



FRITZ, BYRNE, HEAD & HARRISON, PLLC

Attorneys at Law

January 9, 2009

VIA FACSIMILE NO. 239-3311

- and -

U. S. FIRST CLASS MAIL

Ms. LaDonna Castañuela, Chief Clerk
Office of the Chief Clerk (MC-105)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Re: SOAH Docket No. 582-08-2178; TCEQ Docket No. 2007-1774-MSW; In re:
the Application of BFI Waste Systems of North America, Inc., for a Major
Amendment to Type I MSW Permit No. 1447A

Dear Ms. Castañuela:

Enclosed are two copies of a January 9, 2009 letter to Judge Newchurch which we respectfully request be filed among the other papers in the above-referenced proceeding. Please return a file-stamped copy to me in the self-addressed, postage prepaid envelope provided for your convenience.

A copy of the enclosure is being forwarded to all parties of interest as set forth below. Thank you for your assistance in this matter.

Very truly yours,

FRITZ, BYRNE, HEAD & HARRISON, PLLC

By: 

Ann M. Devers

Assistant to Bob Renbarger

Enclosures

cc: See, Certificate of Service (w/encl)

Value Driven...Client Oriented



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FRITZ, BYRNE, HEAD & HARRISON, PLLC

Attorneys at Law

January 9, 2009

VIA FACSIMILE NO. 239-3311

Honorable William G. Newchurch
Administrative Law Judge
State Office of Administrative Hearings
300 West 15th St., Suite 502
Austin, TX 78701

Re: SOAH Docket No. 582-08-2178; TCEQ Docket No. 2007-1774-MSW; In re:
the Application of BFI Waste Systems of North America, LLC, for a Major
Amendment to Type I MSW Permit No. 1447A

Dear Judge Newchurch:

This letter is in response to the letter dated January 8, 2009 addressed to you from BFI Waste Systems of North America, LLC's (BFI) counsel, Mr. Paul Gosselink.

In his letter, Mr. Gosselink makes a number of requests related to certain procedures he would like to employ at the upcoming contested case hearing scheduled to commence on January 20, 2009. Mr. Gosselink seeks leave to (1) expand direct testimony of BFI's experts to provide comment, opinion and testimony regarding protesting parties' experts' pre-filed testimony, (2) alter the pre-filed testimony procedures to permit live direct testimony with never-reviewed demonstrative exhibits, and (3) present a brief opening statement. TJFA, L.P. (TJFA) objects to Mr. Gosselink's proposals for a number of reasons.

With respect to opening up his experts' direct testimony to permit testimony on TJFA's experts, this is tantamount to providing BFI two opportunities for rebuttal testimony. Mr. Gosselink, with his experts in attendance, have deposed all of TJFA's testifying expert witnesses. Through TJFA's pre-filed testimony and through BFI's depositions of these experts, BFI is more than able to ascertain what, if anything, is likely going to comprise its case on rebuttal. By granting BFI's request, BFI would be provided an additional opportunity to inappropriately supplement its direct case with rebuttal of TJFA's witnesses. This is fundamentally unfair and inconsistent with the procedures set forth in the scheduling order. It would be comparable to allowing TJFA to supplement its pre-filed testimony now that TJFA knows what issues appear to be of concern to BFI from the recent depositions. TJFA objects to BFI's proposal and urges the Administrative Law Judge (ALJ) to deny such request. Alternatively, should BFI be able to use its direct testimony to address TJFA's experts' pre-filed testimony, TJFA requests an equal opportunity to supplement its pre-filed by live testimony of its experts to address any issue raised in their depositions. Obviously,

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the BFI request is a substantial change in how the hearing process was envisioned and how the parties have prepared their respective cases. The rules of the game should not now be changed to provide BFI with an additional opportunity to “beef up” its case. BFI still has the opportunity to open and close. It may utilize what it has learned from TJFA’s pre-filed testimony and depositions in both cross-examination of TJFA’s witnesses as well as its rebuttal case. TJFA opposes and objects to BFI’s request and submits that it is nothing more than an attempt for BFI to gain another advantage at the contested case hearing.

TJFA further objects to BFI’s request to provide live testimony of its experts together with demonstrative exhibits on direct examination. The time for pre-filed direct testimony and exhibits has long since passed. BFI’s witnesses all provided this type of background or introductory testimony in their prior filings. This is nothing other than an attempt to supplement its prior pre-filings in hopes that the new live testimony and exhibits will be more persuasive to the ALJ than its prior written filings. This should not be permitted, again under fundamental fairness to the other parties. TJFA objects to this proposal as untimely and contrary to the hearing procedures established by the ALJ.

TJFA further objects to the “brief opening statements” requested by BFI to the extent that there are not parameters on the amount of time and the substantive content established for same. TJFA does not object to opening statements per se but believes that they should be limited in time and should not allow demonstrative exhibits be presented without a prior opportunity for opposing parties to examine them and an opportunity to object to their content. Should the ALJ permit brief opening statements, TJFA respectfully requests that clear restrictions be established to ensure that they do not go beyond the content of the parties’ pre-filed testimony and not introduce new issues or exhibits into these proceedings.

Respectfully submitted,

FRITZ, BYRNE, HEAD & HARRISON, PLLC

By: 
Bob Renbarger

ROR/amd

cc: Ms. LaDonna Castañuela, Chief Clerk
See, Certificate of Service

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that a true and correct copy of the foregoing document has been served this 9th day of January, 2009, via e-mail, facsimile transmission or U.S. First Class mail, to the following:

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GILES HOLDINGS, L.P.**

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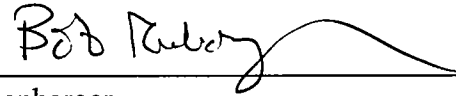
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**NORTHEAST NEIGHBORS COALITION; MARK
MCAFFEE; MELANIE MCAFFEE; ROGER JOSEPH;
DELMER D. ROGERS; and WILLIAMS, LTD.**

Hon William G. Newchurch
Administrative Law Judge
State Office of Administrative Hearings
300 West 15th St., Suite 502
Austin, TX 78701

A handwritten signature in cursive script that reads "Bob Renbarger". The signature is written in black ink and is positioned above a horizontal line.

Bob Renbarger