL DETERMINATION

Property Owner/Agent: Frank T. Williams Farms
Address: Post Office Box 7100
Virginia Beach, Virginia 23457
Telephone No.: (757)426-6465
Size and location of property (waterbody, highway name/number, town, etc.) Approx 793.3 acres of PC cropland located 7 miles N of South Mills, off of US Hwy17N, adjacent to the Dismal Swamp Canal.

Indicate Which of the Following Apply:

_ There are waters of the U.S. and/or wetlands, on the above described property which we strongly suggest should be delineated and surveyed. The surveyed wetland lines must be verified by our staff before the Corps will make a final jurisdictional determination on your property.

_ Because of the size of your property and our present workload, our identification and delineation of your wetlands cannot be accomplished in a timely manner.. You may wish to obtain a consultant to obtain a more timely delineation of the wetlands. Once the consultant has flagged a wetland line on the property, Corps staff will review it, and, if it is accurate, we strongly recommend that you have the line surveyed for final approval by the Corps. The Corps will not make a final jurisdictional determination on your property without an approved survey.

_ The waters of the U.S. and/or wetlands, on your property have been delineated, and the limits of the Corps jurisdiction have been explained to you. Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.

X There are no waters of the U.S., to include wetlands, present on the above described project area which are subject to the permit requirements of Section 404 of the Clean Water Act (33 USC 1344). Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.

_ The property is located in one of the 20 Coastal Counties subject to regulation under the Coastal Area Management Act (CAMA). You should contact the Division of Coastal Management in Washington, NC, at (252) 946-6481 to determine their requirements

Placement of dredged or fill material in Waters of the US and/or wetlands on this property without a Department of the Army permit may constitute a violation of Section 301 of the Clean Water Act (33 USC 1311). A permit is not required for work restricted entirely to existing non-wetland area. If you have any questions regarding this determination and/or the Corps of Engineers regulatory program, please contact Laura D. Toler at (252)975-1616 ext.28.

Basis For Determination: USDA-FSA records show that tract No. 9197 has been drained and cultivated continuously before 12/23/85 and currently under soybean production.

Property Owner/Authorized Agent Signature _____

Corps Regulatory Official Laura D. Toler
Date 9/26/02 Expiration Date 9/26/07

SURVEY PLAT OR FIELD SKETCH OF THE DESCRIBED PROPERTY AND THE WETLAND DELINEATION FORM MUST BE ATTACHED TO THE FILE COPY OF THIS FORM

RECEIVED
OCT - 1 2002

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Company: NCDENR
FAX Number: 919-733-4810
Number of Pages: 2
(including this cover)

From: Robert Kelly-Goss
Phone Number: 252 335 8117
FAX Number: 252 335 4415
E-mail Address: rKelly-goss@coxnc.com

MESSAGE:

FOI Request

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DailyAdvance.com
216 South Poindexter Street
Elizabeth City, NC 27909

Paul Crissman - Project Manager
North Carolina
Dept. of Environment
and Natural Resources

20 July, 2005

RE: Freedom of Information Request

Mr. Crissman,

Under the Freedom of Information Act I am requesting all documents sent to your office by the City of Chesapeake, Va. regarding their objections to the Black Bear Landfill, LLC; a proposed private landfill to be located in Camden County, North Carolina.

Please forward all requested material to me directly. My address, phone number and fax number are provided below. Thank you for your time.

Sincerely,

Robert Kelly-Goss
Reporter
Daily Advance
215 S. Water St.
Elizabeth City, N.C. 27909
Phone: 252-335-8117
Fax: 252-335-4415

COUNTY OF CURRITUCK

RESOLUTION REQUESTING FEDERAL REVIEW OF PROPOSAL OF BLACK BEAR DISPOSAL, L.L.C., TO OPERATE A 490-ACRE MUNICIPAL WASTE LANDFILL IN CAMDEN COUNTY, NORTH CAROLINA, AND CURRITUCK COUNTY, NORTH CAROLINA, IN CLOSE PROXIMITY TO THE WATER SOURCES LOCATED IN CURRITUCK COUNTY

WHEREAS, on November 4, 2002, Camden County, North Carolina, granted a franchise agreement to Black Bear Disposal, L.L.C. ("Black Bear"), a wholly owned subsidiary of Waste Industries USA, Inc., for a 490-acres municipal waste landfill on a 1,060 acre parcel, located approximately 3,000 feet from the center line of U.S. Route 17; and

WHEREAS, the proposed landfill is to be constructed near Currituck County and near the headwaters of the Northwest River, which drains into Tulls Bay located in Currituck County; and

WHEREAS, preliminary information indicates that the surface water run-off from the landfill will be discharged to the Great Dismal Swamp Canal, a navigable waterway and historic site; and

WHEREAS, in addition to concerns regarding the potential for contaminated surface run-off to the Northwest River and the Great Dismal Swamp Canal, the County of Currituck also fears contamination of ground water and knows of no infallible system that will offer citizens complete protection against degradation of ground water quality; and

WHEREAS, because parts of Currituck County are not served with public water, the residents and businesses in the area depend on wells as their sole source of drinking water and would be put at serious risk if ground water quality is degraded by leachate, hog waste or any other unhealthy substance; and

WHEREAS, the potential for contaminated sheet flow into Tulls Bay is a serious endangerment of the public health, safety, and welfare;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of the County of Currituck:

1. Assert standing as an interested and affected party to the permit proceedings for the landfill being conducted by Camden County and the North Carolina Department of Environment and Natural Resources ("DENR").

2. Seek an environmental impact statement for the landfill project under the National Environmental Policy Act to determine the likelihood and extent of adverse impact on federal lands; discharge of contaminated run-off into federal waters; contaminated surface and sheet water flow into the Northwest River, which drains into Tulls Bay in Currituck County; degradation of potable ground water serving as a source of drinking water for residents; and negative impact on the public use of federally funded projects.

3. Seek the support and aid of the U.S. Congress in protecting and promoting Currituck County's vital interests in the location of the proposed Black Bear landfill, as well as important federal interests.

4. Seek the support, aid and intervention of the Governor of North Carolina, the North Carolina General Assembly and the Secretary of Natural Resources in protecting Currituck County and the State from potential adverse impact from the landfill and promoting the health, safety and welfare of the residents of North Carolina.

5. Challenge adverse decisions of Camden County and DENR to the extent allowed by law and supported by fact.

6. Require Black Bear to demonstrate to DENR, Camden County and the County of Currituck that it will construct and operate and infallible system for the absolute protection of ground water aquifers serving Currituck County residents and surface water flows into the Northwest River.

7. Consider whether public emergency services are adequate to respond in case of an emergency generated by the landfill, such as spill or fire.

8. Take any other action that will promote the best interests of the County of Currituck and its citizens.

ADOPTED by the Board of Commissioners ~~of the~~ County of Currituck, North Carolina, this 20th day of June, 2005.

Paul R. Martin, Chairman
Currituck Board of Commissioners

ATTEST:

Gwen H. Keene, CMC
Clerk to the Board

WYRICK ROBBINS YATES & PONTON LLP

POST OFFICE DRAWER 17803
RALEIGH, NORTH CAROLINA 27619

4101 LAKE BOONE TRAIL
RALEIGH, NORTH CAROLINA 27607-7506
email:jyates@wyrick.com

PHONE: 919/781-4000
FAX: 919/781-4865

MEMORANDUM

TO: J. B. Kelly, General Counsel
State of North Carolina Department of Justice

CC: Ven Poole
Don Vaughan
Grady Shields

FROM: Jimmy Yates

RE: Black Bear Disposal, LLC/Waste Industries USA, Inc./Camden County Landfill

DATE: July 12, 2005

Thanks very much for seeing us on such short notice to discuss Waste Industries' concerns. Waste Industries certainly believes Black Bear Disposal, LLC is financially qualified to carry out all activities for which construction and operating permits for a landfill are required. From a legal perspective, there are two points where there appears to be confusion that we were addressing today. First, NCGS §130A-309.27(a) and (b) (a copy of which is attached) addresses the joint and several liability of an owner or operator of a landfill for the improper operation and closure of the landfill. Please note in Section (a)(1) that by definition "owner operator" includes "any person or corporation which owns a majority interest in any other **corporation** which is the owner operator of a landfill". Noticeably absent is inclusion of any kind of non-corporate subsidiary, such as an LLC. We believe this is one area that may be giving DENR heartburn. To confirm Ven Poole's offer today, Waste Industries is absolutely agreeable to be bound contractually by the provisions of this statute as if Black Bear were a subsidiary corporation as opposed to a subsidiary LLC.

The second possible area of confusion is whether or not Black Bear Disposal, LLC has, as a standalone entity, the financial wherewithall to construct and operate the landfill during its start-up phase. Clearly Black Bear Disposal, LLC has already expended approximately $10M in funds to purchase the land free and clear. Furthermore, we believe that the DENR people are satisfied that after the start-up years when construction is complete and operations have commenced, the likelihood of financial failure is not very likely, especially when you take into consideration the bonds in place for the closure and post-closure of the landfill and the third party liability insurance policy for third party liability claims. To address any financial concerns DENR may have relating to this transitional period, I will reiterate what Ven Poole stated today, that Waste Industries has previously offered to enter into an Unconditional Guaranty Agreement

guaranteeing all financial obligations of Black Bear Disposal, LLC during the 5-year period commencing upon the issuance of the construction permit to Black Bear Disposal, LLC, and that offer remains outstanding.

I hope this information provides further explanation of what we believe to be DENR's concerns and Waste Industries' suggested resolutions. Please do not hesitate to call Don, Ven or me if you have any further questions or if we can provide further information or explanation to you.

Attachment

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(2) "Treatment" means any process, including steam sterilization, chemical treatment, incineration, and other methods approved by the Commission which changes the character or composition of medical waste so as to render it noninfectious.

(b) It is the intent of the General Assembly to protect the public health by establishing standards for the safe packaging, storage, treatment, and disposal of medical waste. The Commission shall adopt and the Department shall enforce rules for the packaging, storage, treatment, and disposal of:

(1) Medical waste at facilities where medical waste is generated;
(2) Medical waste from the point at which the waste is transported from the facility where it was generated;
(3) On-site and off-site treatment of medical waste; and
(4) The off-site transport, storage, treatment or disposal of medical waste.

(c) No later than 1 August 1990, the Commission shall adopt rules necessary to protect the health, safety, and welfare of the public and to carry out the purpose of this section. Such rules shall address, but need not be limited to, the packaging of medical waste, including specific requirements for the safe packaging of sharps and the segregation, storage, treatment, and disposal of medical wastes at the facilities in which such waste is generated. (1989, c. 784, s. 2; 1995 (Reg. Sess., 1996), c. 594, s. 20.)

§ 130A-309.27. Landfill escrow account.

(a) As used in this section:

(1) "Owner or operator" means, in addition to the usual meanings of the term, any owner of record of any interest in land on which a landfill is or has been sited, and any person or corporation which owns a majority interest in any other corporation which is the owner or operator of a landfill.
(2) "Proceeds" means all funds collected and received by the Department, including interest and penalties on delinquent fees.

(b) Every owner or operator of a landfill is jointly and severally liable for the improper operation and closure of the landfill, as provided by law.

(c) The owner or operator of a landfill shall establish a fee, or a surcharge on existing fees or other appropriate revenue-producing mechanism, to ensure the availability of financial resources for the proper closure of the landfill. However, the disposal of solid waste by persons on their own property is exempt from the provisions of this section.

(1) The revenue-producing mechanism must produce revenue at a rate sufficient to generate funds to meet State and federal landfill closure requirements.
(2) The revenue shall be deposited in an interest-bearing escrow account to be held and administered by the owner or operator. The owner or operator shall file with the Department an annual audit of the account. The audit shall be conducted by a certified public accountant and shall be filed no later than 31 December of each year. Failure to collect or report this revenue, except as allowed in subsection (d), is a noncriminal violation, punishable by a fine of not more than five thousand dollars ($5,000) for each offense. The owner or operator may make expenditures from the account and its accumulated interest only for the purpose of landfill closure and, if such expenditures do not deplete the fund to the detriment of eventual closure, for planning and construction of resource recovery or landfill facilities. Any moneys remaining in the account after paying for proper and complete closure, as determined by the Department, shall, if the owner or operator does not operate a landfill, be deposited by the owner or operator into the general fund of the unit of local government.

3/4

(3) The revenue generated under this subsection and any accumulated interest thereon may be applied to the payment of, or pledged as security for, the payment of revenue bonds issued in whole or in part for the purpose of complying with State and federal landfill closure requirements. The application or pledge may be made directly in the proceedings authorizing the bonds or in an agreement with an insurer of bonds to assure the insurer of this additional security.

(d) An owner or operator may establish proof of financial responsibility with the Department in lieu of the requirements of subsection (c). This proof may include surety bonds, certificates of deposit, securities, letter of credit, corporate guarantee, or other documents showing that the owner or operator has sufficient financial resources to cover, at a minimum, the costs of complying with landfill closure requirements. The owner or operator shall estimate the costs to the satisfaction of the Department.

(e) This section does not repeal, limit, or abrogate any other law authorizing units of local government to fix, levy, or charge rates, fees, or charges for the purpose of complying with State and federal landfill closure requirements.

(f) The Commission shall adopt rules to implement this section. (1989, c. 784, s. 2.)

§ 130A-309.28. University research.

Research, training, and service activities related to solid and hazardous waste management conducted by The University of North Carolina shall be coordinated by the Board of Governors of The University of North Carolina through the Office of the President. Proposals for research contracts and grants; public service assignments; and responses to requests for information and technical assistance by the State and units of local government, business, and industry shall be addressed by a formal process involving an advisory board of university personnel appointed by the President and chaired and directed by an individual appointed by the President. The Board of Governors of The University of North Carolina shall consult with the Department in developing the research programs and provide the Department with a copy of the proposed research program for review and comment before the research is undertaken. Research contracts shall be awarded to independent nonprofit colleges and universities within the State which are accredited by the Southern Association of Colleges and Schools on the same basis as those research contracts awarded to The University of North Carolina. Research activities shall include the following areas:

(1) Methods and processes for recycling solid and hazardous waste;
(2) Methods of treatment for detoxifying hazardous waste; and
(3) Technologies for disposing of solid and hazardous waste. (1989, c. 784, s. 2.)

§ 130A-309.29. Adoption of rules.

The Commission may adopt rules to implement the provisions of this Part pursuant to Article 2 of Chapter 150B of the General Statutes. (1991, c. 621, s. 12.)

Editor's Note. — Session Laws 1997-374, s. 1 provides: "The Commission for Health Services shall adopt a rule regarding design criteria for municipal solid wasted landfills that complies with 40 C.F.R. Part 258.40 (1 July 1996 Edition) and that provides for alternate landfills liners that are at least as protective as the liner currently authorized under the rules of the Commission for Health Services."

Session Laws 1997-374, s. 2, provides: "This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-

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NCDENR

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

June 29, 2005

Mr. D. Steve Grissom,
Vice President, Chief Financial Officer
Waste Industries USA Incorporated
3301 Benson Drive, Suite 601
Raleigh, NC 27609

RE: Black Bear Disposal, LLC demonstration of financial qualification for a permit for a proposed municipal solid waste landfill in Camden County

Dear Mr. Grissom:

Pursuant to N.C.G.S. 130A-294(b2)(1), the Division of Waste Management has requested that Black Bear Disposal, LLC, which is the applicant for a permit to construct and operate a 10,000 ton per day municipal solid waste landfill on a 703 acre site in Camden County, demonstrate that it is financially qualified to carry out the permitted activity. The Division has previously provided you with guidance which outlines the undertakings and assurances for which an applicant for a particular municipal solid waste landfill permit must be financially qualified to undertake.

The Division has carefully reviewed the letter and accompanying information dated May 10, 2005, submitted by James M. Yates, Jr., attorney at law, on behalf of his client Waste Industries USA, Inc. and its wholly owned subsidiary Black Bear Disposal, LLC. The Division has considered this information together with the financial information for Waste Industries USA, Inc. and Black Bear Disposal, LLC which you submitted to the Agency under cover of a letter dated January 29, 2005. In its previous response to the financial information you submitted, including Securities and Exchange Commission Form 10-K and 10-Q filings for Waste Industries USA, Inc., the Division wrote:

> If it is the intent of Waste Industries that the Division consider the information submitted as relevant to the financial qualification of the applicant for a permit for the proposed municipal solid waste landfill in Camden County, it will be necessary for Waste Industries USA, Inc., also to be an applicant for the permit.

[April 5, 2005 letter from Donald J. Barber, Permitting Branch Supervisor, Solid Waste Section, to D. Steve Grissom.]

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Mr. Yates in his May 10, 2005 letter suggests that the Division consider only financial information for Black Bear Disposal, LLC. An internally prepared balance sheet for Black Bear Disposal, LLC shows assets as of March 31, 2005, of $9,131,903, with Accounts Payable to Trade of $1,010,055 and Intercompany Accounts Payable of $8, 275, 970. The Assets include 1,052 acres of land purchased on November 1, 2004 for $8,139,420, including the 703 acre landfill facility site. Waste Industries USA, Inc. indicates it is willing to convert the Intercompany Accounts Payable figure of $8, 275, 970 to Paid-in Capital if that conversion would enable the Division to conclude that Black Bear Disposal, LLC satisfies the financial viability test.

The proposed conversion to Paid-in Capital would not satisfy the Division that Black Bear Disposal, LLC is financially qualified to undertake all of the activities related to the proposed municipal solid waste landfill. This proposal does not address financial qualification for any of the undertakings and assurances outlined in the financial qualification guidance document, except acquisition of the land where the facility is to be sited and, perhaps, preparation of some preliminary permit application matters.

If Black Bear Disposal, LLC wishes the Division to consider its financial qualification separate and apart from its parent Waste Industries USA, Inc., it must demonstrate that it is now and will continue to be a stand alone company, and that it now has, and will continue to have, unencumbered capital sufficient to cover each of the undertakings and assurances outlined in the guidance document. The demonstration must be based upon a realistic projection of costs for each of the items in the guidance document, considering the size, scope and environmental setting for the proposed landfill. (If, in the view of Black Bear, the guidance document includes items which are inapplicable to the proposed landfill, or the guidance document fails to include items which are appropriate for inclusion under areas to be covered by financial qualification for the proposed landfill, it should bring them specifically to the attention of the Division.)

Black Bear Disposal, LLC and Waste Industries USA, Inc. must also demonstrate that changes have been made to the existing credit structure to eliminate the current circumstances that "virtually all" of the assets of Waste Industries and the assets of its subsidiaries, including Waste Industries' interest in the equity securities of its subsidiaries, are pledged to secure the obligations of Waste Industries USA, Inc. under its revolving credit facility with a syndicate of lending institutions and its term loans with Prudential Insurance Company of America, and all of the subsidiaries have guaranteed Waste Industries' obligations under the Prudential term loan facilities. In order for the Division to consider the financial qualification of Black Bear Disposal, LLC separate and apart from its parent, these credit agreements must be amended specifically to exclude Black Bear Disposal, LLC, including its assets and equity securities, from any and all obligations under these and any future credit agreements with Waste Industries, USA, Inc., its subsidiaries and affiliates.

As the Division has indicated to Waste Industries USA, Inc. on a number of occasions, it may be to the applicant's benefit for Waste Industries USA, Inc. to become a co-applicant for the permit with Black Bear Disposal, LLC.

Enclosed is another copy of the Division Guidance Document which outlines the undertakings and assurances which a demonstration of financial qualification is intended to cover.

Very truly yours,

Donald J. Barber

cc: James M. Yates, Jr.
James C. Coffey
Nancy E. Scott
Ed Mussler

NCDENR

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

June 27, 2005

Mr. Reeves W. Mahoney, Esq.
Huff, Poole & Mahoney, P.C.
4705 Columbus Street
Virginia Beach, VA 23462-6749

Dear Mr. Mahoney:

I have received your letter of June 10 regarding the proposed Black Bear Landfill in Camden County, North Carolina. It was a pleasure to meet with you, representatives of the City of Chesapeake, and staff from Virginia's Department of Environmental Quality (DEQ) on June 9 to hear the City of Chesapeake's concerns involving the proposed landfill.

Karen Sismour, Jim Coffey, and I had a phone conversation on June 24 regarding DEQ's opportunity for review of documents regarding the permit application for the proposed Black Bear Landfill. I am sure Ms. Sismour's staff and others interested in the permit application will take available opportunities to have input prior to final permit decision.

Again, I enjoyed our meeting and appreciate the input you provided.

Sincerely,

Dexter R. Matthews

cc: Jim Coffey, Chief, Solid Waste Section
Nancy Scott, Esq. NC Office of the Attorney General
Karen Sismour, Director, Waste Division, Virginia DEQ

Received
JUN 2005
Solid Waste Section

1646 Mail Service Center, Raleigh, North Carolina 27699-1646
Phone 919-508-8400 \ FAX 919-715-3605 \ Internet http://wastenotnc.org
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NCDENR

North Carolina Department of Environment and Natural Resources

Michael F. Easley, Governor

William G. Ross Jr., Secretary

June 10, 2005

Received
JUN 2005
Solid Waste Section

Mr. Robert G. Burnley, Director
Department of Environmental Quality
P. O. Box 10009
629 East Main Street
Richmond, Virginia 23240

Dear Bob:

Thank you for your recent letter concerning the Black Bear LLC landfill proposed for Camden County, North Carolina. Staff from our Division of Waste Management have been in touch with your staff since last fall when we initiated our public participation process upon our receipt of a site suitability study. On June 9, the North Carolina Division of Waste Management met with representatives of the City of Chesapeake, their attorneys and staff from the Virginia Department of Environmental Quality to listen to their concerns.

Both North Carolina and Virginia are approved by the EPA to enforce the RCRA subtitle D part 258 requirements for municipal solid waste landfills. In fact, North Carolina was one of the first states in the country to receive program approval by EPA, reflecting their determination that our state requirements are fully protective of the public health and environment. The Division of Waste Management in this department has permitted lined landfills since 1982 and has permitted a total of 44 since that time. All of our unlined landfills have been closed since 1998, and 41 lined landfills are operational today. Of the lined landfills that have been permitted, none have resulted in releases affecting water supplies. Our monitoring system requirements are designed to provide early detection and opportunity for correction should any problem occur in the future. Current regulations also establish buffer requirements, including buffers to critical areas of water supply water sheds.

Our state Department of Transportation and local jurisdictions address traffic concerns. There is not a specific requirement for a traffic study as a condition of permitting a municipal solid waste landfill. I am pleased to hear that Virginia regulations will address the unloading and transfer of waste involving the barge port proposed for your state. I am sure our waste management staff will be interested in reviewing those regulations given current discussions of barge ports in our state.

At the meeting held on June 9, our waste management staff agreed to maintain close contact with staff from your department and will afford the opportunity for them to comment as we move forward with the permit application.

Sincerely,

William G. Ross, Jr.

cc. Dexter Matthews, Director, Division of Waste Management

1601 Mail Service Center, Raleigh, North Carolina 27699-1601
Phone: 919-733-4984 \ FAX: 919-715-3060 \ Internet: www.en r.state.nc.us/ENR/

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HUFF, POOLE & MAHONEY, P.C.
ATTORNEYS & COUNSELLORS

Reeves W. Mahoney, Esq.

Direct Dial: 757/552-6032
Email: rmahoney@hpmlaw.com

Reply to:
Virginia Beach

June 10, 2005

Mr. Dexter Matthews, Division Director
Department of Environmental and Natural Resources
Division of Waste Management
DWM Central Office
401 Oberlin Road, Suite 150
Raleigh, NC 27605

Received
JUN 2005
Waste Management

Re: Proposed Black Bear Landfill/Camden County
Our File No.: 13696.000105

Dear Dexter:

Thank you for taking time from your busy schedule, especially with the Legislature in Session, to meet with representatives from the City of Chesapeake, with representatives from Virginia's Department of Environmental Quality ("DEQ") present as well.

With the City of Chesapeake now having had an opportunity to present to DEQ and your office its analysis to date of the weighty issues involved with the proposed Black Bear landfill, we look forward to further addressing this matter. In this vein, after the departure of your office's representatives and those from DEQ, I queried my colleagues as to whether you were predisposed to oblige the request of Ms. Karen Sismour that a draft copy of the Site Suitability Letter first be shared with DEQ prior to its official issuance, assuming it is issued. Not reaching unified consensus on your response, I would most appreciate your clarifying advices.

By copy of this letter, I also extend my thanks to Messrs. Coffey, Barber and Crissman for their participation and feedback during the meeting.

We look forward to further dialogue with your office regarding Black Bear's proposed landfill.

With regards, I am

Very truly yours,

Reeves W. Mahoney

RWM/keb

cc: Mr. James C. Coffey, Section Chief, Solid Waste Section
Mr. Paul Crissman, Environmental Programs Manager, Solid Waste Section
Mr. Jim Barber, Branch Head, Permitting Branch, Solid Waste Section
Amar Dwarkanath, P.E., Deputy City Manager, City of Chesapeake
Ronald H. Hallman, Esq., City Attorney, City of Chesapeake

HUFF, POOLE & MAHONEY, P.C.
ATTORNEYS & COUNSELLORS

Reeves W. Mahoney, Esq.

Direct Dial: 757/552-6032
Email: rmahoney@hpmlaw.com

RECEIVED
JUN 16 2005
N.C. ATTORNEY GENERAL
Environmental Division

Reply to:
Virginia Beach

June 13, 2005

Received
JUN 2005
Solid Waste
Section

Ms. Nancy Scott, Esq.
North Carolina Assistant Attorney-General
9001 Mail Service Center
Raleigh, NC 27699-9001

Re: Proposed Black Bear Disposal, L.L.C. Landfill
Our File No.: 13696.000105

Dear Nancy:

In follow-up to our meeting this past Thursday with representatives of DENR and DEQ present, and in response to your request, enclosed are the following:

1. The Zoning Permit and accompanying documentation dated December 5, 2002 consisting of 28 8 ½ x 11 pages of documentation and six larger pages consisting of Exhibit "A." This is an exact duplication of the December 5, 2002 Zoning Permit received from Camden County late last week pursuant to this office's FOIA request.

2. The Zoning Permit and accompanying documentation dated February 16, 2005 consisting of 11 8 ½ x 11 pages of documentation and nine larger pages consisting of the Site Plan apparently enclosed in the correspondence dated December 22, 2004 to Mr. Parks, Permit Officer, Camden, North Carolina, from Timothy D. Grant, P.G., Camp Dresser & McKee, which was copied to Mr. Jerry Johnson of Waste Industries. This is an exact duplication of the February 16, 2005 Zoning Permit received from Camden County late last week pursuant to this office's FOIA request.

As discussed with you at the meeting, Exhibit "A" in the December 5, 2002 Zoning Permit shows a disposal area of 290 +/- acres and a lake of approximately 90 +/- acres for storm water management. You will note in the Site Plan enclosed in the February 16, 2005 Zoning Permit, the disposal foot print increases 200 acres to 490 +/- acres and the storm water management lake has been deleted.

There are other differences in the two Zoning Permits which I am sure your scrutinous eye will readily identify.

I take this opportunity to thank you for taking time from your busy schedule to participate in the meeting so the City of Chesapeake could present to DENR and DEQ its concerns regarding the proposed landfill.

Of course, if there are any question whatsoever, do not hesitate to call.

With regards, I am

Very truly yours,

Reeves W. Mahoney

RWM/keb
Enclosures
cc: Amar Dwarkanath, P.E., Deputy City Manager, City of Chesapeake (w/Enc)
Ronald H. Hallman, Esq., City Attorney, City of Chesapeake (w/Enc)

Camden County, North Carolina

P.I.N. 01-7082-00-26-3513 **UDO #** 2002-11-26

Address or Property Description:
US. 17 NORTH ½ MILE SOUTH VA LINE

Property Use or Development: SANITARY LANDFILL

Zoning District: HC / I-1

Owner/Agent: BLACK BEAR DISPOSAL, LLC

The proposed use or development is hereby subject to the above-referenced application file (and all attachments and file inclusions thereto). The following marked items to this authorization:

✓. **This document constitutes a Zoning Permit.** The proposed development or use is a permitted use in the district and is hereby permitted under the permitting authority of the Zoning Administrator.

____. **This document constitutes a Conditional Use Permit.** The proposed development or use is a conditional use in the district, and is permitted subject to special conditions placed upon the development or use by the Board of Adjustment.

____. **This document constitutes a Special Use Permit.** The proposed development or use has met all of the requirements for issuance of a Special Use Permit as it may pertain to the application heretofore referenced.

____. **This document constitutes a variance.** The proposed development or use has met all of the requirements for issuance of a Special Use Permit as it may pertain to the application heretofore referenced.

____. The development or use is continuing non-conforming development or use on the property and/or in the district shown on the application and is hereby permitted to continue solely and exclusively as a non-conforming use under the permitting authority of the Zoning Administrator.

Failure to conform to the development or use of this property pursuant to the authorization contained in this signed permit (which, by reference, includes all documents in the application file and to the requirements of any Board action regarding the application) will result in: (a) the immediate invalidation of this permit; (b) legal action necessary to bring the development or use into conformity with the authorized use or development; (c) reimbursement to the County necessary to bring the development or use into conformity with the authorized use or development.

This 5 day of December, 2002.

Administrator

2 C9B B170 P.891

FACSIMILE TRANSMITTAL COVER LETTER

DATE: 12/17/04 TIME:

NUMBER OF PAGES (Including This Cover Letter): 5

DELIVER TO (Company): CAMDEN CO.

LOCATION OR PERSON: DAVE PARKS

FAX #: 252-333-1603

SENDER: JON BECK

If you do not receive all the pages indicated above, please call our office number (757) 497-3591 757-288-6074

MESSAGE:

ATTACHED IS LOMA & ELEV. CERTIFICATE. PAGE 3 OF APPLICATION IS SAYING I NEED SUBDIVISION PLAT MAP, OR COPY OF EFFECTIVE FIRM ETC.

THANKS AGAIN FOR HELP

JON

ASPHALT ROADS & MATERIALS CO., INC.

4901 Cleveland Street Suite #2 • P.O. Box 62423 • Virginia Beach, VA. 23462 • (757) 497-3591 • FAX (757) 552-0324
Plant and Shop • 4985 Euclid Road • Virginia Beach, VA 23462

FEDERAL EMERGENCY MANAGEMENT AGENCY
NATIONAL FLOOD INSURANCE PROGRAM

O.M.B. No. 3067-0077
Expires December 31, 2005

ELEVATION CERTIFICATE

Important: Read the instructions on pages 1-7.

SECTION A - PROPERTY OWNER INFORMATION

For Insurance Company Use:
Policy Number:
Company NAIC Number:

BUILDING OWNER'S NAME
John Beck

BUILDING STREET ADDRESS (Including Apt., Unit, Suite, and/or Bldg. No.) OR P.O. ROUTE AND BOX NO.
107 Taylor Lee

CITY	STATE	ZIP CODE
South Mills	NC	27976

PROPERTY DESCRIPTION (Lot and Block Numbers, Tax Parcel Number, Legal Description, etc.)
PIN 01 7999 00 33 1177

BUILDING USE (e.g., Residential, Non-residential, Addition, Accessory, etc. Use a Comments area, if necessary.)
Residential

LATITUDE/LONGITUDE (OPTIONAL) (##° - ## - ##.## or ##.#####°)
NA

HORIZONTAL DATUM: ☐ NAD 1927 ☐ NAD 1983

SOURCE: ☐ GPS (Type): ____ ☐ USGS Quad Map ☐ Other: ____

SECTION B - FLOOD INSURANCE RATE MAP (FIRM) INFORMATION

B1. NFIP COMMUNITY NAME & COMMUNITY NUMBER	B2. COUNTY NAME	B3. STATE
Camden County (Unincorporated Areas) 370042	Camden	NC

B4. MAP AND PANEL NUMBER	B5. SUFFIX	B6. FIRM INDEX DATE	B7. FIRM PANEL EFFECTIVE/REVISED DATE	B8. FLOOD ZONE(S)	B9. BASE FLOOD ELEVATION(S) (Zone AO, use depth of flooding)
370042 7999	B	Oct 5, 2004	Oct 5, 2004	AE	6.8

B10. Indicate the source of the Base Flood Elevation (BFE) data or base flood depth entered in B9.
☐ FIS Profile ☒ FIRM ☐ Community Determined ☐ Other (Describe): ____

B11. Indicate the elevation datum used for the BFE in B9: ☐ NGVD 1929 ☒ NAVD 1988 ☐ Other (Describe): ____

B12. Is the building located in a Coastal Barrier Resources System (CBRS) area or Otherwise Protected Area (OPA)? ☐ Yes ☒ No Designation Date ____

SECTION C - BUILDING ELEVATION INFORMATION (SURVEY REQUIRED)

C1. Building elevations are based on: ☐ Construction Drawings* ☐ Building Under Construction* ☒ Finished Construction
*A new Elevation Certificate will be required when construction of the building is complete.

C2. Building Diagram Number 8 (Select the building diagram most similar to the building for which this certificate is being completed - see pages 6 and 7. If no diagram accurately represents the building, provide a sketch or photograph.)

C3. Elevations – Zones A1-A30, AE, AH, A (with BFE), VE, V1-V30, V (with BFE), AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO
Complete Items C3.a-i below according to the building diagram specified in Item C2. State the datum used. If the datum is different from the datum used for the BFE in Section B, convert the datum to that used for the BFE. Show field measurements and datum conversion calculation. Use the space provided or the Comments area of Section D or Section G, as appropriate, to document the datum conversion.

Datum ____ Conversion/Comments ____

Elevation reference mark used PBM Does the elevation reference mark used appear on the FIRM? ☐ Yes ☒ No

- o a) Top of bottom floor (including basement or enclosure) 8.3 ft.(m)
- o b) Top of next higher floor 11.3 ft.(m)
- o c) Bottom of lowest horizontal structural member (V zones only) na ft.(m)
- o d) Attached garage (top of slab) na ft.(m)
- o e) Lowest elevation of machinery and/or equipment servicing the building (Describe in a Comments area) 8.37 ft.(m)
- o f) Lowest adjacent (unfinished) grade (LAG) 8.06 ft.(m)
- o g) Highest adjacent (unfinished) grade (HAG) 8.67 ft.(m)
- o h) No. of permanent openings (flood vents) within 1 ft. above adjacent grade 0
- o i) Total area of all permanent openings (flood vents) in C3.h 0 sq. in. (sq. cm)

License Number, Embossed Seal, Signature, and Date

12/07/2004

SECTION D - SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION

This certification is to be signed and sealed by a land surveyor, engineer, or architect authorized by law to certify elevation information.
I certify that the information in Sections A, B, and C on this certificate represents my best efforts to interpret the data available.
I understand that any false statement may be punishable by fine or imprisonment under 18 U.S. Code, Section 1001.

CERTIFIER'S NAME Stephen L. Cardwell LICENSE NUMBER L-4340

TITLE Land Surveyor COMPANY NAME S. L. Cardwell Surveying

ADDRESS	CITY	STATE	ZIP CODE
1206 Francis Street	Elizabeth City	NC	27909

SIGNATURE	DATE	TELEPHONE
	12/07/2004	252.338.6328

IMPORTANT: In these spaces, copy the corresponding information from Section A.

BUILDING STREET ADDRESS (Including Apt., Unit, Suite, and/or Bldg. No.) OR P.O. ROUTE AND BOX NO.			For Insurance Company Use:
107 Taylor Lee			Policy Number
CITY South Mills	STATE NC	ZIP CODE 27976	Company NAIC Number

SECTION D - SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION (CONTINUED)

Copy both sides of this Elevation Certificate for (1) community official, (2) insurance agent/company, and (3) building owner.

COMMENTS

C3-e. ac units

C3- H & I foundation vents with closures installed are not considered as a flood opening

☐ Check here if attachments

SECTION E - BUILDING ELEVATION INFORMATION (SURVEY NOT REQUIRED) FOR ZONE AO AND ZONE A (WITHOUT BFE)

For Zone AO and Zone A (without BFE), complete Items E1 through E4. If the Elevation Certificate is intended for use as supporting information for a LOMA or LOMR-F, Section C must be completed.

E1. Building Diagram Number __(Select the building diagram most similar to the building for which this certificate is being completed – see pages 6 and 7. If no diagram accurately represents the building, provide a sketch or photograph.)

E2. The top of the bottom floor (including basement or enclosure) of the building is __ ft.(m) __ in.(cm) ☐ above or ☐ below (check one) the highest adjacent grade. (Use natural grade, if available).

E3. For Building Diagrams 6-8 with openings (see page 7), the next higher floor or elevated floor (elevation b) of the building is __ ft.(m) __ in.(cm) above the highest adjacent grade. Complete items C3.h and C3.i on front of form.

E4. The top of the platform of machinery and/or equipment servicing the building is __ ft.(m) __ in.(cm) ☐ above or ☐ below (check one) the highest adjacent grade. (Use natural grade, if available).

E5. For Zone AO only: If no flood depth number is available, is the top of the bottom floor elevated in accordance with the community's floodplain management ordinance?
☐ Yes ☐ No ☐ Unknown. The local official must certify this information in Section G.

SECTION F - PROPERTY OWNER (OR OWNER'S REPRESENTATIVE) CERTIFICATION

The property owner or owner's authorized representative who completes Sections A, B, C (Items C3.h and C3.i only), and E for Zone A (without a FEMA-issued or community-issued BFE) or Zone AO must sign here. *The statements in Sections A, B, C, and E are correct to the best of my knowledge.*

PROPERTY OWNER'S OR OWNER'S AUTHORIZED REPRESENTATIVE'S NAME
JONATHAN J. BECK

ADDRESS	CITY	STATE	ZIP CODE
107 TAYLOR LEIGH DR.	SOUTH MILLS	NC	27976

SIGNATURE	DATE	TELEPHONE
Jonathan J. Beck	12/10/04	252-771-2229 OR 757-288-6074

COMMENTS

☐ Check here if attachments

SECTION G - COMMUNITY INFORMATION (OPTIONAL)

The local official who is authorized by law or ordinance to administer the community's floodplain management ordinance can complete Sections A, B, C (or E), and G of this Elevation Certificate. Complete the applicable item(s) and sign below.

G1. ☐ The information in Section C was taken from other documentation that has been signed and embossed by a licensed surveyor, engineer, or architect who is authorized by state or local law to certify elevation information. (Indicate the source and date of the elevation data in the Comments area below.)

G2. ☐ A community official completed Section E for a building located in Zone A (without a FEMA-issued or community-issued BFE) or Zone AO.

G3. ☐ The following information (Items G4-G9) is provided for community floodplain management purposes.

G4. PERMIT NUMBER	G5. DATE PERMIT ISSUED	G6. DATE CERTIFICATE OF COMPLIANCE/OCCUPANCY ISSUED

G7. This permit has been issued for: ☐ New Construction ☐ Substantial Improvement

G8. Elevation of as-built lowest floor (including basement) of the building is: ____ ft.(m) Datum: ____

G9. BFE or (in Zone AO) depth of flooding at the building site is: ____ ft.(m) Datum: ____

LOCAL OFFICIAL'S NAME	TITLE
COMMUNITY NAME	TELEPHONE
SIGNATURE	DATE

COMMENTS

☐ Check here if attachments

FEDERAL EMERGENCY MANAGEMENT AGENCY
APPLICATION FORM FOR SINGLE RESIDENTIAL LOT OR STRUCTURE AMENDMENTS TO NATIONAL FLOOD INSURANCE PROGRAM MAPS

O.M.B. NO. 3067-0257
Expires May 31, 2005

PAPERWORK REDUCTION ACT

Public reporting burden for this form is estimated to average 2.4 hours per response. The burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the needed data, and completing, reviewing, and submitting the form. You are not required to respond to this collection of information unless a valid OMB control number is displayed in the upper right corner of this form. Send comments regarding the accuracy of the burden estimate and any suggestions for reducing this burden to: Information Collections Management, Federal Emergency Management Agency, 500 C Street, S.W., Washington DC 20472, Paperwork Reduction Project (3067-0257). Submission of this form is required to obtain or retain benefits under the National Flood Insurance Program.

This form should be used to request that the Federal Emergency Management Agency (FEMA) remove a single structure or legally recorded parcel of land or portions thereof, described by metes and bounds, certified by a registered professional engineer or licensed land surveyor, from a designated Special Flood Hazard Area (SFHA), an area that would be inundated by the flood having a 1%-chance of being equaled or exceeded in any given year (base flood), via Letter of Map Amendment (LOMA). It shall not be used for requests submitted by developers, for requests involving multiple structures or lots, for property in alluvial fan areas or coastal high hazard areas (V zones), or requests involving the placement of fill. (NOTE: Use MT-1 forms for such requests). Fill is defined as material placed to raise the grade to or above the Base Flood Elevation (BFE). The common construction practice of removing unsuitable existing material (topsoil) and backfilling with select structural material is not considered the placement of fill if the practice does not alter the existing (natural grade) elevation, which is at or above the BFE. Also, fill that is placed before the date of the first National Flood Insurance Program (NFIP) map showing the area in an SFHA is considered natural grade.

LOMA:	A letter from FEMA stating that an existing structure or parcel of land that has not been elevated by fill would not be inundated by the base flood.

A – This section may be completed by the property owner or by the property owner's agent.

1. Has fill been placed on your property?

   [X] No [ ] Yes – If Yes, STOP!! – You must complete the MT-1 application forms; visit http://www.fema.gov/fhm/dl_mt-1.shtm or call the FEMA Map Assistance Center toll free: (877-FEMA MAP) (877-336-2627)

2. Legal description of Property (Lot, Block, Subdivision) and street address of the Property (if different from mailing address):

   LOT 8, MCPHERSON ESTATES PHASE I

   107 TAYLOR LEIGH DR.
   SOUTH MILLS NC 27976

3. Are you requesting that the flood zone designation be removed from (check one):

   [X] Your entire legally recorded property?

   [ ] A portion of your legally recorded property? (a metes and bounds description and map of the area to be removed, certified by a registered professional engineer or licensed land surveyor are required)

   [ ] A structure on your property? What is the date of construction?

All documents submitted in support of this request are correct to the best of my knowledge. I understand that any false statement may be punishable by fine or imprisonment under Title 18 of the United States Code, Section 1001.

Applicant's Name: JONATHAN J. BECK	Company:
Mailing Address: 107 TAYLOR LEIGH DR. SOUTH MILLS NC 27976	Daytime Telephone No.: 757-288-6074
E-mail address:	Fax No.: 757-552-0324
Signature of Applicant (required): Jonathan J. Beck	Date: 12/15/04

End of Section A

In addition to this form (MT-EZ), **ALL** requests must include the following:

- Copy of the Subdivision Plat Map (with recordation data and stamp of the Recorder's Office)
  OR
  Copy of the Property Deed (with recordation data and stamp of the Recorder's Office), accompanied by a tax assessor's map or other certified map showing the surveyed location of the property relative to local streets and watercourses
- Copy of the effective FIRM panel and/or Flood Boundary and Floodway Map (FBFM) (if applicable) on which the property location has been accurately plotted
- Please include a map scale on all maps submitted

All requests should be submitted to the address shown on the last page of the instructions.

STANDARD FLOOD HAZARD DETERMINATION FORM INSTRUCTIONS

PAPERWORK BURDEN DISCLOSURE NOTICE

Public reporting burden for this form is estimated to average 20 minutes per response. Burden means the time, effort and financial resources expended by persons to generate, maintain, retain, disclose, or to provide information to us. You may send comments regarding the burden estimate or any aspect of the form, including suggestions for reducing the burden to: Information Collections Management, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20742; and to the Office of Management and Budget, Paperwork Reduction Project (30676-0264), Washington, DC 20503. You are not required to respond to this collection of information unless a valid OMB control number appears in the upper right corner of this form. **Please do not send your completed form to the above address.**

SECTION 1

1. LENDER NAME: Enter lender name and address.

2. COLLATERAL (Building/Mobile Home/Personal Property) PROPERTY ADDRESS: Enter property address for the insurable collateral. In rural areas, a postal address may not be sufficient to locate the property. In these cases, legal property descriptions may be used and may be attached to the form if space provided is insufficient.

3. LENDER ID. NO.: The lender funding the loan should identify itself as follows: FDIC-insured lenders should indicate their FDIC Insurance Certificate Number; Federally-insured credit unions should indicate their charter/insurance number; Farm Credit institutions should indicate their UNINUM number. Other lenders who fund loans sold to or scrutinized by FNMA or FHLMC should enter the FNMA or FHLMC seller/servicer number.

4. LOAN IDENTIFIER Optional. May be used by lenders to conform with their individual method of identifying loans.

5. AMOUNT OF FLOOD INSURANCE REQUIRED: Optional. The minimum federal requirement for this amount is the lesser of: the outstanding principal loan balance; the value of the improved property, mobile home and/or personal property used to secure the loan; or the maximum statutory limit of flood insurance coverage. Lenders may exceed the minimum federal requirements. National Flood Insurance Program (NFIP) policies do not provide coverage in excess of the value of the building/mobile home/personal property.

SECTION 2

A. NATIONAL FLOOD INSURANCE PROGRAM (NFIP) COMMUNITY JURISDICTION

1. NFIP Community Name. Enter the complete name of the community (as indicated on the NFIP map) in which the building or mobile home is located. Under the NFIP, a community is the political unit that has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction. A community may be any State or area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaska Native village or authorized native organization. (Examples: Brewer, City of; Washington, Borough of; Worchester, Township of; Baldwin County; Jefferson Parish.) For a building or mobile home that may have been annexed by one community but is shown on another community's NFIP map, enter the Community Name for the community with land-use jurisdiction over the building or mobile home.

2. County(ies). Enter the name of the county or counties in which the community is located. For unicorporated areas of a county, enter "unincorporated areas". For independent cities, enter "independent city."

3. State. Enter the two-digit state abbreviation. (Examples: VA, TX, CA.)

4. NFIP Community Number. Enter the 6-dinit NFIP community number. This number can be determined by consulting the NFIP Community Status Book or can be found on the NFIP map; copies of either can be obtained from FEMA's Website http://www.fema.gov or by calling 1-800-611-6125. If no NFIP Community Number exists for the community, enter "none".

B. NFIP DATA AFFECTING BUILDING/MOBILE HOME

The information in this section (excluding the LOMA/LOMR information) is obtained by reviewing the NFIP map on which the building/mobile home is located. The current NFIP map, and a pamphlet titled "Guide to Flood Maps," may be obtained from FEMA by calling 1-800-611-6125. Note that even when an NFIP map panel is not printed, it may be reflected on a community's NFIP map index with its proper number, date, and flood zone indicated; enter these data accordingly.

1. NFIP Map Number or Community-Panel Number. Enter the 11-digit number shown on the NFIP map that covers the building or mobile home. (Examples: 480214 0022C; 58103C0075 F.) Some older maps will have a 9-digit number (Example: 12345601A.) Note that the first six digits will not match the NFIP Community Number when the sixth digit is a "C" or when one community has annexed land from another but the NFIP map has not yet been updated to reflect this annexation. When the sixth digit is a "C", the NFIP map is in countywide format and shows the flood hazards for geographic areas of the county on one map, including flood hazards for incorporated communities and for any unincorporated county contained within the county's geographic limits. Such countywide maps will list an NFIP Map Number. For maps not in such countywide format, the NFIP will list a Community-Panel Number on each panel. If no NFIP map is in effect for the location of the building or mobile home, enter "none".

2. NFIP Map Panel Effective/Revised Date. Enter the map effective date or the map revised date shown on the NFIP map. (Example: 6/15/93.) this will be the latest of all dates shown on the map.

3. LOMA/LOMR. If a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) has been issued by FEMA since the current Map Panel Effective/Revised Date that revises the flood hazards affecting the building or mobile home, check "yes" and specify the date of the letter; otherwise, no entry is required. Information on LOMAs and LOMRs is available from the following sources:

* The community's official copy of its NFIP map should have a copy of all subsequently-issued LOMAs and LOMRs attached to it.
* For LOMAs and LOMRs issued on or after October 1, 1994, FEMA publishes a list of these letters twice a year as a compendium in the Federal Register. This information is also available on FEMA's website at http://www.fema.gov.
* A subscription service providing digitized copies of these letters on CD-ROM is also available by calling 1-800-358-9616.

4. Flood Zone. Enter the flood zone(s) covering the building or mobile home. (Examples: A, AE, A4, AR, ARIA, AR/AE, AR/AO, V, VE, V12, AH, AO, B, C, X, D.) If any part of the building or mobile home is within the Special Flood Hazard Area (SFHA), the entire building or mobile home is considered to be in the SFHA. All flood zones beginning with the letter "A" or "V" are considered Special Flood Hazard Areas (SFHAs). Each flood zone is defined in the legend of the NFIP map on which it appears. If there is no NFIP map for the subject area, enter "none".

5. No NFIP Map. If no NFIP map covers the area where the building or mobile home is located. check this box.

C. FEDERAL FLOOD INSURANCE AVAILABILITY. Check all boxes that apply; however, note that boxes 1 (Federal Flood Insurance is available...) and 2 (Federal Flood Insurance is not available...) are mutually exclusive. Federal flood insurance *is* available to all residents of a community that participates in the NFIP. Community participation status can be determined by consulting the NFIP Community Status Book. which is available from FEMA and at http://www.fema.gov. The NFIP Community Status Book will indicate whether or not the community is participating in the NFIP and whether participation is in the Emergency or Regular Program. If the community participates in the NFIP, check either Regular Program or Emergency Program. To obtain Federal flood insurance, a copy of this completed form may be provided to an insurance agent.

Federal flood insurance is prohibited in designated Coastal Barrier Resources Areas (CBRA) and Otherwise Protected Areas (OPAs) for buildings or mobile homes built or substantially improved after the date of the CBRA or OPA designation. *An* information sheet explaining the Coastal Barrier Resources System may be obtained from FEMA by calling 1-800-611-6125.

D. DETERMINATION: If any portion of the building/mobile home is in an identified Special Flood Hazard Area (SFHA), check yes (flood insurance is required). If no portion of the building/mobile home is in an identified SFHA, check no. If no NFIP map exists for the community, check no. If no NFIP map exists, Section B5 should also be checked.

F. PREPARER'S INFORMATION: If other than the lender, enter the name, address, and telephone number of the company or organization performing the flood hazard determination. *An* individual's name may be included, but is not required.

Date of Determination. Enter date on which flood hazard determination was completed.

OTHER INFORMATION

MULTIPLE BUILDINGS: If the loan collateral includes more than one building, a schedule for the additional building(s)/mobile home(s) indicating the determination for each may be attached. Otherwise, a separate form must be completed for each building or mobile home. Any attachment(s) should be noted in the comment section. A separate flood insurance policy is required for each building or mobile home.

GUARANTEES REGARDING INFORMATION: Determinations on this form made by persons other than the lender are acceptable only to the extent that the accuracy of the information is guaranteed.

FORM AVAILABILITY: Copies of this form are available from the FEMA fax-on-demand line by calling (202) 646-FEMA and requesting form #23103. Guidance on using the form in a printed, computerized, or electronic format is contained in form #23110. This information is also available on FEMA's website http://www.fema.gov.

PURPOSE OF FORM: In accordance with P.L. 103-325, Sec. 1365, (b) (1), the form has been designed to facilitate compliance with the flood insurance purchase requirements for the National Flood Insurance Reform Act of 1994.

*U.S. GPO: 2002-515-872/98759

County of Camden

P.O. Box 190
117 North NC 343
Camden, North Carolina 27921
Voice: (252) 338-1919
Fax: (252) 333-1603
E-Mail: info@ecamden.cc
www.ecamden.cc

Commissioners
Jeffrey B. Jennings, ***Chairman***
Samuel K. Shaw, Sr., ***Vice-Chairman***
J.C. Rountree
Clayton D. Riggs
Melvin J. Jeralds

September 28, 2004

Mr. Ven Poole
Waste Industries
3301 Benson Drive, Suite 601
Raleigh, NC 27609

RE: Zoning Permit (UDO 2002-11-26) for Black Bear Disposal, LLC

Dear Mr. Poole:

The Zoning Permit (attached) for Black Bear Disposal, LLC for a Sanitary Landfill in Camden County was issued on December 5, 2002. The proposed landfill meets all zoning requirements of the Camden County Unified Development Ordinance.

Should you have any questions, please call the Planning Office at (252) 338-1919, ext 232.

Sincerely,

David Parks
Permit Officer

cc: file

Dave Parks

From: "Ava Murgia" <amurgia@camdencountync.gov>
To: "Dave Parks" <dparks@ecamden.cc>
Sent: Monday, September 27, 2004 4:49 PM
Subject: Poole, Ven - 12-6-2002 Letter- Franchise Agreement with Black Bear Disposal

December 6, 2002

Via Hand Delivery through Mr. Mike Patrick

Mr. Ven Poole
Waste Industries
3301 Benson Drive Suite 601
Raleigh, NC 27609

RE: Franchise Agreement with Black Bear Disposal

Dear Mr. Poole:

Attached please find copies of the executed ordinances that (a) authorize a landfill franchise and (b) issue a landfill franchise (along with the franchise agreement). Please sign and execute all four (4) copies of the franchise agreement; keep one (1) original for yourself and return the remaining three (3) to us.

Also, attached please find a copy of an executed zoning permit to Black Bear Disposal.

Should you have any questions, please contact me at your convenience.

Sincerely,

Carl Classen
County Manager

Land Use/Development Application

County of Camden, North Carolina

Depending upon the type of proposal, the proposal may require a Zoning Permit, Conditional Use Permit, or Special Use Permit. This form is used as the start of application process. All applicants must submit a site plan (see "Minimum Site Plan Requirements") and a valid Health Department permit. Applicants for a Conditional Use Permit or Special Use Permit should review the "Requirements for Conditional Use Permit and Special Use Permit Applications").

Applicants for a subdivision must submit this form as their Special Use Permit application.

Please consult the Planning Office (1-252-338-1919) with any questions about your application.

Please Do Not Write in this Box

PIN: 01-7082-00-26-3513

UDO# 2002 - 11 - 26

Date Received: MGJ

Received by: 11-18-02

Zoning District: HC/I-1

Fee Paid $ Ø zoning

PLEASE PRINT OR TYPE

Applicant's Name: BLACK BEAR DISPOSAL, LLC

If the Applicant is acting as agent for another person (the "principal"), please give that person's name on the line below and submit a copy of the agency agreement/letter with this Application.

Applicant's Mailing Address: 3301 BENSON DR.
SUITE 601
RALEIGH, NC 27609

Daytime Phone Number: (800) 647-9946

Location of Property: US 17 NORTH, 1/2 mile south of Va state line

(street address, if possible)

Flood Zone (from FIRM Map): to be determined

Is the property located in the Watershed Protection Area: NO

General Description of Proposal: CONSTRUCTION AND OPERATION OF A SANITARY LANDFILL

I swear or affirm that the foregoing information and all attachments hereto (now or subsequently provided as part of this application) are true and correct to the best of my knowledge.

Signed: Ken Poole

Dated: 11-1-02

...st-it® Fax Note 7671	Date 11-1	# of pages ▶ 5	
...Ken Poole	From Mr. Browner		
...o./...	Co. Camden Cty Off.		
...hone #	Phone # 252-338-1919		
...x # 919 325-3013	Fax # 252-333-1603		

426-6281

November 1, 2002

Mr. Carl Classen
County Manager
Camden County
P.O. Box 190
Camden, NC 27921

Re: Zoning Permit Application

Dear Mr. Classen:

This letter is a follow up to your phone call and e-mail yesterday. I faxed the Land Use/Development Application to Ven this morning. Ven will fill it out, sign it, and fax it to you today. He will bring the "original" with him to the meeting on Monday.

As you know, once the franchise agreement is approved on Monday, Black Bear Disposal, LLC will start work on their state permit application. Certainly the most important part of that application with the state is a detailed site plan, which will show all of the information required by Section 1103 of your code.

A lot of the information requested in Section 1103 won't be available until the detailed engineering for the site is prepared, submitted, reviewed and approved by the North Carolina Division of Waste Management.

It seems to me it would be at this point in time that "Black Bear, LLC" would apply for it's zoning permit and the necessary building permits. It is also my understanding that as the county manager, you have sole authority in approving that permit.

Since we spoke on the phone yesterday, I called Ven and he provided me with some additional information, which I believe will answer the questions you raised yesterday.

First, let me address the site plan itself. The Camden Commerce Centre contains 1058 acres. Fifty acres of the site is proposed for an office and commercial use in keeping with the recent rezoning in the area, and 135 acres is proposed for industrial development. Black Bear, LLC proposed to develop the first phase of the landfill on approximately 606 acres as shown on the attached plan. The remaining 266.7 acres will be set aside in a "Wildlife Conservation Area".

Attached please find a copy of the letter from the U.S> Army Corps of Engineers stating that none of the property, outside of the "Wildlife Conservation Area", contains any wetlands.

As you can see from the plan, access to the solid waste facility will be provided by the construction of a new road leading from Route 17 through the office, commercial, and industrial park.

A lake and canal system will be built to provide off-site drainage for the office park, commercial area, industrial park and landfill. This system will outfall into the George Washington Canal.

The Solid Waste Management Facility will be required by the state to have an extensive on site retention system, which ultimately will outfall into the referenced lake and canal system.

As requested, let me go through each item required under section 1103 and address your concerns.

1. A site plan for all (non-residential development) shall be submitted to the county for review prior to issuance of required building permits. We have submitted a site plan showing the location of the first phase of solid waste management facility and it's relationship to the surrounding properties.

2. All nonresidential site plans shall be submitted at a scale of one which will equal fifty feet (1"=50'). Because of the size of the parcel, if we submitted a site plan meeting this requirement, our drawing would be twenty-five feet long. The 1"=800 foot scale was needed to fit the plan on a standard plan sheet.

3. Site plan review fees will be charged as reflected in the county's adopted fee schedule. These will be paid when due.

4. Unless otherwise determined by the administration, site plans shall show the following minimum information:
   A) Site data-all of this information is provided on the plan with the exception of the gross floor area of the buildings. Ven provided me with that information this morning. Theses buildings are proposed to be located within the area designated "Support Facilities" on the north side of the entrance road. The proposed square footage's are as follows: 1. Office and Administrative Building (2500 sq. ft.) 2. Equipment Maintenance Building 5 Bays (10,000 sq. ft.) 3. Scale House (1200 sq. ft.)
   B) Zoning set backs lines- a 300 foot setback buffer is shown on the plan
   C) Location and dimensions of entrances, exits, drives and fire lanes- the approximate location of the main entrance road is shown on the plan. This road will be build to meet all NCDOT standards for industrial access roads.
   D) The "support facilities" area on the south side of the entrance road is the proposed location of the scale house.
   E) N/A- Trucks will off load at the cell site within the facility. This plan has yet to be prepared or approved.
   F) N/A- Dumpster locations will be determined once the buildings are designed.
   G) Location of buildings- the buildings referred to in section (A) are proposed to be located in the support facilities area north of the entrance road. The buildings have not yet been designed so I can not provide the exterior dimensions.
   H) N/A- There are no docks, pools or patios on this site. The facility will be secured by a fence and gate at the entrance area.
   I) N/A- until county water is available, a state approved well will be constructed to serve the facility.
   J) N/A- Until county sewer is available, sanitary sewer will be provided by a septic system approved by the county and state.
   K) It is proposed that electrical service be provided within the right of way of the main entrance road.
   L) Fire hydrants will be located as required by the state and county authorities.
   M) All easements and right-of-ways required by the N>C> Department of Transportation will be provided.
   N) The location and size of all public utility lines cannot be determined until public utility lines are available to the site.
   O) Drainage from the entire site will outfall into the George Washington Canal through a lake system which will be developed after construction and development plans are approved by the county and state. Specific pipe sizes, catch basins, curb and gutter locations, can only be determined after construction and development plans have been prepared for the entire site.
   P) Refer to (O)
   Q) The state will require an extensive landscape/buffer plan as part of their approval. This landscaping will take place with in the 300-foot buffer shown on the attached plan.
   R) The required site distance triangles will be provided at all public right-of-ways.
   S) Flood zone information has been submitted.

Carl as you can see, it's simply not possible to provide all of the detailed information required by Section 1103 until detailed construction and development plans are prepared by the engineers. I think the additional

information provided in this memo and the attached site plan answer any questions the commissioners might have relating to the landfill's relationship to surrounding properties and it's overall land use impact.

Certainly Ven and I will be prepared to answer any questions on the public record at Monday's meeting.

Thank you for your consideration,

Dick

Dick

cc: Camden County Commissioners
Ven Poole
Vince Mastracco

U.S. ARMY CORPS OF ENGINEERS
WILMINGTON DISTRICT

Action ID 200211083 County Camden

NOTIFICATION OF JURISDICTIONAL DETERMINATION

Property Owner/Agent: Frank T. Williams Farms
Address: Post Office Box 7100
Virginia Beach, Virginia 23457
Telephone No.: (757)426-6465
Size and location of property (waterbody, highway name/number, town, etc.) Approx 793.3 acres of PC cropland located 7 miles N of South Mills, off of US Hwy17N, adjacent to the Dismal Swamp Canal.

Indicate Which of the Following Apply:

_ There are waters of the U.S. and/or wetlands, on the above described property which we strongly suggest should be delineated and surveyed. The surveyed wetland lines must be verified by our staff before the Corps will make a final jurisdictional determination on your property.

_ Because of the size of your property and our present workload, our identification and delineation of your wetlands cannot be accomplished in a timely manner. You may wish to obtain a consultant to obtain a more timely delineation of the wetlands. Once the consultant has flagged a wetland line on the property, Corps staff will review it, and, if it is accurate, we strongly recommend that you have the line surveyed for final approval by the Corps. The Corps will not make a final jurisdictional determination on your property without an approved survey.

_ The waters of the U.S. and/or wetlands, on your property have been delineated, and the limits of the Corps jurisdiction have been explained to you. Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.

X There are no waters of the U.S., to include wetlands, present on the above described project area which are subject to the permit requirements of Section 404 of the Clean Water Act (33 USC 1344). Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.

_ The property is located in one of the 20 Coastal Counties subject to regulation under the Coastal Area Management Act (CAMA). You should contact the Division of Coastal Management in Washington, NC, at (252) 946-6481 to determine their requirements

Placement of dredged or fill material in Waters of the US and/or wetlands on this property without a Department of the Army permit may constitute a violation of Section 301 of the Clean Water Act (33 USC 1311). A permit is not required for work restricted entirely to existing non-wetland area. If you have any questions regarding this determination and/or the Corps of Engineers regulatory program, please contact Laura D. Toler at (252)975-1616 ext.28.

Basis For Determination: USDA-FSA records show that tract No. 9197 has been drained and cultivated continuously before 12/23/85 and currently under soybean production.

Property Owner/Authorized Agent Signature _____

Corps Regulatory Official Laura D. Toler

Date 9/26/02 Expiration Date 9/26/07

SURVEY PLAT OR FIELD SKETCH OF THE DESCRIBED PROPERTY AND THE WETLAND DELINEATION FORM MUST BE ATTACHED TO THE FILE COPY OF THIS FORM

RECEIVED
OCT - 1 2002

U.S. ARMY CORPS OF ENGINEERS
WILMINGTON DISTRICT

Action ID 200211083 County Camden

NOTIFICATION OF JURISDICTIONAL DETERMINATION

Property Owner/Agent: Frank T. Williams Farms
Address: Post Office Box 7100
Virginia Beach, Virginia 23457
Telephone No.: (757)426-6465
Size and location of property (waterbody, highway name/number, town, etc.) Approx 793.3 acres of PC croplad located 7 miles N of South Mills, off of US Hwy17N, adjacent to the Dismal Swamp Canal.

Indicate Which of the Following Apply:

_ There are waters of the U.S. and/or wetlands, on the above described property which we strongly suggest should be delineated and surveyed. The surveyed wetland lines must be verified by our staff before the Corps will make a final jurisdictional determination on your property.

_ Because of the size of your property and our present workload, our identification and delineation of your wetlands cannot be accomplished in a timely manner. You may wish to obtain a consultant to obtain a more timely delineation of the wetlands. Once the consultant has flagged a wetland line on the property, Corps staff will review it, and, if it is accurate, we strongly recommend that you have the line surveyed for final approval by the Corps. The Corps will not make a final jurisdictional determination on your property without an approved survey.

_ The waters of the U.S. and/or wetlands, on your property have been delineated, and the limits of the Corps jurisdiction have been explained to you. Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.

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Basis For Determination: USDA-FSA records show that tract No. 9197 has been drained and cultivated continuously before 12/23/85 and currently under soybean production.

Property Owner/Authorized Agent Signature _____

Corps Regulatory Official Laura D. Toler
Date 9/26/02 Expiration Date 9/26/07

SURVEY PLAT OR FIELD SKETCH OF THE DESCRIBED PROPERTY AND THE WETLAND DELINEATION FORM MUST BE ATTACHED TO THE FILE COPY OF THIS FORM

RECEIVED
OCT - 1 2002

U.S. ARMY CORPS OF ENGINEERS
WILMINGTON DISTRICT

Action ID **200211083** County **Camden**

NOTIFICATION OF JURISDICTIONAL DETERMINATION

Property Owner/Agent: **Frank T. Williams Farms**
Address: **Post Office Box 7100**
Virginia Beach, Virginia 23457
Telephone No.: **(757)426-6465**
Size and location of property (waterbody, highway name/number, town, etc.) **Approx 793.3 acres of PC croplad located 7 miles N of South Mills, off of US Hwy17N, adjacent to the Dismal Swamp Canal.**

Indicate Which of the Following Apply:

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_ Because of the size of your property and our present workload, our identification and delineation of your wetlands cannot be accomplished in a timely manner. You may wish to obtain a consultant to obtain a more timely delineation of the wetlands. Once the consultant has flagged a wetland line on the property, Corps staff will review it, and, if it is accurate, we strongly recommend that you have the line surveyed for final approval by the Corps. The Corps will not make a final jurisdictional determination on your property without an approved survey.

_ The waters of the U.S. and/or wetlands, on your property have been delineated, and the limits of the Corps jurisdiction have been explained to you. Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.

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Basis For Determination: **USDA-FSA records show that tract No. 9197 has been drained and cultivated continuously before 12/23/85 and currently under soybean production.**

Property Owner/Authorized Agent Signature _____

Corps Regulatory Official Laura D. Toler
Date **9/26/02** Expiration Date **9/26/07**

SURVEY PLAT OR FIELD SKETCH OF THE DESCRIBED PROPERTY AND THE WETLAND DELINEATION FORM MUST BE ATTACHED TO THE FILE COPY OF THIS FORM

RECEIVED
OCT - 1 2002

VA Line
DEER TRAIL
US 17
McPHERSON RD
ISLAND R

Black Bear Disposal, LLC
3301 Benson Drive
Suite 601
Raleigh, N.C. 27609

Mr. Dave Parks
Permit Technician
Camden County
P.O. Box 190
Camden, North Carolina 27921

Re: Zoning Permit/Solid Waste Facility/Landfill

Dear Mr. Parks,

Attached please find the following:

1. A completed land use development application for the zoning permit.

2. Exhibit A- site plan showing the proposed development of the Camden Commerce Centre (scale 1"=800') and its relationship to surrounding land uses (3 copies)

3. Exhibit B- site plan showing the location of the buildings, parking areas, roads, utilities, etc as set forth in Section 1103 of your code. (3 copies)

First let me address the site plan referred to as Exhibit A.

The Camden Commerce Centre contains 1058 acres. Fifty acres adjacent to Route 17 is proposed for an office and commercial use in keeping with the recent rezoning in the area. An additional 741.7 acres is proposed for an industrial use also in keeping with the County's recent rezoning.

Black Bear Disposal, LLC is requesting a zoning permit for the first phase of a landfill on 606.5 acres of the 741.7-acre industrial property, the area outlined in red on Exhibit A.

After consultation with the County manager and representatives from the Northeastern North Carolina partnership a detailed plan will be submitted for the 135.2 acre "Industrial Development Area" and the 50-acre "Commercial/Office Park". The remaining 266.7 acres will be set-aside in a "Wildlife Conservation Area."

Enclosed for your files please find a copy of a letter from the US Army Corps of Engineers stating that none of the property outside of the "wildlife Conservation Area" contains any wetlands.

As requested I'd like to discuss each item as required under Section 1103 of your code.

1. A site plan for all (non-residential development) shall be submitted to the county for review prior to issuance of required building permits. We have submitted a site plan showing the location of the first phase of solid waste management facility and it's relationship to the surrounding properties. (Exhibit A and B)

2. All non-residential site plans shall be submitted at a scale of one, which will equal fifty feet (1"=50'). Because of the size of the parcel, if we submitted a site plan meeting this requirement, our drawing would be twenty-five feet long. The 1"=800 foot scale was needed to fit the plan on a standard plan sheet. (Exhibit A)

3. Site plan review fees will be charged as reflected in the county's adopted fee schedule. These will be paid when due.

4. Unless otherwise determined by the administrator site plans shall show the following minimum information.

    a. Site data-including vicinity sketch, north arrow engineering scale ratio, acreage, title of development, date of plan, gross floor area of the building, name and address of the owner/developer and person or firm preparing the plan.

    Exhibit A has all the technical information requested plus it shows the acreage of the total site (606.5 acres), and a break-down showing area devoted to "borrow pit" (90 acres) as well as two twenty acre "support facilities".

    Exhibit B shows the building footprints and gross floor area of all the proposed buildings.

    b. Zoning setback lines-a three hundred foot buffer/setback area is shown on both Exhibits.

    c. Location(s) and dimension(s) of all vehicular entrances, exits, drives and fire lanes. Exhibit A shows the proposed location of the main entrance road as it extends from Route 17 thru the commercial/office and industrial park to the site.

    d. Shown on Exhibit B

    e. Shown on Exhibit B

    f. Shown on Exhibit B

g. Shown on Exhibit B

h. Shown on exhibit A and B-the entire site is required to be fenced and secured.

i. Shown on Exhibit B

j. Shown on Exhibit B

k. Shown on Exhibit B

l. Shown on Exhibit B

m. Shown on Exhibit B

n. Shown on Exhibit B

o. Drainage Plan-Drainage from the entire site will outfall into the George Washington Canal. Storm drainage from the property will be diverted to storm water retention ponds and then into an inter-connected lake system. Storm drainage from the landfill site will have to meet strict North Carolina Department of Natural resources standards before it enters into the lake system.

p. Shown on Exhibit B

q. Shown on Exhibit A and B

r. The required site distances will be provided at all public right of ways

s. The property is outside the 100-year flood plan.

Sincerely,

Mike Patrick

Mike Patrick

ARTICLE 11
SITE PLANS REQUIRED

Section 1101 General.

1. Site Plans shall be required from applicants prior to issuance of any Permit (Building, Zoning, Conditional Use Permit, Special Use Permit, Variance) by the County.

Section 1102 Residential Site Plan Requirements.

1. Sketch site plans shall be drawn with as true an approximate scale as possible, which reviewing agents can determine that all requirements of the Ordinance are met. (Professional renderings are not required).

2. Applicant will be required to sign the zoning form as being a true reflection of what is existing and what is being proposed.

3. Unless otherwise determined by the administrator, the following minimum information shall be included on the site plan:

   (a) lot/parcel dimensions;

   (b) zoning designation;

   (c) all property line setback requirements;

   (d) all existing physical features (structures, buildings, streets, roads, etc.);

   (e) location and dimensions of proposed construction;

   (f) Flood Zone as determined by FIRM Maps; and,

   (g) any additional information as required by the reviewing agents.

Section 1103 Commercial Site Plan Requirements.

1. A site plan for all (nonresidential) development shall be submitted to the County for review prior to issuance of required building permits.

2. All nonresidential site plans shall be submitted at a scale of one inch equals fifty feet (1"= 50') or larger with three (3) black or blue line paper prints and drawn in a professional like manner showing true dimensions.

3. Site plan review fees will be charged as reflected in the County's adopted Fee Schedule.

4. Unless otherwise determined by the administrator, site plans shall show the following minimum information:

   (a) site data - including vicinity sketch, north arrow, engineering scale ratio, acreage, title of development, date of plan, gross floor area of all buildings, name and address of owner/developer and person or firm preparing the plan;

   (b) zoning setback lines;

   (c) location(s) and dimension(s) of all vehicular entrances, exits, drives, and fire lanes;

   (d) location, arrangement and dimension of all automobile parking spaces, width of aisles, width of bays, angle of parking and number of spaces;

   (e) location, arrangement and dimension of all truck unloading docks, ramps and spaces;

   (f) refuse collection (dumpster) container space(s) location;

   (g) location(s) of all building(s) with exterior dimensions;

   (h) location and dimensions of all fences, walls, docks, ramps, pools, patios, and surfaces areas;

   (i) location of water tap(s) denoting size(s) of line(s) or well area;

   (j) location of sewer tap(s) denoting size(s) of line(s) and pole(s);

   (k) location of electrical service connection(s), meter(s) and pole(s);

   (l) existing and proposed fire hydrant location(s);

   (m) location and dimension of all easements and right-of-ways as determined by NC Department of Transportation;

   (n) location(s) and size(s) of all public utility lines (water, sewer and storm sewer) within all adjacent public right-of-ways and easements;

   (o) drainage plan, including site surface drainage, pipe size, yard drains, catch basins, curb inlets, and topographic features;

   (p) curb and gutter alignment, including street widening and storm drainage, if necessary shall be required;

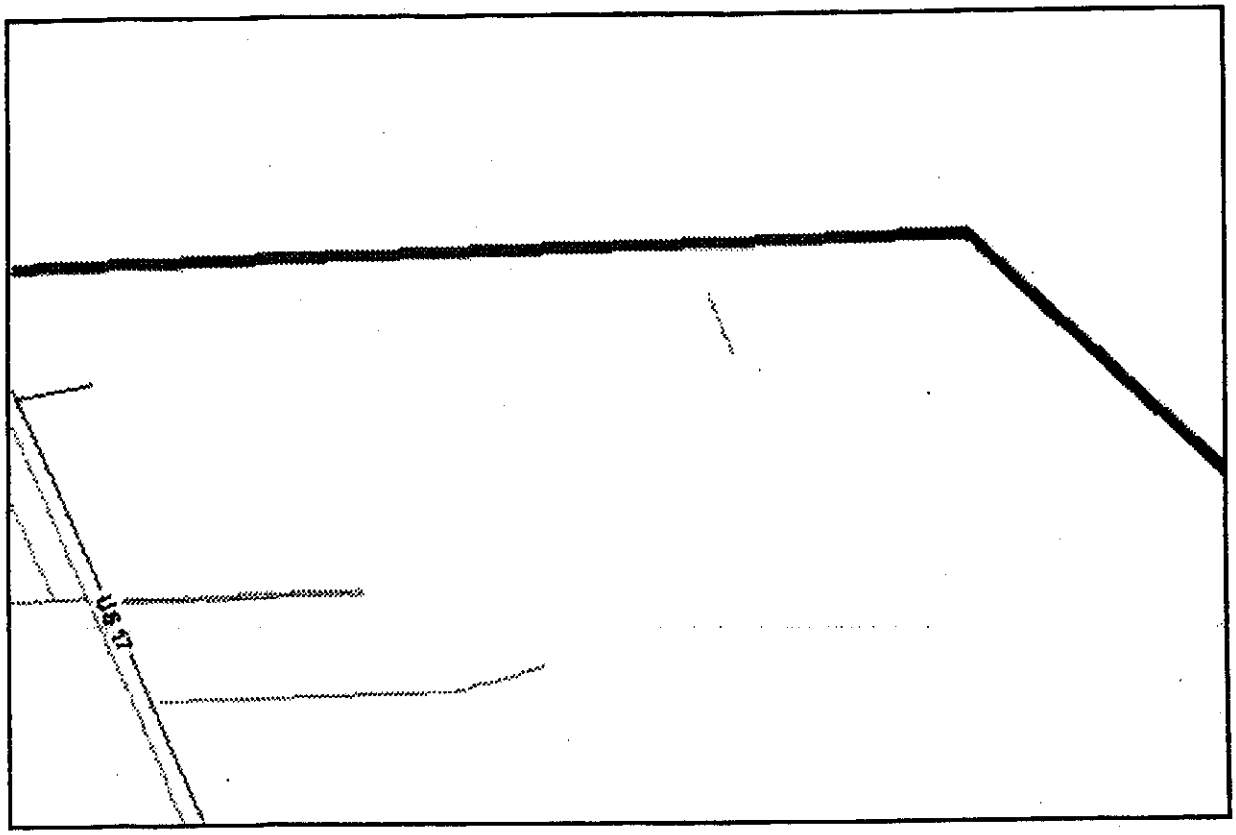
   (q) screening/landscaping plan with a species directory shall be required showing

plants with common names, sizes and numbers of plants and trees;

(r) sight distance triangle (10' x 70') shall be indicated at the intersection of all public right-of-way lines and 10' x 35' at the intersection of a right-of-way and driveway;

(s) Flood Zone as determined by FIRM Maps; and,

(t) any additional information as may be required by the reviewing agents.



0 955 Feet

FID	1785	PIN	017082002635130000
TWNSHP_COD	0001	TOWNSHIP	South Mills
CALC_ACRES	1002.786	DEED_ACRES	986.03
DIST_CODE	1	SPECIAL_DI	01
SPECIAL__1		USER_CODE	
BOOK	102	PAGE	405
TAXPAYER_I	5380	PREV__TAXP	5380
NAME_1	F. T. W. & SONS FARMS	NAME_2	FRANK T, WILLIAMS
HOUSE_NUM_	0	DIR__PHY_	
STREET__PH	PONDEROSA	TYPE__PHY_	DR
CITY__PHY_	SOUTH MILLS	ZIP__PHY_	27976
STATE__PHY	NC	LOT	
BLOCK		HOUSE_NUM1	5021
STREET__MA	MORRIS NET ROAD	ADDR1__MAI	
ADD2__MAIL		CITY__MAIL	VIRGINIA BEACH
STATE__MAI	VA	ZIP__MAIL_	23457
LAND_FMV	926743	IMP_FMV	220321

U.S. ARMY CORPS OF ENGINEERS
WILMINGTON DISTRICT

Action ID 200211083 County Camden

NOTIFICATION OF JURISDICTIONAL DETERMINATION

Property Owner/Agent: Frank T. Williams Farms
Address: Post Office Box 7100
Virginia Beach, Virginia 23457
Telephone No.: (757)426-6465
Size and location of property (waterbody, highway name/number, town, etc.) Approx 793.3 acres of PC cropland located 7 miles N of South Mills, off of US Hwy17N, adjacent to the Dismal Swamp Canal.

Indicate Which of the Following Apply:

_ There are waters of the U.S. and/or wetlands, on the above described property which we strongly suggest should be delineated and surveyed. The surveyed wetland lines must be verified by our staff before the Corps will make a final jurisdictional determination on your property.

_ Because of the size of your property and our present workload, our identification and delineation of your wetlands cannot be accomplished in a timely manner. You may wish to obtain a consultant to obtain a more timely delineation of the wetlands. Once the consultant has flagged a wetland line on the property, Corps staff will review it, and, if it is accurate, we strongly recommend that you have the line surveyed for final approval by the Corps. The Corps will not make a final jurisdictional determination on your property without an approved survey.

_ The waters of the U.S. and/or wetlands, on your property have been delineated, and the limits of the Corps jurisdiction have been explained to you. Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.

X There are no waters of the U.S., to include wetlands, present on the above described project area which are subject to the permit requirements of Section 404 of the Clean Water Act (33 USC 1344). Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.

_ The property is located in one of the 20 Coastal Counties subject to regulation under the Coastal Area Management Act (CAMA). You should contact the Division of Coastal Management in Washington, NC, at (252) 946-6481 to determine their requirements

Placement of dredged or fill material in Waters of the US and/or wetlands on this property without a Department of the Army permit may constitute a violation of Section 301 of the Clean Water Act (33 USC 1311). A permit is not required for work restricted entirely to existing non-wetland area. If you have any questions regarding this determination and/or the Corps of Engineers regulatory program, please contact Laura D. Toler at (252)975-1616 ext.28.

Basis For Determination: USDA-FSA records show that tract No. 9197 has been drained and cultivated continuously before 12/23/85 and currently under soybean production.

Property Owner/Authorized Agent Signature _____

Corps Regulatory Official Laura D. Toler
Date 9/26/02 Expiration Date 9/26/07

SURVEY PLAT OR FIELD SKETCH OF THE DESCRIBED PROPERTY AND THE WETLAND DELINEATION FORM MUST BE ATTACHED TO THE FILE COPY OF THIS FORM

RECEIVED
OCT - 1 2002

U.S. ARMY CORPS OF ENGINEERS
WILMINGTON DISTRICT

Action ID **200211083** County **Camden**

NOTIFICATION OF JURISDICTIONAL DETERMINATION

Property Owner/Agent: **Frank T. Williams Farms**
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Basis For Determination: **USDA-FSA records show that tract No. 9197 has been drained and cultivated continuously before 12/23/85 and currently under soybean production.**

Property Owner/Authorized Agent Signature _____

Corps Regulatory Official Laura D. Toler

Date **9/26/02** Expiration Date **9/26/07**

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WILMINGTON DISTRICT

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Corps Regulatory Official Laura D. Toler
Date 9/26/02 Expiration Date 9/26/07

SURVEY PLAT OR FIELD SKETCH OF THE DESCRIBED PROPERTY AND THE WETLAND DELINEATION FORM MUST BE ATTACHED TO THE FILE COPY OF THIS FORM

RECEIVED
OCT - 1 2002

Camden County, North Carolina

P.I.N. 01-7082-00-26-3513 **UDO #** 2005-02-19

Address or Property Description: Highway 17
South Mills

Property Use or Development: Landfill

Zoning District: I-1

Owner/Agent: Black Bear Disposal, LLC

The proposed use or development is hereby subject to the above-referenced application file (and all attachments and file inclusions thereto). The following marked items to this authorization:

✓. **This document constitutes a Zoning Permit.** The proposed development or use is a permitted use in the district and is hereby permitted under the permitting authority of the Zoning Administrator.

____. **This document constitutes a Conditional Use Permit.** The proposed development or use is a conditional use in the district, and is permitted subject to special conditions placed upon the development or use by the Board of Adjustment.

____. **This document constitutes a Special Use Permit.** The proposed development or use has met all of the requirements for issuance of a Special Use Permit as it may pertain to the application heretofore referenced.

____. **This document constitutes a variance.** The proposed development or use has met all of the requirements for issuance of a Special Use Permit as it may pertain to the application heretofore referenced.

____. The development or use is continuing non-conforming development or use on the property and/or in the district shown on the application and is hereby permitted to continue solely and exclusively as a non-conforming use under the permitting authority of the Zoning Administrator.

Failure to conform to the development or use of this property pursuant to the authorization contained in this signed permit (which, by reference, includes all documents in the application file and to the requirements of any Board action regarding the application) will result in: (a) the immediate invalidation of this permit; (b) legal action necessary to bring the development or use into conformity with the authorized use or development; (c) reimbursement to the County necessary to bring the development or use into conformity with the authorized use or development.

This 16 day of February, 2005.

Administrator

Land Use/Development Application
County of Camden, North Carolina

Depending upon the type of proposal, the proposal may require a Zoning Permit, Conditional Use Permit, or Special Use Permit. This form is used as the start of application process. All applicants must submit a site plan (see "Minimum Site Plan Requirements") and a valid Health Department permit. Applicants for a Conditional Use Permit or Special Use Permit should review the "Requirements for Conditional Use Permit and Special Use Permit Applications").

Applicants for a subdivision must submit this form as their Special Use Permit application.

Please consult the Planning Office (1-252-338-1919) with any questions about your application.

Please Do Not Write in this Box

PIN: 01-7082-00-26-3513

UDO# 2005 - 02 - 19

Date Received: 2/15/05

Received by: MGJ

Zoning District: I-1

Fee Paid $ Ø

PLEASE PRINT OR TYPE

Applicant's Name: BLACK BEAR DISPOSAL, L.L.C

If the Applicant is acting as agent for another person (the "principal"), please give that person's name on the line below and submit a copy of the agency agreement/letter with this Application.

Applicant's Mailing Address: 3301 BENSON DRIVE
RALEIGH, NORTH CAROLINA 27609

Daytime Phone Number: (919) 325-3000 FAX-252-264-4411 CELL-252-264-2996

Street Address Location of Property: HIGHWAY 17 1/2 MILE SOUTH OF NC/VA STATE LINE

General Description of Proposal: COMMERCIAL / INDUSTRIAL, SUBTITLE D MUNICIPAL SOLID WASTE LANDFILL

I swear or affirm that the foregoing information and all attachments hereto (now or subsequently provided as part of this application) are true and correct to the best of my knowledge.

Signed: Mark D. Myers

Dated: 2/15/05

** Information to be filled out by Planning Department*

***Is the Property in a Watershed Protection area?** NO

***Flood Zone (from FIRM Map):** X / A ***Taxes paid? yes** ✓ **no** ____

BOARD OF COMMISSIONERS

MELVIN J. JERALDS
Chairman
CLAYTON D. RIGGS
Vice-Chairman
JEFFREY B. JENNINGS
CAROLYN O. RIGGS
MICHEAL E. ANDREWS

RANDELL K. WOODRUFF
County Manager

AVA MURGIA
Clerk to the Board/
Assistant to the Manager

February 16, 2005

Black Bear Disposal, LLC
3301 Benson Drive
Raleigh, NC 27609

RE: Zoning Permit (UDO 2005-02-19)

Dear Mr. Myers:

Based on the Commercial Site Plan dated February 10, 2005 and submitted by Camp Dresser & Mckee Engineering, attached is the approved Zoning Permit for Black Bear Disposal, LLC.

Prior to the issuance of a building permit, this office will require the following items:

- Copy of State Permit
- Approved Drainage Plan
- Landscaping Plan
- Source of potable water
- Septic/Sewer
- Disposition of House located on the NW portion of property

Should you have any questions, please call the Planning Office at (252) 338-1919, ext 232.

Sincerely,

David Parks
Permit Officer

cc: file

P.O. Box 190 • 117 North 343 • Camden, North Carolina 27921 • Telephone (252) 338-1919 • Fax (252) 333-1603
www.camdencountync.gov

Items required that are not shown

Location, arrangement and dimension of all automobile parking spaces, width of aisles, with of bays, angle of parking and number of spaces.

Location, arrangement and dimension of all truck unloading docks, ramps, and spaces;

Refuse collection (dumpster) container space(s) location;

Location of water tap(s) denoting size(s) of Line(s) or well area;

Location of sewer tap(s) denoting size(s) of line(s) and pole(s);

Location of electrical service connection(s), meter(s) and pole(s);

Existing and proposed fire hydrant location(s);

Drainage Plan

Screening/Landscaping Plan

BOARD OF COMMISSIONERS

MELVIN J. JERALDS
Chairman
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MICHEAL E. ANDREWS

RANDELL K. WOODRUFF
County Manager

AVA MURGIA
Clerk to the Board/
Assistant to the Manager

January 3, 2005

Timothy D. Grant
Camp Dresser & McKee
5400 Glenwood Ave., Suite 300
Raleigh, NC 27612

RE: Commercial Site Plan for Black Bear Disposal, LLC

Dear Mr. Grant:

In review of the Site Plan for Black Bear Disposal, it is requested that you follow Article 151.312 (Commercial Site Plan Requirements) of the Camden County Code of Ordinance (attached). The following are items required for Commercial Site Plans that were not indicated:

- Total acreage of entire parcel
- Gross floor area of all buildings
- Indicate property zoning: "I-1" Light Industrial
- Zoning setbacks for all buildings
- Address of Developer
- Location of Wetlands (if any)
- Location of existing streams
- Ownership of land east of property line
- Dimension of all proposed roads
- Name of proposed roads
- Indicate Buffer area and plan (i.e. type of buffering)

All commercial buildings should be indicated on a separate site plan with all required information. Proposed site plans with proposed roads will require North Carolina Department of Transportation approval.

Once plans are completed, I recommend that a meeting be set with the developer and the Camden County Planning Staff for review.

P.O. Box 190 • 117 North 343 • Camden, North Carolina 27921 • Telephone (252) 338-1919 • Fax (252) 333-1603
www.camdencountync.gov

Should you have any questions, please call the Planning Office at (252) 338-1919, ext 232.

Sincerely,

David Parks
Permit Officer

cc: Jerry Johnson, Waste Industries
File

WASTE INDUSTRIES, INC.

Jerry Johnson
Vice President, NC Landfill Division

3301 Benson Drive
Suite 601
Raleigh, NC 27609
jjohnson@waste-ind.com

Bus: (919) 325-3000
Fax: (919) 325-3013
(800) 647 - WWIN

Specialists in Solid Waste Services

CDM
5400 Glenwood Avenue, Suite 300
Raleigh, North Carolina 27612
tel: 919 787-5620
fax: 919 781-5730

December 22, 2004

Mr. Dave Parks
Permit Officer
P.O. Box 190
117 North NC343
Camden, North Carolina 27921

Subject: Commercial Site Plan for Black Bear Disposal, LLC

Dear Mr. Parks:

Attached for your review is the site plan for the Black Bear Disposal, LLC facility on Highway 17 in Camden County. The Site Suitability Application is currently under review by the NCDENR Solid Waste Section. The approval letter will be forwarded when received, along with the application for an updated Zoning Permit.

Thank you for your assistance. If you have any questions or need additional information, please call me at (919)787-5620.

Very truly yours,

Tim Grant

Timothy D. Grant, P.G.
Camp Dresser & McKee

cc: Jerry Johnson, Waste Industries w/ attachment

P:\Waste Industries 22250\38245 Black Bear Disposal\Communications\Zoning_letter_12-22-04.doc

CDM

5400 Glenwood Avenue Suite 300
Raleigh, North Carolina 27612
tel: 919 787-5620
fax: 919 781-5730

February 4, 2005

Mr. Dan Porter
Director of Planning and Community Development
P.O. Box 190
117 North NC343
Camden, North Carolina 27921

Subject: Commercial Site Plan for Black Bear Disposal, LLC

Dear Mr. Porter:

This letter provides a response regarding the status of the items requested in your January 3, 2005 letter.

1. Total acreage of entire parcel - 704 acres.

2. Gross floor area of all buildings - There will be two buildings, a scale house and a administrative building. The scale house will be 840 square feet and the administrative building will be 3600 square feet.

3. Indicate property zoning - the property is zoned I-1 - light industrial

4. Zoning setbacks for all buildings - The setbacks for the buildings and roads will adhere to the setback required by the Unified Development Ordinances (UDO) for Camden County for I-1 zoning districts. The setbacks are 25 feet for street setbacks and 10 feet for lot boundary setback. The site plan shows that the building locations meet this criteria.

CDM

5. Address of Developer -

   Black Bear Disposal, LLC
   3301 Benson Drive, Suite 601
   Raleigh, North Carolina 27609

6. Location of Wetlands - there are no wetlands on the subject property.

7. Location of existing streams - there are no streams on the subject property. There are a series of drainage features to handle stormwater runoff.

8. Ownership of land east of the property line - Black Bear Disposal LLC owns the 192 acres east of the property.

9. Dimensions of proposed roads - The site plan shows the entrance road and perimeter access road will be 50 feet wide except for the area around the scale house. The paved around the scale house will be widened to 90 feet.

10. Name of the proposed roads - The entrance road to the facility will be Black Bear Street.

11. Indicate buffer area and plan - the landfill will be located a minimum of 300 feet from the property line. Support buildings, the access road, and sediment and erosion control features will be located within this buffer. The buildings and roads will adhere to the setbacks required by the Unified Development Ordinances (UDO) for Camden County.

CDM

Thank you for your assistance. If you have any questions or need additional information, please call me at (919)787-5620.

Very truly yours,

Timothy D. Grant, P.G.
Camp Dresser & McKee

cc: Jerry Johnson, Waste Industries

Scanned 5/11/05

NCDENR

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

May 11, 2005

Ms. Joan Smyth, L.G.
G.N. Richardson & Associates
14 N. Boylan Avenue
Raleigh, N.C. 27603

RE: Black Bear Disposal, LLC,
a subsidiary of Waste Industries, USA, Inc.
Revised Site Hydrogeologic Report
Camden County, North Carolina

Dear Ms. Smyth,

The April 20, 2005, revisions to the Revised Site Hydrogeologic Report for the proposed Black Bear Disposal facility in Camden County have been reviewed for hydrogeologic concerns by the Solid Waste Section. There are still some items in the Report that need clarification and/or revision. Please respond to the following questions and comments:

Table of Contents: With the recent revisions to the text, the pagination referenced in the Table of Contents does not match the pagination in the text of the Report. Also, there is still no reference to section 4.7.3, regarding the Long-term Seasonal High Water Table.

4.3 In the third paragraph on page 8: The Response To Comments indicates that "THG-1 was installed with a hydrated 8-foot bentonite seal", however the text in the Report still indicates a 2-foot bentonite seal.

4.7.1 When the recent revisions were made to the last paragraph on this section (on page 14), it appears some of the text was left out and/or some revisions were inserted in the wrong location.

1646 Mail Service Center, Raleigh, North Carolina 27699-1646
Phone 919-508-8400 \ FAX 919-733-4810 \ Internet http://wastenotnc.org
An Equal Opportunity / Affirmative Action Employer – Printed on Dual Purpose Recycled Paper

4.8.2 Again, while the information currently presented in section 4.8.2 based on depth is useful, the Rules require that representative values for hydraulic conductivity, porosity, and effective porosity be provide for each lithologic (hydrogeologic) unit identified at the site. This information needs to be provided for the shallow soils characterized as having more silt/clay content.

4.8.2 In the discussion of the linear velocity of ground water on page 18, some of the text from the previous Reports has been left out. Was this an oversight, or was it done deliberately?

Table 1 The Screen Interval values for B-1 and B-7 do not match the Well Construction Logs. The Date of Construction for B-3S and B-7S appears incorrect.

Table 2 The values for Effective Porosity for B-5 and B-18 still appear to be too low. Applying the soil grain size values in Appendix C to the Soil Classification Triangle would appear to yield a value of 45 for B-5, and a value of 44 or 45 for B-18.

Table 4 I am still not able to duplicate the Annual Average value of 49.93 presented in this Table. How was this value determined? (The sum of the Monthly Average values is 49.80, and the average of the Annual values for which complete data is available is 51.46.)

Table 6 The Ground Elev. values for B-1s and B-1 still appear to be reversed in both of the tables included as part of Table 6.

Drawing 2A: The TOC Elevation for B-100D is incorrect.

Drawings 3 & 4: I have still not been able to correlate the information presented on the cross-sections with the Boring Logs and Water Table data in the Report. There still appear to be errors in the cross-sections. There also appears to be unsubstantiated assumptions used. (At least I am unable to find supporting documentation for some of the assumptions.) Perhaps it would be easier to resolve these problems if I could meet with whoever has prepared the cross-sections and we could discuss these issues.

Appendix E - Surficial Aquifer Pump Test and Model:

1.4 After the revisions to the text regarding the number of wells upgradient and downgradient, the verb tenses and language of the text needs to also be revised.

- An complete replacement package was submitted for Appendix E. Were there any revisions included in this package other than those specifically addressed in the Response To Comments? If possible, future revisions should be just for selected text, tables, etc. in order to facilitate easier review.

Please respond to these questions and comments, and provide revisions as necessary. A meeting would facilitate the resolution of the remaining questions regarding the hydrogeologic cross-sections. To arrange for a meeting and/or if you have any questions regarding items in this letter, please contact me at (919) 508-8507.

Sincerely,

Bobby Lutfy

Bobby Lutfy
Hydrogeologist
Solid Waste Section

cc:	Jim Barber	Solid Waste Section
	Ed Mussler	Solid Waste Section
	John Crowder	SWS - Wilmington
	Chuck Boyette	SWS - Washington
	Jerry Johnson	Waste Industries

WYRICK
ROBBINS
YATES
& PONTON
LLP

ATTORNEYS AT LAW

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4101 Lake Boone Trail
Suite 300
Raleigh, NC 27607.7506

PO Drawer 17803
Raleigh, NC 27619

ph 919.781-4000
fax 919.781-4865
www.wyrick.com

May 10, 2005

VIA HAND DELIVERY

Nancy E. Scott, Esq.
Assistant Attorney General
North Carolina Department of Justice
Environmental Division
401 Oberlin Road, Suite 150
Raleigh, NC 27699-1646

Mr. Donald J. Barber
Permitting Branch Supervisor
Solid Waste Section Division of Waste Management
401 Oberlin Road, Suite 150
Raleigh, NC, 27699-1646

Received
MAY
Waste

Mr. Edward Mussler, P.E.
Environmental Engineer
Solid Waste Section Division of Waste Management
401 Oberlin Road, Suite 150
Raleigh, NC, 27699-1646

Dear Ms. Scott, Mr. Barber and Mr. Mussler:

Thank you for your time in meeting with us recently. It was particularly helpful to hear your concerns and issues. We hope this letter will address those concerns and issues satisfactorily for you. As you know, Black Bear Disposal, LLC ("BBD") is applying for a permit to construct and operate a municipal solid waste landfill in Camden County, North Carolina. BBD is a wholly-owned subsidiary of Waste Industries, USA, Inc. ("Waste"), a North Carolina based public-traded corporation. In submitting the financial assurance information required by the permit qualification process, BBD submitted financial information on both BBD and Waste. It is our understanding that unless Waste is listed on the permit application along with BBD,

NCDENR will not consider Waste's financial information in making the Department's financial assurance determination, so we are comfortable with NCDENR ignoring the Waste financial information at this time and considering only the BBD financial information.

As noted in our meeting, we believe that BBD is a strong and financially viable company in its own right, and bondable and insurable. As we discussed, BBD owns over $7 million in unencumbered real estate. For your convenience, we have included an additional copy of the title policy covering this real estate so that you can confirm that BBD holds clear title as well as confirm the insured value of the real estate. As we discussed during our meeting, if NCDENR or any third party obtained a judgment or lien against BBD, that judgment or lien would be senior to the claims of Waste's and BBD's lenders, under their present credit facility. In addition, it is our understanding that approximately 350 acres of the property currently owned by BBD will have no landfill footprint on it and that BBD intends to purchase $5,000,000 to $6,000,000 of adjacent property under the same financial arrangement with BBD's lenders which were used in BBD's initial purchase.

We are also enclosing the internally prepared balance sheet for BBD as of March 31, 2005. Please note that as of such date BBD had assets of $9,131,903, of which at least $7 million consisted of the unencumbered real estate. BBD is showing a negative $163,931 in Stockholders' Equity on such date (this all represents accrued interest on the capital investment since the landfill is not open), and it is also showing $8,275,970 as Intercompany Accounts Payable. However, Waste, as BBD's sole owner, is willing to convert that Intercompany Accounts Payable to Paid-in Capital if that conversion would enable you to conclude that BBD satisfies the financial viability test. This simply requires the Waste board of directors and the BBD manager to approve the conversion. We have confirmed there are no legal or accounting impediments to the conversion. Such conversion would result in BBD having a positive Stockholders' Equity (or net worth) of $8,112,038 without any consideration of the cash flows resulting from the landfill operations once open or the anticipated purchase of the adjacent land. See Exhibit A attached. For comparison purposes, Sampson County Disposal, LLC, another wholly-owned subsidiary of Waste, generated the following earnings before interest, taxes, depreciation and amortization (EBITDA or cash flow):

YEAR	CASH FLOW
2001	$ 6,442,330
2002	$ 9,424,436
2003	$12,302,404
2004	$11,744.626

Waste believes that once permitted and opened for business, BBD will succeed as well as, if not better than, Sampson County over future years. Of course, one should also expect BBD to have a comparable local economic development impact on Camden County through local industrial projects, the creation of jobs and the generation of host fees and tax revenue for Camden County for public school and other governmental uses.

We acknowledge your concerns regarding potential third-party liabilities. BBD currently has a $25 million liability insurance policy in place that will provide more than enough coverage should liability arise to third parties, say, for an accident during construction. You have already received a copy of BBD's Certificate of Insurance for your review. To the extent that the Department is concerned regarding successful completion of the construction of the landfill, BBD could provide a performance bond, or require bonds from BBD's contractors.

We understand from speaking with you that you are concerned about whether a suit against Waste, as the parent and sole member of BBD, could be maintained due to certain provisions of the North Carolina Limited Liability Act, Chapter 57C of the North Carolina General Statutes ("NCLLA"). However, the only suits that the NCLLA prevents against members of LLCs are suits that are based ***solely*** upon membership in the LLC; suits based upon other grounds are not prohibited. Indeed, the liability which a member bears for the LLC is analogous to the liability which a shareholder bears for a corporation. See The Creation of North Carolina's Limited Liability Corporation Act, 32 Wake Forest L. Rev. 179, 185-89 (1997) (copy enclosed). When the NCLLA was under consideration, numerous committees and interest groups, including the North Carolina Association of Certified Public Accountants and the plaintiff's bar, voiced strong opinions regarding how the limitation of liability provisions should be drafted. Id. The NCLLA was ultimately drafted to treat the liability of LLC members "in a manner identical to shareholders of a professional corporation." Id. at 179. Therefore, any theories of liability which a party might assert against the shareholders of a corporation should be equally viable causes of action against the members of an LLC. Such actions should include piercing the corporate veil and actions based upon personal acts of the member:

> A person who is a member . . . of a limited liability company is not liable for the obligations of a limited liability company ***solely*** by reason of being a member . . . A member . . . may, however, become personally liable by reason of the person's ***own acts or conduct.***

N.C.G.S. § 57C-3-30 (emphasis added).

We are also enclosing a copy of two research memoranda regarding the liability of a member of a limited liability company. We are hopeful that after you review this research, you

will agree the factors of a veil piercing action in a corporate context should be equally applicable for forming the basis of a veil-piercing cause of action in an LLC context.

Furthermore, N.C.G.S. § 57C-3-30, the provision of the NCLLA that protects members against certain liabilities, is markedly similar to N.C.G.S. § 55-6-22, the provision of the North Carolina Business Corporation Act which protects shareholders from liability. Section 57C-3-30 provides:

> A person who is a member . . . of a limited liability company is not liable for the obligations of a limited liability company solely by reason of being a member . . . A member . . . may, however, become personally liable by reason of the person's own acts or conduct.

Section 55-6-22(b), regarding corporations, provides:

> [A] shareholder of a corporation is not personally liable for the acts and debts of the corporation except that he may become personally liable by reason of his own acts of conduct.

In addition, N.C.G.S. § 57C-4-07, the provision of the NCLLA concerning liability for wrongful distributions, is markedly similar to N.C.G.S. § 55-8-33, the provision of the North Carolina Business Corporation Act concerning the same issue. Section 57C-4-07 provides:

> (a) A manager or director who votes for or assents to a distribution in violation of G.S. 57C-4-06 or a written operating agreement is personally liable to the limited liability company for the amount of the distribution that exceeds what could have been distributed without violating G.S. 57C-4-06 or the operating agreement if it is established that the manager or director did not act in compliance with G.S. 57-3-22.
>
> (b) Each manager or director held liable under subsection (a) of this section for a wrongful distribution is entitled to . . .
>
> (2) Reimbursement from each member for the amount the member received knowing that the distribution was made in violation of G.S. 57C-4-06 or the operating agreement . . . .

Section 55-8-33, concerning corporations, provides:

> (a) A director who votes for or assents to a distribution made in violation of G.S. 55-6-40 or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating G.S. 55-

6-40 or the articles of incorporation if it is established that he did not perform his duties in compliance with G.S. 55-8-30.

(b) A director held liable under subsection (a) for an unlawful distribution is entitled to . . .

(2) Reimbursement from each shareholder for the amount the shareholder accepted knowing the distribution was made in violation of G.S. 55-6-40 or the articles of incorporation.

The analogous wording of these statutes, the legislative history behind the NCLLA, [and the case law provided in our memoranda regarding piercing the corporate veil] clearly indicate that the liability of a member is analogous to the liability of a shareholder, and any theories of liability which a party might assert against the shareholders of a corporation should be equally viable causes of action against the members of an LLC.

During our meeting you raised an instance in which an attorney was sanctioned for suing a member of a limited liability company. We believe the case to which you were referring is Clay v. Roscoe, LLC, 128 N.C. App. 678, 497 S.E.2d 422 (1997). In Clay, Roscoe, LLC ("Roscoe") purchased some property for the development of a gas storage facility. Neighboring residents sued both Roscoe and a member of this LLC, Dale C. Bone ("Bone"), alleging that the proposed facility would constitute a nuisance. The lower court sanctioned the Plaintiff's attorney, and the appellate court remanded for further findings as to whether sanctions were warranted for the claims against Bone.

In our opinion, this case does not stand for the proposition that an attorney will be sanctioned simply for suing a member of an LLC. This case holds, like all Rule 11 cases where sanctions are imposed, that an attorney will be sanctioned for suing *any* party when the claim is not well grounded in fact, not warranted by existing law, and interposed for an improper purpose. Indeed, the Court concluded that, if the claim against Bone "properly alleged" acts "by Bone individually," sanctions would not have been proper. Id. at 687, 497 S.E.2d at 428. The violation was of Rule 11, not the NCLLA. In fact, Cone has been followed in a number of cases deciding Rule 11 issues that have absolutely nothing to do with limited liability companies. See Static Control Components, Inc. v. Vogler, 152 N.C. App. 599, 568 S.E.2d 305 (2002) (citing Cone and involving an alleged Rule 11 violation in a misappropriation of trade secret and breach of contract case); Couch v. Private Diagnostic Clinic, 146 N.C. App. 658, 554 S.E.2d 356 (2001) (citing Cone and concerning an alleged Rule 11 violation by plaintiff's attorney because of his conduct before a jury).

Of further interest is Cooper v. Creative Homes of Distinction, LLC, 2002 N.C. App. LEXIS 2244 (2002). In Cooper, the Plaintiff sued both an LLC *and* the manager of the LLC.

The court held that the manager was not liable to the Plaintiff, but not because a Plaintiff can never sue the manger of an LLC. Rather, the Court found that because liability of a manager cannot be based *solely* on the status of manager, but must be based upon other grounds, the manager was not liable to the Plaintiff because no other grounds for liability existed. Id. at 9-11. Also, the case makes absolutely no mention of sanctioning the Plaintiff's counsel for suing the manager of the LLC.

After you have had a chance to review these materials and BBD's request that you consider BBD as the sole applicant, please call us to discuss any remaining questions or concerns you may have. We respectfully request that based upon the very strong financials which BBD has to offer, the lien free real estate and the projected cash flow, and the right to pursue Waste in the same fashion as one might pursue a shareholder of a corporation, you determine that BBD is a financially viable applicant singularly, and you further determine to issue a permit to Black Bear Disposal, LLC for the construction and operation of the Camden County landfill.

Thank you for your consideration of this additional information. Should you have any further questions, please do not hesitate to call me. We look forward to hearing from you.

Sincerely yours,

WYRICK, ROBBINS, YATES & PONTON

James M. Yates, Jr.

Enclosures

cc: Jim Perry (w/ encl.)
Jerry Johnson (w/ encl.)
Grady Shields (w/o encl.)

Exhibit A

Waste Industries, Inc.
Admin Division Consolidated Balance Sheet
For the Month Ending March 31, 2005
(ON AN AS-CONVERTED BASIS)

Account Description	Current Period 03/31/05	Prior Year End 12/31/04
Assets		
Current Assets		
Net N/R Current - Non-Affiliate	-	-
Accounts Receivable	-	-
Total Reserve for Bad Debt	-	-
Total Current Assets	-	-
Fixed Assets		
Landfill Site/Cell Costs	9,131,927	9,006,088
Accumulated Depreciation	-	-
Accum Site/Cell Amort	(833)	-
Total Net Fixed Assets	9,131,093	9,006,088
Other Assets		
Total Other Assets	-	-
Total Assets	9,131,093	9,006,088
Liabilities & Stockholder Equity		
Liabilities		
Accounts Payable Trade	1,019,055	-
Intercompany 2020	-	9,006,088
Intercompany Accts. Payable	-	9,006,088
Total Liabilities	1,019,055	9,006,088
Stockholder's Equity		
Profit or Loss	(163,931)	-
Stockholders' Equity	8,275,970	-
Liabilities & Equity	9,131,093	9,006,088
Difference	-	-

Received
MAY 2005
Waste
Management

NOTE: This is for illustration purposes only. Any conversion would be done currently, not retroactively.

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MEMORANDUM

TO: File

FROM: LDI

DATE: March 4, 2005

RE: Applicability of the Corporate Veil Concept to Limited Liability Companies

---

The question has apparently been raised as to whether a limited liability company provides greater protection to its owner(s) than does a corporation. The issue is whether piercing the corporate veil is a risk to limited liability companies just as it is a risk with corporations. Though we believe the instances of piercing the corporate veil are and should be extremely limited, the concept does appear to apply equally to a limited liability company as it does to a corporation.

Based on my research, there are no North Carolina cases addressing the question of whether the "corporate veil" or liability shield of a limited liability company could be pierced under the same or similar circumstances as a corporation. With respect to piercing the corporate veil of corporations, the North Carolina Supreme Court has determined that, while the decision is still very much fact based on a case-by-case basis, the three factors of the "instrumentality rule" must be met, as follows:

1) **Control** at such a level that it can be classified as complete domination of finances, business and policy such that the entity has no will, existence or mind apart from the controller;
2) **Use** of such control to commit fraud or wrong; and
3) **Proximate cause** between such control and use and the injury or loss complained of.

In determining whether the first prong has been met, the following factors are commonly considered:

1) Inadequate capitalization, which does not mean the company simply is not operating profitably, but that the capitalization was deceptively or otherwise

abusively structured so as to give an unfair or fraudulent advantage to equity holders over creditors;

2) Noncompliance with corporate formalities and intermingling of assets;
3) Level of domination and control; and
4) Excessive fragmentation of a single enterprise into separate entities beyond any reasonable justification therefore.

Since the North Carolina courts have apparently not made a direct determination with respect to the application of the concept of piercing the corporate veil to limited liability companies, I have done some general research across the country to see if other states have made such a determination. Some states, such as Georgia and Wyoming, have a number of decisions on the issue. Others have only unreported decisions, and many states have none. The LLC entity is still relatively new, so decisions using the LLC form of entity are still somewhat scarce. With respect to the unreported decisions discussed below, I cannot provide certainty that the law as set forth in such decisions would be relied upon in future decisions, but all in all, I was able to locate enough cases to conclude that the states are coming to a consensus – the corporate veil piercing concept applies to limited liability companies in substantially the same manner as to corporations. I found no cases indicating that the treatment of LLCs under corporate veil piercing law would differ from that of corporations except for a brief mention that the determination of corporate formalities would be somewhat different since LLCs require less formality than corporations.

Brief excerpts from decisions across the country are set forth below.

Georgia: In *Bonner v. Brunson*, 262 Ga. App. 521 (2003), the Georgia Court of Appeals states that "[j]ust as the so-called 'corporate veil' protects an individual shareholder of a corporation from personal liability for the debts of the separate corporate entity (so long as the corporate forms are maintained) so is a member of a limited liability company (LLC) 'veiled' from personal liability for the debts of the separately maintained LLC entity."

Wyoming: In *Kaycee Land v. Flahive*, 2002 Wy 73 (2002), the Supreme Court of Wyoming states that "[n]o reason exists in law or equity for treating an LLC differently than a corporation is treated when considering whether to disregard the legal entity."

Colorado: In *Water, Waste & Land v. Lanham*, 955 P.2d 997 (1998), the Colorado Supreme Court states in a discussion about the state's LLC statutes that "[i]t would be an unwarranted stretch to say that these laws intend to extend the insulation of limited liability beyond that traditionally provided by the corporate form. That means that participants in closely held enterprises will continue to be liable for their acts taken in the entity's name that are wrongful or violate regulatory provisions either under agency law or by a court piercing the entity's veil."

Connecticut: In *KLM v. Tylutki*, 75 Conn. App. 27 (2003), the Appellate Court of Connecticut states that "[a]lthough we disagree with the court's decision to pierce the corporate veil, we agree with the court that the determination of whether to pierce the corporate veil of a

stock corporation or to disregard the protections afforded a limited liability company requires the same analysis."

California: In *Stinky Love v. Lacy*, 2004 Cal. App. Unpub. LEXIS 7497 (2004) (unpublished opinion), the California Court of Appeals affirmed the lower court's decision to pierce the corporate veil of a limited liability company and stated that "[t]he alter ego doctrine applies to members of limited liability companies."

New York: In *Westmoreland Assoc. v. Kispert*, 2002 NY Slip Op 50474U (2002) (unpublished opinion), the Civil Court of the City of New York, Queens County, states that "if a corporate veil can be pierced under appropriate circumstances, an LLC veil should be pierceable as well."

Minnesota: In *Tom Thumb Food Markets v. TLH Properties*, 1999 Minn. App. LEXIS 84 (1999) (unpublished decision), the Minnesota Court of Appeals states that "[c]ase law that states the conditions and circumstances under which the corporate veil of a corporation may be pierced under Minnesota law also applies to limited liability companies."

Based on these decisions, the courts that have considered the matter appear to be in agreement that the corporate veil piercing law is equally applicable to limited liability companies. Therefore, it seems likely that the North Carolina courts would follow the trend and apply the same or substantially the same standards to limited liability companies as are applied to corporations with respect to piercing the corporate veil.

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MEMORANDUM

Received
MAY 2005
Waste
Management

TO: File

FROM: LDI

DATE: April 20, 2005

RE: The Corporate Veil in the LLC Context

We have reviewed the legal landscape with respect to insulating corporate/limited liability company obligations and situations where courts have "pierced the corporate veil".

A. General Overview of Member/Shareholder Liability for Company Liabilities

In broad terms, the concern is about potential liability of a member or shareholder for the liabilities of the LLC or corporation in which the member or shareholder has an interest. "Piercing the veil" is another term for disregarding the legal entity. A court may decline to recognize the separate corporate existence of a company under certain limited circumstances. The result would typically be assessing liability for the company's actions to its shareholder(s), whether individuals or entities themselves, or assessing liability to a brother/sister company. Because the LLC entity form has not been in existence for that long, this memo will first give a general overview of corporate veil piercing before discussing application to LLCs.

A corporation is an entity that is separate and distinct from its shareholders and its debts are not the debts of its owners. This is true whether the corporation has one or many shareholders. This concept of separate entity, however, is mere legal theory and the courts will not recognize it when recognition of the corporate form would extend the principle of incorporation beyond its legitimate purposes and would produce injustice or inequitable consequences. Therefore, in an appropriate case and in furtherance of the ends of justice, the corporate veil will be pierced and the corporation and its shareholders will be treated as identical.

Despite the theoretical clarity of the doctrine, the case law tends to be very fact-driven, so it can be difficult to determine its application to any given set of facts. Some states' courts, like those in California, are relatively quick to pierce the corporate veil. Other states' courts, like those in Alabama and Delaware, are more reluctant to pierce. Despite the fact that some states' courts are quicker to pierce than others, most courts look to the same general factors in determining whether veil piercing is warranted. As a result, it is helpful to look at the factors

courts use when deciding whether or not the corporate veil should be pierced. Once these factors have been identified, it is relatively easy to identify those things corporations should and should not do in order to minimize the risk of veil-piercing.

1. Nature of the Entity

The number of shareholders is a key factor in piercing analysis. Studies have shown that publicly held corporations are rarely, if ever, pierced. Perhaps publicly held corporations are more rarely pierced because public policy dictates that we maintain an organized and liquid securities market. Personal liability of shareholders would have an obvious, adverse effect on stock ownership. Moreover, where there are few shareholders, the shareholders are more likely to be intimately involved in running the business. One commentator found after studying a data base of 1,600 veil piercing cases that there were no cases in that group holding shareholders individually liable where the corporation had ten or more shareholders. Studies also have shown that courts are more likely to pierce where the defendants were both shareholders and directors of the corporation. Similarly, courts also appear hesitant to pierce where the defendants are passive shareholders. One can conclude that courts are more comfortable holding individuals accountable when a direct correlation can be shown between the liability and their personal actions.

2. Disregarding the Corporate Entity

Courts often focus in on certain activities as relevant to a veil-piercing claim. These include a disregard of corporate formalities, a disregard of the principle of economic corporate separateness, undercapitalization and the siphoning of funds out of the corporation. To avoid piercing for failing to follow corporate formalities, a corporation should maintain proper records of the corporation's activities and should have appropriate shareholders' and directors' meetings. Common examples of violations of corporate separateness include commingling corporate funds with the assets of the shareholder or with assets of related companies and failing to keep separate corporate records. A corporation must maintain adequate capitalization to cover its potential liabilities. Although "adequate capitalization" is an amorphous concept, veil-piercing cases tend to recognize that it is inequitable to allow shareholders to deliberately or recklessly set up "flimsy organizations" so that they may escape personal liability. Courts do not mechanistically pierce where there has been a technical violation of one of these principles but instead look to the totality of the circumstances. Usually a court will only pierce where there has been a violation of a number of factors and there is an element of injustice or fundamental unfairness. Finally, it is important to note that courts are more likely to pierce the corporate veil in a tort case than in a contract case. This truism is based on the fact that those who contract with a company are able to evaluate the financial risks involved, while tort victims do not pick their tortfeasors.

B. Comparison of LLCs to Corporations

LLCs are entities that possess some of the most attractive characteristics of corporations, S corporations, and limited partnerships. In sum, LLCs generally have pass-through tax treatment, thus avoiding corporate double taxation while still retaining corporation-like limited liability status for members. LLCs are a relatively new entity form in American law and, as a result, there is only limited case law on piercing the "corporate" veil and holding the members

liable for the LLC's liabilities. Commentators, however, have identified a few principle differences between LLCs and corporations that will most likely effect the development of LLC veil-piercing case law. This section, therefore, will first look at how LLC statutes address the issue of veil-piercing and then will look at how differences in the fundamental nature of LLCs and corporations will impact the development of the law in this area.

1. LLC Statutes and Veil-Piercing

State LLC statutes come in several varieties. Some explicitly state that veil-piercing under the case law applicable to the state's corporations shall be used in the case of an LLC while others do not directly address the issue. No matter what form the authorizing statute takes, there is little doubt that courts will look behind the veil of the LLC form in certain circumstances and hold individual members liable.

Some state statutes, such as Colorado's, explicitly address veil-piercing. Other state statutes simply state that the case law addressing corporate veil piercing under that state's corporate law is to be applied to LLCs. See, e.g., Minn. Stat. § 322B.303 ("The case law that states the conditions and circumstances under which the corporate veil of a corporation may be pierced under Minnesota law also applies to limited liability companies.")

On first read, Georgia's statute, like the statute in many other states, appears to provide rather broad protection. Section 14-11-303 states:

> (a) A person who is a member, manager, agent, or employee of a limited liability company is not liable, **solely** by reason of being a member, manager, agent, or employee of the limited liability company, under a judgment, decree, or order of a court, or in any other manner, for a debt, obligation, or liability of the limited liability company, whether arising in contract, tort, or otherwise, or for the acts or omissions of any other member, manager, agent, or employee of the limited liability company, whether arising in contract, tort, or otherwise. Notwithstanding the provisions of this subsection, a member, manager, or employee may be personally liable for tax liabilities arising from the operation of the limited liability company as provided in Code Section 48-2-52.
>
> (b) Notwithstanding the provisions of subsection (a) of this Code section, under a written operating agreement or under another written agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations, and liabilities of the limited liability company.

Though the language appears to allow an LLC member to avoid personal liability unless the member explicitly agrees to assume it, the commentators and the case law indicate that the protection afforded by this language is not as strong as a first read suggests. These authorities indicate that the emphasis should be placed on the word "**solely**" when interpreting the first sentence in (a) above.

2. Nature of the Entity

For a number of structural and legal reasons, LLCs are not likely to challenge traditional corporations as a popular entity choice for publicly traded entities. Therefore, LLCs are likely to be an entity choice that competes directly with that particular subset of corporations most likely to be pierced—the closely-held corporation. Thus, most LLCs will have few members and will often be member-managed. As noted above, this increases the likelihood that courts will look behind the entity veil and hold members liable in certain circumstances.

3. Disregarding the Entity

As discussed above, courts often focus on certain activities as relevant to a veil-piercing claim. These include disregard of corporate formalities, disregard of the principle of economic corporate separateness, undercapitalization and the siphoning of funds out of the corporation. We expect that disregard of corporate formalities will play a smaller role in LLC veil-piercing cases than in corporate veil-piercing cases. Because state LLC statutes require few formalities, this argument is less likely to succeed in LLC veil-piercing cases. However, from a risk management perspective, an LLC should take care to follow any requirements specified by statute, its articles of organization, or its operating agreement. For example, LLC members should be sure to have a signed operating agreement and to appoint managers (where applicable). LLCs may be even more likely to be pierced than corporations for disregarding the principle of economic corporate separateness. As previously noted, LLCs are allowed more latitude and flexibility in their organization and governance than corporations making it more likely that the line between LLC and personal activities will be even more blurred than in close corporations. LLCs should not allow the lack of statutory requirements to lull them into failing to keep adequate entity records and members should be sure to keep their personal assets separate from the assets of the LLC. Finally, LLCs, like corporations, must be adequately capitalized.

C. An Overview of Georgia and Eleventh Circuit Court of Appeals Cases

1. Corporate Cases

a. U.S. v. Fidelity Capital, 920 F2d 827 (1991). The 11th Circuit Court of Appeals, in vacating the lower court's decision and remanding the case back to the US District Court for the Northern District of Georgia, discussed the overall state of corporate veil-piercing law in Georgia, stating the following:

- "[A] corporation and its shareholders and officers are separate, even if one person owns all of its shares and controls its actions."
- "The corporation is not bound by the acts of the owner as an individual . . . and the owner is not bound by corporate acts, even though the individual may dictate every corporate decision."
- "The mere fact that a person owns and controls a corporation will not justify a finding of abuse of the corporate entity even though that person may have used the corporation to promote his own ends."
- "When the person who owns or controls the corporation abuses the privilege however, by using the corporate form to defeat justice, perpetuate fraud, promote

crime, evade contractual or tort responsibility, or for any other reason which in equity or good conscience would justify the disregard of the corporate entity, the court may pierce the corporate veil in order to correct the abuse."

The Court went on to discuss the theory of "alter ego" as one theory used in Georgia courts to justify piercing the corporate veil. In order to establish that a corporation is an alter ego of its owner, it must be shown that "the shareholders disregarded the corporate entity and made it a mere instrumentality for the transaction of their own affairs, that the corporation and its owners have such a unity of interest and ownership that they lack separate personalities and that to observe the corporate form would work an injustice and promote fraud." The Court emphasized that the standard is "difficult to meet" and that courts must exercise "great caution" before disregarding the corporate form. Some of the factors mentioned in finding an "alter ego" are:

- Evidence that the controlling person commingled the corporate assets with his own or with those of other corporations under his control;
- Conducting private and corporate business on an interchangeable or joint basis;
- Maintenance of (or failure to maintain) corporate books, records and formalities; and
- Sharing of offices, telephone number and stationary.

Some of the examples the Court gave where the corporate veil was pierced included:

- Where a sole shareholder listed assets of corporations on his personal financial statement and paid personal expenditures from corporate accounts;
- Where the president, majority shareholder and sole employee of the company paid himself salary advances from an overdrawn account and used company funds to purchase the stock of another company for himself and to make loan and insurance payments on his personal automobile;
- Where the company entered a contract at a time when the corporation's existence was largely ignored by its shareholders, it had issued no stock and held no meetings, and its president endorsed checks individually and personally guaranteed the company's obligation; and
- Where a company was undercapitalized, its sole shareholder made all business decisions, used the same office for his other businesses, held few corporate meetings, used corporate employees on personal projects, and diverted corporate funds for personal and other corporate expenses.

It is notable that while the District Court found that the fact that one of the entities paid part of another entity's obligation was evidence of abuse of the corporate form, the Court of Appeals found that this was <u>not</u> an abuse of the corporate form. The Court indicated that a *draining off* of the funds from one company to the other might be an abuse.

The Court also addressed the issue of undercapitalization stating that "Georgia law will allow the disregard of the corporate entity when a corporation is thinly capitalized *at the time of formation* and other evidence of abuse of the corporate form is present." A corporation that was

adequately capitalized when formed but later suffers financial hardship will not be considered undercapitalized for purposes of analyzing abuse of the corporate form.

The Court analyzed some additional factors, noting that the companies in the case before it shared office space and stationary, one provided the employees for the other and one managed the other through a management agreement. The Court found, however that while these factors when combined with other evidence of corporate abuse might indicate an alter ego, in this case the other evidence was not compelling.

Finally, the Court distinguished this case from *Derbyshire* (discussed below) because a key factor in *Derbyshire* was that the related entities were always represented by the owner as a unit or a unified group, and not as different entities.

b. Derbyshire v. United Builders Supplies, 194 Ga. App. 840 (1990). In *Derbyshire*, the Georgia Court of Appeals found that the "family of corporations acted as a unit," and that the owner had difficulty distinguishing between them. The related companies shared one location and functioned together to produce a common product. Liability on the real property lease was at issue, so the fact that the corporations shared the same office space may have carried significant weight. The Court reiterated that to pierce the corporate veil, there must be abuse of the corporate form and that sole ownership is not a factor, nor is the fact that the sole owner uses and controls the entity to support his ends. The Court stated that "[t]he law intervenes when the separate personalities of the corporation and its owner no longer exist." To find an alter ego, the court must find that "to adhere to the doctrine of corporate entity would promote injustice or protect fraud."

c. Hickman v. Hyzer, 261 Ga. 38 (1991). In *Hickman*, the Supreme Court of Georgia stated that "[g]reat caution should be exercised by the court in disregarding the corporate entity" (citing *Farmers Warehouse v. Collins*). It went on to state that the court will, however, disregard the separateness of the corporate entity where the corporation has "overextended its privileges in the use of the corporate entity to defeat justice, to perpetrate fraud or to evade statutory, contractual or tort responsibility" (citing *Kaplan's Nadler: Georgia Corporation Law*).

In *Hickman*, the plaintiff cited undercapitalization, reliance on loans, improper payments and preferential distributions as reasons to pierce the corporate veil. The Court declined to pierce the veil, stating that in order for undercapitalization to call for piercing the veil, "it must be coupled with evidence of an intent at the time of the capitalization to improperly avoid future debts of the corporation." The Court found that reliance on loans was proper and that if an entity failed to pay its loans then the lender has whatever rights are in its loan agreement, such as foreclosure on the assets. The Court noted that the directors are bound to manage the assets for the benefit of the creditors under such circumstances and not to obtain some benefit for themselves. In the event directors do obtain an improper personal benefit, then the proper action is disgorgement by such directors, but not piercing the corporate veil. The Court ultimately found that this was a "classic example of a failed business and not a case of wrongdoing, fraud or bad faith."

2. LLC Cases. Unlike some other states, the Georgia courts have directly addressed the question of whether corporate veil-piercing standards apply to LLCs.

a. Bonner v. Brunson, 262 Ga. App. 521 (2003). In *Bonner*, the Georgia Court of Appeals states that "[j]ust as the so-called 'corporate veil' protects an individual shareholder of a corporation from personal liability for the debts of the separate corporate entity (so long as the corporate forms are maintained) so is a member of a limited liability company (LLC) 'veiled' from personal liability for the debts of the separately maintained LLC entity." The Court could disregard the separate LLC entity "when the member, in order to defeat justice or perpetrate fraud, conducts his personal and LLC business as if they were one by commingling the two on an interchangeable or joint basis or confusing otherwise separate properties, records, or control."

b. Yukon Partners v. Lodge Keeper, 258 Ga. App. 1 (2002). In *Yukon*, the Georgia Court of Appeals stated that, as with piercing the corporate veil, which should only be exercised with "great caution", a member of a limited liability company is considered separate from the company. In this case, which involved both corporations and LLCs, including some parent-subsidiary relationships, the Court stated that "so long as the law authorizes the formation of subservient corporations, the law would defeat its own purpose by disregarding its own creature merely because a parent corporation, or other sole owner, controls the subsidiary . . . and uses it and controls it to promote his or its ends." In finding that the plaintiff failed to present evidence that the entities were a "sham", or "used to defeat a public convenience, to justify wrong, protect fraud, defend crime, or any other reason which in equity and good conscience would justify the disregard" of the entities.

3. Summary of Case Law. In summary, the Georgia courts do not appear to use a formula with a certain number of prongs that must be satisfied in order to justify the piercing of the corporate veil. Instead, the common theme running through the cases is whether the activities on the part of the owner and company would work injustice and promote fraud. The courts look at the owner's activities and determine whether they were business activities and decisions made on behalf of the company or whether they were personal decisions and activities intended to benefit the owner to the detriment of the company and to cause the company to avoid paying its obligations. Other factors are complete disregard of the corporate form, gross undercapitalization and operating related companies as a single unit. The courts are urged to exercise "great caution" and to respect the fact that one of the inherent purposes of incorporation is insulation from liability.

The cases provide us with some insight into the types of activities that have led to piercing the corporate veil and the types of activities that did not result in such consequences. The analysis remains extremely fact-based, so there is no way to absolutely ensure the respect of the corporate form. However, there are many things that can be done to increase the likelihood that the liability shield will remain in place and that the debts and obligations will not pass through to owners or affiliates.

D. Application of the Law

As a general rule, you should adhere to the following guidelines:

1. You should ensure that each of the companies is adequately capitalized. This does not require that each company be profitable.

2. You should confirm that the insurance coverage of each entity is adequate and reasonable for the field in which that entity operates (i.e., what would be customary for similarly-situated businesses).

3. You must ensure that each company complies with its corporate or LLC formalities on a regular and current basis. We occasionally review the minute books of the various subsidiaries to ensure that officers and managers are properly appointed and that transactions that require consent are properly documented

4. Each entity needs to be run as a separate entity, meaning that employees are employed by the proper entity, each entity has its own bank account, even if just a deposit account, each entity's books and records are separately maintained, etc.

May 13, 2005

To: Jim Barber
Bobby Lutfy
Ed Mussler
Jim Coffey

From: Nancy Scott

Re: Proposed Black Bear Disposal LLC landfill in Camden County

By cover of this memo I am forwarding to your attention three watershed maps and a letter from Paul Schmidt, counsel for the City of Chesapeake, Virginia.

Also attached is a copy of a deed to the property purchased for the landfill by Black Bear, also forwarded to me by Mr. Schmidt. Mr. Schmidt points out the easement conveyed with the land:

> Grantor also conveys to Grantee the right to drain surface water over the existing ditch and channel system on other lands of the Grantor located between the property described above ad the outfall at the Northwest River in Chesapeake, Virginia.

Mr. Schmidt has posed the theory that the ditch(es) may be constitute a landfill "appurtenance" within the meaning of NCGS 130A- 130A-294(b1)(3) and (4), thereby subjecting the applicant to a requirement for a franchise from the City of Chesapeake.

HUFF, POOLE & MAHONEY, P.C.
ATTORNEYS & COUNSELLORS

Paul R. Schmidt, Esq.

Direct Dial: 757/518-2380
Email: pschmidt@hpmlaw.com

NORTH CAROLINA
ATTORNEY GENERAL'S OFFICE
MAY 13 2005
ENVIRONMENTAL DIVISION
RECEIVED

Reply to:
Virginia Beach

May 11, 2005

Ms. Nancy Scott, Esq.
North Carolina Assistant Attorney-General
9001 Mail Service Center
Raleigh, NC 27699-9001

Dear Nancy;

I have taken the liberty of forwarding copies of the maps we discussed earlier this week. These maps depict the USGS data set concerning land elevations in the immediate vicinity of the proposed Black Bear Disposal L.L.C. Landfill. From this data, GIS calculated a watershed delineation for the general area. These watershed boundaries show surface flow from the landfill "primary parcel" would be north to the Northwest River via both natural and artificial waterways. Please note the City of Chesapeake's water treatment plant's infall structure is downstream of the outfalls from the ditch systems draining the "primary parcel."

Thank you for your kind attention to this matter, and please contact this office upon receipt so we might further discuss the maps and potential impact to the Northwest River drainage basin.

Very truly yours,

HUFF, POOLE & MAHONEY, P.C.

By

Paul R. Schmidt

PRS/maw

Being the same property acquired by Grantor by instruments recorded at Book 72, Page 335 and Book 102 Page 405, Camden County Registry and in Book 168, Page 429 and book 324, page 434, Currituck County Registry and as shown on that certain plat recorded at Plat Book 32, Page 32EA, Camden County Registry (the "1974 Plat"), provided, however, that with respect to the 16.10 acres of land shown on the plat in the easternmost portion of the property, Grantor makes no warranties of title and quitclaims such 16.10 acres to Grantee.

Grantor also conveys to Grantee the right to drain surface water over the existing ditch and channel system on other lands of the Grantor located between the property described above and the outfall at the Northwest River in Chesapeake, Virginia.

A map showing the above described property is recorded in Plat Book 32 page 32EA in the Camden County Registry of Deeds.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor has done nothing to impair such title as Grantor received, and Grantor will warrant and defend the title against the lawful claims of all persons claiming by, under or through Grantor, other than the following exceptions:

1. Anything shown on the Boundary Survey entitled "BOUNDARY SURVEY FOR WASTE INDUSTRIES, INC, CURRENT OWNER: F.T.W. & SONS FARMS, SOUTH MILLS TOWNSHIP, CAMDEN COUNTY, NORTH CAROLINA" dated July 16, 2004 and prepared by Surveying Solutions, P.C. including, but not limited to the following:
   a. Perpetual easement for highway purposes on the west
   b. Three (3) foot wire fence located along highway right of way on the west
   c. Overhead utilities on the west and north lines
   d. Thirty (30) foot easement for 30' lane known as Pandorum Drive located on the north
   e. 16.11 acre area of overlap on the east
   f. Various ditches and canals
   g. 100 year Flood Hazard Area on the east
   h. Various soil paths located on and crossing property
2. Camden County and Currituck County ad valorem taxes for tax years 2005 and following.
3. Agreement with Albemarle Electric Membership Corporation recorded in Book 71, at page 199, Camden County Registry.
4. Easement to Department of Transportation recorded in Deed Book 70, at page 161, Camden County Registry.

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

F.T.W. & SONS FARMS, a Virginia limited partnership
Entity Name

By: _____ Title: General Partner

By: _____ Title: _____

By: _____ Title _____

USE BLACK INK ONLY

_____ (SEAL)

_____ (SEAL)

_____ (SEAL)

_____ (SEAL)

Issued Oct 04 2004
$13,700.00
State of North Carolina Camden County
Real Estate Excise Tax

FILED in Camden County, NC
on Oct 04 2004 at 02:36:01 PM
by: Peggy C. Kight
Register of Deeds
BOOK 200 PAGE 819

NORTH CAROLINA EXC SE STAMPS
ATTACHED AND CANCELLED $13,700.00
$2.00 per 1000 value

NORTH CAROLINA SPECIAL WARRANTY DEED

Excise Tax: $13,700.00
PIN: 01-7082-00-26-3513

Parcel Identifier No _____ Verified by 360-05-LSA County on the 4th day of October, 2004
By: 14,507,500- 65,075 taxes pd. LSA

Mail/Box to: Jeffrey J. Johnson, Esq. Wyrick Robbins Yates & Ponton LLP, 4101 Lake Boone Trail, Suite 300, Raleigh, NC 27607

This instrument was prepared by: Joseph T. McFadden, Jr., Kaufman & Canoles, P.C., P.O. Box 3037, Norfolk, VA 23514

Brief description for the Index: _____

THIS DEED made this 1st day of October, 2004, by and between

GRANTOR	GRANTEE
F.T.W. & SONS FARMS, a Virginia limited partnership 5021 Morris Neck Road Virginia Beach, VA 23457	BLACK BEAR DISPOSAL, LLC, a North Carolina limited liability company 3501 Benson Drive, Suite 601 Raleigh, NC 27609

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in the South Mills Township, Camden County, North Carolina and Moyock Township, Currituck County, North Carolina and more particularly described as follows:

> That certain tract of land containing 1,059.99 acres, more or less, composed of one (1) contiguous parcel, located in South Mills Township, Camden County, North Carolina and in Moyock Township, Currituck County, North Carolina; and bounded, now or formerly, by natural boundaries and/or lands owned by and/or in possession of persons as follows:
>
> On the north by the Sawyer land, on the east by the lands of Jarvis and Williams and Halifax Timber Company, on the south by the lands of Lewis Farms, Inc. and Weyerhaeuser Company and on the west by U.S. Highway No. 17; said tract lying approximately 6.4 miles north from the Town of South Mills.

SCANNed 5/11/0

NCDENR

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

May 9, 2005

Mr. Timothy Grant, L.G.
Camp Dresser & McKee
5400 Glenwood Ave., Suite 300
Raleigh, N.C. 27612

RE: Black Bear Disposal, LLC,
a subsidiary of Waste Industries, USA, Inc.
Site Study Revisions of April 21, 2005
Camden County, North Carolina

Dear Mr. Grant,

The April 21, 2005, revisions to the Revised Site Study for the proposed Black Bear Disposal facility in Camden County have been reviewed for hydrogeologic concerns by the Solid Waste Section. There are still a few items in the Report that need clarification and/or revision. Please respond to the following questions and comments:

Section 8 - Preliminary Geotechnical Evaluation:

8.3 In the second paragraph, there are still two references to ditches that run along the landfill ... "footprint". The last three words of the next to last sentence ("boundary property footprint") should be deleted. And the last word in the last sentence should be changed from "footprint" to facility.

8.5.2 The first paragraph references a "layer of fill" below the tilled topsoil. Is this really fill? It is not clear how a 0 to 8 foot layer of fill material would be deposited below the topsoil in this environment.

- There still appears to be a problem with the pagination. The text goes from page 8-4 (to Table 8-1) to page 8-7. There does not appear to be a page 8-6.

1646 Mail Service Center, Raleigh, North Carolina 27699-1646
Phone 919-508-8400 \ FAX 919-733-4810 \ Internet http://wastenotnc.org
An Equal Opportunity / Affirmative Action Employer – Printed on Dual Purpose Recycled Paper

8.6.3 In the second paragraph on page 8-14, The settlement number for the 10 year interval does not appear to match the number in Table 8-5.

Please respond to these questions and comments, and provide revisions as necessary. If you have any questions regarding items in this letter, please contact me at (919) 508-8507.

Sincerely,

Bobby Lutfy

Bobby Lutfy
Hydrogeologist
Solid Waste Section

cc:	Jim Barber	Solid Waste Section
	Ed Mussler	Solid Waste Section
	John Crowder	SWS - Wilmington
	Chuck Boyette	SWS - Washington
	Jerry Johnson	Waste Industries

CDM
5400 Glenwood Avenue, Suite 300
Raleigh, North Carolina 27612
tel: 919 787-5620
fax: 919 781-5730

April 28, 2005

Mr. Edward F. Mussler III, P.E.
Environmental Engineer
Solid Waste Section
North Carolina Department of Environment and Natural Resources
1646 Mail Service Center
Raleigh, North Carolina 27699-1646

Subject: Camden County Board of Commissioners Meeting Minutes
October 21, 2002
Site Study Application
Black Bear Disposal Facility
Camden County, North Carolina

Received
Waste Management

Dear Mr. Mussler:

Per your email dated April 28, 2005, CDM is submitting the attached copy of the meeting minutes from the Camden County Board of Commissioners meeting held on October 21, 2002.

If you have any questions or need additional information, please do not hesitate to contact me at (919) 787-5620.

Very truly yours,

Tim Grant

Timothy D. Grant, P.G.
Principal
Camp Dresser & McKee

cc: Jerry Johnson, Waste Industries

P:\Waste Industries 22250\38245 Black Bear Disposal\Communications\Mussler BOC minutes 4-28-05.doc

CAMDEN COUNTY BOARD OF COMMISSIONERS
Regular Meeting
October 21, 2002
Courthouse Complex
Senior Center Conference Room

MINUTES

The regular meeting of the Camden County Board of Commissioners was held Monday, October 21, 2002 at the Senior Center Conference Room, Courthouse Complex at 7:00 P.M. The following members were present:

J. C. Rountree, Chairman
Forrest R. Pugh, Vice Chairman
Samuel K. Shaw, Sr.
Benjamin C. Gray
Jeff Jennings
Carl Classen, County Manager/Clerk to the Board
Ava Murgia, Administrative Assistant

Chairman Rountree called the meeting to order. Invocation was given by Commissioner Gray.

PUBLIC COMMENTS

Bunch McPherson, 101 Gumberry Road, stated his vehicle is valued at $1,050 above retail dealer price and questioned how the values are determined.

Dennis Morse, South Mills, stated he felt the new developers do not care about Camden, only money.

RURAL TRANSPORTATION PLANNING ORGANIZATION – PRESENTATION BY MR. BILLY LEGGETT, ALBEMARLE COMMISSION

Carl Classen stated Camden County is a member of the Regional Transportation Planning Organization (RPO), which is being administered by the Albemarle Commission. Ben Gray is the Commissioners' representative to the RPO Board and the County Manager serves as a member of the Technical Advisory Committee to the RPO Board.

Mr. Billy Leggett was in attendance to explain the history and purpose of the Regional Transportation Planning Organization (RPO). Mr. Leggett stated the purpose of the RPO is to develop long-range local and regional multi-modal transportation plans in cooperation with the area Metropolitan Planning Organization (MPO) and the North Carolina Department of Transportation; to provide a forum for public participation in the rural transportation planning process; to develop and prioritize suggestions for transportation projects, which the RPO believes should be included in the Sate

Transportation Improvement Program and to provide transportation-related information to local governments and other interested organizations and persons.

CONSIDERATION OF AGENDA

Carl Classen requested the agenda be amended by adding *Item IX. F. Holiday Scheduling and Pay for Deputies,* and *Item IX. G. Review of UDO Amendments.*

Commissioner Shaw made a motion to approve the agenda as amended. The motion passed unanimously.

REZONING APPLICATION – UDO2002-08-18 – THREE OF A KIND, INC.

Carl Classen stated the Rezoning Application (UDO 2002-08-18) from Three of a Kind, Inc. to rezone the existing Wickham Downs and Weaver Farms Subdivisions, located on Wickham Road, Shiloh Township was on the October 7 Commissioners meeting agenda but was not acted upon due to the time constraints.

The Planning Board recommends approval with a 4-2 vote.

Commissioner Pugh made a motion to set this rezoning application (UDO 2002-08-18) from Three of a Kind, Inc. to rezone the existing Wickham Downs and Weaver Farms Subdivisions, located on Wickham Road, Shiloh Township for public hearing during the Regular Meeting of the County Commissioners beginning at 9:00 AM on November 4, 2002, or as soon thereafter as agenda permits. The motion passed unanimously.

REZONING APPLICATION – UDO2002-08-32 – BURGESS

Carl Classen stated on October 15, 2002, the Planning Board recommended approval with a 4-2 vote regarding the Rezoning Application (UDO2002-08-32) from David S. Burgess, Sr. to rezone approximately 23 acres from General Use District (GUD) to Residential (R-2) on property located at Lamb's Road and Run Swamp Road, Courthouse Township.

Commissioner Shaw made a motion to set this rezoning application (UDO2002-08-32) from David S. Burgess, Sr. to rezone approximately 23 acres from General Use District (GUD) to Residential (R-2) on property located at Lamb's Road and Run Swamp Road, Courthouse Township for public hearing during the Regular Meeting of the County Commissioners beginning at 7:00 PM on November 18, 2002, or as soon thereafter as agenda permits. The motion passed unanimously.

REZONING APPLICATION – UDO2002-09-36 – SANDERLIN

Carl Classen stated on October 15, 2002, the Planning Board recommends approval of the Rezoning Application (UDO2002-09-36) from Sandra L. Sanderlin to rezone

property from R-2/CFO to Marine Commercial located at 255 Sailboat Road, Shiloh Township with a 5-1 vote.

Commissioner Pugh made a motion to set the rezoning application (UDO2002-09-36) from Sandra L. Sanderlin to rezone property from R-2/CFO to Marine Commercial located at 255 Sailboat Road, Shiloh Township for public hearing during the Regular Meeting of the County Commissioners beginning at 7:00 PM on November 18, 2002, or as soon thereafter as agenda permits. The motion passed unanimously.

SPECIAL USE PERMIT APPLICATION – NORTHEASTERN COMMUNITY DEVELOPMENT CORPORATION (NCDC)

Carl Classen stated on October 15, 2002, the Planning Board recommended approval with a 6-0 vote for the Special Use Permit Application (UDO2002-10-05) from NCDC for the construction of a Day Care Center facility located at 151 Gumberry Road, Courthouse Township.

Commissioner Pugh made a motion to set the Special Use Permit Application (UDO2002-10-05) from NCDC for the construction of a Day Care Center facility located at 151 Gumberry Road, Courthouse Township for public hearing during the Regular Meeting of the County Commissioners beginning at 7:00 PM on November 18, 2002, or as soon thereafter as agenda permits. The motion passed unanimously.

REQUEST FOR WAIVER OF APPLICATION FEE FOR SPECIAL USE PERMIT AND BUILDING PERMIT FOR MRS. SIMMONS

Carl Classen stated the Board of Commissioners will soon be seeing a Special Use Application for Mrs. Irene Simmons' house on Alder Branch Road (Shiloh Township) that burnt down about a month ago. Mrs. Simmons carried no insurance on the house and has been working with Ms. Bryant at NCDC, who is assisting in the loan process to replace the burnt down house with a modular. Staff would like to receive approval prior to the application being received to waive all costs with the Special Use Permit.

Commissioner Pugh made a motion to waive County fees for Special Use Permit Application and Building Permit Application Fee for Mrs. Irene Simmons relating to a new home to replace her burned home at 131 Alder Branch Road, Shiloh Township. The motion passed unanimously.

HOLIDAY SCHEDULING AND PAY FOR DEPUTIES

Carl Classen stated the Sheriff's department has to have people on duty regardless of whether a holiday exists or not. The change would simply allow the Sheriff to schedule deputies for holiday duty and the deputies would be paid for those hours like any other hours. Under the Personnel Policy, the County Manager can either direct that either the employee take another day off (which causes chaos in scheduling and artificially creates

higher liabilities) (or he can direct that people required to work holidays, which increases current expenses).

The bottom line is the old "pay me now or pay me later" syndrome. Either the County pays deputies their current salary to work holidays or the County may have to pay later (when their salaries are likely to be higher) when they elect to receive the compensation for the holiday worked.

The cost to the County in the current fiscal year for shifting to paying for holidays is approximately $10,000 and then $12,000 thereafter (This amount is accruing now as a liability and is being "paid off" when the deputy takes the holiday – or is being cashed out when a deputy separates employment.)

Currituck and Pasquotank counties already implement holiday pay programs. Most local governments utilizing 12-hour shifts also implement this kind of pay plan.

Sheriff Perry explained this issue arises because Camden County now has 24/7 coverage.

Commissioner Pugh made a motion to approve Holiday Scheduling and Pay plan so long as county offers 24/7 on-duty coverage up to $10,000.00 of straight time pay. The motion passed unanimously.

CLOSED SESSION

Commissioner Gray made a motion to go into closed session to pursuant to G. S. 143-318.11(a)(3) to consult with the county attorney. The motion passed unanimously.

Commissioner Jennings made a motion to go out of closed session and back into regular session. The motion passed unanimously.

RESOLUTION – THIRD ONE-HALF CENT LOCAL GOVERNMENT SALES AND USE TAX

Carl Classen stated under the current State budget, the County will lose approximately $119,000 in revenues. State estimates are that implementing this measure in time for an effective date on December 1 (which means adopting the Resolution and transmitting it to the State before November 1) will generate approximately $125,000 in revenues for Camden County.

Commissioner Jennings made a motion to approve *Resolution of the Board of Commissioners of Camden County, North Carolina, Levying the Third One-Half Cent Local Government Sales and Use Tax and Prescribing The Method of Distribution of the Proceeds Within Camden County.* The motion passed unanimously.

Resolution of the Board of Commissioners of Camden County, North Carolina, Levying the Third One-Half Cent Local Government Sales and Use Tax and Prescribing The Method of Distribution of the Proceeds Within Camden County reads as follows:

Resolution No. 2002-10-01

RESOLUTION OF THE BOARD OF COMMISSIONERS OF CAMDEN COUNTY, NORTH CAROLINA, LEVYING THE THIRD ONE-HALF CENT (1/2¢) LOCAL GOVERNMENT SALES AND USE TAX AND PRESCRIBING THE METHOD OF DISTRIBUTION OF THE PROCEEDS WITHIN CAMDEN COUNTY

WHEREAS, the General Assembly has authorized the Camden County Board of Commissioners to levy a one-half percent (1/2%) local sales and use tax by enacting N.C.G.S. 105-517(b) in Section 34.14(a) of Session Law 2001-424, as amended by S.L. 2002-123, "An Act to Accelerate the Additional One-half Cent (1/2¢) Local Option Sales and Use Tax and to Make Conforming and Technical Changes," and

WHEREAS, the Camden County Board of Commissioners gave proper public notice of the Board's intent to consider this resolution, as required by Section 10 of S.L. 2002-123, and

WHEREAS, Camden County has lost $119,185 in funds made available by the State of North Carolina to replace revenue lost because of legislative action: (1) to repeal sales taxes imposed on purchases made with Food Stamps; (2) to repeal property taxes imposed on inventories held by manufacturers, retailers and wholesalers; (3) to repeal taxes on intangible personal property; and (4) to reduce taxes levied on residential property owned by low-income elderly taxpayers; and

WHEREAS, the Camden County Board of Commissioners hereby finds that, particularly in light of the circumstances cited herein, the levy of "The Third One-Half Cent (1/2¢) Local Government Sales and Use Tax" is necessary to adequately finance the operations of the county and the cities and towns herein.

NOW, THEREFORE, BE IT RESOLVED by the Camden County Board of Commissioners that:

(1) There is hereby imposed and levied within Camden County the third one-half cent (1/2¢) Local Government Sales and Use Tax authorized by Section 34.14(a) of S.L. 2001-424, as amended by S.L. 2002-123, and codified as Article 44 of Chapter 105 of the General Statutes of North Carolina. The tax hereby imposed and levied shall apply to the same extent and be subject to the same limitations as are set forth in said S.L. 2001-424.

(2) Collection of the tax by the North Carolina Secretary of Revenue, and liability therefore, shall begin and continue on and after the first day of December, 2002.

(3) The net proceeds of the tax levied herein shall be distributed by the Secretary of Revenue to Camden County as prescribed by N.C.G.S. 105-520. The amount distributed to Camden County shall be divided among the county and the municipalities herein in accordance with the method by which the one percent (1%) sales and use tax levied in Camden County, pursuant to Article 39 of General Statutes Chapter 105, are distributed.

(4) This Resolution is effective upon its adoption, and a certified copy hereof shall be forwarded to the North Carolina Secretary of Revenue.

Adopted this 21st day of October, 2002.

_____
J. C. Rountree, Chairman
Camden County Board of Commissioners

ATTEST:

_____
Carl Classen
Clerk to the Board of Commissioners (SEAL)

SOUTH MILLS CONVENIENCE SITE – FRIDAY HOURS

Mike Patrick, Waste Industries, calculated the current hourly cost of the existing schedule of $16.00/hour and added twelve (12) hours for an additional day. The additional hours current cost would increase by $831.94 per month. Mr. Patrick said the first Friday of operation would be November 8, 2002.

Commissioner Jennings made a motion to approve the additional Friday hours starting November 8, 2002 at the South Mills Convenience Site. The motion passed unanimously.

TAX MATTERS – TAX RELEASES AND AUTHORITY TO COLLECT TAXES

Carl Classen stated the following tax releases were submitted for approval from the Tax Administrator:

Joseph Bridger	$101.53	Military Exempt
Heather Noon	$178.08	Military Exempt
Albert Poole	$117.28	Listed in Gates Co.
Michael Stimac	$137.92	Military Exempt

Commissioner Gray made a motion to approve tax releases as submitted from the Tax Administrator. The motion passed unanimously.

Carl Classen stated the Tax Administrator is seeking authority to collect taxes on June, 2002 vehicle renewals.

Commissioner Gray made a motion to grant the Tax Administrator authority to collect taxes on June, 2002 vehicle renewals. The motion passed unanimously.

FINANCE – REVENUE AND TREASURY REPORTS – SEPTEMBER 30, 2002

Carl Classen stated the Finance Office generates Revenue and Treasure Reports to benefit the Commissioners information.

No action required, no action taken.

HISTORIC COURTHOUSE RESTORATION – BRICK DESIGN

Dorothy Owens Request: The County Manager spoke with Ms. Judy Abbott, who has been chairing the Brick Committee, and a special meeting of the Brick Committee will be held either October 31 or November 1 so that Ms. Owens may make a presentation and then the Committee can make a final determination on Ms. Owens' request.

Walkway/Water Well: A walkway design that will be used for the south side walkway. This adds an additional seven hundred (700) bricks, but the two (2) available benches have already been donated.

No action required, no action taken.

CLOSED SESSION

Commissioner Pugh made a motion to go into closed session pursuant to G. S. 143-318.11(a)(4) for the purpose of industrial recruitment. The motion passed unanimously.

Commissioner Pugh made a motion to go out of closed session and back into regular session. The motion passed unanimously.

CUSTODIAL SERVICES – WATER TREATMENT PLANT

Carl Classen stated custodial services at the new water treatment plant will be needed. Rather than add an additional custodial person, it may be wise to make one of the existing two (2) part time custodial positions into a full time position. To do this would cost the

General Fund an additional $4196.60 in salary, payroll taxes, and benefits. For the Water Fund, the amount (one-third share of total annual cost) would be $3427.70.

One of the two existing custodial people is interested in this position and one of the custodial staff is interested in remaining part time. Bill Meiggs, Maintenance Supervisor, said that is his intent, should the Commissioners fund the position, to promote the custodial staff person who wishes to be appointed to the full time position.

Commissioner Pugh made a motion to approve deletion of one (1) custodial position and create a new full time custodial position. The motion passed unanimously.

INTERNSHIP – COUNTY MANAGER'S OFFICE

Due to the expanding work in the County Manager's office, the County Manager has decided to fill the receptionist position already budgeted (but not filled). Since July 1, the County Manager has been utilizing a part time college student (Leslie Passante) to help out twelve (12) hours per week. However, despite Ms. Passante's great help on the *Free Press*, the web site, and the government access station, there is still need for a full time person to help with phones, do filing, prepare mailings, make copies, and back up the County receptionist.

However, so as to keep matters moving smoothly on the projects that Ms. Passante has underway and the help she is giving Ava Murgia with those projects, Ms. Passante could be kept on through the balance of the fiscal year as an intern. This could be done without any increase in the current budget due to the savings caused by the delay in filling the budgeted receptionist position in the County Manager's office.

Commissioner Gray made a motion to approve creation of a part time intern position in the County Manager's office at the rate of $6.50 per hour for an average of up to fifteen (15) hours per week. The motion passed unanimously.

PERSONNEL POLICY – RETIREMENT WAITING PERIOD

Carl Classen stated this item was held over from the October 7 Commissioners meeting.

Camden County presently requires all employees to be employed with the county for a period of one (1) year prior to the County making contributions on the employee's behalf to the Local Government Employees Retirement System. (Both the County and the employee make a mandatory contribution based upon actuarial projects for the entire system.)

In some cases where a County employee has transferred from another local government that participates in the same retirement system, the waiting period has been waived.

This issue again has come up in light of several newly-hired staff people.

Commissioner Pugh made a motion to approve a six (6) month retirement waiting period for eligibility. The motion passed unanimously.

REVIEW OF UDO AMENDMENTS

The County Commissioners directed staff to contact Mr. Mike Brough The Brough Law Firm, Chapel Hill, regarding a review of the recent growth management amendments to the Unified Development Ordinance (Chapter 151, Camden County Code).

Commissioner Pugh made a motion to accept Mr. Mike Brough's response and move forward. The motion passed unanimously.

AN ORDINANCE RELATING TO A FRANCHISE ORDINANCE FOR SANITARY LANDFILLS

Carl Classen stated *An Ordinance Relating to a Franchise Ordinance for Sanitary Landfills* that was adopted during the October 7, 2002 Regular Meeting of the Board. Pursuant to NCGS 153A-46, to be effective a franchise ordinance must be adopted at two (2) regular meetings of the Board.

Commissioner Pugh made a motion to approve the second reading of *An Ordinance Relating to a Franchise Ordinance for Sanitary Landfills.* The motion passed 5 aye to 0 nos, with Commissioner Jennings voting aye, Commissioner Gray voting aye, Commissioner Shaw voting aye, Commissioner Pugh voting aye and Chairman Rountree voting aye.

An Ordinance Relating to a Franchise Ordinance for Sanitary Landfills reads as follows:

Ordinance No. 2002-10-01

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF CAMDEN COUNTY RELATING TO A FRANCHISE ORDINANCE FOR SANITARY LANDFILLS

WHEREAS, G.S. §153A-136 provides that a county may grant a franchise to one or more persons for the disposal of solid wastes in the county, and

WHEREAS, G.S. §130A-294(b1)(3) requires any applicant for a sanitary landfill permit, prior to applying for such permit from the State of North Carolina, to obtain from each local government having jurisdiction over any part of the proposed sanitary landfill a franchise for the operation of same, and

WHEREAS, G.S. §130A-294(b1)(3) requires that certain information be contained in every franchise granted for a sanitary landfill, and

WHEREAS, G.S. §130A-290(31) defines "sanitary landfill" as a facility for disposal of solid waste on land in a sanitary manner in accordance with rules concerning sanitary landfills adopted pursuant to G.S. Chapter 130A, Article 9 by the state Department of Environment and Natural Resources ("DENR"), and

WHEREAS, G.S. §130A-290(18a) defines Municipal Solid Waste ("MSW") as any solid waste resulting from the operation of residential, commercial, industrial, governmental or institutional establishments which would ordinarily be collected by public or private solid waste management services, and

WHEREAS, G.S. §130A-290(4) defines construction or demolition debris ("C&D") as any solid waste resulting solely construction, remodeling, repair, or demolitions operations on pavement, buildings, or other structures but does not include inter debris, land-clearing debris or yard debris, and

WHEREAS, the term Sanitary Landfill includes both MSW and C&D landfills, and

WHEREAS, design and operational issues for Sanitary landfills are controlled by the provision of the DENR rules, statutes, and the Camden County Code ("Code"), and

WHEREAS, the Camden County Code provides that Sanitary landfills are allowed as a permitted use in I-1 and I-2 Districts, and

WHEREAS, Camden County is aware of the continual need for sanitary landfill facilities in the County because of growth and development within the County and its environs, and

WHEREAS, Camden County is also aware that without careful regulation and planning, sanitary landfill facilities may have adverse affects on the County, its roads, its utilities, and the health, safety, and welfare of its citizens, and

WHEREAS, under General Statutes Chapter 153A, Article 15 and G.S. §153A-136, the County is granted broad authority to regulate solid waste collection and disposal within its territorial jurisdiction,

NOW, THEREFORE, BE IT ORDAINED,

Section 1. For the purposed of this ordinance, the terms "Sanitary Landfill," construction or demolition debris ("C&D") landfill, and Municipal Solid Waste ("MSW") shall be defined by G.S. §130A-290, et. seq., and the term "Sanitary Landfill" shall include both C&D landfills and MSW landfills.

Section 2. Every applicant for a Sanitary Landfill in Camden County must obtain a franchise from the Camden County Board of Commissioners before commencing

landfill construction or operation. A franchise application for all sanitary landfills must include the following information:

1. Name and address of the applicant, owner and operator of the proposed site.
2. 2. Trade name or other corporate or business names, if any, under which the applicant does business, with certified copies of any assumed name certificate or articles of incorporation stating such name(s).
3. A legal description and a map of the property proposed to be included in the sanitary landfill.
4. 4. A statement of the population to be served by the sanitary landfill, including a description of the geographic area for_which the landfill is proposed to serve.
5. 5. A description of the volume and characteristics of the waste stream.
6. 6. A projection of the useful life of the landfill.

Section 3. Every franchise granted pursuant to this ordinance must include a provision whereby the franchisee agrees to defend, indemnify and hold harmless Camden County, its officers, employees and agents against all claims, actions, damages, and losses of whatever nature, including regulatory actions and actions resulting from environmental contamination, arising from its landfill franchise or landfill operation. This shall include but is not limited to, (a) any monetary settlements or judgments against the County, (b) all claims relating to the creation, enforcement, maintenance, termination of the landfill and its operations, and (c) any costs incurred by the county, including but limited to attorneys fees, expert witness fees, court costs, engineering service costs, or any other fees or costs incurred by the County. Failure to include such a provision will result in denial or invalidation of the franchise.

Section 4. Any application for an MSW landfill franchise must address the following issues adequately to assure the Board of Commissioners that the proposed landfill operation will not impose an undue burden on the County or its Citizens:

I. I. A host fee on solid waste admitted to the landfill.
II. II. Days and hours of operation.
III. III. Estimated tonnage per day to be admitted into the landfill.
IV. IV. Provision for inspection of the facility and its records to insure compliance with the terms of the franchise.
V. V. Whether the owner or operator proposes to establish onsite recycling facilities.
VI. VI. Any potential expansion areas at the site.
VII. VII. Regulate the fees, if any, that may be charged by licensed or franchised persons for collecting or disposing of solid wastes.
VIII. VIII. What provision the applicant will make for litter abatement along main highways.

IX. IX. Whether the applicant will seek issuance of industrial revenue bonds, and if so, for what purposes.

X. X. What provisions the applicant will make for methane gas collection and sale.

XI. XI. Whether the applicant will allow the County to erect a communications tower on the site at no charge to the county for use of the site.

XII. XII. What assurances the applicant will give the County to ensure that hazardous wastes as defined in G.S. §130A-290(8) are not generated at or placed in the landfill.

XIII. XIII. The estimated number of vehicles the applicant will own and operate for landfill purposes, and the place of registration of such vehicles.

XIV. XIV. Any provision for lease or sale of the site after landfill closure.

XV. XV. How the applicant will reimburse the County for expenses related to the landfill application and grant of franchise.

Section 5. Upon issuance, the franchise shall incorporate all information included in the written application and franchise agreement, which shall become terms and conditions of the franchise granted.

Section 6. The Franchise Agreement shall provide appropriate remedies in the event that the franchisee abandons the landfill or fails to operate the landfill for a period of time.

Section 7. The Board of Commissioners, pursuant to G.S. §153A-136 and G.S. §130A-294(b1)(3) may hold a public hearing for the purpose of notifying the public of its intent to issue a franchise for a sanitary landfill if, in its sole discretion, the board determines that sufficient public interest exists to warrant such public hearing. In such cases, notice of the public hearing shall be published at least once in a newspaper of general circulation not less than thirty (30) days prior to the date established for the hearing. A hearing notice must also be placed on the proposed landfill site at a place visible to all adjacent public roads. The franchise applicant shall bear the expenses related to such notice, and shall provide an affidavit to the County not less than ten (10) days before the scheduled hearing date that the required notices have been posted and published.

Section 8. The franchisee shall operate in compliance with applicable state and federal law and regulations.

Section 9. The County may elect to make the franchise exclusive so as to limit the issuance of future franchises during the term of the franchise.

Section 10. This ordinance shall be effective upon adoption.

ADOPTED THIS 15th day of October, 2002.

ADOPTED THIS 21st day of October, 2002.

J.C. Rountree, Chairman
Camden County Board of Commissioners

ATTEST:

Carl Classen
Clerk to the Board of Commissioners (SEAL)

CONSIDERATION OF AGENDA

Carl Classen requested the agenda be amended at this time T*o Consider an Application For A Sanitary Landfill Franchise Application from Black Bear Disposal LLC* as *Item VII. D.*

CONSIDERATION OF AN APPLICATION FOR A SANITARY FRANCHISE APPLICATION FROM BLACK BEAR DISPOSAL LLC

Ven Poole, Vice President Waste Industries, submitted application pursuant to the *An Ordinance Relating to a Franchise Ordinance for Sanitary Landfills* adopted on October 7 and October 21 on behalf of Black Bear Disposal LLC, a wholly owned subsidiary of Waste Industries, USA, Inc., for an exclusive Franchise to design, permit, build, own and operate a Sanitary Landfill within Camden County for a term of thirty (30) years.

Following a review, the County Manager stated the application was generally complete and in compliance with the Franchise Ordinance for Sanitary Landfills, Chairman Rountree so ordered acceptance of the formal application on behalf of Black Bear Disposal LLC, a wholly owned subsidiary of Waste Industries, USA, Inc., with Property Identification Numbers to be used temporarily as the legal description but contingent upon the company providing a proper legal description using metes and bounds prior to execution of final franchise agreement.

Commissioner Jennings made a motion to accept Black Bear Disposal LLC application for a sanitary franchise agreement as amended and approve the franchise ordinance,

including the franchise agreement as submitted as part of the application but with the understanding that there would be delivered to the County Commissioners amendments relating to insurance and other issues within thirty (30) days. The motion passed 5 ayes to 0 nos.

An Ordinance Relating to a Franchise Ordinance for Sanitary Landfills reads as follows:

Ordinance No. 2002-10-02

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF CAMDEN COUNTY RELATING TO AWARDING A FRANCHISE FOR A SANITARY LANDFILL TO BLACK BEAR DISPOSAL LLC AND ADOPTION OF A FRANCHISE AGREEMENT BETWEEN CAMDEN COUNTY AND BLACK BEAR DISPOSAL LLC

WHEREAS, G.S. §153A-136 provides that a county may grant a franchise to one or more persons for the disposal of solid wastes in the county, and

WHEREAS, G.S. §130A-294(b1)(3) requires any applicant for a sanitary landfill permit, prior to applying for such permit from the State of North Carolina, to obtain from each local government having jurisdiction over any part of the proposed sanitary landfill a franchise for the operation of same, and

WHEREAS, Camden County Ordinance No. 2002-10-01 ("AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF CAMDEN COUNTY RELATING TO A FRANCHISE ORDINANCE FOR SANITARY LANDFILLS") authorizes the County Commissioners to award a franchise for sanitary landfill services and enter into a franchise agreement with the franchisee, and

WHEREAS, Camden County and Black Bear Disposal LLC propose to enter into a Franchise Agreement, a copy of which is attached hereto and incorporated herein by reference as Exhibit A (hereinafter to as "Black Bear Disposal Franchise Agreement" or "Franchise Agreement"),

NOW, THEREFORE, BE IT ORDAINED,

Section 1. A franchise is hereby granted to Black Bear Disposal LLC to dispose of solid wastes in Camden County. Such franchise is subject to all terms of this Ordinance, Camden County Ordinance No. 2002-10-01, the Black Bear Disposal Franchise Agreement attached hereto as Exhibit A (all terms of which are incorporated herein by reference), and other applicable federal, state and local laws, rules, and regulations.

Section 2. The franchisee shall operate in compliance with applicable state and federal law and regulations.

Section 3. Black Bear Disposal LLC is hereby granted an exclusive franchise for a Sanitary Solid Waste Landfill during the term of the Black Bear Franchise Agreement, but not to exceed thirty (30) years from the date of adoption of this Ordinance.

Section 4. This Ordinance shall be effective upon adoption and shall expire immediately upon the end of its stated term, earlier termination under the Franchise Agreement, or declaration of invalidity of the Black Bear Disposal Franchise Agreement by a court of competent jurisdiction.

PASSED AT THE REGULAR MEETING OF THE CAMDEN COUNTY BOARD OF COMMISSIONERS this 21st day of October, 2002.

PASSED AT THE REGULAR MEETING OF THE CAMDEN COUNTY BOARD OF COMMISSIONERS AND ADOPTED EFFECTIVE this __ day of November, 2002.

STATE OF NORTH CAROLINA
CAMDEN COUNTY

FRANCHISE AGREEMENT

This Franchise Agreement (the "Agreement") is made and entered into this ____ day of _____, 2002, by and between CAMDEN COUNTY, North Carolina, acting through its Board of Commissioners (the "County"), and BLACK BEAR DISPOSAL, LLC (the "Company"), a North Carolina limited liability company as franchisee, being represented herein by its duly authorized officer.

WITNESSETH:

WHEREAS, state and federal regulations have made it more costly for local governments to own and operate landfills; and,

WHEREAS, the County seeks to provide its citizens with an economical and environmentally sound non-hazardous solid waste management disposal system; and

WHEREAS, the County agrees to host a regional solid waste landfill and to allow the landfill to accept waste generated outside the County; and

WHEREAS, the Company believes that construction and operation of a regional solid waste landfill represents the highest and best use of the land described in Exhibit "A" attached hereto and made a part hereof, given zoning and other considerations (the "Landfill Property"); and

WHEREAS, the Company intends to design, permit, construct and operate a landfill within the County and is willing to compensate the County for hosting the facility and accepting for disposal solid waste generated outside the County.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the host fees to be paid the County hereunder and the respective covenants herein contained, the parties hereby agree as follows:

I. FRANCHISE

(1) (1) This Franchise Agreement will be subject to the Camden County Franchise Ordinance for Sanitary Landfills.

(2) Subject to the Company's acquisition and ownership of the Landfill Property, the Company is hereby granted the exclusive right and authority in Camden County, North Carolina to construct and operate a municipal solid waste ("MSW") landfill, a construction and demolition ("C&D") landfill and other non-hazardous solid waste management facilities (all hereinafter collectively referred to as the "Landfill" or the "Company Landfill"), on the Landfill Property for the term of this Agreement and consistent with the terms of this Agreement (the "Franchise"). The County may, pursuant to a properly-enacted resolution declaring a disaster within Camden County and determining the need for additional C&D landfills to serve the citizens of Camden County, authorize the operation of such additional needed C&D landfills for so long as necessary to complete the cleanup of the disaster debris.

(3) To the extent allowed by State or Federal law, the County expressly agrees that the Landfill may be constructed on the Landfill Property, including the Primary Parcel as well as the Contiguous Parcels described in Exhibit A so long as the area of the Landfill to be covered by the waste disposal cells and associated slopes (the "Landfill Footprint"), and the Landfill entrance, remain a minimum of three thousand (3,000) feet from the centerline of U.S. Highway 17.

II. DEFINITIONS:

(1) The definitions of N.C.G.S. Chapter 130A, Article 9 and its implementing regulations will apply to this Agreement and are incorporated herein by reference.

(2) The Company and the County agree that there are certain taxes that the Company may be required to collect and remit directly to a governmental body ("Pass-through Taxes"). These Pass-through Taxes must be uniformly applied to all landfills within the State of North Carolina (the "State") and specifically do not include income taxes, payroll taxes, social security taxes, privilege, use or ad valorem taxes. The Company and the County explicitly agree that these Pass-through Taxes will be excluded from (i) the actual cash receipts and other valuable consideration when calculating the Host Fees due and payable hereunder and (ii) the guaranteed maximum prices for in-county waste.

III. ADMINISTRATION, MAINTENANCE, DISPOSAL AND OPERATIONS

To the extent allowed by State or Federal law and subject to North Carolina general Statute 153A-136, the County agrees to perform in a timely manner any County functions that may be required for the Company to obtain, modify, expand or maintain the required State permits based on the North Carolina General Statutes and the North Carolina Division of Waste Management (the "Division"), or any successor thereto, rules and other applicable rules or regulations, including, without limitation, modifying its solid waste plan, holding public hearings, adopting a franchise ordinance, issuing a special use permit, providing the State with documentation required of the Company from the County by the State that the Landfill operation (as described in Exhibit A) is consistent with the County's zoning, that the Franchise is valid and that the Franchise is applicable to the Landfill Property, or re-zoning the Landfill Property. The County further agrees not to permit or issue a franchise for any other solid waste management facility, landfill, incinerator or transfer station, other than those owned or operated by the Company or its affiliates, to be constructed or operated within the County's jurisdiction during the term of this Agreement, except that this restriction will not apply to sewage waste or water treatment waste, or to convenience sites (including the transfer of County collected residential waste), stump dumps, or yard waste facilities owned or operated by the County or its Agent.

(1) (1) Upon the opening of the Company Landfill for business (the "Commencement Date"), the Company will accept for disposal at the Company Landfill permitted non-hazardous solid waste generated within Camden County, subject to the provisions of Section III (7) herein, at the prices set forth in Exhibit "B" attached hereto and made a part hereof. The prices established under Exhibit "B" will not extend to, industrial solid waste, or waste requiring special handling ("Special Waste") under relevant North Carolina Department of Environment and Natural Resources ("DENR") rules or regulations, other agency rules or regulations or Company procedures. The prices set forth in Exhibit "B" insofar as they relate to waste generated within Camden County may also be adjusted from time to time as required due to changes in rules, regulations, taxes, fees and assessments upon approval of the Board of County Commissioners.

(2) (2) The Company Landfill may accept for disposal solid wastes allowed by the permit issued by the Division. The waste stream accepted for disposal may include, but is not limited to, non-hazardous MSW, industrial waste ("IW"), C&D debris, land clearing and inert debris ("LCID") and other non-hazardous solid wastes that may be approved by the Division. The Company projects that the volume of waste delivered to the Company Landfill will average 10,000 tons per day. Based on 10,000 tons per day, the Landfill's estimated life will exceed the Franchise term of thirty (30) years.

(3) (3) The service area ("Service Area") will include the area located east of Interstate Highway 75. The current estimated population within the Service Area is 82,000,000. The Company may accept waste from outside the Service Area.

(4) (4) The Company will pay the County the fees calculated pursuant to Exhibit "C" attached hereto and made a part hereof, based on waste disposed of at the Landfill (the "Host Fees"), and will pay the Host Fees to the County quarterly within thirty (30) days of the end of the calendar quarter in which the Host Fees are collected ("Due Date"). Any Host Fees due and payable not received by the County by the Due Date will accrue interest at the Prime Rate as published in the Wall Street Journal or some other comparable index approved by the Board of County Commissioners if the Wall Street Journal does not publish a Prime Rate.

(5) (5) To the extent additional taxes or fees are directly or indirectly required or permitted by State law as a result of operation of the Landfill such that other County revenues will decrease if the new tax or fee is not assessed against the Company's operation of the Landfill, the Company and the County agree to negotiate in good faith to amend this Agreement so that the County will realize the same total funds (whether from the new tax or fee, Host Fee or otherwise) as they did prior to the required or permitted tax or fee being implemented.

(6) (6) The Company will maintain sufficient records to assure the County of the Company's permit compliance and compliance with the terms of this Agreement relating to the operation of the Landfill, including but not limited to volume disposed, fees charged, cash receipts and compliance with the Landfill operating rules and regulations, and allow inspection of the records by the County, or by County's outside auditing firm, during reasonable office hours. Nothing contained herein will be construed to limit the right of law enforcement personnel to inspect Company facilities or records pursuant to a validly issued search warrant or subpoena.

(7) (7) The Company may, but is not obligated to, remove recyclables from waste received at or delivered to the Landfill. In the event the Company elects to remove recyclables, the Company will be entitled to retain all revenues, if any, received from the sale of such recyclables. The Company may establish a recycling facility at the Landfill without further County approval, subject only to the issuance of any required permits.

(8) (8) The Company may reject any portion of solid waste delivered for disposal to the Company Landfill that the Company determines is hazardous or otherwise unacceptable under state or federal laws, rules or regulations or Company rules for the operation of the Landfill.

(9) (9) After the Commencement Date and during the term of this Agreement, plus any extensions or renewals, the Company will operate the Landfill at times determined by the Company and will promptly notify the County of changes in the operating hours, except that the Landfill will not be operated on Sunday, without the prior approval of the County Manager, and/or the Chairman of the Board of County Commissioners, which approval will not be unreasonably withheld. The Company will implement such measures, rules and procedures, as the Company deems necessary or appropriate for the safe and efficient operation of the Landfill. The County expressly

agrees that it will not impose any new restriction (including, without limitation, any rule, regulation, ordinance or restriction that supercedes or is more limiting than those imposed by the State) on the operation of the Landfill during the term of this Franchise, plus any extensions or renewals thereof, that are not otherwise generally applicable within the county unless required by State or Federal law.

(10) (10) No methane or other gases generated at the Landfill may be sold by either party absent execution of a mutually agreeable amendment to this Agreement.

(11) (11) The Company will allow the County, or County's agents, to construct a single telecommunications tower at the Landfill, with the siting of the tower to be mutually agreed upon by the Company and the County, which placement will not disrupt Company's operations or result in additional cost to the Company at the Landfill or endanger those working at or using the Landfill, but will entitle the County to have unlimited access to the tower. To the extent allowed by law, the County will indemnify, defend and hold harmless the Company and its officers, directors, shareholders, members, employees and agents against any and all claims arising from the County's negligence or willful misconduct in the siting, construction, presence, or operation of the tower. Further, the County will add and maintain the Company as an additional insured on the County's liability policy or policies related to the siting, construction, presence or operation of the Telecommunications tower. Similarly, the Company will indemnify, defend and hold harmless the County and its officers, employees and agents against any and all claims arising from the Company's negligence or willful misconduct should it result in damage to the tower or to persons and property arising from such negligence or willful misconduct.

(12) (12) The Company will, during the term of this Agreement, provide reasonable litter removal from the public right-of-way for the entry road to the Landfill, from the public right-of-way for U.S. Highway 17 for one (1) mile in either direction from the intersection of the entry road with U.S. Highway 17, and within the buffer areas on the Landfill Property.

(13) (13) This Franchise Agreement will not affect current agreements between the County and the Company for garbage collection and hauling, and for operation of the convenience sites in Camden County.

(14) (14) The Company will comply with all State laws and rules in the operation of the landfill and will notify the County within five (5) business days of any notice of violation received from the State.

IV. TERM AND EXTENSIONS

The term of this Agreement (the "Primary Term") will begin on the date hereof and continue for thirty (30) years unless sooner terminated as provided in this Agreement. The County and the Company agree to negotiate in good faith as to the extension, renewal or re-issuance of this Franchise prior to the expiration of the Primary Term. The

Commencement Date shall be no more than 60 months after the execution of this Agreement, subject to the cure provisions of Section IX.

V. SERVICE FEE, PAYMENT OF TAXES AND CONTROL OF HAULERS

(1) (1) The Company will have the right to establish, charge, collect and retain any and all fees and charges the Company deems appropriate, including, but not limited to, any and all tipping fees, for use of the Company Landfill after the Commencement Date including, but not limited to, the disposal or deposit of waste therein, subject to the terms of this Agreement and to the extent allowed by state and federal law.

(2) (2) Prices for waste generated within Camden County will be limited as set forth in III(1) and Exhibit B.

(3) (3) Notwithstanding anything else herein to the contrary, the Company will have the right to refuse service to any person, corporation or other entity in the Company's sole discretion.

(4) (4) To the extent allowed by law, all vehicles and equipment owned by the Company and based at the Landfill will be registered and taxed in Camden County.

VI. INSURANCE AND FINANCIAL ASSURANCE

(1) So long as this Agreement remains in effect, and to the extent such coverage remains reasonably available, the Company will carry public liability insurance in the sum of at least Ten Million Dollars ($10,000,000.00) insuring the Company against all claims arising out of the Company's operations hereunder, including hauling and operations that result in environmental damage or contamination resulting from the landfill operation. If the Company determines that the insurance required under this section is not reasonably available, then the Company will notify the Camden County Manager within 30 days prior to any diminution or cancellation of the insurance and the Company and the County Manager will negotiate in good faith a reasonably available level of insurance to remain in place until such time that the insurance required under this section is again reasonably available. Additionally, the Company will obtain, at its sole expense, all insurance required in the following paragraphs and will not commence work until such insurance is in effect and certification thereof has been received and approved by the Camden County Manager, which approval will not be unreasonably withheld:

(a) Workers' Compensation Insurance, with limits for Coverage A Statutory-State of North Carolina and Coverage B Employers Liability $500,000 each accident, disease policy limit and disease Each Employee.

(b) Commercial General Liability - Combined single limits of no less than $1,000,000 each occurrence and $2,000,000 aggregate. This insurance will include Comprehensive Broad Form Coverage including contractual liability.

(c) Commercial Automobile Liability, with limits of no less than $500,000 Combined Single Limit for bodily injury and property damage. Evidence of commercial automobile coverage is only necessary if vehicles are used in the provision of services under this Agreement and/or are brought on a Camden County site.

(2) (2) All insurance companies must be licensed in North Carolina. Insurance Policies, except Workers' Compensation, will be endorsed (i) to show Camden County as additional insured, as their interests may appear and (ii) to amend cancellation notice to 30 days, pursuant to North Carolina law. Certificates of insurance will be signed by a licensed North Carolina agent and be amended to show "thirty (30) days' notice of change or cancellation will be given to the Camden County Manager by certified mail."

(3) Copies or originals of correspondence, certificates, endorsements or other items pertaining to insurance and/or financial assurance will be sent to:

Camden County Manager
P. O. Box 190
Camden, NC 27921

(4) The County Commissioners will review the policy limits every five (5) years during the term of this Agreement and will following good faith negotiations have the right to increase the limits of said insurance by an amount no greater than the CPI increase described in Section 2 of Exhibit B.

VII. FORCE MAJEURE

From and after the Commencement Date, performance hereunder by the County and/or by the Company may be suspended and their respective obligations hereunder excused in the event and during the period that such performance is prevented by a cause or causes beyond the reasonable control of the party claiming relief under this paragraph.

VIII. ASSIGNMENT AND DELEGATION

The County agrees that the Company will have the right to assign this Agreement and all rights and obligations of the Company hereunder to any corporation or other person or entity upon written notice to the County, subject to County's right to require that the proposed assignee be as financially viable as the Company. The proposed assignee (or any guarantor of any proposed assignee) must have had a net worth, shareholders' equity or capital account at least as great as the Company's net worth, shareholders' equity or capital account as of the end of each of the three (3) prior calendar years immediately preceding the proposed assignment date. Failing this, the County may require the provision of reasonable financial assurance determined through good faith negotiations between the County and the Company. The County further agrees that a change of control of the Company through a sale or merger of the Company will not require assignment of this Franchise, but, the County will have the right to require financial assurance as set forth above. In the event of any assignment or transfer, the

assignee or transferee will assume all rights, obligations and liabilities of this Franchise and Agreement and will assume the liabilities of the assignor or transferor. Further, the Company will have the right to delegate the Company's responsibilities under this Agreement to qualified independent contractors for the performance of all or any part of the Company's services hereunder; provided, however, that notwithstanding any such delegation, the Company will in all cases remain liable for the performance of the Company's responsibilities and services hereunder.

IX. DEFAULT

Except as otherwise provided in this Agreement, if a party breaches any provision of this Agreement and fails to cure such breach within sixty (60) days after written notice of such breach (or if such breach cannot reasonably be cured within said sixty (60) day period, if the party fails to commence to cure such breach within said sixty (60) day period and to thereafter diligently pursue such cure to completion within a reasonable period of time for such cure), the non-breaching party may (A) terminate this Agreement as of any date on which that party may select, provided said date is after the expiration of the cure period provided above; (B) cure the breach at the expense of the breaching party; (C) in the event of a breach by the County, the Company may suspend payment of Host Fees leaving the Franchise in effect. The County and the Company will each have recourse to any other right or remedy to which it may be entitled by law or equity, including, but not limited to, the right to recover for all damage or losses suffered as a result of such breach, including, but not limited to the right to offset any damages or losses incurred as a result of such breach against any obligations or liabilities hereunder, except for any payments or liability that may be owed to the State.

If the Company fails to accept waste from Camden County for 72 hours, it will reimburse the County for the cost of disposal of the same at some other solid waste disposal facility, for so long as the Franchise and Agreement remain in full force and effect.

X. TERMINATION OF AGREEMENT

A. Notwithstanding any provision of this Agreement to the contrary and subject to the cure provisions provided in Section IX herein the Company and the County agree that the Company or the County will have the right to terminate this Agreement and Franchise at any time upon occurrence of any of the following events:

(1) (A) DENR fails or refuses to issue, grant or renew any permit, license, consent, authorization or approval at any time hereafter requested by the Company or permanently suspends, rescinds, revokes or terminates any existing or subsequent permit, license, consent, authorization or approval, or any existing or subsequent permit, license, consent, authorization or approval expires, relating to the construction, operation, expansion or closure of the Company Landfill; (B) any change occurs in any applicable existing law, regulation, rule, ordinance or permit condition, or in the interpretation or enforcement thereof, or any new law, regulation, rule, ordinance or permit condition is

imposed or takes effect, the impact of any of which will adversely affect the ability (financial, economic or otherwise) of the Company to construct, operate, continue to operate or expand the Company Landfill or otherwise perform under this Agreement or any order, judgment, action or determinations of the DENR or any federal, state or local court, agency or governmental body is entered which will adversely affect the ability (financial, economic or otherwise) of the Company to construct, operate, continue to operate or expand the Company Landfill or otherwise perform under this Agreement;

(2) The County or the Company breaches or defaults in the observance or performance of any covenant made hereunder, or any representation or warranty made hereunder proves to be untrue or misleading in any material respect, or any covenant, representation or warranty made hereunder is deemed to be contrary to law or public policy now or hereafter existing and is therefore unenforceable or is for any other reason unenforceable, or as a result of any of the foregoing events, either party suffers or incurs or becomes or remains liable for any loss, damage, penalty, fine, cost, expense or other liability (including costs of defense, settlement and reasonable attorney's fees). Upon the occurrence of any of the foregoing events described in paragraph 1 of this Section X, either party will at any time thereafter have the right to terminate this Agreement and Franchise by written notice of termination to the other party, said written notice of termination to be effective ninety (90) days after the date of delivery of said written notice of termination setting forth the reasons for termination; provided, however, that in the event DENR or any other local, state, or federal court, agency or body having authority over the Company Landfill orders or requires the Company Landfill to cease operation or to be closed for any reason, then this Agreement may be terminated by the Company immediately in writing without the necessity for such notice. Termination of this Agreement will not release the Company of any obligation imposed by this Agreement or state law upon the Company on and after the Commencement Date, and prior to the expiration or termination of this Agreement, in accordance with all DENR regulations and this Agreement, nor will it release the Company from liability for closure and post closure expenses and risks.

B. Upon termination of the Franchise, the Company will be liable for all Fees due the County as provided herein at the time of termination.

XI. NOTICES

All notices or other communications to be given hereunder will be in writing and will be deemed delivered when mailed by registered or certified United States mail, postage prepaid, with confirmed delivery, or sent by nationally recognized overnight courier service with confirmed delivery, addressed as follows:

Company:

Black Bear Disposal, LLC
3301 Benson Dr., Suite 601
Raleigh, North Carolina 27609

Attention: Jim W. Perry, CEO

County:

Camden County
P.O. Box 190
117 North NC 343
Camden, NC 27921

Attention: County Manager

It is agreed that either party may hereafter designate another person or address to which notice may be sent, upon written notice given to the other party in the manner specified above.

XII. MISCELLANEOUS

(1) (1) Each of the parties hereto represents and warrants to the other party that this Agreement has been duly authorized by all necessary action and that this Agreement constitutes and will constitute a binding obligation of such party, enforceable against each such party in accordance with its terms.

(2) (2) This Agreement will be binding upon and inure to the benefit of the respective successors and permitted assigns of the parties.

(3) (3) This Agreement evidences the complete agreement between the parties hereto and will supersede all prior contracts, agreements and arrangements between the parties with respect to the subject matter hereof. This Agreement may not be amended, modified or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this Agreement will be void and of no effect.

(4) (4) Any waiver by either party will in no way affect either party's rights to enforcement of the provisions contained in this Agreement nor will any extension or waiver be held to be an extension of time or a waiver of any prior or subsequent breach of the same or any other obligation under this Agreement.

(5) (5) This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

(6) (6) This Agreement will be deemed to be made under, and performance hereunder will be governed by, the laws of the State of North Carolina. Any legal action between the parties under this Franchise and Agreement shall be brought in Camden County. This will not preclude either party from appealing any decision.

(7) (7) After the Commencement Date, the Company will develop a Closure Plan and establish and maintain the necessary financial assurance for the closure and post-closure care and detection monitoring of the Company Landfill as required by State

regulations, and at the closure of the Company Landfill when the Landfill has no remaining capacity will close all cells and used landfill space of the Company Landfill at the Company's expense in accordance with the Closure Plan and all applicable state and federal regulations. Upon completion of waste disposal operations at the Landfill, absent objection by the State, the County will have the option to lease certain areas of the Landfill, for governmental or recreational purposes, for $100.00 annually. The area available for lease will include the landfill footprint, additional space for parking (up to 45 acres) and reasonable access. The parties agree to negotiate in good faith for an amendment to the Lease, if safety issues arise or Closure Plan modifications are required. It is the intent of the parties that the Closure Plan not be used to effectively block the County's right to Lease the areas described above. The lease will provide that all liabilities, obligations, costs and expenses of any nature, known or unknown, fixed or contingent, associated with the leased property, including but not limited to insurance, security, normal maintenance and property taxes will be borne by the County but excluding specific items required by the Closure Plan. Further, the County will, in the lease, agree to defend, indemnify and hold harmless the Company and its officers, directors, shareholders, members, employees and agents, from and against any and all claims arising from the County's lease or use of the leased property. Nothing in this Section will, however, relieve the Company for its liability for post-closure monitoring and for expenses related to any known or unknown contamination resulting from its use of the Landfill property.

(8) (8) During the Term, the Company will pay all ad valorem taxes on the Company Landfill. The County agrees not to assess the Company or the Landfill Property any special taxes, fees, charges or surcharges that apply to the Company alone, except in the case where, at the request of the Company, the County is willing to issue industrial revenue bonds for the benefit of the Company, or that are not applicable to all similarly situated property or taxpayers ("Non-Standard Tax") and will assess the land value only as required by State law. The Company will receive a dollar for dollar credit against the County's Host Fee payments as calculated pursuant to Exhibit "C" to offset the amount of the resulting Non-standard Tax levied.

(9) (9) Upon request by Company, the County agrees to establish an Industrial Revenue Bond Authority for the benefit of Company provided that the Company pays for the costs of the same.

(10) (10) All rights arising under any covenant, agreement, warranty or representation contained in this Agreement will survive the expiration or termination of this Agreement, subject to any applicable statute of limitations.

(11) (11) If any provision in this Agreement is held invalid or unenforceable, such invalidity or unenforceability will not affect or impair the validity or enforceability of the remaining provisions of this Agreement.

(12) (12) The Company agrees to reimburse the County's legal and engineering expenses associated with the formation of this Franchise. Reimbursement will be due and payable 30 days following execution of this Franchise Agreement.

(13) (13) (a) Except as provided in Sections III(11) and XII (7) herein, and except to the extent that a court of competent jurisdiction makes a final determination that any such claims, actions, or damages result from the negligence or willful misconduct of the County or its agents, the Company agrees to defend, indemnify and hold harmless Camden County, its officers, employees and agents (the "County Indemnitees") against all claims, actions, damages, and losses of whatever nature, including regulatory actions and actions resulting from environmental contamination, arising from this Franchise or operation of the Landfill by the Company (including its agents and employees). This shall include but is not limited to, (a) any monetary settlements or judgments against the County, (b) all claims relating to the creation, enforcement, maintenance, termination of this Franchise, the Company's (including its contractors, agents and employees) construction, operation and/or maintenance of the Landfill, and (c) any costs incurred by the County, including but limited to attorneys fees, expert witness fees, court costs, engineering service costs, or any other fees or costs incurred by the County.

(b) The Company will, within thirty (30) days of any dismissal, settlement, or judgment, reimburse the County for any costs incurred under subsection (a). The County agrees that it will employ counsel, experts and other professionals only when reasonably necessary and only at those professionals' normal hourly rates.

(c) Notwithstanding the foregoing, beginning twelve (12) months following the final ruling on said litigation and to the extent Host Fees payable to the County exceed $250,000 in a given quarter, Company may deduct up to 10% of the Host Fee otherwise due and payable in said quarter as reimbursement of the Defense Costs until such time as all of the Defense Costs have been reimbursed to the Company by the County.

(d) Nothing in this Agreement abrogates or limits the County's ability to assert sovereign immunity, public duty doctrine or other governmental defenses.

IN WITNESS WHEREOF, the parties hereto have caused this Franchise Agreement to be executed by their respective officers or officials pursuant to authorization contained in duly adopted resolutions or ordinances, as the case may be.

Exhibit A

Landfill Property

Being all of Camden County Tax Parcel No. 01-7082-00-26-3513, totaling 1003.0 acres more or less (the "Primary Parcel"). Contiguous parcels also explicitly included in the Franchise are identified below (the "Contiguous Parcels"):

01-7082-00-28-4871 01-7082-00-48-6337

01-7082-00-38-6842
01-7082-00-22-4578
01-7082-00-18-7729
01-7072-00-53-9446
01-7072-00-68-2569
01-7082-00-48-7750
01-7082-00-49-2340
01-7082-00-58-2741
01-7082-00-19-2165

FILE COPY

Chesapeake VIRGINIA

City of Chesapeake

Office of the City Manager
Post Office Box 15225
Chesapeake, Virginia 23328-5225
Office: (757) 382-6166
Fax: (757) 382-6507
TDD: (757) 382-8214

April 28, 2005

Received
2005
Waste
Management

Mr. Jim Barber
Department of Environmental and Natural Resources
Division of Waste Management
1646 Mail Service Center
Raleigh, North Carolina 27699-1646

Dear Mr. Barber:

During its meeting of April 12, 2005, City Council approved the enclosed Resolution opposing the proposed landfill in Camden County, North Carolina. Camden County has purportedly entered into a Franchise Agreement with Black Bear Disposal, L.L.C., a wholly owned subsidiary of Waste Industries USA, Inc., to construct a 490 acre "mega" landfill along US Route 17 South, located less than one-half mile south of the Virginia/North Carolina State line. While the bases underlying the City's very strong opposition to the landfill are many, among the most significant is the environmental impact on this sensitive area, including water and air quality.

Specifically, the City requests a comprehensive review of all impacts being undertaken through the preparation of an Environmental Impact Statement ("EIS") pursuant to the National Environmental Policy Act due to the impending impact on the City's drinking water quality and the surrounding fragile ecosystem cited in the Resolution as well as those impacts which will remain unidentified absent an EIS. Any assessment should analyze the landfill's effect on regional air quality and cultural resources. By its Resolution, the City claims standing in the North Carolina permitting process.

The City questions the sufficiency of Camden County's local permitting process as it pertains to public notice and the approval procedures set forth in North Carolina's Solid Waste Management Act and the federal acts governing landfill construction. Regardless, Camden County has issued what it claims to be

"The City of Chesapeake adheres to the principles of equal employment opportunity. This policy extends to all programs and services supported by the City."

an appropriate landfill approval to Black Bear Disposal, L.L.C. The North Carolina Department of Environment and Natural Resources (DENR) has relied upon Camden County's claimed approval and will soon issue a site suitability determination.

The City was not provided with appropriate notice of the landfill approval process or any of the applications filed by Black Bear Disposal, L.L.C., with Camden County, DENR or the State of North Carolina. Having begun our research, it appears the landfill, if constructed, will imperil the natural resources of the City. As stated above, one of the City's primary concerns is water quality. The proposed landfill site is within the watershed of the Northwest River, one of the City's main sources of drinking water.

Preliminary information indicates the surface water run-off from the landfill will be ditched to the Great Dismal Swamp Canal, resulting in a degradation of the federally owned and maintained Great Dismal Swamp National Wildlife Refuge. As Camden County, the City cherishes this national treasure and, in fact, has been working with Camden County for the last several years to develop a recreational trail, a visitor's center and other recreational amenities that are expected to increase eco-tourism in both states. Not only will the potential for contamination of the Refuge jeopardize these cooperative efforts but more importantly, contaminated waters may be spread by sheet flow during significant storms, as was the case in 1998 during the back-to-back Hurricanes Floyd and Dennis, posing a serious threat to the public health, safety and welfare in Virginia. In addition to the concerns regarding surface water run-off into the Northwest River and the Great Dismal Swamp Canal, the City fears contamination of its ground water. Though Black Bear Disposal, L.L.C. claims its leachate containment and processing system will not allow leakage, it proposes to build the largest landfill in North Carolina history. A landfill of this size and design has never been tested in the sensitive Mid-Atlantic Coastal Plain palustrine environment and Great Dismal Swamp environs.

Given Southern Chesapeake is not served with public water, residents and businesses depend on wells as their sole source of drinking water. If the ground water is polluted by leachate or otherwise, our residents, including military personnel living within the Northwest Naval Support Activity Annex, will be in danger from water quality degradation.

As stated above, the City has many other concerns about the landfill and does not waive objections not specifically mentioned in this correspondence. The City's omission from the permitting process, in spite of direct adverse impact upon its residents, raises concern in and of itself. Should you have any questions whatsoever, please contact Ms. Mary Ann Saunders, Assistant to the City Manager, or me.

Thanking you for your attention to this most pressing matter, I am

Sincerely,

Dr. Clarence V. Cuffee
City Manager

Enclosure

CVC:MAS:pme

c: Ronald Hallman, City Attorney
Mary Ann Saunders, Assistant to the City Manager

RESOLUTION OPPOSING THE PROPOSAL OF BLACK BEAR DISPOSAL, L.L.C. TO OPERATE A 490 ACRE MUNICIPAL WASTE LANDFILL IN CAMDEN COUNTY, NORTH CAROLINA IN CLOSE PROXIMITY TO ROUTE 17, THE GREAT DISMAL SWAMP AND THE CHESAPEAKE BOUNDARY.

WHEREAS, on November 4, 2002, Camden County, North Carolina, granted a franchise agreement to Black Bear Disposal, L.L.C. ("Black Bear"), a wholly owned subsidiary of Waste Industries USA, Inc., for a 490 acre municipal waste landfill on a 1,060 acre parcel, located approximately 3,000 feet from the center line of U.S. Route 17; and

WHEREAS, the City of Chesapeake has not received notice of the landfill from Camden County or the North Carolina Department of Environment and Natural Resources, with the exception of a general request from a land use consultant for technical review of the County's Comprehensive Land Use Plan, said request having been made two years after the County granted the franchise to Black Bear; and

WHEREAS, the proposed landfill is to be constructed near the headwaters of the Northwest River, which includes the intake structure for the City's primary source of drinking water for the residents of Chesapeake; and

WHEREAS, preliminary information indicates that the surface water run-off from the landfill will be discharged to the Great Dismal Swamp Canal, a navigable waterway and historic site; and

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M[illegible]pal Center
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Received
Waste
Management

WHEREAS, in addition to concerns regarding the potential for contaminated surface water run-off to the Northwest River and the Great Dismal Swamp Canal, the City of Chesapeake also fears contamination of ground water and knows of no infallible system that will offer citizens complete protection against degradation of ground water quality; and

WHEREAS, because Southern Chesapeake is not served with public water, the residents and businesses in the area, including military personnel residing at the Naval Support Activity, Norfolk-Northwest Annex, depend on wells as their sole source of drinking water and would be put at serious risk if ground water quality is degraded by leachate, hog waste or any other unhealthy substance; and

WHEREAS, the City is also concerned about the proximity of the landfill to the 111,000 acre U.S. Fish and Wildlife Service, Great Dismal Swamp National Wildlife Refuge ("Wildlife Refuge") and the potential for adverse impact on this important public resource; and

WHEREAS, not only may the Wild Life Refuge be under potential threat but any contamination of the Great Dismal Swamp waters may be spread by sheet flow during significant storm events, as occurred in 1999 during back-to-back Hurricanes Floyd and Dennis; and

WHEREAS, the potential for contaminated sheet flow is a serious endangerment of the public health, safety and welfare; and

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WHEREAS, throughout the past two years and longer, Chesapeake and Camden County have been working together in trust on joint land use planning and eco-tourism proposals, without notice to Chesapeake representatives that a large landfill should be factored into such plans and proposals; and

WHEREAS, on February 14, 2002 and again on February 27, 2003, representatives of Chesapeake and Camden County met to discuss joint economic development efforts and based in part on these discussions, without knowledge of the proposed landfill, Chesapeake expended approximately $200,000 for an Urban Land Institute Development Strategy to help determine the most beneficial use and development of 4,000 acres of land located along U.S. Route 17 and bordering Camden County; and

WHEREAS, Chesapeake and Camden County also have been working closely for the last five years in developing the U.S. Route 17 corridor in both states as a tourist destination based on environmental attributes, such as open space, wetlands, wildlife habitats, and the historic Great Dismal Swamp Canal; and

WHEREAS, some of the key components to developing an eco-tourism corridor include the proposed construction of a Visitor's Center for the Great Dismal Swamp National Wildlife Refuge, groundbreaking for a new state park in Camden County, and a joint multi-purpose trail to be created, in part, by converting the existing U.S. Route 17 right-of-way to a recreation trail upon relocation of the highway; and

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WHEREAS, Congressman Randy Forbes was able to secure $1.75 million in federal appropriations to construct the recreation trail, which when combined with state funds, resulted in over $2 million in government expenditures; and

WHEREAS, the public benefit and enjoyment of the recreation trail and other ecological attractions may be severely hindered by the proximity of the 490 acre municipal waste landfill; and

WHEREAS, throughout sessions of joint land use planning and discussion of shared goals, Chesapeake officials and representatives were not informed of the proposed landfill; and

WHEREAS, the trucks transporting waste to the landfill are expected to primarily travel through Virginia on U.S. Route 17, which is not only undergoing relocation but expansion and is expected to be completed as early as the Fall of 2005; and

WHEREAS, the expansion was intended to increase public safety on a road that has endured high fatality rates, rather than to serve primarily as a haul route for municipal waste; and

WHEREAS, the construction design for relocated U.S. Route 17 did not anticipate the predicted volume of heavy trucks that will serve the landfill; and

WHEREAS, the trucks delivering municipal waste are most likely to reach U.S. Route 17 by taking Interstate 64 to Dominion Boulevard, which has a low level moveable bridge with frequent openings over the Intracoastal Waterway and

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which carries over 40,000 vehicles per day and operates at the lowest Level of Service for roads in Chesapeake.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Chesapeake, Virginia, that the City Manager and the City Attorney take necessary action to oppose the Black Bear landfill proposed for Camden County, North Carolina, such action to include without limitation:

1. Assert standing as an interested and affected party to the permit proceedings for the landfill being conducted by Camden County and the North Carolina Department of Environment and Natural Resources ("DENR").

2. Request Camden County and DENR to provide Chesapeake with formal notice of all proceedings and to re-conduct all public hearings for the landfill which have taken place without notice to the City.

3. Seek an environmental impact statement for the landfill project under the National Environmental Policy Act to determine the likelihood and extent of adverse impact on federal lands; discharge of contaminated run-off into federal waters; contaminated surface and sheet water flow into the Northwest River, a source of drinking water for Chesapeake; degradation of potable ground water serving as a source of drinking water for residents and military personnel; and negative impact on the public use of federally funded projects, such as the expansion of U.S. Route 17, the establishment of a new Visitor's Center at the

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Wildlife Refuge, and the development of the Great Dismal Swamp Canal recreation trail.

4. Seek the support and aid of the U.S. Congress in protecting and promoting Chesapeake's vital interests in the location of the proposed Black Bear landfill, as well as important federal interests in preserving the historic Great Dismal Swamp Canal, the environmentally sensitive Wildlife Refuge, and endangered species.

5. Seek the support, aid and intervention of the Governor of Virginia, the Virginia General Assembly and the Secretary of Natural Resources in protecting Chesapeake and the Commonwealth from potential adverse impact from the landfill and promoting the health, safety and welfare of the residents of Virginia.

6. Challenge adverse decisions of Camden County and DENR to the extent allowed by law and supported by fact.

7. Require Black Bear to demonstrate to DENR, Camden County and the City of Chesapeake that it will construct and operate an infallible system for the absolute protection of ground water aquifers serving Chesapeake residents and surface water flows into the Northwest River.

8. Consider whether public emergency services are adequate to respond in case of an emergency generated by the landfill, such as spill or fire.

9. Ensure the safety of motorists traveling on Dominion Boulevard and residents and businesses located along and U.S. Route 17 in light of the volume of

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heavy trucks that will use these roads on protect and a daily basis to serve the landfill.

10. Any other action that will promote the best interests of the City of Chesapeake and its citizens.

ADOPTED by the Council of the City of Chesapeake, Virginia, this 12th day of April, 2005.

APPROVED:

Mayor

ATTEST:

Clerk of the Council

TRUE COPY

Deputy CITY CLERK

City Attorney's Office
City of Chesapeake
Municipal Center
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Section 7
Facility Plan

7.1 Introduction

This Facility Plan has been prepared for the development of a Subtitle D landfill in Camden County, North Carolina. The proposed Black Bear Solid Waste Facility will be owned and operated by Black Bear Disposal, LLC, a wholly-owned subsidiary of Waste Industries USA, Inc. As of November 1, 2004, Black Bear Disposal, LLC owns 1,037 acres of land located in the northeast corner of Camden County, North Carolina which will be developed into a variety of end uses. The landfill, buffers and support facilities will occupy 704 of those acres. The Subtitle D landfill will be comprised of a 490-acre disposal footprint that will be developed in five phases and will be located a minimum of 3,000 feet from the centerline of U.S. Highway 17 in accordance with the franchise agreement. The proposed land use for the remainder of the 1,037 acres include 50 acres future commercial, 91 acres future light industrial, and 192 acres wildlife conservation/wetlands. The future commercial areas may be used for borrow material in support of landfill operations.

The Black Bear Solid Waste Facility is a comprehensive solid waste facility that will accept only wastes permitted by the North Carolina Department of Environmental and National Resources and in accordance with the franchise agreement with Camden County. The current plans for the Black Bear Solid Waste Facility do not include a separate C&D landfill, but will include a 20-acre tire chip storage area. A recycling facility may be constructed at the landfill site as allowed in the franchise agreement with Camden County. If the recycling facility is constructed, it shall be permitted and operated according North Carolina Department of Environment and Natural Resources (NCDENR) requirements.

Rule .1618 (c)(6) of the North Carolina Solid Waste Management Rules requires that a conceptual plan for the development of the facility including drawings and a report be prepared which incorporates the summary findings for the geologic and hydrogeologic report as set forth in Subparagraph (a)(13) of Rule .1623 and includes drawings and reports described in Rule .1619 (d)(1), (d)(2), (e)(1), (e)(2), (e)(3), and (e)(5). The facility plan includes the following drawings and reports:

- Site development drawings, Rule .1619 (d)(1): The Site Development drawings shall delineate landfill units, leachate facilities, and locate all solid waste management facilities and facility infrastructure;
- Landfill Construction, Rule .1619 (d)(2): The Landfill Construction drawings shall delineate the limits of grading, stockpile areas, define the phases of development, propose base grades for the units, delineate the location of access roads, sediment basins, leachate pipelines and storage, and other structures related to its operation, and propose final contours and facility features for closure;

- Waste Stream, Rule .1619 (e)(1): The report shall include the types of waste specified for disposal, average monthly disposal rates and estimates of variance, area served by the facility, procedures for segregated management at different on site facilities, and equipment requirements;
- Landfill Capacity, Rule .1619 (e)(2): The facility plan report shall include an analysis of landfill capacity and soil resources. The analysis will provide accurate volumetric estimates of the following:

  1. Total operating capacity;
  2. Operating capacity for each phase of development;
  3. In-place ratio of waste to soil;
  4. Available soil resources from on site or specific off site sources;
  5. Required quantities of soil for landfill construction, operation, and closure;
  6. The estimated operating life of all MSWLF units in years.

- Containment and environmental control systems: Rule .1619 (e)(3), A general description of the systems designed for proper landfill operation, system components, and corresponding functions shall be provided.
- Special engineering features, Rule .1619 (e)(5).

7.2 Facility Drawings

Rule .1619 (d): A set of facility drawings have been prepared in compliance with Rule .1619 (d). These drawings include conceptual site development and landfill construction sheets.

7.2.1 Site Development

Two drawings were prepared on topographic maps representative of existing site conditions. The first drawing, SD-1, provides existing topographic and structural features of the proposed Subtitle D landfill property. Drawing SD-1 provides information on delineated wetlands, existing piezometers, and on site easements. Drawing SD-2 illustrates the proposed development plan for the property. The perimeter access road; cell locations, and leachate storage facilities are shown on SD-2. A phase development table has been provided, on Drawing SD-2, to depict the planned progression for construction and operation of the Subtitle D landfill. The conceptual design allows for the landfill to be developed in four lateral phases. After 24 years of operation, the landfill will be fully developed from the standpoint of cell, construction. However, an additional 3 years of capacity will be provided by vertically expanding to the proposed final contours. The location restrictions and buffer requirements are indicated on SD-2.

7.2.2 Landfill Construction

All on site grading activities related to the construction and operation of the MSWLF units are shown on the landfill construction drawings. These grades are conceptual and are subject to change based on information obtained for the Design Hydrogeologic Report. The proposed base grades are shown on Drawings LC-1 through LC-4. The cell grades shown inside the liner limits represent ground elevation at the bottom of the clay liner. Grades shown outside the liner limits represent final grade. Stormwater control measures include thirty-seven sedimentation basins, drop inlets and pipes, and a perimeter access road ditch. The components of the leachate management system, which include collection pipes, pump stations, and storage tanks, are identified on Drawings LC-1 through LC-4. All material required for landfill construction will be obtained from off site sources. Generally, stockpile locations will be located within the landfill footprint; however, specific locations will be identified once the operational plan has been completed. The final closure grades are provided on Drawing LC-5.

7.3 Facility Report

This facility report contains discussions of the characteristics of the waste stream to be received at the landfill facility, the landfill capacity, containment and environmental control systems, and special engineering features as required by Rule .1619(e).

7.3.1 Waste Stream

This section contains a discussion of the characteristics of wastes received at the facility and facility specific management plans in accordance with Rule .1619(e) (1).

7.3.1.1 Types of Wastes Accepted

The proposed landfill will accept only wastes permitted by the North Carolina Department of Environmental and National Resources and in accordance with the franchise agreement with Camden County. These wastes include, but are not limited to, non-hazardous MSW, industrial waste (IW), C&D debris, land cleaning and inert debris (LCID) and other non-hazardous wastes that may be approved by the Division that are generated within the east coast service area described in paragraph 7.3.1.3 of this Facility Plan. Some wastes having appropriate properties may be used as alternate daily cover. These materials may consist of petroleum soils, sludges, foundry sands, and other materials suitable for use as daily cover. Waste hauling vehicles will be directed from the scale house to the landfill working face for disposal of all wastes accepted at the landfill.

7.3.1.2 Average Disposal Rates

The Black Bear Solid Waste Disposal Facility is anticipated to operate 308 days per year with an average daily disposal rate of 10,000 tpd for each day of operation. This is equivalent to an average yearly disposal rate of 3,080,000 tpy and an average monthly disposal rate of 257,000 tpm. Disposal rates may vary due to the ramping up of operations when the landfill opens, changing market conditions, seasonal

influences, and lower than expected waste volumes. Typically, average monthly disposal rates are not anticipated to fluctuate more than 25 percent from 257,000 tpm.

7.3.1.3 Area Served by Facility

The Subtitle D landfill will provide waste disposal capacity for a service area that extends from U.S. Interstate 75 (I-75) to the east coast. The population of the service area is over 108,900,000 based on 2001 Census Bureau data. The population number only includes the population in those counties located east of I-75 where the interstate passes through states. The proposed service area is shown in Attachment 7-1..

7.3.1.4 Procedures for Segregated Management

All waste accepted at the Black Bear Solid Waste Facility will be disposed of within the 490-acre landfill, therefore waste segregation will not be required. A 20-acre tire chip storage area will be used to store processed tire chips prior to their use in landfill operations. Wastes shall not be placed within the tire chip storage area. The franchise agreement with the Camden County states that a recycling facility may be established at the landfill site. If Black Bear Disposal, LLC elects to construct such a facility, recyclables will be segregated from waste and all waste materials will be disposed within the landfill in accordance with Division Rules and permit requirements.

7.3.1.5 Landfill Equipment

Standard landfill equipment will be used at the proposed facility. This may include, but not be limited to, equipment such as:

- Trash Compactors
- Dozers
- Graders
- Excavators
- Water truck
- Backhoes
- Fuel truck
- Pick up trucks
- Dump trucks
- Transfer Trailer Tippers

7.3.2 Landfill Capacity

The estimated gross capacity (waste, daily cover and final cover) of the landfill will be approximately 102,400,000 cubic yards (cy) of which approximately 2,400,000 cy will be used for the construction of final cover over the landfill. The remaining

100,000,000 cy is available for waste and daily cover. The estimated gross capacity of the landfill is subject to revision during final design and permitting.

It is anticipated that an in-place ratio of waste to cover material will be 11 to 1. This translates to 8,333,000 cy of cover material necessary for daily cover and 91,667,000 cy available for waste disposal. For an in-place waste density of 1,800 lb/cy, typical for landfill operations, the landfill will have capacity for approximately 82,500,000 tons of waste.

Using the anticipated average daily disposal rate of 10,000 tpd for 308 days of operation per year, or 3,080,000 tpy, the expected active life of the landfill is approximately 27 years. The active life of the facility may be extended beyond 27 years due to ramping up of operations when the landfill opens, fluctuations in daily disposal rates, improved compaction, leachate recirculation, and other variables. Extension of the active life of the landfill beyond the duration of the 30-year franchise agreement with Camden County, dated November 4, 2002, will require a new franchise agreement with the County. The operating capacity for each phase shown on sheets LC 1 is:

Phase	Gross Capacity (yd^3)	Anticipated Phase Life
1	21,845,000	6 years
2	24,891,000	6 years
3	24,067,000	6 years
4	23,659,000	6 years
5	7,938,000	3 years
Total	102,400,000	27 years

Approximately 3,200,000 cubic yards of clay and drainage materials will be required to construct the base liner system. Perimeter access road and berm construction and preparation of the cell base grades (clay liner subgrade) will require 9,824,000 cubic yards of backfill material. Due to the lack of historical site data the seasonal high ground water elevation is conservatively assumed to be the same as existing ground elevation. In order to meet the 4-foot separation requirement, the base liner system is currently shown to be constructed a minimum of 4 feet above existing grade. Therefore, the landfill construction may not require excavation. However, as additional ground water data is collected during additional site investigation work

for the Permit to Construct application and during the operation of the landfill, the base grades for Phase I and future phases will be revised if it is determined that the seasonal high ground water elevation is lower than existing grade.

The amount of fill material required for cell base grade construction is based upon estimates of foundation settlement for the maximum height of the landfill. The preliminary settlement analysis estimates approximately six feet of settlement in the center of the landfill (the location of the greatest depth of waste) and no settlement along the limits of waste. It should be noted that this estimate is based on very conservative assumptions regarding the compressibility of the foundation soils. A more detailed settlement analysis will be performed for each phase of landfill construction based on more extensive subsurface investigation prior to final design.

The majority of fill material will be provided from off site sources. Approximately 26,500,000 cubic yards of fill material will be needed to construct the landfill structures, provide daily and intermediate cover, and install a final cover. This estimate does not account for the use of alternative cover materials that will be employed by Black Bear Disposal, LLC, therefore it is considered to be an upper limit estimate.

7.3.3 Containment and Environmental Control Systems

Base Composite Liner System

A base composite liner system will be designed and constructed to capture leachate generated by the landfill. The composite liner will consist of a prescriptive Subtitle D liner system (i.e.; compacted subgrade, 24-inches of compacted soil with a maximum permeability of 1x10-7 cm./sec., and a 60 mil textured high-density polyethylene (HDPE) liner) or an equivalent alternative liner system as allowed by State rules.

Leachate Collection and Storage

A leachate collection system will be designed and installed above the base liner. This system will ensure that the hydraulic head on the base liner does not exceed 12-inches. The collection system will be composed of a 24-inch sand drainage layer with a minimum permeability of 1x10-3 cm/sec, a drainage net layer, and perforated collection pipes installed in aggregate trenches. The base grades of the landfill will be designed with a minimum, post settlement cross slope of two percent. Leachate will flow vertically through the sand drainage layer and laterally through the drainage net layer to the collection pipes. Modeling of the system will be performed to account for additional capacity requirements due to the recirculation of leachate.

The collection pipes will transport leachate by gravity flow at a minimum post settlement slope of 0.5 percent. The collection pipes will penetrate the liner system and connect to a header pipe system located within the containment berm fill slope that will transport leachate to sixteen designated pump stations around the perimeter of the landfill. The pump stations will feed a force main which will deliver the

leachate to the three onsite leachate storage tanks. The operating goal for Black Bear Disposal, LLC is to recirculate 100% of the generated leachate.

Closure Cap System

A closure cap will be designed and constructed to reduce the infiltration of precipitation into the landfill. The composition of the closure cap will be 18-inches of protective cover soil with a maximum permeability of 1x10-3 cm./sec underlain by geocomposite drainage net and 30-mil linear low-density polyethelyne (LLDPE) liner. A 6-inch layer of soil with sufficient organic content to sustain vegetative growth will be placed above the protective cover. The closure cap will have a maximum constructed side slope grade of three horizontal to one vertical (3:1), and, a minimum top slope of five percent. An alternative cap demonstration will be provided with the permit to Construct Application for Division approval of the 3:1 closure slopes.

Sedimentation and Erosion Control

Prior to construction of the landfill facility, a Sedimentation and Erosion Control Plan will be submitted to the Department of Environmental Management, Land Quality Section for approval. During construction of the facility, and during landfill operations, stormwater runoff will be routed to sedimentation basins. Internal stormwater berms will be utilized to minimize the amount of stormwater that comes in contact with waste. Stormwater collected within the landfill cells will be pumped to the perimeter access road drainage ditch and conveyed to one of the eight sedimentation basins. Once each portion of the landfill has reached final grade and received the closure cap, the storm water runoff will be directed to the same sedimentation ponds as described above. Temporary erosion control measures, such as silt fences, fast germinating vegetation, rock check dams, etc. will be installed as necessary to reduce the amount of sedimentation and erosion during construction activities.

Landfill Gas Management

A landfill gas collection system will be installed to control the migration of methane and ensure that the methane levels at the landfill boundary are kept below the lower explosive limit (L.E.L). This system, in conjunction with the base liner and cap systems will also prevent the accumulation of methane in onsite structures. As part of the final closure procedures, landfill gas extraction wells will be installed in the landfill closure cap at a density of approximately one per acre. The captured gas will either be scrubbed and used as a fuel should an economical end user be found or it will be flared.

7.3.4 Special Engineering Features

Black Bear Disposal, LLC intends to practice leachate recirculation at the Black Bear Solid Waste Facility as the primary means of leachate management. Bioreactor operation which entails addition of liquids other than leachate generated at the facility may be implemented in the future if or when appropriate State or federal regulations allow such activity. Leachate recirculation and bioreactor operation have

the potential of extending the operational life of the landfill. Extension of the active life of the landfill beyond the 30-year term of the franchise agreement will require a new franchise agreement with Camden County.

WYRICK
ROBBINS
YATES
& PONTON
LLP

ATTORNEYS AT LAW

The Summit
4101 Lake Boone Trail
Suite 300
Raleigh, NC 27607.7506

PO Drawer 17803
Raleigh, NC 27619

ph 919.781-4000
fax 919.781-4865
www.wyrick.com

JAMES M. YATES, JR.
jyates@wyrick.com

April 21, 2005

Received
APR 2005
Solid Waste
Section

Mr. Donald J. Barber
Permitting Branch Supervisor
Solid Waste Section Division of
Waste Management
1646 Mail Service Center
Raleigh, NC 27699-1646

Re: Black Bear Disposal, LLC Financial Documents and Demonstration

Dear Mr. Barber:

Our client, Waste Industries USA, Inc. has asked us to clarify for the record the third paragraph of your letter dated April 5, 2005 to D. Steve Grissom. You are correct that the land purchased by Black Bear Disposal, LLC was paid for in part by borrowing under the Waste Industries USA, Inc.'s revolving credit facility and your other statements are accurate as well. However, the real property owned by Black Bear Disposal, LLC is not encumbered by any mortgage or deed of trust, nor is any real property owned by any Waste Industries entity so encumbered. This fact may or may not impact your determination under N.C.G.S. 130A-294(b2)(1). Furthermore, it is my understanding that approximately 350 acres of Black Bear Disposal, LLC will have no landfill footprint on it and Black Bear Disposal, LLC intends to purchase $5-6M of adjacent property under the same financial arrangement with its lenders as its initial purchase. Thus Black Bear Disposal, LLC should have a net worth of over $15M before any accounting for future cash flows. We believe Black Bear Disposal, LLC is and will continue to be a financially strong and viable company in its own right.

Please call Steve Grissom or me should you have any questions or require additional information.

With kind regards, we remain

Very truly yours,

WYRICK ROBBINS YATES & PONTON LLP

James M. Yates, Jr.

JMYjr/emr

cc: Ven Poole
Steve Grissom
Jerry Johnson

WYRICK
ROBBINS
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& PONTON
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JAMES M. YATES, JR.
jyates@wyrick.com

April 22, 2005

Mr. Donald J. Barber
Permitting Branch Supervisor
Solid Waste Section
Division of North Carolina Department of
Environmental and Natural Resources
1646 Mail Service Center
Raleigh, NC 27699-1646

Re: Black Bear Disposal, LLC

Dear Mr. Barber:

In furtherance of the letter I sent to you yesterday in response to your letter of April 5th to Steve Grissom of Waste Industries USA, Inc. regarding the financial qualification of Black Bear Disposal, LLC for a permit for the proposed municipal solid waste landfill in Camden County, I am enclosing a copy of the title insurance policy issued by Investors Title Insurance Company for the 1,059.99 acres presently owned by Black Bear Disposal, LLC. Schedule A indicates that the LLC owns the land in fee simple and there are no mortgages against the property.

In addition, I am enclosing an explanation of the existing bond financing that is presently in place on the Sampson County Disposal Landfill. Black Bear Disposal, LLC would like to use the same type of financing for its permanent financing of the proposed landfill in Camden County.

If you have further questions, please do not hesitate to call Steve Grissom or me.

With kind regards, we remain

Very truly yours,

WYRICK ROBBINS YATES & PONTON LLP

James M. Yates, Jr.

JMYjr/emr
Enclosures (2)
cc: Ven Poole (w/o enc)
Steve Grissom (w/o enc)
Jerry Johnson (w/o enc)

Explanation of NC Bond Financing in Place

The Sampson County Industrial Facilities and Pollution Control Financing Authority issued bonds for the benefit of Sampson County Disposal, LLC ("Borrower"), a wholly-owned subsidiary of Waste Industries USA, Inc. ("Parent"). The two issuances totaled $40.4M and are due after 2020. These bond offerings are tax-exempt adjustable mode environmental facilities revenue bonds, the issuances of which were approved by the NC Local Government Commission and the allocations of which were approved by the North Carolina Federal Tax Reform Allocation Committee. In order for bond counsel to opine that the interest paid on the bonds will be federal income tax-free to the recipients, Parent must represent that none of the bond proceeds will be used to purchase or otherwise invest in "securities" or other "investment-type property", which is deemed to include property **that is directly or indirectly pledged to secure the bonds.** The bonds are secured by a letter of credit from Parent's lenders under Parent's credit facility, which in turn is secured by Parent's obligation to repay the lenders and Parent's pledge of assets (including equity interests in subsidiaries) to those lenders. Accordingly, the bond tax rules treat the property pledged to the lenders as indirectly securing the bonds.

At this time, there is no exclusion from this definition for stock or securities of wholly-owned, operating subsidiaries of Parent – they are included within the definition of securities or investment-type property. However, because a single-member limited liability company is disregarded for federal income tax purposes, ownership by Parent of LLCs is permissible and will not jeopardize the tax-free financing if the membership interests of the LLC are pledged to secure the Parent's obligations, as long as the LLC has not elected to be taxed as a corporation for income tax purposes. Conversely, equity interests in subsidiaries that are corporations, partnerships, or multi-member LLCs cannot be pledged as collateral to secure Parent's obligations to its lenders because repayment of the proceeds from any bond offering may not be secured directly or indirectly by "securities" or other "investment-type property" that is pledged as collateral. It is highly likely, if not a certainty, that Parent's lenders will require a pledge of Black Bear Disposal, LLC's membership interest since the lenders have required a pledge of the membership interests of all other landfills owned and operated by a subsidiary LLC of Parent to secure the obligations of Parent and its subsidiaries, as co-borrowers, under its credit facilities.

Investors Title Insurance Company
313 West Second St.
P.O. Drawer 7205
Greenville, NC 27835-7205
Tel. (800)949-4842 (252)758-5745
Fax (800)659-3023 (252)758-6919

10/21/2004

10·25 04

W. Brock Mitchell
W. Brock Mitchell
Post Office Box 220
Elizabeth City, NC 27909-0220

RE: *Black Bear Disposal, LLC*
1059.99 Acres, HIGHWAY 17
Currituck and Camden Counties, NC

(a) Mortgagee Policy Information:

Policy No.	*200403349GV*
Coverage	*$0.00*
Name	
Mail Mortgagee Policy To:	*N/A*

(b) Owner Policy Information:

Policy No.	*200403349GV*
Coverage	*$7,000,000.00*
Name	*BLACK BEAR DISPOSAL, LLC*
Mail Owner's Policy To:	*Wyrick Robbins Yates & Ponton, LLC* *Attn: Linda Blackwell* *PO Drawer 17803* *Raleigh, NC 27619*

Received
MAY 2005
Waste
Management

Investors Title Insurance Company

INNOVATIVE BY INSTINCT

A Stock Company
P.O. Drawer 2687
Chapel Hill, North Carolina 27515-2687

OWNER'S POLICY

To The Insured:

ENCLOSED IS YOUR OWNER'S POLICY OF TITLE INSURANCE; OR, AN ENDORSEMENT TO THE POLICY PREVIOUSLY ISSUED TO YOU.

The policy and all endorsements provide valuable title protection on the property which is described in Schedule A. **YOU SHOULD KEEP THE POLICY AND ALL ENDORSEMENTS IN A SAFE PLACE.**

Investors Title Insurance Company is a publicly held North Carolina corporation, and we are dedicated to providing title protection for those who acquire real estate or loan money on real estate.

THANK YOU FOR GIVING INVESTORS TITLE THE OPPORTUNITY TO PROVIDE THIS COVERAGE.

Sincerely,

W. Morris Fine

W. Morris Fine
President

Investors Title Insurance Company

POLICY OF TITLE INSURANCE

COINSURANCE CONTRACT

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, INVESTORS TITLE INSURANCE COMPANY, a North Carolina corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

IN WITNESS WHEREOF, Investors Title Insurance Company has caused this Policy to be signed and sealed, to be valid when Schedule A is countersigned by an authorized officer or agent of the Company.

David A. Bennington
Secretary

INVESTORS TITLE INSURANCE COMPANY
SEAL
1972
CHAPEL HILL, N.C.

W. Morris Jones
President

INVESTORS TITLE INSURANCE COMPANY

P.O. Drawer 2687
Chapel Hill, North Carolina 27515-2687

OWNER'S POLICY OF TITLE INSURANCE

SCHEDULE A

Policy Number *200403349GV* Policy Date *10/04/2004* Time *03:05 PM*

Amount of Insurance *$7,000,000.00*
1. Name of Insured *Black Bear Disposal, LLC*

DATE OF POLICY, CURRITUCK COUNTY: 10/04/2004 AT 3:05 PM
DATE OF POLICY, CAMDEN COUNTY: 10/04/2004 AT 12:14 PM

2. The estate or interest in the land which is covered by this policy is:
FEE SIMPLE

3. Title to the estate or interest in the land is vested in the Insured.

4. The land herein described is encumbered by the following mortgage and assignments, if any:
N/A

and the mortgages, if any, shown in Schedule B hereof.

5. The land referred to in this Policy is in the State *of NC* County *of Camden and Currituck* and described as follows:
BEGINNING AT A NEW COTTON SPINDLE SET IN THE ASPHALT OF AN ACCESS LANE NEAR THE CENTER OF U.S. HIGHWAY 17, SAID POINT HAVING N.C. GRID COORDINATES (NAD 83) OF N(Y) 1,026,805.88 E(X) 2,771,805.04 DERIVED USING A COMBINED SCALE FACTOR OF 0.99984598 AND STATIC GPS OBSERVATIONS; THENCE N77 DEG. 25' 05" E 188.96' TO A COMPUTED POINT IN A CANAL AND ON THE EASTERN RIGHT-OF-WAY OF U.S. HIGHWAY 17, SAID POINT BEING LOCATED S 22 DEG. 44' 21" E 60.97' FROM AN EXISTING IRON PIPE AND S 22 DEG. 44' 21" E 754.74' FROM AN EXISTING IRON STAKE, BOTH LOCATED ON THE EASTERN RIGHT-OF-WAY OF U.S. HIGHWAY 17; THENCE ALONG THE SOUTHERN SIDE OF A 30' LANE SHOWN ON A SURVEY TITLED "SAWYER STATE LINE FARM", RECORDED IN PLAT CABINET "A" PAGE 231 OF THE CAMDEN COUNTY REGISTER OF DEEDS N 77 DEG. 25' 05" E 3,397.64' TO AN EXISTING IRON STAKE ON THE NORTH EDGE OF A CANAL, SAID POINT BEING A SURVEY CONTROL

Issued through the Office of:
Investors Title Insurance Company
313 West Second St.
P.O. Drawer 7205
Greenville, NC 27835-7205
T (800)949-4842 (252)758-5745
F (800)659-3023 (252)758-6919

Karen M. Forbes
Authorized Countersignature

CORNER HAVING NC GRID COORDINATES (NAD83) OF N(Y) 1,027,587.04 E(X) 2,775,304.98; THENCE ALONG THE SOUTHERN SIDE OF SAID LANE, N 88 DEG. 28' 19" E 18,122.79' AND CROSSING INTO CURRITUCK COUNTY, TO AN EXISTING IRON PIPE EAST OF A BEND IN THE CANAL, SAID POINT BEING A SURVEY CONTROL CORNER HAVING N.C. GRID COORDINATES (NAD83) OF N(Y) 1,028,070.20 E(X) 2,793,418.54; THENCE S 07 DEG. 04' 49" E 2,081.33 TO AN EXISTING IRON PIPE ON THE EAST SIDE OF AND AT THE BEND OF THE CANAL; THENCE S 88 DEG. 32' 43" W 185.49' TO A MARBLE MONUMENT LABELED "RCW JLRC 1917" ON THE NORTH SIDE OF A CANAL AND ON THE CURRITUCK\CAMDEN COUNTY LINE; THENCE S 87 DEG. 44' 13" W 12,794.68' TO AN EXISTING IRON PIN ON THE SOUTH SIDE OF A CANAL; THENCE S 87 DEG. 44' 13" W 8,025.58' TO A COMPUTED POINT ON THE EASTERN RIGHT-OF-WAY OF U.S. HIGHWAY 17; THENCE S87 DEG. 44'13" W 198.54' TO A NEW IRON PIPE SET IN THE MEDIAN OF U.S. HIGHWAY 17; THENCE N 22 DEG. 44' 21" W 1773.49' TO THE POINT OF BEGINNING CONTAINING A TOTAL OF 1,063.00 ACRES, ALL ACCORDING TO A SURVEY BY SURVEYING SOLUTIONS, P.C. TITLED "BOUNDARY SURVEY FOR WASTE INDUSTRIES, INC", DATED JULY 16, 2004.

INVESTORS TITLE INSURANCE COMPANY

P.O. Drawer 2687
Chapel Hill, North Carolina 27515-2687

Policy No. 200403349GV

SCHEDULE B
EXCEPTIONS FROM COVERAGE

This Policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

I. The lien of the security instrument reflected in Item 4, Schedule A, if any be shown.
II. The dower, curtesy, homestead, community property, or other statutory marital rights, if any, of the spouse of any individual insured.
III.

1. Taxes for the year 2005, and subsequent years, not yet due and payable.

2. Rights or claims of Carl White, tenant in possession under unrecorded lease.

3. Agreement with Albemarle Electric Membership Corporation recorded in Book 71 at Page 199, Camden County Registry, as shown on survey.

4. Easement(s) to Department of Transportation recorded in Book 70 at Page 161 Camden County Registry, as shown on survey.

5. Option and Agreement between FTW & Sons Farms and Camden Land Development, LLC in Book 158 at Page 872 and amended in Book 158 at Page 890, Camden County Registry.

6. Plat of survey by Surveying Solutions, P.C., dated 7/16/2004, shows the following located on insured premises:

a) Perpetual easement for highway purposes on the west
b) Three (3) foot wire fence located along highway right of way on the west
c) Overhead utilities on the west and north lines
d) Thirty (30) foot easement for 30' lane known as Ponderosa Drive located on the north
e) 16.11 acre area of overlap on the east
f) Various ditches and canals
g) 100 year Flood Hazard Area on the east
h) Various soil paths located on and crossing property

7. Rights or claims of FTW & Sons Farms, tenant in possession under unrecorded lease.

8. Deed of Easement recorded in Book 200 at Page 814, Camden County Registry.

NOTE: NO INSURED CLOSING PROTECTION COVERAGE PROVIDED - As to the transaction for which this binder and/or policy is issued, the Company specifically excludes this transaction from any closing protection services.

The following Endorsements are attached to the final policy:

ALTA 8.1 (non-residential)
ALTA 9
Survey
Tax Parcel

INVESTORS TITLE INSURANCE COMPANY

A STOCK COMPANY
P.O. DRAWER 2687
CHAPEL HILL, NORTH CAROLINA 27515-2687

ENVIRONMENTAL PROTECTION LIEN ENDORSEMENT
NON-RESIDENTIAL

This endorsement is made a part of the Policy to which it is attached.

The Company insures the Insured against loss or damage sustained by reason of lack of priority of the lien of the insured mortgage over:

(a) any environmental protection lien which, at Date of Policy, is recorded in those records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge, or filed in the records of the clerk of the United States district court for the district in which the land is located, except as set forth in Schedule B; or

(b) any environmental protection lien provided for by any state statute in effect at Date of Policy, except environmental protection liens provided for by the following state statutes: N/A

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Executed on behalf of Investors Title Insurance Company
By W. Morris Fine, President (SEAL)

Karen M. Forbes

Authorized Countersignature required for validation

(\envirnon.res)

ENDORSEMENT

Investors Title Insurance Company

P.O. Drawer 2687
Chapel Hill, North Carolina 27515-2687

This endorsement is made a part of the Policy to which it is attached.

THE COMPANY INSURES THE OWNER OF THE INDEBTEDNESS SECURED BY THE INSURED MORTGAGE AGAINST LOSS OR DAMAGE SUSTAINED BY REASON OF:

1. The existence at Date of Policy of any of the following:
   (a) Covenants, conditions or restrictions under which the lien of the mortgage referred to in Schedule A can be divested, subordinated or extinguished, or its validity, priority or enforceability impaired.

   (b) Unless expressly excepted in Schedule B:
      (1) Present violations on the land of any enforceable covenants, conditions or restrictions, and any existing improvements on the land which violate any building setback lines shown on a plat of subdivision recorded or filed in the public records.
      (2) Any instrument referred to in Schedule B as containing covenants, conditions or restrictions on the land which, in addition, (i) establishes an easement on the land; (ii) provides a lien for liquidated damages; (iii) provides for a private charge or assessment; (iv) provides for an option to purchase, a right of first refusal or the prior approval of a future purchaser or occupant.
      (3) Any encroachment of existing improvements located on the land onto adjoining land, or any encroachment onto the land of existing improvements located on adjoining land.
      (4) Any encroachment of existing improvements located on the land onto that portion of the land subject to any easement excepted in Schedule B.
      (5) Any notices of violation of covenants, conditions and restrictions relating to environmental protection recorded or filed in the public records.

2. Any future violation on the land of any existing covenants, conditions or restrictions occurring prior to the acquisition of title to the estate or interest in the land by the insured, provided the violation results in:
   (a) invalidity, loss of priority, or unenforceability of the lien of the insured mortgage; or
   (b) loss of title to the estate or interest in the land if the insured shall acquire title in satisfaction of the indebtedness secured by the insured mortgage.

3. Damage to existing improvements, including lawns, shrubbery or trees:
   (a) which are located on or encroach upon that portion of the land subject to any easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved;
   (b) resulting from the future exercise of any right to use the surface of the land for the extraction or development of minerals excepted from the description of the land or excepted in Schedule B.

4. Any final court order or judgment requiring the removal from any land adjoining the land of any encroachment excepted in Schedule B.

5. Any final court order or judgment denying the right to maintain any existing improvements on the land because of any violation of covenants, conditions or restrictions or building setback lines shown on a plat of subdivision recorded or filed in the public records.

Wherever in this endorsement the words "covenants, conditions or restrictions" appear, they shall not be deemed to refer to or include the terms, covenants, conditions or limitations contained in an instrument creating a lease.

As used in paragraphs 1(b)(1) and 5, the words "covenants, conditions or restrictions" shall not be deemed to refer to or include any covenants, conditions or restrictions relating to environmental protection.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Investors Title Insurance Company

INVESTORS TITLE INSURANCE COMPANY
SEAL
1972
CHAPEL HILL, N.C.

W. Morris Fine
President

Attest: David A. Bennington
Secretary

ALTA Endorsement Form 9
Restrictions, Encroachments, Minerals
(Revised 10/17/98)

Investors Title Insurance Company
P.O. Drawer 2687
Chapel Hill, North Carolina 27515-2687

SURVEY ENDORSEMENT

This endorsement is made a part of the Policy to which it is attached.

This Policy insures the Insured against loss due to any inaccuracy in the following assurance:

The land described in this Policy is the same as that described in the survey prepared by Surveying Solutions, PC, dated 7/16/04.
The insured property is also shown on that survey dated December 1973, January 1974 by Andrew Pearce, RLS, and recorded in Book 72 at Page 338-A, Camden County Registry.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

The total liability of the Company under said policy and any endorsements attached thereto shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the provisions of said policy to pay.

This endorsement is made a part of said policy and is subject to the schedules, conditions, stipulations and terms thereof, except as modified by the provisions hereof.

Investors Title Insurance Company
By: W. Morris Fine, President (SEAL)

Investors Title Insurance Company
P.O. Drawer 2687
Chapel Hill, North Carolina 27515-2687

TAX PARCEL ENDORSEMENT

This endorsement is made a part of the Policy to which it is attached.

The Company insures the Insured against loss or damage which the Insured may sustain by reason of any inaccuracy in the following assurance:

The land described in the Policy is assessed under the following Tax I.D. (or Parcel) Number _____*. All of the insured land will be included within the listed Tax I.D. (or Parcel) Number which does not include any additional land. Any part of the insured land which is an insured easement is not included in the insurance provided herein.

*0001-000-0007-0000 (Currituck County) and 01-7082-00-26-3513 (Camden County)

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

The total liability of the Company under said policy and any endorsements attached thereto shall not exceed, in the aggregate, the face amount of said policy and costs which the Company is obligated under the provisions of said policy to pay.

This endorsement is made a part of said policy and is subject to the schedules, conditions, stipulations and terms thereof, except as modified by the provisions hereof.

Investors Title Insurance Company
By: W. Morris Fine, President (SEAL)

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

   (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.

Owner's Policy of Title Insurance

Investors Title Insurance Company

P.O. Drawer 2687
Chapel Hill
North Carolina 27515-2687
(919) 968-2200
www.invtitle.com

EXCLUSIONS FROM COVERAGE (cont'd)

3. Defects, liens, encumbrances, adverse claims other matters:
   (a) created, suffered, assumed or agreed to by t insured claimant;
   (b) not known to the Company, not recorded in t public records at Date of Policy, but known to t insured claimant and not disclosed in writing the Company by the insured claimant prior to t date the insured claimant became an insur under this policy;
   (c) resulting in no loss or damage to the insur claimant;
   (d) attaching or created subsequent to Date Policy; or
   (e) resulting in loss or damage which would not ha been sustained if the insured claimant had p value for the estate or interest insured by t policy.

4. Any claim, which arises out of the transaction vesti in the Insured the estate or interest insured by t policy, by reason of the operation of fede bankruptcy, state insolvency, or similar creditc rights laws, that is based on:
   (a) the transaction creating the estate or inter insured by this policy being deemed a fraudul conveyance or fraudulent transfer; or
   (b) the transaction creating the estate or inter insured by this policy being deemed preferential transfer except where the preferen transfer results from the failure:
      (i) to timely record the instrument of transf or
      (ii) of such recordation to impart notice tc purchaser for value or a judgment or li creditor.

CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

(a)"insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.

(b)"insured claimant": an insured claiming loss or damage.

(c)"knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(d)"land": the land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e)"mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions From Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.

(g)"unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE.

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.

(a)Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b)The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c)Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph, shall terminate any liability of the Company under this policy as to that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

(i) To pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

(ii) Upon the exercise by the Company of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (b)(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any ...ion.

TERMINATION, EXTENT OF LIABILITY AND COINSURANCE.

...is policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a)The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or,

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b)In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the Amount of Insurance stated in Schedule A, then this Policy is subject to the following:

(i) where no subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the amount of insurance at Date of Policy bears to the total value of the insured estate or interest at Date of Policy; or

(ii) where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A.

(c)The Company will pay only those costs, attorneys' fees and expenses in...rred in accordance with Section 4 of these Conditions and Stipulations.

...PPORTIONMENT.

...the land described in Schedule A consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

9. LIMITATION OF LIABILITY.

(a)If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b)In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c)The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in setting any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto.

11. LIABILITY NONCUMULATIVE.

It is expressly understood that the amount of insurance under this policy shall be r...ed by any amount the Company may pay under any policy insuring a ...age to which exception is taken in Schedule B or to which the insured has ...ed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

12. PAYMENT OF LOSS.

(a)No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

13. SUBROGATION UPON PAYMENT OR SETTLEMENT.

(a) The Company's Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) The Company's Rights Against Non-Insured Obligors.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

14. ARBITRATION.

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured ... out of or relating to this policy, any service of the Company in connection wi... its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is $1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of $1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

16. SEVERABILITY.

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

17. NOTICES, WHERE SENT.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at Investors Title Insurance Company, P.O. Drawer 2687, Chapel Hill, North Carolina 27515-2687.

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NCDENR

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

April 19, 2005

Mr. Mason B. Malpass
1283 Green Swamp Rd. N.
Bolton, NC 28423-8588

Re: Proposed Riegel Ridge, Hugo Neu, and Black Bear Landfills
Columbus, Brunswick and Camden Counties

Dear Mr. Malpass:

Thank you for your recent letter to Governor Easley expressing your concerns regarding the referenced landfills. Your letter has been referred to the Division of Waste Management for response.

The Division of Waste Management within the Department of Environment and Natural Resources is the agency responsible for regulation of solid waste management activities in the State of North Carolina. The division will conduct a thorough review of the permit applications in order to ensure that the facilities are protective of public health and the environment.

Thank you again for sharing your concerns. If you have further questions or comments, please feel free to contact Jim Barber, Permitting Branch Head, at (919) 508-8495, or Sherri Coghill, Permitting Engineer, at (919) 508-8498.

Sincerely,

James C Coffey

James C. Coffey, Chief
Solid Waste Section

cc: William G. Ross, Jr., Secretary
Department of Environment and Natural Resources

Dexter R. Matthews, Director
Division of Waste Management

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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

April 11, 2005

Mr. Timothy Grant, L.G.
Camp Dresser & McKee
5400 Glenwood Ave., Suite 300
Raleigh, N.C. 27612

RE: Black Bear Disposal, LLC,
a subsidiary of Waste Industries, USA, Inc.
Site Study Revisions of March 31, 2005
Camden County, North Carolina

Dear Mr. Grant,

The March 31, 2005, revisions to the above referenced Revised Site Study Report of February 2005 have been reviewed for hydrogeologic concerns by the Solid Waste Section. There are still some items in the Report that require clarification, revision, or additional information. Please respond to the following questions and comments:

Section 8 - Preliminary Geotechnical Evaluation:

The text of Section 8 has been revised to include many references to a "bioreactor landfill". It is not clear why it was necessary to make these changes... Does a "bioreactor landfill" require different geotechnical considerations from a regular MSW Landfill?

8.1 It is stated that the MSW bioreactor landfill will be "approximately 490 acres" in size. On the following page , in section 8.3, it is stated to be "approximately 475 acres". All references in the Reports need to be consistent in the size of the proposed landfill footprint referenced.

8.1 The amount of waste expected to be disposed at the landfill facility has been significantly changed from the previous document. Is this current number believed to be more accurate? Why was the number revised? It appears that an extraneous "d" has been added to the "(cyd)" abbreviation for cubic yards.

8.3 It appears that the reference to the location of the reclaimed farmland has been incorrectly changed from "north and west" to "north and south". In the second paragraph, there are two references that ditches run along the landfill "footprint". These should reference the landfill facility boundary, rather than the landfill footprint.

- There continue to be problems with the pagination. The text goes from page 8-4 (to Table 8-1) to page 8-7 to page 8-9. There do not appear to be any pages 8-6 or 8-8.

Table 8-1 Note 2 on this table still appears to reference the wrong year in the date.

Table 8-3 For Test Boring Number B-7, Sample No. S-9A, the Grain Size Analysis for % Sand is incorrect.

8.6.3 The numbers in the second paragraph on page 8-14 do not match the numbers in Table 8-5. In the fourth paragraph on page 8-14, should the table referenced be Table 8-5, rather than 8-4?

page 8-20 Was the section on "Liquefaction Potential Evaluation" that was in the previous document left out of the revised text on purpose?

Sheet 8-1 For the borings for which there is documentation in Appendix A, borings B-1 through B-29, all of the TOC elevations on the drawing are inconsistent with those on the Boring Logs. (The Boring Logs for B-20, B-21, and B-22 do not have the TOC elevations.) I have not checked the elevations for the other borings. However, I did notice that the Ground Elevation (GE) for boring GP-33 is incorrect.

Please respond to these questions and comments, and provide revisions as necessary. If you have any questions regarding items in this letter, please contact me at (919) 508-8507.

Sincerely,

Bobby Lutfy

Bobby Lutfy, Hydrogeologist
Solid Waste Section

cc: Jim Barber, Ed Mussler, John Crowder, Chuck Boyette - SWS
Jerry Johnson - Waste Industries

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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

April 5, 2005

Ms. Joan Smyth, L.G.
14 N. Boylan Avenue
Raleigh, North Carolina 27603

RE: Black Bear Disposal, LLC,
a subsidiary of Waste Industries, USA, Inc.
Revised Site Hydrogeologic Report
Camden County, North Carolina

Dear Ms. Smyth,

The March 16, 2005, revisions to the above referenced Revised Site Hydrogeologic Report of February 25, 2005 have been reviewed for hydrogeologic concerns by the Solid Waste Section. There are still some items in the Report that require clarification, revision, or additional information. Please respond to the following questions and comments:

Table of Contents: The pagination referenced in the Table of Contents does not match the pagination in the text of the Report. Also, there is no reference to section 4.7.3 - regarding the Long-term Seasonal High Water Table.

4.1.2.2 There appears to be some text missing in the middle paragraph of this section. Also, the text needs to be updated with the on-site information gathered from boring B-102.

4.2.1 There are two references to the ditches marking the landfill "footprint". These should reference the landfill facility boundary.

4.2.2 The first part of the first sentence in the fourth paragraph of this section (up to the comma) should be deleted.

4.3 The Well Construction Log for the production well THG-1 indicates an 8 foot bentonite seal, not 2 foot.

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4.4.4. The K-value of 4.1X10E-6 cm/sec would equal 0.0116 ft/day. The K-value of 1.3X10E-6 would equal 0.0037 ft/day.

4.5 The first paragraph at the top of page 12 should identify the figures in Appendix E that are referenced for each model run.

4.7.1 On the last paragraph on page 13, on July 28, 2004, for piezometer B-25, the water table was encountered 14.48 feet below land surface at an elevation of 0.78 MSL.

4.7.2 What is the context of the statement at the top of page 15, that "the elevations collected on July 28, 2004, represent the *worst case scenario* for the landfill area". Is this believed to be the highest readings that could ever occur, and therefore indicative of Long-term Seasonal High Water table conditions. If so, this contradicts other propositions in the Report.

4.8.1.1 Has there been any attempt to plot potentiometric data only from deeper piezometers to estimate horizontal flow deeper in the aquifer system? Would this deeper ground-water flow also be to the north?

4.8.2 Table 8 references Pump Test data, not Slug Test data. I am not able to match the data presented in the last paragraph of page 16 and the first and fourth paragraphs of page 17 to the data presented in the Tables and Appendices. In the first sentence of the last paragraph on page 16, does this data represent hydraulic conductivity of the "Surficial aquifer" or just the shallow upper portion of the surficial aquifer?

4.8.2 The last paragraph of section 4.8.2 (near the top of pg. 18) references an average effective porosity of 35 percent. However, if the two values from the silt/clay units are left out, those values representative of the primary lithologic unit of the upper aquifer would yield a value of about 43 percent. Would this not be a more representative value to be used for the calculations in Table 9?

4.8.2 It is still not clear that the representative hydraulic characteristics (hydraulic conductivity, porosity, and effective porosity) have been presented for the various lithologic units (hydrogeologic units) identified, as outlined in section 4.3 of the Report. The information currently presented in section 4.8.2 based on depth is useful, however it does not correspond to the lithologic units identified.

4.13 Reference is made to the "western borrow pit in the western portion of the site". All other references in the Report describe the borrow pits as being located north of the site. In the first paragraph on page 21, what is the "central drainage ditch" and where is it located?

Table 1 The Date of Construction for B-3 and B-7 are inconsistent with the dates on the Boring Logs.

Table 2 My calculations would indicate slightly higher Estimated Effective Porosity values for B-5 and B-18.

Table 3 The TOC Elevations for boring B-103 and B-103d are inconsistent with the elevations on the Boring Logs. It appears that both the Table and the Boring Logs have been changed. Which are the correct TOC Elevations for these two borings?

Table 4 The Average value for Jan. should be 4.22. I am still not able to duplicate the Annual Average value of 50.76 presented in this Table. How was this value determined?

Table 6 The TOC Elevation and Ground Elev. values for B-1s and B-1 appear to be reversed in both of the tables included as part of Table 6. It would be better to carry the Vertical Gradient values out to at least thousandths in order to maintain more accurate significant figures.

Table 9 Boring B-102 is not a piezometer, so how can it be used in this Table? The Maximum Hydraulic Conductivity value, according to Table 8, should be 31.82, rather than 28.37. Refer to previous comments regarding Average Effective Porosity.

Drawings: Sheets 3 and 4: For the first boring location on Cross-section A - A', (GP-32), the ground surface and water table elevations, and the depth of boring, etc. are not consistent with the Boring Logs and Tables. I was not able to locate a Boring Log or Field Notes describing the lithologic profile at this boring location. What is the basis for showing a shallow silty clay layer at this location? Due to the apparent errors for the first boring location reviewed (GP-32), as well as for several other boring locations that I spot checked, I have not attempted a comprehensive review of these two cross-sections. Please check the accuracy for all information shown on the cross-sections on Sheets 3 and 4.

Appendix D Field Logs do not appear to be available for some of the borings. For many of the borings, little or no information was logged. For some borings that were logged, the information does not appear to be complete, especially for the top few feet of the borings. For several of the borings, the Well Construction Records in Appendix B are inconsistent with the Field Logs in Appendix D.

Appendix E Surficial Aquifer Pump Test and Model:

1.12 Reference is made to "this silty aquifer", however the Report describes primarily a sandy aquifer, with soils of the SP classification dominating.

Table 3 Refer to the previous comments for Table 9 in the main body of the Report, which corresponds to this table, Table 3 in Appendix E.

Drawing No. 2: This figure still has some of the errors previously identified for Sheet 1 in the main body of the Report prior to the recent revisions. The Ground Elevation for Boring GP-33 is incorrect. The TOC Elevation for Boring B-103 is inconsistent with the Boring Log. Some of the borings have I and S suffixes.

Figure 5: It is my understanding that this model run is based on the assumption that no outside influences are affecting ground-water flow. Therefore the "Proposed Recharge Trench" should not appear on this figure. This drawing indicates natural ground-water flow generally to the north. Does the ditch along the northern facility boundary have this strong an effect on ground-water flow? What depth of the aquifer was used in this model run? I would expect more of a westerly component of ground-water flow, at least for the deeper part of the aquifer, toward the Dismal Swamp Canal.

Please respond to these questions and comments, and provide revisions as necessary. If you have any questions regarding items in this letter, please contact me at (919) 733-0692. Beginning on April 11, 2005, our Division phone number will be changed to (919) 508-8400.

Sincerely,

Bobby Lutfy

Bobby Lutfy
Hydrogeologist
Solid Waste Section

cc:	Jim Barber	Solid Waste Section
	Ed Mussler	Solid Waste Section
	John Crowder	SWS - Wilmington
	Chuck Boyette	SWS - Washington
	Jerry Johnson	Waste Industries

NCDENR

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

April 5, 2005

Mr. D. Steve Grissom
Waste Industries USA, Inc
3301 Benson Drive, Suite 601
Raleigh, NC 27609

Subject: Black Bear Disposal LLC financial documents and demonstration.

Dear Mr. Grissom:

The Division of Waste Management has reviewed the financial documents submitted by Waste Industries USA, Inc., on behalf of its subsidiary Black Bear Disposal LLC. If it is the intent of Waste Industries that the Division consider the information submitted as relevant to the financial qualification of the applicant for a permit for the proposed municipal solid waste landfill in Camden County, it will be necessary for Waste Industries USA, Inc., also to be an applicant for the permit. See N.C.G.S. 130A-294(b2)(1).

Chapter 57C of the General Statutes, the "North Carolina Limited Liability Company Act," shields a parent company (member) from all liability for a limited liability company, and provides that a parent (member) is not a proper party to proceedings by or against a limited liability company. Thus, the financial backing of Waste Industries USA, Inc. cannot be considered in establishing the financial qualification of Black Bear Disposal LLC to own and operate the proposed landfill.

The balance sheet submitted for Black Bear Disposal LLC shows assets valued at 9.9 million dollars, most of which is the value of recently purchased land for the landfill. However, Securities and Exchange Commission filing 10-Q for Waste Industries USA, Inc. indicates that the land was purchased in part through borrowing under Waste Industries' revolving credit facility. Both the SEC 10-K and 10-Q filings state that "virtually all" of the assets of Waste Industries and the assets of its subsidiaries, including Waste Industries' interest in the equity securities of its subsidiaries, secure the obligations of Waste Industries USA, Inc. under its revolving credit facility with a syndicate of lending institutions and its term loans with Prudential Insurance Company of America.

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Phone 919-733-0692 \ FAX 919-733-4810 \ Internet http://wastenotnc.org

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Enclosed is a copy of a Division Guidance Document which outlines the undertakings and assurances which a demonstration of financial qualification is intended to cover. If you have any questions, please contact me at 919-733-4996, extension 255.

Sincerely,

Donald J. Barber
Permitting Branch Supervisor
Solid Waste Section
Division of Waste Management

Cc: James C. Coffey
Ed Mussler/Site Suitability File
Ven Poole
Jerry Johnson

DRAFT

GUIDANCE FOR DEMONSTRATING FINANCIAL QUALIFICATION FOR A MUNICIPAL SOLID WASTE LANDFILL FACILTY IN ACCORDANCE WITH THE STATUTORY REQUIREMENTS

This guidance may be used to meet the statutory requirements of N.C.G.S. § 130A-294(b2):

> The Department may require an applicant for a permit under this Article to satisfy the Department 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, N.C.G.S. § 130A-294(b3):
>
> An applicant for a permit under this Article shall satisfy the Department that the applicant has met the requirements of subsection (b2) of this section before the Department is required otherwise to review the application. In order to continue to hold a permit under this Article, a permittee must remain financially qualified and must provide any information requested by the Department to demonstrate that the permittee continues to be financially qualified.

Other statutes, applicable to demonstration of financial qualification and responsibility, have been incorporated into this guidance.

INFORMATION TO BE SUBMITTED

The initial demonstration of financial qualification for the design, construction, and closure of the facility may be limited to the first five-year phase of construction for which a permit to construct is sought. The applicant shall be required to demonstrate financial qualification for each successive five-year phase of design, construction and operation of the landfill when applying for a permit to construct each successive phase of the landfill.

Mechanisms used to demonstrate financial qualification should be compatible with the Solid Waste Management Rules, 15A N.C. Administrative Code 13B, Rule .1628, and shall ensure that the funds necessary to meet the costs shall be available whenever they are needed.

The information should be submitted as part of the initial phase of the permit application and should demonstrate that the applicant, and any parent, subsidiary, or other affiliate of the applicant or parent is financially qualified to carry out the following activities for which the permit is required:

I. **For investigating the site** in accordance with the Solid Waste Management Rules, 15A N.C. Administrative Code 13B .1600. Investigations and reports must be conducted

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and prepared by qualified environmental professionals in the respective fields related to particular investigations.

A. Investigation of location restrictions in Rule .1622.
   1. Investigation and delineation of flood plains.
   2. Delineation and protection of wetlands.
   3. Identification and investigation of geologic fault areas and seismic impact zones.
   4. Identification and investigation of unstable areas, as defined in Rule .1622(6).
   5. Identification and investigation of archeological and historic resources.
   6. Identification of any areas included in the State Nature and Historic Preserve in the vicinity of the site.
   7. Investigation of site for identification of endangered and threatened species and critical habitat for endangered species.

B. Geologic and hydrogeologic investigation of the site, per Rule .1623 (a).

C. Local and regional characterization studies, per Rule .1618(c).

II. For purchasing the land. If the land has already been acquired, who is the owner of record? Is there indebtedness? If so, in what amount and to whom? How is the debt structured? What are the terms of the debt? Is there a deed of trust on the property?

III. For design of the facility:

1. A facility plan, per Rule .1619.
2. A Design geologic and hydrogeologic investigation and report for the first five-year phase of facility construction, per Rule .1623 (b).
3. Water quality monitoring plans for ground and surface water.
4. Engineering plans for each phase of facility construction, per Rule .1620.
5. If applicable, engineering design for seismic impact zones and/ or unstable areas.
6. Plans for collection, storage, treatment and disposal of leachate.
7. Plans for landfill cap system.
8. Plans for stormwater segregation and management system.
9. Temporary and permanent sedimentation and erosion control plans.
10. Plans for landfill gas monitoring and collection systems.

IV. For construction of the first five-year phase of the facility in accordance with approved construction plans and the construction quality assurance plan. Construction also includes construction of access road(s) to the facility and measures to control unauthorized access to the facility, as well as any improvements to the public highway which may be necessary to accommodate solid waste transfer trucks and facilitate ingress and egress to and from the landfill.

DRAFT

V. For operation of the facility:

1. Employment of sufficient number of trained personnel to operate landfill in accordance with approved operations plan.
2. Staff training.
3. Adequate equipment on site to operate landfill in accordance with rules and permit.
4. Adequate waste screening procedures.
5. Daily cover of landfill.
6. Maintenance of leachate collection system.
7. Leachate storage, treatment, sampling and analysis, and disposal.
8. Maintenance of access roads.
9. Maintenance of landfill berms
10. Maintenance of borrow pits.
11. Follow sedimentation and erosion control plans.
12. Follow stormwater management plans.
13. Fire prevention and suppression.
14. Ground and surface water monitoring.
15. Methane monitoring and control of landfill gas..
16. Ensuring structural integrity of landfill.
17. Ensuring structural integrity of borrow pits.
18. Record-keeping in compliance with Rule .1626(10).
19. Maintenance of measures to control unauthorized access.

VI. For closure of the facility:

1. Closure of the first five-year phase of the facility permitted for construction and operation by installation of cap system, including a landfill gas venting or collection system, per Rule .1627.

VII. For post closure maintenance and monitoring (minimum 30 years):

1. Maintenance of landfill cap.
2. Maintenance of leachate collection system, continued leachate treatment and disposal.
3. Maintenance of groundwater monitoring system and minimum 30 years of ground and surface water monitoring.
4. Maintenance of landfill gas monitoring and collection systems and minimum 30 years gas monitoring.
5. Continued prevention of unauthorized access to landfill.

VIII. For investigation and remediation of releases of contamination to ground or surface waters, per rules .1634 - .1637.

DRAFT

IX. For investigation and remediation of landfill gas detected at levels in excess of standards, per rules .1626(4)(c) and .1627(d).

X. For prevention of / and remediation of/ any environmental damage in the vicinity of an ecologically sensitive site, including but not limited to damages to:

1. Fish and wildlife, including adverse effects on migrating birds.
2. Surrounding ecology
3. Surface water quality.
4. Ground water quality.
5. Threatened or endangered species or critical habitat of endangered species.
6. Sedimentation damage.

XI. For prevention of adverse effects upon and damages to public and private property, including downstream property, from release of contaminants from the landfill, landfill fires, flooding of the landfill or catastrophic collapse of the landfill. Liability coverage for any damages.

XII For prevention of injury and damage to human health from release of contaminants from the landfill, landfill fires, flooding of the landfill or catastrophic collapse of the landfill. Liability coverage for injury or damage to human health.

Chesapeake VIRGINIA

City of Chesapeake

Office of the City Manager
Post Office Box 15225
Chesapeake, Virginia 23328-5225
Office: (757) 382-6166
Fax: (757) 382-6507
TDD: (757) 382-8214

RECEIVED
OFFICE OF THE SECRETARY
APR 4
ENVIRONMENT
AND NATURAL RESOURCES
REFERRED TO

March 31, 2005

#6478

The Honorable William G. Ross, Secretary
Department of Environment and Natural Resources
1601 Mail Service Center
Raleigh, North Carolina 27699-1601

Re: Camden County Landfill Proposal; Black Bear, LLC

Dear Secretary Ross:

I have been asked to contact you on behalf of the Council for the City of Chesapeake, Virginia regarding the proposed municipal solid waste landfill in Camden County, North Carolina. The City of Chesapeake has only recently learned of the "Black Bear" landfill, which is to contain a 490-acre disposal area approximately one-half mile from the border of Virginia and in close proximity to the Great Dismal Swamp Canal and the Great Dismal Swamp National Wildlife Refuge. I understand that Camden County has given all necessary local approvals and that the North Carolina Department of Environment and Natural Resources (DENR) will soon issue a site suitability determination.

Please be advised that the City of Chesapeake, Virginia has not received any official governmental notice of this landfill or any of the applications filed by Black Bear LLC from Camden County, DENR or the State of North Carolina. Having begun our research, it is clear that this landfill could have potential adverse impact on the City of Chesapeake. Our primary concern is the water quality. As you may not be aware, the landfill is to be constructed within the watershed of the Northwest River, one of our main sources of drinking water for the residents of Chesapeake. In addition, preliminary information indicates that the surface water run-off from the landfill will be ditched to the Great Dismal Swamp Canal and thereby, possibly lead to a degradation of the federally owned and maintained Great Dismal Swamp National Wildlife Refuge. Like Camden County, the City of Chesapeake cherishes this national treasure and in fact, has been working with the County for the last several years to develop a recreational trail, a visitor's center and other recreational amenities that are expected to increase eco-tourism in both states. Not only will the potential for contamination of the Refuge jeopardize these cooperative efforts but more importantly, any contaminated waters may be spread by sheet flow during significant storms, as was the case in 1999 during back to back Hurricanes Floyd and Dennis, and pose a serious threat to the public health, safety and welfare in Virginia.

"The City of Chesapeake adheres to the principles of equal employment opportunity. This policy extends to all programs and services supported by the City."

In addition to concern regarding surface water run-off into the Northwest River and the Great Dismal Swamp Canal, the City of Chesapeake fears contamination of our ground water. Although Black Bear, LLC claims that its leachate containment and processing system will not allow leakage, the City knows of no infallible system that will offer our citizens complete protection against degradation of ground water quality.

Because Southern Chesapeake is not served with public water, the residents and businesses depend on wells as their sole source of drinking water. If the ground water were polluted by leachate, hog waste or any other unhealthy substance, our residents, including military personnel living with the Northwest Naval Support Activity Annex, could be in danger from water quality degradation.

The City of Chesapeake has other concerns about the landfill as well and does not intend to waive any objections that are not specifically mentioned in this correspondence. The City is disappointed that it has not been notified as an interested party or otherwise been invited to participate in the permitting process, especially in light of the direct adverse impact that the City's residents stands to suffer. Accordingly, the City of Chesapeake hereby asserts standing to contest any determinations or permits issued by DENR in the Phase One and Phase 2 permitting process. The City further asserts a right to appeal the approval of the site and any permit to construct or operate the Black Bear landfill as proposed. We would appreciate notification of all proceedings, public hearings and public comment periods from this day forward.

Thank you for your attention in this regard.

Sincerely,

Amar Dwarkanath
Deputy City Manager
Operations/Water Resources

AD:sjm

C: The Honorable W. Tayloe Murphy Jr., Secretary of Natural Resources
Roy A. Cooper, Attorney General
Dr. Clarence V. Cuffee, Chesapeake City Manager
Ronald S. Hallman, Chesapeake City Attorney
Randell Woodruff, Camden County Manager
Jim Barber, Head of Solid Waste Branch

NCDENR

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

May 3, 2005

10 May

Dexter,
Thanks for responding. Good letter.
Bill

Mr. Amar Dwarkanath
Deputy City Manager
City of Chesapeake
P.O. Box 15225
Chesapeake, Virginia 23328-5225

Re: Black Bear, LLC Landfill; Camden County, North Carolina

Dear Mr. Dwarkanath;

Secretary Ross asked me to respond to your letter regarding the proposed landfill in Camden County NC.

North Carolina is like most states authorized by the Environmental Protection Agency to implement the Resource Conservation and Recovery Act. In fact our state was one of the first eight to be fully approved by EPA to implement the Subtitle D regulations governing landfill permitting.

The Subtitle D regulations address the concerns that you raised in your letter and our permits are protective of the public health and environment. A permit is very comprehensive and consequently in North Carolina, as in most other states, no additional documents are required.

A very aggressive public participation process, involving those who live near a proposed facility, is part of our permitting process. This process starts just after we receive a permit application and provides information about the project and the process involved.

As we proceed with the process of reviewing the proposal, our staff would be glad to meet with you if you have any additional questions or concerns. Please contact Jim Barber, Permitting Branch Supervisor of the Solid Waste Section at 919-508-8495, to set up such a meeting.

Sincerely,

Dexter R. Matthews

Dexter R. Matthews, Director
Division of Waste Management

Cc: Secretary William G. Ross, Jr.

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NC DENR
Division of Waste Management
Solid Waste Section

Fax Transmittal

To: AMAR DWARKANATH

Phone:
Fax:

From: JIM BARBER
Phone: 919-733-4996 x255
Fax:

Date: FAX 10:35AM 3/22/05

Pages Including Cover Page: 4

Please call if any pages of this transmittal are not received clearly.

Subject: black bear disposal application request
From: Jim Barber <Jim.Barber@ncmail.net>
Date: Tue, 22 Mar 2005 10:22:32 -0500
To: water@city.chesapeake.va.us, JAMES COFFEY <JAMES.C.COFFEY@ncmail.net>, ED MUSSLER <ED.MUSSLER@ncmail.net>

Mr. Dwarkanath;
The Solid Waste Section (SWS) within the Division of Waste Management (DWM) received your email request concerning the proposed Black Bear Disposal (BBD) application. The DWM policy is that individuals or companies that wish to have information that is in the possesion of the DWM schedule a file room appointment to review and copy the documents that the individual or company wishes. Currently the SWS has a application for Site Suitability that is being reviewed. I will fax to you a copy of companies in the Raleigh, NC area that provide review and copy services for your use. If you wish to review the SS application in person, please call Carmen Johnson at 919-733-4996 x310 for a file appointment. Also, you may contact Randell Woodruff, County Manager for Camden County, NC at 252-338-1919 and view the SS application that is in Camden County's possession and/or contact the Elizabeth City, NC library to review the application that resides there.

At this time the SWS doesn't have a Construction Application (CA) that addresses site specific issues stated in your request concerning information on engineering, CQA, operations, closure/post closure and water quality monitoring. Once the SWS receives a CA, a copy will be provided to our file room for review and a request will be made by the SWS to the applicant that a copy of the CA be sent to Camden County for public review. Please note, that during the review of the CA comments and additional information is typically requested that may required changes to the CA prior to final review and approval.

If you have any questions or need additional information, please email me at jim.barber@ncmail.net or call me at 919-733-4996 x255.

jim barber
permitting branch supervisor
solid waste section
division of waste management

Chesapeake VIRGINIA

City of Chesapeake

Office of the City Manager
Post Office Box 15225
Chesapeake, Virginia 23328-5225
Office: (757) 382-6166
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TDD: (757) 382-8214

March 21, 2005

VIA FACSIMILE (919.733.4810) AND MAIL

James Coffey, Section Chief
North Carolina Solid Waste Section
Division of Solid Waste Management
Department of Environment, Health, and Natural Resources
401 Oberlin Drive
Raleigh, NC 27605-1350

Re: Camden County Landfill

Dear Mr. Coffey:

Pursuant to N. C. Gen. Stat. Section 132-1, et seq., I am writing to request a copy of the application filed by Black Bear Disposal, LLC, a Waste Industries USA, Inc. Company, to construct a landfill in Camden County, North Carolina. I understand that the application must include a comprehensive plan, engineering plan, construction quality assurance plan, an operation plan, a closure and postclosure plan, and a water quality monitoring plan, and my request encompasses each of these components. In addition, I would like to obtain a complete copy of the site study submitted by the applicant, including the regional characterization study, local characterization study, site hydrogeologic report, location restrictions and proposed facility plan.

Please contact me upon receipt of this request at the number listed above and advise me of the cost and time involved in responding to this request. I would like to obtain this information at the earliest possible time.

Thank you for your attention to this matter.

Sincerely yours,

Amar Dwarkanath, P. E.
Deputy City Manager
Operations/Water Resources

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Agencies for Temp-to-Hire

Express Personnel Services
5886 Faringdon Place
Raleigh, NC 27609
(919) 875-1268
Contact Person: Mike Tidwell

Corestaff Services
4601 Six Forks Rd
Raleigh, NC 27609
(919) 881-8090
Contact Person: Linda Coose

CVC Staffing Associates
104 Turnberry Lane
Cary, NC 27511
(919) 468-5720
Contact Person: Randy Smith

EGW Personnel Services
309 W. Millbrook Rd. Ste. 191
Raleigh, NC 27609
(919) 785-7033
Contact: Allison Turner

Executive Staffing
4101 Lake Boone Trail, Ste. 112
Raleigh, NC 27607
(919) 783-6695
Contact Person: Cindy Heath

Five Star Staffing
5404 Hillsborough St.
Raleigh, NC 27606
(919) 854-4488
Contact Person: Donna Peery

Please contact the agency for their hourly rates for providing these services.

THIS LIST IN NO WAY CONSTITUTES AN ENDORSEMENT OF ANY OF THE COMPANIES LISTED.

The agencies listed above, offer a research service for out of state corporations or individuals that need to hire someone for file reviews and/or research. These agencies have a four-hour minimum. Please be specific in identifying the documents you need copied when you contact the "Temp To Hire" agency. Identification of the documents to be copied should also be provided to the Solid Waste Section File Room assistant. This will enable us to have the files available at the time of the appointment. All copy fees must be paid at the time of the appointment by the agency hired by the corporation.

Fees: First 25 copies – Free
Excess of 25 - 10 cents per copy
Large map copies - $3.00 per copy.

Please contact me should you have questions.
Carmen Johnson, File Room Assistant
Division of Waste Management – Solid Waste Section
Phone: 919-733-4996, Ext. 310 / Fax: 919-733-4810

(2004)

NCDENR
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

March 22, 2005

Mr. Timothy Grant, L.G.
Camp Dresser & McKee
5400 Glenwood Avenue, Suite 300
Raleigh, North Carolina 27612

RE: Black Bear Disposal, LLC,
a subsidiary of Waste Industries, USA, Inc.
Site Study Revisions of March 15, 2005
Camden County, North Carolina

Dear Mr. Grant,

The March 15, 2005, revisions to the Site Study for the proposed Black Bear Disposal Facility have been reviewed for hydrogeologic concerns by the Solid Waste Section. There are still some items in the Report that require clarification, revision, or additional information. Please respond to the following questions and comments:

Section 2 - Regional Characterization Study:

Figure 2-1 Regional Characterization Map: The revised map is legible and appears suitable. However only one copy was provided. Two additional copies of this map, as well as two additional copies of the other revisions, need to be provided to the Solid Waste Section.

Section 3 - Local Characterization Study:

Figure 3-2B There still appears to be some inconsistency between the Site Study and the Site Hydrogeologic Report regarding the surface water flow in the ditches in the vicinity of the proposed landfill. Clarification is still needed in regard to the possibility of some surface water flow to the east. CDM and GNR personnel may need to meet to resolve these apparent inconsistencies.

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Section 7 - Facility Plan:

Drawing SD-2, Site Development: The language on Page 2 of the March 2, 2005, Response To Comments Letter from CDM is not consistent with the decision to delay specific design considerations for the sedimentation/infiltration basins to the Permit To Construct Application. A revised copy of the March 2, 2005, letter is needed with language that is consistent with the revisions in the Site Study.

Section 8 - Preliminary Geotechnical Evaluation:

- The language on Page 4 of the March 2, 2005, Response To Comments Letter from CDM is not consistent with the newly revised report of March 2005. A revised copy of the March 2, 2005, letter is needed with language that is consistent with the revisions in the Site Study.

Table 8-1 There are still a number of errors in Table 8-1 for the values for "Strata Thickness", "Depth to Top of Sand with Shell Fragments Layer", and "Top Elevation of Sand with Shell Fragments Layer". I believe Note 2. Should reference piezometer readings from 02/06/04, rather than from 02/06/03. Also, the format for this page, and several other of the revisions submitted, is not consistent with the pagination in the Report.

Table 8-3 Some of the data for the two B-7 samples is still incorrect. I am still not able to locate the support documentation in Appendix B or C for some of the values in the Table, such as Void Ratio, Porosity, CIUC and UUC Triaxial Test data. Test results for some of these tests do appear in Appendix B, but some of the data does not match the data presented in Table 8-3. Has any attempt been made to confirm with the Geotechnical Engineering Laboratory that Sample S-1A for boring B-26 (with 49.6% fines) was indeed tested for plasticity and that this sample is non-plastic?

Please respond to the questions and comments above, and provide revisions as necessary. If you have any questions regarding items in this letter, please contact me at (919) 733-0692 extension 258.

Sincerely,

Bobby Lutfy

Bobby Lutfy
Hydrogeologist
Solid Waste Section

cc:	Jim Barber	Solid Waste Section
	Ed Mussler	Solid Waste Section
	John Crowder	SWS - Wilmington
	Chuck Boyette	SWS - Washington
	Jerry Johnson	Waste Industries

NCDENR

North Carolina Department of Environment and Natural Resources
Division of Parks and Recreation

Michael F. Easley, Governor | William G. Ross Jr., Secretary | Lewis R. Ledford, Director

March 15, 2005

Received
MAR 2005
Waste Management

Mr. Ed Mussler
Environmental Engineer
Division of Solid Waste
401 Oberlin Road
Suite 150
Raleigh, NC 27605

Dear Mr. Mussler:

I am writing in regards to Black Bear LLC's proposed landfill located near the North Carolina-Virginia border in Camden County adjacent to Highway 17. Section .1622(8) of the Requirements for Municipal Solid Waste Landfill Facilities (MSWLF) states "A new MSWLF unit or lateral expansion shall not have an adverse impact on any lands included in the State Nature and Historic Preserve." The lands comprising the Dismal Swamp State Natural are registered as a State Nature Preserve. The Division believes that under the regulations listed above, an attempt must be made to quantify any foreseeable impacts to the Sate Natural Area (SNA). The analysis should include probable impacts from degradation of water quality, natural systems at the park (through gull migration or other vectors), increased truck traffic, or visual impacts to the SNA. Staff with the North Carolina Division of Parks and Recreation (Division) would like to express the following concerns over the proposed landfill location.

The SNA lies within Camden County, approximately 20 miles north of Elizabeth City, North Carolina on the Virginia-North Carolina state border (see Figure 1). In 1974, the state of North Carolina purchased 14,344 acres from The Nature Conservancy for $2.2 million to establish the Dismal Swamp State Park. In the late 1980's, the Division of Parks and Recreation (DPR, 1995) changed the area's classification to a SNA because of its natural significance, limited potential for public use, and lack of funds to develop educational and recreational resources. The SNA contains 14,433 acres of forested wetland. There are four natural communities well represented in the SNA: Noriverine Swamp Forest, Pond Pine Woodland, Peatland Atlantic White Cedar Forest, and High Pocosin. The Dismal Swamp was authorized as a SNA to protect its biological, geological, recreational, and scenic value.

At present, no facilities exist on the SNA. However, the Division has completed design and will begin construction of a visitors center located adjacent to the Highway 17 Department of Transportation Welcome Center. The project will include a parking area on the east side of

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the Dismal Swamp Canal, a swing bridge to allow visitors to cross the Dismal Swamp Canal, a viewing platform along the dismal swamp canal, a visitors center (including offices, museum, auditorium, and classrooms), a maintenance area and a boardwalk. The project will allow access to the Dismal Swamp SNA and education of visitors on the unique aspects of the natural area.

The proposed landfill will be located approximately 3,000 feet from the state natural on the east of the Dismal Swamp Canal. The proximately of the landfill is a concern for visibility issues related to the SNA. The natural area currently offers a unique setting in regards to the isolation it provides. This may be compromised with the construction of a 270 ft landfill that may be visible from a number of locations in the park. Areas of concern for visibility include trails paralleling the Dismal Swamp Canal in the SNA and viewing areas around the visitor center. The Division would be open to any ideas that may mitigate the impacts of visibility on the SNA.

The next issue is also related to the impacts of the quality of the SNA and how it would be impacted by truck traffic associated with the landfill. The site of the visitors center is located approximately 2.5 miles south of the proposed landfill. The visitors center is located adjacent to Highway 17 and the Division is concerned about the noise that will be created from the increased truck traffic along Highway 17. Material provided by Camp Dresser & McKee indicate that increasing truck traffic will be minimal along Highway 17, primarily arriving from north of the Highway 17 location for the visitors center.

The final issue relates to the increase in gulls that may be associated with the landfill adjacent to the SNA. The new landfill will most likely attract a large population of gulls who feed during the day at the landfill. The gulls will most likely seek a body of water to roost during the evening hours. Lake Drumund and the Dismal Swamp Canal will be a prime location because of its close location to the landfill. The increased gull population could cause problems with increased nitrification of these water bodies; predation on local nesting colonies of wading birds; and increased populations of gulls at the parking areas associated with the Highway 17 welcome center and the SNA visitor center.

The Division appreciates this opportunity to comment on the proposed landfill in Camden County, NC. The Division looks forward to discussing these issues and possible mitigation measures with the Division of Solid Waste. If you have any further questions regarding these comments please contact me at (919) 715-8711.

Sincerely,

Brian L. Strong
Resource Management Specialist

cc: Henry Stokes, Superintendent Dismal Swamp State Natural Area

CDM
5400 Glenwood Avenue, Suite 300
Raleigh, North Carolina 27612
tel: 919 787-5620
fax: 919 781-5730

Received
MAR 2005
Solid Waste
Section

March 15, 2005

Mr. Edward F. Mussler III, P.E.
Environmental Engineer
Solid Waste Section
North Carolina Department of Environment and Natural Resources
1646 Mail Service Center
Raleigh, North Carolina 27699-1646

Subject: Letter to Department of Parks and Recreation
Black Bear Disposal Facility
Camden County, North Carolina

Dear Mr. Mussler:

Attached for your files is the letter and attachments that we provided to Mr. Brian Strong at the North Carolina Department of Parks and Recreation.

If you have any questions, please do not hesitate to contact me at (919) 787-5620.

Very truly yours,

Tim Grant

Timothy D. Grant, P.G.
Camp Dresser & McKee

cc: Jerry Johnson, Waste Industries

P:\Waste Industries 22250\38245 Black Bear Disposal\Communications\Mussler3-15-05.doc

CDM

5400 Glenwood Avenue, Suite 300
Raleigh, North Carolina 27612
tel: 919 787-5620
fax: 919 781-5730

March 3, 2005

Mr. Brian Strong
North Carolina Department of Parks and Recreation
1615 Mail Service Center
Raleigh, North Carolina 27699

Subject: Black Bear Landfill – Camden County
CDM Project No. 22250-38245-DN.RES

Dear Mr. Strong:

This letter is in response to your comments discussed during a telephone conversation with Ms. Kelly Boone with CDM expressing concern with the proposed Black Bear Landfill in Camden County. You described the following three major concerns:

- Visibility of the landfill from the Great Dismal Swamp Canal and Visitors Center;
- Increased truck traffic on US Highway 17; and
- Increased presence of gulls.

We offer the following additional information in response to your concerns.

Visibility of the Landfill

As stated in the Site Study for the Black Bear Disposal Facility, the height of the landfill will be approximately 270 feet. The landfill will be constructed in phases, with construction beginning at the east end of the site (farthest from US 17). The parcels between the landfill site and US 17 are part of a planned commercial/light industrial development. Because the commercial/industrial buildings will be located between the landfill and US 17, they will reduce the visibility of the landfill from US 17 and the Great Dismal Swamp Canal.

A three-dimensional conceptual model has been prepared for the build-out height of the landfill. Enclosed are prints of graphic depictions of the completed landfill and views of the landfill from Highway 17.

CDM

Truck Traffic on NC Highway 17

US 17 is the primary waste transportation route for the Black Bear Disposal Facility. Trucks conveying waste to the landfill will arrive at the landfill primarily from areas north of the site (Virginia). The North Carolina Department of Transportation's 2003 Traffic Survey recorded an annual average daily traffic (AADT) count of 9,500 on US 17 at Cross Canal, approximately 1.75 miles south of the landfill site. Truck traffic associated with the landfill is estimated to be approximately 200 trucks per day, mainly traveling south on Highway 17 and entering the landfill before the Visitor's Center. This constitutes 2-3% of the total daily traffic on Highway 17. Approximately 10 to 15 trucks are anticipated to be traveling north on Highway 17 passing by the Visitor's Center. Vehicular access to the site will be limited to Ponderosa Drive off of US 17 and a new site access road, which will be constructed approximately 2,000 feet south of Ponderosa Drive to provide access to US-17. Camden County's Noise Ordinance will be in effect for residential areas located near the landfill. Truck noise will be abated to levels that are allowable for residential areas.

Increased Presence of Gulls

To manage the presence of gulls at the landfill, several specific vector control measures are proposed. The landfill will be operated and maintained to minimize the amount of material that is exposed at a time. Waste will be compacted, and soil cover will be added to the landfill daily.

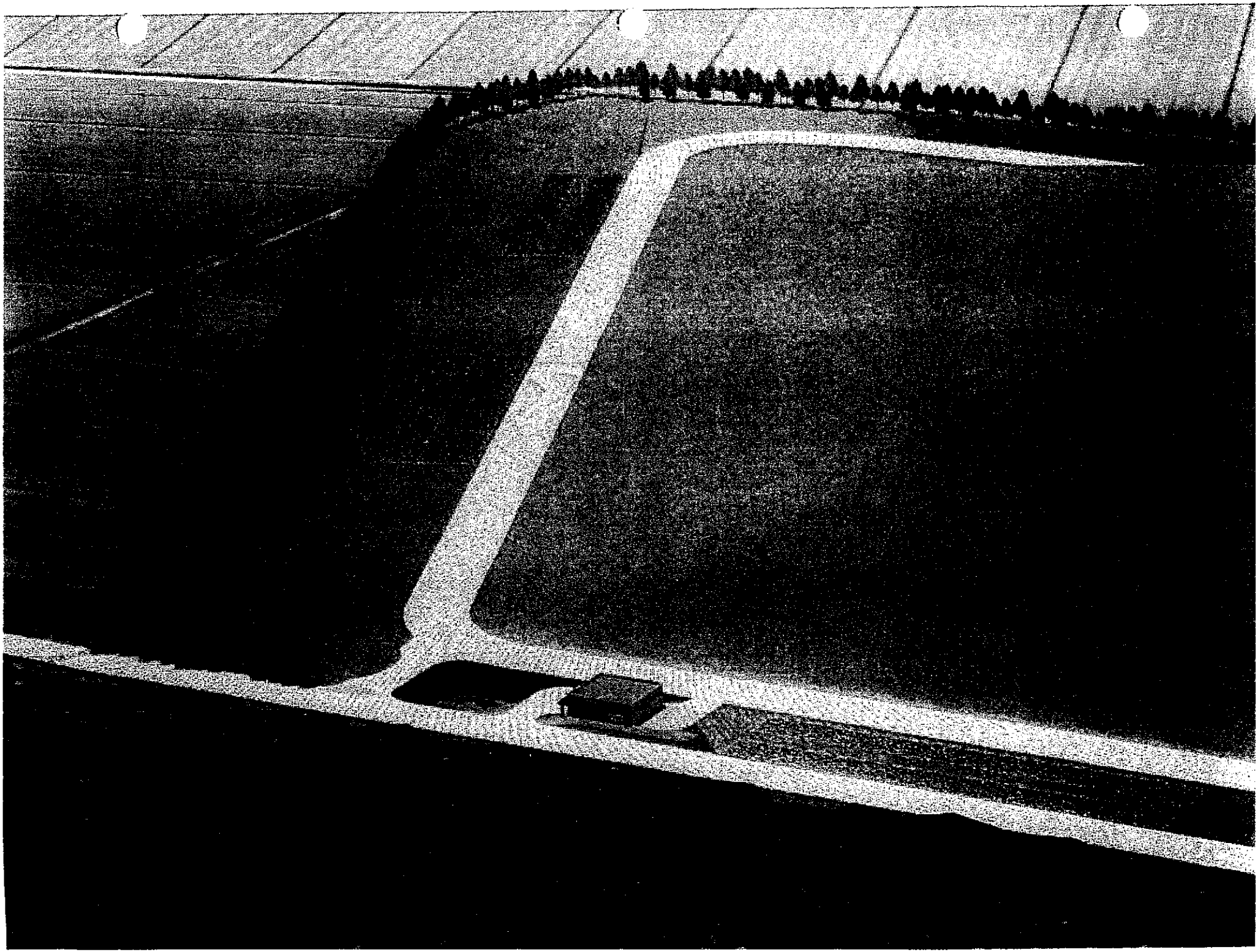
Please let me know if these responses sufficiently address your concerns. If you have any questions or need additional information, please call me at (919) 787-5620. Thank you for your assistance.

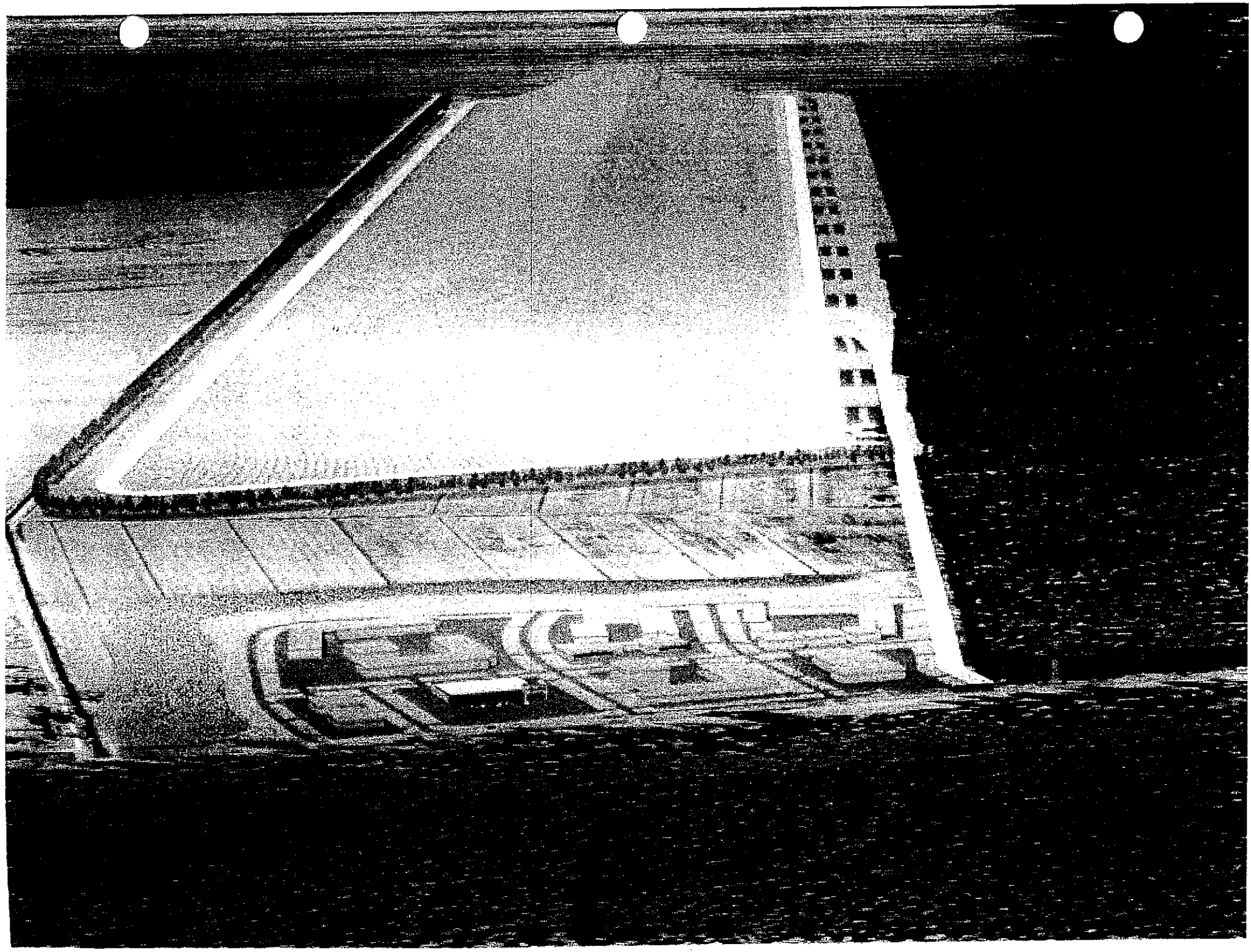
Very truly yours,

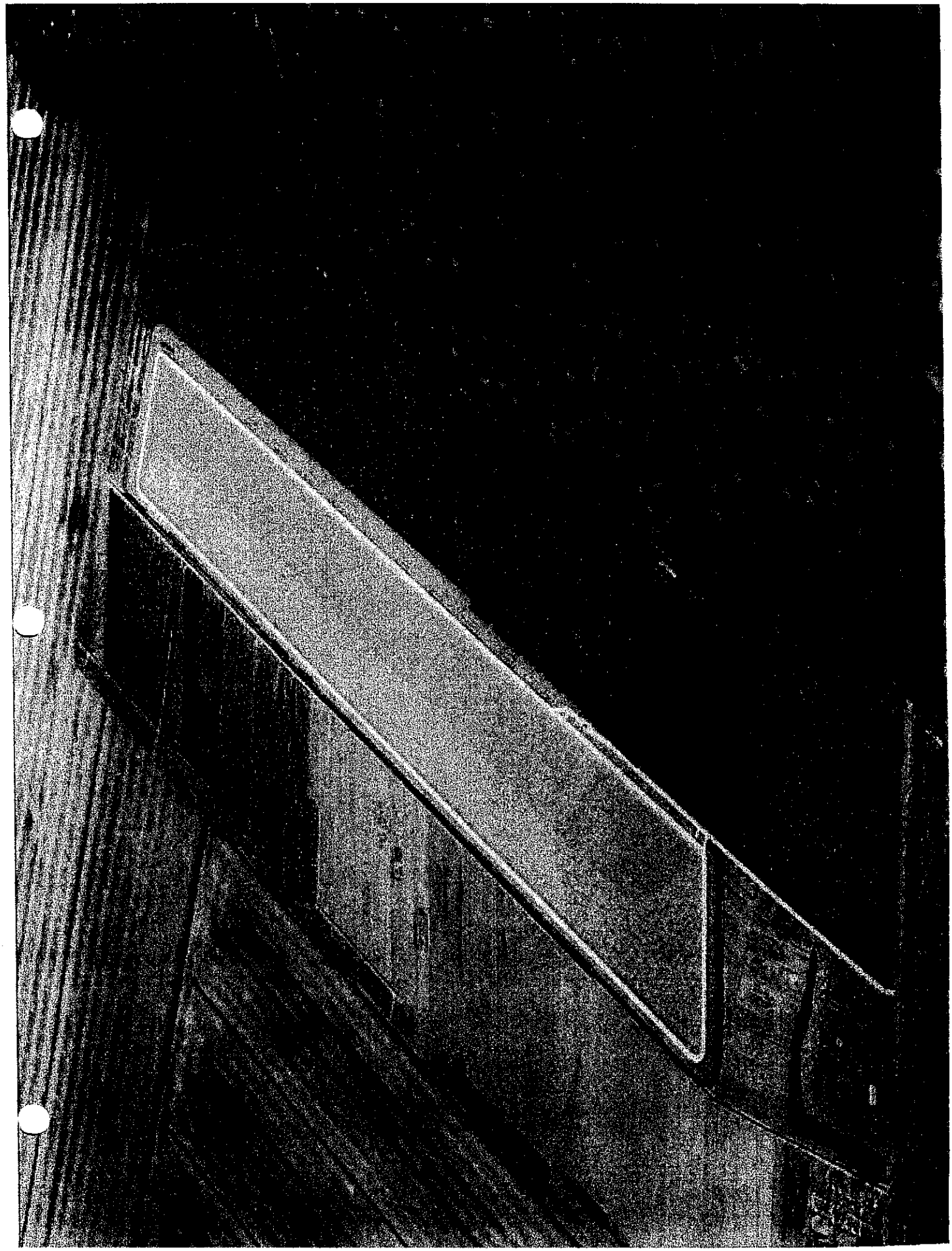
Kelly R. Boone

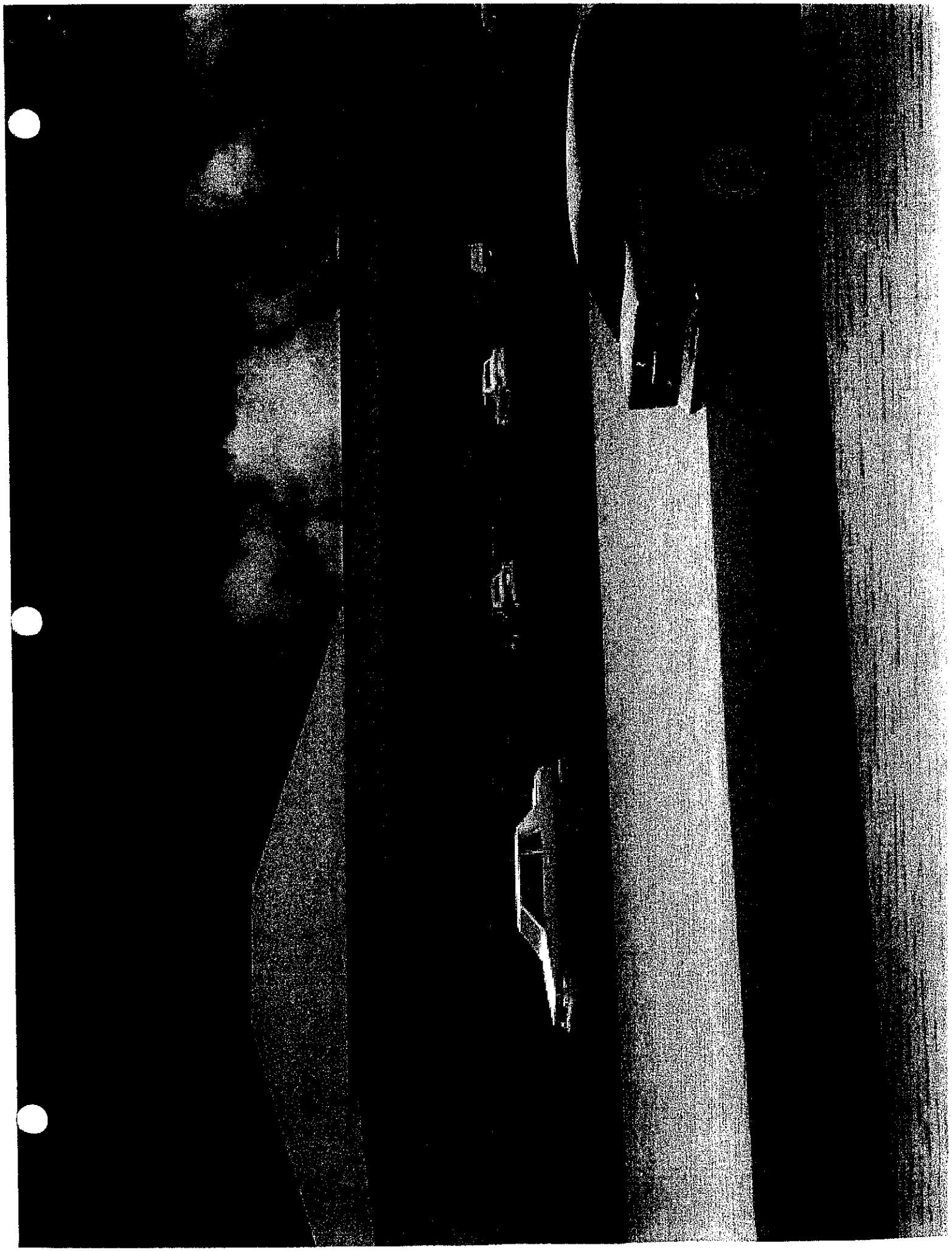
FOR Timothy D. Grant, P.G.
Camp Dresser & McKee

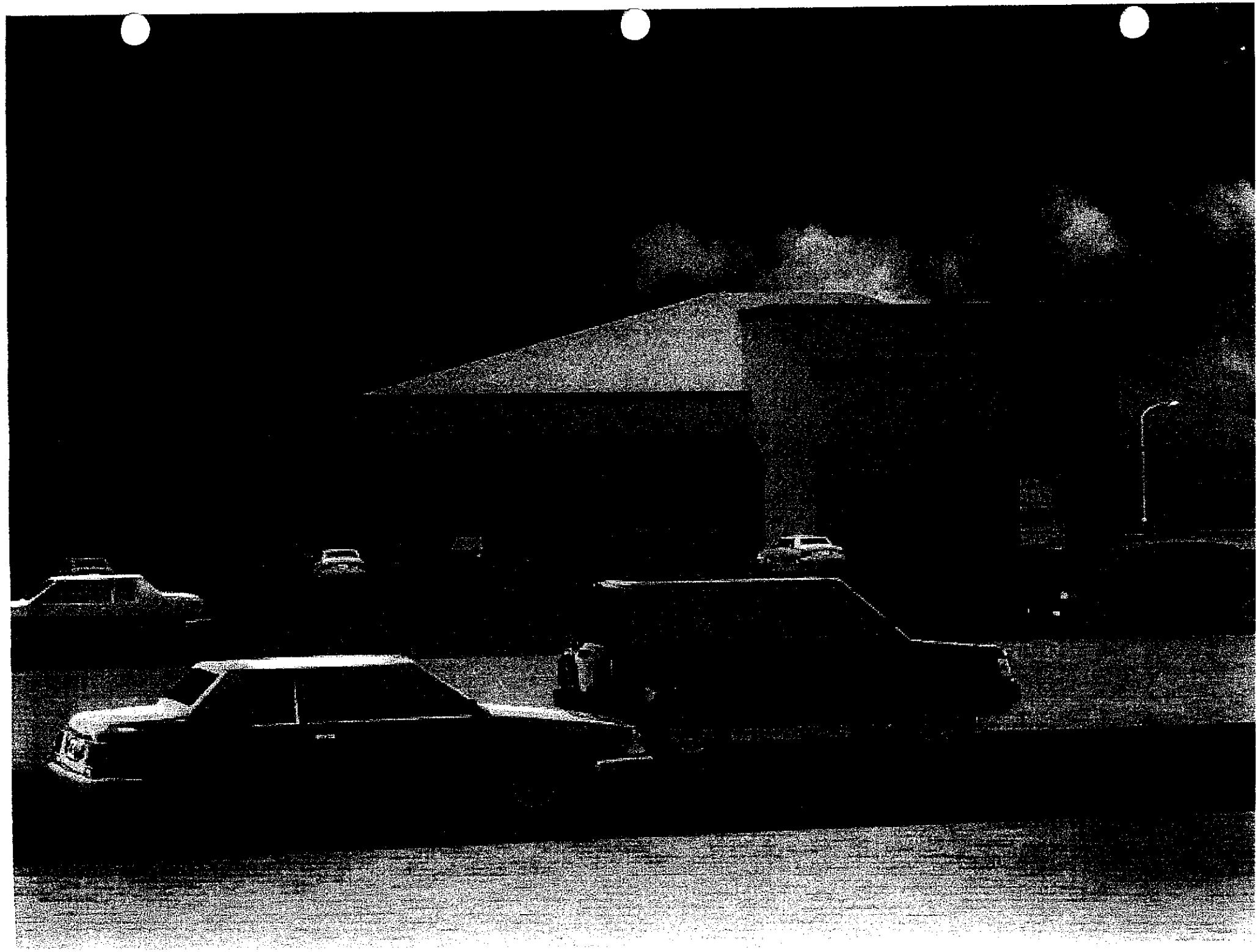
cc: Jerry Johnson, Waste Industries
Martin Sanford, CDM
Tom Yanoschak, CDM
Kelly Boone, CDM
Project File 230











NCDENR

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

March 10, 2005

Mr. Timothy Grant, L.G.
Camp Dresser & McKee
5400 Glenwood Avenue, Suite 300
Raleigh, North Carolina 27612

And

Ms. Joan Smyth, L.G.
G.N. Richardson & Assoc.
14 N. Boylan Avenue
Raleigh, N.C. 27603

RE: Black Bear Disposal, LLC,
a subsidiary of Waste Industries, USA, Inc.
Site Study and Site Hydrogeologic Report, March 2004, as Revised September, 2004, and further revised March 2005
Camden County, North Carolina

Dear Mr. Grant and Ms. Smyth,

The revisions submitted in February and March, 2005, for the above referenced Site Study and Site Hydrogeologic Report for the proposed Black Bear Disposal Facility have been reviewed for hydrogeologic concerns by the Solid Waste Section. There still appear to be some items in the Reports that require clarification, revision, or additional information. Please respond to the following questions and comments:

SITE STUDY:

Section 2 - Regional Characterization Study:

Figure 2-1 Regional Characterization Map: This map is not legible. Since the USGS Topographic Map for this area is an aerial photograph, it would be best to submit an original copy of the map to enhance the ability to interpret the information presented on the figure.

Section 3 - Local Characterization Study:

Figure 3-2B In contrast with some information presented previously, this figure shows all surface water in both the southern and northern ditches flowing west toward a discharge to the Dismal Swamp Canal. Is this correct? And no surface water flow is to the east in either of the ditches?

Section 4 - Site Hydrogeologic Investigation:

- The review comments for the Site Hydrogeologic Report appear after the Site Study review, since it was submitted as a separate report.

Section 5 - Location Restrictions:

5-5 As referenced in my earlier review letter of August 5, 2004, the USGS is constantly updating and revising the Seismic Hazard Maps. Please check the USGS website and provide a copy of the more recent appropriate seismic hazard map for this area.

Section 7 - Facility Plan:

Drawing SD-2, Site Development: The language on Page 2 of the March 2, 2005, Response To Comments Letter from CDM is not consistent with the decision to delay specific design considerations for the sedimentation/infiltration basins to the Permit To Construct Application.

Section 8 - Preliminary Geotechnical Evaluation:

- The language on Page 4 of the March 2, 2005, Response To Comments Letter from CDM is not consistent with the newly revised report of March 2005.

8.5.3 Why would "water levels measured in the test borings and piezometers" "not necessarily be considered to represent stabilized groundwater levels"? The text of the revised Report needs to be changed to reflect that only the "initial" water levels may not be representative due to the use of mud-rotary drilling techniques.

Table 8-1 As referenced in my previous review letter of August 5, 2004, For Boring B-1, the Strata Thickness values do not add up to the Total Drilling Depth. It appears that some of the values are incorrect. After finding errors in the Table for B-1 and B-2, I did not check the values for the other borings. Please check the data in Table 8-1 for accuracy and make revisions as necessary.

8.5.4 and Table 8-2 The Sample Depth for B-1, S-14, is incorrect. According to the Boring Logs, for many of the samples more than one "Strata" was included in the sample interval. Was only the portion of the sample from the finer grained soils sampled in the field using the pocket penetrometer?

Table 8-3 As referenced in my previous review letter of August 5, 2004, The Grain Size Analysis Data (and Moisture Content data) for the two B-7 samples appear to be reversed. I was not able to locate the support documentation in Appendix C for some of the values in the Table, such as Void Ratio, Porosity, CIUC and UUC Triaxial Test data. I was not able to locate a Sample No. S-1A for boring B-26 on the Boring Log. With 49.6% fines in this sample, is there soil test data to support that this soil sample is Non-Plastic? For several of the borings, the soil classification reported on the Boring Logs is inconsistent with the Laboratory Test soil classifications.

SITE HYDROGEOLOGIC REPORT:

Section 4 - Site Hydrogeologic Report:

4.2 Field Observations: Since the ditches and borrow areas largely control surface water flow and shallow ground-water flow, it is very important to understand the surface water flow patterns and present this information in detail in the Report.

4.2.1 The text describing the surface water flow in the ditches is inconsistent with the text and Sheet No. 3-2B in the Local Characterization Study (Section 3 of the Site Study).

4.3 Borings: Did deep boring B-102D encounter the Yorktown Confining Unit? If so, at what depth? Was this boring properly abandoned according to 15A NCAC 2C?

4.7 There does not appear to be any specific discussion of Long-term Seasonal High Water Table or their estimated values.

4.8.1.2 Vertical Groundwater Flow: In the Table at the top of Page 15, the "Screen Midpoint Separation" value for the B-4 location is calculated incorrectly. Several of the Vertical Gradient values appear to have been rounded off incorrectly. Some evaluation and discussion should also be provided regarding variations of vertical gradient values over time.

It appears that all locations show a fairly consistent downward gradient over time, except for the B-4 boring location. This location also shows a downward gradient except for the February 6, 2004 data set used for this Table.

4.8.2 Hydraulic Conductivity: Hydraulic conductivity (porosity and effective porosity) values need to be clearly identified representative "for each lithologic (hydrogeologic) unit of the uppermost aquifer". At the end of this section, it references "an average estimated effective porosity of 35 percent was used for calculation of the groundwater flow velocities presented in Table 8". Why is the average effective porosity value used in Table 8 of Section 4 different from the value used in Table 3 of Appendix E?

4.12.1 Geologic and Hydrologic Features: The Report states that "The potentiometric contour map shows ... the major component of flow towards the west". While I would guess overall ground-water flow under natural conditions would predominately be toward the west, the Potentiometric Contour Map (Sheet 2) indicates most of the ground-water flow under existing conditions to be toward the north.

4.13 Report Summary: The Report states "Eventually, water from the County will be supplied to the area, eliminating the need for domestic wells". Is there any estimated time when County water will be made available to this area? Will County water be made available to all of the residents in the vicinity of the proposed landfill, or just those near Highway 17?

Table 1 It appears that page 2 of Table 1 is missing, since data for many of the wells and piezometers used in the Report is missing. As referenced in my previous review letter of October 28, 2004, "The sand Filter Intervals and Bentonite Seal Intervals are contradictory for most of borings B-1 through B-7 shallow". Also, as previously referenced, "For the deep borings, the effective Sand Filter Intervals have been extended to the bottom of the borehole, since the annular space below the screen was filled with filter sand". These piezometers are improperly constructed and hydraulic data from these wells may not be valid. It will also be important to drill these wells out to their full depth prior to proper well abandonment with grout. The Date of Construction for B-3 and B-7 are inconsistent with the dates on the Boring Logs.

Table 2 Note 1 should reference Appendix C, rather than B. Several of the USCS Classifications are different from those reported on the Boring Logs, though consistent with the Laboratory testing data.

Table 3 The header information for two of the columns appears to be mis-labeled Ground Elevation, rather than Groundwater Elevation. The TOC Elevations for boring B-103 and B-103d are inconsistent with the elevations on the Boring Logs.

Table 4 The Average Monthly Precipitation values for May and December appear to be calculated incorrectly. The Annual totals for 1998 and 1999 appear to be calculated incorrectly. Since the October 1997 value is not available, the Annual total for this year should not be used in calculating an overall Annual Average value.

Table 5 The header immediately above the Table appears to be mis-labeled "Monthly Precipitation (inches)". Since this Table deals with Streamflow Data, it is not clear what the values in the Table really represent or what the units are for these values.

Table 6 It is not clear how the Hydraulic Conductivity values were determined. Appendix F has raw data and graphs, but I am still not able to find any actual Hydraulic Conductivity calculations or values in the appendix that are complete and accurate. It is not clear what some of the supplemental calculations added to Appendix F are based on, what the units are, etc. What little information I could make sense of did not appear to match that found in Table 6. In the Table, what are the definitions for: Le, Yo, and Yt? As previously referenced, some of the deep piezometers with extended sand packs are not constructed properly and hydraulic data from these wells are suspect.

Table 8 Refer to previous comment regarding the discrepancy between the Average Effective Porosity value used in this Table and that used in Table 3 of Appendix E.

Figures 3 and 4 These two figures are not labeled. What is the significance and interpretation of these two hydrographs?

Figure 5 Corrections needed for Table 4 may make it necessary to revise Figure 5.

Drawings:

Sheet 1 The facility boundaries are not indicated on Sheet 1. The Ground Elevation for Boring GP-33 is incorrect. What are the structures located near Boring GP-20? The TOC Elevations for Borings B-103 and B-103D are inconsistent with those on the Boring Logs. A number of the GE and TOC values only go to tenths, not hundredths. What is the significance of the I and S suffixes for some of the borings? It is not clear where Borings GP-104S and GP-26 are located, since both arrows appear to point to the same symbol on the Drawing.

Sheet 2 The facility boundaries are not indicated on Sheet 2. The 15 foot ground-water contour in the vicinity of B-107 does not appear to accurately reflect the water table data.

Sheet 3 The legend does not identify the heavy line that appears to indicate the Water Table. For the first boring location on Cross-section A - A'(GP-32), the ground surface and water table elevations are not consistent with the Boring Logs and Tables. I was not able to locate a Boring Log or Field Notes describing the lithologic profile at this boring location. What is the basis for showing a shallow Silty Clay layer at this location? Due to the apparent errors for the first boring location reviewed (GP- 32), I made no further attempt to evaluate the cross-sections. Please check the accuracy for all information shown on the cross-sections on Sheets 3 and 4.

Appendix B Well Construction Records: Why is lithology and other boring log data not provided in the Well Records for many of the Borings?

Appendix C Laboratory Testing Records: Some of the documentation for soil test data used in the Report appears to be missing from Appendix C.

Appendix D Field Logs: Why is lithology and other boring log data not provided in the Field Logs for many of the Borings? There appear to be duplicate copies for some of the Field Logs. For a few of the Field Logs, it is not clear which Boring is being logged.

Appendix E Surficial Aquifer Pump Test and Model:

1.4 The Report describes the test well pattern as "2 observation wells were located upgradient and 1 observation well was located downgradient". However the Drawing seems to indicate that 1 well is upgradient and 2 are downgradient.

1.12 The Average Ground Water Velocities included in Table 3 would appear to range from 1.22E-02 to 2.29E-01 ft/day rather than the values listed in the text

2.1 What are the definitions for N and L?

3.0 The gradient should be from south to north, not north to south.

Figures:

Figure 4 Why does this Potentiometric Map differ from that for the same set of data that appears as Sheet No. 2 in the Revised Site Hydrogeologic Report?

- Please provide a brief description of the context and conditions represented by each of the figures 3 through 7.

Appendix F Slug Test Data: Refer to previous comment made for Table 6.

Please respond to the questions and comments raised above, and provide additional information and revisions as necessary. If you would like to arrange for a meeting discuss any items in this letter, you may contact me at (919) 733-0692, extension 258.

Sincerely,

Bobby Lutfy

Bobby Lutfy
Hydrogeologist
Solid Waste Section

cc:	Jim Barber	Solid Waste Section
	Ed Mussler	Solid Waste Section
	John Crowder	SWS - Wilmington
	Chuck Boyette	SWS - Washington
	Jerry Johnson	Waste Industries

CDM
5400 Glenwood Avenue, Suite 300
Raleigh, North Carolina 27612
tel: 919 787-5620
fax: 919 781-5730

February 28, 2005

Mr. Edward F. Mussler III, P.E.
Environmental Engineer
Solid Waste Section
North Carolina Department of Environment and Natural Resources
1646 Mail Service Center
Raleigh, North Carolina 27699-1646

Subject: Revised Facility Plan Drawings
Site Application and Facility Plan Review
Waste Industries USA, Inc.
Black Bear Disposal Facility
Camden County, North Carolina

Dear Mr. Mussler:

Attached are two (2) sets of revised Facility Plan drawings (SD-2, LC-1, LC-2, LC-3, LC-4, and LC-5) for the updated Site Study for the proposed Black Bear Disposal Facility, Camden County, NC. These drawings have been modified to make them compatible with the revised Site Hydrogeological Report. Please discard the previous versions of these drawings.

If you have any questions, please do not hesitate to contact me at (919) 787-5620.

Very truly yours,

Thomas M. Yanoschak

Thomas M. Yanoschak, P.E.
Project Engineer
Camp Dresser & McKee

cc: Jerry Johnson, Waste Industries
Jim Barber, SWS
Martin Sanford, CDM

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Received
FEB 2005
Solid Waste
Section

February 28, 2005

Mr. Edward F. Mussler III, P.E.
Environmental Engineer
Solid Waste Section
North Carolina Department of Environment and Natural Resources
1646 Mail Service Center
Raleigh, North Carolina 27699-1646

Subject: Response to February 17, 2005 Comments
Site Application and Facility Plan Review
Waste Industries USA, Inc.
Black Bear Disposal Facility
Camden County, North Carolina

Dear Mr. Mussler:

CDM is submitting the attached updated Site Study for the proposed Black Bear Disposal Facility, Camden County, NC in response to your comments dated February 17, 2005. Please discard the previous version of the Site Study dated September 2004. The comments have been addressed individually with discussions and references within this letter. Solid Waste Section comments are provided in italics, with the CDM response beneath. Updates to the Site Study are noted in the responses.

Comment 1: *In accordance with NCGS 130A-294(b1)(4) the applicant must request the unit of local government with jurisdiction of the facility to issue a determination as to whether the local government has in effect a franchise, zoning, subdivision or land use planning ordinance applicable to the sanitary landfill. Provide the appropriate determination from Camden County. In addition, Rule 15A NCAC 13B .1618 (c)(5)(B) requires a letter from the unit of local government having zoning jurisdiction over the property as to whether the facility meets the zoning requirements or the property is not zoned.*

Response: The original zoning permit was issued in December 5, 2002. An updated zoning permit for Black Bear Disposal, LLC from the County of Camden, NC was approved on February 16, 2005. This permit is referenced in Section 6 of the Site Study and is included in Attachment 6-3. Resolution 2005-02-01 issued by Camden County and included in Attachment 6-3, indicates that the

CDM

Facility Plan for the Black Bear Disposal, LLC is approved and that it is consistent with the County's zoning laws.

Comment 2: *In accordance with Rule .1618(c)(5)(C), provide an updated letter from the unit of local government responsible for the implementation of a comprehensive solid waste management plan setting forth a determination that the operation of the proposed municipal solid waste landfill is consistent with the approved solid waste management plan.*

Response: The letter from Camden County is included in Attachment 6-3.

Comment 3: *In accordance with Rule .1618(c)(5)(A)(i)-(iv), please provide the items required by the rules, including but not limited to, a copy of the resolution or motion approved by the Camden County Board of Commissioners, documentation of public notice of the public meeting, transcripts and other material submitted or used at the meetings.*

Response: Minutes from the February 8, 2005 Public Meeting held by the Camden County Board of Commissioners regarding Black Bear Landfill, LLC are included in Attachment 6-4 of Section 6 of the Site Plan. Also included in Attachment 6-4 is the public notice of the meeting and the information submitted at the meeting as part of the public record (includes presentation from Camden Citizens Against Landfill, written comments, sign-in sheet, and the presentation from Waste Industries).

Minutes from the February 10, 2005 Camden County Board of Commissioners meeting where the Board approved a resolution approving the Black Bear Disposal Facility Plan are included in Attachment 6-5 of Section 6 of the Site Plan.

Comment 4: *With respect to the location descriptions, are new 100-year flood maps available? If so please provide an update to the 1970's maps referenced (1622(2).*

Response: New Camden County floodplain maps were issued in January 2004. The updated maps do not change the location of floodplains on the property. The locations of floodplains in the vicinity of the site, based on the new maps, are included in Attachment 5-8. References to the new maps are included in Sections 3.20 and 5.3 of the Site Study.

CDM

Comment 5: *Provide documentation from the appropriate North Carolina State Agencies that the landfill, as proposed, will not have an adverse impact on any lands in the State Nature and Historic Preserve in accordance with Rule .1622(8).*

Response: A letter from the North Carolina Natural Heritage Program verifying that the landfill is not anticipated to have any adverse impacts. A copy of the letter is provided Section 5, Attachment 5.7 of the Site Study.

Comment 6: *Provide revised engineering drawings for the conceptual facility plan as discussed in the meetings with section staff.*

Response: Revised engineering drawings are included in Section 7 of the Site Study.

Comment 7: *Provide the update to the Facility Plan, Section 7 that was prepared for the public meeting, and amended in response to previous Section comments provided to CDM verbally and in a meeting with Mr. Yanoschak.*

Response: An updated Facility Plan is included in Section 7 of the Site Study.

Comment 8: *Provide page 5.2. CDM previously submitted additional information on airports and the second page of the revised text is needed.*

Response: Page 5.2 is provided in the attached Site Study.

We hope that you find that the additional information and revisions provided in this response letter sufficiently answer your questions and address your comments. If you have any questions, please do not hesitate to contact me at (919) 787-5620.

Very truly yours,

Timothy Grant

Timothy D. Grant, P.G.
Principal
Camp Dresser & McKee

cc: Jerry Johnson, Waste Industries
Jim Barber, SWS
Martin Sanford, CDM

NCDENR

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

February 17, 2005

Mr. Tim Grant
Camp Dresser & McKee
5400 Glenwood Avenue
Suite 300
Raleigh, NC 27612

RE: Black Bear LLC Site Application and Facility Plan Review, Technical Review, Camden County, NC.

Dear Mr. Grant,

The Division of Waste Management, Solid Waste Section, has received your site application and facility plan update for the Black Bear LLC Municipal Solid Waste (MSW) Landfill proposed for Camden County, North Carolina. The hydrogeologic portion of the application has been reviewed by the section hydrogeologist under separate cover. This letter is a technical review of the engineering related portions of the Site Study. Please address the following:

1. In accordance with NCGS 130A-294(b1)(4) the applicant must request the unit of local government with jurisdiction of the facility to issue a determination as to whether the local government has in effect a franchise, zoning, subdivision or land-use planning ordinance applicable to the sanitary landfill. Provide the appropriate determination from Camden County. In addition, Rule 15A NCAC 13B .1618 (c)(5)(B) requires a letter from the unit of local government having zoning jurisdiction over the property as to whether the facility meets the zoning requirements or the property is not zoned.

2. In accordance with Rule .1618 (c)(5)(C), provide an updated letter from the unit of local government responsible for the implementation of a comprehensive solid waste management plan setting forth a determination that the operation of the proposed municipal solid waste landfill is consistent with the approved solid waste management plan.

3. In accordance with Rule .1618(c)(5)(A)(i)-(iv), please provide the items required by the rules, including but not limited to, a copy of the resolution or motion approved by the Camden County Board of Commissioners, documentation of public notice of the public meeting, transcripts and other material submitted or used at the meetings.

4. With respect to the location descriptions, are new 100-year flood maps available? If so please provide an update to the 1970's maps referenced (.1622(2).

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5. Provide documentation from the appropriate North Carolina State Agencies that the landfill, as proposed, will not have an adverse impact on any lands in the State Nature and Historic Preserve in accordance with Rule .1622(8).

6. Provide revised engineering drawings for the conceptual facility plan as discussed in meetings with section staff.

7. Provide the update to the Facility Plan, Section 7, that was prepared for the public meeting, and amended in response to previous Section comments provided to CDM verbally and in a meeting with Mr. Yanoschak.

8. Provide page 5.2. CDM previously submitted additional information on airports and the second page of the revised text is needed.

These comments are intended to expedite the review of the referenced application, and in no way do they restrict the Section's right to request additional information during the technical review process. If you have any additional questions or need help, please feel free to call me at (919) 733-4996 Ext. 343. My email address is: Ed.Mussler@ncmail.net

Sincerely,

Edward F. Mussler III, PE
Environmental Engineer
Solid Waste Section

cc: Jerry Johnson, Waste Industries
Jim Barber, DWM
John Crowder, DWM
Chuck Boyette, DWM

WASTE INDUSTRIES
3301 Benson Drive, Suite 601 Raleigh, NC 27609
Bus: (919) 325-3000 Fax: (919) 325-3013 www.waste-ind.com

November 15, 2004

Mr. Ed Mussler
North Carolina Department of Environment and Natural Resources
Division of Waste Management

Subject: Black Bear Disposal, LLC

Dear Ed,

Black Bear Disposal, LLC was issued a Franchise and Zoning Permit by Camden County for the construction and operation of a regional solid waste landfill on land it acquired on October 1, 2004. Black Bear Disposal, LLC is a direct wholly-owned subsidiary of Waste Industries USA, Inc. whose shares are traded publicly on the Nasdaq stock exchange and whose securities are governed by the US Securities and Exchange Commission. The purpose of this memorandum is to provide clarification to the Franchise terms and capacity of the Landfill.

Franchise Agreement:

- Section III paragraph 2 refers to an estimate of 10,000 tons per day. Given the limitation of operating 6 days per week (section III paragraph 9) the 10,000 tons per day would convert to 3,120,000 tons per year. Using an estimated long term compaction ratio of 1 ton per cubic yard, 93,000,000 cubic yards of capacity would yield a landfill life of 29.5 years. As of November 2004, the Franchise has 28 years remaining. The chart below provides alternative capacity/life scenarios based on different input volumes and compaction ratios.

Volume per Day	Life @ 0.8 compaction and 308 days per year
4,000 tons per day (6 days per week minus 4 holidays)	61 years
6,000 tons per day (6 days per week minus 4 holidays)	41 years
8,000 tons per day (6 days per week minus 4 holidays)	31 years
10,000 tons per day (6 days per week minus 4 holidays)	25 years

*** Likely Scenario: If volume starts at 2,000 tons per day and ramps up 20% per year until the 10,000 tons per day level is reached, the landfill life is 30 years. ***

- Section III paragraph 3 references a service area "east of I-75". This is a true geographic boundary such that only waste generated east of that line may be disposed of within the landfill. I-75 runs through several states, but only the portions of the States east of the boundary line are included in the service area. The estimated population is also calculated entirely east of the I-75 line using county by county population estimates. A map is attached for your reference.

Corporate Structure and Finance

As discussed in my previous memorandum, Black Bear Disposal, LLC is a wholly-owned subsidiary of Waste Industries USA, Inc. As of November 1, 2004, Black Bear Disposal, LLC owns 1,052 acres of land which will be developed into a variety of end uses defined in the chart below. In addition to the land not associated with the landfill, Black Bear Disposal, LLC will also own all the equipment, improvements, buildings and permits. The attached balance sheet demonstrates the current Book Value of Black Bear Disposal, as well as an estimate of Black Bear Disposal, LLC's financial condition in 5-7 years based on other comparable landfills within the Waste Industries USA, Inc family.

Land-Use	Size	Value
Landfill Support Facilities	15 acres	$ 88,432
Landfill Footprint and buffers	689 acres	$4,061,988
Residential/Farm	15 acres	$ 88,000
Future Commercial	50 acres	$1,000,000
Future light industrial	91 acres	$1,365,000
Wildlife conservation/wetland	192 acres	$1,536,000

I hope this summary is useful in your review of the Permit application. Please don't hesitate to contact me if you have any questions: 919-325-4000 ext 3033 919-868-2899 nextel

Sincerely,

Ven

Ven Poole
Vice President, Corporate Development

Balance Sheet Comparison

comparable 5-7 year old Waste Industries Landfill versus Black Bear today

Account Description	Black Bear 11/30/04	Sample Five-Seven Years
Assets		
Current Assets		
Petty Cash	0	670
Deposits	0	2,300
Prepaid Expenses	0	4,126
Prepaid Vehicle Tax	0	412
Accounts Receivable	0	494,836
Reserve for Bad Debt	0	(45,719)
Inventory Fuel	0	31,867
Inventory Parts	0	8,190
Total Current Assets	**0**	**496,682**
Fixed Assets		
Construction In Progress	0	788,848
Computers	0	19,414
Furniture/Fixtures	0	16,744
Land & Buildings	88,432	338,009
Landfill Facility Land	4,061,988	0
Surplus Commercial Land	1,000,000	0
Surplus Industrial Land	1,365,000	0
Surplus Residential/Farm Land	88,000	0
Wildlife Conservation Area	1,536,000	0
Machinery & Equipment	0	3,361,081
Landfill Site/Cell Costs	1,809,698	39,735,666
Landfill Permit Cost	0	6,194
Accumulated Depreciation	0	(2,140,264)
Accum Site/Cell Amort	0	(6,051,671)
Total Net Fixed Assets	**9,949,117**	**36,074,021**
Other Assets		
Software	0	12,201
Accumulated Amort-Software	0	(9,798)
Total Other Assets	**0**	**2,403**
Total Assets	**9,949,117**	**36,573,106**
Liabilities & Stockholder Equity		
Liabilities		
Accounts Payable Trade	0	(590,300)
Closure/Post Closure Reserv	0	(222,410)
Capping Event Closure Reser	0	(3,141,014)
Accrued Expense Liability	(900,000)	(148,290)
Host Fees Liability	0	(483,407)
Workers Comp Deductible	0	(12,027)
Auto Claims Deductible	0	(4,213)
Accrued Property Taxes	0	(1,716)
Accrued Payroll	0	(10,814)
Accrued Beneifts	0	(44,399)
Total Liabilities	**(900,000)**	**(4,658,590)**
Stockholder's Equity		
Retained Earnings		(17,563,930)
Profit or Loss		(6,520,420)
Paid In Capital - Add'l cash paid in by Parent	(9,049,117)	(7,830,166)
Stockholders' Equity	**(9,049,117)**	**(31,914,516)**
Liabilities & Equity	**(9,949,117)**	**(36,573,106)**

NCDENR
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

October 28, 2004

Mr. Thomas Yanoschak, P.E.
and Mr. Timothy Grant, L.G.
Camp Dresser & McKee
5400 Glenwood Avenue, Suite 300
Raleigh, North Carolina 27612

RE: Black Bear Disposal, LLC,
a subsidiary of Waste Industries, USA, Inc.
Site Study, March 2004, as Revised September, 2004
Camden County, North Carolina

Dear Mr. Yanoschak and Mr. Grant,

The revisions submitted in mid-September for the above referenced Site Study for the proposed Black Bear Disposal Facility have been reviewed for hydrogeologic concerns by the Solid Waste Section. There still appears to be several items in the Report that require clarification, revision, or additional information. Please respond to the following questions and comments:

Section 3 - Local Characterization Study:

3.2 The drawings still do not indicate the "surface water drainage patterns" as required by Rule .1618(c)(2)(G).

3.8 There is still an incorrect reference to the Dismal Swamp Canal being located "approximately 7,000 feet west of the proposed landfill footprint". The actual distance is only about half that referenced.

3.9 There is also another incorrect reference that the Dismal Swamp Canal is "close to 1.5 miles west of the site".

Drawings 3-2A and 3-2B: The "match line" references on these two drawings incorrectly reference 3-1 rather than 3-2.

Section 4 - Site Hydrogeologic Investigation:

- The review comments for the Site Hydrogeologic Investigation Report appear after the Site Study review, since it was submitted as a separate report.

Section 7 - Facility Plan:

Drawing SD-2, Site Development, shows the majority of the required minimum 300 foot buffer taken up with an Access Road and Borrow Pit/Stormwater Pond. One of the main purposes of the buffer is to provide an area for ground-water monitoring, and should there be a contaminant release, an area for attenuation, water quality assessment, and possible corrective action. Generally borrow pits are not permitted in the buffer area or within 300 feet of the waste disposal unit. While sedimentation basins are sometimes allowed in the buffer area, there must remain sufficient room for ground-water monitoring and possible assessment and remediation.

The response did not adequately address these concerns:

- Based on the N.C. Groundwater Rules (15A NCAC 2L), ground-water monitoring is required at the review boundary, which is located about 125 feet from the waste boundary. There must be sufficient room between the review boundary and the compliance boundary, which is about 250 feet from the waste boundary, to allow for water quality assessment and corrective action to prevent a contaminant plume from exceeding the 2L Groundwater Standards at the compliance boundary. Most of the buffer area must be reserved for this purpose.

- Borrow activities at landfill sites, if excavating into the water table, are generally located a minimum of 300 feet from the waste boundary, and preferably across a ground-water divide or discharge feature.

- Sedimentation basins at landfill facilities are generally constructed so as to maintain a minimum of two feet separation from the seasonal high water table.

The currently proposed landfill design does not provide adequate room to effectively monitor ground and surface water and assess and remediate a potential contaminant release. The proposed extensive sedimentation basins, which go below the water table, in effect would create an infiltration ring around the lined landfill unit. This could create an inward gradient underneath the landfill which would make ground-water monitoring difficult. It could also force any leachate leakage from the landfill to travel deeper in the aquifer before moving to an effective discharge feature. This design would change the hydrology of the site, making it difficult to predict ground-water flow paths, and therefore difficult to monitor effectively. It appears that a different design and/or larger buffers may be needed to correct these problems.

- During a recent site visit, I noticed a new house under construction on the Charles Roberts property. It does not appear that the minimum 500 feet buffer from wells or residences is achieved from the existing or new house at this general location. (The new house and well need to be indicated on the Local Characterization Map drawing.)

Drawings LC-1 and LC-2: If it is assumed that the Seasonal High Water Table is near Ground Surface, then the proposed Grading Plans do not appear to meet the requirement that the "bottom elevation of the base liner system is a minimum of four feet above the seasonal high ground-water table", Rule .1624(b)(4).

Section 8 - Preliminary Geotechnical Evaluation:

The revised text for Section 8 is confusing. For example page 8-5 is a blank page that merely states "Keep Figure 8-1". However a new revised Figure 8-1 is also included as part of the Report. A similar problem is present with pages 8-11, 8-12, and 8-15. It also appears that Figures 8-2 and 8-3 are missing from the Revised Text of the Report.

8.5.3 Why would "water levels measured in the test borings and piezometers" "not necessarily be considered to represent stabilized groundwater levels"?

8.6 Section 8.6 indicates a potential for significant settlement of up to 62.7 inches. Rule .1624(b)(4) requires "A MSWLF unit shall be constructed so that the *post settlement* bottom elevation of the base liner system is a minimum of four feet above the seasonal high water table".

Section 4 - Site Hydrogeologic Report:

4.2 Since the ditches and borrow areas largely control surface water flow and shallow ground-water flow, it is very important to understand the surface water flow patterns and present this information in detail in the Report.

- The text in the Response to Comments and Drawing 1 depict a somewhat different and contradictory description of surface water flow from that described in Section 4.2.1 and Sections 4.12 and 4.13.

- For the Barnhill borrow pit, what is the expected life for the entire operation? Where will borrow activities be taking place during the life of the proposed landfill and the post-closure monitoring period? Will pumping rates and discharge locations continue as per the current operation or will there be significant changes to the operation in the future? Please provide a copy of the mining permit and discharge permit.

- For the Camden Yards borrow pit, also provide the same information as that requested above for the Barnhill pit. The intermittent pumping of the pit and discharge into the north ditch create a situation of constantly shifting ground-water flow for the upper part of the aquifer. Will the changing conditions create soil stability problems? Will it create a flushing effect that could enhance movement of potential contaminants? How will this affect the ability to monitor ground and surface water in this area?

4.3 The Report needs to clearly identify the major lithologic (hydrogeologic) units of the uppermost aquifer and provide the basic hydraulic characteristics for each unit, as required by Rule .1623(a)(4)(E). The last paragraph on page 4-8 seems to indicate a layer of "1 foot of tilled topsoil", "a thin layer of sandy silt/clay", and the predominant layer of "sand with varying amounts of shell and silt" as being the major lithologic units.

Table 1 The Sand Filter Intervals and Bentonite Seal Intervals are contradictory for most of borings B-1 through B-7 shallow. For the deep borings, the effective Sand Filter Intervals have been extended to the bottom of the borehole, since the annular space below the screen was filled with filter sand. The Date of Construction for Borings B-3 and B-7 are inconsistent with the dates on the Boring Logs.

Table 1 (continued) The Well Construction Diagrams do not identify the Date of Construction for the B-1 through B-7 shallow borings, the GP borings, or borings B-35 through B-44.

Table 2 My estimates for Effective Porosity values using the Soil Classification Triangle are significantly different from those reported in Table 2. Part of the difference may be due to the fact that the definitions for the range of soil particle sizes defining sand, silt, and clay for the Soil Classification Triangle are different from those used in the USCS Soil Classification System.

4.7 While there is a good discussion of Seasonal High Water Table, there does not appear to be any specific estimate of the Seasonal High Water Table values. There does not appear to be any specific discussion of Long-term Seasonal High Water Table or their estimated values.

Table 3 On the back side of Table 3, information is provided for piezometers not previously referenced in the Report. The text and appendices need to be updated to reflect the addition of these borings and geoprobes.

4.8.1.2 The Screen Midpoint Separation value for the B-4 well nest location is incorrect. This could also change the Vertical Gradient value calculated for B-4. Why does the B-4 location show an upward gradient for the 2-06-04 data? Normally only the saturated portion of the shallow well screens should be used for vertical gradient calculations. However, in this case it appears all of the shallow well screens were fully saturated, therefore the screen midpoints can be used.

4.8.2 Hydraulic conductivity (porosity and effective porosity) need to be provided "for each lithologic (hydrogeologic) unit of the uppermost aquifer".

Table 6 It is not clear how the Hydraulic Conductivity values were determined. Appendix D has raw data and graphs, but I am still not able to find any actual Hydraulic Conductivity calculations or values in the appendix.

Table 7 Refer to previous comments regarding Effective Porosity values. How were the Average Permeability values calculated? I was not able to duplicate the values in Table 7.

4.12 Refer to previous comments regarding somewhat contradictory statements regarding shallow ground-water flow and surface water flow.

4.13 The Report states "Eventually, water from the County will be supplied to the area, eliminating the need for domestic wells." When does the County plan to provide a community water supply to this area? Would it be provided for all of the residents in the vicinity of the landfill, or just those near Highway 17?

- The Potentiometric Contour Map indicates that the mining operations are pulling ground-water from the proposed landfill site across the northern ditch otherwise believed to serve as a discharge feature for shallow ground-water flow. Since the details of future mining operations are uncertain, how will this affect the ability to monitor ground and surface water effectively at the proposed landfill site?

Drawings:

- On Sheet 1, what are the structures located near boring GP-20?

- For Sheet 2, the 13ft. ground-water contour in the vicinity of Boring B-4 Shallow does not appear to accurately reflect the water table data in this area. What is the cause of the apparent ground-water sink in the vicinity of boring B-8? It appears that an additional 7ft. ground-water contour is needed in the vicinity of boring B-20. Likewise, it appears that the 13ft. and 12ft. ground-water contours need to be extended and an additional 11ft. ground-water contour added in the vicinity of boring B-26. The ground-water elevation for GP-13 should be 12.02. The ground-water contour in the vicinity of GP-132 seems to indicate there is still the possibility of some ground-water flow to the south and south east. Please comment on why the south/south-easterly element of ground-water flow discussed in the previous Report is no longer featured in the Revised Report. Based on this drawing, there still appears to be some south and southeasterly ground-water flow for the eastern part of the proposed landfill.

Sheet 3: I did not find the cross-sections shown on a plan map for the site, but it appears a number of the borings shown on cross-section A-A' depart significantly from a direct line drawn across the site from west to east.

Sheet 3 (continued) This distortion can lead to a misunderstanding of the information presented on Sheet 3. It should also be noted on the drawing that there is a 80 fold difference in the vertical and horizontal scales for the cross-sections.

- The B-4 well nest is located (south)west of boring B-37, and should therefore be located before B-37 on the cross-section.

- Generally solid lines are used to depict actual data and dashed lines to depict inferred data, however the reverse appears to show the Silty Clay layer for boring B-4. On what basis is this Clay layer inferred to be present at this general depth up to 1400 feet away below borings B-37, B-39, and GP-32?

- Since most of the shallow borings and geoprobes have no Boring Log information, on what basis was the topsoil, silt/clay, fine sand, and sand with silt and shell layers determined on the cross-sections? The Field Logs for these shallow borings also appear incomplete and inadequate to form a basis for these determinations.

- For boring B-3, the deep layer of Medium Sand/Shell Frags does not appear to be accurately shown on the drawing. What is the basis for inferring the extended lateral extent of this layer?

- The ground-water elevation for B-3 Shallow is not consistent with the 10ft. equipotential line drawn. Otherwise, the water table data and flow lines seem to indicate ground-water discharge to the ditch located near boring GP-18, however the top of the water table is not shown to intersect the ditch. Please explain.

- For boring B-21, the soil layers shown on the diagram do not appear to accurately reflect the description in the Field Notes in Appendix C. What is the basis for establishing a clay layer to be present in boring GP-18?

- The ground-water elevation for boring B-1 Shallow seems inconsistent with the equipotential lines and ground-water flow lines drawn.

- The Sandy Clay layer appears to be inaccurately drawn for boring B-7. What is the basis for extending this Sandy Clay layer eastward under boring B-8? The Monitoring Well Detail for boring B-8 does not indicate the presence of a Sandy Clay layer.

- For cross-section B-B', what is the reason for the Clay layer shown for boring GP-18? The water table elevations in the vicinity of GP-18 indicate the possibility of some shallow ground-water discharge to the ditch, but this is not illustrated on the drawing. Again, this is somewhat unclear since the water table does not intersect the ditch.

- Because of the length of the facility from east to west, additional north-south cross-sections are needed to better illustrate the hydrogeology of the site.

Appendix A - Boring Logs and Well Construction Diagrams:

- Several of the deep borings were drilled significantly deeper than where the well screens were placed. When this is done the annular space below the screened interval should be plugged with a relatively inert material that is less permeable than the formation materials. Since for these borings filter sand material was used, this leaves a more permeable conduit for potential migration of contaminated ground water. Therefore, when these borings are abandoned it will be necessary to drill out the boreholes to full depth and then grout the annular space from the bottom of the borehole to the top in a manner that meets the requirements for permanent well abandonment in 15A NCAC 2C .0113(a)(2).

- Boring Logs and Well Construction Records need to be provided for wells and piezometers installed during all hydrogeologic studies that are referenced in this Report.

Appendix C - Field Notes:

- The top of some of the Field Note logs got cut off during the copying process. For this reason some of the logs can not be identified. I was not able to find logs for all of the borings and geoprobes.

Appendix D - Slug Test Data:

- Note previous comment regarding apparent lack of hydraulic conductivity calculations and values in Appendix D.

Please note once again that the proposed Black Bear Disposal Facility in Camden County is a somewhat unique site in that the hydrology of the shallow portion of the uppermost aquifer is largely controlled by man-made features, such as ditches, borrow pits, sedimentation basins, and the landfill itself. Therefore it is important that the effect of all these features be clearly understood regarding how they shape the ground and surface water flow regime. These issues could significantly affect the design of the landfill and its associated appurtenances, such as the erosion and sedimentation control features.

It will be very important to design the landfill facility in such a way so as to allow adequate buffers for effective ground and surface water monitoring. The buffers must also be sufficient to allow for possible water quality assessment and corrective action, if this should ever become necessary.

Please respond to the questions and comments raised above, and provide additional information and revisions as necessary. Also please contact me at you earliest convenience to arrange for a meeting to discuss these issues so we can expedite the review process. You may contact me at (919) 733-0692, extension 258.

Sincerely,

Bobby Lutfy

Bobby Lutfy
Hydrogeologist
Solid Waste Section

cc:	Jim Barber	Solid Waste Section
	Ed Mussler	Solid Waste Section
	John Crowder	SWS - Wilmington
	Chuck Boyette	SWS - Washington
	Jerry Johnson	Waste Industries
	Stacey Smith	G.N. Richardson & Assoc.
	Joan Smythe	G.N. Richardson & Assoc.

WASTE INDUSTRIES
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Received
OCT 200
Solid Waste Section

October 20, 2004

Mr. Ed Mussler
North Carolina Department of Environment and Natural Resources
Division of Waste Management

Subject: Black Bear Disposal, LLC

Dear Ed,

Black Bear Disposal, LLC was issued a Franchise and Zoning Permit by Camden County for the construction and operation of a regional solid waste landfill on land it acquired on October 1, 2004. Black Bear Disposal, LLC is a direct wholly-owned subsidiary of Waste Industries USA, Inc. whose shares are traded publicly on the Nasdaq stock exchange and whose securities are governed by the US Securities and Exchange Commission.

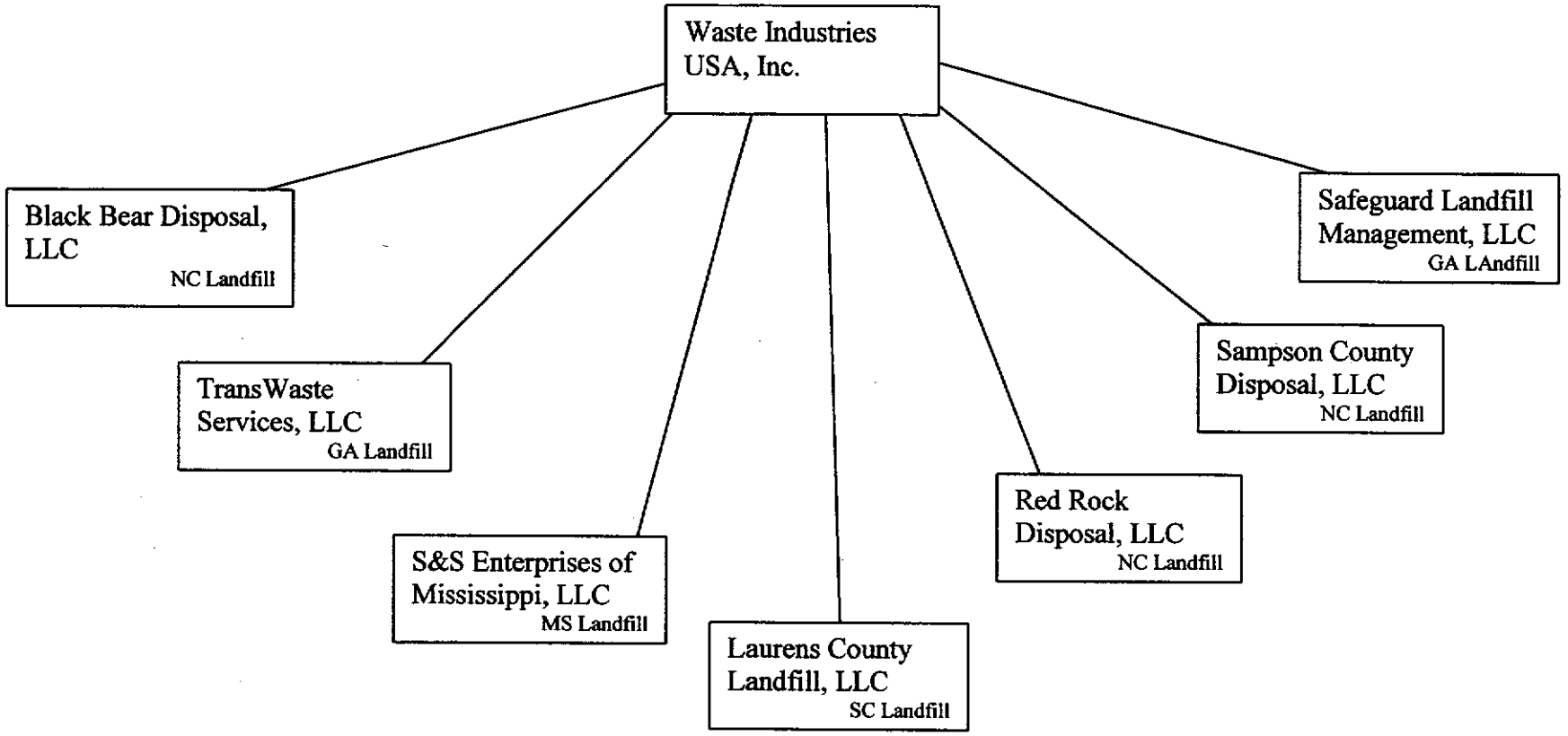
As a holding company, Waste Industries USA's only assets are its ownership interests in its subsidiaries. The tangible and intangible assets (including all operating assets) of the Company are owned by the subsidiaries. Revenues are earned by and expenses are paid by the subsidiaries. Under this structure, Black Bear Disposal, LLC holds title to the land and owns the Franchise, the Zoning Permit, the NC DENR Permits (when issued), equipment, buildings, infrastructure, customer contracts and revenues. Black Bear Disposal, LLC is responsible for all financial, Franchise and Permit obligations and any other liability associated with the landfill. Financial assurance required by the DENR permit will be provided through either a financial institution Letter of Credit or a Bond issued by a licensed Surety on behalf of Black Bear Disposal, LLC.

I have attached a organizational chart demonstrating the relationship of Black Bear Disposal, LLC to its parent as well as its sister LLC's. I hope this summary is useful in your review of the Permit application. Please don't hesitate to contact me if you have any questions. My direct numbers are: 919-325-4000 ext 3033 919-868-2899 nextel

Sincerely,

Ven Poole
Vice President, Corporate Development

LANDFILL ENTITIES OWNED DIRECTLY BY WASTE INDUSTRIES USA, INC.



WASTE INDUSTRIES
3301 Benson Drive Suite 601 Raleigh, NC 27609
Bus: (919) 325-3000 Fax: (919) 325-4040

Received
OCT 7 2004
Solid Waste Section

TO: Mr. Ed Mussler

FROM: Jerry Johnson

DATE: October 7, 2004

Attached is the answer to Question 4 concerning the meeting with residents including the log of who attended, questions & answers, as well as the information provided to the County.

If additional info is needed, please let me know.

Questions of the Property Owners During Community Meeting
February 4, 2004
Ruritan Club Building in South Mills
RE: Black Bear Disposal, LLC

Received
2004
Solid Waste Section

1. **Allen (lives in rear of property)** – "What and when do you cover material?"
Reply – Six inches of dirt or posi shell. ADC controls odor and birds.

2. **D. J. White (lives out at the road)** – "What about the new road? Where will it be located??"
Reply – Roughly in the middle of the property. Will run thru middle of commercial/industrial property. Troy to get road moved to south end of property.

3. **Chat (lives up front of property)** – "Water table and next to swamp area. What is the impact?"
Reply – Regulations require base to be four feet above existing water table.

   Question – How do you test the liner?

   Reply – Electrical signals

   Question – Projected height of LF?

   Reply – 200 feet – 250 feet

4. **Mrs. Sawyer (lives in brick home)** – "Water table concerns – who will guarantee the water quality?"
Reply – State, Bond Money

   Question – Impact to septic system?

   Reply – None

   Question to Engineer: What is your experience in the wetlands & coastal area??

   Reply – None noted

5. **Earl Bass** – "Virus & fire problems??"
Reply – Lake around for water supply, waste covered daily that cuts off oxygen.

   Question – Noise level?

   Reply – State hours of operation are 6 AM to 6 PM.

   Question – Camden County officials don't care about us.

   Reply – No comment

6. **Marvin Myers** – "Who we purchase land from?"
Reply – Mr. Williams

Question – How far is LF from road/Hwy 17?

Reply – 4900 feet

Question – Hours of operation?

Reply – 6 AM – 6 PM

Question – Where will trash come from? Multiple states?

Reply – Trash from VA, NC, other areas and area East of Interstate 75

Question – Hazardous or asbestos waste?

Reply – No, MSW and we meet Federal and State Regulations. Do spot/random checks.

Question – Will there be fire hydrants?

Reply – Yes, if water comes, if not – use lakes – sed ponds around site.

Question – When will County/City water be here?

Reply – Depends on industrial/commercial development. LF is the start of many opportunities for area to bring water system.

Question – Explain the closing/cap of the CL.

Reply – 30 years, will lease to the County for $10/year.
Ven spoke – offered a bus trip in Spring to see a closed and existing LF.

Question – Wild animals – are they protected?

Reply – Jerry mentioned a hunting club.

Question – will residence get lifetime free dumping?

Jeff Jennings, keys/stickers to dump

Reply – Convenience sites are still open.

7. **Joe White** – "Where and when cedar trees be planted?"

Reply – Site development stage in buffer.

Question – Number of trucks a day?

Reply – 150 to 175 per day

Question – What type of trash?

Reply – MSW only – some soils & sludges

Question – How often do inspectors come in?

Reply – Anytime and random checks.
Explained the impact of a NOV
Transfer Station usage

Question –Why was site bought and from who?

Reply – Dick Browner explained

Question – How far is LF from Ponderosa Road?

Reply – Backs up to it.

Question – Will our property be fenced in or will owners be limited to their back yards?

Reply – No impact

8. **Robert Nobles** – a former SPSA Technician, who has seen many bad things in trash, etc.

Question – How many liners have failed?

Reply – None, 0

Question – Water is bad in the area, when will they get county water?

Reply – Jeff Jennings responded as to new water tower placed in area and depends on money available.

Question – How wide is the site?

Reply – Explained the scale.

9. **Gene Lindstrom** – "Where can I see the test records of water wells?"

Reply – County

Question – Where will LF get its water?
Reply – On site wells

Question – How many acres in industrial park?

Reply – 135 acres

Question – Any houses to be built in the immediate area?

Reply – Questionable because of the industrial area land value. Not many people will pay the cost just to build a house – only commercial/industrial.

Robert L. Nobles
140 Heritage Drive
South Mills, NC 27976

Horace Taylor III
148 Heritage Drive
South Mills, NC 27976

Earle R. Mize
102 Heritage Drive 771-5740
South Mills, NC 27976

Larry Sharp
110 Kingsley Lane #504
Norfolk, VA 23505

Earl & Loleta Bass
102 Deer Trail 771-2476
South Mills, NC 27976

Earl & Allene Key
103 Deer Trail 252-2678357
South Mills, NC 27976

Sammie Maxwell Chapman
104 Deer Trial 7715555
South Mills, NC 27976

Donal & Tamika Doby
105 Deer Trail
South Mills, NC 27976

David M. Kravchak
106 Deer Trial
South Mills, NC 27976

Gene & Beverly Lindstom
107 Deer Trial 771-2540
South Mills, NC 27976

Daniel C. Ballweg
108 Deer Trail
South Mills, NC 27976

Darin K. Walker
110 Deer Trail
South Mills, NC 27976

William Bland 771-8169/771-3137
112 Deer Trial
South Mills, NC 27976

Philip Jenkins
113 Deer Trial
South Mills, NC 27976

Richard P. Light 771-5689
114 Deer Trail
South Mills, NC 27976

John Miller
3248 Martin Johnson Road
Chesapeake, VA 23323

PROPERTIES NORTH AND SOUTH OF THE WASTE INDUSTRIES PROPERTY; PIN 01-7082-00-26-3513

Everett L. Sawyer
206 Bunker Hill Road 771-2713
South Mills, NC 27976

Lydia Jones Sawyer Heirs
C/O Joyce C. Medlin
P.O. Box 28
South Mills, NC 27976

F.T.W. & Sons Farms
5021 Morris Net Road
Virginia Beach, VA 23457

John & Martha Knowles
305 Ponderosa Drive 771-5385
South Mills, NC 27976

Lewis Family Limited
C/O Ashton Lewis Lumber
P.O. Box 147
Gatesville, NC 27938

K.W. Farms, LLC
Route 4 Box 157
Moyock, NC 27958

W.W. Realty Company
5021 Morris Neck Road
Virginia Beach, VA 23457

Union Camp Corporation
754 NC Hwy 11
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William C. Haley
43 Moncure Lane
Henrico, NC 27842
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Stewart Sawyer
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Charles Roberts
370 Ponderosa Drive 252-771-8255
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Robert & Margaret Scott
301 S. George Washington Hwy
Chesapeake, VA 23323

~~John~~ William Knowles
299 Ponderosa Drive
South Mills, NC 27976

Daniel & Sheryl Korzeniowski
111 Deer Trail
South Mills, NC 27976

Marvin & Angela Myers
109 Deer Trial
South Mills, NC 27976

Lokie & Dawn Flythe, Jr.
105 Deer Trial
South Mills, NC 27976

Carol Gilmore
103 Deer Trail
South Mills, NC 27976

Layne & Pamela Brown
101 Deer Trial 771-3225
South Mills, NC 27976

D.J. & Annette White
101 Heritage Drive 771-5412
South Mills, NC 27976

Fredrick & Lina Higginbotham
115 Deer Trail 252 771-5294
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Robert & Donna Nobles
134 Heritage Drive 771-2766
South Mills, NC 27976

Name	Address	City/State/Zip	Phone #
Beverly Compton	2991 Ponderosa DR	South Mills NC	771-3102
Buddy Tucker	617 Trotman Rd	Camden	336-4286 - 771-2362
MARVIN MYERS	109 DEER TRAIL	SOUTH MILLS	—
Buck + Martha Knowles	305 Ponderosa Dr	South Mills NC 27976	771-5385
RICHARD LIGHTJR	114 DEER TR.	So. MILLS 27976	771-5689
BILL BLAND	112 DEER TR	"	771-8169/771-3137
Gene Lindstrom	107 Deer Tr	So. Mills, NC 27976	771-2540
Joyce Hartman	4400 Ballahack Rd	Chesapeake VA 23322	757 432-9095

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02-05-2003 09:23am From-

LANDFILL INFORMATION FOR COMMUNITY LEADERS

Waste Industries

October 22, 2002

Received
OCT 2004
Solid Waste Section

Why do we need landfills?

Nearly everything we do leaves behind some kind of waste. Households create ordinary garbage. Industrial and manufacturing processes create both solid waste and hazardous waste. Although source reduction, reuse, recycling, and composting can divert large portions of municipal solid waste from disposal, some waste still must be placed in landfills. Modern landfills are well-engineered facilities that are located, designed, operated, monitored, closed, cared for after closure, cleaned up when necessary, and financed to ensure compliance with federal regulations. The federal regulations were established to protect human health and the environment. In addition, these new landfills can collect potentially harmful landfill gas emissions and convert the gas into energy.

The amount of municipal solid waste generated in the U.S. nearly tripled in the past 40 years to a total of 220 million tons per year, which is approximately 4.4 pounds of waste per person per day, up from 2.7 pounds per person per day in 1960.

As a whole, our country is working very hard to improve our recycling rate. However, it is impractical to expect that we will ever be able to reach 100 percent. That means that there will always be a need for disposal facilities. Of the current alternatives–burying or burning– landfills are superior to, and more environmentally friendly than, waste incinerators.

Definition of a Landfill

Solid waste landfills are carefully engineered structures designed to safely dispose of trash in an environmentally friendly manner. Modern landfills are constructed and operated according to extensive regulations implemented by the U.S. Environmental Protection Agency (U.S. EPA) under the authority of the federal Resource Conservation and Recovery Act (RCRA), Subtitle D, and under the strict oversight of the North Carolina Department of Environment and Natural Resources (NCDENR)/Division of Waste Management Solid Waste Section in accordance with Title 15A NCGA Subchapter 13B.

Landfills are built in natural or engineered geologic depressions and are designed to properly dispose of solid waste by sealing (encapsulating) it in a series of covers, caps and liners. Materials disposed of in such a facility are restricted to municipal solid wastes (waste generated from community, commercial, industrial and agricultural operations – typically, households, offices, stores and other non-manufacturing activities – and free of hazardous materials such as industrial chemicals and medical waste). Modern landfills are designed and built with a number of safeguards intended to prevent trash from coming in contact with the surrounding environment: rain, groundwater, surface water and the air. This is accomplished by a layer of clay-like soil at the bottom

of the landfill. The next layer up is a synthetic lining, usually made of plastic. All remaining layers alternate between soil and garbage.

Proposing a Landfill

Waste Industries is proposing to build and operate a landfill in the northern border section of the County. The proposed site is located within the proposed Camden Commerce Park. The company is following a legal process developed by U.S. EPA and strictly enforced by NCDENR. The first step in the process is site selection based on a number of requirements. These include: adequate land area, protection of groundwater, flow and location of surface water (lakes, rivers, streams or wetlands) and drinking-water wells, setbacks from parks, surface waters, property lines and houses. Additionally, there are restrictions associated with endangered species, airports, the historic or archaeological value of the proposed site, floodplains, earthquakes, and geologically unstable areas. State law requires that a private company applying for a permit must receive approval for the planned landfill from the unit of local government that has jurisdiction over the proposed site. This approval is in the form of a **Franchise Agreement**. Following issuance of the Franchise, the permit process can proceed.

Protection of human health and the environment are the critical considerations in the design and construction of a modern landfill. Several approved measures are implemented to assure this is accomplished. First, an appropriate site is chosen following completion of detailed engineering studies. These studies examine the geology (the composition of the underlying soil and bedrock) and hydrogeology (the location and quantity of aquifers, and the flow of the groundwater) of the proposed site as well as the surrounding area. Location restrictions ensure that landfills are built in suitable geological areas away from faults, wetlands, flood plains, or other restricted areas. Siting requirements for a landfill include:

New solid waste landfills cannot be in a:

- national park or recreational area

New solid waste landfills cannot harm:

- the critical habitat of endangered or threatened species
- national or state nature and historic preserves, or
- national or state parks, recreation or scenic areas.

Solid waste cannot be placed within:

- a minimum of 50 feet from surface waters
- 300 feet from the edge of waste operations to the landfill's property line
- 500 feet of a drinking-water well or residence
- 5,000 feet of an airport runway used by piston-type aircraft, or
- 10,000 feet of an airport runway used by turbojet aircraft.

Geological studies are performed to define the soil and rock. Hydrogeological studies determine groundwater levels. The bottom of the proposed landfill must be a minimum of four feet from the longterm seasonal high-level of the uppermost aquifer. Bedrock

under the area where waste will be buried cannot be significantly fractured. The geology of the proposed facility must be able to accept wells at various points around the site to monitor the groundwater.

The flow of surface water over the area of the proposed landfill will be determined to allow for the design and installation of control systems to prevent storm water from draining off the property. This study will also help in ensuring that the landfill will be located a safe distance from lakes, streams and rivers.

An environmental impact study will determine the potential effects of the landfill on the environment and local wildlife. For example, a landfill may not be located near the nesting areas of protected birds.

Permitting a Landfill

Once a site has been selected and the comprehensive site survey has been completed and approved, the company must obtain a permit to construct (PTC) issued by NCDENR to install the landfill.

Construction of a Landfill

Only when a site has been approved by NCDENR, following U.S. EPA standards, can construction begin. The process follows specific steps and requirements. First, an access road will be built leading off of US 17 to the landfill site. The access road will be used by construction equipment during installation and by sanitation vehicles and the general public when the landfill is in operation. When the access road is completed, excavation of the landfill can begin.

Parts of the Landfill

The basic components of a landfill are:

- Bottom liner system – serves as a barrier between trash and the groundwater; a geomembrane or synthetic sheet reinforced with two feet of clay on the bottom and sides of landfills.
- Cells – defined areas where the trash is disposed within the landfill.
- Storm water controls – system used to keep water from entering the landfill and to remove uncontaminated water from the landfill surface.
- Storm water drainage system - collects precipitation (rain water and snow) that falls around the landfill and water from the Control system.
- Leachate collection system - collects water that has percolated through the landfill and may contain contaminating substances (leachate).
- Groundwater monitoring system - series of wells installed around the landfill to monitor the groundwater to verify that waste materials have not escaped from the landfill.
- Methane gas collection system - collects methane gas that is formed during the decomposition of trash.

- Cap - seals off the top of the landfill after closure and preventing further creation of Leachate; a flexible synthetic liner reinforced with two feet of clay.

Bottom Liner System

A compacted clay base is installed over the entire landfill area to prevent leachate from leaking from the bottom. These liners are typically two feet thick and must cover the bottom and sides of a landfill. The compacted liner is tested to measure permeability, or the ability to prevent liquid from escaping. Next, a flexible synthetic liner made of high density polyethylene [HDPE] at a minimum thickness of 60-ml (approximately 1/8 inch) is placed directly over the compacted soil liner to further safeguard against leaks.

Cells

Trash is compacted into areas called cells to conserve landfill space and increase capacity and the life span of the facility. Each cell contains a predetermined amount of daily trash. In the proposed landfill, a cell will be approximately 1,100 feet long by 1,100 feet wide by 50 feet high. The amount of trash within the cell will be 1,300,000 tons and will be compressed at 1,200 pounds per cubic yard. Heavy equipment (bulldozers and graders) will be driven over the trash several times for compaction. Once the cell is full, it will be covered with a flexible synthetic tarp or with six inches of soil that is compacted further. This daily cover will seal the compacted trash and keep it dry, control litter and odors, and prevent pests (birds, rats, mice, flying insects, etc.) from breeding or scavenging in the landfill.

Leachate collection system

In addition to the liners, a carefully engineered system will be constructed directly above the liners to collect any leachate that travels through the waste. This liquid will be collected and pumped out of the waste facility and into a modern, on-site treatment system or aerated and sent through the local sewer system.

Stormwater controls

In order to keep the landfill as dry as possible to reduce the amount of leachate, stormwater controls, which include a system of drainage ditches, keep water from entering the landfill and remove uncontaminated water from the landfill surface.
The storm drainage system keeps rainwater and snow melt out of the landfill. Plastic drainage pipes and storm liners collect water and direct it to drainage ditches surrounding the landfill. The ditches will be concrete or gravel-lined and will carry water to collection ponds. In the collection ponds, suspended soil particles are allowed to settle and the water is tested for leachate chemicals. After any suspended soil particles in the water have settled, and the water has been successfully tested for the presence of leachate chemicals, it will be pumped off-site and released.

Groundwater Monitoring

During construction, the detailed hydrogeologic study completed in the site assessment will be used to locate groundwater and decide direction and rate of the flow. Once this has been determined, a carefully planned system of wells will be installed around the landfill to monitor the groundwater and detect any changes in groundwater quality. Wells will be installed in areas unaffected by the landfill to determine background water quality.

Because the temperature rises when solid waste decomposes, an increase in groundwater temperature could indicate that leachate is seeping into the groundwater. Also, if the pH of the groundwater becomes acidic, that could also indicate seeping leachate.

Methane Gas Collection System

Decomposing wastes produce gases that contain approximately 50 percent methane, 50 percent carbon dioxide. While not considered an air pollutant, these gases must be collected and treated to prevent uncontrolled build up that has the potential to result in an explosion. A series of pipes, or vents, similar to the leachate collection system, are installed. The collected gas can be handled in a variety of methods depending on the composition of the waste and the size of the landfill operation. It can be vented directly to the air, burned (flared), or as in this case it can be collected and used as fuel to produce electricity for nearby homes and communities or process steam for use by nearby industrial facilities.

Gas Monitoring

A gas monitoring system (similar to the groundwater monitoring system) will be installed in the ground between the landfill to monitor for potential movement of underground gas from the landfill.

Cap

As sections of the landfill reach their capacity, a HDPE flexible cap at a minimum thickness of 60-ml (or approximately 1/8 inch) will be placed over the soil cover and compacted waste. This cap is covered with a two-foot layer of compacted soil. Vegetation is then planted to prevent erosion of the soil cap by rainfall and wind. This vegetative layer will consist of grass. No plants with deep roots will be planted to prevent contact with the trash and possibly create leachate seeps.

Operation of a Landfill

Once these systems are in place, and the facility has been inspected and approved for operation by NCDENR, the landfill can begin to accept waste. As stated above, trash will be placed on top of the liners, in cells, at predetermined daily volumes, and covered in an approved method as specified in the PTO.

The landfill will operate Monday through Saturday. Customers will include local residents, private waste haulers and municipalities.

A "borrow area" will be designated for excavating soil for the landfill cover and cap. This area is also where the runoff and leachate collection ponds, as well as the methane collection facility will be located.

Vehicles entering the facility will be weighed to determine disposal charges, or tipping fees, levied for using the site. The tipping fees charged for local communities and businesses will be $30.00 per ton, which is less than half the current rate being charged at the Pasquatank County transfer station.

The facility will have drop-off stations for recyclable and/or banned materials such as yard waste, appliances, tires and used motor oil.

As you can see, landfills are complex, carefully engineered, and strictly regulated structures that, when properly designed and managed, serve an important purpose.

Closure and Post Closure

When the landfill has reached its capacity, it is closed according to the closure plan detailed in the PTO. An engineered cap will be placed over the entire area to encapsulate the landfill. Following the installation of the cap, the post-closure plan is implemented. During post closure, the entire site is carefully monitored for a minimum of 30 years to ensure protection of the environment and the health and safety of the residents in the area around the landfill. This includes monitoring the groundwater and monitoring for gas; and monitoring the surface water control and cap systems. A post-closure fund, established prior to opening of the landfill, is kept to pay for any additional actions that might need to be implemented beyond the terms of the post closure plan.

Benefits for the host community

Cost savings – By locating this landfill in your community, taxpayers will realize $225,000 in savings per year in waste management costs. This is a result of lower tipping fees and the disposal of convenience site waste free of charge.

Cost vs. benefits – In almost every instance, "costs" of a landfill to your community are perceived, not actual. Many perceptions are based on conditions from landfills that were built 20, 30, or more, years ago. Many of these were unregulated sites, opened prior to the RCRA laws first passed in 1976 and amended in 1984. Modern landfills, built to today's tough standards, are not subject to the extent of the problems (litter, strong odors, leaking, etc.) experienced by the older facilities.

Energy savings – Gas recovered from landfills can be converted to steam and/or electricity. Waste Industries has offered to assist your community in determining the feasibility of creating an energy recovery facility that could provide a clean, renewable and economical source of electricity for your community.

Host community fees – Waste Industries has proposed an agreement that will provide you with a projected average amount of $1.17 per ton or $1,456,000 per year to be paid by the company as compensation for hosting the facility in our community.

Host community plan (HCP) – Waste Industries has offered to work with citizens and leaders of Camden County to develop a Host Community Plan that will detail benefits to the community when the facility is approved. These benefits can include: revenue sharing, reduced tipping

fees, funds to expand or create programs such as museums or local arts groups, additional land for parks or schools, funds for community improvement projects, etc.

Job creation – When fully operational, the full-time facility will require a crew of approximately 20 workers. Skills needed include technicians, engineers, equipment operators, skilled trades people, laborers and office workers. Hourly wages and benefits will average $13.00 per hour for skilled workers and $8.00 for unskilled labor. Waste Industries will give first consideration to all qualified applicants from your community.

Real estate property tax revenue – This facility will pay approximately $70,000 to your community in taxes, easing property owners' tax burden and providing additional funding for schools and other services.

Savings on waste handling costs – Waste Industries has offered a reduced tipping fee of $30.00 per ton for waste generated in the community and disposed of at the landfill. This is a savings of $31.00 per ton versus the tipping fees currently paid, amounting to a savings to citizens and community businesses of approximately $225,000 annually.

Tax revenue – In addition to the property taxes for the landfill itself, additional economic development associated with the Landfill will generate additional tax revenues as well as employment opportunities. Additionally, employees of the Landfill and other associated businesses who live in your community will pay local taxes and provide income for local merchants.

Topics for discussion

Access Roads – Local commercial traffic will not increase significantly when the facility opens. Waste Industries has offered to build a 1 mile long private access road from US 17 directly to the landfill which will keep traffic away from populated areas. In addition, the landfill opening will closely coincide with the US 17 widening that is underway.

Alternate Uses – Once the landfill is closed, surrounding property will be leased to the community for alternate uses. Waste Industries has offered to work with your community to determine what type of facility would be most appropriate according to your wants and needs. Creative uses developed at other closed landfills include: parks, golf courses, nature trails, wildlife refuges, migratory bird breeding sanctuaries and recreational lakes.

Buffer Zone – Regulations require a minimum setback of 300 feet from the facility property lines which will include trees and shrubs. This buffer will not only visually block the landfill from offsite view, in combination

with the daily cover, it will further prevent potential noise, litter and odors that might result from landfill operations.

Citizen Advisory Committee – Waste Industries realizes that it is necessary to work with the citizens of Camden County to gain acceptance and ensure and maintain a good relationship. To this end, the company will sponsor a citizens advisory committee to provide for two-way communications, education and negotiations with the community.

"Clean" vs. "Dirty" Industry – Every activity has an environmental impact. The perceptions many people have landfills as "dirty" are a result of conditions encountered 20 or 30 years ago, before current solid waste rules were implemented and before the advent of modern technology. Today, utilizing state-of-the-art technology and operating under the strict oversight of RCRA, NC Title 15A: Subchapter 13B, and NCDENR, modern landfills are in fact a "clean" industry. No commercial activity is more strictly regulated and closely monitored than waste management. Landfills do not compare in environmental impacts to such facilities as steel mills, paper mills, oil refineries, chemical plants, or even most industrial manufacturing, assembly or distribution facilities. Even retail operations have environmental impacts in the form of energy and sewerage demands, solid waste generation, and increased traffic and storm-water runoff to the surface waters from parking lots.

Compliance History of Waste Industries – Waste Industries adheres to the high standards set by the founders and executive officers: Lonnie Poole Jr., Chairman, and Jim Perry, President and CEO. The company is proud of its operating record. Under these standards, all Waste Industries facilities (landfills, transfer stations, recycling facilities, etc.) operate in full cooperation with all regulations and legal authorities in the best interests of its employees, customers and the communities where they are located. Facilities operated by Waste Industries have an exemplary record of compliance with state and federal laws and regulations. Copies of the files (for operations within the State of North Carolina) that will attest to this fact are available for review at the offices of NCDENR Division of Waste Management, Enforcement Division, 401 Oberlin Rd., Ste 150, Raleigh, NC 27605. They can be reviewed by appointment by contacting Courtney Washburn, Compliance Officer/Solid Waste Section, at that address, by phone at 919.733.0692 ext. 270, fax 919.733.4810, or e-mail Courtney.Washburn@ncmail.net.

Environmental Considerations – Problems associated with unregulated, and earlier, less-regulated, landfills have been addressed through numerous efforts including siting criteria, geologic assessment, hydrogeologic studies, traffic studies and access roads, capacity limits, daily cover, leachate collection and treatment systems, storm water runoff systems, gas collection systems, ground and surface water studies and

monitoring requirements, closure plan, post closure bond and post closure monitoring for at least 30 years.

Environmental Impacts – Siting requirements have been carefully developed and refined to protect the environment and prevent problems from developing.

Litter – Every effort will be made to control litter at the landfill. These include requiring truck drivers to cover their loads, the daily cover, litter fences and wooded buffer zones. In addition, landfill personnel will conduct a daily litter pickup along the access road and US 17.

Local Hydrology – The Army Corp of Engineers has certified that there are no Jurisdictional Wetlands on the Site and the site is outside the 100 year flood plain.

Information Resources – Waste Industries will establish and maintain an information repository in the Landfill office. This repository will contain fact sheets, copies of pertinent regulations, as well as all public records pertaining to the site evaluation, permit applications, regulatory reviews and regulatory determinations.

Financial Assurance – Under state law (NC Title 15A: Subchapter 13B, Rule .1628, Financial Assurance), Waste Industries is required to demonstrate that there will be funds available to properly close, provide 30 years of post-closure maintenance, and fund any environmental remediation costs for the permitted landfill. Five methods of satisfying this rule are available to the operator:

- Establish a cash trust fund
- Establish a capital reserve fund
- Provide a surety bond to guarantee payment and performance
- Provide a letter of credit, or
- Provide evidence of insurance

See Volume II Environmental Statutes, Laws & Regulations, NCAC/General Statutes Solid Waste Management Regulations: Title 15A Subchapter 13B, Rule .1628; General Statutes: Chapter 130 – 309.27, Article 9; and RCRA Title 42, Chapter 82 Subchapter IV, Section 6943 for more details on this requirement.

Groundwater Protection – Waste Industries will install two feet of recompacted soil, covered by a 60-ml HDPE liner, over the bottom and sides of the landfill to prevent leakage of liquids to the groundwater. In addition, baseline studies and regular monitoring of the groundwater through a system of monitoring wells surrounding the site will be conducted to further protect the groundwater. The monitoring program will continue throughout the post-closure plan period.

Leachate – A state-of-the-art leachate collection, treatment and disposal system will be installed to eliminate the liquids captured by the liner system. See Volume II Environmental Statutes, Laws & Regulations NCAC/General Statutes Solid Waste Management Regulations: Title 15A Subchapter 13B, Rules .0600 & .1680 and RCRA Title 42, Chapter 82 Subchapter IV, Section 6943 for more details on this requirement.

Noise & Odors – Waste disposal operations will be conducted at a minimum distance of 300 feet from all property lines. These operations will be 500 feet from the nearest drinking water well or residence. This setback, combined with a 300 foot landscaped buffer zone, will substantially reduce, or completely eliminate, noise and ordors from the site.

Peer Reviews – When legitimate scientific studies are completed, they are presented for what is known as a peer review. In this process, the study is critiqued by a panel of fellow experts from the appropriate field. The process is voluntary, but any scientific report that has been withheld from the peer review process should be suspect. Therefore, whenever someone makes claims based on a "scientific" study, always determine if a peer review has been completed before you make decisions based on the information. Only peer reviewed studies should be seriously considered when making decisions. (Waste Industries relies on valid scientific studies when engineering a solid waste landfill and will be happy to supply information on these studies and how they can be verified.)

Recycling – Waste Industries is an experienced and innovative leader in recycling. The company currently manages recycling programs for several communities in 8 states. They are committed to recycling materials for after market use and have led the way in developing markets for these products. However, there will always be a certain percentage of waste that is not suitable for recycling and will have to be disposed of in an approved manner, including disposal at a solid waste landfill.

Road Maintenance – Because Waste Industries has proposed installing a private one mile access road from US 17 leading directly to the landfill, there will be no appreciable increase in traffic over any of the Community roadways of the Camden County community.

Approximate Size of the landfill

- area = 330 acres
- depth = 5-10 feet
- height = 275 feet

Truck traffic - Because Waste Industries has proposed installing a private one mile access road from US 17 leading directly to the landfill, there will

be no appreciable increase in traffic over any of the Community roadways of the Camden County community.

Frequently asked questions (FAQs)

Isn't this thing a done deal already?

NCDENR requires a company that is considering submitting an application for a PTO to complete a number of preliminary steps. A preliminary site assessment and the approval of local officials are two of these requirements. Discussions have taken place intended to gauge the level of acceptance among local officials before the expensive process of conducting a site assessment is undertaken. However, Waste Industries recognizes the importance of community acceptance of the proposed landfill. To this end, a community advisory committee is being formed, an information repository will be established, education sessions and public meetings will be held to gain public acceptance and form important agreements with the community relating to installation, operation, and closure of the proposed facility.

Will the County be involved in inspecting the site? Who else will be involved?

Inspectors from NCDENR are responsible for inspecting the facility. However, Waste Industries has offered to request that the inspector notify the County when an inspection is scheduled and make arrangements to allow County representatives to participate in these inspections.

Will there be a study completed to decide if this is a good site for a landfill?

Yes. NCGA Title 15A, Subchapter 13B, Rules .0200, .1600, and .1622 require that extensive studies be conducted by a professional engineer and submit a detailed report to be reviewed for approval by representatives of NCDENR. See Volume II Environmental Statutes, Laws & Regulations, NCAC/General Statutes Solid Waste Management Regulations: Title 15A Subchapter 13B, Rules .0200, .1600, and .1622 and RCRA Title 42, Chapter 82 Subchapter IV, Section 6943 for more details on this requirement.

Who will conduct this study?

Waste Industries will contract with a Professional Engineering Firm that specializes in Landfill Facilities and Licensed to practice in the State of North Carolina to conduct the site assessment at the proposed landfill location.

Who decides if the study is correct and approves or denies it?

NCDENR will review the completed study. See Volume II Environmental Statutes, Laws & Regulations, NCAC/General Statutes Solid Waste Management Regulations: Title 15A Subchapter 13B, Rule .0200 for more details on this requirement.

Who will inspect the landfill once it's operating to make sure it's in compliance?

Officials from NCDENR will conduct inspections of the facility to ensure compliance. See Appendix II – Contact Information for contacts for more details on this program.

How will we know if the landfill is getting cited for violations?

All regulatory information relating to this facility will be part of the public record and remain on file at the NCDENR offices. Copies of all public records pertaining to this site will also be placed by Waste Industries in its public information repository established by the County. See Appendix II – Contact Information for contacts for more details on this program. Waste Industries will notify the County within 5 business days of any notice of violation it receives.

How many landfills is Waste Industries operating already?

Eleven. They are:

- Sampson County Landfill, NC
- Red Rock Landfill, Wake County, NC
- Durham LCID landfill, Durham, NC
- Decatur County Landfill, Tennessee
- Coffee County Landfill, Douglas, Georgia
- Safe-Guard Landfill, Atlanta, Georgia
- Old Kings Road Landfill, Jacksonville Florida
- Railroad Avenue Disposal, Memphis, TN
- Curry Lake Landfill, Spartanburg, SC
- S&S Disposal, Gulfport Mississippi
- MacLand Landfill, Pascagula, Mississippi

How can we find out how they are operating these other sites?

Each landfill has a compliance record on file with the state with authority over it. Contact information will be provided on request to any interested individual or group that would like to review these records as per the requirements of the regulatory agency with authority over the particular facility. See Appendix II – Contact Information for contacts for more details on this program.

Can we talk to the people in these other communities to see how they feel?

Waste Industries has offered to arrange for members of the County Commission and the CAC to visit an operating landfill owned by the company. Arrangements will be made for this group to meet with residents of the host community of that facility.

How many total acres will the landfill property occupy?

The permit application will request the facility to cover a total of approximately 700 acres, with only 330 actually containing waste disposal cells.

What is the depth of the landfill in feet and what will be the height of the highest point of the cap after the landfill is closed?

The permit application will request a planned facility that will extend to a height of approximately 275 feet upon closure. The original recompacted soil and synthetic liner will be installed at a depth of 5-10 feet below grade at the deepest point.

How much of the acreage will be filled with solid waste?

The total acreage at the site is approximately 700 acres. Of this, the permit application requests an area of 330 acres for solid waste disposal.

How much of the acreage will be used for the buffer zone?

Approximately 100 acres will be used for a buffer zone.

How much of the acreage will be unused?

All of the area will used for either waste disposal cells, support facilities or a soil excavation "borrow" area for the soil liners caps and daily cover. The remaining 100 acres will constitute the buffer areas.

What is the maximum in tons per day the landfill will accept?

The permit application estimates the daily volume to be around 10,000 tons per day.

Does the contract have a minimum tons-per-day quota (put or pay clauses)? If it does, who is responsible for finding the additional tonnage or the money in lieu of the tonnage?

There is no minimum tons per day requirement.

Where is our waste going now?

Pasquatank County collects it through a transfer station for approximately $61.00 per ton and transports it to a landfill in Bertie County

Why do we have to change?

Waste Industries has offered the County an excellent opportunity for Camden County to take care of its own waste for 30 years, reduce the costs associated with waste disposal for its citizens and businesses, increase services it provides its citizens at no additional cost to the taxpayers. Hosting a landfill will also spur additional economic development and job creation.

What type of waste material will be disposed of in this landfill: (indicate correct answer below)

- municipal solid waste
- non-hazardous industrial solid waste
- construction and demolition debris
- other wastes specifically approved by DEHNR

Will they be putting recyclables in the landfill (glass, aluminum, tin, paper, etc.)?

Recycling to reduce the amount of solid waste generated is required by the regulatory agencies as part of every community's solid waste plan. Although the goal is zero recyclables entering the waste stream, and every effort will be made to meet this goal, it is impossible to prevent all recyclables from ending up in the landfill. See Appendix II – Contact Information for contacts and Web page links for more details on recycling rules in North Carolina.

Will they be putting clean organic compostables in the landfill (for example, yard wastes)?

Yard waste, waste from land clearing activities and inert debris are banned from MSW landfills in North Carolina and many other states.

In tons per day, how much of the garbage will come from our town/county/state/out-of-state?

Approximately 20 tons per day of waste is generated in Camden

For how many years will the landfill be in operation?

The landfill will be designed to last 30 years

What will happen when the landfill is full?

The landfill will be closed according to the requirements of the closure plan approved by NCDENR. See Volume II Environmental Statutes, Laws & Regulations, NCAC/General Statutes Solid Waste Management Regulations: Title 15A Subchapter 13B, Rule .1627 for more details on this requirement.

For how many years will it be monitored after it is closed?

The landfill will be monitored according to the requirements of the closure plan approved by NCDENR. Currently, this period is 30 years.

Who will be responsible for it once this post-closure period is over?

The Company has agreed to lease the property to the County for a minimal fee at which time the County can use the property for recreation or any other use it wishes. Once leased, the County will assume responsibility for maintenance and upkeep.

Will it be lined and capped? If so, what will these be made of?

The facility will be constructed with a composite liner system consisting of two feet of recompacted clay and a minimum 60-ml HDPE flexible synthetic liner or the equivalent thereof. Upon closure, an engineered soil cap of a minimum of two feet of soil and vegetative cover will be installed over another 60-ml HDPE cover.

I was told all caps leak. Is that true?

The multi-layer caps on modern landfills are engineered specifically to prevent infiltration of precipitation into the waste. Regular inspections scheduled under the post-closure plan would quickly detect leaks, should they occur. The breaches in the cap would then be promptly repaired. Any repairs would be paid for with money from the post-closure fund.

I was told all liners leak. Is that true?

No, not necessarily. Even if a hole should occur, it is important to understand the magnitude of the "leak." A hole the size of a dime, with one foot of water on top of it, will release approximately two cups of liquid per day over an area the size of a football field. And although, as a "fail safe" measure, all leachate is considered contaminated, the actual amount of seriously contaminated liquid that might possibly escape, in all but the most extreme instances, is at worst negligible. Additionally, the groundwater monitoring systems required at all landfills are regularly checked and any detectable levels of contamination would be quickly discovered. Detectable levels of contamination in the groundwater can be measured in amounts as small as parts per billion (ppb). One ppb is the equivalent of one drop in an Olympic sized swimming pool.)

Professional opposition groups as an indictment of modern lined landfills often quote this assertion (all liners leak). The U.S. EPA is cited as the source, which is true, however it is a single sentence taken out of context from documents intended to be used as guidance for design and planning of modern landfills. The information is used to state an assumption that can be used to plan for the possibility (not the probability) of a failure. That is, the logic being that the best protection against all possibilities is to "over engineer" based on the hypothetical assumption that all liners will eventually leak. In this manner, a number of redundant measures were designed into the structure to create a fail-safe situation.

There is no qualified scientific evidence to support the statement when referring to liners designed into any of the landfills currently operating in North Carolina. In fact, with the modern liner systems currently in use, it is unlikely that there is ever an amount of water present in a landfill to actually produce enough leachate to reach the groundwater monitoring network. The leachate collection system that is built directly over the synthetic liner is constructed with a series of pipes equipped with access passages for inspection purposes. Regular inspection of these pipes can reveal the presence of leachate, if any should escape collection, and the situation would be quickly addressed.

If leachate did pool in the landfill, it would have to find a leak in the synthetic liner layer before it could continue. These layers are typically made of 60-ml (1/8 inch) HDPE, a highly durable and water tight material. During installation of this layer, thorough inspections are conducted on the entire surface with special attention paid to the seams. In fact, advanced equipment is available that is capable of detecting leaks as small as a pinhole.

In the unlikely event that leachate could find a breach in the synthetic layer, it would have to make it through a minimum of two feet of highly impermeable, recompacted clay. This layer is required by regulations to prevent liquid from traveling through it at a rate of no more than $1x10^{-7}$ cm per day. At that rate it would take approximately 19 years to travel through the two-foot clay layer. At that point, it would still have to penetrate a minimum of four feet of soil before it reached the groundwater.

I was told that more than 80% of all operating landfills are leaking hazardous liquids into the groundwater. Is that true?

No. In fact, there is no reliable scientific evidence to indicate that any of the modern lined landfills currently operating in North Carolina are leaking any liquids into the groundwater.

I hear that landfills attract "dump buzzards." Can we get diseases from these birds?

The permit will require a daily cover over all waste. This is intended to limit any problems, such as litter, odor, vermin, and birds. There is no reason to believe that buzzards will be a problem at this facility. There is no evidence that birds near a landfill would present any more of a threat of disease than birds found anywhere else.

What about mosquitoes and the diseases they carry?

Because of the efforts to keep the facility dry, along with the daily cover requirements, the landfill should not present a favorable breeding area for mosquitoes.

Don't landfills attract rats and other pests?

The permit will require a daily cover over all waste. This is intended to limit any problems, such as litter, odor, birds, and vermin such as rats. There is no reason to believe that vermin will be a problem at this facility.

Why do so many scientific reports I read say landfills are bad?

Many of these reports might be based on operations at older and/or unregulated landfills. Other reports might be based on studies that were not submitted for peer review and therefore are unreliable. There are organizations that benefit from presenting misleading and false information to bolster their membership and fundraising efforts. Some groups that produce these reports are simply obstructionist and pursue an agenda that strives to derail any attempts to site new businesses on political grounds. What you want to do is to be fully informed and study both sides of the issue before you make up your mind one way or another.

Don't landfills scare off other, cleaner, industries because businesses don't want to be located near them?

On the contrary, a well run and well-regulated landfill can attract new industry by providing a reliable and economical location to dispose of their waste. In many cases, property values increase when a modern solid waste facility opens in a community. In addition, industrial operations can be attracted with the promise of cheap and plentiful energy produced by the landfill.

Won't having a landfill near our community lower property values and scare off homebuyers?

With the private access road, buffer zones, and financial responsibility requirements, there is no reason to expect a devaluation of property values or an aversion by potential homebuyers.

Won't the landfill cause air pollution?

This facility will not contribute in any significant amount of polluting emissions to the air. In fact, a landfill gas management program is part of the strict compliance guidelines set forth by the federal government and the State of North Carolina.

What is the compliance history of Waste Industries?

Waste Industries is proud to have one of the best compliance records in our industry. We encourage you to contact the various regulators in the 8 states in which we operate and find out for yourself.

Who will be responsible for groundwater monitoring?

Waste Industries will utilize a qualified hydrologist to monitor the groundwater under the requirements of the approved permit and reports will be regularly submitted to NCDENR. See Volume II Environmental Statutes, Laws & Regulations, NCAC/General Statutes Solid Waste Management Regulations: Title 15A Subchapter 13B, Rules .0600, .1623, .1631 & .1632, for more details on this requirement.

How will they monitor the groundwater?

A series of monitoring wells will be installed according to requirements of the approved permit. Samples of groundwater will be collected and analyzed by a licensed laboratory and the results will be reported to NCDENR. See Volume II Environmental Statutes, Laws & Regulations, NCAC/General Statutes Solid Waste Management Regulations: Title 15A Subchapter 13B, Rules .0600, .1623, .1631 & .1632, for more details on this requirement.

How long will they have to monitor the groundwater?

The groundwater will be regularly monitored during operation and post closure according to requirements of the approved permit. (Post closure monitoring is currently required for a period of 30 years.)

What will happen if there is a post-closure problem?

A certified environmental contractor will be hired in the unlikely event of a serious post closure problem. See Volume II Environmental Statutes, Laws & Regulations, NCAC/General Statutes Solid Waste Management Regulations: Title 15A Subchapter 13B, Rules .1627, .1629, .1635, for more details on this requirement.

Who will pay if there is a post-closure problem?

Waste Industries is responsible for all costs associated with post closure events. The company must provide proof of financial assets in reserve to cover the remediation and repair in the event of a serious post-closure problem. See Volume II Environmental Statutes, Laws & Regulations, NCAC/General Statutes Solid Waste Management Regulations: Title 15A Subchapter 13B, Rule .1628; NCGA GS Chapter 130 – 309.27, Article 9 General Statutes: Chapter 130 – 309.27, Article 9; and RCRA Title 42, Chapter 82 Subchapter IV, Section 6943 for more details on this requirement.

How will they pay?

It is estimated that a minimum of $6,000,000 in post closure funds are required to pay for all post closure monitoring, maintenance, and to correct a problem, should one occur. See Volume II Environmental Statutes, Laws & Regulations, NCAC/General Statutes Solid Waste Management Regulations: Title 15A Subchapter 13B, Rule .1628; General Statutes: Chapter 130 – 309.27, Article 9 and RCRA Title 42, Chapter 82 Subchapter IV, Section 6943 for more details on this requirement.

What about noise and odors?

A 300 foot buffer of trees and shrubs will muffle noise. A daily cover of soil or synthetic material, or other approved method is required to limit odors.

What about truck traffic?

Truck traffic will be routed from US 17 to a private access road to be built and maintained by Waste Industries.

Who will get the money earned at the landfill?

Waste Industries will share revenue with the host community. The estimated amount shared revenue is $1,456,000 annually.

How is building this landfill going to help our community?

The community will benefit from increased revenues and lower waste disposal costs.

How could it hurt our community?

The strict rules governing landfills, the vigorous oversight and enforcement of environmental laws and regulations by NCDENR, combined with the excellent compliance record of Waste Industries will ensure that any impact to your community will be positive.

Why do they have to put it here?

The proposed site has been selected based on the exhaustive list of siting requirements required by the state of North Carolina. It has been determined that the needs of the community and the location of this site are ideal for all parties involved. Waste Industries is committed to ensuring that the community benefits in numerous ways from having this facility located at the proposed site.

Why should we support this plan?

This plan offers diverse advantages to the community with very minor, if any, drawbacks. It will provide numerous financial benefits in the form of lower waste disposal costs, increased tax revenue, funds from revenue sharing, and increased employment opportunities through increased economic development.

Why don't we just recycle all our waste?

Although source reduction, reuse, recycling, and composting can divert large portions of municipal solid waste from disposal, some waste is not feasibly recyclable and must be placed in landfills.

What are the benefits of recycling? Are there environmental and/or financial benefits that encourage recycling?

Recycling prevents the emissions of many greenhouse gases and water pollutants, saves energy, supplies valuable raw materials to industry, creates jobs, stimulates the development of greener technologies, conserves resources for future generations, and reduces the need for new landfills and incinerators.

What new products come from recycled products? What is the process?

Recycling creates new products such as aluminum cans, newspapers, cereal boxes, paper towels, egg cartons, carpeting, motor oil, car bumpers, nails, trash bags, glass containers, comic books, and laundry detergent bottles. Steps in the recycling process include collecting the recyclable components of municipal solid waste, separating materials by type, processing them into reusable forms, and purchasing and using the goods made with reprocessed materials.

What can be done to reduce the amount of trash in landfills?

Landfilling is a major component to integrated waste management. No matter what technologies are available, we can all help by reducing the amount of waste that we generate. This can be done in a variety of ways:

- Strictly follow your community's recycling program.
- Compost yard and organic wastes. Use them as nutrients for other plants.
- Mulch leaves and grass clippings.
- Buy recycled paper products and products with less packaging.
- Buy durable products rather than disposable ones.
- Reuse jars and containers.
- Recycle oil and old tires.

What happens to landfills once they are closed?

After the landfill is closed, the degradation and settlement of the contents eventually reaches completion and stabilization. Upon stabilization, some landfill sites are used as parks, playgrounds, lakes, or other facilities. John F. Kennedy Airport, La Guardia Airport and the Charlotte Motor Speedway were built on landfills.

How can I get involved in the planning process?

Waste Industries is offering a number of ways to become informed and actively participate in the planning process. A list of information resources is included in Appendix I, Information Source. Appendix III includes a list of public information and public participation opportunities that will be offered during the permitting process. If you would like to actively participate in workshops, advisory groups, public meetings, or just talk to a company representative, please contact Ven Poole, Vice President of Corporate Development, Waste Industries USA, Inc. 3301 Benson Drive, Raleigh, North Carolina 27609 800-207-6618 ext 3033 or email at ven@waste-ind.com

Glossary:

Access Road: Private road built and maintained by the landfill facility operator to reduce traffic on public roads.

Anaerobic: An environment without oxygen. A life or process that occurs in, or is not destroyed by, the absence of oxygen. Anaerobic Decomposition: Reduction of the net energy level and change in chemical composition of organic matter caused by microorganisms in an oxygen-free environment.

Aquifer: An underground geological formation, or group of formations, containing usable amounts of groundwater that can supply wells and springs.

Background/Baseline: 1. The concentration of a substance in an environmental media (air, water, or soil) that occurs naturally or is not the result of human activities; 2. In exposure assessment the concentration of a substance in a defined control area, during a fixed period of time before, during, or after a data-gathering operation.

Borrow Area: The area from which soil is taken to provide both daily cover for waste and ultimately for closing each cell of a landfill. The borrow area is included in the permit process for the landfill because of concerns about stormwater runoff and erosion.

Buffer zone: Strips of grass or other close-growing vegetation that separate other properties or waterways from an intensive land use area; also referred to as filter, vegetated filter strips and grassed buffers.

Cap: A fairly impermeable seal, usually composed of clay-type soil or a combination of clay soil and synthetic liner, which is placed over a landfill during closure. The cap serves to minimize amounts of leachate during biodegradation of the waste by keeping precipitation from percolating through the landfill. The cap also keeps odors down and animal scavengers from gathering.

Cell: In solid waste disposal, designated areas where waste is dumped, compacted, and covered with layers of dirt on a daily basis.

Closure: The procedure a landfill operator must follow when a landfill reaches its legal capacity for solid waste: ceasing acceptance of solid waste and placing a final cap on the landfill site.

Closure/Post-Closure Fund: The combination of financial accounts required to properly close and care for the landfill for 30 years after closure.

Closure Plan: A required section of the permitting process that will detail facility closing when the landfill reaches capacity.

Commercial Waste: All solid waste emanating from business establishments such as stores, markets, office buildings, restaurants, shopping centers, and theaters.

Community Relations: In this case, the effort to establish two-way communication with the public to create understanding of the facts related to landfills and landfill operations, to ensure public input into decision-making processes related to affected communities, and to make certain that Waste Industries is aware of and responsive to public concerns.

Combustion/Incineration: Burning MSW can generate energy while reducing the amount of waste by up to 90 percent in volume and 75 percent in weight. EPA's Office of Air and Radiation is primarily responsible for regulating incinerators because air emissions from combustion pose the greatest environmental concern.

Compaction: The process by which solid waste is densely packed, generally into cells, by rolling and tamping.
Compliance: Conformity in fulfilling and following legal requirements in regards to landfill regulations.
Compliance History: Regulatory compliance history reports provide detailed findings of past government investigations.
Construction and Demolition (C&D) Waste: Building materials, dredging materials, tree stumps, and rubble waste resulting from construction, remodeling, repair, and demolition of homes, commercial buildings and other structures and pavements.
Cover Material: Soil used to cover compacted solid waste in a sanitary landfill.
Daily Cover: The placement of soil or synthetic tarps over landfill cells, required daily to keep precipitation from waste, reduce odors and keep animals from scavenging through waste.
Demolition Debris: See **Construction and Demolition (C&D) Waste.**
Drop-off: Recyclable materials collection method in which individuals bring them to a designated collection site.
DENR: Department of Environment and Natural Resources
Dump: A land site where wastes are discarded in a disorderly or haphazard fashion without regard to protecting the environment. Uncontrolled dumping is an indiscriminate and illegal form of waste disposal. Problems associated with dumps include multiplication of disease-carrying organisms and pests, fires, air and water pollution, unsightliness, loss of habitat and personal injury.
DWM: (NCDENR) Division of Waste Management
Encapsulation: In solid waste disposal, the sealing of solid waste with bottom liners and a synthetic and clay cap.
Endangered Species: Animals, birds, fish, plants, or other living organisms threatened with extinction by human-caused or natural changes in their environment. Requirements for declaring a species endangered are contained in the Endangered Species Act.
Enforcement: U.S. EPA, NCDENR, or local legal actions to obtain compliance with environmental laws, rules, regulations, or agreements and/or obtain penalties or criminal sanctions for violations. Enforcement procedures may vary, depending on the requirements of different environmental laws and related implementing regulations. If investigations by U.S. EPA and NCDENR uncover willful violations, criminal trials and penalties can be sought.
Environment: The sum of all external conditions affecting the life, development and survival of an organism.
Environmental Assessment: An environmental analysis prepared pursuant to the Nation

NCDENR

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, Site Study Technical Review.

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. The hydrogeologic portion of the application has been submitted under separate cover and has been reviewed by the section hydrogeologist. This letter addresses some of the technical aspects of the subject application. There will be more review forthcoming at a later date of the engineering related portions of the Site Study. Please address the following:

1. In accordance with NCGS 130A-294(b1)(4) the applicant must request the unit of local government with jurisdiction of the facility to issue a determination as to whether the local government has in effect a franchise, zoning, subdivision or land-use planning ordinance applicable to the sanitary landfill. Provide the appropriate determination from Camden County. In addition, Rule 15A NCAC 13B .1618 (c)(5)(B) requires a letter from the unit of local government having zoning jurisdiction over the property as to whether the facility meets the zoning requirements or the property is not zoned. It is noted that a zoning permit has been provided in the application. Please provide a letter in addition to the zoning permit.

2. In accordance with Rule .1618 (c)(5)(C), provide a letter from the unit of local government responsible for the implementation of a comprehensive solid waste management plan setting forth a determination that the operation of the proposed municipal solid waste landfill is consistent with the approved solid waste management plan.

3. With respect to Rule .1618(c)(5)(A), please provide documentation that the requirements of the rule, subparagraphs (i)-(iii), have been met.

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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4. Rule .1618 (c)(5)(A)(iv) requires action by the applicant. Please provide verification that the rule has been complied with.

These comments are intended to expedite the review of the referenced application, and in no way do they restrict the Section's right to request additional information during the technical review process. If you have any additional questions or need help, please feel free to call me at (919) 733-0692 Ext. 343. My email address is: Ed.Mussler@ncmail.net

Sincerely,

Edward F. Mussler III, PE
Environmental Engineer
Solid Waste Section

Cc: ✔D. Jim Barber, Head, Permitting Branch
Chuck Boyette, DWM
Bobby Lutfy, DWM

NCDENR

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. 130A-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 issude 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.

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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

CDM
5400 Glenwood Avenue, Suite 300
Raleigh, North Carolina 27612
tel: 919 787-5620
fax: 919 781-5730

Received
SEP 2 2004
Solid Waste Section

September 13, 2004

Mr. Bobby Lutfy
Hydrogeologist
Solid Waste Section
North Carolina Department of Environment and Natural Resources
1646 Mail Service Center
Raleigh, North Carolina 27699-1646

RE: Black Bear Disposal, LLC
a subsidiary of Waste Industries, U.S.A., Inc.
Site Study, March 2004
Camden County, North Carolina

Dear Mr. Lutfy:

CDM is submitting this letter in response to the Site Study comments received in your letter dated August 5, 2004 regarding the above referenced project. The comments have been addressed individually with discussions and references both within the letter and the revised Site Study Report sections. The revised Site Hydrogeologic Report is being re-submitted, in its entirety, in a three-ring binder. Solid Waste Section comments are provided in italics, with the CDM response beneath. Please find enclosed three copies of this response letter along with all revised report sections and figures. Modified report sections, figures, and maps have been formatted and prepared so that the complete Site Study Report can easily be updated with the new information. A list of revisions to the Site Study Report is provided at the end of this letter to provide guidance regarding the insertion of new information and replacement of existing text, figures, and maps.

Section 2 - Regional Characterization Study:

Comment: *2.2 There is no USGS Topographic Map as required by Rule .1618 (c) (1) (A).*

Response: The USGS Topographic Map is included as Figure 2-1. Although the map appears to be an aerial photograph, this is the map considered by USGS to be the Lake Drummond SE quadrangle.

Comment: *2.3 The Report states: "The properties with private wells are noted on Figure 2-1". However these properties and wells do not appear to be noted on Figure 2-1.*

Response: Section 2.3 has been revised to delete the reference to Figure 2-1 since the wells are not shown on the figure. Section 3.7 references Figures 3-1(A) and 3-1(B), which do depict the approximate locations of the wells. A sentence has been added to Section 3.7 to refer to the wells shown on Figures 3-1(A) and 3-1(B).

Comment: *2.4 Likewise, the residential properties do not appear to be designated on Figure 2-1, as stated in the Report.*

Response: Section 2.4 has been revised to reference a new Figure 2-5, which has been added to depict the residential subdivisions.

Comment: *2.5 I assume, though it is not stated in the Report, nor is it shown on Figure 2-3, that the primary waste transportation route is via U.S. Hwy. 17.*

Response: Section 2.5 has been revised to include a sentence confirming that the primary waste transportation route for the landfill will be U.S. Hwy. 17. CDM has initiated discussions with the North Carolina Department of Transportation regarding the proposed facility access road.

Section 3 - Local Characterization Study:

Comment: *3.2 There is no map showing existing topography, surface water drainage patterns, etc., as required by Rule .1618(c)(2)(G).*

Response: Figures 3-2(A) and 3-2(B) have been added to Section 3. These figures show existing topography and the landfill facility boundary as well as the 2,000-foot perimeter. The figures are drawn to a scale of 1"=400'. The figures are referenced in Section 3.9.

Comment: *3.10 The Report states: "there are no 100-year floodplains within the 2000-foot perimeter", however Figure 3-1B shows a 100-year flood area at the northeast corner of the 2000-foot perimeter. The FEMA maps referenced should also be included in the Report.*

Response: Section 3.10 has been revised to state that there are no 100-year floodplains within the landfill facility boundary. However, the northeast corner of the 2,000-foot perimeter does include an area within the 100-year floodplain. The FEMA map used in this determination is referenced in Section 3.10, and a copy

of the map that was downloaded from FEMA's website is included for your reference as Attachment 3-2.

Section 4 - Site Hydrogeologic Investigation:

Comment: *The review comments for the Site Hydrogeologic Investigation Report appear after the Site Study review, since it was submitted as a separate report.*

Response: Responses are provided after the Site Study review comments.

Section 5 - Location Restrictions:

Comment: *5.6 The USGS is constantly updating and revising the Seismic Hazard Maps. Have more recent maps been checked for the proposed landfill area? Do the maps indicate an increasing or decreasing level of concern regarding seismic hazards for this location?*

Response: The USGS published an update for the National Seismic Hazard Maps in October 2002. CDM reviewed the updated map, which shows peak horizontal acceleration with a 2 percent probability of exceedance in 50 years (equivalent to 90 percent probability of not being exceeded in 250 years). The updated map, which is provided as an insert for Attachment 5-3, still shows the Camden County site to be located between the 0.04g and 0.06g lines. The site is therefore not located within a seismic impact zone. Documentation for the 2002 Update of the National Seismic Hazard Maps is:

Arthur D. Frankel et al.
USGS Open-File Report 02-420

Comment: *5.7 Considering the height of proposed waste fill and the associated loading, and considering the saturated soils and low Standard Penetration Resistance blow count values recorded in most of the Boring Logs, it appears that soil liquefaction is a potential concern. While it is not likely that this would make the site totally unsuitable, this could greatly affect the amount of waste disposal at the site. Please provide at least some preliminary evaluation of the potential for soil liquefaction.*

Response: CDM performed a preliminary evaluation of liquefaction potential using the procedures in the EPA document" RCRA Subtitle D (258) Seismic Design Guidance for Municipal Solid Waste Landfill Facilities" dated April 1995. Based on the results of the analyses, there does not appear to be a potential for liquefaction at the site. The Preliminary Geotechnical Evaluation (Section 8) has been modified to include a discussion on liquefaction (Paragraph 8.10). The calculation has been included as Appendix H to Section 8 of the Site Study report.

Comment: *5.9 The Report states: "The Great Dismal Swamp is approximately 7,000 feet west of the proposed facility boundary along the west side of US 17". In the Attachment 5-5 Figure, the distance appears to be only about half that stated in the Report.*

Response: Section 5.9 has been revised to state that the Great Dismal Swamp is approximately 3,500 feet west of the proposed facility boundary.

Comment: *Attachment 5-2 In the Attachment for Wetlands Information, there is mention of fairly extensive and deep mining operations in the vicinity of the proposed landfill. Any existing or proposed mining or borrow activities, on-site or off-site, in the vicinity of the proposed facility that would have any potential to affect hydrology within the proposed facility needs to be clearly identified in the Report. The location, size, depth, water pumping activities, duration, post-closure use, etc. for any mines or borrow pits needs to be clearly identified.*

Response: The hydrology impacts of the nearby mining operations are addressed in CDM's response to the Site Hydrogeologic Report -Section 1.2 comment. Section 4 of the Site Hydrogeologic Report has been updated to include additional discussion on the mining operations.

Section 7 - Facility Plan:

Comment: *7.1 What is the exact acreage for the proposed facility?*

Response: Based upon the current property line, the proposed facility is 704 acres, of which 490 acres will be used for waste disposal. Paragraph 7.1 has been modified to reflect the actual facility acreage.

Comment: *Drawing SD-2, Site Development, shows the majority of the required minimum 300 foot buffer taken up with an Access Road and Borrow Pit/Stormwater Pond. One of the main purposes of the buffer is to provide an area for ground-water monitoring, and should there be a contaminant release, an area for attenuation, water quality assessment, and possible corrective action. Generally borrow pits are not permitted in the buffer area or within 300 feet of the waste disposal unit, while sedimentation basins constructed at least 2 feet above the seasonal high water table are sometimes allowed in the buffer area, there must remain sufficient room for ground-water monitoring and possible assessment and remediation.*

Response: The planned width of the access road is 60 feet and the edge of the road will be 60 feet from the edge of waste. It is intended that the monitoring wells will be placed on the outside of the access road (in the road shoulder), between the paved road and the sedimentation basins at a distance of approximately 120 feet from the edge of waste. Preliminary design indicates that there will be approximately 30 to 50 feet between the outside of the sedimentation basins and the facility boundary that can be utilized for groundwater assessment and remediation, if necessary. This should provide sufficient space for the installation of additional monitoring wells or any corrective measures.

Based on the hydrogeologic information acquired thus far, it is anticipated that the site can be adequately monitored with several shallow monitoring wells and surface water sampling locations. The sedimentation basins will intercept shallow groundwater flow and thus, serve as an effective barrier to possible contaminant migration in the unlikely event of a release from the landfill. Due to the shallow depth to groundwater (< 2 feet), it will be necessary for the sedimentation basins to intersect the water table. If landfill constituents are detected in the groundwater, sampling will be conducted at the stormwater pond outfalls to determine if these constituents are present in the stormwater ponds.

Section 8 - Preliminary Geotechnical Evaluation:

Comment: *8.1 The facility acreage, landfill acreage, and landfill height are all inconsistent with values stated in Section 7 and other parts of the Report.*

Response: The text has been revised to reflect the correct acreage for both the facility and landfill.

Comment: *8.5.2 A layer of "fill" is described below the top soil. How and when could a fill" layer of 0 to 8 feet of soil be placed below the top soil?*

Response: The text of the Report has been revised to address these comments.

Comment: *Table 8-1 For Boring B-1, the Strata Thickness do not add up to the Total Drilling Depth. It appears that the Sand, Sand with shell fragments, and Sand (total) values are incorrect. After finding errors in the table for B-1, I did not check the other borings. Please check the data in Table 8-1 for accuracy and make revisions as necessary.*

Response: Table 8-1 of the Report has been checked and revised to address these comments. The boring logs in Appendix A have been updated.

Comment: *Table 8-2 For Boring B-1, according to the Boring Log the sample interval from 33 to 35 feet is sample S-10, a fine silty sand. This differs from the information on the table. After finding apparent errors in the table for B-1, I did not check the other values. Please check the data in Table 8-2 for accuracy and make revisions as necessary.*

Response: Table 8-2 of the Report has been checked and revised to address these comments. The boring logs in Appendix A have been updated

Comment: *Table 8-3 The Grain Size Analysis data for the two B-7 samples appears to be reversed. I was not able to locate the support documentation in Appendix B for some of the values in the table. After finding some errors in my initial evaluation of the B-7 samples, I did not check the other values. Please check the data in Table 8-3 for accuracy and make revisions as necessary.*

Response: Table 8-3 of the Report has been checked and revised to address these comments.

Section 4 - Site Hydrogeologic Report:

Comment: *Rule .1603(b)(2)(A) requires "The text of the application shall: Be submitted in a three ring binder."*

Response: The Revised Site Hydrogeologic Report and all copies are being submitted in three-ring binders.

Comment: *Section 1.2: Since the ditches and borrow areas largely control surface water flow and shallow groundwater flow, it is very important to understand the surface water flow patterns and present this information in detail in the Report. What are the flow patterns in the various ditches?*

Response: The flow patterns in the main ditches were verified during a July 30, 2004 site visit. During this visit, it was determined that flow at the site in both the northern and southern drainage ditches is toward the west, ultimately discharging to the Dismal Swamp Canal. There is a smaller ditch running north-south connecting the two ditches. The large, main ditches accept water from the smaller irrigation ditches. Surface water flow directions in the main ditches are indicated with arrows on Sheet 1. Flow directions in the small irrigation ditches are not indicated. The smaller ditches do not intersect the water table and are intended to handle surface run-off. Flow in the small irrigation ditches is to both the north and south ditches, depending on amount of precipitation.

Comment: *Section 1.2 continued: Where are existing and proposed borrow pits located? What are the proposed depths of borrow pits? How long are the borrow pits to be in operation? What are the pumping rates and volumes and how is the pumped water dispersed? A thorough understanding of these things is necessary in order to understand the hydrologic regime of the upper portion of the surficial aquifer.*

Response: The text of the Report (Section 4.2.2) has been revised to address these comments.

Comment: *Section 1.3: Please clarify the discrepancies within the Report regarding the amount of total acreage in the proposed facility and the acreage to be used for landfilling.*

Response: The text has been revised to reflect the correct acreage for both the facility and landfill.

Comment: *Table 1: For those Boring Logs that included TOC Elevation values, the TOC Elevations in Table 1 do not match those on the Boring Logs. There is no TOC Elevation data provided on the Boring Logs for GP-1 through GP-34 and B-35 through B-44. What is the source of TOC Elevations for these borings. Likewise, there is a lack of Ground Elevation data for many of the borings on the Borings Logs.*

Response: Both Table 1 and the Boring Logs have been revised to reflect correct TOC and Ground Elevation data.

Comment: *Table 1: The Screen Interval values for Borings B-1 and B-7 differ with those on the Boring Logs. For many of the borings, the Sand Filter Interval values and Bentonite Seal values differ from those on the Boring Logs.*

Response: The screen interval, sand filter, and bentonite seal values provided on Table 1 were correct as reported. The values depicted on the boring log have been corrected.

Comment: *Table 2: It is not clear how the USCS Soil Classification was established for B-26, since there are no Atterberg Limits. I was not able to find documentation for the Porosity data? What is the source of the Estimated Effective Porosity Values? Based on the soil analyses and the Soil Classification Triangle, I calculated different Effective Porosity values from those in Table 2.*

Response: As noted on the Particle Size Distribution Test Report, the USCS for B-26 was established by using ASTM-D2488 – Standard Practice for Description and Identification of Soils (Visual-Manual Procedure).

The porosity data was calculated using the initial void ratios calculated during the hydraulic conductivity testing reported in Appendix B. Table 2 has been revised to show initial void ratios for the Shelby Tube samples from B-2, B-7, and B-26.

The estimated effective porosity values were obtained from the Soil Classification Triangle showing the relationship between particle size and specific yield (effective porosity) as described by Johnson, 1967. Table 2 has been revised to show re-calculated effective porosity values for all samples. In addition, Johnson's Soil Classification Triangle has been included in the *Revised Site Hydrogeologic Report.*

Comment: *Table 3: Refer to previous comments regarding the TOC Elevations.*

Response: Table 3 has been revised and is included in the *Revised Site Hydrogeologic Report.*

Comment: *Section 1.7: The data is insufficient for providing "Tabulations of stabilized water table elevations over time in order to develop an understanding of seasonal fluctuations in the water table," as required by .1623(a)(7)(B). There is no "estimation of long-term seasonal high water table" as required by Rule .1623(a)(7)(C). There is no "discussion of any natural or man-made activities that have the potential for causing water table fluctuations," as required by Rule .1623(a)(7)(D). As referenced earlier in this letter, this information is especially critical for understanding the hydrology of this site.*

Response: The text of Section 1.7 (renamed 4.7) has been revised to address all of the above comments. The revised text includes a discussion of additional water levels collected since the Site Hydrogeologic Report which help to estimate long-term seasonal high water table elevations. The revised text also includes a discussion of the man-made causes for water table fluctuation; particularly the borrow pits to the north.

Comment: *Section 1.8.1.2: I was not able to calculate the same Screen Midpoint Separation values that appear in the chart. This may be due to the discrepancies noted in Table 1. Was just the saturated portion of the shallow well screens used?*

Response: The values presented in Section 1.8.1.2 (renamed 4.8.1.2) have been verified. The entire screened interval in the shallow piezometers was used as opposed to just the saturated portions. The section has been revised to better clarify how the vertical gradient information was calculated.

Comment: *Table 6: It is not clear how the Hydraulic Conductivity values were determined. Appendix D has raw data and graphs, but I was not able to find any actual Hydraulic Conductivity calculations or values.*

Response: Table 6 has been revised and the hydraulic conductivity values have been recalculated.

Comment: *Table 7: What is the source of the Horizontal Gradient values, Effective Porosity values, and Permeability values?*

Response: The source of the Horizontal Gradient values is shown on the Table 7. Horizontal Gradient values were calculated based on the potentiometric contour map from February 6, 2004. The piezometers used for the calculations

were chosen to represent each portion of the surficial aquifer (shallow, intermediate, deep).

The Effective Porosity values represent an average of the calculated effective porosity values from the samples presented in Table 2. Average values were used due to the relative homogeneity of the surficial aquifer material.

The Permeability values used represent minimum and maximum values for all piezometers tested within each representative portion of the surficial aquifer.

Drawings:

Comment: *The facility boundaries are not indicated on Sheets 1 or 2.*

Response: Facility boundaries have been added to Sheets 1 and 2.

Comment:- *The Ground Elevation for Boring GP-33 is incorrect on Sheet 1.*

Response: The Ground Elevation for Boring GP-33 on Sheet 1 has been corrected.

Comment: *For Sheet 2, the Groundwater Contours appear inaccurate in some locations. Examples: in the vicinity of B-2 Shallow, B-27, GP-29. At other locations it appears the contours are not best proportioned based on the data available. Where is the ground-water divide and south-easterly element of ground-water flow that is referenced in the Report?*

Response: Sheet 2 has been revised based on additional data collected on July 28, 2004. The discussion of the potentiometric contour map and flow originally presented in Section 1.8.1 (renamed 4.8.1) has also been revised based on the new interpretation.

Locations B-2 shallow, B-27, and GP-29 were installed in order to assess the effects of the borrow pits on groundwater elevations and also to assess the area as a possible borrow source. Due to the lack of sufficient groundwater data in that area, groundwater contours will not be inferred.

Due to the large size of the site and related spacing of piezometers, some subtleties within the groundwater contours may have been overlooked. As mentioned above, Sheet 2 has been revised and updated with the piezometers installed on July 28, 2004. Based on the new data and improved coverage, there

appears to be a recharge area in the south-east portion of the site. The contours indicate that generally flow is from the southeast to the west. The large borrow pit is influencing flow, creating a discernable change in groundwater elevations to the north on the western portion of the site. The previously perceived groundwater divide and easterly flow have been resolved.

Comment: *Sheet 3: What is the basis for defining the different hydrogeologic units for many of the borings that do not have Boring Log data provided. In some random spot checks, I was not able to match Ground Elevations and soil profiles for some of the borings.*

Response: All GP borings were installed with a GeoProbe® rig and used for supplementing groundwater table information. In addition, borings B-35 through B-44 were shallow (15 feet) mud-rotary borings installed for supplementary water table information only. Due to the relative homogeneity of the surficial aquifer and the shear size of the site, stratigraphic information was inferred for those shallow borings.

Cross-section A-A' is more than 2 miles long. Due to the scale and the overall homogeneity of the surficial aquifer material, field samples collected while drilling were grouped into general categories. As described in the Report and on Sheet 3, the dominant lithology of the site is fine sand with varying amounts of silt and shell. In some cases, materials that may be described as silty fine sand or fine sandy silt with or without shells, etc. have all been grouped together. Distinct bands or beds of significant size (generally greater than 5 feet) were maintained as separate units within the surficial aquifer (clean fine sand, medium sand, or any clay lenses).

Appendix A - Boring Logs and Well Construction Diagrams:

Comment: *Several of the deep borings were drilled significantly deeper than where the well screens were placed. How were the bottoms of these holes plugged?*

Response: Three borings (B-1, B-3, and B-7) were advanced to 100 feet in the surficial sand aquifer; however none of the borings were screened on the bottom of the boring. In all cases, the sand filter material was placed in the bottom of the boring and extended approximately 2-feet above the top of the screen, as shown in the well construction diagrams.

CDM

Comment: *Note previous comments regarding discrepancies in TOC elevations between the Boring Logs and the tables.*

Response: All discrepancies between the Boring Logs and Tables have been rectified.

Comment: *Many of the borings have no boring log information, ground surface elevations, or TOC elevations.*

Response: All GP borings and the shallow mud-rotary borings (B-35 through B-44) were installed to obtain water table information only. All of those boring logs have been revised to show ground and TOC elevations.

Appendix D - Slug Test Data:

Comment:- *Note previous comment regarding apparent lack of hydraulic conductivity calculations and values.*

Response: Table 6 has been revised to show calculations and values.

We hope that you find that the additional information and revisions provided in this response letter sufficiently answer your questions and address your comments. A revised, complete copy of the site study will be submitted once all comments and questions are resolved. If you have any questions, please do not hesitate to contact me at (919) 787-5620.

Very truly yours,

Tim Grant

Timothy D. Grant, P.G.
Principal
Camp Dresser & McKee

NORTH CAROLINA LICENSED SEAL 1412 GEOLOGIST TIMOTHY DAVID GRANT

Timothy D. Grant
9-13-04

cc: Jerry Johnson, Waste Industries
Jim Barber, SWS
Ed Mussler, SWS
Martin Sanford, CDM

CDM

List of Revisions to the Black Bear Disposal Facility Site Study Report

Table of Contents
- Replace Table of Contents with enclosed.

Section 2
- Replace Section 2 in its entirety, with the exception of the figures.
- Add Figure 2-5 at the end of the section.

Section 3
- Replace Section 3 in its entirety, with the exception of Attachment 3-1.
- Replace Figures 3-1(A) and 3-1(B) with the enclosed figures.
- Add Attachment 3-2 (FEMA map) to the end of the section.
- Add Figures 3-2(A) and 3-2(B) to the end of the section.

Section 4
- Replace Section 4 in its entirety with the enclosed Hydrogeologic Report (a stand-alone document).

Section 5
- Replace Pages 5-7 and 5-8 with enclosed.
- Add the enclosed seismic map figure to the end of Attachment 5-3.

Section 7
- Replace Pages ~~5-1~~ 7-1 and ~~5-2~~ 7-2 with enclosed.

Section 8
- Replace Section 8 in its entirety with enclosed, with exception of figures and appendices.
- Replace Appendix A with enclosed.
- Add Appendix H at the end of the section.

NCDENR
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

August 5, 2004

Mr. Thomas Yanoschak, P.E.
and Mr. Timothy Grant, L.G.
Camp Dresser & McKee
5400 Glenwood Avenue, Suite 300
Raleigh, North Carolina 27612

RE: Black Bear Disposal, LLC,
a subsidiary of Waste Industries, USA, Inc.
Site Study, March 2004
Camden County, North Carolina

Dear Mr. Yanoschak and Mr. Grant,

The above referenced Site Study for the proposed Black Bear Disposal Facility has been reviewed for hydrogeologic concerns by the Solid Waste Section. There appears to be a number of items in the Report that require clarification, revision, or additional information. Please respond to the following questions and comments:

Section 2 - Regional Characterization Study:

2.2 There is no USGS Topographic Map as required by Rule .1618(c)(1)(A).

2.3 The Report states: "The properties with private wells are noted on Figure 2-1". However these properties and wells do not appear to be noted on Figure 2-1.

2.4 Likewise, the residential properties do not appear to be designated on Figure 2-1, as stated in the Report.

2.5 I assume, though it is not stated in the Report, nor is it shown on Figure 2-3, that the primary waste transportation route is via U.S. Hwy. 17.

Section 3 - Local Characterization Study:

3.2 There is no map showing existing topography, surface water drainage patterns, etc., as required by Rule .1618(c)(2)(G).

3.10 The Report states: "there are no 100-year floodplains within the 2000-foot perimeter", however Figure 3-1B shows a 100-year flood area at the northeast corner of the 2000-foot perimeter. The FEMA maps referenced should also be included in the Report.

Section 4 - Site Hydrogeologic Investigation:

- The review comments for the Site Hydrogeologic Investigation Report appear after the Site Study review, since it was submitted as a separate report.

Section 5 - Location Restrictions:

5.6 The USGS is constantly updating and revising the Seismic Hazard Maps. Have more recent maps been checked for the proposed landfill area? Do the maps indicate an increasing or decreasing level of concern regarding seismic hazards for this location?

5.7 Considering the height of proposed waste fill and the associated loading, and considering the saturated soils and low Standard Penetration Resistance blow count values recorded in most of the Boring Logs, it appears that soil liquefaction is a potential concern. While it is not likely that this would make the site totally unsuitable, this could greatly affect the amount of waste disposal at the site. Please provide at least some preliminary evaluation of the potential for soil liquefaction.

5.9 The Report states: "The Great Dismal Swamp is approximately 7,000 feet west of the proposed facility boundary along the west side of US 17". In the Attachment 5-5 Figure, the distance appears to be only about half that stated in the Report.

Attachment 5-2 In the Attachment for Wetlands Information, there is mention of fairly extensive and deep mining operations in the vicinity of the proposed landfill. Any existing or proposed mining or borrow activities, on-site or off-site, in the vicinity of the proposed facility that would have any potential to affect hydrology within the proposed facility needs to be clearly identified in the Report. The location, size, depth, water pumping activities, duration, post-closure use, etc. for any mines or borrow pits needs to be clearly identified.

Section 7 - Facility Plan:

7.1 What is the exact acreage for the proposed facility?

Drawing SD-2, Site Development, shows the majority of the required minimum 300 foot buffer taken up with an Access Road and Borrow Pit/Stormwater Pond. One of the main purposes of the buffer is to provide an area for ground-water monitoring, and should there be a contaminant release, an area for attenuation, water quality assessment, and possible corrective action. Generally borrow pits are not permitted in the buffer area or within 300 feet of the waste disposal unit. While sedimentation basins constructed at least 2 feet above the seasonal high water table are sometimes allowed in the buffer area, there must remain sufficient room for ground-water monitoring and possible assessment and remediation.

Section 8 - Preliminary Geotechnical Evaluation:

8.1 The facility acreage, landfill acreage, and landfill height are all inconsistent with values stated in Section 7 and other parts of the Report.

8.5.2 A layer of "fill" is described below the top soil. How and when could a "fill" layer of 0 to 8 feet of soil be placed below the top soil?

Table 8-1 For Boring B-1, the Strata Thickness do not add up to the Total Drilling Depth. It appears that the Sand, Sand with shell fragments, and Sand (total) values are incorrect. After finding errors in the table for B-1, I did not check the other borings. Please check the data in Table 8-1 for accuracy and make revisions as necessary.

Table 8-2 For Boring B-1, according to the Boring Log the sample interval from 33 to 35 feet is sample S-10, a fine silty sand. This differs from the information on the table. After finding apparent errors in the table for B-1, I did not check the other values. Please check the data in Table 8-2 for accuracy and make revisions as necessary.

Table 8-3 The Grain Size Analysis data for the two B-7 samples appears to be reversed. I was not able to locate the support documentation in Appendix B for some of the values in the table. After finding some errors in my initial evaluation of the B-7 samples, I did not check the other values. Please check the data in Table 8-3 for accuracy and make revisions as necessary.

Section 4 - Site Hydrogeologic Report:

- Rule .1603(b)(2)(A) requires "The text of the application shall: Be submitted in a three ring binder".

1.2 Since the ditches and borrow areas largely control surface water flow and shallow ground-water flow, it is very important to understand the surface water flow patterns and present this information in detail in the Report. What are the flow patterns in the various ditches? Where are existing and proposed borrow pits located? What are the proposed depths of borrow pits? How long are the borrow pits to be in operation? What are the pumping rates and volumes and how is the pumped water dispersed? A thorough understanding of these things is necessary in order to understand the hydrologic regime of the upper portion of the surficial aquifer.

1.3 Please clarify the discrepancies within the Report regarding the amount of total acreage in the proposed facility and the acreage to be used for landfilling.

Table 1 For those Boring Logs that include TOC Elevation values, the TOC Elevations in Table 1 do not match those on the Boring Logs. There is no TOC Elevation data provided on the Boring Logs for GP-1 through GP-34 and B-35 through B-44. What is the source of TOC Elevations for these borings. Likewise, there is a lack of Ground Elevation data for many of the borings on the Boring Logs.

Table 1 The Screen Interval values for Borings B-1 and B-7 differ with those on the Boring Logs. For many of the borings, the Sand Filter Interval values and Bentonite Seal values differ from those on the Boring Logs.

Table 2 It is not clear how the USCS Soil Classification was established for B-26, since there are no Atterberg Limits. I was not able to find documentation for the Porosity data? What is the source of the Estimated Effective Porosity values? Based on the soil analyses and the Soil Classification Triangle, I calculated different Effective Porosity values from those in Table 2.

Table 3 Refer to previous comments regarding TOC Elevations.

1.7 The data is insufficient for providing "Tabulations of stabilized water table elevations over time in order to develop an understanding of seasonal fluctuations in the water table", as required by Rule .1623(a)(7)(B). There is no "estimation of the long-term seasonal high water table" as required by Rule .1623(a)(7)(C). There is no "discussion of any natural or man-made activities that have the potential for causing water table fluctuations", as required by Rule .1623(a)(7)(D). As referenced earlier in this letter, this information if especially critical for understanding the hydrology for this site.

1.8.1.2 I was not able to calculate the same Screen Midpoint Separation values that appear in the chart. This may be due to the discrepancies noted in Table 1. Was just the saturated portion of the shallow well screens used?

Table 6 It is not clear how the Hydraulic Conductivity values were determined. Appendix D has raw data and graphs, but I was not able to find any actual Hydraulic Conductivity calculations or values.

Table 7 What is the source of the Horizontal Gradient values, Effective Porosity values, and Permeability values?

Drawings:

- The facility boundaries are not indicated on Sheets 1 or 2.
- The Ground Elevation for Boring GP-33 is incorrect on Sheet 1.

- For Sheet 2, the Ground-water Contours appear inaccurate in some locations. Examples: in the vicinity of B-2 Shallow, B-27, GP-29. At other locations it appears the contours are not best proportioned based on the data available. Where is the ground-water divide and south-easterly element of ground-water flow that is referenced in the Report?

- Sheet 3: What is the basis for defining the different hydrogeologic units for many of the borings that do not have Boring Log data provided. In some random spot checks, I was not able to match Ground Elevations and soil profiles for some of the borings.

Appendix A - Boring Logs and Well Construction Diagrams:

- Several of the deep borings were drilled significantly deeper than where the well screens were placed. How were the bottoms of these holes plugged?

- Note previous comments regarding discrepancies in TOC elevations between the Boring Logs and the tables.

- Many of the borings have no boring log information, ground surface elevations, or TOC elevations.

Appendix D - Slug Test Data:

- Note previous comment regarding apparent lack of hydraulic conductivity calculations and values.

The proposed Black Bear Disposal Facility in Camden County is a somewhat unique site in that the hydrology of the shallow portion of the uppermost aquifer is largely controlled by man-made features, such as ditches, borrow pits, sedimentation basins, and the landfill itself. Therefore it is critical that the effect of all these features be clearly understood regarding how they shape the ground and surface water flow regime. While there does not appear to be any thing that would preclude landfill development, these issues could dramatically affect the design of the landfill and its associated appurtenances, such as the erosion and sedimentation control features. It will be critical to design the landfill facility in such a way so as to allow adequate buffer for effective ground and surface water monitoring. The buffer must also be sufficient to allow for possible water quality assessment and corrective action, if this should ever become necessary.

Please respond to the questions and comments raised above, and provide additional information and revisions as necessary. If you have any questions or would like to arrange for a meeting to discuss these issues, you may contact me at (919) 733-0692, extension 258.

Sincerely,

Bobby Lutfy

Bobby Lutfy
Hydrogeologist
Solid Waste Section

cc: Jim Barber Solid Waste Section
[redacted] Solid Waste Section
Chuck Boyette SWS - Washington