

PREHEARING CONFERENCE

SOAH DOCKET NO. 582-08-2186

TCEQ DOCKET NO. 2006-0612-MSW

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

AUSTIN, TEXAS

APPLICATION OF)	SOAH DOCKET NO.
WASTE MANAGEMENT OF TEXAS,)	582-08-2186
INC., MSW PERMIT AMENDMENT)	TCEQ DOCKET NO.
APPLICATION NO. 249D)	2006-0612-MSW

PREHEARING CONFERENCE

WEDNESDAY, APRIL 16, 2008

BE IT REMEMBERED THAT AT approximately
10:05 a.m., on Wednesday, the 16th day of April 2008,
the above-entitled matter came on for hearing at the
State Office of Administrative Hearings, 300 West 15th
Street, Hearing Room 404, Austin, Texas, before
ROY SCUDDAY, Administrative Law Judge; and the
following proceedings were reported by Kim Pence, a
Certified Shorthand Reporter of:

WEDNESDAY, APRIL 16, 2008

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A P P E A R A N C E S

1
2 FOR THE APPLICANT WASTE MANAGEMENT OF TEXAS, INC.:

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5 Ms. M. Nicole Adame Winningham
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10 -- AND --

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A P P E A R A N C E S (CONTINUED)

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10 FOR THE NORTHEAST NEIGHBORS COALITION, HARRIS BRANCH
11 RESIDENTIAL PROPERTY OWNERS ASSOCIATION, JOHN WILKINS,
12 JEAN BREAZEALE, JANET L. SMITH, CECIL AND EVELYN
13 REMMERT, ALFRED WENDLAND, JEREMIAH BENTLEY, WILLIAMS,
14 LTD., BOB LANFORD, MARK AND MELANIE McAFEE, ALTO AND
15 ROSEMARY NAUERT, JOHN MURPHY AND GEORGE EDWARDS:

16 Ms. Mary W. Carter
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A P P E A R A N C E S (CONTINUED)

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2 FOR THE OFFICE OF PUBLIC INTEREST COUNSEL OF THE TEXAS
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P R O C E E D I N G S

1
2 WEDNESDAY, APRIL 16, 2008
3 (10:05 a.m.)

4 JUDGE SCUDDAY: All right. This is a
5 preliminary hearing and -- let's see here --
6 preliminary hearing in Docket No. 582-08-2186,
7 Application of Waste Management of Texas for a
8 Proposed Solid Waste Permit Amendment.

9 My name is Roy Scudday. I'm the
10 Administrative Law Judge assigned to hear this matter.
11 And this morning what we're going to do is to
12 establish jurisdiction, establish who wishes to be a
13 party and then kind of talk about where we go from
14 there. We will not be -- this will not be an
15 evidentiary hearing except as we may need to take
16 evidence regarding party status.

17 So at this time, I'd like to get the
18 appearances of the parties on the record, starting
19 with the applicant. And I've got so many people
20 signed in for the applicant, surely not all of you are
21 appearing on -- who is in charge over here?

22 MR. MOORE: I am, Your Honor. Good
23 morning. My name is Bryan Moore. I'm with the law
24 firm of Vinson & Elkins, and we represent the
25 applicant in this matter, Waste Management of Texas,

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1 Inc. With me today are my colleagues, John Riley to
 2 my left and Nikki Adame Winningham seated over here to
 3 my right, also with the firm of Vinson & Elkins. And
 4 also here today representing Waste Management is their
 5 region counsel, Ruth Muelker, also seated here to my
 6 right.
 7 JUDGE SCUDDAY: All right. Okay. On
 8 behalf of the Executive Director?
 9 MS. RICHARDSON: Your Honor, my name is
 10 Amie Richardson. I'll be representing the Executive
 11 Director. And today I have my co-counsel, Timothy
 12 Reidy, and assisting me today is Steve Shepherd.
 13 JUDGE SCUDDAY: All right. And OPIC?
 14 MS. COLLINS: Thank you, Judge. My name
 15 is Emily Collins. I'm an attorney with the TCEQ,
 16 Office of Public Interest Counsel.
 17 JUDGE SCUDDAY: All right. Let me
 18 briefly outline the overall purpose of the hearing
 19 process. During this process, information will be
 20 provided to me in order for me to make a
 21 recommendation as to whether or not this permit
 22 application should be granted, denied or modified.
 23 Unless the parties named settle, an evidentiary
 24 courtroom-style hearing will be held to let the
 25 parties address all the issues.

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1 Today's session has several specific
 2 purposes: To establish the jurisdiction of the State
 3 Office of Administrative Hearings, or SOAH, to hear
 4 this case; to identify the formal participants to the
 5 proceeding; and to the extent necessary, align those
 6 parties with similar interests. In order to do this,
 7 I may need to take evidence to determine if the
 8 persons seeking party status are qualified to do so.
 9 And we also will need to establish a procedural
 10 schedule, although we may actually not do that today.
 11 I may let that -- once we name the parties let the
 12 parties work out the schedule that would work for
 13 them.
 14 If an evidentiary hearing is held, and I
 15 assume it will be, what would follow would then be a
 16 written recommendation by me to the Texas Commission
 17 on Environmental Quality, and they will make the final
 18 decision at their -- one of their agenda meetings in
 19 Austin.
 20 So the first thing we want to do today
 21 is to establish jurisdiction for me to hear this case.
 22 And to do that I guess -- Ms. Richardson?
 23 MS. RICHARDSON: Your Honor, we were
 24 electing to have the applicant establish jurisdiction
 25 because it is a direct referral.

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1 JUDGE SCUDDAY: All right. Okay. Then
 2 Mr. Moore?
 3 MR. MOORE: Yes, Your Honor. Per the
 4 Texas Health and Safety Code, Section 361.08(3)(a),
 5 SOAH's jurisdiction over this matter is established
 6 upon evidence sufficient to show that proper notice of
 7 this hearing was given to affected persons. And we
 8 have with us today a certified copy of the notice of
 9 hearing that was published for this hearing.
 10 JUDGE SCUDDAY: All right.
 11 MR. MOORE: Your Honor, if I may
 12 approach?
 13 JUDGE SCUDDAY: You may.
 14 MR. MOORE: Your Honor, would you prefer
 15 to have this marked?
 16 JUDGE SCUDDAY: Yes.
 17 (Applicant Exhibit No. 1 marked)
 18 JUDGE SCUDDAY: Okay. Applicant
 19 Exhibit 1 is the affidavit of publication showing that
 20 notice of this hearing was published. I will admit it
 21 establishing the right for me to actually hear this
 22 case.
 23 (Applicant Exhibit No. 1 admitted)
 24 JUDGE SCUDDAY: All right. And let's
 25 see. Are there any -- based on this exhibit, I rule

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1 that SOAH has jurisdiction to hear this case.
 2 So the next thing to do is to proceed to
 3 hear parties.
 4 MS. RICHARDSON: Your Honor, I hate to
 5 interrupt, but we were wondering if we could also see
 6 proof of mailing.
 7 JUDGE SCUDDAY: Okay. All right, fine.
 8 Do we have the proof of mailing?
 9 MR. MOORE: No, Your Honor. We don't
 10 have that with us today. We thought that was part of
 11 the administrative record that was submitted to SOAH
 12 already.
 13 JUDGE SCUDDAY: All right. Let me
 14 see -- let me tell you what I have submitted by the
 15 Executive Director's office.
 16 MR. MOORE: Your Honor, I actually do
 17 have a certified copy of the mailing here. I don't
 18 have copies of it with me. I have one copy. It's the
 19 original.
 20 JUDGE SCUDDAY: All right.
 21 Ms. Richardson, do you want to take a look at this?
 22 See if that's what you're asking about.
 23 MS. RICHARDSON: (Nodded)
 24 JUDGE SCUDDAY: Okay. I also have and I
 25 will mark this -- Mr. Moore, do you want to look at

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1 this? Is this what you're talking about?
 2 MS. RICHARDSON: Your Honor, for the
 3 record, the Executive Director has no objections to
 4 that exhibit.
 5 MR. MOORE: That's what we have, Your
 6 Honor.
 7 JUDGE SCUDDAY: Okay. Why don't we mark
 8 that for purposes -- as No. 2. That's the mailing
 9 list showing who the notice went out to.
 10 (Applicant Exhibit No. 2 marked)
 11 MS. COLLINS: Your Honor, I'd like --
 12 Emily Collins with OPIC. I'd like to have a copy of
 13 that at the soonest available time.
 14 JUDGE SCUDDAY: Sure. Just remind me
 15 when we get through. I'm sure other people are going
 16 to want copies of different things and before we get
 17 there today --
 18 MS. COLLINS: Well, if the applicant can
 19 provide copies --
 20 JUDGE SCUDDAY: Okay. Well, however you
 21 want to do it.
 22 (Simultaneous discussion)
 23 MS. COLLINS: -- if you want to put the
 24 responsibility on them.
 25 MR. MOORE: And just so I'm clear, that

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1 has been marked Applicant's Exhibit 2. And by "that,"
 2 I mean the notice of mailing.
 3 JUDGE SCUDDAY: Yes.
 4 MR. MOORE: The mailing list.
 5 JUDGE SCUDDAY: Yes.
 6 Okay. I'll tell all the attorneys
 7 before everybody gets away today, if anybody needs
 8 copies of anything, make sure you've made arrangements
 9 to do so. And if you need something from me, be sure
 10 and let me know.
 11 All right. Exhibit 2, Applicant's 2, is
 12 admitted.
 13 (Applicant Exhibit No. 2 admitted)
 14 PARTY STATUS
 15 JUDGE SCUDDAY: All right. There are
 16 three automatic parties, the applicant, Waste
 17 Management, Inc. or Waste Management of Texas -- Waste
 18 Management of Texas, Inc., the Executive Director of
 19 the Commission and the Public Interest Counsel of the
 20 Commission. They're all automatically parties.
 21 And for our purposes, Mr. Moore, you
 22 will be the representative of the applicant that I
 23 will need to address.
 24 MR. MOORE: Yes, Your Honor.
 25 JUDGE SCUDDAY: Ms. Richardson on behalf

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1 of the ED, and Ms. Collins, of course, on behalf of
 2 OPIC.
 3 Okay. Now then, to be named a party to
 4 this proceeding, a person must show that they have a
 5 personal or special interest related to a right,
 6 privilege, power or economic interest that affects you
 7 more directly than it does the general public. This
 8 is called a justiciable interest. Depending on what
 9 your individual circumstances are, I may need to take
 10 sworn testimony as to the facts that you feel support
 11 your request to be a party or introduce documents into
 12 the record.
 13 A party is more actively involved in the
 14 hearing process. The party participates in the
 15 hearing, is allowed to question witnesses of other
 16 parties, offer their own witnesses, participate in
 17 settlement talks or mediation, if there is any. And
 18 as a party, you can directly address the Commission in
 19 the agenda meeting where the final decision is made.
 20 It would be harder to become a party later if you want
 21 to. On the other hand, if you wish to withdraw later
 22 as a party, you may do so. An important concern in
 23 gaining party status is whether you are willing to
 24 fully participate in any settlement negotiations that
 25 may occur at any time before the evidentiary hearing

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1 is held. And as a rule to have a valid settlement,
 2 all parties must be in agreement.
 3 Now, I already have requests for party
 4 status from Travis County, and I've got somebody here
 5 from Travis County. Who is representing Travis
 6 County?
 7 MS. COX: I am, Your Honor.
 8 JUDGE SCUDDAY: And you are?
 9 MS. COX: Annalyn Cox, County Attorney's
 10 Office.
 11 JUDGE SCUDDAY: Yes, I have a request
 12 from Travis County to be named a party -- admitted as
 13 a party.
 14 I also have a request by -- I don't
 15 know. Actually, it's not a request. I have a letter
 16 from Capitol Area Council of Governments. Who is here
 17 on their behalf? Somebody?
 18 MS. KELLY: I am, Your Honor. I'm just
 19 here to observe today.
 20 JUDGE SCUDDAY: Okay. You're not
 21 requesting party status for the Council of
 22 Governments?
 23 MS. KELLY: No.
 24 JUDGE SCUDDAY: All right, fine.
 25 And then we have representatives from

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1 the City of Austin. Okay. Ms. Farhadi --
 2 MS. FARHADI: Farhadi, yes, sir.
 3 JUDGE SCUDDAY: -- and Ms. Noelke?
 4 MS. NOELKE: Yes.
 5 JUDGE SCUDDAY: Okay. Is the city
 6 requesting party status?
 7 MS. FARHADI: Yes, Your Honor.
 8 JUDGE SCUDDAY: Okay. Does the
 9 applicant have any problems with either Travis County
 10 or the City of Austin being named parties?
 11 MR. MOORE: Your Honor, as to Travis
 12 County, I believe they filed, as you said, a formal
 13 request for party status which includes a resolution,
 14 if I'm not mistaken, certified minutes from a County
 15 Commissioners' Court meeting and an affidavit of
 16 Mr. Jon White. On those -- on the basis of those
 17 representations as the documents they -- Travis County
 18 has provided, we have no objection to Travis County
 19 becoming a party to this case.
 20 JUDGE SCUDDAY: All right. What about
 21 the City of Austin?
 22 MR. MOORE: Your Honor, if I -- I'm
 23 sorry. If I may on that last point on Travis County?
 24 JUDGE SCUDDAY: Okay, yes.
 25 MR. MOORE: We would ask that Travis

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1 County's request to be admitted as a party be marked
 2 as an exhibit and entered into the record of this
 3 case.
 4 JUDGE SCUDDAY: All right. I'll make
 5 that -- let's make that County Exhibit 1.
 6 (County Exhibit No. 1 marked)
 7 JUDGE SCUDDAY: This is Travis County's
 8 request to be admitted as a party. Does anybody need
 9 to see this?
 10 (No response)
 11 JUDGE SCUDDAY: Then I will admit County
 12 Exhibit 1.
 13 (County Exhibit No. 1 admitted)
 14 JUDGE SCUDDAY: Okay. Now, regarding
 15 the City of Austin?
 16 MR. MOORE: Regarding the City of
 17 Austin, Your Honor, we would ask that the City of
 18 Austin provide a resolution of some sort or some form
 19 of documentation authorizing the city to take part as
 20 a party in this case.
 21 JUDGE SCUDDAY: Do you have something?
 22 MS. FARHADI: Yes, Your Honor, I do have
 23 here with me the resolution signed by the counsel
 24 members in May of '07 as well as an affidavit of our
 25 party representative.

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1 JUDGE SCUDDAY: Do you want to show that
 2 to Mr. Moore?
 3 MR. MOORE: If I could have a minute,
 4 Your Honor, to take a look?
 5 (Brief pause)
 6 MS. FARHADI: Yes, Your Honor, we've
 7 also sent a letter to the TCEQ requesting party
 8 status.
 9 JUDGE SCUDDAY: Okay.
 10 MS. FARHADI: We don't have that with
 11 us, but we do have the response received in March.
 12 JUDGE SCUDDAY: That's all right. For
 13 some reason, I don't have that in my file.
 14 MS. RICHARDSON: Your Honor, we have it
 15 in our files. We've received it.
 16 JUDGE SCUDDAY: Okay. Okay.
 17 MR. MOORE: Your Honor, we've taken a
 18 look at the resolution provided by the City of Austin,
 19 the affidavit of Mr. Joe Word, who appears to be a
 20 professional engineer with the City of Austin. We
 21 have no objection to the City of Austin becoming a
 22 party in this case, and that's on the basis of the
 23 resolution.
 24 With respect to the affidavit of
 25 Mr. Word, we would take objection to the statement

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1 that the City of Austin -- that our facility, the
 2 Austin Community Recycling and Disposal facility, is
 3 located within the corporate jurisdiction limits of
 4 the City of Austin. We agree with the
 5 extraterritorial jurisdiction limits, but the
 6 corporate limits we would not agree with.
 7 JUDGE SCUDDAY: Okay.
 8 MR. MOORE: With that representation, we
 9 do not object.
 10 JUDGE SCUDDAY: All right. Let's make
 11 that City 1.
 12 (City Exhibit No. 1 marked)
 13 JUDGE SCUDDAY: Does anybody else want
 14 to see the resolution?
 15 (No response)
 16 JUDGE SCUDDAY: Okay. I have City 1,
 17 which is the resolution and affidavit, noting the
 18 question of where it -- whether it's in the corporate
 19 or extraterritorial jurisdictional limits, but for
 20 purposes of the request, I will admit City 1, and City
 21 of Austin will be made a party.
 22 (City Exhibit No. 1 admitted)
 23 JUDGE SCUDDAY: All right. Are there
 24 any other governmental entities represented here
 25 today?

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1 (No response)
 2 JUDGE SCUDDAY: Okay. All right. I
 3 have several individuals here. Okay. And let me
 4 ask -- Ms. Farhadi?
 5 MS. FARHADI: Yes, Your Honor?
 6 JUDGE SCUDDAY: You or Ms. Noelke is
 7 going to be --
 8 MS. FARHADI: I am.
 9 JUDGE SCUDDAY: I don't want to drown my
 10 system in paper here.
 11 All right. I'm just going to call
 12 through the people who have indicated they are here
 13 as -- in opposition to see if you are requesting party
 14 status as opposed to just wanting to see what's going
 15 on. We'll start with Mark McAfee.
 16 MR. McAFEE: Yes, sir.
 17 JUDGE SCUDDAY: Are you requesting to be
 18 made a party to this proceeding?
 19 MR. McAFEE: Yes.
 20 JUDGE SCUDDAY: Bob Lanford?
 21 MR. LANFORD: Yes?
 22 JUDGE SCUDDAY: Are you requesting to be
 23 made a party to this proceeding?
 24 MR. LANFORD: Yes, please.
 25 JUDGE SCUDDAY: B. Trek English?

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1 MS. ENGLISH: I'm here.
 2 JUDGE SCUDDAY: Are you requesting to be
 3 made a party to this proceeding?
 4 MS. ENGLISH: Yes, sir.
 5 JUDGE SCUDDAY: Jeremiah Bentley?
 6 MR. BENTLEY: Yes, sir?
 7 JUDGE SCUDDAY: Are you requesting to be
 8 made a party to this proceeding?
 9 MR. BENTLEY: On behalf of the
 10 association of --
 11 THE REPORTER: I can't hear you, sir.
 12 You'll have to speak up.
 13 JUDGE SCUDDAY: Yeah, you're going to
 14 have to speak up so the reporter can hear you.
 15 MR. BENTLEY: Yes, on behalf of Harris
 16 Branch Residential Property Owners Association.
 17 JUDGE SCUDDAY: Okay. So that's an
 18 organizational request.
 19 Joyce Best?
 20 MS. BEST: I'm not requesting party
 21 status, but I am wanting to present affidavits on
 22 behalf of several of those folks who could not be here
 23 today who would like party status.
 24 JUDGE SCUDDAY: Okay. We'll get to that
 25 then.

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1 Lyndia Slayton?
 2 MS. SLAYTON: I'm not requesting party
 3 status, but I am a member of the Harris Branch group.
 4 JUDGE SCUDDAY: Okay. That's fine.
 5 Angela Moorman?
 6 MS. MOORMAN: Yes, sir. Myself and
 7 Erich Birch are here on behalf of TJFA.
 8 JUDGE SCUDDAY: What's TJFA?
 9 MS. MOORMAN: It's a real estate
 10 management company.
 11 JUDGE SCUDDAY: Okay, fine. So are you
 12 requesting party status individually or as the
 13 organization or what?
 14 MS. MOORMAN: As the organization TJFA.
 15 JUDGE SCUDDAY: Okay. Evan Williams?
 16 MR. WILLIAMS: Yes, sir, I'm requesting
 17 party status on behalf of Williams, Ltd.
 18 JUDGE SCUDDAY: Okay. Melanie McAfee?
 19 I assume that goes with Mark McAfee.
 20 MS. McAFEE: Yes.
 21 JUDGE SCUDDAY: Are you individually
 22 requesting or are just one of you requesting party
 23 status?
 24 MS. McAFEE: I would think both of us
 25 would be requesting.

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1 JUDGE SCUDDAY: All right. Janet Smith?
 2 MS. SMITH: Yes, sir?
 3 JUDGE SCUDDAY: Are you requesting party
 4 status?
 5 MS. SMITH: Yes, sir.
 6 JUDGE SCUDDAY: I can't read this first
 7 name, Breazeale.
 8 MS. BREAZEALE: Jean, J-E-A-N.
 9 JUDGE SCUDDAY: Okay. Ms. Breazeale,
 10 are you requesting party status?
 11 MS. BREAZEALE: Yes.
 12 JUDGE SCUDDAY: Cecil Remmert?
 13 MR. REMMERT: Yes, I'm requesting party
 14 status.
 15 JUDGE SCUDDAY: Is it Mary Carter?
 16 MS. CARTER: Yes. And I'm requesting
 17 party status on behalf of the Northeast Neighbors
 18 Coalition.
 19 JUDGE SCUDDAY: Okay. Evelyn Remmert?
 20 MS. REMMERT: Yes, sir?
 21 JUDGE SCUDDAY: Are you requesting party
 22 status?
 23 MS. REMMERT: Yes, along with my
 24 husband.
 25 JUDGE SCUDDAY: You don't trust him,

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1 huh?
 2 (Laughter)
 3 MS. REMMERT: And I'm also requesting
 4 party status for my brother. I have an affidavit --
 5 JUDGE SCUDDAY: Okay.
 6 MS. REMMERT: -- who is also a property
 7 owner with me.
 8 JUDGE SCUDDAY: Is there anybody else
 9 here requesting party status that hasn't filled out
 10 one of these green slips?
 11 MR. WILKINS: Your Honor, I filled one
 12 out, but you didn't call my name.
 13 JUDGE SCUDDAY: What's your name?
 14 MR. WILKINS: John Wilkins.
 15 JUDGE SCUDDAY: Let's see. Yeah, here
 16 it is, yes. John Wilkins, you're requesting party
 17 status?
 18 MR. WILKINS: Yes, Your Honor.
 19 JUDGE SCUDDAY: Okay. Anybody else?
 20 MR. TERRILL: Yes, sir, Your Honor,
 21 Paul Terrill on behalf of Giles Holding requesting
 22 party status.
 23 JUDGE SCUDDAY: Okay. Do I have a slip
 24 from you, too?
 25 MR. TERRILL: Yes, sir, I filled out a

Page 23

1 green one.
 2 JUDGE SCUDDAY: Oh, that's because you
 3 said "observer."
 4 MR. TERRILL: Because the choices are
 5 either "for" or "against," and I want to be --
 6 (Laughter)
 7 JUDGE SCUDDAY: Well, you can put
 8 "undecided."
 9 (Laughter)
 10 JUDGE SCUDDAY: Okay. All right. So
 11 we've got several individuals and a couple of
 12 organizations who are requesting party status. So I
 13 guess we're going to have to go through these one by
 14 one to determine the basis for your request. And also
 15 those people who have affidavits on behalf of others,
 16 Ms. Best and Ms. Carter was it? Somebody else had --
 17 oh, Ms. Remmert -- yeah, Ms. Remmert -- we'll have to
 18 look at those.
 19 So let's start with -- Angela Moorman
 20 and Erich Birch are both requesting party status on
 21 behalf of TJFA. Whichever one of you wants to come
 22 forward.
 23 MR. BIRCH: Yes, Your Honor, Erich Birch
 24 with Birch, Becker & Moorman. We represent TJFA in
 25 this party. Do you want me to speak from here, Your

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1 Honor?
 2 JUDGE SCUDDAY: At this point, you can
 3 indicate the reason for your request, and then we may
 4 need to actually put you under oath, but just go ahead
 5 and state your reason.
 6 MR. BIRCH: Your Honor, TJFA owns two
 7 pieces of property within a one-mile radius of the
 8 proposed landfill amendment, and TJFA is requesting
 9 party status as an affected person in this matter.
 10 And we've got a deed -- two deeds for the two pieces
 11 of property, plus the location identified on the
 12 map -- on the applicant's map where this property is
 13 located. I can provide this to you.
 14 JUDGE SCUDDAY: Why don't you let --
 15 Mr. Moore, do you want to look at it?
 16 MR. MOORE: Yes, Your Honor.
 17 MR. BIRCH: Your Honor, I provided
 18 these -- a copy to the ED and to the OPIC, and I
 19 offered it to the applicant also, but the applicant
 20 didn't want to see those before we started.
 21 JUDGE SCUDDAY: Okay, not at that point.
 22 That's fine.
 23 All right. Let me ask, Mr. Moore, is
 24 there going to -- do you want to take any -- have any
 25 testimony taken regarding the establishment of their

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1 qualifications for party status?
 2 MR. MOORE: Yes, Your Honor, we'd ask
 3 that TJFA present a representative to take the stand
 4 and be sworn in and articulate their justiciable
 5 interest in this case.
 6 JUDGE SCUDDAY: All right. Do you want
 7 to do that then? Do you want to come up?
 8 MR. BIRCH: Yes, Your Honor. We have a
 9 representative here today --
 10 JUDGE SCUDDAY: Okay.
 11 MR. BIRCH: -- from TJFA.
 12 JUDGE SCUDDAY: All right.
 13 MR. BIRCH: I'll let Mr. Dennis Hobbs --
 14 JUDGE SCUDDAY: All right. Mr. Hobbs,
 15 do you want to come over here where the microphone and
 16 the chair are where you can stand out and everybody
 17 can see you? If you'll raise your right hand?
 18 (Witness Hobbs sworn)
 19 JUDGE SCUDDAY: Have a seat, please,
 20 sir, and state your name for the record.
 21 MR. HOBBS: My name is Dennis Hobbs,
 22 H-O-B-B-S.
 23 JUDGE SCUDDAY: Thank you.
 24 MR. BIRCH: And, Your Honor, if you
 25 don't mind, I'll move over here --

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1 JUDGE SCUDDAY: Sure, that's fine.
 2 MR. BIRCH: -- so we won't be that far
 3 across the room.
 4 PRESENTATION ON BEHALF OF TJFA, L.P.
 5 DENNIS HOBBS,
 6 having been first duly sworn, testified as follows:
 7 DIRECT EXAMINATION
 8 BY MR. BIRCH:
 9 Q Mr. Hobbs, are you familiar with TJFA?
 10 A Yes, I am.
 11 Q And what is TJFA?
 12 A TJFA is a limited partnership that owns real
 13 estate where the real estate investment is the
 14 business.
 15 Q And who is the managing partner of TJFA?
 16 A Managing partner is Garra De Aguila.
 17 Q And what is your position with Garra
 18 De Aguila?
 19 A I am president of Garra De Aguila.
 20 Q And as president of the managing partner, are
 21 you responsible for the decisions regarding TJFA?
 22 A Yes, I am.
 23 Q And does TJFA own property within the
 24 vicinity of the Austin Community landfill?
 25 A Yes, sir. We own two tracts.

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1 Q Could you describe those two tracts of
 2 property, please?
 3 A One tract is an 11-acre tract that's on Blue
 4 Goose Road. The other one a five and a half acre
 5 tract approximately on Springdale.
 6 Q And, Mr. Hobbs, before we go further, are you
 7 feeling well today?
 8 (Laughter)
 9 A No, I've been home sick for the last couple
 10 of days. Thank you.
 11 Q (By Mr. Birch) Okay. You made a special
 12 exception to come in today?
 13 A Yes.
 14 Q Okay. Well, thank you for --
 15 JUDGE SCUDDAY: Just stay over there
 16 then.
 17 (Laughter)
 18 A I will, Your Honor.
 19 Q (By Mr. Birch) Now, can you tell me for
 20 the -- for the approximately five-acre tract, how far
 21 away is that tract from the proposed landfill
 22 expansion?
 23 A That five-acre tract is actually due east
 24 across the road from their expansion area.
 25 Q Do you have an estimate of about how many

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1 feet it is away from the expansion area of the
 2 landfill?
 3 A I would guesstimate somewhere between 500
 4 to 700 foot.
 5 Q Okay. And for the 11-acre tract, about how
 6 far away do you think that is from the landfill?
 7 A It's a little further, probably -- I'm
 8 guessing. Probably in the thousand-foot range.
 9 Q Okay. So is it your testimony that both of
 10 these pieces of property are within one mile of the --
 11 of the landfill property permit boundary?
 12 A Yes, I am.
 13 Q And what do you use these two pieces of
 14 property for? What does TJFA use these properties
 15 for?
 16 A The property on Springdale Road is being
 17 leased as a single-family home, and the property on
 18 Blue Goose is being leased for agricultural purposes
 19 at the moment.
 20 Q And will the operations of the landfill
 21 affect TJFA's interests and its ownership of these
 22 properties?
 23 A Yes.
 24 Q And how would it affect those interests?
 25 A Economic interests. I'm concerned about

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1 surface runoff, blowing debris, odors, vectors.
 2 Q Does TJFA own other properties?
 3 A Yes, we do -- I'm sorry. Ask that question
 4 again.
 5 Q Does TJFA own other properties? This real
 6 estate investment firm of TJFA, does it own other
 7 properties other than the properties that you
 8 mentioned today, the two pieces around the landfill?
 9 A Yes, we do.
 10 Q And is the purpose of TJFA to manage and to
 11 make income off of these investment properties?
 12 A Yes, sir.
 13 MR. BIRCH: Your Honor, based on that
 14 testimony, we think TJFA has demonstrated that it is
 15 an affected person according to the TCEQ regulations.
 16 It owns property within one mile of the landfill, and
 17 it has property rights and interests that will be
 18 affected by the landfill application.
 19 JUDGE SCUDDAY: All right.
 20 MR. BIRCH: And, Your Honor, before I
 21 step down, there are probably a number of other issues
 22 that are going to come up regarding this issue that
 23 the applicant may bring up. And if possible, we may
 24 be able to shortcut a lot of this with additional
 25 documents. So I just wanted to let you know that in

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1 advance that Mr. Hobbs is able to provide additional
 2 testimony if necessary and additional documentation.
 3 Thank you.
 4 JUDGE SCUDDAY: You're saying that he
 5 has additional documents here?
 6 MR. BIRCH: What I'm saying, Your Honor,
 7 is based on several prior landfill applications with
 8 the applicant, previous disputes that have arisen, and
 9 in anticipation of some of those disputes we're
 10 prepared to respond. I can tell Your Honor that we've
 11 done everything at this point to demonstrate TJFA is
 12 an affected person under the regulations.
 13 JUDGE SCUDDAY: Okay.
 14 MR. BIRCH: And that's -- that's what
 15 we've provided today.
 16 JUDGE SCUDDAY: All right. All right.
 17 MR. MOORE: Your Honor, I would just add
 18 to that. If Mr. Birch believes there's something else
 19 that he needs to support his case for TJFA being a
 20 party, we would ask that he admit it now because I
 21 would like to take Mr. Hobbs on a little
 22 cross-examination next.
 23 JUDGE SCUDDAY: Well, I was going to
 24 say, Mr. Birch, it seems to me if there's something
 25 you anticipate that you're going to need to get in,

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1 let's do it now. You've already submitted the two
 2 deeds.
 3 MR. BIRCH: Your Honor, the only thing
 4 we'd like to do at this time is to offer those
 5 documents into evidence.
 6 JUDGE SCUDDAY: All right. Okay. For
 7 the purposes of this hearing, we'll call these TJFA
 8 Exhibits 1A and 1B.
 9 MR. BIRCH: And, Your Honor, we do have
 10 one additional --
 11 THE REPORTER: Hold on just one second.
 12 MS. MOORMAN: Excuse me, Your Honor.
 13 THE REPORTER: Okay. Just one second.
 14 MS. MOORMAN: We couldn't hear what you
 15 said.
 16 JUDGE SCUDDAY: I said for the purposes
 17 of this proceeding, I'm calling -- I'm calling these
 18 documents TJFA Exhibits 1A and 1B.
 19 MR. BIRCH: And, Your Honor --
 20 JUDGE SCUDDAY: Wait. Let her finish
 21 hers. She can't write and type at the same time.
 22 (TJFA Exhibit Nos. 1A and 1B marked)
 23 JUDGE SCUDDAY: Okay. Now, Mr. Birch.
 24 MR. BIRCH: All right. I apologize for
 25 that, Your Honor.

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1 Q (By Mr. Birch) Mr. Hobbs, I'm going to ask
 2 you to identify one additional document here. Can you
 3 tell me what that document is?
 4 A It's a March 13, 2008 letter to the Office of
 5 the Chief Clerk submitting my authorization to act on
 6 behalf of TJFA.
 7 Q And additionally what -- additional is this
 8 document? Are these comments that you provided to the
 9 TCEQ regarding the TJFA's concern with the Waste
 10 Management application?
 11 A Yes, they are.
 12 MR. BIRCH: Your Honor, we'd like to
 13 offer -- and I have a copy of this for you, and we'd
 14 like to offer into evidence TJFA's comments that were
 15 filed with the TCEQ on this application. It will also
 16 provide some information on TJFA's interest in this
 17 application.
 18 JUDGE SCUDDAY: All right. Let's mark
 19 this as TJFA Exhibit 2.
 20 (TJFA Exhibit No. 2 marked)
 21 JUDGE SCUDDAY: Okay. I'm not going to
 22 admit them until Mr. Moore has an opportunity to look
 23 at them. Have you had --
 24 MR. MOORE: Your Honor, I have seen
 25 these comments before, and I do have an objection to

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1 their admission.
 2 JUDGE SCUDDAY: Okay. Well, what
 3 about -- first, let's start with the deeds.
 4 MR. MOORE: Your Honor, no objection to
 5 the admission of the deeds.
 6 JUDGE SCUDDAY: All right. Exhibits 1A
 7 and 1B will be admitted.
 8 (TJFA Exhibit Nos. 1A and 1B admitted)
 9 JUDGE SCUDDAY: Now, regarding the
 10 comments?
 11 MR. MOORE: 30 Texas Administrative
 12 Code, Section 80.105(b)(2) specifies there are two
 13 kinds of matters that SOAH may accept public comment
 14 in. And municipal solid waste applications under the
 15 Texas Health and Safety Code, Chapter 361, Solid Waste
 16 Disposal Act, are not one of the two specified
 17 matters. I think it's improper at this time to accept
 18 public comments from a would-be party in this case.
 19 JUDGE SCUDDAY: Response, Mr. Birch?
 20 MR. BIRCH: Your Honor, the purpose of
 21 admitting this is not for the comments that are
 22 attached. The purpose is to show TJFA's interest in
 23 this and to support that it is an affected person in
 24 this application.
 25 JUDGE SCUDDAY: Okay. Well, at the

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1 moment, I'm not going to admit it because I don't see
 2 how it's -- I mean, I think you've already established
 3 it by the deeds, but I will revisit that, but let me
 4 hear what Mr. Moore has, or unless you have some other
 5 questions for Mr. Hobbs at this time.
 6 (TJFA Exhibit No. 2 not admitted)
 7 MR. BIRCH: Well, Your Honor, also we
 8 have the map that we offered.
 9 JUDGE SCUDDAY: The map will be fine.
 10 Go ahead, offer it.
 11 MR. BIRCH: Yes, we're offering that
 12 also.
 13 JUDGE SCUDDAY: What's that, attached in
 14 here?
 15 MR. BIRCH: It's a separate document,
 16 Your Honor.
 17 JUDGE SCUDDAY: Okay. Do you want to
 18 submit it then?
 19 MR. BIRCH: Yes.
 20 MR. MOORE: No objection, Your Honor.
 21 JUDGE SCUDDAY: Okay. I don't have it.
 22 MR. RILEY: That's what I thought.
 23 MS. MOORMAN: It's underneath the two
 24 deeds. It's the color document.
 25 MR. BIRCH: Yes, it's a single-page

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1 document, Your Honor.
 2 JUDGE SCUDDAY: Oh, okay. All right.
 3 Let's make that TJFA Exhibit 3.
 4 (TJFA Exhibit No. 3 marked)
 5 JUDGE SCUDDAY: TJFA Exhibit 3 will be
 6 admitted.
 7 (TJFA Exhibit No. 3 admitted)
 8 JUDGE SCUDDAY: Okay. Mr. Moore?
 9 MR. MOORE: Thank you, Your Honor.
 10 CROSS-EXAMINATION
 11 BY MR. MOORE:
 12 Q Good morning, Mr. Hobbs.
 13 A Good morning.
 14 Q Mr. Hobbs, I want to make sure I understood
 15 you correctly. You represented that you are the
 16 president of Garra De Aguila?
 17 A That's correct.
 18 Q Okay. And have you recently been named the
 19 president of Garra De Aguila?
 20 A In February of this year.
 21 Q Okay. Are there any other officers of Garra
 22 De Aguila?
 23 A No, sir.
 24 Q When you became president of Garra De Aguila,
 25 did you replace a Mr. Bobby Gregory in that role?

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1 A Yes.
 2 Q Mr. Hobbs, are you familiar with the Texas
 3 Disposal Systems landfill?
 4 A Yes.
 5 Q And how are you familiar with that landfill,
 6 Mr. Hobbs?
 7 A I am familiar -- I was part of the permitting
 8 process of that landfill and have looked for the real
 9 estate to purchase that landfill.
 10 Q On behalf of who?
 11 A At that time, Texas Disposal Systems
 12 landfill.
 13 Q If I refer to the Texas Disposal Systems
 14 landfill as the TDS landfill, will you know what I'm
 15 referring to?
 16 A For reference purposes, yes.
 17 Q Okay. And the TDS landfill is a municipal
 18 solid waste landfill that's located in Creedmoor,
 19 Texas. Correct?
 20 A That's correct.
 21 Q And that's in southeast Travis County.
 22 Correct?
 23 A Correct.
 24 MR. BIRCH: Your Honor, at this point,
 25 I'm going to object. This is exactly what I alluded

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1 to. TJFA is asking for party status. We've
 2 demonstrated where our property is located, and for
 3 some reason we're talking about a landfill that's
 4 located in southeast Travis County.
 5 JUDGE SCUDDAY: I kind of agree,
 6 Mr. Moore. Where are we going?
 7 MR. MOORE: Your Honor, I will make it
 8 quick, but I think you will quickly find out that TJFA
 9 as a real estate investment company is an absolute
 10 fiction; that it is owned and run and operated by
 11 individuals that own and run and operate the Texas
 12 Disposal Systems landfill in southeast Travis County
 13 that competes directly with the landfill at issue in
 14 this case, the Austin Community landfill.
 15 JUDGE SCUDDAY: Well, that might be, but
 16 they still are the owners of the property that is
 17 adjacent to and within the range, which would seem to
 18 me to give them status as a party unless you're
 19 challenging that they are not or there is no such
 20 thing as TJFA.
 21 MR. MOORE: No, Your Honor, we're not
 22 challenging that TJFA is nonexistent. We are taking
 23 the position that TJFA is simply a shield for the
 24 operations of the Texas Disposal Systems landfill.
 25 JUDGE SCUDDAY: That may be, but, you

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1 know, BFI could come oppose you, too, and they're
 2 right next door. So that doesn't mean that they don't
 3 have an interest so -- just because they're a
 4 competitor -- because it seems to me they have this
 5 real property. If you want to -- so I don't see any
 6 reason to know who they are. As far as I'm concerned,
 7 the question is what their status is, and right now
 8 what I have shows that they own property adjacent to
 9 the landfill.
 10 MR. MOORE: Your Honor, in addition to
 11 property ownership, TJFA needs to establish a
 12 justiciable interest in this case.
 13 JUDGE SCUDDAY: I agree. So do you want
 14 to pursue that?
 15 MR. MOORE: Okay.
 16 Q (By Mr. Moore) Mr. Hobbs, I'd like to
 17 discuss what the Judge and I just talked about, and
 18 that is, your interest in this case. I believe that
 19 TJFA has previously taken the position that their
 20 investment strategy for TJFA is to buy land in
 21 proximity to landfills in Central Texas. Correct?
 22 MR. BIRCH: Your Honor, I object. He's
 23 assuming facts not in evidence.
 24 JUDGE SCUDDAY: I didn't catch it quite
 25 that way, but let him answer it -- answer the

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1 question.
 2 A Would you repeat that question?
 3 Q (By Mr. Moore) Certainly, Mr. Hobbs.
 4 Mr. Hobbs, is it TJFA's investment strategy -- real
 5 estate investment strategy to buy land in close
 6 proximity to landfills in Central Texas?
 7 A That is one of the strategies, yes.
 8 Q Okay. And you believe that investment in
 9 real estate close to landfills is a wise investment.
 10 Correct?
 11 A That's my hope, yes.
 12 Q And the reason that you hope that is because
 13 it's your opinion that -- or TJFA's approach, if you
 14 will, that by buying land in close proximity to
 15 landfills, if those landfills operate in compliance
 16 with TCEQ's rules, the value of the property that's
 17 held by TJFA will increase. Correct?
 18 A That's correct.
 19 Q So your interest in this case, Mr. Hobbs, if
 20 I have it correct, is to ensure that Waste Management
 21 operates its expanded facility in accordance with
 22 TCEQ's rules so that your property, TJFA's property,
 23 will increase?
 24 A I'm sorry. You need to repeat that question.
 25 Q I certainly will. Mr. Hobbs, am I correct

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1 that your interest -- TJFA's interest in this case is
 2 to ensure that Waste Management operates the Austin
 3 Community Recycling and Disposal facility in
 4 accordance with TCEQ's rules so that the property held
 5 by TJFA in proximity to the Austin Community Recycling
 6 and Disposal facility will increase in value?
 7 A That would be one of them, yes.
 8 MR. MOORE: Your Honor, on that basis,
 9 we object. An interest in property values is not a
 10 justiciable interest in this case. Property values
 11 are outside the scope of this proceeding, and they are
 12 outside the scope of the jurisdiction of TCEQ.
 13 JUDGE SCUDDAY: All right. Mr. Birch,
 14 do you want to take him on redirect?
 15 MR. BIRCH: Thank you, Your Honor.
 16 REDIRECT EXAMINATION
 17 BY MR. BIRCH:
 18 Q Mr. Hobbs, what is the business purpose of
 19 TJFA? If you could explain that, please.
 20 A Yes, it's real estate investment and
 21 development on tracts of land in Central Texas.
 22 Q Now, is part of the purpose of TJFA to
 23 receive income from the property it owns?
 24 A It certainly is.
 25 Q Is part of the income rental income?

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1 A Yes.
 2 Q Does TJFA also expect to receive income
 3 because of increase in property values should you
 4 decide to sell the property at a later time?
 5 A Yes.
 6 Q Would those be economic interests of TJFA?
 7 A Yes. As I stated earlier, that economic
 8 interest was one of the points that we're concerned
 9 about and want to be a party in this case.
 10 Q And if a landfill is not properly operated,
 11 for example, if it has windblown trash or odors, is
 12 that going to affect the ability of TJFA to rent its
 13 property?
 14 A Absolutely.
 15 MR. BIRCH: Your Honor, I think TJFA has
 16 demonstrated it is an affected person under the TCEQ's
 17 regulations.
 18 JUDGE SCUDDAY: I agree. TJFA is a
 19 party.
 20 MR. HOBBS: May I step down, sir?
 21 JUDGE SCUDDAY: Yes, sir, you may step
 22 down.
 23 All right. Paul Terrill, state your
 24 basis for requesting party status, please, sir.
 25 MR. TERRILL: Your Honor, I'm here on

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1 behalf of Giles Holdings, Ltd. Partnership. Giles
 2 Holdings is a landowner that is immediately adjacent
 3 to the subject property.
 4 JUDGE SCUDDAY: Wait, wait. Sorry.
 5 Okay. Start over there, what Giles is.
 6 MR. TERRILL: In case we didn't catch
 7 this, I'm Paul Terrill. I'm here on behalf of Giles
 8 Holding, Ltd. Partnership. Giles holdings is a
 9 landowner that's not just within one mile. They're
 10 immediately adjacent to the property that's the
 11 subject of this landfill applicatin, and Giles is
 12 requesting party status on that basis.
 13 JUDGE SCUDDAY: Okay. And for the
 14 record, can you state where you're located?
 15 MR. TERRILL: Immediately to the
 16 northeast, adjacent on the northeast side.
 17 JUDGE SCUDDAY: Okay. All right,
 18 Mr. Moore, are you going to want to -- wish to have
 19 testimony regarding --
 20 MR. MOORE: Yes, Your Honor. I think we
 21 can keep it very brief, but we would like a
 22 representative to take the stand.
 23 JUDGE SCUDDAY: Okay. Mr. Terrill, do
 24 you want to come up here, please, sir?
 25 MR. TERRILL: Mr. Mobley, Steve Mobley,

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1 a representative of the company, is going to take the
 2 stand.
 3 JUDGE SCUDDAY: All right. That's fine.
 4 State your name for the record, please, sir.
 5 MR. MOBLEY: Steve Mobley, M-O-B-L-E-Y.
 6 JUDGE SCUDDAY: All right. Thank you.
 7 Go ahead, Mr. Terrill.
 8 MR. TERRILL: Mr. Mobley, tell the
 9 court, please --
 10 THE REPORTER: He needs to be sworn.
 11 JUDGE SCUDDAY: Oh, I'm sorry. Yeah.
 12 (Witness Mobley sworn)
 13 JUDGE SCUDDAY: All right. Now then, go
 14 ahead.
 15 PRESENTATION ON BEHALF OF GILES HOLDINGS
 16 STEVE MOBLEY,
 17 having been first duly sworn, testified as follows:
 18 DIRECT EXAMINATION
 19 BY MR. TERRILL:
 20 Q Tell the Judge what your position is within
 21 the company and your authorization to be here today.
 22 A I'm vice-president of Mobley Management
 23 Company, which is the general partner of Giles
 24 Holdings, Ltd. Partnership. I represent them and have
 25 authority to act for all matters pertaining to this

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1 property.
 2 Q Why don't you speak up just a little bit
 3 also?
 4 A Excuse me.
 5 JUDGE SCUDDAY: Okay.
 6 Q (By Mr. Terrill) And does Giles Holdings own
 7 property adjacent to the land that's the subject of
 8 this landfill application?
 9 A Yes.
 10 Q And is it immediately -- well, explain to the
 11 Court where it is.
 12 A Can I point here?
 13 Q Fine with me.
 14 MR. TERRILL: Is that all right, Your
 15 Honor?
 16 JUDGE SCUDDAY: That's fine. He can
 17 point.
 18 A We're just to the north here. We share a
 19 fence line parallel to Blue Goose, and our property
 20 line is contiguous with their property line along
 21 Giles, and it runs up to form a box, approximately
 22 350 acres in total.
 23 Q (By Mr. Terrill) And, Mr. Mobley, can you
 24 briefly explain to the Court whether your property can
 25 be affected by the operation of this landfill

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1 expansion as it's proposed by Waste Management here?
 2 A I think it can be, yes.
 3 Q And is the property that is the subject of
 4 the landfill, is it currently being operated as a
 5 landfill right now, the entire footprint of the Waste
 6 Management property?
 7 A I'm sorry. I don't understand your question.
 8 Q Okay.
 9 A Whose property?
 10 Q Waste Management's. Are they proposing to
 11 expand that landfill, the footprint of the landfill?
 12 A My understanding is they are. I couldn't
 13 draw you a picture of what they currently have
 14 permitted and what they plan to permit that is not
 15 presently the subject.
 16 MR. TERRILL: Your Honor, I can ask more
 17 questions. I know you've got a whole lot of people
 18 here today. And so because they're an adjacent
 19 landowner, I'll keep going if you want me to. I don't
 20 know that --
 21 JUDGE SCUDDAY: I'll let Mr. Moore ask
 22 his questions.
 23 MR. MOORE: No questions, Your Honor.
 24 We don't oppose Giles Holdings.
 25 JUDGE SCUDDAY: All right, fine. Giles

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1 Holdings will be made a party.
 2 MR. MOBLEY: Thank you.
 3 JUDGE SCUDDAY: You may step down.
 4 John Wilkins?
 5 MR. WILKINS: Yes, Your Honor?
 6 JUDGE SCUDDAY: Do you want to come up,
 7 please? What is the basis of requesting party status?
 8 MR. WILKINS: I'm an adjacent landowner.
 9 JUDGE SCUDDAY: All right. Do you want
 10 to have testimony from Mr. Wilkins?
 11 MR. MOORE: If Mr. Wilkins will just
 12 take the stand and identify his property, I think we
 13 can dispense of this quickly.
 14 JUDGE SCUDDAY: Okay.
 15 MR. WILKINS: Would you like for me to
 16 point?
 17 JUDGE SCUDDAY: No. Just sit down for a
 18 minute. Raise your right hand.
 19 JOHN WILKINS,
 20 having been first duly sworn, testified as follows:
 21 JUDGE SCUDDAY: State your name for the
 22 record, please, sir.
 23 MR. WILKINS: John Wilkins. Also John
 24 A. Wilkins Trustee.
 25 JUDGE SCUDDAY: Okay. All right. Do

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1 you want to just state where your property is in
 2 relation to the landfill?
 3 MR. WILKINS: Yes, I'm an adjacent
 4 landowner immediately to the north of the proposed
 5 expansion. I'm the next-door neighbor.
 6 JUDGE SCUDDAY: Okay. Mr. Moore?
 7 CROSS-EXAMINATION
 8 BY MR. MOORE:
 9 Q Good morning, Mr. Wilkins. There is a map
 10 behind you to your -- over your right-hand shoulder,
 11 and there are some stickpins to the left of that map.
 12 If I could ask you to take one of the colored ones so
 13 we can all see it and place it approximately where
 14 your property is located?
 15 A (Complied) I'll use another one, too.
 16 (Laughter)
 17 A Our land comes down like this. So right
 18 here.
 19 MR. MOORE: Your Honor, may I approach?
 20 JUDGE SCUDDAY: Yes.
 21 Q (By Mr. Moore) Mr. Wilkins, what I am going
 22 to do is make this easier on all of us at a later
 23 date. I'll take this red marker, I'm going to circle
 24 the two green stickpins that you put in, and I'm going
 25 to mark each one of them with a "1"?

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1 A It's one tract of land.
 2 Q Okay. Well, why did you place two stickpins
 3 for the one tract of land?
 4 A Well, I started off here. It doesn't look
 5 like I would about this expansion out here. So our
 6 land comes down this way.
 7 MR. MOORE: With that representation,
 8 Your Honor, we have no objection to Mr. Wilkins.
 9 JUDGE SCUDDAY: All right. Mr. John
 10 Wilkins will be made a party.
 11 Okay. Cecil and Evelyn Remmert, what is
 12 the basis for your requesting party status?
 13 MS. REMMERT: Our property adjoins Blue
 14 Goose, which is right across the road from BFI, and
 15 it's within a one-mile radius.
 16 JUDGE SCUDDAY: Okay. Which one of you
 17 wants to testify?
 18 MS. REMMERT: I will.
 19 JUDGE SCUDDAY: Okay. Come on up here.
 20 EVELYN REMMERT,
 21 having been first duly sworn, testified as follows:
 22 JUDGE SCUDDAY: Okay. You need to speak
 23 up.
 24 MS. REMMERT: Yes.
 25 JUDGE SCUDDAY: State your name for the

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1 record, please.
 2 MS. REMMERT: My name is Evelyn Remmert,
 3 R-E-M-M-E-R-T.
 4 JUDGE SCUDDAY: All right. And for the
 5 record, will you state again where your property is in
 6 relation to the proposed expansion?
 7 MS. REMMERT: It adjoins Blue Goose
 8 Lane. It's right across the road from BFI, and it
 9 would be within a one-mile radius of WMI.
 10 JUDGE SCUDDAY: All right. Mr. Moore?
 11 CROSS-EXAMINATION
 12 BY MR. MOORE:
 13 Q Ms. Remmert, do I have that correct?
 14 A Yes.
 15 Q Am I saying the name correct?
 16 A Yes.
 17 Q Thank you. If you would, as we asked
 18 Mr. Wilkins to do, please take one of the stickpins
 19 there that are in front of you or to your side and on
 20 the map behind you just please place a stickpin in the
 21 approximate location of your property.
 22 A (Complied)
 23 MR. MOORE: Judge, if I may approach?
 24 JUDGE SCUDDAY: (Nodded)
 25 Q (By Mr. Moore) Thank you, Ms. Remmert. I am

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1 going to take this red pen, I'm going to draw a circle
 2 around the stickpin that you just put on the map, and
 3 I am going to take the stickpin out and place a number
 4 "2" in that circle.
 5 Ms. Remmert, about how large is your
 6 tract of land?
 7 A One tract is 98 acres, a little -- 98 plus.
 8 And then my husband and I have a smaller tract to the
 9 south -- to the north of that, which is 7 acres. So
 10 totally it's over 100 acres.
 11 Q Ms. Remmert, how is that property currently
 12 used?
 13 A It's use for agricultural purposes.
 14 Q Is it an active farm?
 15 A Yes.
 16 MR. MOORE: Your Honor, with those
 17 representations, we do not oppose the party status of
 18 the Remmerts.
 19 MS. RICHARDSON: Your Honor, I'd like to
 20 interject that the applicant really needs to show some
 21 environmental impacts for these witnesses and elicit
 22 that from the witnesses either through
 23 cross-examination or if they are represented by
 24 counsel. We'd like to hear some testimony regarding
 25 that.

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1 JUDGE SCUDDAY: Well, I take it the
 2 Remmerts are not represented by counsel.
 3 MS. COLLINS: Well, Your Honor, if the
 4 Executive Director has questions about their
 5 environmental interest, I think they can ask.
 6 JUDGE SCUDDAY: Yeah, I was going to say
 7 you're certainly free to ask any questions you want.
 8 CROSS-EXAMINATION
 9 BY MS. RICHARDSON:
 10 Q Ms. Remmert, I was just wondering how you
 11 think this landfill expansion is going to impact your
 12 property from an environmental standpoint?
 13 A From an environmental standpoint, because of
 14 the dust, the odors, the trash blowing, all of the
 15 problems associated with the landfill, it will impact
 16 us economically.
 17 MS. RICHARDSON: Thank you, Ms. Remmert.
 18 With those representations, we have no objections.
 19 JUDGE SCUDDAY: Okay. The Remmerts,
 20 Cecil -- you both want to be parties or just you?
 21 MS. REMMERT: Yes.
 22 JUDGE SCUDDAY: Okay. Cecil and Evelyn
 23 Remmert are a party.
 24 And then there was somebody you had an
 25 affidavit on behalf of?

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1 MS. REMMERT: Yes, I co-own this with my
 2 brother, Alfred Wendland, and I have an affidavit for
 3 him. He could not attend today.
 4 JUDGE SCUDDAY: Okay.
 5 MS. REMMERT: He has appointed me as his
 6 representative.
 7 JUDGE SCUDDAY: Do you want to show that
 8 to Mr. Moore?
 9 MS. REMMERT: (Complied)
 10 JUDGE SCUDDAY: All right. Mr. Moore,
 11 is there any objection to Mr. Wendland being added as
 12 a party with the Remmerts?
 13 MR. MOORE: No -- sorry, Your Honor. No
 14 objection from the applicant, Your Honor.
 15 JUDGE SCUDDAY: Okay. Thank you.
 16 Do you want to submit the affidavit,
 17 please, ma'am?
 18 MS. REMMERT: Yes.
 19 (Remmert Exhibit No. 1 marked)
 20 JUDGE SCUDDAY: All right. Then based
 21 on the testimony, I will make Cecil and Evelyn Remmert
 22 and Alfred Wendland parties.
 23 MR. RILEY: Judge, I'm sorry for
 24 interrupting, but can we ask everyone again to check
 25 their cell phones. I'm still hearing the static.

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1 JUDGE SCUDDAY: I am, too, but I don't
 2 know whether if it's cell phones or it's just this
 3 high-priced state equipment that we're operating here.
 4 (Laughter)
 5 (Discussion off the record)
 6 JUDGE SCUDDAY: Remmert 1 will be
 7 admitted.
 8 (Remmert Exhibit No. 1 admitted)
 9 JUDGE SCUDDAY: Thank you, Ms. Remmert.
 10 You may step down.
 11 Jean Breazeale?
 12 MS. BREAZEALE: Yes, sir?
 13 JUDGE SCUDDAY: Will you state what the
 14 basis of your request is?
 15 MS. BREAZEALE: We border the Remmerts.
 16 We share a fence line.
 17 JUDGE SCUDDAY: All right. Why don't
 18 you come on up here then, and we'll get you under
 19 oath.
 20 MS. BREAZEALE: The Remmert's fence line
 21 is our fence line.
 22 JUDGE SCUDDAY: Okay. Just a minute;
 23 just a minute. Slow down.
 24 MS. BREAZEALE: Okay.
 25 JUDGE SCUDDAY: Raise your right hand.

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1 BARBARA JEAN BREAZEALE,
 2 having been first duly sworn, testified as follows:
 3 JUDGE SCUDDAY: Would you state your
 4 name for the record?
 5 MS. BREAZEALE: My name is Barbara Jean
 6 Breazeale, and I go by Jean.
 7 JUDGE SCUDDAY: All right. Okay. Now
 8 then, tell where your land is located.
 9 MS. BREAZEALE: My land is located -- we
 10 are part of the Remmert's land. We bought 80 acres
 11 from them 40 years ago. So we share fence lines.
 12 JUDGE SCUDDAY: Okay. And if the
 13 Remmerts are across the road from BFI --
 14 MS. BREAZEALE: Right.
 15 JUDGE SCUDDAY: -- where are you in
 16 relation to their tract?
 17 MS. BREAZEALE: My tract borders their
 18 tract.
 19 JUDGE SCUDDAY: Okay. But what side?
 20 MS. BREAZEALE: There's a Cameron Road
 21 and a Blue Goose. We're between Blue Goose and
 22 Cameron Road.
 23 JUDGE SCUDDAY: Okay. Well, I'll let
 24 Mr. Moore do his little stickpin thing.
 25 MR. MOORE: That helps me to visualize,

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1 Your Honor.
 2 CROSS-EXAMINATION
 3 BY MR. MOORE:
 4 Q Ms. Breazeale, my first question is, I want
 5 to make sure I have the spelling of your name correct.
 6 Could you please spell it for me?
 7 A B-R-E-A-Z-E-A-L-E.
 8 Q And, Ms. Breazeale, it's pronounced like the
 9 country Brazil?
 10 A Right.
 11 Q Okay. If you would, please, take one of
 12 those stickpins that are sitting there in front of you
 13 and place it in the approximate location of the
 14 80 acres that you own.
 15 A Oh, my. Was this "2" Remmerts?
 16 Q Yes, it was.
 17 A Okay. We're right -- approximately right
 18 in -- this is our 80 acres here. This is Blue Goose,
 19 Cameron Road. This is our acres. We border their
 20 acreage. Wherever theirs ends, ours start. Right
 21 approximately there. This is all -- this is all ours
 22 also.
 23 MR. MOORE: Judge, if I may?
 24 JUDGE SCUDDAY: Yes.
 25 Q (By Mr. Moore) All right. Ms. Breazeale,

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1 thank you for locating your property on this map. I'm
 2 going to take a red pin. I'm going to circle the
 3 green stickpin that you put into the map, and I'm
 4 going to take your green stickpin out, and I'm going
 5 to put a "3" in that circle.
 6 A Okay.
 7 Q Okay. Ms. Breazeale, the 80 acres that you
 8 own, what is the use of that -- the current use of
 9 that property?
 10 A We live there. We've lived there for 40
 11 years. We built our own home there, and it's a ranch.
 12 Q Okay. So an agricultural --
 13 A We have cows, horses, yes.
 14 Q Okay. So an agricultural use?
 15 A In fact, I'm very -- yes. I'm very nervous
 16 right now. As I drove out, we had a calf last night,
 17 and there are buzzards all gathered around it.
 18 MR. MOORE: With the representation of
 19 Ms. Breazeale's property --
 20 A I should be home.
 21 MR. MOORE: -- property location and
 22 use, we have no objection to the Breazeales.
 23 JUDGE SCUDDAY: Do you have any
 24 questions?
 25 MS. RICHARDSON: The Executive Director

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1 has no objections and no questions.
 2 JUDGE SCUDDAY: All right.
 3 Ms. Breazeale, you'll be made a party. Thank you.
 4 MS. BREAZEALE: Thank you.
 5 JUDGE SCUDDAY: Janet L. Smith?
 6 MS. SMITH: Yes, sir?
 7 JUDGE SCUDDAY: What is the basis of
 8 your request?
 9 MS. SMITH: I rent property from Cecil
 10 and Evelyn Remmert.
 11 JUDGE SCUDDAY: Okay. Do you want to
 12 come up here then, please, ma'am?
 13 Somebody's cell phone is still on.
 14 MR. RILEY: Not mine.
 15 (Laughter)
 16 JUDGE SCUDDAY: It's probably Mr. Riley.
 17 Yeah, you want to check yours?
 18 MR. MOORE: Just for clarification, I
 19 think it needs to be completely off for the buzzing to
 20 stop.
 21 JUDGE SCUDDAY: Yeah, you have to turn
 22 it off. You can't just put it on vibrate.
 23 Okay. Raise your right hand.
 24
 25

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1 JANET L. SMITH,
 2 having been first duly sworn, testified as follows:
 3 JUDGE SCUDDAY: And state your name for
 4 the record, please, ma'am.
 5 MS. SMITH: Janet L. Smith.
 6 JUDGE SCUDDAY: Okay. Thank you,
 7 Ms. Smith. Now, you rent property from the Remmerts?
 8 MS. SMITH: Yes, sir.
 9 JUDGE SCUDDAY: And where is that
 10 property located?
 11 MS. SMITH: Do you want me to do the
 12 little stick --
 13 JUDGE SCUDDAY: Well, just a minute. I
 14 mean, is it part of -- okay. They had a 90 --
 15 MS. SMITH: It's not part of the 90.
 16 It's part of the seven and a half.
 17 JUDGE SCUDDAY: It's part of the smaller
 18 tract that they had referred to?
 19 MS. SMITH: Yes, sir.
 20 JUDGE SCUDDAY: Okay. All right. Now,
 21 Mr. Moore?
 22 CROSS-EXAMINATION
 23 BY MR. MOORE:
 24 Q Good morning, Ms. Smith.
 25 A Hi there.

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1 Q If you would, please, so I can, again, orient
 2 myself on where your property is, take one of these
 3 stickpins and stick it in the map that's over your
 4 right hand shoulder.
 5 A Right here.
 6 MR. MOORE: Judge, if I may?
 7 JUDGE SCUDDAY: Yes.
 8 Q (By Mr. Moore) Thank you, Ms. Smith. I'm
 9 going to do what I've done with everyone else, draw a
 10 circle around your stickpin, pull your blue stickpin
 11 out. I'm going to put a number "4" in that circle
 12 that I drew around.
 13 Ms. Smith, do you rent a residence? Is
 14 part of the rental agreement that you have with the
 15 Breazeales to rent a residence?
 16 A The Remmerts.
 17 Q Remmerts -- to rent a residence?
 18 A Yes, sir. I have a mobile home out there.
 19 Q Do you make any other use of the property
 20 other than as your residence?
 21 A No, sir.
 22 MR. MOORE: Judge, with that
 23 representation, the applicant has no objection to
 24 Ms. Smith's participation as a party.
 25 JUDGE SCUDDAY: Executive Director?

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1 CROSS-EXAMINATION
 2 BY MS. RICHARDSON:
 3 Q Ms. Smith, could you articulate any
 4 particular concerns you have with the landfill
 5 expansion?
 6 A What you've heard in the past. The odors are
 7 outrageous. It's hard to be outside on the land. The
 8 trash, the buzzards, the dust is awful.
 9 MS. RICHARDSON: Thank you, Ms. Smith.
 10 With those representations, the Executive Director has
 11 no objections and no further questions.
 12 JUDGE SCUDDAY: All right. Then,
 13 Ms. Smith -- Janet Smith will be made a party.
 14 MS. SMITH: Thank you.
 15 JUDGE SCUDDAY: You may step down.
 16 Thank you.
 17 All right. I have Mark and Melanie
 18 McAfee. Which one is going to do the talking?
 19 MR. McAFEE: I think me.
 20 JUDGE SCUDDAY: All right. What is the
 21 basis of your request, Mr. McAfee?
 22 MR. McAFEE: We own property we bought
 23 in 1980. It's within a mile of the facility.
 24 JUDGE SCUDDAY: All right.
 25

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1 MARK McAFEE,
 2 having been first duly sworn, testified as follows:
 3 JUDGE SCUDDAY: State your name for the
 4 record, please.
 5 MR. McAFEE: Mark McAfee.
 6 JUDGE SCUDDAY: All right. And if you
 7 would, please, sir, where is your property located in
 8 relation to the location of the permit?
 9 MR. McAFEE: It's located north and west
 10 approximately 1600 feet.
 11 JUDGE SCUDDAY: All right. And what use
 12 do you make of this property?
 13 MR. McAFEE: We've been running an event
 14 facility there for 26 years. Like I say, I bought the
 15 property in 1980 and began to renovate and turn it
 16 into this business.
 17 JUDGE SCUDDAY: All right. Mr. Moore?
 18 CROSS-EXAMINATION
 19 BY MR. MOORE:
 20 Q Good morning, Mr. McAfee, if you would,
 21 please, I've seen you -- I'm sure you've seen what's
 22 happened thus far. If you would, please, take a
 23 stickpin and on the map to your right locate your
 24 property with that stickpin.
 25 A (Complied)

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1 MR. MOORE: Your Honor?
 2 JUDGE SCUDDAY: (Nodded)
 3 Q (By Mr. Moore) Mr. McAfee, I'm going to take
 4 my red pen, draw a circle around your stickpin, and
 5 I'm going to write in that circle the number "5."
 6 Mr. McAfee, this may clear up some
 7 confusion on my part. I might have the names wrong.
 8 Are you represented by counsel in this case?
 9 A Yes, I am.
 10 Q And who would your counsel be?
 11 A Mary Carter.
 12 Q Okay. And how are you -- are you represented
 13 by Ms. Carter as an individual or as part of a group?
 14 A As an individual.
 15 Q Mr. McAfee, are you part of -- are you a
 16 member of any of the -- I'll call them local
 17 neighborhood associations?
 18 A Yes.
 19 Q And which association or which associations
 20 are you a member of?
 21 A Both the Northeast Neighbors Coalition and
 22 NAG.
 23 Q I take it you said "NAG" because you don't
 24 know what the acronym stands for?
 25 A It's been around so long now it's like a

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1 first name. Northeast Action Group, yeah. It's
 2 finally coming back to me.
 3 MR. MOORE: Your Honor, with
 4 Mr. McAfee's representations, we don't -- we don't
 5 object to his party status, but when you get to --
 6 JUDGE SCUDDAY: Organization.
 7 MR. MOORE: -- organization point of
 8 this case and alignment case --
 9 JUDGE SCUDDAY: I understand. That's
 10 why we're doing the individuals first.
 11 MR. MOORE: Okay. Thank you, Your
 12 Honor.
 13 JUDGE SCUDDAY: Okay. Executive
 14 Director?
 15 CROSS-EXAMINATION
 16 BY MS. RICHARDSON:
 17 Q Mr. McAfee, I just had a couple of questions.
 18 A Sure.
 19 Q Mr. Moore discussed with you -- or the Judge
 20 discussed with you your facility. Could you describe
 21 that facility briefly?
 22 A Sure. It's an 1898 Victorian home on
 23 7.41 acres. The home is on the National Register of
 24 Historic Places and has been the scene of some 3,000
 25 weddings. Many movie scenes and commercials have been

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1 shot there, et cetera. So it's used as an event
 2 facility and as a location for film.
 3 Q And could you briefly explain your concerns
 4 about the landfill expansion?
 5 A Well, I'll start with the last. They can't
 6 do sound at my facility any longer because of all the
 7 truck noise. We used to record noise. You know, they
 8 have to go do the dub-overs somewhere else in the
 9 studio. So I'm concerned about noise. I'm concerned
 10 about hours of operation, bright lights coming at us
 11 from the landfill, the windblown litter. I'm also
 12 very concerned about the health effects and -- for all
 13 my employees.
 14 MS. RICHARDSON: Thank you, Mr. McAfee.
 15 I have no further questions, and I do not object to
 16 this witness.
 17 JUDGE SCUDDAY: All right. Then Mark
 18 and Melanie McAfee will be admitted as parties.
 19 B. Trek English, what is the basis of
 20 your request?
 21 MS. ENGLISH: Well, Your Honor, I'm
 22 probably the most vocal advocate in this part of
 23 Austin and on this landfill issue since 1990. And I
 24 just recently had to move because Travis County
 25 purchased our home. And my home has actually been

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1 demolished and is now residing in the Travis County --
 2 the Waste Management landfill.
 3 (Laughter)
 4 MS. ENGLISH: So I probably meet the one
 5 mile.
 6 (Laughter)
 7 JUDGE SCUDDAY: What is your -- are you
 8 located near -- you're in Arlington now?
 9 MS. ENGLISH: Yes, sir.
 10 JUDGE SCUDDAY: So you're not here
 11 anymore?
 12 MS. ENGLISH: No. And I probably will
 13 reconsider and not ask for party status because I
 14 don't want to delay any of the proceedings --
 15 JUDGE SCUDDAY: Okay. That's fine.
 16 MS. ENGLISH: -- if I cannot come.
 17 JUDGE SCUDDAY: All right. That's fine.
 18 I accept. You can stay as an observer, and we won't
 19 need to go into your --
 20 MS. ENGLISH: Okay.
 21 JUDGE SCUDDAY: -- why you would or
 22 would not be qualified.
 23 Bob Lanford?
 24 MR. LANFORD: Yes, I'm a trustee for a
 25 trust that owns 76 acres.

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1 JUDGE SCUDDAY: I'm sorry, trustee for a
 2 trust that what?
 3 MR. LANFORD: That owns 76 acres within
 4 the one-mile radius of the landfill.
 5 JUDGE SCUDDAY: All right. Do you want
 6 to come up here, please, sir?
 7 BOB LANFORD,
 8 having been first duly sworn, testified as follows:
 9 JUDGE SCUDDAY: All right. Would you
 10 state your name for the record, please, sir?
 11 MR. LANFORD: Robert L. Lanford.
 12 JUDGE SCUDDAY: All right. And what is
 13 the -- you're a trustee? Is that what you said?
 14 MR. LANFORD: I'm a trustee for a living
 15 trust that my parents have, which owns 76 acres --
 16 JUDGE SCUDDAY: Okay.
 17 MR. LANFORD: -- northeast of the
 18 proposed landfill.
 19 JUDGE SCUDDAY: And what use is made of
 20 that property?
 21 MR. LANFORD: It is my residence, and
 22 it's also used agriculturally.
 23 JUDGE SCUDDAY: Okay. Mr. Moore?
 24
 25

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1 CROSS-EXAMINATION
 2 BY MR. MOORE:
 3 Q Good morning, Mr. Lanford.
 4 A Good morning.
 5 Q If you would, please, following the footsteps
 6 of those that have come before you, please take a
 7 stickpin --
 8 A I've lost the pins.
 9 Q It's on your right-hand side there, on the
 10 far corner of the table there. I'm sorry.
 11 A (Complied)
 12 MR. MOORE: Judge, if I may?
 13 JUDGE SCUDDAY: Yes.
 14 Q (By Mr. Moore) Mr. Lanford, you've placed a
 15 green stickpin in the map to your right indicating the
 16 location of your property. Correct?
 17 A Yes, sir.
 18 Q I'm going to draw a circle around that
 19 stickpin, and I think you are number 6. I'm go to put
 20 a number "6" in the middle of that circle.
 21 A Okay.
 22 MR. MOORE: Your Honor, with the
 23 representations that Mr. Lanford has made, the
 24 applicant has no objection to his party status.
 25 JUDGE SCUDDAY: Executive Director?

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1 CROSS-EXAMINATION
 2 BY MS. RICHARDSON:
 3 Q Mr. Lanford, I would just like you to
 4 articulate your specific concerns about the landfill
 5 expansion.
 6 A They are numerous, but to begin with,
 7 windblown trash, noise, light pollution. We've had
 8 the property since the mid '60s. I had a well on the
 9 property that is no longer usable because the quality
 10 of the water has declined; we have windblown trash
 11 that impairs livestock that's on the property, a lot
 12 of plastic bags that they can ingest; the dust; and I
 13 never had allergy problems or any kind of whatever
 14 until just recently, and I attribute a lot of it to
 15 the landfill.
 16 MS. RICHARDSON: Thank you, Mr. Lanford.
 17 With those representations, the Executive Director has
 18 no objections.
 19 JUDGE SCUDDAY: All right. Bob Lanford
 20 Trustee will be named a party.
 21 MR. LANFORD: Thank you.
 22 JUDGE SCUDDAY: Thank you. You did want
 23 to be named a party as a trustee as opposed to
 24 individually or individually as well?
 25 MR. LANFORD: Both, if possible.

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1 JUDGE SCUDDAY: All right. Okay.
 2 John Riley?
 3 MR. RILEY: Yes, sir?
 4 JUDGE SCUDDAY: Oh, I'm sorry. How did
 5 you get in this stack?
 6 MR. RILEY: And I would like to confess
 7 that it was indeed me who was making the noise. I had
 8 an extra cell phone.
 9 JUDGE SCUDDAY: Ah-hah.
 10 (Laughter)
 11 MR. RILEY: But I've removed the
 12 batteries so I --
 13 (Laughter)
 14 JUDGE SCUDDAY: Okay. Let's see. Were
 15 there any other individuals? I've got some
 16 organizations. Yes, ma'am?
 17 MS. BEST: I have -- I have affidavits
 18 from several individuals on Aus-Tex Acres Lane.
 19 JUDGE SCUDDAY: Okay. Do you want to
 20 bring those forward, please?
 21 MS. BEST: Sure.
 22 MR. WILLIAMS: My organization of a real
 23 estate partnership, would that be organization or
 24 individual?
 25 JUDGE SCUDDAY: No, we're talking about

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1 organizations like the Northeast Neighbors Coalition
 2 and things like that.
 3 MR. WILLIAMS: And myself --
 4 JUDGE SCUDDAY: Okay. And you are?
 5 MR. WILLIAMS: Evan Williams.
 6 JUDGE SCUDDAY: Okay. All right. Come
 7 over here, please, ma'am. And can you get through
 8 there? I don't know why they put those so close.
 9 Usually they don't want the attorneys this close to
 10 the Judge.
 11 (Laughter)
 12 (Discussion off the record)
 13 JUDGE SCUDDAY: All right. If you would
 14 just state your name so we know who you are?
 15 MS. BEST: My name is Joyce Best.
 16 JUDGE SCUDDAY: Okay. Ms. Best, what
 17 have you got here?
 18 MS. BEST: I have affidavits from four
 19 neighbors who live on Aus-Tex Acres Lane, which is an
 20 unincorporated road in the vicinity of the Waste
 21 Management landfill.
 22 JUDGE SCUDDAY: And they are requesting?
 23 MS. BEST: They are requesting party
 24 status.
 25 JUDGE SCUDDAY: But you're not

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1 requesting party status?
 2 MS. BEST: I am not requesting party
 3 status since I no longer live in the area.
 4 JUDGE SCUDDAY: All right. Do you want
 5 to show those affidavits to Mr. Moore, please, ma'am?
 6 MR. MOORE: Your Honor, the affidavits
 7 represent that the individuals live in Manor, Texas.
 8 And so we would certainly be interested in knowing
 9 where they are in relation to the landfill.
 10 JUDGE SCUDDAY: Okay. All right.
 11 Ms. Best, would you raise your right hand, please?
 12 JOYCE BEST,
 13 having been first duly sworn, testified as follows:
 14 JUDGE SCUDDAY: All right. What are the
 15 names of the people whose affidavits you have there?
 16 MS. BEST: Alto and Rosemary Nauert, who
 17 live at 11201 Aus-Tex Acres Lane; George Edwards and
 18 John Murphy. The address is 11404 Aus-Tex Acres Lane.
 19 JUDGE SCUDDAY: All right. And these
 20 are residences then on this paper?
 21 MS. BEST: Yes, yes, they are.
 22 JUDGE SCUDDAY: Okay. Well, then we'll
 23 let Mr. Moore do his little thing.
 24 MR. MOORE: Thank you, Your Honor, for
 25 the opportunity to do my thing.

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1 (Laughter)
 2 CROSS-EXAMINATION
 3 BY MR. MOORE:
 4 Q Ms. Best, are you familiar with these four
 5 individuals?
 6 A Yes, I am.
 7 Q And how are you familiar with them?
 8 A I have known them. I lived in Harris Branch
 9 for 16 years up until 2006, and I have known the
 10 Nauerts quite well during that period of time,
 11 Mr. Edwards and Mr. Murphy not so well, but I am
 12 aware -- I have met and known Mr. Murphy and know that
 13 he lives there as well.
 14 Q Have you visited their homes previously?
 15 A I have visited the Nauert's home. I have not
 16 visited Mr. Murphy's home.
 17 Q Okay. And if you could, there's a map over
 18 your right-hand shoulder, if you could take a
 19 stickpin -- and we're only looking for rough
 20 approximations -- a stickpin where their subdivision
 21 is located would be fine.
 22 A (Complied)
 23 MR. MOORE: Okay. Your Honor, may I?
 24 JUDGE SCUDDAY: Yes.
 25 Q (By Mr. Moore) Okay. Ms. Best, you've

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1 placed a green stickpin. I'm going to draw a circle
 2 around that with a red pin and place in the middle the
 3 number "7." Do I have that correct?
 4 A As close as I can tell.
 5 Q And so am I correct that the locations of
 6 these individuals are actually in the incorporated
 7 limits of Manor, Texas?
 8 A Their mailing address is Manor. There are
 9 some residents in the area, including some in my
 10 former neighborhood Harris Branch, who are actually in
 11 the City of Austin, but they have a Manor mailing
 12 address. These folks are unincorporated, to the best
 13 of my understanding.
 14 Q Ms. Best, to the best of your understanding,
 15 do you know if any of the individuals that you've
 16 brought affidavits for today are members of any of the
 17 what we've termed "local neighborhood associations" or
 18 groups?
 19 A I am aware that the Nauerts are members of
 20 the Northeast Neighbors Coalition. I have no
 21 knowledge of Mr. Murphy or Mr. Edwards.
 22 MR. MOORE: Your Honor, with the
 23 representations that Ms. Best has made here today and
 24 the affidavits that she's brought with her, the
 25 applicant does not have any objection to the admission

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1 of these individuals as parties to this case.
 2 JUDGE SCUDDAY: Executive Director?
 3 MS. RICHARDSON: Thank you, Your Honor.
 4 CROSS-EXAMINATION
 5 BY MS. RICHARDSON:
 6 Q Ms. Best, I just have a few questions. I was
 7 just wondering why these people had to fill out
 8 affidavits today and why they couldn't be here.
 9 A The Nauerts are attending a funeral. I'm not
 10 aware of the circumstances of the other individuals.
 11 Q Thank you, Ms. Best. I'm only asking because
 12 our rules require that there be good cause established
 13 for you to represent them.
 14 A I'm sorry. I'm having trouble hearing.
 15 Q I'm sorry. Our rules establish we require
 16 good cause for a representative to bring affidavits.
 17 I was just following up on that.
 18 A I understand.
 19 Q And are you aware of any of the specific
 20 concerns that your representative folks, the Nauerts,
 21 the Edwards or Mr. Murphy, have about the landfill
 22 expansion?
 23 A Yes, I am. They have lived there for many
 24 years, the Nauerts in particular, and have been
 25 subjected to the same issues you've heard from other

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1 folks who live nearby, that is the dust, the birds,
 2 the noise and various types of adverse environmental
 3 conditions as a result of living nearby.
 4 MS. RICHARDSON: Thank you, Ms. Best. I
 5 have no further questions and no objection to their
 6 admittance.
 7 JUDGE SCUDDAY: All right. If you
 8 would, give those affidavits, please, ma'am, to the
 9 court reporter and mark them. Let's just mark them
 10 separately for the time being.
 11 (Nauert Exhibit No. 1 marked)
 12 (Edwards Exhibit No. 1 marked)
 13 (Murphy Exhibit No. 1 marked)
 14 JUDGE SCUDDAY: All right. I have
 15 Edwards 1, Murphy 1, Nauert 1, all being the
 16 affidavits referred to by Ms. Best. There being no
 17 objection, I'll admit them into evidence and admit
 18 those four people as parties, being George Edwards,
 19 John Murphy, Alto and Rosemary Nauert.
 20 (Nauert Exhibit No. 1 admitted)
 21 (Edwards Exhibit No. 1 admitted)
 22 (Murphy Exhibit No. 1 admitted)
 23 JUDGE SCUDDAY: Okay. Mr. Williams?
 24 MR. WILLIAMS: Yes, sir?
 25 JUDGE SCUDDAY: What is the basis for

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1 your request?
 2 MR. WILLIAMS: A partnership that I'm a
 3 partner of who owns three tracts within a mile radius.
 4 JUDGE SCUDDAY: Okay. Do you want to
 5 come up here, please, sir? Raise your right hand.
 6 EVAN WILLIAMS,
 7 having been first duly sworn, testified as follows:
 8 JUDGE SCUDDAY: State your name for the
 9 record, please, sir.
 10 MR. WILLIAMS: Evan Williams.
 11 JUDGE SCUDDAY: All right. And for the
 12 record then, you're a partner of what?
 13 MR. WILLIAMS: Williams, Ltd., which is
 14 a Texas general partnership.
 15 JUDGE SCUDDAY: Okay. And what is
 16 the -- you say that the partnership owns some land?
 17 MR. WILLIAMS: Yes, sir. We own three
 18 tracts of land within the vicinity of the landfill.
 19 JUDGE SCUDDAY: All right. Mr. Moore?
 20 CROSS-EXAMINATION
 21 BY MR. MOORE:
 22 Q Mr. Williams, I guess the first step would be
 23 for you to identify those three tracts of land
 24 separately, if you could.
 25 A With a pin or just pointing with --

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1 Q With a stickpin, please.
 2 A (Complied)
 3 MR. MOORE: Your Honor, may I?
 4 JUDGE SCUDDAY: Yes.
 5 Q (By Mr. Moore) Thank you, Mr. Williams. You
 6 have three stickpins in the map identifying your three
 7 properties or the Williams, Ltd. three properties.
 8 A That's right.
 9 Q And I'm going to circle each one of those
 10 with a red pen. And inside those circles,
 11 Mr. Williams, I'm going to write the number "8" in
 12 each, and then I'm going to identify the properties
 13 8A, 8B and 8C.
 14 A Okay.
 15 Q Okay. So the property most north of the
 16 proposed facility is identified as "8A"?
 17 A Yes, sir.
 18 Q The property just due south of 8A but still
 19 north of the facility has been identified as "8B"?
 20 A Yes, sir.
 21 Q And then the property to the -- I'll call it
 22 southeast of the facility has been identified as "8C."
 23 Is that correct?
 24 A That's correct.
 25 Q Okay. Mr. Williams, what is the -- what is

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1 the purpose of your partnership?
 2 A Real estate investment.
 3 Q Okay. And how many properties does your
 4 investment company own?
 5 A This partnership, probably seven or eight.
 6 Q And are they all in Travis County?
 7 A Yes, sir, they are.
 8 Q Okay. What is the -- the use of each of the
 9 three tracts of land?
 10 A They're currently agricultural.
 11 Q All three?
 12 A Yes, sir.
 13 Q And about what size is each one? Let's start
 14 with 8A. About how big is 8A?
 15 A 8A is approximately 94-1/2 acres --
 16 Q Okay.
 17 A -- 8B is 22.93, and 8C is 23.8 acres.
 18 Q And you may have stated this. I want to make
 19 sure I understand your role in Williams, Ltd. You are
 20 the --
 21 A I'm the -- I'm the managing partner of the
 22 general partnership.
 23 MR. MOORE: Your Honor, with those
 24 representations, the applicant has no objection to
 25 Mr. Williams being a party as a representative of

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1 Williams, Ltd. in this matter.
 2 JUDGE SCUDDAY: I was going to say is
 3 Williams, Ltd. then the one you want to actually be
 4 the party?
 5 MR. WILLIAMS: Yes, sir. That will be
 6 fine.
 7 JUDGE SCUDDAY: All right.
 8 CROSS-EXAMINATION
 9 BY MS. RICHARDSON:
 10 Q Mr. Williams, could you articulate your
 11 concerns about the landfill expansion?
 12 A Including but not limited to the comments
 13 earlier, noise, dust, water quality. In particular we
 14 have some stormwater and erosion control issues with
 15 regard to the runoff; water quality.
 16 MS. RICHARDSON: Thank you,
 17 Mr. Williams. With those representations, we have no
 18 objections.
 19 JUDGE SCUDDAY: Okay. Then Williams,
 20 Ltd. partnership will be admitted as a party. Thank
 21 you, Mr. Williams.
 22 MR. WILLIAMS: Thank you, Your Honor.
 23 JUDGE SCUDDAY: All right. Let's take
 24 about a ten-minute break, and then we'll come back and
 25 we'll talk about the organizations. Are there any

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1 other individuals?
 2 (No response)
 3 JUDGE SCUDDAY: Going once.
 4 (No response)
 5 JUDGE SCUDDAY: That's it. Okay. Thank
 6 you.
 7 (Recess: 11:40 a.m. to 11:50 a.m.)
 8 JUDGE SCUDDAY: Okay. If we could get
 9 back to order here?
 10 All right. Ms. Carter?
 11 MS. CARTER: Yes?
 12 JUDGE SCUDDAY: Do you have somebody on
 13 behalf of the Northeast Neighbors Coalition to testify
 14 this morning?
 15 MS. CARTER: The Remmerts, the McAfees
 16 and the Nauerts have all been admitted as parties.
 17 JUDGE SCUDDAY: Yes.
 18 MS. CARTER: And they are members of the
 19 Northeast Neighbors Coalition.
 20 JUDGE SCUDDAY: Okay. On the basis of
 21 that then, you're requesting the organization be
 22 admitted as a party as well?
 23 MS. CARTER: Yes.
 24 JUDGE SCUDDAY: Mr. Moore?
 25 MR. MOORE: Your Honor, if we could just

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1 have one of the members take the stand and provide
 2 some information regarding the group --
 3 JUDGE SCUDDAY: Okay.
 4 MR. MOORE: -- and their interest?
 5 JUDGE SCUDDAY: Pick one.
 6 MS. CARTER: Okay. Mr. McAfee, Your
 7 Honor.
 8 JUDGE SCUDDAY: All right. Mr. McAfee,
 9 you've previously been sworn. All right?
 10 PRESENTATION ON BEHALF OF
 11 NORTHEAST NEIGHBORS COALITION
 12 MARK McAFEE,
 13 having been previously sworn, testified as follows:
 14 JUDGE SCUDDAY: And as I recall, you had
 15 testified that you were a member of the Northeast
 16 Neighbors Coalition. Is that correct?
 17 MR. McAFEE: Correct.
 18 JUDGE SCUDDAY: All right. Mr. Moore?
 19 CROSS-EXAMINATION
 20 BY MR. MOORE:
 21 Q Nice to see you again, Mr. McAfee. The
 22 Northeast Neighbors Coalition, does that group have a
 23 charter?
 24 A If it does, I don't know what it is. I
 25 haven't -- it's been a while since I --

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1 MS. CARTER: Your Honor, may I give some
 2 of this information?
 3 JUDGE SCUDDAY: Do what now?
 4 MS. CARTER: May I give some of the
 5 information that I think Mr. Moore is trying to
 6 elicit.
 7 JUDGE SCUDDAY: Yeah, you --
 8 MS. CARTER: Mr. McAfee may not know the
 9 interworkings of it, for example, that it is a
 10 nonprofit corporation, so it's filed with the
 11 Secretary of State.
 12 JUDGE SCUDDAY: All right. Do you want
 13 to submit the documentation to Mr. Moore, please?
 14 MS. CARTER: I don't have the
 15 documentation with me, but my assistant may.
 16 (Laughter)
 17 MS. CARTER: But I'll be happy to get
 18 that information. I'll be happy to submit it.
 19 JUDGE SCUDDAY: Well, Ms. Carter, you're
 20 asking for organizational status -- party status
 21 today.
 22 MS. CARTER: Right.
 23 JUDGE SCUDDAY: You need the
 24 documentation today.
 25 MS. CARTER: Well, okay. I don't have

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1 it with me. I have the information which has been
 2 submitted to the state, and I have my three identified
 3 parties.
 4 JUDGE SCUDDAY: Okay. I understand
 5 you've got the parties. Go ahead, Mr. Moore.
 6 Q (By Mr. Moore) Mr. McAfee, are you an -- are
 7 you an officer of any kind in the Northeast Neighbors
 8 Coalition?
 9 A No, I'm not.
 10 Q Mr. McAfee, are you familiar with any of the
 11 documents that Northeast Neighbors Coalition may have
 12 filed with the Secretary of State?
 13 A I don't believe I've seen those myself.
 14 MR. MOORE: Your Honor, at this time, we
 15 would object to the participation of Northeast
 16 Neighbors Coalition. They don't have any
 17 documentation showing they are an actual registered
 18 group or the agency -- the organization's stated
 19 purpose. Part of the -- one of the requirements for
 20 participation by a group or association in a contested
 21 case hearing is that the interests of the group or
 22 association they seek to protect are germane to the
 23 organization's purpose, and we have no evidence of the
 24 organization's purpose here.
 25 JUDGE SCUDDAY: Okay.

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1 MS. CARTER: That all has been submitted
 2 to the TCEQ.
 3 JUDGE SCUDDAY: It has not been
 4 submitted to me.
 5 MS. CARTER: Right, and I have the
 6 Certificate of Corporation, thanks to my assistant.
 7 MS. RICHARDSON: Your Honor, I would
 8 also corroborate that the comment letter that the
 9 organization did supply did represent a social --
 10 Secretary of State filing number.
 11 I also wanted to represent that
 12 55.205(a)(1) allows a group to be admitted if they
 13 would otherwise have standing to request a hearing in
 14 their own right, and we've already had testimony of
 15 three members of the group. The Executive Director
 16 would not object, assuming that a supplementation
 17 could be filed with those documents.
 18 JUDGE SCUDDAY: All right. Let me see
 19 what you've got.
 20 (Brief pause)
 21 JUDGE SCUDDAY: Ms. Carter, while
 22 Mr. Moore is looking at that, I assume the corporation
 23 has bylaws or something that has set forth its
 24 purpose?
 25 MS. CARTER: Yes, they do.

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1 AUDIENCE MEMBER: The president is here.
 2 MR. BLACKBURN: Your Honor, I'm
 3 Jim Blackburn. Could we just call the president up?
 4 I'm Ms. Carter's associate.
 5 JUDGE SCUDDAY: That sounds like that
 6 would be the best thing. Thank you, Mr. McAfee.
 7 MR. BLACKBURN: If we could call the
 8 president up and see if we can just go ahead and get
 9 this clarified? I don't think Ms. Carter thought that
 10 there was going to be an issue about this.
 11 MR. RILEY: Well, there's a way to
 12 prevent that from happening.
 13 MR. BLACKBURN: There is. We'll take
 14 care of it.
 15 JUDGE SCUDDAY: Okay. Do you want to
 16 come up here, please, sir?
 17 MR. RILEY: Are we switching lawyers
 18 now? I just want to be clear.
 19 JUDGE SCUDDAY: Apparently Mr. Blackburn
 20 is taking over for Ms. Carter for this purpose.
 21 State your name for the record, please,
 22 sir.
 23 MR. BENTLEY: Jeremiah Bentley.
 24 JUDGE SCUDDAY: Would you raise your
 25 right hand?

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1 (Witness Bentley sworn)
 2 MR. BLACKBURN: May I stand here, Your
 3 Honor?
 4 JUDGE SCUDDAY: Yeah, that's fine,
 5 wherever is comfortable for you.
 6 JEREMIAH BENTLEY,
 7 having been first duly sworn, testified as follows:
 8 DIRECT EXAMINATION
 9 BY MR. BLACKBURN:
 10 Q Would you state your name, please?
 11 A Jeremiah Bentley.
 12 Q Mr. Bentley, where do you live?
 13 A 12100 Kilmartin Lane, Harris Branch.
 14 Q And are you an officer in a group called
 15 Northeast Neighbors?
 16 A Yes, I'm president of Northeast Neighbors.
 17 Q And could you describe for the Administrative
 18 Law Judge what Northeast Neighbors is?
 19 A The Northeast Neighbors Coalition exists to
 20 serve the residences of Northeast Travis County by
 21 educating the citizens and government officials about
 22 economic --
 23 THE REPORTER: Could you slow down just
 24 a little bit?
 25 (Laughter)

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1 A Oh, sorry -- economic -- I haven't done this
 2 before. I'm sorry.
 3 THE REPORTER: That's okay.
 4 A -- and quality of life issues related to the
 5 existence of the operations of the northeast Travis
 6 County landfills, BFI of North America and Waste
 7 Management, Inc. and to oppose permits for new
 8 expansions of these landfills.
 9 Q (By Mr. Blackburn) And are you the president
 10 of that organization?
 11 A Yes.
 12 Q And are you here today in the official
 13 capacity?
 14 A Yes.
 15 Q And are you requesting party status for the
 16 group?
 17 A Yes.
 18 Q And are you an incorporated organization?
 19 A Yes.
 20 MR. BLACKBURN: That's all. Thank you.
 21 JUDGE SCUDDAY: Okay. Do you want to
 22 give him -- mark that as Northeast Coalition No. 1.
 23 (NNC Exhibit No. 1 marked)
 24 JUDGE SCUDDAY: Mr. Blackburn, are you
 25 offering the Certificate of Filing of the Office of

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1 the Secretary of State?
 2 MR. BLACKBURN: Yes, Your Honor.
 3 JUDGE SCUDDAY: Is there objection,
 4 Mr. Moore?
 5 MR. MOORE: No, Your Honor.
 6 (NNC Exhibit No. 1 admitted)
 7 JUDGE SCUDDAY: Do you have any
 8 questions for Mr. Bentley?
 9 MR. MOORE: Yes, yes, Your Honor.
 10 CROSS-EXAMINATION
 11 BY MR. MOORE:
 12 Q Mr. Bentley, one question. It seems to me
 13 you were reading off something there when
 14 Mr. Blackburn asked you about the purpose of the
 15 Northeast Neighbors Coalition. What would that be?
 16 A That's a copy of the original bylaws.
 17 Q You referenced them as the "original bylaws."
 18 Have they changed?
 19 A No. It's a copy of the bylaws on file.
 20 MR. MOORE: Your Honor, we would ask
 21 that a copy of the bylaws of the Northeast Neighbors
 22 Coalition also be placed in the record. And with
 23 that, we would have no objection to their
 24 participation in this case.
 25 JUDGE SCUDDAY: I assume there's no

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1 problem with that, Mr. Blackburn.
 2 MR. BLACKBURN: No, Your Honor.
 3 JUDGE SCUDDAY: Okay. With that
 4 standing, that a copy of the bylaws will be submitted,
 5 I will make Northeast Neighbors Coalition a party.
 6 Thank you, Mr. Bentley.
 7 MR. BENTLEY: Okay.
 8 JUDGE SCUDDAY: Are you going to submit
 9 those, or are you going to make a copy?
 10 MR. BENTLEY: I think we're going to
 11 make a copy.
 12 MS. BEST: You can submit those.
 13 MR. BENTLEY: Or I will submit these.
 14 (Laughter)
 15 JUDGE SCUDDAY: Okay. All right. Then
 16 that will be NNC-2.
 17 MR. BENTLEY: I'm going to stay, I
 18 think.
 19 JUDGE SCUDDAY: Mr. Moore, did you want
 20 to look at those before --
 21 MR. MOORE: Yeah, I'll take one quick
 22 look at them.
 23 (NNC Exhibit No. 2 marked)
 24 JUDGE SCUDDAY: All right. I have what
 25 has been marked as NNC-2 as being the bylaws of the

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1 Northeast Neighbors Coalition. Is there any objection
 2 to their admission?
 3 MS. RICHARDSON: No, Your Honor.
 4 MR. MOORE: None, Your Honor.
 5 JUDGE SCUDDAY: Admitted.
 6 (NNC Exhibit No. 2 admitted)
 7 JUDGE SCUDDAY: Thank you. You may now
 8 step down, Mr. Bentley.
 9 MR. BENTLEY: Thank you.
 10 JUDGE SCUDDAY: Okay. We had one other
 11 here somewhere. Was there any other organization that
 12 was --
 13 MR. BENTLEY: It's actually me as Harris
 14 Branch Residential Property Association.
 15 JUDGE SCUDDAY: Oh, okay. I knew there
 16 was -- two hats today, huh?
 17 MR. BENTLEY: Yes, sir.
 18 JUDGE SCUDDAY: Okay. Come on up here.
 19 MR. BENTLEY: Okay.
 20 JUDGE SCUDDAY: You're representing
 21 yourself on this one?
 22 MR. BENTLEY: I'm representing the --
 23 well, I guess --
 24 MS. BEST: Harris Branch.
 25 MR. BENTLEY: I'm here on behalf of

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1 Harris Branch.
 2 JUDGE SCUDDAY: Yes, okay. I mean, you
 3 don't have an attorney for this one?
 4 MR. BENTLEY: Oh, we do. Yeah, I think
 5 we have Carter and Blackburn for this.
 6 MR. BLACKBURN: I'll go ahead and do it
 7 again.
 8 (Laughter)
 9 JUDGE SCUDDAY: That's fine.
 10 PRESENTATION ON BEHALF OF
 11 HARRIS BRANCH RESIDENTIAL PROPERTY OWNERS ASSOCIATION
 12 JEREMIAH BENTLEY,
 13 having been previously sworn, testified as follows:
 14 DIRECT EXAMINATION
 15 BY MR. BLACKBURN:
 16 Q Once again, would you state your name for the
 17 record, please?
 18 A Jeremiah Bentley.
 19 Q And are you here also in a capacity with
 20 regard to the Harris Branch neighborhood?
 21 A Yes, I'm here as the president of the board
 22 of Harris Branch Residential Property Owners
 23 Association.
 24 Q And could you identify on the map behind you
 25 where Harris Branch is?

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1 A Sure. It starts here on Blue Goose Road and
 2 goes all the way up past the north end of the map
 3 here.
 4 Q And are you here today seeking party status
 5 on behalf of Harris Branch?
 6 A Yes.
 7 Q And do you live within Harris Branch?
 8 A Yes, I do.
 9 MR. BLACKBURN: No further questions.
 10 JUDGE SCUDDAY: Mr. Moore?
 11 MR. MOORE: Yes, Your Honor.
 12 CROSS-EXAMINATION
 13 BY MR. MOORE:
 14 Q Mr. Bentley, do I have the name right, Harris
 15 Branch Residential Property Owners Association?
 16 A You do.
 17 Q Okay. Do you have any resolution or other
 18 authorization to act on behalf of the Harris Branch
 19 Residential Property Owners Association and to seek
 20 party status in this case?
 21 A Not with me today. We do have an action by
 22 three of the five board members taken, but I don't --
 23 I don't have it with me.
 24 Q Do you have with you any of your articles of
 25 incorporation or bylaws?

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1 A No, I don't.
 2 MR. MOORE: Your Honor, we would object
 3 on the same grounds that, one, Mr. Bentley doesn't
 4 appear to be fully authorized to be here today or
 5 doesn't have documentation of his authorization. And
 6 two, we don't have any documentation of the
 7 organization's purpose.
 8 JUDGE SCUDDAY: Mr. Blackburn?
 9 REDIRECT EXAMINATION
 10 BY MR. BLACKBURN:
 11 Q Yes, let me ask you, Mr. Bentley, was, in
 12 fact, a vote taken?
 13 A Yes.
 14 Q And did three of five of the board members
 15 vote to seek party status?
 16 A Yes.
 17 Q And is that appropriate under the bylaws of
 18 the organization?
 19 A Yes.
 20 Q And can written authorization be provided at
 21 a later time?
 22 A Yes.
 23 Q And can bylaws and articles of incorporation
 24 be provided at a later time?
 25 A Yes.

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1 MR. BLACKBURN: I would ask that Harris
 2 Branch have provisional standing today, and that we
 3 will supplement and clarify for the record the basis
 4 for the standing and move for it on that basis.
 5 JUDGE SCUDDAY: You say there are
 6 members that have been -- that are here today.
 7 MS. SLAYTON: I'm here today.
 8 JUDGE SCUDDAY: Who is that?
 9 MS. SLAYTON: Lyndia Slayton.
 10 JUDGE SCUDDAY: Okay. All right.
 11 MR. BENTLEY: And also -- I also have
 12 affidavits from about eight members that are within a
 13 mile of the proposed area that I can present --
 14 actually seven within a mile and eight within 1.1
 15 miles.
 16 JUDGE SCUDDAY: All right.
 17 MS. RICHARDSON: Your Honor, I'd like to
 18 ask a few questions when the time is right.
 19 JUDGE SCUDDAY: Okay. Just a minute.
 20 All right, but the only member that has -- the only
 21 member of the association that's here today is
 22 Ms. Slayton.
 23 MS. SLAYTON: I am.
 24 JUDGE SCUDDAY: Okay. All right.
 25 MR. BENTLEY: And me.

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1 JUDGE SCUDDAY: And you. You live in
 2 Harris Branch I take it?
 3 MR. BENTLEY: Yes.
 4 JUDGE SCUDDAY: All right. Mr. Moore, I
 5 would be willing to withhold designation or
 6 nondesignation subject to the submission of the bylaws
 7 setting forth the purpose and giving you an
 8 opportunity to look at them and make -- provide any
 9 objections on why you feel like they would not be
 10 qualified.
 11 MR. MOORE: Thank you, Your Honor.
 12 That's acceptable to us.
 13 JUDGE SCUDDAY: All right. That's what
 14 we'll do. Anything else for Mr. Bentley?
 15 MR. MOORE: No, Your Honor.
 16 JUDGE SCUDDAY: Thank you, Mr. Bentley.
 17 You may step down. Oh, I'm sorry, did the Executive
 18 Director --
 19 MS. RICHARDSON: Your Honor, with that
 20 stipulation, we have no objections.
 21 JUDGE SCUDDAY: Okay. Sorry. I didn't
 22 mean to cut you off there.
 23 All right. Is there anybody else here
 24 today that is requesting party status that we haven't
 25 gotten?

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1 (No response)
 2 JUDGE SCUDDAY: All right. Now then,
 3 what I'm proposing to do is align the individuals and
 4 the Northeast Neighbors Association and -- assuming
 5 they can provide the qualification of eligibility --
 6 the Harris Branch Property Owners Association as one
 7 protestant group because they all seem to have similar
 8 issues in that they're all within the vicinity of the
 9 landfill. Does anybody have any objection to doing
 10 that? That way it makes it a lot easier. It doesn't
 11 mean you're not a party. It just means we're putting
 12 you together so that I only have one group to deal
 13 with in that regard rather than each of you
 14 individually.
 15 MS. RICHARDSON: We have no objection,
 16 Your Honor.
 17 JUDGE SCUDDAY: Any of the group?
 18 (No response)
 19 JUDGE SCUDDAY: Mr. Blackburn, do you
 20 see any problem with doing it that way?
 21 MR. BLACKBURN: I don't see any
 22 problems, Your Honor.
 23 JUDGE SCUDDAY: And if something comes
 24 up, if it looks like there's a conflict within the
 25 group, we can always revisit that.

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1 MR. BLACKBURN: Right. That was the one
 2 thing I would identify. If there turns out to be a
 3 conflict of interest perhaps --
 4 JUDGE SCUDDAY: I've had that -- I've
 5 had that happen before.
 6 MR. BLACKBURN: We'll bring that to the
 7 attention of Your Honor at that time.
 8 JUDGE SCUDDAY: All right. And for the
 9 purpose of the party -- the person that is to be
 10 notified on behalf of this group, I would suggest
 11 either Mr. Blackburn or Ms. Carter, unless somebody
 12 has a problem with that, and then it will be up to you
 13 to make sure everybody else gets notice rather than
 14 having to send out individual notices to each party.
 15 Is everybody agreed with that?
 16 (No response)
 17 JUDGE SCUDDAY: Okay. So the parties
 18 are, of course the applicant represented by Mr. Moore,
 19 et al.; the Executive Director represented by
 20 Ms. Richardson, et al.; OPIC, Ms. Collins all alone by
 21 herself sitting there at the end of the table.
 22 MS. COLLINS: All the time.
 23 (Laughter)
 24 JUDGE SCUDDAY: The City of Austin
 25 represented by Ms. Farhadi, et al.; the county -- I

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1 had it somewhere.
 2 MS. COX: It's Annalyn Cox, Your Honor.
 3 JUDGE SCUDDAY: Yeah, I know, I just
 4 can't find the piece of paper. But anyway, that's who
 5 it is. I'll find it.
 6 And then the group, the protestants'
 7 group represented by Ms. Carter and Mr. Moore.
 8 MS. CARTER: Blackburn.
 9 JUDGE SCUDDAY: Blackburn. I'm sorry.
 10 MR. MOORE: That would be a conflict of
 11 interest, Your Honor.
 12 JUDGE SCUDDAY: Yeah, that is.
 13 (Laughter)
 14 MR. BLACKBURN: I'd like to see that.
 15 JUDGE SCUDDAY: I was going to say the
 16 applicant might like that.
 17 All right. Now then, that being
 18 established --
 19 MR. BIRCH: Your Honor?
 20 JUDGE SCUDDAY: Yes?
 21 MR. BIRCH: TJFA is also a party.
 22 JUDGE SCUDDAY: Oh, that's right.
 23 MR. RILEY: Oh, yeah.
 24 JUDGE SCUDDAY: I knew I was missing
 25 somebody here.

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1 MR. TERRILL: Your Honor, Giles also.
 2 JUDGE SCUDDAY: And Giles is also a
 3 party.
 4 MR. MOORE: I believe Williams, Ltd. is
 5 also a party, Your Honor.
 6 JUDGE SCUDDAY: All right. Let me ask
 7 if it would be better to break the group into
 8 individuals and the associations on one hand and then
 9 the partnerships as a separate group?
 10 MR. BLACKBURN: Your Honor, I would say
 11 that at least the protesting group that you've got,
 12 the citizens and the two associations, we represent
 13 some of those individuals as well as the associations.
 14 So I think it would make sense for our grouping to
 15 stay as it is.
 16 JUDGE SCUDDAY: Right.
 17 MR. BLACKBURN: How other people are
 18 grouped, I mean, we wouldn't certainly have any
 19 objection to --
 20 JUDGE SCUDDAY: Well, that's what I was
 21 saying. I was going to break out the individuals and
 22 the property owners association and the coalition into
 23 Protestants One. Let's make sure I've got the right
 24 people here to make up Protestants One, which would
 25 include John Wilkins, the Remmerts, Mr. Wendland, Jean

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1 Breazeale, Janet Smith, the McAfees, Mr. Lanford, the
 2 Nauerts, Mr. Murphy, Mr. Edwards, the Northeast
 3 Neighbors Coalition and the Harris Branch Residential
 4 Property Owners Association.
 5 AUDIENCE MEMBER: Evan Williams -- you
 6 didn't call Evan Williams.
 7 JUDGE SCUDDAY: Who did I forget? Who?
 8 MS. SMITH: Evan Williams.
 9 JUDGE SCUDDAY: Well, that was -- give
 10 me a minute.
 11 MS. SMITH: I'm sorry; I'm sorry.
 12 JUDGE SCUDDAY: Mr. Williams had
 13 indicated he was representing the partnership, and so
 14 I had made the partnership the entity that was
 15 admitted as the party. And what I'm making is a
 16 distinction between parties who are living or working
 17 the land themselves or utilizing the land themselves
 18 as opposed to real estate investors, which would
 19 include Mr. Williams' partnership, TJFA and Giles
 20 Holdings. So my question is, does each of you need to
 21 be a separate -- do you think that we have such
 22 different issues that you-all would need to be
 23 separate parties?
 24 MR. BIRCH: Well, Your Honor, at this
 25 point, we know nothing about the partnerships or their

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1 activities, and we really at this point would prefer
 2 to stay as a separate party.
 3 JUDGE SCUDDAY: All right. For the time
 4 being, I will have you as separate parties. If
 5 Mr. Williams -- is he here?
 6 MS. SMITH: He had to leave.
 7 JUDGE SCUDDAY: Okay. If Mr. Williams
 8 wants to be part of the group, if he'll just let me
 9 know to that effect, I'll make him part of the
 10 Protestants One group.
 11 AUDIENCE MEMBER: Yeah, I think he is.
 12 JUDGE SCUDDAY: Well, I understand, but
 13 I need him to tell me that. I can't just do it and
 14 say he was there as a partnership.
 15 MR. BLACKBURN: Would a letter work, or
 16 do you want --
 17 JUDGE SCUDDAY: Yeah, a letter would be
 18 fine.
 19 MR. BLACKBURN: Okay.
 20 JUDGE SCUDDAY: I just need something
 21 from him indicating that he would be willing to be
 22 part of that group rather than out there by himself.
 23 All right. Mr. Terrill, then Giles
 24 Holdings will be a party Protestant Two --
 25 MR. TERRILL: As a separate --

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1 JUDGE SCUDDAY: -- and TJFA will be
 2 Protestant Three. And Mr. Williams -- I'll wait and
 3 hear from him which way, and if he wants to be a
 4 separate party, I'll make him Protestant Four.
 5 Okay. All right. Is that everybody now
 6 accounted for?
 7 (No response)
 8 JUDGE SCUDDAY: All right. Then the
 9 next thing to do is decide how we're going to work out
 10 a schedule. And it would appear to me that it would
 11 be easier if the attorneys for the various groups
 12 could work out a proposed schedule, and then where
 13 they differ, then I'll just flip a coin --
 14 (Laughter)
 15 JUDGE SCUDDAY: -- as to how we will
 16 proceed, but it would make it a lot easier to look at
 17 everybody's schedules. So I need Mr. Moore,
 18 Mr. Birch, Mr. Terrill, Ms. Farhadi, Ms. Collins,
 19 Ms. Richardson, Mr. Blackburn and Mr. Williams,
 20 depending on what he ends up doing -- I assume, from
 21 what they tell me, he'll be part of that group -- to
 22 get me, oh, let's say -- today is the 16th -- by the
 23 18th -- by the 25th if you have worked out a schedule,
 24 Mr. Moore. If you haven't, then each of you can
 25 submit individual schedules. It will be easier on

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1 those parts that we can agree with and where we
 2 disagree. And this would cover prefilings, prefilings
 3 of evidence, discovery, all the way to when we would
 4 look to be able to set a hearing on the merits with
 5 dates that would be available for you, and then we'll
 6 see what my docket looks like. Do we have any feel at
 7 this point what we're talking about?
 8 MR. RILEY: Well, actually with that
 9 opening, Judge, just a little crack there, I don't
 10 want to anticipate an issue that may not be there, but
 11 I think it's worth bringing up in this preliminary
 12 matter or this preliminary proceeding, which is at
 13 least a number of folks have requested that this
 14 application be abated or postponed for a substantial
 15 amount of time because of another application that's
 16 out there also proceeding through the system.
 17 So I think if -- I believe the procedure
 18 you've suggested is a good procedure, and certainly
 19 given the hour would be probably preferred, but I
 20 think if we take up the first issue, the threshold
 21 issue of whether anyone, I guess number one, is going
 22 to request this case be abated or postponed for some
 23 18 or more months, then we address that issue.
 24 Otherwise, I fear in not too short order what we'll be
 25 submitting, Judge, is we'll have what I would call an

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1 aggressive but normal schedule, and folks will be
 2 advocating that the case be postponed for a year or
 3 better.
 4 MR. BLACKBURN: And, Your Honor, I have
 5 such a motion.
 6 JUDGE SCUDDAY: Okay --
 7 MR. RILEY: See?
 8 MR. BLACKBURN: -- which I wasn't sure
 9 of the appropriate time to present it.
 10 JUDGE SCUDDAY: I guess now is as
 11 appropriate as any.
 12 (Laughter)
 13 MR. BLACKBURN: It seemed like it might
 14 be. And if I may, I'm not sure if we made enough
 15 copies or not.
 16 MS. RICHARDSON: Your Honor, before the
 17 motion actually becomes live, the Executive Director
 18 wants to point out a few housekeeping issues with the
 19 administrative record --
 20 JUDGE SCUDDAY: Okay.
 21 MS. RICHARDSON: -- in advance of the
 22 discovery. On Monday the applicant submitted parts of
 23 their technical application, and we haven't had a
 24 chance to review that as the Executive Director.
 25 We're requesting a little time to be allotted for

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1 that --
 2 JUDGE SCUDDAY: Okay.
 3 MS. RICHARDSON: -- in the discovery
 4 process --
 5 JUDGE SCUDDAY: Okay.
 6 MS. RICHARDSON: -- as well as the
 7 response to comments, which will be pending for
 8 approximately -- on June the 16th.
 9 MR. RILEY: Okay.
 10 MS. RICHARDSON: So I'd like everyone to
 11 keep that in mind while we're scheduling discovery.
 12 JUDGE SCUDDAY: Okay.
 13 MR. SHEPHERD: And, Judge, just to
 14 clarify that, I'm Steve Shepherd. I'm also
 15 representing the Executive Director, and the Executive
 16 Director did not plan to review those additions to the
 17 application unless that was directed by the Judge.
 18 Our perspective was that the application had been
 19 referred over here, and the supplement is not part of
 20 that application at this point. But at your
 21 direction, the Executive Director would be glad to
 22 review it.
 23 JUDGE SCUDDAY: Well, let me ask, is the
 24 supplement -- what is the purpose of the supplement?
 25 Does it change the application as it stands?

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1 MR. RILEY: There are a number of
 2 purposes, but I'll let Mr. Moore address the
 3 specifics. Some of them are just clarifications or
 4 typographical things, but Mr. Moore can speak more
 5 specifically.
 6 MR. MOORE: Yes, Your Honor. As
 7 Mr. Riley alluded to, some of them were simply
 8 clarifications that had been caught in further review
 9 as we prepared for this hearing, making those changes.
 10 Other changes were to pull back part of
 11 the property line, pull it back away to add more
 12 buffer in one area of the landfill.
 13 Another change was to propose additional
 14 wells down -- groundwater monitoring wells down in a
 15 deeper stratum that is not the uppermost aquifer.
 16 We're getting into a little bit of the merits of the
 17 case, if you will, but proposing those in response to
 18 public comments that we have heard. And those are the
 19 substantive -- the substantive changes, if you will.
 20 And I think -- I won't speak for
 21 Mr. Shepherd, but as far as their review of anything,
 22 I believe that Mr. Shepherd is referring solely to
 23 these wells that are in the deeper -- beneath the
 24 uppermost aquifer at the site.
 25 MS. RICHARDSON: And, Your Honor, the

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1 Executive Director estimates review time to be no more
 2 than 20 working days.
 3 JUDGE SCUDDAY: Okay. Well, we're not
 4 talking about something that would be considered a
 5 major amendment, are we?
 6 MS. RICHARDSON: No, Your Honor; no,
 7 Your Honor.
 8 MR. BLACKBURN: Your Honor, we haven't
 9 seen this documentation.
 10 JUDGE SCUDDAY: I understand; I
 11 understand.
 12 MR. BLACKBURN: We may well disagree
 13 that this is a major amendment.
 14 JUDGE SCUDDAY: I understand that,
 15 Mr. Blackburn.
 16 MR. RILEY: Well, if that's the case,
 17 Judge, just so everyone can be aware or on the same
 18 page, since these are additional measures that we
 19 could consider voluntary and above and beyond
 20 regulatory requirements, if there is an objection, the
 21 solution would be to pull those requirements.
 22 JUDGE SCUDDAY: I understand that.
 23 Okay. Let me see your motion.
 24 MR. BLACKBURN: I actually have three,
 25 Your Honor.

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1 JUDGE SCUDDAY: I can already tell you
 2 the answer to that one.
 3 MR. BLACKBURN: Okay. One must try.
 4 JUDGE SCUDDAY: All right.
 5 (Brief pause)
 6 MR. BLACKBURN: Are there others that I
 7 have missed?
 8 (No response)
 9 JUDGE SCUDDAY: It appears that before
 10 we get into the scheduling, we're going to have to
 11 deal with these. So I would like -- I think what we
 12 will do -- I will issue a preliminary order
 13 designating the parties and the other boilerplate part
 14 of the order for preliminary hearings. But I will
 15 also want responses to these motions that have been
 16 filed on behalf of the Northeast Neighbors Coalition,
 17 which we'll call Protestant Group One, I guess, for
 18 our purposes today.
 19 And I'll start with you, Mr. Moore.
 20 What kind of time would you want?
 21 MR. MOORE: Well, Your Honor, as you're
 22 well aware, these are four- and five-page motions it
 23 looks like, and we are just now seeing them for the
 24 first time --
 25 JUDGE SCUDDAY: I understand; I

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1 understand.
 2 MR. MOORE: -- although we've been
 3 representing Waste Management all along in this case.
 4 I would think we could respond to them within a week.
 5 JUDGE SCUDDAY: Executive Director?
 6 MS. RICHARDSON: We have no objection to
 7 a week response.
 8 JUDGE SCUDDAY: All right. Okay. Then
 9 why don't we set the 23rd for everybody to file their
 10 responses. I'll just hold off issuing the preliminary
 11 order until I get the responses, and then I'll
 12 incorporate whatever my ruling is in the
 13 preliminary --
 14 MR. BLACKBURN: Could we have a couple
 15 of days to file a reply to those responses?
 16 JUDGE SCUDDAY: Yeah, you can have until
 17 the 25th. How is that?
 18 MR. BLACKBURN: So when are they due?
 19 JUDGE SCUDDAY: The 23rd.
 20 MR. BLACKBURN: The 23rd?
 21 JUDGE SCUDDAY: Just a couple of days.
 22 MR. BLACKBURN: Assuming that we can get
 23 service by -- are we doing electronic service?
 24 MR. RILEY: We thought we'd drop them on
 25 Mr. Blackburn much the way he's dropped these on us

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1 today.
 2 MR. BLACKBURN: Well, we didn't have
 3 party status until we --
 4 MR. RILEY: I know. There's no other
 5 way.
 6 JUDGE SCUDDAY: All right. I'll give
 7 you until the 28th. All right?
 8 MR. BLACKBURN: Thank you.
 9 MS. RICHARDSON: Your Honor, might I
 10 point out that we don't have contact information for
 11 everyone? I think we can exchange contact information
 12 informally.
 13 JUDGE SCUDDAY: I think that -- well, I
 14 can issue an order, but it's really going to be kind
 15 of piecemeal, and I think this is really going to have
 16 to determine how we're going to proceed. So I kind of
 17 hesitate to issue a preliminary order unless you
 18 really want me to just to get the parties established.
 19 I mean, we know who the parties are for our purposes.
 20 MS. RICHARDSON: I'm comfortable with an
 21 informal exchange of contact information.
 22 JUDGE SCUDDAY: Is that acceptable?
 23 MR. RILEY: That's acceptable, yes.
 24 JUDGE SCUDDAY: Mr. Blackburn, is that
 25 acceptable to you?

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1 MR. BLACKBURN: Yes.
 2 JUDGE SCUDDAY: Okay. Well, let's do it
 3 that way and save some paper. We're supposedly
 4 environmentalists here.
 5 MR. MOORE: Your Honor, just so I'm
 6 clear on the schedule, are the --
 7 JUDGE SCUDDAY: Responses are due on the
 8 23rd, and Mr. Blackburn's reply is due on the 28th.
 9 MR. MOORE: And are proposed schedules
 10 still due on the 25th?
 11 JUDGE SCUDDAY: No, let's hold off on
 12 the proposed schedules until we see where we are on
 13 these motions. And then I will put in the order my
 14 ruling on the motion, designation of the parties and a
 15 date by which I would want the proposed schedules.
 16 Okay?
 17 MR. MOORE: Okay.
 18 JUDGE SCUDDAY: Does that sound like a
 19 reasonable way to proceed?
 20 MR. MOORE: Yes, Your Honor.
 21 JUDGE SCUDDAY: Okay. Anything else we
 22 need to do today or can do today?
 23 MR. BIRCH: Your Honor, just as a
 24 question, there are a number of exhibits admitted
 25 today that we don't have copies of. What's the best

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1 way for the parties to get copies of those?
 2 JUDGE SCUDDAY: The best way would be to
 3 contact my clerk, Susan Bryson. I will provide her
 4 this because she'll have to try to get this in some
 5 kind of format anyway. And so just tell her what it
 6 is you want, and she'll -- she'll have the list of who
 7 the parties are so she can get them to you.
 8 MR. RILEY: Judge, I apologize again for
 9 interrupting. What's not clear to me right now is
 10 where other parties -- if they are inclined to file
 11 anything where they would come into --
 12 JUDGE SCUDDAY: Well, the motion to
 13 abate seems to me -- that's the first thing that's got
 14 to be resolved. And then after that, once it's
 15 determined -- this seems to me is going to control.
 16 MR. RILEY: Let me be more clear.
 17 JUDGE SCUDDAY: Okay.
 18 MR. RILEY: If there are other
 19 parties --
 20 JUDGE SCUDDAY: Wanting to file motions
 21 to abate --
 22 MR. RILEY: -- file motions to abate --
 23 JUDGE SCUDDAY: This is going to be the
 24 motions to abate --
 25 MR. RILEY: Okay.

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1 JUDGE SCUDDAY: -- unless somebody comes
 2 up with something -- a totally different reason to
 3 abate. Okay?
 4 MR. RILEY: All right. And then --
 5 JUDGE SCUDDAY: Not just to delay.
 6 MR. RILEY: What I'm imagining is this.
 7 JUDGE SCUDDAY: I understand. I know,
 8 that they're going to tag-team you on motions to
 9 abate.
 10 MR. RILEY: That's exactly right.
 11 JUDGE SCUDDAY: If anybody wants to file
 12 a motion to abate, they better get it in because I'm
 13 going to make a decision after the 28th.
 14 MR. RILEY: All right. And my hope
 15 would be that if there is anyone who wants to either
 16 join or file a separate motion, that that be done in
 17 the next two days.
 18 JUDGE SCUDDAY: I would agree that it
 19 needs to be done quickly, but I would think that most
 20 people would think that Mr. Blackburn's covered the
 21 watershed; and, therefore, they would abide by what he
 22 wants. But if that's not the case --
 23 MR. BIRCH: Your Honor?
 24 JUDGE SCUDDAY: Yes?
 25 MR. BIRCH: If that's the case, perhaps

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1 there should be some clarification on the supplement
 2 filed by the applicant because this motion to abate
 3 may depend on what was filed in that supplement. So
 4 we're wondering what's the status of the supplement,
 5 which application we're responding to.
 6 JUDGE SCUDDAY: Well, I think based on
 7 what was said that the application that's being
 8 responded to is the application before me. The
 9 supplement is there for the Executive Director to look
 10 at. And if I understand, if there's going to be
 11 objections to that, then they'll withdraw it because
 12 they were voluntarily made to address some concerns
 13 that you have.
 14 And so if you still have concerns about
 15 them, we can always make them part of the application
 16 at a later date, and you can still discuss it, but it
 17 doesn't seem to me, at least on what I've heard so
 18 far, that this would constitute a major permit change
 19 with what's been proposed. But obviously as soon as
 20 the Executive Director has had an opportunity to
 21 respond, then we might know more and can revisit the
 22 issue.
 23 MR. BIRCH: Yes, Your Honor. I
 24 appreciate that. It's just that none of us have seen
 25 it.

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1 JUDGE SCUDDAY: I understand; I
 2 understand. I know.
 3 MR. SHEPHERD: And, Judge, should I take
 4 that as direction that you do approve the Executive
 5 Director proceeding to review that?
 6 JUDGE SCUDDAY: Yes, yes.
 7 MR. SHEPHERD: Okay. Thank you.
 8 JUDGE SCUDDAY: Yes, I do want you to go
 9 ahead and respond to that. If there's some problem,
 10 we need to know it before we get too far down the road
 11 on this one.
 12 MR. BLACKBURN: Your Honor, may we get
 13 copies of that since we haven't seen it?
 14 JUDGE SCUDDAY: Can we do that?
 15 MR. MOORE: Your Honor, if I may, we
 16 actually have copies with us today of the entire
 17 application on CD to hand out to the protestants in
 18 this case.
 19 JUDGE SCUDDAY: Okay. Including the
 20 supplements?
 21 MR. MOORE: It includes all the
 22 supplements.
 23 JUDGE SCUDDAY: All right.
 24 MR. MOORE: It includes the application
 25 as it stands as the Executive Director is reviewing it

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1 today.
 2 JUDGE SCUDDAY: Okay. Well, then that
 3 should --
 4 MR. BLACKBURN: And then there's a
 5 separate supplement to --
 6 JUDGE SCUDDAY: No, he says it includes
 7 the supplement. The CD includes the supplement.
 8 Right?
 9 MR. MOORE: That's correct. It's
 10 everything.
 11 MR. BIRCH: Is the supplement clearly
 12 identified as a separate part of the --
 13 MR. MOORE: No, the application on CD
 14 includes everything. There's nothing that's
 15 red-lined, struck out or standout. It includes
 16 everything. Red-line, struck-out versions have been
 17 submitted to the agency and are certainly
 18 discoverable, but without a discovery request, we
 19 still have no problem producing that as we just don't
 20 have them with us here today.
 21 JUDGE SCUDDAY: All right. Can I ask in
 22 order to get that moving, would it be that difficult
 23 to provide it to the representatives of the other
 24 groups?
 25 MR. MOORE: We'll be happy to do so,

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1 Your Honor.
 2 JUDGE SCUDDAY: All right. Does that
 3 satisfy you, Mr. Blackburn?
 4 MR. BLACKBURN: Yes, Your Honor, but I
 5 would like the red struck-out version.
 6 JUDGE SCUDDAY: Yes, I understand.
 7 MR. BLACKBURN: I appreciate them
 8 bringing the full version today, but it would be
 9 helpful.
 10 JUDGE SCUDDAY: I understand.
 11 Mr. Birch?
 12 MR. BIRCH: Well, I'm still going to be
 13 a little confused about what we're looking at.
 14 JUDGE SCUDDAY: He just told you it's
 15 going to be a struck-out version to show what they're
 16 supplementing. What else do you want?
 17 MR. BIRCH: Well, I'm saying the DVD
 18 version they are providing us today.
 19 JUDGE SCUDDAY: No, he's going to
 20 provide the struck-out version to you.
 21 MR. BIRCH: All right.
 22 (Simultaneous discussion)
 23 JUDGE SCUDDAY: That's what he just
 24 agreed to do.
 25 MR. BIRCH: Thank you.

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1 JUDGE SCUDDAY: Okay. Anything else?
2 (No response)

3 JUDGE SCUDDAY: All right. Then we will
4 adjourn this proceeding, and I will get the responses
5 and replies, and then I will proceed to issue an
6 order. In the meantime, if Mr. Williams will submit
7 his request to me, then I can include that in my
8 order.

9 Anybody have anything else they want to
10 bring before me today?

11 (No response)

12 JUDGE SCUDDAY: We're adjourned. Thank
13 you very much.

14 (Proceedings concluded at 12:25 p.m.)
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1 C E R T I F I C A T E
2

3 STATE OF TEXAS)
4 COUNTY OF TRAVIS)
5

6 I, KIM PENCE, a Certified Shorthand
7 Reporter in and for the State of Texas, do hereby
8 certify that the above-mentioned matter occurred as
9 hereinbefore set out.

10 I FURTHER CERTIFY THAT the proceedings
11 of such were reported by me or under my supervision,
12 later reduced to typewritten form under my supervision
13 and control and that the foregoing pages are a full,
14 true and correct transcription of the original notes.

15 IN WITNESS WHEREOF, I have hereunto set
16 my hand and seal this 21st day of April 2008.
17
18

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