

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

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

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

HEARING ON THE MERITS

FRIDAY, JANUARY 23, 2009

BE IT REMEMBERED THAT AT approximately  
9:10 a.m., on Friday, the 23rd 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  
Virginia L. Bunting, a Certified Shorthand Reporter of:  
Volume 4 Pages 803 - 1007

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1 PROCEEDINGS  
2 FRIDAY, JANUARY 23, 2009  
3 (9:00 a.m.)  
4 JUDGE NEWCHURCH: This is a continuation of  
5 the hearing of 582-02-178.  
6 Are there any preliminary matters?  
7 MR. GOSSELINK: Yes, Your Honor. I'm happy  
8 to report a preliminary matter.  
9 Can you hear me?  
10 JUDGE NEWCHURCH: Yes, sir.  
11 MR. GOSSELINK: The parties have, I  
12 believe, reached a stipulation agreement as to certain  
13 issues, and I can identify them for you.  
14 JUDGE NEWCHURCH: Okay.  
15 MR. GOSSELINK: And they relate to Witness  
16 Neyens for Protestant TJFA. And Witness Neyens will not  
17 take the stand is my understanding. And as a result,  
18 three issues will be no longer -- evidence will not be  
19 taken on those issues.  
20 And those issues would be Issue J, whether  
21 the application includes adequate provisions for closure  
22 and postclosure in compliance with agency rules,  
23 including 30-TAC 330.561.  
24 And M, referred Issue S, whether the  
25 application includes adequate provisions for fire

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1 protection in accordance with agency rules, including  
2 30-TAC 330.1 -- I think that's 115. It's not one. It's  
3 115.  
4 And Issue Z, whether the storage treatment  
5 and disposal of contaminated water is adequately  
6 addressed in the application and granted permit.  
7 So those issues will be removed from the  
8 case by agreement of the parties.  
9 JUDGE NEWCHURCH: So are you saying that  
10 the parties now agree that there's no dispute concerning  
11 those issues? Is that what I'm understanding?  
12 MR. HEAD: Let me try to elaborate. For  
13 the record, attorney for TJFA.  
14 I met with counsel for BFI and Giles. The  
15 testimony of Mr. Neyens, with regard to closure issues,  
16 the testimony solely involved closure-cost estimates.  
17 He also had two other issues, which was fire protection  
18 and contaminated water. We are not going to present  
19 Mr. Neyens' testimony. And, thus, the issues with  
20 regard to fire protection and contaminated water are  
21 stipulated to.  
22 JUDGE NEWCHURCH: Meaning that you've got  
23 stipulated facts or meaning that you're stipulating that  
24 they're no longer in dispute?  
25 MR. HEAD: No longer in dispute.

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1 JUDGE NEWCHURCH: Okay. And are all  
2 parties in agreement with that?  
3 MR. BLACKBURN: I am, Your Honor.  
4 MR. SHEPHERD: Yes, Your Honor.  
5 JUDGE NEWCHURCH: Okay.  
6 MS. NOELKE: Yes, Your Honor.  
7 MR. HEAD: I hope we don't have to go off  
8 the record. I thought it was our clear understanding  
9 that inasmuch as Mr. Neyens only discussed closure-cost  
10 estimates, that was the issue that was off the table as  
11 well.  
12 MR. GOSSELINK: Is what?  
13 MR. HEAD: We stipulate, too, that TJFA  
14 does not dispute the closure-cost estimates of BFI.  
15 MR. GOSSELINK: Yes. And we don't expect  
16 to provide any testimony about anybody else's  
17 closure-cost estimates. And to that extent, I have  
18 agreed with Mr. Head that we will not put on testimony  
19 that I elicited from Witness Chandler on that issue.  
20 JUDGE NEWCHURCH: So you either will not  
21 offer -- you will strike portions of that testimony? Is  
22 that what you're saying?  
23 MR. GOSSELINK: I just had the opportunity  
24 to cross-examine him on it, because I raised it during  
25 his deposition, and I will not cross-examine him on that

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1 issue.  
2 JUDGE NEWCHURCH: Okay. All right. I just  
3 wanted to make sure I have this clear. So JS -- see,  
4 from my point of view, the critical point is those  
5 issues are no longer in dispute, that the parties are  
6 conceding that BFT's application complied with the  
7 requirements in Issues J, S, and Z.  
8 MR. BLACKBURN: Would you reread Z, please?  
9 JUDGE NEWCHURCH: Paul, you will need to do  
10 that.  
11 MR. GOSSELINK: Whether the storage,  
12 treatment, and disposal of contaminated water is  
13 adequately addressed in the application and draft  
14 permit.  
15 And, Jim, there's a separate issue about  
16 surface waters, if that's what your question is.  
17 MR. BLACKBURN: Groundwater protection is  
18 what I wanted to make sure was still on the table. We  
19 clearly have concerns about MW-30, but not about the way  
20 that water that is taken out of the landfill is handled.  
21 JUDGE NEWCHURCH: Okay. So Z is partially  
22 stipulated to be not in controversy?  
23 MR. BLACKBURN: It depends on how Z is  
24 interpreted.  
25 MR. TERRILL: Groundwater is Issue C, at

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1 least that's my reading of it.  
2 MR. HEAD: I think Z is stipulated to.  
3 Groundwater contamination is a separate  
4 issue that no one is stipulating to.  
5 MR. BLACKBURN: As long as C is still  
6 alive, then I'm happy with Z being taken off of the  
7 table.  
8 JUDGE NEWCHURCH: Okay. That's good. It  
9 makes it simple.  
10 MR. HEAD: But to be clear, I don't have  
11 the number in front of me. But with regard to the  
12 stipulation on closure and postclosure, the stipulation  
13 is solely with regard to the closure-cost estimates of  
14 the Applicant. That was the sole testimony of Neyens.  
15 He didn't like the closure-cost estimates, and we're  
16 stipulating closure-cost estimates and postclosure-cost  
17 estimates are not in dispute.  
18 JUDGE NEWCHURCH: That suggests that  
19 there's still something that is in dispute concerning  
20 closure and postclosure. Can you be a little more  
21 clear?  
22 MR. HEAD: Well, for instance, with regard  
23 to closure, you may have -- there may be an issue as to  
24 whether you have enough available soil to accomplish  
25 that or --

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1 JUDGE NEWCHURCH: So --  
2 MR. HEAD: I'm sorry.  
3 JUDGE NEWCHURCH: Go ahead.  
4 MR. HEAD: Or there are some provisions in  
5 the Rule 11, we were just looking at, on closure that we  
6 haven't stipulated to. But Neyens -- Mr. Neyens'  
7 testimony was solely about cost of closure cost.  
8 JUDGE NEWCHURCH: So would it be a fair  
9 summary to say that you're agreeing there's no dispute  
10 concerning costs of closure and postclosure? There  
11 might be disputes about the proposed activities that  
12 would occur upon closure?  
13 MR. HEAD: That's accurate.  
14 JUDGE NEWCHURCH: Okay. I think I  
15 understand.  
16 And, Mr. Gosselink, going back to you just  
17 to make sure that's your understanding as well?  
18 MR. GOSSELINK: That was not. I thought we  
19 were removing the entire issue. There is no other place  
20 that I see that, for example, a soil balance dispute,  
21 assuming it was relevant, could come up. And so when I  
22 approached and said, "Are we removing Issue Z," I  
23 thought the answer was yes. And so we probably  
24 should --  
25 JUDGE NEWCHURCH: Why don't you confer

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1 again.  
2 MR. GOSSELINK: -- confer again.  
3 MR. HEAD: I think we can knock this out  
4 really quick.  
5 JUDGE NEWCHURCH: I know this is on the run  
6 and everybody is busy, but this kind of thing would be  
7 best if it would be laid out in writing so that it's  
8 very clear. Because after the hearing is over and  
9 everybody goes away and starts shipping briefs to one  
10 another, things often get muddy on this type of thing.  
11 MR. GOSSELINK: I've got a suggestion as to  
12 timing to do that. I think Mr. Blackburn has an  
13 appointment. I presumed he would ask that the hearing  
14 be recessed during his obligation.  
15 MR. BLACKBURN: Actually, I wasn't going to  
16 ask for that just because I didn't want to burden  
17 everybody, but it might be a good time to talk about  
18 that. If y'all could spend a little time, it would be  
19 appreciated.  
20 MR. GOSSELINK: I don't know that it will  
21 take long, but I thought we would have a slot, and that  
22 was the slot I was going to suggest. If we're going to  
23 proceed anyway, then I don't want to -- I don't want to  
24 slow this down, but it's -- it's got its own pace, and I  
25 would like to pick it up.

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1 JUDGE NEWCHURCH: Yeah, I would like to  
 2 keep the train moving. If we need to break for a half  
 3 an hour or so, we can certainly do that, but I prefer to  
 4 move on as much as possible.  
 5 MR. GOSSELINK: There's more to the  
 6 stipulation.  
 7 JUDGE NEWCHURCH: All right.  
 8 MR. GOSSELINK: And the other stipulation  
 9 is that the Protestant parties have agreed that  
 10 additional revised pages to the application pursuant to  
 11 the TCEQ's interpretation of the requirements of the  
 12 Rule 11 Agreement will be allowed into the record by  
 13 stipulation.  
 14 And those pages have to do with the  
 15 stabilization basin. Specifically, Rule 11 Agreement  
 16 calls for the closure and removal of the stabilization  
 17 basin, and there's a special condition in the permit  
 18 that says that's a requirement. Because the special  
 19 condition and the Rule 11 Agreement occurred after we  
 20 had drafted the application and had it technically  
 21 complete, is the term, there's a lot of references in  
 22 the document to the existence or the planned  
 23 stabilization basin.  
 24 So the TCEQ's staff would like all of that  
 25 language removed, and that language, you know, occurs in

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1 20 to 30 pages. It's sort of spread out. So there's an  
 2 agreement that that language can be removed by  
 3 stipulation. And we will provide -- assuming the  
 4 stipulation is effectuated, we will provide that  
 5 language to you and to the court reporter and to all the  
 6 parties. We have it in redline strikeout. But, really,  
 7 we would like a red pen under it right now. That's one  
 8 part of that.  
 9 Do you have a question, sir?  
 10 JUDGE NEWCHURCH: Yes.  
 11 Did you say the application or the draft  
 12 permit or both?  
 13 MR. GOSSELINK: The application.  
 14 JUDGE NEWCHURCH: Okay.  
 15 MR. GOSSELINK: On that one. There's more  
 16 to come.  
 17 JUDGE NEWCHURCH: Okay.  
 18 MR. GOSSELINK: There are two other aspects  
 19 of the application that would need to be revised.  
 20 There's one other that needs to be revised. One of the  
 21 provisions in the Rule 11 Agreement is that we provide a  
 22 100-foot buffer strip of Buffalo sod, and that was  
 23 nowhere referenced in the revised pages that Mr. Mehevec  
 24 or Mr. Shull included. And that omission was pointed  
 25 out by the TCEQ staff, and they asked that we include

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1 that specific provision. And I think it would occur in  
 2 a figure and in a narrative, and we would do that.  
 3 And finally, the TCEQ staff has asked that  
 4 a special provision be added reflecting the continued  
 5 obligation of the applicant to place vegetation  
 6 immediately after the placement of final cover. And  
 7 that is what our application already says, but to  
 8 whatever extent the Rule 11 Agreement cast that  
 9 obligation in doubt, TCEQ staff asked that that be made  
 10 clear in a special provision to the permit.  
 11 Steve, do I have that right?  
 12 MR. SHEPHERD: That is correct. And I  
 13 guess the only condition that the Executive Director  
 14 would add is that, of course, all these things in the  
 15 application are incorporated by reference in the draft  
 16 permit. I believe the draft permit has one or two  
 17 corresponding provisions that would need to be  
 18 reconciled, I think, at this point. It still provides  
 19 for a liquid waste stabilization basin, and we would be  
 20 striking that provision.  
 21 We had anticipated potentially adding a  
 22 sentence to clarify that these special provisions do  
 23 supercede any inconsistent provisions within the rest of  
 24 the permit, the application. We've made an effort to  
 25 make sure there aren't any inconsistent provisions, but

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1 to the extent there could be, we may be adding that  
 2 provision.  
 3 I believe it was BFI's motion to supplement  
 4 the application to incorporate the settlement  
 5 provisions, had attached a document from the Executive  
 6 Director that was drafted in a way that it could be cut  
 7 and pasted into the draft permit as special provisions.  
 8 So we anticipate, along with our direct case, we would  
 9 be supporting this new revised draft permit that would  
 10 be incorporating the provisions from the settlement.  
 11 JUDGE NEWCHURCH: Okay.  
 12 MR. GOSSELINK: The point of all of these  
 13 stipulations on the part of all of the parties is  
 14 obviously, and I should say this, to all mutual benefit  
 15 is to eliminate issues that aren't really in dispute and  
 16 not argue that process. By that, I mean they still have  
 17 reserved the right to talk to Mr. Shull, as I understand  
 18 it, to be brought back to go over the -- well, whatever  
 19 they want to talk about on the Rule 11 Agreement with  
 20 him including whether the stabilization basin should be  
 21 there or should not be there.  
 22 We haven't eliminated the right for  
 23 cross-examination. We've just stopped arguing about  
 24 whether we can put in the revised pages.  
 25 JUDGE NEWCHURCH: Okay. Shaking heads all

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1 around. So those are the agreements.  
 2 MR. GOSSELINK: Finally, I just want to  
 3 make sure I understand for the benefit of Mr. Shull of  
 4 when you expect to have Mr. Shull brought back to the  
 5 stand. There was a discussion, if you recall, that he  
 6 was going to come back. They were going to give him an  
 7 hour to talk to Mr. Shull because of the request by  
 8 Mr. Head. And it's fair, and that's an established  
 9 event. I just don't know when it's going to happen.  
 10 Is that up to me, or up to you, or up to  
 11 them?  
 12 JUDGE NEWCHURCH: It's hard to pinpoint  
 13 because it's dependent upon when TJFA begins to put on  
 14 its direct case.  
 15 Now, I suppose that we could -- as I said  
 16 repeatedly, I like to accommodate people's schedules and  
 17 other obligations, so if the parties want to agree on a  
 18 specific time -- I mean, like we could say first thing  
 19 Monday morning, just would that work for everybody. But  
 20 I'm not saying -- I'm not throwing that out there. I'm  
 21 just saying that kind of thing could be done.  
 22 MR. GOSSELINK: One reason I bring it up is  
 23 because Mr. Mehevec is going to be testifying today, and  
 24 I haven't talked to these guys about that, because I  
 25 actually just thought of it this morning. It's unclear

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1 to me as to whether or not it makes sense to delve  
 2 deeper into the Rule 11 Agreement with Mr. Mehevec or  
 3 not. If they do, they may not want to talk to Mr. Shull  
 4 or they may want to specifically not talk to Mr. Mehevec  
 5 so that they can talk to Mr. Shull. Either way works  
 6 for us. I just wanted to point out we're at  
 7 mini-crossroads here on that issue. It's not my call.  
 8 I'm just trying to figure it out.  
 9 JUDGE NEWCHURCH: Mr. Head, it's really  
 10 your option. I mean, you can call him during your  
 11 direct case. You can choose not to call him. That's  
 12 really up to you.  
 13 And really, Mr. Gosselink, all you're  
 14 really asking is some sort of certainty so you can  
 15 advise your witness on when he needs to be here.  
 16 MR. GOSSELINK: That's right. He has other  
 17 things to do. And he said, "I can schedule around it if  
 18 I've got just some idea about what I need to do."  
 19 MR. HEAD: And I would respond that it's  
 20 entirely likely that I may address some of the  
 21 components of the Rule 11 with Mr. Mehevec today, but I  
 22 don't want to waive the right to discuss it with  
 23 Mr. Shull, who sealed it. He's instrumental in --  
 24 JUDGE NEWCHURCH: Sure.  
 25 MR. GOSSELINK: I wasn't suggesting that.

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1 I was just suggesting they might limit what they want to  
 2 talk about if they exhausted the subject.  
 3 JUDGE NEWCHURCH: Okay. As we get a little  
 4 further down the road, maybe things will be clearer, and  
 5 you can be more specific with him about the schedule.  
 6 MR. GOSSELINK: One last schedule item.  
 7 I've learned this morning that Witness McInturff is  
 8 unavailable on Tuesday morning from 10:00 to 12:00. I  
 9 don't have any idea how that's going to, in fact, impact  
 10 the schedule. We told him we thought he would be on on  
 11 Monday, but I don't -- it may be that he has to be on on  
 12 Tuesday afternoon.  
 13 JUDGE NEWCHURCH: It sounds like something  
 14 we could work around.  
 15 MR. GOSSELINK: I just noticed everyone  
 16 sort of what I was trying to accomplish.  
 17 JUDGE NEWCHURCH: Okay. Anything else?  
 18 MR. BLACKBURN: Yes. I have a matter. I  
 19 think that the Applicant has agreed to allow the  
 20 testimony of -- I believe it's Marcy in without her  
 21 testifying.  
 22 . And I have just been informed that  
 23 Jeremiah Bentley, who is one of our witnesses, is going  
 24 to have to leave town on Wednesday. And I would wonder,  
 25 one, if you would be willing to allow his testimony in

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1 without cross; or if you want cross, could we take  
 2 Mr. Bentley out of order? I know this is the first  
 3 you've heard of it, so I'm not necessarily asking for a  
 4 response right now, but I would like to at least put  
 5 that on the table.  
 6 MR. GOSSELINK: Okay. And we did agree to  
 7 Marcelina Cook being handled that way, and I will look  
 8 in -- we're going fast enough that I need to go read  
 9 Mr. Bentley again to see what it was he said.  
 10 MR. TERRILL: What was the name of the  
 11 other one, Mr. Blackburn?  
 12 MR. BLACKBURN: It's Marcy Cook. And at  
 13 least so far the Applicant has, at least, agreed that it  
 14 can come in without the necessity of cross-examination.  
 15 MR. GOSSELINK: We have the option to put  
 16 on the deposition in response just by submitting the  
 17 written deposition or the portions thereof and handle  
 18 everything by writings.  
 19 MR. BLACKBURN: And perhaps the same could  
 20 be worked out with Mr. Bentley, or perhaps we could  
 21 bring him out of order. We're willing to do either. I  
 22 just raise it as a problem and would appreciate  
 23 everybody taking a look at it and figuring out a way to  
 24 deal with it.  
 25 JUDGE NEWCHURCH: Okay. Those things

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1 usually work out.  
2 Anything else?  
3 MR. GOSSELINK: No, sir.  
4 JUDGE NEWCHURCH: Okay. BFI may call its  
5 next witness.  
6 MR. MOORE: John Moore for the Applicant.  
7 The Applicant calls Mr. Matt Stutz to the stand.  
8 JUDGE NEWCHURCH: Mr. Stutz, if you will  
9 take the oath, please.  
10 (Witness sworn)  
11 JUDGE NEWCHURCH: Please have a seat.  
12 PRESENTATION ON BEHALF OF  
13 BFI WASTE SYSTEMS OF NORTH AMERICA, INC.  
14 MATT STUTZ,  
15 having been first duly sworn, testified as follows:  
16 DIRECT EXAMINATION  
17 BY MR. MOORE:  
18 Q Will you state and a spell your name for the  
19 record, please.  
20 A Matt Stutz, M-a-t-t S-t-u-t-z.  
21 Q What is your current occupation?  
22 A I'm a principal within the firm of Weaver Boos  
23 Consulting.  
24 Q And what is your connection with the Sunset  
25 Farms Landfill project?

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1 A I have worked with Sunset Farms on landfill gas  
2 collection and control system design, perimeter  
3 monitoring system, and the air quality.  
4 Q Which perimeter monitoring system is that?  
5 A That would be the perimeter probe landfill gas  
6 monitoring system.  
7 Q Did you write any portion of the application  
8 for the expansion of the Sunset Farms Landfill?  
9 A Yes. The Attachment 14 Landfill Gas Management  
10 Plan.  
11 Q Have you visited the landfill?  
12 A Several times.  
13 Q Did you prepare prefiled testimony for this  
14 proceeding?  
15 A Yes, I did.  
16 Q I would like for you to look at what's been  
17 marked as Exhibit MS-1 and identify that for the record,  
18 please.  
19 A This is my prefiled testimony.  
20 Q Do you have any changes or corrections to that  
21 testimony at this time?  
22 A No.  
23 Q Could you also look at Exhibits MS-2 through  
24 MS-8 and briefly describe each of those documents?  
25 A MS-2 is my resume.

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1 3 is the Attachment 14 in the expansion  
2 amendment.  
3 MS-4 is the current and proposed probe  
4 monitoring system.  
5 5 describes the different phases of the gas  
6 system and coverage by acres of the gas system.  
7 MS-6 shows the different phases of the gas  
8 system, just shows what was installed and when.  
9 MS-7 is the approval letter for the  
10 standard air permit for the landfill. It includes the  
11 expansion.  
12 And MS-8 is the approval authorization to  
13 operate under the general operating permit.  
14 Q Do you adopt your prefiled testimony here today  
15 as if you had given it all live before the Court?  
16 A Yes.  
17 Q Thank you, Mr. Stutz.  
18 MR. MOORE: At this point, Your Honor, the  
19 Applicant submits Mr. Stutz' prefiled testimony and all  
20 of the exhibits he has just identified into the  
21 evidentiary record.  
22 JUDGE NEWCHURCH: I don't remember  
23 specifically if there were rulings or agreements  
24 following the objections on prefile, but if there were,  
25 they're incorporated in the versions provided in the

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1 official record, right?  
2 MR. MOORE: Yes.  
3 JUDGE NEWCHURCH: Are there further  
4 objections to Mr. Stutz' testimony and exhibits?  
5 Then MS-1 through MS-8 are all admitted.  
6 (Exhibit BFI Nos. MS-1 through MS-8  
7 admitted)  
8 MR. GOSSELINK: The Applicant passes the  
9 witness.  
10 JUDGE NEWCHURCH: Cross-examination,  
11 Mr. Terrill?  
12 MR. TERRILL: No, Your Honor.  
13 JUDGE NEWCHURCH: Ms. Noelke?  
14 MS. NOELKE: No, Your Honor.  
15 JUDGE NEWCHURCH: Mr. Morse?  
16 MR. MORSE: No, Your Honor.  
17 JUDGE NEWCHURCH: Ms. Mann?  
18 CROSS-EXAMINATION  
19 BY MS. MANN:  
20 Q My name is Christina Mann. I'm with the Public  
21 Interest Counsel at TCEQ. And I just have a few  
22 questions. Let me clarify some of your testimony.  
23 First, I'd like to start off by talking  
24 about the different kinds of monitors that you had to  
25 monitor the potential leaks in landfill gas. By my

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1 count, there's, more or less, three: perimeter  
 2 monitors, building monitors, and then maybe the surface  
 3 admission handheld monitors; is that correct?  
 4 A Yes, those are three monitoring systems that  
 5 are at the facility.  
 6 Q And can you tell me how frequently each one of  
 7 those undergoes testing? Is it a consistent -- or  
 8 constant monitoring, or is it quarterly?  
 9 A Yes. The building monitors have continuous  
 10 monitors in them and they get checked quarterly, that  
 11 they're in operation. The perimeter probe monitoring  
 12 system gets checked on a quarterly basis. All of the  
 13 probes get checked. The surface emissions monitoring  
 14 are also checked quarterly.  
 15 Q The perimeter monitoring gets checked  
 16 quarterly, but is it still a constant emissions  
 17 monitoring?  
 18 A No. The probes -- at the time of monitoring,  
 19 they take the instrument to each probe and pull in a  
 20 sample and then check the methane readings at that time.  
 21 Q It's sort of analogous of checking a water --  
 22 A Exactly.  
 23 Q Okay. Now, is the perimeter monitoring system  
 24 intended to monitor whether landfill gases are sort of  
 25 coming from the landfill, moving over and redepositing

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1 into the soil, or is it intended to monitor, or maybe  
 2 both, whether or not it's moving laterally away from the  
 3 sides, underground?  
 4 A Yes. It's there to monitor subsurface  
 5 migration, the gas, as it migrates through the soils  
 6 underground.  
 7 Q Were you here for any testimony yesterday?  
 8 A I was here for a portion of Carel's testimony.  
 9 Q I can't remember -- I can't recall which  
 10 portion, but there was discussion that perhaps some  
 11 monitoring wells had been -- that exceedances in certain  
 12 amount of constituents were from landfill gas deposition  
 13 into the well. Did you understand that to be a lateral  
 14 movement through the soil or an aboveground sort of  
 15 movement and redeposit?  
 16 A I'm not -- I can't really answer to that  
 17 particular case. You know, I'm not familiar with that  
 18 monitoring well and those particulars in that case.  
 19 Q But, generally, when we're concerned about  
 20 landfill gas, we're mostly concerned about it moving  
 21 subsurface; is that correct?  
 22 A Certainly. I mean, that's -- the perimeter  
 23 system is there to monitor that, to make sure that gas  
 24 is not leaving the permitted boundary.  
 25 Q You testified about certain percentages -- I

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1 think it's 1.25 percent methane -- in the buildings and  
 2 5 percent in the perimeter monitors; is that correct?  
 3 A That's correct.  
 4 Q How does that compare to, for those of us who  
 5 don't know or understand, say, 500 parts-per-million  
 6 detect level for the surface emission monitors?  
 7 A Okay. Let's see how to do that conversion.  
 8 Q And it can be approximate. I'm just trying to  
 9 get a ballpark idea of what kind of concentration detect  
 10 levels we're talking about here comparably.  
 11 A I guess just to clarify, the perimeter probes  
 12 are monitored to make sure that there's less than  
 13 5 percent methane. That's 5 percent by volume in air.  
 14 The building monitors have continuous  
 15 monitors in them that can read down to 1.25 percent  
 16 methane by volume in air.  
 17 The surface emissions monitoring uses a  
 18 handheld scanner that goes across the surface of the  
 19 landfill, and it's detecting 500 parts-per-million above  
 20 background concentration.  
 21 I guess the conversion from 5 percent  
 22 methane into a parts-per-million, I could do it, but I  
 23 would rather take some time to calculate that out.  
 24 Q Is the 500 parts-per-million a much stronger  
 25 concentration than the 5 percent detect level? In other

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1 words, is it allowed to be much stronger methane levels  
 2 or higher methane levels at the surface of the landfill  
 3 than you would be comfortable with in a perimeter  
 4 monitoring well by comparison?  
 5 A I couldn't say. That's a great question, but I  
 6 could -- give me a minute and I could answer it, but --  
 7 Q Do you find -- I mean, I've had -- I've been in  
 8 hearings --  
 9 A Okay.  
 10 Q -- where we've gone off the record for half an  
 11 hour. I don't really want to do that. I mean, if it  
 12 only takes you a couple of minutes, I'm just curious to  
 13 know that. But if it's a long --  
 14 A Yeah. Just give me a couple of minutes.  
 15 Q Okay.  
 16 MS. MANN: Can we go off the record?  
 17 JUDGE NEWCHURCH: Off the record.  
 18 (Off the record)  
 19 JUDGE NEWCHURCH: Back on the record.  
 20 Q (BY MS. MANN) Mr. Stutz, do you have a  
 21 response?  
 22 A I do. From doing the calculation here, I would  
 23 estimate that 5 percent methane is equivalent to about  
 24 5,000 parts-per-million.  
 25 Q Okay. Do you have an understanding of the

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1 sensitivity level of SEMs, the surface emission  
2 monitoring, handheld devices?  
3 A I'm not sure I understand.  
4 Q How low of a concentration of methane can SEMs  
5 detect accurately?  
6 A I'm not sure of the low end. I know that they  
7 calibrate those machines to read, I believe, between  
8 zero to 500 -- or a little bit above  
9 500 parts-per-million.  
10 Q And are the -- are the measurements -- the  
11 quarterly measurements that are taken, are they logged?  
12 A Yes.  
13 Q Okay.  
14 A Yes. The quarterly measurements, if they do  
15 get an exceedance when they're monitoring, those  
16 exceedances are noted and reported back to the TCEQ.  
17 Q But, otherwise, it has to be over the  
18 500 parts-per-million?  
19 A Right. Anything over 500 gets reported.  
20 Q Okay.  
21 MS. MANN: I pass the witness.  
22 JUDGE NEWCHURCH: The Executive Director?  
23 MR. SHEPHERD: Pass.  
24 JUDGE NEWCHURCH: Or TJFA?  
25 MR. HEAD: If we could, since Mr. Blackburn

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1 has to catch a limo, can he go out of order?  
2 JUDGE NEWCHURCH: Sure. Mr. Blackburn?  
3 CROSS-EXAMINATION  
4 BY MR. BLACKBURN:  
5 Q I have just a few questions. It's really more  
6 to explain things than perhaps anything.  
7 Did you in your prefiled testimony come to  
8 a conclusion as to the source of odors in the 2002 time  
9 frame?  
10 A Yes. Looking -- I guess I started at the site  
11 around 2002 with the design of the gas system. At that  
12 point, the gas system that was installed was installed  
13 primarily for gas -- for energy development, not  
14 necessarily installed for odor control. And so I do  
15 feel that at that point the gas system needed to be  
16 upgraded and expanded to control odors.  
17 Q So you would agree with the statement that the  
18 odors from the landfill during that time period, at  
19 least in part, were due to by emissions of landfill gas?  
20 A Yes.  
21 Q Now, on your Exhibit 6 -- what is it? Yeah, I  
22 believe it is MS-6. Do you have that in front of you?  
23 A I do.  
24 Q Okay. Is that the plan that will be in place  
25 through the life of the facility through 2015?

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1 A No. That is what's currently installed at the  
2 facility now.  
3 Q Is there a map of what the final configuration  
4 will be?  
5 A Yes. That's in the Attachment 14.  
6 Q And excuse me a second while I get that.  
7 Do you have a page number on that? Excuse  
8 me. Do you have a page number on that?  
9 A It's Figure 14E-1.  
10 Q How about the page number at the bottom? APP?  
11 A 001557.  
12 Q Now, I must admit the way we read our copies,  
13 mine has ended up in black and white.  
14 MR. BLACKBURN: May I approach, Your Honor?  
15 JUDGE NEWCHURCH: Yes, sir.  
16 Q (BY MR. BLACKBURN) Now, what is shown on this  
17 diagram is a series of green lines, which I presume are  
18 the final profiles; is that correct?  
19 A Yes. That's the proposed final cover.  
20 Q And there are, within that, a number of blue  
21 circles; is that right?  
22 A Yes.  
23 Q And what are those blue circles?  
24 A Those are the proposed future wells that will  
25 be installed as a part of the expansion.

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1 Q So those would be added to the wells that -- or  
2 the system that you've shown in the exhibit which is, I  
3 think, No. 7; is that correct? I'm sorry, MS-6.  
4 A Yes, they will be added in addition to what's  
5 shown on MS-6.  
6 Q And how exactly will that be done? How will  
7 they be added over time?  
8 A There's actually a couple of methods.  
9 Generally what they do is as a landfill progresses,  
10 those wells -- the existing wells will be extended. And  
11 once there's enough waste in place to drill a new well,  
12 a new well will be drilled through the additional waste  
13 that's placed over it.  
14 Q And if there were a crack that were to appear  
15 in, say, the cover on the side of the landfill, would  
16 that interfere with the gas collection system?  
17 A Certainly if there was a significant crack on  
18 the side slopes that was allowing air to enter the  
19 landfill, that would be a major concern. These wells  
20 are pulling vacuum. And if they pull air into the  
21 landfill, it does disrupt the gas generation process.  
22 Q Basically your system wouldn't work if that  
23 were the case; is that correct?  
24 A No, not necessarily. The system would work.  
25 It would continue to pull and collect gas, but it would

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1 also be pulling ambient air.  
 2 Q So you're telling me, though, that the movement  
 3 would be from the outside in as opposed from the  
 4 landfill out; is that correct?  
 5 In other words, if there was a crack, would  
 6 the air be coming into the landfill because of the  
 7 vacuum being pulled, or would gas escape out of the  
 8 crack?  
 9 A No. With the gas -- air would be pulled in.  
 10 Q So it might disrupt the efficiency of the  
 11 system and the gas -- for example, gas energy plant, but  
 12 should not be a problem from the standpoint of odor; is  
 13 that your testimony?  
 14 A Yes. My testimony would be that the crack  
 15 would interfere with gas generation because of the  
 16 additional oxygen. It is possible that the -- some of  
 17 those fissures that do develop will be picked up during  
 18 the surface emissions monitoring and would have to be  
 19 corrected.  
 20 Q And how does the surface emissions monitoring  
 21 work?  
 22 A They walk the entire landfill on approximately  
 23 a hundred-foot pattern -- space pattern across the  
 24 landfill. And then they have a handheld instrument that  
 25 they keep above the surface, about two to four inches

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1 above the surface, checking for emissions of gas, seeing  
 2 if there is any gas escaping from the surface of the  
 3 landfill.  
 4 If that gas is encountered, they have a  
 5 prescribed number of days that they have to get that  
 6 fixed or they have to expand the gas system to make sure  
 7 that that gas no longer escapes the landfill.  
 8 MR. BLACKBURN: Thank you. Pass the  
 9 witness.  
 10 JUDGE NEWCHURCH: Mr. Head?  
 11 CROSS-EXAMINATION  
 12 BY MR. HEAD:  
 13 Q Good morning, Mr. Stutz.  
 14 A Good morning.  
 15 Q In response to an inquiry from the Public  
 16 Interest Counsel, you did a quick computation with  
 17 regard to conversion of 5 percent methane gas. I think  
 18 your response was that would compute to  
 19 5,000 parts-per-million. Did you mean 50,000  
 20 parts-per-million?  
 21 A No. I think it's 5,000. 50 percent methane is  
 22 about 50 parts-per-million. 5 percent methane is --  
 23 would be 500 parts per million -- or  
 24 5,000 parts-per-million.  
 25 Q That's your testimony, 5,000?

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1 A That was quick calculation, but that's --  
 2 Q If on a break you feel uncomfortable with that  
 3 calculation, you can recalculate it and we can --  
 4 A I appreciate that.  
 5 Q Fair enough.  
 6 Now, Mr. Blackburn asked you a question if  
 7 you had a crack or a void in the side of the landfill,  
 8 you could pull -- because of the vacuum, you would pull  
 9 air into the landfill?  
 10 A Right. That is a potential.  
 11 Q Yes. Would pulling air into the landfill cause  
 12 a potential for any spontaneous combustion in that  
 13 landfill, causing a fire?  
 14 A It is possible.  
 15 Q Now, you sealed Attachment 14, which basically  
 16 entails what I'll call your -- the probes component and  
 17 also the landfill gas collection system component,  
 18 correct?  
 19 A Right.  
 20 Q Did anyone assist you in the preparation of  
 21 Attachment 14?  
 22 A Yes. I had assistance from Bob Furbend in our  
 23 office who is a geologist. I had assistance with some  
 24 other staff engineers, Heath Parker, and David Vonaske.  
 25 Q In the preparation of Attachment 14, was there

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1 any assistance by Mr. Snyder or Mr. Adams, any  
 2 geologists, any geotechnical folks?  
 3 A Yes. Mr. Snyder provided me with some  
 4 groundwater information. And I think Mr. Mehevec  
 5 provided me with excavation for the bottom of the  
 6 landfill.  
 7 Q Okay. And with regard -- we're going to skip  
 8 around a little bit today.  
 9 But with regard to the excavation for the  
 10 bottom of the landfill, that is pertinent towards the  
 11 extraction wells as opposed to the probes; is that  
 12 correct?  
 13 A It's important for both.  
 14 Q How is the depth of the landfill and the depth  
 15 of the liner significant towards the placement of the  
 16 extraction wells?  
 17 A The depth of the waste is what we use to  
 18 determine the spacing of the wells on the landfill.  
 19 Wells that are in deeper waste, we can pull harder on  
 20 and can get a better radius of influence. Wells that  
 21 are in shallow waste, we have to -- we can't pull as  
 22 hard on. And so the depth of the waste is important.  
 23 Q And I may have not stated my question properly.  
 24 With regard to depth of the waste, how is  
 25 that significant with the perimeter probes?



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1 A Oh. The perimeter probes, we look at the depth  
2 of waste within a thousand foot of the proposed probe  
3 location. And we use that as one of the criterias to  
4 determine how deep the probes should be in that area.  
5 Q And just to be clear, the probes are not  
6 installed in any waste, correct?  
7 A Correct.  
8 Q Now, on Page 13 of your prefiled testimony.  
9 I'm going to make you jump around a little bit.  
10 A That's all right. Okay.  
11 Q Page 16 -- I'm sorry. Page 13, Line 19, you  
12 state: Currently there's 16 probes around the perimeter  
13 of the site. Each probe was installed to a depth equal  
14 to the depth either of groundwater or the depth of the  
15 deepest waste within 1,000 feet of the probe.  
16 A Right.  
17 Q Now, isn't it the case that you look at the  
18 shallower of the groundwater or the waste, and that's  
19 the extent of your probe?  
20 A We look at both the shallowest groundwater and  
21 the depth of the waste within a thousand foot of that  
22 probe location.  
23 Q And you determine how deep to put the probe  
24 with the shallower of the two; isn't that accurate?  
25 A Yes. Yes.

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1 Q Okay. And I don't know, this may have been a  
2 question from the Public Interest Counsel. She asked  
3 how often the perimeter probes were checked.  
4 And, first, let me ask you: How does one  
5 check a perimeter probe? They use a handheld instrument  
6 that they -- when they go to each probe, each probe is  
7 equipped with a sample port. They connect the equipment  
8 to the sample port and draw a sample, and they take a  
9 methane reading.  
10 Q And, hypothetically, if there was a 5 percent  
11 or more in a perimeter monitor in between a quarterly  
12 sampling, how would you know that?  
13 A You wouldn't.  
14 Q Is there any federal or state law that mandates  
15 the sampling frequency of the perimeter probes?  
16 A The current -- or the current TCEQ rules  
17 require, at a minimum, quarterly.  
18 Q At a minimum, quarterly.  
19 I think you've worked, according to your  
20 testimony, on the landfill gas project for approximately  
21 seven years?  
22 A Yes.  
23 Q Have you worked at the Sunset Farms Landfill  
24 prior to that on the probe project?  
25 A No, not on the probe project, just on some air

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1 quality.  
2 Q Okay. Do you have personal knowledge of when  
3 the first probes were installed at Sunset Farms?  
4 A I don't. I do -- I recall they were several  
5 years ago, but I don't recall the exact time they were  
6 installed.  
7 Q Are you aware of -- strike that.  
8 Is there a federal or state law that  
9 mandates the installation of these methane probes?  
10 A Subtitle D requires installation, as well as  
11 TCEQ requirements.  
12 Q So Subtitle D came into effect roughly 1994?  
13 A Correct.  
14 Q So is it safe to assume that since 1994, we've  
15 had probes out there?  
16 A I don't know for sure, but it is an assumption.  
17 Q Okay. Who installed the initial probes?  
18 A I don't know.  
19 Q Now, according to your testimony, the probes  
20 were all replaced per a 2005 MOD; isn't that correct?  
21 A Yes.  
22 Q What was the purpose of replacing all of the  
23 probes?  
24 A The purpose for replacing the probes goes back  
25 to your original questions of not knowing. We were

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1 uncomfortable with how the probes were installed, who  
2 installed them, and felt like we wanted to make sure  
3 they were installed properly, and decided to redo them  
4 all.  
5 Q Do you have personal knowledge of any of the  
6 probes prior to -- prior to the 2005 MOD being  
7 submitted, any of those probes having what I'll call  
8 hits?  
9 A I was not aware of any -- any exceedances in  
10 any of the previous gas-monitoring probes until  
11 reviewing some information in some of the discovery.  
12 Q And from your review of the information in  
13 discovery, what did you glean from any potential -- any  
14 hits?  
15 A I recall, from what I remember, maybe one probe  
16 that had some exceedances in it.  
17 Q Was that a perimeter probe or was that a probe  
18 inside a structure?  
19 A It was a perimeter probe.  
20 Q And would that perimeter probe had been at the  
21 boundary shared by Waste Management and Sunset Farms  
22 Landfill?  
23 A I'm not sure where the location was for that  
24 probe.  
25 Q Okay. Are you aware that there was a probe on

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1 the BFI site on its southern boundary with the Waste  
 2 Management facility?  
 3 A I am not aware. I don't know where the probe  
 4 was that had an exceedance in the past.  
 5 Q Well, let me rephrase that.  
 6 Are you aware -- as we sit here today, is  
 7 it not a fact that there are no probes on the southern  
 8 boundary of the Sunset Farms facility?  
 9 A That's correct.  
 10 Q Okay. Are you aware that at one time in the  
 11 past there was a probe on the southern boundary?  
 12 A Yes.  
 13 Q And are you aware that there was a request by  
 14 BFI, through a MOD, to have that probe taken away?  
 15 A Yes.  
 16 Q And are you aware that that was granted?  
 17 A Yes.  
 18 Q Does that refresh your recollection that that  
 19 was the probe that had the hit?  
 20 A No. I was unaware of why those probes were  
 21 requested to be removed.  
 22 MR. HEAD: Off the record just one second.  
 23 JUDGE NEWCHURCH: Off the record.  
 24 (Off the record)  
 25 (Exhibit TJFA No. 17 marked)

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1 Q (BY MR. HEAD) Mr. Stutz, I've handed you an  
 2 exhibit marked TJFA-17. Have you ever seen this  
 3 document?  
 4 A I don't recall ever seeing this.  
 5 Q Okay. This document is a transmittal to Adam  
 6 Mehevec, dated 2/29/2000, from a Jamie Meaux?  
 7 A Meaux.  
 8 Q Do you know Jamie Meaux?  
 9 A Yes.  
 10 Q Who is Jamie Meaux?  
 11 A I'm not sure what his capacity was at the time.  
 12 I just know of him in the landfill gas industry. He  
 13 is -- I just know of him. I'm not sure what his  
 14 capacity was at this point. He's changed jobs a few  
 15 times.  
 16 Q Is he an engineer?  
 17 A I don't know.  
 18 Q But he's a landfill gas person?  
 19 A Yes.  
 20 Q Okay. And this e-mail indicates that "In  
 21 December '99, Sunset Farms Landfill installed additional  
 22 gas extraction wells. The gas monitoring probes were  
 23 checked at the end of December and there were no hot  
 24 probes."  
 25 It goes on to state, "After pulling on the

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1 new wells for a month, the monitoring probes were tested  
 2 again on January 31, 2000. At this time GMP-12 was  
 3 found to have 24-percent methane in the 20-foot level."  
 4 Let me stop and ask, is 24-percent methane,  
 5 would that be a hit, an exceedance?  
 6 A Yes.  
 7 Q It goes on to say, "As has happened in the  
 8 past, I expected that the gas was being pulled across  
 9 the property boundary from Waste Management. This probe  
 10 had never been hot until the new gas extraction wells  
 11 were installed.  
 12 "In order to correct the problem, I went  
 13 over and opened up on the Waste Management extraction  
 14 well closest to this probe. This was done on  
 15 February 1, 2000. The probe was checked the next two  
 16 weeks and the readings went down to 18 percent and then  
 17 to 13-percent methane. I checked the probe again today,  
 18 2/29/00, the probe read 4-percent methane."  
 19 Are you aware of the location of GMP-12?  
 20 A No. I could look at some old drawings.  
 21 Q If you have them handy, would you, please?  
 22 A I believe -- I'm not sure if GMP-12 -- GMP-12  
 23 is not an existing probe at the site.  
 24 Q Correct.  
 25 A So I --

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1 Q Do you recall whether GMP-12 was the subject of  
 2 the permit modification to remove that probe?  
 3 A I believe it may have been one of several  
 4 probes along that boundary. It appears to be so.  
 5 Q How, if you know, would a gas extraction well  
 6 impact a methane probe?  
 7 A The gas extraction system, one of the purposes  
 8 of the system is to control subsurface migration. And  
 9 so by inducing vacuum within the waste, you create a  
 10 pressure gradient that draws the gas into the extraction  
 11 wells into the landfill and away from the probes. So  
 12 any gas -- it would -- gas wouldn't want to naturally  
 13 migrate away from the landfill because the landfill  
 14 would be under vacuum with the gas system.  
 15 Q So if you have -- hypothetically, if you have  
 16 two landfills side-by-side, and they both had the gas  
 17 extraction well system, how would that impact the probes  
 18 between the two landfills?  
 19 A Sure. We see this quite often. If you've got  
 20 two -- a perimeter -- a probe in between two waste  
 21 masses or two landfills, you do create an instance where  
 22 if one gas system in that area is pulling harder than  
 23 the other gas system, then you can draw gas back and  
 24 forth across that probe. It becomes a time where you  
 25 have to balance how you're pulling and how hard you're

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1 pulling on your gas system, but it's quite common.  
 2 MR. HEAD: Move to admit TJFA-17.  
 3 MR. MOORE: Objection; hearsay.  
 4 JUDGE NEWCHURCH: Mr. Head?  
 5 MR. HEAD: Well, one, it's authenticated.  
 6 It was produced by BFI. It's a document that was sent  
 7 to Adam Mehevec. It appears to be reliable. It appears  
 8 to be germane to the proceeding.  
 9 MR. MOORE: I don't think he's identified  
 10 any exception to the hearsay rule in that argument. The  
 11 fact that it's produced doesn't authenticate anything.  
 12 You're required to produce all kinds of  
 13 documents. That doesn't make them admissible. He needs  
 14 to show some independent basis or exception to hearsay  
 15 rule. I don't think I heard any.  
 16 JUDGE NEWCHURCH: So this is an e-mail --  
 17 or, rather, a fax from Jamie Meaux. It was never clear  
 18 to me if Jamie Meaux is a male or female --  
 19 Male.  
 20 THE WITNESS: Male.  
 21 JUDGE NEWCHURCH: Okay.  
 22 -- who exists, because Mr. Stutz says he  
 23 exists. And this is his statement. I don't -- there's  
 24 not an obvious exception, Mr. Head. So I'm going to  
 25 sustain the hearsay objection and 17 is not admitted.

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1 MR. HEAD: We may come back to that with  
 2 Mr. Mehevec.  
 3 JUDGE NEWCHURCH: Sure.  
 4 Q (BY MR. HEAD) Let's go to 1529 of the  
 5 application, if you would, please.  
 6 A Okay.  
 7 Q This was sealed by you, and this is the  
 8 schematics, drawings. Proposed Landfill Gas Probe Event  
 9 Details.  
 10 Could you -- and on the left-hand side of  
 11 that page is "LFG monitoring probe."  
 12 JUDGE NEWCHURCH: What APP page is this?  
 13 MR. HEAD: I'm sorry. It's 001529.  
 14 JUDGE NEWCHURCH: Thank you.  
 15 Q (BY MR. HEAD) Could you just briefly describe  
 16 the construction -- the construction methodology of the  
 17 extraction well?  
 18 A Sure. I guess you -- it's -- the probe is  
 19 drilled down and then backfilled. A pipe is then -- a  
 20 slot of PVC pipe is inserted and backfilled with a  
 21 silica sand around the screen interval. On top of that,  
 22 you have bentonite granulars placed there to seal off  
 23 the surface. That is then followed by a bentonite grout  
 24 and then a concrete pad on the top.  
 25 MR. MOORE: Your Honor, I'm going to make

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1 an unusual objection to the responsiveness, because I  
 2 think the question was -- while he was being referred to  
 3 the detail of the monitoring probe, the question was  
 4 about an extraction well. And I want to -- if you could  
 5 clear it up.  
 6 MR. HEAD: And I misspoke. We were talking  
 7 about monitoring probes.  
 8 JUDGE NEWCHURCH: And was that the witness'  
 9 understanding as well?  
 10 THE WITNESS: That was my understanding,  
 11 and I described a probe.  
 12 JUDGE NEWCHURCH: Okay. So I think that's  
 13 clear now.  
 14 Q (BY MR. HEAD) Now, on these probes, is the  
 15 probe screen to the bottom of the probe?  
 16 A Yes. The screen extends to the bottom of the  
 17 probe.  
 18 Q And typically -- so the length of the screen is  
 19 dependent upon the length of the probe?  
 20 A Yes. The length of the -- yes. I guess the  
 21 perforation level varies with the depth of the probe.  
 22 Q But the entire probe is perforated?  
 23 A No.  
 24 Q Okay. How much of the probe typically is  
 25 perforated?

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1 A Typically at the site, the top five feet of the  
 2 probe is not perforated. The rest of it is.  
 3 Q And why is the top five feet not perforated?  
 4 A The top five feet is not perforated for a  
 5 couple of reasons. First, within TCEQ guidance  
 6 documents, they have requested that we leave between a  
 7 four-and-a-half to six-foot surface casing in place.  
 8 The reason for the surface casing is to  
 9 protect infiltration of groundwater, as well as when  
 10 monitoring the probe, not to pull in air into the probe  
 11 while you're sampling.  
 12 Q So in your prefiled on Page 14, this would  
 13 coincide with what you stated. All of the probes have  
 14 perforations that are within five feet of the ground  
 15 surface. So the probes would only become completely  
 16 submerged if the water level was within five feet of the  
 17 surface?  
 18 A Correct.  
 19 Q How does groundwater impact the probes?  
 20 A Groundwater -- you know, gas will certainly  
 21 seek the path of least resistance. And so any time the  
 22 gas encounters a saturated zone, groundwater, it's going  
 23 to quickly find a path around it and travel quickly to  
 24 the surface and vent out as opposed to traveling through  
 25 the groundwater or through the saturated zone.

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1 Q If you have water -- high groundwater that is  
 2 in your screen interval, would that impede the detection  
 3 of methane?  
 4 A No.  
 5 Well, I mean, were you saying -- if you  
 6 have some groundwater in your probe, you can still  
 7 detect methane.  
 8 Q If you have groundwater -- let's say you've got  
 9 an eight-foot-deep probe and you've got six feet of  
 10 groundwater in it, is that going to be an effective  
 11 probe for the purposes of monitoring methane?  
 12 A Yes.  
 13 Q So it's your testimony that water in the probe,  
 14 no matter how much water, is not going to impact the  
 15 efficacy of the probe for monitoring methane?  
 16 A No. That's not what I'm saying.  
 17 Q Okay.  
 18 A Do you want me to clarify?  
 19 Q Please do.  
 20 A You mentioned water at any level --  
 21 Q Right.  
 22 A -- as opposed to water in the probe. Having  
 23 some water in your probe still allows some perforations  
 24 to be available to sample.  
 25 Q Okay. The more water in the perforated area,

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1 the less effectiveness of the probe; is that not  
 2 correct?  
 3 A No. It's still effective here. You can still  
 4 monitor gas because the gas is going to travel on top of  
 5 that groundwater.  
 6 Q Okay.  
 7 (Discussion off the record)  
 8 (Exhibit TJFA No. 18 marked)  
 9 Q (BY MR. HEAD) Mr. Stutz, I have handed you  
 10 what's been marked TJFA-18 that consists of two pages at  
 11 APP 020577 and APP 020578. And let me represent to you  
 12 the chart here is exactly the same, but someone has put  
 13 notations on 020577. It also indicates at the bottom of  
 14 the left-hand corner that this was Sunset Farms' Permit  
 15 MOD 705. Are you familiar with this document? Have you  
 16 ever seen this document?  
 17 A Yes. I mean, it's been a while, but this does  
 18 look familiar.  
 19 Q Did you generate this document?  
 20 A I would have to -- I believe we did. I believe  
 21 I did.  
 22 Q Is that your writing on the right-hand side?  
 23 A It does look like my handwriting.  
 24 Q Okay. Now, I would like to go through this  
 25 with you briefly. This appears to be a list of the

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1 probes, and we have certain columns. We have the ground  
 2 surface elevation, the bottom of the waste depth within  
 3 a thousand feet, lowest groundwater elevation, required  
 4 bottom of probe elevation, required depth of probe, and  
 5 then recorded depth of probe from the ground, recorded  
 6 probe bottom elevation, recorded depth to water from the  
 7 ground, and recorded water elevations.  
 8 Do you see all of those notations?  
 9 A Yes.  
 10 Q And Note 2 indicates: "The bottom of the waste  
 11 depth obtained from the excavation plan provided by  
 12 ACE." And you're familiar with Ray Shull and Adam  
 13 Mehevec and folks at ACE.  
 14 And the asterisk note indicates: "Recorded  
 15 Probe Depths obtained by Weaver Boos Consultants-LLC,  
 16 Southwest on 11/24/2004."  
 17 And that's your company, correct?  
 18 A Correct.  
 19 Q And in the column in the middle, you have a  
 20 column, Required Depth of Probe. And, for instance, for  
 21 GMP-1S, the first one, it says, Required depth of probe,  
 22 11 feet.  
 23 Now, is that required depth of probe based  
 24 on how you determine -- is that based on the  
 25 determination that you put your probe to the shallower

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1 of the groundwater or the waste fill within a thousand  
 2 feet?  
 3 A There's a lot of information on here. It would  
 4 take me a minute to familiarize myself with it.  
 5 Q Please take your time.  
 6 MR. MOORE: J.D., while he's doing that,  
 7 did you have this marked?  
 8 MR. HEAD: Yes. I had it marked 18.  
 9 MR. MOORE: Thank you.  
 10 A (Reviews document.)  
 11 Do you want to re-ask?  
 12 Q (BY MR. HEAD) Yes.  
 13 But before I ask that question, I'm going  
 14 to go back to your "Proposed Replacement: A New Probe  
 15 Data" page, which is in the application, Table 14-1.  
 16 And it's at 001515. And I apologize in advance for  
 17 having you skip around.  
 18 A What was that again?  
 19 Q It's Application 1515, and it's Table 14-1.  
 20 A Okay.  
 21 Q And as I understand this, this table reflects  
 22 proposed replacements and new probe data subsequent to  
 23 the 2005 MOD.  
 24 A Actually, this is taken from the 2005 MOD.  
 25 Q Right. Now, in the 2005 MOD from this Table 1,

12 (Pages 847 to 850)

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1 you indicate in Note 2: "The bottom of probe elevation  
2 is based on the higher elevation between the lowest  
3 elevation of waste within 1,000 feet of the probe and  
4 the lowest groundwater elevation at the probe," correct?  
5 A Correct.  
6 Q And the total depth of the probe is a minimum  
7 of 10 feet. Is the minimum depth of the probe being  
8 10 feet, is that an industry standard?  
9 A Yes.  
10 Q And looking at this chart, it appears to me  
11 that what you've done is you've looked at the ground  
12 surface elevation, and you've looked -- and you prepared  
13 the lowest elevation of waste and the lowest  
14 elevation -- lowest groundwater elevation, and you go  
15 with the higher of the two.  
16 A Yes.  
17 Q And we talked about that at the beginning of  
18 your testimony.  
19 A Yes.  
20 Q So going back to TJFA-18, I just want to draw  
21 your attention to the first probe GMP-1S. If I go to  
22 that column, although it states under required depth of  
23 probe, 11 feet, the next entry and recorded depth of the  
24 probe from ground is 4.9 feet; isn't that correct?  
25 A That's what it shows on here.

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1 Q And the recorded depth to water from the ground  
2 is 2.3 feet?  
3 A Correct.  
4 Q So is it my understanding that at least as of  
5 2004, one of the probes was only -- less than five-feet  
6 deep?  
7 A Those are a series of probes. 1S, 1I, and 1D,  
8 they're nested. And so you have three probes in one  
9 casing there. You have a shallow, intermediate, and a  
10 deep. And the shallow, according to this, is at 4.9.  
11 As I mentioned earlier, I don't have any of the logs of  
12 the existing probes.  
13 Q And nesting means within a pipe you would have  
14 multiple probes?  
15 A Within a boring, within one of the drillings  
16 for the probe.  
17 Q Okay.  
18 A They also could have been adjacent. I guess I  
19 should clarify. You could also have adjacent probes  
20 with different intervals at that one location.  
21 Q Okay. And if we could go down to GMP-2S.  
22 Once again, it states required depth of probe, 13 feet.  
23 And I see the recorded depth of the probe from the  
24 ground, 4.9 feet.  
25 A Correct.

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1 Q And the depth of the groundwater, 1.5.  
2 And I'm grappling with how you have a  
3 required depth of the probe and the probe is, according  
4 to this chart, less than five-feet deep and the required  
5 depth is 13.  
6 A The required depth is not any regulatory  
7 standard. That was just our -- again, these were the  
8 previously existing probes that we didn't have any  
9 information or data on. And we were trying to look at  
10 what was out there just based on observations in the  
11 field.  
12 The required depth is simply -- I guess, as  
13 an internal use, we were using that to evaluate how deep  
14 the probes were in relation to how we measure  
15 groundwater in that area. But this certainly wasn't  
16 used to design the existing probes that are out there  
17 now.  
18 Q Well, these -- I think you indicated those are  
19 your notations and on the right you say eight good --  
20 and is that six or seven not good? I can't tell.  
21 A I don't know.  
22 Q It looks like a six to me.  
23 A Okay.  
24 Q And "1 New probe."  
25 Can you tell from looking at this which was

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1 the new probe?  
2 A I don't recall.  
3 Q Okay. So are all of these probes gone?  
4 A Yes.  
5 Q So you submitted a MOD in 2005 to replace all  
6 of the probes, correct?  
7 A Yes.  
8 Q And, once again, the purpose of that MOD was  
9 what?  
10 A As I originally testified. Do you want me to  
11 restate?  
12 Q Please. I'm not trying to trick you.  
13 A That's okay.  
14 Q We've had some long days here.  
15 A The original -- the reason -- the purpose for  
16 replacing the probes at the site were exactly what we  
17 were looking at here. We were unaware of how the probes  
18 were constructed and installed. They're subsurface.  
19 They're below the ground. We're not sure what they look  
20 like.  
21 And I was uncomfortable preparing a gas  
22 management plan not knowing the details of the  
23 installation or having boring logs or having any  
24 information on how they were installed. We went to the  
25 field and did some field verification and checked the

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1 best we could, looked at several things, hoping to be  
 2 able to use the existing probes. We probably could  
 3 have, you know, incorporated some of those existing  
 4 probes into the current system.  
 5       However, again, we still didn't have the  
 6 boring logs to back it up, and just wanted to make sure  
 7 all of the probes were installed and that they were  
 8 consistent. That makes for ease of monitoring and  
 9 compliance if all of the probes are the same, have the  
 10 same monitoring ports, design, and are installed the  
 11 same. So that was the intent.  
 12       Q Can you tell from this Exhibit TJFA-18 whether  
 13 certain of those probes were not functioning properly?  
 14       A No. I couldn't say that.  
 15       Q Would you deem a five-foot probe with a  
 16 recorded depth of water of one-and-a-half feet to be an  
 17 effective probe for detecting migration of methane gas?  
 18       A It's hard to say. I don't know anything about  
 19 how these were constructed.  
 20       Q So you looked at these probes that were  
 21 existing that day and said, "We have to have a whole new  
 22 set of probes," and that was your 2005 MOD, right?  
 23       A That's not a good characterization. My  
 24 approach was I looked at the existing probes and hoped  
 25 that I could use them, and, you know, was trying to

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1 gather the data so that we could use the existing  
 2 probes. But when it came time to needing to provide  
 3 boring logs in our application, they couldn't be found.  
 4 And at that point, we decided to continue with  
 5 replacement of the probes.  
 6       MR. HEAD: Off the record for a second.  
 7       JUDGE NEWCHURCH: Off the record.  
 8       (Off the record)  
 9       JUDGE NEWCHURCH: Back on.  
 10       MR. HEAD: Move to admit TJFA-18.  
 11       MR. MOORE: No objection.  
 12       JUDGE NEWCHURCH: 18 is admitted.  
 13       (Exhibit TJFA No. 18 admitted)  
 14       (Exhibit TJFA No. 19 marked)  
 15       Q (BY MR. HEAD) Mr. Stutz, I've handed you  
 16 what's been marked TJFA-19. This is APP 021693 and 694.  
 17 I'll represent to you this was produced to my law firm  
 18 by BFI, and it's an e-mail exchange between yourself and  
 19 Ray Shull; is it not?  
 20       A Yes. It appears to be from Ray to myself and  
 21 others.  
 22       Q Right. And Mr. Shull states to you: "My  
 23 understanding is that we pretty much decided to install  
 24 the probes along the south boundary, but would want to  
 25 describe it such that if 'hits' are recorded, then an

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1 action would then be developed. And that we don't want  
 2 are required to provide many details of the action plan  
 3 at this time."  
 4       MR. MOORE: Objection, Your Honor. I'm  
 5 going to object to the form of the question. I  
 6 anticipate that Mr. Head will want to offer this, and I  
 7 will preemptorily make an objection to the hearsay  
 8 nature of this document. And I think that it's  
 9 basically skirting a hearsay objection to try to read  
 10 this document into the record.  
 11       If he's going to be using this as a prior  
 12 inconsistent statement or a statement against interest,  
 13 then he can use that after he has -- after he finds that  
 14 Mr. Stutz has made a statement inconsistent with this.  
 15       We need to have testimony about the subject  
 16 before we can make a determination of whether this would  
 17 be admissible as a prior inconsistent statement. So  
 18 just reading this into the record is skirting the  
 19 hearsay objection, and I therefore object.  
 20       JUDGE NEWCHURCH: Do you have a response?  
 21       MR. HEAD: I have a hard time responding to  
 22 that. Let me just try to go a different route on this.  
 23       JUDGE NEWCHURCH: Okay. So you're  
 24 withdrawing the question and asking a new question?  
 25       MR. HEAD: Yes.

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1       Q (BY MR. HEAD) Mr. Stutz, this e-mail -- this  
 2 is an e-mail from Ray Shull, correct?  
 3       A It appears to be.  
 4       Q And it was addressed to you, correct?  
 5       A Correct.  
 6       Q Okay. And what does Mr. Shull discuss in the  
 7 e-mail?  
 8       MR. MOORE: Objection; hearsay.  
 9       MR. HEAD: He's indicated that he's  
 10 received this document.  
 11       JUDGE NEWCHURCH: Okay. Okay. So that  
 12 would indicate that there was a statement by Mr. Shull.  
 13 Are you offering it for a limited purpose  
 14 or for the truth of the matters asserted by Mr. Shull?  
 15       MR. HEAD: For the truth of the matters  
 16 asserted.  
 17       JUDGE NEWCHURCH: Okay. So you are  
 18 offering the exhibit at this time?  
 19       MR. HEAD: Yes.  
 20       JUDGE NEWCHURCH: Is there an objection?  
 21       MR. MOORE: Yes. Objection on the basis of  
 22 hearsay.  
 23       JUDGE NEWCHURCH: And is it somehow exempt  
 24 from the normal prohibition on hearsay?  
 25       MR. HEAD: To tell you the truth, I can't

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1 think of one.  
 2 JUDGE NEWCHURCH: Okay. Well, the  
 3 objection is sustained.  
 4 MR. HEAD: Does that mean we can't discuss  
 5 this document?  
 6 JUDGE NEWCHURCH: Well --  
 7 MR. HEAD: Let me just go another route.  
 8 JUDGE NEWCHURCH: -- you might be able to  
 9 discuss it in part. It sounded like Mr. Moore was  
 10 objecting to quoting statements as if they had been  
 11 stated by Mr. Shull. Those are hearsay statements. You  
 12 might be able to ask Mr. Stutz questions about the  
 13 subject matter without quoting any hearsay statement.  
 14 MR. HEAD: That's where I'm going.  
 15 Q (BY MR. HEAD) When the application -- BFI  
 16 application was filed initially in 2006, was there  
 17 included any probes on the southern boundary of the  
 18 facility?  
 19 A I'm not certain on the date, but I do know when  
 20 originally submitted we did not have probes on the  
 21 southern boundary.  
 22 Q And isn't it a fact that TCEQ issued a note of  
 23 deficiency requiring that those probes be installed?  
 24 A Again, I remember them issuing a letter  
 25 requesting that probes be installed on the southern

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1 boundary.  
 2 Q In your advising BFI on the landfill gas  
 3 component, was it your advice not to have probes on the  
 4 southern boundary?  
 5 A Absolutely.  
 6 Q Absolutely?  
 7 A Absolutely.  
 8 Q And why is that?  
 9 A Having probes in between two waste masses, a  
 10 lot of time, it just doesn't make sense. It -- you're  
 11 monitoring gas traveling between two landfills, and it's  
 12 not going off into the public property. It's -- both  
 13 sites have collection systems. If those probes do get  
 14 exceedances, if -- there's -- the remediation of that  
 15 probe would be, basically, continue with the gas systems  
 16 that are already in place. They're not monitoring gas  
 17 leaving the -- outgoing into the general public.  
 18 Q Are you familiar with any other landfill  
 19 facilities in Texas where two landfills are coterminous?  
 20 A Yes.  
 21 Q And are you aware of whether there are methane  
 22 probes between the two landfills?  
 23 A Where there are probes between two landfills?  
 24 Q Yes. Yes.  
 25 A I can't recall any in Texas.

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1 Q But the bottom line was that TCEQ required this  
 2 over the objections of the Applicant?  
 3 A The TCEQ originally told us we could take the  
 4 probes out, and then they came back and said we would  
 5 like to have the probes put back in.  
 6 Q And as we sit here today, you, BFI has  
 7 installed all of the probes in the 2005 MOD, but has not  
 8 installed the probes on the southern boundary; is that  
 9 correct?  
 10 A That's correct. Those are proposed with the  
 11 approval of the expansion.  
 12 Q Now, if you have an exceedance in your  
 13 application -- in the application in your portion  
 14 starting with Page 1516 -- you have the exceedance  
 15 action plan, correct?  
 16 A 1516?  
 17 Q I think 1516 is where the exceedance action  
 18 plan begins.  
 19 A Correct.  
 20 Q Could you briefly explain to the Court what an  
 21 exceedance action plan is?  
 22 A This is the actions that are to be taken should  
 23 there be an exceedance in a perimeter gas probe or in  
 24 one of the building monitors.  
 25 Q Is there any plan for BFI to have a separate

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1 exceedance action plan for the methane probes at the  
 2 boundary of the Waste Management Landfill?  
 3 A No, not that I'm aware of.  
 4 MR. HEAD: I'm going to go to gas  
 5 collection next. It might be a good time for a break if  
 6 that works for you.  
 7 JUDGE NEWCHURCH: Yes, it does. Let's take  
 8 a 10-minute break.  
 9 (Recess: 10:31 a.m. to 10:46 a.m.)  
 10 JUDGE NEWCHURCH: Back on the record.  
 11 MR. MOORE: Your Honor, I believe the  
 12 witness would like to offer a correction to some prior  
 13 testimony, if he may.  
 14 JUDGE NEWCHURCH: What's your correction,  
 15 please?  
 16 THE WITNESS: The conversion. Five-percent  
 17 methane would be equivalent to 50,000 parts-per-million.  
 18 Thank you.  
 19 JUDGE NEWCHURCH: Got it. Thanks.  
 20 MR. HEAD: You don't really believe I  
 21 calculated that, do you, Your Honor?  
 22 Q (BY MR. HEAD) A few more questions on these  
 23 probes. We had a discussion about groundwater and the  
 24 perforations. I think your testimony was that that  
 25 didn't impact the efficacy of the probe. Is that your

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1 testimony?  
 2 A Groundwater -- when gas hits that groundwater,  
 3 it's not going to migrate. So if there's groundwater in  
 4 a gas probe, that means that there's a natural barrier  
 5 there to gas migration. So having water in a gas probe  
 6 is -- that gas will just hit the groundwater and rise to  
 7 the surface and vent off.  
 8 Q So the gas will rise above the water?  
 9 A Yes.  
 10 Q Now, what about if the water is above the  
 11 perforation? Will that impact the efficiency of the  
 12 methane probes?  
 13 A Those perforations are within five feet of the  
 14 surface. So you're talking about gas traveling to the  
 15 top five feet of the surface. And that gas is going to  
 16 find its path of least resistance, which is not through  
 17 the soil. It's going to get to the surface.  
 18 Q If you have heavy rains and you've got  
 19 groundwater at the very top of that probe above the  
 20 perforations --  
 21 A Okay.  
 22 Q -- will that condition impact the efficacy of  
 23 the methane probe?  
 24 A I guess I struggle with the word "efficacy" of  
 25 the probe. The probe is still effectively monitoring

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1 what's happening in the subsurface, which is there's  
 2 water and the gas isn't migrating. It's effectively  
 3 doing its job.  
 4 Q Well, let me try to state it another way.  
 5 Hypothetically, you come out to do your monthly  
 6 monitoring. Is it monthly or quarterly?  
 7 A Quarterly.  
 8 Q And you come after a high rain condition and  
 9 you've got water to the very top of that probe. So  
 10 you're not -- as I understand it, you're not picking up  
 11 any gas.  
 12 A Right. No.  
 13 You could still be picking up gas. Gas can  
 14 bubble up through a probe, but it can still read  
 15 methane.  
 16 Q Isn't it correct it wouldn't be reading methane  
 17 to the extent the probe would, without the existence of  
 18 water above the perforation?  
 19 A No. Actually, your methane readings could be  
 20 higher.  
 21 Q I'm going to have to give up on that one.  
 22 A Could I explain?  
 23 Q Explain, please.  
 24 A As methane migrates, it travels through that  
 25 water. As we talked about a little yesterday, the CO2 in

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1 that gas will go into solution, and you're left with  
 2 methane. And so your gas probe will still monitor gas.  
 3 Q Just so we're clear, you've got your water  
 4 table to the very top of that probe above the  
 5 perforation, and you're telling the Court that that's  
 6 not going to impact when you do a quarterly reading to  
 7 determine whether we have a methane situation at the  
 8 perimeter? Is that your testimony?  
 9 A My testimony is that that probe will continue  
 10 to give an accurate representation of what's happening  
 11 at the subsurface in the gas migration.  
 12 Q Fair enough.  
 13 And are you familiar with the federal and  
 14 state regulations with regard to requirements or  
 15 installation of gas probes around a landfill?  
 16 A Yes.  
 17 Q And isn't it a fact that those regulations  
 18 require that the entire perimeter of a landfill have  
 19 extraction wells?  
 20 A I'm sorry. Did you change from wells to probes  
 21 again?  
 22 Q I did. Probes. Probes.  
 23 A Okay. Ask it again.  
 24 Q Isn't it a fact that the federal and state  
 25 regulations require gas probes to extend along the

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1 entire perimeter of the landfill?  
 2 A No.  
 3 Q No?  
 4 A No.  
 5 Q Is there an exception to those rules for  
 6 landfills located adjacent to other landfills?  
 7 A There is certainly some engineering judgment,  
 8 some determinations on geology, looking at natural  
 9 barriers, looking at off-site structures. All of those  
 10 things do go into determining the location of a  
 11 monitoring system.  
 12 Q So as you sit here today, your testimony is, as  
 13 we pull out the state and federal regulations, it's not  
 14 going to say that we have to have probes around the  
 15 perimeter of a landfill? That's your testimony?  
 16 A My testimony would be, from my understanding of  
 17 the rules, is that the perimeter monitoring system has  
 18 to take into consideration other factors in designing  
 19 the spacing and location of probes. The spacing of  
 20 those probes could be such that you have probes that  
 21 aren't between two landfills. It's not that you're not  
 22 having a monitoring system around the perimeter. It's  
 23 just that you're having a larger spacing of probes  
 24 around the perimeter.  
 25 Q Explain briefly how extraction wells operate at



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1 a landfill.  
 2 A The extraction wells are drilled into the waste  
 3 and have a perforated pipe and a gravel pack around them  
 4 and they're used to extract the gas in the landfill.  
 5 Q And if I could refer you in the application to  
 6 Figure 14-E2, which is Application No. 0001558.  
 7 Do you have that in front of you?  
 8 A Yes.  
 9 Q You have a typical extraction well on the left  
 10 side there, correct?  
 11 A Yes.  
 12 Q And you have your perforated pipe, correct?  
 13 A Yes.  
 14 Q And, typically, how much of the pipe is  
 15 perforated? What percentage of the length is  
 16 perforated?  
 17 A That varies, depending on the depth of the well  
 18 and the depth of the waste at the well. Generally, it  
 19 can be anywhere from a half to three-fourths.  
 20 Q Okay. And looking at -- is it safe to call  
 21 this schematic?  
 22 A Sure.  
 23 Q Looking at this -- what I will call is a  
 24 schematic, it appears that the bottom of your extraction  
 25 well should be located within 10 feet of the top of the

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1 protective cover or the bottom of the waste.  
 2 A Yes. The proposed wells are designed to go no  
 3 closer than 10 feet from the bottom.  
 4 Q And you said "proposed wells." Are the  
 5 existing wells situated within 10 feet of the liner at  
 6 the landfill?  
 7 A Some are within 10 feet; some are closer.  
 8 Q Is there any -- do you know the difference  
 9 between --  
 10 A And some are much higher.  
 11 Q And you are aware there's a portion of this  
 12 landfill which has pre-Subtitled D wells, correct?  
 13 A Correct.  
 14 Q And are you generally aware of where that area  
 15 is?  
 16 A Yes.  
 17 Q Is there any distinction between the depths of  
 18 the wells -- between the pre-Subtitle D and the  
 19 post-Subtitle D areas?  
 20 A The pre-Subtitle D wells were certainly  
 21 installed prior to my involvement at the site. What  
 22 I've been able to gather is that the pre-Subtitle D  
 23 wells are generally within about 15 feet -- some are a  
 24 lot higher -- of the bottom of the landfill. But,  
 25 generally, they're around 10 to 15 feet from the bottom.

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1 The Subtitle D wells are wells that I'm  
 2 familiar with having been involved in the design  
 3 installation. And those wells generally go to within 10  
 4 to 15 feet of the landfill, of the bottom.  
 5 Q And is it your professional opinion that wells  
 6 should be located within 10 to 15 feet of the liner?  
 7 A It's my opinion that the -- the purpose of the  
 8 10-foot separation is a safety factor to not penetrate  
 9 the liner. So you can drill deeper, but I don't  
 10 encourage it because you're just getting too close.  
 11 Q You don't want to puncture the liner?  
 12 A Absolutely.  
 13 Q Now, going back to my schematic, your  
 14 schematic, I see you have your perforated pipe, and then  
 15 you have an area that says clay backfill or well-graded  
 16 soil backfill. And my question is in that area, if  
 17 there's landfill gas, could it not enter the extraction  
 18 well where you have the clay backfill?  
 19 A Could you re-ask?  
 20 Q Yes.  
 21 The gas enters the extraction well in the  
 22 perforated pipe, correct?  
 23 A Yes. That's where it enters into the well, is  
 24 through the perforations.  
 25 Q Okay. And my question is: If you have a

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1 portion of your extraction well where the well is  
 2 backfilled with clay or well-graded soil, in that  
 3 section of your well, can gas -- landfill gas enter the  
 4 extraction well?  
 5 A Yes.  
 6 Q And does it -- does the gas go through the clay  
 7 backfill?  
 8 A No.  
 9 Q Then where does the gas enter?  
 10 A Through the perforations.  
 11 Q I guess my question is: If I've got gas,  
 12 hypothetically, look at our --  
 13 A Let me help you.  
 14 Q Please. Help me.  
 15 A This gas is under vacuum. And so you're  
 16 creating a zone of low pressure. So any gas is going to  
 17 go from high pressure to low pressure. So the gas above  
 18 the perforation is still going to migrate to the low  
 19 pressure and enter the perforation.  
 20 Q So you're pulling it below that clay backfill  
 21 into the perforation?  
 22 A Yes.  
 23 Q Is that your testimony?  
 24 A That is possible.  
 25 Q Okay. In your schematic, you have your

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1 monitoring ports, and those are above-grade, correct?  
2 A Correct.  
3 Q And then you have laterals as well? It appears  
4 these laterals are located in the erosion layer. Is  
5 this schematic premised upon final cover?  
6 A Yes. This is showing the wells at completion,  
7 final cover.  
8 Q We've got maybe hundreds -- how many wells do  
9 we have out there today?  
10 A Currently, I believe there's close to 180.  
11 Q And is it a fact that each of those wells has a  
12 component above the surface such as a monitoring port?  
13 A Yes.  
14 Q And they've got -- as well, if you come down  
15 from the control valve flex hose, you've got a lateral.  
16 A Correct.  
17 Q Where -- are those laterals on the surface or  
18 are they buried?  
19 A They're buried.  
20 Q And how deep are they buried?  
21 A Generally, at this site, they're buried a foot  
22 to 18 inches.  
23 Q Would they be buried in waste?  
24 A Typically, they're in the intermediate, their  
25 daily cover, but sometimes they do -- they are in waste.

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1 Q Are there any areas, as we sit here today,  
2 where you have your laterals that are just sitting on  
3 top of the landfill not covered?  
4 A I don't think there are, but there could  
5 possibly be a new line put in that's aboveground for a  
6 temporary installation. I'm not sure.  
7 Q So is it your testimony that an extraction well  
8 can collect landfill gas from the entire column of the  
9 boring?  
10 A Yes.  
11 Q In MS-5, which is one of your -- Exhibit 5,  
12 this appears to be a chart from 2000 to 2008. You would  
13 agree with me that it shows the coverage of the GCCS  
14 system and the amount of fill areas by acreage  
15 encompassed by the system?  
16 A Correct.  
17 Q And when was your initial involvement on behalf  
18 of BFI with respect to the GCCS system?  
19 A 2002.  
20 Q Okay. And were you -- to your knowledge, were  
21 you called in to address the odor problems that other  
22 witnesses have testified were related to the poorly  
23 functioning GCCS system?  
24 A That was not the initial request I got. The  
25 initial request I got was, "We need to expand our gas

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1 system. Come take a look." But as we moved into the  
2 design phase, it was brought to my attention that there  
3 were odor complaints and needed to control some odors.  
4 Q And who at BFI contacted you to get involved  
5 with their landfill gas situation?  
6 A I would -- oh, vaguely, I remember working with  
7 Randy Bodnar and Lee Kuhn at the time.  
8 Q And according to this chart in 2007, there was  
9 an entry under Phases, GCCS repair. Was that pursuant  
10 to a TCEQ MOD?  
11 A No. That was actually -- we had one of the  
12 pipes that had settled and needed to be replaced. It  
13 was just a routine operation and maintenance activity.  
14 Q And did that repair, according to this chart,  
15 resulted in 3-percent less coverage of a GCCS of  
16 landfills acreage, correct?  
17 A No, I wouldn't say the repair resulted in less.  
18 It was -- as a landfill continues to take waste, there's  
19 more area without coverage. It was simply they were  
20 taking waste at the same time they were doing repairs.  
21 Q I see. What impact does leachate have in the  
22 screened area of an extraction well on the effectiveness  
23 of gas collections?  
24 A As we have talked about, the gas will find the  
25 path of least resistance. Traveling through leachate is

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1 not something it would prefer to do. So it will either  
2 quickly bubble up through the leachate and be collected  
3 or it will travel along the leachate and be collected.  
4 Q Have you ever heard the term of a well being  
5 watered-in?  
6 A Yes, sir.  
7 Q Explain what happens when a well is watered-in.  
8 A "Watered-in" is used to refer to a well where  
9 the perforations are completely submerged, completely  
10 full with water.  
11 Q Okay. Now, if you have the perforations  
12 completely submerged in water, that does, in fact,  
13 impact the efficiency of your extraction well, correct?  
14 A Correct.  
15 Q All right. And if you have, hypothetically,  
16 30 feet of perforation and 20 feet of water, that is  
17 also going to affect the effectiveness of your  
18 extraction well, correct?  
19 A One more time.  
20 Q Say you've got 30 feet of perforation --  
21 A Okay.  
22 Q -- and 20 feet of water in there --  
23 A Okay.  
24 Q -- that is going to impact the effectiveness of  
25 your extraction well, correct?

18 (Pages 871 to 874)

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1 A It still can collect gas, but at a reduced  
2 rate.  
3 Q Okay. The court reporter is going to hand you  
4 TJFA-1, which has already been admitted into evidence.  
5 Have you been provided TJFA-1 yet?  
6 A Yes, I have.  
7 Q Before we go to that document, have you ever  
8 heard of a business called Gas Recovery Systems, Inc.?  
9 A Yes, sir.  
10 Q And what is Gas Recovery Systems, Inc.'s  
11 association with the BFI Landfill?  
12 A I can give you my understanding.  
13 Q Please.  
14 A Gas Recovery Systems owns and operates a  
15 gas-to-energy facility at the landfill. They collect  
16 the gas, send it to their facility to generate power  
17 from the waste.  
18 Q Does a fellow -- Paul Hesson, does that ring a  
19 bell?  
20 A Yes, sir.  
21 Q And he's with Gas Recovery Systems, Inc.?  
22 A Not currently.  
23 Q Not currently.  
24 Does -- I'm going to call them GRS. Does  
25 GRS generate reports for BFI and for Weaver Boos with

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1 regard to the extraction wells?  
2 A Yes, sir.  
3 Q And what's the purpose of those reports?  
4 A They serve a couple of purposes. One is to  
5 assist in balancing and tuning the well field, making  
6 the proper adjustments to the wells, to collect as much  
7 gas as they can. The other is regulatory driven.  
8 They're required to keep records of the extraction  
9 wells.  
10 Q And do you rely on those reports -- let me back  
11 up.  
12 Who is responsible for the maintenance of  
13 the extraction wells?  
14 A That's probably a contract question that I'm  
15 not aware of, but I do know that BFI has been the one  
16 pushing forward with gas system improvements and  
17 construction.  
18 Q And were you called in to assist in the  
19 improvements?  
20 A Yes.  
21 Q Okay. And so do you rely on reports, in your  
22 capacity in assisting BFI, from GRS?  
23 A Yes.  
24 Q Okay. I would like to refer you to TJFA-1.  
25 This is a widely circulated exhibit in this proceeding,

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1 and it's styled Sunset Farms Landfill Gas Collection and  
2 Control System Leachate Level Data for 8/23/05. Have  
3 you ever seen this document?  
4 A Not until a couple of days ago, probably  
5 Tuesday when I received it.  
6 Q And I would like to draw your attention to --  
7 you see you have the well numbers and you see you have  
8 the depths -- Well No. 121. That well appears to be  
9 38.57 feet from the ground surface and has close to  
10 seven feet of water in it as of 8/23/05?  
11 A That's what it shows here, right.  
12 Q Right above there, Well 63 is a 23.21-foot  
13 well, and it has 11-1/2 feet of water in it, right?  
14 A Correct.  
15 Q First, let me back up and ask you: Is it usual  
16 to have an extraction well of only 23 feet?  
17 A It's not common, no.  
18 Q You've got an extraction well, 58, with a depth  
19 less than 20 feet. Do you see that one?  
20 A I do.  
21 Q Is that uncommon?  
22 A Yes.  
23 Q An uncommon depth?  
24 A Yes. But I'm not sure if those are actual  
25 depths of the probe -- of the extraction well. Those

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1 are the depths that were measured at the time. It's  
2 possible that those wells were originally drilled  
3 deeper, but I'm not sure.  
4 Q If the wells are drilled deeper, how does it  
5 get shorter?  
6 A When they put their tape down the extraction  
7 well, you know, it could -- the tape could get hung up  
8 on one of the welding beads that are inside the well.  
9 The wells kind of move a little bit as they're filling  
10 and the landfill is shifting. So it could be that the  
11 tape hit on one of those bends in the pipe.  
12 Q You're talking about a dipstick?  
13 A That's how they measure the bottom, yes.  
14 Q What I would like for you to do is to go to  
15 MS-6. Actually, Mr. Stutz, I'm going to give you a  
16 choice; it's either MS-4 or MS-6. What I'm going to ask  
17 you to do is circle some extraction wells. And I'll  
18 leave it to you to see which are the most legible for  
19 those purposes.  
20 A MS-4 is probably easier to read.  
21 Q Okay. MS-4, could you circle Well 121, please,  
22 with a red pen, marker?  
23 MR. HEAD: Judge, do you have any  
24 preference to the marking of exhibits with regard to --  
25 JUDGE NEWCHURCH: A red pen is fine, if

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1 that's what you've got up there.  
 2 Do you have a pen?  
 3 THE WITNESS: I do. Do you want me to mark  
 4 it in this?  
 5 JUDGE NEWCHURCH: Why don't you go ahead  
 6 and mark it on the official exhibit. And if you would,  
 7 just so the rest of us can follow along, give us a rough  
 8 description on the page where it is.  
 9 THE WITNESS: Okay.  
 10 JUDGE NEWCHURCH: What is the first one,  
 11 please?  
 12 MR. HEAD: I'm sorry. It was Well 121.  
 13 JUDGE NEWCHURCH: Well 121.  
 14 A You want me to circle on this map where 121 is?  
 15 Q (BY MR. HEAD) Circle on the map where 121 is.  
 16 And for the crowd, you can kind of give us a notation so  
 17 we can find it as well.  
 18 A Sure. 121 is, I would have to say, right in  
 19 the middle. If you -- let's see, I'll give you some  
 20 other wells. Wells 120, 160, 162. We're right in the  
 21 center of the site.  
 22 Q I got it. And 121, at least as of 8/23/05, had  
 23 about seven feet of water covering the well, correct?  
 24 A At this time, that's correct.  
 25 Q All of these questions are going to be as of

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1 8/23/05.  
 2 A Okay.  
 3 Q Could you find and circle Well 63, please?  
 4 A Sure. 63, if you go straight down the page to  
 5 the bottom, from 121, it will be the well on the very  
 6 bottom there, almost in a straight line.  
 7 Q Below 62?  
 8 A Below 62.  
 9 Q And as of 8/23/05, there was 11.55 water  
 10 covering that well, according to this chart, correct?  
 11 A Correct.  
 12 Q And could you find Well 60 for us, please?  
 13 A 60?  
 14 Q 60, yes.  
 15 Can you hear me?  
 16 A Yes.  
 17 60. Again, go straight back towards 121,  
 18 along that same line of 63. And 60 is at the end.  
 19 Q And according to our chart, that well, as of  
 20 8/23/05, had four feet of water covering the well,  
 21 right?  
 22 A Right.  
 23 Q Okay. 58, please?  
 24 A 58 is just to the right of 63.  
 25 Q Got it.

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1 54, please?  
 2 A 54, again, just to the right of 58.  
 3 Q So that would be the -- basically the southern  
 4 portion of the pre-Subtitle D area, correct?  
 5 A Yes.  
 6 Q And that has, according to the chart, a little  
 7 over a foot of water.  
 8 The next one we'll go to is 53.  
 9 A Just to the right and up the page from 54.  
 10 Q Let's skip to 50.  
 11 A 50. If you go straight up the page from 53, at  
 12 the end of that line is 50.  
 13 Q I'm having problems finding that one.  
 14 A To the right of 60.  
 15 Q Okay. To the right of 60 is 55?  
 16 A One more. One more to the right.  
 17 Q And that, according to the chart, 8/23/05, had  
 18 close to six feet of water correct?  
 19 A Correct.  
 20 Q So 44?  
 21 A All right. 44 is on the very bottom southern  
 22 edge. If you go --  
 23 Q I found it.  
 24 Go ahead and tell everybody else.  
 25 A Okay.

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1 MR. GOSSELINK: What's that number, again?  
 2 THE WITNESS: 44.  
 3 A Again, to the right of 45 along the southern  
 4 edge.  
 5 Q (By Mr. Head) And 44, has, as of this daily  
 6 chart, 6.86 feet of water, right?  
 7 A Right.  
 8 Q Have we circled 45 yet? Did I miss one?  
 9 A No.  
 10 Q Let's circle 45.  
 11 A All right. (Witness complies.)  
 12 Q And 45, according to the chart, has  
 13 approximately five feet of water as of 8/23/05.  
 14 A Correct.  
 15 (Discussion off the record)  
 16 MR. HEAD: Bear with me.  
 17 Q (BY MR. HEAD) Well, 40, please?  
 18 A 40 is to the right of 44 along the bottom.  
 19 Q Well 30, please?  
 20 A 30 is, again, along that southern edge on the  
 21 bottom. Let's see, if you move over from 40 about an  
 22 inch, inch-and-a-half, 30 is on that bottom.  
 23 Q And according to this chart, as of '05, they  
 24 had 1.28 feet of leachate, right?  
 25 A Correct.

20 (Pages 879 to 882)

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1 Q I made you skip a bit.  
 2 Well No. 13?  
 3 A 13 is in the southeast corner, the very --  
 4 Q Right. The very southeast?  
 5 A -- southeast.  
 6 Q Right by where it says "Existing site  
 7 entrance"?  
 8 A Correct.  
 9 Q And that's, once again, the southern boundary  
 10 of the pre-Subtitle D?  
 11 A Right.  
 12 Q And, also, could you find and circle Well 11,  
 13 please?  
 14 A Well 11 is north of 13 along that edge.  
 15 Q And according to this chart, we've got, as of  
 16 8/23/05 5.08 feet of water in that well, correct?  
 17 A No.  
 18 Q No?  
 19 A No.  
 20 Q I've got -- I may have gotten off. Well 11,  
 21 according to my chart, is 5.08 feet of water.  
 22 Did I misstate myself on the well I wanted  
 23 you to locate?  
 24 A Yes. I show Well 11 as only having .08.  
 25 Q Let's look at the chart for a moment. I think

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1 I have the same chart.  
 2 A Well --  
 3 Q The beginning well, top of the chart, is  
 4 Well 1, correct?  
 5 A Correct.  
 6 Q Far right corner, nondetect?  
 7 A Nondetect.  
 8 Q Well 6, .29?  
 9 A Correct.  
 10 Q Well 11, 5.08?  
 11 A Yes. I'm sorry. You are correct. 11. Sorry.  
 12 Q Is that right above 12 there, close to the  
 13 "Existing site entrance"?  
 14 A Yes.  
 15 Once again, you got me. That's twice.  
 16 Q Mr. Stutz, in the past, have you been provided  
 17 information from GRS with regard to high leachate levels  
 18 in Wells 39, 40, and 44?  
 19 A I don't recall anything in the past, no one  
 20 indicating that to me.  
 21 (Discussion off the record)  
 22 (Exhibit TJFA No. 20 marked)  
 23 Q (BY MR. HEAD) Have you had a chance to review  
 24 BFI 20 (sic)? Take your time.  
 25 A (Witness reviews document.)

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1 Okay.  
 2 Q And 20 is a two-page document APP 004252 and  
 3 004253, which was produced by BFI. The first page is a  
 4 memo from Hesson. It's my recollection that you  
 5 indicated that Mr. Hesson used to be with GRSI.  
 6 A That's correct.  
 7 Q And it's my recollection that you indicated you  
 8 relied on reports from Mr. Hesson in your functioning on  
 9 behalf of BFI to review their extraction wells?  
 10 A That's correct.  
 11 Q And you were cc'd on this document?  
 12 A That's what it shows, yes.  
 13 Q Turning to the second page, if you look at  
 14 wells -- you see the well number on the left-hand side?  
 15 I would like for you to refer to Well 39.  
 16 A On the second page?  
 17 Q Yes, sir.  
 18 A Please --  
 19 Q The water level analysis.  
 20 A I just want to clarify. These are together?  
 21 Q It's one exhibit. Yes, sir. They're together.  
 22 The e-mail says: See the attached spreadsheet. And now  
 23 I'm going to the spreadsheet.  
 24 A Got it. Okay.  
 25 Q This chart does deal with extraction wells,

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1 does it not?  
 2 A Yes.  
 3 Q And according to this chart, Well No. 39 had a  
 4 bore depth of 28 and a perforation length of 16?  
 5 MR. MOORE: Your Honor, I'm going to make  
 6 another objection. Now we're reading from a document  
 7 that is hearsay and skirting the hearsay objection,  
 8 which I will have against this document, by reading it  
 9 into the record and questions --  
 10 MR. HEAD: I think this goes to a business  
 11 record. The gentleman has admitted that he relies upon  
 12 these documents prepared by this company in his capacity  
 13 as the landfill gas go-to guy for BFI.  
 14 JUDGE NEWCHURCH: Okay. I'm looking at the  
 15 rule. You're talking about the record of a  
 16 regularly-conducted activity. Is that what you're  
 17 saying, that is exception to the hearsay rule?  
 18 MR. HEAD: Yes. This is a document that's  
 19 kept in the regular course of business. This is a  
 20 communication between two entities involved with the  
 21 landfill gas out at BFI. It's probative, provided by  
 22 BFI.  
 23 Your Honor, if every time I'm going to have  
 24 a document that has clearly pertinent and relevant data  
 25 that people have relied upon, to have to call up Paul

21 (Pages 883 to 886)

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1 Hesson or 15 other people, this is going to be  
 2 problematic. I think this is probative information.  
 3 It's clear from the company who operates the landfill  
 4 and gas, that Well 39, 40, and 44 are not functioning  
 5 because of the water level.  
 6 MR. MOORE: Well, Your Honor, that  
 7 addresses the subject matter of the documentation, but  
 8 it doesn't address the business records exception. And  
 9 I don't think we have testimony sufficient to show that  
 10 this is a business record, that this gentleman doesn't  
 11 have sufficient knowledge of whether or not this is a  
 12 regularly-conducted business activity, and if it was the  
 13 regular practice of that business activity to make a  
 14 memorandum, etcetera, etcetera.  
 15 And to the extent that Mr. Head is  
 16 concerned that he would have to get an affidavit and/or  
 17 have proper person testify about the business record, he  
 18 had that opportunity. There is a specific provision in  
 19 the authentication portion of the Rules of Civil  
 20 Procedure that allows him to get an affidavit and serve  
 21 it on the other parties 14 days ahead of time. The fact  
 22 that he failed to get that affidavit and serve that on  
 23 everyone is not a failing of Mr. Stutz. And I would  
 24 reurge my objection.  
 25 MR. HEAD: Well, let me respond. And

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1 nobody claimed that there was any failing of Mr. Stutz  
 2 here, Counsel.  
 3 MR. MOORE: Thank you.  
 4 MR. HEAD: Okay. I will state that  
 5 Mr. Stutz did state, in my previous questioning, that he  
 6 and BFI were provided on a routine basis reports from  
 7 GRS on the condition of the system, and that he was  
 8 called upon by BFI at times to address those conditions.  
 9 JUDGE NEWCHURCH: All right. Let me think  
 10 about this for a second. So we've got a statement by  
 11 Mr. Hesson. And I think it's clear that there was  
 12 testimony of who Mr. Hesson was, right? And that you  
 13 were working with Mr. Hesson out at GRSI?  
 14 THE WITNESS: Correct.  
 15 JUDGE NEWCHURCH: All right. And there's  
 16 no challenge to the authenticity of the document, just  
 17 that it's hearsay and that Mr. Hesson is not here.  
 18 MS. MANN: Your Honor?  
 19 JUDGE NEWCHURCH: Yes, ma'am.  
 20 MS. MANN: At a minimum, I think you should  
 21 be able to ask questions about it, because even if it  
 22 goes to the -- introducing some of the actual data,  
 23 because just before this document was intended to be  
 24 introduced or discussed, Mr. Stutz said he hadn't  
 25 received reports regarding whether or not there were

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1 high leachate levels in 39, 40, and 44.  
 2 And I think that at a minimum he can look  
 3 at this document and say whether or not he can change  
 4 his answer about that, or if his answer is the same, or  
 5 somehow reflect on this document. We haven't gotten to  
 6 that opportunity yet because of the understandable  
 7 preemptive hearsay objection.  
 8 So my response would be that we wait until  
 9 it's offered and see what it's offered for, because I  
 10 think there's information in here that's definitely  
 11 pertinent to the previous question.  
 12 MR. MOORE: Your Honor, I'm not objecting  
 13 to the document being used to refresh the recollection  
 14 of the witness. What I'm objecting to is that the  
 15 document itself being read into the record to skirt the  
 16 hearsay rule, and I would further say 803(6) exception  
 17 for regularly conducted business activity requires the  
 18 testimony of the custodian or other qualified witness,  
 19 or by affidavit. So we don't have an affidavit that  
 20 satisfies the Rule 902(10), and we do not have testimony  
 21 of the custodian of this document.  
 22 MR. HEAD: But we do have testimony of a  
 23 qualified witness who is sitting on the witness stand  
 24 right now.  
 25 MR. MOORE: And I don't think the testimony

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1 he provided satisfied all of the other requirements  
 2 about it being a memorandum, record, report kept in the  
 3 regular course of business, and it was the regular  
 4 practice in a business activity, making the memorandum  
 5 report, blah, blah, blah. So I reurge my objection.  
 6 JUDGE NEWCHURCH: Okay. Off the record. I  
 7 want to think this through.  
 8 (Off the record)  
 9 JUDGE NEWCHURCH: Back on the record.  
 10 Mr. Stutz, I have a few questions for you.  
 11 And maybe you said this earlier, and I wasn't listening  
 12 closely enough.  
 13 Mr. Hesson was in communication with you,  
 14 and he was another contractor for BFI; is that right?  
 15 THE WITNESS: My understanding is Paul  
 16 Hesson, working for GRS, has a contract with BFI to  
 17 operate the gas system.  
 18 JUDGE NEWCHURCH: Okay. And to your  
 19 knowledge, was he -- as a part of those responsibilities  
 20 under that contract with GRSI and BFI, was he measuring  
 21 water levels in these wells?  
 22 THE WITNESS: It was -- it appears that it  
 23 was under his responsibility that they did measure these  
 24 wells. Taking water levels in wells is something that  
 25 they do occasionally. It's not something that we

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1 routinely see.  
 2 JUDGE NEWCHURCH: That they do  
 3 occasionally? You mean this and other locations where  
 4 you worked together in the past, is that what you mean?  
 5 THE WITNESS: Yes. Yes.  
 6 JUDGE NEWCHURCH: I'm going to overrule the  
 7 objection.  
 8 I think Mr. Stutz is another qualified  
 9 witness, and his testimony is sufficient to show that  
 10 these are regularly -- these are records of a regularly  
 11 conducted activity by Mr. Hesson on behalf of his  
 12 employer pursuant to contract with BFI. So the  
 13 objection is overruled and TJFA-20 is admitted.  
 14 MR. HEAD: Thank you, Your Honor.  
 15 MR. MOORE: At this point it wasn't  
 16 offered. We were just objecting to the testimony of  
 17 reading it into the record.  
 18 JUDGE NEWCHURCH: Well, we kind of wobbled  
 19 all over the place.  
 20 MR. HEAD: I did intend to offer it.  
 21 JUDGE NEWCHURCH: Well, it was argued as if  
 22 it was offered, so TJFA 20 is now offered and it is  
 23 admitted.  
 24 (Exhibit TJFA No. 20 admitted)  
 25 JUDGE NEWCHURCH: Those preemptive

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1 objections are hard to figure out.  
 2 Go ahead.  
 3 Q (BY MR. HEAD) Let's go to the first page of  
 4 the memorandum. Mr. Stutz, does not that memorandum  
 5 from Paul Hesson indicate that he measured leachate  
 6 levels in the extraction wells, and the only seriously  
 7 impacted ones of those were 39, 40, and 44?  
 8 A Yes. That's what it says.  
 9 Q And for the record, this is the 2003 memo. And  
 10 then on the water analysis -- water level analysis, if  
 11 you go to Well 39, evidently the perforation length is  
 12 16 feet, correct?  
 13 A Yes.  
 14 Q Depth to water says 14.9 feet?  
 15 A Correct.  
 16 Q It indicates that the perforation was  
 17 submerged. It appears to be at 17 feet, and percent  
 18 open, zero. What is your understanding of "percent  
 19 open"?  
 20 A My understanding would be that would be the  
 21 percent of perforation above the water.  
 22 Q Would that mean this well is not working  
 23 properly?  
 24 A This would be the watered-in.  
 25 Q The watered-in.

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1 Would Well 40 also be watered-in?  
 2 A Is Well 40 right below 39?  
 3 Q Yes.  
 4 A It's not completely watered-in.  
 5 Q But it's significantly covered with leachate?  
 6 A Yes.  
 7 Q And 44, which is the next one down?  
 8 A Yes. There is high levels of liquid in that  
 9 well.  
 10 Q And also Well 35, what's the perforation length  
 11 there?  
 12 A Perforation length on 35 shows to be 21 feet.  
 13 Q And the depth to water?  
 14 A 21.1.  
 15 Q And how much of that perforation was submerged?  
 16 A This shows 14 feet.  
 17 Q And the efficiency or percent open is  
 18 34 percent, correct?  
 19 A That's what it states.  
 20 Q Can you go back to MS-4 and circle Wells 35,  
 21 39, 40, and 44, please, if they haven't been circled  
 22 yet.  
 23 A 39?  
 24 Q Start with 35.  
 25 A 35. Okay.

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1 Q We would agree according to this document, 14  
 2 feet -- according to this document, it's 14 feet of  
 3 water in that well, correct?  
 4 A Yes.  
 5 Q And 35 is located on the southern boundary?  
 6 A Yes.  
 7 Q Well 39, please.  
 8 A I think 39 was previously circled.  
 9 Q I think it was too.  
 10 40?  
 11 A It was previously circled.  
 12 Q All right. And 44, please?  
 13 A Already circled.  
 14 (Exhibit TJFA No. 21 marked)  
 15 Q (BY MR. HEAD) Mr. Stutz, I've handed you  
 16 what's been marked as TJFA-21. Could you identify this  
 17 document for the record?  
 18 A It appears to be a letter to Lee Kuhn from GRS.  
 19 Q And who signed the letter?  
 20 A Paul Hesson.  
 21 Q And were you cc'd on this?  
 22 A It shows I was.  
 23 Q And this is a monthly report regarding the  
 24 operation maintenance of the well field, correct?  
 25 A This is the cover letter, correct.

23 (Pages 891 to 894)

FRIDAY, JANUARY 23, 2009

VOLUME 4

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1 Q Right. And is it not true that the third  
 2 paragraph indicates that GRS noted leachate outbreaks  
 3 between Wells 80 and 81 near LCV-3?  
 4 A That's what it states.  
 5 Q Okay. Do you know what LCV-3 is, what that  
 6 refers to?  
 7 A No.  
 8 Q What is a leachate outbreak?  
 9 A I'm not much of a leachate expert. It's  
 10 usually whenever there's -- near a side slope there is  
 11 sometimes a moist area.  
 12 Q So it would be leachate outside the leachate  
 13 collection system surfacing on the side of the landfill?  
 14 A Yes.  
 15 Q Could you go to your Exhibit MS-4 and circle  
 16 Wells 80 and 81? Actually, to be fair, could you put a  
 17 red mark between 80 and 81?  
 18 A A red mark?  
 19 Q Well, I just want to be fair for the record, it  
 20 indicated -- when you say between 80 and 81, so a red  
 21 line as opposed to a circle.  
 22 MR. HEAD: Move to admit 21.  
 23 JUDGE NEWCHURCH: Any objection?  
 24 MR. MOORE: No objection.  
 25 JUDGE NEWCHURCH: 21 is admitted.

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1 (Exhibit TJFA No. 21 admitted)  
 2 (Exhibit TJFA No. 22 marked)  
 3 Q (BY MR. HEAD) Mr. Stutz, have you had the  
 4 opportunity to review what has been marked as TJFA-22?  
 5 A Yes.  
 6 Q Can you identify this document?  
 7 A I have no idea what this is.  
 8 Q Okay. At the top does it not indicate "GRS  
 9 Landfill Monitoring-Excursion Report"?  
 10 A It does.  
 11 Q And have we established that GRS is the entity  
 12 that, one, operates the landfill gas plant -- the plant  
 13 at Sunset Farms?  
 14 A They are one entity that takes care of the well  
 15 field out there; that's correct.  
 16 Q And I refer you to the -- this appears to be a  
 17 list of landfills on the left-hand column, correct?  
 18 A Yes. That's what it states.  
 19 Q All right. And it discusses the -- who the  
 20 report was sent to, landfill status, the NSPS, number of  
 21 wells on the 120-day list. Let me stop.  
 22 What is the 120-day list as it relates to  
 23 extraction wells?  
 24 A Should an extraction well have -- not being --  
 25 operating efficiently -- unless you want to go into more

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1 detail -- not operating efficiently, the site has 121  
 2 days to remediate and fix that.  
 3 Q Does EPA or the State set the standard for what  
 4 is not operating efficiently?  
 5 A Yes.  
 6 Q Is that removal sufficiency?  
 7 A No.  
 8 Q Can you briefly describe what sets that off?  
 9 A A well needs to be able to maintain vacuum. It  
 10 needs to be able to have less than 5-percent oxygen.  
 11 And it needs to have a temperature of less than  
 12 131-degrees Fahrenheit.  
 13 Q Okay. If you go to the next-to-the-last entry  
 14 on the far left column, that's the Sunset Farms facility  
 15 in Texas, correct?  
 16 A I would assume it is.  
 17 Q Well, these are all lists of landfills, are  
 18 they not?  
 19 A I'm not familiar with those. If I look at the  
 20 column, yes.  
 21 Q If you look at the column, it says Landfills or  
 22 Recycling Facility. If you go to the next-to-the- last  
 23 entry on the left column, it says Texas and Sunset  
 24 Farms.  
 25 Are you familiar with any other landfills

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1 in Texas called Sunset Farms?  
 2 A No.  
 3 Q All right. And going to the fourth column  
 4 over, it says "Wells on 120-day list." This is for  
 5 Sunset Farms 2, correct?  
 6 A Correct.  
 7 Q Far left column, it has "Comments/Areas of  
 8 Concern." It says "high leachate levels - South slope,"  
 9 right?  
 10 A Yes.  
 11 Q And we've seen, have we not, previously -- in  
 12 our markings on MS-4, we've marked many wells on the  
 13 south slope, correct?  
 14 A We have marked many wells on the south slope.  
 15 MR. HEAD: Move to admit.  
 16 JUDGE NEWCHURCH: Any objections?  
 17 MR. MOORE: No objections.  
 18 JUDGE NEWCHURCH: 22 is admitted.  
 19 (Exhibit TJFA No. 22 admitted)  
 20 Q (BY MR. HEAD) Okay. I'm going to refer your  
 21 attention to Application 001520.  
 22 A One more time?  
 23 Q I'm sorry. 001520. That's the application  
 24 where you start talking about the LFG System.  
 25 A Okay.



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1 Q And, in particular, looking at 6.2 --  
 2 A Okay.  
 3 Q -- this describes how you intend to make  
 4 improvements, and as I understand it, add additional  
 5 extraction wells as the landfill expands.  
 6 A Correct.  
 7 Q All right. And isn't it true that if you have  
 8 an existing extraction well that's located at an area of  
 9 a new vertical fill, that you will have to deactivate  
 10 that well when they put the new fill on top of it?  
 11 A No.  
 12 Q If I have a well located in an existing fill  
 13 and we've got the risers coming out of the top there, is  
 14 it your testimony that you can just go ahead and start  
 15 the working face right on top of that riser, right on  
 16 top of that extraction well, and that's not going to  
 17 impact any efficiency?  
 18 A You have to make some adjustments to the well  
 19 prior to that waste being put over, but, yes, that well  
 20 will remain active.  
 21 Q Explain the adjustments you have to make to the  
 22 well.  
 23 A Typically, they will extend the well up so that  
 24 it's out of the way of the filling activity and it will  
 25 continue to operate as they fill around it.

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1 Q Okay. That's what I'm trying to understand.  
 2 So I've got an area that's been filled and it's got  
 3 intermediate cover. You understand what intermediate  
 4 cover is?  
 5 A Yes.  
 6 Q And I've got my risers -- that eco term --  
 7 A Right.  
 8 Q -- coming out.  
 9 Are you saying that what you would do for  
 10 new waste areas, you would extend your well 30, 40 feet  
 11 in the air and dump garbage around it?  
 12 A Yes. They extend it up; typically not 30 or  
 13 40 feet at a time, but it is extended up enough so they  
 14 can fill around it.  
 15 Q When they fill around it, they put the fill  
 16 around it, do they immediately start vacuuming that area  
 17 of the new fill? Do they put the vacuum on it?  
 18 A Well, the well continues to be under vacuum the  
 19 whole time. When they extend the well up, only for that  
 20 moment that they're out there extending the well is it  
 21 not under vacuum.  
 22 Q Let me try it this way. You've got this well  
 23 sunk within 5 to 10 feet of the liner, right?  
 24 A Yes.  
 25 Q I mean hypothetically.

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1 A Hypothetically.  
 2 Q And you've got 30 or 40 percent of that  
 3 extraction well has perforations, maybe more?  
 4 A Most likely more.  
 5 Q So that extraction well is pulling gas from the  
 6 bottom of the landfill, lower portions of the landfill?  
 7 A And some from the upper portion of the  
 8 landfill. Again, you've got a pressure gradient that  
 9 you're working with.  
 10 Q My question is: If I put a -- 30 feet of new  
 11 waste on top of that existing extraction well, is that  
 12 30 feet of waste going to -- is the extraction well  
 13 system going to extract gas from that new waste fill  
 14 within 18 months to two years?  
 15 A Within that time frame a new well will be  
 16 installed in that up to 30 feet that you're referencing.  
 17 They'll sink a new extraction well in that upper waste.  
 18 Q Right. But before they sink the new extraction  
 19 well in the upper waste, that upper waste is not going  
 20 to be serviced by an extraction well?  
 21 A Not significantly.  
 22 Q Okay. So your only odor control is going to be  
 23 daily cover?  
 24 A Yes, but that new waste won't be generating  
 25 gas. If it's new waste, it takes a year to two years

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1 before it's actually generating methane gas.  
 2 Q And is another reason that you don't install  
 3 the vacuum for -- is GRS -- GRS, who runs your gas plan,  
 4 do they have any say-so of when you install -- at Sunset  
 5 Farm Landfill when you install the gas collection system  
 6 and when you put it under vacuum?  
 7 A No.  
 8 Q They don't?  
 9 A No.  
 10 Q Okay. Let's go back to my hypothetical  
 11 extraction well where I'm going to have new waste put on  
 12 it. What happens to the laterals when you're going to  
 13 put the new waste on top?  
 14 A The below portion of that lateral stays  
 15 belowground.  
 16 Q Okay. Were you here for Dr. Libicki's  
 17 testimony a few days ago?  
 18 A I was not.  
 19 Q She testified that a gas control system should  
 20 typically not be installed in new waste for two years.  
 21 Do you agree with that testimony?  
 22 A I agree that that's common and typical. I  
 23 don't know if I would say that's always the case.  
 24 Q When you place new waste vertically over old  
 25 waste, can't this increase the pressure and cause more

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1 gas production in the previously filled area?  
 2 A The question is that as you're adding more  
 3 waste on top will it increase?  
 4 Q Is it going to increase gas production below by  
 5 virtue of the fact that you've got more weight and maybe  
 6 that's pushing out the gas from the pores in the waste  
 7 bins, if that's your area?  
 8 A Well, I mean, you're referencing a sudden dump  
 9 of waste all of a sudden instantaneously on top of the  
 10 landfill. It just doesn't happen. It's placed  
 11 gradually over time. So, no, I guess there isn't -- you  
 12 wouldn't notice a significant increase.  
 13 Q Is there any scenario whereby in the expansion  
 14 proposed by BFI you would have to deactivate some  
 15 operational gas control wells?  
 16 A I mean, I can't think of an instance where we  
 17 are planning or would need to deactivate extraction  
 18 wells for any significant period of time, no.  
 19 Q How do you define significant? Because  
 20 Dr. Libicki, she said a little bit of time is two years.  
 21 How do you define significant?  
 22 A To have a well not active.  
 23 Q Based on expansion activities?  
 24 A I guess, unfortunately, we don't have that  
 25 luxury. Under the rules we have to monitor every

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1 extraction well every month. If a well is taken offline  
 2 and is not monitored, we just don't allow it. It would  
 3 have to be monitored.  
 4 Now, you could petition the State to allow  
 5 you to abandon a well or decommission a well  
 6 temporarily, but you would have to prove-up that the  
 7 surrounding wells around would be able to compensate for  
 8 the well you're decommissioning. So this is a system --  
 9 a collection system, so one well down just means you  
 10 would have to increase vacuum to the surrounding wells  
 11 to compensate for it.  
 12 MR. HEAD: Off the record for just a  
 13 second. I know we're getting close to lunch.  
 14 (Off the record)  
 15 MR. HEAD: Pass the witness.  
 16 JUDGE NEWCHURCH: Mr. Blackburn, you went  
 17 already.  
 18 MR. BLACKBURN: I've already gone.  
 19 JUDGE NEWCHURCH: So redirect?  
 20 MR. MOORE: Yes. And I think this would  
 21 probably be an appropriate time to break for lunch if  
 22 that fits in your schedule.  
 23 JUDGE NEWCHURCH: We can do that. So why  
 24 don't we break until 130.  
 25 (Recess: 12:01 p.m. to 1:33 p.m.)

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1 AFTERNOON SESSION  
 2 JANUARY 23, 2009  
 3 (1:33 p.m.)  
 4 JUDGE NEWCHURCH: Coming back on the  
 5 record, it's 1:35. Are there any preliminary matters  
 6 this afternoon?  
 7 (No response)  
 8 JUDGE NEWCHURCH: Then we will go back to  
 9 the testimony of Mr. Stutz. And, Mr. Moore, do you have  
 10 redirect?  
 11 MR. MOORE: Yes, I do, Your Honor.  
 12 PRESENTATION ON BEHALF OF  
 13 BFI WASTE SYSTEMS OF NORTH AMERICA, INC.  
 14 (CONTINUED)  
 15 REDIRECT EXAMINATION  
 16 BY MR. MOORE:  
 17 Q Good afternoon, Mr. Stutz.  
 18 Mr. Stutz, do you have the Exhibit TJFA  
 19 No. 1 up there still, which was the table showing  
 20 certain gas levels or water levels and gas extraction  
 21 wells?  
 22 A Yes.  
 23 Q And I think your testimony was that you had  
 24 just seen this within the last couple of days; is that  
 25 correct?

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1 A That's correct.  
 2 Q Let me ask you a general question: Is it  
 3 common, when you put a gas extraction system into a  
 4 landfill, to survey for water levels?  
 5 A It is common. It's done, I wouldn't say on a  
 6 routine or regular basis. It is done occasionally. If  
 7 you try to increase production of certain wells and you  
 8 have some wells that you want to investigate, it's a  
 9 common practice.  
 10 Q And I think it was your testimony if you get  
 11 enough water in a gas extraction well that it can  
 12 interfere with production of gas; is that correct?  
 13 A It can -- I would say it would interfere more  
 14 with maybe some collection -- gas collection and  
 15 control. I don't -- production of gas, really, the more  
 16 moisture you have, the more gas you produce.  
 17 Q Well, is there a solution if the water gets so  
 18 high in an extraction well that it becomes watered-in, I  
 19 believe is the phrase?  
 20 A Oh, certainly. Having water in extraction  
 21 wells is pretty common. It's not unusual to have that  
 22 occur. The solution is to install pumps into the  
 23 extraction wells and pump out the water.  
 24 Q And once the water is pumped out, it will go  
 25 back to producing gas?

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1 A Yes.

2 Q Do you still have Exhibit MS-4 in front of you

3 that Mr. Head was asking you to circle certain wells on?

4 A Yes, I do.

5 Q If you could, referring back to the table on

6 TJFA-1, I think he had you circle some wells that didn't

7 seem to have very much water in them. If you can go

8 through that table and any of them that you think is an

9 insignificant amount of water, if you could rehighlight

10 those. And in this case, since we've used blue and red,

11 I'll ask you to use the green pen and, again, circle

12 those same wells where you don't think there was a

13 significant amount of water, and tell us how much was

14 there.

15 A Going for the wells that were previously

16 circled?

17 Q Or others. If there is other wells in there

18 that didn't have any water in them and was functioning

19 completely, you can go ahead and identify those.

20 A Okay. Extraction Well 1 has no detectable

21 water.

22 Q And you're marking that with a green circle?

23 A Yes, I will.

24 Extraction Well 1 is on the -- I would say

25 the east side, kind of in that southwest corner area.

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1 I would say Extraction Well 6 only has 2.9.

2 Extraction Well 6 is near the label that says Existing

3 Scalehouse, just below that.

4 Q Let me interrupt you there. You've skipped

5 over 2, 3, 4, and 5. Were those wells in existence

6 during that time?

7 A Yes, they were.

8 Q And as far as you know, there's no reason,

9 then, to think that there was any water in them? They

10 were not surveyed?

11 A They were not.

12 Q Go ahead, please.

13 The water levels indicated in 11, 12, and

14 13 show about six feet of water. I wouldn't consider

15 that significant. I would have to compare with

16 perforation levels of those wells at the time and the --

17 well, let me look real quick and see if I can do that.

18 Yeah. Again, I wouldn't consider those to

19 be a significant amount of water. There still would be

20 a good portion of screen -- from what I can infer from

21 here, a good portion of screen above those wells that

22 would allow them to continue to collect gas. You know,

23 really, Well 18, Well 22.

24 Do you want me to keep circling?

25 Q Sure. And if you could note the amount -- the

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1 level in feet. I think the ones you just mentioned were

2 less than a foot.

3 A Yes. Let me go back. Extraction Well 18 has

4 .46 feet.

5 Extraction Well 22 has .08 feet.

6 Extraction Well 27, .05.

7 Q Got it.

8 A I got to get it.

9 Q I think it's near the road going up onto the

10 landfill?

11 A Thank you.

12 Extraction Well 28, .24 feet of water.

13 Extraction Well 29, .05 feet of water.

14 Extraction Well 30 has only 1.28 feet of

15 water. That was previously marked.

16 31 has .34 feet of water.

17 Well 40, 2.5 feet of water. That was

18 previously marked.

19 Well 44, I'll leave that off of the list.

20 Well 45, almost five feet of water, but

21 still would have screen above it. So I would circle

22 that one.

23 46 is nondetect.

24 Extraction Well 50 with a little over

25 five feet of water, but it's a 64-foot well, so I would

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1 say that would be insignificant. That's Well 50,

2 previously marked.

3 Wells 51 and 52 have no detectable water.

4 Well 53 and 54, just over one foot of

5 water.

6 53 and 54 are previously marked.

7 Well 55 and 56 are nondetect.

8 57 is also no detectable water.

9 58, just over three feet of water. It

10 would be insignificant. And that was previously marked.

11 Well 60, four feet of water. It's a

12 71-plus well, so it would still be an insignificant

13 amount of water. That was previously marked.

14 Well 61, 62, no detectable water.

15 I would say Well 121 has about six, almost

16 seven feet of water, but would not be a significant

17 amount compared to a 38-foot well.

18 Q Mr. Stutz, does it appear to you that whether a

19 well might have significant amounts of water in it as

20 regards to gas production purposes, and might not seem

21 to be fairly randomly distributed across this map that

22 you just marked up?

23 A I'm sorry. I was still marking. I got a

24 little behind.

25 I would say that, you know, certainly it

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1 looks pretty random. I mean, there are some wells that  
 2 do have water, which is common, but there are several  
 3 wells in the same area that don't have water.  
 4 Q And in several circumstances, that's the case,  
 5 you have water in one and the next closest one has  
 6 no-detect?  
 7 A Correct.  
 8 Q All right. Since you've received a copy of  
 9 TJFA-1, have you had an opportunity to talk to the  
 10 people that operate the gas wells out at the Sunset  
 11 Farms Landfill?  
 12 A Yes, I have.  
 13 Q And did you ask them about what's currently  
 14 going on in terms of whether some of the gas wells might  
 15 be experiencing some collection of water in them?  
 16 A Yes. In talking with --  
 17 MR. HEAD: I'm going to object if he's  
 18 getting ready to get into hearsay. The question was  
 19 have you spoken with someone.  
 20 MR. MOORE: I'll withdraw that, and I'll  
 21 lay a little bit more predicate.  
 22 JUDGE NEWCHURCH: Okay.  
 23 Q (BY MR. MOORE) Mr. Stutz, in formulating  
 24 opinions about gas collection systems, their efficiency,  
 25 and particularly about the current efficiency of the gas

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1 collection system wells, is it common for professionals  
 2 such as yourself to rely on communications with the  
 3 operators of those systems?  
 4 A Yes.  
 5 Q And can you identify the individual that you  
 6 spoke to about this particular system?  
 7 A I spoke with Billy Johnson.  
 8 Q And how is he employed?  
 9 A He is hired by GRS to monitor the well field.  
 10 Q Is that the same GRS that was involved in  
 11 several of the communications that were addressed in  
 12 e-mails and memoranda that were recently offered to you  
 13 by Mr. Head?  
 14 A It is the same company, but they have changed  
 15 names since then.  
 16 Q Okay. And, again, is it common for experts  
 17 such as yourself in landfill gas collection systems and  
 18 their efficiencies to rely on information provided to  
 19 you by persons such as him?  
 20 A Yes. It's critical.  
 21 Q And what did he tell you about gas wells that  
 22 might be experiencing the collection of water currently  
 23 at the Sunset Farms Landfill?  
 24 MR. HEAD: Objection; calls for hearsay.  
 25 MR. MOORE: Your Honor, I think I've --

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1 this is the basis on which his opinion is based.  
 2 JUDGE NEWCHURCH: So you're offering it for  
 3 the sole purpose of showing his basis for the expert  
 4 opinion?  
 5 MR. MOORE: Yes. And I believe an expert  
 6 can be required to disclose the basis of the  
 7 information, and that's all that I'm doing.  
 8 JUDGE NEWCHURCH: For the limited purpose,  
 9 the objection is overruled.  
 10 Q (BY MR. MOORE) What did you learn about the  
 11 current conditions of the wells that might be  
 12 experiencing the collection of water out there today?  
 13 A I learned that there are six wells that I know  
 14 of that currently have water in them that they are  
 15 concerned about maybe possibly removing that water to  
 16 increase gas production.  
 17 Q And are you able to identify those wells on  
 18 this same exhibit, MS-4?  
 19 A Sure.  
 20 Q Would you please do so again with your green  
 21 pen and tell us where on the map you're finding them.  
 22 A Extraction Well 75. 75 is located kind of  
 23 south central area.  
 24 Wells 70, 89A, 74A are in the general  
 25 vicinity. Maybe just up from the previously marked

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1 well, 80.  
 2 Q Okay.  
 3 A Just below that 75 is Well 76. And across from  
 4 those two, Well 78. In addition, there was some water  
 5 in Well 100. 100 is in the center of the system on the  
 6 west side, maybe, if you go straight up from Well 78  
 7 that we marked, past Well 89. The well just down from  
 8 100 to the west, 101, and going further north to  
 9 Well 110.  
 10 Q And what is the nature of the -- if you could,  
 11 just a little more general information. What is the  
 12 nature of the water collection in those wells that  
 13 you've been informed about?  
 14 A I was informed that they had water in them. I  
 15 was informed that Well 110 was the one they were most  
 16 significantly concerned about. It had -- it was, I  
 17 would say watered-in, as we've talked about, where the  
 18 water was above the perforations. That Well 110 was --  
 19 they pumped it out. They put a pump in there, extracted  
 20 the water out of it, and possibly will be doing the same  
 21 for other wells.  
 22 MR. MOORE: May I approach?  
 23 JUDGE NEWCHURCH: Yes, sir.  
 24 MR. MOORE: I believe we're at Exhibit  
 25 BFI-8.

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1 (Discussion off the record)  
 2 (Exhibit BFI No. 8 marked)  
 3 Q (BY MR. MOORE) Mr. Stutz, will you look at  
 4 what's been marked as Exhibit BFI-8?  
 5 A Okay.  
 6 Q And identify that for us.  
 7 A This is the well boring log and the completion  
 8 log for Extraction Well 110.  
 9 Q These have the name of Weder Services. Who is  
 10 Weder, and how are they related to this project?  
 11 A They were the driller contractor at the time  
 12 these wells were installed.  
 13 Q Can you explain to us what's shown on the  
 14 second page of that in terms of the well construction  
 15 log?  
 16 A Sure. This is a detail showing how the well  
 17 was installed, showing the gravel pack, the bentonite  
 18 plugs, the perforation distances. You know, overall, it  
 19 shows that the well had a boring depth of 64 feet.  
 20 Q And were you able in the last couple of days to  
 21 determine how high above the liner the bottom of this  
 22 well is?  
 23 A This particular well is about 15 feet above the  
 24 bottom of the liner in this area.  
 25 Q And how much of the well is perforated?

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1 A This shows the slotted pipe length of 31 feet.  
 2 Q And it's your understanding that this well was  
 3 collecting water recently?  
 4 A It's my understanding that there's been water  
 5 in this well and that they've pumped water out of this  
 6 well.  
 7 Q Is that common?  
 8 A Oh, yes.  
 9 Q Is it a regular part of the maintenance of gas  
 10 extraction wells to pump water out of them?  
 11 A Yes. It's done routinely.  
 12 Q To your knowledge, is the location of this  
 13 well, as you have shown on Exhibit MS-4, in an area of  
 14 the landfill that is underlined by a Subtitle D liner  
 15 and leachate collection system?  
 16 A Yes. Well 110 is in the Subtitle D lined area.  
 17 Q Is the same true for Wells 101, 100, 78, 75,  
 18 and 76?  
 19 A Yes. Those are all in Subtitle D areas.  
 20 Q And based on that and your experience, then,  
 21 does the collection of water in a well have anything to  
 22 do with whether or not it's an area underlaid by a  
 23 Subtitle D liner leachate collection system or not?  
 24 A We see water collecting in wells in Subtitle D,  
 25 pre-Subtitle D regardless of the underlying liner.

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1 Q When you find a well that is collecting water,  
 2 does it tell you anything about what the water level or  
 3 leachate level might be below that well?  
 4 A No.  
 5 Q What does it tell you?  
 6 A All it tells us is that in that particular area  
 7 that liquids have accumulated into that well. It tells  
 8 us that as water percolates through the waste up above  
 9 that well, that it has somehow come in contact with the  
 10 well and that gravel pack has accumulated in that area.  
 11 Q From the perspective of a raindrop or other  
 12 liquid that finds its way into the near surface of a  
 13 landfill or above it, can you tell us about the journey  
 14 of that raindrop as it passes through a landfill?  
 15 A Sure.  
 16 Q Or not.  
 17 A Sure.  
 18 Q Tell me which do and which don't.  
 19 A Yeah. You know, as moisture enters the  
 20 landfill from a rainfall event, you know, a majority of  
 21 that water runs off as runoff. Some of that water is  
 22 used in evapotranspiration in the top cover for  
 23 vegetation growth. Should the water be sufficient that  
 24 it passes through the upper layers and into the waste,  
 25 most of that water is then consumed by the waste and

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1 held in the waste itself until it gradually -- if it  
 2 does reach fill capacity, at that point the water will  
 3 continue to migrate down. A lot of times what we will  
 4 see as this water migrates through, if it's moving  
 5 through the waste, it will hit different layers within  
 6 the landfill, an intermediate cover, a final cover layer  
 7 that's been buried. As that water hits that layer, it  
 8 will sometimes perch on that layer.  
 9 When we drill an extraction well in that  
 10 wet zone, we're drilling right through those  
 11 intermediate and daily covers and putting in a  
 12 perforated pipe and a gravel pack. And naturally all of  
 13 that water will then come into that well through those  
 14 layers up above. And that's a pretty common journey of  
 15 the rainfall.  
 16 Q Is there a way to perform a water balance  
 17 calculation and determine or estimate the amount of  
 18 water that collects or stays in a landfill?  
 19 A Yes. You can calculate, based on the rainfall  
 20 and cover materials, how much water will actually enter  
 21 into the landfill, how much water will be consumed and  
 22 held as part of the waste itself until it reaches its  
 23 fill capacity. You can determine how much water will  
 24 then accumulate.  
 25 In addition, really, you can also calculate

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1 how much water is removed from the landfill. You know,  
 2 these -- as gas is being produced, it takes an enormous  
 3 amount of water to produce the gas itself. And so  
 4 gas is -- water is consumed in the gas-generation  
 5 process. Water is also extracted through the gas. Gas  
 6 is -- it's saturated. And so when you're removing all  
 7 of this gas from a landfill in a saturated form, as it  
 8 cools there's a condensate. And that condensate is  
 9 collected and removed. You do have some water coming  
 10 in, but you also have a lot of water being consumed and  
 11 taken out in the process.  
 12 Q So as the gas enters the well from the waste  
 13 mass, is it relatively warm?  
 14 A As the water enters the well?  
 15 Q As the gas moves into the well, is it  
 16 relatively warm?  
 17 A Oh, yes. It's very warm.  
 18 Q And does that allow it to hold more water?  
 19 A Yes.  
 20 Q So then as it moves through the header system  
 21 toward the blowers, what happens?  
 22 A As it moves -- as it reaches the surface and  
 23 moves through the piping, it cools. And as it cools,  
 24 the condensate and the moisture in that gas stream comes  
 25 out and is collected as a condensation and is collected

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1 and disposed of.  
 2 Q Does that condensate also sometimes collect in  
 3 the well itself?  
 4 A Yes, it does. You know, in some wells, and  
 5 particularly the ones maybe we've looked at where  
 6 there's, you know, a couple of feet, there's inches of  
 7 water, it's most likely that that water is from  
 8 condensate and not leachate collecting in a well. The  
 9 wells themselves are very moist and wet just from the  
 10 condensation.  
 11 Q So as it moves through, then, the header system  
 12 toward the blowers that are pulling it, it's sort of  
 13 like a still; is that right?  
 14 MR. HEAD: Be careful how you answer that.  
 15 A I have never been to a still. You will have to  
 16 ask it again.  
 17 MR. MOORE: Okay. I'll waive the question.  
 18 MR. HEAD: I was going to go with a  
 19 speculation objection.  
 20 MR. MOORE: I'm sure I've opened up a wide  
 21 door with that.  
 22 MR. BLACKBURN: Mr. Moore has much more  
 23 experience than most of us.  
 24 (Discussion off the record)  
 25 Q (BY MR. MOORE) I'd like for you to look at the

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1 gas management plan, which is Attachment 14 to the  
 2 application. And, particularly, if you can find  
 3 Figure 14-E2, which is also Bates No. 1558.  
 4 A Okay.  
 5 Q When you design a schematic like this to  
 6 specify how a well can or should be built, do you take  
 7 into consideration the possibility that there might be  
 8 water collecting in the wells?  
 9 A Yes. It's -- part of the process is to  
 10 anticipate that water will be in the wells. And as  
 11 noted on the detail here, we show a pump to be installed  
 12 in the extraction wells to remove liquids as needed.  
 13 So it was certainly something that we contemplated.  
 14 Q And if you could, there's a Note 3. Is that  
 15 where it says they will be installed as needed?  
 16 A Yes. The pump is shown in the schematic  
 17 itself. There's just kind of an outline of a pump in  
 18 the bottom of the extraction well, a liquid removal  
 19 pump, and then it refers to Note 3: Pumps will be  
 20 installed as needed.  
 21 Q And if one is not installed with the initial  
 22 construction, is there still an opportunity to pump the  
 23 well to remove collected water?  
 24 A Yes. These wells are specifically designed to  
 25 accommodate a pump as needed in the future. They're

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1 about a six-inch diameter pipe and can easily take a  
 2 pump.  
 3 Q To your knowledge, if you discover water  
 4 collecting in a gas well, does that mean that leachate  
 5 is mounding up from the bottom of the fill upward -- I'm  
 6 sorry -- from the bottom of the landfill upward?  
 7 A No. That's -- water in an extraction well does  
 8 not in any way indicate that there's an amount of water  
 9 coming from the bottom up. It's more likely that the  
 10 water in the well is coming from water down, so no.  
 11 Q Mr. Stutz, if you could refer now to what was  
 12 previously marked as TJFA-22.  
 13 Do you have that document before you?  
 14 A I do. Yes.  
 15 Q I believe it was your prior testimony that if a  
 16 well is experiencing collected water to the extent that  
 17 it's interfering with production or for other reasons  
 18 that a well might be having trouble in production,  
 19 there's some sort of a 120-day list; is that correct?  
 20 A Yes. That's correct.  
 21 Q And what -- so does that mean it's -- that if  
 22 it goes on that list that it's in violation, or you need  
 23 to make sure it's corrected within 120 days?  
 24 A It needs to be corrected within 120 days.  
 25 Q Adjacent to the column where there's a number

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1 of wells on the 120-day list, there's another column.  
 2 Can you tell me what that is?  
 3 A That is the number of wells that are beyond 120  
 4 days -- on the 120-day list.  
 5 Q And based on this document as regards to Sunset  
 6 Farms Landfill, back in February of 2003, were there any  
 7 wells that were on the 120-day list more than 120 days?  
 8 A No.  
 9 Q And that's a zero in that column; is that  
 10 correct?  
 11 A That's correct.  
 12 Q Mr. Stutz, is it your opinion that the gas  
 13 collection and control system and the landfill gas  
 14 management plan, as they're currently being implemented  
 15 at the Sunset Farms Landfill, are controlling odors?  
 16 A Yes.  
 17 Q Is it also your opinion that if the permit  
 18 amendment is granted and the system is operated in  
 19 accordance with the Attachment 14, the landfill gas  
 20 management plan, and the GCCS is operated as described,  
 21 that it will continue to control odors at the Sunset  
 22 Farms Landfill?  
 23 A Yes.  
 24 MR. MOORE: Pass the witness.  
 25 JUDGE NEWCHURCH: Who wishes additional

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1 cross-examination?  
 2 Anyone?  
 3 MR. HEAD: Yes.  
 4 JUDGE NEWCHURCH: Mr. Head?  
 5 MR. HEAD: We have Blackburn.  
 6 MR. BLACKBURN: I'm going to pass.  
 7 JUDGE NEWCHURCH: Okay.  
 8 RECROSS-EXAMINATION  
 9 BY MR. HEAD:  
 10 Q You mentioned that there could be layers in  
 11 the waste from past intermediate daily cover which was  
 12 causing some perch zones, correct?  
 13 A Correct.  
 14 Q Are you aware that the practice of BFI in the  
 15 past has been to use alternative daily covers like  
 16 tarps?  
 17 A I am not aware that that's been their normal  
 18 practice.  
 19 Q One last question: With regard to these wells  
 20 that you mentioned in the Subtitle D area, 100, 101, 78,  
 21 75, 76, as you sit here today, you cannot state  
 22 definitively that there is not leachate from the liner  
 23 all the way to that perforation, can you?  
 24 A Are you asking --  
 25 Q I'm asking if you know for a certainty that the

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1 wells in Subtitle D that have the water, including 110  
 2 that's watered-in, can you say with a hundred percent  
 3 degree of certainty that that water does not extend from  
 4 the perforation down to the liner?  
 5 A Oh, with a hundred percent certainty, no.  
 6 MR. HEAD: I pass the witness.  
 7 JUDGE NEWCHURCH: Any other cross?  
 8 Okay. Off the record.  
 9 (Off the record)  
 10 FURTHER REDIRECT EXAMINATION  
 11 BY MR. MOORE:  
 12 Q Very briefly. Do you have an opinion about  
 13 whether there is leachate mounding up from the liner  
 14 through the drainage layer of the leachate collection  
 15 system and up to the elevations of the production zone  
 16 of Gas Well 110?  
 17 A My opinion is that it's not. My opinion is  
 18 that that well is in that area, that there's a leachate  
 19 collection system in that area, that there's -- the  
 20 water is not mounding up from the bottom, but simply the  
 21 water has entered from the top. That's my opinion.  
 22 MR. MOORE: No further questions. Well,  
 23 wait.  
 24 Q (BY MR. MOORE) And is that your opinion to a  
 25 reasonable degree of engineering certainty?

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1 A Yes.  
 2 MR. MOORE: Pass the witness.  
 3 JUDGE NEWCHURCH: Any other cross?  
 4 Thank you, Mr. Stutz. You're excused.  
 5 Off the record.  
 6 (Off the record)  
 7 JUDGE NEWCHURCH: Back on the record.  
 8 MR. MOORE: We would like to offer Exhibit  
 9 BFI-8. It is the boring log on Well 110.  
 10 JUDGE NEWCHURCH: Is there objection?  
 11 MR. HEAD: One second. I assumed he wasn't  
 12 going to offer it.  
 13 No objection.  
 14 JUDGE NEWCHURCH: 8 is admitted. And we're  
 15 off the record.  
 16 (Exhibit BFI No. 8 admitted)  
 17 (Recess: 2:08 p.m. to 2:30 p.m.)  
 18 JUDGE NEWCHURCH: Let's go back on the  
 19 record.  
 20 MR. GOSSELINK: Would you like to hear  
 21 about the final resolution of our stipulations?  
 22 JUDGE NEWCHURCH: I would love to.  
 23 MR. GOSSELINK: We have agreed that all  
 24 three of those issues that we previously identified are  
 25 being stipulated to as no longer being in the case.

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1 They're being dropped as issues.  
 2 JUDGE NEWCHURCH: Those would be J, S, and  
 3 Z of the Commission's designations?  
 4 MR. GOSSELINK: Yes. However, with the  
 5 understanding that BFI acknowledges that part of what  
 6 might be talked about in a closure issue is also a final  
 7 cover issue, and to the extent that it's appropriate to  
 8 bring up as part of cross-examination on final cover, we  
 9 have agreed not to contend that that issue is being  
 10 dropped. In other words, that's fair game.  
 11 JUDGE NEWCHURCH: Whether or not the final  
 12 cover is an issue?  
 13 MR. GOSSELINK: Yes.  
 14 JUDGE NEWCHURCH: Okay.  
 15 So your next witness, please?  
 16 MR. GOSSELINK: BFI calls Adam Mehevec.  
 17 JUDGE NEWCHURCH: Mr. Mehevec, will you  
 18 take the oath, please.  
 19 (Witness sworn)  
 20 JUDGE NEWCHURCH: Thank you.  
 21 Mr. Gosselink.  
 22 MR. GOSSELINK: Thank you.  
 23 ADAM WADE MEHEVEC,  
 24 having been first duly sworn, testified as follows:  
 25 DIRECT EXAMINATION

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1 BY MR. GOSSELINK:  
 2 Q Good afternoon.  
 3 A Good afternoon.  
 4 Q Will you please state your full name and  
 5 address for the record.  
 6 A My name is Adam Wade Mehevec. I reside at  
 7 2747 Grimes Ranch Road in Austin, Texas.  
 8 Q And what is your current occupation?  
 9 A I am currently employed as a professional  
 10 engineer with the firm Associated Consulting Engineers  
 11 here in Austin.  
 12 Q And what's your connection to this project?  
 13 A I've been involved with this project, I  
 14 believe, since its inception around the 2000 time frame  
 15 and was deeply involved in the development of the  
 16 application that we're talking about here today.  
 17 Q And would you take a look at what I think is  
 18 marked as Applicant's Exhibit AM-3 and identify it for  
 19 the record.  
 20 A AM-3 appears to be a copy of all of Part III of  
 21 the application except for the things that were  
 22 previously sponsored by Mr. Snyder, Mr. Adams, and  
 23 Mr. Stutz, which would be Attachments 4, 5, 10, 11, and  
 24 14, to Part III.  
 25 Q Are you familiar with that part of the

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1 application?  
 2 A Yes, sir.  
 3 Q Does it, in fact, appear to be a true and  
 4 correct copy of Part III of the application?  
 5 A It does.  
 6 Q Did you prepare any prefiled testimony?  
 7 A Yes, I did.  
 8 Q And would you take a look at what's been marked  
 9 as AM-1 and identify that for the record?  
 10 A This appears to be a true and correct copy of  
 11 my prefiled testimony.  
 12 Q Do you have any changes or corrections to your  
 13 testimony, sir?  
 14 A Yes, I do.  
 15 Q Okay. And what are they?  
 16 A I've made some amendments to address the  
 17 Rule 11 Agreement that was executed with the City of  
 18 Austin.  
 19 MR. GOSSELINK: And, in particular, Your  
 20 Honor, those were Exhibits AM-29 and AM-30, which we had  
 21 attached to our Motion to Supplement, which has  
 22 previously been admitted by the Court. We also in one  
 23 of those attachments had Mr. Mehevec's amended prefiled  
 24 testimony, which I had not marked which I now understand  
 25 you would like to be marked and put in the record to

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1 make the record clearer -- or at least you would like to  
 2 make the record clear. And I choose to do it by marking  
 3 it.  
 4 JUDGE NEWCHURCH: Instead of offering AM-1,  
 5 you're going to offer the revised version and put it in?  
 6 MR. GOSSELINK: I'm going to offer what I  
 7 now will call AM-31 and at the end offer AM-1 through  
 8 31.  
 9 JUDGE NEWCHURCH: Okay. I think I'm with  
 10 you.  
 11 MR. GOSSELINK: All right.  
 12 (Discussion off the record)  
 13 MR. GOSSELINK: I'm sorry. I know you  
 14 asked us to get this all organized, but with all of that  
 15 negotiating, I got lost.  
 16 JUDGE NEWCHURCH: That's fair.  
 17 (Exhibit BFI Nos. AM-29 through AM-31  
 18 marked)  
 19 Q (BY MR. GOSSELINK) Mr. Mehevec, have you had a  
 20 chance to look at AM-29, AM-30, and 31?  
 21 A Yes, I have.  
 22 Q Are they, in fact, the changes that you would  
 23 like to offer to your prefiled testimony?  
 24 A Yes, they are.  
 25 Q And just for the record, what is AM-31, please?



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1 A AM-31 is a supplement to my prefiled testimony  
2 that brings in the Rule 11 Agreement we got with the  
3 City of Austin.  
4 Q Does it change Pages 46 through 49 of your  
5 testimony?  
6 A Yes, that appears to be correct.  
7 MR. GOSSELINK: And, Your Honor, it will  
8 also change subsequent pages, which I have asked to be  
9 brought forward, but these are the same pages that were  
10 attached to the Motion to Supplement. I just didn't get  
11 them in the record yet.  
12 JUDGE NEWCHURCH: They don't seem to go  
13 smoothly. Like 46 starts -- oh, I see. There we go. I  
14 understand.  
15 MR. GOSSELINK: Are you all right?  
16 JUDGE NEWCHURCH: Off the record.  
17 (Discussion off the record)  
18 JUDGE NEWCHURCH: And I think we've all  
19 agreed what had been marked as AM-31, the page numbers  
20 were changed slightly, because it's actually an insert  
21 on Page 46. So those pages of AM-31 are 46-A through D.  
22 MR. GOSSELINK: Yes, sir. Thank you.  
23 JUDGE NEWCHURCH: I think that's a cleaner  
24 record that way.  
25 MR. GOSSELINK: I'm almost done.

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1 Q (BY MR. GOSSELINK) Is AM-2 your resume, sir?  
2 A Yes, it is.  
3 Q Do you have any changes to your resume?  
4 A No, I do not.  
5 Q Do you adopt your prefiled testimony here today  
6 as if you were giving it all live before the Court?  
7 A Yes, sir.  
8 Q Have you given everyone the understanding of  
9 what you are sponsoring in terms of an exclusion of all  
10 of Part III, except what three other witnesses  
11 sponsored? For purposes of the record, I've asked you  
12 to identify exactly what you are sponsoring, and include  
13 the Bates labels. Will you do that, please?  
14 A Sure. I'm sponsoring Part III, Site  
15 Development Plan Narrative, which is Bates labels  
16 APP 356 through APP 378.  
17 I'm also sponsoring Appendix A to that --  
18 actually Appendices A through D of that narrative, which  
19 is APP 379 through APP 394. I am sponsoring  
20 Attachment 1 to Part III, which is APP 395 to APP 405.  
21 Attachment 2 to Part III, which is APP 406  
22 through APP-412.  
23 Attachment 3 to Part III, APP 413 through  
24 APP 418.  
25 Attachment 6 to Part III, which is APP 921

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1 through APP 1128.  
2 Attachment 7 to Part III, which is APP 1131  
3 through APP 1137.  
4 Attachment 8 to Part III, which is APP 1138  
5 through APP 1151.  
6 Attachment 9 to Part III, which is APP 1152  
7 through APP 1155.  
8 Attachment 12 to Part III, which is  
9 APP 1402 through APP 1487.  
10 Attachment 13 to Part III, which is  
11 APP 1488 through APP 1499.  
12 Attachment 15 to Part III, which is  
13 APP 1566 through APP 1699. That's all  
14 Q Thank you.  
15 MR. GOSSELINK: Pass the witness.  
16 JUDGE NEWCHURCH: You wanted to offer the  
17 exhibits, right?  
18 MR. GOSSELINK: I do. Thank you, Your  
19 Honor. As I said in the beginning of this, I would like  
20 to offer Mehevec Exhibits 1 through 31.  
21 JUDGE NEWCHURCH: Are there further  
22 objections beyond that which has been ruled on?  
23 (No response)  
24 JUDGE NEWCHURCH: Then AM-1 through 31 are  
25 all admitted.

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1 (Exhibit Nos. AM-1 through AM-31 admitted)  
2 JUDGE NEWCHURCH: And you passed the  
3 witness for cross-examination.  
4 Mr. Terrill?  
5 MR. TERRILL: No questions, Your Honor.  
6 JUDGE NEWCHURCH: Ms. Noelke?  
7 MS. NOELKE: Thank you.  
8 CROSS-EXAMINATION  
9 BY MS. NOELKE:  
10 Q Mr. Mehevec, I'm Holly Noelke. I'm with the  
11 City of Austin.  
12 A Hi, Holly. How are you?  
13 Q I'm fine.  
14 You are familiar, are you not, with the  
15 terms of the agreement between City of Austin and BFI,  
16 the subject of the Rule 11 Agreement?  
17 A Yes, ma'am, I am.  
18 Q Does this agreement apply to current permit  
19 operations as well as any future operations of the  
20 landfill?  
21 A Yes, ma'am, it will.  
22 Q Does the agreement include requirements for  
23 erosion and sedimentation controls?  
24 A Yes, ma'am.  
25 Q As well as additional operational improvements,

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1 correct?  
 2 A Yes.  
 3 Q Does it also provide for prohibition on the  
 4 acceptance of waste after November 2015?  
 5 A Yes, ma'am.  
 6 Q And prohibits the use of the property or  
 7 facility for a transfer station, correct?  
 8 A Yes, that's correct.  
 9 Q Are you asking -- or is it your opinion that  
 10 special conditions that BFI has requested to be a part  
 11 of this permit, those conditions that were a part of the  
 12 agreement, that those apply in the event that there is a  
 13 conflict between special conditions and the application  
 14 or permit -- draft permit?  
 15 A Yes, ma'am. I agree that I am requesting it be  
 16 included, and I do agree that the special provisions  
 17 would take precedent over anything that was in the  
 18 application.  
 19 Q Thank you.  
 20 Under the agreement, does BFI agree to  
 21 submit a site development application to the City of  
 22 Austin?  
 23 A Yes, we do. In fact, we've already done that.  
 24 Q And under the agreement, does BFI agree to  
 25 revise its Storm Water Pollution Prevention Plan?

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1 A Yes, ma'am.  
 2 Q And has BFI complied with this requirement?  
 3 A We will comply with it by the date that's set  
 4 in the requirement. I think we have about eight more  
 5 days, and it's getting wrapped up right now. It's  
 6 somewhat slowed by the fact that I'm sitting here today,  
 7 but we're working on it.  
 8 Q Is it your opinion that the effectiveness of  
 9 the proposed stormwater facility of the northeast  
 10 portion of the landfill will be enhanced by making the  
 11 improvements called out in the agreement?  
 12 A I think it will, yes.  
 13 Q Do you agree that the agreement includes the  
 14 requirement to catch more drainage area to the pond  
 15 since it is -- which it's sized to handle it and  
 16 permanently vegetating the basin side slopes within 30  
 17 days of final grading?  
 18 A I agree the agreement requires us to construct  
 19 the pond as soon as that drainage area is available to  
 20 drain water to it. I don't think the agreement provides  
 21 more water to the pond than we had before. And I do  
 22 agree with the second part of your question that it  
 23 requires the stabilization of the side slopes of that  
 24 basin.  
 25 Q Within 30 days of final grading?

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1 A Yes, ma'am. Sorry.  
 2 Q Is it your opinion that the settlement terms  
 3 pertaining to the sequence and timing of revegetation,  
 4 the revegetation methods and additional erosion  
 5 prevention and sediment control devices will increase  
 6 the effectiveness of the overall erosion/sedimentation  
 7 control plan?  
 8 A I believe it will, yes.  
 9 Q Does the agreement provide for specifications  
 10 for soil composition, fertilizer, irrigation, and bed  
 11 preparation in a separate exhibit called Exhibit No. 1  
 12 to the Agreement?  
 13 A Yes, it does.  
 14 Q Are these practices and improvements of past  
 15 practices at Sunset?  
 16 A I would say they are, yes.  
 17 Q Regarding the photo in Exhibit AM-28, which  
 18 is --  
 19 A Okay. I have it.  
 20 Q Are you aware that the grass establishment in  
 21 the area depicted in this picture has taken over two  
 22 years to establish?  
 23 A I'm not aware of the timing of this. This is a  
 24 picture of the waste management facility next door to  
 25 BFI.

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1 Q Oh, it is?  
 2 A And I'm not sure when they first seeded this  
 3 area.  
 4 Q I apologize. I thought it was BFI.  
 5 Are you aware that the current areas in BFI  
 6 have taken two years or more and many re-seedings to  
 7 establish vegetation?  
 8 A In some areas, that's correct, yes.  
 9 Q Regarding the type of soil currently being  
 10 purchased for use at BFI, is it your intention to amend  
 11 the soil purchase from any source and the soil purchase  
 12 for use on the site as necessary to comply with the  
 13 Exhibit 1 requirements contained in the Agreement?  
 14 A Yes. Any soil that's used for topsoil would be  
 15 amended in that way. Daily cover that isn't the top  
 16 part, if we -- when we go back and put an intermediate  
 17 cover, if there's another layer, then we would amend  
 18 that part.  
 19 MS. WHITE: Your Honor, if Ms. Noelke could  
 20 speak up just a little bit, the Executive Director would  
 21 appreciate it.  
 22 MS. NOELKE: Oh, I'm sorry.  
 23 JUDGE NEWCHURCH: Ms. Noelke, if you could  
 24 pull your microphone a little closer. I think you  
 25 managed to get one of the bad microphones.

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1 Q (BY MS. NOELKE) Does the BFI agreement with  
 2 the City specify the type of erosion control devices,  
 3 their location, and the timing for placement?  
 4 A Yes.  
 5 Q Do you believe that the agreement with the City  
 6 is likely to provide more effective erosion and  
 7 sedimentation control at the BFI facility?  
 8 A It will definitely enhance the current program  
 9 that's out there.  
 10 MS. NOELKE: No further questions.  
 11 JUDGE NEWCHURCH: Mr. Morse?  
 12 MR. MORSE: Not at this time, Your Honor.  
 13 JUDGE NEWCHURCH: Ms. Mann?  
 14 MS. MANN: I pass.  
 15 MR. SHEPHERD: I do have a question.  
 16 CROSS-EXAMINATION  
 17 BY MR. SHEPHERD:  
 18 Q Mr. Mehevec, I'm Steve Shepherd with the  
 19 Executive Director. I have just one follow-up question  
 20 related to what the City just asked you.  
 21 I believe at one point they had asked about  
 22 whether or not additional stormwater would be routed to  
 23 some of the detention ponds. In the exhibit that was  
 24 marked AM-31, your supplemental prefiled, at the bottom  
 25 of that page, Page 46-A, Line 22, you're discussing

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1 routing additional stormwater to and through detention  
 2 and sedimentation ponds.  
 3 A I believe that is an error. The agreement  
 4 specifies timing. There's no additional water that  
 5 wasn't going to the pond before. It's a timing issue of  
 6 when the pond would be constructed and when the water  
 7 would be directed there.  
 8 MR. SHEPHERD: Thank you.  
 9 No further questions.  
 10 JUDGE NEWCHURCH: Mr. Head?  
 11 MR. HEAD: Yes.  
 12 CROSS-EXAMINATION  
 13 BY MR. HEAD:  
 14 Q Good afternoon, Mr. Mehevec.  
 15 A How are you doing, Mr. Head?  
 16 Q I've been pronouncing your name wrong for  
 17 months. Please forgive me.  
 18 A It's all right. It's a common mistake.  
 19 Q While we're on the Rule 11, I would like to go  
 20 to Item 1.  
 21 A Okay.  
 22 Q Where at least -- do you have the Rule 11 in  
 23 front of you itself?  
 24 A I do.  
 25 Q It says: BFI agrees to place intermediate

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1 cover and implement seeding events, on all side-sloped  
 2 disturbed areas on which activity is not recommended  
 3 within 60 days, etcetera, etcetera.  
 4 A Are you in Section D, Item 1?  
 5 Q Yes.  
 6 A I'm with you.  
 7 Q And just for clarity, talk about on all  
 8 side-sloped disturbed areas.  
 9 What is your understanding of a disturbed  
 10 area?  
 11 A Disturbed area would basically be a bare area,  
 12 an area that's been worked and therefore has no  
 13 vegetation on it. An area that's currently vegetated, I  
 14 would say, is an undisturbed area.  
 15 Q And under the wording of this, it appears that  
 16 activities could be recommended within 50 days of when  
 17 they stopped and there would be no obligation for BFI to  
 18 seed such area.  
 19 A That's correct.  
 20 Q And that could continue cyclically, could it  
 21 not, under the wording of this?  
 22 A If they were filling a slope and continually  
 23 placing on top of that slope every 50 days, every 45  
 24 days, then it could until it got to final grade, at  
 25 which point then they would seed.

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1 Q Now, then -- and I have a question -- and this  
 2 goes back to the application, so we're going to jump a  
 3 little bit.  
 4 A Okay.  
 5 Q It would be your Attachment 6.  
 6 A Okay.  
 7 Q Page 000989. And that's at the bottom. And  
 8 this is an original application where it says:  
 9 Abovegrade intermediate cover areas.  
 10 Do you see that?  
 11 A Yes, sir, I do.  
 12 MR. GOSSELINK: I don't, J.D.  
 13 Did you say Attachment 6?  
 14 THE WITNESS: It's Appendix --  
 15 MR. HEAD: I meant Appendix 6. I  
 16 apologize. It's 989 of the application, Paul.  
 17 Q (BY MR. HEAD) Mr. Mehevec, it states in this  
 18 section that if significant erosion is occurring, then  
 19 one or more of the following actions will be taken to  
 20 mitigate the erosion, including the placement of rock  
 21 berms, silt fencing, vegetation, and contouring where  
 22 the surface of the cover may be roughened with a series  
 23 of horizontal grooves running parallel.  
 24 And my question is: On the 60-day limit,  
 25 if BFI was to go out there and determined there had been

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1 some erosion and they roughened it with a series of  
2 horizontal grooves, would that in any way total the  
3 60-day requirement?  
4 A That's not my understanding of the intent of  
5 the requirement. My understanding was that activity was  
6 defined as if they were going to come back and do waste  
7 placement activities within 60 days.  
8 Q And to your knowledge, is activity, as you just  
9 defined it, defined either in the Rule 11 or in your  
10 amendments to the application?  
11 A I'm not aware whether it is or not.  
12 Q Going to Item 2 of the Rule 11, this addresses  
13 the immediate cover and implement seeding events on the  
14 top deck of the landfill. And it indicates in all  
15 disturbed areas on which the activity has not  
16 recommenced within 120 days.  
17 Again, you could have the area to be  
18 undisturbed and then they disturbed it on the 118th day,  
19 and under the strict wording of this, there would be no  
20 obligation to start that seeding, correct?  
21 A If they did more waste placement activities up  
22 there, which I think it would be fairly unlikely, on the  
23 top deck, the majority of that would be at final grade.  
24 Q And, once again, the word "activity" is not  
25 specifically defined in this Rule 11 nor in the

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1 application?  
2 A I think, as I stated before, I'm not aware  
3 whether it is or not.  
4 Q Okay. And you've worked for BFI since the  
5 inception of this amendment process, which has been long  
6 and laborious, I know. As you read this Rule 11, do you  
7 envision this as requiring additional water in order to  
8 grow the vegetation that Ms. Noelke was talking about?  
9 A Yes, I do. Beyond what they're doing  
10 currently?  
11 Q Yes.  
12 A Yes, I would envision that they would have to  
13 apply more water -- more irrigation than they are using  
14 currently.  
15 Q And do you have personal knowledge of what  
16 water availability BFI has on site with regard to the  
17 size of the force mains?  
18 A Yes. I have some knowledge.  
19 Q Could you give me the knowledge you do have?  
20 A BFI has a permanent inch-and-a-half water meter  
21 that's in the northeast corner of this site. This meter  
22 is tied into their current irrigation system. They also  
23 have temporary three-inch meters that they use on the  
24 fire hydrants along Giles Lane. In addition, there's a  
25 55-inch water main in Giles that there's a stub-out just

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1 south of the BFI property that could be accessed if we  
2 needed additional water. There's also on-site water  
3 storage in the pond, the trapezoidal pond, that we draw  
4 from to try to give us a buffering for water use.  
5 Q I am assuming at this point in time there's not  
6 a whole heck of a lot of water.  
7 A I think it's actually quite full right now.  
8 Q Really?  
9 A I'm sure our water bill would reflect that.  
10 Q So BFI actually puts City water in the pond for  
11 fire protection purposes or other purposes?  
12 A At times they do usually for cell construction  
13 purposes because the contractor needs a large amount of  
14 water in a fairly short amount of time. So we use the  
15 pond as a storage device to kind of buffer-out that  
16 demand.  
17 Q And BFI has submitted a site plan permit to the  
18 City of Austin, correct?  
19 A Yes, sir. I believe December 22nd, 23rd,  
20 around that period.  
21 Q And, to your knowledge, has that been  
22 distributed to any of the parties in this proceeding?  
23 A I'm not aware of whether it has or not.  
24 Q Okay. Did you prepare the site plan?  
25 A I did, yes.

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1 Q And what is entailed in this site plan for the  
2 City?  
3 A It primarily incorporates the Rule 11 Agreement  
4 stuff. It shows all of the drainage for the facility.  
5 It shows the pond. The water quality and detention pond  
6 have been permitted previously through the City.  
7 Q Correct.  
8 A This permit is exclusively for the vertical  
9 expansion of the landfill and the inclusion of the  
10 Rule 11 Agreement stipulations.  
11 Q To your knowledge, has the City approved the  
12 site plan permit?  
13 A They have not approved it yet. It is currently  
14 under review.  
15 Q Does the site plan permit recently, submitted  
16 to the City of Austin, make any modifications to the  
17 sedimentation basins on site?  
18 A No, it does not. I will say short of -- I  
19 believe there's a requirement in the agreement about  
20 maintenance of the basins. Do you want me to check that  
21 real quick?  
22 Q We'll get there. Thank you.  
23 A Okay.  
24 Q So as I understand it, there are two existing  
25 sedimentation basins on the southern boundary, and there

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1 are two sedimentation basins on the western boundary.  
 2 A That's correct so far.  
 3 Q At one point in time on some of your maps there  
 4 was an indication of a small sedimentation basin on the  
 5 northern portion.  
 6 A Yeah. It's about midway from the west to the  
 7 east. There's one along Blue Goose Road.  
 8 Q Right. And, as I recall, there are no  
 9 sedimentation basins on the eastern portion.  
 10 A That's correct. Yes.  
 11 Q And then we have -- currently we have the  
 12 trapezoidal pond. And part of this -- part of this  
 13 permit expansion is approval of the large stormwater  
 14 detention water quality pond?  
 15 A That's correct.  
 16 Q Now, is it my understanding that the City of  
 17 Austin and Travis County have already signed off on that  
 18 large water quality detention pond?  
 19 A That's correct.  
 20 Q And is it your understanding that BFI still  
 21 needs the approval of TCEQ to this proceeding in order  
 22 to go forward with construction of that pond?  
 23 A That's correct. Or they would have to do a  
 24 modification to their current permit if they wanted to  
 25 incorporate that pond separate from the amendment.

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1 Q And Ditch K was the subject of the CLOMR,  
 2 correct?  
 3 A And LOMR followed that up.  
 4 Q And LOMR followed that up. And that was  
 5 reconfiguration or a movement of the floodplain, if you  
 6 will?  
 7 A I'll give you that.  
 8 Q And after that activity, the hundred-year  
 9 floodplain was up towards the northernmost boundaries of  
 10 the landfill site?  
 11 A That's correct. It runs parallel to Blue Goose  
 12 Road. It's approximately 50 to 100 feet off of Blue  
 13 Goose.  
 14 Q And Ditch K -- large Ditch K, is that within  
 15 the new 100-year floodplain?  
 16 A Ditch K contains the 100-year floodplain. So  
 17 the boundaries of the floodplain are the boundaries of  
 18 Ditch K.  
 19 Q And as I understand Ditch K, Ditch K is going  
 20 to pick up water from certain drainage areas that we'll  
 21 get to on the map.  
 22 A Okay.  
 23 Q And some of the water in Ditch K is just going  
 24 to run directly down from Ditch K from where it entered,  
 25 including off-site water.

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1 A That's correct.  
 2 Q And then the detention pond, the detention pond  
 3 to be, that is going to pick up waters coming down from  
 4 the downchutes which are proposed?  
 5 A From one downchute, that's correct.  
 6 Q So from just one downchute?  
 7 A Right. There's one downchute that serves the  
 8 largest single drainage area on the facility, which is  
 9 87 acres. That downchute is the inlet into Ditch K -- I  
 10 mean into the pond. I'm sorry.  
 11 Q And the revision -- the Rule 11 revision, which  
 12 speaks -- let me find that section -- bear with me.  
 13 This is all fairly new to us.  
 14 Okay. I'm talking about No. 8 of the  
 15 Rule 11.  
 16 A Okay. I've got it.  
 17 Q "Stormwater runoff from the landfill area  
 18 designated as Drainage Area 2 shall be routed through  
 19 the existing detention pond, or the proposed water  
 20 quality/detention pond, when the waste fill in Drainage  
 21 Area 2 has reached the final grades."  
 22 Prior to the waste fill reaching final  
 23 grade, where does the drainage from Drainage Area 2,  
 24 where would that go to?  
 25 A Yeah. It would go into -- there's a perimeter

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1 ditch at the toe of that area, both on the north side  
 2 and the east side and Drainage Area 2 kind of wraps  
 3 around the landfill. So there's ditches on both the  
 4 east side of the landfill and north side of the landfill  
 5 that would collect that water and route it towards  
 6 Outfall 1.  
 7 Q Okay. So that's where's I was getting. So  
 8 Drainage Area 2 pre post-Rule 11 is still going to exit  
 9 Outfall 1?  
 10 A Yes, that's correct.  
 11 Q And initially it will go through Ditch K?  
 12 A No.  
 13 Q Never runs through Ditch K?  
 14 A No.  
 15 Q Tell me where -- how the water will be conveyed  
 16 from Drainage Area 2 to Outfall 1.  
 17 A As I mentioned, Drainage Area 2 wraps around  
 18 the northern and eastern face of the landfill. There's  
 19 two separate ditches, one on the north and one on the  
 20 east, that collects that water at the toe and convey it  
 21 towards the -- toward Outfall 1.  
 22 Q Okay. Do you recall the names of those ditches  
 23 because that --  
 24 A I can look it up if you will give me just a  
 25 second.

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1 Q Sure.  
2 A The ditch on the northern face -- I'm on  
3 APP 968.  
4 Q 968?  
5 A Which is Figure 6-4 of Attachment 6.  
6 Q Give me just a second, please.  
7 A If you see on the northern side of the  
8 landfill, there's Ditch L, which is delineated by some  
9 kind of squiggly arrows, and then labeled towards the  
10 northeast corner.  
11 Q On the northern side?  
12 A Yes, sir.  
13 Q I see a Ditch J.  
14 A No. Go further east. Right at the northeast  
15 corner of the footprint of the landfill.  
16 Q Northeast?  
17 A On the north face.  
18 Q Right.  
19 A There's a ditch running along the entire --  
20 that northern section. And at the right of the  
21 northeast corner, it says Ditch L.  
22 Q I see it.  
23 A Right below a label that says a 7-by-2 concrete  
24 box culvert.  
25 Q Got it.

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1 A That would convey the water coming off the  
2 northern portion of Drainage Area 2 towards Outfall 1.  
3 Q You're wrapping the water from D-2 way around?  
4 A Well, before it's at final grade, these berms  
5 won't be in place, so it will be controlled by  
6 topography. So water won't be wrapping around at that  
7 point. It will be straight -- flowing down that slope  
8 and going into that ditch.  
9 Q While we're on this Figure 6-4, the  
10 Downchute D, do you see that one coming out of --  
11 A Yes, sir.  
12 Q -- I guess Drainage Area D-1, that will go into  
13 Ditch K, I assume?  
14 A The one from Drainage Area D-1, yes.  
15 Q And the only -- there's another Downchute D,  
16 and that's going to go into the big detention pond?  
17 A The one in Drainage Area 2, that's correct.  
18 Q Right. And that's the -- as I understand this,  
19 the only water entering the large stormwater detention  
20 pond will coming from Downchute B?  
21 A That's correct. It happens to be just over a  
22 third of the total landfill.  
23 Q Okay. And the water from the detention pond,  
24 that eventually is going to be discharged into Ditch K,  
25 correct?

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1 A That is correct, the water that leaves the  
2 pond, yes.  
3 Q And it will go out Outfall 1?  
4 A That's correct.  
5 Q And, as I understand, you also have drainage  
6 from, you know, like with where the gas plant is and the  
7 white good storage is, I guess D-9 area, that drainage  
8 also goes to Outfall 1?  
9 A Yes. Drainage D-9 goes to Outfall 1.  
10 Q And all of the drainage leaving Outfall 1,  
11 before it gets to Outfall 1, passes through a  
12 jurisdictional wetland pond?  
13 A I would say essentially all of it. There's a  
14 little bit that doesn't, but I would say predominantly  
15 it does, yes.  
16 Q And the water coming from the D-9 area, there's  
17 no sediment basins before it reaches the wetland pond,  
18 is there?  
19 A There's no basins. There are other --  
20 MR. GOSSELINK: Objection, Your Honor.  
21 There are two wetland areas that have been identified on  
22 one of these exhibits that have been talked about.  
23 Which wetland area are we discussing before we answer  
24 this question? It's confusing.  
25 MR. HEAD: Yes. Let me try to take away

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1 the confusion. When I say "wetland pond," I mean the  
2 pond. If I want to refer to the other wetland, it will  
3 be the 3.5-acre wetland.  
4 MR. GOSSELINK: Okay.  
5 A To answer your question, there aren't any  
6 basins. There are other erosion and sedimentation  
7 controls that do treat the water going to that pond from  
8 Drainage Area 9.  
9 Q (By Mr. Head) Right.  
10 And in your Attachment 6, you discussed  
11 your drainage calculations, and I think you also had an  
12 erosion control plan somewhere in that attachment,  
13 correct?  
14 A That's correct. Appendix 6-A.  
15 Q And when you discuss -- never in that section  
16 is there a reference to wetlands, is there?  
17 A In Appendix 6-A or Attachment 6?  
18 Q Either one.  
19 A I don't know if there is or not. I could try  
20 to look for you. I'm sure it's discussed in the  
21 narrative somewhere, but I could be incorrect about  
22 that. Normally that would be handled in Part II of the  
23 application. There's a wetland section.  
24 Q Well, you mention in your application -- you do  
25 mention four erosion basins, correct?

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1 A Yeah, at least. Yes.  
 2 MR. GOSSELINK: Objection. Do you mean  
 3 "sedimentation"?  
 4 MR. HEAD: Sedimentation. I'm sorry, Paul.  
 5 You're right. Sedimentation basins. Good catch.  
 6 Q (BY MR. HEAD) You mention four sedimentation  
 7 basins?  
 8 A Yes, at least that many. That's correct.  
 9 Q But in the text you never mention the wetland  
 10 pond as a sedimentation basin, correct?  
 11 A That's correct. Because the intent was not to  
 12 take any credit from the existing pond.  
 13 Q But you do have an exhibit, which I'll find,  
 14 which labels the wetland pond as a sedimentation, slash,  
 15 water quality pond?  
 16 A I believe it does say that, and I believe  
 17 that's a misrepresentation.  
 18 Q Did you prepare that exhibit?  
 19 A I sealed that exhibit, yes. It was prepared  
 20 under my supervision.  
 21 Q All right. Off the record for just a second,  
 22 please, Judge.  
 23 JUDGE NEWCHURCH: Off the record.  
 24 (Discussion off the record)  
 25 Q (By Mr. Head) And just for the record, Figure

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1 6A-1 and Figure 6A-2 at Application 000997 and 996, they  
 2 do indicate in the northeast corner an existing  
 3 sedimentation/water quality pond, correct?  
 4 A That's correct. And I believe that accurately  
 5 portrays its natural function, but it was not intended  
 6 to imply that we were utilizing that to -- in any way to  
 7 protect sedimentation discharge on the site.  
 8 Q Okay. Now, Mr. Mehevec, you prepared what I'll  
 9 call the RUSLE calculation. You probably pronounce it  
 10 RUSLE?  
 11 A Tomato, tomato.  
 12 Q All right.  
 13 A Actually, I did not prepare them. They were  
 14 prepared and sealed by Mr. Olson.  
 15 Q You are familiar with the RUSLE calculation in  
 16 the application?  
 17 A Yes, sir, I am.  
 18 Q As I understand, that's the Revised Universal  
 19 Soil Loss Equation.  
 20 A That's correct.  
 21 Q And as I further understand that, what that  
 22 calculates is at final cover, final closure, that  
 23 calculates the tons per acre per year soil loss both at  
 24 the cap and at the 41 side slopes?  
 25 A That is correct.

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1 Q And in the application, we have calculated 0.7  
 2 tons per acre per year of soil loss at the cap and 2.18  
 3 tons per acre per year of soil loss for the 41 slopes,  
 4 correct?  
 5 A That sounds about right.  
 6 Q And how many acres of 41 slope are in the  
 7 current application as opposed to the 2002 MOD?  
 8 A I'm not sure of the exact number. I wouldn't  
 9 have a guess as to what the exact amount is. I could  
 10 probably figure it out.  
 11 Q Would approximately 68 acres sound right to  
 12 you?  
 13 A For -- yeah, I think for a 258-acre landfill,  
 14 it looks about right.  
 15 Q And so if we have additional acreage, we have  
 16 additional height at 41 slope, correct?  
 17 A That's correct.  
 18 Q So isn't it true that there will be more soil  
 19 loss generated from the landfill at full build-out than  
 20 with the 2002 modification configuration?  
 21 A Based on the RUSLE calculations or RUSLE  
 22 calculations, there will be more soil eroded from the  
 23 landfill overall than there was in the 2002 MOD  
 24 configuration.  
 25 Q And prior to closure, have you run any

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1 calculations to determine during active operations,  
 2 prior to final capping and prior to planting the  
 3 vegetation at the top, how much additional tons per year  
 4 per acre of erosion is anticipated with this expansion?  
 5 A I haven't, primarily because it would be  
 6 speculation on my part. Because during operation -- the  
 7 landfill operator installs erosion control as he sees  
 8 necessary and he sees problems and addresses them. It  
 9 would be almost impossible for me to predict any interim  
 10 situation with any accuracy.  
 11 Q So you haven't done those calculations?  
 12 A I have not done those calculations, no.  
 13 Q And during the active operations on the  
 14 vertical expansion, you're not going to have the  
 15 diversion berms on the 41 slopes, are you?  
 16 A Not the same ones that are shown on final  
 17 cover, no.  
 18 Q So as I understand the two-to-one sloped  
 19 diversion berms on the four-to-one slope, that's  
 20 something that's going to occur at closure?  
 21 A The final closure -- the final cover berms,  
 22 that's correct. They do use soil berms of similar  
 23 design during interim operations currently, and they  
 24 place them as they see areas that may be experiencing  
 25 erosion. They will put a berm to collect water and

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1 convert it to a temporary downchute or some other  
 2 feature.  
 3 Q Do you know the size of those berms?  
 4 A They're usually two- to three-foot high. The  
 5 top width is probably four-feet across. Now, they're  
 6 not perfectly cut. So they're probably -- a  
 7 three-to-one, two-to-one side slope on them.  
 8 Q And I think another witness mentioned yesterday  
 9 there are some temporary downchutes?  
 10 A There's currently five, I believe.  
 11 Q Are they vegetated downchutes?  
 12 A No. They're synthetic. They're HDPE.  
 13 Q Wouldn't you anticipate during active  
 14 operations with the expansion more soil loss than with  
 15 the current permitted configuration, prior to closure?  
 16 A I wouldn't say so, because I think we have much  
 17 more enhanced interim erosion controls, especially with  
 18 the Rule 11 Agreement brought in, so I don't think that  
 19 would be true.  
 20 Q Just if you can do this -- and we're treading  
 21 on unfamiliar territory -- pull the Rule 11 out for a  
 22 second.  
 23 Imagine I prepared my cross prior to this  
 24 Rule 11 showing up and Paul's pleading last Friday at  
 25 4:30, without the City of Austin controls, would you not

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1 agree that there would be more soil loss coming off that  
 2 landfill with the expansion prior to closure than the  
 3 2002 model?  
 4 A No, I wouldn't because there are other  
 5 enhancements that were included in the application prior  
 6 to the Rule 11 that aren't in the current permit.  
 7 Q And what were those enhancements?  
 8 A There was a requirement that there be a silt  
 9 fence at the toe of all slopes that haven't been  
 10 vegetated. That's currently a practice at the site, but  
 11 it's not required in the current application. Also,  
 12 under the current application -- interim -- I guess you  
 13 won't have the pond, so I can't take credit for it with  
 14 a -- I would say that would be the biggest one. We now  
 15 have a line of silt fence at all slopes that aren't  
 16 vegetated to catch any silt coming down the slope.  
 17 Q How high are the silt fences?  
 18 A I think a standard silt fence is two-foot high.  
 19 Q And how often are they inspected?  
 20 A I would have to look that up for you. I can.  
 21 Q If you know.  
 22 A Okay. Sorry. I hid it on a drawing, typical  
 23 engineering move. It's in a note. The silt fences are  
 24 inspected weekly or after each rainfall event. And  
 25 that's on Figure 6-A-4.

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1 Q Give me the --  
 2 A APP 999.  
 3 Q 999.  
 4 Has the Rule 11 made any changes with these  
 5 silt fences?  
 6 A It's increased their frequency. There's more  
 7 silt fence required under the Rule 11 than there were  
 8 before.  
 9 Q Can you show me where in the Rule 11, please?  
 10 I see it --  
 11 A It's in a couple of places. Do you want me to  
 12 go through them one at a time or --  
 13 Q If you don't mind.  
 14 A Okay. Under Section D, No. 2, there is a silt  
 15 fence to be installed or a mulch berm to be installed at  
 16 the top and bottom of each of these temporary downchutes  
 17 that we talked about earlier. That was not in the  
 18 application before.  
 19 Under section --  
 20 Q Let me stop you while you're looking. The idea  
 21 behind this is when the sediment comes rolling down the  
 22 downchute, the silt fence supposedly catches it?  
 23 A Right.  
 24 Q Okay.  
 25 A Under Section 6, that's dealing with soil

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1 stockpiles at the site.  
 2 Q Uh-huh.  
 3 A It says: Perimeter sediment/erosion control  
 4 devices, such as silt fences, hay bales, or other  
 5 systems acceptable to the City shall be in place prior  
 6 to establishment of any soil stockpiles on the site.  
 7 And then it's got some additional  
 8 requirements that the stockpile height gets above a  
 9 certain point.  
 10 Q Okay. So we've got silt fences for the  
 11 downchutes and we've got silt fences for the stockpiles?  
 12 A Right. Item 7, I believe, just reiterates a  
 13 requirement that was already in the application: BFI  
 14 shall install or maintain silt fences or mulch berms  
 15 within 14 days of completion of intermediate cover at  
 16 the base of all side slope and top deck intermediate  
 17 cover areas until adequate growth vegetations is  
 18 achieved.  
 19 I would say that's actually an enhancement  
 20 because that would put a silt fence at the break between  
 21 the top deck and the side slope, also.  
 22 Q Okay. As we sit here today, does the Sunset  
 23 Farms facility have silt fencing at the bottom of every  
 24 slope?  
 25 A That's unvegetated, I believe they do.



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1 Q And how many slopes are vegetated?  
2 A The entire southern portion of the landfill is  
3 vegetated. I think the entire western portion is  
4 well-vegetated. The north, there's probably a third of  
5 it that's well-vegetated and a portion that's been  
6 active fairly recently.  
7 Q Okay. Now, did you design the sedimentation  
8 basins for the landfill?  
9 A Which one?  
10 Q Well, there's four sedimentation basins.  
11 There's the one -- I'm not talking about the big --  
12 A Well, I have a different answer depending on  
13 which of the four you're talking about.  
14 Q Did you design the sedimentation basins on the  
15 southern side?  
16 A No, I did not.  
17 Q Do you know who did design those?  
18 A I don't believe they were designed. They were  
19 installed by the operator as a part of their normal  
20 stormwater pollution controls.  
21 Q So you don't have any knowledge as to whether  
22 any calculations were made in the design and  
23 installation of the sediment basins on the -- southern  
24 side, did we say?  
25 A Right.

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1 Q -- southern side with regard to capacity to  
2 rain sediment?  
3 A I'm not aware of any calculations that were  
4 made at the time they were constructed. However, we  
5 surveyed them and determined they would meet the same  
6 criteria we used to design the ones on the west side.  
7 Q Okay. So you designed the ones on the west  
8 side?  
9 A Our firm did, yes.  
10 Q And was that a part of the 2002 MOD?  
11 A It was included in that MOD, yes.  
12 Q And what factors did you take into account in  
13 designing sedimentation basins on the west side?  
14 A We followed the City of Austin criteria and  
15 calculated what a one-half inch of runoff capture volume  
16 would be for the drainage area that goes to each pond.  
17 And the ponds were designed based on that criteria. The  
18 configuration and outlet for the pond were also based on  
19 City of Austin specifications.  
20 Q And was this the Austin Environmental Criteria  
21 Manual?  
22 A That would be one place. The actual  
23 requirement for the half-inch capture is in the land  
24 development code. I think Chapter 25.8, Environment.  
25 I'm offering it up.

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1 Q Isn't it true that City of Austin rules for  
2 water quality controls allow from a one-half inch up to  
3 1.3 inches of capture velocity?  
4 A Yes. If you have impervious cover that exceeds  
5 20 percent on your site, you have to add an additional  
6 1/10th of an inch for every impervious cover over  
7 20 percent. If you have 40 percent impervious cover,  
8 you would capture 7/10ths of an inch. If you had a  
9 hundred percent impervious cover, you could potentially  
10 capture 1.3 inches or be required to capture that much.  
11 Q How much impervious cover did we have at the  
12 landfills?  
13 A I think we're just under 5 percent.  
14 Q Have you done specific calculations as to how  
15 much of the 25-year/24-hour storm runoff will be  
16 captured by the sedimentation ponds?  
17 A It will capture the first half-inch of that  
18 runoff.  
19 Q And what happens to the rest of it?  
20 A If there's a splitter feature in the pond, that  
21 water would be routed around the sediment chamber and  
22 discharged into the outfall.  
23 Q And how big of a rainfall event equates to a  
24 half-inch runoff?  
25 A I would think it's about somewhere between a

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1 1.2- to 1.4-inch event, somewhere in that range, based  
2 on the characteristics of the site.  
3 Q Okay. This runoff, if you get the rain, you're  
4 going to have runoff that's going to contain total  
5 dissolved solids, correct?  
6 A Suspended or dissolved?  
7 Q Total suspended solids.  
8 A It will most likely contain some total  
9 suspended solids, yes.  
10 Q And isn't TSS the concern of the sediment  
11 control ponds?  
12 A That's the feature they're trying to capture,  
13 yes.  
14 Q And have you done any calculations as to how  
15 much TSS is actually in this runoff, depending on a  
16 1-1/2 inch rainfall event?  
17 A No. And I think that would vary greatly  
18 depending on the vegetation level of the drainage area,  
19 how the storm progressed, whether it was a very quickie  
20 storm or very slow storm. I don't think there's a way  
21 to calculate that.  
22 Q So as we sit here today, we don't have those  
23 calculations?  
24 A That's correct. We follow the criteria that  
25 the City established.

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1 Q How much sediment removal is achieved by the  
2 ponds on the southern boundary of the facility?  
3 A For the water they capture, it's almost a  
4 hundred percent removal because those ponds don't  
5 discharge. They're basically retention ponds. So they  
6 fill up, a volume of water is captured and stays there  
7 until it evaporates or infiltrates into the soil, which  
8 at this site, nothing infiltrates very quickly, so the  
9 water generally evaporates out and all of a sudden has  
10 left the pond.  
11 Q So where do the ponds on the south side  
12 discharge?  
13 A They discharge onto the Waste Management  
14 property. Would you like more specific on each one?  
15 Q Sure. Please.  
16 A The one at Outfall 2 discharges into a large  
17 drainage channel that Waste Management has constructed  
18 between two of their units. The pond at Outfall 3  
19 discharges into I believe a 48-inch, but it may be a  
20 30-inch, storm sewer pipe that routes that water  
21 parallel to the fence line and then recombines it with  
22 the water at Outfall 2, so they both end up in that same  
23 ditch.  
24 Q Are you familiar with the facility's Storm  
25 Water Pollution Prevention Plan?

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1 A I've seen it and read it, yes.  
2 Q Does the Storm Water Pollution Prevention Plan  
3 have any language with regard to protections of either  
4 the 3.5-acre wetland or the wetland pond on site?  
5 A I'm not aware of any, no.  
6 Q Okay. You or your firm was responsible for  
7 filing the CLOMR with -- CLOMR application with FEMA  
8 with regard to the floodplain?  
9 A That's correct. I was responsible for that  
10 work.  
11 Q And did you point out or did anyone with your  
12 firm point out to FEMA the existence of the 3.5-acre  
13 wetland and the wetland pond?  
14 A At the time we filed the CLOMR, we didn't  
15 realize the 3.5-acre wetland existed. It had never been  
16 delineated even though that area had been surveyed  
17 multiple times by wetland specialists.  
18 Q So Horizon submitted a report attached to your  
19 CLOMR request that had no -- that mentioned two wetland  
20 ponds at the northeast corner but did not mention the  
21 3.5-acre?  
22 A No. There was no wetland's report attached to  
23 the CLOMR request. We did do an authorization through  
24 the Corps of Engineers, a separate agency, where Horizon  
25 submitted a report to the Corps about the project.

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1 Q And that Horizon report submitted to the Corps  
2 made no mention of the 3.5-acre wetland?  
3 A I believe that's correct. Yes.  
4 Q And the 3.5-acre wetland, as shown on the  
5 Horizon map in the exhibit here, was in the prior  
6 100-year floodplain, correct?  
7 A Partially, yes.  
8 Q And since the reconfiguration, if that's the  
9 correct term, that water has been cut off from the  
10 3.5-acre wetland; is that not also correct?  
11 A Some of it has, yes.  
12 Q All right.  
13 JUDGE NEWCHURCH: Let's take a 10-minute  
14 break.  
15 (Recess: 3:31 p.m. to 3:44 p.m.)  
16 JUDGE NEWCHURCH: Mr. Head?  
17 Q (BY MR. HEAD) Mr. Mehevec, the large proposed  
18 stormwater detention water quality pond, as I  
19 understand, has been permitted by the City of Austin and  
20 Travis, but you're awaiting approval from TCEQ?  
21 A That's correct.  
22 Q And I think we discussed that the only entry of  
23 water there would be Downchute B coming into there?  
24 A That's correct.  
25 Q When do you anticipate, not the construction,

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1 but the actual utilization of the detention pond?  
2 A As soon as Drainage Area 2 gets to its final  
3 grades, we will start routing water into that pond and  
4 utilizing it.  
5 Q So is it your testimony that you would install  
6 Downchute B prior to final closure?  
7 A If we weren't going to close the area at that  
8 time, I think we would either initiate final closure on  
9 the area or install a temporary downchute to get water  
10 to the pond.  
11 Q Do you have a time estimate as to when water  
12 coming off of the landfill will actually be entering  
13 that detention pond?  
14 A I haven't done any calculations to see how the  
15 fill would progress to determine when we would have  
16 Drainage Area 2 filled up, no.  
17 Q Could it be two to three years from now?  
18 A Yes, it could definitely be two to three years  
19 from now, because I think our current capacity will get  
20 us to 2011, so I think it would be after that, in fact.  
21 Q Okay. And the existing sedimentation ponds,  
22 which you had nothing to do with, as I recall, on the  
23 southern portion --  
24 A I did no design on them.  
25 Q Okay. Do you know whether there was any

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1 requirement that those ponds be permitted by any  
 2 federal, state, or local agency?  
 3 A I'm not aware of when they were constructed, so  
 4 depending on what the jurisdiction was at the site at  
 5 the time. I'm not exactly sure what the answer would be  
 6 to that question.  
 7 Q Are you, as we sit here today, aware of any  
 8 permits by state, local, or federal agencies being  
 9 issued for those southern two sedimentation ponds?  
 10 A I would say they are permitted through the TCEQ  
 11 because they were shown, I believe, on our 2002 MOD as  
 12 existing conditions and accepted that way. I don't  
 13 believe they were permitted through the City or the  
 14 State.  
 15 Q But as I understand your 2002 MOD, BFI  
 16 requested authorization for the west sedimentation pond?  
 17 A To construct them, yes. The other two were  
 18 already there.  
 19 Q In your view --  
 20 A Yes, I believe so.  
 21 Q In your view, the issuance of the MOD was the  
 22 Agency's approval. Is that your testimony?  
 23 A They didn't disagree with our showing them as  
 24 existing conditions.  
 25 Q Okay. Now, Ditch K currently has some pools

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1 and rock berms?  
 2 A That's correct.  
 3 Q When you did your hydraulics, your calculations  
 4 for this application for pre- and postdevelopment  
 5 conditions, did you model those pools and rock berms?  
 6 A We did indirectly. We used a much higher  
 7 Manning's coefficient than I would have used normally,  
 8 and that was to account for the fact that there was both  
 9 vegetative and structural obstructions in the channel.  
 10 Q And how much -- I know you've done this  
 11 calculation, but I'm not a hydraulic guy. But how much  
 12 water enters Ditch K at 25-year/24-hour storm both from  
 13 on site and off site?  
 14 A It's around 700 cfs. I think the total outflow  
 15 at Outfall 1 is in the range of 1,000 cfs. So I think  
 16 the ditch is probably carrying about 700.  
 17 Q Wouldn't you agree with me that those pools and  
 18 rock berms are not effective sedimentation control  
 19 devices for that type of flow on a 25-year/24-hour  
 20 storm?  
 21 A No, I wouldn't agree with that.  
 22 Q And why not?  
 23 A Well, one, they've been through a hundred-year  
 24 storm and performed very well. Both the City and the  
 25 State came out and inspected the channel after we had an

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1 event that exceeded a hundred-year intensity. And both  
 2 agencies said they performed well and, in fact, I think  
 3 somewhat patted us on the back for our erosion controls  
 4 in the channel project.  
 5 Q When the -- the City and State came out?  
 6 A The City and the TCEQ. Yes.  
 7 Q Did they take any samples at the Outfall 1 to  
 8 determine compliance with the Storm Water Pollution  
 9 Prevention Plan?  
 10 A I know samples have been taken in Outfall 1  
 11 before by other agencies. I'm not sure if they did in  
 12 that particular event. If I remember, that event was a  
 13 nighttime event, so they may not have taken a sample.  
 14 Q May not have grabbed a sample?  
 15 A Right. But they have come out during other  
 16 events and grabbed samples.  
 17 Q And were those samples all below 100 TSS?  
 18 A I wasn't given copies of them, so I'm not sure.  
 19 Q So you don't know what the samples said?  
 20 A No. But I was never informed that there was  
 21 any violation or that they had any concerns about the  
 22 sample.  
 23 Q Okay. And going back to Figure 6A-1, which is  
 24 996 -- I may be repeating a question before -- but on  
 25 the eastern side you've got Ditch A. Do you see

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1 Ditch A?  
 2 A Yes, I do.  
 3 Q Ditch A appears to -- is it just renumbered  
 4 Ditch N?  
 5 A No. Ditch N is on the other side of the road  
 6 there. So there's a ditch on both sides of the road.  
 7 Q Okay. So what sedimentation controls are there  
 8 in Ditch A?  
 9 A Ditch A is what's termed as a grassy swale.  
 10 It's a control by itself. There's also silt fence that  
 11 wraps the entire pond in the northeast corner that  
 12 filters the water before it goes into that pond.  
 13 Q Okay. And what about sedimentation controls in  
 14 Ditch N?  
 15 A Ditch N doesn't exist currently, but it's  
 16 proposed to be the same configuration as Ditch A. It  
 17 would be a grassy swale. And then, again, there's a  
 18 silt fence around the pond.  
 19 Q Okay. Well, you've got me confused, and I knew  
 20 you could do it. I see Ditch A.  
 21 A Right.  
 22 Q You're telling me Ditch N does not exist, but  
 23 I'm seeing these little arrows heading towards the  
 24 existing sedimentation water quality pond.  
 25 Are you telling me, as we sit here today,

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1 that those arrows -- there's no flow, as we speak -- or  
 2 would be no flow?  
 3 A Well, what I'm saying is the road that's shown  
 4 right there --  
 5 Q Show me the road.  
 6 A It goes up -- it goes between -- you see where  
 7 it says Ditch N?  
 8 Q Yes.  
 9 A Just to the right of that, there's a white  
 10 space that curves around.  
 11 Q I see that.  
 12 A And it goes -- it kind of ends in a little mini  
 13 T head.  
 14 Q Yes, sir.  
 15 A That's a road --  
 16 Q Yes.  
 17 A -- a proposed road under this application.  
 18 That road doesn't exist currently. So what happens is  
 19 flow in that area flows just straight into Ditch A,  
 20 which does exist currently. When the road is  
 21 constructed, it will cut off that flow and Ditch N will  
 22 have to be created just to catch the flow up against the  
 23 road.  
 24 Q Okay.  
 25 MR. HEAD: Pass the witness.

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1 JUDGE NEWCHURCH: Mr. Blackburn?  
 2 MR. BLACKBURN: Thank you, Your Honor.  
 3 CROSS-EXAMINATION  
 4 BY MR. BLACKBURN:  
 5 Q Is it Mr. Mehevec?  
 6 A Mehevec, yes, sir.  
 7 Q Mr. Mehevec, I have a number of questions to  
 8 ask you. What I'd like to start with is this Rule 11  
 9 Agreement. And I believe that it is your testimony that  
 10 there is a requirement that you make a submission to the  
 11 City. Is that a site development plan; is that what  
 12 that is?  
 13 A Yes, sir. That's correct.  
 14 Q Now, would that be for the increased height,  
 15 the expansion of the landfill?  
 16 A Yes, that's correct.  
 17 Q And would that include approval of the drainage  
 18 aspects associated with that?  
 19 A It's being reviewed for that aspect, yes.  
 20 Q And is the City obligated to approve it under  
 21 the Rule 11 Agreement?  
 22 A The City, under the agreement, is obligated not  
 23 to unnecessarily to deny approval. If the application  
 24 meets all of the current City code and standards, then  
 25 they are obligated to approve it, just like any other

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1 site plan.  
 2 Q Okay. Let me ask the court reporter to give  
 3 you NNC Exhibits 1 through 5.  
 4 JUDGE NEWCHURCH: Can you remind everyone  
 5 of what they are?  
 6 MR. BLACKBURN: Sure. It's the MOD from  
 7 2002. And then there were four sheets, two from the  
 8 MOD, and two from the application that Mr. Shull marked  
 9 boundaries upon is what the exhibits are.  
 10 (Discussion off the record)  
 11 A I believe I have them, Mr. Blackburn.  
 12 Q (BY MR. BLACKBURN) Okay. I'd like you to just  
 13 go ahead and open them up, because we're going to be  
 14 going back and forth between them a bit.  
 15 First, I would like you to look at NNC-1,  
 16 which is the 2002 modification. Do you have that  
 17 document?  
 18 A I do have that document, yes.  
 19 Q And if you want to page through it, you're  
 20 welcome to, but can you identify this document as the  
 21 2002 modification?  
 22 A This document appears to be the initial  
 23 submittal of that modification. There was a revision to  
 24 this document in August of '02, and that became the  
 25 final submission.

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1 Q Okay. Now, I have not been able to find in any  
 2 of my materials that modification -- the modification  
 3 of the modification. I was afraid there might be one  
 4 somewhere.  
 5 In that modification, were any of the  
 6 drainage diagrams changed?  
 7 A Yes. Your diagram that you have labeled as  
 8 NNC-2 is changed. Your Exhibit NNC-3 was changed.  
 9 These other two aren't associated with the modification.  
 10 Q Right. And can you tell me how they were  
 11 changed, or do you happen to have the changed documents  
 12 with you?  
 13 A I do have all of the relevant drawings of the  
 14 modification, yes.  
 15 Q You do?  
 16 A Yes.  
 17 Q Might I see those?  
 18 A I believe --  
 19 MR. GOSSELINK: I possess them, Your Honor.  
 20 I was going to use them to clarify this matter on  
 21 redirect.  
 22 MR. BLACKBURN: You know, if we could save  
 23 some time, if we could get it clarified on the front end  
 24 as opposed to the back end. I thought this might be  
 25 happening, but I didn't have copies myself, but I was

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1 certainly concerned that there might be something like  
 2 this coming.  
 3 JUDGE NEWCHURCH: Would the parties like an  
 4 opportunity to confer?  
 5 MR. HEAD: Yes.  
 6 MR. BLACKBURN: I think that would be an  
 7 excellent thing.  
 8 MR. GOSSELINK: We're been fairly good at  
 9 conferring. Let's do it again.  
 10 JUDGE NEWCHURCH: Off the record.  
 11 (Recess: 3:56 p.m. to 4:06 p.m.)  
 12 (Exhibit BFI Nos. AM-32 through AM-35  
 13 marked)  
 14 JUDGE NEWCHURCH: I think we're going to  
 15 proceed by agreement. We just need to work out the  
 16 mechanics of doing this the most efficiently.  
 17 Mr. Gosselink, y'all are in the middle of Northeast's  
 18 case. Perhaps you could offer these and give  
 19 Mr. Mehevec an opportunity to describe them. I think  
 20 that might be more efficient.  
 21 MR. BLACKBURN: I think that would be very  
 22 efficient, Your Honor.  
 23 JUDGE NEWCHURCH: Okay. Let's do it that  
 24 way, then.  
 25 MR. GOSSELINK: May I just offer them

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1 en masse and let him go through it one at a time?  
 2 MR. BLACKBURN: I'll be happy to go through  
 3 them, because I'm going to need to have them explained  
 4 to me anyway, so...  
 5 JUDGE NEWCHURCH: Okay. Well, give me, at  
 6 least, a superficial description so the court reporter  
 7 will have that to write down.  
 8 MR. GOSSELINK: I can do that. Okay.  
 9 We're going to offer AM-32, which is the  
 10 final modification in 2002, the drainage modification I  
 11 think we've come to call it. Okay.  
 12 AM-33 is another modification dated  
 13 February 1, 2006. And what you will note is that this  
 14 modification removed the 11 acres in the upper  
 15 right-hand corner, okay? We took out one cell and we  
 16 discussed that in different parts of testimony. That's  
 17 what this one did, okay?  
 18 AM-16, which is already in and described in  
 19 Mr. Mehevec's testimony, is the existing drainage  
 20 condition in the application which tracks AM-33. And it  
 21 is the baseline that Mr. Blackburn was looking for  
 22 yesterday within NNC-3.  
 23 MR. TERRILL: Which one is that one, Paul?  
 24 MR. GOSSELINK: It's AM-16.  
 25 AM-17, which is already in Mr. Mehevec's

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1 prefiled, is dated 5/5/06, and it is the proposed  
 2 drainage conditions, the other side of the comparison.  
 3 AM-34 is labeled 6-D-1, Existing Drainage  
 4 Condition, City of Austin. This is a parallel analysis  
 5 that was done for the City of Austin, and it is the  
 6 existing drainage condition utilizing the same landfill  
 7 geometry, but using a different drainage analysis.  
 8 And AM-35 is labeled -- is Figure 6-D-2,  
 9 and I haven't given you the Bates labels. I apologize  
 10 about that. I just realized that. It's the proposed  
 11 drainage condition, again utilizing the same landfill  
 12 geometry, but utilizing the City of Austin drainage  
 13 analysis. So we have both of those. Both the City and  
 14 you will learn from Mr. Mehevec the TxDOT base analysis.  
 15 34 and 35, parallel with 16 and 17.  
 16 They're two ways to make the same analysis, using two  
 17 different hydrologic calculations.  
 18 Adam, am I right on that?  
 19 THE WITNESS: You're doing great.  
 20 JUDGE NEWCHURCH: So are the parties in  
 21 agreement then -- the four that are not in the record at  
 22 this point are AM-32, 33, 34, and 35. Are the parties  
 23 in agreement all of these should be admitted into the  
 24 record?  
 25 MR. BLACKBURN: Yes.

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1 MR. HEAD: Yes.  
 2 JUDGE NEWCHURCH: All right. So they are  
 3 all admitted.  
 4 (Exhibit BFI Nos. AM-32 through AM-35  
 5 admitted)  
 6 JUDGE NEWCHURCH: Thank you for your  
 7 cooperation.  
 8 And, Mr. Blackburn, back to you.  
 9 MR. BLACKBURN: And, Your Honor, I hope you  
 10 will kind of bear with me a little bit. Some of these I  
 11 haven't seen. I'm not saying they weren't provided in  
 12 discovery, but I never discovered them. Of course, I  
 13 didn't discover a lot of things. I'm certainly not  
 14 disparaging anyone but myself.  
 15 Q (BY MR. BLACKBURN) Where to start. Let's  
 16 start with AM-32. That is a document that -- it has two  
 17 pages: One by the TCEQ, followed by a TNRCC document,  
 18 followed by a -- I presume a revised Figure 3, or at  
 19 least a Figure 3 from the prior MOD, that may or may not  
 20 be revised. I'm going to ask you that in a second.  
 21 A Okay.  
 22 Q So are we on the same document?  
 23 A We definitely are, yes.  
 24 Q Okay. Figure 3 that is attached to AM-32, is  
 25 that the same or different than the proposed drainage

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1 condition in NNC-1?  
 2 A It's different.  
 3 Q And how is it different?  
 4 A It's been revised based on NOD comments we got  
 5 from the TCEQ after the initial submittal and the  
 6 addition of the sedimentation ponds on the west side,  
 7 which were incorporated into the MOD after it was  
 8 submitted initially.  
 9 Q Now, if you will look with me with regard to  
 10 the western boundaries of the site, there are two  
 11 outfalls, one from DA-4 and one from DA-5. Do you see  
 12 those?  
 13 A I do, yes.  
 14 Q And I believe that Sedimentation Pond A is  
 15 associated with the outfall from DA-5; and Sedimentation  
 16 Pond B, that we were previously discussing, is  
 17 associated with DA-4; is that correct?  
 18 A That is correct.  
 19 Q Now, there is a Q identified coming out of  
 20 Sedimentation Pond B and exiting the site; do you see  
 21 that?  
 22 A I see the value, yes.  
 23 Q And what is that value?  
 24 A It's 26 cfs.  
 25 Q And is that the same value that is found on

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1 Figure 3 in NNC-1?  
 2 A Yes, it is.  
 3 Q And then if you would look at the outfall -- I  
 4 guess really from Sedimentation Pond A that leaves the  
 5 site out of DA-5, what is the flow on Figure 3 from  
 6 AM-32, the new exhibit?  
 7 A The flow shown there is 66 cfs.  
 8 Q And is that the same or different from the flow  
 9 indicated on NNC-1?  
 10 A That's the same.  
 11 Q Okay. Now, is this cover letter on AM-32 an  
 12 approval letter from the TCEQ for the modification?  
 13 A Yes, it is.  
 14 Q So this would be the final approval?  
 15 A Of this modification, yes, that's correct.  
 16 Q And as finally approved by the letter at AM-32,  
 17 the flow that's authorized or at least is identified as  
 18 respectively 26 cfs coming out of Sedimentation Pond B  
 19 and 66 coming out of Sedimentation Pond A?  
 20 A Can I make one quick clarification?  
 21 Q Sure.  
 22 A That flow is not the flow coming out of those  
 23 ponds.  
 24 Q It's the flow exiting the site at a location  
 25 near those ponds?

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1 A No, that's not correct. That is the flow  
 2 emanating from the drainage areas that are shown.  
 3 Q Okay. Does it exit the site?  
 4 A It does, but with additional flow mixed in with  
 5 it.  
 6 Q Okay. But that would just be the contribution  
 7 from the site?  
 8 A From the drainage area. The landfill was  
 9 modeled as the drainage boundary.  
 10 Q Okay.  
 11 A And so that is the flow from Drainage Areas 4  
 12 and Drainage Areas 5 respectively.  
 13 Q So that's the flow off of the landfill?  
 14 A Right.  
 15 Q That actually is a nice clarification. I  
 16 appreciate it.  
 17 A Okay.  
 18 Q AM-33?  
 19 A I have it.  
 20 Q Letter dated February 1, 2006.  
 21 A That's correct.  
 22 Q From the TCEQ.  
 23 A Yes, sir.  
 24 Q What is this letter?  
 25 A This is the approval letter for a modification

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1 that we submitted in 2006 to remove approximately  
 2 10-1/2 acres from the landfill footprint in the  
 3 northeast portion of the footprint.  
 4 Q So it's a modification to the modification?  
 5 A It's a modification to the permit, yes.  
 6 Q To the permit which had been modified in 2002  
 7 by AM-32?  
 8 A Right. The permit has had multiple  
 9 modifications. This is one of them.  
 10 Q But in terms of sequencing, there was the NNC-1  
 11 application; there were then some changes that were made  
 12 and that were approved in the letter and with the  
 13 alteration in AM-32; and then this is the next change in  
 14 sequence AM-33?  
 15 A Of this group, yes.  
 16 Q And, again, looking at the Figure 3 Proposed  
 17 Drainage Condition -- which I presume was approved by  
 18 the letter in AM-33; is that correct?  
 19 A Yes, that's correct.  
 20 Q The flow exiting Drainage Area 4 is still shown  
 21 to be 26 cfs, correct?  
 22 A Yes, that's what we calculated.  
 23 Q And the flow exiting DA-5 is still shown to be  
 24 66 cfs, correct?  
 25 A That's correct.

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1 Q Now, I'm not sure sequentially. There are two  
2 documents that I have been given that are City of  
3 Austin-related, and I believe those are AM-34 and AM-35;  
4 is that correct?  
5 A That's correct.  
6 Q And is it fair to say that the drainage  
7 calculations are done a bit differently on those  
8 documents?  
9 A Compared with the modification or --  
10 Q Well, compared with the way that you have done  
11 it for TCEQ purposes.  
12 A Well, both of these were submitted to TCEQ.  
13 These were both from the application.  
14 Q Right. Well, then -- but AM-16 and AM-17 are  
15 the existing and proposed drainage condition from the  
16 application, correct?  
17 A Yes, as well as AM-34 and 35. We did it two  
18 different ways in the application. These are two  
19 parallel ways of calculating the same thing.  
20 JUDGE NEWCHURCH: Okay. When you said "the  
21 application," are you talking about the current  
22 application that is the subject of this case?  
23 THE WITNESS: Yes, sir.  
24 Q (BY MR. BLACKBURN) So AM-16 is -- is intended  
25 to portray the existing permitted condition on the BFI

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1 site, correct?  
2 A That's correct.  
3 Q Okay. Now, if you look back at AM-33, which  
4 that, if I understood your testimony, was the last  
5 approved modification to the permit, correct?  
6 A Of this group, yes.  
7 Q The flow coming out of Drainage Area 4 is shown  
8 to be 26 cfs, correct?  
9 A In AM-33?  
10 Q AM-33.  
11 A That's correct.  
12 Q The flow coming out of Outfall No. 4 in Figure  
13 6-3, which APP 000967 is 65.8; is that correct?  
14 A That's correct.  
15 Q So that is roughly a, I don't know, 250-percent  
16 increase in outfall?  
17 A No. I would say that's incorrect.  
18 Q Well, how much is -- we're going from 26 cfs to  
19 65 cfs, correct?  
20 A Right. But these two analyses are done with  
21 completely different methodologies, and they don't even  
22 model the same drainage area. There's no increase in  
23 flow. These numbers are different. I'll agree with  
24 that.  
25 Q Let's start with that. The numbers are

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1 different, right?  
2 A If you're asking me if 66 is roughly two and a  
3 half, three times of 26, that's correct.  
4 Q That's what I was asking.  
5 A Because --  
6 Q I'm taking it basic at a time. I have a  
7 feeling I know where we're headed.  
8 A Okay.  
9 Q But, nonetheless, I'm trying to ask these  
10 questions in my kind of simple, plodding way.  
11 So 65, you do agree is about two and a half  
12 times more than 26?  
13 A Yes, I agree with that.  
14 Q Oh, good.  
15 And the drainage area that's shown in your  
16 existing conditions, Figure 6-3, APP 967, is 11.84  
17 acres; is that right?  
18 A Yes, that's correct, for Drainage Area 6.  
19 Q And that would be the area that's going to  
20 Outfall No. 4, correct?  
21 A Yes, sir.  
22 Q Okay. And Outfall No. 4 is shown on  
23 Exhibit AM-33 as receiving the runoff from nine acres,  
24 correct? That would be DA-4?  
25 A No, that's not correct.

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1 Q I'm sorry. Would you clarify that?  
2 A The outfall -- what would be Outfall No. 4 on  
3 that drawing would be the nine acres from the landfill  
4 plus the additional acreage from the site that's not  
5 included in this model, the buffer zone around the  
6 landfill.  
7 Q Is the buffer zone not included in 967 --  
8 Page 967 to be your proposed?  
9 A It is included in 967, yes.  
10 Q Okay.  
11 A But it is not included in APP -- AM-33.  
12 Q Are you telling me it went from nine acres to  
13 11 acres because the buffer zone was added?  
14 A Predominantly, yes.  
15 Q Okay. And with regard to the outfall on --  
16 near Sedimentation Pond A, which is Outfall No. 5, it  
17 has gone from 66 to 175 cfs. Do you see that?  
18 A The value on AM-33 is definitely 66, and the  
19 drainage from Outfall No. 5 on APP 967 is 175.4 for the  
20 same storm.  
21 Q Now, do you agree with me that the boundary  
22 that -- for DA-5 is essentially the dashed line that  
23 comes roughly in at the top of the Sedimentation Pond A?  
24 A Yes. On AM-33, that's correct.  
25 Q And do you agree with me that on AM-16, the

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1 boundary line for D-7, which is indicated as being 35.93  
2 acres, includes an area that on AM-33 Figure 3 is shown  
3 known going to the northeast, if you will, a tip up to  
4 the northeast corner?  
5 A That is correct.  
6 Q And that tip has now been rerouted in AM-16  
7 back to the south to Outfall No. 5, correct?  
8 A No. The flow has been correctly routed. It  
9 was not rerouted. It was incorrectly shown in AM-33,  
10 because we do not have accurate topographic data at the  
11 time for that area.  
12 Q So you're saying you made a mistake whenever  
13 you figured -- when you did Figure 3 on AM-33?  
14 A No, sir. I'm saying that based on the  
15 topographic data we had at the time of 2002, we  
16 delineated the watershed. We later, after taking more  
17 extensive survey of that area, realized that that was  
18 not a correct delineation.  
19 Q Now, are you aware that when the TCEQ approved  
20 your modification that the modification indicated no  
21 increase over existing conditions when 26 cfs outfall  
22 was shown in what is now called Outfall No. 4 and when  
23 66 was shown at Outfall No. 5?  
24 A I am aware of that, yes.  
25 Q So what you're saying is you really didn't

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1 correctly represent that at that flow, at that outfall,  
2 based on the configuration of the landfill?  
3 A No, I'm not saying that.  
4 Q Well, isn't the topography that you're showing  
5 here topography that you create?  
6 A Only on the landfill.  
7 Q Isn't that the direction -- isn't that where  
8 the arrows are going to the north within what's --  
9 MR. BLACKBURN: Let me approach, if I  
10 might, Your Honor?  
11 JUDGE NEWCHURCH: Yes, sir.  
12 Q (BY MR. BLACKBURN) I'm going to get you -- let  
13 me get you a nice marker. I have a blue marker.  
14 I'm very interested in that corner, that  
15 top part.  
16 A Okay.  
17 Q Which diagram do you have in front of you?  
18 A This is AM-33.  
19 Q In AM-33 -- and then would you compare that  
20 to AM-16. Would you pull those two --  
21 THE REPORTER: Excuse me. This is the  
22 original exhibit.  
23 A Do you want me to mark on this one?  
24 Q (By Mr. Blackburn) It probably would be nice  
25 if you marked on the real thing.

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1 A Okay.  
2 Q What I'm interested in your marking on -- and  
3 this is AM-33 -- there is an area that has been added in  
4 AM-16 that now it's a triangle that is now included that  
5 was shown in the AM-33 as draining to the north and then  
6 to the east. Do you see that?  
7 A Yes, sir.  
8 Q Could you outline that triangle on -- I believe  
9 that this is AM-33.  
10 A Do you want me to transpose from AM-16 to  
11 AM-33?  
12 Q Yes, to draw that triangle.  
13 A I will do my best.  
14 Q You have drawn a triangle on AM-33, correct?  
15 A That's correct.  
16 Q Now, that triangle that I asked you to draw,  
17 that is part of the landfill, correct?  
18 A Yes, it is.  
19 Q So when you said that you redid your  
20 topographic map, that hadn't been built yet, has it?  
21 A That portion of landfill had probably not been  
22 built yet.  
23 Q And, in fact, you can engineer that to flow  
24 that direction, can you not?  
25 A Yes. In fact, on the landfill, it is flowing

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1 that direction. It's flowing towards the north.  
2 Q But you're showing it coming back to the south  
3 on AM-16?  
4 A Right, because once the water leaves the  
5 landfill and gets onto the buffer, it actually turns  
6 around and it flows back towards Outfall 5.  
7 Q But you can engineer it to go on around the  
8 corner, can't you?  
9 A Are you asking if we could have designed a  
10 landfill that would have forced this water around the  
11 corner?  
12 Q Yes.  
13 A I didn't explore that possibility, but it's  
14 possible that we could have carried berms to take it  
15 around the corner.  
16 Q But, in fact, that is what you represented as  
17 occurring in the modification, right?  
18 A Well, based on the topographic information  
19 available, that's what it looked like was going on.  
20 Q Did anyone ever give you approval to reroute  
21 that water to the south?  
22 A I have not rerouted any water.  
23 Q Your arrows do not go where they're shown as  
24 going on AM-33, do they?  
25 A Those arrows are diversion berms on the cap.



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1 Q Right.  
 2 A Water on the landfill cap is flowing in that  
 3 direction along those berms.  
 4 Q And these --  
 5 A Once it hits the ground, it follows natural  
 6 topography, which I did not design or alter.  
 7 Q Did you see at the very top of the diagram at  
 8 AM-33 the arrow that indicates the flow is going around  
 9 the corner?  
 10 A That's a continuation of a berm, yes.  
 11 Q Does it, in fact, do that?  
 12 A It looks like it does, yes.  
 13 Q And it continues on around and goes all the way  
 14 down to the end of DA-6?  
 15 A Right, but not all of the berms can do that  
 16 because they hit the ground first, because the berms  
 17 have a slope on them. So the ones that start at the top  
 18 of four-to-one can make it farther before hitting the  
 19 ground. The lower berms are forced to run into the  
 20 natural ground.  
 21 Q And I guess my question is: Are you not bound  
 22 by the representations in the approved modification to  
 23 make those flows occur? You represented there would be  
 24 no increase in flow coming off the site in the  
 25 modification, did you not?

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1 A Right. And we compared the same analysis and  
 2 the modification existing and proposed.  
 3 Q One might suggest that you were misrepresenting  
 4 the flow in your modification.  
 5 MR. GOSSELINK: Objection; argumentative.  
 6 JUDGE NEWCHURCH: Response?  
 7 A And I would strongly disagree with that.  
 8 JUDGE NEWCHURCH: Just a second.  
 9 Do you have a response?  
 10 A I disagree with that statement.  
 11 JUDGE NEWCHURCH: No, not you.  
 12 MR. BLACKBURN: He does, Your Honor, and so  
 13 do I. I will withdraw the question.  
 14 Q (BY MR. BLACKBURN) Do you have to bring before  
 15 me -- the Court today a document that shows an approved  
 16 plan prior to this proposed application revision that  
 17 modifies the numbers shown on the left-hand side exiting  
 18 the property? Is there an approved modification that  
 19 says TCEQ has approved an increase in flow beyond 26 cfs  
 20 down at the bottom left and beyond 66 cfs in the sort of  
 21 top left?  
 22 A There's no document that has numbers different  
 23 than those numbers that have been approved.  
 24 Q Thank you.  
 25 Now if you will look again at AM-33 and

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1 AM-16.  
 2 A Okay.  
 3 Q In terms of the drainage area draining to  
 4 Outfall No. 5, would you agree with me that that  
 5 drainage area is shown as increasing from 27 acres in  
 6 AM-33 to 35.93 acres in AM-16?  
 7 A Those are the correct numbers, yes.  
 8 MR. BLACKBURN: Excuse me just a second,  
 9 Your Honor.  
 10 JUDGE NEWCHURCH: Yes, sir.  
 11 MR. BLACKBURN: I have one colored copy,  
 12 and then the rest are black-and-white.  
 13 JUDGE NEWCHURCH: Thank you.  
 14 MR. BLACKBURN: Which number are we on?  
 15 THE REPORTER: This should be No. 6.  
 16 (Exhibit No. NNC-6 marked)  
 17 Q (By Mr. Blackburn) Mr. Mehevec?  
 18 A Yes, sir.  
 19 Q I'd like you to look at NNC No. 6. I believe  
 20 this is a map from the application, APP 000227. And I'm  
 21 going to ask you: Have you ever seen this map before?  
 22 A Yes, I have.  
 23 Q And do you see a wetland area of 3.5 acres  
 24 that's identified there?  
 25 A Yes. I see an area that's identified as a

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1 wetland, 3.5 acres.  
 2 Q Okay. Now, Have you prepared grading plans for  
 3 the site?  
 4 A I have in the past, yes.  
 5 Q Do you not indicate grading going across this  
 6 area where the 3.5-acre wetland is?  
 7 A We did in the past, yes.  
 8 Q And that's, in fact, in the application right  
 9 now, is it not?  
 10 A If it is, it's based on some old designs we had  
 11 for the channel project.  
 12 Q So are you telling me it's a mistake if, in  
 13 fact, there is a representation of grading occurring  
 14 across that wetland?  
 15 A Well, I haven't seen the document you're  
 16 referring to so I can't tell you if it's representing  
 17 something we're proposing to do or if it's a copy of  
 18 something we submitted prior. But when we were going to  
 19 build the channel project, we were going to be grading  
 20 this area because no wetlands had been identified in  
 21 this area. The wetland was since identified and we  
 22 abandoned those plans to protect the wetland.  
 23 Q To your knowledge, has recycling material been  
 24 stored in this wetland?  
 25 A No, it has not.

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1 Q Are you sure of that?  
2 A Of all of the site visits I have ever made,  
3 which are very numerous, I've never seen recycling  
4 materials sitting out there.  
5 MR. BLACKBURN: I move for the admission of  
6 NNC-6.  
7 JUDGE NEWCHURCH: Any objection?  
8 MR. GOSSELINK: No.  
9 JUDGE NEWCHURCH: It's admitted.  
10 (Exhibit NNC No. 6 admitted)  
11 Q (BY MR. BLACKBURN) I'm going to ask you to  
12 find and ask the court reporter to help you find -- I  
13 believe this is Mr. Shull's exhibits, Exhibit No. RS-7.  
14 (Discussion off the record)  
15 Q (BY MR. BLACKBURN) RS-7.  
16 A Okay. I have it.  
17 Q There appears to be a grading plan.  
18 A Which sheet are you on?  
19 Q Okay. Go to Sheet 4 of 15, please.  
20 A Okay.  
21 Q Now, do you see Proposed Conditions and Grading  
22 Plan?  
23 A Yes, I do.  
24 Q And do you see where it shows grading going  
25 right across the wetland?

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1 A That was what was submitted to the City when we  
2 did the channel site development plan, yes.  
3 Q And is that what you're proposing to do at this  
4 point in time?  
5 A No.  
6 Q And this is what you were referring to as  
7 having been changed?  
8 A This is what we were proposing to do until the  
9 delineation of the wetland area.  
10 Q Did the City approve this?  
11 A The City did approve this, yes, because they  
12 had come out to inspect the site, along with our  
13 wetlands people, and there were no wetlands detected in  
14 that area. The wetland was later delineated, and we  
15 modified our plans to not fill that area.  
16 Q So to the extent you identify grading in any of  
17 these exhibits across that wetland area, you're telling  
18 me that I should disregard that, that those have been  
19 changed?  
20 A Right. And, in fact, that project has been  
21 completed and signed off by the City and that grading  
22 was not done as a part of that project.  
23 Q Are you aware of when the wetland was  
24 delineated by Mr. Sherrod?  
25 A I'm not aware of the exact date. It may have

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1 been mentioned in his report. I don't know.  
2 Q Let me cross-check that. APP 218 is  
3 Mr. Sherrod's report or at least a report that was  
4 prepared by Horizon Environmental that puts forth the  
5 jurisdictional determination, and it's dated -- okay,  
6 it's dated October 2005, but it's indicated as being  
7 revised on January 18th, 2007. Do you know when that  
8 wetland was, in fact, delineated?  
9 A I was with Mr. Sherrod the day that he first  
10 came upon the wetland. I know the channel project was  
11 under construction, which was my purpose for being at  
12 the site. I believe the channel was being -- I actually  
13 don't remember what year we were starting construction  
14 on the channel, but I do remember going out there and  
15 talking to him about it. And then he came back later  
16 and delineated it by himself.  
17 Q And, in fact, it was delineated in October  
18 of 2005, was it not?  
19 A I'll take your word for that.  
20 Q And the submission to the City appears to be in  
21 2006, does it not?  
22 A No. The original submission -- this project  
23 has been revised multiple times. The original was  
24 submitted -- it was originally submitted in 2002. It  
25 was revised in 2005, and it was revised again in 2007.

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1 Q If you will look at Sheet 4 of 15.  
2 A Right.  
3 Q Sheet 4 of 15 is dated April 19th, 2007; is it  
4 not?  
5 A Right. And I believe it's indicated that that  
6 is the second revision to this sheet.  
7 Q Right. But it still has the grading contours  
8 on it.  
9 A Right, because the only change was to add the  
10 pond.  
11 Q I'm sorry. I thought you had decided to drop  
12 the grading --  
13 A We had.  
14 Q -- as soon as you found the wetland?  
15 A We did decide that, and we did not grade that  
16 area.  
17 Q That change was not represented on your  
18 drawing, was it?  
19 A That's correct.  
20 MR. BLACKBURN: Excuse me, Your Honor.  
21 It's going to take just a second.  
22 JUDGE NEWCHURCH: Off the record.  
23 (Off the record)  
24 Q (BY MR. BLACKBURN) Would you turn to Page 1093  
25 of the application, please.

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1 A Which volume is it?  
2 Q It's Volume 2, if I'm not mistaken. That's  
3 what I was just trying to go through to figure out which  
4 volume.  
5 MR. TERRILL: Mr. Blackburn, what was the  
6 page?  
7 MR. BLACKBURN: 1093.  
8 A Okay. I have it.  
9 MR. BLACKBURN: Is everybody with me?  
10 JUDGE NEWCHURCH: Yes.  
11 Q (BY MR. BLACKBURN) Is this a schematic diagram  
12 of how the HEC 1 computer model basically pulls the flow  
13 data together and assembles it?  
14 A This is a schematic -- HEC-HMS is the program  
15 we use -- of how the model has been set up for  
16 Outfall 1.  
17 Q And so, basically, it shows where different  
18 contributing areas are sort of routed into the model; is  
19 that correct?  
20 A That's correct, but it is not to scale. It  
21 simply shows where things are located related to each  
22 other.  
23 Q Right. No, I understand.  
24 A All right.  
25 Q My question is this: Where is rainfall that

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1 falls on the pond, for example, the detention reservoir,  
2 where does that rainfall get put into the model?  
3 A It's included as -- water that falls directly  
4 on the proposed pond?  
5 Q Correct.  
6 A It's included as part of Drainage Area 10.  
7 Q And it is not actually routed through the  
8 reservoir, is it?  
9 A No.  
10 Q And, in fact, doesn't that affect essentially  
11 the accuracy of the modeling itself?  
12 A It would tend to lower the flows very slightly.  
13 Q And lowered flows, is that a concern to you?  
14 A Is a lower peak flow of concern to me?  
15 Q Yeah.  
16 A No, it's not a concern.  
17 Q I mean, isn't it the higher peak flow that one  
18 would be concerned about in terms of comparing this  
19 landfill and its impacts to existing conditions?  
20 A If it was a significant increase using  
21 comparable methodologies, then yes.  
22 Q But we don't know if it's a significant  
23 increase or not because you didn't model that, correct?  
24 A Well, I will state to you that my professional  
25 opinion is that it can only serve to lower the flow

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1 because that water was not being routed through the  
2 pond. And if it falls in the pond, it obviously will be  
3 routed through pond, which will lower the flow coming  
4 out at Outfall 1.  
5 Q It might affect the timing, might it not? And,  
6 in fact, isn't HEC modeling all about the timing of the  
7 various inputs basically assembly?  
8 A That is one piece of the model.  
9 Q And, in fact, that's where most of the  
10 hydrologic impacts come from, does it not, is that  
11 you're adding various input areas and you're comparing  
12 their timing and that's why you use a computer for it,  
13 right?  
14 A Well, the timing is one piece. The major  
15 contributor is the rainfall itself and the runoff from  
16 the individual drainage areas. How they run together  
17 does affect the peak flow, but the major contribution is  
18 the actual flow coming from those areas.  
19 Q So when you did this, you actually knew that  
20 this is what you were doing?  
21 A Did I realize that the pond was included in  
22 Drainage Area 10 and that there was some water that  
23 would fall directly on the pond?  
24 Q Right.  
25 A Yes, I was probably aware of that.

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1 MR. BLACKBURN: Thank you. Pass the  
2 witness.  
3 JUDGE NEWCHURCH: Is there redirect?  
4 MR. GOSSELINK: There will be, probably  
5 quite a bit. Do you want me to get started, or what do  
6 you want me to do?  
7 JUDGE NEWCHURCH: Well, if there's going to  
8 be quite a bit, we should probably break for the day,  
9 then. Let's go off the record and talk about next week.  
10 (Discussion off the record)  
11 JUDGE NEWCHURCH: Back on the record.  
12 And I think we're proceeding by agreement.  
13 Mr. Mehevec, you discovered something that needs to be  
14 changed in your prefiled testimony?  
15 THE WITNESS: That's correct.  
16 JUDGE NEWCHURCH: And what page -- which  
17 exhibit, first of all?  
18 THE WITNESS: Bear with me one minute.  
19 JUDGE NEWCHURCH: This is the insert to  
20 AM-1, so it's AM-31. Is that what you changed?  
21 THE WITNESS: Yes.  
22 JUDGE NEWCHURCH: And which page?  
23 THE WITNESS: This would be Page 46A, what  
24 was called 46A.  
25 JUDGE NEWCHURCH: What line?

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1 THE WITNESS: The change would be in  
2 Line 22, the last line of the page.  
3 JUDGE NEWCHURCH: What is that change?  
4 THE WITNESS: I would move to strike the  
5 word "additional" and to insert the word "timely"  
6 before the word "routing."  
7 MR. HEAD: Timely and what word?  
8 THE WITNESS: "Timely routing of stormwater  
9 to and through the detention sedimentation pond."  
10 JUDGE NEWCHURCH: All right. Does anyone  
11 object to that change being made?  
12 Then let it be made on the official record.  
13 And we've talked while we were off the  
14 record about witnesses in preparation for next week.  
15 And when we reconvene on Monday, we will complete  
16 Mr. Mehevec's testimony. And the parties should be  
17 prepared for cross-examination of witnesses McInturff,  
18 Lewis, and Worrall.  
19 And we will reconvene at 9:00 o'clock  
20 Monday morning.  
21 Is there anything else?  
22 We are recessed.  
23 Thank you.  
24 (Proceedings recessed at 4:55 p.m.)  
25

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