



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

January 8, 2008

Certified Mail: Return Receipt Requested

Mr. Jim W. Perry, President and Chief Executive Officer
Waste Industries USA, Inc.
3301 Benson Drive, Suite 601
Raleigh, NC 27609

Re: Permit Application and \$50,000 Application Fee for proposed Black Bear Disposal, LLC Landfill

Dear Mr. Perry:

On September 11, 2007, our office sent you a letter regarding the application of Waste Industries, USA, Inc. ("Waste Industries") and Black Bear Disposal LLC ("Black Bear") for a permit authorizing the construction and operation of a landfill in Camden County. This letter notified you of several recent changes in state law regarding the regulation of solid waste. One of these changes was the enactment of North Carolina General Statute § 130A-295.8 which now requires permit applicants to pay permit application fees according to the schedule contained in the statute. Accompanying this letter was an invoice in the amount of \$50,000 which represented the permit application fee applicable to your application.

This letter also referenced several other changes contained in recent legislation by the North Carolina General Assembly which have resulted in additional requirements for permit applications for new sanitary landfills pending at the time of the enactment of these statutes. We informed you that your companies' application was currently incomplete, and we also noted that changes contained in these new laws may render your facility site unsuitable. For this reason, we informed you that you had the option of either choosing to withdraw your application or, alternatively, submitting the application fee so as to allow our agency to continue its review of your application.

On November 29, 2007, a check for \$50,000 was sent to our office on your behalf by Grady L. Shields, an attorney at the Wyrick Robbins Yates & Ponton LLP law firm purporting to represent Waste Industries and Black Bear. In the cover letter, your attorney stated that the \$50,000 was being paid to our office despite his belief that the permit application had been deemed denied in that no final decision had been issued by our agency as of that date regarding the application. That afternoon Paul Crissman, Chief of the Solid Waste Section, called Mr. Shields and explained that it was not necessary to pay the permit application fee in order to request reimbursement of expenses pursuant to Section 3 of Senate Bill 6 (SL 2007-543). Mr. Crissman noted that the agency was required to deposit checks within a certain time period, and asked if Waste Industries desired either to pick up the check or to have the agency return the check to them. Neither Mr. Shields nor Waste Industries requested return of the check.

On or about December 4, 2007, we received a summons and complaint for a civil lawsuit filed on behalf of Waste Industries and Black Bear naming our agency and the State of North Carolina as defendants. Paragraph 40 of the complaint in your lawsuit contains the representation that the site of your proposed landfill is located within five miles of a national wildlife refuge and is, therefore, barred by a buffer provision contained in the new laws which prohibit the issuance by our agency of a permit to construct a sanitary landfill if any portion of the proposed landfill would be located within five miles of the outermost boundary of a national wildlife refuge.

As of the present date, our office has not completed its review of your permit application, and, therefore, no final permitting decision has been made by our agency regarding the application. The next step would be a review for completeness under the new legislation and a determination of the components needed to complete the application. The purpose of the present letter is to request that you let us know whether you wish for our agency to continue to review your permit application for the proposed Black Bear Landfill or, alternatively, whether you desire that we treat your application as having been withdrawn and return the \$50,000 to you. Please provide us with your written response within fifteen days of the date of this letter.

If we receive such a response from you informing us that you would like our office to deem your application to be withdrawn, we will promptly return the \$50,000 to you. However, if we have not received such a written response from you within that time, we will operate under the assumption that you wish for us to continue reviewing your application (despite your stated belief that the site for your proposed landfill renders the facility ineligible for a permit in light of the above-referenced buffer requirement contained in the new legislation). In that event, we will retain the \$50,000 as your permit application fee pursuant to North Carolina General Statute § 130A-295.8

We look forward to receiving your written response within fifteen days.

Sincerely,



Dexter R. Matthews, Director

cc: Paul Crissman, Chief, Solid Waste Section
Edward Mussler, Permitting Branch Head, Solid Waste Section
Nancy Scott, Assistant Attorney General