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TELECOPIER COVER SHEET

September 4, 2008

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Client No.: 1635-03

From: Paul Gosselink

No. of Pages: 19 + 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

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Lloyd Gosselink Rochelle & Townsend, P.C.



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September 4, 2008

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

Dear Judge Newchurch:

Enclosed please find a proposed Order No. 4 regarding BFI's motions to compel. The enclosed document reflects BFI's work product as the base document and incorporates suggested edits from Mary Carter, counsel for NNC and the aligned parties, and Bob Renbarger, counsel for TJFA. Susan White, counsel for the Executive Director, stated she agreed with my original draft of the proposed order as accurately reflecting her understanding of your rulings. I provided a revised version of the document to Ms. White last night via email, but have not heard back as to whether or not she finds the proposed revisions acceptable.

I have not incorporated all of the revisions suggested by Ms. Carter and Mr. Renbarger. I think we got as close as we could. I see that they have now each filed competing versions of the proposed order. Accordingly, I am enclosing (i) a clean copy of the proposed order BFI is requesting, (ii) a second copy of BFI's proposed order that has yellow and pink highlights to indicate where the parties disagree; and (iii) a highlighted copy of Ms. Carter's letter to you that shows a few additional phrases or provisions that NNC wants inserted in the final order.

The primary difference between TJFA's version and BFI's version only involves language (yellow highlights) which TJFA does not want included in the order. You can find those differences in the last sentence of Paragraph 1 and the last sentence and the clause regarding piercing or waiving the privilege in Paragraph 4. The issues in both instances are the extent to which TDS-related information/documents (and information and documents from affiliates) need to be produced. We believe that was the point of our argument, and further believe that the hearing transcript reflects ruling in support of BFI's version.

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Conversely, the differences between BFI's version and NNC's version involve a dispute about language (pink highlights) that NNC would like included in the final order. That language can be found in the last clause of the last sentence of NNC's proposed Paragraph 9, which recites that a separate motion to allow adverse health effects testimony could be granted by the ALJ. BFI objects to this language because BFI is looking for certainty at this stage of the proceeding on this issue. If NNC and any of the aligned parties seek to raise this issue in the future, it would mandate a continuance in the hearing because of the complexity such issues will create and due to the simple fact that it takes months to obtain documents from medical providers and other third parties using HIPAA releases (that have not yet even been provided). The other difference is found in the last sentence of Paragraphs 10 and 11. BFI does not dispute that the protestants have the right to bring forward testimony about nuisance. However, BFI believes that pages 62 and 63 of the hearing transcript in particular make clear that evidence regarding property values or adverse impact on businesses for whatever reason is not relevant, and that the statement by the Administrative Law Judge and the non-objection to that statement by any party at the time of the hearing confirms BFI's version of the order.

TFJA and NNC have proposed identical changes to the preamble paragraph. The difference between their versions and BFI's version is primarily one of organization/sentence structure. It does not have the substantive impact of the prior disagreements. However, BFI believes that its proposed language is typical, appropriate and contains the bases for the ordering provisions.

Based on all the foregoing BFI respectfully requests that the Administrative Law Judge adopt Order No. 4 as proposed by BFI. Please have your assistant let me know if an electronic copy of the proposed order would be helpful in preparing the final order

All parties of record are being copied pursuant to the certificate of service attached. Thank you for your assistance. Should you have any questions, please feel free to call me at 512-322-5806.

Respectfully submitted,



Paul Gosselink

ATTORNEY FOR APPLICANT
BFI WASTE SYSTEMS OF NORTH AMERICA, LLC

Enclosures

cc: See attached Certificate of Service

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was 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 September 4, 2008:

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Paul G. Gosselink

Enclosure 1

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

Order No. 4

On August 22, 2008, applicant BFI Waste Systems of North America, LLC (BFI) filed motions to compel certain answers and responses to discovery requests from protestants TJFA, LP (TJFA), Northeast Neighbors Coalition (NNC), Pioneer Farms, Mark and Melanie McAfee (the McAfees), Williams, Ltd., Roger Joseph and Delmer Rogers. NNC filed its written response on August 25, 2008; that response also included responses on behalf of the parties that have been aligned with NNC. An oral hearing was held on BFI's motions to compel on August 26, 2008. Due to the compressed schedule, TJFA did not file its response until August 26, 2008, thus its response was not considered at the hearing although it was noted as filed of record. Due to the volume of disputed discovery requests, not all specific requests were the subject of rulings from the bench. The remaining requests were dealt with on a global basis with the Administrative Law Judge (ALJ) providing guidance on how he might rule and requested the parties to work out appropriate responses within the general parameters provided. Counsel for BFI was further requested to provide a draft order to incorporate the specific rulings upon reviewing the transcript of the hearing. The parties were further ordered to attempt to work out any disagreements on the wording of the order.

After considering BFI's motions and the accompanying evidence, the objections and responses of the various protestants to BFI's discovery requests, the written responses of TJFA, NNC and those parties aligned with NNC, the arguments of counsel, applicable law and the proposed orders submitted by the parties, the parties' objections to BFI's discovery requests are overruled in part and sustained in part, and the parties are ordered to respond to the discovery requests consistent with the provisions of this order:

1. TJFA's Relevance Objections. TJFA objected to Interrogatory No. 3, Request for Production Nos. 1, 21 & 27 and Request for Admission Nos. 1-8, 12, 21, 24, 26-28, 30-34, 38, 40-41, 48, 56-57 & 59-61 on the ground that these requests pertain to Texas Disposal Systems, Inc. (TDS), Texas Disposal Systems Landfill, Inc. (TDSL), Bob Gregory, Jim Gregory, Dennis Hobbs and other persons or entities that are not a party to this proceeding and thus the discovery sought is not relevant and not calculated to lead to the discovery of admissible evidence. The objections are overruled, and TJFA is hereby ordered to answer Interrogatory No. 3 and Request for Admission Nos. 1-8, 12, 21, 24, 26-28, 30-34, 38, 40-41, 48, 56-57 & 59-61 that are directed to non-parties on or before

5:00 pm, September 5, 2008. TJFA is also ordered to produce all documents that are in its possession, custody or control or constructive possession, custody or control that are responsive to Request for Production Nos. 1, 21 and 27 – including any responsive documents that are in the possession of TDS, TDSL and Garra de Aguila, Inc. and these entities' officers and directors (including Bob Gregory, Jim Gregory and Dennis Hobbs) – on or before 5:00 pm, September 5, 2008.

2. TJFA's Objections to Information Pertaining to Other Properties, Landfills or Other MSW Proceedings. TJFA objected to Interrogatory Nos. 4 & 5, Request for Production Nos. 2-6, 10-17, 26, 28 & 30 and Request for Admission Nos. 37, 39, 42-47 & 58 on the grounds that these discovery requests seek information regarding properties that are not in the immediate vicinity of the Sunset Farms landfill or information related to proceedings involving other landfills, and are overbroad, harassing and seek information not relevant or reasonably calculated to lead to the discovery of admissible evidence. These objections are overruled in part and sustained in part. TJFA is hereby ordered to answer Interrogatory Nos. 4 & 5 and Request for Admission Nos. 37, 39, 42-47 & 58 on or before 5:00pm, September 5, 2008. TJFA is also ordered to produce copies of deeds for each property it owns in response to Request for Production Nos. 2 & 3, and is also ordered to produce copies of any expert reports and expert witness testimony (whether pre-filed testimony or transcripts of deposition or hearing testimony) by any expert witnesses it retained in any contested case hearings involving other landfill applications in response to Request for Production Nos. 11, 13-17, 26, 28 & 30. TJFA's objections to Request for Production Nos. 2-6, 10-17, 26, 28 & 30 are otherwise sustained.
3. TJFA's Objections to Contention Interrogatories. TJFA also objected to Interrogatory Nos. 7-24 on the grounds that the information sought in these contention interrogatories is premature because they request information that will not be known until after additional discovery is obtained / conducted. TJFA has also stated that its answers to these interrogatories will be supplemented by the filing of pre-filed expert testimony. TJFA's objections are overruled in part and sustained in part. TJFA is hereby ordered to answer Interrogatory Nos. 7-24 on or before 5:00pm, September 5, 2008 by providing general descriptions of its present contentions and the general reasons for such contentions, and is not required to marshal its evidence. To the extent that BFI's contention interrogatories seek more information than set forth above, TJFA's objections are sustained.
4. TJFA's Claim of Attorney-Client Privilege to Communications Involving Bob Gregory, Jim Gregory or Dennis Hobbs. TJFA has also asserted an attorney-client communication privileged in response to Request for Production No. 18(l), which seeks correspondence and other communications regarding BFI's application and the proposed expansion of the landfill to and from Bob Gregory, Jim Gregory and/or Dennis Hobbs. TJFA is not required to produce copies of any such communications to the extent that they are solely between TJFA's attorneys and officers and directors of TJFA, TDS, TDSL and Garra de Aguila, Inc. (including Messrs. Gregory, Gregory and Hobbs) and the privilege has otherwise not been pierced or waived. However, TJFA is ordered to produce all other documents responsive to Request No. 18(l) that are in its possession, custody or control

or constructive possession, custody or control – including any responsive documents that are in the possession of TDS, TDSL and Garra de Aguila, Inc. and these entities' officers and directors (including Bob Gregory, Jim Gregory and Dennis Hobbs) -- on or before 5:00pm, September 5, 2008.

5. NNC's and Certain Aligned Parties' Objections to Contention Interrogatories. NNC, Pioneer Farms, the McAfees and Williams, Ltd. have each objected to Interrogatory Nos. 3 & 5-18 on the grounds that the requests are premature because they seek information that will not be known until after additional investigation and discovery is completed. These parties' objections are overruled, and NNC is hereby ordered to answer (or supplement its answers to) Interrogatory Nos. 3 & 5-18 on or before 5:00pm, September 5, 2008; Williams, Ltd. is hereby ordered to answer (or supplement its answers to) Interrogatory Nos. 3, 6, 7, 11, 13, 14 & 16-18 on or before 5:00pm, September 5, 2008; the McAfees are hereby ordered to answer (or supplement their answers to) Interrogatory Nos. 3, 6-8, 11 & 13-17 on or before 5:00pm, September 5, 2008; Pioneer Farms is hereby ordered to answer (or supplement its answers to) Interrogatory Nos. 3, 5, 6, 9 & 11-18 on or before 5:00pm, September 5, 2008. However, they are only required to generally describe their present contentions and the general reasons for such contentions, and are not required to marshal their evidence. They shall also supplement their answers as additional information is discovered and/or developed, provided, however, that any such supplementation shall otherwise satisfy any procedural deadlines set forth in the procedural schedule (as amended).
6. NNC's Freedom of Association Objections. NNC has objected to Interrogatory No. 21 & Request for Production Nos. 28, 29 & 38 on freedom of association grounds. NNC's objections to Interrogatory No. 21 and Request for Production Nos. 28 and 29 are sustained insofar as these discovery requests seek information pertaining to NNC's general membership or lists of members. The objection is overruled to the extent that the requests seek information pertaining to the corporation and its current officers and directors only. NNC is ordered to provide answers and/or produce responsive documents to Interrogatory No. 21 and Request for Production Nos. 28 and 29 pertaining to NNC and its current officers and directors only, on or before 5:00pm, September 5, 2008. NNC's Objection to Request for Production No. 38 is sustained.
7. NNC's Undue Burden, Harassment and Overbreadth Objections. NNC has objected to Interrogatory No. 24C, which pertains to other litigation, on grounds of undue burden, harassment and overbreadth. These objections are overruled to the extent that the interrogatory seeks information pertaining to the corporation and its officers and directors only. However, the scope of discovery shall be limited to matters pertaining to NNC and its officers and directors only and not to its general members for the reasons discussed above. NNC is ordered to provide answers for NNC and its officers and directors only on or before 5:00pm, September 5, 2008.
8. NNC's and Aligned Parties' Objection to Discovery of Communications with Bob Gregory, Jim Gregory and/or Dennis Hobbs. NNC, Pioneer Farms, the McAfees and Williams, Ltd. have each objected to Request for Production No. 5 on relevance grounds

insofar as the request calls for production of communications with Bob Gregory, Jim Gregory and/or Dennis Hobbs. The objections are overruled. NNC, Pioneer Farms, the McAfees and Williams, Ltd are ordered to produce all documents responsive to this request on or before 5:00pm, September 5, 2008.

9. The McAfees' Objections and Answers to Requests Pertaining to Claims of Individualized Health Effects. BFI has moved to compel a more complete answer to Interrogatory No. 8, which addresses alleged individualized health effects resulting from exposure to the landfill. The McAfees have objected to Request for Production No. 8, which requests an executed HIPAA release form for each person identified in the McAfees' answer to Interrogatory No. 8, on the ground that the information sought is not relevant or will not lead to discovery of admissible evidence. The objections are overruled if the McAfees intend to present any evidence (whether lay or expert) at the hearing that any person has suffered illness as a result of any alleged exposure to the landfill. If the McAfees intend to present any such evidence, they are ordered to fully answer Interrogatory No. 8 and to produce an executed HIPAA release form for each person identified in their response to Interrogatory No. 8 on or before 5:00pm, September 5, 2008. No evidence of individualized health effects will be allowed to be presented at the hearing on the merits by the McAfees or any other party who fails to fully and timely respond to reasonable discovery requests regarding any such alleged effects.
10. The McAfees' Objections to Discovery Pertaining to the Alleged Impact of the Landfill on Property. The McAfees have objected to Request for Production No. 34, which seeks information pertaining to the effect of the landfill on their business and the value of their business, on the ground that the information requested is not relevant and the request is not reasonably calculated to lead to the discovery of admissible evidence. The objection is sustained on the ground that the impact of the landfill and the proposed expansion on the value of real property or its impact on the value of any business is not relevant to any issue that has been referred to contested case hearing and, thus, no party will be allowed to present such evidence.
11. Williams, Ltd's Objections to Discovery Pertaining to the Appraised Value of its Property. Williams, Ltd. has objected to Request for Production No. 4, which seeks copies of appraisals for their properties, on relevance grounds. The objection is sustained on the ground that the impact of the landfill and the proposed expansion on the value of real property or the landfill's impact on the value of any business is not relevant to any issue that has been referred to contested case hearing and, thus, no party will be allowed to present such evidence.
12. Delmer Rogers' and Roger Joseph's Failure to Respond. BFI has also moved to compel answers and responses from Delmer Rogers and Roger Joseph, who both failed to timely respond or object to any discovery request. BFI's motion is granted, and Delmer Rogers and Roger Joseph are both ordered to provide written answers and responses and produce responsive documents on or before 5:00pm, September 9, 2008.

All relief not specifically granted herein is otherwise denied.

Dated: September _____, 2008.

William G. Newchurch
Administrative Law Judge

Enclosure 2

**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**

Order No. 4

On August 22, 2008, applicant BFI Waste Systems of North America, LLC (BFI) filed motions to compel certain answers and responses to discovery requests from protestants TJFA, LP (TJFA), Northeast Neighbors Coalition (NNC), Pioneer Farms, Mark and Melanie McAfee (the McAfees), Williams, Ltd., Roger Joseph and Delmer Rogers. NNC filed its written response on August 25, 2008; that response also included responses on behalf of the parties that have been aligned with NNC. An oral hearing was held on BFI's motions to compel on August 26, 2008. Due to the compressed schedule, TJFA did not file its response until August 26, 2008, thus its response was not considered at the hearing although it was noted as filed of record. Due to the volume of disputed discovery requests, not all specific requests were the subject of rulings from the bench. The remaining requests were dealt with on a global basis with the Administrative Law Judge (ALJ) providing guidance on how he might rule and requested the parties to work out appropriate responses within the general parameters provided. Counsel for BFI was further requested to provide a draft order to incorporate the specific rulings upon reviewing the transcript of the hearing. The parties were further ordered to attempt to work out any disagreements on the wording of the order.

After considering BFI's motions and the accompanying evidence, the objections and responses of the various protestants to BFI's discovery requests, the written responses of TJFA, NNC and those parties aligned with NNC, the arguments of counsel, applicable law and the proposed orders submitted by the parties, the parties' objections to BFI's discovery requests are overruled in part and sustained in part, and the parties are ordered to respond to the discovery requests consistent with the provisions of this order:

1. TJFA's Relevance Objections. TJFA objected to Interrogatory No. 3, Request for Production Nos. 1, 21 & 27 and Request for Admission Nos. 1-8, 12, 21, 24, 26-28, 30-34, 38, 40-41, 48, 56-57 & 59-61 on the ground that these requests pertain to Texas Disposal Systems, Inc. (TDS), Texas Disposal Systems Landfill, Inc. (TDSL), Bob Gregory, Jim Gregory, Dennis Hobbs and other persons or entities that are not a party to this proceeding and thus the discovery sought is not relevant and not calculated to lead to the discovery of admissible evidence. The objections are overruled, and TJFA is hereby ordered to answer Interrogatory No. 3 and Request for Admission Nos. 1-8, 12, 21, 24, 26-28, 30-34, 38, 40-41, 48, 56-57 & 59-61 that are directed to non-parties on or before

5:00 pm, September 5, 2008. TJFA is also ordered to produce all documents that are in its possession, custody or control or constructive possession, custody or control that are responsive to Request for Production Nos. 1, 21 and 27 – including any responsive documents that are in the possession of TDS, TDSL and Garra de Aguila, Inc. and these entities' officers and directors (including Bob Gregory, Jim Gregory and Dennis Hobbs) – on or before 5:00 pm, September 5, 2008.

2. TJFA's Objections to Information Pertaining to Other Properties, Landfills or Other MSW Proceedings. TJFA objected to Interrogatory Nos. 4 & 5, Request for Production Nos. 2-6, 10-17, 26, 28 & 30 and Request for Admission Nos. 37, 39, 42-47 & 58 on the grounds that these discovery requests seek information regarding properties that are not in the immediate vicinity of the Sunset Farms landfill or information related to proceedings involving other landfills, and are overbroad, harassing and seek information not relevant or reasonably calculated to lead to the discovery of admissible evidence. These objections are overruled in part and sustained in part. TJFA is hereby ordered to answer Interrogatory Nos. 4 & 5 and Request for Admission Nos. 37, 39, 42-47 & 58 on or before 5:00pm, September 5, 2008. TJFA is also ordered to produce copies of deeds for each property it owns in response to Request for Production Nos. 2 & 3, and is also ordered to produce copies of any expert reports and expert witness testimony (whether pre-filed testimony or transcripts of deposition or hearing testimony) by any expert witnesses it retained in any contested case hearings involving other landfill applications in response to Request for Production Nos. 11, 13-17, 26, 28 & 30. TJFA's objections to Request for Production Nos. 2-6, 10-17, 26, 28 & 30 are otherwise sustained.
3. TJFA's Objections to Contention Interrogatories. TJFA also objected to Interrogatory Nos. 7-24 on the grounds that the information sought in these contention interrogatories is premature because they request information that will not be known until after additional discovery is obtained / conducted. TJFA has also stated that its answers to these interrogatories will be supplemented by the filing of pre-filed expert testimony. TJFA's objections are overruled in part and sustained in part. TJFA is hereby ordered to answer Interrogatory Nos. 7-24 on or before 5:00pm, September 5, 2008 by providing general descriptions of its present contentions and the general reasons for such contentions, and is not required to marshal its evidence. To the extent that BFI's contention interrogatories seek more information than set forth above, TJFA's objections are sustained.
4. TJFA's Claim of Attorney-Client Privilege to Communications Involving Bob Gregory, Jim Gregory or Dennis Hobbs. TJFA has also asserted an attorney-client communication privileged in response to Request for Production No. 18(l), which seeks correspondence and other communications regarding BFI's application and the proposed expansion of the landfill to and from Bob Gregory, Jim Gregory and/or Dennis Hobbs. TJFA is not required to produce copies of any such communications to the extent that they are solely between TJFA's attorneys and officers and directors of TJFA, TDS, TDSL and Garra de Aguila, Inc. (including Messrs. Gregory, Gregory and Hobbs) and the privilege has otherwise not been pierced or waived. However, TJFA is ordered to produce all other documents responsive to Request No. 18(l) that are in its possession, custody or control

or constructive possession, custody or control – including any responsive documents that are in the possession of TDS, TDSL and Garra de Aguila, Inc. and these entities' officers and directors (including Bob Gregory, Jim Gregory and Dennis Hobbs) -- on or before 5:00pm, September 5, 2008.

5. NNC's and Certain Aligned Parties' Objections to Contention Interrogatories. NNC, Pioneer Farms, the McAfees and Williams, Ltd. have each objected to Interrogatory Nos. 3 & 5-18 on the grounds that the requests are premature because they seek information that will not be known until after additional investigation and discovery is completed. These parties' objections are overruled, and NNC is hereby ordered to answer (or supplement its answers to) Interrogatory Nos. 3 & 5-18 on or before 5:00pm, September 5, 2008; Williams, Ltd. is hereby ordered to answer (or supplement its answers to) Interrogatory Nos. 3, 6, 7, 11, 13, 14 & 16-18 on or before 5:00pm, September 5, 2008; the McAfees are hereby ordered to answer (or supplement their answers to) Interrogatory Nos. 3, 6-8, 11 & 13-17 on or before 5:00pm, September 5, 2008; Pioneer Farms is hereby ordered to answer (or supplement its answers to) Interrogatory Nos. 3, 5, 6, 9 & 11-18 on or before 5:00pm, September 5, 2008. However, they are only required to generally describe their present contentions and the general reasons for such contentions, and are not required to marshal their evidence. They shall also supplement their answers as additional information is discovered and/or developed, provided, however, that any such supplementation shall otherwise satisfy any procedural deadlines set forth in the procedural schedule (as amended).
6. NNC's Freedom of Association Objections. NNC has objected to Interrogatory No. 21 & Request for Production Nos. 28, 29 & 38 on freedom of association grounds. NNC's objections to Interrogatory No. 21 and Request for Production Nos. 28 and 29 are sustained insofar as these discovery requests seek information pertaining to NNC's general membership or lists of members. The objection is overruled to the extent that the requests seek information pertaining to the corporation and its current officers and directors only. NNC is ordered to provide answers and/or produce responsive documents to Interrogatory No. 21 and Request for Production Nos. 28 and 29 pertaining to NNC and its current officers and directors only, on or before 5:00pm, September 5, 2008. NNC's Objection to Request for Production No. 38 is sustained.
7. NNC's Undue Burden, Harassment and Overbreadth Objections. NNC has objected to Interrogatory No. 24C, which pertains to other litigation, on grounds of undue burden, harassment and overbreadth. These objections are overruled to the extent that the interrogatory seeks information pertaining to the corporation and its officers and directors only. However, the scope of discovery shall be limited to matters pertaining to NNC and its officers and directors only and not to its general members for the reasons discussed above. NNC is ordered to provide answers for NNC and its officers and directors only on or before 5:00pm, September 5, 2008.
8. NNC's and Aligned Parties' Objection to Discovery of Communications with Bob Gregory, Jim Gregory and/or Dennis Hobbs. NNC, Pioneer Farms, the McAfees and Williams, Ltd. have each objected to Request for Production No. 5 on relevance grounds

insofar as the request calls for production of communications with Bob Gregory, Jim Gregory and/or Dennis Hobbs. The objections are overruled. NNC, Pioneer Farms, the McAfees and Williams, Ltd are ordered to produce all documents responsive to this request on or before 5:00pm, September 5, 2008.

9. The McAfees' Objections and Answers to Requests Pertaining to Claims of Individualized Health Effects. BFI has moved to compel a more complete answer to Interrogatory No. 8, which addresses alleged individualized health effects resulting from exposure to the landfill. The McAfees have objected to Request for Production No. 8, which requests an executed HIPAA release form for each person identified in the McAfees' answer to Interrogatory No. 8, on the ground that the information sought is not relevant or will not lead to discovery of admissible evidence. The objections are overruled if the McAfees intend to present any evidence (whether lay or expert) at the hearing that any person has suffered illness as a result of any alleged exposure to the landfill. If the McAfees intend to present any such evidence, they are ordered to fully answer Interrogatory No. 8 and to produce an executed HIPAA release form for each person identified in their response to Interrogatory No. 8 on or before 5:00pm, September 5, 2008. No evidence of individualized health effects will be allowed to be presented at the hearing on the merits by the McAfees or any other party ~~who is not a party to this case~~ ~~in response to reasonable discovery requests regarding any such alleged effects.~~

10. The McAfees' Objections to Discovery Pertaining to the Alleged Impact of the Landfill on Property. The McAfees have objected to Request for Production No. 34, which seeks information pertaining to the effect of the landfill on their business and the value of their business, on the ground that the information requested is not relevant and the request is not reasonably calculated to lead to the discovery of admissible evidence. The objection is sustained on the ground that the impact of the landfill and the proposed expansion on the value of real property or its impact on the value of any business is not relevant to any issue that has been referred to contested case hearing and, thus, no party will be allowed to present such evidence.

11. Williams, Ltd's Objections to Discovery Pertaining to the Appraised Value of its Property. Williams, Ltd. has objected to Request for Production No. 4, which seeks copies of appraisals for their properties, on relevance grounds. The objection is sustained on the ground that the impact of the landfill and the proposed expansion on the value of real property or the landfill's impact on the value of any business is not relevant to any issue that has been referred to contested case hearing and, thus, no party will be allowed to present such evidence.

12. Delmer Rogers' and Roger Joseph's Failure to Respond. BFI has also moved to compel answers and responses from Delmer Rogers and Roger Joseph, who both failed to timely respond or object to any discovery request. BFI's motion is granted, and Delmer Rogers and Roger Joseph are both ordered to provide written answers and responses and produce responsive documents on or before 5:00pm, September 9, 2008.

All relief not specifically granted herein is otherwise denied.

Dated: September _____, 2008.

William G. Newchurch
Administrative Law Judge

Enclosure 3

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September 4, 2008

Via Fax & U.S. First Class Mail
William G. Newchurch
Administrative Law Judge
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Re: SOAH Docket No. 582-08-2178; TCEQ Docket No. 2007-1774-MSW;
Application of BFI Waste Systems of North America, Inc. Permit No. 1447A

Dear Judge Newchurch:

This letter is being filed on behalf of Northeast Neighbors Coalition (NNC) and the aligned parties. The Applicant in the above referenced proceeding will file a proposed Order No. 4 in response to the Hearing held on Tuesday, August 26, 2008 addressing various Motions to Compel filed by the Applicant. The Applicant and NNC have consulted by e-mail and by telephone and are in agreement as to item numbers 5, 6, 7, 8 and 12. NNC's proposed item numbers 9, 10 and 11 are presented below for your consideration. NNC's proposed item numbers 9, 10 and 11 are also included in TJFA's Proposed Order, which will be provided to you separately. NNC has not commented or conferred regarding TJFA items 1-4.

9. The McAfees' Objections and Answers to Requests Pertaining to Claims of Individualized Health Effects BFI has moved to compel a more complete answer to Interrogatory No. 8, which addresses alleged individualized health effects resulting from exposure to the landfill. The McAfees have objected to Request for Production No. 8, which requests an executed HIPAA release form for each person identified in the McAfees' answer to Interrogatory No. 8, on the ground that the information sought is not relevant or will not lead to discovery of admissible evidence. The objections are overruled if the McAfees intend to present any evidence (whether lay or expert) at the hearing that any person has suffered illness as a result of any alleged exposure to the landfill. If the McAfees intend to present any such evidence, they are ordered to fully answer Interrogatory No. 8 and to produce an executed HIPAA release form for each person identified in their response to Interrogatory No. 8 on or before 5:00 p.m., September 5, 2008. No evidence of individualized health effects will be allowed to be presented at the hearing on the merits by the McAfees or any other party.

~~Nothing is to be construed as an admission of liability by the Applicant or its attorneys.~~

The Honorable William G. Newchurch
September 4, 2008
p. 2

10. The McAfees' Objections to Discovery Pertaining to the Alleged Impact of the Landfill on Property. The McAfees have objected to Request for Production No. 34, which seeks information pertaining to the effect of the landfill on their business and the value of their business, on the ground that the information requested is not relevant and the request is not reasonably calculated to lead to the discovery of admissible evidence. The objection is sustained on the ground that the impact of the landfill and the proposed expansion on the value of real property or its impact on the value of any business is not relevant to any issue that has been referred to contested case hearing and, thus, no party will be allowed to present such evidence. [REDACTED]

11. Williams, Ltd's Objections to Discovery Pertaining to the Appraised Value of its Property. Williams, Ltd. has objected to Request for Production No. 4, which seeks copies of appraisals for their properties, on relevance grounds. The objection is sustained on the ground that the impact of the landfill and the proposed expansion on the value of real property or the landfill's impact on the value of any business is not relevant to any issue that has been referred to contested case hearing and, thus, no party will be allowed to present such evidence. [REDACTED]

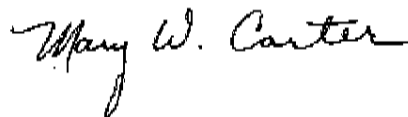
NNC respectfully requests that the Administrative Law Judge adopt paragraph nos. 9, 10 and 11 above and that the same be incorporated into Order 4.

All parties of record are being copied pursuant to the Certificate of Service attached.

Thank you for your assistance. Should you have any questions, please feel free to call me at (713) 524-1012.

Sincerely,

BLACKBURN CARTER, P.C.



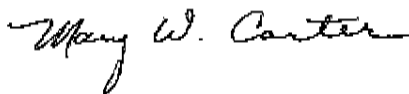
Mary W. Carter

c: See attached Certificate of Service

The Honorable William G. Newchurch
September 4, 2008
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CERTIFICATE OF SERVICE

On this 4th day of September, 2008, the undersigned hereby certifies that a true and correct copy of the foregoing instrument was served on all attorneys/parties of record as indicated below for each.



Mary W. Carter

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