

TRANSCRIPT OF PROCEEDINGS BEFORE THE
STATE OFFICE OF ADMINISTRATIVE HEARINGS
(TEXAS COMMISSION ON ENVIRONMENTAL QUALITY)

AUSTIN, TEXAS

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

PREHEARING CONFERENCE

TUESDAY, AUGUST 26, 2008

BE IT REMEMBERED THAT AT approximately 9:05 a.m., on Tuesday, the 26th day of February 2008, 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 G. NEWCHURCH, Administrative Law Judge; and the following proceedings were reported by Lou Ray, a Certified Shorthand Reporter of:

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A P P E A R A N C E S

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P R O C E E D I N G S

TUESDAY, AUGUST 26, 2008

(9:05 a.m.)

JUDGE NEWCHURCH: We're coming on the record now, and it's five minutes after 9:00 a.m. and it's August 26th, 2008. This is a hearing at the State Office of Administrative Hearings in a Texas Commission on Environmental Quality matter. I'm Bill Newchurch. I'm the Administrative Law Judge presiding at the Clements Building. The prehearing conference called for this morning in Docket No. 582-08-2178, and that is application of BFI Waste Systems of North America Incorporated for a major amendment to Type 1 MSW Permit No. 1447A.

Let's note the appearances of the parties, beginning with the applicant.

MR. GOSSELINK: Thank you, Judge. My name is Paul Gosselink, and with me is John Carlson. And we're appearing on behalf of BFI, the applicant.

JUDGE NEWCHURCH: And for the Executive Director, please.

MS. WHITE: Susan White with the Division of Legal Services for the Executive Director of TCEQ.

JUDGE NEWCHURCH: And for TJFA.

1 MR. RENBARGER: Bob Renbarger appearing
2 for TJFA Limited Partnership.

3 JUDGE NEWCHURCH: And we also have
4 Northeast Neighbors and their other coalition members
5 appearing by phone. If you would identify yourself,
6 please?

7 MS. CARTER: This is Mary Carter, and
8 appearing on behalf of Northeast Neighbors Coalition,
9 Mark and Melanie McAfee, Pioneer Farms, Williams
10 Limited, Mr. Delmer Rogers and Mr. Roger Joseph.

11 JUDGE NEWCHURCH: Okay. We have some
12 other parties, and I think we had a conference -- not
13 a conference -- we had a discussion prior to coming on
14 the record, and I think the other parties contacted
15 one or more of the parties who are here to indicate
16 that they would not be attending today. So I think
17 we're ready to proceed.

18 This hearing concerns the motions to
19 compel filed by BFI -- motions to compel various
20 parties to respond. And, Mr. Gosselink, I'll go to
21 you for argument on your motion.

22 MR. GOSELINK: Thank you, Judge. There
23 are various motions. One is directed at TJFA, and the
24 others are collectively directed at NNC and the
25 aligned parties. Mr. Carlson will bat lead-off for us

1 and address the TJFA motion --

2 MS. CARTER: Excuse me. I'm having a
3 little difficulty hearing Paul. If he could get a
4 little closer to the phone perhaps.

5 JUDGE NEWCHURCH: Well, we actually have
6 microphones and normally it's sort of a convenience --

7 MS. CARTER: Oh, okay.

8 JUDGE NEWCHURCH: -- but since she's on
9 the phone if you could pull your microphone -- and you
10 have to actually get up pretty close. But if everyone
11 would do that, we shouldn't have any problems with
12 audio.

13 MS. CARTER: Thank you very much.

14 JUDGE NEWCHURCH: Okay. Mr. Carlson is
15 going to make the argument for BFI concerning the
16 motion regarding TJFA.

17 MR. CARLSON: Thank you, Judge. My name
18 is John Carlson. I do represent the applicant, BFI.
19 I will be addressing the motion as to TJFA.
20 Mr. Gosselink will be handling the others. There are
21 some overlapping issues between the motions. There's
22 some similar objections between all of the parties. I
23 might address a few of those just briefly to lay the
24 groundwork.

25 We served discovery requests on TJFA

1 slightly more than a month ago. We got their
2 responses back, which included a number of objections.
3 I think the objections can be fairly categorized into
4 three -- and perhaps four -- categories of objections.
5 In lieu of going request by request down the line, I
6 would like to address those in terms of the category
7 of objection. I'll be happy to talk about any
8 individual request and objection as it arises.

9 The first category of objections -- and
10 this includes objections to interrogatories, document
11 requests, and requests for admission -- has to do with
12 requests that were either directed toward or they
13 believe were directed towards some other entities --
14 Texas Disposal Land Systems, TDS, Texas Disposal --
15 Texas Disposal Systems Landfill, which is TDSL in our
16 motion, Bob Gregory, Jim Gregory and Dennis Hobbs.

17 And the gist of all of these -- the
18 wording is slightly different, but the objection is
19 the same. It's based on the notion that none of these
20 entities are parties to this particular proceeding
21 and, therefore, any discovery of these parties are
22 basically off limits because it's irrelevant and it's
23 not seeking evidence that would lead to the discovery
24 of potentially admissible evidence at the hearing on
25 the merits.

1 I'd like to briefly address the first of
2 these objections. The TDS-Gregory-related requests,
3 again they're claiming that because these entities
4 aren't parties, that we can't take discovery of those
5 and there are no document -- no indication of
6 documents would be provided in response to these
7 requests or that answers, for example, to the requests
8 for admission would be provided.

9 It's not a compelling argument, Judge,
10 especially when we can see how -- just how
11 interrelated TJFA is with TDS, TDSL, the Gregorys and
12 Mr. Hobbs. We've attached some evidence to our motion
13 to show this to the ALJ. And as you look through the
14 evidence that we've attached, we find that TJFA,
15 according to their own response to a request for
16 admission which they did not object to, do not have
17 any employees. It's a bare bones operation. It
18 shares physical address -- a physical address with TDS
19 and TDSL in Creedmoor. It shares the same P.O. Box,
20 got the same phone number or within a series of phone
21 numbers that are TDS phone numbers, got the same fax
22 number. And the list goes on. And we would like to
23 discover -- or take discovery of additional and
24 related information.

25 But I would like to point you to a

1 couple of things we attached. One was -- is attached
2 as Exhibit C for our motion to compel, and that is a
3 motion for reconsideration that was faxed to TCEQ for
4 filing in this case in November of 2007. And it is a
5 motion for reconsideration that was either submitted
6 by or on behalf of TJFA, and I think that one thing
7 that's very telling about this is not the content, but
8 the first page. And if you look at the very top, the
9 fax was sent from no less than Texas Disposal Systems'
10 fax machine.

11 JUDGE NEWCHURCH: All right. I'm going
12 to stop you here.

13 Mr. Renbarger, these attachments which
14 are Texas Disposal Systems --

15 MR. RENBARGER: Yes, sir.

16 JUDGE NEWCHURCH: -- do you have any --
17 are you questioning the authenticity of those
18 documents?

19 MR. RENBARGER: I certainly am not
20 questioning the authenticity. I am questioning the
21 relevance of them.

22 JUDGE NEWCHURCH: All right. Let's go
23 back to Mr. Carlson then -- is it Carlson or
24 Carlson --

25 MR. CARLSON: It's Carlson with an "s."

1 MR. RENBARGER: Excuse me, Judge, if I
2 may very briefly. There is one exhibit and I think
3 that counsel has indicated that it is not an exact and
4 true copy of that exhibit. I believe it refers to the
5 facts that were sent with the TDS fax -- I think it
6 was a blowup, if I'm not mistaken, on that where it --

7 MR. CARLSON: That's not. I agree with
8 that.

9 MR. RENBARGER: But for that, we don't
10 have questions about authentication.

11 JUDGE NEWCHURCH: Mr. Renbarger, is
12 there any dispute then that there is a significant --
13 very large overlap between the officers and directors
14 of TJFA and Texas Disposal Systems.

15 MR. RENBARGER: Yes, there is a very
16 real dispute there.

17 JUDGE NEWCHURCH: How so?

18 MR. RENBARGER: TJFA, as we know, is a
19 limited partnership. As a limited partnership it has
20 to have a general partner. The general partner of
21 TJFA Limited Partnership is a corporation known as
22 Garra de Aguila, Inc. -- Garra de Aguila, Inc.'s
23 president, vice president, secretary and director is a
24 gentleman named Dennis Hobbs. And Dennis Hobbs serves
25 in that capacity as managing, if you will, the general

1 partner of TJFA. TJFA has nothing to do with the
2 waste disposal business, has nothing to do with waste
3 transport business, has nothing to do with recycling
4 business. It is a limited partnership and its sole
5 function in life is to own and possess real estate.

6 JUDGE NEWCHURCH: Is it true that Dennis
7 Hobbs is also the director of special projects for
8 Texas Disposal?

9 MR. RENBARGER: It is my understanding.
10 That is correct.

11 JUDGE NEWCHURCH: Okay.

12 MR. RENBARGER: I might point out, Your
13 Honor --

14 JUDGE NEWCHURCH: Given those
15 stipulations, I am more than convinced that there is a
16 significant overlap between TJFA and Texas Disposal
17 Systems. And I think it would affect the credibility
18 of any witness who might be a member of the management
19 team of Texas Disposal Systems.

20 I think, Mr. Carlson, you-- I'm trying
21 to remember. Mr. Renbarger, did you identify
22 Mr. Hobbs and one other person as witnesses that TJFA
23 might call? Am I misremembering that?

24 MR. RENBARGER: I don't recall if -- I
25 know Mr. Hobbs I think we did identify as far as

1 identification of people who had facts or knowledge of
2 facts, but as potentially could be witnesses, I think
3 we listed virtually everybody that we think of and
4 that very well may have included others than
5 Mr. Hobbs.

6 JUDGE NEWCHURCH: Mr. Carlson, can you
7 help me with that? In addition to Mr. Hobbs are there
8 other identified witnesses who you allege are members
9 of the management team of Texas Disposal Systems?

10 MR. CARLSON: Particularly -- yes, Your
11 Honor. I believe that Jim Gregory -- excuse me, Bob
12 Gregory has been very integral -- I'll give an
13 example -- in the Williamson County proceeding there
14 was a deposition taken of a corporate -- in fact I
15 don't have the exact date, but a year, year-and-a-half
16 ago -- Jim Gregory was the designated corporate rep --
17 Bob Gregory was the designated corporate rep for TJFA.
18 Now, we don't know if we send out a depo notice who
19 they'll designate this time. It may be Dennis Hobbs.
20 But --

21 MR. RENBARGER: I can assure you it
22 won't be Bob Gregory because he no longer has any
23 affiliation with Garra de Aguila, which he was
24 president of at the time of that other proceeding,
25 which I think is outside of this one.

1 MR. CARLSON: Nevertheless, Judge, the
2 fingerprints of Mr. Gregory, TDS, TDSL, are all over
3 this. We've got some other things that we've shown.
4 One of the things that came out in our discovery
5 request, we sent out interrogatories asking for basic
6 information about TJFA's corporate representative.
7 And again now Mr. Hobbs is the sole person identified.

8 I saw a new e-mail address for Mr. Hobbs
9 I'd never seen before as dennis@tjfa-lp.com. We
10 hadn't seen that. So we did a little research, went
11 on the Internet, and we found out that, yes, there is
12 a new domain name that was registered in March or
13 April of this year to TJFA-LP, but guess who the
14 registrant was -- Texas Disposal System. Same
15 address. They're designated as both the registrant
16 and the administrator.

17 I think we have a pretty good case, and
18 we're certainly entitled to take some discovery along
19 an alter ego line. Our bottom line is at one level
20 we're entitled to know who we're going up against in
21 this case. That's No. 1.

22 The second thing is I completely concur
23 to you that it goes to the credibility, not only of
24 the protesting entity itself, but also its witnesses,
25 whether it's Mr. Hobbs or Mr. Gregory or somebody

1 else, and it goes even a step further. It goes to the
2 credibility of at least two of their expert witnesses.

3 JUDGE NEWCHURCH: Well, I would agree
4 with you that it goes to the credibility of expert
5 witnesses. And I think there's more than enough
6 information just based on the stipulations and facts
7 that you can clearly and easily prove at the hearing
8 to show that, at a minimum, Mr. Hobbs -- and probably
9 the other witnesses as well -- have a close
10 relationship with TDS -- Texas Disposal Systems.

11 Mr. Carlson -- just a second. Mr.
12 Carlson, I thought you also indicated in your motion
13 that Texas Disposal Systems has another landfill, a
14 competing landfill in Travis County?

15 MR. CARLSON: That's correct, Your
16 Honor. It's in Creedmoor in Southeast Travis County.
17 I don't know the exact distance, but I believe it's
18 between 15 and 20 miles roughly due south and slightly
19 southwest from the BFI facility here.

20 And one of our points -- and I believe
21 it will be a fairly major issue as we work with our
22 experts at the hearing on the merits -- is comparing
23 and contrasting two landfills that are very
24 similarly-situated geologically and that they've got
25 some experts who are on the payroll of TDS, not TJFA

1 necessarily, who are going to be offering opinions as
2 to why our landfill for some reason or another is in
3 some sort of improper or a poor ecologic setting;
4 whereas a landfill for which they are paid to do work,
5 a very similar situation, is somehow okay, that again
6 goes to the credibility and durability and ultimately
7 the Commissioner's ability to weigh the type of
8 opinions that they're going to be offering in this
9 case.

10 JUDGE NEWCHURCH: Okay. Let me stop
11 you.

12 Mr. Renbarger --

13 MR. RENBARGER: Yes.

14 JUDGE NEWCHURCH: -- Texas Disposal
15 Systems, does it in fact have a landfill facility in
16 Travis County?

17 MR. RENBARGER: Absolutely. We have not
18 been hiding any of this, Your Honor. I think the
19 whole issue -- and perhaps it's not being stated as
20 such -- but the whole issue here relates to what
21 relevance does TDS's landfill -- or its operations --
22 have to a landfill that is not even the subject of
23 these proceedings. What issue of credibility going to
24 our experts is it that they may or may not have worked
25 for TDS in the past. What issue -- and frankly, we

1 feel that the mechanism -- the discovery mechanisms
2 utilized in this particular case are totally improper
3 to get at experts and expert testimony and expert
4 credibility.

5 There is a procedure for that, and it's
6 not Rules 196 through 198 of the Texas Rules of Civil
7 Procedure. It's rules 205, et cetera. If they want
8 to talk about credibility of experts, then they should
9 depose those experts and they should -- I don't
10 represent TDS. I don't represent TDSL. I just
11 represent the limited partnership.

12 I don't think it is proper to utilize
13 discovery mechanisms that are reserved for party
14 discovery to try to deal with extraneous matters.
15 Now, I do not object and we aren't trying the fact
16 that, yes, TJFA the limited partnership does have
17 offices in the same building that TDS does. That is
18 out there. We provided a copy early on in these
19 proceedings of the Williamson County Landfill with the
20 then president of Garra de Aguila, the general partner
21 of TJFA, made a very detailed and lengthy deposition
22 in the Williamson County case exploring and defining
23 very clearly all of these relationships between these
24 entities. We will stipulate to that deposition and
25 indeed we provided it already in this proceeding.

1 So we aren't hiding the fact, but what
2 relevance does that have to whether or not this
3 landfill and the 26 issues referred by this
4 Commission, what relevance does it have to those
5 issues? We don't need to be trying TDS's landfill
6 liner in this proceeding. We need to be talking about
7 specifically those 26 issues the Commission gave us
8 and under the TCEQ's discovery rules, that is the
9 scope of permissible discovery. It is the issues
10 referred by the Commission. It's not extraneous
11 matters dealing with Williamson County Landfill, Comal
12 County Landfill or any other landfill in the state of
13 Texas.

14 JUDGE NEWCHURCH: Well, to a large
15 extent I agree with that. The problem is that
16 Mr. Carlson has argued -- and I think persuasively --
17 that TJFA is so closely connected to TDS that it's
18 difficult to see a meaningful description between the
19 two of them; that witnesses called by TJFA -- their
20 credibility must be -- it would be relevant to their
21 credibility, to their relationship between the two
22 entities. It would be relevant to their credibility
23 to the extent that they are criticizing a landfill
24 that BFI proposes that when Texas Disposal Systems
25 might have a very similar landfill.

1 On the other hand, Mr. Carlson, I have
2 no intention of spending two days of hearing or three
3 days of hearing listening to back and forth between
4 the two competitors, because those aren't
5 fundamentally relevant to this case. If you want to
6 say that TJFA's witnesses should be taken with a giant
7 bolder of salt, I'm with you. If you want to say --
8 you want to have a three-day hearing on your
9 competition and how that works out and the nature of
10 their business structure and you want to conduct
11 discovery that might help you gather information about
12 how your competitor is conducting its business, I
13 don't have much sympathy for that.

14 MR. CARLSON: Let me make clear, that
15 that's not our intention. What I anticipate doing is,
16 first of all, getting fair discovery to understand
17 this relationship between these various TJFA and TDS
18 entities so that I can put on some evidence to build a
19 record because I think it's important not only because
20 it impacts the credibility of the company and its
21 witnesses, and I believe that the Commissioners have
22 that -- should have that right or interest as well and
23 so that this whole thing can be put into context.

24 I don't anticipate that taking a
25 particularly long time. I certainly don't intend to

1 get back and forth into the nuts and bolts of the
2 competition between BFI, TJFA, TDS or anything like
3 that. But I believe there's an important feature here
4 and we need to have the light of day on exactly who
5 the entity that is challenging our landfill is and
6 what their relationship is to it.

7 JUDGE NEWCHURCH: Well, I can certainly
8 understand when you are talking about the individual
9 witnesses. When you're talking about the party and
10 its position, that gets a little fuzzier. I mean,
11 parties have all kinds of motives to be in these cases
12 and we could endlessly inquire into motives and I
13 could take lots of evidence on it and in the end what
14 does it get me, what does it get the Commissioners?
15 If you're talking about this particular witness and
16 what they say is credible, then that seems to make
17 sense.

18 MR. RENBARGER: And, Judge, we concur in
19 that. I mean, we have no issues with respect to any
20 of these bodies. We just think that, particularly in
21 the requests that have been propounded to date on TJFA
22 that essentially they are using discovery that is
23 intended for party discovery and they're not a party
24 on those issues. I think that -- and again, I hope we
25 aren't going to be belaboring Your Honor and the court

1 with having to go through these individually, but I'll
2 also say this: This motion was filed on Friday
3 afternoon. Discovery responses were filed the
4 preceding Monday. Neither counsel for BFI nor counsel
5 for TJFA have even had an opportunity to look at each
6 other's documents at this junction. They don't know
7 what we're giving. They basically just shot off the
8 gun and have got over here and got in front of you.
9 And I think the motive is to try to get -- to say that
10 TJFA is not playing ball in discovery. That's simply
11 not the case.

12 We are more than willing right now to
13 enter into a Rule 11 agreement. We're more than
14 willing to postpone until we have an opportunity to
15 sit down and go through some of these things. It just
16 hasn't happened. We have not gone through each of
17 these disputed discovery requests one by one and said
18 "What do you want? We can get that. We can
19 supplement our objection." None of that has taken
20 place.

21 JUDGE NEWCHURCH: So you're saying
22 really in fact that you have not conferred concerning
23 resolution of this motion?

24 MR. RENBARGER: That's right. We have
25 conferred, but I don't think we have conferred to the

1 extent that I think the rules anticipate we would
2 confer. We had a very brief conversation. Counsel --
3 Mr. Gosselink and I -- on Friday afternoon. And it
4 was along the lines of: Okay. I've got to call you
5 to confer. We talked globally, "What are your deals?"
6 I said, "Well, Paul, we've got several different
7 objections. We've got objections on relevance as
8 relates to parties that are not participating in this
9 hearing. We've got relevance as to subject matter --
10 i.e., other landfills that are not participating in
11 this hearing." We've got relevance -- we've got
12 objections -- and I'm sure Mr. Carlson will get to
13 these in a minute -- relating to some contention
14 interrogatories which we feel are extremely overbroad
15 and actually are asking us to marshal our case in
16 chief and present that in response to an interrogatory
17 as opposed to the pre-filing of testimony, which is
18 scheduled sometime later in this proceeding. Those
19 are the kinds of discussions we had.

20 We did not go through, for example, and
21 say, "Okay, what about this other case? Did you have
22 a witness that testified in this? Will you provide us
23 information about the witness?" Well, of course we're
24 going to provide that kind of information.

25 JUDGE NEWCHURCH: Okay. Let me stop

1 you.

2 Ms. Carter, I want to hear from you,
3 please. You make a similar representation in your
4 response that I saw this morning that you haven't
5 really had an opportunity to meaningfully confer
6 concerning the motion to compel. Is that right?

7 MS. CARTER: Yes, that's correct, Your
8 Honor.

9 JUDGE NEWCHURCH: Well, I'm going to do
10 this. You're all here, either personally or by
11 telephone, and we're going to recess and you're going
12 to confer right now, because this motion to compel is
13 extremely broad -- these motions to compel are
14 extremely broad. There doesn't appear to be a good
15 reason why this couldn't have been narrowed down quite
16 a bit, and I'm going to give you some preliminary
17 takes on some of these issues. I've addressed the one
18 about TJFA and Texas Disposal Systems.

19 In the past, parties have responded to
20 contention discovery requests with answers along the
21 line of, "We think you've got a problem here. It's a
22 preliminary take. We don't have all the information.
23 We expect to gather more information later in the
24 case, and we will supplement when we do." And I have
25 found numerous times in the past that that's a

1 legitimate answer, especially in the context of
2 prefiling your case where this plays out in stages.
3 It's not like everybody is getting ready prior to a
4 live hearing.

5 So I've got problems with the idea
6 that -- well, let's see, let me rephrase it. I'm
7 trying to determine whether or not Northeast, and
8 perhaps the other parties as well, have gotten to that
9 point. "This is where we are. We might know more
10 later. We'll get back to you." That's going to be
11 good enough.

12 MR. CARLSON: And if I may respond to
13 that briefly --

14 JUDGE NEWCHURCH: Yes.

15 MR. CARLSON: -- just to put this whole
16 thing into context here. With respect to TJFA alone,
17 we've got the interrogatory answers, and those are
18 just objections with -- "We know what the answers
19 are." Those are a little different than the document
20 requests where there are objections based on this TDS
21 and TDSL have nothing to do with that.

22 And then if you go down and look at the
23 responses to the request for admission, there's just a
24 blanket objection, "They're not related and you're not
25 entitled to that." There's no subject that it's

1 admitted or denied. So some of those are fairly
2 clear.

3 With respect to contention
4 interrogatories, they are fair game contention
5 interrogatories. I understand what you're saying
6 there, and, you know, there are -- their objection has
7 been based on prematurity. And sure, we're going into
8 discovery and there's more things to learn.

9 However, to put this in complete
10 context, this application has been prepared, public
11 and then filed for five years. These gentlemen have
12 been commenting on it very actively for up to the
13 entire five years. They're landfill professionals.
14 They've got expert witnesses that have been on
15 retention, I assume, for more -- for longer than their
16 designations were made.

17 And we've worked against these folks
18 before. We know their modus operandus. They've got
19 very detailed lists, I suspect, from their experts
20 that basically lay out their case. And what we're --
21 we're not asking for a tome. We are asking for a fair
22 description of what their positions are because we
23 have prefiled testimony due in less than one month.
24 And we need to be able to address the issues that the
25 other parties are raising, and we haven't gotten

1 anything from these folks.

2 JUDGE NEWCHURCH: Well, Mr. Renbarger
3 said earlier -- and maybe I'm paraphrasing here -- but
4 I understood you to represent that BFI has gotten a
5 box -- or maybe multiple boxes -- worth of documents
6 from you. Are the types of things that Mr. Carlson is
7 asking about included in that box?

8 MR. RENBARGER: There is definitely some
9 of that type of information. There is information
10 that relates to -- I'll just generally describe it --
11 working papers, if you will, of experts that were
12 engaged prior to the onset of discovery and prior to
13 even my law firm being involved. All of that stuff is
14 fair game and all of that stuff is in a box over there
15 for them to look at.

16 They have got the request for
17 disclosures, which I would submit is the proper
18 discovery mechanism to learn a person's general
19 theories and cases. They've got requests for
20 disclosures. They've got innumerable and voluminous
21 comments from TJFA in the proceedings before the TCEQ
22 on the issues they felt were of interest. They've got
23 26 issues that have now been referred to the
24 Commission, which we have adopted also as issues which
25 we think are fair game for this hearing. And we've

1 got designation of experts, which we have provided,
2 which has identified the different topics and subject
3 matter of which those experts are expected to testify
4 to. Now, that's quite a bit of stuff and it gives
5 them a pretty good clue where we're headed.

6 We haven't provided -- and we find it
7 objectionable to provide that you're looking at --
8 hopefully, we won't have to indulge your looking at a
9 lot of these specific contention requests -- but
10 basically they ask a contention and they say list
11 every document, list every legal theory, who are your
12 witnesses -- I mean, they basically are asking us to
13 present our case in chief, and we don't think that's
14 proper.

15 JUDGE NEWCHURCH: No, you don't have to
16 do that. You don't have to do that. You have to
17 list -- you have to respond with your general
18 contention and general statements. You don't have to
19 marshal every bit of evidence. You don't have to cite
20 every --

21 MR. RENBARGER: And, Your Honor, I guess
22 what I'm suggesting is that the stuff that has been
23 provided in the form of our comments, in the form of
24 our request for disclosures, in the form of our expert
25 designations, all of those things, I think paint a

1 pretty clear picture on the issues that are going to
2 be contested by these protesting -- by this protesting
3 party.

4 So I -- I mean, certainly we are more
5 than willing -- more than willing to amend or
6 supplement as Your Honor sees fit, but I don't think
7 that it goes as far as they're asking us to go in the
8 interrogatories that were actually propounded on
9 the -- on TJFA.

10 MR. CARLSON: Well, I don't necessarily
11 agree that everything is that thorough. I would also
12 note, Judge, that those are unsworn documents;
13 whereas, the interrogatory answers are sworn.

14 MR. RENBARGER: Okay.

15 JUDGE NEWCHURCH: Have you conferred
16 about resolving that and seeing if you can get it --

17 MR. CARLSON: Here's the history of the
18 conference as I understand it -- and Mr. Gosselink was
19 more involved and I might even defer to him on that if
20 you want to do that.

21 MR. GOSSELINK: Yeah. Judge, we -- I
22 sent a letter out to both Bob and to Mary that said,
23 you know, I'm going to file a motion to compel. I
24 don't think their answers are complete and some of
25 them are evasive. Please consider this our

1 conference. If we need the talk about it, please, let
2 me know.

3 I then called Bob and confirmed that,
4 you know, we weren't going to be able to agree
5 on this -- which we sort of agreed to the basic part
6 again this morning that TJFA/TDS has got a very
7 stringent position that they are not interconnected
8 and that it's not relevant -- all of our questions --
9 about TDS and we weren't going to be able to confer
10 and resolve that.

11 I also spoke with Mary after I filed the
12 letter to ask her about a different matter in -- with
13 regard to one of her aligned parties. They had --
14 Pioneer Farms had said they would send us some
15 documents and they didn't, and that was just a
16 mistake. In that conversation, neither one of us
17 talked about, you know, if she had any questions with
18 regard to trying to confer further.

19 We attempted to confer to the extent
20 required. This matter is our one shot at written
21 discovery. Written discovery ends August -- deadline
22 for written discovery is July 18th and answers
23 August 18th. So consequently -- I mean, we filed a
24 lot of questions.

25 We got a lot of answers that sought to

1 not provide information. We didn't ask to marshal the
2 evidence. We just wanted to know if you thought
3 enough about this to make it an issue, what are your
4 facts? Why is it you raised this as an issue?

5 With very limited exceptions, we don't
6 have any answers to that yet. And I would be
7 astounded if we could confer and get those answers. I
8 think this schedule is better served by proceeding
9 with a ruling from the Judge to move forward. I'll be
10 happy to confer and attempt to confer.

11 JUDGE NEWCHURCH: Okay.

12 MR. GOSSELINK: But I'm the requester,
13 and we need to hear that people are actually willing
14 to provide some answers and I have not heard that.

15 JUDGE NEWCHURCH: Okay. I'm jumping
16 around, but I'm just going to do that.

17 Freedom of association objections,
18 Ms. Carter makes an argument that freedom of
19 association is protected by the United States
20 Constitution; that trying to seek a membership of that
21 association is -- well, I don't know how to phrase it
22 exactly.

23 Ms. Carter, I think you're saying if
24 there is any hint that there might be a reason to
25 suspect that there's some sort of attempt to

1 intimidate or harass that that invokes the
2 constitutional protection. Is that about right?

3 MS. CARTER: That is right, Your Honor.

4 JUDGE NEWCHURCH: And I think you're
5 also saying that there's got to be some compelling
6 state interest given that protection.

7 MS. CARTER: That's correct. And also
8 there must be some showing of relevance.

9 JUDGE NEWCHURCH: Mr. Gosselink, why is
10 it relevant to know every member of NNC's -- of NNC?

11 MR. GOSSELINK: Let me start by saying
12 that we've asked for three different things. We've
13 tried to find out the members. We've tried to find
14 out the officers. And we've tried to find out the
15 directors and so on. The State of Texas requires you
16 to make filings as to who are your officers and who
17 are your directors. It's obviously not protected.
18 It's in the Texas Business and Commerce Code. I've
19 got the forms that include that information, and
20 indeed have subsequently found out that they have
21 listed the directors. They haven't listed the
22 officers.

23 So I now know who the directors are. I
24 don't know who the officers are. They were required
25 to report that and they didn't, so I'd still like to

1 know that.

2 As to the members, I don't need to know
3 who every member is. What I am interested in is
4 certain -- how big is this outfit really? There was
5 an entity that opposed us with great fervor called the
6 Northeast Action Group. Turned out that was a
7 membership of one. I'd like to see whether or not the
8 Northeast Neighbors Coalition is a membership of 3 or
9 500.

10 JUDGE NEWCHURCH: And what difference
11 does that make? Why is that relevant to this case?

12 MR. GOSSELINK: Well, I think it lends,
13 well, again, credibility to the position of a
14 neighborhood association saying they're representing
15 the neighborhood if the neighborhood is really an
16 isolated little group of folks, it may not.

17 JUDGE NEWCHURCH: If we counted heads in
18 these cases, applicants would lose every time. You
19 know that as well as I --

20 MR. GOSSELINK: I think that's probably
21 right.

22 JUDGE NEWCHURCH: So we don't need to
23 count heads. So I don't see why you need the numbers.

24 MR. GOSSELINK: The other reason I'm
25 interested in the members is whether or not

1 Mr. Gregory is a member, whether or not Texas Campaign
2 for the Environment is a member. As a member, they
3 may be able to -- be providing the funding to continue
4 this fighting.

5 JUDGE NEWCHURCH: And you're arguing
6 that if they are members that their providing funding
7 affects the credibility of witnesses called by NNC?

8 MR. GOSSELINK: Yes, sir.

9 JUDGE NEWCHURCH: Ms. Carter, I thought
10 your representation in your response that I received
11 this morning was that NNC intends to call no experts.

12 MS. CARTER: That's correct. We don't
13 have any -- we have not identified any experts and we
14 have no intention of calling any experts. Our
15 witnesses will be strictly factual based on their
16 personal knowledge. And the applicant, of course, is
17 welcome to depose them to find out personal knowledge
18 and they are certainly welcome to cross-examine them
19 at the hearing. So I don't think the membership of
20 Mr. Gregory or TDS or TJFA is relevant to the
21 credibility of the witnesses or for any other reason
22 for that matter.

23 JUDGE NEWCHURCH: Mr. Gosselink, if NNC
24 is not calling any expert witnesses, why do you need
25 to test their credibility by finding out who provided

1 the funding for expert witnesses that are not called?

2 MR. GOSSELINK: As to expert witnesses
3 that don't exist, there's obviously no credibility
4 issue. This announcement is more definitive than it
5 was made at the time of their answer, which said we
6 don't have any right now and we'll supplement. If
7 they're making an announcement now that "we don't have
8 any and are not going to have any," the issue of the
9 credibility of their witnesses obviously becomes moot.
10 But this would be the first time that I've heard that
11 definitive announcement.

12 JUDGE NEWCHURCH: Ms. Carter, given your
13 representation, I'm prepared to sustain your objection
14 concerning membership. However, I would entertain an
15 objection should expert testimony later be filed by
16 NNC to strike the entirety of that expert testimony.
17 Do you understand that position?

18 MS. CARTER: Yes, I do. And thank you.

19 JUDGE NEWCHURCH: Okay.

20 MR. GOSSELINK: I understand you
21 sustained it. I would like to depose various members
22 of NNC, and I only know one. I don't know how exactly
23 I get to depose more of them if they won't tell me who
24 they are.

25 JUDGE NEWCHURCH: Okay. And when you

1 say you want to depose various members --

2 MR. GOSSELINK: I'm assuming there are
3 various members.

4 JUDGE NEWCHURCH: For what?

5 MR. GOSSELINK: To understand -- they're
6 neighbors. They presumptively have reasons to -- you
7 know, that they contend the landfill will cause them
8 problems. I think we're entitled to probe what those
9 reasons are to find out whether they're accurate and
10 truthful reasons.

11 JUDGE NEWCHURCH: So it sounds like you
12 anticipate taking depositions of neighbors who might
13 be testifying to offer factual testimony?

14 MR. GOSSELINK: Yes.

15 JUDGE NEWCHURCH: Okay.

16 MS. CARTER: Well, we have identified
17 factual witnesses, and we have provided some 3,000
18 documents which are primarily the neighbors talking
19 about problems with the landfill. I certainly agree
20 that deposing the witnesses that we have identified is
21 appropriate. Individual members of NNC I don't think
22 would be appropriate deposition people, unless they
23 are testifying.

24 JUDGE NEWCHURCH: Mr. Gosselink, that
25 sounds fairly convincing. Why is that a problem?

1 MR. GOSSELINK: As to the experts, it's
2 not a problem. As to the individuals it's -- the
3 people they've identified, if in the course of
4 deposing them, we find that we should have a right to
5 try to depose somebody else, we will come forward and
6 file a motion to request that right.

7 JUDGE NEWCHURCH: Okay. Ms. Carter,
8 this is something I didn't pick up on previously, but
9 Northeast is actually a corporation, correct?

10 MS. CARTER: Yes, that's correct.

11 JUDGE NEWCHURCH: I'm assuming it's not
12 for profit?

13 MS. CARTER: Yes. Under Texas state
14 law, yes.

15 JUDGE NEWCHURCH: And officers and
16 directors are supposed to be identified I suppose with
17 documents filed with the Secretary of State. Is that
18 right, Mr. Gosselink?

19 MR. GOSSELINK: Yes, sir.

20 JUDGE NEWCHURCH: Ms. Carter, I'm
21 certainly not really up on corporation law --
22 corporate law, but that sounds like something I
23 recall. Do you dispute that as a matter of law that a
24 corporation is supposed to file its list of its
25 officers and directors with the Secretary of State?

1 MS. CARTER: I'm laughing a little bit
2 because I'm not up on corporate law either, but to the
3 extent that that is the law, we will certainly provide
4 the names of the officers. And Mr. Gosselink
5 indicated he already had the directors and so we will
6 provide the names of the officers.

7 JUDGE NEWCHURCH: Okay. I think I can
8 break off and rule on this based on what I heard. I'm
9 going to sustain the objection to the request for the
10 list of membership, and I'm going to overrule the
11 objection and grant the motion to compel to the extent
12 it pertains to the officers and directors. I'm trying
13 to think if there's something else that we could
14 discretely break off.

15 MR. CARLSON: I've got one, Your Honor,
16 one or two. It's a single objection on the TJFA
17 motion. In particular we requested communications
18 that were to include e-mails involving TJFA, and
19 there's a list of various persons in there. There's a
20 specific objection to a request that pertained to Bob
21 Gregory, Jim Gregory and/or Dennis Hobbs and it was a
22 blanket objection based on attorney/client privilege,
23 and to my understanding none of these gentlemen is an
24 attorney. So it's hard to see how any attorney/client
25 privilege would apply to any of these folks. I'm

1 unaware in the rules of evidence or the case law that
2 there's any sort of Bob Gregory privilege -- specific
3 privilege.

4 JUDGE NEWCHURCH: Mr. Renbarger?

5 MR. RENBARGER: That's somewhat amusing.
6 Again this is one of those specific kinds of
7 objections that -- with the opportunity to discuss --
8 I feel confident we can probably work something out.
9 I think the objection was interposed to the extent
10 that certainly counsel has had innumerable
11 conversations and exchanges with Mr. Dennis Hobbs.
12 That certainly, I think, clearly is privileged
13 information.

14 There's also an evidentiary rule having
15 to do with work product, which I believe is Rule 195,
16 I believe, that reflects -- well, 192, excuse me,
17 192.5. That reflects that anything, as far as party
18 communications between and among themselves and
19 consultants and employees after the initiation of the
20 case is also privileged information.

21 So to those extents, I think that the
22 objection and the assertion of privilege is
23 well-founded. Now to the extent that there are any
24 other documents that may be out there that have to do
25 with e-mails by and between or among those folks that

1 are outside of the scope of those privileges that I
2 just enumerated, then certainly that would be fair
3 game and if anything like that exists, we will produce
4 it.

5 MR. CARLSON: That's a little
6 inconsistent with the other objection that he's told
7 us that they're not parties. I don't know how you can
8 have a party communication privilege with folks that
9 they're claiming now aren't parties in other
10 objections.

11 MR. RENBARGER: May I respond to that?

12 JUDGE NEWCHURCH: Sure.

13 MR. RENBARGER: Okay. I think we have
14 tried to set out, not only in the responses to
15 discovery of which apparently they have no issues, but
16 also in the ones that identify TDS and Garra de Aguila
17 as the general partner. We've identified the
18 relationships there, ownership interest and all of
19 those things.

20 Mr. Gregory, Mr. Bob Gregory, not
21 Mr. Jim Gregory -- Mr. Bob Gregory is a shareholder in
22 the corporation as the general partner of TJFA. As --
23 I think he would fall within that same umbrella of
24 party communications to the extent Garra de Aguila is
25 the general partner and TJFA is the limited partner --

1 limited partnership, excuse me -- I don't think that
2 those communications are anything but privileged and
3 fall within that work product as I enumerated a moment
4 ago.

5 To the extent that --

6 JUDGE NEWCHURCH: Let me back up and
7 make sure I understood.

8 MR. RENBARGER: Sure.

9 JUDGE NEWCHURCH: You're saying that the
10 attorney -- not Mr. Gregory -- the attorney is you --

11 MR. RENBARGER: Correct.

12 JUDGE NEWCHURCH: -- in communications
13 between you and Mr. Gregory, because Mr. Gregory is a
14 limited partner in TJFA or --

15 MR. RENBARGER: He is not a limited
16 partner --

17 JUDGE NEWCHURCH: Yeah, I misunderstood.

18 MR. RENBARGER: Excuse me, I beg your
19 pardon. Let me start back over and make sure I get
20 this straight.

21 JUDGE NEWCHURCH: Okay.

22 MR. RENBARGER: The limited
23 partnership's general partner is a corporation, of
24 which Mr. Gregory is a shareholder of that
25 corporation. Okay? The limited partner TJFA also --

1 its sole limited partner is -- yeah, I think you are
2 correct. I misunderstood you.

3 JUDGE NEWCHURCH: So your argument is
4 that more -- privilege stemming from your
5 communications extends to --

6 MR. RENBARGER: -- the limited partner
7 under the limited partnership.

8 MR. CARLSON: I'm not quite sure what
9 hat Mr. Gregory is wearing any time he's sending an
10 e-mail back and forth. I suspect, based on the fact
11 that tjfal -- or tjfa-lp.com is a very new e-mail
12 address that there are a lot of communications that
13 are potentially responsive pertaining to the
14 application and the expansion that go back and forth
15 between Mr. Gregory, probably under a TDS e-mail
16 address correspondence.

17 What I'm concerned about, Judge, is that
18 there's a file somewhere out there in Creedmoor that
19 says, "Here are our TJFA documents and these are
20 discoverable. And here are ones that are -- that
21 happen to be TDS documents, and that's a separate part
22 and they're undiscoverable." That's where the meat is
23 going to be because they've been going back and forth
24 on this for five or six years, like I said.

25 And I don't want to cast -- I don't want

1 to impugn anybody, but I also want to have a fair
2 opportunity to get documents that we're entitled to.
3 I don't want any sort of shuffle going on here where
4 there are documents that are plainly relevant to this,
5 but they're sitting on a shelf somewhere because they
6 happen to be formally TDS documents. It kind of goes
7 back to my alter ego argument. I think we're allowed
8 to explore just exactly how these people and entities
9 interact with each other.

10 MR. RENBARGER: Judge, if I may, I mean,
11 we are talking about separate legal entities, yes,
12 that are housed in the same building; and, yes, that
13 have a some of the same people involved. There have
14 been innumerable situations -- and I don't represent
15 TDS -- but there have been innumerable situations
16 where TDS may have participated in a rulemaking
17 proceeding at the TCEQ, may have discussed landfill
18 meetings in the City of Austin, may have any number of
19 those things and as relates to TDS as a business
20 interest. I don't represent those. Those are outside
21 my bailiwick.

22 Now, if counsel feels like they want to
23 get into those, they know how to do that and they
24 should take a look at TRCP 205, subpoena them and get
25 them up there for deposition, ask them to bring their

1 documents, whatever those may be, and we'll deal with
2 it. But I just find it -- you know, at this point in
3 time to use TJFA as a launchpad to try to get into a
4 bunch of business affairs and business communications
5 involving separate legal entities, I just don't think
6 that's proper.

7 MR. GOSSELINK: We're not seeking
8 business information, Judge.

9 JUDGE NEWCHURCH: Okay. If there were
10 other privileges like business confidential
11 information, that would be fairly convincing. If it's
12 information that pertains to their landfill or
13 information that might indicate that a similar
14 landfill was okay but this one is not, I think that's
15 discoverable.

16 MR. RENBARGER: -- as to TJFA or as to
17 TDS?

18 JUDGE NEWCHURCH: Well --

19 MR. RENBARGER: See, that's where I'm
20 hung up on because TJFA is a real estate company. It
21 has no managerial control by TDS or anyone else.

22 MR. CARLSON: We don't know that.
23 That's the representation. But some of the documents
24 we've asked for may absolutely show the -- there may
25 be some alter ego issues and we'll be able -- are

1 entitled to --

2 JUDGE NEWCHURCH: -- trying to remember
3 where it is, but there is -- in the discovery rules
4 there are provisions that talk about obtaining
5 responses from entities under the direction,
6 control -- someone refresh my memory.

7 MR. GOSSELINK: I can't do that, Judge,
8 but I can make it easier for everybody to get there.
9 We have the same requests of NNC, asking for -- asking
10 for the information exchanges between NNC -- all the
11 aligned parties -- and the other parties to the case
12 and TDS, TDSL, TJFA and the Gregory's, and their
13 response is we can't have any of that.

14 NNC takes that position as well. Every
15 one of the responses are scripted to say the same
16 thing. You can get to the point where we are entitled
17 to find out what's been going on for the last seven
18 years as it relates to the issues -- it's actually
19 been seven years, and I've been involved in this case
20 for seven years, and Mr. Gregory has been in the
21 audience in multiple political and TCEQ forums taking
22 positions in collocation with the other protestants on
23 the merits of this application and the merits of this
24 landfill.

25 It is not something that just started

1 when Bob Renbarger got hired. It's something that's
2 gone on for years and it is very full of substance.
3 And we have asked to see it so that we can understand
4 the thought process, the issues that are relevant
5 here. They all led up to 26 issues that Mr. Gregory
6 was the champion of. We think we're entitled to see
7 that. We've asked for it from all the parties. We've
8 had the same answer from everyone.

9 MR. RENBARGER: Judge, I don't --

10 JUDGE NEWCHURCH: Just a second.

11 Ms. Carter --

12 MS. CARTER: Yes.

13 JUDGE NEWCHURCH: -- help me understand
14 better your objection to requests for information
15 concerning communications between parties. As I
16 recall you just blanketly object to providing any of
17 those documents.

18 MS. CARTER: That is correct. We did
19 object on a blanket objection. To the extent that the
20 parties are cooperating, that would be information
21 that would be covered by our joint dispense agreement.
22 With respect to Messrs. Gregory and Dennis Hobbs, we
23 didn't feel that there was relevance to documents
24 between -- if there were documents -- between the
25 Gregorlys and NNC, because our witnesses are fact

1 witnesses. And again, they're only testifying to
2 personal observations, not opinions that could be
3 supposedly influenced by documentation or
4 communications from Mr. Gregory, Mr. Gregory or
5 Mr. Hobbs.

6 JUDGE NEWCHURCH: Okay. This is what
7 I'm going to do. Mr. Renbarger, I'm going to sustain
8 the objection based on attorney/client privilege to
9 communications between you or Mr. Head (phonetic) or
10 other retained attorneys and all of these entities
11 that are officers or directors. Those objections are
12 all sustained as attorney/client objections. The
13 other objections are overruled in their entirety.

14 MR. RENBARGER: Excuse me, Judge, which
15 objections are those?

16 JUDGE NEWCHURCH: All the objections to
17 documents that might be in the custody and control of
18 Texas Disposal Systems, as well as TJFA if they're
19 requested in the discovery request. It's clear to
20 me --

21 MR. RENBARGER: All the discovery
22 requests or -- on some there's a specific objection --

23 JUDGE NEWCHURCH: On the objection
24 concerning they're separate entities, they're separate
25 entities, hence discovery is not allowed.

1 MR. RENBARGER: Okay. Could I ask the
2 Judge to please just take a quick look at TRCP 205.1
3 because that has been one of the bases for our
4 discussion of nonparty issues, and I think that that
5 rule speaks very clearly to what we're talking about
6 here.

7 JUDGE NEWCHURCH: 205.1?

8 MR. RENBARGER: Yes, sir. I do not
9 represent Bob Gregory individually, TDS, TDSL or
10 any --

11 JUDGE NEWCHURCH: That objection is
12 overruled.

13 You know, basically, it's clear to me
14 that TJFA is closely aligned with the Texas Disposal
15 Systems. It's also clear to me that I'm going to --
16 I'm going to guess that BFI is going to be able to
17 show pretty clearly -- in fact, the stipulations that
18 have already been made pretty clearly show -- that
19 Texas Disposal Systems would be happy if BFI didn't
20 get this permit.

21 MR. RENBARGER: What does that have to
22 do with the --

23 JUDGE NEWCHURCH: Well, I think it
24 strongly impacts the credibility of any expert witness
25 that TJFA might call. And if there's information

1 that's relevant to BFI's application, then I think BFI
2 ought to have an opportunity to see that. If TJFA and
3 Texas Disposal Systems want to play in somebody else's
4 permit sand box, then things might happen to them.

5 MR. RENBARGER: -- is a property owner
6 right across the street --

7 JUDGE NEWCHURCH: I understand that.

8 Okay. We've narrowed down some. Oh,
9 having said all that, Mr. Carlson and Mr. Gosselink,
10 as I said earlier, I'm going to liberally sustain
11 objections to the extent that evidence is offered that
12 gets into business strategy, the nature of the
13 competition. We don't need to be here for days and
14 days going into all that. Attacking the credibility
15 of witnesses, that sure sounds like something you
16 ought to be able to do.

17 MR. RENBARGER: Judge, as a housekeeping
18 matter, could I broach this very briefly, because I
19 have brought with me this morning a response to the
20 motion to compel. We just haven't had an
21 opportunity --

22 JUDGE NEWCHURCH: Okay.

23 MR. RENBARGER: It was filed this
24 morning at TCEQ, but we have not had an opportunity
25 to -- I just want to make sure we're on record as

1 opposing the motion.

2 JUDGE NEWCHURCH: All right. Thank you.

3 MR. GOSSELINK: You have an extra one,
4 Bob?

5 MR. RENBARGER: Yeah.

6 JUDGE NEWCHURCH: Judge, there is one
7 other sort of -- it's part of the contention
8 interrogatories, but a pretty important one. We used
9 it in our -- in the motion that we -- directed to NNC
10 and the various aligned parties. It's Interrogatory
11 No. 8, and -- as it relates to Interrogatory No. 8,
12 request for production No. 8, and that is the
13 interrogatory that asks, pursuant to Issue W, which
14 the Commission approved which had to do with any
15 adverse health effects to you or your family.

16 While we objected to that as an
17 improper -- as an improper issue on the basis that if
18 you complied with all the regulations by definition
19 you had protected human health and the environment,
20 that's the purpose of the regulations, nonetheless, it
21 got forwarded as an issue. With Commissioner Soward
22 making this observation as he forwarded it as an
23 issue, "Stating what I just said, if you complied with
24 it, you've satisfied your burden. But if a protestant
25 comes forward with credible testimony about an adverse

1 health effect, then the applicant would have the
2 opportunity to probe that and would have the
3 responsibility to rebut it."

4 So we've asked the obvious question, "So
5 is anybody sick?" And the answer we got was, "It's
6 premature," with the exception of the McAfee's who
7 answered, "Two of my children have gotten sick and it
8 may be because of the landfill." I'm not sure what --
9 I'm not sure whether that's a contention yet or not,
10 but as to everything else about the prematurity, I
11 don't know what else a protestant needs to know about
12 themselves if they're going to learn, after deposing
13 my witnesses or taking discovery of BFI. They either
14 have an illness or not and it's either caused by the
15 landfill or not. That's a very difficult issue --
16 very difficult burden of proof for anybody. But if
17 they're going to make that contention, then we -- we
18 believe we have the opportunity to -- obligation to
19 probe that.

20 And so we ask for the -- we ask for very
21 specific information. Tell us what you -- you know,
22 what your sickness is, when you got it, what your
23 medical treatment is and why you think it was caused
24 by the landfill?

25 And then we said if you're going to

1 answer -- if you're going to answer anything but no,
2 then in order for us to get into this information, the
3 only legal way we can do it is to ask you to fill out
4 this HIPAA form.

5 So we got to this point in the process
6 where NNC, on behalf of -- let me start again,
7 Williams said no, Pioneer Farms said no, Joseph and
8 Rogers never answered. McAfee said maybe, and NNC
9 said premature. And McAfee also said premature and
10 then answered.

11 The interesting dilemma that I think
12 Ms. Carter found herself in was after making the
13 strong point that she only represents McAfee and NNC,
14 is that her two clients more or less took opposite
15 positions. One answered and one said it's too early
16 to answer. So she adopted McAfee's answer in this
17 most recent response.

18 I don't know what that means yet. I
19 need to find out whether there's a bona fide
20 contention here with -- one reason we're before you.
21 And the second is, if there is a bona fide contention,
22 then we need to have the HIPAA form filled out and we
23 need to have the answer more -- you know, more
24 complete than just "maybe I got sick." This can
25 complicate this hearing tremendously and we need to

1 get it figured out.

2 MS. CARTER: Well, we're trying to
3 figure it out. That's why the answer was phrased as
4 it was. The girls -- the daughters of Mr. and
5 Ms. McAfee have these illnesses, which may or may not
6 be attributable to the landfill. We're trying to
7 figure that out. And we're trying to find out if
8 there are others in the neighborhood who have
9 illnesses which may or may not be attributable to the
10 landfill.

11 Until we do figure that out -- and we're
12 not there yet -- it is premature. We do not want to
13 sign or file a HIPAA form which would release
14 confidential medical information to the applicant. We
15 think that's highly inappropriate at this time.

16 MR. GOSSELINK: This contention has been
17 made in public forums by the McAfee's on behalf of
18 their children as reasons why the city and the county
19 should oppose this landfill three or four years ago
20 and ongoing -- a constant -- a constant refrain. I
21 mean, figure this out or not, but first of all it
22 indicates that it's at least three or four years old.

23 MS. CARTER: Paul, I'm sorry. I didn't
24 hear what you said. What is three or four years old?

25 MR. GOSSELINK: This information.

1 MS. CARTER: What information?

2 MR. GOSSELINK: That the McAfee's -- one
3 or both of the McAfee's children have gotten sick as a
4 result of -- potentially the landfill. That has been
5 put forward by the McAfee's in public forums, in front
6 of the county commissioners, and I believe in front of
7 the city. So it's not new information. It's
8 information that, you know, if you're a parent and you
9 get your arms around and you have -- you can at least
10 answer when, and you can at least answer what
11 treatment has been provided. And there are
12 legitimate, easy-to-answer questions in that
13 interrogatory that there ought to be actual answers
14 for by now. And we just asked what they were and we
15 simply need to know, because arguably a burden can
16 shift to us.

17 JUDGE NEWCHURCH: Okay. Let's break
18 that down, because y'all have lots of background in
19 this that I don't share, so it's hard for me to keep
20 up.

21 So there are two children, the McAfee
22 children, and there's been an assertion that the
23 McAfee children are ill in public forums -- in public
24 forums there has been an assertion that they're ill as
25 a result of living near the landfill and you want

1 specific health information subject to confidentiality
2 protections, I assume, concerning the health records
3 of those McAfee children that are asserted to be
4 related to this landfill.

5 MR. GOSSELINK: Yes, sir.

6 JUDGE NEWCHURCH: So that's one area
7 we're talking about. The other area is whether or not
8 there are any other people who -- Northeast of any of
9 its aligned parties -- that might be claiming are ill
10 as a result of living near the landfill?

11 MR. GOSSELINK: Yes, sir.

12 JUDGE NEWCHURCH: Okay. Ms. Carter,
13 with regard to the McAfee children -- tell me again.
14 Am I correct -- I know I'm asking you something you
15 probably addressed, but it was a lot information to
16 digest in one swallow. Are you saying that you don't
17 want to sign the HIPAA form with regard to the McAfee
18 children at this time? And if so, why not?

19 MS. CARTER: Because we haven't
20 definitively decided or figured out that their
21 illnesses are attributable to the landfill.

22 MR. BLACKBURN: Jim Blackburn here, and
23 let me jump in on this. I think it's fair to say that
24 it's one thing for people to believe that their
25 illnesses are from a landfill; I think it's quite

1 another thing to prove that in any definitive sense.
2 We have not identified any experts. I think what we
3 have are concerns that people have that there are
4 illnesses that are related to what is occurring at the
5 landfill. I don't think that it takes filling out a
6 HIPAA form to say that.

7 I think that to the extent that we are
8 trying to put on expert testimony that we're going to
9 prove causation. I think that at that point the
10 confidential doctor information becomes relevant. I
11 think the McAfee's have a concern. They have children
12 who are sick. They think it's related to the
13 landfill. I think they have every right to have that
14 opinion. How much persuasion that opinion has I think
15 is an issue for the examiner -- or for the judge.

16 JUDGE NEWCHURCH: Well, if you're not
17 going to offer any evidence to show that they're sick,
18 then that probably resolves the issue.

19 (Simultaneous discussion)

20 JUDGE NEWCHURCH: Okay.

21 MR. BLACKBURN: -- I think the same
22 thing is true. We're in the process of canvassing
23 hundreds of neighbors to try to understand what is
24 going on in that community. That is a major effort
25 for, frankly, a poorly-funded exercise that we have

1 here. And we're doing it as best we can, but it's
2 just going to take some time. And it is highly
3 premature to I think get pushed on all of these issues
4 to the extent that Paul is pushing at this point.

5 JUDGE NEWCHURCH: Okay. Mr. Blackburn,
6 let me see if I can paraphrase what you said. You
7 said the McAfee parents think their children are ill
8 and it might be related to the landfill.

9 MR. BLACKBURN: Correct.

10 JUDGE NEWCHURCH: You're saying other
11 people think they might be ill, but you've got a lot
12 of people you're dealing with and you're not quite
13 sure about all that, you're not prepared to argue that
14 at this point, you need some time to look at that
15 before you can start to respond to discovery requests
16 concerning those other people.

17 MR. BLACKBURN: That's correct.

18 JUDGE NEWCHURCH: Okay. Are you
19 agreeing not to offer evidence to indicate that the
20 McAfee children are ill?

21 MR. BLACKBURN: I think -- no, I think
22 we're offering evidence that the McAfee -- I think
23 Mr. and Ms. McAfee, whoever ends up being the
24 designated witness, which, frankly, I don't know who
25 is -- whoever it is would testify that that's a

1 concern they have. That, you know, they're going to
2 testify, for example, about odors, they'll testify
3 about experiences, they're testify their kids are
4 sick --

5 JUDGE NEWCHURCH: Well, I guess what
6 you're saying is your clients may want to offer that
7 evidence, but in the absence of supporting evidence
8 from a medical expert, it's probably not going to be
9 very persuasive and, therefore, you don't really need
10 to sign the HIPAA disclosure agreement?

11 MR. BLACKBURN: That's what I'm arguing
12 at the moment. I think if I really try to make a
13 stronger case, then I think I do have the obligation
14 to come forward with the HIPAA information. I think
15 it's a question of how much kind of invasion of
16 privacy versus sort of the pay-back on the issue. I
17 mean, we have raised it. I think it's serious. It's
18 an issue that's out there. We're being honest about
19 it.

20 I think that if we make the HIPAA
21 disclosure, I think it takes us to another level.

22 JUDGE NEWCHURCH: Well, first of all,
23 SOAH deals with sensitive medical information in other
24 types of cases every day. So we're very aware and
25 careful about protecting people's privacy and we can

1 figure out ways to do that. But, frankly, with regard
2 to the McAfee children, I don't see how you can have
3 it both ways. You can either drop the claim now that
4 they're ill as a result of exposure to the landfill,
5 or you can respond to the discovery request
6 concerning them. One or the other, but not something
7 in between.

8 MR. BLACKBURN: I understand what you're
9 saying. You know, we'll need to consult and figure
10 out --

11 JUDGE NEWCHURCH: Maybe that's something
12 that you can confer on when --

13 MR. BLACKBURN: I think we're going to
14 have to confer with them before we go to the next
15 level of the response.

16 JUDGE NEWCHURCH: Well, if -- I was -- I
17 thought you meant the conference between the counsel,
18 but you might have to confer with your clients --

19 MR. BLACKBURN: Well, I think we
20 definitely have to confer with the clients, Your
21 Honor.

22 JUDGE NEWCHURCH: I understand that.
23 Well --

24 MR. GOSSELINK: We understand that
25 and --

1 JUDGE NEWCHURCH: Why don't the
2 attorneys confer on that. Mr. Blackburn, my
3 preliminary thoughts are I'm going to overrule the
4 objections to disclosure under protection of the
5 health information of the McAfee children unless you
6 are willing to drop the claim that they are ill as a
7 result of exposure.

8 MR. BLACKBURN: Well, Your Honor, you
9 have given us a pretty clear indication of where you
10 are. I think we can work it out with Paul from here
11 out.

12 JUDGE NEWCHURCH: Okay. That's what I
13 was hoping.

14 I've been trying to break off things and
15 give preliminary guidance so y'all can confer and see
16 if you can narrow this down more. If there is
17 something else that --

18 MR. GOSSELINK: Yeah, I think there's
19 one more. We're going to have to confer about the
20 contention interrogatories, which is what I think the
21 bulk of the conference will be. But there's one other
22 non-contention interrogatory that we need to bring to
23 your attention --

24 JUDGE NEWCHURCH: Yes, sir.

25 MR. GOSSELINK: -- about the McAfee

1 thing. We have asked -- I think it's in 34, request
2 for production -- hold on. I wrote this down. Yes,
3 we've asked --

4 MS. CARTER: We can't hear you.

5 MR. GOSSELINK: I backed away from the
6 mic. Sorry guys.

7 It's McAfee Request for Production 34.

8 JUDGE NEWCHURCH: You want to give me a
9 page number?

10 MR. GOSSELINK: I'm sure I can, Your
11 Honor.

12 MS. CARTER: Did you say 34?

13 MR. GOSSELINK: Yes, I said 34. It's
14 our request for production to the McAfee's.

15 JUDGE NEWCHURCH: This is in the same
16 set that has the request for Northeast it --

17 MR. GOSSELINK: I think it's easier if I
18 just give you my copy.

19 JUDGE NEWCHURCH: Okay. You're asking
20 for financial information tending to prove or disprove
21 the allegation that the landfill expansion will harm
22 your business.

23 MR. GOSSELINK: Right.

24 JUDGE NEWCHURCH: And we're talking
25 specifically about the McAfee's?

1 MR. GOSSELINK: Yes, we are. And the
2 reason that we're making that request is because the
3 McAfee's have made that assertion innumerable times
4 over the past four or five years regarding the adverse
5 impact that the landfill has had and will have on
6 their business. It's all been in political forums
7 and, you know, it doesn't appear -- what we'd like to
8 know is whether that's true or not -- first of all, I
9 want to start with the proposition that we don't have
10 I think it's a relevant issue, but there hasn't been a
11 ruling on that yet, so in the event that it is a
12 relevant issue, we'd like to know whether it's true.

13 JUDGE NEWCHURCH: Okay. Well, let's
14 deal with that. Mr. Blackburn, Ms. Carter, are you
15 arguing that impact on -- the value of the land and
16 business. Is that right?

17 MR. GOSSELINK: Yes.

18 JUDGE NEWCHURCH: -- that are in the
19 facility -- are you contending that that's a relevant
20 issue in this proceeding?

21 MR. BLACKBURN: Actually, Your Honor, I
22 think it's relevant as a standing allegation as to its
23 near proximity. I think, you know, certainly
24 financial impact is one of the aspect that goes to
25 standing, I think we have standing; but unless that

1 somehow or other another has been disputed, I would
2 think that from now on -- I mean, there's -- the basic
3 issue is going to be compliance with the rule, my
4 understanding of the land use rules, for example, you
5 know, impact would be an issue for, you know -- to say
6 land use, I would think that would be the physical
7 impact -- that's certainly what we intend to argue.
8 We have no intention at this point of coming forward
9 with statements to argue that the McAfee's have lost
10 value. Frankly, I've had that denied as an issue in
11 every landfill case I've ever been in.

12 JUDGE NEWCHURCH: Well, it seems like
13 I've done that and every ALJ I know has done that.
14 Does anyone contend that the impact of the landfill on
15 the value of the property is a relevant issue in this
16 proceeding?

17 MR. BLACKBURN: Other than this being
18 compatibility is an issue, but the dollar value of
19 loss of property is not an issue that I know of.

20 MR. GOSSELINK: That's walking a fine
21 nuance line as to whether or not they're going to be
22 able to put on testimony about impact on their
23 business --

24 MR. BLACKBURN: -- impact in terms of
25 odors, yes; impact in terms of noise, yes; impact in

1 terms of buzzards circling at parties, yes. Those are
2 relevant issues. I think they go to value, but it's
3 not value testimony.

4 JUDGE NEWCHURCH: Okay. And you're
5 asking about values here.

6 MR. GOSSELINK: I would like to be --
7 ideally I would like to be sure that the testimony is
8 not going to be because of the alleged odor and
9 alleged height and alleged -- all the other things
10 that are being alleged -- that's caused them to lose
11 income. That's economically damaged them. If that's
12 their contention, then we want to see whether that's
13 true.

14 JUDGE NEWCHURCH: On the flip side,
15 although you might disagree that there was -- that
16 there were going to be such impacts -- I take it you
17 agree with Mr. Blackburn that land use accountability
18 and -- those things are relevant.

19 MR. GOSSELINK: Yes, sir.

20 JUDGE NEWCHURCH: Okay. So you're
21 saying if the parties are in agreement that impact on
22 land values or business values are not relevant, then
23 you're prepared to drop the discovery request 34.

24 MR. GOSSELINK: Yes, sir.

25 JUDGE NEWCHURCH: Does anyone want to

1 argue that the impact on values of land and businesses
2 remains a relevant issue in this proceeding?

3 MR. RENBARGER: I think the financial
4 with respect to the issues as described a moment ago,
5 vectors, odors, all of those things --

6 JUDGE NEWCHURCH: Okay. And I agree the
7 issue of impact on the value of the land or businesses
8 is irrelevant and I will not allow evidence on that.
9 So given that, you're dropping 34?

10 MR. GOSSELINK: Yes, we are.

11 JUDGE NEWCHURCH: Okay. Anything else
12 we can break off as a discrete piece?

13 MR. GOSSELINK: I think so. I'm going
14 to suggest that, you know, Interrogatory 24C to NNC is
15 something that can be broken off.

16 JUDGE NEWCHURCH: 24C?

17 MR. GOSSELINK: And while I look for it,
18 my notes remind that what it is that we've asked for
19 is any other suits or contested case hearings that NNC
20 or any of its members have brought in the last five
21 years with respect to this type of subject matter. We
22 got an answer that there was one, and it was too
23 burdensome to have them identify any others.

24 I didn't ask for anything other than the
25 names of them. It's not hard to identify one, two or

1 five more. It leads me to conclude that the others
2 don't -- they don't want to identify the others, not
3 that it's too hard to do. It leads me to surmise --
4 which we obviously don't know; that's the point of the
5 discovery -- that one of NNC's members is some form of
6 TJFA, TDS, Bob Gregory, and he's brought a whole bunch
7 of these things.

8 MR. BLACKBURN: Your Honor, this is a
9 membership issue all over again.

10 JUDGE NEWCHURCH: I'm still looking for
11 the request.

12 MR. GOSSELINK: It's not in that book.

13 JUDGE NEWCHURCH: "Please identify by
14 proceeding or permit number all prior pending
15 lawsuits, civil lawsuits." Okay.

16 MR. GOSSELINK: The objection is that
17 it's burdensome and harassing, and I don't dispute it
18 being very burdensome or harassing at all.

19 JUDGE NEWCHURCH: Okay. Well, so,
20 Mr. Blackburn, Ms. Carter, why is it burdensome or
21 harassing?

22 MR. BLACKBURN: Well, first of all, it
23 is speaking indirectly to membership of the
24 organization by asking about any litigation of
25 members.

1 Secondly -- I mean -- I mean, frankly,
2 to go out and talk to every member of every
3 neighborhood that is a part of Northeast Neighbors,
4 frankly, is unduly burdensome. And I think what he's
5 trying to do is trying to tie down the membership of
6 the organization by this question. And I think that
7 the ruling has already been that the membership list
8 is not to be required.

9 MR. GOSSELINK: I'm not seeking to find
10 out the membership broadly. I'm seeking to find out
11 whether any members are in the business of bringing
12 these kinds of actions that would, once again, go to
13 the general credibility of the witnesses that get
14 called here. I really think, Judge -- and this is
15 sort of an admission -- I should have asked the same
16 question I asked about -- what's the connection
17 between NAG -- Northeast Action Group -- and NNC. The
18 answer, they're both -- you know, TRECK (phonetic) was
19 a member of NNC, so they told me who one of the
20 members is. I should have just said is Bob Gregory a
21 member of NNC? We'll get around to that in the
22 deposition, but it's -- you know, it's not like
23 there's this Holy Grail that's going to be protected.
24 You can ask direct questions. I'm not asking for the
25 whole list.

1 MS. CARTER: That question is probably
2 better asked of Mr. Gregory directly.

3 JUDGE NEWCHURCH: So your question
4 you -- want to limit your question at this point to
5 ask: Is Bob Gregory a member and has Bob Gregory
6 brought any civil lawsuits or civil proceedings other
7 than this?

8 MR. GOSSELINK: If I had it to do over,
9 I would have asked that question. But I asked it
10 broadly enough to include Mr. Gregory, but there are
11 other potential people in this group who bring
12 lawsuits. You know, I'm asking about the lawsuits,
13 not about the people.

14 JUDGE NEWCHURCH: For purposes of doing
15 what? I mean, why is it ultimately going to be
16 relevant? I mean, if the particular witness was
17 called as an expert in those other lawsuits, I can
18 understand why that might lead to something that was
19 relevant concerning credibility of the applicant --
20 statements by them or something like that. I guess
21 I'm interposing an objection here because they don't
22 exactly say it's irrelevant. They say it's unduly
23 burdensome, harassing and overbroad.

24 MR. GOSSELINK: Right.

25 JUDGE NEWCHURCH: I'm just trying to --

1 MR. GOSSELINK: -- won't know who it is
2 I might be able to ask that question of to find out if
3 there are any inconsistent statements that have been
4 made between the various positions that they've taken
5 and the various lawsuits and contested case hearings.
6 I need to have some baseline information in order to
7 work around.

8 JUDGE NEWCHURCH: Well, as you said, you
9 probably should have asked another question that was
10 more specific to Mr. Gregory, so I won't construe this
11 as that question and ask it. And I've already
12 resolved that membership broadly is protected under
13 the freedom of association.

14 So Mr. Blackburn and Ms. Carter, are you
15 arguing that producing this information concerning
16 lawsuits or contested case hearings regarding the NNC
17 itself as a corporate entity is burdensome?

18 MS. CARTER: No, we're not. In fact,
19 the only one that we're aware of is the one that we
20 had identified in the response to these
21 interrogatories.

22 JUDGE NEWCHURCH: All right. So the
23 objection with regard to NNC itself as an entity is
24 overruled. With regard to the officers and directors,
25 are you arguing that it is unduly burdensome to

1 identify civil lawsuits or contested case hearing
2 requests that have been filed by its officers and
3 directors?

4 MS. CARTER: We'll do that once we find
5 out who the officers are.

6 MR. BLACKBURN: Yeah, in light of your
7 earlier ruling, I think that's certainly reasonable.

8 JUDGE NEWCHURCH: Okay. So I'm going to
9 sustain the objection with regard to identifying
10 lawsuits and contested case hearings involving just
11 the members, but sustain it -- I didn't say that
12 right. I got caught up in my own language. Let's try
13 that again.

14 I'm going to sustain the objection with
15 regard to membership and their lawsuits and contested
16 case hearing activities. I'm going to overrule the
17 objection and grant the motion to compel with regard
18 to the officers and directors and the corporation
19 itself.

20 MS. CARTER: Thank you.

21 JUDGE NEWCHURCH: I hope that's clear.
22 Anything else we can break out?

23 MR. CARLSON: I've got one left, and I
24 believe you touched on it. Maybe this is a point of
25 clarification. One other group of objections that

1 TJFA asserted had to do with requests --
2 interrogatories and requests for production that had
3 to do with proceedings involving TJFA and other
4 landfill expansions. And the objections were that in
5 any request that pertains to properties in the
6 immediate vicinity of the landfill are fair, anything
7 that has to do with proceedings involving TJFA, and
8 other landfills and expansions is overbroad,
9 harassing, seeks information that's not reasonably
10 calculated to lead to discovery of admissible
11 evidence.

12 In particular, looking for some
13 information -- as I understand it there's a -- at
14 least a partial history of purchasing property
15 immediately across the street or next door to a
16 landfill that's proposing an expansion and
17 participating in proceedings, SOAH proceedings,
18 challenging those. I'd like to at minimum, Judge --
19 we may be able to pare this down -- I'd like to get
20 the deeds for the properties that are at issue so I
21 can at least find out what landfills we're talking
22 about and potentially what proceedings we're talking
23 about.

24 The particular discovery requests are on
25 Page 2 of the TJFA motion to compel. It's

1 Interrogatories 4 and 5, Request for Production Nos.
2 2, 6, 10 through 17, 26, 28 and 30, and then several
3 requests for admission, 37, 39, 42 through 47, and 58.

4 JUDGE NEWCHURCH: Mr. Renbarger?

5 MR. RENBARGER: I'm going to have to
6 hear those again. I'm not sure I got all those
7 numbers.

8 MR. CARLSON: Bob, on Page 2, the second
9 box -- substantive box -- that's that kind of fourth
10 category of objections y'all raised pertaining to
11 properties and proceedings for landfills in the
12 vicinity -- I believe there are several in the
13 vicinity in Central Texas, but we'd ask for, for
14 example, copies of the deeds of the company. I
15 understand there may be eight or nine deeds in total
16 here.

17 I'd like to be able to identify, Judge,
18 the properties and the landfills that are proximate to
19 those properties. And I believe, to be frank, and
20 trying to be reasonable here, that we can probably
21 fill in the blanks and get some of the pleadings,
22 which are public documents, and depositions and
23 what-not to see what positions TJFA has taken
24 recently -- I believe in the last three or four years.

25 MR. RENBARGER: The only response I have

1 to that, Judge, is the response is contained in the
2 responses we filed this morning. And then just a
3 paraphrase is essentially that, again, the TCEQ's
4 scope of discovery for purposes of cases where there
5 are referred issues, they are those referred issues.
6 And looking at the referred issues, I don't see where
7 the TCEQ has asked us to compare, contrast other
8 landfills in other parts of Texas, notwithstanding
9 TJFA's participation in those.

10 So we don't really see that that kind of
11 information, save and except what might have to do
12 with any experts that we might have that testified in
13 other proceedings that may be testifying on same or
14 similar issues in this proceeding, what any relevance
15 of that is to this proceeding.

16 JUDGE NEWCHURCH: So you're willing to
17 provide information concerning land owned by TJFA that
18 might be near another landfill to the extent that
19 there was some type of testimony filed or other expert
20 analysis prepared by one of the witnesses who might be
21 called back by TJFA in this hearing --

22 MR. RENBARGER: Certainly we'll do
23 that --

24 THE REPORTER: I'm sorry, might be
25 called by what?

1 JUDGE NEWCHURCH: By TJFA.

2 MR. RENBARGER: We're certainly going to
3 do that. I mean, we think that does go to some of the
4 issues counsel has been talking about all morning, and
5 they certainly have every right to learn what our
6 experts in this case, if they testified in other
7 landfill hearings, what they testified to. That's no
8 issue.

9 JUDGE NEWCHURCH: Is that an acceptable
10 resolution?

11 MR. CARLSON: It is, Judge. I just want
12 to note -- for example, with the deeds I need to
13 know -- understand the full panoply of cases where
14 this has arisen. But other than that, yes.

15 MR. RENBARGER: And I don't know what
16 relevance that has to this proceeding if they own land
17 in Williamson County, Comal County or, you know, State
18 of Louisiana. I mean that -- that doesn't seem to me
19 to bear on any of the 26 issues that the Commission
20 has asked us to explore --

21 MR. CARLSON: -- well, it does. For
22 example, in Williamson County, which again to be
23 totally candid -- I'm aware of that, but I understand
24 that they did purchase a piece of property, they did
25 challenge that, so that's yet another landfill which

1 is situated in a geologic area very similar to both
2 TDS and the Sunset Farms Landfill. So if I can find
3 out that piece of property, find out the case -- the
4 SOAH proceeding that ensued or comments perhaps made
5 that didn't lead to a contested case hearing, I
6 believe that's fair game it seems to me, Judge, to be
7 calculated to lead to the discovery of admissible
8 evidence.

9 MR. RENBARGER: We certainly agree with
10 respect to experts. I don't think that's -- I think
11 we've covered that certainly adequately --

12 JUDGE NEWCHURCH: So you're saying
13 you're willing to provide this information concerning
14 any case where one your experts are to be called --
15 and you're saying the only way you can know if you're
16 getting all that information is to know where all of
17 the landfill --

18 MR. CARLSON: -- owned by TJFA, and I
19 don't believe that's a lot. I believe it's in the
20 Central Texas area, but I'm not quite sure what TJFA
21 owns. It's kind of hard for me to go out into all
22 these different counties and do a search for TJFA.
23 And I think the information is probably all sitting in
24 a file someplace there and they should know the
25 properties that they own.

1 MR. RENBARGER: I might also suggest,
2 Judge, it's not very hard for them to read the
3 Williamson county transcript of Bobby Gregory that we
4 have provided already in this proceeding.

5 JUDGE NEWCHURCH: Okay. Well, if it can
6 be resolved, it can be resolved -- kind of what you're
7 saying. It's already out there and all you've got to
8 do is --

9 MR. RENBARGER: We're not hiding it.

10 MR. CARLSON: Well, I think it can be
11 resolved by answering two of the interrogatories. One
12 is tell me where the pieces of property are and, two,
13 tell me the proceedings you've been involved in. I'll
14 be happy to go out and do the leg work to find the
15 testimony and expert opinions. I think I have enough
16 connections and there's enough public documents to do
17 that. But I haven't even been provided with the
18 information about what the range of potential
19 proceedings is.

20 MR. RENBARGER: Again, Judge --

21 JUDGE NEWCHURCH: So are you still
22 objecting, Mr. Renbarger, if the request was limited
23 to tell me where the properties are and tell me what
24 the cases are?

25 MR. RENBARGER: I have no objection to

1 that from the standpoint of can we provide it,
2 certainly we can. But I have questions about what
3 relevance does that have to BFI's landfill here in
4 Travis County and the 26 issues that the Commission
5 has asked us to look into. Does it matter if
6 Williamson County has, you know, a liner that is the
7 same or different than the liner in Sunset Valley --
8 or, excuse me, Sunset Farms? No, it doesn't. I mean,
9 it's irrelevant.

10 I mean, if our experts say under no
11 circumstances will a double liner and a leak detection
12 system work in this kind of geology, then, you betcha
13 they need to know that because our geologist has
14 testified to that and that would be relevant in this
15 hearing. But all that other stuff is superfluous,
16 including the land ownership.

17 JUDGE NEWCHURCH: And you're saying you
18 can't know that you're getting an opportunity to find
19 out the information concerning the experts to find out
20 if they've made prior inconsistent statements unless
21 you know where all the land is.

22 MR. CARLSON: That's exactly correct,
23 Judge.

24 JUDGE NEWCHURCH: That sounds correct,
25 so I'm going to overrule the objection to the extent

1 that it covers that limited scope. I know that's a
2 really fuzzy thing, I'm hoping the parties can, based
3 on the guidance, figure out a way to --

4 MR. CARLSON: I believe we can, Your
5 Honor, and I believe --

6 JUDGE NEWCHURCH: -- he wants to know
7 where the other pieces of property are, just give -- I
8 mean, just tell me, does TJFA own a thousand pieces of
9 property?

10 MR. RENBARGER: No, it does not.

11 JUDGE NEWCHURCH: Does it own 10?

12 MR. RENBARGER: That's maybe a ball park
13 number. I think it's fewer than 10, but I can't tell
14 you the exact number because I'm more interested in
15 the two in this proceeding.

16 JUDGE NEWCHURCH: Given the interest --
17 and the legitimate interest of finding out if the same
18 experts have somehow reached an opinion that might be
19 inconsistent concerning another landfill, it seems
20 like it's not unduly burdensome to ask you to disclose
21 where TJFA's approximately 10 or less properties are.

22 MR. RENBARGER: Okay.

23 MR. CARLSON: Thank you, Judge.

24 JUDGE NEWCHURCH: Anything else to break
25 out?

1 MR. GOSSELINK: I don't think we have
2 anything else to break out. I think all that's left
3 are the contention interrogatories, and I think I
4 understood you to say let's get together and be -- if
5 I don't ask them to marshal their evidence and
6 protestants don't tell me that you haven't got
7 anything, we've got to figure out how to get some
8 answer in between those. Is that --

9 JUDGE NEWCHURCH: That's about right.
10 If you've got preliminary conclusions, go ahead and
11 disclose them broad brush. That's what parties have
12 done in the past. And I have overruled motions to
13 compel that attempted to compel them to go beyond
14 that.

15 MR. CARLSON: I believe one other issue
16 is there are a couple of gentlemen who have not timely
17 responded to their discovery requests. Is it
18 Mr. Rogers --

19 MR. GOSSELINK: Mr. Rogers and
20 Mr. Joseph. And Mary has put in her pleading, you
21 know, an explanation for Mr. Joseph, I believe, that
22 there apparently was some glitch in communication
23 between Mary and Mr. Joseph and he didn't realize he
24 had to answer these. And Mr. Rogers is 80 years
25 old -- that's the explanation that is --

1 MS. CARTER: -- to me yesterday was that
2 he didn't get the request due to a computer --
3 Blackburn & Carter stuff or some other computer
4 glitch. So I'm just asking -- he is willing to
5 respond, but I'm just asking for some time for him to
6 do that.

7 JUDGE NEWCHURCH: Is there objection
8 to -- let's just say both of them -- giving another --
9 how long? How long, Ms. Carter?

10 MR. GOSSELINK: -- 10 days --

11 MS. CARTER: -- I asked for two weeks,
12 but 10 days would be fine. We're talking about 10
13 business days, right, would be --

14 JUDGE NEWCHURCH: Right.

15 MS. CARTER: Yeah.

16 JUDGE NEWCHURCH: I think we can
17 probably all agree you're not going to get a whole lot
18 of discovery responses from those three pro se parties
19 anyway. So a two-week extension is granted.

20 MR. GOSSELINK: How long for the
21 responses -- the objections that have been overruled
22 need to be responded to. We requested that they be
23 done in 10 days. How long are you going to give --

24 JUDGE NEWCHURCH: When is your prefiled
25 testimony due?

1 MR. GOSSELINK: September 25th; 10 days
2 would be -- depending on how you count them, either
3 September 5th or September 6th, which would make it
4 September 8th.

5 MR. RENBARGER: Judge, if I may speak to
6 this briefly, but I think certainly with the September
7 25th deadline, I think certainly everybody is willing
8 to try to work together to get this done.

9 Also just under general TRCP, normally a
10 person has 30 days to supplement. Obviously 30 days
11 would not help him much and we certainly recognize
12 that, but we've got an intervening holiday weekend
13 coming up here and a number of things like that and
14 many of our families have plans. And to the extent
15 that we could maybe push that to two weeks, it would
16 certainly buy a little bit of time for parties to get
17 some of this done.

18 MR. GOSSELINK: We're not talking about
19 supplementing here. We're talking about properly
20 responding in the first place.

21 JUDGE NEWCHURCH: So two weeks would be
22 the 9th.

23 MR. BLACKBURN: Could y'all speak up a
24 little bit, please?

25 JUDGE NEWCHURCH: Two weeks would be the

1 9th of September --

2 (Simultaneous discussion)

3 JUDGE NEWCHURCH: -- 9th of September to
4 respond to --

5 MS. CARTER: Okay.

6 MR. RENBARGER: Yes, Your Honor.

7 JUDGE NEWCHURCH: Okay.

8 MR. GOSSELINK: That gives us a grand
9 total of 16 days, and if they deliver it at five
10 o'clock on the 9th, it gives us even less to fulfill
11 our prefiled testimony requirements.

12 MR. RENBARGER: Judge, it's prefiled --

13 MR. GOSSELINK: Either we're going to
14 need to get it done a little earlier as you ruled it
15 should have been, or we're going to need a little
16 relief at the back end --

17 MR. RENBARGER: -- haven't even looked
18 at our documents yet, so that's a disingenuous
19 statement.

20 MR. GOSSELINK: Well, I asked to look at
21 his documents and he told me they wouldn't ready --

22 JUDGE NEWCHURCH: All right.

23 MR. RENBARGER: He asked me on Friday at
24 5:00 p.m. knowing --

25 JUDGE NEWCHURCH: -- don't start to

1 attack each other's character.

2 Let's see. It looks like there's
3 approximately a month between the deadline for the
4 applicant to prefile and the other parties except the
5 ED to prefile.

6 MR. GOSSELINK: I don't think anybody
7 would be harmed if you kicked us forward a week or 10
8 days.

9 MR. RENBARGER: I'm not sure what
10 counsel is requesting.

11 MR. GOSSELINK: Our prefiled testimony
12 deadline be moved forward to accommodate the two weeks
13 that you'll need to respond.

14 MR. RENBARGER: Forward or backward?

15 MR. GOSSELINK: Well, yeah, into
16 October. How is that?

17 MS. CARTER: Are you talking about your
18 prefiled, Paul? We're having trouble hearing you.

19 JUDGE NEWCHURCH: How about this -- this
20 works out. This seems like this would work with
21 everybody. Ten days from today would be Friday the
22 5th. Okay? So if we say discovery responses to the
23 objections that have been overruled and motions to
24 compel that were granted are due by the 9th, and then
25 slide your prefiled testimony date to the 30th?

1 MR. GOSSELINK: That's a -- what day of
2 the week is that?

3 JUDGE NEWCHURCH: That is a Tuesday,
4 plus it's Rosh HaShanah --

5 MR. RENBARGER: Judge, the only thing
6 that I would offer on that is if theirs is going to be
7 moved back, then ours needs to be moved back as well.

8 JUDGE NEWCHURCH: Well, we can probably
9 do that. I just --

10 MR. RENBARGER: Otherwise we're being
11 directly harmed by the time to get our stuff done.

12 JUDGE NEWCHURCH: Well, you're being a
13 little harmed --

14 MR. GOSSELINK: -- self-induced, I'll
15 just throw that in --

16 MR. RENBARGER: I just -- I mean,
17 frankly, he hasn't looked at my stuff and him making
18 statements like that is -- quite frankly that's just
19 out of line.

20 JUDGE NEWCHURCH: Let's do this -- let's
21 do this. We can tweak these dates a little bit. If
22 we tweak yours we probably need to tweak his and that
23 means we need to tweak hers --

24 MR. GOSSELINK: Okay.

25 JUDGE NEWCHURCH: -- and those are the

1 kind of things y'all can confer on and confer on the
2 scope of the contention interrogatories and other
3 things. So we'll just leave that pending for now
4 while y'all confer.

5 It looks like there's enough play in the
6 schedule that we can probably accommodate everybody
7 without throwing too many things off track.

8 Also, frankly, this has been all over
9 the place this morning. So what I'm hoping is that
10 after the parties conference, probably you,
11 Mr. Gosselink, would prepare an order with the review
12 of the parties --

13 MR. GOSSELINK: I'm probably going to
14 need the transcript --

15 JUDGE NEWCHURCH: You're going to get a
16 transcript, right?

17 MR. GOSSELINK: Yes.

18 JUDGE NEWCHURCH: I assume the
19 transcript -- the court reporter is here today at your
20 request?

21 MR. GOSSELINK: Yes.

22 JUDGE NEWCHURCH: Okay. So that might
23 be a better way to do it. And that will also allow
24 you to wordsmith with the review of the other parties
25 to make sure whatever agreements you reach are in that

1 order and saying it in a way that --

2 MR. GOSSELINK: Yes.

3 JUDGE NEWCHURCH: So why don't we take a
4 break now for a conference. And my desk phone is
5 936-0716, and call me when you're ready. I'll
6 probably check in just before noon to see what
7 progress you've made.

8 MR. GOSSELINK: Thank you. And Mary and
9 Jim are still on that line right there?

10 JUDGE NEWCHURCH: Right, they're still
11 there. So we're in recess.

12 (Recess: 10:45 a.m. to 11:45 a.m.)

13 JUDGE NEWCHURCH: We're back on the
14 record. It's a quarter to 12:00.

15 MR. GOSSELINK: Okay. I am happy to
16 report that we've conferred and we have reached
17 agreement about how to go forward, and I think that --
18 I'm just going to volunteer this piece -- I think that
19 is based in some part if not large part on the
20 relationship of the parties that counsel have had with
21 each other over the years, so there's some trust that
22 this will work.

23 JUDGE NEWCHURCH: Good.

24 MR. GOSSELINK: So the first calendar
25 date is September 5th, and what happens on September

1 5th, as we understand it, is all the items that you
2 have ordered them to answer in response to our motion
3 to compel are due, and the contention interrogatories
4 will be due. And the contention interrogatories are
5 going to be handled by NNC and the aligned parties and
6 TJFA basically in good faith, providing a written
7 response to -- generally summarizing the facts that
8 are contained in the documents that they're also
9 producing, not marshaling their evidence, but -- but
10 providing at least an initial response to the
11 contention "do you contend" "yes," and if you
12 contend -- your answer is yes to the contention,
13 explain a little bit about why, following your lead
14 that we don't exactly know where the bar is, but it's
15 not to the top of the ladder.

16 JUDGE NEWCHURCH: Right.

17 MR. GOSSELINK: As a result, the parties
18 have agreed -- the parties in this case are NNC, TJFA,
19 BFI the applicant, and the Executive Director, have
20 agreed to recommend to you -- subject to discussing it
21 with the county, the city and OPIC -- the following
22 schedule for prefiled testimony, extending it. The
23 applicants would move from September 25th to September
24 30th as you suggested.

25 JUDGE NEWCHURCH: From September 25th to

1 September 30th?

2 MR. GOSSELINK: Right. That's -- right.
3 The protestants collectively would move from
4 October 27th to October 31st. That would be from a
5 Monday to a Friday. The Executive Director would move
6 from November 5th to November 10th. I think that's
7 from like a Thursday to a --

8 MS. WHITE: -- Wednesday to a Monday --

9 MR. GOSSELINK: -- from a Wednesday to a
10 Monday. And those would be all the changes that we
11 would recommend.

12 MR. RENBARGER: And again they would be
13 subject to the City of Austin, Travis County and
14 OPIC's concurrence as far as those dates. I guess
15 what we're suggesting is please do not enter to that
16 effect today until we have an opportunity to make
17 those contacts.

18 JUDGE NEWCHURCH: Okay. I will not do
19 that. And so I should anticipate a motion, which the
20 parties present hope will be a joint motion of all
21 parties, to change these prefiled dates?

22 MR. GOSSELINK: Yes. And I will take
23 the lead to discuss this with the city, the county and
24 OPIC.

25 JUDGE NEWCHURCH: Okay. So I'll reserve

1 ruling on the schedule changes for now. And are my
2 oral rulings sufficient on the discovery at this time?

3 MR. GOSSELINK: I'm going to say we are
4 hoping that we're all on the same page. What we
5 decided to do was each of the respondents, TJFA and
6 NNC, we're going to go about the business of preparing
7 their answers on the basis of what they understood
8 your rulings were.

9 I'm going to get the transcript from the
10 court reporter -- which will be out Friday before
11 Labor Day, which means I'm really not going to get a
12 chance to draft something until the following
13 Tuesday -- and circulate it as soon as I can. And if
14 it's any variance, we'll try and work that out. And
15 if there's -- if there's ultimately still a dispute --
16 and the devil is in the details -- you know, we'll see
17 where we are then, but I'm hoping not.

18 JUDGE NEWCHURCH: And I apologize for --
19 usually I really like to do a written order and nail
20 things down, but this was so sprawling that I'm afraid
21 I would miss some details --

22 MR. GOSSELINK: Right.

23 JUDGE NEWCHURCH: And I dare say those
24 of you who cared more about your particular points
25 remember better what I said about it.

1 MR. RENBARGER: We certainly hope so.
2 And, Judge, I think along those lines, I think on all
3 of the specific issues and the specific requests that
4 we're discussing in detail, I think everybody is very
5 comfortable -- we fully understand and appreciate
6 those rulings. The only ones -- and I believe Your
7 Honor may have stated from -- there's some vagueness
8 because we were talking about global things where we
9 didn't take up individual things in many instances --
10 and we would probably be here for several days had we
11 had done so. So we're going to try to use the spirit
12 of what we believe that to be and operate under those
13 parameters.

14 JUDGE NEWCHURCH: Right. Right. And if
15 you get stuck, of course, I'll expect you to confer
16 and maybe call my office if you need to file something
17 else.

18 It sounds like we're done for the day.
19 Anything else before we adjourn?

20 MR. GOSSELINK: No, Your Honor.

21 MS. CARTER: No, Your Honor.

22 JUDGE NEWCHURCH: We're adjourned.

23 Thank you all.

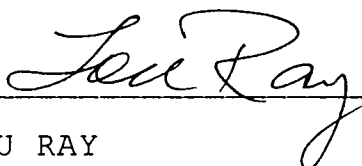
24 (Proceedings concluded at 11:47 a.m.)

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5 COUNTY OF TRAVIS)

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