

## DEMONSTRATION OF EQUIVALENCY

### Malfunctions, Baseline Actual Emissions, and Projected Actual Emissions

Louisiana's June 20, 2005 AQ246L proposal eliminated "malfunctions" from the definitions of "baseline actual emissions" and "projected actual emissions." With the September 20, 2005 substantive changes (AQ240LS), "malfunctions" was reinstated where previously omitted, but defined. The federal rules do not define malfunctions. AQ246LS establishes that for purposes of LAC 33:III.504 and 509, malfunctions shall include any such emissions authorized by permit, variance, or the on-line operating adjustment provisions of LAC 33:III.1507.B and 2307.C.2, but exclude any emissions that are not compliant with federal or state standards.

The addition of a definition which clarifies that the only "malfunction" emissions to be excluded are those not compliant with federal or state standards ensures that Louisiana's PSD and NNSR rules are at least as stringent as the federal NSR Reform rules.

The department believes use of the term "authorized" is consistent with federal language requiring the average rate, when calculating baseline actual emissions, to be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period. Also, when determining projected actual emissions, a source should not assume this figure will be greater than its potential to emit (i.e., include emissions not "authorized" by its permit).

Concerning the association of the terms "authorized" and "malfunctions," the department's intent is to avoid semantic issues resulting from use of the term "malfunction." For example, if a process upset diverts vent gases to a backup control device permitted as an alternate operating scenario, allowable emission limits may not be exceeded, though some might consider the process upset to be a "malfunction." In such a case, the emissions from the backup control device should be included in calculation of baseline actual emissions (unless, of course, they must be excluded for other reasons, such as promulgation of new regulations). Releases that do **not** qualify for the federally permitted release exemption under CERCLA and EPCRA, based on EPA's April 17, 2002 guidance (67 FR 18899), should not be included.

Region 6 has also weighed in on the issue of startup/shutdown emissions and NSR. Correspondence from Mr. David Neleigh, Chief of the Air Permits Section at EPA Region 6, to Ms. Joyce Spencer of TCEQ (formerly TNRCC) states that:

"The EPA acknowledges that at the time of previously issued permits many entities may not have had the technology or methodology for 'quantifying' and permitting their MSS [Maintenance, Startup and Shutdown] emissions. Instead, these permitted entities have relied upon the reporting and enforcement discretion provisions set forth in the Chapter 101 rule concerning 'excess emissions' above the permitted emissions limits. While EPA has endorsed enforcement discretion regarding these 'excess emissions' in the past, it has consistently maintained that these **MSS emissions, if unpermitted, are illegal emissions with regard to the NSR/PSD program** and are subject to the range of enforcement discretion of the permitting agency." (Emphasis added.)

## **Clean Coal Technology Demonstration Projects**

The December 31, 2002, federal rules exclude certain “clean coal” projects from the definition of “major modification” by deeming them not to be “a physical change or change in the method of operation.” Louisiana’s PSD and NNSR rules omit the exclusions for temporary and permanent clean coal technology demonstration projects and for the reactivation of a very clean coal-fired electric utility steam generating units. Louisiana has only 4 coal-fired power plants, a handful of pulp and paper power boilers that burn coal with other fuels, and no known decommissioned coal units. Due to the magnitude and variety of emissions associated with such facilities and the relative infrequency at which they are modified, the department believes it would be best to maintain as much oversight as possible into matters associated with coal combustion. Because all major modifications to coal-fired units would be subjected to full NSR review, Louisiana’s rules are at least as stringent as the federal rules.

## **Underestimation of Projected Actual Emissions**

Finally, the federal rules contain no apparent consequences for underestimation of “projected actual emissions.” LAC 33:III.504.D.11 and LAC 33:III.509.R.8 include additional requirements in the event “projected actual emissions” are underestimated; thus, they are at least as stringent as the federal rules.

For a project originally determined not to result in a significant net emissions increase, if an owner or operator subsequently reevaluates projected actual emissions and determines that project has resulted or will now result in a significant net emissions increase, the owner or operator must either request that the administrative authority limit the potential to emit of the affected emissions units (including those used in netting) as appropriate via federally enforceable conditions such that a significant net emissions increase will no longer result, or submit a revised permit application within 180 days requesting that the original project be deemed a major modification.

In its decision *New York, et al. v. U.S. EPA* (No. 02-1387), the D.C. Circuit Court of Appeals expressed its concern that EPA “failed to explain how, absent recordkeeping, it [EPA] will be able to determine whether sources have accurately concluded that they have no ‘reasonable possibility’ of significantly increased emissions.” Also, the decision noted, “Without paper trails, however, enforcement authorities have no means of discovering whether the exercise of such judgment was indeed ‘reasonable’.”

LAC 33:III.504.D.11 and 509.R.8 should result in adequate records being maintained for 5 or 10 years following the date an emissions unit resumes regular operation after a project. Accordingly, the D.C. Circuit Court of Appeals’ concerns should be satisfied until such time as EPA responds to the Court by providing justification for the recordkeeping concerning projected actual emissions or by revising the rule.