

Office of the Parish Attorney



City of Baton Rouge
Parish of East Baton Rouge

222 St. Louis Street
Post Office Box 1471
Baton Rouge, Louisiana
70821

225/389-3114
225/389-5554 (Fax)

MARY E. ROPER
Parish Attorney

April 30, 2010

babbott@brgov.com

Mr. Michael T. Donnellan
U.S. Department of Justice
ENRD Mailroom, Room 8020
601 D. Street NW.
Washington DC 20004

Ms. Mona Bates (6EN-WM)
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Mr. Ted R. Broyles II
Louisiana Department of Environmental Quality
602 N. Fifth Street
Baton Rouge, LA 70802

Re: City of Baton Rouge\East Baton Rouge Parish
Consent Decree-Civil Action No. 01-978-B-M3
2009 Annual EPA Report Amendment
Consent Decree Section XVIII – Reporting
Consent Decree Exhibit I – Quarterly and Annual Report Format

Dear Sirs and Madame:

Attached please find an amendment to the 2009 Annual Report, Table 8. After filing the initial version of the 2009 Annual Report, the question was raised internally if we are over stating the self reporting penalties required under the Consent Decree. Undoubtably, Table 8 over states the time period that the report is intended to cover in that it covers from 2002 to date, not just the calendar year of 2009.

In reviewing the underlying data from the previously filed quarterly and annual reports, this adjusted table was prepared. to reflect the spirit of the Consent Decree. Most notably, those events that occurred during or as a result of an extreme storm event, such as Hurricanes Katrina, Rita and Gustav, are no longer included. Also penalties in the immediate aftermath of these events, when power outages, clean up efforts, etc., diverted manpower and resources from normal work related tasks and maintenance were deleted. The Consent Decree also provides an exception for small SSO's when the City-Parish is in compliance with its preventive maintenance plan and these were deleted. Finally, penalties for late project start delays were deleted if the project finished within a positive

or net zero time frame. (Example, a project started 3 days late but finished 3 days or more early.)

While we understand the original 2009 report is a part of the public record, we feel the amended Table 8 more accurately reflects the un-assessed liability of the City-Parish. All of the underlying raw data has been previously reported and this Amended Table 8 merely reflects what the City-Parish feels best reflects the reality of the current state of the City-Parish's position.

Sincerely,



Robert H. Abbott III
Senior Special Assistant Parish Attorney

DOJ 1 copy
EPA 3 copies
LDEQ 3 copies

Cc: Honorable Melvin L. "Kip" Holden, Mayor-President
 Mr. Mike Futrell, Chief Administrative Officer
 Mr. Michael Donnellan, Environmental Enforcement Section, US DOJ
 Ms. Mona Bates, USEPA Region 6 (6EN-WM)
 Mr. Ted Broyles, LDEQ
 Mr. Mary Roper, City of Baton Rouge/East Baton Rouge Parish Attorney
 Mr. Bob Abbott, City of Baton Rouge/East Baton Rouge Parish Attorney's Office
 Mr. Bryan Harmon, DPW
 Mr. Mark LeBlanc, DPW
 Ms. Amy Schulze, DPW
 Ms. Cheryl Berry, DPW
 Mr. Michael Ellis, CH2M HILL
 Ms. Karen Johnson, CH2M HILL ✓



Department of Public Works

City of Baton Rouge
Parish of East Baton Rouge

P.O. Box 1471
Baton Rouge, Louisiana 70821
(225) 389-3158

April 30, 2010

CERTIFIED – RETURN RECEIPT REQUESTED

Mr. Michael T. Donnellan
U.S. Department of Justice
ENRD Mailroom, Room 8020
601 D. Street NW.
Washington DC 20004

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Dear Sirs and Madame:

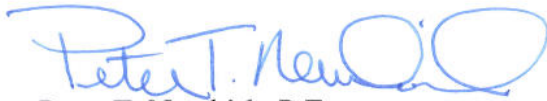
The City of Baton Rouge/East Baton Rouge Parish (City/Parish) has re-evaluated and amended the original Table 8 of the 2009 Annual EPA Report titled Stipulate Penalties to Date. This table that includes a summary of the cumulative self-reported stipulated penalties is required by the Consent Decree in Exhibit I - Quarterly and Annual Report Format. The original 2009 Annual EPA Report was submitted on January 30, 2010 by the City/Parish to the Department of Justice (DOJ), Environmental Protection Agency (EPA), and Louisiana Department of Environmental Quality (LDEQ).

The City/Parish hereby submits this 2009 Annual EPA Report Amendment. The intent is for this amendment including the updated Table 8 that is to replace the original. The amended Table 8 depicts an updated summary of the stipulated penalties to date as

noted in the attachment titled 2009 Annual EPA Report Amendment Table 8 Self-Reported Potential Stipulated Penalties.

I certify that the information contained in or accompanying this document is true, accurate, and complete. As to the identified portions of this document for which I cannot personally verify their truth and accuracy, I certify as the official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification, that this is true, accurate and complete.

Sincerely,



Peter T. Newkirk, P.E.
Director of Public Works

Cc: Honorable Melvin L. "Kip" Holden, Mayor-President
Mr. Mike Futrell, Chief Administrative Officer
Mr. Michael Donnellan, Environmental Enforcement Section, US DOJ - (1)
Ms. Mona Bates, USEPA Region 6 (6EN-WM) - (3)
Mr. Ted Broyles, LDEQ - (3)
Ms. Mary Roper, City of Baton Rouge/East Baton Rouge Parish Attorney
Mr. Bob Abbott, City of Baton Rouge/East Baton Rouge Parish Attorney's Office
Mr. Bryan Harmon, DPW
Mr. Mark LeBlanc, DPW
Ms. Amy Schulze, DPW
Ms. Cheryl Berry, DPW
Mr. Michael Ellis, CH2M HILL
Ms. Karen Johnson, CH2M HILL

Table 8 2009 Annual EPA Report Amendment			
Self-Reported Potential Stipulated Penalties to Date			
Stipulated Penalties	Number	Cost Per Occurrence	Amount Accrued
Unauthorized Discharges 2002			
Less than 1 MG & Non-Compliance with the Collection System Preventative Maintenance Plan	0	\$5,000	\$0
Less than 1 MG & Non-Compliance with the Sanitary Sewer Overflow Response Plan	0	\$5,000	\$0
1 MG or more	3	\$5,000	\$15,000
Non-Compliant Discharges (WWTP) 2002			
Weekly Average Limits	7	\$1,000	\$7,000
Monthly (30-day average) Limits	9	\$2,500	\$22,500
Unauthorized Discharges 2003			
Less than 1 MG & Non-Compliance with the Collection System Preventative Maintenance Plan	0	\$5,000	\$0
Less than 1 MG & Non-Compliance with the Sanitary Sewer Overflow Response Plan	1	\$5,000	\$5,000
1 MG or more	2	\$5,000	\$10,000
Non-Compliant Discharges (WWTP) 2003			
Weekly Average Limits	7	\$1,000	\$7,000
Monthly (30-day average) Limits	22	\$2,500	\$55,000
Unauthorized Discharges 2004			
Less than 1 MG & Non-Compliance with the Collection System Preventative Maintenance Plan	0	\$5,000	\$0
Less than 1 MG & Non-Compliance with the Sanitary Sewer Overflow Response Plan	2	\$5,000	\$10,000
1 MG or more	3	\$5,000	\$15,000
Non-Compliant Discharges (WWTP) 2004			
Weekly Average Limits	10	\$1,000	\$10,000
Monthly (30-day average) Limits	22	\$2,500	\$55,000
Unauthorized Discharges 2005			
Less than 1 MG & Non-Compliance with the Collection System Preventative Maintenance Plan	102	\$5,000	\$510,000
Less than 1 MG & Non-Compliance with the Sanitary Sewer Overflow Response Plan	0	\$5,000	\$0
1 MG or more	0	\$5,000	\$0
Non-Compliant Discharges (WWTP) 2005			
Weekly Average Limits	14	\$1,000	\$14,000
Monthly (30-day average) Limits	29	\$2,500	\$72,500
Unauthorized Discharges 2006			
Less than 1 MG & Non-Compliance with the Collection System Preventative Maintenance Plan	49	\$5,000	\$245,000
Less than 1 MG & Non-Compliance with the Sanitary Sewer Overflow Response Plan	0	\$5,000	\$0
1 MG or more	6	\$5,000	\$30,000
Non-Compliant Discharges (WWTP) 2006			
Weekly Average Limits	2	\$1,000	\$2,000
Monthly (30-day average) Limits	15	\$2,500	\$37,500
Unauthorized Discharges 2007			
Less than 1 MG & Non-Compliance with the Collection System Preventative Maintenance Plan	47	\$5,000	\$235,000

Table 8 2009 Annual EPA Report Amendment			
Self-Reported Potential Stipulated Penalties to Date			
Stipulated Penalties	Number	Cost Per Occurrence	Amount Accrued
Less than 1 MG & Non-Compliance with the Sanitary Sewer Overflow Response Plan	0	\$5,000	\$0
1 MG or more	0	\$5,000	\$0
Non-Compliant Discharges (WWTP) 2007			
Weekly Average Limits	7	\$1,000	\$7,000
Monthly (30-day average) Limits	22	\$2,500	\$55,000
Unauthorized Discharges 2008			
Less than 1 MG & Non-Compliance with the Collection System Preventative Maintenance Plan	62	\$5,000	\$310,000
Less than 1 MG & Non-Compliance with the Sanitary Sewer Overflow Response Plan	0	\$5,000	\$0
1 MG or more	3	\$5,000	\$15,000
Non-Compliant Discharges (WWTP) 2008			
Weekly Average Limits	1	\$1,000	\$1,000
Monthly (30-day average) Limits	15	\$2,500	\$37,500
Unauthorized Discharges 2009			
Less than 1 MG & Non-Compliance with the Collection System Preventative Maintenance Plan	0	\$5,000	\$0
Less than 1 MG & Non-Compliance with the Sanitary Sewer Overflow Response Plan	0	\$5,000	\$0
1 MG or more	0	\$5,000	\$0
Non-Compliant Discharges (WWTP) 2009			
Weekly Average Limits	1	\$1,000	\$1,000
Monthly (30-day average) Limits	27	\$2,500	\$67,500
SEP Project Milestone Schedule			
Pleasant Hills/Green Acres Start Date	0	\$2,500	\$0
Sharon Hills/Cedar Glen/Pleasant Hills Start Date	0	\$2,500	\$0
Stumberg Lane Start Date	0	\$2,500	\$0
Total Stipulated Penalties (through December 31, 2009)			\$1,576,500
General Notes			
1 - None of the self-reported stipulated penalties in this table have been assessed to the City/Parish by the DOJ/EPA/LDEQ or have been paid by the City/Parish at this time. Historical data utilized in this table was taken from the City/Parish Quarterly and Annual EPA Reports since the date of entry into the Consent Decree. Rainfall data used in calculating extreme storm events was taken from East Baton Rouge Parish USGS rainfall gauges.			
2 - SSOs that occurred during or were the result of extreme storm events (such as hurricanes, etc.), should not be susceptible to stipulated penalties and have therefore been left out of the totals. In addition, in the aftermath of Hurricanes Katrina and Rita that City/Parish staff were diverted from normal work related tasks and couldn't complete regular maintenance activities. Therefore in the quarter following these hurricanes where collection preventative maintenance activities goals were not met, no penalties were totaled for SSOs.			
3 - WWTP permit violations (or non-compliant discharges) that occurred during the month of extreme storm events (such as hurricanes, etc.) should not be susceptible to stipulated penalties and have therefore been left out of the totals.			
4 - The Supplemental Environmental Projects (SEPs) listed here all finished construction ahead of schedule, so it was assumed that stipulated penalties should be waived for project start day delays for the those projects (Pleasant Hills/Green Acres finished 7 days ahead of schedule; Sharon Hills/Cedar Glen/Pleasant Hills finished 15 days ahead of schedule; Stumberg Lane finished 181 days ahead of schedule).			