

KENNEDY REPORTING SERVICE

SOAH DOCKET NO. 582-08-2178

TCEQ DOCKET NO. 2007-1774-MSW

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

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

HEARING ON THE MERITS TUESDAY, JANUARY 20, 2009

BE IT REMEMBERED THAT AT approximately 9:07 a.m., on Tuesday, the 20th 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 Kim Pence, a Certified Shorthand Reporter of: Volume 1 Pages 1 - 280

1 APPEARANCES (CONTINUED)

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3 RESIDENTIAL PROPERTY OWNERS ASSOCIATION, MARK AND
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5 Mr. John Carlson
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1 PROCEEDINGS

2 TUESDAY, JANUARY 20, 2009

3 (9:07 a.m.)

4 (Exhibit BFI Nos. RS-1 through RS-45;
5 JS-1 through JS-10; GA-1 through GA-7; KC-1 and KC-2;
6 MS-1 through MS-8; GL-1 through GL-4; AM-1 through
7 AM-28; MM-1 through MM-6; SL-1 through SL-10,
8 SL-10A-I, SL-11 and SL-12; JW-1 through JW-7; CH-1
9 through CH-6; DC-1 through DC-11; LS-1 through LS-5;
10 WS-1 through WS-5 and BD-1 through BD-6 marked)

11 (Exhibit COA Nos. 1 through 9 marked)

12 (Exhibit TJFA Nos. PC-1 through PC-19;

13 BK-1 through BK-8; SS-1 through SS-3 and JN-1 through
14 JN-6 marked)

15 JUDGE NEWCHURCH: Okay. Going on
16 the record seven minutes after 9 a.m. It's
17 January 20, 2009. This is the hearing of the State
18 Office of Administrative Hearings in a Texas
19 Commission on Environmental Quality matter. I'm
20 Bill Newchurch, the Administrative Law Judge presiding
21 in the Clements Building in Austin.

22 The hearing this morning is SOAH Docket
23 No. 582-08-2178, which concerns the Application of BFI
24 Waste Systems of North America for a Permit. I'll
25 take the appearances of the parties, beginning with

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1 the applicant.
 2 MR. GOSSELINK: Thank you, Judge
 3 Newchurch. My name is Paul Gosselink with the law
 4 firm of Lloyd-Gosselink. I'm here on behalf of BFI,
 5 the applicant. And with me today is John Carlson of
 6 our firm, and also with me today are two other
 7 attorneys who will be appearing periodically in this
 8 matter. They are John Moore and Jeffrey Reed. Thank
 9 you.
 10 JUDGE NEWCHURCH: Good morning to all of
 11 you.
 12 And for the Executive Director?
 13 MS. WHITE: Susan White for the
 14 Executive Director, and my co-counsel is on his way,
 15 Steve Shepherd. And then our paralegal today is
 16 Jenny Fred.
 17 JUDGE NEWCHURCH: For the Office of
 18 Public Interest Counsel?
 19 MS. MANN: Good morning. Christina Mann
 20 representing the Office of Public Interest Counsel.
 21 JUDGE NEWCHURCH: And let's see. Let's
 22 start over here on the left with the other parties.
 23 Oh, I'm sorry.
 24 MR. RENBARGER: The far left.
 25 JUDGE NEWCHURCH: The far left.

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1 MR. BLACKBURN: In more ways than one
 2 probably. Jim Blackburn representing NNC.
 3 JUDGE NEWCHURCH: Good morning.
 4 MR. RENBARGER: Bob Renbarger
 5 representing TJFA, L.P. along with --
 6 MR. BLACKBURN: J.D. Head, TJFA, and
 7 also Ann Devers, our paralegal behind us here.
 8 JUDGE NEWCHURCH: All right.
 9 MS. NOELKE: I'm Holly Noelke with the
 10 City of Austin, and with me today is Meitra Farhadi.
 11 MR. MORSE: Good morning, Judge.
 12 Kevin Morse for Travis County. Also appearing here
 13 are Sharon Talley and Annalynn Cox.
 14 JUDGE NEWCHURCH: For the applicant
 15 Giles?
 16 MR. TERRILL: Paul Terrill for Giles
 17 Holdings, L.P.
 18 JUDGE NEWCHURCH: All right. I think we
 19 have everybody now. Is that it?
 20 (No response)
 21 JUDGE NEWCHURCH: Okay. Very good.
 22 Let's talk about some scheduling matters just so
 23 everybody will know up front. What I try to do --
 24 since we're going to be here for two weeks, we're
 25 scheduled to go through February 2nd. By the way, I

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1 have reserved the room for a couple of extra days in
 2 case we should run over. I'm hoping that will not
 3 happen.
 4 We will start every day at 9:00 a.m. If
 5 we start to run behind, I might want to push that up
 6 as early as 8:30. We'll just see how things go as we
 7 progress. I try to take a midmorning break around
 8 10:30 or so to given the court reporter a rest and
 9 most of us as well. We'll take a lunch break more or
 10 less at noon each day for an hour to an hour and a
 11 half. We'll adjust that some as need be. We'll take
 12 another afternoon break and then try to wrap up before
 13 five o'clock every afternoon. So that's the general
 14 outline of the schedule we'll try to follow.
 15 Every morning and at the beginning of
 16 every afternoon session I'll ask if anyone has
 17 preliminary matters. That might include a series
 18 of -- any stipulations or special motions that need to
 19 be made at that time. It's also a particularly good
 20 time to deal with things like the inevitable "My
 21 witness missed his flight, can't be here until
 22 tomorrow," "We'd like to swap the order of witnesses,"
 23 that sort of thing. That's a particularly good time
 24 to bring those things up.
 25 Along those lines, my general rule of

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1 thumb is that your opponents should know by the end of
 2 the hearing the day before the witnesses you plan to
 3 call the next day. In other words, we're going to
 4 make -- try to make guestimates about -- we're going
 5 to get through -- "We're going to call three
 6 tomorrow," and everybody needs to be on notice that
 7 those three are coming up. If there's any need to
 8 deviate from the order, that's the appropriate time to
 9 make sure everyone knows that. Announcements in
 10 advance are always welcome so people can be more
 11 prepared. That's just some general guidelines to
 12 follow.
 13 And with that, are there any preliminary
 14 matters anyone needs to raise this morning?
 15 MR. GOSSELINK: There are some --
 16 there's a pending preliminary matter with regard to
 17 our motion to supplement.
 18 JUDGE NEWCHURCH: Okay. We'll get to
 19 that when we turn to your direct case, which is what
 20 we're going to go to in just a few minutes here.
 21 MR. GOSSELINK: There's another pending
 22 matter with regard to the endangered species issue
 23 which we had an opportunity to file briefs on, and I
 24 didn't see any briefs filed, but I didn't see a final
 25 ruling either, Judge.

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1 JUDGE NEWCHURCH: You're right, and
 2 that's my oversight. We had a chaotic week last week.
 3 Our office was repainted. So everything was scattered
 4 last week, and I neglected to rule on that. And
 5 indeed there has been no objection to the motion for
 6 partial summary disposition concerning those issues.
 7 As I recall, you also asked that the
 8 witness' testimony be admitted without -- without his
 9 appearing.
 10 MR. GOSSELINK: That's correct.
 11 JUDGE NEWCHURCH: And just to refresh my
 12 memory, what witness was that again, please?
 13 MR. GOSSELINK: Lee Sherrod, and he was
 14 the endangered species expert.
 15 JUDGE NEWCHURCH: Okay. And there has
 16 been no objection to that admission of his testimony
 17 without his appearing. Correct?
 18 (No response)
 19 JUDGE NEWCHURCH: So that's admitted.
 20 We'll deal later with the numbering. I assume you've
 21 got it premarked with a number.
 22 MR. GOSSELINK: I'll have to check with
 23 my paralegal who is actually the brains of that
 24 outfit.
 25 JUDGE NEWCHURCH: All right.

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1 MR. CARLSON: It's LS-1.
 2 MR. GOSSELINK: Yes, it is. It's
 3 prenumbered LS-1, I'm told.
 4 JUDGE NEWCHURCH: All right. So without
 5 objection then, LS-1 is admitted.
 6 (Exhibit BFI No. LS-1 admitted)
 7 MR. GOSSELINK: Along those lines, Judge
 8 Newchurch --
 9 JUDGE NEWCHURCH: Yes, sir.
 10 MR. GOSSELINK: -- I would simply ask if
 11 there are any other witnesses that upon reflection the
 12 parties actually do not anticipate cross-examining, in
 13 which case that might assist in the scheduling and
 14 streamlining the process. We have asked the question
 15 about Donna Carter in the past, and the answer has
 16 been "I don't know. I'm not sure. I'll think about
 17 it." So I thought I'd bring it up now to see if
 18 anybody had finally resolved their position.
 19 JUDGE NEWCHURCH: Any party wishing
 20 cross-examination of -- Ms. Carter did you say?
 21 MR. GOSSELINK: Yes, sir.
 22 MR. BLACKBURN: I think we'd like to
 23 probably subject her to some cross-examination.
 24 JUDGE NEWCHURCH: Okay. And everyone is
 25 always entitled to do that, but just as a matter of

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1 courtesy, if you don't anticipate cross-examination,
 2 that's certainly appropriate and if you want to
 3 stipulate to the admission of the witness' prefiled.
 4 Okay. Any other preliminary matters?
 5 Mr. Terrill?
 6 MR. TERRILL: Yes, Your Honor. Giles is
 7 generally supportive of this application, and I have a
 8 question about the order of questioning. We're going
 9 to be going after the applicant, and I don't want to
 10 ask a bunch of questions after they've just put their
 11 witness on, but I don't want to waive any questions on
 12 re-examination after it's gone through all of the
 13 other parties. And I just wanted to make sure that
 14 it's okay with you if I don't ask questions initially.
 15 I still have the opportunity as the other witnesses --
 16 or as the other cross-examiners ask questions of the
 17 witnesses.
 18 JUDGE NEWCHURCH: Let's talk about that,
 19 and I thought we talked about that at the preliminary
 20 hearing, but it's been a long time and maybe we have
 21 not.
 22 My practice is to go through the
 23 cross-examiners in order from those most friendly to
 24 the testifying witness to those least friendly to the
 25 testifying witness, and with rare exception,

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1 Mr. Terrill, I'm going to assume -- since you support
 2 the application. Correct?
 3 MR. TERRILL: Yes.
 4 JUDGE NEWCHURCH: -- that you are among
 5 the most friendly cross-examiners.
 6 MR. TERRILL: I would think so.
 7 JUDGE NEWCHURCH: So you're going to go
 8 very early in the order. On the other hand, at least
 9 with regard to the applicant's witnesses, I'm going to
 10 anticipate that TJFA and Northeast are the least in
 11 accord with the witness. So it will be a little --
 12 we'll have to work out some bugs with the first couple
 13 of witnesses, but generally the order should start
 14 probably with you and go into them.
 15 MR. TERRILL: Right. And what I'm
 16 saying is I'm probably going to ask little to nothing
 17 after the applicant puts their witness on. I'm just
 18 asking to be able to reserve the right to address
 19 issues as they come up on cross-examination.
 20 JUDGE NEWCHURCH: I don't quite
 21 understand what you mean.
 22 MR. TERRILL: Okay. Do you allow more
 23 than one round of questioning?
 24 JUDGE NEWCHURCH: If you're asking on
 25 subsequent rounds --

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1 MR. TERRILL: Yes, sir.
 2 JUDGE NEWCHURCH: -- let's say we go
 3 through an entire round of cross-examination.
 4 MR. TERRILL: Yes, sir.
 5 JUDGE NEWCHURCH: I'll then go to BFI
 6 for redirect --
 7 MR. TERRILL: Uh-huh.
 8 JUDGE NEWCHURCH: -- limited to the
 9 scope of the cross-examination, then go to the other
 10 parties for recross.
 11 MR. TERRILL: Okay.
 12 JUDGE NEWCHURCH: So if what you're
 13 saying is on that first opportunity for recross, would
 14 you have an opportunity to engage in recross?
 15 MR. TERRILL: That's correct.
 16 JUDGE NEWCHURCH: The answer is yes.
 17 MR. TERRILL: Okay. All right. I just
 18 want to make sure I'm not waiving by not asking any
 19 questions.
 20 JUDGE NEWCHURCH: Okay. What I'm trying
 21 to avoid is any situation where someone, in effect,
 22 rehabilitates the witness. If BFI passes on redirect,
 23 other parties don't get to follow-up.
 24 MR. TERRILL: Okay.
 25 JUDGE NEWCHURCH: Okay?

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1 MS. MANN: To make sure to clarify --
 2 MS. WHITE: Yes.
 3 MS. MANN: -- is recross going to be
 4 limited to redirect?
 5 JUDGE NEWCHURCH: Recross is limited to
 6 redirect. And usually I'll go through subsequent
 7 rounds if there's a need to, but always getting
 8 narrower and narrower as we go.
 9 MS. WHITE: Point of clarification. The
 10 Executive Director is neutral as a party. And so my
 11 assumption from what you described was that you would
 12 go to the parties in alignment with the applicant,
 13 then you will go to the parties in alignment with the
 14 protestants, and then you would have OPIC and followed
 15 by the Executive Director.
 16 JUDGE NEWCHURCH: Your assumption would
 17 be incorrect. The Executive Director would go --
 18 because the Executive Director is not in disagreement
 19 with the applicant's witnesses, then the Executive
 20 Director would go in the middle of that pack.
 21 MS. WHITE: The Executive Director
 22 respectfully requests to go last. Our procedural
 23 rules indicate in Chapter 80 that the Executive
 24 Director is to go last. Our objective in the hearing
 25 is to hear all the evidence and to respond accordingly

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1 and to provide a draft permit that is protective of
 2 human health and the environment. So we respectfully
 3 request that the procedural rules allow the Executive
 4 Director to go last.
 5 JUDGE NEWCHURCH: Your request is
 6 overruled. And, in fact, your summary of the rule is
 7 incorrect. You're allowed to put on your case last.
 8 That's what the rule says. The rule does not talk
 9 about order of cross-examination. Some have tried to
 10 argue over the years that cross-examination is also
 11 included within the scope of the rule, and it's not.
 12 The Executive Director -- again, to
 13 avoid a situation where there might be something that
 14 could be construed as friendly cross-examination
 15 precluding the need for redirect, the Executive
 16 Director should cross-examine in the middle of that
 17 order, not at the end. The parties who are opposed to
 18 the applicant's witnesses will have the opportunity to
 19 cross-examine last.
 20 MS. WHITE: And not to press the point
 21 too far, Your Honor, but we have case precedent in
 22 which Administrative Law Judges have recognized the
 23 role of the Executive Director to be last in the
 24 cross-examination.
 25 JUDGE NEWCHURCH: Yeah, that's true, and

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1 there's much case precedent on the other side as well,
 2 including many cases I've presided over. So we're
 3 going to go in the order I've indicated.
 4 The Executive Director, of course, as is
 5 required by the rule, will put on his direct case
 6 following all other parties. That's what the rule
 7 specifies.
 8 MS. WHITE: Thank you, Your Honor.
 9 JUDGE NEWCHURCH: You're welcome.
 10 Any other preliminary matters?
 11 MS. MANN: Then I will go after -- then
 12 the Public Interest Counsel will cross after the
 13 Executive Director and then the protestants?
 14 JUDGE NEWCHURCH: Right. We're talking
 15 all about this all theoretically. When we get to our
 16 first witness, we'll establish a more specific order,
 17 and then we'll generally follow that with all the
 18 applicant's witnesses and the need to construct
 19 another order as we move to other parties' witnesses.
 20 Okay?
 21 Any other preliminary matters?
 22 MR. RENBARGER: Judge, there are some
 23 preliminary matters pending as well. Late Friday
 24 afternoon around 4:30, the applicant filed a motion
 25 for leave to supplement the prefiled testimony.

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1 JUDGE NEWCHURCH: Right.
 2 MR. RENBARGER: And I presume we're
 3 going to take that up as an early matter, are we not?
 4 JUDGE NEWCHURCH: We are, and I
 5 indicated a moment ago to Mr. Gosselink that we'd take
 6 it up once he begins his direct case. So we're almost
 7 ready for that.
 8 MR. RENBARGER: Okay. There's another
 9 preliminary matter, too, I'm not sure has been
 10 addressed, and that was there was a filing with the
 11 chief clerk's office yesterday, at least the date was
 12 yesterday, to where the applicant is also filing its
 13 fourth supplemental production with respect to
 14 discovery issues, and these items include an update to
 15 one of the expert witnesses, Dr. William Southern's
 16 report related to bird issues at the landfill, as well
 17 as some new calculations recently performed by
 18 Mr. Adam Mehevec, who is the drainage expert for BFI,
 19 in response to specific challenges by an expert for
 20 TJFA named Steve Stecher on drainage.
 21 I think this is nothing other than a
 22 veiled attempt to try to interject into the discovery
 23 materials rebuttal information, and it is very
 24 untimely. We certainly object to that, and we move to
 25 strike those late filings.

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1 JUDGE NEWCHURCH: Well, that's all a
 2 little vague.
 3 Mr. Gosselink, did you have a response?
 4 It's vague for me because I don't understand all of
 5 what's going on there.
 6 MR. GOSSELINK: Yes, Your Honor. The
 7 bird expert, Dr. Southern, conducted an additional
 8 site investigation closer to the time of the hearing
 9 so that he would be able to respond to any questions
 10 about "When was the last time you were there?" So we
 11 asked him to chronicle those findings, and we've added
 12 slight changes to two pages of his report. I believe
 13 that's the full amount of that change. During -- and
 14 so that's one.
 15 JUDGE NEWCHURCH: Okay.
 16 MR. GOSSELINK: The other one is
 17 adequate -- correctly characterized as to what it is.
 18 It is calculations by Mr. Mehevec, one of our drainage
 19 engineers. During the deposition of their expert, the
 20 challenge came up, the question was, "Have you
 21 performed any calculations?" I asked their witness,
 22 and their witness said no. I turned to my expert
 23 later and said "Can you perform the calculations?" He
 24 did, and I submitted them believing that they are
 25 appropriate for rebuttal, but believing that as soon a

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1 I had them I ought to produce them. It's not -- I
 2 mean, that's why I did both of them so that as soon as
 3 I had them I would produce them because it seemed to
 4 me the longer I waited, the less appropriate it
 5 became.
 6 JUDGE NEWCHURCH: Okay. Is it fair to
 7 say at this point that all that has occurred, at least
 8 as of now, is a supplementation of prior discovery
 9 responses? That's what it sounds like.
 10 MR. GOSSELINK: Yes, I think that's
 11 correct.
 12 MR. RENBARGER: It's supplemented
 13 prefiled testimony, Your Honor.
 14 JUDGE NEWCHURCH: Well, it's not been
 15 filed as prefiled testimony. It might be offered when
 16 the witness takes the stand, and if there's an attempt
 17 to supplement or alter the witness' prefiled testimony
 18 at that point, an objection might be in order, and
 19 then I'll hear arguments on the objection.
 20 I'd point out, though, that to the
 21 extent we're talking about supplements to discovery
 22 and not supplementing of the prefiled, but to the
 23 extent that something has been supplemented as part of
 24 discovery but late, there might be an opportunity --
 25 there might be a request for a sanction based on

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1 failure to comply with discovery that would preclude
 2 the admission of that evidence, say, on redirect or as
 3 rebuttal, but that doesn't make it necessarily
 4 inadmissible. It might mean that a sanction is
 5 appropriate, and you can argue for that, and we'll see
 6 when we get to that very specifically.
 7 MR. RENBARGER: Well, certainly we did
 8 want to at least get it on the record as a preliminary
 9 matter that it is not pure discovery in the sense of
 10 supplementing discovery. It is actual modifications
 11 in addition to existing prefiled testimony under the
 12 guise of discovery.
 13 JUDGE NEWCHURCH: Well, if it's offered
 14 as a supplement or an alteration of prefiled
 15 testimony, then you might object and I'll rule on
 16 that --
 17 MR. RENBARGER: We will.
 18 JUDGE NEWCHURCH: -- when we get to
 19 that. I don't know that your objection is in order.
 20 I'm just saying that would be the time to make that
 21 objection.
 22 MR. RENBARGER: Certainly. Thank you,
 23 Judge.
 24 JUDGE NEWCHURCH: All right. Any other
 25 preliminary matters?

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1 (No response)
 2 OPENING STATEMENT ON BEHALF OF
 3 BFI WASTE SYSTEMS OF NORTH AMERICA, INC.
 4 JUDGE NEWCHURCH: I think we are ready
 5 to go with BFI's direct case. And, Mr. Gosselink,
 6 would you have an opening statement?
 7 MR. GOSSELINK: Yes, Your Honor. Thank
 8 you very much. Thank you for the opportunity to make
 9 this opening statement. May I be seated?
 10 JUDGE NEWCHURCH: Yes, sir.
 11 MR. GOSSELINK: Thank you. I'm sure I
 12 speak for BFI when I say that we're delighted to be
 13 here. This is the beginning of our ninth year in
 14 pursuit of this permit amendment, and it feels good to
 15 get started. When we began, we were looking for
 16 additional landfill capacity of, you know, a
 17 relatively significant amount. At this stage, we are
 18 seeking additional landfill capacity of approximately
 19 four years, and I'll explain that.
 20 What we believe the evidence will show
 21 is that during these eight years we've worked hard at
 22 listening to our neighbors and the TCEQ and the
 23 concerns expressed by the city council, county
 24 Commissioners' court and CAPCOG. I'm pleased to
 25 report, and I think it is important to note, that all

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1 of these governmental entities or their staffs have
 2 approved any authorizations we have requested so far,
 3 and that none of them are appearing today as active
 4 party protestants.
 5 As the TCEQ Commissioners have
 6 repeatedly stated, land use compatibility is
 7 predominantly a local issue, and the positions of the
 8 local governmental entities are to be given great
 9 weight.
 10 The evidence will show that we have
 11 received a letter of conditional conformance from
 12 CAPCOG predominantly based on two promises: The first
 13 promise is that we will cease accepting waste by
 14 November 1, 2015, and the second promise is we will
 15 never locate a transfer station at this site. These
 16 two promises were also significant factors in securing
 17 the Rule 11 Agreement, which we have reached with the
 18 City of Austin. And after five years of discussions,
 19 the Travis County Commissioners voted not to oppose
 20 the landfill so long as we sought special conditions
 21 to implement these same two promises.
 22 The evidence will also show that as part
 23 and parcel of that long period of negotiations with
 24 Travis County and with the neighbors, we have agreed
 25 to multiple other design and operational changes.

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1 While we obviously haven't been able to resolve our
 2 differences with all of our neighbors, we have been
 3 able to resolve our differences with Pioneer Farms.
 4 This application is unique. I say that
 5 after having done an awful lot of these. This is the
 6 only landfill in Texas that I believe has ever applied
 7 for a permit which delineates a specific operations
 8 termination date, November 1, 2015.
 9 I'd like to put this into a little
 10 perspective, if I can. We presently operate under an
 11 existing permit which has no regulatorily imposed
 12 closure date, just a capacity and geometric limitation
 13 like every other landfill. However, the application
 14 filed in 1994 as a part of the Subtitle D modification
 15 contains a site life estimate that shows that the
 16 existing landfill was projected to close in 2016. The
 17 reason this point is significant is because we are
 18 asking to close earlier than the only estimate we have
 19 ever made and that we have made -- and we made that
 20 estimate in public in a public filing.
 21 The estimate of 2016 was a pretty good
 22 one in 1994. However if the landfill continues to
 23 accept waste at its present rate, we estimate that we
 24 would reach the existing capacity sometime in 2011.
 25 If volumes we receive slow down, either because of

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1 market conditions or business decisions, the site life
 2 would obviously last longer. We estimate up to 2013.
 3 The math is easy. We are only asking for an
 4 approximate four-year or less extension. I'm pretty
 5 sure four years is the shortest landfill site life
 6 expansion ever requested in Texas.
 7 So why are we doing this? The primary
 8 reason that we sought to expand the Sunset Farms
 9 Landfill originally was to attempt to get a reasonable
 10 site life. We've continued to do this in an attempt
 11 to bridge the time where we can get an alternate
 12 landfill to not attempt -- attempt to not lose our
 13 market share while we look for that alternate
 14 capacity.
 15 We believe we provide a valuable public
 16 service to the community at large and believe the
 17 community would be worse off if it lost a cost
 18 competitive landfill. Admittedly, a fixed end date
 19 seemed like a better idea in the early 2000s than it
 20 does now as the window is closing on an alternate site
 21 location, but we committed to this course of conduct,
 22 we have publicly explained our plans, and indeed are
 23 now legally obligated pursuant to contracts and
 24 agreements, and we are still pursuing the alternate
 25 site.

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1 You will hear contentions from the
2 neighbors that this has become too much of a suburban
3 area and that any landfill expansion at all should not
4 be allowed. The neighbors hold this position with
5 regard to not only BFI, but perhaps even more
6 pointedly with regard to our neighbor to the south,
7 Waste Management.
8 We have presented expert opinion in
9 our prefiled testimony from John Worrall and
10 Charles Heimsath delineating how this area of town
11 continues to develop at a rapid rate. On the other
12 hand, you'll see that there's been no objective or
13 expert evidence offered in the prefiled indicating
14 that the community growth trends have been or will be
15 adversely affected by the landfill. Notwithstanding
16 this fact, BFI has tried to be conscious of the
17 concerns of residents.
18 In other unique effort, BFI began its
19 design for the proposed expansion by retaining a team
20 of landscape architects and land use planners in
21 giving them the threshold task of designing a land
22 mass that was as compatible as possible in size and
23 shape with the natural topography and which will be
24 at the end -- in the words of Donna Carter and
25 John Worrall -- painted with native vegetation upon

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1 closure.
2 After they developed the aesthetic
3 design, BFI gave the project to the engineers -- so we
4 did this in a different order than basically ever
5 done -- to ensure that it could be constructed. The
6 landfill we are seeking to permit is much smaller than
7 many of the alternatives considered. And along the
8 way the originally planned 14-acre lateral expansion
9 and an already permitted nine-acre cell were deleted.
10 I spent the bulk of my time in the
11 opening statement on these background and land use
12 issues because they are the ones that require a little
13 more explanation and a little more scene setting. The
14 other major categories in any landfill proceeding are
15 the technical siting, the engineering design and the
16 operational features.
17 Only TJFA has hired technical experts.
18 We believe the evidence will show that these experts'
19 opinions have two things in common: First, that
20 while they reflect creative efforts to do what is
21 commonly referred to as throwing spaghetti at the wall
22 to see what sticks, nothing sticks.
23 A significant number of their criticisms
24 are abstract and ignore the specific facts of the BFI
25 case. You will also learn that in almost every

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1 instance their complaints are not based upon any
2 failure of the application to comply with the TCEQ's
3 regulatory requirements, but a failure of the
4 application to comply with what these experts perceive
5 the design or operational standards should be or
6 omissions from the narrative they believe should have
7 been included.
8 The second thing these four experts have
9 in common is that they all work for Mr. Gregory in
10 various TDSL projects. This is not necessarily a
11 problem per se, but it becomes a problem when the
12 Sunset Farms application is criticized when TDSL has
13 the same or even less restrictive or comprehensive
14 requirements or components.
15 Please be assured that we bring these
16 points up not for the purpose of asserting that there
17 is anything inadequate in TDSL's landfill siting,
18 design or operations, but rather to point out that if
19 they are acceptable to TDSL to these very same
20 experts, we do not understand why these witnesses say
21 they are not acceptable at Sunset Farms. To repeat
22 the applicable phrase, "What's good for the goose is
23 good for the gander."
24 To give you some quick examples, the
25 evidence will show that despite the similarity of the

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1 geologic and hydrogeologic settings, TJFA's witness
2 Pierce Chandler has challenged the adequacy of our
3 borings and soil characterization. This is
4 particularly hard to see as a viable challenge as the
5 landfill is sited in the Taylor Marl, the same
6 formation selected by countless landfills, including
7 every other one operating in the Austin area.
8 Perhaps the most notable of these
9 examples is the allegation that the landfill is
10 leaking, a contention that even TJFA's experts
11 acknowledge is not supported by any confirmed
12 detection in any BFI groundwater monitoring well.
13 Another example -- another example is
14 the fact that the design of the slopes we proposed are
15 challenged by Mr. Chandler are subject to slope
16 failure despite the fact that they are the same slopes
17 found at virtually every landfill in Texas and are the
18 same or less steep than the slopes used at TDSL.
19 As a final example, our closure cost
20 estimate of \$39 million has been criticized as
21 insufficient while TDSL filed a closure cost estimate
22 in 2008 of \$1,288,000. On a per acre apples-to-apples
23 comparison, Sunset Farms Landfill's estimate is
24 approximately 12 times greater than TDSL's.
25 The last portion of the evidence which I

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1 will address is operations. The evidence will show
 2 that we have received one enforcement action in 27
 3 years of our existence. Indeed, we had no NOV's of
 4 any kind for the first 20 years. Then late 2001 and
 5 early -- and the early mid 2002 there were odor
 6 problems with the northeast landfills predominantly
 7 associated with extraordinary rainfall events.
 8 BFI's position from the very beginning
 9 was not to deny the existence of the problem, but
 10 rather to acknowledge there was a problem and it was
 11 part of the problem and to promptly attempt to
 12 determine any potential sources and to implement the
 13 remedy.
 14 In saying that, I want to emphasize that
 15 BFI never agreed, either legally or any dialogue with
 16 any person, that the problem was anywhere near as bad
 17 as the neighbors contended or that BFI was either the
 18 sole, primary or worst source of the problem.
 19 One example of an objective support for
 20 our position comes from the TCEQ's enforcement efforts
 21 themselves. Specifically the evidence will show the
 22 TCEQ dispatched what they called their strike force to
 23 camp out at the landfill for a week in 2002 in the
 24 midst of all the odor complaints to determine whether
 25 either landfill in the northeast was causing the odors

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1 as alleged.
 2 The report on BFI and I believe on the
 3 Waste Management landfill as well, was that there were
 4 no odor violations, and there was no evidence to
 5 support the neighbor's odor nuisance complaints. This
 6 is consistent with the fact that there were hundreds
 7 of odor complaints in that approximate 18-month
 8 timeframe, but only one NOV. One odor violation, some
 9 stormwater discharge violations and a leachate level
 10 violation, we paid a fine of \$28,000.
 11 More importantly, the evidence will show
 12 that in response to these problems BFI took aggressive
 13 and definitive action to deal with the issues notably
 14 BFI constructed sedimentation basins on the west side
 15 of the landfill and installed other erosion controls.
 16 There had been no further erosion or sedimentation
 17 problems since then despite the occurrence of a
 18 greater than 100-year storm event in 2005.
 19 The evidence will also show the
 20 aggressive expansion of the gas collection and control
 21 system and the use of misters at the working face and
 22 vigilant operating procedures have controlled any BFI
 23 odors and reduced the number of odor complaints to be
 24 a very limited few, a significant fact given the
 25 scrutiny that BFI and Waste Management are under.

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1 We realize that there are 12 neighbor
 2 party opponents who obviously remain dissatisfied with
 3 the fact that they live near these two landfills. All
 4 we can say to them is we believe we have remedied the
 5 problem that caused them to be irritated with us, and
 6 we have promised to leave after only four or less
 7 years.
 8 To TJFA, who states that they are in
 9 this case to protect the real estate investment, we
 10 say that we don't understand your business model. But
 11 again, we will be gone by 2015.
 12 The evidence will also show that the
 13 adjacent Waste Management Landfill will be there until
 14 2015 whether we are or not.
 15 Finally, we fully recognize that we have
 16 the burden of proof on the referred issues. The
 17 evidence we have also presented through our 14 expert
 18 witnesses and Mr. Dugas, who in his own right is an
 19 expert in landfill operations and management,
 20 satisfies all the relevant TCEQ regulations, and that
 21 is our burden, to meet the regulatory requirements of
 22 the TCEQ. We submit we have done that and request
 23 that you recommend issuance of our permit amendment
 24 upon completion of this proceeding. Thank you.
 25 JUDGE NEWCHURCH: All right. I think I

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1 indicated in the prehearing conference that all
 2 parties will have an opportunity to make an opening
 3 statement. Traditionally the other parties reserve
 4 their opportunity until they begin their direct case.
 5 Can I assume that everyone else wants to do that?
 6 (No response)
 7 JUDGE NEWCHURCH: Okay. Then we're
 8 ready for evidence. Mr. Gosselink, you may call your
 9 first witness.
 10 MR. GOSSELINK: We call Mr. Ray Shull to
 11 the stand.
 12 JUDGE NEWCHURCH: Mr. Shull?
 13 MR. RENBARGER: Judge, weren't we going
 14 to deal with the motion first?
 15 JUDGE NEWCHURCH: Pardon me?
 16 MR. RENBARGER: Weren't we going to deal
 17 with the motion for leave before the presentation of
 18 this first witness? Perhaps I misunderstood you. I
 19 thought we were going to deal with the motion for
 20 leave to supplement the prefiled testimony prior to
 21 the first witness.
 22 JUDGE NEWCHURCH: I assume at some point
 23 he's going to make that motion once the witness is
 24 called.
 25 MR. RENBARGER: Okay. I'm just making

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1 sure we're not missing our opportunity because we do
2 strenuously object to that.
3 JUDGE NEWCHURCH: I don't think so.
4 MR. RENBARGER: Okay.
5 JUDGE NEWCHURCH: He hasn't offered that
6 yet. I mean, you're talking about what was filed late
7 last week?
8 MR. RENBARGER: That's correct.
9 JUDGE NEWCHURCH: Okay. I think we'll
10 get to that. You haven't waived an opportunity.
11 MR. RENBARGER: Thank you.
12 (Witness sworn)
13 JUDGE NEWCHURCH: Mr. Gosselink?
14 MR. GOSSELINK: Thank you, Your Honor.
15 I'm just getting slightly organized.
16 PRESENTATION ON BEHALF OF
17 BFI WASTE SYSTEMS OF NORTH AMERICA, INC.
18 RAY LEE SHULL,
19 having been first duly sworn, testified as follows:
20 DIRECT EXAMINATION
21 BY MR. GOSSELINK:
22 Q Mr. Shull, will you please state your name
23 and address for the record?
24 A My name is Ray Lee Shull. My business
25 address is Associated Consulting Engineers at 901

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1 South MoPac, Building 2, Suite 165, Austin, Texas
2 78746.
3 Q And what's your current occupation,
4 Mr. Shull?
5 A I'm an engineer.
6 Q And what is your connection with this
7 project?
8 A I'm the overall project manager and the
9 engineer of record for this application.
10 Q Mr. Shull, I'm going to ask you to take a
11 look at what's been marked as Exhibit RS No. 1 and ask
12 you if you can identify that?
13 A Yes, RS-1 is my prefiled testimony.
14 Q Are you familiar with the -- with this
15 application, sir?
16 A Yes, I believe I am.
17 Q And I'm going to ask you if you're familiar
18 with it as Exhibit RS-11?
19 A Yes, I am.
20 Q Okay. And that is a three-volume
21 application, and you don't need to have me bring it up
22 to you, do you, sir, in order to identify it?
23 A I think it's right here next to me at this
24 time.
25 Q Thank you. Does the application that happens

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1 to be right there next to you appear to be a true and
2 correct copy of the application, sir?
3 A As best I can tell, that's correct.
4 Q Did you prepare your prefiled testimony in
5 this proceeding?
6 A Yes, I did.
7 Q And we have just identified that. Is that
8 correct, sir?
9 A That is correct.
10 Q It's RS No. 1?
11 A Yes.
12 Q Okay. Do you have any changes, corrections
13 or additions to that prefiled testimony that you would
14 like to make?
15 A Yes, I do.
16 Q And what are they, sir?
17 A Well, I brought them, and they're identified
18 as RS-42, 43, 44 and 45.
19 Q Would you identify those, please, by
20 explaining what each of those exhibits are?
21 A Yes, RS-42, I believe, is a copy of the Rule
22 11 Settlement Agreement with the City of Austin.
23 Q What is RS-43?
24 A RS-43 is the approval of the revisions to the
25 application that incorporate the requirements of the

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1 Rule 11 Settlement Agreement, and then --
2 Q RS-44?
3 A RS-44 are the actual underlined
4 strike-through revisions to the application that were
5 submitted to the TCEQ prepared under my supervision.
6 Q And RS-45?
7 A RS-45 is the clean copy of those same
8 revisions to the application.
9 Q Okay. And do you have, as part of the packet
10 that you have there, proposed additional text for your
11 prefiled testimony?
12 A Yes, I do.
13 Q Okay. And is that -- is that labeled yet,
14 sir?
15 A It's -- it does not have an exhibit number.
16 It's shown as Attachment C.
17 Q Okay. In the packet that you have before
18 you?
19 A That is correct.
20 MR. GOSSELINK: Okay. Your Honor, may
21 we have a label for that as RS-46?
22 (Exhibit BFI No. RS-46 marked)
23 MR. GOSSELINK: Your Honor, these are
24 the attachments to the motion for leave to supplement
25 that we've all been waiting for. I haven't yet

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1 offered them. We'll get there.
 2 JUDGE NEWCHURCH: Okay.
 3 MR. GOSSELINK: Okay.
 4 Q (BY MR. GOSSELINK) Are you familiar with
 5 what has been labeled as RS-2, your resume, Mr. Shull?
 6 A Yes, I am.
 7 Q Do you have any changes or corrections to
 8 offer for your resume?
 9 A No, I do not.
 10 Q Do you adopt your prefiled testimony here
 11 today as if you had given it all live before the
 12 Court?
 13 A Yes, I do.
 14 Q Okay. I would like you to specifically
 15 identify for the ALJ those portions of the application
 16 which you are sponsoring in this hearing in summary
 17 form.
 18 A I'm sponsoring Part I of the application,
 19 Part II of the application with the exception of the
 20 traffic evaluation and the land use evaluation, and
 21 then the narrative of the site development plan, which
 22 is part of Part III and the entire part of Part IV,
 23 which is the site operating plan.
 24 Q For the benefit of the parties and the Court,
 25 the Bates label numbers for those portions of the

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1 application are: Part I is APP1 through 132, Part II
 2 is 133 through 141 and 206 through 355, with the other
 3 excluded pages being Mr. Worrall's and McInturff's
 4 reports. The narrative portion of Part III is APP356
 5 through 394, and all of Part IV or the site operating
 6 plan is APP1700 through 1816. Thank you, Mr. Shull.
 7 Your Honor, at this point, the applicant
 8 submits Mr. Shull's prefiled testimony, including all
 9 those parts of the application he has sponsored, into
 10 the evidentiary record and seeks to have his prefiled
 11 testimony supplemented per our motion.
 12 JUDGE NEWCHURCH: Okay. So let's start
 13 with the supplement since that apparently is going to
 14 be the most controversial area. And supplement pages
 15 to the prefiled itself, Mr. Gosselink, that's
 16 Attachment C, what you prefiled last week?
 17 MR. GOSSELINK: Yeah, I believe that's
 18 right, Your Honor. I need to be sure. Yes, it is.
 19 JUDGE NEWCHURCH: All right. So why
 20 don't we start with that.
 21 And, Mr. Renbarger, is there objection
 22 to --
 23 MR. RENBARGER: There is objection, Your
 24 Honor.
 25 JUDGE NEWCHURCH: -- Attachment C?

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1 Okay. Go ahead.
 2 MR. RENBARGER: And frankly, I don't
 3 know how Your Honor wants to take this up, but since
 4 there are going to be a number of different witnesses
 5 affecting a number of different parts of the
 6 application affected that are covered in the pending
 7 motion, I think I had kind of hoped perhaps that we
 8 would take it up globally as to whether or not the
 9 motion for leave would be granted at the front end of
 10 the proceedings rather than piecemeal as each
 11 individual witness comes before you.
 12 The reason being is this, is quite
 13 frankly, it is very objectionable to the protesting
 14 parties that this late-filed document right before the
 15 onset of the evidentiary hearings would come into
 16 play. We have known for some time there was a Rule 11
 17 Agreement that the city and the applicant had worked
 18 out dated October the 31st. But again, the only
 19 effect of floating all this stuff out less than 72
 20 hours before the commencement of these proceedings is
 21 for the benefit of surprise and to disrupt the
 22 protestants' case.
 23 We have relied, and I think justifiably
 24 relied, on your order with respect to scheduling and
 25 with respect to prefiled testimony filing, all of

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1 which took place some three months ago roughly for the
 2 applicant's case. Bringing this stuff in here at the
 3 very last minute like this, amending application parts
 4 and all of that, is going to certainly prejudice the
 5 protestants' case because we have been working off of
 6 those prefiled testimony and the parts of the
 7 application covered by the prefiled testimony up to
 8 this point in time.
 9 So basically I think from the standpoint
 10 of not just the additional exhibits that are being
 11 offered through this witness, that we would also
 12 suggest that the filing of this motion and the
 13 inclusion of all of the parts of this motion is
 14 untimely. We would suggest that it is premature in
 15 that if the applicant chooses to amend its application
 16 and seek special provisions in the draft permit
 17 there's a time and a place for that, and that time and
 18 place is during the rebuttal part of the case, not
 19 after the parties have relied on the existing
 20 application and relied on these witness' prefiled
 21 testimony in the preparation of their case.
 22 So it is prejudicial. It is operated as
 23 a surprise, and quite frankly, under the current state
 24 of affairs, it's going to clutter up the record
 25 tremendously trying to figure out which parts of the

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1 application have been changed versus those same things
 2 that will be offered as testimony by our witnesses as
 3 well as our cross-examination of the applicant's
 4 witnesses.
 5 So for all of those reasons, we would
 6 respectfully request that the motion for leave be
 7 denied at this time. And should the applicant seek to
 8 introduce some of this information later on in the
 9 proceedings, that would be the more appropriate time.
 10 Further, I think the Judge is quite
 11 aware of this, as are the parties, any number of cases
 12 often result in special provisions being offered or
 13 proposed into a permit. If that is the case with
 14 these changes, then that opportunity can come at the
 15 end of the proceedings. And should the Commission
 16 ultimately adopt those, then the application may then
 17 be amended to conform to those special provisions.
 18 So again, for all of those reasons, I
 19 think it is prejudicial. I think it operates as a
 20 surprise, and I think it's actually something that is,
 21 quite frankly, untimely under your order.
 22 JUDGE NEWCHURCH: Okay. I'm going to go
 23 to the other parties in a minute just so you don't
 24 think you're being left out.
 25 Mr. Gosselink, I wanted to go back to

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1 you. Now, this came in late last week. I haven't
 2 looked at every page of it closely, but is it at least
 3 your representation as an officer of the Court that
 4 there's nothing in here other than amendments to
 5 conform the application to the Rule 11 Agreement?
 6 MR. GOSSELINK: Yes, that's correct, and
 7 we've shown a redlined strike-out version to identify
 8 where those are, and that's all they are intended to
 9 be, and I think that's all they are.
 10 JUDGE NEWCHURCH: And while admittedly I
 11 haven't focused as closely on the Rule 11 Agreement as
 12 the parties might have, I want to say the substance of
 13 it is a stipulation between you and Austin, between
 14 BFI and Austin, that the permit should contain
 15 additional, more restrictive conditions than what was
 16 previously proposed.
 17 MR. GOSSELINK: That's correct.
 18 JUDGE NEWCHURCH: And, Mr. Renbarger,
 19 you saw the Rule 11 Agreement, I don't know how long
 20 ago, but let's say somewhere between six weeks and
 21 three months ago, something like that. I don't
 22 remember the exact date.
 23 MR. RENBARGER: It was roughly the end
 24 of October, first of November, that is correct. I
 25 might add also that there will be additional changes

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1 other than through this witness covered by the
 2 applicant's motion to do some other amendments as well
 3 to the testimony of other witnesses.
 4 MR. GOSSELINK: I think timing is a good
 5 question, and I'm going to provide -- be sure you
 6 understand one of the key ingredients in the timing
 7 here. The Rule 11 Agreement was reached on
 8 October 31st, and you actually had a hearing about the
 9 perceived trouble that it would cause the protestants
 10 for us to have settled -- other protestants for us to
 11 have settled with Austin. So at least as to that
 12 point in time, all parties knew or should have known
 13 about the Rule 11 Agreement.
 14 Between that point in time and
 15 January 15th, there was a concerted effort on the part
 16 of the protestants to persuade the Austin City Council
 17 to rescind the agreement, both in public presentations
 18 by, among others, Mr. Blackburn and in private
 19 consultations by, among others, TJFA's
 20 representatives.
 21 That decision was in doubt and not
 22 finalized until January 15th. That was Thursday. On
 23 Friday I got this out. I had considerations about the
 24 continued viability of the Rule 11 Agreement, and I
 25 had considerations about not wanting to appear

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1 presumptuous to an Austin City Council that was
 2 attempting to make a decision about whether there was
 3 still an agreement. I had to sit still and wait and
 4 see what happened. As soon as it happened, I filed
 5 this.
 6 JUDGE NEWCHURCH: Do any of the other
 7 parties join in the objection to the admission that's
 8 contained -- the revision of the prefiled that's
 9 contained in the supplemental filing of late last
 10 week? Does anybody else object?
 11 MR. BLACKBURN: NNC joins in the
 12 objection. And I would just state the following: I
 13 appreciate Mr. Gosselink's concern that the city
 14 might, in fact, take some additional action, but
 15 certainly the position that was set forth was there
 16 was full authority to execute the Rule 11 Agreement at
 17 the time it was executed, and -- I mean, literally I
 18 haven't had a chance to review all of the details of
 19 the changed testimony because I was in transit. That
 20 came in late Friday. I did not get a chance to review
 21 all of it.
 22 I mean, if what Mr. Gosselink represents
 23 is true, then all it is is a modification of the
 24 application to conform it to the Rule 11 Agreement,
 25 perhaps that may save us a little time at the front

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1 end, but I just object to the fact that something is
 2 done this late in the process without frankly -- I
 3 mean, I was preparing and working on other issues and
 4 other things. It's not the right time to be receiving
 5 that. And if he felt like he had himself an agreement
 6 early on, he should have been bold enough to go ahead
 7 and change the application. To do it at the last
 8 minute puts us at a disadvantage even further than we
 9 already were. So I join in the objection. I
 10 understand where he's coming from, but I still object.
 11 JUDGE NEWCHURCH: Okay. Anybody else,
 12 any other party?
 13 MR. GOSSELINK: I have further response
 14 if you want -- if would you like.
 15 JUDGE NEWCHURCH: Yes, please.
 16 MR. GOSSELINK: In terms of Order No. 1
 17 entered by Your Honor with regard to prefiled
 18 testimony, it says "Good cause will be determined
 19 primarily based upon the offering parties showing a
 20 need for the additional evidence in either" and then
 21 it gets down to "or the rationale is the other parties
 22 will not be unreasonably surprised by the late
 23 offering of the evidence." There can't be a
 24 contention that they are surprised by what's in the
 25 Rule 11 Agreement. Everything that flows in the other

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1 documents are derived totally from the Rule 11
 2 Agreement. The language of the special conditions are
 3 almost identical to the Rule 11 Agreement, the
 4 proposed special conditions. The change in the site
 5 operating plan is two pages and not even two full
 6 pages. The additional pages that are in the packet
 7 are the result of pagination changes. You know, they
 8 stick something in, it moves the back pages forward.
 9 There are, I believe, six pages that are affected in
 10 Attachment 3 -- or Attachment 6, Part III, a paragraph
 11 at most.
 12 I mean, this is not difficult to deal
 13 with. This is not a surprise, and we can -- we can
 14 disagree about what the most appropriate way to handle
 15 a politically sensitive situation was that I didn't
 16 try to make politically sensitive. I just had to
 17 watch what was happening or attempted to do to the
 18 agreement.
 19 I bring it up now because it seems to me
 20 that it is a focal point of an awful lot of this
 21 hearing. And why not have it on the table first?
 22 It's already in evidence. It's an attachment to each
 23 one of the City's prefiled exhibits. You know, this
 24 is a matter of sort of let's get the meat on the table
 25 and get after it. That's it.

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1 MR. RENBARGER: May I respond, Judge?
 2 JUDGE NEWCHURCH: Yes, sir.
 3 MR. RENBARGER: Okay. I understand
 4 Mr. Gosselink's interest in trying to minimize the
 5 impact of this particular motion, and I fully
 6 appreciate where he's coming from. And, yes, the
 7 Rule 11 Agreement has been bounced around for a while,
 8 and only last Thursday did the city council apparently
 9 choose not to act to either rescind it or otherwise
 10 change it.
 11 I have heard at least some discussions
 12 apparently from city hall that there is still some
 13 discussions going on as between the applicant and the
 14 city for possible further modifications to that
 15 agreement. Perhaps Ms. Noelke can address that for us
 16 on behalf of the city because this may or may not be
 17 the final product we're going to be dealing with.
 18 JUDGE NEWCHURCH: Well --
 19 MR. GOSSELINK: Future settlement, if
 20 any, is really not public dialogue.
 21 JUDGE NEWCHURCH: I think that's a
 22 matter that's confidential. If the parties have
 23 agreed on something more that they want to bring to my
 24 attention at this time, that would be one thing. But
 25 to ask a party to disclose the status of settlement

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1 negotiations is inappropriate.
 2 MR. RENBARGER: My point simply being,
 3 Judge, is that if that dialogue is continuing, then
 4 what we are dealing with here is a Rule 11 Agreement
 5 that may not, in fact, be the final product of which
 6 we are going to be doing an evidentiary hearing on
 7 presumably if you grant this motion. And that will,
 8 again, result in a considerable waste of resources.
 9 JUDGE NEWCHURCH: Okay. Normally I take
 10 a pretty dim view of late amendments to prefiled
 11 evidence, aside from "I made an obvious typo, and I
 12 want to fix that." But this doesn't fall into that
 13 category. This is something that's been on the table
 14 for quite some time. It imposes additional
 15 restrictions that would be included in the permit.
 16 Under those -- and I think there's the
 17 whole -- it makes sense to me, let's put it that way,
 18 without specific evidence. The idea that this is a
 19 politically sensitive matter for the City of Austin
 20 and BFI didn't want to trot into that territory
 21 recklessly makes some sense to me.
 22 So I'm going to allow this amendment to
 23 incorporate the Rule 11 Agreement, and I'm relying in
 24 part on your representation, Mr. Gosselink, that this
 25 supplement does nothing other than that. Should it

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1 develop later in the case that there's other material
 2 here beyond what was in the Rule 11 Agreement -- I
 3 don't think there is -- but should that come up, I'll
 4 have to deal with that later, but it doesn't appear to
 5 be anything other than incorporating the rule.
 6 MR. GOSSELINK: There is nothing in the
 7 documents that I've asked Mr. Shull to sponsor, that's
 8 correct. There is an additional part of my motion to
 9 supplement which has to do with the merger that
 10 occurred between Republic and Allied, the parent
 11 companies, effective December 5th. That would come up
 12 with Mr. Dugas, who we have presently batting last in
 13 the batting order, No. 15.
 14 JUDGE NEWCHURCH: Okay. So the portion
 15 of the motion to supplement concerning the Rule 11
 16 Agreement is granted, and the objection is overruled.
 17 That tees up the offering, I think,
 18 Mr. Gosselink, of RS-1, RS-2, portions of RS-11 and
 19 RS-42 through 46. Is that right?
 20 MR. GOSSELINK: Yes, Your Honor.
 21 JUDGE NEWCHURCH: And you're offering --
 22 MR. RENBARGER: Judge?
 23 JUDGE NEWCHURCH: Yes, sir?
 24 MR. RENBARGER: Excuse me. Before we
 25 get into that, of course I would like to reurge those

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1 objections. But nonetheless, I think we'd also like
 2 to move for a continuance of no less than one week so
 3 we can adapt our case because this is prejudicial and
 4 surprise with respect to this being entered into the
 5 record at this time.
 6 JUDGE NEWCHURCH: That objection -- that
 7 request is overruled. That motion is overruled,
 8 motion denied rather.
 9 And so you want to reurge objections to
 10 those exhibits that I just numbered beyond the
 11 objections to the supplement that you already
 12 described or other objections? I thought the parties
 13 had resolved all the other objections.
 14 MR. GOSSELINK: We had a hearing on
 15 objections, and I believe the prefiled testimony, as
 16 modified, including all of the exhibits for everybody,
 17 including Mr. Shull, are now in evidence and not
 18 subject to any further objection. That's what I
 19 thought the Judge's ruling was.
 20 JUDGE NEWCHURCH: I thought I ruled on
 21 all the objections that the parties had not resolved,
 22 and you're saying that these exhibits conform to those
 23 rulings and agreements concerning prior objections?
 24 MR. GOSSELINK: Yes, they do.
 25 JUDGE NEWCHURCH: Then I don't --

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1 Mr. Renbarger, what beyond that are you -- I thought
 2 those objections were resolved.
 3 MR. RENBARGER: Which objections, Your
 4 Honor?
 5 JUDGE NEWCHURCH: The objections to
 6 Mr. Shull's testimony and the other exhibits that had
 7 been made earlier in the process.
 8 MR. RENBARGER: Oh, indeed. It's the
 9 more recent -- I guess the RS-42 through 45, certainly
 10 those were the ones we were objecting to based on our
 11 most recent discussion. With respect to the earlier
 12 prefiled testimony, I think all those objections have
 13 been resolved, both as to testimony and exhibits of
 14 this witness.
 15 JUDGE NEWCHURCH: All right. So the
 16 objections are overruled. The revisions to conform to
 17 the prior ruling on objections and party agreements
 18 are approved, and Exhibits RS-1, 2, portions of RS-11
 19 described by the witness, RS-42, RS-43, 44, 45 and 46
 20 are all admitted.
 21 (Exhibit BFI Nos. RS-1, RS-2, RS-11,
 22 RS-42 through RS-46 admitted)
 23 MR. GOSSELINK: As are all the other
 24 numbered Exhibits 3 through 10 and 12 through 41.
 25 JUDGE NEWCHURCH: And those are the

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1 attachments to Mr. Shull's --
 2 MR. GOSSELINK: Yes, sir.
 3 JUDGE NEWCHURCH: -- testimony?
 4 MR. GOSSELINK: Yes, sir.
 5 JUDGE NEWCHURCH: And those have been
 6 revised where necessary to conform with the parties'
 7 agreements and to prior rulings?
 8 MR. GOSSELINK: Yes, sir. In
 9 Mr. Shull's case, there was very little, Judge.
 10 JUDGE NEWCHURCH: Right. And is there
 11 any further objection to those Exhibits RS-3
 12 through 10?
 13 MR. RENBARGER: None, Your Honor.
 14 JUDGE NEWCHURCH: Then they are all
 15 admitted.
 16 (Exhibit BFI Nos. RS-3 through RS-10
 17 admitted)
 18 MR. GOSSELINK: And 12 through 41, I'm
 19 sure you meant to say that.
 20 JUDGE NEWCHURCH: No, sir, because you
 21 haven't offered them yet. So now you're offering 12
 22 through 41 as well. Right?
 23 MR. GOSSELINK: I'm sorry. I meant to
 24 offer them.
 25 JUDGE NEWCHURCH: Okay.

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1 MR. GOSSELINK: And now I will.
 2 JUDGE NEWCHURCH: I'm a little rigid,
 3 Mr. Gosselink. Sorry. Well, more than a little.
 4 So 12 through 41. Correct?
 5 MR. GOSSELINK: Yes.
 6 JUDGE NEWCHURCH: And is there further
 7 objection to Exhibits 12 through 41?
 8 MR. BLACKBURN: No, Your Honor.
 9 JUDGE NEWCHURCH: Then they are all
 10 admitted.
 11 (Exhibit BFI Nos. RS-12 through RS-41
 12 admitted)
 13 JUDGE NEWCHURCH: Anything more?
 14 MR. GOSSELINK: I pass the witness, Your
 15 Honor.
 16 JUDGE NEWCHURCH: Pass the witness.
 17 Let's talk about order of cross-examination. Let me
 18 sketch out an order I think will work. Giles first;
 19 Austin; then Travis County; then the Office of Public
 20 Interest Counsel; the Executive Director, which you --
 21 okay. TJFA and Northeast last.
 22 MR. BLACKBURN: Thank you, Your Honor.
 23 JUDGE NEWCHURCH: Does that work? And
 24 so let's begin with Giles.
 25 MR. TERRILL: Your Honor, I have no

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1 questions at this time.
 2 JUDGE NEWCHURCH: Ms. Noelke for Austin?
 3 MS. NOELKE: Thank you.
 4 CROSS-EXAMINATION
 5 BY MS. NOELKE:
 6 Q Mr. Shull, do you understand that when I
 7 refer to the BFI Landfill I'm asking you about the
 8 landfill known as the Sunset Farms Landfill?
 9 A Yes.
 10 Q Thank you. Do you understand that when I
 11 refer to the agreement, I am referring to what is now
 12 Exhibit RS-42?
 13 A Yes, I do.
 14 Q Thank you. Do you agree that to the extent
 15 that RS-43 or any of the changes that you have made in
 16 the site operating plan or the site development plan
 17 described in your exhibits, if those conflict with the
 18 terms "special provisions," that the terms of the
 19 special provisions should control?
 20 A By "special provisions," are you talking
 21 about the special provisions of the permit?
 22 Q Yes.
 23 A Yes, that's correct.
 24 Q Are you asking that the Administrative Law
 25 Judge include the special provisions discussed in your

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1 exhibits for any permit that is issued for an
 2 expansion?
 3 A By the TCEQ, yes.
 4 Q Thank you. With regard to your discussions
 5 of TPDES violations in 2004 -- you discuss that, I
 6 believe, on Page 51 of your testimony.
 7 A Yes, the violations occurred in late 2001 or
 8 2002, and the agreed order was finally signed in 2004.
 9 Q Thank you. Are you aware that those
 10 violations were for discharge of sediment and to
 11 stormwater?
 12 A Yes, that was one of the violations.
 13 Q Would you agree that the agreement between
 14 the City of Austin and BFI reduces the likelihood of
 15 similar violations in the future?
 16 A Yes, I would.
 17 Q With respect to your testimony regarding
 18 sludges and liquid waste, does the city agreement
 19 prohibit the acceptance of such waste -- of liquid
 20 waste at the facility?
 21 A Yes, it does.
 22 Q Is it your opinion that this prohibition will
 23 enhance odor control at the facility?
 24 A Yes, I believe it will.
 25 Q Thank you. Does the agreement between BFI

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1 and the City provide for specifications for soil
 2 composition, fertilizer, irrigation and bed
 3 preparation set out in Exhibit 1 to the agreement?
 4 A Yes, it does.
 5 Q Are these requirements or practices an
 6 improvement to the past practices at Sunset Farms?
 7 A I believe they are.
 8 Q Are you aware that in the past it has taken
 9 two or more years to establish vegetation at the BFI
 10 facility?
 11 A Could you be more specific about where the
 12 vegetation that you're referring to would occur?
 13 Q I believe -- I can withdraw that question.
 14 I'm referring to exhibits of another witness of BFI.
 15 A Okay. Okay.
 16 Q Does the BFI agreement with the City specify
 17 the type of erosion control devices, their specific
 18 location and the timing replacement?
 19 A I think it has the general provisions for
 20 where they would be located and the types, and it also
 21 requires BFI to submit a site development permit
 22 application to the City. I think that would have more
 23 detail about specific locations.
 24 Now, the Rule 11 Settlement Agreement
 25 does have some specific locations for those.

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1 Q Does it also have specific timing?
2 A Yes, it does.
3 Q Do you believe that the agreement between BFI
4 and the City is likely to provide more effective
5 erosion and sedimentation control at the facilities?
6 A Yes, I do.
7 MS. NOELKE: No further questions.
8 JUDGE NEWCHURCH: For Travis County?
9 MR. MORSE: Yes.
10 CROSS-EXAMINATION
11 BY MR. MORSE:
12 Q Mr. Shull, my name is Kevin Morse. I just
13 have a few questions for you. You heard Mr. Gosselink
14 in his opening statement. Is that correct?
15 A That's correct.
16 Q Do you have anything that you disagree with
17 that he said in that opening statement?
18 A No, no, I do not.
19 Q All right. So you worked on this application
20 to the TCEQ for this permit. Is that correct?
21 A Yes, I did.
22 Q What's your understanding of the date upon
23 which this landfill will no longer be able to accept
24 waste?
25 A November 1, 2015.

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1 MR. MORSE: Travis County has no further
2 questions.
3 JUDGE NEWCHURCH: Let's see. Next we
4 said OPIC.
5 CROSS-EXAMINATION
6 BY MS. MANN:
7 Q Good morning. My name is Christina Mann.
8 I'm with the Public Interest Counsel. I have some
9 initial questions about your testimony related to
10 disease vectors. And on Page 54 of your testimony,
11 you state that "The vector control procedures listed
12 in the application are essentially the same practices
13 that BFI has been using" -- do you recall that
14 testimony?
15 A Yes, I do.
16 Q -- "for the past few years." I should finish
17 that statement. Do you know when those vector control
18 procedures were implemented? Is it different from the
19 origination of the landfill?
20 A Yes, it was. The site operating plan was
21 revised in, I think, late 2004, early 2005, and that
22 included the current procedures. So they've been in
23 operation for a little over three years, I believe.
24 Q Do the current procedures include any
25 improvements that were enacted based on past concerns

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1 or complaints from neighbors or regulators?
2 A Yes, yes, it does.
3 Q And was there a noticeable improvement from
4 prior practices to those -- to those practices enacted
5 after the SOPs were altered?
6 A And is your question specific to vector
7 control?
8 Q Yes. I'm sorry.
9 A Yes, yes, I agree with that.
10 Q Okay. Do the SOPs provide a mechanism to
11 allow the public to complain about -- pardon me. Let
12 me rephrase that -- to allow public complaints about
13 odor to be quickly addressed? And if so, how?
14 A The SOP specifically?
15 Q Yes.
16 A I don't know that the SOP has provisions for
17 public complaints, but it does have the requirement
18 for the site manager to address any issues that are
19 apparent to him, whether they come from public
20 complaints, TCEQ, inspection reports or any other
21 source.
22 Q And do you know if BFI has a mechanism for
23 quickly getting complaints to the site manager or how
24 long that would take, or do you know -- and if you
25 don't know, do you know who the proper person would be

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1 to ask that?
2 A Complaints from the source?
3 Q From the public.
4 A I believe that if the public calls BFI
5 directly with their complaint, that they go right to
6 the site manager usually at that time.
7 Q Okay. You're talking on Page 64 of your
8 testimony about a limited working face, a limited
9 working face and size of approximately 200 by
10 200 feet. Do you recall that testimony?
11 A I think that's the unloading area.
12 Q The unloading area?
13 A Yes, which is limited to 200 by 200, that's
14 correct.
15 Q Okay. What is the size of the working face
16 then?
17 A I believe the SOP specifies a maximum size of
18 35,000 square feet.
19 Q Okay. And so would that mean that everything
20 besides the working face would have at least
21 intermediate cover over it, or would it be final
22 cover?
23 A Well, there's -- areas of the landfill can
24 have either daily cover or intermediate cover or final
25 cover except for the working face area.

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1 Q Okay. So it would either have daily,
2 intermediate or final?
3 A That's correct.
4 Q Okay. What's your understanding of the
5 purpose of the buffer zone requirements?
6 A I assume you mean the buffer zone
7 requirements in the TCEQ rules?
8 Q Yes.
9 A They provide a space around the landfill for
10 nonwaste management activities and also a separation
11 distance from the waste management activities to the
12 property boundary.
13 Q Do they provide any -- let me rephrase that.
14 Normally when I think of buffer zones
15 because I do most of water and waste -- or most of my
16 work in wastewater, it's generally for odor control.
17 Is that what the buffer zones are for here, or is it
18 more for aesthetics?
19 A I think that's one of the functions of the
20 buffer zone. It allows for odor dissipation.
21 Q Is there any concerns that the buffer zones
22 don't change in size regardless of how tall the
23 facility becomes? In other words, the buffer zones
24 are only related to the footprint rather than the
25 vertical height. Is that correct?

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1 A Yes. I think you had two questions in there.
2 Q Yes.
3 A Would you ask one question at a time?
4 Q Okay. I'll rephrase. The buffer zone is
5 only related to the footprint rather than the vertical
6 height. Is that correct?
7 A Well, the buffer zone is a horizontal
8 distance measured on site, that's correct.
9 Q And there's no correlation or concern or
10 thought of expansion of the buffer zone to assist with
11 odor control or vector control, et cetera, for when a
12 vertical expansion is --
13 A I don't believe the rules require that the
14 buffer zone be expanded based upon the height of the
15 landfill.
16 Q Okay. I had a little bit of confusion on
17 your testimony on operational hours. It's my
18 understanding that BFI can operate -- is allowed to
19 operate 24/7. Is that correct?
20 A That's correct.
21 Q And does that mean that BFI received
22 additional authority to operate beyond the 7 to 7
23 hours?
24 A I believe they've been -- they've been
25 allowed to operate 24/7 since it was originally

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1 permitted.
2 Q Right. But in your testimony on Page 108,
3 you say waste acceptance hours of an MSW facility may
4 be any time between the hours of 7 to 7, and that's
5 according to the general regs. And then later you say
6 that this landfill is currently authorized to operate
7 and accept waste up to 24 hours per day, 7 days a
8 week. So is that an extension of that general
9 authority?
10 A Oh, I think it's automatically granted the 7
11 to 7 unless authorized by the Executive Director, and
12 that's what BFI has been functioning on since they
13 opened.
14 Q Okay. So in their original permit, they
15 asked for operation for 24/7 and were granted it.
16 Otherwise you're always allowed 7 to 7. Is that
17 correct?
18 A That's correct.
19 MS. MANN: Okay. I have no further
20 questions.
21 JUDGE NEWCHURCH: Ms. White, or is it
22 Mr. Shepherd?
23 MR. SHEPHERD: Thank you, Judge.
24 Steve Shepherd. I apologize for not announcing
25 earlier. The Executive Director does not have any

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1 questions.
2 JUDGE NEWCHURCH: All right. So that
3 takes us to TJFA.
4 CROSS-EXAMINATION
5 BY MR. HEAD:
6 Q Good morning, Mr. Shull. How are you today?
7 A Just fine, Mr. Head.
8 Q Mr. Shull, you served as the engineer of
9 record for the application. Is that correct?
10 A Yes, I did.
11 Q And is it safe to say that you quarterbacked
12 the preparation of the application?
13 A If you want to term it that, yeah, I
14 coordinated and managed the overall production and
15 preparation of the application.
16 Q And your seal is on the cover of this
17 application?
18 A Yes, it is.
19 Q And as the engineer of record, with your seal
20 on the cover, are you vouching for the accuracy of the
21 contents of the application?
22 A The parts that I prepared. Now, we had other
23 people seal individual sections that I can't verify
24 the accuracy of a geology section, but I believe it
25 was prepared properly and in accordance with the

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1 regulations.
 2 Q So as engineer of record, you're not taking
 3 full professional responsibility for the work of
 4 others. Is that your testimony?
 5 A What do you mean by "full responsibility"? I
 6 believe it was done properly.
 7 Q Under the Professional Engineers Act?
 8 A Yes, I can't, I'll say, take responsibility
 9 for nonengineering aspects of it, although I believe
 10 those aspects were done properly.
 11 Q And I think you testified earlier that you
 12 prepared the site operating plan in its entirety, and
 13 you sealed that?
 14 A That is correct.
 15 Q That's Part IV. And I think in response to a
 16 question by Mr. Gosselink, you also sealed or worked
 17 on Parts I and Part II?
 18 A That's correct.
 19 Q But not the traffic and not the land use?
 20 A That's correct.
 21 Q And with regard to the site development plan,
 22 that is Section III of the application. Correct?
 23 A Yes, it is.
 24 Q Okay. You worked on the narrative of that?
 25 A And other parts, yes.

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1 Q And that's what I wanted to get to. What
 2 other portions of the site development plan did you
 3 personally hands-on work on?
 4 A I had oversight responsibility for, I guess,
 5 the entire part of Part III. I assisted the other
 6 engineers with large portions of those, but I'm not
 7 sponsoring anything other than the site narrative or
 8 site development plan narrative.
 9 Q And the site operating plan, is it safe to
 10 say if I was to pick up the La Gloria application, the
 11 Tessman Road application and look at those site
 12 operating plans, it would be very similar to the site
 13 operating plan in this application?
 14 A Yeah, there's a few differences that are site
 15 specific, but in general, they are very similar plans.
 16 JUDGE NEWCHURCH: Mr. Head, just to be
 17 clear, are you referring to other BFI facilities,
 18 Tessman Road and La Gloria.
 19 MR. BLACKBURN: I believe those are BFI
 20 landfills.
 21 JUDGE NEWCHURCH: Okay.
 22 Q (BY MR. BLACKBURN) Did you personally review
 23 the drainage calculations that were included in
 24 Attachment 6 of the Part III?
 25 A Some of them I did, yes.

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1 Q Did you run any of the HEC models?
 2 A No, I did not.
 3 Q Did you run -- do any of the rational method
 4 computations?
 5 A No, I did not.
 6 Q So is it safe to say that you reviewed the
 7 work of others at ACE?
 8 A That's correct.
 9 Q And did you personally review the engineering
 10 calculations with regard to the leachate collection
 11 system?
 12 A I reviewed some of them. I don't think I
 13 reviewed every last calculation.
 14 Q So you didn't verify the computations?
 15 A No, and I didn't do the HELP modeling on
 16 that.
 17 Q And with regard to the gas management plant,
 18 did you personally review the engineering that was
 19 involved with the gas management plant?
 20 A To more of -- a more limited extent than the
 21 previous questions that you had, yes.
 22 Q Did you personally review the geotechnical
 23 analysis and the slope stability analysis in the
 24 application?
 25 A To a very limited extent.

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1 Q So you relied upon other engineers with
 2 regard to the slope stability issues?
 3 A That's correct.
 4 Q And with regard to the geology and
 5 groundwater protection components of the application,
 6 did you have any hands-on work with those sections?
 7 A Other than just general review. I relied on
 8 the geologist and hydrogeologist for those.
 9 Q Okay. So with regard to any computations
 10 with regard to the underdrain system, you didn't do
 11 those computations?
 12 A That's correct.
 13 Q You didn't -- and you relied on other folks?
 14 A Yes, I did.
 15 Q Okay. Now, it's my understanding that the
 16 company you're president of, ACE, did the erosion and
 17 sediment control plan?
 18 A That is correct.
 19 Q Okay. And of all the referred issues that
 20 you opine on in your prefiled testimony, you did not
 21 give an opinion on whether that section of the
 22 application met the rules, although it was prepared by
 23 your folks. I ask, why?
 24 A It might have been an oversight. I certainly
 25 believe that it did.

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1 Q And ACE did the work on the drainage portions
2 of the application. Is that correct?
3 A That's correct.
4 Q And once again, in your prefiled, you did not
5 render an opinion as to whether you thought -- with
6 regard to alteration of natural drainage patterns, you
7 didn't offer an opinion one way or the other whether
8 the application was compliant. Was there a reason you
9 did not render an opinion there?
10 A No.
11 Q Do you believe there's any defect in the
12 drainage analysis included in that application?
13 A No, I do not.
14 Q So by that do you agree there's no
15 significant alteration of natural drainage patterns
16 from the conditions as approved in the 002
17 modification as compared to the postdevelopment
18 conditions in the application?
19 A By the 2002 permit modification, you mean --
20 Q When I refer to the 2002 MOD, that was the
21 drainage MOD which also included the ten-foot
22 extension.
23 A Okay. I just wanted to make sure which MOD
24 we were talking about. Yes, I believe that that
25 requirement has been met.

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1 Q Okay. And have you personally compared the
2 hydraulic analysis in the 2002 MOD to the hydraulic
3 analysis in this application?
4 A In a general sense, yes, I've reviewed both
5 of them, not in a great amount of detail.
6 Q So is it safe to say that you have relied on
7 the work of Mr. Mehevec -- if I've pronounced that
8 right -- and Mr. Holland of ACE to do those
9 computations?
10 A Yes, and Mr. Lewis was involved also.
11 Q Now, the landfill -- as I understand this
12 expansion, it's going to expand over a pre-Subtitle D
13 area as well as a Subtitle D area. Is that correct?
14 A That is correct.
15 Q And most people in this room may know, but
16 could you briefly tell us the distinction between
17 pre-Subtitle D and Subtitle D for the record?
18 A Subtitle D was a federal regulation that
19 required all landfills to meet federal standards. I
20 think it was published in the fall of 1993 and
21 mandated at that time composite liners underneath the
22 landfill of the equivalent -- typically a composite
23 final cover system or equivalent. It also required
24 leachate collection systems and groundwater monitoring
25 wells and I think gas monitoring systems around

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1 landfills. Those were the major requirements. There
2 were other minor issues that it also implemented.
3 Q And when did the Subtitle D regulations come
4 into effect?
5 A I think I said 1993.
6 Q Okay.
7 A And there was an implementation period that
8 most facilities were granted.
9 Q And this facility was permitted in '81.
10 Correct?
11 A That's correct.
12 Q And so there's a certain -- there are certain
13 cells that are pre-Subtitle D?
14 A That's correct.
15 Q And do you -- can you tell me the surface
16 area of those pre-Subtitle D cells?
17 A It's approximately 90 acres.
18 Q And can you tell the Court what portion of
19 the landfill footprint the pre-Subtitle D cells are
20 located in, east, west, north, south?
21 A Well, the total footprint is approximately
22 251 acres, and the 90 acres is in the southeast
23 section of the landfill. That was the first part that
24 was filled.
25 Q And is it true that the pre-Subtitle D area

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1 has no leachate collection system?
2 A That's correct.
3 Q So there's no method for the landfill
4 operator to remove leachate from that pre-Subtitle D
5 area?
6 A No leachate collection system, that's
7 correct.
8 Q So there's no methodology to remove leachate.
9 Correct?
10 A You mean is there no possible methodology, or
11 is there any installed?
12 Q Is there any -- pardon me. I spoke over you.
13 Is there any methodology employed at the
14 landfill today to remove any leachate that would be
15 generated in the pre-Subtitle D cells?
16 A I have to answer when they installed the gas
17 collection wells that are into the waste mass, they
18 drilled those down to somewhat near the bottom liner,
19 whether at the pre-Subtitle D liner or the
20 post-Subtitle D liner. And if excessive liquid is
21 found in those wells, they removed it. It's a fairly
22 simple process to pump that water out.
23 Q Well, isn't it a fact that if you have high
24 leachate levels in your extraction wells, that that
25 impacts the efficiency of those extraction wells?

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1 A Yes, it does.
 2 MR. BLACKBURN: Okay. Your Honor, may I
 3 approach?
 4 JUDGE NEWCHURCH: Yes, sir.
 5 MR. BLACKBURN: And, Your Honor, I don't
 6 know how we want to sequence the exhibit numbers.
 7 JUDGE NEWCHURCH: Generally I prefer
 8 them marked by party and then sequentially. Now,
 9 we've got some witness-specific numbers so it gets a
 10 little off. So, for example, you know, if you don't
 11 have anything else premarked, it would be good to mark
 12 this as TJFA-1.
 13 MR. BLACKBURN: That works.
 14 (Discussion off the record)
 15 (Exhibit TJFA No. 1 marked)
 16 JUDGE NEWCHURCH: Back on the record.
 17 Mr. Head?
 18 Q (BY MR. BLACKBURN) Mr. Shull, have you
 19 reviewed TJFA No. 1?
 20 A You've just handed it to me. So I haven't
 21 reviewed it in detail.
 22 Q I ask if you could review that. Could you
 23 identify this document?
 24 A Well, the cover page is titled "Document
 25 Info, DocID: ACE00000701, a folder from Tim Holland,

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1 Amendment Folder, Filename: Liquid levels1.xls." I
 2 assume that's just a document identification system.
 3 Q Correct.
 4 JUDGE NEWCHURCH: Just a second. Can we
 5 go off the record?
 6 (Discussion off the record)
 7 JUDGE NEWCHURCH: Okay. Back on the
 8 record. Mr. Head?
 9 Q (BY MR. BLACKBURN) I'm not sure where I left
 10 off. Could you identify the second page of the
 11 document that I handed you for the record?
 12 A The second page is a table and it appears --
 13 in the heading part of the table, it's titled Sunset
 14 Farms - Landfill Gas Collection and Control System,
 15 Leachate Level Data dated of 8/23/05.
 16 Q Okay. Thank you. And if you would, do you
 17 see the wells are numbered in the far left column
 18 there?
 19 A Yes, I do.
 20 Q And in the far right column, you'll see a
 21 column entitled Portion of Well Covered by Water.
 22 A I see that column, yes.
 23 Q Now, Well No. 11, what portion of that well
 24 is covered by water --
 25 A The data --

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1 Q -- according to the chart?
 2 A According to this table, it says 5.08 feet.
 3 Q And then skipping down to Well No. 13, we've
 4 got six feet covering that well. Correct?
 5 A That's what the table indicates, yes.
 6 Q The table indicates. Skipping down to
 7 Well 44, the table indicates, does it not, 6.86 feet
 8 of water over that well?
 9 A That's the number presented here, yes.
 10 Q Right. You've got Well 50 with close to six
 11 feet of water. And then I'd like to draw your
 12 attention to the bottom of the chart, Well 63, and can
 13 you just read into the record how much water is
 14 reflected on this chart?
 15 A It says 11.55.
 16 Q And finally, the last well, 121,
 17 approximately how many feet of water is covering that
 18 extraction well?
 19 A This table has 6.97.
 20 Q And, Mr. Shull, are you familiar, as you sit
 21 here today, with the locations of those extraction
 22 wells as of 8/23/05?
 23 A No, I'm not.
 24 Q Well, let me ask you this: If you
 25 had 11 feet of water close to -- covering an

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1 extraction well in a post-Subtitle D area, then you
 2 would have a violation, would you not, of your permit
 3 with regard to limiting leachate to one foot over the
 4 line?
 5 A Yes, I agree with that.
 6 Q And the same with 6.97 for 121, four feet for
 7 Well 60. All the wells that have more than one foot
 8 of water in these extraction wells indicates -- if
 9 it's post-Subtitle D, you're not getting the leachate
 10 out. Correct?
 11 MR. GOSSELINK: Your Honor, I'm going to
 12 object to that question. A, it calls for speculation
 13 and, B, it had an improper predicate. There is water
 14 in the wells that may or may not be leachate, and it
 15 may or may not be at the bottom of the well. He'll
 16 have to establish that this leachate that he's talking
 17 about starts at the bottom and carries up and expands
 18 throughout the entire bottom. Otherwise it's perched
 19 water, and it is not a violation.
 20 JUDGE NEWCHURCH: Mr. Head?
 21 MR. BLACKBURN: Well, my response is the
 22 chart I'm looking at is entitled Leachate Level Data.
 23 It's not entitled Perched Water Level Data. That's
 24 one response.
 25 JUDGE NEWCHURCH: Correct. And your

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1 objection concerning your characterizing it as
 2 leachate is overruled for that reason.
 3 MR. GOSSELINK: Your Honor?
 4 JUDGE NEWCHURCH: Yes, sir.
 5 MR. GOSSELINK: I still object to that.
 6 This is what's in the gas collection system, not
 7 what's in the bottom of the landfill, and he's trying
 8 to reach a conclusion through a witness that's not
 9 sponsoring this that is, I believe, suggesting an
 10 improper hypothetical and calling for speculation, and
 11 I object to the question.
 12 JUDGE NEWCHURCH: Suggesting an improper
 13 hypothetical. So if it was asked as a hypothetical
 14 question, you would still have an objection?
 15 MR. GOSSELINK: I think so. I'd also
 16 include the objection that it is a confusing question
 17 based upon the factors that I have just explained to
 18 you.
 19 JUDGE NEWCHURCH: Okay. Mr. Head, in
 20 order to resolve this, could you reask the question,
 21 please? And if possible, would you pose it as a
 22 hypothetical question along the lines of "Assuming
 23 other evidence will show"?
 24 MR. BLACKBURN: I'll ask a simple -- a
 25 different question.

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1 JUDGE NEWCHURCH: Okay. Very good.
 2 Q (BY MR. BLACKBURN) Mr. Shull, does not this
 3 chart establish leachate levels in the landfill over
 4 one foot?
 5 A Well, this table reports leachate levels of
 6 over one foot.
 7 Q Okay. That's fine.
 8 JUDGE NEWCHURCH: Go ahead.
 9 Q (BY MR. BLACKBURN) In working on this
 10 application, did you -- did you consider as the
 11 engineer of record a separatory liner over the
 12 pre-Subtitle D area?
 13 A Yes, it was considered.
 14 Q All right. And obviously the decision was
 15 made not to install a separatory liner. Correct?
 16 A Yes, there was no regulatory requirement, and
 17 we decided there was no technical need for it.
 18 Q Had you -- had this application been filed
 19 after the 2006 MSW rewrite, isn't it true that for
 20 this expansion there would either have to be a
 21 separatory liner or a demonstration as to why one was
 22 not necessary?
 23 A I believe that's correct.
 24 Q And I think you mentioned for technical
 25 reasons you decided not to do a separatory liner for

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1 our testimony. Is that accurate?
 2 A I think I said we didn't determine there was
 3 a technical need for it.
 4 Q And what did you -- what was the analysis
 5 that resulted in the determination that there was no
 6 technical need for it?
 7 A We came up with no technical basis that
 8 justified its inclusion.
 9 Q Now, when you have waste in a landfill, you
 10 have voids in that waste. Correct?
 11 A Yes.
 12 Q And could you tell the Court what's in those
 13 voids, if you know?
 14 A You've got to be a little more definitive
 15 than that.
 16 Q Okay. From your experience in dealing with
 17 landfills, is there leachate in voids and landfill gas
 18 in voids?
 19 A There may be.
 20 Q All right. And if you have these voids and
 21 you put additional waste on top, will that additional
 22 waste with its poundage have some type of impact on
 23 the leachate and the gas in the voids?
 24 A Could you ask that question again and narrow
 25 it down a little bit? That's a pretty general

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1 question.
 2 Q I'll try to; I'll try to. I'm not a landfill
 3 designer. Is it possible that when you do a vertical
 4 expansion on top of a pre-Subtitle D landfill that
 5 that expansion is going to move the leachate and the
 6 landfill gas outward from its location?
 7 A I don't necessarily agree with that.
 8 Q No?
 9 A No.
 10 Q And why not?
 11 A Well, the reason I asked you to narrow your
 12 question down, there's lots of different types of
 13 voids in a landfill mass. There's soil voids within
 14 the soil particles. There's voids within the
 15 placement of the waste just as the waste was placed.
 16 There's voids -- there's like large appliances that
 17 end up in there, and they have voids in there.
 18 Placing additional --
 19 Q Excuse me. You said that they landfill large
 20 appliances at BFI?
 21 A Toasters, you know, things like that. Of
 22 course, you know, that's part of what ends up in
 23 municipal garbage.
 24 When you add additional waste on top of
 25 that waste mass, yes, that will compress and reduce

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1 the size of some of the voids, some of them, not all,
 2 but I don't know that that has a direct correlation to
 3 what you said as far as forcing the leachate out.
 4 Q And could that expansion cause settlement
 5 problems with the voids in the existing waste?
 6 A What do you mean by "problems"?
 7 Q Cause settlement.
 8 A It would -- I'll agree it will cause
 9 settlement.
 10 MR. BLACKBURN: All right. Your Honor,
 11 if I could ask, since we're just starting this cross,
 12 I was hoping to cross Mr. Shull on some exhibits that
 13 are in the record, they're in the application, so just
 14 to talk to him about those. I'm assuming you have a
 15 copy of the application and everyone has a copy of the
 16 application.
 17 JUDGE NEWCHURCH: I have a copy of the
 18 application. If you could refer to it, I think
 19 they're all Bates stamped. So if you refer to it by
 20 those numbers, that will very much help.
 21 MR. BLACKBURN: Okay.
 22 Q (BY MR. BLACKBURN) Mr. Shull, I'm going to
 23 refer you to -- actually, it was in your prefiled,
 24 RS-3.
 25 A I don't have that with me.

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1 Q You didn't bring your exhibits?
 2 A No.
 3 (Discussion off the record)
 4 (Recess: 10:45 a.m. to 11:00 a.m.)
 5 (Exhibit TC Nos. 1 through 4 marked)
 6 JUDGE NEWCHURCH: All right. Coming
 7 back on the record. And, Mr. Head?
 8 MR. BLACKBURN: Thank you, Your Honor.
 9 Q (BY MR. BLACKBURN) Mr. Shull, I'd like to
 10 draw your attention to the overall excavation plan,
 11 which is Application 000401. Do you have that in
 12 front of you?
 13 A Yes, I do.
 14 Q And for the record, that was also RS-3 in
 15 your exhibits. Correct?
 16 A That's correct.
 17 Q Now, the overall excavation plan does
 18 show at the southern portion of the landfill the
 19 pre-Subtitle D area. Correct?
 20 A Yes, it does.
 21 Q Okay. And I was curious, if you know, the
 22 cells designated 2, 3 and 4 to the west, are those
 23 also pre-Subtitle D cells?
 24 A I don't know.
 25 Q You don't know?

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1 A No.
 2 Q And the reason I ask for the record is we've
 3 got a 1, a 2 and a 3 cell at the far eastern portion,
 4 and then we've got a 2 and a 3 there. So is it
 5 possible that the subtitle -- the pre-Subtitle D area
 6 ends with 1A and 1B?
 7 A I think it extends on to 2, 3 and 4 from the
 8 legend of that drawing, yes.
 9 Q Okay. Is it safe to assume that Cells 20
 10 and 21 at the top of that lightly shaded area are
 11 pre-Subtitle D?
 12 A I believe that's correct.
 13 Q Okay. Now, on this overall excavation plan
 14 at the northern portion, you have a detention and
 15 water quality pond. Do you see that at the top?
 16 A Yes, I do.
 17 Q Now, is that -- is that detention water
 18 quality pond, does that exist as we sit here today?
 19 A Not in its final configuration, no.
 20 Q Okay. Can you tell from this overall
 21 excavation plan whether the demarcation of the
 22 detention water quality pond, that is the final
 23 configuration?
 24 A I believe it's pretty close to the pond
 25 configuration.

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1 Q Okay. And we'll go back on the 2002 MOD
 2 regarding drainage. Is it not correct that MOD
 3 included some sort of detention pond at the area now
 4 designated detention water quality pond?
 5 A Yes, it did.
 6 Q Is it your testimony that that 2002 MOD pond
 7 was smaller than what is depicted -- I mean as
 8 constructed is smaller than what is depicted here?
 9 A Yes, that's correct.
 10 Q Okay. If you could go to the left-hand side
 11 under your notes and read into the record Note 2?
 12 A I'll try to stay near the mic. Note 2 says
 13 "All cells which have not yet received waste may be
 14 used for mulching, grinding, recycling or salvaging
 15 operations and for the temporary stockpiling of
 16 excavated soils or other materials. Areas outside the
 17 landfill footprint, except 100-year floodplain and
 18 areas at least 50 feet from permit boundary, may also
 19 be used for these operations."
 20 Q Okay. So what this tells us is for any cells
 21 not receiving waste, you can mulch, grind, recycle and
 22 salvage. And then for areas outside these cells, you
 23 can do the same activities as long as you're not in
 24 the 100-year floodplain and 50 feet from the permit
 25 boundary. Correct?

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1 A That's correct.
 2 Q Okay. Could you tell the Judge -- indicate
 3 to the Judge on this map where the 100-year floodplain
 4 is on this map?
 5 A It's not shown on this map.
 6 Q Do you -- albeit not shown, can you generally
 7 tell us from this map where the 100-year floodplain
 8 is?
 9 A Well, in very general terms, it's to the
 10 north of the detention or water quality pond extending
 11 over to the northeast portion of the landfill -- not
 12 of the landfill, but of the site.
 13 Q Okay. So as I read -- as I read this, for
 14 instance, south of the detention water quality pond
 15 you could conduct grinding, mulching, recycling and
 16 salvaging operations?
 17 A I believe that's correct.
 18 Q And you can do that anywhere aside from the
 19 100-year floodplain and 50 feet from the permit
 20 boundary. Correct?
 21 A Yes.
 22 Q Okay. And as long as we're here, let's go to
 23 Note 11. Note 11 indicates the "Pre-Subtitle D cell
 24 boundaries taken from approved SLERs for each cell
 25 excavation grades are not available for all areas. In

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1 general, cells were excavated 10 to 14 feet below the
 2 existing ground surface." So my question is -- well,
 3 first, have you reviewed all the SLERs, S-L-E-R, SLERs
 4 from the pre-Subtitle D area?
 5 A I've reviewed some. I don't believe I've
 6 seen all of them.
 7 Q And who made the determination that the cell
 8 boundaries are unknown for some of these SLERs? Is
 9 that based on your review or maybe Mr. Olson's review?
 10 A I don't think that's what this note says.
 11 You said that the boundaries are unknown?
 12 Q It says "are not available." It says "The
 13 cell boundaries are not available for all areas."
 14 A I don't think that's what that says. I think
 15 you're missing a period after the word "cell." It
 16 says "The pre-Subtitle D cell boundaries taken from
 17 approved" --
 18 Q Ah, you're right; you're right.
 19 A -- "SLERs for each cell."
 20 Q So what this tells us is the excavation
 21 grades are not available for all areas?
 22 A I agree with that.
 23 Q Okay. So is that what that tells us? We're
 24 not -- we're not sure -- BFI is not sure from looking
 25 at historical information the excavation grades of

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1 certain cells?
 2 A It's not absolutely to the nearest tenth of a
 3 foot.
 4 Q Okay. One last question on Note 1. You
 5 indicate activities can occur outside of cell areas.
 6 You talk about temporary stockpiling of excavated
 7 soils or other materials. What other materials could
 8 be stockpiled out there?
 9 A Well, and you started by saying Note 1 said
 10 that?
 11 Q Note 2. I'm sorry.
 12 A Note 2 said that. I would only guess other
 13 materials.
 14 Q Excuse me?
 15 A I'd only make a guess at what other
 16 materials.
 17 Q So as you sit here today, you don't know what
 18 the reference was to "other materials"?
 19 A As long as it's not a waste material, which
 20 has to be managed within the landfill, there's a
 21 number of things that could be stored there.
 22 Q Could you give us some examples?
 23 A I'll say roll-off boxes, grass seed.
 24 Q Okay. I'm going to refer you to -- this was
 25 included in your Exhibit RS-4, but also in the

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1 application for ease of reference 000398. That's the
 2 site layout plan. Do you have that in front of you?
 3 A Yes, I do.
 4 Q Okay. Okay. Now, it appears to me that this
 5 site layout plan depicts as the northern portion the
 6 detention pond at full buildout. Is that correct?
 7 A I believe that's correct.
 8 Q Okay. And above the detention pond we have
 9 this existing drainage channel. Do you see that?
 10 A Yes, I do.
 11 Q Would that be the area of the 100-year
 12 floodplain?
 13 A I think the shaded area is generally the
 14 100-year floodplain.
 15 Q Okay. So as we go to the far east where it
 16 expands out, it's your opinion that that would be a
 17 portion of the 100-year floodplain?
 18 A I believe that's correct.
 19 Q Okay. And we discussed this in your
 20 deposition. Right where it says the wording
 21 "detention pond," there's some lines coming down from
 22 the detention pond that appear to be a haul road. Do
 23 you recall the discussion in your deposition regarding
 24 that?
 25 A I believe we discussed that. Yes, I remember

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1 that.

2 Q So for what purpose would they be -- why

3 would a haul road be located at that location?

4 A I believe that it was used as a haul road to

5 a soil stockpile area prior to waste excavation for

6 the cell -- or excavation for the cell.

7 Q Okay. And I'm assuming -- tell me if I'm

8 wrong -- that when the detention pond is actually

9 finalized there will be some excavation to accomplish

10 that goal?

11 A Yes.

12 Q And I'm assuming BFI will save that soil and

13 use it for some sort of cover?

14 A Or, yes, some other purpose.

15 Q Okay. And in order to construct that

16 detention pond, I'm wondering how you would -- from

17 what area you would bring in the heavy equipment to

18 excavate that pond. You certainly couldn't do it from

19 the existing drainage channel, could you?

20 A The equipment is on site right now, and it's

21 off-road equipment. It can just move from wherever it

22 is to that location.

23 Q Okay.

24 A Or if they have a contractor do it, the

25 contractor can bring the equipment into a staging

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1 area. The equipment used for excavation of that

2 detention pond is off-road equipment.

3 Q Right. Maybe my question is not specific.

4 I'm talking about bringing in the equipment, the

5 actual excavation of the detention pond.

6 A Yes.

7 Q Where would the equipment be located when

8 they bring it in to do the excavation?

9 A There's a number of places that could be

10 brought in. They could bring it in through the

11 entrance gate along the access road to an equipment

12 staging area.

13 Q But the heavy equipment would have to be in

14 close proximity, if not adjacent to, the outline of

15 the detention pond in order to do the excavation?

16 A At some point in time, it would be there,

17 yes.

18 Q Okay. And can you envision any scenario

19 where you would have heavy equipment in this existing

20 drainage channel?

21 A Only for a very short period of time if you

22 have to go across it or something like that.

23 Q So logically the excavation of the detention

24 pond would have to occur from the southern portion of

25 where it's delineated on here, southern or eastern

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1 portion. Correct?

2 A No, I don't -- it's up to the contractor to

3 determine how he wants to excavate it. Again, I don't

4 think that there would be a tendency to access it from

5 the drainage channel. There's three other sides of

6 the detention pond you can access it.

7 Q And are you saying that it can be accessed

8 from the western portion as well?

9 A There's room between the landfill footprint

10 and the detention pond, and there's even a road shown

11 at some point in time that you can get to that area.

12 Q But you would agree with me that the largest

13 area between the footprint and the proposed detention

14 pond is south of the proposed detention pond and east

15 of the detention pond?

16 A Yes, I'll agree with that.

17 Q Okay. Mr. Shull, I'm going to refer you

18 to -- these are your exhibits, not in the application,

19 Exhibit RS-7, Sheet 13.

20 A All right.

21 Q Okay. And it's my understanding -- correct

22 me if I'm wrong -- that this is one sheet of 15 which

23 was submitted to the City of Austin to obtain the site

24 development permit for the detention pond?

25 A Among other things, yes.

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1 Q Right, okay. And just for those folks in the

2 room who don't have this in front of you, what we have

3 here is we have a schematic of the proposed detention

4 water quality pond. Correct?

5 A That's correct.

6 Q All right. And then above that we have -- I

7 think it's referred to as Ditch K with Pool A, Pool B

8 and Pool C above there.

9 A Yes, I see that.

10 Q All right. Now, to the far right, there's a

11 shaded area close to the boundary of the landfill.

12 Could you read the notation which is inside that

13 shaded area?

14 A It says "Existing wetland area to be

15 preserved."

16 Q Okay. So we've established that that is a

17 wetland?

18 A That's correct.

19 Q All right. I refer your attention to the

20 Horizon report, which was included in Volume 1 of the

21 application, and the reference is APP000218.

22 A Would you like for me to get that?

23 Q Yes; yes, please.

24 MR. BLACKBURN: While he's digging it

25 out, it's going to be 000218, 000228.

23 (Pages 89 to 92)

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1 A What was the page number again?
 2 Q (BY MR. BLACKBURN) I'm sorry, Mr. Shull. It
 3 was 000218 is the beginning of the Horizon report.
 4 A Yes, okay.
 5 Q Do you have that?
 6 A I'm there, yes.
 7 Q Okay. And the Horizon report was submitted
 8 to the U.S. Army Corps of Engineers for a
 9 jurisdictional determination of wetlands. Is that not
 10 correct?
 11 A That's correct.
 12 Q All right.
 13 MR. GOSSELINK: Your Honor, I'd like to
 14 interpose an objection.
 15 JUDGE NEWCHURCH: Yes, sir?
 16 MR. GOSSELINK: Wetlands is not a
 17 referred issue in this case. So to whatever extent we
 18 are now going into cross-examination on wetlands, I
 19 would object it's not a referred issue.
 20 JUDGE NEWCHURCH: Mr. Head?
 21 MR. HEAD: And my response is if you
 22 look at the regulations with regard to protecting
 23 surface water quality, it includes protection of
 24 wetlands.
 25 MR. BLACKBURN: And I'd like to join in

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1 with that, too. I think that absolutely is part of
 2 surface water drainage, and it has been referred.
 3 MR. GOSSELINK: Surface water drainage
 4 is obviously something that has been referred. It has
 5 been the subject of discovery in terms of are you
 6 significantly altering natural drainage patterns.
 7 When we asked whether Mr. Sherrod could be excused
 8 because of the endangered species issue, no one has
 9 identified wetlands as a separate issue. Wetlands did
 10 not come up as a separate issue in the referral
 11 process. Wetlands is not a separately referred issue,
 12 and I think it is sufficiently distinct that it is not
 13 an appropriate subject for cross-examination.
 14 JUDGE NEWCHURCH: All right. Let's do
 15 this: Let me get out the Commission's referral order,
 16 a copy of which is probably somewhere in evidence, but
 17 I have within my SOAH files the order that was
 18 transmitted to my office by the Commission, by the
 19 Chief Clerk.
 20 Mr. Head and Mr. Blackburn, you say that
 21 it's included within one of these issues. Could you
 22 be more specific, please? Can you identify it by
 23 letter?
 24 MR. BLACKBURN: Let me take a shot and
 25 see. If Jim needs to back me up, we'll see. Referred

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1 issues is groundwater and surface water protection.
 2 JUDGE NEWCHURCH: Which one are you
 3 referring to? We've got letters.
 4 MR. BLACKBURN: (c).
 5 JUDGE NEWCHURCH: (c), okay.
 6 MR. BLACKBURN: All right. And Section
 7 330.55 says "A facility shall not cause discharge of
 8 solid wastes or pollutants adjacent to or into waters
 9 of the state, including wetlands, that is in violation
 10 of the requirements of Texas Water Code." It also
 11 states "A discharge of pollutants into waters of the
 12 United States, including wetlands, that violates any
 13 requirement of the Clean Water Act, including, but not
 14 limited to, NPDES requirements under 402." It also
 15 states "A discharge of dredged or fill material to
 16 waters of the United States, including wetlands, that
 17 is in violation of the requirements under Federal
 18 Clean Water Act, 404."
 19 JUDGE NEWCHURCH: And that's within --
 20 MR. BLACKBURN: And (d) -- let me
 21 finish, if you don't mind.
 22 JUDGE NEWCHURCH: Go ahead.
 23 MR. BLACKBURN: "A discharge of nonpoint
 24 source pollutants into waters of the United States,
 25 including wetlands, that violates any requirement of

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1 an area-wide or state-wide water quality management
 2 plan that has been approved under Federal Clean Water
 3 Act, 208 or 319, as amended."
 4 JUDGE NEWCHURCH: So those are -- your
 5 citation was to 30 TAC 330.55. The Commission refers
 6 to (b)(1). Are you saying that those provisions you
 7 just read -- I have to ask because this is a situation
 8 where the rules are -- I have them on disk, but I
 9 don't have a copy of the rule.
 10 MR. HEAD: Your Honor, I'm looking at
 11 the referral list, which includes 330.55(b)(1).
 12 JUDGE NEWCHURCH: Yes.
 13 MR. HEAD: And the list I just read you
 14 was from 330.55(b)(1).
 15 MR. BLACKBURN: There it is.
 16 JUDGE NEWCHURCH: Okay. I'm looking at
 17 what apparently is that rule.
 18 Mr. Gosselink, are you saying -- what
 19 are you saying? This appears to have some reference
 20 to wetlands.
 21 MR. GOSSELINK: It does have some
 22 reference to wetlands. I can see that, too.
 23 JUDGE NEWCHURCH: Yes.
 24 MR. GOSSELINK: And I'd like to reserve
 25 the opportunity to go check something because I don't

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1 remember for sure, but I think wetlands was one of the
 2 issues that was not referred. It was a proposed
 3 provision, and it was not referred. If that's the
 4 case, I think that has a bearing on your potential
 5 ruling. If it's not the case, then it has bearing on
 6 what I do. I need to bring Mr. Sherrod back after I
 7 told him he was free to go. So, you know --
 8 MR. BLACKBURN: And, Your Honor, I would
 9 just say the mere fact that wetlands was put forward
 10 as a separate issue, the fact that the referral was to
 11 rules as opposed to an issue I think -- or to an issue
 12 within inclusion of a rule would be a way of
 13 addressing, frankly, what was requested.
 14 MR. GOSSELINK: Well, that could be
 15 correct, but if -- and I'm not representing that I
 16 know this or remember this accurately. I think there
 17 was a proposed issue for wetlands, which was
 18 specifically requested and not referred, which would
 19 be a specific act which would trump over some
 20 inference that (b)(1), which is the subject of all of
 21 the drainage issues and an issue that we discussed at
 22 great length with Mr. Stecher and our witnesses
 23 discussed at great length, not related to wetlands.
 24 It related to hard core drainage and hydrology. I
 25 think that's a general referral. I think the specific

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1 act would control, but I'm not representing that my
 2 memory at this age is that pure.
 3 JUDGE NEWCHURCH: Okay. Well, for the
 4 time being at least, I'm going to overrule your
 5 objection. There does seem -- there's certainly
 6 references to wetlands within 330.55(b)(1). I don't
 7 pretend to understand all the implications of that,
 8 but to the extent you're saying any consideration of
 9 the impact on wetlands is off the table, this seems to
 10 say the contrary. So your objection is overruled.
 11 And you might want to reurge your objection at some
 12 point once your memory is refreshed.
 13 MR. SHEPHERD: And, Your Honor, if I may
 14 on behalf of the Executive Director?
 15 JUDGE NEWCHURCH: Mr. Shepherd?
 16 MR. SHEPHERD: I believe the agency does
 17 look at wetlands issues in two different parts of the
 18 rules. The other rule that may have been discussed
 19 before the Commission is 330.302. It's in an area
 20 that we refer to as location restrictions. And so
 21 there may be two separate types of considerations
 22 related to wetlands. I just wanted to make you aware
 23 of that, and I will go back and also try to review how
 24 that issue was dealt with at the Commission.
 25 JUDGE NEWCHURCH: Okay. First of all,

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1 your objection is overruled.
 2 Second, for evidentiary purposes, I'm
 3 not going to try in the midst of an extremely
 4 complicated regulatory scheme to make evidentiary
 5 rulings that might preclude something that ultimately
 6 is relevant to a referred issue. So I'm going to err
 7 on the side of letting evidence in. If it turns out
 8 in the long run there's no requirement and the parties
 9 argue that convincingly in posthearing briefs, then
 10 we've got evidence in the record that wasn't
 11 necessary, but that's no harm, no foul.
 12 MR. GOSSELINK: Thank you. I've learned
 13 something. I need to potentially bring Mr. Sherrod
 14 back into the witness list.
 15 JUDGE NEWCHURCH: Okay. So back to you,
 16 Mr. Head. Objection overruled.
 17 MR. BLACKBURN: Thank you, Your Honor.
 18 Q (BY MR. BLACKBURN) Mr. Shull, I would draw
 19 your attention to APP000225, which is Figure 3.
 20 A All right. I'm looking at that.
 21 Q Okay. Does not that figure delineate a
 22 3.5-acre wetland to the -- in the northern portion of
 23 the landfill boundary and north of the footprint?
 24 A It identifies it as a jurisdictional area in
 25 the legend.

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1 Q On Figure 3, you see the green drawing at the
 2 northern part? Does it not state "Wetlands
 3 3.5 acres"?
 4 A Yes, it does.
 5 Q Okay. And then it also -- you also have to
 6 the far eastern corner, we have a green area as well,
 7 which is designated as a wetland. Correct?
 8 A It's designated as a pond.
 9 Q And is that not the same pond we discussed on
 10 the prior exhibit where the notation was "Wetland
 11 area, do not disturb"?
 12 A Yes, it is.
 13 Q Okay. Now, could you turn to 000227,
 14 Figure 4?
 15 A Yes.
 16 Q Once again, we see the 3.5 wetland area.
 17 Correct?
 18 A That's labeled that, yes.
 19 Q Right. And the pond at the northeastern
 20 portion. Correct?
 21 A That's correct.
 22 Q And is it not accurate to say that what is
 23 designated as a 3.5-acre wetland would be -- is
 24 located south and to the east of the
 25 soon-to-be-constructed detention pond?

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1 A That's correct.
 2 Q All right. And I refer you to Page 000226,
 3 Section 2.3. Could you read the last sentence of
 4 Section 2.3?
 5 A The last sentence says "Based upon proposed
 6 plans from the landfill engineer, the identified
 7 wetland will not be impacted" --
 8 Q Okay.
 9 A -- "(Figure 4)."
 10 Q Thank you. And then could you also read on
 11 the same page under 3.0, which is entitled TCEQ 30
 12 TAC 330.302, Determination, could you read the last
 13 sentence?
 14 A The last sentence on that page?
 15 Q Yes, sir.
 16 MR. GOSSELINK: What's the APP number
 17 again, please?
 18 MR. BLACKBURN: I'm sorry, Paul. It's
 19 000226.
 20 A The last sentence on that page reads "Neither
 21 of these areas will be affected by the proposed
 22 expansion."
 23 Q (BY MR. BLACKBURN) Okay. And those areas
 24 include the pond and the 3.5-acre wetland. Correct?
 25 A It refers to the pond in the northeast corner

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1 and the wetland described above?
 2 Q Yes.
 3 A Yes.
 4 Q Okay. And we're through with that exhibit.
 5 Turning to your prefiled, the original
 6 version, Page 47.
 7 A I'm on Page 47.
 8 Q Okay. You indicate on Line 1 that "An MSW
 9 facility must apply for a TPDES stormwater permit by
 10 submitting a Notice of Intent to discharge stormwater
 11 under the Texas General Permit application. After
 12 this application is accepted by the TCEQ, the site
 13 must also prepare a Stormwater Pollution Prevention
 14 Plan and implement the procedures contained within
 15 that plan at the site." Is that correct?
 16 A That's correct.
 17 Q Okay. Now, Mr. Shull, isn't it true that the
 18 mere fact that a facility has a TPDES multisector
 19 stormwater permit and the mere fact that it has a
 20 stormwater pollution prevention plan, that does not
 21 guarantee compliance with the terms of that permanent?
 22 A I would agree with that.
 23 Q All right. And isn't it true that the BFI
 24 facility is covered by two separate sectors of the
 25 multisector stormwater permit?

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1 A What two sectors are you referring to?
 2 Q My question was, do you know what segments
 3 within the stormwater permit cover the BFI landfill?
 4 A Segments of the multisector permit?
 5 Q Yes. The multisector permit has many
 6 different sectors. Okay?
 7 A Yes.
 8 Q And I'm wondering if you know, as you sit
 9 here today, what sectors apply to the BFI landfill?
 10 A I know the sector related to discharges from
 11 the landfill apply. I'm not sure what the other one
 12 you're referring to is.
 13 Q Okay. So you do not know, as you sit here
 14 today, whether the recycling requirements of the
 15 general stormwater permit apply to the BFI landfill?
 16 A No, I don't believe that they do, but I'm
 17 not -- without looking at those, I can't make a
 18 determination on that.
 19 Q So is it safe to say that you have not done
 20 an exhaustive review of the BFI stormwater pollution
 21 prevention plan in the permit in RS-36?
 22 A RS-36 was --
 23 Q The stormwater plan.
 24 A I've done a review. I don't know how you
 25 qualify it as exhaustive. I did not prepare that

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1 plan.
 2 Q Okay. But as engineer of record, you today
 3 cannot tell us whether the facility is covered by the
 4 recycling segment of the general permit which you're
 5 testifying to in your prefiled?
 6 A The landfill is certainly covered by that
 7 portion of it.
 8 Q Okay. You prepared the SOP -- correct -- the
 9 site operating plan?
 10 A Yes, I did.
 11 Q Can you recall any discussion within the SOP
 12 of -- that is directed to the recycling activities at
 13 the landfill?
 14 A Could you define "recycling" a little bit
 15 better than just the general term recycling? Because
 16 they do recycling inside the office.
 17 Q Okay. Is there not a designated area in the
 18 landfill for recycling?
 19 A At one time, there was a brush collection
 20 area, and they recycled that as compost -- not
 21 compost, but mulch throughout the facility. And I
 22 know they collect large -- called white goods,
 23 refrigerators and stoves like that and recycle those.
 24 Q And where was that area located?
 25 A It was the citizens' collection area. I'm

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1 not exactly sure where they stored collected equipment
2 or trash.
3 MR. BLACKBURN: Could we go off the
4 record just one second while I find an exhibit?
5 JUDGE NEWCHURCH: Yes, sir. Off the
6 record.
7 (Discussion off the record)
8 JUDGE NEWCHURCH: Back on the record.
9 Q (BY MR. HEAD) Mr. Shull, I refer your
10 attention to Exhibit RS-36.
11 MR. BLACKBURN: I'm sorry. What did you
12 say, J.D.?
13 MR. HEAD: I think it's RS-36, Jim.
14 It's the stormwater pollution prevention plan.
15 A Yes.
16 Q (BY MR. HEAD) And could you go to Page 169
17 of the stormwater pollution plan?
18 A All right.
19 Q Okay.
20 A Yes.
21 Q This is entitled SWP, Attachment 6, Site
22 Plan, Sunset Farms Landfill. Correct?
23 A Yes, it is.
24 Q Okay. And at the northern portion, you have
25 your stormwater detention pond. Correct?

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1 A That is correct.
2 Q And that would be the pond not as
3 contemplated from the expansion, but the pond that was
4 included in the 2002 MOD. Is that correct?
5 A That is correct.
6 Q All right. Now, directly below the
7 stormwater detention pond area, what's that
8 designation?
9 A It's labeled in this drawing as the recycling
10 area.
11 Q Okay. And that recycling area below the
12 pond -- and do we know what was recycled there? And
13 for clarity purposes, the date of this is -- of this
14 map is 11/13/06.
15 A That's correct. I think that was where brush
16 was stored prior to grinding.
17 Q Okay. If Mr. Dugas had testified in a
18 deposition that white goods were stored there without
19 CFCs, would you have any argument with that testimony?
20 A I don't know if they were or were not.
21 Q Okay. And those arrows, do you see those
22 arrows -- my bad Texas accent -- the arrows by the
23 recycling area and the stormwater detention pond?
24 A Yes, I do.
25 Q They're pointing towards Outfall 1. Correct?

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1 A That's correct.
2 Q In this recycling area is in the vicinity of
3 that 3.5-acre wetland. Is it not?
4 A Well, I don't --
5 Q We can refer back to the Horizon exhibit if
6 you choose.
7 A Yeah, it's generally in the same area. I'll
8 agree with that.
9 Q Now, I'd like to draw your attention to
10 APP000399.
11 A Are we in the application?
12 Q We're in the application.
13 MR. HEAD: I apologize to all
14 participants for jumping around like this.
15 MR. GOSSELINK: APP what?
16 MR. HEAD: 399.
17 A All right.
18 Q (BY MR. HEAD) Okay. And this was prepared
19 by Mr. Mehevec. Am I saying that right?
20 A No, it's Mehevec.
21 Q Mehevec. I'll try to do better. Mr. Mehevec
22 sealed in as of 8/22/06?
23 A That's correct.
24 Q And this is the site layout plan. In the
25 eastern portion right in the middle, there's a

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1 designation of a "white goods and drop-off and
2 storage" area.
3 A Yes, I see that.
4 Q Do you know that this drawing was drawn
5 before the 11/13/06 SWP attachment, which showed the
6 recycling area up around the stormwater detention
7 pond?
8 A The date of this drawing is August 22, 2006.
9 Q Right. And the other drawing, just for the
10 record, was 11/13/06.
11 My question is, where it says "white
12 goods drop-off and storage," do you know today from
13 your visits to the facility if that is the area where
14 white goods are being dropped off and stored?
15 A I believe that's correct.
16 Q The liquid waste stabilization basin that's
17 delineated on here, which is in the same general
18 vicinity, does that stabilization basin still exist?
19 A No, it does not.
20 Q Has it been concreted over or filled or how
21 did --
22 A It's been removed.
23 Q All right. The drainage -- you have
24 familiarity with drainage in your professional
25 experience, do you not?

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1 A Yes, I do.
2 Q The drainage from the area where the white
3 goods drop-off storage is, do you know what outfall
4 that drains into?
5 A Well, I need to correct my previous
6 testimony. I was a little disoriented about where
7 this white goods and drop-off storage area was. That
8 area has now been excavated, and that's part of the
9 last cell.
10 Q Okay.
11 A So that's not being used for white goods
12 storage as I previously offered that opinion.
13 Q Okay. As you sit here today, do you know
14 where they're storing the white goods?
15 A No, I don't.
16 Q Okay. And white goods, just so I'm clear,
17 that's refrigerators and ovens and things like that?
18 A It's generally large appliances, yes.
19 Q I'm going to refer you back to RS-36, the
20 stormwater plan.
21 A All right.
22 MR. HEAD: Off the record one second,
23 Judge.
24 JUDGE NEWCHURCH: Yes, sir. Off the
25 record.

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1 (Discussion off the record)
2 MR. HEAD: Back on.
3 JUDGE NEWCHURCH: Back on.
4 Q (BY MR. HEAD) Starting on Application
5 013398 --
6 MR. BLACKBURN: Where are you, J.D.?
7 MR. HEAD: I'm in RS-36, which is an
8 exhibit. It's the stormwater plan, and where I'm
9 going to is the quarterly visual monitoring checklist.
10 MR. GOSSELINK: What page?
11 MR. HEAD: It starts at 013398 Bates
12 label.
13 Q (BY MR. HEAD) Tell me your Bates label.
14 A My version is not Bates labeled.
15 JUDGE NEWCHURCH: Mine is not either.
16 MR. BLACKBURN: Mine is not either.
17 MR. HEAD: Okay.
18 JUDGE NEWCHURCH: Do this, Mr. Head. In
19 the lower left-hand corner, is there a page
20 designation on the right?
21 MR. HEAD: Judge, let me see what
22 everyone else is working off of.
23 JUDGE NEWCHURCH: Okay. Off the record.
24 (Discussion off the record)
25 JUDGE NEWCHURCH: Okay. Back on the

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1 record.
2 MR. HEAD: This would be Page 209,
3 Attachment 10.
4 A All right.
5 Q (BY MR. HEAD) Okay. And this is a -- we've
6 been through this before. This is the Quarterly
7 Visual Monitoring Checklist. Correct?
8 A Yes, that's correct.
9 Q And quarterly monitoring of the stormwater
10 outfalls is required under the multisector stormwater
11 permit. Is that correct?
12 A Yes, it is.
13 Q Okay. And I'll represent to you that we have
14 monitoring checklists from January '07 through
15 6/30/08. Do you recall you and I going through those
16 at your deposition?
17 A Yes, I do.
18 Q Okay. I'd like to go through those today
19 briefly. On Page 210, we have -- at the top column,
20 we have the total amount of rainfall .63 inches. Do
21 you see that?
22 A Yes, I do.
23 Q All right. And the notation from Everett
24 Moore, who signed at the bottom, was "Could not sample
25 outfall, was not during daylight hours." Right?

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1 A Yes.
2 Q Okay. Turning to Page 217, we have reports
3 starting 5/14/08 where there was .15 inches of
4 rainfall and Mr. Moore indicated there "Was not enough
5 rainfall to runoff, no discharge from outfall."
6 Right?
7 A Yes.
8 Q Now, on 3/10/08, and that page number is
9 starting at 222 at the bottom, there was a 1.06-inch
10 rainfall, and the notation by Mr. Moore is "Could not
11 check outfalls in first 30 minutes due to it was dark
12 and dangerous lightning." Right?
13 A Yes, that's correct.
14 Q Page 228, it's dated 2/15/08. At the top of
15 the checklist, we've got a total rainfall of .34, and
16 Mr. Moore indicates there was "No discharge at
17 outfalls"?
18 A That's correct.
19 Q All right. So so far we haven't picked up
20 any samples. Correct?
21 A That's correct.
22 Q All right. We'll try to go quicker.
23 Page 234 is 12/18/07, no rain, no sample?
24 A That's correct.
25 Q All right. And the same with 9/8/07, that's

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1 the date starting on Page 241, "no rain event," no
 2 samples?
 3 A That's correct.
 4 Q If you go to 6/20/07, which starts at
 5 Page 246 at the bottom, the total rainfall amount is
 6 1.34 inches. Correct?
 7 A Yes.
 8 Q Okay. And the notation to the far right is
 9 "Could not get sample in first 30 minutes due to
 10 lightning." Correct?
 11 A That's what it says, yes.
 12 Q All right. And just for completeness of the
 13 record -- and we're going through these different
 14 checklists, there's notation for Outfall 1 through
 15 Outfall 6 for each one of these dates. Right?
 16 A Yes, that's the six outfalls at the site.
 17 Q All right. And you would agree with me that
 18 we're picking up from Everett Moore the same notations
 19 for each one of the outfalls?
 20 A I believe that's correct.
 21 Q All right. Let's go to the page that's 252,
 22 the date is 5/2/07.
 23 A Yes.
 24 Q We've got a four-inch rainfall, according to
 25 the report. Correct?

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1 A That's correct.
 2 Q And the notation from Mr. Moore is "Could not
 3 get sample event, happened at night, not a qualifying
 4 event"?
 5 A That's correct.
 6 Q I'm getting close to the end of this.
 7 Page 258 at the bottom, date 4/30/07, we had,
 8 according to the report, a quarter inch rainfall and
 9 could not get any samples. He said there was no
 10 discharge.
 11 A That's correct.
 12 Q Right?
 13 A Yes.
 14 Q Page 264 at the bottom, date 3/26/07, total
 15 rainfall amount 1.2 inches, according to Mr. Moore.
 16 This indicates "Could not get grab sample, event was
 17 not qualifying event due to rain the previous night"?
 18 A Yes, that's what it says.
 19 Q And last starting at Page 270 at the bottom,
 20 we have 1/4/07. We had a one-inch rain, 1.02 inches
 21 of rain, and the notation was "Could not get sample,
 22 rain event occurred after hours"?
 23 A That's correct.
 24 Q All right. So in summary, we have six dates
 25 where we have rain events over an inch and never was a

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1 sample taken. Is that correct?
 2 A I wasn't counting the number of days, but
 3 that would be correct if that is correct.
 4 Q It's five. I stand corrected.
 5 A Okay.
 6 Q Now, I want to turn your attention to an
 7 attachment in the same -- in the same exhibit,
 8 Mr. Shull, Attachment 13, Sampling Data and Report
 9 Forms.
 10 A All right.
 11 Q And you may want to take just a second to
 12 review that before we get into it, but I'm going to --
 13 I'm going to indicate to you that every one of these
 14 samples is just from one date, but please feel free to
 15 go through there and verify that.
 16 A That appears to be the case.
 17 Q And the dates of all these samples is
 18 June 20, 2007. Right?
 19 A Yes, that's correct.
 20 Q All right. Now, going to Page 300, those are
 21 sample results for Outfall No. 1. Correct?
 22 A That's correct.
 23 Q And if you'll go to the following Page 301,
 24 302, 303, 304, those are for Outfalls 2, 4, 5 and 6.
 25 Right?

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1 A Yes, that's correct.
 2 Q Now, you notice that Outfall 1 is looking at
 3 chemical oxygen demand, total suspended solids,
 4 aluminum total, copper, iron, lead and zinc. Do you
 5 see that reflected there?
 6 A Yes, I do.
 7 Q Okay. And turning the pages, the other
 8 outfalls are only looking at total suspended solids
 9 and iron?
 10 A That's correct.
 11 Q Do you know why, as you sit here today, that
 12 for Outfall 1 there were additional samples taken?
 13 A No. I have a guess, but I don't know for
 14 certain.
 15 Q What would your guess be?
 16 A They're sampling in accordance with their
 17 TPDES permit and the stormwater pollution prevention
 18 plan, and it has different parameters for different
 19 outfalls.
 20 Q Let me suggest to you that you have specific
 21 parameters for Outfall 001 because that's where your
 22 recycling water leaves the site.
 23 A I don't know.
 24 Q Okay. And drawing your attention to
 25 Page 303, which is Outfall 5 results, what are the

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1 results, according to Austin Analytical Labs, for
 2 total suspended solids?
 3 A They're reported as 240 milligrams per liter.
 4 Q And are you aware of what the TSS benchmark
 5 number is in the general permit?
 6 A The benchmark number is 100 milligrams per
 7 liter.
 8 Q And would you agree with me that at least
 9 with regard to RS-36, we have only one date of
 10 analytical samples, and on that date at least one
 11 outfall exceeded the benchmark number?
 12 A Yes.
 13 Q In the application and in prior testimony,
 14 you indicated that the maximum size of the working
 15 face would be 35,000 square feet. Is that correct?
 16 A Yes.
 17 Q And that's on Application 001735?
 18 A Would you like for me to refer to that?
 19 Q You may want it handy.
 20 MR. HEAD: Your Honor, could I approach?
 21 JUDGE NEWCHURCH: Yes, sir.
 22 (Exhibit TJFA No. 2 marked)
 23 JUDGE NEWCHURCH: Back on the record.
 24 Just to stay up to date as we go, Mr. Head, I don't
 25 show you offering TJFA-1. Did you want to offer that?

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1 MR. HEAD: I want to offer that.
 2 JUDGE NEWCHURCH: Is there objection to
 3 the admission of TJFA-1, which actually is an excerpt
 4 of a portion of the application, I think?
 5 MR. GOSSELINK: Your Honor, I think I
 6 would object to that. I'm not sure where this came
 7 from, and I don't -- to the extent Mr. Shull has
 8 merely agreed that it says what it says, but it hasn't
 9 been authenticated, to the best of my knowledge, by --
 10 Mr. Shull said it wasn't him.
 11 MR. HEAD: Well, if I can respond, it
 12 was produced by you, Paul, and it's your Bates stamp,
 13 and it's also part of the -- part of your team is on
 14 the cover page there, your permit team, which is
 15 Tim Holland who works for ACE, if I'm not mistaken.
 16 MR. GOSSELINK: Well, Mr. Holland --
 17 MR. HEAD: It's self-authenticated by
 18 the mere fact you produced it.
 19 MR. GOSSELINK: Well, there's no Bates
 20 stamp on my page, my copy.
 21 JUDGE NEWCHURCH: There's a Bates stamp
 22 underneath the staple. Perhaps that's --
 23 MR. GOSSELINK: Okay.
 24 JUDGE NEWCHURCH: The Bates stamp is
 25 actually in kind of an odd location.

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1 MR. HEAD: There's a Bates stamp --
 2 MR. GOSSELINK: We have a practice of
 3 Bates stamping every page. We didn't Bates stamp
 4 these two pages.
 5 MR. HEAD: Paul, I've got a Bates stamp.
 6 JUDGE NEWCHURCH: Let's go off the
 7 record.
 8 (Discussion off the record)
 9 JUDGE NEWCHURCH: All right. Let's come
 10 back on the record. Is there still an objection to
 11 TJFA-1?
 12 MR. GOSSELINK: No.
 13 JUDGE NEWCHURCH: Okay.
 14 MR. GOSSELINK: No objection.
 15 JUDGE NEWCHURCH: So TJFA-1 is admitted.
 16 (Exhibit TJFA No. 1 admitted)
 17 JUDGE NEWCHURCH: And, Mr. Head, I did
 18 that because now you're ready to move on to another
 19 TJFA exhibit. Right?
 20 MR. HEAD: Yes, and I appreciate you
 21 pointing it out to me, Your Honor.
 22 Q (BY MR. HEAD) Mr. Shull, you've been handed
 23 what's been marked as TJFA-2.
 24 A That's correct.
 25 Q Could you identify TJFA-2?

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1 A There's five sheets, and they're all titled
 2 Evaluation of Soil Stockpile for Fire Protection,
 3 and they're completed at various dates signed by
 4 Everett Moore.
 5 Q Okay. And just for clarification, all these
 6 sheets do have a Bates stamp mark at the bottom?
 7 A Yes, they do.
 8 Q And that Bates stamp is an APP Bates stamp?
 9 A Yes, it is.
 10 Q Okay. The first inspection date, which is
 11 APP014290, that's 12/19/07. Correct?
 12 A That's correct.
 13 Q What's the size of the working face on that
 14 date?
 15 A It's listed as 40,500 square feet.
 16 Q Okay. Turning to the next page, Bates
 17 stamped 014293, 9/28/07, what's the size of the
 18 working face?
 19 A It's listed as 36,000 square feet.
 20 Q Okay. Turning the page for 8/24/07, what did
 21 Everett Moore indicate the working face was?
 22 A 37,625 square feet.
 23 Q Okay. Turning the page, 7/25/07,
 24 Everett Moore, what was the size of the working face,
 25 according to him?

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1 A 40,500 square feet.
 2 Q All right. And last and least, 3/23/07,
 3 Everett Moore, what did he indicate the size of the
 4 working face was?
 5 A 36,000 square feet.
 6 Q Okay. So, in fact, the size of the working
 7 face is not limited to 35,000 square feet in practice?
 8 MR. GOSSELINK: Objection, Your Honor.
 9 This question is confusing in that this working face
 10 applies to a permit that is not the subject of this
 11 application. This is the existing permit. They have
 12 to comply with the existing permit.
 13 JUDGE NEWCHURCH: Well, that may be so,
 14 but it sounds like you're testifying, Mr. Gosselink.
 15 If the witness wants to enlighten me about that,
 16 that's fine. Your objection is overruled. Go ahead.
 17 Q (BY MR. HEAD) Let me ask you this: The SOP,
 18 site operating plan, which you sealed, has been
 19 approved by the TCEQ. Correct?
 20 A Which SOP are you referring to?
 21 Q The 2006 version.
 22 A The one in the application or the one that's
 23 currently in effect at the site? I'm just curious
 24 which one you're talking about.
 25 Q Okay. The one that's currently in effect at

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1 the site.
 2 A Okay.
 3 Q That was recently -- that's been approved by
 4 the TCEQ. You state that in your prefiled testimony.
 5 A That's correct.
 6 Q And that -- that SOP which is in effect does
 7 have the 35,000 cubic feet limitations for the working
 8 face. Correct?
 9 A I believe it does.
 10 MR. HEAD: Move to admit TJFA-2.
 11 JUDGE NEWCHURCH: Is there objection?
 12 MR. GOSSELINK: No objection.
 13 JUDGE NEWCHURCH: TJFA-2 is admitted.
 14 (Exhibit TJFA No. 2 admitted)
 15 Q (BY MR. HEAD) Mr. Shull, you would agree
 16 that uncovered garbage can cause odor conditions at a
 17 landfill?
 18 A It could, yes.
 19 Q Okay. And how often -- according to your
 20 SOP, we're talking about your SOP, the one in the
 21 application, how often is the working face covered in
 22 a 24-hour day under the terms of your SOP?
 23 A It must be covered daily.
 24 Q And how -- according to your SOP, how long
 25 must that daily cover stay on the waste?

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1 A I don't --
 2 Q Stated another way, does your SOP have any
 3 requirements for a duration of cover to stay on the
 4 working face?
 5 A There's three types of cover, and daily cover
 6 may remain on the waste for up to 180 days.
 7 Q The SOP allows for daily cover to be taken
 8 off the working face the next day. Correct?
 9 A Some portion of daily cover --
 10 Q Right.
 11 A -- only if waste is not exposed.
 12 Q Right. So if I can follow this, you've
 13 got -- you've got a waste deposited. At some point in
 14 the day, you cover it with six inches of daily cover.
 15 Right?
 16 A At least six inches.
 17 Q Right. And that's required by the TCEQ
 18 regulations?
 19 A That's correct.
 20 Q And that could happen at hypothetically
 21 11 o'clock at night. Right?
 22 A Yeah. In reality they cover continually
 23 throughout the day. It's not a one-time per day
 24 occurrence at this facility.
 25 Q But once the cover is put on the waste, cover

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1 can immediately be taken off the waste and waste
 2 filling commenced again. Is that not correct?
 3 A I suppose in that scenario that could be.
 4 Q And your SOP does not prohibit that type of
 5 operation?
 6 A That's correct. But again, only a portion of
 7 the daily cover can be removed and reused. You cannot
 8 take off daily cover to the extent of exposing any
 9 waste.
 10 MR. HEAD: Move to strike;
 11 nonresponsive.
 12 JUDGE NEWCHURCH: A response to the
 13 motion?
 14 MR. GOSSELINK: I think Mr. Shull's
 15 answer gives a complete recitation of what he just
 16 said before. He said it once. He said it again.
 17 JUDGE NEWCHURCH: I think it was
 18 responsive. He completed the answer. And in fact, I
 19 have a question. When you say a portion of it can be
 20 removed, are you saying so long as at least six inches
 21 remains, or can it be taken down lower than that?
 22 A It's allowed to be taken down lower than that
 23 as long as waste is not uncovered. So if they put six
 24 inches or more, they can remove some portion of the
 25 daily cover that's clean soil and reuse that as

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1 additional daily cover, but they cannot take off any
2 daily cover that exposes waste.
3 JUDGE NEWCHURCH: Okay.
4 Q (BY MR. HEAD) During what period of the day
5 is waste deposited at the BFI landfill?
6 A Are you asking about the operating hours?
7 Q Operating hours. Stated another way,
8 pursuant to your SOP, is there any prohibition in the
9 SOP for waste to be accepted 24 hours a day?
10 A No, there's not.
11 Q In your SOP you discuss at 001724 that you
12 have a video monitoring system for inspection of open
13 top waste loads.
14 A That's correct.
15 Q Is that video monitoring system -- when a
16 load comes in at night, is it capable of monitoring
17 the open top wasteload?
18 A It's a video camera that's fed into the gate
19 attendant's office, and there's lights at the
20 facility. I haven't seen it operated at night.
21 Q Okay.
22 A So I don't know.
23 Q So as you sit here today, you don't know
24 whether it's effective or not?
25 A No, I don't know.

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1 Q And what efficacy does that video monitoring
2 system have for tarped loads?
3 A Well, it provides visual inspection of the
4 tops of the loads.
5 Q Now, maybe I don't understand. When you have
6 a load that's tarped, my understanding of a tarp is
7 you've got a canvas over the garbage. Is that what's
8 referred to as a "tarped load" in your SOP?
9 A Sometimes they're a netting system. It's not
10 necessarily completely opaque.
11 Q Okay. If you have a tarp that's opaque, what
12 efficacy would this video monitoring system have for
13 waste coming in to the site?
14 A You probably wouldn't be able to see the
15 waste, but you could see the condition of the tarp and
16 whatever else is visible from the top, looking down on
17 the truck.
18 Q But doesn't the SOP encourage tarp loads to
19 deter windblown trash?
20 A Yes, it does, if there's windblown material
21 being transported.
22 Q And in fact, there's a policy -- or a mention
23 in your SOP there's a surcharge for folks that don't
24 have tarped loads in high wind conditions?
25 A It's not just high wind conditions. If

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1 they're hauling trash that can potentially be
2 windblown out of the truck, they're required to have
3 tarps on them.
4 Q Okay. Okay. Now, if waste can come in at
5 any time, waste can come in at night under your SOP?
6 A Yes.
7 Q Okay. And the waste is taken out to the
8 working face. Correct?
9 A That's correct.
10 Q Okay. How do they do the random inspections
11 in the dark at the working face?
12 A They have lights at the working face.
13 Q They have lights. Are lights mentioned
14 anywhere in your SOP?
15 A Yes.
16 Q Okay. I missed that.
17 The SOP never mentions ceasing waste
18 acceptance during heavy rains, does it?
19 A No, I don't believe it does.
20 Q Do you know whether it's BFI's practice to
21 continue to accept waste when it's raining?
22 A I don't know that it's not.
23 Q Okay. Is it common practice -- you've worked
24 for a lot of landfills --
25 A Yes.

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1 Q -- according to your resume. Is it common
2 practice for landfills to accept waste when it's
3 raining?
4 A I believe it is.
5 Q You can't tell the trucks not to come in.
6 Right?
7 A That's correct.
8 Q Okay. Which brings us to APP001673, and
9 that's Table 15D-1.
10 A Okay.
11 MR. GOSSELINK: Would you wait for me to
12 catch up, J.D.?
13 (No response)
14 MR. GOSSELINK: J.D., would you wait for
15 me to catch up?
16 MR. HEAD: Yes.
17 MR. GOSSELINK: Okay.
18 Q (BY MR. HEAD) Are you with me, Ray -- I mean
19 Mr. Shull?
20 A Yes, I am.
21 MR. HEAD: I apologize for that, Your
22 Honor?
23 A That's fine.
24 Q (BY MR. HEAD) Table 15D was sealed by
25 Mr. Mehevec, and it's an active disposal area runoff

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1 containment berm sizing. Correct?
 2 A That's correct.
 3 Q And your SOP calls for a 35,000 square foot
 4 working face. Right?
 5 A That's correct.
 6 Q And so that would -- if my math is correct
 7 would fit into the 125 times 280 column for Active
 8 Area?
 9 A I'm not sure that "active area" and "working
 10 face" are used in the same term in this chart.
 11 Q Well --
 12 A The active area can be more than just the
 13 working face.
 14 Q Okay. Well, let's go to an active area --
 15 okay. Back up.
 16 Define "active area."
 17 A I think the active area can include the
 18 unloading area in the working face.
 19 Q Okay.
 20 A Potentially other areas also.
 21 Q And unloading area, as I understand it, is
 22 where the trucks dump the garbage before it gets put
 23 into the working face. Right?
 24 A That's correct.
 25 Q Okay.

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1 A That's correct.
 2 Q So if you've got this dumping area and it
 3 rains, then that's contaminated water. Right? Water
 4 on garbage equals contaminated water. Right?
 5 A That's correct.
 6 Q Okay. So I just wanted to try to -- whether
 7 it's -- let us go with the 125 times 280 area that
 8 computes to 35,000 square feet.
 9 MS. NOELKE: What? Oh, okay.
 10 A Do you want me to take your word that that
 11 calculation is correct?
 12 Q (BY MR. HEAD) I know you can calculate it.
 13 I have done it --
 14 A Okay.
 15 Q -- but if you don't take my word, then go
 16 ahead.
 17 A That sounds about right off the top of my
 18 head.
 19 Q Okay. And the runoff volume on this chart
 20 for the 25-year/24-hour would be 23,165, according to
 21 Mr. Mehevec, and that would be in cubic feet.
 22 A That's for the separation distance of
 23 45 feet.
 24 Q Right.
 25 A This table has four different separation

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1 distances with a corresponding runoff volume for each
 2 separation distance.
 3 Q Right. But this table -- this table does try
 4 to determine how high of a berm you need to retain the
 5 amount of water that is going to be generated from the
 6 25-year/24-hour storm. Right?
 7 A That's correct.
 8 Q Okay. So the runoff volume in the column
 9 next to the separation distance is a volume of water
 10 that would be generated?
 11 A That's correct.
 12 Q Okay. And we've got 23,165. What is that,
 13 cubic feet?
 14 A That's correct.
 15 Q Okay. And the -- in order to do the
 16 conversion from cubic feet to gallons, the conversion
 17 factor is 7.481. Right?
 18 A That's correct.
 19 Q All right. So I'm going to represent to you
 20 that at this 25-year/24-hour event we have, according
 21 to this chart, 173,286 gallons of water would be
 22 generated by this storm event.
 23 A Okay.
 24 Q Okay. And as I understand it, you size the
 25 berm to retain this water?

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1 A All right.
 2 Q Okay. Because it could be contaminated
 3 coming from either the collection area or the working
 4 face. Right?
 5 A Yes.
 6 Q All right. How much tank storage does BFI
 7 have on site?
 8 A I don't know currently.
 9 Q You have no idea?
 10 A No.
 11 Q Well, I'm going to represent to you that
 12 Mr. Dugas indicated it was a maximum of 40,000 gallons
 13 of storage capacity in temporary tanks. If you have
 14 this much water generated by this 25-year/24-hour
 15 storm event from an active area, how, under your SOP,
 16 would you deal with this water?
 17 A They would either pump it to those temporary
 18 tanks or bring in tank transport trucks and pump it
 19 directly out of this containment area into the trucks
 20 and haul it off site.
 21 Q So if you had 173,000 gallons of water
 22 and 40,000 gallons of tankage, you're going to have --
 23 unless you bring the tankers in, you're going to have
 24 additional water standing there. Right?
 25 A Yeah, they'll bring the tankers in. It's my

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1 experience they bring the tankers in very quickly.
2 Q Okay. Okay. Mr. Shull, under the SOP, how
3 often would the final cover be inspected? And not to
4 trick you, that would be APP001763.
5 MR. GOSSELINK: Is that 1736?
6 MR. HEAD: I've got, Paul, 001763.
7 MR. GOSSELINK: Thank you.
8 A I'm on this page.
9 Q (BY MR. HEAD) You're on that page. My
10 question is, how often is final cover inspected during
11 the postclosure care period?
12 A Final cover is inspected at least
13 semiannually during the postclosure care period for
14 erosion.
15 Q So is it possible for erosion to occur and be
16 unaddressed during these six-month intervals of
17 inspections?
18 A I guess it's possible.
19 Q I think this has been covered by a prior
20 counsel, but I just wanted to cover the special waste.
21 Is it my understanding that with the stabilization
22 pond gone, that BFI will no longer be able to accept
23 tank pumpings or grease trapped waste or grit trapped
24 waste unless it's already passed the paint filter
25 test?

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1 A That's correct.
2 Q And in your experience, could grease trapped
3 waste ever pass a paint filter test?
4 A I'm not experience with that waste. So I
5 don't know. I couldn't exclude that it could never
6 pass. I would be surprised if it would.
7 Q Okay. Okay. Have you reviewed the testimony
8 of other BFI experts on the odor problem in 2001-2002
9 timeframe?
10 A To some extent, yes.
11 Q And did you read where Ms. Libicki believes
12 that the culprit was C&D waste, particularly wall
13 board, that caused the odor problems?
14 A I haven't read her testimony, but I've heard
15 that, I guess, conjecture.
16 Q Okay. And does your SOP anywhere prohibit
17 the receipt of wall board in the facility?
18 A No, it does not.
19 Q Okay. And isn't it true that waste must be
20 deposited for a certain amount of time before it can
21 generate sufficient methane gas to fuel a
22 gas-to-energy plant?
23 A That's correct.
24 Q Okay. And with the new expanded cells, it is
25 not the plan of BFI to immediately install your gas

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1 collection control systems immediately upon waste
2 fill, is it?
3 A Well, the gas control system will function
4 throughout the expansion. It's functioning now, and
5 it will continue to function.
6 Q My question is, when you put a new waste
7 fill, do you have your gas collection system at that
8 location at that time?
9 A I think shortly after it reaches final grade,
10 they'll install the wells to replace the wells that
11 were covered up.
12 Q Okay. When you say "reach final grade"?
13 A Yeah.
14 Q So right now final grade is going to be in
15 one area in some areas 50 feet higher, in other
16 areas 75 feet higher -- correct -- under the
17 expansion?
18 A That's correct.
19 Q Okay. Is it your testimony today that BFI's
20 plan is to wait until you have reached final grade to
21 install your new gas collection control system?
22 A No, and that's not an area I'm that familiar
23 with. I think Mr. Stutz is probably the better person
24 to ask questions about gas collection.
25 Q So your testimony today is you don't have the

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1 expertise to discuss what the plans are for the GCCS?
2 A I haven't done those plans. So I really
3 don't know.
4 Q That's fair. It makes it go quicker.
5 A Okay.
6 Q On Page 56 of your SOP, which is the
7 Application 001762, at Section 23.2, you state -- if
8 you're not there yet, I'll wait.
9 A I'm there.
10 Q Oh, you are?
11 A Yes.
12 Q Okay. You state "Intermediate cover must be
13 inspected weekly."
14 A It says "at least weekly." It may be
15 inspected more often than that.
16 Q But then on the next page under Section 23.6,
17 which is APP001763, it's stated that "Intermediate
18 cover will be inspected monthly." Could you explain
19 the inconsistency?
20 A Yes. 23.2 is about intermediate cover, and
21 it's inspected for a lot of different things as far as
22 placement of integrity, you know, other things.
23 Section 23.6 is just about erosion of cover. So the
24 erosion inspection is done monthly, and the overall
25 inspection is done at least weekly.

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1 Q Okay.
 2 A Those are slightly different inspections.
 3 Q All right. And in Section 23.2, the seeding
 4 of intermediate cover is discussed. Correct?
 5 A That's correct.
 6 Q Okay. And the SOP states that "Areas with
 7 intermediate cover, which are not anticipated to be
 8 disturbed for at least six months, will be seeded."
 9 Right?
 10 A That's correct.
 11 Q Okay. Isn't it true that 30 TAC 330.133(b)
 12 requires intermediate cover be seeded or sodded
 13 following its application to control erosion?
 14 A I think that's following its application.
 15 Q So it's --
 16 A Now --
 17 Q Please, go ahead.
 18 A Okay. I was going to say this is one of the
 19 provisions that has been revised by the City of Austin
 20 Rule 11 Settlement Agreement. We're seeding under the
 21 revised SOP, which I handed out in Exhibit 44 and 45
 22 earlier today. This seeding is even accelerated
 23 beyond what this is. So I don't want you to forget
 24 that this has been revised by the pages submitted
 25 today.

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1 Q And I'm at a little disadvantage with the
 2 Rule 11 and the application coming in at the last
 3 moment, but as long as we're there, tell me under the
 4 Rule 11 when the seeding is conducted for the
 5 intermediate cover.
 6 A Certainly. And it's in two areas, and they
 7 have different requirements. For the side slopes,
 8 which are the four-to-one exterior slopes, as soon as
 9 intermediate cover is placed on there and the areas --
 10 or activity is not recommenced within 60 days, seeding
 11 must occur, except for the months of July and August.
 12 Q Okay. So as I understand without looking at
 13 it, you've got the -- you've got the side slope, and
 14 as long as no activities are going to be recommenced
 15 for 60 days?
 16 A 60 days. If we're not putting additional
 17 waste in there within 60 days or applying final cover
 18 within 60 days, then we're required to seed within
 19 that period of time --
 20 Q Okay.
 21 A -- except for the months of July and August.
 22 Q Fair enough. And if BFI waits 45 days and
 23 decides "Let's open up a little area and put some more
 24 waste in here," then the 60 days are going to start
 25 running again. Right?

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1 A I suppose that's correct, although that's not
 2 the way landfills are placed or filled anyway.
 3 Q But under the Rule 11, arguably that could
 4 occur?
 5 A Yes.
 6 Q As long as you're going to disturbs it
 7 within 60 days -- if you disturbs it within 60 days,
 8 the clock starts again?
 9 A That's correct.
 10 Q Okay.
 11 A And that's for the side slopes. On the top
 12 slopes, it's 120 days.
 13 Q And is it the same provision about --
 14 A Same provision.
 15 Q -- not disturbed?
 16 A If the landfill is not doing additional waste
 17 or cover activity within 120 days, then the seeding
 18 has to be implemented.
 19 Q So hypothetically you could go 110 days, do
 20 some -- open it up, put some waste in there, and you
 21 would not be obligated under the Rule 11 to have
 22 seeded it?
 23 A Hypothetically, that's correct.
 24 Q Okay.
 25 JUDGE NEWCHURCH: Mr. Head, we're past

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1 our time to break for lunch. Do you have much more?
 2 Should we try to finish up?
 3 MR. HEAD: I have maybe five minutes
 4 more.
 5 JUDGE NEWCHURCH: Would you like to
 6 finish, and then we'll break for lunch.
 7 MR. HEAD: I'll do whatever you want to
 8 do.
 9 JUDGE NEWCHURCH: Okay.
 10 MR. HEAD: I tell you what let's do, if
 11 you don't mind. Because this is going to be my only
 12 chance to talk about that Rule 11, which I'm not
 13 prepared to talk about right now, why don't we break
 14 and let me prep up for that.
 15 JUDGE NEWCHURCH: More than fair. So
 16 let's break. We got going a little more slowly today
 17 because it's the first day. Would it be okay if we
 18 broke just for an hour and come back at 1:30? Is that
 19 enough time for everyone? Okay. So we will break
 20 until 1:30.
 21 (Recess: 12:35 p.m. to 1:35 p.m.)
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 23
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1 AFTERNOON SESSION
 2 TUESDAY, JANUARY 20, 2009
 3 (1:35 p.m.)
 4 JUDGE NEWCHURCH: So let's come back on
 5 the record. Are there any preliminary matters this
 6 afternoon?
 7 MR. GOSSELINK: Yes. We discovered that
 8 in some or all of the supplemental prefiled that we
 9 handed out we actually did not include two Xeroxed
 10 pages, and we're getting them Xeroxed over lunch and
 11 will bring them in. Okay? It's a clerical omission,
 12 but we will fill that gap. Okay?
 13 JUDGE NEWCHURCH: Okay.
 14 MR. GOSSELINK: I think it was to RS-44.
 15 MR. RENBARGER: What are we talking
 16 about?
 17 MR. GOSSELINK: Ray Shull's Rule 11
 18 motion to supplement when we brought in RS-42 through
 19 46. And one of my trusty associates bought to my
 20 attention there were two pages missing from the packet
 21 we handed out, and we'll -- we're getting them copied
 22 and we'll distribute them. They don't change anything
 23 we said. They just flesh out the document. Does that
 24 make sense?
 25 JUDGE NEWCHURCH: Why don't we do this

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1 since Mr. Head and Mr. Renbarger are shaking their
 2 heads. We're going to go off the record. Why don't
 3 you get together with them and show them because
 4 apparently some of them have the two pages. So why
 5 don't you go ahead and confer with them right now.
 6 MR. GOSSELINK: I don't know that I --
 7 the way it came up was they said "Take a look in your
 8 packet. I don't think you'll find these two pages,"
 9 and I don't have the two pages.
 10 MS. NOELKE: What are they?
 11 JUDGE NEWCHURCH: Which pages are they?
 12 MR. GOSSELINK: They are the two pages
 13 that relate to the revisions to the SOP. We have the
 14 cover pages, we have the table of contents, but we
 15 don't have the actual two pages with red lines on
 16 them.
 17 MR. HEAD: Your Honor, could I make a
 18 suggestion with great trepidation? I understand that
 19 you overruled our motion with regard to leave to put
 20 all this information in on the Rule 11. This is going
 21 to be a long proceeding. I think it would be a lot
 22 cleaner and a lot safer and fairer to all parties if
 23 we could just at some point in the proceeding bring
 24 Mr. Shull back for an hour and let him be
 25 cross-examined on the Rule 11 instead of everybody

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1 jumping around without all the documents. I just
 2 don't think it's fair.
 3 JUDGE NEWCHURCH: Well, I hear what
 4 you're saying. I don't want us to proceed for the
 5 next week to try a case which is not what the
 6 applicant is actually proposing at this point. That
 7 seems to be a silly exercise. There might be good
 8 reason to ask Mr. Shull additional questions. So what
 9 I would allow you to do, Mr. Head, if you care to, is
 10 to call him during your case as a hostile witness, and
 11 maybe that would be a way of resolving that.
 12 MR. HEAD: That works for me. Thank
 13 you.
 14 JUDGE NEWCHURCH: Okay. Good. Any
 15 other preliminary matters?
 16 MR. GOSSELINK: I expect to get these
 17 two pages while Mr. Shull is still on the stand,
 18 assuming Mr. Blackburn cross-examines him at all.
 19 JUDGE NEWCHURCH: Okay. Well, in any
 20 event, I'll allow you to recall -- call Mr. Shull as
 21 your witness, though you haven't filed anything for
 22 him. That's fine. Under these circumstances, I think
 23 that's appropriate, and that will be a few days from
 24 now at least. So that will have -- that will give
 25 everybody an opportunity to collect themselves and see

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1 if there's anything more we need to inquire about.
 2 All right.
 3 MR. CARLSON: Judge?
 4 JUDGE NEWCHURCH: Yes, sir?
 5 MR. CARLSON: For planning purposes,
 6 based on conversations with counsel, we brought two
 7 witnesses with us today. I don't think we're going
 8 for go father than the second witness. Our third
 9 witness is an out-of-town witness, who will not be
 10 here. So if we happen to finish Mr. Snyder, who is
 11 next up, short of five o'clock, we're not going to
 12 have a witness.
 13 JUDGE NEWCHURCH: It doesn't look like
 14 that's going to happen --
 15 MR. CARLSON: I don't think so.
 16 JUDGE NEWCHURCH: -- that we're going to
 17 get past the second witness by five o'clock.
 18 So I think we're ready to go. Mr. Head,
 19 you had additional cross-examination of Mr. Shull.
 20 MR. HEAD: Very brief.
 21
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1 PRESENTATION ON BEHALF OF
 2 BFI WASTE SYSTEMS OF NORTH AMERICA, INC.
 3 (CONTINUED)
 4 RAY LEE SHULL,
 5 having been previously sworn, continued to testify as
 6 follows:
 7 CROSS-EXAMINATION (CONTINUED)
 8 BY MR. HEAD:
 9 Q Mr. Shull, in Ms. Libicki's testimony, she
 10 mentioned a site visit when she went out to Sunset
 11 Farms in 2008, and she stated in her testimony that
 12 there were empty waste bins at the working face and
 13 this -- during her site visit, and this helped mixed
 14 the air at the working face as an odor control
 15 technique. Do you have any -- in your SOP, is there
 16 anything regarding having empty waste bins for odor
 17 control techniques?
 18 A Not that I'm aware of, no.
 19 Q And you did put together the odor management
 20 plan, did you not?
 21 A In the SOP, yes.
 22 Q Can you tell us here today how empty waste
 23 bins at the working face work as an odor control?
 24 A I defer to Ms. Libicki on that.
 25 Q Fine. In Section 11.2 of the SOP --

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1 A What page are you on?
 2 Q It's Section 11.2 of the buffer -- it
 3 discussed the buffer zones. It APP001750.
 4 A Yes.
 5 Q There's a short discussion of buffer zones.
 6 Where in this discussion is there a provision for safe
 7 passage of firefighting or other emergency vehicles?
 8 A The buffer zone around the landfill is a
 9 minimum 50 feet. I think that's sufficient for the
 10 safe passage of emergency vehicles.
 11 Q Is there an all-weather road around the
 12 perimeter of the landfill buffer zone?
 13 A Not within the buffer zone, but there's
 14 access available all around the landfill all the way
 15 to the roads.
 16 Q Are there gas probes and monitoring wells in
 17 the buffer zone?
 18 A Yes, there are.
 19 Q Okay. So if you have an emergency vehicle
 20 out there at night, you've got an emergency, how is
 21 that emergency vehicle supposed to know and get around
 22 and get through all these obstacles sticking up in the
 23 buffer zone?
 24 A Well, fortunately at this site, it's
 25 surrounded on three sides by waived roads, and two of

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1 those are public roads, Blue Goose Road and Giles
 2 Lane, provide access to the complete north side and
 3 the east side. On the south side, there's a paved
 4 road on the Waste Management property that BFI has a
 5 joint access agreement that specifically allows
 6 emergency vehicles to use that and can access any side
 7 on the south side. And on the west side, there's an
 8 entrance gate on the northwest corner off of Blue
 9 Goose Road, and there's a very nice road within the
 10 buffer zone. I've driven it many times along that
 11 west side. It's easy to access the entire perimeter
 12 of the landfill.
 13 Q So your testimony is there's no obstructions,
 14 such as monitoring wells or probes, that could impact
 15 an emergency vehicle at night in any of the buffer
 16 zone area?
 17 A I think at any time day or night emergency
 18 vehicles can access any part of the landfill.
 19 Q Are there obstructions in the buffer area to
 20 transportation of an emergency vehicle?
 21 A There's obstructions. I think there's ways
 22 around them also.
 23 Q Okay. Are there any lights on -- any lights
 24 on them at night where an emergency vehicle could see
 25 these obstructions?

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1 A I don't think so, no.
 2 Q Okay. You've opined that you believe the
 3 application meets the requirements for surface water
 4 quality. Do you know whether the sedimentation ponds
 5 that are out there today, whether they were designed
 6 with taking into account sediment loading preclosure
 7 conditions?
 8 A Can you be a little more specific?
 9 Q Let me try to be better.
 10 A Please.
 11 Q Are you aware whether your engineering team
 12 has calculated the amount of sediment running off the
 13 landfill during operational conditions, and have they
 14 designed their sediment ponds to account for that?
 15 A I haven't performed those calculations. So I
 16 don't know.
 17 MR. HEAD: Pass the witness.
 18 JUDGE NEWCHURCH: Let's see.
 19 Mr. Blackburn?
 20 MR. BLACKBURN: Thank you, Your Honor.
 21 How many copies do we provide to whom? Do you get two
 22 up here?
 23 THE REPORTER: Yes.
 24 MR. BLACKBURN: This, I guess, will be
 25 NNC-1.

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1 (Exhibit NNC No. 1 marked)
2 CROSS-EXAMINATION
3 BY MR. BLACKBURN:
4 Q Good afternoon, Mr. Shull. I'm
5 Jim Blackburn. I represent the Northeast
6 Neighbors Coalition. And I'd like to start off by
7 asking you during your direct testimony -- or during
8 your direct and cross you testified about a
9 modification that was -- that was offered by BFI at an
10 earlier time. Do you recall that?
11 A Yes, I do.
12 Q And I've placed before you what is marked as
13 NNC No. 1 and ask you if you can identify this
14 document?
15 A Yes, I can.
16 Q What is this document?
17 A This appears to be the transmittal of the
18 application to the TCEQ for that permit MOD dated
19 May 31, 2002.
20 Q And did your company prepare this permit MOD?
21 A Yes, we did. And my signature and seal is on
22 the transmittal letter.
23 Q And to the best of your recollection, is this
24 a true and correct copy of what was submitted?
25 A As far as I know it is.

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1 MR. BLACKBURN: Move admission of NNC-1.
2 JUDGE NEWCHURCH: Is there objection?
3 MR. GOSSELINK: No.
4 JUDGE NEWCHURCH: NNC-1 is admitted.
5 (Exhibit NNC No. 1 admitted)
6 Q (BY MR. BLACKBURN) Now, in your testimony
7 that was prefiled, Mr. Shull, you talk about drainage,
8 do you not?
9 A Yes, to some extent.
10 Q And did you offer an opinion whether or not
11 this proposed application that we're here on this
12 hearing whether it meets the rules of the TCEQ or not?
13 A Yes, I did.
14 Q And what was that opinion?
15 A That it meets the rules.
16 Q And were you testifying with regard to
17 nuisance?
18 A Those are covered in the rules, yes.
19 Q So you're just testifying blanketly it met
20 the rules?
21 A I believe the application does.
22 Q Now, with regard to the modification, would
23 you turn with me to Figure 1 in the modification? And
24 let me ask you in a broad general sense, would it be
25 fair to say that the modification was an alteration of

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1 the landfill that added both height and altered the
2 drainage system?
3 A Yes, I think that's accurate.
4 Q And in this modification, certain information
5 was submitted regarding these changes. Is that
6 correct?
7 A That's correct.
8 Q And if you'd look at Figure 1, Existing
9 Drainage Conditions, would it be fair to say that at
10 the time that the MOD was prepared Figure 1 identifies
11 what the existing drainage situation was?
12 A That's correct.
13 Q And then if you would go to Figure 3 -- and
14 at least the way they get bound up -- I think that in
15 the copy and several of those got rolled together, but
16 I think Figure 3 is in the bundle there.
17 A Yes, I'm looking at Figure 3.
18 Q And is it fair to say that Figure 3 is the
19 drainage system that is proposed after the
20 modification is accomplished?
21 A Well, it's the delineation of the watershed
22 that would result.
23 Q But this is anticipating the ten-foot
24 increase in height and the revised drainage system
25 that was part of the modification. Is that fair?

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1 A Yes.
2 Q And is it fair to say that this is the
3 existing condition that became -- that it was the
4 starting point for the application that we are, in
5 fact, before the Court on today?
6 A Yes, as of -- the 2002 MOD is our existing
7 conditions.
8 Q It's the starting point?
9 A That's correct.
10 Q Okay. And what I'd like to do, if you would,
11 explain the existing drainage system before this
12 application. In other words, once the MOD was in
13 place, once it was completed, could you like, for
14 example, take Figure 3 for a minute and just sort of
15 explain how the drainage system worked? And I'm
16 particularly interested in where flow occurs off site.
17 So let me just take you, if I may -- let's go to
18 Drainage Area 1.
19 JUDGE NEWCHURCH: Mr. Blackburn, can I
20 interrupt for just a second? You asked the witness
21 whether this was the existing condition, and he said
22 yes, it was. And, Mr. Shull, what I would like to
23 understand better is, are you meaning to say that this
24 is the existing condition for regulatory purposes
25 using that phrase as a term of art going forward, or

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1 are you meaning to say that if I went out there today
 2 I would find this?
 3 A No, the former, the definition that -- as far
 4 as the proposed application as what is the assumption
 5 on what the existing conditions are, it's as depicted
 6 upon the approval of permit modification in 2002.
 7 JUDGE NEWCHURCH: Which does not
 8 necessarily mean that this is exactly what's out there
 9 today?
 10 A That's right, because this depicts a landfill
 11 that's completed, and that landfill is not completed
 12 yet.
 13 JUDGE NEWCHURCH: Gotcha. That's what I
 14 thought. I just wanted to make sure.
 15 Thank you, Mr. Blackburn.
 16 MR. BLACKBURN: You bet.
 17 Q (BY MR. BLACKBURN) Now, there are various --
 18 in this Figure 3, there are various DA that are
 19 delineated. Do you see those?
 20 A Yes, I do.
 21 Q There's DA-1, which is 77 acres. Do you see
 22 that?
 23 A Yes, I do.
 24 Q And there are various arrows that run across
 25 DA-1, and it looks like the arrows converge on a line

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1 that runs I guess to the north, northeast. Would that
 2 be fair?
 3 A I think that's correct.
 4 Q And would it be fair to say that those arrows
 5 depict essentially a collection point on the slope
 6 where stormwater is intercepted and then is routed in
 7 the direction of the arrows to the black line, which
 8 is essentially a place -- a slough or a place where
 9 the water runs down?
 10 A Yes.
 11 Q And so with regard to Drainage Area 1, the
 12 water comes down and it goes toward the northern
 13 boundary of the site and into -- does it go into the
 14 black square?
 15 A Yes, the water is collected on the top
 16 surface, which is the 5 percent portion of the
 17 landfill, and it's collected by drainage berms there
 18 and then routed down the side slope into a collection
 19 channel that then discharges into the proposed
 20 detention pond, and the detention pond then discharges
 21 into the proposed drainage channel.
 22 Q And with regard to Drainage Area 1, there is
 23 a dotted line or dashed line around I guess what I
 24 will call a perimeter. Do you see that?
 25 A Since there's so many dashed lines --

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1 Q There's a lot of dashed lines.
 2 A There's one around the perimeter of Drainage
 3 Area 1. Is that what you're referring to.
 4 Q Yes, that's what I'm referring to.
 5 A Yes, yes.
 6 Q And each of the various drainage areas have a
 7 dashed line around it. Is that correct?
 8 A That is correct.
 9 Q And so DA-1 is delineated to a total acreage
 10 of 77 acres?
 11 A Yes.
 12 Q And DA-2 to 46 acres?
 13 A That's correct.
 14 Q And DA-3 to 16 acres?
 15 A Yes.
 16 Q And DA-4 to 9 acres?
 17 A Yes.
 18 Q DA-5 to 27 acres?
 19 A Yes.
 20 Q And DA-6 is 40 acres?
 21 A That's correct.
 22 Q And is there a DA-7? Yeah, it's back over on
 23 the back right-hand side.
 24 A Yeah, lower right-hand corner.
 25 Q Yes, sir. How many acres is that?

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1 A 45 acres.
 2 Q Okay. Now, there are arrows that point off
 3 the boundaries of the landfill. Do you see those?
 4 A Yes, I do.
 5 Q There is a boundary up on the top right-hand
 6 side -- hold on. Let's see what I've done with my
 7 glasses. Excuse me -- and there's a depiction. Do
 8 you see the arrow going off to the right on sort of
 9 the top right-hand boundary, and it says Q25 equals
 10 1386 cfs?
 11 A Yes, I do.
 12 Q And is that a point where water leaves the
 13 site?
 14 A Yes, it is.
 15 Q And is that essentially the point of exit for
 16 the rerouted floodplain?
 17 A Yes, it is.
 18 Q I mean, if I recall, among other things,
 19 there was something either called a LOMR or CLOMR that
 20 was submitted to FEMA to remove a hundred-year
 21 floodplain area from closer within this site and move
 22 it up along the boundary of the site. Is that
 23 correct?
 24 A Yes, it was relocated.
 25 Q It was relocated, and that's essentially a

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1 major flow area coming along the north edge of the
2 landfill. Is that right?
3 A That's correct.
4 Q And would it be fair to say that where Q
5 equals 1386 cfs is where that water leaves the site?
6 A Yes.
7 Q Okay. And then coming around the landfill
8 down at the -- right on the bottom by the bottom of
9 DA-2, there's a Q equals -- I can't read that very
10 easy. Is that 704 cfs?
11 A I believe it's 204.
12 Q 204 cfs. And that's a point where water
13 leaves the site. Is that right?
14 A That's correct.
15 Q And then over here on the left-hand side,
16 there's a Q25 equals 26 cfs. Do you see that?
17 A Yes, I do.
18 Q And is that the drainage coming off of
19 Drainage Area 4?
20 A I believe so, yes.
21 Q And then there's one up here, Q25 equals 66
22 cfs?
23 A Yes.
24 Q And would that be the flow coming off of
25 DA-5?

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1 A Yes, it is.
2 Q And then for DA-6, there are arrows that go
3 to the north and then come around back to the east,
4 and all of that drains ultimately all the way back
5 over here to where we said the hundred-year floodplain
6 sort of exited the site over where Q equals 1386?
7 A Yes, the flows from DA-6 ultimately end up --
8 the 1386, that's Outfall 1 at this site --
9 Q Right.
10 A -- and those flows exit the site there.
11 Q Okay. Now, bear with me a second. I need to
12 go to your application. Would you turn with me to the
13 Application 967 and 968?
14 A Okay.
15 Q And Figure 6.3, which is Application
16 Page 967, do you see essentially what is a diagram or
17 a figure titled Existing Drainage Conditions?
18 A Yes, I do.
19 Q And would you --
20 MR. BLACKBURN: Just a second, Your
21 Honor. I need to get one more diagram.
22 Q (BY MR. BLACKBURN) And would you look with
23 me at what is now marked as Outfall No. 4? Do you see
24 that?
25 A Yes, I do.

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1 Q And that is on a diagram called Existing
2 Drainage Condition. Right?
3 A Yes, it is.
4 Q And what is the Q that is identified there
5 for a 25-year storm?
6 A It's shown as 65.8 cfs.
7 Q Now, if you go back to the MOD to what you
8 described as the existing drainage conditions for our
9 starting point, on the MOD, the runoff from that area
10 is shown as 26 cfs, is it not?
11 A That's correct.
12 Q So your existing conditions map from the
13 MOD -- or the proposed conditions which you testified
14 is the starting point for the current application
15 says 26 cfs coming offer of D-4, and in the permit,
16 the existing conditions are shown as 65. Is that
17 right?
18 A That's correct.
19 Q Now, those are different numbers. Right?
20 A Yes, they are.
21 Q It's the same drainage area, is it not?
22 A Well, on this drawing, it's shown D-6 as the
23 designated drain area of 11.84 acres as opposed to the
24 nine acres.
25 Q Well, in the existing conditions, it's shown

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1 as an 11-acre drainage area, and in your existing
2 conditions that come -- or the proposed conditions out
3 of the MOD, which become the existing conditions, we
4 start with nine acres?
5 A On this drawing, yes.
6 Q So you've added two acres to the drainage
7 delineation?
8 A From this map to this figure, that's correct.
9 Q And is it your testimony that adding two
10 acres adds 66 -- explains the difference between 26
11 and 65?
12 A Maybe I can answer this. This was the
13 initial submittal of the permit MOD. I'm sure it was
14 revised as the TCEQ issued comments, and I don't --
15 I'm not specifically familiar with the drainage
16 delineation flows and how those were adjusted as the
17 MOD was approved. I think I would defer to
18 Mr. Mehevec. He did those calculations.
19 Q Do you agree with me that the boundary
20 between Figure 3 from the MOD for the drainage area to
21 the west has changed?
22 A I don't know where you're specifically
23 referring to. I'm sorry.
24 Q Between Figure 3 in the MOD --
25 A Yes.

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1 Q -- and Figure 6-3 on Page 967, have the
2 boundaries changed on drainage area that is
3 respectively D-4 or D-6, the same drainage area?
4 A Well, on Figure 3 it's shown as nine acres,
5 and on Figure 6-3 it's shown as 11.84 acres. So I
6 assume that the boundary area has changed.
7 Q Okay. Let's take DA-5 from the proposed
8 drainage conditions, Figure 3, which is 27 acres.
9 Right?
10 A Yes, that's correct.
11 Q And do you see D-7 in the existing conditions
12 on 967?
13 A Yes, I do.
14 Q And that's how many acres?
15 A It's shown as 35.93.
16 Q Now, do you see the tip that goes up to the
17 north?
18 A The tip?
19 Q The tip of the Drainage Area D-7. Perhaps I
20 can get you to draw some things for me.
21 MR. BLACKBURN: And let me get these two
22 marked as NNC-2, and these two will be NNC-3.
23 (Exhibit NNC Nos. 2 and 3 marked)
24 Q (BY MR. BLACKBURN) And I have a yellow
25 marker that I'm going to give you, and with regard to

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1 what I have marked as NNC-2, would you be kind enough
2 to draw in the boundaries for DA-8 and DA-9?
3 MR. BLACKBURN: And then I guess
4 everybody -- I'm going to get several of these drawn,
5 and then I guess everybody can come up and either draw
6 it in yourself or come and see what he's drawn.
7 A So I've outlined the shown perimeter
8 boundaries of Drainage Area 8 and Drainage Area 9 on
9 NNC-2.
10 Q (BY MR. BLACKBURN) Okay. And would you do
11 the same thing for NNC-3?
12 A And there's not a Drainage Area 8 or 9 shown
13 on NNC-3.
14 Q Would you draw the equivalent drainage areas
15 that drain to the discharge points that are leaving
16 the site that you have identified with AA-8 and DA-9,
17 and then identify what it is that you have marked?
18 A On NNC-3, the Drainage Area 4 goes to the
19 outfall furthest to the south.
20 Q Uh-huh.
21 MR. GOSSELINK: Pardon me, Your Honor.
22 We're referencing Exhibit NNC-3?
23 MR. BLACKBURN: That's correct. It's a
24 blowup of Figure 3 from the MOD. It should have been
25 passed out.

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1 JUDGE NEWCHURCH: It was passed out. I
2 don't think it was identified yet.
3 MR. BLACKBURN: Oh, I'm sorry.
4 MR. GOSSELINK: I don't have NNC-3.
5 MR. RENBARGER: We don't have 3 yet.
6 MR. CARLSON: We're not quite sure what
7 we're looking at.
8 JUDGE NEWCHURCH: Okay. Let's go off
9 the record and get this sorted out.
10 (Discussion off the record)
11 JUDGE NEWCHURCH: Okay. Back on the
12 record. Mr. Blackburn?
13 Q (BY MR. BLACKBURN) Let me ask you if you
14 would cross-reference, Mr. Shull, and identify whether
15 NNC-2 and 3 can be traced back to the MOD that is
16 NNC-1. In other words, can those diagrams be found in
17 NNC-1?
18 A They appear to be the same drawings
19 identified in the original permit MOD application.
20 Q And have you had a chance to mark the
21 boundaries for NNC -- on NNC-2 and on NNC-3 of the
22 areas that drain into the off-site exit points to the
23 west?
24 A No, I still have not outlined the Drainage
25 Area 5 on NNC-3.

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1 Q Would you please do so?
2 A Yes. All right.
3 MR. BLACKBURN: All right. I have two
4 more.
5 (Exhibit NNC No. 4 and 5 marked)
6 Q (BY MR. BLACKBURN) Now, with regard to
7 NNC-4, is that the existing conditions diagram from
8 the application, Page 967?
9 A Yes, it is.
10 MR. CARLSON: Judge, just for the
11 record --
12 JUDGE NEWCHURCH: Yes, sir?
13 MR. CARLSON: -- we're talking about
14 exhibits that may have been marked up here, but they
15 haven't been identified yet for the record. So we're
16 not sure --
17 MR. BLACKBURN: I'm sorry.
18 MR. CARLSON: -- what documents. Sorry,
19 Jim.
20 MR. BLACKBURN: I'm referring to a
21 document called BFI Sunset Landfill Permit Amendment,
22 Existing Drainage Conditions, Figure 6-3, with the
23 Bates No. APP000967 at the bottom.
24 Q (BY MR. BLACKBURN) Is that NNC Exhibit 4?
25 A Yes, it is.

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1 Q And do you also have a document that is
 2 labeled NNC Exhibit 5?
 3 A Yes, I do.
 4 Q And NNC Exhibit 5, is it Proposed Drainage
 5 Conditions, Figure 6-4, APP000968?
 6 A Yes, it appears to be.
 7 Q Okay. And that's from the application?
 8 A Yeah, that is correct.
 9 Q Now, would you mark on NNC-4 the drainage
 10 area that flows off site to each of the two outfalls
 11 flowing to the west? And would you identify the areas
 12 that you're marking when you do that?
 13 A All right. I'm outlining Drainage Area 6 and
 14 Drainage Area 7.
 15 Q All right. Have you done that on both NNC-4
 16 and on NNC-5?
 17 A No, I didn't do NNC-5. (Drawing) All right.
 18 Q Now, I would like you to put before you NNC-3
 19 and NNC-4.
 20 A Okay. All right.
 21 Q Now, in your earlier testimony you testified
 22 when the Judge asked you a specific question that this
 23 MOD was the legal existing conditions for this permit
 24 application. Correct?
 25 A That's correct.

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1 Q If you would refer to NNC-2, that is the
 2 existing conditions from the MOD. Right? I mean, I'm
 3 sorry. NNC-3 is the proposed conditions from the MOD.
 4 Right?
 5 A I don't know. This was the initial
 6 submittal. I'm sure it was revised during the review
 7 by the TCEQ. I'd have to look at the final approved
 8 version to compare that.
 9 Q I will represent to you that we've never been
 10 provided any other document in discovery that alters
 11 this diagram. And if there is no such alteration,
 12 would you change your testimony?
 13 MR. GOSSELINK: Your Honor, let me --
 14 let me interject an objection. Mr. Shull has tried to
 15 clarify that this document may or may not be what
 16 Mr. Blackburn is purporting it to be, which is an
 17 approved final version of the MOD. At this time, I
 18 don't know either. But I would also say with regard
 19 to what's been provided in discovery, 200,000 pages
 20 were provided in discovery. We would have provided
 21 this. You know, due to budget limitations, they
 22 didn't come look, and it's also available at the TCEQ
 23 and should have been provided at the TCEQ.
 24 I'm not -- I'm feeling that comment is
 25 not substantiated, but most importantly I'm feeling

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1 that Mr. Shull is trying to say "Look, this may or may
 2 not be it," and you're drawing a whole lot of
 3 conclusions without having yet authenticated that
 4 you've got a final version.
 5 JUDGE NEWCHURCH: Mr. Blackburn, did you
 6 want to respond?
 7 MR. BLACKBURN: I'll simply respond that
 8 he has testified that he has prepared this. At this
 9 point, it's the only modification that is in evidence.
 10 If there's another modification to be placed in
 11 evidence that supersedes this one, then fine. But at
 12 this point, I will represent to the Court that we were
 13 unable to find it in our discovery. Now, that doesn't
 14 mean -- I didn't go through every document of 200,000,
 15 and the applicant should have it. I just -- I just
 16 am, frankly, very concerned that there has been a
 17 major misrepresentation here. I hope I'm wrong.
 18 JUDGE NEWCHURCH: Okay. Let's see what
 19 we've got. I've got so far the witness --
 20 Mr. Blackburn, NNC-1 was the modification of 2002.
 21 MR. BLACKBURN: That's correct.
 22 JUDGE NEWCHURCH: Mr. Shull, you agree
 23 with that?
 24 A That's just a submittal. That was the
 25 initial submittal.

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1 JUDGE NEWCHURCH: Right, okay. And 3
 2 and 4 are excerpts from that same document.
 3 MR. BLACKBURN: 2 and 3 are excerpts.
 4 JUDGE NEWCHURCH: 2 and 3. Excuse me.
 5 Okay. So, Mr. Shull, you agree with
 6 that. Right?
 7 A Yes, that's correct.
 8 JUDGE NEWCHURCH: Okay. Mr. Gosselink,
 9 you are suggesting that there's at least the
 10 possibility -- and you're not representing there is.
 11 You're saying there might be a modification.
 12 MR. GOSSELINK: That's right. I'm
 13 simply saying it might be, but it is quite -- it's
 14 quite clear that there would be something final, and
 15 this is not the final. This is just the application.
 16 So it may be -- it may be that this was approved in
 17 its entirety, and this, therefore, is a fair starting
 18 point to make a comparison to, and it may not be.
 19 Mr. Blackburn is making those assertions.
 20 Mr. Shull has said that he has reviewed
 21 the application. He has not said that he was the
 22 engineer who sealed Exhibits NNC-1, 2 and 3 or was
 23 responsible for them. Indeed that would be
 24 Mr. Mehevec. If Mr. Blackburn wants to talk to the
 25 guy who really did it, that's the place to go.

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1 JUDGE NEWCHURCH: Okay. We're getting
2 overly complicated. I'm just trying to get past the
3 current impasse. So your objection is to a
4 representation that this is final.
5 MR. GOSSELINK: Yes.
6 JUDGE NEWCHURCH: Is that what you're
7 saying?
8 MR. GOSSELINK: Yes.
9 JUDGE NEWCHURCH: And it's a guarded
10 objection because it might be final. Right?
11 MR. GOSSELINK: Yes, Your Honor. Yes, I
12 don't know.
13 JUDGE NEWCHURCH: Okay. I don't see any
14 grounds for sustaining an objection at this time. So
15 your objection is overruled.
16 And, Mr. Blackburn, you may proceed to
17 your -- to ask the witness questions to compare the
18 current proposal to the modification. If, in fact,
19 later evidence in the case shows that the modification
20 in 2002 yielded a different result, then we'll deal
21 with that then.
22 Q (BY MR. BLACKBURN) Mr. Shull, if you would
23 compare NNC-3 with NNC-4, would you agree with me that
24 there has been an increase in the flow off of this
25 site between NNC-3 and NNC-4 with regard to the more

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1 or less equivalent area DA-4 and DA-6?
2 A It appears that the depicted flows have
3 increased from NNC-3 to NNC-4.
4 Q And would you agree with that with regard to
5 both Outfall No. 4 and Outfall No. 5?
6 A According to the numbers on these figures,
7 that's correct.
8 Q And, in fact, with regard to Outfall No. 5,
9 would you agree with me that the increase is from
10 66 cfs to 175 cfs?
11 A That's what's depicted, yes.
12 Q And would you also agree with me there's
13 differences in the boundaries?
14 A What boundaries?
15 Q The boundary of the area draining into
16 Outfall No. 5. For example, do you see the area on
17 NNC-4, which is a triangle going up to the northwest
18 corner?
19 A Yes. You're comparing the acreage from
20 Drainage Area 5 on NNC-3 to Drainage Area 7 on NNC-4.
21 They are different.
22 Q And, in fact, flow that is depicted on
23 figure -- on NNC-3 in that little triangle area, the
24 flow is depicted as going to the north and then around
25 to the east. Correct?

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1 A Some portion of it, yes, that's correct.
2 Q Whereas in NNC-4 the flow is depicted as
3 coming back to the south. Correct?
4 A That's correct.
5 Q Do you know where Mr. Even Williams' property
6 is?
7 A Yes, I do.
8 Q Do you know that Mr. Williams has filed
9 prefiled testimony about drainage problems on his
10 site?
11 A I haven't reviewed his testimony, but I know
12 he's a party.
13 Q Do you know he's concerned about drainage?
14 A I haven't seen his prefiled.
15 Q You haven't looked at that?
16 A No, I have not.
17 Q Do you know if Outfall No. 5 on NNC-4 goes
18 onto Mr. Williams' property?
19 A I believe it does.
20 Q And do you know if Outfall No. 4 on NNC-4
21 goes onto Mr. Williams' property?
22 A Yes, I believe they both do.
23 Q If the numbers depicted on NNC-3 have not
24 changed, would you agree with me that the existing
25 conditions that are depicted on NNC-4 would be

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1 incorrect?
2 A Which numbers? There's a number of --
3 Q I'm sorry.
4 A -- different numbers on NNC-3.
5 Q Well, basically any of those numbers. You
6 have the concern that there may have been a
7 modification in NNC-3. If you make the assumption
8 that there has been no further change in NNC-3, would
9 you agree with me that with regard to Outfalls 4 and 5
10 that there has been a misrepresentation of existing
11 conditions on NNC-4?
12 A I don't know that I agree with that. First,
13 I think NNC-3 is not the final version, and I didn't
14 do the calculation to know how the modeling was done
15 to know how NNC-4 was developed either.
16 Q You testified that this application met the
17 requirements of the rules of the TCEQ. Right?
18 A That's correct.
19 Q If NNC-3 is the correct existing conditions
20 as opposed to NNC-4, would you agree with me this
21 application would not meet the rules of the TCEQ?
22 MR. GOSSELINK: Your Honor, may I just
23 interpose a continuing objection that this question is
24 confusing because it's assuming something that we
25 have -- you know, is not necessarily in evidence at

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1 all?
 2 MR. BLACKBURN: I'm sorry. It is in
 3 evidence.
 4 MR. GOSSELINK: Well, it's not
 5 necessarily confirmed as the final version.
 6 JUDGE NEWCHURCH: Well, I think you
 7 asked it as a hypothetical question anyway.
 8 MR. BLACKBURN: I did.
 9 JUDGE NEWCHURCH: So your objection is
 10 overruled. Go ahead.
 11 A Well, obviously NNC-3 has lower flows to
 12 Outfall 4 and 5 than shown on NNC-4. So that would be
 13 an issue that I don't know. I can't explain, you
 14 know, why the flows are different on NNC-4 because I
 15 don't know the validity of NNC-3. I don't know if
 16 that's the final condition.
 17 Q (BY MR. BLACKBURN) It was valid when you
 18 submitted it, I presume?
 19 A Absolutely.
 20 Q So you're not disavowing the submission?
 21 A No. I'm just saying I don't believe it's the
 22 final version.
 23 Q Ah, but today you can't offer -- you don't
 24 have with you anything to dispute whether it's final
 25 or not. It is what was submitted. Correct?

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1 A It was as submitted, and I recall comments
 2 from the TCEQ that warranted additional revisions. I
 3 know it was revised. I don't know if this figure was
 4 revised, but I know they commented on it.
 5 Q Now, with regard to NNC-5, which are your
 6 proposed conditions --
 7 A Yes.
 8 Q -- if you were to compare the proposed
 9 conditions on NNC-5, those are the proposed conditions
 10 if this application is granted. Right?
 11 A That's correct.
 12 Q And if you were to compare those proposed
 13 conditions to the NNC-3 proposed conditions, would you
 14 agree with me that there would be a significant
 15 increase in the flows at Outfall 4 and Outfall 5?
 16 A Yes, subject to what I said before about I
 17 don't know whether NNC-3 is valid or not. Obviously
 18 comparing these two figures shows an increase in flows
 19 at those two outfalls.
 20 Q It's about three times. Right?
 21 A Approximately, yes.
 22 Q Now, you are taking the landfill up how many
 23 additional feet?
 24 A Fifty feet on the eastern portion and
 25 seventy-five feet on the western portion.

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1 Q So this would be the western portion?
 2 A Yes, it would be.
 3 Q So the 75 feet of increase, you would be
 4 basically putting more slope coming down the side of
 5 that landfill. Right?
 6 A That's correct.
 7 Q So water that would have been flowing a bit
 8 slower coming down off the ten-foot increase would be
 9 go much faster off of the 75-foot increase. Right?
 10 A To a point. There are, I'll say, berms on
 11 the four-to-one side slope to capture that flow and to
 12 take it to a drop chute. So it's not a straight flow
 13 all the way down the expanded vertical -- or the
 14 expanded four-to-one slope.
 15 Q Mr. Shull, you would never accept, would you,
 16 that someone might fudge existing conditions so that
 17 the proposed conditions would look better?
 18 A You mean no one in the world would ever fudge
 19 that?
 20 Q Uh-huh.
 21 A I wouldn't.
 22 Q Well, that would be my question. Would you?
 23 A No.
 24 Q So it would be totally erroneous of me to
 25 even suspect that that could have happened?

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1 A I certainly didn't do it.
 2 Q Did you explain to the City of Austin that
 3 there was a difference between what was represented in
 4 the MOD and what was set forth in the proposed
 5 conditions?
 6 A Related to what?
 7 Q Have you discussed with anybody the
 8 modification calculations versus what's in this
 9 application?
 10 A We submitted the entire Attachment 6 drainage
 11 calcs to the City of Austin staff for their review. I
 12 don't recall that they requested the permit MOD
 13 calculations or anything related to that. If they had
 14 asked for it, we certainly would have provided it to
 15 them.
 16 Q Now, I want to talk a bit about
 17 implementation of the drainage system. Now, when
 18 exactly are the berms placed on the slope?
 19 A Which berms, sir?
 20 Q I guess any of them. Let's just say -- I
 21 don't have in front of me a phasing plan on the
 22 construction. Could you just describe in a general
 23 sense your understanding of how this landfill will be
 24 constructed over time?
 25 A That's a real general question.

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1 Q I know it is.
 2 A First, there's a flat piece of ground, you
 3 dig a whole, you line the cells, you fill with waste.
 4 Q Yeah, I know. I hear that.
 5 A Please specify a little bit more.
 6 Q I'm trying to get an understanding of how --
 7 I mean, there's a currently -- well, first of all,
 8 before the modification was proposed and accepted,
 9 there was a landfill that was what, some feet above
 10 the land surface?
 11 A In certain parts. In some places, it hadn't
 12 even been constructed because those cells were not
 13 being used.
 14 Q Right, and then there was an allowance of
 15 what, a ten-foot increase in height across the entire
 16 landfill in that modification. Correct?
 17 A No. The maximum height was increased by ten
 18 feet.
 19 Q Okay. And then it would slope off from that
 20 to a lesser extent along the periphery?
 21 A That's correct.
 22 Q And there was a berm system that was proposed
 23 to be constructed to collect the drainage of the
 24 stormwater runoff coming down the side. Is that
 25 correct?

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1 A That's correct, yes.
 2 Q And to your knowledge, has that been
 3 constructed?
 4 A Some portions -- I'll say some berms and drop
 5 chutes, down chutes have been constructed, but they're
 6 temporary because the configuration approved with that
 7 drainage improvement MOD in 2002 showed the final
 8 cover configuration, and those berms, those drop
 9 chutes and all those other drainage facilities are
 10 only constructed when the final cover is installed.
 11 Q So there would be an interim berm and drop
 12 chute that would be constructed as the landfill was
 13 being constructed to its permitted levels. Is that
 14 fair?
 15 A There could be, yes.
 16 Q And is that, in fact, occurring at this time?
 17 A Yes, they have constructed, I think, five
 18 drop chutes and various, I'll say, temporary berms at
 19 the current time.
 20 Q Have the drop chutes to the west of what are
 21 identified on NNC-4 and 5 as Outfalls 4 and 5, have
 22 those been constructed?
 23 A No, they have not.
 24 Q Now -- I'm sorry. Have the drop chutes been
 25 constructed that were authorized in the MOD at

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1 outfalls what are now called 4 and 5?
 2 A Let me clarify. There are two drop chutes on
 3 the western portion. They are not the ones depicted
 4 in NNC-5 because these are the final cover
 5 configuration drop chutes. The ones that have been
 6 constructed on the western portion are temporary drop
 7 chutes to be left in place until the final cover is
 8 constructed. Then they will be replaced.
 9 Q Okay. Now, with regard to this proposal that
 10 is seeking -- that you're seeking to have permitted in
 11 this hearing, would the concept be similar that
 12 interim berms and down chutes would be constructed in
 13 the years leading up to closure in 2015?
 14 A That's correct.
 15 Q And is what is represented on NNC-5, is that
 16 the absolute worst-case stormwater runoff, or might
 17 there be interim conditions that would be worse than
 18 that?
 19 A Well, this is the final cover configuration.
 20 Q There's not my question. My question is --
 21 A You asked two questions.
 22 Q I'm sure I probably did.
 23 A Okay.
 24 Q I'll try to make it at least one. The
 25 question I was interested in is on NNC-5, there is a

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1 flow depicted from final cover situation. Is that
 2 correct?
 3 A That's correct, yes.
 4 Q There will be interim flows that occur during
 5 the course of the construction of that -- of this
 6 landfill. Is that correct?
 7 A If it rains, that's correct.
 8 Q If it ever rains. I understand.
 9 A Right.
 10 Q But should it rain, there will be something
 11 other than this final cover runoff configuration that
 12 will be in place. Correct?
 13 A That's correct.
 14 Q And are there circumstances where the Q
 15 leaving either Outfalls 4 and 5 would be higher during
 16 the construction or during the phasing where you're
 17 not in final configuration than what is shown on this
 18 diagram?
 19 A I don't know.
 20 Q You don't know?
 21 A No.
 22 MR. BLACKBURN: Can I take a minute,
 23 Your Honor?
 24 JUDGE NEWCHURCH: Yes, sir. Off the
 25 record.

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1 (Discussion off the record)
2 MR. BLACKBURN: Move to admit NNC-2, 3,
3 4 and 5.
4 JUDGE NEWCHURCH: Any objection?
5 (No response)
6 JUDGE NEWCHURCH: They're all admitted.
7 (Exhibit NNC Nos. 2 through 5 admitted)
8 (Discussion off the record)
9 JUDGE NEWCHURCH: Back on the record.
10 Q (BY MR. BLACKBURN) Now, did I understand you
11 that you also testified in your prefiled testimony to
12 nuisance conditions or to the absence of nuisance
13 conditions?
14 A I think I testified whether or not I felt the
15 proposed application would prevent any nuisance
16 conditions from occurring.
17 Q And what was your opinion?
18 A That it would.
19 Q Okay. Now, with regard to odors, are you
20 aware that there have been citizen concerns about
21 odors?
22 A Yes, there's been numerous citizen complaints
23 about odors.
24 Q Have you ever personally investigated any of
25 those complaints?

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1 A Yes, I have.
2 Q Have you ever talked to any of the citizens?
3 A Yes, I have.
4 Q Who did you talk to?
5 A I've talked to Trek English, Joyce Best,
6 Joyce Thoreson, probably others, you know, several
7 years ago.
8 Q When was this?
9 A 2001, 2002, 2003 timeframe.
10 Q In that time period where I believe at least
11 there's been some discussion that there was odor
12 problems at the site. Would you agree with that
13 characterization?
14 A Yes.
15 Q And what about in the time since then, 2004,
16 2005, 2006, 2007, have you talked to any citizens
17 during that time period?
18 A I think I talked to those citizens and others
19 at various -- probably Travis County meetings, more
20 likely Travis County Commissioner's Court meetings
21 where I talked to them after the meeting was over and
22 see if they had any concerns, if they had some
23 specific issues. I've known those people for a long
24 time.
25 Q Have they been mentioning odors lately?

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1 A Not to me personally, but they have in public
2 meetings, public forums, yes.
3 Q But you haven't called them up as part of
4 your work on this application and said, "You know,
5 look, I want to try to understand the odors." Have
6 you done that?
7 A I have not, no.
8 Q Now, I believe on page -- well, I'm not sure
9 what the page numbering is at the current time. On
10 Page 59 of your original testimony, I don't know which
11 one you have. Turn to Page 59 and see if you're
12 talking about odors on Page 59.
13 A Yes. In fact, the supplement to my prefiled
14 are all at the end.
15 Q They're all at the end.
16 A That's right.
17 Q That's at least somewhat helpful since all of
18 my notes are on prefiled that was before that.
19 A Okay.
20 Q Now, there's a question about "Was the source
21 of these odors investigated?" Do you see that?
22 A Yes, I do.
23 Q And I think you say "Yeah, but it's difficult
24 to identify the specific cause of odors." Do you see
25 that?

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1 A Yes, that's correct.
2 Q Now, have you investigated whether Waste
3 Management was the cause of the odors?
4 A I didn't go onto Waste Management's site, no.
5 Q Are you aware that the citizens are often
6 told that Waste Management is the source of the
7 problem?
8 A Told by whom and what timeframe? I mean,
9 I've heard citizens tell other citizens that every
10 possible source of odor is the source of the odor.
11 Q And I guess my question is in terms of your
12 investigation, did you make any attempt to try to
13 discriminate between odors that may be originating at
14 the Waste Management site or those at the BFI site?
15 A Some attempts, yes.
16 Q Were you successful?
17 A Sometimes we felt that we were able to
18 determine which landfill was the probable cause of the
19 odors, but nothing scientific. You know, it was more
20 of just a general opinion to see if we needed to do
21 more efforts at the BFI site.
22 Q Now, you do state in your prefiled testimony
23 that BFI has acknowledged that Sunset Farms was the
24 source of odors during a timeframe?
25 A That's correct.

46 (Pages 181 to 184)

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1 Q What was that timeframe?
2 A Late 2001 and 2002.
3 Q And what specifically was identified as the
4 source of those odors that was fixed?
5 A Well, there's two questions there, I believe.
6 First, what was specifically identified as the source,
7 and I don't know that anyone ever identified the
8 source. We identified that it could be coming from
9 the BFI landfill, either from the waste stabilization
10 process, the use of leachate on recirculation on the
11 landfill area. It could be from working face
12 practices. It could have been from receiving very
13 odorous waste, possibly from the leachate removal
14 process. All of those were identified and evaluated
15 to see if things could be done differently to reduce
16 the odors, and a number of practices were implemented.
17 In addition to that previous list is the
18 landfill gas collection system was evaluated to see if
19 it could be more effective also.
20 Q Now, is daily cover applied at this landfill?
21 A Yes, it is.
22 Q Is gasoline-contaminated soil ever used as
23 daily cover?
24 A It may have been used at one time. That's
25 classified as alternative daily cover, and it's not

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1 proposed to be used in this explanation application.
2 Q Is it prohibited in this expansion
3 application?
4 A Yes. Alternative daily cover, ADC, is not
5 authorized.
6 Q That would include all gasoline-contaminated
7 soils?
8 A If that's classified as an alternative daily
9 cover, which contaminated soils are, that's correct.
10 Q And that's a permit condition?
11 A That's in the application. I don't know if
12 it's in the permit or not. It's been too long since
13 I've read the entire permit.
14 Q Now --
15 MR. BLACKBURN: Your Honor, may I come
16 and get my code book?
17 JUDGE NEWCHURCH: You may. Thank you
18 for the loan.
19 MR. BLACKBURN: It's actually easier for
20 me to come this way, if you don't mind.
21 Q (BY MR. BLACKBURN) Now, there was some
22 testimony that you gave in cross-examination by
23 Mr. Head with regard to wetlands. Do you recall that?
24 A Yes, I do.
25 Q And do you recall that there is a pond in

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1 the -- what I'll call the top right-hand side, it
2 would be the northeast corner of the landfill?
3 A Yes, I do.
4 Q And that pond is identified as a
5 sedimentation pond. Is that correct?
6 A There's a sedimentation -- it's an existing
7 sedimentation -- well, let me back up. It's an
8 existing detention pond, and under the proposed
9 expansion it will be a sedimentation/water quality
10 detention pond.
11 Q That would be the wetland we're talking
12 about?
13 A No, that is not the wetland.
14 Q Okay. Is the wetland proposed as a
15 sedimentation pond?
16 A No, it is not.
17 Q Is there flow going into the wetland from the
18 sedimentation pond?
19 A Yes, there is.
20 Q But the pond itself, it's your testimony, is
21 not a sedimentation pond?
22 A We're not proposing it to be categorized as a
23 sedimentation pond.
24 Q Would you turn to Page 996 in the
25 application?

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1 A Yes.
2 Q Do you see the area on 996 that is identified
3 as an existing sedimentation/water quality pond?
4 A I see it labeled as such, yes.
5 Q That's the wetland, is it not?
6 A Yes, I think that's mislabeled.
7 Q Oh, that's -- excuse me. I'm sorry. That's
8 mislabeled? You didn't mean that?
9 A I think it says it's an error. It's not
10 intended to be a water quality pond or a sedimentation
11 pond. Certainly those functions occur in that pond,
12 but that's not existing detention.
13 Q Go to Page 997, please.
14 A All right.
15 Q Did you make the same mistake on that page?
16 A Yeah, I mean, it's an existing pond. I
17 wouldn't have labeled it as such.
18 Q But it's called a sedimentation/water quality
19 pond. Right?
20 A Well, all ponds provide a sedimentation
21 function and water quality just by their nature, but
22 it's not proposed to be a constructed or operated
23 facility. It's a wetland, and that's its main --
24 that's what it should be categorized.
25 Q Would you turn to 968 in the application,

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1 please?
2 A Yes.
3 Q Is the pond -- I'm trying to figure out
4 stormwater coming off of the -- do you see Ditch A
5 that runs along the side would be -- runs along the
6 eastern side of the landfill?
7 A Yes, I see Ditch A.
8 Q And there is a -- looks like an operational
9 area that's about like 22 acres or so. Do you see
10 22.3?
11 A Yes.
12 Q Could you describe what's going on in kind of
13 that white area that the 22.3 is within?
14 A That's where the existing landfill
15 gas-to-energy plant is located, and I believe that the
16 citizens' collection area is there also.
17 Q Am I correct that the stormwater from that
18 ones directly into this wetland?
19 A Well, I believe it goes into Ditch A first.
20 Q And then it goes from -- Ditch A goes into
21 the wetlands. Right?
22 A I believe that's correct.
23 Q So that wetland is a primary sedimentation
24 pond for all the runoff coming off that area.
25 Correct?

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1 A I don't know what "primary sedimentation
2 pond" --
3 Q Is there any other sedimentation pond?
4 A No; no pond, no.
5 Q So the first stopping point, if you will,
6 that that water encounters is the wetland that you say
7 was mischaracterized as a sedimentation pond.
8 Correct?
9 A Well, it's an existing pond, and the runoff
10 from that area goes there right there and has as long
11 as I know. So the function of that pond is not
12 changing in any regard.
13 Q Do you think that Ditch A cause as discharge
14 of pollutants into the wetland?
15 A No, Ditch A doesn't.
16 Q The runoff that's carried by Ditch A, would
17 that convey pollutants to the wetland?
18 A I don't know if it does or not.
19 Q Are you telling me there's no pollutants that
20 come out of the runoff off of that gas plant area?
21 A There may be some suspended solids.
22 Q Is that a pollutant?
23 A It depends upon the level of solids.
24 Q Would you agree with me that discharging
25 solids into a wetland is a discharge of fill material?

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1 A No, I don't think I would agree with that.
2 Q Fill material is solids. Right?
3 A It can -- they can be solids, yes.
4 Q So in certain circumstances it would be a
5 discharge of fill material?
6 A In certain circumstances, solids could be.
7 Q Now, there was another wetland. Are you
8 familiar with that 3.5-acre wetland?
9 A The area delineated as potential wetlands,
10 yes.
11 Q That's the area that was identified as being
12 used for recycling?
13 A It was shown in the recycling area, yes.
14 Q So we are conducting recycling area --
15 recycling activities within a wetland on this site.
16 Is that correct?
17 A I don't believe recycling has ever been done
18 in that area.
19 Q But it's marked as a recycling area.
20 Correct?
21 A That's right, as an area that could be used,
22 but it was never used.
23 Q And never will be?
24 A That's correct.
25 Q Is it part of the permit that it will not be

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1 used?
2 A I don't know.
3 Q That 3.5-acre wetland, you know, it's your
4 testimony that it is proposed to be used as part of
5 this landfill, or is it proposed to be left alone?
6 A It's proposed to be left alone.
7 Q And that could be added as a permit
8 condition, and you'd recommend it?
9 A Sure.
10 Q To your knowledge, does that wetland area
11 receive any water anymore?
12 A Every time it rains.
13 Q Does it get any runoff like it used to?
14 A What do you mean "like it used to"?
15 Q I'll withdraw.
16 There was a modification that was
17 submitted in 2002 that's NNC-1. Correct?
18 A That's correct.
19 Q And that implements, among other things, a
20 change in the floodplain. Correct?
21 A Yes.
22 Q And that change in the floodplain diverted
23 much of the flow that went through that 3.5-acre
24 wetland to the northern perimeter of the site.
25 Correct?

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1 A That's correct.
 2 Q And so is there a source of runoff currently
 3 proposed to come into that wetland area?
 4 A Yes.
 5 Q And where would that be coming from?
 6 A The surrounding area.
 7 Q So in other words, if it rains on it or the
 8 open space around it, then it will get some water?
 9 A That's correct.
 10 Q Do you think it -- well, nevermind.
 11 MR. BLACKBURN: No further questions.
 12 Pass the witness.
 13 JUDGE NEWCHURCH: I think we've done
 14 everybody for cross. So is there redirect?
 15 MR. GOSSELINK: Would you like me to
 16 begin? I would love to take a minute or two. What do
 17 you think?
 18 JUDGE NEWCHURCH: We can take a break
 19 now. Why don't we take a break for ten minutes, and
 20 ten we'll come back for redirect.
 21 (Recess: 2:50 p.m. to 3:10 p.m.)
 22 JUDGE NEWCHURCH: Let's go back on the
 23 record, and we're ready for redirect, Mr. Gosselink.
 24 MR. GOSSELINK: Thank you, Your Honor.
 25

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1
 2 REDIRECT EXAMINATION
 3 BY MR. GOSSELINK:
 4 Q Mr. Shull, I'd like to try and clear up this
 5 discussion with regard to NNC Exhibits 1, 2 and 3. Is
 6 it your understanding that there were additional
 7 changes to the submission that was made that's labeled
 8 NNC-1 and contains NNC-2 and NNC-3? In other words,
 9 this is not the final submission. Is that correct?
 10 A Yes. As I testified, I distinctly remember
 11 receiving comments from the TCEQ. It was probably
 12 under a NOD, a response to us, which would have
 13 resulted in modifications to the submittal before it
 14 was finalized.
 15 Q And are you, in fact, the person at ACE
 16 Engineering who has been responsible for doing the
 17 drainage calculations?
 18 A No, I'm not.
 19 Q Okay. And who would the person be who could
 20 answer the questions with regard to NNC-1, 2 and 3 or
 21 its progeny and the other drainage issues that
 22 Mr. Blackburn was questioning you about?
 23 A That would be Adam Mehevec.
 24 MR. GOSSELINK: Your Honor, Mr. Mehevec
 25 is a witness in this case, and he will be called.

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1 Q (BY MR. GOSSELINK) You also spent some time
 2 looking at the pond in the upper right-hand corner or
 3 northeast corner of the landfill that has a little
 4 cartoon label that includes in it the words
 5 "sedimentation pond." Do you recall that discussion?
 6 A I think it said "existing sedimentation/water
 7 quality pond."
 8 Q Right. I think that was in NNC-4 and NNC-5.
 9 Let me be sure. Yes, it was. Would you take a look
 10 and confirm that, please?
 11 A No, I think --
 12 Q Well, no, it's not. Would you look at Bates
 13 Label APP996 and let's see if that's it.
 14 A Yes, I believe it was 996 and 997.
 15 Q Okay. And you used the term in response to
 16 Mr. Blackburn's question -- or you responded to
 17 Mr. Blackburn's question by explaining that you felt
 18 that this notation on the face of each of those
 19 Pages 996 and 997 were mislabeled. Could you explain
 20 to the ALJ what you meant when you said you felt they
 21 were mislabeled?
 22 A Yeah, by labeling them as "existing
 23 sedimentation/water quality ponds," I didn't think
 24 that was accurate because we didn't assume that there
 25 was actually any sedimentation function provided by

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1 this pond, nor water quality improvement. It's an
 2 existing pond, and it's been identified as meeting the
 3 criteria for a jurisdictional wetland, but -- so I
 4 think it was inappropriate to call it a
 5 sedimentation/water quality pond. It's just an
 6 existing pond. Certainly it provides those functions,
 7 but we didn't take credit for any of those functions
 8 in what we presented in the application.
 9 Q And when you say "take credit," does that
 10 include the hydraulic calculations that determine the
 11 Q at Outfall 1?
 12 A Yes, that's correct.
 13 Q And that aspect of this pond was not
 14 incorporated into that part of your analysis?
 15 A That's correct.
 16 Q And you didn't sort of incorporate it with
 17 the concept that this was like one of the
 18 sedimentation basins you designed or water quality
 19 detention pond that you designed. It was just an
 20 existing pond that happens to have flow going through
 21 it, and you labeled it that way?
 22 A That's correct.
 23 Q Okay. I'm looking for the document that
 24 contains the 3.5-acre wetland and the retention or the
 25 recycling area. I think that's --

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1 MR. GOSSELINK: Your Honor, if I could
2 have a moment? Because it's not a handed out exhibit,
3 we have to flip back through the application. I lose
4 track of what we were talking about.
5 JUDGE NEWCHURCH: Off the record.
6 (Discussion off the record)
7 Q (BY MR. GOSSELINK) Do you have before you
8 now, Mr. Shull, RS-36, Page 169?
9 A Yes, I have Page 169 in front of me now.
10 Q Thank you. And can I also ask you to turn to
11 the application Bates Label APP225, and let me know
12 when you have it.
13 A Yes, I have both of those now.
14 Q I'm looking at Page 169 that shows the
15 recycling area. Can you tell the Judge whether or not
16 there's actually any recycling going on in that area?
17 A Currently there is none. That area has been
18 converted, I guess, into the landfill area along the
19 southern boundary landfill cells. I think 22 and 23
20 are constructed in that area.
21 Q That's actually part of the landfill itself
22 in this area?
23 A Yeah, that's right.
24 Q Part of it?
25 A Part of it.

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1 Q Okay. What else?
2 A And the southern portion of that area called
3 recycling area, and I believe it was intended to be
4 recycling until the landfill was constructed there.
5 Q And the landfill is now constructed in that
6 area?
7 A The landfill is now constructed in that area.
8 So they have stopped accepting brush and storing it in
9 that area, which was their only related activity to
10 recycling that I understand has ever gone in there.
11 At one time, they stored white goods in the very
12 southern portion of this area, and that's no longer
13 being done either.
14 Q Is there any plan to put any recycling
15 activities of any sort, including brush, in that area?
16 A No, there's not.
17 Q Okay. Where is the brush now going?
18 A It's going directly to the working face.
19 Q Okay. And where are the white goods now
20 going?
21 A They're going to a very small area. If you
22 look on 169 where it shows the solidification basin,
23 that basin has been removed, but I believe just to the
24 east of that location they're got a small area for
25 white good storage.

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1 Q And is there any other recycling that might
2 have existed at this site at one time that has moved
3 anywhere or is no longer being -- no longer being
4 used?
5 A No, other than brush grinding and white goods
6 recycling, that was it.
7 Q Okay. Now, if you'll turn to 225 and do the
8 same thing with whoever cross-examined you on this was
9 doing, which is to try and -- take a look at the
10 3.5-acre wetland area. And let me know whether or not
11 any aspect of the landfill facilities encroach upon
12 that wetland area.
13 A No, they don't.
14 Q Are there any plans to?
15 A No, no, activities are planned for that area.
16 Q Remind me, Mr. Shull, during the break, were
17 you able to discuss with any of the BFI management
18 what limitations, if any, exist as to the size of the
19 working face under the existing permit?
20 A Yes, I was.
21 Q Okay. And further --
22 MR. BLACKBURN: You know, Your Honor,
23 I'm going to object to hearsay.
24 MR. GOSSELINK: I'm going to -- I'm
25 going to provide a copy of the SOP right now.

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1 JUDGE NEWCHURCH: Well, I haven't heard
2 a question soliciting hearsay yet.
3 MR. BLACKBURN: Well, I'm sorry. He
4 started off by saying did you talk to some people on
5 the break.
6 JUDGE NEWCHURCH: Right, and that wasn't
7 asking for hearsay. It might lead to something asking
8 for hearsay.
9 MR. GOSSELINK: I'm this close.
10 MR. BLACKBURN: You were very close.
11 (Laughter)
12 MR. GOSSELINK: May I approach the
13 witness?
14 JUDGE NEWCHURCH: Yes, sir.
15 Q (BY MR. GOSSELINK) And this -- and I'll ask
16 you, Mr. Shull, to -- I'll show you part of the SOP to
17 the existing -- would you open that for me?
18 A Yes.
19 Q Thank you very much. You're the engineer.
20 MR. CARLSON: Paul, you might want to
21 tell them it's a previously marked document.
22 MR. GOSSELINK: I will; I will.
23 Q (BY MR. GOSSELINK) Okay.
24 A All right.
25 Q Now, I've asked you to open to what, would

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1 you please identify that?
 2 A This is Exhibit BD-3 to, I believe,
 3 Brad Dugas' testimony, and this is the existing site
 4 operating plan dated April 6, 2006, which is the
 5 operating plan that they're currently operating the
 6 site under.
 7 Q Okay. And would you turn to the page I've
 8 marked?
 9 A Yes.
 10 Q And that is Page 36. Okay? Is there any
 11 discussion on Page 36 or anywhere in the SOP for the
 12 existing permit which limits the size of the working
 13 face to any particular dimension?
 14 A No. This section of the SOP says that the
 15 unloading area will be less than 200 by 200 feet, but
 16 it does not contain a limit on the size of the working
 17 face.
 18 Q Okay. So if indeed Mr. Moore had sized his
 19 working face at 37,000 feet or 40,000 feet, it's not
 20 in violation of this permit, is it?
 21 A No. And I previously testified that I
 22 thought there was a 35,000-foot limitation under the
 23 existing operating plan, but that was incorrect.
 24 MR. GOSSELINK: Thank you. Pass the
 25 witness.

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1 JUDGE NEWCHURCH: Okay. Is there
 2 further cross limited to the scope of the redirect?
 3 Mr. Terrill?
 4 MR. TERRILL: Your Honor, I don't have
 5 any questions.
 6 JUDGE NEWCHURCH: Let's see.
 7 Ms. Noelke?
 8 MS. NOELKE: Your Honor, I don't have
 9 any questions.
 10 JUDGE NEWCHURCH: Mr. Morse?
 11 MR. MORSE: None from the county, Your
 12 Honor.
 13 JUDGE NEWCHURCH: Ms. Mann?
 14 MS. MANN: No questions.
 15 MR. SHEPHERD: The Executive Director
 16 does not have any questions.
 17 JUDGE NEWCHURCH: And that takes us to
 18 TJFA.
 19 MR. BLACKBURN: Just a few questions.
 20 JUDGE NEWCHURCH: Okay.
 21 RECROSS-EXAMINATION
 22 BY MR. HEAD:
 23 Q Going back to the overall excavation plan,
 24 APP000401, Note 2.
 25 A All right. I'm open to 401.

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1 Q Okay. Note 2, is there anything in Note 2
 2 that would prohibit stockpiling of materials,
 3 recycling, grinding or mulching in the wet -- 3.5-acre
 4 wetland area?
 5 A No.
 6 Q And is there any wording in your SOP or in
 7 the current SOP which discusses procedures to ensure
 8 the 3.5-acre wetland is not disturbed?
 9 A I don't recall anything in the SOP related to
 10 that. I'm not sure of the rest of the several
 11 thousand pages of application. I don't recall it's in
 12 there either.
 13 Q Okay. But with regard to the SOP which you
 14 personally prepared and sealed, there's nothing in
 15 there about ensuring that no activities occur in that
 16 3.5-acre wetland, is there?
 17 A I don't believe there's anything specific
 18 under that, no.
 19 MR. HEAD: One second, please. Pass the
 20 witness.
 21 JUDGE NEWCHURCH: Mr. Blackburn?
 22 MR. BLACKBURN: Could I take just a
 23 minute? I've got really just one question, but I've
 24 got to find the right exhibit.
 25 JUDGE NEWCHURCH: Okay. Off the record.

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1 (Discussion off the record)
 2 JUDGE NEWCHURCH: Back on the record.
 3 RECROSS-EXAMINATION
 4 BY MR. BLACKBURN:
 5 Q Mr. Shull, as we are here today with regard
 6 to the modification, which is NNC Exhibit 1, do you
 7 have any written document that would indicate that the
 8 information in NNC-1 had been supplanted or otherwise
 9 changed by action of TCEQ?
 10 A You mean the documents that I brought with me
 11 today?
 12 Q Right.
 13 A No, I think that's in our files, though.
 14 Q Okay. But, you know, today you can't produce
 15 anything that refutes that that was approved as
 16 submitted?
 17 A I did not bring any documents with me to that
 18 effect.
 19 MR. BLACKBURN: Okay. Thank you. Pass
 20 the witness.
 21 JUDGE NEWCHURCH: Is there further
 22 direct?
 23 MR. GOSSELINK: I have one.
 24
 25

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1 FURTHER REDIRECT EXAMINATION
 2 BY MR. GOSSELINK:
 3 Q Mr. Shull, could you go back to APP401, Note
 4 2?
 5 A Yes.
 6 Q I'd like to read the first line to you and
 7 ask you how you interpret it, please, with regard to
 8 Mr. Head's question about whether there is anything in
 9 Note 2 which would prohibit the location of any of
 10 this recycled material. The first sentence says "All
 11 cells which have not yet received waste may be used
 12 for" -- and it goes on to the list. Have all of the
 13 cells that are ever going to be constructed at BFI
 14 Sunset Farms Landfill already been excavated and
 15 taking waste?
 16 A Yes, they have.
 17 MR. GOSSELINK: Okay. No further
 18 questions.
 19 JUDGE NEWCHURCH: Any further
 20 cross-examination based on that one question?
 21 MR. HEAD: Sorry to do this, Your Honor.
 22 FURTHER RECROSS-EXAMINATION
 23 BY MR. HEAD:
 24 Q Back to Note 2 in 401. All the cells have
 25 been excavated. Correct?

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1 A That is correct.
 2 Q The 3.5-acre wetland surely is not within
 3 those cells. Correct?
 4 A That's correct.
 5 Q And the 3.5-acre wetland is not in the
 6 hundred-year floodplain. Correct?
 7 A That's correct.
 8 Q And the 3.5-acre wetland is not within
 9 50 feet of the perimeter. Correct?
 10 A Yes, that's correct.
 11 Q So under Note 2 on the strict reading,
 12 activities could occur in the wetland as this is
 13 written with regard to the mulching, grinding and
 14 recycling. Correct?
 15 A This Note does not prevent that.
 16 MR. HEAD: Thank you.
 17 JUDGE NEWCHURCH: I think we're done.
 18 Mr. Shull, I volunteered you to be recalled later. I
 19 assume you're going to be here for the rest of the
 20 hearing anyway. Right?
 21 A I'll be available certainly.
 22 JUDGE NEWCHURCH: Okay. Very good. So
 23 you're excused at this time, and thank you for your
 24 service.
 25 A Thank you.

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1 JUDGE NEWCHURCH: And I think we are
 2 ready to move on to BFI's next witness.
 3 MR. CARLSON: Applicant calls
 4 Mike Snyder.
 5 JUDGE NEWCHURCH: Mr. Snyder, if you
 6 would come forward?
 7 (Discussion off the record)
 8 JUDGE NEWCHURCH: All right. Is
 9 everyone ready?
 10 (Witness sworn)
 11 JUDGE NEWCHURCH: Thank you. Please
 12 have a seat.
 13 JOHN MICHAEL SNYDER,
 14 having been first duly sworn, testified as follows:
 15 DIRECT EXAMINATION
 16 BY MR. CARLSON:
 17 Q Good afternoon, Mr. Snyder.
 18 A Good afternoon.
 19 Q Could you please state your full name and
 20 address -- business address for the record?
 21 A My name is John Michael Snyder. My business
 22 address is 1700 Robert Road, Suite 100, Mansfield,
 23 Texas 76063.
 24 Q What do you do for a living?
 25 A I'm a hydrogeologist.

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1 Q What was your role with respect to BFI's
 2 application for Sunset Farms?
 3 A I prepared the geologic/hydrogeologic parts
 4 of the application.
 5 Q Did you prepare any prefiled testimony for
 6 this hearing?
 7 A I did.
 8 Q Okay. There's some binders back there.
 9 Would you take a look at the exhibit that's been
 10 marked -- premarked as Exhibit JS-1, please?
 11 A Okay. I've got it.
 12 Q Do you have it?
 13 A Yes.
 14 Q Is JS-1 a true and correct copy of your
 15 prefiled testimony?
 16 A It appears to be.
 17 Q Has your resume been attached to that --
 18 marked and attached as Exhibit JS-2, Mr. Snyder?
 19 A Yes.
 20 Q Is that a true and correct copy of your
 21 resume?
 22 A It appears to be.
 23 Q And is it a current copy of your resume,
 24 Mr. Snyder?
 25 A Certainly I've worked on many other projects

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1 which could have been included, but it's
2 representative.
3 Q Do you have any changes or revisions or
4 clarifications that you'd like to make to either your
5 prefiled testimony or to your resume at this point in
6 time?
7 A I do for my prefiled testimony.
8 Q Are these essentially clerical types of
9 things?
10 A Yes.
11 Q Could you go through the changes you'd like
12 to make, please?
13 A Sure. The first one is on Page 16, Line 16.
14 Q Why don't you give people a chance to get
15 there a second, Mr. Snyder.
16 A Okay.
17 MR. BLACKBURN: I'm sorry. What was the
18 page number?
19 A Page 16, Line 16.
20 MR. BLACKBURN: 16/16.
21 A The first full sentence or part of it says
22 "The majority of marine deposits at this site." The
23 word "near" should be substituted for "at."
24 Q So you want to change the word "near" for
25 "at" in Line 16/16 -- is that right -- Page 16.

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1 A The word is "at" now. I want to change it to
2 "near."
3 Q Okay. Any others?
4 A Yes. On Page 21, there's clarification or a
5 correction. On Line 6 on Page 21, it says "Yes, 18
6 exploratory borings were done in 2004 after the plan
7 had been approved." That should read that "Ten of the
8 borings were done prior to plan approval. The other
9 eight were done after the plan was approved."
10 Q Okay. Any other changes to that portion of
11 your prefiled?
12 A No.
13 Q All right. Any other changes, Mr. Snyder?
14 A Yes, Page 31, Line 20.
15 Q What's the --
16 A The last four words of that line say "it also
17 deposits." That word was intended to be "depicts."
18 Q So you want to put the word "depicts" for
19 "deposits --"
20 A Instead of "deposit."
21 Q -- on Line 30, Page 21?
22 A Yes.
23 Q Okay. Anything else?
24 A Yeah, there's a series all related to the
25 same issue. I'll go through them one by one. On

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1 Page 40, Lines 13 and 15, where it says "The existing
2 system is comprised of 15." And then on Line 15 it
3 says "these 15," both of those should read "17." The
4 same change on Page 41, Line 10. And then again on
5 Page 42, Line 2 and Line 6, both of those should read
6 "17" rather than "15."
7 Q So you have five instances that you've said
8 where you want to change the number "15" to "17." Is
9 that correct?
10 A Yes, sir.
11 Q Is that all related to the same issue?
12 A Yes, it is.
13 Q Could you very briefly for the ALJ and for
14 the record explain the basis for that change?
15 A Yes. In the existing system, there are 15
16 wells that will become part of the final system, and
17 that was the -- that was the confusion because there
18 are a total of 17: Two of those will be plugged, 17
19 new ones will be installed for a total of 32. But
20 that 15 was the number in the original system that
21 will then go to the final system.
22 Q Any other changes, revisions or
23 clarifications to your prefiled?
24 A No, sir.
25 Q What portions of the application are you

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1 sponsoring?
2 JUDGE NEWCHURCH: Can I stop you there?
3 First of all, are there objections to those changes
4 concerning 15 and 17?
5 MR. RENBARGER: No objections.
6 JUDGE NEWCHURCH: And, Mr. Snyder, have
7 you made those in the official record copy?
8 A I have not.
9 JUDGE NEWCHURCH: Okay. If you would
10 take a minute and do that, please?
11 A Okay.
12 JUDGE NEWCHURCH: Let's go off the
13 record.
14 (Discussion off the record)
15 JUDGE NEWCHURCH: Okay. Back on the
16 record. Mr. Carlson?
17 Q (BY MR. CARLSON) Thank you, Mr. Snyder.
18 Other than the changes you've just made, Mr. Snyder,
19 is there anything else, any other revisions, changes
20 or clarifications to your prefiled?
21 A No, sir.
22 Q Now, what portions of the application are you
23 sponsoring, sir?
24 A Can I refer to my prefiled?
25 Q Sure.

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1 A I'm sponsoring Attachment 4, Sections 1, 2
2 and 4, Appendices 4A, 4B, 4C, 4D and H. Do you want
3 me to read the Bates numbers?
4 Q If you will, please.
5 A Okay. That would be 000428 to 443; 000456
6 to 471; 000474 to 723; and 00818 to 824.
7 I also sponsored Attachment 5 and
8 Appendices 5A and 5B. Those are Bates Nos. 854
9 to 920. And Attachment 11 with Appendices 11A, B and
10 C, Bates Nos. 001340 to 1401.
11 Q And just to make the record clear, all the
12 Bates labels or Bates numbers you just read in are
13 preceded by the prefix "APP." Is that correct?
14 A Yes.
15 Q Do you adopt your prefiled testimony as true
16 and correct in the same manner as if you were
17 providing that testimony live here today?
18 A Yes, I do.
19 MR. CARLSON: At this point, Judge, I'd
20 offer Mr. Snyder's prefiled, which is JS-1, as well as
21 the exhibits that accompany that, JS-2 through JS-10.
22 JUDGE NEWCHURCH: All right. Any
23 objection beyond those that have already been ruled
24 on?
25 (No response)

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1 JUDGE NEWCHURCH: So JS-1 is admitted in
2 its entirety, and the additional portions of RS-11 are
3 also admitted.
4 (Exhibit BFI No. JS-1 admitted)
5 MR. CARLSON: And to clarify one thing,
6 Judge, there was an objection that you sustained to
7 the very end -- the question and answer at the very
8 end of Mr. Snyder's testimony. It's Page 56. The
9 current version of Page 56 that you have reflects that
10 objection and those changes.
11 JUDGE NEWCHURCH: Thank you. Thank you
12 for being clear about that. And I am assuming as we
13 go, because I've directed the parties to conform the
14 exhibits that they're actually offering for the record
15 to the prior rulings and agreements, so I'm assuming
16 that's occurring unless someone tells me otherwise.
17 Thank you for that clarification. And so you pass the
18 witness?
19 MR. CARLSON: I do.
20 JUDGE NEWCHURCH: JS-2 through 10, did
21 you want to offer those also?
22 MR. CARLSON: I think I did.
23 JUDGE NEWCHURCH: Oh, I'm sorry. I
24 missed that. JS-2 through 10 are also admitted.
25

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1 (Exhibit BFI No. JS-2 through JS-10
2 admitted)
3 JUDGE NEWCHURCH: Let's go to
4 cross-examination in the same order.
5 MR. BLACKBURN: Your Honor?
6 JUDGE NEWCHURCH: Yes, sir?
7 MR. BLACKBURN: Could we ask that
8 everybody speak in the microphones as best as
9 possible? It's just a little hard to hear.
10 JUDGE NEWCHURCH: Okay. Mr. Terrill?
11 MR. TERRILL: Your Honor, Giles Holdings
12 has no questions at this time.
13 JUDGE NEWCHURCH: Ms. Noelke?
14 MS. NOELKE: City of Austin has no
15 questions, Your Honor.
16 JUDGE NEWCHURCH: Mr. Morse?
17 MR. MORSE: Neither does Travis County,
18 Your Honor.
19 JUDGE NEWCHURCH: Ms. Mann?
20 CROSS-EXAMINATION
21 BY MS. MANN:
22 Q Good afternoon.
23 A Hello.
24 Q I want -- I was hoping you could help me walk
25 through a little bit of the geology so I understand

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1 the relationship between the landfill footprint and
2 the geology that it overlays or sometimes lies within.
3 So let me make sure I understand. The Taylor -- well,
4 actually let me start with this: How deep is the
5 landfill excavated, or is it uniform?
6 A It is not uniform, and I couldn't tell you
7 right off the top of my head exactly how many feet it
8 was excavated.
9 Q Can you give me a ballpark?
10 A Maybe 40 or 50 feet.
11 Q Okay. And so all that's within what
12 geological formation?
13 A The Taylor -- the cretaceous Taylor Marl.
14 Q Okay. And is all of that within the
15 unweathered Taylor, or would some of that extend into
16 the -- vice versa. Is all of that within the
17 weathered Taylor, or would some of that extend into
18 the unweathered Taylor?
19 A Most of it's within the weathered Taylor.
20 There's a little piece of it in the northeast corner
21 where I think it extends into the -- slightly into the
22 unweathered, but mostly it's in the weathered Taylor.
23 Q And would the -- if I understand this
24 correctly, the weathered Taylor is less permeable than
25 the unweathered Taylor -- is that correct -- for

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1 water?
 2 A I think you said that backwards. Could you
 3 repeat that for me?
 4 Q Sure. The weathered Taylor, the top layer,
 5 is more permeable than the unweathered Taylor, which
 6 is a thicker clay-like substance. Is that correct?
 7 A That's correct.
 8 Q Okay. And there are aquifers that underlie
 9 all of this, but they don't begin in the Taylor
 10 formation. Is that correct?
 11 A That's correct. There's multiple cretaceous
 12 aquifers well below the Taylor.
 13 Q And if I understood your testimony, there's
 14 very little accessible water in any aquifer in the
 15 Taylor formation. Is that correct?
 16 A I'm not quite sure what you mean by "very
 17 little."
 18 Q Is there any accessible -- is there any water
 19 that can be accessible in the Taylor formation?
 20 A Very, very small quantities can be yielded
 21 to -- there are some wells in the Taylor in the area.
 22 They're not high quantity wells used for any public
 23 water supply.
 24 Q And would they have any connectivity or
 25 hydraulic connectivity to any of the underlying

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1 aquifers?
 2 A No.
 3 MS. MANN: I have no further questions.
 4 JUDGE NEWCHURCH: Mr. Shepherd?
 5 MR. SHEPHERD: The executive Director
 6 does not have any questions.
 7 JUDGE NEWCHURCH: Mr. Renbarger?
 8 MR. RENBARGER: Thank you.
 9 CROSS-EXAMINATION
 10 BY MR. RENBARGER:
 11 Q Good afternoon, Mr. Snyder.
 12 A Hello.
 13 Q Let's start out a little bit here by getting
 14 a better idea on the actual things that you did in
 15 preparation of your parts of the application. Could
 16 you give me just some ideas of some of the tasks and
 17 some of those things that you undertook?
 18 A Yeah, I think I said in my prefiled testimony
 19 that I prepared the Attachments 4 and 5, which
 20 included reviewing existing data, data that already
 21 existed at the site done by others. It involved some
 22 preliminary understanding of what the landfill design
 23 was. It involved doing some borings and integrating
 24 that data and constructing cross-sections and geologic
 25 maps and doing an interpretation of the hydrogeology,

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1 which also included incorporating groundwater levels.
 2 Q Okay. And what sources of information other
 3 than just some of the existing information did you
 4 rely upon in preparing your prefiled testimony?
 5 A I'm not sure what --
 6 Q More specifically, for example, the 2006 MSW
 7 rules prior to the more recent adopted changes, did
 8 you rely on those?
 9 A Certainly.
 10 Q Okay. How about the Resource Conservation
 11 Recovery Act, Subtitle D, that would be one, would it
 12 not?
 13 A Yes, sir.
 14 Q EPA guidance policy documents?
 15 A I mean, in general terms I'm familiar with
 16 the EPA documents and incorporate them into my work.
 17 I don't remember a specific instance in this case.
 18 Q Okay. You're a registered professional
 19 geoscientist. Correct?
 20 A Yes, sir.
 21 Q And you do have an educational background in
 22 the field of geology no doubt?
 23 A Yes, sir.
 24 Q Let me ask you if you're familiar with some
 25 of these references that are commonly used in geotech

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1 and geotechnical kinds of reviews. Are you familiar
 2 with the RCRA, the R-C-R-A, Groundwater Monitoring and
 3 Technical and Enforcement Guidance Document, sometimes
 4 referred to as the TEGD?
 5 A Is that -- is that the one that was published
 6 in the early '90s?
 7 Q Actually it was published in the late 1980s,
 8 but I think it was subsequently amended in the '90s.
 9 A Yes.
 10 Q Are you familiar with a publication called
 11 the Fundamentals of Soil Mechanics by an author named
 12 Taylor of MIT in the late '60s?
 13 A Only in the --
 14 Q Late '40s. Excuse me.
 15 A I'm sorry.
 16 Q Pardon me.
 17 A Only in the most general way. I'm not a
 18 geotechnical engineer.
 19 Q Okay. But you do perform evaluations of
 20 subsurface geology. Right?
 21 A Yes.
 22 Q How about the Earth Manual, Second Edition,
 23 as published by the Bureau of Reclamation in the '70s?
 24 A I've used it. I'm somewhat familiar, but
 25 not -- not closely.

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<p>1 Q Okay. How about the publication entitled</p> <p>2 Soil Mechanics in Engineering Practice, Third Edition,</p> <p>3 Wiley & Sons 1996?</p> <p>4 A No.</p> <p>5 Q No? How about the Geotechnical Manual that</p> <p>6 is produced by the Texas Department of Transportation</p> <p>7 in 2000?</p> <p>8 A I'm not familiar with it. I'm aware of it.</p> <p>9 Q How about Subsurface Exploration and Sampling</p> <p>10 of Soils for Civil Engineering Purposes, Hvorslev,</p> <p>11 American Society of Civil Engineers 1949, reprinted in</p> <p>12 '65?</p> <p>13 A I'm somewhat more familiar with that.</p> <p>14 Q And Standard Practice for Description</p> <p>15 Identification of Soils, the Visual Manual Procedure,</p> <p>16 and that is an ASTM standard. I believe it's Standard</p> <p>17 2488.</p> <p>18 A Yes.</p> <p>19 Q Okay. The ones that you are familiar, these</p> <p>20 are references that are considered to be authoritative</p> <p>21 in the field of geology. Is that right?</p> <p>22 MR. CARLSON: Objection; form.</p> <p>23 JUDGE NEWCHURCH: Your objection?</p> <p>24 MR. CARLSON: I'm sorry. Objection. I</p> <p>25 believe he's been asked questions about geotechnical</p>	<p>1 Q Have you got your prefiled testimony there in</p> <p>2 front of you handy?</p> <p>3 A Yes, sir, I do.</p> <p>4 Q Would you please go to Page 13 of your</p> <p>5 testimony?</p> <p>6 A Okay.</p> <p>7 Q Have you got that in front of you?</p> <p>8 A I do.</p> <p>9 Q Okay. Starting on Line 15 -- oh, wait.</p> <p>10 Excuse me. Strike that. Let's move along here.</p> <p>11 If you'd go to Page 9 of your testimony,</p> <p>12 please?</p> <p>13 A Okay.</p> <p>14 Q Let's see. I believe in your prefiled</p> <p>15 testimony -- that's the wrong reference again.</p> <p>16 I believe in your prefiled testimony you</p> <p>17 did indicate that you were responsible for Attachments</p> <p>18 4 and 5 and 11. Right?</p> <p>19 A I was responsible for certain parts of 4 or</p> <p>20 all of 5 and 11.</p> <p>21 Q Okay. Very well. And do I understand</p> <p>22 correctly that you developed a boring plan for the</p> <p>23 application to assist in the site characterization</p> <p>24 part of the rules?</p> <p>25 A Yes, sir, that's correct.</p>
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<p>1 manuals, and Mr. Snyder has indicated he's not a</p> <p>2 geotech. He's a geologist and hydrogeologist. We're</p> <p>3 not offering him as a geotechnical expert.</p> <p>4 JUDGE NEWCHURCH: Well, that may or may</p> <p>5 not be, but why is that objectionable? Why is it</p> <p>6 objectionable? It's wide open cross. Why can't he</p> <p>7 ask the witness about this? I don't understand your</p> <p>8 objection.</p> <p>9 MR. CARLSON: I believe he's asking him</p> <p>10 questions in an area that he's not being offered as an</p> <p>11 expert. I'll withdraw the objection.</p> <p>12 JUDGE NEWCHURCH: Okay.</p> <p>13 MR. RENBARGER: Proceed?</p> <p>14 JUDGE NEWCHURCH: Yes, sir.</p> <p>15 Q (BY MR. RENBARGER) Now, you serve as the</p> <p>16 lead geologist for BFI in this permit application.</p> <p>17 Correct?</p> <p>18 A Yes.</p> <p>19 Q Okay. And I believe counsel just went</p> <p>20 through the various parts of the application that you</p> <p>21 either personally prepared or was prepared under your</p> <p>22 supervision. Right?</p> <p>23 A Yes.</p> <p>24 Q Did you seal each of these sections?</p> <p>25 A I believe so.</p>	<p>1 Q Does the boring plan appear in the</p> <p>2 application anywhere?</p> <p>3 A No. The approval letter does, but the plan</p> <p>4 itself doesn't.</p> <p>5 Q Okay. Why was the boring plan not included</p> <p>6 in the application?</p> <p>7 A The map of the boring plan itself always ends</p> <p>8 up being in the application. It's not a required</p> <p>9 element of the application. So it wasn't included.</p> <p>10 Q Okay. There are actually two versions of the</p> <p>11 boring plan at one time or the other that were</p> <p>12 submitted to the TCEQ. Correct?</p> <p>13 A Yes, that's correct.</p> <p>14 Q Wasn't there an April 6, 2004 version and</p> <p>15 then subsequent to that a June 28, 2004 versin.</p> <p>16 Right?</p> <p>17 A Yes.</p> <p>18 Q And isn't it true that the TCEQ did not find</p> <p>19 the April 6, 2004 boring plan acceptable. Right?</p> <p>20 A That's correct.</p> <p>21 Q Okay.</p> <p>22 MR. RENBARGER: May I approach the</p> <p>23 witness, Your Honor?</p> <p>24 JUDGE NEWCHURCH: Yes, sir.</p> <p>25 (Exhibit TJFA No. 3 marked)</p>

56 (Pages 221 to 224)

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1 JUDGE NEWCHURCH: Okay.
 2 Q (BY MR. RENBARGER) Mr. Snyder, I just handed
 3 you what has been marked I believe as TJFA-3.
 4 Correct?
 5 A Yes, sir.
 6 Q And would you agree with me that TJFA-3
 7 consists of the narrative portions of the April 6,
 8 2004 as well as the June 28, 2004 boring plans?
 9 Right?
 10 A I'm unable to tell that.
 11 Q And why is that?
 12 A Well, it looks like it's the narrative part
 13 of the first one.
 14 Q I believe that's what I stated, the narrative
 15 portions of each of those.
 16 A Oh, I'm sorry. I thought you said "and the
 17 boring plan."
 18 Q No, sir, the narrative portions of those
 19 plans.
 20 A I'm sorry. I misunderstood.
 21 Q Is that correct, that is what that exhibit
 22 represents?
 23 A I believe it is. I can't tell from the page
 24 numberings, but I think that that's correct. Two
 25 pages have dates on them and the other ones don't, but

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1 I believe that that's correct.
 2 Q Okay. And these have Bates stamps in the
 3 lower right-hand corner, do they not, of APP
 4 designations?
 5 A Yes, sir, they do.
 6 Q Okay. Could you please move over to
 7 Page 29191 of the exhibit, please?
 8 A Okay.
 9 Q And do you see toward the lower part of the
 10 page a heading called Drilling Methods?
 11 A Yes, sir.
 12 Q Okay. The second sentence of that
 13 designation indicates that "samples will be collected
 14 at at least every five feet with Shelby tubes, split
 15 spoons, and coring as appropriate." Correct?
 16 A Yes, sir, that's what it reads.
 17 Q Okay. Now, if I could get you to move over
 18 to Page 24968 which is contained in the June 28th
 19 plan?
 20 (Discussion off the record)
 21 Q (BY MR. HEAD) Again, if I can refer you now
 22 to Page 24968, you do have that now. Correct?
 23 A Yes, sir.
 24 Q Okay. And again, going back to the heading
 25 Drilling Methods kind of at the lower portion of that

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1 page, do you find that?
 2 A Yes, sir.
 3 Q Again, I'm going to refer you to the second
 4 sentence of that entry. It says "Samples will be
 5 collected at least every five feet with Shelby tubes,
 6 split spoons, cuttings, and coring as appropriate."
 7 So there is a difference in that sentence between the
 8 two different plans. Correct?
 9 A Yes, sir.
 10 Q And that difference being is that in the
 11 second plan, which was ultimately approved by the
 12 TCEQ, that you added the word "cuttings." Correct?
 13 A That's correct.
 14 Q Why was that?
 15 A Well, we ultimately -- the first ten borings
 16 that we did we cored, and when we went to do the
 17 additional eight that were requested, we had already
 18 felt like we -- the only other thing that we could
 19 learn that we didn't already know from existing
 20 borings was to attempt to identify the weathered and
 21 unweathered. So I don't remember exactly, but I think
 22 that when we resubmitted that that we -- we were
 23 asking for permission to do that with the additional
 24 eight borings.
 25 Q Okay. On Pages 24965 and 24966, do you have

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1 that in front of you?
 2 A Yes, sir.
 3 Q Do you see anywhere on those two pages where
 4 you've indicated to the TCEQ the change made with
 5 respect to drilling methods and the addition of the
 6 word "cuttings"?
 7 A No, I do not.
 8 Q And would you agree with me that the boring
 9 plan that was ultimately approved by the TCEQ included
 10 the word "cuttings" in the drilling method. Right?
 11 A Yes, it did.
 12 MR. RENBARGER: At this time, we'd offer
 13 TJFA-3.
 14 JUDGE NEWCHURCH: Any objection?
 15 (No response)
 16 JUDGE NEWCHURCH: It's admitted.
 17 (Exhibit TJFA No. 3 admitted)
 18 MR. RENBARGER: I'm sorry. I didn't
 19 hear your ruling.
 20 JUDGE NEWCHURCH: It's admitted. I'm
 21 sorry.
 22 MR. RENBARGER: Thank you.
 23 Q (BY MR. RENBARGER) Now, Mr. Snyder, don't
 24 the MSW rules that govern procedures to conduct site
 25 investigations require that that information be

57 (Pages 225 to 228)

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1 reported in the permit application? Right?
 2 A What information?
 3 Q The information from your site
 4 characterization study. That needs to be reported in
 5 the application --
 6 A Yes, sir.
 7 Q -- does it not? Okay. And would you agree
 8 with me that the results of a site characterization,
 9 to be adequate, it would need to follow the provisions
 10 of Rule 330.56(d)(5) of the old MSW rules?
 11 A I would agree with that in general terms.
 12 I'd like to hear some specifics.
 13 Q We will get to the specifics, I can assure
 14 you.
 15 Now, the purpose of a subsurface
 16 investigation is multifaceted, isn't it, Mr. Snyder?
 17 A Yes.
 18 Q The information, in other words, gathered or
 19 gleaned during this investigation is utilized for any
 20 number of things that go into the landfill
 21 application. Correct?
 22 A Yes, it is.
 23 Q And I think you would agree with me that the
 24 rules require the submission of not only a subsurface
 25 investigation report, but also a geotechnical report.

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1 Correct?
 2 A Yes.
 3 Q Okay. Do you have access to you where you're
 4 sitting right now a copy of Rule 330.56(d)(5)?
 5 A I don't have the rules with me.
 6 Q Okay. Well, I'll certainly get that for you.
 7 (Discussion off the record)
 8 A I'm sorry. Could you refer me again?
 9 Q (BY MR. RENBARGER) Okay. Yeah, it's
 10 330.56(d)(5) related to Subsurface Investigation
 11 Reports is what the heading is.
 12 A Okay.
 13 Q Okay. Have you got that?
 14 A Yes.
 15 Q Okay. Do you concur that the one you've got
 16 in front of you is the pre-2006 rules? Right?
 17 A I believe so.
 18 Q Okay. Now, in large capital (A,) that sets
 19 forth the requirements for a subsurface investigation
 20 report, doesn't it?
 21 A Yes, sir.
 22 Q Did the boring plan that was implemented
 23 based on the June 28, 2004 plan, is it your view that
 24 that particular plan deviated from the requirements of
 25 this rule?

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1 A No, I don't think so.
 2 Q Okay. Let's take a look at your testimony
 3 briefly then on Page 22.
 4 A Okay.
 5 Q Okay. And I believe on Page 22, starting on
 6 about Line 14, you're discussing about the exploratory
 7 borings that were conducted in 2004. Correct?
 8 A Yes.
 9 Q Okay. And it indicates there that all
 10 samples were logged using the ASTM 2488 Visual Manual
 11 Procedures. Correct?
 12 A Yes.
 13 Q It said "Four of the borings were
 14 continuously sampled and lab tests were run on
 15 selected samples." Right?
 16 A Yes.
 17 Q "Six borings were continuously sampled, but
 18 no lab tests were run based on professional judgment
 19 of the geotechnical engineer that sufficient lab
 20 testing had been completed in four of the new borings
 21 and in several previously-drilled borings nearby."
 22 Correct?
 23 A Yes, sir.
 24 Q And then on down toward the bottom of page,
 25 it said "Sample intervals were only shown on logs of

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1 borings in which lab testing was completed for the
 2 2004 site exploration." Correct?
 3 A Yes, sir.
 4 Q And then proceeding from the bottom of
 5 Page 22 to the top of 23, "After evaluating these
 6 borings, the eight additional borings for the boring
 7 plan were drilled using rotary wash methods and
 8 cuttings logged to confirm the weathered and
 9 unweathered Taylor." Right?
 10 A Yes.
 11 Q Okay. Now, do you -- do you think that that
 12 testimony shows compliance with 330.56(d)(5)(A)?
 13 A Yes, I do.
 14 Q Okay. I'd like you to look at the
 15 Rule 330.56(d)(5)(A). That's in front of you. Right?
 16 A Okay.
 17 Q Could you please read into the record the
 18 second, third and fourth sentences of that rule,
 19 please?
 20 A Specifically (A) you're talking about?
 21 Q Yes, sir.
 22 A "This report must describe all borings
 23 drilled on site to test soil and characterize
 24 groundwater, include a site map drawn to scale showing
 25 the surveyed location and elevation of the borings.

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1 Boring logs must include a detailed description of
 2 materials encountered, including discontinuity such as
 3 fractures, fissures, slickensides, lenses or seams.
 4 Geophysical logs of the bore holes may be useful in
 5 evaluating the stratigraphy."
 6 Q Okay. And is it your testimony that you
 7 believe that the -- for example the boring logs
 8 contained the detailed information required by this
 9 rule?
 10 A It's my testimony that the detail -- that the
 11 information contained on the logs is a detailed
 12 description of the materials.
 13 Q Consistent with this rule. Is that correct?
 14 A I believe it is.
 15 MR. RENBARGER: May I approach the
 16 witness?
 17 JUDGE NEWCHURCH: Yes, sir.
 18 (Exhibit TJFA No. 4 marked)
 19 Q (BY MR. RENBARGER) Do you have in front of
 20 you now what has been marked TJFA No. 4, Mr. Snyder?
 21 A Yes, sir.
 22 Q And would you please identify what that
 23 exhibit consists of?
 24 A This appears to be copies of the 18
 25 borings -- copies of logs of the 18 borings drilled

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1 by us.
 2 Q Okay. And is it your testimony that you
 3 believe these boring logs to be completed in
 4 conjunction with the Rule 330.56(d)(5)(A)?
 5 A Yes.
 6 Q Now, the requirements in the rule are
 7 mandatory, are they not, Mr. Snyder?
 8 A I think all the requirements in that rule are
 9 subject to the professional's interpretation and the
 10 application.
 11 Q Okay. Well, let's go down and take a look at
 12 that rule then. If you would please, if you'll skip
 13 down to the sentence that starts "Each boring must be
 14 presented in the form of a log," do you see that?
 15 A Yes.
 16 Q Would you read that in the record, please?
 17 A "Each boring must be presented in the form of
 18 a log that contains, at a minimum, the boring number,
 19 surface elevation, location coordinates and a column
 20 or section with text showing the elevation of all
 21 contacts between soil and rock layers and descriptions
 22 of each layer using the Unified Soil Classification
 23 System, color, degree of compaction and moisture
 24 content."
 25 Q The rule says it must include that, doesn't

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1 it, Mr. Snyder?
 2 A Yes.
 3 Q So you still believe that you have the
 4 discretion of disregarding that?
 5 A I think that we have discretion at sites
 6 given the material that we encounter to include that
 7 information that's available to us from the material
 8 sampled with the methods we use.
 9 Q But what you just said does not necessarily
 10 comply with the requirements of this rule, do they?
 11 A I think it is in compliance with the rule.
 12 Q Okay. Then let's go take a look at some of
 13 the boring logs that compromises TJFA-4. All right?
 14 A Yes, sir.
 15 Q Let's start on Page 520 of that exhibit. I
 16 believe that's Boring Log No. 2. Right?
 17 A Yes, sir.
 18 Q Okay. Mr. Snyder, if you could please show
 19 me on Page 520 in the columns that reflect the
 20 moisture content for this boring log, what is the
 21 moisture content for this boring log as reflected on
 22 Page 520?
 23 A We did not run any moisture contents on the
 24 samples from that log.
 25 Q How about the degree of compaction, did you

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1 do anything there?
 2 A Well, I guess it depends on what you mean by
 3 "degree of compaction," but I think when you say
 4 "massive and hard," that's some element of degree of
 5 compaction.
 6 Q It's got Unconfined Compressive Strength as a
 7 column. Right?
 8 A Yes.
 9 Q And we have no indications in that, do we?
 10 A No.
 11 Q Okay. So looking at Page 520, I do not
 12 believe we're going to find anything with regard to
 13 any degrees of compaction and moisture content, are
 14 we?
 15 A I think that's correct, on that log.
 16 Q On that log, yes, sir.
 17 Let's move to Page 522 on Boring Log 3.
 18 Do you have that in front of you?
 19 A I do.
 20 Q Okay. Do you see any degrees of compaction
 21 or moisture content for that log?
 22 A No, sir.
 23 Q How about on Page 526, could the same be said
 24 on 526?
 25 A Yes, sir.

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1 Q 528?
 2 A On Page 528, is that what you referred me to?
 3 Q Excuse me. I misstated a page number. I beg
 4 your pardon. 531. 531?
 5 A I'm at 531.
 6 Q Okay. No degrees of compaction or moisture
 7 content there either?
 8 A No, sir.
 9 Q How about on 536, anything there with respect
 10 to compaction or moisture content?
 11 A No.
 12 Q 539, anything there?
 13 A With respect to?
 14 Q Right, same question.
 15 A No, sir.
 16 Q Okay. Anything with compaction or moisture
 17 content on Page 540?
 18 A No, sir.
 19 Q How about 543, same question?
 20 A No, sir.
 21 Q 545, same question.
 22 A No, sir.
 23 Q 547, same question.
 24 A No, sir.
 25 Q 550, same question.

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1 A No, sir.
 2 Q 553, same question.
 3 A No, sir.
 4 Q 555, same question.
 5 A No, sir.
 6 Q 557, same question.
 7 A No, sir.
 8 Q So you agree with me that at least quite a
 9 number of these borings reflected this boring log do
 10 not reflect compaction or moisture content levels on
 11 the face of those boring logs, do they?
 12 A That's correct.
 13 Q And do you still consider that each of the
 14 borings -- boring logs have been reported as required
 15 by 330.56(d)(5)(A).
 16 A Yes, sir, I do.
 17 Q How do you square that?
 18 A The implication of your interpretation of the
 19 rule -- and I admit it sounds like each log should be.
 20 Your interpretation says that moisture contents and
 21 compressive strengths need to be taken in every boring
 22 across the site, and that has never been our
 23 interpretation, nor our application of the rule.
 24 Q Well, notwithstanding your interpretation,
 25 the rule does say each boring must be presented in

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1 that form, does it not?
 2 A Yes, it does.
 3 Q Thank you. Now, Mr. Snyder, all the borings
 4 that were identified in Exhibit TJFA-4, were those
 5 done with rotary methods, the drilling?
 6 A In part.
 7 Q You say "in part." What do you mean there?
 8 A Well, we pushed tubes, so that was not rotary
 9 method; and then we did wet rotary, and we did several
 10 kinds of sampling with wet rotary, including cores and
 11 cuttings. Both of those are rotary methods.
 12 Q Okay. And if you'll go back to each and
 13 every one of the logs comprising TJFA-4, and if you'll
 14 look at the lower left-hand column under the term
 15 "drilling method," I believe it will say "wet rotary"
 16 on each and every one of those logs, does it not?
 17 A Yeah, that is the drilling method generally,
 18 although we pushed tubes and we described that.
 19 Q I understand you pushed tubes, but my
 20 question was, doesn't that state "wet rotary" on each
 21 and every one of those logs?
 22 A It says that in part.
 23 Q I think it says in total. What else does it
 24 say?
 25 A If you'll look at the other column, it says

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1 "Borehole advanced with Shelby tubes pushed to depth
 2 of refusal, then wet rotary coring."
 3 Q But nonetheless, the boring logs do reflect
 4 wet rotary methods as the drilling method. Correct?
 5 A Yes.
 6 Q Thank you. Now, the boring logs for EB-11
 7 through EB-18 used what is called wash boring method.
 8 Right?
 9 A Yes.
 10 Q And that is the method where presumably you
 11 receive cuttings coming up from the borehole from
 12 these borings for purposes of sampling. Right?
 13 A Yes, sir.
 14 MR. RENBARGER: Move admission of
 15 TJFA-4.
 16 JUDGE NEWCHURCH: Any objection?
 17 MR. CARLSON: No objections, Judge.
 18 JUDGE NEWCHURCH: It's admitted.
 19 (Exhibit TJFA No. 4 admitted)
 20 Q (BY MR. RENBARGER) Do you have a copy of the
 21 application handy there, Mr. Snyder?
 22 A It appears so. Okay.
 23 Q Okay.
 24 A Let me make sure.
 25 Q If I could refer to you Page 438 of the

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1 application, please?
 2 A Yes, sir.
 3 Q Okay. Do you see a column there that's
 4 identified as 2.3.3 Drilling and Sampling?
 5 A Yes, sir.
 6 Q Are you aware that an expert from TJFA named
 7 Mr. Pierce Chandler has some pretty strong
 8 disagreements with the representations that you've
 9 made on Page 438 of the application?
 10 A I'm aware that he has objections. I guess
 11 I'm not immediately aware of which page he had
 12 objections to.
 13 Q Okay. Have you read Mr. Chandler's
 14 testimony?
 15 A I have.
 16 Q Okay. Well, let me see if we can find out a
 17 bit more about that then. Mr. Chandler testified that
 18 one of the criticisms he had with the boring plan was
 19 that only four of the eighteen borings that were
 20 reflected there on TJFA-4, only four of those eighteen
 21 borings were continuously sampled as that term is used
 22 in geotechnical practice. Do you concur or disagree
 23 with that statement?
 24 MR. CARLSON: Objection. At this point,
 25 he's assuming facts not in evidence, Judge.

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1 JUDGE NEWCHURCH: Do you have a
 2 response?
 3 MR. RENBARGER: Do what?
 4 JUDGE NEWCHURCH: He says you're
 5 assuming facts not in evidence.
 6 MR. RENBARGER: Well, my response is --
 7 well, his prefiled has not been admitted into
 8 evidence, but I'm using that just for purposes of
 9 examination of the witness.
 10 JUDGE NEWCHURCH: Perhaps you would like
 11 to ask a hypothetical question.
 12 MR. RENBARGER: Thank you, Judge.
 13 Q (BY MR. RENBARGER) Hypothetically -- perhaps
 14 I will. Thank you.
 15 (Laughter)
 16 Q (BY MR. RENBARGER) Okay. Mr. Snyder, back
 17 to the hypothetical version of that. Hypothetically
 18 if one were to state that only four of eighteen of
 19 those borings in TJFA-4 were continuously sampled,
 20 would you concur with that statement?
 21 A Would I concur with the statement that four
 22 of them were --
 23 Q Four of the eighteen were continuously
 24 sampled.
 25 A No. Ten of the eighteen were continuously

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1 sampled.
 2 Q So you dispute that. Correct?
 3 A Yes, sir.
 4 Q And hypothetically 14 of the 18 borings were
 5 wet rotary or wash boring drillings. Do you dispute
 6 that as well?
 7 A Yes, sir, I do.
 8 Q Hypothetically only four of the eighteen
 9 borings actually showed samples were taken. Do you
 10 dispute that?
 11 A Yes, I do.
 12 Q In what regard?
 13 A Only four of the eighteen boring logs have
 14 the Sample column filled out. However, the other --
 15 the logs also discuss the sampling method and say they
 16 were cored. We had our own purposes for not filling
 17 out the Sample column, and so that's where we --
 18 that's how that is. I think Mr. Chandler has assumed
 19 that because we didn't fill out the Sample columns
 20 that the rest of the log -- that the rest of the
 21 statements were not true.
 22 Q Very well then. Hypothetically eight of the
 23 eighteen borings were identified as wet rotary borings
 24 and cuttings as the sampling method. Do you agree
 25 with that?

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1 A Yes, sir, I do.
 2 Q And would you agree with me that on TJFA-4
 3 that those boring logs only reflect that ten of those
 4 eighteen borings were grouted?
 5 A I haven't done a tally of that. I think I'm
 6 aware that not all the borings showed that they
 7 were -- that they were grouted.
 8 Q Would it refresh your memory to take a look
 9 at TJFA-4 to determine that?
 10 A Do you want me to tally the number?
 11 Q Please.
 12 A Okay. It appears that ten of the eighteen
 13 showed that they were grouted.
 14 Q Ten show they were grouted?
 15 A Yes, sir, Nos. 1 through 10, if I'm reading
 16 correctly.
 17 Q Okay.
 18 A And then 11 through 18 don't make that
 19 notation. However, they were grouted.
 20 Q Okay. But there's nothing to be reflected on
 21 11 through 18 that those were, in fact, grouted if you
 22 just look at the boring logs. Right?
 23 A I agree.
 24 Q Was there any particular reason why you chose
 25 not to show samples on some of the selected borings?

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1 A Sure. Every job that we do has requirements,
 2 and we have a log that is kind of a composite log used
 3 for all kinds of projects. The TCEQ rules of the
 4 things -- you were referring a little bit ago to what
 5 things were required to be on the logs, and the sample
 6 interval is not one of those in TCEQ rules. We use
 7 that column for our own internal communication.
 8 And in this particular case, and every
 9 job is different, but in this particular case, we used
 10 that to communicate to the lab. So the other ones
 11 that we didn't assign lab tests, we didn't show the
 12 sample intervals.
 13 Q Okay. Then I guess maybe I'm struggling a
 14 little bit with the term "continuously sampled." What
 15 does the geotechnical literature refer to as
 16 "continuously sampled"?
 17 A I'm not a geotechnical engineer, and I'm the
 18 one that wrote that, and I wrote that from a geologic
 19 perspective and described how that was in my
 20 testimony --
 21 Q So --
 22 A -- what "continuous sampling" meant.
 23 Q So hypothetically if there were text or
 24 literature that disagreed with your definition of
 25 "continuously sampled," then it may well be that

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1 you're just in disagreement with those texts.
 2 Correct?
 3 A I wouldn't say that I'm in disagreement with
 4 them. I'd say that I used the term for the meaning
 5 that I explained, and that may be different than what
 6 a geotechnical engineer might use the term for.
 7 Q Okay. Going back to Rule 330.56(d)(5) --
 8 THE WITNESS: May I borrow your book?
 9 MR. BLACKBURN: You may.
 10 MR. RENBARGER: Oh, thank you.
 11 A Sorry. I gave up the book. Okay. I'm back
 12 to the rule.
 13 Q (BY MR. RENBARGER) Okay. Doesn't the TCEQ
 14 rules require, for purposes of the subsurface
 15 investigation, that established field exploration
 16 methods be used?
 17 A Yes, I think that's part of the rule.
 18 Q And do you contend that the boring plan that
 19 was undertaken by your firm utilized established field
 20 exploration methods?
 21 A Yes, sir.
 22 Q Do you contend that the use of wash borings
 23 is an established field exploration method for
 24 purposes of subsurface investigations?
 25 A Yeah, I think that most subsurface

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1 investigations contain at least some wash borings.
 2 That is one of the methods that's used.
 3 Q Let's see what some of the literature has to
 4 say about that, if we could, please.
 5 (Discussion off the record)
 6 JUDGE NEWCHURCH: Back on the record.
 7 Q (BY MR. RENBARGER) Okay. Mr. Snyder, I'm
 8 looking at a reference here. It's Donald Taylor, Soil
 9 Mechanics -- fundamentals of Soil Mechanics. And on
 10 Page 78 of that reference, the left-hand column
 11 there's a column identified as Common Name or Method,
 12 and it says "wash borings." Right? Do you see that?
 13 A Yes.
 14 Q Okay. And if you'll go all the way to the
 15 right-hand column under Value for Foundation Purposes,
 16 it says "Almost valueless and dangerous because
 17 results are deceptive." Do you see that?
 18 A Yes, sir.
 19 Q Do you concur with that?
 20 A I concur for foundation purposes and
 21 geotechnical purposes that's probably true.
 22 Q Even though you're not a geotechnical expert,
 23 though. Right?
 24 A I'm not, and I used them for a different
 25 purpose.

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1 Q Let's move on to the Earth Manual, the second
 2 publication I've offered you there.
 3 A Okay.
 4 Q And '74 Edition, Pages 334 and 335. Again,
 5 we have a table with columns, do we not? And if we go
 6 down the first column on the left-hand side to the
 7 words "wash boring," do you see that?
 8 A Yes, sir.
 9 Q If you follow that over horizontally onto
 10 Page 335 of the exhibit, under the vertical column
 11 Limitations, I believe it says "no information for
 12 logging or samples for classification; slow in hard or
 13 cemented layers." Correct?
 14 A Yes.
 15 Q Okay. Moving along to the next reference I
 16 gave you, the Soil Mechanics in Engineering Practice,
 17 Terzaghi.
 18 A Okay.
 19 Q Page 38 of that excerpt at the top of the
 20 page on the right-hand column, there is an 11.3
 21 identification for sampling, and 11.3.1 Purpose. Do
 22 you see that?
 23 A Yes.
 24 Q Okay. It says there, I believe, "The
 25 cuttings or washings from exploratory drill holes are

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1 inadequate to furnish a satisfactory conception of the
 2 engineering characteristics of the soil encountered,
 3 or even of the thickness and depths of the various
 4 strata. On the contrary, such evidence more often
 5 than not is grossly misleading and has been
 6 responsible for many foundation failures."
 7 "Proper identification of the subsurface
 8 materials requires that samples be recovered
 9 containing all the constituents of the materials in
 10 their proper proportions. Moreover, evaluation of the
 11 appropriate engineering properties, such as strength,
 12 compressibility, or permeability, may require the
 13 performance of lab tests on fairly intact or even
 14 virtually undisturbed samples." Do you concur with
 15 that?
 16 A Do I concur with the sentiment or that that's
 17 what it says?
 18 Q That statement, do you think that is a true
 19 statement?
 20 A Well, this statement is intended to talk
 21 about some geotechnical engineering, foundation
 22 engineering, of which I'm not -- I'm not an engineer,
 23 and I'm not really qualified to answer that question.
 24 I used the methods we used for geologic purposes. And
 25 in that context, I disagree with some of the

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1 statements in that statement.
 2 Q Okay. But you have nothing to dispute in
 3 this text, though, do you?
 4 A No.
 5 Q Moving on to the next one, the Geotechnical
 6 Manual by the Texas Department of Transportation, do
 7 you have that in front of you?
 8 A Yes, sir.
 9 Q Okay. If you will, please, turn to
 10 Page 2-13, and at the bottom of the page, there is a
 11 paragraph entitled Wash Sampling or Fishtail Drilling.
 12 Do you see that?
 13 A Yes, sir.
 14 Q I believe it says "Although there are many
 15 methods for penetrating overburdened soils, only those
 16 that offer an opportunity for sampling and testing of
 17 foundation materials without excessive disturbance are
 18 recommended. Therefore, do not use wash sampling or
 19 fishtail drilling and instruct the core driller not to
 20 utilize this method unless absolutely necessary.
 21 Attempts to classify the soil materials by watching
 22 the wash water may lead to erroneous conclusions about
 23 the subsurface soils being penetrated." Do you concur
 24 with that?
 25 A I think I have the same comment to that that

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1 I had for the others. The purposes for which these
 2 were intended, these are probably very true. None of
 3 these were intended to apply to hydrogeologic
 4 investigations, nor the TCEQ rules.
 5 Q Well, with all due respect, Mr. Snyder,
 6 wouldn't you agree with me the reason for a subsurface
 7 site investigation is to characterize the subsurface
 8 for purposes of such things as foundational purposes
 9 for the landfill, for the characteristics of the
 10 material to be utilized and the structural components
 11 of the landfill, among others?
 12 A Certainly that's a part of what the purpose
 13 of the subsurface investigation is. There are other
 14 parts as well.
 15 Q I certainly agree with that, but for purposes
 16 of characterization of the subsurface soils or
 17 materials, do you not agree that that is an extremely
 18 critical part of that evaluation?
 19 A I think it's part of that evaluation.
 20 Q Okay. Now, I believe you indicated somewhere
 21 in your testimony that you thought that the ASTM 2488
 22 methods were utilized for purposes of identifying and
 23 sampling the soils during the boring plan. Right?
 24 A Yes, on the cored samples.
 25 Q On the core samples alone?

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1 A On the cored samples, that's correct.
 2 Q Could you point to somewhere in the
 3 application where it limits that to the cored samples?
 4 A I think my statement was incomplete in the
 5 application. I think the word "cored" should have
 6 been inserted there.
 7 Q In the converse of that statement, would it
 8 also be true then other than in a cored sample, that
 9 ASTM 2488 would not be appropriate?
 10 A Generally not.
 11 Q The fact of the matter is, from a wash
 12 boring, Mr. Snyder, you could not actually conduct a
 13 2488 analysis, could you?
 14 A You could not conduct a complete 2488
 15 analysis, that's correct.
 16 Q Okay. Back to Page 438 of the application,
 17 and we're talking about continuously sampled. Do you
 18 have that back in front of you now?
 19 A Not yet.
 20 Q Okay.
 21 A Okay. Now I do.
 22 Q Do you have it?
 23 A Yes, sir.
 24 (Discussion off the record)
 25 Q (BY MR. RENBARGER) Do you have in front of

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1 you, Mr. Snyder, a document that at least has the
 2 cover page title Subsurface Exploration and Sampling
 3 of Soils?
 4 A Yes, sir.
 5 Q Okay. And if I could direct your attention
 6 on that to the bottom of Page 64, I believe there's a
 7 heading 2.17 Continuous Sampling. Right?
 8 A Yes, sir.
 9 Q And it states there "Each sampling operation
 10 advanced the borehole, and the boring may be
 11 accomplished entirely by sampling. In this case the
 12 method becomes one of both exploration and sampling
 13 and may be called continuous sampling and further
 14 designated by the particular methods of sampling
 15 used."
 16 Following that on down to the bottom of
 17 Page 65, the very bottom sentence begins "The greatest
 18 advantage of continuous or nearly continuous sampling
 19 is that it provides more reliable and detailed
 20 information for soil conditions than any other method
 21 with the exception of accessible explorations.
 22 Continuous sample is therefore used extensively in
 23 detailed and special foundation exploration for
 24 important structures." And again, I would ask if you
 25 have any reason to disagree with that statement?

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1 A I don't have any reason to disagree with the
 2 statement.
 3 Q Okay. If we go to your prefiled testimony,
 4 please --
 5 A Okay.
 6 Q -- on Page 23.
 7 A Okay.
 8 Q I believe at the bottom of Page 23, starting
 9 on Line 20, the question is posed "In the permit
 10 application, you say the borings were continuously
 11 sampled. What did you mean by that phrase?" Do you
 12 see that?
 13 A Yes, sir.
 14 Q To which you respond "It means the samples
 15 for the borings were examined and described for total
 16 depths of each boring in the following manner." And
 17 then you go on to describe there on the bottom of the
 18 page and the top of the following page what you
 19 considered to be the continuous sampling method.
 20 Right?
 21 A It's the one we used that I described, yes,
 22 sir.
 23 Q Okay. So is your definition of "continuous
 24 sampling" consistent with the subsurface exploration
 25 and sampling of soils document we just read?

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1 A Probably not, but I didn't read the part in
 2 your -- the parts that you directed me to didn't
 3 really say anything about exactly what the sampling
 4 was. So I -- but I understand the point.
 5 Q Okay. The point is what? The point is that
 6 your definition of "continuous sampling" in your
 7 prefiled testimony may be very different than what
 8 "continuous sampling" may be in the geotechnical
 9 literature. Is that right?
 10 A Yes, sir.
 11 Q As I understand your testimony, the major
 12 geologic stratigraphy at this site involves the Taylor
 13 group. Right?
 14 A Yes, sir.
 15 Q And I believe the Public Interest Counsel
 16 asked you a few questions generally about that.
 17 Right?
 18 A Yes, sir.
 19 Q And we've basically got here the weathered
 20 portion, which is the closest to the surface, and then
 21 below that the unweathered Taylor. Correct?
 22 A Yes, sir.
 23 Q And could you please generally describe what
 24 are considered to be secondary features with regard to
 25 geologic interpretation?

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1 A All kinds, fractures and fissures and
 2 slickensides and grain cementation. Often when
 3 geotechnical engineers use secondary features, they're
 4 talking about mechanical. They're talking about
 5 fractures and fissures.
 6 Q For purposes of geology, not geotechnical --
 7 A Sometimes I use different cementation
 8 processes to be secondary features because they
 9 weren't part of the original deposition.
 10 Q And would you agree with me that the
 11 weathered Taylor Marl contains a number of secondary
 12 features?
 13 A Yes, sir.
 14 Q Both vertical and horizontal. Correct?
 15 A I'm not sure what you mean by the
 16 differentiation.
 17 Q Well, "horizontal" to me means what it says,
 18 is that there are fractures along the horizontal
 19 plain, or there -- "vertical" means there may be
 20 fractures along the vertical plain.
 21 A I'm familiar with bedding plains. I'm less
 22 familiar with horizontal fracturing in the tables.
 23 Q Okay. How do you define the "bedding plain"?
 24 A The bedding plain is the sediment plains upon
 25 which the individual grains were deposited and

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1 sometimes show partings along that plain.
 2 Q And along that plain, is that plain a
 3 horizontal plain, vertical plain?
 4 A Yes, horizontal.
 5 Q It's a horizontal plain?
 6 A Generally horizontal.
 7 Q Okay. So the purpose of my question then I'm
 8 saying the secondary features you might encounter in
 9 the weathered Taylor would include such things as
 10 horizontal bedding plain, fractures. Right?
 11 A Yes, sir.
 12 Q And the same could be said and true as to
 13 vertical fractures in the Taylor. Right?
 14 A I really apologize. I lost track when you
 15 said "the same could be said." I lost track of what
 16 you were referring to.
 17 Q The secondary feature in the weathered Taylor
 18 can include vertical fracturing?
 19 A Certainly.
 20 Q Where does one expect to find groundwater in
 21 the Taylor -- the weathered Taylor?
 22 A Groundwater is found in the weathered Taylor
 23 was going to be my answer. Are you asking me exactly
 24 where it is within the weathered Taylor?
 25 Q Is there a particular area in the Taylor

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1 present at the BFI site where one would likely
 2 encounter groundwater?
 3 A Well, the bottom part or the bottom third or
 4 two-thirds of the weathered Taylor, groundwater
 5 infiltrates from the surface downward until it meets
 6 the lower permeability unweathered Taylor.
 7 Q And would that also be what we would expect
 8 to call the aquaclude for purposes of this site
 9 characterization?
 10 A The unweathered Taylor would be, yes, sir.
 11 Q Okay. And would you agree with me that there
 12 is not a clear or a bright line differentiation
 13 between the weathered and the unweathered Taylor at
 14 this site?
 15 A Yeah, I would say that at any site, not just
 16 this site.
 17 Q So, for example, the weathered Taylor may
 18 exhibit a lot of fracturing and things up to a certain
 19 point. And then as it gets closer to and into the
 20 unweathered Taylor, then we start seeing that
 21 demarcation, if you will, from weathered to
 22 unweathered?
 23 A Okay.
 24 Q Okay. And that's not a very defined area, is
 25 it? For example, you don't go down precisely 40 feet

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1 and it instantly changes from weathered to
 2 unweathered, do you?
 3 A No.
 4 Q And one would expect, would they not, that it
 5 would be something in a gradual transition zone from
 6 one to the other?
 7 A It is a transition zone. However, almost any
 8 site characterization identifies where they think it
 9 becomes unweathered.
 10 Q And that is critical, is it not, for purposes
 11 of establishing groundwater monitoring, for example?
 12 A It's important. I'm not sure I would use the
 13 word "critical," but it's important.
 14 Q Would not one want to be monitoring the
 15 groundwater at the area where it reaches the less
 16 permeable unweathered Taylor?
 17 A Generally that's true.
 18 Q So during this period of time going from
 19 weathered to unweathered, that would seem to me to be
 20 a key area for purposes of groundwater monitoring,
 21 wouldn't it?
 22 A Yes.
 23 Q In your experience with the Taylor formation
 24 in this transition zone, sometimes it exists from
 25 distances, say, of ten feet in nature?

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1 A Distances of what?
 2 Q Ten to fifteen feet during that transition
 3 from weathered to unweathered.
 4 A I guess that depends on how you define the
 5 transition zone.
 6 Q Well, why don't you -- what's your definition
 7 of the "transition zone"?
 8 A I no longer use the term "transition zone" in
 9 defining the Taylor. I basically say the whole
 10 weathered Taylor is a transition zone transitioning
 11 downward to an unweathered portion. And the deeper
 12 you go, the less fractured and the less weathered
 13 effect you see. Eventually you get to a spot where
 14 it's no longer weathered.
 15 Q Okay. As a part of your work on the BFI
 16 application, you conducted a water well survey, did
 17 you not, Mr. Snyder?
 18 A Yes, sir.
 19 Q And what does one typically do in the conduct
 20 of a water well survey?
 21 A Well, we typically do two things: One of
 22 them is we hire an outside water well search done by a
 23 regulatory search firm where they -- where they are
 24 trained to search through the regulatory files.
 25 Nowadays that's often done on-line. I think at the

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1 time we did this thing it was still being done as a
 2 search.
 3 And then to follow up on that, we do
 4 what I call a windshield survey or a survey in the
 5 area where I drive the roads that are publicly
 6 accessible in the area and attempt to identify water
 7 wells that are -- or structures that may be water
 8 wells.
 9 Q And what were the findings of the water wells
 10 survey you conducted in this case?
 11 A We found -- I believe we found 12 water wells
 12 in the area.
 13 Q When you say "in the area," are you saying
 14 within one mile --
 15 A Yes, sir.
 16 Q -- of the permit boundary?
 17 A Uh-huh.
 18 Q And did you not find one water well located
 19 within 500 feet of the boundary?
 20 A I think that's right. My recollection is
 21 slim on that, but I believe that's correct.
 22 Q Okay. Well, let's take a closer look at the
 23 water well survey information, please.
 24 A Okay. Okay. Oh, you've got it.
 25 Q I've got one, yeah. You won't have to pull

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1 it out of the application.
 2 (Discussion off the record)
 3 (Exhibit TJFA No. 5 marked)
 4 Q (BY MR. RENBARGER) Mr. Snyder, you have in
 5 front of you what has been identified as TJFA
 6 Exhibit 5. Correct?
 7 A Yes, sir.
 8 MR. CARLSON: Do we get a copy?
 9 Q (BY MR. RENBARGER) And what does that
 10 exhibit appear to be?
 11 MR. GOSSELINK: Excuse me,
 12 Mr. Renbarger.
 13 MR. RENBARGER: Yes?
 14 MR. GOSSELINK: What is Exhibit 5? Are
 15 you going to hand that out, or is that an APP number?
 16 What are we talking about?
 17 MR. RENBARGER: It's out of the
 18 application. If that's helpful, I can get you there.
 19 MR. CARLSON: That's fine. If you'll
 20 just give us the Bates, that's --
 21 MR. RENBARGER: I'll give you the
 22 numbers. It's excerpts from the water well survey --
 23 MR. GOSSELINK: Okay.
 24 MR. RENBARGER: -- at Pages 490, 491,
 25 496 and 497 out of the application.

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1 MR. CARLSON: All right. Thanks.
 2 Q (BY MR. RENBARGER) Okay. Mr. Snyder, you
 3 have those pages I just described in front of you as
 4 TJFA Exhibit 5. Correct?
 5 A Yes, sir.
 6 Q And would you please describe for the record
 7 what that exhibit consists of?
 8 A It exists -- sorry -- it consists of on 490 a
 9 water well detailed sheet from Travis County, Owner
 10 R.E. Joseph. It then consists of a map showing the
 11 location of that well. Then the third Page 496 is a
 12 well from Travis County, owned by B.B. Heath, along
 13 with a map.
 14 Q Okay. And these pages come directly from the
 15 water well survey contained in the application.
 16 Correct?
 17 A I see that they're numbered from our
 18 application. So I would say yes.
 19 Q Okay. If I could direct your attention to
 20 Page 491 of that exhibit, please?
 21 A Okay.
 22 Q I believe you mentioned a moment ago that
 23 that reflects a map showing the location of that
 24 particular water well. Correct?
 25 A Yes, sir.

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1 Q If you look at the middle of that page, I
 2 believe there's also what appears to be an
 3 indication -- it says "industrial waste materials
 4 management tract" and an arrow. Correct?
 5 A I see that, yes, sir.
 6 Q Okay. Do you also see an arrow pointing to
 7 an area where it says "pits where acid is placed"?
 8 A Yes, sir.
 9 Q And another arrow "excavation of where
 10 55-gallon drums currently are buried"?
 11 A I see that.
 12 Q Do you have an understanding of what property
 13 that is located on?
 14 A Yes, sir, that's located on the Waste
 15 Management Austin Community Landfill.
 16 Q Okay. And that's immediately adjacent to the
 17 southern boundary of BFI's property. Correct?
 18 A Yes; the ACL landfill is, yes.
 19 Q Yes. So at least for purposes of Exhibit
 20 TJFA-5, BFI was certainly very much aware that there
 21 at least had been reportedly some industrial waste
 22 disposal activities immediately south of its boundary.
 23 Correct?
 24 MR. CARLSON: Objection; calls for
 25 speculation.

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1 JUDGE NEWCHURCH: Do you have a
 2 response?
 3 MR. RENBARGER: You say speculation was
 4 the objection?
 5 JUDGE NEWCHURCH: Yes.
 6 MR. RENBARGER: Okay. My response is
 7 simply that's what this document represents. Right?
 8 Let me rephrase the question, if need be.
 9 JUDGE NEWCHURCH: Okay. Well, why don't
 10 you do that.
 11 MR. RENBARGER: Okay.
 12 Q (BY MR. RENBARGER) Mr. Snyder, Page 491 of
 13 Exhibit TJFA-5 does contain representations that would
 14 reflect that industrial waste activities may have
 15 occurred on the ACL landfill property immediately to
 16 the south of BFI's boundary. Correct?
 17 A Yes, sir, it does.
 18 MR. RENBARGER: Thank you. Move to
 19 admit TJFA-5.
 20 JUDGE NEWCHURCH: Any objection?
 21 MR. CARLSON: I believe we've already
 22 offered it, Judge. Let me double-check my notes.
 23 MR. RENBARGER: It is in RS-11. These
 24 are just excerpts for purposes of examination.
 25 MR. CARLSON: I think -- Mr. Renbarger,

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1 it's part --
 2 MR. RENBARGER: I'm having difficulty
 3 hearing you down here. I'm sorry.
 4 MR. CARLSON: I'm sorry. I believe it
 5 might be part of the application that Mr. Snyder
 6 sponsored. Let me double-check my notes here.
 7 JUDGE NEWCHURCH: Well, let's do this.
 8 God knows this record is already quite burdened. So
 9 if that's the only objection --
 10 MR. CARLSON: I don't have an objection
 11 to you doing it again. Just for the record, it is --
 12 JUDGE NEWCHURCH: It's often a little
 13 helpful to have something pulled out separately.
 14 MR. CARLSON: Sure.
 15 JUDGE NEWCHURCH: So it makes it
 16 actually easier to understand. So without objection
 17 then, TJFA Exhibit 5 is admitted.
 18 (Exhibit TJFA No. 5 admitted)
 19 MR. BLACKBURN: What number is this one?
 20 MR. RENBARGER: That was 5.
 21 Okay. Back on the record here.
 22 JUDGE NEWCHURCH: Yes, sir.
 23 Q (BY MR. RENBARGER) Other than the example
 24 maps that were in TJFA-5 indicating the possible
 25 industrial waste disposal at the neighboring facility,

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1 have you even heard about the industrial waste
 2 disposal activities occurring at the ACL landfill?
 3 A Yes, I was generally aware of that.
 4 Q And how did you become aware of that?
 5 A I don't remember for sure the first time I
 6 heard of it, but certainly back in the late '90s and
 7 early 2000s I was aware of the controversy about that
 8 site and that with the City of Austin and Texas
 9 Disposal Systems and all the challenges related to it.
 10 Q Did you on behalf of BFI ever investigate
 11 groundwater conditions at or near the southernmost
 12 quarter of BFI adjacent to the Waste Management
 13 facility?
 14 A Well, we investigated groundwater conditions
 15 on the BFI facility.
 16 Q Right, but I think my question was, did you
 17 investigate groundwater conditions at or near the
 18 southernmost borders between Waste Management and
 19 BFI's properties?
 20 MR. CARLSON: Objection; asked and
 21 answered.
 22 MR. RENBARGER: I can't hear you. I'm
 23 sorry.
 24 JUDGE NEWCHURCH: He said asked and
 25 answered.

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1 MR. CARLSON: I'm sorry. My microphone
 2 is not working.
 3 MR. RENBARGER: Oh, it's not working.
 4 MR. CARLSON: Asked and answered.
 5 MR. RENBARGER: Okay. That's fine.
 6 JUDGE NEWCHURCH: Mr. Renbarger, why
 7 don't you start looking for a spot to break for the
 8 day.
 9 MR. RENBARGER: I can't hear you. I'm
 10 sorry.
 11 JUDGE NEWCHURCH: If you'll start
 12 thinking about a place to break for the day?
 13 MR. RENBARGER: Okay.
 14 JUDGE NEWCHURCH: We can go on a little
 15 bit longer.
 16 MR. RENBARGER: Okay. I think we can
 17 get a few things done here --
 18 JUDGE NEWCHURCH: Okay.
 19 MR. RENBARGER: -- with the Judge's
 20 permission.
 21 (Exhibit TJFA No. 6 marked)
 22 Q (BY MR. RENBARGER) Mr. Snyder, I just handed
 23 you a copy of TJFA-6, and if you would please describe
 24 what that exhibit consists of?
 25 A This is an e-mail, appears to be an e-mail

67 (Pages 265 to 268)

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1 from me to Lee Kuhn of BFI.
 2 Q Okay. And Mr. Kuhn is no longer with BFI.
 3 Is that right?
 4 A I don't have any idea.
 5 Q You don't have any idea? Okay. But the date
 6 of this e-mail, February 8, 2005, you presume that he
 7 was. Right?
 8 A Yes, sir.
 9 Q Okay. Okay. At the top of Page 32319, it
 10 seems to indicate that you had conducted a search -- a
 11 file search on groundwater level data and constructed
 12 maps that includes the facility to the south, and I'm
 13 presuming that to be the Waste Management facility.
 14 Correct?
 15 A I think that that's what it was referring to,
 16 yes.
 17 Q And was that a part of an overall effort to
 18 try to ascertain what might be going on with the
 19 groundwater conditions at the Waste Management
 20 facility immediately adjacent to BFI?
 21 A I think it was, but I don't have specific
 22 recollection of exactly what -- what the thought
 23 process was, but I think what you said is probably
 24 correct.
 25 Q Okay. Moving a little further down on

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1 Page 32319, I believe there's an entry there from
 2 Mike Snyder again to Lee Kuhn, February 4, 2005. It
 3 says "Hi, Lee. During our peer review meeting at
 4 Gosselink's office late in December, the consensus was
 5 we needed to do" --
 6 THE REPORTER: Can you slow down?
 7 MR. RENBARGER: Slow down?
 8 THE REPORTER: Yes.
 9 MR. RENBARGER: Okay. I'm trying to get
 10 moving here.
 11 Q (BY MR. RENBARGER) -- "the consensus was
 12 that we needed to do some evaluation of the
 13 groundwater for the facility to the south of yours.
 14 We have started working on that, but I hadn't put
 15 together a cost estimate for you." So you indeed,
 16 according to this e-mail, exchanged with Mr. Kuhn to
 17 undertake to evaluate the groundwater conditions at
 18 the facility to the south, Waste Management. Correct?
 19 A It looks like that's what the e-mail says,
 20 yes.
 21 Q Well, are you disputing the accuracy of that
 22 e-mail?
 23 A No, sir, I'm not. I don't have specific
 24 recollection of it.
 25 Q Do you have specific recollection of

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1 undertaking any review of the groundwater information
 2 from the Waste Management facility to the south?
 3 A I do have recollection that we started on
 4 that. I have recollection of reviewing some
 5 documents. I don't have recollection that we ever
 6 completed anything. I'm certain that I don't -- that
 7 I don't have any maps because there have been
 8 sometimes when I wished I did have. So I'm certain I
 9 don't have any maps of that -- of that study. So my
 10 recollection was we never actually completed the
 11 study, and I don't have any reason -- any recollection
 12 of why.
 13 Q Well, let me ask you this then, Mr. Snyder:
 14 As a groundwater professional and the lead geologist
 15 for BFI, would you not be concerned about the
 16 groundwater conditions of an adjacent facility,
 17 particularly a Waste Management facility that may have
 18 taken industrial waste in the past?
 19 A There's a lot of things in that question.
 20 Q There are a lot of things in that question,
 21 but please respond, if you can.
 22 A Okay. Yes, I have been and am interested in
 23 that in that facility. I'm obviously interested in
 24 whether or not it has impacted this facility. I'm
 25 interested in what I can know about it so that I can

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1 interpret hydrogeology of the area.
 2 Q So you would agree with me then a prudent
 3 geoscientist would certainly want to take those things
 4 into consideration when evaluating groundwater
 5 conditions for purposes of putting together your
 6 groundwater monitoring system, for example?
 7 A I think I agree generally with your
 8 statement.
 9 Q That's fine. We can move along.
 10 MR. RENBARGER: I offer TJFA Exhibit 6,
 11 please.
 12 JUDGE NEWCHURCH: Is there objection?
 13 MR. CARLSON: No, Your Honor.
 14 JUDGE NEWCHURCH: 6 is admitted.
 15 (Exhibit TJFA No. 6 admitted)
 16 MR. RENBARGER: Judge, this may be a
 17 good place to kind of wind down for the evening.
 18 JUDGE NEWCHURCH: Okay. Let's go off
 19 the record for just a minute here and talk about
 20 tomorrow.
 21 (Discussion off the record)
 22 JUDGE NEWCHURCH: Okay. Coming back on
 23 the record. Mr. Gosselink, you had something?
 24 MR. GOSSELINK: Yes, Your Honor. In the
 25 interim since we last discussed this matter, I have

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1 been provided with copies of Mr. Shull's revised SOP,
 2 Pages 55 and 56, the redline strikeout version of
 3 that. The complete version was always there, just the
 4 red line strikeout wasn't. And now to flesh out that
 5 record, which I think was RS-44, I'm providing you and
 6 all parties with a copy of those two pages. It's
 7 already been marked. It was just two pages
 8 inadvertently omitted.
 9 JUDGE NEWCHURCH: Okay.
 10 MR. GOSSELINK: Okay?
 11 JUDGE NEWCHURCH: If you'd pass those
 12 out, please?
 13 MR. GOSSELINK: I will.
 14 JUDGE NEWCHURCH: And while you're doing
 15 that, I'll just say on the record we've agreed we will
 16 reconvene tomorrow at nine, and that the parties
 17 should be prepared for the testimony of the rest of
 18 Mr. Snyder's testimony as well as witnesses Libicki
 19 and Adams.
 20 MR. HEAD: Question?
 21 JUDGE NEWCHURCH: Yes, sir.
 22 MR. HEAD: If for whatever reason we get
 23 through with Adams at three o'clock, are we going to
 24 go forward with Stutz, or are we just going to shut it
 25 down?

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1 JUDGE NEWCHURCH: That's why I was
 2 trying to clear that up. We'll always go forward if
 3 they're ready to call their next witness and no one
 4 objects, but I'm not going to put somebody in a
 5 position of not having prepared and then we call
 6 someone else.
 7 MR. HEAD: And that's why we're asking.
 8 JUDGE NEWCHURCH: Yeah, that's why I'm
 9 trying to be clear because, you know, we've got a long
 10 way to go. I don't want to waste time by adjourning
 11 early unless we have to. Are you thinking that it
 12 might not take that long tomorrow?
 13 MR. HEAD: No. I think it will take
 14 that long.
 15 JUDGE NEWCHURCH: Okay. Good.
 16 MR. HEAD: It's just I've got the next
 17 one on rotation, and I don't want to be caught with my
 18 pants down.
 19 JUDGE NEWCHURCH: Exactly.
 20 MR. CARLSON: We'd like to move forward,
 21 but the next in order would be an out-of-town witness.
 22 So he would have to come in tonight versus coming in
 23 tomorrow for an early Thursday examination. That's
 24 our biggest issue.
 25 JUDGE NEWCHURCH: Okay. Why don't we

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1 just say those three witnesses for tomorrow. And if
 2 we adjourn a little early, that will probably be okay.
 3 Mr. Gosselink?
 4 MR. GOSSELINK: I have one other, I
 5 guess, clarification from you or notice to all the
 6 parties. We have produced as supplement to our
 7 discovery a PowerPoint that Ms. Libicki and indeed
 8 Mr. Stutz would use. They're just electronic versions
 9 of information that's already been produced in their
 10 prefiled, but it displays the circumstance of the
 11 point of their testimony I think more graphically
 12 for our -- from our point of view. We have provided
 13 it to the parties. If we're going to be allowed to
 14 use that on redirect, we need to have our IT people
 15 here to set it up. And so I wanted to make sure that
 16 there's -- that there's not a problem with doing that.
 17 JUDGE NEWCHURCH: Okay. Are you saying
 18 that it just would be a large display of what's
 19 included, or are you saying it will be a restatement,
 20 a summary of what they have included?
 21 MR. GOSSELINK: It will be an electronic
 22 display showing sequentially the data that is in the
 23 prefiled in hard copy. We will show, for example, the
 24 progression of the development of the gas collection
 25 and control system. We have -- the way it is right

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1 now in the prefiled is we have one big map that's got
 2 like nine different colors on it, and it's hard to see
 3 what we did when, but if you can layer in what you did
 4 in 2003 and then you say what happened in 2004 and you
 5 layer that in and you see that exhibit developed right
 6 in front of you, it adds nothing new except it makes
 7 it easier to understand.
 8 JUDGE NEWCHURCH: Well, it's going to be
 9 requiring the witness to be testifying and explaining
 10 all this for 20 minutes maybe?
 11 MR. GOSSELINK: We're actually presuming
 12 that this would come up on redirect. We're not -- we
 13 wanted to do it originally, and we asked for
 14 permission, and you ruled against it.
 15 JUDGE NEWCHURCH: Well, redirect is an
 16 entirely different matter.
 17 MR. GOSSELINK: Yes.
 18 JUDGE NEWCHURCH: If you're responding
 19 to something else and you want to offer additional
 20 evidence in response to what came up on cross and that
 21 might include redirect, then that would be
 22 appropriate.
 23 MR. GOSSELINK: Okay.
 24 MR. HEAD: Your Honor?
 25 JUDGE NEWCHURCH: Yes, sir?

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1 MR. HEAD: If I might, the PowerPoint
 2 that Paul talked about, unless I'm mistaken, they're
 3 in the prefiled in the direct case.
 4 MR. GOSSELINK: They are.
 5 MR. BLACKBURN: So I don't understand
 6 how you're going to take that document from the
 7 prefiled, which is already there, and all of a sudden
 8 use it for redirect.
 9 And I will also add one other thing. I
 10 noticed in Ms. Libicki's prefiled there's a section
 11 that just states live testimony. And I don't know
 12 whether Mr. Gosselink is contending for Ms. Libicki
 13 just to start going on a narrative, but we will object
 14 to that strenuously if that's the plan.
 15 MR. MOORE: Your Honor, if I may, I'll
 16 be the one presenting Dr. Libicki. We're going to
 17 present her prefiled direct and exhibits in the same
 18 manner they have just been with Mr. Shull and
 19 presumably Mr. Snyder, although I wasn't here.
 20 We're anticipating that there will be
 21 cross-examination on some of the exhibits starting
 22 with Ms. Libicki, and we have simply put those things
 23 on a PowerPoint so that we can call them up and put
 24 them on a screen so that she can talk about them when
 25 we get to her redirect. We are not going to offer

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1 anything new in her direct testimony.
 2 As to Mr. Stutz, it's a little more
 3 complicated because his exhibit that's in there is a
 4 map showing all of the phases of construction of the
 5 gas collection control system on the landfill. What
 6 we've done is deconstruct that so we can also end
 7 redirect, put it up sequentially and show how they
 8 were added in culminating in the complete coverage of
 9 the landfill. That's the one that we produced about
 10 two weeks ago that was the deconstruction of the map,
 11 but we are not going to try to get that in through the
 12 direct case. We're just anticipating it will be a
 13 useful and demonstrative tool when we get to redirect.
 14 JUDGE NEWCHURCH: Well, you know, I
 15 never quite know what to say about this because I
 16 understand fully why you want demonstrative exhibits
 17 when you're in a jury setting. For my purposes what
 18 I'm looking at when I go back and write proposals for
 19 decisions are the documents. If something flashed on
 20 the wall for 15 minutes one afternoon, that doesn't
 21 help me a whole lot.
 22 So I don't know if that feedback helps
 23 you or not, and I don't quite know how to respond to
 24 this. It sounds like there might be objections. If
 25 you're restating or you're redisplaying what is

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1 already in a document or exhibits, then I'm not sure
 2 you're adding anything. You know, I don't know what I
 3 can tell you beyond that because you're asking for
 4 approval of something on which there might be an
 5 objection.
 6 MR. MOORE: Your Honor, at this point, I
 7 was intending to ask we be allowed to have the
 8 equipment here so it's available if it comes up.
 9 JUDGE NEWCHURCH: You can certainly
 10 bring your equipment.
 11 MR. MOORE: All right.
 12 JUDGE NEWCHURCH: Okay.
 13 (Laughter)
 14 JUDGE NEWCHURCH: Okay. Let's see.
 15 Anything else before we adjourn for the day?
 16 MR. HEAD: You're serious about the
 17 ties. Right, Your Honor?
 18 JUDGE NEWCHURCH: Pardon me?
 19 MR. HEAD: You're serious about the ties
 20 off?
 21 JUDGE NEWCHURCH: You don't have to wear
 22 your tie, Mr. Head.
 23 MR. HEAD: Thank you, sir. I've got a
 24 bad neck.
 25 JUDGE NEWCHURCH: Yes, sir?

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1 MR. SHEPHERD: Your Honor, I was just
 2 going to ask about leaving materials here if we leave
 3 any of the --
 4 JUDGE NEWCHURCH: Yeah. Well, about
 5 that, you may feel free to leave as much as you want
 6 to here. Now, there are some -- there's some things
 7 that you need to know about. The room is locked for
 8 the evening. As far as I know, we have never had a
 9 problem, but there are no guarantees.
 10 MR. SHEPHERD: Okay.
 11 JUDGE NEWCHURCH: So if you leave
 12 something and you don't find it here tomorrow, sorry.
 13 I can tell you I'm this confident. I'm going to leave
 14 everything I've got right here and walk away, and I'm
 15 not worried about it being here in the morning. Okay?
 16 And if you would, our cleanup people
 17 would be delighted if you would take away your soda
 18 bottles and water bottles and those kinds of things.
 19 And we are off the record.
 20 (Proceedings recessed at 5:15 p.m.)
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