



LAW DEPARTMENT FAX TRANSMISSION COVER
David Allan Smith, City Attorney

DATE: July 18, 2008

FROM: Holly Noelke	FAX NUMBER: (512) 974-6490
TO: Christina Mann	FAX NUMBER: (512) 239-6377
Bob Renbarger	FAX NUMBER: (512) 477-5267
Steve Shepherd, Susan White	FAX NUMBER: (512) 239-0606
Paul Gosselink	FAX NUMBER: (512) 472-0532
Jim Blackburn	FAX NUMBER: (713) 524-5165
Kevin W. Morse	FAX NUMBER: (512) 854-4808

RE: **Application of BFI Waste Systems of North America Inc., for a Major Amendment to Type I MSW Permit No. 1447A**
SOAH Docket No. 582-08-2178
TCEQ Docket No. 2007-1774-MSW

COMMENTS: City of Austin's Discovery Requests

This transmission consists of this cover sheet plus 26 page(s) of copy. If problems occur and you do not receive all pages of this transmission, please call **Mona Light Being at 974-2168** for assistance. The FAX machine used by the Law Department is located in our office; however, it is not always staffed. Please telephone the Law Department to ensure your transmitted documents are immediately picked up.

The information contained in this facsimile message is privileged and confidential attorney information intended only for the use of the addressee. Persons responsible for delivering this communication to the intended recipient are hereby notified not to read the attached and that any dissemination, distribution or copying of this communication is strictly prohibited.

If you have received this communication in error, please notify us immediately by telephone, and please return the original message to us at our address shown above via the U.S. Postal Service.

CERTIFICATE OF SERVICE

I have served a copy of *City of Austin's Requests for Production to Applicant* to the following attorneys of record on this 18th day of July, 2008.

Christina Mann (Via Facsimile: 512-239-6377)
Texas Commission on Environmental Quality
Office of Public Interest Counsel
P. O. Box 13087, MC-103
Austin, TX 78711-3087
Attorney for: Office of Public Interest Counsel

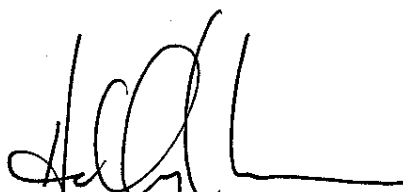
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Austin, TX 78701
Attorney for: TJFA, L.P. (TJFA)

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Susan White
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Environmental Law Division
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Austin, TX 78711-3087
Attorney for: Executive Director

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Attorney for: BFI Waste Systems of North America, Inc. (BFI), and Alignment Representative for: Giles Holdings, L.P.

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Assistant County Attorney
Travis County Attorney's Office
P. O. Box 1748
Austin, TX 78767
Attorney for: Travis County, Texas



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11. "Contested Case Hearing" refers to the Application for Permit No. MSW-1447A pending before the State Office Of Administrative Hearings ("SOAH"), SOAH Docket No. 582-08-2178, TCEQ Docket No. 2007-1774-MSW.
12. "Facility" means the Type I, Municipal Solid Waste Landfill located at 9912 Giles Rd., Austin, Texas 78714.

INSTRUCTIONS

1. Please produce all responsive documents which are in your possession, custody or control regardless of where such documents are located.
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DUTY TO SUPPLEMENT

You are reminded that this is a continuing request, thus any responsive information obtained after the Interrogatory due date herein should be promptly delivered to Protestant City of Austin.

REQUESTS FOR PRODUCTION**REQUEST FOR PRODUCTION NO. 1:**

Please provide a copy of all documents referenced and/or that support your answers to the City's Interrogatories to Applicant.

RESPONSE:**REQUEST FOR PRODUCTION NO. 2:**

In regards to the TPDES permit for the BFI Sunset Farms' landfill, please provide all documents relating to:

- a. reports of non-compliance;
- b. reportable spills;
- c. results of representative discharge samples;
- d. results of quarterly discharge sampling, inspections and examinations; and
- e. analytical results for storm water grab sampling.

RESPONSE:**REQUEST FOR PRODUCTION NO. 3:**

Please provide a copy of BFI Sunset Farms' current and past storm water pollution prevention plan(s) and/or storm water management systems.

RESPONSE:**REQUEST FOR PRODUCTION NO. 4:**

Please provide a copy of any BFI Sunset Farms' proposed modifications to the current and past storm water pollution prevention plan(s) and/or storm water management systems.

RESPONSE:**REQUEST FOR PRODUCTION NO. 5:**

Please provide a copy of BFI Sunset Farms' current and proposed site plans, engineering reports, permits, calculations which pertain to:

- a. Storm Water Pollution Prevention Plan, or other erosion and sedimentation control plans;

- b. Permanent storm water (ponds, swales, etc.) Best Management Practices to remove pollutants and/or detain flows;
- c. Current and proposed impervious cover, pollutant loadings, removal efficiencies for Best Management Practices. Please include the following information: increases in stormwater runoff volume, increases in drawdown time, bypass calculations, and methods of calculations.

RESPONSE:**REQUEST FOR PRODUCTION NO. 6:**

All BFI Sunset Farms' maintenance plans and logs for storm water controls (including permanent water quality and detention facilities, temporary erosion and sedimentation controls).

RESPONSE:**REQUEST FOR PRODUCTION NO. 7:**

All BFI Sunset Farms' correspondence (received and sent), reports, or other documentation regarding sediment discharges on-site and off-site. This includes neighbor complaints, photographs, citations or any other information regarding fugitive sediment from the current landfill.

RESPONSE:**REQUEST FOR PRODUCTION NO. 8:**

Any maps that reflect the Travis County or City of Austin regulatory boundaries of: 100 year floodplain, Critical Water Quality Zone (CWQZ), Water Quality Transition Zone of the BFI facility.

RESPONSE:**REQUEST FOR PRODUCTION NO. 9:**

Any drawings, calculations or correspondence regarding slope stability of the proposed permitted landfill during active landfilling and after final cover of the BFI Sunset Farms facility.

RESPONSE:

REQUEST FOR PRODUCTION NO. 10:

Please provide the historic groundwater data from Subtitle D wells located at the BFI Sunset Farms landfill.

RESPONSE:

REQUEST FOR PRODUCTION NO. 11: If you contend that the proposed expansion is compatible with land use in the surrounding area, please state the basis for such contention and identify with specificity the regulatory authority relied upon for this contention.

RESPONSE:

REQUEST FOR PRODUCTION NO. 12: If you contend that the Sunset Farms Landfill's operational hours are appropriate, please state the basis for such contention and identify with specificity the regulatory authority relied upon for this contention.

RESPONSE:

REQUEST FOR PRODUCTION NO. 13: If you contend that the erosion control methods identified in the Application and draft permit are sufficient, please state the basis for such contention and identify with specificity the regulatory authority relied upon for this contention.

RESPONSE:

REQUEST FOR PRODUCTION NO. 14: If you contend that the Application includes adequate provisions for dust control and maintenance of site access roads, please state the basis for such contention and identify with specificity the regulatory authority relied upon for this contention.

RESPONSE:

REQUEST FOR PRODUCTION NO. 15: If you contend that the land use at or near the BFI Facility is consistent with the siting and operation of a vertically expanded municipal solid waste landfill as proposed in the Application, please state the basis for this contention and identify with specificity the regulatory authority relied upon for this land use determination.

RESPONSE:

REQUEST FOR PRODUCTION NO. 16: If you contend that the Application includes adequate provisions to control spilled and windblown waste and cleanup spilled waster, please

state the basis for such contention and identify with specificity the regulatory authority relied upon for this contention.

RESPONSE:

REQUEST FOR PRODUCTION NO. 17: Please provide copies of all deeds, restrictive covenants, and easements for the property on which the proposed landfill will be located.

RESPONSE:

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

IN THE MATTER OF THE APPLICATION OF BFI WASTE SYSTEMS OF NORTH AMERICA, INC. PROPOSED SOLID WASTE PERMIT AMENDMENT No. 1447A	§ § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**PROTESTANT CITY OF AUSTIN'S
 REQUEST FOR PRODUCTION TO GILES HOLDING, L.P.**

To: **Giles Holding, L.P.**, by and through attorney Paul Gosselink, Lloyd, Gosselink, Rochelle & Townsend, P.C., 816 Congress Ave., Suite 1900, Austin, Texas 78701.

NOW COMES Protestant City of Austin, and makes this its Request for Production of Documents to Applicant pursuant to Rule 196 of the Texas Rules of Civil Procedure.

Protestant City of Austin requests that the documents and written responses be served at: City of Austin, Law Department, City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, or at some other place mutually agreeable to the parties.

Respectfully submitted,

DAVID ALLAN SMITH
 CITY ATTORNEY



HOLLY NOELKE
 Assistant City Attorney
 State Bar No. 04651000
 City of Austin Law Department
 Post Office Box 1088
 Austin, Texas 78767-1546
 (512) 974-2630
 (512) 974-6490 [FAX]

ATTORNEYS FOR CITY OF AUSTIN

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Attorney for: Office of Public Interest Counsel

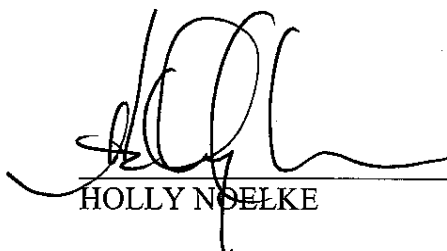
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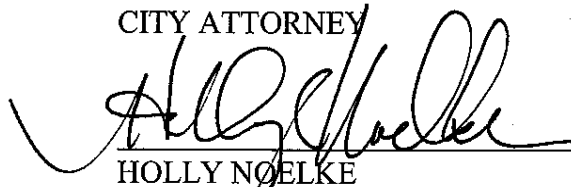
PROTESTANT CITY OF AUSTIN'S INTERROGATORIES TO APPLICANT

To: **Applicant alignment, ("BFI")**, by and through its attorneys of record, Paul Gosselink and John Carlson, Lloyd, Gosselink, Rochelle & Townsend, P.C., 816 Congress Ave., Suite 1900, Austin, Texas 78701.

Pursuant to Tex. R. Civ. P. 193, 196, 197, and 198, Applicant is hereby requested to answer fully, separately, and under oath the following Interrogatories. Protestant, City of Austin, requests that Applicant serve its written responses on Protestant, City of Austin's lead counsel Holly Noelke, City of Austin Law Department, P.O. Box 1546, Austin, Texas 78767-1546, within thirty (30) days of the service hereof. These requests shall be deemed continuing so as to require immediate and timely supplemental answers if you obtain further information between the time you serve answers hereto and the time of trial.

Respectfully submitted,

DAVID ALLAN SMITH
 CITY ATTORNEY



HOLLY NOELKE
 Assistant City Attorney
 State Bar No. 04651000
 City of Austin Law Department
 Post Office Box 1088
 Austin, Texas 78767-1546
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INTERROGATORIES

INTERROGATORY NO. 1:

Please identify and describe the proposed facility's lighting system(s). Please include each system's location.

ANSWER:

INTERROGATORY NO. 2:

Please identify and describe the specifications, methods and plans pertaining to the revegetation of cover for inactive areas and intermediate cover for the following areas:

- soil;
- seeding;
- irrigation; and
- erosion control.

ANSWER:

INTERROGATORY NO. 3:

What are the historic leachate levels for the liner for the facility? Please provide the dates and levels for each incident when leachate levels exceeded permit allowances. Please also provide the reasons for exceeding the levels and the remedies used to prevent the reoccurrence.

ANSWER:

INTERROGATORY NO. 4:

Please identify and describe any existing and proposed contaminated water treatment systems that are located on the facility.

ANSWER:

INTERROGATORY NO. 5:

Please describe the erosion prevention measures for the inactive areas of the facility.

ANSWER:

INTERROGATORY NO. 6:

Please describe the stormwater management plans in place for the facility.

ANSWER:**INTERROGATORY NO. 7:**

Please identify any sideslope berms located at your proposed facility. For each sideslope berm identified, describe its design purpose and its application use.

ANSWER:**INTERROGATORY NO. 8:**

Please identify and describe any existing and proposed sediment traps intended to prevent discharge of sediment from eroded daily cover.

ANSWER:**INTERROGATORY NO. 9:**

Please describe the expected analytical requirements for contaminated stormwater that is discharged via the surface water drainage system and the proposed facility.

ANSWER:**INTERROGATORY NO. 10:**

Please identify and describe any temporary storage facilities designed for contaminated stormwater, particularly stormwater that comes in direct contact with the waste face. Please include the following information for each identified facility:

- a. storage facility capacity; and
- b. methods or formulas for determining its capacity.

ANSWER:**INTERROGATORY NO. 11:**

Please describe the facility's measures or plans that will be followed when using contaminated soil for berms or ponds.

ANSWER:**INTERROGATORY NO. 12:**

Please identify and summarize all measures/procedures/plans that have been modified as a result of a previous discharge of any solid waste or pollutant.

ANSWER:**INTERROGATORY NO. 13:**

Please identify by location, design and performance specification, where any and all detentions and sedimentation ponds described in the Groundwater and Surface Water Protection Plan are currently located and where they will be located under the proposed permit amendment.

ANSWER:**INTERROGATORY NO. 14:**

Based on Part III, Appendix III-B, of the Application, "Erosion/Soil Loss Calculations", please identify and provide the calculations for total annual soil loss for the entire site in tons per year (loss rate times number of acres, respectively). Please provide the same calculations for soil loss prior to final cover, including average annual runoff volume.

ANSWER:**INTERROGATORY NO. 15:**

Please describe the method(s) of calculation as referenced in Part III, Attachment 6 to the Application.

ANSWER:

INTERROGATORY NO. 16: If you contend that the land use at or near the BFI Facility is consistent with the siting and operation of a vertically expanded municipal solid waste landfill as proposed in the Application, please state the basis for this contention and identify with specificity the regulatory authority relied upon for this land use determination.

ANSWER:

INTERROGATORY NO. 17: If you contend that the Application includes adequate provisions to control spilled and windblown waste and cleanup spilled waste, please state the basis for such contention and identify with specificity the regulatory authority relied upon for this contention.

ANSWER

INTERROGATORY NO. 18: If you contend that the Application includes adequate provisions for dust control and maintenance of site access roads, please state the basis for such contention and identify with specificity the regulatory authority relied upon for this contention.

ANSWER:

INTERROGATORY NO. 19: If you contend that the proposed expansion is compatible with land use in the surrounding area, please state the basis for such contention and identify with specificity the regulatory authority relied upon for this contention.

ANSWER:

INTERROGATORY NO. 20: If you contend that the Sunset Farms Landfill's operational hours are appropriate, please state the basis for such contention and identify with specificity the regulatory authority relied upon for this contention.

ANSWER:

INTERROGATORY NO. 21: If you contend that the erosion control methods identified in the Application and draft permit are sufficient, please state the basis for such contention and identify with specificity the regulatory authority relied upon for this contention.

ANSWER:

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SYSTEMS OF NORTH AMERICA, INC.	§	OF
PROPOSED SOLID WASTE PERMIT	§	
AMENDMENT No. 1447A	§	ADMINISTRATIVE HEARINGS

**PROTESTANT CITY OF AUSTIN'S INTERROGATORIES TO
EXECUTIVE DIRECTOR**

To: **Executive Director**, by and through its attorneys of record, Susan White, Texas Commission on Environmental Quality, Litigation Division, P.O. Box 13087, Austin, Texas 78711.

Pursuant to Tex. R. Civ. P. 193, 196, 197, and 198, Executive Director is hereby requested to answer fully, separately, and under oath the following Interrogatories. Protestant, City of Austin, requests that Executive Director serve its written responses on Protestant, City of Austin's lead counsel Holly Noelke, City of Austin Law Department, P.O. Box 1546, Austin, Texas 78767-1546, within thirty (30) days of the service hereof. These requests shall be deemed continuing so as to require immediate and timely supplemental answers if you obtain further information between the time you serve answers hereto and the time of trial.

Respectfully submitted,

DAVID ALLAN SMITH
CITY ATTORNEY



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ATTORNEYS FOR CITY OF AUSTIN

CERTIFICATE OF SERVICE

I have served a copy of *City of Austin's Interrogatories to Executive Director* to the following attorneys of record on this 18th day of July, 2008.

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Texas Commission on Environmental Quality

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816 Congress Avenue, Suite 1900

Austin, TX 78701

Attorney for: BFI Waste Systems of North America, Inc. (BFI), and Alignment Representative for: Giles Holdings, L.P.

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4709 Austin

Houston, TX 77004

Attorney for: Northeast Neighbors Coalition, and Alignment Representative for: Williams, Ltd., Mark McAfee, Melanie McAfee, Pioneer Farms, Roger Joseph, and Delmer D. Rogers

Kevin W. Morse (Via Facsimile: 512-854-4808)

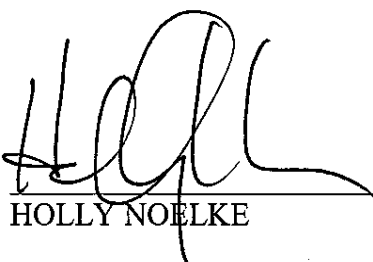
Assistant County Attorney

Travis County Attorney's Office

P. O. Box 1748

Austin, TX 78767

Attorney for: Travis County, Texas



HOLLY NOELKE

DEFINITIONS

1. "Protestants" refers to City of Austin, and to its attorneys, employees, agents, or other representatives.
2. "TCEQ" refers to Texas Commission on Environmental Quality and its attorneys, employees, agents, or other representatives, including the Executive Director.
3. "Applicant" refers to BFI Waste Systems of North America, LLC and its attorneys, employees, agents, partners, or other representatives, and to any predecessors or successors in interest.
4. "Person" means any natural person, corporation, partnership, association, joint venture, sole proprietorship, firm or business enterprise, governmental body or agency, and any other artificial business, legal, or governmental entity, as well as all divisions, subdivisions, bureaus, offices, or other units thereof.
5. "Application" means the Application for Permit No. MSW-1447A filed with the Texas Commission on Environmental Quality ("TCEQ"), as well as any amended or supplemental applications filed by Applicant.
6. "Draft Permit" means the draft permit for the Application issued by the TCEQ on January 20, 2006.
7. "Communication" means the transmittal of information (in the form of facts, ideas or otherwise) by any means whatsoever (oral, written or otherwise).
8. "Discuss" or any form of that word means discussing, communicating about, referring to or mentioning.
9. "Concerning" means commenting on, referring to, relating to, pertinent to, discussing, tending to support, or relating to in any way.
10. "Expert" means any testifying expert and any consulting expert whose mental impressions or opinions have been reviewed by a testifying expert.
11. "Contested Case Hearing" refers to the Application for Permit No. MSW-1447A pending before the State Office Of Administrative Hearings ("SOAH"), SOAH Docket No. 582-08-2178, TCEQ Docket No. 2007-1774-MSW.
12. "Facility" means the Type I, Municipal Solid Waste Landfill located at 9912 Giles Rd., Austin, Texas 78714.

INSTRUCTIONS

1. Please produce all responsive documents which are in your possession, custody or control regardless of where such documents are located.
2. The following rules of construction apply to this discovery request:
 - a) The words "and" and "or" are to be construed conjunctively or disjunctively as may be necessary to make the request inclusive rather than exclusive;
 - b) The use of the singular shall be deemed to include the plural, the masculine gender includes the feminine and neuter, and vice versa.
3. Please produce the documents for inspection as they are kept in the usual course of business or organize and label them to correspond with the categories in the request. Documents which, when regularly maintained, are stapled, clipped or otherwise physically attached to other documents should be produced in their stapled, clipped or otherwise physically attached form.
4. This request is continuous and Protestants request that you supplement your response and production as required by the Texas Rules of Civil Procedure.
5. With regard to electronic documents and emails, please produce electronic data in their native format: such as Microsoft Word, PowerPoint, Excel, Visio or Access, WordPerfect, Oracle, or any other Microsoft, Adobe, or other currently available "off-the-shelf application. Additionally, please produce all emails in their native format. The documents shall not be locked, re-saved, restructured, "scrubbed" of unapparent content or any other metadata, but rather should be produced in a copy precisely reproducing its entire state as present in Your systems. Electronic documents or emails created with software not generally available shall be produced as Portable Documents Format (PDF) files.

Unless otherwise stated, the relevant time period for all document requests is January 1, 2006 to present.

DUTY TO SUPPLEMENT

You are reminded that this is a continuing request, thus any responsive information obtained after the Interrogatory due date herein should be promptly delivered to Protestant City of Austin.

INTERROGATORIES

INTERROGATORY NO. 1: For any “consulting expert” whose mental impressions and opinions have been reviewed by any “testifying expert” of yours, state the name, address, and telephone number of each such consulting expert.

ANSWER:

INTERROGATORY NO. 2: If you contend that the Site Development Plan contained in the Application is adequate, please state the basis for this contention and identify with specificity the regulatory authority relied upon for each component of the plan.

ANSWER:

INTERROGATORY NO. 3: If you contend that the land use at or near the BFI Facility is consistent with the siting and operation of a vertically expanded municipal solid waste landfill as proposed in the Application, please state the basis for this contention and identify with specificity the regulatory authority relied upon for this land use determination.

ANSWER:

INTERROGATORY NO. 4: If you contend that the Application includes adequate provisions for dust control and maintenance of site access roads, please state the basis for such contention and identify with specificity the regulatory authority relied upon for this contention.

ANSWER:

INTERROGATORY NO. 5: If you contend that the proposed expansion is compatible with land use in the surrounding area, please state the basis for such contention and identify with specificity the regulatory authority relied upon for this contention.

ANSWER:

INTERROGATORY NO. 6: If you contend that the erosion control methods identified in the Application and draft permit are sufficient, please state the basis for such contention, and identify with specificity the regulatory authority relied upon for this contention.

ANSWER: