

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 5, 2007

TO: Persons on the attached mailing list.

RE: BFI Waste Systems of North America, Inc.
Permit No. 1447A

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the University Hills Branch of the Austin Public Library, 4721 Loyola Lane, Austin, Texas 78723-3939.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
 - (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant; the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be in writing and must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter: You should submit your request to the following address:

LaDonna Castañuela, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,



LaDonna Castañuela
Chief Clerk

LDC/er

Enclosures

MAILING LIST

for

BFI Waste Systems of North America, Inc.

Permit No. 1447A

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Proposed Amendment to TCEQ MSW Permit No. 1447
BFI Sunset Farms Landfill

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2007 SEP 28 PM 2:06

Application by §
BFI Waste Systems of North America, §
Inc. §
for TCEQ MSW Permit No. 1447A §

Before the
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY
CHIEF CLERKS OFFICE

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment on the application by BFI Waste Systems of North America, Inc. (BFI, applicant), for an amendment to TCEQ Municipal Solid Waste (MSW) Permit Number 1447 (BFI Sunset Farms Landfill), and on the Executive Director's preliminary decision on the application. As required by Title 30 of the Texas Administrative Code (30 TAC), Section (§) 55.156, the Executive Director prepares a response to all timely, relevant and material, or significant, comments before issuing a permit. The TCEQ Office of the Chief Clerk received timely comment letters, and comments at the public meeting held May 24, 2007, from eight elected officials¹ and from 86 concerned citizens representing themselves and various organizations². A comment was also received from the Applicant. This Response to Public Comment addresses all timely public comments received, whether or not withdrawn.

If you would like more information about this application or the permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found on the TCEQ Web site at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

The BFI Waste Systems of North America Sunset Farms Landfill is located in Travis County, Texas, approximately three quarters of a mile north of the intersection of Giles Road and U.S. Highway 290. The site is within the city limits and extra-territorial jurisdiction of the City of Austin. The address of the facility entrance is 9912 Giles Road.

The landfill is a Type I municipal solid waste landfill, with a total capacity of 27,703,735 cubic yards (waste and daily cover) and final maximum elevation of 720 feet mean sea level (msl) under current MSW Permit No. 1447. The landfill is currently authorized to operate 24 hours a day, seven days a week. The total area within the permit boundary is approximately 349.4 acres, of which approximately 251.5 acres is designated for waste disposal.

MSW Permit Amendment Application No. 1447A proposes to expand the landfill vertically by 75 feet to a new final maximum elevation of 795 feet msl, and increase landfill capacity by 10,630,000 cubic yards, to a total of 38,333,735 cubic yards (waste and daily cover). The operating hours, total area within the permit boundary, and area designated for waste disposal are not changed by this application. The application indicates that the site life will be approximately 8 years, and that waste will be accepted for disposal at this site at the initial rate of approximately 3,150 tons-per-day, increasing over time to a maximum acceptance rate of approximately

5,000 tons-per-day.

The permittee is currently authorized and would continue to be authorized to dispose of municipal solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, including household garbage, putrescible wastes, rubbish, ashes, brush, street cleanings, dead animals, construction-demolition waste, and yard waste. The facility may also accept regulated asbestos-containing material from municipal sources, Class 1 industrial nonhazardous solid waste that is considered Class 1 only because of asbestos content, Class 2 industrial nonhazardous solid waste, Class 3 industrial nonhazardous solid waste, and certain special wastes identified in Part IV of the application. Prohibited wastes include wastes identified in 30 TAC §330.5(e), regulated hazardous wastes (other than municipal hazardous waste or hazardous waste from conditionally exempt small quantity generators), radioactive wastes, polychlorinated biphenyl (PCB) wastes, nonhazardous Class 1 industrial wastes (other than that considered Class 1 only because of asbestos content), or any other wastes not authorized in the permit.

Procedural History

The Executive Director received BFI's application on January 20, 2006, and declared it administratively complete on January 31, 2006. The TCEQ Office of the Chief Clerk mailed Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit Amendment on February 6, 2006. The TCEQ Office of the Chief Clerk mailed an amended Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit Amendment on February 22, 2006. BFI published the amended notice in English in the *Austin American-Statesman* on February 27, 2006, and in Spanish in *El Mundo* on March 2, 2006.

The Executive Director completed the technical review of the application on March 21, 2007, and prepared a draft permit. The TCEQ Office of the Chief Clerk mailed Notice of Application and Preliminary Decision for a Municipal Solid Waste Permit on March 29, 2007. The TCEQ Office of the Chief Clerk mailed an Amended Notice of Application and Preliminary Decision and Notice of Public Meeting for Municipal Solid Waste Permit on May 7, 2007. BFI published its second notice April 26, 2007, May 3, 2007, May 10, 2007, and May 17, 2007, in English in the *Austin American-Statesman* and on the same dates in Spanish in *El Mundo*.

The Executive Director held a public meeting May 24, 2007, in Manor, Texas. The comment period was scheduled to close on June 18, 2007, but was extended by the Executive Director to close on June 29, 2007.

This application was administratively complete on or after September 1, 1999; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801 (76th Legislature, 1999).³

Rules, Law, and Records

The following Internet sites contain rules, statutory law, and other information that applies to this application.

Texas statutes

tlo2.tlc.state.tx.us/statutes/index.htm

TCEQ rules, codified in Title 30 Texas Administrative Code	www.tceq.state.tx.us/rules/index.html , and info.sos.state.tx.us/pls/pub/readtac\$ext.ViewTAC
Secretary of State	www.sos.state.tx.us
Federal statutes and rules	www.epa.gov/epahome/lawregs.htm

Because the Executive Director declared this permit application administratively complete on January 31, 2006, the application was reviewed under the 30 TAC Chapter 330 rules effective prior to March 27, 2006. All references to 30 TAC Chapter 330 rules are to those rules in effect prior to March 27, 2006. These rules are available at:

www.tceq.state.tx.us/permitting/waste_permits/msw_permits/msw_330rules_old.html

Commission records for this facility are available for viewing and copying at the TCEQ Central Office in Austin, 12100 Park 35 Circle, Building E, Room 103 (Central Records), and at the TCEQ Region 11 Office in Austin at 2800 S IH 35, Suite 100. The technically complete application is also available for review and copying at the University Hills Public Library in Austin, at 4721 Loyola Lane.

If you would like to file a complaint about an existing facility concerning its compliance with provisions of its permit or with TCEQ rules, you may contact the TCEQ at 888-777-3186 or the TCEQ Region 11 Office at 512-339-2929. Citizen complaints may also be filed on-line at www.tceq.state.tx.us/compliance/complaints/. If the Executive Director finds that a facility is out of compliance, it will be subject to enforcement action.

COMMENTS AND RESPONSES

Copies of comment letters are available for examination in the TCEQ Office of the Chief Clerk. Comments have been grouped under the following topics for response:

COMMENT	TOPIC
1	Opposition to Expansion
2	Public Meeting Date, Comment Period, and Issues for Hearing
3	Access to Application Materials
4	Representative of BFI with Legal Authority Over Application
5	Identification of Permittee and Site Owners
6	Permit Term, End Date for Waste Acceptance, and Coordination with CAPCOG
7	Regional Capacity, Facility as a Regional Landfill, and Planning for New Location
8	Applicable Municipal Solid Waste Rules
9	Low Economic Area, Health and Environmental Risks, and Environmental Impact Statement
10	Compliance History, Complaint Response, and Enforcement
11	Business Practices of Applicant
12	Application Format and Professional Responsibilities
13	Compatibility with Surrounding Community and Growth Trends
14	Facility Location

COMMENT	TOPIC
15	Buffer Zone and Easements
16	Ownership and Use of 54.13-acre Tract of Land Transferred from Giles Holdings to BFI
17	Size of Facility and Visual Impact
18	Health Effects from Waste Buried at Site, and Emissions
19	Restrictions on Types of Waste Accepted
20	Traffic and Routes to Site
21	Details in Site Operating Plan
22	Odor and Air Quality
23	Operation of Working Face
24	Dust
25	Operating Hours, Noise, and Vibrations
26	Tracking of Mud and Dirt onto Public Roadways
27	Windblown Trash, Roadside Trash, and Illegal Dumping
28	Scavenging Animals and Vectors
29	Liner and Leachate Collection System Design, Construction, and Stability
30	Effect of Vertical Expansion over Pre-Subtitle D Waste Areas
31	Daily Cover
32	Soil Stockpiles
33	Drainage and Erosion Controls
34	Cover Inspection and Repair
35	Leachate Management and Contaminated Water Management
36	Contaminated Water Runoff
37	Final Cover Design
38	Subsurface Investigation and Groundwater Monitoring
39	Landfill Gas Management
40	Wetlands, Habitat, and Endangered Species Protection
41	Financial Assurance
42	Recycling
43	Post-Closure Care, and Use of Land After Closure
44	Comments by Applicant

COMMENT 1 Opposition to Expansion

Four elected officials and 62 concerned citizens explicitly stated opposition to the proposed landfill expansion. None of the comments from elected officials or concerned citizens expressed support for the expansion. Several commentors requested that the Commission deny the proposed expansion, as well as future expansions of the BFI Sunset Farms Landfill or the adjacent operating landfill.

RESPONSE 1

The Executive Director acknowledges the commentors' opposition. The TCEQ is responsible

for reviewing the application for compliance with state statutes and TCEQ's rules. Accordingly, the TCEQ does not have jurisdiction to prohibit owners and operators from seeking an authorization; nor can the TCEQ prohibit owners and operators from receiving authorization if they comply with all statutory and regulatory requirements. The Executive Director has determined that the application complies with applicable laws.

COMMENT 2 Public Meeting Date, Comment Period, and Issues for Hearing

Several commentors registered their concern that the public meeting notices issued for this application were confusing, that the deadline for public comments was unclear, and that the May 24, 2007, date for the public meeting was inconvenient. Several commentors also asked which comments would be responded to and could be considered if a contested case hearing is granted. One commentor asked why commissioners don't attend the public meeting since the Executive Director may only make recommendations to the Commission on an application.

RESPONSE 2

The TCEQ regrets any confusion and inconvenience regarding the public meeting and comment period. BFI requested the TCEQ Office of Public Assistance to schedule a public meeting rather than wait for public meeting requests and requested that the TCEQ issue an Amended Notice of Application and Preliminary Decision and Notice of Public Meeting. BFI arranged the public meeting date with the Office of Public Assistance and then published an amended notice. The last date of publication was May 17, 2007, which made the deadline for public comments June 18, 2007 (the first business day on or after the 30th day after the last date of publication). At the request of several interested parties including Texas Senator Kirk Watson, the deadline for comments was extended to June 29, 2007.

The Commission considers all timely received, relevant and material, or significant public comments, including those submitted in writing and those stated during the formal comment period at the public meeting held on May 24, 2007. TCEQ rules prohibit commissioners from considering comments on an application until after that application is formally referred to them, a procedural step completed after the Executive Director evaluates public input. It would not be practical for the commissioners to attend the 300-400 public meetings held annually around Texas for air quality, water quality, and hazardous and municipal solid waste applications.

COMMENT 3 Access to Application Materials

Several commentors indicated that persons living in neighborhoods surrounding the facility did not have access to the application and revisions to the application or did not have enough time to critically evaluate the information. Travis County Judge Samuel Biscoe commented that the County requested and received the initial application in its entirety, but not the revisions, and that it reserves the right to review and comment on information in those documents. One commentor asked why the applicant was not required to provide an electronic copy of the application on a publicly accessible Internet site.

RESPONSE 3

The notices for this application indicated that the application is available for viewing and copying at the University Hills Branch of the Austin Public Library, 4721 Loyola Lane, Austin, Texas, approximately two and one-half miles southeast of the BFI Sunset Farms Landfill.

Access to the library is free to all persons, whether or not they are residents of the City of Austin. BFI indicated that its staff placed the initial application, all revisions, and the technically complete application in the library.

The comment from Judge Biscoe reported that the County requested from the applicant and received the initial volumes of the application, but did not state whether the County formally requested any of the revisions or the technically complete application from BFI. The Executive Director did not receive a request from Travis County to have BFI supply a copy of the application, revisions, or technically complete application to the County.

MSW rules applicable to BFI's application do not require the application and revisions to be provided on the Internet.

COMMENT 4 Representative of BFI with Legal Authority Over Application

One commentator noted that the signatory of the original application, dated August 1, 2005, Mr. Heath Eddlebutte, is apparently no longer associated with the application. The commentator asked who is now the person with legal authority over the application and if the application has been updated.

RESPONSE 4

The person who now has legal authority over the application is Mr. Brad Dugas, South Central Texas District Manager, BFI Waste Systems of North America, Inc. BFI updated the application to reflect the change, as can be seen in the technically complete application.

COMMENT 5 Identification of Permittee and Site Owners

Several commentators noted that the draft permit and Notice of Application and Preliminary Decision identified two entities (BFI Waste Systems of North America, Inc., and Giles Holdings, L.P.) as both "permittee" and "site owner," and commented that the permit should be changed to clarify who is in what role, and who will be legally responsible for the facility. Several commentators also asked for clarification about the role of Mobley Chemicals, Inc. (identified in the property owner affidavit section of the permit application) and the role of Tiger Corporation (the entity identified as site owner in the original permit issued in 1982 and in the permit transfer issued in 1997). One commentator asked why the property ownership has changed. Several commentators asked about the relationship between BFI and Allied Waste Industries.

RESPONSE 5

The Executive Director's draft permit used a format that did not differentiate the permittee and site owner. To clarify this issue, the Executive Director has changed the draft permit to: (1) identify the Applicant, BFI Waste Systems of North America, Inc., as the sole permittee, and (2) identify BFI Waste Systems of North America, Inc., and Giles Holdings, L.P., together as property owners. These changes reflect the information submitted on the Part A application form in Part I of the permit application. The permittee is responsible for the operation, closure, and post-closure care facility. However, under 30 TAC §330.52(b)(7), the TCEQ may also hold the property owner of record either jointly or severally responsible for the operation, maintenance, and closure and post-closure care of the site.

Part I.J of the application explains that Mobley Chemicals, Inc., became Texas Landfill

Consultants, Inc., which in turn became Giles Holdings, L.P., and that all assets of Mobley Chemicals, Inc., are now held by Giles Holdings, L.P.

The application does not detail the history and role of Tiger Corporation. BFI informed the Executive Director that Tiger Corporation was originally a partnership of BFI and the Mobley family and that BFI purchased the Mobley interests in Tiger, which included an option to purchase the land. After BFI did not exercise the land purchase option, BFI assimilated Tiger Corporation's interests in the permit into BFI. The land was purchased instead by Mobley, whose assets are owned by Giles Holdings. Giles later sold approximately 54.13 acres of the land to BFI. The Executive Director does not know exact reason for the sale as 30 TAC §330.52(b)(7) requires that the permit application identify the property owner, but does not require an explanation of why ownership may have changed.

Section I.L in Part I of the application states that BFI Waste Systems of North America, Inc., is a subsidiary of Allied Waste Industries.

COMMENT 6 Permit Term, End Date for Waste Acceptance, and Coordination with CAPCOG

Several commentors expressed concern that the proposed permit has no expiration date and/or stated their wish that the landfill be closed immediately, or as soon as possible. Several other commentors, including public officials expressed concern about potentially conflicting statements in the application regarding expected site life and date of last receipt of wastes. Commentors also asked whether the agreement between BFI and CAPCOG (Capitol Area Council of Governments) regarding conformance with the regional solid waste management plan (RSWMP) was meaningful or enforceable. One commentor expressed concern that the Final Closure Plan does not indicate the closure date.

RESPONSE 6

MSW permits are generally issued for the life of a site, including the closure and post-closure care periods. MSW permits must remain in place after the last receipt of waste and after closure of a facility while permit-required activities, such as post-closure care monitoring and maintenance continue.

The original application lacked definitive evidence of conformance with the RSWMP and indicated a site life extending to 2018, with no certain end date for last receipt of wastes. The technically complete application included a conditional agreement between BFI and CAPCOG regarding conformance with the RSWMP. Under the agreement, BFI promised to cease accepting waste on or before November 1, 2015, provided the terms of the agreement were met. The conditional agreement was incorporated into the draft permit as a Special Provision. At the public meeting on May 24, 2007, BFI stated unconditionally that it would cease accepting waste on or before November 1, 2015. Therefore, the Executive Director has revised the draft permit to add a Special Provision specifying that BFI receive no waste after November 1, 2015. Although the commission does not generally have authority to enforce agreements between other parties, the deadline for receiving waste is now enforceable as a permit provision.

The Final Closure Plan (Attachment 12 to Part III of the application) details procedures and specifications for closure in accordance with 30 TAC §330.253, which does not require the plan to specify a date for last receipt of waste or initiation of final closure.

COMMENT 7 Regional Capacity, Facility as a Regional Landfill, and Planning for New Location

Several commentors stated that Travis County has sufficient landfill capacity and that expansion of the BFI Sunset Farms Landfill is not necessary. Other commentors recommended that BFI not operate the facility as a regional landfill and not accept waste from communities that do not have recycling programs. One commentor observed that BFI solicits waste from outside Travis County and asked whether BFI, Travis County, or the City of Austin subsidize the waste disposal costs of the other counties. One commentor asserted that the current landfill has sufficient capacity to operate until 2015 and that there is no need for expansion. Several commentors asked why the applicant, anticipating need for more capacity, has not found a new location to permit a new facility. In their opinion, allowing an expansion decreases the urgency to find a new location and prolongs operations at the current site. Travis County Commissioner Davis stated that the County offered financial assistance to help BFI find a new site, but that BFI did not accept the assistance. Several commentors opposed regional landfills in Travis County, new facilities in certain places in Travis County, and new landfills in Travis County.

RESPONSE 7

Local and regional solid waste planning (including capacity planning and interregional waste transfer) is a responsibility of local governments. The Capitol Area Council of Governments, which has jurisdiction over regional solid waste planning in this area, has conditionally determined that BFI's application to expand Sunset Farms Landfill complies with the regional solid waste management plan for Travis County and surrounding areas. The TCEQ does not have authority to consider the need for landfill capacity in deciding whether to issue an MSW landfill permit. The TCEQ does not have authority to restrict the area a landfill serves or consider the service area in deciding whether to issue a permit. The commission considers the application filed and does not have authority to require an applicant to apply to locate a landfill in a different location.

COMMENT 8 Applicable Municipal Solid Waste Rules

Several commentors expressed concern that the Executive Director processed BFI's application under the MSW rules that were in effect before March 27, 2006, instead of the revised rules that became effective on March 27, 2006 (2006 Revisions).

RESPONSE 8

BFI's application is subject to the rules in effect before the 2006 Revisions as reflected in current 30 TAC §330.1(a)(2). Applications for new permits and major amendments to existing permits that were administratively complete as of the effective date of the 2006 Revisions shall be considered under the former rules unless the applicant elects otherwise. The Executive Director received BFI's amendment application for Sunset Farms Landfill on January 20, 2006, and declared it administratively complete on January 31, 2006. Therefore, the Executive Director properly processed the application under the MSW rules in effect before March 27, 2006. The Site Operating Plan (SOP) meets revised SOP requirements that became effective December 2, 2004, which were not significantly changed by the subsequent 2006 Revisions. In addition, according to §330.1(a)(2) in the 2006 Revisions, the facility will be required to submit modifications required by the 2006 Revisions within one year after the Commission's decision on the application has become final and appealable, unless a longer period of time is specified

for the particular requirement.

COMMENT 9 Low Economic Area, Health and Environmental Risks, and Environmental Impact Statement

Several commentors expressed the feeling that the area in which the landfill is located is targeted for waste disposal because of perceived low economic status of residents. Many commentors asked if the State had performed any environmental assessments or comprehensive health studies to determine what individual and/or cumulative risks and impacts may be caused by the Sunset Farms Landfill, adjacent landfills, and related activities (such as emissions from vehicles going to and from the landfill, and landfill gas-fueled electrical generation facilities), as well as effects from other traffic that will be using new and projected highways in the area.

RESPONSE 9

The TCEQ considers MSW landfill applications under the commission's rules which apply to landfill applications. When evaluating permits, TCEQ takes into consideration the surrounding community regardless of its socioeconomic status.

The National Environmental Policy Act (NEPA) requires federal agencies to integrate environmental values into their decision-making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. To meet this requirement, federal agencies must prepare detailed statements known as an Environmental Impact Statements (EIS) for projects receiving federal funding. An EIS is not required for state actions such as considering this application.

COMMENT 10 Compliance History, Complaint Response, and Enforcement

Many commentors stated that the facility has a poor compliance history, with ongoing problems including odors, uncontrolled storm water runoff and sediment, and windblown trash, and urged that the TCEQ not grant a permit amendment which they believe would worsen existing problems. Several commentors stated that they have contacted the landfill operator when problems occur, but in their opinion the operator is not responsive or does not correct the problem. Commentors also stated that they have contacted the TCEQ and gotten no formal response on complaints, or by the time an investigator from the TCEQ is able to respond, the problem the complainant experienced (such as odor) has gone, and/or that the TCEQ fails to identify a violation or enforce, giving the perception of being more interested in permitting than addressing complaints and protecting citizens from bad practices. One commentor expressed concern that the TCEQ does not have enough staff to pursue enforcement. Another commentor stated that the City of Austin renewed a contract with facility but did nothing to curtail behaviors that threaten health and property values.

RESPONSE 10

During the technical review, a compliance history review of the company and the site is conducted based on the criteria in 30 TAC Chapter 60. These rules may be found on the TCEQ website at www.tceq.state.tx.us/rules/index.html, and on the Texas Secretary of State website at [info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC). The compliance history for the company and site is reviewed for the five-year period prior to the date the permit application was received by the Executive Director. The compliance history includes multimedia compliance-related components about the site under review. These components include the following: enforcement

orders, consent decrees, court judgments, criminal convictions, chronic excessive emissions events, investigations, notices of violations, audits and violations disclosed under the Audit Act, environmental management systems, voluntary on-site compliance assessments, voluntary pollution reduction programs and early compliance.

The BFI Sunset Farms Landfill permit amendment application was received after September 1, 2002, and the company and site have been rated and classified pursuant to Title 30, Chapter 60 of the Texas Administrative Code. A company and site may have one of the following classifications and ratings:

CLASSIFICATION	RATING
High	< 0.10 (above-average compliance record)
Average by Default	3.01 (for sites which have never been investigated)
Average	0.10 < Rating < 45 (generally complies with environmental regulations)
Poor	45 < Rating (performs below average)

This site has a rating of 17.77 and a classification of Average. The company rating and classification for BFI Waste Systems of North America, Inc. (the average of the ratings for all sites the company owns), is 2.59 and Average. The company rating and classification for Giles Holdings is 17.77 and Average.

The MSW rules and air rules that apply to landfills require procedures to be included in the permit for various monitoring and inspection activities, and response actions depending on circumstances, which are enforceable permit provisions. However, the TCEQ is not involved in direct contacts between neighbors or other potentially affected parties and a permitted facility, and does not have rules requiring formal procedures for those contacts and responses.

The TCEQ regrets that some commentors have not been satisfied with the commission's response to complaints about the facility. Commission inspectors have been actively involved responding to complaints about this facility, and appropriate compliance actions have been taken by the commission in response to complaints.

The TCEQ does not have jurisdiction over and is not involved in contracts between waste management entities, such as BFI, and customers, such as the City of Austin. The decision of a customer to renew a contract is not a matter considered in the permitting process, and therefore information relating to the matter is not required in the permit application.

COMMENT 11 Business Practices of Applicant

One commentor alleged that the applicant has a history of unlawful business practices, and another questioned whether the facility "cuts corners" to lower its operating costs to be able to charge a lower disposal fee than other landfills.

RESPONSE 11

As stated in the response to comments regarding compliance history, an applicant's compliance history is considered when deciding whether to grant an application to amend a permit. The compliance history of a company and facility is based on the criteria in 30 TAC Chapter 60, regarding compliance with matters within the jurisdiction of the TCEQ, which does not ordinarily include business practices. In addition, the setting of disposal fees is at the discretion

of the operator, who must operate the facility in compliance with applicable rules and regulations and the permit, regardless of what disposal fees it charges customers.

COMMENT 12 Application Format and Professional Responsibilities

One commentor expressed concern that two engineers signed and sealed the application without specifying who is taking responsibility for what part, that both an engineer and a geoscientist signed and sealed the geology report (Attachment 4 to Part III of the application) without specifying who is taking responsibility for what part, and that only title sheets were signed and sealed. The commentor also stated that figures in Attachment 4 do not have page numbers.

RESPONSE 12

The application complies with the sealing requirements. TCEQ rules at 30 TAC §330.51(d)(1) require the responsible engineer to seal, sign, and date each sheet of engineering plans, drawings, and the title or contents page of bound reports; 30 TAC §330.56(d) requires that a qualified groundwater scientist (who may be a licensed engineer or licensed geoscientist) prepare and sign the geology report, except for certain reports within the geology report that must be signed and sealed by an engineer. Documents submitted in three-ring binders are considered bound reports; therefore a person sealing a title page is accepting responsibility for the entire document, unless noted otherwise. If more than one engineer or geoscientist seals a document, it is taken to mean that each is accepting full responsibility for the contents as work done by them or under their supervision, unless notes are included to specify otherwise. Seals on individual drawings and other items within the application indicate that a person is responsible for that particular item, whether or not they are sealing the title page of the document.

Each figure in Attachment 4 to Part III of the application bears a separate figure number following a logical numbering scheme, and each is listed in the table of contents. Each page can be referenced by its unique number, and therefore is considered to meet the requirement of 30 TAC §330.51(e)(3) that all pages contain a page number.

COMMENT 13 Compatibility with Surrounding Community and Growth Trends

Most commentors expressed the opinion that the landfill is incompatible with the surrounding community and growth trends, and that the landfill does and would continue to impact the quality of the environment and quality of life in the surrounding area. Commentors noted that the area is in the desired development zone for the Austin area, and expressed concern that the presence of the BFI and other landfills harms property values and hampers the ability of the area to grow and prosper, and ultimately will undermine the tax base for the area. Several commentors stated that the application did not provide sufficient or complete information regarding compatibility, and one commentor stated that the maps in the application are old and do not reflect present land use or ownership. One commentor asked why more building permits are issued for areas close to the landfill.

RESPONSE 13

The TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute and rules. Accordingly, the TCEQ does not have jurisdiction to consider effects on property values when determining whether to approve or deny a permit application. Rule 30 TAC §330.53(b)(8) requires that the Commission consider the impact of a site upon a city,

community, group of property owners, or individuals in terms of compatibility of land use, zoning, community growth patterns, and other factors associated with the public interest. To assist the Commission in considering these issues, the applicant is required to include a description of zoning at the site and in the vicinity; character of the surrounding land uses within one mile of the proposed facility; growth trends and the directions of major development for the nearest community; proximity to residences, business establishments, and other uses within one mile, such as schools, churches, cemeteries, historic structures and sites, archaeologically significant sites, and sites having exceptional aesthetic quality; and information regarding all known wells within 500 feet of the site. The Executive Director has determined that the required information concerning land use was submitted in the application and that it was current at the time the application was declared technically complete. The land use information submitted does not justify the commission denying the application based on the landfill being an incompatible land use.

COMMENT 14 Facility Location

One commentor stated that the facility location in the draft permit is incorrect, but did not specify what information was incorrect.

RESPONSE 14

The location specified in the draft permit – approximately three quarters of a mile north of the intersection of Giles Road and U.S. Highway 290, in Travis County, Texas – was checked and verified to be accurate (representing the distance from the intersection of Giles Road and U.S. Highway 290 to the center of the facility).

COMMENT 15 Buffer Zone and Easements

Several commentors expressed concern that the buffer zone around the landfill is not adequate to prevent odors and runoff from affecting adjacent properties and roadways, nor is it adequate to allow flexibility to adapt to regulatory updates or deal with unanticipated emergencies. One commentor stated an opinion that the application does not comply with the rules because the buffer zone is not labeled on figures and that a perimeter access road is not shown, and that there is no discussion of easements in Part III of the application. Several commentors asked if Blue Goose Road is considered part of the buffer zone, and how that could be allowed.

RESPONSE 15

The buffer zone rule at 30 TAC §330.121(b) requires that a minimum separating distance of 50 feet be maintained between solid waste processing and disposal activities and the boundary of the site. The Site Operating Plan (SOP) acknowledges that requirement, and Attachment 1, Sheet 2 to Part III of the application shows a zone at least 50 feet wide between the permit boundary and the landfill footprint and other processing and disposal activities. The buffer zone is entirely within the landfill permit boundary on land owned by BFI and Giles Holdings, and does not include any part of Blue Goose Road or any other public right of way. Rule 30 TAC §330.121(b) requires that the buffer zone provide for safe passage for fire-fighting and other emergency vehicles. The placement of access roads is determined by the applicant based on design and operational considerations, and is not prescribed in rule. Rule 30 TAC §330.121(a)

establishes operating requirements for easements; §330.52(b)(4) and §330.53(b)(7) specify that easements should be documented in Parts I and II of the application. Easements at the BFI Sunset Farms Landfill are documented in a drawing in Section I.I in Part I of the application, which is referenced on figures in Section II.C of Part II of the application and in Figure 14B-1 in Attachment 14 to Part III of the application. The location of an underground utility trench, discussed in Section 2.6 of Attachment 14, is shown in Figure 14A-1. The application meets the requirements for easements and buffer zones, and it includes adequate provisions to control odors and runoff.

COMMENT 16 Ownership and Use of 54.13-acre Tract of Land Transferred from Giles Holdings to BFI

Several commentors asked what was the purpose of BFI's purchase of the 54.13-acre tract in the northeast quadrant of the site (also referred to as 54.1 acres and 54.119 acres in Section I.B-2 and I.J-3 in Part I of the application) from Giles Holdings, how the change of ownership affects commitments or agreements made with the City of Austin or Travis County, what part of the facility is located on the tract, what plans BFI may have for this part of the facility, and who has jurisdiction over the drainage area. One commentor noted the property owner affidavit for the 54.13 acres (in Section I.J-4 in Part I of the application) states that an affidavit will be filed with the county deed records advising that the land has been used for a solid waste facility, and asked if the 54.13 acres has been or will be part of disposal area.

RESPONSE 16

The location of the 54.13-acre tract is shown in Figure I.F in Part I of the application. The reason for BFI's purchase of the tract is not stated in the application and is not required by the MSW rules. According to the application, the 54.13 acres is outside the landfill footprint and therefore not to be used for disposal. However, because the tract is within the permit boundary, the property owner is required by 30 TAC §330.52(b)(7) to include a property owner affidavit for the tract, acknowledging that the owner has a responsibility to file the specified affidavit with the county deed records. The portion of the 54.13-acre tract closer to the landfill is being used for a detention pond for runoff from the facility, and the portion adjacent to Blue Goose Road is used for maintaining the natural drainage through the site. The application does not indicate any other plans for the tract. Details regarding drainage are contained in Attachment 6 to Part III of the application.

The 54.13-acre tract is within the city limits and extraterritorial jurisdiction of the City of Austin, and within Travis County, and would need to comply with any drainage ordinances of those local governments. In addition, according to Section II.H in Part II of the application, several areas within the tract are considered jurisdictional wetlands that must be managed in accordance with rules administered by the U.S. Army Corps of Engineers (USACE). Section II.K of Part II contains a letter documenting the applicant's coordination with USACE. Any commitments or agreements made by BFI with the City of Austin or Travis County would need to be enforced by those entities.

COMMENT 17 Size of Facility and Visual Impact

Many commentors expressed concern about the height and size of the landfill after the proposed expansion, its appearance, and the visual impact it will have on the surrounding area, and the ability to screen operations from view. Several commentors expressed their wish that the sides

of the landfill facing the public be landscaped. Several commentors expressed concern that visual impact of the proposed height increase will deter visitors from their business and historical sites. One commentor asked how the expansion might be expressed in acres, and another asked if any part of the landfill would be deeper as a result of the proposed expansion.

RESPONSE 17

The TCEQ's rules include design requirements that apply to all sizes of landfills, but the rules do not set a maximum size limit for landfills.

The applicant has proposed in Section 28 of the Site Operating Plan (SOP), that parts of the landfill at low elevations and at natural ground level will be screened by landscaping in the northeast part of the site along Blue Goose Road. Waste deposited on elevated portions of the landfill will be screened by daily, intermediate, and final covers, described in the SOP and in the Final Closure Plan. The Executive Director has not determined that any additional screening should be required under 30 TAC §330.138.

The proposed expansion would add 10,630,000 cubic yards of landfill volume (including cover), on top of most of the existing landfill, which has a permitted disposal area (footprint) of about 251.5 acres. The proposed amendment will not change the footprint, and does not propose to deepen any cells (all cell excavation and liner construction will have been completed under the existing permit before the final decision on the proposed amendment).

COMMENT 18 Health Effects from Waste Buried at Site, and Emissions

Many commentors expressed concern that the landfill causes and will cause adverse health effects on the surrounding community, some requesting that a health impact study be performed before issuance of a permit for the facility. Several commentors expressed concern about hazardous waste that may have been buried at site of the BFI Sunset Farms Landfill and/or the adjacent landfill, and some stated that it needs to be removed. Some questioned how incoming waste is monitored and how BFI will ensure prohibited waste is not disposed of in the landfill. Others expressed concern that waste currently acceptable in an MSW landfill might turn out to be a big health risk in the future. One commentor expressed the opinion that because MSW landfills can accept some hazardous wastes (household hazardous waste, and hazardous waste from conditionally exempt small quantity generators [CESQGs]), the landfills, the leachate, and the air emissions should be classified as hazardous.

RESPONSE 18

The Executive Director determined that the proposed landfill was designed in compliance with the Texas Solid Waste Disposal Act (TSWDA), and with the MSW rules and regulations developed to protect human health and the environment. The MSW rules do not require health impact studies to be conducted for MSW landfill applications. Monitoring of groundwater for release of contaminants and monitoring for landfill gas emissions will be required while the facility is active and during the post-closure care period (30 years unless specified otherwise).

The TCEQ does not have any information indicating that hazardous waste (other than household hazardous waste, and hazardous waste from CESQGs) has been disposed at the site. The Site Operating Plan (Part IV of the application) contains the procedures that will be used to detect and prevent disposal of prohibited wastes.

Whether MSW landfills, the leachate, and resulting air emissions should be classified as hazardous is not relevant to whether this application complies with the commission's MSW landfill permitting rules. In accordance with Title 40 Code of Federal Regulations (CFR), Part 261, Section 261.4(b), leachate and gas condensate from a municipal solid waste landfill is excluded from regulation as a hazardous waste provided the leachate or gas condensate is not characteristically hazardous (that is, not ignitable, reactive, corrosive, or toxic). Air emissions from the landfill are regulated under federal rules in 40 CFR Part 60, Subpart WWW (Standards of Performance for Municipal Solid Waste Landfills), adopted by reference by the state, which require active gas collection and control (including reduction of non-methane organic compounds by 98 weight-percent or to less than 20 parts per million by volume), monitoring, and corrective action as needed to ensure compliance.

COMMENT 19 Restrictions on Types of Waste Accepted

One commentator suggested that the landfill should restrict acceptance of sludge and/or liquid wastes, industrial wastes, special wastes, contaminated soils, asbestos-containing materials, and prohibited wastes, and should install equipment to detect radioactive materials. The commentator also asked if the facility has ever received "dangerous material" during the last 26 years, and if so, the details regarding the case and the fate of the waste.

RESPONSE 19

According to the Part A application form in Part I of the application, and the Site Operating Plan (SOP) (Part IV of the application), the applicant proposes to continue to accept the wastes currently authorized, including municipal solid waste, regulated asbestos-containing material from municipal sources, Class 1 industrial nonhazardous solid waste that is considered Class 1 only because of asbestos content, Class 2 industrial nonhazardous solid waste, Class 3 industrial nonhazardous solid waste, and certain special wastes. The facility is not authorized and will not be authorized to accept prohibited wastes identified in 30 TAC §330.5(e), hazardous wastes (other than household hazardous waste and hazardous waste from conditionally exempt small quantity generators [CESQGs]), radioactive wastes, polychlorinated biphenyl (PCB) wastes, nonhazardous Class 1 industrial wastes (other than that considered Class 1 only because of asbestos content), or any other wastes not identified in the permit. The facility may accept sludge and liquid waste that has been solidified, and tested and determined not to contain free liquids before disposal. The SOP indicates that automated radiation detection equipment will be installed at each incoming waste scale to allow detection of radioactive materials. The commission's rules authorize MSW landfills to accept the types of waste that the applicant proposes to accept.

The Executive Director is not certain what materials the commentator would include in the definition of "dangerous material," however, as explained above, the facility is not authorized to accept regulated hazardous wastes, radioactive wastes, PCB wastes, or nonhazardous Class 1 industrial wastes, and the existing landfill has not reported receiving or disposing of such wastes.

COMMENT 20 Traffic and Routes to Site

Many commentators expressed concern regarding traffic to and from the facility, including truck traffic on back roads and bridges that are too narrow to allow safe passing, trucks exceeding speed limit and/or driving unsafely, deterioration of roads, illegal left turns out of the facility, and truck drivers not watching as they pull into or out of the facility. Several commentators stated

opinions that information on roads and traffic was insufficient, that access roads to the facility have not been fully identified by the applicant, or that the traffic study does not take into account upcoming highway construction projects. One commentor asked how much traffic will increase due to the proposed expansion and how the applicant will minimize the impact. Several commentors asked how BFI will ensure that trucks to and from the facility use the main access routes identified in the application and not alternate routes.

RESPONSE 20

The application includes information related to adequacy of access roads and coordination with the Texas Department of Transportation (TxDOT). Rule 30 TAC §330.53(b)(9) requires an applicant for a new permit or permit amendment to provide data, including availability and adequacy of roads that the applicant will use to access the site, volume of vehicular traffic on access roads within one mile of the proposed facility, and volume of traffic expected to be generated by the facility. The information is provided in Section II.E in Part II of the application. According to the Part A application form in Part I of the application, and the traffic study in Section II.E in Part II of the application, the traffic impact by the facility is estimated to be 1205 vehicles per day at the beginning of operation under the proposed amendment (equivalent to the number of vehicle trips per day in 2004), increasing to 1344 vehicles per day at the peak of operations. The application indicates that the primary access route to the facility is and will continue to be from U.S. Highway 290 via Giles Road (referred to as Giles Lane in the application). The applicant advised the Executive Director verbally that it restricts trucks operated by BFI to this route, but is not able to restrict the routes taken by other customers. The application includes information required by §330.51(b)(6)(C) that documents coordination with TxDOT for traffic and location restrictions. Section II.K of Part II of the application includes a letter dated October 31, 2006 from the TxDOT Austin District indicating no objections to the traffic study provided by the applicant. The application includes an adequate demonstration addressing transportation issues.

The applicant must also comply with any local city or county regulations that apply related to transportation. If garbage trucks or other vehicles are observed operating in an unsafe manner, or if trucks are traveling on roads in violation of restrictions, this information may be reported to local law enforcement agencies (police or sheriff). The TCEQ does not have jurisdiction to limit routes taken by garbage trucks. If roads need repair, this information should be reported to the city, county, or state road maintenance department.

COMMENT 21 Details in Site Operating Plan

One commentor stated that the equipment list in the Site Operating Plan (SOP) (Part IV of the application) does not match the waste acceptance rate; that the fire protection plan does not contain any information on working face size or calculations to show that six inches of soil cover can be applied to the working face within one hour; and that the discussion of easements and buffer zones in the SOP does not specifically describe them nor identify a drawing that shows them, and does not explain how the buffer zone will provide for safe passage for fire-fighting and other emergency vehicles nor reference perimeter access. Another commentor asked what measures will the applicant use to prevent fires in the old, pre-Subtitle D area of the landfill, and also stated that nothing in the application addresses how they are going to manage the potential increased impacts that would result from expansion.

RESPONSE 21

The commentor questioning the equipment list did not specify how the list does not match the waste acceptance rate. Rule 30 TAC §330.114(2) requires the applicant to describe the minimum number, size, type, and function of the equipment to be used. The applicant provided an equipment list in Figure 4 in the SOP (and also in Section I.L in Part I of the application), which shows the types and number of pieces of equipment that will be used for three ranges of waste acceptance rates, up to the maximum rate anticipated. The SOP includes information in Section 5 and in Appendix A regarding the working face size and calculations to show that six inches of soil cover can be applied to the working face within one hour.

The rule regarding easements and buffer zones, at 30 TAC §330.121, specifies requirements for easements and buffer zones, but does not specifically state that the SOP must describe the features nor explain how they meet the requirements. Easements are shown in a drawing in Section I.I in Part I of the application, which is referenced on figures in Section III.C (regarding land use) of Part II of the application and in Figure 14B-1 in Attachment 14 to Part III of the application; the location of an underground utility trench, discussed in Section 2.6 of Attachment 14, is shown in Figure 14A-1. The buffer zone for the landfill is shown on Attachment 1, Sheet-2 to Part III, and is at least 50 feet wide between the permit boundary and the landfill footprint and other processing and disposal activities.

Fire protection in the old, pre-Subtitle D area of the landfill is provided by existing intermediate cover.

Procedures to control potential impacts from operation of the landfill are contained in the SOP. The SOP complies with the rules and operating the facility in accordance with these procedures should control impacts from the proposed expansion.

COMMENT 22 Odor and Air Quality

Many commentors stated that the facility has been and continues to be a source of noxious odors affecting people at their residences, businesses, schools, and public places, and that at times the odors are too unbearable to be able to be outside or to have windows open. Many expressed the concern that as the landfill grows the odor problem will worsen and lead to an extended period of odor releases as had occurred some years ago, which one commentor explained BFI battled and was barely able to control. Several commentors suggested that the odor management plan is insufficient given the historical odor problems, and that the applicant should be required to provide an odor management plan under the revised MSW rules (the 2006 Revisions).

Several commentors asked whether odors are caused by excessive amounts of leachate on the liner, or if they are escaping from the leachate collection system, or emanating from leachate recirculated on the working face. One commentor asked if odors are coming from trucks bringing in waste from distant collection points, and what is the most distant collection point from which waste is brought to the BFI Sunset Farms Landfill.

Some commentors expressed concern about the health effects of short term and long-term exposures to the odor-causing compounds and gaseous pollutants that may be emitted along with the odor.

Commentors also asked how gas releases are monitored; what is present in the on-site misters

that are used to combat odors; and what steps will BFI be required to take to minimize the effect on the air quality of the increased numbers of diesel trucks in combination with dust and landfill gases.

RESPONSE 22

The procedures for odor management specified in Section 15 of the Site Operating Plan (SOP) (Part IV of the application) provide adequate control of odors in accordance with 30 TAC §330.125(b), effective December 2, 2004. The 2006 Revisions moved the requirements for odor management to 30 TAC §330.149, but did not change the requirements. If the owner or operator follows these procedures, odors from the landfill should be adequately controlled. If persons have any complaints or concerns regarding operation of the facility, please contact the TCEQ Region 11 office in writing or in person at 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, or by telephone at (512)339-2929. Information on TCEQ procedures for investigating odor complaints is available on the TCEQ Internet site at www.tceq.state.tx.us/compliance/complaints/protocols/odor_protodef.html.

The Leachate and Contaminated Water Plan (Attachment 15 in Part III of the application) details the design and operating procedures for the leachate collection system (LCS). The Executive Director has determined that the design and plan meet the requirements of 30 TAC §330.56(o), §330.200(a)(2), and §330.201, and therefore does not expect excessive amounts of leachate to accumulate on the liner. The Executive Director does not expect gases to escape from the LCS because according to the Landfill Gas Management Plan (LGMP) (Attachment 14 to Part III of the application), the leachate collection system will be connected to the gas collection and control system at the cleanout risers for the LCS. The application does not explicitly state that the facility will or will not recirculate leachate, however, the applicant advised the Executive Director that the facility ceased recirculating leachate in late 2001, and does not intend to do so in the future. To clarify this issue, the Executive Director has revised the draft permit to add a Special Provision specifying that leachate and gas condensate shall not be recirculated.

The MSW rules do not require an applicant to specify waste collection points or service areas, and therefore the Executive Director does not know the most distant collection point contributing waste to the applicant's facility. However, all wastes must be managed in accordance with the odor control procedures specified in the SOP (immediate burial of particularly odorous wastes with other waste or soil), regardless of hauling distance. Rule 30 TAC §330.33(a) requires that waste hauling vehicles be maintained in a sanitary condition to preclude odors.

The MSW rules do not require health impact studies; however, if the proposed landfill is constructed and operated as shown in the application and as required by the regulations, the Executive Director expects human health and the environment to be protected now and in the future.

Section 3 of the LGMP specifies that gas releases or migration in the subsurface will be monitored by permanent gas monitoring probes that are or will be installed at the perimeter of the facility, as required by 30 TAC §330.56(n). In addition, Section 6 of the LGMP indicates that the facility is subject to federal air quality rules in 40 CFR Part 60, Subpart WWW (Standards of Performance for Municipal Solid Waste Landfills), which include requirements for monitoring emissions at the surface of the landfill.

Section 15 of the SOP describes where misters may be used to release odor-controlling

compounds. The MSW rules do not require that the application specify the composition of the odor-controlling compounds. However, material safety data sheets (MSDSs) were provided with a letter to the TCEQ dated April 6, 2006, from Associated Consulting Engineers, Inc. responding to comments on the permit modification to upgrade the SOP for the existing facility under MSW Permit No. 1447 (modification issued September 27, 2006). The MSDSs indicated no adverse effects are expected on human health or the environment.

This is an MSW landfill permit amendment application, and air quality issues are generally outside the scope of review for landfill applications. The facility and traffic emissions will continue to be subject to applicable air quality requirements. The TCEQ does not consider the effects on air quality from increased numbers of diesel trucks, alone or in combination with any other factors, in deciding whether to issue a landfill permit. However, according to the Part A application form in Part I of the application, and the traffic study in Section II.E in Part II of the application, the proposed expansion could result in an increase of approximately 239 vehicles per day (12 percent increase, from current 1205 vehicles per day to 1344 vehicles per day at the peak of operations), including waste hauling trucks and all other vehicles.

COMMENT 23 Operation of Working Face

Several commentors inquired about how often the facility operates more than one working face, and why, and if and how often the facility has diverted waste-carrying vehicles to other facilities when the working face was inaccessible due to surface water problems.

RESPONSE 23

TCEQ rules at 30 TAC §330.117 require that the unloading of solid waste be confined to as small an area as practical. The rule requires that the maximum size of the unloading area be specified in the Site Operating Plan (SOP), and that the number and types of unloading areas be identified. The proposed SOP complies with these requirements. The commission is not aware of how often the existing facility has operated more than one working face or how often the facility has diverted waste-carrying vehicles to other facilities when the working face was inaccessible.

COMMENT 24 Dust

Several commentors reported that dust from facility roads, soil stockpiles, and other sources drifts off site and onto neighboring properties, and have asked how the dust problems will be managed if an expansion is granted and activity at the site increases. One commentor asked what the health effects of dust particles are and what chemicals they might contain or carry. One commentor reported seeing what was thought to be smoke and assumed the facility was burning waste; other commentors reported seeing dust thick enough that it resembled smoke.

RESPONSE 24

Section 17 of the Site Operating Plan specifies procedures to control dust from facility roads as required by 30 TAC §330.127(b). Dust from other sources, such as soil stockpiles must not create a nuisance which is prohibited by §330.5(a)(2). Burning of solid waste is prohibited, except in very specific circumstances as outlined in §330.5(d). The MSW rules do not require health impact studies; therefore, the application does not contain information about health effects of dust from the existing or proposed facility. The Executive Director has determined that the

application complies with all applicable requirements regarding control of dust. If dust creates a nuisance, please report the problem to the TCEQ Region 11 office in writing or in person at 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, or by telephone at (512) 339-2929.

COMMENT 25 Operating Hours, Noise, and Vibrations

Several commentors expressed concern about the 24-hours-a-day, 7-days-a-week (24/7) operating hours of the existing and proposed facility, and the impact of noise and vibrations from landfill traffic and equipment, especially at night. Several commentors also expressed concern regarding bright lights used during nighttime operations that illuminate their own properties. Commentors expressed concern that the application does not address how these problems will be kept from worsening as the landfill height increases. Several commentors stated that the landfill should be completely closed at night and on weekends.

RESPONSE 25

BFI proposes to continue the 24/7 waste acceptance and operating hours of the existing facility. The commission is not aware of information to justify restricting the proposed operating hours. The commission's rules do not set specific limits on facility lighting or noise, but the facility is prohibited from causing a nuisance under 30 TAC §330.5(a)(2).

COMMENT 26 Tracking of Mud and Dirt onto Public Roadways

Several commentors reported that tracking of mud and dirt from the landfill onto public roadways has been a problem at the site, creating a nuisance as well as a driving hazard. One commentor suggested that the cause is that drivers of trash trucks are unwilling to take the time to wash their wheels. Several commentor noted that street sweepers clean the road in front of the facility, but that the sweeping does not remove all the dirt and is insufficient. They argue that the city is wasting tax dollars as sweepers run all day trying unsuccessfully to keep up with the problem. One commentor indicated that mud is also tracked onto U.S. Highway 290 and is not swept. One commentor expressed concern about transport of contaminants by vehicles.

RESPONSE 26

Section 17.2 in the Site Operating Plan (SOP) (Part IV of the application) identifies specific features and procedures proposed to control tracking of mud and dirt onto public roadways, including all-weather access roads (paved main access road and unpaved interior roads that use gravel or ground woody material). In addition, the SOP requires exiting vehicles to use a truck wheel wash facility near the entrance. The procedures also state that washing and/or sweeping will be used to remove mud deposited from trucks leaving the site. The Executive Director does not have any information to indicate whether the City of Austin is conducting street sweeping near the facility at the City's expense. BFI has proposed to provide a street sweeper, as indicated in Figure 4 of the SOP. The application includes adequate provisions to control tracking of mud and dirt onto public roadways.

COMMENT 27 Windblown Trash, Roadside Trash, and Illegal Dumping

Many commentors reported that the area around the landfill and routes to the landfill are littered with windblown trash on the ground and in fences and trees. Commentors observed trash on routes other than the primary access routes identified in the application and beyond the area subject to daily cleanup requirements. One commentor expressed concern that bags and other

windblown trash end up in pastures and endanger livestock that may accidentally ingest the trash, and are incorporated into bales of hay. Several commentors also reported that waste is spilled from trucks both on the way to the landfill and on the way out if they did not empty completely. One commentor reported getting flat tires from debris that has fallen off trucks. One commentor questioned whether the City of Austin spends tax dollars to clean up the windblown trash along the routes to the site. Several commentors reported that illegal dumping occurs in the area by people who have come when the landfill is closed or who find the disposal fee too high.

RESPONSE 27

Sections 10 and 13 of the Site Operating Plan provide procedures for control of windblown solid waste and litter and for control and cleanup of materials along the route to the site. BFI is responsible for picking up litter scattered throughout the site, along fences and access roads, at the gate, and along and within the right-of-way of public access roads serving the facility for a distance of two miles from the entrance (including any waste illegally dumped within the right-of-way). That clean up must occur at least once a day on the days the facility is in operation. BFI is responsible for the costs of the cleanup.

The Executive Director has determined that BFI's application complies with the requirements of 30 TAC §330.120 and §330.123. If the landfill is operated in accordance with the SOP, the Executive Director expects that windblown waste and materials along the route to the site will be adequately controlled and picked up. The TCEQ is not aware of whether the City of Austin spends tax dollars to clean up trash along routes to the site. If you have any complaints or concerns regarding operation of the facility, please contact the TCEQ Region 11 Office in writing or in person at 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, or by telephone at (512) 339-2929. If you observe or have information regarding illegal dumping, please contact the TCEQ Region 11 Office and city or county officials.

COMMENT 28 Scavenging Animals and Vectors

Several commentors expressed concern that the landfill provides food for or attracts vectors (insects, rodents, birds, or other animals or organisms capable of mechanically or biologically transferring a pathogen from one organism to another). Commentors also reported that scavenging animals such as coyotes pass through the residential neighborhood on the way to or from the landfill. They also complained about scavenging birds that roost on houses, power lines, and in trees in the neighborhood and at the nearby elementary school, and leave messy, potentially disease-ridden droppings on the ground.

RESPONSE 28

The procedures provided in Section 16 of the Site Operating Plan (SOP) for controlling on-site populations of disease vectors meet the requirements of 30 TAC §330.126. The procedures include proper compaction and application of daily cover, which should adequately control scavenging animals and vectors.

COMMENT 29 Liner and Leachate Collection System Design, Construction, and Stability

Several commentors expressed opinions that the Soil and Liner Quality Control Plan (SLQCP)

for the facility is not specific to the conditions at this site and that the Geology and Geotechnical Report contains no caveats regarding use of high-to-very-high plasticity materials available on site for liner and cover construction. They also expressed concern that the documents do not adequately demonstrate that recompacted soils will meet the permeability requirement of 10^{-7} cm/sec or less. One commentor stated that the slope stability analysis in Appendix 4G of Attachment 4 to Part III of the application was not done to industry standards and therefore flawed. Several commentors questioned whether the liner and leachate collection systems and existing waste would be stable under the increased weight of a vertical expansion. One commentor asked which landfill cells do not have double composite liners. One commentor asked if at sometime in the future we might learn that the material used for liners is hazardous or that it will deteriorate and no longer provide groundwater protection.

RESPONSE 29

The SLQCP provided in Attachment 10 to Part III of the application provides specifications for the liner system, as well as construction and testing procedures to ensure the liner is built to those specifications. Properties of the materials available on site are discussed in Section 3.2 and Appendix 4E of Attachment 4 (Geology Report) to Part III of the application. The applicant has used those materials in the past to construct liners that meet specifications. The SLQCP meets the requirements of 30 TAC §330.205.

The comment on slope stability analysis did not identify what was not done to industry standard. The methods used and documented in the application are generally accepted by the industry. Analyses and discussion provided in Sections 3.6 and 3.7, and Appendices 4G and 4H of Attachment 4 demonstrate that the liner and waste will be stable under the increased weight of a vertical expansion; analyses and discussion in Appendix 15-C of Attachment 15 (Leachate and Contaminated Water Plan) to Part III of the application demonstrate that the leachate collection system pipes have sufficient structural stability.

None of the liners at the BFI Sunset Farms Landfill are a double composite liner. The rule regarding liner design for MSW landfills, 30 TAC §330.200, does not require double composite liners. Section 4 of Attachment 15 discusses the chemical stability of the synthetic liner components and their resistance to attack by chemicals that may be in leachate and establishes that the materials are suitable choices for construction of containment systems.

COMMENT 30 Vertical Expansion over Pre-Subtitle D Waste Areas

Several commentors expressed concern about how the facility will manage leachate in areas of the expansion that will overlie older, pre-Subtitle D waste areas that are not lined and/or do not have a leachate collection system.

RESPONSE 30

The permit amendment application for BFI Sunset Farms Landfill was declared administratively complete on January 31, 2006, and processed under the MSW rules in effect at that time. Those rules do not contain a requirement for placing a liner and leachate collection system (LCS) over pre-Subtitle D waste areas that are to be vertically expanded. The requirement for a liner and LCS over pre-Subtitle D waste areas was added to the revised MSW rules that became effective March 27, 2006 (the 2006 Revisions) and does not apply to this application.

COMMENT 31 Daily Cover

Several commentors raised issues related to the alternative daily cover (ADC). They asked why BFI used ADC in the past instead of using dirt from areas they are excavating now and stockpiling, whether the facility is currently permitted to use any ADC, and whether the amendment application proposes to use ADC. One commenter advised that despite statements by the applicant's engineer that the site has not used ADC in more than five years, annual reports filed by BFI for the past five years indicate that the facility did use "tire pieces/chips and ground woody waste" as ADC. Several commentors expressed concern that it was unclear whether ADC would be authorized by the permit amendment, because of references to ADC in Standard Permit Condition VIII.I in the draft permit, and statements in Section 15 of the narrative to Part III of the application. Another commentor expressed the belief that the facility does not apply daily cover soil in the winter when it appears there will be a freeze. Commentors also expressed concern that soil balance calculations in Appendix III-D to Part III indicate a deficit of soil and questioned what BFI will do if it does not have enough dirt for daily cover.

RESPONSE 31

Section 23.1 of the Site Operating Plan (SOP) in Part IV of the application indicates that the facility will apply daily cover soil at least once per day, in accordance with 30 TAC §330.133(a). Section 23.3 of the SOP states that the use of ADC material is not proposed and that no ADC materials are currently approved for the site. The facility was authorized by its permit in the past to use ADC instead of soil as daily cover, but BFI apparently ceased using ADC several years ago because of operational issues. Standard Permit Condition VIII.I has been revised in the draft permit to delete the reference to ADC. The Executive Director is not aware of any occasion that the facility did not apply daily cover (or ADC) because of freezing weather conditions.

The soil balance calculations provide information and help the applicant plan for soil needs. The MSW rules do not require that all construction materials be available on site. The applicant will be responsible for obtaining the necessary materials, whether available on site or from another source. Attachment 8 (Cost Estimate for Closure and Post-Closure Care) in Part III of the application includes provisions for purchase of soil.

COMMENT 32 Soil Stockpiles

Several commentors inquired about soil stockpiles on top of filled areas of the facility. They asked what is the source of the material in the stockpiles, whether the permit allows stockpiling, whether the tops of the stockpiles extend above the permitted final elevations for the landfill, and how the material will be used. Commentors also reported that the stockpiles are a source of dust and sediment that create a nuisance and asked how long the stockpiles would remain.

RESPONSE 32

The soil in the stockpiles on top of filled areas of the facility is from excavations on the site. The tops of the stockpiles extend above the final contours specified in the current permit, and therefore must be moved and/or regraded according to the existing final closure plan if the pending application is not granted. The Executive Director anticipates that the facility will use most, or all of the soil in the stockpiles for daily, intermediate, and final cover, and/or other activities that require soil. The facility will be required to follow the erosion and sediment control procedures for stockpiles, described in Section 3.1 in Appendix ATT6-A of Attachment 6

(Groundwater and Surface Water Protection Plan) to Part III of the application while the soil stockpiles are in place. The facility will also be required to implement, within one year of issuance of this permit, erosion and sediment controls that comply with the March 2006 Revisions of 30 TAC Chapter 330 rules relating to erosional stability of top and side slopes during all phases of landfill operation. If dust or sediment eroded from the stockpiles creates a nuisance, please report the problem to the TCEQ Region 11 office in writing or in person at 2800 South IH 35, Suite 100, Austin, Texas 78704 5700, or by telephone at (512) 339-2929.

COMMENT 33 Drainage and Erosion Controls

Many commentors expressed concern that drainage and erosion controls at the facility are presently inadequate, and that erosion, runoff, and sedimentation problems will worsen if the facility expands and constructs longer, steeper slopes. Commentors reported various problems, including: erosion of creek beds and damage to roads, fences, and ponds on adjacent property; exposure of trash due to erosion of cover; overflow of detention ponds and ditches after heavy rains; deposition of sediment on roads; and erosion of soil stockpiles. One commentor asked what specific procedures will be required for "control" of run-on and runoff, and what does "control" mean. Another commentor asked what is the definition of "protection" in the Groundwater and Surface Water Protection Plan. Several commentors stated that the applicant should be required to follow the requirements of the revised MSW rules that became effective March 27, 2006, to provide erosion and sediment control during all phases of landfill development, and should be required to install drainage and erosion controls and detention ponds now, rather than at closure. One commentor stated that the drainage calculations do not appear to demonstrate that the proposed controls will maintain low non-erodible velocities, minimize soil erosion losses, and provide long-term, low maintenance geotechnical stability to the final cover. The commentor also expressed concern that the demonstration of "no significant alteration" of natural drainage patterns compared the conditions for the proposed facility with the conditions for the existing facility existing rather than the conditions before the site was developed into a landfill.

RESPONSE 33

TCEQ rules at 30 TAC §330.55(b)(2) require the applicant to design, construct, and maintain a run-on control system capable of preventing flow into the active portion of the landfill during the peak discharge from at least a 25-year storm. Rule 30 TAC §330.55(b)(3) requires that the owner or operator design, construct, and maintain a runoff management system from the active portion of the landfill to collect and control at least the water volume resulting from a 24-hour, 25-year storm. Rule 30 TAC §330.55(b)(4) requires that dikes, drainage structures, or diversion channels sized and graded to handle the design runoff be provided, and that the slopes of the sides and toe be graded in such a manner as to minimize the potential for erosion. In addition, 30 TAC §330.55(b)(5)(E) requires that the proposed surface water protection and erosion control practices maintain low non-erodible velocities, minimize soil erosion losses below permissible levels, and provide long-term, low-maintenance geotechnical stability to the final cover. "Control" of run-on and runoff means to meet the requirements of 30 TAC §330.55(b)(2) and (3), described above. "Protection" of surface water means to meet the requirements of 30 TAC §330.55(b)(5)(E) as stated above. Attachment 6 (Groundwater and Surface Water Protection Plan) to Part III of the application specifies designs for control structures that, according to calculations presented in Attachment 6, will perform as required by the rules. The plan includes an enlarged detention pond to mitigate the expected increase in peak stormwater flow due the

vertical expansion. The application complies with all applicable requirements regarding drainage and erosion controls.

The Executive Director declared the permit amendment application for BFI Sunset Farms Landfill administratively complete on January 31, 2006, and processed the application under the MSW rules in effect at that time. The applicant will be required to submit a separate application to modify the permit (within one year after the commission's decision on the amendment application has become final and appealable) to incorporate design features that will provide effective erosional stability during all phases of landfill operation, closure, and post-closure care, in accordance with the revised MSW rules that became effective March 27, 2006.

The comment regarding drainage calculations did not explain what aspect of the calculations did not appear to demonstrate that the proposed controls will perform as required by the rules; the Executive Director determined that the drainage calculations and designs meet the requirements of the rules. The analysis and demonstration of "no significant alteration" of natural drainage patterns was conducted in accordance with TCEQ rules and guidance (*Guidelines for Preparing a Surface Water Drainage Report for a Municipal Solid Waste Facility*, August 2006), which advises that for expansions or modifications of existing facilities, the appropriate comparison should be between the currently permitted site closure condition and the proposed post development condition at closure.

COMMENT 34 Cover Inspection and Repair

Several commentors noted that the Site Operating Plan proposes that cover inspections will be conducted the next weekday operating day after measurable rainfall occurs, even though the landfill is also proposing to be open on weekends; and that the timeline for repair (within five days of detection) is not consistently stated.

RESPONSE 34

The rule regarding erosion of cover, 30 TAC §330.133(f), does not specify that cover must be inspected the next day after a rain. Inspecting cover on the next weekday operating day after a measurable rainfall occurs is sufficiently protective. However, the Executive Director has revised the draft permit to clarify statements regarding the time by which erosion must be repaired, by adding a Special Provision specifying that the permittee shall repair eroded cover within 5 days of detection unless the commission's regional office approves otherwise.

COMMENT 35 Leachate Management and Contaminated Water Management

One commentor asked where the leachate collection system (LCS) is located in Subtitle D cells; how the applicant will keep leachate from Subtitle D cells (which have LCSs) out of pre-Subtitle D cells (which do not have LCSs); how the applicant will keep leachate depths below 12 inches (30 centimeters) above the liner and out of waste; and how the applicant is ensuring that the liner system is built with a slope that will promote drainage of leachate. Several commentors expressed concern that the Site Operating Plan (SOP) contains no provisions for leachate management and no provisions to prohibit leachate recirculation, and that the application did not provide required details on storage, treatment, and disposal of contaminated water. One commentor suggested that the landfill should have installed cutoff drains to prevent infiltration of groundwater into waste cells. Another commentor stated that the LCS may not work adequately because of "problems related to the sump."

RESPONSE 35

The LCS is located on the bottom and side slopes of the Subtitle D landfill cells. The LCS design and operation are described in Attachment 15 (Leachate and Contaminated Water Plan) to Part III of the application, and details for the LCS are shown in Figures 15-1 through 15-4 in Attachment 15. According to Figure 15-1, the Subtitle D cells have been or will be excavated to greater depths than the pre-Subtitle D cells, which is expected to prevent leachate in Subtitle D cells from draining to pre-Subtitle D cells. According to the leachate generation analysis described in Section 2.1 of Attachment 15, and detailed in Appendix 15-A, the LCS is designed to maintain leachate depths below 12 inches (30 centimeters) above the liner. The proposed Subtitle D cells are designed with 3:1 side slopes (1 foot of vertical rise for each 3 feet of horizontal run) and 2 percent bottom slopes (2 feet of vertical drop for each 100 feet of horizontal run) that is typical for landfills and is considered sufficient to promote leachate drainage.

Procedures for managing leachate and contaminated water are provided in Section 5 of Attachment 15 (Leachate and Contaminated Water Plan) to Part III of the application. Section 5.5 lists leachate treatment and disposal options, which do not include recirculation. The applicant advised the Executive Director that leachate has not been recirculated at the facility since late 2001, and that although the application does not state it clearly, BFI does not intend to recirculate leachate in the future. The Executive Director has therefore added a Special Permit Provision to clarify that leachate and gas condensate shall not be recirculated.

According to Appendix 4F (Construction Below the Groundwater Table) in Attachment 4 to Part III of the application, the design for the cells remaining to be constructed at the time the application was prepared include a temporary dewatering drain to ensure stability of the liner until it is weighed down by protective cover and waste. Older Subtitle D cells also included temporary dewatering drains in their designs. After dewatering ceases, the landfill liner system and the weight of waste as ballast will provide sufficient resistance to groundwater hydrostatic pressure to prevent infiltration of groundwater into waste cells. Appendix 15-G of Attachment 15 provides calculations of the amount of groundwater that may seep through the liner, in case of liner defect, and adequacy of the leachate collection system to handle any groundwater inflow through such defect. Section 4.4 of Attachment 4 (Geology and Geotechnical Report) indicates that the permeability of the weathered Taylor Marl stratum (the groundwater-bearing unit at the site) is low (in the range of 10^{-5} to 10^{-7} cm/sec), which will also limit the potential for infiltration.

The comment regarding performance of the LCS due to problems related to the sump did not explain what problems were perceived or how it may affect the LCS. The LCS design meets the requirements of the rules.

COMMENT 36 Contaminated Water Runoff

Several commentors stated that the existing facility has had difficulty preventing contaminated surface water from running off the site, and expressed concern that the problem will worsen if the landfill expands. Commentors expressed concern about management of stormwater that comes in contact with waste and with daily cover, and stated that the application does not adequately demonstrate that the facility meets the criteria to ensure runoff from daily cover is not contaminated. Several commentors stated that surface water quality is not tested adequately before it leaves the site and is not tested off site, and expressed concern that water in the

detention ponds is contaminated and not fit for birds.

RESPONSE 36

Section 29 of the Site Operating Plan (SOP) in Part IV of the application refers to procedures for contaminated water management and surface water discharges in Attachments 6 (Groundwater and Surface Water Protection Plan) and 15 (Leachate and Contaminated Water Plan) to Part III of the application. Section 2.2 of Attachment 6 identifies the procedures the applicant will follow to minimize the generation of contaminated water, which include the use of diversion berms to prevent surface water from running onto the working face and separation berms to contain water that does contact waste. Section 5.6 of Attachment 15 describes how contaminated water will be managed. According to 30 TAC §330.56(o)(1), contaminated water is water which has come into contact with waste, leachate or gas condensate. Runoff from areas that have intact daily cover is not considered as having come into contact with the working face or leachate. Section 23.6 of the SOP describes how daily cover will be maintained. Surface water quality testing requirements and discharge limits are established by a separate stormwater permit issued in accordance with the Texas Pollutant Discharge Elimination System (TPDES), and an associated Storm Water Pollution Prevention Plan. All discharges of stormwater must be in accordance with TPDES requirements; if unauthorized discharges from the landfill occur, the permittee will be subject to enforcement. Section 5.6 of Attachment 15 indicates that contaminated water will be stored in tanks or lined ponds until treated and/or disposed in accordance with TPDES requirements. Stormwater detention ponds should only contain stormwater that is uncontaminated or has been treated in accordance with TPDES requirements.

The application meets the requirements of 30 TAC §330.55(b)(6), §330.56(o), and §330.139 regarding contaminated water management. The off-site discharge of contaminated water should be prevented if the facility is constructed and operated as proposed.

COMMENT 37 Final Cover Design

Several commentors expressed opinions that the final cover system design may not meet the requirements of the rules, suggesting that the application does not address slope stability; and that the vegetative layer soil is not thick enough to support permanent vegetation, particularly through hot and dry summers. One commentor expressed concern that Figures 6-16 and 6-17 in the Groundwater and Surface Water Protection Plan (Attachment 6 to Part III of the application) did not show or otherwise indicate that geomembrane (GM) in the final cover system extends beneath the drainage downchutes, and that the thickness of the GM is variously stated to be 20, 40, or 60 mil high density polyethylene.

RESPONSE 37

Section 3.6 of Attachment 4 (Geology and Geotechnical report) to Part III of the application describes the slope stability analysis conducted for the facility, which includes analysis of the final cover slope. Section 2.1 of Attachment 12 (Final Closure Plan) to Part III indicates two options for the final cover system; both will have a six-inch top soil layer directly overlying a 12-inch erosion layer. The combined thickness of 18 inches is expected to provide sufficient moisture storage capacity and rooting depth to support vegetation.

Figures 6-16 and 6-17 in the application show that the GM in the final cover system extends beneath the drainage downchutes and specifies a thickness of 40 mils. Attachment 12 specifies

that the GM will be 40-mil LLDPE (linear low density polyethylene).

COMMENT 38 Subsurface Investigation and Groundwater Monitoring

Several commentors expressed opinions that the subsurface investigation was not performed "up to the standard of care, nor seemingly regulatory requirements," that cross sections do not depict generalized strata, and that contaminant pathways at the site and from the neighboring Waste Management site have not been adequately discussed. Several commentors expressed concern regarding potential migration of contaminants from industrial or hazardous waste disposal areas at the adjacent Waste Management facility, and asked whether BFI will be required to test for constituents in Appendix IX to 40 CFR Part 264 (Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities).

Commentors questioned whether the groundwater monitoring system is adequately designed to detect a release, whether monitor wells are to be added, and whether the applicant is proposing to add to the "contamination attenuation zone." One commentor questioned the timing of installation of the current Subtitle D groundwater monitoring system.

Several commentors inquired whether contaminants have been detected in groundwater at the site, and what plans exist to remediate contamination. One commentor expressed concern that groundwater might be infiltrating pre-Subtitle D waste cells that do not have leachate collection systems. Several commentors expressed concern that contaminated surface water is infiltrating and contaminating groundwater, and one commentor stated that the landfill is impacting drinking water in her residence because the water has the same bad smell as the landfill.

RESPONSE 38

The comment that the subsurface investigation was not performed "up to the standard of care, nor seemingly regulatory requirements" did not explain what aspect of the investigation or documentation the commentor believed was not up to standards. The generalized strata at the facility, consisting of unweathered Taylor Marl overlain by weathered Taylor Marl, is described in Attachment 4 (Geology and Geotechnical Report) to Part III of the application and is depicted on cross sections provided in Appendix 4C of Attachment 4. Analysis of contaminant pathways is provided in Section 4.5.3 of Attachment 4, and is based on site-specific geologic and hydrogeologic data documented in Attachment 4 which includes groundwater potentiometric surface maps that illustrate groundwater flow directions. The maps indicate that the groundwater generally flows toward (rather than from) the Waste Management facility to the south. The facility will not be required to monitor groundwater for constituents in Appendix IX to 40 CFR Part 264. The facility will conduct groundwater monitoring in accordance with 30 TAC §§330.231-235, which includes detection monitoring for constituents in Appendix I to 40 CFR Part 258 (Criteria for Municipal Solid Waste Landfills). If assessment monitoring is triggered, the facility will monitor at least once for constituents in Appendix II to 40 CFR Part 258, which contains most or all of the constituents in Appendix IX to 40 CFR Part 264. If an initial assessment event does not detect Appendix II constituents that are not also in Appendix I, the applicant may request to continue assessment monitoring for Appendix I constituents only.

The groundwater monitoring system design is based on the information from the subsurface geologic and hydrogeologic investigation and the analysis of contaminant pathways documented in Attachment 4 to Part III of the application. The application proposes to retain 15 of 17 existing groundwater monitor wells and add 17 new groundwater monitor wells, for a total of 32

monitor wells. The spacing of the proposed wells complies with the 600-foot spacing requirement in the revised MSW rules that became effective March 27, 2006. The existing and new wells will be along approximately the same point of compliance (POC) as for the existing facility; therefore, the zone between the landfill and POC in which contaminants might attenuate would not be changed by the proposed amendment.

The groundwater monitoring system at the BFI Sunset Farms Landfill originally consisted of 14 monitor wells installed in 1981, which were replaced by 17 monitor wells in 1998. A brief history of the groundwater monitoring system at the BFI Sunset Farms Landfill is described in Section 1.3 of Attachment 5 (Groundwater Characterization Report) to Part III of the application. The Executive Director provides the following additional information from TCEQ files:

- In a letter dated November 19, 1993, the Executive Director raised concerns regarding the construction of the monitor wells in the original groundwater monitoring system;
- In a letter dated January 7, 1994, BFI advised that it would replace the monitor wells;
- In a letter dated August 9, 1994, BFI further advised that it would do additional groundwater characterization at the facility;
- In a letter dated October 17, 1994, BFI certified pursuant to 30 TAC §330.231 that the landfill will be in compliance with groundwater monitoring requirements;
- The Executive Director acknowledged that certification in a letter dated October 18, 1994, and advised that due to the large number of permit modifications received from facilities upgrading to Subtitle D standards, the review of the certification would be delayed;
- In a letter dated March 9, 1995, the Executive Director provided a review of the certification and requested additional information;
- BFI provided additional information in a letter dated May 2, 1996, and further information in a letter dated December 18, 1996;
- In a letter dated March 31, 1998, the Executive Director requested that BFI address several items further;
- BFI provided additional information in a letter dated May 22, 1998; and
- the Executive Director approved the groundwater monitoring system design in a letter dated July 15, 1998.

The installation of wells for the Subtitle D groundwater monitoring system was completed in October 1998. The old monitoring system was retained and continued to be monitored in the interim while the Subtitle D monitoring system design was under review; the last monitoring of the old system occurred in July 1998, and the first monitoring of the new system in December 1998.

The October 2005 groundwater monitoring event detected 1,1-dichloroethane (DCE), a volatile organic compound (VOC), at a concentration of 8.2 micrograms/liter ($\mu\text{g/L}$) in monitor well MW-30 (near the southwest corner of the site). The constituent was detected at 7 $\mu\text{g/L}$ during a verification resampling event in January 2006, triggering assessment monitoring for the well.

The initial assessment event for MW-30 was conducted at the next semiannual monitoring event, in April 2006, and included sampling and analysis for Appendix II constituents. DCE was not detected above the reporting limit of 5 µg/L during that event, and no other Appendix II constituents that are not also in Appendix I were detected, except total barium and nickel. In a letter dated August 8, 2006, the Executive Director approved a request by BFI to continue assessment monitoring of MW-30 for Appendix I constituents and total barium and total nickel. During the September 2006 event, DCE, total barium, and total nickel were below reporting limits. During the next semiannual event, in March 2007, DCE was again detected at 7.8 µg/L. In accordance with 30 TAC §330.235(e), the well will remain in assessment monitoring until the concentrations of all assessment constituents are shown to be at or below background. The detection of any assessment constituent at statistically significant levels above a groundwater protection standard (GWPS) triggers notifications, investigation, and potentially corrective action. The Texas Risk Reduction Program, Tier 1 Protective Concentration Level for DCE, for groundwater ingestion (the strictest GWPS), is 4,900 µg/L. Therefore, no further investigation or corrective action is required at this time. No other contaminants have been verified in facility groundwater monitor wells. Statistically significant changes were identified in the past for arsenic in monitor well MW-17, barium in monitor well PZ-21B, and selenium in monitor well MW-26, but all were demonstrated to be due to natural variation in groundwater quality.

Groundwater may be infiltrating pre-Subtitle D waste cells that do not have leachate collection systems. However, the pre-Subtitle D liner system together with the low permeability of the groundwater-bearing unit at the site (weathered Taylor Marl, in the range of 10^{-5} to 10^{-7} cm/sec) is expected to limit infiltration.

It does not appear that contaminated surface water is infiltrating and contaminating groundwater, because the groundwater monitoring system at the facility has not detected groundwater contamination except for the compound DCE in monitor well MW-30. The DCE in monitor well MW-30 is believed to have been carried from the landfill by landfill gas migrating in the subsurface (see the response to comments regarding landfill gas management for more information regarding gas migration).

The commentator who stated that water in the house smelled bad did not indicate whether the water is from a well or a municipal water system. In either case, it is unlikely the smell in the water is caused by the landfill because the aquifers that could yield enough water to a well for domestic purposes in the area of the landfill are separated from the landfill by hundreds of feet of low permeability strata, and because municipal water systems are enclosed in tanks and pipes and pressurized, which would prevent inflow of contaminants into drinking water.

The subsurface investigation and proposed groundwater monitoring system design meet the requirements of 30 TAC §330.56(d) and (e).

COMMENT 39 Landfill Gas Management

Several commentators inquired about the regulations governing landfill gas control and about how gas releases are detected. Several commentators expressed concern that landfill gas control at the facility is inadequate, and they were concerned that odor problems and subsurface gas migration will worsen if the landfill expands. Commentators stated that the facility is unlikely to be able to capture all of the landfill gas due to underground seepage off site, and that when soil dries out, large cracks form that can bleed toxic gases. Several commentators expressed concern that gas

monitoring probes along the common boundary with the Waste Management facility had been removed, and that as a result the monitoring system is not protective.

One commentor inquired about how many times landfill gas concentrations have exceeded action levels at the facility, and whether the TCEQ has studied health effects of landfill gas on populations surrounding landfills. One commentor questioned whether the existing gas collection and control system would be stable under the increased weight of the vertical expansion.

Several commentors asked about the ownership, operation, and responsible party for the landfill gas to energy (LFGTE) facility, including questions about quantities of methane produced, efficiency of energy recovery, emissions monitoring/testing, and plans for expansion of the facility.

RESPONSE 39

Landfill gas consists mainly of methane and carbon dioxide with small amounts of nitrogen, oxygen, hydrogen, and non-methane organic compounds (NMOC). Regulations in 30 TAC §330.56(n) and §330.130 require control of landfill gas to prevent creation of explosive hazards from migration and accumulation of methane. Regulations in 40 CFR Part 60, Subpart WWW (Standards of Performance for Municipal Solid Waste Landfills) require control of landfill gas to prevent emission of hazardous air pollutants (non-methane organic compounds). Subsurface gas migration and surface emissions are controlled by containment systems (liners and covers) and by an active gas collection and control system (GCCS) which applies a vacuum to the landfill through gas extraction wells installed in waste. Section 3 of the Landfill Gas Management Plan (LGMP) (Attachment 14 to Part III of the application) details procedures for quarterly monitoring of permanent gas probes around the perimeter of the facility in accordance with 30 TAC §330.56(n) and §330.130 to detect potential subsurface gas migration. BFI proposes to add five probes along the common boundary with the Waste Management facility, restoring probes removed during earlier permit actions. The locations for the proposed probes are shown in Figure 14A-1 in the LGMP. Sections 6.1 and 6.3 of the LGMP explain that gas collected by the GCCS will be routed to the on site LFGTE facility, and excess gas burned in a flare. Operating requirements for the GCCS, and testing requirements and emission limits for the landfill and flare are established by separate air permits referenced in Sections 6.1 and 6.3 of the LGMP.

Methane was detected above the action level of 5 percent methane by volume in gas monitoring probe GMP-13 (near the southwest corner of the facility) in April 1999 (8 percent methane). Following the April 1999 detection, the facility expanded the GCCS into that area of the landfill, which apparently did not yet have gas extraction wells. Methane was detected above the action level in GMP-12 (near the southwest corner of the facility, along the boundary with the Waste Management facility to the south) in January 2000 (24 percent methane). The facility has not reported exceeding a methane action level since then. Section 6 of the LGMP describes procedures for maintaining the GCCS, including addition and replacement of wells as waste disposal operations proceed. If a component of the GCCS were to fail under the weight of the proposed expansion, the facility would be required to replace it as needed to comply with landfill gas regulations and provisions of the permit.

The application does not propose to expand the LFGTE facility. The LFGTE facility is operated

by Gas Recovery Systems LLC, the responsible party, under MSW Registration No. 48000. The monitoring requirements and emissions limits for the LFGTE are specified in the separate air permits referenced in Sections 6.1 and 6.3 of the LGMP. The quantities of methane produced by the landfill and converted to energy are stated by the LFGTE operator in annual reports for Registration 48000. The reports are available in the TCEQ Central File Room, Building E, Room 103, 12100 Park 35 Circle, Austin, Texas 78753, telephone (512) 239-2900. The efficiency of the LFGTE operation is not specified and is not required to be reported.

The MSW rules do not require health impact studies, and therefore the application does not contain information about health effects of landfill gas from the existing or proposed facility. The provisions and procedures for landfill gas management specified in the LGMP meet the requirements of 30 TAC §330.56(n) and §330.130 and are expected to control releases of gas and odors from the landfill.

COMMENT 40 Wetlands, Habitat, and Endangered Species Protection

Several commentors expressed concern regarding the condition of the wetland/pond area, which is a habitat for waterfowl in the northeast corner of the site. One commentor suggested that the applicant was allowed to destroy wetlands without a federal permit or mitigation.

Several commentors expressed concern about leachate leaking into the nearby creeks and harming endangered species, about habitat destruction in general, and that the area has in the past been a habitat for owls. One commentor stated that the owls are gone and that dead birds are found in the area.

RESPONSE 40

Section II.H (Floodplains & Wetlands) in Part II of the application documents that BFI modified the waterway in the northeast part of the site to relocate a floodplain. The work was completed in July 2005, and revegetation and landscaping efforts were underway at the time this application was submitted. According to Section II.H, several areas within the tract are considered wetlands. According to Section II.J of the application, the wetlands will not be disturbed. Section II.K contains a letter from the U.S. Army Corps of Engineers dated February 6, 2007, indicating that the activities proposed in the application do not involve discharge of dredged or fill material into waters of the United States, including wetlands, and therefore a Section 404 permit under the federal Clean Water Act is not required.

The BFI Sunset Farms Landfill employs a groundwater monitoring system designed to detect releases from the landfill at the point of compliance, before any potential groundwater contamination could leave the site. To date, groundwater contamination has been detected at trace levels in one monitor well (see the response to comments regarding subsurface investigation and groundwater monitoring for more information). BFI proposes to provide adequate protection from contaminated groundwater migrating off site and discharging into area creeks by design and operation of the monitoring system and by the low permeability of the weathered Taylor Marl (the groundwater-bearing unit at the site that is monitored).

TCEQ rules at 30 TAC §330.51(b)(8), §330.53(b)(13), §330.55(b)(9), and §330.129 require that the application include information about endangered or threatened species and habitat. Section II.J in Part II of the application contains a habitat review that concludes the site contains marginal habitat for the Texas horned lizard, but not any other state or federal listed threatened or endangered species. As required by 30 TAC §330.129, the habitat review includes a Texas

horned lizard management plan detailing procedures for identifying the lizard and relocating any individuals that are found, as well as for conducting land clearing in a manner to minimize harm to any Texas horned lizards that may be present. Section II.K of the application contains letters dated November 11, 2005, documenting communication with the Texas Parks and Wildlife Department and the U.S. Fish and Wildlife Service regarding threatened and endangered species, with responses from those agencies indicating they expect no adverse impacts.

COMMENT 41 Financial Assurance

One commentor stated that the facility does not have adequate financial assurance should a release occur.

RESPONSE 41

TCEQ rules at 30 TAC §330.284 require that a municipal solid waste landfill unit required to undertake a groundwater corrective action program establish financial assurance to cover the cost of hiring a third party to perform the corrective action. The site currently is not required to undertake a groundwater corrective action; therefore a cost estimate and financial assurance for corrective action are not required. If at some time groundwater corrective action is required, the facility will be required to submit a permit modification to incorporate the cost estimate and to provide financial assurance. BFI has provided financial assurance to close the existing facility and has proposed to provide financial assurance to close the proposed facility in compliance with 30 TAC §330.281.

COMMENT 42 Recycling

Several commentors expressed concern that the application does not propose recycling or composting.

RESPONSE 42

The TCEQ encourages source reduction, reuse, and recycling; however, recycling is not a requirement for a landfill permit.

COMMENT 43 Post-Closure Care, and Use of Land After Closure

Several commentors inquired about what plans the applicant has for using the land after the landfill closes. One commentor expressed concern about landfill gas after the landfill closes.

RESPONSE 43

Attachment 12 (Final Closure Plan) to Part III of the application does not indicate that either the applicant or owner has any plans for use of the land after the landfill closes. Use of the land is restricted according to the provisions of 30 TAC §330.255 (relating to Post-Closure Land Use). The owner or operator must submit any plans for proposed construction activities or structural improvements on a closed MSWLF unit to the Executive Director for review and approval. If the permit is revoked after the end of the post-closure care period (nominally 30 years after closure), use of the land will be restricted according to the provisions of 30 TAC Chapter 330, Subchapter T (Use of Land Over Closed Municipal Solid Waste Landfills). The owner or operator is required by 30 TAC §330.254(b)(2) to continue monitoring programs, including landfill gas monitoring, during the post-closure care maintenance period.

COMMENT 44 Comments by Applicant

The applicant, BFI Waste Systems of North America, Inc., commented on the draft permit, stating that: (1) the cover page misidentifies Giles Holdings, L.P. as a co-applicant; (2) Section III.D incorrectly represents waste acceptance rates; (3) Section IV.H should be revised to include the word "significant" in the phrase "any *significant* increase in bird activity"; and (4) Section VIII.D, referring to preconstruction meetings should be deleted, because the proposed facility will neither be a new facility or a lateral expansion.

RESPONSE 44

The Executive Director has revised the cover page of the draft permit to identify the applicant, BFI Waste Systems of North America, Inc., as the sole permittee, and to identify BFI Waste Systems of North America, Inc., and Giles Holdings, L.P., together as property owners, reflecting the information submitted on the Part A application form in Part I of the permit application. The Executive Director has also revised Section III.D to represent accurately the applicant's information regarding waste acceptance rates. The Executive Director did not make any changes to Section IV.H regarding bird safety, nor to Section VIII.D regarding preconstruction meetings (even though the facility is not expanding laterally, the preconstruction meetings are still necessary to verify that all aspects of the permit, construction activities, and inspections are met).

CHANGES MADE IN RESPONSE TO COMMENTS

The Executive Director has made the following changes to the draft permit based on comments:

1. Revised the cover page of the draft permit to identify the applicant, BFI Waste Systems of North America, Inc., as the sole permittee, and to identify BFI Waste Systems of North America, Inc., and Giles Holdings, L.P. together as property owners.
2. Revised Section III.D to represent accurately the applicant's information regarding waste acceptance rates.
3. Revised Section III.E to correct the number representing the total waste disposal capacity of the landfill for the proposed amendment.
4. Revised Section VIII.I to delete the reference to alternative daily cover.
5. Added a Special Provision specifying that all waste receipt shall cease on or before November 1, 2015.
6. Added a Special Provision to prohibit leachate and gas condensate recirculation.
7. Added a Special Provision to clarify that the permittee is required to repair eroded cover within 5 days of detection unless the commission's regional office approves otherwise.

Respectfully submitted,


Steve Shepherd
Attorney
Environmental Law Division
State Bar No. 18224200

Representing the Executive Director
of the Texas Commission on
Environmental Quality

CERTIFICATE OF SERVICE

I certify that on September 28, 2007, the "Executive Director's Response to Public Comment" for Permit No. 1447A was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.


Steve Shepherd, Attorney
Environmental Law Division
State Bar No. 18224200

TEXAS
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ON ENVIRONMENTAL
QUALITY
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¹ Comments were received in writing and/or orally, by mail and at the May 24, 2007, public meeting on this application, from Samuel Biscoe, Travis County Judge; Gerald Daugherty, Travis County Commissioner Precinct 3, Ron Davis, Travis County Commissioner Precinct 1; Sarah Eckhardt, Travis County Commissioner Precinct 2, Margaret Gomez, Travis County Commissioner Precinct 4; Hector Gonzales, Mayor, Village of Webberville; Mark Strama, State Representative District 50; and Kirk Watson, State Senator District 14.

² Comments were received in writing and/or orally, by mail and at the May 24, 2007, public meeting on this application, from Lane Ahnell, Robert Andrews, Karin Ascot, Ed Attra, Todd Ballard, Jeremiah Bentley (representing Harris Branch Residential Property Owners Association), Joyce Best (representing NorthEast Action Group), Jim and Cheryl Bowles, Dr. & Mrs. J.L. Breazeale, Dewy Brooks, Linda Bullock, Neil Carman, (representing the Sierra Club, Lone Star Chapter), Mary Carter (representing Northeast Neighbors Coalition), Doka Cullender, Chuck Dabbs, Juan DeAnda, Mandy Doctoroff, Jocelyn Doherty, Trek English (representing NorthEast Action Group), Jeannie Ferguson, Wallace and Marsha Fowler, Kyle and Sara Friesen, Ellen Hironymous, Dennis Hobbs (representing TJFA, L.P.), Lisa, Joel, and John Hotchkiss, Kim Jones, Ronald and Cam Junker, Sheila Kannappan, Amy Kersten, Janet Klotz, Robert Lanford, Amber Luttig-Buonodono, Ariana Martinez, Emilio Martinez, Fabian Martinez, Jesus Martinez, Maria Martinez, Rebecca Martinez, Anne McAfee, Melanie and Mark McAfee (representing themselves and NorthEast Action Group), Christine and Kenneth W. Miller, Jan Milstead, Roberto and Cindy Montoya, Susan Morgan, Alto and Rosemary Nauert, Craig Nazor, Mike O'Brien, Laurel O'Neal, Alice Penney, Abel Porras, Leahbeth Prince, Sherry Pyle, Cecil and Evelyn Remmert, Georgia Rich, F. Rinehart, Dr. Delmer Rogers, Mike and Ramona Rountree, Celeste Scarborough (representing Pioneer Farms and Pioneer Crossing neighborhood), Robin Schneider (representing Texas Campaign for the Environment), Roy and Janet Smith, Germaine Swenson (representing Park Springs Neighborhood Association), Joyce Thorsen (representing Walnut Place Neighborhood Association), Elizabeth Trevino (representing NorthEast Neighbors Coalition), Andrea and Jason Troncale, K. C. Walter, Martha Ward (representing Ridge Top Neighborhood Association and North Loop Planning Team), Robert Werstler, John Wilkins, David Williams, Evan Williams (representing himself and representing Williams Ltd.), and Rex Yocum.

³ See Texas Water Code, Sections 5.551 - 5.557.