

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

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

**NORTHEAST NEIGHBORS COALITION'S RESPONSE TO FILINGS BY
CITY OF AUSTIN AND BFI WASTE SYSTEMS OF NORTH AMERICA, LLC
AND GILES HOLDINGS, LP., MOTION FOR CONTINUANCE AND MOTION FOR
ADDITIONAL TIME TO FILE PREFILED TESTIMONY**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE WILLIAM E. NEWCHURCH:

COMES NOW Northeast Neighbors Coalition, Protestant herein, and files this its response to the recent filings made by The City of Austin, BFI Waste Systems of North America, L.L.C. and Giles Holdings, L.P., and its Motion for Continuance and Motion For Additional Time to File Prefiled Testimony.

NNC is submitting this Motion for Continuance and Motion for Additional Time to File Prefiled Testimony based upon a set of events that occurred with one of the parties who was in opposition to the proposed BFI Sunset Farms permit but who has filed this documentation indicating that a settlement type of "Agreement" has been reached. NNC respectfully asks that the ALJ consider the following circumstances.

On October 31, 2008, counsel for the Applicant, BFI Waste Systems of North America, LLC ("BFI"), Paul Gosselink, filed a Rule 11 Agreement in the above styled proceeding. The counsel that signed the Rule 11 Agreement, Mr. Gosselink, Ms. Holly Noelke on behalf of the City of Austin, and Mr. Paul Terrill on behalf of Giles Holdings, L.P., stated that the three parties had entered into a binding agreement ("Agreement") regarding operations and closure of the Sunset Farms Landfill, asked that the TCEQ consider the Agreement in this contested case,

asked that the proposal for decision and any permit amendment issued by the TCEQ in the contested case contain the provisions set out in the Agreement as Special Conditions in the permit, and that the City's participation in the contested case hearing be limited to testimony and evidence in support of the terms of the Rule 11 Agreement and the Agreement regarding operations and closure.

The Agreement was signed by Ms. Noelke and the Assistant City Manager on behalf of the City of Austin, Brad Dugas on behalf of BFI Waste Systems of North America, LLC, and Steve Mobley on behalf of Giles Holdings, L.P..

Prior to this Agreement being reached by the City of Austin, Giles, and BFI, the protesting parties, with the exception of Giles Holdings, met pursuant to a "Joint Defense Agreement" to plan strategy for the opposition to this permit amendment. The parties that were originally in opposition to this permit application, in an effort to better utilize limited resources and to better use the time allocated to this process, agreed to divide issues. TJFA took the lead on technical issues, and NNC took the lead on factual information associated with the operation of the landfill. Among other issues, the City of Austin agreed to address their primary concern which was land use, including the presentation of land use experts from the City of Austin regarding various plans and planning documents about future growth and land use. Therefore, no other protesting party was planning to have an expert witness testify regarding the land use incompatibility issue. Notably, NNC's testimony, which has been prefiled with the Honorable Administrative Law Judge and the Parties, consists of factual testimony regarding the operation of the BFI landfill under the current permit.

NNC was taken by surprise when the City of Austin filed a Rule 11 agreement with the ALJ last Friday. Counsel for NNC had some inkling that discussions were occurring, but was

not consulted or informed of the filing prior to it being delivered by fax after business hours on Friday. Since that time, we have been trying to ascertain if in fact the City Attorney had authority to settle this litigation without approval by the City Council of the City of Austin. Needless to say, however, NNC's case has been undermined by the City of Austin's changing their planned testimony as agreed with no time for NNC or other protesting parties to present expert testimony on the issues.

Although there is some question whether this Agreement is a legally binding document, it is NNC's understanding that the City Council will take up this matter at their next council meeting scheduled for November 20, 2008. The problem that we want to bring to the Honorable Administrative Law Judge's attention is the fact that we are now in a position where we have no land use expert to present at the contested case hearing. Additionally, we have no money at this time to obtain such expertise. We are filing this Motion for Continuance to seek additional time to raise money and hire a land use expert. The action by the Applicant and the City of Austin has caused a material problem with regard to our ability to present our case and we ask for additional time to solve this problem.

It is certainly arguable that NNC made a mistake of judgment to allocate responsibilities and depend upon the City of Austin for anything. That judgment was based upon prudent use of time in the hearing and allocation of resources. NNC is strained financially. Nonetheless, NNC is willing to try to raise additional money (but not from TDSL or from any entity associated with TDSL) and retain a land use expert. Land use and nuisance conditions are THE issues in this hearing as far as NNC is concerned. Our ability to present our case has been harmed by this Agreement and by our reliance upon the City of Austin.


We are trying to better understand the circumstances of this Agreement. We know that we have been harmed and were not informed. We know that this occurred at the deadline for Prefiled Testimony. NNC is in a “pickle” and requests that the Honorable Administrative Law Judge grant their Motion for Continuance and Motion For Additional Time to hire an expert in land use issues, along with any necessarily associated Prefiled Testimony and Exhibits.

Thank you for your consideration of this Response and Motions.

WHEREFORE, PREMISES CONSIDERED, NNC respectfully requests that its Motion for a Continuance and For Additional Time to File Prefiled Testimony, be granted.

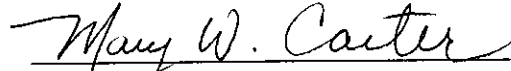
Respectfully submitted,

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CERTIFICATE OF SERVICE

On this 7th day of November, 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.



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