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**TELECOPIER COVER SHEET**

December 10, 2008

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Client No.: 1635-03

From: Paul Gosselink

No. of Pages: 8 + 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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December 10, 2008

**Via Facsimile**

Judge William E. Newchurch  
State Office of Administrative Hearings  
300 W. 15<sup>th</sup> 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 for filing is an original and one copy of Applicant BFI Waste Systems Of North America, LLC's Objections to TJFA's Notice of Oral Deposition of Ray Shull and Subpoena Duces Tecum in the above referenced matter.

Should you have any questions, please do not hesitate to contact me. Thank you for your attention to this matter.

Respectfully submitted,

A handwritten signature in black ink that reads "Paul Gosselink". The signature is written in a cursive, flowing style.

Paul Gosselink

Attachment

cc: Certificate of Service

**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**

**APPLICANT BFI WASTE SYSTEMS OF NORTH AMERICA, LLC'S  
OBJECTIONS TO TJFA'S NOTICE OF ORAL DEPOSITION  
OF RAY SHULL AND SUBPOENA DUCES TECUM**

TO: TJFA, L.P., by and through its attorneys of record, Bob Renbarger and J.D. Head, FRITZ, BYRNE, HEAD & HARRISON, LLP, 98 San Jacinto Blvd., Suite 2000, Austin, Texas 78701

Counsel for Applicant BFI WASTE SYSTEMS OF NORTH AMERICA, LLC (BFI) received TJFA, L.P.'s (TJFA's) Notice of Oral Deposition of Ray Shull and Subpoena Duces Tecum by facsimile on December 5, 2008. The deposition was scheduled by agreement of counsel, and BFI does not object to the time and place of the deposition. However, BFI does oppose the subpoena duces tecum attached to the deposition notice as Exhibit "A" as set forth in the general and specific objections contained herein. BFI serves these objections to document requests/subpoena duces tecum pursuant to the Texas Rules of Civil Procedure and the ALJ's Order No.1.

Respectfully submitted,

**LLOYD GOSSELINK**  
**ROCHELLE & TOWNSEND, P.C.**  
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By: 

PAUL G. GOSSELINK  
State Bar Number 08222800

**ATTORNEYS FOR APPLICANT**  
**BFI WASTE SYSTEMS OF NORTH**  
**AMERICA, LLC**

OF COUNSEL:  
JOHN E. CARLSON  
Texas Bar No. 00790426

JOHN R. MOORE  
Texas Bar No. 14348565

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Objections and Responses to TJFA's Notice of Deposition of Brad Dugas and Subpoena Duces Tecum were 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 December 10, 2008:

**FOR THE CHIEF CLERK:**

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Paul G. Gosselink

## EXHIBIT "A"

### **OBJECTIONS AND RESPONSES TO REQUESTS FOR PRODUCTION**

#### **I. WITHHOLDING STATEMENT**

BFI and the witness are undertaking a good faith effort to obtain information and search for the documents for this request for production. BFI and the witness reserve the right to change or supplement their responses in accordance with Tex. R. Civ. P. 193.5, to produce additional documents, and to produce additional evidence at any hearing. BFI and the witness reserve the right to redact from otherwise responsive and non-privileged documents portions that contain information that is irrelevant, non-responsive, or privileged.

#### **II. RESPONSE TO REQUESTS**

Subject to certain objections made and discussed below:

The witness, who is a retained testifying expert, has previously produced/disclosed all documents subject to disclosure by retained testifying expert witnesses under Tex. R. Civ. P. 194.2(f)(A) and (B). Those disclosures were subsequently supplemented in November 2008. The witness is bringing additional documents that are responsive to individual requests to the deposition for inspection by all parties.

#### **III. GENERAL OBJECTIONS**

##### **General Objection No. 1:**

BFI objects to all of the requests to the extent that they call for any proprietary or confidential business or trade information pertaining to BFI, its affiliates, the landfill or its operations – including but not limited to any matters pertaining to BFI's clients, contractors, costs and cost structures, and finances. TJFA is very closely affiliated with Texas Disposal Systems, Inc. (TDS) and Texas Disposal Systems Landfill, Inc. (TDSL) and other affiliates, agents and represents of TDS and TDSL, all of which are BFI's competitors in the Central Texas market.

##### **General Objection No. 2:**

The requests are largely duplicative of earlier documents requests that were made of BFI and of documents of this witness that were disclosed to TJFA and to which BFI has either timely and properly objected to and/or produced responsive documents for. BFI and the witness have already made approximately 100,000 documents available for inspection and copying by TJFA and the other parties. BFI thus objects to these requests because they are duplicative, harassing and unduly burdensome.

**General Objection No. 3:**

A number of the requests call for copies of drafts of pre-filed testimony, which are not discoverable under SOAH's rules. BFI and the witness will not produce copies of any such drafts.

**IV. SPECIFIC REQUESTS AND OBJECTIONS**

1. All documents, tangible things, reports, models, or data compilations that have been provided to you, reviewed by you, or prepared by or for you in anticipation of his testimony, including:

a. Any and all documents and things reviewed, referred to, or relied upon by you in formulating any of your opinions or conclusions concerning the BFI Sunset Farms Landfill, BFI Waste Systems of North America, LLC's (BFI) application to expand the landfill, and this contested case hearing.

**Objections: BFI incorporates General Objection Nos. 1, 2 and 3.**

b. Any and all documents and things created or produced by you in connection with your work pertaining to the BFI Sunset Farms Landfill, BFI's application to expand the landfill, and this contested case hearing.

**Objections: The request is overbroad and lacks specificity or is so vague and unclear that BFI and the witness cannot identify the document or documents requested. It also potentially requests documents such as environmental audits that are not related to this application and are statutorily protected from discovery. The request also calls for public documents that are equally available to TFJA. BFI also incorporates General Objection Nos. 1, 2 and 3.**

c. Any and all documents in your custody or control concerning this contested case hearing.

**Objections: The request is overbroad and lacks specificity or is so vague and unclear that BFI and the witness cannot identify the document or documents requested. BFI also incorporates General Objection Nos. 1, 2 and 3.**

d. Any and all documents in your custody or control concerning the BFI Sunset Farms Landfill.

**Objections: The request is overbroad, unduly burdensome and lacks specificity or is so vague and unclear that BFI and the witness cannot identify the document or documents requested. It also potentially requests documents such as environmental audits that are not related to this application and that are statutorily protected from discovery. The request also calls for public**

**documents that are equally available to TFJA. BFI also incorporates General Objection Nos. 1, 2 and 3.**

- e. Your complete file in this case, including but not limited to any and all of your records, correspondence (including e-mails), personal notes, calendars, diaries, phone logs and any other type of documents concerning any fact or opinion in relation to BFI Sunset Farms Landfill, BFI's application to expand the landfill, and this contested case hearing.

**Objections: The request is overbroad, unduly burdensome and lacks specificity or is so vague and unclear (both as to time and subject matter) that BFI and the witness cannot identify the document or documents requested. It also potentially requests documents such as environmental audits that are statutorily protected from discovery. The request also calls for public documents that are equally available to TFJA. BFI also incorporates General Objection Nos. 1, 2 and 3.**

- f. Invoices and time entries for work performed by you and/or anybody under your control or supervision in connection with the BFI Sunset Farms Landfill, BFI's application to expand the landfill, and this contested case hearing.

**Objections: BFI incorporates General Objection No. 1.**

- g. Printouts of any and all magnetic, electronic or computerized documents, information, data, database searches, recordings, images, and/or transmissions reviewed, referred to, or relied upon by you in formulating any of your opinions or conclusions concerning the BFI Sunset Farms landfill, BFI's application to expand the landfill, and this contested case hearing.

**Objections: BFI incorporates General Objection No. 2.**

- h. Printouts of any and all magnetic, electronic or computerized documents, information, data, database searches, recordings, images, and/or transmissions in your custody or control concerning the BFI Sunset Farms landfill, BFI's application to expand the landfill, and this contested case hearing.

**Objections: BFI incorporates General Objection No. 2.**

- i. All models, samples and test results that relate in any way to the BFI Sunset Farms Landfill, BFI's application to expand the landfill, and this contested case hearing. This request specifically encompasses any and all tables, spreadsheets, summaries or graphical representations of such information..

**Objections: BFI incorporates General Objection No. 2.**



- j. Any and all photographs, recordings, digital videos, videotapes and/or films reviewed, referred to, or relied upon by you in formulating any of your opinions or conclusions concerning the BFI Sunset Farms Landfill, BFI's application to expand the landfill, and this contested case hearing.

**Objections: BFI incorporates General Objection No. 2.**

- k. Any and all photographs, recordings, videotapes, and/or radiographic films in your custody or control concerning BFI Sunset Farms Landfill, BFI's application to expand the landfill, and this contested case hearing.

**Objections: BFI incorporates General Objection No. 2.**

- l. Any and all models, illustrations, photographs or other exhibits or documents of any kind which you intend or contemplate using to illustrate, explain or support your testimony at the trial of this cause.

**Objections: BFI incorporates General Objection No. 2.**

- 2. Any memoranda, letters, notes, or other documents prepared by you or reviewed by you relating to the Rule 11 Agreement between BFI, Giles Holdings, L.P. and the City of Austin dated October 31, 2008, or relating to the Austin City Council's consideration of that Rule 11 Agreement or topics addressed therein) prior to or at the Austin City Council meeting planned for December 11, 2008.

**Objections: BFI incorporates General Objections Nos. 1 and 2.**

- 3. To the extent not identified in your curriculum vitae already produced in the pre-filed testimony, lists, spreadsheets or other documents that list or reflect legal proceedings in which you have given testimony or in which you have made an expert report.

**Objections: BFI incorporates General Objection No. 2.**