

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA and)
STATE OF LOUISIANA,) Case No.: 3:01-cv-978
) Judge: Brian A. Jackson
Plaintiffs,)
)
 v.)
)
CITY OF BATON ROUGE and)
PARISH OF EAST BATON ROUGE,)
)
Defendants.)

COMPLAINT IN INTERVENTION

For their Complaint in Intervention, Intervenor-Plaintiffs Concerned Citizens of University Place Subdivision (“Concerned Citizens”) and Louisiana Environmental Action Network (“LEAN”) make the following allegations:

CIRCUMSTANCES OF THIS CASE

1. Intervenor-Plaintiffs bring this Complaint in Intervention in accordance with Federal Rules of Civil Procedure 24(a) and (b). The other parties to this case are Plaintiffs United States of America and State of Louisiana (collectively “EPA”) and Defendants City of Baton Rouge and Parish of East Baton Rouge (collectively “Baton Rouge”).

2. EPA has failed to prosecute this case diligently and has failed even to enforce the Consent Decree that this Court entered in 2002. After more than twenty years of federal oversight, Baton Rouge continues to violate the Clean Water Act, its permit, and the 2002 Consent Decree at its North Wastewater Treatment Plant. Those violations and the related mismanagement of the plant impose offensive odors, sewer flies, and unsanitary conditions on the residents of the University Place Subdivision, violating those residents’ human rights and

creating an environmental injustice. EPA's response to this crisis has been to extend deadlines whenever Baton Rouge fails to meet them (upon information and belief) and to let stipulated penalties accumulate uncollected. For more than two decades, EPA has failed to require Baton Rouge to devote sufficient resources to the sewage treatment project to meet its obligations under the Clean Water Act.

3. EPA has announced plans to push back compliance deadlines in a proposed modified consent decree without taking any steps to remedy the environmental injustice and human rights violations that Baton Rouge's continuing mismanagement at the North Wastewater Treatment Plant causes. Exacerbating this injustice, EPA has refused to explain its decision to members of the community. When the Concerned Citizens requested a public hearing, EPA's response was that "There are no provisions for a public hearing in the CD process." EPA e-mail to Gregory R. Mitchell, Concerned Citizens of University Place Subdivision (Feb. 29, 2012). In other words, EPA's response was that because there is no specific requirement to hold a public hearing, EPA would refuse to take this reasonable step to involve residents in a decision that will dramatically affect the quality of their lives.

4. EPA's participation in the environmental injustice and human rights violations at the North Wastewater Treatment Plant violates federal policy. This is because the plant — as managed under a federally-funded program and under more than two decades of EPA supervision — has "the effect of subjecting individuals to discrimination because of their race ... [and] the effect of defeating or substantially impairing accomplishment of the objectives of the [Clean Water Act] program with respect to individuals of a particular race" Further, the "site or location of [the plant where EPA is proposing to extend deadlines for compliance] has the ... effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under [the Clean Water Act] program ... on the grounds of race" and has the

“effect of defeating or substantially impairing the accomplishment of the objectives of [40 C.F.R. pt. 7 subpt. B].” 40 C.F.R. § 735(b) & (c). Because it has a disparate impact on a minority community, EPA’s handling of the instant case violates the general prohibition of 40 C.F.R. § 730 by denying the predominately African American population the “the benefits of ... [an] activity receiving EPA assistance”

5. The 2002 Consent Decree provides that stipulated penalties are “in addition to any other rights or remedies which may be available to the United States or the State of Louisiana by reason of the City/Parish's failure to comply with the requirements of this Consent Decree and all applicable Federal, state or local laws, regulations, wastewater discharge permit(s) and all other applicable permits.” 2002 Consent Decree (ECF 10) at ¶ 77. It is clear, therefore, that EPA has *full authority* to craft an equitable settlement in this matter that respects the human rights of residents of the University Place Subdivision, including through use of supplemental environmental projects and (using state authority) beneficial environmental projects. Indeed, after the 1988 Consent Decree failed, EPA followed up with a new (2002) Consent Decree with a new requirement for a supplemental environmental project. See 2002 Consent Decree (ECF 10) at ¶¶ 66, 60.

JURISDICTION

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question), the Clean Water Act, 33 U.S.C. § 1251, et seq., and the Declaratory Judgment Act, 28 U.S.C. § 2201.

VENUE

7. Baton Rouge’s violations occur in East Baton Rouge Parish, Louisiana. Therefore, venue is proper in the Middle District of Louisiana.

NOTICE

8. On November 24, 2009, LEAN sent a Notice of Violation to Baton Rouge, the U.S. Environmental Protection Agency (“EPA”), and the State of Louisiana. LEAN sent a revised notice to those same entities on December 21, 2009. The Notice and Revised Notice clearly detailed Baton Rouge’s violations of the Clean Water Act.

PARTIES

A. Intervenor-Plaintiffs

9. Intervenor-Plaintiff Concerned Citizens is an unincorporated association formed to protect residents of the University Place Subdivision in Baton Rouge from environmental assaults and human rights violations, including those caused by Baton Rouge’s management of the North Wastewater Treatment Plant. Members of the Concerned Citizens live in the neighborhood affected by the North Wastewater Treatment Plant. The Concerned Citizens is a “person” under Clean Water Act § 502(5), 33 U.S.C. § 1362(5), and is a “citizen” as defined by Clean Water Act § 505(g), 33 U.S.C. § 1365(g) (defining “citizen” as a person having an interest which is or may be adversely affected). This lawsuit is germane to the Concerned Citizens’ purpose.

10. Intervenor-Plaintiff LEAN is a non-profit community organization incorporated and operating under the laws of Louisiana. LEAN serves as an umbrella organization for many environmental and citizen groups in Louisiana and also has individual members. LEAN members reside, own property, work, and recreate in areas near and downstream of the North Wastewater Treatment Plant. LEAN’s purpose is to preserve and protect Louisiana’s land, air, water, and other natural resources. LEAN seeks to protect its members from threats of pollution, including harmful discharges, overflows, and odors from the North Wastewater Treatment Plant. LEAN is a “person” under Clean Water Act § 502(5), 33 U.S.C. § 1362(5), and is a “citizen” as

defined by Clean Water Act § 505(g), 33 U.S.C. § 1365(g). This lawsuit is germane to LEAN's purpose.

11. Baton Rouge's Clean Water Act violations at issue in this lawsuit injure Intervenor-Plaintiffs' members. The violations contribute to pollution of the Mississippi and therefore impair LEAN members' use and enjoyment of that resource. Odors associated with Baton Rouge's violations also annoy LEAN members and impair their enjoyment of their homes and communities. These injuries are concrete and irreparable and cannot be adequately remedied by money damages. These injuries are documented in declarations (originally prepared for a related case) attached as Exhibits A, B, C, and D, and incorporated by reference. A photograph showing sewer flies from the North Wastewater Treatment Plant is attached as Exhibit E and incorporated by reference.

12. Intervenor-Plaintiffs' members' injuries are fairly traceable to Baton Rouge's permit violations and this Court has power to redress them. Upon information and belief, Baton Rouge will continue its violations until enjoined by this Court.

B. Plaintiffs and Defendants

13. EPA' Complaint (ECF 1), at ¶¶ 7 – 12, describes EPA and Baton Rouge.

14. Baton Rouge owns and operates the North Wastewater Treatment Plant located at 55 Mills Avenue in East Baton Rouge Parish (AI# 4843, Permit No. LA0036439).

LEGAL BACKGROUND

15. The purpose of the Clean Water Act is to “restore and maintain the chemical, physical, and biological integrity of the Nation's waters.” Clean Water Act § 101(a), 33 U.S.C. § 1251(a).

16. Clean Water Act § 301(a), 33 U.S.C. § 1311(a) prohibits the “discharge of any pollutant” that violates a permit issued pursuant to Clean Water Act § 402, 33 U.S.C. § 1342.

17. The Louisiana Department of Environmental Quality (“LDEQ”) administers the Clean Water Act permit program in Louisiana pursuant to Clean Water Act § 402(b), 33 U.S.C. § 1342(b), under a program called the Louisiana Pollution Discharge Elimination System (“LPDES”). *See* Clean Water Act §§ 402(b) & (c), 33 U.S.C. § 1342(b) & (c).

18. LDEQ issued LPDES Permit No. LA0036439 to Baton Rouge for the North Wastewater Treatment Plant.

19. Any person in violation of the Clean Water Act is subject to a civil penalty of up to \$37,500 per day for each violation. 40 C.F.R. § 19.4.

FACTS

20. The 2002 Consent Decree does not change or supersede the requirements of Permit No. LA0036439.

21. Permit No. LA0036439 sets effluent limits for discharges of BOD and TSS from the North Wastewater Treatment Plant that include the following:

- The thirty (30) day average amount of BOD in the wastewater discharged from the North Wastewater Treatment Plant must be at least 85 percent less than the amount of BOD in the sewage entering the plant
- The thirty (30) day average amount of TSS in the wastewater discharged from the North Wastewater Treatment Plant must be at least 85 percent less than the amount of TSS in the sewage entering the plant

22. Baton Rouge has a duty to comply with all conditions of Permit No. LA0036439 at the North Wastewater Treatment Plant. Noncompliance violates the Clean Water act. 40 C.F.R. § 122.41(a).

23. Baton Rouge violates both the 85% reduction requirement, as set out in Permit No. LA0036439 and the less stringent 75% reduction requirement set out in the Consent Decree, for BOD and TSS at the North Wastewater Treatment Plant.

24. BOD is directly related to the amount of dissolved oxygen in rivers and streams. The greater the biological oxygen demand, the faster oxygen is depleted in the stream, so less oxygen is available. Low or no availability of oxygen will cause aquatic organisms to become stressed, suffocate, and die.

25. High concentrations of TSS in a river diminish water quality. Other pollutants and pathogens adhere to TSS and are transported by them. TSS also affects water clarity. High levels of TSS block light from reaching submerged vegetation, which slows down photosynthesis thereby decreasing the amount of oxygen released by these plants into the environment. If light is completely blocked, plants will stop producing oxygen and die. Decomposing plants use up even more oxygen. Low dissolved oxygen can lead to fish kills. TSS also causes surface water temperature to rise, since the suspended particles absorb heat from sunlight.

26. Untreated wastewater and raw sewage have been discharged into residential areas in association with the activities of the North Wastewater Treatment Plant.

27. The North Wastewater Treatment Plant emits a stench in community surrounding the plant. Baton Rouge subjects residents of that community to unsanitary and unhealthful conditions, including unreasonable orders and infestation by sewer flies.

28. The 2002 Consent Decree has failed to achieve compliance. Baton Rouge has violated Consent Decree provisions and, upon information and belief, is not on track to meet the deadlines set forth in the decree.

CAUSE OF ACTION

29. LDEQ issued Permit No. LA0036439 pursuant to section 1342 of the Clean Water Act.

30. Permit No. LA0036439 has been in effect, and remains in effect, at all times pertinent to these claims.

31. Baton Rouge's discharges at the North Treatment Plant violate Permits No. LA0036439.

32. Baton Rouge is in violation of Section III(B)(3) of Permit No. LA0036439 by failing to "at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance"

33. Baton Rouge is liable to the Intervenor-Plaintiffs under 33 U.S.C. § 1365(a), for violation of "an effluent standard or limitation" as the Act defines that phrase at 33 U.S.C. § 1365(f)(1)&(6).

RELIEF

WHEREFORE, The Concerned Citizens and LEAN pray that the Court award the following relief:

A. Reopening of the failed 2002 Consent Decree to provide an opportunity for discovery, and opportunity for the parties to craft a settlement that mitigates harm to the community and, if necessary, trial and a Court order abating Baton Rouge's violations;

B. A declaration that Baton Rouge is in violation of the Clean Water Act and Permit No. LA0036439;

C. An injunction against Baton Rouge compelling compliance with the Clean Water Act and Permit No. LA0036439;

D. An award of civil penalties, payable to the U.S. Treasury, of \$37,500 per day per violation for each violation of the Act pursuant to Clean Water Act § 309(d), 33 U.S.C. 1319(d); 40 C.F.R. § 122.41(a)(2); 40 C.F.R. § 19.4. (For violations that occurred before January 13, 2009, the award should be \$32,500 per day per violation. 40 C.F.R. § 19.4.);

E. An award of attorney fees and expert witness fees, and reasonable litigation expenses incurred in this case; and

F. Such other relief as this Court may deem appropriate.

Respectfully submitted on March 4, 2012,

s/ Adam Babich

Adam Babich, La. Bar No. 27177
Corinne Van Dalen, No. 21175
Tulane Environmental Law Clinic
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New Orleans, LA 70118-6321
Phone: (504) 865-5789; direct dial 862-8800
Fax: (504) 862-8721
Counsel for Intervenor-Plaintiffs

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel of record by electronic means on March 4, 2012.

/s/ Adam Babich

Adam Babich, SBN: 27177

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

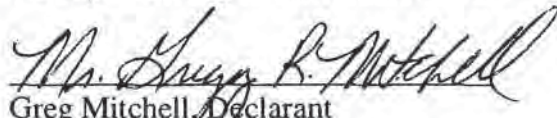
16. I am concerned about the sewerage overflows of raw human waste that are produced by the plant. Raw sewerage overflows often occur in the ditches and low-lying areas surrounding my home and the community. The pipes in my home have backed-up with human feces and raw sewerage, flooding the inside of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

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

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

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

This 12th day of November 2010.



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

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This 19th day of January, 2011.


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

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

LOUISIANA ENVIRONMENTAL
ACTION NETWORK,

Plaintiff,

v.

CITY OF BATON ROUGE and PARISH
OF EAST BATON ROUGE,

Defendants.

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3:10-cv-00187-BAJ-SCR

Judge: Brian A. Jackson

Magistrate Judge: Stephen C. Riedlinger

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

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

1. I am of the age of majority and I am competent to make this declaration.
2. I make this declaration based on my personal knowledge and observations.

3. I have been a resident in the University Place Subdivision neighborhood in Baton Rouge, Louisiana for almost forty years. I live at 10092 Avenue M, directly across the street from the North Baton Rouge Sewerage Treatment Plant, less than 0.6 miles from the Mississippi River, and less than 0.8 miles from the point where the North Baton Rouge Treatment Plant discharges its wastewater into the river

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

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

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

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

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

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

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

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

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

This 26 th day of October 2010.

Willie Dunn

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

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

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

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

I, Marylee Orr, make the following declarations:

1. I am competent to make this declaration.
2. All statements in this declaration are based on my personal knowledge and observations.
3. I am the Executive Director of the Louisiana Environmental Action Network ("LEAN").

I have been the organization's executive director since 1988. In my capacity as LEAN's Executive Director, I am familiar with LEAN's policies, its organizational structure and practices, and its membership records.

4. LEAN is a non-profit Louisiana corporation with its principal place of business in Baton Rouge, Louisiana. LEAN is a state-wide environmental advocacy organization with more than 1,700 members, many of whom live, work, or recreate on the Mississippi River south of Baton Rouge. LEAN is committed to preserving Louisiana's natural resources and to protecting its organizational members and all citizens of Louisiana from pollution. LEAN works to further its goals through educational initiatives, legal advocacy, and legislative campaigns involving Louisiana citizens and grassroots organizations. The breadth of LEAN's involvement within Louisiana's environmental community is evidenced by its active partnerships with nearly one hundred community organizations throughout the state and the continual work it performs in developing, implementing, and enforcing legislative and regulatory environmental safeguards.

5. On June 12, 2002, LEAN received certification as the Lower Mississippi Riverkeeper according to the standards and requirements of the national Waterkeeper Alliance. As the Lower Mississippi Riverkeeper, LEAN is part of a network of grassroots neighborhood watch programs founded on the principle that protection of a community's natural resources depends upon the daily vigilance of its citizens. LEAN believes that everyone has the right to use the Mississippi River and no one has the right to diminish its use or enjoyment by others. LEAN has a specific mission to preserve and protect the Lower Mississippi River for the benefit its members and all citizens.

6. One of LEAN's most important jobs as Lower Mississippi Riverkeeper is to ensure that holders of Louisiana Pollution Discharge Elimination System (LPDES) Permits do not routinely exceed their discharge parameters and thereby endanger the quality of the environment and the health of citizens downstream. LEAN considers routine violations of LPDES permits to be a major threat to the health of Louisiana citizens and the integrity of Louisiana's environment.

7. LEAN is aware that the City of Baton Rouge and the Parish of East Baton Rouge have been violating the terms their LPDES permits and the Clean Water Act continuously since at least 2007. LEAN's members have expressed concern that these violations have resulted in the pollution of the Mississippi River, where many LEAN members get their drinking water, and where LEAN members fish, boat, recreate, and own, rent, and live in homes throughout Baton Rouge. Furthermore, the North, Central, and South wastewater treatment plants impair their use and enjoyment of the water, the land, and the air in this area by failing to comply with their permit limits.

8. The public health, ecological, recreational, aesthetic, and other interests that LEAN seeks to protect through this lawsuit to enforce the City and Parish's LPDES and Clean Water Act violations are directly related to LEAN's overall goal of protecting Louisiana's environment and the health of all citizens.

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

This 26th day of October 2010.



Marylee Orr, Declarant
Executive Director, LEAN
PO Box 66323
Baton Rouge, LA 70806

Exhibit E



Showing sewer flies

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA and)
STATE OF LOUISIANA,) Case No.: 3:01-cv-978
) Judge: Brian A. Jackson
Plaintiffs,)
)
 v.)
)
CITY OF BATON ROUGE and)
PARISH OF EAST BATON ROUGE,)
)
Defendants.)

**MOTION TO INTERVENE
OF CONCERNED CITIZENS OF UNIVERSITY PLACE SUBDIVISION AND
LOUISIANA ENVIRONMENTAL ACTION NETWORK**

Pursuant to Federal Rules of Civil Procedure 24(a) and (b) Intervenor-Plaintiffs Concerned Citizens of University Place Subdivision (“Concerned Citizens”) and Louisiana Environmental Action Network (“LEAN”) respectfully move to intervene. As grounds for their Motion, Concerned Citizens and LEAN state the following:

1. The Clean Water Act, a federal statute, gives Intervenor-Plaintiffs an unconditional right to intervene. 33 U.S.C. § 1365(b)(1)(B). That law, on its face, provides that “any citizen may intervene as a matter of right” in a case in which the government is “diligently prosecuting” a claim to require Clean Water Act compliance. In context, it is clear that Congress intended to also provide a right to intervene when, as here, the governments’ prosecution is less than diligent.

2. Intervenor-Plaintiffs claim an interest relating to the Clean Water Act violations that are the subject of this action, and Intervenor-Plaintiffs are so situated that disposing of the

action may as a practical matter impair or impede their ability to protect their interest, which existing parties do not adequately represent.

3. In the alternative, Intervenor-Plaintiffs have a claim under 33 U.S.C. § 1365(a) that shares with the main action common questions of law and fact.

4. Intervenor-Plaintiffs submit a proposed Complaint in Intervention, a Memorandum in Support, and a Proposed Order with this Motion.

WHEREFORE, This Court should GRANT the Concerned Citizens and LEAN's Motion to Intervene.

Respectfully submitted on March 4, 2012,

s/ Adam Babich

Adam Babich, La. Bar No. 27177
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Fax: (504) 862-8721
Counsel for Intervenor-Plaintiffs

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel of record by electronic means on March 4, 2012.

/s/ Adam Babich

Adam Babich, SBN: 27177

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA and)
STATE OF LOUISIANA,) Case No.: 3:01-cv-978
) Judge: Brian A. Jackson
Plaintiffs,)
)
 v.)
)
CITY OF BATON ROUGE and)
PARISH OF EAST BATON ROUGE,)
)
Defendants.)

**MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE
OF CONCERNED CITIZENS OF UNIVERSITY PLACE SUBDIVISION AND
LOUISIANA ENVIRONMENTAL ACTION NETWORK**

Pursuant to Federal Rules of Civil Procedure 24(a) and (b) Intervenor-Plaintiffs Concerned Citizens of University Place Subdivision (“Concerned Citizens”) and Louisiana Environmental Action Network (“LEAN”) have moved to intervene in this lawsuit. This is a Clean Water Act enforcement action in which the Plaintiffs United States of America and State of Louisiana (collectively “EPA”) have repeatedly sought to extend deadlines for compliance by Defendants City of Baton Rouge and Parish of East Baton Rouge (collectively “Baton Rouge”). Indeed, EPA has been involved in more than two decades of litigation and settlement with Baton Rouge and has yet to achieve compliance. EPA has failed to bring enforcement actions against Baton Rouge for repeated violations of the 2002 Consent Decree, and now proposes to push off deadlines in its failed 2002 Consent Decree for another three years.

Federal Rules of Civil Procedure Rule 24(a) provides for intervention as of right, stating:

“On timely motion, the court must permit anyone to intervene who: (1) is given an unconditional right to intervene by a federal statute; or (2) claims an interest relating to the property or transaction that is the subject of the action, and is so

situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.”

The Clean Water Act gives Intervenor-Plaintiffs an unconditional right to intervene. 33 U.S.C. § 1365(b)(1)(B). That law, on its face, provides that “any citizen may intervene as a matter of right” in a case in which the government is “diligently prosecuting” a claim to require Clean Water Act compliance. In context, it is clear that Congress intended to also provide a right to intervene when, as here, the governments’ prosecution is less than diligent. The Plaintiffs’ motion is timely because EPA only recently proposed to push off deadlines for Baton Rouge’s compliance with the Clean Water Act. 77 Fed. Reg. 4060 (Jan. 26, 2012).

Intervenor-Plaintiffs also claim an interest relating to the Clean Water Act violations that are the subject of this action, and Intervenor-Plaintiffs are so situated that disposing of the action may as a practical matter impair or impede their ability to protect their interests, which existing parties do not adequately represent. This is because the Intervenor-Plaintiffs are injured by Baton Rouge’s violations at issue in this case. These injuries are documented in declarations attached as Exhibits A through D to the proposed Complaint in Intervention. EPA does not adequately represent the Intervenor-Plaintiffs because it has failed to achieve compliance after more than 20 years of purporting to enforce the law, has failed to enforce the existing Consent Decree, and has proposed to push out compliance deadlines in that decree. These delays exacerbate the Intervenor-Plaintiffs’ injuries.

In the alternative, Federal Rules of Civil Procedure Rule 24(b)(1) provides for permissive intervention, stating: “On timely motion, the court may permit anyone to intervene who: ... (B) has a claim or defense that shares with the main action a common question of law or fact.”

Intervenor-Plaintiffs have a claim under 33 U.S.C. § 1365(a) that shares with the main action common questions of law and fact and this motion is timely, given EPA's recent proposal to push off Baton Rouge's deadlines for compliance.

Intervenor-Plaintiffs have submitted a proposed Complaint in Intervention, and a proposed order with their Motion to Intervene.

WHEREFORE, This Court should GRANT the Concerned Citizens and LEAN's Motion to Intervene.

Respectfully submitted on March 4, 2012,

s/ Adam Babich

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Fax: (504) 862-8721
Counsel for Intervenor-Plaintiffs

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel of record by electronic means on March 4, 2012.

/s/ Adam Babich

Adam Babich, SBN: 27177

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA and
STATE OF LOUISIANA,

Plaintiffs,

v.

CITY OF BATON ROUGE and
PARISH OF EAST BATON ROUGE,

Defendants.

)
) Case No.: 3:01-cv-978
) Judge: Brian A. Jackson
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**ORDER GRANTING MOTION TO INTERVENE
OF CONCERNED CITIZENS OF UNIVERSITY PLACE SUBDIVISION AND
LOUISIANA ENVIRONMENTAL ACTION NETWORK**

Having considered the Intervenor-Plaintiffs' Motion to Intervene and all related briefs and arguments and being fully advised, the Court hereby finds that the Motion is well taken. Accordingly, **IT IS ORDERED** that Intervenor-Plaintiffs' Motion to Intervene is hereby **GRANTED**.

DONE this ____ day of _____, 2012,

**BRIAN A. JACKSON
CHIEF JUDGE
UNITED STATES DISTRICT COURT**