CLEAN AIR ACT SECTION (CAA) 111(d) PLAN FOR OTHER SOLID WASTE INCINERATION (OSWI) UNITS
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I. Background

In response to the requirements of Sections 111(d) and 129 of the federal Clean Air Act Amendments of 1990, EPA has promulgated standards and guidelines for new and existing Other Solid Waste Incineration (OSWI) Units**.** The New Source Performance Standards (NSPS) 40 CFR 60 Subpart EEEE and emission guidelines (EG) 40 CFR 60 Subpart FFFF are for OSWI units. The OSWI unit rules regulate very small municipal waste combustion units and institutional waste incineration units. Very small municipal waste combustion (VSMWC) units are incinerators that burn less than 35 tons per day of municipal solid waste. Institutional waste incineration (IWI) units are incinerators located at institutions that burn solid waste generated on site. The final NSPS rules apply to OSWI units that were built after December 9, 2004 and EGs for existing OSWI units. The EGs set limits for particulate matter (PM), sulfur dioxide (SO_2), hydrogen chloride (HCl), nitrogen oxides (NO_x), carbon monoxide (CO), lead (Pb), cadmium (Cd), mercury (Hg) and dioxins/furans. The NSPS apply directly to new OSWI units. In order for the state to implement EG for existing OSWI units, the state must submit an approvable implementation plan to EPA pertaining to the EGs for affected facilities.

State Plans must contain specific information and legal mechanisms necessary to implement the Emission Guidelines. The minimum requirements are listed below:

1. A demonstration of the State's legal authority to carry out the section 111(b)/111(d)/129 State Plan, including the authority to:
   - adopt emission standards and compliance schedules applicable to designated facilities;
   - enforce applicable laws, regulations, standards, and compliance schedules, and seek injunctive relief;
   - obtain information necessary to determine whether designated OSWI facilities are in compliance with applicable laws, regulations, standards, and compliance schedules, including the authority to require recordkeeping and to make inspections and conduct tests of designated OSWI facilities; and
   - require owners or operators of designated facilities to install, maintain, and use emission monitoring devices and to make periodic reports to the State on the nature and amounts of emissions from such facilities; also the authority for the state to make such data available to the public as reported and as correlated with applicable emission standards.

2. An inventory of affected incineration units, including those that have ceased operation but have not been dismantled.

3. An emission inventory of each applicable source as specified in 40 CFR 60 Appendix D, although many of the 40 CFR 60 Appendix D requirements are obsolete.

4. Emission limitations for OSWI that are at least as protective as those in the EG.

5. Operator training and qualification requirements at least as protective as those in the EG.

6. Requirements for development of a Waste Management Plan at least as protective as those in the EG.

7. Operating parameter requirements that are at least as protective as those in the EG.

8. Stack testing, recordkeeping, and reporting requirements at least as protective as those in the EG.

9. A transcript of public hearing(s) on the State Plan.

10. Provision for State progress reports to EPA.

11. Identification of enforceable mechanisms selected for implementing EG.

There is currently one known OSWI unit in the State of Louisiana, namely Louisiana State Penitentiary-Angola, that will be subject to regulation.

II. Demonstration of Legal Authority

The Louisiana Environmental Quality Act, La. R.S. 30:2001, et seq., (herein after referred to as the Act) grants the secretary of the Department of Environmental Quality (the department) specific authority to adopt, amend, or repeal those rule and regulations that are deemed necessary for the protection of the state's environment. Further, the Act provides the secretary with the general power to assure compliance with applicable federal laws and regulations and to assume authority for those delegated programs that exist under the provision of the Clean Air Act Amendments.

Also included in the Act is the Louisiana Air Control Law, La. R.S. 30:2051, et seq., which provides specific statutory authority for air quality matters. The secretary is provided the authority to adopt and/or promulgate rules and regulations that are consistent with applicable state and federal law. This authority also includes the air operating permit program that is required by 40 CFR Part 70.

Although the Act does not provide the department with specific authority to include monitoring, recordkeeping, and reporting requirements in an air operating permit, broad statutory authority is provided the secretary to develop permitting procedures and regulations that conform to applicable state and federal laws. Such statutory authority is sufficient to incorporate monitoring, recordkeeping, reporting and compliance certification requirements in to the air operating permit consistent with the federal requirements of 40 CFR Part 70. (See Appendix C, Attorney General's Opinion, dated November 15, 1993)

State law provides authority to make available to the public any permit application, compliance plan, and monitoring and compliance certification report, except

for that information entitled to confidential treatment. According to the Act, the contents of an operating permit and air emissions data shall not be entitled to confidential treatment. Further, the Louisiana Public Records Law, La. R.S. 44:1, et seq., provides that all records of a public body are defined as "public record" and are therefore available for public inspection and copying. This general rule has been modified by the Act, which allows the department to maintain certain records as confidential. (La. R.S. 30:2030)

III. Inventory of Applicable Sources

There is one known OSWI unit in the State of Louisiana that will be subject to the new regulation. Table 1 lists the facility, the capacity of the facility along with the type of air pollution control equipment currently used at the facility, if any. Other existing sources, not identified below, are also subject to the requirements of this 111(d) plan, and as these new sources are identified they will be added to the inventory and reported via the annual progress report to EPA Region VI.

Table 1. Other Solid Waste Incineration Units in Louisiana

FACILITY NAME	RATED CAPACITY (capacity/hr/yr)	AIR POLLUTION EQUIPMENT
Louisiana State Penitentiary- Angola	1,500 lbs/hr 8,000 BTUs/lb	None

IV. Emissions Inventory from OSWIs in Louisiana

Name/Address Incinerator	Location UTM	Parish	Incinerator Type	Permit / Emission Information	Waste Incinerated Component tons per year / Total tons per year
Louisiana State Penitentiary-Angola	Zone 15 634880 m East 3425259 m North	West Feliciana	Refuse Incinerator-Consumat Systems, Inc. Model C-550T-1H	Permit P-0124 (permit and Jan. 2001 permit application)	NOx 9.41 tpy CO 5.36 tpy SO_2 2.34 tpy PM_{10} 1.72 tpy VOC 0.21 tpy 19.04 Total TPY

V. Federal Regulations Adopted by Reference

Standards Adopted – The following standards of Performance for New Stationary Sources and Emission Guidelines contained in the *Federal Register* on December 16, 2005 (Vol. 70 FR 74870-74924) are adopted and incorporated by reference on May 20, 2006 (LR 32:808)

1. 40 CFR 60, Subpart EEEE, Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006. Any OSWI unit subject to 40 CFR 60, Subpart EEEE shall file an application for a permit to operate under the requirements of LAC 33: III Chapter 5.

2. 40 CFR 60, Subpart FFFF, Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units That Commenced Construction On or Before December 9, 2004 as published on July 1, 2005 CFR is hereby adopted and incorporated by reference subject to the following provisions.

TABLE 2 EMISSION LIMITATIONS TABLE

Air Pollutant	Emission Limitation	Averaging Time	Method for Determination
Cadmium	18 µg/dscm	3-run average (1 hour min./run)	Method 29
Carbon monoxide	40 ppm by dry vol.	3-run average (1 hour min./run), and 12-hour rolling averages	Method 10, 10A or 10B and CEMS
Dioxins/furans (total basis)	33 ng/dscm	3-run average (1 hour min./run)	Method 23
Hydrogen chloride	15 ppm by dry vol.	3-run average (1 hour min./run)	Method 26A
Lead	226 µg/dscm	3-run average (1 hour min./run)	Method 29
Mercury	74 µg/dscm	3-run average (1 hour min./run)	Method 29
Opacity	10%	6-run average (1 hour min./run)	Method 9
Oxides of nitrogen	103 ppm by dry vol.	3-run average (1 hour min./run)	Method 7, 7A, 7C, 7D, or 7E
Particulate matter	0.013 gr/dscf	3-run average (1 hour min./run)	Method 5 or 29
Sulfur dioxide	3.1 ppm by dry vol.	3-run average (1 hour min./run)	Method 6 or 6C or ANSI/ASME PTC 1981 in lieu of Method 6 only.

VI. Compliance Schedules

A. The OSWI initial compliance requirements at 40 CFR 60.2983(a)(3) are hereby incorporated by reference at 40 CFR 60.3030 and 60.3031. The compliance date is no later than 3 years after the effective date of State plan approval or

December 16, 2010 whichever is earlier. Title V Permit Applications must be submitted by May 20, 2007 in accordance with LAC 33:III.507.C.3.

B. The OSWI continuous compliance requirements at 40 CFR 60.2983(a)(4) are hereby incorporated by reference at 40 CFR 60.3033 through 60.3036.

C. The OSWI compliance schedule requirements at 40 CFR 60.2983(a)(3) are hereby incorporated by reference at 40 CFR 60.3000 through 60.3011.

VII. Additional Requirements for Existing OSWI

A. Waste Management Plan

The OSWI waste management plan requirements at 40 CFR 60.2983(a)(4) are hereby incorporated by reference at 40 CFR 60.3010 through 60. 3012 "Model Rule – Waste Management Plan".

B. Operator Training and Qualification

The OSWI operator training and qualification requirements at 40 CFR 60.2983(a)(4) are hereby incorporated by reference at 40 CFR 60.3014 through 60.3020 "Model Rule Operator Training and Qualification".

C. Emission Limitations and Operating Limits

The OSWI emission limitations and operating limits at 40 CFR 60.2983(a)(4) are hereby incorporated by reference at 40 CFR 60.3022 through 60. 3025 "Model Rule – Emission Limitations and Operating Limits".

D. Performance Testing

The OSWI performance testing requirements at 40 CFR 60.2983(a)(5) are hereby incorporated by reference at 40 CFR 60.3027 through 3028 "Model Rule – Performance Testing".

E. Monitoring

The OSWI monitoring requirements at 40 CFR 60.2983 (a)(4) are hereby incorporated by reference at 40 CFR 60.3038 through 60.3044 "Model Rule-Monitoring".

F. Recordkeeping and Reporting

The OSWI recordkeeping and reporting requirements at 40 CFR 60.2983(a)(5) are hereby incorporated by reference at 40 CFR 60.3046 through 60.3057 "Model Rule-Recordkeeping and Reporting".

G. Title V Operating Permits

The OSWI operating permit requirements at 40 CFR 60.3059 through 60.3060 are hereby incorporated by reference.

H. Temporary-Use Incinerators and Air Curtain Incinerators Used in Disaster Recovery

The temporary-use incinerators and air curtain incinerators used in disaster recovery requirement is hereby incorporated by reference at 40 CFR 60.3061 "Model Rule- Temporary-Use Incinerators and Air Curtain Incinerators Used in Disaster Recovery".

I. Air Curtain Incinerators That Burn Only Wood Waste, Clean Lumber, and Yard Waste

The air curtain incinerators that burn only wood waste, clean lumber, and yard waste requirements are hereby incorporated by reference at 40 CFR 60.3062 through 60.3069 "Model Rule- Air Curtain Incinerators That Burn Only Wood Waste, Clean Lumber, and Yard Waste".

J. Equations

The equations at 40 CFR 60.3076 are hereby incorporated by reference.

K. Definitions

Definitions at 40 CFR 60.3078 are hereby incorporated by reference. The terms used, but not defined in 40 CFR 60, Subpart FFFF, will have the meaning given to them in the Clean Air Act and in 40 CFR 60, Subpart A.

L. State Reports

Annual reports to EPA Region 6 will be submitted in accordance with 40 CFR 60.25(e) & (f).

M. Compliance Monitoring

Facilities will be inspected for compliance with this EG every other year and a comparison of the actual emissions to the emission limitations will be made available to the public upon request.

VIII. Public Hearing

A public hearing for the proposed Section 111(d) plan for Other Solid Waste Incineration (OSWI) Units in Louisiana will be held on October 25, 2006, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. The public comment period for the proposed Section 111(d) plan that includes 40 CFR Part 60, Subpart FFFF begins on September 20, 2006 and ends on October 25, 2006. Interested persons are invited to submit written comments concerning the 111(d) plan no later than 4:30 p.m., October 25, 2006, and should be sent to Jodie L. Alexis, Office of Environmental Assessment, Box 4314, Baton Rouge, LA 70821-4314

or to FAX (225) 219-3581 or by e-mail to jodie.alexis@la.gov. The proposed 111(d) plan is available on the Internet at http://www.deq.louisiana.gov/portal/tabid/2381/Default.aspx under Louisiana SIP Revisions.

Chapter 49. Incorporation by Reference

§4901. 40 CFR Part 136

A. 40 CFR Part 136, Guidelines Establishing Test Procedures for the Analysis of Pollutants, July 1, 2005, in its entirety, is hereby incorporated by reference.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:958 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1467 (August 1999), LR 26:1609 (August 2000), LR 27:2231 (December 2001), LR 28:996 (May 2002), LR 29:700 (May 2003), repromulgated LR 30:232 (February 2004), amended LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 31:920 (April 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:

§4903. 40 CFR Chapter I, Subchapter N

A. 40 CFR Chapter I, Subchapter N, Effluent Guidelines and Standards, Parts 401 and 405-471, July 1, 2005, are hereby incorporated by reference.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:958 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1467 (August 1999), LR 26:1609 (August 2000), LR 27:2232 (December 2001), LR 28:996 (May 2002), LR 29:700 (May 2003), LR 29:1467 (August 2003), repromulgated LR 30:232 (February 2004), amended LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 31:920 (April 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:

Part XV. Radiation Protection

Chapter 15. Transportation of Radioactive Material

§1517. Incorporation by Reference

A. 10 CFR Part 71, Appendix A, January 1, 2005, is hereby incorporated by reference.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 and 2113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:1270 (June 2000), amended LR 27:2233 (December 2001), LR 28:997 (May 2002), LR 29:701 (May 2003), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 31:920 (April 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:

A public hearing will be held on March 28, 2006, 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 Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Free parking is available in the Galvez Garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by OS068ft. Such comments must be received no later than March 28, 2006, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation 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 OS068ft. This regulation is available on the Internet at www.deq.louisiana.gov under Rules and Regulations.

This proposed regulation is 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.

Herman Robinson, CPM
Executive Counsel

0602#016

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

2005 Incorporation by Reference—Air Quality
(LAC 33:III.111, 507, 1432, 2160, 3003, 5116, 5122, 5311, and 5901)(AQ258ft)

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.111, 507, 1432, 2160, 3003, 5116, 5122, 5311, and 5901 (Log #AQ258ft).

This proposed rule is identical to federal regulations found in 40 CFR Parts 51 (Appendix M), 60, 61, 63, 70.6(a), and 93, Subpart A, July 1, 2005, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the proposed rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This rulemaking incorporates by reference (IBR) the corresponding federal regulations in 40 CFR Parts 51 (Appendix M), 60, 61, 63, 68, 70.6(a), and 93, Subpart A, July 1, 2005, into the Air Quality regulations. Exceptions to the IBR are explicitly provided in the regulations. In order for Louisiana to maintain equivalency with federal regulations, the most current Code of Federal Regulations must be incorporated by rerference into the LAC. This rulemaking is necessary to maintain delegation, authorization, etc. granted to Louisiana by the EPA. The basis and rationale for this rule are to mirror the federal regulations as they apply to Louisiana's affected sources.

This proposed 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 proposed rule has no known impact

on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 1. General Provisions

§111. Definitions

A. When used in these rules and regulations, the following words and phrases shall have the meanings ascribed to them below.

* * *

Volatile Organic Compound (effective March 1, 1990)—any organic compound that participates in atmospheric photochemical reactions; that is, any organic compound other than those which the administrator of the U.S. Environmental Protection Agency designates as having negligible photochemical reactivity. VOC may be measured by a reference method, an equivalent method, or an alternative method. A reference method, an equivalent method, or an alternative method, however, may also measure nonreactive organic compounds. In such cases, an owner or operator may exclude the nonreactive organic compounds when determining compliance with a standard.

* * *

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 LR 14:348 (June 1988), LR 15:1061 (December 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:777 (August 1991), LR 21:1081 (October 1995), LR 22:1212 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2444 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 32:

Chapter 5. Permit Procedures

§507. Part 70 Operating Permits Program

A. - B.1. ...

2. No Part 70 source may operate after the time that the owner or operator of such source is required to submit a permit application under Subsection C of this Section, unless an application has been submitted by the submittal deadline and such application provides information addressing all applicable sections of the application form and has been certified as complete in accordance with LAC 33:III.517.B.1. No Part 70 source may operate after the deadline provided for supplying additional information requested by the permitting authority under LAC 33:III.519, unless such additional information has been submitted within the time specified by the permitting authority. Permits issued to the Part 70 source under this Section shall include the elements required by 40 CFR 70.6. The department hereby adopts and incorporates by reference the provisions of 40 CFR 70.6(a), July 1, 2005. Upon issuance of the permit, the Part 70 source shall be operated in compliance with all terms and conditions of the permit. Noncompliance with any federally applicable term or condition of the permit shall constitute a violation of the Clean Air Act and shall be grounds for enforcement action; for permit termination, revocation and reissuance, or revision; or for denial of a permit renewal application.

C. - J.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011, 2023, 2024, and 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 19:1420 (November 1993), LR 20:1375 (December 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:698 (May 2003), LR 30:1008 (May 2004), amended by the Office of Environmental Assessment, LR 31:1061 (May 2005), LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2437 (October 2005), LR 32:

Chapter 14. Conformity

Subchapter B. Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded, or Approved under Title 23 U.S.C. or the Federal Transit Act

§1432. Incorporation by Reference

A. 40 CFR Part 93, Subpart A, July 1, 2005, is hereby incorporated by reference with the exclusion of Section 105.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 24:1280 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:697 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:640 (March 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:

Chapter 21. Control of Emission of Organic Compounds

Subchapter N. Method 43—Capture Efficiency Test Procedures

NOTE: This Subchapter was moved and renumbered from Chapter 61 (December 1996).

§2160. Procedures

Except as provided in Subsection C of this Section, the regulations at 40 CFR Part 51, Appendix M, July 1, 2005, are hereby incorporated by reference.

B. - C.2.b.iv. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:653 (July 1991), amended LR 22:1212 (December 1996), LR 23:1680 (December 1997), LR 24:1286 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:1224 (August 2001), LR 29:698 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:

Chapter 30. Standards of Performance for New Stationary Sources (NSPS)

Subchapter A. Incorporation by Reference

§3003. Incorporation by Reference of 40 *Code of Federal Regulations* (CFR) Part 60

A. Except for 40 CFR Part 60, Subpart AAA and as modified in this Section, Standards of Performance for New Stationary Sources, published in the *Code of Federal Regulations* at 40 CFR Part 60, July 1, 2005, are hereby incorporated by reference as they apply to the state of Louisiana. Also incorporated by reference are Subpart EEEE, "Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006," and Subpart FFFF, "Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units That Commenced Construction On or Before December 9, 2004," promulgated on December 16, 2005, in the *Federal Register*, 70 FR 74870-74924.

B. - B.6. ...

7. The department's emission guideline plan, required by Section 111(d) of the Clean Air Act, for Other Solid Waste Incinerator Units includes 40 CFR 60.2980-60.3078 and Tables 1-5 (70 FR 74870-74924, December 16 2005). Until the department has a mechanism to approve training programs in compliance with 40 CFR 60.3014, the department shall accept accreditation approved by other states complying with 40 CFR 60.3014.

8. 40 CFR Part 60, Subpart B, Adoption and Submittal of State Plans for Designated Facilities, and 40 CFR Part 60, Subpart C, Emission Guidelines and Compliance Times, are not included in this incorporation by reference.

9. The minimum standards of the following emission guidelines of 40 CFR Part 60, and amendments to 40 CFR Part 60, that are incorporated by reference shall be applied to applicable units in the state.

40 CFR Part 60	Subpart Heading
	* * *
	[See Prior Text In Subparts Cb – DDDD]
Subpart FFFF	Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units That Commenced Construction On or Before December 9, 2004 (70 FR 74870-74924, December 16, 2005)

C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 22:1212 (December 1996), amended LR 23:1681 (December 1997), LR 24:1287 (July 1998), LR 24:2238 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1239 (July 1999), LR 25:1797 (October 1999), LR 26:1607 (August 2000), LR 26:2460, 2608 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 28:2179 (October 2002), LR 29:316 (March 2003), LR 29:698 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2446 (October 2005), LR 32:

Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program

Subchapter B. Incorporation by Reference of 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants)

§5116. Incorporation by Reference of 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants)

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants, published in the *Code of Federal Regulations* at 40 CFR Part 61, July 1, 2005, and specifically listed in the following table, are hereby incorporated by reference as they apply to sources in the state of Louisiana.

40 CFR Part 61	Subpart/Appendix Heading
	* * *
	[See Prior Text]

B. - C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:61 (January 1997), amended LR 23:1658 (December 1997), LR 24:1278 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1464 (August 1999), LR 25:1797 (October 1999), LR 26:2271 (October 2000), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2179 (October 2002), LR 29:699 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:1569 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2448 (October 2005), LR 32:

Subchapter C. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as It Applies to Major Sources

§5122. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as It Applies to Major Sources

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants for Source Categories, published in the *Code of Federal Regulations* at 40 CFR Part 63, July 1, 2005, are hereby incorporated by reference as they apply to major sources in the state of Louisiana. Also incorporated by reference are amendments to the EPA rule entitled, "National Emission Standards for Hazardous Air Pollutants: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II)," promulgated on October 12, 2005, in the *Federal Register*, 70 FR 59402-59579.

B. - C.2. ...

3. 40 CFR Part 63, Subpart D, Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants; Subpart E, Approval of State Programs and Delegation of Federal Authorities; and Subpart J, National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production, are not included in this incorporation by reference.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:61 (January 1997), amended LR 23:1659 (December 1997), LR 24:1278 (July 1998), LR 24:2240 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1464 (August 1999), LR 25:1798 (October 1999), LR 26:690 (April 2000), LR 26:2271 (October 2000), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2180 (October 2002), LR 29:699 (May 2003), LR 29:1474 (August 2003), LR 30:1010 (May 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2449 (October 2005), LR 31:3115 (December 2005), LR 32:

Chapter 53. Area Sources of Toxic Air Pollutants

Subchapter B. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as It Applies to Area Sources

§5311. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as It Applies to Area Sources

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants for Source Categories, published in the *Code of Federal Regulations* at 40 CFR Part 63, July 1, 2005, and specifically listed in the following table, are hereby incorporated by reference as they apply to area sources in the state of Louisiana.

40 CFR Part 63	Subpart/Appendix Heading
* * *	
[See Prior Text]	

B. - C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:63 (January 1997), amended LR 23:1660 (December 1997), LR 24:1279 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1464 (August 1999), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2180 (October 2002), LR 29:699 (May 2003), LR 30:1010 (May 2004), amended by the Office of Environmental Assessment, LR 31:1569 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2451 (October 2005), LR 32:

Chapter 59. Chemical Accident Prevention and Minimization of Consequences

Subchapter A. General Provisions

§5901. Incorporation by Reference of Federal Regulations

A. Except as provided in Subsection C of this Section, the department incorporates by reference 40 CFR Part 68, July 1, 2005.

B. - C.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054 and 30:2063.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:421 (April 1994), amended LR 22:1124 (November 1996), repromulgated LR 22:1212 (December 1996), amended LR 24:652 (April 1998), LR 25:425 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:70 (January 2000), LR 26:2272 (October 2000), LR 28:463 (March 2002), LR 29:699 (May 2003), LR 30:1010 (May 2004), amended by the Office of Environmental Assessment, LR 30:2463 (November 2004), LR 31:1570 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:

A public hearing will be held on March 28, 2006, 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 Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Free parking is available in the Galvez Garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ258ft. Such comments must be received no later than March 28, 2006, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation 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 AQ258ft. This regulation is available on the Internet at www.deq.louisiana.gov under Rules and Regulations.

This proposed regulation is 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.

Herman Robinson, CPM
Executive Counsel

0602#037

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Designated Uses and Criteria for Cote Gelee Wetland, Subsegment 060801-001
(LAC 33:IX.1123)(WQ064)

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 Water Quality regulations, LAC 33:IX.1123.Table 3 (Log #WQ064).

The proposed Rule establishes Cote Gelee Wetland as subsegment 060801-001, located east of Broussard. Site-specific criteria and designated uses have been established

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

2005 Incorporation by Reference for Air Quality (LAC 33:III.111, 507, 1432, 2160, 3003, 5116, 5122, 5311, and 5901) (AQ258ft)

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.111, 507, 1432, 2160, 3003, 5116, 5122, 5311, and 5901 (Log #AQ258ft).

This proposed rule is identical to federal regulations found in 40 CFR Parts 51 (Appendix M), 60, 61, 63, 70.6(a), and 93, Subpart A, July 1, 2005, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the proposed rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This rulemaking incorporates by reference (IBR) the corresponding federal regulations in 40 CFR Parts 51 (Appendix M), 60, 61, 63, 68, 70.6(a), and 93, Subpart A, July 1, 2005, into the Air Quality regulations. Exceptions to the IBR are explicitly provided in the regulations. In order for Louisiana to maintain equivalency with federal regulations, the most current Code of Federal Regulations must be incorporated by reference into the LAC. This rulemaking is necessary to maintain delegation, authorization, etc. granted to Louisiana by the EPA. The basis and rationale for this rule are to mirror the federal regulations as they apply to Louisiana's affected sources.

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

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The Times

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FEB 21 2006
LDEQ/OSEC/LARD
REGULATION DEVELOPMENT SECT

PROOF OF PUBLICATION

00000

STATE OF LOUISIANA

PARISH OF CADDO

Before me, the undersigned authority, personally came and appeared

Altheas Critton, personally known to me,

Who being duly sworn, deposes and says that she is the Assistant to the Classified Advertising Manager of The Times, and that the attached Advertisement entitled:

NOTICE OF INTENT (AQ258ft)

February 13, 2006

(Signed) Altheas Critton

Sworn to and subscribed before me this 13th day of February, 2006

Diana W. Barber
(Notary)

DIANA W. BARBER, NOTARY PUBLIC # 60491
CADDO PARISH, LOUISIANA
MY COMMISSION IS FOR LIFE

GANNETT

A public hearing will be held on March 28, 2006, 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 Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Free parking is available in the Galvez Garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ258ft. Such comments must be received no later than March 28, 2006, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-3582 or by e-mail to judith.schuerman@la.gov. The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation 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 AQ258ft. This regulation is available on the Internet at www.deq.louisiana.gov under Rules and Regulations.

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Herman Robinson, CPM
Executive Counsel

The Times:
February 13, 2006

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3/20/06

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LDEQ/OSEC/LARD
REGULATION DEVELOPMENT SECTION

NOTICE OF INTENT

Department of Environmental Quality Office of the Secretary Legal Affairs Division

2005 Incorporation by Reference for Air Quality (LAC 33:III.111, 507, 1432, 2160, 3003, 5116, 5122, 5311, and 5901) (AQ258ft)

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Herman Robinson, CPM
Executive Counsel

Monroe, LA
February 13, 2006

Publisher of

THE NEWS-STAR
MONROE, LOUISIANA
PROOF OF PUBLICATION

The hereto attached advertisement

Was published in the NEWS-STAR.

A daily newspaper of general circulation.

Published in Monroe, Louisiana.

Parish of Ouachita in the issues of:

February 13, 2006

Amanda Brown

LEGAL AD DEPT.

Sworn and subscribed before me by

The person whose signature appears above in Monroe, LA on this

17th **day of** February **20** 06 **AD**

Virginia Weakley

#62081

NOTARY PUBLIC

CERTIFIED COPY

RECEIVED
FEB 20 2006
LDEQ/OSEC/LARD
REGULATION DEVELOPMENT SECTION

Affidavit of Publication

NOTICE OF INTENT

Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, 2005 Incorporation by Reference for Air Quality (LAC 33:III.111, 507, 1432, 2160, 3003, 5116, 5122, 5311, and 5901) (AQ258ft)

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Herman Robinson, CPM
Executive Counsel
February 15 1t
00232166

STATE OF LOUISIANA
Parish of Calcasieu

Before me the undersigned authority, personally came and appeared

Cardi Dickson

who being duly sworn, deposes and says:

He/She is a duly authorized agent of
LAKE CHARLES AMERICAN PRESS
a newspaper published daily at 4900 Highway 90 East,
Lake Charles, Louisiana, 70615. (Mail address: P.O. Box 2893
Lake Charles, LA 70602)

The attached Notice was published in said newspaper in its issue(s) dated:

00232166 - $41.00
February 15, 2006

00053262
LA. DEQ OSEC/LARD
REGULATION DEVELOPMENT
REMENDER WEATHERSPOON
P.O. BOX 4302
BATON ROUGE, LA 70821-4302

Cardi Dickson
Duly Authorized Agent

Subscribed and sworn to before me on this 15th day of February, 2006 at Lake Charles, LA

Gwendolyn R. Dugas
Notary Public

00053262

LA. DEQ OSEC/LARD

Gwendolyn R. Dugas
#056523

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FEB 21 2006

LDEQ/OSEC/LARD
REGULATION DEVELOPMENT SECTION

AFFIDAVIT OF PUBLICATION

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

2005 Incorporation by Reference for Air Quality
(LAC 33:III.111, 507, 1432, 2160, 3003, 5116, 5122, 5311, and 5901)
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HERMAN ROBINSON, CPM
Executive Counsel

(2) 15

I, Linda Ward, Call Center Supervisor

of THE TOWN TALK, published at Alexandria, Louisiana do solemnly swear that the

Public Notice

advertisement, as per clipping attached, was published in the regular and entire issue of said newspaper, and not in any supplement thereof for one insertions commencing with the issue dated February 15, 2006 and ending with the issue dated February 15, 2006.

Linda V. Ward

Subscribed and sworn to before me

this 15th day of February, 2006

Notary Number 019888

CAPITAL CITY PRESS

CERTIFIED COPY

RECEIVED
MAR 03 2006
LDEQ/OSEC/LARD
REGULATION DEVELOPMENT SECTION

Publisher of
THE ADVOCATE

PROOF OF PUBLICATION

The hereto attached notice was
published in THE ADVOCATE,
a daily newspaper of general circulation
published in Baton Rouge, Louisiana,
and the official Journal
of the State of Louisiana,
the City of Baton Rouge,
and the Parish of East Baton Rouge,
in the following issues:

02/15/06

Susan A. Bush, Public Notices Clerk

Sworn and subscribed before me by the
person whose signature appears above:

February 15, 2006

Pegeen Singley, Notary Public, #66565
My Commission Expires: Indefinite
Baton Rouge, Louisiana

NOTICE OF INTENT

Department of
Environmental Quality
Office of the Secretary
Legal Affairs Division

2005 Incorporation by Reference for Air Quality (LAC 33:III.111, 507, 1432, 2160, 3003, 5116, 5122, 5311, and 5901) (AQ258ft)

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Herman Robinson, CPM
Executive Counsel
3265596-feb 15-1t

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BATON ROUGE LA 70821-4314

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Acadiana's Daily Newspaper

THE ADVERTISER

1100 Bertrand Drive
LAFAYETTE, LA 70506

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FAX: (337) 289-6466

AFFIDAVIT OF PUBLICATION

Remender D. Weatherspoon
LA Department of Environmental Quality
OSEC/Legal Affairs Division/
Regulation Development Section
P. O. Box 4302
Baton Rouge, LA 70821-4302

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Ad Number: 07532810
Ad Total: $85.00
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To insure proper credit please refer to your **account number and/or ad number when making payment. Remittance address: P.O. Box 3268, Lafayette, LA 70502-3268

I, **ROSE PENFOLD,** do solemnly swear that I am the LEGAL CLERK of THE ADVERTISER, a newspaper printed and published at Lafayette, in the Parish of Lafayette, State of Louisiana, and that from my personal knowledge and reference to the files of said publication, the advertisement of

NOTICE OF INTENT
Department of Environmental Quality
Office of the Secretary
Legal Affairs Division
2005 Incorporation by Reference for Air Quality
(LAC 33:III.111, 507, 1432, 2160, 3003, 5116, 5122, 5311, and 5901) (AQ258ft)

was published in THE ADVERTISER on the following dates:

***Thursday, February 16, 2006**

Rose Penfold
ROSE PENFOLD
LEGAL CLERK

Sworn to and subscribed before me this 16th day of February, 2006.

Monica Lallen
NOTARY PUBLIC - ID#13817

07532B10

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

2005 Incorporation by Reference for Air Quality
(LAC 33:III.111, 507, 1432, 2160, 3003, 5116, 5122, 5311, and 5901)
(AQ258ff)

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.111, 507, 1432, 2160, 3003, 5116, 5122, 5311, and 5901 (Log #AQ258ff).

This proposed rule is identical to federal regulations found in 40 CFR Parts 51 (Appendix M), 60, 61, 63, 70.6(a), and 93, Subpart A, July 1, 2005, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the proposed rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This rulemaking incorporates by reference (IBR) the corresponding federal regulations in 40 CFR Parts 51 (Appendix M), 60, 61, 63, 68, 70.6(a), and 93, Subpart A, July 1, 2005, into the Air Quality regulations. Exceptions to the IBR are explicitly provided in the regulations. In order for Louisiana to maintain equivalency with federal regulations, the most current Code of Federal Regulations must be incorporated by rerference into the LAC. This rulemaking is necessary to maintain delegation, authorization, etc. granted to Louisiana by the EPA. The basis and rationale for this rule are to mirror the federal regulations as they apply to Louisiana's affected sources.

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

A public hearing will be held on March 28, 2006, 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 Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Free parking is available in the Galvez Garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ258ff. Such comments must be received no later than March 28, 2006, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-3582 or by e-mail to judith.schuerman@la.gov. The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation 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 AQ258ff. This regulation is available on the Internet at www.deq.louisiana.gov under Rules and Regulations.

This proposed regulation is 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.

Herman Robinson, CPM
Executive Counsel

CERTIFIED COPY

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FEB 21 2006

LDEQ/OSEC/LARD
REGULATION DEVELOPMENT SECTION

The Times-Picayune

3800 HOWARD AVENUE, NEW ORLEANS, LOUISIANA 70140-1097 TELEPHONE (504) 826-3206

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

2005 Incorporation by Reference for Air Quality
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(AQ258ft)

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This proposed rule is identical to federal regulations found in 40 CFR Parts 51 (Appendix M), 60, 61, 63, 70.6(a), and 93, Subpart A, July 1, 2005, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the proposed rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This rulemaking incorporates by reference (IBR) the corresponding federal regulations in 40 CFR Parts 51 (Appendix M), 60, 61, 63, 68, 70.6(a), and 93, Subpart A, July 1, 2005, into the Air Quality regulations. Exceptions to the IBR are explicitly provided in the regulations. In order for Louisiana to maintain equivalency with federal regulations, the most current Code of Federal Regulations must be incorporated by reference into the LAC. This rulemaking is necessary to maintain delegation, authorization, etc. granted to Louisiana by the EPA. The basis and rationale for this rule are to mirror the federal regulations as they apply to Louisiana's affected sources.

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All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ258ft. Such comments must be received no later than March 28, 2006, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-3582 or by e-mail to judith.schuerman@la.gov. The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation 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 AQ258ft. This regulation is available on the Internet at www.deq.louisiana.gov under Rules and Regulations.

This proposed regulation is 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.

Herman Robinson, CPM
Executive Counsel

State of Louisiana

Parish of Orleans

City of New Orleans

Personally appeared before me, a Notary in and for the parish of Orleans, Robert J. Chiasson who deposes and says that he is the Accounts Receivable Manager, of The Times-Picayune Publishing Corporation, a Louisiana Corporation, Publishers of The Times-Picayune, Daily and Sunday, of general circulation; doing business in the City of New Orleans and the State of Louisiana, and that the attached LEGAL NOTICE

Re:(AQ258ft) Notice of Intent 2005 Incorporation by Reference for Air Quality

Advertisement of Dept. Of Environmental Quality

P.O. BOX 4302
Baton Rouge, La. 70821-4302

Was published in The Times Picayune

3800 Howard Ave.
New Orleans, La. 70125

On the following dates February 15, 2006

Robert J. Chiasson

Sworn to and subscribed before me this

15th Day of February, 2006

Notary Public

My commission expires at my death.
Charles A. Ferguson, Jr.

Notary identification number 23492

COPY

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN RE:

2005 INCORPORATION BY REFERENCE
FOR AIR QUALITY LAC 33:III.111,
507, 1432, 2160, 3003, 5116,
5122, 5311, and 5901

LOG #: AQ258ft

PUBLIC HEARING

The Public Hearing held by the Department of Environmental Quality, Regulation Development Section, at the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, Louisiana, beginning at 1:33 p.m., on March 28, 2006.

BEFORE: Lori B. Overland
Certified Court Reporter
In and For the State of
Louisiana

RECEIVED
APR 07 2006
LDEQ/OSL/OLAD
REGULATION DEVELOPMENT SECTION

A P P E A R A N C E S

FOR THE LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY:

Sandy Stephens
Hearing Officer

Department of Environmental Quality
Office of Environmental Assessment,
Environmental Planning
Regulation Development, 6th Floor
P.O. Box 4314
Baton Rouge, Louisiana 70821-4314

* * * * *

I N D E X

EXAMINATION: PAGE(S):

None

EXHIBITS:

None

REPORTER'S PAGE 7

REPORTER'S CERTIFICATE 8

* * * * *

1 * * * * *

2 **MS. STEPHENS:**

3 Good afternoon! My name is Sandy
4 Stephens. I'm employed with the Louisiana
5 Department of Environmental Quality. I'll
6 be serving as hearing officer this afternoon
7 to receive comments regarding proposed
8 amendments to the Air Quality State
9 Implementation Plan (SIP), and to the
10 Environmental Quality regulations.
11 The comment period for these
12 amendments began on February 20, 2006, when
13 the potpourri notice and notices of intent
14 were published in the Louisiana Register.
15 The comment period will close at 4:30 p.m.,
16 today, March 28, 2006, for the Log Numbers
17 AQ258ft, HW089ft, and OS068ft. It will
18 close at 4:30 p.m. on April 4, 2006, for the
19 SIP Revision and Log Numbers WQ062, WQ063,
20 and WQ064. It would be helpful to us if all
21 oral comments received today were followed
22 up in writing.
23 This public hearing provides a forum
24 for all interested parties to present
25 comments on the proposed changes. I'll ask

that each person commenting come up and sit at the front table and begin by stating his or her name and affiliation for the record.

The next amendment is designated by the Log Number AQ258ft.

This rulemaking incorporates into the Air Quality regulations by reference the corresponding federal regulations in 40 CFR Part 51 (Appendix M), and Parts 60, 61, 63, 68, 70.6(a), and 93 (Subpart A), as of July 1, 2005. Exceptions to the incorporation are explicitly provided in the regulations. In order for Louisiana to maintain equivalency with federal regulations, the most current Code of Federal Regulations must be incorporated by reference into the LAC. This rulemaking is necessary to maintain delegation, authorization, etc. granted to Louisiana by the EPA.

Does anyone care to comment on this regulation?

If not, the hearing on AQ258ft is closed.

Thank you for your attention and participation.

1 This hearing is closed.

2 **THE HEARING CONCLUDED AT 1:34 P.M.**

1 **R E P O R T E R ' S P A G E**

2 I, Lori B. Overland, Certified Court
3 Reporter, in and for the State of Louisiana, the
4 officer, as defined in Rule 28 of the Federal
5 Rules of Civil Procedure and/or Article 1434(b)
6 of the Louisiana code of Civil Procedure, before
7 whom this sworn testimony was taken, do hereby
8 state on the Record
9 That due to the interaction in the
10 spontaneous discourse of this proceeding, dashes
11 (--) have been used to indicate pauses, changes
12 in thought, and/or talk overs; that same is the
13 proper method for a Court Reporters's
14 transcription of proceeding, and that the dashes
15 (--) do not indicated that words or phrases have
16 been left out of this transcript;
17 That any words and/or names which could not
18 be verified through reference material have been
19 denoted with the phrase "(inaudible)"
20
21 Lori Overland, C.C.R.
22 # 97083

OFFICIAL SEAL
LORI B. OVERLAND
Certified Court Reporter
in and for the State of Louisiana
Certificate Number 97083
Commission Expires 12-31-09

1 **C E R T I F I C A T I O N**

2 I, the undersigned reporter, do hereby
3 certify that the above and foregoing is a true
4 and correct transcription of the stenomask tape
5 of the proceedings had herein, taken down by me
6 and transcribed under my supervision, to the
7 best of my ability and understanding, at the
8 time and place hereinbefore noted, in the above
9 entitled cause.

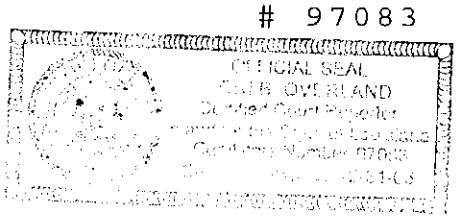
10 I further certify that the witness was duly
11 sworn by me in my capacity as a Certified Court
12 Reporter pursuant to the provisions of R.S.
13 37:2551 et seq. in and for the state of
14 Louisiana; that I am not of counsel nor related
15 to any of the counsel of any of the parties, nor
16 in the employ of any of the parties, and that I
17 have no interest in the outcome of this action.

18 I further certify that my license is in good
19 standing as a court reporter in and for the
20 state of Louisiana.

21

22 Lori Overland, C.C.R.

23 # 97083



Jodie Alexis

From: Sandra Hilton
Sent: Tuesday, June 13, 2006 9:34 AM
To: Jodie Alexis
Subject: FW: AQ258ft

NO COMMENTS were received on the above-referenced rule. To continue the rulemaking process and deliver the Summary Report to the LOC in time to meet the next deadline to finalize the rule, please send **authorization to proceed** and the following items, if applicable, *via email WORD attachments,* to **Sandy Stephens** by the **eighteenth** of the month:

1. the rule with technical amendments (use the strikeout/underline/highlight format), and
2. a separate list of technical amendments.

If you have any questions or need assistance, please call **Sandy @ x3566**.

Thanks!
Remender

****
Mrs. Remender D. Weatherspoon, Administrative Assistant
LDEQ/OSEC/Legal Affairs Division
Regulation Development Section
Room 636-14
Phone: (225) 219-3550
Fax: (225) 219-3582

RULE

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

2005 Incorporation by Reference—Air Quality
(LAC 33:III.111, 507, 1432, 2160, 3003, 5116, 5122, 5311, and 5901)(AQ258ft)

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 has amended the Air regulations, LAC 33:III.111, 507, 1432, 2160, 3003, 5116, 5122, 5311, and 5901 (Log #AQ258ft).

This rule is identical to federal regulations found in 40 CFR Parts 51 (Appendix M), 60, 61, 63, 70.6(a), and 93, Subpart A, July 1, 2005, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This rulemaking incorporates by reference (IBR) the corresponding federal regulations in 40 CFR Parts 51 (Appendix M), 60, 61, 63, 68, 70.6(a), and 93, Subpart A, July 1, 2005, into the Air Quality regulations. Exceptions to the IBR are explicitly provided in the regulations. In order for Louisiana to maintain equivalency with federal regulations, the most current Code of Federal Regulations must be incorporated by reference into the LAC. This rulemaking is necessary to maintain delegation, authorization, etc. granted to Louisiana by the EPA. The basis and rationale for this rule are to mirror the federal regulations as they apply to Louisiana's affected sources.

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.

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 1. General Provisions

§111. Definitions

A. When used in these rules and regulations, the following words and phrases shall have the meanings ascribed to them below.

* * *

Volatile Organic Compound (effective March 1, 1990)—any organic compound that participates in atmospheric photochemical reactions; that is, any organic compound other than those which the administrator of the U.S. Environmental Protection Agency designates as having negligible photochemical reactivity. VOC may be measured by a reference method, an equivalent method, or an alternative method. A reference method, an equivalent method, or an alternative method, however, may also measure nonreactive organic compounds. In such cases, an owner or operator may exclude the nonreactive organic compounds when determining compliance with a standard.

* * *

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 LR 14:348 (June 1988), LR 15:1061 (December 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:777 (August 1991), LR 21:1081 (October 1995), LR 22:1212 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2444 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 32:808 (May 2006).

Chapter 5. Permit Procedures

§507. Part 70 Operating Permits Program

A. - B.1. ...

2. No Part 70 source may operate after the time that the owner or operator of such source is required to submit a permit application under Subsection C of this Section, unless an application has been submitted by the submittal deadline and such application provides information addressing all applicable sections of the application form and has been certified as complete in accordance with LAC 33:III.517.B.1. No Part 70 source may operate after the deadline provided for supplying additional information requested by the permitting authority under LAC 33:III.519, unless such additional information has been submitted within the time specified by the permitting authority. Permits issued to the Part 70 source under this Section shall include the elements required by 40 CFR 70.6. The department hereby adopts and incorporates by reference the provisions of 40 CFR 70.6(a), July 1, 2005. Upon issuance of the permit, the Part 70 source shall be operated in compliance with all terms and conditions of the permit. Noncompliance with any federally applicable term or condition of the permit shall constitute a violation of the Clean Air Act and shall be grounds for enforcement action; for permit termination, revocation and reissuance, or revision; or for denial of a permit renewal application.

C. - J.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011, 2023, 2024, and 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 19:1420 (November 1993), LR 20:1375 (December 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:698 (May 2003), LR 30:1008 (May 2004), amended by the Office of Environmental Assessment, LR 31:1061 (May 2005), LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2437 (October 2005), LR 32:808 (May 2006).

Chapter 14. Conformity

Subchapter B. Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded, or Approved under Title 23 U.S.C. or the Federal Transit Act

§1432. Incorporation by Reference

A. 40 CFR Part 93, Subpart A, July 1, 2005, is hereby incorporated by reference with the exclusion of Section 105.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 24:1280 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:697 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:640 (March 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:808 (May 2006).

Chapter 21. Control of Emission of Organic Compounds

Subchapter N. Method 43—Capture Efficiency Test Procedures

[*Editor's Note*: This Subchapter was moved and renumbered from Chapter 61 (December 1996).]

§2160. Procedures

A. Except as provided in Subsection C of this Section, the regulations at 40 CFR Part 51, Appendix M, July 1, 2005, are hereby incorporated by reference.

B. - C.2.b.iv. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:653 (July 1991), amended LR 22:1212 (December 1996), LR 23:1680 (December 1997), LR 24:1286 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:1224 (August 2001), LR 29:698 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:809 (May 2006).

Chapter 30. Standards of Performance for New Stationary Sources (NSPS)

Subchapter A. Incorporation by Reference

§3003. Incorporation by Reference of 40 *Code of Federal Regulations* (CFR) Part 60

A. Except for 40 CFR Part 60, Subpart AAA and as modified in this Section, Standards of Performance for New Stationary Sources, published in the *Code of Federal Regulations* at 40 CFR Part 60, July 1, 2005, are hereby incorporated by reference as they apply to the state of Louisiana. Also incorporated by reference are Subpart EEEE, "Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006," and Subpart FFFF, "Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units That Commenced Construction On or Before December 9, 2004," promulgated on December 16, 2005, in the *Federal Register*, 70 FR 74870-74924.

B. - B.6. ...

7. The department's emission guideline plan, required by Section 111(d) of the Clean Air Act, for Other Solid Waste Incinerator Units includes 40 CFR 60.2980-60.3078 and Tables 1-5 (70 FR 74870-74924, December 16, 2005). Until the department has a mechanism to approve training programs in compliance with 40 CFR 60.3014, the department shall accept accreditation approved by other states complying with 40 CFR 60.3014.

8. 40 CFR Part 60, Subpart B, Adoption and Submittal of State Plans for Designated Facilities, and 40 CFR Part 60, Subpart C, Emission Guidelines and Compliance Times, are not included in this incorporation by reference.

9. The minimum standards of the following emission guidelines of 40 CFR Part 60, and amendments to 40 CFR Part 60, that are incorporated by reference shall be applied to applicable units in the state.

40 CFR Part 60	Subpart Heading
	* * *
	[See Prior Text In Subparts Cb – DDDD]
Subpart FFFF	Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units That Commenced Construction On or Before December 9, 2004 (70 FR 74870-74924, December 16, 2005)

C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 22:1212 (December 1996), amended LR 23:1681 (December 1997), LR 24:1287 (July 1998), LR 24:2238 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1239 (July 1999), LR 25:1797 (October 1999), LR 26:1607 (August 2000), LR 26:2460, 2608 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 28:2179 (October 2002), LR 29:316 (March 2003), LR 29:698 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2446 (October 2005), LR 32:809 (May 2006).

Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program

Subchapter B. Incorporation by Reference of 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants)

§5116. Incorporation by Reference of 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants)

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants, published in the *Code of Federal Regulations* at 40 CFR Part 61, July 1, 2005, and specifically listed in the following table, are hereby incorporated by reference as they apply to sources in the state of Louisiana.

40 CFR Part 61	Subpart/Appendix Heading
	* * *
	[See Prior Text]

B. - C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:61 (January 1997), amended LR 23:1658 (December 1997), LR 24:1278 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1464 (August 1999), LR 25:1797 (October 1999), LR 26:2271 (October 2000), LR 27:2230

Nolan, Office of Environmental Services, Air Permits Division, at 225-219-3010 or cheryl.nolan@la.gov.

Herman Robinson, CPM
Executive Counsel

0609#023

POTPOURRI

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Section 111(d) Plan for Other Solid Waste Incineration (OSWI) Units

Under the authority of the Louisiana 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 the Office of Environmental Assessment, Air Quality Assessment Division, is proposing a Section 111(d) plan for Other Solid Waste Incineration (OSWI) Units in Louisiana.

Sections 111(d) and 129 of the Clean Air Act Amendments of 1990 require states to submit to EPA a plan which establishes performance standards for each category of combustion units that indicate the application of strict emissions controls known as maximum achievable control technology. EPA publishes guidelines to assist states with this plan. On December 16, 2005, EPA promulgated 40 CFR Part 60, Subpart EEEE, Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006, and Subpart FFFF, Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units That Commenced Construction On or Before December 9, 2004 (70 FR 74870-74924). These federal regulations were incorporated by reference by the department into LAC 33:Part III in Rule AQ258ft, published on page 809 of the May 20, 2006, issue of the *Louisiana Register*. The public comment period for the proposed Section 111(d) plan that includes 40 CFR Part 60, Subpart FFFF, begins on September 20, 2006 and ends on October 25, 2006.

The public hearing for this proposed Section 111(d) plan will be held on October 25, 2006, 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 111(d) plan. Should individuals need an accommodation in order to participate, contact Jodie L. Alexis at the address given below or at (225) 219-3581. Parking in the Galvez Garage is free with a validated parking ticket.

Written comments concerning the Section 111(d) plan should be received no later than 4:30 p.m., October 25, 2006, and should be sent to Jodie L. Alexis, Office of Environmental Assessment, Box 4314, Baton Rouge, LA 70821-4314 or to FAX (225) 219-3582 or by e-mail to jodie.alexis@la.gov. The proposed Section 111(d) plan is available on the Internet at http://www.deq.louisiana.gov/portal/tabid/2381/Default.aspx under Louisiana SIP Revisions.

A copy of the plan may be viewed at the following DEQ office locations from 8 a.m. to 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; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM
Executive Counsel

0609#022

POTPOURRI

Office of the Governor
Oil Spill Coordinator's Office

Draft Damage Assessment and Restoration Plan
East Lake Palourde

Action: Notice of availability of a Draft Damage Assessment and Restoration Plan (Draft DARP) with a 30-day public review and comment period.

Agencies: Louisiana Oil Spill Coordinator's Office, Office of the Governor (LOSCO); Louisiana Department of Environmental Quality (LDEQ); and Louisiana Department of Wildlife and Fisheries (LDWF).

Authorities: The Oil Pollution Act of 1990 (OPA) (33 USC 2701 et seq.) and the Louisiana Oil Spill Prevention and Response Act of 1991 (OSPRA) (R.S. 30:2451 et seq.) are the principal federal and state statutes, respectively, authorizing federal and state agencies and tribal officials to act as natural resource trustees for the recovery of damages for injuries to trust resources and services resulting from oil-spill incidents in Louisiana. In accordance with OPA and OSPRA, the agencies listed above (hereafter referred to as the "Trustees") have conducted a Natural Resource Damage Assessment (NRDA) for the reported discharges of crude oil into the swamp of East Lake Palourde, Assumption Parish, Louisiana, on June 11, 2002 (hereafter referred to as the "incident"), in which Union Oil Company of California (Unocal) was identified by the Trustees as the Responsible Party.

Summary: Pursuant to 15 C.F.R. §990.23 and 15 C.F.R. §990.55(c) and LAC 43:XXIX, Chapter 1, notice is hereby given that a document entitled, "Draft Damage Assessment and Restoration Plan for Two Crude Oil Discharges Reported on June 11, 2002 into the Swamp of East Lake Palourde, Assumption Parish, Louisiana" will become available for public review and comment on September 20, 2006. The Draft DARP was prepared by the Trustees to address injuries to natural resources and services resulting from the incident. On March 20, 2004, the Trustees published a Notice of Intent (NOI) to conduct restoration planning in the *Louisiana Register* (Vol. 30, No. 03, pp. 702-704) for the incident in order to develop restoration alternatives that will restore, replace, rehabilitate, or acquire the equivalent of natural resources injured and/or natural resource services lost as a result of the incident. The Draft DARP identifies the natural resources and services that were

ATTORNEY GENERAL'S OPINION

November 15, 1993

Pursuant to my authority as Attorney General of the State of Louisiana and in accordance with Section 502(d) of the Federal Clean Air Act (CAA), as amended, (42 U.S.C. § 7401, et seq.), and 40 C.F.R. § 70.4(b)(3), it is my opinion that the laws of the State of Louisiana provide adequate authority to carry out all aspects of the program submitted by the Louisiana Department of Environmental Quality (LDEQ) to the U.S. Environmental Protection Agency for approval to administer and enforce the operating permit program under Title V of the CAA. The specific authorities provided, which are contained in statutes, regulations, or other legal authorities lawfully adopted, and which shall be fully effective by the time the program is approved, include those identified below.

I. BROAD GRANT OF STATUTORY AUTHORITY

State Authority: *La.R.S. 30:2011(A)(1), 2011(C)(1)(a), 2011(D)(1), 2011(D)(6), 2011(D)(12), 2011(D)(14), La.R.S. 30:2054(B)(1), [Acts 1983, No. 97, effective date: Feb. 1, 1984;]*

Remarks of Attorney General

Pursuant to La.R.S. 30:2011(A)(1) the Louisiana Department of Environmental Quality is the primary agency in the state "concerned with environmental protection and regulation." The department has jurisdiction over matters "affecting the regulation of the environment within the state including but not limited to regulation of air quality . . . "

Subsection (C)(1)(a) of R.S. 30:2011 creates the Office of Air Quality and Radiation Protection which shall "administer and enforce the Louisiana Air Control Law as provided in Chapter 3 of this Subtitle . . ."

Subsection (D)(1) provides the Secretary of the department with the power to "adopt, amend, or repeal all rules, regulations, and standards for the protection of the environment as is provided by this Subtitle." Subsection (D)(6) authorizes the secretary to "issue such orders or determinations as may be necessary to effectuate the purpose of this Subtitle;" and, subsection (D)(14) grants the Secretary "all incidental powers necessary or proper to carry out the purposes of this Subtitle."

One clear intent of the Environmental Quality Act is to empower the secretary of the department to adopt regulations and

impose standards as are required by federal statutes, rules and regulations. For example, R.S. 30:2011(D)(2) provides: "The secretary shall have the general power to require such conditions in individual instances (in permits) as are necessary to assure compliance with applicable federal laws and regulations relating to this Subtitle" (emphasis added). Section 2011(D)(12) provides the secretary with the power and duty to assume authority, when delegated, for programs existing under the provisions of the Clean Air Act.

This intent to empower the secretary with the authority necessary to conform with federal law and regulations is continued in the Louisiana Air Control Law (Louisiana Environmental Quality Act, Chapter 3) which provides statutory authority specifically for air quality matters. La.R.S. 30:2054(B)(1) provides the secretary with the authority "To adopt and promulgate rules and regulations consistent with applicable state and federal law and the general intent and purposes of this Chapter for the maintenance of air quality within the state of Louisiana." (emphasis added) Pursuant to section 2054(B)(1), the secretary has broad authority to adopt rules which are consistent with or required by federal rules, including the air operating permit program required by 40 CFR Part 70.

Statutory limitations placed upon the secretary regarding regulation of certain emission sources (i.e., oil & gas wells and pipelines and the burning of cotton gin agricultural wastes in connection with cotton gin operation) will not impede the ability of the department to implement and administer a program complying with the Part 70 regulations, as none of these sources will qualify as a major source and be subject to regulation under Part 70.

La.R.S. 30:2022(C) provides certain statutory limitations on how the department will process applications for permits for facilities relating to oil and gas wells and pipelines. In LAC 33:III.502, the department has defined oil & gas wells and pipelines and determined them to be an insignificant emission unit pursuant to 40 CFR 70.5(c). A calculation of emissions of volatile organic compounds and hazardous air pollutants (the only regulated pollutants) from typical oil & gas wells and pipelines shows them to be minimal compared to major source levels (see Exhibit #1, Addison Tatum memorandum with attachments).

R.S. 30:2054(B)(2)(b) and 30:2057(B) also will not preclude the department from implementing and enforcing a program meeting the requirements of 40 CFR Part 70. The only exclusion covered in those sections which would qualify as a stationary source is the burning of cotton gin agricultural wastes in connection with cotton

gin operations. However, a calculation of emissions of particulate matter (the only regulated pollutants) from existing cotton gins within the state shows them to be minimal compared to major source levels (see Exhibit #2, Addison Tatum memorandum with attachments).

II. AUTHORITY TO ISSUE PERMITS

State law provides authority for LDEQ to issue operating permits to all air pollution sources within the state that are required to have permits under Section 502(a) of the CAA and 40 CFR section 70.3, and to incorporate into permits and assure compliance with each applicable requirement of the Clean Air Act and the requirements of 40 CFR Part 70. State law also provides authority to issue operating permits for solid waste incineration units combusting municipal waste under section 129 (e) of the CAA that assure compliance with all applicable requirements of the Clean Air Act and the requirements of 40 CFR Part 70.

Federal Authority: CAA §§ 129(e) 502 (a)-(b)., 503, 504(a), 42 U.S.C. §§ 7429(e), 7661a(a)-(b), 7661b, 7661c(a); 40 C.F.R. §§ 70.4 (b) (3) (i), 70.4 (b) (3)(iv), 70.4 (b) (3) (v), 70.5(a), 70.6, 70.7(b).

State Authority: La.R.S. 30:2011(A)(1), 2011(C)(1)(a), 2011(D)(1), 2011(D)(2), 2011(D)(6), 2011(D)(14), La.R.S. 30:2054(B)(1), 2054(B)(2) [Acts 1983, No. 97, effective date: Feb. 1, 1984;]

Remarks of Attorney General

In addition to the broad general statutory authorization discussed in section I above, La.R.S. 30:2011(D)(2) provides the secretary with the specific authority to "grant or deny permits." La.R.S. 30:2054(B)(2)(a) also provides the secretary with specific authority "To develop permitting procedures and regulations conforming to applicable state and federal laws, and to require and issue permits, . . . for all sources of air contaminants within the state of Louisiana . . ." (emphasis added) Therefore, the secretary has broad authority to issue such permits as are necessary to implement the air operating permit program as required by 40 CFR Part 70.

III. PERMIT BOARD MEMBERSHIP AND CONFLICTS OF INTEREST

State law provides that no State board or body which approves operating permits, either in the first instance or upon appeal, shall be constituted of less than a majority of members who represent the public interest and who do not

derive a significant portion of their income from persons subject to operating permits. State law also provides that any potential conflicts of interest by members of such board or body or the head of any executive agency with similar powers be adequately disclosed. State law also provides that no permit for a solid waste incinerator unit may be issued by an agency, instrumentality or person that is also responsible in whole or in part, for the design and construction or operation of the unit.

Federal Authority: CAA §§ 128(a)(1)-(2), 129(e), 42 U.S.C. §§ 7428(1)(a)-(2), 7429(e); 40 C.F.R. § 70.4(b)(3)(iv).

State Authority: La.R.S. 30:2014.1 [Acts 1993, No. 451, effective date: Aug. 15, 1993]; La.R.S. 42:1101 et. seq [Acts 179, No. 443, effective date: Sept. 7, 1979]

Remarks of the Attorney General:

The Louisiana Code of Governmental Ethics (La. R.S. 42:1101 et seq) prohibits any conflicts of interest involving a public servant.. In particular section 1111 and 1112 prohibit the public servant from receiving "any thing of economic value" for the performance of his duties or from participating in any transaction in which he has substantial economic interest. In addition, La. R.S. 30:2014.1 prohibits any permit to be reviewed by any one who has received a significant portion of income from the applicant.

IV. AUTHORITY TO ISSUE PERMITS TO NONCOMPLYING SOURCES

State law provides authority for the LDEQ to issue permits to sources that are not in compliance with applicable requirements, and to include compliance schedules in permits to bring sources into compliance.

Federal Authority: CAA §§ 502 (b)(5)(A), 504(a), 42 U.S.C. §§ 7661a(b)(5)(A), 7661c(a); 40 C.F.R. §§ 70.5(e)(8), 70.6(c)(3).

State Authority: La.R.S. 30:2011(D)(2), 30:2054(B)(2)(a), [Acts 1983, No. 97, effective date: Feb. 1, 1984;]

Remarks of Attorney General

In addition to the broad statutory authorization discussed in sections I and II above, La.R.S. 30:2054(B)(2)(a) provides the secretary with authority " . . . to issue compliance schedules for all sources of air contaminants . . ." (emphasis added) These

compliance schedules may be included as a condition in any permit issued by the secretary. (see R.S. 30:2011(D)(2) The secretary shall have the power: "To grant or deny permits, . . . or compliance schedules as are provided in this Subtitle. The secretary shall have the general power to require such conditions in individual instances as are necessary to assure compliance with applicable federal laws and regulations relating to this Subtitle." [emphasis added])

V. PERMIT FEES

State law provides authority for the LDEQ to assess and collect annual permit fees (or the equivalent amount of fees over some other period of time) from sources within the state which are subject to the requirements of Title V of the CAA and 40 CFR Part 70, in an amount sufficient to cover all reasonable direct and indirect costs required to develop, administer, and enforce the State's title V program.

Federal Authority: CAA § 502(b)(3)(A), 42 U.S.C § 7661a (b)(3)(A); 40 C.F.R. §§ 70.9(a)-(d).

State Authority: La.R.S. 30:2014(B) [Acts 1983, No. 97, effective date: Feb. 1, 1984; Amended Acts 1986, No. 385 & 943, effective date: July 2, 1986]

Remarks of Attorney General

In addition to the broad statutory authority discussed in sections I and II above, La.R.S. 30:2014(B) also provides a specific statutory authority to adopt, impose and collect all fees that are necessary to implement the Part 70 air permit program. Section 2014(B) provides:

> "In order to provide for adequate permitting, monitoring, investigation, administration, and other activities required for the maintenance of a healthful and safe environment, an initial fee and an annual monitoring and maintenance fee shall be charged for all permits, licenses, registrations, or variances authorized by this Subtitle."

This provides the necessary authority for the department to charge fees to support the Part 70 air operating permit program.

VI. PERMIT TERM

State law provides authority to issue operating permits for a fixed term not to exceed 5 years. State law provides a fixed term not to exceed 12 years for solid waste incineration units combusting municipal waste under section 129(e) of the CAA and a review of such permits at least every 5 years. State law provides authority to issue permits with acid rain provisions for a fixed term of 5 years.

Federal Authority: CAA §§ 129(e), 408(a), 502(b)(5)(B), 42 U.S.C. §§ 7429(e), 7651g(a), 7661a(b)(5)(B); 40 C.F.R. §§70.4(b) (3)(iii)-(iv), 70.6(a)(2), 72.70(b), 72.72(a).

State Authority: La.R.S. 30:2023 [Acts 1989, No. 472, effective date: Sept. 3, 1989] LAC 33:III.507.E.1, 505.D.5.a.ii, [adopted November 1993, effective date upon approval of Part 70 program by EPA] La.R.S. 30:2011(A)(1), 2011(C)(1)(a), 2011(D)(1), 2011(D)(2), 2011(D)(6), 2011(D)(14), La.R.S. 30:2054(B)(1), 2054(B)(2) [Acts 1983, No. 97, effective date: Feb. 1, 1984;]

Remarks of Attorney General

La.R.S. 30:2023(A) provides the maximum term of any permit, registration, variance or license for any activity covered by the Environmental Quality Act shall be ten years "unless otherwise specified by rule." Under the broad statutory grant of authority discussed in sections I and II above, the department has adopted regulations necessary to be consistent with federal regulations. These regulations (LAC 33:III.507.E.1) establish a maximum term of five years for any permit issued to a Part 70 source. LAC 33:III.505.D.5.a.ii provides the permit term (5 years) for any acid rain permit under Title IV of the CAA.

VII. MONITORING, RECORDKEEPING, AND REPORTING

State law provides authority to incorporate monitoring, recordkeeping, reporting, and compliance certification requirements into operating permits consistent with 40 CFR § 70.6 State law provides authority to incorporate into the permit periodic monitoring or testing requirements where the existing State Implementation Plan or other applicable requirement does not contain such a requirement, consistent with 40 CFR § 70.6(a) (3)(i)(B).

Federal Authority: CAA §§ 502(b)(2), 503(b)(2), 504(a)-(c), 42 U.S.C. §§ 7661a(b)(2), 7661c(a)-(c); 40 C.F.R. §§ 70.4(b)(3)(ii), 70.6(a)(3), 70.6(c)(1), 70.6 (c)(5)

State Authority: La.R.S. 30:2011(A)(1), 2011(C)(1)(a), 2011(D)(1), 2011(D)(6), 2011(D)(14), La.R.S. 30:2054(B)(1), 2054(B)(2) [Acts 1983, No. 97, effective date: Feb. 1, 1984;]

Remarks of Attorney General

Although the Louisiana statutes do not provide the department with the specific authority to include monitoring, recordkeeping and reporting requirements in an air permit, the broad statutory authority discussed in Sections I and II above provide sufficient authority to include these provisions. La.R.S. 30:2011(D)(2) provides the secretary with authority to include such conditions in a permit "as are necessary to assure compliance with applicable federal laws." With respect to air permits in particular, La.R.S. 30:2054 grants the secretary the broad power necessary to include monitoring, recordkeeping and reporting requirements in the Part 70 permits. Subsection (B)(1) grants the secretary the authority to adopt rules and regulations "consistent with applicable state and federal law;" and, subsection (B)(2) authorizes the secretary to develop permitting procedures and regulations "conforming to applicable state and federal laws." These grants of statutory authority are sufficient to incorporate monitoring, recordkeeping, reporting and compliance certification requirements into the operating permit consistent with 40 CFR § 70.6.

VIII. <u>INSPECTION/ENTRY AUTHORITY</u>

State law provides authority to incorporate into permits inspection and entry requirements consistent with 40 CFR § 70.6(c)(2).

Federal Authority: CAA § 504(c), 42 U.S.C. § 7661c(c); 40 C.F.R. §§ 70.6 (c)(2).

State Authority: La.R.S. 30:2002(C), 30:2011(D)(13), [Acts 1983, No. 97, effective date: Feb. 1, 1984] La.R.S. 30:2012 [Acts 1983, No. 97, effective date: Feb. 1, 1984, Amended Acts 1990, No. 141, effective Sept. 7, 1990]

Remarks of Attorney General

One of the stated findings of the Environmental Quality Act is the need for unannounced regular inspections of all facilities which may be regulated under the Act, (see La.R.S. 30:2002(3)). In accordance with that finding, the secretary is specifically empowered to conduct inspections as provided in La.R.S. 30:2012, (see La.R.S. 30:2011(D)(13)). La.R.S. 30:2012 provides the statutory framework for inspections conducted by the department.

The section provides that each permit "shall as a matter of law be conditioned upon the right of the secretary or his representative" to make monitoring inspections in accordance with the statute. The section also provides that the secretary may obtain a court order to compel inspections, gain admission to the facility, obtain information requested by the secretary and obtain access to records, (see 30:2012(F)). The statute provides the secretary or his representative shall make inspections "upon presentation of identification." This statute provides the necessary statutory authority to conduct inspections as required by the Part 70 permit program.

IX. INCORPORATION OF ALL APPLICABLE REQUIREMENTS INTO PERMIT

State law provides authority to incorporate into an operating permit, upon issuance or renewal, all applicable requirements as defined in 40 CFR § 70.2, and as provided generally in the CAA and 40 CFR Part 70.

Federal Authority: CAA §§ 502(b)(5)(c), 504(a), 42 U.S.C. 7661a(b)(5)(c), 7661c(a); 40 C.F.R. §§ 70.4(b)(3)(v), 70.6(a).

***State Authority:** La.R.S. 30:2011(A)(1), 2011(C)(1)(a), 2011(D)(1), 2011(D)(2), 2011(D)(6), 2011(D)(14), La.R.S. 30:2054(B)(1), 2054(B)(2) [Acts 1983, No. 97, effective date: Feb. 1, 1984;]*

Remarks of Attorney General

The broad statutory authority granted to the secretary discussed in Parts I and II above are sufficient to incorporate all applicable requirements as defined in 40 CFR Part 70 into an air operating permit.

X. PERMIT REOPENING

State law provides authority to revise permits with remaining terms of 3 or more years to incorporate new applicable requirements which become effective after issuance of the permit. State law provides authority to reopen permits when additional acid rain requirements become applicable, regardless of the remaining permit term. State law provides authority to terminate, modify, or revoke permits for cause at any time during the permit term consistent with 40 CFR §§ 70.7 (f) and(g).

Federal Authority: CAA §§ 502(b)(5)(D), 502(b)(9), 42 U.S.C. §§7661a(b)(5)(D), 7661a(b)(9); 40 C.F.R. §§ 70.4(b)(3)(vi), 70.6(a)(6)(iii), 70.7(f)-(g).

State Authority: La.R.S. 30:2023(B) [Act 1993, No. 116, effective date: August 15, 1993]; LAC 33:III.529(B) adopted November 1993, effective date upon approval of part 70 program by EPA

Remarks of Attorney General

La.R.S. 30:2023(B) provides: "The department may at any time: . . . modify a permit for cause in accordance with law, rule or regulation." La.R.S. 30:2054(B)(1) provides the secretary with the authority "To adopt and promulgate rules and regulations consistent with applicable state and federal law and the general intent and purposes of this Chapter for the maintenance of air quality within the state of Louisiana." In accordance with these statutes, LDEQ has adopted regulations which provide for the reopening of a permit under these circumstances (LAC 33:III.529.B). The authority to adopt rules and procedures consistent with federal law, provides the authority for LAC 33:III.529.B. The federal requirement to reopen the permits is sufficient "cause" under R.S. 30:2023(B) which then authorizes the reopening of the permit.

XI. OPERATIONAL FLEXIBILITY

State law provides authority to allow changes within a permitted facility without requiring a permit revision if the changes are not modifications under any provision of title I of the CAA, and the changes do not exceed the emissions allowable under the permit, provided that the source provides at least 7 days written notice to the State and to EPA. State law provides authority for permits to include terms and conditions for reasonably anticipated alternative operating scenarios in permits.

Federal Authority: CAA § 502(b)(10), 42 U.S.C. § 7661a(b)(10); 40 C.F.R. §§ 70.4(b)(12), 70.6(a)(9).

State Authority: La.R.S. 30:2011(A)(1), 2011(C)(1)(a), 2011(D)(1), 2011(D)(2), 2011(D)(6), 2011(D)(14), La.R.S. 30:2054(B)(1), 2054(B)(2) [Acts 1983, No. 97, effective date: Feb. 1, 1984;]

Remarks of Attorney General

The broad statutory authority granted to the secretary discussed in Parts I and II above are sufficient to allow operational flexibility as provided in 40 CFR Part 70.

XII. PERMIT MODIFICATIONS

State law provides authority to process permit modifications in a manner that conforms to or is substantially equivalent to the procedures set forth under 40 CFR § 70.7(e).

Federal Authority: CAA 502(b)(6), 42 U.S.C. § 7661a(b)(6), 40 C.F.R. §§ 7661a(b)(6); 40 C.F.R. §§ 70.4(b)(13), 70.7(e).

State Authority: La.R.S. 30:2011(A)(1), 2011(C)(1)(a), 2011(D)(1), 2011(D)(2), 2011(D)(6), 2011(D)(14), La.R.S. 30:2054(B)(1), 2054(B)(2) [Acts 1983, No. 97, effective date: Feb. 1, 1984;] LAC 33:III.521-527 [adopted November 1993, effective date upon approval of Part 70 Program by EPA]

Remarks of Attorney General

The broad statutory authority granted to the secretary discussed in Parts I and II above are sufficient to process applications for permit modifications in a manner that conforms to or is substantially equivalent to the procedures set forth under 40 CFR Part 70 into an air operating permit. The department has adopted such permit modification procedures complying with 40 CFR Part 70 in LAC 33:III.521-527.

XIII. PUBLIC PARTICIPATION

State law provides authority for procedures to allow public participation in [the permitting authority's] action to issue or deny an operating permit, to modify a permit (except as provided in §§ 70.7(e)(2) and (3)), or to renew a permit. Public participation under State law includes the opportunity for public comment and the opportunity for a hearing on draft permits in accordance with the requirements of the CAA and 40 CFR § 70.7(h). State law provides for affected States to review permit applications in accordance with the CAA and 40 CFR § 70.8 (b).

Federal Authority: CAA §§ 502(b)(6), 505(a)(2), 42 U.S.C. §§ 7661a(b)(6), 7561d(a)(2); 40 C.F.R. §§ 70.7(h), 70.8(b)

State Authority: La.R.S. 30:2011(A)(1), 2011(C)(1)(a), 2011(D)(1), 2011(D)(2), 2011(D)(5), 2011(D)(6), 2011(D)(14), La.R.S. 30:2054(B)(1), 2054(B)(2) [Acts 1983, No. 97, effective date: Feb. 1, 1984;] LAC 33:III.531 [adopted November 1993, effective date upon approval of Part 70 program by EPA]

Remarks of Attorney General

The broad statutory authority granted to the secretary discussed in Parts I and II above are sufficient to allow public participation in the permitting process and to allow affected states to review permit applications in accordance with 40 CFR Part 70. In addition to the general powers, La.R.S. 30:2011(D)(5) provides the secretary with the authority to hold meetings or hearings "for purpose of factfinding, receiving public comments, conducting inquiries and investigations, or other purposes under this Subtitle." In LAC 33:III.531, the department has provided for such public participation in accordance with 40 CFR Part 70.

XIV. PUBLIC ACCESS TO PERMIT INFORMATION

State law provides authority to make available to the public any permit application, compliance plan, permit, and monitoring and compliance certification report, except for information entitled to confidential treatment. State law provides that the contents of an operating permit shall not be entitled to confidential treatment.

Federal Authority: CAA §§ 114(c), 502(b)(8), 503(e), 42 U.S.C. §§ 7414(c), 7661a(b)(8), 7661b(e); 40 C.F.R. §70.4(b)(3)(viii).

State Authority: La.R.S. 44:1 et seq, [Acts 1940, No. 195] La.R.S. 30:2030 [Acts 1983, No. 97, effective date: Feb. 1, 1984]

Remarks of Attorney General

The Louisiana Public Records Law (R.S. 44:1 et seq) provides that all records of a public body (such as the Department of Environmental Quality) are "public record" and therefore, available to the public for inspection and copying, (see e.g., La.R.S. 44:1(A)(2)). This general rule is modified by La.R.S. 30:2030 which allows the DEQ to maintain certain records as confidential. In order to be maintained as confidential, a written application must be made to the secretary. The secretary must then determine nondisclosure of the information is necessary to (1) prevent impairment of an ongoing investigation or prejudice the final decision regarding a violation, or (2) protect trade secrets, proprietary secrets and information, and commercial or financial information. The statute also provides that certain environmental information, e.g. air emission data, shall not be held as confidential.

XV. ENFORCEMENT OF PERMIT PROGRAM REQUIREMENTS

State law provides civil and criminal enforcement authority consistent with 40 CFR § 70.11, including authority to recover penalties and fines in a maximum amount of not less than $10,000 per day per violation.

Federal Authority: CAA § 502(b)(5)(E), 42 U.S.C. § 7661a(b)(5)(E); 40 C.F.R. §§ 70.4(b)(3)(vii), 70.11.

State Authority: La.R.S. 30:2025(A),(B),(C),(D),(E)&(F) [originally enacted Acts 1983, No. 97, effective date: Feb. 1, 1984, amended several times, most recently by Acts 1992, No. 965, effective date: Aug. 21, 1992]

Remarks of Attorney General

La.R.S. 30:2025 provides the statutory authority for the department to enforce the appropriate regulations under the program. Subsection A provides a broad general authority. The department may bring administrative actions to require compliance under subsections C and D or may bring civil actions under subsections B. Civil penalties (not to exceed $25,000 for each day of violation of a statute or regulation) may be assessed under subsection E ($50,000 for each day of violation of a compliance order). Subsection F provides for criminal penalties for the intentional or wilful violations of the Environmental Quality Act or any rules or regulations promulgated by the DEQ pursuant to the Subtitle. Maximum criminal penalties for violations are $25,000 per violation per day of violation ($100,000 if there is endangerment of human life or health).

The burden of proof and degree of knowledge or intent required under state law is no greater than that required under the Clean Air Act. The burden of proof under R.S. 30:2025(F) is beyond a reasonable doubt. The degree of knowledge or intent under 2025(F) is willful or knowing. Louisiana jurisprudence has held that "In the context of a criminal charge 'willful' and 'intentional' have the same meaning" State v. Neumeyer 561 So.2d 944 at 945 (La.App. 4th Cir. 1990). The standard for an intentional crime is provided by La.R.S. 14:10 and 14:11. R.S. 14:11 provides that the terms "intent" and "intentional" have reference to "general intent" as defined by R.S. 14:10. General intent is defined by R.S. 14:10 as whenever the offender " . . . in the ordinary course of human experience, must have adverted to the prescribed criminal consequences as reasonably certain to result from his act or failure to act."

Louisiana jurisprudence has established the same standard for "knowledge." In State v. Ford 473 So.2d 931 (La.App. 3rd Cir. 1985) the court held:

> "Knowledge, like intent, must be inferred from the totality of the circumstances of a transaction where it is an element of the crime charged. The test of knowledge is not a subjective test, but rather a completely objective test, i.e., the offender is taken to know that which any reasonable person so situated would have known." id at 934.

Therefore, violations under R.S. 30:2025(F) are "general intent" crimes, a standard no greater than the federal requirement of "knowing."

XVI. AUTHORITY TO ENFORCE LAPSED PERMITS

> State law provides authority to enforce the terms and conditions of a permit which has expired, if the source has filed a timely and complete application for renewal, so as to assure compliance with all applicable requirements.

Federal Authority: CAA § 502(b)(5)(A), 42 U.S.C. § 7661a(b)(5)(A); 40 C.F.R. § 70.4(b)(10).

State Authority: La.R.S. 30:2023(C), [Acts 1989, No. 472, effective date: Sept. 3, 1989] La.R.S. 49:961 [Acts 1966, No. 382, effective date: July 1, 1967]

Remarks of Attorney General

La.R.S. 30:2023(C) provides that R.S. 49:961(B) shall apply at the end of any DEQ permit. La.R.S. 49:961(B) provides specifically:

> "When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall not expire until the application has been finally determined by the agency, and, in case the application is denied or terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by the order of the reviewing court."

XVII. EPA PERMIT VETO

State law provides that an operating permit will not issue if the Administrator of EPA (or her designee) objects in a timely manner to its issuance pursuant to 40 CFR § 70 8(c) or, if the permit has been issued, but the Administrator or her designee objects pursuant to 40 CFR § 70.8(d).

Federal Authority: CAA §§ 502(b)(5)(F)(, 505(b), 42 U.S.C. §§ 7661a(b)(5)(F), 7661d(b); 40 C.F.R. §§ 70.4(b)(3)(ix), 70.8(c)-(d).

State Authority: La.R.S. 30:2011(A)(1), 2011(C)(1)(a), 2011(D)(1), 2011(D)(2), 2011(D)(6), 2011(D)(14), La.R.S. 30:2054(B)(1), 2054(B)(2) [Acts 1983, No. 97, effective date: Feb. 1, 1984;] LAC 33:III.533 [adopted November 1993, effective date upon approval of Part 70 program by EPA].

Remarks of Attorney General

The broad statutory authority granted to the secretary discussed in Parts I and II above are sufficient to allow a veto by the administrator of EPA of any part 70 permit issued. The department has provided for EPA veto of permits in accordance with 40 CFR Part 70 in LAC 33:III.533.

XVIII. FINAL AGENCY ACTION ON PERMITS

State law provides that, solely for the purposes of obtaining judicial review in State court for LDEQ's failure to take final action, "final permit action' shall include the failure of LDEQ to take final action on an application for a permit, permit renewal, or permit revision within at a minimum of 18 months.

Federal Authority: CAA § 502(b)(7), 42 U.S.C. § 7661a(b)(7); 40 C.F.R. § 70.4(b)(3)(xi).

State Authority: La.R.S. 30:2022(B), [Acts 1990, Nos. 696 and 996, effective date: Sept. 7, 1990], Code of Civil Procedure Article 3861 et seq. [Act 1960, No. 15, effective date: Jan. 1, 1961] LAC 33:I.1505.C [Effective date: April 20, 1993], LAC 33:III.519.C.3&4, [Effective date: upon approval of part 70 program by EPA]

Remarks of Attorney General

La.R.S. 30:2022(B) provides that the department shall adopt rules for the processing and review of permit applications. The statute mandates that the rules provide that a final decision on

applications for permits for new facilities and for substantial permit modifications shall be made within 410 days of the application. These rules were adopted and promulgated on April 20, 1993 (LAC 33:I.1505.C). This requirement to make a final decision within 410 days is repeated in LAC 33:III.519.C.4.

For all other Part 70 permits, LAC 33:III.519.C.3 provides "Final permit action shall be taken on any application pertaining to a Part 70 source within 18 months of receipt of a complete application, except as provided under the time frames for issuance of initial Part 70 permits to existing sources under LAC 33:III.507 or as provided for the issuance of acid rain permits under LAC 33:III.505."

The requirement to make a final decision within the appropriate time limit is mandatory and non-discretionary. If the secretary fails to follow the mandatory provision of law, the applicant has the right to obtain a writ of mandamus under the provisions of the Louisiana Code of Civil Procedure, see e.g., Myers v. City of Lafayette 537 So.2d 1269 (La.App. 3 Cir. 1989). Through the use of the mandamus preceding, the applicant can obtain a court order requiring the LDEQ to make final permit decision.

XIX. DEFAULT PERMIT ISSUANCE

State law does not authorize the issuance, modification, or renewal of any permit based on the passage of a specified time period when LDEQ has failed to take action on the application, and does not include any other similar provision providing for default issuance of a permit unless EPA has specifically waived the right of review for itself and affected States.

Federal Authority CAA § 505(a)-(e), 42 u.S.C. § 7661d(a)-(e); 40 C.F.R. § 70.8(e)

State Authority: La.R.S. 30:2056 [Acts 1979, No. 449, amended by Acts 1983, No. 97 and Acts 1993, No. 570, effective date: August 15, 1993]

Remarks of Attorney General

There is no provision in Louisiana law which would provide for the issuance of a Part 70 permit "by default" if the DEQ fails to act upon the application timely. The applicant's remedy for the failure to act timely is to obtain a writ of mandamus pursuant to the Code of Civil Procedure directing the agency to act within a time limit set by the court or be found in contempt (see e.g. Myers v. City of Lafayette 537 So.2d 1269 (La.App. 3 Cir. 1989).

Previously there was a provision in La.R.S. 30:2056 which provided that if the department failed to act timely upon a variance requested pursuant to that section, the applicant could treat the failure to act as a grant of the variance requested. The section was amended in 1993 to delete the "default" provision. Act 570 of the 1993 session of the Louisiana legislature amended subsection D which now reiterates the general rule that if the secretary fails to act timely, the applicant has a right to a writ of mandamus.

XX. OPPORTUNITY FOR JUDICIAL REVIEW OF PERMIT ACTIONS

State law provides an opportunity for judicial review in State court of any final permit action by the applicant, any person who participated in the public participation process provided pursuant to the CAA and 40 CFR § 70.7(h), or any other person who could obtain judicial review of such actions under State laws, including any person aggrieved by the permit decision. Any provisions of State law which limit access to judicial review do not exceed the corresponding limits on judicial review imposed by the standing requirements of Article III of the United States Constitution.

Federal Authority: CAA § 502(b)(6), 42 U.S.C. § 7661a(b)(6); 40 C.F.R. § 70.4(b)(3)(x).

State Authority: La.R.S. 30:2024(C) [Acts 1983, No. 97, amended by Acts 1984, No. 795, No. 825, Effective date: July 13, 1984], Code of Civil Procedure, Article 681 [Act 1960, No. 15, effective date: Jan. 1, 1961]

Remarks of Attorney General

Judicial review of permit decisions is available under La.R.S. 30:2024(C). This right is available to any person "aggrieved." Jurisprudence has established that to be an aggrieved person, one must have a real actual interest which is or may be adversely affected by the decision. See In the Matter of BASF Corporation, Chemical Division 533 So.2d 971 (La.App. 1st Cir. 1988). The court in BASF looked to the Louisiana Code of Civil Procedure, Article 681 for guidance on the issue of who has been "aggrieved." Article 681 provides that an action may be brought "by a person having a real and actual interest." The requirement that the petitioner have a "real and actual interest" is equivalent to the standing requirement imposed by Article III, Section 2 of the United States Constitution.

XXI. LIMITATIONS ON JUDICIAL REVIEW

State law provides that the opportunity for judicial review of a final permit action in State court described in paragraph XIX of this Opinion shall be the exclusive means for obtaining judicial review of the terms and conditions of permits. State law provides that petitions for judicial review must be filed no later than 30 days after the final permit action. State law provides that where petitions for judicial review are based solely on grounds arising after the 30-day or less deadline for judicial review, such petitions may be filed no later than 30 days after the new grounds for review arise. State law further provides that if the final permit action being challenged is the DEQ's failure to take final action, a petition for judicial review may be filed at any time before DEQ denies the permit or issues the final permit.

Federal Authority: CAA §502(b)(6), 42 U.S.C. § 7661a(b)(6); 40 C.F.R. § 70.4(b)3)(xii).

State Authority: La.R.S. 30:2024 [Acts 1983, No. 97, amended by Acts 1984, No. 795, 1984, No. 825, 1990, No. 197, 1991, No. 846 and 1993, No. 567, effective date: June 10, 1993]

Remarks of Attorney General

La.R.S. 30:2024 provides for the finality of agency action and for judicial review of that action. Subsection A provides that a permit or enforcement action "shall be final and not be subject to further review" unless the respondent requests a hearing within 30 days of the action. The fact that the action becomes "final" and "not subject to further review" precludes any further examination of the action or any collateral attack. The proper mechanism to review such "final" action is through an appeal authorized under R.S. 30:2024(C) and discussed section XX above.

XXII. COORDINATION WITH ACID RAIN PROGRAM REQUIREMENTS

State law is consistent with, and cannot be used to modify, the Acid Rain Program requirements of 40 CFR Part 72.

Federal Authority: CAA §§ 408(a), 506(b), 42 U.S.C. §§ 7651g(a), 7661e(b); 40 C.F.R. §§ 70.4(b)(3)(xiii), 72.70(b), 72.72(a)

State Authority: La.R.S. 30:2011(A)(1), 2011(C)(1)(a), 2011(D)(1), 2011(D)(6), 2011(D)(12), 2011(D)(14), La.R.S. 30:2054(B)(1), [Acts 1983, No. 97, effective date: Feb. 1, 1984;] LAC 33:III.505

[adopted November 1993, effective date upon approval of Part 70 program by EPA]

Remarks of the Attorney General:

The broad statutory authority granted to the secretary discussed in Parts I and II above are sufficient to implement and enforce the Acid Rain requirements of 40 CFR Part 72. The acid rain permitting requirements have been adopted in LAC 33:III.505.

XXIII. DISCRETIONARY AUTHORITY

The EPA has raised certain questions concerning the statutory authority of the LDEQ which may not comply with the requirement of Title V of the Clean Air Act and 40 CFR Part 70 (including the authority to issue variances under certain limited circumstances). These concerns are misplaced and without statutory authorization.

In accordance with discussions with EPA, La.R.S. 30:2056 (which provided that if the department failed to act timely upon a variance requested pursuant to that section, the applicant could treat the failure to act as a grant of the variance requested), was amended by Act 570 of the 1993 session of the Louisiana legislature to delete the "default" provision. The present law provides that if the secretary fails to act on the variance request timely, the applicant has a right to a writ of mandamus. No further statutory revision concerning variances is required by the Clean Air Act or 40 CFR Part 70 .

Title V requires that regulations promulgated by the Administrator establishing the minimum elements of a permit program include the requirement that the permitting agency have "adequate authority" to administer the program, see 42 U.S.C. § 7661a(b)(4). In accordance with this provision 40 CFR 70.4(b)(3) requires this opinion of the Attorney General to state that "the laws of the State, locality, or interstate compact provide adequate authority to carry out all aspects of the program." (emphasis added) There is no provision in the Clean Air Act or 40 CFR Part 70 which compel the state statutes LIMIT the authority of the LDEQ to those requirements or standards imposed by the Clean Air Act and 40 CFR Part 70.

The fact that LDEQ may have the statutory "authority" under state law to implement, administer or enforce a program which does not meet the requirements of the federal air operating permit program is not relevant if LDEQ does not make use of that authority. The state has adopted regulations which meet or exceed all standards or requirements of the Clean Air Act and 40 CFR Part

70. The state has adequate statutory authority to do so. The state is willing to commit to the EPA through an implementation agreement to utilize the statutory authority to implement, administer, and enforce the program in accordance with the Clean Air Act and 40 CFR Part 70. However, there is no requirement for a statute which limits LDEQ authority.

Richard P. Ieyoub
Attorney General

by: _____
Jack Yelverton
First Assistant Attorney General

AG_OPION.
November 12, 1993