

TAB B

RULE 11 AGREEMENT

SOAH Docket No. 582-08-2178
TCEQ Docket Number 2007-1774-MSW

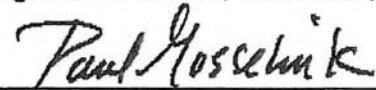
IN THE MATTER OF THE	§	
APPLICATION OF BFI WASTE	§	BEFORE THE STATE
SYSTEMS OF NORTH AMERICA, INC.	§	OFFICE OF ADMINISTRATIVE
PROPOSED SOLID WASTE PERMIT	§	HEARINGS
AMENDMENT No. 1447A	§	

RULE 11 AGREEMENT

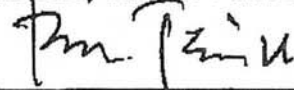
Pursuant to Rule 11 of the Texas Rules of Civil Procedure, the undersigned counsel agree as follows:

1. The City of Austin ("City"), BFI Waste Systems of North America, LLC ("BFI") and Giles Holdings, L.P. ("Giles") have entered into a binding Agreement Regarding Operations and Closure of the Sunset Farms Landfills ("Agreement") (copy attached as Exhibit A).
2. BFI, Giles and the City desire for the TCEQ to consider the Agreement in this contested case.
3. BFI, Giles and the City desire and request that the proposal for decision and any permit amendment issued by the TCEQ in this contested case contain the provisions set out in the Agreement as Special Conditions in the permit.
4. The City participation in the contested case hearing will be limited to testimony and evidence in support of the terms of this Rule 11 Agreement and the Agreement.

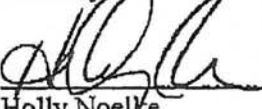
Agreed on this date, October 31, 2008.



Paul Gosselink
Texas State Bar No. 0822280
Attorney for BFI Waste Systems of North America, LLC



Paul Terrell
Texas State Bar No. 00785094
Attorney for Giles Holdings, LP



Holly Noelke
Texas State Bar No. 04651000
Attorney for City of Austin

Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was served on the following counsel/parties of record by certified mail (return receipt requested), regular U.S. mail, facsimile transmission and/or hand delivery on October 31, 2008:

FOR THE CHIEF CLERK:

LaDonna Castañuela
Texas Commission on Environmental Quality
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-3300
Fax: (512) 239-3311

FOR THE PUBLIC INTEREST COUNSEL:

Christina Mann
Texas Commission on Environmental Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4014
Fax: (512) 239-6377

FOR THE EXECUTIVE DIRECTOR:

Sieve Shepherd, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-0600
Fax: (512) 239-0606

REPRESENTING CITY OF AUSTIN:

Holly Noelke
Assistant City Attorney
City of Austin Law Department
P. O. Box 1088
Austin, Texas 78767
Tel: (512) 974-2630
Fax: (512) 974-6490

REPRESENTING GILES HOLDINGS, L.P.

Paul M. Terrill, III
The Terrill Firm, P.C.
810 W. 10th Street
Austin, Texas 78701
Tel: (512) 474-9100
Fax: (512) 474-9888

REPRESENTING NORTHEAST NEIGHBORS
COALITION AND INDIVIDUALS:

Jim Blackburn and Mary Carter
Blackburn and Carter, LLP
4709 Austin Street
Houston, Texas 77004
Tel: (713) 524-1012
Fax: (713) 524-5165

REPRESENTING TJFA, L.P.:

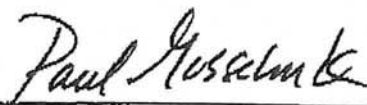
Bob Renbarger and J. D. Head
Fritz, Byrne, Head, & Harrison, LLP
98 San Jacinto Blvd., Suite 2000
Austin, Texas 78701
Tel: (512) 476-2020
Fax: (512) 477-5267

REPRESENTING TRAVIS COUNTY:

Kevin Morse
Assistant Travis County Attorney
Travis County Attorney's Office
P. O. Box 1748
Austin, Texas 78767
Tel: (512) 854-9513
Fax: (512) 854-4808

REPRESENTING PIONEER FARMS:

Stephen P. Webb
Webb & Webb
1270 Bank of America Center
515 Congress Avenue
P. O. Box Drawer
Austin, Texas 78767
Tel: (512) 472-9990
Fax: (512) 472-3183


Paul G. Gosselink

AGREEMENT REGARDING OPERATIONS
AND CLOSURE OF THE SUNSET FARMS LANDFILL

This Agreement ("Agreement") is made by and between BFI Waste Systems of North America, LLC ("BFI"), Giles Holdings, L.P. ("Giles"), and the City of Austin ("Austin" or "City") a home rule municipality located in Travis County Texas, in connection with BFI's application to expand the Sunset Farms Landfill ("Landfill") located at 9912 Giles Road in Travis County, Texas.

I. RECITALS

Whereas, BFI applied to the Texas Commission on Environmental Quality (TCEQ) for a vertical expansion to the Sunset Farms Landfill (TCEQ MSW Draft Permit No. 1447A);

Whereas, BFI's application to expand the Landfill has been referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing, SOAH Docket No. 582-08-2178;

Whereas, Austin obtained party status in SOAH Docket No. 582-08-2178 with the stated goals of ensuring discontinuance of waste acceptance at the Landfill by November 1, 2015 and requiring improved enforceable operating standards as long as the Landfill remains open;

Whereas, the area surrounding BFI has become urbanized through the years subsequent to the initial permitting of the Landfill;

Whereas, landfill operations in close proximity to residential neighborhoods present unique problems requiring specialized solutions;

Whereas, a portion of the property on which the Landfill is located is owned by Giles and the remaining property on which the landfill is located is owned by BFI;

Whereas, BFI is of the opinion that it has a valid exemption from the City's site development plan permitting requirements;

Whereas, the City is of the opinion that BFI must obtain administrative site plan approval under Austin City Code Chapter 25-5, Article 2;

Whereas, whether and the extent to which BFI can vertically expand the Landfill and whether Austin can prevent or restrict the expansion is uncertain; and

Whereas BFI and Austin have agreed to resolve their disputes regarding closure and operations of the Landfill.

NOW THEREFORE and in consideration of the mutual covenants and agreements to be performed as set out below, City, BFI and Giles agree as follows:

II. ACKNOWLEDGEMENTS, REPRESENTATIONS, AND WARRANTIES

- A. BFI and Giles and Austin acknowledge that they understand the purpose and intent of this agreement.
- B. BFI and Giles and Austin represent and warrant that they have the full right and authority to execute this agreement.

III. DEFINITIONS

For the purposes of this Agreement:

- A. Side slope means the exterior edges of fill areas or sidewalls of detention ponds which generally will have a slope steeper than 10%.
- B. Top deck means the top portion of the landfill which generally will have a slope flatter than 10%.
- C. Adequate vegetation growth means 85% surface area coverage in vegetation at least 1" tall.
- D. Seeding events means seeding in compliance with City of Austin Environmental Criteria Manual (ECM) Section 1.4.7 A (Exhibit 1) except as otherwise noted.
- E. Amended landfill permit means proposed TCEQ draft permit 1447A for the Sunset Farms Landfill.
- F. Property means the property on which the Landfill operates as described in the amended landfill permit application.

IV. TERMS

- A. BFI agrees to cease accepting waste at the Landfill and agrees to restrict the property on which the landfill operates from accepting waste after November 1, 2015 and to further restrict the property on which the landfill currently operates from use for transfer station operations.
- B. Giles agrees to restrict the property on which the Landfill operates from accepting waste after November 1, 2015 and to further restrict the property on which the landfill currently operates from use for transfer station operations.

C. This Agreement is understood by the parties to be a written contract under which the Parties are granting certain concessions and providing services to one another. This Agreement shall be binding upon and inure to the benefit of each and all of the Parties hereto and their affiliates, successors and assigns and shall be a covenant and restriction running with the land that constitutes the Landfill site and adjacent land owned by BFI and Giles as follows:

Parcel 1: Approximately 54.13 acres of land of the LUCAS MUNOS SURVEY, ABSTRACT NO. 55, in Travis County, Texas and being more particularly described by metes and bounds in Document No. 2005198209 of the Travis County Real Property Records, said Document attached as Exhibit "A" hereto.

Parcel 2: Approximately 172.531 acre tract of land out of the LUCAS MUNOS SURVEY No. 55, Abstract 513, being a portion of a 176.10 acre tract of land conveyed to Mobley Chemicals, Inc., by warranty deed, dated January 22, 1982, recorded in volume 7671, page 101, of the deed records of Travis County, Texas; said 172.531 acres being more particularly described by metes and bounds in Exhibit "B" attached hereto.

Parcel 3: Approximately 122.711 acre tract of land out of the LUCAS MUNOS SURVEY No. 55, Abstract 513, being a portion of a 73.20 acre tract of land conveyed to Mobley Chemicals, Inc., by warranty deed, dated January 22, 1982, recorded in volume 7671, page 117 and a portion of a 102.87 acre tract of land conveyed to Mobley Chemicals, Inc., by warranty deed, dated January 22, 1982, recorded in volume 7671, page 109, both of the deed records of Travis County, Texas; said 122.711 acres being more particularly described by metes and bounds in Exhibit "C" attached hereto.

Giles and BFI represent that no other person or entity other than themselves currently possesses any interest in such land that would allow them to dispose of waste or operate a transfer station at the Landfill and agree that such covenant and restriction shall bind all future holders of any interests in such land. BFI and Giles will execute and deliver to Austin a document memorializing the restrictive covenant and the City of Austin may record the restrictive covenant in the Travis County Real Property Records. BFI and Giles agree that any sale, assignment, or transfer of the Landfill permit shall be made expressly subject to the terms of this Agreement.

D. BFI will comply with the following terms related to drainage, erosion and revegetation:

1. BFI agrees to place intermediate cover and implement seeding events, on all side slope disturbed areas on which activity has not recommenced within 60 days except BFI is under no obligation to seed such areas during the months of July

and August. These seeded areas shall be irrigated in accordance with the requirements of Exhibit 1.

2. BFI agrees to place intermediate cover and implement seeding events on the top deck of the landfill in all disturbed areas on which activity has not recommenced within 120 days except for that area immediately up gradient to the five proposed or constructed drainage down chutes on intermediate cover areas as shown on attached Exhibit 2. Those up gradient areas shall be immediately vegetated upon construction of each down chute with a filter strip of buffalo grass sod that extends at least 100 feet out from each down chute inlet and is wide enough to filter the run off to be directed to each down chute (See Exhibit 2 for width dimensions). The buffalo grass filter strip shall be maintained until final cover is placed. In addition, a silt fence or mulch berm shall be placed on the top deck in front of the inlet of each down chute and at the end of each constructed down chute (See Exhibit 2 for locations). These silt fences or mulch berms shall remain in place and be maintained until the areas contributing runoff to these down chutes achieve adequate vegetation growth.
3. The initial seeding event for all disturbed areas will be accomplished using hydro-mulch seeding application procedures per Exhibit 1.
4. Seeding of the disturbed areas will be of a seasonally appropriate mix. Currently the seed mix is bermuda/millet for warm weather and rye for cold weather. When cold weather seed is used the seeded area shall be reseeded within 60 days of the onset of sufficiently warm weather to support the warm weather mix. The reseeded area shall be irrigated until adequate vegetation growth is achieved.
5. Seeding for the final cover shall include a seasonally appropriate 609-S (native seeds) mix as defined in the City of Austin Standard Specifications Manual on approximately 15% of the surface area of the eastern and northern slopes of the landfill and for the remainder of the site a seasonally appropriate mix.
6. Perimeter sediment/erosion control devices such as silt fences, hay bales or other systems acceptable to the City shall be in place prior to the establishment of any soil stock piles on site. For soil stock piles which have slope lengths greater than 20 feet, mid-slope temporary stabilization controls such as seeding, tarping or placement of silt fences or mulch berms shall be implemented within fourteen days of the initial establishment of the soil stock pile and shall be maintained in good working condition until the stockpile is removed.
7. BFI shall install and maintain silt fences or mulch berms within 14 days of completion of intermediate cover at the base of all side slope and top deck intermediate cover areas until adequate vegetation growth is achieved.
8. Stormwater runoff from the landfill area designated as Drainage Area 2 shall be routed through the existing detention pond, or the proposed water

quality/detention pond, when the waste fill in Drainage Area 2 has reached the final grades proposed in the landfill expansion plan.

9. BFI will ensure that the side slopes of the existing detention pond and the side slopes of the proposed water quality/detention pond in the northeast portion of the landfill shall be adequately stabilized through proper grading and maintenance and by implementing/applying vegetation on the side slopes of the ponds within thirty days of completion of construction of the pond. BFI further agrees to inspect the sedimentation ponds/basins every three months and after every half-inch rainfall event and to clean the ponds/basins by removing the accumulated sediment once the sediment has reached 25% of the respective pond capacity.
10. BFI shall amend its Storm Water Pollution Prevention Plan (SWPPP) for the Sunset Farms Landfill within 90 days of the effective date of this Agreement so as to incorporate the specific practices and procedures described in this Agreement. The SWPPP will be submitted to the City for review and concurrence.
11. BFI agrees to begin operating the Sunset Farms Landfill pursuant to the terms of this Agreement and the amended SWPPP within 60 days after the SWPPP has been amended and the City's concurrence has been achieved.

E. BFI agrees that it shall not accept liquid waste that has not passed the TCEQ's paint filter test and shall not construct or operate a liquid waste stabilization/solidification basin at the Sunset Farms Landfill.

F. BFI agrees to prohibit commercial waste hauling vehicles from utilizing Blue Goose Road as ingress or egress to the Sunset Farms Landfill except for those few vehicles which service businesses and residences in that area. Specifically, BFI shall progressively discipline any of its own drivers, up to and including termination, which ignore this prohibition. BFI shall also incorporate into its future and/or renewal contracts with other commercial waste haulers that the haulers will not be allowed to dispose of their waste loads at the Sunset Farms Landfill if they utilize Blue Goose Road for ingress or egress more than one time.

G. BFI will request that the Administrative Law Judge issue a proposed permit containing special provisions incorporating the terms of paragraphs D. 1 through 9 and E. and F. as set out above.

H. BFI will request a site plan permit from the City for the Landfill vertical expansion, and will file a site plan permit application with Austin within 60 days of execution of this Agreement. The City will process this site plan application as a "D" site plan application under Austin City Code Chapter 25-5, Article 2, and will not unreasonably withhold approval of the site plan if all technical requirements of the City are satisfied.

J. As long as BFI and Giles are in substantial compliance with this Agreement, Austin will limit its participation in the contested case hearing regarding the landfill expansion to testimony and matters in support of the terms of this Agreement.

V. TERM, TERMINATION

A. This Agreement shall be effective from and after the date of execution.

B. If any party defaults in the performance of any of the terms or conditions of this Agreement, the defaulting party shall have 10 days after receipt of written notice of the default within which to cure the default. If such default is not cured within the 10 days, then the offended party shall have the right without further notice to terminate this Agreement or seek enforcement of the Agreement in court including specific performance of the terms of the Agreement and attorneys fees.

C. The parties agree that monetary damages would be inadequate compensation if any party defaults in the performance of any of the terms or conditions of this Agreement, therefore specific performance should be required.

VI. MISCELLANEOUS

A. Severability. If any section, subsection, sentence, clause, or phrase of this Agreement is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of the Agreement shall not be affected thereby. It is the intent of the parties signing this Agreement that no portion of it, or provision or regulation contained in it shall become inoperative or fail by reason of unconstitutionality or invalidity of any other section, subsection, sentence, clause, phrase, provision, or regulation of this Agreement.

B. Force Majeure. No party shall be liable for any delay, failure or default in performing under this Agreement if such delay, failure or default is caused by conditions beyond its control including – but not limited to Acts of God, government restrictions, wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

C. Law and Venue. This Agreement shall be governed by the laws of the State of Texas. The obligations under this Agreement are performable in Travis County, Texas. It is expressly understood that any lawsuit or litigation arising out of or relating to this Agreement will take place in Travis County, Texas.

D. Alteration, Amendment, or Modification. This Agreement may not be altered, amended, or modified except in writing, approved by BFI and Giles and the City Manager of the City of Austin or his designee.

E. Entire Agreement. This Agreement constitutes the entire agreement between Austin and BFI and Giles. No other agreement, statement or promise relating to the subject matter of this Agreement which is not contained in this Agreement is valid or binding.

F. Notice. Notices to either party shall be in writing, and may be either hand delivered or sent by certified or registered mail, postage paid, return receipt requested. If sent to the parties at the addresses designated herein, notice shall be deemed effective upon receipt in the case of hand delivery and three days after deposit in the U.S. Mail in case of mailing. The address of the City of Austin for all purposes shall be:

CITY: City of Austin
Solid Waste Services
P.O. Box 1088
Austin, Texas 78767

The address for BFI and for Giles for all purposes under this Agreement and for all notices hereunder shall be:

BFI:
2575 IH 35 South, Suite 103
San Marcos, TX. 78666

Giles:

Steve Mobley
2205 Westover Road
Austin, Texas 78703

Ron Habitzreiter
1208 West Avenue
Austin, Texas 78701

F. Giles joins this Agreement for the reason that it owns fee simple title to land on which the Landfill is located and leases that land to BFI for operation of the Landfill and benefits from the mutual covenants and agreements herein. Giles hereby consents to BFI and Austin entering into, complying with and enforcing the terms of this Agreement and agrees to take no action that would be inconsistent with or impede implementation of and compliance with this Agreement by any Party.

IN WITNESS WHEREOF, the authorized representative of Austin, Giles and BFI, by the signature of their authorized representatives below, have caused this Agreement to be executed in duplicate originals, effective as of the latest of the three dates entered below.

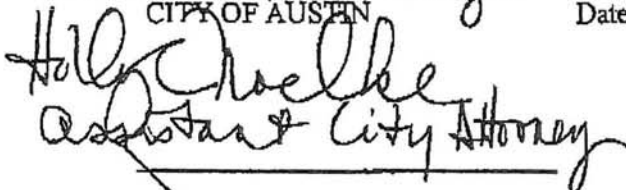
~~BFI WASTE SYSTEMS OF
NORTH AMERICA, LLC~~

Date: _____


Assistant City Manager
CITY OF AUSTIN

Date: _____

Oct. 31, 2008


Assistant City Attorney

~~GILES HOLDINGS, L.P.
Formerly Known as Mobley
Chemicals, Inc.~~

Date: _____

IN WITNESS WHEREOF, the authorized representative of Austin, Giles and BFI, by the signature of their authorized representatives below, have caused this Agreement to be executed in duplicate originals, effective as of the latest of the three dates entered below.

BFI WASTE SYSTEMS OF
NORTH AMERICA, LLC

CITY OF AUSTIN

Bruce Dwyer ~~MANAGER~~ VICE PRESIDENT

GILES HOLDINGS, L.P.
Formerly Known as Mobley Chemicals, Inc.

GILES HOLDINGS, L.P.
Formerly Known as Mobley Chemicals, Inc.

