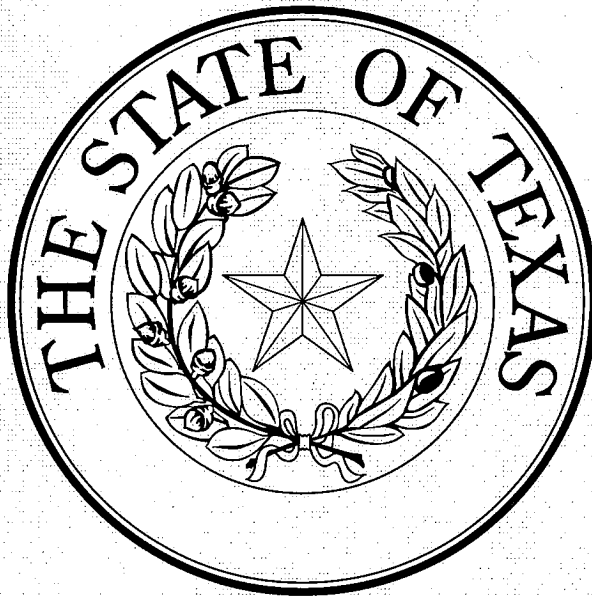


SOAH DOCKET NO. 582-08-2178
TCEQ DOCKET NO. 2007-1774-MSW

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

THE EXECUTIVE DIRECTOR'S DIRECT TESTIMONY OF
ARTEN J. AVAKIAN, P.G.
GEOSCIENTIST III



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

NOVEMBER 13, 2008

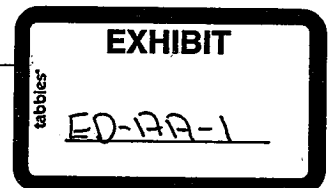


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1 **I. INTRODUCTION AND STAFF MEMBER BACKGROUND**

2
3 Q: Please state your name for the record.

4
5 A: My name is Arten John Avakian. I sign documents as Arten J. Avakian.

6
7 Q: How are you employed?

8
9 A: I am employed with the Texas Commission on Environmental Quality (TCEQ) as a
10 Geoscientist III, on MSW Permit Team II in the Municipal Solid Waste Permits Section,
11 Waste Permits Division.

12
13 Q: How long have you been employed by the TCEQ in this capacity?

14
15 A: I have been employed by the TCEQ and its predecessor agency (the Texas Natural Resource
16 Conservation Commission, or TNRCC) as a Geoscientist or Geologist since February 1995.
17 From May 1994 to January 1995, I was employed as an Environmental Quality Specialist in
18 the former Agriculture and Rural Assistance Division of the TNRCC.

19
20 Q: How were you employed prior to joining the TCEQ?

21
22 A: Before joining the TCEQ, I was employed by The University of Texas at Austin (UT),
23 Department of Geological Sciences as a Teaching Assistant from August 1981 to July 1984,
24 then by the UT Bureau of Economic Geology as a Research Assistant from June 1986 to
25 March 1988 and January 1989 to May 1990, and as a Research Scientist Associate, from
26 June 1990 to April 1994.

27
28 Q: What are your job responsibilities at the TCEQ?

29
30 A: I review and evaluate: permit applications, modifications, and other authorizations;
31 groundwater and landfill gas monitoring and corrective action plans and reports; final cover
32 designs, and other aspects of the design, operation, and monitoring of MSW facilities in
33 Texas for compliance with applicable regulations. I also provide technical assistance and
34 consultation to other staff members, MSW facility owners and operators, consultants, and
35 interested persons.

36
37 Q: Are you licensed to practice geology in the State of Texas?

38
39 A: Yes. I am a Texas Licensed Professional Geoscientist, in the discipline of geology. My
40 license number is 3047.

42 Q: Have you prepared a resume that reflects your professional career?

43
44 A: Yes. My resume is attached to this Prefiled Testimony as Exhibit ED-AA-2 and this Prefiled
45 Testimony is marked as Exhibit ED-AA-1.

46
47 Q: What was your role in the review of this Application?

48
49 A: I was the project manager and geologist for this Application. I performed a technical review
50 of materials in the Application that relate to geology, hydrogeology, groundwater monitoring,
51 landfill gas, and parts other than those reviewed by the project engineer/hydrologist. During
52 the initial technical review (culminating in the TCEQ issuance of the first Notice of
53 Technical Deficiency (NOD), dated March 15, 2006), I was the project geologist only. The
54 project manager at that time was Ms. Karen Cleveland, P.E., who left the TCEQ shortly after
55 the first NOD was issued. I then became project manager and geologist, and Mr. Matthew
56 Udenenwu became the project engineer/hydrologist. Ms. Cleveland later returned to the
57 MSW Permits Section of the TCEQ, but has not been assigned to or worked on the project
58 since her return. I will provide additional details regarding my role in the review of this
59 Application later in this Prefiled Testimony, in Section IV (Technical Review of the
60 Application), Part A (Division of Responsibility).

61
62 Q: Have you reviewed any other MSW applications similar to that filed by BFI?

63
64 A: Yes. I performed a similar technical review of materials relating to geology, hydrogeology,
65 groundwater monitoring, and landfill gas in the application by Waste Management of Texas,
66 Inc., for proposed MSW Permit No. 249D, on the site immediately south of the BFI site that
67 is the subject of this testimony. In my past ten years of employment in the MSW Permits
68 Section of the TCEQ, I have also reviewed approximately 130 permit modifications relating
69 to various aspects of the design, operation, and monitoring of MSW facilities. I have
70 reviewed approximately 500 groundwater monitoring and landfill gas monitoring and
71 corrective action plans and reports.

72
73
74 **II. RESOURCES USED DURING THE APPLICATION REVIEW**

75
76 Q: Did you have training that assists you in conducting the review of MSW landfill permit
77 applications such as the BFI Application?

78
79 A: Yes. A list of training and continuing education courses which I have taken since 1994 is
80 included in my resume which is attached as Exhibit ED-AA-2.

81
82 Q: What rules did you rely on in your review of the Application?

83
84 A. The Executive Director declared the Application Administratively Complete on January 31,
85 2006. My review of the Application was therefore conducted following the MSW Rules in
86 Title 30 Texas Administrative Code (30 TAC), Chapter 330, as they existed at that time,
87 prior to the 2006 Revisions to Chapter 330 (which became effective March 27, 2006).

88
89 Q. What guidance or other documents did you rely on in your review of the Application?

90
91 A. I consulted the following guidance documents prepared by the MSW Permits Section for use
92 by staff and/or applicants:

93 *MSW Permit Application Review Process, April 26, 2005*

94 *Waste Permits Division 5-Year Compliance History Review Procedures, March 12, 2004*

95 *Guidelines for Preparing a Landfill Gas Management Plan*

96 *Methane Monitoring Handbook*

97 *Landfill Gas Reporting and Corrective Action Procedures for Owners and Operators of*
98 *Municipal Solid Waste Landfills*

99 *TCEQ RG-420, Guide for Preparing Site Operating Plans for Municipal Solid Waste*
100 *Facilities*

101 *General Notice of Deficiency for Site Operating Plans*

102

103 **III. GENERAL PROCEDURES FOR PROCESSING AN MSW APPLICATION**

104

105 Q: Are you familiar with the manner in which the MSW Permits Section processes municipal
106 solid waste permit amendment applications?

107

108 A: Yes.

109

110 Q: Describe that process from the point at which an application is received to where we are
111 today at the Contested Case Hearing.

112

113 A: When the MSW Permits Section receives a permit amendment application, it goes through an
114 administrative review, pursuant to 30 TAC §330.51 (relating to Permit Application for
115 Municipal Solid Waste Facilities), to determine whether the applicant has provided all the
116 information and attachments required by the MSW rules. The administrative review ensures
117 that an administratively complete application is provided for technical review. The Permit
118 Administrative Review (PAR) Team of the Waste Permits Division works with the applicant
119 to cure any administrative deficiencies in the application, after which the Executive Director
120 declares the application Administratively Complete. At this time, a Notice of Receipt of
121 Application and Intent to Obtain a Permit Amendment is provided and published in local

122 area newspapers and mailed to affected landowners and other persons on a mailing list
123 maintained by the TCEQ's Office of the Chief Clerk.
124

125 After the application is determined by the Executive Director to be Administratively
126 Complete, the Executive Director commences a technical review as necessary and
127 appropriate. The application is assigned to a team of staff members, with each person
128 reviewing material within his or her area of expertise. The objective of technical review is to
129 determine whether the contents of the application comply with all applicable regulations. If
130 the application is found to be technically deficient in any aspect, the applicant is notified in
131 writing, through a Notice of Technical Deficiency (NOD) letter, and is requested to respond
132 on the deficient issues and provide necessary additional technical information for a complete
133 application.
134

135 After one or more cycles of NOD letters and responses, if the application is determined to
136 meet all the applicable requirements of the TCEQ Rules, it is declared Technically Complete
137 and a Technical Summary, Draft Permit and Compliance History are prepared. At this time,
138 a Notice of Application and Preliminary Decision (NAPD) is provided and published in local
139 area newspapers and mailed to affected landowners and other persons on a mailing list
140 maintained by the TCEQ's Office of the Chief Clerk. Throughout the review period and
141 after the publication of the NAPD, members of the public may submit written comments
142 until the comment period deadline stated in the NAPD elapses. If a public meeting on the
143 application is held after publication of the NAPD, the public comment period is
144 automatically extended to the close of any public meeting, pursuant to 30 TAC §55.152(b).
145

146 At any time during the technical review period, the Executive Director will prepare and mail
147 an Inter-Agency Review package consisting of a summary of the contents of the application
148 (Application Summary) and a letter addressed to appropriate federal, state, and local agencies
149 and/or officials pursuant to 30 TAC §330.11 (relating to Relationships with Other
150 Governmental Entities), informing them of the proposed activity and requesting their
151 comments, if any. The agencies have 30 days from the date of the inter-agency review letter
152 to respond in writing to the Executive Director.
153

154 A public meeting will be held at the request of a member of the legislature who represents
155 the general area in which the facility is proposed to be located or if the Executive Director
156 determines that there is substantial public interest in the proposed facility. The Executive
157 Director usually receives oral and written comments from members of the public at a public
158 meeting. The Executive Director prepares a formal Response to Comments (RTC), to
159 respond to all timely received public comments concerning the application received from
160 members of the public. Once the RTC is filed, pursuant to 30 TAC §55.201(a), the public
161 has 30 days to request a contested case hearing. Any timely hearing requests are then
162 evaluated by the Commissioners and issues are refined at the Commissioner's agenda for

163 referral to SOAH.

164
165 Q: Was the general process you have just described followed to your knowledge for this
166 Application?

167
168 A. Yes.

169
170 Q. Did you develop any special tools to assist you in your technical review?

171
172 A. Yes. I used a checklist in my review to ensure that the Application addressed all aspects of
173 the applicable regulations in a manner that satisfies rule requirements. The checklist is a
174 chart prepared by the MSW Permits Section of the TCEQ. It aids in the administrative and
175 technical review and evaluation of Type I landfill applications to ensure consistency and
176 completeness in the review process. The checklist briefly describes all the regulatory items,
177 along with the corresponding rule citations, that need to be addressed in a MSW Type I
178 landfill application (for a new permit or permit amendment). As my review progressed, I
179 used the checkboxes provided within the checklist to check off each required item BFI
180 submitted (or did not submit), and to designate whether that item was technically adequate
181 (or technically inadequate) as well as to indicate which items are not applicable. Where I
182 checked "yes" for both "submitted" and "technically adequate" for a listed item, the BFI
183 Application complied with rule requirements.

184
185 **IV. REVIEW OF THE APPLICATION**

186
187 **A. Division of Responsibility**

188
189 Q. What was your responsibility in the technical review of this Application?

190
191 A: I was the project manager and geologist for this Application. I performed a technical review
192 of materials in the Application that relate to geology, hydrogeology, groundwater monitoring,
193 and landfill gas, and parts of the Application other than those reviewed by the project
194 engineer/hydrologist. I reviewed the portions of Parts I and II of the Application that were
195 not related to engineering/hydrology, the narrative of Part III (the Site Development Plan, or
196 SDP), certain attachments to Part III, and Part IV (the Site Operating Plan, or SOP). There
197 were some portions of Parts I, II, III, and IV of the Application that the project
198 engineer/hydrologist and I both reviewed. The attachments to Part III which I reviewed were:

199
200 Attachment 4, Geology Report (excluding Geotechnical Report section)

201 Attachment 5, Groundwater Characterization Report

202 Attachment 11, Groundwater Sampling and Analysis Plan

203 Attachment 14, Landfill Gas Management Plan
204

205 I prepared the second Notice of Technical Deficiency (NOD) (the first NOD was prepared by
206 the former project manager, Ms. Karen Cleveland), and supplementary NODs. I will identify
207 the NODs more completely in the next part of this Prefiled Testimony. I also prepared the
208 Draft Permit and Technical Summary, and the "Technically Complete Package" which
209 included the letter that declared the application Technically Complete and transmitted the
210 aforementioned documents and the Compliance History to the Applicant. The TCEQ Office
211 of the Chief Clerk provided instructions to the Applicant for issuing the Notice of
212 Application and Preliminary Decision (NAPD). In addition, I prepared the "Draft Permit
213 Package" for filing in the Office of the Chief Clerk. The Draft Permit Package included the
214 items in the Technically Complete Package, along with the Applicant's Part A Application
215 Form, the Landowners List and Map from the Application, information regarding the NAPD,
216 and other administrative documents.
217

218 I also prepared the Response to Comments (attached as Exhibit ED-AA-3) with assistance
219 from the project engineer/hydrologist, addressing the comments TCEQ received on the
220 application (the opportunity for public comment was announced in the NAPD).
221

222 **B. Application Review History and Draft Permit**
223

224 Q. When was the Application received?
225

226 A. The Executive Director received the Application on January 20, 2006.
227

228 Q: Who conducted the administrative review of the Application?
229

230 A: Ms. Kimberly Sladek, formerly of the TCEQ Waste Permits Division (WPD), Administrative
231 Review Group conducted the administrative review.
232

233 Q. What is the date the Application was declared Administratively Complete?
234

235 A. The Application was declared Administratively Complete on January 31, 2006, as
236 documented in a letter of the same date to the Applicant, signed by Mr. Robert Brydson (now
237 retired), former supervisor of the WPD Administrative Review Group.
238

239 Q. What is the date that notice of the Application was first provided to the public?
240

241 A. The TCEQ Office of the Chief Clerk (OCC) mailed a Notice of Receipt of Application and
242 Intent to Obtain a Municipal Solid Waste Permit Amendment (NORI) on February 6, 2006.
243 The OCC then mailed an amended NORI on February 22, 2006. BFI published the amended

244 notice in English in the *Austin American-Statesman* on February 27, 2006, and in Spanish in
245 *El Mundo* on March 2, 2006.

246

247 Q. When did the technical review of the Application begin?

248

249 A. The technical review of the Application began immediately after the Application was
250 declared Administratively Complete.

251

252 Q. Who are the TCEQ staff members that made up the technical review team?

253

254 A. During the initial review of the Application and through the issuance of the first Notice of
255 Technical Deficiency (NOD) (which I will describe in more detail later in this testimony) I
256 was the project geologist and Ms. Karen Cleveland of the MSW Permits Section was the
257 project manager and project engineer. Ms. Cleveland left the TCEQ shortly after the first
258 NOD was issued, at which time I assumed the role of project manager for the Application, in
259 addition to my role as project geologist. Mr. Matthew Udenenwu of the MSW Permits
260 Section assumed the role of project engineer.

261

262 Q. Describe the method you used to conduct the technical review of the Application.

263

264 A: I reviewed the parts of the Application assigned to me to determine if the technical
265 requirements in 30 TAC Chapter 330 for a municipal solid waste permit amendment
266 application were adequately addressed. When it appeared that an item required by the rule
267 had not been adequately addressed or had been omitted, I prepared a comment to include in a
268 Notice of Technical Deficiency requesting additional information from the Applicant.

269

270 Q. What is the technical review history of the Application, up to and including the point at
271 which it was declared Technically Complete?

272

273 A: Ms. Cleveland (the former project manager for the TCEQ technical review of this
274 Application) and I conducted the first technical review of the Application, and prepared a
275 number of comments. Ms. Cleveland compiled our comments into the first Notice of
276 Technical Deficiency (NOD), which was mailed to the Applicant on March 21, 2007.
277 The Executive Director received revisions to the Application on May 8, 2006, in response to
278 the first NOD. Mr. Udenenwu and I conducted a technical review of the revised Application,
279 and mailed a second NOD to the Applicant on July 24, 2006.

280

281 The Applicant met with Mr. Udenenwu and me on August 7, 2006, to discuss items in the
282 second NOD, and then provided further revisions to the Application, which were received by
283 the Executive Director on August 23, 2006. Mr. Udenenwu and I reviewed the revisions to

284 the Application, and provided supplemental comments to the Applicant by E-mail on
285 October 12, 2006.

286
287 The Applicant met with Mr. Udenenwu and me on October 25, 2006, to discuss items in the
288 supplemental comments, and then provided further revisions to the Application, which were
289 received by the Executive Director on November 10, 2006. Mr. Udenenwu and I reviewed
290 the revisions to the Application, and provided further supplemental comments to the
291 Applicant by E-mail on December 21, 2006. The Executive Director received additional
292 revisions to the Application on February 5, 2007, February 12, 2007, and March 16, 2007, in
293 response to the further supplemental comments E-mailed to the Applicant on December 21,
294 2006, and to address several minor discrepancies and other items recognized by the
295 Applicant. Mr. Udenenwu and I determined that the revised application with these last
296 revisions adequately addressed all of our technical review comments and met the
297 requirements in the MSW rules.

298
299 I then prepared a Draft Permit (attached as Exhibit ED-AA-4) and a Technical Summary, as
300 well as a “technically complete letter” to the Applicant advising that the Application was
301 technically complete as of the date of the letter. At the same time, I obtained a Compliance
302 History report (attached as Exhibit ED-AA-5) for the BFI Sunset Farms Landfill from the
303 Division Support Team of the Waste Permits Division. The letter, along with the Draft
304 Permit, Technical Summary, and Compliance History together constitute the “Technically
305 Complete Package” for the application. The technically complete letter was signed by Dr.
306 Richard C. Carmichael, Ph.D., P.E., Manager, MSW Permits Section, and was mailed to the
307 Applicant on March 21, 2007. The Technically Complete Package is included as a section of
308 the “Draft Permit Package,” which I will describe in more detail in the answer to the next
309 question.

310
311 Q. What procedural steps occurred next, after the Application was declared Technically
312 Complete?

313
314 After preparing and mailing the Technically Complete Package to the Applicant, I prepared
315 the Draft Permit Package for filing in the TCEQ Office of the Chief Clerk (OCC). The Draft
316 Permit Package includes all of the items in the Technically Complete Package, along with the
317 Applicant’s Part A Application Form, the Landowners List and Map from the Application,
318 information regarding the Notice of Application and Preliminary Decision for a Municipal
319 Solid Waste Permit (NAPD), and other administrative documents.

320
321 Using the information provided in the Draft Permit Package, the OCC provided instructions
322 to the Applicant for issuing the NAPD. The OCC mailed the NAPD on March 29, 2007. The
323 OCC then mailed a revised notice titled “Amended Notice of Application and Preliminary
324 Decision and Notice of Public Meeting for Municipal Solid Waste Permit” on May 7, 2007.

325 BFI published the amended notice on April 26, 2007, May 3, 2007, May 10, 2007, and
326 May 17, 2007, in English in the Austin American-Statesman and on the same dates in
327 Spanish in El Mundo. The amended NAPD advised interested persons of the opportunity to
328 submit public comments on the Application, and that a public meeting would be held on May
329 24, 2007.

330
331 The Executive Director held a public meeting on the Application on May 24, 2007, in
332 Manor, Texas. According to the amended NAPD, the comment period was to close on
333 June 18, 2007, but the Executive Director extended the comment period to close on June 29,
334 2007.

335
336 Q. What procedural steps occurred next, after the public meeting?
337
338 The TCEQ began to receive comments on the Application by mail in early April 2007. The
339 TCEQ received additional public comments at the meeting and continued to receive public
340 comments after the public meeting. After the comment period came to its close on June 29,
341 2008, I reviewed the comments and prepared a formal Response to Comments (RTC) to
342 respond to all timely received public comments concerning the proposed Application and/or
343 facility received from members of the public. Mr. Udenenwu assisted me in the preparation
344 of some of the responses. The RTC was mailed October 5, 2007
345

346 Q. Did you make any changes to the Draft Permit after considering the public comments on the
347 Application?
348

349 A. Yes. I made several changes to the Draft Permit to clarify certain details, and made several
350 corrections. Specifically, I made the following changes: (1) revised the cover page of the
351 draft permit to identify the Applicant, BFI Waste Systems of North America, Inc., as the sole
352 permittee, and to identify BFI Waste Systems of North America, Inc., and Giles Holdings,
353 L.P. together as the property owners; (2) revised Section III.D to represent accurately the
354 Applicant's information regarding waste acceptance rates; (3) revised Section III.E to correct
355 the number representing the total waste disposal capacity of the landfill for the proposed
356 amendment; (4) revised Section VIII.I to delete the reference to alternative daily cover;
357 (5) added a Special Provision specifying that all waste receipt shall cease on or before
358 November 1, 2015; (6) added a Special Provision to prohibit leachate and gas condensate
359 recirculation; and (7) added a Special Provision to clarify that the permittee is required to
360 repair eroded cover within 5 days of detection unless the Commission's regional office
361 approves otherwise. The revised Draft Permit was filed in the TCEQ's OCC on October 23,
362 2007.
363

364 Q. What procedural steps occurred next, after the RTC was mailed?
365

- 366 A. After the RTC was mailed, the public had 30 days to request a contested case hearing. The
367 TCEQ received a number of hearing requests, which were reviewed by the Executive
368 Director's Environmental Law Division, and responded to in the Executive Director's
369 Response to Hearing Requests, which was filed in the OCC on February 1, 2008. The
370 Commission considered the hearing requests at its Agenda on February 27, 2008. The
371 Commission voted to refer the Application to the State Office of Administrative Hearings
372 (SOAH) for a contested case hearing. In an Interim Order issued February 29, 2008, the
373 Commission identified 26 issues to be referred to SOAH for a contested case hearing. I will
374 discuss these issues in the next part of this Prefiled Testimony.
375
- 376 Q. Did you make any other changes to the Draft Permit, since filing the revised Draft Permit in
377 the TCEQ's OCC on October 23, 2007?
378
- 379 A. Yes. I made one more change to the Draft Permit to reflect the transfer of the Application at
380 the request of the Applicant. The Applicant had requested to transfer the existing MSW
381 Permit No. 1447 and the Application for MSW Permit No. 1447A from "BFI Waste Systems
382 of North America, Inc." to "BFI Waste Systems of North America, LLC." The transfer of the
383 permit was granted on April 3, 2008. The Applicant also requested transfer of the
384 Application under 30 TAC §281.23. That rule requires an additional notice which was
385 provided by Applicant mailing notice on April 11, 2008. I then modified the cover page of
386 the Draft Permit, changing "BFI Waste Systems of North America, Inc." to "BFI Waste
387 Systems of North America, LLC" where the name appeared in the description of the
388 Permittee block and in the description of the Property Owner. This revised Draft Permit was
389 filed in the TCEQ's OCC on May 1, 2008.
390
- 391 Q. Was any other notice provided for transferring the Application?
392
- 393 A. Yes. In addition to the notice of transfer of the Application under 30 TAC §281.23 which I
394 just mentioned, the first sentence of the Notice of Hearing issued April 3, 2008, which was
395 mailed and published, named the Applicant as "BFI Waste Systems of North America, LLC,
396 (formerly BFI Waste Systems of North America, Inc.)."
397
- 398 Q. Have any changes been made to the Application after it was declared Technically Complete
399 on March 21, 2007?
400
- 401 A. Yes. As I prepared the Response to Public Comments, I reviewed parts of the Application
402 and while doing so noticed items potentially needing cleanup. I compiled a list of these
403 items and E-mailed them to the Applicant on September 10, 2007. The Applicant met with
404 Mr. Udenenwu and me on April 29, 2008, to discuss the cleanup changes to the Application
405 and the changes necessary to reflect the transfer of the Application. The Applicant submitted
406 a summary of the changes on May 13, 2008, under a cover letter dated May 12, 2008. The

407 Executive Director agreed that the proposed changes adequately addressed the cleanup items,
408 and that the changes were minor and would not require any additional notice. Those changes
409 were incorporated into the Bates-stamped copy of the Application that was provided to the
410 parties by the Applicant after the preliminary hearing.

411
412 Q. Please describe the types of cleanup changes made to the Application in the May 12, 2008
413 package.

414
415 A. Those revisions were minor typographical changes, formatting irregularities, clarification of
416 identification of other permits, and consistency of revisions that had been requested for one
417 section of the Application but had not been noticed in others.

418
419 Q. Would any of those revisions have amounted to a major amendment of the Application as
420 that term is used in 30 TAC §305.62(c), which could have required re-notice and restarting of
421 technical review?

422
423 A. No. All of the revisions were minor, and did not affect the design or operation of the facility
424 and therefore were not major amendments under 30 TAC §305.62. I may not have requested
425 that these changes be made at the time, if it had not been for the need to make changes to
426 identify the Applicant to reflect the transfer of the Application from "BFI Waste Systems of
427 North America, Inc." to "BFI Waste Systems of North America, LLC."

428
429 **V. DISCUSSION OF ISSUES REFERRED FOR HEARING**

430
431 Q: How have you organized this section of your Prefiled Testimony?

432
433 A. I have organized this section of my Prefiled Testimony in the same order as the 26 issues
434 identified as issues A through Z in the Interim Order from the Commission, issued
435 February 29, 2008, that referred the Application to SOAH for this contested case hearing.

436
437 **A. Issue A – Natural Drainage Patterns**

438
439 Q. What is the first issue in the list of 26 issues referred to SOAH by the Commission?

440
441 A. The first issue the Commission referred to SOAH is identified as issue A and relates to
442 "Whether the application demonstrates that natural drainage patterns will not be significantly
443 altered by the expansion, in accordance with agency rules, including 30 TAC
444 §330.56(f)(A)(iv)."

445
446 Q. Did you review the parts of the Application that address this issue?
447

448 A. No. The parts of the Application regarding natural drainage patterns were reviewed by the
449 project engineer, Mr. Udenenwu, who will address the issue in his Prefiled Testimony.
450

451 **B. Issue B – Control of Disease Vectors**

452
453 **1. Introduction to Issue B**
454

455 Q. What is the second issue in the list of 26 issues referred to SOAH by the Commission?
456

457 A. Issue B is “Whether the application includes adequate provisions to control disease vectors,
458 in compliance with agency rules, including 30 TAC §330.126 and 330.133(a).”
459

460 Q. Did you review the parts of the Application that address this issue?
461

462 A. Yes.
463

464 Q. What are the applicable rules regarding control of disease vectors?
465

466 A. Rule 30 TAC §330.126 (relating to Disease Vector Control) requires the site operator to
467 control onsite populations of disease vectors using proper compaction and daily cover
468 procedures, and the use of other approved methods when needed. The rule also requires that
469 the general methods and performance-based frequencies for disease vector control be
470 specified in the SOP. The related applicable rule regarding compaction is 30 TAC §330.132
471 (relating to Compaction) which requires that solid waste be spread and compacted by
472 repeated passages of compaction equipment such that each layer of solid waste is thoroughly
473 compacted, and that the methods for compaction be specified in the SOP. The related rule
474 regarding daily cover procedures is 30 TAC §330.133(a) (relating to Landfill Cover, Daily
475 Cover), which requires that waste be covered with six inches of well-compacted earthen
476 material not previously mixed with garbage, rubbish, or other solid waste at the end of each
477 operating day to control disease vectors, fires, odors, windblown litter or waste, and
478 scavenging, unless the Executive Director requires a more frequent interval. Landfills that
479 operate on a 24-hour basis must cover the working face or active disposal area at least once
480 every 24 hours.
481

482 **2. Application Materials Relating to Issue B**
483

484 Q. What parts of the Application address control of disease vectors?
485

486 A. The Applicant specifies procedures for control of disease vectors in Section 16 of the SOP in
487 Part IV of the Application. Section 16 indicates that “The primary means of control will be
488 to prevent, inhibit, or deter vectors from coming into contact with deposited waste through

489 proper waste compaction and daily cover application.” Waste compaction is described in
490 Section 22 of the SOP, and daily cover application is described in Section 23.1 of the SOP.

491
492 **3. Technical Review Conclusion Relating to Issue B**

493
494 Q. Do the procedures specified in the Application for control of disease vectors meet the
495 requirements of the applicable rules?

496
497 A. Yes. Section 16 of the SOP specifies the procedures BFI will use for control of disease
498 vectors, as well as provisions for semi-annual inspections by a licensed commercial pesticide
499 applicator, with further procedures to follow if additional vector controls besides compaction
500 and daily cover are needed. Section 22 of the SOP specifies the procedures for waste
501 compaction, and Section 23.1 specifies the procedures for daily cover application. All three
502 aforementioned sections of the SOP specify procedures that conform to the applicable rules,
503 and the SOP itself is sealed by Mr. Ray L. Shull, P.E., Texas Licensed Professional Engineer
504 No. 47759, in conformance with 30 TAC §330.51(d) (relating to Permit Application for
505 Municipal Solid Waste Facilities, Preparation).

506
507 **C. Protection of Groundwater and Surface Water**

508
509 **1. Introduction to Issue C**

510
511 Q. What is the third issue in the list of issues referred to SOAH by the Commission?

512
513 A. Issue C is “Whether the application proposes adequate protection of ground water [*sic*] and
514 surface water, in compliance with agency rules, including 30 TAC §§330.55(b)(1), 330.56(f),
515 330.134, and 330.200-330.206.”

516
517 Q. Did you review any parts of the Application that address this issue?

518
519 A. Yes. I reviewed the part of the Application that addresses the requirements of 30 TAC
520 §330.134 (relating to Poned Water). The parts of the Application that address the other
521 cited rules regarding protection of groundwater and surface water were reviewed by the
522 project engineer, Mr. Udenenwu, who will address those aspects of this issue in his Prefiled
523 Testimony.

524
525 Q. What are the requirements of 30 TAC §330.134 regarding ponded water?

526
527 A. Rule 30 TAC §330.134 requires that facilities prevent ponding of water over waste. The rule
528 further requires that facilities eliminate any ponded water that occurs and fill in and regrade
529 the area in which the ponding occurred within seven days. In addition, a facility must

530 provide a ponding prevention plan in the SOP that identifies techniques to be used at the
531 landfill to prevent the ponding of water over waste, an inspection schedule to identify
532 potential ponding sites, corrective actions to remove ponded water, and general instructions
533 to manage water that has been in contact with waste.

534

535 2. Application Materials Relating to Part of Issue C

536

537 Q. What parts of the Application address the requirements of 30 TAC §330.134?
538

539 A. The Applicant specifies procedures to prevent ponded water in Section 24 of the SOP.
540 Section 24 also references Attachment 15, the Leachate and Contaminated Water Plan in Part
541 III of the Application, for procedures for managing water that has been in contact with waste.
542

543 3. Technical Review Conclusion Relating to Part of Issue C

544

545 Q. Do the procedures specified in Section 24 of the SOP to prevent and manage ponded water
546 meet the requirements of the applicable rules?
547

548 A. Yes. Section 24 of the SOP specifies that waste fill areas and cover will be sloped to prevent
549 ponding, and that the facility will eliminate any ponding that occurs and fill and regrade the
550 area in which the ponding occurred within seven days of the occurrence. Section 24 also
551 provides an inspection schedule to identify potential ponding sites and acknowledges that the
552 facility will manage any ponded water that has been in contact with waste, leachate, or waste-
553 contaminated soils according to Attachment 15, the Leachate and Contaminated Water Plan.
554 The provisions in Section 24 of the SOP specify procedures that conform to the applicable
555 rule, and the SOP itself is sealed by Mr. Ray L. Shull, P.E., Texas Licensed Professional
556 Engineer No. 47759, in conformance with 30 TAC §330.51(d).
557

558 The adequacy of the Leachate and Contaminated Water Plan is a separate issue in this
559 hearing -- Issue Z -- which will be addressed by the project engineer, Mr. Udenenwu in his
560 Prefiled Testimony.
561

562 D. Issue D – Control of Odors

563

564 1. Introduction to Issue D

565

566 Q. What is issue D?
567

568 A. Issue D is “Whether the application includes adequate provisions to control odors, in
569 compliance with agency rules, including 30 TAC §§330.125(b) and 330.133(a).”
570

571 Q. Did you review the parts of the Application that address this issue?

572

573 A. Yes.

574

575 Q. What are the applicable rules regarding control of odors?

576

577 A. Rule 30 TAC §330.125(b) (relating to Air Criteria), requires the SOP to include an odor
578 management plan that addresses the sources of odors and includes general instructions to
579 control odors or sources of odors. The rule states further that plans for odor management
580 must include the identification of wastes that require special attention such as septage, grease
581 trap waste, dead animals, and leachate. Rule 30 TAC §330.133(a) relates to the application
582 of daily cover, and notes that one of the purposes of daily cover is to control odors.

583

584 **2. Application Materials Relating to Issue D**

585

586 Q. What part of the Application addresses the requirements of 30 TAC §§330.125(b) and
587 330.133(a) regarding odors?

588

589 A. The Applicant specifies procedures for controlling odor in Section 15.2 of the SOP. Section
590 15.2 constitutes an odor management plan which identifies possible sources of odors and
591 wastes that may require special attention. Section 15.2 specifies practices which will be
592 followed for prompt processing or covering of wastes that are a potential source of odor.
593 Section 15.2 also indicates that the facility operates an active gas collection and control
594 system to extract potentially odorous landfill gas from the landfill and the leachate collection
595 system sumps before it escapes to the atmosphere. The extracted landfill gas is routed to a
596 landfill-gas powered electrical generation facility and/or to a flare, both of which must
597 operate within limits established by separate air quality regulations. In addition, Section 15.2
598 indicates that the facility may also use odor-controlling compounds at the working face and
599 at other locations that may potentially be a source of odors or which may require odor
600 management. Section 23.1 of the SOP describes procedures for daily cover.

601

602 **3. Technical Review Conclusion Relating to Issue D**

603

604 Q. Do the procedures specified in the Application for controlling odor meet the requirements of
605 the applicable rules?

606

607 A. Yes. The SOP includes an odor management plan that addresses sources of odors and
608 includes general instructions to control odors or sources of odors. The provisions in the SOP
609 specify procedures that conform to the applicable rules, and the SOP itself is sealed by Mr.

610 Ray L. Shull, P.E., Texas Licensed Professional Engineer No. 47759, in conformance with
611 30 TAC §330.51(d).

612

613 **E. Issue E – Managing Landfill Gas**

614

615 **1. Introduction to Issue E**

616

617 Q. What is issue E?

618

619 A. Issue E is “Whether the application includes adequate provisions to manage landfill gas, in
620 compliance with agency rules, including 30 TAC §§330.56(n) and 330.130.”

621

622 Q. Did you review the parts of the Application that address this issue?

623

624 A. Yes.

625

626 Q. What are the applicable rules regarding the management of landfill gas?

627

628 A. Rule 30 TAC §330.56(n) (relating to Attachments to the Site Development Plan, Attachment
629 14 - Landfill Gas Management Plan) requires an owner or operator to describe how landfill
630 gases will be managed and controlled, requires methane monitoring, sets minimum standards
631 for the monitoring system, sets limits on the amounts of methane allowed at the permit
632 boundary and in facility structures, and requires action if limits are exceeded. Rule 30 TAC
633 §330.56(n) also requires that these details be documented in a landfill gas management plan.

634 Rule 30 TAC §330.130 requires that all landfill gases be monitored in accordance with the
635 landfill gas management plan developed pursuant to §330.56(n), and that all required reports
636 and other submittals be included in the operating record of the facility and submitted to the
637 Executive Director.

638

639 **2. Application Materials Relating to Issue E**

640

641 Q. What part of the Application addresses the requirements of 30 TAC §§330.56(n) and
642 330.130 regarding the management of landfill gas?

643

644 A. The Applicant provided a Landfill Gas Management Plan in Attachment 14 to the Site
645 Development Plan, in Part III of the Application. The Landfill Gas Management Plan
646 includes: a discussion of the site characteristics that are relevant to the management of gas; a
647 discussion of the monitoring program, including the number and location of perimeter gas
648 monitoring probes; an action plan in the event that methane exceeds an action limit at a
649 monitoring point; a discussion of how a remediation plan will be implemented, if necessary;

650 and a description of the landfill gas collection and control system. The Landfill Gas
651 Management Plan also acknowledges the operating requirements of 30 TAC §330.130.
652

653 **3. Technical Review Conclusion Relating to Issue E**
654

655 Q. Do the provisions specified in Landfill Gas Management Plan for managing landfill gas
656 meet the requirements of the applicable rules?
657

658 A. Yes. The Applicant's Landfill Gas Management Plan in Attachment 14 includes adequate
659 provisions to comply with 30 TAC §§330.56(n) and 330.130, and is sealed by Mr. Matt K.
660 Stutz, P.E., Texas Licensed Professional Engineer No. 93662, in conformance with
661 §330.51(d).
662

663 **F. Issue F – Slope Stability**
664

665 Q. What is issue F?
666

667 A. Issue F is "Whether the application includes adequate provisions for proper slope stability, in
668 compliance with agency rules, including 30 TAC §§330.55(b)(8) and 330.56(l)."
669

670 Q. Did you review the parts of the Application that address this issue?
671

672 A. No. The parts of the Application regarding slope stability were reviewed by the project
673 engineer, Mr. Udenenwu, who will address the issue in his Prefiled Testimony.
674

675 **G. Issue G – Spilled and Windblown Waste**
676

677 **1. Introduction to Issue G**
678

679 Q. What is issue G?
680

681 A. Issue G is "Whether the application includes adequate provisions to control spilled and
682 windblown waste and cleanup spilled waste, in compliance with agency rules, including
683 30 TAC §§330.117, 330.120, 330.123, and 330.127."
684

685 Q. Did you review the parts of the Application that address this issue?
686

687 A. Yes.
688

689 Q. What are the applicable rules regarding control of spilled and windblown waste and cleanup
690 of spilled waste?
691

692 A. The applicable rules are: 30 TAC §§330.120 (relating to Control of Windblown Solid Waste
693 and Litter); 330.123 (relating to Materials Along the Route to the Site); 330.127 (relating to
694 Site Access Roads); and 330.117 which regulates the unloading of waste, but does not
695 contain any requirements regarding control of spilled and windblown waste or cleanup of
696 spilled waste. Rule §330.120 requires the facility to operate the working face in a manner to
697 control windblown waste, to collect and manage windblown waste, and to specify the
698 procedures for complying with these requirements in the SOP. Rule §330.123 requires the
699 owner or operator to take steps to encourage vehicles hauling waste to effectively secure
700 loads to prevent the escape of any part of the load by blowing or spilling, and to perform at
701 least once per day cleanup of waste materials spilled along and within the right-of-way of
702 public access roads serving the facility for a distance of two miles in either direction from
703 entrances to the facility. Rule §330.127, specifically §330.127(c), requires the facility to
704 maintain all onsite and other access roadways in a clean and safe condition and to pick up
705 litter and any other debris at least daily.
706

707 2. Application Materials Relating to Issue G 708

709 Q. What parts of the Application address the requirements of 30 TAC §§330.117, 330.120,
710 330.123, and 330.127, regarding control of spilled and windblown waste and cleanup of
711 spilled waste?
712

713 A. The Applicant specifies procedures in Section 10 of the SOP, for encouraging vehicles
714 hauling waste to effectively secure loads, for litter control at the working face, for onsite litter
715 pickup, and for offsite litter pickup. The Applicant also states in Section 17 of the SOP that
716 litter and other debris along access roadways will be collected as provided in Section 10.
717

718 3. Technical Review Conclusion Relating to Issue G 719

720 Q. Do the procedures specified in Section 10 of the SOP for control of spilled and windblown
721 waste and cleanup of spilled waste meet the requirements of the applicable rules?
722

723 A. Yes. Section 10 of the SOP includes procedures as required by 30 TAC §§ 330.117,
724 330.120, 330.123, and 330.127 for operating the working face, for encouraging vehicles
725 hauling waste to the facility to effectively secure loads, and for performing cleanup, and the
726 SOP itself is sealed by Mr. Ray L. Shull, P.E., Texas Licensed Professional Engineer No.
727 47759, in conformance with 30 TAC §330.51(d).
728

729 **H. Issue H – Groundwater Monitoring**

730
731 **1. Introduction to Issue H**

732
733 Q. What is issue H?

734
735 A. Issue H is “Whether the application includes adequate provisions for groundwater
736 monitoring, in compliance with agency rules, including 30 TAC §330.230-330.233.”

737
738 Q. Did you review the parts of the Application that address this issue?

739
740 A. Yes.

741
742 Q. What are the applicable rules regarding groundwater monitoring?

743
744 A. The applicable rules are 30 TAC §§330.230 (relating to Applicability), 330.231 (relating to
745 Groundwater Monitoring Systems), 330.233 (relating to Ground-Water Sampling and
746 Analysis Requirements), 330.234 (relating to Detection Monitoring Program), and 330.235
747 (relating to Assessment Monitoring Program). The Chapter 330 rules under which this
748 Application was reviewed does not include a rule §330.232.

749
750 Rule 30 TAC §330.230 requires the owner or operator of a facility to conduct groundwater
751 monitoring, to certify that the facility is in compliance with the groundwater monitoring
752 requirements specified in §§330.231 and 330.233 - 330.235 before waste can be placed in a
753 unit, and to conduct monitoring throughout the active life and post-closure care period of a
754 landfill unit.

755
756 Rule §330.231 requires the owner or operator to install a groundwater monitoring system that
757 is designed and certified by a qualified groundwater scientist, that consists of a sufficient
758 number of monitoring wells installed at appropriate locations and depths to yield
759 representative groundwater samples from the uppermost aquifer. It also requires background
760 wells to be installed to allow determination of the quality of background groundwater that
761 has not been affected by leakage from a unit, and downgradient wells to be installed to allow
762 determination of the quality of groundwater passing the relevant point of compliance.

763
764 Rule 30 TAC §330.233 requires the owner or operator to prepare a Groundwater Sampling
765 and Analysis Plan that details the procedures for groundwater elevation measurement, sample
766 collection, sample preservation and shipment, analytical procedures, chain of custody
767 controls, quality assurance and quality control, and evaluation and reporting of results.

769 Rule 30 TAC §330.234 requires the owner or operator of a facility to conduct detection
770 monitoring in the monitoring system, established pursuant to 30 TAC §330.231, specifies
771 requirements for evaluation and reporting of monitoring results, and requires the facility to
772 initiate assessment monitoring if a statistically significant change from background of any
773 tested constituent occurs in any monitoring well.

774
775 Rule 30 TAC §330.235 requires the owner or operator of a facility to conduct assessment
776 monitoring whenever a statistically significant change from background has been detected for
777 one or more of the tested constituents, and it prescribes the procedures for evaluating and
778 acting on the results of the monitoring.

779

780 **2. Application Materials Relating to Issue H**

781

782 Q. What parts of the Application address the requirements of 30 TAC §§330.230-330.233,
783 330.234 and 330.235 regarding groundwater monitoring?

784

785 A. The Application includes a Groundwater Sampling and Analysis Plan in Attachment 11 to
786 the Site Development Plan, in Part III of the Application, which specifies that the owner or
787 operator will monitor groundwater as required by 30 TAC §330.230 and details the
788 procedures for sampling, analysis, reporting, and action on results required by §§330.233-
789 330.235. The Application also includes a Groundwater Characterization Report in
790 Attachment 5 to the Site Development Plan, which includes the design and installation of the
791 groundwater monitoring system required by 30 TAC §330.231 and includes a Geology and
792 Geotechnical Report in Attachment 4 to the Site Development Plan that documents the
793 geological investigation of the site.

794

795 **3. Technical Review Conclusion Relating to Issue H**

796

797 Q. Does the Application contain procedures for groundwater monitoring that meet the
798 requirements of the applicable rules?

799

800 A. Yes. The Groundwater Sampling and Analysis Plan contains adequate procedures for
801 groundwater sampling, analysis, reporting, and action on results, as required by §§330.233-
802 330.235. The Groundwater Characterization Report adequately details the design of the
803 monitoring system and presents the hydrogeological information that was considered for the
804 design, as required by §330.231. The Groundwater Characterization Report also references
805 information in the Geology and Geotechnical Report that is relevant to the groundwater
806 monitoring system design. In addition, all three of the aforementioned documents are sealed
807 by Mr. John Michael Snyder, P.G., Texas Licensed Professional Geoscientist No. 595, in
808 conformance with 30 TAC §330.51(d).

809

810 **I. Issue I – Rate of Solid Waste Deposition and Operating Life**

811
812 **1. Introduction to Issue I**

813
814 Q. What is issue I?

815
816 A. Issue I is “Whether the application includes adequate provisions calculating the estimated
817 rate of solid waste deposition and operating life of the site, in compliance with agency rules,
818 including 30 TAC §330.55(a)(4).”

819
820 Q. Did you review the parts of the Application that address this issue?

821
822 A. Yes.

823
824 Q. What are the applicable rules regarding calculating the estimated rate of solid waste
825 deposition and operating life of the site?

826
827 A. The applicable rules are 30 TAC §330.55(a)(4) (relating to Site Development Plan), which
828 requires that the Site Development Plan contain a calculation of the estimated rate of solid
829 waste deposition and operating life of the site, and 30 TAC §330.113(h) (relating to
830 Recordkeeping Requirements), which requires the owner or operator to maintain records to
831 document the annual waste acceptance rate for the facility. Rule §330.113(h) also requires
832 the owner or operator to modify the permit if the annual waste acceptance rate exceeds the
833 rate estimated in the permit application, to revise the estimated acceptance rate, and to make
834 any other needed changes in the SOP to manage the increased acceptance rate.

835
836 **2. Application Materials Relating to Issue I**

837
838 Q. What parts of the Application address the requirements of 30 TAC §§330.55(a)(4) and
839 330.113(h), regarding calculating the estimated rate of solid waste deposition and operating
840 life of the site?

841
842 A. The Application provides information on sources and estimated rates of waste acceptance in
843 Section 2.0, Solid Waste Data in the narrative text of the Site Development Plan, and
844 information on how the site life was estimated in Section 6.0, Estimated Site Life.
845 Appendix III-A to the narrative text of the Site Development Plan contains the calculations of
846 the estimated rate of solid waste deposition and operating life of the site. Section 3.5 of the
847 SOP explains how BFI will determine the annual waste acceptance rate and acknowledges
848 BFI’s obligation to modify the SOP if the actual rate exceeds the rate estimated in the
849 Application, and which parts to modify.

850

851 **3. Technical Review Conclusion Relating to Issue I**

852
853 Q. Does the information in Sections 2.0 and 6.0 in the narrative text of the Site Development
854 Plan and the calculations in Appendix III-A meet the requirements of the applicable rules
855 regarding estimated rate of solid waste deposition and operating life of the site?

856
857 A. Yes. The information in those Sections 2.0 and 6.0 explains the basis for the estimates, and
858 Appendix III-A provides the calculations of site life. The Site Development Plan, including
859 the calculations of site life, are sealed by Mr. Adam W. Mehevec, P.E., Texas Licensed
860 Professional Engineer No. 84736, in conformance with 30 TAC §330.51(d). It should also
861 be noted that the estimate for the operating life has less significance in this case, because this
862 permit is proposed to include a set term limit. The Applicant has agreed to the term limit
863 which the Executive Director has included as a Special Provision in the Draft Permit
864 specifying that all waste receipt shall cease on or before November 1, 2015.

865
866 **J. Issue J – Closure and Post-Closure**

867
868 Q. What is issue J?

869
870 A. Issue J is “Whether the application includes adequate provisions for closure and post-closure
871 in compliance with agency rules, including 30 TAC §330.56(1) and (m).”

872
873 Q. Did you review the parts of the Application that address this issue?

874
875 A. No. The parts of the Application regarding slope stability were reviewed by the project
876 engineer, Mr. Udenenwu, who will address the issue in his Prefiled Testimony.

877
878 **K. Issue K – Special Waste**

879
880 **1. Introduction to Issue K**

881
882 Q. What is issue K?

883
884 A. Issue K is “Whether the application includes adequate provisions to manage and dispose of
885 special waste, in compliance with agency rules, including 30 TAC §330.136.”

886
887 Q. Did you review the parts of the Application that address this issue?

888
889 A. Yes.

890

891 Q. What are the applicable rules regarding the management and disposal of special wastes?
892

893 A. The applicable rules are 30 TAC §§330.113(b)(10) (relating to Recordkeeping), 330.136
894 (relating to Disposal of Special Wastes), 330.137 (relating to Disposal of Industrial Wastes)
895 and 330.2(137) which defines the term “special waste.” Rule 30 TAC §330.113(b)(10)
896 requires an owner or operator to record and retain in the operating record any and all
897 documents, manifests, trip tickets, etc., involving special waste. Rule §330.136 details the
898 requirements for accepting and disposing of special wastes at a municipal landfill. Industrial
899 wastes are also considered to be special wastes, and Rule §330.137 details the requirements
900 for disposing of industrial wastes.
901

902 2. Application Materials Relating to Issue K

903
904 Q. What parts of the Application address the requirements of 30 TAC §§330.113(b)(10),
905 330.136, and 330.137, regarding the management and disposal of special wastes?
906

907 A. Section 3.1, including Figure 1 in the SOP acknowledges the requirement to retain records
908 involving special waste. Section 26 of the SOP details which wastes will be prohibited and
909 which special wastes will be accepted, and the procedures for waste evaluation, acceptance,
910 recordkeeping, and disposal.
911

912 3. Technical Review Conclusion Relating to Issue K

913
914 Q. Does the information in the SOP meet the requirements of the applicable rules regarding
915 management and disposal of special wastes?
916

917 A. Yes. Section 3.1 of the SOP acknowledges the recordkeeping requirements of 30 TAC
918 §330.113(b)(10), and the provisions of Section 26 conform to the rules regarding acceptance
919 and disposal of special wastes and industrial wastes in §§330.136 and 330.137. In addition,
920 the SOP is sealed by Mr. Ray L. Shull, P.E., Texas Licensed Professional Engineer No.
921 47759, in conformance with 30 TAC §330.51(d).
922

923 L. Issue L – Responsible Parties and Qualified Personnel

924 1. Introduction to Issue L

925
926
927 Q. What is issue L?
928

929 A. Issue L is “Whether the application includes adequate provisions designating the owner,
930 operator, responsible parties, and qualified personnel, in compliance with agency rules,
931 including 30 TAC §§330.52(a)(1), 330.52(b)(7)-(10), and 330.114(1).”

- 932
933 Q. Did you review the parts of the Application that address this issue?
934
935 A. Yes.
936
937 Q. What are the applicable rules regarding designation of the owner, operator, responsible
938 parties, and qualified personnel?
939
940 A. The applicable rules are 30 TAC §§281.5, 305.45, 330.52 and 330.114(1). Rule
941 §330.52(a)(1) requires an applicant to submit the information required by §§330.52 and
942 305.45. Rules 30 TAC §§281.5 and 305.45 require basic information including facility
943 owner and applicant name, and advise that the Executive Director will provide an application
944 form for submitting that information and other information as reasonably may be required by
945 the Executive Director. Rules §330.52(b)(7)-(10) require an applicant to provide a property
946 owner affidavit, verification of legal status, evidence of competency, and notices of
947 appointments establishing the authority of the person signing the application and identifying
948 the applicant's engineer. Rule §330.114(1) requires a description of functions and minimum
949 qualifications for each category of key personnel to be employed at the facility and for the
950 supervisory personnel in the chain-of-command.
951

952 2. Application Materials Relating to Issue L

- 953
954 Q. What parts of the Application address the requirements of 30 TAC §§281.5, 305.45,
955 330.52(a)(1), 330.52(b)(7)-(10), and 330.114(1), regarding designating the owner,
956 operator, responsible parties, and qualified personnel?
957
958 A. The site operator and site owners are designated on the Part A Application Form and Core
959 Data Forms in Part I of the Application. Property ownership is detailed further in the
960 Property Owner Affidavits in Section I.J in Part I of the Application. The verification of
961 legal status and evidence of competency of the Applicant are provided in Sections I.K and I.L
962 in Part I of the Application. Notices of appointments are provided in Section I.M in Part I of
963 the Application. Provisions for qualified personnel and their responsibilities are detailed in
964 Section 4.1 of the SOP, in Part IV of the Application.
965

966 3. Technical Review Conclusion Relating to Issue L

- 967
968 Q. Does the information in the Application meet the requirements of the applicable rules
969 regarding designation of the owner, operator, responsible parties, and qualified personnel?
970
971 A. Yes. The Part A Application Form and Core Data Forms in Part I of the Application identify
972 that BFI is the Applicant, operator, and a property owner, and that Giles Holdings is also a

973 property owner (but not an applicant or operator). BFI will be the permittee if the permit is
974 issued. The Property Owner Affidavits in Section LJ in Part I of the Application identify
975 which tracts are owned by BFI, and which by Giles Holdings. The permittee will be
976 responsible for the operation, closure, and post-closure care of the facility; however, under
977 30 TAC §330.52(b)(7), the State of Texas may also hold the property owner(s) of record
978 either jointly or severally responsible for the operation, maintenance, and closure and post-
979 closure care of the site. The verification of legal status, evidence of competency, and notices
980 of appointments are provided as required by §§330.52(b)(8)-(10). Part I of the Application
981 therefore contains all of the information required by 30 TAC §§281.5, 305.45, and 330.52.
982 The SOP contains the provisions for qualified personnel and their responsibilities as required
983 by §330.114(1). In addition, Part I of the Application and Part IV of the Application (which
984 consists of the SOP) are sealed by Mr. Ray Shull, P.E., Texas Licensed Professional Engineer
985 No. 47759.

986
987 Q. Are there other historical notes you would like to mention about the identification of the
988 permittee and site owners?

989
990 A. Yes. When I initially prepared the Draft Permit for this Application, I used a format that did
991 not differentiate the permittee and site owner. To clarify those roles, I revised the Draft
992 Permit to identify the Applicant (BFI Waste Systems of North America, Inc.), as the sole
993 permittee and to identify BFI Waste Systems of North America, Inc. and Giles Holdings,
994 L.P., together as property owners. That revised Draft Permit was filed in the TCEQ Office of
995 the Chief Clerk (OCC) on October 23, 2007. Later, BFI transferred the permit Application
996 from BFI Waste Systems of North America, Inc., to BFI Waste Systems of North America,
997 LLC, to reflect a change in corporate structure. I therefore revised the Draft Permit a second
998 time, to reflect the transfer and filed that revised Draft Permit in the OCC on May 1, 2008.
999

1000 **M. Issue M – Preventing Unauthorized Wastes**

1001
1002 **1. Introduction to Issue M**

1003
1004 Q. What is issue M?

1005
1006 A. Issue M is “Whether the application includes adequate provisions to prevent unauthorized
1007 wastes from being disposed in the landfill, in compliance with agency rules, including
1008 30 TAC §330.114(5).”

1009
1010 Q. Did you review the parts of the Application that address this issue?

1011
1012 A. Yes.

1013

1014 Q. What are the applicable rules regarding preventing disposal of unauthorized wastes?
1015

1016 A. The applicable rules are 30 TAC §§330.5(e) (relating to General Prohibitions), 330.113(b)(2)
1017 (relating to Recordkeeping), 330.114(5) (relating to Site Operating Plan), and 330.117(c)
1018 (relating to Unloading of Waste). Rule §330.5(e) lists wastes that are prohibited from
1019 disposal in any municipal solid waste facility. Rule §330.113(b)(2) requires the owner or
1020 operator to record and retain in the operating record inspection records, training procedures,
1021 and notification procedures relating to excluding the receipt of prohibited waste.
1022 Rule§330.114(5) requires that the SOP include procedures to detect and prevent the disposal
1023 of prohibited wastes. Rule §330.117(c) states that the unloading of prohibited wastes at a
1024 municipal solid waste facility must not be allowed, and it requires that the owner or operator
1025 take necessary steps to ensure compliance with this provision. Rule §330.117(c) also
1026 requires the owner or operator to immediately return any prohibited waste to the transporter
1027 or generator of the waste, or to otherwise properly manage the waste.
1028

1029 **2. Application Materials Relating to Issue M**
1030

1031 Q. What parts of the Application address the requirements of 30 TAC §§330.5(e),
1032 330.113(b)(2), 330.114(5), and 330.117(c), regarding the prevention of disposal of
1033 unauthorized wastes?
1034

1035 A. The following sections of the SOP address preventing disposal of prohibited or unauthorized
1036 wastes:

- 1037 • Section 3.1, including Figure 1, acknowledges the requirement to retain in the
1038 operating record the inspection records, training procedures, and notification
1039 procedures relating to excluding the receipt of prohibited waste;
- 1040 • Section 4.1, including Figure 3, identifies which personnel will have responsibility to
1041 identify prohibited or unauthorized wastes;
- 1042 • Section 4.3.1 identifies training topics for site personnel, including prevention,
1043 detection, and management of prohibited waste;
- 1044 • Section 4.4 identifies prohibited wastes and details the procedures for detecting and
1045 controlling the receipt of prohibited or unauthorized wastes, including educating
1046 customers, training site personnel, load observations, and random inspections;
- 1047 • Section 4.5 details procedures for detecting and preventing the disposal of regulated
1048 radioactive materials;
- 1049 • Section 7.2 acknowledges that spotters or equipment operators must monitor the
1050 working face for any unauthorized or prohibited wastes;

- 1051 • Section 9 states that a sign listing prohibited wastes will be posted on the entrance road
1052 to the facility;
- 1053 • Section 26.1.1 lists prohibited wastes;
- 1054 • Section 26.5 provides a contingency plan to investigate and manage prohibited wastes,
1055 radioactive wastes, or other unauthorized wastes if they are suspected or discovered;
1056 and
- 1057 • The Generator Waste Profile Sheet in Appendix A contains a statement to be signed by
1058 the waste generator certifying that the generator will not deliver or attempt to deliver
1059 any prohibited waste for disposal.

1060 The Applicant has also indicated in Section 27 of the SOP that the facility will prohibit
1061 acceptance or disposal of Class 1 non-hazardous industrial waste

1062
1063
1064

3. Technical Review Conclusion Relating to Issue M

1065 Q. Does the information in the SOP meet the requirements of the applicable rules regarding
1066 preventing disposal of prohibited or unauthorized wastes?

1067
1068 A. Yes. The SOP adequately addresses the requirements regarding prohibited and unauthorized
1069 wastes. The SOP contains adequate procedures for training personnel, and for detecting and
1070 preventing disposal of prohibited or unauthorized wastes. In addition, the SOP is sealed by
1071 Mr. Ray L. Shull, P.E., Texas Licensed Professional Engineer No. 47759, in conformance
1072 with 30 TAC §330.51(d).

1073

1074 **N. Issue N – Transportation**

1075

1076 Q. What is issue N?

1077

1078 A. Issue N is “Whether the application provides adequate information related to transportation,
1079 as required by agency rules, including 30 TAC § 330.53(b)(9).”

1080

1081 Q. Did you review the parts of the Application that address this issue?

1082

1083 A. No. The parts of the Application regarding transportation were reviewed by the project
1084 engineer, Mr. Udenenwu, who will address the issue in his Prefiled Testimony.

1085

1086 **O. Issue O – Dust Control and Maintenance of Site Access Roads**

1087

1088 **1. Introduction to Issue O**

1089

1090 Q. What is issue O?

1091
1092 A. Issue O is "Whether the application includes adequate provision for dust control and
1093 maintenance of site access roads, in compliance with agency rules, including 30 TAC
1094 §330.127."

1095
1096 Q. Did you review the parts of the Application that address this issue?

1097
1098 A. Yes.

1099
1100 Q. What are the applicable rules regarding dust control and maintenance of site access roads?

1101
1102 A. The applicable rules are 30 TAC §§330.55(a)(2) (relating to Site Development Plan) and
1103 330.127 (relating to Site Access Roads). Rule §330.55(a)(2) requires the owner or operator
1104 to include provisions for all-weather operation, provisions for all-weather access to
1105 unloading areas used during wet weather, and provisions for roads designed to minimize the
1106 tracking of mud onto public access roads. Rule §330.127(a) requires all-weather access
1107 roads to the unloading area(s) designated for wet-weather operation, at least once per day
1108 removal of mud and debris tracked onto public roadways on days when tracking occurs, and
1109 specification of methods for controlling tracking. Rule §330.127(b) prohibits the owner or
1110 operator from allowing dust from access roadways to become a nuisance to surrounding
1111 areas, and it requires the owner or operator to provide a water source and necessary
1112 equipment or other means of dust control. Rule §330.127(c) requires the owner or operator
1113 to maintain all on-site and other access roadways in a clean and safe condition and to specify
1114 the frequency of regrading access roadways to minimize depressions, ruts, and potholes.

1115
1116 **2. Application Materials Relating to Issue O**

1117
1118 Q. What parts of the Application address the requirements of 30 TAC §§330.55(a)(2) and
1119 330.177, regarding dust control and maintenance of site access roads?

1120
1121 A. Section 4.0 of the Site Development Plan documents that the city streets and state highways
1122 provide adequate all-weather access routes to the site, and it indicates that onsite roads are
1123 surfaced with asphalt, crushed rock and gravel, and covered in wood chips in some areas near
1124 the working face. Section 4.0 also indicates equipment is available onsite to maintain the
1125 roads, and that an outside contractor may perform major repairs as needed. In addition,
1126 Section 4.0 indicates BFI installed a wheel wash to reduce the transport of mud to off site
1127 roadways.

1128
1129 Section 4.1.2.5 of the SOP indicates that the Site Manager is responsible for monitoring and
1130 abating any nuisance conditions such as dust and mud tracking. Figure 4 in Section 4.2.1

1131 indicates the facility will have one or two water trucks available for dust control and other
1132 purposes. Section 17 of the SOP identifies the all-weather access roads at the site, specifies
1133 inspection frequency, and indicates that access roads will be maintained on a regular basis
1134 and repaired or regraded as necessary. Section 17.1 of the SOP specifies how BFI will
1135 maintain roads to control and suppress dust. Section 17.2 identifies the wheel wash at the
1136 facility, and when it will be used. Section 17.2 also states that during periods of wet weather,
1137 BFI personnel will inspect the access roads to the site daily for the presence of excessive
1138 mud, and that BFI will remove excessive mud deposited from trucks leaving the site by
1139 washing and/or sweeping. Figure 4 in Section 4.2.1 indicates that the facility will have one
1140 street sweeper available for cleaning roads.

1141
1142 **3. Technical Review Conclusion Relating to Issue O**

1143
1144 Q. Does the information in the Site Development Plan and the SOP meet the requirements of the
1145 applicable rules regarding dust control and maintenance of site access roads?

1146
1147 A. Yes. Section 4.0 of the Site Development Plan, and Sections 4.1.2.5, 4.2.1, and 17 of the
1148 SOP contain adequate provisions for all-weather access, dust control, and road maintenance.
1149 The Site Development Plan is sealed by Mr. Adam W. Mehevec, P.E., Texas Licensed
1150 Professional Engineer No. 84736, and the SOP is sealed by Mr. Ray Shull, P.E., Texas
1151 Licensed Professional Engineer No. 47759, in conformance with 30 TAC §330.51(d).

1152
1153 **P. Issue P – Endangered Species**

1154
1155 **1. Introduction to Issue P**

1156
1157 Q. What is issue P?

1158
1159 A. Issue P is “Whether the application includes adequate provisions to protect endangered or
1160 threatened species, in compliance with agency rules, including 30 TAC §§330.53(b)(13) and
1161 330.129.”

1162
1163 Q. Did you review the parts of the Application that address this issue?

1164
1165 A. Yes.

1166
1167 Q. What are the applicable rules regarding protection of endangered or threatened species?

1168
1169 A. The applicable rules are 30 TAC §§330.51(b)(8) (relating to Permit Application for
1170 Municipal Solid Waste Facilities, Required Information), 330.53(b)(13) (relating to
1171 Technical Requirements of Part II of the Application, Protection of Endangered Species),

1172 330.55(b)(9) (relating to Site Development Plan), 330.129 (relating to Endangered Species
1173 Protection), and 330.302 (relating to Wetlands).
1174

1175 Rule §330.51(b)(8) requires an applicant to submit Endangered Species Act compliance
1176 demonstrations under state and federal laws according to the definition of “endangered or
1177 threatened species” in §330.2 (relating to Definitions). The federal and state laws are the
1178 Federal Endangered Species Act, §4, 16 United States Code, §1536, and the Texas
1179 Endangered Species Act. Rule §330.53(b)(13) requires the impact of a solid waste disposal
1180 facility upon endangered or threatened species to be considered and, along with §330.129,
1181 prescribes that the facility and its operation shall not result in the destruction or adverse
1182 modification of the critical habitat of endangered or threatened species, or cause or contribute
1183 to the taking of any endangered or threatened species. Rule §330.55(b)(9) requires that the
1184 site be designed to protect endangered species. Rule §330.302 requires that MSW facilities
1185 not be located in wetlands, unless the owner or operator makes certain demonstrations,
1186 including as required by §330.302(c) that construction and operation will not jeopardize the
1187 continued existence of endangered or threatened species or result in the destruction or
1188 adverse modification of a critical habitat protected under the Endangered Species Act of
1189 1973.
1190

1191 2. Application Materials Relating to Issue P 1192

1193 Q. What parts of the Application address the requirements of 30 TAC §§330.51(b)(8),
1194 330.53(b)(13), 330.55(b)(9), 330.129, and 330.302, regarding protection of endangered or
1195 threatened species?
1196

1197 A. Section II.I in Part II of the Application contains an endangered and threatened species
1198 review and evaluation prepared by Horizon Environmental Services, which concludes that
1199 the site contains marginal habitat for the Texas horned lizard, but not for any other state or
1200 federal listed threatened or endangered species. The habitat review includes a Texas horned
1201 lizard management plan required by 30 TAC §330.129. Section II.K contains letters dated
1202 November 11, 2005, documenting communication by the Applicant with the Texas Parks and
1203 Wildlife Department and the U.S. Fish and Wildlife Service regarding threatened and
1204 endangered species, with responses from those agencies indicating that they expect no
1205 adverse impacts.
1206

1207 Section 13.0 of the Site Development Plan in Part III of the Application states that the
1208 Application will result in no destruction or adverse modification of critical habitats or cause
1209 or contribute to the taking or harming of any endangered or threatened species, and it
1210 references the coordination with the U.S. Fish and Wildlife Service and Texas Parks &
1211 Wildlife Department documented in Section II.K of Part II of the Application.
1212

1213 Section 19 states that no endangered or threatened species or any potential critical or
1214 essential habitats for federal or state listed endangered or threatened species exist on the site,
1215 and therefore BFI determined that neither the facility nor its operation would result in the
1216 destruction or adverse modification of critical habitat or cause the taking of any endangered
1217 or threatened species. Appendix B to the SOP contains a copy of BFI's endangered and
1218 threatened species review and evaluation that appears in Section II.I.
1219

1220 **3. Technical Review Conclusion Relating to Issue P**
1221

1222 Q. Does the information in the Application meet the requirements of the applicable rules
1223 regarding protection of endangered or threatened species?
1224

1225 A. Yes. Section II.I and II.K in Part II of the Application, Section 13.0 of the Site Development
1226 Plan in Part III of the Application, and Section 19 of the SOP contain the information
1227 required to demonstrate compliance with the applicable rule. In addition, Part II of the
1228 Application and the SOP are sealed by Mr. Ray L. Shull, P.E., Texas Licensed Professional
1229 Engineer No. 47759, and Part III of the Application is sealed by Mr. Adam W. Mehevec,
1230 P.E., Texas Licensed Professional Engineer No. 84736, in conformance with 30 TAC
1231 §330.51(d).
1232

1233 **Q. Issue Q – Cover**
1234

1235 **1. Introduction to Issue Q**
1236

1237 Q. What is Issue Q?
1238

1239 A. Issue Q is “Whether the application includes adequate provisions for cover, in compliance
1240 with agency rules, including 30 TAC §330.133.”
1241

1242 Q. Did you review the parts of the Application that address this issue?
1243

1244 A. I reviewed the parts of the Application related to daily and intermediate cover. The project
1245 engineer, Mr. Udenenwu reviewed the parts of the Application related to final cover, and he
1246 will address that issue in his Prefiled Testimony regarding Issue F on slope stability and
1247 Issue J on closure and post-closure care.
1248

1249 Q. What is the applicable rule regarding cover?
1250

1251 A. The applicable rule is 30 TAC §330.133 (relating to Landfill Cover). Rule §330.133(a)
1252 (relating to Daily Cover) requires that waste be covered with six inches of well-compacted

1253 earthen material at the end of each operating day. Landfills that operate on a 24-hour basis
1254 must cover the working face or active disposal area at least once every 24 hours.
1255

1256 Rule §330.133(b) (relating to Intermediate Cover) requires that all areas that have received
1257 waste that will be inactive for longer than 180 days be covered with intermediate cover or
1258 final cover. Intermediate cover must be a minimum of 12 inches of earthen material.
1259

1260 Rule §330.133(c) (relating to Alternative Material Daily Cover) does not apply in this case as
1261 the Application has specifically excluded the use of alternative cover. Rule §330.133(d)
1262 relates to a temporary waiver of requirements in §330.133(a)-(c) during extreme seasonal
1263 climatic conditions, and does apply in this case.
1264

1265 Rule §330.133(e) (relating to Final Cover) requires that the final cover for the landfill be in
1266 accordance with the site closure plan and the rules regarding closure and post-closure care in
1267 Subchapter J of the Chapter 330 MSW rules.
1268

1269 Rule §330.133(f) (relating to Erosion of Cover) requires erosion of final or intermediate
1270 cover to be repaired within five days of detection unless the Commission's regional office
1271 approves otherwise. The rule also requires that the owner or operator document the date of
1272 detection of erosion and date of completion of repairs in a cover inspection record that will
1273 be part of a cover application record required by §330.133(g). The frequency of regular
1274 inspections and other occasions for conducting inspections of the cover to detect the need for
1275 repairs must be specified in the SOP.
1276

1277 Rule §330.133(g) (relating to Cover Inspection Record) requires the facility to keep a cover
1278 application record on site readily available for inspection documenting the application of
1279 daily, intermediate, and final cover.
1280

1281 **2. Application Materials Relating to Issue Q**

1282
1283 Q. What parts of the Application address the requirements of 30 TAC §330.133, regarding
1284 cover?
1285

1286 A. Section 23.1 of the SOP in Part IV of the Application specifies the procedures for applying
1287 daily cover, and Section 23.2 specifies the procedures for applying intermediate cover.
1288 Section 23.3 of the SOP states that BFI does not propose the use of alternative material daily
1289 cover. Section 23.5 of the SOP acknowledges that final cover will be in accordance with the
1290 Final Closure Plan in the Application. Section 23.4 specifies the procedures for keeping a
1291 cover log, and Section 23.6 specifies the procedures for inspection and repair of cover.
1292

1293 **3. Technical Review Conclusion Relating to Issue Q**
1294

1295 Q. Does the SOP include adequate provisions for daily and intermediate cover and for
1296 documenting cover application, inspection, and repair?
1297

1298 A. Yes. Sections 23.1, 23.2, 23.4, and 23.6 of the SOP contain adequate provisions for daily
1299 and intermediate cover and for documenting cover application, inspection, and repair that
1300 meet the requirements of 30 TAC §330.133. The SOP is sealed by Mr. Ray Shull, P.E.,
1301 Texas Licensed Professional Engineer No. 47759, in conformance with 30 TAC §330.51(d).
1302

1303 **R. Issue R – Compliance History**
1304

1305 Q. What is issue R?
1306

1307 A. Issue R is “Whether the application should be denied based on the Applicant's compliance
1308 history, in accordance with state laws and agency rules, including Tex. Health & Safety Code
1309 §361.089, 30 TAC §305.66, and 30 TAC ch. 60.”
1310

1311 Q. Did you review the Compliance History of the Applicant?
1312

1313 A. Yes.
1314

1315 Q. What does Texas Health and Safety Code (THSC), Chapter 361, Section 361.089, referred to
1316 in Issue R, state about Compliance History?
1317

1318 A. THSC §361.089(a) states that the Commission “may, for good cause, deny or amend a permit
1319 it issues or has authority to issue for reasons pertaining to public health, air or water
1320 pollution, or land use, or for having a compliance history that is in the lowest
1321 classification. . . .”
1322

1323 Q. What are the applicable TCEQ rules regarding Compliance History?
1324

1325 A. The applicable rules are 30 TAC §§60.1 (relating to Compliance History), 60.2 (relating to
1326 Classification), 60.3 (relating to Use of Compliance History), and 305.66 (relating to Permit
1327 Denial, Suspension, and Revocation). The rules in Chapter 60 explain the applicability,
1328 method of calculation and use of Compliance History. Rule 30 TAC §305.66 allows the
1329 Commission to deny, amend, revoke, or suspend, after notice and hearing, any permit it
1330 issues or has authority to issue for a solid waste storage, processing, or disposal facility, for
1331 good cause.
1332

1333 Q. How did you obtain the Applicant's Compliance History?
1334

1335 A. During the technical review of the Application, I obtained a Compliance History report for
1336 the Applicant published October 1, 2006, for the compliance period September 1, 2001,
1337 through August 31, 2006, from the TCEQ Central Registry database.
1338

1339 Q. How did you review the Applicant's Compliance History?
1340

1341 A. I followed the internal guidance document that I noted earlier: *Waste Permits Division*
1342 *5-Year Compliance History Review Procedures*, dated March 12, 2004, which is based on the
1343 rules in 30 TAC Chapter 60. The procedure states that "those facilities which are ranked
1344 average or higher will be presumed to have permits with adequate provisions to ensure
1345 compliance with the state's environmental regulations," whereas those which are ranked as
1346 poor will have their compliance histories and permits reviewed in an effort to determine if
1347 enhancement of the permits through revised provisions might increase compliance.
1348

1349 Q. How is Compliance History expressed, and for whom?
1350

1351 A. Compliance History is expressed as a Classification and a Rating. Both the Regulated Entity
1352 (the physical feature consisting of the facility itself), and the Customer (the owner or operator
1353 who is the Applicant) have a Compliance History. According to 30 TAC Chapter 60, a
1354 company and site may have one of the following classifications and ratings:
1355

<u>CLASSIFICATION</u>	<u>RATING</u>
High	< 0.10 (above-average compliance record)
Average by Default	3.01 (for sites that have never been investigated)
Average	0.10 < Rating < 45 (generally complies with environmental regulations)
Poor	45 < Rating (performs below average)

1362
1363 Q. What was the Applicant's Compliance History Classification and Rating in the Compliance
1364 History report you included in the Draft Permit Package?
1365

1366 A. The Applicant, the Customer BFI Waste Systems of North America, Inc., had a Classification
1367 of Average with a Rating of 2.59. The Regulated Entity, the landfill, also had a Classification
1368 of Average, with a Rating of 17.77.
1369

1370 Q. What was your conclusion regarding the Applicant's Compliance History?
1371

1372 A. Because the Compliance History for the facility and the Applicant were both Average, and
1373 because the Application reflects the current practices at the facility, I concluded that no

1374 changes needed to be made to the Application other than those to address technical
1375 deficiencies identified by Mr. Udenenwu and me during our technical review.

1376

1377 **S. Issue S – Fire Protection**

1378

1379 **1. Introduction to Issue S**

1380

1381 Q. What is issue S?

1382

1383 A. Issue S is “Whether the application includes adequate provisions for fire protection in
1384 accordance with agency rules, including 30 TAC §330.115.”

1385

1386 Q. Did you review the parts of the Application that address this issue?

1387

1388 A. Yes.

1389

1390 Q. What is the applicable rule regarding fire protection?

1391

1392 A. The applicable rule is 30 TAC §330.115 (relating to Fire Protection), which requires the
1393 owner or operator to maintain a source of earthen material that is available at all times to
1394 extinguish any fires. The source must be large enough to cover any waste not yet covered
1395 with six inches of earthen material, and sufficient equipment must be provided on-site to
1396 place a six-inch layer of the earthen material to cover any waste not already covered within
1397 one hour of detecting a fire. The SOP must contain calculations demonstrating the adequacy
1398 of the earthen material. The Executive Director may approve alternate methods of fire
1399 protection. The rule requires that the SOP contain a fire protection plan that identifies the
1400 fire protection standards to be used at the facility and how personnel are trained. The fire
1401 protection plan must also address fire protection measures specific to each activity at a
1402 landfill that stores or processes combustible materials, such as solidification basins, brush
1403 collection areas, construction waste and demolition waste areas, composting areas, mulching
1404 areas, and shredding areas. The rule also requires notification to the Commission’s regional
1405 office in some circumstances.

1406

1407 **2. Application Materials Relating to Issue S**

1408

1409 Q. What parts of the Application address the requirements of 30 TAC §330.115, regarding fire
1410 protection?

1411

1412 A. The Applicant details fire protection procedures in Section 5 of the SOP, and provides
1413 calculations regarding the adequacy of the proposed stockpile of earthen material on the last
1414 page of Appendix A to the SOP.

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3. Technical Review Conclusion Relating to Issue S

- Q. Does the information in the SOP meet the requirements of the applicable rules regarding fire protection?
- A. Yes. The Applicant details adequate fire protection procedures in Section 5 of the SOP, and provides calculations demonstrating that sufficient soil will be available and can be moved quickly enough to cover the maximum area of waste that might be exposed within one hour of detecting a fire. The SOP is sealed by Mr. Ray Shull, P.E., Texas Licensed Professional Engineer No. 47759, in conformance with 30 TAC §330.51(d).

T. Issue T – Financial Assurance

- Q. What is issue T?
- A. Issue T is “Whether the Applicant has complied with financial assurance requirements, in accordance with agency rules, including 30 TAC §§330.52(b)(11) and 330.281.”
- Q. Did you review the parts of the Application that address this issue?
- A. No. The parts of the Application regarding financial assurance were reviewed by the project engineer, Mr. Udenenwu, who will address the issue in his Prefiled Testimony.

U. Issue U – Land Use Compatibility

1. Introduction to Issue U

- Q. What is issue U?
- A. Issue U is “Whether the proposed expansion is compatible with land use in the surrounding area.”
- Q. Did you review the parts of the application that address this issue?
- A. Yes.
- Q. What are the applicable rules regarding compatibility with land use in the surrounding area?
- A. The applicable rules are 30 TAC §§330.53(a)(1) (relating to Technical Requirements of Part II of the Application, General), and 330.53(b)(7) and (8) (relating to Technical Requirements

1456 of Part II of the Application, Requirements of Part II).

1457
1458 Rule 30 TAC §330.53(a)(1) requires Part II of the Application to describe the existing
1459 conditions and character of the site and surrounding area, and requires Parts I and II of the
1460 Application to provide information relating to land use compatibility. Rule §330.53(b)(7)
1461 requires the Applicant to provide a land-use map of the site showing the boundary of the
1462 property and any existing zoning on or surrounding the property and actual uses
1463 (e.g., agricultural, industrial, residential, etc.) within the site and within one mile of the site.
1464 Rule §330.53(b)(8) requires the Applicant to provide certain information to assist the
1465 Executive Director in evaluating the impact of the site on the surrounding area, including
1466 zoning, character of surrounding land uses within one mile, growth trends of the nearest
1467 community, proximity to residences and other uses, and a description and discussion of all
1468 known wells within 500 feet of the proposed site.

1469
1470 **2. Application Materials Relating to Issue U**

1471
1472 Q. What parts of the Application address the requirements of 30 TAC §§330.53(a)(1) and
1473 330.53(b)(7) and (8), regarding compatibility with land use in the surrounding area?

1474
1475 A. The Applicant provided an Existing Conditions Summary, an Aerial Photograph, a Land Use
1476 Map, a Land Use Report, and a Transportation Study in Sections II.A through II.E in Part II
1477 of the Application.

1478
1479 **3. Technical Review Conclusion Relating to Issue U**

1480
1481 Q. Does the information in Part II of the Application meet the requirements of the applicable
1482 rules regarding compatibility with land use in the surrounding area?

1483
1484 A. Yes. The maps, reports, and other information in Sections II.A through II.E in Part II of the
1485 Application adequately document the surround land uses and conditions. The land use
1486 information submitted does not justify the commission denying the application based on the
1487 landfill being an incompatible land use. Part II of the Application is sealed by Mr. Ray Shull,
1488 P.E., Texas Licensed Professional Engineer No. 47759, in conformance with 30 TAC
1489 §330.51(d).

1490

1491 **V. Issue V – Buffer Zones and Landscape Screening**

1492
1493 **1. Introduction to Issue V**

1494
1495 Q. What is issue V?

1496
1497 A. Issue V is “Whether the provisions proposed for buffer zones and landscape screening
1498 comply with agency rules, including 30 TAC §§330.121(b) and 330.138.”

1499
1500 Q. Did you review the parts of the Application that address this issue?

1501
1502 A. Yes.

1503
1504 Q. What are the applicable rules regarding buffer zones and landscape screening?

1505
1506 A. The applicable rules are 30 TAC §§330.11(b) (relating to Relationships with Other
1507 Governmental Entities, Texas Department of Transportation (TxDOT)), 330.55(b)(10)
1508 (relating to Site Development Plan), 330.56(a)(1) (relating to Attachments to the Site
1509 Development Plan, Attachment 1 - Site Layout Plan), 330.121(b) (relating to Easements and
1510 Buffer Zones), and 330.138 (relating to Visual Screening of Deposited Waste).

1511
1512 Rule 30 TAC §330.11(b) requires the Commission to coordinate with TxDOT on the review
1513 of all permit applications for municipal solid waste land disposal facilities existing or
1514 proposed within 1,000 feet of an interstate or primary highway to determine the need for
1515 screening or special operating requirements, in view of the responsibilities of TxDOT
1516 regarding the junkyard control provisions of the Texas Litter Abatement Act.

1517
1518 Rule 30 TAC §330.55(b)(10) requires the owner or operator to install landfill markers to
1519 clearly mark significant features, including the buffer zone. Rule §330.56(a)(1) requires a
1520 Site Layout Plan on a constructed map that includes, where appropriate, plans for screening
1521 the site from public view.

1522
1523 Rule 30 TAC §330.121(b) requires the Applicant to maintain a minimum separating distance
1524 of 50 feet between solid waste processing and disposal activities and the boundary of the
1525 facility. The buffer zone must provide for safe passage for fire-fighting and other emergency
1526 vehicles. Buffer zone is defined in 30 TAC §330.2 (relating to Definitions).

1527
1528 Rule 30 TAC §330.138 requires the owner or operator of a facility to provide visual
1529 screening of deposited waste materials at a municipal solid waste facility if the executive
1530 director determines that screening is necessary or where permit or design requirements so
1531 dictate.

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2. Application Materials Relating to Issue V

- Q. Did the Commission coordinate with TxDOT on the review of this Application, in accordance with 30 TAC §330.11(b)?
- A. Yes. I prepared letters that were mailed on January 22, 2007, to various agencies including TxDOT, advising them of the Application and the opportunity to comment. TxDOT did not comment that any screening or special operating requirements were necessary.
- Q. What parts of the Application address the requirements of 30 TAC §§330.55(b)(10), 330.56(a)(1), 330.121(b), and 330.138, regarding buffer zones and landscape screening?
- A. Section 11.2 of the SOP states that BFI will maintain a minimum buffer of 50 feet between the permit boundary and waste processing and disposal activities. Section 12 of the SOP indicates that BFI will place buffer zone markers as required. Section 28 of the SOP states that landscape screening vegetation is located along Blue Goose Road to assist in screening the landfill from view. The Applicant shows this area of screening on the Site Layout Plan in Attachment 1 to the Site Development Plan, in Part III of the Application.

3. Technical Review Conclusion Relating to Issue V

- Q. Does the information in the Site Development Plan and the SOP meet the requirements of the applicable rules regarding buffer zones and landscape screening?
- A. Yes. The Applicant addressed the buffer zone requirement in Sections 11.2 of the SOP, and included the required provision for buffer zone markers in Section 12 of the SOP. The Application indicates that some screening will be provided along Blue Goose Road, and the Executive Director did not determine that any additional screening was required under 30 TAC §330.138. The Site Layout Plan is sealed by Mr. Adam W. Mehevec, P.E., Texas Licensed Professional Engineer No. 84736, and the SOP is sealed by Mr. Ray Shull, P.E., Texas Licensed Professional Engineer No. 47759, in conformance with 30 TAC §330.51(d).

W. Issue W – Health Protection and Avoiding Nuisance

- Q. What is issue W?
- A. Issue W is “Whether the application proposes sufficient provisions to protect the health of requesters and their families, and to avoid causing a nuisance, in violation of Commission rules, including 30 TAC §330.5(a)(2).”

1573 Q. What parts of the Application address this issue?

1574
1575 A. The Application in its entirety addresses this issue. The regulations in 30 TAC Chapter 330
1576 were promulgated to implement the purpose of the Texas Solid Waste Disposal Act to
1577 safeguard the health, welfare, and physical property of the people and to protect the
1578 environment by controlling the management of solid waste. Therefore, the ultimate intent of
1579 the MSW rules is to ensure facility owners or operators will manage municipal solid waste
1580 in a manner that will protect human health and the environment and prevent nuisances,
1581 which is expressed by the statements in 30 TAC §330.5 (relating to General Prohibitions),
1582 including §330.5(a)(2).
1583

1584 Q. Did the Application meet the requirements of the applicable rules?

1585
1586 A. The project engineer, Mr. Udenenwu and I determined that the Application meets the
1587 requirements of the applicable rules. We, therefore, expect that BFI will protect human
1588 health and the environment and will prevent nuisances if it constructs and operates the
1589 proposed landfill as proposed in the application and as required by the regulations.
1590

1591 **X. Issue X – Operating Hours**

1592
1593 **1. Introduction to Issue X**

1594
1595 Q. What is issue X?

1596
1597 A. Issue X is “Whether the landfill's operational hours are appropriate.”
1598

1599 Q. Did you review the parts of the Application that address this issue?

1600
1601 A. Yes.
1602

1603 Q. What is the applicable rule regarding operating hours?

1604
1605 A. The applicable rule is 30 TAC §330.118 (relating to Facility Operating Hours). The rule
1606 requires that the owner or operator specify in the SOP the waste acceptance hours, the
1607 operating hours when materials will be transported on or off site, and the hours when heavy
1608 equipment may operate. Waste acceptance hours of an MSW facility may be any time
1609 between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, unless otherwise
1610 approved in the authorization for the facility. Transportation of materials and heavy
1611 equipment operation must not be conducted between the hours of 9:00 p.m. to 5:00 a.m.,
1612 unless otherwise approved in the authorization for the facility. Operating hours for other
1613 activities do not require other specific approval. The Commission’s regional offices may

1614 allow additional temporary operating hours to address disaster or other emergency situations,
1615 or other unforeseen circumstances that could result in the disruption of waste receipt at the
1616 facility.

1617

1618 **2. Application Materials Relating to Issue X**

1619

1620 Q. What part of the Application addresses facility operating hours?

1621

1622 A. The Application specifies the operating hours in Section 8 of the SOP. Section 8 of the SOP
1623 proposes operating hours and waste acceptance hours of 24 hours per day, seven days a
1624 week. The Draft Permit was drafted according to the
1625 Applicant's proposal. Section III.A of the Draft Permit reads "The facility is authorized to
1626 operate and accept waste 24 hours per day, seven days per week." Section 8 of the SOP
1627 indicates that the Site Manager, at his own discretion may choose to have shorter waste
1628 acceptance hours; however, it is not a proposed Permit provision.

1629

1630 **3. Technical Review Conclusion Relating to Issue X**

1631

1632 Q. Does the information in the Site Operating Plan meet the requirements of the applicable rules
1633 regarding operating hours?

1634

1635 A. Yes. The Applicant specified the proposed waste acceptance hours, operating hours when
1636 materials will be transported on or off site, and the operating hours when heavy equipment
1637 may operate as required by 30 TAC §330.118. The proposed operating hours are the same as
1638 the existing operating hours, and the Executive Director is not aware of potential impacts
1639 rising to a level that would justify restricting the proposed operating hours. The Site
1640 Operating Plan is sealed by Mr. Ray Shull, P.E., Texas Licensed Professional Engineer No.
1641 47759, in conformance with 30 TAC §330.51(d).

1642

1643 **Y. Issue Y – Erosion Control Methods**

1644

1645 Q. What is issue Y?

1646

1647 A. Issue Y is "Whether the erosion control methods identified in the application and draft permit
1648 are sufficient."

1649

1650 Q. Did you review the parts of the Application that address this issue?

1651

1652 A. No. The parts of the Application regarding erosion control were reviewed by the project
1653 engineer, Mr. Udenenwu, who will address the issue in his Prefiled Testimony.

1654

1655 **Z. Issue Z – Contaminated Water**

1656

1657 Q. What is issue Z?

1658

1659 A. Issue Z is “Whether the storage, treatment, and disposal of contaminated water is adequately
1660 addressed in the application and draft permit.”

1661

1662 Q. Did you review the parts of the Application that address this issue?

1663

1664 A. No. The parts of the Application regarding the storage, treatment, and disposal of
1665 contaminated water were reviewed by the project engineer, Mr. Udenenwu, who will address
1666 the issue in his Prefiled Testimony.

1667

1668 **VI. RESPONSE TO PREFILED TESTIMONY BY WITNESSES FOR PROTESTANT**
1669 **TJFA**

1670

1671 Q: Did you review the prefiled testimony of any of the other parties in this hearing.

1672

1673 A. Yes. I briefly examined the prefiled testimony of the Applicant’s witnesses and the
1674 protestants’ witnesses.

1675

1676 Q. Do you have any comments regarding subjects discussed in those testimonies?

1677

1678 A. Yes.

1679

1680 Q. Which of these subjects would you like to comment on first?

1681

1682 A. First, I disagree with Mr. Pierce Chandler’s opinion that the site characterization is
1683 inadequate [citation]. The existing BFI Sunset Farms Landfill has an existing permit that
1684 was issued on the basis of an application that met the requirements of the rules in effect at
1685 that time, including rules that required characterizing the site. In addition, BFI modified its
1686 permit in the mid-1990s to comply with new state requirements to upgrade to federal RCRA
1687 Subtitle D standards for MSW landfills, including standards for groundwater characterization
1688 and monitoring system design. As part of that upgrade to Subtitle D standards, BFI
1689 performed additional characterization of the groundwater at the site, redesigned the
1690 groundwater monitoring system, and installed the redesigned monitoring system. The results
1691 of these previous investigations are incorporated in the Geology and Geotechnical Report in
1692 Attachment 4 to the Site Development Plan, in Part III of the Application.

1693

1694 BFI submitted a soil boring plan in April 2004 for a contemplated lateral expansion of the
1695 waste disposal footprint at the Sunset Farms Landfill by 14 acres and deepening of part of the

1696 existing footprint in the northeast part of the site. The TCEQ approved the soil boring plan,
1697 with revisions, in a letter dated July 20, 2004. The Permit Amendment Application that BFI
1698 submitted proposes vertical expansion, but did not propose the lateral expansion or
1699 deepening contemplated earlier. The Executive Director is of the opinion that permit
1700 amendment applications that propose vertical expansion of the existing waste disposal area,
1701 but not lateral expansion of the waste disposal footprint or deepening of the bottom of the
1702 waste disposal unit, do not require additional subsurface investigation beyond that which was
1703 already provided for the existing permit. Therefore, the additional subsurface investigation
1704 that BFI conducted pursuant to the Soil Boring Plan approved in July 2004 ultimately was
1705 not needed for the Application.

1706
1707 Q. Which subject do you wish to comment on next?

1708
1709 A. Next, I disagree with the opinions of Mr. Chandler and Mr. Robert Kier that leachate from
1710 the landfill is recharging to the groundwater beneath the landfill. Mr. Chandler and Mr. Kier
1711 referred to Fill Cross Sections in Attachment 2 to the Site Development Plan and Geologic
1712 Cross Sections in Appendix 4C of Attachment 4 to the Site Development Plan that show a
1713 line representing the groundwater levels in December 1999. On the cross sections that run
1714 through the landfill itself, the line representing the groundwater level is also shown to run
1715 through the landfill and, in some places within the landfill, the line appears higher than in the
1716 areas outside the landfill at the ends of the cross sections.

1717
1718 According to the December 1999 groundwater potentiometric surface map in Figure 4I.2 in
1719 Appendix I of Attachment 4, all of the groundwater elevation measurements in
1720 December 1999 were in wells or piezometers around the periphery of the landfill, and none
1721 were from within the landfill itself. I understood the groundwater potentiometric contours
1722 drawn within the waste disposal area to merely represent the interpretation of the Applicant's
1723 geologist as to what the shape of the potentiometric surface would be in the middle of the
1724 site, in absence of landfill development. I also understood that, as BFI developed the landfill,
1725 portions of the uppermost aquifer were excavated and blocked off at the edges of the
1726 excavations by the landfill liners, which should cause the groundwater to flow around those
1727 parts of the landfill in approximately the same directions as indicated by the potentiometric
1728 surface map. The groundwater mounds implied by the cross sections and potentiometric
1729 surface maps are therefore most likely artifacts of the geologist's interpretation. Indeed, if
1730 you compare the potentiometric surface maps by The Carel Corporation reproduced in
1731 Mr. Kier's exhibit BK-4 with those in the Application for the same monitoring period, you
1732 will see that two geologists produced two very different maps using the same data.

1733
1734
1735
1736

1737 **VII. CONCLUSIONS**

1738
1739 Q: Overall, what is your conclusion about the BFI Sunset Farms Application
1740 meeting applicable TCEQ regulations?

1741
1742 A: In my capacity as the Project Manager and Geologist for Executive Director's
1743 technical review of the Application, I have determined that the BFI Sunset
1744 Farms Application satisfactorily meets all applicable TCEQ regulations.

1745
1746 Q: Does this conclude your Prefiled Testimony?

1747
1748 A: Yes.

1749
1750
1751
1752
1753

ARTEN AVAKIAN
RESUME – OCTOBER 2008

PROFESSIONAL REGISTRATION

Texas Licensed Professional Geoscientist (License No. 3047)

EDUCATION

B.A. Geology, *Magna Cum Laude*, California State University, Fresno, December 1980

M.A. Geology, The University of Texas at Austin, December 1989

Continuing Education:

A Systematic Approach for Evaluation of Capture Zones at Pump and Treat Systems, Interstate Technology & Regulatory Council Internet Seminar, September 2008

Determination and Application of Risk-Based Values, ITRC Internet Seminar, July 2008

Constraints for Combining Modeling and Management for Groundwater, Texas Water Development Board, October 2007

Phytostabilization of Mine Tailings in Arid and Semi-Arid Environments, ITRC Internet Seminar, July 2007

Characterization, Design, Construction, and Monitoring of Bioreactor Landfills, ITRC Internet Seminar, April 2007

Evaluating, Optimizing, or Ending Post-Closure Care at Municipal Solid Waste Landfills, ITRC Internet Seminar, February 2007

Designing with Geosynthetic Clay Liners, CETCO Lining Technologies, February 2007

Alternative Covers for Landfills, Waste Repositories and Mine Wastes, University of Wisconsin / Desert Research Institute / USEPA, September 2006

Unsaturated-Zone Forensics Provides Insight to Soil and Water Resources, U.S. Geological Survey Internet Seminar, July 2006

Applied Ground Water Statistics, NIC USA Inc., May 2005

An Overview of Direct-Push Well Technology for Long-Term Groundwater Monitoring, ITRC Internet Seminar, April 2005

Performance Based Measurement Systems, Texas Natural Resource Conservation Commission (TNRCC), January 2001

Natural Attenuation of Chlorinated Solvents, TNRCC / University of Texas / ITRC / Remediation Technologies Development Forum, September 1997

Vadose Zone Hydrology, TNRCC, August 1997

OSHA 29 CFR 1910.120(e)(3)(i) 40 Hour HAZWOPER General Site Worker Training, Environmental Options, Inc., May 1997

Method Detection Limits: Measurement Theory, TNRCC, December 1996

Fundamental Approaches to Groundwater Investigations, TNRCC, June 1995

Practical Application of Ground Water Geochemistry, National Ground Water Association (NGWA), May 1995

Fundamentals of Ground Water Geochemistry, NGWA, May 1995

EXHIBIT

tabbles

ED-AA-a

Physical Science Aid, U.S. Bureau of Mines, Summer 1979
Range Aid, U.S. Bureau of Land Management, Summer 1978

PROFESSIONAL AFFILIATIONS

American Geophysical Union

PRESENTATIONS AND PUBLICATIONS

Evapotranspiration (ET) Cover Systems for MSW Landfills - Design and Modeling Recommendations:
Presentation at TCEQ Environmental Trade Fair, May 2007

Groundwater Monitoring Statistical Evaluation for MSW Sites, Presentation at TCEQ Environmental Trade
Fair, May 2000

Paine, J. G., **Avakian, A. J.**, Gustavson, T. C., Hovorka, S. D. , and Richter, B. C., 1994, Geophysical and
Geochemical Delineation of Sites of Saline-Water Inflow to the Canadian River, New Mexico and
Texas: The University of Texas at Austin, Bureau of Economic Geology.

Proposed Amendment to TCEQ MSW Permit No. 1447
BFI Sunset Farms Landfill

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2007 SEP 28 PM 2:06

Application by
BFI Waste Systems of North America,
Inc.
for TCEQ MSW Permit No. 1447A

§
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§

Before the
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY
CHIEF CLERKS OFFICE

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment on the application by BFI Waste Systems of North America, Inc. (BFI, applicant), for an amendment to TCEQ Municipal Solid Waste (MSW) Permit Number 1447 (BFI Sunset Farms Landfill), and on the Executive Director's preliminary decision on the application. As required by Title 30 of the Texas Administrative Code (30 TAC), Section (§) 55.156, the Executive Director prepares a response to all timely, relevant and material, or significant, comments before issuing a permit. The TCEQ Office of the Chief Clerk received timely comment letters, and comments at the public meeting held May 24, 2007, from eight elected officials¹ and from 86 concerned citizens representing themselves and various organizations². A comment was also received from the Applicant. This Response to Public Comment addresses all timely public comments received, whether or not withdrawn.

If you would like more information about this application or the permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found on the TCEQ Web site at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

The BFI Waste Systems of North America Sunset Farms Landfill is located in Travis County, Texas, approximately three quarters of a mile north of the intersection of Giles Road and U.S. Highway 290. The site is within the city limits and extra-territorial jurisdiction of the City of Austin. The address of the facility entrance is 9912 Giles Road.

The landfill is a Type I municipal solid waste landfill, with a total capacity of 27,703,735 cubic yards (waste and daily cover) and final maximum elevation of 720 feet mean sea level (msl) under current MSW Permit No. 1447. The landfill is currently authorized to operate 24 hours a day, seven days a week. The total area within the permit boundary is approximately 349.4 acres, of which approximately 251.5 acres is designated for waste disposal.

MSW Permit Amendment Application No. 1447A proposes to expand the landfill vertically by 75 feet to a new final maximum elevation of 795 feet msl, and increase landfill capacity by 10,630,000 cubic yards, to a total of 38,333,735 cubic yards (waste and daily cover). The operating hours, total area within the permit boundary, and area designated for waste disposal are not changed by this application. The application indicates that the site life will be approximately 8 years, and that waste will be accepted for disposal at this site at the initial rate of approximately 3,150 tons-per-day, increasing over time to a maximum acceptance rate of approximately

EXHIBIT

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ED-AA-3

TCEQ rules, codified in Title 30 Texas Administrative Code www.tceq.state.tx.us/rules/index.html, and [info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC)

Secretary of State www.sos.state.tx.us

Federal statutes and rules www.epa.gov/epahome/lawregs.htm

Because the Executive Director declared this permit application administratively complete on January 31, 2006, the application was reviewed under the 30 TAC Chapter 330 rules effective prior to March 27, 2006. All references to 30 TAC Chapter 330 rules are to those rules in effect prior to March 27, 2006. These rules are available at:

www.tceq.state.tx.us/permitting/waste_permits/msw_permits/msw_330rules_old.html

Commission records for this facility are available for viewing and copying at the TCEQ Central Office in Austin, 12100 Park 35 Circle, Building E, Room 103 (Central Records), and at the TCEQ Region 11 Office in Austin at 2800 S IH 35, Suite 100. The technically complete application is also available for review and copying at the University Hills Public Library in Austin, at 4721 Loyola Lane.

If you would like to file a complaint about an existing facility concerning its compliance with provisions of its permit or with TCEQ rules, you may contact the TCEQ at 888-777-3186 or the TCEQ Region 11 Office at 512-339-2929. Citizen complaints may also be filed on-line at www.tceq.state.tx.us/compliance/complaints/. If the Executive Director finds that a facility is out of compliance, it will be subject to enforcement action.

COMMENTS AND RESPONSES

Copies of comment letters are available for examination in the TCEQ Office of the Chief Clerk. Comments have been grouped under the following topics for response:

COMMENT	TOPIC
1	Opposition to Expansion
2	Public Meeting Date, Comment Period, and Issues for Hearing
3	Access to Application Materials
4	Representative of BFI with Legal Authority Over Application
5	Identification of Permittee and Site Owners
6	Permit Term, End Date for Waste Acceptance, and Coordination with CAPCOG
7	Regional Capacity, Facility as a Regional Landfill, and Planning for New Location
8	Applicable Municipal Solid Waste Rules
9	Low Economic Area, Health and Environmental Risks, and Environmental Impact Statement
10	Compliance History, Complaint Response, and Enforcement
11	Business Practices of Applicant
12	Application Format and Professional Responsibilities
13	Compatibility with Surrounding Community and Growth Trends
14	Facility Location

for reviewing the application for compliance with state statutes and TCEQ's rules. Accordingly, the TCEQ does not have jurisdiction to prohibit owners and operators from seeking an authorization; nor can the TCEQ prohibit owners and operators from receiving authorization if they comply with all statutory and regulatory requirements. The Executive Director has determined that the application complies with applicable laws.

COMMENT 2 Public Meeting Date, Comment Period, and Issues for Hearing

Several commentors registered their concern that the public meeting notices issued for this application were confusing, that the deadline for public comments was unclear, and that the May 24, 2007, date for the public meeting was inconvenient. Several commentors also asked which comments would be responded to and could be considered if a contested case hearing is granted. One commentor asked why commissioners don't attend the public meeting since the Executive Director may only make recommendations to the Commission on an application.

RESPONSE 2

The TCEQ regrets any confusion and inconvenience regarding the public meeting and comment period. BFI requested the TCEQ Office of Public Assistance to schedule a public meeting rather than wait for public meeting requests and requested that the TCEQ issue an Amended Notice of Application and Preliminary Decision and Notice of Public Meeting. BFI arranged the public meeting date with the Office of Public Assistance and then published an amended notice. The last date of publication was May 17, 2007, which made the deadline for public comments June 18, 2007 (the first business day on or after the 30th day after the last date of publication). At the request of several interested parties including Texas Senator Kirk Watson, the deadline for comments was extended to June 29, 2007.

The Commission considers all timely received, relevant and material, or significant public comments, including those submitted in writing and those stated during the formal comment period at the public meeting held on May 24, 2007. TCEQ rules prohibit commissioners from considering comments on an application until after that application is formally referred to them, a procedural step completed after the Executive Director evaluates public input. It would not be practical for the commissioners to attend the 300-400 public meetings held annually around Texas for air quality, water quality, and hazardous and municipal solid waste applications.

COMMENT 3 Access to Application Materials

Several commentors indicated that persons living in neighborhoods surrounding the facility did not have access to the application and revisions to the application or did not have enough time to critically evaluate the information. Travis County Judge Samuel Biscoe commented that the County requested and received the initial application in its entirety, but not the revisions, and that it reserves the right to review and comment on information in those documents. One commentor asked why the applicant was not required to provide an electronic copy of the application on a publicly accessible Internet site.

RESPONSE 3

The notices for this application indicated that the application is available for viewing and copying at the University Hills Branch of the Austin Public Library, 4721 Loyola Lane, Austin, Texas, approximately two and one-half miles southeast of the BFI Sunset Farms Landfill.

Consultants, Inc., which in turn became Giles Holdings, L.P., and that all assets of Mobley Chemicals, Inc., are now held by Giles Holdings, L.P.

The application does not detail the history and role of Tiger Corporation. BFI informed the Executive Director that Tiger Corporation was originally a partnership of BFI and the Mobley family and that BFI purchased the Mobley interests in Tiger, which included an option to purchase the land. After BFI did not exercise the land purchase option, BFI assimilated Tiger Corporation's interests in the permit into BFI. The land was purchased instead by Mobley, whose assets are owned by Giles Holdings. Giles later sold approximately 54.13 acres of the land to BFI. The Executive Director does not know exact reason for the sale as 30 TAC §330.52(b)(7) requires that the permit application identify the property owner, but does not require an explanation of why ownership may have changed.

Section LL in Part I of the application states that BFI Waste Systems of North America, Inc., is a subsidiary of Allied Waste Industries.

COMMENT 6 Permit Term, End Date for Waste Acceptance, and Coordination with CAPCOG

Several commentors expressed concern that the proposed permit has no expiration date and/or stated their wish that the landfill be closed immediately, or as soon as possible. Several other commentors, including public officials expressed concern about potentially conflicting statements in the application regarding expected site life and date of last receipt of wastes. Commentors also asked whether the agreement between BFI and CAPCOG (Capitol Area Council of Governments) regarding conformance with the regional solid waste management plan (RSWMP) was meaningful or enforceable. One commentor expressed concern that the Final Closure Plan does not indicate the closure date.

RESPONSE 6

MSW permits are generally issued for the life of a site, including the closure and post-closure care periods. MSW permits must remain in place after the last receipt of waste and after closure of a facility while permit-required activities, such as post-closure care monitoring and maintenance continue.

The original application lacked definitive evidence of conformance with the RSWMP and indicated a site life extending to 2018, with no certain end date for last receipt of wastes. The technically complete application included a conditional agreement between BFI and CAPCOG regarding conformance with the RSWMP. Under the agreement, BFI promised to cease accepting waste on or before November 1, 2015, provided the terms of the agreement were met. The conditional agreement was incorporated into the draft permit as a Special Provision. At the public meeting on May 24, 2007, BFI stated unconditionally that it would cease accepting waste on or before November 1, 2015. Therefore, the Executive Director has revised the draft permit to add a Special Provision specifying that BFI receive no waste after November 1, 2015. Although the commission does not generally have authority to enforce agreements between other parties, the deadline for receiving waste is now enforceable as a permit provision.

The Final Closure Plan (Attachment 12 to Part III of the application) details procedures and specifications for closure in accordance with 30 TAC §330.253, which does not require the plan to specify a date for last receipt of waste or initiation of final closure.

for the particular requirement.

COMMENT 9 Low Economic Area, Health and Environmental Risks, and Environmental Impact Statement

Several commentors expressed the feeling that the area in which the landfill is located is targeted for waste disposal because of perceived low economic status of residents. Many commentors asked if the State had performed any environmental assessments or comprehensive health studies to determine what individual and/or cumulative risks and impacts may be caused by the Sunset Farms Landfill, adjacent landfills, and related activities (such as emissions from vehicles going to and from the landfill, and landfill gas-fueled electrical generation facilities), as well as effects from other traffic that will be using new and projected highways in the area.

RESPONSE 9

The TCEQ considers MSW landfill applications under the commission's rules which apply to landfill applications. When evaluating permits, TCEQ takes into consideration the surrounding community regardless of its socioeconomic status.

The National Environmental Policy Act (NEPA) requires federal agencies to integrate environmental values into their decision-making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. To meet this requirement, federal agencies must prepare detailed statements known as an Environmental Impact Statements (EIS) for projects receiving federal funding. An EIS is not required for state actions such as considering this application.

COMMENT 10 Compliance History, Complaint Response, and Enforcement

Many commentors stated that the facility has a poor compliance history, with ongoing problems including odors, uncontrolled storm water runoff and sediment, and windblown trash, and urged that the TCEQ not grant a permit amendment which they believe would worsen existing problems. Several commentors stated that they have contacted the landfill operator when problems occur, but in their opinion the operator is not responsive or does not correct the problem. Commentors also stated that they have contacted the TCEQ and gotten no formal response on complaints, or by the time an investigator from the TCEQ is able to respond, the problem the complainant experienced (such as odor) has gone, and/or that the TCEQ fails to identify a violation or enforce, giving the perception of being more interested in permitting than addressing complaints and protecting citizens from bad practices. One commentor expressed concern that the TCEQ does not have enough staff to pursue enforcement. Another commentor stated that the City of Austin renewed a contract with facility but did nothing to curtail behaviors that threaten health and property values.

RESPONSE 10

During the technical review, a compliance history review of the company and the site is conducted based on the criteria in 30 TAC Chapter 60. These rules may be found on the TCEQ website at www.tceq.state.tx.us/rules/index.html, and on the Texas Secretary of State website at [info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC). The compliance history for the company and site is reviewed for the five-year period prior to the date the permit application was received by the Executive Director. The compliance history includes multimedia compliance-related components about the site under review. These components include the following: enforcement

of the operator, who must operate the facility in compliance with applicable rules and regulations and the permit, regardless of what disposal fees it charges customers.

COMMENT 12 Application Format and Professional Responsibilities

One commentator expressed concern that two engineers signed and sealed the application without specifying who is taking responsibility for what part, that both an engineer and a geoscientist signed and sealed the geology report (Attachment 4 to Part III of the application) without specifying who is taking responsibility for what part, and that only title sheets were signed and sealed. The commentator also stated that figures in Attachment 4 do not have page numbers.

RESPONSE 12

The application complies with the sealing requirements. TCEQ rules at 30 TAC §330.51(d)(1) require the responsible engineer to seal, sign, and date each sheet of engineering plans, drawings, and the title or contents page of bound reports; 30 TAC §330.56(d) requires that a qualified groundwater scientist (who may be a licensed engineer or licensed geoscientist) prepare and sign the geology report, except for certain reports within the geology report that must be signed and sealed by an engineer. Documents submitted in three-ring binders are considered bound reports; therefore a person sealing a title page is accepting responsibility for the entire document, unless noted otherwise. If more than one engineer or geoscientist seals a document, it is taken to mean that each is accepting full responsibility for the contents as work done by them or under their supervision, unless notes are included to specify otherwise. Seals on individual drawings and other items within the application indicate that a person is responsible for that particular item, whether or not they are sealing the title page of the document.

Each figure in Attachment 4 to Part III of the application bears a separate figure number following a logical numbering scheme, and each is listed in the table of contents. Each page can be referenced by its unique number, and therefore is considered to meet the requirement of 30 TAC §330.51(e)(3) that all pages contain a page number.

COMMENT 13 Compatibility with Surrounding Community and Growth Trends

Most commentators expressed the opinion that the landfill is incompatible with the surrounding community and growth trends, and that the landfill does and would continue to impact the quality of the environment and quality of life in the surrounding area. Commentors noted that the area is in the desired development zone for the Austin area, and expressed concern that the presence of the BFI and other landfills harms property values and hampers the ability of the area to grow and prosper, and ultimately will undermine the tax base for the area. Several commentators stated that the application did not provide sufficient or complete information regarding compatibility, and one commentator stated that the maps in the application are old and do not reflect present land use or ownership. One commentator asked why more building permits are issued for areas close to the landfill.

RESPONSE 13

The TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute and rules. Accordingly, the TCEQ does not have jurisdiction to consider effects on property values when determining whether to approve or deny a permit application. Rule 30 TAC §330.53(b)(8) requires that the Commission consider the impact of a site upon a city,

establishes operating requirements for easements; §330.52(b)(4) and §330.53(b)(7) specify that easements should be documented in Parts I and II of the application. Easements at the BFI Sunset Farms Landfill are documented in a drawing in Section I.I in Part I of the application, which is referenced on figures in Section II.C of Part II of the application and in Figure 14B-1 in Attachment 14 to Part III of the application. The location of an underground utility trench, discussed in Section 2.6 of Attachment 14, is shown in Figure 14A-1. The application meets the requirements for easements and buffer zones, and it includes adequate provisions to control odors and runoff.

COMMENT 16 Ownership and Use of 54.13-acre Tract of Land Transferred from Giles Holdings to BFI

Several commentors asked what was the purpose of BFI's purchase of the 54.13-acre tract in the northeast quadrant of the site (also referred to as 54.1 acres and 54.119 acres in Section I.B-2 and I.J-3 in Part I of the application) from Giles Holdings, how the change of ownership affects commitments or agreements made with the City of Austin or Travis County, what part of the facility is located on the tract, what plans BFI may have for this part of the facility, and who has jurisdiction over the drainage area. One commentor noted the property owner affidavit for the 54.13 acres (in Section I.J-4 in Part I of the application) states that an affidavit will be filed with the county deed records advising that the land has been used for a solid waste facility, and asked if the 54.13 acres has been or will be part of disposal area.

RESPONSE 16

The location of the 54.13-acre tract is shown in Figure I.F in Part I of the application. The reason for BFI's purchase of the tract is not stated in the application and is not required by the MSW rules. According to the application, the 54.13 acres is outside the landfill footprint and therefore not to be used for disposal. However, because the tract is within the permit boundary, the property owner is required by 30 TAC §330.52(b)(7) to include a property owner affidavit for the tract, acknowledging that the owner has a responsibility to file the specified affidavit with the county deed records. The portion of the 54.13-acre tract closer to the landfill is being used for a detention pond for runoff from the facility, and the portion adjacent to Blue Goose Road is used for maintaining the natural drainage through the site. The application does not indicate any other plans for the tract. Details regarding drainage are contained in Attachment 6 to Part III of the application.

The 54.13-acre tract is within the city limits and extraterritorial jurisdiction of the City of Austin, and within Travis County, and would need to comply with any drainage ordinances of those local governments. In addition, according to Section II.H in Part II of the application, several areas within the tract are considered jurisdictional wetlands that must be managed in accordance with rules administered by the U.S. Army Corps of Engineers (USACE). Section II.K of Part II contains a letter documenting the applicant's coordination with USACE. Any commitments or agreements made by BFI with the City of Austin or Travis County would need to be enforced by those entities.

COMMENT 17 Size of Facility and Visual Impact

Many commentors expressed concern about the height and size of the landfill after the proposed expansion, its appearance, and the visual impact it will have on the surrounding area, and the ability to screen operations from view. Several commentors expressed their wish that the sides

Whether MSW landfills, the leachate, and resulting air emissions should be classified as hazardous is not relevant to whether this application complies with the commission's MSW landfill permitting rules. In accordance with Title 40 Code of Federal Regulations (CFR), Part 261, Section 261.4(b), leachate and gas condensate from a municipal solid waste landfill is excluded from regulation as a hazardous waste provided the leachate or gas condensate is not characteristically hazardous (that is, not ignitable, reactive, corrosive, or toxic). Air emissions from the landfill are regulated under federal rules in 40 CFR Part 60, Subpart WWW (Standards of Performance for Municipal Solid Waste Landfills), adopted by reference by the state, which require active gas collection and control (including reduction of non-methane organic compounds by 98 weight-percent or to less than 20 parts per million by volume), monitoring, and corrective action as needed to ensure compliance.

COMMENT 19 Restrictions on Types of Waste Accepted

One commentator suggested that the landfill should restrict acceptance of sludge and/or liquid wastes, industrial wastes, special wastes, contaminated soils, asbestos-containing materials, and prohibited wastes, and should install equipment to detect radioactive materials. The commentator also asked if the facility has ever received "dangerous material" during the last 26 years, and if so, the details regarding the case and the fate of the waste.

RESPONSE 19

According to the Part A application form in Part I of the application, and the Site Operating Plan (SOP) (Part IV of the application), the applicant proposes to continue to accept the wastes currently authorized, including municipal solid waste, regulated asbestos-containing material from municipal sources, Class 1 industrial nonhazardous solid waste that is considered Class 1 only because of asbestos content, Class 2 industrial nonhazardous solid waste, Class 3 industrial nonhazardous solid waste, and certain special wastes. The facility is not authorized and will not be authorized to accept prohibited wastes identified in 30 TAC §330.5(e), hazardous wastes (other than household hazardous waste and hazardous waste from conditionally exempt small quantity generators [CESQGs]), radioactive wastes, polychlorinated biphenyl (PCB) wastes, nonhazardous Class 1 industrial wastes (other than that considered Class 1 only because of asbestos content), or any other wastes not identified in the permit. The facility may accept sludge and liquid waste that has been solidified, and tested and determined not to contain free liquids before disposal. The SOP indicates that automated radiation detection equipment will be installed at each incoming waste scale to allow detection of radioactive materials. The commission's rules authorize MSW landfills to accept the types of waste that the applicant proposes to accept.

The Executive Director is not certain what materials the commentator would include in the definition of "dangerous material," however, as explained above, the facility is not authorized to accept regulated hazardous wastes, radioactive wastes, PCB wastes, or nonhazardous Class 1 industrial wastes, and the existing landfill has not reported receiving or disposing of such wastes.

COMMENT 20 Traffic and Routes to Site

Many commentators expressed concern regarding traffic to and from the facility, including truck traffic on back roads and bridges that are too narrow to allow safe passing, trucks exceeding speed limit and/or driving unsafely, deterioration of roads, illegal left turns out of the facility, and truck drivers not watching as they pull into or out of the facility. Several commentators stated

RESPONSE 21

The commentor questioning the equipment list did not specify how the list does not match the waste acceptance rate. Rule 30 TAC §330.114(2) requires the applicant to describe the minimum number, size, type, and function of the equipment to be used. The applicant provided an equipment list in Figure 4 in the SOP (and also in Section I.L in Part I of the application), which shows the types and number of pieces of equipment that will be used for three ranges of waste acceptance rates, up to the maximum rate anticipated. The SOP includes information in Section 5 and in Appendix A regarding the working face size and calculations to show that six inches of soil cover can be applied to the working face within one hour.

The rule regarding easements and buffer zones, at 30 TAC §330.121, specifies requirements for easements and buffer zones, but does not specifically state that the SOP must describe the features nor explain how they meet the requirements. Easements are shown in a drawing in Section I.I in Part I of the application, which is referenced on figures in Section III.C (regarding land use) of Part II of the application and in Figure 14B-1 in Attachment 14 to Part III of the application; the location of an underground utility trench, discussed in Section 2.6 of Attachment 14, is shown in Figure 14A-1. The buffer zone for the landfill is shown on Attachment 1, Sheet-2 to Part III, and is at least 50 feet wide between the permit boundary and the landfill footprint and other processing and disposal activities.

Fire protection in the old, pre-Subtitle D area of the landfill is provided by existing intermediate cover.

Procedures to control potential impacts from operation of the landfill are contained in the SOP. The SOP complies with the rules and operating the facility in accordance with these procedures should control impacts from the proposed expansion.

COMMENT 22 Odor and Air Quality

Many commentors stated that the facility has been and continues to be a source of noxious odors affecting people at their residences, businesses, schools, and public places, and that at times the odors are too unbearable to be able to be outside or to have windows open. Many expressed the concern that as the landfill grows the odor problem will worsen and lead to an extended period of odor releases as had occurred some years ago, which one commentor explained BFI battled and was barely able to control. Several commentors suggested that the odor management plan is insufficient given the historical odor problems, and that the applicant should be required to provide an odor management plan under the revised MSW rules (the 2006 Revisions).

Several commentors asked whether odors are caused by excessive amounts of leachate on the liner, or if they are escaping from the leachate collection system, or emanating from leachate recirculated on the working face. One commentor asked if odors are coming from trucks bringing in waste from distant collection points, and what is the most distant collection point from which waste is brought to the BFI Sunset Farms Landfill.

Some commentors expressed concern about the health effects of short term and long-term exposures to the odor-causing compounds and gaseous pollutants that may be emitted along with the odor.

Commentors also asked how gas releases are monitored; what is present in the on-site misters

compounds. The MSW rules do not require that the application specify the composition of the odor-controlling compounds. However, material safety data sheets (MSDSs) were provided with a letter to the TCEQ dated April 6, 2006, from Associated Consulting Engineers, Inc. responding to comments on the permit modification to upgrade the SOP for the existing facility under MSW Permit No. 1447 (modification issued September 27, 2006). The MSDSs indicated no adverse effects are expected on human health or the environment.

This is an MSW landfill permit amendment application, and air quality issues are generally outside the scope of review for landfill applications. The facility and traffic emissions will continue to be subject to applicable air quality requirements. The TCEQ does not consider the effects on air quality from increased numbers of diesel trucks, alone or in combination with any other factors, in deciding whether to issue a landfill permit. However, according to the Part A application form in Part I of the application, and the traffic study in Section II.E in Part II of the application, the proposed expansion could result in an increase of approximately 239 vehicles per day (12 percent increase, from current 1205 vehicles per day to 1344 vehicles per day at the peak of operations), including waste hauling trucks and all other vehicles.

COMMENT 23 Operation of Working Face

Several commentors inquired about how often the facility operates more than one working face, and why, and if and how often the facility has diverted waste-carrying vehicles to other facilities when the working face was inaccessible due to surface water problems.

RESPONSE 23

TCEQ rules at 30 TAC §330.117 require that the unloading of solid waste be confined to as small an area as practical. The rule requires that the maximum size of the unloading area be specified in the Site Operating Plan (SOP), and that the number and types of unloading areas be identified. The proposed SOP complies with these requirements. The commission is not aware of how often the existing facility has operated more than one working face or how often the facility has diverted waste-carrying vehicles to other facilities when the working face was inaccessible.

COMMENT 24 Dust

Several commentors reported that dust from facility roads, soil stockpiles, and other sources drifts off site and onto neighboring properties, and have asked how the dust problems will be managed if an expansion is granted and activity at the site increases. One commentor asked what the health effects of dust particles are and what chemicals they might contain or carry. One commentor reported seeing what was thought to be smoke and assumed the facility was burning waste; other commentors reported seeing dust thick enough that it resembled smoke.

RESPONSE 24

Section 17 of the Site Operating Plan specifies procedures to control dust from facility roads as required by 30 TAC §330.127(b). Dust from other sources, such as soil stockpiles must not create a nuisance which is prohibited by §330.5(a)(2). Burning of solid waste is prohibited, except in very specific circumstances as outlined in §330.5(d). The MSW rules do not require health impact studies; therefore, the application does not contain information about health effects of dust from the existing or proposed facility. The Executive Director has determined that the

windblown trash end up in pastures and endanger livestock that may accidentally ingest the trash, and are incorporated into bales of hay. Several commentors also reported that waste is spilled from trucks both on the way to the landfill and on the way out if they did not empty completely. One commentor reported getting flat tires from debris that has fallen off trucks. One commentor questioned whether the City of Austin spends tax dollars to clean up the windblown trash along the routes to the site. Several commentors reported that illegal dumping occurs in the area by people who have come when the landfill is closed or who find the disposal fee too high.

RESPONSE 27

Sections 10 and 13 of the Site Operating Plan provide procedures for control of windblown solid waste and litter and for control and cleanup of materials along the route to the site. BFI is responsible for picking up litter scattered throughout the site, along fences and access roads, at the gate, and along and within the right-of-way of public access roads serving the facility for a distance of two miles from the entrance (including any waste illegally dumped within the right-of-way). That clean up must occur at least once a day on the days the facility is in operation. BFI is responsible for the costs of the cleanup.

The Executive Director has determined that BFI's application complies with the requirements of 30 TAC §330.120 and §330.123. If the landfill is operated in accordance with the SOP, the Executive Director expects that windblown waste and materials along the route to the site will be adequately controlled and picked up. The TCEQ is not aware of whether the City of Austin spends tax dollars to clean up trash along routes to the site. If you have any complaints or concerns regarding operation of the facility, please contact the TCEQ Region 11 Office in writing or in person at 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, or by telephone at (512) 339-2929. If you observe or have information regarding illegal dumping, please contact the TCEQ Region 11 Office and city or county officials.

COMMENT 28 Scavenging Animals and Vectors

Several commentors expressed concern that the landfill provides food for or attracts vectors (insects, rodents, birds, or other animals or organisms capable of mechanically or biologically transferring a pathogen from one organism to another). Commentors also reported that scavenging animals such as coyotes pass through the residential neighborhood on the way to or from the landfill. They also complained about scavenging birds that roost on houses, power lines, and in trees in the neighborhood and at the nearby elementary school, and leave messy, potentially disease-ridden droppings on the ground.

RESPONSE 28

The procedures provided in Section 16 of the Site Operating Plan (SOP) for controlling on-site populations of disease vectors meet the requirements of 30 TAC §330.126. The procedures include proper compaction and application of daily cover, which should adequately control scavenging animals and vectors.

COMMENT 29 Liner and Leachate Collection System Design, Construction, and Stability

Several commentors expressed opinions that the Soil and Liner Quality Control Plan (SLQCP)

COMMENT 31 Daily Cover

Several commentors raised issues related to the alternative daily cover (ADC). They asked why BFI used ADC in the past instead of using dirt from areas they are excavating now and stockpiling, whether the facility is currently permitted to use any ADC, and whether the amendment application proposes to use ADC. One commenter advised that despite statements by the applicant's engineer that the site has not used ADC in more than five years, annual reports filed by BFI for the past five years indicate that the facility did use "tire pieces/chips and ground woody waste" as ADC. Several commentors expressed concern that it was unclear whether ADC would be authorized by the permit amendment, because of references to ADC in Standard Permit Condition VIII.I in the draft permit, and statements in Section 15 of the narrative to Part III of the application. Another commentor expressed the belief that the facility does not apply daily cover soil in the winter when it appears there will be a freeze. Commentors also expressed concern that soil balance calculations in Appendix III-D to Part III indicate a deficit of soil and questioned what BFI will do if it does not have enough dirt for daily cover.

RESPONSE 31

Section 23.1 of the Site Operating Plan (SOP) in Part IV of the application indicates that the facility will apply daily cover soil at least once per day, in accordance with 30 TAC §330.133(a). Section 23.3 of the SOP states that the use of ADC material is not proposed and that no ADC materials are currently approved for the site. The facility was authorized by its permit in the past to use ADC instead of soil as daily cover, but BFI apparently ceased using ADC several years ago because of operational issues. Standard Permit Condition VIII.I has been revised in the draft permit to delete the reference to ADC. The Executive Director is not aware of any occasion that the facility did not apply daily cover (or ADC) because of freezing weather conditions.

The soil balance calculations provide information and help the applicant plan for soil needs. The MSW rules do not require that all construction materials be available on site. The applicant will be responsible for obtaining the necessary materials, whether available on site or from another source. Attachment 8 (Cost Estimate for Closure and Post-Closure Care) in Part III of the application includes provisions for purchase of soil.

COMMENT 32 Soil Stockpiles

Several commentors inquired about soil stockpiles on top of filled areas of the facility. They asked what is the source of the material in the stockpiles, whether the permit allows stockpiling, whether the tops of the stockpiles extend above the permitted final elevations for the landfill, and how the material will be used. Commentors also reported that the stockpiles are a source of dust and sediment that create a nuisance and asked how long the stockpiles would remain.

RESPONSE 32

The soil in the stockpiles on top of filled areas of the facility is from excavations on the site. The tops of the stockpiles extend above the final contours specified in the current permit, and therefore must be moved and/or regraded according to the existing final closure plan if the pending application is not granted. The Executive Director anticipates that the facility will use most, or all of the soil in the stockpiles for daily, intermediate, and final cover, and/or other activities that require soil. The facility will be required to follow the erosion and sediment control procedures for stockpiles, described in Section 3.1 in Appendix ATT6-A of Attachment 6

vertical expansion. The application complies with all applicable requirements regarding drainage and erosion controls.

The Executive Director declared the permit amendment application for BFI Sunset Farms Landfill administratively complete on January 31, 2006, and processed the application under the MSW rules in effect at that time. The applicant will be required to submit a separate application to modify the permit (within one year after the commission's decision on the amendment application has become final and appealable) to incorporate design features that will provide effective erosional stability during all phases of landfill operation, closure, and post-closure care, in accordance with the revised MSW rules that became effective March 27, 2006.

The comment regarding drainage calculations did not explain what aspect of the calculations did not appear to demonstrate that the proposed controls will perform as required by the rules; the Executive Director determined that the drainage calculations and designs meet the requirements of the rules. The analysis and demonstration of "no significant alteration" of natural drainage patterns was conducted in accordance with TCEQ rules and guidance (*Guidelines for Preparing a Surface Water Drainage Report for a Municipal Solid Waste Facility*, August 2006), which advises that for expansions or modifications of existing facilities, the appropriate comparison should be between the currently permitted site closure condition and the proposed post development condition at closure.

COMMENT 34 Cover Inspection and Repair

Several commentors noted that the Site Operating Plan proposes that cover inspections will be conducted the next weekday operating day after measurable rainfall occurs, even though the landfill is also proposing to be open on weekends; and that the timeline for repair (within five days of detection) is not consistently stated.

RESPONSE 34

The rule regarding erosion of cover, 30 TAC §330.133(f), does not specify that cover must be inspected the next day after a rain. Inspecting cover on the next weekday operating day after a measurable rainfall occurs is sufficiently protective. However, the Executive Director has revised the draft permit to clarify statements regarding the time by which erosion must be repaired, by adding a Special Provision specifying that the permittee shall repair eroded cover within 5 days of detection unless the commission's regional office approves otherwise.

COMMENT 35 Leachate Management and Contaminated Water Management

One commentor asked where the leachate collection system (LCS) is located in Subtitle D cells; how the applicant will keep leachate from Subtitle D cells (which have LCSs) out of pre-Subtitle D cells (which do not have LCSs); how the applicant will keep leachate depths below 12 inches (30 centimeters) above the liner and out of waste; and how the applicant is ensuring that the liner system is built with a slope that will promote drainage of leachate. Several commentors expressed concern that the Site Operating Plan (SOP) contains no provisions for leachate management and no provisions to prohibit leachate recirculation, and that the application did not provide required details on storage, treatment, and disposal of contaminated water. One commentor suggested that the landfill should have installed cutoff drains to prevent infiltration of groundwater into waste cells. Another commentor stated that the LCS may not work adequately because of "problems related to the sump."

detention ponds is contaminated and not fit for birds.

RESPONSE 36

Section 29 of the Site Operating Plan (SOP) in Part IV of the application refers to procedures for contaminated water management and surface water discharges in Attachments 6 (Groundwater and Surface Water Protection Plan) and 15 (Leachate and Contaminated Water Plan) to Part III of the application. Section 2.2 of Attachment 6 identifies the procedures the applicant will follow to minimize the generation of contaminated water, which include the use of diversion berms to prevent surface water from running onto the working face and separation berms to contain water that does contact waste. Section 5.6 of Attachment 15 describes how contaminated water will be managed. According to 30 TAC §330.56(o)(1), contaminated water is water which has come into contact with waste, leachate or gas condensate. Runoff from areas that have intact daily cover is not considered as having come into contact with the working face or leachate. Section 23.6 of the SOP describes how daily cover will be maintained. Surface water quality testing requirements and discharge limits are established by a separate stormwater permit issued in accordance with the Texas Pollutant Discharge Elimination System (TPDES), and an associated Storm Water Pollution Prevention Plan. All discharges of stormwater must be in accordance with TPDES requirements; if unauthorized discharges from the landfill occur, the permittee will be subject to enforcement. Section 5.6 of Attachment 15 indicates that contaminated water will be stored in tanks or lined ponds until treated and/or disposed in accordance with TPDES requirements. Stormwater detention ponds should only contain stormwater that is uncontaminated or has been treated in accordance with TPDES requirements.

The application meets the requirements of 30 TAC §330.55(b)(6), §330.56(o), and §330.139 regarding contaminated water management. The off-site discharge of contaminated water should be prevented if the facility is constructed and operated as proposed.

COMMENT 37: Final Cover Design

Several commentors expressed opinions that the final cover system design may not meet the requirements of the rules, suggesting that the application does not address slope stability; and that the vegetative layer soil is not thick enough to support permanent vegetation, particularly through hot and dry summers. One commentor expressed concern that Figures 6-16 and 6-17 in the Groundwater and Surface Water Protection Plan (Attachment 6 to Part III of the application) did not show or otherwise indicate that geomembrane (GM) in the final cover system extends beneath the drainage downchutes, and that the thickness of the GM is variously stated to be 20, 40, or 60 mil high density polyethylene.

RESPONSE 37

Section 3.6 of Attachment 4 (Geology and Geotechnical report) to Part III of the application describes the slope stability analysis conducted for the facility, which includes analysis of the final cover slope. Section 2.1 of Attachment 12 (Final Closure Plan) to Part III indicates two options for the final cover system; both will have a six-inch top soil layer directly overlying a 12-inch erosion layer. The combined thickness of 18 inches is expected to provide sufficient moisture storage capacity and rooting depth to support vegetation.

Figures 6-16 and 6-17 in the application show that the GM in the final cover system extends beneath the drainage downchutes and specifies a thickness of 40 mils. Attachment 12 specifies

monitor wells. The spacing of the proposed wells complies with the 600-foot spacing requirement in the revised MSW rules that became effective March 27, 2006. The existing and new wells will be along approximately the same point of compliance (POC) as for the existing facility; therefore, the zone between the landfill and POC in which contaminants might attenuate would not be changed by the proposed amendment.

The groundwater monitoring system at the BFI Sunset Farms Landfill originally consisted of 14 monitor wells installed in 1981, which were replaced by 17 monitor wells in 1998. A brief history of the groundwater monitoring system at the BFI Sunset Farms Landfill is described in Section 1.3 of Attachment 5 (Groundwater Characterization Report) to Part III of the application. The Executive Director provides the following additional information from TCEQ files:

- In a letter dated November 19, 1993, the Executive Director raised concerns regarding the construction of the monitor wells in the original groundwater monitoring system;
- In a letter dated January 7, 1994, BFI advised that it would replace the monitor wells;
- In a letter dated August 9, 1994, BFI further advised that it would do additional groundwater characterization at the facility;
- In a letter dated October 17, 1994, BFI certified pursuant to 30 TAC §330.231 that the landfill will be in compliance with groundwater monitoring requirements;
- The Executive Director acknowledged that certification in a letter dated October 18, 1994, and advised that due to the large number of permit modifications received from facilities upgrading to Subtitle D standards, the review of the certification would be delayed;
- In a letter dated March 9, 1995, the Executive Director provided a review of the certification and requested additional information;
- BFI provided additional information in a letter dated May 2, 1996, and further information in a letter dated December 18, 1996;
- In a letter dated March 31, 1998, the Executive Director requested that BFI address several items further;
- BFI provided additional information in a letter dated May 22, 1998; and
- the Executive Director approved the groundwater monitoring system design in a letter dated July 15, 1998.

The installation of wells for the Subtitle D groundwater monitoring system was completed in October 1998. The old monitoring system was retained and continued to be monitored in the interim while the Subtitle D monitoring system design was under review; the last monitoring of the old system occurred in July 1998, and the first monitoring of the new system in December 1998.

The October 2005 groundwater monitoring event detected 1,1-dichloroethane (DCE), a volatile organic compound (VOC), at a concentration of 8.2 micrograms/liter ($\mu\text{g/L}$) in monitor well MW-30 (near the southwest corner of the site). The constituent was detected at 7 $\mu\text{g/L}$ during a verification/resampling event in January 2006, triggering assessment monitoring for the well.

monitoring probes along the common boundary with the Waste Management facility had been removed, and that as a result the monitoring system is not protective.

One commentator inquired about how many times landfill gas concentrations have exceeded action levels at the facility, and whether the TCEQ has studied health effects of landfill gas on populations surrounding landfills. One commentator questioned whether the existing gas collection and control system would be stable under the increased weight of the vertical expansion.

Several commentators asked about the ownership, operation, and responsible party for the landfill gas to energy (LFGTE) facility, including questions about quantities of methane produced, efficiency of energy recovery, emissions monitoring/testing, and plans for expansion of the facility.

RESPONSE 39

Landfill gas consists mainly of methane and carbon dioxide with small amounts of nitrogen, oxygen, hydrogen, and non-methane organic compounds (NMOC). Regulations in 30 TAC §330.56(n) and §330.130 require control of landfill gas to prevent creation of explosive hazards from migration and accumulation of methane. Regulations in 40 CFR Part 60, Subpart WWW (Standards of Performance for Municipal Solid Waste Landfills) require control of landfill gas to prevent emission of hazardous air pollutants (non-methane organic compounds). Subsurface gas migration and surface emissions are controlled by containment systems (liners and covers) and by an active gas collection and control system (GCCS) which applies a vacuum to the landfill through gas extraction wells installed in waste. Section 3 of the Landfill Gas Management Plan (LGMP) (Attachment 14 to Part III of the application) details procedures for quarterly monitoring of permanent gas probes around the perimeter of the facility in accordance with 30 TAC §330.56(n) and §330.130 to detect potential subsurface gas migration. BFI proposes to add five probes along the common boundary with the Waste Management facility, restoring probes removed during earlier permit actions. The locations for the proposed probes are shown in Figure 14A-1 in the LGMP. Sections 6.1 and 6.3 of the LGMP explain that gas collected by the GCCS will be routed to the on site LFGTE facility, and excess gas burned in a flare. Operating requirements for the GCCS, and testing requirements and emission limits for the landfill and flare are established by separate air permits referenced in Sections 6.1 and 6.3 of the LGMP.

Methane was detected above the action level of 5 percent methane by volume in gas monitoring probe GMP-13 (near the southwest corner of the facility) in April 1999 (8 percent methane). Following the April 1999 detection, the facility expanded the GCCS into that area of the landfill, which apparently did not yet have gas extraction wells. Methane was detected above the action level in GMP-12 (near the southwest corner of the facility, along the boundary with the Waste Management facility to the south) in January 2000 (24 percent methane). The facility has not reported exceeding a methane action level since then. Section 6 of the LGMP describes procedures for maintaining the GCCS, including addition and replacement of wells as waste disposal operations proceed. If a component of the GCCS were to fail under the weight of the proposed expansion, the facility would be required to replace it as needed to comply with landfill gas regulations and provisions of the permit.

The application does not propose to expand the LFGTE facility. The LFGTE facility is operated

horned lizard management plan detailing procedures for identifying the lizard and relocating any individuals that are found, as well as for conducting land clearing in a manner to minimize harm to any Texas horned lizards that may be present. Section II.K of the application contains letters dated November 11, 2005, documenting communication with the Texas Parks and Wildlife Department and the U.S. Fish and Wildlife Service regarding threatened and endangered species, with responses from those agencies indicating they expect no adverse impacts.

COMMENT 41 Financial Assurance

One commentor stated that the facility does not have adequate financial assurance should a release occur.

RESPONSE 41

TCEQ rules at 30 TAC §330.284 require that a municipal solid waste landfill unit required to undertake a groundwater corrective action program establish financial assurance to cover the cost of hiring a third party to perform the corrective action. The site currently is not required to undertake a groundwater corrective action; therefore a cost estimate and financial assurance for corrective action are not required. If at some time groundwater corrective action is required, the facility will be required to submit a permit modification to incorporate the cost estimate and to provide financial assurance. BFI has provided financial assurance to close the existing facility and has proposed to provide financial assurance to close the proposed facility in compliance with 30 TAC §330.281.

COMMENT 42 Recycling

Several commentors expressed concern that the application does not propose recycling or composting.

RESPONSE 42

The TCEQ encourages source reduction, reuse, and recycling; however, recycling is not a requirement for a landfill permit.

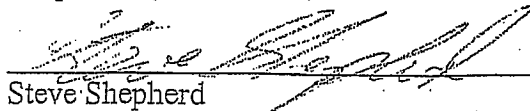
COMMENT 43 Post-Closure Care, and Use of Land After Closure

Several commentors inquired about what plans the applicant has for using the land after the landfill closes. One commentor expressed concern about landfill gas after the landfill closes.

RESPONSE 43

Attachment 12 (Final Closure Plan) to Part III of the application does not indicate that either the applicant or owner has any plans for use of the land after the landfill closes. Use of the land is restricted according to the provisions of 30 TAC §330.255 (relating to Post-Closure Land Use). The owner or operator must submit any plans for proposed construction activities or structural improvements on a closed MSWLF unit to the Executive Director for review and approval. If the permit is revoked after the end of the post-closure care period (nominally 30 years after closure), use of the land will be restricted according to the provisions of 30 TAC Chapter 330, Subchapter T (Use of Land Over Closed Municipal Solid Waste Landfills). The owner or operator is required by 30 TAC §330.254(b)(2) to continue monitoring programs, including landfill gas monitoring, during the post-closure care maintenance period.

Respectfully submitted,

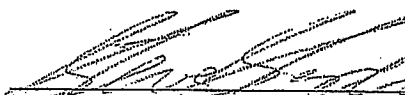


Steve Shepherd
Attorney
Environmental Law Division
State Bar No. 18224200

Representing the Executive Director
of the Texas Commission on
Environmental Quality

CERTIFICATE OF SERVICE

I certify that on September 28, 2007, the "Executive Director's Response to Public Comment" for Permit No. 1447A was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



Steve Shepherd, Attorney
Environmental Law Division
State Bar No. 18224200

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
07 SEP 28 PM 2:06
CHIEF CLERK'S OFFICE

¹ Comments were received in writing and/or orally, by mail and at the May 24, 2007, public meeting on this application, from Samuel Biscoe, Travis County Judge; Gerald Daugherty, Travis County Commissioner Precinct 3, Ron Davis, Travis County Commissioner Precinct 1; Sarah Eckhardt, Travis County Commissioner Precinct 2, Margaret Gomez, Travis County Commissioner Precinct 4; Hector Gonzalés, Mayor, Village of Webberville; Mark Strama, State Representative District 50; and Kirk Watson, State Senator District 14.

² Comments were received in writing and/or orally, by mail and at the May 24, 2007, public meeting on this application, from Lane Ahnell, Robert Andrews, Karin Ascot, Ed Attra, Todd Ballard, Jeremiah Bentley (representing Harris Branch Residential Property Owners Association), Joyce Best (representing NorthEast Action Group), Jim and Cheryl Bowles, Dr. & Mrs. J.L. Breazeale, Dewy Brooks, Linda Bullock, Neil Carman, (representing the Sierra Club, Lone Star Chapter), Mary Carter (representing Northeast Neighbors Coalition), Doka Cullender, Chuck Dabbs, Juan DeAnda, Mandy Doctoroff, Jocelyn Doherty, Trek English (representing NorthEast Action Group), Jeannie Ferguson, Wallace and Marsha Fowler, Kyle and Sara Friesen, Ellen Hieronymous, Dennis Hobbs (representing TJFA, L.P.), Lisa, Joel, and John Hotchkiss, Kim Jones, Ronald and Cam Junker, Sheila Kannappan, Amy Kersten, Janet Klotz, Robert Lanford, Amber Luttig-Buonodono, Ariana Martinez, Emilio Martinez, Fabian Martinez, Jesus Martinez, Maria Martinez, Rebecca Martinez, Anne McAfee, Melanie and Mark McAfee (representing themselves and NorthEast Action Group), Christine and Kenneth W. Miller, Jan Milstead, Roberto and Cindy Montoya, Susan Morgan, Alto and Rosemary Nauert, Craig Nazor, Mike O'Brien, Laurel O'Neal, Alice Penney, Abel Porras, Leahbeth Prince, Sherry Pyle, Cecil and Evelyn Remmert, Georgia Rich, F. Rinehart, Dr. Delmer Rogers, Mike and Ramona Rountree, Celeste Scarborough (representing Pioneer Farms and Pioneer Crossing neighborhood), Robin Schneider (representing Texas Campaign for the Environment), Roy and Janet Smith, Germaine Swenson (representing Park Springs Neighborhood Association), Joyce Thorsen (representing Walnut Place Neighborhood Association), Elizabeth Trevino (representing NorthEast Neighbors Coalition), Andrea and Jason Troncale, K. C. Walter, Martha Ward (representing Ridge Top Neighborhood Association and North Loop Planning Team), Robert Werstler, John Wilkins, David Williams; Evan Williams (representing himself and representing Williams Ltd.), and Rex Yocum.

³ See Texas Water Code, Sections 5.551 - 5.557.

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 5, 2007

TO: Persons on the attached mailing list.

RE: BFI Waste Systems of North America, Inc.
Permit No. 1447A

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the University Hills Branch of the Austin Public Library, 4721 Loyola Lane, Austin, Texas 78723-3939.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be in writing and must be **received** by the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You should submit your request to the following address:

LaDonna Castañuela, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

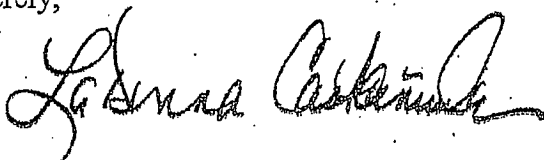
Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,



LaDonna Castañuela
Chief Clerk

LDC/er

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