



City of Austin

# Law Department

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November 5, 2008

*Via Facsimile: 512-239-3311 and Hand Delivery*

LaDonna Castanuela, Chief Clerk  
Office of Chief Clerk, MC-105  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

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

Dear Chief Clerk:

Enclosed is the original and one copy of **Prefiled Protestant City of Austin Direct Case** in connection with the above-referenced matter. Please file and enter the original and return the filed stamped copy in the SASE provided. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Holly C. Noelke  
Assistant City Attorney

Enclosures

cc: Hon. William G. Newchurch (Via Hand Delivery)  
Administrative Law Judge  
State office of Administrative Hearings  
300 West 15<sup>th</sup> Street, Suite 502  
Austin, Texas 78701

(Via email: [cmann@tceq.state.tx.us](mailto:cmann@tceq.state.tx.us))  
Christina Mann; Attorney for: Office of Public Interest Counsel  
Texas Commission on Environmental Quality  
Office of Public Interest Counsel  
P. O. Box 13087, MC-103  
Austin, TX 78711-3087

(Via email: [bob@fbhh.com](mailto:bob@fbhh.com); [jdhead@fbhh.com](mailto:jdhead@fbhh.com))  
Bob Renbarger and J.D. Head; *Attorney for: TJFA, L.P. (TJFA)*  
Fritz, Bryne, Head & Harrison, LLP  
98 San Jacinto Blvd., Suite 2000  
Austin, TX 78701

(Via email: [sshepher@tceq.state.tx.us](mailto:sshepher@tceq.state.tx.us); [swhite@tceq.state.tx.us](mailto:swhite@tceq.state.tx.us))  
Steve Shepherd and Susan White; *Attorney for: Executive Director*  
Texas Commission on Environmental Quality  
Environmental Law Division  
MC-173, P. O. Box 13087  
Austin, TX 78711-3087

(Via email: [pgosselink@lglawfirm.com](mailto:pgosselink@lglawfirm.com); [jcarlson@lglawfirm.com](mailto:jcarlson@lglawfirm.com))  
Paul Gosselink and John Carlson; *Attorney for: BFI Waste Systems of North America, Inc. (BFI), and Alignment Representative for: Giles Holdings, L.P.*  
Lloyd, Gosselink, Blevins, Rochelle & Townsend, P.C.  
816 Congress Avenue, Suite 1900  
Austin, TX 78701

(Via email: [jbb@blackburncarter](mailto:jbb@blackburncarter); [mcarter@blackburncarter](mailto:mcarter@blackburncarter))  
Jim Blackburn and Mary Carter; *Attorneys for: Northeast Neighbors Coalition, and Alignment Representative for Williams, Ltd., Mark McAfee, Melanie McAfee, Roger Joseph, and Delmer D. Rogers*  
Blackburn Carter, P.C.  
4709 Austin  
Houston, TX 77004

(Via email: [kevin.morse@co.travis.tx.us](mailto:kevin.morse@co.travis.tx.us); [sharon.talley@co.travis.tx.us](mailto:sharon.talley@co.travis.tx.us))  
Kevin W. Morse and Sharon Talley *Attorneys for Travis County, Texas*  
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Travis County Attorney's Office  
P. O. Box 1748  
Austin, TX 78767

Via email: [webbwebblaw@abcglobel.net](mailto:webbwebblaw@abcglobel.net))  
Stephen P. Webb; *Attorney for Pioneer Farms*  
Webb & Webb  
P.O. Box 1329  
Austin, TX 78767

SOAH Docket No. 582-08-2178  
TCEQ Docket Number 2007-1774-MSW

IN THE MATTER OF THE	§	
APPLICATION OF BFI WASTE	§	BEFORE THE STATE
SYSTEMS OF NORTH AMERICA, INC.	§	OFFICE OF ADMINISTRATIVE
PROPOSED SOLID WASTE PERMIT	§	HEARINGS
AMENDMENT No. 1447A	§	

PRE-FILED PROTESTANT CITY OF AUSTIN DIRECT CASE

Pursuant to this Court's Order, the City of Austin hereby submits its pre-filed testimony and exhibits as follow:

- Exhibit 1 Pre-filed Testimony of Greg Guernsey
- Exhibit 2 Résumé of Greg Guernsey
- Exhibit 3 Agreement Regarding Operations and Closure of the BFI Landfill
- Exhibit 4 Pre-filed Testimony of Joe Word
- Exhibit 5 Résumé of Joe Word
- Exhibit 6 Pre-filed Testimony of Charles Lesniak
- Exhibit 7 Résumé of Charles Lesniak
- Exhibit 8 Pre-filed Testimony of Michael Kelly
- Exhibit 9 Résumé of Michael Kelly

Respectfully submitted,

DAVID ALLAN SMITH  
CITY ATTORNEY



HOLLY NOELKE

Assistant City Attorney  
State Bar No. 04651000  
City of Austin Law Department  
Post Office Box 1088  
Austin, Texas 78767-1546  
(512) 974-2630

(512) 974-6490 [FAX]

ATTORNEYS FOR CITY OF AUSTIN

**CERTIFICATE OF SERVICE**

I have served a copy of *Prefiled Protestant City of Austin Direct Case* to the following attorneys of record on this 5<sup>th</sup> day of November, 2008.

(Via email: [cmann@tceq.state.tx.us](mailto:cmann@tceq.state.tx.us))

Christina Mann; Attorney for: Office of Public Interest Counsel  
Texas Commission on Environmental Quality  
Office of Public Interest Counsel  
P. O. Box 13087, MC-103  
Austin, TX 78711-3087

(Via email: [bob@fbhh.com](mailto:bob@fbhh.com); [jdhead@fbhh.com](mailto:jdhead@fbhh.com))

Bob Renbarger and J.D. Head; *Attorney for: TJFA, L.P. (TJFA)*  
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Steve Shepherd and Susan White; *Attorney for: Executive Director*  
Texas Commission on Environmental Quality  
Environmental Law Division  
MC-173, P. O. Box 13087  
Austin, TX 78711-3087

(Via email: [pgosselink@lglawfirm.com](mailto:pgosselink@lglawfirm.com); [jcarlson@lglawfirm.com](mailto:jcarlson@lglawfirm.com))

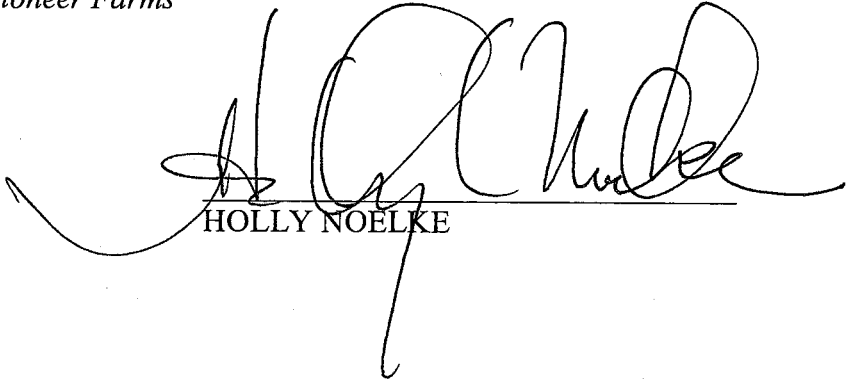
Paul Gosselink and John Carlson; *Attorney for: BFI Waste Systems of North America, Inc. (BFI), and Alignment Representative for: Giles Holdings, L.P.*  
Lloyd, Gosselink, Blevins, Rochelle & Townsend, P.C.  
816 Congress Avenue, Suite 1900  
Austin, TX 78701

(Via email: [jbb@blackburncarter](mailto:jbb@blackburncarter); [mcarter@blackburncarter](mailto:mcarter@blackburncarter))

Jim Blackburn and Mary Carter; *Attorneys for: Northeast Neighbors Coalition, and Alignment Representative for Williams, Ltd., Mark McAfee, Melanie McAfee, Roger Joseph, and Delmer D. Rogers*  
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Kevin W. Morse and Sharon Talley *Attorneys for Travis County, Texas*  
Assistant County Attorney  
Travis County Attorney's Office  
P. O. Box 1748  
Austin, TX 78767

Via email: [webbwebblaw@abcgloba.net](mailto:webbwebblaw@abcgloba.net))  
Stephen P. Webb; *Attorney for Pioneer Farms*  
Webb & Webb  
P.O. Box 1329  
Austin, TX 78767



HOLLY NOELKE

1 Q. State your name.

2 A. *Greg Guernsey*

3 Q. Who is your employer?

4 A. *City of Austin*

5 Q. What department do you work for?

6 A. *The Neighborhood Planning and Zoning Department*

7 Q. How long have you worked for the City?

8 A. *23 years, 5 months*

9 Q. I am handing you what's been marked as COA Exhibit 2. Do you recognize it?

10 A. *Yes.*

11 Q. What is it?

12 A. *My resume.*

13 Q. Is the information contained in it true and correct?

14 A. *Yes.*

15 Q. What are your job duties?

16 A. *I am the Department director that is responsible for the City's zoning, historic*

17 *preservation, annexation, neighborhood planning, long range transportation planning,*

18 *the comprehensive plan, and urban design programs.*

19 Q. What type of studies/ analysis/review have you done?

20 A. *I have reviewed numerous zoning, subdivision and site plan applications for residential,*

21 *commercial, industrial and civic land uses. I have also contributed to several*

22 *neighborhood plans and zoning studies. I have specifically reviewed and/or provided*

1           *recommendations on zoning and site plans applications for compliance with land use*  
2           *compatibility between residential and non-residential uses.*

3    Q.    How does your professional and educational experience relate to your testimony and  
4           opinion in this matter?

5    A.    *I have more than 25 years of professional planning and zoning related experience in*  
6           *Texas. I have received a Masters Degree and Community and Regional Planning from*  
7           *the University of Texas at Austin in 1983 and a Bachelor of Science Degree in Urban*  
8           *Planning from Michigan State University in 1981.*

9    Q.    What is your connection with the permit application that is the subject of this proceeding?

10   A.    *I have no direct connection to this application. However, I have been asked by the City of*  
11           *Austin to provide testimony regarding this application.*

12   Q.    What is the purpose of your testimony?

13   A.    *The purpose of my testimony is to assess the land use compatibility of landfill with the*  
14           *adjacent property and the City. My assessment is based on my prior experience in*  
15           *planning and zoning as well as my direct observation of landfill operation.*

16   Q.    Have you reviewed the application of BFI for a landfill permit amendment that is the  
17           subject of this proceeding?

18   A.    *Yes.*

19   Q.    What parts of the application did you review in particular?

20   A.    *Specially, I have reviewed the Sunset Farms Landfill Permit Amendment, TCEQ MSW*  
21           *Permit No. 1447-A, Vol. 1 of 3, pages APP 000001-000005, 00026-00038, 000146-*  
22           *000168, 000200; and Vol. 3 of 3, pages APP 001130-001137 (dated August 1, 2005). I*  
23           *also reviewed portions of Part IV, Site Operating Plan, Sunset Farms Landfill, Austin*

1           *Texas, Texas Commission on Environmental Quality Permit Amendment Application*  
2           *Permit No. MSW-1447-A, Revision 5 (dated May 12, 2008).*

3    Q.    Why?

4    A.    *Because, these sections of the application pertain to land use related issues.*

5    Q.    Are you familiar with the proposed site?

6    A.    *Yes. Over the past 20 years I have reviewed numerous land development applications in*  
7           *the area of the landfill and conducted field trips in the area adjacent to the landfill.*

8    Q.    Have you reviewed the prefiled testimony for the applicant in this case?

9    A.    *Yes. I have reviewed the pre-filed testimony presented by Mr. John Worrall, Mr. Charles*  
10           *Heimsath AICP, and Ms. Donna Carter AIA.*

11   Q.    Does the applicant's prefiled testimony address the concerns which prompted the city to  
12           contest this application?

13   A.    *Yes. The pre-filed testimony addresses some of the concerns such as it relates to land use*  
14           *compatibility once the land fill is closed.*

15   Q.    Please state the remaining concerns not addressed in the applicants prefiled testimony and  
16           suggest any special conditions that could be added to address these concerns?

17   A.    *To lessen the impact on the existing and proposed residential uses and adjacent civic*  
18           *uses, I would suggest that the operation be limited to day light hours, truck traffic be*  
19           *limited to Giles Road, and the closure date for the land fill be move up or at least be*  
20           *limited to a specific date in the near future to provide certainty to the adjacent property*  
21           *owners.*

22   Q.    Are there any other changes that should be made to the draft permit?



1 A. *Yes. I believe the additional changes suggested by the City in a proposed restrictive*  
2 *covenant would help to mitigate, but not eliminate the impacts of the landfill operation.*

3 Q. Do you have concerns regarding land use compatibility of the landfill with the  
4 surrounding areas?

5 A. *The proposed application does not address the continued negative affects created by the*  
6 *current land fill operation on the existing and proposed residential and civic land uses in*  
7 *the adjacent area. The landfill and the adjacent property are located within the City's*  
8 *Desired Development Zone which is an area the City has designated for future growth*  
9 *and development. It is anticipated that additional residential uses will be built within the*  
10 *Harris Branch Planned Unit Development located immediately to the north and*  
11 *northeast over the next five to ten years. Although the landfill operation may be*  
12 *compliant with the minimum standards established by the State of Texas, it does not*  
13 *mitigate all odor, traffic, litter or noise. Nor does a State permit lessen the visual impact*  
14 *of the landfill on adjacent land uses.*

15 Q. I am handing you what's been marked as COA Exhibit 3. Do you recognize it?

16 A. *Yes.*

17 Q. What is it?

18 A. *It is the Agreement Regarding Operations and Closure of the BFI landfill.*

19 Q. Is it your opinion that the special conditions contained in COA Exhibit 3 will mitigate  
20 your concerns regarding landuse compatability?

21 A. *Yes.*

22 Q. Does this conclude your testimony?

1 A. *Yes, although I reserve the right to amend or supplement my testimony as additional*  
2 *information becomes available through the discovery process.*

Gregory I. Guernsey, A.I.C.P.

Gregory I. Guernsey, A.I.C.P., Director  
Neighborhood Planning and Zoning Department  
P.O. Box 1088  
Austin, Texas 78767

EXPERIENCE

February 2006  
to Present

Director, Neighborhood Planning and Zoning Department, City of Austin, Texas.

Responsible for a department consisting of 63 employees and an annual operating budget of \$5.3 million dollars. The department administers the City's comprehensive plan, neighborhood plans, long range transportation plans, zoning, historic preservation, annexation, great streets and urban design programs.

April 2005-  
January 2006

Assistant Director, Neighborhood Planning and Zoning Department, City of Austin, Texas.

Managed division activities and develop and establish goals, priorities and operational procedures. Interpret and enforce City policies and procedures, zoning regulations and related ordinances.

May 2001-  
March 2005

Development Services Manager, Neighborhood Planning and Zoning Department, City of Austin, Texas. Responsible for the management and coordination of zoning, land use, and land development related matters for City Council consideration.

June 1997-  
May 2001

Principal Planner, Neighborhood Planning and Zoning Department/Development Review and Inspection Department, City of Austin, Texas. Responsible for the management and coordination of zoning, land use, and land development related matters for City Council consideration.

June 1995 -  
June 1997

Principal Planner, Development Review and Inspection Department, City of Austin, Texas. Manager land use review teams for zoning, historic zoning, subdivision, sign, alcoholic beverage permit, and Board of Adjustment variance applications. Lead planner responsible for the Planning Commission, Zoning Board of Adjustment, Sign Review Board, and the Historic Landmark Commission.

May 1993-  
June 1995

Senior Planner, Department of Planning and Development, City of Austin, Texas.

Reviewed site plans and development application and assisted the public with the City of Austin's land development process and the Land Development Code.

Gregory I. Guernsey, A.I.C.P.

February 1988-  
April 1993

Senior Planner/Planning Coordinator, Department of Planning and Development/Planning Department, City of Austin, Texas. Case manager responsible for the processing and coordination of administrative site plans, Planning Commission, and City Council approved site plan applications and zoning cases.

March 1987-  
February 1988

Planner III, Office of Land Development Services, City of Austin, Texas. Case manager responsible for the processing and coordination of administrative, Planning Commission, and City Council approved site plan applications and zoning cases.

June 1985-  
March 1987

Planner II, Office of Land Development Services, City of Austin, Texas. Case manager responsible for the processing and coordination of administrative site plan applications.

June 1983-  
June 1985

Planner II, Department of Planning and Transportation, City of Galveston, Texas. Responsible for the administration and creation of amendments to the City's Zoning Ordinance, Subdivision Ordinance, Beach and Dune Management Master Plan, and Oil and gas Master Plan

September 1982-  
May 1983

Planning Intern, Department of Urban Transportation, City of Austin, Texas. Researched and wrote a draft pamphlet entitled a "Citizen's Guide to City Traffic" and conducted vehicle windshield and traffic count surveys.

February 1982-  
May 1983

Research Assistant, School of Architecture, University of Texas at Austin, Texas. Researched various structural and non-structural land use techniques to manage development over the Southern Edwards Aquifer Recharge Zone in central Texas.

June 1982-  
August 1982

Planning Assistant, Department of Community Development, Mentor, Ohio. Collected analyzed and forecasted population and housing data for an update to the City's Comprehensive Plan. Assisted in the formulation of standards for conditional use permits. Reviewed sign permit and residential permits for compliance with the City's Zoning Ordinance.

June 1981-  
August 1981

Planning Assistant, Department of Community Development, Mentor, Ohio. Collected, mapped and analyzed land use and transportation data for an update to the City's Comprehensive Plan. Other duties included research and preparation of support information for the Planning Commission and the Zoning Board of Appeals.

Gregory I. Guernsey, A.I.C.P.

June 1980-  
August 1980

*Planning Intern, Planning Department, Ann Arbor, Michigan.*

Assisted in the creation of the Park, Recreation and Open Space Plan. Duties included research and analysis of various park plans, conducting on-site inventories surveys, designing preliminary park improvement site plans, and presentations before the Planning Commission and neighborhood associations.

#### EDUCATION

*Master of Science in Community and Regional Planning*, School of Architecture, The University of Texas, Austin, Texas. May 1983.

*Bachelor of Science in Urban Planning*, School of Planning and Landscape Architecture, Michigan State University, East Lansing, Michigan. June 1981.

#### PROFESSIONAL ACTIVITIES

Member of the American Institute of Certified Planners

Member of the American Planning Association

Member of the Urban Land Institute

1991-1993 State Board Member, Texas Chapter, APA

1991-1993 Director, Central Texas Section, Texas Chapter, APA

1992 Texas-Louisiana State Planning Conference Coordinator

AGREEMENT REGARDING OPERATIONS  
AND CLOSURE OF THE SUNSET FARMS LANDFILL

This Agreement ("Agreement") is made by and between BFI Waste Systems of North America, LLC ("BFI"), Giles Holdings, L.P. ("Giles"), and the City of Austin ("Austin" or "City") a home rule municipality located in Travis County Texas, in connection with BFI's application to expand the Sunset Farms Landfill ("Landfill") located at 9912 Giles Road in Travis County, Texas.

**I. RECITALS**

Whereas, BFI applied to the Texas Commission on Environmental Quality (TCEQ) for a vertical expansion to the Sunset Farms Landfill (TCEQ MSW Draft Permit No. 1447A);

Whereas, BFI's application to expand the Landfill has been referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing, SOAH Docket No. 582-08-2178;

Whereas, Austin obtained party status in SOAH Docket No. 582-08-2178 with the stated goals of ensuring discontinuance of waste acceptance at the Landfill by November 1, 2015 and requiring improved enforceable operating standards as long as the Landfill remains open;

Whereas, the area surrounding BFI has become urbanized through the years subsequent to the initial permitting of the Landfill;

Whereas, landfill operations in close proximity to residential neighborhoods present unique problems requiring specialized solutions;

Whereas, a portion of the property on which the Landfill is located is owned by Giles and the remaining property on which the landfill is located is owned by BFI;

Whereas, BFI is of the opinion that it has a valid exemption from the City's site development plan permitting requirements;

Whereas, the City is of the opinion that BFI must obtain administrative site plan approval under Austin City Code Chapter 25-5, Article 2;

Whereas, whether and the extent to which BFI can vertically expand the Landfill and whether Austin can prevent or restrict the expansion is uncertain; and

Whereas BFI and Austin have agreed to resolve their disputes regarding closure and operations of the Landfill.

**NOW THEREFORE** and in consideration of the mutual covenants and agreements to be performed as set out below, City, BFI and Giles agree as follows:

## **II. ACKNOWLEDGEMENTS, REPRESENTATIONS, AND WARRANTIES**

- A. BFI and Giles and Austin acknowledge that they understand the purpose and intent of this agreement.
- B. BFI and Giles and Austin represent and warrant that they have the full right and authority to execute this agreement.

## **III. DEFINITIONS**

For the purposes of this Agreement:

- A. **Side slope** means the exterior edges of fill areas or sidewalls of detention ponds which generally will have a slope steeper than 10%.
- B. **Top deck** means the top portion of the landfill which generally will have a slope flatter than 10%.
- C. **Adequate vegetation growth** means 85% surface area coverage in vegetation at least 1” tall.
- D. **Seeding events** means seeding in compliance with City of Austin Environmental Criteria Manual (ECM) Section 1.4.7 A (Exhibit 1) except as otherwise noted.
- E. **Amended landfill permit** means proposed TCEQ draft permit 1447A for the Sunset Farms Landfill.
- F. **Property** means the property on which the Landfill operates as described in the amended landfill permit application.

## **IV. TERMS**

- A. BFI agrees to cease accepting waste at the Landfill and agrees to restrict the property on which the landfill operates from accepting waste after November 1, 2015 and to further restrict the property on which the landfill currently operates from use for transfer station operations.
- B. Giles agrees to restrict the property on which the Landfill operates from accepting waste after November 1, 2015 and to further restrict the property on which the landfill currently operates from use for transfer station operations.

C. This Agreement is understood by the parties to be a written contract under which the Parties are granting certain concessions and providing services to one another. This Agreement shall be binding upon and inure to the benefit of each and all of the Parties hereto and their affiliates, successors and assigns and shall be a covenant and restriction running with the land that constitutes the Landfill site and adjacent land owned by BFI and Giles as follows:

Parcel 1: Approximately 54.13 acres of land of the LUCAS MUNOS SURVEY, ABSTRACT NO. 55, in Travis County, Texas and being more particularly described by metes and bounds in Document No. 2005198209 of the Travis County Real Property Records, said Document attached as Exhibit "A" hereto.

Parcel 2: Approximately 172.531 acre tract of land out of the LUCAS MUNOS SURVEY No. 55, Abstract 513, being a portion of a 176.10 acre tract of land conveyed to Mobley Chemicals, Inc., by warranty deed, dated January 22, 1982, recorded in volume 7671, page 101, of the deed records of Travis County, Texas; said 172.531 acres being more particularly described by metes and bounds in Exhibit "B" attached hereto.

Parcel 3: Approximately 122.711 acre tract of land out of the LUCAS MUNOS SURVEY No. 55, Abstract 513, being a portion of a 73.20 acre tract of land conveyed to Mobley Chemicals, Inc., by warranty deed, dated January 22, 1982, recorded in volume 7671, page 117 and a portion of a 102.87 acre tract of land conveyed to Mobley Chemicals, Inc., by warranty deed, dated January 22, 1982, recorded in volume 7671, page 109, both of the deed records of Travis County, Texas; said 122.711 acres being more particularly described by metes and bounds in Exhibit "C" attached hereto.

Giles and BFI represent that no other person or entity other than themselves currently possesses any interest in such land that would allow them to dispose of waste or operate a transfer station at the Landfill and agree that such covenant and restriction shall bind all future holders of any interests in such land. BFI and Giles will execute and deliver to Austin a document memorializing the restrictive covenant and the City of Austin may record the restrictive covenant in the Travis County Real Property Records. BFI and Giles agree that any sale, assignment, or transfer of the Landfill permit shall be made expressly subject to the terms of this Agreement.

D. BFI will comply with the following terms related to drainage, erosion and revegetation:

1. BFI agrees to place intermediate cover and implement seeding events, on all side slope disturbed areas on which activity has not recommenced within 60 days except BFI is under no obligation to seed such areas during the months of July



and August. These seeded areas shall be irrigated in accordance with the requirements of Exhibit 1.

2. BFI agrees to place intermediate cover and implement seeding events on the top deck of the landfill in all disturbed areas on which activity has not recommenced within 120 days except for that area immediately up gradient to the five proposed or constructed drainage down chutes on intermediate cover areas as shown on attached Exhibit 2. Those up gradient areas shall be immediately vegetated upon construction of each down chute with a filter strip of buffalo grass sod that extends at least 100 feet out from each down chute inlet and is wide enough to filter the run off to be directed to each down chute (See Exhibit 2 for width dimensions). The buffalo grass filter strip shall be maintained until final cover is placed. In addition, a silt fence or mulch berm shall be placed on the top deck in front of the inlet of each down chute and at the end of each constructed down chute (See Exhibit 2 for locations). These silt fences or mulch berms shall remain in place and be maintained until the areas contributing runoff to these down chutes achieve adequate vegetation growth.
3. The initial seeding event for all disturbed areas will be accomplished using hydro-mulch seeding application procedures per Exhibit 1.
4. Seeding of the disturbed areas will be of a seasonally appropriate mix. Currently the seed mix is bermuda/millet for warm weather and rye for cold weather. When cold weather seed is used the seeded area shall be reseeded within 60 days of the onset of sufficiently warm weather to support the warm weather mix. The reseeded area shall be irrigated until adequate vegetation growth is achieved.
5. Seeding for the final cover shall include a seasonally appropriate 609-S (native seeds) mix as defined in the City of Austin Standard Specifications Manual on approximately 15% of the surface area of the eastern and northern slopes of the landfill and for the remainder of the site a seasonally appropriate mix.
6. Perimeter sediment/erosion control devices such as silt fences, hay bales or other systems acceptable to the City shall be in place prior to the establishment of any soil stock piles on site. For soil stock piles which have slope lengths greater than 20 feet, mid-slope temporary stabilization controls such as seeding, tarping or placement of silt fences or mulch berms shall be implemented within fourteen days of the initial establishment of the soil stock pile and shall be maintained in good working condition until the stockpile is removed.
7. BFI shall install and maintain silt fences or mulch berms within 14 days of completion of intermediate cover at the base of all side slope and top deck intermediate cover areas until adequate vegetation growth is achieved.
8. Stormwater runoff from the landfill area designated as Drainage Area 2 shall be routed through the existing detention pond, or the proposed water

quality/detention pond, when the waste fill in Drainage Area 2 has reached the final grades proposed in the landfill expansion plan.

9. BFI will ensure that the side slopes of the existing detention pond and the side slopes of the proposed water quality/detention pond in the northeast portion of the landfill shall be adequately stabilized through proper grading and maintenance and by implementing/applying vegetation on the side slopes of the ponds within thirty days of completion of construction of the pond. BFI further agrees to inspect the sedimentation ponds/basins every three months and after every half-inch rainfall event and to clean the ponds/basins by removing the accumulated sediment once the sediment has reached 25% of the respective pond capacity.
10. BFI shall amend its Storm Water Pollution Prevention Plan (SWPPP) for the Sunset Farms Landfill within 90 days of the effective date of this Agreement so as to incorporate the specific practices and procedures described in this Agreement. The SWPPP will be submitted to the City for review and concurrence.
11. BFI agrees to begin operating the Sunset Farms Landfill pursuant to the terms of this Agreement and the amended SWPPP within 60 days after the SWPPP has been amended and the City's concurrence has been achieved.

E. BFI agrees that it shall not accept liquid waste that has not passed the TCEQ's paint filter test and shall not construct or operate a liquid waste stabilization/solidification basin at the Sunset Farms Landfill.

F. BFI agrees to prohibit commercial waste hauling vehicles from utilizing Blue Goose Road as ingress or egress to the Sunset Farms Landfill except for those few vehicles which service businesses and residences in that area. Specifically, BFI shall progressively discipline any of its own drivers, up to and including termination, which ignore this prohibition. BFI shall also incorporate into its future and/or renewal contracts with other commercial waste haulers that the haulers will not be allowed to dispose of their waste loads at the Sunset Farms Landfill if they utilize Blue Goose Road for ingress or egress more than one time.

G. BFI will request that the Administrative Law Judge issue a proposed permit containing special provisions incorporating the terms of paragraphs D. 1 through 9 and E. and F. as set out above .

H. BFI will request a site plan permit from the City for the Landfill vertical expansion, and will file a site plan permit application with Austin within 60 days of execution of this Agreement. The City will process this site plan application as a "D" site plan application under Austin City Code Chapter 25-5, Article 2, and will not unreasonably withhold approval of the site plan if all technical requirements of the City are satisfied.

J. As long as BFI and Giles are in substantial compliance with this Agreement, Austin will limit its participation in the contested case hearing regarding the landfill expansion to testimony and matters in support of the terms of this Agreement.

## V. TERM, TERMINATION

A. This Agreement shall be effective from and after the date of execution.

B. If any party defaults in the performance of any of the terms or conditions of this Agreement, the defaulting party shall have 10 days after receipt of written notice of the default within which to cure the default. If such default is not cured within the 10 days, then the offended party shall have the right without further notice to terminate this Agreement or seek enforcement of the Agreement in court including specific performance of the terms of the Agreement and attorneys fees.

C. The parties agree that monetary damages would be inadequate compensation if any party defaults in the performance of any of the terms or conditions of this Agreement, therefore specific performance should be required.

## VI. MISCELLANEOUS

A. Severability. If any section, subsection, sentence, clause, or phrase of this Agreement is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of the Agreement shall not be affected thereby. It is the intent of the parties signing this Agreement that no portion of it, or provision or regulation contained in it shall become inoperative or fail by reason of unconstitutionality or invalidity of any other section, subsection, sentence, clause, phrase, provision, or regulation of this Agreement.

B. Force Majeure. No party shall be liable for any delay, failure or default in performing under this Agreement if such delay, failure or default is caused by conditions beyond its control including – but not limited to Acts of God, government restrictions, wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

C. Law and Venue. This Agreement shall be governed by the laws of the State of Texas. The obligations under this Agreement are performable in Travis County, Texas. It is expressly understood that any lawsuit or litigation arising out of or relating to this Agreement will take place in Travis County, Texas.

D. Alteration, Amendment, or Modification. This Agreement may not be altered, amended, or modified except in writing, approved by BFI and Giles and the City Manager of the City of Austin or his designee.

E. Entire Agreement. This Agreement constitutes the entire agreement between Austin and BFI and Giles. No other agreement, statement or promise relating to the subject matter of this Agreement which is not contained in this Agreement is valid or binding.

F. Notice. Notices to either party shall be in writing, and may be either hand delivered or sent by certified or registered mail, postage paid, return receipt requested. If sent to the parties at the addresses designated herein, notice shall be deemed effective upon receipt in the case of hand delivery and three days after deposit in the U.S. Mail in case of mailing. The address of the City of Austin for all purposes shall be:

**CITY:** City of Austin  
Solid Waste Services  
P.O. Box 1088  
Austin, Texas 78767

The address for BFI and for Giles for all purposes under this Agreement and for all notices hereunder shall be:

**BFI:**  
2575 IH 35 South, Suite 103  
San Marcos, TX. 78666

**Giles:**  
  
Steve Mobley  
2205 Westover Road  
Austin, Texas 78703


Ron Habitzreiter  
1208 West Avenue  
Austin, Texas 78701

F. Giles joins this Agreement for the reason that it owns fee simple title to land on which the Landfill is located and leases that land to BFI for operation of the Landfill and benefits from the mutual covenants and agreements herein. Giles hereby consents to BFI and Austin entering into, complying with and enforcing the terms of this Agreement and agrees to take no action that would be inconsistent with or impede implementation of and compliance with this Agreement by any Party.

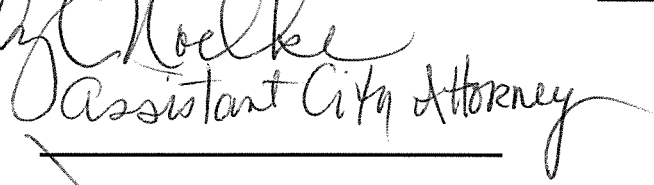
IN WITNESS WHEREOF, the authorized representative of Austin, Giles and BFI, by the signature of their authorized representatives below, have caused this Agreement to be executed in duplicate originals, effective as of the latest of the three dates entered below.

~~BFI WASTE SYSTEMS OF  
NORTH AMERICA, LLC~~

Date: \_\_\_\_\_

~~  
Assistant City Manager  
CITY OF AUSTIN~~

Date: Oct 31, 2008

~~  
Assistant City Attorney~~

~~GILES HOLDINGS, L.P.  
Formerly Known as Mobley  
Chemicals, Inc.~~

Date: \_\_\_\_\_

\_\_\_\_\_

IN WITNESS WHEREOF, the authorized representative of Austin, Giles and BFI, by the signature of their authorized representatives below, have caused this Agreement to be executed in duplicate originals, effective as of the latest of the three dates entered below.

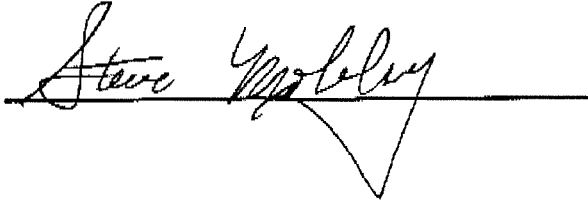
BFI WASTE SYSTEMS OF  
NORTH AMERICA, LLC

CITY OF AUSTIN

*Bruce Dugan* MANAGER VICE PRESIDENT

GILES HOLDINGS, L.P.  
Formerly Known as Mobley Chemicals, Inc.

GILES HOLDINGS, L.P.  
Formerly Known as Mobley Chemicals, Inc.



**Exhibit A**

**Approximately 54.13 acres of land of the LUCAS MUNOS SURVEY, ABSTRACT NO. 55, in Travis County, Texas and being more particularly described by metes and bounds in Document No. 2005198209 of the Travis County Real Property Records, said Document attached as Exhibit "A" hereto.**

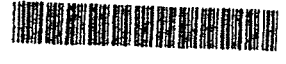


150  
File 1114 / E

3/30

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER**

**FOLLOWING RECORDATION,  
RETURN TO:**



LD 2005198209  
5 PGS

BFI WASTE SYSTEMS OF NORTH AMERICA, INC.  
c/o Allied Waste Industries, Inc.  
15880 N. Greenway-Hayden Loop, Suite 100  
Scottsdale, AZ 85260  
Attn: Steven M. Helm, Vice-President - Legal

**SPECIAL WARRANTY DEED**

Date: August 17, 2004

Grantor: Giles Holdings, L.P.

Grantor's Mailing Address (including county):  
c/o Steve Mobley  
2205 Westover Road  
Austin, Travis County, Texas 78703

Grantee: BFI WASTE SYSTEMS OF NORTH AMERICA, INC.

Grantee's Mailing Address:  
c/o Allied Waste Industries, Inc.  
15580 N. Greenway-Hayden Loop, Suite 100  
Scottsdale, AZ 85260

I, Dana DeBeauvoir, County Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on Dec 30, 2004  
Dana DeBeauvoir, County Clerk  
By Deputy:  
*Michael P. Gonzales*  
Michael P. Gonzales

Consideration:

The Grantor acknowledges the receipt of \$10.00 and other good and valuable consideration paid to Grantor by Grantee, for which no lien, express or implied is retained.

Property (including any improvements):

APPROXIMATELY 54.13 acres of land out of the LUCAS MUNOS SURVEY, ABSTRACT NO. 55, in Travis County, Texas and being more particularly described by metes and bounds in Exhibit "A" attached hereto, SAVE AND EXCEPT that

portion of the subject property lying within that certain 1.606 acre tract of land awarded to the City of Austin in Eminent Domain proceedings, recorded in Document No. 2003143218, Official Public Records of Travis County, Texas.

Reservations From and Exceptions to Conveyance and Warranty:

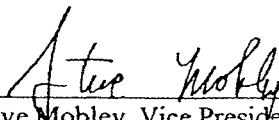
Subject to taxes and assessments not yet delinquent, reservations in patents and all easements, rights of way, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record and such state of facts as would be disclosed by a proper inspection or accurate TLTA survey of the Property

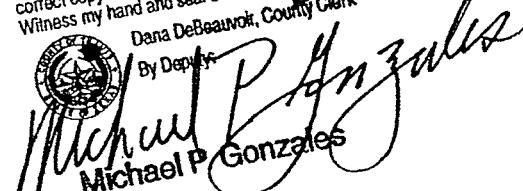
Grantee is accepting and taking the Property in its current condition, "AS IS".

Grantor, for the consideration set forth herein and subject to the reservations from and exceptions to conveyance and warranty, grants, sells, and conveys to Grantee the above referenced property, together all the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's successors, or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, and successors to warrant and forever defend said property to Grantee and Grantee's successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, when the claim is by, through, or under Grantor, except as to the reservations from and exceptions to conveyance and warranty set forth herein. When the context requires, singular nouns and pronouns include the plural.

EXECUTED this 17 day of August, 2004.

GILES HOLDINGS, L.P.  
by: Mobley Management Company,  
General Partner

  
\_\_\_\_\_  
Steve Mobley, Vice President

I, Dana DeBeauvoir, County Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on Dec 30, 2005  
Dana DeBeauvoir, County Clerk  
By Deputy   
Michael P. Gonzales

ACKNOWLEDGMENT

STATE OF TEXAS       §  
                                  §  
COUNTY OF TRAVIS   §

BEFORE ME, the undersigned authority, on this day personally appeared Steve Mobley, the Vice-President of Mobley Management Company in its capacity as General Partner of Giles Holdings, L.P., a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity stated.

Given under my hand and seal of office on this the 17 day of AUGUST, 2004.



*[Signature]*  
\_\_\_\_\_  
Notary Public, State of Texas

I, Dana DeBeauvoir, County Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on Aug 30, 2005  
Dana DeBeauvoir, County Clerk  
By Deputy:  
*[Signature]*  
Michael P. Gonzales

EXHIBIT "A" TWO PAGES

54.13 Acres  
Lucas Munos Survey No. 55, A-513  
Travis County, Texas

FN 2945 (TWH)  
May 14, 2003  
SAM, Inc. Job No. 23147-01

SAID 54.13 ACRE TRACT OF LAND AS SHOWN ON SURVEYING AND MAPPING, INC. DRAWING NUMBER 23147-01.DWG AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2-inch iron rod found in the southwest Right-of-Way (ROW) line of Blue Goose Road, a variable width ROW for which no deed information was found, for the northwest corner of said 55.10 acre tract;

THENCE with the southwest ROW line of said Blue Goose Road, the northeast lines of said 55.10 acre tract, and the northeast lines of the tract described herein, the following two (2) courses and distances:

1. S 63° 16' 26" E, a distance of 532.82 feet to A 1/2-inch iron rod found, and
2. S 63° 01' 29" E, a distance of 2574.44 feet to a 1/2-inch iron rod with a plastic cap marked "SAM, INC" set in the proposed northwest ROW Line of Giles Road, a variable width ROW, described in a Right of Entry and Possession Agreement with the City of Austin as recorded in Document No. 2000069038 of the Official Public Records of Travis County Texas;

THENCE leaving the northeast line of said 55.10 acre tract, and crossing said 55.10 acre tract with the proposed northwest ROW line of said Giles Road, being the southeast line of the tract described herein, the following six (6) courses and distances:

1. S 26° 54' 06" W, a distance of 20.00 feet to a 1/2-inch iron rod with a plastic cap found at the beginning of a non-tangent curve to the right, from which a 1/2-inch iron rod found in the southeast ROW line of said Giles Road bears S 61° 54' 17" E, a distance of 179.98 feet.
2. with the arc of said curve to the right, passing at a distance of 17.14 feet a 1/2-inch iron rod found for the northeast corner of a proposed slope easement described in said Right of Entry and Possession Agreement, in all a total distance of 40.00 feet, through a central angle of 91° 40' 42", having a radius of 25.00 feet, and a long chord which bears S 17° 38' 12" E, a distance of 35.87 feet to a 1/2-inch iron rod with a plastic cap found for the end of said curve to the left.
3. S 27° 57' 12" W, a distance of 250.98 feet to a 1/2-inch iron rod with a plastic cap found,
4. S 26° 51' 02" W, a distance of 224.98 feet to a 1/2-inch iron rod with a plastic cap marked "SAM INC" set,
5. S 27° 52' 16" W, a distance of 356.71 feet to a 1/2-inch iron rod with a plastic cap marked "SAM, INC" set, from which rod a 1/2-inch iron rod found for the west corner of said proposed slope easement bears with the west line of said easement, N 61° 56' 34" W, a distance of 16.04 feet,
6. S 27° 59' 39" W, a distance of 803.63 feet to a 1/2-inch iron rod with a plastic cap marked "SAM, INC" set in the south line of said 55.10 acre tract, from which a 1/2-inch iron rod found for a point of intersection in the northwest ROW line of said Giles Road bears with said ROW line, S 26° 52' 08" W, a distance of 28.68 feet;

I, Dana DeBeauvoir, County Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office.  
Witness my hand and seal of office  
Dana DeBeauvoir, County Clerk  
By Deputy:  
Michael P. Gonzales



54.13 Acres  
Lucas Munos Survey No. 55, A-513  
Travis County, Texas

FN 2945 (TWH)  
May 14, 2003  
SAM, Inc. Job No. 23147-01

THENCE with the west and south lines of said 55.10 acre tract and the tract described herein, being the remaining lines of a called 102.87 acre tract described in a deed as recorded in Volume 7671, Page 109 of the Deed Records of Travis County, Texas, and a called 176.10 acre tract of land described in a deed as recorded in Volume 7671, Page 101 of the Deed Records of Travis County, Texas, the following six (6) courses and distances:

1. N 62° 45' 22" W, a distance of 224.16 feet to an X chiseled in the top of a headwall.
2. N 27° 49' 51" E, a distance of 1233.92 feet to a 1/2-inch iron rod found,
3. N 83° 43' 02" W, a distance of 1282.31 feet to a 1/2-inch iron rod found,
4. N 63° 03' 14" W, a distance of 1080.00 feet to a calculated point in the margin of a spoils pile,
5. N 27° 35' 24" E, a distance of 260.00 feet to a 1/2-inch iron rod found,
6. N 17° 29' 12" W, a distance of 894.12 feet to the POINT OF BEGINNING, and containing 54.13 acres of land, more or less.

Bearing Basis: Bearings are based on the Texas State Coordinate System, NAD 83/(86), Central Zone.

THE STATE OF TEXAS

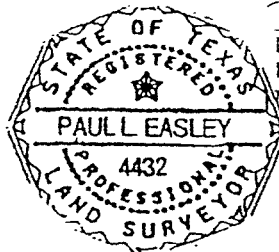
KNOW ALL MEN BY THESE PRESENTS:

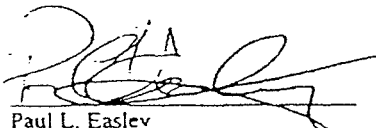
COUNTY OF TRAVIS

That I, Paul L. Easley, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground during May, 2003 under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas this the 14<sup>th</sup> day of May 2003 A.D.

SURVEYING AND MAPPING, Inc.  
4029 Capital Of Texas Hwy., So. Suite 125  
Austin, Texas 78704

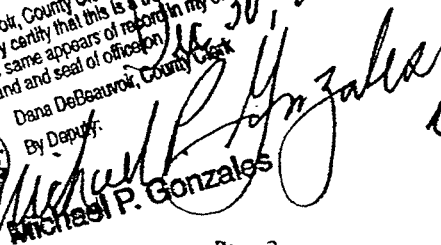


  
Paul L. Easley  
Registered Professional Land Surveyor  
No. 4432 - State of Texas

I, Dana DeBeauvoir, County Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on this 30<sup>th</sup> day of May, 2005.



By Deputy:

  
Michael P. Gonzales

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS



2005 Oct 24 04:41 PM 2005198209

WILLIAMS \$32.00

DANA DEBEAUVOIR COUNTY CLERK  
TRAVIS COUNTY TEXAS

Page 2

**Exhibit B**

Approximately 172.531 acre tract of land out of the LUCAS MUNOS SURVEY No. 55, Abstract 513, being a portion of a 176.10 acre tract of land conveyed to Mobley Chemicals, Inc., by warranty deed, dated January 22, 1982, recorded in volume 7671, page 101, of the deed records of Travis County, Texas; said 172.531 acres being more particularly described by metes and bounds in Exhibit "B" attached hereto.



Professional Land Surveying, Inc.  
Surveying and Mapping

Office: 512-443-1724  
Fax: 512-441-6987

2807 Manchaca Road  
Building One  
Austin, Texas 78704

**172.531 ACRES  
MOBLEY CHEMICALS, INC.**

A DESCRIPTION OF A 172.531 ACRE (APPROXIMATELY 7,515,455 S.F.) TRACT OF LAND OUT OF THE LUCAS MUNOS SURVEY NO. 55, ABSTRACT 513, BEING A PORTION OF A 176.10 ACRE TRACT OF LAND CONVEYED TO MOBLEY CHEMICALS, INC., BY WARRANTY DEED, DATED JANUARY 22, 1982, RECORDED IN VOLUME 7671, PAGE 101, OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS; SAID 172.531 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**BEGINNING** at a 1/2" rebar with cap set for the southeast corner of the remainder of the 176.10 acre tract, being also the southwest corner of the remainder of a 73.20 acre tract recorded in Volume 7671, Page 117, of the Deed Records of Travis County, Texas, and in the north line of a 108.272 acre tract recorded in Volume 7579, Page 500, of the Deed Records of Travis County, Texas;

**THENCE** along the north line of the 108.272, over and across the 176.10 acre tract the following two (2) courses:

1. North 62°34'02" West, a distance of 1091.65 feet to a 112" rebar with cap set in the south line of the 176.10 acre tract, being also in the north line of the 108.272 acre tract;
2. North 62°17'02" West, a distance of 1558.29 feet to a 1" iron pipe found for the southwest corner of the 176.10 acre tract, being also the northwest corner of the 108.272 acre tract, and in the east line of a 90.00 acre tract of land conveyed to Elizabeth Jarmon Wilder by deed of record in Volume 3499, Page 1369, of Deed Records of Travis County, Texas and in Document No. 2002128106 of the Official

**THENCE** North 26°51'46" East, along the west line of the 176.10 acre tract, being also the east line of the 90.00 acre tract, 432.99 feet to a 60d nail found in a post in the west line of the 176.10 acre tract, being also the southeast corner of a 40.00 acre tract recorded in Volume 10845, Page 198 of the Real Property records of Travis County, Texas;

**THENCE** North 27°02'31" East, along the common line of the 176.10 acre tract, and the 40.00 acre tract, a distance of 381.28 feet to a 60d nail found in a tree stump for the south corner of the 0.136 acre Quit Claim Deed recorded in Document No. 2001155894, of the Official Public Records of Travis County, Texas;

**THENCE** along the west line of the remainder of the 176.10 acre tract, and east line of the 0.136 acre tract the following two (2) courses:

1. North 37°05'31" East, a distance of 83.25 feet to a 60d nail found in a tree stump;
2. North 26°47'17" East, a distance of 794.19 feet to a 1/2" rebar found in the west line of the remainder of the 176.10 acre tract, being also the northeast corner of the 0.136 acre tract and the south corner of a 0.048 acre Quit Claim Deed recorded in Document No. 2001125471, of the Official Public Records of Travis County, Texas;

**THENCE** North 27°57'24" East, along the common line of the remainder of the 176.10 acre tract and the 0.048 acre tract, a distance of 1228.30 feet to a 1/2" rebar with cap set for the northwest corner of the remainder of the 176.10 acre tract, being also the north corner of the 0.048 acre tract, and in the south right-of-way line of Blue Goose Road (right-of-way width varies) and the beginning of a non-tangent curve to the left;

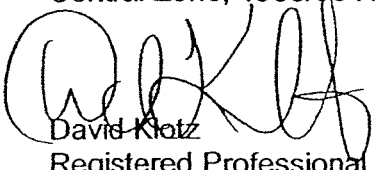
**THENCE** along the south right-of-way line of Blue Goose Road, and in part the north line of the remainder of the 176.10 acre tract the following two (2) courses:

1. 251.34 feet along the arc of said non-tangent curve to the left, having a radius of 615.15 feet, and through a central angle of 23°24'35" the chord of which bears South 51°22'47" East, a distance of 249.59 feet to a 1/2" rebar with cap set;
2. South 63°07'59" East, a distance 1869.68 feet to a 1/2" rebar with cap set in the north line of the remainder of the 176.10 acre tract, being also the northwest corner of a 54.13 acre tract of land recorded in Document No. 20005198209, of the Official Public Records of Travis County, Texas, from which a 1/2" rebar found bears South 63°07'59" East, a distance of 532.70 feet;

**THENCE** leaving the south right-of-way line of Blue Goose Road, South 17°27'36" East, over and across the 176.10 acre tract and along the southwest line of the 54.13 acre tract, a distance of 753.01 feet to a calculated point in the east line of the 176.10 acre tract, being also in the west line of a 102.87 acre tract recorded in Volume 7671, Page 109, of the Deed Records of Travis County, Texas;

**THENCE** leaving the southwest line of the 54.13 acre tract, South 27°33'43" West, along the east line of the 176.10 acre tract, and in part the west line of the 102.87 acre tract and the 73.20 acre tract, a distance of 2363.00 feet to the **POINT OF BEGINNING**, containing an area of 172.631 acres of land, more or less.

Surveyed on the ground in January, 2001. BEARING BASIS: Grid azimuth for Texas Central Zone, 1983/93 HARN values from LCRA control network. Attachments: None.

  
David Klotz

01/05/06

Registered Professional Land Surveyor  
State of Texas No. 5428





Exhibit C

Approximately 122.711 acre tract of land out of the LUCAS MUNOS SURVEY No. 55, Abstract 513, being a portion of a 73.20 acre tract of land conveyed to Mobley Chemicals, Inc., by warranty deed, dated January 22, 1982, recorded in volume 7671, page 117 and a portion of a 102.87 acre tract of land conveyed to Mobley Chemicals, Inc., by warranty deed, dated January 22, 1982, recorded in volume 7671, page 109, both of the deed records of Travis County, Texas; said 122.711 acres being more particularly described by metes and bounds in Exhibit "C" attached hereto.



Professional Land Surveying, Inc.  
Surveying and Mapping

Office: 512-443-1724  
Fax: 512-441-6987

2807 Manchaca Road  
Building One  
Austin, Texas 78704

**122.711 ACRES  
MOBLEY CHEMICALS, INC.**

A DESCRIPTION OF A 122.711 ACRE (APPROXIMATELY 5,345,291 S.F.) TRACT OF LAND OUT OF THE LUCAS MUNOS SURVEY NO. 55, ABSTRACT 513, BEING A PORTION OF A 73.20 ACRE TRACT OF LAND CONVEYED TO MOBLEY CHEMICALS, INC., BY WARRANTY DEED, DATED JANUARY 22, 1982, RECORDED IN VOLUME 7671, PAGE 117 AND A PORTION OF A 102.87 ACRE TRACT OF LAND CONVEYED TO MOBLEY CHEMICALS, INC., BY WARRANTY DEED, DATED JANUARY 22, 1982, RECORDED IN VOLUME 7671, PAGE 109, BOTH OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS; SAID 122.711 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**BEGINNING** at 1/2" rebar found for the southeast corner of the remainder of the 73.20 acre tract, being also in the west right-of-way line of Giles Road (right-of-way width varies), in the west line of a 1.606 acre tract recorded in Document No. 2003143218, of the Official Public Records of Travis County, Texas, and the northeast corner of the remainder of a 108.272 acre tract recorded in Volume 7579, Page 500, of the Deed Records of Travis County, Texas;

**THENCE** North 62°34'06" West leaving the west right-of-way line of Giles Road, over and across the 73.20 acre tract and along the north line of the 108.272 acre tract, a distance of 2586.52 feet to a 1/2" rebar with cap set in the west line of the 73.20 acre tract, being also in the east line of a 176.10 acre tract, recorded in Volume 7671, Page 101, of the Deed Records of Travis County, Texas for the southwest corner of the herein described tract, from which a 1/2" rebar with cap set bears South 62°34'02" East, a distance of 1091.65 feet;

**THENCE** leaving the north line of the 108.272 acre tract, North 27°33'43" East, along the east line of the 176.10 acre tract and in part the west line of the 73.20 acre tract and the 102.87 acre tract, a distance of 2363.00 feet to a calculated point for the northwest corner of the remainder of the 102.87 acre tract, being also in the west line of a 54.13 acre tract recorded in Document No. 2005198209, of the Official Public Records of Travis County, Texas;

**THENCE** leaving the east line of the 176.10 acre tract, along the common line of the 54.13 acre tract and the remainder of the 102.87 acre tract, the following six (6) courses:

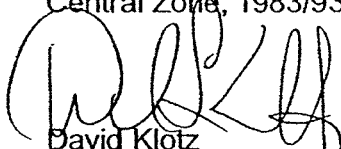
1. South 17°27'36" East, a distance of 141.95 feet to a 1/2" rebar found;

2. South 27°32'10" West, a distance of 260.07 feet to a 1/2" rebar found;
3. South 63°05'47" East, a distance of 1079.88 feet to a 1/2" rebar found;
4. South 83°44'54" East, a distance of 1282.25 feet to a 1/2" rebar found;
5. South 27°47'49" West, a distance of 1233.87 feet to a punch hole found;
6. South 62°46'49" East, a distance of 224.65 feet to a calculated point in the east line of the remainder of the 102.87 acre tract, being also in the west right-of-way line of Giles Road and the west line of the 1.606 acre tract;

**THENCE** South 27°55'44" West, along the east line of the remainder of the 102.87 acre tract, being also the west right-of-way line of Giles Road, and the west line of the 1.606 acre tract, a distance of 28.62 feet to a 1/2" rebar found for the northeast corner of the remainder of the 73.20 acre tract, being also the southeast corner of the remainder of the 102.87 acre tract, in the west right-of-way line of Giles Road and the west line of a 1.606 acre tract recorded in Document No. 2003143218, of the Official Public Records of Travis County, Texas;

**THENCE** South 27°55'48" West, along the east line of the remainder of the 73.20 acre tract, being also the west right-of-way line of Giles Road, and the west line of the 1.606 acre tract, a distance of 1214.01 feet to the **POINT OF BEGINNING**, containing an area of 122.711 acres of land, more or less.

Surveyed on the ground in January, 2001. BEARING BASIS: Grid azimuth for Texas Central Zone, 1983/93 HARN values from LCRA control network. Attachments: None.

  
David Klotz  
Registered Professional Land Surveyor  
State of Texas No. 5428



**Exhibit 1**

## EXHIBIT 1

### Vegetative Practices

#### *Temporary Vegetative Stabilization of Disturbed Areas*

1. Description.

Stabilize soil in disturbed areas with temporary vegetation or mulching.

2. Purpose.

To stabilize the soil; to reduce damages from sediment and runoff to downstream areas; improve wildlife habitat; enhance natural beauty.

3. Conditions Where Practice Applies.

Use vegetation to temporarily stabilize the soil on disturbed, graded or cleared areas prior to establishment of permanent vegetation.

4. Design Criteria.

Prior to vegetative establishment, install needed erosion control practices, such as diversions, grade stabilization structures, berms, dikes, level spreaders, and sediment basins.

Final grading and shaping has usually not been completed for temporary stabilization.

5. Fertilizer.

For temporary vegetative establishment, apply fertilizer with an analysis of 15-15-15 at the rate of .5 pounds of nitrogen per 1,000 square feet during the installation period. In order to avoid the conveyance of nutrients off-site, the timing shall not occur when rainfall is expected.

6. Seed Bed Preparation.

Prepare a suitable seed bed which allows good seed-to-soil contact and soil conditions that are conducive to vegetative growth. Do not disturb the soil within the critical root zone of existing trees.

Areas of compacted soil shall be loosened to a depth of at least two (2) inches by plowing, discing, raking or other acceptable means before seeding. In areas where no topsoil exists, or where fill is needed, the subgrade shall be loosened by discing or by scarifying to a depth of at least two (2) inches to permit bonding of the topsoil to the subsoil.

Topsoil, when used, shall have the following requirements: The depth of the topsoil shall be a minimum of 6" in all areas except within the critical root zone of existing trees. Do not add topsoil within the critical root zone of existing trees.

For temporary vegetative stabilization, the top six inches of soil used for intermediate cover must contain sufficient organic matter and nutrients to support vegetative cover. The following description is not required but is a suggested mix which will be presumed to meet this performance requirement: *The topsoil shall be composed of 3 parts of soil mixed with 1 part Compost, by volume. The compost*

shall be Dillo Dirt or an equal approved by the Engineer, or designated representative. The soil shall be locally available native soil that meets the following specifications:

- Shall be free of trash, weeds, deleterious materials, rocks, and debris.
- 100% shall pass through a 0.75-inch screen.
- Less than 25 % shall pass through a #200 sieve.

Topsoil salvaged from the existing site may often be used, but it should meet the same standards as set forth in these standards.

7. Seeding.

If seeding is to be conducted during the cool season (November 1 to February 15) select species noted as "cool season cover crop" from the tables in Standard Specification 604S and/or 609S. If seeding is to be conducted during the warm season (February 16 to October 31) use one of the following options (whichever is applicable).

- Native Seeding: Green Sprangletop (*Leptochloa dubia*) at the rate of 4 lbs. per acre.
- Non-native Seeding: Comply with 604S.5 using Bermuda grass.
  - Apply seed uniformly with a seed spreader, drill, cultipacker seeder or hydroseeder (slurry includes seed, fertilizer and binder).

8. Protection of Seed Bed with Hydromulching or Soil Retention Blanket.

Newly-installed temporary vegetation must be protected by hydromulch or soil retention blanket (refer to Standard Specification 605S Soil Retention Blanket) immediately after seeding. Protection of the seed bed shall occur in a manner that will allow seed germination and that encourages effective vegetative growth. Hydromulching, when used, shall comply with the requirements of Table 1.4.7-A: Hydromulching for Temporary Vegetative Stabilization.

**Table 1.4.7-A: Hydromulching for Temporary Vegetative Stabilization**

Material	Description	Longevity	Typical Applications	Application Rates
70/30 Wood/Cellulose Blend Mulch	70% Wood 30% Paper 3% Tackifier	0-3 months	Moderate slopes; from flat to 3:1	45.9 lbs/1000 sf
Wood Fiber Mulch	96% Wood 3% Tackifier	0-3 months	Moderate slopes; from flat to 3:1	45.9 lbs/1000 sf

a. 70/30 Wood/Cellulose Blend Fiber Mulch. Wood/Cellulose blend fiber mulch shall consist of 70% long wood grain fibers produced from grinding clean, whole wood chips and 30% cellulose fiber produced from ground newsprint. Refer to Table 1.4.7-B for mulch properties and to Standard Specification 604S – Seeding for additional mulch requirements.

b. Wood Fiber Mulch. Wood fiber mulch shall consist of 100% long wood grain fibers produced from grinding clean, whole wood chips. . Refer to Table 1.4.7-C for mulch properties and to Standard Specification 604S – Seeding for additional mulch requirements.

**Table 1.4.7-B: Properties of 70/30 Wood/Cellulose Blend Fiber Mulch**

<b><u>Property (Test Method)</u></b>	<b><u>Required Value</u></b>
<u>Moisture content %</u>	<u>12.0% ±3.0% (max.)</u>
<u>Organic matter % - wood fiber</u>	<u>70% ±1% Oven Dry Basis (min.)</u>
<u>Organic matter % - paper fiber</u>	<u>30.0% ±1% Oven Dry Basis (max.)</u>
<u>Tacking Agent</u>	<u>3.0% (min.)</u>
<u>Water holding capacity</u>	<u>1,000 Grams of water per 100 grams of fiber (min.)</u>

**Table 1.4.7-C: Properties of Wood Fiber Mulch**

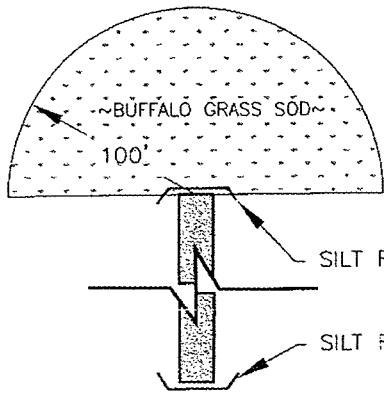
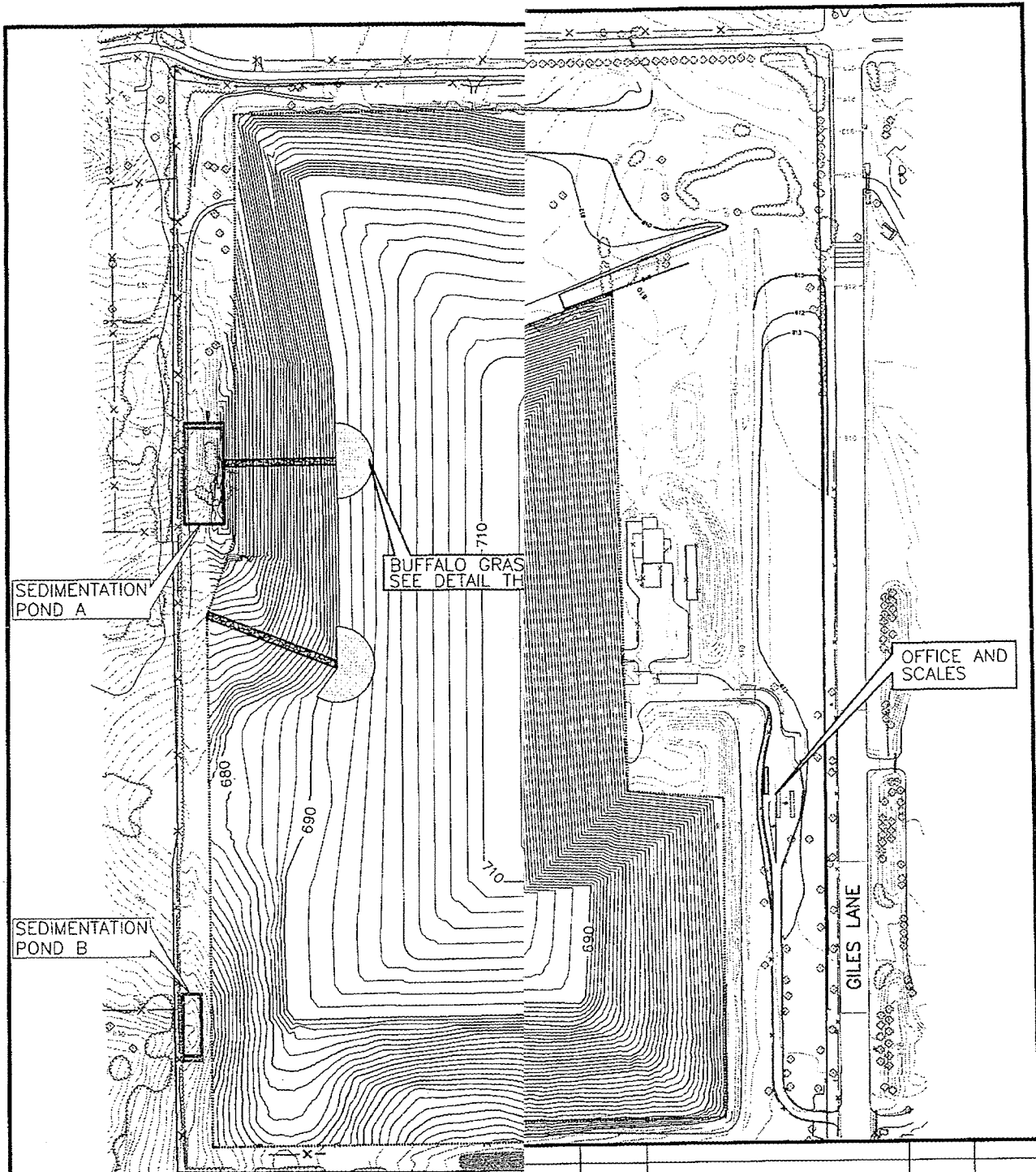
<b><u>Property (Test Method)</u></b>	<b><u>Required Value</u></b>
<u>Moisture content %</u>	<u>12.0% ±3.0% (max.)</u>
<u>Organic matter % - wood fiber</u>	<u>96% ±1% Oven Dry Basis (min.)</u>
<u>Organic matter % - paper fiber</u>	<u>30.0% ±1% Oven Dry Basis (max.)</u>
<u>Tacking Agent</u>	<u>3.0% (min.)</u>
<u>Water holding capacity</u>	<u>1,000 Grams of water per 100 grams of fiber (min.)</u>

9. Watering

Seed germination will be expected within 1 week of sowing. Watering is required to germinate seed and maintain growth. Seedlings shall be watered daily, or more often as necessary to ensure growth and to ensure that the vegetative cover stabilizes the soil as required.

Exhibit 2





BUFFALO GRASS SOD DETAIL  
N.T.S.

REV. NO.	DATE	DR. BY	APP. BY



ASSOCIATED CONSULTING ENGINEERS, INC.



BFI SUNSET FARMS LANDFILL  
PERMIT AMENDMENT  
MSW 1447-A

ACE REFERENCE NO. 070-03
DATE:
FILE: EXHIBIT 2.dwg

SITE LAYOUT PLAN	EXHIBIT 2
COA Exhibit 3	
Agreement Re: BFI	

1 Q. State your name.

2 A. *Joe D. Word*

3 Q. Who is your employer?

4 A. *The City of Austin*

5 Q. What department do you work for?

6 A. *Solid Waste Services*

7 Q. How long have you worked for the City?

8 A. *I worked for the City for 25 years and retired in 2001. I then accepted an offer to work*  
9 *part-time for the Solid Waste Services Department, which is my current position.*

10 Q. I am handing you what's been marked as COA Exhibit 5. Do you recognize it?

11 A. *Yes.*

12 Q. What is it?

13 A. *It is a summary resume of my education, qualifications, and professional experience.*

14 Q. Is the information contained in it true and correct?

15 A. *Yes.*

16 Q. What are your job duties?

17 A. *I assist in the management of the City's environmental remediation program for old*  
18 *landfills, including consultant selection, contract negotiation, and oversight of the*  
19 *various phases of each project. I also perform special projects for the Director as*  
20 *assigned, such as representing the City in this proceeding.*

21 Q. What type of studies/ analysis/review have you done?

1 A. *I reviewed the TCEQ rules and the BFI application in order to understand what was*  
2 *being proposed, and looked for opportunities to improve the overall operations to*  
3 *mitigate the impact of the facility on surrounding properties, residents and businesses.*

4 Q. How does your professional and educational experience relate to your testimony and  
5 opinion in this matter?

6 A. *I have a Bachelor of Science in Civil Engineering Degree from the University of Texas. I*  
7 *am a licensed professional engineer (#50381) in the State of Texas. In my career with the*  
8 *City of Austin, I managed the Street and Bridge Division of Public Works for six years,*  
9 *where I was responsible for street construction and maintenance, and drainage*  
10 *maintenance. I assumed responsibility for management of Solid Waste Services in 1983.*  
11 *My responsibilities included the management of the City of Austin's FM812 Type I*  
12 *municipal solid waste landfill, as well as management of all collection and recycling*  
13 *operations. I also represented the Department in the procurement of disposal contracts*  
14 *with private landfills, including the BFI landfill that is the subject of this proceeding. I*  
15 *participated in numerous meetings with landfill operators and neighborhood*  
16 *representative to discuss concerns and possible remedies. I therefore have an*  
17 *understanding of the engineering and operational considerations of running a landfill,*  
18 *both the theoretical ideal and the practical reality.*

19 Q. What is your connection with the permit application that is the subject of this proceeding?

20 A. *I am the City of Austin representative for this proceeding.*

21 Q. What is the purpose of your testimony?

22 A. *To provide my best assessment of the implications of extending landfill operations at this*  
23 *site beyond its current permitted capacity, and to recommend improvements to the*

1            *operating requirements that would mitigate to some degree the impacts of the landfill on*  
2            *neighboring properties, residents, and businesses. My assessment is based on my prior*  
3            *experience in earthwork, drainage, and landfill operations, as well as direct observation*  
4            *of the BFI landfill facility as a customer of that facility in the past, and in reviewing this*  
5            *application. I will also provide some recommendations in terms of cover and vegetation*  
6            *management on the site.*

7    Q.    Have you reviewed the application of BFI for a landfill permit amendment that is the  
8            subject of this proceeding?

9    A.    *Yes.*

10   Q.    What parts of the application did you review in particular?

11   A.    *I did a cursory review of the entire application, but paid particular attention to Part III*  
12            *(the Site Development Plan) and Part IV (The Site Operating Plan).*

13   Q.    Why?

14   A.    *To ascertain whether the application proposed to exceed the minimum requirements of*  
15            *the TCEQ rules for operations in order to mitigate impacts of continued operation of the*  
16            *landfill beyond its currently permitted capacity.*

17   Q.    Are you familiar with the proposed site?

18   A.    *Yes.*

19   Q.    Did you have concerns about the BFI permit application that prompted a request for party  
20            status in the matter referred for hearing?

21   A.    *Yes. The City and nearby property owners, businesses, and residents had an expectation*  
22            *that the landfill would close upon reaching its currently permitted capacity, at which*

1 *point the landfill's impacts on their quality of life and potential uses of their property*  
2 *would no longer be a significant factor.*

3 Q. Have you reviewed the prefiled testimony for the applicant in this case?

4 A. Yes.

5 Q. Does the applicant's prefiled testimony address the concerns which prompted the city to  
6 contest this application?

7 A. *Not all of them. We are concerned that even though BFI has agreed to close by a date*  
8 *certain in the application, they could submit subsequent applications to amend that time*  
9 *frame. Additionally, the City wants to see improved operational requirements which go*  
10 *beyond the minimum requirements of the TCEQ rules in order to minimize the impact so*  
11 *extended landfill life on the nearby properties, businesses, and neighborhoods.*

12 Q. Please state the remaining concerns not addressed in the applicants prefiled testimony and  
13 suggest any special conditions that could be added to address these concerns?

14 A. *The following special conditions should be considered:*

- 15 *1. Place intermediate cover and implement seeding events, on all side slope*  
16 *disturbed areas on which activity ahs not recommenced within 60 days except*  
17 *BFI is under no obligation to seed such areas during the months of July and*  
18 *August. These seeded areas shall be irrigated in accordance with the*  
19 *requirements of Section 1.4.7 A, paragraph 9 (Temporary Vegetative*  
20 *Stabilization of Disturbed Areas) set forth in the City of Austin*  
21 *Environmental Criteria Manual (ECM). The City agrees that the*  
22 *requirements of Section 1.4.7 A, paragraph 6 of the ECM shall be satisfied if*

1                    *the top six inches of soil used for intermediate cover contains sufficient*  
2                    *organic matter and nutrients to support vegetative cover.*

- 3                    2. *Place intermediate cover and implement seeding events on the top deck of the*  
4                    *landfill in all disturbed areas on which activity has not recommenced within*  
5                    *120 days except for that area immediately up gradient to the two constructed*  
6                    *down chutes. Those up gradient areas shall be immediately vegetated with a*  
7                    *filter strip of buffalo grass sod that extends at least 100 feet out from each*  
8                    *down chute inlet and is wide enough to filter the run off to be directed to each*  
9                    *down chute (See Agreement Exhibit 3 for width dimensions). The buffalo*  
10                   *grass filter strip shall be maintained until final cover is placed. In addition, a*  
11                   *silt fence or mulch berm shall be placed on the top deck in front of the inlet of*  
12                   *each down chute and at the end of each constructed down chute (See Exhibit*  
13                   *1 for locations). These silt fences or mulch berms shall remain in place until*  
14                   *the areas contributing runoff to these down chutes achieve adequate*  
15                   *vegetative growth.*
- 16                   3. *The initial seeding event for all disturbed areas will be accomplished using*  
17                   *hydromulch seeding application procedures per 1.4.7 A ECM guidelines.*
- 18                   4. *Seeding of the disturbed areas will be of a seasonally appropriate mix.*  
19                   *Currently the seed mix is bermuda/millet for warm weather and rye for cold*  
20                   *weather.*
- 21                   5. *Seeding for the final cover shall include a seasonally appropriate 609-S*  
22                   *(native seeds) mix on approximately 15% of the surface area of the eastern*

1                    *and northern slopes of the landfill and for the remainder of the site a*  
2                    *seasonally appropriate mix.*

3                    6.    *Stock piles. Perimeter sediment/erosion control devices such as silt fences,*  
4                    *hay bales or other systems acceptable to the City of Austin shall be in place*  
5                    *prior to the establishment of any stock piles on site. For soil stock piles which*  
6                    *have slope lengths greater than 20 feet, mid-slope temporary stabilization*  
7                    *controls such as seeding, tarping or placement of silt fences or mulch berms*  
8                    *shall be implemented within 14 days of the initial establishment of the soil*  
9                    *stock pile.*

10                  7.    *Install and maintain silt fences or mulch berms within 14 days of completion*  
11                  *of intermediate cover at the base of all side slope and top deck intermediate*  
12                  *cover areas until adequate vegetation growth is achieved.*

13                  8.    *Stormwater runoff from the landfill area designated as Drainage Area 2 shall*  
14                  *be routed through the existing detention pond, or the proposed water*  
15                  *quality/detention pond when it is constructed, when the waste fill in Drainage*  
16                  *Area 2 has reached the final grades proposed in the landfill expansion plan.*

17                  9.    *Ensure that the side slopes of the existing detention pond and the side slopes*  
18                  *of the proposed water quality/detention pond in the northeast portion of the*  
19                  *landfill shall be adequately stabilized through proper grading and*  
20                  *maintenance and by implementing/applying vegetation on the side slopes of*  
21                  *the ponds within thirty days of completion of construction of the pond.*

22                  *Inspect the sedimentation ponds/basins every three months or after every half*

1                    *inch rainfall event and clean the ponds/basins by removing the accumulated*  
2                    *sediment once the sediment has reached 25% of the respective pond capacity.*

3                    *10. BFI agrees that it shall not accept liquid waste that has not passed the*  
4                    *TCEQ's paint filter test and shall not construct or operate a liquid waste*  
5                    *stabilization/solidification basin at the Sunset Farms Landfill.*

6                    *11. BFI agrees to prohibit commercial waste hauling vehicles from utilizing*  
7                    *Blue Goose Road as ingress or egress to the Sunset Farms landfill except for*  
8                    *those few vehicle which may service businesses and residences in that area.*  
9                    *Specifically, BFI shall progressively discipline any of its own drivers up to*  
10                   *and including termination which ignore this prohibition. BFI shall also*  
11                   *incorporate into its contracts with other commercial waste haulers that they*  
12                   *will not be allowed to dispose of their waste loads at the Sunset Farms*  
13                   *Landfill if they utilize Blue Goose Road for ingress or egress more than one*  
14                   *time.*

15 Q.     Are there any other changes that should be made to the draft permit?

16 A.     *No.*

17 Q.     Do you have concerns related to erosion and sedimentation controls on the site?

18 A.     *Yes. The large areas of unvegetated soil that are characteristic of this landfill operation*  
19           *have the potential to release large quantities of sediment into stormwater runoff, as well*  
20           *as transport by wind erosion.*

21 Q.     Do you have concerns regarding land use compatibility of the landfill with the  
22           surrounding areas?



1 A. *Yes. Even with state of the art operating practices, large buffer areas are the most*  
2 *effective means of mitigating impacts of landfill operations.*

3 Q. Do you have concerns related to the revegetation proposed on the site for intermediate  
4 and final cover?

5 A. *Yes.*

6 Q. What are those concerns?

7 A. *Large areas of bare soil can remain in place for up to 180 days before attempting to*  
8 *establish vegetative cover. Much of the soil being used at this site is a sterile clay*  
9 *removed well below the existing ground level. Its fertility is very poor, and it is therefore*  
10 *very difficult to establish sufficient vegetative cover to be effective in controlling erosion*  
11 *and sediment loss. Irrigation is virtually non-existent.*

12 Q. I am handing you what's been marked as COA Exhibit 3. Do you recognize it?

13 A. *Yes.*

14 Q. What is it?

15 A. *It is an agreement that substantially increases the requirements and protections that the*  
16 *site operator will implement at the landfill. It will result in the more frequent placement*  
17 *of intermediate cover, and faster and more effective establishment of revegetation on that*  
18 *cover, as well as reductions in sediment in stormwater runoff.*

19 Q. Is it your opinion that the special conditions contained in COA Exhibit 3 will satisfy your  
20 concerns.

21 A. *I believe it will significantly mitigate the impacts of the landfill in these areas. It will*  
22 *require that disturbed areas be revegetated in a much shorter time frame than the TCEQ*  
23 *rules require. It will require significantly more temporary erosion control devices. It will*

1            *require soil amendment and irrigation practices that will result in substantially less time*  
2            *to establish vegetative cover.*

3    Q.    Does this conclude your testimony?

4    A.    *Yes.*

**Joe Word**  
Solid Waste Services  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767

### **Summary of Qualifications**

Joe D. Word, P.E. is currently employed by the City of Austin Solid Waste Services Department as Coordinating Engineer for Special Projects. He earned a Bachelor of Science in Civil Engineering from the University of Texas at Austin in 1975. He has worked for the City of Austin in a variety of positions, becoming the Division Engineer for the Street and Bridge Division of the Public Works Department, where he pioneered a number of new pavement management systems and techniques. He became Chief Engineer, and later, Assistant Director for Solid Waste Services in 1983. In this position, he was responsible for overall management of Solid Waste Services, including collection operations, street cleaning, and disposal operations. This included the City's municipal solid waste landfill. He participated in the permitting of that facility, as well as the evaluation of other disposal alternatives such as waste to energy. He has experience and expertise in landfill management, operations and permitting. He retired from the City of Austin in 2001 after a 25 year career, and is currently working for Solid Waste Services part-time, coordinating special projects and providing expertise in his areas of experience and knowledge.

Mr. Word is a member of the Texas Chapter of the Solid Waste Association of North America, and a licensed engineer in the State of Texas, license # 50381.

1 Q. State your name.

2 A. *Charles (Chuck) Lesniak*

3 Q. Who is your employer?

4 A. *City of Austin*

5 Q. What department do you work for?

6 A. *Watershed Protection and Development Review Department*

7 Q. How long have you worked for the City?

8 A. *A little over 18 years.*

9 Q. I am handing you what's been marked as COA Exhibit 7. Do you recognize it?

10 A. *Yes*

11 Q. What is it?

12 A. *My resume.*

13 Q. Is the information contained in it true and correct?

14 A. *Yes*

15 Q. What are your job duties?

16 A. I work in a variety of areas, including pipelines, landfills, environmental contamination

17 *(soil contamination, water pollution, environmental risk, etc.), and environmental*

18 *regulatory compliance. I provide technical assistance and advice in these and other*

19 *similar areas.*

20 Q. What type of studies/ analysis/review have you done?

21 A. *In relation to the BFI facility, I have assisted in complaint investigations, responses to*

22 *citizen complaints, and performed site inspections.*

1 Q. How does your professional and educational experience relate to your testimony and  
2 opinion in this matter?

3 A. *I have a Bachelor of Science in Aquatic Biology and am the City of Austin's lead staffer  
4 on abandoned landfills. I also have worked on many issues relating to existing landfills  
5 and have a working knowledge of TCEQ Municipal Solid Waste regulations. I have  
6 considerable experience as an investigator and project technical resource regarding  
7 erosion and sedimentation impacts and control methodologies.*

8 Q. What is your connection with the permit application that is the subject of this proceeding?

9 A. *As an employee of the City of Austin Watershed Protection and Development Review  
10 Department I am providing my expertise to the City's Law Department.*

11 Q. What is the purpose of your testimony?

12 A. *To provide the best possible evaluation of the implications of the BFI landfill's  
13 construction, operation, and closure to this site and surrounding area in terms of  
14 possible impacts to the environment, in particular surface water quality. My assessment  
15 is based on my prior experience in inspecting landfills, constructions sites and other  
16 similar facilities in relation to their possible discharge of pollutants. In addition, my  
17 assessment is based on my direct experience and observations during visits to the BFI  
18 facility during pollution investigations and facility inspections. My goal is to provide  
19 assessments and recommendations for temporary erosion and sedimentation controls and  
20 revegetation that provide the highest level of protection to the environment and the  
21 community.*

22 Q. Have you reviewed the application of BFI for a landfill permit amendment that is the  
23 subject of this proceeding?

1 A. *Not in its entirety, but I have reviewed the portions relevant to the areas I have been*  
2 *asked to provide comment, specifically those portions related to stormwater management,*  
3 *drainage, and erosion and sedimentation control.*

4 Q. What parts of the application did you review in particular?

5 A. *I have reviewed Vol. I, Parts I.A-E, Parts II.A-B, Parts II.F-I, Part III (including*  
6 *attachments), Vol. II, Vol. III Attachments 12, 13, and 15.*

7 Q. Why?

8 A. *Those particular sections provided the information relevant to stormwater and drainage*  
9 *management and erosion and sedimentation control.*

10 Q. Are you familiar with the proposed site?

11 A. *Yes, I have visited the site many times over the years and as recently as September 2008.*

12 Q. Did you have concerns about the BFI permit application that prompted a request for party  
13 status in the matter referred for hearing?

14 A. *Yes. In my opinion, this site has historically had poor erosion and sedimentation control*  
15 *and, in particular, poor revegetation of intermediate cover. I have observed large areas*  
16 *of unvegetated or poorly vegetated side slopes and "top deck". I have also witnessed*  
17 *intermediate cover slope failures that I believe were related to poor revegetation*  
18 *practices.*

19 Q. Have you reviewed the prefiled testimony for the applicant in this case?

20 A. *Yes.*

21 Q. Does the applicant's prefiled testimony address the concerns which prompted the city to  
22 contest this application?

1 A. *The prefiled testimony addresses some of my concerns and appears to be an improvement*  
2 *on past site practices.*

3 Q. Please state the remaining concerns not addressed in the applicants prefiled testimony and  
4 suggest any special conditions that could be added to address these concerns?

5 A. *For the most part prefiled testimony and the descriptions in the application are not a*  
6 *significant improvement on the TCEQ's minimum requirements for stormwater*  
7 *management, erosion controls, and revegetation. Nor does it meet City of Austin*  
8 *standards for temporary erosion controls and revegetation.*

9 *I have strongly recommended significant improvements in temporary erosion controls at*  
10 *or near the source of possible erosion, limiting areal coverage of unvegetated, disturbed*  
11 *soils, and, most importantly, upgrading revegetation practices. Revegetation should*  
12 *occur much more frequently than every 180 days, include adequate soils to support*  
13 *growth, include an irrigation plan, and a requirement for coverage of 85%. The City of*  
14 *Austin's standard specifications would be an appropriate basis for developing the*  
15 *revegetation plan.*

16 Q. Are there any other changes that should be made to the draft permit?

17 A. *I would also recommend a clear, written maintenance schedule for all permanent*  
18 *sedimentation basins. Modifications to the temporary controls should be included in the*  
19 *applicant's permit or in the facilities Stormwater Pollution Prevention Plan.*

20 Q. I am handing you what's been marked as COA Exhibit 3. Do you recognize it?

21 A. *Yes*

22 Q. What is it?

1 A. *The agreed upon enhancements to the facilities erosion and sedimentation controls and*  
2 *other agreements concerning the operations and closure of the landfill.*

3 Q. Is it your opinion that the special conditions contained in COA Exhibit 3 will satisfy your  
4 concerns regarding erosion and sedimentation controls.

5 A. *Yes, these conditions do address my concerns regarding erosion and sedimentation*  
6 *control, particularly those regarding revegetation.*

7 Q. Does this conclude your testimony?

8 A. *Yes*



## CHARLES LESNIAK III, REM

### SUMMARY OF QUALIFICATIONS

Eighteen years of experience with the City of Austin working on water quality issues, including five years of experience coordinating and overseeing the work of a team of environmental investigators. Broad range of experience and skills, including; environmental regulatory compliance (federal, state and local), inter-agency coordination and issue resolution, multi-disciplinary technical review (surface water, groundwater, soil) and community outreach and education. Extensive experience working with multiple City Departments at the executive level and City Boards and Commissions. Very familiar with the policies, regulations, and staff of many City, State and Federal agencies including the Texas Commission on Environmental Quality, Texas Department of Transportation, Lower Colorado River Authority, US Environmental Protection Agency and the US Fish and Wildlife Service. Strong technical writing, public speaking and presentation skills.

### WORK EXPERIENCE

2007-Present *Environmental Policy Program Manager*

City of Austin - Watershed Protection and Development Review Department, Austin, Texas

- Responsible for advising the Watershed Protection and Development Review Department (WPDRD) and other City of Austin departments on regulatory and technical aspects of contaminated sites and remediation activities which are the City's responsibility or which may impact the City.
- Coordinate with other Departments, and local, State and Federal authorities on potential environmental risks and potential impacts of pipelines, landfills, and other high-risk land uses or activities.
- Provide advice and recommendations on complex environmental regulatory and technical issues, including environmental risk assessment, contaminated site remediation, water quality protection, solid waste disposal facility operation, pipeline operations, and other high risk facilities. Includes reviewing or preparing technical reports, memoranda, summaries of applicable regulations, site assessments, contracts, regulations (local, state, federal) and providing expert opinions and recommendations based on that review.
- Prepares and provides briefings to the City Council and/or Boards and Commissions on complex and sensitive environmental issues.

1999 - 2007 *Environmental Program Coordinator*

City of Austin - Watershed Protection and Development Review Department, Austin, Texas

- Provide environmental technical expertise and assistance to many City

Departments including Watershed Protection and Development Review, Public Works and Transportation, Solid Waste Services, Parks and Recreation, and the Law Department. Major projects include the Longhorn Pipeline lawsuit, East Austin Tank Farm remediation, Mabel Davis Park landfill assessment and remediation, and Water Treatment Plant No. 4.

- Responsible for coordination with other City Departments and State agencies on a wide variety of environmental issues and developing solutions to address those issues. Coordinated and drafted an inter-Departmental agreement on spill response with the Austin Water Utility. Led the development of a Spill Plan for the Barton Springs salamander to establish spill response policies for the Barton Springs Zone of the Edwards Aquifer and coordinate the activities of municipal and county agencies in the region.
- Regularly review a wide range of technical reports including environmental site assessments, groundwater monitoring reports, and remediation reports for completeness and regulatory compliance.
- Work with the City Manager, Asst. City Managers, Law Department, Dept. Directors and Asst. Directors and City Boards and Commissions on many local environmental issues such as the Longhorn Pipeline, East Austin Tank Farm and the WMI Landfill Industrial Waste Unit.
- Routinely work with other staff in developing City ordinances and polices. Worked as lead technical staff person in developing Austin's ordinance regulating development along pipelines and City ordinance regarding development on abandoned and closed landfills.

1994 - 1998 *Environmental Quality Specialist III*

City of Austin - Watershed Management Department, Austin, Texas

- Team Leader for Spills and Complaints Response Program. Oversaw and coordinated the activities of 4 person team of pollution investigators. Assisted with budget and performance measure development and tracking.
- Responded to and investigated hazardous materials spills and pollution complaints. Personally conducted over 2,000 pollution investigations.
- Directed spill response and remediations of all sizes and types, including remediation projects in excess of \$500,000.
- Developed and managed abandoned hazardous waste disposal and remediation contracts (\$50K/year), including writing bid and contract specifications.
- Designed and maintained computerized investigation report database of over 8,000 records, including management of programmer services contract.
- Assisted City departments in environmental regulatory compliance and developing environmental policy and procedures.
- Created and reviewed technical reports and correspondence.
- Developed and presented multimedia presentations to community organizations, business associations, boards, commissions, and City Council.
- Developed and coordinated City's inter-departmental environmental

justice initiative.

1992 - 1994     *Environmental Quality Specialist II*  
City of Austin - Drainage Utility Department, Austin, Texas

- Senior Investigator in Spills and Complaints Response Program.
- Responded to hazardous and non-hazardous materials spills.
- Investigated citizen pollution complaints regarding residential, industrial, commercial, and government activities, directing responsible parties in remediation and disposal activities.
- Provided technical assistance and direction to other City Departments to assist with compliance with local, State, and Federal environmental regulations.
- Wrote and reviewed technical reports.
- Developed community education materials and gave numerous presentations to community and business organizations, including City Boards and Commissions.
- Created and led the City's East Austin Environmental Initiative, an initiative to coordinate and promote the City of Austin's environmental activities in East Austin and respond to the environmental concerns of this minority community. This project required extensive community relations work with neighborhood associations, East Austin businesses and environmental activist organizations.

1990 - 1992     *Environmental Quality Specialist I*  
City of Austin - Environmental & Conservation Services Department,  
Austin, Texas

- Worked in multi-dimensional program that included spill and complaint investigation, stormwater monitoring, and small business inspection.
- Responded to hazardous and non-hazardous materials spills, often as first responder.
- Provided technical guidance to emergency responders on environmental protection and regulatory compliance with local, State, and Federal laws.
- Investigated citizen pollution complaints regarding residential, industrial, commercial, and government activities.
- Directed responsible parties in both spills and complaints in remediation and disposal of contaminated media.
- Operated and maintained automated stormwater samplers and collected samples during storm events.
- Inspected small businesses for compliance with pollution prevention regulations.
- Designed and programmed computerized database for investigation tracking and reporting.

1989 *Field Technician*  
Texas Parks and Wildlife Commission, Austin, Texas

- Continued work on instream flow project (see below) in cooperation with Lower Colorado River Authority.



1 Q. State your name.

2 A. *Michael Kelly*

3 Q. Who is your employer?

4 A. *The City of Austin*

5 Q. What department do you work for?

6 A. *Watershed Protection and Development Review*

7 Q. How long have you worked for the City?

8 A. *12 years*

9 Q. I am handing you what's been marked as COA Exhibit 9. Do you recognize it?

10 A. *Yes*

11 Q. What is it?

12 A. *It is a summary resume of my education, qualifications and professional experience*

13 Q. Is the information contained in it true and correct?

14 A. *Yes*

15 Q. What are your job duties?

16 A. *1)Manage the design and construction of COA-sponsored water quality treatment and*

17 *erosion control projects; 2) Develop technical criteria for construction phase and post-*

18 *construction water quality controls (including erosion and sedimentation controls); 3)*

19 *Provide engineering support to all City Department's regarding stormwater management*

20 *and erosion control.*

21 Q. What type of studies/ analysis/review have you done?

22 A. *I have performed reviews of erosion and sedimentation control plans, performed*

23 *hydraulic and hydrologic modeling (including MUSLE/RUSLE erosion models), sediment*

1           *transport modeling in relation to site development plans and COA Capital Improvement*  
2           *Projects.*

3    Q.    How does your professional and educational experience relate to your testimony and  
4           opinion in this matter?

5    A.    *I received a Masters Degree in Agricultural Engineering from the University of*  
6           *Wisconsin at Madison. The coursework was specifically geared towards training*  
7           *engineers to analyze and stormwater quantity and quality, to quantify soil erosion due to*  
8           *land disturbance (like agriculture and construction activities) and how to design*  
9           *solutions to problems associated with stormwater runoff. My graduate advisor, Dr. Gary*  
10          *Bubnzer, was the author of the Wisconsin Construction Site Handbook, used by the State*  
11          *of Wisconsin as a guidance document for reducing erosion from construction sites.*

12          *As part of my job duties, I have crafted the erosion and sedimentation control criteria to*  
13          *be used on all projects under COA jurisdiction. I am a registered Professional Engineer*  
14          *(#87774) in the State of Texas.*

15    Q.    What is your connection with the permit application that is the subject of this proceeding?

16    A.    *I am representing the City of Austin in my capacity as a soil and water resource*  
17          *engineer.*

18    Q.    What is the purpose of your testimony?

19    A.    *To provide my best assessment of the implications of landfill expansion on the drainage*  
20          *system. My assessment is based on my prior experience in drainage and erosion control*  
21          *measures as well as my review of the site plans that have been submitted to the City of*  
22          *Austin and my review of the permit application. I will provide recommendations on*  
23          *methods to minimize soil loss from the landfill, prevent off-site migration of sediment and*

1           *minimize off-site drainage impacts and why I believe the proposed settlement meets these*  
2           *goals.*

3    Q.     Have you reviewed the application of BFI for a landfill permit amendment that is the  
4           subject of this proceeding?

5    A.     *Yes.*

6    Q.     What parts of the application did you review in particular?

7    A.     *I reviewed the entire application, paying particular attention to Part III and Part IV. I*  
8           *also reviewed the Stormwater Pollution Prevention Plan (SWPPP).*

9    Q.     Why?

10   A.     *To determine the proposed provisions for drainage, water quality and erosion control*

11   Q.     Are you familiar with the proposed site?

12   A.     *I am familiar with the site.*

13   Q.     Did you have concerns about the BFI permit application that prompted a request for party  
14           status in the matter referred for hearing?

15   A.     *Yes. The application and SWPPP provided only generic plans for soil erosion control. It*  
16           *appeared that the proposed methods for controlling erosion were not to the Maximum*  
17           *Extent Practicable.*

18   Q.     Have you reviewed the prefiled testimony for the applicant in this case?

19   A.     *Yes.*

20   Q.     Does the applicant's prefiled testimony address the concerns which prompted the city to  
21           contest this application?

22   A.     *No.*

1 Q. Please state the remaining concerns not addressed in the applicants prefiled testimony and  
2 suggest any special conditions that could be added to address these concerns?

3 A. *The pre-filed testimony does not address the following concerns: 1) timing of temporary  
4 stabilization of intermediate cover; 2) proper installation and establishment of vegetative  
5 cover; 3) adequate perimeter controls to prevent off-site migration of sediment; 4)  
6 inclusion of more robust erosion and sedimentation measures in the SWPPP; 5) routing  
7 of landfill runoff to the existing detention pond, and proper vegetative stabilization of  
8 said detention pond.*

9 Q. Are there any other changes that should be made to the draft permit?

10 A. *The draft permit should be amended to address the concerns mentioned above.  
11 Specifically, BFI should place intermediate cover and temporarily stabilize the cover  
12 over slide slope areas that will not be disturbed for 60 days and to do the same for top  
13 deck areas when no activity for 120 days. The top deck areas should also include a  
14 buffalo grass sod vegetated filter strip from the top of the downchute to 100 feet  
15 upgradient of the downchute and wide enough to capture all runoff that flows down each  
16 downchute. The methods for establishing vegetative cover should comply with the City of  
17 Austin's Environmental Criteria Manual, Section 1.4.7. In addition silt fence or mulch  
18 berms should be placed at the top of the side slope between the vegetated filter strip and  
19 the down chute, as well as at the bottom of each downchute. Perimeter sedimentation  
20 controls (such as silt fence, mulch berms) should be in place prior to establishment of  
21 stockpiles. For piles that have slope lengths greater than 20 ft, a mid slope silt  
22 fence/mulch berm should be installed within 14 days of establishment of the stockpile. All  
23 side slopes with intermediate cover should have similar perimeter controls installed*



1           *within 14 days of installation of cover. The perimeter controls should be at the base of*  
2           *all such slopes and on the top deck at a point before the top of the adjacent slope. These*  
3           *changes should be included in an amended SWPPP. Finally, BFI should complete the*  
4           *construction of the detention pond in the northeast portion of the landfill. The pond*  
5           *should be permanently stabilized with vegetation within 30 days of pond completion.*  
6           *Then, flow from Drainage Area 2 should be routed to the completed detention pond.*

7    Q.    Do you have concerns related to drainage on the landfill site?

8    A.    *Yes. I have concerns that the current stormwater system does not adequately treat the*  
9           *runoff from the site. There are drainage areas that do not drain to stormwater ponds*  
10           *prior to discharging to off-site drainage systems.*

11   Q.    Do you have concerns related to erosion and sedimentation controls on the site?

12   A.    *I have concerns that the amount of exposed soil will produce sediment discharge in*  
13           *excess of what the proposed measures in the application and SWPPP can control. I have*  
14           *concerns that the current permit application does not adequately address revegetation of*  
15           *disturbed soils.*

16   Q.    Do you have concerns regarding land use compatibility of the landfill with the  
17           surrounding areas?

18   A.    *Yes. Residential areas that are adjacent to a landfill are subject to increased localized*  
19           *flooding and degraded water quality if the stormwater is not properly managed.*

20   Q.    Do you have concerns related to the revegetation proposed on the site for intermediate  
21           and final cover?

22   A.    *Yes.*

23   Q.    What are those concerns?

- 1 A. *See comments on recommended changes to permit above.*
- 2 Q. I am handing you what's been marked as COA Exhibit 3. Do you recognize it?
- 3 A. *Yes.*
- 4 Q. What is it?
- 5 A. *It is an agreement that substantially increases the requirements and protections that the*  
6 *site operator with implement at the landfill. It will result in less exposed soil, quicker and*  
7 *denser establishment of vegetation, proper maintenance and establishment of the*  
8 *vegetation, better capture of sediment on the site so that ultimately the stormwater runoff*  
9 *leaving the site will have significant reductions in sediment.*
- 10 Q. Is it your opinion that the special conditions contained in COA Exhibit 3 will satisfy your  
11 concerns regarding drainage?
- 12 A. *Yes.*
- 13 Q. Does this conclude your testimony?
- 14 A. *Yes.*

**MICHAEL KELLY, P.E.**  
**City of Austin**  
**Watershed Protection and Development Review Department**  
**P.O. Box 1088**  
**Austin, Texas 78767- 1088**  
  
[Mike.Kelly@ci.austin.tx.us](mailto:Mike.Kelly@ci.austin.tx.us)

## **EXPERIENCE**

**City of Austin**  
**Watershed Protection and Development Review Department**  
**November 1, 1996-Present**  
**Supervising Engineer**

1/05-present: Supervising Engineer, Stormwater Treatment and Stream Restoration Section.

Duties: Senior Division Engineer charged with approval of all construction plan sets, analytical reports and design criteria for channel restoration and stormwater treatment projects. Research and adopt hydrologic and hydraulic computer models for in-house design and regulatory review of channel and pond projects. Update regulations to reflect state of science in stormwater treatment devices and erosion and sedimentation controls.

8/2002-1/2005: Lead Engineer for Austin Clean Water Program.

Duties: developed design criteria and procedures to remove sanitary lines from the channel and floodplain wherever practical, and where not practical, ensure design accounts for hydraulic, sediment transport and geomorphic conditions that impact channel stability and pipeline integrity.

11/1996-8/2002: Water Resources Design Engineer.

Duties: Engineered channel design and implementation for major projects to restore channel stability to both bed and banks using Natural Channel Design and Biotechnical Stabilization techniques.

**Private Consultant 1996**  
**(Employed by land owner, US Forest Service)**

- Designed and installed system to repair levee and dam for millpond
- Designed and installed plans for drainage basin restoration, slope stabilization and channel restoration on US Forest Service lands impacted by logging roads
- Supervised construction crews during installation of both projects

**Wisconsin Department of Natural Resources      1995**  
**Bureau of Water Regulation and Zoning**  
**Engineer Assistant**

- Performed hydraulic and hydrologic modeling for floodplain
  - determinations, dam safety, detention pond design and in-stream structure design
  - Performed surveys, dam safety inspections and hydraulic capacity analyses
  - Reviewed streambank stabilization plans

**University of Wisconsin- Madison**  
**Graduate Research Assistant      1994-1996**

- Responsible for maintenance and data collection/analysis on wetland constructed to treat dairy milkhouse wastewater
- Authored annual reports and journal articles on research status

**Wisconsin Department of Natural Resources      1994**  
**Bureau of Water Resource Management,**  
**Non-point Source Pollution Unit Engineer Assistant**

- Authored chapter on Stormwater Infiltration Best Management Practices
- Developed technical report as basis for Animal Waste Regulations
- Created precipitation input files for use in Stormwater Management Model

**EDUCATION**

**University of Wisconsin-Madison      August, 1996**  
MS Agricultural Engineering  
Soil & Water Resources Concentration

**University of Wisconsin-Milwaukee      Spring, 1994**  
Engineering Course Requirements for Agricultural Engineering MS Program

**Austin Community College      January, 1992- January, 1994**  
Pre-Engineering

**University of Wisconsin-Madison      September, 1984 - May, 1988**  
Bachelor of Arts: Psychology  
Graduated with Distinction and Honors

## AREAS OF EXPERTISE

Open Channel Hydraulics, Sediment Transport in relation to Stream Mechanics

Stormwater Management for Water Quality and Quantity

Construction Phase Erosion and Sedimentation Management

Slope Stability of Embankments

## ACTIVITIES & REGISTRATIONS

**Professional Engineer (TX #87774) 02/09/01**

- Member American Society of Civil Engineers
- Dripping Springs Planning and Zoning Commissioner 2002-2003
- Alpha Epsilon (Agricultural Engineering Honor Society) 1995-96 Vice President

## PUBLICATIONS & PRESENTATIONS

**Byars, Morgan S. and Michael P. Kelly, "Sediment Transport in Urban Stream"**

- Rehabilitation," Proceedings from American Society of Civil Engineers
- Wetlands Engineering and River Restoration Conference, Reno, NV, August 27-31, 2001. Resulted in receiving the ASCE Hawley Award for Technical Papers.

Instructor for courses in channel restoration and slope stability for the following organizations:

- University of Wisconsin-Madison, Dept. of Engineering Professional Development
- United States Army Corps of Engineers
- American Society of Civil Engineers