STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE

300 West 15th Street Suite 502 Austin, Texas 78701 Phone: (512) 475-4993 Fax: (512) 475-4994

DATE:

11/19/2008

NUMBER OF PAGES INCLUDING THIS COVER SHEET:

<u> 19</u>

REGARDING: SUBPOENA- ANALYSIS, INC.; APPLIED MATERIALS, INC.; AND POST BUCKLEY, SCHUH &

JERNIGAN, INC.

DOCKET NUMBER:

<u>582-08-2 | 178</u>

	<u>JUDGE WILLIAM G NEWCHURCH</u>
FAX TO: JIM BLACKBURN	FAX TO: (713) 524-5165
KEVIN W. MORSE	(512) 854-4808
HOLLY C. NOELKE	(512) 974-6490
PAUL TERRILL	(512) 474-9888
J.D. HEAD	(512) 477-5267
BOB RENBARGER (FRITZ, BYRNE, HEAD & HARRISON, LLP)	(512) 477-5267
PAUL GOSSELINK (LLOYD GOSSELINK BLEVINS ROCHELL & TOWNSEND, P.C.)	(512) 472-0532
JOHN CARLSON (LLOYD GOSSELINK BLEVINS ROCHELLE & TOWNSEND, P.C.)	(512) 472-0532
CHRISTINA MANN (TEXAS COMMISSION ON ENVIRONMENTAL QUALITY)	(512) 239-6377
STEVE SHEPHERD (TEXAS COMMISSION ON ENVIRONMENTAL QUALITY)	(512) 239-0606
SUSAN WHITE (TEXAS COMMISSION ON ENVIRONMENTAL QUALITY)	(512) 239-0606

TCEO Docket Clerk, Fax Number 512/239-3311

NOTE: IF ALL PAGES ARE NOT RECEIVED, PLEASE CONTACT NORMA LOPEZ(nlo) (512) 475-4993

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THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

SOAH DOCKET NO. 582-08-2178 TCEO DOCKET NO. 2007-1774-MSW

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

SUBPOENA

To any Sheriff, Constable, or any other person authorized to serve and execute subpoenas in the State of Texas:

You are commanded to summon: Post, Buckley, Schuh & Jernigan, Inc.

6504 Bridge Point Parkway

Austin, Texas 78730

By and through its registered agent, Corporate Creations Network, Inc. 4265 San Felipe, Suite 1100

Houston, Texas 77027

on behalf of: TJFA, L.P. and Northeast Neighbors Coalition, parties in the above-contested municipal solid waste landfill hearing now pending at the State Office of Administrative Hearings

Fritz, Byrne, Head & Harrison, PLLC to appear at:

98 San Jacinto, Suite 2000

Austin, Texas 78701

Telephone: (512) 476-2020

on December 9, 2008 at 11:00 a.m., and there to remain until discharged, in order to:

Give testimony at a: ■ DEPOSITION (by written questions only)

□ HEARING □ TRIAL

☑ Produce and permit inspection and copying of the following designated documents or tangible things in the possession, custody, or control of Applied Materials, Inc., to protestant TJFA, L.P.'s counsel, Bob Renbarger, Fritz, Byrne, Head & Harrison, PLLC, 98 San Jacinto, Suite 2000, Austin, Texas 78701 on or before December , 2008.

See list attached as Exhibit A.

FAILURE BY ANY PERSON WITHOUT ADEQUATE EXCUSE TO OBEY A SUBPOENA SERVED UPON THAT PERSON MAY RESULT IN THE INITIATION OF ENFORCEMENT PROCEEDINGS AND MAY BE PUNISHED IN ACCORDANCE WITH CIVIL AND/OR CRIMINAL SANCTIONS IN PROCEEDINGS BROUGHT IN DISTRICT COURT.

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EXHIBIT "A"

SUBPOENA FOR PRODUCTION OF DOCUMENTS

The following instructions and definitions apply to the Subpoena and your responses thereto

INSTRUCTIONS

- 1. These requests are continuing in nature and require supplementary responses if you or your attorney obtain information which reveals that your responses were incorrect or incomplete when made or that your responses are no longer correct or complete.
- 2. If any document requested herein has been destroyed, you are requested to describe in detail the circumstances of and reasons for such destruction and to produce all documents which relate to either the circumstances or the reasons for such destruction.
- 3. If any document requested herein is withheld under claim of privilege or is not produced for whatever reason, you are instructed to comply with Rule 193.3 of the Texas Rules of Civil Procedure and (I) to state with specificity the claim of privilege or other reason used to withhold production, and (ii) to identify each such document by date, author, addressee, persons or entities copied, persons or entities who reviewed the document, and subject matter, without disclosing its contents, in a manner sufficient to allow it to be described to the Administrative Law Judge for ruling on the privilege or other reason asserted. You are further requested to produce those portions of any such documents which are not subject to a claim of privilege or other reason for non-production by excising or otherwise protecting the portions for which privilege is asserted, if such a technique does not result in disclosing the contents of the portions for which some privilege is asserted. Also, for each document you claim is not discoverable, state the date of the document; the name, job title, and address of the person to whom it was addressed or circulated, or who saw it; the name, job title, and address of the person now in possession of the document; a description of the subject matter of the document; and the present location and the custodian for the document.
- 4. Unless otherwise specified, the documents requested cover the period since January 1, 1990 until present.

DEFINITIONS

- 1. The term "Person" as used herein includes individuals, general partnerships, limited partnerships, corporations, governmental units, and any other form of business entity or association, as the case may be.
- 2. "Documents" is defined broadly to include all originals and all non-identical copies of all written, typed, printed, recorded, or graphic matter, as well as all attachments, addenda, and appendices thereto, of any nature or description whatsoever, wherever located, and in whatever form or condition, in both hard copy and electronic format.

As the context requires, "documents" includes tangible things of every kind and description, which may be non-documentary in nature.

Pursuant to Rule 196.4 of the Texas Rules of Civil Procedure, request is made for the production of all data or information that exists in electronic or magnetic form. Request is also made for this data to be produced in hard-copy (paper) form.

- 3. "Communications" means any exchange of information, whether written or oral, including, but not limited to, exchanges of information in conversation (both face to face and telephonic) and correspondence.
- 4. The term "Concerning" shall mean referring to, evidencing, reflecting, constituting or supporting.
- 5. "PBSJ" shall refer or Post, Buckley, Schuh & Jernigan, Inc., and its facilities located at 6504 Bridge Point Parkway, Austin, Texas, and as the context requires, includes its present and former predecessors, successors, affiliates, parents, subsidiaries, agents, assigns, officers, directors, employees, attorneys, representatives, and/or any person or entity acting or purporting to act in concert with it, on its behalf, or under its control, directly or indirectly
- 6. "You" or "Your" shall refer to Post, Buckley, Schuh & Jernigan, Inc., and as the context requires, includes its present and former predecessors, successors, affiliates, parents, subsidiaries, agents, assigns, officers, directors, employees, attorneys, representatives, and/or any person or entity acting or purporting to act in concert with it, on its behalf, or under its control, directly or indirectly.
- 7. "BFI" shall refer to BFI Waste Systems of North America, LLC, and as the context requires, includes its present and former predecessors, successors, affiliates, parents, subsidiaries, agents, assigns, officers, directors, employees, attorneys, representatives, and/or any person or entity acting or purporting to act in concert with it, on its behalf, or under its control, directly or indirectly.

- 8. "Applied Materials" shall refer to Applied Materials, Inc., and its facilities located at 9700 East Highway 290, Austin, Texas, and as the context requires, includes its present and former predecessors, successors, affiliates, parents, subsidiaries, agents, assigns, officers, directors, employees, attorneys, representatives, and/or any person or entity acting or purporting to act in concert with it, on its behalf, or under its control, directly or indirectly.
- 9. "AnalySys" shall refer or AnalySys, Inc., and its facilities located at 3512 Montopolis Drive, Austin, Texas, and as the context requires, includes its present and former predecessors, successors, affiliates, parents, subsidiaries, agents, assigns, officers, directors, employees, attorneys, representatives, and/or any person or entity acting or purporting to act in concert with it, on its behalf, or under its control, directly or indirectly.

REQUESTED DOCUMENTS OR TANGIBLE ITEMS

- 1. All documents concerning a July 2002 groundwater sampling event which took place at the Applied Materials' property located at 9700 East Highway 290, Austin, Texas.
- 2. All documents concerning groundwater monitoring or groundwater sampling events occurring at the Applied Materials' property located at 9700 East Highway 290, Austin, Texas since July 2002 to present.
- 3. All documents reflecting communications between You and BFI concerning groundwater conditions at the Applied Materials' property located at 9700 East Highway 290, Austin, Texas.
- 4. All documents reflecting communications between You and any other person or entity concerning groundwater conditions at the Applied Materials' property located at 9700 East Highway 290, Austin, Texas, including but not limited to communications with the Texas Commission on Environmental Quality (or its predecessor agencies), Waste Management (located at 9708 Giles Road, Austin, Texas), AnalySys and/or Applied Materials.

THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

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

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

SUBPOENA

To any Sheriff, Constable, or any other person authorized to serve and execute subpoenas in the State of Texas:

You are commanded to summon: Applied Materials, Inc.

9700 East Highway 290 Austin, Texas 78724

By and through its registered agent,

CT Corp System 350 N. St. Paul Street Dallas, Texas 75201

on behalf of: TJFA, L.P. and Northeast Neighbors Coalition, parties in the above-contested municipal solid waste landfill hearing now pending at the State Office of Administrative Hearings

to appear at: Fritz, Byrne, Head & Harrison, PLLC

98 San Jacinto, Suite 2000

Austin, Texas 78701

Telephone: (512) 476-2020

on December 9, 2008 at 9:00 a.m., and there to remain until discharged, in order to:

- ☐ Give testimony at a: ☐ DEPOSITION (by written questions only)
 - □ HEARING
 - □ TRIAL
- Produce and permit inspection and copying of the following designated documents or tangible things in the possession, custody, or control of Applied Materials, Inc., to protestant TJFA, L.P.'s counsel, Bob Renbarger, Fritz, Byrne, Head & Harrison, PLLC, 98 San Jacinto, Suite 2000, Austin, Texas 78701 on or before December ______, 2008.

⊠ See list attached as Exhibit A.

ISSUED THE KATHDAY OF November

FAILURE BY ANY PERSON WITHOUT ADEQUATE EXCUSE TO OBEY A SUBPOENA SERVED UPON THAT PERSON MAY RESULT IN THE INITIATION OF ENFORCEMENT PROCEEDINGS AND MAY BE PUNISHED IN ACCORDANCE WITH CIVIL AND/OR CRIMINAL SANCTIONS IN PROCEEDINGS BROUGHT IN DISTRICT COURT.

By: WILLIAM G. NEWCHURCH ADMINISTRATIVE LAW JUD								
Received on the day of to:	day of	_, 2008 a	, 2008 at	a.m./p.m.	a.m/p.m. by de	Executed	on the	ie person
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			Notary Pub	lic, State of	Texas			

EXHIBIT "A"

SUBPOENA FOR PRODUCTION OF DOCUMENTS

The following instructions and definitions apply to the Subpoena and your responses thereto.

INSTRUCTIONS

- 1. These requests are continuing in nature and require supplementary responses if you or your attorney obtain information which reveals that your responses were incorrect or incomplete when made or that your responses are no longer correct or complete.
- 2. If any document requested herein has been destroyed, you are requested to describe in detail the circumstances of and reasons for such destruction and to produce all documents which relate to either the circumstances or the reasons for such destruction.
- 3. If any document requested herein is withheld under claim of privilege or is not produced for whatever reason, you are instructed to comply with Rule 193.3 of the Texas Rules of Civil Procedure and (I) to state with specificity the claim of privilege or other reason used to withhold production, and (ii) to identify each such document by date, author, addressee, persons or entities copied, persons or entities who reviewed the document, and subject matter, without disclosing its contents, in a manner sufficient to allow it to be described to the Administrative Law Judge for ruling on the privilege or other reason asserted. You are further requested to produce those portions of any such documents which are not subject to a claim of privilege or other reason for non-production by excising or otherwise protecting the portions for which privilege is asserted, if such a technique does not result in disclosing the contents of the portions for which some privilege is asserted. Also, for each document you claim is not discoverable, state the date of the document; the name, job title, and address of the person to whom it was addressed or circulated, or who saw it; the name, job title, and address of the person now in possession of the document; a description of the subject matter of the document; and the present location and the custodian for the document.
- 4. Unless otherwise specified, the documents requested cover the period since January I, 1990 until present.

DEFINITIONS

1. The term "Person" as used herein includes individuals, general partnerships, limited partnerships, corporations, governmental units, and any other form of business entity or association, as the case may be.

2. "Documents" is defined broadly to include all originals and all non-identical copies of all written, typed, printed, recorded, or graphic matter, as well as all attachments, addenda, and appendices thereto, of any nature or description whatsoever, wherever located, and in whatever form or condition, in both hard copy and electronic format.

As the context requires, "documents" includes tangible things of every kind and description, which may be non-documentary in nature.

Pursuant to Rule 196.4 of the Texas Rules of Civil Procedure, request is made for the production of all data or information that exists in electronic or magnetic form. Request is also made for this data to be produced in hard-copy (paper) form.

- 3. "Communications" means any exchange of information, whether written or oral, including, but not limited to, exchanges of information in conversation (both face to face and telephonic) and correspondence.
- 4. The term "Concerning" shall mean referring to, evidencing, reflecting, constituting or supporting.
- 5. "Applied Materials" shall refer to Applied Materials, Inc., and its facilities located at 9700 East Highway 290, Austin, Texas, and as the context requires, includes its present and former predecessors, successors, affiliates, parents, subsidiaries, agents, assigns, officers, directors, employees, attorneys, representatives, and/or any person or entity acting or purporting to act in concert with it, on its behalf, or under its control, directly or indirectly.
- 6. "You" or "Your" shall refer to Applied Materials, Inc., and as the context requires, includes its present and former predecessors, successors, affiliates, parents, subsidiaries, agents, assigns, officers, directors, employees, attorneys, representatives, and/or any person or entity acting or purporting to act in concert with it, on its behalf, or under its control, directly or indirectly.
- 7. "BFI" shall refer to BFI Waste Systems of North America, LLC, and as the context requires, includes its present and former predecessors, successors, affiliates, parents, subsidiaries, agents, assigns, officers, directors, employees, attorneys, representatives, and/or any person or entity acting or purporting to act in concert with it, on its behalf, or under its control, directly or indirectly.
- 8. "AnalySys" shall refer or AnalySys, Inc., and its facilities located at 3512 Montopolis Drive, Austin, Texas, and as the context requires, includes its present and former predecessors, successors, affiliates, parents, subsidiaries, agents, assigns, officers, directors, employees, attorneys, representatives, and/or any person or entity acting or purporting to act in concert with it, on its behalf, or under its control, directly or indirectly.

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REQUESTED DOCUMENTS OR TANGIBLE ITEMS

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- 4. All documents reflecting communications between You and any other person or entity concerning groundwater conditions at the Applied Materials property located at 9700 East Highway 290, Austin, Texas, including but not limited to communications with the Texas Commission on Environmental Quality (or its predecessor agencies), Waste Management (located at 9708 Giles Road, Austin, Texas), PBSJ and/or AnalySys.

THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

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

IN RE: APPLICATION OF BFI WASTE	§	BEFORE THE STATE OFFICE
SYSTEMS OF NORTH AMERICA,	§	
INC., FOR A MAJOR AMENDMENT	§	\mathbf{OF}
TO TYPE I MSW PERMIT NO.	§	
1447A	§	ADMINISTRATIVE HEARINGS

SUBPOENA

To any Sheriff, Constable, or any other person authorized to serve and execute subpoenas in the State of Texas:

You are commanded to summon:

AnalySys, Inc.

Richard L. Elton, III, registered agent

3512 Montopolis Drive Austin, Texas 78744

on behalf of: TJFA, L.P. and Northeast Neighbors Coalition, parties in the above-contested municipal solid waste landfill hearing now pending at the State Office of Administrative Hearings

to appear at: Fritz, Byrne, Head & Harrison, PLLC

98 San Jacinto, Suite 2000

Austin, Texas 78701

Telephone: (512) 476-2020

on December 9, 2008 at 10:00 a.m., and there to remain until discharged, in order to:

☑ Give testimony at a:
☑ DEPOSITION (by written questions only)

□ HEARING□ TRIAL

Produce and permit inspection and copying of the following designated documents or tangible things in the possession, custody, or control of Applied Materials, Inc., to protestant TJFA, L.P.'s counsel, Bob Renbarger, Fritz, Byrne, Head & Harrison, PLLC, 98 San Jacinto, Suite 2000, Austin, Texas 78701 on or before December ______, 2008.

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By: William G. NEWCHURCH ADMINISTRATIVE LAW JUDGE

Received on the day of	, 2008 at a.m./p.1	m. Executed on the
day of		ivering, in person,
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SHERIFF/CONSTABLE/	DEPUTY/SERVER	
AUTHORIZED PERSON		
SWORN TO AND SUBSCRIBED I	BEFORE ME THIS DAY OF	. 2008
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Seal:		
	Notary Public, State of Texas	

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- 6. "You" or "Your" shall refer to AnalySys, Inc., and as the context requires, includes its present and former predecessors, successors, affiliates, parents, subsidiaries, agents, assigns, officers, directors, employees, attorneys, representatives, and/or any person or entity acting or purporting to act in concert with it, on its behalf, or under its control, directly or indirectly.
- 7. "BFI" shall refer to BFI Waste Systems of North America, LLC, and as the context requires, includes its present and former predecessors, successors, affiliates, parents, subsidiaries, agents, assigns, officers, directors, employees, attorneys, representatives, and/or any person or entity acting or purporting to act in concert with it, on its behalf, or under its control, directly or indirectly.

- 8. "Applied Materials" shall refer to Applied Materials, Inc., and its facilities located at 9700 East Highway 290, Austin, Texas, and as the context requires, includes its present and former predecessors, successors, affiliates, parents, subsidiaries, agents, assigns, officers, directors, employees, attorneys, representatives, and/or any person or entity acting or purporting to act in concert with it, on its behalf, or under its control, directly or indirectly.
- 9. "PBSJ" shall refer or Post, Buckley, Schuh & Jernigan, Inc., and its facilities located at 6504 Bridge Point Parkway, Austin, Texas, and as the context requires, includes its present and former predecessors, successors, affiliates, parents, subsidiaries, agents, assigns, officers, directors, employees, attorneys, representatives, and/or any person or entity acting or purporting to act in concert with it, on its behalf, or under its control, directly or indirectly.

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- 4. All documents reflecting communications between You and any other person or entity concerning groundwater conditions at the Applied Materials' property located at 9700 East Highway 290, Austin, Texas, including but not limited to communications with the Texas Commission on Environmental Quality (or its predecessor agencies), Waste Management (located at 9708 Giles Road, Austin, Texas), PBSJ and/or Applied Materials.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE

300 West 15th Street Suite 502 Austin, Texas 78701 Phone: (512) 475-4993 Fax: (512) 475-4994

SERVICE LIST

AGENCY:

Environmental Quality, Texas Commission on (TCEQ)

STYLE/CASE:

BFI WASTE SYSTEMS OF NORTH AMERICA INC

SOAH DOCKET NUMBER:

582-08-2178

REFERRING AGENCY CASE: 2007-1774-MSW

STATE OFFICE OF ADMINISTRATIVE

ADMINISTRATIVE LAW JUDGE
ALJ WILLIAM G. NEWCHURCH

<u>HEARINGS</u>

REPRESENTATIVE / ADDRESS

PARTIES

CHRISTINA MANN ATTORNEY TEXAS COMMISSION ON ENVIRONMENTAL QUALITY OFFICE OF PUBLIC INTEREST COUNSEL P.O. BOX 13087, MC-103 AUSTIN, TX 78711-3087 (512) 239-4014 (PH)

OFFICE OF PUBLIC INTEREST COUNSEL

PAUL TERRILL ATTORNEY 810 W 10TH STREET AUSTIN, TX 78701 (514) 474-9100 (PH) (512) 474-9888 (FAX) PTERRIL@HAZEN-TRRILL.COM

(512) 239-6377 (FAX)

GILES HOLDINGS, L.P.

BOB RENBARGER
ATTORNEY
FRITZ, BYRNE, HEAD & HARRISON, LLP
98 SAN JACINTO BLVD., SUITE 2000
AUSTIN, TX 78701
(512) 476-2020 (PH)
(512) 477-5267 (FAX)
bob@fbhh.com

TJFA, L.P. (TJFA)

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J.D. HEAD ATTORNEY AT LAW FRITZ, BYRNE, HEAD & HARRISON, LLP 98 SAN JACINTO BLVD., SUITE 2000 AUSTIN, TX 78701 (512) 476-2020 (PH) (512) 477-5267 (FAX)

TJFA, L.P. (TJFA)

HOLLY C. NOELKE
ASSISTANT CITY ATTORNEY
CITY OF AUSTIN LAW DEPARTMENT
P.O. BOX 1088
AUSTIN, TX 78767
(512) 974-2630 (PH)
(512) 974-6490 (FAX)
holly.noelke@ci.austin.tx.us

CITY OF AUSTIN

STEVE SHEPHERD LEGAL COUNSEL TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ENVIRONMENTAL LAW DIVISION MC-173 P.O. BOX 13087 AUSTIN, TX 78711-3087 (512) 239-0464 (PH) (512) 239-0606 (FAX) sshepher@tceq.state.tx,us

EXECUTIVE DIRECTOR

PAUL GOSSELINK LLOYD GOSSELINK BLEVINS ROCHELL & TOWNSEND, P.C. 816 CONGRESS AVENUE, SUITE 1900 AUSTIN, TX 78701 (512) 322-5800 (PH) (512) 472-0532 (FAX)

BFI WASTE SYSTEMS OF NORTH AMERICA, INC. (BFI)

図019/019 図019/019

JIM BLACKBURN ATTORNEY 4709 AUSTIN HOUSTON, TX 77004 (713) 524-1012 (PH) (713) 524-5165 (FAX) jbb@blackburncarter.com

MARK MCAFEE

NORTHEAST NEIGHBORS COALITION

WILLIAMS, LTD.

MELANIE MCAFEE

ROGER JOSEPH

DELMER ROGERS

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TRAVIS COUNTY

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