# APPENDIX B –
# FINAL RULE AQ292 WITH TECHNICAL AMENDMENTS

# Rules

## RULE

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

Clean Air Interstate Rule
(LAC 33:III.506)(AQ292)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air regulations, LAC 33:III.506 (Log #AQ292).

This revision for the Clean Air Interstate Rule (CAIR) nitrogen oxide ($NO_x$) trading programs allocation metholodogy addresses the following issues: updates citations to all federal revisions to the CAIR; revises and adds definitions; provides that allowances for petroleum coke-fired electrical generating units (EGUs) are to be calculated using the same methodology as allowances for coal-fired EGUs; adds a provision for repowered utility units; adds a provision for the reclassification of units from utility to non-utility and vice versa; and adds language to cease allocation of $NO_x$ allowances to certified units that are not built (If the unit does not commence operations by a certain date, then the permit becomes void. Once the permit is void, no additional allocations will be made.). EPA promulgated a CAIR Federal Implementation Plan (FIP) on April 28, 2006, which allows a state to allocate CAIR $NO_x$ allowances in a manner that is different from the FIP. The initial state allocation rule was promulgated on August 20, 2007. Since that time the department has determined that some operating circumstances were inadvertently omitted, and these are included in this revision. In this rulemaking the department is also updating the regulations to include the latest changes to the federal program. This rule is also a revision to the air quality CAIR State Implementation Plan (SIP). The basis and rationale for this rule are to improve air quality through the reduction of intrastate and interstate emissions of $NO_x$ from electrical generating units. This rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Title 33**
**ENVIRONMENTAL QUALITY**
**Part III. Air**

**Chapter 5. Permit Procedures**

**§506. Clean Air Interstate Rule Requirements**

A. Clean Air Interstate Rule (CAIR) Nitrogen Oxide ($NO_x$) Annual Program. This Subsection is adopted in lieu of 40 CFR 97.141 and 97.142 as promulgated under the CAIR Federal Implementation Plan (FIP) $NO_x$ Annual Trading Program on April 28, 2006, at 71 FR 25328-25469 and as amended on October 19, 2007, at 72 FR 59190-59207. All provisions of 40 CFR Part 97, Subparts AA-HH, continue to apply, with the exception of §97.141 (Timing Requirements for CAIR $NO_x$ Allowance Allocations) and §97.142 (CAIR $NO_x$ Allowance Allocations). The provisions of this Subsection state how the CAIR $NO_x$ annual allowances shall be allocated in accordance with this Section and 40 CFR 97.144(a).

1. Definitions. The terms used in Subsection A of this Section have the meaning given to them in the CAIR FIP (40 CFR Part 97 as promulgated on April 28, 2006), except for those terms defined herein.

*Certified Unit*—an electricity-generating unit that has been certified by the LPSC or approved by a municipal authority but was not in operation on, or approved by, December 31, 2004.

*Certified Unit or Contract*—Repealed.

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*Electric Public Utility*—any person furnishing electric service within this state, including any electric cooperative transacting business in this state, provided, however, that the term shall not be construed to apply to any co-generator who consumes any or all of the electric power and energy that it generates or to any independent power producer who sells its entire production of electric power and energy to an *electric public utility* as herein defined.

*Fuel Types*—for the allocation of allowances under Louisiana's program, *fuel types* include solid, gaseous, or liquid fuel. The following definitions apply to *fuel types*.

i. *Solid Fuel*—includes, but is not limited to, coal and petroleum coke. Any amount of solid fuel that is combusted, alone, in series, or in combination with any other fuel, during any control period shall meet the definition of solid fuel.

ii. *Gaseous Fuel*—includes, but is not limited to, natural gas, propane, coal gas, and blast furnace gas. Any mixture containing at least 50 percent of gaseous fuel that is combusted with any liquid fuel during any control period shall meet the definition of gaseous fuel.

iii. *Liquid Fuel*—includes, but is not limited to, petroleum-based oils and glycerol.

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*LPSC or Municipal Certification*—the process under which the LPSC certifies, or the relevant municipal authority approves, construction, conversion, or repowering of an electricity-generating unit as being in the public convenience and necessity. This process includes the certification or approval of long-term contracts that dedicate a portion of the electrical output of any generation facility to a utility unit. Long-term contracts are those contracts of at least one year in duration, provided that the municipality or utility unit expects to receive power under the contract within one year of the contract execution.

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*Utility Unit*—a certified unit that is in operation, a previously-operational certified unit, a non-utility unit purchased by an electric public utility, or a non-utility unit that has an effective and active long-term contract with a utility unit. Long-term contracts are those contracts of at

least one year in duration, provided that the municipality or utility unit expects to receive power under the contract within one year of the contract execution.

2. - 2.a....

b. Certified Units. A certified and permitted unit subject to CAIR shall be allocated $NO_x$ allowances for the control period in which the unit will begin operation, and for each successive control period, for which no $NO_x$ allowances have been previously allocated until operating data are available for the three calendar years immediately preceding the deadline for submission of the control period allocations. Until a unit has three calendar years of operating data immediately preceding the allocation submittal deadline, the converted heat input as calculated in Clause A.2.b.i or ii of this Section shall be used to allocate allowances for the unit. The certified unit shall be treated as a utility unit for the purposes of this allocation, except that converted heat input shall be used instead of adjusted heat input. Repowered utility units will be allocated in the same manner as certified units in the control period of certification. Converted heat input is calculated as follows.

i. For a solid fuel-fired unit, the hourly heat input for a specified calendar year shall equal the control period gross electrical output, including the capacity factor, of the generator(s) served by the unit multiplied by 7,900 BTU/KWh and divided by 1,000,000 BTU/MMBTU. The control period gross electrical output as stated in the documentation presented for the LPSC or municipal certification shall be used in this calculation. If a generator is served by two or more units, then the gross electrical output of the generator shall be attributed to each unit in proportion to the unit's share of the total control period heat input of all the units for the year.

ii. For a gaseous or liquid fuel-fired unit, the hourly heat input for a specified calendar year shall equal the control period gross electrical output, including the capacity factor, of the generator(s) served by the unit multiplied by 6,675 BTU/KWh and divided by 1,000,000 BTU/MMBTU. The control period gross electrical output as stated in the documentation presented for the LPSC or municipal certification shall be used in this calculation. If a generator is served by two or more units, then the gross electrical output of the generator shall be attributed to each unit in proportion to the unit's share of the total control period heat input of all the units for the year.

c. Utility Units. The department shall allocate CAIR $NO_x$ allowances to each CAIR utility unit by multiplying the CAIR $NO_x$ budget for Louisiana (40 CFR 97.140), minus the allowances allocated under Subparagraph A.2.a of this Section, by the ratio of the adjusted heat input of the CAIR utility unit to the total amount of adjusted heat input and converted heat input of all CAIR utility units and certified units in the state and rounding to the nearest whole allowance. The adjusted heat input (in MMBTU) used with respect to the CAIR $NO_x$ annual allowance for each CAIR utility unit shall be established as follows.

i. The average of the unit's control period adjusted heat input for the three calendar years immediately preceding the deadline for submission of allocations to the administrator shall be used (except that the allocation submitted in 2007 shall use the average of the control period adjusted heat input for calendar years 2002, 2003, and 2004), with the control period adjusted heat input for each year calculated as follows.

(a). If the unit is solid fuel-fired during a year, the unit's control period heat input for that year shall be multiplied by 100 percent.

(b). If the unit is liquid fuel-fired during a year, the unit's control period heat input for that year shall be multiplied by 60 percent.

(c). If the unit is not subject to Subclause A.2.c.i.(a) or (b) of this Section, the unit's control period heat input for the year shall be multiplied by 40 percent.

ii. A unit's control period heat input, fuel type, and total tons of $NO_x$ emissions during a calendar year shall be determined in accordance with 40 CFR Part 97 and reported in accordance with LAC 33:III.919.

3. - 3.b....

4. Reclassification of Units. When the ownership of a unit is transferred, the unit is reclassified accordingly as a utility or non-utility unit. The department will allocate future allowances using the new classification, beginning with the allocation submission deadline after the effective date of the unit reclassification. The electric public utility must notify the department of the transfer of ownership. No changes will be made without written notification from the electric public utility.

B. Clean Air Interstate Rule (CAIR) Nitrogen Oxide ($NO_x$) Ozone Season Program. This Subsection is adopted in lieu of 40 CFR 97.341 and 97.342 as promulgated under the CAIR Federal Implementation Plan (FIP) $NO_x$ Ozone Season Trading Program on April 28, 2006, at 71 FR 25328-25469 and as amended on October 19, 2007, at 72 FR 59190-59207. All provisions of 40 CFR Part 97, Subparts AAAA–HHHH, continue to apply, with the exception of §97.341 (Timing Requirements for CAIR $NO_x$ Ozone Season Allowance Allocations) and §97.342 (CAIR $NO_x$ Ozone Season Allowance Allocations). The provisions of this Subsection state how the CAIR $NO_x$ ozone season allowances shall be allocated in accordance with this Section and 40 CFR 97.343(a).

1. - 2.a....

b. Certified Units. A certified and permitted unit subject to CAIR shall be allocated $NO_x$ allowances for the ozone season of the control period in which the unit will begin operation, and for each successive ozone season in a control period, for which no $NO_x$ allowances have been previously allocated until ozone season operating data are available for the three calendar years immediately preceding the deadline for submission of the control period allocations. Until a unit has three years of ozone season operating data preceding the allocation submittal deadline, the converted heat input as calculated in Clause B.2.b.i or ii of this Section shall be used to allocate ozone season allowances for the unit. The certified unit shall be treated as a utility unit for purposes of this allocation, except that ozone season converted heat input shall be used instead of ozone season adjusted heat input. Repowered utility units will be allocated in the same manner as certified units in the control period of certification. Ozone season converted heat input is calculated as follows.

i. For a solid fuel-fired unit, the hourly heat input for a specified calendar year shall equal the control period gross electrical output, including the capacity factor, of the

generator(s) served by the unit multiplied by 7,900 BTU/KWh and divided by 1,000,000 BTU/MMBTU. If the control period gross electrical output is unavailable, the hourly heat input for a specified calendar year shall equal the annual gross electrical output, including the capacity factor, of the generator(s) served by the unit multiplied by 7,900 BTU/KWh and divided by 1,000,000 BTU/MMBTU, and multiplied by 5/12. The control period gross electrical output as stated in the documentation presented for the LPSC or municipal certification shall be used in this calculation. If a generator is served by two or more units, then the gross electrical output of the generator shall be attributed to each unit in proportion to the unit's share of the total control period heat input of all the units for the specified ozone season.

ii. For a gaseous or liquid fuel-fired unit, the hourly heat input for a specified calendar year shall equal the control period gross electrical output, including the capacity factor, of the generator(s) served by the unit multiplied by 6,675 BTU/KWh and divided by 1,000,000 BTU/MMBTU. If the control period gross electrical output is unavailable, the hourly heat input for a specified calendar year shall equal the annual gross electrical output, including the capacity factor, of the generator(s) served by the unit multiplied by 6,675 BTU/KWh and divided by 1,000,000 BTU/MMBTU, and multiplied by 5/12. The control period gross electrical output as stated in the documentation presented for the LPSC or municipal certification shall be used in this calculation. If a generator is served by two or more units, then the gross electrical output of the generator shall be attributed to each unit in proportion to the unit's share of the total control period heat input of all the units for the specified ozone season.

c. Utility Units. The department shall allocate CAIR $NO_x$ ozone season allowances to each CAIR utility unit by multiplying the CAIR $NO_x$ ozone season budget for Louisiana (40 CFR 97.340), minus the allowances allocated under Subparagraph B.2.a of this Section, by the ratio of the ozone season adjusted heat input of the CAIR utility unit to the total amount of ozone season adjusted heat input and converted heat input of all CAIR utility units and certified units in the state and rounding to the nearest whole allowance. The ozone season adjusted heat input (in MMBTU) used with respect to the CAIR $NO_x$ ozone season allowance for each CAIR utility unit shall be established as follows.

i. The average of the unit's control period ozone season adjusted heat input for the three calendar years immediately preceding the deadline for submission of allocations to the administrator shall be used (except that the allocation submitted in 2007 shall use the average of the control period ozone season adjusted heat input for calendar years 2002, 2003, and 2004), with the control period ozone season adjusted heat input for each year calculated as follows.

(a). If the unit is solid fuel-fired during a year, the unit's control period ozone season heat input for that year shall be multiplied by 100 percent.

(b). If the unit is liquid fuel-fired during a year, the unit's control period ozone season heat input for that year shall be multiplied by 60 percent.

(c). If the unit is not subject to Subclause B.2.c.i.(a) or (b) of this Section, the unit's control period ozone season heat input for the year shall be multiplied by 40 percent.

ii. A unit's control period ozone season heat input, fuel type, and total tons of $NO_x$ ozone season emissions during a calendar year shall be determined in accordance with 40 CFR Part 97 and reported in accordance with LAC 33:III.919.

3. - 3.b....

4. Reclassification of Units. When the ownership of a unit is transferred, the unit is reclassified accordingly as a utility or non-utility unit. The department will allocate future allowances using the new classification, beginning with the allocation submission deadline after the effective date of the unit reclassification. The electric public utility must notify the department of the transfer of ownership. No changes will be made without written notification from the electric public utility.

C. Annual Sulfur Dioxide. Except as specified in this Section, the Federal $SO_2$ Model Rule, published in the *Code of Federal Regulations* at 40 CFR Part 96, July 1, 2007, and as revised at 72 FR 59190-59207, October 19, 2007, is hereby incorporated by reference, except for Subpart III–CAIR $SO_2$ Opt-in Units and all references to opt-in units.

D. - E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:1597 (September 2006), amended LR 33:1622 (August 2007), LR 33:2083 (October 2007), LR 34:978 (June 2008)

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## RULE

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

Incorporation by Reference—2007
(LAC 33:I.3931; V.3099; IX.2301, 4901, and 4903, and XV.1517)(MM007ft)

Editor's Note: This Rule is being reprinted to correct a citation error. The Rule may be viewed in its entirety on pages 865-867 in the May 20, 2008 *Louisiana Register*.

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Environmental Quality regulations, LAC 33:I.3931; V.3099; IX.2301, 4901, and 4903; and XV.1517 (Log #MM007ft).

This Rule is identical to federal regulations found in 10 CFR Part 71, Appendix A, January 1, 2007; 40 CFR 117.3, Part 136, Part 266, Appendices I-IX and XI-XIII, 302.4, 302.6(e), 355.40(a)(2)(vii), Part 401, Parts 405-415, and Parts 417-471, July 1, 2007; and 72 FR 40245-40250, July