



Tulane Environmental Law Clinic

Ref. 101-117.2

March 2, 2012

Via E-mail (pubcomment-ees.enrd@usdoj.gov)

Ignacia S. Moreno, Assistant Attorney General
Environment and Natural Resource Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

Re: The Concerned Citizens of University Place Subdivision and Louisiana Environmental Action Network's Comments on the Second Consent Decree Modification in *United States and the State of Louisiana v. City of Baton Rouge and Parish of East Baton Rouge*, D.J. Ref. 90-5-1-1-2769/1

Dear Ms. Moreno:

Thank you for the opportunity to comment on the Second Consent Decree Modification in *United States and the State of Louisiana v. City of Baton Rouge and Parish of East Baton Rouge*, notice of which the Department of Justice lodged on January 19, 2012 with the U.S. District Court for the Middle District of Louisiana and published in the Federal Register (77 Fed. Reg. 4060) on January 26, 2012. The Concerned Citizens of University Place Subdivision and the Louisiana Environmental Action Network ("LEAN") submit the following comments and also reserves the right to rely on comments that any other person or entity submits in these proceedings.

The City of Baton Rouge and the Parish of East Baton Rouge ("City and Parish") own three Publicly Owned Treatment Works ("POTWs") that operate under National Pollutant Discharge Elimination System ("NPDES") permits issued pursuant to the Clean Water Act ("CWA"). The City and Parish have continually failed to meet the minimum requirements of these permits since at least 1988. The City and Parish entered into a consent decree in 1988 to settle claims brought by EPA in *United States v. Baton Rouge*, No. 88-191A (M.D. La.) for chronic permit violations, but that consent decree did not bring the City and Parish into compliance. Later, EPA brought a new suit which it settled in 2002 with a new consent decree which required the City and Parish to comply with its permits by January 1, 2015. And now the City and Parish seek an additional three years beyond January 1, 2015 in the proposed Second Consent Decree Modification to achieve compliance under the CWA and their NPDES permit.

Tulane Environmental Law Clinic

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COMMENTS

I. EPA HAS FAILED TO SHOW THAT THE PROPOSED CONSENT DECREE REVISION IS FAIR, REASONABLE, OR EQUITABLE OR TO SHOW THAT IT DOES NOT VIOLATE PUBLIC POLICY.

The standard for entry of a proposed consent judgment is that the decree must be “fair, reasonable and equitable and ... not violate the law or public policy.” *See, e.g., Sierra Club, Inc. v. Electronic Controls Design, Inc.*, 909 F.2d 1350, 1355 (9th Cir. 1990). Here, EPA has failed to meet that standard and, in fact, has proposed a decree that is unfair and unreasonable and will violate public policy by exacerbating an environmental injustice. More specifically, the plant — as managed under a federally-funded program and under more than two decades of EPA supervision — has “the effect of subjecting individuals to discrimination because of their race ... [and] the effect of defeating or substantially impairing accomplishment of the objectives of the [Clean Water Act] program with respect to individuals of a particular race” Further, the “site or location of [the plant where EPA is proposing to extend deadlines for compliance] has the ... effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under [the Clean Water Act] program ... on the grounds of race” and has the “effect of defeating or substantially impairing the accomplishment of the objectives of [40 C.F.R. pt. 7 subpt. B].” 40 C.F.R. § 735(b) & (c). Because it has a disparate impact on a minority community, EPA’s handling of this situation violates the general prohibition of 40 C.F.R. § 730 by denying the predominately African American population the “the benefits of ... [an] activity receiving EPA assistance”

LEAN agrees with the goal of requiring the City and Parish to achieve and maintain compliance with its NPDES permit and the CWA, however, neither EPA nor the City and Parish have justified the extension that they request in the Second Consent Decree Modification, much less shown it to be fair, reasonable, or equitable under the circumstances. LEAN understands that the purpose of the Second Consent Decree Modification is to defer lower priority projects in favor of accelerating and adding more critical projects—namely the proposed public project to create a buffer zone between the North Wastewater Treatment Plant and the adjacent University Place subdivision that the City and Parish outlined to the EPA in a letter on September 9, 2011. *See* Ltr. From W.B. Daniel, IV, Acting Dir. Pub. Works to S. Murray, Regional Counsel, EPA Region 6, Exh. A. The proposed Second Consent Decree Modification, however, fails to incorporate any requirements concerning this buffering/relocation project.

Before EPA grants any extension, EPA should meet with effected members of the public and explain why—after more than two decades of federal oversight—Clean Water Act and human rights violations continue at the North Wastewater Treatment Plant. When members of the affected neighborhood requested a public hearing about the extension that EPA proposed (by e-mail of February 25, 2012), EPA’s response was that “There are no provisions for a public hearing in the CD process.” EPA e-mail to Gregory R. Mitchell, Concerned Citizens of

University Place Subdivision (Feb. 29, 2012). In other words, EPA's response was that because there is no specific requirement to hold a public hearing, EPA would refuse to take this reasonable step to involve residents of the University Place Subdivision in a decision that will dramatically affect the quality of their lives. EPA's decision in this regard exacerbates the environmental injustice imposed upon these residents. EPA should reverse this decision and hold a public hearing before making any decision on the proposed consent decree modification. EPA cannot meet its burden of showing its decision to be fair, reasonable, and equitable if EPA continues to refuse to talk to the affected community about its decision.

II. EPA MUST REQUIRE REVISIONS TO THE SECOND CONSENT DECREE MODIFICATION TO INCLUDE A REMEDY FOR THE HUMAN RIGHTS AND ENVIRONMENTAL JUSTICE VIOLATIONS TAKING PLACE IN THE COMMUNITY.

At a minimum, if EPA grants the extension, it should impose several additional requirements. Primarily, EPA should require the City and Parish to remedy—subject to federal oversight—the human rights and environmental justice violations that the current operations at the North Wastewater Treatment Plant create. For example, EPA should consider including a revised version of the proposed buffering plan, submitted to EPA Region VI on September 9, 2011, in the Second Consent Decree Modification, after vetting that plan with community residents and adjusting it to provide for fairness to the North Wastewater Treatment Plant's neighbors.

EPA has suggested that it cannot address environmental justice violations in this Consent Decree. Upon information and belief, however, EPA's argument is based on non-binding and un-promulgated internal policies that are subject to waiver.

a. EPA Has Not Been Candid With The Court About the Purpose of the Extension

The City and Parish submitted a Public Project to EPA Region VI proposing to buffer the wastewater treatment system from the surrounding community. *Id.* In that submittal, the City and Parish stated, "The City/Parish does not have funds to initiate this public project, and can't reiterate enough the importance of getting approval of the extension and updated compliance schedules. The extension allows the City/Parish to reallocate resources and move this project forward." *Id.* This buffering/relocation project, therefore, is tied directly to the new terms in the proposed Second Consent Decree Modification.

The proposal, dated September 9, 2011, proposes the three year extension requested in the Second Consent Decree Modification in order to fund and implement this buffering/relocation plan. *Id.* However, in the actual Second Consent Decree Modification, the buffering plan is not even referenced and the September 9, 2011 proposal is unacceptably vague. Further, that proposal, as written, is not enforceable. If the City and Parish need the extension they request in the Second Consent Decree Modification to serve the public good by

implementing a buffering plan, they must create definition and accountability to perform that public good in the Second Consent Decree Modification. Alternatively, a mechanism could be created in another context—for example, an enforceable contract—to ensure that the buffer project is properly implemented. If EPA selects that option, however, EPA and the City and Parish should provide for definition and accountability in the buffer project *before* modifying the decree.

b. **The Community Around The North Plant Is In Dire Need Of Relief From Sewage Odors, Sewage Mist, and Sewage Flies.**

The Concerned Citizens of University Place Subdivision is an organization (and LEAN member) consisting of the residents of University Place Subdivision community. It now has more than 100 members. The City and Parish's routine violations of its water discharge permit at the North Wastewater Treatment Plant are part and parcel of a history of mismanagement and poor operations that threaten the health of the Concerned Citizens' members and the health of the environment where its members live. *Declaration of G. Mitchell*, ¶ 7 (Nov. 12, 2010) (Exh. B).

The operations at the North Wastewater Treatment Plant frequently lead to unpleasant odors for the neighbors of the plant. *Id.* at ¶ 10. Neighbors in the community used to enjoy sitting and walking in the open space, paths, and river areas near their homes. *Id.* at ¶ 13. However, outside socializing is no longer enjoyable due to unbearable odors that emanate from the plant. *Id.* Community members battle hordes of sewer flies and sewage mist that contacts their skin when they venture outdoors. *Id.* at ¶ 15. Greg Mitchell, President of Concerned Citizens of University Place Subdivision, testifies that he now goes inside his home immediately upon arriving home from work. *Id.* Furthermore, he must spray chemical insect repellent around his door every time he enters his home. *Id.* Additionally, he is not able to have his son visit the house because the odors and chemicals that emanate from the plant exacerbate his son's asthma condition and cause him to become ill. *Id.* at ¶ 14.

The effect of the violations committed by the City and Parish is discrimination against the largely African American community surrounding the plant. EPA has announced a goal of ensuring that everyone enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn, and work.¹ If EPA does not address the human rights and environmental justice issues being pressed upon this community, it will be failing in its responsibility to give fair treatment and meaningful involvement to people of all races.

¹ <http://www.epa.gov/environmentaljustice/>

III. EPA HAS NOT JUSTIFIED ITS PROPOSED EXTENSION.

EPA's enforcement pattern at the North Wastewater Treatment Plant appears to be to extend any deadlines that Baton Rouge fails to meet and to overlook violations of existing agreements. Indeed, upon information and belief, EPA has failed to collect stipulated penalties or otherwise enforce the 2002 Consent Decree. EPA should explain its reluctances to insist that Baton Rouge devote sufficient resources to the sewage treatment project to meet its obligations under the Clean Water Act. What evidence has EPA collected that it would not be feasible for Baton Rouge to comply more promptly?

The current Consent Decree went into effect in 2002 as a result of a civil action brought by the United States and by the State of Louisiana against the City and Parish. The goal of the 2002 Consent decree was to allow the City and Parish to come into compliance with the CWA and avoid litigation while still furthering the public interest.

We are now a decade into the 2002 Consent Decree with less than three years until its deadline. Although the City and Parish suggest the need for the extension by proposing new projects, they fail to address the fact that a vast majority of projects required under the current Consent Decree are still incomplete. If thirteen years is not enough time to implement the requirements under the Consent Decree, LEAN has the concern that the City and Parish will continue to apply for extensions and never actually further the public interest in the way they agreed to do.

As of January 12, 2012, the City and Parish reported that over 75% (23/30) of the RMAP Category 1 projects were incomplete.² They also reported that over 89% (51/57) of RMAP Category 2 projects were incomplete. *Id.* They also reported that 67% (4/6) of RMAP Category 3 projects were incomplete. *Id.* These numbers do not reflect any new proposed projects to the Consent Decree. The City and Parish must provide a detailed analysis of what they will do differently in order to complete these projects timely if they do receive the extension.

EPA must require the City and Parish to detail how it will achieve full compliance under the new timeline. Pushing compliance back three years in order to prioritize and add projects without a detailed plan for showing how the City and Parish will achieve full compliance is not enough. For instance, the City and Parish have not provided any detailed information on what it plans to do to fix the BOD and TSS exceedances at its three plants. The City and Parish's discharges have exceeded not only permit limits, but also the more relaxed interim limits set in the present consent decree. These exceedances foul the Mississippi River, causing LEAN's members to cease fishing and curtail recreational activities on the river. *See* Declarations of Paul Orr, Exh. C and Willie Dunn, Exh. D. The City and Parish must explain in detail what measures it is or will be taking to achieve compliance with limits for BOD and TSS at each of its plants,

² Second Consent Decree Modification

and EPA must incorporate deadlines for achieving such measures into the proposed Second Consent Decree Modification.

LEAN also asks that the City and Parish explain whether it has considered mobile/temporary wastewater treatment units for its plants to alleviate capacity and treatment problems until they have implemented a permanent fix. Temporary measures will help reduce the negative impacts from the plants especially at the University Place subdivision.

CONCLUSION

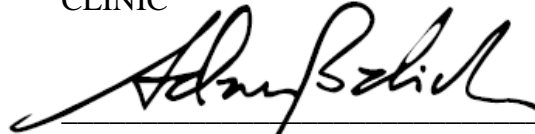
For the foregoing reasons, LEAN requests that EPA deny the modification until an enforceable, detailed plan is in place to remedy ongoing environmental justice and human rights violations at the North Wastewater Treatment Plant. Additionally, EPA should meet with the residents surrounding the plant to explain why the residents still have to suffer from the actions of the plant although it has been under a Consent Decree for over twenty years. EPA must be a driving force in achieving prompt Clean Water Act compliance and eliminating the human rights violations.

Substantially prepared by:

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Respectfully Submitted By:

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University Place Subdivision*

Louisiana Environmental Action Network
Comments on Second Consent Decree Modification
U.S. v. City of Baton Rouge and Parish of East Baton Rouge
March 2, 2012
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Department of Public Works

City of Baton Rouge
Parish of East Baton Rouge

Post Office Box 1471
Baton Rouge, La 70821

Exhibit A

September 9, 2011

CERTIFIED – RETURN RECEIPT REQUESTED

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

Re: City of Baton Rouge and Parish of East Baton Rouge
Consent Decree-Civil Action No. 01-978-B-M3
Public Project – Buffer for the North Wastewater Treatment Plant

Ms. Murray:

The City of Baton Rouge and Parish of East Baton Rouge (City/Parish) hereby submits a proposed public project to create a buffer zone between the North Wastewater Treatment Plant (NWWTP) and the adjacent residential neighborhood within the boundary area as defined herein. The City/Parish will acquire the properties in **Attachment 2** to accomplish this objective. This project is not currently a requirement of the Consent Decree (2001) or Consent Decree Amendment (2009) and is not funded as such. The proposed public project presents a logical and reasonable method for determining where to draw a “boundary”, or “buffer” line surrounding the NWWTP facilities. The plan takes into account the future odor impacts to homeowners in the area based on the City/Parish’s *Wastewater Master Plan 2008 (Odor Study)*.

The rest of this memo highlights the proposed public project, an overview of the NWWTP Odor Study which was used as a basis for justifying the buffer lines, and the history of odor control improvements made and planned at the NWWTP.

Proposed Public Project

The City/Parish’s proposed public project area is depicted in **Attachment 1**. The individual property details are shown in **Attachment 2**. The City/Parish feels this proposal meets the definition of a public project as set forth in the opinion of the Louisiana State Attorney General’s Office; see **Attachment 4** for more details. The City/Parish is proposing a minimum 300 foot buffer adjacent to the existing facility which is shown as a yellow border on the map. The justification behind the buffer border of 300 feet, or more, is primarily based on results from the *Odor Study* as follows:

- It covers the City/Parish selected 99.9% target that achieves a 10 dilutions/threshold (D/T) limit once corrective actions are taken (*Wastewater Master Plan 2008 – Odor Study*).
 - Note - a brief summary of the *Odor Study* and results used as the basis of the public project are included in a section below.

The 300 foot buffer should also provide enough distance away from the NWWTP in order to provide for an area dedicated and maintained as an open space and may include green space, cultivation, nature preserve or other uses consistent with buffer zones. The buffer zone shall meet or exceed the landscape standards as defined by the City/Parish Unified Development Code (UDC). This buffer is also an easy distance to visualize since it is the width of a nominal local city block, and is also the length of a football field.

Additionally, the city blocks numbered 1, 2, and 3 on the maps are those specific properties included in the buffer zone. All of those properties identified in **Attachment 2** not already owned by the City/Parish would be included in the proposed public project. Note that the City/Parish, through previous buy-out attempts, owns all properties that are hashed as shown on **Attachment 2**. The numbered city blocks on the maps correspond directly to city blocks 1, 2, and 3 in Table 1 depicted in **Attachment 2** which list the specific property details proposed in the public project.

The criteria to be used to value the properties and relocate the residents will be consistent with other public projects executed by the City/Parish and allowed by Louisiana law.

As shown on the maps, this proposed public project focuses on the acquisition of property (primarily residential) immediately East of the WWTP. Note that there may be some additional property that may need to be acquired in the future to provide the additional buffer shown on the maps around all sides of the NWWTP.

Odor Control Study Overview and Boundary Justification

As previously mentioned, an *Odor Study* was done as a part of the City/Parish's *Wastewater Master Plan* voluntarily undertaken by the City/Parish in 2007 and completed in 2008. The study evaluated odor sources and provided odor mitigation recommendations for all three wastewater treatment plant facilities that are owned and operated by the City/Parish. It consisted of an initial odor source characterization evaluation based on field sampling, dispersion modeling (Industrial Source Complex Terrain Model Version 3 – EPA approved) to identify high-priority odor sources, and a technology evaluation with recommendations for corrective measures for those high-priority sources at each WWTP facility.

The study projected odor risk by plotting the number of times the offsite odor threshold target (10 D/T) was exceeded with all sources acting together at each facility. The City/Parish had a goal to reduce odors to an acceptable level (target below 10 D/T) 99.9% of the time (note that since there aren't any permitted requirements, or local or state regulations that support a target goal, the City/Parish set this self-imposed goal in order to reduce the risk of odor impacts). The resulting model output indicated locations, if any, where the offsite impact targets were not met.

- D/T Definition = Dilutions to threshold limit, is an estimate of the number of times an odor is diluted until ½ of a trained odor panel can't smell it.

Basically, the figures in **Attachment 3** were used to help identify the "buffer" line proposed in the public project on maps shown in **Attachments 1 and 2**. The top figure depicts the odor model results generated in 2007/2008, before any odor control improvements were made at the NWWTP facility. As you can see from that top figure, there were 450 hourly odor exceedances of 10 D/T predicted to occur from the model in the area immediately surrounding the NWWTP, which corresponds to approximately 95% target.

Before Corrective Measures Calculation

1 year = 8,760 hours
450 hours/8,760 = 5%

100% - 5% = 95% target, therefore 99.9% goal not met

The bottom figure shows the modeled odor impacts (i.e. reduced odor frequency) once all of the odor control corrective measures/recommendations are implemented at the NWWTP. There are just 9 hourly odor exceedances of 10 D/T predicted to occur in the area surrounding the NWWTP which corresponds to over 99.9% exceedance and meets or exceeds the City/Parish's goal. What this means is that once all of the odor improvements are made at the NWWTP, there should be a greatly reduced odor impact frequency in the area and a much lower risk of significant odor events that have occurred in past years.

After Corrective Measures Calculation

1 year = 8,760 hours

9 hours/8,760 = 0.1%

100% - 0.1% = 99.9% target, therefore 99.9% goal achieved

The City/Parish conservatively assumed that the "buffer" zone would encompass the 3 city blocks in the bottom figure of **Attachment 3** where there are just 9 hourly odor exceedances of 10 D/T shown once all plant odor control improvements are made.

NWWTP Historical, On-going, and Proposed Odor Improvements

The City/Parish is committed to improving odors that affect the neighborhood near the NWWTP and has spent, and plans to spend, millions of dollars to achieve the odor control target identified in the odor studies. Additionally, the City/Parish has spent significant time, money, and effort on attempting to buy-out the residents surrounding the NWWTP dating back since 1996.

The bulleted list below highlights the significant investment that the City/Parish has made, and plans to make, at the NWWTP regarding odor control improvements in the neighborhood surrounding the NWWTP. These efforts at the NWWTP go above and beyond anything that has been required by Louisiana and EPA Region 6. A quick timeline shows the odor improvements implemented, underway, and planned at the NWWTP:

- **1996** – *Mitchell Litigation* (case including residents surrounding the NWWTP) began. The City/Parish has made repeated attempts throughout this case to purchase many of the properties surrounding the NWWTP, see **Attachment 5** for more details. As you can see from the map in **Attachment 2**, several properties were able to be purchased in this manner. However, not all property owners agreed to the settlement offers and have continued to appeal the case to the highest levels of Louisiana State Court. This case has been on-going for over 14 years including appeals, etc. The ruling of this case was made in the City/Parish's favor and was made final in 2010.
- **2007/2008** – The City/Parish voluntarily developed a *Wastewater Master Plan* which consisted of an assessment of the North, South, and Central wastewater treatment plants and collection systems in order to plan for future flows/loads and future regulatory requirements through the year 2032. One portion of this included a *Wastewater Treatment Plant Odor Control Analysis (Odor Study)* which resulted in recommended odor improvements for the wastewater treatment plants that were intended to be included as a part of the scope of the master plan projects implemented once the Consent Decree required work was completed. The *Wastewater Master Plan* identified over identified over \$37 million dollars worth of improvements to be implemented at the North WWTP at the time of publication. Since that time, additional odor control items have been identified for improvement. Therefore, the estimated total cost (design and construction) of the North WWTP Master Plan Improvements project is currently estimated to be approximately \$55.1

million dollars. This project is currently scheduled in 2015 and beyond (unless the extension request is granted as submitted). The project includes the following:

- Comprehensive odor control - \$24.1 million
 - New raw sewage pumping station - \$2.4 million
 - New preliminary treatment - \$7.1 million
 - Plant SCADA system - \$2.5 million
 - Replace gaseous chlorine with sodium hypochlorite - \$2.8 million
 - General plant rehabilitation (electrical, mechanical, structural) - \$8.4 million
 - Standby electrical generators - \$5.9 million
 - Sludge digestion rehabilitation with gas utilization - \$1.9 million
- **2007 –NWWTP Odor Control Facility Project** began. This project was designed to minimize odors from the preliminary treatment process *and* raw sewage pump station. The design included some recommendations which were made as a result of the *Odor Study* completed around the same time. The project included two biotowers at the NWWTP and chemical feed systems at 5 remote pump stations in the NWWTP basin. The City/Parish spent over \$3.5 million dollars on the design and construction of this project. The chemical feed systems were completed in November 2009, and the biotowers were completed in November 2010.
 - **April 2011 to Present** – The City/Parish is implementing the *NWWTP Interim Rehabilitation and Odor Control Project*, which is estimated to cost an additional \$2.3 million dollars, and is scheduled to be completed by 4th quarter 2011. The project includes many improvements to the operation of the NWWTP, and specific odor improvements/refinements related to the following:
 - Contracted with WWTP O&M experts to help refine standard operating procedures (SOPs), improve process operation of the plant (including new biotower odor control units), in addition to training staff on the updated procedures, etc. – work still in progress
 - Rehab odor control for solids handling system
 - Identified ways to maximize grease, grit, and solids removal
 - Implement an improved trickling filter flushing program to reduce/minimize filter flies
 - Develop and implement major plant maintenance plan

Already, as a result of this project the new biotowers have been proven to be operating effectively in the removal of H₂S (Hydrogen Sulfide) gases. These units have consistently removed approximately 98% of the odorous air through biological interactions during the past three (3) months.

- **January 2012 - December 2016** – Implement *NWWTP Master Plan Improvements* project, (contingent upon approval of the 3 year extension request).
 - Comprehensive odor control - \$24.1 million (beyond recommendations identified in the *Odor Study*)

The City/Parish has put together a number of attachments listed below, which are also included with this submittal for the benefit of the EPA and all parties in order to help ensure a timely implementation of the proposal linked to the consent decree extension as proposed.

September 9, 2011

The City/Parish believes this public project can be formalized, implemented, and completed in approximately 18 months, starting from the date of the approval of the Consent Decree extension.

The City/Parish does not have funds to initiate this public project, and can't reiterate enough the importance of getting approval of the extension and updated compliance schedules. The extension allows the City/Parish to reallocate resource and move this project forward. We need to resolve these issues at the soonest possible date, in order for the schedule adjustments to have the desired benefits.

Summary of Attachments

1 – North Plant Project Vicinity Map: Proposed Public Project

2 – Proposed Public Project Map and Table 1 (list of the Lot ID details corresponding to the maps)

3 – Comparison of NWWTP Odor Impacts Before and After the NWWTP Corrective Measures

4 – State of Louisiana Letter Approving Buffer Zone Declaration Surrounding the North WWTP

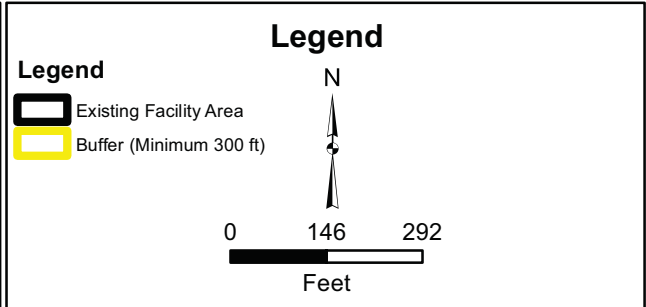
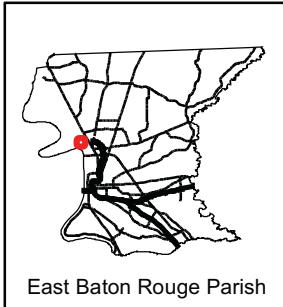
5 - History of NWWTP Residential Buy-Out and Lawsuit Timeline

Sincerely,

s/William B. Daniel, IV
Acting Director of Public Works

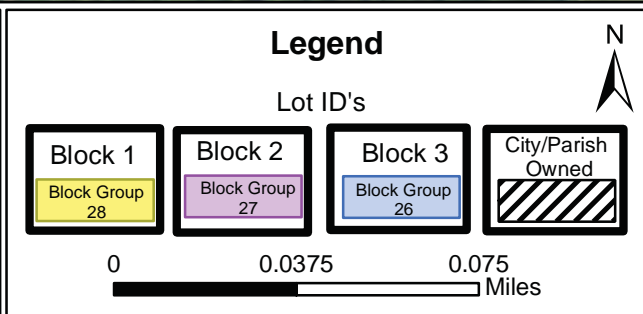
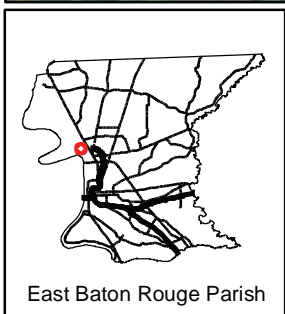
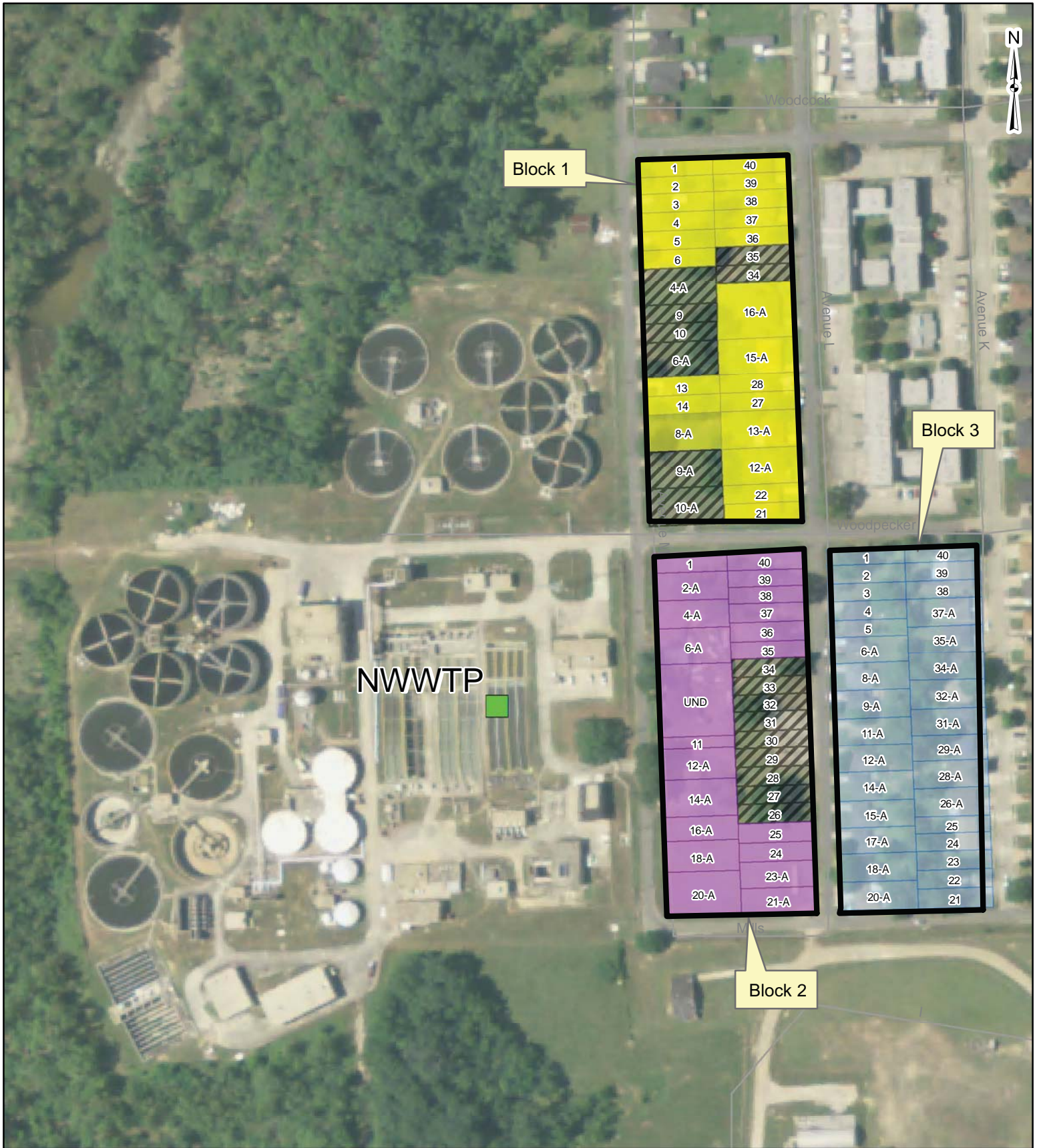
Cc: Honorable Melvin L. "Kip" Holden, Mayor-President
Mr. John Carpenter, Chief Administrative Officer
Ms. Suzanne Murray, US EPA (6RC)
Mr. Mary Roper, Parish Attorney
Mr. Bob Abbott, Parish Attorney's Office
Mr. Bryan Harmon, DPW
Mr. Jim Ferguson, DPW
Mr. Mark LeBlanc, DPW
Mr. David Guillory, DPW
Mr. Michael Ellis, CH2M HILL
Mr. Jim Hawley, CH2M HILL
Mr. Gordon Garner, CH2M HILL
Ms. Karen Johnson, CH2M HILL

Attachment 1 North Plant Project Vicinity Map: Proposed Public Project



**Attachment 1
North Plant Project
Vicinity Map**

Attachment 2 Proposed Public Project Map & Table 1



**Attachment 2
Proposed
NWWTP Project**

BATON ROUGE **SSO**
Program

Attachment 2 – Table 1

This attachment lists the specific details of the properties included in the proposed NWWTP public project. Additionally, the city blocks numbered 1, 2, and 3 on the maps are listed in the proposed buy-out plan below. The table lists the following information about the property: the randomly selected buy-out number (total properties included = 47), property address, the lot number, and the owner’s name. Note that there are several properties already owned by the City/Parish located within each city block that are not listed in the tables below.

Table 1 Blocks 1, 2, and 3 Proposed Public Project Buy-Out Plan

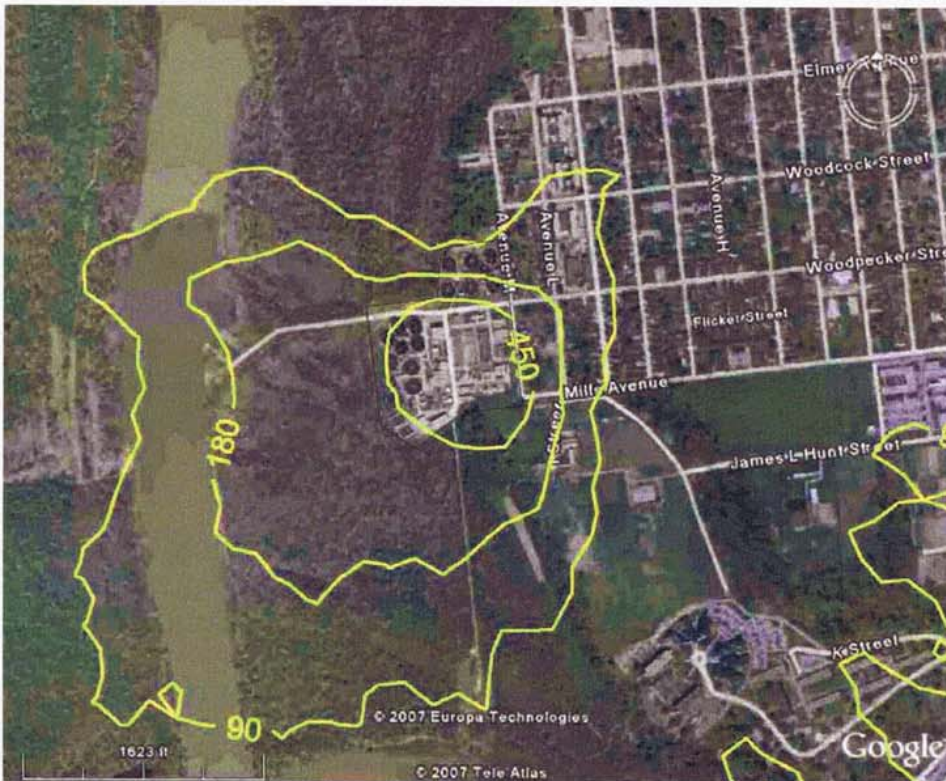
Buy-Out Number (Random)	Address (GIS)	Map Lot Number (GIS)	Owner’s Name (GIS)
Block 1			
1	10092 Avenue M	1 & 2	Willie Dunn, et al
2	10074 Avenue M	3 & 4	Juanita Bush Burton
3	10046 Avenue M	5 & 6	Leo Banks, et al
4	9958 Avenue M	13 & 14	Mamie Lee Mitchell
5	10097 Avenue M	39 & 40	Jesse Ernest White
6	10073 Avenue L	37 & 38	Martha Hills Scott
7	V Avenue L	36	Timothy Carter
8	10015 Avenue L	16-A	Frances L. Hollins
9	9987 Avenue L	15-A	Wollean Brock Francis
10	9967 Avenue L	27 & 28	Chase Home Finance, LLC
11	9949 Avenue L	13-A	Johnnie Y. Johnson
12	9935 Avenue L	12-A	Lizzie Lee Clark
13	9925 Avenue L	21 & 22	Joel A. Gordon, Sr.
Block 2			
14	V Avenue L	1	Jerry L Johnson
15	V Avenue M	2-A, 4-A, & 6-A	Josephine Walker, et al
16	9828 Avenue M	11 & UND	Tom Ed Bell, Jr.
17	9760 Avenue M	12-A & 14-A	Mary H. Smith, et al
18	9728 Avenue M	16-A & 18-A	Curtis J. & Winnie P. Womack
19	V Avenue M	20-A	Nathan E. Wilson
20	V Avenue L	36-40	Hazel Fontenot Buggs
21	V Avenue L	35	Wyema Sue Pennington Lee
22	V Avenue L	21-A, 23-A, 24, & 25	Edward C. Buggs, et al

Table 1 Blocks 1, 2, and 3 Proposed Public Project Buy-Out Plan

Buy-Out Number (Random)	Address (GIS)	Map Lot Number (GIS)	Owner's Name (GIS)
Block 3			
23	V Avenue L	1	Mandy Washington
24	V Avenue L	2 & 3	James Newman Williams, et al
25	9862 Avenue L	4 & 5	Dave Moore, Jr., et al
26	9842 Avenue L	6-A	Shirley Johnson Shropshire
27	9824 Avenue L	8-A	Viancia Phillips Chattman
28	9812 Avenue L	9-A	Rosa Mary Powell
29	V Avenue L	11-A	Ory Alvin Jackson, et al
30	9764 Avenue L	12-A	Joyce Augustus Ross
31	9758 Avenue L	14-A	Eligah Brady, et al
32	9750 Avenue L	15-A	Audrey Collins
33	9746 Avenue L	17-A	Irma Lee Collins
34	9738 Avenue L	18-A	Lionel R. Parker, et al
35	9726 Avenue L	20-A	Vallery Thierry, Jr. et al
36	9885 Avenue K	40	Sidney Hall
37	9885 Avenue K	38 & 39	Clarence Williams, Sr., et al
38	9865 Avenue K	37-A	Emile Washington
39	9845 Avenue K	35-A	Richard Fisher
40	9835 Avenue K	34-A	Daniel Scott, et al
41	98215 Avenue K	32-A	Willie Woods, Jr., et al
42	9805 Avenue K	31-A	Jackie Knighten Rogers
43	9781 Avenue K	29-A	Anthony Antione Collins
44	9771 Avenue K	28-A	John Willis, Sr., et al
45	9751 Avenue K	26-A	Jimmie Johnson, et al
46	9741 Avenue K	23-25	Richard L. Williams, et al
47	9711 Avenue K	21 & 22	Wilson Jones, et al
*Note that ownership names and addresses will be verified during the formal appraisal process.			

**Attachment 3 Comparison of NWWTP Odor Impacts
Before and After the NWWTP Corrective Measures
(Odor Study 2007)**

FIGURE 22
Comparison of North WWTP Odor Imports Before and After Corrective Measures (Number of 10 D/T Odor Exceedances)
Existing baseline condition using summary 2007 odor emission data



Reduced odor impact frequency



Attachment 4 State of Louisiana Letter Approving Buffer Zone Declaration Surrounding the NWWTP



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005

AUG 10 2011
OPINION 11-0117

71-1-B	MUNICIPALITIES – Home Rule Charter
90-A-1	PUBLIC FUNDS & CONTRACTS
90-A-2	PUBLIC FUNDS – Loan, Pledge or Grants
92	PUBLIC WORKS – Sewerage Systems
167-B	UTILITIES – Public

Mary E. Roper, Esq.
Parish Attorney
City of Baton Rouge
Parish of East Baton Rouge
222 St. Louis Street
Baton Rouge, LA 70821

La. Const. Arts. I § 4, VI § 23, VII § 14
La. R.S. 33:1329, 33:1236(20), 33:3981, 33:4712.10
La. Atty. Gen Op. Nos. 90-0289, 06-0011, 07-0050A, 09-0146, 09-0251,
09-0259, 09-0271, 09-0293, 10-0171.

La. Const. Arts. I § 4, and VI § 23 require a declaration of a public purpose prior to a public entity acquiring immovable property next to a public sewer treatment plant to create a "buffer zone". La. Const. Art. VII § 14 requires that a public entity pay fair market value for when purchasing immovable property to avoid gratuitously alienating public funds.

Dear Ms. Roper,

You have requested an opinion of this Office as to whether the Metropolitan Council of the City of Baton Rouge and the Parish of East Baton Rouge (collectively referred to herein as "EBR") would be in violation of the provisions of Articles I, VI, or VII of the Louisiana Constitution of 1974 if it elects to declare that property immediately adjacent to a public sewer treatment plant as needed to create a "buffer zone."¹ After declaring this area as a buffer zone, EBR would then voluntarily purchase the private property surrounding the plant to establish the actual separation of private landowners from the sewer treatment plant, thus creating the "buffer zone".

Factual History

EBR operates a waste treatment plant in north Baton Rouge, which began operating in 1960 and has experienced several expansions. The most recent expansion was initiated in 1997 and completed in 1998. As your request explains, this sewer treatment plant was formerly at the heart of a lawsuit filed (in 1996) by landowners surrounding the plant seeking damages for inconvenience, mental suffering, and property damages, allegedly caused by the operation of the plant.²

¹ In subsequent communications with this Office, you noted that you were specifically concerned with La. Const. Art. I § 4, La. Const. Art. VI § 23, and La. Const. Art. VII § 14.

² *Mitchell, et al. v. East Baton Rouge Parish, et. al.*, 09-1076 (La. App. 1 Cir. 7/16/10) 2010 WL 2889572, overruling *Mitchell, et al. v. East Baton Rouge Parish, et. al.*, No. 432,169 Div. M, Section 26, 19th Judicial District Court, State of Louisiana.

In the case noted above, the First Circuit Court of Appeal overturned much of the trial court's decision to award damages to the various Plaintiffs.³ The trial court had held that there were valid claims for damages by several of the Plaintiffs, and also dismissed other Plaintiffs' claims because of their failure to appear in Court, failure to be close enough to the sewerage plant to establish damage, and failure to establish ownership to the property at issue in the case.⁴ Subsequently, the First Circuit Court of Appeal, in the unpublished opinion, overturned a great majority the trial court's decision, reversing much of the awarded stigma, discomfort, and inconvenience damages and further holding that only one of the Plaintiffs had proven actual damages (but in an amount far less than that found at the trial court).⁵ Because the First Circuit decision was not overturned by the Supreme Court, it fundamentally established that the Plaintiffs' *claims for damages* of inconvenience, mental suffering, and property damages, allegedly caused by the operation of the plant were not valid claims.

You note that "[r]ecently, a number of the Plaintiffs from the lawsuit described above have approached the Metro Council complaining of the operation of the plant, the same complaints made in the courts and requesting that the Metro Council authorize the City/Parish to purchase the property adjacent to the plant, allowing those residents to move." While the factual history above sets the background for your current opinion request, this judicial decision (denying the Plaintiffs allegations of damages caused by the sewerage plant), does not effect EBR's authority to make decisions with regard to creating a buffer zone around the sewerage plant. Therefore, this decision must be considered independently under each of the Constitutional provisions at issue.

La. Const. Art. I § 4

Article I § 4 of the Louisiana Constitution sets forth the general premise that "[e]very person has the right to acquire, own, control, use, enjoy, protect, and dispose of private property."⁶ While everyone has the right to acquire, own, control, use, enjoy, protect, and dispose of his/her private property, the Constitution goes on to state that "[t]his right is subject to reasonable statutory restrictions and the reasonable exercise of the police power."⁷

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ La. Const. Art. I § 4 (A).

⁷ *Id.*

You specifically ask whether declaring a buffer zone and acquiring the property surrounding the sewer treatment plant is a violation of La. Const. Art. I § 4(B)(1). This provision states that:

[p]roperty shall not be taken or damaged by the state or its political subdivisions except for public purposes and with just compensation paid to the owner or into court for his benefit.

La. Const. Art. I § 4(B)(2) further states, in pertinent part, that, under La. Const. Art. I § 4(B)(1), "public purpose" shall be limited to the following:

(b) Continuous public ownership of property dedicated to one or more of the following objectives and uses:

(v) Public utilities for the benefit of the public generally.

(c) The removal of a threat to public health or safety caused by the existing use or disuse of the property.

Under La. Const. Art. I § 4(B)(1), if the property is acquired in a method other than gift or grant (purchase, condemnation proceeding, or otherwise), for a public purpose, then just compensation must be paid to the owner. Pursuant to Subsection (B)(2), subsections (b) and (c), it appears that EBR will not be in violation of La. Const. Art. I § 4 if this "buffer zone" is created for one of the public purposes listed therein.

Therefore, if the property to establish the "buffer zone" is purchased from the current owners, it must be purchased for a public purpose and just compensation must be paid in exchange for the property.

La. Const. Art. VI § 23

La. Const. Art. VI § 23 states that:

[s]ubject to and not inconsistent with this constitution and subject to restrictions provided by general law, political subdivisions may acquire property for any public purpose by purchase, donation, expropriation, exchange, or otherwise.

La. R.S 33:1329 provides the general law by which political subdivisions may acquire property. It states:

[a]ny parish or municipality or commission appointed under this part may acquire by gift, grant, purchase, or condemnation proceedings or otherwise, all property, including rights-of-way, necessary to effectuate arrangements concluded under the terms of this Part. Where condemnation is necessary, the parish or municipality shall follow the procedures which, under existing law, govern its acquisition of property by condemnation.

In addition to this authority of the parish to acquire property, La. R.S. 33:1236 states, in pertinent part, that:

[t]he police juries and other parish governing authorities shall have the following powers:

(20) To pass all ordinances and regulations which they deem necessary to govern and regulate the laying out of subdivisions, resubdivisions, roads, streets, alleys, ways, subways, viaducts, bridges, parks, parkways, boulevards, playgrounds, community centers and other public buildings, grounds, or improvements, and the location, re-location, widening, removal, vacation or extension or other improvements of such existing public works; the platting of land into lots, roads, streets, and other dedicated or private ways; the location, re-location, development, routing, and re-routing of transit and transportation lines, which in the opinion of the police jury are in the interest of the systematic planning of the parish.

Considering La. R.S 33:1329 and La. R.S. 33:1236(20) in tandem, EBR has the authority to acquire immovable property, the authority to use its property as a park, and the authority to expand or improve existing public works. These powers would consequently include purchasing property for a public purpose and declaring that area as a buffer zone, public park, and/or improvement to the current sewer plant.

La. R.S. 33:3981 also provides the governing authorities of any sewerage districts with the authority "to establish, acquire, construct, improve, extend and maintain within said district a sewerage system or systems, including such sewerage disposal facilities as may be required." Establishing a "buffer zone" around the sewer plant at issue could easily be considered an improvement of the current sewer plant.

It is the opinion of this Office that there will be no violation of La. Const. Art. VI § 23 if EBR decides to acquire property surrounding the sewer plant at issue for the purpose of

creating a buffer zone around the plant, provided it deems such a purchase to be public purpose. Since a determination of this sort is purely policy and factually based, this Office can only render an opinion on the matter using the facts with which we are supplied. Filing a declaratory judgment action in a court of competent jurisdiction would likely be the most efficient way of achieving a proper determination as to whether creation of such a buffer zone serves a valid public purpose. However, this Office has noted in prior opinions that "the exercise of a [local government's] functions 'is subject to much discretion and has traditionally been judicially granted much latitude.'"⁸ The Second Circuit Court of Appeal has additionally held that "[g]enerally an abuse of discretion results from a conclusion reached capriciously or in an arbitrary manner."⁹ Therefore, as long as EBR's decision is not arbitrary or capricious, it will most likely be upheld by the judicial system.

La. Const. Art. VII § 14

La. Const. Art. VII, § 14 sets forth the general prohibition against public entities gratuitously alienating public funds or property. It provides, in pertinent part, the following:

- (A) Prohibited Uses. Except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private ...

Article VII, § 14 "is violated when public funds or property are gratuitously alienated."¹⁰ It has been the consistent opinion of this Office that in order for an expenditure of public funds to be permissible under Louisiana Constitution Article VII, § 14(A), the public entity must have the legal authority to make the expenditure and must show: (i) a public purpose for the expenditure or transfer that comports with the governmental purpose for which the public entity has legal authority to pursue; (ii) that the expenditure or transfer, taken as a whole, does not appear to be gratuitous; and (iii) that the public entity has a demonstrable, objective, and reasonable expectation of receiving at least equivalent value in exchange for the expenditure or transfer of public funds.¹¹

⁸ La. Atty. Gen. Op. No. 06-0011, citing La. Atty. Gen. Op. No. 90-0289 and *Torrance v. Caddo Parish Police Jury*, 119 So.2d 617 (La. App. 2 Cir. 1960).

⁹ *Torrance v. Caddo Parish Police Jury*, 119 So.2d 617, 619 (La. App. 2 Cir. 1960).

¹⁰ *Board of Directors of the Industrial Development Board of the City of Gonzales, Louisiana, Inc. v. All Taxpayers, Property Owners, Citizens of the City of Gonzales, et al.*, 2005-2298 (La. 9/6/06), 938 So.2d 11, 20.

¹¹ See La. Atty. Gen. Op. Nos. 10-0171, 09-0271, 09-0259, 09-0251, 09-0146 and 07-0050A.

In considering element (i) above, the objectives of EBR in the current situation, the public purpose, under the facts set forth in your opinion request, would be rooted in improving the facility of the sewer plant (a public utility for the benefit of the public generally) and also in providing public health and safety benefits. Additionally, considering the history of the legal issues surrounding this particular sewer plant, another benefit of purchasing the property and creating this buffer zone will be prevent future lawsuits by surrounding landowners that may hinder or impede the operation of the sewer plant at this location, which would also benefit the general public.

Because La. R.S 33:1329,¹² La. R.S. 33:1236(20)¹³, and La. R.S. 33:3981¹⁴ provide EBR with the legal authority to acquire property for the purposes of improving the sewerage plant, and in considering this first element, it is our opinion that EBR can expend public funds for acquiring property to create a buffer zone around the sewer plant, provided EBR determines this to be a public purpose.

In considering elements (ii) and (iii) above, La. R.S. 33:4712.10 states, in pertinent part, that:

[n]otwithstanding any other provision of law to the contrary, no political subdivision shall purchase immovable property with a value greater than three thousand dollars unless prior to such purchase the property has been appraised by a qualified appraiser.

Therefore, as long as EBR pays fair market value for any immovable property purchased, these elements should easily be satisfied. Fair market value means the price at which property would change hands between a willing buyer and a willing seller when neither party is under any compulsion to buy or sell, and both parties have a reasonable knowledge of relevant facts.¹⁵ This Office has consistently held that “[t]he purchase of immovable property for a price that exceeds the appraised value of the property would be tantamount to a donation of public funds; and therefore, a violation of Article VII, § 14(A) of the 1974 Constitution.¹⁶

¹² Providing the authority to acquire property.

¹³ Providing the authority to regulate the laying out of parks, other public buildings, grounds, or improvements, and the location, re-location, widening, removal, vacation or extension or other improvements of such existing public works.

¹⁴ Providing the authority to establish, acquire, construct, improve, extend and maintain sewer systems or sewerage disposal facilities.

¹⁵ La. Atty. Gen. Op. No. 09-0293. citing La. Atty. Gen. Op. Nos. 08-0226, 06-0236.

¹⁶ *Id.*, citing La. Atty. Gen. Op. Nos. 08-0226, 99-251, 89-581.

CONCLUSION

Declaring that property immediately adjacent to a public sewer treatment plant is needed to create a "buffer zone," and the subsequent acquisition of this property, would not be in violation of the provisions of La. Const. Art. I § 4, La. Const. Art. VI § 23, or La. Const. Art. VII § 14, provided the Metropolitan Council of the City and Parish of Baton Rouge finds that there is a public purpose associated with such an action.

We trust this adequately responds to your request. If you should have any questions about the response contained herein, please feel free to contact our office.

Yours very truly,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

BY:



DANIEL D. HENRY JR.
Assistant Attorney General

JDC/DDH/jv

Attachment 5 History of NWWTP Residential Buy-Out and Lawsuit Timeline

Mitchell Litigation

The City/Parish recently concluded a lawsuit brought by residents living in the vicinity of the NWWTP. The suit was filed in 1996 and tried over an extended period of time that included referral of the matter to a special master in an effort to reach a settlement as well as several appeals. The matter became final in 2010 when the Louisiana Supreme Court declined to review an appellate court's determination that the plaintiffs were not entitled to recover personal injury damages.

The City/Parish made repeated attempts to settle the suit with offers to buyout area residents. The residents rejected these offers because they believed that they would be able to recover large personal injury awards through their civil suit. At numerous stages throughout the lengthy litigation, the City/Parish instructed its counsel to attempt to settle the lawsuit by offering to buy the homes located closest to the NWWTP and paying a modest amount of inconvenience damages to the plaintiffs. The plaintiffs rejected these offers because they believed that they would be able to force the City/Parish to pay them large personal injury awards in addition to damages for decreased property values. The Louisiana First Circuit Court of Appeal found that the inconvenience allegedly suffered by the plaintiffs was not compensable as a matter of law. The Louisiana Supreme Court rejected the plaintiffs' application to review the appellate court's decision, thus concluding the litigation. Following the Louisiana Supreme Court's decision, which means that the residents have no right to recover personal injury or property damages, the residents/former plaintiffs have expressed a willingness to reconsider a buyout proposal from the City/Parish.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

LOUISIANA ENVIRONMENTAL ACTION NETWORK,)	
)	
<i>Plaintiff,</i>)	3:10-cv-00187-BAJ-SCR
)	
v.)	Judge: Brian A. Jackson
)	
CITY OF BATON ROUGE and PARISH OF EAST BATON ROUGE,)	Magistrate Judge: Stephen C. Riedlinger
)	
)	
<i>Defendants.</i>)	

**28 U.S.C. § 1746 DECLARATION OF GREG MITCHELL IN SUPPORT OF
PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**

I, Greg Mitchell, pursuant to 28 U.S.C. §1746, declare as follows:

1. I am of the age of majority and I am competent to make this declaration.
2. I make this declaration based on my personal knowledge and observations.
3. I have been a resident in the University Place Subdivision neighborhood in Baton Rouge, Louisiana for 42 years, since I was born in 1968. I live at 9958 Avenue M, directly across the street from the North Baton Rouge Sewerage Treatment Plant, less then 0.6 miles from the Mississippi River, and less than 0.8 miles from the point where the North Baton Rouge Treatment Plant discharges its wastewater into the river.
4. I have been a member of the Concerned Citizens of University Place Subdivision, an organization under the umbrella organization of the Louisiana Environmental Action Network (“LEAN”) for over sixteen years, since the founding of the organization.

5. I am the President and Spokesperson of the Concerned Citizens of University Place Subdivision. I have been the organization's President and Spokesperson since the organization's founding in or before 1994. In my capacity as the Concerned Citizens of University Place Subdivision's President and Spokesperson, I am familiar with the organization's policies, its organizational structure and practices.

6. The Concerned Citizens of University Place Subdivision is an organization that was formed in 1994 by the residents of University Place Subdivision community. It now has more than 100 members. The Concerned Citizens of University Place Subdivision is committed to combating environmental problems, preserving the community's natural resources, protecting its members and all residents of the community from pollution, and fighting for justice and equality for all community citizens. The Concerned Citizens of University Place Subdivision is actively involved in developing positive solutions to the problems facing the community, especially those problems arising from the City of Baton Rouge and East Baton Rouge Parish's illegal discharges of pollutants into the Mississippi River at the North Baton Rouge Sewerage Treatment Plant.

7. The Concerned Citizens of University Place Subdivision is founded, in part, on the principle that protection of a community's natural resources depends upon the daily vigilance of its citizens. The Concerned Citizens of University Place Subdivision believes that everyone has the right to use the Mississippi River and no one has the right to diminish its use or enjoyment by others. The Concerned Citizens of University Place Subdivision has a specific mission to preserve and protect the Mississippi River for the benefit of its members and its community. The Concerned Citizens of University Place Subdivision believes that the City and Parish's routine violations of its water discharge permit at the North Baton Rouge Sewerage Treatment Plant threatens the health of its members and the health of the environment where its members live.

8. The public health, ecological, recreational, aesthetic, and other interests that the Concerned Citizens of University Place Subdivision seeks to protect through this lawsuit by enforcing the City and Parish's Clean Water Act violations are directly related to the Concerned Citizens of University Place Subdivision's overall goal of protecting the environment of University Place Subdivision, and the health of all citizens affected by the City and Parish's illegal discharges at the North Baton Rouge Sewerage Treatment Plant.

9. Furthermore, in my personal capacity, I understand that the Clean Water Act prohibits discharges of pollutants into waters of the United States, except pursuant to limits set forth by a permit issued pursuant to the Act.. I am also aware that the City and the Parish have been violating limits for biological oxygen demand ("BOD") and total suspended solids ("TSS") in their permit issued under the Clean Water Act since at least 2007. This has resulted in the illegal discharge of pollutants into the Mississippi River right near my house.

10. I understand that increased levels of BOD will frequently lead to unpleasant odors. I am aware that these odors are a natural byproduct of low oxygen levels in water, which is a result of excess BOD levels in water. I understand that the City and Parish's permit violations of BOD levels produce much of the bad odors in the community.

11. For at least twenty-five years, I used the Mississippi River downstream of the North Baton Rouge Treatment Plant's discharge point frequently for recreational and fishing purposes. However, I no longer recreate or fish in the Mississippi River downstream of the plant due to the City and Parish's permit violations and illegal discharges into the Mississippi River.

12. I am concerned about the pollution in the Mississippi River, especially the illegal discharges from the plant. The plant's illegal discharges scare me away from using the river. I

fear the illegal pollutants discharged from the plant will contaminate any fish I could catch, making the fish no longer safe to eat.

13. I frequently enjoyed sitting and walking with family, friends, and neighbors in the open space, paths, and river environs near my home. However, I no longer enjoy doing this because of the unbearable odors that emanate from the polluted waters of the Mississippi River and from the plant. I also no longer enjoy being outside socializing in my neighborhood because of the sewer flies, chemical spray, and sewerage mist that comes from the plant.

14. My son cannot visit my home because the odors and chemicals that emanate from the plant exacerbate his asthma condition and cause him to become sick.

15. I used to enjoy sitting by myself outside my home just to relax after getting home from work. I am no longer able to enjoy sitting and relaxing outside my home due to the bad odors that come from the plant, and from the chemical odors, sewer flies, and sewerage mist that come from the plant. Instead, I now go inside my home immediately after getting home from work to avoid the odors, flies, and mist. Furthermore, I now have to spray chemical bug repellent around my doors every time I enter my house to prevent sewer flies from flooding my home. I am concerned for my health and the health of my family due to the infestation of the sewer flies in and around my home and the continuous presence of chemical bug repellent.

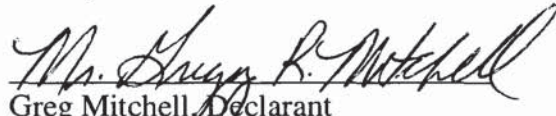
16. I am concerned about the sewerage overflows of raw human waste that are produced by the plant. Raw sewerage overflows often occur in the ditches and low-lying areas surrounding my home and the community. The pipes in my home have backed-up with human feces and raw sewerage, flooding the inside of my home. I am concerned about the short-term and long-term effects of exposure to such unsanitary conditions and the chemicals that I must use to clean my home as a result of these overflows. I am fearful of the overflows outside my house and the

health effects that may result from anyone who may come into contact with these unsanitary overflows in my community, including myself.

17. I am worried that the City and Parish's pollution of the Mississippi River will affect my health and the health of my community. The City and Parish's discharges of pollutants into the river in excess of permit limits injure me and my way of life.

I declare, under penalty of perjury, that the foregoing is true and correct.

This 12th day of November 2010.

A handwritten signature in cursive script that reads "Mr. Greg R. Mitchell". The signature is written in black ink and is positioned above the printed name of the declarant.

Greg Mitchell, Declarant
Member, LEAN
9958 Avenue M
Baton Rouge, LA 70807

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

LOUISIANA ENVIRONMENTAL)	Civil Action No. 10-cv-00187-JVP-SCR
ACTION NETWORK,)	
)	Judge: Brian A. Jackson
<i>Plaintiff,</i>)	Magistrate: Judge: Stephen C. Riedlinger
)	
v.)	
)	
CITY OF BATON ROUGE and)	
PARISH OF EAST BATON ROUGE)	
)	
<i>Defendants.</i>)	

**28 U.S.C. § 1746 DECLARATION OF PAUL ORR IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

I, Paul Orr, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am of the age of majority and I am competent to make this declaration.
2. I make this declaration based on my personal knowledge and observations.
3. My address is P.O. Box 66323, Baton Rouge, Louisiana 70896.
4. I am a member and employee of the Louisiana Environmental Action Network ("LEAN").
5. Furthermore, I am the Lower Mississippi Riverkeeper, a position I have held for seven years. In this capacity, I am part of the Waterkeeper Alliance, a grassroots advocacy organization dedicated to ensuring water quality and protecting the integrity of waterways around the world. Locally, I strive to raise awareness of the natural and cultural importance of the Mississippi River. Part of my work as Lower Mississippi Riverkeeper requires that I

perform regular surveillance of the Mississippi River and the lower parts of the Mississippi River Basin by means of water and aerial patrols.

6. One of my most important jobs as Lower Mississippi Riverkeeper is ensuring that holders of Louisiana Pollution Discharge Elimination System (LPDES) permits do not routinely exceed their discharge limits and thereby endanger the quality of the environment and the health of downstream citizens.

7. I understand that the Clean Water Act (“Act”) prohibits the discharge of pollutants into waters of the United States, except pursuant to limits set forth by a permit issued pursuant to the Act. I am also aware that the City of Baton Rouge (“City”) and the Parish of East Baton Rouge (“Parish”) have been violating the limits set forth in their permits for biological oxygen demand (“BOD”) and total suspended solids (“TSS”) since at least 2007. The illegal discharges at the City and Parish’s North, Central, and South wastewater treatment plants impair my use and enjoyment of the Mississippi River by failing to comply with their permit limits.

8. I understand increased levels of BOD will frequently lead to unpleasant odors. I am aware that these odors are a natural byproduct of low oxygen levels in water, which is a result of excess BOD levels in water. I understand that the City and Parish’s permit violations of BOD at the North, Central, and South wastewater treatment plants produce bad odors in the neighborhoods near the plants.

9. I have used the Mississippi River for educational purposes. I have taken groups of students out on the Mississippi River to see its condition and the effect pollutants have on it.

In addition, last fall I did an expedition on the river, boating from St. Francisville, Louisiana down to the mouth of the river at the Gulf of Mexico.

10. When I boat on the Mississippi River, I use either a rowboat or a small motorboat. Both of these vessels sit close to the water and therefore water frequently splashes up from the river into my eyes, mouth, and onto my skin. I am concerned that if I come into contact with polluted Mississippi River water I will get sick or my skin will become irritated.

11. Because I am concerned about adverse health effects from polluted Mississippi River water that splashes on me while I boat, I do not boat on the river as often as I would like. I also worry about taking other people out on the river for educational purposes because I worry that polluted water will splash on them and make them sick, or will irritate their skin. Therefore, I do not take people out on the river as often as I would like.

12. I worry especially about boating on the Mississippi River near the North, Central, and South wastewater treatment plant outfalls. I worry that the illegal discharges from these plants adds to the pollution in the Mississippi River that can cause adverse health problems for me and the passengers in my boat if water splashes onto us as we travel through the river near the outfalls. I avoid boating in these areas for fear that I or my passengers could get sick or experience skin irritation if the polluted water splashes on us.

13. Furthermore, in my capacity as the Lower Mississippi Riverkeeper, I frequently fly over the Mississippi River to perform aerial observations and take aerial photographs. During my observations of the water around the wastewater discharge point of the North Wastewater Treatment Plant I began seeing dark colored discharges. As a result of these observations, I tested the waters of the Mississippi River on at least two occasions. Both tests resulted in

excessively high levels of fecal contamination, with one test result for Fecal Coliform coming back as “too numerous to count” (greater than 2000 colonies per 100ml).

14. I took the photographs described in detail below on Monday, August 10, 2009.

15. The first photograph (“Photograph 1”), the second photograph (“Photograph 2”), and the third photograph (“Photograph 3”) depict the wastewater discharge point of the North Wastewater Treatment Plant. Photograph 1 shows a close-up of the effluent flow from the wastewater discharge point into the Mississippi River. The dark discoloration I described in Paragraph 12 of this declaration can be seen in this photograph.

16. Photograph 2 depicts a wider view of the wastewater discharge point with the discharge pipe and access culverts visible. The dark discoloration I described in Paragraph 12 of this declaration can also be seen in this photograph.

17. Photograph 3 depicts a close-up aerial view of the wastewater discharge point. The dark discoloration I described in Paragraph 12 of this declaration can also be seen in this photograph.

I declare, under the penalty of perjury, that the foregoing is true and correct.

This 19th day of January, 2011.


Paul Orr, Lower Mississippi Riverkeeper & LEAN Member
P.O. Box 66323
Baton Rouge, LA 70896

Exhibit D

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

LOUISIANA ENVIRONMENTAL
ACTION NETWORK,

Plaintiff,

v.

CITY OF BATON ROUGE and PARISH
OF EAST BATON ROUGE,

Defendants.

)
)
) 3:10-cv-00187-BAJ-SCR
)
) Judge: Brian A. Jackson
)
) Magistrate Judge: Stephen C. Riedlinger
)
)
)
)
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)

**28 U.S.C. § 1746 DECLARATION OF WILLIE DUNN IN SUPPORT OF PLAINTIFF’S
MOTION FOR SUMMARY JUDGMENT**

I, Willie Dunn, pursuant to 28 U.S.C. §1746, declare as follows:

1. I am of the age of majority and I am competent to make this declaration.
2. I make this declaration based on my personal knowledge and observations.
3. I have been a resident in the University Place Subdivision neighborhood in Baton

Rouge, Louisiana for almost forty years. I live at 10092 Avenue M, directly across the street from the North Baton Rouge Sewerage Treatment Plant, less than 0.6 miles from the Mississippi River, and less than 0.8 miles from the point where the North Baton Rouge Treatment Plant discharges its wastewater into the river

4. I have been a member of the Concerned Citizens of University Place Subdivision, an organization under the umbrella organization of the Louisiana Environmental Action Network (“LEAN”) for over fifteen years. I work with Concerned Citizens of University Place Subdivision to prevent the environmental degradation of the community by advocating for the conservation and protection of its surrounding natural resources.

5. I understand that the Clean Water Act prohibits discharges of pollutants into waters of the United States, except pursuant to limits set forth by permits issued pursuant to the Clean Water Act. I am also aware that the City of Baton Rouge (“City”) and the Parish of East Baton Rouge (“Parish”) have been violating limits set in their permits for biological oxygen demand (“BOD”) and total suspended solids (“TSS”) since at least 2007. This has resulted in the illegal discharge of pollutants into the Mississippi River.

6. I understand that increased levels of BOD will frequently lead to unpleasant odors. I am aware that these odors are a natural byproduct of low oxygen levels in water, which is a result of excess BOD levels in water. I understand that the City and Parish’s permit violations of BOD levels produce much of the bad odors in the community.

7. The Mississippi River is an integral part of my neighborhood. I frequently used the Mississippi River downstream of the North Baton Rouge Treatment Plant’s discharge point for recreational boating and fishing purposes for at least twenty-seven years, beginning around 1973. However, I no longer use the river for recreational boating and fishing purposes because I am concerned about the pollution in the river, especially the illegal discharges from the plant just upstream of the area where I used fish and boat. I fear the unpermitted pollutants from the plant will contaminate any fish I would catch and I fear that the fish are no longer safe to eat because of this pollution. I am also concerned that the polluted Mississippi River water will be harmful to my health if I come into contact with it while boating. Thus, the City and Parish’s pollution of the Mississippi River in excess of their permits injures my recreational enjoyment of the river and threatens the ecological integrity of the river for myself, my community, and future generations, such as my children and grandchildren, ~~to~~

8. I frequently enjoyed sitting and walking with friends and neighbors in the open space, paths, and river environs near my home. However, I no longer do this because of the bad odors that come from the plant. I also stopped socializing outside in my neighborhood because of the chemical odors, sewer flies, and sewerage mist that comes from the North Baton Rouge Sewerage Treatment Plant.

9. I used to enjoy sitting by myself outside my home just to relax after getting home from work. I am no longer able to enjoy sitting and relaxing outside my home due to the bad sewerage odors that come from the plant, and from the chemical odors, sewer flies, and sewerage mist that come from the plant. Instead, I now go inside my home immediately after getting home from work to avoid the odors, flies, and mist.

10. Furthermore, I now have to spray chemical bug repellent around my doors every time I enter my house to prevent sewer flies from flooding my home. I am concerned for my health and the health of my family due to the infestation of the sewerage flies in and around my home and the continuous presence of chemical bug repellent.

11. My friends and family, ^{and} ~~including my six children~~, no longer visit me at my home because of the bad odors from the plant and other problems such as the chemical spray, sewer files, and the sewer mist that comes from the plant. My friends and children also no longer visit me because of the frequent sewerage overflows throughout my neighborhood that are caused by the plant. My friends and family worry that their children will come in contact with the sewerage that has flowed into open ditches along the streets in my neighborhood and will become sick.

I declare, under penalty of perjury, that the foregoing is true and correct.

This 26 th day of October 2010.

Willie Dunn

Willie Dunn, Declarant
Member, LEAN
10092 Avenue M
Baton Rouge, LA 70807