

MISSISSIPPI COMMISSION ON ENVIRONMENTAL QUALITY

EVIDENTIARY HEARING

IN RE: APPROVAL OF AMENDMENT
TO MADISON COUNTY
SOLID WASTE PLAN TO INCLUDE BILBERRY LANDFILL

Held at Department of Environmental Quality
Southport Center
2380 Highway 80 West
Jackson, Mississippi,
beginning at approximately 9:00 a.m.
on Thursday, June 30th, 2005

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ORIGINAL

1 HEARING OFFICER:

2 CHARLENE PIERCE

3 COMMISSIONERS PRESENT:

4 JAMES R. CARTER, CHAIRMAN
5 CHARLES CHISOLM
6 MARTHA DALRYMPLE
7 HOWARD McKISSACK
8 CHARLES DUNIGAN
9 JACK WINSTEAD

10 STAFF PRESENT:

11 (MDEQ)

12 ROY FURRH, ESQ.
13 MARY JACQ EASLEY, ESQ.
14 General Counsel
15 MDEQ
16 Post Office Box 20305
17 Jackson, Mississippi 39289-1305

18 OTHER APPEARANCES:

19 (Hinds County Board of Supervisors)
20 AZANDE WILLIAMS, ESQ.
21 Attorney at Law

22 (Madison County Board of Supervisors)
23 GLEN BUSH, ESQ.

24 (Michael Bilberry)
25 ERIC HAMER, ESQ.

26 (Petitioner Rory Reardon)
27 JIM McCAFFERTY, ESQ.

28 (Petitioner Jean Enochs)
29 JEAN ENOCHS, PRO SE

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1 **HEARING OFFICER PIERCE:** We're here today
 2 9:33 a.m., June 30th, in the matter styled
 3 "Amendment to Madison County Solid Waste
 4 Management Plan." As you know, the Commission
 5 will render a decision based on testimony and
 6 evidence that's presented this morning. And as
 7 hearing officer, I will be responsible for the
 8 procedural requirements of the hearing.

9 We're having this hearing. It was
 10 requested by Jean Enochs, Rory Reardon and
 11 Hinds County Board of Supervisors in response
 12 to the Commission's initial decision in the
 13 matter. The petitioners oppose Madison
 14 County's request to amend its solid waste
 15 management plan to include the proposed
 16 municipal landfill property.

17 We, as you can see, have a lot of parties
 18 this morning, and we have a lot of witnesses.
 19 In an attempt to avoid as much confusion as we
 20 possibly can, we're going to go in a set order.
 21 We're going to begin with the Department of
 22 Environmental Quality, followed by the Hinds
 23 County Board of Supervisors, Rory Reardon, Jean
 24 Enochs, the Bilberry Family Limited Partnership
 25 if the motion is not opposed, depending on the

1 action of the motion, and Madison County Board
2 of Supervisors.

3 We'll go in that order for opening
4 statements. We'll go in that order for
5 witnesses. For instance, when DEQ presents its
6 first witness, then Hinds County will have
7 first opportunity to cross-examine, followed by
8 Mr. Reardon, Ms. Enochs, again depending on the
9 motion to intervene, the Bilberry Family
10 Partnership, and then Madison County. And
11 we'll just follow that order all the way
12 through opening statements, presentation of the
13 witnesses, cross-examination, closing
14 statements.

15 At the end of each witness, we'll give the
16 commissioners an opportunity to ask any
17 questions they need to clarify any matters.
18 Before we begin, can we get the names of the
19 attorneys for each party, beginning with
20 Department of Environmental Quality.

21 **MR. FURRH:** Roy Furrh and Mary Jacq Easley
22 representing the Mississippi Department of
23 Environmental Quality.

24 **MS. WILLIAMS:** Azande Williams
25 representing Hinds County Board of Supervisors.

1 **MR. McCAFFERTY:** James McCafferty
2 representing Rory Reardon.

3 **MR. HAMER:** Eric Hamer representing
4 Bilberry Family Limited Partnership.

5 **MR. BUSH:** Glen Bush representing Madison
6 County.

7 **HEARING OFFICER PIERCE:** Okay. Before we
8 begin with the opening statements, we had a
9 motion to intervene that has been filed by the
10 Bilberry Family Limited Partnership. Are there
11 any objections to that motion?

12 **MR. McCAFFERTY:** I would object if the
13 Bilberry group wants to enter any testimony in
14 the record or any affidavits that we haven't
15 been served with. But other than that, I have
16 no objection.

17 **MR. HAMER:** The only affidavit we have is
18 Mr. Bilberry's affidavit which has been served
19 on all parties.

20 **HEARING OFFICER PIERCE:** It's been
21 prefiled?

22 **MR. HAMER:** Yes, ma'am.

23 **HEARING OFFICER PIERCE:** Other than that,
24 is there any other objection?

25 **MR. McCAFFERTY:** No.

1 **MS. WILLIAMS:** No objection.

2 **MR. HAMER:** Do I need to make this part of
3 the record, the motion to intervene?

4 **HEARING OFFICER PIERCE:** The motion to
5 intervene will be granted. Any there any other
6 motions?

7 **MR. BUSH:** I have one preliminary matter.
8 I would make it in the form of a motion, I
9 suppose. And that is Mr. Arthur Johnston has
10 submitted an affidavit, and it is simply that
11 he is submitting the records from his office.
12 He is the chancery clerk and custodian of those
13 records. He has no substantive testimony.

14 And I have talked to the other lawyers,
15 and they have no objection to it admitting that
16 on the affidavit, and I would like to release
17 him if we can stipulate on the record that that
18 is -- that those exhibits are admissible into
19 evidence.

20 **HEARING OFFICER PIERCE:** Are there any
21 objections? Has everyone agreed to that?

22 **MS. WILLIAMS:** No objection.

23 **MR. FURRH:** No objection by the
24 Department.

25 **MS. WILLIAMS:** No objection by Hinds

1 County.

2 MR. McCAFFERTY: No objection for
3 Mr. Reardon.

4 MS. ENOCHS: No objection.

5 HEARING OFFICER PIERCE: If there is no
6 objection, then Mr. Johnston's affidavit will
7 be admitted without testimony and by
8 stipulation.

9 MR. BUSH: Thank you.

10 HEARING OFFICER PIERCE: Are there any
11 preliminary matters? If not, we'll begin with
12 opening statements. Again, we're going to go
13 in the set order.

14 Mr. Furrh, if you would like to begin.

15 MR. FURRH: The matter before the
16 Commission today is an amendment to the Madison
17 County Solid Waste Management Plan proposed by
18 the Madison County Board of Supervisors. The
19 Commission has received voluminous prefiled
20 testimony related to this matter, and I think
21 the Commission's had it for several months now.

22 The amendment involves the addition of a
23 new municipal solid waste landfill in Madison
24 County proposed by the Bilberry Family Limited
25 Partnership. The amendment was originally

1 approved by the Commission on December 16th,
2 2004. I'm going to start with some background
3 regarding the Mississippi Nonhazardous Solid
4 Waste Planning Act of 1991, which I'm going to
5 refer to as The Act.

6 The Act requires each county in
7 Mississippi to develop and adopt a
8 comprehensive solid waste management plan which
9 describes the county's plan for managing solid
10 waste for 20 years. Each county must then
11 implement the plan and revise and update the
12 plan as necessary. Both the initial solid
13 waste plan as well as revisions or updates to
14 the plan are reviewed by the Department to
15 ensure the adequacy of the plans and are
16 presented to the Commission for consideration.

17 The Madison County plan includes
18 unincorporated areas of the county, as well as
19 the cities of Madison, Ridgeland and Flora.
20 The city of Canton has its own separate solid
21 waste plan which is not part of the Madison
22 County plan.

23 The amendment to the local plan proposed
24 by the Madison County Board of Supervisors
25 includes a new municipal solid waste landfill

1 to be located on property owned by the Bilberry
2 family. It's in southwest Madison County north
3 of the city of Jackson. The landfill is
4 proposed to be located on north County Line
5 Road on property just north of and adjacent to
6 an existing BFI landfill known as the Little
7 Dixie landfill.

8 The plan is to develop 103 acres for
9 landfill within a total property area of
10 169 acres. The landfill will have an approved
11 service area consisting of 13 Mississippi
12 counties: Madison, Hinds, Rankin, Attala,
13 Leake, Scott, Smith, Simpson, Copiah,
14 Claiborne, Warren, Yazoo and Holmes County are
15 part of that service area. The Department
16 reviewed the plan related to ensure that the
17 plan contained all the necessary components
18 required by state law and regulations, and in
19 particular Mississippi Code Annotated Section
20 17-17-225 and 227 and the evaluation criteria
21 for local solid waste management plans, also
22 known as Regulation SW-1.

23 A decision by the Commission to approve
24 the plan proposed by Madison County in no way
25 guarantees the environmental permits for the

1 landfill will be granted. The Department's
2 environmental permits division will conduct a
3 very in-depth review of the applications and
4 the environmental aspects of the proposed new
5 landfill, and that review will only occur if
6 the Commission affirms its decision to approve
7 the county's proposed amendment. The permit
8 board will ultimately consider these
9 environmental permits.

10 I must emphasize that the Department's
11 review of the Madison County process to amend
12 its plan did not include certain factors that
13 are part of the separate environmental
14 permitting process. The Department's staff did
15 not review the information to determine if the
16 proposed new municipal solid waste landfill met
17 environmental siting criteria. The
18 environmental siting criteria is within the
19 permit board's jurisdiction rather than the
20 Commission's and would include standards
21 related to geology and hydrology of a site,
22 impact on wetlands, endangered species and
23 historical sites. Also setbacks and buffer
24 zones to surface waters, public water supplies
25 and property lines, as well as other siting

1 criteria.

2 Also the Commission does not have
3 jurisdiction over local matters. Issues such
4 as damage to roads and disputes between Hinds
5 and Madison County. In relation to state
6 statutory and regulatory requirements, the
7 Department reviewed the amendment request
8 during the planning phase for three types of
9 information. First we reviewed the
10 documentation for procedure and content. Next
11 we reviewed the documentation with regard to
12 the county's consideration of a need for a new
13 landfill and its impact on local solid waste
14 management conditions. And finally we reviewed
15 the proposal to determine if preliminary siting
16 issues had been considered, in particular
17 confirmation of local zoning compliance and
18 consideration of environmental justice.

19 The Commission historically has upheld and
20 approved decisions by local governments to
21 include new or expanded local solid waste
22 management facilities and rarely has
23 disapproved a local government's decision on
24 such matters. The Department's review in
25 previous matters focused mostly on whether or

1 not the county followed the correct process in
2 considering and acting upon the amendment to
3 the plan and adequately described the project
4 for incorporation into the local plan.

5 After reviewing the documentation for that
6 original process by the county, the Department
7 believed there were inadequacies of the public
8 participation phase of the process and
9 requested the Madison County reinstantiate the
10 process of soliciting and considering public
11 comment on the proposed Bilberry project site.
12 The county reinstituted its public input process
13 for the proposed landfill facility and held a
14 public hearing on November 7, 2003.

15 The request to amend the plan to include
16 the project was submitted to the Department on
17 December 5, 2003. Due to significant turnover
18 of the Madison County Board of Supervisors in
19 the elections of November 2003, because of
20 public opposition to the project, the
21 Department in a letter dated March 11, 2004,
22 asked the new Madison County board to confirm
23 its support of the proposed amendment to the
24 local plan.

25 The board voted on April 16, 2004 in a 3-2

1 vote to reaffirm the previous board's request
2 to include the proposed landfill in the Madison
3 County solid waste plan. Note that the
4 previous board voted on January 17th and
5 December 5, 2003, to approve the proposed
6 amendment.

7 Based on the Department's review of the
8 documentation, we believe that the county
9 conducted the process for considering the
10 amendment in a manner consistent with
11 applicable state laws. From our review, it
12 appears that the county ultimately published
13 the appropriate public notices on this matter,
14 conducted the public hearings in a timely and
15 appropriate manner and provided for public
16 involvement in the decision related to this
17 amendment.

18 The county also notified adjacent counties
19 of the proposed amendment. The county then
20 acted in the time frame allowed by statute and
21 subsequently adopted the appropriate resolution
22 on the amendment to the plan. In addition, the
23 county reconstructed the affected pages of
24 solid waste management plan. It appears these
5 pages, as well as other documents related to

1 the amendment, adequately describe the project.

2 The Department also reviewed the
3 information on the project related to the
4 county's consideration of the need for the
5 facility and the disposal facility's impact on
6 local solid waste management conditions. The
7 county provided information to the Department
8 from a study commissioned by the county in part
9 related to this proposed landfill. The study
10 was completed in September 2002 by
11 Environmental Business Consultants --
12 Environmental Business Services, LLC, and
13 Copeland Cook Taylor & Bush lawfirm.

14 The county indicated that the study
15 recommended that the county include the
16 Bilberry landfill in the plan to encourage
17 competition. In addition to the county study,
18 the Bilberry project owners also conducted a
19 need study in February of 2004. The landfill
20 owner is responsible, under state law, for
21 providing a demonstration of need document as
22 part of their permit application that will be
23 presented to the permit board.

24 The Bilberry Partnership study contained
5 certain information addressing the requirements

1 in state law of the demonstration of need that
2 the landfill owner must ultimately provide in
3 the permit application. The need demonstration
4 indicates that the Bilberry project owners
5 believe that with the volumes of waste rejected
6 from the 13-county service area, the new
7 landfill would provide for a competitive
8 long-term option for waste disposal services
9 for residential, commercial and industrial
10 waste in the region.

11 The Department conducted a review of the
12 available commercial solid waste landfill
13 facilities in the area. The review indicated
14 there were two landfills in Madison County that
15 were already operating, the BFL Little Dixie
16 landfill and the City of Canton landfill. Both
17 landfills have remaining life. The BFI
18 landfill has approximately 15 years, and the
19 Canton landfill has approximately 40 years.

20 There was one other landfill in 13-county
21 service area, and that is the Waste Management
22 landfill in Lake, Mississippi, which is in
23 Scott County. That landfill also has remaining
24 life of approximately 40 years. Madison County
25 and Bilberry contend that the new landfill is

1 needed to encourage competition and to replace
2 facilities that have closed, such as the Durant
3 landfill, as well as other area landfills which
4 closed in early 1990s as a result of costly
5 requirements imposed by the federal landfill
6 regulations.

7 The Department also reviewed certain
8 preliminary siting issues related to county
9 zoning and land use ordinances and potential
10 environmental justice issues. The Department
11 reviewed the proposal to confirm that the
12 project had obtained local zoning approval.
13 The review indicated the county approved the
14 rezoning of the property from R-1 residential
15 to I-1 industrial on June 1, 1998 to
16 accommodate the proposed landfill. In addition
17 to the local land use and zoning laws, the
18 Department also asked the county to review and
19 consider potential environmental justice impact
20 of the proposed landfill.

21 Environmental justice as specified by EPA
22 ensures the fair treatment and meaningful
23 involvement of all people, regardless of race,
24 color, national origin or income, with respect
5 to the development, implementation and

1 enforcement of environmental laws, regulations
2 and policies. Fair treatment means that no
3 group of people, including a racial, ethnic or
4 socioeconomic group, should bear a
5 disproportionate share of the negative
6 environmental consequences resulting from
7 industrial, municipal and commercial operations
8 or the execution of federal, state, local and
9 tribal programs and policies.

10 Bilberry hired a consulting firm,
11 GeoScience Engineers, to conduct an
12 environmental justice review concerning the
13 proposed landfill. The report from GeoScience
14 Engineers indicated that they met with the
15 Department's solid waste planning and
16 environmental justice coordinators, developed a
17 tri fold sheet that was distributed to
18 households in the area of landfill, held a
19 community meeting concerning the landfill,
20 conducted a search of the Department's
21 databases for permitted facilities throughout
22 Madison County, and obtained and reviewed
23 information from US Census Bureau related to
24 the demographics of Madison County.

25 The Bilberry report asserts there was no

1 evidence of discriminatory intent on the part
2 of Madison County or Bilberry and no evidence
3 of desperate impact on the health, minority or
4 low income population groups. The Department
5 reviewed the information related to
6 environmental justice issues in the report
7 submitted by Bilberry, as well as the county's
8 assertions on the matter, letters filed by the
9 opponents to the report, as well as U.S. EPA's
10 web-based Environmental Justice Geographic
11 Assessment Tool.

12 The Department concluded that while the
13 location of three solid waste disposal
14 facilities in such close proximity causes
15 potential concerns, numerous opportunities for
16 meaningful public involvement were made
17 available, including the local public hearings
18 and a community meeting. It further appears
19 that the Madison County Board of Supervisors
20 reviewed and considered the potential for
21 environmental justice impacts. Additionally,
22 the new board appears to have scrutinized the
23 proposal further with that potential in mind.

24 Note, state law does not require Madison
25 County to conduct a review of environmental

1 justice issues in amending its plan.

2 Additionally, the Department considers the
3 review by the county as only a preliminary
4 review of environmental justice issues and not
5 a final or indepth analysis of this issue. A
6 more comprehensive independent analysis of
7 environmental justice implications will be
8 conducted by the Department in the
9 environmental permitting process. The review
10 by Madison County merely indicates to the
11 Department that the local government did not
12 find significant environmental justice issues
13 when it sought to amend its plan.

14 Upon completion of the Department's review
15 of the final documents submitted by the county,
16 the Department concluded the information
17 demonstrated that the county had followed the
18 proper procedures, reviewed and considered the
19 need for the project, as well as local land use
20 and environmental justice issues.

21 On December 16, 2004, the Commission voted
22 to approve the amendment to the Madison County
23 Solid Waste Plan, and this was only an initial
24 decision. As a condition of this initial
25 approval, the Commission directed the

1 Department to work with the permit board to
2 consider requiring the prospective landfill
3 permit applicant to initiate actions to collect
4 litter along the roads leading to the landfill
5 and to consider requiring a greater setback
6 distance from the property line to the disposal
7 area than what is required by state
8 regulations.

9 The Department is going to call two
10 witnesses today: Mark Williams who's been
11 thoroughly involved in the review of this
12 proposed amendment by Madison County and Gloria
13 Tatum who was involved in one meeting with Gene
14 Wardlaw, the consultant for Mr. Bilberry.

15 In conclusion, Madison County has been
16 through a lengthy and extensive review of the
17 proposed amendment of the proposed landfill
18 dating back to 1998. There has been thorough
19 consideration by the former board and the
20 current board. According to the prefilled
21 testimony, this matter has been discussed in
22 board of supervisor meetings on at least nine
23 occasions. There's also been three public
24 meetings, and there was a community meeting as
25 well. The current board approved the amendment

1 once, and the old board approved it twice.
2 There was ample opportunity for public input
3 and comment.

4 The Department believes the amendment
5 process was not perfect but satisfies the
6 applicable statute and regulations.
7 Furthermore, the Commission has historically
8 left decisions on the need for a new landfill
9 to the local government in planning matters.
10 Therefore, the Department believes that the
11 initial decision made by the Commission on
12 December 16, 2004, to approve the amendment to
13 include the proposed landfill was consistent
14 with state law and regulations and therefore
15 should be affirmed. Thank you.

16 **HEARING OFFICER PIERCE:** Ms. Williams.

17 **MS. WILLIAMS:** Good morning, members of
18 the Commission. My name is Azande Williams,
19 and I'm here to register Hinds County's
20 opposition to the amendment to the solid waste
21 plan of Madison County. Whereas Hinds County
22 realized that it is not this Commission's duty
23 to look at the need and siting criteria, we
24 feel it's important that you recognize some of
5 the environmental justice issues we feel are

1 on the south, mining operations on the north.
2 So land use is appropriate, even though that's
3 a local government. I just wanted to stress
4 that.

5 So in closing I would just reiterate what
6 Mr. Furrh said, that the county has ^{*}complied
7 with requirements, and we would ask this board
8 approve the amendment to the plan. Thank you.

9 **HEARING OFFICER PIERCE:** This concludes
10 the procedural portion of this hearing, and at
11 this time the matter will be tendered to
12 Chairman Carter and the Commission for their
13 consideration.

14 **CHAIRMAN CARTER:** Are there any questions
15 from any of the commissioners? No questions.

16 **COMMISSIONER FLOWERS:** I move we approve
17 the amendment to the Madison County Solid Waste
18 Management Plan.

19 **COMMISSIONER WINSTEAD:** Second.

20 **CHAIRMAN CARTER:** We have a motion and a
21 second. Any discussion?

22 **COMMISSIONER DALRYMPLE:** One discussion.
23 I would like to add that the buffer remain,
24 which was our last decision, which is a larger
25 buffer and I've forgotten what that --

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CHAIRMAN CARTER: Roy, do you know?

MR. FURRH: I'm going to have to quickly glance at the order. But really it was a request to the permit board, who has jurisdiction over the buffer zones.

COMMISSIONER DALRYMPLE: Request to the permit board. That was agreed upon, okay. You've got a motion and second.

CHAIRMAN CARTER: All those in favor, signify by saying aye.

(Commissioners vote.)

CHAIRMAN CARTER: Opposed, no.

COMMISSIONER MCKISSACK: I oppose it.

CHAIRMAN CARTER: I think that concludes our meeting.

(CONCLUDED)