



FRITZ, BYRNE, HEAD & HARRISON, LLP  
*Attorneys at Law*

May 29, 2008

**VIA FACSIMILE NO. 239-3311**

**- and -**

**U. S. FIRST CLASS MAIL**

Ms. LaDonna Castañuela, Chief Clerk  
Office of the Chief Clerk (MC-105)  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

Re: In re the Application of BFI Waste Systems of North America, Inc., for a  
Major Amendment to Type I MSW Permit No. 1447A


Dear Ms. Castañuela:

Enclosed are an original and one copy of TJFA, L.P.'s Responses to Requests for Disclosure which we respectfully request be filed among the other papers in the above-referenced proceeding. Please return a file-stamped copy of the Responses to me in the self-addressed, postage prepaid envelope provided for your convenience.

A copy of the Responses is being forwarded to all parties of interest as set forth below. Thank you for your assistance in this matter.

Very truly yours,

FRITZ, BYRNE, HEAD & HARRISON, PLLC

By: 

Ann M. Devers  
Assistant to Bob Renbarger

Enclosures

cc: See, Certificate of Service (w/encl)

*Value Driven...Client Oriented*



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

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

**TJFA, L.P.’s RESPONSES TO REQUESTS FOR DISCLOSURE**

TO: All parties identified in the attached Certificate of Service

COMES NOW, TJFA, L.P. (“TJFA”) and pursuant to Rules 190 - 198 of the TEX. R. CIV. P. submits its responses to Requests for Disclosure. To the extent that discovery is ongoing in this case, TJFA specifically reserves its rights to change or supplement any of its responses as recognized by the TEX. R. CIV. P. and relevant regulations.

**RESPONSES TO REQUESTS FOR DISCLOSURE**

Pursuant to TEX. R. CIV. P. § 194.3 and the deadline established in Order No. 1 of this docket, TJFA responds as follows:

**§ 194.2(a) - Parties**

The correct names of the parties are BFI Waste Systems of North America, Inc. (“BFI”); Giles Holdings, L.P.; the Executive Director of the Texas Commission on Environmental Quality (“TCEQ”), the Public Interest Counsel of the TCEQ; Travis County; City of Austin; TJFA, L.P.; Northeast Neighbors Coalition (whose members include Evelyn Remmert, Mark McAfee and others); Mark McAfee; Melanie McAfee; Roger Joseph; Delmer D. Rogers; Williams, Ltd.; and Pioneer Farms.

#### § 194.2(b) - Potential Parties

TJFA believes that Harris Branch Residential Property Owners Association (the "POA") may be seeking party status. The POA may be contacted through counsel for certain aligned protesting parties, Mr. Jim Blackburn, as set forth on the attached service list. Other than the POA, TJFA is not aware of any potential parties not already identified in its response to TEX. R. CIV. P. § 194.2(a) above.

#### § 194.2(c) - Legal Theories/Factual Bases

In its February 29, 2008 Interim Order, the TCEQ identified twenty-six (26) issues it deemed relevant and material to its decision on the application which is the subject of these proceedings. The TCEQ's Interim Order specifically referred these 26 issues to the State Office of Administrative Hearings ("SOAH") for contested case hearings and requested that a Proposal for Decision on these issues be provided within twelve (12) months of the date of the preliminary hearing. TJFA adopts these issues for purposes of its response and asserts that the application fails to comply with the TCEQ rules and regulations applicable to each of these issues. A true and correct copy of the TCEQ's February 29, 2008 Interim Order is appended to this response and incorporated herein for all purposes. As discovery is not scheduled to begin until May 29, 2008 and designation of experts not due until June 27, 2008, TJFA has not sufficiently developed facts or additional theories to support its claims in these proceedings. TJFA reserves its rights to supplement this response as additional information is subsequently developed and shall do so consistently with the applicable discovery rules and the due dates set forth in SOAH Order No. 1.

#### § 194.2(d) - Damages

As economic damages are not relevant to these proceedings, a response to this request is not applicable.

#### § 194.2(e) - Fact Witnesses

TFJA identifies the following persons who have or may have knowledge of relevant facts:

1. Mr. Dennis Hobbs - In his capacity as President of Garra de Aguila, Inc.(General Partner of TJFA, L.P.) - Protesting Party  
TJFA, L.P.  
12200 Carl Rd.  
Creedmoor, TX 78610  
TEL: 512/421-1321
2. Mr. Bob Gregory - In his capacity as limited partner of Protestant TJFA, L.P.  
TJFA, L.P.  
P.O. Box 17126  
Austin, TX 78760-7126  
TEL: 512/421-1300
3. Mr. Evan Williams - On behalf of Williams, Ltd., a Protesting Party  
Williams, Ltd.  
524 N. Lamar, # 203  
Austin, TX 78703  
TEL: 512/477-1277
4. Ms. Celeste Scarborough - On behalf of Pioneer Farms, a Protesting Party  
1632 Payton Falls Dr.  
Austin, TX 78754  
TEL: 512/658-8961
5. Mr. Roger Joseph - Protesting Party  
P.O. Box 7  
Austin, TX 78767  
TEL: 512/459-5997
6. Ms. Melanie McAfee - Protesting Party  
6315 Spicewood Springs Rd.  
Austin, TX 78759  
TEL: 512/343-0126
7. Mr. Mark McAfee - Protesting Party  
6315 Spicewood Springs Rd.  
Austin, TX 78759  
TEL: 512/517-6552

8. Mr. Delmer Rogers - Protesting Party  
5901 Speyside Dr.  
Manor, TX 78653  
TEL: 512/278-9188
  
9. Mr. Jeremiah Bentley - On Behalf of Potential Protesting Party  
Harris Branch Residential Property  
Owners Association  
12100 Kilmartin Lane  
Manor, TX 78653
  
10. The Honorable Will Wynn - Elected Official  
Mayor  
City of Austin  
P.O. Box 1088  
Austin, TX 78767-1088  
TEL: 512/974-2000
  
11. The Honorable Betty Dunkerly - Elected Official  
Mayor Pro-Tem  
City of Austin  
P.O. Box 1088  
Austin, TX 78767-1088  
TEL: 512/974-2000
  
12. Ms. Sheryl Cole - Elected Official  
Council Member  
City of Austin  
P.O. Box 1088  
Austin, TX 78767-1088  
TEL: 512/974-2000
  
13. Ms. Jennifer Kim - Elected Official  
Council Member  
City of Austin  
P.O. Box 1088  
Austin, TX 78767-1088  
TEL: 512/974-2000

14. Mr. Lee Leffingwell - Elected Official  
Council Member  
City of Austin  
P.O. Box 1088  
Austin, TX 78767-1088  
TEL: 512/974-2000
  
15. Mr. Mike Martinez - Elected Official  
Council Member  
City of Austin  
P.O. Box 1088  
Austin, TX 78767-1088  
TEL: 512/974-2000
  
16. Mr. Brewster McCracken - Elected Official  
Council Member  
City of Austin  
P.O. Box 1088  
Austin, TX 78767-1088  
TEL: 512/974-2000
  
17. The Honorable Sam Biscoe - Elected Official  
Travis County Judge  
P.O. Box 1748  
Austin, TX 78767  
TEL: 512/854-9000
  
18. Mr. Ron Davis - Elected Official  
Travis County Commissioner  
P.O. Box 1748  
Austin, TX 78767  
TEL: 512/854-9000
  
19. Ms. Sarah Eckhardt - Elected Official  
Travis County Commissioner  
P.O. Box 1748  
Austin, TX 78767  
TEL: 512/854-9000

20. Mr. Gerald Daugherty - Elected Official  
Travis County Commissioner  
P.O. Box 1748  
Austin, TX 78767  
TEL: 512/854-9000
21. Ms. Margaret Gomez - Elected Official  
Travis County Commissioner  
P.O. Box 1748  
Austin, TX 78767  
TEL: 512/854-9000
22. Senator Kirk Watson - Elected Official  
Texas State Senate  
P.O. Box 12068  
Austin, TX 78711-2068  
TEL: 512/463-0114
23. Representative Mark Strama - Elected Official  
Texas House of Representatives  
P.O. Box 2910  
Austin, TX 78768-2910  
TEL: 512/463-0821
24. Mr. Steve Mobley - Affiliated with Giles Holdings, L.P.  
Mobley Management Company, LLC  
General Partner of Giles Holdings, LP  
2205 Westover Rd.  
Austin, TX 78703
25. Mr. John Mobley - Affiliated with Giles Holdings, L.P.  
305 Camp Craft Rd., Suite 150  
Austin, TX 78746
26. Mr. James Mobley - Affiliated with Giles Holdings, L.P.  
919 Hillcrest Dr.  
Longview, TX 75601

27. Mr. Bill Rich - Affiliated with Applicant  
BFI Waste Systems of North America, Inc.  
P.O. Box 140026  
Austin, TX 78714
28. Lee Kuhn - Affiliated with Applicant  
BFI Waste Systems of North America, Inc.  
P.O. Box 140026  
Austin, TX 78714
29. Mr. Kirk Bruton, P.E. - Affiliated with Applicant  
BFI Waste Systems of North America, Inc.  
P.O. Box 140026  
Austin, TX 78714
30. Mr. Everett Moore - Affiliated with Applicant  
BFI Waste Systems of North America, Inc.  
P.O. Box 140026  
Austin, TX 78714
31. Dozie Ony - Affiliated with Applicant  
BFI Waste Systems of North America, Inc.  
P.O. Box 201690  
San Antonio, TX 78220-1690
32. Mr. Jon Truett Anstey - Affiliated with Applicant  
BFI Waste Systems of North America, Inc.  
P.O. Box 140026  
Austin, TX 78714
33. Mr. Joseph Mrjenovich - Affiliated with Applicant  
111 Congress Ave.  
Austin, TX 78701
34. Mr. Bill Davis - Affiliated with Applicant  
BFI Waste Systems of North America, Inc.  
P.O. Box 140026  
Austin, TX 78714



35. Mr. Heath Eddleblute - Affiliated with Applicant  
251 N. FM 1626, Bldg. 1, Suite A  
Buda, TX 78610  
TEL: 512/295-5682
36. Mr. Michael Stewart - Affiliated with Applicant  
BFI Waste Systems of North America, Inc.  
P.O. Box 140026  
Austin, TX 78714
37. Mr. Steve Shannon - Affiliated with Applicant  
BFI Waste Systems of North America, Inc.  
P.O. Box 140026  
Austin, TX 78714
38. Mr. Jimmy Neese - Affiliated with Applicant  
BFI Waste Systems of North America, Inc.  
P.O. Box 140026  
Austin, TX 78714
39. Ms. Kim Borgess - Affiliated with Applicant  
(Address Unknown)
40. Mr. Rusty Fusilier - Affiliated with Applicant  
(Address Unknown)
41. Mr. Mark Talbot - Former BFI Employee  
(Address Unknown)
42. All persons identified by the Applicant, BFI, in response to the Requests for Disclosure or other discovery responses filed in this docket or supplemented thereto, or who otherwise prepared, reviewed, consulted or participated in the preparation, processing or advocacy in support of the application which is the subject of these proceedings.
43. All persons identified by the Executive Director of the TCEQ in response to Requests for Disclosure or other discovery responses in this docket or supplements thereto or who otherwise reviewed, worked on, consulted or participated in the review and processing of BFI's application which is the subject of these proceedings.

44. All persons identified by the Public Interest Counsel of the TCEQ in response to Requests for Disclosure or other discovery responses in this docket or supplements thereto.
45. All persons identified by all other parties in response to Requests for Disclosure or other discovery responses in this docket or supplements thereto.
46. Mr. John Carlson and Mr. Paul Gosselink - Attorneys for BFI  
Lloyd, Gosselink, Blevins, Rochell & Townsend, P.C.  
816 Congress Ave., Suite 1900  
Austin, TX 78701  
TEL: 512/322-5800
47. Mr. Paul Terrill - Attorney for Giles Holdings, L.P.  
The Terrill Firm, P.C.  
810 W. 10<sup>th</sup> St.  
Austin, TX 78701  
TEL: 512/474-9100
48. Mr. Steve Shepherd - Attorney for the Executive Director of the TCEQ  
Legal Counsel  
Environmental Law Division (MC-173)  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087  
TEL: 512/239-0464
49. Ms. Susan White - Attorney for the Executive Director of the TCEQ  
Staff Attorney  
Litigation Division (MC-173)  
Texas Commission on Environmental Quality  
P.O. Box 13087  
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TEL: 512/239-0454

50. Ms. Christina Mann - Attorney in Office of Public Interest Counsel of the TCEQ  
Attorney  
Office of Public Interest Counsel (MC-103)  
Texas Commission on Environmental Quality  
P.O. Box 13087  
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51. Mr. J. D. Head and Mr. Bob Renbarger - Attorneys for TJFA, L.P.  
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98 San Jacinto Blvd., Suite 2000,  
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52. Ms. Holly C. Noelke - Attorney for the City of Austin  
Assistant City Attorney  
City of Austin Law Department  
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53. Meitra Farhadi - Attorney for the City of Austin  
Assistant City Attorney  
City of Austin  
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54. Mr. Kevin W. Morse - Attorney for Travis County  
Assistant Travis County Attorney  
P.O. Box 1748  
Austin, TX 78767  
TEL: 512/854-9513

55. Mr. Jim Blackburn and Ms. Mary Carter - Attorneys for the Northeast Neighbors Coalition and certain aligned protesting parties  
Blackburn & Carter, P.C.  
4709 Austin St.  
Houston, TX 77004  
TEL: 713/524-1012

To the extent that additional information relevant to this request is subsequently discovered, TJFA will supplement its response.

§ 194.2(f) - Testifying Experts

TJFA has not designated testifying expert witnesses at this time but reserves the right to do so at or before the time identified in Order No. 1 for designation of expert witnesses in this docket. TJFA reserves its rights to supplement its response to this request as necessary or appropriate. TJFA further designates all expert witnesses identified by the other parties to this docket as potential adverse expert witnesses on the subjects for which they may present testimony or other evidence.

§ 194.2(g) - Indemnity/Insuring Agreements

As indemnity/insuring agreements are not relevant to these proceedings, a response to this request is not applicable.

§ 194.2(h) - Settlement Agreements

TJFA is not aware of any settlement agreements within the meaning of TEX. R. CIV. P. § 192.3(g). To the extent that additional information relevant to this request is subsequently discovered, TJFA will supplement its response.

§ 194.2(i) - Witness Statements

TJFA is not aware of any witness statements within the meaning of TEX. R. CIV. P. § 192.3(h). To the extent that additional information relevant to this request is subsequently discovered, TJFA will supplement its response.

§ 194.2(j) - Personal Injuries/Records

As personal injuries are not relevant to these proceedings, a response to this request is not applicable.

§ 194.2(k) - Personal Injuries/Records

As personal injuries are not relevant to these proceedings, a response to this request is not applicable.

§ 194.2(l) - Responsible Third Parties

As responsible third parties are not relevant to these proceedings, a response to this request is not applicable.

§ 194.4 - Production

TJFA has not identified any documents responsive to this request required to be produced at this time. To the extent that additional information or documents are subsequently discovered, TJFA will supplement its response consistent with applicable discovery rules and the due dates set forth in Order No. 1.

Respectfully submitted,

FRITZ, BYRNE, HEAD & HARRISON, PLLC  
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By: Bob Renbarger  
J. D. Head  
State Bar No. 09322400

Bob Renbarger  
State Bar No. 16768100

ATTORNEYS FOR TJFA, L.P.

## CERTIFICATE OF SERVICE

By my signature above, I hereby certify that a true and correct copy of the foregoing document has been served this 29<sup>th</sup> day of May, 2008, via e-mail, facsimile transmission or U.S. First Class mail, to the following:

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Mr. John Carlson  
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GILES HOLDINGS, L.P.**

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**CITY OF AUSTIN**

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**CITY OF AUSTIN**

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E-MAIL: [jbb@blackburncarter.com](mailto:jbb@blackburncarter.com)  
**NORTHEAST NEIGHBORS COALITION; MARK  
MCAFEE; MELANIE MCAFEE; ROGER JOSEPH;  
DELMER D. ROGERS; WILLIAMS, LTD.; and PIONEER  
FARMS**

Mr. Evan Williams  
Williams, Ltd.  
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TEL: 512/477-1277  
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**WILLIAMS, LTD.**

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**PIONEER FARMS**

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Mr. Delmer Rogers  
5901 Speyside Dr.  
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TEL: 512/278-9188

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



## **AN INTERIM ORDER**

concerning the application by BFI Waste Systems of North America, Inc. for a major amendment to Type I MSW Permit No. 1447 (Proposed Amendment No. 1447A); TCEQ Docket No. 2007-1774-MSW.

On February 27, 2008, the Texas Commission on Environmental Quality (Commission) considered during its open meeting requests for hearing and reconsideration filed by numerous individuals and entities concerning the application by BFI Waste Systems of North America, Inc. (Applicant) for a major amendment to its Type I Municipal Solid Waste Permit No. 1447 (Proposed Amendment No. 1447A) for a landfill located in Travis County. The requests for hearing and reconsideration were evaluated under the requirements in the applicable statutes and Commission rules, including 30 Texas Administrative Code Chapter 55. The Commission also considered the responses to the requests for hearing and reconsideration filed by the Executive Director, Office of Public Interest Counsel, and Applicant; the requesters' replies; all timely public comment; and the Executive Director's Response to Comment.

After evaluation of all relevant filings, the Commission determined that the following persons/entities are affected under applicable law and that their hearing requests should be granted: 1) Jeremiah Bentley/Harris Branch Residential Property Owners Association; 2) Amy Kersten; 3) Nora Longoria; 4) Mark and Melanie McAfee/Barr Mansion; 5) Alto and Rosemary



Nauert; 6) Northeast Neighbors Coalition; 7) Evelyn and Cecil Remmert; 8) Delmer Rogers; 9) Mike and Ramona Roundtree; 10) Pioneer Farms, represented by Celeste Scarborough; 11) Roy and Janet Smith; 12) TJFA, L.P.; 13) Evan Williams/Williams, Ltd./Roger Joseph; and 14) Petitioners Kathryn Albee, Jeremiah Bentley, Lionel Bess, Amber and Tony Buonodono, Terry Cainal and Amy Williamson, Lee Cook, Sean Cottle, Chuch Dabbs, James Daniel, Melissa Fields, Tim Fleetwood, Ron and Cam Junker, Nora Longoria, Pam and Allan Luttig, James Marchak, Dan Pyka, Merry Rightmer, Jeffrey Seider, Cloyce Sprading, Janet Smith, Vu Tran, Roland Valles, Jeremy and Karen Vest, Alfred Wendland, Mark Wilkerson, David Williams, and Michael Young. The Commission denied the remaining hearing requests.

The Commission also determined whether those persons/entities' requests for hearing raised disputed issues of fact that were raised during the comment period which are relevant and material to its decision on the application. The Commission determined that the following issues met these requirements, and directed that they be referred to the State Office of Administrative Hearings (SOAH): (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 agency 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); (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 provision 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 ch. 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; (W) Whether the application proposes sufficient provisions to protect the health of requesters and their families, and to avoid causing a nuisance, in violation of 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; and (Z) Whether the storage, treatment, and disposal of contaminated water is adequately addressed in the application and draft permit.

The Commission denied the remaining issues. The Commission specified that the maximum duration of the contested case hearing shall be twelve (12) months from the first day of the preliminary hearing to the date the proposal for decision is issued by SOAH. The Commission also directed SOAH to include findings of fact, conclusions of law, and ordering provisions in its proposed order and directed the Executive Director to participate as a party in the hearing. Finally, the Commission determined to deny the requests for reconsideration filed by Joyce Best and TJFA, L.P.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

- (1) The Commission's Chief Clerk shall refer the case to SOAH for hearing on the application as ordered below;
- (2) The following are affected persons and their hearing requests are hereby granted with regard to the issues identified in Ordering Provision No. 3: A) Jeremiah Bentley/Harris Branch Residential Property Owners Association; B) Amy Kersten; C) Nora Longoria; D) Mark and Melanie McAfee/Barr Mansion; E) Alto and Rosemary Nauert; F) Northeast Neighbors Coalition; G) Evelyn and Cecil Remmert; H) Delmer Rogers; I) Mike and Ramona Roundtree; J) Pioneer Farms, represented by Celeste Scarborough; K) Roy and Janet Smith; L) TJFA, L.P.; M) Evan Williams/Williams, Ltd./Roger Joseph; and N) Petitioners Kathryn Albee, Jeremiah Bentley, Lionel Bess, Amber and Tony Buonodono, Terry Cainal and Amy Williamson, Lee Cook, Sean Cottle, Chuch Dabbs, James Daniel, Melissa Fields, Tim Fleetwood, Ron and Cam Junker, Nora Longoria, Pam and Allan Luttig, James Marchak, Dan Pyka, Merry Rightmer,

Jeffrey Seider, Cloyce Sprading, Janet Smith, Vu Tran, Roland Valles, Jeremy and Karen Vest, Alfred Wendland, Mark Wilkerson, David Williams, and Michael Young;

(3) The Chief Clerk shall refer to SOAH the following issues for a contested case hearing on the application:

- (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 agency 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);
- (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 provision 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 ch. 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;

(W) Whether the application proposes sufficient provisions to protect the health of requesters and their families, and to avoid causing a nuisance, in violation of 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; and

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

(4) All hearing requests not granted by Ordering Provision No. 2 and all issues not identified as being referred to SOAH in Ordering Provision No. 3 are hereby denied;

(5) The requests for reconsideration filed by Joyce Best and TJFA, L.P. are hereby denied;

(6) The maximum duration of the hearing is set at twelve months from the first day of the preliminary hearing to the date the proposal for decision is issued by the State Office of Administrative Hearings.

(7) The Executive Director is directed to participate in the hearing as a party;

(8) SOAH shall provide the Commission with a proposed order at the time of submittal of the proposal for decision. The proposed order shall contain findings of fact, conclusions of law, and ordering provisions; and

(9) If any provision, sentence, clause or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

Issue date: FEB 29 2008

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

  
Buddy Garcia, Chairman