



FRITZ, BYRNE, HEAD & HARRISON, PLLC

Attorneys at Law

August 27, 2009

VIA FACSIMILE NO. 239-3311

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: SOAH Docket No. 582-08-2178; TCEQ Docket No. 2007-1774-MSW; In re:
the Application of BFI Waste Systems of North America, LLC, for a Major
Amendment to Type I MSW Permit No. 1447A

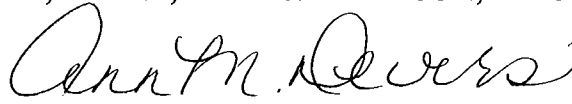
Dear Ms. Castañuela:

Enclosed are an original and eight copies of Protestant TJFA, L.P.'s letter objecting to Applicant's Brief Regarding Operating Hours filed August 26, 2009 which we respectfully request be filed among the other papers in the above-referenced proceeding. Please return a file-stamped copy of the enclosure to me in the self-addressed, postage prepaid envelope provided for your convenience.

A copy of the enclosure 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 J. D. Head

Enclosures

cc: Mr. Les Trobman (w/encl)
See, Certificate of Service (w/encl)

Value Driven...Client Oriented





FRITZ, BYRNE, HEAD & HARRISON, PLLC

Attorneys at Law

August 27, 2009

VIA FACSIMILE NO. 239-3311

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

VIA FACSIMILE NO. 239-5533

Mr. Les Trobman, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087 (MC-101)
Austin, TX 78711-3087

Re: SOAH Docket No. 582-08-2178; TCEQ Docket No. 2007-1774-MSW;
In re: the Application of BFI Waste Systems of North America, LLC,
for a Major Amendment to Type I MSW Permit No. 1447A

Dear Ms. Castañuela and Mr. Trobman:

I represent TJFA, L.P. ("TJFA"), a party protestant in the above-referenced matter. TJFA is in receipt of Applicant's Brief Regarding Operating Hours which was filed with the Chief Clerk yesterday, August 26, 2009. The Administrative Law Judge's ("ALJ") Proposal for Decision ("PFD") is scheduled to be considered by the Texas Commission on Environmental Quality ("TCEQ") on September 9, 2009.

TJFA objects to BFI Waste Systems of North America, LLC's ("BFI") filing of the Brief Regarding Operating Hours. There is no provision in the TCEQ rules for additional filings after replies to exceptions. The deadline for all filings in this case was June 9, 2009, as established by General Counsel Les Trobman's June 2, 2009 letter to all parties. This deadline was established pursuant to 30 T.A.C. § 80.257(b).

Assuming BFI would argue 30 T.A.C. § 80.257(b) accords it the right to file additional materials after replies to exceptions, BFI's filing of the Brief Regarding Operating

K:\DIR15\15207\01\CLERK-TROBMAN.wpd

Value Driven...Client Oriented



98 SAN JACINTO BOULEVARD SUITE 2000 AUSTIN, TEXAS 78701 (512) 476-2020 FAX: (512) 477-5267 WWW.FBHH.COM

August 27, 2009

Page 2

Hours contravenes the clear language of § 80.257(b) regarding change of filing deadlines. BFI failed to file a written request with the Chief Clerk, failed to confer with other parties, no proposed date for a brief was suggested, and there was no indication by BFI whether the parties agreed to any proposed dates for changing deadlines to file pleadings following the PFD. Counsel for BFI contacted neither TJFA nor the attorney representing Northeast Neighbors Coalition and additional individual protestants in this matter. If the TCEQ deems § 80.257(b) as an avenue for additional filings, BFI failed to meet the rule's requirements.

On June 29, 2009, the ALJ submitted a letter to General Counsel Les Trobman setting forth his recommendations concerning exceptions filed by the parties to the PFD. The ALJ's letter was the basis for BFI's untimely filed brief of August 26, 2009. TJFA submits that 30 T.A.C. § 80.259 implicitly prohibits the acceptance of BFI's brief. Section 80.259 provides that the judge may file an amended PFD in response to exceptions, replies or briefs submitted by the parties. The parties are not entitled to file exceptions or briefs in response to the amended PFD but may raise any issue before the Commission as permitted by the Commission at the time of oral presentation. Because the TCEQ's rules prohibit filing briefs in response to an amended PFD, it follows that no briefs are allowed in response to an ALJ's letter to the TCEQ making recommendations on exceptions to a PFD.

In conclusion, TJFA objects to the filing of Applicant's Brief Regarding Operating Hours and, in accordance with existing agency policy, requests that the brief not be considered by the Commissioners in any deliberations on the PFD.

Very truly yours,

FRITZ, BYRNE, HEAD & HARRISON, PLLC

By: _____


J. D. Head

JDH/amd

cc: See, Certificate of Service

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that a true and correct copy of the foregoing document has been served this 27th day of August, 2009, via e-mail, facsimile transmission or U.S. First Class mail, to the following:

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

Mr. Paul Terrill
The Terrill Firm, P.C.
810 W. 10th St.
Austin, TX 78701
TEL: 512/474-9100
FAX: 512/474-9888
E-MAIL: pterrill@terrill-law.com
GILES HOLDINGS

Mr. Steve Shepherd
Ms. Susan White
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: sshepherd@tceq.state.tx.us
E-MAIL: swhite@tceq.state.tx.us
EXECUTIVE DIRECTOR


Ms. Amy Swanholm
Attorney
Office of Public Interest Counsel (MC-103)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087
TEL: 512/239-6823
FAX: 512/239-6377
E-MAIL: aswanhol@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
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
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
E-MAIL: mcarter@blackburncarter.com
**NORTHEAST NEIGHBORS COALITION; MARK
MCAFEE; MELANIE MCAFEE; ROGER JOSEPH;
DELMER D. ROGERS; and WILLIAMS, LTD.**

Hon William G. Newchurch
Administrative Law Judge
State Office of Administrative Hearings
300 West 15th St., Suite 502
Austin, TX 78701


J. D. Head