

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

TRANSCRIPT OF PROCEEDINGS BEFORE THE
STATE OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AUSTIN, TEXAS

IN THE MATTER OF THE) SOAH DOCKET NO.
APPLICATION OF BFI WASTE) 582-08-2178
SYSTEMS OF NORTH AMERICA, LLC)
PROPOSED SOLID WASTE PERMIT) TCEQ DOCKET NO.
AMENDMENT NO. 1447A) 2007-1774-MSW

HEARING ON THE MERITS
TUESDAY, JANUARY 27, 2009

BE IT REMEMBERED THAT AT approximately
9:00 a.m., on Tuesday, the 27th day of January 2009,
the above-entitled matter came on for hearing at the
State Office of Administrative Hearings, 300 West 15th
Street, Hearing Room 402, Austin, Texas, before
WILLIAM NEWCHURCH, Administrative Law Judge; and the
following proceedings were reported by Evelyn Coder, a
Certified Shorthand Reporter of:
Volume 6 Pages 1229 - 1510

Page 1231

1 (No response)
2 JUDGE NEWCHURCH: Then we are ready for
3 BFI's next witness.
4 MR. REED: Applicant calls William
5 Southern to the stand.
6 (Witness sworn)
7 JUDGE NEWCHURCH: You may proceed.
8 Counsel, I don't think you've made an appearance yet
9 at this hearing.
10 MR. REED: This is my first.
11 JUDGE NEWCHURCH: Okay.
12 MR. REED: Jeffrey Reed with Lloyd,
13 Gosselink.
14 JUDGE NEWCHURCH: And it's Reed. Right?
15 MR. REED: Yes, R-E-E-D.
16 JUDGE NEWCHURCH: I know we've met
17 before.
18 MR. REED: We have.
19 JUDGE NEWCHURCH: Very good. Mr. Reed,
20 you may proceed.
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22
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Page 1230

1 P R O C E E D I N G S
2 TUESDAY, JANUARY 27, 2009
3 (9:00 a.m.)
4 JUDGE NEWCHURCH: Okay. Coming on
5 record. It's ten minutes after 9 a.m. It's January
6 27th, 2009. This is the continuation of the hearing
7 of BFI, 582-08-2178.
8 Any preliminary matters this morning?
9 MR. GOSSELINK: Yes, Your Honor. As
10 Mr. Blackburn just alluded to, Giles and BFI have
11 reached an agreement with Mr. Blackburn with regard to
12 his witness, Jeremiah Bentley. It is acceptable to
13 all parties that -- at least the three I'm
14 referencing -- that Mr. Bentley be put on through his
15 prefiled and that all or portions of his deposition
16 can be put on in response; which portions, if any, yet
17 to be determined.
18 JUDGE NEWCHURCH: Okay. And before we
19 came on the record, Mr. Blackburn announced something
20 similar and indicated he was calling Mr. Bentley to
21 inform him of that. So we'll wait for that until
22 Mr. Blackburn puts on his case, and then he can make
23 that offer, and then you can follow up on your
24 agreement.
25 Anything else?

Page 1232

1 PRESENTATION ON BEHALF OF
2 BFI WASTE SYSTEMS OF NORTH AMERICA, INC. (CONTINUED)
3 WILLIAM E. SOUTHERN,
4 having been first duly sworn, testified as follows:
5 DIRECT EXAMINATION
6 BY MR. REED:
7 Q Mr. Southern, please state your name and
8 business address for the record.
9 A William E. Southern, S-O-U-T-H-E-R-N.
10 Q And your business address?
11 A W4147 County Highway F, Springbrook,
12 Wisconsin. Company is WES Ecological Consulting.
13 Q And what is your current occupation, sir?
14 A I am an ornithologist with WES Consulting.
15 Q Would you please review what's been marked
16 WS-1?
17 A Yes. That is my direct testimony.
18 Q Is that a true and correct copy of your
19 prefiled testimony?
20 A Yes. But I have two changes I would like
21 to -- or two additions I would like to make to it.
22 Q Very good. Can you tell us what those are?
23 A Yes. On Page 8, Line 14, since this was
24 prepared, I have made two additional visits to the
25 site; one set of visits was on 17 and 18 November

1 (Pages 1229 to 1232)

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1233

1 2008, and the other one was yesterday, 26 January
 2 2009.
 3 Q Okay. So you want to add those dates at the
 4 end of Line 14?
 5 A Yes.
 6 Q Okay. Can you go ahead and make the change
 7 in the copy that you've got there, and then just read
 8 to the Court what you've added.
 9 A All right. At the end of Line 14, following
 10 the year 2006, I've changed the period to a semicolon
 11 and added "17-18 November 2008," and "January" -- or
 12 "26 January 2009."
 13 Q Thank you, sir. Any other changes?
 14 A Yes. The same change will be on Page 17,
 15 Line 2. And, once again, those same dates should be
 16 added at that location.
 17 Q Thank you, sir. Go ahead and add those. Let
 18 us know when you're done.
 19 A Should I initial these changes or --
 20 Q No, just hand-write them.
 21 A Those are the only changes.
 22 Q Would you also take a look at Exhibit WS-2?
 23 A Yes.
 24 Q Is that a copy of your resume?
 25 A Yes, it is.

Page 1234

1 Q And do you have any changes you need to make
 2 to the resume?
 3 A No, I do not.
 4 Q Do you adopt WS-1 as your sworn testimony as
 5 if you were testifying in court today?
 6 A Yes, I do.
 7 MR. REED: Applicant submits
 8 Mr. Southern's prefiled testimony as amended, Exhibit
 9 WS-1, and attached to it, WS-2 through WS-5, into the
 10 record.
 11 JUDGE NEWCHURCH: Any objection?
 12 MR. RENBARGER: None.
 13 JUDGE NEWCHURCH: WS-1 through WS-5 are
 14 all admitted.
 15 (Exhibit BFI Nos. WS-1 through WS-5
 16 admitted)
 17 MR. REED: Pass the witness.
 18 JUDGE NEWCHURCH: Mr. Terrill?
 19 MR. TERRILL: No questions, Your Honor.
 20 JUDGE NEWCHURCH: Ms. Noelke?
 21 MS. NOELKE: No questions, Your Honor.
 22 JUDGE NEWCHURCH: Mr. Morse?
 23 MR. MORSE: No questions, Your Honor.
 24 JUDGE NEWCHURCH: Ms. Mann?
 25 MS. MANN: No questions.

Page 1235

1 MS. WHITE: No questions, Your Honor.
 2 JUDGE NEWCHURCH: Mr. Renbarger?
 3 MR. RENBARGER: Thank you, Judge.
 4 CROSS-EXAMINATION
 5 BY MR. RENBARGER:
 6 Q Good morning. Is it Dr. Southern?
 7 A Yes, it is.
 8 Q Good morning.
 9 A Good morning.
 10 Q Dr. Southern, I understand that you have made
 11 a number of visits to the BFI Sunset Farms landfill
 12 facility over the years. Is that correct?
 13 A Yes, it is.
 14 Q Approximately how many times have you been
 15 out there?
 16 A I would have to count up the dates that we
 17 just discussed. I don't know offhand how many that
 18 would add up to.
 19 Q Okay. So when you're referring to your
 20 prefiled testimony and the change you made a moment
 21 ago to add a couple of dates to that, I'm assuming
 22 that the list of dates appearing on Page 8, for
 23 example, does that reflect the number of times you've
 24 been there?
 25 A The number of times that I've visited the

Page 1236

1 site under the contract with Allied. I've also
 2 visited the site as part of another project that I've
 3 been doing in the Austin area. And as part of that
 4 project, the vicinity of this landfill and the vulture
 5 roost that is nearby was part of a general area that
 6 is a 20-mile area that was centered on a landfill near
 7 the airport.
 8 Q Are you doing any work on behalf of Waste
 9 Management for its Austin Community Landfill facility?
 10 A No, I have not.
 11 JUDGE NEWCHURCH: Excuse me a minute.
 12 Off the record.
 13 (Brief pause)
 14 JUDGE NEWCHURCH: Back on the record.
 15 Q (BY MR. RENBARGER) Dr. Southern, when was
 16 the first bird control plan for the Sunset Farms
 17 landfill facility prepared by you?
 18 A Prior to February 2002. The plan went into
 19 effect -- I believe it was on the 14th of February,
 20 but the plan was prepared prior to that time.
 21 Q Is that plan still in existence today?
 22 A It has been modified and they are using a
 23 plan that is comparable to it in most respects, but it
 24 has been modified. I think it's referred to as the
 25 ACE plan currently.

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1237

1 Q You anticipated my next question. Isn't it
 2 true that ACE, the engineering firm that's
 3 representing Sunset Farms landfill in this proceeding,
 4 actually did take an existing bird control plan that
 5 you prepared and subsequently modified that plan?
 6 A That is correct.
 7 Q And is it your understanding that plan is
 8 currently in effect?
 9 A Yes.
 10 Q Dr. Southern, I believe on Page 8 of your
 11 testimony, you indicated that one of the occasions
 12 you've had to be at the Sunset Farms landfill facility
 13 was in mid-November of 2006. Does that sound right?
 14 A Yes.
 15 Q And also on Page 19 of your testimony, you
 16 reflect visiting the site in October of 2006. Is that
 17 also correct?
 18 A Yes, it is.
 19 Q What did you observe in October of 2006 when
 20 you were at the Sunset Farms facility with respect to
 21 bird control?
 22 A At that time, there appeared to have been a
 23 lapse in bird control to the extent that vultures
 24 beyond numbers that I thought acceptable were
 25 concentrating about the active face of the landfill.

Page 1238

1 Q When you say "a lapse," are you suggesting
 2 that BFI was not following the bird control plan that
 3 you had prepared?
 4 A I don't know that to be a fact. There can be
 5 various reasons for this. It could be they were not
 6 following the plan as specified, or it could be they
 7 temporarily ran out of ammunition or something, but
 8 whatever the reason was, vultures were concentrating
 9 in numbers that I thought worth referencing to the
 10 company so they could take steps to remedy the
 11 situation.
 12 Q What kinds of consequences do you associate
 13 with concentrations of vultures at a landfill?
 14 A At this particular landfill, none. Most of
 15 the landfills that I work on are situated near
 16 airports, and we're called in because of the potential
 17 for bird/aircraft hazards. And in those situations,
 18 vultures at the landfill, indeed, pose a possible
 19 hazard to aircraft.
 20 This landfill is far enough removed from
 21 the Austin Bergstrom Airport that it is not posing any
 22 hazards to aircraft if birds are there. The only
 23 reason for dispersing birds from this site is that
 24 they might be considered to be a nuisance by the local
 25 residents who do not want them present at the site.

Page 1239

1 This is the main reason we were called
 2 in to do a bird control plan for this site prior to
 3 2002, was that apparently residents had complained
 4 about gulls, and gulls were the issue at that time.
 5 And so we came in to control the gull problem, and
 6 that has been successfully done.
 7 Q Do you consider your testimony that the
 8 overriding concern with respect to birds are potential
 9 safety hazards to aircraft?
 10 A That is of primary concern, yes, insofar as
 11 bird movements are concerned and aircraft locations.
 12 There's few other problems that birds might cause.
 13 Q Let me ask you this: It sounds like, to me,
 14 that one can devise a Cadillac bird control plan, but
 15 that plan is only going to be as effective as the
 16 operations of a facility in carrying out that plan.
 17 Is that a fair statement?
 18 A Yes. If you have a plan, and it is not
 19 followed, then obviously it is not going to work.
 20 Q Are you aware of whether or not the bird
 21 control plan currently in place at the Sunset Farms
 22 landfill facility is incorporated into their site
 23 operating plan?
 24 A Yes, it is.
 25 Q Are you aware of whether or not there would

Page 1240

1 actually be entries made in the operating record on a
 2 periodic basis with respect to compliance with that
 3 plan?
 4 A No, I do not. You would have to consult with
 5 Allied about that.
 6 Q Dr. Southern, I believe on -- toward the end
 7 of your testimonies, you offer a couple of opinions
 8 regarding health issues with respect to birds. Is
 9 that right?
 10 A Yes, it is.
 11 Q And I believe your opinion is that you do not
 12 believe that those present any significant impacts at
 13 the Sunset Farms landfill facility. Correct?
 14 A That is correct.
 15 Q You're not a toxicologist, are you,
 16 Dr. Southern?
 17 A No, I am not.
 18 Q And you're not a medical doctor either, are
 19 you?
 20 A No, I am not. But if I may add, I have
 21 taught wildlife management and dealt with wildlife
 22 diseases. So I'm fairly knowledgeable about what
 23 birds might carry and something about the epidemiology
 24 of those particular diseases.
 25 Q You're not an epidemiologist either, are you?

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1241

1 A No, I am not.
 2 Q You've never offered experts opinions in the
 3 field of toxicology, have you?
 4 A Not in toxicology, no, but I have offered
 5 expert opinions regarding birds and diseases.
 6 Q You've never offered expert testimony as a
 7 medical doctor, have you?
 8 A No, I have not.
 9 Q You mentioned earlier in your testimony that
 10 you're working on another project in the Austin area.
 11 What is that project?
 12 A It's a project for the IESI landfill that's
 13 located near the airport. It's a C&D landfill.
 14 Q And what is the nature of that engagement?
 15 A Primarily whether or not that landfill had
 16 anything to do with the bird risks that exist at the
 17 ABIA airport.
 18 Q That seems to be very topical these days
 19 after what happened in New York, doesn't it?
 20 A Yes, but this preceded that.
 21 MR. RENBARGER: Pass the witness.
 22 JUDGE NEWCHURCH: Did you pass the
 23 witness?
 24 MR. RENBARGER: Yes.
 25 JUDGE NEWCHURCH: Mr. Blackburn?

Page 1242

1 MR. BLACKBURN: Yes.
 2 CROSS-EXAMINATION
 3 BY MR. BLACKBURN:
 4 Q Good morning, Dr. Southern. I'm Jim
 5 Blackburn. I'm over here.
 6 A Good morning.
 7 Q I represent some of the citizens that live
 8 and own property near the landfill.
 9 And I would like to ask you a series of
 10 questions about your report, and I'll start by asking
 11 a bit about vultures.
 12 First of all, I understand from your
 13 report there are both black vultures and turkey
 14 vultures. Is that right?
 15 A That is correct.
 16 Q Is it relatively evenly distributed between
 17 those two birds?
 18 A No.
 19 Q Which is the more predominant of the two?
 20 A It varies from time to time, but turkey
 21 vultures appear to be the most abundant.
 22 Q Now, I know this is going to sound like a
 23 silly question, but are black vultures more
 24 intelligent than turkey vultures?
 25 A Not to my knowledge.

Page 1243

1 Q Just curious about that.
 2 A I guess one thing that might make you think
 3 they are is that they tend to be far more aggressive
 4 than turkey vultures, so they take advantage of turkey
 5 vultures. So if that makes them more intelligent, the
 6 answer is yes.
 7 Q They always seem to sort of rule over the
 8 carrion, and I was just kind of curious if they're
 9 smarter or what, but you think it's aggressiveness?
 10 A They are definitely more aggressive, and they
 11 do tend to follow turkey vultures to carrion and then
 12 they move the turkey vultures out of the way and --
 13 Q So perhaps they are smarter?
 14 A Could well be.
 15 Q Now, in your review of the impacts on
 16 adjacent properties, I think it's your conclusion that
 17 there was no impact on adjacent properties. Is that
 18 correct?
 19 A Insofar as residences are concerned, I saw no
 20 evidence of there being any problems.
 21 Q Now, are you aware that there are pieces of
 22 property immediately adjacent to the landfill that are
 23 owned as bulk pieces of property by neighbors?
 24 A I'm not sure what you mean by that.
 25 Q Well, like, pieces of property that are 40,

Page 1244

1 50, 60 acres in size.
 2 A Oh, agricultural-type, yes.
 3 Q Or pastureland or things like that.
 4 A Yes, I am aware of that.
 5 Q And would you agree with me that the vultures
 6 do use those properties?
 7 A It wouldn't surprise me that they do. I've
 8 certainly seen them flying over those properties. I
 9 don't recall seeing them actually landing on those
 10 properties.
 11 Q The bird control program that you set up and
 12 that ACE implemented doesn't extend to removing
 13 vultures from adjacent property. Correct?
 14 A No, it does not, because many of the vultures
 15 that occur in the area presently are using the power
 16 lines that are nearby for roosting purposes, and that
 17 is totally extraneous, as near as I can tell, to the
 18 landfill operations.
 19 Q Well, I was most curious about that. You
 20 seem to not believe that there is a linkage between
 21 the landfill and the roosts nearby.
 22 A I wouldn't rule out any linkage whatsoever,
 23 but I would rule out a large part of it, and that is
 24 because we've had in excess of 600 vultures using that
 25 roost on occasion. This is primarily during the

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1245

1 winter months. On no occasions has anyone, to my
 2 knowledge, reported anywhere near that number of
 3 vultures at the two landfills combined, let alone just
 4 at the Sunset Farms landfill.
 5 Q But, now, aren't most vulture roosts smaller
 6 than 600 birds?
 7 A Yes, but it is not uncommon to have roosts
 8 that are several hundred in size.
 9 Q But nonetheless, 600 is an unusually large
 10 roost. Right?
 11 A Yes, it is, but that particular location is
 12 suited for a large number of birds because you have
 13 several towers in close proximity. They're in a
 14 somewhat protected valley that I presume is the main
 15 reason for the birds being attracted to that
 16 particular site.
 17 Q As opposed to the food source being nearby?
 18 A I don't think the food source has much to do
 19 with it. As I said, seldom do you see anywhere near
 20 that number of birds approaching either of the
 21 landfills. It is true that some vultures have been
 22 reported on the ground; actually, maybe on rare
 23 occasions, feeding at the landfill. And by "rare
 24 occasions," I mean post-bird control, but you never
 25 see the majority of those birds coming to the landfill

Page 1246

1 or even attempting to come to the landfill.
 2 When we are at the site for hours at a
 3 time, these birds don't even circle over the landfill.
 4 They have gone somewhere else when they depart from
 5 that roost. They head off in all directions, and we
 6 see this at other roost sites, too. The birds are
 7 pretty omnidirectional when it comes time to depart
 8 from a roost site.
 9 For example, we have sizable roost off
 10 the southwest corner of the airport that is near
 11 Hillcrest school, and at that location, the birds are
 12 also using the same type of high-voltage towers. And
 13 when those birds depart, they basically head in all
 14 directions. A sizable number, on occasion, they pass
 15 over the airport and create temporary hazards, but
 16 soon they disperse in all directions looking for
 17 carrion primarily.
 18 Q Have you ever seen a roost in the Austin area
 19 with 600 birds?
 20 A The one we're discussing here near Sunset
 21 Farms, we've estimated in excess of 600.
 22 Q But that's the only one. Right?
 23 A That's the only one I'm aware of of that
 24 size, yes.
 25 Q Have you seen one elsewhere in the United

Page 1247

1 States that large?
 2 A Approaching that down near Donna, Texas.
 3 Q But not that large?
 4 A I don't recall the exact numbers. It's been
 5 a while since I've been down there, but there were
 6 hundreds of vultures at that location.
 7 Q But not 600?
 8 A I don't recall for sure. It may not have
 9 been exactly 600.
 10 Q I mean, you do this all the time. Right?
 11 A Yes.
 12 Q You know, I mean, that's really my question.
 13 You know, in all the time that you've been doing this,
 14 have you ever seen a roost of over 600 birds?
 15 A No, I don't believe so.
 16 Q Now, you say the only other place you've seen
 17 a roost this large is near the Donna landfill?
 18 A Approaching that size. It wasn't -- I
 19 believe it's a microwave tower that is a mile or so
 20 from the landfill, and the vultures are using that
 21 particular roost.
 22 Q The Donna landfill is a BFI landfill, too.
 23 Right?
 24 A Yes, it is.
 25 Q Now, you say that there was a lapse in the

Page 1248

1 bird plan. Is that your testimony?
 2 A Yes. Because on my subsequent visit, the
 3 following month, the problem hadn't been resolved, and
 4 we didn't see anywhere near the number of vultures at
 5 the landfill.
 6 Q Right. But the word "lapse" is your term?
 7 A Yes, it is.
 8 Q Is that the same term that's used in drug
 9 rehab when there's a lapse in the program?
 10 A I don't do anything with drug rehab, so I
 11 don't know.
 12 Q I mean, "lapse" makes it seem like just
 13 someone failed to think about it.
 14 And what does the word "lapse" mean to
 15 you?
 16 A As I mentioned before, there could have been
 17 a shortage of ammunition, and, therefore, they were
 18 not firing as frequently as they would normally just
 19 because they had to preserve the ammunition they had,
 20 and so by that, I mean, there's a delay in the
 21 activity that would discourage the birds.
 22 Q Or perhaps a shortage of interest in scaring
 23 the birds away?
 24 A I can't really address that. You know, I
 25 don't know what --

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1249

1 Q You don't know why?
2 A -- was going on in the minds of the people,
3 no.
4 Q Did you inquire about it?
5 A No, I notified them of the problem at the
6 time. I didn't try to get at the reasons for the
7 actions of their people. That was a management
8 problem, not my problem.
9 Q But if there's testimony from adjacent
10 residents complaining of bird problems in the
11 2006 time period, that would be consistent with your
12 testimony. Correct?
13 A The only consistency I see is the fact that
14 my report of vultures being at the landfill in
15 unacceptable numbers for a short span of time happened
16 in 2006. Whether or not there's a correlation with
17 the rest of it, I don't know.
18 I try to avoid correlations because I
19 recall a statement of an old professor of mine that
20 said at one time -- statistics professor saying that,
21 "Remember, causation and correlation are not
22 synonymous," and so I try not to correlate unless I
23 have data to support that correlation, and I have none
24 in this case.
25 Q Now, I understand now that the civil

Page 1250

1 engineers have become bird experts. Is that correct?
2 A I don't know what you mean by that.
3 Q The ACE group has now been writing the bird
4 program for BFI landfill, Sunset Farms. Correct?
5 A Well, the bird program that they modified is
6 still basically the program that I designed. So they
7 haven't really rewritten any of the actual techniques
8 for controlling birds at the landfill.
9 Q And, now, you also testified, I believe, that
10 there was -- is it 7,800 gulls on the site in 2002?
11 A Closer to 9,800, as I recall.
12 Q 9,800 -- a large number of gulls?
13 A That was in 2002.
14 Q Right.
15 A Yes.
16 Q And that was a large number. Right?
17 A Yes. That's a large number, not the largest
18 I've seen at landfills, but it's a large number, yes.
19 Q What is the largest number you've seen at a
20 landfill?
21 A Excess of 100,000.
22 Q Where was that?
23 A California.
24 Q But 9,800 is unacceptable. Right?
25 A In this area, it was considered to be because

Page 1251

1 gull, in deference to the other birds that we've
2 listed at the landfill and of the area, are not
3 typical of the surrounding habitats.
4 The only reason the gulls were this far
5 inland at the lake at Long Park or Long reservoir,
6 is -- was the landfill. There's no other reason for
7 them to be out here in these areas during the
8 wintertime.
9 So this struck the tone for bird control
10 at the landfill because this group of birds were
11 unusual at this location, and the landfill was the
12 sole attraction for them. Therefore, the original
13 bird control plan was aimed at getting rid of that
14 attraction to the gulls. And they've successfully
15 done that, because there basically are zero gulls
16 using the site currently.
17 And when you look at 9,800 using it in
18 2002 and the numbers declining over the years to now
19 there being essentially none there, even though there
20 are still gulls using Waste Management's site, you
21 don't see them using the -- or at least I have not
22 seen them using the BFI site.
23 Q Now, with regard to the vultures, what
24 diseases do vultures bring?
25 A I'm not aware of them spreading any diseases.

Page 1252

1 Q Are they -- would you include a vulture as a
2 vector?
3 A Not really, because, again, I don't know of
4 them directly transmitting any particular diseases.
5 This does not mean that they could not carry disease
6 organisms, but I know of no instances where vultures
7 have actually transmitted diseases to humans.
8 Q But they do carry disease organisms?
9 A Rarely. I don't think they do it all the
10 time --
11 Q Do --
12 A -- that is organisms that are going to affect
13 other organisms. Vultures themselves may have their
14 own set of disease organisms that they carry, but that
15 is not part of the vector definition.
16 Q Right. I mean, I'm thinking about something
17 that would be of concern from a health standpoint to
18 organisms other than vultures.
19 A No. Typically, I would not expect them to be
20 doing so. This is based on what I've seen in the
21 literature. There's no documentation of vultures, to
22 my knowledge, transmitting diseases on a regular
23 basis.
24 Q Do vultures regurgitate?
25 A They can, yes.

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1253

1 Q I mean, is that part of their sort of
2 practice or life cycle?
3 A It might if they are being gluttonous, so to
4 speak, and they swallow some bony material or
5 something of this sort, which they are not going to be
6 able to directly digest and so they may regurgitate
7 that -- that material.
8 Q In the process, any of the pathogens that may
9 be in that material would be passed back out of the
10 body and onto the ground?
11 A What else is in the proventriculus or airway
12 pre-gizzard part of the bird's digestive system,
13 indeed, could pass out with it. However, that part of
14 the digestive tract is highly acid, and it is capable
15 of digesting practically anything that might be in
16 there. So it is not the likely location of a large
17 group of pathogens. So I don't think there's much
18 risk associated with that directly.
19 Q How often do the vultures regurgitate?
20 A I have no idea.
21 Q You haven't studied that?
22 A No.
23 MR. BLACKBURN: Pass the witness.
24 JUDGE NEWCHURCH: Mr. Reed, redirect?
25

Page 1254

1 REDIRECT EXAMINATION
2 BY MR. REED:
3 Q Just a few questions for you. They spoke a
4 little bit about the lapse in 2006.
5 A Yes.
6 Q You testified that you had notified BFI of
7 the issue?
8 A Yes, I did.
9 Q And BFI began taking measures to address it?
10 A Yes, they did.
11 Q How long before the measures that they took
12 started to have an effect?
13 A By my next visit and probably before that,
14 but that was the only point at which I could record
15 the difference or the change, was by the time I
16 visited the next time, and there was drastic changes
17 by that time.
18 Q Did the fact that the changes were that
19 drastic over that period of time lead you to conclude
20 anything about how long that lapse might have lasted?
21 A Yes. This whole process of discouraging
22 birds from using the landfill is a conditioning
23 process. So you don't go out and immediately shoot
24 off a couple pyrotechnics and every bird in the area
25 is scared to death and they leave and that's the end

Page 1255

1 of it.
2 Instead, one has to consistently do this
3 and the birds show by their behavior that they have
4 been conditioned to avoid the site. And what we
5 observed at that time was because these birds, again,
6 departed the landfill on a rather quick basis, that
7 indicated they had been conditioned previously to
8 avoiding the site, that there had been a temporary
9 lapse. They came in, took advantage of that
10 opportunity for feeding at the site, but, once again,
11 as soon as bird control is brought up to its previous
12 standards, the birds departed, and it was not a
13 problem.
14 Q So you concluded that this lapse was a very
15 short-term lapse?
16 A Yes, based on the behavior of the birds, not
17 talking to people but watching the birds.
18 Q You also discussed how large this roost is.
19 A Yes.
20 Q How large an area do these birds disperse
21 from their roost?
22 A We don't know exactly, but it's probably a
23 radius of 40 to 50 miles from the roost site.
24 Q Let's suppose that BFI and even Waste
25 Management managed to keep any birds -- and vultures

Page 1256

1 from ever feeding at either landfill. Do you think
2 those birds would then disperse and go somewhere else
3 and no longer roost there?
4 A Not necessarily, because, again, I feel a
5 very small proportion of the birds that have used that
6 roost in the past have actually attempted to feed at
7 the landfill.
8 And I should mention in this
9 conjunction, the number of birds that we recorded on
10 those few occasions, 600 plus, whatever the numbers
11 actually were, that is not the number presently using
12 those towers to the best of my knowledge. The number
13 has decreased drastically.
14 The reasons for those decreases I can't
15 document, but they have decreased. During our visit
16 this year, during the winter months -- early winter
17 months, the number was down way below 100. So there's
18 been a significant decline for the winter period.
19 Yesterday when I was at that site, there
20 were 93 vultures on one tower. Before, there were
21 vultures on several towers. So there's been some
22 drastic changes, and this has to be put in
23 perspective.
24 We aren't talking about a 600-bird roost
25 any longer. As near as I can tell, we're talking

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1257

1 about maybe 100 birds using that roost.
 2 Q The change -- well, strike that.
 3 Suppose it were currently a 600-bird
 4 roost and they, for whatever reason, had been run off
 5 of that roost. Would they go away or would they just
 6 go to some other place and roost in the area?
 7 A They're roosting somewhere else, whether or
 8 not in what we would call the area or not, I don't
 9 know how far they might have moved. I have no way of
 10 knowing that.
 11 Q You were also asked about the ACE plan as
 12 opposed to your plan.
 13 A Yes.
 14 Q Is the ACE plan working?
 15 A Yes, it is.
 16 Q And it's, I believe you said, essentially the
 17 same -- in the essential respects, it's the same as
 18 the plan that you drafted?
 19 A Correct.
 20 Q Let me just ask you the question that's
 21 probably the most important, which is, the bird
 22 control plan as a whole, has it been effective at
 23 reducing the species that you're targeting, and how
 24 effective?
 25 A Yes, it has been very effective. And, again,

Page 1258

1 as I mentioned earlier, gulls were originally the
 2 targeted species. Even though other species occur
 3 there at a landfill near an airport would be
 4 considered a problem and be considered a major
 5 targeted species, that was not the case here. It was
 6 gull, and the gulls have been removed from this
 7 landfill and that's --
 8 Q From 9,800 to essentially zero?
 9 A Correct.
 10 Q What about with respect to vultures?
 11 A With respect to vultures, the number feeding
 12 at the landfill on a regular basis has been decreased
 13 significantly. There may be times when vultures fly
 14 over the site. There may be times when vultures land
 15 somewhere on the property, but they are rarely feeding
 16 at the active face of the landfill, and so the bird
 17 control plan is successfully doing that job.
 18 MR. REED: Thank you. Pass the witness.
 19 JUDGE NEWCHURCH: Any further
 20 cross-examination?
 21 MS. MANN: I have a couple of
 22 questions.
 23 RECROSS-EXAMINATION
 24 BY MS. MANN:
 25 Q Good morning.

Page 1259

1 A Good morning.
 2 Q My name is Christina Mann. I'm with the
 3 Public Interest Counsel. I just have some follow-ups
 4 on questions counsel had on redirect.
 5 We were talking about the number of
 6 vultures that are roosting in the area that they might
 7 disperse to. Is it possible that the landfill
 8 initially attracted those vultures to the roost and
 9 that that's how they established the roost, even if
 10 they're no longer feeding at the landfills?
 11 A It's hard to say, which came first, the
 12 chicken or the egg; it's that sort of a thing, but
 13 when we started the study here in 2002, to my
 14 knowledge, there was not a vulture roost at that
 15 location, but there had been a landfill for some time.
 16 So vultures did not come to the landfill and feed and
 17 immediately set up a roost nearby.
 18 So it seems unlikely that after bird
 19 control at the site vultures that were attempting to
 20 feed at the landfill would suddenly decide to roost
 21 near the landfill. So based on what I've observed, I
 22 would say -- give a no answer to your question, that I
 23 don't think the landfill contributed to this. There
 24 are localities in the area where there are no
 25 landfills in close proximity where vultures roost.

Page 1260

1 We are aware of some thousand to 1,100
 2 vultures that are using several roost sites within the
 3 20-mile radius of the airport, and while this is the
 4 largest one here, there are other sites that they're
 5 using as well. And those certainly do not have this
 6 correlation, you know, between the landfill being
 7 nearby and a roost being at that location.
 8 So, again, given that situation, I would
 9 say it's highly unlikely that the landfill was a major
 10 contributor to the vultures selecting this site. I
 11 think it had to do with the characteristics of the
 12 roost site itself.
 13 Q And just so I can get a little chronology
 14 straight, when did you observe the 600 birds in the
 15 roost?
 16 A This was around 2005, and this was -- as I
 17 recall, that's when we had our peak numbers of
 18 vultures using that roost site.
 19 Q How long between -- okay. And then -- I'm
 20 sorry. Let me back up.
 21 When you were discussing the lapse about
 22 the time it took for the corrective action to take
 23 effect -- and we were talking about gulls in that
 24 case. Is that correct?
 25 A Gulls?

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1261

1 Q Gulls on the active face of the landfill.
2 A Yes, uh-huh.
3 Q That's the time you noted -- was the lapse
4 the time you noted 9,800 gulls or was that a different
5 time?
6 A Well, that was 2002 that we had the large
7 number of gulls. That was prior to the onset of bird
8 control, and immediately after bird control started,
9 the number of gull started to decline, but it was a
10 gradual thing. So even by 2004, we were still seeing
11 a number of gulls approaching the Allied site.
12 However, many of these were not feeding
13 there, they, instead, were feeding at the Waste
14 Management site, but they would try to come over and
15 feed at the Allied site or at Sunset Farms, but they
16 were deterred by the bird control program.
17 Eventually, the conditioning was such that the birds
18 ceased even trying to come to the Sunset Farms site on
19 a regular basis.
20 And now you can sit there for a
21 prolonged period of time. Like yesterday, I was there
22 five hours straight and did not see a single gull
23 approach the site, even though there were some gulls,
24 not many -- 28 or so at the Waste Management
25 facility -- 28 or so I could see. I could not see the

Page 1262

1 active face of the Waste Management yesterday.
2 Q So the time you noticed the lapse, was that
3 your November 2006 visit when you thought there were
4 too many gulls on the face?
5 A Vultures.
6 Q Vultures on the face; okay. But that lapse
7 or that 2006 time frame didn't -- you didn't notice
8 any extra -- unusual amounts of gulls?
9 A There were no -- gulls had nothing to do with
10 that incident. It was only vultures.
11 And I might add, at that time, most of
12 those vultures were simply standing on the ground in
13 proximity to the active face, and that caused me
14 concern. They were not actively feeding at the active
15 face at the time.
16 So even though the bird control program
17 was not as effective as it should have been to prevent
18 the birds from actually landing on the ground near the
19 site, they were still preventing them from feeding.
20 Q When was the next time you visited, then, to
21 notice that -- to make that assessment that it was --
22 A At I recall, it was the following month.
23 Q So sometime in December of '06?
24 A Pardon me?
25 Q Was it December of '06 then?

Page 1263

1 A I believe so. I'll have to check the dates.
2 I have too many landfills.
3 Q Doctor, I was just looking at your dates. I
4 was just trying to correlate the chronology of your
5 visits that are listed on Page 8 of your prefiled
6 testimony to the dates that we are mentioning, and I'm
7 not sure if that one is part of your study officially.
8 A No, the problem occurred the 8 to 10 November
9 visits -- no. I'm sorry. That's not right.
10 To tell you the truth, I can't tell from
11 those dates that are in there either.
12 MR. REED: When the questioning comes
13 back to me, I might can help you.
14 A Yeah, okay; you'll have to.
15 MS. MANN: Well, I'll remain confused
16 until redirect.
17 A You got me confused now, too.
18 Q (BY MS. MANN) Now, the whole purpose of the
19 bird control plan that you initiated has been
20 slightly -- or created, that has been slightly
21 modified by ACE, is obviously to get birds off the
22 face of the landfill. Correct?
23 A To prevent them -- primarily to prevent them
24 from actively feeding at the landfill, and the
25 landfill being a primary attractant, yes.

Page 1264

1 Q If they are not contributing to likely -- if
2 they're not a likely disease vector, what's the
3 concern with them? Why even have a bird control plan?
4 A Good question. My understanding at the onset
5 was that some local residents had complained about the
6 large number of gulls they were seeing at the
7 landfill. I was not made aware of them actually
8 causing any problems for individuals, other than
9 seeing a large number of birds and that somehow
10 triggering a response, but the landfill was concerned
11 enough about those complaints that they decided to
12 have a bird control program, and that's how the whole
13 thing got started.
14 Q So to your understanding, it's because local
15 residents were uncomfortable with the large bird
16 populations?
17 A Correct.
18 MS. MANN: I pass the witness.
19 JUDGE NEWCHURCH: Anyone else?
20 MR. RENBARGER: One quick follow-up
21 question.
22 JUDGE NEWCHURCH: Go ahead.
23 RECROSS-EXAMINATION
24 BY MR. RENBARGER:
25 Q Dr. Southern, in response to a question from

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1265

1 the Public Interest Counsel, you mentioned that you
2 were at the site yesterday for approximately five
3 hours. Is that correct?
4 A Right.
5 Q What times of day was that?
6 A I arrived -- well, I was outside of the site
7 from about 7:30 in the morning, and then I think I
8 went on to the site at about 9 a.m., and I remained in
9 the area until after 2 p.m.
10 Q At what time did you go review the earlier
11 roost that formerly contained the 600 or so vultures?
12 A That was around 10:30 -- no. I went by there
13 earlier. I went by there about 7:30 in the morning.
14 MR. RENBARGER: Pass the witness.
15 JUDGE NEWCHURCH: Mr. Blackburn?
16 RE-CROSS-EXAMINATION
17 BY MR. BLACKBURN:
18 Q Dr. Southern, again, with regard to the
19 roost, your testimony was that it was not present in
20 2002 when you first started. Is that correct?
21 A Well, I'm not aware of there being a vulture
22 roost at that time, and there certainly were not --
23 there was not that quantity of birds using the roost,
24 if any birds were using it at that time.
25 Q Now, specifically, on what type of structure

Page 1266

1 are the birds roosting?
2 A At that location?
3 Q At that location.
4 A They're using the steel high-voltage power
5 poles.
6 Q Do you know when those were built?
7 A No, I do not.
8 Q Do you know if they were in existence in
9 2002 when you first came to the site?
10 A No, I do not.
11 Q Would you agree with me that the erection of
12 a structure suitable for roosting might cause birds to
13 congregate near where they were feeding?
14 A I don't know that to be a fact, and the
15 reason I'm hesitating on this is that I don't know of
16 any -- well, let me back this up.
17 Vultures tend to feed on an
18 unpredictable food source normally, primarily in the
19 form of carrion. So I don't think they typically have
20 the behavior of establishing a roost site somewhere
21 where they have a food supply that might last them for
22 a short span of time. So whether or not they would be
23 attracted to a power pole that was created near a
24 landfill, where they had been permitted to feed
25 previously or not, I really can't say.

Page 1267

1 Q It makes sense, though, doesn't it?
2 A Yes.
3 Q I mean, a dependable food source would be
4 something different than what they normally run
5 across?
6 A Well, you know, this is something else I
7 questioned. You know, I haven't said much about this,
8 but I question how constant the food supply is at a
9 landfill for vultures.
10 When you look at the operation of the
11 landfill, waste materials are brought in, dumped by
12 the truck load, compactors push them into a pile, more
13 material is piled on top, and so it gets buried rather
14 quickly. And so there's not a smorgasbord of stuff
15 scattered out over a large area.
16 And usually, in the case of vultures,
17 the operation of equipment deters the vultures from
18 eating during the daytime -- during the operational
19 hours. There are exceptions to this, where I've seen
20 them become conditioned to the equipment, but that's
21 usually black vultures. Talking about the difference
22 between the two earlier, that sometimes, but here,
23 that never happened.
24 So there isn't much for vultures during
25 the day, and if you have good, daily cover, which is

Page 1268

1 the case here, after closing hours, there is not much
2 food either.
3 Now, this doesn't mean to say that the
4 olfactory queues aren't there to attract turkey
5 vultures, and they're one of the few birds that do
6 have a fairly good olfactory sense, and so that queues
7 them in on site here, the landfill and odors that
8 suggest food.
9 And so they'll come in and some will
10 prowl around and look for items, but I don't consider
11 it to be a dependable food source because there isn't
12 much going to be exposed, and certainly not quantities
13 of vultures we're talking about here.
14 So, again, when you say, the vultures
15 are selecting those power poles as roost sites because
16 of a dependable food supply, I question how dependable
17 it is. And so I don't think that necessarily fits.
18 Q But you are also observing that the numbers
19 of roosting birds declined as the bird control program
20 became more effective. Is that a fair summary of your
21 testimony?
22 A No, I don't think the current decline is
23 necessarily the sole result of bird control. Now, it
24 may be contributing to it to some extent, but I think
25 the drop in the number of vultures using that

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1269

1 particular roost site is other causes.
 2 Q Do you know what those are?
 3 A Not precisely, no.
 4 Q You're just kind of sure it's not related to
 5 the bird program but not sure what else it might be
 6 related to?
 7 A No, the reason I say I don't think it's
 8 directly related to the bird control program is that
 9 the bird control program has been going on for a long
 10 period of time and still -- well, let's see. In 2005,
 11 we had the large number of vultures using that
 12 particular site. The bird control program had been in
 13 for two-plus years at that time. So, still, vultures
 14 were enlarging the size of that roost at that
 15 particular point in time.
 16 Q Well, might there have been a lapse or two
 17 during that 2005 time period?
 18 A Not enough to ever account for that many
 19 birds coming in, when, again, those birds don't even
 20 come to the landfill for the large part. They're off
 21 foraging somewhere else. So I don't think the
 22 majority of them have ever been exposed to the
 23 pyrotechnics of the landfill.
 24 Q So you don't think a large lapse would
 25 explain 600 birds?

Page 1270

1 A Definitely not, definitely not. I don't
 2 consider the landfill responsible for 600 birds using
 3 that landfill or using that roost site in any way. I
 4 don't think the landfill contributed to that
 5 significantly.
 6 MR. BLACKBURN: Pass the witness.
 7 JUDGE NEWCHURCH: Mr. Reed?
 8 FURTHER REDIRECT EXAMINATION
 9 BY MR. REED:
 10 Q Let's suppose that the reason that the number
 11 of birds at the roost site had dropped from 600 to 100
 12 was because of the effective bird control plan at the
 13 landfill. Wouldn't that be a good thing of --
 14 A Then applaud the bird control program, but,
 15 you know, I'm not in a position to say that that is
 16 the reason for the decline.
 17 Q Is it your professional opinion that the
 18 roost would be there even if the landfill -- if Sunset
 19 landfill had not ever been put on that spot?
 20 A I think the probabilities are good.
 21 Q Just to clear up OPUC's timing question --
 22 A Yes.
 23 Q -- is it true that the lapse that you noted
 24 was in October of '06?
 25 A Yes.

Page 1271

1 Q Then you came back in November of '06 and
 2 noted the drastically improved conditions?
 3 A Yes. Yes. That is correct.
 4 MR. REED: Pass the witness.
 5 JUDGE NEWCHURCH: Any other questions?
 6 MR. RENBARGER: Nothing further.
 7 JUDGE NEWCHURCH: Thank you,
 8 Dr. Southern. You're excused.
 9 A Okay. Thank you.
 10 JUDGE NEWCHURCH: Off the record.
 11 (Recess: 9:50 a.m. to 9:53 a.m).
 12 JUDGE NEWCHURCH: Back on the record.
 13 BFI may call its next witness.
 14 MR. GOSSELINK: BFI will call Brad
 15 Dugas.
 16 BRAD DUGAS,
 17 having been first duly sworn, testified as follows:
 18 DIRECT EXAMINATION
 19 BY MR. GOSSELINK:
 20 Q Good morning, Mr. Dugas. Would you please
 21 state your name and address for the record?
 22 A Brad Dugas; 2575 IH-35 South, Suite 103, San
 23 Marcos, Texas 78666.
 24 Q And what is your current occupation?
 25 A I'm the area president.

Page 1272

1 Q For --
 2 A Republic Services, today.
 3 Q Which we've all come to learn, Republic
 4 Services is what we're calling BFI in this case?
 5 A That's correct.
 6 Q And what's your connection to this project?
 7 A I am the -- as the area president, I'm tied
 8 with the oversight and operation and management of
 9 Sunset Farms, along with other facilities within the
 10 west Texas area.
 11 Q And did you prepare any prefiled testimony in
 12 this case?
 13 A Yes, I have.
 14 Q And would you take a look at it? I believe
 15 it's BD No. 1. Would you confirm that that is, in
 16 fact, your prefiled testimony?
 17 A Yes, it is.
 18 Q And would you like to supplement your
 19 testimony?
 20 A Yes, I would.
 21 Q And would you like to supplement it with the
 22 additional testimony that was connected to the motion
 23 to supplement, which we have previously submitted to
 24 this Court?
 25 A Yes, I would.

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1273	Page 1275
<p>1 Q Let's identify exactly what that is. Okay?</p> <p>2 MR. GOSSELINK: I have handed out,</p> <p>3 Judge, three exhibits. They should be marked --</p> <p>4 Applicant's Statement should be 7A, parties.</p> <p>5 Applicant's certification --</p> <p>6 JUDGE NEWCHURCH: Hold on. I haven't</p> <p>7 got my copies so I'm flying blind here.</p> <p>8 MR. GOSSELINK: I'm sorry. I can wait.</p> <p>9 (Brief pause)</p> <p>10 (Exhibit BFI Nos. BD-7A, BD-8A and BD-9</p> <p>11 marked)</p> <p>12 JUDGE NEWCHURCH: All right. I have</p> <p>13 mine. I'm ready.</p> <p>14 MR. GOSSELINK: Parties, for your</p> <p>15 convenience, Applicant's Statement should be marked</p> <p>16 7A. Applicant's Certification should be marked 8A,</p> <p>17 and direct testimony, a clean copy, should be marked</p> <p>18 9. And I guess those are all BD-7A, BD-8A and BD-9.</p> <p>19 Q (BY MR. GOSSELINK) With that extraordinary</p> <p>20 set of guidance, Mr. Dugas, would you identify what</p> <p>21 each of those documents are for us for the record?</p> <p>22 A Item 7A is our applicant's statement that was</p> <p>23 modified only for correction of a date -- footnote,</p> <p>24 and Sheet 8A is a certification that we're using</p> <p>25 qualified personnel, same purpose of the --</p>	<p>1 Q Does it contain a table -- does it contain a</p> <p>2 table of contents?</p> <p>3 A Yes, it does.</p> <p>4 Q And a list of exhibits?</p> <p>5 A Yes, it does.</p> <p>6 Q And starting on Page 54, your additional</p> <p>7 testimony?</p> <p>8 A That is correct.</p> <p>9 MR. GOSSELINK: And for the record, this</p> <p>10 all occurs at the very end of Mr. Dugas' testimony.</p> <p>11 So these would be the only changes to his testimony.</p> <p>12 In other words, there's no pagination shift as a</p> <p>13 result of this.</p> <p>14 Q (BY MR. GOSSELINK) And does the testimony</p> <p>15 beginning on Page 54 relate to the Rule 11 agreement?</p> <p>16 A Yes, it does.</p> <p>17 Q Does the testimony beginning on Page 57</p> <p>18 relate to the merger with Republic Waste?</p> <p>19 A That's correct.</p> <p>20 Q Would you look at Applicant's Exhibit BD-2,</p> <p>21 which is your resume?</p> <p>22 A Yes, sir.</p> <p>23 Q Do you have any changes to your resume, sir?</p> <p>24 A No.</p> <p>25 Q Do you adopt your prefiled testimony here</p>
<p>Page 1274</p> <p>1 Q Let me ask you just a clarifying point on</p> <p>2 both of those. In other words, there is a BD-7</p> <p>3 attached to the motion to supplement and a BD-8</p> <p>4 attached to the motion to supplement, but there was an</p> <p>5 inconsistency between two things on those documents.</p> <p>6 Is that right?</p> <p>7 A That's correct.</p> <p>8 Q What was that inconsistency?</p> <p>9 A The footer was not accurate on this, and</p> <p>10 these are clean versions.</p> <p>11 Q So what we did here was we changed the date</p> <p>12 on the footer so that we didn't have the old date on</p> <p>13 the footer, and we've resigned them. Is that correct?</p> <p>14 A That is correct.</p> <p>15 Q So we've now labeled them "A" in both cases.</p> <p>16 Is that correct?</p> <p>17 A That is correct.</p> <p>18 Q What is BD-9?</p> <p>19 A That adds additional testimony in regard to</p> <p>20 the stipulated agreement with the TCEQ in regard to</p> <p>21 the Rule 11 agreement to my testimony.</p> <p>22 Q Is this, indeed, a clean copy, as opposed to</p> <p>23 the red-lined copy that was attached to the motion to</p> <p>24 supplement?</p> <p>25 A Yes, it is.</p>	<p>Page 1276</p> <p>1 today as if you had given it all live before the Court</p> <p>2 today?</p> <p>3 A Yes, I do.</p> <p>4 MR. GOSSELINK: Your Honor, at this</p> <p>5 point, we would offer Mr. Dugas' prefiled testimony</p> <p>6 and all of the associated exhibits. So that would be</p> <p>7 BD-1 through BD-9, including 7A and 8A.</p> <p>8 JUDGE NEWCHURCH: But not the 7 or the 8</p> <p>9 attached to the motion to supplement, and not the</p> <p>10 supplement to the prefiled that was attached to this</p> <p>11 motion?</p> <p>12 MR. GOSSELINK: Not the red-lined</p> <p>13 strike-out and not the two pages with the mistaken</p> <p>14 footer.</p> <p>15 JUDGE NEWCHURCH: So the one you handed</p> <p>16 out today, rather than one you attached to the errata?</p> <p>17 MR. GOSSELINK: Yes. We've given clean</p> <p>18 copies to the court reporter for her to insert into</p> <p>19 the record correctly.</p> <p>20 JUDGE NEWCHURCH: Okay. Let's see.</p> <p>21 Let's start with 1 through 6. You had an opportunity</p> <p>22 to file objections previously, and I don't remember</p> <p>23 the specific rulings. Is there any further objection</p> <p>24 to 1 through 6?</p> <p>25 (No response)</p>

12 (Pages 1273 to 1276)

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1277

1 JUDGE NEWCHURCH: Then they are all
 2 admitted.
 3 (Exhibit BFI Nos. BD-1 through BD-6
 4 admitted)
 5 JUDGE NEWCHURCH: And I've granted the
 6 motion to supplement, but now we have a further
 7 change. Is there objection to what's been marked and
 8 handed out today as BD-7A, 8A and 9?
 9 (No response)
 10 JUDGE NEWCHURCH: Without further
 11 objection, they are all admitted.
 12 (Exhibit BFI Nos. BD-7A, BD-8A and BD-9
 13 admitted)
 14 JUDGE NEWCHURCH: So --
 15 MR. GOSSELINK: Pass the witness.
 16 JUDGE NEWCHURCH: Mr. Terrill?
 17 MR. TERRILL: No questions, Your Honor.
 18 JUDGE NEWCHURCH: Ms. Noelke?
 19 MS. NOELKE: Thank you.
 20 CROSS-EXAMINATION
 21 BY MS. NOELKE:
 22 Q Good morning.
 23 A Morning?
 24 Q I'm Holly Noelke. Are you aware of the --
 25 well, you stated that you're aware of the agreement

Page 1278

1 between BFI and the city of Austin regarding specific
 2 requirements.
 3 A Yes, ma'am.
 4 Q Did you execute the agreement on behalf of
 5 BFI?
 6 A Yes, ma'am.
 7 Q Does the agreement apply to current permit
 8 operations as well as future operations of the
 9 landfill?
 10 A It doesn't necessarily apply to current.
 11 We've already implemented many of the improvements of
 12 the Rule 11 agreement, but it applies to those going
 13 forward in the application.
 14 I could be mistaken about that, but I
 15 know we've implemented many of those improvements and
 16 changes already at the site.
 17 Q All right. I'll catch you on recross then.
 18 Are you aware that the Executive
 19 Director has proposed specific language to be included
 20 as special conditions enforceable by the TCEQ?
 21 A Yes, ma'am.
 22 Q If additional definitions are required to
 23 implement the terms of the agreement so that the
 24 operational requirements will be enforceable by the
 25 TCEQ, is that acceptable to BFI?

Page 1279

1 A Yes, ma'am, it is.
 2 Q Are you asking that the special conditions
 3 apply in the event there is a conflict between the
 4 special conditions and the application or the draft
 5 permit -- or the permit language?
 6 A We believe the special conditions are the
 7 conditions we want to have in there.
 8 Q All right. Thank you. Under the agreement,
 9 does BFI agree to submit a site development
 10 application to the city of Austin?
 11 A Yes, ma'am. In fact, I believe we've already
 12 done so.
 13 Q Okay. Thank you. In addition, under the
 14 agreement, does BFI agree to revise its TPDES
 15 stormwater pollution prevention plan?
 16 A Our SWPPP?
 17 Q Yes.
 18 A Yes, ma'am, we do.
 19 Q And will BFI -- BFI intends to submit that to
 20 the city of Austin for review prior to filing.
 21 Correct?
 22 A Yes, ma'am.
 23 Q Do you agree that the agreement includes the
 24 requirement to capture the drainage area to the pond
 25 when the area reaches final grade?

Page 1280

1 A Yes, ma'am, it does.
 2 Q And in addition, BFI agrees to permanently
 3 revegetate the base and side slopes within 30 days of
 4 final grading?
 5 A Yes, ma'am, that's part of the agreement.
 6 Q Is it your opinion that the settlement items
 7 pertaining to the sequencing and timing of the
 8 revegetation, the revegetation methods, and the
 9 additional erosion prevention and sediment control
 10 devices will increase the effectiveness of the overall
 11 erosion control plan?
 12 A Yes, ma'am, we do believe that.
 13 MS. NOELKE: Thank you. I pass the
 14 witness.
 15 JUDGE NEWCHURCH: Mr. Morse?
 16 MR. MORSE: I do have some questions,
 17 Your Honor.
 18 CROSS-EXAMINATION
 19 BY MR. MORSE:
 20 Q Good morning, Mr. Dugas.
 21 A Morning.
 22 Q I'm so glad you're here. I finally get to
 23 ask you questions, and it won't be too many.
 24 You did execute this Rule 11 agreement
 25 with the city on behalf of Allied. Is that correct?

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1281

1 A Allied was the company at the time. BFI is
2 the applicant. Yes, I did execute it on behalf of
3 Allied Waste, BFI.
4 Q All my questions, you know, are related
5 solely to the closing date that's proposed in the
6 permit.
7 A Yes.
8 Q I think you know that. We've sat across the
9 table talking about that before.
10 A Yes, sir.
11 Q Is it your understanding that this agreement
12 that you executed with the city will also apply to
13 Republic?
14 A Absolutely.
15 Q And would you agree with me that the closing
16 date that is proposed is November 2015?
17 A November 1st, 2015, or sooner.
18 Q If possible?
19 A If possible.
20 Q All right. Thank you.
21 MR. MORSE: I think that's all the
22 questions I have at this time, Your Honor.
23 JUDGE NEWCHURCH: Ms. Mann?
24 MS. MANN: I have no questions.
25 JUDGE NEWCHURCH: Mr. Shepherd?

Page 1282

1 MR. SHEPHERD: No questions.
2 JUDGE NEWCHURCH: Mr. Head?
3 MR. HEAD: Yes.
4 CROSS-EXAMINATION
5 BY MR. HEAD:
6 Q Morning, Mr. Dugas.
7 A Morning, Mr. Head.
8 Q We've established that you signed the
9 agreement which was attached to the Rule 11 on behalf
10 of Allied Waste. Correct?
11 A That's correct.
12 Q And currently, you're the area president for
13 Republic Services?
14 A That's correct.
15 Q Is Republic Services -- have they been privy
16 to the Rule 11 agreement?
17 A Yes, they have.
18 Q And does Republic Services -- are they
19 prepared to abide by the terms and conditions of the
20 Rule 11 agreement?
21 A Yes, sir, we are.
22 Q And is Republic Services prepared to abide by
23 the terms and the conditions of the restrictive
24 covenant referred to in the Rule 11?
25 A Yes, we are.

Page 1283

1 Q Now, Ms. Noelke asked you a question -- and
2 for clarification purposes, I would like to, when I
3 refer to the Rule 11, that is inclusive of the
4 agreement attached thereto.
5 MR. HEAD: Is that acceptable to
6 everyone?
7 (No audible responses)
8 Q (BY MR. HEAD) On October 31st, you signed
9 the Rule 11 agreement. Correct?
10 A Yes, sir.
11 Q And that Rule 11 agreement included certain
12 erosion control conditions, and it included
13 prohibitions from operating beyond November 1st, 2015.
14 Correct?
15 A Along with other operational criteria as
16 well; yes, sir.
17 Q And it included a prohibition to ever operate
18 a transfer station at that facility.
19 A That being one of the additional elements;
20 yes, sir.
21 Q Now, the -- and we'll get into the meat of
22 this, but the components of the Rule 11 agreement have
23 been taken by the TCEQ staff, and they're preparing
24 special conditions for the permit. Correct?
25 A Yes, sir. That is correct.

Page 1284

1 Q And the engineers with ACE have taken the
2 contents of the Rule 11 agreement and incorporated it
3 into revisions of the permit application?
4 A That's correct. We tried to insert all the
5 applicable areas to their applicable points in the
6 application, that they would rightly be placed.
7 Q Now, the agreement with the city of Austin
8 was a Rule 11 agreement whereby they would withdraw
9 opposing your permit in exchange for BFI and Giles
10 Holdings agreeing to certain conditions. Correct?
11 A I don't think it's to totally withdraw from
12 opposing. They're sitting at the table today, but to
13 ensure that we would adhere to the conditions of the
14 Rule 11 for the erosion and sedimentation control, the
15 elimination of our sedimentation basins and
16 solidification, elimination of a transfer station and
17 the commitment to close by November 1st, 2015.
18 Q Now, assuming that the TCEQ Commissioners,
19 when this item comes before them, denies the
20 application for the expansion, is it your position
21 that BFI is not bound by the terms and conditions of
22 the Rule 11?
23 A No, my position is that we've made verbal
24 statements and commitments to be out of here by 2015.
25 Q Well, let's be specific. The Rule 11

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1285

1 agreement includes certain erosion control
 2 methodologies. Correct?
 3 A Correct.
 4 Q It includes things for seeding. It includes
 5 a whole litany, which we can get into.
 6 Is it your testimony today that if the
 7 permit expansion is denied that BFI is not bound to
 8 comply with the terms and conditions of that Rule 11
 9 agreement?
 10 A I believe we're still bound to comply with
 11 the conditions of the Rule 11.
 12 Q All right. And under that Rule 11 agreement,
 13 the city has the right to enforce the terms and
 14 conditions of that Rule 11 agreement. Correct?
 15 A That's correct.
 16 Q All right. And if the permit is issued and
 17 the terms and conditions of the Rule 11 are rolled
 18 into the permit, then the TCEQ has the right to
 19 enforce the terms and conditions of the Rule 11 which
 20 have been rolled into the permit?
 21 A That's correct.
 22 Q Do you have, Mr. Dugas, a copy of the Rule 11
 23 agreement before you? I think it's --
 24 MR. HEAD: Paul, help me here. I think
 25 it's Exhibit RS-42.

Page 1286

1 MR. RENBARGER: Yes.
 2 Q (BY MR. HEAD) If you can't find it, I'm sure
 3 Joe can help you. RS-42 has a cover letter from
 4 Lloyd, Gosselink to Judge Newchurch informing him of
 5 the Rule 11 agreement. Is that the first document in
 6 front of you?
 7 A That's correct.
 8 Q Then you've got -- two pages later, you have
 9 the actual Rule 11 agreement. Do you see that?
 10 A I do.
 11 Q And the Rule 11 agreement was signed by the
 12 lawyers, and that has to do with the city's
 13 participation in the contested case hearing. Correct?
 14 A Correct.
 15 Q All right. Then we go to the agreement
 16 regarding operations and closure of the Sunset Farms
 17 landfill. Do you have that -- find that page?
 18 A Yes, sir.
 19 Q And what I'm looking for, and Ms. Noelke
 20 alluded to it, is potential -- in the permit
 21 conditions or anywhere else -- clarifications to some
 22 language that may be confusing.
 23 Under the definitional section, you'll
 24 see under F., property. Do you see that definition?
 25 A Yes, sir, I do.

Page 1287

1 Q In your opinion, does that definition of
 2 property -- is that the entire 349-acre permit acreage
 3 in the permit, or is that solely the 251 landfill
 4 footprint?
 5 A No, it's the entire 300 and approximately 50
 6 acres, the entire site.
 7 Q So going to Roman Numeral IV.A., where it
 8 provides BFI agrees to cease accepting waste at the
 9 landfill and agrees to restrict the property in which
 10 the landfill operates from accepting waste after 2015,
 11 is it your understanding that that applies to the
 12 entire 349-acre permitted site?
 13 A That is correct.
 14 Q And similarly, with regard to the requirement
 15 to restrict the property on which the landfill
 16 currently operates for use of transfer station
 17 operations, that applies to the entire 349-acre
 18 permitted site?
 19 A That is correct.
 20 Q And under B., you have basically the same
 21 language applies to Giles. So is it your testimony
 22 that those restrictions, with regard to 2015 and the
 23 transfer station apply to the entire 349 vis-a-vis
 24 Giles as well?
 25 A That is correct.

Page 1288

1 Q Now, turning to Page 3, under C., we have a
 2 description of the properties within the landfill
 3 permitted boundary -- correct --
 4 A Yes, sir.
 5 Q -- as Parcel 1, Parcel 2, Parcel 3. And I'm
 6 going to represent to you that those add up to
 7 approximately 349 acres. Does that look about right
 8 to you?
 9 A That looks about right.
 10 Q The next paragraph indicates that BFI and
 11 Giles will execute and deliver to Austin a document
 12 memorializing the restrictive covenant. Has BFI and
 13 Giles executed that document?
 14 A Yes, sir.
 15 MR. HEAD: May I approach, Your Honor?
 16 JUDGE NEWCHURCH: Yes, sir.
 17 (Exhibit TJFA No. 25 marked)
 18 Q (BY MR. HEAD) Mr. Dugas, you have TJFA 25 in
 19 front of you?
 20 A Yes, sir, I do.
 21 Q Could you identify that for the record?
 22 A It's Exhibit A, Restrictive Covenant.
 23 Q And Exhibit A, that was referred to in the
 24 Rule 11 agreement we discussed previously. Correct?
 25 A That is correct.

15 (Pages 1285 to 1288)

TUESDAY, JANUARY 27, 2009

VOLUME 6

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1289

1 Q And you executed this restrictive covenant on
2 behalf of BFI Waste Systems of North America.
3 Correct?
4 A That is correct.
5 Q And is your execution of this document -- is
6 that binding on Republic Services?
7 A Yes, it is.
8 Q And this restrictive covenant includes the
9 entire 349-acre tract. Is that correct?
10 A Yes, sir, it does.
11 Q And we see that by the two owners at the top,
12 the 54.13 acres owned by BFI and the 295 plus or minus
13 acres owned Giles Holdings. Right?
14 A That is correct.
15 Q And this restrictive covenant, once again,
16 provides -- it carries forward the 2015 termination of
17 receipt of waste at the BFI landfill?
18 A That's correct.
19 Q That would be in the Provision 1 on Page 2.
20 Right?
21 A That is right.
22 Q Okay. And that provides that the owners
23 shall not receive, process or recycle or dispose of
24 any waste on the property after November 1, 2015.
25 Right?

Page 1290

1 A Correct.
2 Q And, once again, no transfer station shall
3 ever be constructed on the property?
4 A That's correct.
5 Q And as I understand this restrictive
6 covenant, this would be binding on any heir or assign
7 of Giles or BFI?
8 A That's the intent; yes, sir.
9 Q And so that would be binding on Republic
10 Services?
11 A That's correct.
12 Q When I took your deposition, I recall you
13 having no objection to this being added as a special
14 condition to the permit. Is that still your position?
15 A Absolutely. We desire this to be a special
16 condition.
17 Q All right. Now, to your knowledge, has this
18 restrictive covenant been filed in the deed records by
19 the city of Austin?
20 A I can't -- I don't know.
21 Q You don't know?
22 A No.
23 Q Have you had any conversations with the city
24 asking them at what point in time they intend to file
25 this in the deed records?

Page 1291

1 A I don't know. I don't know any answers. I
2 don't know if it's filed or not.
3 Q You haven't requested the city to go ahead
4 and file this?
5 A No, sir. We just executed the document.
6 Q It was executed -- by that, your answer
7 doesn't mean you just recently executed it; you just
8 executed it?
9 A No, no. We executed it, and I don't know
10 what happened after that.
11 Q And it was executed on Halloween 2008 --
12 October 31st?
13 A Yes, sir.
14 MR. HEAD: Move to admit TJFA 25.
15 JUDGE NEWCHURCH: Any objection?
16 MR. GOSSELINK: No objection.
17 JUDGE NEWCHURCH: It's admitted.
18 (Exhibit TJFA No. 25 admitted)
19 Q (BY MR. HEAD) Turning your attention back to
20 RS-42, which was the agreement attached to the Rule
21 11, I would like to draw your attention to Section
22 D.1.
23 A On Page 3?
24 Q Yes, Mr. Dugas.
25 A Okay.

Page 1292

1 Q You've been here through the course of most,
2 if not all the BFI witnesses?
3 A Yes, I have.
4 Q And you've heard testimony about -- from
5 certainly Mr. Shull and Mr. Mehevec that this language
6 could be construed in D.1. whereby BFI would not be
7 obligated to do the intermediate cover and implement
8 seeding if activity had occurred out there within 60
9 days?
10 A Restate that.
11 Q Let me try again. Let's just go through
12 this. D.1. provides BFI agrees to place intermediate
13 cover and implement seeding events on all
14 slope-disturbed areas. Let me stop there.
15 What is your definition or understanding
16 of disturbed area?
17 A Well, for clarity, it says, "all side
18 slope-disturbed areas."
19 Q Right. And I'm curious about "disturbed" --
20 the use of the term "disturbed."
21 A It's where activity is going on, grading,
22 applying the dirt, waste placement. It could be any
23 number of things, but it's still active and will be
24 active for the near term.
25 Q So "disturbed" is not limited to waste

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1293

1 disposal?
 2 A No, sir.
 3 Q So we go on to say, "BFI agrees to place
 4 intermediate cover and implement seeding events on all
 5 side slope-disturbed areas on which activity has not
 6 recommenced within 60 days."
 7 And my question is if there's an erosion
 8 event out there and someone comes out there and does
 9 some grading, is it your contention that that would be
 10 activity whereby you would not have to do the
 11 intermediate cover and seeding if that occurred within
 12 60 days?
 13 A Can I clarify a little bit on that?
 14 Q Please.
 15 A The intent of this, during the negotiation,
 16 was for the external side slope areas that we would
 17 have that we would place seeding on there if there was
 18 not additional waste advancement on an exterior side
 19 slope.
 20 And if that does not happen in this
 21 case -- in this case, this is a waste placement
 22 activity area, and we would seed that irrespective of
 23 having to regrade that or not within 60 days.
 24 Q Okay. And that's what I was getting to. Is
 25 it the understanding of BFI that the use of the term

Page 1294

1 "activity" on that second sentence means solid waste
 2 disposal activity?
 3 A Predominantly, yes, sir.
 4 Q You said "predominantly." What other
 5 activity could stop the seeding within 60 days?
 6 A The intent of this, again, was to -- all the
 7 off-site drainage -- we have a lot of interior slopes
 8 as you're working the working face and you move back
 9 and forth, if you will, just a building block effect
 10 that you might be back on within 60 days and some of
 11 that is still daily cover and not intermediate cover
 12 that you know you're going to be on and you may grade
 13 that.
 14 That may not get seeded on the top deck
 15 area. This predominantly is all the exterior slope
 16 areas that we -- are identified to put daily cover and
 17 intermediate cover on.
 18 Q I don't want to interrupt you, but D.2. talks
 19 about the top deck. So maybe we're getting ahead of
 20 ourselves.
 21 A No, I don't believe we are. D.2. is
 22 definitely a top deck, which is a flat area.
 23 Q All right. So I'm wondering, if not -- once
 24 again, if solid waste disposal activity does not
 25 recommence what other activity could occur within the

Page 1295

1 60-day period whereby BFI would not be required to
 2 place intermediate cover?
 3 A Pretty much nothing else at that point.
 4 We're going to seed every 60 days on the slopes that
 5 won't have waste coming back on them within a
 6 reasonable amount of time.
 7 Q If the TCEQ was to decide to include in its
 8 special provisions under D.1. before activity -- solid
 9 waste disposal activity, would you have an objection
 10 to that?
 11 A No, not really.
 12 Q Okay. Under D.2., we basically have -- take
 13 your time to look at them. I'm talking about the
 14 first full paragraph. We have the same language, but
 15 it applies to the top deck, and we have the 120-day
 16 provision, and that requires, as I read this, that if
 17 no activity has occurred within 120 days, then the
 18 cover and the seeding must be implemented.
 19 A Correct.
 20 Q Once again, would you have an issue if
 21 activity was limited to solid waste activity?
 22 A We might have an issue with that. There may
 23 be stockpiles, access roads that are in those areas,
 24 and I think that was the city's understanding as well
 25 when we were negotiating this.

Page 1296

1 Q So if you had a disturbed area and after the
 2 110th day you came in and put in the stockpile --
 3 A Correct.
 4 Q -- then as I read this, you would not be
 5 required to do any intermediate cover or implement
 6 seeding events.
 7 A I guess you could draw that conclusion. With
 8 this area fill that we're going to be doing, we're
 9 going to be moving pretty quickly back and forth
 10 across the top deck. This is going to go fast, and we
 11 don't anticipate -- and I think the city as well did
 12 not anticipate that there would be large areas left on
 13 the top deck that were not active.
 14 Q And I've learned in the landfill world that
 15 moving fast might have a different connotation than
 16 other worlds. When you say "moving fast," what time
 17 frames are we talking about?
 18 A Well, we're committing to closure
 19 November 1st of 2015. We're already in 2009, so
 20 there's six years to cover 150 acres that would be
 21 impacted. So we're going to be moving in lifts fairly
 22 quickly back and forth across the top deck of that,
 23 and there's probably only five lifts that would happen
 24 in that five years, six years.
 25 Q So if you had -- is it your testimony that

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1297

1 those five lifts could result in no intermediate cover
 2 and seeding for the entire period until the five lifts
 3 were effectuated?
 4 A No. We anticipate there will be seeding
 5 events that happen on the top deck. I think the city
 6 additionally added some controls in lieu -- not in
 7 lieu of, but in belt and suspenders, as it was put
 8 during negotiations, of the additional buffalo grass,
 9 filter strips at all the downshoots, additional silt
 10 fencing at the top and bottom of all the downshoots
 11 that we have on an intermediate basis. So I think
 12 they clearly contemplated the activity level that
 13 would be on the top deck.
 14 Q All right. But as I understand this, to be
 15 clear, if there's been no activity for 120 days on an
 16 area, BFI has to seed it?
 17 A That's correct.
 18 Q Now, is it also your testimony that after
 19 it's seeded you may come back and put on another new
 20 lift on top of that?
 21 A We envision that happening quite often.
 22 Q So you would be stripping off the
 23 intermediate cover and the seeded area, putting on a
 24 new lift and doing it again?
 25 A As a practice, we strip off dirt until we saw

Page 1298

1 waste. We obviously wouldn't expose the waste that's
 2 been covered for any period of time, and do new waste
 3 placement in that area.
 4 Q I'm going to skip down to Provision 10 on
 5 Page 5 of the document we're looking at.
 6 A Okay.
 7 Q This provides that BFI shall amend its
 8 stormwater pollution prevention plan within 90 days of
 9 the effective date of this agreement. What was the
 10 effective date on of this agreement?
 11 A 10/31 of '08, I believe.
 12 Q Has BFI amended its stormwater pollution
 13 prevention plan yet?
 14 A I can't confirm that, but I believe we have.
 15 I know it was in work.
 16 Q It was in word?
 17 A It was in our works to do it, you know.
 18 Q To your knowledge -- I understand the
 19 deadline is four days away -- that has not been
 20 submitted to the city yet?
 21 A I don't know.
 22 Q I'm going to take you to RS-43.
 23 A Yes, sir.
 24 Q RS-43 starts with a letter from the TCEQ to
 25 Mr. Gosselink signed by Steve Shepherd. Correct?

Page 1299

1 A Yes, sir. That's correct.
 2 Q All right. Then after some fax pages, at
 3 least on my copy, we have -- unfortunately, these are
 4 not paginated. So bear with me, Mr. Dugas, but you
 5 start with "Special settlement provisions." Do you
 6 see those?
 7 A Right; I do.
 8 Q Have you reviewed these previously?
 9 A I have.
 10 Q And these are similar, if not exact, to the
 11 Rule 11?
 12 A That's correct.
 13 Q All right. And I would refer you to Special
 14 Provision 3 here. It talks about the initial seeding
 15 event for all disturbed areas to be accomplished using
 16 hydromulch seeding application procedures per Exhibit
 17 1. Do you see that?
 18 A Yes, sir.
 19 Q And have you reviewed Exhibit 1?
 20 A I believe that Exhibit 1 is the city's
 21 seeding criteria.
 22 Q Right. And I'm going to take you to Page 3
 23 of the city's seeding criteria. It's got Provision 9,
 24 watering.
 25 A Yes, sir.

Page 1300

1 Q And that provides seed germination will be
 2 expected within one week of sowing. Watering is
 3 required to germinate seed to maintain growth.
 4 Seedlings shall be watered daily, or more often as
 5 necessary, to ensure growth. So that's -- that is
 6 incorporated in the special conditions, as I
 7 understand it, both with regard to the TCEQ if the
 8 permit is issued, as well as the Rule 11 with the
 9 city?
 10 A That's correct.
 11 Q And I'm wondering what capacities -- what
 12 sources of water does BFI have at the Sunset Farms
 13 facility?
 14 A Well, we have an existing on-site line that
 15 currently provides water for our trailer, as well as
 16 some irrigation that we do to landscaping trees along
 17 Blue Goose and Giles Road. Additionally, we have a
 18 tap --
 19 Q Let me stop you there. I didn't mean to
 20 interrupt, but are we getting -- are we on to a
 21 different line? Because I want to talk the first line
 22 here. You have a line that provides water to the
 23 trailer. Correct?
 24 A Trailer, scalehouse and other facilities, the
 25 other area being the irrigation and mister system.

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1301

1 Q Is that off the same --
 2 A Off the same line; that's correct.
 3 Q What size line is that?
 4 A An inch and a half or two inch. I don't
 5 recall.
 6 Q Is that water provided by the city of Austin?
 7 A That's correct.
 8 Q Have you utilized this line for irrigation of
 9 the landfill in the past?
 10 A For our landscape work, absolutely.
 11 Q And when you say "landscape work," how do you
 12 define the landscape work?
 13 A There was a drainage mod that incorporated
 14 some landscaping and vegetative work in and on Giles
 15 and down Blue Goose, and it's been utilized to get all
 16 the initiated and maintained.
 17 Q But was that irrigation project similar to
 18 irrigating four-to-one side slopes?
 19 A Probably not identical, but irrigation is
 20 irrigation.
 21 Q Have you investigated whether BFI has on-site
 22 capabilities, vis-a-vis water, to comply with the
 23 Special Conditions No. 3 here regarding watering?
 24 A Absolutely. We believe we have plenty of
 25 capacity to manage and sustain this agreement.

Page 1302

1 Q And what is the capacity of that one and a
 2 half inch line?
 3 A I don't know the exact output of it, but we
 4 have other sources as well, of water available.
 5 Q And what other sources of water do you have
 6 available?
 7 A Obviously we have surface water that is
 8 collected on site in our trapezoidal pond, and then we
 9 also have -- which is utilized for -- that water is
 10 utilized for dust control as well as irrigation and
 11 any potential fire protection that might be required.
 12 And then we have a fire hydrant tap that
 13 we're also supplementing water in this drought period
 14 that we've had.
 15 Q And the trapezoidal pond, is that the pond
 16 that was approved in the 2002 mod?
 17 A I don't believe that that was in that
 18 2002 mod. It's an on-site pond for stormwater
 19 collection.
 20 Q Where is the trapezoidal pond located? Is
 21 that in the northeast quadrant?
 22 A Yes, sir. It's near the water quality and
 23 detention pond that's described in the application
 24 that will be built if the application is approved.
 25 Q And that's what I was getting at. Right now

Page 1303

1 we don't have the water quality and detention pond.
 2 Right?
 3 A That's correct.
 4 Q But there is a pond in that area as we sit
 5 here today?
 6 A Yes, sir.
 7 Q And is that the trapezoidal pond you're
 8 referring to?
 9 A That is correct.
 10 Q And what is the capacity of that pond with
 11 regard to holding the water?
 12 A Again, I couldn't tell you what the capacity
 13 of that is. It's significant.
 14 Q And how much water is in there as we sit here
 15 today?
 16 A It's just a wild guess, at best, if I threw a
 17 number out there.
 18 Q Well, is the only source of water in the
 19 trapezoidal pond rainwater?
 20 A No, sir. No, sir. We pump water directly
 21 into that as well as from the fire hydrant tap that we
 22 have.
 23 Q And do you pump that for purposes of fire
 24 protection and dust control?
 25 A And a recently installed irrigation system

Page 1304

1 that we put on the side slopes to begin our
 2 revegetation efforts.
 3 JUDGE NEWCHURCH: Ready for a break?
 4 MR. HEAD: Sure am.
 5 JUDGE NEWCHURCH: Let's break for ten
 6 minutes, please.
 7 (Recess: 10:36 a.m. to 10:30 a.m.)
 8 JUDGE NEWCHURCH: All right. Back on
 9 the record. Mr. Head?
 10 MR. HEAD: Okay.
 11 Q (BY MR. HEAD) Okay. Mr. Dugas, let me try
 12 to get organized here.
 13 I refer your attention to your Exhibit
 14 BD-5. If you can't find it, Joe can find it for you.
 15 A No, it's just -- I'm in the back of the book.
 16 Yes, sir. I found it.
 17 Q Okay. And what is BD-5?
 18 A That's an agreement we have struck with Waste
 19 Management at the Austin Community Landfill to
 20 purchase up to a million and a half yards from them.
 21 Q Okay. And how many other landfills in Texas
 22 do you have jurisdiction over?
 23 A Can I just guess at ten?
 24 Q Is that -- do you feel comfortable with that?
 25 A I think that's close.

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1305

1 Q And are you familiar with the operations and
2 contractual obligations of those ten facilities?
3 A For the most part; yes, sir.
4 Q Of those ten other facilities, which of those
5 facilities have purchase contracts for excess soil?
6 A I can think of two that have opportunities to
7 purchase soil different than this, but they are -- you
8 do have opportunities to purchase soil.
9 Q Are they contractual obligations?
10 A Yes, they are.
11 Q And what facilities would those be?
12 A The Donna landfill, and, I believe, the
13 Abilene landfill.
14 Q And what is the purpose of the Donna and
15 Abilene landfill having contractual -- having
16 contracts to purchase soil?
17 A To ensure a soil source for operations and
18 closure.
19 Q Does the Donna landfill have a deficit of
20 soil?
21 A Yes, sir, it does.
22 Q Does the Abilene landfill have a deficit of
23 soil?
24 A I believe it does. I'm not sure.
25 Q And, in fact, the BFI waste landfill,

Page 1306

1 according to the application, has a deficit of soil.
2 Correct?
3 A Yes, sir.
4 Q And are you familiar as to what the
5 application provides for, what that soil deficit is?
6 A If I recall, it's around two and a half to
7 two -- a little over 2 and a half million yards.
8 Q And that would be cubic yards?
9 A Cubic yards, that's correct.
10 Q Now, as I understand the testimony of other
11 folks who have gone before you, BFI has finished all
12 its excavations on site?
13 A We just completed our final excavated cell,
14 that's correct.
15 Q Is that cell being lined as we speak?
16 A That cell has been lined, certified and is
17 being filled in as we speak.
18 Q So the SLER and the GLER have been submitted
19 and approved?
20 A That's correct.
21 Q And waste is being deposited in that cell?
22 A As we speak.
23 Q And that cell is cell number --
24 A Twenty-two.
25 Q So 23 has already been filled?

Page 1307

1 A Yes, sir. Well, it's been excavated and
2 certified, and we jump back to 22 to fill.
3 Q So isn't it true that BFI is not going to
4 have available any new on-site excavated soils?
5 A There will be some soil yielded from the
6 detention water quality pond.
7 Q And we've heard testimony from Mr. Mehevec
8 that it may be two or three years before that pond is
9 implemented?
10 A That's correct.
11 Q So it may be two or three -- is it correct
12 maybe two or three years before that excavation
13 occurs?
14 A Yes, sir.
15 Q Now, you state in your testimony -- in your
16 prefiled on Page 46 that BFI has always had a soils
17 surplus.
18 A Yes, sir.
19 Q And hasn't this been in part due to the --
20 what I'll call free soil from on-site excavations?
21 A That's supplemented a lot of the soil we've
22 had on site. We've had other sources as well.
23 Q But it's the plan for BFI to obtain
24 additional soil pursuant to the contracts in BD-5?
25 A Yes. In fact, we're taking some of our first

Page 1308

1 soil on that contract as we speak.
2 Q And so am I to assume that BFI has made the
3 initial option payment \$50,000?
4 A Yes. We've made all the payments and
5 installments required by contract.
6 Q And this contract in BD-5 is an amendment of
7 a prior contract, dated May 2, 2005. Right?
8 A That is correct.
9 Q Was any soil obtained from Waste Management
10 pursuant to the 2005 contract?
11 A No, sir.
12 Q Were any payments made under the
13 2005 contract?
14 A As per the initial payment and the annual
15 payments, yes, there were.
16 Q And those were separate payments than are
17 represented in the first amended purchase and sale
18 agreement?
19 A I don't think we modified the payment area,
20 other than the rate of the cost of the dirt.
21 Q And just so the record is clear, the rate
22 went from \$1.10 per cubic yards to \$2 per cubic yard?
23 A That's correct.
24 Q And how much soil has BFI recently purchased
25 from Waste Management?

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1309

1 A We don't have an exact count on it, but it's
 2 going to be in excess of 200,000 yards.
 3 Q Has that soil been moved to the BFI site yet?
 4 A They're in the process of finalizing their
 5 haul road and to begin hauling it any day now.
 6 Q Now, as we sit here today, how much soil is
 7 stockpiled on the BFI site?
 8 A Again, it's going to be a guess, but I would
 9 guess there's probably 200 to -- 200,000 yards in
 10 various stockpiles.
 11 Q That 200,000 yards, would that be soil that
 12 had been excavated from Cell 23?
 13 A I would say the majority of it. It could be
 14 clean soil that was brought into the site that we
 15 stockpiled as well.
 16 Q Now, referring you to the contract, BD-5, are
 17 you fairly familiar with this contract?
 18 A Yes, I am.
 19 Q And isn't it a fact that on Page 3, under the
 20 termination and expiration provisions, that Waste
 21 Management, upon 30 days' notice, if they need the
 22 soil, can terminate this contract?
 23 A Yes, sir.
 24 Q And isn't it also a fact that with regard to
 25 the right to purchase soil, the contract provides that

Page 1310

1 the exact amount of surplus soil that is or becomes
 2 available is not known and that seller first has to
 3 satisfy its own needs before providing soil to BFI?
 4 A That's correct.
 5 Q So isn't it a fact that this contract does
 6 not provide an absolute guarantee for
 7 1.5 million cubic yards?
 8 A I guess you could put it that way. We prefer
 9 to look at it as they were conservative in their
 10 estimate of available dirt.
 11 Q But the fact remains within a 30-day notice,
 12 they can terminate this contract?
 13 A That's accurate.
 14 Q Now, you mention in your testimony that there
 15 are times when BFI has come into soil from
 16 construction projects --
 17 A That's correct.
 18 Q -- transportation projects, downtown building
 19 projects?
 20 A To name a couple, that's right.
 21 Q Has BFI ever had a project contribute
 22 1.5 million cubic yards of soil to the landfill?
 23 A I don't believe individually, no.
 24 Q Now, the Waste Management contract expires
 25 March 2015. Isn't that correct?

Page 1311

1 A That's correct.
 2 Q And that's prior to the November 1, 2015
 3 deadline for BFI to cease taking waste?
 4 A That's correct.
 5 Q If Waste Management was to terminate the
 6 contract, what alternative provisions, as we sit here
 7 today, does BFI have to obtain 1.5 million cubic yards
 8 of soil?
 9 A Well, we've periodically investigated soil
 10 availability in the 290 area, and we found it to be
 11 readily available from a number of sources, from
 12 people that just have borrow holes that can sell it to
 13 us, to projects that are upcoming. We certainly
 14 anticipate there will probably be some soil coming off
 15 the 290 highway project that will be occurring, but
 16 we've never run into an occasion where dirt was not
 17 available that would meet the criteria of our landfill
 18 operations for closure.
 19 Q But as we sit here today, does BFI have any
 20 firm commitment, aside from BD-5, for a guarantee of
 21 purchase of excess soil?
 22 A We've not executed anything, no, sir.
 23 Q Now, the soil that is in BD-5 contract, what
 24 would be the utilization of that soil at BFI Sunset
 25 Farms?

Page 1312

1 A We fully anticipate using it for daily and
 2 immediate cover, operational needs, and it is of a
 3 quality that would actually meet some of the closure
 4 criteria, hence that's why the termination before the
 5 end of our facility.
 6 We anticipate phasing closure of this
 7 application approval and that we would utilize that
 8 material prior to finding another source.
 9 Q Utilize the material --
 10 A This 1.5 million yards you just asked me
 11 about.
 12 Q Now, currently, in the site operating plan,
 13 there's a statement that BFI will use no alternative
 14 daily cover.
 15 A That's one of the commitments we've made
 16 through a series of lengthy negotiations with the
 17 political parties and citizens around there, that's
 18 correct.
 19 Q And is BFI prepared to have a provision -- a
 20 special provision in the permit that there will be no
 21 alternative daily cover utilized at the Sunset Farms
 22 landfill?
 23 A I believe we've clearly stated that in our
 24 application, yes.
 25 Q Now, you sat through much testimony, and

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1313

1 you've heard reference to the Horizon report --
 2 correct -- the wetlands report?
 3 A I believe he did the endangered species as
 4 well.
 5 Q Right. And if I could refer your attention
 6 to the application, Page 218, which will be in Volume
 7 1 --
 8 A Yes, sir.
 9 Q Okay. And this is the Horizon jurisdictional
 10 determination for wetlands. Correct?
 11 A That's correct.
 12 Q And we've had testimony that this report
 13 designates two separate wetlands on site. Right?
 14 Let me refer you to --
 15 MR. GOSSELINK: Mr. Dugas, do you have
 16 the document yet?
 17 A I do.
 18 Q (BY MR. HEAD) Let me refer you to Figure 3
 19 there, which is Page 225.
 20 A I have it.
 21 Q Okay. And do you see the 3.5-acre wetland in
 22 the northeast portion?
 23 A Yes, sir, I do see that.
 24 Q And then you see the pond at the far
 25 northeast portion?

Page 1314

1 A Right.
 2 Q And you recall testimony that -- Mr. Shull
 3 stated that that was mislabeled. It should not have
 4 been mislabeled as sedimentation pond. Do you recall
 5 that testimony from Mr. Shull?
 6 A On a different drawing, it was done
 7 incorrectly; that's correct.
 8 Q Turning to 227, we have the same wetland
 9 designations on Figure 4. Right?
 10 A That's correct.
 11 Q But those -- the only difference here and the
 12 one primary difference is we have included the water
 13 detention, water quality pond yet to be constructed.
 14 A That's correct.
 15 Q All right. Now, for how long have you
 16 personally been aware of the existence of the 3.5-acre
 17 wetland?
 18 A Probably not until after this report.
 19 Q So that would be -- the report is dated 2007?
 20 A Right.
 21 Q So -- and you've been out there with
 22 responsibility for Sunset Farms since when?
 23 A I moved here in February of 2004 as general
 24 oversight responsibility of all the landfills in this
 25 area.

Page 1315

1 Q So is it safe to say that although you were
 2 here in 2004, it's not until sometime in 2007 you
 3 became aware of the existence of that 3.5-acre
 4 wetland?
 5 A There was never any evidence of a wetland
 6 prior to that.
 7 Q But the fact of the matter is, this report --
 8 A Delineates it as of this date, that's
 9 correct.
 10 Q Right. Right. And are you aware of whether
 11 the Horizon 2005 version delineated that wetland as
 12 well?
 13 A I don't believe it did. That's what I was
 14 basing that previous criteria on.
 15 MR. HEAD: Can we go off the record for
 16 a second, please?
 17 JUDGE NEWCHURCH: Off the record.
 18 (Discussion off the record)
 19 JUDGE NEWCHURCH: Back on the record.
 20 Thank you, Mr. Head.
 21 Q (BY MR. HEAD) If you don't mind if I
 22 approach, I'm going to hand you the Horizon
 23 2005 report.
 24 A Okay.
 25 Q And you would agree that the Horizon report

Page 1316

1 you looked at previously was a 2007 revision?
 2 A Yes.
 3 Q Okay. And with regard to the 3.5-acre
 4 wetland, is it not delineated in the 2005 report?
 5 A It appears to be so, that's correct.
 6 MR. HEAD: I'll have this marked.
 7 Should we -- Your Honor, I can mark this. I have one
 8 copy. I don't have two for the court reporter. I
 9 don't know how you want to --
 10 JUDGE NEWCHURCH: So you want to offer
 11 it now?
 12 MR. HEAD: I want to offer it.
 13 JUDGE NEWCHURCH: Okay. And everybody
 14 has had a chance to see the one copy you have. So go
 15 ahead and mark it and offer it, and if it's admitted,
 16 I'll let you make copies during the break, or, really,
 17 by tomorrow would be fine.
 18 MR. GOSSELINK: Your Honor, I have seen
 19 it. I understand what it is. If there's going to be
 20 specific questions showing some disparities, I'm going
 21 to be at a disadvantage here in even understanding the
 22 testimony. I don't know what J.D. intends to do with
 23 this.
 24 MR. HEAD: Paul, all I intend to do is
 25 Mr. Dugas was of the impression that the first time

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1317

1 anyone knew there was a wetland was 2007, according to
 2 the Horizon report. This report is a 2005 report by
 3 the same gentleman. Mr. Sherrod establishes that in
 4 2005 we had the 3.5-acre wetland delineated. That's
 5 all I want to use it for.
 6 MR. GOSSELINK: Okay. And I understand
 7 that, and that's not a problem. I think you've
 8 mischaracterized his testimony. I think what he said
 9 was, "The first time I knew about it was the first
 10 time I saw the report." We need to figure out what
 11 report he saw first.
 12 MR. HEAD: I still want to have it
 13 marked.
 14 JUDGE NEWCHURCH: Okay. So let's have
 15 this marked as -- off the record.
 16 (Exhibit TJFA No. 26 marked)
 17 MR. HEAD: Move to admit TJFA 26.
 18 JUDGE NEWCHURCH: Is there objection?
 19 MR. GOSSELINK: No objection.
 20 JUDGE NEWCHURCH: Without objection,
 21 TJFA 26 is admitted.
 22 (Exhibit TJFA No. 26 admitted)
 23 Q (BY MR. HEAD) Just to be clear on your
 24 testimony, when you came out there in 2004 to the
 25 Sunset Farms, got jurisdiction, no one told you of the

Page 1318

1 existence of this 3.5-acre wetland. Is that correct?
 2 A That's absolutely correct.
 3 Q And you're familiar with the site development
 4 plan and the site operating plan included within the
 5 application. Correct?
 6 A Yes, fairly familiar with it; yes, sir.
 7 Q And you testified to that in your prefiled?
 8 A Yes, sir.
 9 Q Could you please refer the Judge to anywhere
 10 in the site operating plan or the site development
 11 plan where there are any provisions whatsoever for the
 12 protection of this 3.5-acre wetland?
 13 A I couldn't off the top of my head here, no.
 14 Q How would any employee -- if you didn't know,
 15 how would any employee at the Sunset Farms landfill be
 16 aware of this 3.5-acre wetland?
 17 A From my understanding of this, when it was
 18 identified -- after conversation, not personal
 19 experience -- the wetland was delineated by driving
 20 wire flaggings around it. And so there were wire
 21 flaggings, if you will, left in that general area
 22 outlining what's delineated on the map. That's just
 23 my understanding.
 24 Q Have you seen -- personally seen any wire
 25 flaggings that delineate the 3.5-acre wetland?

Page 1319

1 A I'm not going to say specifically. I've seen
 2 a lot of wire flaggings in and around that general
 3 area. We did some landscaping on the other side of
 4 the channel, and, of course, we constructed the
 5 Channel K to the north of that, but I don't recall
 6 them being specifically flagged and marked as a
 7 wetland in that area.
 8 Q Do you, as you sit here today, have personal
 9 knowledge of when this flagging was first installed?
 10 A No, I don't.
 11 Q Are there any "keep away" signs out there
 12 surrounding the 3.5-acre wetland?
 13 A Not that I recall.
 14 Q What source of water is there for the
 15 3.5-acre wetland?
 16 A I think it was just general rainfall that
 17 landed in that area.
 18 Q Have you ever seen the 3.5-acre wetland be
 19 used as a staging area?
 20 A Not specifically. We have staged material
 21 around that area, I know liner materials and maybe
 22 some -- but I couldn't specifically say if it was
 23 right there or to the west or east or south or --
 24 Q Now, there is a haul road -- or at least
 25 there is a haul road that comes from the southern

Page 1320

1 portion of the trapezoidal detention pond. Is that
 2 not correct?
 3 A Yes, to the east of that -- on the west
 4 side -- I'm sorry -- to the west side.
 5 Q Right. In the vicinity of the wetland?
 6 A To the west of that. I think it's on the
 7 west side of the trapezoidal area.
 8 Q We'll take a look at that in a second. I
 9 draw your attention to APP 000404. This is entitled
 10 Sequence 3, completion of vertical expansion.
 11 A Okay.
 12 Q Do you see the detention water quality pond?
 13 A I do.
 14 Q And do you see on the eastern portion
 15 coming -- there's two lines coming down towards the
 16 working face?
 17 A Yes, I do.
 18 Q Is that the haul road which we're talking
 19 about?
 20 A No, it's not.
 21 Q Do you recall the testimony of Mr. Shull that
 22 that, in fact, was a haul road?
 23 MR. GOSSELINK: I object. I don't
 24 believe Mr. Shull testified to that at all. It
 25 mischaracterizes Mr. Shull's testimony.

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1321

1 MR. HEAD: What's going to be in the
 2 record is going to be in the record, but he did
 3 testify to that.
 4 JUDGE NEWCHURCH: I don't know if he did
 5 or not, so could you say, "Do you recall if"?
 6 Q (BY MR. HEAD) Do you recall if Mr. Shull
 7 testified that that designation had, at one point in
 8 time, been utilized as a haul road?
 9 A What I recall in testimony prior to today was
 10 a question of Mr. Mehevec in regard to that, and I
 11 think he testified that we were constructing the
 12 Channel K -- Ditch K, if you will, and that was when
 13 the delineation had been made that there was a wetland
 14 there, and they removed that; if that was a haul road,
 15 in fact, it had been removed at that point in time.
 16 Q So at one point in time it was a haul road?
 17 A Well, that's what Mr. Mehevec had indicated.
 18 Q That's according to his testimony as you
 19 recall it?
 20 A That's correct.
 21 Q You don't recall, as you sit here today,
 22 Mr. Shull's testimony on the haul road question?
 23 A No, I don't.
 24 Q You're excused for not remembering everyone's
 25 testimony in this proceeding, sir.

Page 1322

1 Were you aware, prior to this
 2 proceeding, that BFI was utilizing a wetland pond at
 3 Outfall 1 for water flowing through there?
 4 A I don't believe we have used it as a -- if
 5 you're referring to it as a water quality pond, I
 6 don't believe -- I think that was Mr. Shull's
 7 commentary, that we don't use it as a water quality
 8 pond.
 9 Q You're familiar with the pond in closest
 10 proximity to Outfall 1?
 11 A Yes, sir.
 12 Q Now, if -- and Outfall 1 takes water from
 13 Ditch K. Correct?
 14 A And other sources, yes.
 15 Q And other ditches?
 16 A Right.
 17 Q Now, is it possible that those ditches, in a
 18 high rainfall event, would be carrying suspended
 19 solids?
 20 A I guess it's possible.
 21 Q So if that's the case, would those suspended
 22 solids not have the potential to enter that pond
 23 before it exits Outfall 1?
 24 A That's probably right.
 25 Q Now, you obviously were here for

Page 1323

1 Mr. Mehevec's testimony yesterday, the day before,
 2 when he mentioned there were stakes around this
 3 northeast wetland pond.
 4 How long had those stakes been out
 5 there?
 6 A I didn't recall the stake comment. I think
 7 there was a reference -- I know what is there is a
 8 silt fence that goes around it.
 9 Q And how long has that silt fence been there?
 10 A As long as I've been here. It's been
 11 improved a couple times due to storm events.
 12 Q To your personal knowledge, has sediment ever
 13 been removed from the wetland pond in the northeast
 14 corner by Outfall 1?
 15 A No, I've never heard or seen it.
 16 Q Is it possible that has occurred and you
 17 would be unaware of it?
 18 A I guess there's always a possibility.
 19 Q Are you informed personally of every sediment
 20 removal activity that occurs at Sunset Farms?
 21 A I have been since my involvement here.
 22 Q Since your involvement in the hearing?
 23 A Sunset Farms -- Sunset Farms, 2004.
 24 Q So how precisely is it brought to your
 25 attention every time there's a removal of sediment

Page 1324

1 from any sedimentation pond?
 2 A Either from a call directly from the --
 3 Everett Moore, the site manager, or through our
 4 environmental department, Michael Stewart.
 5 Q So your testimony is every time Everett Moore
 6 takes a shovel out and removes sediment, he
 7 immediately calls and contacts you?
 8 A Whenever we do a cleaning event, and, really,
 9 the cleaning events that we've done to date have only
 10 been for Sedimentation Basins 4 and 5, which are the
 11 on the west side, which have been constructed since
 12 I've been here.
 13 Other than that, I don't recall any
 14 sedimentation removal from any other areas.
 15 Q So you don't recall any sedimentation removal
 16 from the two sedimentation ponds on the southern
 17 boundary of the facility?
 18 A No, I've personally been by those, and I just
 19 don't recall ever seeing any sedimentation or any
 20 comment of cleaning them out.
 21 Q And those, as I recall, they flow to the
 22 Waste Management landfill. Correct?
 23 A That's correct. They tie together, and then
 24 flow through.
 25 Q Turning to your exhibit on the site operating

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1325

1 plan -- I forget the number, Mr. Dugas. I think
2 that's BD-3.
3 A Yes, sir.
4 Q Okay. And for clarification purposes, this
5 site operating plan is the existing operating plan,
6 not the proposed operating plan of the application.
7 Is that correct?
8 A For clarification purposes, you're exactly
9 right, other than the change that's in the application
10 is only for some date changes on seals. Other than
11 that, I believe it's identical to what's in the
12 application. I think the wetlands -- not wetlands,
13 but the endangered species were additionally updated.
14 Q And there may be some corrections of the
15 pagination as well?
16 A That's, I think, the change that was made.
17 Other than that, I think it is the same as was in the
18 application.
19 Q Under the SOP, it provides that you cover the
20 working face once in a 24-hour period. Correct?
21 A That's correct.
22 Q And the facility operates 24/7. Right?
23 A Typically we close Saturday at 3 and open
24 back up Monday at 5 and don't work on Sunday right
25 now.

Page 1326

1 Q But under the permit --
2 A That's correct.
3 Q -- 24/7. When is the cover of the working
4 face typically done in the course of the 24-hour
5 working day?
6 A It's at different times for different events,
7 you know, depending on where we're going, but I would
8 say typically the area that was advanced and
9 considered to be the working area that had not been
10 covered is covered typically in the early evening.
11 Q But at some -- is it accurate to say at some
12 point in a 24-hour day the entire working face is
13 covered with daily cover?
14 A That's correct. The working face material --
15 I mean, the waste materials have been covered within a
16 24-hour period; that's correct.
17 Q Is there ever a time in a 24-hour period
18 where there's a section that has not been covered?
19 A Well, I don't know if that would -- if it was
20 within a 24-hour period -- I mean, you're always going
21 to have a little segment working.
22 Q And that's what I'm getting at.
23 A Right.
24 Q So there's always going to be a segment
25 working?

Page 1327

1 A Potentially; yes, sir.
2 Q Even at 2 a.m.?
3 A Absolutely, at 2 a.m. we have trucks coming
4 in providing service for the downtown and industrial
5 collection areas.
6 Q So in a 24-hour period, there is never a time
7 when everything -- all the working face is entirely
8 covered?
9 A I would say during the week that you do have
10 24-hour periods that have a pass that might not be
11 covered -- a compactor pass, if you will, but I don't
12 think any waste has gone uncovered for a period
13 greater than 24 hours.
14 Q But waste can be covered during a 24-hour
15 period, as I understand the SOP, and the next day that
16 daily cover can be stripped from that waste. Correct?
17 A That's correct.
18 Q And why is it necessary to strip off the
19 daily cover from a waste lift?
20 Why not leave the daily cover and put
21 waste on top of that?
22 A I think there's two or three reasons for it.
23 One, operationally, it obviously saves you some air
24 space to retrieve that six inches of air space that
25 you -- that's what we're selling. That's what we're

Page 1328

1 trying to preserve. That's what we've applied for
2 here, so we're preserving that.
3 Two, where you have some of that dirt
4 that helps stabilize our top deck -- and we don't use
5 it for any of our detention berms, because it
6 typically has some litter picked into it. And then
7 more importantly, as the landfill is developed, it
8 could create lenses that would stop water from --
9 impede water flow from going down in a vertical means.
10 So you don't want to create any of that going on in
11 the working face, in the waste column.
12 Q And it also saves soil?
13 A There is that benefit, too, you're right.
14 Q And we've established that you have a deficit
15 of soil -- right -- BFI does?
16 A The Sunset Farms landfill has a soil deficit;
17 that's correct.
18 Q Wouldn't it be a better odor management
19 practice to leave the daily cover on the old waste
20 before putting on new waste?
21 A I don't believe so.
22 Q Why not?
23 A As has been proven time and again and at many
24 facilities we operate, that alternate daily covers,
25 i.e., a tarp, which are drug on and drug off at the

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1329

1 end of the day, are equally as good for operational
 2 and odor issues.
 3 The bigger conditions for odor
 4 management is being able to manage potentially odorous
 5 materials as they come in and burying those where
 6 they're not near surface.
 7 Q And we're going to get to that, but my
 8 question did not have to do with alternative daily
 9 cover. My question had to do with, from an odor
 10 management standpoint, wouldn't it be more appropriate
 11 to leave the daily cover on deposited waste and put
 12 new waste on top of that, as opposed to stripping off
 13 the cover and revealing the waste to the environment
 14 again?
 15 A Right. Well, just for clarity, it may be
 16 exposed in some areas, but on a very short period of
 17 time. Waste is immediately placed in that area, and I
 18 think from a generation of the overall perspective of
 19 odor management, our gas collection and control system
 20 manages the odors that might generate from the waste
 21 much better than even a daily cover because that waste
 22 is not breaking down in day one or in day ten.
 23 It's typically not for a year or two
 24 before it's potentially developing an odor of its own,
 25 unless it came through the gate as an odorous

Page 1330

1 material, which, again, I talk about that that we bury
 2 not near surface.
 3 Q But when you have the odorous material that
 4 comes in, the SOP provides that -- as I read it, you
 5 take it to the working face, you may dig a little
 6 trench in the working face, but one of the options is
 7 to cover it with waste -- cover the odoriferous waste
 8 with other waste.
 9 A That's correct.
 10 Q Wouldn't it be more preferable from an odor
 11 standpoint to cover the odoriferous waste with daily
 12 cover?
 13 A Well, in many of those cases, just so you
 14 understand, these trenches are not just scattered with
 15 other waste. They're typically buried four or five
 16 feet deep in the working face, and the -- we have a
 17 very rigorous compaction effort. So they're really
 18 encapsulated, if you will, in the face by garbage as
 19 it comes in throughout the day.
 20 Q So your testimony is if a load of dead
 21 animals comes in -- and you do receive dead animals?
 22 A That's correct.
 23 Q And dead animals would qualify as odoriferous
 24 waste, would they not?
 25 A Potentially.

Page 1331

1 Q Well, tell me what's the most odoriferous
 2 waste you receive at the facility.
 3 A I would say it might be a compactor that was
 4 at a food court or a school cafeteria that has souring
 5 milk or something along that line.
 6 Q So the -- you get a call from the folks at
 7 the front gate, and they say, "We got this nasty stuff
 8 coming from the food court." Correct?
 9 A Uh-huh.
 10 Q And I'm assuming someone contacts the
 11 folks -- the operator of the working face --
 12 A That's correct.
 13 Q -- and says, "Here comes the nasty stuff from
 14 the food court"?
 15 A Correct.
 16 Q And you put it in the working face. Right?
 17 A In a trench in the working face; that's
 18 correct.
 19 Q The question is, from an odor standpoint,
 20 wouldn't it be more preferable to cover it with daily
 21 cover as opposed to waste?
 22 A No, I don't believe that's a correct
 23 characterization. Otherwise tarps would never be used
 24 anywhere, and obviously they're an approved
 25 alternative daily cover. So the fact that we've

Page 1332

1 committed to use soils here is one thing, but
 2 operationally, these things are buried significantly
 3 deep. You would have to see it. It's not --
 4 Q And I haven't seen it. And, once again, I'm
 5 not trying to interrupt you. You keep bringing up
 6 tarps.
 7 A Right.
 8 Q My question has nothing to do with tarps. My
 9 question has to do with the differentiation between
 10 covering odoriferous waste with waste as opposed to
 11 dirt, daily cover. Tarps aren't -- I'm not talking
 12 about tarps.
 13 A Okay.
 14 Q So take tarps out of the equation. From an
 15 odor management standpoint, wouldn't it be more
 16 appropriate to cover smelly waste with daily cover,
 17 which does not smell, than with other waste which does
 18 smell?
 19 A Well, obviously, we're not going to agree on
 20 this one, but you actually implied that all waste
 21 smells, and that's not accurate either. So I just --
 22 I don't necessarily agree with that, no.
 23 Q I don't think we're going to have a meeting
 24 of the minds, so let's go somewhere else.
 25 The owner of at least the majority of

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1333

1 this facility is Giles Holdings, LP. Correct?
 2 A That's correct.
 3 Q And does Giles Holdings, LP, take an active
 4 role in strategic decisions at Sunset Farms?
 5 A No, he does not.
 6 Q When you say "he does not" -- I'm talking
 7 about the LP itself.
 8 A Right.
 9 Q Is there a particular person with Giles
 10 Holdings, LP, that interfaces with you?
 11 A I communicate with Steve Mobley.
 12 Q But isn't it a fact that Mr. Mobley
 13 participated in numerous meetings with regard to
 14 preparing this permit application?
 15 A Yes, sir. I believe his lease establishes
 16 his ability to be a party to that.
 17 Q Correct. Now, can Giles Holdings dictate to
 18 BFI how the facility will be operated?
 19 A No, they cannot.
 20 Q So is it your testimony that Giles Holdings
 21 can't say, "No, I don't want 6 million cubic yards of
 22 air space on this expansion. I want 10 million"?
 23 They can't make that decision?
 24 A Not arbitrarily. I think if it was in any
 25 agreements, it would obviously be established as to

Page 1334

1 what everybody's minimals would be.
 2 Q To your knowledge, did Giles Holdings have
 3 any input on how much air space would be applied for
 4 in this permit application?
 5 MR. GOSSELINK: I'm going to object to
 6 that, Your Honor. That's calling for proprietary
 7 information from counsel for one of our competitors.
 8 MR. HEAD: My response is one of the
 9 referred issues is owner/operator, and I think it's
 10 pertinent to determine whether the owner of a portion
 11 of this facility is actually engaged in operational
 12 decisions.
 13 MR. GOSSELINK: He's testified to that
 14 question. He's answered that question.
 15 JUDGE NEWCHURCH: I'm not seeing -- I'm
 16 going to sustain the objection.
 17 Q (BY MR. HEAD) Does Giles Holdings have any
 18 input on personnel matters at the BFI Sunset landfill?
 19 A Absolutely not.
 20 Q Does Giles Holdings have any input on whether
 21 to install the water quality detention pond?
 22 A Absolutely not.
 23 MR. HEAD: If I could take just one
 24 second to review my notes, I might be pretty close to
 25 passing.

Page 1335

1 JUDGE NEWCHURCH: Off the record.
 2 (Brief pause)
 3 MR. HEAD: I pass.
 4 JUDGE NEWCHURCH: You're passing,
 5 Mr. Head?
 6 MR. HEAD: Yes, I am.
 7 JUDGE NEWCHURCH: Mr. Blackburn?
 8 MR. BLACKBURN: Yes.
 9 CROSS-EXAMINATION
 10 BY MR. BLACKBURN:
 11 Q Good morning, Mr. Dugas.
 12 A Morning, Mr. Blackburn.
 13 Q You just mentioned a lease agreement
 14 between -- I guess it's between Giles and BFI. Is
 15 that correct?
 16 A That's correct.
 17 Q And you said there were provisions of that
 18 agreement that provided for Giles to participate in
 19 certain types of activities. Is that correct?
 20 A I believe that's correct.
 21 Q Now, I have not been provided a copy of that
 22 lease agreement. Were you aware that that lease
 23 agreement has not been produced and has been refused
 24 to be produced?
 25 A No, sir.

Page 1336

1 Q Do you have any problem with us getting
 2 access to that lease agreement?
 3 A Probably.
 4 MR. TERRILL: And, Your Honor, I'll just
 5 add an objection and say that this has been a
 6 long-running dispute, and Giles obviously objects --
 7 or maybe not obviously to you, but to the TJFA
 8 lawyers. We object to it. It's going to go straight
 9 to their competitor, TDS. It's inappropriate, and
 10 it's not germane to any of the referred issues either.
 11 MR. BLACKBURN: Well, I would have
 12 thought not at an earlier point, but his testimony
 13 that there were operational relationships that were
 14 defined in the lease agreement leads me to want to
 15 look at that document. And, I mean, I am not a
 16 representative of the competitor, and I think I have
 17 every right to see that document, and I just asked
 18 counsel if he had a copy of it, and he said it has not
 19 been produced, and I think that is totally
 20 inappropriate.
 21 JUDGE NEWCHURCH: Well, you know, this
 22 case has gone for quite a while, but I cannot recall a
 23 motion to compel concerning that issue. Am I not
 24 remembering something?
 25 MR. BLACKBURN: I haven't filed one

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1337

1 because I, frankly, just became aware of it. So from
 2 my standpoint, I certainly hadn't filed one.
 3 JUDGE NEWCHURCH: Well, in the absence
 4 of a motion to compel on the spot saying, "I want it
 5 right now," then --
 6 MR. BLACKBURN: Well, may I so make such
 7 a motion?
 8 JUDGE NEWCHURCH: Is there objection to
 9 a motion to compel?
 10 MR. GOSSELINK: Yes, Your Honor. This
 11 has been an ongoing dispute between the parties with
 12 regard to proprietary information, and we have
 13 withheld it. The parties knew we withheld it. Our
 14 withholding was the subject of discussion and debate,
 15 and it's still being withheld for the very same
 16 reason.
 17 JUDGE NEWCHURCH: Mr. Blackburn, I
 18 thought I understood you to say that you did not know
 19 it was being --
 20 MR. BLACKBURN: I did not. I was not
 21 privy to those discussions. I did not participate in
 22 all of the activities that at least TJFA participated
 23 in, and, frankly, I was totally unaware of it.
 24 JUDGE NEWCHURCH: Did you file a
 25 motion -- did you file a request for production

Page 1338

1 concerning this document?
 2 MR. BLACKBURN: Oh, I'm sure I filed
 3 something that would qualify, but to be honest with
 4 you, Your Honor, I truly was unaware it was an issue
 5 until I just heard the testimony.
 6 MR. GOSSELINK: That's -- I mean, that
 7 is probably a very valid admission, and it doesn't
 8 have anything to do with how good a lawyer he is.
 9 He's a very good lawyer, but he hasn't looked at this
 10 stuff, and, therefore, he's not aware of the
 11 production disputes, and it's not -- that's his
 12 responsibility, not ours.
 13 MR. TERRILL: Your Honor, I'll just add
 14 that there was a specific request for the lease made
 15 by TJFA. We objected to it. I believe BFI did as
 16 well, and that objection was sent out in our discovery
 17 responses to everybody, including Northeast Neighbors
 18 Coalition, and during Mr. Mobley's six-plus-hour
 19 deposition, it was something that came up repeatedly,
 20 and I objected to it at that time as well. And so
 21 it's not a new dispute. It's been going on, I'd say,
 22 since probably September or October of last year.
 23 JUDGE NEWCHURCH: Mr. Blackburn, I don't
 24 understand all the ins or outs, and I don't think I
 25 need to. I think your motion to compel is not timely,

Page 1339

1 and for that reason, it's denied.
 2 MR. BLACKBURN: Okay. Your Honor.
 3 Thank you.
 4 Q (BY MR. BLACKBURN) Let's go elsewhere;
 5 actually, no.
 6 Let me ask you to describe your
 7 understanding of the rights that the lease gives to
 8 Giles.
 9 A Okay.
 10 Q Would you do that for me?
 11 A Describe them?
 12 Q Yeah. In other words, what rights does Giles
 13 have under the lease that I haven't seen?
 14 MR. TERRILL: Your Honor, I have the
 15 same objection. I mean, for the same reasons that the
 16 lease is inappropriate, the witness' description of
 17 what the lease says is inappropriate as well.
 18 And, again, I'll also just refer the
 19 Court to the fact that there's not a referred issue
 20 that's germane to the proprietary terms in the lease.
 21 Giles is a landowner. BFI is the operator, and
 22 there's not any debate about that.
 23 JUDGE NEWCHURCH: So your objection to
 24 the question is that it seeks --
 25 MR. TERRILL: Confidential, proprietary

Page 1340

1 information and that's going to go straight to TDS.
 2 In fact, Mr. Gregory is sitting here in the courtroom
 3 today.
 4 JUDGE NEWCHURCH: Mr. Blackburn, do you
 5 have a response to the objection?
 6 MR. BLACKBURN: Yes. I mean, I think
 7 that -- I mean, it is relevant to owner/operator,
 8 which is a referred issue.
 9 JUDGE NEWCHURCH: Which issue would that
 10 be, please?
 11 MR. BLACKBURN: Hang on one second.
 12 (Brief pause)
 13 MR. BLACKBURN: It's Issue L, if I'm
 14 reading it correctly, whether the application includes
 15 adequate provisions designating the owner/operator,
 16 responsible parties and qualified personnel in
 17 compliance with agency rules.
 18 MR. GOSSELINK: Your Honor, this issue
 19 has to do with the dispute that emanated out of the
 20 Williamson County landfill as to whether or not
 21 Williamson County or Waste Management were properly
 22 designated under the words "owner" or "operator."
 23 This has nothing to do with seeking
 24 proprietary information. This is admittedly by
 25 Mr. Blackburn, a last minute, and I will admit, clever

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1341

1 attempt to try and weasel some information out here,
 2 but that's not what this issue was referred as.
 3 MR. RENBARGER: If I may add something
 4 to Mr. Gosselink's comment, I think the order speaks
 5 for itself. The order does not indicate anything
 6 about Williamson County or anything remotely related
 7 to that.
 8 MR. GOSSELINK: This topic was the
 9 subject of a proposed rulemaking promulgated by
 10 Mr. Gregory that came out of that hearing.
 11 MR. BLACKBURN: And I have a further
 12 response when you're ready, Your Honor.
 13 JUDGE NEWCHURCH: What's that?
 14 MR. BLACKBURN: And that is that,
 15 frankly, this line of questioning came up in response
 16 to the answer to a question that was given by
 17 Mr. Dugas, who referred to that lease in answering a
 18 question, and that's what triggered my question in the
 19 first place.
 20 It was simply responsive to that answer
 21 which identified that there was at least certain
 22 responsibilities that -- or certain rights that Giles
 23 got under the lease agreement, and I started looking
 24 for the lease agreement to try to find out what those
 25 were. And so it basically is a follow-up question to

Page 1342

1 something that came out of Mr. Dugas' mouth, not mine.
 2 JUDGE NEWCHURCH: Off the record.
 3 (Recess: 11:44 a.m. to 11:50 a.m.)
 4 JUDGE NEWCHURCH: Back on the record.
 5 With regard to Issue L, the Commission cites specific
 6 rules on which its based its question -- its referred
 7 issue, and those are 330.52(a)(1), 330.52(b)(7)
 8 through (10) and 330.114(1), and I've taken a quick
 9 look at those.
 10 I don't see that there's a requirement
 11 to provide a copy of the lease. I don't see that any
 12 of those issues -- at least on my quick reading, those
 13 seem to contemplate something that would require proof
 14 of the contents of the lease in order to show
 15 compliance with any requirements.
 16 MR. BLACKBURN: The issue, Your Honor,
 17 really, went to the substantive involvement of the
 18 lessor with the lessee's decision-making process,
 19 which that was the testimony that I understood, is
 20 that there were certain rights that were given in the
 21 lease.
 22 And it isn't so much that it has to do
 23 with this commingling of owner/operator, not in the
 24 sense of -- I mean, right to a lease in a rule, per
 25 se, but to the effect of the lease as it relates to

Page 1343

1 owner/operator and that relationship, and I think that
 2 goes beyond strictly what's required and gets more
 3 into the nature of the relationship between these two
 4 entities, which was what the testimony that Mr. Dugas
 5 gave that I was trying to follow up on basically was
 6 about, which had to do with the rights of Giles to be
 7 involved in certain aspects of decision-making about
 8 the landfill and be involved in decisions and then
 9 meetings and things like that.
 10 MR. TERRILL: Your Honor, can I respond
 11 to that?
 12 JUDGE NEWCHURCH: Yes, sir.
 13 MR. TERRILL: They're just trying to get
 14 the lease. When Mr. Dugas was asked questions about
 15 what Giles does and who has operational control, every
 16 time Mr. Dugas said the same thing: "Can Giles do
 17 it?" "Absolutely not. Absolutely not. Absolutely
 18 not." They're just trying to get the lease. It's
 19 nothing more complicated than that.
 20 If they want to ask questions about
 21 whether BFI has control, I mean, I guess Mr. Dugas can
 22 continue to say the same thing, but he's very clear on
 23 every single question to that effect.
 24 JUDGE NEWCHURCH: You know, as far as I
 25 know, there's only two cases where we've ever had --

Page 1344

1 and I'm going to say it because I think there's
 2 sufficient evidence through prehearing issues for me
 3 to at least conclude for that purpose that it's
 4 true -- where an affiliate of a competitor intervened
 5 in a proceeding concerning a permit.
 6 I think there's only this case and the
 7 Waste Management case where a Texas Disposal Systems
 8 affiliate intervened.
 9 That injects concerns into these types
 10 of cases that I've never seen before in environmental
 11 permitting cases. We're used to dealing with this --
 12 SOAH is used to dealing with this in other kind of
 13 economic competitive cases, like car dealerships,
 14 those sorts of things. This is different, and I'm
 15 going to err on the side of not facilitating someone
 16 gaining a competitive advantage through the use of
 17 this process, and for that reason I'm going to sustain
 18 the objection.
 19 MR. BLACKBURN: Understood.
 20 Q (BY MR. BLACKBURN) Now, Mr. Dugas, on BD-9,
 21 that's your new testimony that was, I think, added
 22 today. It's dated January 16th. Do you have a copy
 23 of that in front of you?
 24 A Yes, I do.
 25 Q On Page 57 of that, there is testimony

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1345

1 regarding a merger with Republic Waste.
2 A That's correct.
3 Q When did this merger take place?
4 A I think it culminated officially December 5th
5 of 2008.
6 Q And if I understand your testimony right,
7 Allied, which was the -- which was your prior parent
8 company, has been purchased by Republic, which is your
9 new parent company?
10 A I couldn't answer exactly the machinations of
11 how it all came together. I understand it was a
12 merging of stock with a parent name of Republic Waste.
13 Q So the Allied name has disappeared?
14 A That is correct; it is no longer.
15 Q So they don't exist anymore?
16 A The Allied name, as far as a monetary -- the
17 stock exchange type deal, you can't find AW anymore on
18 the stock exchange, but all of the Allied obligations
19 and permits all still exist in their totality.
20 Q Now, there is documentation in the
21 application that is supplied relevant to Allied Waste.
22 Are you aware of that information?
23 A Yes, sir.
24 Q Did you help put that together?
25 A Not directly, no.

Page 1346

1 Q But you're aware that it's in there?
2 A Yes, sir.
3 Q Like, for example, if you would turn to --
4 oh, for example, Applicant's 103, which is Page 103 in
5 the application, or it's Bates stamped 103. It would
6 be your first volume.
7 I'm not sure if you've got the
8 application there in front of you or not.
9 MR. BLACKBURN: May I approach, Your
10 Honor?
11 JUDGE NEWCHURCH: Yes, sir.
12 Q (BY MR. BLACKBURN) Now, do you see Section
13 I.L, evidence of competency?
14 A Yes, sir, I do.
15 Q Right. And it says, "Allied or its
16 subsidiaries" -- this is the second sentence of the
17 first paragraph -- "own, operate or maintain a
18 financial interest in the facilities identified in
19 Tables 2-1 and 2-2." And then it provides a listing
20 of state regulatory agencies for these facilities are
21 contained in Table, I guess, I.L-3. Do you see that?
22 A Yes, sir, I see that sentence.
23 Q Have you provided that information relative
24 to Republic Waste?
25 A I don't think there's been any supplemental

Page 1347

1 addition to the application, to date, in regard to
2 that.
3 Q And in terms of the compliance record of the
4 applicant, which I believe is an issue, have you
5 provided information about the compliance record of
6 Republic Waste?
7 A Again, I don't believe that we've made any
8 additional amendments to the application in regard to
9 that.
10 Q Now, in terms of the financial assurance
11 that's provided for this site, is a corporate
12 guarantee part of that financial assurance?
13 A I don't know if this was a letter of credit
14 or an insurance form -- bond insurance. I don't
15 recall what the mechanism was exactly.
16 Q Will that remain unchanged with Republic
17 becoming the owner?
18 A I don't know what their preferred mechanisms
19 are, but it will have a mechanism that will definitely
20 meet the criteria of financial assurance.
21 Q But you don't know what that is at this time?
22 A I couldn't -- I don't know what that is.
23 Q Now, with regard to the site development plan
24 that you are obligated to -- and I think have
25 submitted to the city of Austin as part of the Rule 11

Page 1348

1 agreement?
2 A Yes, sir.
3 Q Do you -- do you remember what I'm talking
4 about? Do you have a remembrance of that?
5 A Yes, sir. We agreed to submit a site
6 development plan to the city.
7 Q Right. Is it your understanding that the
8 city could turn that site development plan down?
9 A It's my understanding that if it meets all
10 the technical criteria that there is some history of
11 approval of that process.
12 Q But if it doesn't, then they could turn it
13 down. Correct?
14 A I think there would be an opportunity to have
15 meetings to address concerns and ensure that we do
16 meet the criteria of the city.
17 Q Could you operate the landfill if the site
18 development plan were turned down?
19 A I'm not sure how that plays into the
20 application being granted or not granted ultimately.
21 Q I mean, let's assume that the application
22 were granted but the site development plan were
23 denied.
24 A I'm not sure how that would play out in the
25 grand scheme of things.

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1349

1 Q Under the Rule 11, you agree to subject
 2 yourself to the authority of the city, which I
 3 understand had been contested previously, or am I not
 4 correct on that?
 5 MR. GOSSELINK: Objection.
 6 A What was the last part of that?
 7 MR. BLACKBURN: Let me restate that. I
 8 may have restated something incorrectly.
 9 JUDGE NEWCHURCH: Okay.
 10 Q (BY MR. BLACKBURN) Did BFI contest whether
 11 the city had the right to require a site development
 12 plan for the expansion?
 13 A I don't believe BFI ever contested that. In
 14 fact, I think there's a long history of our efforts to
 15 ascertain the requirement of a site development plan,
 16 and ultimately, it's been determined that a site
 17 development plan would be submitted to the city.
 18 Q And you agreed to that in the Rule 11?
 19 A Absolutely; yes, sir.
 20 Q Now, I would like you to turn to Page 24 of
 21 your prefiled testimony. I'm sorry. Let me start you
 22 off a little earlier.
 23 Would you turn to Page 19 of your
 24 prefiled testimony?
 25 A Yes, sir.

Page 1350

1 Q And you have a series of pages that discuss
 2 odor starting on Page 19. Do you see that?
 3 A Yes, sir.
 4 Q Now -- so under your testimony on Page 20, am
 5 I correct that you basically acknowledge that there
 6 was an odor problem at the landfill in 2001?
 7 A Just for clarification, I moved here in 2004,
 8 checked into the history. My understanding is there
 9 were odor issues at both landfills and in the area and
 10 that there were odor issues in that area.
 11 Q And BFI was part of that?
 12 A And BFI was a part of those odors.
 13 Q Now, if you would, go to Page 24 now.
 14 A Yes, sir.
 15 Q And you are discussing Travis County and URS'
 16 recommendations, and starting on Line 12, you answer a
 17 question of, I guess, why did Travis County not go
 18 forward with URS' recommendations, and about -- oh, I
 19 don't know -- Line 19, there is a statement, "There
 20 was, however, a small group that continued to lodge
 21 complaints." Do you see that?
 22 A Yes, sir, I do.
 23 Q And then on the next page, starting on
 24 Line 8, you answer a question, "What is the nature of
 25 the odor complaints that persist?" Do you see that?

Page 1351

1 A Yes, sir.
 2 Q And you say, "Among the few remaining
 3 complaints, most are lodged by a small group of
 4 individuals that I believe are opposed to the
 5 landfill's existence and expansions." Do you see
 6 that?
 7 A Yes, sir.
 8 Q Are you stating by that testimony that the
 9 position espoused by those people, that there are
 10 odors, are not true?
 11 A I don't know that I'm saying they're not
 12 true. I'm just saying that they have a very
 13 predisposed plan at this point.
 14 Q I'm just asking you straight out, are you
 15 saying the citizens are lying?
 16 A We've followed up on odor complaints that
 17 have been lodged to us or acknowledged to us, and we
 18 have not been able to verify those.
 19 Q I'll repeat. Are you saying that the
 20 citizens are lying?
 21 MR. TERRILL: Your Honor. I'm going to
 22 object. The rules of evidence are pretty clear that
 23 you can't ask a witness whether somebody else is
 24 lying. I can't remember the rule off the top of my
 25 head, but I do know that the rules of evidence speak

Page 1352

1 to whether somebody else is lying because you can't
 2 know what's going on inside somebody else's head.
 3 MR. BLACKBURN: I'm trying to understand
 4 what his testimony is, so perhaps I can rephrase.
 5 JUDGE NEWCHURCH: Okay. I'll let you
 6 rephrase.
 7 Q (BY MR. BLACKBURN) Would it be fair to say
 8 that you are questioning the veracity of those that
 9 are making odor complaints?
 10 A Where's my thesaurus on veracity?
 11 Q "Truthfulness" would be an alternative word.
 12 A We have not been able to substantiate odor
 13 complaints that have happened.
 14 Q Now, do you agree that you had a lapse in
 15 bird control in 2006?
 16 A There have been occasions where we have
 17 encountered shortages of shells and different
 18 operational issues on occasion.
 19 Q Shortages of shells?
 20 A Yeah. Our bird plan predominantly is
 21 shooting pyrotechnics, which effectively is a guy just
 22 popping off a popper-type firework with a handheld gun
 23 at or near the working face. And we found some
 24 operational issues, such as lunches. If nobody is
 25 left there to maintain the popping, the birds will

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1353

1 quickly come to roost. And then there's been times
 2 we've run out of shells as well. They're just popping
 3 cartridges. So we've encountered our issues with
 4 that.
 5 JUDGE NEWCHURCH: Mr. Blackburn, it's
 6 about lunch time. Are you close to finishing up?
 7 MR. BLACKBURN: I am actually very close
 8 to finishing up. I can probably conclude mine in
 9 another couple or two or three questions, and then
 10 they can come back, perhaps, with redirect.
 11 JUDGE NEWCHURCH: Sounds good. Why
 12 don't you do that.
 13 MR. BLACKBURN: If you give me a second,
 14 I actually may be through. Oh, no, I know a good one.
 15 Q (BY MR. BLACKBURN) How much more life does
 16 your landfill have if this permit application is -- or
 17 amendment is not granted?
 18 A That is actually a very difficult question to
 19 answer. There is a capacity remaining at the facility
 20 if -- and these are all assumptions -- if we continued
 21 at the waste acceptance rate that we're taking in
 22 today, we're probably inside 18 months.
 23 If the waste acceptance rate were to be
 24 cut in half, we could potentially have three years.
 25 If it were cut into, you know, 1/10 we could

Page 1354

1 potentially be here till 2016.
 2 Q At the current acceptance rate, it's 18
 3 months?
 4 A That's what it looks like today.
 5 Q And are you aware that our request for that
 6 information in an interrogatory was amended to
 7 indicate 18 months a few weeks ago?
 8 A I hadn't seen it. I didn't recall that.
 9 Q Eighteen months is a good estimate under
 10 current operating conditions?
 11 A Sitting here today; yes, that's correct.
 12 MR. BLACKBURN: I'll pass the witness.
 13 JUDGE NEWCHURCH: Okay. Let's take a
 14 lunch break, and it's a little past noon but is 1:30
 15 okay? So 1:30.
 16 (Recess: 12:08 a.m. to 1:31 p.m.)
 17
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Page 1355

1 AFTERNOON SESSION
 2 TUESDAY, JANUARY 27, 2009
 3 (1:31 p.m.)
 4 JUDGE NEWCHURCH: Back on the record.
 5 It's just after 1:30. Are there any preliminary
 6 matters this afternoon? Any preliminary matters?
 7 MR. GOSSELINK50: No, Judge.
 8 JUDGE NEWCHURCH: Then let's see. We
 9 left off -- Mr. Blackburn, you had passed the witness?
 10 MR. BLACKBURN: I had passed, yes, Your
 11 Honor.
 12 JUDGE NEWCHURCH: Mr. Gosselink, is
 13 there redirect for Mr. Dugas?
 14 PRESENTATION ON BEHALF OF
 15 BFI WASTE SYSTEMS ON NORTH AMERICA, INC. (CONTINUED)
 16 BRAD DUGAS,
 17 having been previously duly sworn, testified as
 18 follows:
 19 REDIRECT EXAMINATION
 20 BY MR. GOSSELINK:
 21 Q Mr. Dugas, I would like to start with some
 22 questions about the Rule 11 agreement that were posed
 23 to you first by Ms. Noelke.
 24 A Yes.
 25 Q Now, the Rule 11 agreement is a binding

Page 1356

1 contract between BFI and the city of Austin, isn't it?
 2 A Yes, it is.
 3 Q And it contains provisions that BFI is going
 4 to be obligated to perform whether they get a permit
 5 in this proceeding from the TCEQ or not, isn't that
 6 right?
 7 A That's correct.
 8 Q Now, in answer to one of Mr. Head's
 9 questions -- maybe it was Mr. Blackburn's; I forgot,
 10 but it was question about how much site life you had
 11 left. Do you remember that question?
 12 A Yes, sir.
 13 Q And you were laying out some hypotheticals.
 14 Right?
 15 A Yes, sir.
 16 Q And at some point, you said if we extended
 17 the wastestream into small enough pieces you might get
 18 as far as 2016?
 19 A Yes, sir.
 20 Q You, indeed, are not suggesting, under any
 21 circumstance, that you will go to 2016, are you?
 22 A No, sir. No, we intend to close on
 23 November 1st, 2015, or sooner.
 24 Q And there was a question posed to you about
 25 whether or not you have, indeed -- you and Giles have,

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1357

1 indeed, signed and executed the restrictive covenant.
2 Do you remember that?
3 A Yes, sir.
4 Q And did you?
5 A Yes, we have.
6 Q And did you give it to the city?
7 A Yes, we did.
8 Q And is it up to the city to file it if and
9 when they want to?
10 A That is correct.
11 Q Let me ask you some questions about soil
12 balance.
13 First, big-picture question, is there a
14 TCEQ requirement that your soil balance balance, if I
15 can use both of those words together?
16 A Not that I'm aware of.
17 Q So a site can have a soil surplus and a site
18 can have a soil deficit and in either event -- or a
19 site can be perfect, and that's not an issue that the
20 TCEQ reviews, is it?
21 A Not that I'm aware of.
22 Q Another big-picture question on the soil.
23 Assuming all of the worst assumptions that Mr. Head
24 posed to you, that you can't get the soil from Waste
25 Management and that you get no volunteer soil coming

Page 1358

1 in ever again, notwithstanding your history of always
2 getting volunteer soil, what would you do?
3 A Sounds like we're going to go buy it.
4 Q And that's something that you can do, isn't
5 it?
6 A Absolutely.
7 Q So one last question on this. When you
8 entered into your contract with Waste Management, I
9 take it there was some negotiations?
10 A Yes.
11 Q And among the things you discussed was how
12 much soil they would actually have available
13 potentially. Wouldn't that be right?
14 A There was some discussions of that.
15 Q And so the 1.5 million, does that represent
16 an optimistic or a conservative estimate of the amount
17 of soil they have?
18 A It was a conservative estimate on Waste
19 Management's part.
20 Q How much soil do you think is a more
21 realistic estimate?
22 A We've heard numbers in excess of 2 and a half
23 million yards.
24 Q With regard to bird control, is there a TCEQ
25 requirement that a site possess a bird abatement plan?

Page 1359

1 A I think the only requirement is if you're
2 within five miles of an airport.
3 Q And are you within five miles of a qualifying
4 airport?
5 A No, sir.
6 Q Then why did you do it?
7 A I think Mr. Southern stated earlier, and
8 accurately so, that we undertook the bird plan and
9 program based on citizen issues that were raised with
10 TCEQ -- I mean, not TCEQ -- Travis County at the time.
11 They had made several alleged
12 operational issues, and that was our first direct and
13 effective effort to try to adhere to some of the
14 citizens' concerns.
15 Q Okay. And has it been successful?
16 A We believe it's been very successful at the
17 site.
18 Q Indeed, are there any seagulls there?
19 A None that I've seen.
20 Q Have all of the other birds that were part of
21 the target species been controlled?
22 A Yes. And I believe that the seagulls were
23 the primary target of that at the time, and as a
24 secondary, the vultures were.
25 Q Now, the comment made by Dr. Southern that

Page 1360

1 there was some lapses, do you remember that comment?
2 A Yes, sir.
3 Q And in response to questions to you from, I
4 think, Mr. Blackburn, you identified examples of those
5 lapses. Do you remember that?
6 A Yes, sir.
7 Q And one example was sometimes you ran out of
8 ammunition called poppers?
9 A That's correct.
10 Q Another example you gave was you learned that
11 during lunchtime you needed to have the bird abatement
12 plan in full swing, rather than have everybody take a
13 lunch break?
14 A That's correct.
15 Q Did you learn lessons from both of these
16 examples?
17 A Yes, we have.
18 Q Have you fixed those problems?
19 A We believe we have.
20 Q Now, there was some questions about the
21 3.5-acre wetland. Do you remember those?
22 A Yes, sir.
23 Q And Mr. Head gave you a report prepared by
24 Horizon?
25 A That's correct.

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1361

1 Q And you responded to one of his questions
 2 that the first time you knew about this wetland was
 3 when you heard about it from this report?
 4 A That's correct.
 5 Q And he said, "So that's 2007," and you looked
 6 down at the book and it had 2007 on it, and you
 7 answered 2007. Is that right?
 8 A That's correct.
 9 Q Were you a little too quick to agree with the
 10 nice guy, Mr. Head, down there?
 11 A I was. I was referring more to the report by
 12 Mr. Sherrod. In fact, it was probably the one he
 13 showed me of 2005.
 14 Q So you were aware of it in 2005?
 15 A On his first report, that's correct.
 16 Q Are you a wetlands expert?
 17 A I am not.
 18 Q Is Mr. Sherrod a wetlands expert?
 19 A He is.
 20 MR. GOSSELINK: Just a moment, Your
 21 Honor.
 22 JUDGE NEWCHURCH: Off the record.
 23 (Exhibit BFI No. 9 marked)
 24 Q (BY MR. GOSSELINK) Mr. Dugas, do you
 25 remember the questions that I think Mr. Head was

Page 1362

1 posing to you about the pond in the northeast corner
 2 and concerns about siltation and runoff?
 3 A Yes, sir.
 4 Q And I want you to take a look at what's now
 5 marked BFI No. 9, and I will represent to you that
 6 this is Stecher Exhibit 234, a photograph taken by
 7 Steve Stecher, the drainage expert for TJFA, in
 8 November of 2008.
 9 A Yes, sir.
 10 Q Have you been to the site in and around the
 11 time of November 2008?
 12 A Yes, sir.
 13 Q And does this accurately and fairly represent
 14 the site in that time frame?
 15 A From this vantage point, absolutely.
 16 MR. GOSSELINK: I would like to
 17 introduce BFI 9.
 18 JUDGE NEWCHURCH: Any objection?
 19 (No response)
 20 JUDGE NEWCHURCH: It is admitted.
 21 (Exhibit BFI No. 9 admitted)
 22 Q (BY MR. GOSSELINK) Would you describe for
 23 the Judge the features that are shown on BFI 9 that
 24 relate to the erosion control and sedimentation
 25 control that BFI has in place with regard to the pond

Page 1363

1 in the northeast corner?
 2 A Yes, I will. Just for reference, we're
 3 pretty much on Blue Goose Road looking southeast
 4 across the northeast quarter of the new landfill
 5 property, and in the -- on the left-hand side, before
 6 you get to the building on the horizon is where the
 7 pond that Mr. Head referenced on the wetland's map
 8 from Mr. Sherrod, and then that black line that you
 9 see there is the silt fence that lines all the known
 10 drainage accesses from our site through that pond, so
 11 that's the last -- our control mechanisms.
 12 If you come back this direction, you see
 13 a little rock wall there. That, in fact, is the last
 14 rock gabion that Mr. Mehevec described in our Ditch K
 15 that was part of the 2002 mod. There are three of
 16 those. And, again, this is the last one and the last
 17 outfall. And as you go across the rock gabion,
 18 there's a slight swell there. I believe that's the
 19 interior berm that Mr. Mehevec as well mentioned
 20 that's got a 12- to 18-inch separation from that
 21 gabion.
 22 And then the little brown pile actually
 23 is mulch that was dumped right on the south boundary
 24 of the Ditch K to assist with our landscaping plan and
 25 planning, and in the distance is Applied Materials

Page 1364

1 across Giles Road.
 2 Q Where is Ditch K shown on this picture?
 3 A Ditch K is -- again, where that rock gabion
 4 is, you can see how wide it is right there. I don't
 5 know in feet how wide it is. I would guess, gosh,
 6 150 feet or so, maybe, across there.
 7 And it runs all the way to the -- almost
 8 to the back northwest corner. And the northwest
 9 corner actually drains to the west, and this was part
 10 of the submission to the city of Austin on our -- on
 11 that ditch mod there.
 12 Q And was also -- was this also part of the
 13 drainage mod that you submitted to the TCEQ?
 14 A That's correct. This was a 2002 drainage
 15 mod, an element of that, which predominantly installed
 16 this ditch and two sedimentation basins that I
 17 mentioned earlier that Mr. Moore has periodic
 18 maintenance and sediment removal from that drain
 19 across Mr. Williams' property to the west.
 20 Q These are at Outfalls 4 and 5 for purposes of
 21 everybody remembering that from the record?
 22 A Those sedimentation basins are Outfalls 4 and
 23 5, and this Ditch K drains to Outfall 1.
 24 Q But they were both part of the same basic
 25 upgrade to the erosion, sedimentation and drainage

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1365

1 control features at the site?
2 A That's correct.
3 Q You were also asked some questions about
4 updating your application. Do you remember those --
5 A Yes, sir.
6 Q -- since Republic Waste is taking over.
7 Let me ask you, is the legal entity who
8 is the permittee going to change? Is it going to be
9 BFI Waste Systems of North America, LLC, still?
10 A That will remain the same.
11 Q And as part of your BD No. 9 supplementation,
12 including 7A and 8A, you submitted some revisions to
13 the TCEQ to reflect this change. Is that correct?
14 A That's correct.
15 Q If the TCEQ tells you that you need to make
16 another revision -- submit another revised page to
17 further reflect this change, are you prepared to do
18 that?
19 A Yes, we are.
20 Q Do you, at the present time, have an
21 understanding of whether you need to do that or not?
22 A I don't have an understanding of that. As I
23 said -- I mean, we mentioned in questioning that the
24 legal entity will remain the same.
25 Q Finally, I would like to give you one last

Page 1366

1 time to say into the record, for friends at the city
2 and the county and everybody else who wants to know,
3 are you fully prepared to accept all of the special
4 provisions so far that have been requested, that you
5 have contracted for and you have applied for and have
6 even been requested during this hearing?
7 A Yes, we are.
8 MR. GOSSELINK: Pass the witness.
9 JUDGE NEWCHURCH: Let me clear something
10 up before we move on.
11 Is there any dispute at this point that
12 the applicant is now BFI Waste Systems of North
13 America, LLC, and that if a permit is issued -- not
14 that it should be -- but if it is, the permit
15 amendment is granted that that's the entity whose name
16 should be as the permitted operator and owner. Right?
17 MR. GOSSELINK: That's the correct
18 entity. That's our position.
19 JUDGE NEWCHURCH: Is that in dispute in
20 any way because of these corporate changes? Is that
21 an issue for anyone?
22 MR. BLACKBURN: I don't know. I mean,
23 frankly, some of this I am learning for the first
24 time. The Republic -- I mean, I just haven't been in
25 the loop on some of these issues, and Republic taking

Page 1367

1 over, I don't think that changes anything.
2 JUDGE NEWCHURCH: Okay.
3 MR. BLACKBURN: I would like to think
4 about that some more. If it comes to my mind that
5 there is a problem, I will try to bring it to the
6 Court's attention before we adjourn the hearing, and I
7 will certainly bring it to Paul's attention. At this
8 point, I don't think so.
9 JUDGE NEWCHURCH: Okay. I was just
10 inviting a stipulation because it seemed like it was
11 one of those things that could be taken off the table.
12 MR. BLACKBURN: I think a stipulation
13 would be in order, if I can think about it a little
14 bit longer.
15 JUDGE NEWCHURCH: Okay. Mr. Renbarger?
16 MR. RENBARGER: Judge, thank you. I
17 think from TJFA's perspective, we would also like to
18 take that under advisement. I know we did conduct
19 some discovery on the change from BFI Waste Systems of
20 North America, Inc. to BFI Waste Systems of North
21 America, LLC, and it certainly did raise an issue in
22 our mind as to the propriety of that change, as part
23 of the process of when it took place.
24 And, again, much like Mr. Blackburn, I
25 may not be prepared to say that that is a huge issue,

Page 1368

1 but it is certainly something that we still would at
2 least like to reserve our rights to consider with
3 respect to any legal arguments on down the road here.
4 JUDGE NEWCHURCH: Okay. And,
5 Mr. Gosselink, I may have missed some details, but let
6 me go over what I think I understood to be your
7 position, the applicant's position, that that change
8 in the applicant has been made, that the Executive
9 Director has approved that change in the application.
10 MR. GOSSELINK: The change from Inc. to
11 LLC -- there's been a transfer that's been made and
12 approved.
13 JUDGE NEWCHURCH: Right. So at this
14 point, that's the applicant, the LLC?
15 MR. GOSSELINK: Yes, sir.
16 JUDGE NEWCHURCH: Furthermore, just to
17 clear it up regarding Republic and Allied, Republic is
18 the remaining corporate entity, but it is solely the
19 holding company and neither operator nor the owner of
20 the --
21 MR. GOSSELINK: This facility is set up
22 separately, to run separately, as a separate LLC, and
23 I don't know if it's right to say Republic is the
24 holding company in a pure legal sense. I don't know,
25 but that's the concept.

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1369

1 JUDGE NEWCHURCH: It's the parent
 2 corporation?
 3 MR. GOSSELINK: They're the parent
 4 corporation.
 5 JUDGE NEWCHURCH: It's the sole
 6 stockholder of --
 7 MR. GOSSELINK: Yes, they're the
 8 ultimate parent.
 9 JUDGE NEWCHURCH: All right. So --
 10 MR. HEAD: Judge Newchurch, you know, we
 11 might be prepared to stipulate at some time. We've
 12 been provided, to my knowledge, no documentation,
 13 aside from prefiled testimony from Mr. Dugas, about
 14 the relationship vis-a-vis this merger.
 15 I would invite Mr. Gosselink to provide
 16 some sort of documentation if he can come up with some
 17 to -- some paper to establish this, and then it might
 18 be easy to stipulate.
 19 JUDGE NEWCHURCH: Regarding Republic and
 20 Allied, is that what you're saying?
 21 MR. HEAD: Yes. We don't know. No one
 22 knows. All we have is the word of Mr. Dugas.
 23 JUDGE NEWCHURCH: Okay. Do you have any
 24 reason to think that Republic or Allied is now the
 25 applicant for this permit in this matter?

Page 1370

1 MR. HEAD: Until I see some
 2 documentation to establish they're not, then I'm
 3 reluctant to take a position one way or the other.
 4 JUDGE NEWCHURCH: Okay. Well, maybe
 5 I've opened a can of worms. I was thinking this was
 6 something that would be --
 7 MR. GOSSELINK: Trying to make this
 8 easier so far hasn't, but I guess my comment would be
 9 several-fold. First of all, as it relates to the
 10 relatively small waste industry, the impending merger
 11 of Republic and Allied was well known. It happened to
 12 get executed on December 5th.
 13 The terms of that merger -- I don't know
 14 what kind of paper Mr. Head is looking for, but we
 15 certainly would consider that extraordinarily
 16 proprietary.
 17 MR. HEAD: Paul, let me make it easy. I
 18 mean, I would be satisfied with a letter signed by
 19 somebody from Republic substantiating your position on
 20 the permittee, some corporate rep. Right now all we
 21 have is Paul saying, "No problem," Mr. Dugas saying
 22 it's no problem. We don't have any paper to
 23 substantiate this.
 24 JUDGE NEWCHURCH: Well, there's no
 25 amendment making either Republic or Allied the

Page 1371

1 applicants in this case. Right? You don't know of
 2 anything like that?
 3 MR. HEAD: No, sir.
 4 JUDGE NEWCHURCH: And the Commission
 5 hasn't referred this issue that I recall in any way,
 6 but these are sort of corporate developments that came
 7 along as -- while the case was pending. I'm just
 8 trying to make sure I've got this right. Okay.
 9 MR. HEAD: Well, to interrupt, it could
 10 fall under the owner/operator referred issue.
 11 JUDGE NEWCHURCH: Okay. Well, maybe so.
 12 We'll see. But at this point you're not willing to
 13 stipulate, but I think both Northeast and TJFA are
 14 saying that they think there's a distinct possibility
 15 they could stipulate. Is that a fair statement?
 16 MR. HEAD: Yes.
 17 MR. BLACKBURN: That's fair.
 18 JUDGE NEWCHURCH: So having made that
 19 crystal clear, is there further cross based on
 20 Mr. Gosselink's redirect? Anyone?
 21 MS. NOELKE: I have one question.
 22 JUDGE NEWCHURCH: Ms. Noelke, go ahead.
 23 RE-CROSS-EXAMINATION
 24 BY MS. NOELKE:
 25 Q Just one question. I think you've already

Page 1372

1 clarified this, but just to make sure, if you look at
 2 the agreement between the city of Austin and BFI at
 3 Page 6 of the agreement, it's Article V.A.
 4 A Okay.
 5 Q Would you agree that that says that this
 6 agreement shall be effective from and after the date
 7 of execution?
 8 A Yes, ma'am.
 9 Q And is it your understanding also that the
 10 terms of this agreement are not contingent on any
 11 action for approval by the Commission?
 12 A That is correct.
 13 Q Okay. Thank you.
 14 MS. NOELKE: I pass the witness.
 15 JUDGE NEWCHURCH: Anyone else?
 16 Mr. Head?
 17 MR. HEAD: Yes.
 18 RE-CROSS-EXAMINATION
 19 BY MR. HEAD:
 20 Q Mr. Dugas, going to BFI 9 -- do you have that
 21 in front of you?
 22 A Yes, sir.
 23 Q Mr. Gosselink went through that with you, and
 24 I'm trying to understand because you weren't giving us
 25 directions as well as I might like. So I'm going to

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1373

1 try to see what's depicted here, although I should
2 know since it's my own expert's picture, but
3 regardless of that, we have the fence line. Correct?
4 A The near fence line is running east and west
5 along Blue Goose.
6 Q That's on Blue Goose. And then I see -- the
7 first feature I see heading upwards looks like a rock
8 wall. Do you see the rock wall?
9 A Going across to your left?
10 Q The west side -- the west side, yes.
11 A And then it runs across the picture, kind of
12 perpendicular to this fence?
13 Q Yeah, looks like a two- or three-foot rock
14 wall.
15 A Right. That's the rock gabion -- the last
16 rock gabion in Ditch K.
17 Q So where is Ditch K?
18 A It's running parallel to the fence here in
19 our forefront, and if you go parallel to that across
20 about the middle of the page, there's a little swale
21 that you see, a berm. That's the interior south berm
22 of that ditch that Mr. Mehevec described to you as
23 well.
24 Q So where all the mulch -- I think you said
25 the mulch is --

Page 1374

1 A Is right against that berm, on the south side
2 of that berm.
3 Q So is that mulch adjacent to Ditch K?
4 A Yes, it is, right next to that decorative
5 fence.
6 Q So Ditch K is running from east to west
7 towards the pond on this depiction?
8 A That's correct.
9 Q And then what -- past the mulch -- and then
10 you have a tree in the middle, and I see a little
11 black pyramid-shaped something. What is that?
12 A I'm sorry?
13 Q You see the mulch on the eastern side, and
14 then the mulch ends and then you have a tree sticking
15 up closer to the forefront, and then if you keep going
16 to the west, there's a black kind of triangle feature.
17 A So you're going left from the mulch. Right?
18 Q Yeah.
19 A That's another piece of the silt fence media
20 that's across -- you know, like, coming up Ditch A or
21 N, whatever it is, on the back side of the gas plant.
22 Q That's a portion of the silt fence?
23 MR. GOSSELINK: To help clarify the
24 record, going left is going east, not going west.
25 MR. HEAD: I have my directions

Page 1375

1 backwards. I think I know what that is. It's a silt
2 fence.
3 A You're right. I think it's just the angle
4 that you're looking at it there running through a
5 swale.
6 MR. HEAD: I've got so much confusion,
7 I'm going to pass. I was trying to get it -- I've got
8 people telling me I don't know east from west so it's
9 time to shut down.
10 JUDGE NEWCHURCH: Mr. Blackburn?
11 MR. BLACKBURN: I have no further
12 questions.
13 JUDGE NEWCHURCH: Mr. Dugas, when is
14 this facility closing?
15 A Our preferred closure date is November 1st,
16 2015.
17 JUDGE NEWCHURCH: Just making sure.
18 Any further direct?
19 (No response)
20 JUDGE NEWCHURCH: You're excused. Thank
21 you.
22 Mr. Gosselink, I think that's your last
23 witness. Is that correct?
24 MR. GOSSELINK: That's correct, Your
25 Honor.

Page 1376

1 JUDGE NEWCHURCH: Let's make sure we
2 don't have any loose ends before you rest your direct
3 case. Number one, I think at this point you have
4 offered all portions of the application.
5 MR. GOSSELINK: Yes, sir, through
6 various witnesses.
7 JUDGE NEWCHURCH: Does anyone disagree
8 with that, that the entire application -- and that's
9 RS-11 -- has been admitted?
10 MR. BLACKBURN: No.
11 JUDGE NEWCHURCH: Okay. So RS-11 is
12 admitted for all purposes.
13 Secondly, I still have at least one
14 exhibit -- it's BFI 6. I think you're planning to
15 offer that later through an adverse witness?
16 MR. CARLSON: That's correct, Judge. I
17 believe there's a BFI 1 that has not been offered.
18 JUDGE NEWCHURCH: That's correct also.
19 And you don't want to offer that one?
20 MR. CARLSON: That will be the same
21 exercise, I believe.
22 JUDGE NEWCHURCH: Just double-checking
23 to make sure because sometimes the best of us forget
24 we have something hanging loose. So with that --
25 MR. SHEPHERD: Your Honor, on that note

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1377

1 of hanging loose, I believe that we still are making
 2 some of the minor revisions to the application that
 3 basically incorporate the Rule 11 into the actual
 4 application. There are going to be some replacement
 5 pages that the applicant was going to provide to the
 6 ED here in the next day or two.

7 MR. GOSSELINK: That is correct, and
 8 we're working on that. And we will have that provided
 9 to the ED, which is where we -- the proper home for
 10 it, at least in the first place, and we will provide
 11 copies to everybody showing the revised pages.

12 JUDGE NEWCHURCH: Okay. So you'll be
 13 revising your application after you -- after your
 14 direct case is concluded, but you're going to be
 15 revising it at the request of the ED?

16 MR. GOSSELINK: That's correct. In
 17 order to implement the Rule 11 agreement and the other
 18 portions of the motion to supplement, we have learned
 19 in the process that the ED would like certain pages
 20 revised, and we are providing those revised pages.

21 I will say in the way of legal argument,
 22 noting that we are agreeing to do it but I don't think
 23 you have to do it, but we are certainly, in response
 24 to their request, going to do that. And in order to
 25 introduce those pages, if that's a subsequent

Page 1378

1 requirement, we can and would like to be able to bring
 2 back a witness or bring somebody in for the limited
 3 purpose, or ED can bring the pages in.

4 JUDGE NEWCHURCH: Okay. But in any --
 5 yes, sir. Did you say something?

6 MR. RENBARGER: I didn't, but I was
 7 thinking something.

8 JUDGE NEWCHURCH: I'm sorry. I looked
 9 the wrong way.

10 MR. RENBARGER: That's fine. Thank you,
 11 Judge. From the perspective of TJFA, we certainly
 12 understand there's a lot of housekeeping going on with
 13 respect to the application, as well as even crafting
 14 some special provisions for the permit, and just so
 15 the record is very clear, I think we would at least
 16 like to have an opportunity to review those and
 17 potentially even question a witness to the extent
 18 there may be some controversy that evolves out of this
 19 process.

20 MR. GOSSELINK: I think there's actually
 21 a procedural vehicle left open that you created, that
 22 they have the ability to bring Mr. Shull back if they
 23 want him.

24 MR. RENBARGER: Are you suggesting by
 25 that, Counsel, that Mr. Shull will sponsor any changes

Page 1379

1 to the application that are now being crafted, as well
 2 as any special provisions, as the sole witness for
 3 BFI?

4 MR. GOSSELINK: I know -- I believe he
 5 can sponsor all the revised pages as the primary
 6 author and sealer of the application document.

7 I believe Mr. Dugas has testified that
 8 he will accept all those special conditions, and so if
 9 the issue is just who writes them down, that would be
 10 the ED in response to Mr. Dugas' representations, and
 11 we would probably ask, as is the habit, as you know,
 12 offer suggested language to the ED about, this is what
 13 we think Mr. Opiela said, and this is how the -- this
 14 special condition we would suggest be written, and
 15 they will review and decide whether our suggestion is
 16 appropriate or not.

17 MR. RENBARGER: That said, the only
 18 point I'm trying to make is that we may or may not
 19 agree with the wording of what may ultimately evolve
 20 out of the process, or perhaps even some of the pages
 21 in the application, and that's all I'm trying to point
 22 out is, it's not knowing what that is today. I think
 23 we would be somewhat remiss just to go ahead and
 24 stipulate that that's fine without an opportunity to
 25 review it.

Page 1380

1 JUDGE NEWCHURCH: Right. And I don't
 2 think you have, but having discussed all of that, does
 3 BFI have any other evidence that it wishes to put on
 4 as part of its direct case?

5 MR. GOSSELINK: Not as part of its
 6 direct case.

7 JUDGE NEWCHURCH: Then you rest?

8 MR. GOSSELINK: We rest.

9 JUDGE NEWCHURCH: I think we're ready
 10 next for Giles' case.

11 MR. TERRILL: Yes, Your Honor. Giles
 12 Holdings calls Mr. Steve Mobley.

13 MR. HEAD: I was just wanting to go off
 14 the record to distribute some exhibits from TJFA.
 15 Maybe we can do that while Mr. Mobley gets situated.

16 JUDGE NEWCHURCH: Sure. Off the record
 17 while we reorganize and pass those out.

18 (Brief pause)

19 JUDGE NEWCHURCH: Back on the record.
 20 Mr. Terrill?

21 MR. TERRILL: Your Honor, Giles Holdings
 22 calls Steve Mobley.

23
 24
 25

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1381

1 PRESENTATION ON BEHALF OF
 2 GILES HOLDINGS, L.P.
 3 STEVE MOBLEY,
 4 having been first duly sworn, testified as follows:
 5 DIRECT EXAMINATION
 6 BY MR. TERRILL:
 7 Q Mr. Mobley, would you please state your full
 8 name for the record?
 9 A Steven Mark Mobley.
 10 Q And what is your current occupation?
 11 A I am developing new business projects and
 12 also serve as the president of Mobley Management
 13 Company, which is the general partner of Giles
 14 Holdings.
 15 Q And what's your connection with this landfill
 16 application?
 17 A I represent Giles, who is one of the
 18 landowners.
 19 Q And have you visited the landfill that's the
 20 subject or the area where this expansion is going to
 21 be located?
 22 A Yes.
 23 Q Have you prepared prefiled testimony in this
 24 case?
 25 A I have.

Page 1382

1 Q Do you have that prefiled testimony in front
 2 of you?
 3 A I do.
 4 Q Can you take a look at that, please?
 5 A Yes.
 6 Q Under Tab A of that binder that's in front of
 7 you --
 8 A Yes.
 9 Q -- do you see that prefiled testimony?
 10 A I do.
 11 Q And is that a true and correct copy of your
 12 prefiled testimony in this case?
 13 A Yes.
 14 Q And are there some exhibits that are there in
 15 that binder in connection with the prefiled testimony
 16 as well?
 17 A Yes, sir.
 18 Q And, Mr. Mobley, do you adopt your prefiled
 19 testimony here today as true, correct and accurate?
 20 A Yes.
 21 MR. TERRILL: Your Honor, for the
 22 record, we offer Mr. Mobley's prefiled testimony,
 23 which is in a binder. Under Tab A is the prefiled,
 24 and then Exhibits 1 through 13 are under numerical
 25 tabs in that binder as well.

Page 1383

1 JUDGE NEWCHURCH: All right. Is there
 2 further objection beyond what might have been offered
 3 earlier in the case?
 4 (No response)
 5 JUDGE NEWCHURCH: Then Giles Exhibits A
 6 and G-1 through G-13 are all admitted.
 7 (Exhibit Giles A marked and admitted)
 8 (Exhibit Giles Nos. 1 through 13 marked
 9 and admitted)
 10 MR. TERRILL: Your Honor, we tender
 11 Mr. Mobley for cross-examination.
 12 JUDGE NEWCHURCH: Let's see. We have to
 13 figure out an order of cross-examination, and I think
 14 the best order is just going to be to switch BFI for
 15 Giles. BFI would go first in the order, and then
 16 we'll stick with what we had before.
 17 MR. GOSSELINK: No questions.
 18 JUDGE NEWCHURCH: Okay. Very good. And
 19 let's see. Ms. Noelke?
 20 MS. NOELKE: Thank you.
 21 CROSS-EXAMINATION
 22 BY MS. NOELKE:
 23 Q Good afternoon. I'm Holly Noelke with the
 24 city of Austin. You're familiar, are you not, with
 25 the agreement that -- we've been calling it the

Page 1384

1 agreement between BFI and the city of Austin. You
 2 were a party to that agreement. Is that correct?
 3 A That's correct.
 4 Q On Page 2 of that agreement in Article IV,
 5 Subparagraph B -- do you have that? It's Exhibit 42,
 6 I believe, RS.
 7 A Article IV?
 8 Q IV, Paragraph B, as in "boy." The heading is
 9 Terms.
 10 A Yes. You're asking me about Paragraph B?
 11 Q I'm asking you about Paragraph B. Under that
 12 paragraph, do you agree that Giles has agreed to
 13 restrict the property on which the landfill operates
 14 from accepting waste after November 1, 2015, and to
 15 further restrict the property on which the landfill
 16 currently operates from use for transfer station
 17 operations?
 18 A Yes. I believe through the restrictive
 19 covenant we signed we did so restrict it.
 20 Q All right.
 21 MS. NOELKE: Pass the witness.
 22 JUDGE NEWCHURCH: Mr. Morse?
 23 MR. MORSE: I just have one quick
 24 question.
 25

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1385

1 CROSS-EXAMINATION
2 BY MR. MORSE:
3 Q I'm Kevin Morse, representing Travis County
4 here today.
5 When you told Ms. Noelke that you felt
6 like the 2015 limitation was in the restrictive
7 covenant, do you mean to suggest that it's not
8 included in the agreement she was just referencing as
9 RS-42?
10 A No, I didn't mean to suggest that.
11 Q Is it also in RS-42?
12 A Yes.
13 Q Did you sign RS-42?
14 A Yes.
15 Q Do you agree that that's a limitation, based
16 on your agreement with the city of Austin?
17 A You'll have to repeat that question. Sorry.
18 Q Is it your understanding that you have agreed
19 that the limitation on accepting waste and a transfer
20 station is limited to operating up until and accepting
21 waste up until November 1st, 2015?
22 Let me make it simpler for you.
23 A Okay. I think that's kind of two questions.
24 If you don't mind --
25 Q Your understanding -- are you going to accept

Page 1386

1 any waste or have a transfer station on that property
2 after November 1, 2015?
3 A No.
4 MR. MORSE: No further questions, Your
5 Honor.
6 JUDGE NEWCHURCH: Ms. Mann?
7 MS. MANN: I have no questions.
8 JUDGE NEWCHURCH: Mr. Shepherd?
9 MR. SHEPHERD: No questions.
10 JUDGE NEWCHURCH: Mr. Renbarger?
11 MR. RENBARGER: Thank you.
12 CROSS-EXAMINATION
13 BY MR. RENBARGER:
14 Q Good afternoon, Mr. Mobley.
15 A Good afternoon.
16 Q Mr. Mobley, I understand from your prefiled
17 testimony that you are a limited partner of Giles
18 Holdings. Correct?
19 A That's correct.
20 Q And I believe counsel -- in response to a
21 question from counsel, you also indicated you're the
22 president of Mobley Management Company, which is Giles
23 Holdings' general partner. Correct?
24 A That's correct.
25 Q And you were present during Mr. Dugas'

Page 1387

1 testimony, were you not?
2 A Most of it; yes, sir.
3 Q And, also, you've had your deposition taken
4 in this case. Correct?
5 A Yes, sir; for six hours and 15 minutes.
6 Q You remember very well.
7 A I remember how much time I spent there. I'm
8 not sure I remember everything we talked about.
9 Q Well, we may revisit some of that. Isn't it
10 true, Mr. Mobley, that Giles Holdings, LP, is a
11 limited partnership business? Correct?
12 A That's correct.
13 Q And it is a limited partnership that consists
14 of various members of the Mobley family. Right?
15 A That would be right.
16 Q Is it also correct that you in your role as
17 president of Mobley Management Company take on an
18 active leadership role in Giles Holdings' affairs?
19 A That's correct.
20 Q Indeed, I believe there was earlier testimony
21 from Mr. Dugas that you actually participate on behalf
22 of Giles in various meetings with BFI's
23 representatives. Correct?
24 A I don't remember that that's what Mr. Dugas
25 said.

Page 1388

1 Q Well, let me represent to you he did mention
2 that you did participate in meetings with BFI, and
3 BFI's lawyers from time to time.
4 A Okay.
5 Q Do you recall in your deposition testimony
6 you testified that on approximately a weekly basis you
7 participate in such meetings?
8 A I remember that testimony.
9 Q Okay. Giles Holdings, LP, is the property
10 owner of approximately 295 acres of BFI's landfill
11 property. Correct?
12 A I believe that's the number, yes.
13 Q And, also, Giles Holdings has in place a
14 lease agreement with BFI for use of this property for
15 landfilling purposes. Correct?
16 A Yes, sir.
17 Q So, in essence, Giles Holdings is BFI's
18 landlord. Correct?
19 A That's correct.
20 Q And Giles Holdings is also compensated under
21 this lease agreement. Isn't that right?
22 A Yes.
23 Q And as long as BFI is actively receiving
24 wastes at the property, Giles Holdings has an
25 expectation it will be compensated. Correct?

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1389

1 A That is certainly correct.
 2 Q Now, with respect to Giles Holdings'
 3 compensation under its lease with BFI -- now, is that
 4 on a monthly basis or is that on a royalty basis?
 5 MR. TERRILL: Your Honor?
 6 JUDGE NEWCHURCH: Mr. Terrill?
 7 MR. TERRILL: Object; it's not relevant.
 8 Once again, TJFA, as an affiliated -- competitor of
 9 TDS, is trying to get into commercial terms of the
 10 lease. It's just not appropriate. It's not relevant
 11 to any referred issue, and it's confidential,
 12 proprietary information.
 13 MR. RENBARGER: May I respond?
 14 JUDGE NEWCHURCH: Yes, sir.
 15 MR. RENBARGER: I can assure counsel and
 16 Mr. Mobley I'm not interested in the actual amounts of
 17 any amounts of money under the lease agreement or
 18 anything else. I was just trying to establish a
 19 general term of that legal agreement without going
 20 into anything whatsoever with any kind of financial or
 21 proprietary information.
 22 MR. TERRILL: Well --
 23 JUDGE NEWCHURCH: Your last question --
 24 repeat your last question, please.
 25 MR. RENBARGER: My last question to

Page 1390

1 Mr. Mobley was under the terms of the lease with BFI,
 2 is the compensation under that lease agreement in the
 3 form of a royalty payment or a monthly lease term?
 4 JUDGE NEWCHURCH: So I think I heard two
 5 objections; number one, it's not relevant. Number
 6 two, to the extent it is relevant, it's protected
 7 information and it shouldn't be allowed.
 8 MR. TERRILL: That's correct, Your
 9 Honor.
 10 JUDGE NEWCHURCH: Why is it relevant?
 11 MR. RENBARGER: It's relevant because,
 12 as perhaps we may get into or perhaps we may not here
 13 in a few moments, I think one of the things we're
 14 trying to establish is that Giles Holdings is actually
 15 involved with BFI, and its interests are very much
 16 aligned as to whether or not this permit application
 17 is granted, and its economic interests are further
 18 aligned with BFI.
 19 JUDGE NEWCHURCH: Is that in dispute?
 20 MR. TERRILL: We'll stipulate.
 21 JUDGE NEWCHURCH: I thought that was --
 22 MR. RENBARGER: It may or may not be in
 23 dispute. I don't know until I ask the questions.
 24 MR. TERRILL: Well, look; we'll
 25 stipulate to that.

Page 1391

1 MR. GOSSELINK: BFI will stipulate that
 2 Mobley's interests and BFI's interests are aligned as
 3 per the alignment you made.
 4 JUDGE NEWCHURCH: Okay.
 5 MR. RENBARGER: And I don't know that
 6 that alignment goes as far as saying the economic
 7 interests are aligned either.
 8 JUDGE NEWCHURCH: I understand you to be
 9 saying that that would be relevant. I can't think of
 10 any other purpose off the top of my head, other than
 11 the credibility of the witness. Is there some other
 12 reason why it's relevant to this proceeding?
 13 MR. RENBARGER: Certainly credibility is
 14 one; yes, sir.
 15 JUDGE NEWCHURCH: So the stipulation is
 16 that their interests are financially aligned. Does
 17 that address your concern with that stipulation or do
 18 you need --
 19 MR. RENBARGER: I would like to know the
 20 answer to my question, but obviously there's a pending
 21 objection on that.
 22 JUDGE NEWCHURCH: All right. Then I'm
 23 going to sustain the objection.
 24 Q (BY MR. RENBARGER) If I understand the
 25 stipulation, Mr. Mobley -- going back to where we left

Page 1392

1 off -- it is fair to say then that Giles Holdings'
 2 commercial and economic interests are aligned with
 3 those of BFI. Correct?
 4 A That would be correct.
 5 Q So in other words, should BFI's permit
 6 expansion application be granted, it would enure to
 7 the economic benefits of Giles Holdings as well.
 8 Correct?
 9 A That's correct.
 10 Q And Giles Holdings supports BFI in its
 11 efforts to gain approval of the subject permit
 12 application. Right?
 13 A Yes, we do.
 14 Q Would you agree with me, Mr. Mobley, that
 15 Waste Management's Austin Community Landfill is a
 16 competitor of BFI in the central Texas market?
 17 MR. TERRILL: Objection; relevance.
 18 JUDGE NEWCHURCH: Why is it relevant?
 19 MR. RENBARGER: Why is it relevant?
 20 Again, I'm going to the witness' credibility. I'm not
 21 quite there yet.
 22 JUDGE NEWCHURCH: You asked about a
 23 Waste Management --
 24 MR. RENBARGER: Yes, I did.
 25 JUDGE NEWCHURCH: -- whether Waste

41 (Pages 1389 to 1392)

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1393

1 Management was a competitor.
 2 MR. RENBARGER: Yes, sir.
 3 JUDGE NEWCHURCH: And how does that --
 4 how does that shed light on the witness' credibility?
 5 MR. RENBARGER: Well, I'll get to that
 6 with a little bit of liberty to ask a couple more
 7 questions. I mean, basically we're talking about --
 8 and I think we have a stipulation -- BFI's economic
 9 interests and Giles are aligned.
 10 JUDGE NEWCHURCH: Yes.
 11 MR. RENBARGER: And I think one of the
 12 questions that comes from that is if Giles' interests
 13 are economically aligned with BFI, then also Giles
 14 would necessarily not be aligned with Waste
 15 Management's interests.
 16 JUDGE NEWCHURCH: How is that relevant
 17 to this proceeding? It might be relevant to the Waste
 18 Management proceeding that's coming up soon, but it
 19 doesn't seem to be relevant to this proceeding.
 20 MR. RENBARGER: Well, Judge, I can
 21 pretty much just make my whole pitch right now, and
 22 then maybe perhaps you can tell me whether I can ask
 23 these questions.
 24 JUDGE NEWCHURCH: There you go.
 25 MR. RENBARGER: Maybe I should do that.

Page 1394

1 JUDGE NEWCHURCH: There you go.
 2 MR. RENBARGER: Okay. Thank you. From
 3 my perspective, the economic interests of Giles
 4 Holdings are very much aligned with BFI's. BFI and
 5 Waste Management are competitors. The economic
 6 interests, therefore, of Giles and Waste Management
 7 are adverse. Because they are adverse, Giles has
 8 taken an active role in participating in the Waste
 9 Management hearing now pending at SOAH as a
 10 protestant, and as a consequence of that, I wanted to
 11 ask Giles -- again, going to credibility -- why it is
 12 pursuing its role as a protesting party in the Waste
 13 Management case and whether or not it has a problem
 14 with TJFA participating in this case.
 15 JUDGE NEWCHURCH: So to the extent
 16 you're trying to conduct discovery concerning some
 17 issue in the Waste Management case, I don't see how
 18 that's relevant. To the extent you're trying to
 19 explore more the position of Giles in anticipation of
 20 an attack on the credibility of TJFA's witnesses -- is
 21 that what you're doing?
 22 MR. RENBARGER: That's where I'm
 23 heading, Judge, or trying to.
 24 JUDGE NEWCHURCH: All right. So your
 25 theory might be if -- it's fair game for TJFA to --

Page 1395

1 TJFA, which is affiliated with TDSL to be protesting
 2 this case, and their credibility should not be in
 3 question because Giles takes a similar position in
 4 another case?
 5 MR. RENBARGER: I think that's getting
 6 close to the point, yes, sir.
 7 MR. TERRILL: Can I respond?
 8 JUDGE NEWCHURCH: Yes, sir.
 9 MR. TERRILL: First of all, we're not
 10 protesting -- Giles is not protesting Waste
 11 Management's application. They're a next-door
 12 landowner and haven't filed any adverse papers in that
 13 case and really is essentially just monitoring it.
 14 It's not a situation like TJFA where
 15 it's essentially a shield for TDS. They come and buy
 16 land next to a landfill so they can get standing to
 17 participate in the hearing. So the analogy breaks
 18 down on that level, but more fundamentally, it's just
 19 not relevant.
 20 There's no relevance to any of the
 21 referred issues that are in the case, and if you look
 22 in Mr. Mobley's prefiled testimony, you won't find any
 23 attack on either TJFA or Texas Disposal Systems. I
 24 mean, we're not trying to -- this case is not about
 25 trying TDS' application or its landfill. It's about

Page 1396

1 BFI's application.
 2 MR. RENBARGER: I certainly agree with
 3 the last statement, but counsel, not only Mr. Terrill,
 4 but Mr. Gosselink has repeatedly, throughout these
 5 proceedings, tried to tie TJFA to TDS in an attempt to
 6 attack its credibility, while at the same time, Giles
 7 Holdings is doing exactly the same thing with a
 8 competitor of it and its aligned economic interests,
 9 Waste Management immediately next to it. That's the
 10 only point I'm trying to make, Judge.
 11 MR. GOSSELINK: That point hasn't been
 12 established at all.
 13 JUDGE NEWCHURCH: I'm going to sustain
 14 all the objections to this area of inquiry. I
 15 anticipate that when TJFA's witnesses take the stand
 16 there will be questions about their credibility
 17 because of their relationship or perceived
 18 relationship with TDSL, and that would be relevant to
 19 my weighing and the Commission's weighing the
 20 credibility of those witnesses.
 21 Whether Giles has a similar credibility
 22 problem in another proceeding, I don't see how that's
 23 relevant at all and whether -- so, anyway, I sustain
 24 the objection.
 25 Q (BY MR. RENBARGER) I believe I understand

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1397

1 your testimony, Mr. Mobley, to indicate that Giles
2 Holdings also is a party to the Rule 11 agreement with
3 the city of Austin. Correct?
4 A Yes, sir, that's correct.
5 Q And by its -- or your execution on behalf of
6 Giles Holdings on the Rule 11 document, that is a
7 representation -- a reliable representation that Giles
8 intends to be bound by that document. Correct?
9 A That's correct.
10 Q Could you please look at a copy of TJFA 25,
11 please, if the reporter could make that available to
12 you?
13 A I've got it.
14 Q Looking at the top of the page on TJFA 25,
15 this is the restrictive covenant, I think, that has
16 been bandied about in some of the testimony. Correct?
17 A That's correct.
18 Q On the first page of that, it identifies, in
19 the very first paragraph, that BFI Waste Systems of
20 North America, LLC, and Giles Holdings, LP, are
21 collectively known as the owners as referenced in that
22 document. Correct?
23 A That's correct.
24 Q And going down a couple of paragraphs -- not
25 a couple paragraphs, but spacing down under one of the

Page 1398

1 owner designations after a semicolon, it does identify
2 Giles Holdings, LP. Correct?
3 A That's correct.
4 Q Moving to the second page of that document,
5 after we get through with all the "whereas" clauses,
6 there's a paragraph that begins with "Now, therefore."
7 Do you see that?
8 A Yes, sir.
9 Q And does that paragraph not indicate, "It is
10 declared that the owners of the property for the
11 consideration shall hold, sell and convey the
12 property, subject to the following covenants and
13 restrictions impressed upon the property by the
14 restrictive covenant. These covenants and
15 restrictions shall run with the land and shall be
16 binding on the owners of the property, their
17 successors and assigns."
18 Now, looking at that language,
19 Mr. Mobley, do you understand that to mean that
20 certainly Giles Holdings must comply with the
21 restrictive covenant? Correct?
22 A That's correct.
23 Q Do you also understand in the second sentence
24 of that paragraph by applying this to not only owners
25 of the property, which I think we've defined as BFI

Page 1399

1 and Giles, that it is also to be binding on any of
2 their successors and assigns? Do you see that?
3 A Yes.
4 Q And you also concur then, I would assume,
5 that that would mean that if Giles Holdings were to
6 change corporate form, it would still be bound by the
7 agreement. Correct?
8 A That would be correct.
9 Q Or if Giles Holdings were to convey its
10 interests in the subject 295-acre tract that this same
11 restrictive covenant would be binding upon anyone
12 accepting that interest from Giles. Is that also
13 correct?
14 A That's my understanding, yes.
15 MR. RENBARGER: Pass the witness.
16 JUDGE NEWCHURCH: Mr. Blackburn?
17 MR. BLACKBURN: I have no questions.
18 JUDGE NEWCHURCH: Is there redirect?
19 MR. TERRILL: No, Your Honor.
20 JUDGE NEWCHURCH: I'm looking at the
21 wrong people. Okay. Thank you, Mr. Mobley. You're
22 excused.
23 Mr. Terrill, that is your only witness.
24 Right?
25 MR. TERRILL: Yes, sir, that was it.

Page 1400

1 JUDGE NEWCHURCH: So you rest?
2 MR. TERRILL: I rest.
3 JUDGE NEWCHURCH: So order of cases --
4 what did we say? TJFA would go next. Right?
5 MR. RENBARGER: Yes, Judge. If we can
6 just have maybe a couple moments off the record to
7 kind of reorganize our files here --
8 JUDGE NEWCHURCH: We're off the record.
9 (Recess: 2:24 p.m. to 2:43 p.m.)
10 JUDGE NEWCHURCH: Just so everyone
11 knows, Mr. Morse had a family emergency. He's asked
12 to be excused, so anyway --
13 MS. NOELKE: I'm taking notes for him.
14 JUDGE NEWCHURCH: Very good.
15 MR. BLACKBURN: I have some information
16 about who will be here at 1:30 tomorrow.
17 JUDGE NEWCHURCH: Okay.
18 MR. BLACKBURN: We're making
19 arrangements at the current time for Delmer Rogers,
20 John Wilkins, Bob Andrews, Marion Childress-Usher,
21 Jennifer Wells and Barbara Winchell to be here.
22 MR. CARLSON: Could you say that slower,
23 please, Jim?
24 MR. BLACKBURN: Sure. Delmer Rogers,
25 John Wilkins, Bob Andrews, Marion Childress-Usher,

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1401

1 Jennifer Wells and Barbara Winchell. Those six will
 2 be here at 1:30. I have been told that my other four
 3 witnesses, Evelyn Remmert, Mark McAfee, Joyce Best and
 4 Evan Williams will be subjected to more extensive
 5 cross-examination, and so I'm not going to bring them
 6 at 1:30.

7 We're going to bring the ones that we
 8 can get on and get off quickly or relatively quickly.
 9 And the others, I'll have on standby. I'll have one
 10 witness for late afternoon just ready and can probably
 11 get another one if I need to. So I will have two
 12 standby. Otherwise we'll be ready to go Thursday
 13 morning.

14 JUDGE NEWCHURCH: Okay. So I think
 15 we're ready for TJFA's case.

16 MR. RENBARGER: Thank you, Judge. TJFA
 17 would call Pierce L. Chandler, please.

18 PRESENTATION ON BEHALF OF TJFA, L.P.
 19 PIERCE L. CHANDLER, JR.,
 20 having been first duly sworn, testified as follows:
 21 DIRECT EXAMINATION
 22 BY MR. RENBARGER:
 23 Q Mr. Chandler, would you please state your
 24 full name for the record?
 25 A My name is Pierce L. Chandler, Jr.

Page 1402

1 Q Please state your business address.
 2 A My business address is 1204 Bayshore, and
 3 that's in Rockwall, Texas.
 4 Q What is your occupation, Mr. Chandler?
 5 A I am a consulting engineer and a
 6 hydrogeologist.
 7 Q And what was your role in the context of the
 8 BFI application?
 9 A I was asked to review the application, and I
 10 focused specifically on, as I recall, Attachments 4
 11 and 5, 10 and 14, which I believe are the geology
 12 report, the hydro or groundwater report, the liner
 13 quality control plans, landfill gas plan, and I guess
 14 there was also attachment -- whatever it is -- as the
 15 closure plan.
 16 Q Okay. And as a result of your review of the
 17 BFI application, did you prepare some prefiled
 18 testimony in this case?
 19 A Yes, I did.
 20 Q Do you have before you a copy of PC-1, which
 21 I believe to be your prefiled testimony?
 22 A Yes, I have a copy of that in front of me.
 23 Q As you look at PC-1, are there any changes or
 24 amendments to that document you would like to make at
 25 this time?

Page 1403

1 A While I was going through the document last
 2 night, I noticed that there was garbling of wording on
 3 Page 82. The paginations changed from the one I was
 4 looking at last night. You may have to help me here.
 5 Q I believe you may want to refer to Page 85,
 6 Mr. Chandler. There has been a change in pagination.
 7 A That is correct. It is Page 85. This would
 8 be the third bullet in Line 8. The language got
 9 garbled. The word "or" should be struck, and the
 10 wording "and more than" substituted for "or." It
 11 should read, "use residual interface strengths on
 12 slopes greater than 5 percent and more than lightly
 13 loaded."
 14 Q Have you made those notations on the document
 15 there in front of the court reporter?
 16 A I will be happy to.
 17 Q Thank you.
 18 (Brief pause)
 19 Q (BY MR. RENBARGER) Have you completed that?
 20 A Yes, sir, I have.
 21 Q What is Exhibit PC-2?
 22 A PC-2 is a more or less representative resume
 23 of my experience as a consultant.
 24 Q Is it accurate?
 25 A I believe so.

Page 1404

1 Q Mr. Chandler, in the context of preparing
 2 your prefiled testimony, you also put together a
 3 number of exhibits, did you not?
 4 A Yes.
 5 Q And would those be Exhibits PC-3 through
 6 PC-19, other than the ones you've already mentioned
 7 today?
 8 A Yes, sir, that is correct.
 9 Q Are there any changes to any of these
 10 exhibits you would like to make?
 11 A I noted again on PC-19 there is a calculation
 12 error on what I hope is Page 3 of this version.
 13 On Page 3, there is a table near the top
 14 of the page that has six column headings. I have
 15 revised that table to break that slope into equal
 16 segment lengths in accordance with the method.
 17 When I did the first calculations, I did
 18 them off the top of my head, and I should have looked
 19 at the reference very carefully. I have done that
 20 now.
 21 Q With regard to Exhibit PC-19, is there
 22 provided to the court reporter, Judge and parties a
 23 red-lined version that highlights the changes you made
 24 to that exhibit?
 25 A Yes, that is correct.

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1405

1 Q Is there also then the exhibit that is
2 conformed to those redlined changes?
3 A Yes, that is correct.
4 Q Is it your testimony today that you would
5 like to make those corrections?
6 A Yes, sir, it is.
7 Q Mr. Chandler, when we first prefiled our
8 testimony, you understand there were some objections
9 to your prefiled testimony and exhibits. Correct?
10 A That was my understanding, yes, sir.
11 Q And as you sit here today, I would represent
12 to you that those changes have been made in accordance
13 with the parties' agreements, as well as the Judge's
14 rulings, and conformed copies of those documents have
15 been provided to the reporter and all parties.
16 Do you have any reason to doubt that?
17 A No, I don't, and based on the reduced volume,
18 that would appear to be the case.
19 Q Mr. Chandler, considering all the changes
20 that we have made now to PC-1 and PC-9, does PC-1 and
21 all the exhibits now conform to your prefiled
22 testimony? PC-19; excuse me.
23 A I believe so.
24 Q If we were to go through your direct
25 testimony this afternoon, would you answer each of the

Page 1406

1 questions as presented in your prefiled testimony?
2 A Yes.
3 Q Do you adopt PC-1 through PC-19 as your
4 prefiled testimony?
5 A Yes, sir.
6 MR. RENBARGER: Move to admit
7 Exhibits PC-1 through 19.
8 MR. TERRILL: Your Honor, I've got an
9 objection on PC-19.
10 JUDGE NEWCHURCH: Okay. What is that?
11 MR. TERRILL: I'm look at this revised
12 exhibit, and it's not like some little typos here and
13 there. It's a very substantive rewrite, making
14 material changes to the nature of his testimony. This
15 is the first time I've seen it. I don't know whether
16 Mr. Carlson has seen it or not, but it's the first
17 time I've seen it, and it looks like it's probably to
18 anticipate some errors that were detected in his work,
19 and it ought not be done through a revision to an
20 exhibit popped on us a minute before the
21 cross-examination starts.
22 MR. CARLSON: Judge, for the record, I
23 do join in that objection.
24 JUDGE NEWCHURCH: Mr. Renbarger?
25 MR. RENBARGER: If I might just perhaps

Page 1407

1 ask a couple of questions of the witness to clarify
2 changes made on the document?
3 JUDGE NEWCHURCH: Okay.
4 Q (BY MR. RENBARGER) Mr. Chandler, would you
5 please explain the changes, for the benefit of the
6 parties, that have been made to PC-19?
7 A Yes, sir, I would be glad to. In the
8 Agricultural Handbook 537, there is a specific
9 procedure for allocating erosion production as a
10 function of parts of a slope. As you go down the
11 slope, different parts of the slope contribute more to
12 the total erosion loss when you're dealing with a
13 convex or complex slope -- which in this case is a
14 concave slope -- you have a small portion of the slope
15 is at a 50 percent grade or two-to-one slope, and then
16 the remainder of the slope is at a four horizontal to
17 one slope, or 25 percent grade.
18 When I did the initial calculations, I
19 was in a hurry, and I just made an error, and I
20 apportioned those equally. They're not equal lengths
21 obviously. The first segment is about 16 feet, and
22 the remaining 25 percent slope is about 49 feet, which
23 is almost exactly three times 16. So I broke the
24 slope up into four equal-lengths segments, which is in
25 accordance with the procedure in the agricultural

Page 1408

1 handbook, which contains the universal soil loss
2 equation, and provided the new compound or complex
3 slope LS factor.
4 Q And as I understand it, if the amendments to
5 PC-19 are authorized, that would not in any way change
6 any of your narrative testimony in PC-1. Is that
7 correct?
8 A That is correct.
9 Q It would be a mere substitution of this
10 revised chart without any other changes to Exhibit
11 PC-19, other than the redlined sentence -- that
12 sentence immediately below the chart. Is that
13 correct?
14 A That is correct.
15 Q By making the changes to PC-19, does this
16 make the exhibit more accurate?
17 A In my opinion, yes.
18 Q Does it also make your testimony with regard
19 to PC-19 more accurate?
20 A Yes, I believe it does.
21 MR. RENBARGER: Judge, at this time, I
22 think what we've got here essentially is a -- for lack
23 of a better term, an error that was made by the
24 witness who wishes to correct it at this point in
25 time, just so the record is very clear as to PC-19 and

45 (Pages 1405 to 1408)

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1409

1 what that exhibit reflects, and we would ask that it
 2 be admitted, along with the other exhibits, PC-1
 3 through PC-18.
 4 MR. CARLSON: Judge, I was going to ask
 5 to voir dire the witness. I don't think I need to at
 6 this point. I believe his testimony is pretty clear
 7 that these are material changes in his calculations.
 8 Now, if they want to try to clean them
 9 up on redirect later after our cross, that would be
 10 one thing, but my understanding of the original
 11 discussion we had about changing testimony was that it
 12 was really supposed to be minor things, like typos and
 13 that sort of thing.
 14 JUDGE NEWCHURCH: It's usually about
 15 typos. Of course, BFI filed a supplement on Friday
 16 before it started the hearing concerning the Rule 11
 17 agreement. I heard similar objections from TJFA that
 18 their cross-examination was prepared in reliance on
 19 lack of that supplement.
 20 MR. TERRILL: May I add something, Your
 21 Honor?
 22 JUDGE NEWCHURCH: I realize, of course,
 23 the Rule 11 agreement was well known to everybody
 24 prior to Friday. Nevertheless, it was subject to the
 25 last minute. Mr. Terrill?

Page 1410

1 MR. TERRILL: I don't think there's any
 2 problem with Mr. Renbarger on redirect getting this
 3 into evidence, but actually substituting this for what
 4 was originally filed wouldn't clarify the record. It
 5 would obscure it.
 6 The original exhibit has the mistake in
 7 it, and he can explain it when he gets him back on
 8 redirect, but taking out the original exhibit with the
 9 mistake is, you know, respectfully I would submit, the
 10 wrong procedure.
 11 JUDGE NEWCHURCH: Well, see, if we do it
 12 that way, then he's going to redirect, and then -- I
 13 guess you're saying if that happens, then you would
 14 have an opportunity through recross to go over this.
 15 MR. CARLSON: I have maybe a Solomonic
 16 solution here, going back to the Rule 11 agreement.
 17 MR. RENBARGER: I'm always anxious to
 18 hear that.
 19 MR. CARLSON: I believe that TJFA was
 20 providing the other parties an opportunity to
 21 readdress the Rule 11 issues at a later date with
 22 Mr. Shull. I've seen Mr. Chandler here every day of
 23 the hearing. I obviously don't know his schedule, but
 24 I would anticipate he'll be here, and to the extent
 25 that we need some additional time to review the

Page 1411

1 numbers and see if there are further questions, maybe
 2 we can call him back for a short -- very short
 3 cross-examination period.
 4 JUDGE NEWCHURCH: During your
 5 redirect -- your rebuttal, is that what you're saying?
 6 MR. CARLSON: Yes, Your Honor.
 7 MR. RENBARGER: Judge, that's certainly
 8 acceptable. And just to concur with your previous
 9 statement, I think the Rule 11 agreement, while it is
 10 correctly represented, it has been out there for a
 11 while, since October. I think we also heard today on
 12 the record they're still revising parts of the
 13 application consistent with that, as well as special
 14 provisions to go into the draft permit.
 15 So I see -- at least on a factual basis,
 16 I see no difference with this document coming in now,
 17 subject to the opportunity for everyone to have a full
 18 opportunity to question the witness on it, but I would
 19 still ask that it be admitted at this time.
 20 JUDGE NEWCHURCH: Mr. Terrill and
 21 Mr. Carlson, I'm going to guess I'm the only one in
 22 the room who didn't know that there was an error in
 23 Mr. Chandler's Attachment 19 -- Exhibit 19. Is that
 24 correct? I mean, did you-all explore this during
 25 discovery?

Page 1412

1 MR. CARLSON: Let me put it this way: I
 2 was not going to cross-examine Mr. Chandler until we
 3 had an illness in the family, so to speak. I have not
 4 had -- it was not an area of the case that I have
 5 focused on in particular, Judge, so I would like an
 6 opportunity.
 7 JUDGE NEWCHURCH: Let's do that. I
 8 think it's probably going to be more productive to let
 9 him make the change now, and you can cross-examine
 10 now, and I'll allow BFI to recall Mr. Chandler during
 11 its rebuttal case, which will give both you and
 12 Mr. Terrill an opportunity to follow up further, if
 13 necessary.
 14 MR. CARLSON: That's fine, Judge.
 15 JUDGE NEWCHURCH: So I'm going to
 16 overrule the objection to Exhibit PC-19 and find that
 17 there is good cause for offering the additional
 18 testimony that was not prefiled.
 19 And because we've got lots of moving
 20 parts, let me make sure, Mr. Renbarger, I understand
 21 this.
 22 MR. RENBARGER: Yes, Judge.
 23 JUDGE NEWCHURCH: There was an original
 24 prefilng. Then on January 19th, you prefiled the
 25 amended exhibits that were in accordance with my

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1413

1 rulings and the parties' agreements.
 2 MR. RENBARGER: That is correct, Judge.
 3 JUDGE NEWCHURCH: So in addition to
 4 PC-1, which is Mr. Chandler's testimony, at that time,
 5 there were substitutes offered for 4, 6, 7, 8, 9, 10,
 6 12 and 13.
 7 MR. RENBARGER: That sounds correct. I
 8 probably need to look at your ruling to confirm that.
 9 JUDGE NEWCHURCH: Well, I only say that
 10 because your package only has those exhibits.
 11 So I'm to understand that the original
 12 prefilng for the others, those being 2, 3, 5, 11 and
 13 14 through 18, those are what you're offering now.
 14 MR. RENBARGER: Perhaps we may need to
 15 go off the record, Judge, to confirm that because I'm
 16 hesitant to say that without looking at a document.
 17 JUDGE NEWCHURCH: I just want to make
 18 sure I know. Off the record.
 19 (Recess: 3:01 p.m. to 3:04 p.m.)
 20 JUDGE NEWCHURCH: Back on the record.
 21 Mr. Renbarger?
 22 MR. RENBARGER: If I understood your
 23 statement prior to us going off the record, that PC-1,
 24 which is the narrative portion, 4, 6, 7, 8, 9, 10, 12
 25 and 13 did undergo some amendments, and Exhibits PC-2,

Page 1414

1 3, 5, 11 about 14 and 18 did not, and that appears to
 2 conform to my understanding of the ruling.
 3 MR. TERRILL: Do you mind repeating
 4 that? That was going a little bit too fast for me.
 5 JUDGE NEWCHURCH: Let's do this: Do you
 6 have the submittal on January 14th that was their
 7 substitute? That's going to put it all in line.
 8 MR. TERRILL: I don't think that I've
 9 got that.
 10 JUDGE NEWCHURCH: Off the record.
 11 (Brief pause)
 12 JUDGE NEWCHURCH: So those are your
 13 offerings, Mr. Renbarger. And beyond objections that
 14 are previously ruled on, are there additional
 15 objections to the exhibits that are now being offered,
 16 PC-1 through 19?
 17 MR. CARLSON: No, Judge.
 18 JUDGE NEWCHURCH: Then they are all
 19 admitted.
 20 (Exhibit TJFA Nos. PC-1 through PC-19
 21 admitted)
 22 MR. RENBARGER: With that, Judge, we
 23 would pass the witness for cross.
 24 JUDGE NEWCHURCH: Let's see. Now we're
 25 going to need an entirely different cross-examination

Page 1415

1 order. So, Mr. Blackburn, it seems like you should go
 2 first and probably BFI last and in between -- how
 3 about Ms. Noelke and for Travis County -- why don't
 4 you enter your appearance, please?
 5 MS. TALLEY: I'm Sharon Talley.
 6 JUDGE NEWCHURCH: Ms. Talley, you're
 7 here for Travis County?
 8 MS. TALLEY: For Travis County, yes.
 9 JUDGE NEWCHURCH: Would this be
 10 acceptable? Mr. Blackburn, Ms. Noelke, Travis
 11 County --
 12 MS. TALLEY: Ms. Talley.
 13 JUDGE NEWCHURCH: Ms. Talley, Ms. Mann,
 14 the Executive Director, Giles, BFI?
 15 Your previous objection is noted,
 16 Ms. White.
 17 MS. WHITE: Thank you, Your Honor. I
 18 still object, and I think the Executive Director
 19 should go last, but we recognize that since that is
 20 your preference, we will accept that.
 21 JUDGE NEWCHURCH: Very good. So,
 22 Mr. Blackburn?
 23 MR. BLACKBURN: Thank you, Your Honor.
 24
 25

Page 1416

1 CROSS-EXAMINATION
 2 BY MR. BLACKBURN:
 3 Q Good afternoon, Mr. Chandler.
 4 A Good afternoon, Mr. Blackburn.
 5 Q Would you turn to Page 45 of your prefiled
 6 testimony, please?
 7 A Yes, sir, I have that.
 8 Q And there's a section called "Issues
 9 regarding virtual -- vertical expansions." Do you see
 10 that?
 11 A Yes, sir.
 12 Q And what I would like to do is just ask a few
 13 questions to clarify a few things.
 14 The first issue that you reference from
 15 a design standpoint is the issue of a separatory liner
 16 system. Do you see that language under your answer to
 17 the first question? I believe it's on Line 18 on
 18 Page 45.
 19 A Yes, sir.
 20 Q What do you mean by "separatory liner
 21 system"?
 22 A Well, this would be basically a complete
 23 liner system in the same sense that we put a
 24 containment underneath a landfill, but this is a liner
 25 system that's placed to separate old waste and new

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1417

1 waste.
2 Q And would that be a Subtitle D liner or --
3 A Yes.
4 Q I mean, as you were envisioning it?
5 A Well, it would be a Subtitle D liner in that
6 it's being installed after Subtitle D went into
7 effect, if that's the nature of your question.
8 Q Just trying to understand what type of liner
9 you were speaking of. And if it were a post-Subtitle
10 D passage liner, would that have a leachate collection
11 system as part of it?
12 A If it, indeed, had a composite liner, it
13 would have a leachate collection system. There might
14 be other liner systems that might or might not have a
15 leachate collection system.
16 Q What is your understanding about the manner
17 in which the current expansion is being constructed
18 over the pre-Subtitle D liner area?
19 A It's my understanding that the new waste will
20 be landfilled directly on top of the existing waste.
21 Q And why would you be concerned about the
22 installation of a separatory liner system?
23 A Well, it would seem that, at least as I've
24 opined in previous proceedings, it doesn't make a lot
25 of sense to put new waste on top of old waste in a

Page 1418

1 pre-Subtitle D lined area. It seems like that is a
2 disconnect with the intent at least of the federal and
3 state Subtitle D regulations.
4 Q Do you have a concern -- or what is the basis
5 of your concern?
6 A Well, you've got an area that has a
7 pre-Subtitle D liner, or it has -- it may not even
8 have a liner, as a hypothetical. Let me address that
9 as a hypothetical first.
10 Q That would be fine.
11 A A pre-Subtitle D landfill may or may not have
12 a liner. It certainly may not have a modern lining
13 system. The thrust of the Subtitle D regulations were
14 to try to close as many of these sites as possible.
15 It was not to encourage them to continue filling for
16 an indefinite period of time over that old liner.
17 We're trying to get rid of all the pre-Subtitle D
18 areas in the country. That was the focus of Subtitle
19 D.
20 So it seems like if you're coming back
21 and continuing to vertically expand on top of an old
22 pre-Subtitle D liner system, that's not as protective
23 as if you were landfilling over an area that had a
24 Subtitle D lining system.
25 Q Now, I believe in your prefiled testimony you

Page 1419

1 also criticized the characterization of the waste
2 material upon which filling is to take place. Is that
3 correct?
4 A I don't think I criticized it. I said it
5 seemed to be absent.
6 Q That there was no such description?
7 A I believe that was the nature of my
8 testimony.
9 Q And why would such a description be of
10 importance?
11 A Well, the analogy would be we're trying to
12 build on top of something, and we don't know what the
13 foundation material that we're building on top of is;
14 in terms of liquids, in terms of, you know,
15 consistency, how much will it settle, how much is it
16 already settled, all sorts of things. If we're going
17 to build on top, we would kind of like to know what
18 we're building on.
19 Q And what would you recommend be done?
20 A I think that it would be prudent to
21 characterize what's in the existing waste in terms of
22 its properties, liquid levels, that sort of thing, so
23 we had some idea of what we're going to build on top
24 of.
25 Q And in your review of the application, were

Page 1420

1 you able to find any such information?
2 A No, sir.
3 Q Were you able to find characterization of the
4 waste material?
5 A Other than it's municipal waste; no, sir.
6 Q Were you able to find characterization of the
7 liquid levels?
8 A No, sir.
9 Q Were you able to find any description of the
10 prior liner, either from the standpoint of liner
11 reports that were completed or any other sources?
12 A Other than what was discussed during the
13 hearing.
14 Q I'm talking about in the application.
15 A No, sir.
16 MR. BLACKBURN: Pass the witness.
17 JUDGE NEWCHURCH: Ms. Noelke?
18 MS. NOELKE: No questions, Your Honor.
19 MS. TALLEY: No questions.
20 JUDGE NEWCHURCH: Ms. Mann?
21 CROSS-EXAMINATION
22 BY MS. MANN:
23 Q Good afternoon.
24 A Good afternoon.
25 Q I'm reading through your testimony, and you

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1421

1 have a lot of what I would characterize as
 2 reservations with the vertical expansion permit
 3 amendment. Is that correct?
 4 A I think that's reasonable; yes, ma'am.
 5 Q Do you have reservations with vertical
 6 expansions generally or are some vertical expansion
 7 amendments more acceptable than others?
 8 A Well, I don't know how to answer that.
 9 You've asked multiple questions. I don't think I'm
 10 opposed to vertical expansions, per se. I think
 11 they're certainly possible and can be properly
 12 designed and built, assuming that we have conditions
 13 that will allow vertical expansion. I won't say that
 14 carte blanche you can just put a vertical expansion
 15 anywhere that you want to, regardless of its height
 16 or -- you know, it's a function of what's there now.
 17 Q Okay. And Mr. Blackburn asked you a little
 18 bit about your testimony on separatory liners. Is
 19 your criticism that there should be a separatory liner
 20 for just the pre-Subtitle D portion of the landfill or
 21 for the entirety of the landfill?
 22 A No, I think my opinion that I expressed in my
 23 prefiled testimony is there should be a separatory
 24 liner in those areas where we were going back up over
 25 a pre-Subtitle D area.

Page 1422

1 Q And is it your testimony that -- I'm reading
 2 on Page 48 of prefiled -- that you state that almost
 3 nothing is known about the conditions in the existing
 4 waste. And that's at Lines 1 and 2. Do you see that?
 5 A Yes, ma'am.
 6 Q Is that -- I'm sort of thinking about the
 7 landfill in sort of the post- and pre-Subtitle D
 8 areas, and is that statement true, in your opinion,
 9 for both areas?
 10 A For the existing waste; yes, ma'am.
 11 Q You state on Page 82 of your prefiled
 12 testimony that -- in response to a question of whether
 13 or not -- at Line 11 -- the application reflects any
 14 consideration of the possibility that the pre-Subtitle
 15 D liner is saturated. I've paraphrased slightly.
 16 A Yes.
 17 Q In your answer, are you suggesting that the
 18 engineer, as a worst-case-scenario option, should have
 19 assumed saturation, or that's your opinion, that the
 20 liner is, in fact, saturated?
 21 A Well, I think -- again, you've asked multiple
 22 questions, if I understand your question, but let me
 23 try to address those in order.
 24 I think I've answered that the bottom
 25 liner of the landfill in the pre-Subtitle D areas and

Page 1423

1 the compacted soil liner in the Subtitle D areas is
 2 likely saturated, either due to leachate in the
 3 pre-Subtitle D area or groundwater in both areas
 4 because parts of the excavation are below the water
 5 table or below the groundwater level.
 6 So if the compacted liner is there and
 7 it's below the water table, it's likely saturated or
 8 close to saturated. One of the reasons that we say
 9 that is when liner is placed, it's very close to the
 10 saturation point to begin with, and so if there's
 11 additional water or if any additional loading occurs,
 12 it becomes saturated.
 13 Q Okay. If it's saturated at placement, is
 14 that to keep the clays compact? Is it a wet-type
 15 sticky clay? Is that what you mean?
 16 A Yes, ma'am. When we build a soil liner, it's
 17 close to the saturation level because that's when we
 18 achieve the minimum permeability. That's good for a
 19 containment function. It's not so good from a soil
 20 shear strength function.
 21 Q When you say "containment," you mean
 22 containment of solids or containment of leachate?
 23 A Containment of leachate.
 24 Q And later you testify that something you
 25 define as mounding -- groundwater mounding is

Page 1424

1 occurring under the existing landfill. I'm actually
 2 looking at Page 87 in your testimony.
 3 And can you define -- I'm sure it's in
 4 here, but can you define again what you consider
 5 mounding?
 6 A Well, if you think of the groundwater surface
 7 as being represented by a topography, mounding is just
 8 what it implies. It's a mounding in the surface of
 9 the groundwater -- level of the groundwater surface.
 10 Q Is it an unnatural concentration of water in
 11 the --
 12 A Well, it might not be an unnatural. It's
 13 just -- you could have a situation, as a hypothetical,
 14 in a non-landfill case where you've got a source of
 15 water recharge in a localized area, and it would
 16 create a groundwater mound in that area. In essence,
 17 water would be flowing in all directions away from the
 18 mound. That's the significance of mounding.
 19 Q But your explanation for the mounding --
 20 first of all, we're talking about groundwater under
 21 the landfill -- correct -- like, not leachate within
 22 the landfill?
 23 A I was referring to water levels or the
 24 piezometric levels in the geologic materials
 25 underneath the landfill; yes, ma'am.

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1425

1 Q And your explanation for that mounding is
 2 that liquid is either moving or is likely moving from
 3 the landfill to underneath the landfill?
 4 A Well, it would appear that since the mounding
 5 is occurring under the landfill, that implies a source
 6 of recharge under the landfill footprint, which would
 7 lead to the conclusion that the source of recharge is
 8 probably leakage from the landfill unit.
 9 Q And so you're basing your opinion off of
 10 information that you found in the actual application.
 11 Correct?
 12 A Yes, ma'am; that is correct.
 13 Q So let's make sure I understand this. You're
 14 looking at groundwater levels, which you're taking at
 15 face value that were submitted by the applicant. So
 16 the groundwater levels themselves are uncontroverted,
 17 but what is in contest here is the cause of the
 18 groundwater levels and the import of those levels. Is
 19 that correct?
 20 A Well, again, there's multiple questions. I
 21 think the groundwater levels speak for themselves in
 22 the application. I think the speculation is what is
 23 the source of those groundwater levels that seem to be
 24 at the highest under the landfill proper.
 25 Q On Page 94 of your testimony, you discuss

Page 1426

1 what would be more realistic calculations for final
 2 cover erosion on Line 3.
 3 Have you reviewed the Rule 11 agreement
 4 or the proposed special provisions related to erosion
 5 control in the final cover?
 6 A Not to a significant degree. I have read it,
 7 and I'm generally familiar with some of the proposals
 8 therein, but I didn't spend an awful lot of time on
 9 it.
 10 Q So do you have an opinion on whether or not
 11 any of those special provisions will address any of
 12 your concerns?
 13 A I think, as I said in my deposition, I
 14 believe it will address a number of concerns I had
 15 with the intermediate conditions.
 16 Q Okay. So the intent to install or -- not to
 17 install, but rather to irrigate final cover, that
 18 doesn't address your concerns that irrigation would be
 19 needed in order to maintain 85 percent cover due to
 20 the Austin summer climate?
 21 A Well, irrigation would imply some other
 22 factors that -- in engineering, we always have what we
 23 talk about, the laws of unintended consequences. If
 24 you water the final cover then -- but now your
 25 infiltration modeling is off because you're putting

Page 1427

1 synthetic rainfall down, and there's all sorts of
 2 things that you need to look at.
 3 I didn't even go into that. With
 4 irrigation, surely you can maintain vegetation if
 5 irrigation is properly applied, but that creates maybe
 6 other problems.
 7 MS. MANN: I have no further questions.
 8 Thank you.
 9 JUDGE NEWCHURCH: Mr. Shepherd?
 10 Ms. White?
 11 MR. SHEPHERD: No questions.
 12 JUDGE NEWCHURCH: Mr. Terrill?
 13 CROSS-EXAMINATION
 14 BY MR. TERRILL:
 15 Q Mr. Chandler, I'm Paul Terrill. I represent
 16 Giles Holdings.
 17 A Good afternoon, Mr. Terrill.
 18 Q How are you doing? Mr. Chandler, I read your
 19 112 pages of prefiled testimony and is it fair to say
 20 you are extremely critical of this application?
 21 Correct?
 22 A That would not be the word choice that I
 23 would make, but I would say I have reservations, and I
 24 see a number of errors and flaws that appear to be in
 25 the application.

Page 1428

1 Q Well, I don't want to put words in your
 2 mouth. Let me ask you to turn to Pages 31 and 32 of
 3 your testimony.
 4 A (The witness complied.)
 5 Q Are you there?
 6 A Yes, sir, I am.
 7 Q Starting at the bottom of Page 31, you list
 8 site characterization -- and these are your areas of
 9 concern, at least as I gather -- site
 10 characterization, the vertical expansion, unstable
 11 area, groundwater issues, surface water issues,
 12 landfill gas and odor issues, and then continuing on
 13 Page 32, you've got nine issues where, in one form or
 14 fashion, you think that the application does not
 15 satisfy the regulations or your sense of what the
 16 regulations ought to be for those issues. Is that
 17 fair to say?
 18 A Yes, sir, it is.
 19 Q Well, let's start with the first one, site
 20 characterization. On Page 33 of your testimony -- and
 21 I think it goes for about 15 or so pages, you've got
 22 about 15 pages of testimony where you criticize the 18
 23 borings that are in the application. Correct?
 24 A I think that would be a mischaracterization
 25 of what I actually said. It certainly involves the 18

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1429

1 borings, but it's more than just the 18 borings.
 2 Q Well, fair to say that -- let me put it to
 3 you this way: It's a criticism of the 18 borings and
 4 the implications that it has for site
 5 characterization. Is that correct?
 6 A Among other things. There are other things,
 7 though, with those 18 borings that I also commented
 8 on.
 9 Q Okay. In other words, in addition to having
 10 criticism about site characterization you're saying
 11 there are additional criticisms as well?
 12 A No. What I'm saying is the application made
 13 certain representations about site characterization.
 14 The comments that the application makes about site
 15 characterization is inconsistent with what was done in
 16 those 18 borings.
 17 Q Well, here is what is curious to me about
 18 reading that 15 or so pages of testimony and the
 19 discussion of the 18 borings. You were -- you've been
 20 here the whole time during the contested-case hearing.
 21 Correct? At least I seem to have seen you back there
 22 in the corner every day.
 23 A I believe I may have come in late on the
 24 first day, but I've been here most of the time; yes,
 25 sir.

Page 1430

1 Q You were here during the testimony of all of
 2 BFI's witnesses, though. Correct?
 3 A I believe so.
 4 Q You're aware that there are 60-plus other
 5 borings, other than these 18 that you've discussed in
 6 your testimony. Correct?
 7 A Yes, sir; that's correct.
 8 Q And you don't discuss, at any point in time
 9 in your 15 pages of testimony, any of those 60-plus
 10 other borings. Is that correct?
 11 A That is correct.
 12 Q Why is it that in rendering an opinion in
 13 which you say that that site is not adequately
 14 characterized you don't discuss at any point in time
 15 in your prefiled testimony those 60-plus additional
 16 borings that you had access to?
 17 A I believe you're mischaracterizing what I
 18 said. I believe in my prefiled testimony I referred
 19 to the northeast -- corner of the northeast quadrant
 20 of the site was improperly characterized, and if part
 21 of the site is improperly characterized, then I
 22 believe the entire site is improperly characterized.
 23 Q All right. Well, your testimony will speak
 24 for itself, but the one thing that we can agree on is
 25 that 60-plus borings are not discussed anywhere in

Page 1431

1 your prefiled testimony. Correct?
 2 A That would be correct.
 3 Q You also have some criticisms about vertical
 4 expansions, which begin on Page 45 of your prefiled
 5 testimony. Do you recall that testimony?
 6 A Yes, sir.
 7 Q One of the criticisms, as I gather, is that
 8 you -- you believe that there ought to be a separatory
 9 liner system, and I think Mr. Blackburn was asking you
 10 about this as well. Do you recall that testimony?
 11 A Yes, sir.
 12 Q Would you agree with me that the TCEQ rules
 13 do not require a separatory liner system?
 14 A Are you talking about the current rules or
 15 the rules in effect for this application?
 16 Q The rules that are in effect for this
 17 application.
 18 A No. The rules that are in effect for this
 19 application do not require it.
 20 Q Is there -- let me see if this is a fair
 21 generalization. In addition to the separatory liner
 22 system where you criticize BFI for not installing a
 23 separatory liner system, there are other places where
 24 you have, I'm going to say, held BFI to a higher
 25 standard than what the TCEQ rules require. Is that a

Page 1432

1 fair characterization?
 2 A I don't believe so. Could you elaborate or
 3 give me examples perhaps?
 4 Q We'll go through it as the subjects come up.
 5 I didn't think that you would disagree with me on
 6 that, but we can press on.
 7 Why don't we talk about unstable areas
 8 in that respect. On Page 50 of your testimony, this
 9 is where you're critical of the application with
 10 respect to unstable areas. And in particular, on
 11 Pages 51 and 52, as I understand your testimony, or as
 12 I read your testimony, you think that the TCEQ ought
 13 to be requiring a type of comprehensive stability
 14 analysis that they are not currently requiring. Is
 15 that a fair characterization of your testimony?
 16 A That would -- I think my testimony would be
 17 that I believe that the unstable area or location
 18 restriction requires a demonstration of stability, and
 19 that demonstration of stability would include
 20 stability analysis calculations.
 21 Q All right. Is it fair to say that you do not
 22 see eye to eye with the TCEQ on the interpretation of
 23 those provisions?
 24 A I would agree with that; yes, sir.
 25 Q And, Mr. Chandler, you would agree with me

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1433

1 that this is not -- that the area where the BFI
 2 landfill is, it's not an area that's subject to
 3 seismic activity?
 4 A Not to any level that would be of concern
 5 under federal or state rules; no, sir.
 6 Q Fair enough. And the same with respect to
 7 it's not over a karst area either. Correct?
 8 A I didn't look at that, but I don't believe it
 9 is.
 10 Q On your slope stability testimony -- and I'm
 11 talking specifically about side slopes. I know
 12 there's been some possible confusion about underground
 13 versus -- I'll call them aboveground slopes -- side
 14 slopes. Are you with me on that?
 15 A Well, are you referring to excavation side
 16 slopes or are you referring to aerial fill side
 17 slopes, I guess, would be the definitive difference?
 18 Q Aerial.
 19 A Okay. Aerial side slopes.
 20 Q Let me ask you this: What is a common aerial
 21 side slope?
 22 A Four-to-one typically.
 23 Q And what side slope is being proposed in this
 24 application?
 25 A I believe it's a four-to-one.

Page 1434

1 Q Now, as I read your slope stability
 2 testimony, I read it as a complaint about not the
 3 methodology that their experts used but basically the
 4 inputs, the numbers that they used in the equations
 5 rather than the equations themselves. Is that
 6 correct?
 7 A Well, I think, again, that's a
 8 mischaracterization. I think it's a -- you are
 9 correct that I'm critical of the inputs, but saying
 10 that I may be more critical of the type of layers that
 11 were chosen on the cover, maybe that's an input as a
 12 result of what the design is, and based on their
 13 design that's in the application, I didn't feel that
 14 the input was realistic or representative of the
 15 materials that are being used in the design of that
 16 outer cover of the side slopes.
 17 Q Let me put it in the most simplistic way I
 18 can. The equations that they used, you didn't
 19 disagree with. Fair to say?
 20 A Well, that's just a simple, infinite slope.
 21 That's high school physics. It's a block sliding on a
 22 wedge.
 23 Q And at least to my mind, as I looked at your
 24 criticisms, it was the numbers that they plugged into
 25 that equation that you essentially disagreed with. Is

Page 1435

1 that fair to say?
 2 A That's a fair characterization; yes, sir.
 3 Q In other words, we've got -- let's say we've
 4 got two sets of numbers; BFI's numbers, and I'll call
 5 it your numbers that are the inputs for these
 6 equations. Are you with me?
 7 A Yes, sir.
 8 Q If BFI's numbers are the correct inputs, you
 9 would agree with me that their analysis is proper and
 10 the results that they got were calculated correctly.
 11 Is that fair to say?
 12 A With the assumptions that you offered; yes,
 13 sir.
 14 Q Mr. Chandler, what side slope ratio would you
 15 recommend for this landfill?
 16 A I think a four-to-one is fine. I think it
 17 might require the selection of the materials that are
 18 used in the final cover so that you can make it work
 19 on a four-to-one slope.
 20 Q Let me ask you some questions about
 21 groundwater. In your testimony -- and I'm going to
 22 refer you to Page 86 of your testimony. Let me know
 23 when you're there.
 24 A 86. Yes, sir.
 25 Q Yes, sir. On Page 86, the question beginning

Page 1436

1 on Line 9 -- I'm going to read the question. "Do you
 2 think the application is protective of groundwater?"
 3 Do you mind reading the answer on Lines 10 and 11?
 4 A "I do not. In fact, the application provides
 5 conclusive evidence that the existing landfill is
 6 releasing contaminated leachate into the subsurface."
 7 Q All right. That's a pretty serious charge.
 8 Wouldn't you agree?
 9 A I think so.
 10 Q And you say there's conclusive evidence?
 11 A Well, I think the mounding is conclusive
 12 evidence that mounding is occurring in the groundwater
 13 levels under the landfill footprint. There is no
 14 other source of recharge that can explain that.
 15 Q I'm not saying conclusive evidence of
 16 mounding. I mean, as I read this, you say that
 17 there's conclusive evidence that the landfill is
 18 leaking. Right?
 19 A Well let me explain my answer. Maybe I
 20 wasn't clear. The fact that the groundwater --
 21 Q Time out. Time out. That's what that says
 22 on Lines 10 and 11. Right?
 23 A Yes, sir, it does.
 24 Q Let me ask you this question: I assume that
 25 you've looked at the downgradient monitoring wells.

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1437

1 Right?
 2 A What's --
 3 Q Around the landfill.
 4 A Yes, sir, I have.
 5 Q You would agree with me that there are no
 6 hits in any of the downgradient monitoring wells.
 7 Correct?
 8 A Well, can I ask you to explain what you mean
 9 by "downgradient monitoring wells"? Maybe that's one
 10 of our problems.
 11 Q Well, you understand what downgradient means.
 12 Right?
 13 A I do, but in this case, you've got a point of
 14 compliance that goes around the entire site. So every
 15 well is downgradient at this site.
 16 Q Well, let me ask you this: What is the
 17 gradient in your mind? Which direction is the
 18 gradient, or directions, if you want to put it that
 19 way?
 20 A It appears to be from the center of the
 21 landfill outward.
 22 Q Okay. Is there a prevailing flow direction?
 23 A There is a general regional flow direction
 24 that in the western part of the site, it seems like it
 25 drops back off to the west. In the eastern part of

Page 1438

1 the site, it seems like there's kind of a general
 2 eastward trend with some little protuberations to the
 3 southeast, as I recall.
 4 Q As I read your testimony, it's not because
 5 you saw hits of contaminants in any of the monitoring
 6 wells in the landfill. Is that correct?
 7 A That would be correct.
 8 Q And as I read your testimony, it's because of
 9 what I will call your mounding theory. Fair to say?
 10 A Yes, sir, that's correct.
 11 Q And, Mr. Chandler, you are a professional
 12 engineer. Correct?
 13 A That is correct.
 14 Q And do you have a PG number from the state --
 15 professional geologist number from the state of Texas?
 16 A No, I do not.
 17 Q Okay. Now, your client in this case is TJFA.
 18 Correct?
 19 A Yes, sir, that's correct.
 20 Q How much an hour are you billing TJFA?
 21 A I believe it's \$150 per hour.
 22 Q And you've been here every day of the
 23 hearing. Right?
 24 A Yes, sir.
 25 Q And you prepared this 112 pages of testimony.

Page 1439

1 Correct?
 2 A Yes, sir.
 3 Q How much have you been paid to date in this
 4 case, both billed -- strike the question.
 5 How much have you incurred in hourly
 6 fees and expenses to date?
 7 A To date, I do not know. Through the end of
 8 the year, 2008, it was something on the order of, as I
 9 recall, \$30,000.
 10 Q And where is the property that you're seeking
 11 to protect for your client?
 12 A It's off on the northwest corner. I believe
 13 that's right, if I don't have my directions confused.
 14 Q Could you find it on a map?
 15 A I don't know if I can or not.
 16 Q Have you ever been out to the TJFA property?
 17 A No.
 18 Q Have you ever been out to the landfill?
 19 A I've been around it but not on it.
 20 Q When did you go around it?
 21 A I was there on December 10th to visit the
 22 adjacent landfill site.
 23 Q Meaning Waste Management?
 24 A Yes, sir.
 25 Q When you were out at Waste Management's site,

Page 1440

1 you didn't go out to your client's property?
 2 A I did not.
 3 Q Have you been to the affiliate of TJFA's
 4 property, their landfill down in southeast Travis
 5 County?
 6 A Yes, I have.
 7 MR. RENBARGER: Objection, Judge. I'm
 8 not sure what counsel means when he says "affiliate,"
 9 but perhaps he could help us with that. TJFA is a
 10 free-standing limited partnership. It is not owned by
 11 anyone.
 12 JUDGE NEWCHURCH: So your objection is
 13 the question is vague. Is that correct?
 14 MR. RENBARGER: Excuse me. I couldn't
 15 hear you.
 16 JUDGE NEWCHURCH: Your objection is the
 17 question is vague?
 18 MR. RENBARGER: The question would be
 19 vague to the extent it mischaracterizes TJFA as an
 20 affiliate of a landfill to the southeast, when, in
 21 fact, its legal status is not that of an affiliate.
 22 It is a free-standing limited partnership.
 23 JUDGE NEWCHURCH: Mr. Terrill?
 24 MR. TERRILL: You know what? I'm going
 25 to pass the witness because I know that my co-counsel

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1441

1 here is going to explore that relationship, so perhaps
2 it's best to let him do it.
3 JUDGE NEWCHURCH: Okay. Mr. Carlson?
4 MR. CARLSON: Thank you, Judge.
5 CROSS-EXAMINATION
6 BY MR. CARLSON:
7 Q Mr. Chandler, at the outset, I just would
8 like to try to get my arms around the areas that you
9 claim to have expertise in. Okay?
10 You claim to be an expert in general
11 landfill design, sir.
12 A Yes, sir.
13 Q You claim to be an expert in geology.
14 A Not necessarily geology. Hydrogeology would
15 be more appropriate.
16 Q But not geology?
17 A Not, per se; no, sir.
18 Q Apparently you claim to be an expert in
19 matters pertaining to hydrogeology?
20 A I thought that's what I just stated.
21 Q What about geotechnical matters?
22 A I have done extensive work in what I think I
23 would refer to as geotechnical engineering, if that's
24 what you mean by geotechnic matters.
25 Q Do you claim to have expertise in that area,

Page 1442

1 sir?
2 A Yes, sir.
3 Q What about slope stability evaluations?
4 A Yes.
5 Q What about hydrology? Are you an expert in
6 matters pertaining to hydrology?
7 A I have done hydrology work. I'm not offering
8 myself as an expert in this proceeding in that subject
9 matter.
10 Q Would you throw the phrase or term or concept
11 of drainage design into -- under the umbrella of
12 hydrology, sir?
13 A Some of it's civil engineering, some of it's
14 drainage.
15 Q You don't claim to be an expert in matters of
16 hydrology?
17 A My answer would be I have done hydrology.
18 I've testified on that subject in other hearings. I'm
19 not doing that in this hearing. I'm not offering
20 testimony in that area.
21 Q Well, let's go down this laundry list. Do
22 you claim to be an expert in matters pertaining to the
23 design and operating of groundwater monitoring
24 systems?
25 A Yes, sir.

Page 1443

1 Q What about landfill gas management systems?
2 A Yes, sir.
3 Q That would include both perimeter monitoring
4 systems and collection and control systems that are
5 extracting gas from a landfill?
6 A Yes, sir.
7 Q Any other areas, sir, that you claim to be an
8 expert in that would relate in any sort of way to the
9 testimony you're offering today?
10 A Probably liner construction quality control
11 procedures. I don't know if that's covered under your
12 definition of geotechnical engineering or not.
13 Q Anything else?
14 A Nothing comes immediately to mind, but maybe
15 something will later.
16 Q That's a pretty long list, isn't it?
17 A I'm sorry. Was that a question?
18 Q Yes, sir.
19 A I suppose so.
20 Q Do you claim to be an expert in matters
21 pertaining to either botany or agronomy?
22 A No, sir.
23 Q Let me ask you this: You were retained by
24 TJFA's attorneys sometime in the spring of 2008 to
25 serve as a testifying expert witness. Is that

Page 1444

1 correct?
2 A I believe it was -- yes, that sounds about --
3 I think you said spring of 2008?
4 Q Yes, sir.
5 A I think that's right; yes, sir.
6 Q What is your understandings of TJFA? Who is
7 your ultimate client, sir?
8 A My ultimate client is TJFA in this matter.
9 That's who we've met with and that's who is paying my
10 checks.
11 Q I'm just wondering a little bit bigger
12 picture. Who is TJFA? What do they do? What's your
13 understanding?
14 A It's my understanding that they are a
15 property owner in the immediate area and that they
16 have concerns about a landfill application that may or
17 may not affect their property interests.
18 Q Do you know what kind of business TJFA is
19 engaged in, sir, your client -- your ultimate client?
20 A No, I do not.
21 Q No idea. Have you met with or discussed any
22 matter of your engagement with any TJFA
23 representatives?
24 A Yes, I have.
25 Q Mr. Gregory in the back of the room --

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1445

1 A No, sir.
 2 Q -- do you consider him to be a
 3 representative?
 4 A No, sir.
 5 Q What about Mr. Hobbs?
 6 A Yes, sir.
 7 Q He's back here in the room. Is that correct?
 8 A Yes.
 9 Q Now, Mr. Hobbs is also an employee of TDS or
 10 Texas Disposal Systems. Is that correct, at least to
 11 your knowledge?
 12 A Yes, sir, he is.
 13 Q You've dealt with Mr. Hobbs before in matters
 14 pertaining to the Texas Disposal System site. Is that
 15 correct?
 16 A I've talked to Mr. Hobbs on numerous
 17 occasions for other reasons, but that's some of the --
 18 we're old friends for a number of years.
 19 Q He offices in Creedmoor. Is that correct?
 20 A Yes, sir, he does.
 21 Q At the TDS facility. Is that correct?
 22 A I believe that's correct.
 23 Q On matters pertaining to TJFA business, do
 24 you call Mr. Hobbs at the same number that you could
 25 call him at if you were calling him on TDS business?

Page 1446

1 A I don't recall ever calling Dennis relative
 2 to TJFA work.
 3 Q In your mind, just based on your last few
 4 months working for TJFA, is there any real difference,
 5 at least in terms of your relationship, between TJFA
 6 and Texas Disposal Systems and people you're working
 7 with?
 8 A I think there is, yes.
 9 Q What is that, sir?
 10 A Well, in the past, I've worked for TDSL,
 11 which is the owner and operator of a landfill south of
 12 town. That's a different entity than TJFA totally.
 13 You know, they asked me to look at these things. I do
 14 work for them. To me, that's a completely different
 15 situation.
 16 Q Okay. Do you happen to know what
 17 relationship there is between Mr. Gregory -- Mr. Bobby
 18 Gregory and TJFA, if any?
 19 A I do not.
 20 Q Do you have -- do you know what the
 21 relationship between Mr. Gregory and Texas Disposal
 22 Systems is?
 23 A It's always been my understanding that he's
 24 one of the owners and is also the CEO of the
 25 operation.

Page 1447

1 Q Now, you've done prior engineering work for
 2 Texas Disposal Systems, haven't you?
 3 A Actually, I believe I've done it for Texas
 4 Disposal Systems Landfill basically.
 5 Q Let's make things clear. There's a landfill
 6 down in Creedmoor that's owned and operated by
 7 Mr. Gregory, at least in part. Is that correct?
 8 A That's my understanding.
 9 Q That's called the Texas Disposal Systems
 10 Landfill. Right?
 11 A Yes, sir.
 12 Q Sometimes referred to as TDSL?
 13 A Yes, sir.
 14 Q And then there's another company, perhaps a
 15 waste hauling company, a management company that's
 16 called Texas Disposal Systems. Is that correct?
 17 A That's my understanding.
 18 Q And that entity, to your knowledge, is also
 19 affiliated with Mr. Gregory. Correct?
 20 A Yes, sir.
 21 Q He's an owner and an officer in that company.
 22 Correct?
 23 A To the best of my knowledge, yes, sir.
 24 Q So in your -- wearing your engineering hat,
 25 you've done work for TDSL. Is that correct?

Page 1448

1 A Yes, sir.
 2 Q As I understand it, you worked on a Subtitle
 3 D modification for the TDSL facility in the 1990s?
 4 A That is correct.
 5 Q You worked on a compost facility for TDSL?
 6 A Yes, sir; that is correct.
 7 Q You worked on a transfer station for TDSL?
 8 A Yes, sir; that's correct.
 9 Q I believe you testified or I've seen that you
 10 worked on a gas collection and control system for
 11 TDSL?
 12 A Yes, sir; that's correct.
 13 Q You prepared closure cost estimates for that
 14 facility. Is that correct?
 15 A Yes, sir.
 16 Q And I understand you're currently working on
 17 a peer review for a proposed expansion of the TDSL
 18 facility. Is that correct?
 19 A I'm not currently. I think I'm scheduled to
 20 work on it, I believe would be the way I would word
 21 that.
 22 Q Any sort of engineering work that you've
 23 performed for Mr. Gregory or any of his solid waste
 24 related businesses?
 25 A I don't believe so.

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1449

1 Q Did you have -- wearing your engineering hat
2 now, you have a 15-year professional relationship with
3 Mr. Gregory, TDS and TDSL. Is that fair to say?
4 A Yes, sir; that would be correct.
5 Q And, now, I understand you have done other
6 consulting work -- and I'll call it litigation
7 support -- for TJFA in recent years. Is that correct?
8 A Yes, sir; that is correct.
9 Q I believe you've testified you're not quite
10 sure what TJFA is, except maybe that it owns a piece
11 of property. Is that correct?
12 A They own numbers of pieces of properties.
13 Q They own one in Williamson County near the
14 Williamson County landfill. Correct?
15 A Yes, sir; that is correct.
16 Q And you were engaged by TJFA or its attorneys
17 as a consulting-only expert in connection with TJFA's
18 opposition of a proposed expansion of the Williamson
19 County landfill. Is that correct?
20 A Yes, sir; that's correct.
21 Q And that case has been through evidentiary
22 hearing, hasn't it?
23 A I think it's finished. I don't actually
24 know.
25 Q You were monitoring it. Right?

Page 1450

1 A I was there during the -- during a part of
2 the hearing, but I don't know -- I don't know the
3 status since then.
4 Q You don't know what the result of that
5 hearing was?
6 A No, I do not.
7 Q Now, TJFA also owns a piece of property near
8 the Comal County facility, down near New Braunfels.
9 Is that correct?
10 A Yes, sir, that's correct.
11 Q And you were also retained by either TJFA or
12 by its attorneys to serve as a consulting expert in
13 connection with TJFA's opposition of an expansion of
14 that particular facility. Is that correct?
15 A That would be correct.
16 Q And that one has been through an evidentiary
17 hearing as well. Is that correct?
18 A Yes, sir, it has.
19 Q And you were there for most of that hearing.
20 Is that right?
21 A I believe so.
22 Q What was the result of that hearing, sir?
23 A I do not know.
24 Q Well, you spent all this time on these two,
25 and you don't know what the result of those -- the

Page 1451

1 outcome of those hearings, just the evidentiary
2 hearing part? You don't know?
3 A No, I really don't.
4 Q Now, obviously you've been retained to serve
5 as a testifying expert witness in this proceeding.
6 Right?
7 A Yes, sir; that's correct.
8 Q And I understand that you've been retained to
9 serve as a testifying expert witness for TJFA in its
10 opposition to the Austin Community Landfill
11 proceeding. Is that correct?
12 A Yes, sir; that's correct.
13 Q I take it that in each of the four matters
14 for which you were retained by or on behalf of TJFA to
15 offer opinions that you had criticisms of each of
16 those permit amendment applications. Right?
17 A I would say I pointed out regulatory
18 variances in each of those; yes, sir.
19 Q In each case, did you recommend to TJFA's
20 lawyers that you believed -- strike that.
21 In each of those cases, did you state to
22 TJFA's lawyers that you believed that the permit
23 amendment application should be denied for any reason?
24 MR. RENBARGER: Objection, Judge. To
25 the extent that the witness has testified that he

Page 1452

1 served as a consulting expert and was hired by
2 attorneys for TJFA, I don't believe that is a fair
3 area for inquiry.
4 MR. CARLSON: I'll withdraw it with
5 respect to the -- any consulting only.
6 JUDGE NEWCHURCH: Okay. So --
7 MR. CARLSON: I'll move on, Judge.
8 JUDGE NEWCHURCH: Okay.
9 Q (BY MR. CARLSON) Excluding your work in
10 connection with this particular permit amendment
11 application, Mr. Chandler, could you estimate for
12 me -- I'm not looking for an exact dollar amount --
13 the amount of compensation that you have received for
14 any work that you performed for either Mr. Gregory,
15 his solid waste companies or TJFA in the last 15
16 years?
17 A Probably not. I can tell you what I've done
18 in the last couple of years because it goes in gaps.
19 Obviously there was work in the '94, '95 time frame
20 where I worked, and I don't recall what that amount
21 was. That's been way too long for me to remember
22 that. I don't remember on the compost facility, what
23 those fees were, but, again, that was --
24 Q Let me cut to the chase. You've been
25 compensated to the tune of several hundred thousand

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1453	Page 1455
<p>1 dollars, at least, by those entities. Is that fair to 2 say? 3 A It would probably be in that range. I don't 4 know if it's that much. It might not be that much 5 total. 6 Q Okay. Now, I believe you were contacted by 7 Bob Kier, who is another expert witness in this case, 8 to review the application -- BFI's application in 9 2007. Right? 10 A That would be correct. 11 Q And at that time, TJFA was considering 12 whether or not to oppose BFI's application? 13 A That was not my understanding. 14 Q Okay. In any event, you did review and 15 comment on the application during the 2007, early 16 2008 time frame. Right? 17 A Yes, sir. 18 Q Okay. Did you participate in preparing the 19 public comments that TJFA filed with the TCEQ in the 20 2007, 2008 time frame? 21 A I'm not sure exactly how to answer that. I'm 22 aware that some of the information that Dr. Kier and I 23 put together apparently made it to some form of a list 24 because I seem to recall Mr. Hobbs calling me and 25 reading a list to me to ask me if this was pretty</p>	<p>1 Q It didn't involve either 2007, early 2 2008 work. Right? 3 A No, it did not. 4 Q And it also, obviously, didn't cover your 5 time in December in which you were deposed and the 6 time you've been spending here at the hearing. 7 Correct? 8 A That is correct. 9 Q How many hours a day are you billing for your 10 time, monitoring this? 11 A I don't really know yet. I haven't even 12 thought about it. 13 Q Eight hours a day? 14 A Probably. 15 Q So you're clocking roughly \$1,200 a day. 16 Correct? 17 A I would say so. 18 Q So based on our conversation, can you give me 19 an estimate of roughly how much money you've billed 20 TJFA for your engagement with respect to the Sunset 21 Farms application alone? 22 A I can make a guess. The 30,000, and it seems 23 like there was another 5,000 in December between the 24 exhibits and the deposition and other things. And I 25 have no idea what January is going to be.</p>
Page 1454	Page 1456
<p>1 consistent with the list of variances we put together. 2 Q In that time frame, you and Dr. Kier 3 collaborated on a list of grievances, if you will, of 4 the proposed application. Is that correct? 5 A I wouldn't call them grievances, but we -- I 6 think we noted they were regulatory variances, I think 7 is what the document was titled. 8 Q And at some point, your engagement 9 transferred into a testifying expert witness 10 engagement in this matter. Right? 11 A About a year later as I recall. 12 Q I believe in response to Mr. Terrill's 13 question, you indicated you're being compensated \$150 14 an hour for your services. Right? 15 A Yes, sir; that's correct. 16 Q And do you recall at your deposition you were 17 asked about how much you had billed between May and 18 the end of November of 2008? 19 A Yes, sir, I do. 20 Q And your answer was something around \$30,000. 21 Correct? 22 A That's what I recall. 23 Q And that only involved that time frame. 24 Correct? 25 A Yes, sir, that's correct.</p>	<p>1 Q You're somewhere north of \$50,000, aren't 2 you? 3 A I don't really know. It would seem to be in 4 that range, but like I say, I haven't actually 5 calculated it, so I don't really know. 6 Q Switching gears a little bit now, you've 7 worked on other MSW projects for facilities that are 8 either located or were to be located in the Taylor 9 marl. Is that correct? 10 A Yes, sir; that's correct. 11 Q That would include the Maxwell Creek 12 expansion? 13 A Yes, sir. 14 Q That's in Colin County? 15 A Yes, sir. 16 Q You worked on the Skyline landfill in the 17 Dallas, Ellis County area? 18 A Yes, sir. 19 Q And you testified that you worked for the 20 TDSL landfill. Correct? 21 A Yes, sir. 22 Q And you also worked on the Ellis County 23 landfill in Ellis County. Right? 24 A Well, I didn't work on it. Mr. Gosselink 25 asked me to review some documents, and I did that for</p>

57 (Pages 1453 to 1456)

TUESDAY, JANUARY 27, 2009

VOLUME 6

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1457

1 Mr. Gosselink.
 2 Q Each of those facilities were located in the
 3 Taylor formation, though. Right?
 4 A Yes, sir.
 5 Q And over the course of your professional
 6 career, you've had an opportunity to become familiar
 7 with the basic properties of the Taylor Formation. Is
 8 that right?
 9 A Yes.
 10 Q I would like to go through some of the basic
 11 concepts regarding the Taylor and see if we can agree
 12 on a few things. Okay?
 13 A Okay.
 14 Q Would you agree that the Taylor formation
 15 runs north-south through the central part of the state
 16 of Texas?
 17 A I would say, as general direction, that would
 18 be true. You could say it might follow the I-35
 19 corridor, more or less.
 20 Q I was just going to ask you that. The
 21 formation -- the Taylor formation doesn't change much
 22 across the state, does it?
 23 A No. As I've commented in my deposition or
 24 the prefiled, it's pretty consistent. There are
 25 slight, subtle changes as you go from one end of the

Page 1458

1 state to the other, but it's pretty consistent
 2 throughout.
 3 Q I went through your deposition, and I saw you
 4 describe it at times as pretty consistent, relatively
 5 uniform, pretty uniform and remarkably consistent. Do
 6 you have any dispute with any of those?
 7 A Not at all.
 8 Q Now, the geologic formation of the Taylor is
 9 similar between the Sunset Farms site and the TDSL
 10 site in Creedmoor. Right?
 11 A Yes, sir, it is.
 12 Q They're roughly 15 miles apart, both in
 13 Travis County. Is that correct?
 14 A That may be correct. I don't know that I've
 15 ever estimated the mileage.
 16 Q The formation -- the Taylor formation
 17 generally consists of, at the surface, an unweathered
 18 layer over -- excuse me -- a weathered layer over an
 19 unweathered layer. Is that correct?
 20 A I think that's probably not the way I would
 21 talk about it.
 22 Q Would you break it down into a soil layer at
 23 the very top as well?
 24 A In a lot of cases, there is a developed soil
 25 layer, and in other places, erosion has removed that

Page 1459

1 soil layer, and in a couple of places in Travis
 2 County, you actually have high-terraced gravels or a
 3 remnant of high-terraced gravels on top of the Taylor
 4 but --
 5 Q Let's talk in generalities. In generalities,
 6 the Taylor consists of a weathered layer over an
 7 unweathered layer of clay. Is that right?
 8 A How about we say once we get past the surface
 9 soils, the Taylor consists of a relatively weathered
 10 zone and unweathered zone. Is that satisfactory?
 11 Q Okay. And in the vicinity of Sunset Farms
 12 and TDSL, this interface or transition between the
 13 weathered and unweathered layers generally occurs at
 14 some point between 30 and 50 feet below the ground
 15 surface. Is that fair?
 16 A Actually, it varies all over the place,
 17 depending on where it sits because previous erosion
 18 processes may have removed a significant part of the
 19 weathered material.
 20 Q I'm not talking about any particular point.
 21 Again, I'm talking about generalities. As a general
 22 matter, both sides, it's roughly between 30 and
 23 50 feet below ground surface. Fair enough?
 24 A No. I would say probably an arithmetic
 25 average might be 30 feet, but it would vary, plus or

Page 1460

1 minus, 30 feet perhaps.
 2 Q All right. The unweathered Taylor, the lower
 3 level, is very impermeable, isn't it?
 4 A I would agree with that; yes, sir.
 5 Q And that layer serves as the lower confining
 6 unit for shallow groundwater that's in the weathered
 7 layer. Fair enough?
 8 A I would probably refer to it more as
 9 subsurface water, but for our purposes, it's
 10 essentially the same.
 11 Q Okay. And the water that's in this upper
 12 weathered layer is considered the uppermost aquifer
 13 for regulatory groundwater monitoring purposes.
 14 Correct?
 15 A That is correct.
 16 Q And shallow groundwater in Travis County in
 17 this particular formation, that's not used for
 18 drinking purposes as a general rule. Correct?
 19 A Probably in areas that are served by public
 20 water supply, it's not. Historically, there was use
 21 of the Taylor as water supply for rural homes.
 22 Q That's kind of an historical artifact though.
 23 Right?
 24 A I would agree.
 25 Q Now, let's see if you agree with this: The

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1461

1 groundwater in the Taylor formation is the result of
 2 infiltration that moves down through the cracks in the
 3 weathered, and then moves laterally, generally
 4 following the topography?
 5 A In general, I would agree with that.
 6 Q The groundwater levels in the weathered
 7 Taylor somewhat imitate the surface topography?
 8 A I don't like that "imitate" or "mimic,"
 9 although that's a term that we commonly use, but it
 10 generally follows topography more or less because the
 11 topography that's developed on top of the Taylor
 12 somehow has some representation to the
 13 weather\unweathered zone, so in a way you could say
 14 that, yes.
 15 Q And the Taylor formation is generally
 16 recognized across the state as one of the better
 17 locations for siting landfills. Is that correct?
 18 A Yes, sir, that is correct.
 19 Q Let's talk about your general experience in
 20 terms of landfill design concepts. You've agreed, I
 21 believe, that a three horizontal to one vertical slope
 22 is the most common excavation slope for landfills in
 23 Texas. Is that correct?
 24 A Yes, I would agree with that.
 25 Q In your deposition, you agreed that

Page 1462

1 three-to-one is pretty much the standard cross the
 2 state. Is that correct?
 3 A Yes, sir.
 4 Q In fact, you agreed that you yourself would
 5 typically use a three-to-one excavation slope in a
 6 design?
 7 A I'm sure that's what I said.
 8 Q And the excavation slope at McKinney, the
 9 site you're involved in, was, in fact, three-to-one.
 10 Right?
 11 A Yes, sir; that's correct.
 12 Q And that facility was located in the Taylor
 13 formation?
 14 A No. McKinney is actually in the Austin
 15 chalk.
 16 Q A similar formation. Is that correct?
 17 A Well, it's a more rock-like material, and
 18 then you have a recently alluvium over the top of the
 19 Austin chalk. So geologically, it's not exactly
 20 similar.
 21 Q What's the excavation slope for the Sunset
 22 Farms facility?
 23 A The application shows three-to-one.
 24 Q Let's talk about side slopes. And when we
 25 talk about side slopes, we're talking about the slopes

Page 1463

1 of the waste above ground. Your definition?
 2 A Okay.
 3 Q Do you want to work with that?
 4 A Aerial -- let's call them -- to avoid
 5 confusion, let's call them aerial fill side slopes,
 6 for everybody.
 7 Q Aerial fill side slopes. I'm not going to
 8 promise I can do that every time.
 9 In your deposition, you agreed that
 10 four-to-one -- four horizontal to one is pretty much
 11 the standard aerial fill side slope in Texas, didn't
 12 you?
 13 A Yes, I would.
 14 Q In fact, Austin Community Landfill here in
 15 Texas and the North Texas 121 facility and Maxwell
 16 Creek in Comal County, all ones that we've talked
 17 about, they all employed a four-to-one side slope. Is
 18 that correct?
 19 A I believe so. To the best of my knowledge,
 20 that's what I recall.
 21 Q There's a lot of other landfills in this
 22 state that employ a four-to-one aerial fill side
 23 slope. Correct?
 24 A Yes, I would agree with that.
 25 Q What about TDSL, what's the side slope --

Page 1464

1 aerial fill side slope at that facility?
 2 A I don't recall looking at that. I'm trying
 3 to think. I'm not sure what the side slope is at TDSL
 4 to tell you the truth.
 5 Q I might show you a document in a little while
 6 that will refresh your recollection.
 7 A Okay.
 8 Q What's the proposed side slopes -- or aerial
 9 fill side slope for the Sunset Farms vertical
 10 expansion?
 11 A A four-to-one generally.
 12 Q Now, you testified that you had originally
 13 started reviewing BFI's application sometime in the
 14 spring 2007. Right?
 15 A Yes, sir, that's correct.
 16 Q You had an opportunity to familiarize
 17 yourself with the application at that time and through
 18 early 2008. Right?
 19 A I don't recall. There was a gap. I did the
 20 work in 2007, and then I didn't work on it again until
 21 spring of 2008.
 22 Q Well, by the time this matter was referred to
 23 SOAH in the spring of 2008, the application was no
 24 mystery to you. You had an opportunity to go up and
 25 down -- right -- look it over?

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1465

1 A Actually, I had only seen parts of it prior
2 to that time.
3 Q You had an opportunity to review the order of
4 referral to determine what the issues were?
5 A I don't recall seeing the order of referral
6 until after I had been retained by TJFA.
7 Q But you have seen that document. Is that
8 correct?
9 A Yes, sir, I have.
10 Q And you had opportunities in the spring and
11 summer of 2008 to review -- or to meet with TJFA's
12 lawyers and some of the other parties' lawyers and
13 some of the other experts to discuss the case. Right?
14 A Yes, sir; that's correct.
15 Q And you knew at that point in time that you
16 were going to be required to file -- prepare and file
17 prefiled testimony. Right?
18 A I don't recall when the decision was actually
19 made that I was going to prefile testimony and appear
20 as a testifying expert. I don't recall the date.
21 Q Over the course -- you recall there was a lot
22 of discovery in this proceeding. Right?
23 A Yes, sir.
24 Q A lot of documents produced by all the
25 parties. Right?

Page 1466

1 A Yes, sir.
2 Q Including BFI?
3 A Yes, sir.
4 Q And I believe you testified in your
5 deposition that your prefiled testimony contained all
6 the opinions that you're prepared to offer in this
7 case. Is that fair?
8 A That's a fair statement; yes, sir.
9 Q Now, as I understand it, looking at your
10 prefiled, you've got six basic areas of criticism of
11 the application; site characterization, a piggyback
12 vertical expansion, the unstable area location
13 restriction, the groundwater protection issues,
14 surface water protection issues and landfill gas and
15 odor. Does that sound right?
16 A That sounds right.
17 Q That covers all your opinions. Right?
18 A I think so.
19 Q Let's talk about those in order. Let's talk
20 about site characterization, sir.
21 As I understand your prefiled, you have
22 basically four basic criticisms in terms of the site
23 characterization. I think you've testified that you
24 think that site characterization in the northeast area
25 is inadequate and below the standard of care. Is that

Page 1467

1 right?
2 A That is correct.
3 Q You say it doesn't comply with the site
4 characterization with the MSW regs?
5 A That's my belief; yes, sir.
6 Q You don't have problems with four of the
7 2004-era borings, but you have problems with the other
8 14. Is that correct?
9 A That would be a correct statement.
10 Q You had some problems with the technique that
11 was used with respect to at least eight of those, the
12 ones that used -- they got what are called wash
13 cuttings. Is that correct?
14 A Yes, sir.
15 Q Now, let me see if I can cut to the chase,
16 and I believe that Mr. Terrill touched on this a
17 little bit.
18 You've got ten or 11 pages in your
19 testimony, between Pages 32 and 42 or 43, something
20 like that, where you criticize the 2004-era borings,
21 those 18 borings. Right?
22 A Yes, sir.
23 Q Nowhere else in your testimony do you mention
24 67 other borings that have been previously done at
25 this site. Is that fair to say?

Page 1468

1 A That's fair to say.
2 Q There's not -- was that an intentional
3 omission from your prefiled testimony, sir?
4 A No, sir.
5 Q You knew about those 67 borings. Right?
6 A Yes, I did.
7 Q In fact, the boring log information for those
8 in some of the previous site characterization had been
9 included in the permit application. Right?
10 A Yes, sir; that's correct.
11 Q No surprise to Pierce Chandler about those --
12 those being in the application?
13 A No, sir.
14 Q Now, let's focus a little bit on the
15 2004 borings that you're critical of. Let's carve
16 aside the other 67 for a moment. Okay?
17 A Okay.
18 Q It's your understanding that those were
19 performed in connection with a boring plan that had
20 been proposed when there was a lateral component
21 planned for the expansion. Right?
22 A That's my understanding; yes, sir.
23 Q There's also a plan to excavate a little
24 deeper in at least one or two cells. Right?
25 A I seem to recall that. I believe that's

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1469

1 right.
 2 Q Now, both the lateral component and the
 3 deeper excavation component of the proposed expansion
 4 were abandoned at some point in time, weren't they?
 5 A That's my understanding; yes, sir.
 6 Q So at some point, this became a vertical-only
 7 expansion. Is that right?
 8 A That is correct.
 9 Q And it remains so today?
 10 A That's my understanding.
 11 Q And the application that we're here for today
 12 is a vertical-only expansion?
 13 A That would be correct.
 14 Q This landfill is not moving further sideways
 15 or going deeper. Right?
 16 A That's my understanding; yes, sir.
 17 Q I believe that you yourself have agreed in
 18 your deposition that BFI would be under no obligation
 19 to do any additional borings at this site -- or would
 20 have been under no additional obligation in connection
 21 with a vertical-only expansion unless the state had
 22 decided that for some reason there was some deficiency
 23 in the prior site characterization. Is that correct?
 24 A Yes, sir.
 25 Q Now, I also understand if we carve aside the

Page 1470

1 18 borings in the 2004 time frame, you agree that the
 2 site, in fact, was adequately characterized by the
 3 original 67 borings. Is that correct?
 4 A That's what it appears to be; yes, sir.
 5 Q You said that to Mr. Gosselink in your
 6 deposition. Right?
 7 A I believe I did.
 8 Q So I take it that any additional borings for
 9 a vertical-only expansion -- any of these other 18
 10 that you're critical of are superfluous. Is that fair
 11 to say?
 12 A I think that's fair to say.
 13 Q They were all extra borings. They weren't
 14 required for the vertical expansion?
 15 A That's true, but they were in the
 16 application.
 17 Q But you just testified that they're not
 18 required to characterize this site any better. Is
 19 that correct?
 20 A That is correct.
 21 Q I believe you've testified, and it's in your
 22 prefiled and I think we discussed it today, that at
 23 least four of the additional 18 2004 borings you don't
 24 have any problem with. Right?
 25 A No, I don't.

Page 1471

1 Q So let's add those four to the 67. Now we've
 2 got 71. The site is even a little better
 3 characterized using those four. Right?
 4 A I would hope so.
 5 Q A little improvement. Right?
 6 A It should be.
 7 Q Okay. And then do you understand, based on
 8 the testimony, that another six of these 18 were
 9 actually continuously sampled, which is one of your
 10 criticisms? Do you understand that from the testimony
 11 that Mr. Snyder gave?
 12 A I heard that as his testimony. That's not
 13 what I saw in the application.
 14 Q But you heard his testimony. Right?
 15 A Yes, I did.
 16 Q You take that at face value. And there were
 17 a continuous coring of six more. Right?
 18 A That's what was represented; yes, sir.
 19 Q And they've testified they actually looked at
 20 the corings?
 21 A I believe he did; yes, sir.
 22 Q So we got at least six more borings that a
 23 geoscientist has said that he looked at, in addition
 24 to the 71 we talked about. Right?
 25 A That seems right.

Page 1472

1 Q So would it be fair to say that the site is
 2 even yet a little bit better characterized, based on
 3 inclusion of those other six?
 4 A If they were what they were represented in
 5 the hearing, yes, that would be true.
 6 Q Now, you do have some criticisms about the
 7 way the boring logs were prepared. Right --
 8 A Yes, sir.
 9 Q -- for at least some of the boring logs of
 10 the 18 in the 2004 time frame?
 11 A Yes, sir; that's correct.
 12 Q I believe I marked as an exhibit during an
 13 exam -- I believe it was Mr. Snyder -- BFI 1. Could
 14 you take a look at that?
 15 A Yes, sir.
 16 Q Do you recognize BFI 1 as at least excerpts
 17 from part of the application for the North Texas 121
 18 application?
 19 A It appears to be related to the 121 permit
 20 application. However, as I point out in the
 21 deposition, the Bates numbers don't match up with the
 22 version that went through hearing or with the permit
 23 version, because in addition to the Bates number, the
 24 document that went through contested hearing actually
 25 was technically complete as part of the Bates

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1473

1 numbering system.
 2 And after the hearing was over and the
 3 permit was issued, the document was reissued with a
 4 Bates number and permit issued as of a certain date.
 5 So this may be an earlier version. I'm not sure what
 6 it is.
 7 Q Well, let's even run with that for a moment.
 8 A Okay.
 9 Q On Page 2 of BFI 1, you've got your seal and
 10 signature. Correct?
 11 A Yes, sir; that's correct.
 12 Q Suggesting that you did the geotech report.
 13 Right?
 14 A That is correct.
 15 Q Mr. Kier -- Robert Kier has signed or affixed
 16 his seal and signed that page as well. Right?
 17 A Yes, sir; that's correct.
 18 Q You two worked on the 121 project together.
 19 Is that correct?
 20 A That is correct.
 21 Q And then as I read this document, there's a
 22 discussion of the subsurface investigation report.
 23 Right?
 24 A Yes, sir.
 25 Q Okay. And is it your recollection that --

Page 1474

1 this is a greenfield site. Right?
 2 A Yes, sir; that's correct.
 3 Q And as part of your boring plan for 121,
 4 you-all did a total of 40 borings at the site. Is
 5 that correct?
 6 A Yes, sir; that's correct.
 7 Q Twenty of those borings were continuously
 8 sampled. Is that correct?
 9 A Yes, sir; that's correct.
 10 Q And then another 20 were done using -- was it
 11 air cuttings or a sample that gave you air cuttings or
 12 wash cuttings?
 13 A Well, it was actually a wash rotary, but we
 14 were using air as the drilling fluid.
 15 Q All right. Now, do you recall the discussion
 16 we had the other day about boring logs and what they
 17 should include?
 18 A Yes, sir.
 19 Q There was some discussion about the inclusion
 20 or exclusion of moisture content information on the
 21 boring logs. Is that correct?
 22 A Yes.
 23 Q Would you flip through BFI 1 to the log for
 24 the Boring B-1?
 25 A Yes, sir.

Page 1475

1 Q Do you see that?
 2 A Yes, sir; I do.
 3 Q And that's got your name on the bottom of
 4 that, doesn't it?
 5 A Yes, sir; it does.
 6 Q And it's got Mr. Kier's name or his business
 7 name and logo on the bottom. Right?
 8 A Yes, sir.
 9 Q This was a boring log for the 121 facility
 10 that was included in the application. Correct?
 11 A Yes, sir; that's correct.
 12 Q And this one was done using the wash rotary
 13 method. Right?
 14 A Yes, sir; that's correct.
 15 Q Can you show me, sir, on this document where
 16 information regarding the moisture content of the
 17 soils that were observed or collected is contained?
 18 A Well, this was not a sample boring, so there
 19 would not be that information.
 20 Q This was a cuttings. Right?
 21 A It was just a borehole actually.
 22 Q But as I understand your testimony -- your
 23 prefiled testimony, you're critical of BFI for not
 24 including information regarding moisture content on
 25 its boring log?

Page 1476

1 A I was critical for them substituting a wash
 2 boring under the guise of it being a sample boring,
 3 was actually the source of my criticism.
 4 Q Let's go to the log for Boring B-2. Flip
 5 through a couple of pages.
 6 A Okay.
 7 Q Do you have it in front of you?
 8 A Yes, sir; I do.
 9 Q B-2 is an air rotary core boring. Right?
 10 A That is correct.
 11 Q So cores were taken in this one. Is that
 12 correct?
 13 A Yes, sir; that's correct.
 14 Q Okay. Could you show me where the
 15 description of the moisture content is included on
 16 B-2?
 17 A There isn't any.
 18 Q Okay. And if you look in that column on the
 19 right that says "moisture content," that's empty.
 20 Right?
 21 A Yes, sir. That's for the laboratory tests;
 22 yes, sir.
 23 MR. CARLSON: Judge, I'll offer BFI 1 at
 24 this point in time.
 25 JUDGE NEWCHURCH: Is there objection?

62 (Pages 1473 to 1476)

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1477

1 MR. RENBARGER: Yes, Judge, there is.
2 And I'm not sure for what purpose but -- and perhaps
3 we can get into it more on redirect, but I think
4 there's a lot of facts that aren't in evidence that
5 distinguishes very much both the purposes of the
6 drillings that took place at 121, the techniques that
7 were utilized and ultimately the boring plan and the
8 purpose of the boring plan, all of which, without
9 understanding this exhibit, could be taken very much
10 out of context.
11 So in the interest of optional
12 completeness, I would think that we would want a bunch
13 of that information into the record before we ruled on
14 its admissibility.
15 MR. TERRILL: That goes to its weight,
16 not its admissibility.
17 JUDGE NEWCHURCH: Yeah. I didn't
18 understand his -- I didn't hear an evidentiary
19 objection. You mentioned optional completeness, but
20 it doesn't appear it's optional completeness of this
21 document. We're talking about other evidence ought to
22 come in. Is that correct?
23 MR. RENBARGER: My concern is that, as I
24 understand this exhibit and the testimony elicited
25 about this exhibit, it was to compare some of the

Page 1478

1 criticisms that Mr. Chandler made regarding the BFI
2 application, and this document is being used to
3 suggest, at least if I understand it correctly, that
4 perhaps Mr. Chandler, in a boring program in another
5 landfill in which he was engaged, may have done the
6 same or similar kinds of procedures of which he's
7 criticizing BFI.
8 And I'm just saying that that is
9 certainly not a fair criticism to the extent that it
10 mischaracterizes the boring program in the 121
11 landfill. And to that extent, I'm not sure that this
12 document is relevant.
13 MR. CARLSON: Boy, that sure sounds like
14 an opportunity for him to try to rehabilitate his
15 witness on redirect.
16 JUDGE NEWCHURCH: I didn't really hear
17 an evidentiary objection. It might be that you want
18 to offer other evidence, but this might be some
19 evidence on that point.
20 MR. RENBARGER: We'll address it on
21 redirect, Judge.
22 JUDGE NEWCHURCH: Is there any other
23 objection?
24 MR. RENBARGER: Not at this time. We'll
25 address it on redirect.

Page 1479

1 JUDGE NEWCHURCH: All right. Then that
2 objection is overruled, and BFI 1 is admitted.
3 (Exhibit BFI No. 1 admitted)
4 MR. BLACKBURN: Your Honor, would it be
5 possible to have a five-minute break?
6 JUDGE NEWCHURCH: Yes; five minutes.
7 (Recess: 4:22 p.m. to 4:31 p.m.)
8 JUDGE NEWCHURCH: Okay. Back on the
9 record. Mr. Carlson?
10 MR. CARLSON: All right.
11 Q (BY MR. CARLSON) A few more questions about
12 North Texas 121, Mr. Chandler.
13 A Okay.
14 Q The North Texas 121 site is approximately 450
15 acres. Is that correct?
16 A I think that's the footprint size. Is that
17 what you're referring to?
18 Q I did not see whether that was a footprint
19 size or was the whole enchilada, if you will.
20 A I think the whole permit area is over
21 1,000 acres, as I recall.
22 Q How much of that -- when you did your --
23 prepared your boring plan, were you looking
24 specifically where the footprint was?
25 A Pretty much.

Page 1480

1 Q You-all did 40 borings as part of that plan.
2 Is that correct?
3 A Yes, sir; that's correct.
4 Q So if my math is correct, you did
5 approximately one boring for every 11 acres at North
6 Texas 121. Right?
7 A Yes, sir.
8 Q And the Sunset Farms facility -- the entire
9 facility is 350 acres, plus or minus an acre. Is that
10 correct?
11 A I believe that's what I've heard.
12 Q Okay. And we've had discussions about number
13 of borings. If you look at -- divide 85 into
14 350 acres, that's roughly one boring for every four
15 acres at that site. Is that correct?
16 A Yes, sir; that's correct.
17 Q Would you turn to the application -- it
18 should be Volume 2 of the application, sir -- and open
19 up to Page APP 000728?
20 A Which volume is that?
21 Q It should be Volume 2 of 3.
22 A Okay. And the page?
23 Q APP 000728. It's a page that has on the
24 top -- it says, "average material properties."
25 A Yes, sir, it does.

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1481	Page 1483
<p>1 Q Do you have that in front of you?</p> <p>2 A Yes, sir, I do.</p> <p>3 Q Would you agree that the properties shown on</p> <p>4 APP 000728 are fairly typical of the properties that</p> <p>5 we would expect to see for the Taylor clays?</p> <p>6 A You mean the Taylor marls, sir?</p> <p>7 Q Yes, sir.</p> <p>8 A Yes, I would agree.</p> <p>9 Q All right. Let's -- I believe your second</p> <p>10 criticism in your category of criticisms that are in</p> <p>11 your prefiled had to do with the piggyback vertical</p> <p>12 expansion. Let's talk about that a little bit.</p> <p>13 As I understand your criticism -- and</p> <p>14 you've taken the position that the waste inside the</p> <p>15 existing landfill should be considered as an unstable</p> <p>16 area and evaluated pursuant to 330.305 of the MSW</p> <p>17 rules. Is that correct?</p> <p>18 A That is correct.</p> <p>19 Q Okay. Now, that's not consistent with TCEQ's</p> <p>20 position about whether or not waste in existing</p> <p>21 landfills should be considered in that manner. Is</p> <p>22 that correct?</p> <p>23 A I don't know.</p> <p>24 Q You haven't bothered to ask the agency?</p> <p>25 A I have asked, and I've gotten different</p>	<p>1 the rules, is it, sir, that an applicant has to</p> <p>2 consider leachate or leachate levels in an existing</p> <p>3 facility for the purposes of the unstable areas</p> <p>4 analysis or demonstration. Is that correct, sir?</p> <p>5 A Again, I don't know.</p> <p>6 Q And you haven't asked anybody at the agency.</p> <p>7 Right?</p> <p>8 A I have asked, and I've gotten different</p> <p>9 answers, as in your previous question.</p> <p>10 Q Can you point me to another -- any other</p> <p>11 case, any other instance, where the agency has taken</p> <p>12 the position that the applicant has to consider</p> <p>13 leachate levels in the existing waste mass?</p> <p>14 A No, I cannot.</p> <p>15 Q And, again, it certainly didn't appear to</p> <p>16 take that position in this case. Fair to say?</p> <p>17 A Based on the declaration of technical</p> <p>18 completeness, I would agree.</p> <p>19 Q Are you aware of any agency technical</p> <p>20 documents -- I'm talking about TCEQ technical guidance</p> <p>21 documents -- that would support your theory that</p> <p>22 either the waste or leachate in the waste should be</p> <p>23 considered as part of the 330.305 analysis?</p> <p>24 A No, I do not.</p> <p>25 Q Now, as I read your prefiled testimony, I</p>
Page 1482	Page 1484
<p>1 answers.</p> <p>2 Q Can you point to me -- can you point me to a</p> <p>3 single occasion in which the agency has taken that</p> <p>4 position, sir?</p> <p>5 A No.</p> <p>6 Q It certainly hasn't taken that position in</p> <p>7 this case. Is that fair to say?</p> <p>8 A I don't believe so.</p> <p>9 Q You don't believe that's fair to say, or you</p> <p>10 don't believe it's taken that position, just to get a</p> <p>11 clear record?</p> <p>12 A Okay. I don't believe it's taken that</p> <p>13 position from what I can tell from the application.</p> <p>14 Q To make it completely clear, the agency has</p> <p>15 not taken the position that the waste -- existing</p> <p>16 waste had to be considered by BFI, as applicant, in</p> <p>17 connection with its unstable area analysis. Correct?</p> <p>18 A My answer would be by virtue that it was</p> <p>19 declared technically complete, I'm assuming what their</p> <p>20 opinion was, but I don't actually know what their</p> <p>21 opinion was.</p> <p>22 Q Okay. Let me ask you about a variation --</p> <p>23 slight variation of the same question in terms of</p> <p>24 considering leachate in the existing waste. Okay?</p> <p>25 It's not the agency's interpretation of</p>	<p>1 understand that, at least with respect to your</p> <p>2 position, you rely heavily on an EPA manual. Is that</p> <p>3 correct?</p> <p>4 A I wouldn't say "heavily." It's just one of</p> <p>5 the documents that I referenced.</p> <p>6 Q Okay. Well, you cite a document called EPA</p> <p>7 Solid Waste Disposal Facility Criteria, Technical</p> <p>8 Manual, in connection with your discussion of unstable</p> <p>9 areas. Is that correct?</p> <p>10 A Absolutely.</p> <p>11 Q Would you pull Exhibit PC-4 out, please, sir?</p> <p>12 A Sure.</p> <p>13 Q Maybe I misspoke. It's PC-5.</p> <p>14 A Okay. I have that.</p> <p>15 Q As I understand your prefiled testimony, you</p> <p>16 cite some language on Page 48 of PC-5 in support of</p> <p>17 your contention that the existing waste has to be</p> <p>18 looked at in terms of the unstable areas. Is that</p> <p>19 correct?</p> <p>20 A Of some effect; yes, sir.</p> <p>21 Q In particular, I believe you point to the</p> <p>22 language at the top right-hand column of Page 48, the</p> <p>23 bullet point. Right?</p> <p>24 A Yes, sir; that's correct.</p> <p>25 Q Could you read that bullet point for the</p>

64 (Pages 1481 to 1484)

TUESDAY, JANUARY 27, 2009

VOLUME 6

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1485

1 record, please?
 2 A Sure. "A closed landfill as the foundation
 3 for a new landfill ('piggybacking') may be unstable
 4 unless the closed landfill has undergone complete
 5 settlement of the underlying waste."
 6 Q Sunset Farms is not a closed landfill, is it?
 7 A No, sir; it's not.
 8 Q One could also read this sentence a little
 9 different. It says it may be unstable. Correct?
 10 A That is correct.
 11 Q So it means it may also be stable. Right?
 12 A That is correct.
 13 Q Would it be fair to say that at least the
 14 bulk of your prefiled testimony has to do with slope
 15 stability concerns?
 16 A I thought it was kind of divided among all
 17 six, but I'm not sure what your reference point is.
 18 Q I'm just kind of doing it in terms of the raw
 19 number of pages. Maybe that's not a fair analysis.
 20 A That's probably not.
 21 Q Nevertheless, you did spend a number of pages
 22 in your testimony expressing various concerns about
 23 slope stability at Sunset Farms with this proposed
 24 vertical expansion. Correct?
 25 A That would be correct.

Page 1486

1 Q Now, we've agreed that a three-to-one
 2 excavation slope is more or less the standard
 3 excavation slope in Texas. Right?
 4 A Yes, sir.
 5 Q And Sunset Farms, in fact, has three-to-one
 6 excavation slopes. Right?
 7 A Yes, sir; it does, or it did. I believe I
 8 understood that excavation had been finished and they
 9 were filling.
 10 Q Right. Well, you got to my next question.
 11 How many more excavation slopes are planned for this
 12 site in connection with the proposed vertical
 13 expansion?
 14 A As near as I can tell, none now.
 15 Q There won't be any more. Is that right?
 16 A That's my understanding.
 17 Q The last cell has already been constructed
 18 and it's being filled with waste as we speak. Right?
 19 A I believe that's what I heard.
 20 Q Based on everything you've seen or heard in
 21 connection with this litigation, sir, how many
 22 excavation slope failures have occurred at the BFI
 23 Sunset Farms site since it was first opened 26 years
 24 ago?
 25 A I do not know.

Page 1487

1 Q Would it surprise you if that number was
 2 zero?
 3 A Not particularly.
 4 Q Three-to-one is pretty normal -- right --
 5 particularly for these soils?
 6 A Yes, sir.
 7 Q I believe we've also agreed that four-to-one
 8 is more or less the standard for the aerial fill or
 9 the -- you're tripping me over. I'm going to go back
 10 to side slopes, Mr. Chandler.
 11 Four-to-one is a standard aboveground
 12 side slope. Correct?
 13 A Pretty much.
 14 Q I believe in your testimony you make an
 15 assertion that slope stability, particularly with
 16 respect to the final waste slopes, is inversely
 17 related to the height and length of a particular
 18 slope; that is, something along the lines of the
 19 higher the waste mass and the longer the slope, the
 20 less stable it will be, all other things being equal.
 21 Is that correct?
 22 A Yes, sir; that's correct.
 23 Q What's the maximum height of the waste column
 24 projected for Sunset Farms if this application is
 25 granted?

Page 1488

1 A I seem to recall something on the order of
 2 150 to 170 feet, but I could be wrong. I can refer to
 3 a cross-section and tell you, but that's what I
 4 recall.
 5 Q Now, you worked on the North Texas 121
 6 project. Is that correct?
 7 A Yes, sir; that's correct.
 8 Q Okay. That one had four-to-one side slopes?
 9 A Yes, sir.
 10 Q And the maximum height of the waste column
 11 for North Texas 121 was what, sir?
 12 A In the 300-foot range.
 13 Q Almost twice as tall. Is that right?
 14 A Yes, sir.
 15 Q Was that permit application granted?
 16 A Yes, sir.
 17 Q What about the Ellis County facility you
 18 worked on, how high was the maximum waste column at
 19 that facility?
 20 A You asked me that in deposition, and I don't
 21 recall what -- the height, but Mr. Gosselink indicated
 22 it was higher than I thought.
 23 Q It's a big one, isn't it?
 24 A You know I really -- when I drive down 45, it
 25 doesn't look that big, I think was my comment during

65 (Pages 1485 to 1488)

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1489

1 my deposition.
2 Q You just won't agree with me, then, that it's
3 somewhere in the realm of 300 feet at Ellis County?
4 A I don't know.
5 Q In any event, the Ellis County permit --
6 application was granted as well. Right?
7 A I assume so because they continue to operate,
8 but I had -- as I said, I had very little to do with
9 Ellis County.
10 Q That facility, to your knowledge, has
11 four-to-one side slopes?
12 A I don't know what Ellis County has.
13 Q You did work on Skyline. Right?
14 A Yes, sir; I did.
15 Q What's the maximum waste column at Skyline,
16 sir?
17 A I believe it's in the 250-, 270-foot range.
18 Q Roughly 100 feet taller than Sunset Farms as
19 proposed. Right?
20 A Yes, sir.
21 Q What were the side slopes -- or what are the
22 side slopes at Skyline?
23 A The original design, they started off at
24 four-to-one up to a certain elevation, and then they
25 flattened to a five-to-one, and they went a little

Page 1490

1 higher and they flattened to a six-to-one, and then
2 they went a little higher. And I think we even got as
3 flat as seven-to-one.
4 Q That one certainly had some four-to-one slide
5 slopes. Right?
6 A Yes, sir.
7 Q And that permit application was granted as
8 well. Right?
9 A Yes, sir; it was.
10 Q None of those were denied on slope stability
11 grounds?
12 A I don't believe so.
13 Q Now, there was some discussion, I believe, in
14 my redirect of Mr. Adams that talked about the concept
15 of interim slopes. Do you recall that?
16 A Not really. Could you refresh me?
17 Q What's an interim slope?
18 A An interim slope, as I use it, is where we've
19 got an intermediate stage of filling prior to final
20 filling. The way it's usually addressed in the
21 geotechnical literature is where we've got an
22 excavation for a landfill and we're proceeding across
23 the floor. The landfill is at full height, but
24 because we're not all the way against the far side, we
25 don't get the buttress from the excavation sidewalls.

Page 1491

1 So the interim slope is actually higher than the final
2 slope.
3 Q The classic interim slope -- "interim" means
4 short-term -- right -- in a sense?
5 A Actually, it's used, in this case, as
6 intermediate between initial filling and final
7 filling.
8 Q The classic interim slope involves waste.
9 Correct?
10 A Well, it could not only involve waste, but if
11 a forced closure occurred, that could end up being the
12 final configuration of the landfill proper.
13 Q All right. And I believe you testified in
14 your deposition that the steepness of an interim slope
15 can vary in Texas, anything on the range of one-to-one
16 on the one hand to seven or eight-to-one on the other.
17 Do you recall that?
18 A I think we were talking about working faces.
19 I don't recall that being applied to interim slopes.
20 Q All right. Sunset Farms is proposing no more
21 than a three-to-one working face slope. Is that
22 correct?
23 A Now that they're all the way across, I'm not
24 even sure what it is.
25 Q You just don't know as you're sitting here

Page 1492

1 today?
2 A Yes, sir; that's correct.
3 Q But in any event, that three-to-one ratio
4 falls between one-to-one and seven or eight-to-one.
5 Right?
6 A Yes, it does.
7 Q There is no MSW rule in Texas that identifies
8 the things that an applicant must show to demonstrate
9 slope stability, is there?
10 A I don't believe that there is.
11 Q There's no checklist of things you've got to
12 include?
13 A What I have heard the agency say is there is
14 not.
15 Q There's no laundry list?
16 A That's my understanding.
17 Q And there's also no TCEQ rule that
18 specifically dictates the things that an applicant has
19 to actually include in the application with respect to
20 slope stability. Is that correct?
21 A That is correct.
22 Q No technical guidance manual either.
23 Correct?
24 A No, sir.
25 Q Let's talk about the sort of things that a

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1493

1 reasonably prudent geotechnical engineer would do to
2 analyze the stability of slopes for a prospective MSW
3 landfill design. Okay?
4 A Okay.
5 Q One thing he or she would do would be
6 identify worst-case scenarios. Isn't that right? You
7 would want to find, for lack of a better term, soft
8 spots where potential slope failures are most likely
9 to occur?
10 A By that do you mean, like, critical layers
11 where sliding would be expected to occur? I'm not
12 sure I follow your question.
13 Q Well, there are different types of slope
14 stability analysis. Right? There are rotational
15 analysis -- excuse me. There are rotational failures.
16 There are block-types of failures, and we've talked
17 about the infinite failures. Right?
18 A Yes, sir; that is correct.
19 Q For each of those cases, a prudent geotech
20 would go through and look at the configuration of the
21 site, what's going to happen out there and find -- try
22 to identify the slope or slopes for those various
23 scenarios that are most likely to fail. Right?
24 A I don't know that I would quite characterize
25 it that way. There might be a number of situations

Page 1494

1 that would be suspect to start with. You may not be
2 able to predict where the failure is going to occur in
3 advance.
4 One of the reasons you analyze it is to
5 try to find out where it will. Now, there's lots of
6 situations where the weak link is indicated, but not
7 necessarily.
8 Q But you go through, look at various
9 scenarios, analyze it looking in terms of the site
10 geometry and conditions and try to hone in on those
11 worst-case scenarios. Right?
12 A Yes, sir; that is correct.
13 Q And then at some point, he or she would
14 determine the material properties for the various
15 materials that are going to be used at the facility.
16 Right?
17 A Well, you may not determine -- he or she. It
18 may be what's there, so it would be to assess what's
19 there, as opposed to choosing them.
20 Q You look at the site soils, for example.
21 Right?
22 A Yes, sir.
23 Q The geosynthetics that you're planning to
24 use?
25 A Yes, sir.

Page 1495

1 Q And the waste?
2 A Yes, sir.
3 Q And for the purposes of this part of the
4 analysis, knowing and using site-specific properties
5 as a starting point for your calculations, that's kind
6 of the Cadillac of information, isn't it?
7 A Could you rephrase that? I'm not sure I
8 follow your question.
9 Q Sure. I'm just saying a prudent geotech, as
10 he or she is looking at these -- the material
11 properties, the actual data from the properties that
12 you have; for example, the geotechnical data of the
13 soils, the properties of the proposed liners, and to
14 the extent you can figure out what the shear strengths
15 of wastes are, that sort of information, that's the
16 Cadillac. That's the best starting point for
17 determining what sort of information to use for your
18 calculation. Is that fair to say?
19 A I don't know that I would call it the
20 Cadillac. I would say that would be the most
21 reasonable and realistic approach. What I think I'm
22 interpreting your question to ask -- and let me
23 rephrase.
24 Q I asked you a similar question and let me
25 just -- in deposition. Let me show you your

Page 1496

1 deposition and have you read it and see if you agree
2 with that.
3 A Okay.
4 MR. CARLSON: Sorry about this, Judge.
5 May I approach?
6 JUDGE NEWCHURCH: Yes, sir.
7 Q (BY MR. CARLSON) Do you remember giving a
8 deposition in January, Mr. Chandler?
9 A Yes, sir.
10 Q I'm going to ask you to read a question --
11 actually, a question that starts on Line 19 of
12 Page 210 of your deposition and the answer that ends
13 on Line 21.
14 A Okay. So start here?
15 Q Nineteen through 21.
16 MR. RENBARGER: Excuse me. Is that page
17 number 210? I couldn't --
18 MR. CARLSON: It's 210.
19 MR. RENBARGER: Thank you.
20 A Start here?
21 Q (BY MR. CARLSON) Right here. Tell me if I
22 read this right.
23 A Okay.
24 Q "Question: We earlier called site-specific
25 data a Cadillac. Right?"

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1497

1 A Right.
2 Q Your answer?
3 A "Yes, sir." But you didn't ask site
4 specific. That's what I was trying to ask you, if you
5 mean site-specific data because I don't believe your
6 question phrased it --
7 Q Maybe I asked it wrong. I'm sorry.
8 A Or if you did, I misunderstood.
9 Q My question is, as this reasonably prudent
10 geotech is going about the process of determining what
11 sort of properties to use for the purposes of his or
12 her analysis and calculations, using site-specific
13 data -- and I'm talking about site-specific data for
14 geotechnical properties of the soils or the types of
15 geomembranes or geocomposites that are planned and
16 whatnot, that's the Cadillac, at least in terms of the
17 starting point for the geotechnical analysis or slope
18 stability analysis?
19 A Yes, sir.
20 Q Okay. A reasonably prudent geotech would
21 look at various types of potential slope failures,
22 including the rotational failures, block failures and
23 the interface types of failures -- is that correct --
24 the near failures?
25 A Yes, sir; that's correct.

Page 1498

1 Q Now, he or she would determine, based on the
2 inputs, a factor of safety. Correct?
3 A Yes, sir; that's correct.
4 Q And in terms of the rotational and block
5 failures, you divide resisting moments by driving
6 moments. Right?
7 A That's true for all of it. That's true for
8 all of them.
9 Q Actually, on the interface you use resisting
10 forces versus driving forces.
11 A Well, I use the terms interchangeably, so it
12 would be the same. There is no difference in
13 calculating factor of safety.
14 Q And at that point, he or she would look at
15 the results and determine if the factor of safety that
16 was calculated was acceptable. Is that right?
17 A Yes, sir; that is correct.
18 Q Using engineering judgment?
19 A Well, they might even apply it to a
20 particular standard.
21 Q A reasonably prudent geotech would consider
22 both peak and residual strengths of materials. Is
23 that right?
24 A As appropriate; yes, sir.
25 Q Applying engineering judgment?

Page 1499

1 A Again, it may be specified because of the
2 type of situation you're in.
3 Q This reasonably prudent geotech would include
4 both total and effective strength parameters.
5 Correct?
6 A Again, as appropriate, because they're two
7 different conditions that you're modeling in terms of
8 time.
9 Q And he or she, in an ideal situation, would
10 run numerous iterations of the modeling, tweaking
11 values to ensure that the ultimate design will be
12 stable from a slope stability perspective?
13 A Maybe not numerous, but typically at least
14 some iterations unless it's very obvious where the
15 failure surface is.
16 Q Don't hurt to run more. Right?
17 A Well, but you can pursue something that
18 immediately appears to be an unreasonable situation.
19 You wouldn't keep pursuing that.
20 Q And assuming you've got a professional, it's
21 fair to say that he or she should be allowed to use or
22 employ his engineering judgment in this process. Is
23 that correct?
24 A Although engineering judgment should not be a
25 substitute for, you know, regulatory requirements or

Page 1500

1 the general standard of practice.
2 Q When you do engineering work, do you
3 routinely employ your engineering judgment?
4 A Yes, sir; I do.
5 Q Now, there are various computer programs that
6 have been developed to analyze slope stability. Isn't
7 that correct?
8 A Yes, sir; that's very correct.
9 Q This includes the PC STABL program that
10 Mr. Adams testified that he used. Right?
11 A Yes.
12 Q It includes the UTEXAS programs that you've
13 said you used in the past?
14 A Yes, sir.
15 Q Are these the types of programs that
16 geotechnical professionals commonly use and rely upon
17 in doing their slope stability analyses for MSW
18 facilities?
19 A If they use digital solutions; yes, sir.
20 Q Do you have PC STABL on your own computer?
21 A No, I do not.
22 Q Do you know how much a PC STABL license --
23 strike that.
24 Do you know how much a license to have
25 PC STABL on a personal computer would cost?

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1501

1 A No, I do not.
2 Q Does a couple thousand dollars sound right?
3 A I don't know.
4 Q But nevertheless, you do have access to the
5 UTEXAS3 software when you want to analyze slope
6 stability?
7 A Yes. And I have used UTEXAS2 on my own
8 machine.
9 Q And as I think we discussed -- you may
10 dispute this a little bit, but you dedicated a number
11 of pages of your prefiled criticizing the slope
12 stability calculations that Mr. Adams did, or at least
13 presented. Is that correct?
14 A That is correct.
15 Q But you yourself, you never ran a
16 computer-based stability model at all in connection
17 with your work on this project, did you?
18 A I did not.
19 Q Okay. You didn't do any computer-based
20 modeling for either a rotational or a translational
21 failure?
22 A I did not.
23 Q Okay. You testified that so far you've been
24 compensated up to \$50,000 for your work on this
25 project alone?

Page 1502

1 A I believe I said it might be in that range.
2 I don't recall the number.
3 Q Do you know how much the other testifying
4 experts that TJFA has retained have billed so far for
5 their work?
6 A I do not.
7 Q Did you ever attempt to get a budget to
8 perform any sort of computer-based modeling in terms
9 of analyzing slope stability?
10 A I did not.
11 Q The only calculations you performed were some
12 hand-calculations for this infinite slope analysis.
13 Isn't that right?
14 A That is correct.
15 Q These are basically simple hand-calculations?
16 A Even though they're simple, they're very
17 rigorous.
18 Q And, in fact, a copy of some calculations
19 that Mr. Gosselink asked you to do have been
20 previously marked but not offered or admitted at this
21 point in time. Will you please pull BFI 6 in front of
22 you?
23 A Sure. Yes, I have it.
24 Q It's your signature on BFI 6. Is that
25 correct?

Page 1503

1 A Yes, sir; it is.
2 Q This is a document that you prepared -- I
3 guess it was actually during a break during your
4 deposition. Is that correct?
5 A Oh, I don't think it was during the break. I
6 thought it was actually during the deposition, as I
7 recall.
8 Q Marked as an exhibit, though. Right?
9 A Yes, sir.
10 Q And you were charged with using -- doing some
11 interface stability calculations. Correct?
12 A What I recall was being asked what a slope
13 ratio would be compared to a slope angle.
14 Q Using conservative inputs. Correct?
15 A This has nothing to do with inputs. This is
16 the equivalents. This is the equivalents from a slope
17 angle to a horizontal to vertical slope ratio.
18 Q This -- BFI 6, that's your work product from
19 the exercise in deposition. Is that correct?
20 A That is correct.
21 MR. CARLSON: Applicant offers BFI 6,
22 Judge.
23 JUDGE NEWCHURCH: Any objection?
24 MR. RENBARGER: No.
25 JUDGE NEWCHURCH: It's admitted.

Page 1504

1 (Exhibit BFI No. 6 admitted)
2 MR. CARLSON: Judge, I don't know how
3 much longer you want to go. I'm closing in on a
4 natural breaking spot. Five more minutes?
5 JUDGE NEWCHURCH: Sure.
6 Q (BY MR. CARLSON) Mr. Chandler, in reviewing
7 your prefiled, you have some discussions about factors
8 of safety and the appropriate factor of safety to use.
9 Correct?
10 A Yes, sir.
11 Q I don't believe you ever came out and said
12 exactly what the appropriate factor of safety or
13 factors of safety are that should have been used by
14 BFI in connection with this application, did you?
15 A I thought I said that the EPA table
16 represented a fair statement of what they should be.
17 I thought that was in my prefiled testimony.
18 Q Well, you've taken the position in other
19 proceedings that MSW applicants should actually use
20 the 2.0 factor of safety for long-term conditions.
21 Isn't that correct?
22 A It would depend on the quality of the data.
23 The table obviously has a whole range of values,
24 depending on the quality of data and the environmental
25 consequences of the -- of failure. There's actually a

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1505

1 matrix in that table. So 2.0 might be appropriate
 2 under certain conditions, or 1.5 would be appropriate
 3 under other conditions.
 4 Q That gets me back to my question. You've
 5 pointed to a table in an EPA document. Correct?
 6 A Yes.
 7 Q It's got a little grid in it?
 8 A Yes, sir.
 9 Q But nowhere in your testimony have you
 10 actually just come out and said, "BFI should have used
 11 1.5 for its -- as the factor of safety for its
 12 long-term calculations," did you?
 13 A I don't -- I thought I had referred to the
 14 table. I don't recall what I --
 15 Q I mean, the table is a resource, but --
 16 A Sure.
 17 Q -- it doesn't go to the actual factor of
 18 safety that you believe BFI should have used here?
 19 A If you had low-quality data, then it should
 20 be a two.
 21 Q For long-term conditions. Is that correct?
 22 A Well, that's for the conditions specified.
 23 It doesn't differentiate between long-term and
 24 short-term conditions.
 25 Q So is it your position -- you say it's based

Page 1506

1 on whether or not you had low-quality data. That's
 2 your testimony. Right?
 3 A Yes, sir.
 4 Q Is it your position that BFI had low-quality
 5 data and so it should have used a factor of safety of
 6 two?
 7 A The explanation given in the -- or the lack
 8 of explanation for the data in the application and the
 9 absence of any sort of testing or correlations that
 10 were done would indicate to me it's low-quality data
 11 because it was based on some assumption that is not
 12 even provided in the application.
 13 Q Are you aware, sir, of any other MSW
 14 application, either you've been involved in or you
 15 just heard professionally, where the TCEQ required the
 16 applicant to use a factor of safety of 2.0?
 17 A No.
 18 Q Are you aware of any other application you've
 19 seen or reviewed where the applicant itself employed,
 20 or it is engineer employed, a factor of safety of 2.0
 21 for an MSW application?
 22 A No. For a reasonably conducted, it would
 23 typically -- or a reasonably conducted stability
 24 analysis, it would be typically around 1.5.
 25 Q You've used that number, 1.5, in your own

Page 1507

1 calculation before. Is that correct?
 2 A I have indeed. I have indeed.
 3 Q I might be able to cut this short. You've
 4 actually sent some correspondence to Mr. Gosselink in
 5 which you employed the 1.5 measurement as the factor
 6 of safety you looked at. Is that correct?
 7 A Yes, sir; that's correct.
 8 Q I believe you used the 1.5 factor of safety
 9 as the measuring stick, if you will, for the North
 10 Texas 121 project you worked on. Isn't that right?
 11 A Yes, sir; that's correct.
 12 Q Earlier during my exam, I asked you about the
 13 soils in the Taylor formation. Do you remember that?
 14 A There were several questions.
 15 Q And I believe you testified the soils are
 16 fairly -- or let me get your direct words here.
 17 At one point, you've described them as
 18 remarkably uniform, didn't you?
 19 A I may have.
 20 Q And we looked a little while ago at the table
 21 of information in the application that described the
 22 soil testing results for the facility. Right?
 23 You said you agreed with those?
 24 A Yes, sir.
 25 Q Okay. Let me show you -- well, you've

Page 1508

1 also --
 2 MR. CARLSON: If I may approach, Judge?
 3 JUDGE NEWCHURCH: Yes, sir.
 4 Q (BY MR. CARLSON) You've testified that the
 5 TDSL site and the Sunset Farms site are very similar
 6 in terms of the geology. Is that correct?
 7 A Yes, sir.
 8 Q I'm going to hand you a document I showed
 9 somebody on the stand the other day. It's called the
 10 Supplement to Performance Standard Design Criteria for
 11 the Texas Disposal Systems Landfill, prepared by
 12 Dr. Kier. Is that correct?
 13 A Well, it looks like there were three people
 14 that actually prepared it.
 15 Q Another one is Mr. Stecher. Right?
 16 A Yes, sir.
 17 Q He's a testifying expert witness for TJFA in
 18 this proceeding. Is that correct?
 19 A Yes, sir.
 20 Q Will you read a sentence into the record from
 21 Page 24 under Tab 2 of this particular document? It's
 22 the sentence that starts here with "the narrow range."
 23 A "The narrow range between the percent passing
 24 the No. 200 mesh sieve, 95 to 99 percent, and between
 25 the lowest and highest plasticity (PI) 30 to 44,

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

Page 1509

1 indicates that the weathered Taylor and the overlying
2 soil are remarkably uniform, homogeneous and
3 isotropic."
4 Q Could you pull out the table from the EPA
5 document that you were referring to earlier, sir? I
6 believe it's somewhere around Page 55 of the EPA
7 manual -- PC-5, Page 55.
8 A Yes, sir.
9 Q All right. What is the Footnote 1?
10 A Footnote 1 is, "The uncertainty of the
11 strengths measurements is smallest when the soil
12 conditions are uniform and high-quality strength test
13 data provide a consistent, complete and logical
14 picture of the strength characteristics."
15 MR. CARLSON: Judge, this might be a
16 good time to break.
17 JUDGE NEWCHURCH: Let's go off the
18 record briefly to talk about scheduling.
19 (Recess: 5:09 p.m. to 5:11 p.m.)
20 JUDGE NEWCHURCH: Back the record.
21 We're going to break now. The parties should be
22 prepared tomorrow for cross-examination of
23 Mr. Chandler, Dr. Kier; NNC witnesses Rogers,
24 Williams, Andrews, Usher, Wells and Winchell and
25 Mr. Stecher.

Page 1510

1 Again, concerning the weather, check the
2 SOAH website. You can also call the main number.
3 That's 475-4993. I feel like a TV reporter. And if
4 you're told that we're closed, you can assume that we
5 will reconvene about a half hour after the opening
6 time, and it sounds like at the worst that will be
7 sometime mid-morning or so.
8 So we are adjourned until nine o'clock
9 or until SOAH reopens tomorrow.
10 (Proceedings recessed at 5:12 p.m.)
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