

IN THE CHANCERY COURT OF RANKIN COUNTY, MISSISSIPPI

GOLD COAST COMMODITIES, INC.

FILED

APPELLANT

FEB 02 2022

VS.

LARRY SWALES
Chancery Clerk, Rankin County

CAUSE NO. 21-717

MISSISSIPPI ENVIRONMENTAL
QUALITY PERMIT BOARD

APPELLEE

OPINION

THIS CAUSE is an administrative appeal by Gold Coast Commodities, Inc. (“Gold Coast”) of the Mississippi Environmental Quality Permit Board’s (“Permit Board”) decision to revoke Gold Coast’s State Operating Permit numbered MSU 218003 (“Permit”). This Court, after thoroughly reviewing the record and briefs submitted by parties, finds as follows:

Procedural Background

On August 13, 2019, the Permit Board issued a state operating permit to Gold Coast authorizing construction and operation of a wastewater treatment lagoon near Pelahatchie, Rankin County, Mississippi. On September 11, 2020, the Executive Director of the Mississippi Department of Environmental Quality issued an *ex parte* order per Miss. Code Ann. § 49-2-13(j), and 11 Miss. Admin. Code Pt. 1, R.1.1.E, citing Gold Coast for violating the permit and certain environmental laws and regulations.

On October 1, 2020, the Executive Director entered a second *ex parte* order requiring Gold Coast to remove and dispose of all the wastewater in the lagoon within sixty days.

On November 10, 2020, the Permit Board revoked Gold Coast's operating permit. Gold Coast requested a full evidentiary hearing which was held on April 13, 2021. The Permit Board affirmed its November 10, 2020, decision by Order numbered 7112-21.

On April 16, 2021, Gold Coast appealed the Permit Board's decision to the Hinds County Chancery Court [MEC No. 2]. On May 11, 2021, the Hinds County Chancery Court transferred the appeal to this Court [MEC No. 14].

On the same day Gold Coast appealed, Gold Coast filed a Motion for Appeal with Supersedeas [MEC No. 3]. On June 28, 2021, following oral argument, this Court entered its Order denying that motion and setting a briefing schedule [MEC No. 26].

The administrative record was filed July 28, 2021 [MEC No. 27]. On September 21, 2021, Gold Coast filed its appeal brief [MEC No. 30]. The Permit Board filed its response on October 21, 2021 [MEC No. 31]. Gold Coast filed its reply on November 4, 2021 [MEC No. 32].

The Court reviewed the briefs, administrative record, and the applicable law, and affirms the decision of the Permit Board, as set forth below.

Standard of Review

Appeals from the Permit Board to Chancery Court are governed by Miss. Code Ann. § 49-17-29(5), which provides in subsection (b): "The Chancery Court shall review all questions of law and fact. If no prejudicial error is found, the matter shall be affirmed. If prejudicial error is found the decision of the board shall be reversed

and the chancery court shall remand the matter to the Permit Board for appropriate action”

“An administrative decision may be reversed if the decision ‘(1) was not supported by substantial evidence, (2) is arbitrary or capricious, (3) was beyond [the administrative agency’s] power to adopt, or (4) violates a constitutional or statutory provision.” *Mississippi Division of Medicaid v. Windsor Place Nursing Center, Inc.*, 296 So. 3d 68, 72 (Miss. 2020) (quoting *Miss. State Board of Nursing v. Wilson*, 624 So. 2d 485, 489 (Miss. 1988)).

The interpretation of a rule or regulation of an administrative agency is a matter of law and is reviewed *de novo*, “with great deference afforded to the agency’s interpretation of the rule.” *Windsor Place*, 296 So. 3d at 72. That deference does not extend to the agency’s interpretation of a statute. *Id.* Interpretation of a statute is reserved to the court. *Id.* (citing *King v. Miss. Military Dep’t*, 245 So. 3d 404, 408 (Miss. 2018)).

Appeals before the chancery court are considered on the record made before the Permit Board. MISS. CODE ANN § 49-17-29.

Analysis

1. The Permit Board’s Decision is Supported by Substantial Evidence.

“Substantial evidence exists so long as there is evidence that a reasonable mind might accept as sufficient to support a conclusion.” *Ray v. Miss. Dep’t of Pub. Safety*, 172 So. 3d 182, 187 (Miss. 2015). This Court is not authorized to substitute its judgment for that of the Permit Board where there is more than a scintilla of evidence

to support the Permit Board's finding. See *Richards v. Miss. Dep't of Pub. Safety*, 318 So. 3d 1150, 1157 (Miss. Ct. App. 2020).

Gold Coast concedes that "the Permit Board has papered the file adequately to step over the low 'substantial evidence'" standard. See Gold Coast's Memo. Br. at 3. However, Gold Coast argues that the Permit Board did not base its decision on definite, objective standards. More specifically, Gold Coast states that the Permit Board did not define "cause" to the public or Gold Coast prior to revocation of Gold Coast's permit. This Court disagrees.

The facts relevant to this argument are that on August 13, 2019, the Permit Board issued the Permit to Gold Coast. The Permit provides that it "may be modified, revoked and reissued, or terminated for cause."

Mississippi Code section 49-17-29 states, in part:

The Permit Board, based upon any information as it deems relevant, shall issue, reissue, deny, modify or revoke [a permit issued] within the jurisdiction of the Permit Board under any conditions as it deems necessary that are consistent with the commission's regulations."

MISS. CODE ANN. § 49-17-29(3)(c).

The Mississippi Administrative Code provides that "permits are subject to modification, revocation, and/or reissuance for cause at any time during the life of the permit." 11 Miss. Admin. Code Pt. 6, R.1.1.5(A)(3) & (C)(5).

Part 6 of the Mississippi Administrative Code went a step further and adopted and incorporated into the code 40 C.F.R. Part 124.5, related to termination of permits. See 11 Miss. Admin. Code Pt 6, R.1.1.5(C)(1)(e). Though these federal regulations do

not apply directly to state issued permits like the Permit in question, the Permit Board found the guidance contained therein instructive. This guidance was available to Gold Coast prior to issuance of the Permit.

The Permit Board painstakingly detailed in its July 13, 2021, Findings of Fact and Conclusions of Law, Gold Coast's numerous violations of the Permit. This included Gold Coast making the "business decision" to begin storing its wastewater in the subject lagoon without proper aeration, as required. Gold Coast began discharging wastewater into the lagoons five months before the aerators were even ordered, and eight months prior to operating the aerators. The Permit Board's findings sufficiently showed that Gold Coast misrepresented many material aspects of the ordering, delivering, and operating of the aerators. See MEQPB/GCC 0079, ¶ 36.

The Permit Board's Findings of Fact further showed that offensive odors were detected at the lagoon as early as November of 2019. *Id.* 0080, ¶ 42. MDEQ began receiving formal complaints regarding the odor in May of 2020. *Id.* ¶ 39. The aerators had not been installed, the lagoon had no electrical power, and there were no records of disposal of water into the lagoon as required by the permit. *Id.*

Complaints about the odors continued into August of 2020. *Id.* ¶ 40. On August 30, 2020, the Rankin County Board of Supervisors requested MDEQ to terminate Gold Coast's activities and withdraw the permit. *Id.* ¶ 41.

Complaints about the odors continued into September of 2020. *Id.* 0081, ¶ 43. On September 23, 2020, MDEQ inspectors found "strong, pungent nuisance-level

odors and above average amount of flies three-quarters of a mile away from the lagoon. *Id.* A September 28, 2020 inspection found “plague-like levels of flies” directly downwind of the lagoon. *Id.* Odor complaints continued into November of 2020. *Id.*

When the aerators were finally turned-on July 20, 2020, there was a release of hydrogen sulfide gas that caused three people to collapse, requiring emergency medical response. *Id.* 0082, ¶ 47. Subsequently, three of Gold Coast’s electrical contractors were hospitalized due to hydrogen sulfide. *Id.* 0083, ¶ 47. Gold Coast then failed to fully comply with Rankin County Emergency Operations Center’s health and safety requirements. *Id.*

Between August 28 and 29, 2020, Gold Coast’s land application of wastewater materials caused the soils to saturate with 418,000 gallons of wastewater, ultimately running into Dry Creek. *Id.* ¶ 48. The land application system apparently pumped wastewater onto the land unnoticed for more than twenty-four hours. *Id.* Gold Coast reported the spill to the Mississippi Emergency Management Agency, but not MDEQ, as the Permit required. *Id.* It was MEMA that notified MDEQ of the spill. *Id.*

Wastewater samples taken by MDEQ during the applicable time frame regularly exceeded permitted levels. *See id.* 0085, ¶¶ 52, 53. MDEQ further found irregularities with Gold Coast’s sampling date. *Id.* 0086, ¶¶ 54-59

It is superfluous for this Court to detail every Permit violation found by the Permit Board when making its decision to revoke the Permit for cause. The Court incorporates herein Paragraphs 73-87 of the Findings of Fact and Conclusions of Law. The Court finds that the Permit Board not only papered the file adequately to

demonstrate substantial and credible evidence of “cause,” the Permit Board ascended the mountain.

In *Miss. Comm’n on Env’tl. Quality v. Desai*, 868 So. 2d 381 (Miss. Ct. App. 2004), a gas station owner, found in violation of the Mississippi Underground Storage Tank Act, argued that “good faith” was not adequately defined by MDEQ or otherwise. The court of appeals examined several definitions of “good faith,” and ultimately determined that “under any of the definitions cited above, there was substantial evidence to support the Commission’s findings that Desai failed to make a ‘good faith’ effort to comply with the Act and its regulations, i.e., substantial compliance.” *Desai*, 868 So. 2d at 387.

The same analysis from *Desai* applies to the present case. The Mississippi legislature authorized the Permit Board to revoke the Permit “based upon any information as it deems relevant . . . under any conditions as it deems necessary that are consistent with the commission’s regulations.” See MISS. CODE ANN. § 49-17-29(3)(c). Those regulations provided for revocation by the Permit Board “for cause at any time during the life of the permit.” 11 Miss. Admin. Code Pt. 6, R.1.1.5(A)(3) & (C)(5). “Cause” is defined by as “something that precedes and brings about an effect or result.” BLACK’S LAW DICT. at 221 (6th ed. 1990). The effect or result of Gold Coast’s multiple permit violations were pungent odors, plague-like swarms of flies, hospitalized individuals, illegal discharges of waste into state waters, failures to notify, and non-permitted levels of waste in sampling date, among many other

violations. There is substantial and credible evidence affirming the Permit Board's revocation of the Permit, no matter what definition of "cause" is used.

2. The Permit Board's Decision is Not Arbitrary or Capricious.

"If an agency's decision is supported by substantial evidence, then it is not arbitrary or capricious." *Richards*, 318 So. 3d at 1160 (quoting *Miss. Transp. Comm'n v. Anson*, 879 So. 2d 958, 964 (Miss. 2004)). As set forth above, the Permit Board supported its decision with substantial and credible evidence. Accordingly, the Permit Board's decision was not arbitrary or capricious.

3. The Permit Board's Decision Was Within its Power to Adopt.

Gold Coast did not allege that the Permit Board's decision was outside of its power to adopt.

4. The Permit Board's Decision Did Not Violate a Constitutional or Statutory Provision.

Gold Coast argues that the Permit Board's violation of the Open Meetings Act, *Miss. Code Ann.* § 25-41-1 *et seq.* mandates reversal.¹ The facts relevant to this argument are that on September 29, 2020, former Permit Board member, Dennis

¹ The Permit Board argues that the decision from the Mississippi Ethics Commission was not a part of the record before the Permit Board and cannot be considered by this Court on appeal. The Permit Board may be correct. However, the Ethic's Commission's finding that the Permit Board members violated a state statute in their electronic communications is the basis for Gold Coast's argument. This violation took place amidst the hearings that led to revocation of Gold Coast's permit. As a result, the Court errs on the side of caution and recognizes the violation of the Open Meetings Act, as it relates to the Permit Board's electronic communications.

Riecke, emailed all other Permit Board members a link to an article about Gold Coast from a local blog, Jackson Jambalaya. That blog article included links to multiple news reports of complaints against Gold Coast's activities.

There were five responses to this email, directed to all Permit Board members. These emails discussed Gold Coast's actions in the Pelahatchie, Mississippi, area, and complaints received by Permit Board members from residents. Permit Board Vice-Chairman, Lester Herrington, asked whether MDEQ's enforcement actions were adequately remedying Gold Coast's noncompliance, or whether MDEQ staff was considering a recommendation to revoke the Permit. Mr. Herrington further stated that he was "happy to take appropriate action within [the Permit Board's] authority." On October 6, 2020, after MDEQ Executive Director issued her *ex parte* orders, Mr. Herrington thanked MDEQ staff "for their expeditious work on this issue."

On July 22, 2021, because of these emails, the Mississippi Ethics Commission found the Permit Board violated the Open Meetings Act. However, there was insufficient basis to find the Permit Board members willfully and knowingly violated the Open Meetings Act. As a result, the Ethics Commission did not fine the individual members of the Permit Board, though it ordered the Permit Board to refrain from further violations and to comply strictly with the Open Meetings Act.

Between the issuance of the offending emails and the Ethics Commission's ruling, the Permit Board held its November 10, 2020, hearing (where the Permit Board revoked Gold Coast's permit), its November 19, 2020, hearing (where the

Permit Board allowed Gold Coast to resume operations under certain conditions), and the full evidentiary hearing on April 13, 2021.

During the full evidentiary hearing on April 13, 2021, MDEQ submitted the written testimony of five witnesses, and Gold Coast submitted written testimony of six witnesses. Those same witnesses were also available live for cross-examination during the hearing. MDEQ called Gold Coast's owners to testify; however, they evoked their Fifth Amendment privilege against self-incrimination. The hearing lasted all day. At the end, the Permit Board affirmed its November 10, 2020, decision, and revoked Gold Coast's permit. This Court held above that the Permit Board's decision was based on substantial and credible evidence.

Again, Gold Coast's argument is that because the Permit Board violated the Open Meeting Act, the permit revocation must be reversed. This Court disagrees.

The email communications and resulting Ethics Commission finding of a violation of the Open Meetings Act is a separate matter from the permit revocation. Gold Coast already received its remedy for the offending email communications—an injunction against further violations of the Open Meetings Act. That is an appropriate remedy. Gold Coast cannot obtain in addition a different and wildly disproportionate remedy. If this Court were to accept Gold Coast's argument, six innocuous emails would give Gold Coast *carte blanche* to commit any number of environmental violations in relation to this permit—its permit could never be revoked.

This Court finds persuasive *Shipman v. No. Panola Consol. Sch. Dist.*, 641 So. 2d 1106 (Miss. 1994) which held the only remedy the chancery court could provide is

that authorized in the Open Meetings Act. At the time the Mississippi Supreme Court decided *Shipman*, that remedy was an injunction or writ of *mandamus*. See *Shipman*, 641 So. 2d at 1116 (citing the 1994 version of the Open Meetings Act). As the Open Meetings Act presently reads, the chancery court may either enforce the Ethics Commission ruling or hear an appeal *de novo* by an aggrieved party. See MISS. CODE ANN. § 25-41-15. While noncompliance with the Open Meetings Act may subject the Permit Board to an injunction by the chancery court, nowhere is it written that said noncompliance nullifies the actions taken by the Permit Board. See *Shipman*, 641 So. 2d at 1116.

Gold Coast cannot failed to prove the full evidentiary hearing held April 13, 2021, and resulting decision by the Permit Board violated a constitutional or statutory provision.

Conclusion

The Court finds that the Permit Board's decision was supported by substantial evidence, was not arbitrary or capricious, was not beyond the Permit Board's power to adopt, and did not violate a constitutional or statutory provision.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the decision of the Permit Board to revoke Gold Coast's Permit is affirmed.

SO ORDERED on this, the 2d day of February, 2022.



CHANCELLOR