

APPENDIX A
PUBLIC NOTICE

ozone nonattainment area to implement specific emission reduction control strategies and demonstrate compliance with the 8-hour ozone air quality standard. The SIP revision is mandated under the requirements of the 1990 Clean Air Act Amendments.

The Baton Rouge ozone nonattainment area, namely Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge Parishes, did not attain the 8-hour National Ambient Air Quality Standards (NAAQS) by June 15, 2007, which was the attainment date for marginal nonattainment areas set forth by the Clean Air Act. As a result the U.S. Environmental Protection Agency (EPA), by operation of law, reclassified the Baton Rouge area from marginal to moderate nonattainment effective April 21, 2008. The new attainment date for the Baton Rouge area is June 15, 2010.

A public hearing will be held on September 24, 2009, 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 SIP revision. Should individuals with a disability need an accommodation in order to participate, contact Vivian Aucoin at the address given below or at (225) 219-3509. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are encouraged to submit written comments on the attainment demonstration SIP revision. Comments are due no later than 4:30 p.m., September 24, 2009, and should be submitted to Vivian H. Aucoin, Office of Environmental Assessment, Box 4314, Baton Rouge, LA 70821-4314 or to FAX (225) 219-3240 or by e-mail to vivian.aucoin@la.gov. If you have any questions regarding this document please contact Vivian H. Aucoin at (225) 219-3509.

A copy of the attainment demonstration SIP revision may be viewed from 8 a.m. to 4:30 p.m. in the DEQ Public Records Center, Room 127, 602 N. Fifth Street, Baton Rouge, LA. This SIP revision is available on the internet at <http://www.deq.louisiana.gov/portal/tabid/2920/Default.aspx>.

Herman Robinson, CPM
Executive Counsel

0908#038

POTPOURRI

**Department of Environmental Quality
Office of the Secretary
Legal Affairs Division**

**Baton Rouge Area Redesignation Request and
1997 8-Hour Ozone Maintenance Plan (0908Pot3)**

Under the authority of the Louisiana Environmental Quality Act, R. S. 30:2001 et seq., the secretary gives notice that the Office of Environmental Assessment, Air Quality Assessment Division, will submit a proposed Redesignation Request and Ozone Maintenance Plan for the 1997 8-Hour Ozone National Ambient Air Quality Standards (NAAQS) for the Baton Rouge Area, which includes the parishes of East Baton Rouge, West Baton Rouge, Livingston, Ascension, and Iberville. The Redesignation Request is *Louisiana Register Vol. 35, No.8 August 20, 2009*

being submitted as required under the Section 107(d)(3)(E) of the 1990 Clean Air Act Amendments (CAAA), and the Ozone Maintenance Plan is being submitted as required under Section 175A of the 1990 CAAA.

A public hearing will be held at 1:30 p.m. on September 24, 2009, in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA. Should individuals with a disability need an accommodation in order to participate, please contact Vivian H. Aucoin at (225) 219-3509 or at the address listed below. Interested persons are invited to attend and submit oral comments on the proposal.

All interested persons are invited to submit written comments concerning the Redesignation Request and the Ozone Maintenance Plan for the Baton Rouge Area no later than 4:30 p.m., September 24, 2009, to Vivian H. Aucoin, Office of Environmental Assessment, Box 4314, Baton Rouge, LA 70821-4314 or to FAX (225) 219-3240 or by e-mail to vivian.aucoin@la.gov.

A copy of the Redesignation Request and Ozone Maintenance Plan for the Baton Rouge Area may be viewed from 8 a.m. to 4:30 p.m. in the DEQ Public Records Center, Room 127, 602 N. Fifth Street, Baton Rouge, LA. The document is available on the Internet at www.deq.louisiana.gov/portal/Default.aspx?tabid=2381.

Herman Robinson,
CPM Executive Counsel

0908#039

POTPOURRI

**Department of Environmental Quality
Office of the Secretary
Legal Affairs Division**

**Control Techniques Guidelines (CTG) State
Implementation Plan (SIP) (0908Pot4)**

Under the authority of the Louisiana Environmental Quality Act, R. S. 30:2001 et seq., the secretary gives notice that the Office of Environmental Assessment, Air Quality Assessment Division, will submit a revision to the State Implementation Plan (SIP) to demonstrate specific emission reduction control strategies to bring Louisiana into compliance with the ozone National Ambient Air Quality Standards (NAAQS). The SIP revision is mandated under the requirements of the 1990 Clean Air Act Amendments.

The Clean Air Act (CAA) Section 172(c)(1) provides that state implementation plans (SIPs) for nonattainment areas must include reasonably available control measures (RACT), including reasonably available control technology (RACT), for sources of emissions. CAA Section 182(b)(2)(A) provides that for certain nonattainment areas, states must revise their SIPs to include RACT for each category of volatile organic compound (VOC) source covered by a Control Techniques Guidelines (CTG) document issued between November 15, 1990, and the date of attainment. The Environmental Protection Agency (EPA) provides states with guidance concerning what types of controls could constitute RACT for a given source category

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**Comment Summary Response & Concise Statement
State Implementation Plan Revision
Baton Rouge Ozone Nonattainment Area Redesignation Request and
Maintenance Plan**

- COMMENT 1: Section 2.1 — Attainment of the 1997 8-Hour Ozone NAAQS — In Chart 1 the national ambient air quality standard (NAAQS) should be 84 ppb. In Table 1 the correct 2007 design value for the Baker site should be 0.084 ppm.
- RESPONSE 1: Section 2.1 — the chart and table have been amended accordingly.
- COMMENT 2: Section 2.2 — SIP Approvability under Section 100(k) of the CAA/Appendix B — Revise the following sentence as shown below.
- Based on this Federal Register notice ~~submitted~~ published by EPA, the SIP for the BRNA has been fully approved under Section 110(k).*
- RESPONSE 2: Section 2.2 — SIP Approvability under Section 100(k) of the CAA/Appendix B has been amended accordingly
- COMMENT 3: Section 2.4 — Requirements Met for the Area Under Section 110 and Part D — A Reasonable Available Control Technology (RACT) analysis for the Baton Rouge area was not included in this submittal. A redesignation to attainment cannot be approved without an approvable RACT demonstration. The state needs to develop an adequate and thorough RACT state implementation plan (SIP).
- RESPONSE 3: The document has been amended and a RACT analysis is now included.

- COMMENT 4: Section 2.4 — Section 185 Fees — A Section 185 penalty fee program is a required element and must be in place before a redesignation can be approved.
- RESPONSE 4: The document has been updated to reflect this request.
- COMMENT 5: Section 3 — Emissions Inventory — In the title, change “Emission” to “Emissions”.
- RESPONSE 5: The document has been amended accordingly.
- COMMENT 6: Section 3 — Point Source Emissions — The methodologies used in collecting emissions data from stationary sources has been reviewed and found to be consistent with EPA guidelines.
- RESPONSE 6: No response necessary.
- COMMENT 7: Section 3 — Maintenance Demonstration and Future Emissions — The trend analysis was reviewed and it has been determined that the approach and methodologies used to develop the maintenance inventory are consistent with EPA’s guidance.
- RESPONSE 7: No response necessary
- COMMENT 8: Section 3 — Conclusion — The Baton Rouge nonattainment area maintenance emission inventory component of the redesignation request has been evaluated and it has been determined that the department has demonstrated that emissions of VOC and NOx will decrease by 1.75 and 10.38 tons per average ozone season day, respectively. The department has adequately calculated and documented emissions using methods consistent with EPA’s guidance.
- RESPONSE 8: No response necessary; the Department appreciates the support.

- COMMENT 9: Section 4 — Attainment Inventory — It is recommended that the state include one or more additional years in the projections for this section, in consideration of Sections 175A and 107(d)(3)(D) of the Clean Air Act.
- RESPONSE 9: LDEQ has projected growth of emissions to 2020, which is 12 years following the attainment year of 2008. According to guidance, emission projections should be grown to the 12th year. The department has followed EPA guidance.
- COMMENT 10: Maintenance Plan —No motor vehicle emissions budgets (MVEBs) associated with the maintenance plan were found. It must be possible to determine conformity with the maintenance plan, for the maintenance plan to be approvable. The MVEBs must be clearly identified and established also for the last year of the maintenance plan (2020), pursuant to 40 CFR 93.118(b)(2)(i)-(ii). The plan should also state that the MVEBs for 2009 are the budgets for future years, and that the area can continue to attain if motor vehicle emissions remain at 2009 levels consistent with 40 CFR 93.118(b)(2)(i).
- RESPONSE 10: Maintenance Plan — See Appendix E of the Technical Support Document included as Appendix D of the Baton Rouge Ozone Nonattainment Area Redesignation Request and Maintenance Plan.
- COMMENT 11: Section 5 — Maintenance Demonstration — The maintenance demonstration must provide for maintenance of the ozone NAAQS for at least 10 years after redesignation. The plan should include time for EPA to review and act on the request. Revise the first paragraph of Section 5 to include this requirement.
- RESPONSE 11: LDEQ has projected growth of emissions to 2020, which is 12 years following the attainment year of 2008. According to guidance, emission projections should be grown to the 12th year. The department has followed EPA guidance
- COMMENT 12: Section 6 — Ambient Air Quality Monitoring — Correct the

typographical error in the title.

RESPONSE 12: The document has been amended accordingly.

COMMENT 13: Section 6.1 — Attainment of the 8-Hour Ozone Standard — Correct the NAAQS to be properly referenced as 0.08 ppm. Revise the third paragraph to incorporate the requirement that the state commits to continue to operate an appropriate air quality monitoring network *in accordance with 40 CFR Part 58*.

RESPONSE 13: The document has been amended accordingly.

COMMENT 14: Section 7 — Verification of Continued Attainment — Add the following to this section.

- Assurance that the state has the legal authority to implement and enforce all measures necessary to attain and maintain the NAAQS.
- A discussion of how the state will track the progress of the maintenance plan.

RESPONSE 14: The document has been amended accordingly.

COMMENT 15: Section 8.1 — Contingency Implementation — Contingency measures need to occur within 18 months of the triggering event if a contingency plan consistent with Section 175A, of the Clean Air Act (CAA), is triggered.

RESPONSE 15: Contingency measures will take effect when triggered; if triggering event occurs during summer ozone season, the rule will become applicable immediately. If the triggering event occurs outside of the summer ozone season, it will become applicable the following April.

COMMENT 16: Section 8.1 — Contingency Implementation — It is recommended that the department include a trigger when the area exceeds the

precursor emissions levels upon which maintenance is based, or some other earlier trigger.

- RESPONSE 16: Section 8.1 — Contingency Implementation — A definition of the triggering violation is now included in the document.
- COMMENT 17: Section 8.2 — Contingency Measures — Revise this section to add one or more clearly identified measures to be adopted and implemented that will promptly reduce ozone levels, if the contingency plan is triggered.
- RESPONSE 17: The document has been amended accordingly.
- COMMENT 18: Section 2.1 — Redesignation Document — The department should provide a statement to EPA, and/or amend Section 2.1 to specifically confirm that the monitoring data met the data completeness requirements.
- RESPONSE 18: EPA has determined that the data has met all completeness requirements by publishing the determination of attainment of the 1-hour ozone standard, 75 FR 6570.
- COMMENT 19: Section 6.0 — Redesignation Document — The department should provide a statement to EPA, and/or amend Section 6.0 to specifically confirm that it will meet the 40 CFR Part 58 consultation requirements prior to making any changes to the monitoring network.
- RESPONSE 19: The department provides confirmation of its monitoring network commitments through the annual monitoring network plan as well as the annual Performance Partnership Grant agreement.
- COMMENT 20: — The department should request EPA to make the attainment demonstration finding through a Clean Data Policy determination in advance of the final, full redesignation determination pursuant to 40 CFR §51.918, in order to make it clear that certain SIP requirements are suspended while EPA reviews the full

redesignation request.

- RESPONSE 20: The department has requested EPA to make said attainment determination for both the 1-hour and the 1997 8-hour ozone standards.
- COMMENT 21: Attainment Demonstration — The department should specifically state that CAA Section 185 penalty fees, severe area new source review, and contingency measures for failure to attain the 1-hour standard are not applicable requirements for the SIP. This is implied in the SIP but should be more directly stated to EPA, Region 6. [Supporting rationale can be found in the original comments provided to the department by the commenter.]
- RESPONSE 21: The department believes that those requirements were sufficiently covered in the proposed document.
- COMMENT 22: Redesignation Request — Additional discussions are needed by the department to supplement the department's analysis in the submitted SIPs.
Although the commenter supports the department's conclusion that the improvement to air quality is due to permanent and enforceable emission reductions, the department should supply additional discussions by citing source material that supports the conclusion that NO_x controls are more effective in ozone control than are VOC controls.
- RESPONSE 22: The department believes that discussion of either a NO_x or VOC control strategy is premature; this is evidenced in the modeling and monitoring data which both show the area to be in attainment.
- COMMENT 23: Redesignation Request — The department may not have adequately discussed the EPA ultra-low sulfur diesel requirements for highway vehicles. The department should enhance this discussion in the support materials presented to EPA. If reductions from the ultra-low sulfur highway vehicle rule were not included in the SIP estimates, the department should indicate that emissions will be even lower if the rule is considered.
- RESPONSE 23: The department use MOBILE6 as its method of calculating

emission reductions from Onroad and Nonroad vehicles.

COMMENT 24: Redesignation Request — While the commenter supports the department's position, that EPA enacted non-road source controls have resulted in permanent and enforceable emission reductions, the department did not formally cite the 2004 Clean Air Non-Road Diesel rule. The department is requested to cite this rule in the redesignation request.

RESPONSE 24: The rule has been formally cited.

COMMENT 25: Redesignation Request — The department should discuss the impact of the Mobile Sources Air Toxics rule in the redesignation request. This rule has the benefit of reducing VOC emissions. Even though some provisions of the rule do not get phased in until later, the rule will provide an added measure of emission reductions that will help to assure continued attainment.

RESPONSE 25: The department outlined those rules that it believed would benefit the area's maintenance, as well as those rules that are fully enforceable and will promote continued emission reductions. It is also the department's belief that EPA understands the emission reductions that the area will benefit from with the implementation of this national rule.

COMMENT 26: Redesignation Request — The department is requested to include a discussion of any federal maximum achievable control technology (MACT) standards enacted pursuant to 40 CFR Part 63 that are effective with the area, in particular those that have become effective since the implementation of the 8-hour ozone standard.

RESPONSE 26: The department appreciates the enthusiasm of the commenter but believes the discussion pertaining to VOC emission reductions provide sufficient evidence that the area's ability to reach attainment has been met and will continue.

COMMENT 27: Redesignation Request — The department should include a VOC and NOx trend analysis in the redesignation request. Also, the information (chart) indicated in the original comments should be included and updated to demonstrate the significant reductions in VOC and NOx emissions that have occurred since the adoption of the Clean Air Act amendments of 1990.

RESPONSE 27: Redesignation Request – According to the emissions inventory data for the 5-parish Baton Rouge Nonattainment area, there has been a 49.5% reduction in NOx and a 61.5% reduction in VOC since the 1990 Clean Air Act Amendments. These reductions are due to permanent and enforceable control measures as is outlined in the VOC/RACT Analysis that is included in this document.

Source Category	NOx, tpd		VOC, tpd	
	1990	2008	1990	2008
Point Sources	184.0	67.1	128.4	32.2
Area/Nonroad	26.8	41.6	40.7	44.9
Onroad	60.5	28.4	78.2	17.8
Total	271.3	137.1	247.3	95.0

COMMENT 28: Maintenance Plan — The department’s proposal satisfies Section 175A of the Clean Air Act.

RESPONSE 28: No response necessary.

COMMENT 29: In the projected inventories, the department should supplement the documentation by discussing that implementation of the Clean Air Interstate rule (CAIR) is likely to further reduce NOx emissions. The NOx rule in LAC 33:III.2201 applies to sources

within the area of influence, not just the nonattainment area. These provisions result in permanent and enforceable reductions. Some discussion on recent permitting actions should also be included.

RESPONSE 29: The department agrees with the commenter that the CAIR rule has produced NO_x emission reductions; however, the department does not feel it is ready to make any projections on the future rule that EPA will issue.

COMMENT 30: Contingency Plan — The contingency plan is adequate. The statement concerning the trigger for contingency measures could be clarified and perhaps changed. A more specific definition of “violation” is suggested below.

If quality assured air quality monitoring data indicate that the area has violated the 1997 eight-hour ozone NAAQS (any consecutive three-year average of each annual fourth-highest daily maximum eight-hour ozone average at or above 85 parts per billion (ppb)) the Louisiana Department of Environmental Quality will implement specific contingency measures.

RESPONSE 30: Contingency Plan — The Department appreciates the support.

COMMENT 31: Contingency Measures — It is unclear why the department used the 15.9 tons per day (TPD) instead of the 40 TPD that is used during the current May - Sept. period. The 40 TPD value should still be applicable to the April and October period. This should be reviewed in the redesignation request.

RESPONSE 31: Contingency Measures — The Department’s calculations show that the contingency measures will produce an extra 15.9 TPD in NO_x reductions. When added to the currently enforced NO_x control measures, the area will achieve an actual reduction of 55.9 TPD of NO_x. The Department was emphasizing the additional reductions only.

COMMENT 32: Contingency Measures — The department could strengthen the discussion on contingency measures if a discussion on NO_x versus VOC control strategy was included in the contingency

measures. [Include the documentation from the original comments.]

RESPONSE 32: The department believes that a discussion of control strategies is not necessary in this section. The department has satisfied the requirements by stating what measures will be put into place should it become necessary.

COMMENT 33: Contingency Measures — It is strongly suggested that the department not limit contingency measures to a temporal extension of LAC 33:III.2201. Instead, the department should list other potential contingency measures. The identification of specific detailed measures may not be practical or desired at this time. The department would have time in the 24-month period in which to evaluate the cause of the exceedance and tailor the appropriate contingency measure to the most effective ozone reduction strategy.

RESPONSE 33: The department has added additional measures as was suggested by the commenter.

COMMENT 34: — Since the Baton Rouge nonattainment area has achieved both the 1-hour and 8-hour ozone NAAQS without the use of reformulated gasoline (RFG), the nonattainment area should not have to implement the requirement for RFG. The commenter is in agreement with the department on this issue. It was argued that EPA had the authority to create *de minimus* exceptions to the CAA in situations where there will be little or no benefit (and even potential harm) as a result of CAA required measures. EPA agreed to voluntarily reconsider its prior decision to deny the area a waiver from the RFG requirement and is still reconsidering its decision. EPA has established precedent that upon redesignation RFG is not required in a SIP maintenance plan, provided that the covered area demonstrates that whatever fuel regime is used it will be as effective as RFG. Based on past EPA action with respect to Atlanta's RFG waiver request, EPA should not require the Baton Rouge area to sell only RFG within the area since the area has achieved attainment with the 1-hour and 8-hour standards using the Tier II low sulfur Reid vapor pressure (RVP) gasoline.

RESPONSE 34: No response necessary

COMMENT 35: — The modeling conducted for the department provides ample support for the approval of the application for redesignation of the Baton Rouge area to attainment with the 8-hour ozone standard, as well as the likelihood of continued attainment.

RESPONSE 35: No response necessary

**Comment Summary Response & Concise Statement Key
State Implementation Plan Revision
Baton Rouge Ozone Nonattainment Area Redesignation Request and
Maintenance Plan**

COMMENT No.

SUGGESTED BY

1 — 17

Guy Donaldson, Chief / EPA, Air Planning Section

18 — 35

Maureen N. Harbourt, Kean Miller / for Louisiana
Chemical, Baton Rouge Area Chamber, and
Louisiana Mid-Continent Oil and Gas Association

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September 24, 2009

Vivian H. Aucoin,
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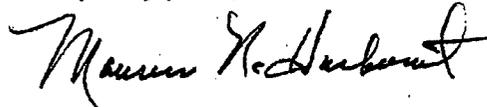
Re: Comments of Louisiana Chemical Association, Baton Rouge Area Chamber, and Louisiana Mid-Continent Oil and Gas Association on Advance Notice of Rulemaking and Solicitation of Comments on Organic Solvents and Solvent Degreasers, Log #AQ307, **Docket 0908Pot1**, Baton Rouge Area Ozone Attainment Demonstration State Implementation Plan Revision, **Docket 0908Pot2**, Baton Rouge Area Redesignation Request and 1997 8-Hour Ozone Maintenance Plan, **Docket 0908Pot3**, and Control Techniques Guidelines (CTG) State Implementation Plan (SIP), **Docket 0908Pot4**
Our File: 3645-306

Dear Ms. Aucoin:

On behalf of the Louisiana Chemical Association, the Baton Rouge Area Chamber, and the Louisiana Mid-Continent Oil and Gas Association, we are submitting the attached comments to be included in the official administrative record of these proceedings. If you have any questions concerning these comments, please let me know.

Thank you for your assistance and consideration of these comments.

Very truly yours,



Maureen N. Harbort

CC: Dan Borne'
Henry Graham
Mike Lyons
Richard Metcalf
Adam Knapp
Meg Mahoney

Comments of the Louisiana Chemical Association, the Baton Rouge Area Chamber of Commerce, and the Louisiana Mid-Continent Oil & Gas Association on

Advance Notice of Rulemaking and Solicitation of Comments on Organic Solvents and Solvent Degreasers, Log #AQ307, Docket 0908Pot1,

Baton Rouge Area Ozone Attainment Demonstration State Implementation Plan Revision Docket 0908Pot2,

Baton Rouge Area Redesignation Request and 1997 8-Hour Ozone Maintenance Plan Docket 0908Pot3, and

Control Techniques Guidelines (CTG) State Implementation Plan (SIP), Docket 0908Pot4

I. Introduction

The Louisiana Chemical Association ("LCA") is a nonprofit Louisiana corporation composed of 64 member companies with over 90 chemical manufacturing plant sites in Louisiana. LCA members employ over 24,000 persons in Louisiana, who not only work in the communities their companies call home – they live there, too. LCA members are committed to excellence in safety, health, security and environmental performance, and to earning their "license to operate." Over 30 of LCA's members have plant sites located within the Baton Rouge Ozone Nonattainment Area (the "Baton Rouge Area"), which consists of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge Parishes.

The Baton Rouge Area Chamber of Commerce ("BRAC") is a non-profit organization dedicated to fostering a strong, growing economy throughout the nine parish Baton Rouge region by serving as the primary advocate and change agent for the region's business community. The Baton Rouge Area Chamber is the voice for business and other entities concerned with economic development within the region. BRAC members include large multi-national corporations, medium sized businesses, small businesses and educational institutions, such as Louisiana State University and Southern University. The members of BRAC, by type of business, include: auto body and repair, bakeries, chemical manufacturers, contractors, convenience stores, delivery services, dry cleaners, florists, hospitals, industrial repair, marine transport, oil companies, port authorities, staffing companies, tour bus charters, utility companies, wholesalers, and wrecker services. The 9-parish region represented by BRAC includes all 5 parishes within the Baton Rouge Ozone Nonattainment Area as well as Pointe Coupee, East Feliciana, West Feliciana, and St. Helena Parishes. BRAC has over 1404 members, with the majority of its members located within the 5-parish ozone nonattainment area.

The Louisiana Mid-Continent Oil and Gas Association ("LMOGA") is a state-wide industry trade association representing members who together produce, refine, market and transport crude oil, natural gas, and petroleum products originating in Louisiana. Louisiana is the

third leading producer of natural gas and the fourth leading producer of crude oil in the country. When including the oil and gas production in the Gulf of Mexico, Louisiana becomes the second leading natural gas producer in the country and the third leading crude oil producer. The active refineries in the State of Louisiana account for 15 percent of the total refining capacity in the country. There are thousands of miles of pipelines in the state, safely carrying crude oil from the Gulf of Mexico to refineries in Louisiana and other states as well as carrying natural gas to all parts of the country. In addition there are pipelines carrying refined products such as gasoline from and through Louisiana to other states. LMOGA members include 16 refineries and numerous production facilities, natural gas plants, compressor stations, and product terminals. A number of these members are located within the Baton Rouge Area.

The members of LCA, BRAC and LMOGA (collectively "the Associations") have been key partners with the Louisiana Department of Environmental Quality ("LDEQ") and the United States Environmental Protection Agency ("EPA") to plan for attaining the National Ambient Air Quality Standard ("NAAQS") for ozone within the area. These members are proud of the progress that has been made in the Baton Rouge Area with respect to achieving Clean Air Act ("CAA") standards. The Baton Rouge Area achieved attainment with the now revoked 1-hour ozone standard for the three year period 2004-2006 and continues to be in attainment with that for the 2006-2009 period (year to date).¹ The Baton Rouge Area also achieved attainment of the 8-hour standard for the 2006-2008 period and continues to be in attainment with that standard during 2009 (year to date).

All three of the potpourri notices that are the subject of these comments concern requirements necessary for full redesignation of the Baton Rouge Area to the status of attainment with the currently implemented 8-hour National Ambient Air Quality Standard ("NAAQS") for ozone.² The Associations support LDEQ's proposed redesignation of the Baton Rouge Area to attainment in accordance with §107(d)(3)(E) of the Clean Air Act ("CAA") (42 U.S.C. §7407(d)(3)(E)). That provision allows for redesignation to attainment provided that the following requirements are satisfied:

- (1) The Administrator determines that the area has attained the applicable NAAQS based on current air quality data;
- (2) The Administrator has fully approved the applicable state implementation plan for the area under section 110(k) of the CAA;
- (3) The Administrator determines that the improvement in air quality is due to permanent and enforceable emission reductions resulting from implementation of

¹ The Baton Rouge Area did have one monitor, the LSU monitor, that exceeded the revoked 1-Hour standard in 2007. The effect of that occurrence is not clear as the 1-Hour Standard was not in effect at that time, as it had been revoked. The design value for the LSU monitor was 128 ppb in 2007. All of the other nine (9) monitors within the Baton Rouge Area demonstrated attainment. In addition, the monitored data demonstrate that all 10 monitors now comply with the 1-hour standard again for the 2006-2008 time period, with the LSU monitor design value at only 110 ppb for 2008.

² In 2008, EPA adopted rules to lower the 8-hour NAAQS; however, EPA has announced that it is reconsidering those standards and has not yet adopted rules to implement the revised NAAQS have not yet been adopted. See http://www.epa.gov/groundlevelozone/pdfs/O3_Reconsideration_FACT%20SHEET_091609.pdf.

- the applicable SIP, Federal air pollution control regulations, and other permanent and enforceable emission reductions;
- (4) The Administrator has fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA; and,
 - (5) The state containing the area has met all requirements applicable to the area under section 110 and part D of the CAA.

LDEQ's Potpourri Notice titled "Baton Rouge Area Ozone Attainment Demonstration State Implementation Plan Revision, docket 0908Pot2, is designed to solicit comment on LDEQ's proposed demonstration of attainment with the 8-hour standard. The companion Potpourri Notice, "Baton Rouge Area Redesignation Request and 1997 8-Hour Ozone Maintenance Plan, Docket 0908Pot3, solicits comment on LDEQ's submittal to EPA to satisfy the requirements of §107(d)(3) outlined above. LDEQ's Potpourri Notice "Control Techniques Guidelines (CTG) State Implementation Plan (SIP), 0908Pot4, solicits comment concerning LDEQ's proposed compliance with the CAA §172(c)(1) requirement that SIPs for nonattainment areas must include "reasonably available control measures"(RACM), including "reasonably available control techniques" (RACT), for sources of emissions within the area and the CAA §182(b)(2) requirement that LDEQ must revise its SIPs to include RACT for sources of VOC emissions covered by an EPA control techniques guidelines document (CTG) issued after November 15, 1990 and prior to the area's date of attainment. This proposed SIP revision is being submitted concurrently with the redesignation petition for these parishes in order to meet SIP obligations for this area. Finally, LDEQ's Potpourri Notice "Advance Notice of Rulemaking and Solicitation of Comments on Organic Solvents and Solvent Degreasers, Log #AQ307," Docket 0908Pot1, is an advanced notice of public rulemaking to gather information necessary to determine whether the SIP should also be revised to incorporate an updated CTG guideline published by EPA -- namely Industrial Cleaning Solvents [EPA-453/R-06-001 2006/09]. LDEQ intends to conduct this investigation, and subsequent rulemaking concurrently with the redesignation request.

The comments below demonstrate how the LDEQ proposals for the Baton Rouge Area meet each of these requirements for an attainment demonstration and full redesignation. These comments are offered in support of LDEQ's proposed actions. However, in certain comments, the Associations are requesting that LDEQ provide supplemental materials to EPA to further support these proposed actions.

II. The Baton Rouge Area Meets All Requirements for Redesignation to Attainment.

A. Demonstration of Attainment

The Baton Rouge Area met the 8-hour ozone NAAQS for the 2006-2008 period. Under EPA regulations at 40 C.F.R. Part 50, the 8-hour ozone standard is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 ppm (i.e., less than or equal to 0.084 ppm or 84 ppb based on data rounding conventions specified in appendix I of 40 CFR part 50) over the most recent three-year period at all monitors in an area. Such supporting data must meet a minimum data completeness requirement. The completeness requirement (specified in Appendix I of 40

C.F.R. Part 50) for ozone data supporting a determination of attainment and a redesignation to attainment is met when the annual average percent of days with valid ambient monitoring data is greater than 90 percent for the ozone seasons during the three-year period, with no single year with less than 75 percent data completeness during the ozone season.

As part of the August 20, 2009 ozone redesignation request, the LDEQ submitted summarized ozone monitoring data indicating the top four daily maximum 8-hour ozone concentrations for each monitoring site in the Baton Rouge Area during the 2006-2008 period. These summarized worst-case ozone concentrations are part of the quality-assured ozone data collected in this area and recorded in the federal Air Quality System. The annual fourth-high 8-hour daily maximum concentrations for each year during the 2006-2008 period, along with the 3-year averages, are summarized in Table 1 below.

Table 1.--Annual Design Values³ for 8-Hour Ozone Concentrations in Parts Per Million (ppm) for the Baton Rouge Area

Monitor Site	2006 Design value (ppb)	2007 Design value (ppb)	2008 Design value (ppb)
Baker	87	87	79
Capitol	80	80	75
LSU	91	89	80
Pride	81	81	77
Port Allen	85	83	78
Bayou Plaquemine	80	81	79
Carville	84	85	81
Grosse Tete	83	86	80
Dutchtown	82	84	83
French Settlement	77	80	79

* Highlighted areas show where monitor's design value was in compliance with the 8-hour standard.

The monitored ozone concentrations for 2006-2008 show that the entire Baton Rouge Area has attained the 8-hour ozone standard as the design value for all 10 monitors is below ≤ 84 ppb. The current design value for the area is 83 ppb, based upon the Dutchtown monitor. The data collected at these monitoring sites show that the area satisfies the CAA requirement that the ozone standard must be attained at all monitoring sites in the area. Finally, available (some of which is quality assured, and some of which has not yet been quality-assured) ozone monitoring data from 2009 indicates that all monitors in the Baton Rouge Area continue to attain the ozone NAAQS.

It is the Association's understanding that the data in Table 1 meets the data completeness requirement is also met because the average percent of days with valid ambient

³ The design value is the the average of the annual fourth-high daily maximum 8-hour average ozone concentrations measured and recorded at each monitor.

monitoring data is greater than 90%, and no single year has less than 75% data completeness. However, LDEQ's proposed redesignation request documentation does not specifically state this fact. **The Associations therefore request that LDEQ provide a statement to EPA, and/or amend Section 2.1 of the redesignation document, to specifically confirm that the monitoring data met the data completeness requirements.**

Per guidance from EPA concerning redesignation requests and per 40 C.F.R. Part 58, LDEQ must commit to continue ozone monitoring in this area as part of the State's ozone maintenance plan. LDEQ specifically made this commitment in Section 6.0 of its redesignation document; thus satisfying this legal requirement. However, LDEQ did not specifically state that it will consult with EPA prior to altering the existing monitoring network if changes become necessary in the future, which is an additional requirement of Part 58. **The Associations request that LDEQ provide a statement to EPA, and/or amend Section 6.0 of the redesignation documents, to specifically confirm that it will meet the 40 C.F.R. Part 58 consultation requirements prior to making any changes to the monitoring network.**

Therefore, EPA should promptly make a finding that the ozone monitoring data submitted by the State of Louisiana provide an adequate demonstration that the Baton Rouge Area has attained the 8-hour ozone NAAQS. **Further, the Associations request that LDEQ request EPA to make this finding through a Clean Data Policy determination in advance of the final, full redesignation determination pursuant to 40 C.F.R. §51.918, in order to make it clear that certain SIP requirements are suspended while EPA reviews the full redesignation request.**

B. The SIP for the Baton Rouge Area is Fully Approvable Under §110(k) of the CAA

The Baton Rouge Area initially was designated as a marginal nonattainment area under the 8-hour ozone standard, with a deadline of June 15, 2007, within which to achieve attainment. As the Area did not attain the standard by that date, EPA reclassified the area to "moderate" status on April 21, 2008, with an attainment deadline of June 15, 2010. 73 Fed. Reg. 15087, March 21, 2008. As discussed above, the area attained the standard in 2008, prior to the June 2010 deadline.

The SIP revision for the Baton Rouge Area must be fully approved under Section 110(k). This section of the CAA contains the requirements for SIP completeness, deadlines, full, partial and conditional approval, and disapproval. **It is clear that approval action on SIP elements and the redesignation request may occur simultaneously.** An area cannot be redesignated if a required element of its plan is the subject of a disapproval, a finding of failure to submit, or to implement the SIP; or partial, conditional, or limited approval. **However, SIPs must be fully approved only with respect to applicable requirements.** Thus, in order for the Baton Rouge Area to be redesignated, LDEQ must demonstrate that the SIP meets all requirements of CAA § 110 and Part D that were **applicable.** Due to the transition from the 1-hour rule to the 8-hour rule, this involves a determination of what requirements for the 1-hour standard are applicable and what requirements for the 8-hour standard are applicable.

The Associations believe that the currently effective SIP, along with pending SIP revision submittals by LDEQ to EPA Region 6, including the CTG revisions SIP proposed at Docket 0908Pot4, fully satisfy all 1-hour and 8-hour applicable requirements. The only potential exception is the requirement to revise the existing SIP to incorporate the updated CTG document for Industrial Cleaning Solvents. However, as discussed further below, LDEQ has initiated comment on whether such rule is required in order to fully implement RACT requirements and will process the rulemaking concurrently with EPA's review of the Attainment Demonstration SIP and the Redesignation Request and Maintenance Plan. If required, this rule will be adopted as part of the Maintenance SIP.

1. Basic Infrastructure SIP Requirements Under CAA §110(a)

On March 27, 2008, EPA made a finding in the Federal Register that LDEQ met the basic infrastructure requirements for Section 110(a) State Implementation Plans for the 8-hour Ozone NAAQS. 73 Fed. Reg. 16205. The Fact Sheet for this rule stated: "For those states that have made submissions that address all of the elements fully or partially, EPA is making a finding that those SIPs are "complete" for the whole plan or the complete elements, as applicable. This finding initiates a 1-year deadline for EPA to take action on the submissions pursuant to section 110(k) -- requiring EPA to approve or disapprove the documents within one year." The Fact Sheet summarized the status of the state plans as follows:

- The following 13 states/territories failed to make submissions to satisfy the basic program requirements for managing ozone air quality:
 - Alaska, American Samoa, Arizona, Guam, Hawaii, Idaho, Nevada, North Dakota, Commonwealth of the Northern Mariana Islands, Oregon, Texas, Vermont, Washington
- The following 21 states/district made submissions that satisfy some, but not all of the basic program requirements for managing ozone air quality:
 - Arkansas, California, Delaware, Florida, Georgia, Illinois, Maryland, Massachusetts, Minnesota, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Pennsylvania, Puerto Rico, Tennessee, Virgin Islands, Virginia, Washington DC, West Virginia
- **The following 22 States made submissions that satisfy the basic program requirements for managing ozone air quality:**
 - Alabama, Colorado, Connecticut, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Mississippi, Missouri, Montana, Nebraska, New Hampshire, Ohio, Rhode Island, South Carolina, South Dakota, Utah, Wisconsin, and Wyoming.

The Associations believe that the LDEQ SIP satisfies all of the infrastructure elements required by §110(a) of the CAA.

2. Applicable One-Hour Nonattainment Area Requirements

The 1-hour ozone standard was revoked by EPA in 2004, effective on June 15, 2005; however, under the EPA's Phase I Transition Rule, to prevent anti-backsliding areas designated nonattainment for the 1-hour standard at the time of the 8-hour designations remained subject to certain control measures that applied by virtue of the 1-hour classification. At the time of the 1997 8-hour ozone designation to nonattainment, the Baton Rouge Area was classified as severe under the 1-hour standard. Per 40 C.F.R. 51.905(a)(1), the applicable 1-hour requirements in 51.900(f) continue to apply after revocation of the 1-hour standard. (Note that EPA proposed to amend 40 C.F.R. 51.905 on January 19, 2009, but that rulemaking is not yet final.)

For the Baton Rouge Area, the 1-hour requirements applicable according to 40 C.F.R. 51.905(a)(1) and 51.900(f) are:

- Reasonably Available Control Technology (RACT) under CAA § 172(b) - these requirements have been satisfied through the approved or pending SIP revisions noted at <http://www.deq.louisiana.gov/portal/Default.aspx?tabid=2381>, including the CTG SIP revision proposed at Docket 0908Pot4. The only potential exception to this is discussed in the Advanced Notice of Public Rulemaking (Docket 0908Pot1) for revisions to the Industrial Solvent Cleaning rule already contained in current LAC 33:III.2123. Sections 172, 182(b)(2), and 182(f) of the CAA require implementation of RACT for sources that are subject to Control Techniques Guidelines (CTGs) that are promulgated by U.S. EPA. EPA updated a CTG document for Industrial Solvent Cleaners in September 2006. As a Subpart 2 moderate areas under the 1997 8-hour ozone standard, the Subpart 2 implementation guidelines require VOC RACT to be in place if sources within the area exist; however, the State can adopt equivalent RACT measures. LDEQ is still evaluating and consulting with U.S. EPA regarding the CTGs for Industrial Solvent Cleaning to determine if a rule to reduce VOC emissions from these two categories is necessary. Information from the ANPR will assist in this determination. This analysis will be being submitted concurrently with the redesignation petition for these counties in order to meet SIP obligations for this area.
- Major source applicability cut-offs for purposes of RACT under CAA § 182(c) - these were submitted to EPA Region 6 as a SIP revision on May 9, 2005. See <http://www.deq.louisiana.gov/portal/tabid/2910/Default.aspx>
- Rate of Progress (ROP) reductions under CAA § 182(b)(1)(A) - This was submitted to EPA Region 6 on May 9, 2005. See <http://www.deq.louisiana.gov/portal/tabid/2910/Default.aspx>. (See also the 8-hour 2002-2008 RFP demonstration in <http://www.deq.louisiana.gov/portal/tabid/2984/Default.aspx>.)

- Stage II vapor recovery under CAA § 182(b)(3) - Adopted as LAC 33:III.2132 on November 20, 1992, approved by EPA March, 25, 1994 at 59 Fed. Reg. 14114.
- Clean fuel fleet program under CAA §182(c)(4) – On July 19, 1999, EPA approved a revision to the SIP for the Baton Rouge Area to allow a substitute measure in lieu of the Clean Fuel Fleet Program. This was based upon a showing that additional controls for tank filling operations under LAC 33:III.2103 would achieve equivalent or better VOC reductions. See 64 Fed. Reg. 38577. <http://www.epa.gov/fedrgstr/EPA-AIR/1999/July/Day-19/a18037.htm>.
- Enhanced ambient monitoring under CAA § 182(c)(1) – the Baton Rouge Area has 10 ambient monitors that meet these requirements, as described in LDEQ's supporting materials.
- NOx requirements under CAA § 182(f) - At LDEQ's request, EPA revoked the NOx waiver for the Area. LDEQ subsequently enacted LAC 33:III.2201 for NOx control during ozone season for sources emitting 50 TPY or more. LDEQ subsequently lowered the threshold in LAC 33:III.2201 to 25 TPY and submitted such SIP revision on May 9, 2005, where it is pending EPA approval. See <http://www.deq.louisiana.gov/portal/LinkClick.aspx?fileticket=SBFXz2Hit2U%3d&tabid=2910>

3. One Hour Requirements That Are Not Applicable

The Associations believe that LDEQ should specifically state that CAA Section 185 penalty fees, Severe Area New Source Review, and contingency measures for failure to attain the 1-hour standard are not applicable requirements for the SIP. LDEQ implies such in the materials found in the SIP Revision, 0908Pot2, but should more directly state such to EPA Region 6 and should provide the following supporting rationale to EPA.

The requirement to adopt a Section 185 penalty fee program and Severe Area NSR were obligations that pertained to the Area at the time it was reclassified from serious to severe under the 1-hour standard. Such requirements were due to be placed in the SIP by June 23, 2004. However, before those requirements became due in the SIP, EPA promulgated the Phase I 8-Hour Implementation Rule, which specifically stated that these were no longer SIP obligations. 69 FR 23996, Apr. 30, 2004. This is found in 40 CFR 51.905 (e), which states:

(e) What obligations that applied for the 1-hour NAAQS will no longer apply after revocation of the 1-hour NAAQS for an area?

(2) Findings of failure to attain the 1-hour NAAQS

(ii) Upon revocation of the 1-hour NAAQS for an area, the State is no longer required to include in its SIP provisions for CAA section 181(b)(4) and 185 fees on emissions

sources in areas classified as severe or extreme based on a failure to meet the 1-hour attainment date. Upon revocation of the 1-hour NAAQS in an area, the State may remove from the SIP for the area the provisions for complying with the section 185 fee provision as it applies to the 1-hour NAAQS.

(iii) Upon revocation of the 1-hour NAAQS for an area, the State is no longer required to include in its SIP contingency measures under CAA sections 172(c)(9) and 182(c)(9) that would be triggered based on a failure to attain the 1-hour NAAQS or to make reasonable further progress toward attainment of the 1-hour NAAQS. A State may not remove from the SIP a contingency measure that is an applicable requirement.

* * *

(4) Nonattainment area new source review under the 1-hour NAAQS.

(i) Upon revocation of the 1-hour ozone NAAQS, for any area that was designated nonattainment for the 1-hour ozone NAAQS, the area's implementation plan provisions satisfying sections 172(c)(5) and 173 of the CAA (including provisions satisfying section 182) based on the area's previous 1-hour ozone NAAQS classification are no longer required elements of an approvable implementation plan. Instead, the area's implementation plan must meet the requirements contained in paragraphs (e)(4)(ii) through (e)(4)(iv) of this section.

Therefore, as of April 30, 2004, LDEQ was not required to include such measures in a SIP provision. The Phase I Implementation Rule also provided that 1-hour nonattainment areas were not required to revise their SIPs to adopt "severe" area New Source Review ("NSR") requirements, such as lower major source thresholds and more stringent offset requirements, as part of the applicable anti-backsliding requirements. See 40 C.F.R. § 51.905(e)(4).

The Phase I Implementation Rule was vacated by the United States Court of Appeals for the District of Columbia Circuit on December 22, 2006, with a clarification to the decision on June 8, 2007. *South Coast Air Quality Mgmt. Dist. v. Env'tl Prot. Agency*, 472 F.3d 882 (D.C. Cir. 2006), *amended and rehearing denied*, 489 F.3d 1245 (D.C. Cir. 2007), *cert. denied*, 128 S. Ct. 1065 (Jan. 14, 2008). The clarification to the decision indicated that only the appealed portions were vacated. Because the requirements for 1-hour contingency plans were not vacated, the provisions of 51.905(e)(2)(iii) above remain unaffected. Thus, it is clear that the LDEQ maintenance SIP need not include contingency measures for failure to meet 1-hour standard, but need contain only contingency measures associated with the 8-hour standard.

The final South Coast decision does affect the requirements of 40 CFR 51.905(e)(2)(ii) with regard to Section 185 penalty fees and 40 C.F.R. 51.905.(e)(4) with regard to NSR. The *South Coast* decision did not become final until January 14, 2008, when the United States Supreme Court declined the writ of certiorari. *Id.* In amending the decision in June 2007, the D.C. Circuit in *South Coast* specifically stated: "EPA is urged to act promptly **in promulgating a revised rule** that effectuates the statutory mandate by implementing the eight-hour standard." *South Coast*, 489 F.3d at 1248-49 (emphasis added). It is clear that this is needed. Even if

51.905(e)(2)(ii) and 51.905(e)(4) are considered vacated, the requirements to include 185 fees and NSR are not listed as applicable requirements yet in 51.900(f).

As a result of the *South Coast* decision, EPA is required to conduct rulemaking to specify when and how former 1-hour nonattainment areas are subject to the requirement to continue 1-hour New Source Review and Section 185 fee programs. Because EPA ceased making formal redesignations to attainment with the 1-hour standard when the 1-hour standard was revoked, there is ambiguity about the appropriate starting point for such requirements and about the content of those requirements regarding the cessation of the obligations. EPA's positions in various proceedings since adoption of the Phase I rule and even subsequent to the final *South Coast* decision have given rise to confusion both concerning when there is a requirement to adopt these as rules, and what the rules may state concerning termination of the obligations once adopted.

There is also ambiguity about whether these conclusions as to the cessation of old 1-hour requirements differ depending upon whether an area has already adopted them in its SIP or not as of the date of attainment.⁴ EPA has undertaken a proposed rulemaking to implement the *South Coast* decision and to address some of these issues, but there is not yet a final rule. See 74 Fed. Reg. 2936 (Jan. 16, 2009).

In the meantime, the Baton Rouge Area achieved attainment with both the 1-hour and 8-hour standards. Attainment with the standards effectively negates any requirements for LDEQ or EPA to impose any of the former 1-hour ozone requirements that have not previously been enacted and relied upon to achieve attainment. See *Sierra Club v. Whitman*, 285 F.3d 63 (D.C. Cir. 2002); *Sierra Club v. U.S. Env'tl. Prot. Agency*, 375 F.3d 537 (7th Cir. 2004). Such requirements were imposed under the 1-hour standard, which has since been revoked, and were continued under the 2004 8-hour standard only to prevent backsliding until 1-hour attainment was achieved. The Baton Rouge Area has done more – it achieved attainment with both the 1-hour standard and the 2004 8-hour standard. The fact that attainment has been achieved without these old 1-hour provisions effectively negates any requirement for LDEQ or EPA to adopt them.

First, the Baton Rouge Area attained the 1-hour standard during the 2004-2006 time period, as demonstrated by Table 1 below. LDEQ requested this determination through a February 28, 2007 letter to EPA; however, EPA took no action at that time due to the fact that

⁴ The opinion in *South Coast* indicates that, at worst, any old 1-hour requirements such as these are no longer applicable once an area achieves attainment with the 8-hour standard, and suggests that such requirements could be moved from applicable measures to contingency measures where an area is in attainment with the 1-hour standard, but not yet the 8-hour standard. The latter would be applicable to an area that had already included such requirements in a SIP; but it is not clear that these would be required contingency measures where the area achieves attainment with both the 1-hour and 8-hour standards without having these measures in the SIP. The EPA Clean Data Policy, along with several EPA actions and judicial decisions, would indicate that the answer is no. Further, EPA has proposed to approve a SIP provision for the San Joaquin Valley SIP that specifies Section 185 fees cease when an area achieves attainment with the 1-hour standard, rather than the 8-hour standard. See 74 Fed. Reg. 33,950 (July 14, 2009). The proposed San Joaquin Valley rule states: "This rule shall cease to be effective when the Administrator of the U. S. EPA designates the San Joaquin Valley Air Basin (SJVAB) to be in attainment of the federal one-hour standard for ozone." See San Joaquin Valley Unified Air Pollution Control Dist. Rule 3170, § 2.0 (emphasis added).

the 1-hour standard was revoked and EPA's position at that time was that it was no longer making determinations of attainment under the 1-hour standard.

Table 1 - One-Hour Ozone Data for the Baton Rouge Ozone Nonattainment Area

Monitor Site	Design value (ppb) (4 th high over 3 year period)*		Number of exceedances					3-year exceedance average**	
	2004-2006	2006-2008	04	05	06	07	08	2004-2006	2006-2008
Baker	124	111	2		1			1.0	0.33
Capitol	103	97	1					0.33	0
LSU	120	110	1	2			2	1.0	0.66
Pride	113	101		1				0.33	0
Port Allen	118	106	1		1			0.66	0.33
Bayou Plaquemine	107	114						0	0
Carville	118	113	1	1				0.66	0
Grosse Tete	112	110		1	1	1		0.66	0.66
Dutchtown	113	112				1		0	0.33
French Settlement	98	100			1			0.33	0.33
		Total	6	5	4	4	0		

*The fourth-highest daily ozone concentration over the 3-year period is called the design value ("DV"). The DV indicates the severity of the ozone problem in an area; it is the ozone level around which a state designs its control strategy for attaining the ozone standard. A monitor's DV is the fourth highest ambient concentration recorded at that monitor over the previous 3 years. An area's DV is the highest of the design values from the area's monitors. Thus the design value for the Baton Rouge Area for 2004-2006 was 124 ppb, and the design value for the area for 2006-2008 is 114 ppb.

**An area violates the ozone standard if, over a consecutive 3-year period, more than 3 days of exceedances occur at the same monitor. Thus, a 3-year average of 1.0 or below shows the monitor is in compliance.

It is important to note that EPA has agreed that the area achieved the 1-hour standard. On March 26, 2009, EPA published a proposed Determination of Attainment with the 1-Hour Ozone Standard for the 5-parish Baton Rouge Area. See 74 Fed. Reg. 13,166 (Mar. 26, 2009). This proposal also suspends certain air quality planning requirements under the 1-hour standard pursuant to the EPA Clean Data Policy.⁵

The Associations believes that it makes little sense to require an area to adopt 1-hour SIP requirements for Section 185 fees or severe area NSR when the area has already achieved 1-hour attainment. EPA's proposed rule to implement the *South Coast* decision, published January 19, 2009, specifically indicated that where there is a Clean Data Policy Determination, such suspends the requirement to adopt a Section 185 fee rule. See 74 Fed. Reg. 2936, 2941 (Jan. 16, 2009). EPA indicated that it would use the "Clean Data Policy" to suspend the requirement for 1-

⁵ EPA's Clean Data Policy is reflected in the May 10, 1995, memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone Ambient Air Quality Standard" (hereinafter, the "Clean Data Policy").

hour contingency measures after EPA makes a finding that an ozone nonattainment area attains the revoked 1-hour standard. *Id.* EPA also indicated in that same Preamble discussion that the requirement for a Section 185 or equivalent program would be suspended under the Clean Data Policy where an area achieves 1-hour attainment. *Id.* at 2942. The Associations support the use of the Clean Data Policy to suspend contingency measures and Section 185 fee or equivalent programs.

As noted, EPA has formally proposed a Clean Data Policy determination for the Baton Rouge Area. LDEQ should urge EPA to complete this process and confirm that the Baton Rouge Area is not required to adopt a Section 185 fee rule when it is clear that the area has achieved attainment.

Such a policy recognizes in a common-sense way that certain requirements of the CAA are written so as to be operative only if the area is not attaining the standard. Requirements that are designed to bring an area into attainment should be suspended once the goal of attainment has been achieved, provided the area continues its monitoring program and continues to attain the relevant standard. EPA has relied upon the Clean Data Policy in numerous actions over the last fourteen years. *See, e.g.*, 73 Fed. Reg. 61,357 (Oct. 16, 2008)(Dallas-Ft. Worth, TX); 67 Fed. Reg. 49,600 (July 31, 2002) (Cincinnati-Hamilton, OH-KY); 65 Fed. Reg. 37,879 (June 19, 2000)(Cincinnati-Hamilton, OH-KY); 61 Fed. Reg. 20,458 (May 7, 1996)(Cleveland-Akron-Lorain, OH); 66 Fed. Reg. 53,094 (Oct. 19, 2001)(Pittsburgh-Beaver Valley, PA); 60 Fed. Reg. 37,366 (July 20, 1995)(Grand Rapids and Muskegon, MI); 61 Fed. Reg. 31,832-33 (June 21, 1996)(Grand Rapids, MI); 60 Fed. Reg. 36,723 (July 18, 1995)(Salt Lake and Davis Counties, UT); 68 Fed. Reg. 25,418 (May 12, 2003)(St. Louis, MO); and 69 Fed. Reg. 21,717 (Apr. 22, 2004)(San Francisco Bay Area, CA). The Tenth, Seventh and Ninth Circuits have also upheld EPA rulemakings applying the Clean Data Policy. *See Sierra Club v. U.S. Env'tl Prot. Agency*, 99 F.3d 1551 (10th Cir. 1996); *Sierra Club v. Env'tl Prot. Agency*, 375 F.3d 537 (7th Cir. 2004); *Our Children's Earth Found. v. EPA*, No. 04-73032 (9th Cir. June 28, 2005) memorandum opinion. Finally, the DC Circuit Court on July 10, 2009 upheld the EPA's use of the Clean Data policy in the Ozone Phase II implementation rule decision.

The Associations believe that it is fully consistent with CAA Sections 185 and 172(e) to suspend the requirements for a Section 185 program when an area is determined to be in attainment with the 1-hour standard. The purpose of Section 172(e) is to prevent backsliding. In the absence of EPA's enactment of the 8-hour standard, the Section 185 fee program would apply only until an affected area has achieved air quality at the level of the 1-hour standard.⁶ Thus, suspending the requirement for such program when the area has achieved the objective without the program is appropriate as long as no backsliding occurs. In addition, the Clean Air Act addresses the circumstance of a 1-hour ozone area that attains and returns to non-attainment by specifying that the new classification is to be consistent with the new ozone design value data (not the last classification in effect before attainment). *See* CAA §181(b).

Moreover, because EPA has not adopted rules to specify what LDEQ must do with respect to addressing Section 185 Penalty Fees or 1-Hour Severe New Source Review in its SIP, there is no present legal requirement for LDEQ to adopt such requirements in its maintenance

⁶ *See* 42 U.S.C. § 7511d.

SIP. Those requirements clearly were not required under the Phase I Implementation Rule. The *South Coast* decision directed EPA to enact rules to provide for appropriate transition. EPA has begun, but has not yet completed, that process. In any case, because the Baton Rouge Area is in attainment with both the 1-hour and the 2004 8-hour standards, even if EPA's later rulemaking requires nonattainment areas to now adopt SIP revisions for Section 185 Penalty Fee programs or for 1-hour New Source Review, such requirements cannot be applied to the Baton Rouge Area.

The Associations agree with LDEQ's assessment that Section 185 Penalty Fees should not be imposed in the Baton Rouge Area. Even if there was a Section 185 fee rule, the actual imposition of penalties under such program is to be triggered by an EPA finding that the area did not meet the old 1-hour deadline. EPA never made a finding that the Baton Rouge Area failed to achieve the 1-hour standard by the November 15, 2005, deadline. EPA did not do so because the 1-hour standard was revoked at that time and the Phase I Implementation Rule was still in effect pre-*South Coast*. Thus, there was no need to make any such finding. Pursuant to CAA Section 181(b)(2)(A), 42 U.S.C. § 7511(b)(2)(A), however, Section 185 Penalty Fees cannot be imposed until that finding is made. Further, no requirements for Section 185 Penalty Fees can be imposed retroactively. See *Sierra Club v. Whitman*, 285 F.3d 63 (D.C. Cir. 2002). Because such a requirement has never started, and because the Baton Rouge Area is now in attainment of both the 1-hour and 8-hour standards, no Section 185 Penalty Fees can be imposed against the Baton Rouge Area. It would be useless then, to require a SIP to contain a Section 185 fee rule.

It should be noted that EPA recently proposed partial approval a Section 185 penalty fee rule for the San Joaquin Ozone Nonattainment Area. 74 Fed. Reg. 41826, August 19, 2009. The portion of the San Joaquin rule for which partial approval was proposed specifically provides that the obligation for such fees ends when the area is in 1-hour attainment, not 8-hour attainment. Thus, EPA has proposed an interpretation of Section 185 that is consistent with the position of the Associations with respect to when the obligation for fees ceases.

With respect to NSR requirements, LDEQ's SIP presently contains requirements more stringent than required for a moderate 8-hour nonattainment area. The CAA requires a major source threshold of 100 TPY for NOx and VOC, a 40 TPY threshold for major modifications, and an offset ratio of 1.15 to 1 for moderate 8-hour areas. LDEQ's rules use a 50 TPY major source threshold for VOC and NOx, a 25 TPY major modification threshold, and a 1.2 to 1 offset ratio. See LAC 33:III.504.M. LDEQ is proposing to continue this requirement in its maintenance SIP. LDEQ did not promulgate a rule to implement 1-hour severe area NSR requirements (25 TPY major source threshold, 1.3 to 1 offset), due to the Phase I rule and lack of EPA rulemaking since the South Coast decision. However, its existing SIP and the maintenance SIP are more stringent than 8-hour requirements.

It should also be noted that EPA has taken the position that areas being redesignated need not comply with the requirement that a New Source Review (NSR) program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without part D NSR, since Prevention of Significant Deterioration (PSD) requirements will apply after redesignation. This was specifically stated in EPA's approval for redesignation of Jefferson Co., Ohio to attainment. 72 Fed. Reg. 711, January 8, 2007. In the Federal Register notice, EPA supported this decision by citing a memorandum from Mary Nichols, EPA Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source

Review Requirements for Areas Requesting Redesignation to Attainment." It went on to state "Ohio is not relying on reductions from NSR to attain the ozone standard, and so the State need not have a fully approved part D NSR program prior to approval of the redesignation request. The State's PSD program will become effective in Jefferson County upon redesignation to attainment. See rulemakings for Detroit, Michigan (60 FR 12467-12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469-20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); Grand Rapids, Michigan (61 FR 31834-31837, June 21, 1996)." See also the final decision for Jefferson Co., Ohio at 72 Fed. Reg. May 16, 2007.

For all of these reasons, LDEQ's determination that a Section 185 fee rule and a 1-hour severe area NSR rule are not applicable SIP requirements at this time is justified.

3. Applicable Eight-Hour Requirements

The requirements for a SIP for a moderate ozone nonattainment area are set forth below:

- (1) An attainment demonstration (40 CFR 51.908);
- (2) Provisions for reasonable available control technology (RACT) and reasonably available control measures (RACM) (40 CFR 51.912);
- (3) Reasonable further progress reductions in volatile organic compound (VOC) and nitrogen oxide (NOx) emissions (40 CFR 51.910);
- (4) Contingency measures to be implemented in the event of failure to meet a milestone or attain the standard (CAA 172(c)(9));
- (5) A vehicle inspection and maintenance program (40 CFR 51.350);
- (6) NOx and VOC emissions offset of 1.15 to 1 for major source permits (40 CFR 165(a)).

The Associations support LDEQ's analysis of these requirements contained in Dockets 0908Pot2 and 0908Pot3. However, the associations believe that LDEQ should supplement its submittal to EPA as discussed in the following sections.

C. The Improvement in Air Quality Is Due to Permanent and Enforceable Emission Reductions

The Associations support LDEQ's conclusion stated in Section 2.3 of the Redesignation Request that the air quality improvement in the Baton Rouge Area is due to permanent and enforceable reductions in VOC and NOx emissions that have resulted from implementation of the SIP, federal air control regulations and other enforceable reductions. The changes documented by LDEQ in its request are reductions in anthropogenic (man-made or man-based) sources in the area, occurring between 2002 and 2008. Both the 1-hour and the 8-hour inventories submitted to EPA demonstrate the significant decreases in VOC and NOx emissions.

The primary emission reductions within the area resulted from the NOx control rule, LAC 33:III.2201 adopted by LDEQ in 2002, which required reductions from major sources by May 1, 2005. The rule was later amended to lower the applicability threshold from 50 TPY NOx to 25 TPY NOx. (This amendment was submitted by LDEQ in a SIP revision to EPA Region 6

for review in May 2005 due to the anti-backsliding requirements of the Phase I 8-Hour Ozone Implementation Rule. It is still pending at EPA Region 6 for full approval into the SIP, but has been effective as a matter of state law since prior to May 2005.) The rule was projected to result in 40 TPD NOx emission reductions. As indicated in the LDEQ's documentation supporting the proposed SIP Redesignation Request, 0908Pot2, the emission inventory comparison of 2002 to 2007 point source emissions indicates that there was a reduction of 16,415 TPY of NOx emissions from point sources subject to inventory reporting. This equates to a reduction of approximately 45 TPD greater than 40 TPD reduction during that time period. See <http://www.deq.louisiana.gov/portal/LinkClick.aspx?link=2984&tabid=2381>, at Section 3: Reasonable Further Progress, pp. 429-445. This fact provides supporting evidence of substantial NOx reductions in line with the projected impact of the rule.

The Associations suggest that LDEQ further supplement its discussion in this area by citing source material that supports the conclusion that NOx controls are more effective in ozone control within this area than are VOC controls. That principle may be widely known and accepted; however, it is not specifically discussed in the Redesignation Request and Maintenance Plan SIP.

In addition, LDEQ implemented rules to lower the applicability threshold for a number of VOC control regulations from 50 TPY to 25 TPY or lower. These regulatory amendments were submitted as a proposed SIP revision to EPA Region 6 on May 9, 2005. <http://www.deq.louisiana.gov/portal/tabid/2910/Default.aspx>. The reduction in point source VOC emissions from the 2002 inventory to the 2007 inventory was 2,167 TPY or about 5.9 TPD as demonstrated in the LDEQ August 20, 2009 proposed SIP revision. See <http://www.deq.louisiana.gov/portal/LinkClick.aspx?link=2984&tabid=2381>, at Section 3: Reasonable Further Progress, pp. 429-445.

The Associations agree with LDEQ's contention that there were also substantial reductions in mobile source emissions due to LDEQ's continued implementation of the Vehicle I/M program and EPA fuel and vehicle regulations. LDEQ received full approval from EPA for its low enhanced I/M program in 2002 (Final Rule, 67 Fed.Reg. 60594). The program included gas cap testing and visual anti-tampering checks on 1980 and newer gasoline-fueled cars and trucks weighing less than 10,000 lbs (gross vehicle weight rating). On-board diagnostic (OBD) testing is conducted on 1996 and newer vehicles. Annual emission testing is conducted using a decentralized network of certified motor vehicle inspection stations.

EPA has also enacted federal fuel and vehicle regulations that have led to permanent and enforceable reductions in emissions. These include the EPA Tier II rules, enacted on February 10, 2000. This rule required automakers to manufacture and sell lower-emitting cars and refineries to make cleaner, lower sulfur gasoline. Lower sulfur gasoline improves the efficiency of catalytic converters, thereby resulting in lower NOx emissions. The rules are being phased in between 2004 and 2009. U.S. EPA has estimated that when fully implemented, NOx emission reductions will be approximately 77% for passenger cars, 86% for smaller SUVs, light trucks, and minivans, and 65-95% reductions for larger SUVs, vans, and heavier trucks. EPA estimated that VOC emission reductions will be approximately 12% for passenger cars, 18% for smaller SUVs, light trucks, and minivans, and 15% for larger SUVs, vans, and heavier trucks.

The Associations are not certain that LDEQ adequately discussed the EPA Ultra-low Sulfur Diesel Requirements for Highway Vehicles in its Redesignation Materials and requests LDEQ to add further discussion of these requirements to the support materials presented to EPA. Under this program, beginning June 1, 2006, refiners started producing diesel fuel for use in highway vehicles with a sulfur content of no more than 15 ppm. At the terminal level, highway diesel fuel sold as low sulfur fuel was required to meet the 15 ppm sulfur standard as of July 15, 2006. For retail stations and fleets, highway diesel fuel sold as low sulfur fuel met the 15 ppm sulfur standard by October 15, 2006. These reductions have helped the area achieve attainment and are permanent, enforceable measures.

LDEQ's August 20, 2009 proposed SIP revision package estimates that peak weekday NOx emissions from mobile sources were reduced by 15.7 TPD and VOC emissions by 7.6 TPD as a result of these measures from the 2002 to the 2008 time period, even when considering mobile source VMT growth. **If reductions from the Ultra low Sulfur Highway Vehicle rule were not included in this estimate, the Associations request that LDEQ indicate that emissions will be even lower if this rule is considered.**

The Associations support LDEQ's position that EPA enacted Non-road Source Controls have resulted in emission reductions that are permanent and enforceable. As noted by LDEQ, these include the following four federal off-road measures:

(1) **Non-road Diesel Engines** – Two rules under this category have resulted and will continue to result in emission reductions. The final rule on control of emissions from non-road diesel engines was published on October 23, 1998 (63 Fed. Reg. 205). The rule was established to reduce emissions from non-road diesel engines and equipment by establishing stringent new emissions standards and requirements to ensure that engines maintain their level of emission performance as they age, to provide compliance flexibility to engine and equipment manufacturers, and to establish a voluntary program to encourage the introduction of low-emitting engines. In June 2004, U.S. EPA finalized the Clean Air Non-road Diesel Rule which requires stringent pollution controls on diesel engines used in industries such as construction, agriculture, and mining that will result in a reduction in NOx emissions. In addition, beginning in 2007, sulfur levels in non-road diesel fuels were reduced by 99 percent from current levels (from approximately 3,000 ppm now to 15 ppm in 2010). In the case of locomotive and marine diesel fuel, the second step will occur in 2012. The rule also requires engine manufacturers to use advanced clean technologies, similar to catalytic technologies used in passenger cars. New engine standards took effect, based on engine horsepower, in 2008. **While LDEQ discussed the 1998 rule, the Associations are not certain that LDEQ formally cited the 2004 Clean Air Non-road Diesel Rule in its materials and request that LDEQ do so.**

(2) **Marine Spark-Ignition Engines** – The final rule for control of emissions from new, gasoline, spark-ignition marine engines was published on October 4, 1996 (61 Fed. Reg. 194). The rule established, beginning in 1998, more stringent standards for manufacture of engines used in outboards, personal watercraft, and jet boats.

(3) Marine Compression-Ignition Engines - The final rule for control of emissions from new, compression-ignition, marine diesel engines, equal to or greater than 37 kilowatts, was published on December 29, 1999 (64 Fed. Reg. 249). The rule sets emission standards for engines and took effect between 2004 and 2007, depending on engine size.

(4) Locomotives and Locomotive Engines - The final rule for control of emissions from locomotives and locomotive engines was published on April 16, 1998 (63 Fed. Reg. 73). The rule sets emission standards for engines and includes a variety of compliance and enforcement provisions and regulations concerning the preemption of certain state and local controls for locomotives.

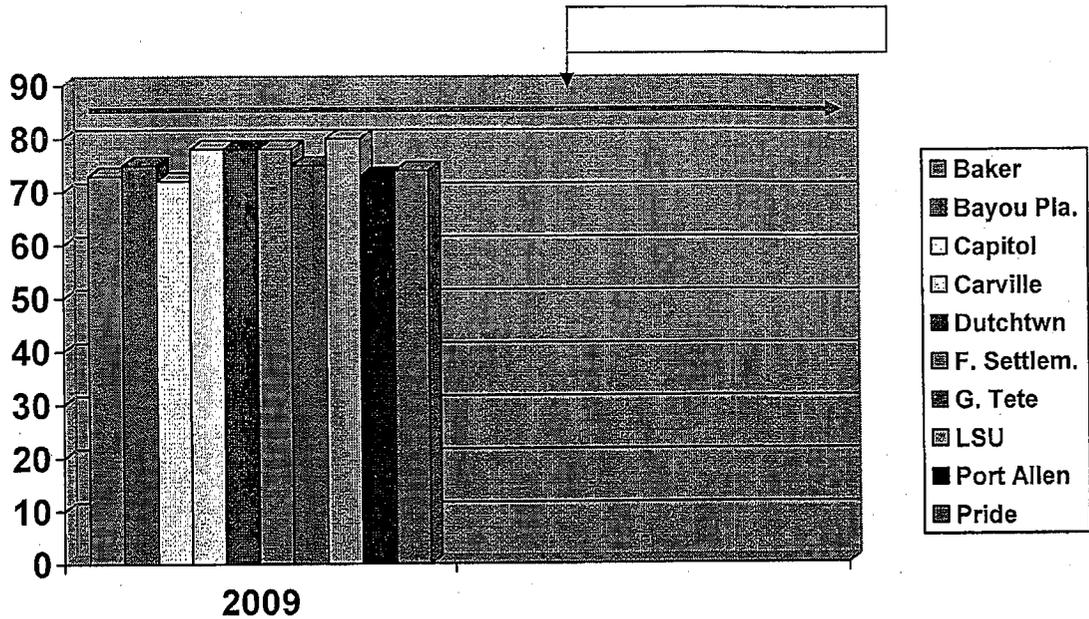
While LDEQ also stated that two other EPA national rules constitute permanent and enforceable measures resulting in emissions reductions, LDEQ did not discuss these rules other than citing them by title: National Volatile Organic Compound Emission Standards for Consumer Products and the National Organic Compound Emission Standards for Architectural Coatings ("AIM rule"). The Consumer Products Rule was enacted in September 1998 and established VOC content standards for 24 categories of household consumer. The requirements were phased-in from December 1998 through December 1999. See the following for the rule and implementation information. <http://www.epa.gov/ttn/atw/183e/cp/cppg.html>. The AIM rule was enacted in August 1998, and became applicable to architectural coatings manufactured after August 15, 1999. It established a VOC content limit for each of the 61 categories of architectural coatings. EPA's Fact Sheet indicated that it was expected to reduce emissions of VOCs by 113,500 tons per year, nationwide, representing a 20 percent reduction from 1990 levels. See Fact Sheet, regulations and implementation information at <http://www.epa.gov/ttnatw01/183e/aim/aimpg.html#IMP>.

The Associations also believe that LDEQ should discuss the impact of the **Mobile Sources Air Toxics Rule** in its redesignation materials submitted to EPA. This rule was enacted in February 26, 2007. See <http://www.epa.gov/OTAQ/toxics.htm#regs>. Under this rule, U.S. EPA issued a final rule to reduce hazardous air pollutants from mobile sources. Among these requirements in the rule are new standards to reduce non-methane hydrocarbon exhaust emissions from new gasoline-fueled passenger vehicles, more stringent evaporative emissions standards for new passenger vehicles and establishing standards that will limit hydrocarbon emissions that evaporate from and permeate through portable fuel containers such as gas cans. Because this rule has the co-benefit of reducing VOC emissions, LDEQ should also discuss the impact of this rule in its submittal to EPA for redesignation. While the fuel provisions of the rule do not become effective until 2010 and the evaporative emission standards for vehicles begin phase-in in 2009, this rule will provide an added measure of emission reductions that will help to assure continued attainment.

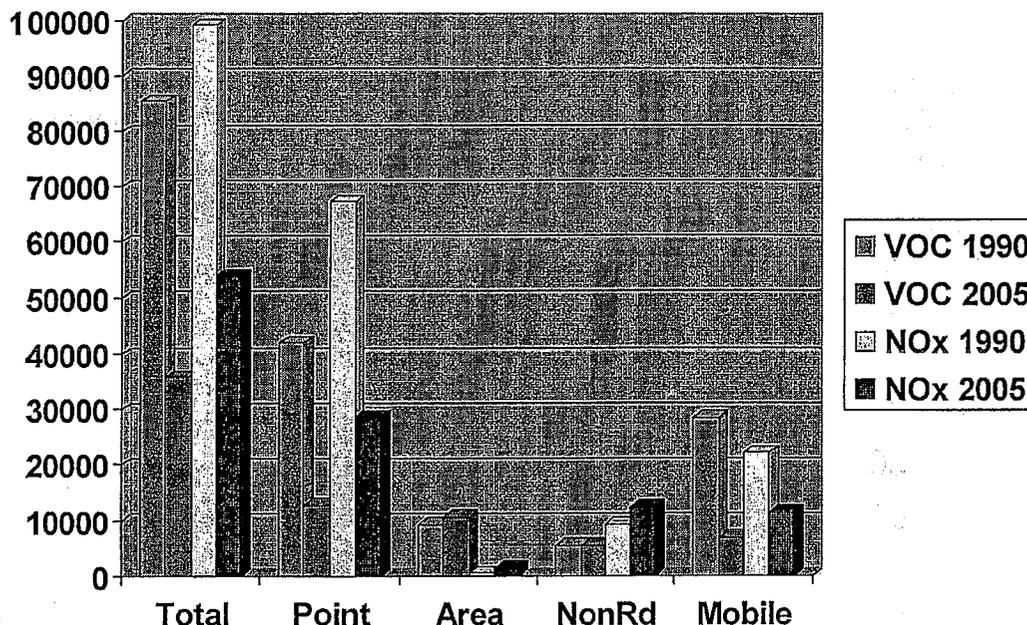
The Associations also request that LDEQ supplement its submittal to EPA with a discussion of any federal **Maximum Achievable Control Technology Standards** enacted pursuant to 40 CFR Part 63 that are effective within the area, in particular those that have become effective since the implementation of the 8-hour ozone standard. These regulations

are generally more stringent than the VOC RACT rules and have a co-benefit of reducing VOC emissions.

That the reductions observed through 2008 are continuing is also verified by 2009 monitoring data. As of August 31, 2009, the design values for all monitors within the Baton Rouge Area were well below 85 ppb. These design values are as follows:



Finally, the Associations believe that LDEQ should supplement the Redesignation and Maintenance SIP Revision request with a VOC and NOx trend analysis. An ozone design value trend analysis is provided, but a trend analysis for NOx and VOC emissions since 1990 would also be helpful. The Associations believe the following data should be included, and updated with more recently available data, to demonstrate the significant reductions in VOC and NOx emissions that have occurred since the adoption of the Clean Air Act amendments of 1990.



The above chart is based on certified LDEQ inventory information through 2005. This information demonstrates that total VOC emissions have been reduced by 58% and total NOx emissions by 46%. The largest contributors to these reductions were point source reductions of 70% for VOCs and 57 % for NOx, although reductions in mobile source emissions have also been significant. As indicated in LDEQ's supporting materials, further reductions are likely to occur both through SIP measures and additional federal regulatory provisions that are yet to be completely phased in.

D. The Proposed Maintenance Plan Fully Meets the Requirements of §175A of the CAA

LDEQ submitted a SIP revision request to provide for maintenance of the 8-hour ozone NAAQS in the Baton Rouge area. The Associations believe that the LDEQ proposal satisfies §175A of the CAA. This section requires that the maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after EPA redesignates the area to attainment. Within 8 years after the redesignation, Louisiana must submit a revised maintenance plan which demonstrates that maintenance of the standard will continue for another 10 years following the initial 10 year maintenance period. The maintenance plan must contain contingency measures, along with a schedule for implementation, to assure prompt correction of any future NAAQS violations.

Guidance from EPA, indicates that the ozone maintenance plan should address the following items:

- (1) The attainment VOC and NO_x emissions inventories;
- (2) a maintenance demonstration showing maintenance for the first 10 years of the maintenance period;
- (3) a commitment to maintain the existing monitoring network;
- (4) factors and procedures to be used for verification of continued attainment; and,
- (5) a contingency plan to prevent and/or correct a future violation of the NAAQS.

The Associations believe that the LDEQ proposed Maintenance SIP demonstrates maintenance of the 8-hour ozone NAAQS through 2018 (ten years after the 2008 attainment year) by documenting current and projected VOC and NO_x emissions. The information provided demonstrates that future emissions of VOC and NO_x will remain at or below the attainment year emission levels. Although the maintenance demonstration need not be based on modeling, the modeling provided by LDEQ in Section 2.1 of the Attainment Demonstration SIP supports the conclusion that the area will continue to maintain the standard. The modeling specifically addresses 2009 and projects attainment. See also comments in Section III below.

In addition to the reductions addressed specifically in the projected inventories, LDEQ should supplement its documentation to EPA by noting that implementation of the Clean Air Interstate Rule ("CAIR") both within the Baton Rouge area and from sources in nearby areas are likely to further reduce NO_x emissions. LDEQ should also supplement its analysis by discussing the fact that the NO_x rule in LAC 33:III.2201 applies to sources within the area of influence, not just within the nonattainment area. This has resulted in permanent and enforceable reductions from the Big Cajun power plant in Pointe Coupee Parish owned and operated by NRG. Recent permitting actions lowering such NO_x emissions should be discussed.

The Associations believe that the contingency plan proposed by LDEQ is adequate, but offer the following comments. The maintenance plan must identify the contingency measures to be considered for possible adoption, a schedule and procedure for adoption and implementation of the selected contingency measures, and a time limit for action by the State. The proposal by LDEQ does these things. However, the Associations believe that the statement concerning the trigger for contingency measures could be clarified and potentially changed. It currently states that the contingency plan will be triggered upon "monitoring a violation of the 8-hour ozone standard." The Association believes this should be clarified to provide a more specific definition of "violation" as follows:

If quality assured air quality monitoring data indicate that the area has violated the 1997 eight-hour ozone NAAQS (any consecutive three-year average of each annual fourth-highest daily maximum eight-hour ozone average at or above 85 parts per billion (ppb)) the Louisiana Department of Environmental Quality will implement specific contingency measures.

The Associations support LDEQ's proposed contingency measures, which seeks to extend its Chapter 22 Nitrogen Oxide ("NO_x") requirements to additional months. As noted above, the Baton Rouge Area is more suitable for a NO_x control strategy than a VOC control strategy. Currently, the provisions of Chapter 22 apply only during the ozone season (May 1st to September 30th). Under its proposed contingency measures, the Chapter 22 requirements would

apply from April to October. The Associations believe that LDEQ has miscalculated the NO_x reduction value. The LDEQ background information indicates that application of the rule reduced NO_x by 40 to 45 Tons Per Day (TPD) during the current May-Sept. period. However, LDEQ is presuming only 15.9 TPD for each day of April and October, rather than 40 TPD. The basis for this is not clear, and the Associations believe that the 40 TPD value should still be applicable to the April and October period. **LDEQ should review this portion of the Redesignation Request and Maintenance Plan SIP.**

Also, as indicated above, LDEQ's submittal to EPA concerning contingency measures focused on NO_x control would be strengthened if LDEQ specifically discusses the preference for a NO_x versus a VOC control strategy. This discussion should refer to the following documentation that supports a NO_x control strategy:

- September 24, 2001, request by the State of Louisiana to EPA to rescind the CAA §182(f) NO_x exemption for the Baton Rouge ozone nonattainment area along with the photochemical modeling results submitted to EPA to support that request.
- The December 31, 2001, request by the State of Louisiana to EPA for a revision to the Baton Rouge SIP requesting rescission of the transportation conformity NO_x exemption based on this photochemical modeling.
- December 31, 2001, request by the State of Louisiana to EPA for a revision to the vehicle I/M SIP for the Baton Rouge area to address the I/M NO_x requirements. The SIP included a revised program design intended to meet the Federal low enhanced I/M performance standard for both VOC and NO_x.
- EPA's Rescission of the Sections 182(f) and 182(b)(1) Exemptions to the Nitrogen Oxides (NO_x) Control Requirements for the Baton Rouge Ozone Nonattainment Area, 67 Fed.Reg. 30638, May 7, 2002.
- The photochemical grid modeling submitted to EPA in the Attainment Demonstration materials associated with 0908Pot3 and any other modeling information, reports, and correspondence with EPA concerning appropriate control strategy for the Baton Rouge area.

Additionally, the Associations strongly suggest that LDEQ add additional potential contingency measures from which to select, based upon the circumstances. Because implementation of potential contingency measures would not be expected to take place until well in the future, the identification of specific detailed measures may not be practical or desired at this time. The most appropriate contingency measures may be significantly different from the measures mentioned below due to technological, societal, economic, and political factors that are not predicted at this time. Thus, instead of a definitive commitment to implement a temporal extension of LAC 33:III.2201, LDEQ should list that as a likely contingency measure, but should also list other potential contingency measures as well.

Because Louisiana DEQ rulemaking procedures generally allow passage of a rule in less than 6 months, LDEQ would have time within the 24 month period to evaluate the cause of the

exceedance and tailor the appropriate contingency measure to the most effective ozone reduction strategy. These could include: Agreed to Orders with point sources or currently unregulated barge sources, extending RACT to smaller sources, diesel retrofits, truck idling requirements for mobile sources, consumer product requirements, and the like.

E. Louisiana Has Met All Requirements Applicable to the Area Under §110 and part D of the CAA

The Associations believe that the materials provided by LDEQ in these proposed actions demonstrate that LDEQ has met all requirements applicable to the Baton Rouge Area under Section 110 and Part D of the Clean Air Act. The Associations offer the following specific comments concerning reformulated gasoline.

The Associations concur with LDEQ's position that the Baton Rouge Area should not have to implement the requirement for RFG because the area has achieved both the 1-hour and 8-hour ozone NAAQS without the use of RFG. As LDEQ stated in its request for Redesignation Request, Section 5.3, the United States Court of Appeal for the Fifth Circuit granted the City-Parish of East Baton Rouge, the Parishes of Ascension, Iberville, West Baton Rouge, and Livingston, the Baton Rouge Chamber of Commerce, and the Louisiana Oil Marketers and Convenience Store Association a stay of the EPA-mandated requirement that the 5-parish Baton Rouge ozone nonattainment area sell only RFG within the area. *City of Baton Rouge et al. v. U.S. Envtl Prot. Agency*, No. 04-60408 (5th Cir. Aug. 2, 2004). The petitioners had argued, in part, that EPA had the authority to create *de minimus* exceptions to the CAA in situations where there will be little or no benefit (and even potential harm) as a result of CAA required measures. Before an argument on the merits, EPA agreed to voluntarily reconsider its prior decision to deny the area a waiver from the RFG requirement. Periodic status reports have been made to the court indicating that EPA is still reconsidering its decision.

The District of Columbia Circuit decision on July 10, 2009 on the Phase II Implementation rule, *Natural Resources Defense Council v. Envtl Prot. Agency*, No. 06-1045 (D.C. Cir. 07/10/09), did not affect the status of the *City of Baton Rouge* case. In fact, the decision specifically left it up to the Fifth Circuit to resolve the waiver issue. *Id.* at *52-53. The court did say, however, that as a general matter the requirement for RFG does not simply go away when the 1-hour standard goes away. *See id.* The court stated that the requirement would generally apply until 8-hour redesignation, however, the court indicated the Fifth Circuit waiver decision would control as to whether RFG would be required in the Baton Rouge Area. *Id.*

Since the time that EPA has considered the Baton Rouge Area's waiver request, EPA has established precedent that RFG is not required in a SIP maintenance plan upon redesignation, provided that the covered area demonstrates that whatever other fuel regime it will be using is as effective as RFG. *See* 70 Fed. Reg. 34,660 (June 15, 2005). The Atlanta nonattainment area was classified as a serious 1-hour ozone nonattainment area, *see* 56 Fed. Reg. 56,694 (Nov. 6, 1991). The area subsequently failed to attain the 1-hour standard and was bumped up to "severe" nonattainment status, effective January 1, 2004. *See* 68 Fed. Reg. 55,469 (Sept. 26, 2003). Atlanta was required to implement RFG, yet did not do so, *see* 70 Fed. Reg. 20495, 20504 (Apr. 20, 2005), but subsequently achieved attainment with the 1-hour ozone NAAQS standard. *See* 70 Fed. Reg. at 34,660. EPA did not require Atlanta to implement RFG as a SIP maintenance

plan requirement. EPA instead stated that the area could use either the "RFG or Georgia gasoline⁷ currently in place", as either would be effective in maintaining attainment. 70 Fed. Reg. at 20,504. (Note that Atlanta achieved the 1-hour standard in 2004, but still has not achieved attainment with the 8-hour standard. Baton Rouge has attained both.)

The Baton Rouge Area and the Atlanta ozone nonattainment area are in similar positions in several regards, as it relates to the matter of the RFG requirement. Both areas were bumped up from serious to severe ozone nonattainment areas, due to the failure to attain the 1-hour standard. As a result of this failure to meet the 1-hour ozone standard, both areas were subsequently required to use RFG under the terms of the CAA. Both areas were subsequently able to achieve the 1-hour standard even without the use of RFG within the areas.⁸ However, there are two important differences between these two areas. First, the Baton Rouge Area has attained both the 1-hour and 8-hour standards, while the Atlanta ozone nonattainment area has only achieved the 1-hour standard. Second, and quite importantly, EPA has allowed Atlanta to use its own low sulfur gasoline instead of RFG. EPA is still considering the Baton Rouge Area's RFG waiver request. Based on EPA's past action with respect to Atlanta's RFG waiver request, the Associations believe that EPA should not require the Baton Rouge Area to sell only RFG within the area, as the area has achieved attainment with the 1-hour and 8-hour standards with the Tier II low sulfur/low RVP gasoline currently in use in the area.

III. The Associations Support the Modeling Prepared for LDEQ

The Associations assert that the modeling conducted for LDEQ provide ample support for LDEQ's application for redesignation of the Baton Rouge Area to attainment with the 8-hour ozone standard as well as the likelihood of continued attainment. While such modeling is not required as part of this redesignation package, it should be considered as additional support. A technical support document detailing and analyzing the photochemical modeling used to support the Baton Rouge Area's 8-hour ozone SIP, dated March 11, 2009, was prepared by ENVIRON International Corporation and Eastern Research Group, Inc. for LDEQ. The study included meteorological ("MM5"), episodic emissions ("EPS3"), and ozone ("CAMx") simulations during June 2006. The overall technical approach used was established in modeling protocol documents previously developed, which had followed the latest modeling guidance published by EPA and relating to 8-hour ozone attainment demonstrations. The analysis of the modeling shows that the 8-hour ozone standard would be attained in the Baton Rouge Area by 2009. In fact, attainment was reached in 2008.

The MM5 meteorological modeling was conducted in June 2006. EPA ran a single MM5 simulation and configured it against four different runs performed during May 2005. This configuration was done to ensure that the model closely replicated the diurnal variations and winds of southeast Louisiana.

The emissions processing used EPS3 to convert the 2006 emissions inventory into the formats needed by CAMx. The emissions data was based on information provided by LDEQ,

⁷ "Georgia gasoline" refers to the low sulfur (30 ppm)/low RVP (7.0 psi) gasoline in place under the Atlanta SIP before the mandated RFG implementation date. See 70 Fed. Reg. 20,495, 20,504 (Apr. 20, 2005).

⁸ The 5th Circuit's August 2, 2004 decision to stay the RFG requirement did not occur until after RFG had already gone into use in the Baton Rouge Area on June 23, 2004. Thus, RFG was briefly in use in the area during that time.

Louisiana Department of Transportation and Development ("DOTD"), and the Capitol Region Planning Commission ("CRPC"). The 2009 emissions estimates were based on projections developed from numerous sources. New point facilities were introduced, some facilities were removed because they had shut down between 2006 and 2009, and some existing facilities had expanded. Economic and population data was used to project emissions from area and non-road sources. Projections for mobile sources were based traffic volume data and transportation demand modeling. Emissions from biogenic and offshore sources were held constant at their 2006 levels.

The CAMx photochemical model was used to simulate ozone levels in the Baton Rouge Area during the period of May 26 to July 1, 2006 ("the Base Year"). Predictions of ozone, NOx, and VOC precursors were compared to actual measurements recorded at the ten Air Quality System ("AQS") monitoring sites and four Photochemical Assessment Monitoring ("PAMS") within the Baton Rouge Area in order to establish the reliability of CAMx 8-hour ozone modeling. A series of "developmental runs" were conducted to improve model performance and to characterize sensitivity to changes in various model inputs, such as emissions, meteorological, and boundary conditions inputs.

CAMx was then run to obtain 2009 data. This modeling was based on the Base Year modeling configuration, except that the 2006 emissions data was replaced with the 2009 emissions projections. Daily 8-hour ozone concentrations were extracted from the CAMx model for both the Base Year and 2009 simulations. These modeled concentrations were applied to EPA's Modeled Attainment Test Software ("MATS") model, which used the inputs to project the 2009 ozone design values from the observation-based 2006 DV at each of the monitoring sites.

For the case where CAMx was provided on-road mobile emissions data estimated from parish-level monitored Highway Performance Monitoring System ("HPMS") vehicle miles traveled ("VMT") data, the 2009 DV projection was below the 85 parts per billion ("ppb") 8-hour ozone standard at each of the monitoring sites. When the on-road mobile emissions was instead estimated from transportation demand model activity, the 2009 DV projection remained under the 85 ppb 8-hour ozone standard at each of the sites.

EPA Region 6 requested that the June 2006 Baton Rouge Area 8-hour ozone attainment demonstration modeling also be used to specifically show maintenance of the revoked 1-hour ozone standard of 124 ppb. EPA's suggested approach was to use the 2006/2009 CAMx modeling results in a relative sense using relative response factors ("RRFs"). Therefore, in the study, the 8-hour DV project approach was followed by utilizing EPA's MATS modeling tool. The 2006 1-hour DVs at each of the monitors was obtained, and these DVs were taken to be the fourth highest 1-hour ozone measured at each site during the period of 2004 through 2006. CAMx simulated 1-hour daily maximum ozone at each of the monitoring sites during the period of June 2006, and this information was extracted to MATS. MATS was then configured to consider modeled days at or above 125 ppb at each site, and then to reduce by 1 ppb until at least five days were found in the Base Year results. Once the appropriate dates and emissions rates were obtained at a particular site, MATS then calculated the average RRF from the days above that ozone level and applied the RRF to that particular site's DV. The resulting 1-hour DV projections were also all below the revoked 124 ppb 1-hour ozone standard.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

SEP 24 2009

Vivian H. Aucoin
Office of Environmental Assessment
Box 4314
Baton Rouge, LA 70821-4314

Dear Ms. Aucoin:

Thank you for the opportunity to submit comments on the August 20, 2009, proposed version of the Louisiana Department of Environmental Quality State Implementation Plan (SIP) revision titled, "Baton Rouge Ozone Nonattainment Area Redesignation Request and Maintenance Plan." We appreciate the improvements in air quality so that this request is possible.

In addition, to clean air quality, to be redesignated to attainment, the Clean Air Act requires a State to meet five conditions. At this point, not all of these conditions have been met. I would like to highlight key issues that need to be addressed before EPA will be able to approve the redesignation request and maintenance plan.

First, the State will have to have an approved 185 fee program. Second, the State needs to provide an analysis showing RACT is in place for all major sources in the Baton Rouge area. Third, the State will need to add at least one additional year to the projections in the maintenance plan. These issues are discussed in more detail in the enclosure along with a number of other issues that can be addressed more easily.

We would prefer the above elements be addressed before the final redesignation request is submitted.

Please contact me or Ms. Sandra Rennie of my staff at 214-665-7367 if you have any questions.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Guy Donaldson".

Guy Donaldson
Chief
Air Planning Section (6PD-L)

Enclosure

Cc: Michael Vince, Louisiana Department of Environmental Quality

Comments on the Proposed Baton Rouge Ozone Nonattainment Area Redesignation
Request and Maintenance Plan

Section-Specific Comments

Section 2. Redesignation Requirements

2.1 ATTAINMENT OF THE 1997 8-HOUR OZONE NAAQS – On page 9, In Chart 1 the applicable NAAQS should be 84 ppb (instead of 85 ppb). In Table 1, the correct 2007 Design Value for the Baker site should be 0.084 ppm (instead of 0.087 ppm).

2.2 APPROVABILITY UNDER SECTION 100(k) OF THE CAA /Appendix B

Revise the following sentence regarding approval of the 110(a)(2) SIP as noted: “Based on this Federal Register notice ~~submitted~~ published by EPA, the SIP for the BRNA has been fully approved under Section 110(k).”

2.4 REQUIREMENTS MET FOR THE AREA UNDER SECTION 110 AND PART D

Reasonably Available Control Technology (RACT). A RACT analysis for the Baton Rouge area was not included in this or the attainment demonstration submittal. Approvability of the redesignation request is directly related to the approvability of the required SIP elements, including RACT. EPA is precluded from approving a redesignation to attainment without an approvable RACT demonstration. The RACT-related comments below concern both the VOC and NOx regulations within the affected Parishes.

As a moderate nonattainment area under the 1997 eight-hour ozone standard, the Baton Rouge area is required to meet the RACT mandates of the Clean Air Act (CAA) under §172(e)(1), §182(b)(2) and §182(f). In EPA’s Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) – Phase 2 (70 FR 71612, November 29, 2005), areas classified as moderate nonattainment or higher must demonstrate, by revision to their SIP, that their current rules fulfill eight-hour RACT for all Control Technique Guidelines (CTG) categories and all non-CTG major sources.

We appreciate the efforts of LDEQ to adopt rules to address the CTGs issued in 2006, 2007 and 2008. We have commented on these rules separately. It will be necessary for EPA to approve the rules for the new CTGs before we can approve the redesignation request.

In addition under 182(b)(2), Louisiana must confirm that RACT is in place for the all source categories. There are two main questions that need to be answered for a RACT analysis: (1) what are the sources in the Baton Rouge area that may need to be subject to

RACT; and (2) whether the control measures approved into the SIP for these sources represent RACT.¹

For each source category, the State must provide details of its evaluation of how RACT is satisfied. See 70 Fed. Reg. at 71655 (“States should ensure that their SIP’s accurately reflect RACT based on the current availability of technically and economically feasible controls.”). This is particularly true for source categories for which rules were approved by EPA long ago.² This analysis should not focus simply on the technology itself, but on the emission limits that can reasonably be achieved.

We appreciate your attention to these comments. An adequate and thorough analysis of reasonably available controls is a fundamental element of an approvable attainment plan and redesignation request. We hope the State will develop a RACT SIP that includes a true, detailed RACT analysis. Without an adequate RACT analysis EPA will not be able to approve an attainment demonstration or maintenance plan for the area.

Section 185 Fees. EPA will be able to approve an attainment plan only when all required elements have been submitted and approved. This includes an approvable 185 penalty fee program as well as the RACT Analysis. Realizing that guidance from EPA on how to set up a 185 fee program is limited, we still must be able to approve this element into the SIP before a redesignation can take place.

Section 3. Emissions Inventory

In the title, please change “Emission” to “Emissions”.

A redesignation request must contain a demonstration that improvement in air quality between the year that violations occurred and the year that attainment was achieved is based on permanent and enforceable emissions reductions. LDEQ prepared a comprehensive emission inventory for the Baton Rouge nonattainment area (BRNA) including point, nonpoint (area), on-road, and non-road mobile sources for the baseline year of 2006, and projected emissions for the horizon year of 2020. Emissions were also projected for the interim years of 2008, 2012, and 2016, which were selected to show a trend analysis for maintenance of the 1997 8-hour ozone NAAQS. The 2006 attainment inventory is for VOC and NO_x, which are precursors of ozone and includes a description of the methods used to estimate emissions. Table 1 summarizes the 2006, 2008, 2016, and 2020 VOC and NO_x emissions by source type.

Table 1. Summary of Future VOC and NO_x Emissions for the BRNA area (tons per average ozone season day)

¹ CAA Section 182(b)(2) provides that, for moderate areas, the State shall submit a SIP revision to require RACT for:

(A) Each category of VOC sources in the area covered by a CTG document issued by the Administrator between November 15, 1990 and the date of attainment.

(B) All VOC sources in the area covered by any CTG issued before November 15, 1990.

(C) All other major stationary sources of VOC’s which are located in the area.

² For example, rules that were adopted for the Baton Rouge area to address 1-hour ozone requirements.

Source Category	2006		2008		2012		2016		2020		Net Change	
	VOC	NOx	VOC	NOx	VOC	NOx	VOC	NOx	VOC	NOx	VOC	NOx
Point	33.10	73.40	39.00	78.70	39.00	78.70	39.00	78.70	39.00	78.70	5.90	5.30
Nonpoint	31.59	4.05	32.35	4.16	33.63	4.36	35.58	4.53	37.53	4.73	5.94	0.68
Nonroad	13.60	36.75	12.59	37.45	11.22	38.51	10.27	39.58	9.97	41.36	-3.63	4.61
Onroad	17.60	29.30	17.82	28.35	10.64	18.63	9.70	12.08	7.82	8.33	-9.78	-20.97
Total	95.89	143.50	101.76	148.66	94.49	140.20	94.55	134.89	94.14	133.12	-1.75	-10.38

The inventory also includes a description of the methods used to estimate emissions.

Point Source Emissions

Industrial sources are required to submit emissions data to LDEQ annually. LDEQ notifies these sources in writing, and provides them with reporting instructions, deadlines and certification requirements. The data had to be submitted electronically on an annual basis, and a certification statement has to be signed by the responsible party and sent in by mail. Emissions data provided by the facilities are estimates of actual emissions. Estimation methodologies are required to follow state and federal guidelines utilizing AP-42 or other approved methods. AP-42 is the compilation of emission factors issued by EPA. A list of those facilities is provided in Appendix C. EPA reviewed the methodologies used in collecting emissions data from stationary sources and found them to be consistent with our guidance.

Non-Point Source Emissions

Area source emissions from the 2002 National Emission Inventory (NEI) were used as the starting point for the 2006 Louisiana area emissions. Projection years' emissions were grown using the EPA's Economic Growth Analysis System (EGAS) 6.0 growth factors. The data used to estimate and grow these emissions was provided by Environ International Corporation. The methodologies used to develop non-point (area) sources inventory are described in Appendix D of the submittal.

On-road Emissions

The on-road mobile EI was developed based on Parish-specific inputs provided by several state agencies. MOBILE6, an emission factor model that predicts emissions from cars, trucks, and motorcycles under various conditions was then used to generate emission factors. A detailed description of on road emission estimates is found in Appendix D of the LDEQ submittal.

Non-road Emissions Inventory

For all non-road mobile categories except aircraft, locomotives, and commercial marine vessels, the emissions were calculated using the EPA's National Mobil Inventory Model (NMIM) to generate Louisiana state-wide parish level emissions estimates. Airport and locomotive emissions were derived from 2006 TCEQ inventory. Marine emissions were developed from CENRAP inventories. A detailed description of non road emission estimates is found in Appendix D, of the submittal.

Maintenance Demonstration and Future Emissions

The maintenance plan must demonstrate that the BRNA area will remain in attainment of the 1997 8-hour ozone standard for the 10-year period following the date of redesignation to attainment. LDEQ selected the year 2020 as the horizon year. In addition to the EI for 2006, the emission inventory base year, and the horizon year of 2020, LDEQ selected the interim years of 2008, 2012, and 2016 to show a trend analysis for maintenance of the 1997 eight-hour ozone NAAQS. We reviewed the trend analysis and found that the approach and methodologies used to develop the maintenance inventory are consistent with EPA's guidance.

Conclusion

We have evaluated the BRNA maintenance emission inventory component of the redesignation request and determined that LDEQ has demonstrated that emissions of VOC and NO_x will decrease by 1.75 and 10.38 tons per average ozone season day respectively, a decrease to levels below the 2006 baseline year emissions levels, throughout the year 2020. We also determined that LDEQ has adequately calculated and documented emissions by using methods consistent with EPA's guidance.

Section 4. Attainment Inventory

For purposes of the maintenance plan, the attainment inventory must provide for maintenance and of the ozone NAAQS for at least 10 years after redesignation. Because section 175A requires a designation of maintenance for 10 years after the area is redesignated, not 10 years after the submittal of an approvable redesignation request, the State should plan for some lead time for EPA action on the request. In determining the amount of lead time to allow, a State should consider that section 107(d)(3)(D) grants the Administrator up to 18 months from receipt of a complete, approvable, submittal to process a redesignation request. Consistent with this, EPA recommends including one or more additional years in the projections for this section.

The only specifically identified MVEBs are for 2009 and are based on the attainment modeling. We did not find any MVEBs associated with the maintenance plan. For the maintenance plan to be approvable, it must be possible to determine conformity with the maintenance plan. The MVEBs must be clearly identified and established also for the last year of the maintenance plan (2020), as per 40 CFR 93.118(b)(2)(i)-(ii). In addition, the plan should also explicitly state that the MVEBs for 2009 are the budgets for

future years (the maintenance period), and that the area can continue to attain if motor vehicle emissions remain at 2009 levels consistent with 93.118(b)(2)(i).

Section 5. Maintenance Demonstration

As discussed above, in addition to what is required for the attainment demonstration, for purposes of the maintenance plan, the maintenance demonstration must provide for maintenance and of the ozone NAAQS for at least 10 years after redesignation. Because of this requirement in the CAA, the plan should include time for EPA review and action on the request. This first paragraph of this section needs to be revised to add discussion of this requirement.

Also, as discussed above (Section 4: Attainment Inventory), we recommend including one or more additional years in the projections in Section 5: Maintenance Demonstration.

Section 6. Ambient Air Quality Monitoring

The typo in the page title should be corrected to read "Quality".

In Section 6.1 the NAAQS should be properly referenced as 0.08 ppm (instead of 0.880 ppm). The third paragraph of this section needs to be revised to incorporate the requirement that the State commits to continue to operate an appropriate air quality monitoring network *in accordance with 40 CFR part 58*.

Section 7. Verification of Continued Attainment

Please add the following to this section:

a) Assurance that the State of Louisiana has the legal authority to implement and enforce all measures necessary to attain and to maintain the NAAQS; and

b) Discussion of how the State will track the progress of the maintenance plan. There are a number of ways in which this can be accomplished, including periodically updating the emissions inventory, performing a comprehensive review of the factors that were used in developing the attainment inventory to show no significant change, and/or re-evaluating modeling assumptions and input data (please see the Memorandum dated September 4, 1992 by John Calcagni).

Section 8. Contingency Plan

In general, the requirements for maintenance plans under Section 175A are more stringent than the requirements of Section 110(a)(1), and include contingency provisions, as necessary to promptly correct any violation of the NAAQS that occurs after redesignation of the area. Under Section 175A, the contingency plan is considered to be

an enforceable part of the SIP and should ensure that the contingency measures are adopted expediently once they are triggered. The plan should clearly identify the measures to be adopted or already adopted, a schedule for adoption and implementation, and a specific time limit for action by the State.

We have the following specific comments:

a) Section 8.1. If a contingency plan consistent with Section 175A is triggered, implementation of contingency measures needs to occur within 18 months (rather than 24 months for plans under Section 110(a)(1)) of the triggering event.

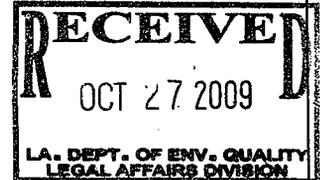
b) Section 8.1. This section includes a trigger for a monitored violation of the 8-hour ozone NAAQS which is required. In addition, in order to prevent a violation of the NAAQS, we recommend also including a trigger when the area exceeds the precursor emissions levels upon which maintenance is based, or some other earlier trigger.

c) Section 8.2. This section must be revised to add one or more clearly identified measures to be adopted and implemented if the contingency plan is triggered which will promptly reduce ozone levels. Although the plan includes a measure to extend the applicability of the NOx control rule to include two additional months, one or more specific measures need to be included that will reduce ozone levels during other months in which a violation could occur. For example, this could be early implementation of a measure scheduled to be implemented at a later date.

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DEPARTMENT OF ENVIRONMENTAL QUALITY
REGULATION DEVELOPMENT SECTION

In Re: Potpourri Notice #0908Pot3



The above-entitled cause came in for a meeting in the Galvez Building, Oliver Pollock Conference Room, 602 North Fifth Street, Baton Rouge, Louisiana on Thursday, September 24, 2009, commencing at 1:29 p.m.

Reported by:

Tara Torres-Blank
Certified Court Reporter

A P P E A R A N C E S

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The Hearing Officer:

Gretchen Soniat

The Court Reporter:

Tara Torres-Blank

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(The Meeting was called to order and proceeded as follows:)

MS. SONIAT:

Good afternoon. My name is Gretchen Soniat, and I'm employed by the Louisiana Department of Environmental Quality. I'll be serving as Hearing Officer this afternoon to receive comments regarding proposed amendments to the Air Regulations and the Air Quality State Implementation Plan.

The comment period for these amendments began on August 20, 2009, when the Potpourri Notices were published in the *Louisiana Register*. The comment period will close at 4:30 p.m. today, September 24, 2009. It would be helpful to us if all oral comments received today were followed up in writing.

This public hearing provides a forum for all interested parties to present comments on the proposed changes. This hearing is not being

1 conducted in a question and answer
2 format. Please remember that the
3 purpose of this public hearing is to
4 allow you, the public, an
5 opportunity to express your thoughts
6 concerning today's proposed
7 amendments.

8 I'll ask that each person
9 commenting come up and sit at the
10 front table and begin by stating his
11 or her name and affiliation for the
12 Record.

13 The next agenda item is
14 Potpourri Notice 0908Pot3, regarding
15 a redesignation request and ozone
16 maintenance plan for the 1997 8-hour
17 Ozone National Ambient Air Quality
18 Standards (NAAQS) for the Baton
19 Rouge area.

20 Under the authority of the
21 Louisiana Environmental Quality Act,
22 R.S. 30:2001 et seq., the secretary
23 gives notice that the Office of
24 Environmental Assessment Air Quality
25 Assessment Division will submit a

1 proposed Redesignation Request and
2 Ozone Maintenance Plan of the 1997
3 8-hour Ozone NAAQS for the Baton
4 Rouge area, which includes the
5 parishes of East Baton Rouge, West
6 Baton Rouge, Livingston, Ascension
7 and Iberville.

8 The Redesignation request is
9 being submitted as required under
10 Section 1079(d)(3)(E) of the 1990
11 Clean Air Act Amendments (CAAA), and
12 the Ozone Maintenance Plan is being
13 submitted as required under Section
14 175A of the 1990 CAAA.

15 Does anyone care to comment on
16 this amendment? If not, the hearing
17 on Potpourri Notice 0908Pot3 is
18 closed.

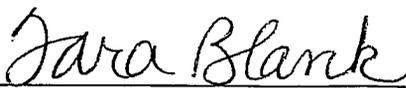
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R E P O R T E R ' S P A G E

I, Tara Torres-Blank, Certified Court Reporter, in and for the State of Louisiana, the officer, as defined in Rule 28 of the Federal Rules of Civil Procedure and/or Article 1434(b) of the Louisiana Code of Civil Procedure, before whom this sworn testimony was taken, do hereby state on the Record:

That due to the interaction in the spontaneous discourse of this proceeding, dashes (--) have been used to indicate pauses, changes in thought, and/or talkovers; that same is the proper method for a Court Reporter's transcription of proceeding, and that the dashes (--) do not indicate that words or phrases have been left out of this transcript;

That any words and/or names which could not be verified through reference material have been denoted with the phrase "(phonetic)."



Tara Torres-Blank, CCR
Certified Court Reporter

C E R T I F I C A T E

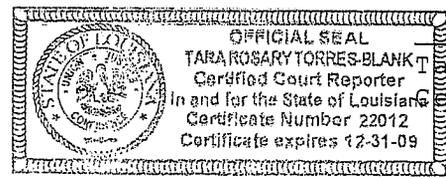
This certification is valid only for a transcript accompanied by my original signature and original raised seal on this page.

I, Tara Torres-Blank, Certified Court Reporter, in and for the State of Louisiana, as the officer before whom this testimony was taken, do hereby certify that after having first been duly sworn by me upon authority of R.S. 37:2554, did testify as hereinbefore set forth in the foregoing pages;

That this testimony was reported by me in the Stenomask method (voice-writing), was prepared and transcribed by me or under my personal direction and supervision, and is a true and correct transcript to the best of my ability and understanding;

That I am not related to counsel or to the parties herein; am not otherwise interested in the outcome of this matter; and am a valid member in good standing of the Louisiana State Board of Examiners of Certified Shorthand Reporters.

Tara Blank



Tara Torres-Blank (#22012)
Certified Court Reporter

In The Matter Of:

In Re: Potpourri Notice #0908Pot3

DEPARTMENT OF ENVIRONMENTAL QUALITY

September 24, 2009

Associated Reporters Inc.

2431 South Acadian Thruway

Suite 550

Baton Rouge, LA 70808

(225) 216-2036 Fax (225) 216-2220

Original File DEQ3Aa.TXT

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AUG 24 2009

LA. DEPT. OF ENVIRONMENTAL QUALITY
LEGAL AFFAIRS DIVISION

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:

August 15, 2009
Kim Orwig

LEGAL AD DEPT.

Sworn and subscribed before me by

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

18th day of August 20 08 AD



Sarah M Walker
62422 NOTARY PUBLIC

AUG 24 2009

LA. DEPT. OF ENVIRONMENTAL QUALITY
LEGAL AFFAIRS DIVISION

The Times-Picayune

3800 HOWARD AVENUE, NEW ORLEANS, LOUISIANA 70140-1097 TELEPHONE (504) 826-3201

State of Louisiana

Parish of Orleans

City of New Orleans

Personally appeared before me, a Notary in and for the parish of Orleans, Elizabeth C. Darcey who deposes and says that she is an Assistant Controller of The Times-Picayune, L.L.C., 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/0908Pot3

Re:Potpourri Dept Environmental Quality Baton Rouge Area Redesignation request & 1997 8-hour Ozone Maint.

Advertisement of Louisiana Dept. of Environemental

OEESC/Legal Affairs Division/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 August 20, 2009

Elizabeth C. Darcey

Sworn to and subscribed before me this
20th Day of August, 2009

[Signature]

Notary Public

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

Notary identification number 23492

POTPOURRI

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Baton Rouge Area Redesignation Request and 1997 8-Hour Ozone Maintenance Plan (0908Pot3)

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., the secretary gives notice that the Office of Environmental Assessment, Air Quality Assessment Division, will submit a proposed Redesignation Request and Ozone Maintenance Plan for the 1997 8-Hour Ozone National Ambient Air Quality Standards (NAAQS) for the Baton Rouge Area, which includes the parishes of East Baton Rouge, West Baton Rouge, Livingston, Ascension, and Iberville. The Redesignation Request is being submitted as required under the Section 107(d)(3)(E) of the 1990 Clean Air Act Amendments (CAAA), and the Ozone Maintenance Plan is being submitted as required under Section 175A of the 1990 CAAA.

A public hearing will be held at 1:30 p.m. on September 24, 2009, in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA. Should individuals with a disability need an accommodation in order to participate, please contact Vivian H. Aucoin at (225) 219-3509 or at the address listed below. Interested persons are invited to attend and submit oral comments on the proposal.

All interested persons are invited to submit written comments concerning the Redesignation Request and the Ozone Maintenance Plan for the Baton Rouge Area no later than 4:30 p.m., September 24, 2009, to Vivian H. Aucoin, Office of Environmental Assessment, Box 4314, Baton Rouge, LA 70821-4314 or to FAX (225) 219-3240 or by e-mail to vivian.aucoin@la.gov.

A copy of the Redesignation Request and Ozone Maintenance Plan for the Baton Rouge Area may be viewed from 8 a.m. to 4:30 p.m. in the DEQ Public Records Center, Room 127, 602 N. Fifth Street, Baton Rouge, LA. The document is available on the Internet at www.deq.louisiana.gov/portal/Default.aspx?tabid=2381.

Herman Robinson, CPM
Executive Counsel

I attest that the copy attached hereto as "Exhibit A" is a true and correct copy of the advertisement published in The Times-Picayune on these dates.

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AUG 17 2009

LA. DEPT. OF ENVIRONMENTAL QUALITY
LEGAL AFFAIRS DIVISION

State of Louisiana
Parish of Rapides
AFFIDAVIT OF PUBLICATION

POT-POURRI

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Baton Rouge Area
Redesignation Request
and
1997 8-Hour Ozone
Maintenance Plan
(0908Pot3)

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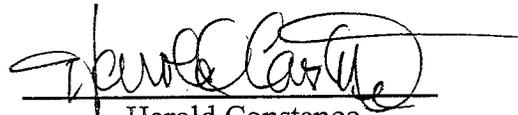
HERMAN ROBINSON
CPM, Executive
Counsel

(8) 12

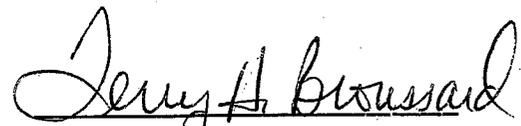
I, Harold Constance, Classified Sales Manager
of THE TOWN TALK, published at Alexandria,
Louisiana do solemnly swear that the

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 insertion(s) commencing with the issue
dated August 12, 2009 and ending with the
issue dated August 12, 2009.


Harold Constance

Subscribed and sworn to before me this 12th day
of August, 2009 at Alexandria, Louisiana.



Terry A. Broussard
Notary Number 19477
My commission is for life.

CAPITAL CITY PRESS

**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**, **City of Baton Rouge**, and **Parish of East Baton Rouge**, in the following issues:

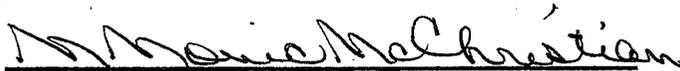
08/13/09



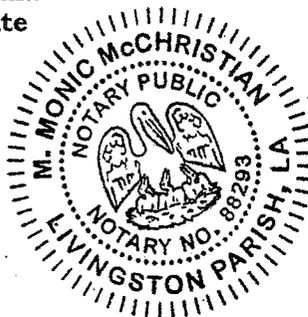
Susan A. Bush, Public Notice Clerk

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

August 13, 2009



M. Monic McChristian,
Notary Public ID# 88293
Livingston Parish, State of Louisiana
My Commission Expires: Indefinite



DEQ - OSEC/LAD REG
REMENDER WEATHERSPOON
PO BOX 4302 RM 821-74
BATON ROUGE LA 70821-4314

4137302

RECEIVED

AUG 28 2009

LA. DEPT. OF ENVIRONMENTAL QUALITY
LEGAL AFFAIRS DIVISION

POTPOURI
Department of
Environmental Quality
Office of the Secretary
Legal Affairs Division
Baton Rouge Area
Redesignation Request and
1997 8-Hour Ozone
Maintenance Plan
(0908Pot3)
Under the authority of the
Louisiana Environmental
Quality Act, R. 5:530:2001 et
seq., the secretary gives notice
that the Office of Environmental
Assessment, Air Quality
Assessment Division, will submit a proposed
Redesignation Request and
Ozone Maintenance Plan for
the 1997 8-Hour Ozone National
Ambient Air Quality
Standards (NAAQS) for the
Baton Rouge Area, which includes
the parishes of East Baton
Rouge, West Baton
Rouge, Livingston, Ascension,
and Iberville. The Redesignation
Request is being submitted as
required under Section 107(d)(3)(E)
of the 1990 Clean Air Act
Amendments (CAA) and the
Ozone Maintenance Plan is
being submitted as required
under Section 175A of the 1990
CAA.
A public hearing will be
held at 1:30 p.m. on September
24, 2009, in the Galvez
Building, Oliver Pollock
Conference Room, 602 N. Fifth
Street, Baton Rouge, LA.
Should individuals with a
disability need an accommodation
in order to participate, please
contact Vivian H. Aucoin at
(225) 219-3509 or at the address
listed below. Interested persons
are invited to attend and submit
oral comments on the proposal.
All interested persons are
invited to submit written
comments concerning the
Redesignation Request and
the Ozone Maintenance Plan
for the Baton Rouge Area no
later than 4:30 p.m., September
24, 2009, to Vivian H. Aucoin,
Office of Environmental
Assessment, Box 4314, Baton
Rouge, LA 70821-4314 or to
FAX (225) 219-3240 or by e-
mail to vivian.aucoin@la.gov.
A copy of the Redesignation
Request and Ozone
Maintenance Plan for the Baton
Rouge Area may be viewed
from 8 a.m. to 4:30 p.m. in
the DEQ Public Records Center,
Room 127, 602 N. Fifth Street,
Baton Rouge, LA. The document
is available on the Internet at
www.deq.louisiana.gov/portals/Default.aspx?tabid=2381.
Herman Robinson
CPM Executive Counsel
4137302-aug 13-11

AUG 24 2009

LA. DEPT. OF ENVIRONMENTAL QUALITY
LEGAL AFFAIRS DIVISION

Affidavit of Publication

STATE OF LOUISIANA
Parish of Calcasieu

Before me the undersigned authority, personally came and appeared

Karen Stalkus
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:

00550648 - \$26.00
August 19, 2009

Karen Stalkus

Duly Authorized Agent

Subscribed and sworn to before me on this 19th day of August, 2009 at
Lake Charles, LA

Gwendolyn R. Dugas

Notary Public

00053262
LDEQ-OSEC-LAD

Gwendolyn R. Dugas
#056523

POTPOURRI
Department of Environmental Quality
Office of the Secretary
Legal Affairs Division
Baton Rouge Area Redesigna-
tion Request and
1997 8-Hour Ozone
Maintenance Plan
(0908P013)
Under the authority of
the Louisiana Environ-
mental Quality Act, R.S.
30:2001 et seq., the
secretary gives notice
that the Office of Envi-
ronmental Assessment
Air Quality Assessment
Division will submit a
proposed Redesigna-
tion Request and Ozone
Maintenance Plan for
the 1997 8-Hour Ozone
National Ambient Air
Quality Standards
(NAAQS) for the Baton
Rouge Area, which in-
cludes the parishes of
East Baton Rouge, West
Baton Rouge, Living-
ston, Ascension, and Iberville. The Redesigna-
tion Request is being
submitted as required
under the Section
107(d)(3)(E) of the 1990
Clean Air Act Amend-
ments (CAAA), and the
Ozone Maintenance
Plans being submitted
as required under Sec-
tion 175A of the 1990
CAAA.
A public hearing will
be held at 3:30 p.m. on
September 24, 2009, in
the Galvez Building, Ol-
iver Bollock Conference
Room, 602 N. Fifth
Street, Baton Rouge,
LA. Should individuals
with a disability need an
accommodation in order
to participate, please
contact Vivian H. Au-
coin at (225) 219-3240 or
at the address listed be-
low. Interested persons
are invited to attend and
submit oral comments
on the proposal.
All interested persons
are invited to submit
written comments con-
cerning the Redesigna-
tion Request and the
Ozone Maintenance
Plan for the Baton
Rouge Area no later
than 4:30 p.m. Septem-
ber 24, 2009, to Vivian H.
Aucoin, Office of Envi-
ronmental Assessment,
Box 4314, Baton Rouge,
LA 70821-4314 or to FAX
(225) 219-3240 or by
e-mail to vivian.au-
coin@deq.louisiana.gov.
A copy of the Redesigna-
tion Request and
Ozone Maintenance
Plan for the Baton
Rouge Area may be
viewed from 8 a.m. to
4:30 p.m. in the DEQ
Public Records Center,
Room 127, 602 N. Fifth
Street, Baton Rouge,
LA. The document is
available on the Internet
at
www.deq.louisiana.gov/
portal/Default.aspx?tag=
bid=2381
Herman Robinson
CPA
Executive Counsel
Aug 19
00550648

AUG 24 2009

LA. DEPT. OF ENVIRONMENTAL QUALITY
LEGAL AFFAIRS DIVISION

Acadiana's Daily Newspaper

THE ADVERTISER1100 Bertrand Drive
LAFAYETTE, LA 70506PHONE: (337) 289-6300
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 70821-4302Account No.: 8DEQRD
Ad Number: 1224003
Ad Total: \$53.85
No. of Lines: 105
Reference No.:**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

POTPOURRI
Department of Environmental Quality
Office of the Secretary
Legal Affairs Division
Baton Rouge Area Redesignation Request and
1997 8-Hour Ozone Maintenance Plan
(0908Pot3)

was published in **THE ADVERTISER** on the following dates:

***Thursday, August 13, 2009**



ROSE PENFOLD
LEGAL CLERK

Sworn to and subscribed before me this 18th day of August, 2009.



Notary Public - Christie Veazey ID# 058555

1224003
P.O. POURRI
Department of
Environmental Quality
Office of the Secretary
Legal Affairs Division

Baton Rouge Area
Redesignation Request
and
1997 8-Hour Ozone
Maintenance Plan
(0906 P01)

Under the authority
of the Louisiana Enviro-
nmental Quality Act,
R.S. 30:2001 et seq.,
the secretary gives no-
tice that the Assess-
ment and Air Quality
Division will
submit the proposed
Redesignation Request
and Ozone Maintenance
Plan for the 1997
8-Hour Ozone National
Ambient Air Quality
Standards (NAAQS)
for the Baton Rouge
Area, which includes
the parishes of East
Baton Rouge, Livingston,
St. Ascension, and
Iberie. The
Redesignation Request
is being submitted as
required under the
Section 10(d)(3)(E) of
the 1990 Clean Air Act

Amendments (CAA),
and the Ozone Mainte-
nance Plan is being
submitted as required
under Section 175A of
the 1990 CAAA.
A public hearing will
be held at 1:30 p.m. on
September 24, 2009, in
the Calvez Building,
Oliver Pollock Confer-
ence Room, 602 N.
Fifth Street, Baton
Rouge, LA. Should in-
dividuals with a disa-
bility need an accom-
modation in order to
participate, please con-
tact Vivian H. Aucoin
at (225) 219-3509 or at
the address listed be-
low. Interested per-
sons are invited to at-
tend and submit oral
comments on the pro-
posal.
All interested per-
sons are invited to sub-
mit written comments
concerning the
Redesignation Request
and the Ozone Mainte-
nance Plan for the Bat-
on Rouge Area no later
than 4:30 p.m. Septem-
ber 24, 2009, to Vivian
H. Aucoin, Office of
Environmental Assess-
ment, Box 4314, Baton
Rouge, LA 70821-4314
or by FAX (225) 219-
3509 or by e-mail to
vivian.aucoin@la.gov.
A copy of the
Redesignation Request
and Ozone Mainte-
nance Plan for the Bat-
on Rouge Area may be
viewed from 8 a.m. to
4:30 p.m. in the DEQ
Public Records Center,
Room #17, 602 N. Fifth
Street, Baton Rouge,
LA. The document is
available on the Inter-
net at
www.deq.louisiana.gov/portal/Default.aspx?tabid=238
Herman Robinson,
CPM
Executive Counsel

RECEIVED

AUG 17 2009

LA. DEPT. OF ENVIRONMENTAL QUALITY
LEGAL AFFAIRS DIVISION

The Times

PROOF OF PUBLICATION

POTPOURRI

Department of
Environmental
Quality
Office of the
Secretary
Legal Affairs
Division

Baton Rouge Area
Redesignation
Request and
1997 8-Hour Ozone
Maintenance Plan
(0908Pot3)

Under the authority of the Louisiana Environmental Quality Act, R. S. 30:2001 et seq., the secretary gives notice that the Office of Environmental Assessment, Air Quality Assessment Division, will submit a proposed Redesignation Request and Ozone Maintenance Plan for the 1997 8-Hour Ozone National Ambient Air Quality Standards (NAAQS) for the Baton Rouge Area, which includes the parishes of East Baton Rouge, West Baton Rouge, Livingston, Ascension, and Iberville. The Redesignation Request is being submitted as required under the Section 107(d)(3)(E) of the 1990 Clean Air Act Amendments (CAAA), and the Ozone Maintenance Plan is being submitted as required under Section 175A of the 1990 CAAA.

A public hearing will

be held at 1:30 p.m. on September 24, 2009, in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA. Should individuals with a disability need an accommodation in order to participate, please contact Vivian H. Aucoin at (225) 219-3509 or at the address listed below. Interested persons are invited to attend and submit oral comments on the proposal.

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:

POTPOURRI Department of Environmental Quality Office of the Secretary Legal Affairs Division Baton Rouge Area Redesignation Request and 1997 8-Hour Ozone Maintenance Plan (0908Pot3)

As per copy of advertisement hereto annexed, was published in

The Times on the following dates to wit:

August 14, 2009

(Signed) Altheas Critton

Sworn to and subscribed before me this 14th day of August, 2009

Diana W. Barber

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

(Notary)

All interested persons are invited to submit written comments concerning the Redesignation Request and the Ozone Maintenance Plan for the Baton Rouge Area no later than 4:30 p.m., September 24, 2009, to Vivian H. Aucoin, Office of Environmental Assessment, Box 4314, Baton Rouge, LA 70821-4314 or to FAX (225) 219-3240 or by e-mail to vivian.aucoin@la.gov

A copy of the Redesignation Request and Ozone Maintenance Plan for the Baton Rouge Area may be viewed from 8 a.m. to 4:30 p.m. in the DEQ Public Records Center, Room 127, 402 N. Fifth Street, Baton Rouge, LA. The document is available on the Internet at www.deq.louisiana.gov/portal/Default.aspx?fabid=2381.

Herman Robinson,
CPM
Executive Counsel

The Times
August 14, 2009