

**IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT**

GOLD COAST COMMODITIES, INC.

APPELLANT

VS.

CAUSE NO. 25CH1:21-cv-00479

**MISSISSIPPI ENVIRONMENTAL QUALITY
PERMIT BOARD**

APPELLEE

**APPELLEE’S MOTION TO TRANSFER VENUE TO
RANKIN COUNTY CHANCERY COURT**

The Mississippi Environmental Quality Permit Board (the “Permit Board”) files this Motion to Transfer Venue to Rankin County Chancery Court and shows:

1.

Gold Coast Commodities, Inc. (“Gold Coast”) applied for a State Operating Permit for a wastewater treatment and disposal system located on Lake Road near Pelahatchie, Rankin County, Mississippi. The system was designed to treat wastewater generated at Gold Coast’s facility located in Brandon, Rankin County. The system that was ultimately constructed consists of a single lagoon and two land application sites containing stands of pine trees. The Permit Board issued Gold Coast Permit No. MSU218003 (the “Permit”) on August 13, 2019, and initially revoked the Permit on November 10, 2020.

2.

Gold Coast requested an evidentiary hearing before the Permit Board pursuant to the statute governing challenges to the Permit Board’s permitting decisions. *See* Miss. Code Ann. § 49-17-29(4)(b). The Permit Board held this evidentiary hearing on April 13, 2021. After considering testimony of the parties’ witnesses, documents submitted into evidence, and opening and closing

statements by the parties' attorneys, the Permit Board affirmed its decision to revoke the Permit. Gold Coast has appealed the Permit Board's decision to this Honorable Court.¹

3.

The Permit Board objects to Gold Coast's filing its appeal in the Hinds County Chancery Court. The statute governing appeals from a Permit Board decision to issue a permit states the following:

Any person who is aggrieved by any decision of the permit Board issuing, reissuing, denying, revoking or modifying a permit after a formal hearing may appeal that decision within the period specified in subsection (4)(c) of this section to the chancery court of the *county of the situs in whole or in part of the subject matter*.

Miss. Code Ann. § 49-17-29(5)(b) (emphasis added). While Gold Coast argued this venue is proper because the hearing to revoke the Permit was physically held at the offices of the Mississippi Department of Environmental Quality located in the City of Jackson, the statute relates to decisions regarding permit issuance, reissuance, denial, revocation, or modification. The focus of the statute is on the subject matter of the Permit Board's permitting decisions, i.e., the permitted facility, not where the building where the permitting decision was made is physically located. The evidentiary hearing was held to determine whether the Permit Board should uphold its decision to revoke the Permit. Thus, the subject matter of the hearing was a State Operating Permit for the operation of a lagoon and two land application sites, all wholly constructed and located within Rankin County. The situs of the subject matter is Rankin County. Thus, Gold Coast should have filed its appeal in Rankin County Chancery Court.

¹ The Permit Board must prepare and record in its minutes its Findings of Fact and Conclusions of Law ("FOFCOL") supporting its decision. Miss. Code Ann. § 49-17-29(4)(c); 11 Miss. Admin. Code Pt. 6, R. 6.19. The Permit Board has not yet prepared and recorded its FOFCOL in this matter. The Permit Board's adoption of the written FOFCOL is the date that triggers the 20-day appeal period specified in the statute.

Gold Coast argues venue is proper in this Court because the “subject matter in this action is the revocation of Gold Coast’s Permit by the Permit Board and the situs of the November 10, 2020, revocation and the April 13, 2021, affirmation of that revocation was the City of Jackson.” When the Mississippi Legislature promulgated the Mississippi Air and Water Pollution Control Law, it included provisions governing appeals from Permit Board decisions (Miss. Code Ann. § 49-17-29(5)(b)) and from decisions of the Mississippi Commission on Environmental Quality (“Commission”) (Miss. Code Ann. § 49-17-41). The Legislature specified the venue for appeals from Permit Board actions as the county of the situs in whole or in part of the subject matter of the hearing. The Legislature added an additional venue for appeals from Commission actions by specifying proper venue as the situs in whole or in part of the subject matter of the hearing *or the county where the hearing was held*. Miss. Code Ann. § 49-17-41. If this Court accepts Gold Coast’s argument, Hinds County would be appropriate venue for every appeal from a Permit Board decision. The Legislature expressly made the county of the hearing location a proper venue for appeals from Commission decisions, but not Permit Board decisions. Had the Legislature intended to do the same for appeals from Permit Board decisions, it would have included a similar provision in the Permit Board appeals statute.

4.

This Court has previously considered the appropriate venue for appeals from Permit Board decisions. *City of Jackson, Miss. v. Miss. Env’t Quality Permit Bd.*, No. 25CH1:15-cv-001357 (Hinds Cty. Ch. Ct. Feb. 16, 2016) (unpublished) (attached as Exhibit A). Upon consideration of the Motion to Transfer Venue filed on behalf of the Permit Board, this Court specifically transferred an appeal from Hinds County to Rankin County from a Permit Board decision finding that

The permit was granted to WRUA to construct a wastewater treatment facility in Rankin County, to collect Rankin County wastewater, to treat the wastewater at the facility located in Rankin County, to monitor and measure the wastewater in Rankin County and to discharge wastewater at an outfall point located in Rankin County.

Id. at p. 2. Similarly, in *Bell Util. of Miss., LLC v. Miss. Comm'n on Env't Quality*, No. 25CH1:11-cv-01372 (Hinds Cty. Ch. Ct. June 5, 2012) (unpublished) (attached as Exhibit B), upon consideration of the Motion to Transfer Venue filed on behalf of the Permit Board, this Court transferred venue from Hinds County to Forrest County finding that “[a]s the relevant operation is located in Forrest County, the pertinent statute provides that venue is proper in Forrest County.”

Id. at p. 1. In the present case, like *City of Jackson*, the relevant operation is wholly located in Rankin County. The subject matter of the Permit Board hearing is the permitted facility, and the situs of the subject matter is Rankin County. Thus, this Court should transfer Gold Coast’s appeal to the Rankin County Chancery Court.

5.

Other appeals from the Permit Board’s permitting decisions have been to the situs of the permitted facility. *See Bertha Mae Amaker, et al. v. Jimmy Le Poultry and the Miss. Dept. of Env'tl. Quality*, No. 19-cv-557WS (Pike Cty. Ch. Ct. 2019) (appeal from Permit Board to county where proposed poultry farm will be located); *Stephen M. Maloney v. Miss. Dept. of Env'tl. Quality*, No. 2019-522W (Madison Cty. Ch. Ct. 2019) (appeal from Permit Board to Madison County where the approved project was constructed); *Globe Metallurgical, Inc. v. Miss. Env'tl. Quality Permit Bd.*, 192 So. 3d 1084 (Miss. Ct. App. 2016) (appeal from Permit Board’s denial of request for evidentiary hearing to Tishomingo County Chancery Court, where the permitted facility was located); *Taylor v. Miss. Env'tl. Quality Permit Bd.*, 205 So. 3d 1129 (Miss. Ct. App. 2016) (appeal from Permit Board to Greene County Chancery Court, where the permitted poultry farm was

located); *Riverbend Util., Inc. v. Miss. Env't Quality Permit Bd.*, 130 So. 3d 1096, 1099 (Miss. 2014) (appeal from Permit Board to Harrison County Chancery Court, where the projects were to be constructed); *Madison Cty. Bd. of Supervisors v. Miss. Env'tl. Quality Permit Bd.*, No. 45CH:1:13-cv-00331 (appeal from Permit Board to Madison County where the proposed landfill was proposed to be located); *Sierra Club v. Miss. Env't Quality Permit Bd.*, 943 So. 2d 673 (Miss. 2006) (appeal from Permit Board to Oktibbeha County, where the permitted hog farm was located); *Golden Triangle Reg'l Solid Waste Mgmt. Auth. v. Concerned Citizens against Location of Landfill*, 722 So.2d 648, 649 (Miss. 1998) (appeal from Permit Board to Oktibbeha County Chancery Court, where the site was located); *Miss. Dep't of Env't Quality v. Weems*, 653 So. 2d 266, 269-270 (Miss. 1995) (appeal from Permit Board to Scott County Chancery Court, where the operation was located); *United Cement Co. v. Safe Air for the Environment, Inc.*, 558 So. 2d 840 (Miss. 1990) (appeal from Permit Board to Lowndes County Chancery Court, where the permitted cement kiln was located); *Wheeler v. Miss. Dep't of Env't Quality Permit Bd.*, 856 So. 2d 700 (Miss. Ct. App. 2003) (appeal to Lowndes County Chancery Court, where the operations were located); and *Miss. Air & Water Pollution Control Permit Bd. v. Pets & Such Foods, Inc.*, 394 So. 2d 1353, 1354 (Miss. 1981) (appeal to Hinds County Chancery Court by egg producer situated "on industrial land in Hinds County"). While venue was not a contested matter in those cases, the cases demonstrate that the situs of the subject matter was the location of the permitted facility.

6.

Because the Gold Coast lagoon and spray fields are wholly located in Rankin County, and because the subject matter of this appeal is the permit issued to Gold Coast to use that lagoon and spray fields, proper venue for this appeal lies in Rankin County Chancery Court. Miss. Code Ann. § 49-17-29(5)(b). "When a court has proper jurisdiction but not venue, the appropriate action is to

transfer the case to a court where venue is proper.” *Office of Governor Div. of Medicaid v. Johnson*, 950 So. 2d 1033, 1035 (Miss. Ct. App. 2006) (citation omitted). This Court should therefore grant Appellee’s Motion to Transfer Venue to Rankin County Chancery Court.

Wherefore, premises considered, the Permit Board respectfully requests that this Court grant the Motion to Transfer Venue to Rankin County Chancery Court.

Respectfully submitted, this the 27th day of April, 2021.

**MISSISSIPPI ENVIRONMENTAL QUALITY
PERMIT BOARD, APPELLEE**

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CERTIFICATE OF SERVICE

I, Lisa Thompson Ouzts, Attorney for the Mississippi Environmental Quality Permit Board, certify that I have this day electronically filed the forgoing pleading electronically through the Court's electronic system which sent notification of such pleading to the following:

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I also certify that I have served a copy via electronic mail on the Hearing Officer as follows:

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SO CERTIFIED on this 27th day of April, 2021.

/s/ Lisa Thompson Ouzts