



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

FEB 18 2015

CERTIFIED MAIL—RETURN RECEIPT REQUESTED: 7005 1820 0003 7457 0847

Mr. Robert H. Abbott, III  
Office of the Parish Attorney  
East Baton Rouge Parish/City of Baton Rouge  
222 St. Louis Street  
P.O. Box 1471  
Baton Rouge, LA 70821

Re: Consent Agreement and Final Order; Docket Number: CWA-06-2014-1769  
NPDES Permit Number: LAS000101

Dear Mr. Abbott:

This is to acknowledge receipt of the signed Consent Agreement and Final Order (CAFO). As no comments were received from the general public during the thirty day public notice period, the Environmental Protection Agency hereby issues this CAFO.

The CAFO shall become effective thirty days after the date of issuance.  
The penalty payment is due within thirty days after the effective date.

If you have any questions regarding this matter, please contact  
Ms. Thea Lomax at (214) 665-8098 or Ms. Carol Peters at (214) 665-3145.

Sincerely,

A handwritten signature in black ink, appearing to read "John Blevins".

John Blevins  
Director  
Compliance Assurance and  
Enforcement Division

Enclosure

cc: Ms. Angela Marse, Manager  
Water Enforcement  
Louisiana Department of Environmental Quality  
P.O. Box 4312  
Baton Rouge, LA 70821-4312

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

FILED  
2015 FEB 26 PM 3:19  
REGIONAL HEARING CLERK  
EPA REGION VI

In the Matter of	§	
	§	
East Baton Rouge Parish/City of Baton Rouge,	§	
	§	
a Louisiana municipality,	§	DOCKET NO. CWA-06-2014-1769
	§	
Respondent	§	CONSENT AGREEMENT AND
	§	FINAL ORDER
	§	
NPDES Permit No. LAS000101	§	Pursuant to 40 C.F.R. § 22.13(b)

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the United States Environmental Protection Agency (“EPA”) pursuant to Section 309(g) of the Clean Water Act (“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.”
2. On June 16, 2014, EPA Region 6 issued to Respondent an Administrative Complaint (“Complaint”) under Section 309(g) of the Act, 33 U.S.C. § 1319(g), which 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.
3. EPA and Respondent (“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. Compliance with all the terms and conditions of this CAFO resolves only those violations alleged in the Complaint.

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

5. Respondent expressly waives any right to contest the factual allegations or conclusions of law contained in the Complaint and this CAFO, and waives its right to appeal the Final Order set forth herein. The Complaint is hereby incorporated by reference.

6. 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.

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. East Baton Rouge Parish/City of Baton Rouge ("Respondent") is a municipality chartered under the laws of the State of Louisiana, and as such, 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. § 122.2.

8. Respondent owned or operated a municipal separate storm sewer system ("MS4"), located in the city of Baton Rouge, Louisiana ("facility"), and the operation of which was the subject of the Complaint.

9. The Complaint specified findings of fact and conclusions of law that are hereby incorporated by reference and alleged, among other things, that at the relevant times: Respondent was a "person" that "owned or operated" a facility that acted as a "point source" subject to a

“discharge” of “pollutants” to identified “waters of the United States” within the meaning of Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2; Respondent and the facility were subject to the provisions of the Act, 33 U.S.C. § 1251 *et seq.*, and the National Pollutant Discharge Elimination System (“NPDES”) program; and Respondent violated Section 402 of the Act, 33 U.S.C. § 1342, by failing to implement Part VI.O of the Louisiana Pollutant Discharge Elimination System (“LPDES”) permit number LAS000101 (*Proper Operation and Maintenance*). Specific violations include: a) failure to provide sufficient administrative, technical, and inspection staff, equipment and resources to conduct inspections; b) failure to investigate alleged illicit discharges and document inspection reports and related storm water activities in a database. Respondent submitted a revised and updated Storm Water Management Plan (“SWMP”) in November 2014 and EPA approved the SWMP for immediate implementation. With the issuance of the Complaint, the State of Louisiana was notified and given an opportunity to consult with EPA regarding the proposed assessment of an administrative penalty against Respondent.

10. EPA notified the public of the Complaint via the internet at <http://www.epa.gov/earth1r6/6en/public.html>, 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.

### III. TERMS OF SETTLEMENT

#### A. PENALTY PROVISIONS

11. 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) of 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 forty-four thousand eight hundred and two dollars (\$44,802.00) to settle the violations as alleged in the Complaint, in accordance with 40 C.F.R. § 22.18(c).

12. Payment shall be made by one of the following methods within thirty (30) days of the effective date of this CAFO.

- a. By mailing a bank check, a cashier's check or certified check, payable to "Treasurer of the United States," to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

- b. By wire transfer to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

- c. By overnight mail (Express, FedEx, DHL, etc.) to:

U.S. Bank  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
Phone: 314-418-1028

- d. By credit card payments to: <https://www.pay.gov>

(enter sfo 1.1 in the search field)

“In the Matter of East Baton Rouge Parish/City of Baton Rouge, Docket No. CWA-06-2014-1769,” should be clearly marked on the check to ensure credit for payment.

13. Respondent shall send simultaneous notice of payment, including a copy of each check, to each of the following:

- (a) Regional Hearing Clerk (6RC-D)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733
- (b) Chief, NPDES Compliance (6EN-WC)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733
- (c) Chief, Water Legal Branch (6RC-EW)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Respondent's adherence to these procedures will ensure proper credit when payment is received by EPA.

14. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

15. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative

handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

16. EPA will also assess a fifteen (\$15.00) administrative handling charge for administrative costs on unpaid penalties for the first thirty (30)-day period after the payment is due and an additional fifteen (\$15.00) for each subsequent thirty (30)-day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. See 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

17. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States' enforcement expenses including, but not limited to, attorney's fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be twenty percent (20%) of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

18. Failure by Respondent to pay the penalty assessed according to the terms of this CAFO, in full, by its due date, may subject Respondent to a civil action to collect the assessed penalty and any accrued interest and penalties.

19. 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.

20. Respondent by execution of this CAFO, certifies that, as of the date of this Consent Agreement and Final Order, 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.

**B. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

21. Respondent shall implement a SEP, the value of which may not be less than one hundred sixty-seven thousand dollars (\$167,000.00), which the parties agree is intended to secure significant environmental or public health improvement (SEP proposal attached for reference). The SEP shall involve a pollution prevention project at the Canoe Bend Lake that will prevent pollutants and sediments from entering the lake and downstream waterbodies (Dawson's Creek, Ward's Creek, and Bayou Manchac). The four component project consists of:

- a. Sediment traps to collect sediments and oil and grease prior to these pollutants entering Canoe Bend Lake. This allows for easy collection and removal thus reducing pollutants flowing into Dawson's Creek, Ward's Creek, and Bayou Manchac.
- b. Bank stabilization along the main canal flowing into Canoe Bend Lake. This will prevent sediments from sloughing from the bank into the water and entering Canoe Bend Lake.



- c. Weirs or steps in the main canal flowing into Canoe Bend Lake. This will decrease the velocity of water flow, thus preventing bank erosion, which contributes to pollutants entering Canoe Bend Lake. Weirs or steps also reduce the velocity of the water as it enters Canoe Bend Lake, allowing the sediments to settle.
  - d. Pond sediment removal within portions of Canoe Bend Lake. This will provide an area within Canoe Bend Lake for sediments to fall out prior to entering Dawson's Creek and improve water quality and enhance the eco-system.
23. The SEP shall be implemented according to the following schedule:
- a) Start Design and Permitting: March 1, 2015.
  - b) Submit Progress Reports: September 1, 2015, March 1, 2016, and September 1, 2016.
  - c) All milestones and requirements of the SEP shall be completed no later than November 1, 2016.
24. With regard to the SEP, Respondent certifies the truth and accuracy of the following:
- a. That all cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate.
  - b. No part of the SEP expenditure shall include federal funds, including low interest federal loans, federal contracts, or federal grants. Respondent may not deduct from its taxes any expenses incurred as part of this settlement.
25. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.
26. Whether Respondent has complied with the terms of this CAFO regarding the implementation of the SEP shall be the sole determination of EPA.
27. If Respondent fails to satisfactorily complete the SEP by the deadline set forth above, Respondent shall pay stipulated penalties for each day for which it fails to satisfactorily complete the SEP as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Non-compliance</u>
\$200	1 <sup>st</sup> through 30 <sup>th</sup> day
\$300	31 <sup>st</sup> day and beyond

28. 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. documented itemized costs of the SEP, e.g., by copies of purchase orders and receipts or canceled checks, and copies of monthly reports regarding labor costs, equipment costs, and materials purchased; and
- c. certification that the SEP has been fully implemented pursuant to the provisions of this CAFO.

29. 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.

30. 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 EPA for violations of CWA provisions."

31. 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.

32. To execute this Agreement, Respondent shall forward this copy of the CAFO, with original signature, to:

Mr. Scott McDonald, Chief  
Water Legal Branch (6RC-EW)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

33. 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.

34. 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.

35. Each party agrees to bear its own costs and attorney's 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.

36. Each undersigned representative of the parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement and to execute and legally bind that party to it.

In recognition and acceptance of the foregoing:

*Melvin L. "Kip" Holden*

For: East Baton Rouge Parish/City of Baton Rouge

Melvin L. "Kip" Holden

Mayor-President

*2-9-15*

Date

*John Blevins*

John Blevins

Director

Compliance Assurance and

Enforcement Division

*2-18-15*

Date

**APPROVED**

**FEB 09 2015**

**W. DANIEL, CAO**

**APPROVED**

*[Signature]*  
**PARISH ATTORNEY'S OFFICE**

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. Pursuant to 40 C.F.R. § 22.31(b), this CAFO shall become effective upon filing with the Regional Hearing Clerk.

Issuance Date:

2/26/15



\_\_\_\_\_  
Regional Judicial Officer  
U.S. EPA, Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the 26<sup>th</sup> day of February, 2015, the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA, Region 6 (6RC-D), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy was placed in the United States mail.

Certified mail, return receipt requested,  
addressed to the following:

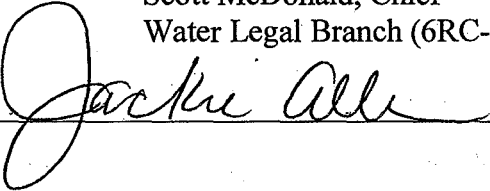
Mr. Robert H. Abbott, III  
Office of the Parish Attorney  
City of Baton Rouge  
222 St. Louis Street  
P.O. Box 1471  
Baton Rouge, LA 70821

with a copy, first class postage prepaid, to:

Ms. Angela Marse, Manager  
Water Enforcement  
Louisiana Department of Environmental Quality  
P.O. Box 4312  
Baton Rouge, LA 70821-4312

hand-delivered:

Scott McDonald, Chief  
Water Legal Branch (6RC-EW)

  
\_\_\_\_\_