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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MELISSA L. MAGEE, CSR, RPR
Certified Shorthand Reporter
Registered Professional Reporter
Notary Public

MELISSA L. MAGEE PROFESSIONAL REPORTING SERVICES
Post Office Box 433
Mt. Olive, Mississippi 39119
(601) 797-9240
1-800-73STENO

ORIGINAL
HEARING OFFICER:

CHARLENE PIERCE

COMMISSIONERS PRESENT:

JAMES R. CARTER, CHAIRMAN
CHARLES CHISOLM
MARTHA DALRYMPLE
HOWARD MCKISSACK
CHARLES DUNIGAN
JACK WINSTEAD

STAFF PRESENT:

(MDEQ)

ROY FURRH, ESQ.
MARY JACQ EASLEY, ESQ.
General Counsel
MDEQ
Post Office Box 20305
Jackson, Mississippi 39289-1305

OTHER APPEARANCES:

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

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

(Michael Bilberry)
ERIC HAMER, ESQ.

(Petitioner Rory Reardon)
JIM MCCAFFERTY, ESQ.

(Petitioner Jean Enochs)
JEAN ENOCHS, PRO SE
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HEARING OFFICER PIERCE: We're here today 9:33 a.m., June 30th, in the matter styled "Amendment to Madison County Solid Waste Management Plan." As you know, the Commission will render a decision based on testimony and evidence that's presented this morning. And as hearing officer, I will be responsible for the procedural requirements of the hearing.

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

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

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

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

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

**MS. WILLIAMS:** Azande Williams representing Hinds County Board of Supervisors.
MR. McCAFFERTY: James McCafferty representing Rory Reardon.


MR. BUSH: Glen Bush representing Madison County.

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

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

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

HEARING OFFICER PIERCE: It's been prefiled?

MR. HAMER: Yes, ma'am.

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

MR. McCAFFERTY: No.
MS. WILLIAMS: No objection.

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

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

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

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

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

MS. WILLIAMS: No objection.

MR. FURRH: No objection by the Department.

MS. WILLIAMS: No objection by Hinds
MR. McCAFFERTY: No objection for Mr. Reardon.

MS. ENOCHS: No objection.

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

MR. BUSH: Thank you.

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

Mr. Furrh, if you would like to begin.

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

The amendment involves the addition of a new municipal solid waste landfill in Madison County proposed by the Bilberry Family Limited Partnership. The amendment was originally
approved by the Commission on December 16th, 2004. I'm going to start with some background regarding the Mississippi Nonhazardous Solid Waste Planning Act of 1991, which I'm going to refer to as The Act.

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

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

The amendment to the local plan proposed by the Madison County Board of Supervisors includes a new municipal solid waste landfill
to be located on property owned by the Bilberry family. It's in southwest Madison County north of the city of Jackson. The landfill is proposed to be located on north County Line Road on property just north of and adjacent to an existing BFI landfill known as the Little Dixie landfill.

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

A decision by the Commission to approve the plan proposed by Madison County in no way guarantees the environmental permits for the
landfill will be granted. The Department's environmental permits division will conduct a very in-depth review of the applications and the environmental aspects of the proposed new landfill, and that review will only occur if the Commission affirms its decision to approve the county's proposed amendment. The permit board will ultimately consider these environmental permits.

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

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

The Commission historically has upheld and approved decisions by local governments to include new or expanded local solid waste management facilities and rarely has disapproved a local government's decision on such matters. The Department's review in previous matters focused mostly on whether or
not the county followed the correct process in considering and acting upon the amendment to the plan and adequately described the project for incorporation into the local plan.

After reviewing the documentation for that original process by the county, the Department believed there were inadequacies of the public participation phase of the process and requested the Madison County reinitiate the process of soliciting and considering public comment on the proposed Bilberry project site. The county reinitiated its public input process for the proposed landfill facility and held a public hearing on November 7, 2003.

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

The board voted on April 16, 2004 in a 3-2
vote to reaffirm the previous board's request to include the proposed landfill in the Madison County solid waste plan. Note that the previous board voted on January 17th and December 5, 2003, to approve the proposed amendment.

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

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

The Department also reviewed the information on the project related to the county's consideration of the need for the facility and the disposal facility's impact on local solid waste management conditions. The county provided information to the Department from a study commissioned by the county in part related to this proposed landfill. The study was completed in September 2002 by Environmental Business Consultants -- Environmental Business Services, LLC, and Copeland Cook Taylor & Bush law firm.

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

The Bilberry Partnership study contained certain information addressing the requirements
in state law of the demonstration of need that the landfill owner must ultimately provide in the permit application. The need demonstration indicates that the Bilberry project owners believe that with the volumes of waste rejected from the 13-county service area, the new landfill would provide for a competitive long-term option for waste disposal services for residential, commercial and industrial waste in the region.

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

There was one other landfill in 13-county service area, and that is the Waste Management landfill in Lake, Mississippi, which is in Scott County. That landfill also has remaining life of approximately 40 years. Madison County and Bilberry contend 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 early 1990s as a result of costly requirements imposed by the federal landfill regulations.

The Department also reviewed certain preliminary siting issues related to county zoning and land use ordinances and potential environmental justice issues. The Department reviewed the proposal to confirm that the project had obtained local zoning approval. The review indicated the county approved the rezoning of the property from R-1 residential to I-1 industrial on June 1, 1998 to accommodate the proposed landfill. In addition to the local land use and zoning laws, the Department also asked the county to review and consider potential environmental justice impact of the proposed landfill.

Environmental justice as specified by 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.

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

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

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

Note, state law does not require Madison County to conduct a review of environmental
justice issues in amending its plan. Additionally, the Department considers the review by the county as only a preliminary review of environmental justice issues and not a final or indepth analysis of this issue. A more comprehensive independent analysis of environmental justice implications will be conducted by the Department in the environmental permitting process. The review by Madison County merely indicates to the Department that the local government did not find significant environmental justice issues when it sought to amend its plan.

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

On December 16, 2004, the Commission voted to approve the amendment to the Madison County Solid Waste Plan, and this was only an initial decision. As a condition of this initial approval, the Commission directed the
Department to work with the permit board to consider requiring the prospective landfill permit applicant to initiate actions to collect litter along the roads leading to the landfill and to consider requiring a greater setback distance from the property line to the disposal area than what is required by state regulations.

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

In conclusion, Madison County has been through a lengthy and extensive review of the proposed amendment of the proposed landfill dating back to 1998. There has been thorough consideration by the former board and the current board. According to the prefiled testimony, this matter has been discussed in board of supervisor meetings on at least nine occasions. There's also been three public meetings, and there was a community meeting as well. The current board approved the amendment
once, and the old board approved it twice.
There was ample opportunity for public input
and comment.

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

HEARING OFFICER PIERCE: Ms. Williams.

MS. WILLIAMS: Good morning, members of
the Commission. My name is Azande Williams,
and I'm here to register Hinds County's
opposition to the amendment to the solid waste
plan of Madison County. Whereas Hinds County
realized that it is not this Commission's duty
to look at the need and siting criteria, we
feel it's important that you recognize some of
the environmental justice issues we feel are
on the south, mining operations on the north.
So land use is appropriate, even though that's a local government. I just wanted to stress that.

So in closing I would just reiterate what Mr. Furrh said, that the county has complied with requirements, and we would ask this board approve the amendment to the plan. Thank you.

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

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

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

COMMISSIONER WINSTEAD: Second.

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

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