



February 11, 2016

LDEQ
Public Participation Group
P.O. Box 4313
Baton Rouge, LA 70821-4313
DEQ.PUBLICNOTICES@LA.GOV

RE: Draft LPDES permit for St. Bernard Parish Government Riverbend Oxidation Ponds/Poydras-Verret Wetlands; AI Number 19244; Permit Number LA0040185; Activity Number PER20110001

Dear Public Participation Group:

The Gulf Restoration Network (GRN) respectfully submits the following comments on the Draft LPDES permit for St. Bernard Parish Government Riverbend Oxidation Ponds/Poydras-Verret Wetlands; AI Number 19244; Permit Number LA0040185; Activity Number PER20110001 (Draft Permit). GRN reserves the right to rely on all public comments submitted, request a written response to our comments, and request written notification when any action is taken on this Draft Permit (issuance, denial, remand, etc.).

The construction of the assimilation project was not properly vetted to the public.

In the past the permittee has been a chronic violator of their permit, and it seems that they were given weakened limits to discharge into the adjacent wetlands. This was primarily done through a series of Compliance Orders, which were not open to public comment. It is our impression that the discharge structures for the assimilation project were built before they even had a proper LPDES permit for wetland discharge.

This gives the public a feeling of helplessness when a facility is built, and then public comment is solicited, with the public knowing well that the odds of the facility being changed after it is built are very low.

Sampling sites are inappropriate.

The 'Middle' and 'Far' sampling sites are inappropriate to assess the status of the receiving wetlands. For this Section, we will be referring to the map in Exhibit A.

First, we feel that just three sampling sites is not adequate to determine the fate and transport of pollutants or to assess the health of the wetlands. More sampling sites, following demonstrated hydrology must be used to get an accurate picture of the impacts the discharge, positive or negative, will have on the receiving wetland

In this particular project the ‘Middle’ and ‘Far’ sampling plots are not appropriately placed. Based on the information provided in St. Bernard Parish’s LPDES Permit Application to Discharge Treated Sanitary Wastewater Into a natural Wetland for Wetland Assimilation (January 19, 2012), the ‘Middle’ site is situated at the far northeastern corner of the assimilation site, nowhere near the middle of the proposed assimilation area. The ‘Far’ or ‘out’ is approximately 3,000 feet from where the assimilation area ends.

This cannot be permitted with so few and obviously misplaced sampling plots.

Draft permit inappropriately applies Federal “equivalent to secondary” rules for waste stabilization (oxidization) ponds.

LDEQ is authorizing the discharge of TSS at a rate of 90 mg/l monthly average and 135 mg/l weekly average under LAC 33:IX §711.D. However, they do not take into consideration of Federal laws. Federal law under states the following:

*Waste Stabilization ponds...*The State Director subject to EPA approval is authorized to adjust the minimum levels of effluent quality...to conform to the [T]SS concentrations achievable with waste stabilization ponds. Provided that (1)Waste stabilization ponds are the principle process used for secondary treatment; and (2) operation and maintenance data indicate that the SS values specified in [regular secondary treatment] cannot be achieved.¹

It is the past year of DMRs (See Exhibit B) makes it clear that secondary treatment can be achieved, not to mention the requirements of the old permit in regards to TSS. Therefore it is inappropriate to grant “equivalent to secondary” limits to this facility that has shown, if maintained and operated properly can achieve more stringent limits.

Draft permit impermissibly allows backsliding.

The proposed permit allows effluent limitations which are less stringent than the comparable effluent .limitation in the previous permit, which is not allowed under the backsliding provision in Section 402 of the Clean Water Act (“the Act”). The act and the implementing regulations prohibit backsliding from more stringent to less stringent permits limits in permit reissuances.² The previous permit had discharge limitations for CBOD₅, TSS, Ammonia-Nitrogen, and Dissolved Oxygen some of which have been weakened, and some removed entirely:

- CBOD₅ has been changed to BOD and been increased by three times.
- TSS has been increased by 6 times
- Ammonia-Nitrogen has been completely removed
- Dissolved Oxygen has been completely removed

The above changes would allow the facility to emit at levels significantly above the current permits, and in fact well beyond what the facility is currently discharging.

¹ 40 C.F.R. §133.103(c)

² 33 U.S.C. §1342(o)(1), (Clean Water Act §403(o)(1)); 40 C.F.R. §122.44(1)(2)

Inspection of the last year of DMRs available on LDEQ's EDMS (See Exhibit B), show that 10 out of 12 months actually met the original monthly average/daily maximum limits of 10 mg/l and 15 mg/l respectively for BOD. Similarly, the facility was able to meet the original TSS requirements of 15mg/l and 23mg/l 8 out of the 12 months. There is no reason to weaken limits and endanger Louisiana's waters if the plant, while operated correctly, can meet the original limits.

Current wetland assimilation regulations do not adequately protect receiving wetlands.

Any assimilation project should have the aim to at least maintain, if not improve the receiving wetlands. The current rules do not reflect this. In fact the rules seem to assume there will be a reduction in quality of the receiving wetland. It is stated in the Statement of Basis of the Draft Permit that:

Due to effluent addition, the discharge area of a wetland shall have no more than a *20 percent reduction* in the rate of total above-ground wetland productivity over a five-year period as compared to a reference area...

No more than *50 percent reduction* in the wetland's faunal assemblage total abundance, total abundance of dominant species, or the species richness of fish and macroinvertebrates, minimum of five replicate samples per site. [emphasis added]

Both statements allow for significant degradation.

The statement about faunal assemblage is particularly troubling, as on page 6 of the Statement of Basis says that "specific monitoring for fauna shall not be required for assessing this wetland." Even though it admits that this should be required under state law.

Impacts to receiving waters have not been fully assessed.

This system has the potential to discharge pollutants into the flowing waters to the north and east (Bayou Dupre/Violet Canal and the canal to the east). We have not seen any evidence of exploration of the impacts the discharge may have on these waters of Louisiana.

The efficacy of 'wetlands assimilation' is in question.

There have been several assimilation project implemented with several more in the permitting process. While some of these projects might be successful, some certainly are not, such as the Hammond assimilation project (see additional comments on this project in Exhibit C). There have also been some questions about the Thibodaux assimilation site, and they are apparently moving away from assimilation with the construction of a new sewage treatment plant.

It seems there is a particular concern with assimilation projects discharging into marsh, as opposed to forested wetlands. This project proposes to discharge into marsh. It could even be considered open water at times. The applicant states that they intend to plant cypress trees in the area, but that was also the intent at Hammond, and was wholly unsuccessful.

Perhaps LDEQ should wait on permitting any more assimilation projects while there is a full assessment of the efficacy of the concept.

Conclusion

Given the above concerns, as well as those submitted by other organizations and individuals, this permit must be vastly improved before it is granted.

For a healthy Gulf,



Matt Rota
Senior Policy Director

CC:
Lisa Jordan, Tulane Environmental Law Clinic
May Nguyen, Tulane Environmental Law Clinic
EPA Region 6
Louisiana Department of Natural Resources