

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
)
)
 LEAGUE OF WOMEN VOTERS OF NEW)
 ORLEANS, et al.)
 Plaintiff-Intervenors,)
 v.)
)
 SEWERAGE AND WATER BOARD OF)
 NEW ORLEANS, and the)
 CITY OF NEW ORLEANS,)
)
)
 Defendants,)
)
)
 STATE OF LOUISIANA,)
)
)
 Defendant.)

CIVIL ACTION NO. 93-3212
 Section "S"
 Mag. 1

THIRD MODIFIED CONSENT DECREE

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LIST OF EXHIBITS - FIRST, SECOND AND THIRD MODIFIED CONSENT DECREES

1. Modified Operation and Maintenance Plan for the Fluidized Bed Incinerator (to be inserted)
2. Specifications for Furnishing Programming for the Supervisory Control and Data Acquisition System for Remote Monitoring and Control of the Sewage Pumping Stations – *Original Consent Decree only*
3. Modified Preventive Maintenance Program (to be inserted)
4. Modified Sewer Overflow Action Plan (to be inserted)
5. Outreach and Public Awareness Program – *Original Consent Decree only*
6. Supplemental Environmental Project Plan Requirements – *Original Consent Decree only*
7. Pump Station Testing and Evaluation Report – *Original Consent Decree only*
8. Force Main Capacity Report – *Original Consent Decree only*
9. Flow Measurement Plan – *Original Consent Decree only*
10. Collection System Evaluation Criteria – *Original Consent Decree only*
11. Drainage and Sewage Pumping Operations Employee Training Manual – *Original Consent Decree only*
12. Cross Connection Security Plan – *Original Consent Decree only*
13. Computerized Collection System Model Plan – *Original Consent Decree only*
14. Modified Cross Connection List (to be inserted)

**LIST OF EXHIBITS - ORIGINAL CONSENT DECREE
(Available Upon Request)**

1. Operation and Maintenance Plan for the Fluidized Bed Incinerator
2. Specifications for Furnishing Programming for the Supervisory Control and Data Acquisition System for Remote Monitoring and Control of the Sewage Pumping Stations
3. Preventive Maintenance Program
4. Sewer Overflow Action Plan
5. Outreach and Public Awareness Program
6. Supplemental Environmental Project Plan Requirements
7. Pump Station Testing and Evaluation Report
8. Force Main Capacity Report
9. Flow Measurement Plan
10. Collection System Evaluation Criteria
11. Drainage and Sewage Pumping Operations Employee Training Manual
12. Cross Connection Security Plan
13. Computerized Collection System Model Plan
14. Cross Connection List

WHEREAS, Plaintiff, the United States of America ("United States"), by the authority of the Attorney General of the United States and through its undersigned counsel, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), has filed the Complaint, First Amended Complaint and the Second Amended Complaint in this action seeking injunctive relief and civil penalties pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319, and Section 113 of the Clean Air Act, 42 U.S.C. § 7413, naming as defendants the Sewerage and Water Board of New Orleans (the "Board") and the City of New Orleans (the "City") (hereinafter together referred to as the "Defendants"), and the State of Louisiana (the "State") as a statutory defendant pursuant to Section 309(e) of the Clean Water Act, 33 U.S.C. § 1319(e); and

WHEREAS, the Board operates publicly owned treatment works ("POTW") that serve the citizens of the City of New Orleans, Louisiana, which is located in Orleans Parish within the jurisdiction of the U.S. District Court for the Eastern District of Louisiana; and

WHEREAS, the City of New Orleans, Louisiana, which is located in the Eastern District of Louisiana, is a Defendant in this action by Order of the Court; and

WHEREAS, the United States alleged that the Board has violated Section 301 of the Clean Water Act, 33 U.S.C. § 1311, by: (1) discharging pollutants from permitted outfall 001 for its East Bank Plant into the Mississippi River in violation of the effluent limitations established in National Pollutant Discharge Elimination System ("NPDES") permit number LA0038091 ("Permit No. LA0038091") issued to the Board pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342; (2) discharging untreated sewage from its sewage collection system ("Collection System") as defined in Paragraph 13(e) and treatment facilities ("East Bank Plant") into canals, ditches and other conduits, the Mississippi River, Lake Pontchartrain and

other waters of the United States; (3) failing to report noncompliance, as required by Permit No. LA0038091; and (4) failing to properly operate and maintain the treatment and control facilities and systems at the East Bank Plant as required by Permit No. LA0038091; and

WHEREAS, the First Amended Complaint and the Second Amended Complaint allege that in operating a fluidized bed incinerator ("FBI") at its East Bank Plant, the Board violated the Standards for Performance of New Stationary Sources ("NSPS"), 40 C.F.R. Part 60, Subparts A and O, promulgated pursuant to Section 111 of the Clean Air Act, 42 U.S.C. § 7411, and the National Emissions Standards for Hazardous Air Pollutants ("NESHAP"), 40 C.F.R. Part 61, Subparts A and E, promulgated pursuant to Section 112 of the Clean Air Act, 43 U.S.C. § 7412; and

WHEREAS, the First Amended Complaint and the Second Amended Complaint allege that in operating a multiple hearth furnace ("MHF") at its East Bank Plant, the Board violated Subparts A and E of the NESHAP; and

WHEREAS, the League of Women Voters of New Orleans, the Lake Pontchartrain Basin Foundation, the Orleans Audubon Society and the Louisiana Environmental Action Network have intervened in this action by Order of the Court as Plaintiff-Intervenors, and allege that the Defendants violated Section 301 of the Clean Water Act, 33 U.S.C. § 1311, by (1) discharging pollutants from its East Bank Plant into the Mississippi River in violation of the effluent limitations established in Permit No. LA0038091; (2) discharging untreated sewage from unauthorized point sources to canals, ditches and other conduits, the Mississippi River, Lake Pontchartrain and other waters of the United States; (3) failing to report noncompliance, as required by Permit No. LA0038091; and (4) failing to properly operate and maintain the treatment and control facilities at the East Bank Plant; and

WHEREAS, the Board and the City have asserted defenses to the allegations contained in the First and Second Amended Complaints and deny in whole or in part the allegations presented by the United States in same; and

WHEREAS, the Original Consent Decree was entered on June 22, 1998; and

WHEREAS, the Board has on-line and is continuously operating a Supervisory Control and Data Acquisition ("SCADA") system at each fully operational pump station within the Collection System in accordance with the specifications described in the document entitled "Specifications for Furnishing Programming for the Supervisory Control and Data Acquisition System for Remote Monitoring and Control of the Sewage Pumping Stations" (Original Exhibit 2); and

WHEREAS, as part of its Clean Water Act remedial measures, the Board undertook, and has substantially completed, a comprehensive collection system remedial action program, intended to minimize and prevent unauthorized discharges in the East Bank Collection System and to ensure that the Collection System has adequate capacity to convey peak flows to the East Bank Plant, which is comprised of a number of sequential and inter-related elements including a Preliminary Collection System Evaluation Study Plan, Collection System Evaluation Studies, Remedial Measures Action Plan ("RMAP"), an Emergency Sewer System Assessment ("ESSA"), and a Computerized Collection System Model; and

WHEREAS, the Preliminary Collection System Evaluation Study Plan was based upon findings of the Interim and Final System Characterization Reports, the Pump Stations and Force Main Capacity Plan, and the Flow Measurement Plan, and provided a listing of nine basins to be studied, the order in which they were to be studied, the type and technologies to be used, and common criteria for study of the individual basin studies; and

WHEREAS, the EPA has determined that the Collection System Evaluation Studies, that were basin by basin studies and reports that set forth the problems within each area requiring attention, were conducted in accordance with the EPA-approved Collection System Evaluation Criteria (Original Exhibit 10) and met the purpose of the Original Consent Decree; and

WHEREAS, the Board has completed the development of the Computerized Collection System Model (the "Model") and has certified that it is being used in accordance with the schedule and procedures in the EPA-approved Model Plan (Original Exhibit 13); and

WHEREAS, the Board submitted to EPA, and the EPA approved, a Final Plan for the Collection System Evaluation Studies identifying those modifications sought by the Board with justifications for the modifications, based upon its implementation of the Computerized Collection System Model, as described in the preceding paragraph, as well as the following reports or plans and/or known information used to prepare such reports or plans: a) the Final System Characterization Report (submitted to EPA on May 15, 1997); b) Flow Measurement Plan (Original Exhibit 9) and results of flow monitoring conducted pursuant to such plan; c) Pump Station Testing and Evaluation Report (Original Exhibit 7) and the Force Main Capacity Report (Original Exhibit 8); and d) any other relevant information known about the collection system as of the time of the submittal of the report, including data based upon the design and development of the Computerized Collection System Model; and

WHEREAS, the EPA has approved a RMAP based upon the EPA-approved Collection System Evaluation Study for each particular basin, identifying the remedial measures needed for each basin to ensure that the condition and capacity of the East Bank Collection System in that basin are sufficient to prevent unauthorized discharges, including a description of

the proposed remedial measures to be implemented for the particular basin (these remedial measures were required to be designed to address defects identified in the Collection System Evaluation Study, including but not limited to activities to repair or replace portions of the East Bank Collection System, address and resolve issues related to pump station and force main capacity, and address measures intended to eliminate unauthorized discharges), an implementation schedule for the proposed remedial measures, an estimate of the resources and costs to be committed to the proposed remedial measures and whether the proposed remedial measures were to be performed by Board staff or by outside contract; and

WHEREAS, the Board has paid a total civil penalty to the United States in the amount of One Million, Five Hundred Thousand Dollars (\$1,500,000), plus interest, for violations as alleged by the United States in the Complaint, the First Amended Complaint and the Second Amended Complaint and all known Unauthorized Discharges and known Non-Compliant Discharges through April 8, 1998, the Date of Lodging of the Original Consent Decree; and

WHEREAS, in consideration of the settlement of this enforcement action under the Clean Water Act, the Board conducted a Supplemental Environmental Project ("SEP"), titled "Lincoln Beach Water Quality Improvement Plan," in accordance with the EPA-approved SEP Plan Requirements (Original Exhibit 6), the goal of which was: 1) to secure significant water quality improvement and public health protection in the Lincoln Beach Area; 2) to provide public access to the project area for educational, recreational, and environmental purposes; 3) to restore, enhance, and create wetlands and a vegetative upland buffer in a wave protected area; 4) to mitigate and limit the effects of runoff and erosion in the beach area; and 5) to make this area both swimmable and fishable in the future; and

WHEREAS, the Board spent no less than Two Million Dollars (\$2,000,000) on the SEP for the purpose of improving water quality, no portion of which included federal funds (including low interest federal loans, federal contracts, or federal grants). Expenditures unrelated to the goals of the SEP did not count towards the requisite expenditure of Two Million Dollars (\$2,000,000). The Board sponsored a public information program designed to educate the public in the New Orleans Metropolitan Area of the benefits of the SEP; and

WHEREAS, the Board certified that it was not required to perform or develop the SEP by any federal, state or local law or regulation; nor was the Board required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or in compliance with state or local requirements; nor did the Board receive credit for the SEP in any other enforcement action; and

WHEREAS, the August 2005 natural disaster known as Hurricane Katrina prevented the Board from timely complying with some of the Clean Air Act and Clean Water Act remedial measures in the Original Consent Decree, necessitating a modified schedule for completion of such measures and related modifications to the Consent Decree (hereafter, "Modified Consent Decree"); and

WHEREAS, the Modified Consent Decree was entered by the Court on March 23, 2010; and

WHEREAS, the Board has completed repairs to the FBI, received EPA's approval for its Modified Operation and Maintenance plan for the FBI, and received revisions to its Title V air permit from the State to operate the FBI; and

WHEREAS, the Board submitted a Modified Sewer Overflow Action Plan to EPA on December 31, 2008, and EPA approved the Modified Sewer Overflow Action Plan; and

WHEREAS, the Board submitted a Modified Preventive Maintenance Program to EPA for review and approval on April 27, 2010, within 90 days of lodging the Modified Consent Decree with the Court; and

WHEREAS, on July 15, 2010, after completing the required force main reliability study and submitting it to EPA for review and comment, the Board submitted its corrective action plan for addressing issues identified in the study; and

WHEREAS, the Board timely completed repairs to each of the 66 pump stations identified in Paragraph 18 of the Modified Consent Decree; and

WHEREAS, on November 30, 2012, the Board certified to EPA that the Board had completed construction activities for the manufacturing and delivery of a 4MW generator, along with completing all supporting mechanical and electrical work, and that the generator was operational and capable of providing dependable electrical services during a catastrophic event; and

WHEREAS, on April 24, 2013, on account of the continuing effects of Hurricane Katrina, the Court entered a Second Modified Consent Decree extending the end construction dates for the Ninth Ward basin and the New Orleans East basin; and

WHEREAS, continuing effects of Hurricane Katrina, including logistical, engineering and financial issues, will prevent the Board from timely completing some of the Clean Water Act remedial measures in the Second Modified Consent Decree, necessitating a similar modified schedule for completion of such measures in the Carrollton, South Shore and MidCity basins (hereafter, "Third Modified Consent Decree"); and

WHEREAS, in connection with their conclusion that the Third Modified Consent Decree is fair, reasonable, and in the public interest, EPA and LDEQ have reviewed the modified

schedule for completion of Clean Water Act remedial measures in the Carrollton, South Shore, and MidCity basins proposed by the Board and incorporated into this Third Modified Consent Decree and have concluded that the Board can complete the required work within the proposed schedule. The Parties fully expect that all Clean Water Act remedial measures for all basins will be completed by the deadlines set forth in this Third Modified Consent Decree and no Party presently anticipates seeking any further modification of those deadlines. Nothing in this Whereas clause, however, shall be construed to change the standards applicable to modification of this Third Modified Consent Decree under Section XXXI (Modification) and applicable law; and

WHEREAS, it has been the practice of the Board and EPA to hold a meeting each year to discuss progress under the Consent Decree, the Board and EPA agree to invite the Plaintiff-Intervenors to attend any future meetings to discuss such progress; and

WHEREAS, the parties recognize that this Third Modified Consent Decree, like the Original Consent Decree, the Modified Consent Decree and the Second Modified Consent Decree, is a settlement of a contested matter and that participation in the settlement does not constitute or represent any admission of law or fact by any party; and

WHEREAS, the parties agree, and the Court finds, that settlement of the claims alleged in the Complaint, the First Amended Complaint and the Second Amended Complaint, without further litigation or trial of any issues, is in the public interest and that the entry of this Third Modified Consent Decree is the most appropriate way of resolving the claims alleged in the Complaint, the First Amended Complaint and the Second Amended Complaint; and

NOW THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I.
JURISDICTION

1. This Court has jurisdiction over the subject matter of this action and over the parties to this action pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b); Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b); and 28 U.S.C. §§ 1331, 1345, and 1355. The Complaint, the First Amended Complaint and the Second Amended Complaint state claims upon which relief may be granted against the Board under Section 309 of the Clean Water Act, 33 U.S.C. § 1319, and Section 113 of the Clean Air Act, 42 U.S.C. § 7413, for injunctive relief and civil penalties. The First Amended Complaint and the Second Amended Complaint state claims upon which relief may be granted against the City under Section 309 of the Clean Water Act, 33 U.S.C. § 1319, for injunctive relief. The Defendants waive any and all objections that they might have to the Court's jurisdiction to enter and enforce this Third Modified Consent Decree. Authority to bring this action is vested in the United States Department of Justice (“DOJ”) pursuant to Section 506 of the Clean Water Act, 33 U.S.C. § 1366; Section 305 of the Clean Air Act, 42 U.S.C. § 7605; and 28 U.S.C. §§ 516 and 519.

II.
VENUE

2. Venue is proper in this Court pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b); Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b); and 28 U.S.C. §§ 1391(b) and 1395(a).

III.
PARTIES

3. Plaintiff, the United States, is acting at the request and on behalf of the Administrator of the EPA.

4. Plaintiff-Intervenor League of Women Voters of New Orleans is a nonpartisan organization; Plaintiff-Intervenor Lake Pontchartrain Basin Foundation is a membership-based citizens' organization; Plaintiff-Intervenor Orleans Audubon Society is a chapter of the National Audubon Society; and Plaintiff-Intervenor Louisiana Environmental Action Network is an incorporated civic organization.

5. Defendants, the Sewerage and Water Board of New Orleans (the "Board") and the City of New Orleans (the "City"), are each a "municipality" as defined in Section 502(4) of the Clean Water Act, 33 U.S.C. § 1362(4), and in Section 302(f) of the Clean Air Act, 42 U.S.C. § 7602(f).

6. The Board and the City are each a "person" within the meaning of Section 502(5) of the Clean Water Act, 33 U.S.C. § 1362(5), and Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

7. The State of Louisiana ("State") is a statutory defendant pursuant to Section 309(e) of the Clean Air Act, 33 U.S.C. 1319(e).

IV. BINDING EFFECT

8. The provisions of this Third Modified Consent Decree shall apply to and be binding on Defendants, their officers, directors, employees, agents, servants, contractors, successors and assigns, and all persons, firms and corporations in active concert or participation with Defendants or Defendants' officers, directors, employees, agents, servants, contractors, successors and assigns, and upon the United States and the Plaintiff-Intervenors.

9. Effective from the Date of Lodging of this Third Modified Consent Decree until its termination, the Board and the City shall give written notice of this Third Modified Consent Decree to any person or entity to whom those Defendants transfer ownership or

operation of the East Bank Plant, the Collection System or any other portion of their wastewater treatment and collection system and shall provide any such person or entity with the address of a public website from which such person may access a copy of this Third Modified Consent Decree. The Board and the City shall notify EPA and the United States Department of Justice in writing of any successor in interest at least twenty-one (21) days prior to any such transfer.

10. The Board shall publish a copy of this Third Modified Consent Decree on a website and provide the address of such website to each engineering, consulting and contracting firm to be retained to perform the work or any portion thereof required by this Third Modified Consent Decree upon execution of any contract relating to such work, and shall provide the website address to each engineering, consulting and contracting firm already retained no later than ninety (90) days after the Date of Lodging of this Third Modified Consent Decree. Any action taken by any contractor or consultant retained by the Board to implement the Board's duties under this Third Modified Consent Decree shall be considered an action of the Board for purposes of determining compliance with this Third Modified Consent Decree. In an action to enforce this Third Modified Consent Decree, the Board shall not assert as a defense against the Parties any act or failure to act by any of its officers, directors, employees, agents, servants, contractors, successors and assigns.

V.
PURPOSE

11. The express purpose of the parties entering into this Third Modified Consent Decree is to take all measures necessary to enable the Board to comply with the Clean Water Act, including the terms of Permit No. LA0038091, the Clean Air Act, and the regulations promulgated under those Acts.

VI.
DEFINITIONS

12. Unless otherwise defined herein, terms used in this Third Modified Consent Decree shall have the meanings given to those terms in the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; and the regulations promulgated under each of those Acts.

13. The following terms used in this Third Modified Consent Decree shall be defined as follows:

a. "Calendar quarter" shall mean a three month period ending on March 31st, June 30th, September 30th, or December 31st.

b. The terms "day" or "days" as used herein shall mean a calendar day or calendar days. When the day a report or other deliverable is due under this Third Modified Consent Decree falls on a Saturday, Sunday or legal holiday as set forth in Federal Rule of Civil Procedure 6, Defendants shall have until the next calendar day that is not one of the aforementioned days for submittal of such report or other deliverable.

c. "Board" shall mean the Sewerage and Water Board of New Orleans.

d. "City" shall mean the City of New Orleans, Louisiana.

e. "Collection System" shall mean the sewage collection and transmission system (including all pipes, force mains, gravity sewer lines, lift stations, pump stations, manholes, and appurtenances thereto) operated by the Board that serves the East Bank Plant.

f. "Third Modified Consent Decree" shall mean this Third Modified Consent Decree.

g. "Cross Connection" shall mean any physical connection between any part of the Collection System and any part of the Drainage System, whether valved or not valved, and whether or not such physical connection is now known to the Board.

h. "Date of Entry" shall mean the date this Third Modified Consent Decree is approved and signed by a United States District Court Judge for the Eastern District of Louisiana.

i. "Date of Lodging" shall mean the date this Third Modified Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the Eastern District of Louisiana.

j. "Drainage System" shall mean pipes, conduits, channels, stormwater pump stations, canals and other appurtenances operated by the Board and designed for and used for conveying stormwater runoff, surface water runoff, and other drainage water.

k. "East Bank Plant" shall mean the sewage treatment plant operated by the Board and located at 6501 Florida Avenue, New Orleans, Louisiana, and all components of such sewage treatment plant.

l. "Emergency Sewer System Assessment" ("ESSA"), to be distinguished from the Collection System Evaluation Studies ("CSES"), shall mean the assessment developed to assess the functionality of the gravity collection system following damage caused by Hurricane Katrina. The assessment involves detecting and clearing solid accumulations and blockages, inspecting lines that do not clear using appropriate methodologies as described in Paragraph 38, and identifying damages requiring repair.

m. "Non-Compliant Discharge" shall mean any discharge of wastewater through the permitted outfall (Permit No. LA0038091) not in compliance with permit conditions.

n. "Paragraph" shall mean a portion of this Third Modified Consent Decree identified by Arabic numerals. "Sub-paragraph" shall mean a portion of a paragraph identified by lower case letters.

o. "Permit No. LA0038091" shall mean National Pollutant Discharge Elimination System ("NPDES") permit number LA0038091 issued to the Board pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, for the East Bank Plant and any future, extended, modified or reissued permit.

p. "RMAP" shall mean a remedial measures action plan consistent with this Third Modified Consent Decree.

q. "Section" shall mean a portion of this Third Modified Consent Decree identified by Roman numerals.

r. "Surface Waters" shall mean waters of the United States as defined by 40 C.F.R. § 122.2.

s. "Unauthorized Discharge" shall mean any discharge of wastewater from any point in the Collection System, other than through the permitted outfall, to waters of the United States.

VII.

COMPLIANCE WITH CLEAN WATER ACT AND CLEAN AIR ACT

14. The Board shall comply at all times with the Clean Water Act, the regulations promulgated thereunder, and all terms of Permit No. LA0038091. The Board shall

comply at all times with the Clean Air Act, and the NSPS and NESHAP regulations promulgated thereunder, at the East Bank Plant.

VIII.
CLEAN AIR ACT REMEDIAL MEASURES

15. The Board shall operate all facilities in accordance with the Clean Air Act. Specifically, the Board shall operate its FBI consistent with the final, EPA-approved Modified Operation and Maintenance Plan for the Fluidized Bed Incinerator ("Incinerator Plan") for the East Bank Plant, attached as Modified Exhibit 1. The Board shall comply with the requirements of the Incinerator Plan and submit reports as required by Paragraph 56(c) below to document proper compliance with the Incinerator Plan.

16. The Board has completed repairs to its FBI, and received revisions to its Title V air permit from the State to operate the FBI on October 1, 2008. The Board shall operate the FBI only in accordance with its revised permit.

IX.
CLEAN WATER ACT REMEDIAL MEASURES: PUMP STATIONS

17. The Board shall operate all stations such that, in the event of the failure of the largest or primary pump, one or more additional pumps shall be immediately activated as necessary to maintain pump station capacity and to prevent unauthorized discharges.

18. The Board shall complete repairs to its pump stations on the following schedule:

Lakeview	
City Park	Completed
Lakeview South	Completed
SPS #18	Completed
SPS #19	Completed
SPS #20	Completed
SPS #21	Completed

SPS #22	Completed
SPS #4	Completed
CBD/FQ	
SPS A	Completed
Gentilly	
Chickasaw	Completed
France & Florida	Completed
K-Mart	Completed
Meco	Completed
SPS #17	Completed
SPS #23	Completed
SPS D	Completed
Uptown	
SPS #14	Completed
Mid-City	
SPS #6	Completed
SPS #8	Completed
SPS #9	Completed
SPS #15	Completed
9th Ward	
SPS #16	Completed
SPS #24	Completed
SPS #25	Completed
SPS #26	Completed
SPS B	Completed
Carrollton	
SPS #1	Completed
SPS #3	Completed
SPS #5	Completed
New Orleans East	
Alcee Fortier	Completed
America	Completed
American Marine	Completed
Amid	Completed
Boulevard X	Completed
Bullard	Completed
Castle Manor	Completed
Cerise	Completed

Crowder	Completed
DODT	Completed
Eastover	Completed
Folgers	Completed
Gentilly Oaks	Completed
Industrial Parkway	Completed
Lake Forest	Completed
Lakeland Terrace	Completed
McCoy	Completed
Michoud	Completed
Oak Island	Completed
Paris Road	Completed
Plum Orchard	Completed
Southern Scrap	Completed
Venetian Isles	Completed
Victoria	Completed
Village D'Lest	Completed
Willowbrook	Completed
Wilson	Completed
Wright	Completed
South Shore	
Berg	Completed
Briarwood	Completed
Burke	Completed
Lamb	Completed
Lawrence	Completed
Liggett	Completed
Pines Village	Completed
Shorewood	Completed
Weber	Completed

X.

CLEAN WATER ACT REMEDIAL MEASURES: SCADA AND REMOTE MONITORING

19. The Board has on-line and shall continuously operate a SCADA system at each fully operational pump station within the Collection System. The McCoy-Darby pump station is excluded from any requirement of this Section X.

20. The SCADA system shall include, at a minimum, remote monitoring equipment at each pump station in the Collection System, and a central dispatch center manned on

a 24-hour basis (currently at Pump Station A) to receive remotely transmitted information from each pump station. All data shall be continuously reported and transmitted via SCADA from each pump station and shall be continuously monitored by Board personnel at the central dispatch center. When the information transmitted to the central dispatch center indicates that a problem has occurred that may result in an unauthorized discharge, the dispatch center shall notify appropriate responsible individuals who will ensure that the problem is resolved in a timely manner in order to prevent or mitigate an unauthorized discharge, in accordance with procedures in the Modified Sewer Overflow Action Plan, attached as Modified Exhibit 4.

21. The SCADA system shall continuously monitor, report, and transmit information for each pump station. The SCADA system shall be fully operational for each pump station identified in Paragraph 18.

XI.

CLEAN WATER ACT REMEDIAL MEASURES: CROSS CONNECTIONS

22. The Board has certified, and by its signature hereto represents, that it has conducted a thorough inspection of all known cross connections and that all known cross connections not provided for in Modified Exhibit 14 have been permanently sealed.

23. If the Board identifies any cross connection subsequent to the lodging of this Third Modified Consent Decree it shall permanently seal or eliminate such cross connection within thirty (30) days of identification.

24. Cross connections retained by the Board as identified in Modified Exhibit 14 shall comply with the following conditions:

- a. Wherever there is a physical connection between the sanitary sewer and the storm drainage system, there shall be a physical barrier to prevent any transfer between the two systems (i.e. a valve or gate) which shall be closed and secured;

b. The Cross Connection Security Plan, Original Exhibit 12, must be followed to ensure that there is no use of the cross connection by unauthorized individuals;

c. The Board shall inspect the valves in the method and frequency set forth in the Cross Connection Security Plan, to assure that they are closed and that they have not been opened; and

d. The Board shall report to EPA all instances in which the valve or gate is opened in accordance with Paragraph 56(b) below.

25. Any use of a cross connection, whether listed in Modified Exhibit 14 or newly discovered, will be considered a violation of the Clean Water Act and of the Third Modified Consent Decree.

XII.
CLEAN WATER ACT REMEDIAL MEASURES: PREVENTIVE MAINTENANCE
PROGRAM

26. Under the Original Consent Decree, the Board developed a Preventive Maintenance Program (Original Exhibit 3), approved by EPA, intended to prevent unauthorized discharges and to achieve compliance with the Clean Water Act and NPDES Permit with regard to the day-to-day operation of the East Bank Collection System. Under the Modified Consent Decree, the Board developed a Modified Preventive Maintenance Program (Modified Exhibit 3), approved by EPA, likewise intended to prevent unauthorized discharges and to achieve compliance with the Clean Water Act and NPDES Permit with regard to the day-to-day operation of the East Bank Collection System. (Modified Exhibit 3). The Modified Preventive Maintenance Program describes the type and frequency of inspection, cleaning, and preventive maintenance activities the Board will conduct. The Board shall comply with the Modified Preventive Maintenance Program in accordance with the procedures and schedule therein.

27. If the Board believes that new information or data requires a significant modification of the Modified Preventive Maintenance Program, the Board may submit to EPA a Request for Modification of the Modified Preventive Maintenance Program together with its Annual Report on preventive maintenance activities required by Paragraph 57(b) below. The Request for Modification shall describe the significant modification being requested, the new information or data supporting the modification and how such modification would improve the Modified Preventive Maintenance Program.

28. EPA shall either approve the Request for Modification or disapprove it, and shall provide the Board with written notice of its approval or disapproval. In its review, EPA will use industry standards (such as American Waterworks Association (AWWA)/Water Environment Federation (WEF) standard manuals). If, upon review, EPA determines that the Request for Modification should not be approved, EPA shall provide written comments to the Board and, where appropriate, identify needed changes or additional information necessary to support the modification. The Board shall make the needed changes to address EPA's concerns and/or provide the additional information necessary to support the modification, within sixty (60) days of receipt of such comments. Once the Request for Modification to the Modified Preventive Maintenance Program is approved by EPA or resolved by dispute resolution, the Board shall comply with the revised Modified Preventive Maintenance Program within sixty (60) days of approval or resolution of the dispute. Until that time, the previously approved Modified Preventive Maintenance Program shall remain in effect.

29. If, after receipt of the Annual Report, EPA determines that there are one or more violations of the Third Modified Consent Decree or the Clean Water Act, and that there is a nexus between the violations and the Modified Preventive Maintenance Program, EPA may

require the Board to modify the Modified Preventive Maintenance Program in accordance with specific recommendations. The Board shall make the needed changes to address EPA's concerns within sixty (60) days of receipt of such recommendations, or invoke dispute resolution. Once the Request for Modification to the Modified Preventive Maintenance Program is resolved by dispute resolution, the Board shall comply with the revised Modified Preventive Maintenance Program within sixty (60) days of resolution of the dispute. Until that time, the previously approved Modified Preventive Maintenance Program shall remain in effect.

30. It is anticipated by the Parties that some non-significant changes to the Modified Preventive Maintenance Program will be necessary (*e.g.*, renovation of certain pump stations may result in the need for different equipment to be utilized than what was originally contemplated in the Modified Preventive Maintenance Program). Such changes may be made when the need arises (*e.g.*, at the time the pump station becomes operational) and will be considered in conformance with this Third Modified Consent Decree without EPA review. The Board shall describe the changes in the first Annual Report submitted following the changes, at which time the EPA may seek clarification and additional information - and the Board shall provide such clarification and additional information - on any such changes. If the EPA does not concur that a change is non-significant, the dispute resolution process set forth in Section XXII below shall apply.

XIII.

CLEAN WATER ACT REMEDIAL MEASURES: SEWER OVERFLOW ACTION PLAN

31. Pursuant to the Original Consent Decree, the Board developed a Sewer Overflow Action Plan (Original Exhibit 4), approved by EPA, intended to ensure that, through the expedient and consistent application of technically sound response techniques, when an unauthorized discharge occurs the volume of untreated wastewater discharged to the environment

and the impact of the discharge on the environment will be minimized. The Board submitted a Modified Sewer Overflow Action Plan on December 31, 2008 (Modified Exhibit 4), approved by EPA on June 16, 2009. The Board shall comply with the Modified Sewer Overflow Action Plan in accordance with the procedures therein.

32. If the Board believes that new information or data requires a significant modification of the Modified Sewer Overflow Action Plan previously submitted to EPA, the Board may submit to EPA a Request for Modification of the Modified Sewer Overflow Action Plan together with its Annual Report on Sewer Overflow Action Plan Activities required by Paragraph 57(a) below. The Request for Modification shall describe the significant modification being requested, the new information or data supporting the modification and how such modification would improve the Modified Sewer Overflow Action Plan.

33. EPA shall either approve the Request for Modification or disapprove it, and shall provide the Board with written notice of its approval or disapproval. If, upon review, EPA determines that the Request for Modification should not be approved, EPA shall provide written comments to the Board and, where appropriate, identify needed changes or additional information necessary to support the modification. The Board shall make the needed changes to address EPA's concerns and/or provide the additional information necessary to support the modification, within sixty (60) days of receipt of such comments. Once the Request for Modification to the Modified Sewer Overflow Action Plan is approved by EPA or resolved by dispute resolution, the Board shall comply with the revised Modified Sewer Overflow Action Plan within sixty (60) days of approval or resolution of the dispute. Until that time, the previously approved Modified Sewer Overflow Action Plan shall remain in effect.

34. If, after receipt of the Annual Report, EPA determines that there are one or more violations of the Third Modified Consent Decree or the Clean Water Act, and that there is a nexus between the violations and the Modified Sewer Overflow Action Plan, EPA may require the Board to modify its Modified Sewer Overflow Action Plan in accordance with specific recommendations. The Board shall make the needed changes to address EPA's concerns within sixty (60) days of receipt of such recommendations or invoke dispute resolution. Once the Request for Modification to the Modified Sewer Overflow Action Plan is resolved by dispute resolution, the Board shall comply with the revised Modified Sewer Overflow Action Plan within sixty (60) days of resolution of the dispute. Until that time, the previously approved Modified Sewer Overflow Action Plan shall remain in effect.

34A. It is anticipated by the Parties that some non-significant changes (*e.g.*, revised pump station procedures resulting from pump station renovations, changes in equipment, and substitutions in personnel) to the Modified Sewer Overflow Action Plan will be necessary. Such changes may be made when the need arises, and will be considered in conformance with this Third Modified Consent Decree without EPA review. The Board shall describe the changes in the first Annual Report submitted following the changes, at which time the EPA may seek clarification and additional information - and the Board shall provide such clarification and additional information - on any such changes. If the EPA does not concur that a change is non-significant, the dispute resolution process set forth in Section XXII below shall apply.

XIV.

CLEAN WATER ACT REMEDIAL MEASURES: TRACKING AND REPORTING OF UNAUTHORIZED DISCHARGES

35. The Board has established an unauthorized discharge tracking and reporting plan ("Communication and Reporting Plan") (Section 3 of Modified Exhibit 4), approved by EPA, intended to track and report all unauthorized discharges to ensure that all

unauthorized discharges are properly identified and reported to EPA. The Board shall comply with the Communication and Reporting Plan in accordance with the schedule and procedures specified therein.

XV.

CLEAN WATER ACT REMEDIAL MEASURES: COMPREHENSIVE COLLECTION
SYSTEM REMEDIAL PROGRAM

A. INTRODUCTION

36. As described in the Whereas Clauses in this Third Modified Consent Decree, the Board undertook a comprehensive collection system remedial action program, intended to minimize and prevent unauthorized discharges in the East Bank Collection System and to ensure that the Collection System has adequate capacity to convey peak flows to the East Bank Plant. The program is substantially completed with the exception of the Emergency Sewer System Assessment and RMAP Implementation described below in Subsections B and C.

B. EMERGENCY SEWER SYSTEM ASSESSMENT (ESSA)

37. Following completion of repairs for each pump station identified in Paragraph 18 above, the Board shall conduct an ESSA to identify Katrina-related damages in the portion of the collection system served by that pump station. The ESSA shall include an inspection of the sewers by one or more inspection methodologies, as described in Paragraph 38. The quantity and location of inspections will be determined by the procedures outlined in Paragraph 38.

38. Procedures for Inspection. The ESSA shall be conducted in accordance with the following procedures:

- a. For portions of the basin that were not previously inspected using these ESSA procedures, open and inspect gravity fed sewer manholes for debris or evidence of obstructions and/or damage;

b. For all sewer manholes displaying debris, obstructions and/or damage, clean the manhole and associated line segment(s) utilizing a vactor truck, or similar equipment, to vacuum liquid and solids from the line segment from manhole to manhole; and

c. Inspect line segments that are unable to be cleaned from manhole to manhole, or line segments that provide evidence of damages found as a result of the cleaning process, by appropriate technologies including, but not limited to, remote camera televised inspection, sonar, or electroscan technology. In the event that remote camera televised inspection is utilized, such inspection will be accomplished by inserting a camera in the line segment and moving that camera from the upstream manhole to the downstream manhole, recording the inspection during the process.

C. IMPLEMENTATION OF RMAPs

39. The Board shall implement the remedial measures and meet milestones in accordance with the schedule contained in the EPA-approved RMAPs and this Subsection C. The major milestones for implementation of the RMAPS are: begin construction, resume construction (if applicable, following disruption due to Hurricane Katrina), end construction, and three additional milestones proposed by the Board and approved by EPA in each of the Board’s individual basin RMAPs. These milestones, including interim milestones identified pursuant to Paragraphs 41 and 41A below, are subject to Stipulated Penalties and must be complied with no later than the dates indicated in the schedule contained in Paragraph 40.

40. Modified Schedule for RMAP Implementation

BASIN	BEGIN CONSTR.	RESUME CONSTR.	END. CONSTR
a. Lakeview	12/15/98	N/A	12/14/01 (completed/approved)
b. Central Business Dist.	1/01/01	N/A	12/31/05 (completed/approved)
c. Gentilly	1/01/02	N/A	12/31/04 (completed/approved)

d. Uptown	1/01/03	N/A	12/31/05 (completed/approved)
e. MidCity	1/01/04	11/15/08	7/31/23
f. Ninth Ward	1/01/05	11/15/08	3/31/18
g. Carrollton	1/01/06	11/15/08	10/31/25
h. New Orleans East	4/1/09	N/A	10/31/19
i. South Shore	4/1/10	N/A	10/31/21

41. The Board shall submit to EPA within thirty (30) days of award of each construction contract, the three interim milestones between beginning and ending construction that approximate 25%, 50%, and 75% project completion.

41A. Estimated interim quarterly milestones for work in the remaining basins:

Ninth Ward Basin: Within 120 days of entry of the Second Modified Consent Decree, the Board shall submit to EPA an estimated quarterly milestone for the Ninth Ward basin that would approximate completion of 25% of Consent Decree-mandated work within that basin [COMPLETED August 19, 2013]. Within 120 days of reporting satisfaction of the 25% milestone for the Ninth Ward basin pursuant to Paragraph 58 below, the Board shall submit to EPA and simultaneously provide a copy to the Plaintiff-Intervenors an estimated quarterly milestone that would approximate completion of 50% of Consent Decree-mandated work within that basin. Within 120 days of reporting satisfaction of the 50% milestone for the Ninth Ward basin pursuant to Paragraph 58 below, the Board shall submit to EPA and simultaneously provide a copy to the Plaintiff-Intervenors an estimated quarterly milestone that would approximate completion of 75% of Consent Decree-mandated work within that basin. The Board may use any reasonable metric to measure satisfaction of these quarterly milestones, subject to EPA's verification upon receiving the Board's reports regarding those milestones under Paragraph 58.

New Orleans East Basin: Within 120 days of entry of the Second Modified Consent Decree, the Board shall submit to EPA an estimated quarterly milestone for the New Orleans East basin that would approximate completion of 25% of Consent Decree-mandated work within that basin [COMPLETED August 19, 2013]. Within 120 days of reporting satisfaction of the 25% milestone for the New Orleans East basin pursuant to Paragraph 58 below, the Board shall submit to EPA and simultaneously provide a copy to the Plaintiff-Intervenors an estimated quarterly milestone that would approximate completion of 50% of Consent Decree-mandated work within that basin. Within 120 days of reporting satisfaction of the 50% milestone for the New Orleans East basin pursuant to Paragraph 58 below, the Board shall submit to EPA and simultaneously provide a copy to the Plaintiff-Intervenors an estimated quarterly milestone that would approximate completion of 75% of Consent Decree-mandated work within that basin. The Board may use any reasonable metric to measure satisfaction of these quarterly milestones, subject to EPA's verification upon receiving the Board's reports regarding those milestones under Paragraph 58.

Carrollton Basin: Within 120 days of entry of this Third Modified Consent Decree, the Board shall submit to EPA and simultaneously provide a copy to the Plaintiff-Intervenors an estimated quarterly milestone for the Carrollton basin that would approximate completion of 25% of Consent Decree-mandated work within that basin. Within 120 days of reporting satisfaction of the 25% milestone for the Carrollton basin pursuant to Paragraph 58 below, the Board shall submit to EPA and simultaneously provide a copy to the Plaintiff-Intervenors an estimated quarterly milestone that would approximate

completion of 50% of Consent Decree-mandated work within that basin. Within 120 days of reporting satisfaction of the 50% milestone for the Carrollton basin pursuant to Paragraph 58 below, the Board shall submit to EPA and simultaneously provide a copy to the Plaintiff-Intervenors an estimated quarterly milestone that would approximate completion of 75% of Consent Decree-mandated work within that basin. The Board may use any reasonable metric to measure satisfaction of these quarterly milestones, subject to EPA's verification upon receiving the Board's reports regarding those milestones under Paragraph 58.

South Shore Basin: Within 120 days of entry of this Third Modified Consent Decree, the Board shall submit to EPA and simultaneously provide a copy to the Plaintiff-Intervenors an estimated quarterly milestone for the South Shore basin that would approximate completion of 25% of Consent Decree-mandated work within that basin. Within 120 days of reporting satisfaction of the 25% milestone for the South Shore basin pursuant to Paragraph 58 below, the Board shall submit to EPA and simultaneously provide a copy to the Plaintiff-Intervenors an estimated quarterly milestone that would approximate completion of 50% of Consent Decree-mandated work within that basin. Within 120 days of reporting satisfaction of the 50% milestone for the South Shore basin pursuant to Paragraph 58 below, the Board shall submit to EPA and simultaneously provide a copy to the Plaintiff-Intervenors an estimated quarterly milestone that would approximate completion of 75% of Consent Decree-mandated work within that basin. The Board may use any reasonable metric to measure satisfaction of these quarterly

milestones, subject to EPA's verification upon receiving the Board's reports regarding those milestones under Paragraph 58.

MidCity Basin: Within 120 days of entry of this Third Modified Consent Decree, the Board shall submit to EPA and simultaneously provide a copy to the Plaintiff-Intervenors an estimated quarterly milestone for the MidCity basin that would approximate completion of 25% of Consent Decree-mandated work within that basin. Within 120 days of reporting satisfaction of the 25% milestone for the MidCity basin pursuant to Paragraph 58 below, the Board shall submit to EPA and simultaneously provide a copy to the Plaintiff-Intervenors an estimated quarterly milestone that would approximate completion of 50% of Consent Decree-mandated work within that basin. Within 120 days of reporting satisfaction of the 50% milestone for the MidCity basin pursuant to Paragraph 58 below, the Board shall submit to EPA and simultaneously provide a copy to the Plaintiff-Intervenors an estimated quarterly milestone that would approximate completion of 75% of Consent Decree-mandated work within that basin. The Board may use any reasonable metric to measure satisfaction of these quarterly milestones, subject to EPA's verification upon receiving the Board's reports regarding those milestones under Paragraph 58.

42. Notwithstanding the fact that the Board has completed implementation of the RMAPs for the Lakeview, Central Business District, Gentilly and Uptown Basins (see Paragraph 40), no later than July 31, 2015, the Board shall have completed all ESSAs to identify Katrina-related damages in those basins and shall have repaired all such damages in those basins.

D. FORCE MAIN RELIABILITY

43. Provisions addressing Force Main Reliability as follows:

a. Pursuant to Paragraph 43 of the Modified Consent Decree, the Board timely completed an evaluation of the force mains from Pump Station A and Pump Station D to the East Bank Plant to determine the reliability of such force mains, including an examination of areas of significant weaknesses and vulnerabilities both under the Industrial Canal and within the right-of-way on land; timely reported its findings to EPA and consulted with EPA on the measures to be taken to address the reliability of the force mains; and submitted to EPA for review and approval a corrective action plan and appropriate schedule for implementing such measures. The Board shall implement the plan in accordance with the approved schedule.

E. AUXILIARY POWER

44. [COMPLETED]

F. CAPACITY

45. a. As of the Date of the Lodging of this Third Modified Consent Decree, there are no capacity issues that the Board needs to address.

b. Beginning with the Annual Report covering the period ending December 31, 2008, and every subsequent Annual Report, the Board shall report on population changes and any revised population projections. If at any time prior to July 31, 2015, the Board or EPA determines that the data indicates further capacity is needed, EPA, the Board and Plaintiff-Intervenors shall consult on measures to be taken. In accordance with Paragraph 46, the Board shall provide a plan and appropriate schedule for implementation of such measures to EPA for its review and approval, with a copy at the same time to Plaintiff-Intervenors.

G. REVIEW AND APPROVAL OF SUBMITTALS

46. Following submittal by the Board of a plan and/or schedule under this Third Modified Consent Decree, EPA shall either approve or disapprove the plan/schedule within

sixty (60) days of receipt, and shall provide the Board with written notice of its approval or disapproval. If, upon review, EPA finds that the plan/schedule is inadequate or unacceptable, EPA shall provide written comments to the Board identifying EPA's position and any needed changes. The Board shall make the needed changes to address EPA's concerns and submit the revisions to EPA, within thirty (30) days of receipt of such comments. If, within the thirty (30) days, the Board does not submit the revisions to EPA and does not invoke the Dispute Resolution provisions, the Board shall be deemed to have accepted EPA's proposed changes to the plan/schedule, which shall be incorporated in this Third Modified Consent Decree as an EPA-approved plan/schedule. If the EPA fails to notify the Board of EPA's position within sixty (60) days of receiving the plan/schedule, any subsequent milestones dependent on such approval shall be extended by the number of days beyond sixty (60) days which EPA takes for such approval or disapproval. Without limitation, submittals by the Board that EPA shall approve or disapprove under this Paragraph do not include the green infrastructure plan submitted pursuant to Paragraph 100.

XVI.
STORM SEWER MONITORING PROGRAM

47. The Board established a Storm Sewer Monitoring Program designed to provide baseline data on the presence of sewage indicating pollutants in the East Bank storm water drainage system prior to and following completion of the RMAP implemented in each drainage basin (each drainage basin contains several sewage basins). This was accomplished by sampling the storm water drainage system following specific rainfall events.

48. The Storm Sewer Monitoring Program included two Phases. Phase I of this program (Baseline Monitoring) was required to commence within one hundred and eighty (180) days of the Date of Lodging the Original Consent Decree and include taking six (6)

quarterly storm water samples on the discharge side of the hereinafter designated drainage pump stations which pump into Lake Pontchartrain following those storm events over a two year (8 quarters) period as specified below. Samples were required to be analyzed for the parameters set out below. Phase I was completed on January 23, 2001. The Phase II sampling protocol will be initiated following remediation of sewage basins which are contained within the drainage basins which are tributary to each drainage pump station. Commencing no later than 180 days after the completion of remediation of all sewage basin(s) within an individual drainage pump station basin, the Board shall collect six (6) quarterly samples over a two year (8 quarters) period. The samples shall be taken at the drainage pump station following a specified rainfall event and these samples shall be analyzed for the same parameters as the earlier sampling protocol. The Program will continue until the RMAPs have been completed in all sewage basins and the final drainage basin sampling is complete.

49. The Board shall conduct all sampling and analysis in accordance with EPA approved methods under 40 C.F.R. Part 136 or, where EPA methods do not exist, in accordance with the latest edition of the Standard Methods for the Examination of Water and Wastewater.

50. Samples shall be analyzed for the following parameters: fecal coliform, fecal streptococcus, enterococcus, and caffeine.

51. The stations at which the monitoring is to be conducted are:

Station 3 - 2251 N. Broad Avenue
Station 6 - 345 Orpheum St.
Station 7 - 5741 Orleans Avenue
Station 10 - 9600 Haynes Blvd.
Station 14 - 12200 Haynes Blvd.
Station 16 - 7200 Wales St.

PHASE I

52. Within one hundred and eighty (180) days after the Date of Lodging of the Original Consent Decree, the Board commenced Phase I baseline monitoring of the East Bank storm water drainage areas. Phase I monitoring met the following requirements:

a. The Board took water samples on the discharge side of each drainage station which pumps storm water to Lake Pontchartrain at a location or locations which yielded samples representative of the water pumped during the sample period.

b. Samples were taken between 6 and 12 hours following a rainfall event of approximately 1" or more over a 24 hour period measured at the drainage pump station.

c. Sample volume, preservation and holding times were in accordance with 40 C.F.R. 136 or, where EPA methods do not exist, in accordance with the latest edition of Standard Methods for the Examination of Water and Wastewater. Samples were taken in each of six (6) calendar quarters for a period of two years (8 quarters) unless the specified rainfall event did not occur in the quarter. If the specified rainfall event did not occur during said quarter, the Board was exempt from performing said testing.

d. The results of Phase I sampling were tabulated and submitted to EPA within ninety (90) days following the end of the two year (eight quarters) monitoring period. The report included the date and location of all sampling, the associated 24 hour rainfall measurement, and the results of the analyses for the specified parameters.

PHASE II

53. Within one hundred and eighty (180) days following completion of the RMAP, including ESSA-related repairs, for all sewage basin(s) within a drainage pump station basin, the Board shall initiate Phase II sampling for that drainage basin. This shall continue until

all pump stations identified in Paragraph 51 above are sampled. Phase II shall include the following:

a. The Board shall take water samples on the discharge side of the drainage pump station(s) which are used to drain the geographic area of the sewage basin remediated under the RMAP. Sample locations will be the same as those locations used in Phase I.

b. The Board shall follow the sampling protocol specified under Paragraph 52(b) & (c) above.

c. The results of each Phase II sampling period shall be submitted to EPA within ninety (90) days after completion of the two year (8 quarters) sampling period for the affected drainage basin. The report shall include identification of the drainage pump station sampled and the sewage basins associated with that station, the date and location of all sampling, the associated 24 hour rainfall measurement and the results of the analyses for the specified parameter.

XVII.
EMPLOYEE TRAINING PROGRAM

54. The parties recognize that employee training is essential for effective and complete implementation of this Third Modified Consent Decree. Accordingly, the Board has developed and implemented a training program described in its submittal to EPA of January 2, 1997. The Board shall continue to implement the employee training program in accordance with the requirements in the Original Consent Decree.

XVIII.
OUTREACH AND PUBLIC AWARENESS

55. The parties agree that an effective public education program will assist in fulfilling the purpose of this Third Modified Consent Decree. This is particularly important in

advising the public of steps they can take to minimize the impact on the collection system, improve environmental compliance and educate local groups. Accordingly, the Board shall continue the full implementation of the Outreach and Public Awareness Program (Original Exhibit 5).

XIX.
REPORTING

56. Beginning with the first quarter following entry of the Modified Consent Decree, and each quarter thereafter until termination of the decree, the Board shall submit electronically to the Associate Director, Water Enforcement Branch, EPA Region 6, and to Plaintiff-Intervenors, a Quarterly Report on the first day of February, May, August and November, for calendar quarters ending December 31, March 31, June 30 and September 30, containing a summary of compliance with and activities related to:

a. Implementation of RMAPs in Paragraph 40, and progress of ESSA repairs in Paragraph 37. The obligations to provide a quarterly report for implementation of the RMAPs for a particular basin shall terminate when all of the milestones for that basin have been met to the satisfaction of EPA.

b. Retained cross connections that were inspected, opened or closed during the preceding quarter in accordance with Section XI above, and the location of any new cross connections discovered during the quarter, together with a description of what was done to seal or eliminate them.

c. The Operation and Maintenance Plan for the FBI. The Board submitted to EPA the Operation and Maintenance Plan for the Fluidized Bed Incinerator within sixty (60) days following the Date of Lodging of the Modified Consent Decree. The O & M Quarterly Report shall be submitted after the first full quarter following approval by the State

for operation of the FBI. The O & M Quarterly Report shall contain information related to periodic inspection of the FBI's wet scrubber for integrity and function; periodic inspections of monitoring devices to detect malfunctions or defects and scheduled repairs; dates of calibration of monitoring devices; and verification that FBI maintenance is conducted in accordance with the Incinerator Plan.

d. For sewer overflow events on private or commercial property, any information regarding such events occurring during that quarter, to the extent such events are known by the Board, as well as any information known by the Board as to how such events were resolved by the property owner.

57. Beginning on March 1, 1999, and every twelve (12) months thereafter until termination of this Third Modified Consent Decree, the Board shall submit to EPA and Plaintiff-Intervenors electronically an Annual Report containing a summary of compliance with and activities related to:

a. The Sewer Overflow Action Plan (including Modified Sewer Overflow Action Plan) activities, including, but not limited to, the number of responses to unauthorized discharges, the response times for each discharge and actions taken to clean up and disinfect the discharge site. The Board shall also include a certification that the Board is complying with any non-significant changes made to the modified SOAP, as provided for in Paragraph 34A.

b. The Preventive Maintenance activities listed on the table "Preventive Maintenance - Quantifiable Measures" in the Modified Preventive Maintenance Program, to be attached hereto as Modified Exhibit 3. This report shall include information identifying specific pipe segments which were inspected, cleaned, repaired or replaced, number

and location of manhole inspections, a summary of all force main Preventive Maintenance activities for the year, and any other non-RMAP related activity. The following tasks shall be reported separately: smoke testing, visual inspections, closed circuit television, and any other appropriate Preventive Maintenance methodology used by the Board. Where available, maps shall be submitted documenting the information provided in the report. The summary shall include a certification that the Board is complying with the EPA-approved Modified Preventive Maintenance Program, including pump station preventive maintenance, and any non-significant changes made to the Modified Preventive Maintenance Program, as provided in Paragraph 30. For the first year in which each pump station becomes operational, the reporting period for that pump station shall begin after it has been operating for a full quarter of the year. The Preventive Maintenance activities shall begin immediately upon each pump station's becoming operational.

c. The Storm Sewer Monitoring Program activities, in accordance with Section XVI.

d. A report on the progress of construction of facilities to protect the East Bank Plant from a one-hundred (100) year flood.

e. A report on any population changes and any revised population projections as provided in Paragraph 45.

58. No later than twenty-one (21) days following completion of any milestone under the Comprehensive Collection System Remedial Program, including construction milestones referenced in Paragraphs 39, 40, 41, and 41A above, the Board shall submit to EPA a written statement indicating whether or not compliance with the milestone date was achieved.

59. The Board will include in its quarterly and annual reports a summary of the Board and the City's coordination efforts and work progress, including a summary of significant coordination efforts undertaken during the reporting period and a chart depicting those efforts. The chart shall identify each project (represented as a contract) on which the Board and the City are coordinating or at the time of submitting the report reasonably expect to coordinate, the estimated budget for each entity's share of the work (including the expenditure of federal funding that the Board and the City reasonably expect to make at the time of submitting the report), the current status of that coordinated work, and the estimated and actual date for design completion, contract advertising, notice to proceed, and construction completion. With respect to the summaries and information reported under this paragraph 59, all parties understand that the amounts and dates of anticipated federal funding expenditures regularly change, that the reported information reflects what is anticipated at the time the Board submits it, and that the information is likely to change between each report.

60. The Board shall submit to EPA all reports required to be submitted under its NPDES Permit in accordance with the requirements of the permit. No later than the fifteenth day of the month following any calendar month, the Board shall submit a summary report of all unauthorized discharges. This report shall contain the following information:

- a. The specific (and general) location of the unauthorized discharge (i.e. street address and specific basin of the city);
- b. The duration of the discharge (including the beginning and end dates and times);
- c. An estimate of the volume discharged;

- d. The drainage canal into which the wastewater was released (include the most likely destination of the canal);
- e. The specific cause(s) of the discharge;
- f. Any and all measures taken by the Board to minimize the duration and/or impacts of the discharge;
- g. The specific measures taken to eliminate the discharge;
- h. The specific measures the Board intends to use to prevent recurrence of the discharge; and
- i. The date and time of the response.

Although the Board has no responsibility for nor authority over discharges on private property (except to such extent such authority is addressed in the Modified SOAP provisions), it will report overflows on private property, including the information listed in subsections (a) through (i) above, to the extent known by the Board, and follow up actions on them in its Quarterly Reports to the extent the Board has knowledge of same.

61. All reports required to be submitted in this section shall contain a certification signed by a responsible official of the Board. The certification shall read as follows:

"I certify that the information contained in or accompanying this (submission/document) is true, accurate and complete. As to (the/those) identified portion(s) of this (submission/document) for which I cannot personally verify (its/their) truth and accuracy, I certify as the official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this is true, accurate and complete."

XX. STIPULATED PENALTIES

62. Failure to Submit Timely Reports - The Board shall pay to the United States stipulated penalties, as set forth below, for each day the Board fails to submit the Quarterly

Reports and Annual Reports as outlined in Paragraphs 56 and 57. If a due date falls on a holiday or weekend, the due date shall be the following business day. The stipulated penalties for failure to meet such document submittal dates shall be as follows:

Period of Noncompliance	Penalty per Day per Violation
1st to 30th day	\$ 500
31st to 60th day	\$ 1,000
more than 60 days	\$ 2,500

After 60 days, EPA reserves the right to take additional enforcement action and seek additional stipulated penalties up to the statutory maximum for each day of continuing non-compliance.

63. Failure to Submit Timely and Complete Documents - The Board shall pay to the United States stipulated penalties, as set forth below, for each day the Board fails to submit timely construction milestones as described in Paragraphs 39, 40, 41, and 41A above by the due dates. All plans, upon submission and approval, shall be incorporated herein as part of this Third Modified Consent Decree. If a due date falls on a holiday or weekend, the due date shall be the following business day. The stipulated penalties for failure to meet such document submission dates shall be as follows:

Period of Noncompliance	Penalty per Day per Violation
1st to 30th day	\$ 1,000
31st to 60th day	\$ 2,500
more than 60 days	\$ 5,000

After sixty (60) days, EPA reserves the right to take additional enforcement action and seek additional stipulated penalties up to the statutory maximum for each day of continuing non-compliance.

64. Failure to meet RMAP and Construction Milestones -

a. The Board shall pay to the United States stipulated civil penalties as set forth below for each day the Board fails to meet milestone dates in the RMAP schedules

and construction deadlines described in Paragraphs 39, 40, 41, and 41A above. The stipulated penalties for failure to meet such implementation dates shall be as follows:

Period of Noncompliance	Penalty per Day per Violation
1st to 30th day	\$2,000
31st to 60th day	\$5,000
more than 60 days	\$10,000

After 60 days, EPA reserves the right to take additional enforcement action and seek additional stipulated penalties up to the statutory maximum for each day of continuing non-compliance.

b. Provided that the Board begins construction at a basin at or before the due date required in Paragraph 40 above, it shall place in an EPA-approved escrow account any stipulated penalties due for failure to meet an interim construction deadline established pursuant to Paragraphs 41 and 41A in the RMAP and construction milestone schedule. Upon completion of the remedial action in the basin, the Board shall pay such stipulated penalties to the United States, unless it establishes that it met the date for the end of construction for that basin established pursuant to Paragraph 40.

c. Stipulated penalties shall not apply to failure to complete all ESSAs to identify Katrina-related damages and to repair such damages in the Lakeview, Central Business District, Gentilly and Uptown Basins by July 31, 2015, pursuant to Paragraph 42.

65. The Board shall pay to the United States stipulated civil penalties as set forth below for each day the Board fails to satisfy any of the following requirements:

a. \$2,000 for each day the Board fails to seal or eliminate newly discovered cross connections within thirty (30) days of identification or inspection in accordance with Paragraph 23;

b. \$5,000 for each day the Board operates the FBI, other than in accordance with its revised Title V permit;

c. Force main reliability.

1) \$2,000 for each day the Board fails to implement its approved force main reliability corrective action plan in accordance with the approved schedule.

66. Unauthorized Use of Cross Connections - The Board shall pay \$5,000 to the United States as a stipulated penalty for each day of use of any cross connection, unless the Board notifies EPA within 24 hours of the first day of such use and establishes in writing that the cross connection use was solely to prevent loss of life, personal injury or significant property damage to the East Bank Plant and/or the Collection System and that there was no alternative to the use. EPA will also consider waiving stipulated penalties if the Board can demonstrate that its action was necessary to prevent widespread and significant property damage, that there was no alternative to such use, and if the Board notifies EPA within twenty-four (24) hours of the first day of such use.

67. Pre-Remedial Action Unauthorized Discharges - Prior to the date for completion of the remedial measures for a particular basin in accordance with the EPA-approved RMAP for that basin, the Board shall pay to the United States stipulated civil penalties of \$5,000 per day for each day of each Unauthorized Discharge occurring within that particular basin, if the Board is out of compliance with the Preventive Maintenance Program (or Modified Preventive Maintenance Program) or its Drainage and Sewerage Pumping Operations Employee Training Manual (Original Exhibit 11) or subsequent modifications based on new industry standards, or if

the Board failed to follow the Modified Sewer Overflow Action Plan in responding to and mitigating the impact of the discharge.

68. Post-Remedial Action Unauthorized Discharges - After the date for completion of the remedial measures for a particular basin in accordance with the EPA-approved RMAP for that basin:

a. The Board shall pay the United States stipulated civil penalties of \$5,000 per day for each day of each Unauthorized Discharge occurring within that particular basin, if the Board is out of compliance with the Preventive Maintenance Program (or Modified Preventive Maintenance Program) or its Drainage and Sewerage Pumping Operations Employee Training Manual (Original Exhibit 11) or subsequent modifications based on new industry standards, or if the Board failed to follow the Modified Sewer Overflow Action Plan in responding to and mitigating the impact of the discharge.

b. EPA may assess a stipulated civil penalty of up to \$1,000 per day for each day of each Unauthorized Discharge occurring within that particular basin, if the Board is in compliance with the Preventive Maintenance Program (or Modified Preventive Maintenance Program) and its Drainage and Sewerage Pumping Operations Employee Training Manual (Original Exhibit 11) or subsequent modifications based on new industry standards, and if the Board followed the Modified Sewer Overflow Action Plan in responding to and mitigating the impact of the discharge.

69. Non-Compliant Discharge -- The Board shall pay stipulated penalties to the United States for each day of a Non-Compliant Discharge at the East Bank Plant. For violations of the Daily Maximum limits, the Board shall pay \$1,000 per parameter, per day. For violations of the Thirty (30) Day Average, the Board shall pay \$2,500 per parameter, per month.

70. Preventive Maintenance Program Non-Compliance - The Board shall pay stipulated civil penalties to the United States for failure, during the course of a calendar year beginning January 1998, to complete implementation of the EPA-approved Preventive Maintenance Program (or Modified Preventive Maintenance Program) (Modified Exhibit 3), as follows:

<u>Non-Compliance with PM Program Requirements</u>	<u>Amount</u>
Complete less than 25% of manhole inspections in a year	\$10,000
Complete less than 100% of manhole inspections in 3.3 years	\$15,000
Complete less than 9% of collection system gravity sewer inspections in a year	\$10,000
Complete less than 100% of collection system gravity sewer inspections in 8 years	\$15,000
Complete less than 7% of mainline cleaning in a year	\$10,000
Complete less than 100% of mainline cleaning in 10 years	\$15,000
Complete less than 90% of Pump Station Preventive Maintenance Program in a year	\$10,000
Complete less than 90% of scheduled activities in a year for force main preventive maintenance program including air release valve maintenance, inspection and exercising isolation valves, visually inspecting all force main alignments, and conducting cathodic protection surveys	\$10,000

71. Storm Sewer Monitoring Program - The Board shall pay stipulated penalties to the United States for failure to conduct sampling required by Paragraph 53 above, as follows: \$25,000 per quarter for failure to complete any of the quarterly samples required within a two year period, unless the specified rainfall event does not occur in that quarter.

72. Stipulated civil penalties shall automatically begin to accrue on the first day Defendants fail to satisfy any obligation or requirement of this Third Modified Consent

Decree. If Defendants invoke dispute resolution and the Court resolves the dispute in favor of the Defendants, those days during which the dispute is unresolved will not be counted for the purpose of calculating stipulated penalties.

73. Payment of stipulated civil penalties as set forth above shall be in addition to any other rights or remedies which may be available to the United States or its agencies by reason of the Board's failure to comply with the requirements of this Third Modified Consent Decree and all applicable federal, state or local laws, regulations, wastewater discharge permit(s) and all other applicable permits.

74. Stipulated civil penalties shall be paid in the following manner:

a. For stipulated penalties accruing under Paragraphs 62, 63, 64 and 65, no later than thirty (30) days following the day that compliance with the requirement giving rise to the violation is achieved;

b. For stipulated penalties accruing under Paragraphs 66, 67, 68, and 69, no later than thirty (30) days following the first day of the violation; and

c. For stipulated penalties accruing under Paragraphs 70 and 71, no later than thirty (30) days following submission of the respective annual report detailing the violations of these requirements pursuant to Paragraph 57(b) and (c).

Stipulated civil penalties shall be paid electronically or by submitting a certified or cashier's check payable to "Treasurer, the United States of America," and tendered to the United States Attorney for the Eastern District of Louisiana, Hale Boggs Federal Building, 502 Magazine Street, New Orleans, Louisiana 70130. Simultaneously, the Board shall send copies of the certified or cashier's check, together with a letter describing the basis for the penalties, to Chief, Environmental Enforcement Section, United States Department of Justice, Post Office Box 7611 ,

Ben Franklin Station, Washington, D.C. 20044 (or by express mail to Chief, Environmental Enforcement Section, United States Department of Justice, 601 D Street, N.W., Washington, D.C. 20579), and to Chief, Legal Branch (6EN-L), Compliance Assurance and Enforcement Division, United States Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202-2733. The transmittal letter shall reference the caption, civil action number, DOJ number 90-5-1-1-4032, and the U.S.A.O. file number.

75. In the event that a stipulated civil penalty is not paid when due, the stipulated civil penalty shall be payable with interest from the original due date to the date of payment at the statutory judgment rate set forth at 28 U.S.C. § 1961(a).

XXI.
FORCE MAJEURE

76. "Force Majeure" for the purposes of this Third Modified Consent Decree is defined as an event arising from causes beyond the control of Defendants or the control of any entity controlled by Defendants, including their agents, consultants and contractors, which delays or prevents the performance of any obligation under this Third Modified Consent Decree. Unanticipated or increased costs or expenses associated with implementation of this Third Modified Consent Decree and changed financial circumstances shall not, in any event, be considered Force Majeure events. Failure to apply for a required permit or approval or failure to provide in a timely manner all information required to obtain a permit or approval that is necessary to meet the requirements of this Third Modified Consent Decree, shall not, in any event, be considered Force Majeure events.

77. When Defendants know or should have known, by the exercise of due diligence, of an event that might delay completion of any requirement of this Third Modified Consent Decree, whether or not the event is a Force Majeure event, Defendants shall notify EPA

and the Plaintiff-Intervenors, in writing, within ten (10) business days after Defendants first knew, or in the exercise of reasonable diligence under the circumstances, should have known of such event. The notice shall indicate whether Defendants claim that the delay should be excused due to a Force Majeure event. The notice shall describe in detail the basis for Defendants' contention that they experienced a Force Majeure delay, the anticipated length of the delay, the precise cause or causes of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented. Defendants shall adopt all reasonable measures to avoid or minimize such delay. Failure to so notify EPA shall render this Section void and of no effect as to the event in question, and shall be a waiver of Defendants' right to obtain an extension of time for their obligations based on such event.

78. If EPA finds that a delay in performance is, or was, caused by a Force Majeure event, it shall extend the time for performance, in writing, for a period to compensate for the delay resulting from such event and stipulated penalties shall not be due for such period. In proceedings on any dispute regarding a delay in performance, the dispute resolution provisions of Section XXII (Retention of Jurisdiction/Dispute Resolution) shall apply, and Defendants shall have the burden of proving that the delay is, or was, caused by a Force Majeure event, and that the amount of additional time requested is necessary to compensate for that event.

79. Compliance with a requirement of this Third Modified Consent Decree shall not by itself constitute compliance with any other requirement. An extension of one compliance date based on a particular event shall not automatically extend any other compliance date. Defendants shall make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought.

XXII.

RETENTION OF JURISDICTION/DISPUTE RESOLUTION

80. This Court shall retain jurisdiction of this matter for the purposes of implementing and enforcing the terms and conditions of this Third Modified Consent Decree and for the purpose of adjudicating all disputes among the parties that may arise under the provisions of this Third Modified Consent Decree, to the extent that this Third Modified Consent Decree provides for resolution of disputes by the Court.

81. Any dispute that arises with respect to the meaning, application, implementation, interpretation, amendment or modification of this Third Modified Consent Decree, or with respect to Defendants' compliance herewith or any delay hereunder, the resolution of which is not expressly provided for in this Third Modified Consent Decree, shall in the first instance be the subject of informal negotiations. If any party believes it has a dispute with respect to this Third Modified Consent Decree with any other party, it shall notify the other parties in writing, setting forth the matter(s) in dispute. Defendants shall address such notification to the addressees listed in Paragraph 105. If the dispute cannot be resolved by the parties within fourteen (14) days from receipt of such notice, Defendants shall comply with the position of the United States unless Defendants file a petition with the Court for resolution of the dispute within forty-five (45) days of receipt of such notice of dispute. The petition shall set forth the nature of the dispute with a proposal for its resolution. The United States may, within thirty (30) days of receipt of this petition, file a response with an alternate proposal for resolution. In any such dispute invoked by the Defendants, Defendants shall have the burden of proof.

82. Submission of any matter to the Court for resolution shall not extend any of the deadlines set forth in this Third Modified Consent Decree unless the parties agree to such extension in writing or the Court grants an order extending such deadline.

XXIII.
RIGHT OF ENTRY

83. The United States and its authorized representatives and contractors shall have authority at all times, upon the presentation of credentials, to enter the premises of Defendants to:

- a. Monitor the progress of activities required by this Third Modified Consent Decree;
- b. Verify any data or information submitted to the United States;
- c. Obtain samples, and, upon request, obtain splits of any samples collected by Defendants or their consultants and contractors;
- d. Observe performance tests;
- e. Inspect and evaluate any portions of the East Bank Plant and Collection System; and
- f. Inspect and review any records required to be kept under the terms and conditions of this Third Modified Consent Decree, Permit No. LA0038091, the Clean Water Act and the Clean Air Act.

These inspection rights are in addition to, and in no way limit or otherwise affect, the United States' statutory authorities to conduct inspections, to require monitoring and to obtain information from Defendants as authorized by law.

XXIV.
NOT A PERMIT/COMPLIANCE WITH OTHER STATUTES/REGULATIONS

84. This Third Modified Consent Decree is not and shall not be construed as a permit issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, nor as a modification of any existing permit so issued, nor shall it in any way relieve Defendants of their obligations to obtain a permit for the East Bank Plant, the Collection System or any other part of

their wastewater treatment and collection system or facilities and to comply with the requirements of any NPDES permit or with any other applicable federal or state law or regulation. This Third Modified Consent Decree is not and shall not be construed as a permit issued pursuant to the Clean Air Act, nor as a modification of any existing permit so issued, nor shall it in any way relieve Defendants of their obligations to obtain Clean Air Act permits and to comply with the requirements of any such permit(s) or with any other applicable federal or state law or regulation. Any new permit, or modification of existing permits, must be complied with in accordance with applicable federal and state laws and regulations.

85. Nothing herein shall be construed as relieving Defendants of the duty to comply with the Clean Water Act, the Clean Air Act, the regulations promulgated under each of those acts, and all applicable permits issued under each of those acts and regulations.

XXV.
FAILURE OF COMPLIANCE

86. The United States does not, by its consent to the entry of this Third Modified Consent Decree, warrant or aver in any manner that Defendants' complete compliance with this Third Modified Consent Decree will result in compliance with the provisions of the Clean Water Act, 33 U.S.C. § 1251 et seq., with Defendants' NPDES permits, or with the Clean Air Act, 42 U.S.C. § 7401 et seq. Notwithstanding EPA's review or approval of any plans, reports, policies, or procedures formulated pursuant to this Third Modified Consent Decree, Defendants shall remain solely responsible for any non-compliance with the terms of this Third Modified Consent Decree, all applicable permits, the Clean Water Act, the Clean Air Act, and regulations promulgated under those Acts. The pendency or outcome of any proceeding concerning issuance, reissuance, or modification of any permit shall neither affect nor postpone Defendants' duties and obligations as set forth in this Third Modified Consent Decree.

XXVI.
NON-WAIVER PROVISIONS

87. This Third Modified Consent Decree in no way affects or relieves Defendants of any responsibility to comply with any federal, state, or local law or regulation.

88. The parties agree that Defendants are responsible for achieving and maintaining complete compliance with all applicable federal and state laws, regulations, and permits, and that compliance with this Third Modified Consent Decree shall be no defense to any actions commenced pursuant to said laws, regulations, or permits, except as otherwise expressly specified in this Third Modified Consent Decree.

89. This Third Modified Consent Decree does not limit or affect the rights of Defendants or the United States as against any third parties that are not parties to this Third Modified Consent Decree.

90. The parties reserve any and all legal and equitable remedies available to enforce the provisions of this Third Modified Consent Decree.

91. In the event that EPA promulgates a rule concerning Sanitary Sewer Overflows which is of general applicability, that rule shall be incorporated by reference into this Third Modified Consent Decree.

92. This Third Modified Consent Decree shall not limit any authority of EPA under any applicable statute, including the authority to seek information from Defendants or to seek access to the property of Defendants.

93. Performance of the terms of this Third Modified Consent Decree by Defendants is not conditioned on the receipt of any federal or state funds. Application for construction grants, State Revolving Loan Funds, or any other grants or loans, or delays caused by

inadequate facility planning or plans and specifications on the part of Defendants shall not be cause for extension of any required compliance date in this Third Modified Consent Decree.

94. EPA recognizes that the Defendants have received Federal and State grants in the past and that they will continue to pursue additional funding.

95. Obligations of Defendants under the provisions of this Third Modified Consent Decree to perform duties scheduled to occur after the Date of Lodging, but prior to the Date of Entry, shall be legally enforceable from the Date of Lodging of this Third Modified Consent Decree. Liability for stipulated penalties for any such obligations shall not begin to accrue until the Date of Entry of this Third Modified Consent Decree. Obligations in the Third Modified Consent Decree, unless otherwise stated, shall be initiated upon Date of Entry of the Third Modified Consent Decree.

96. It is the intent of the parties hereto that the clauses hereof are severable, and should any clause(s) be declared by a court of competent jurisdiction to be invalid and unenforceable, the remaining clauses shall remain in full force and effect.

97. The United States reserves all remedies available to it for violations of the Clean Water Act and the Clean Air Act by the Defendants which are not alleged in the Complaint, the First Amended Complaint and the Second Amended Complaint and for violations of the Clean Water Act and the Clean Air Act by Defendants which occur after the Date of Lodging of this Third Modified Consent Decree.

98. This Third Modified Consent Decree does not resolve criminal liability, if any, that any person might have for violations of the Clean Water Act or the Clean Air Act.

99. Nothing in this Third Modified Consent Decree shall be construed to limit the authority of the United States to undertake any action against any person, including

Defendants, in response to conditions that may present an imminent and substantial endangerment to the environment or to the public health or welfare.

XXVII.
COORDINATION COMMITMENTS

100. Defendants shall develop a plan to incorporate green infrastructure as part of the RMAPs for all Basins. Defendants may pursue those measures at any location within its system. Defendants commit to coordinate and work with EPA, and to consult with Plaintiff-Intervenors, in this effort. Defendants will submit the green infrastructure plan to EPA for review by April 24, 2014 – one year after entry of the Second Modified Consent Decree. As part of this commitment, the Board agrees to dedicate \$500,000 per year, averaged over the next five years, to be subsequently used for green infrastructure projects and activities carried out pursuant to the plan. In addition, the Board shall include in its quarterly and annual reports submitted pursuant to paragraphs 56 and 57 above a summary of any green infrastructure activities undertaken pursuant to this paragraph or the plan developed under it. Defendants' green infrastructure commitment as stated herein shall be final and shall satisfy all green infrastructure requirements contained in any and all Consent Decrees issued in this matter.

101. Defendants shall coordinate City street work with Board RMAP work through termination of this Third Modified Consent Decree.

102. The Board commits to consult with EPA and LDEQ to ensure, to the maximum extent possible, that the RMAP work is consistent with the requirements of the Total Maximum Daily Loads (TMDLs) for Fecal Coliform Bacteria and Dissolved Oxygen for Selected Subsegments in the Lake Pontchartrain Basin and the Board's MS4 (Municipal Separate Storm Sewer System) discharge permit. The Board will include a summary and description of any such discussions in its Quarterly and Annual Reports. Notwithstanding this commitment, this provision

shall not be construed to require the Board to take any action that it otherwise is not required to take by law, including alteration of the design or construction of planned, already initiated, or completed work. Any changes to the RMAP work necessitated by such a requirement shall not be subject to the terms of the Third Modified Consent Decree.

XXVIII.
COSTS OF SUIT

103. Each party shall bear its own costs and attorney's fees with respect to matters resolved by this Third Modified Consent Decree. Should Defendants subsequently be determined by the Court to have violated the terms and conditions of this Third Modified Consent Decree, Defendants shall be liable to the United States for any costs and attorney's fees incurred by the United States in such actions against Defendants for non-compliance with this Third Modified Consent Decree.

XXIX.
RECORD KEEPING

104. Defendants shall maintain copies of any underlying research and data in their possession, custody or control for any and all documents, reports, or permits submitted to EPA pursuant to this Third Modified Consent Decree for a period of ten (10) years from date of submission. Defendants shall require any independent contractor operating any portion of the East Bank Collection System or the East Bank Plant or implementing any portion of this Third Modified Consent Decree to also retain such materials for a period of ten (10) years from date of submission. Defendants shall submit such supporting documents to EPA upon request. This record-keeping requirement does not apply to any underlying research and data that the Board previously produced or made available to the United States in this matter during discovery or for pretrial purposes.

XXX.
FORM OF NOTICE

105. Unless otherwise specified, all reports, notices, or any other written communications required to be submitted under this Third Modified Consent Decree shall be sent to the respective parties at the following addresses:

As to the United States:
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Post Office Box 7611, Ben Franklin Station
Washington, D.C. 20044
(or by express mail to Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice, 601 D Street, N.W., Washington, D.C. 20579)
Reference DOJ Case No. 90-5-1-1-4032

As to EPA:
Associate Director, Water Enforcement Branch (6EN-W)
Compliance Assurance and Enforcement Division
U.S. Environmental Protection Agency, Region VI
1445 Ross Avenue
Dallas, Texas 75202-2733

As to the Board:
Executive Director and Special Counsel
Sewerage and Water Board of New Orleans
625 St. Joseph Street
New Orleans, Louisiana 70165

As to the Plaintiff-Intervenors:	
President	Executive Director
League of Women Voters of New Orleans	Louisiana Environmental Action Network
1215 Prytania Street, Suite 224	P.O. Box 66323
New Orleans, LA 70130	Baton Rouge, LA 70896

Executive Director	Executive Director
Lake Pontchartrain Basin Foundation	Orleans Audubon Society
P.O. Box 6965	710 Carondelet Street
Metairie, LA 70009	New Orleans, LA 70130

Unless otherwise specified, notifications for the City, the State, and the Plaintiff-Intervenors shall be sent only upon written request and shall be mailed to the person and address identified in the written request. Notifications to or communications with EPA or the DOJ, if received, shall be deemed submitted on the date they are postmarked and sent by certified mail, return receipt requested.

XXXI.
MODIFICATION

106. This Third Modified Consent Decree, including all Modified Appendices as well as all Appendices in the Original, Modified, and Second Modified Consent Decrees, contains the entire agreement of the parties. Unless otherwise provided, the terms of this Third Modified Consent Decree may be subsequently modified in a material way only by a subsequent written agreement signed by the United States and the Board, with concurrence by the Plaintiff-Intervenors, or by order of the Court. If the United States and the Board agree to propose a modification constituting a material change to any term of the Third Modified Decree, the Plaintiff-Intervenors shall have 90 days to either concur with or object to the proposed modification after notice of such to the undersigned counsel for Plaintiff-Intervenors. The United States and the Board shall make reasonable efforts to timely provide Plaintiff-Intervenors with all documentation supporting the proposed modification. If Plaintiff-Intervenors do not respond within 90 days, they are deemed to have concurred with the proposed modification. If the Plaintiff-Intervenors timely object to the proposed modification, the United States and the Board may move the Court for modification of the Consent Decree and Plaintiff-Intervenors may oppose the motion. Any material modification shall be effective only upon approval of the Court. Non-material changes to the Consent Decree (including appendices) may be made by written

agreement of the United States and the Board and filed with the Court unless specified otherwise in this Third Modified Consent Decree.

XXXII.
PUBLIC COMMENT AND ENTRY

107. The parties agree and acknowledge that final approval by the United States and entry of this Third Modified Consent Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Third Modified Consent Decree in the Federal Register, an opportunity for public comment, and consideration by the United States of any comments. Further, the parties agree and acknowledge that final approval by LDEQ, and entry of this Consent Decree is subject to the requirements of La. R.S. 30:2050.7, which provides for public notice of this Consent Decree in newspapers of general circulation and the official journals of parishes in which the subject facilities are located, an opportunity for public comment, consideration of any comments, and concurrence by the State Attorney General. LDEQ reserves the right to withdraw or withhold consent if the comments regarding this Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper or inadequate. This Paragraph does not create any rights exercisable by Defendants, other than the State of Louisiana

XXXIII.
TERMINATION

108. The Third Modified Consent Decree shall automatically terminate one year after the Board has certified to the other parties and the Court that Defendants have complied with the following elements of this Third Modified Consent Decree: the Clean Air Act and Clean Water Act remedial measures (Sections VIII-XV), completion of ESSA repairs (Paragraph 37), storm sewer monitoring (Section XVI), employee training (Section XVII), outreach and public awareness (Section XVIII), reporting (Section XIX), and stipulated penalties (Section XX).

109. The Third Modified Consent Decree shall not terminate if, following certification by the Board of compliance pursuant to Paragraph 108 above, the United States asserts in writing that full compliance has not been achieved. If the United States disputes Defendants' full compliance, this Third Modified Consent Decree shall remain in effect pending resolution of the dispute by the parties or the Court.

XXXIV.
SIGNATORIES

110. The Assistant Attorney General on behalf of the United States and the undersigned representatives of Defendants, the State of Louisiana and Plaintiff-Intervenors certify that they are fully authorized to enter into the terms and conditions of this Third Modified Consent Decree and to execute and legally bind such party to this document.


Dated and entered this 17th day of July 2014.


United States District Judge


WE HEREBY CONSENT to the entry of the Third Modified Consent Decree in the United States v. Sewerage and Water Board of New Orleans, et al., Civil Action No. 93-3212, Section S, Mag. 1, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF THE UNITED STATES OF AMERICA

3/10/14
DATE


ROBERT G. DREHER
Acting Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

2014-02-26
DATE

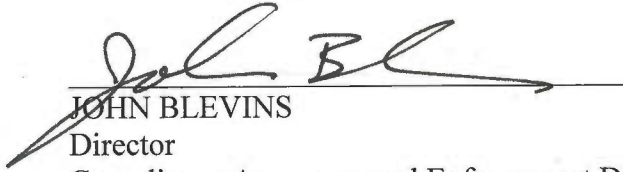

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KENNETH ALLEN POLITE, JR.
United States Attorney
Eastern District of Louisiana

SHARON D. SMITH
Assistant United States Attorney
Eastern District of Louisiana
650 Poydras Street, Suite 1600
New Orleans, LA 70130
Telephone: (504) 680-3000
Facsimile: (504) 680-3184
Email: sharon.d.smith@usdoj.gov

DATE:

2.4.14



JOHN BLEVINS
Director

Compliance Assurance and Enforcement Division
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

DATE:

Feb. 4, 2014

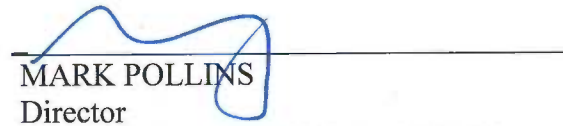


ELLEN CHANG-VAUGHAN

Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue
Dallas, Texas 75202

DATE:

2-5-14



MARK POLLINS
Director

Water Enforcement Division (2243A)
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Washington, D.C. 20460

WE HEREBY CONSENT to the entry of the Third Modified Consent Decree in the United States v. Sewerage and Water Board of New Orleans, et al., Civil Action No. 93-3212, Section S, Mag. 1.

FOR PLAINTIFF-INTERVENORS

DATE:



LISA W. JORDAN
Deputy Director
Tulane Environmental Law Clinic
6329 Freret Street
New Orleans, Louisiana 70118
Counsel for Plaintiff-Intervenors

DATE:



MICHAEL W. TIFFT
710 Carondelet Street
New Orleans, LA 70130
Counsel for Plaintiff-Intervenor
Orleans Audubon Society, Inc.

WE HEREBY CONSENT to the entry of the Third Modified Consent Decree in the United States v. Sewerage and Water Board of New Orleans, et al., Civil Action No. 93-3212, Section S, Mag. 1.

FOR DEFENDANT, THE SEWERAGE AND WATER BOARD OF NEW ORLEANS

DATE:

1/31/2014



MARCIA A. ST. MARTIN
Executive Director
Sewerage & Water Board of New Orleans
625 St. Joseph Street, Room 233
New Orleans, Louisiana 70165

DATE:

1/31/2014



NOLAN P. LAMBERT
Special Counsel
Sewerage & Water Board of New Orleans
625 St. Joseph Street, Room 201
New Orleans, Louisiana 70165

DATE:

2/11/2014



BENJAMIN F. WILSON
Beveridge & Diamond, P.C.
1350 I Street, N.W, Suite 700
Washington, D.C. 20005

DATE:

2/11/14

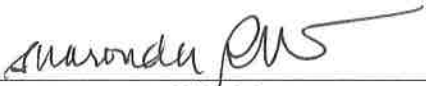


W. PARKER MOORE
Beveridge & Diamond, P.C.
1350 I Street, N.W, Suite 700
Washington, D.C. 20005

WE HEREBY CONSENT to the entry of the Third Modified Consent Decree in the United States v. Sewerage and Water Board of New Orleans, et al., Civil Action No. 93-3212, Section S, Mag. 1.

FOR DEFENDANT, THE CITY OF NEW ORLEANS

DATE: 2/6/14



SHARONDA R. WILLIAMS
City Attorney
Room 5E03
1300 Perdido Street
New Orleans, Louisiana 70112

WE HEREBY CONSENT to the entry of the Third Modified Consent Decree in the United States v. Sewerage and Water Board of New Orleans, et al., Civil Action No. 93-3212, Section S, Mag. 1, subject to the public notice and comment requirements of La. R.S. 30:2050.7.

FOR DEFENDANT, THE STATE OF LOUISIANA

DATE:



CHERYL S. NOLAN
Assistant Secretary
Office of Environmental Compliance
Louisiana Department of Environmental Quality
P.O. Box 4312
Baton Rouge, Louisiana 70821-4312

OF COUNSEL:

JACKIE M. MARVE
Regional Attorney
Legal Division
Louisiana Department of Environmental Quality
P. O. Box 4302
Baton Rouge, LA 70821-4302