

MAILING LIST
for
BFI Waste Systems of North America, Inc.
TCEQ Docket No. 2007-1774-MSW
Permit No. 1447A

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN INTERIM ORDER

concerning the application by BFI Waste Systems of North America, Inc. for a major amendment to Type I MSW Permit No. 1447 (Proposed Amendment No. 1447A); TCEQ Docket No. 2007-1774-MSW.

On February 27, 2008, the Texas Commission on Environmental Quality (Commission) considered during its open meeting requests for hearing and reconsideration filed by numerous individuals and entities concerning the application by BFI Waste Systems of North America, Inc. (Applicant) for a major amendment to its Type I Municipal Solid Waste Permit No. 1447 (Proposed Amendment No. 1447A) for a landfill located in Travis County. The requests for hearing and reconsideration were evaluated under the requirements in the applicable statutes and Commission rules, including 30 Texas Administrative Code Chapter 55. The Commission also considered the responses to the requests for hearing and reconsideration filed by the Executive Director, Office of Public Interest Counsel, and Applicant; the requesters' replies; all timely public comment; and the Executive Director's Response to Comment.

After evaluation of all relevant filings, the Commission determined that the following persons/entities are affected under applicable law and that their hearing requests should be granted: 1) Jeremiah Bentley/Harris Branch Residential Property Owners Association; 2) Amy Kersten; 3) Nora Longoria; 4) Mark and Melanie McAfee/Barr Mansion; 5) Alto and Rosemary

Nauert; 6) Northeast Neighbors Coalition; 7) Evelyn and Cecil Remmert; 8) Delmer Rogers; 9) Mike and Ramona Roundtree; 10) Pioneer Farms, represented by Celeste Scarborough; 11) Roy and Janet Smith; 12) TJFA, L.P.; 13) Evan Williams/Williams, Ltd./Roger Joseph; and 14) Petitioners Kathryn Albee, Jeremiah Bentley, Lionel Bess, Amber and Tony Buonodono, Terry Cainal and Amy Williamson, Lee Cook, Sean Cottle, Chuch Dabbs, James Daniel, Melissa Fields, Tim Fleetwood, Ron and Cam Junker, Nora Longoria, Pam and Allan Luttig, James Marchak, Dan Pyka, Merry Rightmer, Jeffrey Seider, Cloyce Sprading, Janet Smith, Vu Tran, Roland Valles, Jeremy and Karen Vest, Alfred Wendland, Mark Wilkerson, David Williams, and Michael Young. The Commission denied the remaining hearing requests.

The Commission also determined whether those persons/entities' requests for hearing raised disputed issues of fact that were raised during the comment period which are relevant and material to its decision on the application. The Commission determined that the following issues met these requirements, and directed that they be referred to the State Office of Administrative Hearings (SOAH): (A) Whether the application demonstrates that natural drainage patterns will not be significantly altered by the expansion, in accordance with agency rules, including 30 TAC § 330.56(f)(A)(iv); (B) Whether the application includes adequate provisions to control disease vectors, in compliance with agency rules, including 30 TAC §§ 330.126 and 330.133(a); (C) Whether the application proposes adequate protection of ground water and surface water, in compliance with agency rules, including 30 TAC §§ 330.55(b)(1), 330.56(f), 330.134, and 330.200-.206; (D) Whether the application includes adequate provisions to control odors, in compliance with agency rules, including 30 TAC §§ 330.125(b) and 330.133(a); (E) Whether the application includes adequate provisions to manage landfill gas, in compliance with agency rules, including 30 TAC §§ 330.56(n) and 330.130; (F) Whether the application includes adequate provisions for proper slope stability, in compliance with agency rules, including 30 TAC §§ 330.55(b)(8) and 330.56(l); (G) Whether the application includes adequate

provisions to control spilled and windblown waste and cleanup spilled waste, in compliance with agency rules, including 30 TAC §§ 330.117, 330.120, 330.123, and 330.127; (H) Whether the application includes adequate provisions for groundwater monitoring, in compliance with agency rules, including 30 TAC §§ 330.230-.233; (I) Whether the application includes adequate provisions calculating the estimated rate of solid waste deposition and operating life of the site, in compliance with agency rules, including 30 TAC § 330.55(a)(4); (J) Whether the application includes adequate provisions for closure and post-closure, in compliance with agency rules, including 30 TAC §§ 330.56(l) and (m); (K) Whether the application includes adequate provisions to manage and dispose of special waste, in compliance with agency rules, including 30 TAC § 330.136; (L) Whether the application includes adequate provisions designating the owner, operator, responsible parties, and qualified personnel, in compliance with agency rules, including 30 TAC §§ 330.52(a)(1), 330.52(b)(7-10), and 330.114(1); (M) Whether the application includes adequate provisions to prevent unauthorized wastes from being disposed in the landfill, in compliance with agency rules, including 30 TAC § 330.114(5); (N) Whether the application provides adequate information related to transportation, as required by agency rules, including 30 TAC § 330.53(b)(9); (O) Whether the application includes adequate provision for dust control and maintenance of site access roads, in compliance with agency rules, including 30 TAC § 330.127; (P) Whether the application includes adequate provisions to protect endangered or threatened species, in compliance with agency rules, including 30 TAC §§ 330.53(b)(13) and 330.129; (Q) Whether the application includes adequate provisions for cover, in compliance with agency rules, including 30 TAC § 330.133; (R) Whether the application should be denied based on the Applicant's compliance history, in accordance with state laws and agency rules, including Tex. Health & Safety Code § 361.089, 30 TAC § 305.66, and 30 TAC ch. 60; (S) Whether the application includes adequate provisions for fire protection, in accordance with agency rules, including 30 TAC § 330.115; (T) Whether the Applicant has complied with financial assurance requirements, in accordance with agency rules, including 30 TAC §§ 330.52(b)(11) and 330.281; (U) Whether the proposed expansion is compatible with land use in the surrounding area; (V) Whether the provisions proposed for buffer zones and landscape screening comply

with agency rules, including 30 TAC §§ 330.121(b) and 330.138; (W) Whether the application proposes sufficient provisions to protect the health of requesters and their families, and to avoid causing a nuisance, in violation of Commission rules, including 30 TAC § 330.5(a)(2); (X) Whether the landfill's operational hours are appropriate; (Y) Whether the erosion control methods identified in the application and draft permit are sufficient; and (Z) Whether the storage, treatment, and disposal of contaminated water is adequately addressed in the application and draft permit.

The Commission denied the remaining issues. The Commission specified that the maximum duration of the contested case hearing shall be twelve (12) months from the first day of the preliminary hearing to the date the proposal for decision is issued by SOAH. The Commission also directed SOAH to include findings of fact, conclusions of law, and ordering provisions in its proposed order and directed the Executive Director to participate as a party in the hearing. Finally, the Commission determined to deny the requests for reconsideration filed by Joyce Best and TJFA, L.P.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

- (1) The Commission's Chief Clerk shall refer the case to SOAH for hearing on the application as ordered below;
- (2) The following are affected persons and their hearing requests are hereby granted with regard to the issues identified in Ordering Provision No. 3: A) Jeremiah Bentley/Harris Branch Residential Property Owners Association; B) Amy Kersten; C) Nora Longoria; D) Mark and Melanie McAfee/Barr Mansion; E) Alto and Rosemary Nauert; F) Northeast Neighbors Coalition; G) Evelyn and Cecil Remmert; H) Delmer Rogers; I) Mike and Ramona Roundtree; J) Pioneer Farms, represented by Celeste Scarborough; K) Roy and Janet Smith; L) TJFA, L.P.; M) Evan Williams/Williams, Ltd./Roger Joseph; and N) Petitioners Kathryn Albee, Jeremiah Bentley, Lionel Bess, Amber and Tony Buonodono, Terry Cainal and Amy Williamson, Lee Cook, Sean Cottle, Chuch Dabbs, James Daniel, Melissa Fields, Tim Fleetwood, Ron and Cam Junker, Nora Longoria, Pam and Allan Luttig, James Marchak, Dan Pyka, Merry Rightmer,

Jeffrey Seider, Cloyce Sprading, Janet Smith, Vu Tran, Roland Valles, Jeremy and Karen Vest, Alfred Wendland, Mark Wilkerson, David Williams, and Michael Young;

(3) The Chief Clerk shall refer to SOAH the following issues for a contested case hearing on the application:

- (A) Whether the application demonstrates that natural drainage patterns will not be significantly altered by the expansion, in accordance with agency rules, including 30 TAC § 330.56(f)(A)(iv);
- (B) Whether the application includes adequate provisions to control disease vectors, in compliance with agency rules, including 30 TAC §§ 330.126 and 330.133(a);
- (C) Whether the application proposes adequate protection of ground water and surface water, in compliance with agency rules, including 30 TAC §§ 330.55(b)(1), 330.56(f), 330.134, and 330.200-.206;
- (D) Whether the application includes adequate provisions to control odors, in compliance with agency rules, including 30 TAC §§ 330.125(b) and 330.133(a);
- (E) Whether the application includes adequate provisions to manage landfill gas, in compliance with agency rules, including 30 TAC §§ 330.56(n) and 330.130;
- (F) Whether the application includes adequate provisions for proper slope stability, in compliance with agency rules, including 30 TAC §§ 330.55(b)(8) and 330.56(l);
- (G) Whether the application includes adequate provisions to control spilled and windblown waste and cleanup spilled waste, in compliance with agency rules, including 30 TAC §§ 330.117, 330.120, 330.123, and 330.127;
- (H) Whether the application includes adequate provisions for groundwater monitoring, in compliance with agency rules, including 30 TAC §§ 330.230-.233;
- (I) Whether the application includes adequate provisions calculating the estimated rate of solid waste deposition and operating life of the site, in compliance with agency rules, including 30 TAC § 330.55(a)(4);
- (J) Whether the application includes adequate provisions for closure and post-closure, in compliance with agency rules, including 30 TAC §§ 330.56(l) and (m);
- (K) Whether the application includes adequate provisions to manage and dispose of special waste, in compliance with agency rules, including 30 TAC § 330.136;
- (L) Whether the application includes adequate provisions designating the owner, operator, responsible parties, and qualified personnel, in compliance with agency rules, including 30 TAC §§ 330.52(a)(1), 330.52(b)(7-10), and 330.114(1);
- (M) Whether the application includes adequate provisions to prevent unauthorized wastes from being disposed in the landfill, in compliance with agency rules, including 30 TAC § 330.114(5);
- (N) Whether the application provides adequate information related to transportation, as required by agency rules, including 30 TAC § 330.53(b)(9);
- (O) Whether the application includes adequate provision for dust control and maintenance of site access roads, in compliance with agency rules, including 30 TAC § 330.127;
- (P) Whether the application includes adequate provisions to protect endangered or threatened species, in compliance with agency rules, including 30 TAC §§ 330.53(b)(13) and 330.129;
- (Q) Whether the application includes adequate provisions for cover, in compliance with agency rules, including 30 TAC § 330.133;
- (R) Whether the application should be denied based on the Applicant's compliance history, in accordance with state laws and agency rules, including Tex. Health & Safety Code § 361.089, 30 TAC § 305.66, and 30 TAC ch. 60;
- (S) Whether the application includes adequate provisions for fire protection, in accordance with agency rules, including 30 TAC § 330.115;

- (T) Whether the Applicant has complied with financial assurance requirements, in accordance with agency rules, including 30 TAC §§ 330.52(b)(11) and 330.281;
- (U) Whether the proposed expansion is compatible with land use in the surrounding area;
- (V) Whether the provisions proposed for buffer zones and landscape screening comply with agency rules, including 30 TAC §§ 330.121(b) and 330.138;
- (W) Whether the application proposes sufficient provisions to protect the health of requesters and their families, and to avoid causing a nuisance, in violation of Commission rules, including 30 TAC § 330.5(a)(2);
- (X) Whether the landfill's operational hours are appropriate;
- (Y) Whether the erosion control methods identified in the application and draft permit are sufficient; and
- (Z) Whether the storage, treatment, and disposal of contaminated water is adequately addressed in the application and draft permit.

- (4) All hearing requests not granted by Ordering Provision No. 2 and all issues not identified as being referred to SOAH in Ordering Provision No. 3 are hereby denied;
- (5) The requests for reconsideration filed by Joyce Best and TJFA, L.P. are hereby denied;
- (6) The maximum duration of the hearing is set at twelve months from the first day of the preliminary hearing to the date the proposal for decision is issued by the State Office of Administrative Hearings.
- (7) The Executive Director is directed to participate in the hearing as a party;
- (8) SOAH shall provide the Commission with a proposed order at the time of submittal of the proposal for decision. The proposed order shall contain findings of fact, conclusions of law, and ordering provisions; and
- (9) If any provision, sentence, clause or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

Issue date: FEB 29 2008

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY


Buddy Garcia, Chairman