

BEFORE THE MISSISSIPPI COMMISSION ON ENVIRONMENTAL QUALITY

MISSISSIPPI COMMISSION ON
ENVIRONMENTAL QUALITY

COMPLAINANT

v.

Order No. 7112 21

GOLD COAST COMMODITIES, INC.
WASTEWATER TREATMENT SITE
PELAHATCHIE, RANKIN COUNTY

RESPONDENT

ORDER

On November 19, 2020, the above styled cause came for hearing before the Mississippi Commission on Environmental Quality (“Commission”) and the Honorable Douglas E. Levanway, serving as Hearing Officer on evidentiary matters on behalf of the Commission, pursuant to Miss. Code Ann. §§ 49-2-9, 49-2-13, 49-17-29, 49-17-31, 49-17-33, 49-17-41, and 49-17-43. By sworn petition on October 8, 2020, and pursuant to Miss. Code Ann. § 49-17-41, Gold Coast Commodities, Inc. (“Gold Coast”) sought an evidentiary hearing of Orders 7069-20 and 7074-20.¹ Subsequently, on October 23, 2020, pursuant to Miss. Code Ann. § 49-17-31, MDEQ served a Complaint citing violations to be presented during the evidentiary hearing and recommending the assessment of penalties (“Complaint”).² The Hearing Officer made pre-hearing rulings and recommended that the evidentiary hearing under Miss. Code Ann. § 49-17-31 and the evidentiary hearing under Miss. Code Ann. § 49-17-41 be consolidated into one bifurcated hearing. The

¹ These Orders were issued by the Executive Director of the Mississippi Department of Environmental Quality (“MDEQ”) pursuant to authority granted by the Commission. Miss. Code Ann. § 49-2-13 and 11 Miss. Admin. Code Pt. 1, R.1.1.E. The remainder of this Order will refer to Orders 7069-20 and 7074-20 as issued by MDEQ or its Executive Director on behalf of the Commission. All actions and filings of MDEQ or its Executive Director regarding these Orders in this proceeding were made on behalf of the Commission.

² The Complaint was issued by the Executive Director of MDEQ pursuant to authority granted by the Commission. Miss. Code Ann. § 49-17-31 and 11 Miss. Admin. Code Pt. 1, R.1.1.H. The remainder of this Order will refer to this Complaint as issued by MDEQ or its Executive Director on behalf of the Commission. All actions and filings of MDEQ or its Executive Director regarding the Complaint in this proceeding were made on behalf of the Commission.

Commission received pre-filed direct testimony and rebuttal testimony before the hearing and heard arguments and testimony from both parties, along with the submission of exhibits, on November 19, 2020. Four witnesses testified for MDEQ, and five witnesses testified for Gold Coast. After considering all relevant evidence, testimony and arguments, and being fully advised in the premises regarding this administrative enforcement case, including the pre-hearing rulings and the recommendation of the Hearing Officer, the Commission makes the following findings of fact and reaches the following conclusions of law:

I. Procedural History

1. The Executive Director entered *ex parte* Order No. 7069-20 on September 11, 2020, and *ex parte* Order No. 7074-20 on October 1, 2020. On October 8, 2020, Gold Coast sought an evidentiary hearing pursuant to Miss. Code Ann. § 49-17-41, appealing both *ex parte* Orders. In its October 8th filing, Gold Coast requested that the hearing be expedited, and MDEQ set the hearing for October 22, 2020. On October 20, 2020, counsel for Gold Coast asked for the hearing to be moved to a later date, and counsel for Gold Coast and for MDEQ agreed to set the hearing for November 19, 2020. On October 22, 2020, during its regularly scheduled monthly meeting, the Commission confirmed the November 19, 2020, hearing date. On October 23, 2020, MDEQ sent the Complaint to Gold Coast noticing the hearing on its request for an evidentiary hearing and the hearing on the violations outlined in the Complaint for November 19, 2020.

II. Introductory Matters

2. The parties entered into an Agreed Scheduling Order on October 28, 2020. Both Gold Coast and MDEQ filed pre-hearing motions related to the evidence to be presented. Gold Coast filed eight motions: one motion to collectively strike all of the pre-filed testimony of the witnesses of MDEQ as well as four individual motions to strike the pre-filed testimony of each of the

witnesses of MDEQ; a motion to move the motion argument date; a motion to strike the rebuttal testimony of the witnesses of MDEQ; and a motion *in limine*. MDEQ filed two motions: a motion to declare the pre-filed testimony of the witnesses of MDEQ timely filed and a motion *in limine*. Both parties filed responses and rebuttals to the opposing parties' motions. The Hearing Officer heard arguments of counsel on November 10, 2020. The Hearing Officer's Order on Evidentiary Motions and Other Matters was entered on November 17, 2020. In the November 17th Order, the Hearing Officer recommended that the Commission bifurcate the hearing: (1) the Commission should first hear evidence regarding Gold Coast's administrative appeal of the *ex parte* orders and evidence regarding the violations outlined in the Complaint, and (2) if the Commission found violations did in fact occur, the Commission should hear evidence regarding the assessment of penalties against Gold Coast. The Commission accepted the recommendation of the Hearing Officer.

III. Ex Parte Orders and Complaint

3. On September 11, 2020, the Executive Director issued Order No. 7069-20 to Gold Coast citing the following violations regarding its wastewater treatment system on Lake Road, Rankin County, Mississippi (the "Site," "lagoon," or "Facility") (Beasley Direct Testimony, Ex. DD):

- A. Failure to properly operate and maintain the Facility in violation of Condition No. T-9 of State of Mississippi Water Pollution Control Permit No. MSU218003 (the "Permit");
- B. Failure to halt, reduce or otherwise control the discharge of wastewater into the lagoon in violation of Condition No. T-15 of the Permit;
- C. Failure to maintain a level measuring device in violation of Condition No. T-6 of the Permit;
- D. Causing, permitting, or allowing the emission of odors that constitute a public nuisance in violation of 11 Miss. Admin. Code Pt. 2, R. 1.3.C.;

- E. Placing or causing to be placed wastes in a location where they are likely to cause pollution of any waters of the State in violation of Miss. Code Ann. § 49-17-29(2)(a);
 - F. Discharging wastewater from the Facility into waters of the State in violation of Condition No. T-2 of the Permit;
 - G. Having an unauthorized bypass in violation of Condition No. T-13 of the Permit;
 - H. Applying wastewater during times of rainfall, when heavy rainfall was expected or after soil had reached saturation in violation of Condition No. T-1 of the Permit;
 - I. Failing to operate its land application system in accordance with the Land Application Plan in violation of Condition No. T-2 of the Permit; and
 - J. Failing to control odors from the Site in violation of 11 Miss. Admin. Code Pt. 2, Ch. 4.
4. Order 7069-20 ordered Gold Coast to
- A. Immediately cease and desist sending its wastewater to the Site until such time that MDEQ issued written approval for Gold Coast to resume disposal of Gold Coast's wastewater at the Site;
 - B. Not irrigate its wastewater at the Site without scheduling such irrigation activities and receiving approval from MDEQ's Environmental Compliance and Enforcement Division ("ECED");
 - C. Within two weeks of the date of the Order, submit to MDEQ for review and approval a plan to profile the wastewater in the lagoon which should address the constituents present in the lagoon and their concentrations at various locations and depths of the lagoon;
 - D. Within two weeks of the date of the Order, submit to MDEQ for review and approval a vector control plan;
 - E. Within two weeks of the date of the Order, submit to MDEQ for review and approval a supplemental odor control plan which should address additional measures that can be added to the system to eliminate nuisance odors (i.e., additional and/or different types of aerators/diffusers, chemical and/or biological additives, removal of wastewater from site, etc.);
 - F. Within two weeks of the date of the Order, install a depth marker in the lagoon as required by the Permit which shall provide a visible indication of the available freeboard;

- G. Within two weeks of the date of the Order, submit to MDEQ a drawing of the as-built lagoon indicating the estimated volume of the water contained in the lagoon at every foot of depth;
- H. Maintain a sufficient freeboard, but at no time less than three feet, to ensure no discharge shall occur from the lagoon; and
- I. Not dispose of its 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, and documentation of the proper disposal of such wastewater shall be maintained by Gold Coast and submitted to MDEQ on the first day of each calendar month.

5. On October 1, 2020, the Executive Director issued Order No. 7074-20 to Gold Coast citing continuing violations of those violations outlined in Order No. 7069-20. (Beasley Direct Testimony, Ex. KK).

6. Order No. 7074-20 ordered Gold Coast to

- A. Remove and dispose of all wastewater from the lagoon at the Site within sixty days of the date of the Order;
- B. Submit a removal and disposal plan to MDEQ for review and approval within ten days of the date of the Order which shall include the transportation company(s), logistics, the disposal location of the wastewater, and a projected removal schedule required to meet the removal deadline of sixty days; and
- C. Not dispose of its 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; such documentation of the proper disposal of such wastewater shall be maintained by Gold Coast and submitted to MDEQ on the first day of each calendar month. *Id.*

7. On October 23, 2020, MDEQ issued the Complaint to Gold Coast outlining all of the violations listed in Orders 7069-20 and 7074-20, as well as two additional storm water violations: failure to implement the site-specific Storm Water Pollution Prevention Plan ("SWPPP") in violation of Condition No. ACT6 S-1(1) of Mississippi's Small Construction Storm Water General

Permit and failure to maintain erosion and sediment controls in violation of Condition No. ACT6 S-2(9) of the same permit.

IV. Testimony Regarding *Ex Parte* Orders and Violations

8. Mr. Danny Beasley, Manager of the Water I Branch in ECED of MDEQ and Manager of the Storm Water Branch in ECED on special assignment, was a witness for MDEQ. (Tr. at pp. 25-27 and Affidavit of Danny Beasley (Direct Testimony) dated October 30, 2020 (including Exhibits A-MM)). His pre-filed testimony and exhibits were entered into evidence without objection at the hearing, subject only to the Hearing Officer's Order on Evidentiary Motions and other Matters dated November 17, 2020, regarding certain photographs which Gold Coast could challenge during cross-examination. In his pre-filed testimony, Mr. Beasley testified regarding the historical enforcement actions against Gold Coast; the permitting of the wastewater treatment lagoon; complaints received by MDEQ regarding odors and vectors; site visits and inspections by MDEQ; a hydrogen sulfide gas release; a 418,000-gallon wastewater release from the lagoon; MDEQ laboratory analysis of the wastewater in the lagoon; the violations outlined in the Complaint; and the issuance of the two *ex parte* Orders. (Beasley Direct Testimony at ¶¶ 2-24).

9. Gold Coast chose not to cross-examine Mr. Beasley. The Commissioners did not have any questions for Mr. Beasley.

10. Michael Word, Director of Rankin County Emergency Operations Center ("EOC"), Mississippi, was also a witness for MDEQ. (Tr. at pp. 28-29 and Affidavit of Michael A. Word (Direct Testimony) dated October 25, 2020 (including Exhibits A and B)). His pre-filed testimony and exhibits were entered into evidence without objection at the hearing. In his pre-filed testimony, Mr. Word testified regarding EOC's response to the H₂S release, EOC's response to the

wastewater release, and complaints EOC has received regarding odors and flies. (Word Direct Testimony at ¶¶ 3-20).

11. Gold Coast chose not to cross-examine Mr. Word. The Commissioners did not have any questions for Mr. Word.

12. Laine Mashburn Stubbs, a partial landowner of property adjacent to the wastewater lagoon in Rankin County, was the third witness for MDEQ. (Tr. at pp. 29-30 and Affidavit of Laine Mashburn Stubbs (Direct Testimony) dated October 30, 2020, which was redacted in part pursuant to the Hearing Officer's Order on Evidentiary Motions and Other Matters dated November 17, 2020). Her pre-filed testimony was entered into evidence without objection at the hearing. In her pre-filed testimony, Ms. Stubbs testified about conditions emanating from the lagoon, including extreme odors and biting flies; the impact on the lagoon on her father's living conditions and her family's use of their property; and conversations she has had with representatives of Gold Coast. (Stubbs Direct Testimony at ¶¶ 1-17).

13. Gold Coast chose not to cross-examine Ms. Stubbs. The Commissioners did not have any questions for Ms. Stubbs.

14. Sam Hardin, an engineer with Clearwater Consultants, Inc., was a witness for Gold Coast. (Tr. at pp. 31-119; Direct Testimony of Sam Hardin dated October 30, 2020 (including Exhibits A-H); and Rebuttal Testimony of Sam Hardin dated November 6, 2020 (including Exhibits A and B)). His pre-filed direct and rebuttal testimony was entered into evidence without objection at the hearing. In his pre-filed direct testimony, Mr. Hardin testified about the design, permitting, construction, and operation of the wastewater treatment lagoon; the actions taken by Gold Coast to remediate the odors and vectors; the hydrogen sulfide gas release; the wastewater

release; the issuance of the *ex parte* orders and Gold Coast's actions to comply with them. (Hardin Direct Testimony at pp. 2-15).

15. In his pre-filed rebuttal testimony, Mr. Hardin testified about his assessment of the current conditions of the lagoon and about his previously filed response to the storm water violations. (Hardin Rebuttal Testimony at pp. 1-3).

16. In answering a question posed by a Commissioner, Mr. Hardin testified that Gold Coast stopped using lagoons owned by Pelahatchie, because someone informed the officials of Pelahatchie that Gold Coast was putting wastewater in their lagoons that would hurt their facility and the environment. (Tr. at p. 32). Mr. Hardin testified he believed MDEQ's scrutiny on Gold Coast did not make it worth it for Pelahatchie to continue accepting wastewater from Gold Coast for the benefit that they were getting through a lease payment from Gold Coast. (Tr. at pp. 32-33). On cross-examination, Mr. Hardin acknowledged this visit was made by EPA criminal investigator, Ricky Knight. (Tr. at p. 33). Mr. Hardin also agreed that Gold Coast did not have a permit to discharge into the Pelahatchie Publicly Owned Treatment Works ("POTW"). *Id.*

17. Mr. Hardin acknowledged that the design of the lagoon was changed multiple times between the original permit application dated April 17, 2018, and the final permit application dated August 5, 2019. (Tr. at pp. 34-37). He testified these changes included the number of lagoons being built, their locations on the site, the retention time of the lagoons and the volume of the water coming to the lagoon. (Tr. at p. 37). Mr. Hardin testified that he did not believe these changes contributed to any delay in issuing the permit. (Tr. at p. 43).

18. Mr. Hardin testified that prior to discharging into its Rankin County lagoon, Gold Coast was disposing of its wastewater via a sister facility located in Chattanooga into the Chattanooga POTW and that the Chattanooga POTW stopped this activity. (Tr. at pp. 45-46). He testified that

Gold Coast started storing its wastewater onsite in Brandon after this action by the Chattanooga POTW; that the tanks onsite have limited capacity; and that Gold Coast needed to get the water from the tanks into the lagoon as soon as possible. (Tr. at pp. 46-47). Mr. Hardin acknowledged that the fence around the lagoon, the anchors for the aerators, the concrete slab housing for the control panel and the electrical lines were all part of the original design of the lagoon and that the August 5, 2019, permit application described an aerated lagoon and included aerial photos, a schematic, and treatment design calculations that all mentioned an aerated lagoon. *Id.*

19. Mr. Hardin acknowledged that the lagoon contained enough water in December 2019 or January 2020 to protect the liner from damage from the aerators. (Tr. at pp. 51-52). Mr. Hardin testified that he did not instruct Gold Coast to discontinue sending wastewater to the lagoon. (Tr. at p. 52). Mr. Hardin testified that prior to the aerators being turned on in July 2020, there was no plan to mitigate odors in place at the lagoon. (Tr. at pp. 52-53). He acknowledged that on January 15, 2019, in response to questions posed by MDEQ related to Gold Coast's permit application, he was aware that odor at the lagoon would be caused by inadequate dissolved oxygen concentration and that no operational plans were put in place prior to the aerators being turned on to ensure there was adequate dissolved oxygen in the lagoon. (Tr. at pp. 54-55). Mr. Hardin testified that in the January 15, 2019, response, he stated that the lagoon was designed such that there would be efficient mixing due to aerators to effectively dilute influent wastewater and that the lagoon water was not being mixed before the aerators were turned on. (Tr. at pp. 55-56).

20. Mr. Hardin testified that the original planned date for the aerators to be operational was early April 2020. (Tr. at p. 57). Mr. Hardin acknowledged that the lagoon was almost full prior to aeration in July. (Tr. at p. 58). Mr. Hardin testified he was not aware of any plans by Gold Coast in 2020 to make room in their onsite tanks in Brandon to hold any excess wastewater, and he was

not aware of any plans in June 2020, to ship wastewater offsite. (Tr. at pp. 60-61). Mr. Hardin testified that wastewater is currently being stored onsite in Brandon, but that production has been stopped at the Brandon facility so production water is not being generated. *Id.* Mr. Hardin acknowledged that storm water is being stored onsite in Brandon and that Gold Coast has not notified MDEQ regarding its plans to dispose of its wastewater. (Tr. at p. 62).

21. Mr. Hardin testified that he did not agree that the permit did not allow land disposal at the lagoon site during the months of November through May. (Tr. at pp. 64-67). Mr. Hardin acknowledged that the permit application he submitted included a treatment schematic that showed discharge between June and October and that on Form 2-S of the permit application, Gold Coast had checked the months of June through October as months of discharge occurrence (Tr. at pp. 65-66).

22. Mr. Hardin testified that the lagoon currently has 900,000 gallons of capacity while maintaining three feet of freeboard and that the lagoon had 700,000 gallons of capacity on September 22, 2020 (Tr. at pp. 71-72). He acknowledged that Gold Coast was unable to irrigate in June, July, and parts of August because the land application system was not operational, and Gold Coast lost over two months' irrigation time. (Tr. at pp. 72-73). Mr. Hardin also agreed that the ground became supersaturated after the August wastewater release and that Gold Coast lost more irrigation time at the end of August and the beginning of September because of the cleanup effort being conducted by Gold Coast as a result of the release. (Tr. at pp. 73-75).

23. Mr. Hardin testified that he suspected the lagoon may contain H₂S after it had not been aerated for a period of eight months but admitted he did not do any research on the dangers of adding aeration. (Tr. at pp. 75-76). Mr. Hardin testified that Gold Coast does not have any back-

up power supply at the lagoon and that H₂S could build up if the power went out, although he testified that it would not get to an unsafe level before power could be restored. (Tr. at p. 76).

24. Mr. Hardin testified that he was not made aware of odor complaints by Mr. Alman in February or March or of anything Gold Coast did to address the odors. (Tr. at p. 77). Mr. Hardin acknowledged that for eight months the lagoon had zero operational aerators; on July 20th, it had four operational; sometime around July 22nd until the end of August, it had three operational; from the end of August until September 18th, it had four operational; and then a fifth aerator was installed roughly two months after it was ordered. (Tr. at p. 79). Mr. Hardin testified that additional aerators have become inoperable but most of the time have been reactivated within twelve hours. (Tr. at pp. 79-80).

25. Mr. Hardin acknowledged that Gold Coast delivered wastewater to the lagoon while the wastewater release was occurring and while it was being remediated and that Gold Coast did not report the release of wastewater to MDEQ. (Tr. at pp. 80-84). Mr. Hardin acknowledged that the first order required Gold Coast to submit a plan that addressed something other than the current system of four aerators to address odors. (Tr. at p. 85). Mr. Hardin acknowledged that MDEQ had asked Gold Coast for a plan to control odors or revisions to such a plan on multiple occasions including in a letter dated November 19, 2018; in a NOV dated August 12, 2020; on a conference call on September 10, 2020; in Order 7069-20; and in an email dated September 24, 2020, and that each response by Gold Coast had included aeration as the solution to the odor issues. (Tr. at pp. 85-90). Mr. Hardin acknowledged that MDEQ had told Gold Coast it would consider requiring removal of the wastewater from the lagoon if the problems at the lagoon were not quickly alleviated and that the odor control plan submitted on September 25, 2020, the due date for the submittal under the first order, was incomplete. (Tr. at pp. 90-92).

26. Mr. Hardin testified he drafted a revised operations plan but did not submit it to MDEQ, that he did not contact MDEQ to inquire about whether the plan should be submitted, and that Gold Coast has implemented the plan. (Tr. at pp. 92-93). Mr. Hardin testified that the revised plan described how Gold Coast had taken sludge from a rendering plant and added it to the lagoon after the July 20, 2020, H₂S release; he acknowledged that Gold Coast did not notify MDEQ about the sludge until after it added the sludge to the lagoon. (Tr. at pp. 93-96).

27. Mr. Hardin admitted that he did not conduct any laboratory analysis of the foam from October 26, 2020, before concluding it was indicative of bacteria in the lagoon entering log-growth phase associated with the start-up of a lagoon and that this type of foam may be from other causes. (Tr. at pp. 96-98). He acknowledged that he did not instruct Gold Coast to notify the Permit Board pursuant to Condition No. S-1 of the Permit. (Tr. at pp. 99-100).

28. Mr. Hardin testified that he is not at the lagoon daily, that there was not a problem with the design of the lagoon, that there were problems with the delay starting the lagoon, that there were problems with the start-up of the lagoon, that there was not a problem with the construction of the lagoon, and that there are operational problems at the lagoon that they are trying to address. (Tr. at pp. 100-101). Mr. Hardin acknowledged that there have been valid odor complaints, that there have been complaints of black biting flies, that a 418,000-gallon wastewater spill occurred, and that Gold Coast violated the Permit with the release of wastewater from its land application system. (Tr. at p. 101).

29. On redirect, Mr. Hardin testified that he did not tell Gold Coast that there was a possibility of a H₂S release and that there were no substantial differences in the way the lagoon was constructed than the way it was designed and permitted. (Tr. at pp. 105-107).

30. In answering questions posed by the Commissioners, Mr. Hardin testified that Gold Coast contracted with an earthmoving company for the construction of the lagoon; that he did not know when the contract was executed; that the fifth aerator arrived faster than he anticipated and it was much less than the timeline for the initial batch of four aerators; that he did not know when the four aerators were ordered; that he has never recommended a generator be used to power the aerators; that the power was installed around the same time the aerators were delivered; that he is familiar with the notice of violation process at MDEQ; that he is not aware of any other facilities where MDEQ is so concerned about the operation of a lagoon; that he is not aware of any other order to cease using a lagoon; that he did not design the lagoon with sumps for the aerators; that at the time of the wastewater release, there were no locks on the control panel to the switches that run the irrigation pumps; that the electrical contractor that activated the irrigation pump was not the same electrician that installed the original control panel; that the electrician came after work on a Friday to get an inoperable aerator running again; that a padlock was added to the control panel after the release; and that the pump is operated with a switch that has on, off, and auto positions with the auto position running on a timer. (Tr. at pp. 108-119).

31. Buck Alman, who owns property adjacent to the lagoon, was Gold Coast's second witness. (Tr. at pp. 119-142 and (Direct) Testimony of Buck Alman dated October 28, 2020). His pre-filed testimony was entered into evidence without objection at the hearing. In his pre-filed testimony, Mr. Alman testified about his experience with the odors and flies coming from the lagoon, his interaction with representatives from Gold Coast, the H₂S release, and the wastewater release. (Alman Direct Testimony at pp. 2-7).

32. On cross-examination, Mr. Alman acknowledged he had not personally participated in the management of the lagoon nor personally attended or participated in any meetings with Gold

Coast's consultants. (Tr. at pp. 121-122). He acknowledged he did not consider the flies bad, because he is a cattle farmer who has flies on his property year-round. (Tr. at p. 123). Mr. Alman testified that the photographs taken by MDEQ staff on September 28, 2020, showing flies at the lagoon were not taken at the lagoon and that MDEQ staff was lying in its report. (Tr. at pp. 123-126). He acknowledged he started smelling odors from the lagoon in February or March and that these odors were offensive (Tr. at pp. 127-128). He also testified that his neighbor Lewis Mashburn had it hard. (Tr. at p. 128). He acknowledged that his pre-filed testimony was incorrect when he stated that he did not know how the water got to the creek or what caused the runoff on the Sunday morning after the release because he knew on Saturday it was from the lagoon. (Tr. at pp. 130-132). He acknowledged that Gold Coast did not begin remediation of the creek until the Monday after the Friday/Saturday release. (Tr. at p. 133). Mr. Alman acknowledged that prior to the hearing he had called a Commissioner in an attempt to inform the Commissioner about the "agenda going on." (Tr. at pp. 138-139). On re-direct, Mr. Alman testified that Gold Coast needs to work on a plan to dispose of the water in the lagoon and start over. (Tr. at p. 141).

33. Harry Wilson, an engineer with FC&E Engineering, was Gold Coast's third witness. (Tr. at pp. 143-153; Direct Testimony of Harry Wilson dated October 29, 2020; and Rebuttal Testimony of Harry Wilson dated November 6, 2020). His pre-filed direct and rebuttal testimony was entered into evidence without objection at the hearing. In his pre-filed direct testimony, Mr. Wilson testified about three visits to the lagoon and nearest dwellings to document flies, odor, and the functioning of the aerators. (Wilson Direct Testimony at pp. 1-2).

34. In his pre-filed rebuttal testimony, Mr. Wilson testified about two additional visits. (Wilson Rebuttal Testimony at pp. 1-2).

35. On cross-examination, Mr. Wilson acknowledged that on four visits to the lagoon, the fifth aerator was not running due to mechanical issues. (Tr. at pp. 145-148). Mr. Wilson acknowledged that while the odor was neutral to slightly unpleasant during some of his visits, it was an annoying odor. (Tr. at pp. 148-149). He also acknowledged that the wind can carry the odor off-site as much as 1500 feet away. (Tr. at p. 151).

36. Dr. Todd French, a professor at Mississippi State University, was Gold Coast's fourth witness. (Tr. at pp. 153-170; (Direct) Testimony of W. Todd French, Ph.D. dated October 29, 2020 (including attached CV); and Rebuttal Testimony of W. Todd French, Ph.D. dated November 6, 2020 (including Exhibit A)). His pre-filed direct and rebuttal testimony was entered into evidence without objection at the hearing. In his pre-filed direct testimony, Dr. French testified about visiting the lagoon one time to make observations about flies and odors. (French Direct Testimony at pp. 1-2).

37. In his pre-filed rebuttal testimony, Dr. French testified regarding the sampling protocol and the sample results from samples taken and analyzed by MDEQ. (French Rebuttal Testimony at pp. 2-3). He also testified regarding a report by EBS Environmental. (*Id.* at pp. 3-4).

38. On cross-examination, Dr. French acknowledged he did not take any samples of the Gold Coast lagoon water, did not review the MDEQ regulatory file, did not review their operations plan, did not review any notices of violations issued by MDEQ, did not review the two *ex parte* orders at issue, did not observe MDEQ take any samples, did not observe Gold Coast take samples, does not know the MDEQ staff person that took the samples, and did not review any internal documents from the MDEQ laboratory. (Tr. at pp. 157-162). He further testified that the EBS Environmental report did not conclude anything about how well the Gold Coast lagoon—as it has been designed, built, and operated—will treat the Gold Coast wastewater. (Tr. at p. 164). In

answering questions posed by the Commissioners, Dr. French acknowledged odors are subjective and stated that unless a person has training in odor detection, the person's opinion should not be taken into account. (Tr. at pp. 165-166). He also testified that a wastewater lagoon has layers with only the top portion being treated by aerators and that the lagoon would never have zero odor. (Tr. at pp. 166-168). He testified that he visited the site on November 18, 2020, and smelled the odors within 50 yards of the gate to the lagoon. (Tr. at p. 169).

39. Tommy Douglas, son and nephew of the owners of Gold Coast and current employee of Gold Coast, was the last witness for Gold Coast. (Tr. at pp. 170-226 and (Direct) Testimony of Thomas Walker Douglas dated October 29, 2020 (including Exhibits A-C)). His pre-filed testimony was entered into evidence without objection at the hearing. In his pre-filed direct testimony, Mr. Douglas testified about Gold Coast's background and business, the manufacturing process, the wastewater generation, the disposal of the wastewater previously into the City of Pelahatchie POTW, the permitting process, the delays in obtaining the aerators and in installing the control panel and power, the hydrogen sulfide gas release, the odors and Gold Coast's response to them, the wastewater release and Gold Coast's response, the sampling of the water in the lagoon, the foaming incident, and the effect of the *ex parte* orders on Gold Coast's ability to continue operating. (Douglas Direct Testimony at pp. 1-8).

40. On cross-examination, Mr. Douglas testified that Gold Coast has been producing wastewater for twenty years. (Tr. at p. 175). Mr. Douglas acknowledged that Gold Coast previously had a handshake agreement with the mayor of Pelahatchie for disposal of its wastewater into the City's POTW. (Tr. at p. 176). He testified that Gold Coast relied on Clearwater Consultant for the design, construction, and operation of the lagoon but that Gold Coast employees run the lagoon on a day-to-day basis. (Tr. at pp. 180-183). Mr. Douglas acknowledged that when Gold

Coast received its permit in August 2019, it had already spent \$600,000 on its construction; that there would not be odors because the lagoon would be an aerated lagoon; that the permit was for an aerated lagoon; that Gold Coast starting putting wastewater into the lagoon on November 15, 2019; that they added wastewater to the lagoon without installing the aerators; and that they had consulted with their experts who told Gold Coast it was not a violation of its permit. (Tr. at pp. 184-185). Mr. Douglas testified that odors were a problem before the aerators were added. (Tr. at p. 186). Mr. Douglas testified that Clearwater Consultants was responsible for communicating with the aerator manufacturer and that he does not remember when the aerators were ordered (Tr. at pp. 187-188). Mr. Douglas differed from Mr. Alman's testimony in that Mr. Douglas testified that he did not think Mr. Alman first contacted them about the odors in February or March but that it was closer to July. (Tr. at pp. 190-192). He testified that during the months of June and July 2020, the odors were unacceptable and extremely bad and that the flies were prevalent. (Tr. at pp. 192-193). Mr. Douglas agreed that a pest control company was not hired until after MDEQ issued the first *ex parte* order. (Tr. at p. 193).

41. Mr. Douglas also acknowledged the lagoon was close to capacity in July 2020 and that people were sent to the hospital when the aerators were turned on in July. (Tr. at p. 195). When asked about the wastewater release, he agreed that Gold Coast did not report the release to MDEQ. (Tr. at pp. 199-201). Mr. Douglas acknowledged Gold Coast did not hire an environmental cleanup contractor but rather used its own employees along with a pipeline and pump from a contractor to pump the water from the creek back into the lagoon. (Tr. at p. 203).

42. Mr. Douglas testified that Gold Coast had slowed down the part of its business that generated high-strength organic wastewater due to the delayed start up. (Tr. at pp. 204-205). He testified that despite being involved in the management of the day-to-day operations of the lagoon,

he was unsure whether there was an operations plan in place before MDEQ issued its orders. (Tr. at pp. 205-206). He testified that the revised operations plan was fully implemented and that it contained a provision to notify MDEQ 24 hours prior to samples being taken to allow MDEQ to split samples but Gold Coast had not contacted MDEQ. (Tr. at pp. 206-208). He also testified that he is not familiar with the details of the operations plan and that he has had no specialized training on taking samples. (Tr. at pp. 208-209). Mr. Douglas testified that Gold Coast could not take its wastewater to another disposal facility long term and remain profitable. (Tr. at pp. 210-211).

43. In answering questions from the Commissioners, Mr. Douglas testified that Gold Coast was getting quotations from lagoon managers but had not received responses from the managers. (Tr. at pp. 214-215). He also testified that he was unsure when they started construction but believed it was summer of 2018; that he was unsure when the aerators were ordered; and that Gold Coast was relying on Clearwater Consultants. (Tr. at pp. 215-217). Mr. Douglas acknowledged Gold Coast did not submit any financial figures to prove that it would go out of business should the orders stay in place but stated based on his experience with what others would charge, it would be prohibitively expensive. (Tr. at pp. 218-219). Mr. Douglas testified that Mr. Hardin was dealing with the contractors, including Control Systems and Entergy, during the construction phase of the lagoon and acknowledged he did not know when the aerators were ordered or when the electrical contract was signed. (Tr. at pp. 220-223). He also testified that Gold Coast paid for the construction and did not finance it. (Tr. at p. 224). Mr. Douglas testified that the week of the wastewater release was also the first week that Gold Coast had begun irrigating, on Monday, Tuesday and Wednesday of that week. (Tr. at p. 225).

V. Findings of Fact and Conclusions of Law Related to *Ex Parte* Orders and Violations

44. After review and consideration of the pre-filed testimony and evidence (including exhibits) submitted by MDEQ and Gold Coast, and upon consideration of the live witness testimony, evidence and arguments provided by the parties at the evidentiary hearing on November 19, 2020, the Commission makes the following findings of fact and conclusions of law related to the *ex parte* Orders and violations:

45. The Hearing Officer conducted a November 10, 2020, hearing on evidentiary matters relevant to this proceeding, and the Commission adopts and incorporates the rulings of the Hearing Officer as reflected in his Order of November 17, 2020. The Commission held the evidentiary hearing on November 19, 2020, pursuant to Miss. Code Ann. §§ 49-2-9, 49-2-13, 49-17-29, 49-17-31, 49-17-33, 49-17-41, and 49-17-43. The Commission finds that the parties received proper notice of the hearing as provided by law and that the Commission has jurisdiction over the parties and subject matter related to the hearing held on November 19, 2020, pursuant to Miss. Code Ann. §§ 49-2-9, 49-2-13, 49-17-29, 49-17-31, 49-17-33, 49-17-41, and 49-17-43.

46. The Commission finds that Miss. Code Ann. § 49-2-13 does not require notice to Gold Coast before the issuance of an *ex parte* order and that MDEQ nevertheless notified Gold Coast during a conference call on September 10, 2020, and an email on September 24, 2020, that such orders would be or may be issued. (Beasley Direct Testimony, ¶ 19 and Ex. II). The Commission further finds that the *ex parte* Orders were not based on unspecified allegations of unnamed witnesses but rather, as outlined below, were based on the allegations of numerous named, credible witnesses as well as confirmed on multiple occasions by MDEQ staff. The Commission further finds that the *ex parte* Orders were based on substantial evidence as more fully outlined below. Finally, the Commission finds that the *ex parte* Orders were not issued in violation of Gold Coast's due process rights as the hearing before the Commission on November

19, 2020, is the statutory means for an interested party that is aggrieved by any order of the Commission to be heard on the subject matter of the order. Miss. Code Ann. § 49-17-41. The Commission finds that the *ex parte* Orders should be and are hereby modified in part, as more fully outlined below.

47. The Commission finds Gold Coast is subject to the terms of a State of Mississippi Water Pollution Control Permit to Operate a Wastewater Disposal System with No Discharge: On August 13, 2019, the Permit Board issued Permit MSU218003 to Gold Coast Commodities, Inc. for a wastewater treatment system on Lake Road, Rankin County, Mississippi. (Beasley Direct Testimony, Ex. G). The Permit is valid until July 31, 2024, unless the Permit Board modifies, terminates, or revokes the Permit. (11 Miss. Admin. Code Pt. 6, R.1.1.5.A(3) and C(5) and Beasley Direct Testimony, Ex. G at Condition No. T-35 on p. 13). The Permit authorizes an aerated lagoon for the treatment of wastewater from the Gold Coast facility located in Brandon, Mississippi, followed by land application. (Beasley Direct Testimony, Ex. G at Condition Nos. T-2 and T-3 on p. 14 and Beasley Direct Testimony, Ex. E). The Permit prohibits land application during rainfall, when heavy rainfall is predicted and after the soil has reached saturation. (Beasley Direct Testimony, Ex. G at Condition No. T-1 on p. 14). The Permit allows Gold Coast to only land apply the treated wastewater specified in the permit application. (*Id.* at Condition No. T-3 on p. 14). Permit does not allow land application when a visible sheen is present on the surface of the wastewater to be land applied. (*Id.* at Condition No. T-4 on p. 14). The Permit requires Gold Coast to maintain a level-measuring device for determining the depth of the lagoon, and the device shall remain accessible to MDEQ for inspection purposes. (*Id.* at Condition No. T-6 on p. 14). The Permit requires prior to October first of each year that the lagoon be pumped down to a depth that will provide a minimum storage volume equivalent to 150 days of rainfall and wastewater needed

for winter storage. (*Id.* at Condition No. T-7 on p. 14). The Permit requires electrical power at the lagoon once it is necessary to run the aerators and land application pumps. (Beasley Direct Testimony, Ex. E at p. 3 of Treatment Design Calculations and Beasley Direct Testimony, Ex. G at Condition Nos. T-2 and T-3 on p. 14).

48. The Commission finds that the lagoon had about 900,000-gallon available capacity at the time of the hearing on November 19, 2020. (Tr. at p. 71). The average rainfall in Pelahatchie during the winter yields approximately one million gallons (Tr. at pp. 69-71). The Permit requires the lagoon to be empty enough starting October 1st to hold this amount of rainfall. (Beasley Direct Testimony, Ex. G at Condition No. T-7 on p. 14). The tanks at the Brandon facility have limited capacity and continue to store wastewater; at the time of the hearing on November 19, 2020, Gold Coast did not have any disposal plans for this wastewater in Brandon despite the lagoon not having capacity to store the rainfall expected in Pelahatchie much less the wastewater stored in Brandon. (Tr. at pp. 47, 61-63, and 67-69). The wastewater produced at the Brandon facility includes the production water, washdown water and storm water, and it is stored in tanks at the Brandon facility before being trucked to the wastewater treatment lagoon. (Douglas Direct Testimony at p. 2). Gold Coast voluntarily ceased production of some of its production water due to the delayed start-up of the lagoon and due to the wastewater release. (Douglas Direct Testimony at p. 5; Tr. at pp. 72-75, 204:23-205:20). Furthermore, given the current capacity of the lagoon (approximately 900,000 gallons), the expected rainfall in Pelahatchie over the next five months (approximately 1,000,000 gallons), and the wastewater being stored in Gold Coast's tanks in Brandon (unknown quantity), Gold Coast will be unable to generate additional wastewater at its production facility in Brandon without some type of relief from the *ex parte* Orders and/or unless Gold Coast develops an alternate disposal plan. Gold Coast asserts, but provided no written supporting evidence, that it will be

unable to find an alternate legal disposal option that is economically affordable. (Tr. at pp. 218-219).

49. The Commission finds that Gold Coast and several of its witnesses suggested the option of hiring a third party to operate the lagoon. (Douglas Direct Testimony at p. 7; French Direct Testimony at p. 2; Alman Direct Testimony at p. 6; and Tr. at p. 218).

50. The Commission finds and concludes that Gold Coast is liable for and committed the following violations as outlined in the October 15, 2019, NOV and the October 23, 2020, Complaint: failure to implement the SWPPP in violation of Condition No. ACT6 S-1(1) of Mississippi's Small Construction Storm Water General Permit and failure to maintain erosion and sediment controls in violation of Condition No. ACT6 S-2(9) of the same permit. (Beasley Direct Testimony, Ex. H and Tynes Direct Testimony, Ex. A). Since both of these violations are related to the same inspection, the Commission will address them together.

51. On October 4, 2019, MDEQ staff conducted an inspection of the lagoon and found evidence of the SWPPP not being implemented and erosion and sediment controls not being maintained. (Beasley Direct Testimony, ¶ 7 and Ex. H). The October 24, 2019, response by Gold Coast to the NOV admitted that the SWPPP reviewed by MDEQ during its inspection in October 2019, showed the silt fencing, inlet protection, riprap check dam and wattles and that these erosion and sediment controls had not been installed. (Beasley Direct Testimony, Ex. H and Hardin Rebuttal Testimony, Ex. B). A revised SWPPP was not drafted and submitted until after the inspection. (Hardin Rebuttal Testimony, Ex. B). No witnesses for Gold Coast disputed that erosion and sediment controls were not being maintained as documented in the inspection report from the October 4, 2019, inspection.

52. The Commission finds and concludes that Gold Coast is liable for and committed the following violations as outlined in the July 20, 2020, NOV; Order 7069-20; Order 7074-20; and the October 23, 2020, Complaint: failure to properly operate and maintain its permitted facility in violation of Condition No. T-9 of the Permit on p. 5; failure to halt, reduce or otherwise control the discharge of wastewater into the lagoon in violation of Condition No. T-15 of the Permit on p. 7; and failure to maintain a level-measuring device in violation of Condition No. T-6 of the Permit on p. 14. (Beasley Direct Testimony, Ex. M, DD and KK; and Tynes Direct Testimony, Ex. A). Since all of these violations are related to the same inspection, the Commission will address them together.

53. On June 12, 2020, MDEQ staff inspected the lagoon and found evidence that the lagoon was not being aerated, that wastewater had been and was being added to the lagoon, and that a level-measuring device was not installed. (Beasley Direct Testimony, ¶ 11 and Ex. M). The Permit required aerators in the lagoon. (Beasley Direct Testimony, Ex. E, F at 3:19-21, and G; Hardin Direct Testimony at p. 8; Tr. at pp. 47-48 and 185). Mr. Hardin admitted, from a lagoon design perspective, that these aerators could have been installed as early as December 2019 and as late as January 2020 when there was sufficient wastewater in the bottom to safely operate the aerators without damaging the liner. (Tr. at pp. 48-52). He also admitted that the aerators should have been in place prior to the weather getting warm and odors developing. (Hardin Direct Testimony at p. 8 and Tr. at pp. 52-53). No witness offered by Gold Coast could testify to when the aerators were ordered; when the electrical panel was ordered; or when the electrical power installation was ordered; however, Mr. Hardin testified that the original planned operational date was April 2020. (Tr. at pp. 57, 109, and 221-223). Gold Coast testified that the operational date was delayed due to COVID and other delays. (Douglas Direct Testimony at p. 3; Hardin Direct

Testimony at pp. 8-9; and Beasley Direct Testimony, Ex. M). However, despite there being no power, no control panels, and no aerators in the lagoon, Gold Coast began sending wastewater to the lagoon on November 15, 2019, and this activity continued even after Gold Coast and its consultant knew there were delays in getting the power installed and the aerators operational. (Beasley Direct Testimony, ¶ 8; Tr. at pp. 46, 51-52, 57-58, and 184-185). Finally, the original method utilized by Gold Coast for measuring the depth of the lagoon of using tape measures owned and maintained by Gold Coast personnel in their trucks does not satisfy the Permit requirement that the measuring device remain accessible to “qualified personnel” for inspection purposes. (Beasley Direct Testimony, Ex. G and N). A level-measuring device that complies with the terms of the Permit was not installed until after the Commission issued Order 7069-20. (Beasley Direct Testimony, Ex. EE).

54. The Commission finds and concludes that Gold Coast is liable for and committed the following violations as outlined in the August 12, 2020, NOV; Order 7069-20; Order 7074-20; and the October 23, 2020, Complaint: no person shall cause, permit, or allow the emission of any contaminants in sufficient amounts or of such duration from any process as to be a public nuisance in violation of 11 Miss. Admin. Code Pt. 2, R. 1.3.C.; and there shall be no odorous substances in the ambient air in concentrations sufficient to adversely and unreasonably affect human health and well-being or interfere with the use or enjoyment of property in violation of 11 Miss. Admin. Code Pt. 2, Ch. 4. (Beasley Direct Testimony, Ex. S, DD and KK; and Tynes Direct Testimony, Ex. A). In determining that 11 Miss. Admin. Code Pt. 2, Ch. 4 has been violated, pursuant to the cited regulation, the Commission considered the number of complaints and petitioners alleging that such a condition exists, the frequency of the occurrence of such substances in the ambient air as confirmed by MDEQ staff, and the land use of the affected areas. Since both of these violations

are related to odors and the hydrogen sulfide release on July 20, 2020, the Commission will address them together.

55. Beginning in May 2020, MDEQ received complaints of nuisance level odors coming from the lagoon; these complaints came from at least forty unique individuals and included complaints of interference with the use and enjoyment of property. (Beasley Direct Testimony, ¶¶ 10, 13, 14, 16, 18, and 22). In addition, there is evidence nuisance level odors were present at additional times, sometimes months before the first complaint was lodged with MDEQ. (Stubbs Direct Testimony, ¶¶ 6, 7, 10, and 14; Word Direct Testimony, ¶¶ 10, 12, and 20; and Alman Direct Testimony at pp. 2-3). MDEQ staff confirmed these nuisance level odors on at least eight occasions. (Beasley Direct Testimony, ¶¶ 10, 13, 14, 15, 18, 20, and 22). Furthermore, Gold Coast and its consultants admitted that odors were present, describing the odors as “a problem,” “bad,” “unacceptable,” “extremely bad,” and “nuisance.” (Beasley Direct Testimony, Ex. N, T, GG, and II; Douglas Direct Testimony at p. 4; French Direct Testimony at p. 2; Hardin Direct Testimony at p. 10; Hardin Rebuttal Testimony at p. 1; Wilson Direct Testimony at p. 2; Wilson Rebuttal Testimony at p. 1; and Tr. at pp. 96, 101, and 192). In addition, regarding violation of 11 Miss. Admin. Code Pt. 2, R. 1.3.C., Gold Coast is a “person”, and these odors are considered “contaminants” pursuant to 11 Miss. Admin. Code, Pt. 2, R.1.2.B. and R.1.2.V. Finally, the affected areas included residential and recreational uses. (Beasley Direct Testimony, Ex. Q at p. 5 and Ex. MM).

56. In addition to the odors, the Commission finds and concludes the H₂S release was a violation of these two regulations: H₂S is considered a “contaminant” pursuant to 11 Miss. Admin. Code, Pt. 2, R.1.2.B.; the release constituted a public nuisance (Word Direct Testimony at p. 4); the release adversely and unreasonably affected human health as three people were sent to

the hospital, a fourth passed out, and two employees of Gold Coast were affected (Douglas Direct Testimony at p. 3); and the release and subsequent presence of H₂S was noticed by multiple individuals, including representatives of Gold Coast itself, and was confirmed by MDEQ staff. (Douglas Direct Testimony at p. 3; Hardin Direct Testimony at pp. 8-9; Word Direct Testimony at pp. 2-4; and Beasley Direct Testimony at pp. 6-7).

57. The Commission finds and concludes that Gold Coast is liable for and committed the following violations as outlined in Order 7069-20, Order 7074-20, and the October 23, 2020, Complaint: it is unlawful for any person to cause pollution of any waters of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any waters of the state in violation of Miss. Code Ann. § 49-17-29(2)(a); the discharge of any wastewater from this facility to the waters of the State of Mississippi shall constitute a violation of this permit in violation of Condition No. T-2 on p. 14 of the Permit; land applying wastewater during rainfall, when heavy rainfall is predicted or after the soil has reached saturation in violation of Condition No. T-1 on p. 14 of the Permit; and failure to operate the land application system in accordance with the Land Application Plan submitted August 2019 and letter submitted January 2019 in violation of Condition No. T-2 on p. 14 of the Permit. (Beasley Direct Testimony, Ex. DD and KK; and Tynes Direct Testimony, Ex. A). Since all of these violations are related the wastewater release beginning on August 28, 2020, the Commission will address them together.

58. For the statutory violation, the wastewater is “pollution” pursuant to Miss. Code Ann. § 49-17-5(1)(a); the wastewater is a “waste” pursuant to Miss. Code Ann. § 49-17-5(5)(1)(b); Dry Creek is a “water of the state” pursuant to Miss. Code Ann. § 49-17-5(1)(f); and Gold Coast is a “person” pursuant to Miss. Code Ann. § 49-17-5(3)(b). Gold Coast caused pollution of Dry Creek by failing to take steps to prevent the release of wastewater from its lagoon (Tr. at pp. 113-

117); by failing to timely notify the government and failing to notify MDEQ of the release which would have allowed MDEQ to evaluate what steps needed to be taken to stabilize the release (Beasley Direct Testimony, Ex. Y and Tr. at pp. 198-202); and by failing to begin remediation until three days after the release began and two days after the release was discovered allowing the wastewater to spread further. (*Id.* and Tr. at p. 130).

59. With regard to the Permit violations, the release constituted a “discharge,” and the soil became saturated during the release (Tr. at p. 73 and Beasley Direct Testimony, Ex. Z). The Land Application Plan submitted August 2019 and the letter submitted January 2019 set forth the conditions under which the land application system would be operated: the permit application was for a no discharge to the waters of the State system; it was limited to 100,000 gallons per discharge (land application event) over six hours per day with one discharge (land application event) per day; land application would only be of treated effluent; and flow monitoring and an automated shut-off system would be used to prevent runoff. (Beasley Direct Testimony, Ex. D, E and F at pp. 3, 7, and 27). The Permit also states that only treated wastewater would be land applied and that there may be no land application of wastewater when there is sheen on the wastewater. (Beasley Direct Testimony, Ex. G at Condition No. T-3 and T-4 on p. 14). At the time of the release, the wastewater had only been aerated for about one month, and results showed at that time that the wastewater had not been adequately treated. (Hardin Rebuttal Testimony, Ex. A). MDEQ personnel noted a sheen on the discharged wastewater. (Beasley Direct Testimony, ¶ 15, Ex. Y and Z). By Gold Coast’s estimate, approximately 418,000 gallons of wastewater were released over a period of 24 hours, and there was not an automated shut-off system operational that would have prevented runoff. (Beasley Direct Testimony, Ex. X and Tr. at pp. 117-119).

60. The Commission finds and concludes that Gold Coast is not liable for the unlawful bypass of the Permit. Condition T-11 of the Permit defines “bypass” as the “intentional diversion of waste streams from any portion of a treatment facility.” Gold Coast provided testimony that the release of wastewater was the result of an accidental turning on of a switch by a contractor, and MDEQ did not provide any testimony disputing Gold Coast’s testimony. (Tr. at pp. 80 and 198-199).

VI. Testimony Regarding Penalty

61. Based on the findings and conclusions of the Commission that Gold Coast was liable for and committed violations set forth in the Complaint as more fully outlined above, the Commission proceeded to hear and consider evidence regarding the assessment of penalties against Gold Coast.

62. Thomas Tynes, Manager of the Enforcement Branch of the ECED of MDEQ, was a witness for MDEQ. (Tr. at pp. 241-254 and Affidavit of Thomas Tynes (Direct Testimony) dated October 30, 2020 (including Exhibit A)). His pre-filed testimony was entered into evidence without objection at the hearing. In his pre-filed testimony, Mr. Tynes testified regarding MDEQ’s recommendation regarding its proposed penalty and the statutory factors MDEQ considered in calculating the proposed penalty. (Tynes Direct Testimony at ¶¶ 4-21).

63. On cross-examination, counsel for Gold Coast asserted that zoning is a relevant factor for the Commission to consider in determining the penalty. (Tr. at pp. 242-248). Counsel for MDEQ objected stating that it may be a factor to be considered in whether there was a violation but is not considered in determining the amount of the penalty; the Hearing Officer agreed but allowed the questioning. (Tr. at pp. 243-245). Mr. Tynes admitted he did not consider the zoning of the area in calculating the proposed penalty. (Tr. at p. 248). On re-direct, Mr. Tynes testified

that the air nuisance regulation does not use the term zoning but uses the phrase “the land use of the affected area” and that the affected area includes the residential properties surrounding the lagoon. (Tr. at p. 249).

64. In answering questions from the Commissioners, Mr. Tynes testified that on a number of violations he chose to combine days of violations and to use an amount less than the statutory maximum in order to calculate a reasonable proposed penalty. (Tr. at pp. 250-251). When asked about the ability to structure payments under any penalty assessed, Mr. Tynes deferred to legal counsel; Mr. Roy Furrh stated that MDEQ has allowed structured payments in the past and that the Commission had the authority to dictate the terms for any structured payments. (Tr. at pp. 252-253). Gold Coast did not provide specific testimony to rebut the amount of MDEQ’s recommended penalty.

VII. Findings of Fact and Conclusions of Law as to Assessment of Penalties

65. After review and consideration of the pre-filed testimony and evidence (including exhibits) submitted by MDEQ and Gold Coast and upon consideration of the live witness testimony, evidence and arguments provided by the parties at the evidentiary hearing on November 19, 2020, the Commission makes the following findings of fact and conclusions of law related to the assessment of penalties:

66. The Hearing Officer conducted the November 10, 2020, hearing on evidentiary matters relevant to this proceeding and the Commission held the hearing on November 19, 2020, pursuant to Miss. Code Ann. §§ 49-2-9, 49-2-13, 49-17-29, 49-17-31, 49-17-33, 49-17-41, and 49-17-43. The Commission finds that the parties received proper notice of the hearing as provided by law and that the Commission has jurisdiction over the parties and subject matter related to the hearing held on November 19, 2020, pursuant to Miss. Code Ann. §§ 49-2-9, 49-2-13, 49-17-29,

49-17-31, 49-17-33, 49-17-41, and 49-17-43. Having determined that Gold Coast is liable for and committed eleven violations set forth in the Complaint as more fully discussed above, and after considering the factors for assessment of penalties as set forth through the testimony of Mr. Tynes, the Commission finds and concludes that the assessment of penalties is appropriate, assesses penalties in the amount of \$505,000 against Gold Coast, and adopts as its findings and conclusions the consideration of penalties as set forth in the testimony of Mr. Tynes. The Commission orders that the payment of the penalties shall be paid in quarterly installments over eighteen months.

VIII. Summary – Findings of Fact and Conclusions of Law

67. The Commission finds and concludes that Order 7069-20 and Order 7074-20 as modified below were not arbitrary and capricious, were based on substantial evidence, and did not violate the constitutional or statutory rights of Gold Coast. The Commission also finds and concludes the evidence establishes that Gold Coast committed eleven violations outlined in the Complaint, but not an unlawful bypass in violation of Condition No. T-13 of the Permit.

68. The Commission upholds Orders 7069-20 and 7074-20, subject to the following modifications:

- A. Order 7069-20 ordered Gold Coast to cease and desist sending its wastewater to the lagoon until such time that MDEQ issues written approval for it to resume disposal of the wastewater in the lagoon. The Commission orders that disposal in the lagoon may resume contingent on:
 - 1) Gold Coast hiring a professional wastewater lagoon manager. The wastewater lagoon management contract's scope of services, operating agreement and the contract itself shall be submitted to and approved by MDEQ;
 - 2) Gold Coast submitting a plan to MDEQ regarding the disposal of the wastewater, including production water, washdown water, and storm water, currently stored at its facility in Brandon; and
 - 3) Gold Coast not generating wastewater, including production water and washdown water, at its facility in Brandon unless and until it has submitted the plan to MDEQ as described in Paragraph A.2, above.

- B. Order 7069-20 ordered Gold Coast to cease and desist irrigating its wastewater at the land application site without scheduling such land application activities and without receiving approval from MDEQ. The Commission orders that Gold Coast may resume land application contingent on:
- 1) MDEQ and Gold Coast agreeing on when land application can occur. This agreement shall be memorialized in an Agreed Order. One condition of this Agreed Order may be the submittal of a permit modification if the agreed upon terms are not consistent with the conditions of the Permit. In that event, the Agreed Order shall be an interim Agreed Order until such time as the Permit Board takes action on the permit modification.
- C. Order 7074-20 ordered Gold Coast to remove and dispose of all wastewater from the lagoon within sixty days of the date of that Order. The Commission orders that portion of Order 7074-20 rescinded contingent on:
- 1) The hiring of a professional wastewater lagoon manager under the conditions described in Paragraph A.1; and
 - 2) In addition to any reports required to be maintained and/or submitted pursuant to the Permit, Gold Coast submitting written reports to MDEQ for at least a period of one year to demonstrate compliance with the Permit. The specific requirements to be included in the reports as well as the timing of the submittals will be established by MDEQ.
- D. At least four aerators must continue to be operated at the lagoon at all times; if an aerator becomes inoperable, MDEQ's ECED must be notified within 24 hours of Gold Coast becoming aware of the aerator's inoperability.

69. The Commission finds and concludes, as a result of committing eleven violations cited in the Complaint, Gold Coast is hereby assessed a penalty in the amount of \$505,000.00 payable in quarterly installments over an 18-month period.

IT IS THEREFORE ORDERED AND ADJUDGED that Orders 7069-20 and 7074-20 are upheld subject to the modifications outlined in this Order; that Gold Coast Commodities, Inc. is liable for and committed eleven violations outlined in the Complaint letter, specifically excepting an unlawful bypass in violation of Condition No. T-13 on p. 6 of the Permit; and that Gold Coast Commodities, Inc. is hereby assessed a penalty in the amount of \$505,000.00. Gold Coast Commodities, Inc. shall pay this penalty to MDEQ in one quarterly installment of \$84,166.70 due

April 30, 2021, followed by five quarterly installments of \$84,166.66 due on July 31, 2021; October 31, 2021; January 31, 2022; April 30, 2022; and July 31, 2022. The payments shall be submitted to:

Mississippi Department of Environmental Quality
Attn: Accounts Receivable
P.O. Box 2339
Jackson, MS 39225

This is a final Order of the Commission appealable according to the provisions of Miss. Code Ann. § 49-17-41, and the amount of the appeal cost bond is set at \$500.00.

SO ORDERED AND ADJUDGED, this the 15th day of ~~March~~^{April}, 2021.

FOR: MISSISSIPPI COMMISSION ON
ENVIRONMENTAL QUALITY

BY:



JOHN DANE, III
CHAIRMAN