Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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CHIEF CLERKS OFFICE

June 8, 2009

VIA HAND DELIVERY

Ms. LaDonna Castañuela, Chief Clerk
Office of Chief Clerk
Texas Commission on Environmental Quality MC 105
P.O. Box 13087
Austin, TX 78711-3087

RE: SOAH Docket No. 582-08-2178
TCEQ Docket No. 2007-1774-MSW
Application of BFI Waste Systems of North America, LLC. for a Major Permit Amendment to the Existing Type I Municipal Solid Waste Landfill in Travis County, Permit No. 1447A

Dear Ms. Castañuela:

Enclosed for filing, please find an original and eight (8) copies of the **Executive Director's Reply To Exceptions**. Please file-stamp the original and the copies and return one copy to me.

If you have any questions or comments, please call me at (512) 239-0464. Thank you for your assistance in this matter.

Sincerely,

Steven Shepherd, Staff Attorney
Environmental Law Division, MC 173

Enclosures

cc: Mailing list (attached)

The Hon. William G. Newchurch (*Via e-mail and fax)*
Administrative Law Judge
State Office of Administrative Hearings
300 West 15th Street, Suite 502
Austin, Texas 78701

SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)

STYLE/CASE: BFI WASTE SYSTEMS OF NORTH AMERICA INC

SOAH DOCKET NUMBER: 582-08-2178

REFERRING AGENCY CASE: 2007-1774-MSW

STATE OFFICE OF ADMINISTRATIVE HEARINGS	ADMINISTRATIVE LAW JUDGE ALJ WILLIAM G. NEWCHURCH
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EXECUTIVE DIRECTOR

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xc: Docket Clerk, State Office of Administrative Hearings

SOAH DOCKET NO. 582-08-2178
TCEQ DOCKET NO. 2007-1774-MSW

APPLICATION OF BFI WASTE SYSTEMS OF NORTH AMERICA, LLC, FOR A MAJOR AMENDMENT TO TYPE I MSW PERMIT NO. 1447A	**§ § § § §**	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

EXECUTIVE DIRECTOR'S REPLY TO EXCEPTIONS

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) respectfully submits this reply to exceptions in the above-referenced matter. Based on reviewing the evidence and arguments of counsel, the ED recommends issuing the permit with authorization to operate 24 hours a day, seven days a week (24/7), without the restrictions on operating hours recommended by the Administrative Law Judge (ALJ).

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Besides the Public Interest Counsel's relatively short argument that 24/7 operations are not appropriate, BFI is the only other party that provided arguments as to whether the proposed operating hours are appropriate. BFI made several arguments to support its position including that operating at night allows it to: avoid having queues of diesel trucks emitting exhaust while waiting to enter the landfill; keep large collection vehicles out of downtown, campus, and commercial areas during times of heavier commuter, pedestrian and bicycle traffic; minimize traffic conflicts with schools and school buses; provide prompt collection and disposal of hospital waste; provide prompt collection of waste from restaurants and bars; and, spread out trips to and from the landfill over a larger time period. BFI also claims that it needs to operate on Saturdays to dispose of waste collected Friday night and to serve members of the public who cannot

make trips to the landfill on weekdays.

Based on considering the evidence and the arguments related to potential impacts on the surrounding communities, the ED recommends that the facility be authorized to operate 24/7. Alternatively, if the Commission determines that the operating hours should be limited, the ED would support authorizing the alternative operating hours offered in BFI's Exceptions.

CONCLUSION

The ED recommends making the changes to the ALJ's Order listed in the ED's Exceptions and in BFI's Exceptions. Based on considering all of the evidence and arguments, the ED recommends issuing the Draft Permit.

Respectfully Submitted,

TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY

Mark Vickery, P.G.
Executive Director

Robert Martinez,
Division Director
Environmental Law Division

Steven Shepherd, Attorney
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CERTIFICATE OF SERVICE

I certify that on June 8, 2009, the foregoing was sent by e-mail, first-class mail, agency mail, or facsimile to all persons on the attached mailing list.

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