

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

GULF RESTORATION NETWORK

PLAINTIFF

vs.

CIVIL ACTION NO. 2:12-cv-00036-KS-JMR

CITY OF HATTIESBURG

DEFENDANT

vs.

**MISSISSIPPI COMMISSION
ON ENVIRONMENTAL QUALITY**

INTERVENOR

AMENDED CONSENT JUDGMENT

WHEREAS the City of Hattiesburg (“City”) owns and operates wastewater treatment facilities in Hattiesburg referred to as the North Lagoon located at 3401 Lakeview Road and the South Lagoon located at 1903 East Hardy Street; and

WHEREAS the Mississippi Department of Environmental Quality (“MDEQ”), pursuant to its authority under the Clean Water Act, issued Permit No. MS0020826 to the City for discharges from the North Lagoon into the Bowie River and Permit No. MS0020303 to the City for its discharges from the South Lagoon into the Leaf River (collectively “the Permits”); and

WHEREAS Gulf Restoration Network (“GRN” or “Plaintiff”) filed a Complaint with this Court on March 2, 2012 against the City under the Clean Water Act (“CWA”), 33 U.S.C. § 1365, alleging ongoing violations of the Permits (“Complaint”); and

WHEREAS this Court granted the Mississippi Commission on Environmental Quality’s (“MCEQ”) motion to intervene in this matter on August 7, 2012; and

WHEREAS on August 12, 2014, a Second Amended Agreed Order No. 6034 11 (“Second Amended Agreed Order”) was entered into between MCEQ and the City, a copy of which is attached hereto and incorporated herein by reference. The Second Amended Agreed

Order includes tiered interim limits with expiration dates under Permit No. MS0020303 for South Lagoon discharges, milestone deadlines for a City project at the South Lagoon designed to meet Permit No. MS0020303 Phase II limits, and stipulated penalties for project deadlines and interim limit violations; and

WHEREAS, GRN, the City, and MCEQ (collectively, “the Parties”) have negotiated in good faith and have reached a compromise and settlement of the issues raised in the Complaint;

WHEREAS, the City’s agreement to this Consent Judgment is not an admission of liability, except for the City’s consent to jurisdiction and venue as provided in paragraphs 1 and 2 of this Consent Judgment, nor is it an adjudication or admission of any law or facts; and

WHEREAS, the Parties recognize, and the Court by entering this Consent Judgment finds, that this Consent Judgment has been negotiated by the Parties in good faith and that this Consent Judgment is fair, reasonable, and in the public interest; and

WHEREAS the Parties respectfully request that the Court enter this Consent Judgment, following a 45-day waiting period for review by the federal government, pursuant to § 1365(c) of Clean Water Act, which provides: “No consent judgment shall be entered in an action in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator [of EPA];”

NOW, THEREFORE, with the consent of the Parties, it is HEREBY ORDERED, ADJUDICATED and DECREED as follows:

I. JURISDICTION AND APPLICABILITY

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and the CWA, 33 U.S.C. § 1365. This Court has personal jurisdiction over the Parties.

2. Venue is proper in the Southern District of Mississippi because the violations alleged in the Complaint are alleged to have occurred in this judicial district.

3. The Consent Judgment is binding upon the Parties.

4. Each Party promises and warrants that the person or persons that execute this Consent Judgment on the Party's behalf is authorized to execute this Consent Judgment and to bind that Party to its terms.

II. OBLIGATIONS

5. The City shall comply with the terms of the Second Amended Agreed Order and maintain compliance throughout the stated term of the Second Amended Agreed Order. Except to the extent that the Second Amended Agreed Order creates an exception(s), the City shall comply with the Permits. The City shall provide written notice to GRN of any violation of the Second Amended Agreed Order within ten (10) business days of such violation, if any. With respect to any violation(s) of the discharge limits contained in the Second Amended Agreed Order or the Permits, this ten (10) day period shall commence on the day that the City files with MDEQ the monthly Discharge Monitoring Report reflecting the violation(s). No relaxation of any term of the Second Amended Agreed Order shall be effective to modify the obligations of this paragraph unless and until such relaxation is approved by this Court.

6. On or about January 27, 2014, the City entered into an agreement for the treatment of wastewater with Groundworx, LLC ("City-Groundworx Agreement"). The City

shall provide written notice to GRN within seven (7) business days of any decision to terminate the City-Groundworx Agreement.

7. If the City-Groundworx Agreement is terminated, the City shall design and construct, within all deadlines set in paragraph 5 of the Second Amended Agreed Order, a wastewater treatment system that will at least meet all the following requirements:

- (a) All Phase II limits in Permit No. MS0020303;
- (b) Monthly average discharge limitations for Five Day Biochemical Oxygen Demand (BOD5) and Total Suspended Solids (TSS) that will not exceed 30 milligrams per liter;
- (c) Weekly average discharge limitation for BOD5 and TSS that will not exceed 45 milligrams per liter; and
- (d) Monthly average percent removal of BOD5 and TSS, which must be at least 85%.

No relaxation of any term of Permit No. MS0020303 shall be effective to modify the obligations of this paragraph unless approved by this Court.

8. The City shall submit to GRN a written notice of compliance or noncompliance with each deadline contained in paragraphs 4 and 5 of the Second Amended Agreed Order within ten (10) business days after the expiration of each deadline.

9. The City shall provide to GRN a copy of all documents and certifications required by Paragraphs 4.A-C and 5.A-C of the Second Amended Agreed Order within ten (10) business days after such documents and certifications are submitted to MDEQ.

10. The City shall send the notice/information required under Paragraphs 5, 6, 8 and 9 of this Consent Judgment to GRN at the following address:

Matthew Rota
Gulf Restoration Network
541 Julia St., Suite 300
New Orleans, LA 70130
matt@healthygulf.org

III. BENEFICIAL ENVIRONMENTAL PROJECT

11. The City shall contribute up to \$40,000 to fund U.S. Geological Survey water quality monitoring stations on the Leaf River downstream of the City's wastewater outfalls within thirty (30) days of the entry of this Consent Judgment by the Court. Such funds are to be paid by the City to MDEQ for disbursement by MDEQ to U.S. Geological Survey pursuant to the terms of a separate agreement.

IV. AWARD OF COSTS

12. The City shall reimburse GRN, pursuant to § 1365(d) of the Clean Water Act, up to \$50,000 for the reasonable costs and expenses, including reasonable attorneys' fees, incurred by GRN in connection with this litigation. The City shall make this reimbursement to GRN within thirty (30) days after the entry of this Consent Judgment. The City shall make payment by check payable to Tulane Environmental Law Clinic and sent to Corinne Van Dalen at 6329 Freret Street, New Orleans, Louisiana 70118.

VI. RETENTION OF JURISDICTION AND DISMISSAL WITH PREJUDICE

13. This Court shall retain jurisdiction over this case for the purpose of implementing the terms of this Consent Judgment, including resolving any disputes between the parties arising under this Consent Judgment.

14. In all other respects, except as specified in Paragraph 13 above, the Complaint is dismissed with prejudice.

SO ORDERED, THIS THE 1st DAY OF OCTOBER, 2014.

s/Keith Starrett
UNITED STATES DISTRICT JUDGE

AGREED AS TO SUBSTANCE AND FORM:

s/Corinne Van Dalen
s/Cynthia Sarthou
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-and-

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s/Christopher G. Wells

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Counsel for Intervenor MDEQ

BEFORE THE MISSISSIPPI COMMISSION
ON ENVIRONMENTAL QUALITY

MISSISSIPPI COMMISSION ON
ENVIRONMENTAL QUALITY

COMPLAINANT

VS.

SECOND AMENDED
AGREED ORDER NO.6034 11

CITY OF HATTIESBURG
PO BOX 1898
HATTIESBURG, MISSISSIPPI 39403-1898

RESPONDENT

SECOND AMENDED AGREED ORDER

Mississippi Commission on Environmental Quality Agreed Order No. 6034 11, previously issued on October 5, 2011, and amended on February 13, 2012, in the above captioned matter, came on this day for reconsideration upon the joint request of the Mississippi Commission on Environmental Quality, Complainant, and the City of Hattiesburg, Respondent, and the Executive Director of the Mississippi Department of Environmental Quality having received additional information in this cause, finds, and Respondent agrees, that the Agreed Order and Amended Agreed Order should both be amended and superseded as follows:

1.

Respondent owns and operates a wastewater collection and treatment system referred to as the Hattiesburg South Lagoon located at 1903 East Hardy Street, Hattiesburg, Mississippi in Forrest County and subject to NPDES Permit No. MS0020303. By letters dated March 2, 2011, March 22, 2011, June 27, 2011, July 6, 2011, August 2, 2011, and September 1, 2011, and after review of subsequent discharge monitoring report, Respondent was notified of the following alleged violations at that facility:

- A. The effluent Biochemical Oxygen Demand (BOD) limitation was exceeded during the months of October – December 2010 and January – August 2011.
- B. The effluent suspended solids limitation was exceeded during the months of March – April 2011.
- C. The effluent suspended solids percent removal limitation was not met during the months of November – December 2010 and February – April, June – July 2011.
- D. The effluent fecal coliform limitation was exceeded during the months of November 2010 and February 2011.
- E. The effluent chlorine residual limitation was exceeded during the months of February – March 2011.

In an effort to address the BOD exceedances, Respondent has completed projects to physically dredge, remove and dispose of sludge accumulated in Cells 3B and 3C of the Hattiesburg South Lagoon and to replace existing surface aerators in Cell 3A with a diffused aeration system. Respondent anticipates that these actions will improve the treatment efficiency of the system.

2.

Respondent also owns and operates a wastewater collection and treatment system referred to as the Hattiesburg North Lagoon located at 3401 Lakeview Road, Hattiesburg, Mississippi in Forrest County and subject to NPDES Permit No. MS0020826. By letters dated December 1, 2010, January 6, 2011, March 16, 2011, March 24, 2011, June 27, 2011, August 2, 2011, and September 1, 2011, Respondent was notified of the following alleged violations at that facility:

- A. The effluent suspended solids limitation was exceeded during the months of October – December 2010 and January – April and June 2011.
- B. The effluent BOD limitation was exceeded during the months of December 2010 and January 2011.
- C. The effluent suspended solids percent removal limitation was not met during the months of January – February, April, and June 2011.
- D. The effluent fecal coliform limitation was exceeded during the months of October 2010 and January – February and July 2011.

In an effort to address the BOD and suspended solids exceedances, Respondent has completed a project to increase the treatment capacity of the Hattiesburg North Lagoon, which included the addition of two aerated treatment cells.

3.

The February 13, 2012, Amended Agreed Order assessed a civil penalty of \$32,500.00 for the past violations at the North and South Lagoons, of which Respondent paid \$8,125.00 and received credit for the remaining balance of \$24,375.00 after completion of a Supplemental Environmental Project as described in the Amended Agreed Order. The Amended Agreed Order also established interim effluent limitations and deadlines for the completion of the South Lagoon aeration replacement and sludge removal projects, as well as the North Lagoon expansion project. The Amended Agreed Order provided for stipulated penalties in the event of any failure by Respondent to complete those projects by the established deadlines and for any exceedance of the interim effluent limitations. By letters dated June 29, 2012, February 19, 2013, March 21, 2013, May 6, 2013, June 18, 2013, and June 12, 2014, Complainant assessed stipulated penalties totaling \$69,000.00 for the following violations of the Amended Agreed Order:

- A. Exceedances of the BOD and total suspended solids interim effluent limitations for the South Lagoon in November 2011, December 2011, January 2012 and February 2012 (\$8,000 stipulated penalty);
- B. Completion of the North Lagoon expansion project 122 days after the May 30, 2012, deadline established by the Amended Agreed Order (\$12,200.00 stipulated penalty);
- C. Exceedances of the BOD and total suspended solids interim effluent limitations for the South Lagoon in January and February 2013 (\$5,000.00 stipulated penalty);
- D. Completion of the South Lagoon sludge removal project 248 days after the September 12, 2012, deadline established by the Amended Agreed Order (\$24,800.00 stipulated penalty); and
- E. Exceedances of the BOD and total suspended solids interim effluent limitations

for the South Lagoon in March and August 2013 and January through April 2014 (\$19,000.00 stipulated penalty).

4.

The Hattiesburg South Lagoon is subject to "Phase II" effluent limitations contained in NPDES Permit No. MS0020303, with which Respondent is required to comply no later than the expiration date of the permit, May 31, 2015. Because of the history of exceedances at the Hattiesburg South Lagoon, Respondent has been required to engage in long-term planning regarding its wastewater treatment system. Respondent requested, and Complainant agreed, to extend the deadline for compliance with the "Phase II" effluent limitations to no later than May 31, 2017.

The Amended Agreed Order also established a deadline of May 31, 2013, by which Respondent was to decide upon an engineering solution for "Phase II" effluent limit compliance, whether that be the construction of a new mechanical treatment plant, the retrofitting of the existing lagoon system, or other options as recommended by Respondent's consulting engineers. On or about May 31, 2013, Respondent notified Complainant that Respondent had chosen to contract with a third party, Groundworx, LLC, to dispose of its waste water through a land application "no-discharge" system. The contract between Respondent and Groundworx, LLC contains various termination provisions.

Groundworx, LLC applied for, and on April 8, 2014, the Mississippi Environmental Permit Board ("Permit Board") voted to issue, a State Operating Permit for the operation of a system for the land application of treated waste water from the South Lagoon. Multiple parties requested an evidentiary hearing be conducted by the Permit Board in regard to the issuance of that permit. The Permit Board conducted the evidentiary hearing on July 15, 2014, and affirmed the issuance of the permit.

Consistent with the Amended Agreed Order, the following milestone deadlines shall apply to the Groundworx, LLC land application "no-discharge" system:

- A. On or before October 31, 2014, all necessary design work for the "no-discharge" system shall be completed and submitted to Complainant.
- B. On or before January 31, 2015, Respondent shall submit to Complainant a copy of the Notice to Proceed for construction of the "no discharge" system.

- C. On or before February 28, 2017, construction of the “no-discharge” system shall be complete. Respondent shall certify to Complainant completion of construction within ten (10) business days after completion.

If Respondent fails to meet any of these milestone deadlines listed in subparagraphs A-C of this paragraph, Respondent shall pay to Complainant a stipulated penalty of \$1,500.00 per day until Respondent completes the action(s) required by the deadline.

If Respondent fails to demonstrate compliance with the “Phase II” permit effluent limitations by the May 31, 2017 deadline, Respondent shall pay to Complainant a stipulated penalty of \$2,000.00 per day until Respondent demonstrates compliance with the “Phase II” limitations. Respondent shall demonstrate compliance with the “Phase II” limitations in accordance with the provisions of NPDES Permit No. MS0020303.

5.

In the event that the contract between Respondent and Groundworx, LLC is terminated or otherwise does not move forward, it is probable that Respondent will not meet the May 31, 2017, deadline to demonstrate compliance with the Phase II effluent limitations. Accordingly, in the event that the contract between Respondent and Groundworx, LLC is terminated or otherwise does not move forward and it becomes necessary for Respondent to design and construct an alternative wastewater treatment system, the May 31, 2017, deadline shall be extended to September 1, 2018.

In the event that the contract between Respondent and Groundworx, LLC is terminated or otherwise does not move forward, in order to ensure Respondent progresses appropriately toward the extended Phase II compliance deadline of September 1, 2018, the following milestone deadlines shall apply:

- A. On or before September 1, 2015, Respondent shall submit to MDEQ construction plans and specifications, stamped by a professional engineer, for Respondent’s chosen engineering solution, as well as an application for modification of NPDES Permit No. MS0020303 (if necessary) and all other documents, reports and studies which form the basis for the design and that may be reasonably requested by MDEQ.
- B. On or before May 1, 2016, Respondent shall begin construction of its chosen

engineering solution. Respondent shall certify to Complainant that it has begun construction within ten (10) business days of beginning construction.

- C. On or before May 1, 2018, Respondent shall complete construction of the project. Respondent shall certify to Complainant completion of construction within ten (10) business days after completion.

If Respondent fails to meet any of these milestone deadlines listed in subparagraphs A-C of this paragraph, Respondent shall pay to Complainant a stipulated penalty of \$1,500.00 per day until Respondent completes the action(s) required by the deadline.

If Respondent fails to demonstrate compliance with the "Phase II" permit effluent limitations by the September 1, 2018 deadline, Respondent shall pay to Complainant a stipulated penalty of \$2,000.00 per day until Respondent demonstrates compliance with the "Phase II" limitations. Respondent shall demonstrate compliance with the "Phase II" limitations in accordance with the provisions of NPDES Permit No. MS0020303.

6.

Respondent has taken the position that the industrial effluent from USA Yeast, LLC, an industrial facility that discharges to the Hattiesburg South Lagoon, is a contributing factor to the historical effluent violations at the Hattiesburg South Lagoon, particularly with respect to the BOD and suspended solids parameters. Respondent and USA Yeast, LLC have entered into certain agreements by which USA Yeast, LLC has agreed to design, construct and begin operating a pretreatment system for the wastewater that it discharges from its manufacturing facility into Respondent's sanitary sewer system. USA Yeast, LLC has submitted an application for, and the Permit Board issued on January 17, 2013, a modification for Pretreatment Permit No. MSP091951, which requires USA Yeast, LLC to comply with certain numerical pretreatment limitations on or before June 1, 2015.

During the period of time beginning with the date on which the MDEQ Executive Director executes this Second Amended Agreed Order (the "Effective Date") and ending not later than September 1, 2018 (the "Interim Limits Period"), the following interim effluent limitations shall apply for the Hattiesburg South Lagoon:

- A. Until ninety (90) days after USA Yeast, LLC demonstrates initial compliance with

the numerical pretreatment limitations of Pretreatment Permit No. MSP091951, Respondent shall comply with the following interim effluent limitations at the Hattiesburg South Lagoon for the pollutant parameters of BOD and Total Suspended Solids:

| Parameter | Quantity/ Loading | Quantity/ Loading | Conc./ Quality | Conc./ Quality |
|------------------------|-------------------------------|---------------------------------|--------------------------|---------------------------|
| BOD, 5-day | 9,340 lbs/day, Monthly Avg | 14,011 lbs/day, Max Wkly Avg | 80 mg/l, Monthly Avg | 120 mg/l, Max Wkly Avg |
| Total Suspended Solids | 17,514 lbs/day Monthly Avg | 26,271 lbs/day Max Wkly Avg | 150 mg/l, Monthly Avg | 225 mg/l, Max Wkly Avg |

All other permit limitations and provisions shall remain in full force and effect.

- B. Beginning ninety (90) days after USA Yeast, LLC has demonstrated initial compliance with the numerical pretreatment limitations of Pretreatment Permit No. MSP091951, and continuing until no later than September 1, 2018, Respondent shall comply with the following interim effluent limitations for the pollutant parameters of BOD and Total Suspended Solids:

| Parameter | Quantity/ Loading | Quantity/ Loading | Conc./ Quality | Conc./ Quality |
|------------------------|-------------------------------|---------------------------------|--------------------------|---------------------------|
| BOD, 5-day | 7,006 lbs/day, Monthly Avg | 10,508 lbs/day, Max Wkly Avg | 60 mg/l, Monthly Avg | 90 mg/l, Max Wkly Avg |
| Total Suspended Solids | 11,676 lbs/day Monthly Avg | 17,514 lbs/day Max Wkly Avg | 100 mg/l, Monthly Avg | 150 mg/l, Max Wkly Avg |

All other permit limitations and provisions shall remain in full force and effect.

If Respondent completes construction of its chosen engineering solution to "Phase II" effluent limitation compliance prior to the deadline set forth in Paragraphs 4 and 5 above, the existing "Phase II" effluent limitations, or any modifications, shall take effect sixty (60) days after completion of construction, but no later than September 1, 2018. At that time, the interim limits of Paragraph 6.B. shall no longer be applicable.

- C. Respondent shall report all sampling results through the submission of Discharge Monitoring Reports during the Interim Limits Period. Complainant and

Respondent further agree that, except as stated herein, all requirements of NPDES Permit Nos. MS0020303 and MS0020826 shall remain in full force and effect.

- D. Because Respondent has completed the expansion of the North Lagoon, the interim effluent limitations established by Paragraph 5.C. of the Amended Agreed Order are no longer applicable.

7.

For each exceedance of any interim effluent limitation established in Paragraph 6 above, Respondent agrees to pay a stipulated penalty of \$2,000.00, which shall be the total penalty applicable to the exceedance, but shall not be in lieu of penalties for violations of non-effluent-limitation provisions of the applicable permits. Respondent shall not be required to pay any stipulated penalty for any exceedance which occurs prior to ninety (90) days after USA Yeast, LLC has demonstrated initial compliance with the numerical pretreatment limitations of Pretreatment Permit No. MSP091951, and which Respondent can demonstrate resulted from a discharge from USA Yeast, LLC containing a daily maximum BOD concentration of 10,000 mg/L or greater. Any exceedance of an interim limit for which Respondent demonstrates this defense shall not constitute a violation of the applicable NPDES permit.

8.

Commencing one (1) year after the Effective Date, Complainant shall review the monitoring data submitted by Respondent on an annual basis. Complainant shall modify the interim limitations set forth above if such review demonstrates that, under normal operating conditions, it is feasible for the Hattiesburg South Lagoon to comply with more stringent interim limitations. Any such modification would be subject to Respondent's rights under Miss. Code Ann. § 49-17-41.

9.

Nothing in this Agreed Order shall limit the rights of MDEQ or the Commission in the event Respondent fails to comply with this Agreed Order. The Agreed Order shall be strictly construed to apply to those matters expressly resolved herein.

10.


Nothing contained in this Agreed Order shall limit the rights of MDEQ or the Commission to take enforcement or other actions against Respondent for violations not addressed herein and for future violations of environmental laws, rules, and regulations.

11.

Except as provided for in Paragraph 8 above, Respondent understands and acknowledges that it is entitled to an evidentiary hearing before the Commission pursuant to Miss. Code Ann. §§ 49-17-31 and 49-17-41 (Rev. 2003), and that it has made an informed waiver of that right.

ORDERED, this the 12 day of August, 2014.

MISSISSIPPI COMMISSION ON
ENVIRONMENTAL QUALITY

BY: 
TRUDY D. FISHER
EXECUTIVE DIRECTOR
MISSISSIPPI DEPARTMENT
OF ENVIRONMENTAL QUALITY

AGREED, this the 5th day of August, 2014.

CITY OF HATTIESBURG

BY: *Johnny S. DuPree*

TITLE: Mayor

STATE OF Mississippi

COUNTY OF Forrest/Lamar

Personally appeared before me, the undersigned authority in and for the jurisdiction aforesaid, the within named Johnny DuPree who first being duly sworn, did state upon his/her oath and acknowledge to me that he is the Mayor of the City of Hattiesburg and is authorized to sign and enter this agreement.

SWORN TO AND SUBSCRIBED BEFORE ME, this the 5th day of August, 2014.

K. E.
NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

