



**Office of the Parish Attorney**

City of Baton Rouge  
Parish of East Baton Rouge

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MARY E. ROPER  
Parish Attorney

July 16, 2014

*VIA CERTIFIED MAIL 7009 1680 0001 6759 0991*

Regional Hearing Clerk (6RC-D)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Re: In the Matter of East Baton Rouge Parish/City of Baton Rouge, LPDES Permit No. LAS000101; Administrative Complaint, Docket No. CWA-06-2014-1769

Dear Sir or Madam:

Regarding the above referenced matter, please find enclosed the original Answer and Request for Hearing to be filed accordingly.

Please contact our office should you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Robert H. Abbott, III".

Robert H. Abbott, III  
Sr. Special Assistant Parish Attorney

RHB/ts  
enclosure

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

FILED  
JUL 22 AM 9:11  
KATHLEEN M. HANCOCK  
EPA REGION VI

**In the Matter of** \* **Docket No. CWA-06-2014-1769**  
\*  
**East Baton Rouge Parish/City of Baton Rouge, a Louisiana municipality,** \* **Proceedings to Assess a Class II Civil**  
\* **Penalty under Section 309(g) of the**  
\* **Clean Water Act**  
\*  
**Respondent** \*  
\*  
**LPDES Permit No. LAS000101** \* **ADMINISTRATIVE COMPLAINT**  
\*

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**ANSWER AND REQUEST FOR HEARING**

NOW COMES, East Baton Rouge Parish/City of Baton Rouge, a Louisiana municipality (“Baton Rouge” or “Respondent”), named Respondent in the above-referenced proceeding, who, through undersigned counsel and pursuant to the provisions of the United States Constitution, the Clean Water Act, the Administrative Procedure Act, and 40 CFR Part 22, including 40 CFR §22.15, and/or any other applicable law, rule, or jurisprudence, files this Answer and Request for Hearing asserting disputed issues of material fact and law arising from the Administrative Complaint, Docket No. CWA-06-2014-1769, issued by the Environmental Protection Agency, Region 6, (“EPA”), to Baton Rouge on or about June 16, 2014.

**ANSWER**

The Administrative Complaint contains findings of fact and conclusions of law related to alleged violations of the Clean Water Act, its implementing regulations, and/or permits issued thereunder. Pending full investigation of the facts involved with each allegation, Respondent enters a full and complete denial of and contests all allegations and provisions of the Administrative Complaint.

And now, in further answering the specific Paragraphs of the Administrative Order, Baton Rouge avers as follows:

1.

The allegations of Paragraph 1 are admitted.

2.

The allegations of Paragraph 2 are denied. In further answering, the term 'all relevant times' (which is stated to mean 'all times relevant to this action') is vague and is not defined in a manner that affords Baton Rouge sufficient information to admit or deny the allegation. There is no timeframe associated with 'all times relevant to this action.'

3.

The allegations of Paragraph 3 are admitted.

4.

The allegations of Paragraph 4 are admitted.

5.

The allegations of Paragraph 5 are denied to the extent it implies that unauthorized discharges occurred. In further answering, all discharges were authorized and in compliance with LPDES Permit No. LAS000101, which is a permit issued under Section 402 of the Clean Water Act.

6.

The allegations of Paragraph 6 do not require a factual response but to the extent a response is required, the allegations are denied. In further answering, all discharges were authorized and in compliance with LPDES Permit No. LAS000101.

7.

The allegations of Paragraph 7 are admitted.

8.

The allegations of Paragraph 8 are admitted. In further answering, all discharges were authorized and in compliance with LPDES Permit No. LAS000101.

9.

The allegations of Paragraph 9 are admitted. In further answering, the relevant permit was issued by the Louisiana Department of Environmental Quality (LDEQ) on or about May 18, 2010.

10.

The allegations of Paragraph 10 are admitted only insofar as EPA conducted a site visit or 'assessment' of the Storm Water Management Program or Plan (SWMP) on or about September 25-26, 2013. In further answering, Baton Rouge understood that the purpose of the September 25-26, 2013 site visit was merely a meeting with EPA, which was to be conducted as a follow-up to a prior meeting with EPA. It is denied that such assessment was to determine compliance with LPDES Permit No. LAS000101 as the Assessment Report clearly states that the assessment was to "determine if the City complied with terms agreed on with EPA." Any 'assessment' was of a voluntary effort by Baton Rouge to accommodate EPA's requests.

11.

The allegations of Paragraph 11 are denied. In further answering:

A. Baton Rouge fully implemented and complied with LPDES Permit No. LAS000101, including Part VI.O, the SWMP, 40 CFR §122.26(d), and any other applicable policy, guidance, or regulation, at all times;

- B. Baton Rouge properly operated and maintained all facilities and systems of treatment and control and provided an adequate operating staff;
- C. Baton Rouge voluntarily agreed to update its SWMP to accommodate EPA's requests on several occasions, and any such failure to update (which is denied) is not a violation of LPDES Permit No. LAS000101, including Part VI.O, the SWMP, 40 CFR §122.26(d), or any other applicable policy, guidance, or regulation;
- D. Baton Rouge, at all pertinent times, properly provided sufficient administrative, technical, and inspection staff, equipment, and resources to conduct inspections;
- E. Baton Rouge, at all pertinent times, properly investigated alleged illicit discharges;
- F. Baton Rouge, at all pertinent times, properly documented inspection reports and related storm water management activities in a database;
- G. LPDES Permit No. LAS000101, Part VI.O, does not require, mention, or otherwise relate to the SWMP, investigations of alleged illicit discharges, or the documentation of inspection reports and related storm water management activities in a database; and
- H. The allegations of Paragraph 11 are not violations of LPDES Permit No. LAS000101, including Part VI.O, the SWMP, 40 CFR §122.26(d), or any other applicable policy, guidance, or regulation.

12.

The allegations of Paragraph 12 are denied. In further answering, Baton Rouge denies that it was in violation of LPDES Permit No. LAS000101 at any time, as it relates to the allegations in the Administrative Complaint and/or the facts mentioned in the Assessment Report.

13.

The allegations of Paragraph 13 are denied. In further answering, the cited provision, 33 USC §1319(g)(2)(B), specifies that penalties may not exceed \$10,000 per day and that the maximum amount of any such penalty is \$125,000. Additionally, the date of the violation, as alleged in the Administrative Complaint, was September 25-26, 2013, a time when the statutory maximum, as adjusted for inflation, was \$16,000 per day with a maximum amount of \$177,500. 40 CFR 19.4; 78 Fed. Reg. 66643-66648 (November 16, 2013).

14.

The allegations of Paragraph 14 are denied as Baton Rouge has no knowledge of the facts alleged therein regarding EPA's notice and/or interactions with the LDEQ.

15.

The allegations of Paragraph 15 are denied as Baton Rouge has no knowledge of the facts alleged therein regarding EPA's notification of the public and affording the public an opportunity to comment.

16.

The allegations of Paragraph 16 are denied. In further answering, the allegations in the Administrative Complaint, especially in Paragraph 11, and/or the facts mentioned in the Assessment Report do not support a penalty of any amount.

17.

The allegations of Paragraph 17 are denied as Baton Rouge has no knowledge of the facts alleged therein regarding the basis for EPA's penalty. Baton Rouge has not been provided the basis for the penalty computation.

18.

The allegations of Paragraph 18 do not require a response but to the extent a response is required, the allegations are denied.

19.

The allegations of Paragraph 19 do not require a response but to the extent a response is required, the allegations are denied.

20.

The allegations of Paragraph 20 do not require a response but to the extent a response is required, the allegations are denied.

21.

The allegations of Paragraph 21 do not require a response but to the extent a response is required, the allegations are denied.

22.

The allegations of Paragraph 22 do not require a response but to the extent a response is required, the allegations are denied.

23.

The allegations of Paragraph 23 do not require a response but to the extent a response is required, the allegations are denied. However, as set forth below, Baton Rouge requests a hearing on all issues.

24.

The allegations of Paragraph 24 do not require a response but to the extent a response is required, the allegations are denied.

25.

The allegations of Paragraph 25 do not require a response but to the extent a response is required, the allegations are denied.

26.

The allegations of Paragraph 26 do not require a response but to the extent a response is required, the allegations are denied.

27.

The allegations of Paragraph 27 do not require a response but to the extent a response is required, the allegations are denied.

28.

The allegations of Paragraph 28 do not require a response but to the extent a response is required, the allegations are denied.

And now, further answering, Baton Rouge hereby states as follows:

29.

EPA authorized LDEQ to assume the administration of the NPDES Program in Louisiana in August, 1996. LDEQ “became the permitting and enforcement authority for permits issued under the [LPDES] to facilities, including MS4s.” Assessment Report, p. 5.

30.

Pursuant to that authority, LDEQ initially issued LPDES Permit No. LAS000101 (the Permit) in 1997 and renewed it on November 19, 2004 and May 18, 2010. The permits issued in 2004 and 2010 are collectively referred to as the Permits. The SWMP was incorporated by reference into the Permits.

31.

The Permits provide two methods to update the SWMP. See Permits, Part II.G. The permittee may change the SWMP in accordance with specific procedures outlined in the Permits. Additionally, the LDEQ “may require changes” to the SWMP. Any changes required by LDEQ must be in writing, set forth the schedule for the permittee to develop the changes, and allow the permittee the opportunity to propose alternative program changes. See Permits, Part II.G.3. These changes must follow the appropriate procedures for permit modifications as set forth the LDEQ regulations.

32.

Pursuant to the clear and unambiguous wording in the Permits, EPA has no authority to require changes to the SWMP.

33.

EPA conducted an audit on or about August 6-7, 2007 (the 2007 Audit), which lead to the issuance of Administrative Order, No. CWA-06-2008-1753, on or about March 19, 2008.

34.

In August, 2007, EPA reviewed the existing SWMP and found, among other things, that Baton Rouge “failed to establish, develop and implement Measurable Goals for the SWMPs to determine their effectiveness and performance in reducing pollutants in storm water.” Administrative Order, No. CWA-06-2008-1753, Paragraph 5.a.

35.

On August 29, 2008, Baton Rouge submitted a detailed response to Administrative Order, No. CWA-06-2008-1753, which included an updated SWMP. See LDEQ EDMS Document No. 6184340, pp. 1- 47.

36.

The SWMP was also incorporated into the permit issued in 2010. EPA was provided a preliminary draft of the permit in July, 2009. By letter dated October 6, 2009, EPA stated that “based on its review it appears to conform to the guidelines and requirements of the Clean Water Act. Therefore, EPA has no objection to the issuance of this preliminary draft permit.”

37.

On April 27, 2010, EPA conducted an inspection of Baton Rouge and continued the review of the SWMP begun in August, 2007.

38.

Beginning around April, 2013, EPA sent a series of letters to Baton Rouge, referencing the 2007 Audit, the April, 2010 inspection, and Administrative Order, No. CWA-06-2008-1753. At all times, Baton Rouge was working with EPA to resolve issues first raised by the 2007 Audit and Administrative Order, No. CWA-06-2008-1753. Indeed, correspondence as late as February 24, 2014 between EPA and Baton Rouge referenced Administrative Order, No. CWA-06-2008-1753 and Baton Rouge’s efforts to comply with that order.

39.

The letters from EPA in 2013 culminated with a letter, dated August 23, 2013, in which referenced a meeting on August 7, 2013. The meeting, according to EPA, “was beneficial in clarifying how the City of Baton Rouge is working to comply with the Order.”

40.

EPA’s August 23, 2013 letter lists 13 items that “we discussed and agree needed to be changed or incorporated into your SWMP.” Two items are relevant. The first states: “describe the database used to document data for storm water related activities such as: public education

and outreach events, construction and post-construction inspections, structural control maintenance, citizen complaints, employee certified training and enforcement actions.” The second states: “expand the *Illicit Discharge Detection/Dry Weather Screening* section on page 27 and the *Illicit Discharge Detection/Wet Weather Screening* section on page 28 to describe the roles and responsibilities of other municipal entities that inspect illicit discharges during dry and wet weather.”

41.

Baton Rouge responded to EPA’s August 23, 2013 letter on September 23, 2013 by submitting a draft SWMP that addressed the 13 points. When EPA conducted its site visit on September 25-26, 2013, EPA found that Baton Rouge’s response was satisfactory overall but found that Baton Rouge’s response to the two items quoted above was deficient.

A. As to the agreement to ‘describe the database used to document data for storm water related activities such as: public education and outreach events, construction and post-construction inspections, structural control maintenance, citizen complaints, employee certified training and enforcement actions,’ Baton Rouge did describe the database, providing information on the four main databases used to document activities and actions for stormwater management control measures.

1. In the Assessment Report, EPA stated that Baton Rouge did not have a hired data entry specialist committed to making timely data entries. However, a hired data entry specialist is not required by LPDES Permit No. LAS000101, including Part V.O, the SWMP, 40 CFR 122.26(d), or any other applicable guidance, policy, or regulation. As noted in the Assessment Report, inspectors enter the data in the appropriate data base. Further, a committed data entry specialist may delay actual data entry when the specialist is absent or otherwise unavailable. Finally, the

inspectors enter data on a 'real-time' basis into field devices, which immediately uploaded the data into the appropriate database.

2. In the Assessment Report, EPA stated that Baton Rouge had a backlog of inspections stored in various locations. However, there is no specific time frame in LPDES Permit No. LAS000101, including Part V.O, the SWMP, 40 CFR 122.26(d), or any other applicable guidance, policy, or regulation mandating that data entry be complete by a specific time. Further, there is no evidence that the boxes observed by EPA contained actual inspection reports requiring entry into a database. On information and belief, the boxes contained records such as old annual reports already in the possession of EPA and LDEQ.

3. In the Assessment Report, EPA stated that Baton Rouge had workstations which were small and cluttered and which could pose a fire hazard and health concerns. However, there is no specific provision in LPDES Permit No. LAS000101, including Part V.O, the SWMP, 40 CFR 122.26(d), or any other applicable guidance, policy, or regulation regarding the size and condition of the inspector's workstations. Further, the size and condition of the inspector's workstations, and EPA's unfounded conclusion that such condition may create a fire or health hazard, is irrelevant to compliance with the Permit or the SWMP and beyond EPA's regulatory authority.

B. As to the agreement to 'expand the *Illicit Discharge Detection/Dry Weather Screening* section on page 27 and the *Illicit Discharge Detection/Wet Weather Screening* section on page 28 to describe the roles and responsibilities of other municipal entities that inspect illicit discharges during dry and wet weather,' Baton Rouge amended its SWMP to include a detailed description of the roles and responsibilities of the various departments and divisions within the Department of Public Works.

1. In the Assessment Report, EPA stated that the SWMP did not specify a schedule for inspection of the 150 outfalls for illicit discharges. However, LPDES Permit No. LAS000101, including Part V.O, 40 CFR 122.26(d), or any other applicable guidance, policy, or regulation do not require a specific schedule. Even if they did, the SWMP was submitted to EPA in August, 2008 and the assertion of any penalties for deficiencies in the SWMP has prescribed or is barred by the statute of limitations.

2. In the Assessment Report, EPA stated that Baton Rouge placed inspections on hold, did not respond to citizen's complaints, and did not conduct some inspections. However, the SWMP allows Baton Rouge to prioritize inspections. Further, there is no evidence that any specific inspection or response to complaints were not properly conducted. Inspections and responses to complaints were properly conducted.

3. In the Assessment Report, EPA stated that Baton Rouge had only one shared vehicle to conduct inspections. This is factually inaccurate. The various divisions within Baton Rouge's Department of Public Works have responsibilities under the SWMP and each such division has numerous vehicles assigned to it in order to conduct its SWMP-related tasks. The Environmental Division, which is included within the Department of Public Works, has approximately 16 vehicles assigned to it which were and are readily accessible to each inspector. In fact, the keys to all such vehicles are available in a central storage location within the office of the Environmental Division; the inspector need only walk to the storage location, obtain the key, and utilize the vehicle.

## AFFIRMATIVE DEFENSES

42.

All claims for penalties have prescribed and/or are beyond the applicable five-year statute of limitations pursuant to 28 USC 2462 and *Gabelli v. Securities and Exchange Commission*, 133 S.Ct. 1216 (2013). Over five years have passed since the alleged violation(s) occurred and/or the date when the claim for penalties first accrued.

A. The findings in the Assessment Report and the subsequent allegations in the Administrative Complaint are similar and/or identical to the findings in the 2007 Audit which form the basis of the allegations in Administrative Order, No. CWA-06-2008-1753, issued in March, 2008. For example, EPA found in the 2007 Audit that “inspections are not regularly scheduled” and that the “permittee has not made any inspections to specifically detect illicit discharges.” MS4 Audit Checklist, p. 27. Further, the EPA found in the 2007 Audit “some of the records of the investigations are created and retained by the investigating officer.” MS4 Audit Checklist, p. 27. Additionally, Baton Rouge “does not have any equipment specifically designated for storm water management programs.” MS4 Checklist, p. 10. The exact same findings are included in the Assessment Report.

B. The SWMP was submitted to EPA for review in August 29, 2008 and again in July, 2009. Any alleged deficiencies in the SWMP, such as a failure specify a schedule for inspecting outfalls for illicit discharges, (all of which are denied) were, and have been, apparent and/or within the knowledge of the EPA since those dates.

43.

EPA has no legal authority under the Clean Water Act or LPDES Permit No. LAS000101 to require changes to the SWMP. According to the Part II(G), only LDEQ has authority to

requires changes. Baton Rouge was merely accommodating EPA by working with EPA to update the SWMP. Any failure to update, amend, revise, or otherwise modify the SWMP is not a violation of the Permit.

44.

EPA had an opportunity to comment on the SWMP and/or seek changes during its review of the draft permit submitted in July, 2009. See 40 CFR §123.44. EPA is barred or estopped from requiring any such changes outside of the permit review process.

45.

Even if EPA had any authority to require changes to the SWMP, EPA did not offer Baton Rouge the opportunity to propose alternative program changes to meet the objective of the proposed modification as required by Permit, Part II(G). Instead, after receiving additional information from Baton Rouge on or about February 14, 2014, EPA merely completed its Assessment Report in March, 2014 and issued the Administrative Complaint.

46.

The allegations in the Administrative Complaint and/or the facts mentioned in the Assessment Report do not constitute a violation of LPDES Permit No. I.AS000101, including Part V.O, the SWMP, 40 CFR 122.26(d), or any other applicable guidance, policy, or regulation.

A. EPA alleges that Baton Rouge failed to provide sufficient administrative, technical and inspection staff, equipment and resources to conduct inspections. Presumably, this allegation is based on the finding in the Assessment Report that Baton Rouge did not have a hired data entry specialist committed to making timely data entries and that, to conduct inspections, inspectors within Baton Rouge's Environmental Division shared the vehicles owned or allotted to the Environmental Division. In response,

1. Baton Rouge's Department of Public Works, which includes the Environmental Division, employs approximately 800 field staff who contribute, in one form or another, to fulfilling the requirements, activities, and control measures outlined in the SWMP.

2. The factual statement in the Assessment Report regarding the number of vehicles assigned to Environmental Division, upon which the allegation in the Administrative Complaint is based, is factually inaccurate. The Environmental Division has approximately 16 vehicles assigned to it, all of which are available upon request and at any time to the three Environmental Division employees dedicated to stormwater issues. Further, individuals within Baton Rouge's Department of Public Works have vehicles assigned and/or available to them in order to conduct their respective tasks.

3. The allegation is based on rank speculation that the number of vehicles "could potentially interfere with" responses.

4. There is no reliable and documented evidence that the number of vehicles available to the Environmental Division interfered with the ability of Baton Rouge to properly accomplish the requirements, activities, and control measures outlined in the SWMP.

5. The Permit, SWMP, and any applicable guidance, policy, or regulations do not specify the number of data entry specialists required to enter data into a database or require that any person entering data be specifically committed to that task. All data was routinely entered into the database by the inspectors, a fact noted in the Assessment Report.

B. EPA alleges that Baton Rouge failed to investigate alleged illicit discharges. Presumably, this allegation is based on the finding in the Assessment Report that the SWMP did not specify a schedule for inspection of 150 outfalls (called illicit discharges) and that Baton Rouge allegedly

placed inspections on hold, did not respond to citizen's complaints, and did not conduct some inspections. In response,

1. The alleged lack of a schedule in the SWMP has been known to EPA since at least August, 2008, and no later than July, 2009. Not only has greater than five years passed, EPA is barred and/or estopped from asserting this as a violation as EPA had "no objection" to the SWMP, which was included as a part of the Permit reviewed by EPA in July, 2009.

2. The Permit, Part II.A.6.e, allows Baton Rouge to prioritize follow-up activities.

3. The allegation is based on rank speculation that citizen's complaints "may have not been responded to."

4. There is no reliable and documented evidence that Baton Rouge did not respond to citizen's complaints, put inspections on hold, or did not conduct some inspections.

C. EPA alleges that Baton Rouge failed to document inspection reports and related stormwater management activities in a database. Presumably, this allegation is based on the finding in the Assessment Report that Baton Rouge had a backlog of inspections stored in various locations awaiting entry into the database and that inspectors' workstations were small and cluttered which could pose a fire hazard and health concerns. In response,

1. The allegation is based on rank speculation that the "practice [of storing records] could result" in a loss of data.

2. There is no evidence that data was not entered into the database. As noted in the Assessment Report, "inspectors enter data into the appropriate databases."

3. The size of the inspectors' workstations ('small'), their state ('cluttered with boxes'), and the risks posed by this condition ('potential fire hazard and health concerns') are simply not within the regulatory authority of the EPA.

4. The SWMP does not specify a specific time frame or deadline for data entry or the method of records storage.

5. There is no reliable and documented evidence that the boxes contained inspection awaiting entry into a database.

47.

The allegations in the Administrative Complaint and/or the facts mentioned in the Assessment Report do not constitute a violation of the Permit or the SWMP. None of the alleged violations are included in the Permit or SWMP as specific requirements which must be implemented by Baton Rouge. Specially, the SWMP does not impose a requirement as to:

- A hired data entry specialist committed to making timely data entries;
- The timing of when data is entered into the database;
- Where paper records may be stored;
- The size of the workstations or the amount of materials that an inspector may store on or around his or her workstation;
- When inspections of illicit discharges would take place; or
- The number of vehicles specifically assigned to the inspectors of the Environmental Division.

48.

EPA failed to give adequate notice or fair warning to Baton Rouge prior to assessing a penalty that the allegations in the Administrative Complaint and/or the facts mentioned in the Assessment Report constitute a violation of LPDES Permit No. LAS000101, including Part V.O, the SWMP, 40 CFR 122.26(d), or any applicable guidance, policy, or regulation.

49.

The requirement to operate and maintain “facilities and systems of treatment and control (and related appurtenances)” as set forth in LPDES Permit No. LAS000101, Part V.O.1, applies to equipment dedicated to and directly associated with treatment and control. The allegations in the Administrative Complaint and/or the facts mentioned in the Assessment Report are not violations of LPDES Permit No. LAS000101, Part V.O.1, as they do not relate to equipment installed or used for treatment and control.

50.

LPDES Permit No. LAS000101, Part V.O.2, merely requires an “adequate” staff. At all times, Baton Rouge’s staff was more than ‘adequate’. Further, Part V.O.2 and the term ‘adequate’ do not require or encompass a specific number of staff which must be employed or the specific functions of each such staff member. To the extent that the term ‘adequate’ requires such specificity, it is vague and ambiguous and Baton Rouge has not been provided adequate notice or fair warning that EPA interpreted the term in such a manner.

51.

The allegations in the Administrative Complaint are vague, ambiguous, and do not provide sufficient information to properly respond and provide a defense.

52.

The allegations in the Administrative Complaint fail to state a cause of action.

53.

The allegations in the Administrative Complaint are barred by the doctrines of preemption and/or laches.

54.

The proposed penalty, based on the allegations in the Administrative Complaint and/or the facts mentioned in the Assessment Report, is grossly excessive, unreasonable, arbitrary and capricious, contrary to policy, and contrary to law, including without limitation 42 USC §1319(g)(2)(B).

55.

The proposed penalty was calculated in a manner contrary to the requirements of 42 USC §1319(g)(3).

56.

Baton Rouge denies that EPA has the statutory authority cited in Part I, Statutory Authority, to issue the Administrative Complaint under the circumstances as alleged.

57.

The regulatory authority asserted by EPA to issue the Administrative Complaint is not applicable to this Class II administrative penalty as 40 CFR §§22.50 through 22.52 apply to Class I administrative penalties.

58.

Additionally, EPA's actions in issuing the Administrative Complaint are:

- A. In violation of constitutional or statutory provisions;
- B. In excess of the statutory authority of the agency;
- C. Made upon unlawful procedure;
- D. Affected by other error of law;
- E. Arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion; and

f. Not supported and sustainable by a preponderance of evidence as determined by the reviewing court.

### **REQUEST FOR HEARING**

59.

In accordance with 40 CFR Part 22, including 40 CFR §22.15(c), and Part V of the Administrative Complaint, Baton Rouge hereby requests a hearing on all issues raised by the Administrative Complaint and/or this Answer and Request for Hearing.

60.

The hearing should be held in Baton Rouge, Louisiana.

### **REQUEST FOR INFORMAL CONFERENCE**

61.

In accordance with Paragraph 26 of the Administrative Complaint, Baton Rouge hereby requests an informal conference with EPA.

62.

The informal conference should be held in Baton Rouge, Louisiana.

63.

The Administrative Order is dated June 16, 2014 and was received by Baton Rouge on or about June 23, 2014. As this Answer and Request for Hearing is submitted on or before July 16, 2014, this Answer and Request for Hearing is timely filed.

64.

Respondent specifically reserves the right to supplement and/or amend this Answer and Request for Hearing. EPA has failed to provide the written basis or calculations for the penalty

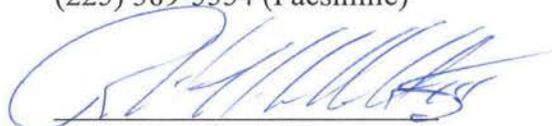
amount and Baton Rouge specifically reserves the right to amend this Answer and Request for Hearing to address any issues raised by or in the written basis or calculations for the penalty.

WHEREFORE, Respondent, East Baton Rouge Parish/City of Baton Rouge, respectfully requests:

- A. That this Answer and Request for Hearing be filed;
- B. That an informal conference be scheduled and held in Baton Rouge, Louisiana;
- C. That a hearing be held in Baton Rouge, Louisiana;
- D. That the Administrative Complaint be dismissed;
- E. That, after due proceedings, EPA's decision to issue a penalty be reversed; and
- F. That Baton Rouge be awarded all costs, attorneys' fees, expert fees, and any other costs or fees allowed by law.

By Attorneys,

Robert H. Abbott III (#02278)  
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East Baton Rouge Parish/City of Baton Rouge  
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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

**In the Matter of**

**East Baton Rouge Parish/City of Baton Rouge, a Louisiana municipality,**

**Respondent**

**LPDES Permit No. LAS000101**

\* **Docket No. CWA-06-2014-1769**  
\*  
\* **Proceedings to Assess a Class II Civil**  
\* **Penalty under Section 309(g) of the**  
\* **Clean Water Act**  
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\* **ADMINISTRATIVE COMPLAINT**  
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I hereby certify that a copy of the foregoing has been hand-delivered or sent via facsimile or electronically, with original to follow by U.S. Mail, to:

Regional Hearing Clerk (6RC-D)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

Scott McDonald (6RC-EW)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

Baton Rouge, Louisiana, this 16<sup>th</sup> day of July, 2014.

  
\_\_\_\_\_  
Robert H. Abbott III