

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

CITY OF RAYNE

AI # 86928

PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL QUALITY ACT
LA. R.S. 30:2001, ET SEQ.

* Settlement Tracking No.
* SA-WE-12-0021
*
* Enforcement Tracking No.
* WE-CN-09-0108
*
* Docket No. 2011-11029-EQ
*

SETTLEMENT

The following Settlement is hereby agreed to between City Of Rayne (“Respondent”) and the Department of Environmental Quality (“DEQ” or “the Department”), under authority granted by the Louisiana Environmental Quality Act, La. R.S. 30:2001, et seq. (“the Act”).

I

Respondent is a governmental entity that owns and/or operates a publically owned treatment works (POTW) facility located in Rayne, Acadia Parish, Louisiana (“the Facility”).

II

On May 13, 2010, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. WE-CN-09-0108, which was based upon the following findings of fact:

The Respondent owns and/or operates a publically owned treatment works (POTW) which serves the City of Rayne. The facility is located at 1301 West Jefferson Davis Avenue in Rayne, Acadia Parish, Louisiana. The Respondent was issued Louisiana Pollutant Discharge Elimination System (LPDES) permit number LA0039055 with an effective date of July 17, 2003, and an expiration date of September 30, 2008. On or about April 22, 2008, the

Department received the Respondent's LPDES permit renewal application and LPDES permit LA0039055 was administratively continued until it was reissued with an effective date of June 1, 2009 and expiration date of May 31, 2014. LPDES permit LA0039055 authorizes the Respondent to discharge treated sanitary wastewater into Bayou Blanc, thence into Bayou Plaquemine Brule, all waters of the state.

An inspection was conducted by the Department on or about January 14, 2009, in response to a citizen's complaint, alleging that CCS Midstream Services in Rayne, Louisiana disposes waste into the Respondent's wastewater plant.

As a result of the citizen's complaint, the Department conducted subsequent inspections at CCS Midstream Services in Rayne, Louisiana on or about January 14, 2009, on or about February 6, 2009, and on or about May 27, 2009, at the Respondent's facility. During the Department's investigations, it was determined that industrial wastewaters generated at CCS Midstream Services in Rayne, Louisiana is disposed of into the Respondent's POTW via a manhole at the intersection of Bailey Avenue and Harrop Street.

A file review conducted by the Department on or about March 23, 2010, revealed the Respondent failed to notify the Department of changes in procedures described in its LPDES permit application. A records review of the Respondent's permit renewal application received by the Department on or about April 22, 2008, revealed the Respondent failed to indicate on its application that indirect discharges are introduced into the treatment facility. The Respondent's failure to notify the Department of changes in procedures described in its LPDES application is a violation of LPDES permit LA0039055 (Part II, C.3, Part III, Sections A.2 and D.1.C), La. R.S. 30:2076 (A) (1), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2701.A and LAC 33:IX.2701.L.8.

A file review conducted by the Department on or about March 23, 2010, revealed operations and maintenance deficiencies. Specifically, during the period of the review from January 2007 through December 2009, the Respondent self-reported two hundred and eighty five (285) overflows to the Department. These overflows reported by the Respondent occurred at various locations throughout the Respondent's collection system. Each discharge from a location not authorized by LPDES permit LA0039055 is a violation of La. R.S. 30:2075, La. R.S. 30:2076 (A) (1), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.501.D, and LAC 33:IX.2701.A. Each failure by the Respondent to properly operate and maintain its sewerage system is a violation of LPDES permit LA0039055 (Part III, Sections A.2 and B.3.a), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX. 2701.A, and LAC 33:IX.2701.E.

A file review conducted by the Department on or about March 23, 2010, revealed the following permit exceedances, as reported by the Respondent on the Discharge Monitoring Reports (DMRs):

Monitoring Period	Outfall	Parameter	Permitted Limit	Reported Value
02/01/07-04/30/07	TX1Q	Chronic Static Renewal 7-Day Survival Test for <i>Pimephales promelas</i>	96%	< 30%
		Whole Effluent Toxicity	96%	< 30%
04/11/07-04/16/07	TX1Q	Chronic Static Renewal 7-Day Survival "Retest" for <i>Pimephales promelas</i>	96%	< 30%

Each exceedance of the permitted limitations is a violation of LPDES permit LA0039055 (Part I, Part II, Section D, and Part III, Section A.2), La. R.S. 30:2076 (A)(1), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC 33:IX.501.D, and LAC 33:IX.2701.A.

A file review conducted by the Department on or about March 23, 2010, revealed that the Respondent failed to submit complete and/or accurate DMRs as indicated:

Reported Monitoring Period/ Date	Outfall	Comments
11/2006-1/2007	TX1Q	Missing Page 2 of the DMR for Biototoxicity data
2/01/07-4/30/07	TX1Q	DMR dated 5/10/07 and labeled as "Retest # 1" has a quarterly monitoring period indicated on the DMR instead of a monthly monitoring period
7/11/07-7/16/07	TX1Q	DMR dated 8/9/07 and labeled as "Retest # 1" has a quarterly monitoring period indicated in the monitoring period section

Each incomplete and/or inaccurate DMR submittal is a violation of LPDES permit LA0039055 (Part I, and Part III, Section A.2), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, and LAC 33:IX.2701.A.

A file review conducted by the Department on or about March 23, 2010, revealed that the Respondent failed to submit the Summary Tables for results of valid biotoxicity tests for Outfall TX1Q as indicated below:

Monitoring Period	Outfall	Failed to Submit
11/2006-01/2007	TX1Q	Summary tables for <i>Ceriodaphnia dubia</i> & <i>Pimphales promelas</i> lab results
02/2007-04/2007	TX1Q	Summary tables for <i>Ceriodaphnia dubia</i> & <i>Pimphales promelas</i> lab results
05/2007-07/2007	TX1Q	Summary tables for <i>Ceriodaphnia dubia</i> & <i>Pimphales promelas</i> lab results
08/2007-10/2007	TX1Q	Summary tables for <i>Ceriodaphnia dubia</i> & <i>Pimphales promelas</i> lab results
11/2007-01/2008	TX1Q	Summary tables for <i>Ceriodaphnia dubia</i> & <i>Pimphales promelas</i> lab results
02/2008-04/2008	TX1Q	Summary tables for <i>Ceriodaphnia dubia</i> & <i>Pimphales promelas</i> lab results
05/2008-07/2008	TX1Q	Summary tables for <i>Ceriodaphnia dubia</i> & <i>Pimphales promelas</i> lab results
08/2008-10/2008	TX1Q	Summary tables for <i>Ceriodaphnia dubia</i> & <i>Pimphales promelas</i> lab results
11/2008-01/2009	TX1Q	Summary tables for <i>Ceriodaphnia dubia</i> & <i>Pimphales promelas</i> lab results

Monitoring Period	Outfall	Failed to Submit
02/2009-04/2009	TX1Q	Summary tables for <i>Ceriodaphnia dubia</i> & <i>Pimphales promelas</i> lab results
05/2009-07/2009	TX1Q	Summary tables for <i>Ceriodaphnia dubia</i> & <i>Pimphales promelas</i> lab results
04/2009-06/2009 (new permit)	TX1Q	Summary tables for <i>Ceriodaphnia dubia</i> & <i>Pimphales promelas</i> lab results

Each failure to submit the required Summary Tables for valid biotoxicity tests conducted is a violation of LPDES permit LA0039055 (Part II, Pages 11 and 12, Part III, Section A.2), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, and LAC 33:IX.2701.L.4.a.

A file review conducted by the Department on or about March 23, 2010, revealed that the Respondent failed to submit DMRs for the monthly monitoring periods when increased biomonitoring frequency was warranted for the *Pimphales promelas*. Specifically, the Respondent failed to submit the monthly retest DMRs for the months of May and June of 2007. Each failure to submit a monthly biomonitoring DMR constitutes a violation of LPDES permit LA0039055 (Part II, Section C.3.c, and Part III, Sections A.2 and D.4), La. R. S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC 33:IX.2701.A, and LAC 33:IX.2701.L.4.a.

A file review conducted by the Department on or about March 23, 2010, revealed that the Respondent failed to submit Discharge Monitoring Reports (DMRs) to demonstrate the increase in the monitoring frequency as indicated in LPDES permit LA0039055 when test failures occurred for the *Pimphales promelas*. Specifically, the Respondent failed to submit monthly DMRs for monitoring periods of May, June and July of 2007, to demonstrate compliance of the critical dilution for the affected species for a period of three consecutive months. Each failure to submit DMRs is a violation of (Part II, Section A.10, and Part III, Sections A.2 and D.4), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2701.A, and LAC 33:IX.2701.L.4.a.

An inspection conducted by the Department on or about May 27, 2009, revealed the Respondent's means of measuring and determining flow had a maximum deviation greater than 10% from true discharge rates. Specifically, a flow calibration performed by the Department at the time of the inspection revealed the continuous monitor at outfall 001 deviated 37% from the actual flow rate. Also noted during the inspection was that the staff gauge used to measure the head height is approximately 50 meters from the continuous flow recorder. The time delay due to the distance from the staff gauge to the flow recorder and the potential for flow turbulence after measuring the staff gauge head height could cause the potential for an inaccurate routine calibration checks. The Respondent's failure to calibrate and maintain a device that can accurately measure the flow at Outfall 001 less than 10% from true discharge rates is a violation of LPDES permit LA0039055 (Part III, Sections A.2 and C.6) La. R. S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC 33:IX.2701.A, and LAC 33:IX.2701.E.

In a correspondence dated July 13, 2009 and a subsequent meeting held with the Department on or about July 30, 2009, CCS Midstream Services informed the Department that all discharges of industrial wastewater into the Respondent's POTW has ceased and that all industrial wastewater were currently being sent to Hoss Well Services for deep well injection.

III

In response to the Consolidated Compliance Order & Notice of Potential Penalty, Respondent made a timely request for a hearing.

IV

Respondent denies it committed any violations or that it is liable for any fines, forfeitures and/or penalties.

V

Nonetheless, Respondent, without making any admission of liability under state or federal statute or regulation, agrees to pay, and the Department agrees to accept, a payment in the amount of EIGHT THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (\$8,400.00), of which One Thousand Two Hundred Forty-Six and 08/100 Dollars (\$1,246.08) represents the Department's enforcement costs, in settlement of the claims set forth in this agreement. The total amount of money expended by Respondent on cash payments to the Department as described above, shall be considered a civil penalty for tax purposes, as required by La. R.S. 30:2050.7(E)(1).

VI

Respondent further agrees that the Department may consider the inspection reports, the Consolidated Compliance Order & Notice of Potential Penalty and this Settlement for the purpose of determining compliance history in connection with any future enforcement or permitting action by the Department against Respondent, and in any such action Respondent shall be estopped from objecting to the above-referenced documents being considered as proving the violations alleged herein for the sole purpose of determining Respondent's compliance history.

VII

This agreement shall be considered a final order of the Secretary for all purposes, including, but not limited to, enforcement under La. R.S. 30:2025(G)(2), and Respondent hereby waives any right to administrative or judicial review of the terms of this agreement, except such review as may be required for interpretation of this agreement in any action by the Department to enforce this agreement.

VIII

This settlement is being made in the interest of settling the state's claims and avoiding for both parties the expense and effort involved in litigation or an adjudicatory hearing. In agreeing to the compromise and settlement, the Department considered the factors for issuing civil penalties set forth in La. R. S. 30:2025(E) of the Act.

IX

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in Acadia Parish, Louisiana. The advertisement, in form, wording, and size approved by the Department, announced the availability of this settlement for public view and comment and the opportunity for a public hearing. Respondent has submitted an original proof-of-publication affidavit and an original public notice to the Department and, as of the date this Settlement is executed on behalf of the Department, more than forty-five (45) days have elapsed since publication of the notice.

X

Payment is to be made within ten (10) days from notice of the Secretary's signature. If payment is not received within that time, this Agreement is voidable at the option of the Department. Payments are to be made by check, payable to the Department of Environmental Quality, and mailed or delivered to the attention of Accountant Administrator, Financial Services Division, Department of Environmental Quality, Post Office Box 4303, Baton Rouge, Louisiana, 70821-4303. Each payment shall be accompanied by a completed Settlement Payment Form (Exhibit A).

XI

In consideration of the above, any claims for penalties are hereby compromised and settled in accordance with the terms of this Settlement.

XII

Each undersigned representative of the parties certifies that he or she is fully authorized to execute this Settlement Agreement on behalf of his or her respective party, and to legally bind such party to its terms and conditions.

CITY OF RAYNE

BY: _____
(Signature)

(Printed)

TITLE: _____

THUS DONE AND SIGNED in duplicate original before me this _____ day of _____, 20 _____, at _____.

NOTARY PUBLIC (ID # _____)

(stamped or printed)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Peggy M. Hatch Secretary

BY: _____
Cheryl Sonnier Nolan, Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this _____ day of _____, 20 _____, at Baton Rouge, Louisiana.

NOTARY PUBLIC (ID # _____)

(stamped or printed)

Approved:  _____
Cheryl Sonnier Nolan, Assistant Secretary