

Post-Construction Notice of Violations (MVN 2015-02295-WII, WQC 160921-03)
Atchafalaya Basinkeeper, Gulf Restoration Network and Louisiana Crawfish Producers Association-West

James W. Little, Jr.
Project Manager
MVN-2015-02295-WII
Regulatory Branch
New Orleans District
U.S. Army Corps of Engineers
7400 Leake Avenue
New Orleans, LA 70118
James.little@usace.army.mil

Elizabeth Hill
Project Manager
WQC 160921-03
Water Quality Certifications
State of Louisiana
Department of Environmental Quality
P.O. Box 4313
Baton Rouge, LA 70821-4313
Elizabeth.hill@la.gov

Brad Guarisco
Chief Surveillance and Enforcement Section
Regulatory Branch
New Orleans District
U.S. Army Corps of Engineers
Brad.A.Guarisco@usace.army.mil

Sent by E-mail

October 7, 2019

Re: Post-Construction Notice of Violations – Bayou Bridge Pipeline, LLC (MVN 2015-02295-WII; WQC 160921-03)

Dear Mr. Little and Ms. Hill,

Atchafalaya Basinkeeper, Gulf Restoration Network and the Louisiana Crawfish Producers Association-West (hereinafter, “Basinkeeper”) submit this Post-Construction Notice of Violations to the Corps’ Regulatory Branch – Enforcement Section and Project Manager for the subject pipeline’s Corps permits, and the Louisiana Department of Environmental Quality Project Manager for the subject pipeline’s Water Quality Certification. From January 2018 through March 2019, Bayou Bridge Pipeline, LLC constructed its 162.5 mile, 24-inch diameter crude oil pipeline across the Atchafalaya Basin, under U.S. Army Corps of Engineers Permit No. MVN 2015-02295-WII, and Louisiana Department of Environmental Quality Water Quality Certification (WQC) 160921-03.

Atchafalaya Basinkeeper has identified numerous, significant unpermitted violations of the Clean Water Act/illegal fills, 33 U.S.C. § 1251 *et seq.*, during on-site boat trips on both the eastern and western portions of the Bayou Bridge Pipeline right-of-way in the Atchafalaya Basin.

Unfortunately, this letter is not the first indication to the Corps of construction-related problems regarding the Bayou Bridge pipeline crossing the Atchafalaya Basin. Basinkeeper sent a series of notice letters to the New Orleans District of the Corps on May 9, 2018; June 1, 2018; and January 4, 2019; identifying a number of permit violations observed in the Basin during the pipeline’s construction. After receiving minimal response from the Corps regarding the status of

these letters and investigation into the concerns raised therein, Basinkeeper sent a follow-up letter to the Corps on August 23, 2019, expressing its disappointment in the lack of communication from the agency, and ongoing concern as to the status of the Basin post-construction.

This letter comes months after the alleged completion of construction of the pipeline, and after operations have commenced and the pipeline has begun to transport hundreds of thousands of barrels of crude oil across the Basin every day. See “Energy Transfer and Phillips 66 Partners Announce Bayou Bridge Pipeline is Ready for Service: Pipeline expected to be fully operational by April 1”, Business Wire, March 26, 2019, *available at* <https://www.businesswire.com/news/home/20190326005964/en/>; *see also* <https://bayoubridge.com> (“We are proud to announce that we have completed construction on the Bayou Bridge Pipeline, and the pipeline is fully operational.”).

As water levels remained high throughout the summer, we have been unable to appreciably inspect the pipeline’s impacts in the Atchafalaya Basin until now.

However, despite repeated prohibitions of hydrologic alterations, and mandates to return the impacted areas to pre-construction contours in the permitting decisions,¹ Bayou Bridge Pipeline not only have failed to comply with the prescribed construction conditions, in violation of its permit and state and federal law but also multiple additional unpermitted illegal fills and Clean Water Act violations. Despite Basinkeeper’s many concerns raised during pipeline construction, the destruction is even worse than anticipated. The receding waters have exposed severe impacts necessitating immediate action to remediate and repair impacted areas.

Monitoring Report:

Atchafalaya Basinkeeper inspected portions of the Bayou Bridge pipeline right-of-way on September 11, 14, 20, 21, 26 & 27, 2019. Throughout the entire portion of the pipeline right-of-way that Basinkeeper inspected on all of these dates, Basinkeeper observed the following:

- Dredged material, including heavy clay and dirt, and new spoil banks, that has been deposited and left behind in the pipeline right-of-way;
- Dammed and blocked waterways;
- Tree remains and other construction debris littering the right-of-way;
- Large ruts and altered elevations in the terrain;
- Lack of gaps in long stretches of spoil banks;
- Appearance of flooded trench with uncovered, or insufficiently covered pipeline;
- Pipeline buried under new spoil bank created by BBP.
- Pipeline installed within existing spoil bank

¹ BBP includes a graphic on its website explaining the construction sequence, including steps 11 and 13 for backfilling the trench and restoring the right-of-way to preconstruction contours. See <https://bayoubridge.com/docs/Pipeline-Construction-Sequence-1-23-18-8.5x11.pdf>.

During the monitoring trips on both sides of the Atchafalaya Basin, the occurrence of the above observations were too numerous to count.

West Side of the Basin Monitoring Trips. September 11 & 27, 2019

On September 11 & 27, 2019, Atchafalaya Basinkeeper staff and a member of LCPA-West inspected the Bayou Bridge pipeline right-of-way on the west side of the Basin from Beau Bayou (at approximately the following coordinates: 30° 08'09.66" N, 91° 35'46.74" W) southeast to the dike before the pipeline crosses Bayou Chene (to approximately the following coordinates: 30° 07'20.8" N, 91° 33'49.4" W). On this date the water stage at Butte La Rose was 6.75'.

Figures 1-W to 6-W, and 8-W² below were taken by Dean Wilson during Basinkeeper's September 11 and 27, 2019 monitoring trip along the pipeline corridor on the west side in the Basin. Figure 7-W below was taken by Shane Doucet, member of the Louisiana Crawfish Producers Association-West during the September 11, 2019 monitoring trip.



Fig. 1-W. September 11, 2019. This photo depicts Bayou Bridge pipeline markers in the spoil bank, and an absence of gaps in the spoil bank. Dean took this photo facing northeast, traveling northwest in the canal adjoining the right-of-way between the dike northwest of Bayou Chene

² "W" indicates photos taken on the west side of the Basin.

and Beau Bayou, between the following approximate coordinates: 30° 07'20.8" N, 91° 33'49.4" W to 30° 08'09.66" N, 91° 35'46.74" W.

404 EA at pg. 23: " "In regards to the recommendations that the applicant not install the pipeline within existing spoil banks along the proposed ROW within the Atchafalaya Basin ..., the applicant has stated that the pipeline will be installed in a manner and to a sufficient depth so as to not disrupt natural water flows in the basin. *The applicant is not proposing to install the pipeline within any of the spoil banks, but is proposing to install it 4 feet below natural grade and would thus not preclude future spoil bank removal projects.* Also, the proposed project will not involve the placement of excavated material on existing spoil banks which parallel the pipeline right-of-way. All excavated materials placed in temporary spoil piles in the workspace will be replaced in the trench and the area restored to pre-construction contours, which will not exacerbate existing flow conditions or preclude future spoil bank restoration activities."



Fig. 2-W. September 27, 2019. This photo depicts illegal fill/Clean Water Act violation along the pipeline right-of-way. The pipeline is on the lower part of the picture without markings. The picture was taken facing northeast, approximate coordinates: 30° 07'38.37" N, 91° 34'27.79" W.



Fig. 3-W. September 27, 2019. This photo depicts the extent of the illegal fill/Clean Water Act violation along the pipeline right-of-way. The pipeline is on the lower part of the picture without markings. The picture was taken facing northeast, approximate coordinates: 30° 07'38.37" N, 91° 34'27.79" W.



Fig. 4-W. September 11, 2019. This photo depicts piles of dredged material/dirt/spoil, including a large hill of dredged material to the right of the pipeline markers and channel, and large holes at the forefront remaining after pipeline construction, in violation of the permit. To the left of the photo, before the pipeline markers placed in elevated spoil, the pipeline trench is full of water and covered with water hyacinth, indicating that the pipeline appears to be uncovered or insufficiently covered at this location. This photo was taken from the west bank of Beau Bayou facing northwest, at the following approximate coordinates: 30°08'10.99" N, 91°35'48'68" W.

Fishermen crossing Beau Bayou, in the area near where this photo was taken, have reported hitting "something hard" with their propellers just in the time since the pipeline was laid in this area, in late summer 2018. If the pipeline is not appropriately covered, it could be hitting the fishermen's propellers as they navigate.



Fig. 5-W. September 11, 2019. This photo depicts more dredged material/dirt/spoil left along the pipeline right-of-way, in violation of the permit, with the pipeline located near the bottom of the photo without pipeline markers. Dean took this photo facing northeast between Beau Bayou and Bayou Chene, between the following approximate coordinates: 30° 08'09.66" N, 91° 35'46.74" W and 30° 07'20.8" N, 91° 33'49.4" W.



Fig. 6-W. September 11, 2019. This photo depicts yet more piles of dredged material/dirt/spoil and holes along the pipeline right-of-way, in violation of the permit. The pipeline trench is located in the lower portion of the photo, with water in the trench and what appears to be uncovered pipeline to the left side. Dean took this photo facing northwest between Beau Bayou and Bayou Chene, between the following approximate coordinates: 30° 08'09.66" N, 91° 35'46.74" W and 30° 07'20.8" N, 91° 33'49.4" W.



Fig. 7-W. This photo was taken by Shane Doucet during the September 11 monitoring trip. This photo depicts a large rut approximately 6' deep in the pipeline right-of-way, remaining after construction of the Bayou Bridge pipeline. Shane took this photo facing southwest very close to the dike that separates the canal to Bayou Chene, at the following approximate coordinates: 30° 07'20.8" N, 91° 33'49.4" W.



Fig. 8-W. September 11, 2019. This photo depicts one of the many damned waterways, between the following approximate coordinates: 30° 08'09.66" N, 91° 35'46.74" W and 30° 07'20.8" N, 91° 33'49.4" W. This waterway is located to the north of the pipeline. One of the many illegal fills/Clean Water Act violations by Bayou Bridge pipeline.

East Side of the Basin Monitoring Trips. September 14, 20, 21 & 26

On September 14, 20, 21 & 26, 2019 Atchafalaya Basinkeeper staff inspected the Bayou Bridge pipeline right-of-way on the east side of the Basin from approximately 1.24 miles west of Cross Bayou (at approximately the following coordinates: 30° 05'24.32" N, 91° 21'10.19" W) to approximately 1.5 miles east of Cross Bayou (to approximately the following coordinates: 30° 05'10.71" N, 91° 23'51.29" W). On this date the water stage at Bayou Sorrel was approximately 4.25'. At this water stage, these sloughs and waterways are typically accessible by boat to crawfish and hunt bullfrogs.

Figures 1-E through 8-E³ below were taken by Dean Wilson during Basinkeeper's September 14, 2019 monitoring trip along the pipeline corridor on the east side in the Basin.

³ "E" indicates photos taken on the east side of the Basin.



Fig. 1-E. This photo depicts piles of dredged material/dirt/spoil and large holes remaining after pipeline construction, in violation of the permit. Dean took this photo facing west from the banks of Cross Bayou, at the following approximate coordinates: 30°05'12.84" N, 91°22'38.47" W.



Fig. 2-E. This photo depicts illegal fill/Clean Water Act violations along the pipeline right-of-way after construction, and dirt in the adjoining forest likely as a result of digging during high water without using appropriate, required erosion controls. Dean took this photo facing north, with the pipeline trench in the bottom portion of the photo, between the following approximate coordinates: 30° 05'24.32" N, 91° 21'10.19" W to 30° 05'10.71" N, 91° 23'51.29" W.



Fig. 3-E. This photo depicts illegal fill/Clean Water Act violations created by dredged material/dirt/spoil and debris remaining along the pipeline right-of-way after construction and pipeline markers placed inside new spoil created by BBP. Dirt seen in the adjoining the forest to the right side of the photo may likely have been the result digging/dredging during high water without any erosion control. Dean took this photo facing west/northwest at a location west of Cross Bayou, between the following approximate coordinates: 30°05'12.84" N, 91°22'38.47" W and 30° 05'10.71" N, 91° 23'51.29" W.



Fig. 4-E. This photo depicts illegal fill/Clean Water Act violations, dredged material/dirt/spoil and debris remaining along the pipeline right-of-way after construction and pipeline markers placed inside new spoil created by BBP. Dirt seen in the adjoining the forest to the left side of the photo may likely have been the result digging/dredging during high water without using appropriate, required erosion controls. Dean took this photo facing east, at a location east of Cross Bayou between the following approximate coordinates: 30° 05'12.84" N, 91°22'38.47" W and 30° 05'10.71" N, 91° 23'51.29" W.

Every single pre-existing slough and natural waterway, except for Cross Bayou and Cow Bayou, observed during the east side pipeline right-of-way monitoring trip was blocked by dredged material, dirt, new spoil and/or debris from construction of the Bayou Bridge pipeline, all illegal fills/Clean Water Act violations. A fisherman accessing the right-of-way by airboat who actually worked on construction of this pipeline counted 35 sloughs and waterways blocked between the Eastern Atchafalaya Basin Guide Levee and the Atchafalaya River. All of these blocked waterways were inaccessible at this water level, and normally would be navigable by boat. Although the water level is significantly lower than it has been in the preceding months, as the water recede, these blockages will become even more prominent in low water.

Figures 5-E to 8-E below depict dammed/blocked sloughs, bayous, and waterways along the pipeline right-of-way on the east side of the Basin, all illegal fills/Clean Water Act violations. It appears that these waterways have been blocked by dredged fill/spoil materials and/or debris

from Bayou Bridge's pipeline construction. Each of these blockages are inaccessible by boat and will likely continue to be as the water level recedes.



Fig. 5-E. This photo depicts a pre-existing, unnamed slough along the right-of-way that is dammed/blocked by construction-related debris, in violation of the permit. Dean took this facing north, at a location west of Cross Bayou between the following approximate coordinates: 30° 05'12.84" N, 91° 22'38.47" W and 30° 05'10.71" N, 91° 23'51.29" W.



Fig. 6-E. This photo depicts another pre-existing, unnamed slough that is dammed/blocked by debris, an illegal fill/Clean Water Act violation. This slough was previously accessible by boat but now it is not. Dean took this facing north, at a location west of Cross Bayou between the following approximate coordinates: 30° 05'12.84" N, 91° 22'38.47" W and 30° 05'10.71" N, 91° 23'51.29" W.



Fig. 7-E. This photo depicts another preexisting, unnamed slough, that is dammed by debris, another illegal fill/Clean Water Act violation. Dean took this facing north, at a location west of Cross Bayou between the following approximate coordinates: 30° 05'12.84" N, 91° 22'38.47" W and 30° 05'10.71" N, 91° 23'51.29" W.



Fig. 8-E. This photo depicts another pre-existing, unnamed slough, that is dammed by debris, another illegal fill/Clean Water Act violation. Dean took this facing north, at a location west of Cross bayou between the following approximate coordinates: 30° 05'12.84" N, 91° 22'38.47" W and 30° 05'10.71" N, 91° 23'51.29" W.

The Bayou Bridge pipeline right-of-way is littered with branches and debris left behind by construction and/or right-of-way clearing performed by BBP or on its behalf. This debris has naturally caused damming throughout the waterways which traverse the right-of-way, impeding navigation and water flow, all illegal fills/Clean Water Act violations.

September 20-21, 2019

On September 20-21, 2019 Atchafalaya Basinkeeper again inspected the Bayou Bridge pipeline right-of-way on the east side of the Basin at the same location as the September 14 monitoring trip (from approximately the following coordinates: 30° 05'24.32" N, 91° 21'10.19" W to approximately the following coordinates: 30° 05'10.71" N, 91° 23'51.29" W). On this date the water stage at Bayou Sorrel was approximately 3.8'.

Figures 9-E through 10-E below were taken by Dean Wilson during Basinkeeper's September 20-21, 2019 monitoring trip along the pipeline corridor on the east side in the Basin.



Fig. 9-E. This photo depicts markers in a the flooded pipeline trench, suggesting that in portions where the pipeline trench remains inundated with water at such a low water stage that the pipeline in these areas is uncovered or insufficiently covered per the terms of the permit (minimum of 4' cover). Dean took this photo facing northeast, at the following approximate coordinates: 30°05'16'61" N, 91°22'18.23" W.



Fig. 10-E. As in fig. 9-E above, this photo depicts an inundated trench and pipeline markers in the flooded trench, again indicating that the pipeline is uncovered or insufficiently covered. Dean took this photo facing east, at the following approximate coordinates: 30°05'12.91" N, 91°22'27.85" W.

Request for Enforcement & Restoration

The photos referenced herein only scratch the surface of violations. Nearly the entire pipeline corridor on both sides of the Basin contains deposited dredged material and dirt piles, disrupting the hydrology and severely altering the pre-construction contours of these areas. Nearly the entire pipeline corridor on the east side⁴ contains new elevated spoil located north of the pre-existing spoil in the right-of-way. All of these post-constructions altered contours are illegal fills/Clean Water Act violations.

Additionally, as noted in our May 9, 2018; June 1, 2019; and January 4, 2019 Notices Letters to the Corps, an issue of grave concern to Basinkeeper throughout the construction of the Bayou Bridge pipeline has been the accelerated rate of sedimentation in areas in and around the pipeline

⁴ Except for Cross Bayou, and certain areas described herein where the pipeline appears to be uncovered or where the trench was not sufficiently backfilled.

right-of-way, particularly from construction during high water, and the anticipated, adverse impacts on the hydrology of these areas, including accretion and elevated contours.

Despite the Corps permit prohibiting more than minimal damage to the hydrology of these wetlands, as Basinkeeper has observed and described herein, areas in and around the pipeline right-of-way have suffered major hydrologic impacts. These Clean Water Act violations also impact fisheries; severely impair the navigability of these areas, fish migration and water flows; and restrict the ability of fishermen to access these productive fishing grounds. As Basinkeeper predicted, it appears that trenching during high water accelerated accretion/sedimentation rates throughout the areas surrounding the pipeline right-of-way, exacerbated by dredging during high water without implementation of adequate erosion controls. Thousands of migratory wading birds use impacted areas. Basinkeeper is concerned that without proper remediation of these sites, bird habitat will continue to be severely harmed, and the capacity of the Basin to pass Mississippi River floods will continue to be diminished.

The violations described in this notice letter adversely impact Atchafalaya Basinkeeper, Healthy Gulf, and LCPA-West's members' use and enjoyment of the effected waterways.

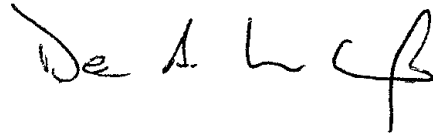
We demand that the agencies **enforce the Clean Water Act violations by immediately issuing a Cease and Desist**, the immediate enforcement of its permit and certifications, and the following actions:

1. Begin and/or continue to inspect the locations identified in all three prior Notice letters, and the present Notice letter.
2. Cease and Desist. Reevaluate the permit decision in consideration of the circumstances, including violation of the Clean Water Act.
3. Suspend, revoke or enforce the Permit in accordance with procedures contained in 33 C.F.R. §§ 325.7, 326.4, 326.5, including costs for corrective measures (MVN-2015-02295-WII at 3);
4. Take all appropriate action to remedy the problems caused by fill/spoil, branches and debris scattered throughout the pipeline corridor in, including requiring restoration of the sites to pre-project conditions or any other appropriate remedial actions.

On September 27, 2019 we witnessed two excavators working on the BBP right-of-way in what appears to be an attempt to fix some of their damage. We are relieved that some attempt to fix this massive destruction appear to be made by BBP. That said, non-compliance with permit conditions, and unabated disregard for state and federal law governing Clean Water Act compliance, caused these ongoing harms, blocking navigable waters, impairing water quality and

wildlife habitat, and disturbing the hydrology of the surrounding areas in the Atchafalaya Basin.⁵
We hope that the discussed impacts and ongoing harms will be met with swift response from the Corps and LDEQ.

Respectfully submitted by,



Dean A. Wilson
Atchafalaya Basinkeeper
P.O. Box 410
Plaquemine, LA 70765
Phone: (225) 692-4114
Email: enapay3@gmail.com

On behalf of the following:

Atchafalaya Basinkeeper

Healthy Gulf

Louisiana Crawfish Producers Association-West

CC:

Samuel Coleman, P.E.
Regional Administrator
EPA Region 6
Fountain Place 12th Floor, Suite 1200
1445 Ross Ave, Suite 1200
Dallas, TX 75202-2733

⁵ The violations raised herein, the perceived lack of response from the Corps to concerns raised in Basinkeeper's previous notice letters during construction, coupled with the failure of the agencies to ensure that BBP began operations with an approved Facility Response Plan as indicated in both the § 404 permit and coastal use permit documents, raise serious concerns as to the efficacy of our state and federal agencies to protect the interests of the public and its environment

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Andrew R. Wheeler, Administrator
U.S. EPA Headquarters
Ariel Rios Building
1200 Pennsylvania Ave, N.W.
Mail Code 1101A
Washington, D.C. 20460

Chuck Carr Brown, Ph. D., Secretary
Louisiana Department of Environmental Quality
P.O. Box 4301
Baton Rouge, LA 70821-4303

Colonel Stephen Murphy, New Orleans District Commander
United States Army Corps of Engineers – New Orleans Division
7400 Leake Avenue
New Orleans, LA 70118