

ATTACHMENT 2A

COMMISSION ORDER 5058 05 EXCERPT

DEMONSTRATION OF NEED SUPPLEMENT

MUNICIPAL SOLID WASTE PERMIT APPLICATION REPORT

NORTH COUNTY LINE LANDFILL

**BEFORE THE MISSISSIPPI COMMISSION
ON ENVIRONMENTAL QUALITY**

**IN THE MATTER OF: AMENDMENT TO THE MADISON COUNTY SOLID
WASTE MANAGEMENT PLAN (RE: ADDITION OF
NORTH COUNTY LINE MUNICIPAL SOLID
WASTE LANDFILL)**

ORDER NO. 5058 05

ORDER

This matter came on for hearing before the Mississippi Commission on Environmental Quality ("Commission") on June 30, 2005, pursuant to Miss. Code Ann. § 49-17-41 (Rev. 2003). This evidentiary hearing was related to the Commission's December 16, 2004, decision (Commission Order No. 4944-05, dated January 19, 2005) to approve an amendment to the Madison County Solid Waste Management Plan ("Plan"). The hearing was requested pursuant to Miss. Code Ann. § 49-17-41 (Rev. 2003) by the Hinds County Board of Supervisors ("Hinds County"), Rory Reardon, and Jean Enochs, as petitioners ("Petitioners") opposing the Madison County Board of Supervisors' ("Madison County's") request to amend Madison County's Plan to include a proposed municipal solid waste landfill. The Bilberry Family Limited Partnership ("Bilberry"), owner of the proposed landfill property, filed a Motion to Intervene. Pre-filed testimony was submitted by the Mississippi Department of Environmental Quality ("Department"), the Petitioners, Bilberry, and Madison County and was provided to the Commission for review in advance of the date of the hearing. The Commission, having heard and considered opening and closing statements and testimony of witnesses on behalf of the Department, Hinds County, Mr. Reardon, Ms. Enochs, Bilberry, and

Madison County, and having considered the same and being fully advised in the premises, finds as follows:

I. Introduction and Procedural History

1.

Madison County is subject to the Mississippi Solid Waste Planning Act of 1991, Miss. Code Ann. § 17-17-201, *et seq.* (Rev. 2003) and the rules and regulations of this Commission. (*See Affidavit of Mark Williams (Direct Testimony)*, DEQ Exhibit 1, p. 2).

2.

On February 3, 1994, the Commission executed Order No. 2747-94 approving the original Madison County Solid Waste Management Plan. Prior to the Commission's action on December 16, 2004, to include the proposed municipal landfill, the Commission approved two amendments to the Plan besides the one at issue here: (1) in 2002, the addition of a Class II rubbish facility to be owned and operated by the City of Flora; and (2) in 2004, a Class I rubbish site near the proposed site of the landfill considered herein. (*See Affidavit of Mark Williams (Direct Testimony)*, DEQ Exhibit 1, pp. 2-3).

3.

On December 5, 2003, Madison County adopted a resolution approving an amendment to the approved Madison County Solid Waste Management Plan to include the addition of a new municipal solid waste landfill. (*See Affidavit of Arthur Johnston (Direct Testimony)*, Exhibit J to Madison County Hearing Exhibit 1.) The proposed facility, to be known as the North County Line Landfill, will be located on property owned by the Bilberry Family Limited Partnership, LLC, ("Bilberry") and operated by it

or another certified operator. The facility is located in Sections 30 and 31, Township 7 North, Range 1 East, of Madison County, on North County Line Road. The proposed facility will include approximately 103 acres of disposal area within the total property area of approximately 169 acres. The facility will receive municipal solid wastes for disposal from an approved service area to include Madison, Hinds, Rankin, Attala, Leake, Scott, Smith, Simpson, Copiah, Claiborne, Warren, Yazoo, and Holmes Counties. (See *Affidavit of Mark Williams (Direct Testimony)*, DEQ Exhibit 1, pp. 4-5).

4.

The request for approval of this amendment to include the North County Line Landfill site initially was submitted to the Department in February 2003. (*Id.* at 6). After reviewing the supporting documentation, the Department found inadequacies in the public participation phase of the process and requested that Madison County again solicit and consider public comment on the proposed project. (*Id.* at 7). The County reinitiated its public input process and conducted a hearing on November 7, 2003. (*Id.* and *Affidavit of Arthur Johnston (Direct Testimony)*, Exhibit H to Madison County Exhibit 1). In addition, the County initiated its process for review and consideration of a new Class I rubbish site, proposed by Dwayne D. Ballard, conducting a public hearing regarding that matter on October 10, 2003. (See *Affidavit of Mark Williams (Direct Testimony)*, DEQ Exhibit 1, pp. 3 and 7). The requests to amend the Plan to include both projects and the associated supporting documentation were submitted to the Department on December 5, 2003. (*Id.* at 7). Because of significant turnover in the membership of the Madison County Board of Supervisors in the election of November 2003, and because of perceived public opposition to the projects, the Department asked the new Madison County Board

of Supervisors to confirm its support for the proposed amendments to the Plan in a letter dated March 11, 2004. (*Id.* at 7 and Exhibit 2 thereto). Thereafter, the Board voted on April 16, 2004, in a 3-2 vote, to reaffirm the previous Board's request to include the proposed North County Line Landfill facility in the Madison County Plan. (*Id.* at 7 and *Affidavit of Arthur Johnston (Direct Testimony)*, Exhibit K to Madison County Exhibit 1). The Department then reviewed the documentation to ensure compliance with state laws and regulations. (*Id.* at 5).

5.

The Department's review included ensuring that the Plan contained all the necessary components required by law and regulations, in particular, Miss. Code Ann. §§ 17-17-225 and 17-17-227 (Rev. 2003) and the *Evaluation Criteria for Local Solid Waste Management Plans* (SW-1). (*Id.* at 5-6). The Department addressed three areas of concern in its review: (1) procedural and content issues to determine if the County followed the proper procedures in adopting the amendment to the local plan and adequately described the project; (2) the County's consideration of the need for the new landfill facility and its impact on local solid waste management conditions; and (3) preliminary siting issues, including confirmation of local zoning compliance and consideration of environmental justice concerns. (*Id.* at 6). The Department's purpose in this review was to ensure that the County followed the correct process in considering and acting upon the amendment to the Plan and that it adequately described the project for incorporation into the local Plan. (*Id.*) The Department's review did not include certain factors that are a part of the environmental permitting process, which will follow approval of the amendment to the plan, including standards related to the geology and

hydrology of the site, any impact on wetlands, endangered species and historical sites, setbacks to surface waters, public water supplies, and property lines, as well as various other siting requirements of the *Mississippi Nonhazardous Solid Waste Management Regulations* (SW-2). (*Id.* at 5). Nor did the Department review the compliance and/or criminal history of the permit applicant, which review is reserved for the permitting process. (*Id.*) The Department concluded that the County conducted the process for considering the amendment in a manner consistent with applicable state laws, that it ultimately published appropriate public notices and conducted public hearings in a timely and appropriate manner, and that it provided for public involvement in the decision on the amendment. (*Id.* at 7). Further, the Department concluded that the County had notified all of the adjacent counties of the proposed change to the Plan, that it had acted on the matter within the time allowed by statute, that it had adopted the appropriate resolution on the amendment to the Plan, that it had reconstructed the affected pages of the Plan and had submitted those pages to the Department as state law required, and that those pages had adequately described the project with respect to the type, size, location and service area of the facility. (*Id.* at 7-8).

6.

At the Commission meeting on November 18, 2004, staff of the Department presented information on the proposed amendment and advised the Commission that the amendment to the Plan appeared to be procedurally complete and appropriately supported by the required documentation. (*Id.* at 14). Madison County presented information concerning the County's consideration of the need for the facility and environmental justice issues. (*Id.*) Both opponents and proponents of the proposed project addressed

the Commission. (*Id.*) Upon hearing all presented information and comments from the Department, Hinds County, Mr. Reardon, Ms. Enochs, Bilberry, and Madison County, the Commission took the matter under advisement until the next Commission meeting, which was scheduled for December 16, 2004. (*Id.* at 15).

7.

At the Commission meeting on December 16, 2004, staff of the Department again tendered the proposed amendment to the Madison County Plan for consideration by the Commission, at which time the Commission voted to approve the amendment. (*Id.* at 16). The Commission executed Order No. 4944-05 on January 19, 2005, approving the amendment and making the additional request that, at the appropriate time, the Mississippi Environmental Quality Permit Board ("Permit Board") review and consider requiring, as a condition for permit issuance, an increase of the required setback distance between the landfill disposal area and the adjacent property lines as well as an additional operating condition requiring the landfill operator routinely to remove and clear litter resulting from waste transportation activities along North County Line Road. (*Id.*, Exhibit 5, and Order No. 4944-05).

II. Evidentiary Matters and Rulings

8.

Pursuant to Miss. Code Ann. § 49-17-41 (Rev. 2003), timely requests for an evidentiary hearing related to the Order No. 4944-05 were filed by Hinds County, Mr. Reardon, and Ms. Enochs. A Motion to Intervene was filed by Bilberry (Bilberry Exhibit 1). The hearing took place before the Commission on Thursday, June 30, 2005, with voluminous prefiled and rebuttal testimony being filed by the Department, Hinds

County, Mr. Reardon, Ms. Enochs, Bilberry, and Madison County. The parties involved in the hearing were represented as follows: Roy Furrh, attorney for the Department; Azande Williams, attorney for Hinds County; Jim McCafferty, attorney for Rory Reardon; Jean Enochs, *pro se*; Eric Hamer, attorney for Bilberry; and Glen Bush, attorney for Madison County. Hearing Officer Charlene Pierce, Special Assistant Attorney General, first took up the matter of the Motion to Intervene by Bilberry, which was granted without objection. (Tr. at 10). Next, the affidavit of Arthur Johnston for Madison County was accepted without testimony on the motion of Mr. Bush. (*Id.*). The Commission heard opening statements by the Department, Hinds County, Mr. Reardon, Ms. Enochs, Bilberry, and Madison County, as well as the testimony of some 24 witnesses and closing statements by all parties. Witnesses included the following: Mark Williams and Gloria Tatum for the Department; Douglas Anderson and James Baker for Hinds County; Andrew Taggart, Jerome Manuel, Bernice Manuel, Jeanette Harris, Odell Hudson, Bennie Cooper, Cleveland Brocks, JoAnne Manual, and Rory Reardon for Mr. Reardon¹; Jean Enochs for Ms. Enochs; Michael Bilberry for Bilberry; and Eugene Wardlaw, Timothy Johnson, and Karl M. Banks for Madison County.

9.

Following the testimony of Ms. Enochs, part of which concerned the condition of roads in the area, Ms. Williams moved on behalf of Hinds County to recall as a witness Douglas Anderson, Hinds County Supervisor for the district involved, on the basis that he has responsibility for Hinds County roads in the area. Objections by Mr. Hamer on behalf of Bilberry and Mr. Bush on behalf of Madison County were noted, but Hearing

¹ Affidavits of Louethel Hudson, John Sweeny, Alice Sweeny, Gregory Lee Harris, Richard McRae, and Mike Parker were accepted into the record for Mr. Reardon although they were not present for examination.

Officer Pierce recalled Mr. Anderson, restricting cross-examination of him to the issue of road use in Hinds County. (Tr. at 71-73). Mr. Anderson testified that he believed an additional landfill would cause further deterioration of North County Line Road and Greens Crossing Road and that it also would result in increased litter along those roads. (Tr. at 75-79).

10.

Madison County Supervisor Andrew Taggart testified under subpoena that he was opposed to the new landfill but that he believed the host fee agreement between Madison County and Bilberry prevented him from offering voluntary testimony against the amendment. (Tr. at 83-84). Mr. Hamer objected to Ms. Enochs' questioning Mr. Taggart regarding environmental justice issues on the basis that these were outside the scope of Mr. Taggart's affidavit, and Hearing Officer Pierce sustained that objection. (Tr. at 87).

11.

The standing of Mr. Reardon to testify either on direct or rebuttal in this matter was the subject of an objection and motion to strike by Mr. Bush for Madison County, joined by Mr. Hamer for Bilberry. (Tr. at 125-126). Mr. Bush argued that Mr. Reardon was not an attorney; he was not an interested party because he does not live near the proposed landfill; and he was not qualified as an expert to offer his opinion. (Tr. at 126-127). Mr. McCafferty argued on Mr. Reardon's behalf that Mr. Reardon was an interested party as a resident of Hinds County. After a short recess, Hearing Officer Pierce ruled that Mr. Reardon was an interested party, speaking on behalf of a group of interested parties, and that both his direct and rebuttal testimony would be admitted as evidence. (Tr. 130-131). During cross-examination of Mr. Reardon, Mr. Hamer

questioned him about the fact that he does not have a license to practice law, offering as evidence a letter dated April 12, 2005, from Mr. Furrh on behalf of the Department cautioning him against the potential unauthorized practice of law. (Tr. at 136). Mr. McCafferty objected to the letter being accepted into evidence on the basis that it was not relevant to the issue before the Commission, and Hearing Officer Pierce sustained the objection. (Tr. at 137).

III. Issues and Arguments

12.

Statements and testimony by parties and witnesses who opposed the Commission's approval of the amendment to the Madison County solid waste management plan centered on need for the facility, environmental justice, siting and zoning issues and the expected impact on roads in the area, including roads for whose upkeep Hinds County ultimately is responsible, the host fee agreement and health concerns.

A. Need for the Landfill

13.

Early in its planning process, Madison County commissioned a study by Environmental Business Services, LLC, and Copeland, Cook, Taylor & Bush law firm on the request for proposals for disposal services and host agreement, which was finished in September, 2002, and indicated that the landfill project is needed to "encourage competition." (*See Affidavit of Arthur Johnston (Direct Testimony)*, Volume II of Madison County Exhibit 1, Tab 15). In addition to the Madison County study, Bilberry conducted a need study pursuant to its responsibility under Miss. Code Ann. § 17-17-229

(Rev. 2003) to provide a demonstration of need which ultimately will be considered in the environmental permitting process. (See *Affidavit of Eugene Wardlaw, P.E.*, (*Direct Testimony*, and Exhibit A thereto, and Madison County Exhibit 2). The environmental permitting process is in the jurisdiction of the Mississippi Environmental Quality Permit Board ("Permit Board") rather than that of the Commission. This study concluded that, with the projected volume of waste from the 13-county service area, the new landfill will provide a competitive, long-term option for waste disposal services for residential, commercial, and industrial wastes in the region. (*Id.* and *Affidavit of Mark Williams (Direct Testimony)*, DEQ Exhibit 1, p. 9). In addition to these two studies, the Department conducted its own review of the available commercial, solid waste landfill facilities in the area, including their projected operating lives and capacities. (*Id.*) This review indicated two active municipal landfill facilities already in existence in Madison County: the BFI Little Dixie Landfill located next to the proposed North County Line facility (with a projected life of 15 years), and another operated by the City of Canton (with a projected life of 40 years). (*Id.* at 9-10). The Department's review indicated only one other active municipal solid waste landfill operating within the proposed, 13-county service area: the Clearview Landfill facility owned by Waste Management, Inc., in Lake, Mississippi, on the extreme eastern border of the service area, with 40 years of remaining life projected by its owners based on incoming waste volumes. (*Id.* at 10). Two other, inactive landfill facilities within the approved service area are owned by the City of Jackson and Warren County Waste Disposal, Inc., but it is not known whether either will ever open. (*Id.*) The Durant Landfill, operated by Waste Management, Inc., stopped accepting solid waste in June 2001 and is now closed. (*Id.*)

14.

Mr. Wardlaw testified on behalf of Madison County that the new landfill is needed to encourage competition and to replace facilities that have closed, such as the Durant Landfill, as well as other area landfills which closed in the early 1990s as a result of costly requirements imposed by federal landfill regulations. (*See Affidavit of Eugene Wardlaw, P.E., (Direct Testimony)*, and Exhibit A thereto, and Madison County Exhibit 2). Mr. Banks, a member of the Board of Supervisors of Madison County, testified that when the Madison County Plan initially was adopted, it underestimated the population of Madison County in the year 2000 by 20 percent, and that, since it was prepared, the Jackson Byram Landfill and the City of Durant Landfill have closed, adding to the need for more landfill capacity. (*See Affidavit of Karl M. Banks, (Direct Testimony)*, p. 5, Madison County Exhibit 5). In addition, Mr. Banks stated that the capacities of existing landfills are insufficient to meet the long-term waste needs of Madison County over the 20-year period covered by the Plan. (*Id.*)

15.

Mr. Baker, Director of Planning and Administration for the Hinds County Department of Public Works, testified on behalf of Hinds County that there is insufficient need for the new landfill, and that evidence of this can be seen in the fact that Hinds County, the City of Jackson, Madison County, and Rankin County all have multi-year, waste collection contracts currently in place. (*See Sworn Testimony of James Baker (Direct Testimony)*, p. 2, Hinds County Exhibit 2). Mr. Baker asserted that the Madison County Board of Supervisors voted at one time to restrict the service area of the proposed landfill to wastes from Madison County only, and that this vote demonstrated that the

proposed landfill is not needed. (*Id.* at 2-3). Mr. Reardon testified that the new landfill was proposed to increase the property value of the land and not to address solid waste needs of Madison County. (*Affidavit of Rory Reardon* at I-A, Reardon Exhibit 1).

Further, Mr. Reardon claimed that Madison County's process for assessment of the need for the landfill contained misleading assessments of existing disposal capacity and that inaccuracies in population and waste volume data were used in the needs assessment.

(*Id.* at I-A, I-B, and III.)

16.

Andrew Taggart, a member of the Madison County Board of Supervisors, testified that Madison County is the only county in the state that currently has two (2) landfills, and a third landfill (North County Line Road) is not needed. (Tr. at 84). Mr. Taggart also testified that the Madison County Board of Supervisors initially voted on April 20, 2004, to limit garbage coming to the North County Line Landfill to Madison County-originated garbage, but later the Board rescinded the restriction on April 23, 2004. (Tr. at 85). Mr. Taggart added that the Madison County Board of Supervisors voted to hire counsel to represent Madison County before the Commission that would be reimbursed by Bilberry. (Tr. at 86). Mike Parker, Public Works Director of the City of Canton, testified that Madison County had sufficient capacity for the area's solid waste. (*See Prefiled Testimony of Rory Reardon*). Mr. Parker also questioned population projections for Madison County and the use of the City of Canton's population and waste generation in computing volumes and capacity which were provided to the Madison County Board of Supervisors in November of 2003. (*Id.*) Ms. Enochs indicated of the seventeen (17) garbage landfills in the state, Madison County is the only county with two,

and that there is plenty of remaining capacity in the Little Dixie and City of Canton landfills. (*See Affidavit of Jean Enochs (Direct Testimony)*, pp. 1-2, Enochs Exhibit 1). Mr. Williams testified on behalf of the Department that, while numbers and quantities have varied during the process of review, these variations are due in part to the lengthy review that the matter has undergone, from 1998 until the present time. (*See Affidavit of Mark Williams (Direct Testimony)*, DEQ Exhibit 1, p. 6). While the Department did not develop a position on whether Madison County's decision on need was correct or not, Mr. Williams testified that the information presented to the Department indicates that the need for the landfill was an ongoing point of discussion and consideration throughout the County's process to amend its Plan. (*Id.* at p. 5-6).

17.

The Commission finds that historically it has left decisions on the need for a new landfill to the local government in planning matters and, consistent with its past decisions, now chooses to rely on Madison County in this matter. Additionally, the Commission finds that state law requires the permit applicant to provide a demonstration of need document as part of the permitting process before the Permit Board pursuant to Miss. Code Ann. § 17-17-229 (Rev. 2003). The Commission further finds that Madison County considered the need for the North County Line Landfill when it decided to approve the amendment to the Plan by the Board.

B. Environmental Justice and Zoning

18.

Environmental justice, as defined by the United States Environmental Protection Agency ("EPA"), ensures the fair treatment and meaningful involvement of all people,

regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. "Fair treatment" means that no group of people, including a racial, ethnic, or socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies. (*See Affidavit of Mark Williams (Direct Testimony)*), pp. 11-12, *DEQ Exhibit 1*, citing *Notices, Environmental Protection Agency, Office of Environmental Justice Hazardous Substances Research Small Grants Program – Application Guidance for FY 2004*, 69 Fed. Reg. 9618-01, 2004 WL 367510 (Mar. 1, 2004); *National Environmental Policy Act (NEPA)*, 42 U.S.C. §§ 4321, *et seq.*; and William J. Clinton, *Exec. Order No. 12898*, 59 Fed. Reg. 7629, 1994 WL 43891 (Feb. 11, 1994)). While environmental justice concerns also will be examined more closely in the permitting process, much of the testimony in opposition to approval of the amendment centered upon this issue, with local residents Jerome Manuel, Bernice Manuel, Jeanette Harris, Odell Hudson, Bennie Cooper, Cleveland Brocks, and Joanne Manuel testifying to their belief that they will be disproportionately and adversely affected by the addition of the new landfill in a county that already has two nearby operating solid waste landfills, the BFI Little Dixie Landfill and the Canton municipal landfill. (Tr. at 105-123). In addition, the prefiled affidavits of Louethel Hudson, John Sweeny, Alice Sweeny, Gregory Harris, and Richard McRae were accepted into the record, although these witnesses were not present for examination. (*See Prefiled Testimony of Rory Reardon*, Appendix II-B-1). Residents Jerome Manuel, Alice Sweeny, Bernice Manuel, Jeanette Harris, Odell Hudson, Louethel Hudson, Bennie

Cooper, John Sweeny, Gregory Lee Harris, Cleveland Brocks, and Richard McRae testified that they were either not notified of, or were discouraged from attending, the community meeting held on November 24, 2003. (*Id.*)

19.

This testimony was contradicted by Mr. Wardlaw, who stated that a tri-fold fact sheet was distributed to households in the area of the proposed landfill on November 21, 2003, and that residents were invited to attend the November 24 meeting. (*See Affidavit of Eugene Wardlaw*, Madison County Exhibit 2, 13-d). Mr. Wardlaw's consulting firm, GeoScience Engineers, was hired by Bilberry to conduct an environmental justice review on behalf of Madison County in response to the Department's request that Madison County review and consider the potential environmental justice impact of the proposed North County Line Landfill. (*Id.*) Mr. Wardlaw testified that, in order to be consistent with the Department's request, he met with Gloria Tatum, the Department's Environmental Justice Coordinator, to obtain guidance and information for his review. (*Id.* at 13-a). This was confirmed by Ms. Tatum's testimony that she provided general recommendations concerning an environmental justice assessment and meeting, although she did not visit the site, study specific demographic information, or review the tri-fold fact sheet or the GeoScience Engineers' environmental justice review. (*See Affidavit of Gloria Tatum*, DEQ Exhibit 2, p. 2). Mr. Wardlaw also stated that his firm analyzed U.S. Census Bureau information and searched the Department's databases for permitted facilities in Madison County, studying their distribution with regard to the population to be sure that there was no discriminatory pattern in the siting of these facilities in Madison County. (*See Affidavit of Eugene Wardlaw (Direct Testimony)*, Madison County Exhibit

2, 13-f). Mr. Wardlaw concluded that the siting of the landfill would fully comply with the Department's environmental justice goals. (*Id.* at 14).

20.

The Department reviewed the GeoScience report, as well as Madison County's assertions on the matter, letters written by opponents, and the EPA's web-based Environmental Justice Geographic Assessment Tool, and concluded that, while the location of three solid waste disposal sites in such close proximity raises potential concerns, Madison County provided numerous opportunities for meaningful public involvement, including local public hearings and the Bilberry community meeting. (*See Affidavit of Mark Williams (Direct Testimony)*, DEQ Exhibit 1, p. 13.) In addition, the Department concluded that that Madison County had given the level of review and consideration to these matters that is required at this stage, without significant environmental justice implications being identified. (*See Second Affidavit of Mark Williams (Rebuttal Testimony)*, DEQ Exhibit 1, pp. 12-13). While environmental justice is an important issue, state law does not require the County to conduct a review of environmental justice issues in amending its Plan. (*Id.* at p. 11). The Department considers the opportunity for meaningful public involvement to be the most important factor in an environmental justice review. (*Id.*) Finally, the Department stated that it considers the environmental justice review by Madison County to be merely a preliminary review, and not a final or in-depth analysis of this issue, which will be conducted by the Department as part of the subsequent environmental permitting process. (*Id.* at 13.)

21.

The Commission finds that Madison County has preliminarily considered environmental justice issues and has provided for public participation in its decision to amend its solid waste plan.

22.

Additionally, review of the zoning issues indicates the Bilberry project proponents began the process to obtain proper industrial zoning of this property in May of 1998. (*See Affidavit of Mark Williams (Direct Testimony)*, DEQ Exhibit 1, p. 11). The information submitted by Madison County indicates the County subsequently approved the re-zoning of the property from R-1 Residential to I-1 Industrial, which Madison County indicates allows the landfill development on the property. (*See Affidavit of Arthur Johnston (Direct Testimony)*, Exhibit L to Madison County Exhibit 1, and *Affidavit of Eugene G. Wardlaw, P.E. (Direct Testimony)*, Madison County Exhibit 2, p. 3).

23.

The Commission finds that the record indicates Madison County has adequately addressed zoning issues, which will be more closely reviewed in the permitting process.

C. Road Maintenance

24.

Witnesses for Hinds County expressed special concern for the capacity and upkeep of roads near the proposed landfill site, pointing out that much of the affected road surface is in Hinds County, rather than Madison County. (*See Affidavit of Douglas Anderson*, Hinds County Exhibit 1, and *Affidavit of James Baker*, Hinds County Exhibit

2). This testimony contended that the location of the proposed landfill will result in financial hardship to Hinds County for the upkeep of its portion of North County Line Road, which will be used as the primary transportation route to the landfill. (*Id.*) State law does not require Madison County to consider this matter in its evaluation of the proposed landfill in the planning process. (*See Second Affidavit of Mark Williams (Rebuttal Testimony)*, DEQ Exhibit 1, p. 7). The Commission's initial order approving the amendment to the Madison County solid waste management plan specifically recognized the problem of litter on the roads and requested that the Permit Board consider a requirement for the operator of the landfill (if permitted) to take responsibility for litter cleanup along North County Line Road adjacent to the landfill. The order also directed the Department to work with the Permit Board to consider requiring a greater setback distance from the property line to the disposal area than what is required by State regulations. In addition, the Commission hopes that, if a landfill eventually is permitted, Hinds and Madison Counties will work together to negotiate an amenable agreement between the local governments concerning maintenance of the road.

D. The Host Fee Agreement

25.

In their affidavits in opposition to the Commission's approval of the amendment, Mr. Anderson, a member of the Hinds County Board of Supervisors, and Mr. Reardon stated that Madison County violated state law with respect to public participation when the County signed a host fee agreement with the Bilberry Family Limited Partnership in January 2003. (*See Affidavit of Douglas Anderson*, Hinds County Exhibit 1, p. 4; *Affidavit of Rory Reardon* at II-B). Mr. Reardon and Mr. Anderson further contended

that Madison County entered into an agreement with Bilberry that had the effect of binding Madison County to include the facility in its plan without soliciting and properly considering public comment on the matter. (*See Affidavit of Rory Reardon* at I-C; *Affidavit of Doug Anderson*, Hinds County Exhibit 1, at p. 4.) Mr. Anderson testified that Madison County entered into the agreement before conducting any public hearing, and Mr. Reardon stated that Madison County was not legally able to prepare, adopt, and submit information in response to the Department's requests because of its legally binding agreement with Bilberry. (*See Affidavit of Rory Reardon* at I-C).

26.

However, the Department pointed out that the Madison County Board received ongoing public comment regarding the proposed facility in its meetings on November 2, 1998, February 1, 1999, and March 1, 1999. (*See Second Affidavit of Mark Williams (Rebuttal Testimony)*, DEQ Exhibit 1, p. 7, *citing* Exhibits B, C, and D to *Affidavit of Arthur Johnston*, Madison County Exhibit 1). In addition, the Board held another public hearing on October 25, 2002, regarding the proposed amendment to include the landfill in the local solid waste plan. (*Id.* at 8-9, *citing* Exhibit F to *Affidavit of Arthur Johnston*, Madison County Exhibit 1). After the Department reviewed the County's original proposal (dated February 18, 2003) to amend the Plan, the Department asked the County to conduct another public comment period due to concerns with the first public notice. (*Id.* at 9). The County again held a public hearing on the matter on November 7, 2003, in response to the Department's request. (*Id.*, *citing* Exhibit H to *Affidavit of Arthur Johnston*, Madison County Exhibit 1). After this hearing process, on December 5, 2003, the County provided its updated request to amend the solid waste plan to the Department.

(*Id.*, citing Exhibit J to *Affidavit of Mr. Johnston*, Madison County Exhibit 1.) In January 2004, a new Madison County Board of Supervisors, including three new members, was seated. The Department asked the current Board to review this matter and to affirm its continued support or withdraw its support for the amendment. (*Id.*) In his testimony before the Commission, new Madison County Supervisor Tim Johnson testified that he felt he could have voted against the plan, despite the host fee agreement, but that he decided to vote for the Plan. (Tr. at 174). The current Board voted on April 16, 2004, to affirm the previous decision of the former Board to amend the Plan. (*See Second Affidavit of Mark Williams (Rebuttal Testimony)*, DEQ Exhibit 1, p. 9, citing Exhibit K to *Affidavit of Arthur Johnston*, Madison County Exhibit 1, and *Affidavit of Timothy L. Johnson*, Madison County Exhibit 1, at 2). The Department testified that it believes that the former Board solicited and considered public comment on various occasions, and the current Board was not bound in its actions by the host fee agreement of the former Board. (*Id.* at 9-10). Evidence that the current Board believed it had this right is implicit in the fact that two supervisors did vote to overturn the previous decision. (*See Exhibit K to Affidavit of Arthur Johnston*, Madison County Exhibit 1).

E. Health Concerns

27.

Ms. Enochs, Mr. Anderson, and Mr. Reardon contended that the proposed landfill will pose health hazards for the local community and that it will affect the quality of life of residents and landowners in the area. (*See Affidavit of Jean Enochs*, Enochs Exhibit 1, pp. 1-2; *Affidavit of Douglas Anderson*, Hinds County Exhibit 1, pp. 3-4; and *Affidavit of Rory Reardon*, IV). While these are important considerations with respect to any

proposed landfill, the health and environmental impacts of a landfill are not issues that state law requires local governments to evaluate in considering a solid waste planning matter. (*See Second Affidavit of Mark Williams (Rebuttal Testimony)*, DEQ Exhibit 1, pp 2-3). Consequently, these are not issues that the Department considered in its review of the County's long-range planning process. (*Id.*) Instead, these issues will be addressed in the siting demonstrations and design and operating plans that will be part of the environmental permit applications to be reviewed later by the Department's permitting staff and presented to the Permit Board for consideration in the environmental permitting process. (*Id.*) Furthermore, neither the decision of the Madison County Board of Supervisors to approve the amendment to include the proposed landfill in its solid waste management plan nor the Commission's approval of that amendment provides any guarantee that the landfill will be granted the necessary environmental permits it needs to operate by the Permit Board. (*Id.*)

IV. Conclusion

After a full review and consideration of the evidence presented, after hearing the testimony at the evidentiary hearing, and from a review and consideration of the history of this proposed amendment to the Madison County solid waste management plan, the Commission finds that Madison County's review of the proposed amendment was consistent with state law and the regulations of this Commission.

IT IS THEREFORE ORDERED AND ADJUDGED THAT the Commission's December 16, 2004, approval of the amendment to the Madison County Solid Waste Management Plan to include the North County Line Landfill is hereby affirmed.

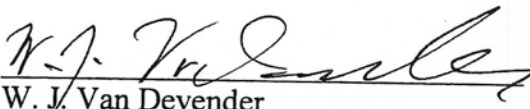
IT IS FURTHER ORDERED AND ADJUDGED THAT the Commission requests that the Mississippi Environmental Quality Permit Board review and consider an increase in the setback distance between the landfill disposal area and the adjacent property lines to greater than the minimum requirement of 500 feet, as well as an additional operating condition which would ensure that the operator of the landfill routinely remove and clean litter resulting from the waste transportation activities to and from the facility along the North County Line Road right-of-way adjacent to the landfill property and leading to the facility entrances.

This is a final Order of the Commission appealable according to the provisions of Miss. Code Ann. § 49-17-41 (Rev. 2003). The cost bond for an appeal of this matter is set at \$500.00 for each party that desires to appeal this decision pursuant to Miss. Code Ann. § 49-17-41 (Rev. 2003).

SO ORDERED AND ADJUDGED, this the 25th day of August, 2005.

MISSISSIPPI COMMISSION
ON ENVIRONMENTAL QUALITY

BY:


W. J. Van Devender
Chairman