

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

IN RE THE APPLICATION OF
BFI WASTE SYSTEMS OF NORTH
AMERICA, LLC
PERMIT NO. MSW-1447A

§ BEFORE THE STATE OFFICE
§
§ OF ADMINISTRATIVE HEARINGS
§

**TEXAS DISPOSAL SYSTEMS LANDFILL, INC.'S REPLY 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 AND
MOTION TO RECONSIDER**

Texas Disposal Systems Landfill, Inc. ("TDSL"), a non-party to the above-referenced proceeding, files this *Reply 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 and Motion to Reconsider* served on the undersigned by fax on January 13, 2009,¹ and in support of this Motion would respectfully show the Court as follows:

I.

BFI Waste Systems of North America, LLC's ("BFI") Response to TDSL's Motion to Quash and Motion for Protective Order provides all the evidence necessary to demonstrate that BFI seeks only to continue to harass, burden, and unnecessarily cause greater expense to a non-party, TDSL. BFI's actions in this case seek only to prejudice Your Honor and others against TDSL and possibly TJFA through the introduction of unsubstantiated claims and misrepresentations against TDSL and Bob Gregory, in particular. BFI certainly provides plenty of information, but does nothing to demonstrate how its request fails to violate the Texas Rules

¹ It should be noted that all other parties, including Your Honor, appear to have been served on January 12, 2009. BFI appears to find it acceptable to serve TDSL a whole day later. Such prejudicial action resulted in TDSL not having adequate time to reply to BFI's Response before Your Honor issued Order No. 13.

of Civil Procedure, SOAH Rules, and TCEQ Rules. BFI knows that TDSL is preparing a permit amendment to expand the TDSL landfill and seeks to prejudice and discredit TDSL through this public hearing process, at a time when TDSL remains a non-party to this proceeding.

BFI asserts that it seeks the TDSL current permit from TDSL as the agency charged with being the custodian of the permit allegedly does not have a copy of the complete current permit. Until BFI clarified that the production of documents is no more than “a few volumes of permitting documents,” it could be argued that BFI is requesting every document generated as part of TDSL’s permit from the first filing in 1988 to the present, including the original permit application. BFI fails to demonstrate to the court why it needs a complete copy of every piece of paper in the current permit or even which portions of the current TDSL permit BFI does not currently possess. If BFI were truly interested in not unduly burdening, harassing, or creating more expense for TDSL, then it would merely seek the portions of the TDSL permit that are relevant to the areas it seeks to question TJFA’s experts on.

BFI indicates that its Sunset Farms Landfill shares “similar soils and groundwater characteristics”² and that it intends to question TJFA’s expert witnesses on the similarity of the sites’ “site characteristics, design features, and operational procedures at the TDSL site.”³ TDSL understands that BFI has already had the opportunity to ask questions about these characteristics when it conducted depositions of TJFA’s experts in December 2008. BFI requested the original subpoena because the “topographical and hydrogeological conditions at the two sites

² 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, *Application of BFI Waste Systems of North America, LLC Permit No. MSW-1447A*, SOAH Docket No. 582-08-2178, TCEQ Docket No. 2007-1774-MSW (Jan. 12, 2009) [hereinafter “BFI Response”] at 1.

³ BFI Response, *supra* note 2, at 2.

are...similar.”⁴ It is apparent that BFI only seeks discreet portions of TDSL’s current permit.⁵ Thus, why is BFI insistent on the production of the entirety of TDSL’s current permit? Which portions of TDSL’s current permit has BFI located and certified from the Texas Commission on Environmental Quality (“TCEQ”), the agency charged with maintaining the document?

If BFI only seeks discreet portions of the application, then why not ask for only those portions to be produced, if not to harass and unduly burden a non-party. After expressing BFI’s intentions regarding TDSL’s current permit, it begs the question, why does BFI need the entirety of the TDSL permit? For example, what value will coordination with Texas Parks and Wildlife Department, the Federal Aviation Authority, or Texas Historical Commission, all parts of a landfill application/permit provide BFI when it seeks to discuss “topographical and hydrogeological conditions”? It appears that many aspects of TDSL’s permit will not be relevant to the information it states it seeks, for example:

- Property location maps
- Land ownership maps
- Adjacent property ownership information
- Evidence of competency
- Identity of sources and characteristics of waste
- General location maps
- Facility maps

⁴ See letter from Mr. Paul Gosselink to Judge William E. Newchurch (Dec. 9, 2008), attached hereto as Exhibit 1.

⁵ As discussed later, it is unclear what BFI actually seeks.

- Impacts on surrounding areas
- Transportation information
- Water pollution control
- Endangered Species Protection
- Landfill gas management plan
- Post-closure care plan
- Cost estimates for closure and post-closure care plans

The above listed items make up a substantial portion of an entity's landfill permit. If BFI's stated intention is to inquire into areas other than those listed in BFI's filings, then its subpoena should be quashed as it is overbroad, unduly burdensome, and harassing. There can be no other explanation. At no time, has counsel for BFI called the undersigned to inquire into providing discreet portions of TDSL's current permit. Instead, BFI has steadfastly sought TDSL to produce the entirety of TDSL's current permit, even portions that are not relevant to BFI's stated intentions. TDSL hopes that BFI's inclusion of the anonymous letter is not their basis to claim that the TDSL landfill is leaking and illegal.

It should be noted that it is unclear what BFI actually seeks by its subpoena. BFI indicates that it wants TDSL's current permit, but then adds "(with all supporting application documents)."⁶ Yet, much of TDSL's permit has been supplemented, modified, and superceded by later filings with the TCEQ. In fact, the 1994 Subtitle D submission superceded many of the 1988 original permit provisions. Thus, much of the information sought by BFI would be

⁶ See Subpoena, *Application of BFI Waste Systems of North America, LLC Permit No. MSW-1447A*, SOAH Docket No. 582-08-2178, TCEQ Docket No. 2007-1774-MSW (Dec. 16, 2008) at Exhibit A, Section III.

contained in documents that it admits it has access to from the TCEQ. Mr. Paul Gosselink admits that he is able to secure the post-Subtitle D documents and the 2006 Site Operating Plan.⁷ To the extent that portions of the permit have been superceded, supplemented, and modified, and for which TCEQ has official certified copies, it is unduly burdensome and harassing to seek that a non-party duplicate the same copies BFI admits it already has. It would seem that BFI needs to tailor its specific request to portions of TDSL's current permit for which (1) it does not have access to and for which (2) is relevant to BFI's intended use.

Indeed, even the letter produced from Mr. Steve Sheppard to Mr. Gosselink indicates that the TCEQ maintains many of the documents that BFI seeks. Mr. Sheppard explains in his letter that the TCEQ has "a lot of the files for the permit starting with the Subtitle D Modification Application."⁸ Thus, both TCEQ and Mr. Gosselink confirm that portions, if not all, of the TDSL current permit are maintained at the TCEQ. At no time, does BFI indicate what documents they do possess and thus lessen the burden of production on TDSL. This is significant because depending on the scope of the request, TDSL's documents could consume numerous banker boxes. Furthermore, TDSL is required to maintain these documents on site under TCEQ rules so TDSL would have to first copy the documents before producing them.

II.

Because of the blatant misstatements by BFI, TDSL is required to respond to some of the more egregious, baseless comments BFI continues to assert. BFI intimates that there is an affiliated relationship between TDSL and TJFA, yet provides no evidence of such affiliate status.

⁷ See BFI Response, *supra* note 2, Exhibit A at 3.
⁸ See *id.* at Exhibit C.

While it is true that Mr. Bob Gregory has a financial interest in both entities, and TDSL has never sought to hide this, the two are not affiliated interests. Each maintains separate legal status and legal lives. Because one holds business interests in two separate legal entities does not make the entities affiliated. Such continued discussion is baseless and serves no purpose in this proceeding other than to attempt to presumably further prejudice Your Honor against TDSL, TJFA, and possibly Bob Gregory in this proceeding. It appears that BFI's intentions are to attempt to color the parties against TDSL in future proceedings as well. BFI complains about TJFA's opposition to the BFI and Waste Management applications, but I understand TJFA has advocated its case based on valid legal and technical issues without resort to these types of tactics. It would not be appropriate to assume that simply because Mr. Gregory has a financial interest in TJFA and TDSL that both entities are the same for all purposes, including discovery. TDSL is a separate legal entity that, up to the time BFI spuriously sought a subpoena, has not participated in this proceeding.

BFI submitted as part of its response an anonymous letter addressed to the TCEQ in an attempt to support its request. The anonymous letter is supposedly from a TDSL neighbor and contains complaints about not being able to find certain documents in the TCEQ files, among other ridiculous and unsubstantiated claims. A close reading of the letter could lead a reasonable person to believe the anonymous letter could have just as easily come from a BFI representative. The letter is neither signed, certified, or self-proving, thus, providing no evidentiary value to this proceeding. BFI's insertion of the letter into its pleading is another example of its attempt to insert grossly inaccurate assertions regarding TDSL in this proceeding. The letter presents an inaccurate picture of the TDSL, BFI, and Waste Management landfills located in Travis County.

In addition to the facts stated above, TDSL has been dealing with continued harassment by BFI, including the two mass mailers attached hereto as Exhibit 2, that serve only to smear TDSL in hopes of prejudicing the parties hereto against TDSL. BFI's mailers were an attempted public relation campaign to garner support for the current amendment by threatening tens of thousands of Southeast Travis County residents with negative consequences from TDSL if BFI's application is denied. The mailers are filled with false statement and are a part of an ongoing campaign to gain support for the two northeast Travis County landfills, which includes the BFI landfill, and to provoke opposition to the TDSL landfill now and into the future. BFI's mailers, which BFI employees admit are inaccurate, necessitated TDSL to respond to the mailers. A copy of TDSL's response to BFI's mailer is attached hereto as Exhibit 3. These mailers coupled with the overbroad subpoena request from BFI leads one to the inescapable conclusion that BFI only seeks to harass, over burden, and cause expense to TDSL and to prejudice the Court against Bob Gregory, TDSL, and TJFA. Despite BFI's assertions on the costs TJFA has spent on expert witnesses, the only money TDSL has expended on this proceeding has been to defend itself from BFI's continued harassment. Money spent by TJFA has no bearing on TDSL and such attempts to link the two entities are overreaching, false, and disingenuous. TDSL cannot afford to acquiesce to BFI's continued abuse.

III. Motion to Reconsider

TDSL is in receipt of Your Honor's Order No. 13. Said Order arrived approximately at 3:55 p.m., less than one day from when BFI served its response on TDSL. Because of the failure by BFI to provide a copy of its response to TDSL, TDSL requests that Your Honor reconsider his ruling in light of the arguments contained herein.

IV. Prayer

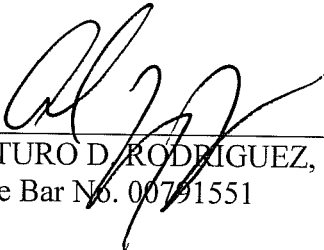
For the above reasons, TDSL asks the Court, on final hearing, to order that BFI's request for production of documents and subpoena for deposition on written questions be quashed. Further, TDSL requests that Your Honor overrule BFI's Motion to Compel. TDSL further prays for any such further relief to which it is justly entitled.

WHEREFORE PREMISES CONSIDERED Plaintiff TDSL prays that the Court issue an order consistent with the relief requested herein.

Respectfully submitted,

Russell & Rodriguez, L.L.P.

1633 Williams Drive
Suite 200, Building 2
Georgetown, Texas 78628
(512) 930-1317
(866) 929-1641 (Fax)



ARTURO D. RODRIGUEZ, JR.
State Bar No. 00791551

CERTIFICATE OF SERVICE

By my signature above, I hereby certify that a true and correct copy of the foregoing document has been served this 14th day of January, 2009, via e-mail, facsimile transmission or U.S. First Class mail, to the following:

State Office of Administrative Hearings

Honorable William Newchurch
Administrative Law Judge
300 West 15th Street, Suite 502
P.O. Box 13025
Austin, Texas 78711-3025
Fax: 512/ 475-4994

Executive Director of the TCEQ

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Ms. Susan White
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TJFA, LP

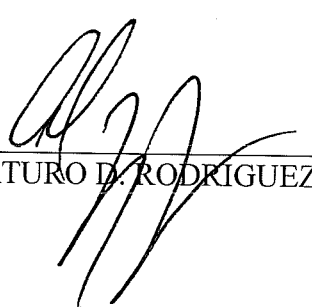
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December 9, 2008

Judge William E. Newchurch
State Office of Administrative Hearings
300 W. 15th 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:

I am submitting this request for issuance of a third-party subpoena on behalf of applicant BFI Waste Systems of North America, LLC (BFI) in order to obtain a complete copy of the current MSW permit for Texas Disposal Systems Landfill, Inc. (TCEQ Permit No. MSW 2123). Enclosed please find a subpoena and documents in support of issuance of the subpoena.

Per the motion to compel that BFI filed late last month, it is clear that TJFA is closely affiliated with Texas Disposal Systems Landfill, Inc. (TDSL), one of BFI's competitors in the Central Texas marketplace – including common ownership, common directors, common officers, same office, shared phones, etc. TDSL's landfill is located in southern Travis County on soils that are virtually identical to the soils at Sunset Farms. The topographical and hydrogeological conditions at the two sites are also quite similar. Three of the expert witnesses that TJFA has designated in this proceeding have also worked on projects at the TDSL Landfill over the years (including work by Dr. Robert Kier on the original permitting proceeding). TDSL's permit also contains specific information regarding both the site and the engineering designs employed there.

BFI submits that some of the information that is contained in TDSL's permit is simply not consistent with the positions that TJFA's experts are taking in this proceeding. As such, I would like to have the opportunity to inquire about such matters at the evidentiary hearing. In so doing, I need to have – and, I believe, it would be fairer to all parties and witnesses if I could use – a full and complete copy of TDSL's current permit. (The complete permit includes both the several page "permit" document itself plus what is undoubtedly a few binders' worth of application documents that the agency incorporates into the "permit." BFI is seeking the totality of the permit document in the subpoena.)

Exhibit 1

December 9, 2008

Page 2

I fully understand that TDSL's current permit is a public document that should be on file with TCEQ. In order to avoid burdening non-parties with discovery requests, I thus made a diligent effort to obtain a full and complete copy of the current permit from the agency. The agency, however, informed me that it either does not have, or cannot locate, a full and complete copy of TDSL's permit. I next contacted TJFA's attorneys once I confirmed that I would be unable to obtain a copy of the permit from the agency. TJFA's attorneys indicated that they would not and could not produce a copy of the TDSL permit for inspection and copying. The only person or entity that appears to have a full and complete copy of TDSL's current permit is thus TDSL itself – hence this request for issuance of a subpoena.

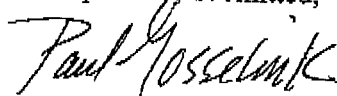
BFI has done those things necessary for issuance of the subpoena pursuant to sections 80.21, 80.153 and 80.155 of Title 30 of the Texas Administrative Code. It intends to use the enclosed subpoena to obtain the required document and to conduct a deposition by written question of the custodian of records of TDSL. The purpose of the deposition by written questions is to verify the authenticity of the document(s) requested and prove it/them up under the business records exception to the hearsay rule.

In looking and the current procedural schedule, I do not believe a third-party document request (including a deposition on written questions that would not require an oral deposition) violates either the letter or the spirit of the schedule. Indeed, I would note that TJFA and NNC recently sought and obtained subpoenas of third-parties Applied Materials and PBS&J well after the July 18, 2008 cut-off for serving discovery requests. No party will be unduly prejudiced by the request and, of course, TJFA's principals and (most likely) their expert witnesses have had many opportunities over the years to review a permit at a site they work at. In the event that you do not believe for any reason that the subpoena requested fits within the current procedural schedule, by copy of this filing I am requesting leave of court to amend the current schedule for the purposes of issuance of the subpoena. I will be happy to discuss this request at the December 19, 2008 prehearing conference, if necessary, but for the reasons set forth in this letter do not believe it should be necessary.

Finally, please note that this request for issuance of a subpoena is materially different from BFI's recent motion to compel in two key respects: (1) the request is directed toward TDSL and not TJFA; and (2) the request is targeted solely to TDSL's current permit.

For the foregoing reasons, BFI respectfully requests the issuance of the enclosed subpoena so that it may timely seek service of same.

Respectfully submitted,



Paul Gosselink

Enclosures

cc: (see certificate)

2-Sided Post Card Mailer



SOUTHEAST TRAVIS COUNTY RESIDENT ALERT: YOU MUST ACT NOW!

Special interest groups are conducting an intense lobbying effort to pressure the Austin City Council to break the landfill agreement. An agreement that could prevent Southeast Travis County from becoming home to Travis County's only landfill and potentially increase truck traffic throughout Southeast Travis County.

ACT NOW to support the fair agreement that the City of Austin signed with the BFI and Sunset Farms Landfill to close that landfill by November 1, 2015

Help PREVENT Southeast Travis County from potentially becoming home of the only remaining landfill in Travis County.

Act Now!
Please visit www.Austin4Fairness.org
Let our leaders know that you support a fair deal for Austin's future!

BFI Waste Systems
PO Box 140026
Austin, TX 78714-9902

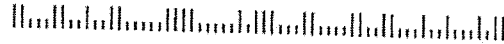
PRESORTED
FIRST-CLASS MAIL
U.S. POSTAGE PAID
VAN NUYS, CA
PERMIT NO. 1225
ZIP CODE 91409

ACT NOW!

Support the negotiated agreement the City of Austin has signed with BFI to close the Sunset Farms Landfill. It's Fair, Equitable, and the Right Thing To Do!

Support the agreement that could prevent Southeast Travis County from becoming home to Travis County's only landfill and potentially increase truck traffic throughout Southeast Travis County.

Go to
Austin4Fairness.org
to support a fair future!



JOAN WILHITE OR CURRENT RESIDENT
12108 FM 1625
BUDA, TX 78610-2006



00007
2069



PRSRV STD
U.S. POSTAGE PAID
PERMIT NO. 1434
AUSTIN, TEXAS

Dear Neighbor,

Special interest groups are working hard to close the two landfills in Northeast Travis County. If they are successful, this could leave only one Travis County landfill, located in Southeast Travis County, to accept the 4 billion pounds of trash disposed of every year in Travis County. We believe this could have a direct impact on you.

According to 2006 reports, this Southeast Travis County landfill accepted over 1.4 billion pounds that year. This leaves 2.6 billion pounds of trash without a home and, unless other options are developed, this may be the only landfill left to accept this trash. If the Northeast landfills are closed, it may double the volume of trash disposed at this landfill.

This could lead to the citizens of Travis County, more specifically Southeast Travis County, living with the consequences. The most significant impact could be traffic. It could result in over 136,000 additional trucks per year headed to the one remaining landfill. Are we trying to sensitize it? No. This estimate is based on a published report by the Capital Area Council of Governments. (See http://www.capcog.org/Documents/inthenews/RSWR_Plan_Volume_II.pdf)

Second, the cost to get rid of your trash could increase significantly. The cost of transporting 2.6 billion pounds of waste across Travis County will have to be paid by someone. Added truck time and more miles equals higher cost with no positive environmental benefit. Higher transportation costs will equal higher trash fees for Travis County residents.

Recycling can help, but it generally costs more and it won't happen overnight. Not everything can be recycled, and reaching the Zero Waste initiative goals are expected to take a generation to implement—requiring new ordinances, recycling facilities, and enforcement resources. None of that will be cheap or quick. We have options.

More landfill space can be permitted in Northeast Travis County. This will provide limited but valuable time to develop new infrastructure such as new landfills and recycling facilities, and better transportation routes. Austin will have more time to develop its "Zero Waste" program and make sure it works. This could take pressure off the need for new landfills in the future.

Yes, it sounds great to oppose landfill expansions but let's "not throw the baby out with the bath water." We need to take the time to do what's right and in the best long-term interest of Travis County. We need to use what we have. We need to make sound plans for the future. We need to build the right infrastructure in the right places. We need to make all of Travis County a better place for everyone.

Call your county and city officials and tell them to take deep breath and do it right. Let's maintain enough landfill capacity in Northeast Travis County for the next five to seven years so we won't have go through this fight again in a few years. "Do-overs" have a big cost in this case.

Sincerely,
BFI Waste Systems

TI P3 *****AUTO**5-DIGIT 78610
THE MUSTANG FAMILY
BUDA TX 78610-4834

ACT NOW – Return this prepaid reply card to ensure that your voice is heard!



YES, I want elected officials to find immediate landfill solutions that will prevent increased garbage truck traffic in my neighborhood and prevent SE Travis County from becoming the dumping ground for our entire region.

NAME
ADDITIONAL NAMES
ADDRESS
EMAIL
PHONE



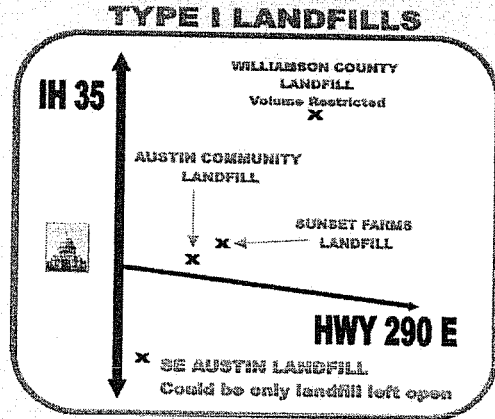
YES, I want to be informed of updates and news regarding his crucial issue.

Closing Northeast Travis County landfills too soon may have an impact on you.

1

Very soon, Southeast Travis County could have our region's only landfill.

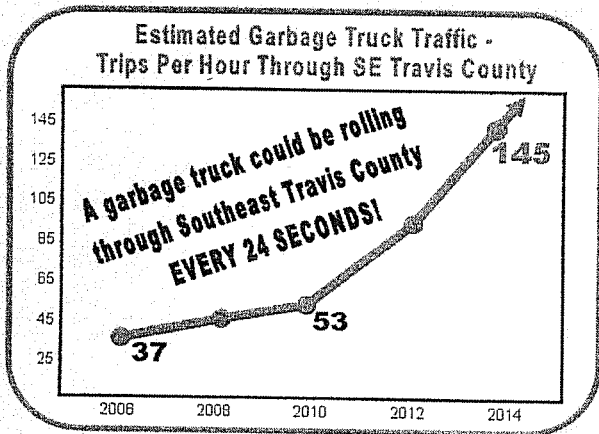
Currently, our region uses several landfills to handle every piece of residential and commercial garbage, but these landfills could close as early as 2010.



2

Truck traffic could increase in Southeast Travis County.

If Southeast Travis County must accommodate the waste needs of our entire region, garbage truck traffic will increase dramatically. This could result in over **2 trucks every minute** headed to the one remaining landfill, located in Southeast Travis County.



3

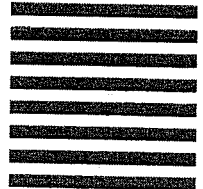
Your costs could increase.

When competition is reduced, your costs usually increase. This means **higher trash fees** for you. Unless other landfill sites are developed or the operational life of existing landfills is extended, all the trucks carrying our waste will likely have to travel to the one remaining landfill located in Southeast Travis County.



NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

BUSINESS REPLY MAIL
FIRST-CLASS MAIL PERMIT NO. 403 AUSTIN TX
POSTAGE WILL BE PAID BY ADDRESSEE



BFI WASTE SYSTEMS
PO BOX 140026
AUSTIN TX 78714-9902



From: Bob Gregory

Sent: Friday, May 02, 2008 4:55 PM

To: 'will.wynn@ci.austin.tx.us'; 'betty.dunkerley@ci.austin.tx.us'; 'Sheryl.cole@ci.austin.tx.us'; 'jennifer.kim@ci.austin.tx.us'; 'Lee.Leffingwell@ci.austin.tx.us'; 'mike.martinez@ci.austin.tx.us'; 'brewster.mccracken@ci.austin.tx.us'; 'marc.ott@ci.austin.tx.us'; 'willie.rhodes@ci.austin.tx.us'

Subject: BFI/Allied bulk mailer apparently sent by BFI

It appears that BFI/Allied is sending out a bulk mailer designed to encourage the public to urge you to withdraw your opposition to the expansion of the two northeast Travis County landfills. I have seen a copy of the bulk mailer and it contains false and misleading propaganda, which can easily be countered. I am responding to this bulk mailer because it uses false information in attempting to induce the recipients into believing the TDS landfill will quickly become the only landfill remaining within the region and that traffic and waste disposal costs will increase significantly unless the two northeast Travis County landfills are able to expand. I assume one of the purposes of the bulk mailer is to encourage the City of Austin and Travis County to not seek affected party status in the SOAH Contested Case Hearing commencing next Thursday.

I will respond more thoroughly to this bulk mailer, and any others that surface, as quickly as I can, but meanwhile, please consider the following points.

- See the attached two-page report, which provides specific information addressing the false and misleading representations about landfill capacity, prices, and traffic made in the bulk mailer.
- There is no restriction on the source or volume of municipal solid waste that can be hauled to or disposed in the Waste Management, Inc. managed landfill that is loosely controlled by Williamson County .
- The remaining life in the IESI southeast Travis County Landfill, the Waste Management, Inc.-Austin Community Landfill and the Williamson County Landfill is in excess of what is sufficient to accommodate the waste displaced by the filling of the BFI landfill until new landfills or transfer stations can be sited and constructed to receive the waste now being transported to these two northeast Travis County landfills.
- The City of Austin has 20 years remaining on a 30-year contract with TDS for the disposal of all the solid waste the City collects. All of the waste the City collects is currently being transported to the TDS landfill under a contract with a CPI adjusted rate.
- The 30-year contract that provides secure rates for the City also allows for the joint development of transfer stations and recycling facilities to be located in the north and west sides of the community where waste and recyclable materials loads can be consolidated, so that the number of loads traveling from those areas to the TDS landfill

will be cut to 25% to 33% of the vehicles currently accessing those landfills. The waste from the two northeast landfills that comes to the TDS landfill will travel on the major highways and not through neighborhood.

- There is no reason to believe that the TDS landfill would be the only remaining landfill in the region as early as 2010, or even over the next 10 years. These companies would build transfer stations and site landfills as needed to manage the waste they control.
- There is no landfill capacity crisis now, nor is there or will there be a traffic or disposal cost crisis in Travis County caused by the filling of the BFI landfill over the next ten to twenty years. The TDS landfill, composting and recycling facility has excellent highway access and is committed to remaining a good neighbor and a responsible leader in waste diversion from landfill disposal, regardless of what the two northeast Travis County landfill operators decide to do in the future. As you have observed, TDS and the other private landfill operators have very different business models.
- I suspect that these landfill operators will delay siting landfills and transfer stations elsewhere until they realize that the continued operation of those facilities in the fashion they have been managing is not acceptable.

Please contact me if you receive comments or concerns generated by the BFI/Allied bulk mailer. I will be happy to respond to any and all of them and provide you whatever information you need to make informed decisions about these issues. I will follow up as necessary with a more detailed response to the bulk mailer, once I have had a chance to study them.

Thanks,

Bob Gregory

www.texasdisposal.com

2 page attachment

**TEXAS DISPOSAL SYSTEMS LANDFILL
CITY OF AUSTIN VOLUMES AND RATE COMPARISON
MARCH 1999 (START OF 30 YEAR DISPOSAL CONTRACT) THRU DECEMBER 2007
May 2, 2008**

(Note: The City of Austin has 20 years remaining on this 30 year contract and now transports all of the solid waste it collects to the TDS landfill in southeast Travis County. This contract also includes a provision for TDS and the City of Austin to develop transfer station/recycling centers in the north and west sides of Austin to receive public and City of Austin vehicles transporting waste. This will allow the diversion of recyclables from the waste stream and the consolidation of garbage from small loads transported by citizens, businesses and City waste collection vehicles to be transferred to the TDS landfill in tractor trailer loads, thus significantly reducing the number of individual vehicles transporting waste into the TDS landfill.)

City of Austin Volumes		Average Rate per ton including \$1.25 per ton TCEQ Fee
Year	Tons	
1999	37,697	\$15.30
2000	75,360	\$15.85
2001	93,353	\$15.85
2002	98,185	\$16.43
2003	92,725	\$17.66
2004	125,780	\$17.00
2005	136,194	\$17.33
2006	141,152	\$17.99
2007	146,842	\$18.62

Current City of Austin rate at TDSL is \$18.81 per ton until next CPI adjustment due June 1, 2008

Comparative Landfill Rates

2008 Average MSW rates compiled by The Envirobiz Group, Inc. - Solid Waste Digest

Texas	\$25.00 per ton
USEPA Region 6 (AR,LA,NM,OK,TX)	\$28.00 per ton

Base Gate rates (including TCEQ fee) at area landfills

(see spreadsheet summarizing the region's TCEQ annual reports for regional landfills on page 2)

	Uncompacted Rate	Compacted Rate
Texas Disposal Systems Landfill (Type I) - Austin *	\$6.80 per yard/ ~\$34.00 per ton	\$7.10 per yard/ ~\$21.30 per ton
WMI Austin Community Landfill (Type I) - Austin	\$35.00 per ton	\$35.00 per ton
WMI managed Williamson County Landfill (Type I) - Hutto **	\$31.75 per ton	\$31.75 per ton
BFI Sunset Farms Landfill (Type I) - Austin	\$35.00 per ton	\$35.00 per ton
IESI Travis County Landfill (Type IV)- Austin	\$9.00 per yard	N/A
WMI Comal County/Mesquite Creek Landfill (Type I) - between San Marcos and New Braunfels *	\$8.85 per yard/ ~\$44.25 per ton	\$9.60 per yard/ ~\$28.80 per ton

* TDSL and WMI Comal County per yard rates converted to per ton rates based on TCEQ conversion ratios of 3:1 for compacted waste and 5:1 for uncompacted waste.

** There is no restriction on the source or volume of municipal solid waste (MSW) that can be transported into the Waste Management, Inc. (WMI) managed Williamson County Landfill.

2007 AUSTIN / SAN ANTONIO AREA SOLID WASTE STREAMS

As they were reported (in tons and rounded to the nearest whole number) in TCEQ required Annual Reports by area landfill owners for the 12 month period ending 8-31-07:

(Prepared by TDS 1-17-08)

<u>Type of Waste</u>	#249C WMI Austin	#1447 BFI Austin	#2123 TDS Austin	#360A City of Austin	#1405A WMI Williamson County	#2093 WMI San Antonio	#1410 BFI San Antonio	#1848 Beck Ready- Mix San Antonio	#66 WMI Comal County	#1841 IESI Travis County
Residential	114,209	572,716	454,990		33,779	275,314	430,133		114,141	
Commercial	171,317	301,075	252,598		50,668	670,271	285,221		10,175	
Institutional										
Recreational										
Brush		4,187	Composted		3,170		38,252	13,420		12,268
C&D	160,152	50,233	100,153	17,432	91,973	265,120	26,873	258,826	68,536	217,061
Litter			262							
NHIW Class 1*	1,309					8,381	2,613			
NHIW Class 1-A**						17,720	272			
NHIW Classes 2/3	11,704	13,544			4,143	60,476	69,727		143,240	
Incinerator ash										
Autoclave			5,605							
Medical		5,077								
Asbestos	2,084	2,420	813			4,396	1,554		474	
Dead animals		312			27	272	119		124	
Sludge	23,016	10,908	2,590		18,124	2,681	74,354		3,312	
Grease	225						6			
Grit	43		2			859				
Septage										
Contaminated Soil	206	6,236	204		1,029	16,813	31,938		10	
Tires	12				50	23	7,114			
Rejects/spoils		11					5,332			
Other				5,635		14				
Special Waste										
Grand Totals (tons)	484,277	966,719	817,217	23,067	202,963	1,322,340	973,508	272,246	340,012	229,329

* Non-Hazardous Industrial Waste (NHIW) Class 1, excluding materials containing asbestos

** NHIW Class 1 Regulated Asbestos-Containing Materials (RACM) only

Landfill life expectancy in years, based upon last waste volumes received and the reported landfill capacity remaining:

6	2	25.81	1.5	18	74	49	20	2.8	8
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