NOTICE OF INTENT

Department of Environmental Quality

Office of the Secretary

Legal Division

Repeal of LAC 33:III.1107.A

(LAC 33:III.1105.A and 1107.A) (AQ361)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.1105.A and 1107.A (AQ361).

This Rule will repeal LAC 33:III.1107.A. The relevant part of LAC 33:III.1105 (Smoke from Flaring Shall Not Exceed 20 Percent Opacity) provides that the, “emission of smoke from a flare or other similar device used for burning in connection with pressure valve releases for control over process upsets shall be controlled so that the shade or appearance of the emission does not exceed 20 percent opacity … for a combined total of six hours in any 10 consecutive days.”

LAC 33:III.1107.A allows LDEQ to grant an exemption from the provisions of LAC 33:III.1105 “during start-up and shutdown periods if the flaring was not the result of failure to maintain or repair equipment.” This exemption was approved by EPA into Louisiana’s State Implementation Plan (SIP) on July 5, 2011 (76 FR 38977).

However, on June 12, 2015, EPA promulgated a rule\* finding that several Louisiana air quality regulations, including LAC 33:III.1507.A and B, are “substantially inadequate to meet [Clean Air Act] requirements” because they provide “impermissible discretionary exemptions” from “otherwise applicable SIP emission limitations.” Consequently, EPA issued a “SIP call” directing affected states to submit corrective SIP revisions by November 22, 2016.

In response to EPA’s SIP call, LDEQ will repeal LAC 33:III.1107.A for two primary reasons. One, there is incongruity between the provisions of LAC 33:III.1105 and LAC 33:III.1107.A. LAC 33:III.1105 applies to flaring in connection with process upsets, whereas 1107.A addresses startup and shutdown periods (not malfunctions or upsets). Two, other standards for flares that are commonly applicable, such as 40 CFR 63.11(b)(4), require the control device to “be designed for and operated with no visible emissions, except for periods not to exceed a total of 5 minutes during any 2 consecutive hours.”

\* State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction [80 FR 33840]

The basis and rationale for this rule are to repeal the exemption provided by LAC 33:III.1107.A in order to comply with EPA’s SIP call. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

This Rule has no known impact on poverty as described in R.S. 49:973.

This Rule has no known impact on providers as described in HCR 170 of 2014.

A public hearing will be held on May 25, 2016, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ361. Such comments must be received no later than June 1, 2016, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Division, P.O. Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to deidra.johnson@la.gov. Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ361. These proposed regulations are available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

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Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 11. Control of Emissions of Smoke

§1105. Smoke From Flaring Shall Not Exceed 20 Percent Opacity

A. The emission of smoke from a flare or other similar device used for burning in connection with pressure valve releases for control over process upsets shall be controlled so that the shade or appearance of the emission does not exceed 20 percent opacity (LAC 33:III.1503.D.2, Table 4) for a combined total of six hours in any 10 consecutive days. If it appears the emergency cannot be controlled in six hours, SPOC shall be notified by the emitter in accordance with LAC 33:I.3923 as soon as possible after the start of the upset period. ~~Such notification does not imply the administrative authority will automatically grant an exemption to the source(s) of excessive emissions.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 25:656 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2450 (November 2000), LR 30:1671 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2438 (October 2005), LR 33:2084 (October 2007), amended by the Office of the Secretary, Legal Division, LR 42:\*\*.

§1107. Exemptions

A. ~~Exemptions from the provisions of LAC 33:III.1105 may be granted by the administrative authority during start-up and shutdown periods if the flaring was not the result of failure to maintain or repair equipment. A report in writing, explaining the conditions and duration of the start-up or shutdown and listing the steps necessary to remedy, prevent, and limit the excess emission, shall be submitted to SPOC within seven calendar days of the occurrence. In addition, the flaring must be minimized and no ambient air quality standard may be jeopardized~~Repealed.

B. - B.6. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2451 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2438 (October 2005), LR 33:2084 (October 2007), LR 37:1144 (April 2011), amended by the Office of the Secretary, Legal Division, LR 42:\*\*.