

February 27, 2008
TCEQ Commissioners Agenda Meeting
New Business Item 1. Docket No. 2007-1774-MSW.

Hearing request on proposed Permit No. MSW-1447A by BFI Waste Systems of North America, Inc.

Excerpt of comments by Commissioner Soward and Commissioner Shaw regarding TJFA's Party Status:

Soward: On the second point is the issue about TJFA and I read all the pleadings and the responses. Let me just say that I don't think, I as a commissioner can't sit up here and divine motives of any landowner that might request a hearing unless they state it, in which we don't have to divine it. I can't, as a commissioner, I can't say well, their motive was anti-competition as raised by some. I know this issue has come up before. It came up in the Legislature last session and I believe that's the appropriate place for this issue to be dealt with and not here unless there are other facts presented by that requester that bears on our ruling as to whether or not they are affected. So I can't as one commissioner say that a party, I can't divine that party's motive and to say they should not be designated an affected person without something from them saying here's what I'm intending to do and that's not the case here. So I would support the recommendation that TJFA be found to be an affected person and then they can go into the hearing again with the SOAH Judge and prove up whether they have a justiciable interest to be designated a party.

Shaw: Commissioner and Chairman, I sort of I guess agree with the challenge there trying to discern someone's motive. It is interesting, one, their allegation of purchasing property with the sole purpose of becoming an affected party is something that obviously does cause some concern over the, whether the concerns are disingenuous are being presented and it would probably also be a good idea to have a practice of not sending in information under the letterhead of a competitor or a cover sheet of the competitor. It sort of gives one the opportunity to sort of question one's motives behind submitting those hearing requests and so I think it's something that causes some concern, but I'm not certain we have a way to use that to justify excluding that party from affected person status. It's something that obviously causes me some concern and I would like to look into that. It does seem a bit awkward if an individual or groups can sort of have a policy to go out and purchase properties near their competitors for the sole purpose of trying to make it more difficult for them to remain competitive. Again, I'm not sure that we can, that that would allow us to justify excluding them as an affected party in this case but it does again cause me some consternation.