

**SOAH DOCKET NO. 582-08-2178  
TCEQ DOCKET NO. 2007-1774-MSW**

**APPLICATION OF BFI WASTE § BEFORE THE STATE OFFICE  
SYSTEMS OF NORTH AMERICA, §  
INC., FOR A MAJOR AMENDMENT § OF  
TO TYPE I MSW PERMIT NO. 1447A §  
§ ADMINISTRATIVE HEARINGS**

**ORDER NO. 1  
SETTING CASE SCHEDULE AND PROCEDURES**

**I. Introduction**

On May 8, 2008, a preliminary hearing was held in this case, and jurisdiction was proven.  
The following appeared and were admitted as part es:

<b>PARTY</b>	<b>REPRESENTATIVE</b>
BFI Waste Systems of North America, Inc. (BFI or Applicant)	Paul Gosselink and John Carlson
Giles Holdings, L.P. (Giles)	Paul Terrill
Executive Director (ED)	Steve Shepherd and Susan White
Office of Public Interest Counsel (OPIC)	Christina Mann
Travis County	Kevin W. Morse
City of Austin (Austin)	Holly Noelke and Meitra Farhadi
TJFA, L.P.	Bob Renbarger and J.D. Head
Northeast Neighbors Coalition, whose members include Evelyn Remmert, Mark McAfee, and others (Northeast)	Jim Blackburn
Mark McAfee	self
Melanie McAfee	self
Roger Joseph	self
Delmer D. Rogers	self
Williams, Ltd., a general Texas partnership	Evan Williams

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<b>PARTY</b>	<b>REPRESENTATIVE</b>
Pioneer Farms	Celeste Scarborough

BFI and Giles are aligned for all purposes except settlement, and their alignment's representative is Paul Gosselink. Northeast; Mark McAfee; Melanie McAfee; Roger Joseph; Delmer D. Rogers; Williams, Ltd.; and Pioneer Farms are aligned for all purposes except settlement; and their alignment's representative is Jim Blackburn. Each aligned party shall be served through the alignment's representative. Only an alignment's representative may file a motion, response, discovery request, etc. unless a motion to appoint a new representative or sever an alignment is filed, served on all other parties, and granted by the Judge.

## II. Schedule

The parties agreed on the following schedule for prehearing activities and the hearing on the merits of the case, which schedule shall govern this proceeding:

<b>DATE</b>	<b>EVENT</b>
May 8, 2008	Preliminary hearing. Each party made a request for disclosure by every other unaligned party and alignment of parties, in accordance with the Texas Rules of Civil Procedure.
May 16, 2008	Applicant to provide one copy of the current application to each unaligned party and each alignment of parties.
May 29, 2008	Discovery Begins. Deadline to respond to requests for disclosure.
June 6, 2008	Applicant shall designate its expert witnesses.
June 23, 2008	Depositions of fact witnesses may begin.
June 27, 2008	Other parties shall designate their expert witnesses.
July 18, 2008	Deadline to serve written discovery requests.
August 11, 2008	Depositions of expert witnesses may begin.
August 26, 2008	Prehearing conference to rule on discovery disputes, if needed and called by Judge.
September 25, 2008	Applicant to profile its direct case in writing, including all testimony and exhibits.

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October 27, 2008	All parties, except Applicant and ED, to prefile their direct cases in writing, including all testimony and exhibits.
November 5, 2008	ED to prefile his direct case in writing, including all testimony and exhibits.
November 17, 2008	Deadline to file objections to any prefiled evidence.
December 3, 2008	Deadline to file responses to objections to prefiled evidence.
December 9, 2008	Deadline to complete all depositions.
December 15, 2008	Deadline to file any pre-trial motion.
December 19, 2008	Prehearing conference to rule on objection to prefiled evidence, other pending motions, and other procedural matters.
January 12, 2009	Hearing on the merits (HOM) of application begins.
January 26, 2009	Estimated end of HOM.
February 23, 2009	Parties file closing arguments.
March 9, 2009	Parties file responses to closing arguments and submit proposed Findings of Fact and Conclusions of Law.
May 8, 2009	Deadline to issue proposal for decision (PFD).

### III. Hearing and Prehearing Dates and Location

The hearing on the merits will convene at 9:00 a.m., January 12, 2009, at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. Unless the parties are notified otherwise, the hearing will continue each workday thereafter until it has concluded. Given the complexity and anticipated length, appearing at the hearing on the merits by telephone is not practical and will not be allowed. The parties shall reserve the morning of August 26, 2008, for a prehearing conference concerning discovery disputes, but it will only be held if the Judge determines that it is needed and issues a subsequent order calling it. The December 19, 2008, prehearing conference will be held at noon at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. .

### IV. Procedural Rules

Except as otherwise provided herein, this case shall be conducted in accordance with the procedural rules of the Texas Commission on Environmental Quality (TCEQ) and SOAH. 30

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TEX. ADMINISTRATIVE CODE (TAC) Chapter 80 and 1 TAC Chapter 155. In the event of conflict, the TCEQ's rules apply. 1 TAC § 155.1 (c).

The parties have agreed that they may serve each other by email, provided that a telephone call is made to each recipient to inform them of the service in order to avoid the email filtering problems. They have also agreed to serve each other so that the recipient receives the served item on the due date; merely mailing the item on the due date will not be considered timely service.

#### V. Discovery

Discovery shall be conducted according to the Texas Rules of Civil Procedure (TRCP), as supplemented by SOAH's discovery rules. 1 TAC § 155.31. The TRCP shall be interpreted consistently with chapter 80 of the TCEQ's rules, the Texas Water Code, the Texas Health and Safety Code, and the Administrative Procedure Act. 30 TAC § 80.151.

Pursuant to SOAH Procedural Rule 1 TAC § 155.23(3), discovery documents shall be served on the other parties but *shall not* be filed with Judge unless such materials are the subject of a discovery dispute and only those portions relevant to the dispute shall be attached to any pertinent motion or response.

Responses to requests for discovery are due within 30 days of receipt of the discovery request.

The parties are expected to attempt to resolve discovery disputes; however, significant disputes which cannot be resolved should be brought to the ALJ's attention in a motion to compel. Any such motion shall include a copy of any discovery correspondence necessary for an informed ruling on the dispute.

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## VI. Pleadings

Unless a party seeks a hearing and the motion is granted or the ALJ determines that a hearing is necessary, the ALJ will rule on motions based on the written pleadings. If oral argument is granted, it shall be conducted by telephone conference, unless the ALJ specifies otherwise.

If a deadline is approaching and a party cannot get a fax through for reasons beyond its control, the party should call SOAH's Docketing Division, (512) 475-3445, to discuss the problem.

When filing or serving documents, the parties shall use the service list attached to this order and attach a copy of that list to each filing.

## VII. Prefiled Evidence

All parties shall prefile their direct-case evidence in writing. One copy shall be served on the representative of every other party, and one copy shall be filed with the Judge. Rebuttal evidence and documents used for impeachment or rebuttal purposes need not be prefiled. The prefiled evidence should include all testimony and other evidence necessary to support a party's direct case.

Non-rebuttal and non-cross-examination evidence that is not prefiled will not be admitted unless the offering party shows that there is good cause to allow it. Good cause will be determined primarily based the offering party's showing a need for the additional evidence and either that the need could not have been reasonably anticipated, the evidence was inadvertently not prefiled due to an error, or the other parties would not be unreasonably surprised by the late offering of the evidence. The party with the burden of proof is cautioned not to attempt to gain a strategic advantage by saving evidence for rebuttal that is more properly part of its direct case, since that might lead to a motion for summary disposition.

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Prefiled testimony shall be written as if the questions were asked by the party's lawyer and answered by the witness. Each witness must be called to testify and adopt the prefiled testimony under oath. The testimony should then be offered as an exhibit. Every other party will have an opportunity to cross-examine the witness unless that opportunity has been waived. If all other parties have waived cross-examination, the witness's testimony shall be admitted without the witness appearing.

When a party prefiles testimony, it shall indicate the sequence in which it intends to call its witnesses. If there is a need to deviate from that sequence, the Judge and the other parties shall be informed not later than the day before the witness is called to testify unless the Judge permits shorter notice.

Every page of every prefiled document shall be appropriately numbered, preferably in the lower right corner, to allow easy identification and reference.

On the day they are offered, two copies of every exhibit, which will be referred to as the "Record Set" and the "Appeal Set," shall be provided to the court reporter, and a copy shall be provided to the Judge and each unaligned party and alignment representative.

### VIII. Transcript

For any proceeding set to last longer than one day, a court reporter is generally required and an ALJ may order one on his or her own motion. 1 TAC § 155.43(b) and 30 TAC § 80.23(b)(4). The parties estimate that the hearing on the merits will last longer than one day.

The Applicant shall arrange for and pay a court reporter to record and transcribe the hearing on the merits and deliver the original transcript to the ALJ and two copies to the TCEQ's Chief Clerk within two weeks after the end of the hearing. The delivered transcript shall also include electronic copies thereof on disc in text format. When the Commission makes a final

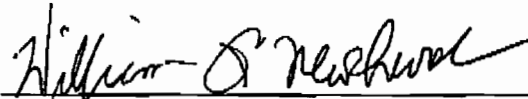
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decision in this case, the costs of the recording and transcription shall be allocated among the parties in accordance with 30 TAC § 80.23.

**SIGNED May 9, 2008.**



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**WILLIAM G. NEWCHURCH  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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**STYLE/CASE:** BFI WASTE SYSTEMS OF NORTH AMERICA INC  
**SOAH DOCKET NUMBER:** 582-08-2178  
**REFERRING AGENCY CASE:** 2007-1774-MSW

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**STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

**ADMINISTRATIVE LAW JUDGE  
ALJ WILLIAM G. NEWCHURCH**

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