



TULANE ENVIRONMENTAL LAW CLINIC

August 1, 2017

RECEIVED

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Dept. of Environmental Quality

*Via E-mail*

Mr. Keith W. Turner  
Mr. Louis B. Lanoux  
Watkins & Eager  
The Emporium Building  
400 East Capitol Street  
Jackson, MS 39201

Re: *Gulf Restoration Network v. City of Hattiesburg*, No.: 2:12-cv-00036 (S.D. Miss)  
GRN Response to City of Hattiesburg's July 28, 2017, Draft Settlement Proposal

Dear Keith and Louis,

GRN has reviewed the City of Hattiesburg's ("City's") July 28, 2017, draft settlement proposal. GRN accepts the proposal with the following additions and changes:

1. Page 1, bulletpoint 1:

- 1. Within 90 days from the entry of the conditional Stipulated Order Terminating the Amended Consent Judgment, Hattiesburg will submit to Mississippi Department of Environmental Quality ("MDEQ") a request to revise the NPDES permit for the South Lagoon to incorporate the effluent limits and monitoring provisions, and maintenance schedule provided for below and to enter an Agreed Order incorporating the stipulated penalty provisions set forth below. The Amended Consent Judgment would then terminate automatically upon the modification/issuance of the revised NPDES permit and Agreed Order to incorporate the effluent limits, monitoring, maintenance, and penalty provisions contained herein, and the parties will jointly request that the Court, upon notice, enter a final order releasing the matter from its continuing jurisdiction. The permit shall be modified to include the following discharge terms:
  - Effluent 30 day average Total Suspended Solids ("TSS") 75 mg/l
  - Effluent 7 day average TSS 95 mg/l

2. Page 2, bulletpoint 1:

- 2. As stipulated penalties cannot be part of NPDES permit terms, the City will agree to a separate MDEQ Agreed Order with stipulated penalties in the

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amount of \$1,500 per day for violations that meet or exceed the MDEQ definition of a Significant Noncompliance (as found in the MDEQ Enforcement Management System for the Clean Water Act and The Mississippi Air and Water Pollution Control Law, revised June 14, 2016). The stipulated penalties provided for in the Agreed Order pursuant to this Agreement shall not preclude any rights, remedies, or sanctions available to MDEQ, EPA, or another person in an enforcement matter.

3. Page 2, bulletpoint 2:

- 3. Within 45 days from the date this Agreement is signed, the City shall present to GRN and MDEQ for their review and comment a proposed maintenance schedule for aeration systems in the South Lagoon. The proposed schedule and the final schedule shall include preventative maintenance of surface aerators and blowers and shall provide for cleaning the underwater diffusers in the South Lagoon at least every five years. Following receipt of comments, the City will present a final maintenance schedule, which upon acceptance by the MDEQ, this final maintenance schedule shall also be added to the revised NPDES permit terms. The maintenance provision of the amended permit shall also provide that the City will maintain records of inspection and maintenance of aerators, blowers and underwater diffusers for at least five (5) years, and shall maintain those records for inspection by the MDEQ, and shall provide such records to GRN within 30 days of a GRN request for such records, and which may be requested by GRN no more than twice each year.

4. Add the following paragraph as paragraph 4.

- 4. If MDEQ fails to modify the permit and issue the Agreed Order in accordance with the provisions of paragraphs 1, 2, and 5 of this Agreement, the parties agree to ask the Court to reschedule the hearing on the City's Motion to Terminate the Amended Consent Judgment (ECF No. 90).

5. Page 2, bulletpoint 3:

- 5. The monitoring provisions of the revised permit shall also provide that any currently existing grab sample requirements for effluent Ammonia Nitrogen, BOD5-day, TSS and Phosphorus shall be deleted and replaced with 24-hour flow proportioned composite samplings every other week. The City shall also be required to conduct 24-hour flow proportioned composite sampling of effluent every other week for the South Lagoon on parameters Nitrate, Nitrite, and Total Kjeldahl Nitrogen (TKN), with no associated limits and for "Report Only." Notwithstanding the testing frequency, the City shall only be required to report on a monthly basis. Neither GRN nor the City shall request any additional change to the sampling and reporting requirements in the current permit during the permit modification proceeding described in this Agreement.

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6. Page 2, bulletpoint 4:

- 6. Upon termination of the Amended Consent Judgment, all pending penalties that may or may not be accrued under the Amended Consent Judgment shall be waived and no longer applicable, excluding any penalties enforced by MDEQ outside of those of the Amended Consent Judgment.

7. Add the following language as paragraph 7:

7. The City shall continue and complete the operational and performance report of the South Lagoon (referenced in ECF No. 163-1, pp. 7-10 (City Response to Interrogatories 5-9 (June 14, 2017))) and shall promptly provide GRN a complete copy of the report upon its completion. The City will advise GRN of any significant activity or modifications to the South Lagoon which relate to, or impact, performance, as they occur prior to the completion of the planned "final opinion regarding performance" (referenced in ECF 177-4 at 4 (the Carey Hardin Report)). Upon completion, the City will promptly provide GRN with a complete copy of the "final opinion regarding performance." The City will also provide GRN with copies of the monthly DMRs as they are reported to MDEQ until the "final opinion regarding performance" is issued.

8. Add the following language as paragraph 8:

8. Notwithstanding any other provision of this Agreement, the Consent Judgment shall not terminate until 45 days after this Agreement is provided to the U.S. Department of Justice (DOJ) or until DOJ completes its review of the Agreement, whichever is earlier.

Please give us a call to discuss this further. Thanks.

For the Gulf Restoration Network:

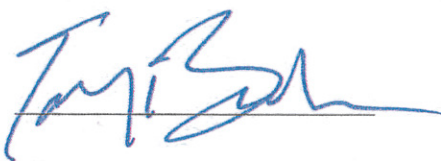


Sincerely yours,

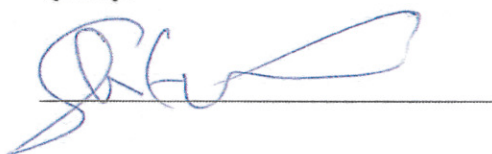
/s/ Lisa Jordan

\_\_\_\_\_  
Lisa Jordan  
Counsel for GRN

For the City of Hattiesburg:



For the Mississippi Commission on Environmental  
Quality:



**Exhibit "A"**

KEITH W. TURNER  
Direct Dial: (601) 965-1958  
kturner@watkinseager.com

July 28, 2017

**Via Email**

Lisa Jordan [lwjordan@tulane.edu]  
Adam Babich [ababich@tulane.edu]  
Corinne J. Van Dalen [cvandale@tulane.edu]  
Tulane Environmental Law Clinic  
6329 Freret Street  
New Orleans, Louisiana 70118

Re: Gulf Restoration Network v. City of Hattiesburg; In the United States District  
Court for the Southern District of Mississippi, Eastern Division; Civil Action No.  
2:12-cv-00036-KS-JSG - **Settlement Discussions - Privileged**

Dear Counsel:

The City hereby offers to settle all subject disputes relating to the Amended Consent Judgment by the entry of a conditional Agreed Order Terminating the Amended Consent Judgment incorporating the provisions and conditions set forth below, and subject to the approval and entry by the Court in the pending matter, which would provide as follows:

- Within 30 days from the entry of the conditional Agreed Order Terminating the Amended Consent Judgment, Hattiesburg will submit to Mississippi Department of Environmental Quality (“MDEQ”) a request to revise the NPDES permit for the South Lagoon to incorporate the effluent limits and penalty provision set forth below. The Amended Consent Judgment would then terminate automatically upon the modification/issuance of the revised NPDES permit to incorporate the effluent limits, maintenance, and penalty provisions contained herein, and the Court, upon notice, shall enter a final order releasing the matter from its continuing jurisdiction. The permit shall be modified to include the following discharge terms:
  - Effluent 30 day average Total Suspended Solids (“TSS”) 75 mg/l
  - Effluent 7 day average TSS 95 mg/l
  - 30 day average percent of TSS removal - 65 percent minimum

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- Within the revised NPDES permit, City will agree to stipulated penalties in the amount of \$1,500 per day for violations that meet or exceed the MDEQ definition of a Significant Noncompliance (as found in the MDEQ Enforcement Management System for the Clean Water Act and The Mississippi Air and Water Pollution Control Law, revised June 14, 2016).
- Within 45 days of submitting the request for revised NPDES permit, the City shall present to GRN and MDEQ for their review and comment a maintenance schedule for aeration systems in the South Lagoon. The schedule shall include preventative maintenance of surface aerators and blowers and shall provide for cleaning the underwater diffusers in the South Lagoon at least every ten years. Following receipt of comments, the City will present a final maintenance schedule, which upon acceptance of the MDEQ shall also be added to the revised NPDES permit terms. The maintenance provision of the amended permit shall also provide that the City will maintain records of inspection and maintenance of aerators, blowers and underwater diffusers for at least ten years, and shall maintain those records for inspection by the MDEQ, and shall provide such records to GRN within 30 days of a GRN request for such records, and which may be requested by GRN no more than twice each year. .
- The monitoring provisions of the revised permit shall also provide that the City shall conduct 24 hour time proportioned composite samplings every other week for the South Lagoon on parameters Ammonia Nitrogen, BOD 5-day, TSS, and Phosphorus.
- Upon termination of the Amended Consent Judgment, all pending penalties that may or may not be accrued under the Amended Consent Judgment shall be waived and no longer applicable, excluding any penalties enforced by MDEQ outside of those of the Amended Consent Judgment.

After reviewing these proposed terms, please contact my office so we may discuss the details of implementing these or other terms of a settlement. Look forward to hearing from you.

Sincerely,

Keith W. Turner

Lisa W. Jordan  
Adam Babich  
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KWT:sd