



**FRITZ, BYRNE, HEAD & HARRISON, PLLC**

*Attorneys at Law*

December 17, 2008

**VIA FACSIMILE NO. 239-3311**

**- and -**

**U. S. FIRST CLASS MAIL**

Ms. LaDonna Castañuela, Chief Clerk  
Office of the Chief Clerk (MC-105)  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

Re: SOAH Docket No. 582-08-2178; TCEQ Docket No. 2007-1774-MSW; In re:  
the Application of BFI Waste Systems of North America, Inc., for a Major  
Amendment to Type I MSW Permit No. 1447A

Dear Ms. Castañuela:

Enclosed are an original and one copy of TJFA, L.P.'s Objections to BFI Waste Systems of North America, LLC's Notice of Oral Deposition of Pierce L. Chandler and Subpoena Duces Tecum which we respectfully request be filed among the other papers in the above-referenced proceeding. Please return a file-stamped copy to me in the self-addressed, postage prepaid envelope provided for your convenience.

A copy of the enclosure is being forwarded to all parties of interest as set forth below. Thank you for your assistance in this matter.

Very truly yours,

FRITZ, BYRNE, HEAD & HARRISON, PLLC

By: 

Ann M. Devers  
Assistant to Bob Renbarger

Enclosures

cc: See, Certificate of Service (w/encl)



*Value Driven...Client Oriented*

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

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

**TJFA, L.P.'s OBJECTIONS TO BFI WASTE  
SYSTEMS OF NORTH AMERICA, LLC's NOTICE OF ORAL  
DEPOSITION OF PIERCE L. CHANDLER AND SUBPOENA DUCES TECUM**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, TJFA, L.P. ("TJFA"), Protestant in the above-referenced matter, and files its Objections to BFI Waste Systems of North America, LLC's ("BFI") Notice of Oral Deposition of Pierce L. Chandler and Subpoena Duces Tecum and would show the following:

1. Counsel for TJFA received BFI's Notice of Oral Deposition of Pierce L. Chandler and Subpoena Duces Tecum by facsimile on December 11, 2008. The deposition was scheduled by agreement of counsel. TJFA does not oppose the deposition of Mr. Chandler, a designated expert of TJFA, nor does it oppose the time and place of the deposition.

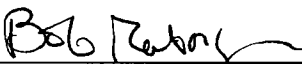
2. TJFA does oppose the subpoena duces tecum attached as Exhibit A to the deposition notice which was styled a Request for Production. To the extent that the request for production seeks documents other than the documents, tangible things, reports, models or data compilations that have been provided to, reviewed by, or prepared by or for Mr. Chandler in anticipation of his expert testimony as described in Rule 194.2(f)(4)(A), the requests are overly broad, unduly burdensome and exceed the scope of discovery for testifying expert witnesses. Rule 195.1 limits the permissible

forms of discovery of testifying experts to disclosure under Rule 194 and to depositions and expert reports as described in Rule 195.

3. TJFA objects to the production of any documents requested by BFI outside the scope of TEX. R. CIV. P. 194.2(f)(4), 195.1, 195.4 and 195.5. In accordance with 30 T.A.C. § 80.151, TJFA objects to and will not produce drafts of pre-filed testimony. TJFA further objects to the production of any documents already produced to BFI or in BFI's possession that are not within the scope of the above-referenced authorities. Specific objections and responses to the request for production are attached hereto as **Exhibit A** and incorporated for all purposes.

Respectfully submitted,

FRITZ, BYRNE, HEAD & HARRISON, PLLC  
98 San Jacinto Blvd., Suite 2000  
Austin, TX 78701  
TEL: 512/476-2020  
FAX: 512/477-5267

By:   
\_\_\_\_\_  
J. D. Head  
State Bar No. 09322400

Bob Renbarger  
State Bar No. 16768100

ATTORNEYS FOR TJFA, L.P.

## CERTIFICATE OF SERVICE

By my signature above, I hereby certify that a true and correct copy of the foregoing document has been served this \_\_\_\_\_ day of December, 2008, via e-mail, facsimile transmission or U.S. First Class mail, to the following:

Mr. Paul G. Gosselink  
Mr. John E. Carlson  
Lloyd, Gosselink, Rochelle & Townsend, P.C.  
816 Congress Ave., Suite 1900  
Austin, TX 78701  
TEL: 512/322-5800  
FAX: 512/472-0532  
E-MAIL: [pgosselink@lglawfirm.com](mailto:pgosselink@lglawfirm.com)  
E-MAIL: [jcarlson@lglawfirm.com](mailto:jcarlson@lglawfirm.com)  
**BFI WASTE SYSTEMS OF NORTH AMERICA, INC. and  
GILES HOLDINGS, L.P.**

Mr. Paul Terrill  
The Terrill Firm, P.C.  
810 W. 10<sup>th</sup> St.  
Austin, TX 78701  
TEL: 512/474-9100  
FAX: 512/474-9888  
E-MAIL: [pterrill@terrill-law.com](mailto:pterrill@terrill-law.com)  
**GILES HOLDINGS**

Mr. Steve Shepherd  
Ms. Susan White  
Environmental Law Division (MC-173)  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087  
TEL: 512/239-0464  
FAX: 512/239-0606  
E-MAIL: [sshepher@tceq.state.tx.us](mailto:sshepher@tceq.state.tx.us)  
E-MAIL: [swhite@tceq.state.tx.us](mailto:swhite@tceq.state.tx.us)  
**EXECUTIVE DIRECTOR**

Ms. Christina Mann  
Attorney  
Office of Public Interest Counsel (MC-103)  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087  
TEL: 512/239-4014  
FAX: 512/239-6377  
E-MAIL: [cmann@tceq.state.tx.us](mailto:cmann@tceq.state.tx.us)  
**OFFICE OF PUBLIC INTEREST COUNSEL**

Mr. Kevin W. Morse  
Assistant Travis County Attorney  
P.O. Box 1748  
Austin, TX 78767  
TEL: 512/854-9513  
FAX: 512/854-4808  
E-MAIL: [kevin.morse@co.travis.tx.us](mailto:kevin.morse@co.travis.tx.us)  
**TRAVIS COUNTY**

Ms. Holly C. Noelke  
Assistant City Attorney  
City of Austin Law Department  
P.O. Box 1088  
Austin, TX 78767  
TEL: 512/974-2630  
FAX: 512/974-6490  
E-MAIL: [holly.noelke@ci.austin.tx.us](mailto:holly.noelke@ci.austin.tx.us)  
**CITY OF AUSTIN**

Mr. Jim Blackburn  
Ms. Mary W. Carter  
Blackburn & Carter, P.C.  
4709 Austin St.  
Houston, TX 77004  
TEL: 713/524-1012  
FAX: 713/524-5165  
E-MAIL: [jbb@blackburncarter.com](mailto:jbb@blackburncarter.com)  
E-MAIL: [mcarter@blackburncarter.com](mailto:mcarter@blackburncarter.com)  
**NORTHEAST NEIGHBORS COALITION; MARK  
MCAFEE; MELANIE MCAFEE; ROGER JOSEPH;  
DELMER D. ROGERS; and WILLIAMS, LTD.**

# EXHIBIT A

## TJFA's SPECIFIC OBJECTIONS AND RESPONSES TO BFI's SUBPOENA DUCES TECUM (REQUEST FOR PRODUCTION)

### GENERAL OBJECTIONS TO BFI'S REQUEST FOR PRODUCTION

TJFA does not object to these request to the extent it falls within TEX. R. CIV. P. 194.2(f)(4)(A). TJFA objects to these requests as unduly burdensome, overbroad and exceeding the scope of discovery to the extent the documents requested go beyond those identified in TEX. R. CIV. P. 194.2(f)(4)(A). TJFA further objects to the requested documents to the extent they may be directed to drafts of pre-filed testimony as they are not discoverable pursuant to 30 T.A.C. § 80.151. TJFA further asserts privilege to any document requested that falls within the ambit of attorney/client or attorney work product related to this contested case hearing. TJFA further objects to the requested documents on the basis that the request was received on December 11, 2008 and only provides less than one business week to comply. TJFA asserts that a party witness is entitled to thirty (30) days to respond under the relevant rules.

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 your testimony including:
  - 1a. 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's application to expand the landfill, and this contested case hearing.

**Objection:** TJFA incorporates its General Objections to the Request for Production stated above. TJFA also objects to this request as it lacks specificity or is so vague and unclear that TJFA cannot identify the document or documents requested. The request also calls for public documents that are equally available to BFI.

- 1b. 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.

**Objection:** TJFA incorporates its General Objections to the Request for Production stated above. The request also calls for public documents that are equally available to BFI.

- 1c. Any and all documents in your custody or control concerning this contested case hearing.

**Objection:** TJFA incorporates its General Objections to the Request for Production stated above.

1d. Any and all documents in your custody or control concerning the BFI Sunset Farms Landfill.

**Objection:** TJFA incorporates its General Objections to the Request for Production stated above. The request further lacks specificity or is so vague and unclear that TJFA and the witness cannot identify the document or documents requested. TJFA further objects to the extent that this request seeks public documents that are equally available to BFI.

1e. Your complete file in this case - including but not limited to any and all of your records, correspondence (including emails), personal notes, calendars, diaries, phone logs, and any other type of document concerning any fact or opinion in relation to the BFI Sunset Farms Landfill, BFI's application to expand the landfill, and this contested case hearing.

**Objection:** TJFA incorporates its General Objections to the Request for Production stated above. The request further lacks specificity or is so vague and unclear as to time and subject matter that TJFA and the witness cannot identify the document or documents requested. TJFA further objects that this request seeks public documents that are equally available to BFI.

1f. 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.

**Objection:** TJFA incorporates the General Objections to the Request for Production stated above. Subject to these objections, TJFA will produce available documents.

1g. 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.

**Objection:** TJFA incorporates the General Objections to the Request for Production stated above. The request further lacks specificity or is so vague and unclear as to time and subject matter that TJFA and the witness cannot identify the document or documents requested. Subject to these objections and to the extent responsive documents exist, TJFA will produce the requested information.

1h. Printouts of any and all magnetic, electronic or computerized documents, information, data, database searches, recordings or 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.

**Objection:** TJFA incorporates the General Objections to the Request for Production stated above. The request further lacks specificity or is so vague and unclear as to time and

subject matter that TJFA and the witness cannot identify the document or documents requested. Subject to these objections and to the extent responsive documents exist, TJFA will produce the requested information.

- 1i. 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.

**Objection:** TJFA incorporates the General Objections to the Request for Production stated above. The request further lacks specificity or is so vague and unclear as to time and subject matter that TJFA and the witness cannot identify the document or documents requested. Subject to these objections and to the extent responsive documents exist, TJFA will produce the requested information.

- 1j. Any and all photographs, recordings, digital videos, videotapes and/or files reviewed, referred to, or relied upon by you in formulating any of your opinions or conclusions concerning this BFI Sunset Farms Landfill, BFI's application to expand the landfill, and this contested case hearing.

**Objection:** TJFA incorporates the General Objections to the Request for Production stated above. The request further lacks specificity or is so vague and unclear as to time and subject matter that TJFA and the witness cannot identify the document or documents requested. Subject to these objections and to the extent responsive documents exist, TJFA will produce the requested information.

- 1k. 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

**Objection:** TJFA incorporates the General Objections to the Request for Production stated above. The request further lacks specificity or is so vague and unclear as to time and subject matter that TJFA and the witness cannot identify the document or documents requested. Subject to these objections and to the extent responsive documents exist, TJFA will produce the requested information.

- 1l. 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 case.

**Objection:** TJFA incorporates the General Objections to the Request for Production stated above. Subject to these objections, TJFA has no documents responsive to this request.



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 thereto).

**Objection:** TJFA incorporates the General Objections to the Request for Production stated above. Subject to these objections, TJFA has no documents responsive to this request.

3. To the extent not identified in the curriculum vitae you have provided in this case, 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.

**Objection:** TJFA incorporates the General Objections to the Request for Production stated above. TJFA objects to this request to the extent it seeks creation of documents not already in existence. Subject to these objections and to the extent that responsive documents exist, TJFA will produce the requested information.

4. A bibliography identifying all papers, abstracts, governmental publications or other medical, technical, or scientific articles written or authored, in whole or in part, by you relating in any way to the subject or issues of this contested case hearing.

**Objection:** TJFA incorporates the General Objections to the Request for Production stated above. TJFA objects to this request to the extent it seeks creation of documents not already in existence. Subject to these objections and to the extent that responsive documents exist, TJFA will produce the requested information.

5. To the extent not identified in response to requests for disclosures made in this case, a list of all papers, abstracts, learned treatises, technical guidance documents, governmental publications, or other engineering technical or scientific articles or texts you will rely or claim to be authoritative in this matter.

**Objection:** TJFA incorporates the General Objections to the Request for Production stated above. TJFA objects to this request to the extent it seeks creation of documents not already in existence. Subject to these objections and to the extent that responsive documents exist, TJFA will produce the requested information.

6. Any and all documents which reflect your opinions, modeling or other work product as well as any trial, contested case hearing and/or deposition transcripts containing any testimony you have given in any other proceeding concerning an application for a municipal solid waste landfill permit or concerning compliance of such a facility that pertains in any way to issues upon which you will be providing expert opinions in this proceeding, including but not limited to site characterization, "piggyback" vertical expansion, "unstable area" location restriction, stability analysis, groundwater protection, surface water protections, landfill gas

or odor (hereinafter the “relevant issues”). This request specifically encompasses any and all pre-filed testimony prepared by or for you in such proceedings relating to the relevant issues. Without limiting the foregoing, the following specific documents or tangible things are requested:

**Objection:** TJFA incorporates the General Objections to the Request for Production stated above.

6a. Any and all reports or other documentary or electronic work product relating to project(s) for the Texas Disposal Systems Landfill and Compost Facility in Austin, Texas as relate to the issues referred in this case as well as documents and things reviewed, referred to, or relied upon by you in connection with such projects.

**Objection:** TJFA incorporates its General Objections to the Request for Production stated above. It also lacks specificity or is so vague and unclear that TJFA cannot identify the document or documents requested. TJFA objects to this request as it is not relevant to any issue in this case. Any work performed by the witness for Texas Disposal Systems landfill was site specific and as such is of limited or no value for purposes of comparison to a different site. TJFA further objects to this request that it seeks information the Administrative Law Judge previously prohibited from discovery in its November 25, 2008 ruling (Order No. 9) to the extent this request seeks same. TJFA further objects to this request to the extent that its seeks confidential or proprietary business information regarding a non-party to these proceeding through this witness.

6b. Any and all transcripts of testimony given by you either in deposition or live testimony in any contested case hearing or trial related to the application for permit for the Texas Disposal Systems Landfill and Compost Facility as referenced in item no. 7[sic]a above.

**Objection:** TJFA incorporates its General Objections to the Request for Production stated above. It also lacks specificity or is so vague and unclear that TJFA cannot identify the document or documents requested. TJFA objects to this request as it is not relevant to any issue in this case. Any work performed by the witness for Texas Disposal Systems landfill was site specific and as such is of limited or no value for purposes of comparison to a different site. TJFA further objects that this request seeks public documents that are equally available to BFI.

6c. Any and all reports or other documentary or electronic work product relating to project(s) involving the Waste Management’s Skyline Landfill in Dallas/Ellis Counties, Texas as relate to the issues referred in this case; as well as documents and things reviewed, referred to or relied upon by you in connection with such projects;

**Objection:** TJFA incorporates its General Objections to the Request for Production stated above. It also lacks specificity or is so vague and unclear that TJFA cannot identify the

document or documents requested. TJFA objects to this request as these projects are approximately or over ten (10) years old and of limited or no value in this case. TJFA further objects to the extent that this request seeks public documents that are equally available to BFI. TJFA further objects to this request as Mr. Paul Gosselink's firm as attorney of record for each of these proceedings and has, or should have, any requested records in his possession.

6d. Any and all transcripts of testimony given by you either in deposition or live testimony in any contested case hearing or trial related to the application for permit for Waste Management's Skyline Landfill as referenced in item no. 7[sic]c above.

**Objection:** TJFA incorporates its General Objections to the Request for Production stated above. It also lacks specificity or is so vague and unclear that TJFA cannot identify the document or documents requested. TJFA objects to this request as this project is over ten (10) years old and of limited or no value in this case. TJFA further objects to the extent that this request seeks public documents that are equally available to BFI. TJFA further objects to this request as Mr. Paul Gosselink's firm was attorney of record for this proceeding and has, or should have, any requested records in his possession.

6e. Any and all reports or other documentary or electronic work product relating to project(s) involving the North Texas Municipal Water District's Maxwell Creek Landfill in Collin County, Texas, as relate to the issues referred in this case; as well as documents and things reviewed, referred to, or relied upon by you in connection with such projects.

**Objection:** TJFA incorporates its General Objections to the Request for Production stated above. It also lacks specificity or is so vague and unclear that TJFA cannot identify the document or documents requested. TJFA objects to this request as this project is over ten (10) years old and of limited or no value in this case. TJFA further objects to the extent that this request seeks public documents that are equally available to BFI. TJFA further objects to this request as Mr. Paul Gosselink's firm was attorney of record for this proceeding and has, or should have, any requested records in his possession.

6f. Any and all transcripts of testimony given by you either in deposition or live testimony in any contested case hearing or trial related to the application for permit for the North Texas Municipal Water District's Maxwell Creek Landfill as referenced in item No. 7[sic]e above.

**Objection:** TJFA incorporates its General Objections to the Request for Production stated above. It also lacks specificity or is so vague and unclear that TJFA cannot identify the document or documents requested. TJFA objects to this request as this project is over ten (10) years old and of limited or no value in this case. TJFA further objects to the extent that this request seeks public documents that are equally available to BFI. TJFA further objects to this request as Mr. Paul Gosselink's firm was attorney

of record for this proceeding and has, or should have, any requested records in his possession.

- 6g. Any and all reports or other documentary or electronic work product relating to project(s) involving North Texas Municipal Water District's McKinney Landfill in Collin County, Texas as relate to the issues referred in this case; as well as documents and things reviewed, referred to, or relied upon by you in connection with such projects.

**Objection:** TJFA incorporates its General Objections to the Request for Production stated above. It also lacks specificity or is so vague and unclear that TJFA cannot identify the document or documents requested. TJFA further objects to the extent that this request seeks public documents that are equally available to BFI. TJFA further objects to this request as Mr. Paul Gosselink's firm was attorney of record for this proceeding and has, or should have, any requested records in his possession.

- 6h. Any and all transcripts of testimony given by your either in deposition or live testimony in any contested case hearing or trial related to the application for permit for the North Texas Municipal Water District's McKinney Landfill as referenced in No. 7[sic]g above.

**Objection:** TJFA incorporates its General Objections to the Request for Production stated above. It also lacks specificity or is so vague and unclear that TJFA cannot identify the document or documents requested. TJFA objects to this request as this project is over ten (10) years old and of limited or no value in this case. TJFA further objects to the extent that this request seeks public documents that are equally available to BFI. TJFA further objects to this request as Mr. Paul Gosselink's firm was attorney of record for this proceeding and has, or should have, any requested records in his possession.

- 6i. Any and all reports or other documentary or electronic work product relating to project(s) involving the North Texas Municipal Water District's 121 Regional Disposal Facility in Collin County, Texas as relate to the issues referred in this case; as well as documents and things reviewed, referred to, or relied upon by you in connection with such projects.

**Objection:** TJFA incorporates its General Objections to the Request for Production stated above. It also lacks specificity or is so vague and unclear that TJFA cannot identify the document or documents requested. TJFA further objects to the extent that this request seeks public documents that are equally available to BFI. TJFA further objects to this request as Mr. Paul Gosselink's firm was attorney of record for this proceeding and has, or should have, any requested records in his possession.

- 6j. Any and all transcripts of testimony given by your either in deposition or live testimony in any contested case hearing or trial related to the application for permit for the North Texas Municipal Water District's 121 Regional Disposal Facility as referenced in item No. 7[sic]i above.

**Objection:** TJFA incorporates its General Objections to the Request for Production stated above. It also lacks specificity or is so vague and unclear that TJFA cannot identify the document or documents requested. TJFA further objects to the extent that this request seeks public documents that are equally available to BFI. TJFA further objects to this request as Mr. Paul Gosselink's firm was attorney of record for this proceeding and has, or should have, any requested records in his possession.

6k. Any and all reports or other documentary or electronic work product relating to project(s) involving the Ellis County Disposal Landfill in Ellis County, Texas, as relate to the issues referred in this case; as well as documents and things reviewed, referred to, or relied upon by you in connection with such projects.

**Objection:** TJFA incorporates its General Objections to the Request for Production stated above. It also lacks specificity or is so vague and unclear that TJFA cannot identify the document or documents requested. TJFA objects to this request as this project is approximately (10) years old and of limited or no value in this case. TJFA further objects to the extent that this request seeks public documents that are equally available to BFI. TJFA further objects to this request as Mr. Paul Gosselink's firm was attorney of record for this proceeding and has, or should have, any requested records in his possession.

6l. Any and all transcripts of testimony given by you either in deposition or live testimony in any contested case hearing or trial related to the application for permit for the Ellis County Disposal Landfill as referenced in item No. 7[sic]k above.

**Objection:** TJFA incorporates its General Objections to the Request for Production stated above. It also lacks specificity or is so vague and unclear that TJFA cannot identify the document or documents requested. TJFA objects to this request as this project is approximately (10) years old and of limited or no value in this case. TJFA further objects to the extent that this request seeks public documents that are equally available to BFI. TJFA further objects to this request as Mr. Paul Gosselink's firm was attorney of record for this proceeding and has, or should have, any requested records in his possession.