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August 22, 2008

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Client No.: 1635-03
From: Paul Gosselink

No. of Pages: 11 + cover sheet
Comments: SOAH Docket No. 582-08-2178
TCEQ Docket No. 2007-1774-MSW
In re Permit Amendment Application of BFI Waste Systems of North America, LLC
MSW Permit No. 1447A

PART 1 of 3

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August 22, 2008

Via Facsimile

Judge William E. Newchurch
State Office of Administrative Hearings
300 W. 15th Street, Suite 504
Austin, Texas 78701

Re: SOAH Docket No. 582-08-2178; TCEQ Docket No. 2007-1774-MSW
Permit Amendment Application of BFI Waste Systems of North America, LLC
MSW Permit No. 1447A - Pre-Hearing Discovery Dispute

Dear Judge Newchurch:

Please find attached a Motion to Compel, Answers to Interrogatories and Requests for Production from TJFA in the Application of BFI Waste Systems of North America LLC, Permit No. MSW-1447A. BFI respectfully requests that this Motion be heard at the pre-scheduled pre-hearing conference on August 26th.

Motions to Compel, Answers to Interrogatories and Requests for Production directed at Williams, LTD, Northeast Neighbors Coalition, Pioneer Farms, Mark McAfee, Melanie McAfee, Roger Joseph and Delmer D. Rogers will follow.

Respectfully submitted,

A handwritten signature in black ink that reads "Paul Gosselink". The signature is written in a cursive style with a large, sweeping "P" and "G".

Paul Gosselink

ATTORNEY FOR APPLICANT
BFI WASTE SYSTEMS OF NORTH AMERICA, LLC

cc: Ms. LaDonna Castañuela
Mr. Steve Shepherd
Ms. Susan White
Mr. James Blackburn
Ms. Mary Carter
Ms. Christina Mann
Mr. Kevin Morse
Ms. Holly Noelke
Ms. Meitra Farhadi

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

**IN RE THE APPLICATION OF BFI WASTE § BEFORE THE
SYSTEMS OF NORTH AMERICA, LLC § STATE OFFICE OF
PERMIT NO. MSW-1447A § ADMINISTRATIVE HEARINGS**

**APPLICANT BFI WASTE SYSTEMS OF NORTH AMERICA, LLC'S
MOTION TO COMPEL (TJFA)**

Applicant BFI WASTE SYSTEMS OF NORTH AMERICA, LLC (BFI) files this motion to compel certain answers and responses to discovery requests served by BFI upon TJFA, LP, respectfully showing:

I. BACKGROUND

BFI served its discovery requests (interrogatories, requests for production and requests for admission) on TJFA on July 17th. TJFA served its objections and responses to BFI's requests on August 18th. TJFA has objected to three of the interrogatories, 19 of the requests for production, and 39 of the requests for admission on some variation of its assertion that matters pertaining to its relationship to persons or entities that are not party to this proceeding or matters involving other landfills TJFA has protested are irrelevant. TJFA also completely failed to answer 18 contention interrogatories based on its assertion that these interrogatories were "premature" and that it does not have to answer such interrogatories at least until its pre-filed testimony is due. And TJFA is categorically claiming that communications pertaining to application or the proposed expansion involving Bob Gregory, Jim Gregory or Dennis Hobbs – who are not attorneys – are somehow privileged attorney-client communications.

TJFA's objections to BFI's requests are attached as Exhibit A. BFI is moving to compel answers and responses to each of the following discovery requests within 10 days:

BFI Discovery Request	Basis for TJFA Objection
Interrogatory No. 3; Request for Production Nos. 1, 21 & 27; Request for Admission Nos. 1-8, 12, 21-24, 26-28, 30-34, 38, 40-41, 48, 56-57 & 59-61	The interrogatory pertains to TDS, TDSL and/or the Gregorys and other entities and thus is not relevant and not calculated to lead to the discovery of admissible evidence
Interrogatory Nos. 4 & 5 Request for Production Nos 2-6, 10-17, 26, 28, 30 Request for Admission Nos. 37, 39, 42-47 & 58	The discovery request seeks information on properties not related to properties in the immediate vicinity of the Sunset Farms landfill or related to proceedings involving other landfills, and is thus overbroad, harassing, and seeks information not relevant or reasonably calculated to lead to the discovery of admissible evidence
Interrogatory Nos. 7-24	The discovery request is premature because it requests information that will not be known until after additional discovery is requested. The answer will be supplemented by the filing of pre-filed expert testimony.
Request for Production No. 18(1)	Any part of any communication with Bob Gregory, Jim Gregory or Dennis Hobbs is a privileged attorney-client communication.

The undersigned counsel has conferred with counsel for TJFA regarding this motion, good cause exists for hearing this motion at the pre-scheduled pre-hearing conference on August 26th, a written request for a hearing has been made, and the motion is otherwise ripe to be heard.

II. TJFA'S RELEVANCE OBJECTIONS

TJFA's claim that the discovery sought is overbroad or not reasonably calculated to lead to the discovery of admissible evidence because Texas Disposal Systems (TDS), Texas Disposal Systems Landfill (TDSL) and/or Bob Gregory and Jim Gregory are not parties in this proceeding is utterly meritless (and, indeed, part of an ongoing charade). TDS, TDSL and the Gregorys are direct competitors of BFI and the Sunset Farms Landfill in the Central Texas solid waste hauling and disposal markets.¹ TDS's, TDSL's and Bob Gregory's fingerprints are all over TJFA, a purported "real estate investment company," and its opposition to the expansion of the Sunset Farms Landfill in this proceeding. Among other things:

- TJFA has no offices of its own. Instead, its listed physical address, P.O. Box, and fax number are the same as TDS's and TDSL's.²
- A request for reconsideration that was filed on TJFA's behalf in connection with this permit application on November 5, 2007 was faxed from TDS's fax machine using a "Texas Disposal Systems, Inc." and "Texas Disposal Systems Landfill, Inc." fax cover sheet.³
- The "tjfa-lp.com" domain name that was identified as part of Dennis Hobb's e-mail address was registered in March of this year listing the "administrator" of TDS as the administrative and technical contact.⁴
- Dennis Hobbs, who is identified as TJFA's president (TJFA admits it has no employees of its own), is also identified as TDS's "Director of Special Projects" on TDS's website.⁵
- Bob Gregory, who has a direct ownership interest in TJFA, is identified as TDS's President and CEO on that company's website.⁶

¹ On its website (<http://www.texasdisposal.com/>), TDS states that it "offers services to Austin, San Antonio, San Marcos, Georgetown and surrounding communities." See Exhibit B (printout from TJFA website).

² 12200 Carl Road, Creedmoor, TX 78610; P.O. Box 17126, Austin, TX 78760; Fax No. (512)243-4123. This information is derived from TJFA's answer to Interrogatory No. 2, Exhibit B (printout from TJFA's website), and Exhibit C (November 5, 2007 fax).

³ See Exhibit C (November 5, 2007 fax with blow-up of fax header).

⁴ See Exhibit D (August 20, 2008 printout of page from Network Solutions website).

⁵ See Exhibit B (printout of TDS website)

⁶ See id.

- Bob Gregory and Dennis Hobbs both attended the jurisdictional hearing in this case.
- Bob Gregory gave a deposition as TJFA's designated corporate representative in another contested MSW proceeding (the Williamson County Landfill expansion case).⁷

Based on these and many other curious apparent connections and interrelationships between TJFA and TDS, TDSL, the Gregorys and Hobbs – as well as TJFA's pattern of serially challenging proposed expansions of other landfills – BFI's discovery requests were, in fact, very reasonably calculated to lead to the discovery of admissible evidence. Indeed, the nature of the relationships between TJFA and TDS et al. and the exact nature of TFJA's putative real estate investment business – a business that is, upon information and belief, based at least in part upon purchasing tracts of land within one mile of the landfills of TDS's and TDSL's competitors and then challenging applications when the operators of those landfills seek to expand their facilities⁸ – is certainly relevant to matters in this hearing. Specifically, the relationship of TJFA to TDS et al. will go to the credibility of (among other things) TFJA's geology, hydrogeology and land use compatibility claims and assertions, as well as the credibility of its own lay witness or witnesses. The relationship and TJFA's prior positions in other cases will also go to the credibility of testifying expert witnesses that have been retained by TJFA in connection with this proceeding who also are (or have been) employed by or on behalf of TDS, TDSL, Gregory and/or Hobbs. Any such relationship and the facts and circumstances of TJFA's business transactions may also bear on TJFA's standing to remain a party in this proceeding. All of these are matters on which BFI is entitled to make a record and, as such, engage in discovery.

⁷ See Exhibit E (short excerpt from Bob Gregory deposition transcript in Williamson County Landfill case)

⁸ This includes, upon information and belief, expansion applications involving the Williamson County, Comal Count, Austin Community and Sunset Farms Landfills.

III. TJFA'S FAILURE TO ANSWER CONTENTION INTERROGATORIES

TJFA has also failed to answer BFI's contention interrogatories. Contention interrogatories are a proper form of discovery in Texas. *See* TEX. R. CIV. P. 192.3(j) & 197.1.

TJFA's claim that the contention interrogatories are somehow "premature" is spurious given that, among other things, BFI's application has been on file with TCEQ for over two years; TJFA has been commenting on the application for well over one year; the jurisdictional hearing was held almost four months ago; TJFA disclosed three testifying expert witnesses several months ago; and Gregory and Hobbs have participated in various ways at various forums in opposition to BFI's application since at least 2002. TJFA's assertion that it is entitled to avoid answering a contention interrogatory and instead simply make its case when its pre-filed testimony is due is equally spurious. As a threshold matter, any such "objection" is not founded in any rule or case law. And, procedurally, any such objection/intention is fundamentally unfair to BFI: BFI is entitled to know TJFA's basic contentions in this case *now*, before its pre-filed testimony is due on September 25th, instead of after that time and at TJFA's leisure.

IV. COMMUNICATIONS INVOLVING THE GREGORYS AND HOBBS

TJFA has also objected to BFI's request for "correspondence (including e-mails and attachments thereto) between [TJFA and its employees and representatives] and [Bob Gregory, Jim Gregory or Dennis Hobbs] regarding the permit amendment application, the draft permit, the proposed expansion, closure of the Landfill, or any alleged deficiency in the Landfill or its operation" on attorney-client privilege grounds.⁹ More specifically, it categorically claims that "any" correspondence involving this gentlemen is privileged. Upon information and belief, none of these gentlemen is an attorney – so a blanket objection here seems unlikely if not impossible.

⁹ See Exhibit A at Response to Request for Production No. 18(l).

V. CONCLUSION AND PRAYER

For the foregoing reasons, BFI respectfully requests that the ALJ overrule the objections listed in TJFA's responses to the discovery requests identified in Section I above for the reasons provided herein, and compel TJFA to provide thorough and complete responses to these discovery requests within 10 days. BFI further requests any and all other relief to which it is entitled.

Respectfully submitted,

By: 
Paul G. Gosselink
Texas Bar No. 08222800

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**ATTORNEYS FOR APPLICANT
BFI WASTE SYSTEMS OF NORTH
AMERICA, LLC**

OF COUNSEL:
John E. Carlson
Texas Bar No. 00790426

Certificate Conference and Attempted Resolution

By my signature above, I, Paul G. Gosselink, certify to the following: I am attorney for BFI Waste Systems of North America, LLC. Pursuant to Civil Procedure Rule 191.2 and 1 T.A.C. 155.31(l), when the discovery dispute underlying this motion arose, I made a reasonable effort to resolve the matter with the opposing counsel without the necessity of intervention from the Administrative Law Judges. The parties conferred, negotiated in good faith, and were unable to resolve the dispute prior to submitting the dispute to the Administrative Law Judges for resolution. Counsel for the Protestants and I agreed it was unlikely we would reach agreement as to resolution of the issues raised in this motion to compel without the intervention of the Administrative Law Judges. We were unable to come to any resolution of the matter. I will continue to seek resolution of all or any part of these matters until the hearing on this Motion.

Certificate of Service

I hereby certify that a true and correct copy of the foregoing discovery requests were served on the following counsel/parties of record by certified mail (return receipt requested), regular U.S. mail, facsimile transmission and/or hand delivery and via e-mail on August 22, 2008:

FOR THE CHIEF CLERK:

LaDonna Castañuela
Texas Commission on Environmental Quality
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087
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Fax: (512) 239-3311

REPRESENTING NORTHEAST NEIGHBORS
COALITION AND INDIVIDUALS:

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Fax: (713) 524-5165

FOR THE PUBLIC INTEREST COUNSEL:

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Texas Commission on Environmental Quality
Public Interest Counsel, MC-103
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Fax: (512) 239-6377

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Fax: (512) 477-5267

FOR THE EXECUTIVE DIRECTOR:

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Susan White, Staff Attorney
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Fax: (512) 974-6490



Paul G. Gosselink

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

**IN RE THE APPLICATION OF BFI WASTE § BEFORE THE
SYSTEMS OF NORTH AMERICA, LLC § STATE OFFICE OF
PERMIT NO. MSW-1447A § ADMINISTRATIVE
HEARINGS**

Affidavit of Paul G. Gosselink

BEFORE ME, the undersigned authority, personally appeared Paul G. Gosselink, known to me to be the person whose name is subscribed below and, after being duly sworn, stated upon his oath as follows:

1. "My name is Paul G. Gosselink. I am over 18 years of age and have never been convicted of a felony or a crime of moral turpitude. I am of sound mind, and am otherwise competent to make this affidavit. The facts stated in this affidavit are based on my personal knowledge and are, in all things, true and correct.
2. "I am an attorney duly licensed to practice law in the State of Texas. I am a partner in the law firm of Lloyd Gosselink Rochelle & Townsend, P.C. My law firm and I represent applicant BFI Waste Systems of North America, LLC in the above-captioned contested case hearing.
3. "Attached as Exhibits A through E to the foregoing motion to compel are true and correct copies of the following documents:

Exhibit No.	Description
A	TJFA's Objections and Responses to BFI's Discovery Requests
B	Printouts of pages from Texas Disposal System's web site (www.texasdisposal.com)
C	TJFA's Request for Reconsideration (11/5/07)
D	Printout from Network Solutions website.
E	Excerpts from Bob Gregory Deposition transcript

Further affiant saycth not.

Dated: August 22, 2008.



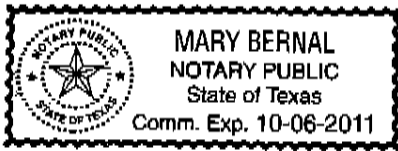
Paul G. Gosselink

State of Texas

§
§
§

County of Travis

SWORN AND SUBSCRIBED TO before me by Paul G. Gosselink on August 22, 2008.



Notary Public in and for
The State of Texas

Seal: