

**MINUTES OF THE MISSISSIPPI ENVIRONMENTAL QUALITY  
PERMIT BOARD, SPECIAL MEETING  
HELD IN JACKSON, MISSISSIPPI, ON THURSDAY, AUGUST 29, 2019**

The Mississippi Environmental Quality Permit Board held a special meeting in the Commission Hearing Room of the Department of Environmental Quality, located at 515 East Amite Street, on Thursday, August 29, 2019. The notice of the special meeting was posted at MDEQ on August 13, 2019, and is attached to the minutes. Chris McDonald called the meeting to order at 9:00 a.m. with the following members and designated representatives present.

Chris McDonald for Andy Gipson, Chair  
Jennifer Wittmann for Joe Spraggins, Vice Chair  
Les Herrington  
Dennis Riecke for Dr. Sam Polles  
Chris Hawkins for Kay Whittington  
David Dockery

**Jimmy Le d/b/a Le Poultry, Pike County, Mississippi**

**Issuance of State of Mississippi Dry Litter Poultry Animal Feeding Operation  
Multimedia General Permit (No. MSG 201968) and  
Large Construction Storm Water General Permit (No MSR107600)**

Petitioners in this matter requested an evidentiary hearing before the Permit Board to reconsider its issuance of coverage under the State of Mississippi Dry Litter Poultry Animal Feeding Operation Multimedia General Permit (No. MSG 201968) and coverage under the Large Construction Storm Water General Permit (No MSR107600) to Jimmy Le d/b/a Jimmy Le Poultry for a proposed poultry facility in Pike County, Mississippi. The Permit Board held a Special Permit Board meeting on August 29, 2019, to consider the Report and Recommendation of the Hearing Officer which the Hearing Officer entered on August 7, 2019, after holding a hearing on April 16, 2019, to consider dispositive motions filed by Petitioners, MDEQ, and Le Poultry. J. Stephenson Ray, Esq., served as the Hearing Officer in this matter. Mr. Ray stated all parties agreed to file dispositive motions, have him as the Hearing Officer consider the motions and make a recommendation to the Permit Board, and then hold an evidentiary hearing before the Permit Board if there were remaining issues to be heard. Hearing Officer Ray stated that while the Mississippi Rules of Civil Procedure do not apply to administrative hearings, the parties agreed that the framework of Rule 56, which governs motions for summary judgment, was appropriate for the hearing on the dispositive motions. Thus, Hearing Officer Ray considered whether there were any genuine issues of material fact in making his recommendations to the Board. He found there were no genuine issues of material fact that would preclude disposing of the matter on the motions and further found he could propose conclusions of law to the Board based on the motions that would justify his recommendation to dispose of the matter based on the dispositive motions.

Mr. Ray stated MDEQ filed a Motion to Declare Jimmy Le d/b/a Le Poultry in Compliance with the Siting Criteria which was limited solely to the issue regarding the siting criteria. Le Poultry filed a Motion for Summary Affirmation of the Issuance of Permit No. MSR 107600 and Permit No. MSG201968 which would dispose of all issues without needing further evidence. Petitioners filed a Motion to Rescind Permits which would also dispose of all issues without further proof. Mr. Ray pointed out that he did not have authority to rule upon dispositive motions; rather, his authority was to act as the Permit Board's agent in holding the hearing and making recommendations to the Board. Mr. Ray stated he was able to recommend findings of fact and conclusions of law that would dispose of the entire matter.

Mr. Ray stated that pages two through four of his Report set out the undisputed facts and timeline and recommended the Permit Board adopt the same. Mr. Ray also stated as a matter of law, based on the wording of the applicable regulations, MDEQ's initial inspection date, January 22, 2018, was the date to determine compliance with the siting criteria. Because it is undisputed there was no occupied dwelling within the buffer zone on January 22, 2018, Mr. Ray stated as a matter of law, Le Poultry met the applicable buffer requirements. Thus, Mr. Ray did not determine whether the structure Mr. and Mrs. Billy and Pauline Magee placed on their property within the buffer zone on March 28, 2018, was an occupied dwelling. Mr. Ray stated that MDEQ's interpretation of the regulation regarding when MDEQ considers siting criteria compliance was reasonable and logical and, as a matter of law, entitled to

deference. He thus recommended the Permit Board find January 22, 2018, as the applicable date pursuant to the regulations to determine buffer zone compliance. He stated that if the Permit Board wished to determine whether the Magees' trailer was an occupied dwelling on March 28, 2018, they would need to hold an evidentiary hearing because Mr. Ray could not make that determination based on the state of the current record.

Mr. Ray also addressed other matters raised by the parties. He stated as a matter of law that MDEQ was not judicially estopped from taking certain positions in this matter after the previous Permit Board meetings. Mr. Ray stated the Permit Board is not bound by its previous decisions and can take any action it wishes to take today notwithstanding its previous action.

Mr. Ray also stated there were no genuine issues of material fact regarding the remaining issues that would preclude him from making a recommendation to the Permit Board with respect to the broader motions brought by Le Poultry and Petitioners. Specifically, the remaining issues did not relate to whether Le Poultry complied with the permit application requirements; rather, these issues pertained to potential future enforcement matters. Mr. Ray stated the Permit Board is required to enter Findings of Fact and Conclusions of Law; he recommended the Permit Board find as fact those items he identified in his Report and conclude as a matter of law the items on pages 20 through 21 of his report. He recommended the Permit Board grant MDEQ's Motiongrant Jimmy Le's Motion for Summary Affirmation, and deny Petitioners' Motion to Rescind. Mr. Ray reiterated that the decision is for the Permit Board and that the Board is not bound by Mr. Ray's recommendation and is further not bound by what Permit Board previously decided. Mr. Ray stated if the Board accepted his recommendation, Petitioners have recourse to the chancery court on appeal.

Mr. Jeff Reynolds, attorney for Petitioners, briefly addressed the Permit Board. He stated the Hearing Officer could only rule on legal matters and his clients had a right to an evidentiary hearing on issues regarding permit application deficiencies. He stated he had two expert witnesses ready to testify regarding harm caused by the violation of the buffer zone rule. Mr. Scott Singley, attorney for Le Poultry, stated the Permit Board rules clearly allow for dispositive motions and pointed out that Mr. Reynolds agreed to this process. To the extent Petitioners are entitled to an evidentiary hearing, Mr. Singley stated Petitioners waived their right by agreeing to allow the parties to file dispositive motions.

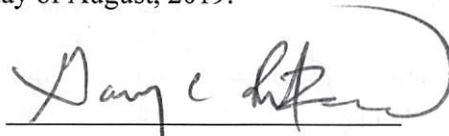
Mr. Ray stated the Permit Board had the following options: (1) it could disregard his Report and rescind its issuance of the permit coverages; (2) it could disregard his Report and hold an evidentiary hearing; (3) it could accept his Report and affirm the permit coverages; or (4) it could accept his Report in part and reject it in part.

Upon motion by Jennifer Wittmann to accept the Report and Recommendations of the Hearing Officer in its entirety, and seconded by Chris Hawkins, the Permit Board unanimously voted to accept the Report and Recommendations of the Hearing Officer in its entirety and reaffirm the issuance of coverage of the State of Mississippi Dry Litter Poultry Animal Feeding Operation Multimedia General Permit and the issuance of coverage of the Large Construction Storm Water General Permit.

#### MEETING ADJOURNED

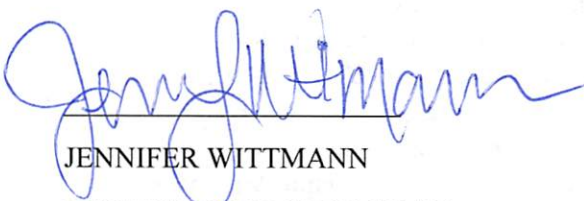
There being no further business to come before the Permit Board, Chair Chris McDonald adjourned the meeting.

DATED at Jackson, Mississippi, this the 29<sup>th</sup> day of August, 2019.



GARY C. RIKARD

EXECUTIVE DIRECTOR



JENNIFER WITTMANN

PERMIT BOARD VICE CHAIR

## Notice of Special Meeting

### Mississippi Environmental Quality Permit Board

Please take note that a special meeting of the Mississippi Environmental Quality Permit Board ("Permit Board") will be held beginning at 9:00 a.m. on Thursday, August 29, 2019, in the Commission Hearing Room at 515 East Amite Street, Jackson, Mississippi. At the special meeting, the Permit Board will consider the Report and Recommendation of the Hearing Officer regarding issuance of coverage under the Mississippi Multimedia General Pollution Control Permit for a Dry Litter Poultry Feeding Operation Permit No. MSG 201968 and coverage under the Mississippi Large Construction Storm Water General NPDES Permit No. MSR107600 to Jimmy Le d/b/a Le Poultry, Pike County, Mississippi. As always, the public is invited to attend the meeting.

Posted: August 13, 2019



General Counsel  
Mississippi Department of  
Environmental Quality