

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA and)
STATE OF LOUISIANA,)
)
Plaintiffs,)
)
v.) CIVIL ACTION NO.
)
CITY OF BATON ROUGE and)
PARISH OF EAST BATON ROUGE,)
)
Defendants.)

CONSENT DECREE

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ATTACHMENTS TO THE CONSENT DECREE

- Exhibit A. Sanitary Sewer Overflow Response Plan
- Exhibit B. Map Depicting the Primary Features of Collection System Remedial Action Program Alternative 1
- Exhibit C. Map Depicting the Primary Features of Collection System Remedial Action Program Alternative 3
- Exhibit D. Map Depicting the Primary Features of Collection System Remedial Action Program Alternative 4
- Exhibit E. Map Depicting the Primary Features of Collection System Remedial Action Program Alternative 7
- Exhibit F. First Remedial Action Plan
- Exhibit G. Environmental Results Monitoring Plan
- Exhibit H. Outreach and Public Awareness Plan
- Exhibit I. Quarterly and Annual Report Format
- Exhibit J. Supplemental Environmental Project Plan Requirements

I. BACKGROUND

A. The City of Baton Rouge, Louisiana and the Parish of East Baton Rouge, Louisiana (collectively “the City/Parish”) jointly own and operate three waste water treatment plants known as the North Waste Treatment (“the “North plant”) located at 55 Mills Avenue, in East Baton Rouge Parish; the South Waste Treatment plant (“the South plant”) located at 2850 Gardere Lane, in East Baton Rouge Parish; and the Central Waste Treatment plant (“the Central plant”) located at 2443 River Road, in East Baton Rouge Parish, Louisiana.

B. On March 3, 1988, the United States filed United States v. Baton Rouge, No. 88-191A (M.D. La.) alleging civil claims for violations of the Clean Water Act (“CWA”), 33 U.S.C. § 1251 et seq., at the North, Central, and South plants. On April 26, 1988, the United States amended its Complaint to add the Parish of East Baton Rouge as a Defendant.

C. On December 23, 1988, a Modified Consent Decree (“the 1988 Consent Decree”) was entered settling the claims alleged in United States v. Baton Rouge, No. 88-191A (M.D. La.). Pursuant to the 1988 Consent Decree, the City/Parish consolidated most of its wastewater treatments plants into the North, Central, and South plants and made certain improvements to those plants. The 1988 Consent Decree continues in effect until the Date of Entry of this Consent Decree and, after that date, is terminated and superceded by this Consent Decree.

D. The State of Louisiana is a plaintiff in this action and is joined as a party under Section 309(e) of the Act, 33 U.S.C. § 1319(e). Whenever a municipality is a party to a civil action brought by the United States under section 309, the Act requires the State in which the municipality is located to be joined as a party. In addition, on August 27, 1996 and pursuant to

CWA Section 402, 33 U.S.C. § 1342, EPA granted to the State of Louisiana authority to administer its own permit program for discharges into navigable waters within Louisiana.

E. The United States and the State of Louisiana file the present civil action against the City/Parish seeking injunctive relief and civil penalties pursuant to Clean Water Act (“CWA”) Sections 301 and 309, 33 U.S.C. §§ 1311 and 1319, for violations of the CWA and National Pollution Discharge Elimination System (“NPDES”) permits issued to the City/Parish for its sewage treatment plants. The violations alleged in the Complaint are:

i. Violation of NPDES permit requirements which require the permittee to reduce the amount of biochemical oxygen demand (“BOD”) and total suspended solids (“TSS”) such that the thirty (30) day average amount of BOD and TSS in the waste water discharged from the North, Central, and South plants is at least eighty-five percent (85%) less than the amount of BOD and TSS in the sewage entering the plant. This requirement is known as the “Eighty-Five Percent Rule;”

ii. Violation of CWA Section 301, 33 U.S.C. § 1311, by discharging untreated sewage to navigable waters from the North, Central, and South plant sewage collection systems. Such overflows are often referred to as “sanitary sewer overflows” or “SSOs;”

iii. Violation of NPDES permit requirements related to operation and maintenance by maintaining the North, Central, and South plant sewage collection systems in a condition such that blockages and other failures in the sewage lines caused SSOs; and

iv. Violation of CWA Section 301, 33 U.S.C. § 1311, by the Parish of East Baton Rouge by failing to obtain an NPDES permit for discharges from the North, Central, and South plants.

F. Neither the City of Baton Rouge nor the Parish of East Baton Rouge is aware of any laws of the State of Louisiana which prevent the City of Baton Rouge or the Parish of East Baton Rouge from raising revenues needed to comply with the requirements of this Consent Decree.

G. The United States, the State of Louisiana, the City of Baton Rouge, and the Parish of East Baton Rouge (“collectively “the Parties”) recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that implementation of this Consent Decree will allow the City/Parish to come into compliance with the requirements of the CWA and regulations enacted pursuant to the CWA, that entry of this Consent Decree will avoid complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED as follows:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to CWA Section 309, 33 U.S.C. § 1319, and 28 U.S.C. §§ 1331, 1345, 1355, and 1367.

2. The Complaint states claims upon which relief may be granted against the City/Parish under Section 309 of the Clean Water Act, 33 U.S.C. § 1319, for injunctive relief and civil penalties.

3. Venue is proper in this judicial district pursuant to CWA Section 309, 33 U.S.C. § 1319, and 28 U.S.C. § 1391 because this is the district in which the City/Parish is located and the district in which the violations occurred.

III. PARTIES

4. Plaintiff, the United States of America ("United States"), is acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency.

5. Plaintiff, the State of Louisiana ("the State"), is a person within the meaning of CWA Sections 502(5) and 505, 33 U.S.C. §§ 1362(5) and 1367.

6. Defendant, the City of Baton Rouge is a political subdivision created by the State of Louisiana, and a municipality within the meaning of CWA Section 502(4), 33 U.S.C. § 1362(4).

7. Defendant, the Parish of East Baton Rouge is a political subdivision created by the State of Louisiana, and a municipality within the meaning of CWA Section 502(4), 33 U.S.C. § 1362(4).

IV. BINDING EFFECT

8. The provisions of this Consent Decree shall apply to and be binding on the Parties, their officers, directors, employees, agents, servants, successors and assigns, and all persons, firms and corporations in active concert or participation with the Parties and/or the Parties' officers, directors, agents, employees, servants, successors and assigns.

9. The City/Parish shall give written notice of this Consent Decree to any person or entity to whom the City/Parish transfers ownership or operation of the North, Central, or South Plants and/or the sewage collection systems for those plants, and the City/Parish shall provide a

copy of this Consent Decree to any such person or entity. The City/Parish shall notify the State and the United States in writing at least twenty-one (21) days prior to any such transfer.

10. The City/Parish shall provide a copy of this Consent Decree to each engineering, consulting and contracting firm to be retained to perform Work within ten (10) days of after entry of this Consent Decree or, for Work commenced after such date, upon execution of any contract relating to such Work. The City/Parish shall condition all contracts entered into to perform Work upon conformity with the terms of this Consent Decree. Any action taken by any contractor or consultant retained by the City/Parish to implement the City/Parish's obligations under this Consent Decree shall be considered an action of the City/Parish for purposes of determining compliance with this Consent Decree. In any action against the City/Parish to enforce this Consent Decree, no act or failure to act by any officer, director, employee, agent, servant, contractor, subcontractor, successor, or assign of the City/Parish shall excuse any failure to comply with the requirements of this Consent Decree.

V. OBJECTIVES

11. It is the express purpose of the Parties entering into this Consent Decree:

A. To require the City/Parish to achieve and maintain compliance with its NPDES permits and the CWA;

B. To require the City/Parish to perform the Work required by this Consent Decree in compliance with the applicable schedules; and

C. To further the goals and objectives of the CWA, particularly Sections 101, 301 and 307, 33 U.S.C. §§ 1251, 1311, and 1317.

VI. DEFINITIONS

12. Unless otherwise defined herein, terms used in this Consent Decree shall have the meanings given to those terms in the Clean Water Act, 33 U.S.C. §§ 1251 et seq., and the regulations promulgated thereunder.

13. Whenever terms listed in this Paragraph are used in this Consent Decree, the following definitions shall apply:

- "BOD" means biochemical oxygen demand.
- "Calendar quarter" means a three month period ending on March 31st, June 30th, September 30th, or December 31st.
- "The Central Plant" means the Central Wastewater Treatment plant located at 2443 River Road, in East Baton Rouge Parish, Louisiana.
- "The City/Parish" means the City of Baton Rouge, Louisiana and the Parish of East Baton Rouge, Louisiana.
- "City" means the City of Baton Rouge, Louisiana.
- "Collection System" means the sanitary sewage collection and transmission system (including all pipes, force mains, gravity sewer lines, lift stations, pump stations, manholes, and appurtenances thereto) owned or operated by the City/Parish that serves the North, Central, and South plants. For purposes of this Consent Decree, "Collection System" does not include the sewage collection and transmission systems owned or operated by Baker, Louisiana; Zachary, Louisiana; Louisiana State University and Agricultural and Mechanical College; Southern University and Agricultural and Mechanical College; agencies of the State of Louisiana; or any other privately maintained sewage collection and transmission systems.
- "Consent Decree" means this Decree, all attachments and exhibits to this Decree, and all items approved by EPA and LDEQ pursuant to Section XVII (Review of Submittals). In the event of any conflict between this Decree and any attachment, exhibit, or approved item, this Decree shall control.
- "Cross Connection" shall mean any physical connection which allows stormwater or other waters (except sanitary sewage and industrial wastewaters) to flow into the Collection System.

- “CWA” means the Clean Water Act, 33 U.S.C. §§ 1251 et seq.
- "Date of Lodging" means the date this Consent Decree is received by the Clerk of the United States District Court for the Middle District of Louisiana prior to signature by the District Judge assigned to this civil action.
- “Date of Entry” means the date this Consent Decree is filed by the Clerk of the United States District Court for the Middle District of Louisiana after being signed by the District Judge assigned to this civil action.
- "Day" or "days" as used herein shall mean a calendar day or calendar days where the period of time allowed is eleven (11) days or more. “Day” or “Days” shall mean a day other than a Saturday, Sunday, or a State or Federal holiday where the period of time allowed is less than eleven (11) days. When the deadline for submission of a report or other deliverable falls on a Saturday, Sunday or a State or Federal holiday, submission will not be required until the next calendar day that is not a Saturday, Sunday, or State of Federal holiday.
- "Effective Date of this Consent Decree” means the Date of Entry.
- "Eighty-Five Percent Rule” means the monthly average percent removal requirements for TSS and BOD specified in Section A (Effluent Characteristics) of NPDES Permits Nos. LA0036412, LA0036421, and LA0036439.
- “EPA” means the United States Environmental Protection Agency.
- “Fully Operational” means all items identified under a particular requirement have been fully completed and are consistently functioning within the design plan and specifications.
- “Infiltration and Inflow” or “I & I” means the infiltration of groundwater and the inflow of stormwater into the North, Central, and South Plant Collection Systems.
- “LDEQ” means the Louisiana Department of Environmental Quality.
- "Non-Compliant Discharge" means any discharge of wastewater through an outfall from which the City and/or the Parish is permitted to discharge pursuant to NPDES Permit Nos. LA0036439, LA0036412, and LA0036421 which is not in compliance with requirements and conditions specified in those permits, except as specifically provided in Section XVI (Interim Effluent Limits).
- “The North Plant” means the North Wastewater Treatment Plant located at 55 Mills Avenue in East Baton Rouge Parish, Louisiana.

- "NPDES Permit No LA 0036412" means National Pollutant Discharge Elimination System ("NPDES") permit number LA0036412 issued pursuant to CWA Section 402, 33 U.S.C. § 1342, for the South Plant and any future, extended, modified, or reissued NPDES permit for the same facility.
- "NPDES Permit No LA0036421" means National Pollutant Discharge Elimination System ("NPDES") permit number LA0036421 issued pursuant to CWA Section 402, 33 U.S.C. § 1342, for the Central Plant and any future, extended, modified, or reissued NPDES permit for the same facility.
- "NPDES Permit No LA0036439" means National Pollutant Discharge Elimination System ("NPDES") permit number LA0036439 issued pursuant to CWA Section 402, 33 U.S.C. § 1342, for the North Plant and any future, extended, modified, or reissued NPDES permit for the same facility.
- "Paragraph" means a portion of this Consent Decree identified by an Arabic numeral.
- "Parish" means the Parish of East Baton Rouge, Louisiana.
- "Parties" means the United States, the State of Louisiana, and the City/Parish.
- "Plaintiffs" means the United States of America and the State of Louisiana
- "RMAP" means a remedial measures action plan.
- "Section" means a portion of this Consent Decree identified by uppercase Roman numerals.
- "The South plant" means the South Wastewater Treatment plant located at 2850 Gardere Lane in East Baton Rouge Parish, Louisiana.
- "SSO" means sanitary sewer overflow. The term does not include discharges that do not violate the CWA or regulations enacted pursuant to the CWA.
- "Sanitary Sewer" has the same meaning as Collection System.
- "SEP" means Supplemental Environmental Project
- "State" means the State of Louisiana.
- "Start of Construction" means issuance by the City/Parish of a notice to proceed with construction to the contractor performing the relevant construction project.

- “Subparagraph” means a portion of a Paragraph.
- "Surface Waters" mean waters of the United States as defined by 40 C.F.R. § 122.2.
- "TSS" means total suspended solids.
- "Unauthorized Discharge" means any discharge of wastewater from the North, South, or Central plants or from the Collection Systems for those plants from any point other than the outfall specified in the applicable NPDES permit, regardless of whether such discharge reaches navigable waters. The term does not include either (1) discharges that do not violate the CWA or regulations enacted pursuant to the CWA or (2) discharges in compliance with the provisions of Section XVI (Interim Effluent Limits)
- “Work” means all activities that the City/Parish is required to perform under this Consent Decree except those required by Section XIX (Civil Penalties) and Section XXXII (Record Keeping).

VII. COMPLIANCE WITH CLEAN WATER ACT

14. The City/Parish shall comply at all times with the CWA, the regulations promulgated thereunder, and all terms of NPDES Permits Nos. LA0036439, LA0036412, and LA0036421 (except as provided in Section XVI (Interim Effluent Limits)).

VIII. REMEDIAL MEASURES—ELIMINATION OF CROSS CONNECTIONS

15. By its signature on this Consent Decree, the City/Parish certifies that it has permanently closed or eliminated all known Cross Connections in the Collection System

16. If the City/Parish identifies any Cross Connection in the Collection System subsequent to the Date of Entry of this Consent Decree, it shall permanently seal or eliminate such Cross Connection within thirty (30) days of identification or, if the City/Parish elects to have the work performed by a contractor, within sixty (60) days of identification.

17. The City/Parish shall maintain in effect the following ordinances banning private Cross Connections:

- City of Baton Rouge & Parish of East Baton Rouge, La., Ordinance 2:308 (Adopted October 13, 1999);
- City of Baton Rouge & Parish of East Baton Rouge, La., Ordinance 2:309 (Adopted October 13, 1999);
- City of Baton Rouge & Parish of East Baton Rouge, La., Ordinance 2:319 (Adopted October 13, 1999); and
- City of Baton Rouge & Parish of East Baton Rouge, La., Ordinance 2:320 (Adopted October 13, 1999).

While the City/Parish is not obligated by this Consent Decree to enter private property to sever Cross Connections, the City/Parish is obligated to effectively enforce the ordinances listed above.

18. Any use of any Cross Connection in the Collection System shall be considered a violation of the CWA and of this Consent Decree.

IX. REMEDIAL MEASURES--PREVENTIVE MAINTENANCE PROGRAM PLANS

19. No later than March 30, 2001, the City/Parish will submit for review and approval to EPA and LDEQ a Collection System Preventive Maintenance Program Plan. The Collection System Preventive Maintenance Program Plan shall be designed to ensure proper operation and maintenance of the North, Central, and South Plant Collection Systems on a day-to-day basis in compliance with the CWA and NPDES Permits Nos. LA0036439, LA0036412, and LA0036421.

At a minimum, the Preventive Maintenance Program Plan shall provide for

- (A) Physical inspection and testing procedures for the collection system;
- (B) Preventive and routine maintenance schedules and procedures;
- (C) Corrective maintenance;
- (D) Current staffing, organization, and resource commitments;
- (E) A tracking system for all maintenance activities;

- (F) A list of subjects to be discussed in the Annual Report to be submitted pursuant to Paragraph 52;
- (G) An implementation schedule—the implementation schedule shall provide no more than two years for full implementation of the Collection System Preventive Maintenance Program Plan; and
- (H) A thorough inspection of the Collection System for the purpose of identifying Cross Connections.

20. If the City/Parish believes that new information or data supports modification of the Collection System Preventive Maintenance Program Plan, the City/Parish may submit to EPA and LDEQ for review and approval a request for modification of the Collection System Preventive Maintenance Program Plan. The request for modification shall describe the modification being requested, the new information or data supporting modification and how such modification would improve the Collection System Preventive Maintenance Program Plan. In its review of any such submittal, EPA and LDEQ will apply industry standards (such as American Waterworks Association (AWWA)/Water Environment Federation (WEF) standard manuals). Until such time as a requested modification is approved, the previously approved Collection System Preventive Maintenance Program Plan shall remain in effect.

21. If, after receipt of an Annual Report pursuant to Paragraph 52, EPA or LDEQ determine that there are one or more violations of this Consent Decree or the Clean Water Act, and that there is a nexus between such violations and the Collection System Preventive Maintenance Program Plan, EPA or LDEQ may require the City/Parish to submit a revised Collection System Preventive Maintenance Program Plan for review and approval under Section

XVII (Review of Submittals). Upon receipt of such a notice, the City/Parish shall revise the Collection System Preventive Maintenance Program Plan to include measures to prevent the identified violations. EPA and LDEQ may make specific recommendations regarding the revisions to the Collection System Preventive Maintenance Program Plan. The City/Parish shall submit the revised Collection System Preventive Maintenance Program Plan within sixty (60) days of receipt of written notice of EPA or LDEQ's requirement that it revise the Collection System Preventive Maintenance Program Plan. Until such time as a revised Collection System Preventive Maintenance Program Plan is approved, the previously approved Collection System Preventive Maintenance Program Plan shall remain in effect.

22. No later than March 30, 2002, the City/Parish will prepare and implement a Treatment Plant Preventive Maintenance Program Plan. The Treatment Plant Preventive Maintenance Program Plan shall be designed to ensure proper operation and maintenance of the North, Central, and South Plants on a day-to-day basis in compliance with the CWA, NPDES Permits Nos. LA0036439, LA0036412, and LA0036421 and, to the extent applicable, Section XVI (Interim Effluent Limits)). The City/Parish shall send notice that it has completed the Treatment Plant Preventive Maintenance Program Plan to the following:

Chief
NPDES Compliance Monitoring Section (6EN-WC)
Water Enforcement Branch
Compliance Assurance and Enforcement Division
United States Environmental Protection Agency--Region 6
1445 Ross Avenue
Dallas, Texas 75202
re: Baton Rouge Consent Decree

Bruce Hammatt
Office of Environmental Compliance
Louisiana Department of Environmental Quality
P.O. Box 82215
Baton Rouge, LA 70884-2215

Street Address
7290 Bluebonnet Rd.
LDEQ Building
Baton Rouge, LA
70810-1611

The City/Parish may update the Treatment Plant Preventive Maintenance Program Plan as needed, and shall maintain complete copies of the current and all prior versions of the Treatment Plant Preventive Maintenance Program Plan on site at the North, Central, and South Plants.

23. If, after receipt of an Annual Report pursuant to Paragraph 52, EPA or LDEQ determine that there are one or more violations of this Consent Decree or the Clean Water Act, and that there is a nexus between such violations and the Treatment Plant Preventive Maintenance Program Plan, EPA or LDEQ may require the City/Parish to revise the Treatment Plant Preventive Maintenance Program Plan. Upon receipt of such a notice, the City/Parish shall revise the Treatment Plant Preventive Maintenance Program Plan to include measures to prevent the identified violations within sixty (60) days. Until such time as the Treatment Plant Preventive Maintenance Program Plan is revised, the previous Treatment Plant Preventive Maintenance Program Plan shall remain in effect.

X. REMEDIAL MEASURES—SANITARY SEWER OVERFLOW RESPONSE PLAN

24. The City/Parish shall implement the Sanitary Sewer Overflow Response Plan (“SSO Response Plan”) attached to this Consent Decree as Exhibit A. If the City/Parish believes that new information or data supports modification of the SSO Response Plan, the City/Parish may submit to EPA and LDEQ for review and approval a request for modification of the SSO Response Plan. The request for modification shall describe the modification being requested, the

new information or data supporting modification, and how such modification would improve the SSO Response Plan. Until such time as a requested modification is approved, the previously approved SSO Response Plan shall remain in effect.

25. If, after receipt of an Annual Report pursuant to Paragraph 52, EPA or LDEQ determine that there are one or more violations of the Consent Decree or the Clean Water Act, and that there is a nexus between such violations and the SSO Response Plan, EPA or LDEQ may require the City/Parish to submit a revised SSO Response Plan for review and approval under Section XVII (Review of Submittals). Upon receipt of such a notice, the City/Parish shall revise the SSO Response Plan to include measures to prevent the identified violations. EPA and LDEQ may make specific recommendations regarding the revisions to the SSO Response Plan. The City/Parish shall submit the revised SSO Response Plan within sixty (60) days of receipt of written notice of EPA or LDEQ's requirement that it revise the SSO Response Plan. Until such time as a revised SSO Response Plan is approved, the previous SSO Response Plan shall remain in effect.

XI. REMEDIAL MEASURES--REPORTING OF UNAUTHORIZED DISCHARGES

26. The City/Parish shall report all Unauthorized Discharges of which it becomes aware to EPA and LDEQ. All such Unauthorized Discharges shall be reported to EPA and LDEQ in the Quarterly Report to be submitted pursuant to Paragraph 51.

27. In addition to the reporting requirements in Paragraph 26, the City/Parish shall orally report all Unauthorized Discharges which have a measurable impact on human health or the environment (e.g. fish kills) to EPA and LDEQ by telephone within twenty-four (24) hours of the time the Unauthorized Discharge occurs. Within five days after the Unauthorized Discharge, the

City/Parish shall submit a written report to EPA and LDEQ addressing the items set forth in the Quarterly Report--Unauthorized Discharge Report Summary Section of Attachment I (Quarterly and Annual Report Format). For purposes of this Paragraph, an Unauthorized Discharge which has a measurable impact on human health shall include, but not be limited to, any unauthorized discharge of more than one hundred thousand (100,000) gallons within a twenty-four (24) hour period.

XII. REMEDIAL MEASURES--COLLECTION SYSTEM REMEDIAL PROGRAM

28. The City/Parish is undertaking a comprehensive collection system remedial action program. The program is intended to minimize and prevent Unauthorized Discharges from the Collection Systems for the North, Central, and South Plants. The program is in progress and will be completed, subject to the provisions of this Consent Decree. The original plan developed by the City/Parish to address Unauthorized Discharges has been referred to as Alternative 1 and included the following elements:

Alternative 1: This alternative is the original base SSO Plan which calls for some 23 storage tanks and a deep tunnel storage system near Airline Highway. Six pump stations would be eliminated under this plan, but another 112 pump stations would be constructed or modified. The primary features of Alternative 1 are depicted on the map attached as Exhibit B.

The City/Parish no longer plans to implement Alternative 1 and is currently evaluating the following options for its collection system remedial action program:

Alternative 3: This alternative generally involves constructing four open storage basins, utilizing five Maryland Tank Farm tanks, and approximately eighteen (18) additional storage tanks. This plan would eliminate the tunnel system proposed in Alternative 1. Under this plan, three (3) pump stations would be eliminated, but 111 pump stations would be constructed or modified. The primary features of Alternative 3 are depicted on the map attached as Exhibit C.

Alternative 4: This alternative generally includes most of the features of Alternative 3 except that six (6) open storage basins and eighteen (18) storage tanks would be constructed. This alternative would not utilize the Maryland Tank Farm storage tanks. Under this plan, three (3) pump stations would be eliminated but 110 pump stations would be constructed or modified. The primary features of Alternative 4 are depicted on the map attached as Exhibit D.

Alternative 7: This alternative generally includes most of the elements of Alternative 1 and some elements of Alternatives 3 and 4. The features of this plan include utilization of one (1) large storage basin near Airline Highway and South Choctaw Drive, construction of deep underground gravity sewers, construction of three (3) ballasted flocculation waste water treatment facilities, and construction of storage tanks in the Baker and Zachary areas. Under this plan, 112 pump stations would be eliminated and 57 pump stations would be constructed or modified. The primary features of Alternative 7 are depicted on the map attached as Exhibit E.

29. The City/Parish shall implement the First Remedial Measures Action Plan (“the First RMAP”) attached to this Consent Decree as Exhibit F. The First RMAP identifies the common elements of Alternatives 3, 4, and 7 listed in Paragraph 28 and sets forth a schedule for beginning and completing construction for each common element identified. The First RMAP also provides an estimate of the costs of the common elements and a detailed description of how the City/Parish will fund construction and operation and maintenance of the elements to be constructed pursuant to the First RMAP.

30. The City/Parish shall meet the following milestones when implementing the First RMAP:

- A. Start construction for the remedial measures identified in the First RMAP by January 15, 2001; and
- B. Complete construction of the remedial measures identified in the First RMAP by May 4, 2007.

31. No later than December 1, 2002, the City/Parish shall submit to EPA and LDEQ for review and approval a Second Remedial Measures Action Plan (“the Second RMAP”). In the Second RMAP, the City/Parish shall select a remedial measure to be implemented and provide a detailed analysis of how the selected measure will accomplish the objectives of this Consent Decree. The City/Parish may propose a remedial measure other than Alternatives 3, 4, and 7; however, if the City/Parish proposes a remedial measure other than Alternatives 3, 4, and 7 which will take more than 15 years to implement, EPA and/or LDEQ may disapprove the proposed remedial measure and require the City/Parish to select among Alternatives 3, 4, and 7. EPA’s and/or LDEQ’s decision to disapprove a proposed remedial measure other than Alternative 3, 4, or 7 on the basis that it will take more than 15 years to implement shall not be subject to dispute resolution pursuant to Section XXIV (Dispute Resolution). In the Second RMAP, the City/Parish shall provide a detailed description of the selected remedial measure and shall specify a schedule for beginning and completing construction of each element of the selected remedial measure not addressed in the First RMAP. The Second RMAP shall also set forth a process for evaluating and providing the personnel and training that will be required to successfully implement the selected remedial measure. The Second RMAP shall also provide an estimate of the cost of the selected remedial measure and a detailed description of how the City/Parish will fund the remedial measure to be implemented.

32. EPA and LDEQ shall evaluate the Second RMAP as provided in Section XVII (Review of Submittals) for consistency with this Consent Decree, including Section V (Objectives), and industry standards current at the time the Second RMAP is submitted.

33. At any time after the Second RMAP is approved by EPA and/or LDEQ pursuant to Section XVII (Review of Submittals), the City/Parish may submit for review and approval pursuant to Section XVII (Review of Submittals) a proposal to modify the remedial measure selected in the Second RMAP. Any proposal to modify the Second RMAP shall be evaluated by EPA and LDEQ for consistency with this Consent Decree, including Section V (Objectives), and industry standards current at the time the proposal is submitted.

A. EPA and/or LDEQ may disapprove any proposal to modify the Second RMAP which would extend the completion date for the remedial measure past the deadline in the approved Second RMAP. EPA's and/or LDEQ's decision to disapprove a proposed modification on the basis that it will be completed after the completion date for the remedial measure in the approved Second RMAP shall not be subject to dispute resolution pursuant to Section XXIV (Dispute Resolution).

B. Any proposed modification of the Second RMAP which would extend the schedule for completion of the work or materially alter the selected remedial measure shall require the approval of the Court.

34. In the Second RMAP, the City/Parish shall propose the following milestones:

- A. Completion of design for remedial measures identified in the Second RMAP;
- B. Thirty-three percent (33%) completion of construction of the complete remedial measure described in the First and Second RMAPs (the proposal shall specify the tasks which must be completed to demonstrate that this milestone has been achieved);

- C. Sixty-six percent (66%) completion of construction of the complete remedial measure described in the First and Second RMAPs (the proposal shall specify the tasks which must be completed to demonstrate that this milestone has been achieved); and
- D. Completion of all construction and fully operational status achieved. The date for this milestone shall be:
 - i. January 1, 2013 if the City/Parish selects as a remedial measure Options 3 or Option 4.
 - ii. January 1, 2015 if the City/Parish selects as a remedial measure Options 7.
 - iii. The earliest date on which the milestone can reasonably be achieved considering how quickly it is physically and financially possible to complete construction, if the City/Parish selects a remedial measure other than Options 3, 4, or 7.

35. During the period from Entry of the Consent Decree until the City/Parish meets the milestone specified in Paragraph 34(D), the City/Parish shall spend at least \$3 million per year for sewer repairs, sewer rehabilitation, and other capital needs related to reduction of Infiltration and Inflow (“I & I”) into the North, Central, and South Plant Collection Systems. These expenditures will be documented in the Annual Report submitted pursuant to Paragraph 52.

XIII. REMEDIAL MEASURE–TREATMENT FACILITY ASSESSMENT

36. No later than March 30, 2002, the City Parish shall submit to EPA and LDEQ for review and approval a Treatment Facility Assessment Report which assesses the treatment capabilities of the North, Central, and South Plants. The Treatment Facility Assessment Report shall analyze (1) the hydraulic and organic design capacity and current and projected loading of each plant, including peak and low flows and (2) the ability of the plant to meet effluent limitations required by the applicable NPDES Permit. The Treatment Facility Assessment Report shall evaluate whether improvement or expansion of the North, Central, and/or South Plant are required to allow the plants to handle projected loading while fully complying with the applicable NPDES permit and whether any change(s) in the current operation and/or maintenance of the North, Central, and/or South Plants will be required to attain or maintain compliance with the applicable NPDES permit. If the report concludes that improvements, expansion or changes in the operation and/or maintenance of the North, Central and/or South Plants are required, the report shall include a schedule for implementing the required improvements, expansion, and/or changes.

XIV. REMEDIAL MEASURE–ENVIRONMENTAL RESULTS MONITORING PLAN

37. The City/Parish shall implement the Environmental Results Monitoring Plan attached as Exhibit G. The Environmental Results Monitoring Plan is designed to measure environmental benefits resulting from the Work performed under this Consent Decree through measurement of water quality improvements.

XV. OUTREACH AND PUBLIC AWARENESS

38. The Parties agree that an effective public education program will assist in fulfilling the purpose of this Consent Decree. This is particularly important in advising the public of steps they can take to minimize impact on the collection system, improve environmental compliance, and educate local groups. Accordingly, the City/Parish shall implement the Outreach and Public Awareness Program (Exhibit H).

XVI. INTERIM EFFLUENT LIMITS

39. The interim relief provisions of this Paragraph shall be in effect beginning on the Date of Entry of the Consent Decree and ending on the date for completion of construction and fully operational status achieved pursuant to Paragraph 34(D). During this period, the City/Parish shall not be liable for stipulated penalties for failure to comply with the Eighty-Five Percent Rule as specified in NPDES Permits Nos. LA0036412, LA0036421, and LA0036439 provided that the thirty (30) day average amount of BOD and TSS in the waste water discharged from the North, Central, and South plants is at least seventy-five percent (75%) less than the amount of BOD and TSS in the sewage entering the plant.

XVII. REVIEW OF SUBMITTALS

40. EPA and LDEQ shall review items submitted by the City/Parish for review and approval pursuant to this Consent Decree. After review of any item which is required to be submitted for approval pursuant to this Consent Decree, EPA and LDEQ shall: (a) approve the item, in whole or in part; (b) approve the item subject to conditions specified in the approval notice; (c) modify the item to cure the deficiencies; (d) disapprove the item, in whole or in part, directing that the City/Parish modify it; or (e) any combination of the above. EPA and LDEQ

shall notify the City/Parish in writing of their decisions regarding each item submitted for review, and if EPA or LDEQ disapproves the item in whole or in part, the notice shall specify those portions of the item that have been disapproved and the reasons for such disapproval.

41. If EPA and LDEQ do not issue a decision on a submittal on the same day, then the agency which has not yet decided shall either issue a decision or waive its right to issue a decision by the latest of the following deadlines:

- (A) Sixty (60) days after the date of the decision issued first in time or
- (B) One hundred twenty (120) days after the date the item was submitted for review.

At any time after an item is submitted for review and approval, EPA or LDEQ, but not both, may in its sole discretion notify the City/Parish in writing that it waives its right to make a decision regarding an item is submitted for review and approval.

42. In the case of decisions by EPA and LDEQ on an item submitted for review and approval which are issued on the same day, the City/Parish shall commence implementation of the Work required by the item in accordance with the approved schedule within thirty (30) days after receipt of notice of EPA and LDEQ's decisions.

43. In the case of decisions on an item submitted for review and approval which are issued by EPA and LDEQ on different days, the City/Parish shall commence implementation of the Work required by the item in accordance with the approved schedule within thirty (30) days after the soonest of the following dates:

A. The date of the decision issued by the agency to decide first in time if the other agency has previously notified the City/Parish pursuant to Paragraph 41 that it waives its right to decide;

B. The date that the second agency notifies the City/Parish pursuant to Paragraph 41 that it waives its right to decide, if that notice is issued after the decision issued by the agency to decide first in time;

C. The date of the decision issued by the agency that decides second in time;
or

D. The date that the right of the second agency to issue decision is waived under Paragraph 41.

44. In the case of an item approved subject to specified conditions or modified and approved in a decision issued by EPA or LDEQ, the City/Parish may invoke the dispute resolution procedures set forth in Section XXIV (Dispute Resolution) with respect to EPA's or LDEQ's decision. Regardless of whether the City/Parish invokes such dispute resolution procedures, if the City/Parish fails to timely commence implementation of the Work required by the item approved subject to specified conditions or modified and approved, it shall be liable for any stipulated penalties due under Section XXI (Stipulated Penalties).

45. A. In the case of an item which has been disapproved, in whole or in part, by EPA or LDEQ, the City/Parish shall, within thirty (30) days of receipt of the notice of disapproval, correct the deficiencies and resubmit the item for approval. The City/Parish may also invoke the dispute resolution procedures set forth in Section XXIV (Dispute Resolution) with respect to a notice of disapproval. Regardless of whether the City/Parish

invokes such dispute resolution procedures, if it fails to timely correct the deficiencies specified in the notice of disapproval and resubmit the item, (i) the City/Parish shall be liable for any stipulated penalties due under Section XXI (Stipulated Penalties) and (ii) EPA and/or LDEQ may modify and approve the item. An item that is resubmitted with the same deficiencies which were identified in the notice of disapproval or with substantially similar deficiencies shall be deemed to have never been submitted for purposes of calculating stipulated penalties.

B. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 40, the City/Parish shall proceed, if so directed by EPA or LDEQ in the notice, to take any action required by any non-deficient portion of the item. The City/Parish shall commence implementation of such actions by the dates specified in Paragraphs 42 and 43.

C. In the event that a resubmitted item, or portion thereof, is disapproved by EPA or LDEQ, EPA and/or LDEQ may again require the City/Parish to correct the deficiencies, in accordance with the procedure set forth in this Paragraph. EPA and/or LDEQ may also approve the item subject to conditions specified in the approval notice or modify and approve the item as set forth in Paragraph 40 above. In the event that EPA and/or LDEQ approve the item subject to specified conditions or modify and approve the item, the City/Parish shall commence implementation of the Work required by the item in accordance with the approved schedule by the dates specified in Paragraphs 42 and 43. The City/Parish may also invoke the dispute resolution procedures set forth in Section XXIV (Dispute Resolution) with respect to a decision by EPA or LDEQ pursuant to this Subparagraph. Regardless of whether the City/Parish invokes such dispute resolution

procedures, if the City/Parish fails to timely re-submit the item or to implement the Work required by the item as approved, the City/Parish shall be liable for any stipulated penalties due under Section XXI (Stipulated Penalties).

46. All items required to be submitted to EPA and LDEQ for review and approval under this Consent Decree shall, upon approval, approval subject to specified conditions, or modification and approval by EPA or LDEQ, be enforceable under this Consent Decree. In the event EPA or LDEQ approves; approves subject to specified conditions, or modifies and approves a portion of an item required to be submitted to EPA and LDEQ under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

47. If the City/Parish timely submits an item for review and approval and either EPA or LDEQ issues a decision regarding the submittal more than sixty (60) days after the date the item was submitted, then the City/Parish shall be entitled to an extension of any interim or final deadlines which the City/Parish will be unable to meet as a result of the length of the review process. Any such request must be in writing and must identify the deadlines for which an extension is requested, the length of the extension requested, and set forth the basis for (1) the City/Parish's claim that it is unable to meet the deadline(s) due the length of the review process and (2) the length of the extension requested. An extension will be considered granted after both EPA and LDEQ consent to the extension in writing.

48. If the City/Parish determines that a difference in the decisions by EPA and LDEQ regarding an item submitted for review under this Consent Decree will impose inconsistent obligations upon it, the City/Parish may invoke the procedures set forth in Section XXIV (Dispute Resolution). If, after the completion of the dispute resolution procedures set forth in Paragraph

93(B) or 94(A), the City/Parish still maintains that the decisions by EPA and LDEQ impose inconsistent obligations upon it, the City/Parish may move the Court to stay performance of the obligations which the City/Parish maintains are inconsistent until the matter is fully resolved pursuant to the procedures set forth in Section XXIV (Dispute Resolution).

49. All documents to be submitted for review and approval pursuant to this Consent Decree , including, but not limited to, reports, approvals, disapprovals, and related correspondence, shall be sent to the following addresses or any other address that the City/Parish, EPA, and LDEQ hereafter agree upon in writing:

A. Three (3) copies of each document to be submitted to EPA should be sent to:

Chief
NPDES Compliance Monitoring Section (6EN-WC)
Water Enforcement Branch
Compliance Assurance and Enforcement Division
United States Environmental Protection Agency--Region 6
1445 Ross Avenue
Dallas, Texas 75202
re: Baton Rouge Consent Decree

B. Three (3) copies of each document to be submitted to LDEQ should be sent to:

Bruce Hammatt	
Office of Environmental Compliance	<u>Street Address</u>
Louisiana Department of Environmental Quality	7290 Bluebonnet Rd.
P.O. Box 82215	LDEQ Building
Baton Rouge, LA 70884-2215	Baton Rouge, LA
	70810-1611

C. One copy of each document to be submitted to the City/Parish should be sent to:

Fred E. Raiford III	
Director	
Department of Public Works	
City of Baton Rouge	<u>Street Address:</u>
Parish of East Baton Rouge	300 North Boulevard, Rm. 208
Post Office Box 1471	Old Municipal Building
Baton Rouge, Louisiana 70821	Baton Rouge, Louisiana 70802

50. Except as specifically provided in Section XVIII (Reporting), all documents submitted by the City/Parish to EPA and LDEQ for review and approval under this Consent Decree shall be signed by an authorized representative of the City/Parish and shall include the following certification statement:

I certify under penalty of law that this document and all attachments were prepared under my direction and supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based upon my inquiry of either the person or persons who manage the system and/or the person or persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I further certify, to the best of my knowledge and belief, that this document is consistent with the applicable requirements of the Consent Decree entered among the United States, the State of Louisiana, the City of Baton Rouge, and the Parish of East Baton Rouge in the matter of United States v. Baton Rouge, [insert civil action number], (M.D. La.). I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

XVIII. REPORTING

51. Beginning with the first Calendar Quarter following entry of this Consent Decree, and each Calendar Quarter thereafter until termination of the decree, the City/Parish shall submit to EPA and LDEQ for review and approval a Quarterly Report. The Quarterly Report shall be due on the thirtieth day following the end of each Calendar Quarter. The Quarterly Report shall address the items set forth in Exhibit I to this Consent Decree (Quarterly and Annual Report

Format). The items to be addressed in the Quarterly Report may be modified by written agreement of the Parties or by EPA and LDEQ approval of an Annual Report submitted pursuant to Paragraph 52 which contains a request by the City/Parish to modify the items to be addressed in the Quarterly Report.

52. Beginning on January 31, 2002 and every twelve (12) months thereafter until termination of this Consent Decree, the City/Parish shall submit to EPA and LDEQ for review and approval an Annual Report. The Annual Report shall cover the most recent one year period from January 1 to December 31. The Annual Report shall address the items set forth in Exhibit I to this Consent Decree (Quarterly and Annual Report Format). The items to be addressed in the Annual Report may be modified by written agreement of the Parties or by EPA and LDEQ approval of an Annual Report submitted pursuant to this Paragraph which contains a request by the City/Parish to modify the items to be addressed in the Annual Report.

53. No later than twenty-one (21) days following completion of any milestone set pursuant to Paragraph 30 or 34, the City/Parish shall submit to EPA and LDEQ a written statement indicating when the milestone was achieved.

54. All reports required to be submitted pursuant to this section shall contain a certification signed by a responsible official of the City/Parish. The certification shall read as follows:

I certify that the information contained in or accompanying this [insert name of submission/document] is true, accurate and complete. As to (the/those) identified portion(s) of this (submission/document) for which I cannot personally verify (its/their) truth and accuracy, I certify as the official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this is true, accurate and complete.

XIX. CIVIL PENALTY

55. The City/Parish shall pay a civil penalty in the amount of Seven Hundred Twenty Nine Thousand Five Hundred Dollars (\$729,500). Payment shall be due within thirty days after the Date of Entry of the Consent Decree. Payment of the civil penalty shall be made as follows:

A. The City/Parish shall pay \$364,750 to the United States by Electronic Funds Transfer ("EFT") to the U.S. Department of Justice ("DOJ") lockbox bank, referencing DOJ No. 90-5-1-1-2769/1. Payment shall be made in accordance with instructions provided by the United States to the City/Parish following lodging of this Consent Decree. Any EFT received at the DOJ lockbox bank after 11:00 A.M. Eastern Time will be credited on the next business day.

B. The City/Parish shall pay \$364,750 to Louisiana in the form of a certified check, made payable to the "Louisiana Department of Environmental Quality," and delivered to Darryl Serio, Office of the Secretary, P.O. Box 82263, Baton Rouge Louisiana, 70884.

56. This civil penalty shall be considered a money judgment in favor of the United States and the State of Louisiana. The remedies provided in the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 et seq., shall be available to the United States for purposes of collection of this civil penalty. Remedies under any applicable federal or state law shall be available to the State of Louisiana for purposes of collection of this civil penalty.

57. At the time the City/Parish makes payment pursuant to Paragraph 55, it shall send a letter to the persons listed below which states the date payment was made and the amount of the

payment. The letter shall include the caption, civil action number and judicial district of this action. The letter should be mailed to the following:

Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Chief
NPDES Compliance Monitoring Section (6EN-WC)
Water Enforcement Branch
Compliance Assurance and Enforcement Division
United States Environmental Protection Agency--Region 6
1445 Ross Avenue
Dallas, Texas 75202
re: Baton Rouge Consent Decree

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-2769/1

Chief, Civil Division
United States Attorney's Office for the Middle District of Louisiana
777 Florida St., Room 208
Baton Rouge, Louisiana 70801

John B. King
Chief Attorney
Legal Affairs Division
Louisiana Department of Environmental Quality
P.O. Box 82282
Baton Rouge, LA 70884-2282

58. If the City/Parish fails to tender all or any portion of the civil penalty payment within thirty (30) days of the Effective Date of this Consent Decree, then interest on the civil

penalty shall accrue from the date payment was due on any unpaid portion of the penalty at the rate established pursuant to 28 U.S.C. § 1961 in effect on the Date of Entry and shall continue to accrue until full payment is made. Interest shall be compounded annually. The City/Parish shall also be liable for stipulated penalties pursuant to Section XXI (Stipulated Penalties) for any failure to comply with the requirements of Paragraph 55.

59. If the City/Parish fails to pay the civil penalty when due, the United States and/or Louisiana may institute proceedings to collect the penalties and interest. If such a proceeding is instituted, the City/Parish shall be liable to reimburse the United States and/or Louisiana for its expenses and attorney fees connected with the proceeding. Attorney fees shall be allowable at the maximum rate permitted under 28 U.S.C. § 2412(d)(2)(A)(ii) without a finding of special factors.

XX. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

60. The City/Parish shall conduct a Supplemental Environmental Project ("SEP") in accordance with the SEP Plan Requirements attached as Exhibit J. The SEP will consist of connecting sewage lines in certain subdivisions and urbanized areas within the City/Parish to the City/Parish treatment plants. The SEP will be completed in accordance with the schedule specified in the SEP Plan Requirements.

61. The City/Parish shall spend no less than \$1,125,000 on the SEP. No part of this expenditure shall include federal funds, including low interest federal loans, federal contracts, or federal grants. Expenditures unrelated to the goals of the SEP as stated above will not count towards the requisite expenditure amount. The City/Parish shall also sponsor a public information program designed to educate the public in the City of Baton Rouge and the Parish of East Baton

Rouge of the benefits of the SEP. The public information program must acknowledge that the SEP will be implemented as a part of this Consent Decree.

62. The City/Parish shall complete the SEP in accordance with the milestones contained in the SEP Plan Requirements (Exhibit J) and submit a SEP Completion Report no later than two years and six months from the Date of Entry of this Consent Decree. The SEP report shall contain the following information:

- A. A detailed description of the SEP as implemented and of any aspects of the work performed which differed from the SEP Plan Requirements;
- B. A description of any operating problems encountered and the solutions thereto;
- C. Itemized costs, documented by copies of purchase orders, force accounts and receipts or canceled checks (which shall be made available to the United States, if requested);
- D. Certification that the SEP has been fully implemented pursuant to the SEP Plan Requirements and the provisions of this Consent Decree;
- E. A description of the environmental and public health benefits resulting from implementation of the SEP;

63. If, following receipt of the City/Parish's SEP Completion Report pursuant to Paragraph 62, EPA or LDEQ determine that the SEP has not been completed in compliance with the requirements of this Consent Decree:

- A. The City/Parish shall pay an additional civil penalty in the amounts specified in this Subparagraph except as specifically provided Subparagraph B. For each SEP Project described in the SEP Plan Requirements which is not completed in

compliance with the requirements of this Consent Decree, the City/Parish shall pay additional civil penalties in the amounts shown in the table below:

Additional Civil Penalties for Failure to Complete Sep Projects in Compliance with the Requirements of this Consent Decree	
SEP Project	Amount of Additional Civil Penalty
Donwood/Oak Manor Project	\$125,000
Pleasant Hills/Green Acres Project	\$250,000
Sharon Hills/Cedar Glen/Pleasant Hills Project	\$650,000
Stumberg Lane Project	\$100,000

B. If EPA and LDEQ determine that the City/Parish (i) made good faith and timely efforts to complete the project and (ii) has certified, with supporting documentation, that at least ninety percent (90%) of the amount of money which was required to be spent was expended on the SEP, then the City/Parish will not be required to pay any additional civil penalty.

Any payments of additional civil penalties pursuant to this Paragraph shall be made according to the method set forth in Paragraph 55.

64. If, following receipt of the City/Parish’s SEP Completion Report pursuant to Paragraph 62, EPA and LDEQ determine that the SEP has been completed in compliance with the requirements of this Consent Decree and that the City/Parish:

A. Expended less than \$1,012,500 on the SEP, then the City/Parish shall pay any portion of that amount not expended or obligated on the SEP to the United States’ Treasury as an additional civil penalty.

B. Expended \$1,012,500 or more on the SEP, then the City/Parish will not be required to pay any additional civil penalty.

Any payments of additional civil penalties pursuant to this Paragraph shall be made according to the method set forth in Paragraph 55.

65. The City/Parish hereby certifies that it is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is the City/Parish required to perform or develop the measures to be taken under the SEP by agreement, grant or as injunctive relief in this or any other case or in compliance with state or local requirements. The City/Parish further certifies that it has not received, and is not presently negotiating to receive, credit for the SEP in any other enforcement action.

XXI. STIPULATED PENALTIES

66. Past Stipulated Penalties: In settlement of claims by the United States for stipulated penalties under the 1988 Consent Decree in United States v. Baton Rouge, No. 88-191A (M.D. La.) through the Effective Date of this Consent Decree, the City/Parish shall pay to the United States stipulated penalties in the amount of \$216,000. Payment shall be made within thirty (30) days of the Date of Entry according to the method set forth in Paragraph 55(A).

67. Failure to Submit Timely Reports: The City/Parish shall be liable to Plaintiffs for stipulated penalties in the amounts set forth below for each day past the applicable deadline the City/Parish fails to submit the Collection System Preventive Maintenance Program Plan pursuant to Paragraph 19, the Treatment Facility Assessment Report pursuant to Paragraph 36, a Quarterly Report pursuant to Paragraphs 51, an Annual Report pursuant to Paragraph 52, the SEP Completion Report pursuant to Paragraph 62, or to resubmit any disapproved item (except the

Second RMAP) pursuant to Paragraph 45. The stipulated penalties for failure to meet the deadline for submission of these reports shall be as follows:

<u>Stipulated Penalties for Failure to Submit Timely Reports</u>	
Period of Noncompliance	Penalty per Day per Violation
1st to 30th day	\$500
31st to 60th day	\$1000
more than 60 days	\$2500

68. Failure to Submit Timely and Complete Second RMAP: The City/Parish shall be liable to Plaintiffs for stipulated penalties, as set forth below, for each day the City/Parish fails to timely submit a complete Second RMAP pursuant to Paragraphs 31 or to resubmit a disapproved Second RMAP pursuant to Paragraph 45. The stipulated penalties for failure to meet the deadline for submission of the RMAPs shall be as follows:

<u>Stipulated Penalties for Failure to Timely Submit Second RMAP</u>	
Period of Noncompliance	Penalty per Day per Violation
1st to 30th day	\$1000
31st to 60th day	\$2000
more than 60 days	\$5000

69. Failure to meet RMAP and Construction Milestones: The City/Parish shall be liable to Plaintiffs for stipulated penalties in the amounts set forth below for each day the City/Parish fails to meet the milestone dates set pursuant to Paragraphs 30 and 34. The stipulated penalties for failure to meet the milestones shall be as follows:

<u>Stipulated Penalties for Failure to Meet Milestones</u>	
Period of Noncompliance	Penalty per Day per Violation
1st to 30th day	\$2000
31st to 60th day	\$5000
more than 60 days	\$10,000

Provided that construction is begun on or before the required date, the City/Parish shall place in an account approved by EPA any stipulated penalties due for failure to meet an interim construction milestone set pursuant to Paragraph 30 or 34. Within thirty days of completion of the remedial measure, the City/Parish shall pay such stipulated penalties together with all accrued interest, unless it establishes that the construction of the remedial measure was completed and full operational status achieved on or before the milestone date set pursuant to Paragraph 34(D).

70. The City/Parish shall be liable to Plaintiffs for stipulated penalties as set forth below for each day the City/Parish fails to satisfy any of the following requirements:

- A. \$2,000 for each day the City/Parish fails to seal or eliminate newly discovered cross connections by the deadline specified in Paragraph 16;
- B. \$15,000 for each day the City/Parish fails to submit the civil penalty required by Paragraph 55 or the stipulated penalty required by Paragraph 66.

71. Pre-Remedial Action Unauthorized Discharges: Prior to the date for completion of all Work specified in the First and Second RMAPs, the City/Parish shall be liable to Plaintiffs for stipulated penalties as follows:

- A. For any Unauthorized Discharge which results in the release of less than one million (1,000,000) gallons during its entire duration, the City/Parish shall be liable to

Plaintiffs for stipulated penalties of \$5000 per day for each day of each such Unauthorized Discharge except as specifically provided in this Subparagraph. The City/Parish shall not be liable to Plaintiffs for stipulated penalties if the City/Parish is in compliance with the Collection System Preventive Maintenance Program Plan (if approved by EPA and/or LDEQ pursuant to Section XVII (Review of Submittals) at the time of the discharge) and the City/Parish followed the SSO Response Plan in responding to and mitigating the impact of the discharge.

B. For any Unauthorized Discharge which results in the release of one million (1,000,000) gallons or more during its entire duration, the City/Parish shall be liable to Plaintiffs for stipulated penalties of \$5000 per day for each day of each such Unauthorized Discharge.

72. Post-Remedial Action Unauthorized Discharges: After the date for completion of all Work specified in the First and Second RMAPs:

A. For any Unauthorized Discharge which results in the release of less than one million (1,000,000) gallons during its entire duration:

i. The City/Parish shall be liable to Plaintiffs for stipulated penalties of \$5,000 per day for each day of each Unauthorized Discharge if the City/Parish is not in compliance with the Collection System Preventive Maintenance Program Plan or if the City/Parish failed to follow the SSO Response Plan in responding to and mitigating the impact of the discharge.

ii. The City/Parish shall be liable to Plaintiffs for a stipulated penalties of \$1,000 per day for each day of each Unauthorized Discharge if the City/Parish

is in compliance with the Collection System Preventive Maintenance Program Plan and the City/Parish followed the SSO Response Plan in responding to and mitigating the impact of the discharge.

B. For any Unauthorized Discharge which results in the release of one million (1,000,000) gallons or more during its entire duration, the City/Parish shall be liable to Plaintiffs for stipulated penalties of \$5,000 per day for each day of each such Unauthorized Discharge.

73. Non-Compliant Discharge: The City/Parish shall be liable to Plaintiffs for stipulated penalties for Non-Compliant Discharges. For violations of any Daily Maximum limits, the City/Parish shall be liable to Plaintiffs for stipulated penalties of \$1,000 per parameter per day per facility. For violations of any Weekly Average limits, the City/Parish shall be liable to Plaintiffs for stipulated penalties of \$1,000 per parameter per week per facility. For violations of any 30-Day Average or Monthly Average limits, the City/Parish shall be liable to Plaintiffs for stipulated penalties of \$2,500 per parameter per month per facility.

74. Supplemental Environmental Projects: The City/Parish shall be liable to Plaintiffs for stipulated penalties of \$2,500 per day for each day that the City/Parish fails to meet the milestone dates for commencement of work for the Supplemental Environmental Projects in accordance with the schedule contained in the Supplemental Environmental Project Plan Requirements (Exhibit J).

75. All stipulated penalties shall begin to accrue on the first day the City/Parish fails to satisfy any obligation or requirement of this Consent Decree and shall continue to accrue through the day the City/Parish satisfies the obligation or requirement of this Consent Decree.

77. Payment of stipulated penalties as set forth above shall be in addition to any other rights or remedies which may be available to the United States or the State of Louisiana by reason of the City/Parish's failure to comply with the requirements of this Consent Decree and all applicable Federal, state or local laws, regulations, wastewater discharge permit(s) and all other applicable permits.

78. Unless otherwise specifically provided in this Consent Decree, stipulated penalties shall be due and owing no later than thirty (30) days following the City/Parish's receipt from the United States or the State of Louisiana setting forth a demand for payment, except as specifically provided in Paragraph 79. However, neither Plaintiff may accept payment in an amount less than the full amount of the stipulated penalties owed for the violations identified in the demand for payment without the written consent of the other Plaintiff. One half of the total amount of stipulated penalties due shall be paid to the United States by tendering a certified or cashier's check in an amount due payable to "Treasurer, the United States of America" to the United States Attorney for the Middle District of Louisiana, 777 Florida St., Room 208, Baton Rouge, Louisiana 70801. The other half of the total amount due shall be paid to the State of Louisiana in the form of a certified check, made payable to the "Louisiana Department of Environmental Quality," and delivered to Darryl Serio, Office of the Secretary, P.O. Box 82263, Baton Rouge Louisiana, 70884. Payments shall be accompanied by a transmittal letter which references United States v. Baton Rouge (M.D. La.) and the civil action number of this case, states the amount being paid, and specifically describes the violations which are the basis for the stipulated penalty being paid. At the time of payment, copies of the transmittal letter and the certified and/or cashier's check shall be sent to:

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
Post Office Box 7611
Washington, D.C. 20044-7611
Ref: DOJ# 90-5-1-1-2769/1

Director
Compliance Assurance and Enforcement Division
United States Environmental Protection Agency, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

John B. King
Chief Attorney
Legal Affairs Division
Louisiana Department of Environmental Quality
P.O. Box 82282
Baton Rouge, LA 70884-2282

79. If the City/Parish invokes dispute resolution pursuant to Section XXIV (Dispute Resolution), stipulated penalties shall continue to accrue as provided in this Section during the pendency of any dispute resolution proceeding but such stipulated penalties need not be paid until the following:

A. If the dispute is resolved by agreement or by a decision by the Director of the Compliance Assurance and Enforcement Division of EPA Region 6 or the Secretary of LDEQ that is not appealed to this Court, accrued penalties shall be paid within fifteen (15) days of the agreement or decision. The City/Parish shall not be liable for any stipulated penalties if it prevails in the dispute or if the parties to the dispute so agree.

B. If the dispute is appealed to the Court and the EPA or LDEQ prevails in whole or in part, accrued penalties determined by the Court to be owing shall be paid

within thirty (30) days of receipt of the Court's decision or order, except as provided in Subparagraph C;

C. If the District Court's decision is appealed by any Party, the City/Parish shall pay all accrued penalties determined by the District Court to be owing into an interest-bearing escrow account within thirty (30) days of receipt of the Court's decision or order. Every thirty (30) days after making the initial payment into the escrow account, the City/Parish shall pay into the escrow account all stipulated penalties which have accrued during the interim since the last payment. Within fifteen (15) days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to the Plaintiffs (in accordance with the payment instruction set forth in Paragraph 78) or to the City/Parish, whichever prevails.

80. In the event that a stipulated penalty is not paid when due, the stipulated penalty shall be payable with interest from the original due date to the date of payment at a rate equal to the statutory judgment rate set forth at 28 U.S.C. § 1961(a) in effect on the date the penalty becomes due plus ten percent (10%).

81. The payment of stipulated penalties shall not alter in any way the City/Parish's obligation to complete performance of the Work required under this Consent Decree

82. If the City/Parish fails to pay any stipulated penalties when due, the United States and/or the State of Louisiana may institute proceedings to collect the stipulated penalties and interest. If such a proceeding is instituted, the City/Parish shall be liable to reimburse the United States and/or the State of Louisiana for its expenses and attorney fees connected with the

proceeding. Attorney fees shall be allowable at the maximum rate permitted under 28 U.S.C. § 2412(d)(2)(A)(ii) without a finding of special factors.

83. For purposes of collection, any stipulated penalties which become due shall be considered a money judgment in favor of the United States and the State of Louisiana. The remedies provided in the Federal Debt Collection Procedures Act (except the provisions of § 3201(e)), 28 U.S.C. § 3001 et seq., shall be available to the United States for purposes of collection of any stipulated penalties.

XXII. FORCE MAJEURE

84. "Force Majeure" for the purposes of this Consent Decree is defined as an event arising from causes beyond the control of the City/Parish or the control of any entity controlled by the City/Parish, including their agents, consultants and contractors, which delays or prevents the performance of any obligation under this Consent Decree despite the City/Parish's best efforts to fulfill the obligation. Unanticipated or increased costs or expenses associated with implementation of this Consent Decree and changed financial circumstances shall not, in any event, be considered force majeure events. Failure to apply for a required permit or approval or to provide in a timely manner all information required to obtain a permit or approval that is necessary to meet the requirements of this Consent Decree, or failure of the City to approve contracts, shall not, in any event, be considered force majeure events. The requirement that the City/Parish exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of a potential force majeure event (a) as it is occurring and (b) following the potential force majeure event, such that

the delay is minimized to the greatest extent practicable. "Force Majeure" does not include financial inability to complete the Work.

85. Within ten days of the date the City/Parish knew or, by the exercise of due diligence, should have known, whichever is first in time, of an event that might delay completion of any requirement of this Consent Decree, regardless of whether the event is a Force Majeure event, the City/Parish shall notify EPA and LDEQ, in writing, within ten (10) business days. The notice shall indicate whether the City/Parish claims that the delay should be excused due to a Force Majeure event. The notice shall describe in detail the basis for the City/Parish's contention that they experienced a Force Majeure delay, the anticipated length of the delay, the precise cause or causes of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented. The City/Parish shall adopt all reasonable measures to avoid or minimize such delay. Failure to so notify EPA and LDEQ shall render this Section void and of no effect as to the event in question, and shall be a waiver of the City/Parish's right to obtain an extension of time for their obligations based on such event.

86. If EPA and LDEQ agree that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by at least the amount of time lost due to the force majeure event. If EPA or LDEQ does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, then the City/Parish will be notified in writing of this decision and the reasons for the decision. If EPA and LDEQ agree that the delay is attributable to a force majeure event, they will notify the City/Parish in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

87. If the City/Parish elects to invoke the dispute resolution procedure set forth in Section XXIV (Dispute Resolution) in connection with EPA's and/or LDEQ's decision that a delay or anticipated delay is not attributable to a force majeure event, it shall do so no later than fifteen (15) days after receipt of EPA and/or LDEQ's notice pursuant to Paragraph 86. In any such proceeding, the City/Parish shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the City/Parish complied with the requirements of Paragraphs 84 and 85. If the City/Parish carries this burden, the delay at issue shall be deemed not to be a violation by the City/Parish of this Consent Decree.

88. An extension of one compliance date based on a particular force majeure event shall not automatically extend any other compliance date. The City/Parish shall make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought.

XXIII. RETENTION OF JURISDICTION

89. This Court shall retain jurisdiction of this matter for the purposes of implementing and enforcing the terms and conditions of this Consent Decree and for the purpose of adjudicating all disputes among the parties that may arise under the provisions of this Consent Decree, to the extent that this Consent Decree provides for resolution of disputes by the Court.

XXIV. DISPUTE RESOLUTION

90. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States or the State of Louisiana to enforce obligations of the City/Parish that have not been disputed in accordance with this Section. Within thirty (30) days after a decision is issued by EPA or LDEQ under Section XVII (Review of Submittals), that decision shall be final and not subject to dispute resolution unless the City/Parish has invoked dispute resolution pursuant to this Section prior to the expiration of the thirty (30) day period.

91. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of good-faith informal negotiations between the parties to the dispute. In the case of a dispute regarding a decision by EPA or LDEQ regarding an item submitted for review and approval under Section XVII (Review of Submittals), the parties to the dispute shall be the City/Parish and the agency that issued the disputed decision. The goal of the informal negotiations shall be to resolve the dispute without further proceedings. The period for informal negotiations shall not exceed thirty (30) days from the time the dispute arises, unless (a) EPA or LDEQ (whichever is party to the dispute), in their sole discretion, determines that a shorter period shall be allowed due to an immediate threat to the environment or (b) all parties to the dispute agree in writing to an extension. The dispute shall be considered to have arisen when the City/Parish sends Plaintiffs a written Notice of Dispute. The Notice of Dispute shall contain a concise statement of the issue or issues in dispute. If informal negotiations result in an agreement between the parties to the dispute, then those parties shall state the agreement in a single

document in writing. If informal negotiations do not result in an agreement between the parties to the dispute, then the agency that issued the disputed decision shall provide to the City/Parish in writing its opinion on the disputed issue or issues.

92. A. If the parties to the dispute cannot resolve it by informal dispute resolution, then the position advanced by the agency that issued the disputed decision shall be considered binding unless, within fifteen (15) days after the issuance of a written opinion under Paragraph 91 by the agency that issued the disputed decision, the City/Parish invokes the formal dispute resolution procedures of this Section by serving on the agency that issued the disputed decision a written Statement of Position on the matter in dispute. In its Statement of Position, the City/Parish shall describe the subject of the dispute, state its position on the dispute, and set forth in detail the basis for that position. The Statement of Position shall include the factual data, analysis, and opinions supporting the City/Parish's position and the supporting documentation relied upon by the City/Parish. The Statement of Position shall specify the City/Parish's position as to whether formal dispute resolution should proceed under Paragraph 93 or Paragraph 94.

B. Within fifteen (15) days after receipt of the City/Parish's Statement of Position, the agency that issued the disputed decision will serve on the City/Parish its Statement of Position. In its Statement of Position, that agency shall describe the subject of the dispute, state its position on the dispute, and set forth in detail the basis for that position. The Statement of Position shall include the factual data, analysis, and opinions supporting the agency's position and the supporting documentation relied upon by it. The

Statement of Position shall specify the agency's position as to whether formal dispute resolution should proceed under Paragraph 93 or Paragraph 94.

C. Within seven (7) days after receipt of the Statement of Position by the agency that issued the disputed decision, the City/Parish may submit a Reply to that agency's Statement of Position.

D. If there is disagreement between the parties to the dispute as to whether dispute resolution should proceed under Paragraph 93 or 94, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by the agency that issued the disputed decision to be applicable. However, after a decision is issued under Paragraph 93(c) or 94(a), if the City/Parish appeals the dispute to the Court for resolution under Paragraph 93(d) or 94(a), the Court shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 93 and 94.

93. The formal dispute resolution procedures set forth in this Paragraph shall apply to disputes pertaining to matters that are accorded review on the administrative record under applicable principles of administrative law. The provisions of this Paragraph shall apply, without limitation, to (1) disputes regarding items requiring approval by EPA and LDEQ under this Consent Decree including, but not limited to, disputes regarding the adequacy or appropriateness of and procedures to implement Work, and (2) disputes regarding the selection, evaluation, implementation, performance, or adequacy of any Work.

A. An administrative record of the dispute shall be maintained by the agency that issued the disputed decision and shall contain all Statements of Position submitted pursuant to Paragraph 92, including supporting documentation, submitted pursuant to this

Section. Where appropriate, the agency that issued the disputed decision may allow submittal of supplemental statements of position by the parties to the dispute.

B. In a case where the disputed decision was issued by EPA, the Director of the Compliance Assurance and Enforcement Division for EPA Region 6 will issue a final administrative decision resolving the dispute based on the administrative record described in Subparagraph (A) above. In a case where the disputed decision was issued by LDEQ, the Secretary of the LDEQ will issue a final administrative decision resolving the dispute based on the administrative record described in Subparagraph (A) above. This decision shall be binding upon the City/Parish subject only to the right to seek judicial review pursuant to Subparagraphs (C) and (D).

C. Any administrative decision pursuant to Subparagraph (B) above shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the City/Parish with the Court and served on all Parties within twenty (20) days of receipt of the decision. The motion shall include a description of the matter in dispute, the efforts made to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. Both EPA and LDEQ may file a response to the City/Parish's motion.

D. In proceedings on any dispute governed by this Paragraph, the City/Parish shall have the burden of demonstrating that the decision under Subparagraph (B) above is arbitrary and capricious or otherwise not in accordance with law. Judicial review of decisions under Subparagraph (B) above shall be limited to the administrative record compiled pursuant to Subparagraph (A) above.

94. Formal dispute resolution for disputes that do not pertain to (1) the adequacy or appropriateness of and procedures to implement Work; (2) the selection, evaluation, implementation, performance, or adequacy of any Work; or (3) that are not otherwise accorded review on the administrative record under applicable principles of administrative law shall be governed by this Paragraph. The provisions of this Paragraph shall apply, without limitation, to disputes arising under Section XXII (Force Majeure) regarding whether any failure by the City/Parish to meet a deadline was caused by a force majeure event.

A. In a case where the disputed decision was issued by EPA, the Director of the Compliance Assurance and Enforcement Division, EPA Region 6 will issue a final decision resolving the dispute. In a case where the disputed decision was issued by LDEQ, the Secretary of the LDEQ will issue a final decision resolving the dispute. Such decision shall be binding on the City/Parish unless, within twenty (20) days of receipt of the decision, the City/Parish files with the Court and serves on the other Parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. Both EPA and LDEQ may file a response to the City/Parish's motion.

B. Judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

95. In the event of any re-organization of EPA which affects the Compliance Assurance and Enforcement Division for EPA Region 6 and/or any substantial change in the responsibilities of the Director of the Compliance Assurance and Enforcement Division for EPA

Region 6, EPA may notify the City/Parish that the authorities and responsibilities of the Director of the Compliance Assurance and Enforcement Division for EPA Region 6 will be transferred to an official specified in the notice.

96. Invocation of the dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the City/Parish under this Consent Decree not directly in dispute, unless EPA and LDEQ agree otherwise or the Court so orders or directs.

XXV. RIGHT OF ENTRY

97. The United States and the State of Louisiana and their authorized representatives and contractors shall have authority at all times, upon the presentation of credentials, to enter the premises and/or worksite of the City/Parish to:

- A. Monitor the progress of activities required by this Consent Decree;
- B. Verify any data or information submitted to the United States or the State of Louisiana;
- C. Obtain samples, and, upon request, obtain splits of any samples collected by the City/Parish or their consultants and contractors;
- D. Inspect and evaluate any portions of the North, Central, or South Plants and related Collection Systems; and
- E. Inspect and review any records required to be kept under the terms and conditions of this Consent Decree, applicable NPDES Permits, or the CWA.

These inspection rights are in addition to, and in no way limit or otherwise affect, the United States' and the State of Louisiana's statutory authorities to conduct inspections, to require monitoring, and to obtain information from the City/Parish as authorized by law.

XXVI. NOT A PERMIT/COMPLIANCE WITH OTHER STATUTES/REGULATIONS

98. This Consent Decree is not and shall not be construed as a permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342, nor as a modification of any existing permit so issued, nor shall it in any way relieve the City/Parish of their obligations to obtain and maintain NPDES permits for the North, Central, and South Plant or any other part of their wastewater treatment and collection system or facilities and to comply with the requirements of any NPDES permit; Section XVI (Interim Effluent Limits), if applicable; and any other applicable federal or state law or regulation. Any new permit, or modification of existing permits, must be complied with in accordance with applicable federal and state laws and regulations.

99. Nothing herein shall be construed as relieving the City/Parish of the duty to comply with the CWA, regulations promulgated under the CWA, and all permits issued under the CWA (except as specifically provided in Section XVI (Interim Effluent Limits)).

100. This Consent Decree shall not be construed as a ruling or determination of any issue related to any federal, state, or local permit required in order to implement this Consent Decree or required to continue operation of the North, South, and Central plants and related Collection Systems. The City/Parish shall be responsible for obtaining any federal, state, or local permit(s) required for Work under this Consent Decree.

XXVII. FAILURE OF COMPLIANCE

101. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that the City/Parish's complete compliance with this Consent Decree will result in compliance with the provisions of the Clean Water Act, 33 U.S.C. §§ 1251 et seq., or with the City/Parish' NPDES permits. Notwithstanding EPA's review or approval of

any plans, reports, policies, or procedures formulated pursuant to this Consent Decree, the City/Parish shall remain solely responsible for any non-compliance with the terms of this Consent Decree, all applicable permits, the CWA and regulations promulgated under the CWA. The pendency or outcome of any proceeding concerning issuance, reissuance, or modification of any permit shall neither affect nor postpone the City/Parish's duties and obligations as set forth in this Consent Decree.

XXVIII. NON-WAIVER PROVISIONS

102. This Consent Decree in no way affects or relieves the City/Parish of any responsibility to comply with any federal, state, or local law or regulation. However, nothing in this Paragraph shall be deemed to conflict with the provisions of Section XVI (Interim Effluent Limits).

103. The parties agree that the City/Parish is responsible for achieving and maintaining complete compliance with all applicable federal and state laws, regulations, and permits, and that compliance with this Consent Decree shall be no defense to any actions commenced pursuant to said laws, regulations, or permits, except as otherwise expressly specified in the Consent Decree.

104. This Consent Decree does not limit or affect the rights of the City/Parish, the United States, or the State of Louisiana as against any third parties that are not parties to this Consent Decree.

105. The Parties reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree.

106. Except as expressly provided herein, Plaintiffs hereby reserve all statutory and regulatory powers, authorities, rights, and remedies (including all such legal, equitable, civil,

criminal, and administrative powers), including, without limitation, those that may pertain to the City/Parish's failure to comply with any of the requirements of this Consent Decree, the CWA, or state law. Such powers, authorities, rights, and remedies shall include, without limitation, additional enforcement action and the assessment of penalties under the CWA against the City/Parish, the authority to seek information from the City/Parish, and the authority to seek access to the property of the City/Parish.

107. Performance of the terms of this Consent Decree by the City/Parish is not conditioned on the receipt of any federal or state funds.

108. Obligations of the City/Parish under the provisions of this Consent Decree to perform Work scheduled to occur after the Date of Lodging, but prior to the Date of Entry, shall be legally enforceable from the Date of Lodging of this Consent Decree. Liability for stipulated penalties for any such obligations shall not begin to accrue until the date of Entry of this Consent Decree. Obligations in the Consent Decree, unless otherwise stated, shall be initiated upon Entry of the Consent Decree.

109. It is the intent of the Parties hereto that the clauses hereof are severable, and should any clause(s) be declared by a court of competent jurisdiction to be invalid and unenforceable, the remaining clauses shall remain in full force and effect.

XXIX. COVENANT NOT TO SUE BY THE UNITED STATES AND THE STATE OF LOUISIANA

110. In consideration of the actions that will be performed under the terms of this Consent Decree by the City/Parish and the payments that the City/Parish will make pursuant to Paragraphs 55 (Civil Penalty) and 66 (Past Stipulated Penalties) and except as otherwise

specifically provided in this Consent Decree, the United States covenants not to sue or to take administrative action against the City/Parish for civil claims specifically alleged in the Complaint which accrue on or before the Date of Entry. In consideration of the actions that will be performed under the terms of this Consent Decree by the City/Parish and the payment that the City/Parish will make pursuant to Paragraph 55 (Civil Penalty) and except as otherwise specifically provided in this Consent Decree, the State of Louisiana covenants not to sue or to take administrative action against the City/Parish for civil claims specifically alleged in the Complaint which accrue on or before the Date of Entry and for the following civil claims which accrue on or before the Date of Entry:

- Civil claims against the City/Parish for Unauthorized Discharges from the Collection System pursuant to LA R.S. 30:2075;
- Civil claims against the City/Parish for violations of NPDES Permits Nos. LA 0036412, LA 0036421, and LA 0036439 pursuant to LA R.S. 30:2076(A); and
- Civil claims against the Parish for discharges without a permit from the North, Central, and South Plants pursuant to LA R.S. 30:2075.

This covenant not to sue is conditioned upon satisfactory performance by the City/Parish of its obligations under this Consent Decree. This covenant not to sue shall take effect upon the receipt by the United States and the State of Louisiana of the full payment required by Paragraphs 55 (Civil Penalty) and Paragraph 66 (Past Stipulated Penalties). This covenant not to sue extends only to the City/Parish and does not extend to any other person.

111. Except as specifically provided in Section XVI (Interim Effluent Limits), the United States and the State of Louisiana reserve all remedies available to it for violations of the

CWA by the City/Parish which are not alleged in their Complaints and for violations of the CWA by the City/Parish which occur after the Date of Lodging of this Consent Decree.

112. This Consent Decree does not resolve criminal liability, if any, that any person might have for violations of the Clean Water Act.

113. Nothing in this Consent Decree shall be construed to limit the authority of the United States or the State of Louisiana to undertake any action against any person, including the City/Parish, in response to conditions that may present an imminent and substantial endangerment to the environment or to the public health or welfare.

XXX. ENDANGERMENT

114. If EPA or LDEQ determine that any activities undertaken pursuant to this Consent Decree have caused or may cause an imminent and substantial risk of harm to the public health or the environment, either Agency may order the City/Parish to (1) stop immediately any specified activities under this Consent Decree for such period of time as may be needed to abate any such risk and (2) undertake any action which EPA or LDEQ determines is necessary to abate such release or threat. Relevant schedules affected by the work stoppage shall be extended by any period during which implementation is stopped by order of EPA or LDEQ plus any reasonable demobilization and/or re-mobilization periods, provided that the release or threat is not due to noncompliance by the City/Parish with this Consent Decree.

XXXI. COSTS OF SUIT

115. Each party shall bear its own costs and attorney's fees with respect to matters resolved by this Consent Decree. Should the City/Parish subsequently be determined by the Court to have violated the terms and conditions of this Consent Decree, the City/Parish shall be liable to

the United States for any expenses and attorney's fees incurred by the United States in actions against the City/Parish to enforce the requirements of this Consent Decree. Attorneys fees shall be allowable at the maximum rate permitted under 28 U.S.C. § 2412(d)(2)(A)ii) without a finding of special factors.

XXXII. RECORD KEEPING

116. The City/Parish shall maintain copies of any underlying research and data for any and all documents, reports, or permits submitted to EPA and LDEQ pursuant to this Consent Decree which are in the possession, custody or control of the City/Parish or its agents, contractors, subcontractors, officers, servants, employees, attorneys, successors, or assigns for a period of three (3) years from date of submission. The City/Parish shall submit such supporting documents to EPA upon request.

XXXIII. FORM OF NOTICE

117. Unless otherwise specified, all reports, notices, or any other written communications required to be submitted under this Consent Decree shall be sent to the respective parties at the following addresses:

As to the United States:

Chief,
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Reference: DOJ Case No. 90-5-1-1-2769/1

Street Address (No USPS delivery)

1425 N.Y. Ave, NW, 13th Floor
Washington, D.C. 20005

Chief, Water Enforcement Branch (6EN-W)
Compliance Assurance and Enforcement Division
U.S. Environmental Protection Agency, Region VI
1445 Ross Avenue
Dallas, Texas 75202-2733

As to EPA:

Chief, Water Enforcement Branch (6EN-W)
Compliance Assurance and Enforcement Division
U.S. Environmental Protection Agency, Region VI
1445 Ross Avenue
Dallas, Texas 75202-2733

As to LDEQ:

Bruce Hammatt
Office of Environmental Compliance
Louisiana Department of Environmental Quality
P.O. Box 82215
Baton Rouge, LA 70884-2215

Street Address

7290 Bluebonnet Road
LDEQ Building
Baton Rouge, LA 70810-1611

As to the City/Parish:

Fred E. Raiford III
Director
Department of Public Works
City of Baton Rouge
Parish of East Baton Rouge
Post Office Box 1471
Baton Rouge, Louisiana 70821

Street Address:

300 North Boulevard, Rm. 208
Old Municipal Building
Baton Rouge, Louisiana 70802

Notifications to or communications, if received, shall be deemed submitted on the date they are postmarked and sent by certified mail, return receipt requested or, when sent by non-postal delivery, the date of pickup provided same is for next day delivery.

XXXIV. MODIFICATION

118. Schedules for completion of the Work, except the deadline for completion of the Collection System Remedial Program set pursuant to Paragraph 34(D), may be modified by agreement of EPA, LDEQ, and the City/Parish. All such modifications shall be made in writing.

119. Material modifications may be made to this Consent Decree only with written notification to and written approval of each of the Parties and the Court and with an opportunity for public notice and comment in a manner consistent with Paragraphs 122 and 123.

Modifications to attachments or exhibits to this Consent Decree that do not materially alter that document may be made by written agreement between the United States, LDEQ, and the City/Parish.

120. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

XXXV. CONTINGENT LIABILITY OF STATE OF LOUISIANA

121. This Consent Decree does not resolve the contingent liability of the State of Louisiana under Section 309(e) of the Act, 33 U.S.C. § 1319(e). The United States specifically reserves its claims against the State, and the State reserves its defenses.

XXXVI. PUBLIC COMMENT AND ENTRY

122. After this Consent Decree has been signed by all Parties, it shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with U.S. Department of Justice Policy and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if comments by the public regarding the Consent Decree

disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. This Paragraph does not create any rights exercisable by the City/Parish.

123. The Parties agree and acknowledge that final approval by Plaintiff the State of Louisiana, Department of Environmental Quality, and entry of this Consent Decree is subject to the requirements of La. R.S. 30:2050.7, which provides for public notice of this Consent Decree in newspapers of general circulation and the official journals of the Parish of East Baton Rouge, and opportunity for public comment, consideration of any comments, and concurrence by the State Attorney General. This Paragraph does not create any rights exercisable by the City/Parish.

124. By the signature of its authorized representative below, the City/Parish agrees to entry of this Consent Decree without further notice.

XXXVII. THE 1988 CONSENT DECREE

125. This Consent Decree is intended to supercede and replace the December 23, 1988 Modified Consent Decree (“the 1988 Consent Decree”) in United States v. Baton Rouge, No. 88-191A (M.D. La.). Accordingly, the 1988 Consent Decree is terminated as of the Effective Date of this Consent Decree.

XXXVIII. TERMINATION

126. The Consent Decree shall remain in effect until terminated by the Court pursuant to a Motion for Termination filed by a Party. As a requirement of termination, the City/Parish shall have the burden to demonstrate the following items:

- A. The remedial measures set forth in the First and Second RMAPs have been completed and are fully operational;

B. All SEPs have been completed in compliance with all applicable requirements;

C. There have been no Non-Compliant Discharges from the North Plant during any twelve (12) month period following the completion of construction of all elements of the Collection System Remedial Program related to the North Plant and its Collection System;

D. There have been no Non-Compliant Discharges from the Central Plant during any twelve (12) month period following the completion of construction of all elements of the Collection System Remedial Program related to the Central Plant and its Collection System;

E. There have been no Non-Compliant Discharges from the South Plant during any twelve (12) month period following the completion of construction of all elements of the Collection System Remedial Program related to the South Plant and its Collection System;

F. The City/Parish has paid all civil penalties, costs, damages, stipulated penalties, and other sums due under this Consent Decree; and

G. The City/Parish has fulfilled all other obligations under this Consent Decree and been in compliance with all other requirements of this Consent Decree during the preceding six months.

If the condition set forth in Subparagraphs (C), (D), and/or (E) has not been met, the City/Parish may still file a Motion for Termination; however, if EPA or LDEQ, in their sole discretion, objects to termination based upon the City/Parish's failure to meet the condition set forth in

Subparagraphs (C), (D), and/or (E) , then the Court shall deny termination until all the conditions specified above have been met. The United States and the State of Louisiana shall have the opportunity to file a response to any motion filed by the City/Parish for termination of this Consent Decree.

XXXIX. SIGNATORIES

127. The Assistant Attorney General on behalf of the United States and the undersigned representatives of the City/Parish and the State of Louisiana certify that they are fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

Entered this _____ day of _____ 200__,

United States District Judge

FOR THE UNITED STATES OF AMERICA:

Date

JOHN C. CRUDEN
Acting Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

Date

MICHAEL T. DONNELLAN
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044
(202) 514-4226

DAVID R. DUGAS
United States Attorney
Middle District of Louisiana

Date

JOHN J. GAUPP, LA Bar No. 14976
Assistant United States Attorney
Middle District of Louisiana
777 Florida St., Suite 208
Baton Rouge, Louisiana 70801
(225) 389-0443

FOR THE ENVIRONMENTAL PROTECTION AGENCY:

Date

SYLVIA LOWRANCE
Acting Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
Washington, D.C. 20460

Date

GREGG A. COOKE
Regional Administrator
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

Date

CARLOS A. ZEQUEIRA
Enforcement Counsel
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue
Dallas, Texas 75202
(214) 665-8053

OF COUNSEL:

ELYSE DIBIAGIO-WOOD
Attorney/Advisor
Office of Regulatory Enforcement
United States Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, D.C. 20460

PRELIMINARILY:

FOR THE STATE OF LOUISIANA, THROUGH THE DEPARTMENT OF ENVIRONMENTAL QUALITY:

Date

LINDA KORN LEVY
Assistant Secretary
Office of Environmental Compliance
Louisiana Department of Environmental Quality

Date

JOHN B. KING
Chief Attorney
Legal Division
Louisiana Department of Environmental Quality
P.O. Box 82282
Baton Rouge, Louisiana 70884-2282

FOR THE CITY OF BATON ROUGE AND THE PARISH OF EAST BATON ROUGE:

Date

Bobby Simpson
Mayor-President
City of Baton Rouge, Louisiana
Parish of East Baton Rouge, Louisiana
222 St. Louis Street
Baton Rouge, Louisiana 70802