

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE

300 West 15th Street Suite 502

Austin, Texas 78701

Phone: (512) 475-4993

Fax: (512) 475-4994

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REGARDING: **ORDER NO. 15- CHANGE TO STYLE OF CASE, CLOSING THE EVIDENTIARY RECORD, REQUIRING PARTIES TO PROPOSE SCHEDULE FOR ARGUMENTS, ADOPTING COMMON OUTLINE, AND REQUIRING PROPOSED FINDINGS OF FACT AND CONCLUSIONS**

DOCKET NUMBER: **582-08-2178**

JUDGE WILLIAM G NEWCHURCH

JIM BLACKBURN	(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
ARTURO D. RODRIGUEZ, JR. (RUSSELL & RODRIGUEZ, L.L.P.)	(866) 929-1641
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

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

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

**ORDER NO. 15
CHANGE TO STYLE OF CASE,
CLOSING THE EVIDENTIARY RECORD,
REQUIRING PARTIES TO PROPOSE SCHEDULE FOR
ARGUMENTS, ADOPTING COMMON OUTLINE,
AND
REQUIRING PROPOSED FINDINGS AND CONCLUSIONS**

Change to Style of Case

The uncontroverted evidence shows that BFI Waste Systems of North America, Inc., which had been the applicant, has changed its form of business organization to BFI Waste Systems of North America, LLC, (BFI), which is now the applicant for the permit amendment at issue in this case. The style of the case has been changed above to reflect that change.

Closing of Evidentiary Record

The presentation of direct case evidence by all parties concluded on January 30, 2009. On February 2, 2009, all parties attended a teleconference to discuss the need for a hearing for the offering of rebuttal evidence. At that time, the parties indicated that they had conferred and were discussing the possibility of stipulating to facts that would make it unnecessary for BFI to offer rebuttal evidence. Nevertheless, the Administrative Law Judge (ALJ) scheduled the hearing for the receipt of rebuttal evidence for February 4, 2009. He also instructed the parties to notify him if they agreed on a stipulation that made a rebuttal hearing unnecessary. On February 3, 2009, BFI filed several stipulations and counsel for BFI contacted the ALJ's Assistant to indicate that the parties had so stipulated and no further hearing was necessary. On February 4,

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2009, no party appeared at the schedule time and place for the rebuttal hearing, thus confirming that it was no longer necessary.

On February 4, 2009, the Executive Director (ED) filed an updated revised draft permit that included all changes. At the hearing, all parties, including those who continue to oppose the application, agreed that the language included in the revised draft permit is appropriate if the application is approved. The updated revised draft permit is admitted into evidence as ED Exhibit No. 1.

The evidentiary record is now closed.

Schedule for Arguments

The Parties shall confer and by February 11, 2009, propose a schedule for the submission of closing arguments and replies to closing arguments. Under the internal guidelines of the State Office of Administrative Hearings (SOAH), the Proposal for Decision (PFD) will be due 60 days after the case record is closed, which will be the date when replies are filed. At the very latest, parties should file replies no later than April 6, 2009, so that the ALJ can meet the PFD deadline without disrupting his family's vacation plans in June.

Common Outline

In order to efficiently consider arguments and replies and prepare a PFD in a case of this complexity, the ALJ is adopting the common outline below, which the parties shall use for both their closing arguments and replies and which the ALJ will use for his PFD.

I. INTRODUCTION

II. PARTIES

III. JURISDICTION

IV. PROCEDURAL HISTORY

V. BACKGROUND FACTS

VI. WITNESSES, QUALIFICATIONS, AND CREDIBILITY

VII. REFERRED ISSUES

- A. Whether the application demonstrates that natural drainage patterns will not be significantly altered by the expansion, in accordance with agency rules, including 30 TAC § 330.56(f)(A)(iv).
- B. Whether the application includes adequate provisions to control disease vectors, in compliance with agency rules, including 30 TAC §§ 330.126 and 330.133(a).
- C. Whether the application proposes adequate protection of ground water and surface water, in compliance with agency rules, including 30 TAC §§ 330.55(b)(1), 330.56(f), 330.134, and 330.200-.206.
- D. Whether the application includes adequate provisions to control odors, in compliance with rules, including 30 TAC §§ 330.125(b) and 330.133(a).
- E. Whether the application includes adequate provisions to manage landfill gas, in compliance with agency rules, including 30 TAC §§ 330.56(n) and 330.130.
- F. Whether the application includes adequate provisions for proper slope stability, in compliance with agency rules, including 30 TAC §§ 330.55(b)(8) and 330.56(l).
- G. Whether the application includes adequate provisions to control spilled and windblown waste and cleanup spilled waste, in compliance with agency rules, including 30 TAC §§ 330.117, 330.120, 330.123, and 330.127.
- H. Whether the application includes adequate provisions for groundwater monitoring, in compliance with agency rules, including 30 TAC §§ 330.230-.233.
- I. Whether the application includes adequate provisions calculating the estimated rate of solid waste deposition and operating life of the site, in compliance with agency rules, including 30 TAC § 330.55(a)(4).
- J. Whether the application includes adequate provisions for closure and post-closure, in compliance with agency rules, including 30 TAC §§ 330.56(l) and (m).

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- K. Whether the application includes adequate provisions to manage and dispose of special waste, in compliance with agency rules, including 30 TAC § 330.136.
- L. Whether the application includes adequate provisions designating the owner, operator, responsible parties, and qualified personnel, in compliance with agency rules, including 30 TAC §§330.52(a)(1), 330.52(b)(7-10), and 330.114(1).
- M. Whether the application includes adequate provisions to prevent unauthorized wastes from being disposed in the landfill, in compliance with agency rules, including 30 TAC § 330.114(5).
- N. Whether the application provides adequate information related to transportation, as required by agency rules, including 30 TAC 330.53(b)(9).
- O. Whether the application includes adequate provisions for dust control and maintenance of site access roads, in compliance with agency rules, including 30 TAC § 330.127.
- P. Whether the application includes adequate provisions to protect endangered or threatened species, in compliance with agency rules, including 30 TAC §§ 330.53(b)(13) and 330.129.
- Q. Whether the application includes adequate provisions for cover, in compliance with agency rules, including 30 TAC § 330.133.
- R. Whether the application should be denied based on the Applicant's compliance history, in accordance with state laws and agency rules, including Tex. Health & Safety Code § 361.089, 30 TAC §§ 305.66 and 30 TAC Chapter 60.
- S. Whether the application includes adequate provisions for fire protection, in accordance with agency rules, including 30 TAC § 330.115.
- T. Whether the Applicant has complied with financial assurance requirements, in accordance with agency rules, including 30 TAC §§ 330.52(b)(11) and 330.281.
- U. Whether the proposed expansion is compatible with land use in the surrounding area.
- V. Whether the provisions proposed for buffer zones and landscape screening comply with agency rules, including 30 TAC §§ 330.121(b) and 330.138.

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W. Whether the application proposes sufficient provisions to protect the health of the requesters and their families and avoid causing a nuisance, in violation of the Commission rules, including 30 TAC § 330.5(a)(2).

X. Whether the landfill's operational hours are appropriate.

Y. Whether the erosion control methods identified in the application and draft permit are sufficient.

Z. Whether the storage, treatment, and disposal of contaminated water is adequately addressed in the application and draft permit.

VIII. TRANSCRIPT COSTS

IX. SUMMARY

X. FINDINGS OF FACT

XI. CONCLUSIONS OF LAW

XII. ORDERING PROVISIONS

Findings of Fact and Conclusions of Law

Because it has the burden of proof, BFI shall file proposed findings of fact and conclusions of law with its reply argument. Other parties may file findings and conclusions. To assist the ALJ in preparing the PFD, any party filing proposed findings and conclusions shall include an electronic copy in MS Word doc format.

SIGNED February 4, 2009.



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

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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
HEARINGS**

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

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)
(512) 239-6377 (FAX)

OFFICE OF PUBLIC INTEREST COUNSEL

ARTURO D. RODRIGUEZ, JR.
RUSSELL & RODRIGUEZ, L.L.P.
1633 WILLIAMS DRIVE BUILDING 2, SUITE 200
GEORGETOWN, TX 78628
(512) 930-1317 (PH)
(866) 929-1641 (FAX)
arodriguez@txadminlaw.com

TEXAS DISPOSAL SYSTEMS LANDFILL, INC. (TDSL)

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

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)

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)

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

MARK MCAFEE
MELANIE MCAFEE
ROGER JOSEPH
DELMER ROGERS
WILLIAMS, LTD.
NORTHEAST NEIGHBORS COALITION

KEVIN W. MORSE
ASSISTANT TRAVIS COUNTY ATTORNEY
P.O. BOX 1748
AUSTIN, TX 78767
(512) 854-9513 (PH)
(512) 854-4808 (FAX)

TRAVIS COUNTY

JOHN CARLSON
LLOYD GOSSELINK BLEVINS ROCHELLE &
TOWNSEND, P.C.
816 CONGRESS AVENUE, SUITE 1900
AUSTIN, TX 78701
(512) 322-5867 (PH)
(512) 472-0532 (FAX)

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

SUSAN WHITE
STAFF ATTORNEY
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
LITIGATION DIVISION
PO BOX 13087
AUSTIN, TX 78711
(512) 239-0454 (PH)
(512) 239-0606 (FAX)
swhite@tceq.state.tx.us

EXECUTIVE DIRECTOR

xc: Docket Clerk, State Office of Administrative Hearings