

**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 FIRST SET OF INTERROGATORIES,  
FIRST REQUESTS FOR PRODUCTION, AND FIRST REQUESTS  
FOR ADMISSIONS TO THE EXECUTIVE DIRECTOR**

TO: The Executive Director of the TCEQ, by and through his attorneys of record, Mr. Steve Shepherd, Legal Counsel, Environmental Law Division (MC-173), Texas Commission on Environmental Quality, P.O. Box 13087, Austin, TX 78711-3087 and Ms. Susan White, Staff Attorney, Litigation Division (MC-173), Texas Commission on Environmental Quality, P.O. Box 13087, Austin, TX 78711-3087

PLEASE TAKE NOTICE that pursuant to Rules 196, 197, and 198 of TEX.R.CIV.P., TJFA, L.P. ("TJFA"), in the above-styled cause, serve these Interrogatories, Requests for Production, and Requests for Admissions upon you. The Executive Director ("ED") must answer each interrogatory in writing and under oath within thirty (30) days after service, must produce all requested documents as they are kept in the ordinary course of business or segregated according to each request, for inspection and copying not more than thirty (30) days after service at the law offices of J. D. Head and Bob Renbarger, and must provide written responses to each request for admission within thirty (30) days after service of such requests.

Respectfully submitted,

FRITZ, BYRNE, HEAD & HARRISON, PLLC  
98 San Jacinto Blvd., Suite 2000  
Austin, TX 78701  
TEL: 512/476-2020  
FAX: 512/477-5267

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 18<sup>th</sup> day of July, 2008, via e-mail, facsimile transmission or U.S. First Class mail, to the following:

Mr. Paul G. Gosselink  
Mr. John E. Carlson  
Lloyd, Gosselink, Blevins, Rochell & Townsend, P.C.  
816 Congress Ave., Suite 1900  
Austin, TX 78701  
TEL: 512/322-5800  
FAX: 512/472-0532  
E-MAIL: [pgosselink@lglawfirm.com](mailto:pgosselink@lglawfirm.com)  
E-MAIL: [jcarlson@lglawfirm.com](mailto:jcarlson@lglawfirm.com)  
**BFI WASTE SYSTEMS OF NORTH AMERICA, INC. and  
GILES HOLDINGS, L.P.**

Mr. Steve Shepherd  
Legal Counsel  
Environmental Law Division (MC-173)  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087  
TEL: 512/239-0464  
FAX: 512/239-0606  
E-MAIL: [sshepher@tceq.state.tx.us](mailto:sshepher@tceq.state.tx.us)  
**EXECUTIVE DIRECTOR**

Ms. Susan White  
Staff Attorney  
Litigation Division (MC-173)  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087  
TEL: 512/239-0454  
FAX: 512/239-0606  
E-MAIL: [swhite@tceq.state.tx.us](mailto:swhite@tceq.state.tx.us)  
**EXECUTIVE DIRECTOR**

Ms. Christina Mann  
Attorney  
Office of Public Interest Counsel (MC-103)  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087  
TEL: 512/239-4014  
FAX: 512/239-6377  
E-MAIL: [cmann@tceq.state.tx.us](mailto:cmann@tceq.state.tx.us)  
**OFFICE OF PUBLIC INTEREST COUNSEL**

Mr. Kevin W. Morse  
Assistant Travis County Attorney  
P.O. Box 1748  
Austin, TX 78767  
TEL: 512/854-9513  
FAX: 512/854-4808  
E-MAIL: [kevin.morse@co.travis.tx.us](mailto:kevin.morse@co.travis.tx.us)  
**TRAVIS COUNTY**

Ms. Holly C. Noelke  
Assistant City Attorney  
City of Austin Law Department  
P.O. Box 1088  
Austin, TX 78767  
TEL: 512/974-2630  
FAX: 512/974-6490  
E-MAIL: [holly.noelke@ci.austin.tx.us](mailto:holly.noelke@ci.austin.tx.us)  
**CITY OF AUSTIN**

Ms. Meitra Farhadi  
Assistant City Attorney  
City of Austin  
P.O. Box 1088  
Austin, TX 78767  
TEL: 512/974-2310  
FAX: 512/974-6490  
E-MAIL: [meitra.farhadi@ci.austin.tx.us](mailto:meitra.farhadi@ci.austin.tx.us)  
**CITY OF AUSTIN**

Mr. Jim Blackburn  
Ms. Mary W. Carter  
Blackburn & Carter, P.C.  
4709 Austin St.  
Houston, TX 77004  
TEL: 713/524-1012  
FAX: 713/524-5165  
E-MAIL: [jbb@blackburncarter.com](mailto:jbb@blackburncarter.com)  
E-MAIL: [mcarter@blackburncarter.com](mailto:mcarter@blackburncarter.com)  
**NORTHEAST NEIGHBORS COALITION; MARK  
MCAFEE; MELANIE MCAFEE; ROGER JOSEPH;  
DELMER D. ROGERS; WILLIAMS, LTD.; and PIONEER  
FARMS**

## INSTRUCTIONS

The following instructions and definitions apply to these requests and your responses thereto.

1. These requests are continuing in nature and require supplementary responses if you or your attorney obtain information which reveals that your responses were incorrect or incomplete when made or that your responses are no longer correct or complete.

2. These requests and your responses may be offered in evidence at the hearings of the above cause.

3. Your failure to respond to these requests as required by the Texas Rules of Civil Procedure within the time required may result in sanctions determined by the Administrative Law Judge.

4. Strict compliance with the requirements of Rules 193, 196, 197, and 198 of the Texas Rules of Civil Procedure shall be required. Service of your written responses to these requests, together with any objections, is due from you within 31 days of the date of service of these requests.

5. If you refuse to answer any interrogatory on the grounds that some or all of the requested information is protected or privileged, set forth, in detail, the privilege claimed, the facts upon which you rely to support the claim of privilege, and the scope of said privilege, and proceed to answer with all requested information for which protection or privilege is not claimed.

6. If you have ever had any of the documents requested below in your possession, custody, or control but do not now, you are requested to state the following with respect to each such document:

- a. The present location thereof, if known, or all reasons why you cannot or do not know the location thereof;
- b. The date each such document left your possession, custody, or control;
- c. The reasons why each such document is not now in your possession, custody, or control; and

- d. Names and addresses of all persons having knowledge about the matters inquired about in the immediately preceding paragraphs (a) through (c).

7. If any document requested herein has been destroyed, you are requested to describe in detail the circumstances of and reasons for such destruction and to produce all documents which relate to either the circumstances or the reasons for such destruction.

8. If any document requested herein is withheld under claim of privilege or is not produced for whatever reason, you are instructed (i) to state with specificity the claim of privilege or other reason used to withhold production, and (ii) to identify each such document by date, author, addressee, persons or entities copied, persons or entities who reviewed the document, and subject matter, without disclosing its contents, in a manner sufficient to allow it to be described to the Court for ruling on the privilege or other reason asserted. You are further requested to produce those portions of any such documents which are not subject to a claim of privilege or other reason for non-production by excising or otherwise protecting the portions for which privilege is asserted, if such a technique does not result in disclosing the contents of the portions for which some privilege is asserted. Also, for each document you claim is not discoverable, state the date of the document; the name, job title, and address of the person who prepared it; the name, address, and job title of the person to whom it was addressed or circulated, or who saw it; the name, job title, and address of the person now in possession of the document; a description of the subject matter of the document; and the present location and the custodian for the document.

9. Each of the requests contained herein is made in accordance with relevant provisions of Rules 193, 196, 197 and 198 of the Texas Rules of Civil Procedure. No request herein should be construed as calling for the following categories of information:

- a. Unless waiver of an existing privilege has occurred or is intended, the work-product of the attorneys for parties who have appeared in this case; and
- b. Documents containing information generated by a non-testifying consulting expert employed by you in anticipation of litigation unless the consulting expert's opinion or impressions have been reviewed by a testifying expert.

As to that information which you contend falls into the categories enumerated above, or is protected from disclosure by any other privilege, counsel should follow the

relevant provisions of Rule 193 concerning presentation of objections to any information requested by these requests.

10. Pursuant to Rule 196.4 of the Texas Rules of Civil Procedure, if any information responsive to any request for production is in electronic or magnetic format or otherwise exists on computer hard-drive or any other form of electronic data storage, you are instructed to provide such information by downloading true and correct copies of such information on a computer disc (“CD”). If you cannot, through reasonable efforts, provide such information in CD format, you are instructed to download and print true and correct copies of such information from the electronic storage format into hard copies for subsequent production. All such electronic, magnetic or computer information is specifically included within the scope and definition of the term “document” as hereinafter defined.

### **DEFINITIONS**

1. “Applicant,” unless otherwise modified to reflect a different context, refers to BFI Waste Systems of North America, Inc., BFI Waste Systems of North America, LLC, BFI Sunset Farms Landfill, Sunset Farms Landfill and all of their present or former officers, directors, board members, employees, agents, engineers, consultants, experts, representatives, predecessors and all other persons acting in concert with such entities, on their behalf or under their control whether directly or indirectly.

2. “Application,” unless otherwise modified to reflect a different context, refers to the application for a permit amendment for TCEQ MSW Permit No. 1447-A originally submitted August 5, 2005 which is the subject of these proceedings, together with any and all documents, attachments, supplements or other written or electronically disseminated information filed or submitted in support thereto.

3. “BFI” refers to Applicant, as herein defined, and all of its present or former officers, directors, board members, employees, agents, engineers, consultants, experts, representatives, predecessors and all other persons acting in concert with BFI, on its behalf or under its control whether directly or indirectly.

4. “Communication(s)” refers to any oral or written communication of which the person answering the request or interrogatory has knowledge, information or belief.

5. “Date” means the exact date, month, and year, if ascertainable, or, if not, the best available approximation.

6. “Document” refers to, without limitation, any book, pamphlet, magazine, circular, bulletin, manual, periodical, written communication, correspondence, resolution,

telegram, letter, message, report, inventory, account, bill of sale, purchase order, bill of lading, shipping order, work order, change order, invoice, check, memorandum, division order, contract, subcontract, agreement, draft, minute, diary, statement, study, analysis, evaluation, worksheet (including any accountant's worksheet), working paper, court paper, paper, transcript, note, pen or pencil notation, schedule, chart, list, log, graph, table, index, instruction, blueprint, drawing, questionnaire, survey, record, photograph, audio or video recording, information generated or stored on a computer disc or hard drive, personal electronic device, computer printout, data compilation, data processing card, microfilm or microfiche or any other writing or recording, however produced or reproduced.

7. "Executive Director" or "ED" refers to the chief administrative officer of the Texas Commission on Environmental Quality ("TCEQ") and all of his present and former employees, deputy directors, managers, agents, consultants, experts, representatives, predecessors and all other persons acting in concert with him, on his behalf or under his control whether directly or indirectly.

8. "Expert" refers to persons who have been consulted, retained or specifically employed by you in any way connected with or related to these permit proceedings, except that a person who will not be called to testify as an expert and whose opinions or impressions have not been and will not be reviewed, in whole or in part, by a testifying expert shall not be considered an expert for purposes of these interrogatories.

9. "Permit," unless otherwise modified to reflect a different context, refers to the authorization granted by the TCEQ to operate the Sunset Farms Landfill, together with any amendments or modifications thereto, for TCEQ MSW Permit No. 1447 as it currently exists and inclusive of the amendments requested in the Application.

10. "Person" refers to any individual, proprietorship, firm, corporation, association, partnership, organization, governmental subdivision or other entity.

11. "Regulatory authority" or "authority" refers to the specific guidance document(s), administrative rule(s), statutory reference(s), TCEQ or Environmental Protection Agency document(s), published study or reference, treatise, textbook or recognized authority consulted, reviewed or relied upon by the ED in support of any element of the Application for the permit amendment sought in these proceedings.

12. "Site" or Facility" refers to the BFI Sunset Farms Landfill facility that is referenced in the Application which is the subject of these proceedings.

13. "Statement" includes any written or graphic statement, any stenographic, mechanical, electrical or other recording or transcription thereof which is a substantially

verbatim recital of an oral statement by the person making it and contemporaneously recorded.

14. "TCEQ" refers to the Texas Commission on Environmental Quality and all of its present and former commissioners, executive directors, deputy directors, managers, employees, agents, consultants, experts, representatives, predecessors, and all other persons acting in concert with it, on its behalf or under its control whether directly or indirectly.

15. "You," "Your," or "Yourself" refers to the Executive Director of the TCEQ, as herein defined, and all of his present and former employees, deputy directors, managers, agents, consultants, experts, representatives, predecessors and all persons acting in concert with him, on his behalf or under his control whether directly or indirectly.

16. When used in reference to an individual or person, "identify" means to state his full name, business affiliation and title, current telephone number, and his present and/or last known business address and personal residence. A request for the "identity" of an individual shall constitute a request for the same information.

17. When used in reference to an entity other than a natural person, "identify" means to state its full name, its assumed name if any, telephone number, the address of its principal place of business, its mode of organization (e.g., corporation, partnership, governmental subdivision, etc.), the names of its principals, if any, and the nature of its business. A request for the "identity" of an entity other than a natural person shall constitute a request for the same information.

18. When used in reference to a document (including any written communication), the terms "identify" and "describe" mean to state the nature and title of the document, its author, its recipient, the date of its preparation, a summary of its contents, its present location and custodian, and a statement of its disposition if it is no longer in the possession, custody or control of the respondent. A request for a "description" or "identification" of a document shall constitute a request for the same information. A true, legible and complete copy of each such document (with a designation of the interrogatory to which it relates) may be affixed to the answers supplied hereto in lieu of such description or identification.

19. When used with reference to an oral communication, the terms "identify" or "describe" mean to state its nature (e.g., telephone call, interview, conversation in person, etc.) the identity (as such term is defined above) of each person participating therein or witnessing any part thereof, its date, its place, and a summary of its substance. Additionally, if there is any written memorandum or other writing evidencing, reflecting or relating to such oral communication, identify or describe such document in accordance with Paragraph E. above. A request for a "description" or "identification" of an oral communication shall constitute a request for the same information.

20. When used in the context of a contention interrogatory, the term “state the basis” means to recite all facts, opinions, arguments and legal theories upon which you rely in support of such contention.

21. Any use of one gender herein is intended to include all genders.

22. Any use of the singular form of grammar herein is intended to include the corresponding plural form as well, and vice versa, where such alteration would contribute either to the accuracy or to the thoroughness of an answer.

### **INTERROGATORIES**

1. Identify each person answering these interrogatories, supplying information to answer these interrogatories, or assisting in any way with the preparation of the answers to these interrogatories and state whether or not each person has read the instructions and “Definitions”.

#### **ANSWER:**

2. State the name, address, and telephone number of any person who is or may be called to testify at the contested case hearings for these permit applications.

#### **ANSWER:**

3. Identify each and every person, other than your attorneys, who has worked for, consulted with or otherwise assisted the ED in the review and processing of the Application that is the subject of these permit hearings.

#### **ANSWER:**

4. If you contend that the design of the leachate collection system described 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 leachate collection system.

#### **ANSWER:**

5. If you contend that the final cover system 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 final cover system.

**ANSWER:**

6. If you contend that the design of the above-grade slopes and berms contained in the Application are adequate, please state the basis for this contention and identify with specificity the regulatory authority relied upon for each component of these systems.

**ANSWER:**

7. If you contend that the design of the storm water management system 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 such systems.

**ANSWER:**

8. If you contend that the Application demonstrates that natural drainage patterns will not be significantly altered by the expansion, please state the basis for such contention and identify with specificity the regulatory authority relied upon for this contention.

**ANSWER:**

9. If you contend that the Application proposes adequate protection of groundwater and surface water, please state the basis for such contention and identify with specificity the regulatory authority relied upon for this contention.

**ANSWER:**

10. If you contend that the Application includes adequate provisions to manage landfill gas, please state the basis for such contention and identify with specificity the regulatory authority relied upon for this contention.

**ANSWER:**

11. If you contend that the Application includes adequate provisions for proper slope stability, please state the basis for such contention and identify with specificity the regulatory authority relied upon for this contention.

**ANSWER:**

12. If you contend that the Application includes adequate provisions for groundwater monitoring, please state the basis for such contention and identify with specificity the regulatory authority relied upon for this contention.

**ANSWER:**

13. If you contend that the Application includes adequate provisions for closure and post-closure, please state the basis for such contention and identify with specificity the regulatory authority relied upon for this contention.

**ANSWER:**

14. If you contend that the Application includes adequate provisions designating the owner, operator, responsible parties, and qualified personnel, please state the basis for such contention and identify with specificity the regulatory authority relied upon for this contention.

**ANSWER:**

15. If you contend that the Application includes adequate provisions for daily, intermediate and final cover, please state the basis for such contention and identify with specificity the regulatory authority relied upon for this contention.

**ANSWER:**

16. If you contend that Applicant's compliance history is acceptable, please state the basis for such contention and identify with specificity the regulatory authority relied upon for this contention.

**ANSWER:**

17. If you contend that the provisions proposed for buffer zones and landscape screening comply with agency rules, please state the basis for such contention and identify with specificity the regulatory authority relied upon for this contention.

**ANSWER:**

18. 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:**

19. 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:**

20. If you contend that the storage, treatment and disposal of contaminated water is adequately addressed in the Application and draft permit, please state the basis for such

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

**ANSWER:**

21. If you contend that the closure date of November 1, 2015, contained in the draft permit is enforceable, please state the basis for such contention and identify with specificity the regulatory authority relied upon for this contention.

**ANSWER:**

22. Please identify and describe any and all communications between the Applicant, as defined herein, and any Commissioner of the TCEQ or Mr. Glenn Shankle, its Executive Director that relate to the Application.

**ANSWER:**

23. Please identify and describe any written and unwritten policies which you considered in your evaluating and processing of the permit Application.

**ANSWER:**

24. Please identify and describe all regulatory authorities relied upon in the ED's review and processing of the permit Application.

**ANSWER:**

25. If any document responsive to the Requests for Production, served contemporaneously herewith, no longer exists, has been destroyed or is otherwise unavailable for production, please identify each such document and describe the circumstances of its unavailability.

**ANSWER:**

**REQUESTS FOR PRODUCTION**

1. Please provide true and correct copies of any and all documents that were reviewed or relied upon in preparing your responses to the written discovery served contemporaneously herewith.

2. Please provide true and correct copies of any and all documents or communications in your possession, custody or control that you consider to comprise the Application which is the subject of these proceedings.

3. Please provide true and correct copies of any and all documents which reflect each of your expert witness' observations, studies, analyses, and conclusions pertaining to the Application.

4. Please provide true and correct copies of any and all documents used, reviewed or consulted by each of your experts in performing studies or evaluations or arriving at conclusions on the Application or provisions for the draft permit.

5. Please provide true and correct copies of any and all documents, reports, drafts of reports, and worknotes for each of your expert and consulting witnesses.

6. Please produce any and all reports, letters or other documents generated by any person you have consulted or from whom you have sought expert advice or opinion relating to the subject matter of this proceeding, if such consultant's or expert's work product either forms the basis of the opinions, conclusions or impressions of an expert you expect to call as a witness or has been reviewed by an expert you expect to call as a witness.

7. Please produce any and all documents, reports, correspondence, or other materials, including test results, reviewed by every expert or TCEQ employee who has participated or was consulted in connection with this Application or that has formed the basis of opinions, conclusions or impressions of testifying experts.

8. Please produce any and all records, reports, memoranda, correspondence or other documents, which have not been otherwise produced, which describe or refer to any deficiencies in the proposed Application.

9. Please produce a current resume for Mr. Arten Avakian, P.G., identifying relevant education, training, course work and/or experience to qualify him as an expert for

any portions of the Application for which he may testify or otherwise offer opinions on the sufficiency of the Application and/or draft permit.

10. Please produce a current resume for Mr. Matthew Udenenwu, Engineer-in-Training, identifying relevant education, training, course work and/or experience to qualify him as an expert for any portions of the Application for which he may testify or otherwise offer opinions on the sufficiency of the Application and/or draft permit.

11. Please produce a current resume for Mr. Jeff Davis, P.G., identifying relevant education, training, course work and/or experience to qualify him as an expert for any portions of the Application for which he may testify or otherwise offer opinions on the sufficiency of the Application and/or draft permit.

12. Please produce a current resume for Dr. Richard Carmichael, Ph.D., P.E., identifying relevant education, training, course work and/or experience to qualify him as an expert for any portions of the Application for which he may testify or otherwise offer opinions on the sufficiency of the Application and/or draft permit.

13. Please produce true and correct copies of any and all documents reflecting notice of deficiency letters from the ED to the Applicant and Applicant's submittals and responses thereto.

14. Please produce true and correct copies of any and all documents reflecting versions of draft permits prepared by or in the possession and control of the ED relating to the Application.

15. Please produce true and correct copies of any and all documents reflecting correspondence and communications between the Applicant and the ED related to the Application.

16. Please produce true and correct copies of any and all documents reflecting checklists used or utilized by the ED in the review and processing of the Application.

17. Please produce true and correct copies of any and all documents reflecting all notes of meetings with the Applicant and/or third parties related to the Application.

18. Please produce true and correct copies of any and all documents reflecting memoranda, reports, communications or correspondence prepared by the ED related to the Application.

19. Please produce true and correct copies of any and all documents comprising TCEQ staff working files and papers in the custody and control of the ED related to the Application.

20. Please produce true and correct copies of any and all documents reflecting complaints and investigations involving the Applicant and/or the Sunset Farms landfill facility in the preceding ten (10) years whether located in the TCEQ's Central Office, Regional Office or other locations.

21. Please produce true and correct copies of any and all documents reflecting information related to Applicant's compliance history, calculation of Applicant's compliance history score or referenced in any and all compliance history evaluation documents.

22. Please produce true and correct copies of any and all documents reflecting current Municipal Solid Waste Permit No. 1447 together with any and all modifications, revisions, changes or corrections and documents related thereto.

23. Please produce true and correct copies of any and all documents reflecting regulatory approvals requested by Applicant and granted by the TCEQ regarding Municipal Solid Waste Permit No. 1447 or proposed Permit No. 1447-A (to include corrections, revisions, changes, boring plans, special waste authorizations, waivers, etc.) and documents related thereto.

24. Please produce true and correct copies of any and all documents reflecting public meetings requested or held related to the Application and all documents prepared, received or otherwise related to such public meetings.

25. Please produce true and correct copies of any and all documents reflecting notes, drafts, work papers, memoranda, support documents of whatever kind or character relating to the ED's responses to public comments and/or hearing requests involving the Application.

26. Please produce true and correct copies of any and all documents reflecting communications between the Applicant or any representative of the Applicant and the TCEQ occurring subsequent to the State Office of Administrative Hearings preliminary hearing on the Application.

27. Please produce true and correct copies of any and all documents reflecting sign-in sheets at any office maintained by the TCEQ wherein Applicant or representatives of the Applicant met with the TCEQ since January 1, 2006.

28. Please produce true and correct copies of any and all documents provided, made available or responsive to any party in this proceeding.

29. Please produce true and correct copies of any and all documents in your custody or control, not previously identified above, that relate to the pending Application.

### **REQUESTS FOR ADMISSIONS**

1. Admit that the ED has relied on the Applicant's representations in processing the permit Application made the subject of these proceedings.

#### **RESPONSE:**

2. Admit that the draft permit for the BFI facility reflects the preliminary position of the ED with respect to the TCEQ's issuance of the requested permit amendment and that the ED may change his position based on information developed during the hearing process.

#### **RESPONSE:**

3. Admit that the ED would recommend denial of the requested permit amendment if information developed during the hearing process indicated that BFI's Application would not be protective of human health or the environment or would otherwise pose an unreasonable threat to human health or the environment.

#### **RESPONSE:**

4. Admit that BFI's solid waste Application is not consistent with each and every rule, regulation and guidance document embodied in the TCEQ's municipal solid waste rules and programs for the management of municipal solid wastes.

#### **RESPONSE:**

5. Admit that the TCEQ, in adopting its municipal solid waste rules, failed to adopt or incorporate many provisions found in the federal Subtitle D program for municipal

solid waste facilities, permitting of municipal solid waste facilities and management of municipal solid wastes under applicable federal law.

**RESPONSE:**

6. Admit that the requirements found in 40 CFR Parts 257 and 258 which implement Subtitle D of the Resource Conservation and Recovery Act are applicable in the State of Texas.

**RESPONSE:**

7. Admit that the Applicant failed or refused to adopt all of the ED's proposed changes to the Application identified in notice of deficiency letters.

**RESPONSE:**

8. Admit that the BFI Sunset Farms landfill has been the subject of numerous complaints for odors, windblown wastes and traffic safety issues during the five (5) years preceding the preliminary hearing on this Application.

**RESPONSE:**

9. Admit that the TCEQ processed and granted a permit modification application for Applicant subsequent to issuance of the ED's preliminary decision on the Application and draft permit.

**RESPONSE:**

10. Admit that the Applicant has submitted revisions to its Application subsequent to the issuance of the ED's preliminary decision on the Application and draft permit.

**RESPONSE:**

11. Admit that revisions to the Application received subsequent to issuance of the ED's preliminary decision and draft permit constitute, in whole or in part, a major amendment requiring additional notice of the Application and opportunity for comments and/or requests for a contested case hearing.

**RESPONSE:**

12. Admit that an attempted transfer of an application after issuance of the ED's preliminary decision and draft permit constitutes an amendment requiring additional notice of the Application and opportunity for comments and/or requests for a contested case hearing.

**RESPONSE:**

13. Admit that subsequent to the April 3, 2008 approval of a permit modification for the Applicant, neither the TCEQ nor the Applicant issued a new notice of the Application or provide an opportunity for public comments or contested case hearing requests.

**RESPONSE:**

14. Admit that the Applicant could have elected to process its Application under the current municipal solid waste rules but elected to proceed under the rules in effect prior to the 2006 revisions.

**RESPONSE:**

15. Admit that portions of the BFI Sunset Farms landfill facility do not meet the current design criteria for post-Subtitle D landfills.

**RESPONSE:**

16. Admit that alternative daily cover is not authorized in the draft permit nor is it appropriate for the Sunset Farms landfill facility.

**RESPONSE:**

17. Admit that both Sunset Farms landfill and the adjacent Waste Management landfill have independent responsibilities to monitor the landfill gas migrating from their respective properties irrespective of a common property line.

**RESPONSE:**

18. Admit that both Sunset Farms landfill and the adjacent Waste Management landfill have independent responsibilities to monitor groundwater beneath their properties irrespective of a common property line.

**RESPONSE:**