



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TX 75202-2733

**MAR 02 2009**

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED (70071490000237340687)**

Mr. Christopher H. Riviere  
P.O. Box 670  
Thibodaux, LA 70302

Re: EPA Docket Number CWA-06-2007-2725

Dear Mr. Riviere:

Enclosed is a Consent Agreement and Final Order ("CAFO") which represents the agreement between the EPA and Lafourche Parish Government to settle violations of Section 301(a) of the Act, 33 U.S.C. § 1311(a), as specified therein. Please note that Respondent is ordered to perform a Supplemental Environmental Project (SEP) worth \$50,000.00, as set forth in Section IV (Final Order) of the CAFO. Please refer to the CAFO for specific instructions regarding performance of the SEP.

If you have any questions, I recommend that you contact Ms. Donna Mullins at (214) 665-7576.

Sincerely yours,

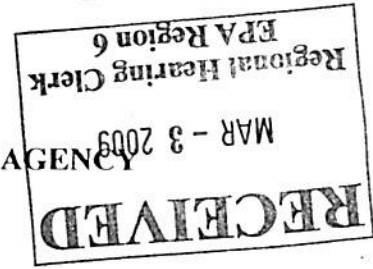
A handwritten signature in black ink that reads "Miguel I. Flores".

Miguel I. Flores  
Director  
Water Quality Protection Division

Enclosures

cc: w/CAFO  
Regional Hearing Clerk  
Furcy Zeringue, New Orleans District Corps of Engineers

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6



IN THE MATTER OF  
LAFOURCHE PARISH  
RESPONDENT

- DOCKET NO. CWA-06-2007-2725
- 
- (Original and Amended Complaint)
- 
- CONSENT AGREEMENT AND  
FINAL ORDER

I. STATUTORY AUTHORITY

This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the United States Environmental Protection Agency (“EPA”) by Section 309(g) of the Clean Water Act (herein “the Act”), 33 U.S.C. § 1319(g). This CAFO is issued in accordance with 40 C.F.R. § 22.18, as described in the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits.”

II. CONSENT AGREEMENT

1. The Parties agree that settlement of the relevant matters without litigation will save time and resources, that it is in the public’s interest, and that the entry of this CAFO is the most appropriate means of resolving such matters.

2. Respondent admits the jurisdictional allegations of the Administrative Complaint; however, the Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in the Complaint or Findings of Fact and Conclusions of Law contained in this CAFO.

3. Respondent expressly waives the right to contest the factual allegations or conclusions of law contained in the Complaint and this CAFO. Respondent further waives all defenses that have been, or could have been, raised to the claims alleged in the Complaint, and Respondent waives the right to any review, hearing, or appeal on liability, penalty, or any other issue within the scope of this CAFO.

4. Before the taking of any testimony, and without adjudication of any issue of law or fact, the parties agree to the terms of this CAFO and to its issuance. Respondent consents to the assessment and payment of a civil penalty in the amount and by the method stated below, and consents to the performance of the Supplemental Environmental Project ("SEP") set forth below.

### III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

5. **LAFOURCHE PARISH** (herein "Respondent") is a "person" as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 232.2.

6. Respondent is a governmental entity and a political subdivision of the State of Louisiana and maintains certain outfall drainage servitudes within its jurisdiction and in particular one known as the Rouse/ Theriot outfall servitude (the Original Complaint Site), and the Mathews Canal (Amended Complaint Site) and, the construction of which was subject of the Complaint and Amended Complaint.

7. On August 20, 2007, EPA Region 6 issued to Respondent the Complaint under Section 309(g) of the Act, 33 U.S.C. § 1319(g), which specified findings of fact and conclusions of law, hereby incorporated by reference, proposed to assess a civil penalty against Respondent, and gave notice of Respondent's opportunity to request a hearing on the proposed administrative

penalty assessment (the Original Complaint Site).

8. On August 14, 2008, EPA Region 6 amended its Administrative Complaint and issued to Respondent under Section 309(g) of the Act, 33 U.S.C. § 1319(g), which specified findings of fact and conclusions of law, hereby incorporated by reference, proposed to assess a civil penalty against Respondent, and gave notice of Respondent's opportunity to request a hearing on the proposed administrative penalty assessment (Amended Complaint Site).

9. These Complaints alleged, among other things, that, at the relevant times: Respondent violated Section 301(a) of the Act, 33 U.S.C. § 1311(a), by discharging "dredged" and/or "fill material" into waters of the United States without authorization by a permit issued by the U.S. Army Corps of Engineers, pursuant to Section 404(a) of the Act, 33 U.S.C. § 1344(a). That on or about March 3, 2006, Respondent, and/or individuals acting on his behalf, conducted, controlled, or directed construction/earthmoving work along the aforementioned servitude and discharged spoil material into the adjacent wetlands. Dredged and spoil material are "pollutants" within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6). Heavy earthmoving equipment is considered a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14). The discharge areas identified as wetlands are "waters of the United States" as those terms are defined at Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 232.2. At no time relevant to this action did Respondent have a permit authorizing such discharges described above.

10. With the issuance of the Complaint, the State of Louisiana was notified and given an opportunity to consult with the EPA regarding the assessment of the administrative penalty against Respondent.

11. EPA notified the public of the Complaint and afforded the public thirty (30) days to

comment on the Complaint and proposed penalty. At the expiration of the notice period, EPA received no comments from the public.

#### IV. FINAL ORDER

12. Based on the foregoing findings of fact and conclusions of law, EPA Region 6, considering the relevant criteria pursuant to Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), and acting pursuant to the authority of Section 309(g) the Act, 33 U.S.C. § 1319(g), hereby ORDERS that Respondent shall pay to the United States a civil penalty in the amount of FIFTY THOUSAND and NO/100 dollars to settle the violations as alleged in the Original and Amended Complaint, in accordance with 40 C.F.R. § 22.18(c). The aforesaid civil penalty shall be used by the respondent to fund a Supplemental Environmental Project(s) ("SEP") as outlined below.

13. Failure by Respondent to fund the SEP assessed according to the terms of this CAFO, in full, may subject Respondent to a civil action to collect the assessed penalty and any accrued interest or penalties.

14. In the event a collection action is necessary, Respondent shall pay, in addition to any applicable penalty, fees, and interest described herein, all reasonable costs and expenses, including legal expenses and court costs, incurred by the United States for enforcement and collection proceedings for nonpayment of the amounts agreed hereunder, pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9). In any such collection action, the validity, amount, and appropriateness of the penalty, and the terms of this CAFO, shall not be subject to review.

#### V. SUPPLEMENTAL ENVIRONMENTAL PROJECT

15. Respondent shall undertake a Supplemental Environmental Project(s) ("SEP"),



which the parties agree is intended to secure significant environmental restoration, improvement, and protection. The SEP requires Respondent to enhance by means of additional funding, to construct and/or restore the following:

NORTHWEST LITTLE LAKE MARSH CREATION and ENHANCEMENT (Louisiana Coastal Impact Assistance Program and/or LAFOURCHE SMALL DREDGE PROJECT (Catfish Lake Marsh Enhancement) a marsh enhancement/creation project comprising approximately 175 acres of new wetland in Lafourche Parish

Respondent is to fund the SEP within twelve (12) months following the effective date of the CAFO. The specific restoration areas in the afore-described project shall be determined by Respondent in coordination with the appropriate governmental agencies (United States Department of Agriculture Natural Resources Conservation Service).

16. Within twelve (12) months of the effective date of this CAFO, Respondent shall complete the SEP in order to create, restore, and enhance wetland functions, as set forth in the Scope of Work ("SOW"), attached hereto as Appendix A, and incorporated herein by reference. The SEP requirements are further described in the SOW.

17. Respondent's total expenditure for the SEP shall not be less than FIFTY THOUSAND and NO/100. No part of this expenditure shall include federal funds, including low interest federal loans, federal contracts, or federal grants.

18. If Respondent's total SEP expenditure is less than 95% of FIFTY THOUSAND and NO/100 or the SEP is not completed as required by the CAFO, Respondent shall pay an additional civil penalty, along with accrued interest, which shall reflect, dollar for dollar, the difference between the cost expended on the SEP and the agreed cost of FIFTY THOUSAND and NO/100. This additional civil penalty shall be due within thirty (30) days of the SEP's completion date.

19. Whether Respondent has complied with the terms of this CAFO regarding the implementation of the SEP shall be the sole determination of EPA.

20. Respondent shall submit a SEP Completion Report to EPA within forty-five (45) days after completion of all SEP activities. The SEP Completion Report shall contain the following information:

- (a) A detailed description of the SEP as implemented;
- (b) A description of any operating problems encountered and the solutions thereto;
- (c) Documented itemized costs of the SEP, supported by copies of purchase orders and receipts or canceled checks, and copies of reports regarding labor costs, equipment costs, and materials purchased;
- (d) Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO;
- (e) Photographs of the SEP installation activities from initiation of SEP to conclusion; and
- (f) A description of the environmental benefits resulting from implementation of the SEP.

21. In the SEP Completion Report, submitted to EPA pursuant to this CAFO, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

"I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment."

22. Nothing herein shall obligate Respondent to publicize its involvement in the SEP; however, any public statement, oral or written, made by Respondent to publicize its participation in SEP activities shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental

Protection Agency for violations of Clean Water Act provisions.”

23. Respondent, by execution of this CAFO, certifies that, as of the date of this CAFO, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant, or as injunctive relief in any other case or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

24. Respondent shall perform the requirements of this CAFO within the time limits set forth or approved or established herein, unless the performance is prevented or delayed solely by events which constitute a force majeure. A force majeure is defined, for purposes of this CAFO, as an event arising from causes which are not foreseeable, which are totally beyond the control of Respondent, including its consultants and contractors, which could not be overcome by the exercise of due diligence, and which delays or prevents the performance by a date or time required by this CAFO. Such events do not include unanticipated or increased costs or performance, changes in economic circumstances of Respondent, or precipitation events normal for the area. In the event that EPA and Respondent cannot agree that a delay or failure has been or will be caused solely by events which are not foreseeable, which are beyond the control of Respondent, and which could not have been overcome by diligence, or if there is no agreement on the length of the extension, the dispute shall be resolved in accordance with the Dispute Resolution provisions of Section VI of this CAFO.

25. Respondent shall submit a Progress Report to EPA in accordance with the SOW at the commencement of the project.

26. Respondent agrees that failure to submit said Progress Report and SEP Completion



Report within the prescribed time periods shall be deemed a violation of this CAFO.

27. Respondent agrees that EPA may inspect the Project Site at any time in order to confirm that the SEP was performed in conformity with the representations, terms, and conditions made herein.

#### VI. DISPUTE RESOLUTION

28. If the Respondent objects to any decision or directive of EPA, the Respondent shall notify the following persons in writing of its objections, and the basis for those objections, within fifteen (15) calendar days of receipt of EPA's decision or directive:

Chief, Wetlands Section (6WQ-EM)  
Water Quality Protection Division  
U.S. EPA Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733

Chief, Water/RCRA Legal Branch (6RC-EW)  
Office of Regional Counsel  
U.S. EPA, Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733

29. The Ecosystems Protection Branch Chief ("Branch Chief") or her designee, and the Respondent shall then have an additional fifteen (15) calendar days from receipt by EPA of the Respondent's written objections to attempt to resolve the dispute. If an agreement is reached between the Branch Chief and Respondent, the agreement shall be reduced to writing and signed by the Branch Chief and Respondent and incorporated by reference into this CAFO.

30. If no agreement is reached between the Branch Chief and the Respondent within that time period, the dispute shall be submitted to the Deputy Director of the Water Quality Protection Division ("Deputy Division Director") or his designee. The Deputy Division Director and Respondent shall then have a second 15-day period to resolve the dispute. If an agreement is

reached between the Deputy Division Director and the Respondent, the resolution shall be reduced to writing and signed by the Deputy Division Director and Respondent and incorporated by reference into this CAFO. If the Deputy Division Director and Respondent are unable to reach agreement within this second 15-day period, the Deputy Division Director shall provide a written statement of EPA's decision to the Respondent, which shall be binding upon the Respondent and incorporated by reference into the CAFO.

#### VII. NOTIFICATION

31. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submittal or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

EPA: Chief, Wetlands Section (6WQ-EM)  
Water Quality Protection Division  
U.S. EPA Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733

Lafourche Parish Government  
P. O. Drawer 5548  
Thibodaux, LA 70302

#### VIII. MODIFICATION

32. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of EPA and Respondent, and such modification or amendment being filed with the Regional

Hearing Clerk.

#### IX. TERMINATION

33. At such time as Respondent believes that it has complied with all terms and conditions of this CAFO, Respondent may request that EPA advise whether the requirements of this CAFO have been satisfied and terminated. Such request shall be in writing and shall provide the necessary certification that there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request as expeditiously as possible. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed, and Respondent has been notified by the EPA in writing that this CAFO has been satisfied and terminated.

#### X. RETENTION OF ENFORCEMENT RIGHTS

34. The EPA does not waive any rights or remedies available to the United States or EPA for any violations by Respondent of Federal or State laws, regulations, or permitting conditions following the entry of this CAFO.

35. Notwithstanding any other provision of this CAFO, an enforcement action may be brought against the Respondent pursuant to Section 504 OF CWA, 33 U.S.C. § 1364.

#### XI. NO EPA LIABILITY

36. Neither EPA nor the United States Government shall be liable for any injuries or damages to persons or property resulting from acts or omissions of the Respondent, their officers, directors, employees, agents, receivers, trustees, successors, assigns or contractors in carrying out activities pursuant to this CAFO, nor shall the EPA or the United States Government be held out as a party to any contract entered into by the Respondent in carrying out activities pursuant to this

CAFO.

XII. GENERAL PROVISIONS

37. To execute this Agreement, Respondent shall forward two (2) copies of this CAFO, with original signature, to:

Ms. Donna Mullins  
Water Quality Protection Division (6WQ-EM)  
U.S. EPA, Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733

38. Issuance of this CAFO does not relieve Respondent from responsibility to comply with all requirements of the Act and the requirements of any permits issued thereunder, as described in Section 309(g)(7) of the Act, 33 U.S.C. § 1319(g)(7), nor does it constitute a waiver by EPA of its right to enforce compliance with the requirements of Respondent's permits or other requirements of the Act by actions pursuant to Section 309 of the Act, 33 U.S.C. § 1319. Respondent shall obtain any and all necessary permits prior to implementation of the SEP.

39. The provisions of this CAFO shall be binding upon Respondent, its officers or officials, managers, employees, and their successors or assigns, in their capacity on behalf of Respondent.

40. Each party agrees to bear its own costs and attorneys fees in this matter, except to the extent that Respondent may be responsible for reasonable costs and expenses of enforcement and collection proceedings for failure to comply with the terms of this CAFO.

41. Respondent shall preserve, during the pendency of this CAFO, all records and documents in its possession or in the possession of its divisions, employees, agents, contractors, or successors which in any way relate to this CAFO regardless of any document retention policy to the contrary.


XIII. EFFECTIVE DATE

42. This CAFO shall become effective upon filing with the Regional Hearing Clerk.

In recognition and acceptance of the foregoing:

  
Lafourche Parish Government

2/9/09  
Date:

  
Miguel Flores, Director  
Water Quality Protection Division  
U.S. EPA, Region 6

2/27/09  
Date:

Consent Agreement and Final Order issued this 3rd day of March, 2009.


**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6**

**IN THE MATTER OF  
LAFOURCHE PARISH  
RESPONDENT**

- **DOCKET NO. CWA-06-2007-2725**
- 
- **(Original and Amended Complaint)**
- 
- **CONSENT AGREEMENT AND  
FINAL ORDER**

**FINAL ORDER**

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Complaint. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. This CAFO shall become effective 30 days after the issuance date.


March 2, 2009

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Michael C. Barra  
 Regional Judicial Officer  
 U.S. EPA, Region 6



CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of March, 2009, the original of the foregoing Consent Agreement and Final Order was hand-delivered to the Regional Hearing Clerk, EPA Region 6 (6RC), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. A second original was placed in the United States mail, certified mail, return receipt requested, addressed to:

Mr. Christopher H. Riviere  
P. O. Box 670  
Thibodaux, Louisiana, 70302

True and correct copies were placed in the United States mail, first class, postage prepaid, addressed to:

Mr. Furcy Zeringue  
U.S. Army Corps of Engineers, New Orleans District  
Regulatory Branch  
P.O. Box 60267  
New Orleans, Louisiana 70160

Copy hand-delivered: Mr. David Gillespie (6RC-EW)  
U.S. EPA Region 6  
1445 Ross Ave.  
Dallas, Texas 75202-2733



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Enforcement Officer  
US EPA Region 6

**Appendix A**  
**Supplemental Environmental Project Scope of Work**  
**(SEPSOW)**

Lafourche Parish Government, through its Department of Coastal Energy & Environment, will manage and administer the implementation of the SEPSOW, which includes providing reports to EPA and ensuring that the project is performed in accordance with the CAFO provisions.

SEP Description

Respondent will fund, in the amount of FIFTY THOUSAND and NO/100 DOLLARS, an Enhancement to a marsh creation project in the coastal water of Lafourche Parish referred to as the NORTHWEST LITTLE LAKE MARSH CREATION and ENHANCEMENT (Louisiana Coastal Impact Assistance Program) and/or LAFOURCHE SMALL DREDGE PROJECT (Catfish Lake Marsh Enhancement). The project is designed to create or enhance approximately 175 acres of new wetlands in the coastal water of Lafourche Parish. Respondent will complete all initial construction activities and then establish vegetation on all enhanced areas with appropriate marsh grasses at appropriate planting rates within twelve (12) months following the effective date of the CAFO. The specific restoration areas on-site, as outlined above, will be determined by Respondent in coordination with the appropriate federal agencies.

SEP Implementation Plan

In mid to late 2009, Respondent will fund the above described enhancement and restoration in accordance with the CAFO and the construction shall be in accordance with the Scope of Work documents as outlined in the pertinent documents contained with, or referenced in, the Agreement for Services of said projects by and between the United States Department of Agriculture, Natural Resource Conservation Service and the Lafourche Parish Government.

After successful establishment of the SEP, as described above, the respondent, in accordance with the above referenced Agreement for Services, as best as practicable, will monitor the restored area.

SEP Commencement Report

Respondent shall submit a commencement report containing the following information:

- A summary description of project progress and how Respondent adhered to the SEP Implementation plan to date.
  - A description of any operating problems encountered to date and the solution thereto; and
  - A summary description of all SEP monetary expenditures to date.
-

SEP Completion Report

Upon completion of the SEP, respondent must submit a final SEP Completion Report to EPA containing the following information:

- A summary description of the overall project and how Respondent adhered to the SEP Implementation Plan;
  - A description of any operating problems encountered and the solution thereto;
  - A summary of the acreage and location of the marsh enhancement established through SEP funding;
  - A summary description of all SEP monetary expenditures, including copies of relevant documents;
  - A certification of all funds spent implementing the SEP, documented by copies of purchase receipts, cancelled checks, etc.; and
  - A certification that the SEP has been fully implemented pursuant to the provisions of this CAFO, including a certification from any contractor that the work has been completed as described.
-