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REGARDING: **ORDER NO. 3- RULING ON MOTIONS TO COMPEL AND GRANTING MOTION TO REVISE PROCEDURAL SCHEDULE**

DOCKET NUMBER: **582-08-2178**

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**SOAH DOCKET NO. 582-08-2178
TCEQ DOCKET NO. 2007-1774-MSW**

**APPLICATION OF BFI WASTE § BEFORE THE STATE OFFICE
SYSTEMS OF NORTH AMERICA, §
INC., FOR A MAJOR AMENDMENT § OF
TO TYPE I MSW PERMIT NO. 1447A §
§ ADMINISTRATIVE HEARINGS**

**ORDER NO. 3
RULING ON MOTIONS TO COMPEL AND
GRANTING JOINT MOTION TO REVISE PROCEDURAL SCHEDULE**

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 12, 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 12, 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 12, 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 12, 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. 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 12, 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 12, 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 12, 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 12, 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 12, 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 12, 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 12, 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 12, 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 12, 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. It is agreed, however, that land use compatibility and nuisance are issues in the contested case hearing. As such, the McAfees will be allowed to bring forward any examples of nuisance interference with business activities but shall not present evidence of dollar loss of diminution of property values.
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. As such, Williams, Ltd. will be allowed to bring forward any examples of nuisance interference with business activities but shall not present evidence of dollar loss or diminution of property values.

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.

On August 29, 2008, several parties filed a joint motion, to which no party objects, proposing changes in the case schedule. That motion is granted, and the following schedule shall henceforth govern this case:

DATE	EVENT
May 8, 2008	Preliminary hearing. Each party made a request for disclosure by every other unaligned party and alignment of parties, in accordance with the Texas Rules of Civil Procedure.
May 16, 2008	Applicant to provide one copy of the current application to each unaligned party and each alignment of parties.
May 29, 2008	Discovery Begins. Deadline to respond to requests for disclosure.
June 6, 2008	Applicant shall designate its expert witnesses.
June 23, 2008	Depositions of fact witnesses may begin.
June 27, 2008	Other parties shall designate their expert witnesses.
July 18, 2008	Deadline to serve written discovery requests.
August 11, 2008	Depositions of expert witnesses may begin.
August 26, 2008	Prehearing conference to rule on discovery disputes, if needed and called by Judge.
September 30, 2008	Applicant to prefile its direct case in writing, including all testimony and exhibits.
October 31, 2008	All parties, except Applicant and ED, to prefile their direct cases in writing, including all testimony and exhibits.
November 10, 2008	ED to prefile his direct case in writing, including all testimony and exhibits.
November 17, 2008	Deadline to file objections to any prefiled evidence.
December 3, 2008	Deadline to file responses to objections to prefiled evidence.
December 9, 2008	Deadline to complete all depositions.
December 15, 2008	Deadline to file any pre-trial motion.
December 19, 2008	Prehearing conference to rule on objection to prefiled evidence, other pending motions, and other procedural matters.
January 12, 2009	Hearing on the merits (HOM) of application begins.

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January 26, 2009	Estimated end of HOM.
February 23, 2009	Parties file closing arguments.
March 9, 2009	Parties file responses to closing arguments and submit proposed Findings of Fact and Conclusions of Law.
May 8, 2009	Deadline to issue proposal for decision (PFD).

All relief not specifically granted herein is otherwise denied.

SIGNED September 9, 2008.



WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

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STYLE/CASE: BFI WASTE SYSTEMS OF NORTH AMERICA INC

SOAH DOCKET NUMBER: 582-08-2178

REFERRING AGENCY CASE: 2007-1774-MSW

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
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