

IN THE MATTER OF THE	§	
APPLICATION OF BFI WASTE	§	BEFORE THE STATE
SYSTEMS OF NORTH AMERICA, INC.	§	OFFICE OF ADMINISTRATIVE
PROPOSED SOLID WASTE PERMIT	§	HEARINGS
AMENDMENT No. 1447A	§	

TRAVIS COUNTY'S
REQUEST TO BE ADMITTED AS A PARTY

TO THE HONORABLE JUDGE OF THE STATE OFFICE OF ADMINISTRATIVE HEARINGS:

COMES NOW TRAVIS COUNTY (County) and files this Request to Be Admitted as a Party in this case, and in support thereof would respectfully show the following:

TRAVIS COUNTY IS AN AFFECTED PERSON AND SHOULD BE ADMITTED AS A PARTY IN THIS CASE.

A. Standards for Determining an Affected Person in this Case

For the purpose of an administrative hearing held before the Texas Commission on Environmental Quality (TCEQ) involving a contested case, an "affected person" is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the administrative hearing. TEX. WATER CODE §5.115(a) (2007). See also 30 TAC §55.29(b) (2008). An interest common to members of the general public does not qualify as a personal justiciable interest. *Id.* The Rules of the TCEQ expressly recognize that "governmental entities, including local governments and public agencies, with authority under state law over issues contemplated by the application may be considered affected persons." 30 TAC §55.29(b)

(2008). All relevant factors, including but not limited to the following, should be considered in deciding standing:

- a. whether the interest claimed is one protected by the law under which the application will be considered;
- b. distance restrictions or other limitations imposed by law on the affected interest;
- c. whether a reasonable relationship exists between the interest claimed and the activity regulated;
- d. likely impact of the regulated activity on the health, safety, and use of property of the person;
- e. likely impact of the regulated activity on use of the impacted natural resource by the person; and
- f. for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC §55.29(c) (2008).

As explained below, the County is an affected person with statutory authority over and interest in the issues relevant to this application, and is therefore entitled to be admitted as a party in this case.

B. Issues Relevant and Material to the TCEQ's Decision in this Case

BFI Waste Systems of North America, Inc. ("Applicant") applied to the Texas Commission on Environmental Quality ("TCEQ") for an amendment to its current permit to allow it to increase the disposal capacity and height of its existing Type I municipal solid waste (MSW) landfill located approximately three quarters of a mile north of the intersection of Giles Road and U.S. Highway 290 at 9912 Giles Road in Travis County, Texas.

The Notice of Application and Preliminary Decision was published on April 26, 2007. On October 5, 2007, the TCEQ's Executive Director sent out notice of his decision that the

Application of BFI Waste Systems of North America, Inc. for TCEQ MSW Permit No. 1447A met the requirements of applicable law. On April 3, 2008, the matter was referred to the State Office of Administrative Hearings (“SOAH”).

C. The County is an Affected Person

The County is a political subdivision of the State of Texas. As such, it has certain rights, duties, privileges, powers, and economic interests that are not common to members of the general public. Additionally, the County is a local government that has authority under state law over issues contemplated by the application. 30 TAC §55.29(b) (2008). The County’s personal justiciable interest in this case is supported by the affidavit of Jon White, Environmental Officer for Travis County. The affidavit is attached as Exhibit A and incorporated for all purposes.

The land that BFI Waste Systems of North America, Inc. is proposing to expand for beneficial use is within the County. The proposed facility will operate under Chapter 361 of the Texas Health and Safety Code. The County has specific statutory authority to enforce Chapter 361 of the Health and Safety Code and the rules adopted and orders and permits issued under that chapter. TEX. WATER CODE ANN. §7.351(a) (2007). This authority is unique to local governments and the TCEQ, and is not common to members of the general public.

In addition, as articulated in its comments, the County has a specific interest in ensuring that the closing date included in the draft permit (November 1, 2015) remains in the permit.

D. Authority of Travis County Attorney’s Office to act on behalf of Travis County

On April 8, 2008, the Travis County Commissioners Court approved a resolution to pursue inclusion as a party in the above referenced case with the Travis County Attorney’s Office acting as counsel. A copy of the Resolution adopted by the Travis County Commissioners Court and a

certified copy of the minutes pertaining to the Resolution are attached as Exhibit B and incorporated for all purposes.

E. Prayer

Wherefore, the County requests that the judge grant the County party status in this case and all other relief to which it is entitled.

Respectfully submitted,

DAVID ESCAMILLA
TRAVIS COUNTY ATTORNEY

By: _____
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Assistant Travis County Attorney
State Bar No. 14549420
SHARON TALLEY
Assistant Travis County Attorney
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(512) 854-9513
(512) 854-4808 (fax)
ATTORNEY FOR TRAVIS COUNTY

CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2008, a true and correct copy of Travis County's Request to Be Admitted as a Party filed by the County was served via first class mail, facsimile, or hand delivery to the persons on the attached mailing list.

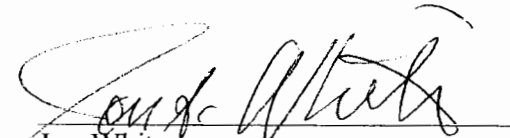
Kevin Morse
Assistant County Attorney

IN THE MATTER OF THE	§	
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PROPOSED SOLID WASTE PERMIT	§	HEARINGS
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AFFIDAVIT OF JON WHITE

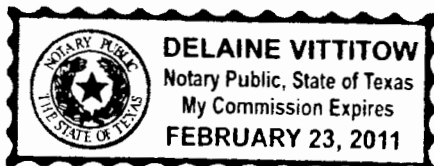
BEFORE ME, the undersigned authority, on this day personally appeared Jon White who, being by me duly sworn on his oath, stated as follows:

“My name is Jon White. I am employed by Travis County, Texas (the County) as its Environmental Officer. I am familiar with the County’s civil and criminal environmental enforcement efforts under the Texas Health and Safety Code, the Texas Water Code, the Texas Penal Code, and all other applicable law. In my official capacity as Environmental Officer for Travis County, I oversee environmental projects and compliance in Travis County. I am also familiar with the pending application made by BFI Waste Systems of North America, Inc. for proposed municipal solid waste permit amendment no. 1447A. I have reviewed the County’s Request to Be Admitted as a Party in the above styled matter. I have personal knowledge of the facts in the County’s Request, and those facts are true and correct.”



 Jon White

SUBSCRIBED AND SWORN TO before me on April 28, 2008, to certify which, witness by hand and official seal.





 Notary Public

My commission expires:

 2/23/11

CERTIFIED MINUTES EXCERPT

The Travis County Commissioners' Court convened on April 8, 2008. The following Item was considered:

- A3. CONSIDER AND TAKE APPROPRIATE ACTION ON PURSUIT OF PARTY STATUS AND ANY OTHER ISSUES RELATED TO PROCEEDINGS BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS REGARDING THE REQUESTED EXPANSION OF THE BROWNING FERRIS INTERNATIONAL (BFI) LANDFILL LOCATED ON GILES ROAD NEAR STATE HIGHWAY 290 EAST (TCEQ PROPOSED MUNICIPAL SOLID WASTE PERMIT AMENDMENT NO. 1447A). (COMMISSIONER DAVIS AND COMMISSIONER ECKHARDT) (10:50 AM) (1:44 PM)

Members of the Court heard from: Jon White, Environmental Quality Program Manager, TNR; and Paul Gosselink, Attorney representing BFI.

Motion by Commissioner Davis **and seconded by** Judge Biscoe to approve this particular Resolution to ensure that we have party status, and also direct Staff to assist in the notification process since we are not sure how the State Office of Administrative Hearings handle the notification process, so if there is anything that we can do to accommodate to make sure that persons are present as far as the hearing itself is concerned on May 8, 2008. Also, to have the County Attorney present.

Motion carried:

County Judge Samuel T. Biscoe	yes
Precinct 1, Commissioner Ron Davis	yes
Precinct 2, Commissioner Sarah Eckhardt	absent
Precinct 3, Commissioner Gerald Daugherty	yes
Precinct 4, Commissioner Margaret J. Gómez	yes

Clerk's Note: Item A3 was further discussed at 2:26 PM with a request by Commissioner Eckhardt that the Commissioners' Court record reflect a Corrected Vote on Item A3. Judge Biscoe instructed that the record show Commissioner Eckhardt voting yes on the Motion on Item A3. The Commissioners' Court record does reflect the Corrected Vote.

Corrected Vote:

Motion carried:

County Judge Samuel T. Biscoe	yes
Precinct 1, Commissioner Ron Davis	yes
Precinct 2, Commissioner Sarah Eckhardt	yes
Precinct 3, Commissioner Gerald Daugherty	yes
Precinct 4, Commissioner Margaret J. Gómez	yes

I, Dana DeBeauvoir, County Clerk and Ex-Officio Clerk of the Commissioners' Court of Travis County, Texas, do hereby certify that the above is correct information from the Proceedings of the Commissioners' Court of Travis County, Texas.

Witness my hand and seal, this the 25th day of April, 2008.



DANA DeBEAUVOIR
County Clerk and Ex-Officio Clerk
of the Commissioners' Court of
Travis County, Texas

By: Robert Resnick
Robert Resnick, Deputy

Travis County Commissioners Court



FILED FOR RECORD
2008 APR 10 AM 11:11
DANA LEBEAUVOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS

Resolution

WHEREAS, BFI Waste Systems of North America, LLC (BFI) has an application pending before the Texas Commission on Environmental Quality (TCEQ) for the expansion of the BFI landfill located at State Highway 290 East and Giles Road under proposed Permit No. 1447A;

WHEREAS, BFI's facility lies within the unincorporated area of Travis County and within the Extraterritorial Jurisdiction of the City of Austin;

WHEREAS, the proposed expansion is subject to a site development permit from Travis County;

WHEREAS, the expanded landfill site is part of three adjacent landfills including one immediately to the south (owned and operated by Waste Management of Texas) which is in turn immediately adjacent to a closed Travis County landfill that is still maintained by Travis County and may be impacted by the expansion;

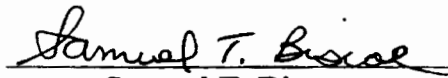
WHEREAS, Travis County has an interest in the outcome of BFI's pending expansion application at this location and could be adversely affected by any change to the proposed permit as written;


WHEREAS, Travis County has submitted comment regarding BFI's proposed expansion at this location to TCEQ; and

WHEREAS, TCEQ has referred BFI's permit expansion application to the State Office of Administrative Hearings for review of issues raised by and related to Travis County's and others' comments to TCEQ;

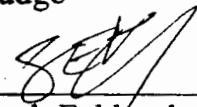
THEREFORE, be it resolved that Travis County requests party status in proceedings regarding BFI's expansion before the State Office of Administrative Hearings.

IN WITNESS THEREOF, WE HAVE HEREUNTO SET OUR HANDS AND AFFIXED THE OFFICIAL SEAL OF THE COUNTY OF TRAVIS ON THIS 8TH DAY OF APRIL, 2008.

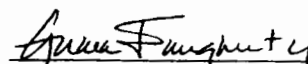

Samuel T. Biscoe
County Judge



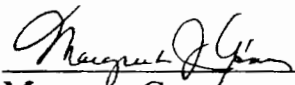
Ron Davis
Commissioner, Pct. 1



Sarah Eckhardt
Commissioner, Pct. 2



Gerald Daugherty
Commissioner, Pct. 3



Margaret Gomez
Commissioner, Pct. 4

MAILING LIST
for
BFI Waste Systems of North America, LLC
SOAH Docket No. 582-08-2178
TCEQ Docket No. 2007-1774-MSW
Permit No. 1447A

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