

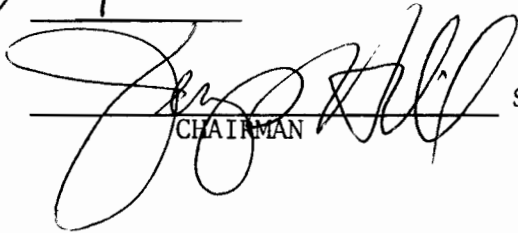
MINUTE ORDER NO. 86-18

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The Commission hereby adopts the recommended decision of the Hearing Officer, Ellen Brantley, in Case No. LIS 85082 as the findings, conclusions, and order of the Commission herein, with the exception that the dates of October 11, 1985, and November 18, 1985, found on lines 7 and 10 of the first page should be October 11, 1983, and November 18, 1983, and, as thus revised, to sign and issue the Order attached hereto as the Order of the Commission.

COMMISSIONERS

  
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CHAIRMAN

SUBMITTED BY: Martha Adcock DATE PASSED: 7-25-86

ARKANSAS DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY

IN THE MATTER OF:  
BROMISLAW JASINSKI d/b/a UNITED SANITATION  
Solid Waste Permit No. 214-S

LIS 85-082

COMMISSION ORDER

Statement of the Case

On August 12, 1983 Bromislaw Jasinski requested a permit to operate a sanitary landfill from the Arkansas Department of Pollution Control and Ecology. The proposed landfill was located on State Highway 141, approximately seven miles from Jonesboro, directly across from a landfill operated by Mr. Jasinski, who does business as United Sanitation, since 1979. The Commission staff held a public hearing on October 11, 198<sup>3</sup> at Jonesboro. The staff recommended that the Commission issue the permit, and the matter was presented to the Commission at its November 18, 198<sup>3</sup> meeting. A decision was tabled at that time, but on January 27, 1984, the Commission voted to grant the permit. Two neighboring landowners, acting on their own behalf and on behalf of a group of local residents who opposed the landfill, known as STOP, appealed the Commission's decision to Craighead County Circuit Court, pursuant to Ark. Stat. Ann. § 82-1907.

After a review of the record, Judge Gerald Brown remanded the case to the Commission for a full hearing in which those who objected to the landfill could put on witnesses and cross-examine witnesses for the applicant and the Commission. On remand, the Commission designated James M. McHaney as hearing officer, and he conducted an evidentiary hearing on June 26, 1984. He

recommended that the landfill permit be granted, and the Commission voted to issue it on July 6, 1984. Opponents to the issuance again appealed the decision to Craighead County Circuit Court. Judge Brown found that the hearing which had been afforded the opponents was inadequate, and he ordered the Commission to appoint a neutral hearing officer to hold another hearing. This order was entered on July 19, 1985. A later order was filed on November 22, 1985.

Ellen B. Brantley was designed hearing officer. A pre-hearing conference was held on Thursday, January 23, 1986. A hearing was held on February 13 and 17, 1986. Post-hearing briefs were submitted by the objectors and the Department of Pollution Control and Ecology. The applicant, Mr. Jasinski, did not submit a brief, but indicated by letter that he "joined" the brief submitted on behalf of the Department.

At the hearing, the Department of Pollution Control and Ecology and the applicant, Bromislaw Jasinski, doing business as United Sanitation, were represented by counsel. The opponents to the landfill were not represented by counsel, but James Ramuer served as community spokesman. All objectors who attended were allowed to testify if they wished and were also permitted to question other witnesses. In addition to the testimony adduced at the February hearing and the briefs of the parties, the complete record of the proceedings prior to that hearing were before the hearing officer for consideration.

The objectors filed no formal pleadings setting forth the grounds of their objection, but from the statements made at various hearings and from the post-trial brief, the following objections appear to be the basis of this case: (1) the geology

and hydrogeology of the proposed site are not suitable for a landfill, because ground water may be contaminated; (2) methane gas may be produced on the site, travel laterally and escape, endangering nearby residents; (3) problems in the operation of Mr. Jasinski's landfills, including excessive noise, odors, burning trash, traffic problems, disposal of hazardous wastes, unpermitted burning, and ground water run-off onto adjacent property, require the denial of the permit; and (4) the granting of a landfill permit for United Sanitation would deprive nearby residents of "equal protection of the law."

#### Finding of Facts

1. Geological data submitted show that the soils on the site are clay and clayey silts. The reports and testimony of Dan Mulhollen and Ed Grubbs, as well as the evaluation of the Department of Pollution Control and Ecology personnel, established that this is good soil for these operations. While objectors have argued that the presence of silty seams in the site make it unsuitable for a landfill, no expert testimony supports this assertion. During cross-examination at the July hearing, the expert witnesses all continued to assert that the soils were very good for landfill purposes. The only negative indication is that the relatively impermeable clays are difficult to work in wet weather. This led to a classification of the soils as poor by the United States Soil Conservation Service. However, while it is true that these clays will be difficult to excavate and use for cover during wet weather, precisely the same characteristics make the soils excellent protection for ground water supply.

2. The hydrogeology of the area is suitable for a landfill. Reports were submitted by Wyndel Goodman of Ozark Geological Service and Daniel Ackerman of the U. S. Geological Service. They found that the impermeable clays and the fact that the aquifer was confined and exerted upward pressure were good protection for the ground water supply. Opponents rely on the testimony of Gib Stramel, a hydrologist who has not performed any tests on the area, and testimony of local residents about the presence of wet weather springs. They also rely upon a study conducted by Mr. Ramer and Mr. James Weston, purporting to show that water level drops during the summer irrigation season. It is difficult to determine what, if any, significance this testimony has. The most credible testimony is that the hydrogeological characteristics of this area make it suitable for a sanitary landfill.

3. Methane gas is not likely to be produced in amounts significant enough to cause danger to nearby residents. The allegations of methane production seem to have been made for the first time at the February hearing. Mike Cameron, a highway contractor and professional engineer who formerly worked at the Jonesboro city landfill, testified about his experience with methane gas production there. Mr. Cameron did not testify that the proposed landfill would produce methane which would endanger nearby residents. In fact, he could not provide any specific information about methane production on the proposed landfill, because he had not conducted any tests on the site. Mark Witherspoon, an employee of the Department of Pollution Control and Ecology, testified that much larger amounts of garbage would be required to generate dangerous quantities of methane.

4. The most significant number of complaints had to do with operational procedures at Landfills #1 and #2. Several objectors testified to the noise of machinery both during the day and after hours and on weekends. Several complained of smoke from a pit incinerator. Mr. Jasinski held a permit for a pit incinerator on his first landfill. He moved the incinerator and operated it on Landfill #2. When the Department's inspector was notified, he ordered Mr. Jasinski to stop using it in that location without a permit. Mr. Jasinski did stop using the incinerator and has not applied for a permit to operate it on the second site.

Others complained of odors on an intermittent basis. (These claims are basis of a nuisance suit.) Some, though not all the claims, have been brought to the Department's attention by the filing of complaints. The compliance officer, Mr. Gale Fuqua, testified that he checks out each complaint made to him. He testified that he had not generally been able to verify the complaints he received about United Sanitation and testified that it was either the best or the second best landfill of those he supervised. Similar testimony about Mr. Jasinski's operation came from other Department of Pollution Control and Ecology employees, including Dr. Phyllis Garnett, the Department's Director.

A particular concern in regard to the operation of the first landfill was its acceptance of "hazardous" wastes. Apparently no hazardous waste, as defined by the United States Environmental Protection Agency, has in fact been accepted. However, a shipper had sent barrels to the first landfill containing volatile materials which Mr. Jasinski is not eligible to receive. All the evidence indicates that Mr. Jasinski did not knowingly receive the materials, that he cooperated in the investigation of them,

and that the Department took appropriate action to deal with the problem. The objectors also are concerned that there is inadequate procedure to verifying what is put in the landfill. However, unless an inspector was on site continually who performed chemical analysis on every item placed in the landfill, their objections could not be met. There was no evidence that Mr. Jasinski did not comply with all of the regulations designed to insure that only waste materials which his landfill is eligible to receive are accepted.

In addition, the landowners object to the operational plan because it allows the leachate to migrate through the soil. However, this plan was known to the expert witnesses who testified about the hydrogeology of the site as well as to the Commission staff who recommended approval. While movement will occur, there is no evidence that the underlying aquifer will be contaminated.

The landowners also object, apparently, to the fact that clay liners are to be used only when trenches exceed 12 feet in depth. This, too, was part of the operational plan. Despite the allegations made by the objectors, there is no evidence that intentionally misleading evidence was given to the Commission by its staff, nor that this requirement is inadequate.

5. Immediately adjacent landowners, Jim and Mabel Bradley, complain of the discharge of surface water over their land from impoundments on the landfill. This problem is currently under litigation. Much of the testimony indicated that the releasing of water over this land was continuous and has damaged the property. While this problem is of concern, it is not reason enough for the denial of the permit. If inspections by the

Department verify a problem, remedial action to protect the Bradley's land should be taken.

6. The argument that the Commission will deprive the objectors of "equal protection" is based upon the argument that since certain aspects of the landfill - i.e. noise, odor, etc. - affect near by residents to a greater degree than those residing farther away, the local residents are denied equal protection. While it is difficult to dispute the basic proposition - that those who live near the landfill are more affected than those who live far away, the conclusion - that this constitutes a denial of equal protection - does not follow. If it did, it would be impossible to site a landfill except in a completely isolated area. The testimony of Dr. Garnett that the regulations involved in the permitting process are designed to, and have the effect of, protecting all citizens, but particularly those living near a proposed landfill site, from undue harm, was convincing.

#### Conclusions of Law

1. The Commission has jurisdiction of this matter pursuant to Ark. Stat. Ann. § 82-2708 and Arkansas Department of Pollution Control and Ecology regulations.
2. The proposed site is geological and hydrogeologically suited for use as a sanitary landfill site.
3. The engineering plan is adequate and complies with the requirements of the Solid Waste Disposal Code.

ORDER

It is therefore ordered that the act of the Director in issuing Solid Waste Permit No. 214-S to Brownslaw Jasinski d/b/a United Sanitation be, and it is hereby, approved.

ARKANSAS COMMISSION ON POLLUTION  
CONTROL AND ECOLOGY

A handwritten signature in cursive script, reading "Joseph Hill, Chairman", written over a horizontal line.