

STATE OFFICE OF ADMINISTRATIVE HEARINGS

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DATE: **11/13/2008**

NUMBER OF PAGES INCLUDING THIS COVER SHEET: **6**

REGARDING: **ORDER NO. 8 DENYING MOTION FOR CONTINUANCE AND ADDITIONAL TIME TO PREFILE**

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

JUDGE WILLIAM G NEWCHURCH

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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. 8
DENYING MOTION FOR CONTINUANCE AND ADDITIONAL TIME TO PREFILE**

On October 31, 2008, BFI Waste Systems of North America, Inc. (BFI); Giles Holdings, L.P.; and the City of Austin (Austin) entered into a Rule 11 agreement regarding the operation and closure of the BFI facility at issue in this case. They agreed that any Proposal for Decision (PFD) or permit issued in this case should contain certain conditions. Additionally, Austin agreed that its participation in the hearing on the merits in this case would be limited to presenting testimony and evidence supporting the Rule 11 agreement.

On November 7, 2008, the Northeast Neighbors Coalition (Northeast) filed a motion to continue the hearing on the merits of BFI's application and to grant Northeast additional time to prefile its direct case evidence. Northeast contends that:

- it had a joint defense agreement with Austin;
- had relied on Austin to present evidence on certain issues, especially land use;
- was surprised by Austin's agreement with BFI, particularly by Austin's announcement that it would only present evidence to support the Rule 11 agreement; and
- because it was surprised, should be given additional time to raise funds, hire a land use expert, and prefile its direct case.

On November 12, 2008, TJFA, L.P. filed a response supporting Northeast's motion, and BFI filed a response opposing the motion. No other party has taken a position on Northeast's motion. On November 13, 2008, a prehearing teleconference was held to consider Northeast's motion.

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Among other things, BFI argues that it would be harmed by a delay and Northeast has not shown that legal or equitable good cause exists to extend Northeast's deadline to prefile or to continue the hearing. The ALJ agrees with BFI's argument. Northeast's motion is denied.

SIGNED November 13, 2008.



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

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AGENCY: Environmental Quality, Texas Commission on (TCEQ)
STYLE/CASE: BFI WASTE SYSTEMS OF NORTH AMERICA INC
SOAH DOCKET NUMBER: 582-08-2178
REFERRING AGENCY CASE: 2007-1774-MSW

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HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ WILLIAM G. NEWCHURCH**

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