



GRAVES DOUGHERTY HEARON & MOODY
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May 28, 2010

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Via Facsimile

Paul G. Gosselink
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816 Congress Avenue, Suite 1900
Austin, Texas 78701

Via Facsimile

Paul M. Terrill III
The Terrill Firm, P.C.
810 West 10th Street
Austin, Texas 78301

Via Facsimile

Re: *TJFA, L.P. v. Texas Commission on Environmental Quality*; Cause No. D-1-GN-09-004062; In the 353rd District Court, Travis County, Texas


Dear Counsel:

Enclosed please find TJFA's Position Paper on Status of BFI Counterclaim which was efiled today with the court in the above-referenced matter.

Thank you.

Sincerely,

GRAVES, DOUGHERTY, HEARON & MOODY
A Professional Corporation

By: 

Nancy T. Karnes,
Assistant to James A. Hemphill

May 28, 2010

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/ntk

Enclosure

cc: The Honorable John K. Dietz
(Via Hand Delivery)

TJFA, L.P.,	§	
<i>Plaintiff,</i>	§	TRAVIS COUNTY, TEXAS
v.	§	
	§	
TEXAS COMMISSION ON	§	
ENVIRONMENTAL QUALITY,	§	
<i>Defendant.</i>	§	353 rd JUDICIAL DISTRICT

TJFA’s POSITION PAPER ON STATUS OF BFI COUNTERCLAIM

The TCEQ ordered BFI Waste Systems of North America, Inc. and TJFA, L.P. each to pay 50% of the administrative hearing transcript fee. TJFA, in its claims against the TCEQ under the Administrative Procedure Act, contends this order was error and that BFI is obligated to pay the entire fee. BFI did, in fact, pay the entire fee. BFI’s counterclaim is derivative of the TCEQ’s order and is in the nature of an indemnity claim for 50% of the transcript fee. TJFA concedes that if it ultimately does not prevail in its appeal of the fee apportionment, it will owe the amount in controversy to BFI.

The order granting TCEQ’s Plea to the Jurisdiction, when entered, will be an interlocutory order because it does not dispose of BFI’s counterclaim. In light of this, TJFA suggests three alternatives to the Court:

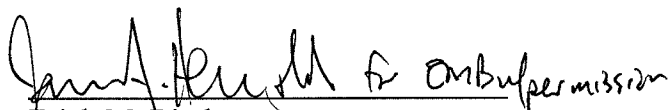
1. TJFA would agree to the form (but not substance) of an order ruling in BFI’s favor on its counterclaim, due to the Court’s disposition of the Plea to the Jurisdiction. This would make all rulings final and appealable. TJFA would file a bond to supersede payment of the judgment to BFI pending TJFA’s appeal of the TCEQ’s fee award.

If the Court chooses this option, TJFA may seek a severance of the intervention issue in the companion case, *Northeast Neighbors Coalition v. TCEQ*, Cause No. D-1-GN-09-004113, so that the Court’s ruling on the intervention issue in that case – which was made on the same ultimate ground as the jurisdiction ruling in this case – also could be appealed immediately.

2. TJFA, in the alternative, would request that the Court sever BFI’s counterclaim from TJFA’s APA appeal, such that the ruling on the jurisdiction issue would be immediately appealable. As with Option 1, above, TJFA also may seek such a severance in the companion case. BFI could then pursue its indemnity counterclaim in this Court.

3. The same effective result as in Option 2 above could be achieved if all parties and the Court agree that the jurisdiction issue in this case, and the intervention issue in the companion case, be certified as appealable interlocutory orders under Section 51.014(d) of the Civil Practice & Remedies Code. TJFA has not had the opportunity to determine if all the parties to both cases would agree, which is a requirement for certified interlocutory appeals.

Respectfully submitted,

 Erich M. Birch

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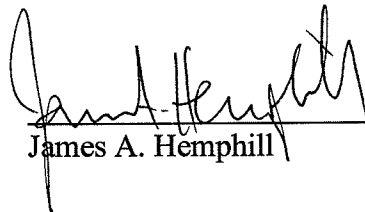
CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been served on the following counsel of record via fax on the 28th day of May, 2010.

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James A. Hemphill

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TO: Paul M. Terrill III
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FROM: James A. Hemphill

RE: TJFA/Sunset Farms Permit

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