

DAVID A. ESCAMILLA
COUNTY ATTORNEY

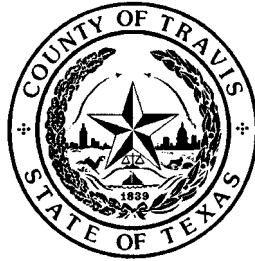
RANDY LEAVITT
FIRST ASSISTANT

JAMES W. COLLINS
EXECUTIVE ASSISTANT

314 W. 11TH, STREET
GRANGER BLDG., SUITE 420
AUSTIN, TEXAS 78701

P. O. BOX 1748
AUSTIN, TEXAS 78767

(512) 854-9513
FAX: (512) 854-4808



ENFORCEMENT DIVISION

KEVIN W. MORSE, DIRECTOR

SHARON TALLEY

GARY D. MARTIN

TIM LABADIE

NEIL KUCERA

ANNALYNN COX

November 5, 2008

Judge William Newchurch
Administrative Law Judge
State Office of Administrative Hearings
305 West 15th Street, Suite 504
Austin, Texas 78701

Re: SOAH Docket No. 582-08-2178
TCEQ Docket Number 2007-1774-MSW
Permit Amendment Application of BFI Waste Systems of North America, LLC,
MSW Permit No. 1447A

Dear Judge Newchurch:

Pursuant to Order No. 1, Travis County is pre-filing its direct testimony and exhibits. At this time, Travis County intends to call one witness, Mr. Jon A. White. All parties of record are being copied according to the attached Certificate of Service.

Thank you for your attention to this matter.

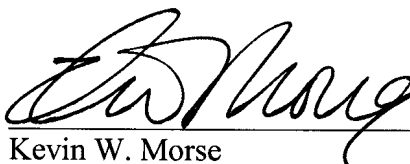
Sincerely,

Kevin W. Morse
Assistant Travis County Attorney

cc: TCEQ Chief Clerk via Hand-Delivery
Service List via electronic mail

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served on all attorneys of record included below, via electronic mail delivery and/or hand delivery, on November 5, 2008, pursuant to Order No. 1.



Kevin W. Morse
Assistant County Attorney

FOR THE APPLICANT

Paul Gosselink
John Carlson
Lloyd Gosselink Blevins Rochell & Townsend, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701
(512) 322-5800 (Phone)
(512) 472-0532 (Fax)
pgosselink@lglawfirm.com
jcarlson@lglawfirm.com

BFI Waste Systems of North America, LLC
Via Electronic Mail

Paul Terrill
810 W. 10th Street
Austin, Texas 78701
Phone (512) 474-9100
Fax (512) 474-9888
pterrill@terrill-law.com

Giles Holdings, L.P.
Via Electronic Mail

FOR THE EXECUTIVE DIRECTOR

Steve Shepherd
Susan Jere White
Staff Attorneys, Environmental Law Division
Texas Commission on Environmental Quality
P. O. Box 13087 - MC-173
Austin, Texas 78711-3087
Phone (512) 239-0464 and (512) 239-0454
Fax (512) 239-0606
sshepherd@tceq.state.tx.us
swhite@tceq.state.tx.us

Executive Director
Via Electronic Mail

FOR THE PUBLIC INTEREST COUNSEL

Christina Mann
Office of Public Interest Counsel
Texas Commission on Environmental Quality
P. O. Box 13087 - MC-103
Austin, Texas 78711-3087
Phone (512) 239-4014
Fax (512) 239-6377
cmann@tceq.state.tx.us

Public Interest Counsel
Via Electronic Mail

FOR THE PROTESTANTS

Bob Renbarger
J. D. Head
FRITZ, BYRNE, HEAD & HARRISON, LLP
98 San Jacinto Blvd., Suite 2000
Austin, Texas 78701
Phone (512) 476-2020
Fax (512) 477-5267
bob@fbhh.com
jdhead@fbhh.com

TJFA, L.P.
Via Electronic Mail

Holly C. Noelke and
Meitra Farhadi
City of Austin
P. O. Box 1088
Austin, Texas 78767
Phone (512) 974-2630 and (512) 974-2310
Fax (512) 974-6490
holly.noelke@ci.austin.tx.us
meitra.farhadi@ci.austin.tx.us

City of Austin
Via Electronic Mail

Stephen P. Webb
Webb & Webb
1270 Bank of America Center
515 Congress Avenue
Austin, Texas 78767
Phone (512) 472-9990
Fax (512) 472-3183
webbwebblaw@sbcglobal.net

Pioneer Farms
Via Electronic Mail

Jim Blackburn
Blackburn and Carter
Attorney and Representative for*
4709 Austin
Houston, Texas 77004
Phone (713) 524-1012
Fax (713) 524-5165
jbb@blackburncarter.com

Northeast Neighbors Coalition
Via Electronic Mail

* Roger Joseph
P. O. Box 7
Austin, Texas 78767
Phone (512) 459-5997
Fax (512) 467-9573

* Melanie and Mark McAffe
6315 Spicewood Springs Road
Austin, Texas 78759
Phone (512) 343-0126
organicmel@gmail.com
organicmark@gmail.com

* Delmer D. Rogers
5901 Speyside Dr.
Manor, Texas 78653
Phone (512) 278-9788
droguel@aol.com

* Evan Williams
Williams, LTD
524 N. Lamar, #203
Austin, Texas 78703
Phone (512) 477-1277
ew@austin.rr.com

FOR THE CHIEF CLERK

Ms. LaDonna Castañuela
Texas Commission on Environmental Quality
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Phone (512) 239-3300
Fax (512) 239-3311

Chief Clerk
Via Hand Delivery

SOAH DOCKET NO. 582-08-2178

IN RE: THE APPLICATION OF	§	BEFORE THE STATE OFFICE
BFI WASTE SYSTEMS OF NORTH	§	
AMERICA, LLC	§	OF
PERMIT NO. MSW-1447A	§	ADMINISTRATIVE HEARINGS

DIRECT TESTIMONY OF

MR. JON A. WHITE

ON BEHALF OF

TRAVIS COUNTY

November 5, 2008

1 Q. Please state your full name and business address.

2 A. My name is Jon A. White. My business address is 411 W. 13th Street, 11th floor,
3 Austin, Texas 78701.

4 Q. What is your role in connection with the Application of BFI Waste Systems of
5 North America, LLC, for an amendment to its Municipal Solid Waste Permit No.
6 1447A?

7 A. I have reviewed the Application and evaluated it with respect to environmental
8 issues of interest to Travis County and its citizens. I have also reviewed records
9 in the possession of the Travis County Transportation and Natural Resources
10 Department, Natural Resources and Environmental Quality Division, to ascertain
11 the historical development of the County's position with respect to the
12 application. Based on this review I am able to provide advice and
13 recommendations to the Travis County Commissioners Court with the goal of
14 protecting the environment of Travis County and effectively representing the
15 environmental interests of the citizens of Travis County and the Commissioners
16 Court.

17 Q. How are you employed?

18 A. I am employed by Travis County.

19 Q. What is your position with Travis County?

20 A. I am the Environmental Officer and Director of the Natural Resources and
21 Environmental Quality Division at Travis County Transportation and Natural
22 Resources.

23 Q. How long have you been employed by Travis County?

24 A. Since June 12, 2006.

25 Q. How long have you been employed in your current position at Travis County?

26 A. Since August 1, 2007.

27 Q. What are your duties in your current position?

28 A. I serve as the Environmental Officer to the Travis County Commissioners Court,
29 and direct, administer and manage operational activities of the Natural Resources
30 and Environmental Quality Division. As Environmental Officer, I provide
31 consultation and guidance directly to the Commissioners Court on a wide variety
32 of technical, policy and regulatory issues in natural resource and environmental
33 contexts. As Division Director, I direct the development and implementation of
34 complex natural resource and environmental projects and programs as well as
35 develop policies and procedures. I am responsible for planning, directing,
36 monitoring, allocating and controlling resources, staffing, equipment and
37 material; as well as developing, implementing and monitoring the division budget,
38 and overseeing all other administrative matters for the division. In both of these
39 capacities I coordinate and work closely with government officials, department
40 heads, and outside agencies. I supervise and direct work of subordinate managers.
41 I ensure that that services delivered are in compliance with applicable laws,
42 statutes, rules, regulations and applicable standards and procedures established by
43 the federal government, state, court, and the department.

44 Q. What was your professional experience prior to taking your current position at
45 Travis County?

46 A. From June 2006 through August 2007, I was the Environmental Quality Program
47 Manager in the Natural Resources and Environmental Quality Division of Travis
48 County's Transportation and Natural Resources Department. From June 1998
49 through June 2006, I was the Intergovernmental Policy Manager for the
50 Transportation Planning Division of the Maricopa County Department of
51 Transportation in Phoenix, Arizona. From July 1991 through May 1998, I was
52 the Chief of the Environment & Product Safety Section of the Bureau of
53 Consumer Protection, Division of Trade and Consumer Protection for the
54 Wisconsin Department of Agriculture, Trade & Consumer Protection in Madison
55 Wisconsin. From December 1987 through July 1991, I was an Environmental
56 Analyst / Senior Environmental Analyst for the New York State Department of
57 Environmental Conservation, Division of Regulatory Affairs in New Paltz, New
58 York. From June 1986 through December 1987, I was an Education Program
59 Specialist, for the North Carolina Department of Public Instruction, Division of
60 Research and Testing Services in Raleigh, North Carolina.

61 Q. What is your educational background?

62 A. I received a B.S. in May 1977 from the University of Wisconsin - Eau Claire,
63 with a major in Biology with Botanical emphasis and a minor in Chemistry. I
64 received a M.S. in Botany/Plant Ecology in August 1983 from Iowa State
65 University in Ames, Iowa. I did additional Graduate Studies in Biology/Plant
66 Ecology from 1981-86 at the University of North Carolina - Chapel Hill. In the
67 Summer of 1982, I participated in a program of the Organization for Tropical
68 Studies, UNC in partnership with the University of Costa Rica.

69 Q. Please identify Travis County's Exhibit TC-1.

70 A. It is a true and correct copy of my resume.

71 Q. Did you prepare this resume?

72 A. Yes.

73 [TRAVIS COUNTY OFFERS TRAVIS COUNTY'S EXHIBIT TC-1]

74 Q. Through your employment as Travis County's Environmental Officer, are you
75 familiar with the landfills in Travis County?

76 A. Yes.

77 Q. What are your job responsibilities regarding landfills in Travis County?

78 A. Together with my division staff, I am responsible for managing and monitoring
79 closed county landfills to ensure they meet state and federal environmental
80 standards. This includes ongoing operation and management of a leachate
81 collection system at the closed Travis County Landfill on Highway 290 East near
82 the BFI facilities. I am also responsible for reviewing any new landfill permit
83 applications in unincorporated Travis County with respect to environmental issues
84 of interest to Travis County and its citizens. This review is coordinated with the
85 TNR Development Services Division and may involve coordination with other
86 involved agencies and jurisdictions. Based on this review I provide advice and
87 recommendations to the Travis County Commissioners Court with the goal of
88 protecting the environment of Travis County and effectively representing the
89 environmental interests of the citizens of Travis County and the Commissioners
90 Court.

91 Q. Specifically, through your employment as Travis County's Environmental
92 Officer, are you familiar with BFI's Sunset Farms Landfill?

93 A. Yes.

94 Q. Through your employment as Travis County's Environmental Officer, are you
95 familiar with the Application of BFI Waste Systems of North America, LLC, for
96 an amendment to its Municipal Solid Waste Permit No. 1447A?

97 A. Yes.

98 Q. What are your job responsibilities as they relate to the expansion application filed
99 by BFI?

100 A. I have reviewed the application and evaluated it with respect to environmental
101 issues of interest to Travis County and its citizens. I have also reviewed records
102 in the possession of the Travis County Transportation and Natural Resources
103 Department, Natural Resources and Environmental Quality Division to ascertain
104 the historical development of the County's position with respect to the
105 application. Based on this review I am able to provide advice and
106 recommendations to the Travis County Commissioners Court with the goal of
107 protecting the environment of Travis County and effectively representing the
108 environmental interests of the citizens of Travis County and the Commissioners
109 Court.

110 Q. Who gave you those instructions?

111 A. These responsibilities arise from three sources that instruct me in an ongoing
112 manner: first, my own understanding of my responsibilities based upon my job
113 description; second, through review of records of my predecessors in this

114 position; and finally, based upon needs expressed to me directly by my immediate
115 supervisor, Joe Gieselman, and by the members of the Travis County
116 Commissioners Court.

117 Q. How did you receive those instructions?

118 A. I receive these instructions through review of my own job description and
119 program records as well as through verbal and written communication with Joe
120 Gieselman and with members of the Commissioners Court.

121 Q. Have you discussed this Application with any of the members of the Travis
122 County Commissioners Court?

123 A. Yes.

124 Q. Were you present at the Travis County Commissioner's Court on April 8, 2008,
125 when the Court considered and took action to pursue party status in this hearing?

126 A. Yes.

127 Q. Please identify Travis County's exhibit TC-2.

128 A. Those are minutes of the Travis County Commissioners Court meeting that took
129 place on April 8, 2008.

130 [TRAVIS COUNTY OFFERS TRAVIS COUNTY'S EXHIBIT TC-2]

131 Q. Please identify Travis County's exhibit TC-3.

132 A. That is a letter dated June 5, 2007, from the Travis County Commissioners Court
133 to the Chief Clerk of the Texas Commission on Environmental Quality.

134 [TRAVIS COUNTY OFFERS TRAVIS COUNTY'S EXHIBIT TC-3]

135 Q. How does this letter describe the interests of Travis County regarding this
136 application?

137 A. In its letter dated June 5, 2007, to the Chief Clerk of TCEQ, the Travis County
138 Commissioners Court outlined its position with respect to the expansion of the
139 BFI landfill. The Commissioners Court identified areas of concern pertinent to
140 the BFI expansion but stated that it will refrain from opposing the expansion
141 because of the Applicant's promised compliance with the six conditions outlined
142 in the conditional conformance finding by the Capital Area Council of
143 Governments (CAPCOG) with respect to the Regional Solid Waste Management
144 Plan. The Commissioners Court articulated those conditions and went on to
145 reserve the right to oppose the permit amendment if the Applicant fails to meet
146 those conditions.

147 Q. As described in this letter, what are those conditions?

148 A. First, that all waste handling, including both disposal and operation of a transfer
149 station, would end at BFI's Sunset Farms Landfill by November 1, 2015. Second,
150 that new landfills could be located in the Desired Development Zone if they
151 included adequate buffer zones and other safeguards to avoid incompatible land
152 use. Third, that CAPCOG opposed any landfill application by BFI Sunset Farms
153 for a permit to operate as a waste disposal site and/or transfer station after
154 November 1, 2015. Fourth, that CAPCOG continued to strongly encourage BFI
155 to locate and permit a green field site in another location and relocate from its
156 current site in northeast Travis County as soon as possible. Fifth, that CAPCOG
157 strongly encouraged BFI Sunset Farms to commit to take the same quantity of
158 waste that it has taken during recent years, factoring in annual increases. And

159 sixth, that CAPCOG strongly encouraged BFI Sunset Farms to commit to not
160 bringing in waste from outside Texas.

161 Q. Is it your understanding that BFI has agreed to those conditions?

162 A. Yes.

163 Q. On what do you base your opinion that BFI has agreed to those conditions?

164 A. In a letter dated January 18, 2007 from Brad Dugas, South Central District
165 Manager for BFI Waste Systems of North America, Inc., to the Executive
166 Director of CAPCOG, BFI agreed that it would comply with all six of the
167 conditions listed by CAPCOG with the understanding in doing so that this would
168 lead to CAPCOG's determination that the application is in conditional
169 conformance with the regional solid waste management plan. Further, after
170 representatives of BFI articulated those agreements at a public hearing, the TCEQ
171 included the conditions in the draft permit that was approved by the TCEQ.

172 Q. What is Travis County's understanding of the condition that all waste handling,
173 including both disposal and operation of a transfer station, would end at BFI's
174 Sunset Farms Landfill no later than November 1, 2015?

175 A. It is the understanding and intent of Travis County that there will be no landfill
176 operations whatsoever, neither disposal operations nor operation of a transfer
177 station, at BFI's Sunset Farms Landfill after November 1, 2015.

178 Q. What is Travis County's understanding of the condition that CAPCOG would
179 oppose any landfill application by BFI Sunset Farms for a permit to operate that
180 location as a waste disposal site and/or transfer station after November 1, 2015.

181 A. It is the understanding of Travis County that this means there will be no landfill
182 operations whatsoever, and all waste handling, including both disposal and
183 operation of a transfer station will cease at BFI's Sunset Farms Landfill after
184 November 1, 2015.

185 Q. What is Travis County's understanding of the condition that CAPCOG continues
186 to strongly encourage BFI Waste Services of North America, Inc., to locate and
187 permit a green field site in another location and relocate from its current site in
188 northeast Travis County as soon as possible.

189 A. It is the understanding of Travis County that this means that BFI is making efforts
190 to locate a green field site other than the Sunset Farms Landfill and will similarly
191 make efforts to permit that green field site prior to November 1, 2015.

192 Q. What is Travis County's understanding of what will transpire if BFI finds and
193 permits another green field site before November 1, 2015?

194 A. It is the understanding of Travis County that this means that if BFI finds and
195 permits another green field site before November 1, 2015, it will cease operations
196 at the Sunset Farms Landfill as soon as that location is operational, but that
197 regardless of when the new site becomes operational, BFI will cease operations at
198 the Sunset Farms Landfill no later than November 1, 2015.

199 Q. Is there a requirement or an understanding that the new green field site will be in
200 Travis County?

201 A. There is no such agreement or understanding.

202 Q. What is Travis County's understanding of what will transpire if BFI does not find
203 and permit another green field site before November 1, 2015?

204 A. It is the understanding of Travis County that this means that if BFI does not find
205 and permit another green field site prior to November 1, 2015, BFI will cease all
206 operations at the Sunset Farms Landfill on November 1, 2015.

207 Q. What is Travis County's understanding of the condition that CAPCOG strongly
208 encourages BFI Sunset Farms to commit to take the same quantity of waste that it
209 has taken during recent years, including factoring in annual increases?

210 A. It is the understanding of Travis County that this means that if this permit
211 expansion is approved, BFI will not, in the years remaining until November 1,
212 2015, the BFI Sunset Farms Landfill will accept amounts of waste that are
213 comparable to what it has been accepting to date, with annual increases that are
214 comparable to the annual increases it has been experiencing in recent years.

215 Q. What is Travis County's understanding of the condition that CAPCOG strongly
216 encourages BFI Sunset Farms to commit to bring no waste into Travis County
217 from out of Texas.

218 A. It is the understanding of Travis County that this means that if this permit
219 expansion is approved, BFI will not bring waste into Travis County that
220 originated outside Texas.

221 Q. Does Travis County oppose the permit amendment?

222 A. Because the permit expansion contains the closure date November 1, 2015, and
223 because BFI has not indicated in any manner that it intends to prolong that date,
224 Travis County continues to refrain from opposing the permit amendment.

225 Q. Is Travis County relying on the closure date of November 1, 2015, remaining in
226 the permit in taking this position?

227 A. Yes, as I said in the answer to the previous question, because BFI has not
228 indicated in any manner that it intends to prolong the closing date of November 1,
229 2015, Travis County continues to refrain from opposing the permit amendment.

230 Q. If the closure date of November 1, 2015, were removed from or modified in the
231 permit amendment, what would Travis County's position be with respect to the
232 permit amendment authorizing expansion of the Sunset Farms Landfill?

233 A. If the November 1, 2015, closure date were removed from the permit amendment
234 or prolonged beyond November 1, 2015, then Travis County would oppose the
235 application for expansion of the Sunset Farms Landfill.

236 Q. Is it correct to state that Travis County does not oppose the expansion of this
237 landfill, so long as the permit includes language that terminates all waste
238 handling, including both disposal and operation of a transfer station, no later than
239 November 1, 2015?

240 A. Yes.

241 Q. Do you know the why the Commissioners Court used the limiting date November
242 1, 2015?

243 A. The closure date of November 1, 2015 is reflective of the projected date that the
244 neighboring landfill operated by Waste Management of Texas, Inc. (WMTX)
245 would reach capacity under the permit under which WMTX was then operating.

246 Q. Please explain.

247 A. Based on projected rates of waste acceptance and the permitted capacity of the
248 WMTX Facility, it is generally projected that WMTX would reach its permitted
249 capacity by, or about, November 1, 2015. It is the position of the Travis County

250 Commissioners Court that continued operation of all solid waste management
251 facilities in this area of Travis County is no longer compatible with surrounding
252 land uses. The Commissioners Court has unanimously opposed the current
253 proposal to expand the WMTX Facility and extend its operation beyond the
254 currently calculated capacity date sometime in late 2015. Given this information
255 the Commissioners Court agreed to refrain from opposing expansion of the BFI
256 Facility provided the Facility was closed to all solid waste activities by November
257 1, 2015. This would coincide with closure of the WMTX Facility so that all solid
258 waste activities in the area would cease by November 1, 2015.

259 Q. What issues in BFI's expansion application would need to be monitored in order
260 to ensure the closing date of November 1, 2015?

261 A. The permit condition regarding the closure date must be maintained in the final
262 permit. The documented rate of waste acceptance must be compatible with the
263 commitment from BFI to maintain existing waste acceptance rates with an
264 allowable increase not to exceed the limits set forth in the draft permit. By
265 December 31, 2013, and by December 31, 2014, BFI should provide engineering
266 and survey analysis documenting that the Facility is on track to cease operations
267 by November 1, 2015 and that the final contours in the permit amendment have
268 not been exceeded.

269 Q. Why?

270 A. This documentation will demonstrate that the Facility is on track to reach capacity
271 without exceeding the permitted volume and will be ready to cease operations by
272 November 1, 2015.

273 Q. How is capacity related to the closing date?

274 A. Capacity is a function of permitted volume, which is, in turn, related to height,
275 footprint, and profile of the Facility. Based on the Facility's volume and the
276 projected rate of waste acceptance described in the application and draft permit,
277 the Facility will reach its full capacity on or before November 1, 2015. If the
278 application or draft permit included a greater volume, it could imply a possibility
279 of a later closure date and could be used to argue the extension of a closing date
280 that would coincide with the full use of the greater volume.

281 Q. With regard to capacity, what would be an indicator in an expansion permit
282 application that operations (meaning acceptance of waste) at BFI's Sunset Farms
283 Landfill could extend beyond November 1, 2015?

284 A. Any of the following factors might indicate that operations at BFI's Sunset Farms
285 Facility could extend beyond November 1, 2015: 1) elimination of the special
286 permit condition regarding the November 1, 2015 closure date; 2) any relaxation
287 of the language specifying that all waste handling and transfer station activities
288 must cease by November 1, 2015; 3) any increase in permitted volume or capacity
289 over the capacity specified in the draft permit; and 4) any change in permitted
290 operational practices that would enable greater compaction of solid waste, thereby
291 extending the effective capacity of the landfill.

292 Q. How is rate of acceptance related to the closing date?

293 A. The landfill permit is based on the quantity of waste disposed in terms of disposed
294 volume. The date of closure is projected based on the rate of waste acceptance,
295 the volume of waste disposed and the total permitted capacity of the landfill.

296 Q. How are hours of operation related to the closing date?

297 A. Hours of operation may affect the rate of waste acceptance, which would, in turn,
298 affect the closing date. The date of closure is projected based on the rate of waste
299 acceptance, the volume of waste disposed and the total permitted capacity of the
300 landfill. If the hours of operation were limited, the time it took to reach the
301 permitted capacity could be extended. Conversely, if the hours of operation were
302 extended, the time it took to reach the permitted capacity might be less.

303 Q. With regard to hours of operation, what would be an indicator in an expansion
304 permit application that operations (meaning acceptance of waste) at BFI could
305 extend beyond November 1, 2015?

306 A. Any of the following factors might indicate that operations at BFI's Sunset Farms
307 Facility could extend beyond November 1, 2015: 1) elimination of the special
308 permit condition regarding the November 1, 2015 closure date; 2) any relaxation
309 of the language specifying that all waste handling and transfer station activities
310 must cease by November 1, 2015; and 3) any permit condition that requires, or
311 would result in, decreased hours of operation, thereby decreasing waste
312 acceptance rates such that capacity would not be reached by November 1, 2015.

313 Q. If a closing date of November 1, 2015, is included in a permit, if any, that is
314 granted to BFI as a part of this application for expansion, does that mean,
315 absolutely and unequivocally, that there is no possibility that BFI will continue to
316 legally accept waste at that location after November 1, 2015?

317 A. Yes. Travis County expects that the final permit will include an unequivocal
318 closing date of November 1, 2015, for all waste handling, including both waste
319 disposal and operation of a transfer station.

320 Q. Please explain your answer.

321 A. In a letter dated January 18, 2007 from Brad Dugas, South Central District
322 Manager for BFI Waste Systems of North America, Inc., to the Executive
323 Director of CAPCOG, BFI agreed to comply with the conditions listed by
324 CAPCOG, including compliance with a closing date of November 1, 2015, for all
325 waste handling, including both waste disposal and operation of a transfer station
326 at the BFI Sunset Farms Facility.

327 Q. Have you personally reviewed BFI's application for expansion?

328 A. Yes.

329 Q. Is it your understanding that BFI's application for expansion includes a
330 mandatory closing date of November 1, 2015?

331 A. Yes.

332 Q. Provided that BFI does not change its position and does not seek to remove or
333 prolong the closing date of November 1, 2015, does Travis County have any
334 further comments to make on their expansion request?

335 A. No.

336 Q. Does this conclude your direct testimony at this time?

337 A. Yes, but I reserve the right to amend or supplement my testimony as additional
338 information is obtained through pre-hearing discovery.

339

SOAH DOCKET NO. 582-08-2178

IN RE: THE APPLICATION OF § **BEFORE THE STATE OFFICE**
§
BFI WASTE SYSTEMS OF NORTH §
§ **OF**
§
AMERICA, LLC §
§
PERMIT NO. MSW-1447A § **ADMINISTRATIVE HEARINGS**

**TRAVIS COUNTY'S
LIST OF EXHIBITS**

Exhibit	Description
TC-1	Resume of Jon A. White
TC-2	Minutes of Travis County Commissioners Court dated April 8, 2008
TC-3	Letter dated June 5, 2007, from Travis County Commissioners Court to Chief Clerk of the TCEQ

Jon A. White

Travis County
Transportation & Natural Resources Department
PO Box 1748, 411 W 13th Street
Austin, TX 78767-1748
Work: (512) 854-7212
jon.white@co.travis.tx.us

EDUCATION

Graduate Studies 1981-86, University of North Carolina - Biology / Plant Ecology, including **Summer 1982**, Organization for Tropical Studies, Costa Rica.

M.S. August, 1983, Iowa State University, Ames, Iowa - Botany / Plant Ecology, 3.81 GPA. Thesis: *Regional and local variation in composition and structure of the tallgrass prairie vegetation of Iowa and eastern Nebraska.*

B.S. May, 1977, University of Wisconsin - Eau Claire, *Summa Cum Laude*, 3.90 GPA. **Major:** Biology with Botanical emphasis. **Minor:** Chemistry. **Academic Honors:** Phi Eta Sigma (1974), Phi Kappa Phi (1976).

PROFESSIONAL EXPERIENCE

August, 2007 – Present: Environmental Officer and Director of the Natural Resources and Environmental Quality Division, Travis County Transportation and Natural Resources Department, PO Box 1748, Austin, TX 78767-1748.

Responsibilities: Serves as the Environmental Officer to the Travis County Commissioners Court, and directs, administers and manages operational activities of the Natural Resources and Environmental Quality Division. Provides consultation and guidance directly to the Commissioners Court on a wide variety of technical, policy and regulatory issues in natural resource and environmental contexts. Directs the development and implementation of complex natural resource and environmental projects and programs; develops policies and procedures; planning, directing, monitoring, allocating and controlling resources, staffing, equipment and material; developing, implementing and monitoring budget, and overseeing all other administrative matters for the division. Coordinates and works closely with officials, department heads, and outside agencies. Supervises and directs work of subordinate managers. Monitors and oversees that services delivered are in compliance with applicable laws, statutes, rules, regulations and applicable standards and procedures established by the federal government, state, court, and the department. Performs all work using appropriate safety procedures.

June 2006 – August 2007: Environmental Quality Program Manager, Natural Resources and Environmental Quality Division, Travis County Transportation and Natural Resources Department, PO Box 1748, Austin, TX 78767-1748.

Responsibilities: Manage, plan, organize, and supervise the Environmental Quality program work unit in activities related to natural resource grants, solid waste, hazardous materials management, water quality, stormwater management, air quality, and environmental compliance and enforcement on a countywide basis. Ensure environmental policies, procedures and projects developed and implemented are consistent with Federal, State, Local and County regulatory requirements.

June 1998 – June 2006: Intergovernmental Policy Manager, Transportation Planning Division, Maricopa County Department of Transportation, 2901 West Durango St., Phoenix AZ 85009.

EXHIBIT

tabbles
TC-1

Responsibilities: Manage and direct the Intergovernmental Branch of the Transportation Planning Division. Formulate program goals, priorities and work plan in alignment with Departmental strategic goals and objectives. Provide staff leadership; analyze and develop staffing plans. Provide:

- Intergovernmental Agreements, funding and operational agreements, in support of capital program and operations.
- Federal aid coordination; obligation of Federal funds for transportation projects.
- Intergovernmental relations with municipalities, the Maricopa Association of Governments, the State of Arizona and the Federal Highway Administration.
- Policy research, analysis, development and advice to top-level management; and
- Legislative development, monitoring and other liaison services.

Accomplishments

- National Association of Counties Awards:
 - 1998 Intergovernmental Agreement Compliance Tracking System;
 - 2000 Entente Program (quick response/exchange of services with other jurisdictions).
- Expanded use of Intergovernmental Agreements (IGAs) to leverage MCDOT financial resources and improve coordination with other jurisdictions: 40% increase in annual number of agreements and 5-fold increase in total value to annual average of \$40 million.
- Expanded Federal aid for MCDOT projects from 1 project per year to current (FY06) program of 12 active projects involving \$13.9 million in Federal aid over 4 years.
- Secured a Federal appropriation (FY03 budget earmark) of \$2.95 million for Intelligent Transportation Systems program (AzTech). County share \$1.65 million.
- Completed a Transportation Needs Assessment and Funding Options Study for unincorporated Maricopa County (2001).
- Developed streamlined single-source, hard-copy and electronic compendium of MCDOT policies.
- Worked successfully with legislators, jurisdictions, trade associations on legislation to:
 - Expand Maricopa County's authority to use alternative project delivery methods including design-build, job-order contracting, etc.;
 - Provide a streamlined annexation process for small county islands; and
 - Principal author of draft bill for the County's 2003 legislative proposal for a Regional Transportation District.

July, 1991 - May, 1998: Chief, Environment & Product Safety Section, Bureau of Consumer Protection, Division of Trade and Consumer Protection, Wisconsin Department of Agriculture, Trade & Consumer Protection, 2811 Agriculture Drive, Madison WI 53708.

Responsibilities: Managed and supervised the Environment & Product Safety Section (6 FTE, \$500,000 annual budget). Formulated program goals, objectives and priorities in accordance with Departmental strategic goals and priorities.

- Managed and directed regulatory compliance and enforcement programs pertaining to environmental qualities of consumer products and services.
- Led statewide rulemaking processes for environmental and product safety programs.
- Coordinated and managed Wisconsin's consumer product safety program:
 - Central collection, analysis and investigation of product safety incidents and hazards;
 - Primary state contact for U.S. Consumer Product Safety Commission;
 - Coordination with other states.
- Served as public information spokesman for Division's environmental & product safety programs.

- Provided legislative and policy analysis; prepared, delivered testimony before State Legislature.
- Assisted in developing Division's strategic plan and biennial budget, prepared Departmental biennial budget issue papers, advised on Department's strategic plan.
- Represented Department on the Wisconsin Waste Reduction Coalition, the International Consumer Product Health and Safety Organization, and other panels.

Accomplishments

- Established a nationally recognized mobile air conditioner / ozone-depleting refrigerant program regulating 3,000 businesses and approximately 100 technician training programs.
- Exceptional Performance Award (1993) for coordinating development of Chapter ATCP 137, WI Administrative Code, regarding environmental marketing claims. Involved extensive, delicate interaction with the regulated community, consumer and environmental interests, as well as state and federal agencies. Final rule was recognized as a model for states seeking to develop rules consistent with U.S. Federal Trade Commission's guidelines.
- Analyzed the effectiveness of Wisconsin's toxics in packaging law. Author of the Department's report to the Governor and Legislature.
- Developed a Rapid Response Plan for the Bureau of Consumer Protection.
- Revitalized the Bureau's product safety activities. Established a highly effective working relationship with the US Consumer Product Safety Commission and other states.
- Special Recognition Award (1997) – For use of television, radio, and print media regularly and with great success in public outreach on product safety hazards and bogus environmental claims. Received state and national attention for effective public outreach efforts on:
 - Carbon monoxide hazards from recalled Bernzomatic space heaters;
 - Hazardous products sold through garage sales;
 - Flammable refrigerants for automotive air conditioners;
 - Mercury in toddlers' shoes, and
 - Misleading claims for a product to recycle engine oil.
- Led statewide rulemaking for the mobile air conditioner program, and several revisions under the Wisconsin Hazardous Substances Act.
- Coordinated Department's statewide Combined Charitable Campaign (1997).

December, 1987 - July, 1991: Environmental Analyst / Senior Environmental Analyst; New York State Department of Environmental Conservation, Division of Regulatory Affairs, 21 South Putt Corners Road, New Paltz, NY 12561.

Responsibilities: As a member of the Regulatory Affairs team, managed the regulatory review process in accordance with New York's Uniform Procedures Act, the State Environmental Quality Review Act (SEQR) and the National Environmental Policy Act (NEPA).

- Provided project sponsors and public a single contact (one-stop shop) within the Department for information on all regulatory and environmental impact programs.
- Served as project manager coordinating interdisciplinary review of projects subject to the Department's regulatory or environmental impact review. Managed and coordinated environmental review pursuant to SEQR and NEPA.
- Minimized environmental impacts through promotion of environmental considerations and mitigation measures.

- Processed, reviewed and analyzed environmental impacts of actions requiring state permit applications under the following jurisdictional programs: protection of waters, water quality certification, freshwater wetlands, tidal wetlands, air resources, solid waste management, mined land reclamation, wild/scenic/recreational river corridors, pollutant discharge to waters (NPDES), public water supply, coastal zone management, and historic/cultural resource preservation.
- Led teams of technical specialists in coordinated environmental analysis of individual permit applications and complex analysis of major projects involving multiple permits. Conducted pre-application meetings; identified state jurisdiction; identified environmental review requirements pursuant to SEQR and NEPA; coordinated review with state, federal and local agencies; identified and evaluated potential environmental impacts; reviewed environmental impact statements; prepared determinations of environmental significance; prepared public notices; developed department positions from regulatory standards, technical staff comments, and assessment of environmental effects; determined need for public hearings; developed department comments, positions, and findings; prepared permits for signature.

June, 1986 - December, 1987: Education Program Specialist, North Carolina Department of Public Instruction, Division of Research and Testing Services, 217 West Jones Street, Raleigh, North Carolina, 27603.

Responsibilities: Member of the Test Development Group charged with developing examinations implementing North Carolina's Statewide Testing Program for public schools.

- Performed statistical and graphical analyses required for test development and standardization.
- Developed, managed and maintained databases.
- Analyzed test items for content validity and measurement characteristics.
- Prepared reports on statewide curriculum surveys and test characteristics.
- Assisted in developing Departmental reports and test booklets.

OTHER WORK RELATED EXPERIENCE

- 1982-86:** Conducted and participated in studies of long-term forest change in North Carolina examining change in both mature and successional forests. Conducted ecological studies in Costa Rica and coastal plain savannas of North Carolina.
- 1981-84:** Graduate Teaching Assistant. University of North Carolina, Courses: Biology, Ecology
- 1977-81:** Performed vegetation analysis on tall-grass prairies of Iowa and eastern Nebraska leading to M.S. from Iowa State University. Studied regional and local patterns of vegetation distribution as influenced by the effect of landscape characteristics on development of soil catenas.
- 1977-80:** Assisted on environmental analyses of power plant sites and the land holdings of The Nature Conservancy in Iowa. Supervised field crews, conducted biological surveys, analyzed data and management practices with special consideration to rare and endangered species.
- 1977-81:** Graduate Teaching Assistant, Iowa State University, Courses: General Botany, Hydrobotany, General Ecology, Plant Ecology.

CERTIFIED MINUTES EXCERPT

The Travis County Commissioners' Court convened on April 8, 2008. The following Item was considered:

- A3. CONSIDER AND TAKE APPROPRIATE ACTION ON PURSUIT OF PARTY STATUS AND ANY OTHER ISSUES RELATED TO PROCEEDINGS BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS REGARDING THE REQUESTED EXPANSION OF THE BROWNING FERRIS INTERNATIONAL (BFI) LANDFILL LOCATED ON GILES ROAD NEAR STATE HIGHWAY 290 EAST (TCEQ PROPOSED MUNICIPAL SOLID WASTE PERMIT AMENDMENT NO. 1447A). (COMMISSIONER DAVIS AND COMMISSIONER ECKHARDT) (10:50 AM) (1:44 PM)

Members of the Court heard from: Jon White, Environmental Quality Program Manager, TNR; and Paul Gosselink, Attorney representing BFI.

Motion by Commissioner Davis **and seconded by** Judge Biscoe to approve this particular Resolution to ensure that we have party status, and also direct Staff to assist in the notification process since we are not sure how the State Office of Administrative Hearings handle the notification process, so if there is anything that we can do to accommodate to make sure that persons are present as far as the hearing itself is concerned on May 8, 2008. Also, to have the County Attorney present.

Motion carried:

County Judge Samuel T. Biscoe	yes
Precinct 1, Commissioner Ron Davis	yes
Precinct 2, Commissioner Sarah Eckhardt	absent
Precinct 3, Commissioner Gerald Daugherty	yes
Precinct 4, Commissioner Margaret J. Gómez	yes

Clerk's Note: Item A3 was further discussed at 2:26 PM with a request by Commissioner Eckhardt that the Commissioners' Court record reflect a Corrected Vote on Item A3. Judge Biscoe instructed that the record show Commissioner Eckhardt voting yes on the Motion on Item A3. The Commissioners' Court record does reflect the Corrected Vote.

Corrected Vote:

Motion carried:

County Judge Samuel T. Biscoe	yes
Precinct 1, Commissioner Ron Davis	yes
Precinct 2, Commissioner Sarah Eckhardt	yes
Precinct 3, Commissioner Gerald Daugherty	yes
Precinct 4, Commissioner Margaret J. Gómez	yes

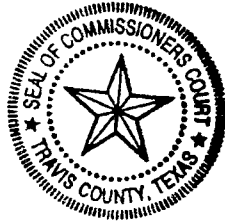
EXHIBIT

tabbles

TC-2

I, Dana DeBeauvoir, County Clerk and Ex-Officio Clerk of the Commissioners' Court of Travis County, Texas, do hereby certify that the above is correct information from the Proceedings of the Commissioners' Court of Travis County, Texas.

Witness my hand and seal, this the 25th day of April, 2008.



DANA DeBEAUVOIR
County Clerk and Ex-Officio Clerk
of the Commissioners' Court of
Travis County, Texas

By: Robert Resnick
Robert Resnick, Deputy

Travis County Commissioners Court



FILED FOR RECORD
2008 APR 10 AM 11:11
DANA LEBEAUVOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS

Resolution

WHEREAS, BFI Waste Systems of North America, LLC (BFI) has an application pending before the Texas Commission on Environmental Quality (TCEQ) for the expansion of the BFI landfill located at State Highway 290 East and Giles Road under proposed Permit No. 1447A;

WHEREAS, BFI's facility lies within the unincorporated area of Travis County and within the Extraterritorial Jurisdiction of the City of Austin;

WHEREAS, the proposed expansion is subject to a site development permit from Travis County;

WHEREAS, the expanded landfill site is part of three adjacent landfills including one immediately to the south (owned and operated by Waste Management of Texas) which is in turn immediately adjacent to a closed Travis County landfill that is still maintained by Travis County and may be impacted by the expansion;

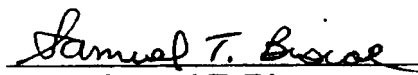
WHEREAS, Travis County has an interest in the outcome of BFI's pending expansion application at this location and could be adversely affected by any change to the proposed permit as written;

WHEREAS, Travis County has submitted comment regarding BFI's proposed expansion at this location to TCEQ; and

WHEREAS, TCEQ has referred BFI's permit expansion application to the State Office of Administrative Hearings for review of issues raised by and related to Travis County's and others' comments to TCEQ;

THEREFORE, be it resolved that Travis County requests party status in proceedings regarding BFI's expansion before the State Office of Administrative Hearings.

IN WITNESS THEREOF, WE HAVE HEREUNTO SET OUR HANDS AND AFFIXED THE OFFICIAL SEAL OF THE COUNTY OF TRAVIS ON THIS 8TH DAY OF APRIL, 2008.



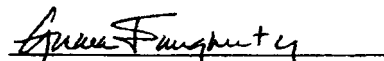
Samuel T. Biscoe
County Judge



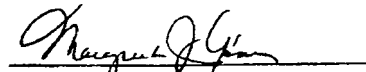
Ron Davis
Commissioner, Pct. 1



Sarah Eckhardt
Commissioner, Pct. 2



Gerald Daugherty
Commissioner, Pct. 3



Margaret Gomez
Commissioner, Pct. 4

Travis County Commissioners Court

COPY

SAMUEL T. BISCOE
County Judge

RON DAVIS
Commissioner, Pct. 1

SARAH ECKHARDT
Commissioner, Pct. 2

GERALD DAUGHERTY
Commissioner, Pct. 3



MARGARET J. GÓMEZ
Commissioner, Pct. 4

Travis County Administration Building, 314 W. 11th, Commissioners Courtroom, 1st Floor, Austin, Tx 78701

June 5, 2007

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

RECEIVED
JUN 11 2007
TNR

RE: BFI Sunset Farms Proposed Municipal Solid Waste permit No. 1447a

Dear Ms. Castañuela:

Travis County Commissioners' Court provides the following comments regarding the above-referenced proposed permit amendment. This application is submitted by co-permit holders, BFI Waste Systems of North America, Inc., 4542 SE Loop 410, San Antonio, Texas 78222-3925, and Giles Holdings, L.P., 1223 Judson Road, Longview, Texas 75601-3922, to expand the existing landfill in Austin, Texas, located on Giles Road near its intersection with Blue Goose Road.

Travis County has been discussing landfill issues for many years with neighboring constituents, BFI and the other waste operators in this immediate vicinity. These discussions included a settlement agreement with Waste Management in the early 90's and negotiations over solid waste facility siting ordinances in the early 2000's. There have been many attempts to negotiate operating agreements, 'memoranda of understanding and agreement,' etc...with BFI which, despite good faith efforts on all parts, have not been successful. Ultimately, BFI applied for an expansion of their existing landfill operation. Indeed, it is this application that elicits these comments.

The Travis County Commissioners Court believes this part of the City of Austin and County has outgrown these types of facilities and eagerly awaits the time that they close these operations and move to more compatible locations. Be that as it may, regarding the existing application, it is Travis County's understanding that through the established permit review mechanism of the Solid Waste and Executive Committees of the Capital Area Planning Council of Governments (CAPCOG), certain special conditions have been specifically agreed to by BFI. Both the CAPCOG Solid Waste Advisory Committee and Executive Committee made these commitments from BFI prerequisite to a finding of conditional conformance with the Regional Solid Waste

EXHIBIT

TC-3

tabbles

Management Plan. This conditional conformance was stated in a letter from CAPCOG sent to the Texas Commission on Environmental Quality on August 23, 2006, and re-committed to by BFI Waste Systems of North America, Inc./Allied Waste Services in a January 18, 2007, letter to CAPCOG. As such, these conditions have been embodied into the proposed permit by reference and attachments to the permit.

Agreed Special Conditions

By these comments it is Travis County's intention to identify issues of concern pertinent to the BFI expansion application. Travis County continues to refrain from opposing the BFI expansion because of the applicant's promised compliance with the conditions outlined in the conditional conformance finding by the CAPCOG RSWMP.

These conditions are as follows:

- All waste handling, including both disposal and operation of a transfer station, ends at BFI's Sunset Farms Landfill by November 1, 2015.
- New landfills may be located in the Desired Development Zone if they include adequate buffer zones and other safeguards to avoid incompatible land use.
- CAPCOG opposes any landfill application by BFI Sunset Farms for a permit to operate as a waste disposal site and/or transfer station after November 1, 2015.
- CAPCOG continues to strongly encourage BFI Waste Services of North America, Inc. to locate and permit a Greenfield site in another location and relocate from its current site in northeast Travis County as soon as possible thereafter.
- CAPCOG strongly encourages BFI Sunset Farms to commit to take the same quantity of waste that it has taken during recent years, including factoring in annual increases.
- CAPCOG strongly encourages BFI Sunset Farms to commit to bring no waste into Travis County from outside of Texas.

However, Travis County reserves the right to oppose the permit application if applicant fails to meet these special conditions. Consistent with these conditions articulated by CAPCOG and accepted by BFI, it is Travis County's understanding and position that BFI must leave the existing location earlier than November 1, 2015, if a new greenfield site is located and permitted prior to that date. BFI maintains that they are unable to secure an appropriate greenfield site. Secondly, should there be any future contested hearing on this matter, Travis County will seek party status so as to ensure the inclusion in the permit of the conditions required by CAPCOG.

FURTHER COMMENTS

Travis County provides further comments regarding this proposed permit amendment because of existing and (inevitable) future land use issues at the site; and regarding certain technical issues

existing and (inevitable) future land use issues at the site; and regarding certain technical issues associated with the proposed expansion; and regarding the applicant's compliance history.

Land Use Issues

Because of proximity to the landfill, adjacent landowners suffer visual, olfactory, and other impairments to the use and enjoyment of their private property. The applicant has a history of nuisance odor violations that have affected neighboring communities. Moreover, the location of the proposed expansion is in the community's preferred growth corridor, known as the "Desired Development Zone" as designated by the City of Austin's Transportation, Planning and Sustainability Department. Thus, many residences, commercial buildings, and employment sites have been, and in the near future will be, constructed near the site. Contextually, it must be noted that there are almost one thousand residences within one mile of the proposed site. Indeed, the application acknowledges that this is the fastest growing sector of the Austin metropolitan area. Further, the Greater Austin Chamber of Commerce states that there was 48% growth in the 1990's and the 2000 census indicates only four U.S. metro areas saw greater total net migration than Austin between 1995 and 2000. Thus, in terms of siting facilities for expansion that avoid nuisances to neighbors and communities, this location is obviously a poor choice. It is clear that the land use pattern that will prevail for the foreseeable future in the vicinity of the proposed expansion is incompatible with ongoing, expanded, and perpetual waste disposal activities.

A partial list of proximate existing and proposed residential developments follows.

- Harris Branch Subdivision
- Harris Branch Speyside Subdivision
- Harris Branch single family (new project across from BFI on Blue Goose)
- Chimney Hill Austin
- Chimney Hills North
- Walnut Place Neighborhood
- Colonial Place neighborhood (close to Waste Management on Springdale)
- Pioneer Crossing (several phases)
- Pioneer Hill - new pilot project for COA - TND - Traditional Neighborhood
- Development concept
- Pioneer Apartments on Sprinkle
- Old Manor at Rosemont (apartments on 290 East)

In addition to these proximate residential developments, there are two closely located and well-established commercial enterprises: Applied Materials (employing about 2,000 people or more) is located within 2 miles of the site; and Samsung (employing about 1,000-1,500 people) is also located nearby. Additionally, there are several housing projects under construction on Johnny Morris Road and others being constructed to the north and east of the landfill.

The application suggests that because there are 793-acres of permitted landfills within one square mile of the facility, the proposed expansion does not constitute a change in land use patterns. This suggestion is misleading because approximately one-third of that acreage is comprised of a closed landfill that will never re-open. The remaining acreage is between 5-8 years away from

final contour and SHOULD be closing, never to re-open. Further the application seems to suggest that because 65% of the land within one square mile is open land there are no impending compatibility conflicts. This too is misleading in light of the above-stated information that this area is the fastest growing planning sector in the City of Austin; it also ignored the fact that a major new roadway (SH 130) connecting nearby to SH 290 will casue an increase in commercial and residential development opportunities; indeed, without limiting conditions the landfills could be phased out as completely incompatible land uses.

While Texas Counties may not have the ability to zone in order to control land uses in rapidly suburbanizing areas, with regard to BFI and Waste Management, the Travis County Commissioners Court has clearly, consistently and continuously informed those landfills that as they currently function they are no longer a compatible land use in this area. Despite such communication and in the face of unprecedented surrounding residential and commercial growth, these landfills refuse to relocate to property more compatible with the operation of a landfill, preferring instead to continue to seek additional expansion and growth at the current, incompatible, locations.

The proposed facility has a permanent benchmark height at 613.4' which represents the natural land surface, and a final contour authorization of 720' above mean sea level (msl). If this expansion application is authorized, the BFI landfill will have a split-level final contour design of 795 feet msl on the west side (75' height increase) and 775' msl on the east side (50' height increase). It is important to recognize that the cited height increases of 50' and 75' are calculated from the 720' final contour of the existing permitted facility, not from the actual natural ground level. It is also notable to recall that the 720' final contour was recently raised or expanded from 710' by virtue of a simple administrative request to the TCEQ in 2002. The reality is that even if the BFI landfill does not further expand the existing final contour of 720', would represent an elevation that is over 100' taller than the natural ground level (e.g., 613.4' msl onsite benchmark). Adding the requested additional 50-75' would elevate it nearly 200' above the natural ground level. Interestingly, this elevation would ensure that the landfill exceeds by more than 100' any surrounding high point in the area thus essentially making the proposed BFI expansion a regional landmark.¹ The landfills are already clearly visible to motorists on SH 130 and not only visible, but distracting to those traveling on US 290E.

Technical Issues

The limited footprint, resulting steep shoulders, and unprecedented proposed height, when combined with existing and future operation challenges at the BFI landfill require comment from

¹ Once completed this imposing facility with its 795' height above mean sea level (msl) will tower more than 100' (equivalent to a 10-story building) above the nearest **high points** in the natural elevation. A review of the USGS topographic maps for the area indicates the highest nearby elevation is 674' msl at Bald Knob benchmark (USGS Quadrangle – Manor Sheet); 671' msl to the south and west near the flea market and on WMT land and 690' msl to the northeast near the Jourdan Bachman Pioneer Settlement Farm. Regardless of the talent of the landscape architects employed by the applicant, this unvegetated prominence, particularly while filling, will at best be a very odd high point surrounded by an urban environment. Despite the fact that TCEQ does not concern itself with aesthetics, a common sense wisdom regarding land use compatibility should question, if not at least address, the short and longterm utility of such a large prominence.

the Travis County Commissioners Court.

The proposed steep sided design creates technical challenges for appropriate stabilization and management of the facility. During inevitable periods of high rainfall, such a steep-walled facility will be much more likely to be unstable and to thus create slumping and stabilization challenges for both employees and customers. Rapid runoff caused by such steep slopes, will create increased erosion potential which will be more likely to overwhelm sedimentation controls. It has taken the applicant more than two years to revegetate a wetland area, a task seemingly less onerous than the revegetation of steep eroding walls. Currently, the facility with its relatively flat contours has released polluted stormwater and has regular, on-site, flooding episodes. A situation that must only be compounded when high rainfall events send stormwater down the proposed, un-vegetated, 4:1, sloped walls.

Within the last five years, profound odor, leachate, landfill gas and pollutant discharges have adversely impacted adjacent landowners. These discharges occurred during a period of high scrutiny on the landfills and the associated noxious migrating emissions, affected thousands of citizens both adjacent to and miles from the area. Through substantial effort and investment, applicant appears to have upgraded the facilities to a level of compliance acceptable to TCEQ that should, if applicant remains vigilant, allow it to reach currently permitted closeout at existing operation levels without excessive repetition of such noxious emissions. However, the proposed expansion at the BFI landfill constitutes such a dramatically escalated operation that it is highly likely, if not inevitable, that the site would once again be unable to contain noxious discharges. Further, if there are un-anticipated operational emergencies or regulatory updates requiring innovation or modernization of the facility, it would appear the waste footprint and surrounding floodplain prevent any flexibility.

Lastly, it is not clear what possible ultimate end use is intended for this land. This will be nearly 400-acres of very steep, un-forested land in what will be a fairly central urban area in the very near future. The owner and operator owe the community a look into the vision for this end land use.

Compliance Issues

TCEQ has fined the applicant for the following violations: stormwater pollution, leachate system operating violations, nuisance odors violations and emissions of harmful gases that affected neighbors and communities. Given this history of violations, and given such a large expansion proposal, it is probable that violations will increase in proportion to the size of the expansion. Thus it would seem prudent to require the applicant to demonstrate that it has taken steps to mitigate this possibility.

A summary of the applicant's violations follows.

BFI Citations

BFI, as owner and operator of the Landfill, has been cited by the TCEQ as follows:

1. 30 TEX. ADMIN. CODE §330.111 by deviating from the Landfill's site operating plan by allowing the leachate head to rise more than 12 inches above the liner, as documented during an investigation conducted on **December 6, 2001**;
2. 30 TEX. ADMIN. CODE §330.111 by deviating from the Landfill's site operating plan by failing to increase the frequency that the leachate levels were monitored after leachate levels were measured above the 12-inch limit, as documented during an investigation conducted on **December 6, 2001**;
3. 30 TEX. ADMIN. CODE §101.4, and TEX. HEALTH & SAFETY CODE §382.085 (b) by discharging one or more air contaminants is such concentration and for such duration so as to interfere with the normal use and enjoyment of property, as documented during an investigation conducted on **April 4, 2002**;
4. 30 TEX. ADMIN. CODE §305.125 (11), Texas Pollutant Discharge Elimination System General Permit No. TXR050000, Part III, Section A.5.h, and TEX. WATER CODE §26.121 by failing to adequately conduct quarterly visual inspections of either each outfall or an outfall that is representative of the others, as documented during an investigation conducted on **March 27, 2002**; and
5. TEX. WATER CODE §26.121 (a) (2) by allowing an unauthorized discharge of waste into or adjacent to any water in the state, as documented during an investigation conducted on **March 27, 2002**. Specifically, A TCEQ investigator observed accumulations of sediment and landfill debris in drainage channels that flow into unnamed tributaries of Walnut Creek.

Source:

June 23, 2004 Agreed Order Docket No. 2002-0936-MLM-E

Permit Text Clarifications

In addition to the land use, technical and compliance history issues, there are several areas in the permit application which need clarification and/or change.

1. Who is the actual applicant and who will ultimately be liable? Most documents suggest BFI Waste Systems of North America, Inc. is the applicant; however, others suggest Giles Holdings, Inc. may be a co-applicant. Given the current compliance history rules and a common sense approach to enforcement challenges, it would seem prudent to have a single entity responsible for operations and post closure requirements so there is no question of liability when violations occur.
2. Section I.J contains an explanation of ownership of the land and discussion regarding transfers in ownership between Mobley Chemical, Inc., L.P., Texas Landfill Consultants, Inc. and Giles Holdings, L.P. between 1991 and 1999; however, there is no mention of the original party referred to as 'Tiger Corporation,' the entity identified as the site owner in the original 1982 Texas Department of Health permit. It would seem that the explanation of ownership is deficient in this regard. It might also be prudent to explain in layman's terms why this property changed hands a minimum of four times between 1982 and 1991.
3. Section I.J also documents the transfer of a 54.119-acre portion of the original 349.4 acre tract from Giles Holding, L.P. to BFI Waste Systems of North America. It would be

helpful to understand what part of the facility is located on this 54.119-acre portion of the overall site and why such transfer occurred.

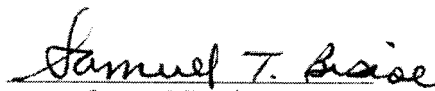
4. The summary of the proposed permit amendment application suggests that TCEQ is making its decision based upon the four volume, four part application dated August 1, 2005 along with revisions dated May 8, 2006, August 22, 2006, November 10, 2006, January 18, 2007, February 12, 2007, and March 14, 2007. Travis County received the initial volumes dated August 1, 2005, after requesting them from BFI; however, despite a longstanding history of dialogue, no subsequent revisions were sent to Travis County for review. Travis County thus reserves the right to make further comment upon those sections after received and after having a reasonable time to review them.
5. Consistently throughout the August 1, 2005, Permit Application, the termination date for receiving wastes listed is 2018. This figure is used for all calculations found throughout the document and conflicts with stated commitments to the Capital Area Council of Governments and others that applicants would cease acceptance of wastes by November 1, 2015. BFI, Allied Waste and Giles Holdings should thus revise the dates and rates of acceptance everywhere stated in the application to conform to the November 1, 2015 date.

Summary

In our ongoing monitoring of BFI's promise to comply with the conditions of the CAPCOG RSWMP conditional conformance finding, we offer these comments identifying issues of concern pertinent to the BFI expansion application. In addition to these comments, we will continue to represent the interests of Travis County, as outlined by the CAPCOG conditions and otherwise, by pursuing party status in any future contested hearing for BFI and Giles Holdings' permit amendment.

Sincerely,

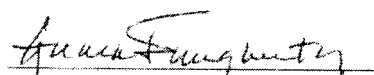
TRAVIS COUNTY COMMISSIONERS COURT



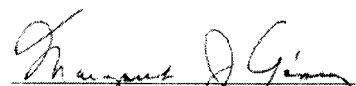
Samuel T. Biscoe
Travis County Judge

Ron Davis
Commissioner, Precinct One

Sarah Eckhardt
Commissioner, Precinct Two



Gerald Daugherty
Commissioner, Precinct Three



Margaret Gomez
Commissioner, Precinct Four