



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

CERTIFIED MAIL; RETURN RECEIPT REQUESTED

Mr. James Perry, President  
Waste Industries USA, Inc.  
3301 Benson Drive  
Suite 601  
Raleigh, NC 27609

RE: Black Bear Disposal, LLC, and Waste Industries USA, Inc., Permit Application (Site Study)  
for proposed Black Bear Municipal Solid Waste Landfill in Camden County, NC. Document  
ID No: 4452.

Dear Mr. Perry:

This letter is to notify Black Bear Disposal, LLC, and Waste Industries USA, Inc., that the application (Site Study) submitted to the Division of Waste Management for a permit for a sanitary landfill in Camden County, North Carolina, is determined to be incomplete, that the site is unsuitable for a municipal solid waste landfill, and that a permit for the proposed landfill is hereby denied. The letter includes a completeness review of the Site Study and notification of components necessary to comprise a complete Site Study application in accordance with G.S. 130A-295.8. In addition, the letter includes a summary of the Agency's technical review of information provided in the Site Study, including revisions to the site hydrogeologic report and other material submitted by the applicant in response to previous Division review comments and requests for information. The letter also includes the reasons for denial of the landfill permit application and provides an estimate of the changes in the applicants' proposed activities or plans which will be required in order that the applicant may obtain a permit.

***COMPLETENESS REVIEW AND COMMENTS ON THE SITE STUDY APPLICATION:***

A Site Study application, the first step in a three step permit application for a municipal solid waste landfill, has been submitted pursuant to 15A N.C. Administrative Code 13B.1618 by the applicants Black Bear Disposal, LLC, and parent company Waste Industries USA, Inc. The Site Study was prepared by consultants Camp Dresser and McKee, Inc. (CDM), and RSG Engineers, formerly G.N. Richardson and Associates, all of Raleigh, NC. The Solid Waste Section (SWS) of the Division of Waste Management (Division) has previously sent review letters for various parts of the Site Study to you and your consultants. This letter is the determination required by G.S. 130A-295.8(e) and 15A N.C. Administrative Code 13B.1618(a) for the site suitability phase of the permit process. (Note that a determination of completeness does not mean that the components of the Site Study, including the information submitted to date, provide all the information that is required for the Department to make a decision on the technical merits of an application and to

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issue permits to construct and operate a municipal solid waste landfill. A final determination of compliance with all requirements of applicable statutes and rules in order to issue permits for a proposed municipal solid waste landfill would be based upon a complete application for each phase of the three step permit process.)

In accordance with the provisions of G.S. 130A-295.8(e) the Solid Waste Section has determined that the Site Study application for the proposed municipal solid waste landfill is not complete within the meaning of the statute. The determination that the application is not complete means that the application does not include all the required components.

Below is a summary of items and information that have not been included in the application, that are deficient, or that raise questions and issues which have not been sufficiently addressed in the application. The Section numbers correspond with the Section numbers in the Site Study application.

**Section 2.5-** According to the Franchise Agreement, the entrance of the proposed MSWLF must be at least 3000 feet away from the centerline of US HWY 17. The length of the proposed access road is 2000 feet. The question was not addressed as to whether there will be a road to connect to the proposed access road. Figure 2-3 does not depict the entrance to the landfill from Highway 17, and shows an access road which is approximately 5400 feet long.

**Section 3.3 -**There are two off-site soil borrow pits near the northern boundary of the proposed landfill property. The effect on groundwater (including hydraulic gradient, flow rate and direction) underneath the proposed landfill footprint due to any future expansion of the pits and any dewatering operation at the pits has not been shown. An evaluation of the impact on local groundwater conditions due to the operation of the nearby borrow pits has not been submitted with the Site Study.

**Section 3.7 -**The locations of potable wells within 2,000 feet of the proposed landfill facility boundary are shown on Figures 3-1A and 3-1B. The application does not include an evaluation of well data, in reference to Rules .1618 (c)(2)(E) and .1623(a), to determine if the adjacent well water use has significant influence on the groundwater flow underneath the proposed landfill facility. [If significant influence were determined, mitigation measures would need to be detailed in the application.]

**Section 3.9-**The application lacks a compilation, discussion and evaluation, at a detailed and complete level, of all relevant and available information regarding the surface water flow and drainage pattern at the proposed landfill site and as related to the surrounding natural features and wetlands, including: the Great Dismal Swamp National Wildlife Refuge, the Dismal Swamp State Park, the Green Sea, the Dismal Swamp Canal, and tributaries leading to the Northwest River in the State of Virginia.

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**Section 4-Site Hydrogeologic Report.** Rule .1623 (a) states that the Site Hydrogeologic Report shall provide, at a minimum, the following information; the horizontal and vertical dimensions of groundwater flow, including flow directions, rates, and gradients, groundwater contour map(s) to show the occurrence and direction of groundwater flow in the uppermost aquifer, and any other aquifers identified in the hydrogeologic investigation.

Groundwater flow in both shallow and deeper aquifers has not been fully characterized in accordance with above-referenced rules. With each successive submittal of the Site Hydrogeologic Report, including: a February 2005 report; a March 2005 report; and an April 2005 report; both the stated and illustrated groundwater flow direction changes. Groundwater flow is stated, at various times and in various reports, as:

- flat, mirroring surface topography;
- radially away from site;
- to the north (main) drainage ditch;
- to the west, toward the Great Dismal Swamp

Because of the coastal plain environment and flat hydraulic gradients at the site, both the shallow groundwater and surface water flow regimes are largely controlled by man-made features, including ditches and borrow pits, as well as future sedimentation basins and the landfill itself, if constructed. The Site Hydrogeologic Report(s) indicate that most of the larger ditches, with the north ditch being the most significant one, flow to the west toward the Intracoastal Waterway (Great Dismal Swamp Canal). One report indicated there was some surface water flow to the east within the north ditch at the northeast corner of the site. One report indicated that one off-site ditch flows north out of the north ditch and may potentially discharge into a different watershed. Ultimate discharge of the south ditch has not been defined.

A total of eleven deep monitoring wells (borehole depths ranging from 60 to 100 feet below ground surface) over an approximate 13,800 linear foot distance were installed to characterize groundwater flow in the deeper portion of the aquifer over the entire site. It may be necessary to more fully characterize and gain a better understanding of groundwater flow direction in the deeper portion of the aquifer. Characterizing groundwater flow in the deeper portion of the aquifer may provide a better representation of groundwater flow that is not affected by man-made activities.

A topographic map of the site locating soil borings with accurate horizontal and vertical control which are tied to a permanent onsite benchmark is required. No permanent benchmark, as required per Rule .1623(a)(10), was identified on any topographic maps submitted in the Site Hydrogeologic Report.

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The discussion in the Site Hydrogeologic Report regarding the uppermost aquifer and groundwater flow regime, as required per Rules .1623(a)(13)(A) and (B), is insufficient, in large part because sufficient data has not been obtained. An expanded discussion would include matters such as the impact of the surface water and groundwater flow regime of the site, focusing on the relationship of the proposed MSWLF units to groundwater receptors and groundwater discharge features, including but not limited to, the two borrow pits north of the site, the on-site drainage ditches, and the Dismal Swamp. Watershed boundaries also need to be resolved. Once existing surface water flow patterns are clearly established, the application should address how these patterns would be altered by changes resulting from proposed landfill development.

A discussion of overall suitability of the proposed site and ability to effectively monitor the proposed MSWLF units is required per Rules .1623(a)(13)(C) and (D). While there was some discussion in the Site Hydrogeologic Report(s), it was of a very limited nature, also due in large part to insufficient data. Surface water and groundwater are related to each other at this site. Groundwater discharges to the main (northern) drainage ditch at the site and surface water is channeled in a series of smaller and shallower ditches which discharge into the main drainage ditch. Consequently, surface water drainage affects groundwater conditions at this site and surface water run-off and drainage ditches should be monitored and sampled at points adjacent to landfill cells/units. The application fails to demonstrate how on-going and future construction of the landfill cells/phases would affect site drainage and groundwater flow. Additionally, the effects of phased construction, implementation, and operation of landfill units and cells on recharge and discharge of surface water at the site are not addressed in the application. The application should address how, as one end of this long and narrow piece of property becomes developed, the remainder of the undisturbed property would be affected regarding surface water flow and drainage.

The conclusion in the Site Hydrogeologic Report that the site can be monitored effectively by installing nested pairs of shallow and deep monitoring-wells is questioned, given that groundwater flow and direction has not been established. In addition, the long perimeter of the site and the large proposed footprint of the landfill would mean that numerous shallow / deep well pairs would need to be installed around the perimeter of the site and monitored regularly.

**Section 5.2-** A February 23, 2004 NCDOT letter indicated that the proposed landfill site would attract flocks of fowl resulting in potential impairment of the Virginia's omnidirectional navigational fix for the Chesapeake Regional Airport. The Division concurred with the NCDOT letter, and requested the applicant to contact Virginia's State Division of Aviation for approval of the aviation evaluation of the proposed MSWLF site. A response from Virginia is not provided in the application.

**Section 5.4-** The previous owner of the farm land later proposed for development of the Black Bear landfill, had obtained a determination from the US Army Corps of Engineers regarding the status of jurisdictional wetlands on the property. The wetlands determination included in the

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Site Study as Attachment 5.2, expired on September 26, 2007. Thus, the application lacks a wetlands determination which is necessary for determining compliance with Rule .1622(3).

**Section 5.7**-It is anticipated that total and differential settlements of foundation soil will occur, according to the settlement analysis in Section 8, when the proposed landfill accepts wastes. The application fails to provide conceptual engineering measures which demonstrate the means to mitigate total and differential settlements and to prevent adverse impacts on the landfill components such as leachate collection system, liners, drainage piping, and etc., as required by Rule .1622(6)(a).

**Section 5.9**-Pursuant to Rule .1622(8), the Division of Parks and Recreation (DPR) of the Department of Environment and Natural Resources (NCDENR) sent the Division of Waste Management a letter dated May 15, 2005 expressing concern with the siting of the proposed landfill in proximity to the Dismal Swamp State Park, which is located approximately 3050 feet west of the landfill proposed site. The DPR requested that the applicant address the following potential negative impacts on this State Natural Area due to the proposed landfill operation: increased truck traffic on US HWY 17, unpleasant aesthetics, degradation of water quality in the State Park and nearby lakes. CDM, on behalf of the applicant, responded to the cited concerns in a letter dated March 3, 2005. The Division has further comments on the applicant's response, as stated below:

- i. Visibility of the landfill. The applicant argued that a planned commercial/light industrial development located in the parcels between the proposed landfill site and US HWY 17 would reduce the visibility of the landfill from US HWY 17 and the Great Dismal Swamp Canal. The commercial/light industrial development is in the early planning stage and not an existing development. The impact to the adjacent State Park and the Great Dismal Swamp Canal if the above-mentioned development does not occur, was not evaluated.
- ii. Visibility of the landfill. The visibility and aesthetic concerns associated with the proposed landfill occurring during the 30-year landfill operations – unloading garbage and machine movements. The 3-D conceptual model is a picture of the post-closure landfill. The applicant did not place an active landfill in the model.
- iii. Increased presence of gulls. MSWLFs are known to attract birds, especially sea gulls. Operation of a municipal solid waste landfill at the proposed site would likely result in an increase in the population of birds in the nearby tree buffer zone, wetlands, open water body, and Lake Drummond. The applicant, in compliance with the Rule .1622(3)(a)(ii)(A) &(C), did not adequately evaluate the potentially adverse impacts, by using the Rule .1622(3)(a)(iii) as a guidance, on the existing balanced wetland ecosystems, water quality in the water supply resources, and protection of the ecological resources.
- iv. Increased presence of gulls. The applicant did not provide sufficient detail regarding the proposed specific vector control measures and how can the vector controls reduce the presence of gulls.
- v. The proposed site is in close proximity to several tourist attractions such as the Great Dismal Swamp National Wildlife Refuge, the Great Dismal Swamp Canal, and the Dismal Swamp

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State Park. The applicant did not address countermeasures against issues such as, litter, noise, odor, dust, and aesthetics associated with the landfill construction and operation activities.

(Note that the provisions of G.S. 130A-295.6(d) prohibiting location of sanitary landfill units within certain distances of State Parks and National Wildlife Refuges are addressed later in this letter. These comments are only included for the applicants' information regarding questions and concerns that existed prior to the enactment of G.S. 130A-295.6(d))

**Section 5.10-**The last paragraph of this Section concluded that a NPDES permit is not needed for the proposed landfill because no leachate is planned for discharge into surface water. How the applicant plans to handle the accumulated leachate if the leachate recirculation system is not properly functioning under unexpected circumstances has not been addressed. The application includes no contingency plan to handle an emergency release. Discharges from the detention ponds/basins which collect stormwater (runoff) and surface water to the nearby water-bodies, including the Dismal Swamp Canal, must be addressed in the application, including potential NPDES permit requirements. The applicant shall address the requirements of the new North Carolina Universal Stormwater Program, effective January 1, 2007, on the management and control of surface water at the proposed landfill facility.

The CDM September 13, 2004 letter, responding to the NCDENR August 5, 2004 comments on the Facility Plan, indicated the proposed base grade of the sediment basins will intersect the uppermost groundwater table. CDM, on behalf of the applicant, agreed to conduct surface water sampling at the basin outfalls if landfill constituents are detected in the groundwater monitoring wells which will be installed between landfill footprints and basins. Therefore, the applicant would need to have a NPDES permit to ensure surface water quality, in compliance with Rules .1622(3)(a)(ii)(B) and .1622(9)(b).

If the applicant believes that a NPDES permit is not needed for the proposed landfill by proposing to re-circulate 100% of generated leachate and to retain all collected stormwater and surface water (including hurricane events) in on-site retention basins; then, the applicant may need to elaborate on engineering alternatives for managing surface water in the Facility Plan (Section 7.3.4). Note that no sewer lines exist in the vicinity of the proposed landfill. Note also that leachate recirculation has not been approved for the proposed landfill, and that the Division would only approve recirculation of leachate on a case-by-case basis, pursuant to certain demonstrations by the applicant.

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**Section 5.11** - As of January 31, 2008, the U.S. Fish & Wildlife Services added the American eel as a new species to the endangered and threatened species lists in Camden County (the updated list is presented below).

<b>Common Name</b>	<b>Scientific name</b>	<b>Federal Status</b>	<b>Record Status</b>
<b>Vertebrate:</b>			
American eel	<i>Anguilla rostrata</i>	FSC	Current

A letter dated February 4, 2004 from the Department of Interior (DOI) stated that the applicant has an obligation to address Section 7 of the Endangered Species Act if a new species is listed.

In the letter to the applicant dated January 7, 2004, the Natural Heritage Program (NHP) stated that the NHP had no record of rare species and significant natural communities at the proposed landfill site. However, the NHP letter pointed out that this conclusion was made even though “the project description and map do not show the proposed boundary of landfill site, just the centroid of the site, marked by a red star on Figure 1.” Additionally, the letter advised the applicant that although maps or records did not show such natural heritage elements on the proposed landfill site, it did not necessarily mean that they were not present. The letter further stated that the Natural Heritage Program (NHP) program data should not be substituted for actual field surveys.

The applicant would thus be required, as part of a complete Site Study Application, to request the NHP to make a new determination based on the re-submittals of a legal property description and a map clearly showing property descriptions and landfill boundaries relative to distances to, by scale, the closest limits of the Great Dismal Swamp National Wildlife Refuge, the Dismal Swamp Canal, Dismal Swamp State Natural Area, and the Green Sea. The applicant would be further required to employ qualified professionals to conduct field surveys and to consult with the Natural Heritage Program to verify and confirm whether an endangered or threatened species is present at the proposed landfill site.

**Section 6**-According to the title insurance policy from Investors Title Insurance Company for the 1,059.99 acres presently owned by Black Bear Disposal LLC, which was enclosed with the letter dated April 22, 2005 to Mr. Donald Barber of the Division, the legal language describing the land on which the proposed landfill is to be located encompasses both Camden and Currituck Counties. To comply with the North Carolina General Statute 130A-294(b1) and the Rule .1618(c)(5), the applicant must provide a surveyed boundary plat for the proposed landfill facility which depicts all components of the proposed facility plan and delineates the Currituck County boundary line. If it appears that part of the facility is located in Currituck County, the applicant must obtain a franchise

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for the facility from the Currituck Board of Commissioners, or clearly explain why a franchise is not required.

**Section 7.2.1** -The third sentence indicated that “drawing SD-1 provides information on delineated wetlands...”, however, no wetlands delineation was provided in the Drawing SD-1.

**Section 7.3.1**-The applicant proposes to use wastes consisting of petroleum soils, sludge, foundry sands, and other materials “suitable for use as an alternative daily cover” (ADC). These wastes must not be wastes prohibited from MSWLFs as listed in the Rule .1626(1)(b). Note that six inches of compacted soil is required for daily cover; alternative daily cover is approved only on a case-by-case basis, pursuant to certain demonstrations. The applicant would need to submit to the Division a written request for approval to use a specific material as ADC in accordance with Rule .1626(2)(b).

The applicant must clarify that the population numbers and the service areas described in Section 7.3.1.3 are consistent with the Franchise Agreement.

**Section 7.3.2**-According to the Rule .1619(c)(1) "phase" is an area constructed with a base liner system that provides no more than approximately five years of operating capacity. The operating capacity described in the Section 7.3.2 and Drawings SD-2, LC-1 through LC-4 exceed this.

The applicant proposes to install a 4-ft-thick sub-base soil layer over the existing ground surface to meet the vertical separation requirements in the Rule .1624(b)(4). The application lacks information as to whether this additional man-made sub-base has been considered as a surcharge in the settlement calculation and included in the slope stability analysis in Section 8, as well as whether this 4-ft-thick sub-base soil layer has been incorporated into the proposed base grade shown on the Drawings LC-1 through LC-4. The application does not include a description of any measures to enhance the dissipation of the build-up of excessive pore water pressure which is generated from the soil consolidation process and high groundwater table being exerted on this 4-ft-thick sub-base soil layer. If such measures are proposed, the application should also discuss how the drainage measures will be incorporated into the proposed stormwater management/ control system. If such drainage measures are not proposed, the application should include an engineering evaluation of the reasons for not including them.

**Section 7.3.2** -Indicates that the landfill is proposed to be developed in five phases but Drawings LC-1 through LC-4 show only four phases.

The applicant indicates that a majority of fill material, approximately 26,500,000 cubic yards, will come from an off-site source, but the source is not identified. Discuss whether soil from the borrow pits shown on the Drawing SD-2 is to be used for fill material. The applicant is required to satisfy the Rule .1619(e)(2)(B)(iv) by addressing issues of where and how to acquire adequate suitable soil

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for daily landfill operation, as well as for construction of the landfill. On-site and off-site sources of soil shall be identified.

**Section 7.3.3-**(The “Leachate Collection and Storage” Section & 2<sup>nd</sup> paragraph) This section mentioned that 16 designated pump stations around the perimeter of the landfill will be used to transfer leachate to the storage tanks via a force main. However, Drawings LC-1 through LC-4 depict only 12 pump stations around the perimeter of the landfill.

The leachate collection system shall be designed to control and contain the volume of leachate generated by the 24-hour, 25-year storm in accordance with the Rule .1624(b)(2). The “Leachate Collection and Storage” Section indicated that all generated leachate from the proposed landfill facility will be 100% re-circulated.

Drawing LC-1 shows that the leachate force main will connect to a future sanitary sewer line along US HWY 17. A time-table for the construction of the above-mentioned sanitary sewer line along US HWY 17 was not provided. Discussion of leachate disposal via a Public Owned Treatment Works (POTW) as either a routine operation or a contingency measure was not included in the application.

The approval of a request to recirculate leachate in the landfill is considered on a case-by-case basis. The applicant must present a proposed plan to the SWS for review.

**Section 8-**The applicant did not evaluate the differential settlement and its impact on landfill structural components such as liners, LCRS, road, piping, leachate collection tank foundation, etc. in accordance with the Rule .1622(6)(a)(i).

### ***Drawings***

#### ***Sheet Nos. 3-1A, 3-1B, 3-2A, & 3-2B***

- Show the minimum 300-foot buffer between the MSWLF unit and all property lines.
- Show the minimum 500-foot buffer between the MSWLF unit and existing private residences and wells in the closest vicinity of the MSWLF property limits.

According to the Rule .1618(c)(2), the Site Study application shall include aerial photographs taken within one year of the original submittal date, a report, and a local map. The reference of date and source of the aerial photographs was not indicated. The aerial photographs, used for the basis of drawings 3-1A, 3-1B, 3-2A, & 3-2B, if not taken within one year of the initial Site Study submission of September 2004, are inadequate. The Camden Yards Sand Mine operation, which was permitted for operation in 2001, was not shown in the drawings.

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**Sheet No. SD-02**

- According to the Franchise Agreement, the entrance of the proposed MSWLF must be at least 3000 feet away from the right-of-way of US HWY 17. The entrance of the proposed LF must be shown and noted on the drawing.

**Requirements of 2007 Session Laws 543 and 550**

In addition to items in the review of documents submitted by or for the applicant discussed above, the application does not meet requirements of the following statutes:

A traffic study in accordance with G.S. 130A-295.5 has not been performed.

A study of the environmental impacts of the proposed sanitary landfill in accordance with G.S. 130A-295.6 has not been performed. (Note that the Department is directed to perform the environmental impact study, and the applicant is to pay the Department's expenses in performing the study.) Information obtained from the study is used to provide findings which demonstrate that denial of a permit directed by G.S. 130A-294 (4)c. is either warranted or not warranted.

The application does not include a demonstration of compliance with the provisions of G.S. 130A-295.6(b) (buffers between landfill disposal units and perennial streams and wetlands) and G.S. 130A-295.6(c) (landfill disposal units shall not be located in 100-year floodplains).

G.S. 130A-295.6(d) prohibits the Department from issuing a permit to construct any disposal unit of a sanitary landfill if at the earlier of (i) the acquisition by the applicant or permit holder of the land or of an option to purchase the land on which the waste disposal unit will be located, (ii) the application by the applicant or permit holder for a franchise agreement, or (iii) at the time of the application for a permit, any portion of the proposed waste disposal unit would be located within:

- (1) Five miles of the outermost boundary of a National Wildlife Refuge.
- (2) One mile of the outermost boundary of a State gameland owned, leased, or managed by the Wildlife Resources Commission pursuant to G.S. 113-306.
- (3) Two miles of the outermost boundary of a component of the State Parks System.

The Site Study application for the proposed Black Bear Disposal municipal solid waste landfill current application does not demonstrate compliance with buffer provisions of G.S. 130A-295.6(d). Information available to the Division indicates the site of the landfill does not meet the provision of G.S. 130A-295.6(d)(1) and (3). In addition, Waste Industries USA, Inc., through its attorneys Wyrick Robbins Yates and Ponton LLP, made a claim on December 18, 2007 for reimbursement of permit application costs allowed to be made by statute if the permit would be denied under G.S. 130A-295.6 (d).

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According to information obtained by the Division, disposal units of the Black Bear Landfill are proposed within five miles of the outermost boundary of the Great Dismal Swamp National Wildlife Refuge and within two miles of the outermost boundary of the Dismal Swamp State Park.

G.S. 130A-295.6(i) prohibits the Department from issuing a permit for a sanitary landfill that authorizes a capacity of more than 55 million cubic yards of waste, or has a disposal area of more than 350 acres, or has a maximum height, including the cap and cover vegetation of more than 250 feet above the mean natural elevation of the disposal area. The Site Study application depicts a facility plan that exceeds each of the limitations in G.S. 130A-295.6(i).

Waste Industries USA, Inc. paid a permit application fee pursuant to G.S. 130A-295.8 and asked for a review of its Site Study application in accordance with that statute. This letter is the notification of incompleteness of the application issued in accordance with the statute and rules. The completeness review only encompasses provisions of statutes and rules applicable to the Site Study phase of the permit application process. Information and documentation necessary for review of completeness and compliance with statutes and rules applicable to subsequent phases of the permit process have not been submitted.

***DENIAL OF PERMIT:***

The application for a municipal solid waste landfill permit for the proposed Black Bear Disposal municipal solid waste landfill in Camden County, NC, applied for by Black Bear Disposal LLC, and Waste Industries USA, is denied based upon:

1. Noncompliance with G.S. 130A-295.6(d)(1)
2. Noncompliance with G.S. 130A-295.6(d)(3)
3. Noncompliance with G.S. 130A-295.6(i)
4. The lack of a complete application meeting statutory requirements of G.S. 130A and the requirements of the North Carolina Administrative Code, 15A NCAC 13B Section .1600.

15A NCAC 13B .0203(e) provides that “ When the Division denies a permit for a solid waste management facility, it shall state in writing the reason for such denial and shall also state its estimate of the changes in the applicant’s proposed activities or plans which will be required in order that the applicant may obtain a permit. A denial shall be without prejudice to the person’s right to a hearing or for filing a future request after revisions are made to meet objections specified as reasons for denial. Reasons for denial are:

- (1) Submission of incomplete information;
- (2) Failure to meet the requirements set forth in Sections .0300, .0400 and .0500 of this Subchapter applicable to the type of facility applied for; or

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- (3) The past conduct by the applicant, as defined in G.S. 130A-309.06(b) (Repealed by 2007-Session Law 550 and replaced by G.S. 130A-295.3), which has resulted in repeated violations of solid waste management statutes, these Rules, or orders issued thereunder, or violations of permit condition of a solid waste management facility located in this State; or
- (4) Any other reasons which would prevent the solid waste facility or site from being operated in accordance with Article 9, Chapter 130A of the General Statutes, these Rules, the Federal Act, or acceptable engineering or public health and environmental standards.

The Division's estimate of the changes in the applicant's proposed activities or plans which will be required in order that the applicant may obtain a permit:

1. Changing noncompliance with G.S. 130A-295.6(d)(1) requires a showing that waste disposal units can be permitted outside five miles of the outermost boundary of a National Wildlife Refuge.
2. Changing noncompliance with G.S. 130A-295.6(d)(3) requires a showing that waste disposal units can be permitted outside the two miles of the outermost boundary of a component of the State Parks System.
3. Changing noncompliance with G.S. 130A-295.6(i) requires a showing that the application has been changed to demonstrate compliance with the capacity, disposal area, and height limitations of the statute.
4. Changing the lack of a complete application by demonstrating that the statutory requirements of G.S. Sections 130A-294 (4)(c), 295.6(b) , 295.6(c) and the requirements of the North Carolina Administrative Code, 15A NCAC 13B Section .1600 are met requires submittal of all information required by the completeness review and meeting all statutory and regulatory requirements for the Site Study phase of the permit application. If the Site Study (site suitability) phase is found acceptable, a complete application for permit to construct and permit to operate meeting all statutory and regulatory requirements would be necessary to complete the permitting process.

### ***APPEAL RIGHTS***

Black Bear Disposal, LLC and Waste Management USA, Inc. ("the companies") may appeal this decision by filing a written petition for an administrative hearing with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, within thirty (30) days of receipt of this letter in accordance with N.C. G. S. 150B-23(a). The petition must be signed by your attorney. It must state facts tending to establish that the agency has deprived the companies of property, has ordered the companies to pay a fine or civil penalty, or has otherwise substantially prejudiced the rights of the companies, and that the agency has:

1. Exceeded its authority or jurisdiction;
2. Acted erroneously
3. Failed to use proper procedure

May 8, 2008,

Mr. James Perry,  
President, Waste Industries USA, Inc.  
Re: Proposed Black Bear Disposal, LLC  
Municipal Solid Waste Landfill  
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4. Acted arbitrarily or capriciously; or
5. Failed to act as required by law or rule.

A copy of the petition must also be served on Ms. Mary Penny Thompson, General Counsel, NC Department of Environment and Natural Resources, 1601 Mail Service Center, Raleigh, NC, 27699-1601. Failure to complete these acts within the thirty (30) day period may result in denial of any administrative hearing.

Any administrative hearing will be conducted in accordance with applicable rules contained in Title 26 of the North Carolina Administrative Code. You may request a copy of the rules by calling the Office of Administrative Hearings at 919.733.2698.

Sincerely,



Edward F. Mussler, III  
Permitting Branch Supervisor  
Solid Waste Section

cc: Dexter Matthews, Division Director, Division of Waste Management  
Paul Crissman, Section Chief, Solid Waste Section,  
Nancy Scott, Assistant Attorney General