

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

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| <p style="text-align: center;">TRANSCRIPT OF PROCEEDINGS BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS TEXAS COMMISSION ON ENVIRONMENTAL QUALITY AUSTIN, TEXAS</p> <p>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</p> <p style="text-align: center;">HEARING ON THE MERITS WEDNESDAY, JANUARY 28, 2009</p> <p>BE IT REMEMBERED THAT AT approximately 9:04 a.m., on Wednesday, the 28th 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 Steven Stogel, a Certified Shorthand Reporter of: Volume 7 Pages 1511 - 1779</p> | <p style="text-align: right;">Page 1513</p> <p>1 A Good morning, Mr. Carlson. 2 Q At the end of yesterday, you recall we had 3 been discussing slope stability issues. Correct? 4 A Yes, sir, that's correct. 5 Q I just wanted to ask you a couple of final 6 questions about that. Do you recall some questions 7 that I had about the height of waste columns at 8 certain landfills in Texas? 9 A I remember a line of questions where we 10 mentioned other sites, yes, sir. 11 Q And we talked about the excavation slopes and 12 the side slopes, the aboveground side slopes at 13 various facilities as well. Do you remember that? 14 A Yes, sir. 15 Q Okay. 16 MR. CARLSON: May I approach, Judge? 17 JUDGE NEWCHURCH: Yes, sir. 18 (Exhibit BFI No. 10 marked) 19 Q (BY MR. CARLSON) Mr. Chandler, I've handed 20 you a document that I will represent to you -- 21 A No, you didn't. 22 Q Oh, has the court reporter not handed it to 23 you? I believe the document he's handed you has been 24 labeled as Exhibit BFI-10. Is that correct? 25 A It's not labeled, sir. Yes, sir, it's now</p> |
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| <p style="text-align: right;">Page 1512</p> <p>1 P R O C E E D I N G S 2 WEDNESDAY, JANUARY 28, 2009 3 (9:04 a.m.) 4 JUDGE NEWCHURCH: We're on the record. 5 It is four minutes after 9:00 a.m., January 28th. 6 This is the continuation of the hearing in 582-08-2178 7 concerning BFI. And are there any preliminary matters 8 this morning? 9 MR. CARLSON: No, Your Honor. 10 JUDGE NEWCHURCH: I think when we left 11 off yesterday, Mr. Carlson, you had just completed 12 your cross of Mr. Chandler. Is that right? 13 MR. CARLSON: I don't think I completed 14 it. I believe I stopped mid redirect. 15 JUDGE NEWCHURCH: Okay. For some 16 reason, I thought you were done. Okay. Then you may 17 proceed. 18 MR. CARLSON: Thank you, Judge. 19 PRESENTATION ON BEHALF OF TJFA, L.P. (CONTINUED) 20 PIERCE L. CHANDLER, JR., 21 having been previously sworn, continued to testify as 22 follows: 23 CROSS-EXAMINATION (CONTINUED) 24 BY MR. CARLSON: 25 Q Good morning, Mr. Chandler.</p> | <p style="text-align: right;">Page 1514</p> <p>1 labeled BFI-10. 2 Q Okay. Yesterday I believe you testified that 3 you worked for TDSL on a permit modification for the 4 Subtitle D upgrades for that facility in the 5 mid-1990s. Is that correct? 6 A Yes, I did. 7 Q And does this appear to be a few pages from 8 that particular upgrade -- modification? 9 A Yes, it does. 10 Q And there are a couple of fill 11 cross-sections, the last two pages of this four-page 12 document. Do you see that? 13 A Yes, sir, I do. 14 Q Okay. Is that your seal to the right-hand 15 corner above those fill cross-sections? 16 A Yes, sir, it is. 17 Q Will you look with me at the last page of 18 BFI-10? It's the fill cross-section for the D-D 19 prime? 20 A Yes, sir. 21 Q Now, this is a document you prepared. Is 22 that correct? 23 A It's actually a document that I modified. 24 Q Okay. 25 A If you'll notice, I added some information to</p> |
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1 it relative to the -- I'm having a hard time reading
2 it. It's been reduced, but I believe it says to
3 include or add leachate collection system as
4 the revision. John Burkes actually did the original
5 document. I added details to John Burkes' document,
6 and so when I did the documents, I indicated what I
7 had added to the document and resealed the document.
8 Q Thanks for that clarification. So, for
9 example, the information regarding collector drains,
10 that's the sort of information you added to this
11 document?
12 A Yes, sir, that is correct.
13 Q Okay. Looking at this document, what is the
14 maximum waste column represented in this D-D prime
15 fill section?
16 A I don't have a scale, but it looks like the
17 top of the landfill is maybe 800, 820 feet, maybe
18 looking at D-D section. And in that area where the
19 maximum height occurs, it looks like maybe the
20 excavation could be as deep as maybe 650. So maybe 70
21 feet, 80 feet, something on that order.
22 Q Actually, around 820 minus something around
23 650 would be about 170 feet.
24 A I'm sorry. I mis-subtracted. You are
25 correct.

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1 Q Okay. So at least this document represents a
2 maximum waste column at the TDSL facility of
3 approximately 170 feet. Correct?
4 A That would appear to be correct, yes, sir.
5 Q And the document shows the side slope for
6 this particular facility, doesn't it?
7 A Yes, sir.
8 Q Okay. And that's four-to-one. Right?
9 A It's identified as four-to-one on the outer
10 edge, and then it rounds off. This is one of those
11 round sites that I mentioned relative to Skyline
12 yesterday. This is another example of that.
13 Q And it shows the excavation slopes. Correct?
14 A Yes, sir, it does.
15 Q And what are the excavation slopes predicted
16 on BFI-10?
17 A On Section D-D, it indicates one-to-one usual
18 mass is the number. So I would interpret that to be a
19 one-to-one.
20 Q And one-to-one is steeper than three-to-one.
21 Right?
22 A Yes, sir, it is.
23 Q Which is the excavation slope at Sunset
24 Farms. Correct?
25 A Yes, sir, that is correct.

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1 Q Are you aware of any slope failures --
2 excavation slope failures that have occurred at the
3 TDSL facility, sir?
4 A I am not.
5 Q Are you aware of any slope failures of any
6 sort that have happened at the TDSL facility, sir?
7 A No, I am not.
8 Q All right. Let's move forward to your
9 groundwater protection section of your prefiled
10 testimony, Mr. Chandler. I believe Mr. Terrill
11 yesterday asked you a question -- your basic assertion
12 is that the Sunset Farms landfill is leaking. Is that
13 correct?
14 A I said based on the groundwater contours, it
15 bears the indication that it is leaking, yes, sir.
16 That's the nature of my testimony.
17 Q All right. And I believe Mr. Terrill asked
18 you something along the lines of that's a pretty
19 serious allegation, isn't it?
20 A And I think I agree with Mr. Terrill.
21 Q You do agree --
22 A Yes, I do.
23 Q -- that a charge that a landfill is
24 leaking is pretty serious stuff. Right?
25 A Yes, I do.

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1 Q Okay. Now, I looked at your prefiled, and by
2 my count, you've devoted a total of three and a half
3 pages of your testimony to your assertion that the
4 Sunset Farms landfill is leaking. Do you have any
5 reason to dispute that?
6 A No, I don't.
7 Q Okay. And I believe we went through an
8 exercise yesterday and we talked about your criticism
9 of the boring plan or 18 borings in the Sunset Farms
10 application. Right?
11 A Yes, sir.
12 Q And we ultimately concluded, I think you
13 agree, that despite those 11 pages in your prefiled
14 testimony, that you had no basis or you agreed that
15 the site characterization at Sunset Farms was, in
16 fact, okay based on the original 67 borings. Right?
17 A Except for the northeast corner, I think, was
18 actually what I testified yesterday.
19 Q Now, if I understand your testimony, you
20 contend that groundwater is mounding underneath Sunset
21 Farms landfill. Is that correct?
22 A My testimony was that the application shows
23 the mounding.
24 Q You keep saying that the application shows
25 mounding. Do you have any proof that it's actually

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1 mounding under there?
2 A That's just what the application shows.
3 Q So your opinion is based strictly on what the
4 application shows. Is that correct?
5 A That is correct.
6 Q And in particular you're pointing to a couple
7 of cross-sections in the application. One is a fill
8 cross-section. Correct?
9 A Yes, sir.
10 Q That was prepared by the ACE group. Right?
11 A Yes, sir.
12 Q Okay. And that would be APP 000409. Could
13 you pull that out?
14 A Yes, sir. Is that Volume 2, from Carlson?
15 Q I believe it is. It's at the very end of
16 Volume 1, but if you'll get Volume 2, I'm going to ask
17 you some questions about that, Mr. Chandler.
18 A Okay. Could you give me the number again,
19 Mr. Carlson?
20 Q Sure. APP 000409.
21 A I have that figure.
22 Q Okay. This is one of the documents that you
23 believe supports your contention that the landfill is
24 leaking. Right?
25 A Yes, sir, it is.

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1 Q Would you pull up APP 000711? It's in
2 Binder 2.
3 A Yes, sir, I have 000711.
4 Q All right. Let's look at -- and that
5 document is a geologic cross-section that was prepared
6 by Mr. Snyder. Is that correct?
7 A That's what it indicates, yes, sir.
8 Q Okay. And both of these cross-sections go
9 roughly through the heart of the landfill basically on
10 a west/east basis. Correct?
11 A Yes, sir.
12 Q Let's look at the ACE cross-section,
13 APP 000409.
14 A Okay.
15 Q Okay. Do you see the two little upside down
16 black carrots, one on the left-hand side and one on
17 the right-hand side?
18 A Yes, sir, I do.
19 Q And beneath that is a dashed and dotted line.
20 Do you see that?
21 A Yes, sir, I do.
22 Q And it runs through the middle of the
23 cross-section, through the landfill that's depicted
24 here. Right?
25 A Yes, sir, I do.

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1 Q Okay. And in the key down below it indicates
2 that it's groundwater level from December 1999.
3 Right?
4 A Yes, sir.
5 Q Is that dashed line -- is that the primary
6 basis or a primary basis for your conclusion that the
7 landfill is leaking?
8 A Yes, sir, it is.
9 Q All right. Now, in your deposition, I
10 believe that you agreed that these water levels don't
11 represent what's actually inside the landfill in terms
12 of either groundwater or leachate. Right?
13 A That's what the application indicates. The
14 application indicates that they're in the weathered
15 Taylor is what these water levels represent.
16 Q Well, I believe that you were asked a little
17 different question. I want to make sure this is
18 clear. I believe you agreed that these water levels
19 don't represent what's actually inside the landfill?
20 A That is correct, because the application
21 doesn't indicate that that's what they are. I'm just
22 restating what the application indicated that those
23 water levels were.
24 Q Okay. It represents a potentiometric
25 surface. Correct?

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1 A Yes, sir, that's correct.
2 Q Okay. In other words, it represents water
3 levels that hypothetically may have been in the
4 landfill or in the area of the landfill at some point
5 in time if there had not been a bottom liner. Right?
6 A I'm not sure I understood your question.
7 Q Potentiometric surface represents a potential
8 water level in the ground. Right?
9 A No, that's not what it really represents.
10 Q Okay. Tell me what a potentiometric surface
11 is, sir.
12 A Okay. If we were to drill a well down into
13 the weathered Taylor or some material -- we can either
14 deal with it as a hypothetical or this case. Which
15 would you prefer?
16 Q Well, let me do it in a hypothetical. Okay?
17 A Okay.
18 Q Suppose I have a galvanized metal trough, the
19 kind that a cow or a horse would drink out of. Okay?
20 A Okay.
21 Q It's two feet tall.
22 A Okay.
23 Q Okay? And let's just say it's about ten feet
24 around in diameter. Okay?
25 A Okay.

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1 Q Let's suppose that inside this trough I put a
2 wash tub that's on six-inch stands. Okay?
3 A Okay.
4 Q So we have a trough -- excuse me, a wash tub
5 sitting inside of a trough. Right?
6 A Yes, sir.
7 Q Okay. Now I put a foot of water into the
8 trough on the outside part of the doughnut. Okay?
9 A Okay.
10 Q How much water is inside the tub?
11 A There is -- I assume that the tub is intact,
12 so there would be no water, assuming it doesn't float.
13 But you're assuming that the tub doesn't float. It
14 stays six inches above the bottom of the tank?
15 Q Right.
16 A Okay.
17 Q Okay. The tub was dry when I put it in.
18 Right?
19 A Sure. You filled the tank around it.
20 Q Okay. And there's no water in that tub, at
21 least as far as you know. Right?
22 A That's correct.
23 Q Okay. Now if I drill a hole through the
24 bottom of that tub and insert a tube or a straw
25 that doesn't quite touch the bottom of the trough --

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1 do you follow me so far?
2 A Yes, sir.
3 Q The water would rise up in that straw.
4 Correct?
5 A That is correct.
6 Q Okay. And how far would it rise?
7 A It would rise to level in the tank.
8 Q Right. The water inside the trough. Right?
9 A Well, what you're calling the trough, I'm
10 calling the tank. Yes, sir. Okay.
11 Q Okay. And that level that's inside the
12 straw, that's reflective of the potentiometric
13 surface. Is that correct?
14 A Or the piezometric surface, yes, sir.
15 Q Those are synonymous terms. Right?
16 A Yes, sir.
17 Q So I think we have a basic understanding
18 of -- a common understanding of potentiometric
19 surfaces?
20 A Yes, sir, we do.
21 Q All right. Now, getting back to APP 409, you
22 agreed that that dashed and dotted line with the
23 carrots on top, that represents a potentiometric
24 surface. Correct?
25 A Yes, sir.

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1 Q Okay. But you agree that that does not
2 represent an actual level of leachate inside the
3 landfill at any point in time. Right?
4 A I don't know.
5 Q Do you recall me asking you that question in
6 deposition -- or Mr. Gosselink, I believe, took your
7 deposition.
8 A And I believe my answer then was I don't know
9 what the levels are inside the landfill.
10 Q Okay. Well, let's look. If you could turn
11 to Page 230.
12 A Sure. Yes, sir.
13 Q All right. Bear with me for a moment, sir.
14 Okay. I believe earlier in your deposition you agreed
15 that that represented a potentiometric surface.
16 Correct? We're looking roughly at the same drawing,
17 the geologic cross-section. Right?
18 A Yes, sir.
19 Q Okay. And you were asked whether that
20 line represents -- I'm looking at the Page 230,
21 Line 4, whether that line represents a hypothetical
22 line when it appears inside the landfill as opposed to
23 a real water level measurement. Right? Did I read
24 that correctly?
25 A Yes, you did.

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1 Q And your answer is, "Well, it says that the
2 water levels -- if the liner wasn't there, the water
3 level would be that high in the landfill." Correct?
4 A That's correct.
5 Q Okay. The next question was, "But the liner
6 is there, and the water levels" -- you said, "I have
7 no idea what the water level in the landfill is, so I
8 don't know." Correct?
9 A That's correct.
10 Q Okay. So you don't know -- as we sit here
11 today, you have no idea what the water levels were
12 inside the landfill at that point in time?
13 A That is correct. I think I've consistently
14 said that.
15 Q Okay. And you also don't know in this
16 December 1999 time frame what the degree of
17 landfilling was in this western and northwestern
18 portion of the landfill site. Is that correct?
19 A I could not tell that from the application,
20 no, sir.
21 Q All right. Now, in rendering your opinion
22 that the landfill is leaking, you didn't look at any
23 groundwater monitoring data at all, did you?
24 A No, sir, I did not.
25 Q Okay. You didn't look at any of the

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1 analytical data that came out of or from the
 2 groundwater monitoring well system at the Sunset Farms
 3 site?
 4 A I did not.
 5 Q Okay. And you didn't check the leachate
 6 levels in the sumps to determine how much water or
 7 what the level of leachate in the landfill was at all,
 8 did you?
 9 A I did not.
 10 Q Okay. In reaching your conclusion that the
 11 landfill is leaking, you didn't perform any sort of
 12 calculations at all, did you?
 13 A No. No, I didn't.
 14 Q Okay. You didn't do any sort of modeling?
 15 A No.
 16 Q Okay. Let's move on to surface water
 17 protection.
 18 A Just a moment. Let me do a little
 19 housekeeping.
 20 Q Sure. I was doing the same thing.
 21 A Okay.
 22 Q All right. Yesterday we went over, I
 23 believe, some areas in which you claim expertise. Do
 24 you recall that discussion?
 25 A Yes, sir.

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1 Q Okay. You're not trained as a hydrologist,
 2 are you?
 3 A No, I'm not.
 4 Q And you don't specialize in that field, do
 5 you?
 6 A That is correct.
 7 Q Okay. Let's say that I'm designing a
 8 top-of-the-line landfill that I expect to be
 9 challenged during the permitting phase. Do I hire
 10 Pierce Chandler or do I go to somebody else to do the
 11 hydrology work on the application?
 12 A I think as I said earlier, you would probably
 13 go to someone who specializes in that area; although,
 14 I have done that type of work in the past.
 15 Q If I hired Pierce Chandler, would Pierce
 16 Chandler end up subcontracting out the hydrology
 17 section to someone else?
 18 A Now I would. I think I've testified I no
 19 longer have any interest in continuing to specialize
 20 in that area.
 21 Q All right. And as I understand your prefiled
 22 testimony, you had some concerns regarding erosion in
 23 the intermediate cover condition. Is that correct?
 24 A Yes, sir.
 25 Q Okay. Now, you agree that the TCEQ MSW rules

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1 don't require BFI or any other operator to seed or sod
 2 the intermediate cover condition for 180 days, don't
 3 you?
 4 A Yes, I do.
 5 Q Now, you've seen the Rule 11 agreement
 6 between BFI and Mobley and the city of Austin?
 7 A As I said, I looked at it. I have not
 8 studied it to any great depth.
 9 Q All right. But I believe that you've
 10 testified that that agreement, if it's implemented,
 11 would resolve your concerns regarding the intermediate
 12 cover condition and potential erosion. Is that
 13 correct?
 14 A I said as far as I know it should address
 15 most of them, I think, was my actual answer.
 16 Q Okay. Well, why don't you pull out your
 17 deposition and look at Page 247.
 18 A Okay. Yes, sir
 19 Q Would you read the question and answer
 20 starting on Line 11 of 247 in your deposition?
 21 A Yes. "Would the terms of this agreement
 22 resolve your criticisms with regard to erosion if this
 23 agreement is incorporated into the terms of the
 24 permit?"
 25 "They would address them substantively

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1 for the intermediate condition, yes, sir."
 2 Q All right. "They would address them
 3 substantively for the intermediate condition, yes,
 4 sir," that was your answer. Right?
 5 A That is correct.
 6 Q Okay. Now, with regard to the final cover
 7 condition, I believe that you have opined that there's
 8 a problem regarding inadequate vegetation. Is that a
 9 fair characterization of your criticism?
 10 A I think it's more the nature of being able to
 11 maintain adequate vegetation would more accurately
 12 characterize what I'm concerned about.
 13 Q You're concerned about whether or not the
 14 site can maintain 85 percent vegetative covering.
 15 Right?
 16 A Yes, sir.
 17 Q All right. Now, you're not an agronomist.
 18 We established that yesterday. Right?
 19 A That is correct.
 20 Q You're not a botanist. Right?
 21 A I don't think so.
 22 Q Now, you do know the Rule 11 agreement that
 23 we've been discussing provides for irrigation of newly
 24 seeded or sodded grass. Is that correct?
 25 A That's my understanding.

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1 Q Okay. So your concern over the 85 percent
2 coverage level in the final cover condition, that
3 would at least be mitigated and perhaps mooted by the
4 irrigation provisions in that. Is that correct?
5 A That could be.
6 Q All right.
7 A Because that was what I was mainly concerned
8 about.
9 Q Okay. Now, you did some calculations related
10 to erosion. Right?
11 A Yes, sir, I did.
12 Q Okay. Would you agree -- you're familiar
13 with USLE and RUSLE or USLE and RUSLE. Is that
14 correct?
15 A Yes. I think they're normally pronounced
16 with the long U. USLE or RUSLE is how I normally --
17 Q I think we've got a tomato and tomato
18 situation here, don't we?
19 A Yes. I understand what you're talking about,
20 yes, sir.
21 Q All right. All right.
22 MR. RENBARGER: Let's call the whole
23 thing off.
24 (Laughter)
25 MR. CARLSON: Let's try, huh?

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1 A For the sake of everybody, should we explain
2 what that actually -- what the acronym means?
3 Q (BY MR. CARLSON) Well, sure. Go ahead.
4 A USLE is the universal soil loss equation,
5 RUSLE-1 is the revised soil loss equation, Version 1,
6 and RUSLE-2 is the revised universal soil loss
7 equation No. 2.
8 Q All right.
9 A For the court reporter's benefit.
10 Q USLE, we'll use that term.
11 A Okay.
12 Q I'm more of a "potato" guy myself, but we'll
13 go with USLE. That was the original soil loss
14 equation, the first. Right?
15 A Well, there were several versions of it, but
16 that was the original.
17 Q And that, as time has gone on, has been
18 replaced by RUSLE-1 and then RUSLE-2. Correct?
19 A It hasn't been replaced. There are
20 computerized versions that are available. USLE is
21 still in use and commonly used.
22 Q All right. I believe in your Exhibit PC-9
23 that we looked at, you at least had a chart that
24 talked about USLE, RUSLE-1 and RUSLE-2. Right?
25 A Yes, sir.

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1 Q Okay. And generally speaking, would it be
2 fair to say that you believe that the RUSLE methods,
3 both 1 and 2, for example in terms of rainfall and
4 runoff, they're more specific -- they require more
5 specific requirements?
6 A Well, they tend to deal less with averages
7 and deal with more time -- like, USLE is dealing more
8 with annual conditions whereas the revised models will
9 let you input or -- I consider seasonal effects and
10 things like that.
11 Q In terms of soil erodibility, USLE requires
12 just annual average whereas RUSLE-1 requires half
13 monthly and RUSLE-2 is daily. That's what your chart
14 says. Right?
15 A I'm not sure I followed your question the way
16 you worded it.
17 Q Why don't you pull out Exhibit PC-19, sir.
18 A Could you re-ask the question?
19 Q Sure. Look on the bottom of Exhibit PC-19.
20 A Yes, sir.
21 Q Do you see the chart that I've been referring
22 to?
23 A Yes, sir.
24 Q You've got various equations and factors on
25 the left-hand side, and you've got entries for USLE,

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1 RUSLE-1, and RUSLE-2. Correct?
2 A Yes, sir.
3 Q And in terms of the rainfall and runoff
4 factor, the R, USLE does it by county. Right?
5 A That is correct.
6 Q Okay. And RUSLE-1 and RUSLE-2 use more
7 specific -- have more specific data. Right?
8 A Right. You can break it down to a particular
9 spot.
10 Q Okay. So you can get more fine-tuned with
11 RUSLE versus the methods in USLE. Is that fair?
12 A Well, they're interpolating, but it would
13 give the appearance of fine tuning.
14 Q All right. And soil erodibility, Factor K,
15 USLE uses an annual average. Right?
16 A Yes, sir. That's correct.
17 Q And again, the RUSLE-1 and the RUSLE-2 are
18 more fine-tuned. Right?
19 A Yes, sir, that's correct.
20 Q Okay. Would it be fair to say basically the
21 same things with the other three equation factors; LS,
22 C, and P?
23 A Yes, sir, that would be fair.
24 Q All right. Now, you used USLE when you did
25 your calculations, didn't you?

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1 A Yes, sir.
2 Q You did not use RUSLE-1, which, I believe, we
3 agreed can use more refined information. Correct?
4 A That is correct.
5 Q I don't want to get into real details --
6 let's just look at one of the numbered -- you ended up
7 ultimately calculating or at least coming close to a
8 conclusion about the projected soil loss from the site
9 in the final cover condition. Is that correct?
10 A I believe that's correct.
11 Q Okay. What number did you come up with?
12 A I'm sorry. What was the question?
13 Q What number did you come up with when you did
14 your calculations for the final cover conditions, the
15 side slopes?
16 A Well, I had several different -- because I
17 looked at the impact of several different factors,
18 there's no one specific answer. Did you have
19 something -- a condition in mind?
20 Q Well, the calculation leads to a result
21 that's measured in terms of tons per acre per year.
22 Is that correct?
23 A That is correct.
24 Q Okay. And TCEQ has at least a
25 recommendation, if not something in the technical

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1 guideline, that says that we don't want more than
2 something between a range of two to three tons per
3 acre per year of erosion sites. Is that correct?
4 A I believe that's correct.
5 Q Okay. And ACE calculated something within
6 that range. Right?
7 A I believe so.
8 Q Okay. Something in the 2.2 range for the
9 final cover condition pertaining to the side slopes.
10 Right?
11 A I believe that's correct.
12 Q Okay. What did you calculate, sir?
13 A I think what -- I actually stated them, the
14 calculations, on Page 4, that if the completed final
15 cover calculations are corrected only to reflect a
16 more realistic cover and management Factor C; e.g., 40
17 percent weed cover, no appreciable canopy of 0.15, the
18 final cover erosion losses would increase by a factor
19 of 15 and a half.
20 Q All right. You've got -- doing some rough
21 math for me, sir, how many tons per acre per year do
22 you get?
23 A That would be over 30. Just multiplying the
24 applicant's two by a factor of 15, I would say
25 something over 30.

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1 Q All right. Now, one of the factors in the
2 equation is the C. Right?
3 A Yes, sir.
4 Q Okay. And for your C, you assumed 40 percent
5 coverage with weeds. Is that correct?
6 A Yes, sir.
7 Q And if the Rule 11 agreement is implemented
8 between the city of Austin and 85 percent vegetative
9 cover is achieved, what would the appropriate C be
10 then, sir?
11 A Well, the C would be what the applicant used.
12 Q Okay. So assume -- strike that. Let me ask
13 you one last question on
14 that. Mr. Stecher -- is it Mr. Stecher
15 or Dr. Stecher?
16 A I believe it's Mr. Stecher.
17 Q I don't think he has a Ph.D., does he?
18 A He's never introduced himself as that.
19 Q At least not since he was deposed. Right?
20 A I don't know.
21 Q Okay. He does these sorts of calculations.
22 Correct?
23 A I believe so.
24 Q Okay.
25 A I've actually never checked.

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1 Q Okay. Are you aware that he was asked to
2 perform some calculations similar to this in his
3 deposition?
4 A No, I'm not.
5 Q Okay. You didn't see the result of that, did
6 you?
7 A No, I did not.
8 Q Let's say hypothetically that Dr. Stecher,
9 using his assumptions, came up with erosion of
10 somewhere between the realm of two and three tons per
11 acre per year, would you have any reason to disagree
12 with Dr. Stecher's conclusions?
13 A I would have no reason to agree or disagree
14 since I haven't seen the calculations.
15 Q All right. Now, you were here during
16 Mr. Mehevec's testimony. Correct?
17 A Yes, sir, I was.
18 Q Do you recall some testimony where he was
19 asked some questions and gave some answers to the
20 effect that the TCEQ MSW regulations themselves
21 contemplate that unvegetated soil during the
22 intermediate cover condition is likely to be eroded at
23 an MSW site?
24 A Could you restate that? I'm not sure I
25 understood your question.

7 (Pages 1535 to 1538)

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1 Q Sure. Why don't you pull out -- are the 2006
2 versions of the MSW rules in front of you?
3 A Yes, sir, they are.
4 Q Could you turn that to 330.133(f), please,
5 sir?
6 A 330.133(f). Yes, sir.
7 Q Would you read that out loud?
8 A Sure. "330.133(f), Erosion of Cover.
9 Erosion of final or intermediate cover must be
10 repaired within five days of detection by restoring
11 the cover material, grading, compacting, and seeding
12 unless the Commission's regional office approves
13 otherwise based on the extent of the damage requiring
14 more time to repair or the repairs are delayed because
15 of weather conditions. The date of detection of
16 erosion and date of completion of repairs including
17 reasons for any delays must be documented in the cover
18 inspection records required under Subsection (g) of
19 this section. The site operating plan must establish
20 a frequency and identify other occasions for
21 conducting inspections of the final and intermediate
22 covers to detect the need for repairs. The periodic
23 inspections and restorations are required during the
24 entire operational life and for the post-closure
25 maintenance period."

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1 Q All right. Thank you, Mr. Chandler. That
2 whole section or subsection is premised on the notion
3 that some erosion will occur at a MSW site. Isn't
4 that fair to say?
5 A I think that's very fair to say.
6 Q All right. And as long as an operator picks
7 up the soil that got eroded before it leaves the site
8 and places it back where it belongs and engages in the
9 restoration and repair of the cover, it hasn't
10 violated any regulation, has it?
11 A It potentially could have. Your question
12 involves an assumption. May I state what I believe
13 the inherent assumption is?
14 Q Sure.
15 A That waste was not exposed by the erosion.
16 Q Let's assume that no waste was exposed.
17 Okay? In that case, as long as everything else I said
18 occurred, there was no violation. Would that be fair
19 to say?
20 A Assuming that no waste was exposed and
21 sediment was not discharged off site or into waters of
22 the state or U.S. on site, I would agree that
23 basically if they repair it in a timely manner,
24 they're in compliance with the regulations.
25 Q Okay. Just a couple of other questions. As

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1 of the date you prepared your prefiled testimony,
2 you've never been present on the Sunset Farms site.
3 Correct?
4 A That is correct.
5 Q In fact, you've never set foot on that site.
6 Is that correct?
7 A To the best of my knowledge, I never have.
8 Q So you didn't know what the status of berms
9 or silt fences or downshoots or sedimentation ponds or
10 gabions was based on any sort of personal
11 observations. Is that fair to say?
12 A Prior to my prefiled, that is correct.
13 Q All right. And prior to the time you offered
14 your opinions and your criticisms pertaining to the
15 subject matter. Right?
16 A That is correct.
17 Q Just one last question about PC-19, the first
18 page?
19 A Yes, sir.
20 Q If you look slightly above that table that we
21 were looking at before, it has a sentence that says,
22 "Terminology and barometer values are given in U.S.D.
23 Agricultural Handbook 537 called Predicting Rainfall
24 Erosion Losses." Do you see that?
25 A Yes, sir.

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1 Q Are you aware that that -- did you use that
2 book?
3 A Yes, I did.
4 Q Okay. Are you aware that that's been
5 superseded by a more recent book called the USA
6 Handbook 703?
7 A Yes, I am.
8 Q But you didn't use the USA Handbook 703 when
9 you did your calculations, did you?
10 A No, I did not. I did not.
11 Q All right. Okay. Let's move on to the
12 landfill gas and odor area of your testimony, sir.
13 A Okay.
14 Q Would you open up the application, I believe
15 it's in the third volume, to Page APP 001157?
16 A That's 00 --
17 Q Well, I'm sending you in the wrong direction.
18 Let's just move on. You've seen the planned well
19 design for the Sunset Farms site that Mr. Stutz
20 prepared?
21 A The gas extraction well, is that what you're
22 referring to?
23 Q Yes, sir.
24 A Yes, I believe I have.
25 Q It shows approximately 100 and something

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1 wells that are going to be placed across the facility?
2 A Yes, sir.
3 Q All right. You're familiar with that
4 document?
5 A Yes, sir.
6 Q Okay. I believe in your prefiled testimony
7 you agreed that the areal coverage of the landfill of
8 these extraction wells, that is, the number and
9 location of these wells as shown on the diagram oh,
10 I did some poor note-taking. It's APP 001557.
11 A 1557.
12 Q I think I must have a little bit of dyslexia
13 when I was typing this up.
14 A I have that.
15 Q Okay. That's the document that we were just
16 referring to that shows where the gas extraction wells
17 will be for the landfill gas collection and control
18 system. Right?
19 A Yes, sir.
20 Q And to your recollection, it includes 180
21 plus or minus a few extraction wells. Right?
22 A I haven't counted them, but I think that
23 seems about right.
24 Q Okay. And I believe, to get back to what I
25 was asking, in the prefiled testimony you agreed that

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1 the areal coverage of the extraction wells, those
2 reflected on APP 001557, would theoretically control
3 landfill gas and migration and surface emissions and,
4 hence, control odors if the system is properly
5 designed, installed, and operated. Is that correct?
6 A Yes, it would.
7 Q Okay. Now, you, yourself you designed one
8 landfill gas collection and control system for an MSW
9 landfill?
10 A That's correct.
11 Q And that was for the TDSL facility?
12 A Yes, sir, that's correct.
13 Q Okay. When did you design that, sir?
14 A I was having trouble recalling that. It
15 seems like it was in the 2004-2005 time frame, but I
16 might be off a year.
17 Q How many extraction wells are there in the
18 TDSL system you designed?
19 A Six.
20 Q Okay. And Sunset Farms' system has 180, give
21 or take. Right?
22 A Yes, sir, that's correct.
23 Q So let me just make sure I can get this
24 straight, get a little perspective here. You're
25 potentially criticizing the Sunset Farms gas

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1 collection system. Right?
2 A No. I think I was pointing out the
3 operational considerations of the vertical expansion.
4 Q Okay.
5 A I was not criticizing -- I don't think I was
6 criticizing the gas extraction system, per se, but the
7 effects that the vertical expansion would have on that
8 system.
9 Q Well, let me ask you this. The six well TDSL
10 system that you designed, did that involve a vertical
11 expansion?
12 A No, not where those wells are located.
13 They're outside any area that will be filled.
14 Q Okay. So you've never personally even
15 designed a well system for a vertical expansion?
16 A I have not.
17 Q And you've never been personally responsible
18 for overseeing the construction of such a system?
19 A No, I have not.
20 Q Okay. So you're criticizing that aspect of
21 it despite your one system experience that didn't even
22 involve a vertical expansion. Is that correct?
23 A That's correct.
24 Q And you're criticizing the work of Mr. Stutz,
25 who I believe testified that he's worked on dozens of

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1 systems. Correct?
2 A Actually, I criticized the application's
3 failure to address how the vertical expansion would be
4 accommodated by the system.
5 Q Okay. Let's talk just very briefly about
6 landfill gas probes, sir. You understand that the
7 application proposes to place gas probes along the
8 Sunset Farms/Austin Community landfill boundary?
9 A I understood they were going to install
10 probes around the entire boundary.
11 Q And you agree that the placement of gas
12 probes between the Sunset Farms let's carve out
13 everything else. Let's just talk about that boundary.
14 You agree that the placement of probes along that
15 boundary resolves any criticisms that you would have
16 that the probes would be properly placed?
17 A I believe on the south side, one of the probe
18 locations I believe I commented that it appeared the
19 screened interval appeared to be below the water
20 table, that there was a design flaw on I believe
21 there was one on the south and there was one that I
22 don't recall. But outside of that, yes, I would
23 agree.
24 Q All right.
25 MR. CARLSON: Judge, if I could just

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1 have a few moments.
 2 JUDGE NEWCHURCH: Off the record.
 3 (Recess from 9:47 a.m. to 9:48 a.m.)
 4 MR. CARLSON: I'm ready, Judge.
 5 JUDGE NEWCHURCH: Go ahead. On the
 6 record.
 7 Q (BY MR. CARLSON) Mr. Chandler, do you recall
 8 a series of questions that Mr. Blackburn asked in his
 9 cross regarding separatory overliner systems and
 10 whether one would be placed here?
 11 A Yes, I do.
 12 Q All right. And I believe you have agreed
 13 that at least under the TCEQ MSW regs, that no
 14 separatory overliner is required for this particular
 15 vertical expansion. Is that fair to say?
 16 A Under the rules that are in effect for this
 17 application, that would be correct.
 18 Q All right. And Mr. Blackburn asked you some
 19 questions about the Subtitle D area and the
 20 pre-Subtitle D area. Do you remember that?
 21 A Yes, sir, I do.
 22 Q And this is roughly a 250-acre landfill
 23 footprint. Right?
 24 A That's what I understand.
 25 Q Okay. And of that, roughly two-thirds is

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1 Subtitle D -- has a Subtitle D composite liner.
 2 Right?
 3 A That seems reasonable, but I don't know the
 4 exact breakdown, to be honest.
 5 Q Roughly two-thirds is Subtitle D?
 6 A That seems about right.
 7 Q And the other is pre-Subtitle D. Correct?
 8 A That seems about right.
 9 MR. CARLSON: Judge, may I approach?
 10 JUDGE NEWCHURCH: Yes, sir.
 11 (Exhibit BFI No. 11 marked)
 12 Q (BY MR. CARLSON) Mr. Chandler, have you had
 13 an opportunity to look at BFI-11?
 14 A I've just looked at the cover. I'm just
 15 glancing through it now. Do you want me to read it
 16 all, or is there a specific area you would like me to
 17 focus on?
 18 Q Take a moment. I want to move things along,
 19 but if you want to, I want you to have an opportunity
 20 to familiarize yourself with the document.
 21 A Okay.
 22 Q Have you at least had an opportunity to get a
 23 sense of what the document is?
 24 A Yes, I have. It's a pretty old document, but
 25 I'm familiar with what was done back then.

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1 Q Okay.
 2 A I recognize the document. I just haven't
 3 seen one of these in quite a while.
 4 Q Okay. It's some correspondence involving
 5 soil and liner evaluation reports for the Sunset Farms
 6 landfill. Right?
 7 A Yes, sir, that's correct.
 8 Q Back and forth between the operator of Sunset
 9 Farms and the Texas Department of Health. Right?
 10 A Yes, sir, that's correct.
 11 Q In the 1982 time frame?
 12 A Yes, sir, that is correct.
 13 Q The cover letter is dated May 6th, '82?
 14 A Yes, sir, that's correct.
 15 Q And the Texas Department of Health, that was
 16 a predecessor agency to TCEQ. Right?
 17 A Way on back, yes, sir.
 18 Q Several agencies ago. Right?
 19 A Yes, sir. That's what I was trying to
 20 indicate.
 21 Q It had a solid waste department. Right?
 22 A Was it a department? I can't remember. Was
 23 it solid waste department? Yeah, it was bureau.
 24 Q Okay.
 25 A That's what it says. Yeah, it says Bureau of

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1 Solid Waste Management. That's what I remember it
 2 was.
 3 Q They had a bureau that performed essentially
 4 the same functions, albeit in a different time frame
 5 than the ladies and gentlemen at the end of the table
 6 over here that do it. Is that correct?
 7 A That is correct.
 8 Q All right. The first page talks about a
 9 review of a soil and liner evaluation questionnaire
 10 report dated April 2nd. Is that correct?
 11 A That's what it indicates, yes, sir.
 12 Q All right. And the second page?
 13 A Yes, sir.
 14 Q The second line of the letter refers to a
 15 permittee's requirement to provide a soils and liner
 16 evaluation report prior to depositing any solid waste
 17 in an evaluated area. Is that correct?
 18 A That is correct.
 19 Q Okay. If you turn to the third page about
 20 two-thirds of the way down, it reflects the permittee
 21 is Sunset Farms. Right?
 22 A Yes, sir.
 23 Q The permit application number is 1447, which
 24 is the permit we're talking about here or at least
 25 the existing permit. Right?

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1 A The one that existed at that time in '82,
2 yes, sir.
3 Q Yes, sir. Travis County. Right?
4 A Yes, sir.
5 Q Do you have any reason to believe that what
6 we're looking at does not pertain to the BFI Sunset
7 Farms landfill?
8 A No, I do not.
9 Q Okay. Would you turn to the second to last
10 page of BFI-11?
11 A Is that the page called "Comments"?
12 Q Comments. Right.
13 A Yes, I have it.
14 Q Why don't you just read the first paragraph
15 into the record, sir?
16 A "The area evaluated in this report was
17 excavated into Stratum 2 as defined in the permit
18 application. The Stratum 2 soils are low permeability
19 clays with shrinkage cracks, fissures, and joints.
20 These soils were overexcavated to approximately 2.5
21 feet below plan depth. The remaining soils were
22 scarified to three feet below plan depth and
23 recompacted in place to an acceptable density which
24 would provide for one times ten to the minus seventh
25 centimeter per second or lower permeability. The 2.5

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1 feet of overexcavated soil was replaced in individual
2 lifts and compacted to acceptable density as required.
3 Compacted liner material which did not meet acceptable
4 levels or compaction was reworked and retested until
5 acceptable."
6 Q Okay. You don't have any basis to disagree
7 with the truthfulness of any of that paragraph.
8 A No.
9 Q Is that correct?
10 A No, I do not.
11 Q Why don't you go ahead and read the second
12 paragraph into the record, please, sir?
13 A Surely. "The periphery boundary liners and
14 sidewall liner were connected to the bottom liner and
15 line section of the perimeter berms. All keys, berm
16 liners, periphery boundary liners, and sidewall liners
17 were tested by Tetco for percent compaction and
18 percent moisture. Compaction series tests were
19 conducted as indicated by changes in material. A
20 full-time inspector was present during the majority of
21 the liner placement. Inspections of the key, liner
22 placement and the finished area to receive waste were
23 conducted by the professional staff of Robert Kistner
24 Consultants, Inc. on a regular basis."
25 Q I'll represent to you that this is

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1 information regarding the first soil, liner, and
2 evaluation report for the Sunset Farms landfill.
3 Okay?
4 A Okay.
5 Q Your understanding is it started accepting
6 waste in the 1982 time frame. Right?
7 A I believe that's correct.
8 Q Okay. Do you have any basis to believe that
9 any other part of the pre-Subtitle D area of the
10 Sunset Farms landfill, the liner, was not constructed
11 and tested in a manner commensurate with what we're
12 seeing in BFI-11?
13 A Since I really haven't looked at any of those
14 records, I don't know.
15 Q Okay. You didn't even bother to look at the
16 SLERQ?
17 A I did not.
18 Q Okay. And these are public records. Right?
19 They're available at TCEQ?
20 A I think so. It may be a little work to find
21 something this old, but I assume they're still
22 available.
23 Q All right.
24 MR. CARLSON: Judge, I'll offer BFI-11.
25 JUDGE NEWCHURCH: Any objection?

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1 MR. RENBARGER: Objection, Judge.
2 Obviously, this is information that is at least
3 represented to come from some public records, but
4 there's nothing on the face of the document to
5 indicate that it is a verified public record from TDH
6 or anywhere else. So, to that extent, there's
7 hearsay. There's hearsay within hearsay to the extent
8 that the letters going back and forth with Robert
9 Kistner with no sponsoring witnesses to reflect the
10 authenticity of those documents or whether they were
11 sent or received from the TDH to Edward G. Miller, who
12 is identified as the recipient at Robert Kistner.
13 JUDGE NEWCHURCH: Mr. Carlson?
14 MR. CARLSON: It's an ancient document,
15 which is admissible under the rules.
16 JUDGE NEWCHURCH: Let's look at that.
17 MR. TERRILL: Your Honor, can I also add
18 that governmental records is an exception to hearsay,
19 and this is the sort of document that experts rely on.
20 Mr. Chandler said that it was reasonable to rely on
21 this sort of thing, and, you know, it doesn't have any
22 indication that it's anything other than a government
23 record of this landfill.
24 JUDGE NEWCHURCH: Okay. Let's break
25 that down a little bit. Mr. Renbarger, are you

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1 objecting to the authenticity of this document or just
 2 to hearsay?
 3 MR. RENBARGER: Well, both.
 4 JUDGE NEWCHURCH: Both. Okay.
 5 MR. RENBARGER: If it were a public
 6 record and being offered as such, then it would need
 7 to be some indication on the document itself that it
 8 was a true and correct copy from the files of TDH to
 9 authenticate it as a public record.
 10 JUDGE NEWCHURCH: Okay. Let's start
 11 with authenticity, because I don't think we go
 12 anywhere unless it's authentic.
 13 MR. CARLSON: Judge, let's look at 902,
 14 too. Domestic public documents not under seal. A
 15 document purporting to bear the signature and in the
 16 official capacity of an officer or employee of any
 17 entity included in Paragraph 1, which would certainly
 18 be the Texas Department of Health, and having official
 19 duties in the district or political subdivision and
 20 the signature is genuine. I don't think we have any
 21 we've got Mr. Arthur's signature for Mr. Griffith. I
 22 don't think there's any dispute as to the authenticity
 23 of this document.
 24 JUDGE NEWCHURCH: Mr. Chandler, were you
 25 were you involved in the solid waste disposal facility

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1 work in 1982?
 2 A Yes, I was.
 3 JUDGE NEWCHURCH: Are you familiar with
 4 L.B. Griffith and Howard Phillips.
 5 A Howard Phillips, I'm not familiar with at
 6 all. L.B Griffith, Jr., I am familiar with. I knew
 7 him, yes, sir.
 8 JUDGE NEWCHURCH: What about Edward
 9 Miller?
 10 A No, sir.
 11 JUDGE NEWCHURCH: So you're at least
 12 familiar with Mr. Griffith?
 13 A Yes, sir.
 14 JUDGE NEWCHURCH: And this reflects that
 15 he was the director of surveillance enforcement
 16 division for the Bureau of Solid Waste Management of
 17 the Department of Health. Did you know him in that to
 18 occupy that position?
 19 A Yes, I did.
 20 JUDGE NEWCHURCH: Okay. I'm going to
 21 find that the document is self-authenticating. Let's
 22 go to the hearsay objections.
 23 MR. RENBARGER: Judge, with respect to
 24 your ruling, just so I understand, please.
 25 JUDGE NEWCHURCH: Yes, sir.

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1 MR. RENBARGER: Are you saying that the
 2 first page of the exhibit is self-authenticating
 3 JUDGE NEWCHURCH: Well, that's --
 4 MR. RENBARGER: -- or are you saying all
 5 of the document?
 6 JUDGE NEWCHURCH: Well, that's certainly
 7 true, but the first page refers to the attachments.
 8 So, if the first page is authentic, then the
 9 attachment is an authentic public record as well. It
 10 was in the records of the department.
 11 MR. RENBARGER: Well, we don't know if
 12 these were the attachments to this specific letter,
 13 though, do we?
 14 JUDGE NEWCHURCH: Well, let's see. It
 15 talks about --
 16 MR. CARLSON: It pretty much described
 17 it.
 18 JUDGE NEWCHURCH: It's incorporated by
 19 reference. Mr. Griffith talks about the April 2nd,
 20 1982 letter from Ed Miller, blah, blah, blah, Robert
 21 Kistner. So, yeah, I can conclude that it's
 22 incorporated by reference. So I'm going to find that
 23 it's an official document. Now, we still have a
 24 hearsay objection.
 25 MR. RENBARGER: That's correct.

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1 JUDGE NEWCHURCH: And your response
 2 there is?
 3 MR. CARLSON: At least twofold, Judge.
 4 First, I would point you to 803.16, statements in
 5 ancient documents, which pertains to documents that
 6 are over 20 years old. And I think it also gets in
 7 under 803.8, public records and reporting.
 8 JUDGE NEWCHURCH: Okay. Well, I think
 9 that certainly is sufficient to get you the first
 10 page. We have what purports to be a public document
 11 which I found is authentic based in part on
 12 Mr. Chandler's testimony. And the document that
 13 purports to be from Mr. Miller is incorporated by
 14 reference.
 15 MR. RENBARGER: Judge, I do not note on
 16 the face of the first page where there are any
 17 references or incorporations by reference of any kind
 18 with respect to some of the other documents that
 19 follow the April 2nd, 1982 letter to Robert Kistner,
 20 and in particular, that addresses the comments which
 21 are identified on the face of that particular page as
 22 Part D2.d.
 23 JUDGE NEWCHURCH: You lost me on that
 24 last reference. D2 --
 25 MR. RENBARGER: Okay. Yeah. The second

12 (Pages 1555 to 1558)

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| <p>1 to the last page of the exhibit has some comments 2 which I think Mr. Carlson elicited testimony from the 3 witness, and I do not see any reference or 4 incorporation by reference in the letters that he 5 previously had indicated appear to be authentic based 6 on the incorporation by reference. I do not see any 7 references to that specific document in the second to 8 the last page. And I guess the concern here is that 9 we do not know I mean, it may well be that these 10 documents came from a variety of sources within TDH 11 that are bundled up in this exhibit. 12 MR. CARLSON: Judge, it even refers to 13 the site map, which is on the back of the paper. I 14 don't think there's any way you cannot fairly read the 15 cover letter to not incorporate the documents that are 16 attached here. Well, let me -- can I just walk 17 through here very briefly? 18 JUDGE NEWCHURCH: Sure. 19 MR. CARLSON: Page 1 under the 20 letterhead of the Department of Health signed for 21 Mr. Griffith, the first line of the substance of the 22 letter says, "Our staff has reviewed the soil and 23 liner evaluation questionnaire report dated April 2, 24 which covers the area on the submitted site map." 25 And then if we turn to Page 3, the</p> | <p>1 JUDGE NEWCHURCH: You know, I think the 2 entire thing is sufficiently incorporated. There is a 3 web of references here. There's a reference to the 4 Robert Kistner report on the first page. The second 5 page is on the Robert Kistner letterhead signed by 6 Mr. Miller. There's a reference to Mr. Miller on the 7 first page. There's a reference to the questionnaire 8 on the first page, and the third page appears to be 9 the start of the questionnaire. There's again a 10 reference to Sunset Farms. 11 It's referenced repeatedly earlier on, 12 getting all the way up to what's marked as Page 7. 13 Again, we see Mr. Miller is the author of the letter 14 beginning on the second page, same date April 2nd. On 15 the next page there's a reference, there's the Robert 16 Kistner letterhead and the Robert Kistner logo, which 17 matches what's on Page 2, and there's a reference to 18 Part D2.d. And, in fact, within the questionnaire 19 there is a D2.d question, which this seems to be 20 intending to fill in the blank in a longer format than 21 what was allowed on the form. 22 MR. RENBARGER: May I make one last 23 comment, Judge? 24 JUDGE NEWCHURCH: Yes, sir. 25 MR. RENBARGER: On the third to the last</p> |
| Page 1560 | Page 1562 |
| <p>1 document is called Texas Department of Health 2 Municipal Solid Waste Site Soil and Liner Evaluation 3 Questionnaire. And if we turn a little further back, 4 we have, on Page 7 there, the signature of Mr. Miller 5 and the date April 2nd, 1982. 6 MR. RENBARGER: Perhaps my exhibit is 7 incomplete, but once we do get the third page, we 8 start there with the document is identified, 9 Mr. Carlson, as the Texas Department of Health 10 Municipal Solid Waste Landfill Site Soils and Liner 11 Evaluation Questionnaire, and then my at least the 12 documents that I've got in front of these skips from 13 Page 1 to Page 3 to Page 5 -- 14 MR. CARLSON: You know what? I agree 15 with you on one point. It appears that it was a 16 double-sided copy that is missing every even page. 17 MR. RENBARGER: And it also reflects on 18 the cover letter talking about Part F on the 19 evaluation report, which is not included either in the 20 documents provided. 21 JUDGE NEWCHURCH: Okay. Well, let's 22 see. With regard to the skipping of every other page, 23 that might be an optional completeness opportunity 24 there. Let's get back to the hearsay. 25 MR. CARLSON: Judge, I'm happy --</p> | <p>1 page and I believe you identified it as having been 2 signed at the top by Edward Miller 3 JUDGE NEWCHURCH: Yes. 4 MR. RENBARGER: -- on or about 5 April 2nd, 1982, I would ask that you just please note 6 at the bottom where it says, "Part A signature of the 7 permittee," that is an unsigned and undated document 8 from the permittee's perspective. 9 JUDGE NEWCHURCH: Right. 10 MR. RENBARGER: Which suggests to me 11 that it was not a finalized document that was being 12 submitted for approval to the TDH. One would think 13 the permittee would sign it. 14 JUDGE NEWCHURCH: Maybe. Maybe not. 15 It's on Mr. Miller's letterhead letter. Well, first 16 of all, I find that there's sufficient 17 cross-references that the entire thing is at least a 18 part of a single document and within well, the 19 attached document to Mr. Griffith's letter. So I find 20 the whole thing is authentic, No. 1. 21 No. 2, it does appear to fall under the 22 ancient documents exception. 23 And so I'm going to overrule the hearsay 24 objection, as well as the authenticity objection, and 25 BFI Exhibit 11 is admitted.</p> |

13 (Pages 1559 to 1562)

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1 (Exhibit BFI No. 11 admitted)
 2 MR. CARLSON: And, Judge, at the risk --
 3 I don't want to muddy the record. I do have the
 4 source copy of this document that has Pages 2, 4, and
 5 6 on it. They just were inadvertently not copied last
 6 night as we were making copies. I'd be happy to show
 7 people those. We can make a full copy. I don't have
 8 any problem with the whole document going in.
 9 MR. BLACKBURN: I'd just be happy to
 10 take a look at it.
 11 MR. CARLSON: Sure.
 12 MR. BLACKBURN: I think we're satisfied
 13 that the copy that's in the record is adequate.
 14 MR. CARLSON: Okay.
 15 JUDGE NEWCHURCH: So let's move on to
 16 something else, Mr. Carlson.
 17 MR. CARLSON: Just a few more questions,
 18 Judge.
 19 Q (BY MR. CARLSON) BFI-11, Mr. Chandler,
 20 indicates that at least with respect to the liner that
 21 was constructed in 1982 and was the subject of this
 22 report, that it was constructed to a permeability of
 23 1.0 times ten to the minus seven centimeters per
 24 second or lower. Is that correct?
 25 A Yes, sir, that's what it says.

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1 Q And that's the current -- that's the
 2 permeability standard under the current Subtitle D
 3 rules for liners as well. Is that correct?
 4 A For constructed soil liners, yes, sir.
 5 MR. CARLSON: One housekeeping matter,
 6 Judge. I forgot to offer BFI-10.
 7 JUDGE NEWCHURCH: Any objection?
 8 MR. RENBARGER: I don't believe so. No
 9 objections.
 10 JUDGE NEWCHURCH: BFI-10 is admitted.
 11 (Exhibit BFI No. 10 admitted)
 12 MR. CARLSON: Pass the witness.
 13 JUDGE NEWCHURCH: Let's see. Back to
 14 Mr. Renbarger.
 15 MR. RENBARGER: Would it be possible to
 16 take a short break?
 17 JUDGE NEWCHURCH: Why don't we take our
 18 morning break now.
 19 MR. RENBARGER: Thank you, Judge.
 20 (Recess from 10:15 a.m. to 10:30 a.m.)
 21 JUDGE NEWCHURCH: Back on the record.
 22 Mr. Renbarger?
 23 MR. RENBARGER: Thank you, Judge.
 24
 25

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1 REDIRECT EXAMINATION
 2 BY MR. RENBARGER:
 3 Q Good morning, Mr. Chandler.
 4 A Good morning, Mr. Renbarger.
 5 Q Mr. Chandler, I believe in response to a
 6 question from Mr. Terrill, he made an inquiry about
 7 you were not a registered professional geoscientist in
 8 the state of Texas. Is that correct?
 9 A That is correct.
 10 Q Is it your understanding that professional
 11 engineers are required to become registered
 12 geoscientists in the state of Texas under the Texas
 13 Geoscience Practice Act?
 14 A They are not.
 15 Q Mr. Carlson also asked you a number of
 16 questions concerning the 121 landfill boring plan. Do
 17 you recall that line of questioning?
 18 A Yes, I do.
 19 Q Do you recall that the boring plan submitted
 20 for the 121 landfill proposed 40 separate borings?
 21 Correct?
 22 A Yes, sir, that's correct.
 23 Q And of those 40 borings, 20 of those were
 24 considered to be wash rotary borings. Correct?
 25 A That is correct.

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1 Q What was the purpose of the wash rotary
 2 borings with respect to the boring plan submitted and
 3 approved for the 121 landfill?
 4 A If I could back up a minute, the 121 landfill
 5 is in a rock setting called the Austin chalk. It was
 6 recognized early on that we would probably have to
 7 rely on geophysics as part of the investigation and
 8 characterization of that site. The decision was made
 9 to utilize geophysics as a major tool in investigating
 10 that site, and the wash borings were used --
 11 Q If I could interrupt you just a second. When
 12 you say "geophysics," just so everyone's clear what
 13 you're referring to, what kinds of items fall within
 14 your definition of geophysics for purposes of a site
 15 characterization?
 16 A We're referring to both electronic, nuclear,
 17 and ultrasound methods of investigating the
 18 subsurface, the resistivity, the conductivity, natural
 19 radiation, evaluating rock density using neutron
 20 bombardment methods, and using ultrasound to actually
 21 photograph the sides of the boring. And those 20 wash
 22 borings were used in addition to the 20 sample borings
 23 for geophysical access so we could put the downhole
 24 tools in the borings to get the information.
 25 Q Okay. So the 20 borings that were wash

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1 rotary drilled were not for purposes of sampling the
2 underlying strata. Is that correct?
3 A No, they were not intended for geotechnical
4 sampling in that or geologic sampling, and that was
5 indicated in the boring plan.
6 Q So would it be fair to say that those 20 bore
7 holes that were drilled using the wash rotary methods
8 were mainly for the purposes of providing, if you
9 will, access to the underlying structures for these
10 more exotic geotechnical tests that you just
11 described?
12 A That would be correct.
13 Q Mr. Carlson also asked you a number of
14 questions concerning the use of computer programs
15 versus hand calculations in the context of slope
16 stability analyses. Do you recall that general line
17 of questioning?
18 A Yes, sir, I do.
19 Q And I believe you indicated in your testimony
20 that you only performed some hand calculations. Isn't
21 that right?
22 A That is correct.
23 Q Is it your testimony that the hand
24 calculations can be the more accurate methodology for
25 purposes of conducting a slope stability analysis?

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1 A Yes, sir.
2 Q And would you agree with me that the validity
3 of any computer slope stability analyses is strictly
4 based on the accuracy of the data inputted into that
5 computer model?
6 A I would answer it's not only a function of
7 the quality or the accuracy of the data that's input,
8 but when I say "data," I'm talking about how the
9 physical conditions are actually modeled, the
10 geometries and stuff like that, if you include that in
11 your definition of data.
12 Q I do.
13 A Then it would yes.
14 Q And isn't one of the greatest concerns that
15 you had with the slope stability analyses that were a
16 part of the application was that in your judgment they
17 did not properly analyze some of the more critical
18 potential failure models?
19 A That would be a fair characterization.
20 Q And would you, please, just for clarity in
21 the record, identify the largest area of what you
22 consider to be a defect in their slope stability
23 analysis?
24 A I think the biggest concern that I had would
25 be regarding the modeling or the analyses of the final

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1 waste slope condition, which is the global stability
2 of the filled landfill as proposed in the application.
3 That's the full height completed waste fill over the
4 bottom liner.
5 Q And if I understood your testimony correctly,
6 your major concern was that nowhere in the application
7 did that analyses appear. Is that right?
8 A It was in the application, but it was
9 incomplete in that the leachate collection system,
10 bottom liner system, and sidewall liner system were
11 not modeled in the stability analysis, so the model
12 doesn't accurately reflect the actual design proposed
13 in the application.
14 Q And you consider that to be a critical flaw,
15 do you not?
16 A Yes, I do.
17 Q Mr. Chandler, I believe Mr. Carlson also
18 asked you questions concerning a table that appears in
19 an EPA publication that has to do with factors of
20 safety. Do you recall that general testimony?
21 A I do.
22 Q Could you please turn to Page I think it's
23 around Page 70 of your prefiled testimony, PC-1.
24 There may be some pagination issues, or have you found
25 that on your chart?

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1 A I believe the table you're referring to is on
2 Page 70. Are you referring to Table 2-4?
3 Q Yes, sir, that table.
4 A Yes, sir.
5 Q And I believe Mr. Carlson asked you some
6 questions about Footnote 1. Do you see Footnote 1
7 there?
8 A Yes, sir, I do.
9 Q And the line of questioning, as I recall, had
10 to do about the uncertainty of strength measurements
11 and how that would ultimately affect the recommended
12 factors of safety. Correct?
13 A Yes, sir, that's correct.
14 Q And I believe Mr. Carlson had you read
15 Footnote 1 into the record, did he not?
16 A That may be true. I don't recall that for a
17 fact.
18 Q Well, let's just -- if you would, please,
19 just read it into the record currently, then, make
20 sure we have it in there.
21 A "The uncertainty of the strength measurements
22 is smallest when the soil conditions are uniform and
23 high quality strength test data provide a consistent,
24 complete, and logical picture of the strength
25 characteristics."

15 (Pages 1567 to 1570)

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1 Q And if I remember your testimony in response
2 to Mr. Carlson's questioning, I believe you indicated
3 that for purposes of this site, that the sole
4 conditions are relatively uniform. Isn't that right?
5 A That was my testimony, yes, sir.
6 Q What about the second part or the second
7 component in that sentence, and that has to do with
8 high quality strength test data. Do you find the high
9 quality strength test data to fall within small
10 uncertainty of strength measurements or large
11 uncertainty of strength measurements at the Sunset
12 Farms landfill site?
13 A The application doesn't really contain any
14 what we would consider high quality strength test
15 data, so it would fall into the large uncertainty
16 category.
17 Q What do you as an engineer experienced in
18 geotechnical engineering consider to be high quality
19 strength test data?
20 A High quality strength test data are generally
21 defined as laboratory evaluations of strength on
22 samples representing the entire spectrum of the
23 subsurface at a particular site. The specific tests
24 that would be considered high quality strength tests
25 would be the triaxial multistage tests, which would

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1 include unconsolidated undrained tests, consolidated
2 undrained tests, and consolidated drained tests. And
3 also direct shear multistage tests, which would
4 include consolidated drain and also consolidated drain
5 on a repeated basis, which we would also call residual
6 shear tests.
7 Q From your review of the application, is there
8 any data reflected in the application that would
9 suggest that triaxial compression tests were performed
10 at the Sunset Farms landfill facility?
11 A I do not see any.
12 Q How about direct shear tests?
13 A I do not see any.
14 Q I recall some earlier testimony where I
15 believe BFI asserted that there was adequate testing
16 based on unconfined compression tests, pocket I
17 can't even pronounce it penetrometer results,
18 penetration sampler, blow counts or Atterberg limit
19 tests. All of these things indicated, at least from
20 BFI's perspective, that those were test data that were
21 of a quality sufficient to meet any testing
22 requirements for a stability analysis. Do you
23 generally remember that?
24 A I remember Mr. Adams testifying something to
25 that effect, yes, sir.

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1 Q Do you agree with me that the tests I just
2 outlined, the unconfined compression test, pocket
3 penetrometer results, penetration sampler, blow
4 counts, and/or Atterberg limit testing would qualify
5 as high quality strength test data?
6 A Not as it's commonly used in the geotechnical
7 engineering work.
8 Q In the course of your career in doing
9 geotechnical work, approximately how many high quality
10 strength tests have you conducted or supervised?
11 A Probably 500 total, maybe. It could be a
12 little more than that.
13 Q So you are very familiar, then, are you not,
14 with high quality strength testing regimens? Correct?
15 A Yes, I am.
16 Q In questioning from Mr. Carlson regarding
17 some of the groundwater issues present in your
18 testimony, I believe he asked some questions having to
19 do with you having not undertaken certain kinds of
20 activities, among others, that you didn't look at the
21 groundwater monitoring data for the site. Do you
22 recall that?
23 A Yes, sir, I do.
24 Q And you didn't check leachate levels in the
25 sumps. Correct?

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1 A That is correct.
2 Q And you didn't perform any independent
3 calculations or modeling. Correct?
4 A That is correct.
5 Q Why was that?
6 A As I recall, the application is pretty vague
7 about what the leachate levels were. I don't recall
8 seeing that information in general. But when I looked
9 through it, beyond that point, I thought that the
10 groundwater contouring data was pretty conclusive on
11 its own. And I also, from my experience, recognize
12 that a monitoring system may not always be the best
13 way to judge whether you've actually got leakage from
14 a site or not. Leakage can be occurring, but you
15 haven't either picked it up yet or you just missed it
16 in your monitoring system.
17 Q One of the main things as I at least heard
18 you testify about was that essentially you relied on
19 what was in the application to draw some of your
20 conclusions. Correct?
21 A Yes, that's correct.
22 Q Is it accurate to say that a professional
23 engineer should be able to rely on what is represented
24 in a permit application to determine the issues
25 relative to groundwater contours and groundwater

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1 monitoring levels?
 2 A I believe so.
 3 Q I believe you also had some testimony that
 4 reflected a landfill gas system that was at the TDSL
 5 landfill. Do you remember that testimony?
 6 A Yes, sir, I do.
 7 Q And I believe you testified that you designed
 8 that system. Right?
 9 A That is correct.
 10 Q And if I remember your testimony correctly,
 11 it consisted of six wells. Is that right?
 12 A That is correct.
 13 Q Now, do those six wells completely ring the
 14 TDSL landfill?
 15 A Oh, no.
 16 Q Could you please tell us, then, what is the
 17 purpose of the six landfill gas wells that you
 18 designed for insulation at the TDSL facility?
 19 A The six wells were the first phase of a -- I
 20 guess what would ultimately be a multiphase gas
 21 collection and control system as the landfill is
 22 developed generally to the east and north. We
 23 installed the six wells on basically the southwest
 24 corner of the site, and that was the area that was
 25 filled and brought to final upgrade as of that time.

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1 Q So would you say, in your opinion, that
 2 comparison of the six well landfill gas system at the
 3 TDSL facility versus the I think he indicated it was
 4 something like 180 wells, approximately at the
 5 Sunset Farms landfill facility is a fair comparison?
 6 A It's really not.
 7 Q Mr. Chandler, there was also a line of
 8 questioning earlier about the soil and liner
 9 evaluation report from some older TDH documents. Do
 10 you recall that?
 11 A Are you referring to the Sunset Farms
 12 documents?
 13 Q Yes, sir, Sunset Farms. And I believe it
 14 actually was in an exhibit that we discussed at some
 15 length, the exhibit being BFI-11.
 16 A Yes, I remember that particular one.
 17 Q Now, the information contained in BFI-11, is
 18 that inclusive of the entirety of the pre-Subtitle D
 19 landfill liner at Sunset Farms?
 20 A Just from a very quick glance at it, it did
 21 not appear to be. It appeared to be maybe the first
 22 cell or one of the first cells at the site, because
 23 it's right next to Giles Road. It's a very small
 24 cell.
 25 Q So, to the extent we're talking about the

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1 entire pre-Subtitle D portion of the Sunset Farms
 2 landfill, that information is only relative or
 3 applicable to that cell. Would you agree with that?
 4 A I would agree.
 5 MR. RENBARGER: Pass the witness.
 6 JUDGE NEWCHURCH: Mr. Blackburn?
 7 MR. BLACKBURN: No questions.
 8 JUDGE NEWCHURCH: Ms. Noelke?
 9 MS. NOELKE: No questions.
 10 JUDGE NEWCHURCH: Ms. Talley?
 11 MS. TALLEY: No questions.
 12 JUDGE NEWCHURCH: Let's see. Ms. Mann,
 13 I guess you're next.
 14 MS. MANN: I have no questions.
 15 JUDGE NEWCHURCH: Mr. Shepherd?
 16 MR. SHEPHERD: No questions.
 17 JUDGE NEWCHURCH: Mr. Terrill?
 18 MR. TERRILL: No questions.
 19 JUDGE NEWCHURCH: Mr. Carlson?
 20 MR. CARLSON: No questions.
 21 JUDGE NEWCHURCH: All right. Thank you,
 22 Mr. Chandler. You're excused.
 23 A Thank you, Your Honor.
 24 MR. RENBARGER: May we have just a
 25 moment to reorganize?

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1 JUDGE NEWCHURCH: Off the record.
 2 (Recess from 10:49 a.m. to 10:53 a.m.)
 3 JUDGE NEWCHURCH: Back on the record.
 4 Mr. Renbarger?
 5 MR. RENBARGER: TJFA calls Robert Kier.
 6 JUDGE NEWCHURCH: Mr. Renbarger?
 7 MR. RENBARGER: Thank you.
 8 ROBERT S. KIER, Ph.D,
 9 having been first duly sworn, testified as follows:
 10 DIRECT EXAMINATION
 11 BY MR. RENBARGER:
 12 Q Good morning, Dr. Kier.
 13 A Good morning.
 14 Q Would you please state your full name for the
 15 record?
 16 A Robert, middle initial S, Kier, K-I-E-R.
 17 Q And would you please state your business
 18 address?
 19 A 505 East Huntland Drive, Suite 250, Austin,
 20 78752.
 21 Q What is your occupation, Dr. Kier?
 22 A I'm a geologist by training. I practice
 23 principally in the field of hydrogeology and
 24 engineering geology with some regular geology.
 25 Q What was your role with respect to the BFI

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1 application?
 2 A My role was to review the permit application
 3 in its final form; that is, the May 2008 form, not any
 4 previous ones, and to make my comments or testimony
 5 based on that.
 6 Q As a result of your review of BFI's
 7 application dated May of '08, did you prepare any
 8 prefiled testimony?
 9 A Yes, I did.
 10 Q Do you have before you a document that's
 11 identified as PC-1?
 12 A No. It's BK-1.
 13 Q Excuse me. BK-1. I beg your pardon. Wrong
 14 witness.
 15 A But, yes.
 16 Q Is BK-1 a true and accurate copy of your
 17 prefiled testimony?
 18 A It certainly looks like it without checking
 19 every word, yes.
 20 Q Also in front of you is there a document
 21 identified as BK-2?
 22 A Yes.
 23 Q What is BK-2?
 24 A BK-2 is a copy of my most recent resume.
 25 Q And are there any other exhibits that you

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1 prepared to correspond to your prefiled testimony
 2 that's covered in BK-1?
 3 A Those would be BK-3 through BK-8.
 4 Q Have you had an opportunity to review your
 5 prefiled testimony prior to this morning?
 6 A Yes.
 7 Q Are there any changes or amendments to your
 8 prefiled testimony which you would like to make at
 9 this time?
 10 A I would like to substitute the copy of BK-3.
 11 Do you want me to explain?
 12 Q Please. For what purposes?
 13 A During my deposition, it was pointed out to
 14 me that there were some errors in the ground surface
 15 elevations, not the water level elevations, which is
 16 the principal part of purpose of the exhibit. And
 17 so we corrected those, put a proper notation on the
 18 bottom, and wrote out what the corrections for the
 19 particular borings were. In the process, we found one
 20 error in a groundwater level where we had written 617
 21 instead of 607, and I missed it, but it does not
 22 change the position of the contours. In other words,
 23 the configuration of the exhibit is the same.
 24 Q And would it be fair to say, Dr. Kier, that a
 25 substitution for purposes of correcting some of those

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1 mistakes that a substitution of BK-3 would not in
 2 any way change your narrative testimony contained in
 3 BK-1?
 4 A That is correct.
 5 Q Dr. Kier, if we read each question and answer
 6 in your prefiled testimony into the record today,
 7 would it be the same as represented in BK-1?
 8 A Yes, sir.
 9 Q And do you adopt that as your testimony
 10 today?
 11 A Yes, sir.
 12 MR. RENBARGER: Move to admit BK-1
 13 through BK-8.
 14 JUDGE NEWCHURCH: Let's be a little
 15 clearer about that. You filed on let's see the
 16 14th of January revisions to Dr. Kier's prefiled
 17 testimony that incorporated the agreement concerning
 18 the objections?
 19 MR. RENBARGER: That is correct, Judge.
 20 And I think it consisted, perhaps, of one page where
 21 there was some very slightly amended narrative
 22 testimony.
 23 JUDGE NEWCHURCH: So, with regard to
 24 BK-1, that's what you're offering?
 25 MR. RENBARGER: That is what we're

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1 offering, yes, Your Honor.
 2 JUDGE NEWCHURCH: With the exception of
 3 BK-3, the other attachments to the prefiled testimony
 4 did not change?
 5 MR. RENBARGER: That is correct.
 6 JUDGE NEWCHURCH: And now you're
 7 offering, in addition to that, this revised vision of
 8 BK-3?
 9 MR. RENBARGER: We would propose to
 10 substitute BK-3 to reflect the inaccuracies that the
 11 witness just testified about.
 12 JUDGE NEWCHURCH: Okay. So is there
 13 further objection to BK-1 through 8 as just described?
 14 MR. CARLSON: I do, Your Honor. With I
 15 object to the revised BK-3. I don't have a problem
 16 with including it in some form or substance in the
 17 record, but I'd like to have it called BK-3B or
 18 something like that. I intend to cross-examine
 19 Dr. Kier, at least in part, on his original BK-3.
 20 MR. TERRILL: Your Honor, I join in that
 21 objection as well. Again, it's a change in the
 22 testimony, and it's certainly something that
 23 Mr. Renbarger could do to rehabilitate his witness.
 24 But the original document ought to be in there because
 25 there was a mistake or several mistakes.

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1 MR. RENBARGER: Judge, may I respond?
 2 JUDGE NEWCHURCH: Yes, sir.
 3 MR. RENBARGER: I'm sure everyone
 4 recalls that there has been a number of changes to
 5 prefiled testimony in exhibits that have taken place
 6 on behalf of the applicant. We've had Mr. McInturff
 7 change numbers in his road his transportation
 8 analysis surveys. We've had any number of things like
 9 that occur. More recently, even with TJFA,
 10 Mr. Chandler had an exhibit which was admitted into
 11 evidence, and I believe the leniency provided by Your
 12 Honor was to the extent that if there needed to be
 13 additional cross-examination, that certainly all
 14 parties would have that opportunity.
 15 So, with that caveat, I'm thinking we
 16 probably could move forward, as much as we've done in
 17 the other witnesses, go ahead and admit it into the
 18 record. And to the extent any of the parties feel the
 19 necessity for additional time for cross-examination,
 20 we would certainly tender Dr. Kier for that purpose.
 21 JUDGE NEWCHURCH: Mr. Renbarger, just to
 22 be clear maybe I should address this to Dr. Kier.
 23 On top of your revised BK-3, there's a cover. It
 24 looks like this is a memo just to explain the changes.
 25 Is that right?

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1 A That is correct. So they don't have to hunt.
 2 MR. RENBARGER: It is for purposes of
 3 the parties to understand what changes actually appear
 4 on BK-3 in the proposed substituted exhibit.
 5 JUDGE NEWCHURCH: I think Mr. Renbarger
 6 is correct on this. I've allowed nearly every witness
 7 to make corrections to numbers that they've gotten
 8 wrong somewhere along the way, and I suppose if it
 9 required all of that to come in and gone to their
 10 credibility, but we haven't proceeded that way. So
 11 I'm going to overrule those objections, find that
 12 there is good cause for the revision, and BK-1 through
 13 8, as described by Mr. Renbarger during my questions a
 14 little bit earlier, are all admitted.
 15 (Exhibit TJFA Nos. BK-1 through BK-8
 16 admitted)
 17 MR. TERRILL: Your Honor, I have one
 18 further objection.
 19 JUDGE NEWCHURCH: Yes, sir.
 20 MR. TERRILL: And it's with respect to
 21 Exhibit 7. I don't have an objection to the first
 22 page of that, which is from an allied representative.
 23 But if I could briefly take the witness on voir dire
 24 on the remaining pages, I'd like to clarify something,
 25 if I could.

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1 MR. RENBARGER: Judge, my --
 2 JUDGE NEWCHURCH: Okay. This would have
 3 been prefiled --
 4 MR. RENBARGER: Judge, I believe the
 5 time has long come and gone for objections to this
 6 exhibit, and I think we covered all that earlier.
 7 JUDGE NEWCHURCH: Occasionally one of
 8 the parties will object to a document and only because
 9 they seek voir dire. And, Mr. Terrill, I can't
 10 remember you doing that with regard to BK-7.
 11 MR. TERRILL: I'm sorry. Say that
 12 again, Your Honor.
 13 JUDGE NEWCHURCH: When you filed your
 14 objections to the prefiled testimony, did you
 15 specifically include an objection to BK-7 and a
 16 request to voir dire the witness?
 17 MR. TERRILL: No, I didn't, but I will
 18 tell you what happened. In looking at this, it
 19 purports on its face, it looks like it's an Allied
 20 Waste, meaning BFI document. I think in reality it's
 21 not, though, and I would like to ask Mr. Kier about
 22 that. In other words, it's not coming from the
 23 applicant in this case, which is what it appears on
 24 its face. In reality, I think it's something
 25 different than that.

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1 MR. RENBARGER: May I make a
 2 representation also on that, Judge?
 3 JUDGE NEWCHURCH: Yes, sir.
 4 MR. RENBARGER: If I remember correctly
 5 and we'll certainly double-check that to make sure
 6 that we are accurate, but if my recollection serves me
 7 correctly, I believe this did come from a file that
 8 was included under the heading of Lee Kuhn, who was an
 9 Allied Waste representative and who was produced to
 10 TJFA and the other parties during the discovery
 11 process.
 12 MR. TERRILL: Your Honor, I'll skip voir
 13 dire if you want me to and let me just tell you what
 14 the issue is. This document, although it purports to
 15 come from Allied because of the fax cover sheet, I
 16 think in reality what it is is it's a copy that got
 17 into BFI's hands of the report that was done by PBS&J
 18 for Applied Materials and worked its way into BFI's
 19 hands. I don't know how. Although it purports to be
 20 from BFI, I think in reality it's that PBS&J report
 21 done for Applied Materials, which we objected to and
 22 which Your Honor sustained those objections earlier.
 23 I think that's the reality of what the following pages
 24 behind the fax cover sheet are. That's what I was
 25 hoping to ask Mr. Kier about.

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1 JUDGE NEWCHURCH: Well, okay. That may
2 all be true, and you may want to ask about that, but
3 the time to object to BK-7 has long passed, and so I'm
4 going to overrule that objection, and BK-1 through 8
5 are all admitted.
6 MR. RENBARGER: At this time, Judge, we
7 would pass the witness for cross-examination.
8 JUDGE NEWCHURCH: Mr. Blackburn?
9 MR. BLACKBURN: Yes, I have a couple of
10 questions.
11 CROSS-EXAMINATION
12 BY MR. BLACKBURN:
13 Q Good morning, Dr. Kier.
14 A Good morning, sir.
15 Q Were you here during the testimony of Mr. I
16 think it was Carel?
17 A Yes, sir.
18 Q And were you here for testimony when it was
19 identified that there were organic hazardous
20 constituents that were identified at MW-30?
21 A Yes, sir.
22 Q Were you previously aware of that?
23 A Yes, sir.
24 Q Is that indicative of leakage from the
25 landfill in your opinion?

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1 A Well, it could be either well, it's leakage
2 of something. Whether it's landfill gas or leachate
3 is, in my opinion, rather irrelevant because EPA
4 doesn't distinguish between the two. If it came from
5 landfill gas and got into the groundwater, it's still
6 contamination in the groundwater.
7 Q And so it is your opinion that it is
8 contamination in the groundwater?
9 A Yes, sir. The only way it was discovered was
10 by sampling the groundwater, so it must be in the
11 groundwater.
12 MR. CARLSON: Judge, I have a procedural
13 objection here. The questions that Mr. Blackburn is
14 asking are outside the scope of this witness' prefiled
15 testimony. These two parties are not only aligned,
16 but they have previously represented to you in some
17 pleadings to the Court, I believe when the city of
18 Austin offered its settlement, that they had
19 agreements with each other. I understand the concept
20 of a friendly cross. At some point, though, it seems
21 like they have the opportunity to bolster a very
22 friendly party's prefiled testimony. So I object to
23 expanding the scope in this particular case.
24 JUDGE NEWCHURCH: I don't agree it's
25 outside the scope. I think cross is unlimited. It's

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1 friendly. It's very friendly. You'll get to follow
2 up on it. Objection overruled.
3 MR. BLACKBURN: Thank you, Your Honor.
4 JUDGE NEWCHURCH: Go ahead.
5 Q (BY MR. BLACKBURN) The other question I have
6 is with regard to Exhibit BK-7. On the basis of BK-7
7 and other information that you have reviewed, did you
8 form a professional opinion about the existence of
9 groundwater contamination moving onto the Applied
10 Material site?
11 A Yes, sir, I did.
12 Q And what was that?
13 A The constituents identified tentatively
14 identified I have to make it clear are such that
15 they would not have come from Applied Materials, nor
16 could they have come from the gasoline station that
17 might have been there, nor from the Leif Johnson body
18 shop. They are very strange, semi-volatile
19 constituents that well, obviously are not on the
20 ordinary 8270 list because they're not ordinarily
21 seen. And they can only be tentatively identified
22 because there's not much information on them. But
23 they can't come from those other facilities. They
24 have to come from one of the neighboring landfills,
25 most likely Austin Community landfill, given its

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1 history.
2 Q Now, having said that, what is the relevance,
3 if any, of that information relative to a hearing on
4 Sunset Farms?
5 A This may get a little lengthy, and I
6 apologize. These constituents are not normally
7 transported well in water. That they have moved so
8 far indicates that the hydraulic conductivity of those
9 clays, the Taylor clays, has radically changed. This
10 is not unexpected given that both drum and bulk waste
11 industrial waste were disposed of at Austin Community
12 landfill in roughly '71, '72 time frame. They were
13 dumped in unlined pits. The presumption then was that
14 it would evaporate. Unfortunately, that was an
15 erroneous presumption, and we have found through later
16 testing that pure solvents desiccate clays and
17 drastically change the hydraulic conductivity. Strong
18 acids -- when they say "spent acid," they don't mean
19 that it's not acidic. They mean it's dirty. So they
20 couldn't use it in the process anymore.
21 Spent acids also radically change the
22 structure of the clay. And if you put any highly
23 saline water in there, it will cause the clays to
24 flocculate. What that means is instead of sitting
25 there like layered picture cards in a deck, the way

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1 clays usually do, they turn and go this way. And this
 2 creates large gaps in the clay structure that makes
 3 the hydraulic conductivity much greater. This would
 4 negate any calculations of travel times based on other
 5 tests around either BFI or Austin Community landfill
 6 and show, in reality, what is happening.
 7 Now, some of this may have moved on or
 8 through BFI. I'm not saying it came from BFI. But
 9 based on both geochemical analyses, the work that I've
 10 done in the past, and groundwater data that are in the
 11 application and we were provided through discovery, it
 12 appears that some of the water from Austin Community
 13 landfill transverses through the BFI landfill. And
 14 this would not be picked up by any of the analyses
 15 that have been performed by BFI.
 16 Q And in that regard, is there any
 17 recommendation that you have to the Administrative Law
 18 Judge with regard to what could or should be done with
 19 regard to this issue?
 20 A I mean, we're dealing with a permit
 21 application, and that's his purview at this point.
 22 Thus my recommendation would be or at least comment
 23 would be that the monitoring program proposed the
 24 standard monitoring program that is in the rules of
 25 testing for certain metals and testing for volatile

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1 organics, if this landfill were in isolation and not
 2 affected by its neighbor or potentially affected by
 3 its neighbor, that would be quite adequate.
 4 However, in that it sits next to Austin
 5 Community landfill, it inherits its location, and each
 6 landfill has to be permitted based on its
 7 site-specific characteristics. Therefore, my comment
 8 and recommendation to the Administrative Law Judge is
 9 that the monitoring program as proposed in the
 10 application is inadequate to protect human health and
 11 the environment.
 12 MR. BLACKBURN: Thank you. Pass the
 13 witness.
 14 JUDGE NEWCHURCH: Let's see. I think,
 15 Ms. Noelke, you're next.
 16 MS. NOELKE: I pass.
 17 JUDGE NEWCHURCH: Ms. Talley?
 18 MS. TALLEY: No questions, Your Honor.
 19 JUDGE NEWCHURCH: Ms. Mann?
 20 CROSS-EXAMINATION
 21 BY MS. MANN:
 22 Q Good morning, Dr. Kier. I'm Christina Mann.
 23 I'm with the Public Interest Counsel, and I have some
 24 questions related to the initially related to the
 25 testimony that is very similar between you and

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1 Mr. Chandler. Are you familiar with Mr. Chandler's
 2 testimony?
 3 A Not overly. I did not read his prefiled
 4 testimony, nor was I here for all of his testimony
 5 here.
 6 Q Okay. Are you aware that he has an opinion
 7 or he has provided an opinion that mounding is
 8 occurring beneath the Sunset Farms landfill?
 9 A Yes.
 10 Q Okay. Looking at the two opinions, you seem
 11 to have relied on the same application materials to
 12 come to that determination -- well, let me back up.
 13 You also agree that mounding is occurring beneath the
 14 Sunset Farms landfill. Is that correct?
 15 A Yes.
 16 Q And do you know whether or not you looked at
 17 the same application materials as Mr. Chandler to come
 18 to that determination?
 19 A I have to presume so.
 20 Q Okay. Well, let's talk about the application
 21 materials that you looked at. Can you identify what
 22 you looked at in the application? I know you've
 23 already done it in your prefiled, but can you talk me
 24 through what you looked at in the application to help
 25 you come to that determination?

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1 A There are at least three things that come to
 2 mind as I sit here. The first is dang. I just
 3 slipped on three of them. The first is the
 4 cross-sections in Attachment 4 and Attachment 2 that
 5 indicate groundwater levels as of December 1999.
 6 There is no qualification as to their projection.
 7 There is no qualification as to why they're there.
 8 They're just there for illustrative purposes. They
 9 are labeled, at least approximate, for December 1999.
 10 As is in my prefiled testimony, I took those water
 11 levels on a cross-section and made a groundwater map
 12 or actually had Ms. Kagen do that.
 13 Q So those groundwater levels that you found in
 14 Section 4 right?
 15 A Attachment 4.
 16 Q -- Attachment 4, thank you of the
 17 application, you took those groundwater levels that
 18 were indicated by what I understood earlier as a
 19 dashed line on the cross-section?
 20 A I think it was on the cross-section, the
 21 same. Without looking at it, my memory is it was the
 22 same symbol that would normally be used for an
 23 intermittent stream, that is, a dash, two dots, dash,
 24 two dots.
 25 Q And you took that to be an accurate

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1 representation of the actual conditions at the site?
2 A I took it at face value.
3 Q Okay.
4 A The documents were signed and sealed either
5 by a professional engineer or professional
6 geoscientist.
7 Q Okay. Are those typically how would
8 someone determine the groundwater let me back up.
9 Strike that.
10 Those dashed lines represent what the
11 actual groundwater levels are underneath the site. Is
12 that correct?
13 A Or within it.
14 Q Or within it.
15 A They don't specify.
16 Q Okay. And so I think I've understood that
17 there's been some suggestion that it's sort of a
18 predicted potentiometric surface. Would that be a
19 possibility?
20 A Well, it is a potentiometric surface. It
21 doesn't matter you can use that term either to
22 describe a water table, which would be within the
23 landfill, or a piezometric surface, a pressure
24 surface, which is beneath the landfill. For my
25 purposes, it doesn't make a difference.

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1 Q Okay. So I'm just trying to make sure I
2 understand. If those lines are intended to represent
3 whether or not that is the actual physical
4 characteristics of the groundwater would be with or
5 without the landfill. Is it your understanding it's
6 the actual representation of the groundwater levels
7 with the landfill?
8 A In that at least part of it was shown to be
9 within the landfill, yes. I didn't quite finish my
10 answer from about three questions ago.
11 Q I'm sorry. Go ahead and continue your
12 answer.
13 A All right. In addition, there were a number
14 of groundwater maps in Attachment 4. I believe all of
15 them maybe one of them didn't but all of them
16 showed what I would call groundwater mounding. It
17 might have been described as a ridge or a groundwater
18 divide, but it makes no never mind in terms of whether
19 it came from the landfill or not.
20 And then the third reason is that the
21 entire perimeter of the landfill, all the monitoring
22 wells have been designated as point of compliance
23 wells and even labeled downgradient in that all of
24 these wells are downgradient. The only inference that
25 one can draw from that is that there is mounding

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1 within the landfill. There's a side issue, but unless
2 you ask me, I won't go there.
3 Q So because all of the wells were determined
4 to be point of compliance and, therefore, since a
5 point of compliance well is supposed to be
6 downgradient and the entire site is encircled by point
7 of compliance wells, it's your position or do I
8 understand your position that the water is all moving
9 away from the site towards the boundary of the site
10 because that's where all the point of compliance wells
11 are? Is that correct?
12 A Yes. Given the definition of a point of
13 compliance, given the definition of downgradient,
14 there can be no other conclusion.
15 Q Do you agree that all the point of compliance
16 all the wells that are labeled as point of compliance
17 are, in fact, downgradient, or do you have a position
18 on that?
19 A Well, ultimately it is the ED who determines
20 the point of compliance. There is a proposed point of
21 compliance in the permit application. That proposed
22 point of compliance is surrounds the entire
23 landfill. That's really all I can tell you.
24 Q Okay. If you just looked at the map and
25 these wells were not labeled anything and they were

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1 just dots, are all of those dots, which are, in fact,
2 what the applicant is purporting to be point of
3 compliance are all of those dots actually
4 downgradient from the site?
5 A I think so. I'd say there's a high
6 probability of it. I think that's the word I used in
7 my deposition or the set of words I used. Can I
8 prove it to you? No.
9 Q Okay. Mr. Blackburn asked you some questions
10 related to your review of some material or some
11 water samples from the Applied Materials site. Is
12 that correct?
13 A That is correct.
14 Q And you stated that it's your position that
15 it's likely that contamination has changed the
16 hydraulic conductivity of the clays?
17 A That is correct.
18 Q And he asked you about perhaps beefing up or
19 you responded with a question to one of his questions
20 about maybe you would beef up the monitoring system,
21 the monitoring wells. Do you recall that?
22 A Well, really his question wasn't so much
23 about beefing up the monitoring wells, but what are
24 the analyses that would be performed on samples that
25 would be adequate. That's how I took his question.

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1 Q And that
 2 A And that's how I answered it, I think.
 3 Q And that's for the groundwater itself?
 4 A That's correct.
 5 Q Can you conduct geologic sampling to confirm
 6 your suggestion that the hydraulic conductivity of the
 7 actual clays has changed?
 8 A Yes, ma'am.
 9 Q Would that be something that would be helpful
 10 to determine whether or not the previous samples were
 11 adequate?
 12 A Samples of what?
 13 Q Previous sampling plan is adequate -- water
 14 well sampling plan?
 15 A You mean in terms of spacing?
 16 Q Sure, in terms of spacing to get a better
 17 idea of how the water is actually moving underneath
 18 the site.
 19 A Certainly that would assist. My reticence is
 20 not that I don't know where I want to go. It's just
 21 trying to put it into good words. We have a
 22 monitoring system proposed in the application, but
 23 there is absolutely no justification in the
 24 application for the positions of the monitoring wells.
 25 There's nothing. Nothing is stated anywhere in the

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1 application about what is the position. There was a
 2 lot of testimony earlier about, well, there's no more
 3 than 600 feet. Well, that would be real neat if we
 4 were perhaps doing this under the post-March 2000
 5 rules, which I thought we were going to be, at least
 6 in that part in my prefiled testimony, and even in
 7 my deposition.
 8 But I have since discovered a little out
 9 that had been slipped into 330.2A, I think, that says
 10 if you're going to expand capacity, you don't have to
 11 meet those requirements in the post-2006 rules until a
 12 year afterwards. That wasn't in any of the drafts
 13 that I read that I thought were final. So I made a
 14 mistake on that. But given that this is now under the
 15 current set of rules, there is no justification given
 16 for the positions of the wells. That was a long
 17 answer to a short question.
 18 Q Okay.
 19 A That's what happens when you get piled higher
 20 and deeper.
 21 Q So that means so would you suggest doing
 22 some testing of the hydraulic conductivity of the
 23 clays that you believe may have been changed?
 24 A Very definitely. I think there needs to be a
 25 very thorough investigation.

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1 Q And is hydraulic conductivity tested in any
 2 of the bore samples that have been the subject of a
 3 lot of discussion? There was a lot of bore sampling.
 4 A There were some hydraulic conductivity tests
 5 made, but they were in a very limited area, where at
 6 one time it was proposed to expand laterally expand
 7 the landfill and deepen it, just a small portion of
 8 it. But that was abandoned, and so the current
 9 testing the most recent testing, and I think the
 10 only testing in the application I may be wrong on
 11 that came from that small area.
 12 Q You testified that there's a surface
 13 watercourse beginning on site. What surface
 14 watercourse are you referring to?
 15 A I may not have the name exactly. I think it
 16 flows into Gilliland Creek. It passes through Applied
 17 Materials. It's the one on that they dealt with
 18 with respect to CLOMRs or LOMRs or whatever they were
 19 for changing the floodplain. There were others, but
 20 they got filled in.
 21 Q Okay. I'm a little bit confused about
 22 groundwater flow and how it reacts to having an
 23 artificial intrusion, the landfill, and how it reacts
 24 around that. Does it go around it? Does it go under
 25 it? It just goes how does that work?

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1 A Okay. If we had groundwater before the site,
 2 it would more or less mimic topography, which also
 3 more you know, it and it also, on a rough basis,
 4 the weathered or unweathered zone interface, which we
 5 can get into a little bit more, if you want, where the
 6 permeability changes, that also more or less mimics
 7 topography. So it would normally flow along that.
 8 That's without the landfill.
 9 Once you put the landfill in there, in
 10 theory, you have created a bathtub that is
 11 sufficiently impermeable. The groundwater, at least
 12 minimally, doesn't come into the landfill site, but if
 13 it were not into the unweathered shale, could flow
 14 underneath it, or it would have to go around it. Is
 15 that clear?
 16 Q So, if either a portion or all of the
 17 landfill is in that unweathered portion, it would go
 18 around it?
 19 A It would have to go around it.
 20 Q But if it's in the weathered portion, it
 21 would likely go under it?
 22 A Under it and around it.
 23 Q Okay.
 24 A And, in theory, you shouldn't be getting
 25 anything out of the landfill because of the liner and

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1 whatever cover you have. I say in theory. Not much,
 2 anyway. Minimally.
 3 Q You state that you had two major problems,
 4 kind of problems -- two problems with the permit
 5 application that you felt the permit application did
 6 not meet the MSW rules. The first is what we've been
 7 talking about, that you believe the landfill is a
 8 source of groundwater recharge. Does that mean that
 9 you think water is coming from within the landfill and
 10 going to the natural groundwater either beside it,
 11 laterally, or underneath it?
 12 A Yes. Let me explain.
 13 Q Sure.
 14 A If it at least in the pre-Subtitle D, and
 15 my understanding or at least in the post-Subtitle D,
 16 and in my understanding in the pre-Subtitle D,
 17 although it's not fully, properly shown on the boring
 18 logs, the bottom of the landfill does not go into the
 19 unweathered zone. All right. So, it has an
 20 opportunity to go underneath. All right. If you have
 21 a groundwater high within the footprint of the
 22 landfill, that groundwater high can only come from
 23 below or above.
 24 Now, below is defined as an aquiclude,
 25 something that does not transmit much water. So it

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1 can't come from below, and you're left with the only
 2 conclusion, that it had to come from above. You
 3 cannot have a high in the footprint of the landfill
 4 without that.
 5 Q What do you mean by "footprint of the
 6 landfill"?
 7 A The area occupied by the waste management
 8 unit.
 9 Q Okay. The hole in the ground?
 10 A That's correct.
 11 Q Okay. So there's no way to get water inside
 12 the landfill, is what we're talking about inside the
 13 actual landfill unless there's communication?
 14 A No. What I'm saying is you have two choices.
 15 Remember I said that the groundwater levels shown in
 16 the application are either they are potentiometric
 17 surface okay or result in one. That either
 18 illustrates a water table or it illustrates a
 19 piezometric surface. It doesn't distinguish. So it
 20 either illustrates the water level in the landfill or
 21 it illustrates the water level pressure level
 22 underneath the landfill.
 23 So, if you can't increase the pressure
 24 level or water level once it's inside the footprint
 25 because you have no place to bring it in you can't

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1 -- it doesn't move along and then suddenly jump up and
 2 come back down again. It has to do that, you have
 3 to have a source from below or a source from above.
 4 There are no other choices. It's very unlikely it
 5 came from below based on the geology of the site and
 6 really the hydrogeology. It has to come from above as
 7 illustrated in the application.
 8 Q Okay. And because you believe or because
 9 it's your opinion that water is coming from above and
 10 is, therefore, most likely leachate is that correct?
 11 A If it comes out of the landfill, it's by
 12 definition leachate.
 13 Q Okay. That since the monitoring systems
 14 haven't picked up any contamination that would support
 15 that position, then the groundwater systems are not
 16 functioning I'm sorry groundwater monitoring
 17 systems are not functioning properly. Is that --
 18 A They're not functioning as to their intent.
 19 Q Okay.
 20 A Which is to detect the release of
 21 contamination from the site.
 22 Q But to be clear, it would have to for that
 23 position to be validated, your first the predicate
 24 would have to be true, that there's leachate moving
 25 from within the landfill out of the landfill. Is that

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1 correct? For the second part of your --
 2 A Given the data and the information in the
 3 application, that's your own choice.
 4 Q Okay.
 5 MS. MANN: I have no further questions.
 6 JUDGE NEWCHURCH: Mr. Shepherd?
 7 MR. SHEPHERD: No questions.
 8 JUDGE NEWCHURCH: Mr. Terrill?
 9 CROSS-EXAMINATION
 10 BY MR. TERRILL:
 11 Q Dr. Kier, I'm Paul Terrill. I'm the lawyer
 12 for Giles Holdings. They're the landowner that owns
 13 most of the land where the BFI landfill is.
 14 A Yes, sir, I knew that.
 15 Q And you've been here for at least several of
 16 the days of the hearing. Correct?
 17 A Correct.
 18 Q Dr. Kier, do you have your exhibits there
 19 with you?
 20 A Which the ones from my prefiled?
 21 Q Yes, sir.
 22 A Yes.
 23 Q Can you turn to Exhibit No. 7, please?
 24 A Yes. I'm there already.
 25 Q Okay. The first page of that exhibit is a

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1 fax cover from Allied Waste to Kevin Carel. Is that
 2 correct?
 3 A Correct.
 4 Q And then what follows that and you
 5 understand that Allied is related to the applicant,
 6 BFI. Correct?
 7 A Yes.
 8 Q Now, what follows that is seven pages.
 9 Correct?
 10 A Yes, if my math is correct.
 11 Q And this is not a report that you prepared.
 12 Correct?
 13 A That is correct.
 14 Q And this is not a report that BFI or its
 15 experts prepared. Correct?
 16 A As far as I know.
 17 Q Well, let me ask you this. Do you know who
 18 prepared this?
 19 A I do now. I didn't at the time I did my
 20 prefiled testimony.
 21 Q Okay. It's safe to say, then, you weren't
 22 involved in any form or fashion in the testing,
 23 analysis, or other reporting that is involved in this
 24 report that's Exhibit 7. Correct?
 25 A Correct.

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1 Q And as I understand your testimony your
 2 prefiled testimony, you were simply pointing out that
 3 BFI was aware of this report. Is that correct?
 4 A I know that was at least one of the issues.
 5 I can't remember all right now. If you call me back
 6 to the prefiled testimony, I'll refresh my memory.
 7 Q Well, I think it speaks for itself, but
 8 that's -- we can move on. The bottom line is it's not
 9 your report and you weren't involved in any form or
 10 fashion with the report. Correct?
 11 A Correct.
 12 Q In your prefiled testimony, there's some
 13 discussion about the gradient the groundwater
 14 gradient. Do you recall that?
 15 A Yes.
 16 Q Let me ask you, what is the direction of the
 17 groundwater gradient on the property that's the
 18 subject of the BFI landfill?
 19 A There are multiple directions.
 20 Q Okay. Let's start with the predominant.
 21 A The predominant direction is to the east,
 22 more or less, southeast if you want.
 23 Q Let me ask you to do this. Can you take your
 24 Exhibit BK-3, which is your groundwater contour map?
 25 A Oh, mine?

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1 Q Yes, sir. Now, just in looking at this, I
 2 don't see that you have the gradient marked on here.
 3 Is that correct?
 4 A Well, I don't have it in numerical form, but
 5 it's shown by the contours.
 6 Q All right. Well, let me ask you to do this
 7 because at least in the reports that I'm familiar
 8 with, I typically see hydrogeologists draw arrows in
 9 the directions of the gradient. And let me ask you to
 10 draw the predominant gradient direction on the BK-3.
 11 A Okay.
 12 MR. RENBARGER: Mr. Terrill, would you
 13 prefer to have a colored pen, something different than
 14 red or blue, just so there isn't a confusion as to his
 15 markings versus the others?
 16 MR. TERRILL: I think that's a fine
 17 idea. May I approach the witness?
 18 JUDGE NEWCHURCH: Yes. Please do. I
 19 believe we had a green the other day.
 20 MR. CARLSON: I've got a nice burnt
 21 orange.
 22 A Good color.
 23 MR. CARLSON: It might be a little more
 24 University of Tennessee than Texas here.
 25 A Yes, that would be.

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1 MR. TERRILL: All right. I'm going to
 2 bring my map up here with me so I can see what you're
 3 doing. If you would, with your burnt orange or
 4 maybe that's University of Tennessee orange, actually
 5 colored pen, will you draw in the direction of the
 6 predominant groundwater gradient?
 7 A Can I put it off to the side as predominant?
 8 Because if I were to draw it explicitly on this, you
 9 would have several arrows.
 10 Q Yes, that's fine with me.
 11 A Do you want me to put my initials on that?
 12 Q Sure. All right. Now, Dr. Kier, you
 13 mentioned that there are other gradients as well. Let
 14 me ask you to explain where those other gradients are.
 15 A All right. There's a gradient, based on this
 16 map, that moves northward or northeastward, and I'm do
 17 you want me to put dashed lines?
 18 Q Sure.
 19 A There's a gradient that moves more or less
 20 more eastward and turns and goes down into Austin
 21 Community landfill. There's a gradient that goes
 22 westward onto the neighboring property. So,
 23 functionally, groundwater flows in all those
 24 directions out of the landfill.
 25 Q Except as I look at your map here, it looks

25 (Pages 1607 to 1610)

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1 like it does not flow this direction, which is --
 2 A Try northwest.
 3 Q -- northwest. All right. It does not flow
 4 to the northwest?
 5 A Well, you'll see that based on the data, I
 6 only had in the landfill. And so we dashed the
 7 contour up here because it's inferred. I have no data
 8 to constrain it. So I cannot tell you whether it does
 9 or does not. I simply infer that it comes around and
 10 joins this other.
 11 Q Let me ask you a question about that. These
 12 contour lines that you've drawn on your original BK-3
 13 that are in blue, those were not based on your
 14 measurements of the landfill. Correct? It's from the
 15 application?
 16 A Yes.
 17 Q And as I understand it, those lines are
 18 inferred based on measurements that are taken around
 19 the perimeter of the landfill. Is that correct?
 20 A No, sir. What I did was take the
 21 cross-sections that are in Attachment 4 that go both
 22 let's make it northwest to southeast and northeast to
 23 southwest or make it simple, east-west, north-south.
 24 And where they show the groundwater level crossing the
 25 cross-section, we've plotted that based on those

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1 cross-sections.
 2 Q Okay. I want to be clear about this. You're
 3 not saying the measurements were taken from here is
 4 what I'm going to do. I'm going to mark on this map.
 5 I'm going to put a No. 1 just right here just for
 6 representative purposes on the 640 contour line.
 7 A Uh-huh.
 8 Q You're not saying that there was a
 9 measurement of the groundwater level at that location,
 10 No. 1, saying that it's 640. Correct?
 11 A No, sir. I you're correct. I had the
 12 level at B-16 or a level I had the level at B-16,
 13 based on the cross-sections.
 14 Q Okay.
 15 A Okay? I had to level --
 16 Q Well, let me stop you there. Let's talk
 17 about B-16. When you say from the cross-sections,
 18 you're saying where that line you're saying that
 19 B-16 is from the cross-section line. Correct?
 20 A It's on the cross-section, yes.
 21 Q Okay. But you're not saying that there was
 22 an actual groundwater measurement of that amount at
 23 B-16, are you?
 24 A Well, probably not, but it is there is on
 25 right above B-16, there is shown a groundwater level.

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1 Q Okay.
 2 A And it's stated to be December 1999.
 3 Q And it's your testimony, it's your
 4 understanding that that is a measurement of the
 5 groundwater level at that location, B-16, in or under
 6 the landfill. Is that what you're saying?
 7 A I am saying I can't tell you where it came
 8 from. I am saying that the application has
 9 cross-sections. And I can show them to you if you
 10 want to produce one.
 11 Q No. We've talked about them a lot earlier.
 12 A Okay. And they show groundwater levels.
 13 Q Okay. All right.
 14 A They don't distinguish how they got there.
 15 They just said, "December 1999, approximate
 16 groundwater level."
 17 Q Were you here for the testimony of
 18 Mr. Terrill?
 19 A Yes.
 20 Q All right. Did you hear the testimony from
 21 him and I think another witness talked about this as
 22 well about the measurements taken at the perimeter
 23 of the landfill and those being inferred lines?
 24 A Yes, I heard him say that.
 25 Q Okay. Do you have new reason to doubt that

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1 testimony?
 2 A In doing so in making that statement, he
 3 violated the most basic principle of hydrogeology or
 4 any geology. If they were inferred, they should have
 5 been displayed as inferred. They were not. They were
 6 shown as solid lines. They were signed and sealed
 7 well, his weren't, but Mr. Snyder's were. And as any
 8 beginning geologist learns in basic geology lab, if
 9 you show a solid line, that is your best
 10 interpretation. If you simply infer it, you dash it.
 11 If you really want to show it as concealed, you might
 12 dot it or something else. These are standard
 13 procedures that every geologist and engineer knows
 14 and, frankly, are on the Geoscientists Practice Act
 15 test.
 16 Q All right. Now, you answered a question
 17 different than what I asked. I understand you
 18 disagree with how he did it. But you heard what he
 19 said, and you heard BFI's other witnesses, I suppose,
 20 saying that those aren't actual measurements. They're
 21 inferred lines. Do you have reason to doubt that?
 22 A I took them at face value in the application.
 23 And at face value, with signed and sealed documents, I
 24 believe I took them correctly.
 25 Q All right. What I'm asking you is different

26 (Pages 1611 to 1614)

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1 than that. Now that you've heard their explanation,
 2 do you doubt that that's what they actually represent?
 3 A They may not have meant it to, but they did.
 4 And that's in the application, which is the subject of
 5 this proceeding.
 6 Q Okay. So you're saying you do doubt that he
 7 was telling the truth when he said those were inferred
 8 lines?
 9 A No, I'm not saying that. I'm saying that
 10 because of the way they were displayed both in
 11 Mr. Terrill's groundwater maps and in Mr. Snyder's
 12 groundwater maps, and on the cross-sections in the
 13 application, signed and sealed documents in the
 14 application, that they have told me explicitly that
 15 that's their best position of the contour, and that's
 16 the water surface. And it's the application, not what
 17 they say trying to get out of it later on subject to
 18 this proceeding.
 19 Q All right. Let's switch subjects. I think
 20 we beat that one to death. All right.
 21 Are you familiar with the groundwater
 22 gradient velocity measurements that have been taken
 23 and testified to in this case?
 24 A Yes.
 25 Q All right. The testimony, at least as I

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1 recall it, earlier in the hearing was that it was in
 2 the neighborhood of five to ten feet per year. Is
 3 that your recommendation?
 4 A Close. I think he said six to ten, but we
 5 won't quibble.
 6 Q All right. Why don't you go ahead and write
 7 six to ten in the direction of the gradient there.
 8 A Okay. Now, you understand I don't
 9 necessarily agree with it?
 10 Q Yes. That's fine. We'll talk about that in
 11 just a minute.
 12 A Okay.
 13 Q And is it your understanding that that is
 14 measured based on actual measurements taken of
 15 groundwater movement?
 16 A It is based on slug tests.
 17 Q Is that a "yes"?
 18 A Do I need to go into no. I've got to tell
 19 you how it was based on.
 20 Q All right. Go ahead.
 21 A It's not based purely on measurements. It's
 22 based on slug tests and water levels and an estimate
 23 of the porosity.
 24 Q It's based on measured data, and then an
 25 amount is inferred from that. Is that a fair

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1 representation?
 2 A No.
 3 Q Okay. How is it unfair? I mean, there are
 4 actual measurements that go into determining the
 5 velocity. Correct?
 6 A There is an actual measurement of hydraulic
 7 conductivity. There is an actual measurement of water
 8 levels. The porosity is generally assumed because we
 9 don't have actual measurements.
 10 Q Do you have any disagreement with the
 11 porosity assumption?
 12 A I don't know. I don't know what it is. I
 13 didn't care.
 14 Q You haven't looked at it?
 15 A Huh-uh.
 16 Q And you haven't made any actual measurements
 17 of the groundwater velocity yourself, have you?
 18 A No. One has a little difficulty measuring
 19 groundwater velocity.
 20 Q All right. Now, during your testimony, you
 21 raised an issue about the I'm going to say implied
 22 increase in velocity of the groundwater movement based
 23 on changes in the subsurface clays. Did I say that
 24 correctly?
 25 A Close enough for starters.

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1 Q My understanding of your testimony is there's
 2 been some sort of change in the subsurface clays which
 3 you think is because of some sort of industrial waste,
 4 solvents, acids, and that has changed the speed of
 5 groundwater movement. Is that a fair representation
 6 of your testimony?
 7 A Yes. It's changed it not everywhere, but
 8 where the clays have been impacted by those materials.
 9 Q All right. No. 1, where are the acids and
 10 solvents that you speculate have caused this change in
 11 groundwater velocity?
 12 A Are you asking me where they are today or
 13 where they were put?
 14 Q Both. Let's start where they were put.
 15 A They were put in what Waste Management they
 16 were largely put in what Waste Management calls its
 17 industrial waste management unit. There was a firm,
 18 Industrial Waste Materials Management, that put them
 19 there.
 20 Q All right.
 21 A There are some that are outside that area
 22 were put outside that area.
 23 Q Now, just so that the record is clear, you're
 24 not saying that any of these solvents or acids were in
 25 BFI's landfill. Correct?

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1 A I'm unaware that they were, if they were.
2 Q And everything that you're basing your theory
3 on is based on the acids and solvents that might have
4 been put in Waste Management's landfill. Correct?
5 A That is correct.
6 Q And by the way, did you look at you know
7 that Travis County has a closed landfill right next to
8 the Waste Management landfill. Correct?
9 A Yes.
10 Q Did you look at any of the wastes that were
11 placed into that landfill?
12 A To the extent that they're known, yes.
13 Q Is that a lined or an unlined landfill?
14 A Oh, it's unlined.
15 Q Okay. So back to my question about your
16 theory on acids and solvents getting into the clays.
17 Where are they now in your theory, where are they
18 now?
19 A Well, that's a very interesting question. It
20 appears that they've made it across Applied Materials'
21 property. How far across Lake Walter E. Long they
22 have gone, I don't know because I have no data.
23 Q Okay. How far is it from the industrial pit
24 in the Waste Management landfill to Applied Materials?
25 A I haven't measured it.

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1 Q No idea?
2 A Well, I would guess at least 1,000 feet.
3 Q Okay. Since you haven't measured it, I'm
4 probably safe in saying this, but let me just ask it.
5 You haven't tried to calculate what the velocity of
6 the groundwater would be to get from the Waste
7 Management industrial disposal site to where it was
8 picked up on Applied Materials' wells. Correct?
9 A No. That really would be an impossible
10 calculation because we have no idea when the material
11 that was found at Applied Materials was placed there.
12 Was it yesterday -- or not yesterday just before
13 they sampled it, or did it come ten years before.
14 Q Now, on the other hand, if you took do you
15 know the distance between the BFI landfill and Applied
16 Materials' site?
17 A It's whatever the right-of-way is for Giles
18 Road plus 50 feet, more or less.
19 Q Now, have you measured the distance between
20 the BFI landfill and where there were some
21 constituents reported on Applied Materials' monitor
22 wells?
23 A No, I have not measured those distances.
24 Q Do you have any idea how many years or
25 decades it would take assuming the six to ten feet

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1 per year, do you have any idea how many years or
2 decades it would take to get from BFI's landfill to
3 the Applied Materials' well?
4 A Well, I haven't personally done the math, but
5 I think I heard Mr. Snyder say it would be over 100
6 years or around 100 years, which would be an
7 impossibility, but that's assuming his six to ten feet
8 is correct.
9 Q Okay. Have you attempted -- let me ask it a
10 different way. From the Allied from the Waste
11 Management landfill, assuming the six to ten feet per
12 year, what time frame would it take for those
13 constituents to get from Waste Management to Applied
14 Materials' well?
15 A I haven't done that calculation. It would be
16 a useless one.
17 Q This theory that you have that the
18 groundwater velocity has increased, have you seen any
19 actual measured data that supports your theory?
20 A Yes, to the extent that tests have shown that
21 strong acid -- and even field measurements have shown
22 that strong acids will desiccate clays and drastically
23 change their hydraulic conductivity.
24 Q That wasn't my question. Let me ask it a
25 different way. Okay?

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1 Have you seen any actual measurements of
2 groundwater velocity that support your theory that
3 there has been an increase in groundwater velocity?
4 A All right. We'll narrow it down to that
5 little bit. And that is yes, because we have found
6 constituents, or somebody has found constituents, on
7 Applied Materials that cannot have come from Applied
8 Materials. Some of them are upgradient of even all
9 their facilities. But they're strange chemicals and
10 would not have been generated by anything Applied
11 Materials or any other known facility, gasoline
12 station, car body shop, would ever produce.
13 Q Dr. Kier, you're not answering my question.
14 You're inferring something based on something that was
15 found in a well. I'm asking a simpler question.
16 Have you seen any measured data
17 supporting the idea that the groundwater velocity
18 movement is something much greater than six to ten
19 feet per year?
20 A Well, yes, but you just don't like my answer.
21 That is, if you have these constituents over at
22 Applied Materials and they could only have come from
23 Waste Management, that is a measure of groundwater
24 velocity to the limited extent that if you assume it
25 started here in '70 and it's here now.

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1 Q Okay. Let's put aside your inference that
 2 one came from the other. I'm talking about
 3 measurement of water movement itself.
 4 A You're asking has anyone tested and run tests
 5 to ascertain the hydraulic conductivity? Is that what
 6 you're asking?
 7 Q I'm asking whether --
 8 A That might have been changed.
 9 Q I'm asking whether you have.
 10 A Oh. Certainly not.
 11 Q All right. Now, has anyone else come up with
 12 any measurements saying that it's anything other than
 13 six to ten feet per year?
 14 A At this location, I'm unaware of it if they
 15 have.
 16 Q As I understand your testimony, you've got
 17 two basic complaints about the landfill, one of which
 18 we've been talking about, which is that there is at
 19 least your theory that the landfill is leaking. And
 20 then your second complaint, as I understand it, is
 21 that the monitoring plan is insufficient. Correct?
 22 A Correct.
 23 Q Now --
 24 A I say it's highly probable it's leaking,
 25 because I can't come up with any other reason.

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1 Q All right. The monitoring plan as I
 2 understand your testimony, you have what I'll call a
 3 professional disagreement about whether the plan meets
 4 the intent of the agency's rules but not is that
 5 correct?
 6 A I don't know. I don't think anybody asked
 7 the other witnesses the questions that would elicit
 8 the kind of so I could make a comparison.
 9 Q Well, my question is a little bit more
 10 simpler than that. It's simply you don't disagree
 11 that the plan itself complies with the TCEQ rules and
 12 regulations for monitoring. Correct?
 13 A Insofar as what they have proposed to
 14 analyze, it would be consistent with the rules for a
 15 landfill in isolation. Insofar as the placement of
 16 the monitoring wells, there is absolutely no
 17 justification for the placement, which is required
 18 under the rules that this application is being
 19 processed.
 20 Q I'll ask it again. The rules, as they are
 21 written, it complies with the monitoring plan rules,
 22 doesn't it?
 23 A Not the way you ask the question.
 24 MR. RENBARGER: Mr. Terrill, if I may.
 25 MR. TERRILL: Sure.

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1 MR. RENBARGER: I think there may be
 2 some confusion as to the pre- and post-2006 MSW rules
 3 that appears at least from this outsider listening in
 4 to the questioning, there may be a little disconnect
 5 there.
 6 Q (BY MR. TERRILL) All right. I assumed,
 7 maybe wrongly so, that you were that you were
 8 reviewing this based on your earlier testimony with
 9 the understanding that the rules that were in effect
 10 at the time the application was filed are what this
 11 application will be judged by.
 12 A That's my assumption, yes.
 13 Q All right. They're in compliance with those
 14 rules the monitoring plan is in compliance with
 15 those rules, isn't it?
 16 A And my answer doesn't change. In terms of
 17 the constituents that they plan to have analyzed for,
 18 it probably meets the rules. But in terms of the
 19 placement of the monitoring wells and the
 20 justification for that placement, it does not.
 21 Q And so what is your recommendation of what
 22 additional requirements?
 23 A There needs to be two things. One is to meet
 24 the rules. One is a justification for where those
 25 wells are placed. Simply giving a distance isn't

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1 sufficient under the current rules. It may not be
 2 under the post-2007 rules either. That's another
 3 story.
 4 Second, this application has designated
 5 no upgradient wells. That is a requirement under the
 6 rules. You must have an upgradient well, and there
 7 isn't one in this application. There are none that
 8 are designated. Every single monitoring well is
 9 designated as a downgradient well, so it doesn't meet
 10 the rules.
 11 Q And that's because there's a well there are
 12 wells that completely encircle the perimeter of the
 13 property. Correct?
 14 A Correct.
 15 Q Who is your client in this case?
 16 A TJFA.
 17 Q Have you been to TJFA's property?
 18 A Yes.
 19 Q How many times?
 20 A I would have to say innumerable. I have no
 21 idea.
 22 Q Innumerable?
 23 A Uh-huh.
 24 Q More than ten?
 25 A Oh, easily.

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1 Q How far is it from the landfill?
2 A How far is what from what landfill?
3 Q TJFA's property.
4 A Oh, you're talking about are you talking
5 about --
6 Q Okay. I wasn't talking about the TDS
7 landfill.
8 A Okay.
9 Q And I know it gets confusing.
10 A All right. Well, it was confusing because
11 TJFA also has property surrounding its own landfill,
12 and I have been to that.
13 Q All right.
14 A Okay? And I've been to the TJFA property at
15 other landfills. But this particular one, no, I have
16 not been to.
17 Q All right. How much are you paid an hour?
18 A \$160.
19 Q And how much have you been paid for this
20 case?
21 A I don't know.
22 Q Ballpark it.
23 A Well, it's difficult to ballpark because my
24 invoices do not just include myself.
25 Q What does that mean?

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1 A Well, for simplicity, the work that Jim
2 Neyens did he's not a witness in this case, but the
3 work that he did was billed through my firm. It was
4 my contract with him or TRC, and the work that
5 Dr. Yuliana, who is not a witness in this case, was
6 billed through my firm, as well as my one and only
7 associate.
8 Q Okay. If you include their amounts, what do
9 those bills add up to?
10 A I still don't know.
11 Q Ballpark.
12 A I don't know. Somewhere between 50 and
13 \$100,000.
14 Q Okay. Now, Mr. Neyens, he wasn't called by
15 TJFA as a witness, but he did, in fact, review the
16 application and prepare prefiled testimony. Correct?
17 A Yes.
18 Q And TJFA chose not to call him, but that
19 didn't mean that he wasn't working on this case.
20 Right?
21 A That is correct.
22 Q And what was the other name? Dr. Yuliana?
23 A Yuliana.
24 Q Was it Doctor or Mister?
25 A Doctor.

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1 Q Dr. Yuliana, he worked reviewing this
2 application as well. Correct?
3 A Yes.
4 Q And that was his assignment through you as a
5 subcontractor?
6 A The financial part came through me. The
7 instructions did not necessarily come through me. The
8 same with Mr. Neyens.
9 Q That, presumably, came from Mr. Gregory.
10 Correct?
11 A Yes, or one of his representatives.
12 Q Now, Dr. Yuliana reviewed the BFI application
13 as well. Correct?
14 A Portions of it.
15 Q And I think he does the groundwater chemistry
16 work. Is that correct?
17 A Yes, he's a hydrogeologist.
18 Q And he has not offered any testimony in this
19 case. Correct?
20 A Correct.
21 Q And how much were his bills? How many like
22 in tens of thousands, how much did he spend looking at
23 the application?
24 A I'm going to guess and it's a pure guess
25 between ten and 20. I mean, you've got the invoices,

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1 so you can add it up yourself.
2 Q I don't have them. I don't disagree that
3 somebody else perhaps sitting to my right might have
4 them, but I don't.
5 A I'm sure he'll be glad to give them to you.
6 MR. TERRILL: Right. I'll pass the
7 witness.
8 JUDGE NEWCHURCH: We'll go ahead and
9 break for lunch now because we have to be back at 1:30
10 sharp because we have time certain witnesses. So
11 we'll be in recess until 1:30.
12 (Recess from 12:06 p.m. to 1:35 p.m.)
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1 AFTERNOON SESSION
 2 TUESDAY, JANUARY 28, 2009
 3 (1:35 p.m.)
 4 (Exhibit NNC Nos. BEST-1 through BEST-8,
 5 BWI-1, BWI-2, ER-1 through ER-7, EW-1, EW-2, JB-1
 6 through JB-3, JWE-1, JWE-2, MCO-1, MCU-1, MCU-2, MM-1
 7 marked)
 8 JUDGE NEWCHURCH: Let's go on the
 9 record. It's 1:35 p.m. Are there any preliminary
 10 matters this afternoon?
 11 MR. BLACKBURN: Well, Your Honor, I
 12 don't know if it's preliminary, but I think we were
 13 going to take some of our many witnesses out of order.
 14 JUDGE NEWCHURCH: That's what we're
 15 going to do next. I was just asking about procedural
 16 type things. So, by prior agreement, we are going to
 17 interrupt the cross-examination of Dr. Kier, and we're
 18 going to go to NNC's case.
 19 And, Mr. Blackburn, first of all, did
 20 you have an opening statement?
 21 MR. BLACKBURN: No, Your Honor. I'll
 22 just go ahead and move forward.
 23 JUDGE NEWCHURCH: Okay.
 24 MR. BLACKBURN: Let me start by saying I
 25 think by prior agreement there are, first of all,

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1 three witnesses that I believe it's been agreed that
 2 their testimony will be admitted into the record
 3 without there being the necessity of their testifying,
 4 and I have given copies of the exhibits to the court
 5 reporter.
 6 One of those witnesses is Marion
 7 Childress-Usher. She has Exhibits MCU-1 and MCU-2,
 8 and I move admission for those two exhibits. That's
 9 her prefiled testimony and the exhibit attached to it.
 10 JUDGE NEWCHURCH: Okay. I'm just
 11 looking for my copy of it. Marion Childress-Usher,
 12 and you've marked these exhibits as 1 and 2. Okay.
 13 MR. BLACKBURN: Yes, Your Honor.
 14 JUDGE NEWCHURCH: And is it correct that
 15 those could be admitted without objection or without
 16 necessity for Ms. Childress-Usher to testify?
 17 MR. CARLSON: Correct, Your Honor.
 18 JUDGE NEWCHURCH: Then the motion to
 19 admit MCU-1 and 2 is granted.
 20 (Exhibit NNC Nos. MCU-1 and MCU-2
 21 admitted)
 22 MR. BLACKBURN: The next of those
 23 witnesses is Jennifer Wells. I believe the same
 24 agreement exists with Jennifer Wells. Her exhibits
 25 are JWE-1 and JWE-2, and I moved admission for those

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1 two exhibits. That is her prefiled testimony and
 2 attached exhibit.
 3 JUDGE NEWCHURCH: Any objection?
 4 MR. CARLSON: None from BFI.
 5 JUDGE NEWCHURCH: Then JWE-1 and 2 are
 6 both admitted.
 7 (Exhibit NNC Nos. JWE-1 and JWE-2
 8 admitted)
 9 MR. BLACKBURN: The third is Barbara
 10 Winchell. Her prefiled testimony is Exhibit BWI-1,
 11 and there is an attached Exhibit BWI-2. I move
 12 admission for those exhibits.
 13 JUDGE NEWCHURCH: Any objection to that?
 14 MR. CARLSON: No objection.
 15 JUDGE NEWCHURCH: BWI-1 and 2 are both
 16 admitted.
 17 (Exhibit NNC Nos. BWI-1 and BWI-2
 18 admitted)
 19 MR. BLACKBURN: Okay. The fourth is
 20 Marcelina Cook. That is slightly different in that
 21 it's been agreed that she can be admitted without
 22 cross-examination or without live testimony, but there
 23 are some deposition excerpts, I believe, that the
 24 counsel for BFI would like to introduce. But I move
 25 admission of Exhibit MCO-1, which is the only exhibit

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1 attached to her which is her prefiled testimony.
 2 And I believe that with that agreement, we can go
 3 forward.
 4 JUDGE NEWCHURCH: Mr. Reed, would you
 5 like to make that offering now or later?
 6 MR. REED: That would be fine, Your
 7 Honor. I'm ready to do that now.
 8 JUDGE NEWCHURCH: Okay. Why don't we
 9 just clear up Ms. Cook once and for all, then. So
 10 where are those exhibits, please?
 11 MR. REED: I'd like to enter her
 12 Deposition Exhibit 162. I'd also like to enter
 13 Page 13 of her deposition, Lines 4 through 14 I have
 14 copies and her deposition, Page 20, Lines 7 through
 15 16.
 16 MR. CARLSON: Do you want to mark those
 17 as BFI exhibits? Would this be easier?
 18 JUDGE NEWCHURCH: Can we make them one
 19 exhibit? Just make that BFI 12. Is that right?
 20 MR. CARLSON: Yes.
 21 JUDGE NEWCHURCH: So let's make that BFI
 22 12.
 23 (Exhibit BFI No. 12 marked)
 24 JUDGE NEWCHURCH: All right. So
 25 Page 13, Page 20, and a map.

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1 MR. REED: Yes, Your Honor.
 2 JUDGE NEWCHURCH: And that's going to be
 3 BFI collectively, BFI-12. Am I to understand
 4 there's no objection to BFI-12 being admitted?
 5 MR. BLACKBURN: No objection.
 6 JUDGE NEWCHURCH: Without objection, BFI
 7 12 is admitted.
 8 (Exhibit BFI No. 12 admitted)
 9 MR. BLACKBURN: And the next is Jeremiah
 10 Bentley, which is JB-1, JB-2, and JB-3, the prefiled
 11 testimony and two attachments. I asked the court
 12 reporter to go ahead and date stamp that before I
 13 talked with Mr. Reed. Mr. Reed does want to offer
 14 deposition testimony with regard to Mr. Bentley. I'm
 15 certainly in agreement with that. He does not have
 16 that prepared yet, and I presume, since we're handling
 17 these as separate BFI exhibits, whenever he assembles
 18 this, he'll pass it out. And we'll just simply he
 19 will offer it, and I there would certainly be no
 20 objection on our part to that, because that's our
 21 agreement. So, with that, I offer JB-1 through 3.
 22 JUDGE NEWCHURCH: With that agreement,
 23 is there no objection to the admission of JB-1, 2, and
 24 3?
 25 MR. REED: No objection.

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1 JUDGE NEWCHURCH: And those are all
 2 admitted.
 3 (Exhibit NNC Nos. JB-1, JB-2 and JB-3
 4 admitted)
 5 MR. BLACKBURN: Next I'd like to proceed
 6 to the live witnesses that are here, and I'd like to
 7 start off with Mr. John Wilkins, please. John, if
 8 you'd come up and take a seat up here, please.
 9 JUDGE NEWCHURCH: Mr. Wilkins, you'll be
 10 over here next to the court reporter, and you'll need
 11 to take the oath.
 12 (Exhibit NNC Nos. JAW-1 and JAW-2
 13 marked)
 14 JUDGE NEWCHURCH: Mr. Blackburn?
 15 PRESENTATION ON BEHALF OF
 16 NORTHEAST NEIGHBORS COALITION
 17 JOHN A. WILKINS,
 18 having been first duly sworn, testified as follows:
 19 DIRECT EXAMINATION
 20 BY MR. BLACKBURN:
 21 Q Would you state your name, please, sir?
 22 A John A. Wilkins.
 23 Q And where do you live, Mr. Wilkins?
 24 A 803 Cutlass, Lakeway, Texas.
 25 Q And do you own property near the BFI Sunset

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1 Farms landfill site?
 2 A I do.
 3 Q Could you tell us just kind of generally
 4 where it is and how close or how far away from the
 5 landfill?
 6 A Our land is approximately one-fourth mile
 7 west of the BFI landfill on Blue Goose Road.
 8 Q And what is the size of your land?
 9 A 119 acres.
 10 Q And have you described your testimony that
 11 you are interested in presenting to this Court in the
 12 exhibit that's in front of you, JAW-1, and the
 13 attachment, JAW-2?
 14 A Yes.
 15 Q And is that true and correct to the best of
 16 your knowledge?
 17 A Yes.
 18 MR. BLACKBURN: Move admission JAW-1 and
 19 2.
 20 JUDGE NEWCHURCH: I think there were
 21 objections early on. Correct?
 22 MR. BLACKBURN: I think we addressed all
 23 of those objections, if I'm not
 24 JUDGE NEWCHURCH: Okay. Those have all
 25 been addressed? That's what I'm clearing up.

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1 MR. BLACKBURN: I believe these have
 2 been conformed to the objections and rulings.
 3 JUDGE NEWCHURCH: Got you.
 4 MR. CARLSON: That's our understanding
 5 as well, Judge.
 6 JUDGE NEWCHURCH: Okay. Any further
 7 objection, then, to JAW-1 or 2?
 8 (No response)
 9 JUDGE NEWCHURCH: Then they are both
 10 admitted.
 11 (Exhibit NNC Nos. JAW-1 and JAW-2
 12 admitted)
 13 MR. BLACKBURN: I pass the witness and
 14 tender him for cross-examination.
 15 JUDGE NEWCHURCH: Let's see. TJFA?
 16 MR. RENBARGER: Thank you, Judge. Just
 17 very quickly.
 18 CROSS-EXAMINATION
 19 BY MR. RENBARGER:
 20 Q Mr. Wilkins, good afternoon.
 21 A Good afternoon.
 22 Q My name is Bob Renbarger. I represent an
 23 entity called TJFA, L.P., which is a party to these
 24 proceedings. I understand you own 119 acres a quarter
 25 mile west of the BFI landfill facility. Is that

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1 correct?
 2 A Correct.
 3 Q Is that an investment property?
 4 A I suppose you would classify it as that.
 5 Q When you say "you suppose you could," are you
 6 holding the property for investment?
 7 A Yes.
 8 Q And when --
 9 A I inherited the land, so --
 10 Q I see. What are your intentions as far as
 11 the future use of the land?
 12 A Hopefully to sell it someday.
 13 Q Have you ever attempted to sell it in the
 14 last five years?
 15 A I've never listed it with a real estate
 16 broker.
 17 Q Is there any particular reason for that?
 18 A Because of the two dumps that are near it.
 19 There was never any interest.
 20 Q Have you actually solicited to see if there's
 21 any interest in anyone purchasing the land?
 22 A No. One real estate company called, oh, a
 23 year and a half ago, and they were mildly interested,
 24 even put a contract on it, but then they learned about
 25 Waste Management purchasing the tract adjoining us,

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1 and they backed out.
 2 Q I see. So is it your view as you sit here
 3 today that the existence of the landfill properties in
 4 proximity to your 119-acre tract has inhibited the use
 5 or commercial sale of your property?
 6 A Yes.
 7 MR. RENBARGER: I pass the witness.
 8 JUDGE NEWCHURCH: Ms. Noelke?
 9 MS. NOELKE: No questions, Your Honor.
 10 JUDGE NEWCHURCH: Mr. Morse?
 11 MR. MORSE: No questions, Your Honor.
 12 JUDGE NEWCHURCH: Ms. Mann?
 13 CROSS-EXAMINATION
 14 BY MS. MANN:
 15 Q Good afternoon. My name is Christina Mann.
 16 I'm an attorney in the Public Interest Counsel at
 17 TCEQ. I just have a couple of questions about how
 18 often you go out to the property and what your
 19 perceptions are when you're there.
 20 So you live in Lakeway, but you own this
 21 property, and you are renting it to someone who runs
 22 cattle out there. Is that correct?
 23 A Yes.
 24 Q How often do you visit the property?
 25 A At least once a month, and I drive by it more

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1 often than that.
 2 Q Okay. And you state that you had complained
 3 of odors to BFI about five years ago. You said you
 4 haven't complained since then. Have you ever talked
 5 to anyone besides a representative of BFI about any
 6 odor issues?
 7 A I talked to my tenant.
 8 Q To your tenant? But never anyone from TCEQ?
 9 A No.
 10 Q And you only complained the once to BFI?
 11 A Yes.
 12 Q Were the odors particularly strong the time
 13 you complained, or was that just --
 14 A Yes. They were very strong.
 15 Q Okay. Have they ever been that strong since?
 16 A No.
 17 Q Had you smelled odors before the time you
 18 complained?
 19 A Yes, I had.
 20 Q So you go out there about once a month, you
 21 testified. Do you have an approximation of what the
 22 frequency is that you have an odor issue when you're
 23 out there?
 24 A Well, it's been better lately. But when the
 25 wind is out of the east, sometimes, even lately, I can

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1 pick up a whiff of odor.
 2 Q So you notice the odor more when the wind is
 3 blowing?
 4 A From the east.
 5 Q From the east. Okay.
 6 MS. MANN: I have no further question.
 7 JUDGE NEWCHURCH: Mr. Shepherd?
 8 MR. SHEPHERD: No questions.
 9 JUDGE NEWCHURCH: Mr. Terrill?
 10 MR. TERRILL: No questions.
 11 JUDGE NEWCHURCH: Mr. Carlson?
 12 CROSS-EXAMINATION
 13 BY MR. CARLSON:
 14 Q Good afternoon, Mr. Wilkins. I have just a
 15 few questions for you.
 16 I understand that you're technically not
 17 the owner of the property in an individual capacity.
 18 Is that correct?
 19 A That's correct.
 20 Q You are the trustee for a trust that owns the
 21 property?
 22 A Yes. It's my dad bought it as trustee, and
 23 he deeded it to me as trustee.
 24 Q So you serve in the capacity as trustee with
 25 respect to the property. Correct?

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1 A Correct.
 2 Q Okay. And there are some other beneficiaries
 3 of that trust that have a beneficial interest in the
 4 property we're talking about?
 5 A Correct.
 6 Q That would be what percentage of the
 7 property do you own? Is it 30 percent?
 8 A 30.
 9 Q And your sister would be a beneficial owner
 10 of another 30 percent. Correct?
 11 A Correct.
 12 Q And then there are some other individuals who
 13 own the other have a beneficial interest in the
 14 other 40 percent. Is that correct?
 15 A Correct.
 16 Q Now, you testified you live in Lakeway.
 17 Right?
 18 A Correct.
 19 Q On the other side of the county from the
 20 landfill. Right?
 21 A Correct.
 22 Q So I'll use the term "owner" loosely here
 23 based on what we said, but you are an absentee owner
 24 of this property. Right?
 25 A Correct.

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1 Q Okay. You do have a tenant on the property.
 2 Right?
 3 A Correct.
 4 Q And there is a single residence on the
 5 property?
 6 A Yes.
 7 Q And your tenant uses that property for
 8 agricultural purposes. Isn't that correct?
 9 A Correct. He lives in the house and rents the
 10 rest of the land for cattle grazing.
 11 Q It's a cattle operation. Right? There isn't
 12 any sort of row crops?
 13 A No.
 14 Q You say "no," but there are no row crops.
 15 Right?
 16 A No row crops.
 17 Q Now, you've had the same tenant for 25 years
 18 out there, haven't you?
 19 A That's correct.
 20 Q That's a pretty good turnover rate for a
 21 landlord, isn't it?
 22 A Yes.
 23 Q Are you happy with that?
 24 A Yes.
 25 Q What do you do professionally, sir?

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1 A Oil and gas landman.
 2 Q You said "landman." Could you explain for
 3 the Judge what a landman does?
 4 A A landman typically deals with oil and gas
 5 interest, research title in the courthouse, determine
 6 who owns the property, and then, on behalf of the oil
 7 and gas company, tries to buy an oil and gas lease
 8 from the landowner.
 9 Q Do you have your own company, sir?
 10 A No.
 11 Q Okay. So you go out and scout out properties
 12 for oil and gas purposes. Right?
 13 A Yes.
 14 Q And then do you actually attempt to purchase
 15 desirable properties in your own name or in the name
 16 of a company you formed?
 17 A No.
 18 Q Are there other companies who you use to
 19 purchase the properties?
 20 A To purchase the leases?
 21 Q Or leases, in that case.
 22 A Yes. You do that for the oil company.
 23 Q All right. Now, are we talking about oil and
 24 gas wells?
 25 A Well, hopefully.

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1 Q Okay. That's what --
 2 A That's the end result.
 3 Q It makes it a little bit more profitable for
 4 you and everybody else. Isn't that right?
 5 A Yes.
 6 Q Okay. And you do this, what, in the
 7 La Grange area? Is that what I understand?
 8 A Yes.
 9 Q Okay. When you're going out and scouting oil
 10 and gas wells to purchase or purchase for somebody or
 11 help them purchase, do you go around to the adjoining
 12 the owners of the adjoining properties and tell them
 13 what you're doing?
 14 A Well, typically, you call the person who owns
 15 the oil and gas rights. Sometimes you don't even
 16 drive out. Nowadays, you use the phone.
 17 Q If there's a piece of property adjacent let's
 18 say you're looking at a particular piece of property
 19 for oil and gas purposes. Okay?
 20 A Okay.
 21 Q And there's a piece of property right next
 22 door that you're not interested in. Do you understand
 23 that scenario?
 24 A Yes.
 25 Q Do you contact the person next door that has

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1 the piece of property you're not interested in and
 2 tell them what you're doing?
 3 A Typically, no.
 4 Q Do you consider the potential impacts of what
 5 you or your clients are doing with respect to the
 6 adjoining properties?
 7 A Well, if you're just leasing, you don't do
 8 that. If you're if the company ultimately drills a
 9 well, someone else in the oil and gas company might
 10 call them I think they would and notify them of
 11 what's going on.
 12 Q Okay. You leave that to engineers. Right?
 13 A Yes, someone else in the chain of command.
 14 Q And your assumption when you do this is that
 15 the oil and gas well that's being drilled, if one
 16 occurs, has been properly permitted through the
 17 Railroad Commission. Is that correct?
 18 A That's correct.
 19 Q And properly engineered. Right?
 20 A Correct.
 21 Q Just a few questions about the property you
 22 or your trust owns. It's 119 acres. Is that correct?
 23 A Yes.
 24 Q It's located on the corner of is it Cameron
 25 Road and Blue Goose?

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1 A Cameron, Blue Goose, and Springdale.
 2 Q Okay. Springdale borders it on the left. Is
 3 that right?
 4 A Right. On the west side.
 5 Q And on the west side of your property, the
 6 119-acre tract, there's a utility easement, isn't
 7 there?
 8 A That's correct.
 9 Q It's a large transmission line that goes
 10 through that easement?
 11 A Correct.
 12 Q Dozens of feet high?
 13 A Yes.
 14 Q Okay. That's an LCRA power line, isn't it?
 15 A No. It's a city of Austin.
 16 Q Oh, city of Austin. Okay. And as far as the
 17 topography of your property, it's kind of up and down,
 18 isn't it?
 19 A Yes. In front, it's fairly level. In the
 20 back, it's up and down. On the west side that you're
 21 referring to, there is a creek.
 22 Q It's a pretty varied topography. Correct?
 23 A Yes.
 24 Q That property is not currently serviced by
 25 any sort of public wastewater utility, is it?

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1 A No.
 2 Q Okay. So your tenant uses a septic system.
 3 Is that correct?
 4 A Yes, but I'm not for certain.
 5 Q Do you know if the city of Austin even can
 6 provide water or wastewater services out to your
 7 property at this point in time?
 8 A No. I think we do have city water. It's
 9 Pflugerville, I believe.
 10 Q Not city of Austin?
 11 A No.
 12 Q The last couple of questions. I believe you
 13 have a little bit of testimony in your prefiled about
 14 some vultures that you've seen or buzzards on the
 15 power line?
 16 A Yes.
 17 Q Do you know how many roosts or flocks of
 18 buzzards there are up and down that transmission line
 19 through Central Texas?
 20 A No.
 21 MR. CARLSON: I pass the witness.
 22 JUDGE NEWCHURCH: Mr. Blackburn, is
 23 there redirect?
 24 MR. BLACKBURN: No, Your Honor.
 25 JUDGE NEWCHURCH: Thank you,

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1 Mr. Wilkins. You're excused.
 2 A Thank you, sir.
 3 MR. BLACKBURN: I'd like to call Bob
 4 Andrews.
 5 (Exhibit NNC Nos. RGA-1 and RGA-2
 6 marked)
 7 ROBERT G. ANDREWS,
 8 having been first duly sworn, testified as follows:
 9 DIRECT EXAMINATION
 10 BY MR. BLACKBURN:
 11 Q Mr. Andrews, have you had a chance to look at
 12 the exhibit that is in front of you marked RGA-1?
 13 A Yes, sir.
 14 Q And is there an attachment to that marked
 15 RGA-2?
 16 A Yes.
 17 Q Now, could I get you to state your full name,
 18 please?
 19 A Robert Glen Andrews.
 20 Q And where do you live, Mr. Andrews?
 21 A At 6815 Ashprington Lane in Austin, Texas,
 22 part of the Harris Branch subdivision.
 23 Q And where is Harris Branch located relative
 24 to the Sunset Farms landfill?
 25 A North and a little bit east, less than a mile

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1 away.
 2 Q And is Exhibit RGA-1 and 2 are they your
 3 prefiled testimony and a questionnaire that you filled
 4 out regarding the Sunset Farms landfill?
 5 A Yes, sir.
 6 Q And is this testimony true and correct to the
 7 best of your knowledge?
 8 A Yes, sir.
 9 MR. BLACKBURN: I move admission of
 10 RGA-1 and 2.
 11 JUDGE NEWCHURCH: Any objection?
 12 MR. REED: No.
 13 JUDGE NEWCHURCH: They are both
 14 admitted.
 15 (Exhibit NNC Nos. RGA-1 and RGA-2
 16 admitted)
 17 MR. BLACKBURN: Pass the witness.
 18 JUDGE NEWCHURCH: Mr. Renbarger?
 19 MR. RENBARGER: Just very briefly.
 20 CROSS-EXAMINATION
 21 BY MR. RENBARGER:
 22 Q Good afternoon, Mr. Andrews.
 23 A Good afternoon.
 24 Q How long have you lived in the Harris Branch
 25 subdivision?

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1 A About 18 years.
 2 Q Any plans to move?
 3 A Not that I know of.
 4 Q Over the course of the 18 years of your
 5 residency in Harris Branch, if you could, just
 6 summarize what, if any, complaints that you may have
 7 about the Sunset Farms landfill.
 8 A I guess the primary complaint would be the
 9 odors, especially when the wind blows from the south.
 10 It carries that odor up into the Harris Branch area,
 11 which the whole development kind of sits a little
 12 bit lower than the landfill. So, when the wind blows
 13 it up there, it kind of settles into the development
 14 area and kind of lingers when it's there.
 15 Also, the trucks coming in and out of
 16 the landfill, driving through the development area I
 17 don't really think the roadways there were built for
 18 truck traffic, so they have, I feel, contributed to
 19 the deterioration of the major roadway through the
 20 development.
 21 Q Mr. Andrews, have you had any expectation of
 22 when the Sunset Farms landfill might close?
 23 A When we bought our home there, we knew the
 24 landfill was there. You had to drive right by it to
 25 get into the development. The representatives of the

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1 developer or the homebuilder, whoever it was that was
 2 handling the sale of homes there, pointed out that the
 3 landfill was there but would eventually fill up and
 4 close and indicated that that probably was a matter of
 5 just a few years.
 6 Q And that was, again, back 18 years ago when
 7 you moved into the subdivision?
 8 A Yes, sir.
 9 Q Did the representations that the landfill
 10 would close in just a few years, did that in any way
 11 color your decision to purchase a residence in Harris
 12 Branch?
 13 A It left a feeling of expectation that the one
 14 major detraction from that development would
 15 eventually go away. We felt like the development was
 16 in a good area. It was located near a major highway.
 17 They had plans for schools and parks, so there were
 18 lots of positive things about buying in Harris Branch
 19 at that time. The one major negative that we saw was
 20 the landfill, and with expectations that in a few
 21 years that would fill up and close, yeah, I think it
 22 did have an impact on our decision.
 23 Q Okay. Given what's taken place now over the
 24 last 18 years and the fact that we're sitting in this
 25 courtroom today talking about an expansion of this

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1 same landfill, would it be fair to say that your
 2 expectations of that landfill going away have been
 3 pretty much disappointed?
 4 A Yes, sir.
 5 MR. RENBARGER: Pass the witness.
 6 JUDGE NEWCHURCH: Ms. Noelke?
 7 MS. NOELKE: No questions, Your Honor.
 8 JUDGE NEWCHURCH: Mr. Morse?
 9 MR. MORSE: No questions, Your Honor.
 10 JUDGE NEWCHURCH: Ms. Mann?
 11 CROSS-EXAMINATION
 12 BY MS. MANN:
 13 Q Good afternoon. My name is Christina Mann.
 14 I'm with the Public Interest Counsel. I have a
 15 question about -- if you could help me understand how
 16 the truck traffic is routed through the neighborhood
 17 or eventually makes its way through the neighborhood.
 18 From what road to what road is it cutting through?
 19 A The major part of the development that you
 20 see truck traffic on is the Harris Branch Boulevard.
 21 Over the last oh, I'd say two years, three years,
 22 that traffic has significantly declined.
 23 Early on when we were there, there were
 24 a lot of trucks that came through that area. For
 25 whatever reason, in the last few years, the landfill

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1 truck traffic has declined significantly. But I think
 2 early on they contributed to what we're living with
 3 now on that Harris Branch Boulevard, which is a
 4 deteriorated roadway.
 5 Q So is Harris Branch Boulevard a shortcut
 6 between two other roads?
 7 A Yes. I don't really know where the trucks
 8 were going to or from, but they would come out of and
 9 go into the landfill down Harris Branch Boulevard.
 10 Q Okay. You said the truck traffic has gotten
 11 a little better gotten significantly better
 12 recently. Are you still noticing mud and dirt on
 13 Harris Branch Boulevard?
 14 A Not on Harris Branch Boulevard, but on Blue
 15 Goose Road and on Highway 290. Anytime it rains, the
 16 roads are very muddy. I've actually seen cars spin
 17 out making the turn off of Harris Branch or Blue
 18 Goose Road onto Highway 290. It's a 90-degree turn
 19 with a yield sign at the traffic line, and a lot of
 20 cars approach that and make a continuous moving turn
 21 onto 290, and I've seen cars do complete 360s on the
 22 mud slick 290 part.
 23 Q Okay. How can you tell is it your opinion
 24 that the mud and dirt is from the it looks like you
 25 conclude it's from the landfill trucks. What leads

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1 you to that conclusion?
 2 A As you drive south on Blue Goose Road, the
 3 roadway is completely mud-free until you get to the
 4 entrance/exits to the landfill, and then the mud
 5 starts to show up, and it continues to go south on
 6 Blue Goose Road and then east and west on Highway 290
 7 until the mud comes off of whatever is tracking it.
 8 MS. MANN: I have no further questions.
 9 JUDGE NEWCHURCH: Mr. Shepherd?
 10 MR. SHEPHERD: No questions.
 11 JUDGE NEWCHURCH: Mr. Terrill?
 12 MR. TERRILL: No questions, Your Honor.
 13 JUDGE NEWCHURCH: Mr. Reed?
 14 CROSS-EXAMINATION
 15 BY MR. REED:
 16 Q Good afternoon, Mr. Andrews. How are you?
 17 A I'm doing great. Thanks.
 18 Q I'm going to take this a little bit out of
 19 order from my outline, but let's talk about the truck
 20 traffic since we're on that subject. You mentioned a
 21 few minutes ago that you don't notice nearly as many
 22 trucks in the area as you used to. Is that correct?
 23 A Not in the Harris Branch area. I think the
 24 amount of trucks coming and going out of the landfill
 25 onto the Blue Goose Road area probably, if anything,

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1 has increased over the years, but not so many of them
 2 coming through the housing area anymore.
 3 Q Do you have do you know whether the reason
 4 for that is that BFI might have prohibited its trucks
 5 from going through the neighborhood area?
 6 A I have no idea why the truck traffic in the
 7 development has decreased. I know that during some of
 8 the homeowners' meetings where BFI representatives
 9 were there, that issue was brought up with their
 10 representatives. And so we just see that as a
 11 positive thing that occurred over the years.
 12 Q Have you noticed whether the trucks that you
 13 used to let me see. I'll try this again. Have you
 14 noticed whether you still see BFI trucks in the
 15 neighborhood?
 16 A I've never seen a truck that I could
 17 specifically identify as being a BFI truck.
 18 Q And with respect to the mud on the roads, are
 19 you aware of whether BFI uses a wheel wash in their
 20 facility to wash mud off of the tires of the trucks?
 21 A I have seen written materials that indicated
 22 that that type of effort was going to be made at the
 23 landfill, but I don't have any personal knowledge that
 24 they ever installed that equipment.
 25 Q Do you remember when we spoke in your

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1 deposition saying that you thought that the mud on the
 2 road was a much less significant problem now that they
 3 used sweepers out on the roads?
 4 A Yes. The sweepers have been a significant
 5 improvement. And I don't recall when they started the
 6 sweeper operation, but since that has been in place,
 7 that does make a big difference in the roadway.
 8 Q And you stated in your prefiled that the
 9 conditions that caused your concerns had not gotten
 10 either better or worse over the course of the 18
 11 years. Is that correct? I can point you to Page 2,
 12 Line 10, of your prefiled, if you'd like.
 13 A I think, in that regard, it's probably the
 14 odor issue has not changed a lot. As I indicated, the
 15 road conditions, the mud on the roads have gotten
 16 better, and the amount of traffic in that area has
 17 gotten better in recent years, but --
 18 Q So you're testifying right now that, in
 19 general, things have gotten better with respect to the
 20 landfill with the exception of odor?
 21 A From my perspective, yes, sir.
 22 Q Do you recall, when taking your deposition,
 23 telling me that you believe that the odor problems
 24 have been less frequent in the past few years than
 25 they had been in past?

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1 A Yes, less frequent. And I don't know how
2 much of that is due to wind conditions and how much of
3 it is attributable to efforts by BFI, but I have not
4 personally noticed the odor as much as often. But
5 when it is there, it's just as distinct as it's ever
6 been.
7 Q Do you remember telling me in your deposition
8 that you also thought it was less noticeable most of
9 the time than it used to be?
10 A Less often, yes. I don't know that I
11 don't know that it's any less distinct.
12 Q I would like to show you a little bit from
13 your deposition. For others that want to follow
14 along, I'm going to have you look at Page 26 of your
15 deposition. And would you read, please, the lines
16 starting at your answer begins at Line 2 and ends on
17 Line 9.
18 A "I can't really say that there was any time
19 period that it noticeably changed. It's just that as
20 this issue has been discussed and talked about, my
21 recollection is that over the years, it has gotten
22 less frequent. And even when we do smell it, it is,
23 most of the time, less noticeable than it was in
24 earlier years, but there are times when it was still
25 just as significantly noticeable."

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1 Q And we were talking about odors at this point
2 in your deposition?
3 A Right.
4 Q Mr. Renbarger was asking you questions about
5 your expectation if the landfill would close a few
6 minutes ago.
7 A Yes.
8 Q Was it a sales representative that told you
9 this?
10 A Yes.
11 Q Has anyone from BFI ever represented to you a
12 specific closure date?
13 A No.
14 Q Has anybody from BFI ever represented
15 anything else about when the landfill would close?
16 A To me personally?
17 Q Yes, sir.
18 A No.
19 Q Has anybody from BFI ever represented to you
20 whether they would or would not ever seek an expansion
21 of the property?
22 A No.
23 Q Have you ever spoken to anybody from BFI and
24 asked the question about when they would close?
25 A Not specifically.

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1 MR. REED: That's all I have. Pass the
2 witness.
3 JUDGE NEWCHURCH: Mr. Blackburn?
4 MR. BLACKBURN: Yes.
5 REDIRECT EXAMINATION
6 BY MR. BLACKBURN:
7 Q Mr. Andrews, just a couple more questions.
8 These odors that you've smelled in the last couple of
9 years, could you describe them? What does it smell
10 like?
11 A Something between well, I don't know. I
12 guess baby poop.
13 MR. REED: I've got a ten-month-old.
14 That's not good.
15 Q (BY MR. BLACKBURN) Do you smell the odor
16 outside of your house or inside of your house or both?
17 A In the times of the year when it's
18 comfortable to have the house open, you can smell it
19 inside the house. There are days that we would open
20 our house because the weather would permit that, but
21 we don't because we can smell the landfill on those
22 days. But if you, you know, just if you go outside,
23 you're going to smell it, but if you are running the
24 air conditioner inside the house, you don't smell it.
25 Q But if you open your windows or you otherwise

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1 open your house up, you
2 A You're going to smell it, yes.
3 MR. BLACKBURN: Thank you. Pass the
4 witness.
5 JUDGE NEWCHURCH: Is there any other
6 cross-examination?
7 MR. REED: One last question.
8 RECROSS-EXAMINATION
9 BY MR. REED:
10 Q Are you aware of whether there's a lift
11 station near your house?
12 A A lift station?
13 Q Yes. Do you know what a lift station is?
14 A You're talking about as far as sewage?
15 Q Yes, sir.
16 A No, I'm not aware of whether there's one or
17 not.
18 MR. REED: Nothing further.
19 JUDGE NEWCHURCH: Okay. Thank you,
20 Mr. Andrews. You're excused.
21 MR. BLACKBURN: I'd like to call Delmer
22 Rogers.
23 JUDGE NEWCHURCH: Welcome, Mr. Rogers.
24 Please have a seat.
25 (Exhibit NNC Nos. DR-1 through DR-3

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1 marked)
2 DELMER D. ROGERS,
3 having been first duly sworn, testified as follows:
4 DIRECT EXAMINATION
5 BY MR. BLACKBURN:
6 Q Would you state your name for the record,
7 please?
8 A Delmer D. Rogers.
9 Q And where do you live, Mr. Rogers?
10 A In the Speyside subdivision in the Harris
11 Branch neighborhood.
12 Q And is that relatively near right near
13 Sunset Farms?
14 A About a mile and a half.
15 Q And I have placed in front of you an exhibit
16 identified as DR-1. Have you had a chance to take a
17 quick look at that?
18 A Yes. And everything seems to be what I had
19 filed and so on.
20 Q So this printed the printed prefiled
21 testimony, which is DR-1, you've taken a look at it,
22 and it's what you put together?
23 A Yes.
24 Q And there is a an affidavit that is
25 Exhibit DR-2. And is that your affidavit?

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1 A No. 2. Yes, it is.
2 Q And then there is a collection of photographs
3 that I think are collectively identified as
4 Exhibit DR-3. And did you take those photographs?
5 A Yes.
6 Q And there's some handwritten notes underneath
7 the various photographs. Are those your notes as
8 well?
9 A Yes, they are.
10 Q And there's also dates that are indicated on
11 there. Did you place those dates there?
12 A Yes.
13 Q To the best of your knowledge, are these
14 photographs as you took them? You've not doctored the
15 photographs or anything, have you?
16 A No. Of course not.
17 Q To the best of your knowledge, is this
18 information true and correct in what it purports to
19 be?
20 A Yes.
21 MR. BLACKBURN: Good. I move admission
22 of Exhibits DR-1, 2, and 3.
23 JUDGE NEWCHURCH: Any objections?
24 (No response)
25 JUDGE NEWCHURCH: They are all admitted.

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1 (Exhibit NNC Nos. DR-1 through DR-3
2 admitted)
3 MR. BLACKBURN: I pass the witness, Your
4 Honor.
5 JUDGE NEWCHURCH: Mr. Renbarger?
6 MR. RENBARGER: No questions of the
7 witness, Judge.
8 JUDGE NEWCHURCH: Ms. Noelke?
9 MS. NOELKE: No questions, Your Honor.
10 JUDGE NEWCHURCH: Mr. Morse?
11 MR. MORSE: No questions.
12 JUDGE NEWCHURCH: Ms. Mann?
13 CROSS-EXAMINATION
14 BY MS. MANN:
15 Q Good afternoon. You indicate January 2007 as
16 both the time you began taking photographs and the
17 time period that odors became an issue for you
18 according to your answer on Line 25, Page 2 of your
19 testimony. Do you recall that?
20 A Yes.
21 Q Did something was there a specific event in
22 January 2007 that made you notice this, or were you
23 outside more?
24 A Well, that is about the time that I began to
25 drive more down one specific road that is by the

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1 landfill.
2 Q Okay. And why did you begin to drive down
3 that one specific road?
4 A To avoid truck traffic and the intersections
5 of Giles Road and 290, particularly.
6 Q Okay. On Page 3 of your testimony, I'm
7 wondering if a couple of words were inverted. Lines 6
8 and 7 you state that I'll let you get there. You
9 state at the very end of Line 6, "The heat was related
10 to the odors and the south wind magnified the
11 problem."
12 Would it be more correct if the odors
13 were related to the heat, or did you mean the heat was
14 related to the odors?
15 A Well, related to the heat in the summertime,
16 particularly.
17 Q Okay. So did you actually mean the odors
18 were related to the heat and the south wind? I just
19 want to make sure --
20 A Well, I would say yes.
21 Q Okay. And you noticed it more when the wind
22 was blowing. Is that correct?
23 A Noticed it more in the summertime. Is that
24 what you mean?
25 Q Right. You noticed the odors more when the

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1 south wind was blowing. Is that correct?
2 A Yes. Because the road Blue Goose Road is
3 on that side of the landfill where the southerlies
4 would be blowing.
5 Q Okay. And were odors a problem when the wind
6 was still, when there was no wind?
7 A Were the odors what? I'm sorry.
8 Q A problem. Did you notice the odors when
9 there was little to no wind?
10 A Well, at times, it was very strong.
11 Q Have you seen grackles on the face of the
12 landfill or just around the landfill?
13 A No. I've seen them in the landfill, as well
14 as on the telephone and electric wires and so on.
15 Both, I would say.
16 Q Okay.
17 MS. MANN: I have no further questions.
18 Thank you.
19 JUDGE NEWCHURCH: Mr. Shepherd?
20 MR. SHEPHERD: No questions.
21 JUDGE NEWCHURCH: Mr. Terrill?
22 MR. TERRILL: No questions.
23 JUDGE NEWCHURCH: Mr. Reed?
24
25

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1 CROSS-EXAMINATION
2 BY MR. REED:
3 Q Mr. Rogers, how are you, sir?
4 A I'm fine.
5 Q Just a few questions for you. I'd like to
6 show you a Google map of your area. You'll note
7 there's some marking on that. Setting those marks
8 aside for a minute, does this look like an accurate
9 map of your area?
10 A Relatively accurate, yes.
11 Q On that you'll notice there's a circle with
12 the letters DR next to them.
13 A Yes.
14 Q Is that roughly where you live?
15 A Yes.
16 Q Do you know Mrs. Marcelina Cook? She's also
17 a witness in this proceeding.
18 A No, I don't.
19 Q You'll note there's a circle in there with
20 the initials MC by them. Do you see that?
21 A Yes.
22 Q And then further down you'll see there's a
23 location that's marked BFI.
24 A Yes.
25 Q The location marked BFI, is that

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1 approximately the location of the landfill?
2 A Yes.
3 Q Okay. If testimony from outside of your
4 testimony shows that Marcelina Cook lives where that
5 circle is with the MC next to it, would you agree that
6 she lives roughly between you and the landfill?
7 A Yes.
8 MR. REED: I would like to go ahead and
9 offer this.
10 JUDGE NEWCHURCH: So this will be
11 BFI-13, I believe. And is there objection to BFI-13?
12 (No response)
13 (Exhibit BFI No. 13 marked)
14 JUDGE NEWCHURCH: Then it is admitted.
15 (Exhibit BFI No. 13 admitted)
16 Q (BY MR. REED) In your prefiled testimony,
17 you mentioned you believe that odor is a problem, and
18 we've talked about that a little bit here.
19 A Sure.
20 Q When you gave your deposition, do you
21 remember telling me that odors are at their worst in
22 the summertime?
23 A Yes.
24 Q Suppose also by later testimony it is shown
25 that Mrs. Cook testified that odors are the worst in

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1 the wintertime. If that's the case, and if the
2 landfill is the source of the odors, does it seem
3 inconsistent to you that two people that live in a
4 more or less straight line from the landfill would
5 believe odors are worse at opposite times of the year?
6 A That would be pretty difficult to ascertain
7 on my part, because Space Side is more downhill, and
8 the winds I can't explain that. I don't know.
9 Q Do you remember, when we took your
10 deposition, telling me that BFI is covering their
11 waste more rapidly than they did in the past and that
12 you believe that because of that, odors have gotten
13 better?
14 A Yes.
15 Q I'd like to talk to you about some of the
16 pictures that you attached to your prefiled testimony
17 as well.
18 A Okay.
19 Q I believe you have your prefiled testimony
20 with you. Would you take a look at the exhibit marked
21 DR-3?
22 A Okay.
23 Q Let me go back. Are those the photographs
24 you submitted with your prefiled?
25 A Yes.

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1 Q And are there 21 photographs included in that
2 exhibit?
3 A There are 22 pages of DDR-3, and there's 29 I
4 haven't counted them all. I'm not sure.
5 Q That should be fine. We may talk about that
6 a little more in a second. But you'll note that each
7 one of the pages has a number that starts with DDR at
8 the bottom.
9 A Yes.
10 Q So as we flip through pictures, that's the
11 number I'm going to refer to, so I just want to try to
12 make sure everybody can follow along.
13 A Okay.
14 Q With respect to windblown trash, you
15 mentioned in your prefiled that the cleanup crews are
16 usually right on it, about picking up the trash that
17 escapes the landfill. Is that correct?
18 A Yes.
19 Q In some of the pictures in DR-3 you note
20 document windblown trash. Is that correct?
21 A Yes.
22 Q Let's take a look at the picture that's
23 labeled DDR-14.
24 A Okay.
25 Q The top photograph on that page, that's one

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1 of them that you noted in your prefiled documents, the
2 windblown trash. Is that correct?
3 A Yes.
4 Q But that picture do you know if that
5 picture shows BFI's property only?
6 A That's correct.
7 Q So it doesn't document any windblown trash
8 outside of BFI's property. Is that correct?
9 A Not that photograph, no.
10 Q Okay. Let's take a look at DDR-22.
11 A Uh-huh.
12 Q I'm sorry. I think I may have given you the
13 wrong number there. The picture on the bottom, that's
14 the other picture you noted in your prefiled
15 documents, windblown trash. Is that correct?
16 A Yes. No, not at the bottom of 22. That's
17 more of the dust issue, taken in June '08.
18 Q Can you take a look at your prefiled
19 testimony, please, Page 5? Line 2 of Page 5, are you
20 there?
21 A Yeah.
22 Q Line 2 asks how often windblown trash is a
23 problem. Correct?
24 A Yes.
25 Q And then you answer that the cleanup crews

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1 are busy. And then Line 4 asks do any photos show
2 this, and you mentioned two photos there. Is that
3 correct?
4 A Yes.
5 Q And the second one of those is DDR-22 at the
6 bottom showing the trash strewn about the site. Is
7 there a different picture that you meant to specify
8 there?
9 A No. That's that one was -- I'm not sure.
10 But it's definitely, as I labeled it, more of the dust
11 issue.
12 Q Will you agree with me that that photograph
13 on the bottom of Page DDR-22 is also a picture of BFI
14 property?
15 A Yes.
16 Q And that it does not show any trash outside
17 the BFI property?
18 A No. No.
19 Q You stated in your prefiled as well that
20 there was trash on the road when you took that
21 picture. Is that correct?
22 A Yes. Correct.
23 Q Did you take any pictures of the trash on the
24 road?
25 A Not that I put into the collection here, no.

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1 Q Of the photographs that were attached to your
2 prefiled, how many of them show property other than
3 property that's owned by BFI? Can you tell me that?
4 Feel free, if you need to thumb through --
5 A Well, I don't know. I haven't counted them.
6 Q Will you take a quick look and see if you can
7 spot which ones don't show --
8 A Of these that are in the exhibit?
9 Q Yes, sir.
10 A Oh. That shows trash outside --
11 Q Yes, sir, trash that's outside of BFI's
12 property.
13 A No. 4, the bottom picture. No. 10 doesn't
14 actually show the trash. It just shows the van who
15 has picked them up. No. That seems to be it.
16 Q I'd also like to talk about runoff. You
17 mentioned in your prefiled that you have concerns
18 about runoff, and you mentioned that those concerns
19 were erosion and leachate leaving the site. Is that
20 right?
21 A Yes.
22 Q You don't have any personal knowledge of
23 whether runoff has ever carried leachate off the site.
24 Is that correct?
25 A Well, certainly.

41 (Pages 1671 to 1674)

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1 Q And you --
2 A Particularly --
3 Q I'm sorry. Did I step on your answer?
4 A Well, particularly along the roads to the
5 east of the landfill.
6 Q I'm sorry.
7 A McDonald's Road, to be specific.
8 Q Let me re-ask the question. I'm not sure
9 we're talking about the same thing. Do you have any
10 personal knowledge of whether leachate has ever
11 escaped the site?
12 A No, I do not.
13 Q And have you ever seen runoff carry sediment
14 off of the site?
15 A Only on Giles Road.
16 Q Do you recall in your deposition telling me
17 that you didn't had never seen sediment being
18 carried off the site?
19 A Yes. Right.
20 Q You do remember having said that?
21 A Yes.
22 Q Okay. You also mentioned in your prefiled
23 that trucks are often broken down on the side of the
24 road?
25 A Yes, I said that.

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1 Q In fact, you've only seen two or three BFI
2 trucks broken down on the side of the road during the
3 time you've lived there. Is that correct?
4 A Yes.
5 Q Would that be over two to three years?
6 A Just over those two or three years.
7 Q Okay. Have you ever seen an accident
8 involving a BFI vehicle?
9 A No, I have not.
10 Q We talked about DDR-22 a second ago and dust.
11 Would you turn back to that picture? Your notation
12 there says that dust is a constant problem. Is that
13 right?
14 A Yes.
15 Q Would you take a look at the other picture on
16 that page?
17 A Uh-huh.
18 Q Does that show the BFI landfill in the
19 background?
20 A Yes.
21 Q Do you see any dust being carried up on that
22 photograph?
23 A Not on that, no.
24 Q How about on DDR-19? I'm sorry. You don't
25 have DDR-19. I have DDR-19. And DDR-19 is labeled

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1 "windy day." Is that correct? The bottom picture on
2 DDR-19.
3 A Yes.
4 Q Is it evident that dust is blowing off the
5 site in that photograph?
6 A No. That's mostly to show the plastic bags.
7 Q So would you agree that dust really isn't a
8 constant problem at the landfill, it's an occasional
9 problem?
10 A Yeah, when the wind is blowing.
11 Q Are you aware of whether you live near a lift
12 station?
13 A Whether I live what?
14 Q Do you know what a lift station is?
15 A No. What is that?
16 Q It doesn't matter. We'll just strike the
17 question.
18 MR. REED: That's all I have. I'll pass
19 the witness.
20 JUDGE NEWCHURCH: Did you want to offer
21 this?
22 MR. REED: I'm sorry. Yes. I'd like to
23 offer BFI-14.
24 (Exhibit BFI No. 14 marked)
25 JUDGE NEWCHURCH: Is there any

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1 objection?
2 (No response)
3 JUDGE NEWCHURCH: So, without objection,
4 BFI-14 is admitted.
5 (Exhibit BFI No. 14 admitted)
6 MR. REED: Thank you, Your Honor. I
7 pass the witness.
8 JUDGE NEWCHURCH: Mr. Blackburn?
9 MR. BLACKBURN: Just a couple of
10 questions.
11 REDIRECT EXAMINATION
12 BY MR. BLACKBURN:
13 Q Mr. Rogers, would you turn to Page DDR-0111?
14 A Yes.
15 Q And at the top of the page, there is a
16 photograph dated June '07. Do you see that?
17 A Yes.
18 Q Where was that photograph taken from?
19 A From the Blue Goose Road.
20 Q Now, Blue Goose Road is between the landfill
21 and the Harris Branch subdivision. Is that correct?
22 A Yes.
23 Q So, if you were driving to and from the
24 subdivision along Blue Goose Road, you would have seen
25 this scene on this day?

42 (Pages 1675 to 1678)

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1 A Yes.
 2 Q And on Page 22 of your photographs on the
 3 bottom --
 4 A Yes.
 5 Q -- where was that photograph taken from?
 6 A It was taken also from the Blue Goose Road.
 7 Q So, once again, this would be the scene that
 8 you would pass if you were going to and from the
 9 Harris Branch subdivision along Blue Goose Road?
 10 A Right. Yes.
 11 Q In some photographs that were taken on a
 12 windy day, like the photographs that are shown on the
 13 bottom picture on BFI No. 14, where you said this was
 14 primarily a picture to take photographs of plastic
 15 bags, were there other places on the landfill on this
 16 day where dust was a problem?
 17 A Oh, yeah.
 18 Q And this photograph just simply didn't point
 19 at those areas. Is that correct?
 20 A Correct.
 21 MR. BLACKBURN: Pass the witness.
 22 JUDGE NEWCHURCH: Any more
 23 cross-examination by anyone?
 24 MR. REED: I'm sorry. I have one last
 25 question.

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1 JUDGE NEWCHURCH: Go ahead.
 2 MR. REED: I was waiting to see if
 3 anybody else did before me.
 4 RE-CROSS-EXAMINATION
 5 BY MR. REED:
 6 Q Have you heard anything about an agreement
 7 between BFI and the city of Austin?
 8 A Yes.
 9 Q And are you aware of whether that agreement
 10 has any provisions for how the landfill will be filled
 11 in order to screen the working face from the roads?
 12 A I have no knowledge of that.
 13 MR. REED: Pass the witness.
 14 JUDGE NEWCHURCH: Anything more?
 15 MR. BLACKBURN: No, Your Honor.
 16 JUDGE NEWCHURCH: Thank you, Mr. Rogers.
 17 You're excused.
 18 A Okay.
 19 JUDGE NEWCHURCH: Mr. Blackburn?
 20 MR. BLACKBURN: That's all the witnesses
 21 we had agreed to take out of order at this point in
 22 time, so, with that, I guess we will momentarily rest
 23 until we are raised again.
 24 JUDGE NEWCHURCH: Okay. So we are going
 25 to go back to the testimony of Dr. Kier and it's a

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1 little early for a break, so I think we'll proceed for
 2 a while here.
 3 MR. CARLSON: Judge, can I move that
 4 easel over here for just a moment?
 5 MR. BLACKBURN: If it's okay, Your
 6 Honor, I'm going to step out for just a second and
 7 talk to my people, but you can go on without me. I'm
 8 not concerned about that.
 9 JUDGE NEWCHURCH: Very good. Thank you.
 10 Off the record while we reorganize.
 11 (Brief recess)
 12 JUDGE NEWCHURCH: Okay. Let's go back
 13 on the record. Dr. Kier has returned to the witness
 14 stand, and you're still under oath. When we broke,
 15 Mr. Terrill had completed his cross-examination, so
 16 it's BFI's turn, Mr. Carlson
 17 MR. CARLSON: Thank you, Judge.
 18 PRESENTATION ON BEHALF OF TJFA, L.P. (CONTINUED)
 19 ROBERT S. KIER, Ph.D.,
 20 having been previously sworn, continued to testify as
 21 follows:
 22 CROSS-EXAMINATION
 23 BY MR. CARLSON:
 24 Q Good afternoon, Dr. Kier.
 25 A Good afternoon.

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1 Q You are a licensed geoscientist in Texas. Is
 2 that correct?
 3 A That's correct.
 4 Q And you've been practicing for over 30 years
 5 in the Central Texas area. Right?
 6 A Yes.
 7 Q Over that period of time, you've become very
 8 familiar with the Taylor formation we've been talking
 9 about in this hearing and the Taylor clays. Right?
 10 A Yes.
 11 Q And you've also become familiar with the
 12 general hydrogeology of the shallow groundwater in
 13 that formation. Is that correct?
 14 A Yes.
 15 Q As well as the deeper groundwater in that
 16 formation. Correct? Oh, excuse me. The deeper
 17 groundwater in the Central Texas area?
 18 A I'm not quite sure to what you're referring,
 19 but --
 20 Q I'm talking about aquifers that are in layers
 21 below Travis County the geologic layers below Travis
 22 County.
 23 A Okay. Yes.
 24 Q You are generally familiar with those as
 25 well. Right?

43 (Pages 1679 to 1682)

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1 A Yes.
 2 Q Now, you were retained in this matter by
 3 TJFA's attorneys to provide services as a testifying
 4 expert witness. Is that correct?
 5 A Yes.
 6 Q And I asked a couple of questions of
 7 Mr. Chandler yesterday that I'm going to ask of you.
 8 What is your understanding of what TJFA is?
 9 A My limited understanding is it's a real
 10 estate holding company.
 11 Q Do you have any sense of TJFA's business
 12 model other than the fact that it holds limited real
 13 estate holdings?
 14 A No.
 15 Q Now, I believe Mr. Terrill asked you about
 16 meetings you may have had with TJFA over recent times.
 17 Have you attended one or more meetings at TJFA's
 18 offices?
 19 A Of course, I've been at TJFA's offices
 20 frequently.
 21 Q Okay. Are they located on Carl Road in
 22 southern Travis County?
 23 A Yes.
 24 Q Is that the same office complex where the
 25 TDS, Texas Disposal, offices are at?

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1 A Yes.
 2 Q And the same offices where the Texas Disposal
 3 System landfill offices are at, at least the off-site
 4 offices?
 5 A I get confused without refreshing the
 6 difference between TDS and TDSL. I think TDS is the
 7 parent company and TDSL is just a subentity, but I
 8 can't remember for sure.
 9 Q The building you go to, does it have the
 10 letters TJFA outside in front?
 11 A No. I don't think it has any letters.
 12 Q Okay. Is that the same building where
 13 Mr. Bobby Gregory offices?
 14 A Yes.
 15 Q Is that the same business where Mr. Dennis
 16 Hobbs offices?
 17 A Yes.
 18 Q Okay. You've done business for Mr. Gregory
 19 and TDS and TDSL in the past, haven't you?
 20 A Yes.
 21 Q So you go to the same place and transact with
 22 the same people generally when you're doing work for
 23 TDS or TJFA. Is that fair to say?
 24 A Well, at different times it may be different
 25 people, but generally I'm dealing with some of the

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1 same people, yes.
 2 Q If you're going out to the office to meet
 3 with Mr. Hobbs on TJFA business, does he have a
 4 different office for his TJFA business?
 5 A I don't know.
 6 Q You've never been to an office that says,
 7 "Dennis Hobbs, TJFA," have you?
 8 A No. But I don't think his office says
 9 anything different. It's just an office.
 10 Q Okay. Would it be fair to say TJFA, TDS, and
 11 TDSL are all part and parcel of the same physical
 12 complex? Is that correct?
 13 A Repeat that, please, to make sure I clearly
 14 understand it?
 15 Q Is it fair to say, in your experience, if
 16 you're doing business with either TJFA, TDS, TDSL,
 17 Mr. Gregory, Mr. Hobbs, you go the same place, and
 18 it's all one in the same place for your purposes?
 19 A I can answer that to the limited extent that
 20 we use the same conference room.
 21 Q Now, Mr. Terrill asked you one or more
 22 questions about your understanding of the properties
 23 that TJFA holds. Do you recall those questions?
 24 A Yes.
 25 Q Okay. Do you have a specific recollection of

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1 how many properties TJFA holds?
 2 A Oh, I don't know that I know all of them.
 3 Q Is it your understanding that TJFA holds one
 4 property within a mile of the Williamson County
 5 landfill near Hutto?
 6 A That's my memory. It could be incorrect.
 7 They might have two. I can't remember.
 8 Q Do you have a knowledge that TJFA owns a
 9 property near the Sunset Farms landfill?
 10 A I believe they have two.
 11 Q Okay. Do you know where those properties are
 12 physically located?
 13 A In general, yes.
 14 Q Okay. Tell me what you think generally?
 15 A Well, the one is is more or less at the
 16 northwest corner of the landfill where Blue Goose Road
 17 makes a little S bend, and the other is off Springdale
 18 Road.
 19 Q And have you been to the one on the northwest
 20 corner before?
 21 A I wouldn't say I've physically been to it.
 22 I've certainly been by it many times.
 23 Q What sort of activity have you seen in terms
 24 of either residential or agricultural on that
 25 particular property?

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1 A Well, there's a house on it. I always
 2 thought it was a pretty neat house.
 3 Q It's your understanding there's a house on
 4 that property?
 5 A I think. But I may be wrong. It may be the
 6 next-door neighbor.
 7 MR. CARLSON: May I approach?
 8 JUDGE NEWCHURCH: Yes, sir.
 9 (Exhibit BFI No. 15 marked)
 10 MS. NOELKE: Is this 15?
 11 MR. CARLSON: Yes.
 12 Q (BY MR. CARLSON) Dr. Kier, I've handed you a
 13 document that I will represent to you I printed,
 14 pulled I found on the TravisCAD Web site, which is
 15 the Travis County Appraisal District Web site, and
 16 it's a detailed property for a property on 5510 Blue
 17 Goose Road that is owned by TJFA. Do you see that?
 18 A Yes.
 19 Q Okay. It indicates that it's approximately
 20 an 11-acre property. Do you see that in the upper
 21 left-hand corner?
 22 A Yes.
 23 Q Okay. As you look at this, does this kind of
 24 refresh your recollection about the size and nature of
 25 the property on the northwest corner of the BFI

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1 landfill that is owned by TJFA?
 2 A Well, yes. I'm either wrong about the house
 3 or they didn't think it was worth anything.
 4 Q Okay. This does not reflect any
 5 improvements. Is that correct?
 6 A That's correct.
 7 Q So, if there's a house on that, we're not
 8 talking about Elvis' mansion, are we?
 9 A I guess not.
 10 Q And it reflects that it actually has an ag
 11 exemption. Do you see that?
 12 A Yes.
 13 Q Okay. I take it from your prior conversation
 14 that you do not have personal knowledge of a legal
 15 relationship between TJFA and Mr. Bobby Gregory. Is
 16 that fair to say?
 17 A I don't know how to answer it, because you're
 18 are you asking me for a legal conclusion or --
 19 Q I'm asking you you're not a lawyer. Right?
 20 A Right.
 21 Q But I'm asking you just in a lay in your
 22 understanding as a layperson, what's your
 23 understanding of the legal relationship, if any,
 24 between TJFA and Mr. Gregory?
 25 A I believe Mr. Gregory owns TJFA.

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1 Q All right. Do you know what the legal
 2 relationship, with the qualification again that you're
 3 not a lawyer, is, if any, between TJFA and Texas
 4 Disposal Systems?
 5 A Again, I can't give the lawyer type answer.
 6 My understanding, which could be wrong, is that well,
 7 I think Mr. Gregory is at least a partial owner of
 8 TDS.
 9 Q My question is a little different. I'm
 10 asking if you have an understanding of the legal
 11 relationship, if any, between TJFA and Texas Disposal
 12 System?
 13 A My understanding is there isn't any.
 14 Q Do you have strike that. Now, Texas
 15 Disposal System is frequently
 16 referred to as TDS. Right?
 17 A Yes.
 18 Q And the entity that owns the landfill in
 19 Creedmoor is actually called Texas Disposal System
 20 landfill it's either LLC or Inc., I believe. Does
 21 that sound right to you?
 22 A I think, but to tell you the truth, I've not
 23 kept up on all the different entities.
 24 Q Is it kind of fair to say that you look at
 25 all the operations down there and just kind of think

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1 of them as TDS?
 2 A Well, I know there are differences. I know
 3 the hauling company is different than the landfill
 4 company, and I know the operating company is different
 5 than the owner of the landfill. But unless I really
 6 work at it or study up on it, I don't remember exactly
 7 the proper names.
 8 Q Okay. From the Bob Kier perspective, it's
 9 just kind of TDS?
 10 A Well, no. I guess it's kind of I know that
 11 there are different entities, legal entities, that
 12 operate the hauling company, another one operates the
 13 landfill, another one that owns the landfill, and
 14 another one that owns all the other companies, and
 15 there may be more that I don't even know about.
 16 Q Do you have an understanding that Mr. Gregory
 17 is both a at least a partial owner and officer of
 18 the companies that do the waste hauling, own and
 19 operate the landfill and own and operate the
 20 landfill?
 21 A I have no idea.
 22 Q Now, you've done work for Mr. Gregory and TDS
 23 on and off for over 20 years. Isn't that correct?
 24 A Yes.
 25 Q As I understand it, you were a consultant for

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1 TDS or some TDS-related entity in the late 1980s and
 2 early 1990s in connection with the original permit
 3 application for the Creedmoor site?
 4 A Yes.
 5 Q And that site is located in southern Travis
 6 County. Right?
 7 A Yes.
 8 Q And it's located in the Taylor formation.
 9 Correct?
 10 A Yes, or group, or whatever you want to call
 11 it.
 12 Q Taylor clays?
 13 A It would be easier that way.
 14 Q Okay. Now, you were also, I believe, a
 15 project manager for the Subtitle D modification for
 16 the TDSL site in the 1990s. Is that correct?
 17 A Correct.
 18 Q And you were here when I showed Mr. Chandler
 19 a document that has since been marked as at least part
 20 of that modification. Correct?
 21 A I was here, yes, I think, but I have since
 22 seen the document.
 23 Q In addition to being project manager, you
 24 were responsible for preparing parts of that that had
 25 to do with site geology and hydrogeology. Is that

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1 correct?
 2 A Yes.
 3 Q Now, I understand that Mr. Gregory or TDS if
 4 you can tell me who, that's great hired you, I
 5 assume, in the late 1990s to do an investigation of
 6 the Austin Community landfill site. Is that correct?
 7 A Yes. It might have started almost I don't
 8 know, mid '90s. I can't remember for sure.
 9 Q Okay. Do you recall if that was Mr. Gregory
 10 individually that hired you or was it Texas Disposal
 11 Systems, or do you just not have a recollection?
 12 A I don't know.
 13 Q And you've attached some reports that you
 14 ultimately prepared and addressed to Mr. Gregory as
 15 exhibit is it BK-8 with your prefiled testimony?
 16 A Yes. They were memos to him.
 17 Q Now, at the time you prepared those reports,
 18 Texas Disposal Systems was in litigation with Waste
 19 Management of Texas. Is that correct?
 20 A I honestly don't remember the juxtaposition
 21 of when I started to work and when actual litigation
 22 took place.
 23 Q There was a lawsuit between Texas Disposal
 24 Systems and Waste Management in the Travis County
 25 state district court in the late 1990s. Is that

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1 correct?
 2 A Yes. I may be vague on the time, but I
 3 remember the lawsuit.
 4 Q And that lawsuit, at least in part, involved
 5 claims by TDS that Waste Management or its agents had
 6 disparaged TDS's business?
 7 A That's my understanding.
 8 Q And the nature of that claim of
 9 disparagement, and let me know if I'm wrong --is that
 10 you buzzing?
 11 A Yeah. It's time for me to take a pill. Do
 12 you mind if I take a pill?
 13 JUDGE NEWCHURCH: Off the record.
 14 (Recess from 3:00 p.m. to 3:15 p.m.)
 15 JUDGE NEWCHURCH: Back on the record.
 16 Mr. Carlson?
 17 Q (BY MR. CARLSON) Dr. Kier, before that
 18 break, I was asking you a question or series of
 19 questions about a lawsuit between TDS and Waste
 20 Management in the late 1990s. I believe we left off
 21 at some point about the nature of that suit, and it's
 22 your understanding that that suit involved claims of
 23 business disparagement by TDS against Waste Management
 24 or some combination of agents or representatives of
 25 Waste Management. Is that fair to say?

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1 A Yes.
 2 Q Okay. And the nature of the disparagement
 3 claims had do with statements attributed to Waste
 4 Management or its representatives about the liner at
 5 the TDS landfill. Is that correct?
 6 A At least it included that, yeah. I can't
 7 remember all of it.
 8 Q That was a component of it. Right?
 9 A Yes.
 10 Q Correct me if I'm wrong, I don't want to
 11 misstate what was going on in that lawsuit, but
 12 basically the claim that TDS made was that Waste
 13 Management had not described or insinuated that the
 14 TDSL liner was not Subtitle D compliant or didn't
 15 satisfy the performance standards of Subtitle D. Is
 16 that fair to say?
 17 A I'm not sure they even mentioned performance
 18 standards. I think the allegation was that they had
 19 gotten a special waiver.
 20 Q In a nutshell, TDS was saying, "You
 21 mischaracterized our liner system, Waste Management."
 22 Right?
 23 A As far as I know, yes.
 24 Q Did you serve as a consultant or testifying
 25 expert witness in that lawsuit at some point in time?

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1 A No. I was a testifying witness.
2 Q Did you testify in court?
3 A Yes.
4 Q When did you testify in court?
5 A When they told me to.
6 Q What year?
7 A I have no idea.
8 Q 2000?
9 A Whenever it was.
10 Q In the last several years you've also served
11 as a consultant for TJFA in several challenges it has
12 mounted to permit amendment applications for MSW
13 facilities in Central Texas. Right?
14 A There were two. I was actually retained by
15 the attorneys.
16 Q Okay. With that caveat, you were retained by
17 the attorneys to serve as a consultant in connection
18 with TJFA's challenge of the Waste Management or the
19 Williamson County landfill near Hutto. Correct?
20 A Yes, I think you've properly characterized
21 it.
22 Q And you served as a consultant for TJFA's
23 attorneys in connection with the proposed expansion of
24 the Comal County landfill, which I think now is called
25 the Mesquite Creek landfill in Comal County. Correct?

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1 A Yes.
2 Q And you're a testifying expert that's been
3 retained by TJFA's attorneys in this case, obviously?
4 A I hope so.
5 Q And you're you've been designated as and
6 are working on the opposition of the expansion of the
7 Austin Community landfill here in Travis County as
8 well. Correct?
9 A Yes.
10 Q Now, in each of these cases, TJFA was
11 challenging the expansion of an existing landfill. Is
12 that correct?
13 A Yes.
14 Q In any of those you offered observations of
15 opinions to TJFA lawyers in those cases. Correct?
16 A Strictly to the attorneys.
17 Q Okay. Were you ever designated as a
18 testifying expert in either the Comal County or the
19 Williamson County?
20 A Not to my knowledge.
21 Q Okay. You have recommended in both this case
22 and the Austin Community landfill case that, in your
23 opinion, the permit application should be denied. Is
24 that correct?
25 A I don't know if I made such an out-and-out

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1 recommendation. I believe what I've stated is that it
2 doesn't meet the municipal solid waste regulations.
3 Q All right. In addition to everything else
4 we've talked about that you've done for the TDS
5 companies and for TJFA over the last few years, your
6 company has overseen the groundwater monitoring at the
7 TDSL landfill from the time it opened until very
8 recently. Is that correct?
9 A Until a few years ago, yes.
10 Q For almost 20 years. Right?
11 A Yes.
12 Q Okay. Over the years, in connection with all
13 these engagements we've just been talking about, could
14 you estimate for us in general terms how much
15 compensation you have received from any combination of
16 Mr. Gregory, TDS, TDSL, or any company that you know
17 to be owned or controlled by Mr. Gregory?
18 A I have no idea.
19 Q Would that number total into the several
20 hundreds of thousands of dollars, sir?
21 A It might.
22 Q Didn't you testify in your deposition that
23 you estimated it would be several hundred thousand
24 dollars?
25 A I don't remember the exact words, but I'm

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1 sure you can quickly point me in the right direction.
2 Q Okay. I may do that, sir. Now, if I
3 understand your testimony that you gave in deposition
4 correctly, Mr. Gregory hired you sometime in the 2004
5 or 2005 time frame to take a look at BFI's
6 application. Is that correct?
7 A What I was retained to do is simply monitor
8 it and keep him informed.
9 Q And you did that?
10 A Yes.
11 Q At that time, you didn't know whether or not
12 Mr. Gregory or any of his companies were planning to
13 actually challenge BFI's proposed expansion. Is that
14 fair?
15 A I didn't know. My assumption was that there
16 would be no challenge.
17 Q Okay. You didn't know, did you?
18 A No, sir.
19 Q Okay. Do you recall monitoring the
20 application as it was working its way through the
21 administrative and technical review processes?
22 A Yes.
23 Q And did you provide comments on the proposed
24 application to Mr. Gregory?
25 A Verbal.

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1 Q Okay. And, to your knowledge, were those
2 comments used or incorporated in any sort of public
3 comments that were made by or an behalf of Mr. Gregory
4 or TDS or any other entity in matters before the
5 Commission prior to referral of this case to SOAH?
6 A Given the way you asked the question, I don't
7 know.
8 Q Okay. Do you remember meeting with
9 Mr. Chandler and discussing the application on
10 occasion in this 2006, 2007 time frame?
11 A I believe all our conversations were by
12 telephone.
13 Q One of the two of you guys put together a
14 chart of comments regarding the proposed application.
15 Is that correct?
16 A Yes.
17 Q Okay. Was that you or was that Mr. Chandler?
18 A He added he started it, and I guess I added
19 to it, now that you remind me.
20 Q And you forwarded that to whom?
21 A I'm sure I forwarded it to Mr. Gregory and
22 probably Mr. Newton.
23 Q All right. At some point you were actually
24 formally retained to become a testifying expert
25 witness in this matter. Is that correct?

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1 A Yes.
2 Q And do you recall that to be in the May 2008
3 time frame?
4 A Yes.
5 Q And you were retained to look into matters
6 pertaining to geology and hydrogeology and groundwater
7 monitoring?
8 A Yes.
9 Q Anything else?
10 A Not that I can think of. I suppose if I'd
11 come up with some things that I needed to look at,
12 they would have listened to me.
13 Q Okay. You've done that in the last eight or
14 nine months?
15 A Yes.
16 Q And do you recall in your deposition I
17 subpoenaed your invoices for your testifying expert
18 services in this matter?
19 A Yes.
20 Q Okay. And you provided me with copies of
21 your invoices for the May through November time frame.
22 Is that correct?
23 A Well, I provided them to the attorney, and I
24 suspect he provided them to you.
25 MR. CARLSON: Can we go off the record

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1 very briefly, Judge?
2 JUDGE NEWCHURCH: Off the record.
3 (Brief recess)
4 JUDGE NEWCHURCH: Back on the record.
5 MR. CARLSON: I apologize. I thought I
6 had 11 copies. For the record, it's Deposition
7 Exhibit 121 from Mr. Kier's deposition. I'll have him
8 identify the document.
9 Q (BY MR. CARLSON) Dr. Kier, will you review
10 what has been is under Tab 121 is it 121?
11 A Yes.
12 Q -- of your deposition?
13 A All right.
14 Q Do those appear to be true and correct copies
15 of the invoices that you brought to your deposition
16 that had been subpoenaed?
17 A Yes.
18 Q Okay. Now, your contract was with TJFA's
19 attorneys. Is that correct?
20 A Yes.
21 Q Okay.
22 A To the extent there's a contract.
23 Q Okay. You have at least some sort of verbal
24 arrangement?
25 A That's correct.

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1 Q And you billed TJFA through its attorneys for
2 your own services in this matter. Is that correct?
3 A Well, my bills, as you can see, went to the
4 attorneys.
5 Q Okay. Your hourly rate in this matter has
6 been \$160 per hour. Is that correct?
7 A Yes.
8 Q Okay. Now, you have a sole proprietorship.
9 Is that correct?
10 A Correct.
11 Q Your daughter also works for you. Is that
12 right?
13 A Ms. Kagen.
14 Q She's a licensed professional geoscientist?
15 A Yes.
16 Q And she became a licensed professional
17 geoscientist relatively recently?
18 A Well, my by standards, yes.
19 Q Okay. What are your standards timewise?
20 A Mr. Chandler said based on the admission of a
21 document that half our work is considered, what,
22 antique business records or something like that.
23 Q Crustacea Era business records?
24 A Yeah.
25 Q In any event, did your daughter actually get

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1 her license at some point in this May to December,
 2 November time frame?
 3 A She took the test in October. She found out
 4 she passed in December.
 5 Q Is that the test you were talking about a
 6 little bit earlier in your --
 7 A Yes.
 8 Q -- testimony?
 9 A Yes.
 10 Q Okay. And her hourly rate was initially \$90,
 11 but it looks like it bumped up to \$100 after she got
 12 her license. Is that correct?
 13 A Yes.
 14 Q Okay.
 15 A Or about then.
 16 Q Now, you testified earlier you included or
 17 included in the bills you submitted to TJFA's
 18 attorneys were bills that were essentially
 19 pass-through bills involving Dr. Yuliana. Correct?
 20 A Yes.
 21 Q And also Mr. Neyens and his firm. Is that
 22 correct?
 23 A Correct.
 24 Q Okay. I did a little bit of math, and I
 25 added the amounts that you charged TJFA's attorneys

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1 solely for your own personal services and those of
 2 your daughter for the invoices reflected in Deposition
 3 Exhibit 120 that were from May to the end of November,
 4 and I came up with a figure of \$35,286.83. Does that
 5 sound about right to you?
 6 A 35 grand?
 7 Q Yes, sir.
 8 A Probably.
 9 Q Okay.
 10 A But you warned me not to trust you in math
 11 because you were from Elgin.
 12 Q That's right. It's always a dangerous type
 13 of a thing.
 14 A Yes.
 15 Q Now, Dr. Yuliana, he specializes in matters
 16 pertaining to geochemistry. Is that correct?
 17 A Yes. Hydrogeology and particularly water
 18 chemistry, geochemistry.
 19 Q Do you know if Dr. Yuliana was originally
 20 designated as a testifying expert witness by TJFA in
 21 this case?
 22 A I don't know.
 23 Q Now, again, if you'll trust my Elgin math,
 24 with that caveat and I hope there aren't any other
 25 people from Elgin around here. I'm going to catch a

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1 little grief. But I added Mr. Yuliana's hours, and I
 2 concluded that he had billed for 156.5 hours between
 3 May and the end of November, at least reflected in the
 4 bills. Does that sound about right?
 5 A I don't know.
 6 Q Okay. What was his hourly rate? Do you want
 7 to look in there?
 8 A Yes, please.
 9 MR. RENBARGER: Mr. Carlson, while he's
 10 taking a look at that, I'm not sure where we're going
 11 with this, but we're really not talking much about
 12 BFI's landfill application, so I was wondering how
 13 much longer we were going to talk about invoices.
 14 MR. CARLSON: Not long but a little bit
 15 more.
 16 MR. RENBARGER: Okay.
 17 A His would have been 120 an hour.
 18 Q (BY MR. CARLSON) All right. Again, by my
 19 math, Dr. Yuliana, through your firm, billed a total
 20 of \$17,440 for his services. Does that sound about
 21 right?
 22 A I don't know.
 23 Q Could you look through your invoices for the
 24 June entries for Dr. Yuliana, please?
 25 A Okay. I'm in June.

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1 Q And do you see Dr. Yuliana's time entries
 2 there?
 3 A Yes.
 4 Q What was his entry for June 12th?
 5 A "Examined correlations between TDS and
 6 various IM concentrations."
 7 Q Does his bill strike that. What does his
 8 entry for June 23rd say?
 9 A "Plotted analytical results for organic
 10 compounds and trace metals."
 11 Q What does his entry for June 27th say?
 12 A There isn't one.
 13 Q Do you see one that says "Reviewed
 14 organic/trace metal" --
 15 A Yeah, but that's June 25th.
 16 Q Okay. There's my Elgin math of sorts, I
 17 guess. Could you read the June 25th entry?
 18 A "Reviewed organic/trace metal contaminant
 19 data and summarized results."
 20 Q And does Dr. Yuliana's bill reflect that he
 21 was doing work on the BFI project?
 22 A Probably not specifically, but I knew where
 23 it was going because he keeps them separate.
 24 Q Look in the upper left. Do you see some
 25 reference to BFI?

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1 A Upper left? Of what?
 2 Q Of the time entries you were looking at.
 3 A Oh. On June 15th to 17th, yes, there is a
 4 reference to BFI.
 5 Q All right. Now, Dr. Yuliana never filed
 6 there was no prefiled testimony that was filed by or
 7 on his behalf in this hearing. Is that correct?
 8 A To my knowledge, yes.
 9 Q Okay. And you never mention Dr. Yuliana in
 10 your prefiled testimony, do you?
 11 A No.
 12 Q Okay. And you don't reference any of
 13 Dr. Yuliana's work product in your prefiled testimony,
 14 do you?
 15 A That's correct. I do not.
 16 Q In fact, have you reviewed the prefiled
 17 testimony of TJFA's other expert witnesses?
 18 A No.
 19 Q You didn't look at Pierce Chandler's?
 20 A No.
 21 Q Okay. Now, Mr. Neyens' work was also billed
 22 through your firm. Correct?
 23 A Correct.
 24 Q Do you have any reason to dispute that his
 25 bill for his work and his firm's work in this time

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1 frame was \$37,636.75?
 2 A I have no way of knowing, so
 3 Q If you'll trust my math, do you have any
 4 reason to dispute that over \$90,000 was billed through
 5 your firm alone in this May through November 2008 time
 6 frame?
 7 A You added it up. I didn't.
 8 Q Okay.
 9 A I have no idea.
 10 Q Now, assuming that's the right number, that
 11 wouldn't include your fees for December, January of
 12 this year. Correct?
 13 A Correct.
 14 Q That wouldn't include any fees that you
 15 charge either Mr. Gregory, TJFA, TDS, or any other
 16 entity for your monitoring, review, and commenting of
 17 the application prior to referral to SOAH. Is that
 18 correct?
 19 MR. RENBARGER: Objection; assuming
 20 facts not in evidence. I think the witness has
 21 testified he was doing this work on behalf of TJFA,
 22 not Mr. Gregory or TDS or anybody else.
 23 MR. CARLSON: I'll limit my question to
 24 TJFA.
 25 MR. RENBARGER: Thank you.

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1 JUDGE NEWCHURCH: Is the question clear?
 2 A No.
 3 JUDGE NEWCHURCH: Why don't you repeat
 4 the whole question.
 5 MR. CARLSON: All right.
 6 Q (BY MR. CARLSON) The \$90,000 that we've been
 7 talking about, assuming that's a correct figure, that
 8 wouldn't include any bills that you submitted to TJFA
 9 for work that you performed during the monitoring,
 10 reviewing, and commenting phase of the application
 11 before this thing was referred to SOAH. Right?
 12 A During the monitoring phase, I was not
 13 working for TJFA.
 14 Q Who were you working for?
 15 A TDS or one of its entities.
 16 Q Isn't it true, in fact, that when the invoice
 17 that you first submitted to TJFA's attorneys for your
 18 work on this project as a testifying expert was
 19 actually cut by TDS
 20 A I'm sorry. What?
 21 Q You submitted a bill for your May time frame.
 22 Correct?
 23 A Yes.
 24 Q To TJFA's attorneys. Correct?
 25 A Yes.

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1 Q You got paid. Right?
 2 A Yes.
 3 Q In the form of a check?
 4 A Yes.
 5 Q And the check was from TDS and not TJFA. Is
 6 that correct?
 7 A Not to my knowledge.
 8 Q Didn't you testify about that in your
 9 deposition?
 10 A I testified that I accidentally got a check
 11 from TDS for one of the two jobs I'm working on. I
 12 couldn't retrieve it fast enough before my wife
 13 quickly deposited it. And so I wrote a check in
 14 reimbursement for it since it would have been an
 15 error.
 16 Q Okay. Dr. Kier, will you look at Exhibit
 17 BFI-15?
 18 A Is there some clue where it is?
 19 Q That's the TravisCAD detail.
 20 A Oh. Yes. Excuse me.
 21 Q Do you see where it has the total appraised
 22 value for the 11-acre property on 5510 Blue Goose
 23 Road?
 24 A Well, there are several entries, but there is
 25 a column saying "appraised value." Is that the one.

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1 Q You see the column in the upper left says
2 "value information" and then later on it says "2008
3 certified"?

4 A Yes.

5 Q Okay. Then you look at the bottom of that
6 column, it says "total value" on the left and then has
7 a number. Do you see that?

8 A I see total value, yes.

9 Q All right. What's that number?

10 A 89,792.

11 Q Okay. So, at least from Travis County's
12 perspective for the 2008 certified appraised value,
13 this particular property was worth slightly under
14 \$90,000. Is that correct?

15 A Yes.

16 Q Okay. One last question about this document.
17 Look in the upper right-hand corner under the entry
18 "property details."

19 A Yes.

20 Q Okay. Do you see the D date entry right
21 under property --

22 A Oh. I didn't realize what that was.

23 Q Okay. If you look over at the far right-hand
24 side, it says 11-23-2004. Correct?

25 A I guess that's what it means.

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1 Q Okay. It appears, at least according to this
2 document, that the property was deeded over on
3 December 23rd, 2004. Correct?

4 A Well, I have to admit lacking knowledge in
5 how these things are presenting. I'm presuming that's
6 what it means, but I don't know for sure.

7 Q And when did you start looking at the BFI
8 application for monitoring, review, and commenting
9 purposes?

10 A Sometime after it was declared
11 administratively complete.

12 Q You don't recall the exact time frame?

13 A No, sir.

14 MR. CARLSON: Judge, at this time we
15 offer BFI-15.

16 JUDGE NEWCHURCH: Any objection?

17 MR. RENBARGER: None.

18 JUDGE NEWCHURCH: It is admitted.
19 (Exhibit BFI No. 15 admitted)

20 Q (BY MR. CARLSON) Let's shift gears a little
21 bit and talk briefly about other consulting projects
22 that you've worked on, Dr. Kier. I'm particularly
23 interested in projects that you've worked on MSW
24 projects for facilities that were located in the --
25 we'll call it the Taylor formation or the Taylor

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1 clays.

2 You worked on the Ellis County project?

3 A Yes.

4 Q Were you the project manager?

5 A No.

6 Q Okay. What was your role?

7 A More of a QA/QC or technical advisor.

8 Q Okay. Let me limit this to matters in which
9 you were working for the applicant, then. Okay? Are
10 there any other facilities where you worked for the
11 applicant on an application involving a facility that
12 was planned to be located or was already located in
13 the Taylor formation? TDSL is one of them. Right?

14 A Right. I'm just rattling down through them.
15 TDSL is one. I can't think of the others. The first
16 was for the firm Lloyd, Gosselink, of course.

17 Q Anything else?

18 A About that project?

19 Q No. Any other facilities that you can
20 recall?

21 A No. I think the Waco one was in Pepper
22 Shale, which is a little lower than the Taylor or its
23 equivalent. That would have been for the city of
24 Waco.

25 Q All right. Let's move on. You've also been

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1 hired by either protestants or attorneys for
2 protestants for protests at at least four facilities
3 that are located in the Taylor formation. Right?

4 Williamson County, Comal County, Sunset Farms, and the
5 Austin Community site. Is that correct?

6 A Yes. Excuse me. Yes.

7 Q And then I understand that you were the
8 project manager for the North Texas 121 project that's
9 come up in various discussions in this hearing.
10 Correct?

11 A Yes.

12 Q At your deposition, you and I discussed some
13 very basic concepts about the Taylor formation and the
14 Taylor clays and the hydrogeology of the shallow
15 groundwater in the Taylor clays. Do you recall that
16 discussion?

17 A Yes.

18 Q Okay. You weren't here yesterday, were you,
19 for Mr. Chandler's direct or cross-testimony?

20 A No.

21 Q Let me just run through some basic concepts
22 and see if you agree with these regarding the
23 basically geology and hydrogeology of the clays in
24 this formation. Do you agree that the formation runs
25 north/south through the central part of the state of

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1 Texas?
 2 A More or less, yes.
 3 Q Roughly along I-35. Right?
 4 A Yeah, parallel. Do you want to know the
 5 reason?
 6 Q I'd be interested, but I also want to move
 7 forward.
 8 A Okay.
 9 Q Okay. The formation itself doesn't change
 10 very much across the state, does it?
 11 A Oh, there are some different changes. You
 12 get some sand in it as you go north. In fact, a piece
 13 of it is an aquifer, the name of which escapes me at
 14 the moment, and it tends to have more and more calcium
 15 carbonate in it as you move north.
 16 Q Let me narrow it down a little bit. Let's
 17 talk about the Taylor clays in the Hays, Travis, and
 18 Williamson County area. Okay?
 19 A All right.
 20 Q Is it fair to say that the soils and clays in
 21 that area are very consistent?
 22 A Generally, yes.
 23 Q Would it be a fair statement to say that the
 24 geologic formation of the Taylor is very similar
 25 between the Austin Community, Sunset Farms, and TDSL

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1 facilities?
 2 A Yes.
 3 Q Okay. And the Taylor formation --
 4 A Excuse me. I try to leave out adverbs like
 5 very.
 6 Q The Taylor formation generally consists of a
 7 weathered layer at the ground level that overlays an
 8 unweathered layer. Is that correct?
 9 A Yes. There is commonly a transition zone
 10 that is either put with the weathered layer or the
 11 unweathered layer depending on someone's bent. But
 12 there is a transition zone. There's not just an
 13 absolute plane.
 14 Q Okay. In the vicinity of Travis County, this
 15 transition that you're talking about generally occurs
 16 somewhere between let's say 30 to 50 feet underneath
 17 the natural ground surface. Correct?
 18 A Generally, but it depends on how much erosion
 19 has taken place.
 20 Q But that's a good rule of thumb at least.
 21 Right?
 22 A Yeah, in the valleys, you tend to have it
 23 deeper and the hilltops more because of the erosion.
 24 Q You agree that the fully unweathered Taylor
 25 is highly impermeable?

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1 A Yes.
 2 Q Do you agree that the unweathered Taylor
 3 serves as the confining unit for shallow groundwater?
 4 A The underlying confining unit, yes.
 5 Q Yes, sir. You agree that the water that's in
 6 the upper unweathered Taylor is considered to be the
 7 uppermost aquifer for regulatory groundwater
 8 monitoring purposes?
 9 A Yes, normally.
 10 Q Do you agree that the shallow groundwater
 11 that we've just been talking about is not a primary
 12 source of drinking water in Travis County?
 13 A I wouldn't call it primary, no.
 14 Q Do you agree that the groundwater levels in
 15 the weathered Taylor tend to mimic the natural
 16 topography?
 17 A In general, yes.
 18 Q And would you agree that groundwater we're
 19 thinking in terms of the weathered and in the
 20 unweathered down below it that groundwater tends to
 21 sink towards that weathered/unweathered interface and
 22 then flows downhill from there?
 23 A Yes.
 24 Q And would you agree that the Taylor formation
 25 is generally considered to be one of the better

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1 formations for situating landfills in Texas?
 2 A Yes.
 3 Q You were designated as a testifying expert in
 4 this case in May of 2008?
 5 A I don't know when I was designated. That's
 6 when I got started on it.
 7 Q So your prefiled was prepared and filed
 8 sometime in November of 2008?
 9 A Yes.
 10 Q So you had six months in which to investigate
 11 matters and consider things that would be put in your
 12 prefiled. Correct?
 13 A I wish.
 14 Q Well, in raw terms, you did have that, didn't
 15 you?
 16 A Well, from start to finish, yes. But it
 17 certainly wasn't six months worth of time.
 18 Q Okay. But you had an opportunity to review
 19 the prefiled testimony that BFI had submitted prior to
 20 preparation of your prefiled. Correct?
 21 A Yes.
 22 Q Okay. And, in fact, you had an opportunity
 23 that predated even the 2003 or 2004 time frame to get
 24 to know the soil and groundwater in and around Sunset
 25 Farms and ACL and Applied Materials as far back as the

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1 late 1990s. Correct?
 2 A Probably mid-1990s.
 3 Q Based on the work you had performed for
 4 Mr. Gregory. Right?
 5 A Correct.
 6 Q So when I asked you in your deposition if
 7 every opinion you were planning to offer in the case
 8 was included in your prefiled testimony, you told me
 9 it was. Do you recall that testimony?
 10 A Yes.
 11 Q Okay. And do you agree with that as we sit
 12 here today?
 13 A I think so.
 14 Q Okay. Now, as I understand your prefiled
 15 testimony, you've got two basic opinions you're
 16 offering. Would you turn to Page 7, please?
 17 A Okay.
 18 Q Those two opinions are summarized at the
 19 bottom of Page 7. Is that correct?
 20 A Yes, that's correct.
 21 Q Okay. So your first opinion, as I understand
 22 it, is that to you it appears that leachate is
 23 mounding inside of the landfill. Is that correct?
 24 A Well, that's what the information shows, yes.
 25 Q Okay. And that this mound of leachate that

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1 you claim exists is recharging groundwater outside the
 2 landfill. Right?
 3 A Yes.
 4 Q Recharging --
 5 A Likely.
 6 Q Recharging being shorthand for leaking?
 7 A That could be, yeah.
 8 Q All right. And that this contaminated
 9 groundwater that's leaked out of the landfill is
 10 moving off site?
 11 A Correct.
 12 Q Fair enough?
 13 A Yes.
 14 Q That's a broad summary of your No. 1 opinion?
 15 A Yeah, with a highly probable in there.
 16 Q It doesn't say "highly probable."
 17 A I know, but that was what we talked about in
 18 deposition.
 19 Q I'm talking about what's in your prefiled.
 20 A Okay.
 21 Q And your second opinion is that the
 22 groundwater monitoring system and the GWSAP, meaning
 23 the groundwater sampling and analysis plan, may meet
 24 the technical requirements of the rules but perhaps
 25 not their intent. Is that a fair summary?

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1 A Yes.
 2 Q Okay. Let's talk about your landfill is
 3 leaking opinion first. That is a pretty serious
 4 allegation, isn't it?
 5 A I guess it could be.
 6 Q Okay. Well, you were involved in a lawsuit
 7 roughly ten years ago in which an allegation was made
 8 that a liner was mischaracterized. Right?
 9 A Yes.
 10 Q And there wasn't even an allegation of
 11 leakage in that case, was there?
 12 A No. There might have been an implication,
 13 but no allegation.
 14 Q All right. So it's kind of fair to say that
 15 the allegation you're making might even be stronger
 16 than an allegation that a liner was misdescribed.
 17 Fair enough?
 18 A I don't know.
 19 Q You just don't have an opinion one way or the
 20 other?
 21 A No.
 22 Q Okay. Apparently Waste Management excuse
 23 me TDS was fairly offended by the description of
 24 their landfill liner. Right?
 25 A Yes.

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1 Q Enough to sue?
 2 A Yes.
 3 Q And it spent, what was it, six or seven years
 4 in litigation with Waste Management?
 5 A Well, it's not over yet.
 6 Q Okay. So ten years?
 7 A I don't know how long it will be.
 8 Q Now, in your prefiled testimony, as I
 9 understand it, the sole basis that you provide now
 10 I'm talking about the prefiled testimony is based on
 11 various cross-sections that were contained in
 12 Attachments 2 and 4 of the application that depict
 13 groundwater elevations. Is that right?
 14 A That's the principal basis. The groundwater
 15 level maps show similar --
 16 Q Well, let's look at that. Could you I
 17 think you pointed to some of the geologic
 18 cross-sections. Correct?
 19 A Yes.
 20 Q That were prepared by Mr. Snyder and his
 21 firm?
 22 A Yes.
 23 Q Would you open up the application I believe
 24 it's Volume 2 to APP 000 starting at Page 708.
 25 A Excuse me. I have too much stuff up here

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1 right now.
2 MR. RENBARGER: What page number,
3 please?
4 MR. CARLSON: APP 000 starting at 708,
5 but I'm going to point him to 711.
6 MS. NOELKE: 708?
7 Q (BY MR. CARLSON) I'd like you specifically,
8 Dr. Kier, to look at APP 000711.
9 A Okay. I have it.
10 Q It's Figure 4C.4. Right?
11 A Correct.
12 Q And it's a geologic cross-section that was
13 prepared and sealed by Mr. Snyder. Right?
14 A Correct.
15 Q It reflects a cross-section for C-C prime
16 across the roughly the southern third of the Sunset
17 Farms site. Right?
18 A Yes.
19 Q Okay. Now, this is one of the documents
20 yeah, the documents in the application that serve as
21 the source for your contention that the landfill is
22 leaking. Right?
23 A Yes.
24 Q Okay. And if I understand your testimony
25 correctly, you're looking specifically at a dashed and

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1 dotted line that runs kind of through the middle of
2 what's represented as the landfill and has on either
3 the left or the right-hand side an inverted black
4 triangle. Is that right?
5 A Yes.
6 Q And you're saying, as I understand it, that
7 that line is reflective of mounding of either water or
8 leachate inside the landfill. Correct?
9 A Yes.
10 Q Okay. What does the key down there say for
11 that line?
12 A For that line, it's groundwater level from
13 December 1999, approximately.
14 Q Okay. And just to make sure, you're basing
15 your opinion on other similar drawings in the
16 application in this series of drawings. For example,
17 if we turned to 712 --right?
18 A 712 is the same as 711.
19 Q Actually, that's a redundant C-C prime, isn't
20 it?
21 A Yes.
22 Q Okay. Why don't we try the F-F prime
23 cross-section? It would be APP 000715.
24 A Okay.
25 Q Okay. This one also has the dotted/dashed

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1 line with the black carrots on it. Right?
2 A Yes.
3 Q The key indicates it says, "Groundwater
4 level from December 1999 (approximate)." Right?
5 A Right.
6 Q And this line that you're talking about is
7 what you believe is evidence of water or leachate
8 inside the landfill. Right?
9 A Well, as I said, it's either leachate it's
10 either a water table or it's the pressure surface
11 beneath the landfill. It doesn't discriminate between
12 the two.
13 Q Your contention, at least in your deposition,
14 was that did not this line did not reflect a
15 potentiometric surface?
16 A No. It does reflect -- the terminology
17 probably gets you. It does reflect a potentiometric
18 surface. It --
19 Q Let me interrupt. You're saying that even if
20 it represents a potentiometric surface, you're saying
21 it also represents an actual level of water inside the
22 landfill? That's your contention, isn't it?
23 A Sir, a potentiometric surface and a water
24 table can be one and the same thing.
25 Q Okay. I just wanted to make sure that's

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1 clear. And that's your position, is that this
2 represents both a potentiometric surface and a water
3 level?
4 A Well, they're one in the same unless they
5 also are trying to show a piezometric surface, which
6 is a pressure surface. The only difference between a
7 water table and a piezometric surface is a piezometric
8 surface is a pressure -- an imaginary pressure surface
9 reflecting what the pressure would be at equilibrium
10 with atmospheric pressure just as the water table is
11 at equilibrium with atmospheric pressure.
12 Q Let's cut to the chase. Is it your
13 contention that this line that we're talking about,
14 the dashed/dotted line, represents actual leachate
15 levels inside this landfill?
16 A It is either inside or underneath. And I
17 don't know which, because he didn't say.
18 Q Let me make sure this is clear. I'm talking
19 in terms of leachate leachate.
20 A Okay.
21 Q The definition of leachate is water that's
22 come in contact with waste. Right?
23 A Yes, passed through.
24 Q Okay. Is it your contention, sir, that this
25 dotted line right here is reflective of an actual

54 (Pages 1723 to 1726)

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1 leachate level inside this landfill unit?
 2 A It could, or it could be the groundwater
 3 pressure level beneath the landfill.
 4 Q In which case that would be the
 5 potentiometric surface. Right?
 6 A No. It would be a potentiometric surface,
 7 but it would be the same as a piezometric surface.
 8 Q They're synonymous. Right?
 9 A No, sometimes they're not.
 10 Q Well, your colleague, Mr. Chandler, disagrees
 11 with you. Were you here this morning?
 12 A No. Not all of it.
 13 Q I believe I asked him the record may stand
 14 me corrected. I asked him if piezometric and
 15 potentiometric surfaces were the same, and he said
 16 yes.
 17 A A piezometric surface is a potentiometric
 18 surface. A water table is also a potentiometric
 19 surface.
 20 Q One more time. Is it your testimony, sir,
 21 under oath in connection with your allegation or your
 22 assertion that this landfill is leaking, that this
 23 line that we're talking about reflects an actual
 24 leachate level inside this landfill?
 25 A And I and the answer doesn't differ. It

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1 either represents the level of leachate in the
 2 landfill or the pressure surface beneath the landfill.
 3 It does not the diagram or cross-section does not
 4 tell me which.
 5 Q All right.
 6 A But in either case, it represents mounding
 7 inside the landfill.
 8 Q Let's move on. Now, you prepared an exhibit
 9 with your original testimony that was the subject of
 10 some discussion that's been labeled as BK-3. Do you
 11 recall that?
 12 A Yes.
 13 Q Could you pull your original?
 14 A Okay. I have a copy of it.
 15 Q This is the the original BK-3 is a document
 16 that you and your daughter collaborated on. Is that
 17 correct?
 18 A Correct.
 19 Q Okay. And it's based on a document that was
 20 originally prepared and sealed by Mr. Snyder?
 21 A Yes.
 22 Q Okay. And that's Mr. Snyder's seal on the
 23 bottom there. Is that correct?
 24 A That's what it seems to indicate.
 25 Q All right. And there's a lot of red and blue

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1 writing on this. Right?
 2 A Yes.
 3 Q Okay. And that's information that your
 4 daughter or yourself or some combination of you added
 5 to this document. Is that correct?
 6 A Yes.
 7 Q Okay. Now and you intended this to be used
 8 for purposes of litigation. Is that correct?
 9 A Contested case hearing, I think.
 10 Q All right. This is litigation, I think.
 11 Fair enough? Now, neither you nor your daughter
 12 signed or sealed this original BK-3, did you?
 13 A Correct.
 14 Q Neither of you signed or dated the original
 15 BK-3?
 16 A That is correct.
 17 Q Okay. Were you here the other day when
 18 Mr. Adams was asking questions about placement of his
 19 seal on Attachment 4 of the BFI application?
 20 A No.
 21 Q Okay. A little earlier in the day you made a
 22 reference to the Texas Geoscientist Practices Act. Do
 23 you remember that?
 24 A Yes.
 25 MR. CARLSON: May I approach, Judge?

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1 JUDGE NEWCHURCH: Yes, sir.
 2 (Exhibit BFI No. 16 marked)
 3 Q (BY MR. CARLSON) Dr. Kier, I've handed you a
 4 section of the Texas Administrative Code, Title 22,
 5 Part 39, Chapter 851, Rule Section 851.156,
 6 Geoscientist Seals. Is that correct?
 7 A Yes.
 8 Q Okay. Would you turn to Subsection let's
 9 see here (j), please?
 10 A Okay.
 11 Q Would you read there's a sentence that
 12 begins with the words "all other" at the end of the
 13 third sentence there. Would you read that sentence
 14 into the record, please?
 15 A As soon as I find it. Oh, third line.
 16 That's what threw me. You said third sentence. "All
 17 other geoscience work, including but not limited to
 18 research reports, opinions, recommendations,
 19 evaluations, addenda, documents produced for
 20 litigation, and geoscience software shall bear the
 21 geoscientist's printed name, date, signature, and
 22 designation PG or other terms allowed under 1002.251
 23 of the Act."
 24 Q All right. Would you take a look at
 25 Subsection (k)? Would you read that into the record,

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1 please?
 2 A "Work performed by more than one geoscientist
 3 shall be sealed in a manner such that all geoscience
 4 can be clearly attributed to the responsible
 5 geoscientist or geoscientists. When sealing plans or
 6 documents on which two or more geoscientists have
 7 worked, the seal of each geoscientist shall be placed
 8 on the plan or document with a notation describing the
 9 work done by each geoscientist responsible for the
 10 charge."
 11 Q And, again, could you read Subsection (n)
 12 into the record, please?
 13 A Oh, there it is. "Alteration of a sealed
 14 document without proper notification to the
 15 responsible geoscientist is misconduct or an offense
 16 under the Act."
 17 Q Now, the original BK-3 didn't have either
 18 your seal or your daughter's seal on it. Right?
 19 A Correct.
 20 Q Not signed or sealed by either of you.
 21 Right?
 22 A Right.
 23 Q You did put some information on Mr. Snyder's
 24 drawing. Is that right?
 25 A Correct.

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1 Q And without any other information, how am I
 2 to know what work you did, what work your daughter
 3 did, and what work Mr. Snyder did?
 4 A Because it's part of the sworn testimony.
 5 Q All right. Now, you submitted some changes
 6 to this particular exhibit this morning. Correct?
 7 A Correct.
 8 Q Okay. And I believe we talked about in your
 9 deposition I'd just like to make sure I'm clear on
 10 the basis for your changes. Do you see why don't
 11 you let's see. I'm still looking at the original
 12 BK-3, the one that was has been substituted for.
 13 A Oh.
 14 MR. CARLSON: Judge, I'd like there
 15 might be a copy up there. I'd like to mark the
 16 original as next in order for BFI.
 17 JUDGE NEWCHURCH: So this would be BK-3
 18 as originally filed, and you want to mark that as
 19 BFI-17?
 20 MR. CARLSON: BFI-17, Your Honor.
 21 JUDGE NEWCHURCH: Let's go off the
 22 record while we make sure there's a copy.
 23 (Brief recess)
 24 (Exhibit BFI No. 17 marked)
 25 JUDGE NEWCHURCH: Back on the record.

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1 Q (BY MR. CARLSON) All right. After a short
 2 break to clarify things, Dr. Kier, the document that's
 3 been marked as BFI-17 is a copy of the original
 4 Exhibit BK-3 that you prepared and submitted with your
 5 prefiled testimony that has subsequently been
 6 superseded by BK-3 after some changes. Correct?
 7 A Correct.
 8 Q Okay. Well, I'd like to look at BFI-17 a
 9 little bit, the original BK-3, and see if I understand
 10 the basis for your changes.
 11 A Sir, you may have an advantage if you would
 12 go to the list that was provided with BK-3 revised.
 13 It itemizes all the changes.
 14 Q Yeah. I just want to make sure I understand
 15 it and make sure it's clear on the record, sir.
 16 A I do not have that in front of me, so I'll be
 17 operating from memory.
 18 Q Which are you talking about?
 19 A The itemized sheet. I don't know where it
 20 went.
 21 (Brief recess)
 22 JUDGE NEWCHURCH: Back on the record.
 23 Q (BY MR. CARLSON) All right. Looking at
 24 BFI-17, do you see Boring B-16 in the southwest corner
 25 of the landfill?

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1 A Yes.
 2 Q Okay. The original document you prepared
 3 shows a reading of 712 feet above sea level for the
 4 top of the casing. Is that correct?
 5 A Well, that's what it says, yes.
 6 Q All right. And I believe at some point you
 7 and I concluded that 712 couldn't possibly be a
 8 correct number because there's not an elevation at the
 9 site, never has been, a natural elevation, that's over
 10 700 feet. Right?
 11 A No. You're correct. 712 was taken off the
 12 dashed line that was the fill.
 13 Q Okay. And the notation in red there
 14 indicates that this number was taken as the
 15 measurement from the top of a casing that had an
 16 elevation of 712 feet. Is that correct?
 17 A Yes.
 18 Q Okay. And this is a boring. Right?
 19 A Right.
 20 Q Not a groundwater monitoring well. Right?
 21 A Right.
 22 Q B-16?
 23 A Yes.
 24 Q Okay. And borings don't have casings, do
 25 they?

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1 A Some do. Some don't.
 2 Q Okay. The borings here didn't. Right?
 3 A I don't know.
 4 Q Okay. Now, this isn't the only error. You
 5 have a list of errors that you corrected in the
 6 corrected BK-3. Right?
 7 A Yes. There were one, two, three, four, five,
 8 six, seven elevations that were incorrect.
 9 Q Okay.
 10 A And have been corrected.
 11 Q And they include the ones running from B-16
 12 eastward, the information for B-17, B-18, B-19. Is
 13 that correct?
 14 A Correct.
 15 Q Okay. Each of those suggests an elevation of
 16 over 700 feet. Right?
 17 A B-19 didn't, but it was close enough.
 18 Q All right. That says 699. Right?
 19 A Yes.
 20 Q Now, if I were to take the information that
 21 was included in this original Exhibit BK-3 along that
 22 particular line, which is the C-C prime line, I could
 23 infer that there was a natural topographic high near
 24 these borings, couldn't I?
 25 A You might, unless you went back to the

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1 original data source.
 2 Q Right. But if I'm just looking at what you
 3 prepared. Right?
 4 A You might.
 5 Q I can infer that there was a natural
 6 topographic high based solely on the information in
 7 this document. Right?
 8 A Well, you could infer it, yes.
 9 Q That wouldn't be fair, though, would it?
 10 A Well, that's why I fixed it.
 11 Q Right. Now, with regard to your landfill is
 12 leaking opinion, sir --
 13 A Yes.
 14 Q -- you don't know to what extent the landfill
 15 had either been excavated or landfilled in the western
 16 portion of this site as of this December 1999 time
 17 frame. Is that correct?
 18 A Well, I didn't at the time of my deposition,
 19 but I have a pretty good idea now.
 20 Q Okay. Did you go back and look at some
 21 aerials?
 22 A No.
 23 Q What did you do?
 24 A A document that was produced from Kero
 25 Corporation whether it was an all source

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1 demonstration or a groundwater report I can't
 2 remember, but it had a misfolded map in it you know,
 3 an eight and a half by 11 or 17 that hadn't been
 4 unfolded before it was copied, so it was not quite
 5 readable. But it had enough of the western portion
 6 that I could see that BFI had turned a corner and was
 7 filling on the north half.
 8 Q In any event, you reached your conclusion
 9 that the landfill was leaking before you even knew
 10 that. Is that fair to say?
 11 A Yes.
 12 Q Okay. Now, you've testified in your prefiled
 13 that the landfill is leaking based on several
 14 cross-sections in the application. I think we've
 15 discussed that. But you didn't even bother to review
 16 any recent groundwater monitoring data for the site
 17 when you reached that opinion, did you?
 18 A Well, the most recent groundwater monitoring
 19 data provided in the application was 2005, and, yes, I
 20 did look at it.
 21 Q Well --
 22 A Let me be absolutely clear here on something.
 23 I reached my conclusion based on the information in
 24 the application.
 25 Q You didn't bother you were retained to look

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1 at this application. Correct?
 2 A That is correct.
 3 Q And you didn't even bother to look outside
 4 the information in the application just to confirm
 5 this opinion that you had reached, this serious
 6 allegation that the landfill is leaking?
 7 A I don't understand your question, sir.
 8 Q Sir, I think we've established it's a serious
 9 allegation regarding the potential leakage of the
 10 landfill. Fair enough?
 11 A We'll call it that for --
 12 Q Okay. And yet you reached this based solely
 13 on the information in the application. Right?
 14 A That is correct.
 15 Q And you didn't look to any extraneous data to
 16 support or refute the opinion you had reached?
 17 A I have now.
 18 Q You didn't do it before you reached your
 19 opinion and prepared your prefiled?
 20 A That is correct. I based my prefiled
 21 entirely on the information and data in the
 22 application.
 23 Q We'll get to this a little bit later. But
 24 talking about these reports you prepared for
 25 Mr. Gregory in the 1990s regarding the Austin

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1 Community landfill --
2 A Yes, sir.
3 Q -- you spent an extensive amount of time
4 rummaging through the archives of the then it was
5 the TNRCC looking for historical groundwater data,
6 didn't you?
7 A I did not personally, but someone did.
8 Q You had somebody do that for you. Right?
9 A Yes.
10 Q Perhaps a Dr. Yuliana type of person?
11 A No.
12 Q But nevertheless, you were actively seeking
13 groundwater data to confirm what I believe or it
14 sounds like your suspicion that there was some sort of
15 escape of contaminants from the ACL site through the
16 groundwater. Right?
17 A I was looking for every piece of data I could
18 find.
19 Q But you didn't do that here, did you?
20 A No, sir. I didn't have the time.
21 Q All right.
22 A And that wasn't the purpose of my prefiled.
23 Q You also didn't perform any sort of
24 calculations in connection with this opinion that you
25 have reached that the landfill was leaking. Is that

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1 correct?
2 A No calculations were needed.
3 Q That wasn't my question, sir. You didn't
4 prepare any, did you?
5 A No. They were not needed.
6 Q You didn't do any groundwater modeling, did
7 you?
8 A No, sir. That would be an exercise in
9 fiction and futility.
10 MR. CARLSON: Judge, I object as
11 nonresponsive.
12 JUDGE NEWCHURCH: Well, the first part
13 was no. The second part is what you're saying is
14 nonresponsive?
15 MR. CARLSON: Correct.
16 JUDGE NEWCHURCH: Do you have a response
17 to the objection?
18 MR. RENBARGER: I think in fairness to
19 just the completeness of the answer I certainly
20 understand why Mr. Carlson would want to isolate his
21 question to the yes or no answer, but I think Dr. Kier
22 is simply trying to give a full answer as to why he
23 did not conduct either modeling or independent
24 calculations as being a futile exercise.
25 JUDGE NEWCHURCH: I agree with that.

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1 Objection overruled.
2 Q (BY MR. CARLSON) I believe we had some
3 discussion of the TJFA property located at the
4 northwest corner of the property?
5 A Yes.
6 Q The Sunset Farms property?
7 A Yes.
8 Q Will you turn to APP 000040 in the
9 application? It should be in Volume 1.
10 A Okay. I've forgotten the number.
11 Q It's APP and as many zeros as you want to
12 look at, but look for the last two digits of 40. It's
13 called the Landowner's Map.
14 A All right.
15 Q Have you got it?
16 A Yes.
17 Q Okay. Do you see up in the upper left-hand
18 corner, which would be the northwest side of the site,
19 there's a reference to 11.227-acre site owned by TJFA,
20 LP?
21 A Yes.
22 Q Okay. That's the site that we've been
23 talking about a little earlier today, the 5510 Blue
24 Goose property. Is that correct?
25 A That's one of the properties, yes.

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1 Q All right. As part of your tasks on this
2 particular project, were you specifically asked to
3 look at the potential groundwater impacts of the
4 proposed expansion on the TJFA property?
5 A Not specifically, no.
6 Q You didn't do any sort of modeling or
7 calculations about how any escape of contaminated
8 groundwater would actually affect the TJFA property.
9 Right?
10 A No. I had no basis to do so.
11 Q Okay. Now, isn't it true that based on your
12 prefiled testimony, you strike that.
13 In your prefiled testimony, if you want
14 to refer to Page 9, you testified that this northwest
15 corner may be the only portion of the area where the
16 groundwater is actually flowing onto the BF site or
17 into the BF site from off site. Correct?
18 A BFI site, yes.
19 Q That would be in the area of this TJFA
20 property. Is that correct?
21 A That would be correct.
22 Q So, in fact, groundwater flows from the TJFA
23 property onto or into or underneath the BFI site.
24 Correct?
25 A No. That would be the only place it could,

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1 if it does.
 2 Q All right. So, hypothetically, even if there
 3 was a leak, Mr. Gregory's property, the TJFA property,
 4 wouldn't be affected by groundwater contamination. Is
 5 that correct?
 6 A No, not necessarily.
 7 Q Groundwater is coming onto the site from
 8 Mr. Gregory's property.
 9 A Not necessarily.
 10 MR. RENBARGER: Objection. I don't
 11 think this is Mr. Gregory's property. We've already
 12 established through his own documents that the
 13 property is deeded in the county records as TJFA
 14 property.
 15 MR. CARLSON: I'll change the question
 16 to refer to TJFA.
 17 MR. RENBARGER: Good. Thank you.
 18 JUDGE NEWCHURCH: Repeat the whole
 19 question as revised.
 20 Q (BY MR. CARLSON) Groundwater is flowing into
 21 the BFI property or onto or underneath the BFI
 22 property from this TJFA property. Right?
 23 A No, sir. You're mischaracterizing what I've
 24 said in my deposition and perhaps in my prefiled
 25 testimony. I said if there is a place where it could

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1 be coming onto the BFI site, that is it, in the
 2 northwest corner, but I didn't say it was.
 3 Q You're saying that might be upgradient, might
 4 be downgradient?
 5 A And we don't have the data to know.
 6 Q All right. Now, in your prefiled you
 7 attached and referenced three reports to Mr. Gregory
 8 that we've been talking about, those 1998 reports?
 9 A Yes.
 10 Q Would you get those out, please?
 11 A Okay. I'm there.
 12 Q Okay. Those have been marked and admitted as
 13 BK-8. Is that correct?
 14 A Yes.
 15 Q Is it fair to say that these three reports
 16 that have collectively been marked as BK-8 are
 17 iterations of the same report, the first in March of
 18 '98, another in May of '98, and then the last in
 19 August of '98?
 20 A That would be correct.
 21 Q Okay. And I believe we discussed these
 22 reports were prepared for Mr. Gregory roughly in the
 23 time that he was in litigation excuse me that TDS
 24 was in litigation with Waste Management. Is that
 25 correct?

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1 A I don't remember the exact times on the
 2 litigation, so I can't tell you.
 3 Q All right. I understand the purpose of your
 4 investigation was to try to determine if there was
 5 some sort of groundwater contamination that was
 6 emanating from and perhaps leaving the Austin
 7 Community landfill site?
 8 A Well, that became the ultimate subject, but
 9 that's not how I started out.
 10 Q Okay. And you did extensive research of
 11 monitoring well data from the state archives in
 12 connection with your investigation. Is that correct?
 13 A Yes.
 14 Q And those data and your review of those data
 15 are included in these reports. Right?
 16 A The review of it -- the actual I can't
 17 remember if the actual data are included or not.
 18 Q So back in '97, '98, you apparently believed
 19 that reviewing groundwater quality data was a valid
 20 methodology for trying to detect or confirm your
 21 personal suspicion that there was a discharge of
 22 contaminants from the ACL facility?
 23 A I can't answer yes or no at least not yes
 24 to that question.
 25 Q Well, why did you look at the groundwater

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1 data?
 2 A Because I had it and I had time.
 3 Q You actually actively went out or had
 4 somebody actively go out and get the groundwater data,
 5 didn't you?
 6 A I had them get every piece of data. I didn't
 7 care whether it was a piece of correspondence, a tear
 8 off a tablet sheet, a written submittal or anything.
 9 I wanted everything.
 10 Q And without going through each and every
 11 entry of the three memos, you've got extensive
 12 discussion of the groundwater data that you reviewed.
 13 Is that correct?
 14 A Yes. That was the subject of this report.
 15 Some of it has do with the gas monitoring probes and
 16 landfill gas excursions, too.
 17 Q Okay. And I'm looking at the would you
 18 turn to the March excuse me the August 10th
 19 report, which I believe is the final report you wrote?
 20 It's buried in there somewhere.
 21 A All right. I found it.
 22 Q It's roughly three-quarters or four-fifths of
 23 the way through.
 24 A Yes, sir.
 25 Q Has everybody found it yet? This is a report

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1 that you authored. Right?
 2 A Correct.
 3 Q And you addressed it to Bob Gregory,
 4 President of Texas Disposal Systems landfill. Right?
 5 A Inc., yes.
 6 Q And the subject was Waste Management of Texas
 7 Austin Community landfill. Right?
 8 A Yes.
 9 Q Okay. And dated August 10th, 1998?
 10 A Yes.
 11 Q Would you turn to Page 9 of that report? Are
 12 you there?
 13 A Yes.
 14 Q Will you read the first sentence of the last
 15 full paragraph on Page 9?
 16 A I assume you mean the one "To date"?
 17 Q Yes, sir.
 18 A "To date, no evidence has been found that BFI
 19 Sunset Farms landfill has contributed in any
 20 detectible way to the contamination of groundwater in
 21 the weathered Taylor clays."
 22 Q All right. Now, you've also attached and
 23 we've discussed a little bit today the PBS&J report
 24 the Applied Materials report. Is that correct?
 25 A Yes.

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1 Q All right.
 2 A That's Attachment 7.
 3 Q BK-7?
 4 A Yes, sir.
 5 Q Would you turn to that?
 6 A Yes, sir.
 7 Q Okay. Now, the Applied Materials site,
 8 that's located on the eastern side of Giles Lane. Is
 9 that correct?
 10 A Yes.
 11 Q Okay. And according to BK-7, which is
 12 portions of a report, there was some groundwater
 13 sampling and analysis that was done at the Applied
 14 Materials site in the summer of 2002. Is that
 15 correct?
 16 A Yes.
 17 Q Okay. And at that time there were eight
 18 monitor wells located at and around the property owned
 19 by Applied Materials?
 20 A Yes.
 21 Q Okay. If you turn to the last page of BK-7
 22 it's a map of the Applied Materials site. Is that
 23 correct?
 24 A Yes.
 25 Q It's labeled APP 019768. Right?

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1 A Correct.
 2 Q Now, these eight wells have been designated,
 3 as far as the report is concerned, monitoring wells 1A
 4 through 8. Is that right?
 5 A Yeah. There's 1A and there's 3A.
 6 Q Okay.
 7 A Those two had to be replaced. They were
 8 destroyed at some point, the original ones.
 9 Q Okay. Now, according to the report, at least
 10 the portions that we have, each of the eight wells
 11 were sampled in July of 2002 for a number of things.
 12 Is that correct? A number of parameters or
 13 constituents?
 14 A Yes.
 15 Q Including various metals and inorganic
 16 parameters?
 17 A Yes.
 18 Q Okay. They were also each monitored --
 19 sampled and analyzed for a suite of 52 volatile
 20 organic compounds, or VOCs?
 21 A I didn't count them, but it's the 8260 list.
 22 Q Using the 8260 list. Right?
 23 A Yes.
 24 Q And another suite of semi-volatile organic
 25 compounds or SVOCs were sampled using the 8270 method?

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1 A Yes.
 2 Q The 8270(c)?
 3 A Yes.
 4 Q And they also sampled for total organic
 5 carbon?
 6 A Yes.
 7 Q Which is also sometimes known as TOC?
 8 A Yes.
 9 Q Then they sampled for total organic halides.
 10 Correct?
 11 A Yes.
 12 Q Which sometimes goes by the acronym TOX?
 13 A Yes.
 14 Q And then they looked for total dissolved
 15 solids. Right?
 16 A Yes.
 17 Q All right. Would you turn to Page 5 of BK-7?
 18 A Let's see. Is that 19766?
 19 Q Yes, sir.
 20 A Okay.
 21 Q Actually, it should be APP 019764.
 22 A Okay. Excuse me.
 23 Q Could you read the first full sentence of the
 24 second paragraph?
 25 A "The analytical results for the metals and

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1 inorganic parameters for groundwater samples collected
2 in July 2002 do not reflect any major abnormalities
3 from previously collected samples at the site."
4 Q All right. Would you turn to Page 7 of the
5 report, APP 019766?
6 A Yes.
7 Q Would you read the first full sentence of the
8 second paragraph on that page, please, sir?
9 A "Relatively high levels of TOC were detected
10 in samples from wells MW-1A, MW-2, MW-5, and MW-8.
11 However, no VOCs or SVOCs included on the laboratory's
12 target compound list were detected."
13 Q Now, that doesn't mention Monitoring Well 3A
14 or Monitoring Well 4. Correct?
15 A In terms of saying that they had relatively
16 high levels. They had TOCs in them. They just didn't
17 have relatively high levels.
18 Q It doesn't mention those wells, does it, sir?
19 A No, sir, it does not.
20 Q Okay. Well, let's turn back to the map at
21 the end there. Do you see where Monitoring Well 1A is
22 located there?
23 A Yes, sir.
24 Q Okay. I believe you and I agreed in your
25 deposition that Monitoring Well 1A is not downgradient

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1 from Sunset Farms. Is that correct?
2 A I believe that was the case. I'm operating
3 without the boundary line.
4 Q Okay.
5 A Whereas I think we had it before.
6 Q Now, Monitoring Well 5 is located in the far
7 southwest corner there, in the triangular area.
8 Right?
9 A Yes.
10 Q Okay. And that monitoring well was not
11 downgradient from Sunset Farms, is it?
12 A I don't think so.
13 Q Okay. In fact, that little building
14 represented slightly to the northwest of Monitoring
15 Well 5, that's the old Lief Johnson Ford body shop.
16 Isn't that correct?
17 A I think so.
18 Q Okay. Monitoring Well 5 is actually just
19 immediately downgradient from that, isn't it?
20 A I believe so.
21 Q All right. And Monitoring Well 8, that's
22 even further to the southwest, almost at the tip
23 there, by Giles Lane and the 290 intersection. Do you
24 see that?
25 A Yes.

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1 Q And it looks like there's a little cluster of
2 buildings right there?
3 A Yes.
4 Q That's the old Diamond Shamrock station that
5 I used to fill up with on my way back from Elgin.
6 Right?
7 A Well, I can't swear to you used to fill up
8 there, but it is an old Diamond Shamrock station, yes.
9 Q Actually, I misspoke, because I didn't fill
10 up on the way to Elgin. I filled up on the way to
11 Austin from Elgin. I wanted to correct that.
12 A Okay. You're forgiven.
13 Q So Monitoring Well 8 is immediately downgradient
14 from an old gas station. Right?
15 A I believe that's the case, yes.
16 Q So let's go back and look at Monitoring
17 Well 2. Do you see that?
18 A Yes.
19 Q That's roughly in the south center portion of
20 the Applied Materials campus. Right?
21 A Yes.
22 Q It appears that there is a rather large
23 pond to the -- there are ponds, actually, to both the
24 north, northwest, and to the east. Right?
25 A Yes.

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1 Q Okay. I believe, if you'll turn to the prior
2 page, the other half of this map do you see that?
3 A Yes.
4 Q Do you see on the right-hand side there's a
5 scale?
6 A Yes.
7 Q Could you I had Mr. Jiminez leave a ruler
8 up there. Do you see a little ruler up there?
9 A Yeah. It's the neatest thing I've ever seen.
10 Q Pretty sweet, isn't it?
11 A It is.
12 Q Could you take that ruler and using that
13 determine how many feet it is between Monitoring
14 Well 2 in a straight line to Giles Lane?
15 A I'm trying to find the the scale doesn't
16 exactly work, so I'm trying to work it.
17 Q Did you come up with a number yet, Dr. Kier?
18 A Oh, it's about 1,350 feet.
19 Q All right. Now, assuming for my question
20 that groundwater monitoring or groundwater shallow
21 groundwater in this particular area travels at a rate
22 of 10 feet per year, how long would it take it to
23 travel assuming that Monitoring Well 2 is
24 downgradient from Giles Lane, a straight line, how
25 long would it take groundwater to travel from Giles

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1 Lane to Monitoring Well 2?
2 A 130 years.
3 Q The Sunset Farms landfill has been open for,
4 what, 26 years so far?
5 A 1982 close enough. That's why I've
6 explained those things.
7 Q All right. Let's talk a little bit about the
8 groundwater monitoring system or the proposed
9 groundwater monitoring system for the vertical
10 expansion. You've had an opportunity to review the
11 diagram where the proposed well locations will be for
12 the expanded landfill?
13 A Yeah. I'm looking at a very small scale
14 sheet, but I have an idea a mental idea at this
15 point.
16 Q And it's your understanding that there will
17 be a total of 32 monitor wells surrounding the
18 perimeter of the facility. Is that correct?
19 A That's correct.
20 Q And there will be wells located on all four
21 sides of the permit boundaries, right; north, south,
22 east, and west?
23 A That's correct, all downgradient.
24 Q Would you agree that the maximum spacing
25 between any two wells around the perimeter of the

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1 proposed system is 600 feet?
2 A I would agree with that. I checked it.
3 Q Okay. Did you do any sort of averaging to
4 determine the average distance between the wells?
5 A No. That's irrelevant.
6 Q In other words, you didn't do it?
7 A No, sir. It's irrelevant.
8 Q Now, BFI has proposed to label the entire
9 perimeter of the landfill as the point of compliance
10 for regulatory purposes. Correct?
11 A Correct.
12 Q Okay. Now, you and I have discussed there
13 may be an upgradient, downgradient well, one that
14 could be classified as both in the northwest corner of
15 the facility. Right?
16 A Well, there may be a well there that could be
17 upgradient, or it could be downgradient, but it is, in
18 the application, designated as a downgradient well.
19 Q And you've testified, I believe, in your
20 prefiled that you believe there might be some
21 groundwater that's entering the Sunset Farms site from
22 the Austin Community landfill site. Is that correct?
23 A Yes.
24 Q Which would mean, if you're correct, that a
25 few of those wells along the southwest portion of

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1 BFI's facility would also be upgradient of their
2 wells. Right?
3 A It would be the southeast.
4 Q Southeast. Yes. Thanks.
5 A That would be the case, yes.
6 Q Now, the designation of the point of
7 compliance, that's a regulatory concept, isn't it?
8 A I guess you could look at it that way.
9 Q TCEQ has a specific rule on point, don't
10 they?
11 A Yes, but parallel to the federal Subtitle D
12 rule.
13 Q All right. So it may be statutory and
14 regulatory. Is that right?
15 A Yes.
16 Q Okay. And in your experience, when you've
17 worked on a landfill application, you coordinate with
18 the ED, correct, to determine where a point of
19 compliance should be defined. Right?
20 A I would say by the time you go through two
21 iterations this one went through six that by the
22 time you've gone through two, you've pretty well
23 established reached an agreement.
24 Q Okay. Now, having a point of compliance is a
25 good thing. You're monitoring groundwater that's

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1 leaving the site. Right?
2 A Well, that is the definition of a point of
3 compliance.
4 Q You want to see what's leaving the site?
5 A Yes.
6 Q Okay. So the more comprehensive you are that
7 is, the more parts of the site that you're checking to
8 make sure what's leaving the site is clean, the
9 better. Right?
10 A I believe that mischaracterizes the
11 situation, if I may explain.
12 MR. CARLSON: Objection.
13 Q (BY MR. CARLSON) It's better to have more
14 let me just re-ask the question. It's better to check
15 more of the water that's leaving the site than less.
16 Right?
17 A You've got the same rationale as my
18 mother-in-law, that more is better. But that's not
19 always the case. If more were better, then you would
20 have put them on 150-foot spacing or 300-foot spacing,
21 which is what the staff really wanted.
22 Q Let me ask you this. You designed the
23 groundwater monitoring system for the TDSL site in
24 Creedmoor. Is that correct?
25 A Yes, sir.

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1 Q How many monitoring wells how big is that
2 site?
3 A Total acreage is 350 acres, I think, not all
4 of it being used for waste.
5 Q And there are presently six monitor wells for
6 that entire site, aren't there?
7 A Yes.
8 Q So BFI is proposing 32 wells for a 350-acre
9 site. Correct?
10 A I don't remember the size, but 32 wells, yes.
11 Q And currently TDS, in a similar geology and
12 hydrogeology strike that TDS has six. Right?
13 A Well, sir, they will progress, so six isn't
14 the ultimate number.
15 Q Ultimately TDS is permitted to install 10.
16 Right?
17 A That is correct.
18 Q All right. Now, BFI is proposing to conduct
19 detection sampling twice annually. Is that right?
20 A Yes.
21 Q Okay. It's proposing to sample for
22 Appendix 1 constituents as long as any individual well
23 is not an assessment monitoring. Is that correct?
24 A I believe that's correct, yes.
25 Q And if a well is an assessment monitoring,

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1 then it is proposing to monitor for Appendix 2
2 constituents. Is that correct?
3 A Yes.
4 Q And the Appendix 1 and Appendix 2 list, those
5 are lists that were developed by EPA specifically to
6 monitor groundwater in and around MSW facilities. Is
7 that correct?
8 A And other things, but they are an EPA list of
9 the most common modern chemicals.
10 Q Now, would it be fair to say, in several
11 portions of your prefiled testimony, that you do
12 concede that the groundwater monitoring system as
13 proposed for the vertical expansion may meet the
14 minimum technical regulatory requirements for TCEQ?
15 A It may.
16 Q It just doesn't meet the Bob Kier standard,
17 apparently. Right?
18 A I didn't know I was elevated to that status,
19 but no. It's a case that, because of its situation,
20 there is more going on. It sits next to a landfill
21 that has taken all kinds of industrial waste and mixed
22 them all together, and the resulting soup of which we
23 have no idea what it is. And it is migrating, if
24 everything I've seen is correct, away from its
25 containment area.

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1 Q One of your contentions, I believe, is that
2 you think BFI should be required to review
3 chromatograms in connection with its sampling
4 analysis. Is that correct?
5 A Yes, I mentioned that.
6 Q All right. Are you aware of any other MSW
7 facility in Texas that has a regulatory requirement or
8 permit requirement that it review chromatograms as
9 part of its groundwater sampling analysis plan?
10 A No, sir. But I'm unaware of any other
11 landfills in Texas that sit next to a competing other
12 landfill.
13 MR. CARLSON: Objection to the second
14 half as nonresponsive. It was a pretty simple
15 question.
16 JUDGE NEWCHURCH: Do you have a response
17 to the objection?
18 MR. CARLSON: At some point he can
19 rehabilitate or redirect him.
20 JUDGE NEWCHURCH: Right. Okay. Do you
21 have a response?
22 MR. RENBARGER: No. Let's just get on
23 with it.
24 JUDGE NEWCHURCH: All right. So
25 objection sustained. Strike the last part of the

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1 answer.
2 Q (BY MR. CARLSON) And as I understand,
3 another complaint you have has to do with the specific
4 locations of maybe some of the proposed monitoring
5 wells. Right?
6 A I didn't phrase it that way.
7 Q Okay. Do you agree that the monitoring wells
8 should be screened to monitor water along the
9 weathered/unweathered interface?
10 A In general, yes.
11 Q That's what you did or you do at TDSL.
12 Right?
13 A That's what we have done. It may change.
14 Q As we sit here today, TDSL is monitoring
15 water at the weathered/unweathered interface. Is that
16 correct?
17 A What we've identified, yes.
18 Q All right.
19 (Exhibit BFI No. 18 marked)
20 MR. HEAD: Pardon me, Your Honor. Can I
21 send Mr. Stecher home? I doubt that we're going to
22 get to him, and he's got a traffic situation.
23 JUDGE NEWCHURCH: We are not going to
24 get to him, so Mr. Stecher is excused for today.
25 MR. HEAD: Thank you.

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1 Q (BY MR. CARLSON) Dr. Kier, you've been
 2 handed a document that's been marked as BFI-18. Is
 3 that correct?
 4 A Yes.
 5 Q Okay. And this is a document from a the
 6 Texas Disposal Systems landfill permit. Is that
 7 correct?
 8 A Yes.
 9 Q Are you familiar with this document?
 10 A Yes.
 11 Q All right. On the upper right-hand side, it
 12 shows the location of the monitor wells. Right?
 13 A Yes, amongst other things.
 14 Q This shows where ultimately ten monitor wells
 15 will be located?
 16 A Yes.
 17 Q All right. It's hard to read, but if you
 18 look at the monitor well I can't even tell what
 19 number it is. You might be able to help me out. Do
 20 you see the at the bottom of the landfill it says,
 21 "Carl Road, 680"?
 22 A I see 680, yes.
 23 Q Right. There's a monitoring well there on
 24 the south?
 25 A Right.

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1 Q Would that be the southeast corner of this
 2 site?
 3 A Well, not the corner.
 4 Q Kind of along the southern border there at
 5 least. Right?
 6 A Well, it's actually kind of eastern, if you
 7 look at the north arrow.
 8 Q Right. Do you see which one I'm talking
 9 about?
 10 A Yes. That's OB-8.
 11 Q That's OB-8?
 12 A Yes.
 13 Q Okay. Is that a downgradient well?
 14 A Yes, sir.
 15 Q That sits in a low area. Right?
 16 A Yes.
 17 Q Those arrows inside the landfill show the
 18 general direction of groundwater flow at the site?
 19 A Yes, before the landfill is built.
 20 Q All right. Do you see those contour lines
 21 there?
 22 A Yes.
 23 Q Are those reflective of groundwater levels
 24 inside the cells?
 25 A No, sir.

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1 Q Okay. Why are those on here if they're not
 2 reflective of groundwater levels inside the landfill?
 3 A Well, that wasn't the purpose.
 4 Q All right. Okay. Now, there's a low spot
 5 there in the area around OB-8. Right?
 6 A You mean topographically or --
 7 Q Yes, sir.
 8 A Why is OB-8 where it is? Is that what you
 9 want to know?
 10 Q Yes, sir.
 11 A OB-8 is there because that's the low place in
 12 the weathered/unweathered zone interface as we defined
 13 it at the time this was permitted.
 14 Q Were you positive, at the time you did this,
 15 that there wasn't a lower weathered/unweathered
 16 interface, let's say 100 feet to either I guess it
 17 would be to the southwest or to the northeast of OB-8?
 18 A Yes.
 19 Q How did you know that, sir?
 20 A Because we drilled a series of borings as was
 21 put into the original plan along the side there so we
 22 could find where it could be.
 23 Q Okay. And OB-8 monitors along the
 24 weathered/unweathered interface. Is that correct,
 25 sir?

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1 A Correct, as we defined it then.
 2 Q All right.
 3 MR. CARLSON: Bear with me, Judge.
 4 JUDGE NEWCHURCH: Off the record.
 5 (Brief recess)
 6 JUDGE NEWCHURCH: Back on the record.
 7 Q (BY MR. CARLSON) Dr. Kier, I have a blowup
 8 of a document that is from the TDSL permit
 9 application. Do you see that?
 10 A Yes. It's actually from the Subtitle D
 11 modification.
 12 Q Okay. That's the modification that you
 13 worked on. Is that correct?
 14 A That is correct.
 15 Q Okay. And it's labeled as Figure 7-1 from
 16 that application. Right?
 17 A Yes.
 18 Q Okay. And that was in Attachment 7?
 19 A At that time, I believe it was.
 20 Q Okay. And the sheet is called a typical fill
 21 cross-section. Do you see that?
 22 A Yes.
 23 Q And it was Bates labeled when it was produced
 24 to us the other day. TDSL 000171. Do you see that?
 25 A Yes.

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1 Q Okay. And this represents a cross-section
 2 through the TDS facility. Is that correct?
 3 A Yes.
 4 Q Okay. And this is the B-B cross-section. Is
 5 that right?
 6 A Correct.
 7 Q Okay. Do you see these little upward or
 8 downward pointing black arrows or carrots?
 9 A Yes.
 10 Q Okay. What are those supposed to represent?
 11 A They were the static groundwater levels in
 12 the borings. They were almost well, all borings but
 13 one at that site were made into piezometers, temporary
 14 piezometers.
 15 Q All right. So those reflected at least some
 16 sort of historic groundwater level. Is that fair to
 17 say?
 18 A Yes.
 19 Q Okay. That doesn't represent that number
 20 right there doesn't represent the amount of water or
 21 leachate inside the landfill, does it?
 22 A No.
 23 Q Nor does that carrot?
 24 A No.
 25 Q Or any of these carrots that are shown

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1 through there. Right?
 2 A That's correct.
 3 Q Now, I could actually go through and connect
 4 these if I were actually qualified as a hydrogeologist
 5 and create with this, and maybe a little other
 6 information, a potentiometric surface, couldn't I?
 7 A Well, I suppose you could.
 8 Q A person could do that. Right?
 9 A But you better label it properly.
 10 Q A person could do that. Right?
 11 A You could connect those, but you would have
 12 to label it properly so it was clear what you were
 13 showing.
 14 Q And I could do a little dot and dashed line
 15 that would roughly follow here, and maybe I'd call it
 16 "water level static elevation" and then put a date
 17 there. Right?
 18 A I wouldn't do that. I would put it in there
 19 as a static I would make sure it was the static
 20 water level at the time the borings were drilled.
 21 Q Okay. Now, if this hypothetical line goes
 22 right across here, that wouldn't be reflective of
 23 groundwater levels inside the TDS landfill, would it?
 24 A No, sir.
 25 Q It wouldn't be reflective of leachate levels

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1 inside the landfill, would it?
 2 A No, sir.
 3 Q There may even be a little rise right here.
 4 Do you see that?
 5 A Yes, sir.
 6 Q Would you call that maybe a mound?
 7 A No, sir. That's simply reflecting the
 8 weathered/unweathered zone interface and the original
 9 topography.
 10 Q However this line went right here, that
 11 wouldn't be reflective of leachate levels within this
 12 landfill. Is that correct?
 13 A That is correct.
 14 Q And it would be unfair for me to surmise that
 15 the TDSL landfill is leaking if I had that line drawn
 16 across this particular diagram. Right?
 17 A If you just drew that line and didn't label
 18 it properly, somebody might infer what you just said,
 19 that it was leaking.
 20 Q Okay. Just because somebody inferred it
 21 doesn't mean it's actually leaking, though, does it?
 22 A Well, it depends on what you put on the
 23 drawing.
 24 Q You don't believe the TDSL landfill is
 25 leaking, do you?

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1 A No, sir.
 2 Q All right. Just a few more topics. If
 3 you'll turn to Page 11 of your testimony, Dr. Kier.
 4 A Okay.
 5 Q Do you see the part of your testimony where
 6 you refer to some potentiometric contours that are
 7 shown on Figure 4F.1 in Part 3, Attachment 4,
 8 Appendix 4-F of the application?
 9 A Yes.
 10 Q All right. Would you turn to Page APP 000737
 11 of the application?
 12 A I've got the wrong volume. Excuse me. Okay.
 13 Q That's Figure 4F.1 4F.1 from the
 14 application. Right?
 15 A Yes.
 16 Q And that's the figure you're referring to in
 17 your prefiled testimony on Page 11?
 18 A Yes.
 19 Q All right. Do you rely on any
 20 representations in 4F.1 as being a projected
 21 potentiometric surface regarding any opinion that
 22 you're offering in this case?
 23 A It did not go into what has been labeled as
 24 BK-3. However, as drawn, it illustrates a
 25 potentiometric surface.

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1 Q Okay. But my question was a little
2 different. In connection with any opinion that you're
3 offering in this case, did you rely on those contour
4 maps on Figure 4F.1?
5 A Yes.
6 Q What opinion is that, sir?
7 A I was hoping you'd direct me to it so I
8 wouldn't have to go hunting.
9 Q Well, I thought you might know your own
10 opinion, so --
11 A It's on the bottom of Page 11.
12 Q All right. What opinion is based in part on
13 your reading of those lines as a potentiometric
14 surface?
15 A Well, it suggests that the landfill is the
16 principal source of groundwater moving eastward
17 towards the drainage, and it goes originating on the
18 BFI site and proceeding across Applied Materials and
19 ultimately to Lake Walter E. Long.
20 Q Would you read Footnote 2 from Figure 4F.1?
21 A "Maximum recorded groundwater elevations are
22 from different dates and do not represent a
23 potentiometric surface."
24 Q All right. That's stamped by Mr. Adams?
25 A That's correct.

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1 Q And signed by him?
2 A Yes.
3 Q All right. So, in that footnote, if I read
4 it correctly, Mr. Adams is telling you and others who
5 are looking at this that that's not intended to
6 represent a potentiometric surface. It's pretty
7 clear, isn't it?
8 A Now, you picked that area out. If I were to
9 look at Note 2, I would say that he's telling me not
10 to use all the other elevations out there to draw a
11 potentiometric surface, but he clearly drew a
12 potentiometric surface in that area. Whether he
13 intended to or not, he did it, and he signed and
14 sealed it.
15 Q And he clearly told reviewers of this
16 document that that was not intended to reflect any
17 sort of potentiometric surface. Is that correct?
18 A He said it's not do not represent, but then
19 he drew one.
20 Q All right. And he also told readers and
21 reviewers that the groundwater elevations are from
22 different dates. Right?
23 A Correct.
24 Q Okay. I believe in your deposition you
25 agreed that as a general rule using elevations from

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1 different dates, that's not a really good practice for
2 groundwater contouring. Right?
3 A I wouldn't.
4 Q All right. Now --
5 A Well, you could use it for solely the purpose
6 of trying to interpret between data points to get
7 ballasting requirements, but you had to be very clear.
8 Q Mr. Adams was doing waste as ballast
9 calculations. Correct?
10 A Well --
11 Q That's what this was for. Look what section
12 it's in.
13 A It's in the geology section.
14 Q All right.
15 A I don't think the waste as ballast
16 calculations are in the geology section.
17 Q Look at the page immediately before.
18 A I take that back. He did put them in here.
19 Q Excuse me?
20 A He did put them in here, but I think they're
21 also repeated elsewhere.
22 Q All right. Well, Appendix 4F, the first
23 page, says "Construction below the groundwater table."
24 Do you see that?
25 A Yes.

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1 Q That's APP 000736?
2 A Correct.
3 Q Then we've looked at 4F.1. Right?
4 A Yes.
5 Q Okay. And then if we turn to the next page,
6 what's the description of that particular drawing say?
7 I'm looking at APP 000738.
8 A Yes. That's labeled "4F.2, Factor safety
9 against uplift."
10 Q All right. It's starting to look like it's
11 part of waste as ballast calculations, isn't it?
12 A Well, it may well be.
13 Q Let's turn to the next page, sir, APP 000739.
14 MR. RENBARGER: Counsel, in the interest
15 of time, we will stipulate that section represents
16 ballast.
17 MR. CARLSON: Let's just read it into
18 the record, and I'll move on.
19 Q (BY MR. CARLSON) What's the title of APP
20 000739?
21 A Liner ballast calculations.
22 Q All right. Could you turn to Exhibit BK-5?
23 I believe that's a map that Kevin Terrill has
24 testified about.
25 A Yes.

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1 Q Are you there?
 2 A Yes. There's actually two maps, I think.
 3 Q Were you here for Mr. Terrill's testimony?
 4 A Yes.
 5 Q Do you recall Mr. Terrill saying that he took
 6 groundwater elevation data for the three different
 7 sites from three different time periods?
 8 A Well, three different dates, yes.
 9 Q Yeah. The Sunset Farms was a couple of
 10 months data was a couple of months different from
 11 the ACL data and a couple months from the Applied
 12 Materials data. Is that correct?
 13 A Yes.
 14 Q All right.
 15 A At least as he stated it. I don't know that
 16 as a fact.
 17 Q Now, you and I have agreed that it can
 18 sometimes be dangerous to infer too much from using
 19 charts groundwater contouring charts from which the
 20 elevations have been selected from different points in
 21 time. Is that correct?
 22 A It can be.
 23 Q All right. Do you recall if I asked you the
 24 question, "Is that a good practice," and your answer
 25 was, "Well, it could be misleading at times"? Right?

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1 A It could.
 2 Q You testified that you served as a project
 3 manager on a couple of major MSW projects. Is that
 4 correct?
 5 A I guess you could look at it that way.
 6 Q Okay. So you have some experience with
 7 respect to just the overall landfill design, even
 8 though you're not a design engineer. Right?
 9 A Correct.
 10 Q And you've been around the MSW industry in
 11 Texas for 20 or 25 years or more. Is that correct?
 12 A Yes, sir.
 13 Q All right. Based on your own personal
 14 experience in the industry and your experience as a
 15 project manager, is it typical for modern landfills in
 16 Texas that plan to install Subtitle D liner systems,
 17 composite liners, to have three-to-one excavation
 18 slopes?
 19 A It's typical, yes, because you can put them
 20 in -- parallel to the side slope.
 21 Q Based on the same premises, your general
 22 experience, is it standard for modern MSW landfills in
 23 Texas to have four-to-one side slopes?
 24 A Yes, sir.
 25 Q Is it typical for modern landfills to have

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1 top caps that range from between 2 to 5 or 6 percent?
 2 A Yes, sir.
 3 Q And in terms of slope stability calculations,
 4 at least the projects that you've worked on or are
 5 familiar with, is it standard for the permit design
 6 engineers to determine whether or not the slopes of
 7 the landfills will be sufficiently stable if you use a
 8 long-term factor of safety of 1.5?
 9 A Well, that's my memory of a typical factor of
 10 safety. Quite honestly, I rely on Mr. Chandler when
 11 it gets to slope stability.
 12 MR. CARLSON: I think I'm done. Let me
 13 just ask
 14 Q (BY MR. CARLSON) Dr. Kier, in your
 15 deposition, I believe you testified that you had
 16 worked on several permitting projects with Mike
 17 Snyder. Is that correct?
 18 A At least two that I remember.
 19 Q And your testimony was that you respect him
 20 professionally. Isn't that correct?
 21 A I do.
 22 MR. CARLSON: I'll pass the witness,
 23 Judge.
 24 JUDGE NEWCHURCH: Is there redirect?
 25 MR. RENBARGER: I think there will be.

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1 And with the Judge's permission, if I could take a
 2 couple of minutes to get organized, we may be able to
 3 finish this witness without a great deal more
 4 testimony this evening. But I need to double-check
 5 that and make sure I'm not --
 6 JUDGE NEWCHURCH: Well, that's
 7 surprising. I would have thought this would be a good
 8 time to break. But if you only need a few minutes,
 9 that's fine. We can press on.
 10 MR. RENBARGER: We'll take a break,
 11 certainly. Or are you talking about breaking for the
 12 evening?
 13 JUDGE NEWCHURCH: Yes.
 14 MR. RENBARGER: Let's we'll go
 15 ahead and we'll start first thing in the morning,
 16 then. That's fine.
 17 JUDGE NEWCHURCH: Let's do that, then.
 18 Let's go off the record while we talk about
 19 scheduling.
 20 (Recess from 5:12 p.m. to 5:17 p.m.)
 21 JUDGE NEWCHURCH: Back on the record.
 22 So we're going to recess for the day. While we were
 23 off the record, we had a discussion, and Mr. Carlson,
 24 you indicated that you had a bit more that you wanted
 25 to offer on cross-examination, so you'll get the

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1 opportunity to do that, to complete your
2 cross-examination of Dr. Kier in the morning. Then
3 we'll proceed with the redirect examination of
4 Dr. Kier. Then the parties should be prepared for
5 witnesses Stecher, the remaining NNC witnesses, and
6 then the city of Austin witnesses, Kelly, Word, and
7 Lesniak. Is there anything else before we adjourn
8 today?

9 (No response)

10 JUDGE NEWCHURCH: We'll reconvene at
11 9:00 a.m. Thank you.

12 (Proceedings recessed at 5:18 p.m.)
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