

IN THE CHANCERY COURT OF RANKIN COUNTY, MISSISSIPPI

GOLD COAST COMMODITIES, INC.

APPELLANT

VS.

CAUSE NO. 61CH1:21-cv-00717

MISSISSIPPI ENVIRONMENTAL QUALITY
PERMIT BOARD

APPELLEE

**APPELLEE'S CONSOLIDATED RESPONSE TO APPELLANT'S SUPPLEMENT TO
MOTION FOR APPEAL WITH SUPERSEDEAS AND APPELLANT'S REPLY IN
SUPPORT OF MOTION FOR APPEAL WITH SUPERSEDEAS**

The Mississippi Environmental Quality Permit Board (Permit Board) files this Consolidated Response to Gold Coast Commodities, Inc.'s (Gold Coast) Supplement to Motion for Appeal with Supersedeas [Doc. 20] and Gold Coast's Reply in Support of Motion for Appeal with Supersedeas [Doc. 21] and shows:

1.

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 (Permit) on August 13, 2019, and 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, requesting that the Permit Board reconsider its decision to revoke the Permit. *See* Miss. Code Ann. § 49-17-29(4)(b) (Rev. 2012). The Permit Board held the evidentiary hearing on April 13, 2021. After considering the

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 appealed the Permit Board's decision to this Honorable Court.¹

3.

The law that governs appeals of Permit Board decisions allows a Chancellor to grant an appeal with supersedeas upon good cause shown. Miss. Code Ann. § 49-17-29(5)(b). In its Supplement to Motion [Dkt. 20] and its Reply [Dkt. 21], Gold Coast has not demonstrated "good cause" for granting an appeal with supersedeas. Gold Coast argues the following constitute "good cause" for an appeal with supersedeas: the lagoon operations have improved; the permit revocation will cause it irreparable harm and make it impossible for Gold Coast to stay in business; a recent Preliminary Report and Recommendation by a Hearing Officer on an Open Meetings Act Complaint related to emails among the Permit Board members; and the Permit Board's decision is arbitrary and capricious because "cause" for permit revocation is not defined in the applicable regulations and leaves that decision-making to the Permit Board.

4.

As the Permit Board has stated in its previous Response [Dkt. 16], related to Gold Coast's claim that operations of the Gold Coast lagoon have improved, Gold Coast tries to lessen the impact of the prefiled testimony of Laine Stubbs, a neighboring landowner whose father lives one-quarter of a mile from the lagoon, that details numerous complaints regarding nuisance odors and flies Gold Coast's operations have caused and the effect such odors and flies have had on Ms. Stubbs and her father. (Dkt. 16, Exhibit A). Gold Coast also ignores Danny Beasley's prefiled

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.

testimony. Mr. Beasley, an inspector with the Mississippi Department of Environmental Quality's (MDEQ) Compliance and Enforcement Division, confirmed the odor complaints and testified regarding Gold Coast's numerous violations of environmental laws, regulations, and the Permit that is the subject of this appeal. He testified about his observations of "nuisance level" odors and "plague-like levels of flies" in the area surrounding the lagoon. (Dkt. 16, Exhibit B). The Mississippi Commission on Environmental Quality (Commission), at a hearing on November 19, 2020, assessed a \$505,000 penalty against Gold Coast for violations associated with the permitted site and detailed Gold Coast's long noncompliance history at other sites. Mr. Beasley testified that odors are generally worse in summer months. (Dkt. 16, Exhibit B, ¶ 3). Gold Coast also ignores the prefiled testimony of Michael Word with the Rankin County Emergency Operations Center. (Dkt. 16, Exhibit C). Mr. Word testified about Rankin County's emergency response to an unlawful Hydrogen Sulfide Release at the lagoon in July 2020 that resulted in a terrible smell and air meter readings which revealed significantly dangerous levels of hydrogen sulfide gas around the lagoon (*Id.* at ¶¶ 10-13) and an unlawful 418,000-gallon wastewater release in August 2020 that caused a fish kill, odors, and flies. *Id.* at ¶¶ 15-19. Mr. Word also testified that the Rankin County Board of Supervisors asked MDEQ to terminate Gold Coast's permit. *Id.* at ¶ 20. All of these above acts occurred when Gold Coast was actively adding wastewater to the lagoon; Gold Coast stopped this activity in 2020. Even Gold Coast's own counsel stated at the evidentiary hearing that if the Permit Board were to consider the events that occurred in 2020, the Board would be justified in revoking Gold Coast's permit. Exhibit A, pp. 43, 262-63. As the exclusive administrative body to make decisions on permit issuance, reissuance, denial, modification, and revocation of water pollution control permits, Miss. Code Ann. § 49-17-29 (3)(a), the Permit Board has upheld its duty and responsibility to protect human health and the environment by revoking

Gold Coast's Permit. If Gold Coast is allowed to resume disposing additional wastewater into the lagoon during the pendency of this appeal, the compliance problems outlined by Ms. Stubbs, Mr. Beasley, and Mr. Word could be exacerbated. This Court should not stay the Permit Board's decision to revoke Gold Coast's Permit and should deny the appeal with supersedeas because Gold Coast has not demonstrated "good cause" as required by Miss. Code Ann. §49-17-29(5)(b).

5.

Gold Coast claims that if supersedeas is not granted, and the Permit revocation is allowed to stand, it will cause irreparable harm to Gold Coast and make it impossible for Gold Coast to stay in business. As discussed in paragraph 6 of the Permit Board's prior response, Gold Coast is currently shipping to and disposing of its wastewater in Memphis, Tennessee. Gold Coast again inaccurately argues that "MDEQ has told us we may not transport the [waste]water to another location in the state [of Mississippi]." Commission Order 6805 17 states, Gold Coast "shall not dispose of their wastewater at any facility located within the state of Mississippi that cannot demonstrate the ability to properly and legally process and dispose of such wastewater. Such demonstration shall include written approval from MDEQ explicitly approving disposal of [Gold Coast's] wastewater." (Dkt. 16, Exhibit B, Beasley Rebuttal, ¶ 17). Other than a pretreatment permit application that would allow Gold Coast to dispose of its wastewater into the City of Pelahatchie's publicly owned treatment works that Gold Coast ultimately withdrew, and its application for the Permit that is at issue here, Gold Coast has not submitted any requests to dispose of its wastewater within the state of Mississippi. (Dkt. 16, Exhibit B, Beasley Rebuttal, ¶¶ 11, 17). The Permit Board believes, based upon permits issued to other operating wastewater treatment facilities, there are other facilities in Mississippi that can properly and legally treat and dispose of Gold Coast's wastewater. Therefore, Gold Coast may have other wastewater disposal options in

Mississippi, its continued argument that the Commission will not allow disposal in Mississippi is inaccurate, and its argument that it will go out of business if its permit remains revoked is without merit and is not a basis for an appeal with supersedeas.

6.

Gold Coast cites an Open Meetings Complaint in paragraph 8 of its Reply filed by its legal counsel as a basis for this Court granting Gold Coast's Motion for an Appeal with Supersedeas. The Open Meetings Complaint was filed with the Mississippi Ethics Commission, and the Hearing Officer recently issued a Preliminary Report and Recommendation on June 4, 2021. *See* Exhibit A of Gold Coast's Reply [Dkt. 21]. The Permit Board objects to Gold Coast supplementing the record by submitting the Preliminary Report as an exhibit. The law governing appeals from Permit Board decisions provides "[a]ppeals shall be considered only upon the record as made before the Permit Board." Miss. Code Ann. § 49-17-29 (5)(B). The Preliminary Report was not part of the Permit Board record, and Gold Coast's attempt to supplement the appellate record with a document that is not part of the record on appeal as justification for its supersedeas request is contrary to law. If this Honorable Court is inclined to consider the Preliminary Report in determining whether to grant supersedeas, the Permit Board notes that this is a **Preliminary** Report, and the Board submitted comments to the Hearing Officer regarding the **Preliminary** Report and those comments have not yet been resolved. While the Hearing Officer did find the Permit Board violated the Open Meetings Act by exchanging emails among a quorum of its members—which occurred prior to the Permit Board's initial decision to revoke Gold Coast's permit on November 10, 2020—the Hearing Officer also found this was the first time the Ethics Commission found the Permit Board violated the Open Meetings Act. The Hearing Officer found there was no evidence that it is the Board's customary practice to discuss matters under its authority via email; there is

insufficient basis to find the Board members actions were willful and knowing; no fine was recommended; and ordered the Permit Board to refrain from further violations. Furthermore, even if the final order from the Ethics Commission finds a violation of the Open Meetings Act, there is no precedent to support reversing the Permit Board's decision that was made after a full evidentiary hearing.

7.

Without waiving the objection stated in Paragraph 6, to the extent that the Court considers Gold Coast's argument related to the Ethics Commission Open Records Complaint, MDEQ asserts that Gold Coast requested an evidentiary hearing after the Permit Board's initial decision on November 10, 2020, and after the Permit Board exchanged the emails Gold Coast complains about. The Permit Board held a *de novo* evidentiary hearing pursuant to Miss. Code Ann. § 49-17-29(4)(b) on April 13, 2021. At the conclusion of the hearing, the Permit Board exercised its statutory authority to affirm, modify, or reverse its prior decision to revoke Gold Coast's permit. Notably, the Permit Board's emails, which were the subject of the Open Meetings Complaint, occurred before the Permit Board's initial decision on November 10, 2020. If there were any issues related to the Permit Board's initial decision, the subsequent *de novo* evidentiary hearing on April 13, 2021, cured those issues by providing Gold Coast with an opportunity to submit sworn testimony from its witnesses, to cross-examine MDEQ's witnesses, and to present legal arguments for the Permit Board to consider. After considering the evidence and arguments presented at the evidentiary hearing, the Permit Board voted to affirm its prior decision to revoke Gold Coast's permit.

8.

Dennis Riecke, the Mississippi Department of Wildlife, Fisheries and Parks (MDWFP) designee on the Permit Board (*see* Miss. Code Ann. § 49-17-28(1)) who initiated the emails cited in the Open Meetings Complaint, was replaced by another MDWFP designee after the Permit Board's initial decision on November 10, 2020. MDWFP's new designee abstained from the Permit Board's vote when the Permit Board made its final decision on April 13, 2021. *See* Permit Board minutes for the April 13, 2021, meeting, attached as Exhibit B. Further, the Permit Board is composed of seven members and only two other members commented on the email chain which occurred prior to the Permit Board's initial decision. Therefore, notwithstanding the three Permit Board members who exchanged the emails, a majority of the Permit Board voted to revoke Gold Coast's permit. One of these members, the chair, also did not vote in the final decision as her vote is reserved for tie-breaking purposes which was not needed for this decision.

9.

Gold Coast also contends in paragraph 11 of its Supplement that the regulations do not define "for cause"; thus, according to Gold Coast's logic, the Permit Board's decision to revoke the Permit is arbitrary and capricious. As mentioned in paragraph 8 of the Permit Board's prior Response [Dkt. 16], MDEQ regulations do not define what constitutes cause to revoke state operating permits, which is the type of permit issued to Gold Coast. 11 Miss. Admin. Code Pt. 6, R.1.1.5.A(3) and C(5). However, state regulations incorporate the provisions regarding cause for termination found in the federal regulations governing National Pollutant Discharge Elimination System (NPDES) permits, permits that are similar to Gold Coast's permit with the difference being the location of the disposal of the treated wastewater. (Dkt. 16, Krystal Rudolph's Prefiled Direct Testimony Affidavit, attached without exhibits, as Exhibit D, ¶ 6). Under the federal NPDES

regulations, the following constitute cause for termination: the permittee's noncompliance with any permit condition; the permittee's failure to fully disclose all relevant facts in the permit application or the permittee's misrepresentation of any relevant facts at any time; a determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; and a change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit. 40 C.F.R. § 122.64(1)–(4). The Permit Board considered the testimony of Ms. Rudolph, who is the Director of MDEQ's Environmental Permits Division, and all of the testimony and arguments provided by the parties at the Permit Board Evidentiary Hearing, and ultimately decided there was cause to revoke Gold Coast's State Operating Permit. Furthermore, the record shows that Gold Coast was informed when it received its permit in August 2019 that violations of the permit could be cause for revocation. Exhibit C, pp. 20-23. The Permit Board's decision is supported by substantial evidence, is not arbitrary and capricious, and its finding of cause does not support an appeal with supersedeas. Thus, Gold Coast's Motion for Appeal with Supersedeas should be denied.

10.

In the alternative, if this Court decides to grant Gold Coast's Motion for Appeal with Supersedeas, the Permit Board requests that this Court require Gold Coast to provide an appeal bond in the amount necessary to properly close Gold Coast's facility to ensure protection of human health and the environment. The law governing Permit Board appeals provides: “. . . [I]f granted, the appellant shall be required to post a bond with sufficient sureties according to law in an amount to be determined by the chancellor.” Miss. Code Ann. § 49-17-29(5)(b). If this Court agrees that the bond should be based on the amount required to properly close the Gold Coast facility, the

Permit Board will need additional time to receive an estimate through bids to properly close the facility; the exact amount will be difficult to determine without a proper assessment of the lagoon which will require representative wastewater and sludge samples from the facility to be collected and analyzed. As mentioned in the Permit Board's prior response, Gold Coast employee Tommy Douglas testified the Entergy bill alone for operations at the lagoon and land disposal areas is \$5,000 to \$6,000 a month. (Exhibit C, p. 217). Notably, MDEQ's effort to determine how much it will cost to close the facility will cost the agency money and time—costs which Gold Coast will not bear—a fact that the Court should consider if it is inclined to allow supersedeas. Alternatively, the Permit Board requests that the Court require Gold Coast to submit a bid for costs required to close the facility.

Wherefore, premises considered, the Permit Board respectfully requests that this Court deny the Gold Coast's Motion to Appeal with Supersedeas.

In the alternative, if this Honorable Court decides to grant supersedeas, the Permit Board requests that Gold Coast be required to provide the required appeal bond in the amount to properly close Gold Coast's facility to ensure protection of human health and the environment.

Respectfully submitted, this the 18th day of June, 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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SO CERTIFIED on this 18th day of June, 2021.

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