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 December 8, 2021

United States Environmental Protection Agency

Radhika Fox, Principal Deputy Assistant Administrator for Water
 Hypoxia Task Force Co-Chair
 (via email to Katie Flahive at Flahive.Katie@epa.gov)

State of Louisiana,

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Public Comments for the Hypoxia Task Force December 14, 2021 Virtual Public Meeting 2021

By now this task force must realize that the methods it has used in the past to reduce the pollution of the Mississippi River, and thereby eliminate the Gulf of Mexico dead zone, have not been successful. The Mississippi River remains contaminated with nutrients and many other pollutants. There are numerous existing laws and programs that are not being enforced. The way to solve "the tragedy of the commons" problem is well known: accountability. The path to accountability begins with measuring the pollutant levels as the river enters and exits every state. This data should be easily obtainable by any member of the public. Finally, the Mississippi River must be given rights such as Boulder Creek in Colorado¹ or wetlands in New Zealand². When every level of government charged with keeping water unpolluted is held accountable, we will begin to see improvement in the quality of our public waters.

Begin by enforcing existing Law

At the County Level

I live in Jefferson Parish, Louisiana, downstream of every polluter on the Mississippi River, including all the urban runoff from my parish that is simply pumped to the river with nothing more than a trash rack to ensure the pump doesn't clog as shown on Exhibit "A". There is no treatment of urban runoff other than dredging silted canals and the trash racks at the pumps³. The Louisiana Department of Environmental Quality and the EPA are complicit because they continue to reissue the MS4 Permit to Jefferson Parish with this extremely low level of pollution control.

¹

<https://www.dailycamera.com/2021/07/13/nederland-passes-rights-of-nature-resolution-to-protect-boulder-creek-and-its-watershed/>

² <https://www.intecol2021.com/uploads/images/The-O%CC%84tautahi-Declaration-on-Wetlands.pdf>

³ Jefferson Parish Separate Storm Sewer System MS4 Permit 2020 Annual Report, Section I. Stormwater Management Program Implementation Status

At the State Level

The Mississippi River is polluted and should be 303(d) listed as impaired per the Clean Water Act. The Lt. Governor of the State of Louisiana published on May 31, 2021 in **The Advocate**,⁴ “I oppose this large-scale Mid-Barataria Sediment Diversion on the Mississippi River, and I’m not alone. CPRA’s plan is deeply flawed. Proponents of the diversion from **the second-most-polluted river in the United States** know it is deeply flawed.” The Lt. Governor made similar comments May 6, 2021 after the Louisiana Seafood Promotion & Marketing Board Meeting which were made available to the public on youtube⁵. Similar public comments were also made at the Jefferson Parish Council: “It’s not a freshwater diversion, **it’s a polluted water diversion**” in June 2021 and at the Plaquemines Parish Council on April 11, 2021.

If the Mississippi River is not 303(d) listed it means either the methods we use to classify an impaired water body need updating or the means by which we sample the river are flawed. Either way, the Clean Water Act is worthless if we allow the situation to continue as is.

Further, as Figure 1 below shows, the Mississippi River gets more polluted as it runs through the state of Louisiana. Therefore every permit to discharge into the Mississippi by the Louisiana Department of Environmental Quality needs to require continuous monitoring of all pollutants so that gross polluters can be stopped in real time. For example, the discharge permit for Mosaic Fertilizer LLC shown in Exhibit “B” is currently only required to monitor Ph and flow amounts continuously, all the pollutants are monitored at most weekly, allowing six days a week of unregulated pollution.

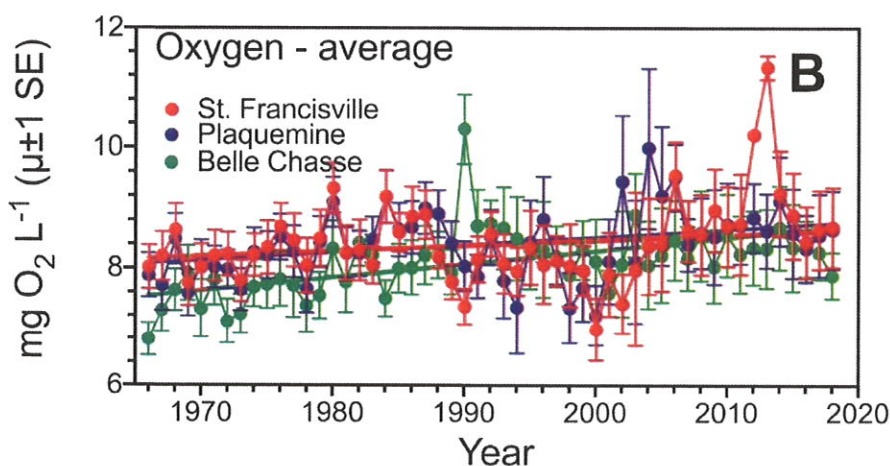


Figure 1. Average Oxygen levels are higher in St. Francisville (upriver) than in Belle Chasse (downriver)⁶

⁴ Billy Nungesser: **Oppose the Barataria diversion, use other methods to protect coast**
https://www.theadvocate.com/baton_rouge/opinion/article_062be400-bf1f-11eb-83c8-9fede5d3f370.html

⁵ <https://youtu.be/6QCwKyedM9o>

⁶ Turner, R.E. *Declining bacteria, lead, and sulphate, and rising pH and oxygen in the lower Mississippi River*. *Ambio* 50, 1731–1738 (2021). <https://doi.org/10.1007/s13280-020-01499-2>

At the Federal Level

The Army Corps continues to issue permits along the Mississippi River without any NEPA analysis. For example, the Corps issued permit number MVN-2020-01251-ES for the construction of a shipyard for ADM at 8400 River Rd in Waggaman, Louisiana by calling the effort "maintenance work"; thus avoiding all NEPA analysis. This permit was issued without a public hearing even though a hearing was requested. If industry was not permitted to degrade the Mississippi, we would not have to spend public funds to clean it.

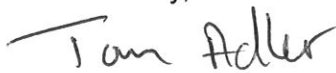
The Benefits of Public Participation

The public is not at the table for standing meetings of the Hypoxia Task Force. The lack of public participation contributes to the many reasons the task force has failed to stop the dead zone in the Gulf of Mexico. The daylight of public participation is necessary to establish accountability and to motivate agencies to move beyond the status quo. Please consider including the public at all Hypoxia Task Force meetings for the reasons listed below:

- The principle of public participation is that those who are affected by a decision have a right to be involved in the decision-making process. My drinking water is downstream of every polluter, therefore, I am a stakeholder. Even if I didn't live on the banks of the river, I would still have standing being that these are navigable waters of the US. Public waters are the public's business.
- Public participation is only valid if the public's contribution will influence the decision. This Task Force does not value public participation and the results speak for themselves.
- Public participation is a vital part of democratic governance, the lack of which is a sign of regulatory capture. Once regulators and industry are intertwined, there is no meaningful enforcement.

This sample of regulation failure is made through the lens of a Louisiana resident but every state has similar issues. I also recommend the adoption of the Mississippi River Restoration & Resilience Initiative. More funds can't hurt even if the initiative is non-regulatory. The most important message I'm hoping to convey with this letter is that we need regulators to regulate. Using the same half measures we've used in the past will guarantee the same results.

Sincerely,



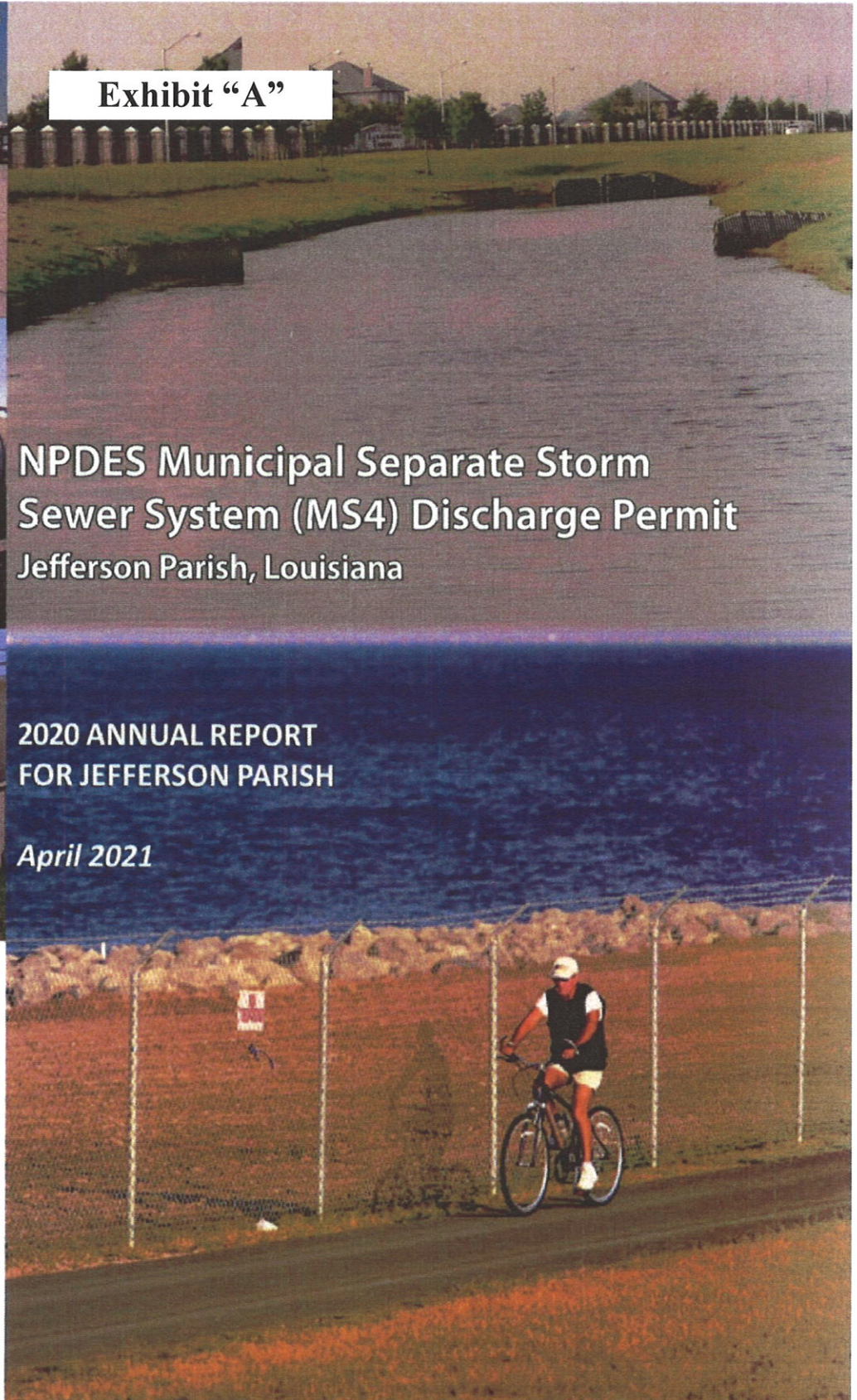
Tom Adler

Exhibit "A"

**NPDES Municipal Separate Storm
Sewer System (MS4) Discharge Permit**
Jefferson Parish, Louisiana

**2020 ANNUAL REPORT
FOR JEFFERSON PARISH**

April 2021



During the reporting period the Department of Environmental Affairs updated both SPCC and SWPPP plans for the East Bank Water Treatment Plant, West Bank Water Treatment Plant, East Bank Citizen's Trash Drop Off, West Bank Citizen's Trash Drop Off.

During the reporting period the Department of Environmental Affairs updated the SPCC plan for the General Government Building, Correctional Facility, and Yenni Building.

Structural controls within Jefferson Parish consist predominantly of the extensive infrastructure of manmade canals and drainage pumping stations. These canals serve as large sedimentation basins and are dredged on an as-needed basis to remove solids.

Drainage Department work quantities:

- Repair and maintenance of canals, including dredging, nutria damage repair, bank stabilization, seeding, inspection for silt build-up, and trash removed: 23,380 linear feet of canals maintained, 47,822 cubic yards of solids dredged, 289 tons of trash removed.

The drainage pumping stations are equipped with coarse bar screens, or "trash racks," which protect the pumping equipment while providing the water quality benefit of removing floatables and other large debris prior to discharge of the Parish's storm water to local waterways. These bar screens are cleaned either mechanically or manually as needed to maintain adequate hydraulic conveyance through the screens. Debris from the screens is disposed as solid waste at the landfill. Jefferson Parish has completed these activities in accordance with the SWMP and anticipates continuation of these activities through the next reporting period.

Drainage Department work quantities:

- Drainage pump station bar screen cleaning at all pump stations: 48 tons of floatable debris

Reporting quantities are summarized in further detail in Section 4.2.2.

1.2.2 Areas of New Development and Redevelopment

Areas of New Development and Significant Redevelopment - master planning process to develop, implement, and enforce controls for minimizing the discharge of pollutants after construction is completed.

Measurable Goals

During each annual reporting year, the Department of Planning is responsible for the following:

- Require compliance with landscaping standards through site plan review and also by performing site inspections on 100% of the new development or redevelopment projects that require landscaping and are reviewed by the Planning Department.
- By the end of the permit term, the Parish will perform an audit of the current codes to determine which codes impede green infrastructure and low impact development and where revisions can be made that encourage green infrastructure and low impact development.
- The Parish will compile a packet with green infrastructure/low impact design guidelines that will be made available to developers and persons requesting a building permit. These guidelines will be complete by the end of the permit term.

Exhibit "B"



PERMIT NUMBER
LA0004847
AI No.: 2532

OFFICE OF ENVIRONMENTAL SERVICES
Water Discharge Permit

Pursuant to the Clean Water Act, as amended (33 U.S.C. 1251 et seq.), and the Louisiana Environmental Quality Act, as amended (La. R. S. 30:2001 et seq.), rules and regulations effective or promulgated under the authority of said Acts, and in reliance on statements and representations heretofore made in the application, a Louisiana Pollutant Discharge Elimination System permit is issued authorizing

Mosaic Fertilizer, LLC
Uncle Sam Plant
7250 Highway 44
Uncle Sam, LA 70792

Type Facility: phosphatic fertilizer manufacturing plant

Location: 7250 Louisiana Highway 44 in Uncle Sam
St. James Parish

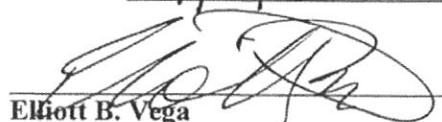
Receiving Waters: Mississippi River (Final Outfall 001) and Bayou des Acadiens thence into Blind
River (Final Outfalls 105, 205, and 305) (070301 and 040401)

to discharge in accordance with effluent limitations, monitoring requirements, and other conditions set forth in a Part II condition is proposed, Parts I, II, and III attached hereto.

This permit shall become effective on 11/1/16

This permit and the authorization to discharge shall expire five (5) years from the effective date of the permit.

Issued on 9/16/16


Elliott B. Vega
Assistant Secretary

PART I

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Permit No. LA0004847

AI No. 2532

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (continued)

During the period beginning the effective date and lasting through the expiration date the permittee is authorized to discharge from:

Internal Outfall 003, the intermittent discharge of treated active calcium sulfate pile water and contaminated phosphate fertilizer area non-process wastewater

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent Characteristic	STORET Code	Discharge Limitations				Monitoring Requirements	
		(lbs/day, UNLESS STATED)		(mg/L, UNLESS STATED)		Measurement Frequency (*1)	Sample Type
		Monthly Average	Daily Maximum	Monthly Average	Daily Maximum		
Flow-MGD	50050	Report	Report	---	---	Continuous	Recorder
Total Fluoride	00951	Report	Report	25	75	1/week	24-hr. Composite
Total Phosphorous (*2)	00665	Report	Report	35	105	1/week	24-hr. Composite
pH Range Excursions (Continuous Monitoring), Number of Events >60 Minutes	82581	---	0(*3)	---	---	Continuous	Recorder
pH Range Excursions (Continuous Monitoring), Monthly Total Accumulated Time in Minutes	82582	---	446(*3)	---	---	Continuous	Recorder
pH Minimum/Maximum Values (Standard Units)	00400	---	---	Report(*3) (Min)	Report(*3) (Max)	Continuous	Recorder

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s):

Internal Outfall 003, for Flow, Total Phosphorous, and Total Fluoride, at the point of discharge prior to commingling with Internal Outfall 004. For pH, after the commingling of Internal Outfalls 003 and 004, but prior to commingling with any other wastestream or outfall.

FOOTNOTE(S):

(*1) When discharging.

(*2) The sum of Internal Outfalls 003 and 004 shall not exceed the effluent limitation in Part II.N of the permit.

(*3) The pH shall be within the range of 6.0 - 9.0 standard units at all times subject to the continuous monitoring pH range excursion provisions at Part II.H. The permittee shall also report on the Discharge Monitoring Reports both the minimum and maximum instantaneous pH values measured.

PART I

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Permit No. LA0004847

AI No. 2532

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS (continued)

During the period beginning the effective date and lasting through the expiration date the permittee is authorized to discharge from:

Internal Outfall 004, Intermittent discharges related to inactive calcium sulfate storage pile water.

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent Characteristic	STORET Code	Discharge Limitations				Monitoring Requirements	
		(lbs/day, UNLESS STATED)		Other Units (mg/L, UNLESS STATED)		Measurement Frequency	Sample Type
		Monthly Average	Daily Maximum	Monthly Average	Daily Maximum		
Flow-MGD	50050	Report	Report	---	---	Continuous	Recorder
pH Minimum/Maximum Values (Standard Units)	00400	---	---	Report (*1) (Min)	Report (*1) (Max)	Continuous	Recorder
Total Phosphorous (as P) (*2)	00665	Report	Report	Report	Report	1/week	24-hr. Composite
Calculated Total Phosphorous Limit Based on River Flow	00665	(*2)	(*2)	Report	Report	1/week	24-hr. Composite
Phosphorous Exceedances	00663	Report	0 (days)	---	---	1/week	24-hr. Composite
Total Fluoride	00951	Report	Report	Report	Report	1/week	24-hr. Composite
Total Sulfate	00945	Report	Report	Report	Report	1/week	24-hr. Composite
Total Radium 226 (*3)	09501	---	---	0.4 pCi/ml	0.5 pCi/ml	1/month	24-hr. Composite
Total Uranium	22708	Report	Report	Report	Report	1/month	24-hr. Composite
Gross Alpha Particle Activity (*3)	80045	---	---	Report	Report	1/month	24-hr. Composite
Total Aluminum	01105	Report	Report	Report	Report	1/month	24-hr. Composite
Total Antimony	01097	Report	Report	Report	Report	1/month	24-hr. Composite
Total Arsenic	01002	Report	Report	Report	Report	1/month	24-hr. Composite
Total Beryllium	01012	Report	Report	Report	Report	1/month	24-hr. Composite
Total Cadmium	01027	Report	Report	Report	Report	1/month	24-hr. Composite
Total Chromium	01034	Report	Report	Report	Report	1/month	24-hr. Composite
Total Copper	01042	Report	Report	Report	Report	1/month	24-hr. Composite
Total Lead	01051	Report	Report	Report	Report	1/month	24-hr. Composite
Total Mercury	71900	Report	Report	Report	Report	1/month	24-hr. Composite
Total Nickel	01067	Report	Report	Report	Report	1/month	24-hr. Composite
Total Selenium	01147	Report	Report	Report	Report	1/month	24-hr. Composite
Total Silver	01077	Report	Report	Report	Report	1/month	24-hr. Composite
Total Thallium	01059	Report	Report	Report	Report	1/month	24-hr. Composite
Total Zinc	01092	Report	Report	Report	Report	1/month	24-hr. Composite
TSS	00530	Report	Report	Report	Report	1/week	24-hr. Composite
Stream Flow (cfs)	00060	---	---	---	Report (*4)	1/day	24-hr. Measurement

The permittee shall at all times be in compliance with the requirements of the calcium sulfate storage pile operating procedures contained in Part II.

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s):

Internal Outfall 004, at the point of discharge from the inactive calcium sulfate impoundment prior to commingling with Final Outfall 001.