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**TELECOPIER COVER SHEET**

January 12, 2009

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Holly Noelke	City of Austin	512-974-6490
Bob Renbarger J.D. Head	TJFA, L.P.	512-477-5267
Jim Blackburn Mary Carter	Northeast Neighbors Coalition	713-524-5165
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Client No.: 1635-03  
From: Paul Gosselink

PART 1 of 2

No. of Pages: 24+ cover sheet

Comments: SOAH Docket No. 582-08-2178  
TCEQ Docket No. 2007-1774-MSW  
In re Permit Amendment Application of BFI Waste Systems of North America, LLC  
MSW Permit No. 1447A

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1984 ——— 25 Years ——— 2009

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January 12, 2009

**Via Facsimile**

Judge William E. Newchurch  
State Office of Administrative Hearings  
300 W. 15<sup>th</sup> Street, Suite 504  
Austin, Texas 78701

Re: SOAH Docket No. 582-08-2178; TCEQ Docket No. 2007-1774-MSW  
Permit Amendment Application of BFI Waste Systems of North America, LLC  
MSW Permit No. 1447A

Dear Judge Newchurch:

Enclosed for filing is an original and one copy of Applicant BFI Waste Systems Of North America, LLC's (1) Response to TDSL's Motion to Quash and Motion for Protective Order and (2) Motion to Compel in the above referenced matter.

Should you have any questions, please do not hesitate to contact me. Thank you for your attention to this matter.

Respectfully submitted,

A handwritten signature in black ink that reads "Paul Gosselink". The signature is written in a cursive, flowing style.

Paul Gosselink

Attachment

cc: Certificate of Service

**SOAH Docket No. 582-08-2178  
TCEQ Docket No. 2007-1774-MSW**

**IN RE THE APPLICATION OF BFI WASTE § BEFORE THE  
SYSTEMS OF NORTH AMERICA, LLC § STATE OFFICE OF  
PERMIT NO. MSW-1447A § ADMINISTRATIVE HEARINGS**

**APPLICANT BFI WASTE SYSTEMS OF NORTH AMERICA, LLC'S  
(1) RESPONSE TO TDSL'S MOTION TO QUASH AND MOTION FOR  
PROTECTIVE ORDER; AND (2) MOTION TO COMPEL**

Applicant BFI WASTE SYSTEMS OF NORTH AMERICA, LLC (BFI) files this consolidated response and motion, respectfully showing:

**I. RESPONSE TO TDSL'S MOTION TO QUASH  
AND MOTION FOR PROTECTIVE ORDER**

In a rather ironic motion, Texas Disposal Systems Landfill, Inc. (TDSL) and its owner/president, Bob Gregory, are asserting that BFI is somehow harassing and unduly burdening them by subpoenaing a copy of TDSL's MSW permit. TDSL's motion lacks merit for many reasons and should be denied.

**Background**

TJFA's close affiliation with TDSL and Mr. Gregory are well documented in this proceeding and will not be belabored here. Because the TDSL site is situated only 15 miles from the Sunset Farms Landfill and shares similar soil and groundwater characteristics with Sunset Farms – and because several of TFJA's expert witnesses who are critical of BFI's application and the Sunset Farms site have worked *for* TDSL and Mr. Gregory at or in connection with the TDSL facility – TDSL's permit (which includes incorporated permit application materials) has evidentiary value as it relates to the bias/credibility of TJFA's testifying expert witnesses. BFI

intends to ask questions of these witnesses at the hearing to establish that the criticisms that they have leveled against Sunset Farms and BFI's application should be weighed against their support for (or, at least, non-criticism of) similar-if-not-identical site characteristics, design features and operational procedures at the TDSL site.

Having a complete copy of TDSL's current permit is, of course, an important part of asking such questions of these witnesses to probe their credibility and potential bias. TDSL is correct insofar as its permit is a public document that *should* be available at TCEQ's offices for inspection and copying by the public. Unfortunately, a complete copy of the permit is not available at TCEQ. While BFI has looked for and found portions of the permit at TCEQ, it has not been able to locate and copy the entire document. (Gosselink Aff., Exhibit A, at ¶3) Other individuals have apparently had similar problems finding copies of TDSL-related materials in recent years. (June 7, 2004 Citizen Letter, Exhibit B, at p.2) TCEQ cannot confirm that it has a complete copy of TDSL's permit and, indeed, believes it does not. (S. Shepherd Letter, Exhibit C) After exhausting its efforts to obtain a complete copy of the current TDSL permit from the public records, BFI sought to obtain a copy from an entity that is required by law to keep such a copy in its files: TDSL. *See* 30 TAC §330.125 (requiring that a copy of the permit "shall be maintained at the Municipal Solid Waste facility, or an alternate location approved by the Executive Director.").

BFI requested issuance of a subpoena to obtain a complete copy of the TDSL permit in its letter to the ALJ dated December 9, 2008. The ALJ signed the subpoena on December 10th. BFI had a constable serve the subpoena on TDSL after TJFA's attorneys indicated that they would not and could not accept service on behalf of TDSL. (December 12, 2008 Renbarger e-mail, Exhibit D) Contrary to TDSL's motion, the subpoena was not directed to Bob Gregory but instead was simply addressed to TDSL's "custodian of records" – which is commonplace for

requests for business records from non-parties. The accompanying deposition on written question was also directed to the company's custodian of records. The deposition on written questions that was served on TDSL uses a short, standard 13-question format that TJFA itself recently used when it subpoenaed records from non-parties Applied Materials and PBS&J in this very proceeding.

### **Reasons Why TDSL's Motion Lacks Merit**

TDSL is now seeking to quash BFI's document request on various grounds – each of which is utterly without merit.

Undue Burden. TDSL has asserted that the request is unduly burdensome – an argument that fails for multiple reasons. First, TDSL has failed to provide any proof in support of its claim of undue burden. That failure alone is fatal to its motion. *See In re Alford Chevrolet-Geo*, 997 S.W.2d 173, 181 (Tex. 1999) (person resisting discovery cannot simply make conclusory allegations that the requested discovery is unduly burdensome); *In re Amaya*, 34 S.W.3d 354, 358 (Tex.App.–Waco 2001, orig. proceeding) (no evidence produced to show undue burden). Second, the request just isn't that burdensome: it simply requires that someone (not necessarily Mr. Gregory) produce a few volumes of permitting documents for inspection and copying (copying at BFI's expense) at the time and place noticed. Neither Mr. Gregory nor anyone else at TDSL will need to "review every page" of the permit prior to its production, as TDSL contends, because TDSL is required to have the exact document that BFI is looking for in a compiled format per the MSW regulations. Third, any claim that Mr. Gregory will personally be unduly burdened by the request rings hollow given the fact that he has taken the time out of his schedule to attend at least four of the depositions in this case simply to *observe* those depositions – totaling perhaps 20-25 hours of his time or more. (Gosselink Aff, Exhibit A, at ¶4 & Exhibits E through I) Fourth, TDSL's claim that Mr. Gregory will somehow be unduly burdened in his role

as president of the company falls flat because the document request is not directed to Mr. Gregory or to the company's president. Instead, the request is directed to a custodian of records, which presumably would enable someone in the company's clerical department to respond. Fifth, BFI is not asking Mr. Gregory to "sit for a deposition" regarding the validity of the permit TDSL produces. BFI did not notice an oral deposition; its deposition on thirteen written questions can be filled out by TDSL's custodian of records in a matter of minutes. Sixth, the request is no more burdensome than the third-party requests that TJFA recently served on Applied Materials and PBS&J. Finally, the claim of undue burden rings hollow when one considers that Mr. Gregory purposely purchased property next door to the BFI and Waste Management facilities, elected to have his company seek party status in both proceedings (and two others), and has spent over \$200,000 on *experts alone* through last November opposing BFI's application. (Kier Depo Tr., Exhibit E, at pp. 220-21 & Depo Exhibit 121 thereto; Neyens Depo Tr., Exhibit F, at p. 44; Stecher Depo Tr., Exhibit G, at p. 59; Chandler Depo Tr., Exhibit H, at p. 84)

Expense. TDSL complains of the expense it will bear complying with the document request. That assertion lacks merit for each of the reasons set forth in the undue burden discussion above – including but not limited to the lack of proof supporting its motion. (BFI notes parenthetically that in all likelihood TDSL spent far more money preparing and filing its motion to quash than it would have expended had it simply had a custodian of records respond directly to the document request.)

Harassment. TDSL has also asserted that BFI's request was made for purposes of harassment. That is far from the case. As discussed above, the permit is plainly relevant to issues in this case, a complete copy of TDSL's current permit is not available at TCEQ, and TDSL is required by law to keep a copy of the very document BFI is seeking at its facility and

ready for easy inspection by TCEQ inspectors. Moreover, the discovery mechanism BFI is using is commonplace and is no different than the mechanism TJFA recently used to obtain the Applied Materials documents. Insofar as Mr. Gregory has sought to oppose the BFI and Waste Management applications by purchasing nearby property under the guise of a supposedly separate entity, TJFA, he has purposely injected himself in this matter and cannot and should not be able to avoid legitimate discovery requests on the grounds that he is some innocent bystander being harassed. This is especially true since compliance with the subpoena will be simple, inexpensive and non-invasive (the document is, after all, supposed to be a public document).

Failure to Show Due Diligence/Good Cause. TDSL also claims that BFI failed to show that it used due diligence to try to obtain a copy of TDSL's permit from the TCEQ and that, absent a statement from the agency that the official public copy of the permit either does not exist or cannot be found, BFI cannot show "good cause" for its supposedly extraordinary request. Notably, the Texas Rules of Civil Procedure do not require a party-litigant to show either "due diligence" or "good cause" to obtain documents or things from a non-party. *See, e.g.*, TEX. R. CIV. P. 175, 192, 196 & 205. Nevertheless, as the attached affidavit of Paul Gosselink shows, counsel for BFI has spent a considerable amount of time and effort looking for a full and complete copy of TDSL's permit. (Gosselink Aff., Exhibit A, at ¶3) While we have obtained various portions of the current permit in bits and pieces through our endeavors, we have never been able to obtain a complete copy of that permit. Thus, while BFI may not ultimately be interested in copying every page of the permit that TDSL produces, it does need to (1) obtain a *complete* copy of the permit; and (2) ensure that the permit obtained is the *current* version of the permit.

Copy of Original Permit Application. TDSL correctly notes that counsel for BFI represented TDSL in its original permit proceeding. However, its assertion that Mr. Gosselink

“should have retained a copy in his files” is disingenuous: after that permitting proceeding TDSL and Mr. Gregory specifically asked Mr. Gosselink to return the entire permitting case file to TDSL, which he did. (Gosselink Aff., Exhibit A, at ¶5) Thus, TDSL knows or should know that Mr. Gosselink does not have the original permit application in his files. (TDSL’s assertion that Mr. Gosselink should be “concerned if he is now suggesting that there is a problem with TDSL’s landfill permit” is equally disingenuous. Neither BFI nor Mr. Gosselink is seeking to suggest that there is any problem with TDSL’s permit. Instead, as explained above BFI’s interest is showing that the things that TJFA’s experts criticize at Sunset Farms are the same things that they do not find subject to criticism at the TDSL site, *i.e.*, showing that what’s good for the goose is good for the gander.)

**No Objections to Form of Subpoena or Time and Place of Production**

TDSL has not objected to the form of BFI’s subpoena or to the time or place of production.

**Sanctions**

TDSL’s request for sanctions is utterly meritless and should be denied forthwith.

**II. BFI’S MOTION TO COMPEL**

For the foregoing reasons, BFI respectfully requests that the ALJ compel production of the requested documents by TDSL for copying/reproduction by BFI at the offices of Lloyd Gosselink Rochelle & Townsend, P.C., 816 Congress Avenue, Suite 1900, Austin, Texas 78701 at 2:00 pm on Wednesday, January 14, 2009. *See* TEX. R. CIV. P. 176.6(d). BFI requests that any order granting this motion to compel include provisions allowing BFI a reasonable opportunity to copy the documents. (Our document services company believes it can copy the permit documents overnight.)



### III. CONCLUSION AND PRAYER

TDSL's motion to quash, motion for protective order and request for sanctions should be denied in their entirety for any number of reasons, and BFI's motion to compel production of the documents requested should be granted. BFI accordingly prays that TDSL's motion/request be denied, and that BFI's motion to compel be granted. BFI also prays for all other relief to which it is entitled.

Respectfully submitted,

By:   
Paul G. Gosselink  
Texas Bar No. 08222800

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**ATTORNEYS FOR APPLICANT  
BFI WASTE SYSTEMS OF NORTH  
AMERICA, LLC**

OF COUNSEL:  
John E. Carlson  
Texas Bar No. 00790426

**Certificate of Service**

I hereby certify that a true and correct copy of the foregoing response/motion was served on the following counsel/parties of record by certified mail (return receipt requested), regular U.S. mail, facsimile transmission and/or hand delivery and via e-mail on January 12, 2008:

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**REPRESENTING TEXAS DISPOSAL SYSTEM  
LANDFILL, INC.**

Arturo D. Rodriguez, Jr.  
Russell & Rodriguez, L.L.P.  
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Georgetown, Texas 78628  
Tel: (512) 930-1317  
Fax: (512) 929-1641



Paul G. Gosselink

**Exhibit A**

**Affidavit of Paul G. Gosselink**

**SOAH Docket No. 582-08-2178  
TCEQ Docket No. 2007-1774-MSW**

**IN RE THE APPLICATION OF BFI WASTE § BEFORE THE  
SYSTEMS OF NORTH AMERICA, LLC § STATE OFFICE OF  
PERMIT NO. MSW-1447A § ADMINISTRATIVE HEARINGS**

**Affidavit of Paul G. Gosselink**

Before me, the undersigned authority, on this day personally appeared Paul G. Gosselink who, being first duly sworn, upon his oath states:

1. "My name is Paul G. Gosselink. I am over 18 years of age, of sound mind, and am otherwise competent to make this affidavit. I have personal knowledge of the facts stated herein, and to my knowledge they are true and correct.
2. "I am an attorney duly licensed to practice law in the State of Texas. I am a partner with the firm of Lloyd, Gosselink, Rochelle & Townsend, P.C. My firm and I represent the applicant BFI Waste Systems North America, LLC in the above-captioned administrative hearing.
3. "In connection our representation of BFI in this proceeding, I have attempted to obtain a complete copy of the solid waste permit of a nearby MSW landfill facility – the TDSL facility in Creedmoor, Texas – from the TCEQ. After we confirmed that we did not have a copy of the TDSL permit and underlying permit application documents in our files, I instructed one of our paralegals, Joe Jimenez, to go to TCEQ Central Records to obtain a copy of the original application and all subsequent amendments and modifications to the TDSL permit. Joe was able to find various portions of the TDSL permit file, but was unable to secure a copy of the original application or any of the submissions prior to the Subtitle D modification application in 1994 and could not locate the latest Site Operating Plan, which we expected to have been filed pursuant to the 2004 call in for Site Operating Plans. The latest version of the Site Operating Plan in TCEQ's Central Records was the 1994 Subtitle D modification Site Operating Plan. I instructed Joe to return to TCEQ's Central Records and review all of the microfiche in the TDSL file. He did and secured additional documentation but did not secure the above-referenced missing documents. He then went to TCEQ's Municipal Solid Waste Section's separate library but again was unable to find the missing documents. I then called Richard Carmichael, Municipal Solid Waste Section head, and explained what we were looking for and asked if he knew whether the application might be located in an individual permit reviewer's office. Mr. Carmichael agreed to see if he could find the documents. He subsequently reported back that he was also unsuccessful. All of these attempts occurred in October and November, 2008. In January 2009 I discussed this issue with Steve

Shepherd of the TCEQ Legal Division and he was able to locate the 2006 Site Operating Plan in the office of an individual permit reviewer. As of January 9, 2009 I possessed that previously missing 2006 Site Operating Plan. We still do not possess the original application and do not know whether there are other parts of the file/application about which we are unaware. Consequently, despite our efforts, we have not been able to obtain a complete copy of TDSL's current permit.

4. "Bob Gregory has attended all or portions of at least four of the depositions that have been taken in this case – including the depositions of Dennis Hobbs, Bob Kier, Brad Dugas and Steve Mobley. He has not been a deponent or attorney in any of these depositions; he was strictly an observer. (Exhibit I to BFI's response to TDSL's motion to quash shows the attendees of these depositions.)
5. "My firm and I served as counsel for TDSL when it first sought its MSW permit for the Creedmoor site in the late 1980s and early 1990s. TDSL and Mr. Gregory specifically requested that my firm and I return our case files to them after the permit was issued. We complied, and no longer have any case files related to that proceeding – including the original permit application.
6. "True and correct copies of the following documents are attached as exhibits to Applicant BFI Waste Systems of North America, LLC's (1) Response to TDSL's Motion to Quash and Motion for Protective Order; and (2) Motion to Compel:

<b>Exhibit No.</b>	<b>Description of Exhibit</b>	<b>Document Date</b>
B	Letter to TCEQ from "John Q. Citizen" obtained from TCEQ's files	June 7, 2004
C	S. Shepherd Letter	Jan. 12, 2009
D	B. Renbarger E-mail	Dec. 12, 2008
E	Excerpts from Deposition of B. Kier	Dec. 4, 2008
F	Excerpts from Deposition of J. Neyens	Dec. 2, 2008
G	Excerpts from Deposition of S. Stecher	Dec. 8, 2008
H	Excerpts from Deposition of P. Chandler	Dec. 18, 2008
I	Cover Pages from D. Hobbs, B. Kier, B. Dugas and S. Mobley Depositions Showing Attendees of Depositions	Various

Further affiant sayeth not.

Dated: January 12, 2009.



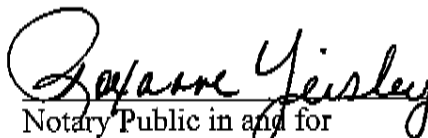
Paul G. Gosselink

State of Texas

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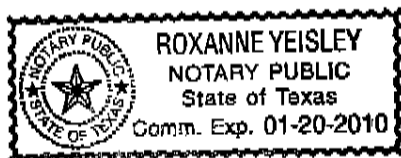
County of Travis

SWORN AND SUBSCRIBED TO before me by Paul G. Gosselink on January 12,  
2009.



Notary Public in and for  
The State of Texas

Seal:



**Exhibit B**

**Letter to TCEQ From "John Q. Citizen" - June 7, 2004**

June 7, 2004

RECEIVED

TCEQ Commissioners White, Marquez and Soward

TCEQ  
MC 100  
P.O. Box 13087  
Austin, TX 78711-3087

RECEIVED BY OPA  
TRACKING # 13847  
ASSIGNED TO: ~~Conservation~~ OLS

JUN 08 2004

Texas Commission on Environmental Quality  
Commissioners Offices

JUN 09 2004

OEPA  
OPR-IC

Dear Commissioners

DUE DATE: FYI  
Vickery  
OC2

I am a resident living very near the Texas Disposal System (TDS) Landfill in Creedmoor, Texas. That also makes me a resident of Travis County and the State of Texas. As you are very aware there is a great deal of publicity on the operation of the BFI and Waste Management Landfills in Travis County. With the encouragement from the president of TDS Bob Gregory, the residents near the BFI and Waste Management landfills have been successful in making public, operational and enforcement issues within those landfills. I fully support the efforts of those residents and firmly believe the all landfills should strictly adhere to all rules in the design and operation of landfills. It is my opinion that there are greater problems associated with the TDS landfill which has an liner inferior to either BFI's or Waste Managements. As a result the chance of contaminating the groundwater in Creedmoor is much higher. Mr. Gregory likes to portray himself as the small landfill owner compared to BFI and Waste Management but let me assure you he has no problems hiring attorneys and buying influence at the highest levels of government to get what he wants. As an ordinary citizen I cannot afford to raise issue against TDS.

With that being said I would like to outline the purpose of this letter and then discuss what I feel are legitimate concerns about the TDS landfill. First and foremost this letter is written to thank all the commissioners for moving forward with rewriting the municipal solid waste rules and investigating the enforcement lapses by the TNRCC/TCEQ.

Second I would like to encourage the TCEQ to rewrite the rules that are clear and direct with no ambiguities. All landfill owners will know exactly what will be required in the design and operation and the implementation of those rules will be fair for each landfill in the state. As part of that I would respectfully request that the TCEQ address the issues I have raised in this letter as well as all attachments to this letter. Two of the attachments were prepared by the TNRCC but evidently ignored when it came time to approve Texas Disposal System's purported Subtitle D alternate liner and leachate collection system.

For my third point to this letter, it is my opinion that with a proper interpretation of the rules and adequate enforcement by the TNRCC the TDS would not have been allowed to build an inadequate liner and leachate collection system. Compare the TDS liner with the BFI and Waste Management liners in Travis County and you will understand. I would ask that TDS be made to build the same kind of liner that BFI and Waste Management



build. With the potential of them taking in hazardous waste to their landfill they should build a proper liner and then move their existing waste onto that liner.

In the event that the TCEQ does not agree with what I have outlined in this letter as well as the attachments prepared by the TNRCC in 1994 my fourth point would be to ask the TCEQ to rewrite the rules in a clear concise format that would allow all other landfills in the state to make the same ridiculous demonstration that TDS made to essentially eliminate most components of the liner and leachate collection system. I know you will find this fourth point silly but how can TDS ignore the design requirements and yet all other landfills are having to go thru the expense of installing a complete Subtitle D-liner and leachate collection system?

Years ago I did try to visit the TNRCC Central Records periodically and review the TDS files to attempt to keep up with what TDS was up to. Fortunately I made copies of some correspondence related to the TDS landfill design. I say this because after the recent newspaper articles including the one about rewriting the rules I went back to review the TDS files again that are now in micro film form. To my amazement many of the key documents had been removed by someone prior to the files being made permanent in micro film. I am attaching copies of some of those documents to this letter and ask that you ensure they be made a part of the permanent record. From what I have seen it is my opinion that the TNRCC may have been part of some shady dealings in the past. However, everybit of the information needs to be in the public records for all to see. Removing those documents makes things look even more suspicious than they already are.

Below is a list of those documents that are missing from your Central Records with copies attached to this letter. I ask that you take the time to read them. You would then understand why someone would not want them in the permanent records.

- September 7, 1994 Interoffice Memorandum from Ronald Bond, P.E. to the Executive Director Barry Williams outlining what should be done for TDS to get approval of their Alternative Liner Design. The memorandum also includes an Interoffice Memorandum from TNRCC staff with review comments on the Alternate Liner Design Demonstration;
- September 12, 1994 letter from the EPA containing comments on the TDS alternative solid waste liner petition;
- November 9, 1994 Interoffice Memorandum from TNRCC staff with comments to a Supplement to Alternate Liner Design;
- May 29, 1995 letter from TDS to Travis County Judge Bill Aleshire;
- June 8, 1995 response letter from Travis County Judge Bill Aleshire to TDS.

There are probably other documents missing from Central Records but if you take the time to read and understand the technical issues you will understand why they might have been removed from the files. Was Ronald Bond removed from his position as Director after the September 7, 1994 memorandum? Why wasn't his name on the November 9, 1994 memorandum. The TDS permit modification for the alternate liner was approved

on November 16, 1994, only 7 days after the TNRCC staff wrote the November 9, 1994 memorandum. Did the TNRCC work that fast to approve something that controversial without input from our friendly legislators? Why did the approval of the TDS alternate liner completely ignore the comments prepared by staff in the memorandums?

I could write pages about my concerns with the TDS Landfill but in general I agree with the comments prepared by Ronald Bond, P.E. and the TNRCC staff. In fact I will use this letter and attachments as my comments to submit to as part of the municipal solid waste rule rewriting.

In a January 6, 2004 article in the Austin American Statesman Mr. Gregory touts how he does not run a trashy facility and how the landfill sports a clean image with exotic game and recycling. The article also states that it is praised by environmentalists and some of its neighbors. What Mr. Gregory does not want people to know and what environmentalists and some of its neighbors fail to see is the most important thing in landfills is what happens below the surface that cannot be seen, primarily contamination of our groundwater. This contamination may not be detected until after Mr. Gregory makes his millions of dollars and walks away. At that point it is up to the TDS neighbors to deal with the contamination problems. Will the state and federal government be responsible for any cleanup since they have allowed Mr. Gregory to ignore the current rules?

Commissioner Soward was quoted in the May 22, 2004 Austin American Statesman saying "We need to hear from Joe Q. Citizen who lives next to a landfill so we know what issues and problems to address". In response to Commissioner Soward, I am Joe Q. Citizen and I am respectfully asking that you and the other commissioners look into the specific details of this landfill and require TDS to construct a complete liner and leachate collection system just as BEI and Waste Management has done in Travis County and require them to move their existing waste onto the new liner. By doing this you can build a stronger case for rewriting the rules as well as correcting a serious enforcement lapse made by the TNRCC years ago.

I certainly do not know what the real agenda is for the rule rewriting but I have to believe that the TCEQ commissioners have the best interest of the citizens of the State of Texas as well as Travis County and yes even Creedmoor in mind. We are the neighbors that do not have the thousands or millions of dollars to contest these multi-million dollar landfills but have to deal with their pollution whether it be below or above ground everyday.

I wish you the best of luck in rewriting the rules that will be protective of the environment above and below the ground and will be fair for all landfills as well as all citizens in the State of Texas.

Sincerely,

John Q. Citizen

**Exhibit C**  
**Steve Shepherd Letter**

01/12/2009 16:20 FAX 5122390626

TCEQ Legal Services

002/004

Buddy Varnum, Chairman  
Larry R. Soward, Commissioner  
Bryan W. Shaw, Ph.D., Commissioner  
Mark R. Vickers, P.C., Executive Director



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 12, 2009

Paul Gosselink  
LLOYD GOSSELINK BLEVINS ROCHELL & TOWNSEND, P.C.  
816 CONGRESS AVENUE, SUITE 1900  
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, L.L.C.,  
for a Major Amendment to Type I MSW Permit No. 1447A

Dear Mr. Gosselink:

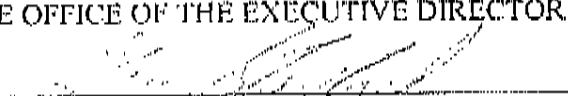
I am writing on behalf of the commission's Municipal Solid Waste Permitting staff to confirm their efforts to locate TDSL's original landfill application from approximately 1988. Permitting staff recall talking with you in November 2008, and making an effort to locate the original application in the files kept by the permitting staff. Staff were not able to find the original application and reported back to you that the earliest document they could find was the Subtitle D Modification Application from the mid 1990s. Permitting staff noted that the original permit was issued by the Texas Department of Health, and that it was possible that the original application and permit may not have made the transition into files kept by the TCEQ. Permitting staff were also contacted by Mr. Art Rodriguez, the author of the Motion to Quash, who asked whether they had a copy of the TDSL application. Permitting staff told Mr. Rodriguez that they could not locate the original application in their files, but that they did have a lot of files for the permit starting with the Subtitle D Modification Application.

Please let me know if you have any questions or want to discuss this matter further.

Sincerely,

THE OFFICE OF THE EXECUTIVE DIRECTOR

By:

  
Steven Shepherd  
Staff Attorney  
Environmental Law Division

cc: Mailing List

MAILING LIST  
BFI SUNSET FARMS MSW LANDFILL  
SOAH DOCKET NO. 582-08-217  
TCEQ DOCKET NO. 2007-1774-MSW

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PIONEER FARMS

01/12/2009 16:20 FAX 5122390626

TCEQ Legal Services

004/004

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**Exhibit D**

**December 12, 2008 - Mr. Renbarger E-mail**

**John Carlson**

---

**From:** Renbarger, Bob [Bob@fbhh.com]  
**Sent:** Friday, December 12, 2008 5:17 PM  
**To:** John Carlson  
**Subject:** RE: Sunset Farms – TDSL Subpoena

John:

Unfortunately, we do not represent TDSL or any of the other TDS entities. Our client, TJFA, has instructed us not to confer or be involved with any matter regarding TDSL or TDS. Accordingly, we cannot assist in obtaining authorizations for service for those entities. I suppose you may need to contact TDSL directly or Mr. Gregory to determine if these arrangements are possible. Thanks

Bob

Bob Renbarger  
Attorney at Law  
Fritz, Byrne, Head & Harrison, PLLC  
98 San Jacinto Blvd., Suite 2000  
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512-476-2020 Office  
512-477-5267 Fax

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---

**From:** John Carlson [mailto:jcarlson@lglawfirm.com]  
**Sent:** Friday, December 12, 2008 3:55 PM  
**To:** Renbarger, Bob; Head, JD  
**Cc:** Paul Gosselink  
**Subject:** Sunset Farms -- TDSL Subpoena

Bob/J.D.:

Re: the commission that Judge Newchurch signed for BFI's third-party request for documents from TDSL (TDSL's current permit and the underlying application dox), please let us know if we need to go the constable route for service or if someone at TDSL has/will indicated to you all that it will simply agree to accept service via certified mail.

Thanks,  
JEC



Lloyd Gosselink Rochelle & Townsend, P.C.  
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