

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

<p style="text-align: center;">TRANSCRIPT OF PROCEEDINGS BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS TEXAS COMMISSION ON ENVIRONMENTAL QUALITY AUSTIN, TEXAS</p> <p>IN THE MATTER OF THE        ) SOAH DOCKET NO. APPLICATION OF BFI WASTE    ) 582-08-2178 SYSTEMS OF NORTH AMERICA, LLC ) PROPOSED SOLID WASTE PERMIT ) TCEQ DOCKET NO. AMENDMENT NO. 1447A        ) 2007-1774-MSW</p> <p style="text-align: center;">HEARING ON THE MERITS THURSDAY, JANUARY 29, 2009</p> <p>BE IT REMEMBERED THAT AT approximately 9:07 a.m., on Thursday, the 29th 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 Lou Ray, a Certified Shorthand Reporter of: Volume 8                       Pages 1779 - 2041</p>	<p style="text-align: right;">Page 1781</p> <p>1 BFI-17, which is the original version of BK-3 that was 2 included in Dr. Kier's prefiled testimony that was 3 revised yesterday and offered as revised. 4 JUDGE NEWCHURCH: Is there any 5 objection? 6 MR. RENBARGER: No. 7 JUDGE NEWCHURCH: Then it is also 8 admitted. 9 (Exhibit BFI No. 17 marked and admitted) 10 MR. CARLSON: BFI-18 is the TDS well -- 11 or TDS monitor well map that I asked some questions 12 about Dr. Kier -- or Dr. Kier about, and I would like 13 to offer BFI-18 at this point in time. 14 JUDGE NEWCHURCH: Any objection? 15 MR. RENBARGER: None. 16 JUDGE NEWCHURCH: Go ahead. Anything 17 more? 18 MR. CARLSON: I have two more things. 19 JUDGE NEWCHURCH: Okay. Well, 18 is 20 admitted. 21 (Exhibit BFI No. 18 marked and admitted) 22 MR. CARLSON: Okay. I asked -- Dr. Kier, 23 do you recall me asking a number of questions about a 24 cross section from the TDSL landfill that was on a 25 white board behind you?</p>
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<p style="text-align: right;">Page 1780</p> <p>1 PROCEEDINGS 2 THURSDAY, JANUARY 29, 2009 3 (9:03 a.m.) 4 JUDGE NEWCHURCH: It's three minutes 5 after 9:00 a.m. It's January 29th, 2009. This is a 6 continuation of the hearing in 582-08-2178 concerning 7 BFI. 8 Are there any preliminary matters this 9 morning? 10 MR. CARLSON: No, Your Honor. 11 JUDGE NEWCHURCH: Well, then we'll go 12 back to the evidence, and Mr. Kier has returned to the 13 stand, and you're still under oath. 14 WITNESS KIER: Thank you. 15 JUDGE NEWCHURCH: I think where we left 16 off, Mr. Carlson, you indicated that you had a bit 17 more of cross-examination exhibits to offer? 18 MR. CARLSON: That's exactly right, Your 19 Honor. First of all, I will offer BFI-16, which is 20 the printed-out copy of Title 22, I believe, Part 39, 21 Chapter 85, of the Texas Geo Practices Act. 22 JUDGE NEWCHURCH: Any objection? 23 It is admitted. 24 (Exhibit BFI No. 16 marked and admitted) 25 MR. CARLSON: Next I'd like to offer</p>	<p style="text-align: right;">Page 1782</p> <p>1 WITNESS KIER: Yes, sir. 2 MR. CARLSON: But I did not have the 3 original copy of that -- a regular-size copy of that 4 document? 5 WITNESS KIER: You said you didn't. I 6 understand there is one available. 7 MR. CARLSON: And there is one available 8 and I anticipated it would be here this morning. So, 9 Judge, if I may offer that at a later point in time, I 10 have 12 copies to distribute. Everybody can look to 11 see that the copy that will be entered into the 12 record, hopefully, conforms with the document Dr. Kier 13 saw. 14 JUDGE NEWCHURCH: Okay. So you want to 15 reserve the opportunity to offer that later? 16 MR. CARLSON: Yes, Judge. 17 MR. RENBARGER: It may make the record a 18 little more clear -- and I'm sorry, John, I didn't 19 have a chance to talk to you about this before we 20 started this morning, but I believe yesterday you 21 offered and, after some discussions, there was 22 admitted a document that was identified as BFI-10, and 23 I don't -- Mr. Carlson, if you have that BFI-10 there 24 available, but at least my review of BFI-10 would 25 indicate that the third page of that exhibit, which is</p>
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1 (Pages 1779 to 1782)

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1 already into evidence, it appears -- at least to me --  
 2 to be the same exact copy of the document that I think  
 3 Mr. Carlson identified as BFI-18 in the discussion we  
 4 just had.  
 5 MR. CARLSON: Mr. Renbarger is correct,  
 6 and at this point it's offered and accepted. So as  
 7 long as the record is clear that yesterday's  
 8 discussion pertaining to the white board and the  
 9 document that had been Bates labeled -- I believe it's  
 10 TDSL -- I do not know how many zeros there were -- but  
 11 the last three digits were 171.  
 12 JUDGE NEWCHURCH: So that is in  
 13 evidence, and I think there were references yesterday  
 14 to 171. So we should be good.  
 15 MR. CARLSON: And I have one last  
 16 administrative matter. May I approach?  
 17 JUDGE NEWCHURCH: Yes, sir.  
 18 (Exhibit BFI No. 19 marked)  
 19  
 20  
 21  
 22  
 23  
 24  
 25

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1 sentence in the second full paragraph that starts with  
 2 the words "A detailed"?  
 3 A "A detailed and extensive site investigation  
 4 coupled with numerous investigations by public  
 5 agencies and The University of Texas Bureau of  
 6 Economic Geology ascertained that the Taylor clay in  
 7 which the landfill will be developed is remarkably  
 8 uniform, homogenous and isotropic."  
 9 Q All right. And are those your words or at  
 10 least did you participate in the writing of that  
 11 particular paragraph?  
 12 A I'm sure I wrote them.  
 13 MR. CARLSON: At this point, Judge, I'd  
 14 offer BFI-19.  
 15 JUDGE NEWCHURCH: Any objection?  
 16 MR. RENBARGER: None.  
 17 JUDGE NEWCHURCH: Then 19 is admitted.  
 18 MR. CARLSON: With that I pass the  
 19 witness.  
 20 JUDGE NEWCHURCH: Okay. So that  
 21 completes cross-examination. Mr. Renbarger, is there  
 22 redirect?  
 23 MR. RENBARGER: Yes, there is, Judge.  
 24 JUDGE NEWCHURCH: Go ahead.  
 25

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1 PRESENTATION ON BEHALF OF  
 2 TJFA, L.P.  
 3 (Continued)  
 4 ROBERT KIER,  
 5 having been previously duly sworn, testified as  
 6 follows:  
 7 CROSS-EXAMINATION (Continued)  
 8 BY MR. CARLSON:  
 9 Q Dr. Kier, this would be on BFI-19. I've  
 10 handed you a document that's been marked as BFI-19.  
 11 Could you identify that document?  
 12 A Yes, this is the supplement to the  
 13 Performance Standard Design Criterion and Basis, Texas  
 14 Disposal Systems Landfill, Inc., Type 1, Municipal  
 15 Solid Waste Disposal Facility, Travis County Permit  
 16 No. 2123.  
 17 Q All right. This is a document that you had  
 18 participated in the preparation of. Is that correct?  
 19 A That's correct.  
 20 Q Pertaining to the TDSL landfill in Creedmoor?  
 21 A Yes.  
 22 Q Would you turn to the second page which is an  
 23 excerpt from the documents, Page 68?  
 24 A (Witness complies)  
 25 Q Could you read for the record the first

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1 REDIRECT EXAMINATION  
 2 BY MR. RENBARGER:  
 3 Q Good morning, Dr. Kier.  
 4 A Good morning.  
 5 Q I believe yesterday Mr. Terrill asked you a  
 6 series of questions about different individuals who  
 7 either worked for you or worked -- at least did their  
 8 billing through your company related to the review of  
 9 the BFI application. Do you recall that line of  
 10 questioning?  
 11 A Yes, sir.  
 12 Q And I believe as Mr. Terrill was closing that  
 13 line of questioning, I think in one of his sentences  
 14 or questions posed to you, he said something along the  
 15 lines -- and I'm paraphrasing now -- he talked about  
 16 Dr. Oliani's (phonetic) work, and he said essentially  
 17 along the lines that, basically, Dr. Kier essentially  
 18 is taking instructions from Mr. Gregory or his  
 19 representatives on what you do or words to that  
 20 effect. Do you remember that?  
 21 A Yes, sir.  
 22 Q Just to make the record very clear, you were  
 23 retained as a testifying expert witness by my law  
 24 firm, correct?  
 25 A Correct.

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1 Q And during the course of your preparation,  
 2 review of the application as a testifying expert, are  
 3 you aware on any occasion that Mr. Bobby Gregory ever  
 4 directed your work?  
 5 A He never did.  
 6 Q Are you aware or to your knowledge did he  
 7 direct the work of any associate working for you in  
 8 that regard, referring to Ms. Cain?  
 9 A Not that I'm aware of.  
 10 Q Are you aware he directed the work of  
 11 Mr. Nian?  
 12 A Not that I'm aware.  
 13 Q Dr. Oliani?  
 14 A Not that I know of. I don't know if he's  
 15 even met him.  
 16 Q Dr. Kier, Mr. Carlson, I believe, asked you  
 17 about a number of engagements that you've had for  
 18 TJFA, and I believe you identified that you had worked  
 19 on the Williamson County Landfill for Waste  
 20 Management, correct?  
 21 A I worked on it for TJFA.  
 22 Q For TJFA?  
 23 A Yes.  
 24 Q And also for TJFA you also worked on the  
 25 Comal County landfill, correct?

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1 A That's correct.  
 2 Q And you're currently engaged obviously as a  
 3 testifying witness in this case?  
 4 A That's correct.  
 5 Q And you're engaged by TJFA to be a testifying  
 6 witness in the Waste Management case pending here at  
 7 SOAH, correct?  
 8 A That's correct.  
 9 Q Are there any other engagements for TJFA for  
 10 review of any other Municipal Solid Waste applications  
 11 that you performed today?  
 12 A I did review also Covel Gardens' application  
 13 for expansion by Waste Management, and fundamentally  
 14 concluded that it was a good application. I had  
 15 challenged it once before on an expansion based --  
 16 with a client, but he settled. I tried to challenge  
 17 it on my own point but never succeeded. But with  
 18 respect to the new application it met all the  
 19 requirements that I could see.  
 20 Q So if I understand your testimony, Dr. Kier,  
 21 based on your review of the Covel Gardens MSW-1  
 22 landfill application that, based on your  
 23 recommendation, TJFA elected not to oppose that  
 24 application. Is that correct?  
 25 A That's correct.

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1 Q Do you have your deposition that Mr. Carlson  
 2 took of you in front of you?  
 3 A Yes.  
 4 Q Could I please refer you to Exhibit 121 in  
 5 that deposition? I believe this is a listing of  
 6 invoices from your company that Mr. Carlson discussed  
 7 with you.  
 8 A Yes.  
 9 Q If you would, please, could you take a look  
 10 at the invoice for services rendered dated June 30 of  
 11 2008? I believe that's your June invoice.  
 12 A All right. I'm there.  
 13 Q Okay. And if you would turn over to the  
 14 entries made by Dr. Oliani for June 12th of 2008?  
 15 A Yes.  
 16 Q Do you see an entry there where Dr. Oliani  
 17 indicated that he had examined correlations between  
 18 TDS and various ion concentrations?  
 19 A Yes.  
 20 Q For clarity of the record, when Dr. Oliana is  
 21 referring to TDS in his invoice, is he referring to  
 22 Texas Disposal Systems or is it referring to something  
 23 else?  
 24 A No, he's not referring to Texas Disposal  
 25 Systems. He's referring to total dissolved solids.

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1 Q So as the entries in Dr. Oliani's invoices  
 2 reflect correlations between TDS and ions, he's  
 3 specifically referring to groundwater chemistry, is he  
 4 not?  
 5 A That's correct. It was a correlation between  
 6 specific ions and the total dissolved solids.  
 7 Q I believe Mr. Carlson also questioned you  
 8 about the groundwater monitoring system at the TDSL  
 9 facility, right?  
 10 A Correct.  
 11 Q And I think in response to his question you  
 12 indicated there were six groundwater wells presently  
 13 active at that site, right?  
 14 A Correct.  
 15 Q And I believe he made a comparison to the  
 16 proposed 32 monitoring wells that are proposed for the  
 17 BFI Sunset Farms facility, right?  
 18 A That is correct.  
 19 Q Now, if I am not mistaken, I think you made  
 20 some kind of comment about, unlike your mother-in-law  
 21 or something -- more is always better, words to that  
 22 effect?  
 23 A Well, I think my comment referred to that --  
 24 the question kind of -- and I apologize that I'm an  
 25 inveterate smarty-britches. I'll say that straight

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1 out. That was a part of it, that somebody gives me a  
 2 straight line, I sometimes take it.  
 3 But more is not always better. It is  
 4 where you locate the wells, where you place them,  
 5 where you screen them and the logic that goes behind  
 6 that that is important, not the number.  
 7 Q Is it your testimony, Dr. Kier, that in  
 8 certain site specific circumstances one would actually  
 9 get adequate groundwater monitoring with fewer wells,  
 10 so it doesn't necessarily equate to more is better.  
 11 Is that --  
 12 A That is definitely correct.  
 13 Q And is it your understanding that the MSW  
 14 rules under which this application is under review  
 15 would reflect that the numbers of wells should be  
 16 sufficient to detect releases from an MSW facility?  
 17 A Yes. It's just a number and location are  
 18 important, there's no specific number given. Any  
 19 reference to 600 feet or less would really be a  
 20 reference to the revised March 2000 rules, not the  
 21 ones we're dealing with here.  
 22 Q Would you please find a copy of BFI-10?  
 23 A All right. I have it.  
 24 Q Do you have that in front of you?  
 25 A Yes.

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1 Q Were you present earlier in the courtroom  
 2 today when Mr. Carlson and I were discussing BFI-10,  
 3 and more specifically a page in that document that's  
 4 identified as TDSL 000171?  
 5 A Yes.  
 6 Q And do you understand that document included  
 7 in BFI 10 to be a copy of the blow-up drawing on which  
 8 you were questioned yesterday afternoon?  
 9 A Yes, it is, absent the Bates number.  
 10 Q Absent the Bates number. Thank you.  
 11 I'm going to ask you a series of  
 12 questions regarding Page TDSL 000171 of BFI-10. Now,  
 13 is this exhibit a revised version of a drawing that  
 14 appeared in the original permit application for TDSL?  
 15 A Yes, sir, it is.  
 16 Q Do you know whether that application was  
 17 submitted?  
 18 A The original application, if I recollect  
 19 correctly, was submitted in 1988.  
 20 Q And the copy of the document before you is a  
 21 revision of that original document, correct?  
 22 A Yeah, there's actually two revisions on it.  
 23 Q And when is the most recent revision?  
 24 A The most recent was by Pierce Chandler in  
 25 October 14th, 1994.

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1 Q Do you know why that drawing was revised?  
 2 A Yes, sir, I do.  
 3 Q Why is that?  
 4 A The Subtitle D regulations have two basic  
 5 standards for liners. There is a design standard,  
 6 which is 2 feet of compacted clay, with a hydraulic  
 7 conductivity no greater than 1 times 10 to the minus  
 8 centimeters per second. And I'm sure the units make  
 9 absolutely no sense to anybody that doesn't deal with  
 10 them, but that's what it is.  
 11 And a performance-based standard --  
 12 that's not an equivalent standard. It's a  
 13 performance-based standard. That is site specific.  
 14 The TDSL landfill design is a performance-based  
 15 design.  
 16 Now, an interesting thing that is in  
 17 those rules is that only the design standard called a  
 18 composite liner is required to have a leachate  
 19 collection system or anything to collect leachate;  
 20 whereas, performance-based liners are not. And so  
 21 as -- in April of '94, the original submittal, it did  
 22 not have a leachate collection system in it other than  
 23 use of vertical wells to monitor it and perhaps  
 24 extract leachate.  
 25 During the process of approval, the

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1 agency TNRCC made it clear that -- they just insisted  
 2 about a leachate collection system, and it became the  
 3 better part of valor to yield and put one in. And so  
 4 Pierce Chandler was retained to design and put that  
 5 in, and it's called -- it is shown as collector drains  
 6 because that's what they are, and that was added to  
 7 show the positions where they would intersect the  
 8 cross sections.  
 9 Q So if you look at Page 000171 on the  
 10 diagrams, you do note indications where collector  
 11 drains are proposed as a part of this subtitle (d)  
 12 modification, correct?  
 13 A That is correct.  
 14 Q Back in 1988, who administered the municipal  
 15 solid waste regulation?  
 16 A Texas Department of Health or Texas  
 17 Department of Health Resources I think it was at that  
 18 time, Texas Department of Health.  
 19 Q Did the 1988 MSW regulations provide for a  
 20 different format for purposes of developing an  
 21 application for submittal?  
 22 A Yes, sir, they did.  
 23 Q And didn't the 1988 MSW regulations provide  
 24 for an Attachment 7?  
 25 A Yes, sir.

4 (Pages 1791 to 1794)

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1 Q And didn't the Attachment 7 include elements  
2 of what, under the 2006 rules, would be typically  
3 referred to as Attachments 2 and 4?  
4 A That is correct.  
5 Q Can you explain a little bit about what  
6 Attachment 7 would include back from the 1988  
7 regulations?  
8 A Attachment 7 in 1988, up until TNRCC took  
9 over the program, somewhere in the early part of the  
10 '90s, before Subtitle (d) had to be implemented,  
11 required that you in your boring logs where you might  
12 have encountered groundwater and your proposed  
13 excavation and final cover. So that's what this  
14 shows. It also shows the natural ground surface,  
15 which they would have wanted also. There were a  
16 series of these diagrams in the original application.  
17 Q Does the drawing in front of you contain that  
18 information?  
19 A Yes, sir, it does.  
20 Q Were the water levels that are reflected on  
21 Page 171 shown for each boring at the time of  
22 conducting the borings?  
23 A Yes. You may recall that I said at this  
24 particular site every boring but one was converted to  
25 a piezometer. That was not a standard practice in

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1 those days, but it was done to carefully document what  
2 the groundwater conditions were. It was the only  
3 landfill I'd ever seen do that with that much  
4 information. And those borings which were done in  
5 1986 or so before there was a shovel turned out there,  
6 in the piezometers that were put in them and  
7 monitored, this shows the groundwater levels, what  
8 they call static groundwater levels, which was just  
9 sort of where it settled, in each of the borings which  
10 had a piezometer.  
11 Q I understand from the questions from  
12 Mr. Carlson directed towards the water levels in the  
13 borings, I believe he asked you as to whether or not  
14 a -- water levels from each of these borings could be  
15 connected in such a way as to represent a  
16 potentiometric surface. Do you recall that?  
17 A Well, they could, but it would be a  
18 pre-landfill potentiometric surface.  
19 Q So basically we're talking about the water  
20 levels on Page 171 as pre-excavation. Is that  
21 correct?  
22 A That is correct.  
23 Q So if one were to draw a potentiometric map  
24 reflecting the water levels Page 171, that wouldn't  
25 have anything to do with post-excavation conditions,

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1 would it?  
2 A No, sir. And that's one thing I had to  
3 consider in the monitoring well design.  
4 Q Okay. Would the boring water levels have  
5 anything to do with either waste fill or leachate in  
6 the subsequent landfill constructed at that location?  
7 A Certainly not waste fill or leachate.  
8 Q So even though this drawing was revised in  
9 1994, the water level information shown on the drawing  
10 is still pre-excavation conditions. Is that correct?  
11 A That is correct.  
12 Q Would you expect the excavation of the TDSL  
13 landfill would significantly alter the water levels  
14 represented on this drawing?  
15 A Yes, sir. Water levels for borings that are  
16 shown inside the excavation actually wouldn't exist  
17 anymore because the uppermost aquifer would not exist  
18 here. This landfill is -- the TDS landfill is  
19 excavated completely through the weathered clay,  
20 completely into the unweathered clay and then down  
21 into the unweathered clay. And so what would be  
22 called the upper-most aquifer was entirely removed,  
23 completely taken out so that it didn't exist anymore.  
24 The BFI landfill, understand, doesn't reach, except in  
25 a few places, into the unweathered, at least that's

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1 what I recall as testimony. But the TDS landfill, by  
2 design, went through -- completely through the  
3 weathered zone into the unweathered zone, so it would  
4 serve as the liner. This meant they excavated about 9  
5 million cubic yards extra soil, which for some reason  
6 sticks in my head.  
7 Q Let's move along to another topic which  
8 counsel has spent a good deal of time cross-examining  
9 you on, and that relates to the issue of the BFI  
10 landfill being a leaking landfill. Do you recall I  
11 believe both Mr. Terrill and Mr. Carlson questioned  
12 you quite a bit about the leaking landfill issue,  
13 correct?  
14 A Yes.  
15 Q And in the course of these proceedings you've  
16 become aware, have you not, of a monitoring well at  
17 the Sunset Farms Landfill facility referred to as  
18 Monitoring Well 30, correct?  
19 A Correct.  
20 Q And if I heard your testimony correctly  
21 yesterday, I believe you indicated that Monitoring  
22 Well 30 at least presented some evidence to you that  
23 there was a release from the landfill, correct?  
24 A There's definitely a release regardless of  
25 how it got there.

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1 Q And you were questioned at -- a pretty good  
2 extent about the contour maps upon which you relied  
3 that came from the application document itself,  
4 correct?  
5 A Yes. I principally relied on the cross  
6 sections, and I created a contour map from those.  
7 Q And the contour maps contained in the  
8 application, signed and sealed by experts for BFI,  
9 provided you some basis for your opinions regarding  
10 the mounding of groundwater within the Sunset Farms  
11 Landfill, correct?  
12 A That is correct.  
13 MR. RENBARGER: Judge, may I approach --  
14 MR. CARLSON: Judge, I've been avoiding  
15 objecting to leading. I don't mind a little bit; it  
16 moves things along. But we're getting a lot of  
17 leading questions of this witness on redirect.  
18 JUDGE NEWCHURCH: Well, if you have an  
19 objection, you should make it at the time the question  
20 is asked.  
21 MR. CARLSON: Yes, sir.  
22 JUDGE NEWCHURCH: Thank you for your  
23 forbearance.  
24 MR. RENBARGER: May I approach, Judge?  
25 JUDGE NEWCHURCH: Yes, sir.

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1 (Exhibit TJFA No. 27 marked)  
2 Q (BY MR. RENBARGER) Dr. Kier, I just handed  
3 you a document, and I believe it's been marked as  
4 TJFA-27.  
5 A Yes, sir.  
6 Q Do you see that document?  
7 A Yes.  
8 Q What is TJFA-27?  
9 A This is a document from EPA. It's called  
10 "Draft Background Document," and sometimes EPA never  
11 goes beyond draft documents, "Case Studies on  
12 Groundwater and Surface Water Contamination from  
13 Municipal Solid Waste Landfills."  
14 Q Where did you acquire this document?  
15 A This particular one came from the National  
16 Technical Information Service.  
17 Q Is that a governmental agency that  
18 distributes public records?  
19 A I honestly don't know.  
20 Q Okay. If you look at the very last page of  
21 the exhibit --  
22 A Well, it appears to be.  
23 Q At the top of the page it does say it was  
24 "Reproduced by NTIS as a part of the US Department of  
25 Commerce." Do you see that?

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1 A Yes. I never paid attention to that before.  
2 Q Now, as I understand it, you were deposed at  
3 one point in time in this case by Mr. Carlson,  
4 correct?  
5 A That is correct.  
6 Q And Mr. Carlson asked you if there were any  
7 opinions you had regarding the leaking issue that were  
8 not specifically contained in your prefiled testimony  
9 at that time. Do you recall that?  
10 A Yes.  
11 Q And do you recall how you responded to that  
12 question?  
13 MR. CARLSON: Bob, what page?  
14 MR. RENBARGER: Excuse me?  
15 MR. CARLSON: What page of the depo?  
16 MR. RENBARGER: What page of the depo?  
17 MR. CARLSON: Yes.  
18 MR. RENBARGER: I can refer you to  
19 several. There is a discussion on Page 215 and 216 of  
20 Dr. Kier's deposition. As a matter of fact, we can  
21 just go to that right now if you would like.  
22 Q (BY MR. RENBARGER) Dr. Kier, you have your  
23 deposition in front of you?  
24 A Yes.  
25 Q Would you please turn to Page 215?

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1 A (Witness complies) Yes.  
2 Q Beginning at Line 13 I believe Mr. Carlson  
3 asked you the question, "I've got one more question  
4 until we get the documents back. Earlier you  
5 talked -- you testified about an EPA leaker list. Do  
6 you recall that testimony?" And what was your  
7 response to that question?  
8 A "Yes."  
9 Q And he then asked, "You couldn't recall any  
10 particular information about that list other than  
11 there was some sort of list you recall seeing, right?"  
12 And you answered --  
13 A "Yes." Excuse me.  
14 Q Okay. The following question: "I'm going to  
15 ask the court report to leave a blank after this  
16 question in the transcript, and when you review the  
17 transcript, I'd like you, if you can, to fill in the  
18 descriptive information as descriptive as possible so  
19 I can find out where that list is. Okay?"  
20 And you answered at the top of Page 216.  
21 A "All right. If I find it -- I mean, I'm  
22 perfectly willing that you get a copy of it."  
23 Q Okay. Now, have you conducted any personal  
24 review of any of your records -- or reference library,  
25 if you will -- to try to locate the EPA document

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1 referenced in your deposition?  
 2 A Yes.  
 3 Q And is EPA -- excuse me -- TJFA-27 the  
 4 document that you were referring to in your  
 5 deposition?  
 6 A I believe so.  
 7 Q When did you locate this document?  
 8 A Day before yesterday.  
 9 Q Could I ask, please, Dr. Kier, if you would  
 10 turn to Page 1-1 of TJFA Exhibit 27?  
 11 A Yes, sir.  
 12 Q At the top of the page there's an executive  
 13 summary, and if you would just please read the  
 14 executive summary into the record.  
 15 A "The purpose of this report is to identify  
 16 and describe human health and environmental impacts  
 17 (excluding impacts from subsurface gas migration) that  
 18 have resulted from the operation of municipal solid  
 19 waste landfills (MSWLFs) and where possible determine  
 20 what role the design, operation and location of the  
 21 facility played in creating the problem." There  
 22 should be a period there, but there's not: "Numerous  
 23 sources of information were reviewed to identify  
 24 MSWLFs that have resulted in some type of adverse  
 25 impact to groundwater, surface water or wildlife.

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1 These efforts resulted in identifying 163 MSWLFs for  
 2 which adverse impacts have been documented. For 111  
 3 of these sites, sufficient information was available  
 4 to identify how the design, operation and location of  
 5 the facility contributed to the problem."  
 6 Q Thank you. If you could go back to the cover  
 7 page of TJFA-27 and looking towards the bottom of the  
 8 page, could you please tell us what the date of this  
 9 report is?  
 10 A July 1988.  
 11 Q And, Dr. Kier, if I could ask you to move  
 12 over to Page 6.  
 13 A All right.  
 14 Q What do you find on Page 6-23 at the top of  
 15 the page?  
 16 A At the top of the page is "Table 1, Human  
 17 Health and Environmental Impacts (Continued)."  
 18 Q If you'll go down the left-hand column of  
 19 that chart that appears on Page 6-23, there is a  
 20 number 91. Could you identify what's reflected next  
 21 to the number 91?  
 22 A 91 lists "Sunset Farms Landfill Texas, and  
 23 the parentheses -- the number in parentheses refers to  
 24 the reference list in the back.  
 25 MR. CARLSON: What page are you on,

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1 Mr. Renbarger?  
 2 MR. RENBARGER: 6-23.  
 3 Q (BY MR. RENBARGER) If you would move going  
 4 to the right in that same column under 91, under  
 5 "Media Impacted" what do you see there reflected on  
 6 Page 6-23.  
 7 A GW.  
 8 Q What is your understanding of what GW  
 9 represents?  
 10 A Groundwater.  
 11 Q Moving to the next column under "Description  
 12 of Impacts," there is a bullet point there and what is  
 13 reflected in that column?  
 14 A "On-site GW exhibits elevated levels of TDS  
 15 and CL," which stands for chloride, "exceeding NSDW,"  
 16 which is the drinking water standards.  
 17 Q And I believe you testified earlier that TDS  
 18 with respect to groundwater chemistry refers to total  
 19 dissolved solids, right?  
 20 A That is correct.  
 21 Q And you just indicated CL is chlorides,  
 22 correct?  
 23 A Yes.  
 24 Q And the NSDW standards, what are those again?  
 25 A Well, I can't remember exactly what the

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1 acronym stands for, but it's the drinking water  
 2 standards.  
 3 Q And the drinking water standards are  
 4 promulgated by the federal government, the EPA, right?  
 5 A Yes.  
 6 MR. RENBARGER: I move to admit TJFA-27.  
 7 MR. CARLSON: I object, Judge. Let me  
 8 put this into context. I asked Dr. Kier about whether  
 9 he had this document at his deposition. And in fact,  
 10 I asked him if he could ever find the document he was  
 11 talking about and could not identify by name would he  
 12 fill in the blank and let me know what it was. He did  
 13 not do that and, in fact, this is the first time this  
 14 document's ever been presented, complete hide the  
 15 ball.  
 16 JUDGE NEWCHURCH: So your objection is  
 17 really a request for a sanction for failure to produce  
 18 a discoverable document that was requested? Is that  
 19 right?  
 20 MR. CARLSON: Absolutely. And I would  
 21 like to strike all the testimony related to this  
 22 document.  
 23 JUDGE NEWCHURCH: Did you have any  
 24 objection other than that motion for sanction?  
 25 MR. CARLSON: Excuse me?

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1 JUDGE NEWCHURCH: Did you have any  
 2 objection other than that motion for sanction?  
 3 MR. CARLSON: Well, it's hearsay.  
 4 JUDGE NEWCHURCH: Okay. Mr. Renbarger?  
 5 MR. RENBARGER: Thank you, Judge. I  
 6 believe the witness just testified that this document  
 7 has only been discovered within the last -- well,  
 8 really in the last 48 hours. So there really hasn't  
 9 been an occasion for this, frankly, to be provided  
 10 until we were already right in the middle of this  
 11 hearing.  
 12 I think Dr. Kier, if asked questions  
 13 about his business activities, he would probably  
 14 reveal to you he's been quite busy, not only in  
 15 preparation for this hearing, but another hearing that  
 16 is now pending a SOAH where he has many deadlines  
 17 going on. And so from the standpoint of the  
 18 timeliness of it, I think the witness has pretty much  
 19 satisfied that.  
 20 With regard to the hearsay objections --  
 21 and I'm not sure exactly how best to deal with -- but  
 22 I think Dr. Kier has provided enough information for  
 23 one to reasonably discern that this is in fact a  
 24 public record. There is no question about its  
 25 authenticity as a public record or its reliability as

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1 such. And using, I guess, what we've seen before in  
 2 this hearing, there is an ancient documents exception  
 3 to the hearsay rule, which I believe Mr. Carlson's  
 4 quite familiar with at the Texas Rules of Evidence 803  
 5 subpart 16.  
 6 So with regard to hearsay, I think  
 7 there's exceptions to the hearsay rule based on it  
 8 being a public document under 803 Subpart 8 and an  
 9 ancient document under 803 Part 16. And certainly  
 10 Dr. Kier stands for any additional cross-examination  
 11 on the document that any party would choose to bring.  
 12 MR. CARLSON: Judge, by definition they  
 13 said they found it two days ago. He first came on the  
 14 stand yesterday. They didn't even have the courtesy  
 15 to provide this before he went on the stand. And I'll  
 16 go back to my deposition questions. I had a  
 17 fill-in-the-blank. His deposition was taken on  
 18 December the 4th. We've had that transcript for well  
 19 over a month. We got no errata sheet that indicated  
 20 that this document exists.  
 21 MR. RENBARGER: The errata sheet was  
 22 turned in quite some time ago before the discovery of  
 23 this document.  
 24 JUDGE NEWCHURCH: Mr. Renbarger, is  
 25 there any dispute that a document that would

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1 include -- a request was made during the deposition  
 2 for documents that would include this document?  
 3 MR. RENBARGER: There is no dispute as  
 4 to a request by Mr. Carlson that if that document is  
 5 found that he be provided a copy, yes, sir. There's  
 6 no dispute about that.  
 7 JUDGE NEWCHURCH: Anybody else want to  
 8 weigh in on the objections?  
 9 MR. BLACKBURN: Yeah, I would like to.  
 10 I mean, we obviously were not involved in the  
 11 discovery dispute.  
 12 A sanction is discretionary.  
 13 JUDGE NEWCHURCH: Right.  
 14 MR. BLACKBURN: And I think it has to  
 15 do, I think, with the -- both the nature of the  
 16 offense and, I would argue, the probative value and  
 17 importance of the information to a just result here.  
 18 JUDGE NEWCHURCH: All true.  
 19 MR. BLACKBURN: Frankly, groundwater  
 20 contamination is a serious issue. It is an allegation  
 21 that has been raised in this hearing. It is part of,  
 22 I think, what will end up being one of the truly  
 23 contested issues coming out of this, and this is a  
 24 piece of information directly related to that. I  
 25 would just simply argue that the public interest in

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1 having this information as part of the record  
 2 outweighs the, if you will, argument associated with  
 3 the disclosure at least from the standpoint of the  
 4 citizens that are adjacent to this landfill. Thank  
 5 you.  
 6 MR. RENBARGER: Might I add something to  
 7 that, Judge?  
 8 JUDGE NEWCHURCH: Yes, sir.  
 9 MR. RENBARGER: I think we've also seen  
 10 repeatedly where the Applicants have been submitting  
 11 additional reports well after the May of '08 version  
 12 that was submitted for hearing and supplements to any  
 13 number of the different attachments in the  
 14 application, supplementary visits, right up to,  
 15 frankly, less than 24 hours from the date this hearing  
 16 commenced.  
 17 So with respect to, you know, hiding the  
 18 ball, I don't think it's a hide-the-ball issue. I  
 19 think we're certainly being asked to be treated the  
 20 same way the Applicant has been treated with its late  
 21 filings.  
 22 MR. CARLSON: That is absolutely not  
 23 correct at all. We have been supplementing, for  
 24 example, with copies of the Rule 11 agreement, if  
 25 that's what you're talking about.

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1 MR. RENBARGER: No, I'm referring to the  
 2 bird study that took place in November that we heard  
 3 about first on the stand from Dr. Southern. I'm  
 4 referring to additional traffic studies that were  
 5 conducted late this fall, well after the application  
 6 that we had been preparing for was on file.  
 7 JUDGE NEWCHURCH: Well, I can't go back  
 8 and revisit possible objections that were not made at  
 9 the time.  
 10 MR. RENBARGER: I understand, Judge. I  
 11 was just trying to put it in perspective --  
 12 JUDGE NEWCHURCH: Right.  
 13 MR. RENBARGER: -- that it has been a  
 14 common pattern.  
 15 JUDGE NEWCHURCH: Well, there's a couple  
 16 of things going on. First of all, the document is  
 17 marked as "Draft," which I usually construe as, you  
 18 know, preliminary and not necessarily correct. I  
 19 don't see any data -- Dr. Kier, besides this one entry  
 20 regarding Sunset Farms on Page 6-23, is there any  
 21 other data in this document that purports to -- even  
 22 something as simple as a footnote -- that purports to  
 23 give the source of that information or where they got  
 24 that information?  
 25 WITNESS KIER: Yes, sir. As I said in

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1 my testimony, the number that is beside the entry for  
 2 Sunset Farms (1), refers to "Section 7.0 references,  
 3 No. 1 ICF, Subtitle D, State Surveys - Data Summary  
 4 Reports, September 1986."  
 5 JUDGE NEWCHURCH: Okay.  
 6 MR. TERRILL: Your Honor, can I add  
 7 something?  
 8 JUDGE NEWCHURCH: Yes, sir.  
 9 MR. TERRILL: And I'll try to be brief.  
 10 There are two problems -- there are two additional --  
 11 problems, at least as I see it. One of them is it's  
 12 not just a draft document, which is a problem in and  
 13 of itself because the government never took the report  
 14 final -- or if they did, we don't have the copy of  
 15 whatever was final. But it's the same type of problem  
 16 that we've had at other points in the case where  
 17 you've got hearsay within hearsay.  
 18 This report is a compilation, obviously.  
 19 It doesn't purport to be a source document. It's a  
 20 compilation of some other studies in this document  
 21 that Mr. Kier referred to. We don't even have that in  
 22 front of us. We do don't know what it says. We don't  
 23 know who did it, why they did it. That's obviously  
 24 hearsay as well. It's not -- not only is it not  
 25 authenticated, it's not even before us.

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1 And this kind of also falls under the  
 2 "it tain't fair." Why is it that we've been having  
 3 this case be litigated for three-quarters of a year  
 4 and well into the hearing, we see this for the first  
 5 time? I represent the landowner and I wasn't part of  
 6 that discovery dispute, but I've never seen this  
 7 before. And if they're saying that there's some  
 8 problem with groundwater contamination, why are we  
 9 finding out about it after the Applicant has had to  
 10 rest its case?  
 11 WITNESS KIER: May I add something  
 12 just -- not in his argument or anything --  
 13 JUDGE NEWCHURCH: No you may not. No  
 14 you may not.  
 15 MR. RENBARGER: Judge, the potential  
 16 existence of this document took place in a deposition  
 17 that occurred well after Dr. Kier had filed his  
 18 prefiled testimony and it was in response to a line of  
 19 questioning from Mr. Carlson as to any reasons that he  
 20 thought the landfill might be leaking. And Dr. Kier  
 21 just basically stated -- and I think the deposition  
 22 would show that -- that he thinks he saw the Sunset  
 23 Farms on a leaker list at one time or the other. And  
 24 I think that certainly has been out there since  
 25 December. Certainly BFI, if it was concerned about

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1 that, would be looking into that in its own right.  
 2 And certainly to the extent BFI may have had knowledge  
 3 since 1988 of this report, one would think they would  
 4 have disclosed that to the TCEQ as well in this permit  
 5 application. So I think the information has been out  
 6 there for a long time. I think it's been discussed  
 7 for a long time. And I think --  
 8 JUDGE NEWCHURCH: Wait a second. They  
 9 asked for the report. You don't provide the report  
 10 and now you're saying they should have gone out and  
 11 they should have somehow discovered the report that  
 12 you were referring to that you didn't provide. That's  
 13 what you're saying?  
 14 MR. RENBARGER: I'm saying that once  
 15 that they were on notice that Dr. Kier thought that  
 16 there was a report out there, he just did not know  
 17 where it was or if he had a copy of it, that certainly  
 18 BFI was on notice at that time, just as -- as was  
 19 Dr. Kier -- that that document may exist. And all I'm  
 20 saying is that, yes, they did request it, but they  
 21 requested it in the context of a deposition. They did  
 22 not request it in the context of any of the previous  
 23 discovery that took place in this case.  
 24 MR. CARLSON: Judge, during the  
 25 deposition I asked Dr. Kier if he had anything that

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1 was outside of his prefiled. This isn't even  
 2 mentioned in his prefiled. He said, "I remember  
 3 something indistinctly." He called it an EPA leaker  
 4 list. This document doesn't say leaker list on it.  
 5 There's no reference to that.  
 6 So later in the deposition as I was  
 7 finishing up -- and let me just go through, I'll get  
 8 you a copy -- "I've got one more question until we get  
 9 the document back. Earlier you talked -- you  
 10 testified about an EPA leaker list. Do you recall  
 11 that testimony?  
 12 Dr. Kier, "Yes.  
 13 "Question: You couldn't recall any  
 14 particular information about that list other than  
 15 there was some sort of list you recall seeing, right?  
 16 "Answer: Yes.  
 17 "Question: I'm going to ask the court  
 18 reporter to leave a blank after this question in the  
 19 transcript. And when you review the transcript, I'd  
 20 like you, if you can, to fill in descriptive  
 21 information, as descriptive as possible, so I can find  
 22 out what that list is. Okay?  
 23 "Answer: All right. If I find it. I  
 24 mean, I'm perfectly willing to get you a copy of it.  
 25 "Question: Okay. Either a web address

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1 or a document title or something like that. Will you  
 2 do that for me sir?  
 3 "Answer: Yes."  
 4 JUDGE NEWCHURCH: You know, it's  
 5 interesting -- I'm looking at the references and I see  
 6 the name of my old friend Hans Mueller, who apparently  
 7 was the source for information concerning three  
 8 landfills, specifies where he was working at the time,  
 9 specifies the sites and the dates that the information  
 10 was given. Sunset Farms is not included among them.  
 11 And I don't see that it's included within any other  
 12 specific reference as to the source of the  
 13 information, just that Subtitle D State Surveys -  
 14 State Summary Report. This is not that report.  
 15 Mr. Blackburn (sic) you're completely  
 16 correct. The sanction should be proportional to the  
 17 offense and with a distinct view on the probative  
 18 value of the document. So I'm always reluctant to  
 19 sanction, but I think this is hearsay within hearsay.  
 20 It purports to be a draft report, not a final report,  
 21 which suggests maybe EPA never did think this was  
 22 true. Maybe this was a preliminary document. It  
 23 gives a cumulative data site without any specifics.  
 24 There are numerous references to other sites and  
 25 specific individuals, specific dates, specific

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1 landfills. None of that is included that I can see.  
 2 So ultimately hearsay is about "the  
 3 witness is not here, can you rely on this document for  
 4 the truth of the matter asserted," and the bottom line  
 5 is I can't. So the hearsay objection is sustained.  
 6 MR. RENBARGER: And with respect to the  
 7 hearsay objection, both as to it being a public  
 8 document or an ancient document. Is that correct,  
 9 Judge?  
 10 JUDGE NEWCHURCH: Yes.  
 11 MR. CARLSON: Judge, I'd like to move to  
 12 strike the testimony regarding this document as well.  
 13 JUDGE NEWCHURCH: Dr. Kier was in the  
 14 middle of talking about this document, and I don't  
 15 know how far back that goes.  
 16 MR. CARLSON: I couldn't tell you  
 17 either, but it's been the last --  
 18 JUDGE NEWCHURCH: Yeah, some of it I  
 19 wasn't paying close attention to. We sort of drifted  
 20 into this discussion and it's sort of here, so I don't  
 21 know exactly the scope of what you're asking to  
 22 strike.  
 23 MR. CARLSON: I would say any -- from  
 24 the point in time when this document was first  
 25 mentioned. I can't give you a page-line. I could

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1 look at the court reporter's in-time transcript and  
 2 perhaps point to that certainly during a break.  
 3 MR. RENBARGER: It certainly identifies  
 4 what Mr. Carlson was asking Dr. Kier about in his  
 5 deposition, and if we don't give it any probative  
 6 value based on the hearsay objections, it just seems  
 7 to me -- the document does exist, good, bad or  
 8 indifferent. And it certainly does reflect what he  
 9 was referring to in the testimony that we went over.  
 10 So, if nothing else, I think it should remain in the  
 11 record for the very limited purpose of that does  
 12 reflect one of the sources upon which Dr. Kier opined  
 13 that this landfill is leaking.  
 14 MR. CARLSON: That's not correct. His  
 15 prefiled testimony doesn't even mention this, nor does  
 16 it actually mention any groundwater quality data. I  
 17 believe he testified yesterday he didn't look at any  
 18 groundwater quality data when he rendered his opinion.  
 19 It was based solely on some allegations of mounding  
 20 based on what he saw in the fill cross-sections and  
 21 the geologic cross-sections. That's it.  
 22 MR. TERRILL: And, Your Honor, how this  
 23 will end up being used on appeal is it will be cited  
 24 for the truth of the matter asserted. It happens in  
 25 appellate cases all the time. And if it gets left in

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1 the record it is going to be cited for the truth of  
 2 the matter asserted.  
 3 MR. RENBARGER: I will stipulate it will  
 4 not be asserted for the truth of the matter asserted.  
 5 JUDGE NEWCHURCH: Let's see, I found the  
 6 document is hearsay, and I haven't allowed the  
 7 document to be admitted because it is hearsay. On the  
 8 other hand, an expert can reach an opinion based on  
 9 hearsay. So what's the basis for striking the  
 10 testimony concerning what he concluded based on the  
 11 document?  
 12 MR. CARLSON: His prefiled testimony  
 13 said he reached his opinion based solely on the fill  
 14 cross-sections and the geologic cross-sections and the  
 15 potentiometric maps and that was it, period.  
 16 JUDGE NEWCHURCH: And now he's added  
 17 something on redirect.  
 18 MR. CARLSON: It's outside the scope of  
 19 his opinion, Judge.  
 20 MR. MENDOZA: Well, it's responsive to  
 21 your cross-examination.  
 22 MR. CARLSON: Judge, I would go back to  
 23 the sanction request at that point and --  
 24 JUDGE NEWCHURCH: So you're asking for a  
 25 sanction because you asked for information concerning

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1 the basis for any such opinion and that wasn't  
 2 provided to you until this morning?  
 3 MR. CARLSON: That's correct, Judge.  
 4 MR. RENBARGER: And again I would note  
 5 that Mr. Carlson has another round of cross coming up  
 6 in which he may freely question the witness.  
 7 MR. CARLSON: This is just an attempt to  
 8 side-step a potential sanction, Judge.  
 9 JUDGE NEWCHURCH: Should a sanction be  
 10 granted because a witness relies on something that was  
 11 presented -- and I couldn't find to be reliable, so  
 12 I'm not going to allow the document. But yet he  
 13 relied on it, even though it was hearsay. But he  
 14 didn't disclose it until the time of the hearing when  
 15 he was asked for it a month ago, roughly in December.  
 16 MR. CARLSON: He said he found it two  
 17 nights ago.  
 18 JUDGE NEWCHURCH: Two nights ago.  
 19 MR. CARLSON: I didn't even get it  
 20 before his cross-exam.  
 21 MR. RENBARGER: I received it for the  
 22 first time yesterday and it was copied last night.  
 23 JUDGE NEWCHURCH: I'm going to grant the  
 24 motion for sanctions. You'll need to be more  
 25 specific. Please refer with the court reporter during

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1 the break and we'll talk about specific lines, but the  
 2 motion is granted.  
 3 MR. CARLSON: Thank you, Judge.  
 4 Q (BY MR. RENBARGER) Dr. Kier, do you have a  
 5 copy of the pre-2006 MSW rules there in front of you?  
 6 A I think so. Yes.  
 7 Q Could you please locate Rule 330.231?  
 8 A Found it, luckily.  
 9 Q Okay. And would you read into the record  
 10 330.231(a), please?  
 11 A 330.231(a) is entitled "Groundwater  
 12 Monitoring Systems." Little (a) says, "A groundwater  
 13 monitoring system must be installed that consists of a  
 14 sufficient number of monitoring wells installed at  
 15 appropriate locations and depths to yield  
 16 representative groundwater samples from the upper-most  
 17 aquifer as defined in 330.2 of this title (relating to  
 18 definitions)."  
 19 Q And moving to subpart little (i) under (A)  
 20 the first sentence of that subsection, please.  
 21 A "Background wells shall be installed to allow  
 22 determination of quality of background groundwater  
 23 that has been affected by leakage from a unit."  
 24 Q Having reviewed the BFI application, the  
 25 signed and sealed contour maps contained in that

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1 application, the proximity of the BFI Landfill to the  
 2 Austin Community Landfill, all of the groundwater  
 3 studies you've performed with respect to the  
 4 relationship of groundwater movements as between or  
 5 among BFI, ACL and the Applied Materials facility, do  
 6 you have an opinion as to whether or not the system  
 7 proposed in the application by BFI meets these  
 8 regulations?  
 9 A It does not.  
 10 MR. RENBARGER: Pass the witness.  
 11 JUDGE NEWCHURCH: Is there recross by  
 12 anyone?  
 13 Mr. Terrill?  
 14 RECCROSS-EXAMINATION  
 15 BY MR. TERRILL:  
 16 Q Dr. Kier, are you familiar with the TDSL --  
 17 Texas Disposal System's challenge to the IESI  
 18 Landfill?  
 19 A Could you tell me which one?  
 20 Q Have they challenged more than one IESI  
 21 Landfill?  
 22 A Well, I don't know. That's why I'd like to  
 23 know which one you're talking about.  
 24 Q Have you worked on any Texas Disposal  
 25 System's case in which they've challenged a landfill

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1 application?  
 2 A Not specifically that I recall.  
 3 Q What do you mean "not specifically?" Have  
 4 you peer reviewed some? Have you -- what do you mean  
 5 by that?  
 6 A There was a discussion at one point by the  
 7 city of allowing IESI to take over the FM 812  
 8 landfill, which is the City of Austin Landfill. It is  
 9 a C&D landfill, construction and demolition and  
 10 potentially raise that landfill. But IESI at that  
 11 point was neither an applicant nor an owner of the  
 12 landfill in any way, shape or form that I'll aware of.  
 13 Q Are you familiar with an IESI Landfill  
 14 application in North Texas that Texas Disposal Systems  
 15 challenged?  
 16 A There might be one up in North Texas.  
 17 MR. RENBARGER: Are we talking about  
 18 Texas Disposal Systems or TJFA?  
 19 MR. TERRILL: Well, my question was  
 20 clear it's Texas Disposal Systems.  
 21 Mr. Renbarger, if you want me to -- I  
 22 mean, look --  
 23 MR. RENBARGER: Well, here's my  
 24 objection, it's beyond the scope of the redirect. The  
 25 only reference we made to any projects related to

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1 TJFA's engagements reviewing other landfill  
 2 applications, we did not talk at all about any TDS  
 3 challenges to any landfills anywhere in the State of  
 4 Texas.  
 5 JUDGE NEWCHURCH: Go ahead.  
 6 MR. TERRILL: Well, look, the connection  
 7 between TJFA and TDS is clear at this point. A lot of  
 8 his attempted rehabilitation was discussing the TDS  
 9 landfill in Creedmoor. There was also a discussion  
 10 about TJFA's challenges of other competitors'  
 11 landfills. I was going to give you the benefit -- and  
 12 the purpose of this cross-examination -- is to show  
 13 why they switched from challenging as TDS to using  
 14 this entity TJFA instead.  
 15 JUDGE NEWCHURCH: I don't recall any  
 16 conversation -- any questions in Mr. Renbarger's  
 17 redirect concerning IESI, I think, were the  
 18 initials --  
 19 MR. TERRILL: That is true. He did not  
 20 mention that competitor. He did talk about Waste --  
 21 other competitors. They're all competitors'  
 22 landfills, and I just wanted to give the Court the  
 23 benefit of understanding how it's changed from TDS to  
 24 TJFA.  
 25 JUDGE NEWCHURCH: Well, that might have

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1 been interesting earlier, but I agree it's outside the  
 2 scope of the redirect.  
 3 MR. TERRILL: Okay.  
 4 Q (BY MR. TERRILL) In your testimony you  
 5 mentioned working on Covell Gardens. That's Waste  
 6 Management's landfill in San Antonio, correct?  
 7 A That is correct.  
 8 Q And of course you're representing TJFA here  
 9 in this case against BFI, correct?  
 10 A Well, yes. I guess that's the case.  
 11 Q Obviously. And you're also representing TJFA  
 12 against Waste Management's application for the Austin  
 13 Community Landfill, correct?  
 14 A Correct.  
 15 Q You represented TJFA in Waste Management's  
 16 case in Williamson County, correct?  
 17 A Well, I was retained by the attorneys.  
 18 Q You worked on that Waste Management  
 19 application, correct?  
 20 A I worked on it as a consulting expert to the  
 21 attorneys.  
 22 Q And that was for TJFA, correct?  
 23 A I believe they were paid by TJFA. But the  
 24 attorneys paid me.  
 25 Q And you worked on the BFI application in

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1 Comal County sometimes referred to as Mesquite Creek,  
 2 correct?  
 3 A I don't believe that's a BFI application.  
 4 Q Whose application is it?  
 5 A I think Waste Management is the owner of that  
 6 landfill.  
 7 Q Again, another competitor of TDS, correct?  
 8 A I don't mess with the competition stuff.  
 9 Q Okay. Does TJFA own any land other than next  
 10 to a competitor's landfill?  
 11 A I don't know.  
 12 Q Are you aware of any -- well, actually, let  
 13 me ask you a different question.  
 14 You already testified that you haven't  
 15 been on a TJFA property that's next to the BFI  
 16 landfill. Have you been on any TJFA property next to  
 17 any of the other competitors' landfills, the list that  
 18 we just went through?  
 19 A Yes.  
 20 Q Which ones?  
 21 A Mesquite Creek.  
 22 Q And is that the one that's in Comal County?  
 23 A Yes. It slopes into Guadalupe County, too.  
 24 Q And how many times have you been out there?  
 25 A Once, maybe twice.

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1 Q All right. Other than that occasion, have  
2 you ever been on any other TJFA property?  
3 A Well, I could have been. I think TJFA owns a  
4 number of properties around its own landfill.  
5 Q TJFA has a landfill?  
6 A No, excuse me, I misspoke. I have been on a  
7 number of properties that TJFA may own adjacent to the  
8 TDS landfill.  
9 Q Ah. All right. So if TDS -- so TJFA  
10 brought -- bought properties belonging to neighbors of  
11 TDS?  
12 A Well, when they were put up for sale I think  
13 they did. I just -- I don't know which ones are which  
14 or what --  
15 Q Okay. So let me see if -- if TDS had bought  
16 that property itself, that would extend the boundaries  
17 of land owned by TDS, correct?  
18 A I don't know.  
19 Q Well, let me ask it a different way. The  
20 properties that TJFA bought, those were potential  
21 protestants in a landfill application by TDS, correct?  
22 MR. RENBARGER: Objection. I don't  
23 think there's any facts in evidence to support that.  
24 JUDGE NEWCHURCH: Do you have a  
25 response?

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1 MR. TERRILL: You just -- you said that  
2 you were there, you've been on that property, right?  
3 MR. RENBARGER: That was not my  
4 objection. My objection related to --  
5 JUDGE NEWCHURCH: Okay. It sounded like  
6 you're withdrawing the question and asking another  
7 question, but your next question was vague. So  
8 rephrase your new question.  
9 Your objection is sustained as to the  
10 previous one, which he implicitly withdrew.  
11 Q (BY MR. TERRILL) Dr. Kier, your  
12 understanding of standing in landfill cases is that  
13 nearby landowners can protest an application, correct?  
14 A Commonly, yes.  
15 MR. RENBARGER: Judge, I think again  
16 we're going beyond the scope of the redirect. I don't  
17 think we talked about standing issues or how one  
18 becomes a party or how one does anything along those  
19 lines. So I'm not sure where he's going with this,  
20 but it sure sounds like it's outside the scope of the  
21 redirect.  
22 JUDGE NEWCHURCH: Mr. Terrill?  
23 MR. TERRILL: Your Honor, this just goes  
24 to the witness's credibility. Texas Disposal Systems  
25 and TJFA are clearly affiliates of each other, and --

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1 MR. RENBARGER: Objection to the term  
2 "affiliates."  
3 JUDGE NEWCHURCH: Well, it's an  
4 argument. He might be wrong, but he can argue that.  
5 So your objection is overruled.  
6 That's not the objection. The objection  
7 is it's outside the scope of the redirect.  
8 MR. TERRILL: Okay. It's not outside of  
9 the scope of the redirect.  
10 JUDGE NEWCHURCH: Because?  
11 MR. TERRILL: During his redirect  
12 examination he went into two different things, both of  
13 which are relevant to my recross. One was he was  
14 essentially trying to rehabilitate Mr. Kier -- or  
15 Dr. Kier. Dr. Kier said during my  
16 cross-examination -- he confused -- understandably  
17 so -- TJFA and Texas Disposal Systems. And  
18 Mr. Renbarger on his redirect was attempting to try to  
19 sort them back again.  
20 Everything that I am asking Dr. Kier  
21 about is relevant to showing that there is,  
22 essentially, identity between the two organizations.  
23 And as Dr. Kier said during his cross-examination by  
24 me, he takes his orders from Mr. Gregory. Now him  
25 changing his response on Mr. Renbarger's redirect

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1 doesn't change the fact that that's what he said the  
2 first time.  
3 MR. RENBARGER: I believe counsel said  
4 that and the witness incorrectly agreed with counsel.  
5 He put words in his mouth.  
6 JUDGE NEWCHURCH: All right. All right.  
7 Wait a second. Clearly the witness' credibility is at  
8 stake and clearly there was an effort to rehabilitate  
9 the witness. But none of that concerned possible  
10 parties in a TDSL landfill permit application that I  
11 recall.  
12 MR. TERRILL: Okay.  
13 JUDGE NEWCHURCH: So I'm going to  
14 sustain the objection. You're beyond the scope of the  
15 redirect.  
16 MR. TERRILL: All right. I'm going to  
17 pass the witness.  
18 JUDGE NEWCHURCH: Mr. Carlson?  
19 MR. CARLSON: Three minute's worth I  
20 think, Judge. May I approach?  
21 JUDGE NEWCHURCH: Yes, sir.  
22 RE-CROSS-EXAMINATION  
23 BY MR. CARLSON:  
24 Q Dr. Kier, Mr. Renbarger asked you a few  
25 questions about your invoices on the redirect. Do you

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1 recall that?  
 2 A Yes.  
 3 Q Dr. Kier, has the court reporter handed you  
 4 the invoices?  
 5 A Yes.  
 6 Q And they've been marked for the purposes of  
 7 this hearing as BFI-20. Is that correct?  
 8 A Correct.  
 9 Q Is that the -- to your knowledge -- a true  
 10 and correct copy of the invoices that Mr. Renbarger  
 11 was asking you about, the invoices that I was asking  
 12 you about yesterday and the invoices that were marked  
 13 as Deposition Exhibit 121 to your deposition?  
 14 A It appears to be, without checking every  
 15 page.  
 16 MR. CARLSON: All right. I'd offer  
 17 BK-20, Judge.  
 18 JUDGE NEWCHURCH: Any objection?  
 19 MR. RENBARGER: None.  
 20 JUDGE NEWCHURCH: Did you say BK --  
 21 MR. CARLSON: I keep saying BK, I'm  
 22 thinking of Mr. Kier. I offer BFI-20.  
 23 JUDGE NEWCHURCH: And there's still no  
 24 objection, just to clear that up.  
 25 MR. RENBARGER: No.

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1 JUDGE NEWCHURCH: Okay. Good. So  
 2 BFI-20 is admitted.  
 3 (Exhibit BFI No. 20 marked and admitted)  
 4 Q (BY MR. CARLSON) One last series of  
 5 questions. On redirect you were asked some questions  
 6 about background wells or background monitoring. Do  
 7 you recall that?  
 8 A No -- yes --  
 9 Q Excuse me?  
 10 A Yes. I guess my confusion is it had nothing  
 11 to do with the invoices.  
 12 Q No, I'm moving on.  
 13 A Okay.  
 14 Q Done with the invoices. I don't think you  
 15 billed for background wells on your invoices.  
 16 It's your understanding that some  
 17 additional wells -- 17 additional wells -- are going  
 18 to be placed around the perimeter of the Sunset Farms  
 19 facility if this permit amendment is granted?  
 20 A I believe the number is 17, plugging  
 21 two and -- of the existing wells and adding 17 new  
 22 ones.  
 23 Q And to create the total of 32 wells for the  
 24 proposed system, right?  
 25 A Correct.

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1 Q And do you recall Kevin Carel's testimony --  
 2 and maybe you didn't read the prefile -- that  
 3 described what background monitoring is?  
 4 A I don't recall that, but he may have talked  
 5 about it.  
 6 Q Background monitoring basically means that a  
 7 well is monitored for a period of time. In this case  
 8 it's proposed to be two years on quarterly -- on a  
 9 quarterly basis to determine the background levels of  
 10 constituents in the water in the well, right?  
 11 A Yes. But be careful that you don't confuse  
 12 background monitoring with background wells. They're  
 13 different things.  
 14 Q Right. It's your understanding -- or do you  
 15 have an understanding -- that BFI is in fact proposing  
 16 to do background monitoring on these 17 new wells to  
 17 establish a baseline?  
 18 A Yes, they are.  
 19 Q And that would be normal procedure for  
 20 installation of new wells, correct?  
 21 A Yes.  
 22 Q At which point, after the background  
 23 monitoring is done, the wells can become detection  
 24 wells, right, for detection monitoring purposes?  
 25 A Yes, as point-of-compliance wells.

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1 Q Right. And that's pretty normal operating  
 2 procedure for groundwater monitoring wells and  
 3 perimeter monitoring systems?  
 4 A Well, to that degree, yes.  
 5 MR. CARLSON: All right. Pass the  
 6 witness, Judge.  
 7 JUDGE NEWCHURCH: Further direct?  
 8 MR. RENBARGER: None.  
 9 JUDGE NEWCHURCH: Thank you, Dr. Kier.  
 10 You're excused.  
 11 Why don't we take our morning break now  
 12 and then we'll return with the next witness. Ten  
 13 minutes.  
 14 (Recess: 10:14 a.m. to 10:25 a.m.)  
 15 JUDGE NEWCHURCH: All right. Back on  
 16 the record. And is TJFA ready to call its next  
 17 witness?  
 18 MR. HEAD: Yes, we are, Your Honor. We  
 19 call Steve Stecher.  
 20 JUDGE NEWCHURCH: Mr. Stecher, if you'll  
 21 take the oath.  
 22 (Witness sworn)  
 23 JUDGE NEWCHURCH: Mr. Head?  
 24  
 25 LEE ROY STEPHEN STECHER, JR.,

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<p>1 having been duly sworn, testified as follows:                  2 DIRECT EXAMINATION                  3 BY MR. HEAD:                  4 Q Please state your full name for the record.                  5 A Lee Roy Stephen Stecher, Jr.                  6 Q And what is your occupation, Mr. Stecher?                  7 A Professional engineer.                  8 Q And how are you employed?                  9 A For Crespo Consulting Services, Inc.                  10 Q And what is your position at Crespo?                  11 A President and principal engineer.                  12 Q And what is your connection with this                  13 landfill application proceeding?                  14 A I've been hired by the Fritz -- I always have                  15 trouble with your name, the company's -- the law                  16 form -- your law firm -- to look at surface water,                  17 erosion and drainage.                  18 Q And have you prepared prefiled testimony in                  19 this matter?                  20 A Yes, I have.                  21 Q And do you have that in front of you?                  22 A I believe so. Yes.                  23 Q And that prefiled testimony is designated                  24 SS-1, correct?                  25 A Yes.</p>	<p>1 resume?                  2 A Yes, except for on one place I had a                  3 certification that has lapsed.                  4 Q And what certification is that?                  5 A The Certified Floodplain Manager.                  6 Q When you prepared the resume, was that                  7 certification in effect?                  8 A Yes.                  9 Q Okay. And you have one additional exhibit,                  10 correct, SS-3?                  11 A Yes.                  12 Q And could you briefly identify that exhibit                  13 for the record?                  14 A That's the 2002 permit modification.                  15 MR. HEAD: And for the record, that's                  16 already been introduced in evidence, I think, as                  17 NNC-1, the 2002 model.                  18 Q Do you adopt --                  19 A I believe so.                  20 Q Do you adopt your prefiled testimony as true                  21 and correct?                  22 A Yes.                  23 MR. HEAD: We offer prefiled SS-1,                  24 including Exhibits SS-2 and SS-3.                  25 JUDGE NEWCHURCH: Any objection?</p>
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<p>1 Q Is this a true and correct copy of your                  2 prefiled testimony?                  3 A Yes, it is.                  4 Q Do you have any revisions to this prefiled                  5 testimony at this time?                  6 A No, I do not.                  7 Q Are you sure you don't want to fix a typo?                  8 A Oh, yes.                  9 (Laughter)                  10 On Page 15 -- on Page 15, Line 14, there                  11 were some periods that were -- there was a period in                  12 place of a -- it was supposed to be a comma instead of                  13 a period after the word "Austin."                  14 Q Would you indicate the line?                  15 A Line 14. I'm sorry.                  16 Q Okay.                  17 A And then another comma after -- where it says                  18 Exhibit RS-7.                  19 Q And you have initialed that and that has been                  20 provided to all parties and the court reporter,                  21 correct?                  22 A Yes.                  23 Q What is Exhibit SS-2?                  24 A Yes, SS-2 is a resume.                  25 Q Is this a true and correct copy of your</p>	<p>1 MR. HEAD: We tender the witness.                  2 JUDGE NEWCHURCH: Then SS-1 through 3                  3 are all admitted.                  4 (Exhibit TJFA No. SS-1 through SS-3                  5 admitted)                  6 JUDGE NEWCHURCH: And going to cross,                  7 Mr. Blackburn?                  8 MR. BLACKBURN: I have no questions,                  9 Your Honor.                  10 JUDGE NEWCHURCH: Ms. Noelke?                  11 MS. NOELKE: I have no questions, Your                  12 Honor.                  13 JUDGE NEWCHURCH: Mr. Morse?                  14 MR. MORSE: I have no questions.                  15 JUDGE NEWCHURCH: Ms. Mann?                  16 MS. MANN: No questions?                  17 JUDGE NEWCHURCH: Mr. Shepherd?                  18 MR. SHEPHERD: No questions.                  19 JUDGE NEWCHURCH: Mr. Terrill?                  20 MR. TERRILL: No questions.                  21 JUDGE NEWCHURCH: Mr. Gosselink?                  22 MR. GOSSELINK: I have some questions.                  23 JUDGE NEWCHURCH: Okay.                  24                  25 CROSS-EXAMINATION</p>

15 (Pages 1835 to 1838)

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1 BY MR. GOSSELINK:  
 2 Q Mr. Stecher, you, in your introduction with  
 3 Mr. Head, just advised the Court that you had prepared  
 4 your prefiled testimony on the issue of drainage and  
 5 erosion and sedimentation control, right?  
 6 A Yes. I probably should have included water  
 7 quality in that.  
 8 Q All right. But in your prefiled you got  
 9 extremely focused when you talked about what your  
 10 testimony was going to be and you identified  
 11 specifically Rules 330.55(b)(1) and 330.56(f) as the  
 12 focus of your testimony. Is that correct?  
 13 A That's correct.  
 14 Q All right. And those are the erosion and  
 15 sedimentation control rules predominantly, correct?  
 16 A Correct.  
 17 Q Now, you did do some drainage analysis and  
 18 you do have some -- some limited opinions that are  
 19 beyond erosion and sedimentation control, but the  
 20 focus of your testimony, and indeed the focus of our  
 21 deposition, involved erosion and sedimentation  
 22 control. Is that correct?  
 23 A That's correct.  
 24 Q Okay. As of November 30th, your invoices  
 25 totaled \$73,000 in this case. Is that correct?

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1 A That sounds about right.  
 2 Q And since that time, we took your deposition  
 3 on two separate days in December?  
 4 A Yes.  
 5 Q And you've attended portions of this hearing?  
 6 A Yes.  
 7 Q Do you know what your bill is up to this  
 8 point?  
 9 A No.  
 10 Q You think you cracked 90,000?  
 11 A Possibly.  
 12 Q And, Mr. Stecher, I'm only going to ask you a  
 13 few TDSL questions. You did -- you have worked for  
 14 TDSL. Is that not correct?  
 15 A Yes.  
 16 Q And you did the Subtitle D MOD along with  
 17 Dr. Kier and Bob Brandes, correct?  
 18 A I worked on portions of the Subtitle D MOD.  
 19 Q And you prepared a stormwater pollution  
 20 prevention program plan for TDS, correct?  
 21 A Correct, back about 1998.  
 22 Q Have you done anything else?  
 23 A No.  
 24 Q Among your prior jobs, Mr. Stecher, you  
 25 worked for the City of Austin, didn't you?

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1 A That's correct.  
 2 Q And did you work for the City of Austin  
 3 performing analyses similar to the analysis you  
 4 performed in this case, correct?  
 5 A Yes.  
 6 Q And while at the City of Austin, you became  
 7 familiar with Mr. Chuck Lesniak?  
 8 A Correct.  
 9 Q And Mr. Mike Kelly, correct?  
 10 A I don't believe he was working there at the  
 11 time that I was there.  
 12 Q All right. But you know Mike Kelly?  
 13 A Yes.  
 14 Q And in deposition I asked you whether or not  
 15 you thought they were good at what they did, and you  
 16 said "yes," correct?  
 17 A That's correct.  
 18 Q In fact, I think I called them good stewards  
 19 for the city of surface water quality protection and  
 20 you agreed with me, didn't you?  
 21 A Yes, I did.  
 22 Q A couple of other introductory comments -- or  
 23 questions, I'm sorry. I believe you told me in the  
 24 deposition that you have never been on the BFI Sunset  
 25 Farms Landfill site. Isn't that correct?

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1 A Not directly on it.  
 2 Q You did in fact drive by on Giles Road and  
 3 Blue Goose Road for what you estimated to be perhaps  
 4 an hour of drive-by and stopping to take photographs.  
 5 Is that correct?  
 6 A That's correct.  
 7 Q Okay. You never asked to come on the Sunset  
 8 Farms Landfill to do any inspection of any of the  
 9 features that you have criticized in this case. Isn't  
 10 that also correct?  
 11 A That's correct.  
 12 Q BFI didn't refuse you access at any time, did  
 13 they?  
 14 A No.  
 15 Q So the work that you've done on this case has  
 16 not involved field work. It has involved office work.  
 17 Is that a fair assessment?  
 18 A Primarily.  
 19 Q Okay. And there was -- I'm going to ask you  
 20 a question at the beginning and probably talk about it  
 21 at the end. I think you agreed with me in the course  
 22 of your deposition that an awful lot of your criticism  
 23 had to do with your contention that BFI engineers  
 24 failed to demonstrate things, didn't include enough  
 25 information in the application to satisfy you. Isn't

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1 that correct?  
 2 A That was part of what my concern was.  
 3 Q Right. I've gone back through your prefiled  
 4 and back through your deposition, and I cannot find  
 5 any instance where you have ever identified an actual  
 6 problem that resulted in a violation or an exceedance  
 7 or anything of that nature. Isn't that the case? You  
 8 didn't testify at any point to any problem or any  
 9 violation?  
 10 A I'm sorry, could you repeat the question?  
 11 Q Yes. Isn't it true that none of your  
 12 testimony identifies any actual violations of the  
 13 erosion or sedimentation control issues at the BFI  
 14 Sunset Farms site?  
 15 A That's correct.  
 16 Q And in fact, you at least tried to find that  
 17 in one instance when you had your associate look for  
 18 whether or not the adjacent Gilleland Creek/Decker  
 19 Creek Watershed might have been in some way impacted  
 20 by the Sunset Farms Landfill, correct?  
 21 A That's correct.  
 22 Q The 303(d) Impaired Water Survey, correct?  
 23 A That's correct.  
 24 Q And your conclusion was it did not. Isn't  
 25 that also correct?

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1 A I think the conclusion was we didn't see  
 2 anything worth pursuing.  
 3 Q Wasn't your actual conclusion that there were  
 4 some potential impacts in the creeks, but that they  
 5 were all not downstream of the Sunset Farms Landfill?  
 6 A That's correct.  
 7 Q Okay. Let's talk a little bit about  
 8 regulatory -- one more question. And with regard to  
 9 the no violations, this included all aspects of your  
 10 review of the application and the on-the-ground  
 11 facility. Isn't that right?  
 12 A Well, when you're talking about violations,  
 13 it's -- we're talking about actual current operations.  
 14 Q Yes.  
 15 A Talking about current operations or past  
 16 operations.  
 17 Q I'm talking about your observations at the  
 18 site and your review of the current application. We  
 19 all know there was a violation in 2002.  
 20 A Correct. Yeah. There was a violation.  
 21 Q With the exception of that, did you find  
 22 anything else?  
 23 A Not that I could tell for sure.  
 24 Q Okay. We've had testimony here from  
 25 Mr. Mehevec about the regulatory philosophy of the

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1 TCEQ as it relates to erosion and sedimentation  
 2 control. And he testified that they were distinct and  
 3 in fact were separated conceptually in the  
 4 regulations. On the one hand you have sedimentation  
 5 control, which applies to daily and intermediate and  
 6 construction phase. Do you agree with that?  
 7 A I can. I'm not sure I'm -- know the whole  
 8 story of how you're going to break this out. But that  
 9 sounds right.  
 10 Q Okay. I think in our deposition we talked  
 11 about that in -- during construction, when you have --  
 12 when you're placing daily cover and intermediate  
 13 cover, it is foreseeable that there will be erosion  
 14 because it's dirt on slopes and it rains, correct?  
 15 A Yes.  
 16 Q Okay. And in that instance a landfill  
 17 operator or an applicant is obligated to control the  
 18 sediment, not to stop the erosion, correct?  
 19 A Not to stop erosion completely, yes.  
 20 Q Yeah, it's going to erode, so you have to do  
 21 something once it erodes, correct?  
 22 A Yes, but I believe there is some obligation  
 23 to try to prevent erosion.  
 24 Q Oh, absolutely. You don't fluff it up and  
 25 spray water on it to see how far it will fall down the

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1 hill. You place it on the side of the landfill, and  
 2 if it happens to erode, that doesn't constitute a  
 3 violation so long as it doesn't go out of the outfall  
 4 in excess of some limit, correct?  
 5 A I believe that's true.  
 6 Q Now, on the other hand when you get to final  
 7 cover, you do have to control erosion and the  
 8 regulations require that, right?  
 9 A Yes.  
 10 Q Okay. They require that because there's no  
 11 reason anymore to be having this open earth on the  
 12 side of the hill or anywhere at the landfill. It  
 13 should be vegetated, correct?  
 14 A Correct.  
 15 Q And it's required to be vegetated  
 16 immediately, correct?  
 17 A I don't believe it's required to be vegetated  
 18 immediately, but it should be -- it should be  
 19 vegetated immediately.  
 20 Q Okay. This was all to say there are two  
 21 different parts of the regulations. One is  
 22 sedimentation control, that's applicable, on the one  
 23 hand throughout the entire process, but on the other  
 24 hand focused during construction, right?  
 25 A I would disagree with that. I think the

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1 sedimentation erosion control happens throughout --  
 2 throughout both the active and the final cover phase.  
 3 How they're focused may be a little different, but I  
 4 think there's many of the things you're going to be  
 5 doing very much similar all the way through.  
 6 Q Do you have a copy of your deposition?  
 7 A Yes.  
 8 Q Can you find your deposition Exhibit 143,  
 9 which is a section of the 330 rules, 330.55(b)(1), the  
 10 one that you say you are focusing on?  
 11 MR. HEAD: Paul, I'm not sure he has the  
 12 deposition up there. Are you going to focus on the  
 13 rule or --  
 14 MR. GOSSELINK: Yeah, just the rule.  
 15 I'm just going to ask him to go through a part of the  
 16 rule.  
 17 MR. HEAD: Here's the two rules.  
 18 Q (BY MR. GOSSELINK) Do you have the rule  
 19 before you now, Mr. Stecher?  
 20 A I have a portion of the rule.  
 21 Q And that would be Rule 330.55(b)(1)?  
 22 A Yes.  
 23 Q Okay. And (b)(1) says, "The site development  
 24 plan of the application shall contain sufficient  
 25 information to document compliance with the

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1 following," and then (I) says, "a facility shall not  
 2 cause," and under (A) it says a discharge. Do you see  
 3 that?  
 4 A Yes.  
 5 Q And (B) it says a discharge.  
 6 A Yes.  
 7 Q And (C) it says a discharge.  
 8 A Yes.  
 9 Q And (D) it says a discharge?  
 10 A Yes.  
 11 Q So the prohibition under 330.55(b)(1) is to  
 12 not discharge in an outfall. Isn't that right?  
 13 A Correct.  
 14 Q Now, you have raised a lot of objections or  
 15 comments in your prefiled about BFI's erosion and  
 16 sedimentation control plan.  
 17 A That's correct.  
 18 Q And you raised questions about their  
 19 performance in both the construction phase where  
 20 there's daily and intermediate cover and in the final  
 21 cover phase, correct?  
 22 A That's correct.  
 23 MR. GOSSELINK: I'm sorry, Your Honor,  
 24 I've got a frog in my throat.  
 25 (Brief pause)

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1 Q (BY MR. GOSSELINK) And, Mr. Stecher, I'm  
 2 back and talkable again.  
 3 And in the course of your deposition, I  
 4 continued to try to draw a distinction between the  
 5 intermediate cover problems and the final cover  
 6 problems. Is that correct?  
 7 A That's correct.  
 8 Q And I actually asked you on Page 208 of your  
 9 deposition -- and I say: "I'm trying to draw a  
 10 distinction between when you are criticizing  
 11 intermediate cover and when you're criticizing final  
 12 cover. Okay? It seems to me an awful lot of what you  
 13 have criticized has been exposed slopes and berms that  
 14 aren't yet vegetated and your concern that there will  
 15 be erosion rills that will, you know, form on the  
 16 sides of the landfill, and I think that's the bulk of  
 17 your criticism. Is that incorrect," I say, and you  
 18 say, "Yes, that's incorrect."  
 19 And I say, "Okay," and you continue by  
 20 saying, "I think it's -- there's two significant parts  
 21 and you just described one-half of it, which  
 22 happens -- which is what happens from tomorrow to  
 23 whatever it is 2015. So that's one area that my  
 24 prefiled testimony describes -- you know, we talked  
 25 about. Then the other part is still the berms and the

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1 flumes and the sedimentation ponds. A lot of those  
 2 are final cover issues."  
 3 So you were drawing a distinction  
 4 between your criticisms of the berms and the flumes  
 5 and the sedimentation basins as applicable to the  
 6 final cover, correct?  
 7 A That's what I said. I think there -- I meant  
 8 that those are primarily final cover issues, but also  
 9 some of them could be the interim condition active  
 10 phase.  
 11 Q Okay. Sedimentation ponds could be an  
 12 interim phase, too, right?  
 13 A Correct. And you could also -- you could put  
 14 berms in -- install the berms earlier during the  
 15 active phase instead of waiting.  
 16 Q And you could have temporary berms.  
 17 A You can have temporary berms.  
 18 Q Which we have. You understand that now?  
 19 A Yes.  
 20 Q Okay. And the reason I asked you that  
 21 question and re-read that now is to ask you this  
 22 question. Are you familiar with the Rule 11  
 23 Agreement?  
 24 A Yes, I am.  
 25 Q We went through the Rule 11 Agreement in

18 (Pages 1847 to 1850)

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1 significant detail, didn't we, in your deposition?  
 2 A Yes. I still don't have my deposition in  
 3 front of me.  
 4 MR. GOSSELINK: Do you have his  
 5 depositions?  
 6 MR. HEAD: I have both of them.  
 7 MR. GOSSELINK: Okay.  
 8 MR. HEAD: Paul, before I approach, this  
 9 is my only copy. I've got my notes on these. Should  
 10 I take my notes off --  
 11 MR. GOSSELINK: No, I'm not going to  
 12 approach. Your notes don't say something like "make  
 13 sure you say this" or anything?  
 14 MR. HEAD: No, there's nothing like  
 15 that.  
 16 (Laughter)  
 17 MR. GOSSELINK: Or don't say this,  
 18 either one.  
 19 Q (BY MR. GOSSELINK) Mr. Stecher, have we  
 20 reviewed each one of the provisions in the Rule 11  
 21 Agreement, which is in evidence, provisions in  
 22 Paragraphs D1 through D11, I believe that you agreed  
 23 that each one of those provisions constituted an  
 24 improvement in the erosion and sedimentation control  
 25 practices that would be practiced at the Sunset Farms

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1 Landfill, didn't you?  
 2 A Yes, I did.  
 3 Q And you referred to them all as positives,  
 4 correct?  
 5 A I believe I did identify a few things that  
 6 were negatives, but in -- on a whole for each item --  
 7 numbered item -- I said it was a positive.  
 8 Q And we went through each item -- each  
 9 paragraph, paragraph-by-paragraph, but the  
 10 conclusion -- and I'm attempting to do this to save  
 11 time -- the conclusion was the Rule 11 was a positive  
 12 improvement to the situation, correct?  
 13 A That's correct.  
 14 Q Okay. And the Rule 11 Agreement focuses on  
 15 intermediate cover. Isn't that right.  
 16 A (No response)  
 17 Q Construction conditions?  
 18 A I think it covers both.  
 19 Q All right. I was trying to give you a chance  
 20 here, but if you want to have it be more encompassing  
 21 you can. "I think it focuses on making sure that the  
 22 landfill immediately engages in erosion control,  
 23 engages in erosion control that is more stringent than  
 24 it otherwise would have to during the construction of  
 25 the permit amendment's side slopes should it get a

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1 permit, and it has some carry-over features to final  
 2 cover." Would you agree with that characterization?  
 3 A No. I think -- do you want me to elaborate?  
 4 Q Let me ask -- let me --  
 5 A That was such a long question.  
 6 Q That was a long question. I thought we had  
 7 agreed to that, and I'm trying not to break out 12  
 8 pages and read them one at a time.  
 9 A Okay.  
 10 Q If you will agree with me that the Rule 11  
 11 Agreement is a positive and you have no criticisms of  
 12 it, I'll then just seek to offer your testimony on all  
 13 those 11 paragraphs and be done with it. Will you  
 14 agree with me that it's a positive and is something  
 15 that you have no objection to?  
 16 A I'm not sure I would agree to that. I think  
 17 there are -- I can agree with the statement that we  
 18 made in the deposition, which was each item overall  
 19 was positive. I didn't ever say that I had no  
 20 criticisms of them.  
 21 Q Okay.  
 22 A And you continue to use the word  
 23 "immediately" and that's -- that's a main focus of  
 24 my -- what I would say is a criticism.  
 25 Q Okay.

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1 (Exhibit BFI No. 21 marked)  
 2 Q (BY MR. GOSSELINK) Mr. Stecher, I'd like to  
 3 direct your attention to what has been marked as BFI  
 4 Exhibit 21. I'll ask you to take a look at it and see  
 5 if it constitutes the transcript of -- a portion of  
 6 the deposition the first day of your deposition?  
 7 A Yes, it is.  
 8 Q Okay. You've had a chance to review this  
 9 deposition and prepare an errata sheet and this is in  
 10 fact your deposition, correct?  
 11 A That's correct.  
 12 Q And I'd like to begin on Line 16 of Page 225,  
 13 and I'll give you the context to help you remember.  
 14 We had talked about Mr. Lesniak's prefiled testimony  
 15 and we got to this point. Do you remember that now?  
 16 A Yes.  
 17 Q Okay. I'll start with your answer. "I can  
 18 say that I've read his prefiled testimony, and his  
 19 prefiled testimony obviously leads into the Rule 11  
 20 Agreement."  
 21 And then my question: "Yes, sir. What  
 22 he's done in his prefiled testimony is he's criticized  
 23 the application. Correct?"  
 24 And would you read along with me,  
 25 Mr. Stecher? When it's your turn, would you read?

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1 A Yes.  
2 Q Okay.  
3 A So the answer was "yes" after that.  
4 Q "And then he said -- but this exhibit, this  
5 Rule 11 Agreement, satisfies his criticisms that he  
6 had just got done setting forth. Is that correct?"  
7 A "That appears that way," is what I said.  
8 Q "Question: Okay. And you have previously  
9 stated your opinion that Mr. Lesniak is a  
10 conscientious steward of the city of Austin of just  
11 these kinds of issues. Correct."  
12 A "Yes."  
13 Q "So I'd like to ask you if, at least we'll  
14 start in concept, with the concept of all of the  
15 requirements that the city has now placed on BFI,  
16 whether or not each one of these requirements make the  
17 situation better," and you answered?  
18 A "I believe so."  
19 Q "Okay." And then you answer?  
20 A "And 'by the situation,' I'm assuming you're  
21 being the sediment and erosion condition."  
22 Q "Sediment and erosion control, yes.  
23 "Indeed Item No. 1, which requires that  
24 BFI agrees to place intermediate cover and implement  
25 seeding events on all side slope disturbed areas on

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1 which activity has not recommenced within 60 days. Is  
2 that not an improvement over the TCEQ requirement of  
3 180 days?"  
4 A And I answered, "I believe so."  
5 Q And I say: "Okay."  
6 JUDGE NEWCHURCH: Okay, Mr. Gosselink,  
7 we're not going to walk through the whole thing.  
8 MR. GOSSELINK: I didn't want to.  
9 JUDGE NEWCHURCH: And I thought you were  
10 asking if -- if the witness had concluded that the  
11 rule 11 Agreement was a net positive.  
12 CLARIFYING EXAMINATION  
13 BY JUDGE NEWCHURCH:  
14 Q And, Mr. Stecher, I understood you to agree  
15 with that.  
16 A Yes, that's what it says right here --  
17 Q And then what seemed to hang you up is when  
18 you asked if it was true that he had no criticisms and  
19 you responded that you did have criticisms.  
20 A That's correct.  
21 Q Are your criticisms about what it contains or  
22 what it fails to contain?  
23 A Both.  
24 Q Okay. And let's start with your criticisms  
25 of what it fails to contain -- no, what it contains.

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1 What do you criticize that it contains?  
2 A Well, for example, and why I specifically  
3 went down this road was Mr. Gosselink kept using the  
4 word "immediate," and it's not immediate. There's a  
5 word -- a time here that's 60 days. And it says -- if  
6 it's okay with you, I'll read what I said in my  
7 deposition and I'll say why -- what my criticism is  
8 and how it can be both a positive and a -- and still  
9 have a criticism.  
10 Q Okay. Just tell me what your criticisms are  
11 1, 2, 3, 4, go through them.  
12 A So the first criticism is the 60 days of  
13 activity on this Line 20 of Page 226 of my deposition,  
14 that that -- the number of days could be lower --  
15 Q So you're criticizing what it fails to  
16 contain. It could be more stringent?  
17 A It could be more stringent or it could  
18 describe a better -- what activity is. Activity is  
19 never defined, so what is activity? Somebody could be  
20 putting some Roundup on some weeds --  
21 Q So it could be more stringent in those two  
22 ways?  
23 A At least.  
24 Q Okay. Anything else?  
25 A I think that on the third thing on side

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1 slopes, there could be an alternative to putting a  
2 soil retention blanket instead of seeding if you can't  
3 get to it within a shorter period of time such as 14  
4 days.  
5 Q So again, it could be more rigorous but  
6 you're not saying what is required is a bad thing?  
7 A Yes.  
8 Q Is that right?  
9 A That's correct.  
10 Q Okay. Are all your criticisms along this  
11 line, that it could be more rigorous, but not  
12 necessarily that something that's required is a  
13 negative thing. Is that a fair summary?  
14 A Yes.  
15 JUDGE NEWCHURCH: Okay. Mr. Gosselink,  
16 I interrupted. I'm trying to speed things up and I  
17 know you are, too, and I don't know if that helps -- I  
18 hope that helps.  
19 MR. GOSSELINK: Sure. It's the only  
20 answer that anyone ever gives to the Judge, isn't it?  
21 (Laughter)  
22 JUDGE NEWCHURCH: You'd be surprised.  
23 MR. BLACKBURN: Mr. Gosselink has  
24 learned something over the years.  
25 MS. WHITE: Your Honor, could we ask the

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1 witness to speak up just a little bit, please?  
 2 JUDGE NEWCHURCH: Mr. Stecher, try to  
 3 pull the microphone a little closer to you. You  
 4 really kind of need to get it up in your face. You're  
 5 a rock star, pull it right up --  
 6 WITNESS STECHER: How is that? Is that  
 7 better?  
 8 MS. WHITE: Thank you.  
 9 CROSS-EXAMINATION (Continued)  
 10 BY MR. GOSSELINK:  
 11 Q Mr. Stecher, I think I must have  
 12 miscommunicated my question, at least in part, because  
 13 the "immediately" I was referring to as related to  
 14 final cover is the requirement set out in 330.253 of  
 15 the existing TCEQ regulations, which relates to final  
 16 cover. And it says that, "The side slopes shall be  
 17 seeded or sodded immediately following the application  
 18 of the final cover in order to minimize erosion."  
 19 Now, that issue is covered by the regulations. Did  
 20 you know that?  
 21 A I didn't remember that specifically.  
 22 Q Okay. And to the extent BFI has agreed to a  
 23 special condition in the TCEQ permit that makes it  
 24 clear that any time that the TCEQ regulations are more  
 25 stringent than anything set out in the Rule 11

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1 Agreement, the more stringent regulations control.  
 2 Does that satisfy your concern?  
 3 A It somewhat does.  
 4 Q Thank you. Final sort of introductory  
 5 observation, you have never observed any sediment  
 6 actually go off-site, have you?  
 7 A At the --  
 8 Q At the Sunset Farms --  
 9 A Not at the Sunset Farms Landfill.  
 10 Q And indeed you've looked at erosion -- you've  
 11 looked at aerial maps to try to and get a handle on  
 12 this, and I asked you in your deposition can you show  
 13 me where any of those aerials reflect any sediment  
 14 leaving the site, and you said you could not, correct?  
 15 A I could not, but I believe I qualified that  
 16 by that I wasn't sure that the aerials were fine  
 17 enough to see that. And I did not go out and tromp  
 18 around the creeks trying to find sediment either.  
 19 Q Okay.  
 20 A I did a drive-by survey.  
 21 Q With all those qualifications, which I'll let  
 22 you have, you still never saw any sediment in any  
 23 place that you looked, including the fact that you  
 24 were looking for sediment. Isn't that true?  
 25 A That's true.

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1 Q Now, of the three things that you identified  
 2 as clearly remaining at the final cover issues,  
 3 clearly still cover, one was you'd like sedimentation  
 4 ponds and you feel that BFI's application does not  
 5 adequately describe the sedimentation ponds. Isn't  
 6 that right?  
 7 A That's correct.  
 8 Q Okay. The first question: Is there a TCEQ  
 9 requirement that any landfill have a sedimentation  
 10 pond?  
 11 A Not that I know of.  
 12 Q So is there any TCEQ standard they have to --  
 13 anyone has to demonstrate to show why they don't have  
 14 a sedimentation pond?  
 15 A None that I know of.  
 16 Q Now, this facility has two sedimentation  
 17 basins on the west side, correct?  
 18 A Yes.  
 19 Q And two sedimentation ponds on the south  
 20 side, correct?  
 21 A That's correct.  
 22 Q And a large water quality detention  
 23 sedimentation pond to be constructed on the  
 24 north-central northeast side, correct?  
 25 A That's correct, to be constructed.

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1 Q To be constructed. And there are sediment  
 2 pools in the Ditch K, which is along -- which is along  
 3 Blue Goose Road, correct?  
 4 A I would not characterize those as sediment  
 5 pools.  
 6 Q Okay. BFI characterizes them as sediment  
 7 pools, right?  
 8 A Right.  
 9 Q And the City of Austin characterizes them as  
 10 sediment pools, correct?  
 11 A No.  
 12 Q How do you know they don't?  
 13 A Based on the --  
 14 Q Do you know whether they characterize them as  
 15 sediment pools or not? Do you have any direct  
 16 information on that?  
 17 A I believe they, yes.  
 18 Q Who? Who told you that?  
 19 A Oh, from reading the plans is the way that I  
 20 understood it.  
 21 Q And you have -- you read the plans and you  
 22 interpret the plans and you interpret them to mean not  
 23 sediment pools?  
 24 A I understood them to be vegetated pools for  
 25 mitigation of CES. And that's critical environmental

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1 features.  
2 Q Okay. Now, the City of Austin does have  
3 criteria for sedimentation ponds, don't they?  
4 A Yes, they do.  
5 Q And that's found in City of Austin's  
6 Environmental Control Manual -- Environmental Criteria  
7 Manual in Section 25-8-213?  
8 A Well, I don't remember the number, but, yes,  
9 it's in there.  
10 Q Well, we had it at the deposition and you  
11 agreed with me then. Do you agree with me still?  
12 A Yes.  
13 Q And their criteria calls for the sediment  
14 ponds to be able to handle the first one-half inch of  
15 runoff. Isn't that right?  
16 A Yes, for --  
17 Q Isn't that -- that's my question. You'll get  
18 a chance if you want to explain. I'm going to give  
19 you another question. All right? But that is their  
20 criteria, correct?  
21 A Minimum of half an inch.  
22 Q Minimum. Okay. And you have criticized the  
23 size of the detention ponds on the west side. Is that  
24 right?  
25 A Yes.

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1 Q Okay. And your criticism has to do with how  
2 big they are. They're not big enough?  
3 A And I believe that's the same criticism as  
4 the two on the south side.  
5 Q Let's take them two at a time. Okay?  
6 A Okay.  
7 Q And as for the ones on the west side,  
8 Mr. Mehevec has testified that he has designed to  
9 accommodate the first one-half inch of runoff. You  
10 realize that, correct?  
11 A Yes, I do.  
12 Q And you still think they're too small?  
13 A Yes, I do.  
14 Q And I asked you whether you had done any  
15 calculations to determine whether Mr. Mehevec's  
16 representations were correct, and you told me you had  
17 not. Isn't that true?  
18 A I don't believe that's -- is this true in the  
19 deposition or in my prefiled?  
20 Q In your deposition.  
21 A I thought I made an estimate in the  
22 deposition, but maybe I'm mistaken.  
23 Q Can you point to any evidence of siltation  
24 problems that exist in and around Sedimentation Basins  
25 4 and 5?

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1 A I don't remember the numbers specifically.  
2 Q The ones on the west side. I'm sorry.  
3 A No, I do not.  
4 Q Okay. Let's talk about the ones on the south  
5 side. The sedimentation basins on the south side were  
6 not designed by BFI, were they?  
7 A I don't know who they were designed by.  
8 Q I think the testimony -- I will tell you that  
9 the testimony in this case is they were not designed,  
10 they were more or less inherited. Okay? They exist  
11 and they were built at some point in time by a prior  
12 operator. Will you accept that?  
13 A Yeah, I believe that's true.  
14 Q Okay. Nonetheless, Mr. Mehevec has testified  
15 that they are sufficiently sized to handle the first  
16 one-half inch of rainfall?  
17 A Yes, I understand that.  
18 Q And you disagree with that?  
19 A No.  
20 Q You agree with that?  
21 A I agree with that now because I heard him  
22 testify that they had been surveyed. I previously had  
23 not had that information.  
24 Q Right. And that was sort of one of the  
25 comments that you were complaining about not having

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1 the information, not necessarily that the ponds were  
2 wrongly sized, but you weren't given enough  
3 information so you criticized those ponds, correct?  
4 A That was one of the criticisms.  
5 Q Okay. Do you have any evidence that there is  
6 any sedimentation problems at the two outfalls on the  
7 south side, the two sedimentation ponds and the  
8 related outfalls on the south side?  
9 A No, I do not --  
10 Q That's fine.  
11 A -- but I -- it would be on the Waste  
12 Management site.  
13 Q Well, one reason you don't know is because  
14 you didn't go on the site to look, right?  
15 A That's correct.  
16 Q Another area you complained about in your  
17 prefiled on Page 18 was you complained about the fact  
18 that drainage areas DA1 and DA3, which are about a  
19 79.1 acre area combined, they don't go to a sed pond.  
20 Is that correct?  
21 A That's correct.  
22 Q So let's repeat the first question. Sed  
23 ponds aren't required though, are they?  
24 A That's correct.  
25 Q And let me ask you the second question: Do

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1 you believe that the Rule 11 Agreement mitigates that  
2 concern?  
3 A Mitigates it somewhat.  
4 Q Okay. Let's go through the things that --  
5 that runoff from those two drainage areas go to Ditch  
6 K, don't they?  
7 A No.  
8 Q Where do you think --  
9 A No, they do not.  
10 Q Where does it run?  
11 A I believe -- I don't have a map in front of  
12 me, but I believe D1, as shown in the application,  
13 which is the same as DA1 in the model, does go to  
14 Ditch K.  
15 Q Okay.  
16 A D3 was it -- was the question?  
17 Q Yes.  
18 A D3 I believe goes to a ditch and it's  
19 ditch -- I don't recall what the ditch number is.  
20 Q You were right about that.  
21 A Thank you.  
22 (Laughter)  
23 Q D1 goes into Ditch K at more or less the  
24 western edge of Ditch K. Would you like to see APP968  
25 so that I'm not the only guy looking at the map?

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1 A Yes.  
2 Q I've got extra copies --  
3 (Brief pause in the proceedings)  
4 MR. GOSSELINK: Okay. Has everybody got  
5 APP968 in front of them? Okay.  
6 Q (BY MR. GOSSELINK) Mr. Stecher, Drainage  
7 Area D1 goes -- drains to Ditch K, doesn't it?  
8 A That's correct.  
9 Q And Drainage Area D3, however, drains to the  
10 small ditch along Giles Road. Is that right? Or is  
11 that not right?  
12 A That's not right either.  
13 Q Okay.  
14 A Well, Drainage Area 3 goes to two different  
15 ditches is what it is. It goes to Ditch M and  
16 Ditch L --  
17 Q Okay.  
18 A -- is the way I understand this.  
19 Q Okay. And Drainage Area 3, to some extent,  
20 drains north and then heads west and then drains back  
21 east on Ditch L. That's one of the ways it drains,  
22 right?  
23 A Yes.  
24 Q Okay. And the other way it drains is  
25 directly into -- I'll call it Ditch A?

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1 A I don't believe it ever goes into Ditch A.  
2 Q You don't? Okay.  
3 A I think it goes to Ditch M.  
4 Q But they both end up in Outfall 1?  
5 A That's correct.  
6 Q All right. And along the way -- let's  
7 identify the gauntlet of sediment controls they go  
8 through. Okay? There's a sediment trap at the top of  
9 Ditch K? Is that right?  
10 MR. HEAD: Paul, are we starting with  
11 the D1 or D3 for the gauntlet?  
12 MR. GOSSELINK: The D1.  
13 A I don't know that there's a sediment trap  
14 there.  
15 Q (BY MR. GOSSELINK) Okay. There is -- you  
16 disagree with whether it functions as a sediment trap  
17 or you disagree with whether or not we created a small  
18 pool at the top that --  
19 THE REPORTER: That can trap what? I'm  
20 sorry. I didn't hear you.  
21 MR. GOSSELINK: That can trap sediment.  
22 I'll fix that word.  
23 A No place in the application did it say that  
24 there was a sediment trap --  
25 Q Okay.

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1 A -- for ditch -- for Drainage Area 1.  
2 Q Okay. Ditch K is a grass-lined swale?  
3 A I'd call it a grass channel.  
4 Q Okay. Grass channel. It's got vegetation, a  
5 lot of vegetation there, right?  
6 A That's correct.  
7 Q And vegetation captures sediment, right?  
8 A It can.  
9 Q There are five rock berms within Ditch K,  
10 right?  
11 A That's correct.  
12 Q And there are three constructed wetland pools  
13 or whatever you call them in there, correct?  
14 A Yeah, three wetland pools.  
15 Q Okay. There's a row of silt fence around the  
16 pond by Outfall 1, correct?  
17 A I believe so.  
18 Q Okay. And then add in Rule 11 at the top of  
19 and at the bottom of -- top of the downchutes and at  
20 the bottom of the downchutes there's a hundred-foot  
21 strip of buffalo sod, buffalo grass sod.  
22 A I believe the buffalo sod is only at the top  
23 in a radial --  
24 Q Buffalo sod at the top, mulch berms, silt  
25 fences also options for the top, right?

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1 A Options at the top. And those were -- two of  
2 my criticisms were --  
3 Q But they're there, you know?  
4 A Yes, they are in the plan.  
5 Q You can criticize them later after we  
6 establish whether they're there or not. Okay?  
7 A Yes.  
8 Q And at the bottom there are proposed mulch  
9 berms or silt fences, too, aren't there?  
10 A That's correct.  
11 Q So all these things exist or are proposed to  
12 exist that relate to have control of the sediment that  
13 might come off of Area D1, right?  
14 A That's correct.  
15 Q And the stuff that comes off D3 will flow  
16 through the channel and be routed toward the pond  
17 where there is a silt fence, correct?  
18 A That's correct.  
19 Q Okay. And, of course, Rule 11 requires  
20 vegetative requirements as well, sooner than they  
21 otherwise would have to be put in, correct?  
22 A That's correct.  
23 Q In addition, when one analyzes the potential  
24 sediment issues on Ditch K, there is a farm field  
25 across Blue Goose Road, isn't there?

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1 A Yes, there is.  
2 Q Approximately we estimated in the deposition  
3 about 200 acres drain in Ditch K, correct?  
4 A I didn't -- I didn't ever add it up, but it's  
5 something that size.  
6 Q Okay.  
7 A Approximately that size.  
8 Q The farm field has, at least historically,  
9 been seasonally disturbed in the planting process,  
10 correct?  
11 A That's correct.  
12 Q And it carries sediment into Ditch K,  
13 correct?  
14 A Yes, it will.  
15 Q Okay. You also have criticisms of  
16 downchutes. Isn't that right?  
17 A Oh, yes, sir.  
18 (Laughter)  
19 Q (BY MR. GOSSELINK) -- figure this is the  
20 good stuff, huh?  
21 A I'm used to you answering for me.  
22 Q Let me get organized. I've got a number of  
23 things to deal with here.  
24 MR. GOSSELINK: May I approach?  
25 JUDGE NEWCHURCH: Yes, sir.

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1 (Exhibit BFI Nos. 22 - 24 marked)  
2 MR. GOSSELINK: They all have their  
3 deposition exhibit numbers on them, so maybe that  
4 will. Deposition Exhibit 258 is BFI-22. All right?  
5 Deposition Exhibit 260 is BFI-23. And deposition  
6 Exhibit 261 is BFI-24.  
7 MR. HEAD: All right.  
8 (Discussion off the record)  
9 JUDGE NEWCHURCH: Back on the record.  
10 MR. GOSSELINK: The first thing I'd like  
11 everybody to have in front of them is APP968. We'll  
12 refer to that with the other exhibits.  
13 Q (BY MR. GOSSELINK) Now, Mr. Stecher, you  
14 were critical of the design of the downchutes,  
15 correct?  
16 A That's correct.  
17 Q And there are six downchutes shown on APP968.  
18 Is that correct?  
19 A That's correct.  
20 Q Four of them are labeled A and two of them  
21 are labeled B, correct?  
22 A Yes.  
23 Q And the two B's are on the north side, right?  
24 A Yes.  
25 Q All right. And one of the things that you

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1 were concerned about is that the design of the  
2 downchutes didn't take into account the bends in the  
3 downchutes, right?  
4 A That's correct.  
5 Q And your concern was therefore that if the  
6 water might overtop the bend, at the bend, if it got  
7 going too fast, right?  
8 A It will be going fast.  
9 Q Well, and your concern --  
10 A That was my concern.  
11 Q And this phenomenon is called superelevation  
12 or supercritical flow, correct?  
13 A It's superelevation.  
14 Q Okay. And so you did some calculations in  
15 order to see if that was really going to be a problem,  
16 right?  
17 A Yes.  
18 Q And those calculations are contained on your  
19 Deposition Exhibit 258 and now labeled BFI-22,  
20 correct?  
21 A That's correct.  
22 Q And these are your calculations?  
23 A Yes.  
24 MR. GOSSELINK: Okay. BFI offers BFI  
25 Exhibit 22.

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1 JUDGE NEWCHURCH: Any objection.  
 2 MR. HEAD: No objection.  
 3 JUDGE NEWCHURCH: BFI-22 is admitted.  
 4 (Exhibit BFI No. 22 admitted)  
 5 Q (BY MR. GOSSELINK) Now, the first thing I  
 6 want to direct your attention to -- and the Judge's  
 7 attention to -- is your note in the upper right-hand  
 8 corner which says, "COA guidelines require  
 9 superelevation calculations only for channels." CH  
 10 stands for channels, right?  
 11 A Yes.  
 12 Q -- "that have a radius curvature greater  
 13 45 degrees," correct? That's what it says?  
 14 A That's correct.  
 15 Q And you pointed that out to any reader of  
 16 this document so that everybody would know that's the  
 17 rules of the game at the City of Austin, right?  
 18 A That's the City of Austin guidelines.  
 19 Q Right. And indeed, if you take a look at  
 20 BFI-23 on Page 7 of 12 -- have you got that?  
 21 A Yes, I do.  
 22 Q -- you see under the letter D  
 23 "superelevation"?  
 24 A Yes.  
 25 Q Would you read that sentence into the

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1 record -- two sentences into the record?  
 2 A "Superelevation of the water surface shall be  
 3 determined at all horizontal curves which deviate more  
 4 than 45 degrees off the projected centerline."  
 5 Q That's enough. So what this means in  
 6 practice, Mr. Stecher, is if you're less than  
 7 45 degrees, you don't have to do this calculation that  
 8 you lay out below, correct?  
 9 A If you're doing a project for the City of  
 10 Austin.  
 11 Q Okay. And this is in the City of Austin,  
 12 correct?  
 13 A I've seen some information about parts of it  
 14 being in the City of Austin and parts of it not being  
 15 in the City of Austin.  
 16 Q Okay. And is there any requirement in the  
 17 TCEQ regulations to do this specific requirement or  
 18 regulation you can point me to?  
 19 A No.  
 20 Q Okay. You're familiar with this document  
 21 Section 6 Open Channels labeled BFI 23?  
 22 A Yes.  
 23 Q Okay. You use it in your work?  
 24 A Yes, I do.  
 25 MR. GOSSELINK: BFI offers Exhibit 23,

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1 BFI-23.  
 2 JUDGE NEWCHURCH: Am I to understand  
 3 BFI-23 is a document of the City of Austin?  
 4 MR. GOSSELINK: It's a City of Austin  
 5 official document.  
 6 JUDGE NEWCHURCH: Is that correct?  
 7 WITNESS STECHER: That's correct. It's  
 8 from the Drainage Criteria Manual.  
 9 JUDGE NEWCHURCH: Okay. And is there  
 10 objection to 23?  
 11 MR. HEAD: No objection.  
 12 JUDGE NEWCHURCH: Then it is admitted.  
 13 (Exhibit BFI No. 23 admitted)  
 14 Q (BY MR. GOSSELINK) So being no TCEQ  
 15 requirement and we don't have to do it under the City  
 16 of Austin, we did it anyway, though. We did this  
 17 analysis anyway, correct, Mr. Stecher?  
 18 A Yes, I did, because I thought it was  
 19 applicable.  
 20 Q And BFI did it also, didn't they?  
 21 A I don't believe so.  
 22 Q Okay. So you looked at -- you looked at this  
 23 issue and that's reflected in what you found on 22,  
 24 right? That's your work product?  
 25 A Yes.

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1 Q Okay. And let me direct your attention to  
 2 Downchute A, the very first input velocity, which  
 3 reads 11.2 feet-per-second for the 25-year storm,  
 4 right? Correct?  
 5 A That's correct.  
 6 Q And in the deposition we established that you  
 7 secured that information from Mr. Mehevec, his  
 8 calculation sheet or what is now labeled BFI-24 titled  
 9 "Downchute A, Worst Case Flow Worksheet for  
 10 Trapezoidal Channel," correct?  
 11 A That's correct.  
 12 Q And where you got that from was if you look  
 13 at the upper left-hand corner there's a list of input  
 14 data and results, and counting up from the very bottom  
 15 1, 2, 3, 4, 5 there's the word "velocity." Do you see  
 16 that?  
 17 A Yes, I do.  
 18 Q And it says 11.16 feet-per-second, correct?  
 19 A That's correct.  
 20 Q And so that we established in the deposition  
 21 is where you got your 11.2 from, correct?  
 22 A Yes, I did.  
 23 Q Okay. And that represents, according to  
 24 Mr. Mehevec, a worst case, right?  
 25 A That's what it says on the worksheet.

25 (Pages 1875 to 1878)

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1 Q And can I ask you what you needed to know in  
 2 order to determine which one of these downchutes  
 3 constituted the worst case, and you answered, well,  
 4 you needed to know the flow of the Q, right?  
 5 A Yes.  
 6 Q So we went to the map, APP968, and we looked  
 7 for the worst case, and that turned out to be Outfall  
 8 2, didn't it, for Downchute A?  
 9 A Yes, it did.  
 10 Q That was 270 cubic-feet-per-second, right?  
 11 A Yes, it is.  
 12 Q But that's not the downchute that has the  
 13 bend, so we have to go over to the downchute at  
 14 Outfall 4 where the bend is, right?  
 15 A That's correct.  
 16 Q And that bend we agreed was about 30 degrees,  
 17 right?  
 18 A Let me look at the sheet.  
 19 Q Okay.  
 20 A Yes.  
 21 Q Okay.  
 22 A Thirty degrees.  
 23 Q Which is less than 45 degrees?  
 24 A That's correct.  
 25 Q And the Q at Outfall 4 is 61.4?

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1 A That's correct.  
 2 Q Which is one-quarter, approximately, of the  
 3 worst case flow, correct?  
 4 A Yes, it is.  
 5 Q Nonetheless, you inputted the worst case flow  
 6 into the Outfall 4 analysis, correct?  
 7 A Well, we were doing a generalized analysis to  
 8 begin with just to see what was going on.  
 9 Q Okay. But indeed you used a velocity of 11.2  
 10 based upon a worst case of 270 cfs, and that's not  
 11 applicable to Outfall 4, is it?  
 12 A Not directly.  
 13 Q Okay. Outfall 4 is the only Downchute A with  
 14 a bend, isn't it?  
 15 A Yes, it is. Yeah, the only outfall downchute  
 16 A that has one, yes.  
 17 Q Right. And I asked you in your deposition  
 18 whether or not you had actually done calculations  
 19 using 61.4 and you answered you had not. Isn't that  
 20 right?  
 21 A That's right.  
 22 Q Okay. And the Downchute B, which goes into  
 23 the sedimentation detention wet pond -- okay -- that  
 24 angle is 40 degrees we agreed?  
 25 A Yes, it is.

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1 Q Okay. You had another criticism of the berms  
 2 or -- I'm sorry, of the downchutes, didn't you, and  
 3 that was the potential problem with the riprap sizing,  
 4 right?  
 5 A That's correct.  
 6 Q And in particular you were concerned about  
 7 the possibility that the rocks might not be big enough  
 8 and they might be dislodged in a big enough storm,  
 9 correct?  
 10 A That's correct.  
 11 Q Okay. And when I asked you on Page 94, Line  
 12 13, if you concluded that the rocks would be  
 13 dislodged, you said, "no," there was a potential, but  
 14 you could not confirm that. Do you remember that  
 15 statement?  
 16 A Yes, I do.  
 17 Q Okay. Now, the debate it seemed to me that  
 18 you educated me about on this had to do with the  
 19 Manning's n coefficient, whether or not BFI picked the  
 20 right Manning's n coefficient or you picked the right  
 21 Manning's n coefficient because that has an impact on  
 22 the analysis, right?  
 23 A That's part of it.  
 24 Q Well, first explain to the Judge what a  
 25 Manning's n coefficient is.

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1 A So the Manning's n coefficient is a measure  
 2 of roughness of a channel, in this case an open  
 3 channel. It could be a pipe, but in this case we're  
 4 talking about a channel here. So the higher the n  
 5 value, the more rough the surface is and, therefore,  
 6 typically that will cause the water level to go higher  
 7 with a higher end value.  
 8 Q Okay.  
 9 A And the velocity -- with the lower -- but  
 10 with the lower end value, the velocity will increase.  
 11 MR. GOSSELINK: May I approach again,  
 12 Your Honor?  
 13 JUDGE NEWCHURCH: Yes, sir.  
 14 (Exhibit BFI No. 25 marked)  
 15 Q (BY MR. GOSSELINK) Mr. Stecher, I've  
 16 shown -- I'll show you what's now been marked as BFI  
 17 Exhibit 25, which has a label on it already in your  
 18 deposition of No. 263. Do you see that?  
 19 A Yes.  
 20 Q And indeed this is the table that we  
 21 discussed in your deposition?  
 22 A I believe it is.  
 23 Q Okay. And it is titled Table 63 Suggesting  
 24 Manning's Roughness Coefficient, and it comes from the  
 25 Groundwater and Surface Water Protection Plan in the

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1 application in Attachment 6, correct? Do you see the  
2 top --  
3 A Yeah, that's what it's labeled.  
4 Q Okay. And drainage engineers look to tables  
5 like this to try and determine what a Manning's n  
6 coefficient should be, correct?  
7 A Yes, and other items.  
8 Q Okay. But -- in other words, you don't go  
9 out in the field and do a measurement, you go out in  
10 the field and do an observation and then relate it  
11 back to things like this table. Is that correct?  
12 A That's correct.  
13 Q So in an effort to understand what this most  
14 resembled, Mr. Mehevec selected -- and if you'll go  
15 down sort of two-fifth's of the way, you'll see the  
16 heading "Mountain streams, no vegetation in channel,  
17 banks usually steep, trees and brush along bank  
18 submerged at high stages." Do you see that?  
19 A Yes.  
20 Q Okay. And then under that, the bottom, he  
21 picked cobbles with large boulders, right?  
22 A Who picked it?  
23 Q Mr. Mehevec.  
24 A Mr. Mehevec, yes.  
25 Q And he picked -- when you look at the columns

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1 "Minimum," "Normal" and "Maximum" he picked .07 for  
2 his Manning's n Roughness Coefficient, right? And he  
3 got it from this spot, correct?  
4 A I believe he did.  
5 Q And in your deposition you have said that you  
6 believe a better number is .05, which we can see is a  
7 number that's listed under normal in this column,  
8 right? Or in this row?  
9 A Yes, it's listed under normal.  
10 Q And I asked you whether or not this split  
11 here between .04 and .07 constituted the acceptable  
12 range within the literature as it relates to cobbles  
13 with large boulders, at least in this table, right?  
14 A Yes, it does.  
15 Q Okay. And I asked you whether or not you  
16 also used this table, and I think you answered this  
17 was one of the tables you used. Is that right?  
18 A That's correct. I believe we looked at this  
19 table and some tables and photos from the book Open  
20 Channel Flow by Ven Te Chow.  
21 Q Okay. And most importantly I asked you  
22 whether or not reasonable engineers could look at the  
23 same table and could reach differing conclusions about  
24 what was acceptable when looking at the on-the-ground  
25 feature at issue and you said "yes," correct?

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1 A I believe so.  
2 Q Okay. You also are --  
3 MR. GOSSELINK: BFI would like to offer  
4 Exhibit 25. It's in the record already as part of the  
5 application, but I'd like to offer it separately for  
6 clarity.  
7 JUDGE NEWCHURCH: Any objection?  
8 MR. HEAD: No objection.  
9 MR. BLACKBURN: No objection.  
10 JUDGE NEWCHURCH: 25 is admitted.  
11 (Exhibit BFI No. 25 admitted)  
12 Q (BY MR. GOSSELINK) You also have criticisms  
13 about the berms, don't you, Mr. Stecher?  
14 A Yes, I do.  
15 Q Okay. One of the criticisms you had was  
16 that -- and you state this on Page 18, Line 20 of your  
17 prefiled -- the question posed to you by your counsel  
18 was: "Will the diversion berms be installed during  
19 filling," and your answer was "no." You have since  
20 come to learn that the designed diversion berms won't  
21 be installed during construction, but that there are  
22 temporary berms that have been constructed and will  
23 continue to be constructed, correct?  
24 A I did hear some of that conversation. I  
25 don't believe I was here for the entire discussion of

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1 the temporary berms.  
2 Q But you have no reason to dispute that  
3 testimony that there are temporary berms on that  
4 landfill now, do you?  
5 A No, I don't.  
6 Q Okay. What you were talking about when you  
7 answered were the approximate 20 miles of erosion  
8 control berms proposed to be constructed on this  
9 facility, right?  
10 A I'm sorry, which page was the --  
11 Q In your prefiled? My notes say Page 18, Line  
12 20, Page 19, Line 1.  
13 A Okay.  
14 Q All right. Are you with me?  
15 A Yes.  
16 Q And what you were talking about about the  
17 diversion berms, BFI proposes to put in almost  
18 20 miles of erosion control diversion berms, don't  
19 they?  
20 A Something like that.  
21 Q Yes, sir.  
22 A A large number.  
23 Q And the big picture is that diversion berms  
24 are an accepted method of erosion control, correct?  
25 A Yes.

27 (Pages 1883 to 1886)

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1 Q In fact, one of the things that we talked  
2 about -- one of your concerns was that you worried  
3 about the constructability of these berms on a 4 to 1  
4 side slope. Is that correct?  
5 A That's correct.  
6 Q And we discussed the fact that BFI has  
7 equipment that goes up and down 4 to 1 side slopes all  
8 the time?  
9 A Yes.  
10 Q And moves dirt all the time?  
11 A Yes.  
12 Q And then I asked you, "Could you identify any  
13 landfill in Texas that did not have erosion control  
14 berms, and your answer was you could not, right?"  
15 A That's correct.  
16 Q And we talked about your concerns about what  
17 happens if the berm actually does erode, right?  
18 A Right.  
19 Q And to go back to that philosophical  
20 discussion we had in the beginning, which was even if  
21 it erodes, so long as the sediment doesn't leave the  
22 site through the outfall, there's no violation, it's a  
23 construction issue and you repair it, right?  
24 A If that's all that happens.  
25 Q If that's all -- nothing goes out of the

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1 outfall and there's no outfall violation, right?  
2 A That's correct.  
3 Q Okay. If it goes into a sedimentation pond,  
4 you pick it up out of the sedimentation pond and  
5 follow your maintenance plan, which calls for  
6 restoration and repair, right?  
7 A There would be excessive sediment and  
8 possibly that would lead to either overtaxing the  
9 sediment ponds or sediment leaving the site. That's  
10 where the concern comes from.  
11 Q I am aware of your concern that that is a  
12 possibility. Okay?  
13 A Yes.  
14 Q My hypothetical was unless it goes out of the  
15 outfall, there's no problem. Unless it goes out of  
16 the outfall, there is no violation of anything, right?  
17 A Well, I guess there's some possibility if it  
18 went into the wetland that there could be some other  
19 violation.  
20 Q Okay. A discharge into a wetland could be a  
21 violation, right?  
22 A Yes.  
23 Q A violation of 404?  
24 A Yes.  
25 Q Simply putting some sediment into a wetland,

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1 having some sediment roll into a wetland, is not a  
2 problem, is not a violation of 404, is it?  
3 A It would depend on the quantity and the type  
4 and nature.  
5 Q Indeed, sediment is -- replenishment is  
6 required for the health of any wetland, isn't it?  
7 A Some sediment.  
8 Q All right. You can't fill in it, you can't  
9 go pick up a bunch of dirt and construct something in  
10 a wetland, but natural replenishment through erosive  
11 practices or events is not only normal but required  
12 for the health of a wetland, isn't it?  
13 A Yes.  
14 Q Okay. You have no evidence of any even  
15 temporary berms eroding at the Sunset Farms Landfill,  
16 do you?  
17 A No, I do not.  
18 Q In fact, you have no evidence of any erosion  
19 control berms eroding at any landfill that you can  
20 point out to me, do you?  
21 A That's correct.  
22 Q Okay. You also suggested in your deposition  
23 that a berm could get so saturated that it could  
24 literally slide down a landfill side slope, correct?  
25 A Something like that.

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1 Q But again, you have no examples of any real  
2 life actions where that's occurred, right?  
3 A Well, in our -- in my work on dam safety for  
4 TCEQ we have some --  
5 Q Berms on landfills is my limited question.  
6 A Okay.  
7 Q Dams hold back a whole bunch of water, right?  
8 A Right.  
9 Q You had some questions about the RUSLE  
10 calculation?  
11 A Yes, I did.  
12 Q Okay. And RUSLE stands for what, please?  
13 Russell or RUSLE, whichever way you pronounce it.  
14 A Revised universal soil loss equation.  
15 Q And pursuant to 330.55(B)(8) -- big B -- it  
16 only applies to final cover, correct?  
17 A In the TCEQ rules, yes.  
18 Q In the TCEQ rules, which are the rules we're  
19 going under in this proceeding, correct?  
20 A But the equation can be applicable to many  
21 conditions, that's why it was developed.  
22 Q The equation can be applicable, but in this  
23 proceeding it is only applicable to final cover by  
24 virtue of the way the regulations are written. Isn't  
25 that correct?

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1 A I don't believe so.  
 2 Q You believe that there's a regulation that  
 3 requires the RUSLE calculations to be applied to  
 4 intermediate cover? I'd like you to point that  
 5 regulation out to me.  
 6 A Well, it's a series of places in the  
 7 regulations, mainly referring to surface water  
 8 protection. And I have interpreted the over --  
 9 overarching goal of the whole section as surface water  
 10 protection to mean you can use any measure you need  
 11 to, you can make any calculation you need to -- to  
 12 make sure the surface water is protected.  
 13 Q What I asked you was would you please  
 14 identify for me a rule that BFI needed to comply with  
 15 in order to apply the RUSLE calculations in their  
 16 application to anything other than final cover?  
 17 A Oh, okay. That's more specific than what I  
 18 was understanding.  
 19 Q Uh-huh.  
 20 A There is no specific detailed description  
 21 that spells out specifically that the RUSLE  
 22 calculation needs to be applied to the interim  
 23 cover -- interim cover.  
 24 Q And there is a specific requirement that it  
 25 be applied on the final cover, correct?

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1 A That's correct.  
 2 Q And BFI did do that, didn't they?  
 3 A Yes, they made the calculation.  
 4 Q Now, your primary concern about BFI's  
 5 calculations was that there's a 65-foot difference  
 6 from midline to midline of each berm, right?  
 7 A That's correct.  
 8 Q But within that 4 to 1 slope there is 16 feet  
 9 that's actually 2 to 1 slope because of the actual  
 10 existence of the berms, right?  
 11 A That's correct.  
 12 Q So it's 49 feet of 4 to 1, and 16 feet of 2  
 13 to 1, correct?  
 14 A Approximately, yes.  
 15 MR. GOSSELINK: Can we go off the  
 16 record, Judge?  
 17 JUDGE NEWCHURCH: Off the record.  
 18 (Discussion off the record)  
 19 MR. GOSSELINK: Judge, I don't have  
 20 multiple copies. I have only one copy out of the  
 21 deposition itself right now. I can approach and we  
 22 can -- Mr. Stecher and I have discussed this already  
 23 and should not be a surprise to him, but I do not have  
 24 it available for everyone else.  
 25 JUDGE NEWCHURCH: Has everyone else seen

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1 it when the deposition was taken?  
 2 MR. GOSSELINK: Exhibit 264 to Stecher's  
 3 deposition. It's the RUSLE calculations he did.  
 4 MR. BLACKBURN: I have no objection.  
 5 JUDGE NEWCHURCH: Why don't we proceed  
 6 and you can make copies during lunch.  
 7 MR. GOSSELINK: I will ask Mr. Jimenez  
 8 to remember this and we'll get the exhibits brought to  
 9 the court reporter and you.  
 10 JUDGE NEWCHURCH: Okay. So this is  
 11 going to be Exhibit 26.  
 12 MR. GOSSELINK: Yes.  
 13 (Exhibit BFI No. 26 marked)  
 14 MR. GOSSELINK: May I approach?  
 15 JUDGE NEWCHURCH: Yes, sir.  
 16 Q (BY MR. GOSSELINK) Do you have 264 in front  
 17 of you?  
 18 A I do.  
 19 Q Then I'll go back. He's got it.  
 20 Mr. Stecher, I will show you, in a  
 21 manner of speaking, what has previously been marked as  
 22 Exhibit 264 to your deposition and now has been marked  
 23 as BFI-26, right?  
 24 JUDGE NEWCHURCH: Well, it's been  
 25 reserved. You can refer to it as 26.

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1 A BFI-26.  
 2 Q (BY MR. GOSSELINK) Yes. And I'll ask you if  
 3 you can identify that for the record, please?  
 4 A Yes, it's some of the RUSLE calculations that  
 5 we performed.  
 6 Q And RUSLE calculations are designed to  
 7 determine how much material will erode off an area in  
 8 terms of the units at the end or  
 9 tons-per-acre-per-year?  
 10 A That's correct.  
 11 Q Okay. And are you aware that in the TCEQ's  
 12 analysis of this an acceptable answer is anything  
 13 between 2 and 3 tons-per-acre-per-year?  
 14 A Yes, I'm aware of that.  
 15 Q And so BFI did their calculations, which are  
 16 reflected as you've repeated them, on the top half of  
 17 BFI-26. Do you see that?  
 18 A Yes.  
 19 Q And they came up with a formula that says at  
 20 the -- that the relevant comparison will be AB-H  
 21 equals 2.18 tons-per-acre-per-year. Do you see that?  
 22 A That's correct.  
 23 Q And that's their calculation, right?  
 24 A Well, this is actually us repeating exactly  
 25 their calculation.

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1 Q Yes, that's what I meant.  
2 A Yes.  
3 Q This isn't -- you're not embracing that  
4 number. That's their number?  
5 A Yeah, this is our reproduction of that  
6 number.  
7 Q And so in an effort to see how they were  
8 doing, you conducted some calculations inserting the  
9 16 feet at 2 to 1 or a 50 percent slope, and that's  
10 what -- those calculations down below the line, below  
11 the little drawing, right?  
12 A Yes. Basically the drawing is part of those  
13 calculations.  
14 Q Yes. And at the bottom of the page, your  
15 formula -- your revised version of this formula using  
16 your input as opposed to BFI's input came up with  
17 2.56-tons-per-acre-per-year, correct?  
18 A That's correct.  
19 Q Are you aware that there's also erosion  
20 matting being employed at -- that is supposed to be  
21 employed at the BFI site or to the upslope or  
22 upgradient side of these berms?  
23 A Yes, I am.  
24 Q Do either of these calculations take that  
25 erosion protection feature into account?

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1 A Not specifically.  
2 Q All right. I want to ask you some questions  
3 that aren't directly related to erosion and  
4 sedimentation control, a question about the stormwater  
5 pollution prevention plan. Okay? In your deposition  
6 you and I discussed that the TPDES permit was an  
7 attempt to have a performance-based sampling  
8 requirement, right?  
9 A We discussed that.  
10 Q Yes. And you made the point that it's very  
11 difficult to get a timely sample under a SWPPP,  
12 Stormwater Pollution Prevention Plan.  
13 A That is a problem.  
14 Q Right. In fact, on Page 73, Line 24, you  
15 said, quote, "It's just really hard to get out there  
16 and sample." Do you remember that?  
17 A Yes.  
18 Q Do you recall that I asked you if you studied  
19 the issue of whether the proposed landfill has altered  
20 natural drainage patterns?  
21 A Could you repeat the question?  
22 Q Do you recall that I asked you if you studied  
23 the issue of whether the landfill -- whether the  
24 proposed landfill has altered natural drainage  
25 patterns?

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1 A Yes, I do. I remember that.  
2 Q And you testified that, yes, you had indeed  
3 studied that.  
4 A Yes.  
5 Q And then I asked you: "Do you have an  
6 opinion that the landfill amendment that's before the  
7 TCEQ at this time or before SOAH at this time violates  
8 the regulation which prohibits significant alteration  
9 of natural drainage patterns?" And you answered, "I  
10 don't believe it does." Do you remember that?  
11 A Yes.  
12 Q You had some criticisms of the water quality  
13 pond, too, didn't you?  
14 A Yes.  
15 Q Okay. And there are a lengthy list of  
16 criticisms on Page 12 of your prefiled I believe. And  
17 it was in connection with this list of -- this litany  
18 of criticisms about information that wasn't provided  
19 that I actually said to you that I felt that this list  
20 was, quote, "representative of a lot of your  
21 complaints." I called them "sort of accurate but  
22 fairly picky and I'm not sure what difference a lot of  
23 them make." Do you remember when I asked you that  
24 question?  
25 A That's correct.

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1 Q And after a discussion about whether it was  
2 really a problem that the water quality pond was  
3 13 feet deep or 8 feet deep, you testified on Page  
4 256, Line 5 through 7 -- so you were complaining --  
5 you were saying that all these things were complaints  
6 more than real things. You say some of them probably  
7 are. Do you remember that?  
8 A That's correct.  
9 Q The first point to make, I hope  
10 substantively, about the water quality pond is that  
11 the City of Austin has reviewed it and approved it and  
12 we have a permit for it, correct?  
13 A I believe that's true.  
14 Q And Travis County has done the same thing,  
15 correct?  
16 A I believe so.  
17 Q And the issue that you were concerned about  
18 is whether the pond is properly functioned to capture  
19 the sediment and detain flow, correct?  
20 A That is correct.  
21 Q And the big issue there is whether it's big  
22 enough, right?  
23 A No, not in this case.  
24 Q Okay.  
25 A Whether the -- I'm sorry --

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1 Q Is the size of it relevant?  
 2 A Could you repeat the question on the --  
 3 Q The issue -- I believe we concluded in your  
 4 deposition -- was that the size of the pond is germane  
 5 to its ability to detain the flow. In other words,  
 6 the bigger the pond, the more it can detain, and it's  
 7 also germane to its ability to control sediment.  
 8 A And we're talking about the large --  
 9 Q We're talking about the yet-to-be-built water  
 10 quality water retention wet pond.  
 11 A Yes. The answer is yes.  
 12 Q You agree with me?  
 13 A The size does matter.  
 14 Q Yeah, don't say it.  
 15 (Laughter)  
 16 So I asked you whether or not you could  
 17 estimate the size, and we estimated it at about 35  
 18 acres, correct?  
 19 A I don't believe I had the numbers in front of  
 20 me. We were --  
 21 Q We were estimating --  
 22 A -- we were estimating, yes.  
 23 Q -- by looking at the diagram and  
 24 understanding the scale and estimating it at 35 acres.  
 25 A I believe you were -- was that area or

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1 volume? I think that was volume.  
 2 Q That was volume.  
 3 A Acre feet.  
 4 Q Acre feet. Okay. Yeah, acre feet. You're  
 5 correct.  
 6 A Yeah. I still don't remember the exact  
 7 number.  
 8 Q Do you have any reason to disagree with that?  
 9 A No.  
 10 Q Okay.  
 11 A I mean I -- pardon me. I actually have the  
 12 calculations somewhere that we estimated based on the  
 13 available information.  
 14 Q Okay.  
 15 A And I remember that it's something like that  
 16 size.  
 17 Q If it's much different, I imagine I'll get to  
 18 hear about that later. But I thought we agreed, at  
 19 least for discussion purposes, it was about 35  
 20 acre-feet. Yes?  
 21 A Yes.  
 22 Q And then I asked you what size the City of  
 23 Austin would require for a pond like this, and you  
 24 didn't know. I suggested .35 acre-feet would be --  
 25 would satisfy their regulations, and you wouldn't

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1 agree with that. You thought that was a little too  
 2 small, right?  
 3 A Yes, that was small.  
 4 Q Okay. We never came up with an actual  
 5 number, but you did agree that the pond was, quote,  
 6 "Significantly bigger than what would be required  
 7 under the regulations," right?  
 8 A Yes, and I believe I did have one caveat to  
 9 that was that most of the ponds are -- the pond design  
 10 is based on usually having impervious cover. So I  
 11 wasn't sure how the City of Austin pond volume  
 12 criteria would actually match up for a facility like  
 13 this.  
 14 Q And only 2 percent of the landfill is  
 15 identified as having impervious cover, right?  
 16 A Right. And none of which goes to the pond.  
 17 Q None of it goes to this pond.  
 18 A I just -- I just want to clarify that it  
 19 didn't --  
 20 Q Go ahead.  
 21 A -- just to clarify that. I was unsure that  
 22 that equation even applied in this case.  
 23 Q Okay. Thinking through that a minute, the  
 24 more impervious the cover, the more runoff, correct?  
 25 A Yes.

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1 Q Okay. So the less impervious cover, the less  
 2 runoff, which would mean the pond -- you know, if you  
 3 needed to have 35 acre-feet for impervious cover, you  
 4 didn't actually need to have that much for the cover  
 5 that's out there, the less-pervious cover, would you,  
 6 because not as much would run off, right?  
 7 A Well, there is some factors of slope and what  
 8 kind of coverage you have on the thing, yes, but  
 9 generally impervious cover generates a lot of runoff.  
 10 Q That's one of those qualifications or  
 11 distinctions without a significantly important  
 12 difference, though, between impervious cover and  
 13 unimpervious cover. When you get down to the nuts of  
 14 it, it's not a problem that the rule discusses  
 15 impervious cover -- impervious cover, right?  
 16 A Well, it's always -- engineering stuff is  
 17 always complicated with the manner of flow and volume  
 18 and so it's always -- something is -- the slow  
 19 vegetation, impervious cover always becomes important  
 20 and this landfill is just different from an urban  
 21 development, and that's all I'm trying to say.  
 22 Q It is different. And notwithstanding the  
 23 fact that it's a quote, "significantly bigger pond,"  
 24 you still wanted to know all these details. So I  
 25 asked you if you would be able to calculate most of

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1 the details you asked for. For example, could you  
 2 calculate the pond-per-minute pool volume, which you  
 3 note is not provided, but I believe you said you could  
 4 calculate it. Based upon what's in there you could go  
 5 to the trouble of calculating it, right?  
 6 A We could estimate it.  
 7 Q Right. But you said you didn't want to do it  
 8 because that really wasn't your role in this case,  
 9 right?  
 10 A That's correct.  
 11 Q All right.  
 12 A In that particular question.  
 13 Q Well, and that particular question carries  
 14 over to several. I mean, it's -- you know, water  
 15 quality volume is not provided. Elevation area  
 16 capacity -- no, that's -- sedimentation rate volume is  
 17 not provided. Sedimentation extended detention volume  
 18 is not provided. The information is in there, it's  
 19 just not provided out there in an easily-readable  
 20 format. That's your comment, right?  
 21 A Well, and all those are to -- yes. They're  
 22 not in an easily-readable format and therefore it made  
 23 it difficult to say, yes, the pond is good, no the  
 24 pond is not good.  
 25 Q Okay. And the point I'm going for is it's

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1 not so much that the pond is a problem, it's just you  
 2 didn't like the way we set out our explanation of the  
 3 pond, right?  
 4 A Well, we couldn't tell if it's a problem or  
 5 not because we didn't have the info.  
 6 Q Okay.  
 7 JUDGE NEWCHURCH: Mr. GosseLink, is this  
 8 a good stopping point or do you want to go on a little  
 9 bit longer?  
 10 MR. GOSSELINK: I don't know how much I  
 11 have left. I can -- let's take a break and I can  
 12 assess where I am.  
 13 JUDGE NEWCHURCH: Okay. So we'll break  
 14 for lunch and come back at 1:30.  
 15 (Recess: 12:09 p.m. to 1:32 p.m.)  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

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1 AFTERNOON SESSION  
 2 THURSDAY, JANUARY 29, 2009  
 3 (1:32 p.m.)  
 4 JUDGE NEWCHURCH: Back on the record at  
 5 1:32. Any preliminary matters?  
 6 MR. CARLSON: Yes, Judge. We talked  
 7 with the court reporter over the lunch break about the  
 8 motion to strike, and she said the page and lines will  
 9 change when the transcript is finalized and  
 10 recommended that we strike -- or recommended striking  
 11 the first reference to TJFA-7 where it was first  
 12 marked until the document was actually offered. And I  
 13 believe Mr. Renbarger and I have agreed that that  
 14 would encompass the area that should be stricken from  
 15 the record.  
 16 JUDGE NEWCHURCH: Well, Mr. Renbarger  
 17 does not agree that it should be stricken --  
 18 MR. CARLSON: Right.  
 19 JUDGE NEWCHURCH: -- but he agrees  
 20 that's the area, correct?  
 21 MR. RENBARGER: That is the agreement  
 22 with counsel as to how best to deal with that. And  
 23 also we did confer with the court reporter and I think  
 24 that's her concurrence as well.  
 25 JUDGE NEWCHURCH: Okay. So that motion

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1 to strike is described correctly?  
 2 MR. RENBARGER: Yes.  
 3 JUDGE NEWCHURCH: Any our preliminary  
 4 matters?  
 5 MR. GOSSELINK: I understand that  
 6 Mr. Jiminez has delivered BFI Exhibit 26. Is that  
 7 correct?  
 8 JUDGE NEWCHURCH: Did I get one?  
 9 MR. JIMINEZ: Yes, Your Honor, it's on  
 10 your left-hand side.  
 11 JUDGE NEWCHURCH: Oh, yes. Thank you.  
 12 Indeed he has.  
 13 Anything else?  
 14 I have one. I noticed -- I should have  
 15 said something about this earlier. In TJFA's prefiled  
 16 evidence you included a courtesy electronic copy of  
 17 the evidence, which is very helpful, because ALFs are  
 18 notorious plagiarizers. So sometimes I will make a  
 19 copy of a document -- or at least I assume this is  
 20 what this was. It was in the binder.  
 21 MR. HEAD: I'll have to ask my able  
 22 assistant.  
 23 UNIDENTIFIED SPEAKER: That was quite  
 24 some time ago. May I come and take a look at it?  
 25 JUDGE NEWCHURCH: Yes, ma'am.

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1 (Laughter)  
 2 JUDGE NEWCHURCH: I bring it up because  
 3 there will be times when I will want copies in an  
 4 electronic format -- now, be clear about this. I'm  
 5 not asking you for new documentation, but sometimes I  
 6 will ask for electronic copies because it facilitates  
 7 preparing the PFD. So my assistant may contact you  
 8 for that, just so you know.  
 9 Similarly -- when we get to the end  
 10 we'll talk about this more -- but I will want  
 11 electronic copies of any finding of facts and  
 12 conclusions of law that any party is proposing.  
 13 Because, again, that makes the whole process of  
 14 preparing the PFD much easier.  
 15 (Brief pause in the proceedings)  
 16 MR. RENBARGER: Judge, to the extent it  
 17 was prefiled testimony, I think -- and I'll confirm  
 18 and make sure with the assistant -- but I think that  
 19 we probably did not apply a subsequent disk that may  
 20 have had any of those changes and amendments made in  
 21 response to the objections.  
 22 JUDGE NEWCHURCH: Okay. Now I've  
 23 started a great mystery. I thought that was clear  
 24 what that was, but maybe not.  
 25 Is there anything else before we resume

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1 with the evidence?  
 2 Okay. Then, Mr. Gosselink?  
 3 MR. GOSSELINK: Thank you, Your Honor.  
 4 PRESENTATION ON BEHALF OF  
 5 TJFA, L.P. (Cont'd)  
 6 LEE ROY STEPHEN STECHER, JR.,  
 7 having been previously duly sworn, testified as  
 8 follows:  
 9 CROSS-EXAMINATION (Cont'd)  
 10 BY MR. GOSSELINK:  
 11 Q Welcome back, Mr. Stecher. I have good news  
 12 for you. I don't have much on reflection. Okay?  
 13 A Good.  
 14 Q We were talking about the water quality pond,  
 15 and one of the issues that we discussed with regard to  
 16 water quality was whether or not it was really an  
 17 appropriate device or sediment structural control to  
 18 remove TSS. It's not clear because it's a wet pond as  
 19 opposed to a normal sediment pond. Do you remember  
 20 that?  
 21 A Yes.  
 22 MR. GOSSELINK: Okay. And I'm going  
 23 to -- may I approach, Your Honor?  
 24 JUDGE NEWCHURCH: Yes, sir.  
 25 (Exhibit BFI No. 27 marked)

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1 Q (BY MR. GOSSELINK) Mr. Stecher, I've handed  
 2 you what has been marked as BFI Exhibit 27 and ask you  
 3 if you would identify it for the record, please.  
 4 A Yes, it's "Complying with the Edwards Aquifer  
 5 Rules, Technical Guidance on Best Management  
 6 Practices."  
 7 Q All right. And that's the cover page and the  
 8 title. And then if you turn to Page 3-30 --  
 9 A Yes.  
 10 Q Okay. And that has a table on it, Table 3-4  
 11 "TSS Reduction on Selected Best Management Practices,  
 12 BMPs," correct?  
 13 A That's correct.  
 14 Q Are you familiar with this technical guidance  
 15 document?  
 16 A Yes, I am.  
 17 MR. GOSSELINK: BFI offers BFI Exhibit  
 18 27.  
 19 JUDGE NEWCHURCH: Any objection?  
 20 MR. HEAD: None.  
 21 JUDGE NEWCHURCH: 27 is admitted.  
 22 (Exhibit BFI No. 27 admitted)  
 23 Q (BY MR. GOSSELINK) And this represents a  
 24 study by the TCEQ regarding the TSS reduction of  
 25 various best management practices, correct?

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1 A That's correct.  
 2 Q And if you look down on the list of best  
 3 management practices 1, 2, 3, 4, 5, 6 -- the seventh  
 4 one is called "Wet Basins"?  
 5 A Yes, it is.  
 6 Q And that's also another word for "wet ponds"?  
 7 A In this particular document it is.  
 8 Q Okay. And that's what BFI has proposed out  
 9 here at Sunset Farms?  
 10 A Yes, it is.  
 11 Q And the TSS reduction from the BMP called  
 12 "Wet Basins" is listed as 93 percent, right?  
 13 A That's correct.  
 14 Q You had a couple other sort of specific  
 15 little criticisms about the wet pond and detention  
 16 pond area. One was you said that there was no safety  
 17 fence around it. Do you recall that?  
 18 A That's correct.  
 19 Q Okay. Isn't there a fence around the entire  
 20 site?  
 21 A Yes.  
 22 Q Okay. And you -- you noted or complained  
 23 that there was no maintenance pad called for. Do you  
 24 remember that?  
 25 A Yes.

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1 Q And I'd like to direct your attention to  
2 APP957.  
3 A What's that in?  
4 Q It's in the application.  
5 MR. HEAD: Is that --  
6 MR. GOSSELINK: Probably Volume 2.  
7 JUDGE NEWCHURCH: What was the APP  
8 number?  
9 MR. GOSSELINK: APP957. I didn't have  
10 time to go make 12 copies, Judge. I apologize.  
11 Q (BY MR. GOSSELINK) Have you found it, sir?  
12 A Yes, I have.  
13 Q On that page there is indented Paragraph 1.  
14 And at the very bottom of indented Paragraph 1, the  
15 last two sentences, would you please read those into  
16 the record?  
17 A "A reinforced concrete pad 12 feet by 16 feet  
18 has been included to form a maintenance pad at this  
19 low point. The purpose of the maintenance pad is to  
20 allow the routine removal of sediment using heavy  
21 equipment soon after the basin has drained without  
22 requiring additional time for the basin bottom to  
23 dry."  
24 Q Okay. Thank you. And you also complained  
25 that there was no access ramp into this basin,

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1 correct?  
2 A Yes.  
3 Q And this basin is designed with 4 to 1 side  
4 slopes?  
5 A Yes.  
6 Q And we have equipment that goes all over 4  
7 to 1 side slopes, don't we?  
8 A If you say so. I'm assuming so.  
9 Q Okay. We have 4 to 1 side slopes proposed on  
10 our landfill?  
11 A If you don't have them, go buy them.  
12 (Laughter)  
13 Q Would that it was that easy, sir.  
14 Finally, would you now look at APP965,  
15 which is Figure 6-1 in the application.  
16 A I have that. 965?  
17 Q Uh-huh. All right. Thank you. And I had  
18 asked you a question with regard to what I called the  
19 gauntlet of sediment controls in Ditch K, and I  
20 started with a sediment trap at the beginning of Ditch  
21 K, and you said we didn't call one out. And what I'd  
22 like to point out at the very top on the north side,  
23 say two-thirds of the way from east to west, the  
24 little box that says "Existing Sedimentation Pond,"  
25 does that change your testimony?

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1 A I've seen that on this figure, but in the  
2 description of the surface water protections, that  
3 pond was never described. So I assumed that possibly  
4 that is existing but will not be there in the future.  
5 Q This is the proposed surface water protection  
6 plan and it's specifically called out on this  
7 document. Is it your testimony that you're somehow  
8 presuming it won't be there?  
9 A Well, it's not described in -- when it's  
10 described -- the other four ponds are described.  
11 They're specifically described and this fifth one is  
12 not.  
13 Q I called that a sediment trap and this  
14 document calls it a sedimentation pond. Is that what  
15 the hang-up is?  
16 A No.  
17 Q Okay.  
18 A It's a discrepancy between all the different  
19 drawings that you have in this -- drawings and  
20 descriptions.  
21 Q Okay. Well, I'll ask it this way: Assuming  
22 that this document accurately represents that there's  
23 supposed to be an existing sedimentation trap at the  
24 beginning of Ditch K, would that be a sedimentation  
25 control feature to Ditch K?

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1 A Yes, it would.  
2 Q Okay. And you had a criticism of Rule 11 as  
3 it related to the definition of disturbed areas. Do  
4 you remember -- the activity wasn't described I think  
5 is how you were concerned -- what your concern was.  
6 Do you remember that testimony?  
7 A That was one concern.  
8 Q Okay. Mr. Shepherd has provided to the  
9 parties a copy of a revised draft permit, which  
10 incorporates language that was agreed to from the  
11 witness stand that -- you were not present, so I don't  
12 think you would have been able to have understood this  
13 in advance, so this is an understandable omission on  
14 your part but I want to bring it to your attention.  
15 On Page 12 of the revised draft permit,  
16 No. 1, it says: "BFI shall place intermediate cover  
17 and implement seeding events on all side slope areas  
18 on which waste placement activity has not  
19 recommenced." Does the use of that term "waste  
20 placement activity" remove your concern about that  
21 item in the Rule 11?  
22 A I would probably have to actually read it to  
23 see what context that particular paragraph is.  
24 MR. GOSSELINK: Okay. I don't know that  
25 it's worth it to go through that. I'll pass the

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1 witness.  
2 JUDGE NEWCHURCH: Is there redirect?  
3 MR. HEAD: Yes.  
4 REDIRECT EXAMINATION  
5 BY MR. HEAD:  
6 Q Do you recall a discussion with Mr. Gosselink  
7 about your deposition and the Rule 11?  
8 A Yes, I do.  
9 Q And do you have your deposition before you?  
10 A Somewhere. I have two volumes.  
11 Q I refer you to the -- it would be the  
12 December 8th, 2008 deposition, Page 219.  
13 A I've got that page in front of me.  
14 Q All right. And referring you to --  
15 Mr. Gosselink asked you a question: "And have you had  
16 that section before? That's the portion of the Rule  
17 11 Agreement you have reviewed."  
18 And your answer was -- please read it.  
19 A I'm sorry, I haven't found that yet.  
20 Q Okay. Page 219, and I read you Line 19  
21 through 21, which was Mr. Gosselink's question. And  
22 your answer?  
23 A My answer was: "More like scanned it."  
24 Q So when you had your deposition taken on  
25 December 8th and you were subjected to questions

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1 regarding the Rule 11, had you thoroughly reviewed the  
2 Rule 11?  
3 A No.  
4 Q Okay. Mr. Stecher, I'm going to ask you to  
5 have the court reporter provide you RS-42, which is an  
6 exhibit that's already been entered, and it is the  
7 Rule 11.  
8 JUDGE NEWCHURCH: Mr. Head, may I  
9 interrupt you please?  
10 MR. HEAD: Yes, you may.  
11 JUDGE NEWCHURCH: Just to make sure,  
12 Mr. Gosselink, you have not offered Exhibits 23, 24 or  
13 26 or 21, and I didn't know if that was an oversight  
14 of it and you planned not to offer them --  
15 MR. GOSSELINK: Absolutely, and it's  
16 even on my pad to make sure I do that, and I  
17 apologize. I'd like to offer those.  
18 MR. HEAD: No objection.  
19 JUDGE NEWCHURCH: Again, those are 21,  
20 23, 24 and 26 of BFI's exhibits. Is there any  
21 objection?  
22 MR. HEAD: No objection.  
23 JUDGE NEWCHURCH: Those are all  
24 admitted.  
25 (Exhibit BFI Nos. 21, 23, 24 and 26

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1 admitted)  
2 Q (BY MR. HEAD) Okay. Do you have the Rule 11  
3 in front of you?  
4 A Yes, I do.  
5 Q Now, it starts, I think, with a cover letter  
6 from Lloyd, Gosselink, but have you gotten to the  
7 provisions with regard to erosion control? Have you  
8 found those?  
9 A Let me go back to those. Is that Section D?  
10 Q That would be subsection D, and I think  
11 you'll see Page 3 on the bottom.  
12 A Yes.  
13 Q Okay. And what Mr. Gosselink was just  
14 talking to you about, I think, is with regard to D1.  
15 You see where the word "activity" is?  
16 A Yes, I do.  
17 Q That is being proposed to be changed to -- is  
18 it solid waste activity, Paul?  
19 MR. GOSSELINK: Waste placement  
20 activity.  
21 Q -- waste placement activity, just so you  
22 understand that.  
23 A Yes, I understand.  
24 Q And in your cross, the impression was given  
25 in some answers that you were happy with all the

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1 provisions in the erosion control. I'd like you to go  
2 through -- do you have any issues with regard to D1,  
3 any concerns?  
4 A So again, the main concern there was lack of  
5 specificity to the activity, how much area could be  
6 left not seeded, and then that -- the 60-day  
7 timeframe.  
8 Q Okay.  
9 A I believe I mentioned something else earlier,  
10 but I forget what that was.  
11 Q Okay. With regard to D2 --  
12 A There was one other one with the -- with the  
13 D1 was the July/August -- not having to seed in July  
14 and August is very understandable, but that 60-day  
15 maybe should get shorter as you approach -- or the  
16 time period should get shorter as you approach July  
17 1st.  
18 Q All right. And you've had the -- so we don't  
19 have to belabor this -- you've had the opportunity to  
20 more than just merely scan the Rule 11 since your  
21 deposition with Mr. Gosselink?  
22 A That's true.  
23 Q Are there any particular provisions in D1  
24 through D9 that you have concerns with?  
25 A A few.

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1 Q Could you give us the number and then  
2 elaborate on those?  
3 A Yeah, I think in 2 -- I'd have to actually  
4 look over, I think, 2, 4 and 5 particularly, and then  
5 I'd have to look at the other ones. I'd have to read  
6 over the other ones.  
7 Q Well, why don't you tell us your issues with  
8 2, 4 and 5, please?  
9 A In 2, this has to do with the -- putting the  
10 buffalo grass around the entrance to the flumes -- or  
11 the downchutes, I'm sorry, is the term that is used.  
12 Q And what's your concern about the buffalo  
13 grass around the downchutes?  
14 A Well, it's unclear how the grading is around  
15 the entrance to the downchute and whether there's even  
16 any water going over the -- whether the water is going  
17 to go over the down -- the buffalo grass and the  
18 buffalo grass operate as a sediment control. It would  
19 obviously have some benefit, but not nearly as much  
20 benefit as shown on this chart. There's a table that  
21 goes with this.  
22 Q Do you have any concerns with the silt fences  
23 or mulch berms?  
24 A Yes, the silt fences and mulch berms in front  
25 of the -- if they were placed too close to the

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1 downchute, the entrance to the downchute, they may  
2 actually block the water and route the water around  
3 the downchute. So those would have to be carefully  
4 designed. Those probably should be -- the mulch berm  
5 probably needs to be some type of rock berm.  
6 Q What about the silt fences or mulch berms at  
7 the end of the constructed downchute?  
8 A Those will probably be blown completely out  
9 by the 11-feet-per-second of velocity coming down the  
10 downchute. There probably needs to be a nice rock  
11 stilling basin with rock riprap and some rock berms  
12 there instead of silt fence and mulch berms.  
13 Q Okay. Any other -- you mentioned Item 4.  
14 What are your concerns with Item 4?  
15 A Items 4 and 5 are kind of together in that I  
16 think that these are specific -- in the City of Austin  
17 requirements for seeding there's a lot more  
18 specificity and detail, and I know -- there is an --  
19 there's another exhibit that includes a lot of detail  
20 on the vegetation, but that is not just straight out  
21 of what the City of Austin would require. And it's  
22 much, much more complex and thorough.  
23 Q Okay. Any other concerns with the Rule 11  
24 specifically?  
25 A On No. 6 the silt fence -- the perimeter silt

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1 fence and hay bales, it's difficult to see how that's  
2 working. And without an actual drawing to follow  
3 that, generally the silt fence won't be able to handle  
4 those -- the flows and there will be some concentrated  
5 flows in those areas. So it's most likely that  
6 something other than silt fence and hay bales would be  
7 needed to make that effective.  
8 Q All right. Anything else on the Rule 11?  
9 A Did I mention -- well, on -- number one, I  
10 kind of alluded to this, but Exhibit 1 is where it  
11 talks about the seeding and the irrigation, and that's  
12 where some of those are not as strict as would be  
13 required if you had, let's say, a development across  
14 the street from the landfill. You'd have to go  
15 through a lot more detail and complex seeding and  
16 plantings.  
17 Q Okay. Does that conclude your concerns with  
18 the Rule 11?  
19 A The only other one I'd like to mention --  
20 well, it's really 10 and 11 together -- but the SWPPP,  
21 again having seen that it is a good provision as I  
22 mentioned, that it's good that that is added in here,  
23 I would have liked to have seen the -- some very  
24 advanced drawings on these included in the  
25 application.

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1 Q Okay. Does that conclude --  
2 A Yes, it is.  
3 Q Now, Mr. Gosselink was talking about the  
4 gauntlet of controls with regard to Ditch K. Do you  
5 recall that line of inquiry?  
6 A Yes, I do.  
7 Q He mentioned five rock berms, three wetland  
8 pools, a silt fence by the pond, and he mentioned also  
9 the Rule 11 buffalo sod, mulch berm and silt fences.  
10 Do you believe these controls will be -- that  
11 Mr. Gosselink mentioned are in the application -- will  
12 be adequate to control erosion in the Ditch K and to  
13 Outfall 1?  
14 A No, I do not.  
15 Q And why do you not?  
16 A For one thing, the wetland pools were --  
17 based on all the information I can find -- were not  
18 designed to be a sediment control trap or basin. And  
19 even if they were, the drainage area is too large for  
20 those type of structures. A sediment trap would be  
21 only for five acres and these are -- as Mr. Gosselink  
22 mentioned, there's several hundred acres just  
23 off-site.  
24 The rock berms are also not generally  
25 used in that confined ditch as a permanent control.

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1 Temporary control I can see that that would be useful,  
 2 but not for any kind of major detention or retention.  
 3 As I mentioned, there's a discrepancy --  
 4 I'm looking at APP000968, which is proposed drainage  
 5 condition that was handed to me earlier. And, you  
 6 know, it doesn't show that other detention pond that  
 7 he was mentioning, so I'm still not counting that  
 8 until I see it on this drawing.  
 9 Q So are you referring to the detention pond to  
 10 the north?  
 11 A To the north on -- just ahead of Ditch K  
 12 there is no pond shown on the proposed drainage  
 13 condition. But, I mean, even if it is, it's very,  
 14 very small and probably less than half-an-inch of  
 15 capture volume.  
 16 I believe that Mr. Gosselink correctly  
 17 mentioned it was a grass swale and that grass is a  
 18 good way to capture sediment. And combined with the  
 19 rock berms would have some effectiveness at some  
 20 times, but in general it's not going to be -- the  
 21 gauntlet, so to speak, is not going to be highly  
 22 effective at removing sediment.  
 23 Q Okay. If you were to -- if you had been  
 24 assigned the task from BFI to design some erosion  
 25 controls for that Ditch K, what would you have done?

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1 A Well, that depends a little bit about how  
 2 Ditch K came about. But I believe that all of the  
 3 detention and water quality should be occurring  
 4 before -- before any water from the landfill gets in  
 5 Ditch K instead of trying to use Ditch K, which is  
 6 also being used as a conveyance for all this off-site  
 7 water.  
 8 Q Okay. Now, have you designed -- there was a  
 9 discussion you had with Mr. Gosselink about  
 10 downchutes. Do you recall that discussion?  
 11 A Yes.  
 12 Q And have you designed downchutes in your  
 13 career?  
 14 A Yes. None of this magnitude, though.  
 15 Q Do you believe the downchutes are properly  
 16 designed?  
 17 A I believe proper engineering factors have  
 18 been looked at, but some -- there just isn't a big  
 19 enough safety factor on here.  
 20 Q And does the safety factor have to do with  
 21 the riprap?  
 22 A It's the riprap and the free board on the  
 23 downchutes.  
 24 Q And what is your issue with the free board?  
 25 A My issue with the free board is that it just

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1 barely -- and some of them don't even have a full free  
 2 board based on the guidelines that Mr. Gosselink  
 3 passed out earlier about the superelevation requires  
 4 to have an -- have a free board equal to the energy  
 5 grade line, and that's not the case in these --  
 6 Q Let me stop and ask --  
 7 A It's on all of these --  
 8 Q -- does that have to do with the discussion  
 9 you and Mr. Gosselink had with the bends, b-e-n-d-s,  
 10 the bends in the downchutes or is that a separate  
 11 issue?  
 12 A That's kind of a complimentary issue or  
 13 supplementary issue. The free board is just -- the  
 14 free board analysis was done just with their flows and  
 15 going down the chute, not worrying about the bends.  
 16 And one of our -- the main part of my concern is that  
 17 these are some of the most major structures that, if  
 18 they fail, could have a major failure of -- including  
 19 discharging the waste, I believe. So it's not -- it's  
 20 not worth being -- looking at saying, well, we can --  
 21 there's a rule that says we can go 25 here. I think  
 22 this is one case where we really need to look at a  
 23 higher level of safety.  
 24 Q So is it your opinion that they should have  
 25 been designed for the hundred-year storm?

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1 A The hundred-year storm or maybe even more,  
 2 because the landfill is going to be here for a very  
 3 long time.  
 4 Q Okay. Now, there was a discussion with  
 5 regard to the -- what is it -- the Manning value? Is  
 6 that -- am I correct about that?  
 7 A Yes.  
 8 Q And that had to do with the riprap?  
 9 A Yes. And that was, again, another type of  
 10 safety consideration that the -- by selecting -- the  
 11 engineers very carefully selected a high end value  
 12 which is good for designing the height of the berms on  
 13 the rock berm -- on the rock, how high the rock comes  
 14 up. But in the same token for that -- for that end  
 15 value is actually reversed and it's not a high factor  
 16 of safety or it's not conservative.  
 17 Q And what do you believe, based on the chart  
 18 that was shown -- I'll find the exhibit number --  
 19 which end value would you recommend?  
 20 A Yes, I reviewed several documents --  
 21 Q By the way -- I'm sorry -- this would be  
 22 BFI-25.  
 23 A Yes, I have it here. We had looked at  
 24 several different documents, including this one, and  
 25 thought that .05 would be more conservative with

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1 respect to velocity and, therefore, more conservative  
2 with respect to the rock size for the downchute.  
3 Q And so you would have selected 05, correct?  
4 A Yes.  
5 Q And is that more conservative with regard to  
6 rock size?  
7 A Yes, it's more conservative.  
8 Q And would 05 mean -- does that take into  
9 account faster velocity of the water coming down the  
10 chutes?  
11 A Yes, it does.  
12 Q And if you have faster velocity, you need  
13 larger rocks, correct?  
14 A Yes.  
15 Q So if in fact, real world, you have faster  
16 velocity and the rocks are too small, what could be  
17 the end result of that?  
18 A The rocks could start moving and could cause  
19 a complete failure of the chute.  
20 Q Okay.  
21 A I did want to point out that the .05 is  
22 listed under normal on the chart. So even though I  
23 say it's conservative velocity-wise, it's still within  
24 the range of reasonable values.  
25 MR. HEAD: Off the record one second,

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1 please?  
2 JUDGE NEWCHURCH: Off the record.  
3 (Discussion off the record)  
4 Q (BY MR. HEAD) You had a discussion with  
5 Mr. Gosselink about the one-half-inch capture volume  
6 of the sedimentation ponds. Do you recall that  
7 discussion?  
8 A Yes, I do.  
9 Q And the sedimentation ponds -- the four  
10 sedimentation ponds, two on the south, two on the  
11 west -- those are the exact same ponds that were in  
12 the 2002 MOD, correct?  
13 A I don't believe the two on the west were in  
14 the 2002 MOD. That was a later MOD. I'm not sure.  
15 Q In your review of the application, have you  
16 seen any discussion of increasing the size of the  
17 sedimentation ponds on either the western side or the  
18 southern side from what currently exists?  
19 A No, I have not.  
20 Q Okay. And isn't it a fact that you will have  
21 increased 4 to 1 slopes with regard to acreage, the  
22 amount of 4 to 1 slopes?  
23 A Yes, there's a significant increase of  
24 acreage on that -- both the south and the west side.  
25 It's a 4 to 1 slope.

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1 Q And in the active phase, active operations,  
2 is it your opinion that there will be additional  
3 sediment in rainfall events with the expansion?  
4 A Yes, I do.  
5 Q Okay. Now, the one-half-inch capture volume  
6 of the sedimentation ponds, based on the application,  
7 what type of rainfall events would that -- would that  
8 provide capture for?  
9 A So the half-inch capture volume equates to a  
10 half-inch of runoff, which would be for about a  
11 1.3-inch rainfall event.  
12 Q And is that based on the CN curve number from  
13 the application?  
14 A Yes, it is.  
15 Q And could you explain to the Court what a  
16 curve number is, what that provides us?  
17 A Well, the runoff curve number is a method  
18 that the NRCS -- previously the SCS -- developed,  
19 mainly for agricultural areas, but then eventually  
20 developed it for urban areas, too, to estimate runoff  
21 in a relatively simple way by knowing how much  
22 rainfall you have, and you estimate the curve number  
23 based on the soil and the land use and the vegetation.  
24 You can just -- you come up with a single curve number  
25 and you can just draw -- read up on the chart and find

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1 out how much runoff there is. There's actually an  
2 equation and computer models that do all this, too,  
3 but it's a nice simple way to calculate runoff.  
4 Q And the CN of 89 in the application, is that  
5 a fairly rapid runoff? Is it a slow runoff? Can you  
6 quantify that?  
7 A Well, it's relatively high for areas that  
8 don't have impervious cover.  
9 Q And to your knowledge was the CN of 89 based  
10 on a vegetative cover?  
11 A Yes, it was.  
12 Q So if this landfill is not under vegetative  
13 cover, would you believe the CN would be greater than  
14 89?  
15 A Yes, it would.  
16 Q And what would be the effect of a higher CN  
17 number?  
18 A Yeah, the higher CN number would relate to --  
19 directly to higher runoff --  
20 Q Okay.  
21 A -- for any given storm.  
22 Q And as I understand your testimony at Page 9,  
23 the capture volume of the sedimentation ponds is only  
24 about 7.5 percent of the 25-year 24-hour storm runoff  
25 volume?

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1 A That's correct.  
2 Q And in your deposition with Mr. Gosselink, I  
3 recall that you testified you needed to have a capture  
4 ability for the two-year storm event?  
5 A Yes, I did.  
6 Q And what do you base that upon?  
7 A Well, I base that on a number of factors, one  
8 of which is that historically that -- around the  
9 country we've used the two-year rainfall event for  
10 erosion and sedimentation control. The City of Austin  
11 has several files involving -- specifically involving  
12 the two-year retention -- detention of the two-year  
13 storm, which is for water quality purposes the --  
14 complying with the Edwards Aquifer Rules Technical  
15 Guidance on best management practices that Mr.  
16 Gosselink turned out -- passed out a page of earlier.  
17 It contains sedimentation basins and it describes  
18 using the two-year rainfall event. So --  
19 Q Now, let me stop you, because Mr. Gosselink  
20 is going to ask you this on recross: This is not in  
21 the Edwards Aquifer, correct?  
22 A That's right.  
23 Q But do you believe that the Edwards Aquifer  
24 guidance is appropriate for this condition, this  
25 landfill?

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1 A Yes. And really in many conditions it's not  
2 just -- I wouldn't pick this out just for this  
3 landfill. It uses standard water quality techniques  
4 that have been collected from around the country and  
5 in Texas.  
6 Q Now, the city -- as I understand, the City of  
7 Austin has a guidance document which talks about you  
8 should have one-half inch capture volume for sediment  
9 ponds. Is that correct?  
10 A That's correct.  
11 Q And Mr. Gosselink discussed that with you in  
12 your deposition, correct?  
13 A That's correct.  
14 Q And you used to work with the City of Austin,  
15 correct?  
16 A Yes, I did.  
17 Q And what was your position at the City of  
18 Austin?  
19 A I was a senior engineer and section manager  
20 of the water research and evaluation section. I guess  
21 back then was called the Environmental and  
22 Conservations Services Department.  
23 Q So you're familiar with the rules of the City  
24 of Austin?  
25 A Yes.

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1 Q And you're familiar with the intent of those  
2 rules of the City of Austin?  
3 A Yes, I am.  
4 Q Do you believe that the one-half inch capture  
5 rule in the City of Austin manual is applicable to a  
6 landfill of the height we're talking about here?  
7 A It's not applicable. It was not intended for  
8 that.  
9 Q And do you believe that these ponds are  
10 undersized with regard to capture volume?  
11 A I do.  
12 Q And what do you -- have you reached a  
13 conclusion as to how -- what's -- how those ponds  
14 should be sized to control sediment runoff?  
15 A Yes, I have. As you mentioned earlier, in my  
16 deposition I had said that I thought it would be  
17 somewhere around the two-year 24-hour rainfall event,  
18 which would equate to -- that is about 3.44 inches of  
19 rainfall and would result in about 2.5 inches, I  
20 believe --  
21 Q Of capture --  
22 A -- of capture volume.  
23 Q Now -- go ahead.  
24 A You wouldn't necessarily have to capture all  
25 the 2.5 because there would be water flowing through

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1 the pond at that time. So it's a little more  
2 difficult when you're sizing a pond that size for a  
3 24-hour storm and the water is going to be running out  
4 of the pond.  
5 Q Now, let me ask you, Mr. Stecher, there's  
6 some provisions in the Rule 11, and there's some  
7 discussion in the application about that BFI will  
8 investigate the sediment ponds after a significant  
9 rainfall. You've seen them?  
10 A Yes, I have.  
11 Q And you've seen that there's provisions that  
12 they will clean out the sediment ponds -- I guess  
13 inspect them and clean them out to where there's only  
14 25 percent left in the ponds. Have you seen those  
15 provisions?  
16 A Yes, I believe the provision is to -- if it  
17 fills up by 25 percent, then it has to be cleaned.  
18 Q Assuming it was cleaned out, if you had a  
19 two-year storm -- a two-year 24-hour storm, and it was  
20 cleaned out, do you believe that the sediment ponds as  
21 they're constructed today would retain the sediment in  
22 a fashion that you would not have a discharge of  
23 significant sediment to the outfalls?  
24 A No, I do not.  
25 MR. HEAD: Pass the witness.

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1 JUDGE NEWCHURCH: Who has additional  
2 cross-examination?  
3 No one -- go ahead, Mr. Gosselink.  
4 RECROSS-EXAMINATION  
5 BY MR. GOSELINK:  
6 Q Mr. Stecher, would you look at your  
7 deposition testimony, which is BFI Exhibit 21 on Page  
8 238? And let me know when you've got it.  
9 A Okay.  
10 Q Okay. So this is the end of our discussion  
11 about the Rule 11 Agreement, correct?  
12 A Well, let me look at this for a second.  
13 Q Sure. It's the last page of the attachment  
14 that I began reading to you.  
15 MR. HEAD: Paul, is it Page 238?  
16 MR. GOSELINK: Page 238.  
17 A Okay. What line do you want me to start on?  
18 Q (BY MR. GOSELINK) I don't yet. I just want  
19 you to make sure that you agreed that where we were  
20 was at the end of our discussion of the Rule 11  
21 Agreement. Do you agree with that?  
22 A It appears so.  
23 Q And the preceding pages go through a reading  
24 of each paragraph of the Rule 11 Agreement D1 through  
25 D11 in full and we discuss it, right?

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1 A I believe so. I don't know if we read them  
2 every line of every one.  
3 Q Well, maybe we didn't read every line of  
4 every one, but we at least had the document in front  
5 of us and we discussed each paragraph relatively  
6 thoroughly. Would you agree with that?  
7 A Relatively.  
8 Q So at the end of that discussion, which was  
9 more than just scanning, I asked you: "Exclusive of  
10 all the political swirl that is going around about  
11 this agreement, just focusing on the sedimentation and  
12 erosion control aspects of this agreement, would you  
13 agree that this improves the operation of the Sunset  
14 Farms Landfill as it relates to erosion and  
15 sedimentation control?"  
16 Go ahead and read your answer, please.  
17 A I said: "Yes, in that most of my knowledge  
18 of it -- of the operation is based on the documents  
19 that I've been provided through the application and  
20 the SWPPP. And it does appear to add beneficial  
21 common elements to the plan."  
22 Q So just as a baseline, you have now  
23 identified some more specific concerns or criticisms  
24 with Mr. Head than you actually identified when the  
25 Judge asked you, but the big picture is this is a

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1 positive, right?  
2 A Yes, that's what I said.  
3 Q Maybe I just wanted to reinforce that.  
4 A Yes.  
5 Q Okay. And you went through some of the  
6 paragraphs with Mr. Head, and at the end of Paragraph  
7 2 and Paragraph 4 and 5, and I think Paragraph 6, what  
8 you concluded, I think, was you would be more  
9 comfortable if there was more detail laid out about  
10 these particular provisions, and you'd sort of like a  
11 design set of drawings or much more detail than is  
12 typical in a settlement agreement for you to be  
13 comfortable, wouldn't you?  
14 A Yes.  
15 Q This is a settlement agreement, isn't it?  
16 A Yes, I understand.  
17 Q Okay. And we are going to submit a site  
18 development plan, aren't we?  
19 A Yes.  
20 Q There will be more details than that, won't  
21 there?  
22 A Most likely.  
23 Q And we can't go forward until that's  
24 approved, correct?  
25 A That's correct.

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1 Q And be reviewed by people like Mr. Kelly and  
2 Mr. Lesniak, correct?  
3 A I believe so.  
4 Q With regard to the downchutes redirect  
5 questions, your concern -- as I think I heard it --  
6 was that there were not adequate calculations  
7 regarding the free board in all of the downchutes.  
8 You were going pretty fast. Did I get that right?  
9 A No.  
10 Q Okay. What was your criticism about free  
11 board.  
12 A That there wasn't enough free board based on  
13 the free board requirements of the City of Austin for  
14 drainage channels.  
15 Q Ah. Okay. So do you think that the City of  
16 Austin will review that?  
17 A I don't know.  
18 Q Okay. Has the City of Austin actually signed  
19 this settlement agreement?  
20 A It appeared so.  
21 Q All right. And you repeated your opinion  
22 that the Manning's n coefficient with regard to the  
23 riprap that .05 is better in your opinion, correct?  
24 A I'm not sure I used the word "better," but  
25 more conservative for concerns of sizing the riprap.

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1 Q Okay. And I take it from your distinction  
 2 between better and more conservative that more  
 3 conservative is somehow even safer. Would that be  
 4 right?  
 5 A Yeah, engineers typically work with factors  
 6 of safety, and if someone says "Design something for a  
 7 five-year storm," they might go ahead and design it  
 8 for a ten-year storm and so forth.  
 9 Q Okay. And you're concerned that there could  
 10 be a problem. And in fact, I read it to you once,  
 11 I'll read it to you again. Your statement was that  
 12 there is a potential for a problem, but you could not  
 13 confirm that. That's still where we are, isn't it?  
 14 A Well, I think I'm a little further along  
 15 because I had not --  
 16 Q Since cross-examination?  
 17 A Well, wasn't I reading my deposition at the  
 18 time?  
 19 Q Okay. Yes.  
 20 A Yeah, and so from the time of the deposition  
 21 that I have relooked at the calculations just to make  
 22 sure and that the energy grade line was going over the  
 23 top of the corner of the channel. So I was in -- when  
 24 I said "potential" --  
 25 Q Did you provide those calculations to

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1 anybody?  
 2 A They're the same calculations that I provided  
 3 you. I just have relooked at them.  
 4 Q The same calculations using the 11.2 --  
 5 A Yeah.  
 6 Q -- feet per second?  
 7 A Uh-huh.  
 8 Q And utilizing the 270 Q in the bend that only  
 9 had a 61.4 Q?  
 10 A Oh, I'm not talking about the bends right  
 11 now.  
 12 Q Okay. I'm talking about the bends.  
 13 A That we did --  
 14 Q Okay.  
 15 A That we did look at.  
 16 Q Okay. And with regard to the riprap, you  
 17 recalculated the riprap?  
 18 A No.  
 19 Q No? I'm lost. Where did you -- where did  
 20 you provide calculations that now show that you've  
 21 confirmed that there's a problem?  
 22 A I just relooked at the calculations that had  
 23 been made and verified that they had been done. When  
 24 I said "potentially," I was unsure based on all the  
 25 calculations we had done.

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1 Q Okay. And now it's your testimony, if I  
 2 understand it, that in your opinion the design of the  
 3 downchutes will fail?  
 4 A No.  
 5 Q No? Might fail?  
 6 A There's still all kinds of engineering  
 7 probabilities and factors of safety. So there's no  
 8 yes for sure it will fail, or no for sure it won't  
 9 fail. But all I can say is I checked and the energy  
 10 grade line is above the edge of the channel, and  
 11 that's not adequate freeboard according to the City of  
 12 Austin.  
 13 Q Well, that opinion, I take it, you believe  
 14 will be reviewed by the City of Austin?  
 15 A Possibly.  
 16 Q Okay. It may have been reviewed by the TCEQ  
 17 already?  
 18 A I'm not sure what has been reviewed by --  
 19 Q The TCEQ has issued a draft permit which  
 20 includes this information. Correct?  
 21 A Yes.  
 22 Q Okay. Now, the sedimentation ponds that you  
 23 think are undersized --  
 24 A Correct.  
 25 Q -- they meet the City of Austin's criteria of

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1 one-half-inch runoff -- capturing the first one-half  
 2 inch of runoff, don't they?  
 3 A Yes.  
 4 Q The City has approved them. Yes?  
 5 A I don't know what they approved with the  
 6 sedimentation ponds.  
 7 Q Sedimentation basins --  
 8 A Sedimentation basins, okay.  
 9 Q -- on the west side. The City approved  
 10 those, didn't they, with the permit?  
 11 A I believe so.  
 12 Q The county has approved them?  
 13 A I believe so.  
 14 Q The TCEQ has issued a draft permit indicating  
 15 their approval, and in fact, it was previously  
 16 approved in the MOD?  
 17 A Yes.  
 18 Q Okay. Steve Stecher doesn't think they're  
 19 big enough?  
 20 A That's correct.  
 21 MR. GOSSELINK: May I have a moment,  
 22 Your Honor?  
 23 JUDGE NEWCHURCH: Yes, sir. Off the  
 24 record.  
 25 (Discussion off the record)

41 (Pages 1939 to 1942)

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1 Q (BY MR. GOSSELINK) Mr. Stecher, you talked  
 2 about the energy grade line as an important factor in  
 3 your -- in developing your opinion about the adequacy  
 4 of the downchutes as it relates to riprap, correct?  
 5 A That's correct.  
 6 Q And the energy grade line is not indeed  
 7 reflective of a water level. That is -- that is  
 8 something that is engineeringly imagined above the  
 9 water level, correct?  
 10 A Yes, it is.  
 11 MR. GOSSELINK: No further questions.  
 12 JUDGE NEWCHURCH: Any further direct?  
 13 MR. HEAD: No.  
 14 JUDGE NEWCHURCH: Thank you, Mr.  
 15 Stecher. You're excused.  
 16 And, Mr. Head, Mr. Renbarger, that's  
 17 your last witness, right?  
 18 MR. HEAD: Yes.  
 19 JUDGE NEWCHURCH: Is there anything else  
 20 you wanted to offer as part of your direct case?  
 21 MR. HEAD: No.  
 22 JUDGE NEWCHURCH: Okay. Then I think  
 23 we're ready for NNC's remaining case.  
 24 MR. BLACKBURN: We're ready. It might  
 25 be good to kind of get the exhibits cleaned up a

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1 little bit.  
 2 JUDGE NEWCHURCH: Right, let's do that.  
 3 Off the record while we reorganize.  
 4 (Recess)  
 5 JUDGE NEWCHURCH: Okay. Let's come back  
 6 on the record. A couple of administrative things:  
 7 First of all, the mystery of the disk has been solved.  
 8 This is not prefiled testimony by TJFA. Apparently it  
 9 is a recording of one of our prehearing conferences.  
 10 So I'm not sure how it got in the same binder as your  
 11 prefiled, but that's what that is.  
 12 MR. HEAD: So I congratulated my  
 13 assistant prematurely.  
 14 (Laughter)  
 15 JUDGE NEWCHURCH: She's worked really  
 16 hard, so you probably deserve to be -- ought to  
 17 congratulate her for something.  
 18 So nevertheless, as I said earlier, you  
 19 may get a call from my assistant for some electronic  
 20 copies of your briefs or your prefiled, so that will  
 21 facilitate preparation of the PFD, and you should  
 22 anticipate having to prefile your findings and  
 23 conclusions because that really helps a lot.  
 24 MR. CARLSON: You use Word instead of  
 25 Word Perfect. Is that correct?

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1 JUDGE NEWCHURCH: We use Word, yes.  
 2 MR. CARLSON: Okay.  
 3 JUDGE NEWCHURCH: But we can translate  
 4 from Word Perfect if necessary. So that works out.  
 5 Let's see. Secondly, Mr. Gosselink, who  
 6 is not here right now --  
 7 MR. CARLSON: I'm second in charge, I  
 8 guess.  
 9 JUDGE NEWCHURCH: He indicated just as  
 10 we went off the record that you had passed out a  
 11 document concerning the merger of Allied and Republic.  
 12 MR. CARLSON: Yes.  
 13 JUDGE NEWCHURCH: So the parties have  
 14 that documentation, and I think the idea there was  
 15 perhaps that would facilitate the parties agreeing  
 16 that there's no issue there, but you don't have a copy  
 17 of it yet?  
 18 MR. RENBARGER: I don't believe so,  
 19 Judge, unless it's been misplaced here with some of  
 20 these papers.  
 21 (Simultaneous discussion)  
 22 MR. HEAD: Your Honor, thank you.  
 23 JUDGE NEWCHURCH: Okay. All right. So  
 24 that's what we've got on that.  
 25 So anything else before we go to NNC's

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1 case?  
 2 MR. CARLSON: No, Judge.  
 3 JUDGE NEWCHURCH: Then, Mr. Blackburn,  
 4 call your first witness.  
 5 MR. BLACKBURN: Okay. I'd like to call  
 6 Joyce Best to the stand, please.  
 7 JUDGE NEWCHURCH: Ms. Best, if you would  
 8 take the oath, please?  
 9 PRESENTATION ON BEHALF OF  
 10 NORTHEAST NEIGHBORS COALITION  
 11 JOYCE BEST,  
 12 having been first duly sworn, testified as follows:  
 13 DIRECT EXAMINATION  
 14 BY MR. BLACKBURN:  
 15 Q Good afternoon, Ms. Best.  
 16 A Good afternoon.  
 17 Q I have placed in -- well, first of all, would  
 18 you state your name for the record, please?  
 19 A My name is Joyce Best.  
 20 Q And where do you live, Ms. Best?  
 21 A I live at 4001 Licorice Lane, Austin, Texas  
 22 78728.  
 23 Q And is Licorice Lane near the Sunset Farms  
 24 Landfill?  
 25 A It is about nine or ten miles away from the

42 (Pages 1943 to 1946)

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1 Sunset Farms Landfill.  
 2 Q And have you recently moved from the  
 3 proximity of the Sunset Farms Landfill?  
 4 A We moved from the Harris Branch neighborhood  
 5 in July of 2006.  
 6 Q Okay. And have you -- I've placed before you  
 7 an exhibit that is -- Best-1 is your prefiled  
 8 testimony. Do you have that in front of you?  
 9 A Yes, I do.  
 10 Q And then there is attached to it a series of  
 11 exhibits, I think Best-2 is an affidavit, and Best-3  
 12 is a map of odor complaints.  
 13 A Yes.  
 14 Q And Best-4 is an odor report form that is  
 15 being offered for a limited purpose of it being an  
 16 example of a document that has been submitted?  
 17 A Yes.  
 18 Q And then there's a series of -- well, there's  
 19 Best -- I guess next is Best-6, Best-7, Best-8, which  
 20 are photographs. Is that correct?  
 21 A Yes.  
 22 Q And are there other exhibits as well?  
 23 A Just those you mentioned, I believe.  
 24 Q And to the best of your knowledge, is your  
 25 prefiled testimony true and correct?

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1 A Yes, it is.  
 2 Q And are these the exhibits to your prefiled  
 3 testimony?  
 4 A Yes.  
 5 MR. BLACKBURN: I move admission of Best  
 6 exhibits.  
 7 JUDGE NEWCHURCH: Okay. That was 1  
 8 through 8, and one was for a limited purpose. Which  
 9 number was that again, please?  
 10 MR. BLACKBURN: The one for a limited  
 11 purpose is Best-4.  
 12 JUDGE NEWCHURCH: Just to show the form?  
 13 MR. BLACKBURN: Just to show the form  
 14 and the type of information, but not for the truth of  
 15 the matter included.  
 16 JUDGE NEWCHURCH: All right. And with  
 17 that limitation on that one exhibit, is there  
 18 objection to Best 1 through 8?  
 19 MR. CARLSON: I don't think I have an  
 20 objection, with one clarification. I believe that  
 21 Exhibit 5, Best-5, which is a compilation of odor  
 22 report forms, had been objected to and were --  
 23 MR. BLACKBURN: I'm sorry, let me be  
 24 clear. Best-5 is not part of that offer.  
 25 JUDGE NEWCHURCH: So Best-5 is just not

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1 here?  
 2 MR. BLACKBURN: That's correct. It's  
 3 not included.  
 4 JUDGE NEWCHURCH: Okay.  
 5 MR. BLACKBURN: It's really only the  
 6 exhibits that are included in the document in front of  
 7 Ms. Best, which includes Best-1, Best-2, Best-3,  
 8 Best-4 -- there is no Best-5 -- and then 6, 7 and 8.  
 9 MR. CARLSON: With that clarification,  
 10 we have no objections, Judge.  
 11 JUDGE NEWCHURCH: Okay. Then is there  
 12 any other objection by anyone?  
 13 (No response)  
 14 JUDGE NEWCHURCH: So Best-1 through 4,  
 15 with the limitation on 4 described, and Best-6  
 16 through 8 are all admitted.  
 17 MR. CARLSON: And I'm advised by  
 18 Mr. Moore, who handled more of the evidentiary things,  
 19 that 2 -- the agreement, I believe, was that 2 was  
 20 limited -- admitted for limited purposes as well. Is  
 21 that correct, Jim?  
 22 MR. BLACKBURN: That doesn't ring a bell  
 23 with me on 2. That's the affidavit that Joyce signed.  
 24 MR. MOORE: Right. We agreed that those  
 25 would be admitted, but not for the truth of the

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1 matters asserted because they were relied upon in the  
 2 rest of the testimony.  
 3 MR. BLACKBURN: Then that's fine. I'll  
 4 accept that. I mean, I don't have a problem with  
 5 that. The testimony covers everything on the  
 6 affidavit anyway, so I'm perfectly happy with that  
 7 limitation as well.  
 8 JUDGE NEWCHURCH: So Best-2 is offered  
 9 only to --  
 10 MR. BLACKBURN: Basically is referred to  
 11 in the testimony, and it is included for ease of --  
 12 JUDGE NEWCHURCH: Are we being --  
 13 Mr. Reid, I mean, she's actually here -- Mr. Moore,  
 14 I'm sorry, she's here to testify and to be  
 15 cross-examined.  
 16 MR. MOORE: That's correct, and we had  
 17 an agreement with -- we negotiated an agreement  
 18 regarding the affidavit that almost all the NNC  
 19 witnesses had attached to theirs. I was just making  
 20 sure that we stick with the terms of that agreement.  
 21 JUDGE NEWCHURCH: Okay. So if  
 22 that's the agreement --  
 23 MR. BLACKBURN: And that's fine because,  
 24 Your Honor, in the prefiled testimony, those issues  
 25 are addressed.

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1 JUDGE NEWCHURCH: Okay. Best-2, just to  
2 put the testimony in context, is that the way to say  
3 it?  
4 MR. BLACKBURN: That's correct.  
5 JUDGE NEWCHURCH: Okay. And with that  
6 limitation, Best-1 through 4 and 6 through 8 are all  
7 admitted.  
8 (Exhibit NNC Nos. Best-1 through Best-4,  
9 Best-6 through Best-8 admitted)  
10 JUDGE NEWCHURCH: Mr. Blackburn?  
11 MR. BLACKBURN: I pass the witness.  
12 JUDGE NEWCHURCH: Mr. Renbarger?  
13 MR. RENBARGER: No questions.  
14 JUDGE NEWCHURCH: Let's see. I think we  
15 can go in the same order we went with TJFA witnesses.  
16 And, Mr. Morse, I think Ms. Noelke indicated to you  
17 that we should proceed without her. Right? She's not  
18 here. Right?  
19 MR. MORSE: Yes.  
20 JUDGE NEWCHURCH: Okay. And, Mr. Morse?  
21 MR. MORSE: I have no questions.  
22 JUDGE NEWCHURCH: You have no questions.  
23 Mr. -- Ms. Mann?  
24  
25

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1 CROSS-EXAMINATION  
2 BY MS. MANN:  
3 Q Good afternoon.  
4 A Good afternoon.  
5 Q I'm Christina Mann. I'm with the Public  
6 Interest Counsel. You state that the first time you  
7 turned in any complaints to TCEQ was sometime in 2001?  
8 A I turned in a complaint in March of 2001 and  
9 another I believe in October of 2001.  
10 Q And those complaints were related to odor?  
11 A Yes.  
12 Q Were they related to any other operational  
13 issues, just solely odor?  
14 A I can't recall at the moment.  
15 Q Okay. Do you recall any odor problems  
16 before 2001?  
17 A I recall there were isolated instances where  
18 neighbors would comment to me that they had smelled an  
19 odor at the swimming pool and -- comments similar to  
20 that, but there were not a large number of complaints.  
21 Q Okay. And you testified that occasionally  
22 the odors affected or -- not occasionally. You  
23 testified that the odors affected you in a physical  
24 manner. This is on Page 6 of your testimony, and you  
25 said that they made you nauseous. Do you recall that

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1 testimony?  
2 A Yes, a feeling of nausea.  
3 Q Did this occur while you were at your home?  
4 A In one particular instance. Other times as I  
5 would be driving in the neighborhood, specifically  
6 along Blue Goose Road or Giles Lane, the odors would  
7 be significant.  
8 Q And do you recall what timeframe that was  
9 because you said it -- well, specifically the one time  
10 in your home, do you recall that one?  
11 A Are you speaking of a particular year or --  
12 Q Well, yes. You said on one incident in  
13 particular at your home you felt nauseated. Do you  
14 remember when it was?  
15 A I cannot -- I cannot tell you exactly when  
16 that was.  
17 Q Did you file complaints with the TCEQ when  
18 you were made nauseous, made ill?  
19 A I filed many complains with the TCEQ, and my  
20 assumption is that on those occasions, those were also  
21 occasions when I would have filed complaints.  
22 Q Okay. But you filed complaints in addition  
23 to the times that you were made ill, correct?  
24 A Yes.  
25 Q Okay. And you indicate that it was early

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1 morning and late evening that you would smell odors in  
2 your backyard. Do you recall that testimony?  
3 A Yes, I do.  
4 Q Was that generally when you were home? Were  
5 you away from your home at other hours? Were you at  
6 home -- let me rephrase that. Were you at home during  
7 the early morning and late evenings?  
8 A Yes.  
9 Q Were you at home during the middle part of  
10 the day?  
11 A Sometimes.  
12 Q But more frequently you were away?  
13 A Correct.  
14 Q You testified that you -- that Mr. Caldo, who  
15 was a TCEQ inspector, asked you to call the company to  
16 make complaints. Do you recall that?  
17 A At one point, that was correct.  
18 Q When did that happen approximately?  
19 A It was during the period of time that the --  
20 I believe it was Travis County had put together a task  
21 force to talk about the odors and to try to come up  
22 with some citing ordinance that would be agreeable and  
23 odors were a part of that discussion. And at that  
24 time, we were told that the landfill was interested in  
25 hearing from us when the odors occurred and that we

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1 should report the odors to them.  
 2 Q And that would be instead of reporting the  
 3 odors to TCEQ?  
 4 A That is my recollection.  
 5 Q And did you do that? Did you report --  
 6 A I did not.  
 7 Q Did you know -- did you inform other people  
 8 to do that?  
 9 A There were a number of people who were aware  
 10 of this request.  
 11 Q You state that people driving on Blue Goose  
 12 had to swerve -- or had to avoid hitting buzzards. Do  
 13 you recall that testimony?  
 14 A There was one occasion where I took -- where  
 15 I had documented that to be the case.  
 16 Q Oh, and that correlates to the pictures that  
 17 you took, but you didn't quite get a picture of the  
 18 actual --  
 19 A I did not stop in the middle of the road to  
 20 take the picture.  
 21 MS. MANN: I have no further questions.  
 22 JUDGE NEWCHURCH: Mr. Shepherd for the  
 23 Executive Director?  
 24 MR. SHEPHERD: No questions.  
 25 JUDGE NEWCHURCH: Mr. Terrill?

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1 MR. TERRILL: No questions, Your Honor.  
 2 JUDGE NEWCHURCH: For BFI?  
 3 MR. CARLSON: Just a few, Judge.  
 4 CROSS-EXAMINATION  
 5 BY MR. CARLSON:  
 6 Q Good afternoon, Ms. Best.  
 7 A Good afternoon.  
 8 Q We've met a couple of times, haven't we?  
 9 A Yes, we have.  
 10 Q You moved to the Ashprington Cove address in  
 11 around 1990. Is that correct?  
 12 A Late September of 1990.  
 13 Q Okay. And you've lived at that address for  
 14 approximately ten years, ten and a half years -- no,  
 15 ten years before you filed a complaint. Is that  
 16 correct?  
 17 A Approximately.  
 18 Q All right. Now, Northeast Neighbors  
 19 Coalition formed as an unincorporated group at some  
 20 point in the 2002 timeframe. Is that correct?  
 21 A Yes, that's correct.  
 22 Q And were you instrumental in the formation of  
 23 that group?  
 24 A I was definitely a participant.  
 25 Q Okay. But were you the group? I mean, were

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1 you the epicenter of the group?  
 2 A I would not characterize myself as that.  
 3 Q All right. Did you work together with  
 4 Ms. English and Ms. Thoreson a lot?  
 5 A There were a number of us who were involved.  
 6 Q All right. At some point, Northeast  
 7 Neighbors incorporated. Is that right?  
 8 A That's correct.  
 9 Q Okay. Is that around the 2007 timeframe?  
 10 A I think that's correct.  
 11 Q As a nonprofit?  
 12 A Yes.  
 13 Q Okay. And you have bylaws, right?  
 14 A Yes.  
 15 Q And what is your role with the corporation?  
 16 A I am a member of the organization. I am not  
 17 an officer.  
 18 Q Okay. Or director?  
 19 A Or a director.  
 20 Q All right.  
 21 MR. CARLSON: Madam Court Reporter,  
 22 what's next in order?  
 23 THE REPORTER: 28.  
 24 (Exhibit BFI No. 28 marked)  
 25 Q (BY MR. CARLSON) Ms. Best, has the court

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1 reporter handed you BFI-28? It's also been marked as  
 2 Deposition Exhibit No. 3. Is this a true and correct  
 3 copy of the bylaws of Northeast Neighbors Coalition?  
 4 A To the best of my knowledge.  
 5 Q All right. And looking at the bottom of  
 6 Section 2, it appears that the purpose of the  
 7 corporation is to oppose permits for new expansions of  
 8 the Austin Community Landfill and the Sunset Farms  
 9 Landfill. Is that correct?  
 10 A I'm having difficulty finding that. If you  
 11 could tell me --  
 12 Q Page 1, sorry; very top of Page 1 in the  
 13 paragraph that says Section 2.  
 14 A Section 2, yes. Thank you.  
 15 Q There's five or six lines, and the last line  
 16 reads "and to oppose permits for new expansion of  
 17 these two landfills," right?  
 18 A That is what it says.  
 19 Q And that's referring to the Waste  
 20 Management -- Austin Community Landfill and the BFI  
 21 Sunset Farms Landfill. Is that correct?  
 22 A Yes.  
 23 Q And that's the purpose of your organization.  
 24 Is that correct?  
 25 A And to provide information to neighborhood

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1 groups as it specified earlier in that particular  
2 paragraph.  
3 Q All right. Now, you personally don't live in  
4 the vicinity of the landfill anymore. Is that  
5 correct?  
6 A I no longer live there.  
7 Q Now, there was some discussion about odors.  
8 I'd like to talk about some of the picture -- drainage  
9 pictures you've included. I believe they've been  
10 marked as Best Exhibit No. 6. Would you turn to  
11 those, please, ma'am?  
12 A Sure.  
13 Q Now, if I understand Best-6, these are  
14 actually some pictures you've taken over the period of  
15 a couple of years. They're of different rain events.  
16 Is that correct?  
17 A Yes.  
18 Q Okay. And as I understand from some of the  
19 documents that you produced in our discussion in your  
20 deposition, over the period of time from 2002 to I  
21 believe it was 2005, you actually took pictures of  
22 four -- at least four separate rain events and  
23 submitted complaints to either the TCEQ or the City of  
24 Austin or both. Is that correct?  
25 A Yes.

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1 Q All right. And the first such time was in  
2 July 2002 involving a July 2, 2002 event. Is that  
3 right?  
4 A Yes.  
5 Q All right. And in fact, TCEQ and Austin both  
6 sent inspectors out in connection with the complaints  
7 you had filed. Is that correct?  
8 A I believe that's my recollection.  
9 Q All right. And both the TCEQ and the City of  
10 Austin found that there were no violations by the  
11 landfill in connection with that rainfall event and  
12 any runoff associated with that. Is that right?  
13 A That is my recollection.  
14 Q All right. And then I believe you submitted  
15 another complaint, perhaps this one was exclusively to  
16 TCEQ, involving a December 9, 2002 rain event. Is  
17 that right? And if you need to refresh your  
18 recollection, I put your deposition and your  
19 deposition exhibits in front of you there in the red  
20 binders. If you want to turn to Tab 20, I believe  
21 it's the e-mail with the pictures that you sent to the  
22 TCEQ, if you want to just help that refresh your  
23 recollection regarding the date.  
24 A Yes.  
25 Q All right. And to your knowledge, the TCEQ

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1 inspector did come out and inspect the site as a  
2 result of your complaint. Is that right?  
3 A To the best of my recollection.  
4 Q Okay. And no violations were found as a  
5 result of that particular complaint. Is that correct?  
6 A Not that I'm aware of.  
7 Q All right. Then I believe you submitted a  
8 complaint to at least the City of Austin in June of  
9 2004 involving a June 9th rainfall event. Is that  
10 correct?  
11 A Yes.  
12 Q Okay. And the City of Austin responded to  
13 your complaint. Is that correct?  
14 A That is correct.  
15 Q And the City of Austin found no violations  
16 involving the landfill or that particular runoff  
17 event. Is that correct?  
18 A That's my recollection.  
19 Q All right. And then the last I'm aware of is  
20 a complaint that you submitted in March of -- or  
21 involving a March 2005 rain event actually that  
22 occurred on March 26, 2005. Is that correct? If it  
23 might help you, if you want to look at Exhibit 23 from  
24 your deposition, that might help you date stamp it.  
25 A Yes, I have located that.

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1 Q Okay. You submitted a complaint with  
2 pictures to TCEQ. Is that right?  
3 A I believe so.  
4 Q And if you look at 24, was that a similar  
5 complaint that was submitted to the City of Austin?  
6 A 24 is a response to the complaint that I --  
7 yes.  
8 Q I had it incorrect.  
9 Now, the TCEQ, again, inspected your  
10 complaint. Is that correct?  
11 A That's my recollection.  
12 Q And do you recall receiving a response from  
13 the TCEQ regarding its inspection?  
14 A I don't specifically recall whether I did or  
15 not, but I -- my recollection is that they did  
16 investigate.  
17 Q Okay.  
18 (Exhibit BFI No. 29 marked)  
19 Q (BY MR. CARLSON) The court reporter handed  
20 you a document that's been marked as BFI 29.  
21 A Yes.  
22 Q And that's a letter under Texas Commission on  
23 Environmental Quality letterhead dated April 27, 2005,  
24 right?  
25 A Yes, it is.

46 (Pages 1959 to 1962)

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1 Q It's addressed to you?  
 2 A Yes, it is.  
 3 Q And it's from Carolyn Runyon from the -- the  
 4 water section manager from the Austin region of the  
 5 agency, correct?  
 6 A That is correct.  
 7 Q Okay. Does this refresh your recollection  
 8 that TCEQ sent you a written response regarding their  
 9 investigation of your complaint?  
 10 A Yes, it does.  
 11 Q All right. And attached to that is, in fact,  
 12 an investigation report, right?  
 13 A That's correct.  
 14 Q And you see those little numbers on the  
 15 bottom right-hand of these -- all the pages that say  
 16 NNC001125 sequentially?  
 17 A Yes.  
 18 Q These came -- these were produced to us by  
 19 NNC. Did this document actually come from your own  
 20 files?  
 21 A It may well have come from my files.  
 22 Q All right. You don't have any reason to  
 23 dispute that this is an actually copy of a letter that  
 24 you received?  
 25 A I have no reason to doubt that.

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1 Q All right. If you'll turn with me, please,  
 2 ma'am, to the third page. On the top left it says  
 3 Page 2 of 4 of the investigation report. Are you at  
 4 that page?  
 5 A Yes, I am.  
 6 Q All right. Could you go to the very bottom,  
 7 and the last full paragraph that starts at -- with the  
 8 words "as of"? Do you see that?  
 9 A Yes.  
 10 Q Could you read that paragraph for the record,  
 11 please, ma'am?  
 12 A "As of this investigation, no water quality  
 13 issues have been reported to the TCEQ regarding or  
 14 alleging detrimental environmental effects down flow  
 15 from this facility."  
 16 Q All right. Thanks. And just to go on, could  
 17 you read the next paragraph into the record, please,  
 18 ma'am?  
 19 A Certainly. "The magnitude of the  
 20 meteorological event which transpired on March 25-26,  
 21 2005 at the facility disabled the BFI onsite weather  
 22 monitoring instruments. Data for the event was  
 23 obtained from the adjacent Waste Management landfill  
 24 on site monitoring station. Wind speeds exceeded 50  
 25 (maximum measurement for the instrument) Miles Per

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1 Hour (MPH) and the rain rate was noted at  
 2 20.57 inches/per hour. A copy of the data is included  
 3 with this report."  
 4 Q All right. Thank you. And then if you'll  
 5 move down a little bit, there's a paragraph -- or it  
 6 appears to be a new paragraph, even though there's not  
 7 a space, that starts with "BFI Outfall 004." Do you  
 8 see that?  
 9 A Yes, I do.  
 10 Q Could you read that, please, Ms. Best?  
 11 A Certainly. "BFI Outfalls 004 and 005  
 12 discharge off-site and to the west. During this  
 13 investigation, it was noted that both outfalls had  
 14 been modified to improve storm water treatment prior  
 15 to discharge. Both outfalls consist of a series of  
 16 settling areas and filters prior to discharge.  
 17 Previous treatment consisted of a larger holding area  
 18 with rock and filter fabric prior to discharge. No  
 19 evidence was apparent during this investigation that  
 20 sediment or waste had discharged from any outfall.  
 21 Vegetation on the other side of the outfalls did not  
 22 appear covered or choked with silt or waste. No  
 23 evidence of silt, sediment, trails of deposited soil  
 24 or debris were noted. Vegetation was noted to be  
 25 dense and vigorous for the season at and below the

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1 outfalls. No ravines or arroyos were noted below the  
 2 outfalls."  
 3 Q All right. And if you could just read the  
 4 next two lines, please?  
 5 A "No violations were alleged and the complaint  
 6 investigation was terminated. No violations  
 7 associated to this investigation."  
 8 Q All right. And that page is signed and dated  
 9 by two different folks. Is that correct?  
 10 A It appears so.  
 11 MR. CARLSON: All right. Judge, I offer  
 12 BFI-29.  
 13 JUDGE NEWCHURCH: Any objection?  
 14 (No response)  
 15 JUDGE NEWCHURCH: 29 is admitted.  
 16 (Exhibit BFI No. 29 admitted)  
 17 JUDGE NEWCHURCH: Mr. Carlson, I don't  
 18 think you offered 28. Did you want to offer that?  
 19 MR. CARLSON: I would like to offer 28.  
 20 JUDGE NEWCHURCH: Any objections to 28?  
 21 (No response)  
 22 JUDGE NEWCHURCH: 28 is admitted.  
 23 (Exhibit BFI No. 28 admitted)  
 24 Q (BY MR. CARLSON) Now, just a few more  
 25 questions, ma'am. Would you turn to Best-8, please,

47 (Pages 1963 to 1966)

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1 the two or three pictures?  
2 A (Witness complies)  
3 Q These are pictures that you took. Isn't that  
4 correct?  
5 A I believe so.  
6 Q All right. And they are all dated  
7 December 23, 2005, correct?  
8 A Yes.  
9 Q And they were taken, it appears, in about a  
10 nine-minute timeframe. Is that correct?  
11 A So it appears.  
12 Q And you took those to demonstrate examples of  
13 windblown waste in and around the facility, fair  
14 enough?  
15 A Correct.  
16 Q All right. Do you know what the weather  
17 conditions were the day that you took these pictures?  
18 A From looking at these pictures, other than  
19 knowing that it was sunny and the wind was blowing, I  
20 can't tell you much more.  
21 Q You don't know the actual wind speed that  
22 day?  
23 A No.  
24 Q You didn't document that, right?  
25 A No.

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1 Q You don't know how long the wind had been  
2 blowing that day?  
3 A I do not recall.  
4 Q Okay. And you didn't -- you don't know how  
5 long -- for example, if we look at the last of the  
6 pictures there, see some of the pictures along the --  
7 there's two fences -- do you see that -- the taller  
8 one and then the chain-link fence?  
9 A Yes.  
10 Q You don't know how long that windblown trash  
11 was actually there before it was picked up, do you,  
12 ma'am?  
13 A I couldn't say.  
14 Q Okay. You didn't go back by there, for  
15 example, at five o'clock or six o'clock and see if it  
16 had been picked up?  
17 A If I did, I don't recall.  
18 Q Okay. You didn't go back the next morning to  
19 see if it had been picked up?  
20 A I may have been by there the next morning,  
21 but I don't recall.  
22 Q Now, you've taken a number of pictures over  
23 the years to document your concerns or complaints  
24 about the facility, correct?  
25 A That's correct.

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1 Q Did you ever do anything systematic? For  
2 example, let's look at that last picture along the  
3 fenceline, and it's marked NNC000067. Do you see  
4 that?  
5 A Yes, I do.  
6 Q Did you ever go out there, for example, every  
7 day over the course of a month, before work or after  
8 work, same time, and take a picture of the same thing  
9 or the same things every day to get a picture -- to  
10 get a sense of what it looked like on a day-to-day  
11 basis?  
12 A I was aware of what it looked like on a  
13 day-to-day basis. I did not take pictures every time  
14 I drove by.  
15 Q You didn't go out and actually do some sort  
16 of systematic documentation, photographic  
17 documentation. Is that correct?  
18 A That's correct.  
19 Q Are you aware of anybody at NNC that  
20 attempted to do that?  
21 A I'm not aware of anyone.  
22 Q And you're not aware of any pictures that  
23 would do that, a picture of the same facility or --  
24 same direction of the facility or same portion of the  
25 facility that was taken at the same time of day every

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1 day to document whatever the issue of concern was. Is  
2 that correct?  
3 A I'm not aware of anything like that.  
4 MR. CARLSON: All right. I'll pass the  
5 witness, Judge.  
6 JUDGE NEWCHURCH: Mr. Blackburn?  
7 MR. BLACKBURN: Yes, I have a few  
8 questions.  
9 REDIRECT EXAMINATION  
10 BY MR. BLACKBURN:  
11 Q Ms. Best, there was an expert brought in by  
12 Browning-Ferris by the name of Dr. Libicki, who is an  
13 odor expert -- I think that's her name -- and she  
14 testified about odors at the site. And she, by her  
15 testimony, spent three hours at the landfill site. Do  
16 you feel that spending three hours at the landfill  
17 site gives a representative picture of odors from this  
18 site?  
19 A No, I do not.  
20 Q Now, how many years did you live near this  
21 landfill?  
22 A Approximately 16.  
23 Q And would it be fair to say that the odors  
24 became more pronounced past the year 2000 than they  
25 had been previously?

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1 A Yes.  
2 Q And was there a period whether the odor  
3 problems peaked?  
4 A The years between 2001 and 2003, to my  
5 recollection, were the most -- when the odors were  
6 most frequent.  
7 Q Okay. And I think in your statement that you  
8 included with part of Exhibit Best-2, I think you say  
9 you have the dubious distinction of having filed the  
10 most odor complaints of any resident. Do you recall  
11 how many complaints you filed with the TCEQ?  
12 A Well, I know when they made the database,  
13 they assigned a number to each complainant, and there  
14 were a significant number that were attributed to me.  
15 I couldn't tell you exactly how many, dozens and  
16 dozens.  
17 Q Now, Dr. Libicki also investigated TCEQ odor  
18 records and came to the conclusion that the odor  
19 problems were getting much better because there were  
20 not so many complaints filed in the more recent years,  
21 say 2005 to 2008, as opposed to the time period from  
22 2001 to 2003. I want to ask you about your experience  
23 in making odor complaints to the TCEQ. Do you get  
24 frustrated?  
25 A Extremely.

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1 Q Now, have your neighbors in NNC reported  
2 frustration as well?  
3 A Yes.  
4 Q Now, what happens when you get frustrated?  
5 A You give up sometimes. You decide that it's  
6 not worth your trouble. You just blow it off and hope  
7 that it doesn't happen again.  
8 Q And so would it be in your -- to your mind a  
9 reliable exercise to simply look at the TCEQ odor  
10 reports and odor complaints and use that as the basis  
11 of deciding if there's an odor problem or not?  
12 MR. CARLSON: Objection, Judge, calls  
13 for an expert opinion.  
14 MR. BLACKBURN: I'm asking her as a lay  
15 person who has been involved in this process.  
16 WINESS BEST: Well.  
17 JUDGE NEWCHURCH: Wait a second.  
18 MR. BLACKBURN: Wait, you need to hold  
19 on. He needs to rule.  
20 JUDGE NEWCHURCH: I think she can have a  
21 lay opinion that can help us, so I'm going to overrule  
22 your objection.  
23 Q (BY MR. BLACKBURN) Go ahead and give your  
24 answer.  
25 A As a lay person whose nose knows, I would

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1 have to say that I would -- and my neighbors at that  
2 time would also have agreed -- that the expert simply  
3 had not been in the area when those conditions were  
4 going on, and that the records at TCEQ may not reflect  
5 the actual number of odors that were being  
6 experienced.  
7 Q Now, before you moved from the neighborhood  
8 in, say, the 2004 to 2006 time period, were there  
9 odors during that time period?  
10 A Oh, yes.  
11 Q Can you identify how frequent those odors  
12 occurred?  
13 A That would be difficult for me to say at this  
14 point. However, even after the worst of the odors in  
15 the 2001, 2003 frequency -- timeframe -- it was still  
16 unpredictable as to when the odors would occur. And  
17 frequently early morning and in the evening they would  
18 occur. And I can't -- I can't tell you a certain  
19 frequency, but there was a period of time when from my  
20 backyard I could smell them every day.  
21 Q Now, also in your written statement  
22 associated with Best No. 2, you identified that you  
23 were told by sales people that the landfills would be  
24 closing in a few years when you purchased your home?  
25 A That's correct.

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1 Q Is that a correct statement?  
2 MR. CARLSON: Outside, outside the  
3 scope.  
4 JUDGE NEWCHURCH: Outside the scope of  
5 cross-examination.  
6 Mr. Blackburn, how is this responsive to  
7 anything that was brought up on cross-examination?  
8 MR. BLACKBURN: Probably isn't, Your  
9 Honor.  
10 JUDGE NEWCHURCH: All right. Objection  
11 sustained.  
12 (Laughter)  
13 JUDGE NEWCHURCH: I have a love for your  
14 honesty, Mr. Blackburn.  
15 MR. BLACKBURN: And with that, I will  
16 pass the witness.  
17 JUDGE NEWCHURCH: Any further cross?  
18 MR. CARLSON: No, Judge. Is everyone  
19 using those recyclable bags when they go to the  
20 grocery store? Just curious.  
21 Thank you, Ms. Best. You're excused.  
22 Mr. Blackburn, next witness?  
23 MR. BLACKBURN: Next witness would be  
24 Evelyn Remmert.  
25 (Witness sworn)

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1 JUDGE NEWCHURCH: Thank you. Please  
 2 have a seat.  
 3 EVELYN REMMERT,  
 4 having been duly sworn, testified as follows:  
 5 DIRECT EXAMINATION  
 6 BY MR. BLACKBURN:  
 7 Q Would you state your name for the record,  
 8 please?  
 9 A My name is Evelyn Remmert.  
 10 Q And where do you live, Ms. Remmert.  
 11 A I live at 11815 Cameron Road, Manor, Texas.  
 12 Q And where is that relative to the BFI Sunset  
 13 Farms Landfill?  
 14 A My property is directly across the road north  
 15 of BFI.  
 16 Q So it would adjoin BFI, but on the other side  
 17 of the road?  
 18 A On the other side of Blue Goose.  
 19 Q So it's on the other side of Blue Goose Road  
 20 on the north side of the landfill?  
 21 A Right.  
 22 Q And, Ms. Remmert, have you had occasion to  
 23 prepare prefiled testimony in this case?  
 24 A Yes.  
 25 Q And would you take a look at the document in

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1 front of you, and first I'd like you to look at  
 2 Exhibit ER-1 and ask you if that's a copy of your  
 3 prefiled testimony?  
 4 A Yes.  
 5 Q And then I would like for you to take a look  
 6 at Exhibit ER-2, and if that is a correct copy of the  
 7 affidavit that is introduced basically to put context  
 8 in your testimony?  
 9 A Yes.  
 10 Q And then ER-3 is a memorandum or an e-mail?  
 11 A Yes.  
 12 Q And ER-4 is a series -- ER-4, ER-5 and ER-6  
 13 are various exhibits -- photographs?  
 14 A Yes.  
 15 Q And then Exhibit ER-7 is a log that you  
 16 completed during various periods in 2006 and, I think,  
 17 2008?  
 18 A Correct.  
 19 Q To the best of your knowledge, is your  
 20 testimony true and correct and are these true and  
 21 correct copies of your exhibits?  
 22 A Yes.  
 23 MR. BLACKBURN: Move admission of ER-1  
 24 through 7.  
 25 JUDGE NEWCHURCH: There were limitations

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1 on 2, right?  
 2 MR. BLACKBURN: Only on No. 2.  
 3 JUDGE NEWCHURCH: Any other limitations?  
 4 MR. MOORE: No, Your Honor.  
 5 MR. CARLSON: I do believe --  
 6 MR. BLACKBURN: No.  
 7 MR. CARLSON: Did you conform -- I think  
 8 she was sponsoring -- actually I'll jump in -- she was  
 9 sponsoring some affidavits that were not hers. Are  
 10 those --  
 11 MR. BLACKBURN: Those are not in there.  
 12 MR. CARLSON: Those are not in -- all  
 13 right.  
 14 JUDGE NEWCHURCH: Which exhibit was  
 15 that? I only say because my working copy might still  
 16 contain those.  
 17 MR. BLACKBURN: No, actually, it wasn't  
 18 even Ms. Remmert that had those. It was Joyce Best I  
 19 think that --  
 20 MR. MOORE: It was Ms. Remmert's Exhibit  
 21 8.  
 22 MR. BLACKBURN: It was Remmert-8? Okay.  
 23 Well, there is no Remmert-8. We only go as far as 7  
 24 as far as I'm aware.  
 25 MR. MOORE: And, Your Honor, there was a

Page 1978

1 prefiled paragraph that referenced it that was also  
 2 stricken.  
 3 JUDGE NEWCHURCH: Okay. So 8 -- in my  
 4 working copies I just want to scratch that out, there  
 5 is no 8. So it's 1 through 7 with limitations on 2 as  
 6 described. Any further objections?  
 7 MR. MOORE: No objections.  
 8 JUDGE NEWCHURCH: Then ER-1 through 7,  
 9 with a limitation on 2, is admitted.  
 10 (Exhibit NNC Nos. ER 1 through 7  
 11 admitted)  
 12 MR. BLACKBURN: Pass Ms. Remmert for  
 13 cross-examination.  
 14 JUDGE NEWCHURCH: Mr. Renbarger?  
 15 MR. RENBARGER: No questions?  
 16 JUDGE NEWCHURCH: Ms. Noelke?  
 17 MS. NOELKE: No questions.  
 18 JUDGE NEWCHURCH: Mr. Morse?  
 19 MR. MORSE: No questions.  
 20 JUDGE NEWCHURCH: Ms. Mann?  
 21 MS. MANN: Yes, thank you.  
 22 CROSS-EXAMINATION  
 23 BY MS. MANN:  
 24 Q Good afternoon.  
 25 A Good afternoon.

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1 Q There's a question in your prefiled on Page  
2 3, Line 5, that says, "Have you noticed the odors have  
3 gotten better?"  
4 And your answer is, "No, it's about the  
5 same." Do you see that testimony?  
6 A Yes.  
7 Q I just want to make sure I understand. When  
8 you say, "No, it's about the same," do you mean it's  
9 about the same since you made your last odor  
10 complaint, or do you mean it's about the same since  
11 you have been noticing problems for the last 12 years?  
12 A It's about the same as it's always been.  
13 Q How did you become familiar with the FIDO,  
14 the FIDO process?  
15 A I was sent the document by Mr. Calda  
16 who's with -- who was with TCEQ at that time.  
17 Q Why did he send it to you?  
18 A Because I had made a complaint.  
19 Q Do you recall approximately when that was?  
20 A Not when I got the document of the FIDO.  
21 Q Okay. You state that you had seen buzzards  
22 over the BFI landfill. Had you noticed any buzzards  
23 actually on the face of the landfill on your -- in  
24 October of --  
25 A Yes.

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1 Q You also testified about a single incident  
2 with an IESI -- IESI -- truck. He had run a stop sign  
3 along Cameron Road. Do you recall that testimony?  
4 A Yes.  
5 Q You also said that you did not report the  
6 incident because it, quote, "Wouldn't do any good,"  
7 end quote.  
8 A Okay. There was no traffic policeman around.  
9 If I had reported it -- you know, it had happened and  
10 then the truck was gone. I had no license number.  
11 Q Okay. So when you're thinking of when --  
12 your discussion of reporting the incident, you're  
13 referring to reporting it to the police as opposed  
14 to --  
15 A Right, or anyone.  
16 Q Or anyone. Okay. And it's your testimony  
17 that the -- strike that.  
18 Is the odor -- are the odor issues worse  
19 or different when the wind is blowing than when it's  
20 not blowing?  
21 A Sometimes it's better; sometimes it's not.  
22 It depends on the actual weather conditions along with  
23 the winds. If it's very damp, then the odors are  
24 worse. Sometimes early in the morning they're worse,  
25 sometimes in the afternoon. But we also experience

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1 them sometimes during the day. It depends on the  
2 weather conditions.  
3 Q Okay. You also testified that you hear  
4 backup horns inside your -- you hear the noise from  
5 backup horns inside your home once or twice per week.  
6 Do you recall that testimony?  
7 A Yes.  
8 Q And you say that you usually hear it at  
9 night. Is that correct?  
10 A I hear it at night because it's quiet --  
11 Q Okay.  
12 A -- and you can hear -- those noises carry  
13 more during the night, again because of some of the  
14 weather conditions. When it's, you know, damp, still,  
15 you can hear it more.  
16 Q So that once or twice per week approximation  
17 is generally at night. Is that correct?  
18 A Usually.  
19 Q Okay. Is that in the middle of the night or  
20 towards the evening?  
21 A In the middle of the night and to the early  
22 morning.  
23 MS. MANN: Okay. No further questions.  
24 Thank you.  
25 JUDGE NEWCHURCH: Mr. Shepherd?

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1 MR. SHEPHERD: No questions.  
2 JUDGE NEWCHURCH: Mr. Terrill --  
3 MR. CARLSON: Mr. Terrill has said he  
4 has no questions.  
5 JUDGE NEWCHURCH: And do you have any  
6 questions, Mr. Moore?  
7 MR. MOORE: Yes.  
8 CROSS-EXAMINATION  
9 BY MR. MOORE:  
10 Q Good afternoon, Ms. Remmert. How are you?  
11 A Fine.  
12 Q You originally moved to the landfill in 1941,  
13 right?  
14 A That's correct --  
15 Q Or I guess not the landfill --  
16 A Not to the landfill, no.  
17 (Laughter)  
18 Q (BY MR. MOORE) You moved away for a while  
19 and then you moved back in 1989?  
20 A That's correct.  
21 Q And you've been there ever since?  
22 A Yes.  
23 (Exhibit BFI No. 30 marked)  
24 Q (BY MR. MOORE) You may remember that as  
25 document we used on your deposition.

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1 A Right.  
 2 Q I just wanted to point a couple of things out  
 3 on it. There is a tract of land to the left of the  
 4 tracts that are marked in green and has an X on it.  
 5 That's a tract of land that you lease, right? You  
 6 don't actually own?  
 7 A I'm not sure what you're saying to the left.  
 8 Q I'm sorry. If you -- if you hold the map up  
 9 so that north faces up, there's 1, 2, 3, 4 different  
 10 tracts that you marked in green, correct?  
 11 A Right.  
 12 Q And the one that's furthest to the west that  
 13 actually fronts -- I've forgotten the name of that  
 14 road off the top of my head?  
 15 A Cameron Road?  
 16 Q Yes, Cameron. Is that a tract that you own  
 17 or that you lease?  
 18 A Lease.  
 19 Q And the other three tracts are tracts that  
 20 you own, correct? In some capacity?  
 21 A There are -- there's one tract next to ours  
 22 that is also leased, but we own the large tract that's  
 23 to the -- I'm going to say the west.  
 24 Q Okay. The one that's the smaller tract  
 25 that's kind of a cut-out of the larger tract, that you

Page 1984

1 sold to TJFA. Is that correct?  
 2 A We did not sell it to TJFA, no.  
 3 Q Okay. You lease it to -- I'm sorry, you said  
 4 you lease it. How do you -- let me try this a  
 5 different way.  
 6 What's your relationship to that tract?  
 7 A We lease it.  
 8 Q You lease it from somebody or to somebody?  
 9 A Lease it from.  
 10 Q Who do you lease it from?  
 11 A From TJFA.  
 12 Q Okay. Thanks. And the -- there's -- to the  
 13 northern most there's kind of an odd-shaped tract of  
 14 land?  
 15 A Yes.  
 16 Q That's where you actually reside, correct?  
 17 A Correct.  
 18 Q These other tracts that you lease, do you  
 19 farm on those?  
 20 A We use -- we use them to make hay or to graze  
 21 cattle.  
 22 Q The largest of the four tracts of land, the  
 23 one immediately to the south of the tract that you  
 24 reside on, what is -- if I went out there today, what  
 25 does that look like? Does that have hay growing?

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1 A Not now.  
 2 (Laughter)  
 3 Q What does it look like?  
 4 A Part it is in -- is a cultivated piece of  
 5 land which now is fallow, you would say, because  
 6 there's not a crop on it because it would have had a  
 7 hay crop. Of course this is not the time for hay  
 8 crop. Part of it is in coastal bermuda which is --  
 9 can be used for hay or for grazing of cattle.  
 10 Q Of the -- what portion of that tract do you  
 11 think is fallow?  
 12 A Approximately half of it.  
 13 Q And forgive the one of us who's not from  
 14 Elgin. Will you tell us exactly what "fallow" means?  
 15 A It means that there is not a cover crop on it  
 16 at the moment.  
 17 Q It's exposed dirt?  
 18 A Right now.  
 19 Q How long is it -- in the normal year, how  
 20 long is it fallow?  
 21 A A crop would probably be planted on it in  
 22 early March and it would remain on it until it's  
 23 probably November.  
 24 Q So four or five months out of the year it  
 25 would be fallow? Is that about right?

Page 1986

1 A Probably four.  
 2 Q Okay. And on that same map do you know where  
 3 BFI is located?  
 4 A Yes.  
 5 Q There's a tract that has BFI written on it.  
 6 Is that where BFI is located?  
 7 A Yes.  
 8 Q And does BFI extend all the way to Giles  
 9 Lane?  
 10 A Yes.  
 11 Q And so those two tracts of land that are next  
 12 to the one marked BFI, are those BFI as well?  
 13 A Let me see -- yes, I would say so.  
 14 MR. MOORE: Let me go ahead and offer  
 15 BFI-30.  
 16 JUDGE NEWCHURCH: Any objections?  
 17 Then 30 is admitted.  
 18 (Exhibit BFI No. 30 admitted)  
 19 Q (BY MR. MOORE) On that same map there's --  
 20 just to the south of BFI there's a large tract of land  
 21 that spans between Giles and Springdale. Is that the  
 22 Waste Management site?  
 23 A Yes.  
 24 Q Okay. In your prefiled testimony you mention  
 25 that you can tell the odors are coming from BFI or

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1 coming from Waste Management based on the direction of  
 2 the wind. Is that right?  
 3 A Yes.  
 4 Q And you said when the odor is coming from the  
 5 south, you attribute that odor to BFI, right?  
 6 A Right.  
 7 Q Does it appear from that map that Waste  
 8 Management is located to the south of BFI?  
 9 A Yes, it is.  
 10 Q Can you tell me how -- what different  
 11 direction does the wind come from that allows you to  
 12 associate an odor with Waste Management instead of  
 13 BFI?  
 14 A It would be more of a southwesterly  
 15 direction. And I have smelled odors I have seen -- in  
 16 BFI I have seen the trash operation working, and  
 17 that's where the odors are coming from.  
 18 Q So when the wind is coming from the south,  
 19 you attribute that to BFI. When it's coming from the  
 20 southwest, you attribute that to Waste Management?  
 21 A Yes, I would think so.  
 22 Q Now, when you think about directionally,  
 23 you're talking about 45 degrees southwest or something  
 24 closer than that, some smaller angle than that?  
 25 A Perhaps smaller than that.

Page 1988

1 Q So it's -- would you say it's a fairly -- a  
 2 fairly fine distinction whether you believe the  
 3 odor -- any given odor is coming from BFI or Waste  
 4 Management?  
 5 A I have always been able to smell the odors  
 6 when I have seen them working. I can detect where the  
 7 odors are coming from, and you can locate that by  
 8 looking toward where the operation is taking place.  
 9 Q Do you believe that Waste Management sends  
 10 odors to you as well or just BFI?  
 11 A I don't believe that the odors are  
 12 predominantly from Waste Management.  
 13 Q So some odors you think are from Waste  
 14 Management?  
 15 A It's possible.  
 16 Q In the 19 years since you've moved back,  
 17 you've complained to the TCEQ about the -- about odors  
 18 about five times. Is that correct?  
 19 A That's correct.  
 20 Q And in your deposition you told me that of  
 21 those five complaints you were only certain that one  
 22 of those came from BFI. Is that correct?  
 23 A Correct.  
 24 Q And of those five complaints that you know of  
 25 the TCEQ -- let's me rephrase.

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1 Of those five complaints, you received  
 2 the results of TCEQ's investigation twice. Is that  
 3 right?  
 4 A Right.  
 5 Q And the TCEQ didn't find an odor violation in  
 6 either one of those cases. Is that right?  
 7 A No, they did not find an odor violation, but  
 8 they did smell the odors.  
 9 Q But there was no violation?  
 10 A According to their criteria, no.  
 11 Q Okay. Let's talk about traffic for a minute.  
 12 You also have concerns about traffic related to  
 13 safety, correct?  
 14 A Right.  
 15 Q And in the same 19 years since you've moved  
 16 back, you only know of one accident that involved a  
 17 waste vehicle?  
 18 A That's all I know of in my area.  
 19 Q Do you know of any in any other areas?  
 20 A I do not know of any, no.  
 21 Q And you're not sure -- the one accident you  
 22 do know of, you don't know if that involved a waste --  
 23 I'm sorry, a vehicle that was going to or coming from  
 24 the BFI landfill?  
 25 A I do not know that it was going into BFI, but

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1 it was going to one of the landfills.  
 2 Q Okay. But you -- so you do have a concern  
 3 regardless that the trucks going to and from the  
 4 landfill at BFI are not driving safely, right?  
 5 A Right.  
 6 Q You would agree this is not a consistent  
 7 problem, it's an occasional problem?  
 8 A It's been an occasional problem.  
 9 Q Do you know either Mr. Everett Moore, or  
 10 Mr. Brad Dugas? Do you know who those two gentlemen  
 11 are?  
 12 A I know Mr. Dugas, I don't know -- Mr. Moore?  
 13 Q Mr. Moore. That's fine. When you've seen  
 14 unsafe driving -- you mentioned the one incident --  
 15 but any time that you've seen unsafe driving, have you  
 16 ever tried to report that incident to anybody with  
 17 BFI?  
 18 A No.  
 19 Q I'm sorry, I'm getting a little hoarse.  
 20 You also mentioned that -- concerns  
 21 about windblown trash, right?  
 22 A Right.  
 23 Q And you've seen trucks going to and from BFI?  
 24 A Yes.  
 25 Q And I believe you stated that those trucks

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1 are generally tarped but you have concerns about  
 2 whether the tarps are tied down securely. Is that  
 3 right?  
 4 A I have seen that the trucks are not tarped  
 5 what I would consider properly. I have seen debris  
 6 sticking up out of them. I have followed a truck that  
 7 was losing trash on the road. As it would hit a bump,  
 8 it would lose some more trash. And we even tried to  
 9 stop the truck by honking at it, but it just kept on  
 10 going.  
 11 Q So the answer was, yes, that you have seen --  
 12 A Yes.  
 13 Q -- they are generally tarped, but you're  
 14 concerned about how well they are tarped?  
 15 A They are not tarped as well as they should  
 16 be.  
 17 Q All of them?  
 18 A Several that I have noticed out there.  
 19 Q What percentage?  
 20 A What percentage?  
 21 Q What percentage of the vehicles that have  
 22 tarps are not well tarped?  
 23 A The percentage that I've noticed -- that I've  
 24 made note of is about 80 percent of them.  
 25 Q And have you ever called BFI or Mr. Dugas

Page 1992

1 to --  
 2 A No.  
 3 Q -- complain about these?  
 4 A No.  
 5 Q Why not?  
 6 A If I had called BFI, I probably would have  
 7 been told that he's not in right now, he'll call you  
 8 back.  
 9 Q You say you probably would have been told  
 10 that. You don't know because you never tried?  
 11 A No, but I had called at one time and -- not  
 12 on this issue -- but several years ago about the  
 13 odors, and I was told that whoever I needed to talk to  
 14 wasn't in and they would call me back, and I'm still  
 15 waiting.  
 16 Q Let me ask this: Would you agree that BFI  
 17 has taken measures to try to stop the trash from  
 18 leaving their property?  
 19 A They may be trying to stop the trash, but  
 20 they are not successful.  
 21 Q And in fact, they've installed high fences on  
 22 the property line, right?  
 23 A They have installed a high fence at the  
 24 property line.  
 25 Q They've installed other containment fences on

Page 1993

1 the property, right?  
 2 A Yes.  
 3 Q And you've attached several pictures that  
 4 show those -- those littered fences, correct?  
 5 A Yes.  
 6 Q And those pictures, they show the conditions  
 7 when you felt like the problem was its worst. Is that  
 8 right?  
 9 A Yes.  
 10 Q And some of them look pretty bad, don't they,  
 11 until somebody came and picked the waste out of the  
 12 nets? There was a lot of trash in those nets?  
 13 A Yes.  
 14 Q And you've seen workers out there on -- on  
 15 and after windy days picking up the trash, correct?  
 16 A Yes.  
 17 Q And they picked up that trash both out of the  
 18 nets on the BFI property and outside of the BFI  
 19 property. Is that right?  
 20 A Yes.  
 21 Q And isn't that what the fences are supposed  
 22 to do, try to capture that trash before it leaves the  
 23 property?  
 24 A Yes.  
 25 Q And when it does escape, BFI picks it up,

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1 correct?  
 2 A They will pick it up on the roadside, but we  
 3 have trash all the way up to our house.  
 4 Q Do you know Mr. Evan Williams?  
 5 A Yes.  
 6 Q Do you know if he's ever complained to BFI  
 7 about trash on his property?  
 8 A I don't know.  
 9 Q Have you never tried to complain to BFI about  
 10 trash on your property?  
 11 A No.  
 12 Q Let's talk about some of the pictures. Will  
 13 you take a look at Exhibit ER-4? I'll let you get  
 14 that.  
 15 Those are the pictures that show the  
 16 trash, your trash concerns. Is that right?  
 17 A Right.  
 18 Q The first picture on it in the lower  
 19 right-hand corner says 3162. Is that right?  
 20 A Right.  
 21 Q And that's a picture of the BFI property,  
 22 correct?  
 23 A Correct.  
 24 Q And that shows litter on the fence and  
 25 somebody out there picking up the litter, correct?

54 (Pages 1991 to 1994)

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Page 1995

1 A Right.  
 2 Q Let's take a look at the next picture, 3172.  
 3 Now, that's a picture of the BFI property and the  
 4 right-of-way. Is that correct?  
 5 A That's correct.  
 6 Q And there's some trash on the litter fence,  
 7 correct?  
 8 A Yes.  
 9 Q And there's a little bit of trash looks like  
 10 in front of the fence. Is that right?  
 11 A Right.  
 12 Q That's not a lot of trash that got outside  
 13 the fence, is it?  
 14 A No, not on that picture.  
 15 Q And they were out there later that day  
 16 picking that up, don't you think?  
 17 A I assume so.  
 18 Q Let's take a look at the next one. It's hard  
 19 to see. I think it was No. 6180. It should be the  
 20 very next picture in the stack.  
 21 A 180?  
 22 Q Let's take a look at the next picture in the  
 23 stack.  
 24 A Okay.  
 25 Q That shows a -- is that a picture of your

Page 1996

1 property?  
 2 A Yes.  
 3 Q And it shows a trash bag on a fence post in  
 4 the foreground?  
 5 A Yes.  
 6 Q Was this taken from Blue Goose?  
 7 A No.  
 8 Q Where was it taken from?  
 9 A This would have been taken about  
 10 three-quarters of the way up on our property. About  
 11 three-quarters of the way -- well, let me look at the  
 12 map. It would have been a small pasture that we have.  
 13 We have a 15-acre pasture and right outside that  
 14 pasture is where those hay bales are located. But  
 15 it's quite a ways from the landfill.  
 16 Q You can see a good bit of your property from  
 17 in the background of that picture. Is that right?  
 18 A Right.  
 19 Q Other than that piece of trash, is there any  
 20 other trash on your property in that picture?  
 21 A Not in that picture.  
 22 Q Okay. And you don't know whether that one  
 23 trash bag came from a passing vehicle or from the  
 24 landfill?  
 25 A It would not have come from a passing

Page 1997

1 vehicle.  
 2 Q Do you know that it came from the landfill?  
 3 A It would have come from the landfill. These  
 4 pictures were taken about the same time as the ones  
 5 where you saw the trash in the fence.  
 6 Q Do you recall telling me in your deposition  
 7 that you didn't know if it might have come from a  
 8 passing vehicle or the landfill?  
 9 A Well, it's possible, but not probable.  
 10 Q Do you recall telling me that?  
 11 A Yes.  
 12 Q You also talk in your prefiled testimony  
 13 about the dust that gets into your house. Is that  
 14 right?  
 15 A Well, not that gets in the house. We did  
 16 talk about the dust flying across the property.  
 17 I can't find the basis for my question,  
 18 so I'll move on from that.  
 19 MR. MOORE: Can we go off the record a  
 20 second?  
 21 JUDGE NEWCHURCH: Off the record.  
 22 (Discussion off the record)  
 23 JUDGE NEWCHURCH: Back on the record.  
 24 Q (BY MR. MOORE) Your property that we've  
 25 talked about, the larger tract just to the south of

Page 1998

1 your -- where you reside, that drains to the south --  
 2 some portion of that drains to a drainage ditch along  
 3 Blue Goose Road. Is that right?  
 4 A Right.  
 5 Q And it drains into a culvert that goes  
 6 underneath Blue Goose Road. Is that right?  
 7 A I would assume so.  
 8 Q Do you know if the water from your property  
 9 drains onto the landfill property at all?  
 10 A No, it does not -- should not.  
 11 Q And you mention that your property is fallow  
 12 for four months of the year, approximately, right?  
 13 A Right.  
 14 Q Do you do anything to try to control erosion  
 15 before it leaves your property?  
 16 A There's usually a cover of the residue from  
 17 the crop on top of the land.  
 18 Q So if I were to go out and look at your  
 19 property today, would I see mostly dirt or would I see  
 20 a covering over all of the --  
 21 A Well, you would see some part of the crop  
 22 that was still on top of the soil.  
 23 Q But mostly I would say dirt, right?  
 24 A I don't know that you would see complete  
 25 dirt, no.

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Page 1999	Page 2001
<p>1 Q You're aware -- we were talking about odors 2 earlier. You're aware that in the last -- in the 26 3 years the landfill has been out there, there's only 4 been one documented odor violation. Are you aware of 5 that? 6 A Yes. 7 Q Did you drive by the landfill today? 8 A No. 9 Q Did you drive by yesterday? 10 A No. 11 MR. MOORE: I'll pass the witness. 12 JUDGE NEWCHURCH: Mr. Blackburn? 13 REDIRECT EXAMINATION 14 BY MR. BLACKBURN: 15 Q Ms. Remmert, you were asked a little bit 16 about the FIDO process? 17 A Right. 18 Q What is the FIDO process? 19 A That is the way that TCEQ gauges whether 20 there is an odor violation, and FIDO stands for 21 frequency, intensity, duration -- and I can't think of 22 what the "O" is. 23 Q How about offensiveness? 24 A Offensiveness is correct. 25 Q Now, was it your testimony you became</p>	<p>1 A Well, I did call and they did send one 2 investigator. I called one time and they did send an 3 investigator out. 4 Q And then did you just get frustrated after 5 that? 6 A Yes. 7 Q Now, you talked a bit in response to Ms. Mann 8 about odors and weather. Is your property physically 9 located differently than Harris Branch is? 10 A It would be more in a south -- we would be 11 more in a south to north pattern for wind direction. 12 Q Is your property lower or higher than Harris 13 Branch? 14 A It's about the same. 15 Q About the same? How about the 16 characteristics of it? Is it rolling the same or is 17 it different in any way? 18 A It's about the same. 19 Q Okay. And you mentioned noise. How often do 20 you hear noise? 21 A Well, we hear noise -- again, it depends on 22 the weather. 23 MR. MOORE: Objection, Your Honor. I 24 don't think noise was mentioned on -- 25 MR. BLACKBURN: Noise actually was</p>
Page 2000	Page 2002
<p>1 familiar with that process? 2 A I became acquainted with it when I was trying 3 to make an odor complaint. 4 Q And did you try to use that concept in your 5 evaluation of odors? 6 A I was frustrated with the paperwork that was 7 sent with that, and so I made a log of my own. 8 Q And that would be the log that's attached as 9 ER Exhibit 7? 10 A Correct. 11 Q Now, you mentioned frustration. Did you 12 become frustrated with reporting to TCEQ? 13 A Yes, I did. 14 Q Would you explain that, please? Why did you 15 become frustrated? 16 A I felt like the person I was talking to 17 thought that it wasn't important enough to come out 18 and check on it, that I was wasting the investigator's 19 time. 20 Q And how did you get that impression? 21 A Well, because of the fact when I did call, I 22 was sent this thick docket (sic) of papers that this 23 is the way you shall submit a report. 24 Q And they would not allow you to simply call 25 and report an odor complaint?</p>	<p>1 mentioned. I wrote it down. 2 MS. MANN: Yes, Your Honor, we had a 3 discussion about being at night and -- 4 MR. MOORE: I'm sorry, that's right. My 5 apologies. 6 MR. BLACKBURN: After the last 7 objection, I tried to be a little more careful. 8 JUDGE NEWCHURCH: Go ahead, 9 Mr. Blackburn. 10 Q (BY MR. BLACKBURN) Would you describe the 11 noise, please? 12 A Okay. The noise we hear would be from the 13 backup horns of the equipment that's running at night 14 or early in the morning. We've heard the equipment 15 that's covering the garbage, we've heard the clacking 16 of the equipment as it runs along. 17 Q And this is mainly at night that you hear 18 this? 19 A Most of the noise we hear at night are the 20 backup horns. We have heard the equipment early in 21 the morning. 22 MR. BLACKBURN: Okay. Pass the witness. 23 JUDGE NEWCHURCH: Any further cross? 24 MR. MOORE: No, Your Honor. 25 JUDGE NEWCHURCH: Thank you, ma'am. You</p>

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1 may step down. You're excused.  
 2 Mr. Blackburn?  
 3 MR. BLACKBURN: I'd like to call Evan  
 4 Williams, please.  
 5 (Witness sworn)  
 6 EVAN WILLIAMS,  
 7 having been duly sworn, testified as follows:  
 8 DIRECT EXAMINATION  
 9 BY MR. BLACKBURN:  
 10 Q Would you state your full name for the  
 11 record, please?  
 12 A Evan Williams.  
 13 Q And where do you live, Mr. Williams?  
 14 A 3403 Ledgestone Drive in Austin.  
 15 Q And is that next to the Sunset Farms  
 16 Landfill?  
 17 A No, it is not.  
 18 Q Do you own property next to the Sunset Farms  
 19 Landfill?  
 20 A We -- yes, we do, in the vicinity.  
 21 Q Could you describe it, please?  
 22 A A partnership that I'm a general managing  
 23 partner of, Williams Limited, owns a  
 24 94-and-a-half-acre piece of property across the  
 25 street, slightly to the west and south of the

Page 2004

1 facility. And my Uncle Roger Joseph, the Roger Joseph  
 2 Properties, owned a piece of tract immediately  
 3 adjoining BFI, and then Williams Limited owns a tract  
 4 adjoining that. So that would be due west of the  
 5 landfill.  
 6 Q And, actually, there's a map that was just  
 7 introduced, BFI-30. Could you just mark your property  
 8 and just put EW --  
 9 A Yes.  
 10 Q -- on the property that you have that are  
 11 adjacent -- actually, why don't you use the orange  
 12 right up there. And just place EW on the tracts that  
 13 are your tracts.  
 14 A (Witness complies)  
 15 Would like me to mark my uncle's  
 16 tracts?  
 17 Q Are you representing your uncle?  
 18 A No, sir.  
 19 Q Okay. Then don't.  
 20 JUDGE NEWCHURCH: Is that it?  
 21 WITNESS WILLIAMS: Yes, sir.  
 22 Q (BY MR. BLACKBURN) Now, Mr. Williams, have  
 23 you prepared prefiled testimony in this proceeding?  
 24 A Yes, sir, I have.  
 25 Q And do you have that in front of you?

Page 2005

1 A Yes, sir.  
 2 Q And is it marked Exhibit EW-1?  
 3 A Yes, sir.  
 4 Q Is there an affidavit attached to it that is  
 5 EW-2?  
 6 A Yes, there is.  
 7 MR. BLACKBURN: I offer admission of  
 8 EW-1 and EW-2 with the prior limitation?  
 9 JUDGE NEWCHURCH: So 2 is limited to  
 10 show --  
 11 MR. BLACKBURN: Basically to provide a  
 12 reference point for the prefiled testimony in EW-1.  
 13 JUDGE NEWCHURCH: Okay.  
 14 MR. GOSSELINK: Is that the same as the  
 15 exhibit in his prefiled?  
 16 MR. BLACKBURN: Yes.  
 17 MR. GOSSELINK: Okay. Sorry. I haven't  
 18 been here. No objection.  
 19 JUDGE NEWCHURCH: All right. Without  
 20 objection, EW-1 and 2 as limited are both admitted.  
 21 MR. BLACKBURN: EW-1 not limited.  
 22 JUDGE NEWCHURCH: Right. I meant to say  
 23 it that way.  
 24 MR. BLACKBURN: Okay. Good.  
 25 (Exhibit NNC Nos. EW-1 and EW-2

Page 2006

1 admitted)  
 2 MR. BLACKBURN: And with that I'll pass  
 3 the witness for cross-examination.  
 4 JUDGE NEWCHURCH: MR. Renbarger?  
 5 MR. RENBARGER: No questions.  
 6 JUDGE NEWCHURCH: Ms. Noelke?  
 7 MS. NOELKE: No questions.  
 8 JUDGE NEWCHURCH: Mr. Morse?  
 9 MR. MORSE: No questions.  
 10 JUDGE NEWCHURCH: Ms. Mann?  
 11 CROSS-EXAMINATION  
 12 BY MS. MANN:  
 13 Q Good afternoon. You testified that you can  
 14 detect odor on your property. Is that correct?  
 15 A That's correct.  
 16 Q And can you detect an odor or do you notice  
 17 an odor when there is no wind or little wind?  
 18 A Yes, in the summer it will be more prevalent.  
 19 Q Okay. But you testify that you can tell  
 20 that -- that you can tell that BFI is the source when  
 21 the wind is from the south. Is that correct?  
 22 A We're right across the street. Yes, ma'am.  
 23 Q Okay. And is the wind -- strike that.  
 24 Is the odor stronger when there is a  
 25 wind than when there is no wind?

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Page 2007

1 A Yes.  
2 Q Okay. You testified that -- that you've  
3 noticed buzzards around your property. Is that  
4 correct?  
5 A That's correct.  
6 Q You say that they enhance the negative  
7 ambience of the property. Do you recall that  
8 testimony?  
9 A Yes, I do.  
10 Q Can you explain that further, please?  
11 A Well, when you own a piece of property across  
12 from a landfill, there's already a negative ambience  
13 existing, and the buzzards just add to that.  
14 Q Okay. You said that you're on a blind corner  
15 on a two-lane road. What road is that?  
16 A Blue Goose.  
17 Q Blue Goose. And how do you know -- according  
18 to your testimony you believe that the large garbage  
19 trucks are tearing up the road. How do you know it's  
20 the garbage trucks doing that?  
21 A I believe I would have to amend that and say  
22 the large trucks, whether they're garbage or materials  
23 hauling or what not.  
24 Q Okay. Do you have an idea of what percentage  
25 of the ordinary traffic is large truck traffic, just a

Page 2008

1 guess?  
2 A I couldn't hazard a guess.  
3 Q Okay. Now, you state on Page 3 of your  
4 testimony that you talked -- or you called out BFI  
5 engineers -- called out the BFI engineers at the Manor  
6 High School meeting. Can you tell me a little bit  
7 about that conversation? It's on Line 21 of your  
8 testimony.  
9 A Yeah. That was probably more out of  
10 frustration than anything. As I recall, there was  
11 a -- some sort of a general meeting about the proposed  
12 expansion of the landfill. And I kind of heard reams  
13 and reams of data about how effectively the water  
14 that's flowing downhill really wouldn't bother  
15 anybody. And I asked any of the engineers if they had  
16 actually been out there in a rainstorm. I think that  
17 was really kind of my point.  
18 Q Okay. And was that the public meeting that  
19 was held by TCEQ?  
20 A I can't recall.  
21 Q But there were a lot of people in Manor --  
22 A Yes, ma'am. It was very crowded.  
23 Q You state that your fence was washed off by  
24 their runoff. Do you recall that testimony?  
25 A Yes, it was knocked down. It wasn't washed

Page 2009

1 off, but it was knocked down.  
2 Q Was that on one specific rain event?  
3 A Yes.  
4 Q Or was over time -- it was one specific?  
5 A To my recollection, yes.  
6 Q Do you recall which event that was?  
7 A I think it was the last big rain we had,  
8 which was probably in -- I think in February of 2007,  
9 but that may not be exactly correct.  
10 Q Was your fence newly constructed or had it  
11 been there for some time?  
12 A This was a new fence -- well, a newer fence.  
13 Q Okay. And when you say runoff, are you  
14 talking about merely water or do you -- is there  
15 sediment in the water as well?  
16 A There's sediment in the water as well. It's  
17 coming off of a dirt hill, so it carries some of it  
18 with it.  
19 Q Okay. And is that what your belief is is  
20 it's silting up your tank or is it sediment from your  
21 property?  
22 A Oh, I'm sure it's from both.  
23 MS. MANN: Okay. I have no further  
24 questions.  
25 JUDGE NEWCHURCH: Mr. Shepherd?

Page 2010

1 MR. SHEPHERD: No questions.  
2 JUDGE NEWCHURCH: Mr. Terrill?  
3 MR. TERRILL: No questions.  
4 JUDGE NEWCHURCH: Mr. Gosselink?  
5 MR. GOSSELINK: Yes, sir.  
6 CROSS-EXAMINATION  
7 BY MR. GOSSELINK:  
8 Q Hi, Mr. Williams.  
9 A Mr. Gosselink.  
10 Q You don't live out on either the 22-acre site  
11 or the 95-acre site?  
12 A No, sir.  
13 Q And you don't work there?  
14 A No, sir.  
15 Q You run cattle on one of the tracts, the  
16 95-acre tract?  
17 A Currently we run them on the 95 and we used  
18 to run them on both.  
19 Q Okay. And you testified in your deposition  
20 that you go out and run the cattle once weekly and not  
21 a job, it's therapy, right?  
22 A That's correct.  
23 Q And you hunt irregularly on the property?  
24 A That's correct.  
25 Q And that's what you do on the property,

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1 period, right?	1 of the application. Okay? And you can find it up
2 A Yes.	2 there as Volume 1 -- maybe Jim can help you.
3 Q Okay. In order to get to the property, you	3 MR. BLACKBURN: Volume 1?
4 generally drive up Springdale, right?	4 MR. GOSSELINK: Volume 1. And we're
5 A That's correct.	5 going to look at APP179.
6 Q And then you make a right there at the Barr	6 MR. BLACKBURN: 179?
7 Mansion and you drive to your property?	7 MR. GOSSELINK: 179.
8 A Yes, sir.	8 A Okay.
9 Q And you go on your property?	9 Q (BY MR. GOSSELINK) You see the APP179 is
10 A Yes, sir.	10 also marked as -- I can tell you it's also your
11 Q And you don't go by the landfill if you go	11 deposition Exhibit No. 86. If you have your
12 that way, right?	12 deposition with you and you would like to cross-check
13 A You can see the corner of the landfill from	13 that or rely --
14 the gate.	14 MR. BLACKBURN: I don't think he has it
15 Q But you don't go by the landfill. You don't	15 up there.
16 drive by the landfill?	16 MR. GOSSELINK: Okay. Do you have it?
17 A No, sir, not going that way. No, sir.	17 MR. BLACKBURN: No.
18 Q Are you familiar with the Rule 11 Agreement?	18 MR. GOSSELINK: May I approach?
19 A No, sir.	19 JUDGE NEWCHURCH: Yes, sir.
20 Q Do you know what we're talking about when I	20 Q (BY MR. GOSSELINK) Is that the same thing?
21 say the agreement that BFI reached with the City of	21 A Yes.
22 Austin?	22 Q Okay. And it's marked Deposition No. 87?
23 A In passing, yes.	23 A Yes.
24 Q Do you know enough about it to know whether	24 Q Matches APP179?
25 or not it's a positive agreement that would benefit	25 A Yes, sir. It appears to be.
Page 2012	Page 2014
1 you?	1 Q Okay. Now, this is an area location map that
2 A From what little I read as a layman, I don't	2 was prepared by Mike McInturff. Do you see his seal
3 believe that there's much benefit to me.	3 in the lower right-hand corner?
4 Q You did read it?	4 A Yes.
5 A I scanned it.	5 Q I think the record will reflect that Mr.
6 Q Okay.	6 McInturff is the traffic engineer and the traffic
7 A It looked like a legal document and I just	7 expert in this case. Do you know him?
8 picked out the high points.	8 A I know of him.
9 Q Okay. Do you remember when I asked you in	9 Q And there's -- in a legend in sort of the
10 your deposition on -- I'll repeat the page -- Page 80,	10 lower right-hand corner, there's a dark black line
11 Line 13, and I asked you would you like to have BFI --	11 which indicates roadways with truck prohibition signs.
12 control BFI trucks in any kind of enforceable way,	12 Do you see that?
13 contract agreement, permit provision, that would	13 A Yes, I do.
14 prohibit BFI's trucks from going on that road,	14 Q Do you remember talking about this with me in
15 referring to Blue Goose Road, and you answered that	15 the deposition?
16 would be a nice start. Do you remember that?	16 A Yes, I do.
17 A Yes, sir.	17 Q And you'll see that several roads are already
18 Q Are you aware of the fact that the agreement	18 prohibited from having trucks on them. Springdale --
19 we were just discussing in fact imposes that	19 do you see that?
20 requirement?	20 A Yes, sir.
21 A No, sir.	21 Q Yeager to Cameron, do you see that?
22 Q Okay. You didn't read it very closely then.	22 A Yes, sir.
23 A I told you I didn't.	23 Q And Harris Branch Parkway?
24 (Laughter)	24 A Yes, sir.
25 Q Right. I'm going to ask you to look at part	25 Q And I'm not sure what this -- I think it's

59 (Pages 2011 to 2014)

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1 Ferguson -- which juts out to the west from  
 2 Springdale. Do you see that?  
 3 A Yes, sir.  
 4 Q All right. And when I asked you how was it  
 5 that the trucks could still get by your property, you  
 6 suggested that they would come past Yeager, go down  
 7 Cameron, double back, go down Cameron again and then  
 8 turn east on Blue Goose, right?  
 9 A Yes. And with all --  
 10 Q Okay. Now, if there is a prohibition from  
 11 having BFI trucks go on Blue Goose, you couldn't draw  
 12 a fully black line on Blue Goose because there may be  
 13 other trucks, right? But there would be no BFI  
 14 trucks?  
 15 A I'm sorry, would you say that again?  
 16 Q Yeah, that was not very good.  
 17 You remember the provision that I told  
 18 you existed in the Rule 11 Agreement -- BFI trucks  
 19 can't go on Blue Goose?  
 20 A Yes.  
 21 Q So if BFI trucks can't go on Blue Goose, it  
 22 doesn't mean other trucks can't go, but BFI trucks  
 23 can't, right?  
 24 A Right.  
 25 Q So you can't draw a fully black line, but you

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1 could sort of gray this one up a little bit, couldn't  
 2 you?  
 3 A I guess to the extent that it affects BFI  
 4 trucks.  
 5 Q Now, do you know where the Barr Mansion is?  
 6 A Yes, I do.  
 7 Q Barr Mansion is on the corner of  
 8 Springdale -- and I don't know if you call it Blue  
 9 Goose or Cameron, but it's on top of the black line?  
 10 A Yes, sir.  
 11 Q And do you know or have an opinion as to how  
 12 the garbage trucks, if they can't go up Springdale and  
 13 the only way they can maneuver in is to go down  
 14 Cameron and then go east actually go past the Barr  
 15 Mansion.  
 16 MR. BLACKBURN: Objection. I think that  
 17 mischaracterizes the Rule 11 Agreement. It's BFI  
 18 trucks.  
 19 Q (BY MR. GOSSELINK) Any trucks.  
 20 A Well, I have a picture of a truck at my gate  
 21 I took yesterday.  
 22 JUDGE NEWCHURCH: Just a second. What's  
 23 your objection?  
 24 MR. BLACKBURN: I'm sorry, I thought he  
 25 was going with where the limitation was in the Rule 11

Page 2017

1 Agreement. I may have been mistaken.  
 2 MR. GOSSELINK: I'm looking for -- my  
 3 first question before we ever had a Rule 11 Agreement  
 4 in deposition had to do with garbage trucks, and his  
 5 testimony in the deposition was, well, they could go  
 6 past Yeager and go down Cameron and get to Blue Goose  
 7 and turn east. And those are garbage trucks. And I'm  
 8 asking him now, assuming that's how the garbage trucks  
 9 go, how is it did they get in front of the Barr  
 10 Mansion?  
 11 MR. BLACKBURN: Withdraw my objection.  
 12 JUDGE NEWCHURCH: Do you understand the  
 13 question?  
 14 WITNESS WILLIAMS: No, sir, I don't.  
 15 JUDGE NEWCHURCH: Try again.  
 16 Q (BY MR. GOSSELINK) Blackburn did.  
 17 A He's smarter than I am.  
 18 (Laughter)  
 19 Q Okay. Mr. Williams, I'll try and take this  
 20 piece by piece. In your deposition you testified that  
 21 you felt that garbage trucks could go down Cameron  
 22 Road -- off of Parmer Lane, down Cameron Road, connect  
 23 with the bottom of Cameron Road, and turn east on Blue  
 24 Goose Road.  
 25 A I don't recall if I limited it to garbage

Page 2018

1 trucks, but trucks certainly do.  
 2 Q And garbage trucks would be trucks.  
 3 A Sure. And they still do.  
 4 Q All right. And that would apply to, yeah,  
 5 all trucks.  
 6 A Just like the one that drove by yesterday.  
 7 Q And as it relates to garbage trucks, I'm  
 8 asking you is there any route that you are aware of  
 9 that it would make sense for a garbage truck to take  
 10 to go past the Barr Mansion?  
 11 A Well, not that I'm aware of.  
 12 Q All right. Now, remember since we had the  
 13 discussion about permit provision about trucks, I  
 14 tried it again and asked you about dust. Okay? Page  
 15 82? Do you remember that?  
 16 A In general, yeah.  
 17 Q Okay. And on Page 82, Line 6, I asked you  
 18 the question, "With regard to dust, would it solve  
 19 your problem if BFI vegetated those slopes so that  
 20 there was less straight dirt exposed and more grass on  
 21 the slopes?"  
 22 And you answered: "I kind of like your  
 23 question or your hypothetical about prohibiting  
 24 trucks. I think that would be a start. I'm not  
 25 intimately familiar with how the landfill operates. I

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1 assume that it's a hill. And I'm not sure what slope  
 2 you're talking about vegetating. If it's the outside  
 3 slope that we're looking at, that would seem to start  
 4 to address at least half of the problem. I don't know  
 5 what goes on on the other side of the slope."  
 6 My question was, "Your answer was  
 7 interesting to me. You really don't know what the  
 8 landfill looks like?"  
 9 And you respond, I don't know how they  
 10 operate. I don't know the extent they have open faces  
 11 and they cover them and how all of the mechanics work,  
 12 but I do know -- I do have a passing familiarity with  
 13 them and I've seen them from the air, on the ground  
 14 and I've been a customer."  
 15 MR. BLACKBURN: I'll object to this -- I  
 16 think this is an improper use of a deposition. I  
 17 think the deposition can be used for impeachment  
 18 purposes, and if the question is asked and not  
 19 answered in the same way. But basically the  
 20 deposition is simply being read, with both questions  
 21 and answers by the attorney really without asking a  
 22 question. And I think that that is improper use of a  
 23 deposition.  
 24 MR. GOSSELINK: If you would like me to  
 25 have Mr. Williams read his part instead we can do

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1 that.  
 2 MR. BLACKBURN: No, that's not my  
 3 objection. My objection is that there was not a  
 4 question asked and then a problem with his answer that  
 5 is non-conforming to the deposition. He's just simply  
 6 reading the deposition.  
 7 MR. GOSSELINK: I am simply trying to  
 8 speed this along. If the Court would like me to go  
 9 differently, I will.  
 10 JUDGE NEWCHURCH: Well, I thought that  
 11 was a long lead into a question, was it not?  
 12 MR. GOSSELINK: Yes.  
 13 JUDGE NEWCHURCH: Okay. Well, that  
 14 would seem to be -- to make the objection not  
 15 sustainable, depending on what your question is.  
 16 Q (BY MR. GOSSELINK) Since that time,  
 17 Mr. Williams, have you taken the opportunity to  
 18 familiarize yourself with the landfill?  
 19 JUDGE NEWCHURCH: Stop. Do you still  
 20 have an objection?  
 21 MR. BLACKBURN: I do, but I'll withdraw  
 22 it for the moment and let's just try to move on.  
 23 JUDGE NEWCHURCH: All right.  
 24 A No, I have not.  
 25 Q (BY MR. GOSSELINK) In your prefile you

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1 discuss your concerns about litter and fugitive trash.  
 2 Do you remember that?  
 3 A Yes, sir.  
 4 Q And one of the things you told me was that  
 5 people dump stuff in the driveway to your 95 acres.  
 6 A They do more than that. They actually come  
 7 on to our property and dump stuff. But, yes, sir.  
 8 Q And when I asked you what did you do about  
 9 that, what did you tell me?  
 10 A I told you typically I'll call the facility  
 11 manager at BFI.  
 12 Q Who you know by first name?  
 13 A Eldon.  
 14 Q Well, you don't know him that well yet --  
 15 Everett?  
 16 A Everett. I'm sorry. Sorry, Everett.  
 17 Q And what will Everett do?  
 18 A He'll typically dispatch somebody to take  
 19 care of it.  
 20 Q And he's always been responsive was your  
 21 testimony, right?  
 22 A That's correct.  
 23 Q And as it relates to litter that happens to  
 24 be on your property, if you've got litter on your  
 25 property and you ask him to clean it up, he'll clean

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1 it up, won't he?  
 2 A I'd prefer not to ask but, yes, he will.  
 3 Q So at least in your experience a request to  
 4 BFI results in a responsive action from BFI?  
 5 A That's correct.  
 6 Q In fact, it was an interesting dialogue we  
 7 had. I mentioned to you that Everett was disappointed  
 8 that you were protesting because he really likes you,  
 9 and didn't you tell me back, "Well, I really like  
 10 Everett, too."  
 11 A I do. It's not personal.  
 12 Q Okay. I even asked you at one point, "Well,  
 13 why don't you ever call Waste Management?" And what  
 14 did you tell me?  
 15 A I'm not across the street from them?  
 16 Q No.  
 17 A I don't know anybody over there?  
 18 Q No.  
 19 A I'm not going to guess anymore.  
 20 (Laughter)  
 21 Q All right. I had fun with you at the  
 22 deposition, too. You're all right. You told me, "Why  
 23 should I bother, Everett always comes."  
 24 (Laughter)  
 25 Now, with regard to this 2007 erosion

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1 event, okay, isn't that about -- and the fence that  
 2 was put in place. Okay? Isn't that fence the fence  
 3 that separates your property from your Uncle Roger  
 4 Joseph's property?  
 5 A That's correct.  
 6 Q And that fence was put in because the road  
 7 was put in because the cell towers were being  
 8 constructed. Isn't that right?  
 9 A No, sir.  
 10 Q That fence predated that?  
 11 A Yes, sir.  
 12 Q And in February of 2007, the road -- the  
 13 caliche road along the western side of the BFI  
 14 landfill, between your property and the BFI landfill,  
 15 was in existence, wasn't it?  
 16 A Not in any form or fashion that you're  
 17 looking at it today. It was really more of a worn  
 18 path. It was a rough-cut road.  
 19 Q Okay. And the status of the cell towers at  
 20 that time, they were just being installed, weren't  
 21 they?  
 22 A No, sir.  
 23 Q They weren't being installed yet?  
 24 A No, sir.  
 25 Q What was on the top of the hill?

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1 A Nothing. Just cedar trees.  
 2 Q This erosion event that occurred in 2007, did  
 3 you report that to the TCEQ?  
 4 A I don't recall. I reported one event or a  
 5 general condition to the TCEQ.  
 6 Q What happened besides having the fence  
 7 knocked down? What was -- what remedy, if any,  
 8 occurred?  
 9 A (No response)  
 10 Q What remedy --  
 11 A From TCEQ or --  
 12 Q No, on your property from anybody?  
 13 A What remedy?  
 14 Q Yeah.  
 15 A Everett came out and fixed the fence.  
 16 Q Okay. And --  
 17 A And worked with regrading some roads.  
 18 Q Okay. And is the area where he knocked down  
 19 the fence downgradient from any construction other  
 20 than the BFI construction?  
 21 A Well, Everett didn't knock it down, but --  
 22 Q Yeah, that was knocked down. Thank you.  
 23 A It's downhill from the mound of the BFI  
 24 landfill.  
 25 Q Is it downhill from anything -- downgradient

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1 from any other erosion source?  
 2 A A small strip of property that's -- that is  
 3 between our property and the BFI landfill. I guess  
 4 it's a hundred feet wide, 50 feet wide.  
 5 Q Was it -- is it downgradient from the cell  
 6 tower property?  
 7 A First of all, the cell towers weren't there  
 8 when this occurred. And second of all, the cell  
 9 tower's up on a hill, although the actual construction  
 10 area of the cell towers is on the south side of the  
 11 hill as opposed to the north side of the hill. So if  
 12 you're referencing the cell towers, we are not -- we  
 13 may be downhill from their property, but not downhill  
 14 from their improvements drainage-wise.  
 15 Q I'm not going to -- I'm not going to be able  
 16 to establish that point through you. I'll have to do  
 17 that later.  
 18 Is it fair, Mr. Williams, that we  
 19 discussed some of the operational and sort of  
 20 environmental concerns you had in your deposition, but  
 21 that you were pretty honest and you acknowledged on  
 22 Page 94 that what your real concern was -- and I'll  
 23 read it to you and tell me if you still concur. I  
 24 say, "Those are sort of the environmental kind of  
 25 issues, but is it fair to say that your real concern

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1 in this case is that the landfill is adversely  
 2 affecting your investment," and you said "yes."  
 3 A That's correct.  
 4 Q Okay. Is it true that at one time you  
 5 offered to sell your property to BFI?  
 6 A That's correct.  
 7 Q And when I asked you if you begrudge BFI's  
 8 efforts at seeking a settlement with the various  
 9 protestants, you recall telling me, "I wish they would  
 10 settle with me?"  
 11 A That's correct.  
 12 Q Okay. So you are an absentee landlord who  
 13 comes to the site once a week?  
 14 A Sometimes more, sometimes less.  
 15 Q Rarely goes by the landfill, but you're  
 16 concerned about your investment -- not that there's  
 17 anything wrong with that --  
 18 A Thank you.  
 19 Q -- but that's it, right? That's your primary  
 20 concern?  
 21 A Well, of course the way you stated it  
 22 diminishes it, but that is my primary concern.  
 23 Q That's half my job.  
 24 A I understand.  
 25 MR. GOSSELINK: No further questions.

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<p>1 JUDGE NEWCHURCH: Mr. Blackburn.                  2 MR. BLACKBURN: Yes.                  3 REDIRECT EXAMINATION                  4 BY MR. BLACKBURN:                  5 Q With regard to the last set of questions, the                  6 investment and the use of the property, has the                  7 investment value of your property been affected by the                  8 BFI landfill?                  9 A I would say yes.                  10 Q And how long have you had this piece of                  11 property?                  12 A It's been in our family since the -- I                  13 believe the 1960s.                  14 Q So your ownership predates the landfill?                  15 A I honestly don't know when the landfill went                  16 in.                  17 Q If you assume that the landfill started in                  18 the early 1980's, your ownership would predate it?                  19 A Yes, sir.                  20 Q Now, in your prefiled testimony you made the                  21 statement that you have done your part for the                  22 community. What did you mean by that?                  23 A (No response)                  24 Q If you would like to refer to Page 4 of your                  25 prefiled testimony, it's in the next-to-the-last --</p>	<p>1 know, avail ourself of any reasonable of the property                  2 in the near future. And it's going to be even worse                  3 when we're next to a mountain.                  4 Q Now, with regard to the incident in 2007,                  5 what I'd like to do --                  6 MR. BLACKBURN: May I approach, Your                  7 Honor?                  8 JUDGE NEWCHURCH: Yes, sir.                  9 MR. BLACKBURN: And I need some                  10 exhibits, if I can manage this mess I have here for a                  11 minute.                  12 Can we go off the record for a second,                  13 Your Honor?                  14 JUDGE NEWCHURCH: Off the record.                  15 (Discussion off the record)                  16 Q (BY MR. BLACKBURN) Now, I'd like you first                  17 to look at AM-33, please. And actually I'm interested                  18 in your looking at the map in the back of it. And on                  19 that exhibit there is an area drawn in blue. Do you                  20 see that?                  21 A Yes, sir, I do.                  22 Q Now, can you orient yourself relative to this                  23 map? There is a -- I believe there is a north arrow,                  24 and this would be the layout -- what's represented                  25 here is a diagram of the Browning-Ferris Landfill.</p>
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<p>1 the question is on Line 13.                  2 A I see. Yes, sir.                  3 Q I'm just curious. I mean, you say, "We have                  4 done our part for the community," on Line 17 --                  5 MR. GOSSELINK: Your Honor, I'm going to                  6 object. I think this is outside the scope of anything                  7 I asked.                  8 MR. BLACKBURN: Oh, I don't think so.                  9 This is about the investment use of the property,                  10 which he did question about.                  11 MR. GOSSELINK: That constitutes helping                  12 the community?                  13 MR. BLACKBURN: Again, I think --                  14 JUDGE NEWCHURCH: I'll give some                  15 latitude for now, Mr. Blackburn. Objection overruled                  16 for now.                  17 Q (BY MR. BLACKBURN) What do you mean by we                  18 have done our part for the community?                  19 A We've owned a piece of property next to a                  20 landfill, which I acknowledge every community needs                  21 and it has to go somewhere. And we have borne the                  22 burden of that, whether it be physical or diminishment                  23 in our investment value. And it seems unreasonable                  24 that -- it almost seems like a -- I know you'll                  25 react -- a taking in that we will be unable to, you</p>	<p>1 Can you make sense out of that layout?                  2 A Yes, sir. It would appear that Blue Goose                  3 Road is to the north and our property would be to the                  4 west.                  5 Q And on that exhibit, do you see what's marked                  6 as DA-5?                  7 A Yes, I do.                  8 Q And then do you see an outfall next to a                  9 sedimentation pond called Sedimentation Pond A?                  10 A Yes, I do.                  11 Q Do you see where it says Q equals 66 cfs?                  12 A Yes, sir.                  13 Q Now, where does that flow from that outfall                  14 go? It indicates it's going off to the left. Do you                  15 see that arrow?                  16 A Yes, sir. The arrows are pointing to the                  17 north.                  18 Q Then where the Q is there's an arrow pointing                  19 to the left, is there not?                  20 A Yes, sir. Yes, sir.                  21 Q And do you see that arrow?                  22 A To the -- yes.                  23 Q Next to the Q?                  24 A Yes, sir.                  25 Q Where is that arrow pointing?</p>

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1 A Towards our property.  
 2 Q And is that near the location where the 2007  
 3 fence incident occurred?  
 4 A I would say as a lay person it appears to be  
 5 in general, yes, sir.  
 6 Q Now, there is another outfall further to the  
 7 south next to Sedimentation Pond B, and do you see the  
 8 arrow with the 26 cfs above it?  
 9 A Yes, sir, I do.  
 10 Q Does that flow across your property or not?  
 11 A I can't say.  
 12 Q Okay. Now, my question to you is: Did  
 13 anybody from BFI ever talk to you about drainage  
 14 coming back off of that landfill towards your  
 15 property?  
 16 A No, sir.  
 17 Q Had you ever been informed anything about  
 18 what the flows were that had been approved in a 2002  
 19 modification?  
 20 A No, sir.  
 21 Q Now, with regard to this application, has  
 22 anybody talked to you at all about any changes in the  
 23 area that is going to be draining through that  
 24 outfall?  
 25 A No, sir.

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1 Q And have you agreed to any increase in flow  
 2 across your property?  
 3 A No, sir.  
 4 Q Do you object to any increase in flow across  
 5 your property?  
 6 A Most definitely.  
 7 Q Does BFI have an easement for flows across  
 8 your property?  
 9 A No, sir.  
 10 Q Have you made any type of arrangement to  
 11 allow additional flow to come off of BFI onto your  
 12 property?  
 13 A No, sir.  
 14 MR. BLACKBURN: Pass the witness.  
 15 JUDGE NEWCHURCH: Any other cross?  
 16 MR. MORSE: No.  
 17 MR. GOSSELINK: No, none from me.  
 18 JUDGE NEWCHURCH: Okay. Then thank you,  
 19 Mr. Williams. You're excused.  
 20 Mr. Blackburn, next witness.  
 21 MR. BLACKBURN: I'm ready.  
 22 JUDGE NEWCHURCH: Okay.  
 23 MR. BLACKBURN: I call Mark McAfee.  
 24 (Witness sworn)  
 25

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1 MARK McAFEE,  
 2 having been duly sworn, testified as follows:  
 3 DIRECT EXAMINATION  
 4 BY MR. BLACKBURN:  
 5 Q Would you state your name for the record,  
 6 please?  
 7 A Mark McAfee.  
 8 Q And, Mr. McAfee, where do you live?  
 9 A 6315 Spicewood Springs Road, Austin, Texas  
 10 78759.  
 11 Q And do you own a property near to the Sunset  
 12 Farms Landfill?  
 13 A Yes, I do.  
 14 Q And what is that property called?  
 15 A Barr Mansion.  
 16 Q And what exactly is the Barr Mansion?  
 17 A We're a special events facility. We do  
 18 mostly weddings and receptions. We tend to do our  
 19 ceremonies in the gardens and receptions inside of our  
 20 building, which we call the Artisan Ballroom.  
 21 Q And could you just identify just the number  
 22 and types of buildings that are part of the Barr  
 23 Mansion complex?  
 24 A There are three buildings that were original  
 25 to the property. The mansion itself and the carriage

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1 house, which is -- which we renovated and use as a  
 2 commercial kitchen, and a third building which is used  
 3 for restrooms. And it's -- it was a small outbuilding  
 4 used for restrooms and a floral shop. And then the  
 5 fourth building, which was not original, we built in  
 6 1999 and 2000.  
 7 Q Okay. And have you prepared prefiled  
 8 testimony that is in front of you and is marked  
 9 Exhibit MM-1?  
 10 A Yes.  
 11 Q And to the best of your knowledge, is this  
 12 testimony true and correct?  
 13 A Yes.  
 14 MR. BLACKBURN: I offer MM-1. There is  
 15 no affidavit associated with this one.  
 16 JUDGE NEWCHURCH: Any objection?  
 17 MR. GOSSELINK: No objection.  
 18 JUDGE NEWCHURCH: Then MM-1 is admitted.  
 19 (Exhibit NNC No. MM-1 admitted)  
 20 MR. BLACKBURN: And I tender the witness  
 21 for cross-examination.  
 22 JUDGE NEWCHURCH: Mr. Renbarger?  
 23 MR. RENBARGER: No questions.  
 24 JUDGE NEWCHURCH: Ms. Noelke?  
 25 MS. NOELKE: No questions.

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1 JUDGE NEWCHURCH: Mr. Morse?  
 2 MR. MORSE: No questions.  
 3 JUDGE NEWCHURCH: Ms. Mann?  
 4 CROSS-EXAMINATION  
 5 BY MS. MANN:  
 6 Q Good afternoon. How close is Barr Mansion as  
 7 the crow flies to the landfill?  
 8 A Just under a mile.  
 9 Q And how close is Barr Mansion to the road --  
 10 let me strike that.  
 11 You complain about truck noise on the  
 12 road. Is that accurate?  
 13 A Sure.  
 14 Q How close is Barr Mansion to the roads that  
 15 you're referring to?  
 16 A Sixty feet. The mansion's front door is  
 17 probably 60 feet from Sprinkle Road is the name of the  
 18 road as it goes in front of Barr Mansion.  
 19 Q And Sprinkle Road intersects with what road?  
 20 A Springdale. It also intersects with Sprinkle  
 21 Cutoff. It changes names a few times as it goes from  
 22 one side to the other of the Barr Mansion and onto --  
 23 eventually ends up being in Blue Goose.  
 24 Q Okay. So how far set back from Springdale is  
 25 Barr Mansion then?

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1 A The mansion itself? I mean, our property is  
 2 adjacent. Our property goes right to Springdale Road.  
 3 The mansion is 150 feet, maybe.  
 4 Q How many acres is your property?  
 5 A 7.41.  
 6 Q Can you tell me about the odor event that  
 7 you're referencing on Line 29 of the testimony on  
 8 Page 2?  
 9 A Yes. We had a client who had -- they  
 10 probably did their holiday party there eight times  
 11 maybe. And the last time that we did an event for  
 12 them was their holiday party and we had this odor  
 13 event that evening. I don't remember the date.  
 14 Q Were you there?  
 15 A Yes.  
 16 Q Did you notice the odor?  
 17 A Yes.  
 18 Q Was it a typical odor event or was it somehow  
 19 extraordinary or --  
 20 A It wasn't as strong as odors as we get. It  
 21 was not a horrendous odor event.  
 22 Q Are you familiar -- okay. You're talking  
 23 about a scale of 0 to 10 later in your testimony, and  
 24 so that odor event was not a 10?  
 25 A No, more like a 5.

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1 Q Okay. But it was enough to disturb your  
 2 client?  
 3 A I knew what it was.  
 4 Q And speaking of the -- referring to the  
 5 testimony where you do talk about your 10 out of 10  
 6 scale, that's on Page 3 of your prefiled. It says  
 7 there was one time when we called in a complaint. Do  
 8 you recall what year that was?  
 9 A I do not recall the year, just, you know, my  
 10 guess would be it would be toward the latter part of  
 11 the window that the earlier witness Joyce Best was  
 12 talking about. So probably 2003ish.  
 13 Q Okay. And did you talk with the TCEQ  
 14 investigator that came out?  
 15 A I did.  
 16 Q Yes?  
 17 A Yeah. I followed up -- just to give you a  
 18 little bit of background, we were having some sort of  
 19 an event at Barr Mansion that kept us there late, both  
 20 my wife and I. We walked out of the ballroom and it  
 21 was just -- it was horrendous. And so we decided to  
 22 drive around the landfill as opposed to driving  
 23 straight to our home. So we went toward Blue Goose,  
 24 and drove all the way around the landfill.  
 25 You know, we had -- our eyes were

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1 watering. It was a really, really bad event. And we  
 2 called and that was the only time I've called in a  
 3 complaint.  
 4 Q That was the only time?  
 5 A That was the only time that I have called in  
 6 a complaint. It's not that I didn't have complaints,  
 7 but I just -- you know, I heard enough from the  
 8 neighbors about the working with the TCEQ that it  
 9 seemed like it was going to be fruitless. I couldn't  
 10 see how they could ignore this one, so that was one of  
 11 the reasons why I called this one in. They managed to  
 12 ignore it.  
 13 Q Okay. And you said that you saw the truck  
 14 come out, but you didn't speak with the investigator  
 15 at that time --  
 16 A I saw-- I drove my wife home, drove back, saw  
 17 the truck driving around, so I knew that they had been  
 18 there, noticed that the odors were there.  
 19 Q Were they the same strength --  
 20 A Maybe an 8 or 9 by then. You know, it wasn't  
 21 quite as strong. And then I believe -- my  
 22 recollection is that I called the TCEQ reporting line  
 23 again to see what -- if they had gone out and what  
 24 their experience was, and they told me that --  
 25 MR. MOORE: To the extent that he's

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1 going to provide what they told him, that would be  
 2 hearsay.  
 3 JUDGE NEWCHURCH: Do you have a  
 4 response?  
 5 Do you have a response?  
 6 MS. MANN: I don't have a response.  
 7 JUDGE NEWCHURCH: Okay. Objection  
 8 sustained.  
 9 Q (BY MS. MANN) Do you notice the odors more  
 10 with winds or without winds?  
 11 A It probably is worse -- it reaches the higher  
 12 scale of being bad odors when there are very little  
 13 winds, when there's an inversion, when the --  
 14 generally after a cold front. We're fortunate on our  
 15 side that generally means that the winds are going  
 16 away from us. And that's one reason that Harris  
 17 Branch and some of the other neighborhoods have  
 18 experienced worse conditions than us probably.  
 19 The winds come -- the warmer weather  
 20 winds coming toward on us and it's real rare to get an  
 21 east wind. But -- and those winds tend to lift, I  
 22 believe, the odors and blow it away somewhat.  
 23 Q Do you have any other concerns with the birds  
 24 besides disease issues?  
 25 A Well, as Mr. Williams was stating, they do

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1 add to the -- I've forgotten how he stated it -- but  
 2 when you're getting married, it's not really great to  
 3 have buzzards buzzing around your head.  
 4 (Laughter)  
 5 MR. BLACKBURN: That's not a good sign.  
 6 A Believe me, it happens at our place.  
 7 MS. MANN: I have no further questions.  
 8 Thank you.  
 9 JUDGE NEWCHURCH: Mr. Shepherd?  
 10 MR. SHEPHERD: No questions.  
 11 JUDGE NEWCHURCH: Mr. Terrill?  
 12 MR. TERRILL: No questions.  
 13 JUDGE NEWCHURCH: Mr. Gosselink --  
 14 Mr. Moore?  
 15 MR. MOORE: No questions.  
 16 JUDGE NEWCHURCH: Mr. McAfee, thank you  
 17 for your testimony -- well, wait a second. Just a  
 18 second. There might be redirect.  
 19 MR. BLACKBURN: No. I have a question,  
 20 but I probably shouldn't ask it so -- I'll just pass  
 21 on -- well, I don't know. Do you have a vulture  
 22 special.  
 23 MR. MOORE: Objection.  
 24 (Laughter)  
 25 MR. BLACKBURN: I pass the witness.

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1 JUDGE NEWCHURCH: I was going to  
 2 overrule the objection.  
 3 Mr. Blackburn?  
 4 MR. BLACKBURN: I rest my case. Those  
 5 are my witnesses.  
 6 JUDGE NEWCHURCH: Okay. We're going to  
 7 break for the day. Let's go off the record and talk  
 8 about scheduling and such.  
 9 (Discussion off the record)  
 10 JUDGE NEWCHURCH: We're going to recess  
 11 until tomorrow morning at 9:00 a.m. The parties  
 12 should be prepared for the testimony of City of Austin  
 13 witnesses Guernsey, Word, Lesniak, Kelly, and the  
 14 Executive Director witnesses.  
 15 And we are recessed until 9:00 a.m.  
 16 Thank you.  
 17 (Proceedings recessed at 5:00 p.m.)  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25