

BOBBY JINDAL  
GOVERNOR



PEGGY M. HATCH  
SECRETARY

**State of Louisiana**  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
ENVIRONMENTAL SERVICES

May 16, 2011

Mr. Thomas H. Diggs  
Associate Director, Air Programs (6PD)  
U.S. Environmental Protection Agency, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Re: Louisiana's PM<sub>2.5</sub> NSR Implementation Rule

Dear Mr. Diggs:

On May 16, 2008, the Environmental Protection Agency (EPA) promulgated a rule entitled "Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>)."<sup>1</sup> This rule specified that states with SIP-approved NSR programs, like Louisiana, must "submit revised PSD programs and revised NA NSR programs for PM<sub>2.5</sub> ... within 3 years from the date of this action" (i.e., May 16, 2011).<sup>2</sup>

By way of this correspondence, the State of Louisiana, through the Louisiana Department of Environmental Quality (LDEQ), transmits to EPA revisions to LAC 33:III.504 (Nonattainment New Source Review) and LAC 33:III.509 (Prevention of Significant Deterioration) to be adopted as required by the aforementioned rule.

Louisiana's PM<sub>2.5</sub> NSR Implementation Rule, identified as AQ318, was proposed in the *Louisiana Register* on February 18, 2011; a public hearing was held on March 29, 2011; and the comment period closed on April 5, 2011. The proposed rule package is included as Attachment A. Public comments were received from EPA (see Attachment B); no other comments were received. In response to EPA's comments, technical amendments were made to the definition of "regulated pollutant" under LAC 33:III.504.K. LDEQ's Comment Summary Response & Concise Statement is included as Attachment C. The list of technical amendments is included as Attachment D, and the final rule, which will be promulgated on June 20, 2011, is included as Attachment E.

Should you have any questions concerning this matter or require additional documentation, please contact Bryan D. Johnston of the Air Permits Division at (225) 219-3450.

Sincerely,

A handwritten signature in black ink that reads "Peggy M. Hatch".

Peggy M. Hatch  
Secretary

PMH:BDJ

<sup>1</sup> 73 FR 28321

<sup>2</sup> 73 FR 28341

# Attachment A

## NOTICE OF INTENT

Department of Environmental Quality  
Office of the Secretary  
Legal Affairs Division

Pm2.5 NSR Implementation Rule  
(LAC 33:III.504 and 509) (AQ318)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.504 and 509 (Log #AQ318).

This Rule incorporates the provisions of the Environmental Protection Agency's (EPA) final rule entitled "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM2.5)", found at 73 FR 28321, May 16, 2008, into the Louisiana air quality regulations. This action also addresses concerns raised by the EPA in correspondence dated January 24, 2008. The Clean Air Act requires both major and minor NSR programs to address any pollutant for which there is a National Ambient Air Quality Standard (NAAQS) and precursors to the formation of such pollutant when identified for regulation by EPA. EPA's PM2.5 NSR implementation Rule amends the federal NSR regulations to establish the minimum elements for state programs implementing NSR for the PM2.5 NAAQS and requires states with SIP-approved PSD programs (like Louisiana) to "submit revised PSD programs and revised NA NSR programs for PM2.5" by May 16, 2011. By letter dated January 24, 2008, EPA submitted comments on revisions to LDEQ's Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) rules promulgated on December 20, 2005. LDEQ responded to EPA's concerns on October 6, 2008. In sum, to ensure SIP-approvability of LDEQ's PSD and NNSR regulations, the definition of "malfunctions" will be removed from LAC 33:III.504 and 509 and the reference to LAC 33:III.519 in Section 504 will be replaced with text that parallels the federal rule at 40 CFR 51.165. This rule is also a revision to the Louisiana State Implementation Plan for air quality. The basis and rationale for this rule are to incorporate the provisions of EPA's PM2.5 NSR Implementation Rule into the air quality regulations and modify several existing provisions to ensure SIP-approvability. This rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

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

A public hearing will be held on March 29, 2011, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. The hearing will also be for the revision to the State Implementation Plan (SIP) to incorporate this rule. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact

Donald Trahan at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ318. Such comments must be received no later than April 5, 2011, at 4:30 p.m., and should be sent to Donald Trahan, Attorney Supervisor, Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-4068 or by e-mail to [donald.trahan@la.gov](mailto:donald.trahan@la.gov). Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ318. This regulation is available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

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

Herman Robinson, CPM  
Executive Counsel

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

**Chapter 5. Permit Procedures**

**§504. Nonattainment New Source Review (NNSR) Procedures**

A. - E.5. ...

F. Emission Offsets. All emission offsets approved by the department shall be surplus, permanent, quantifiable, and enforceable in accordance with LAC 33.III.Chapter 6 and shall meet the following criteria.

1. Except as specified in Subsection M of this Section, offsets shall be required at the ratio specified in Subsection L, Table 1 of this Section. All emission reductions claimed as offset credit shall be from decreases of the same regulated pollutant or pollutant class (e.g., VOC) for which the offset is required, except that direct PM<sub>2.5</sub> emissions or emissions of PM<sub>2.5</sub> precursors may be offset by reductions in direct PM<sub>2.5</sub> emissions or emissions of any PM<sub>2.5</sub> precursor, if such offsets comply with the interprecursor trading hierarchy and ratio established in the approved SIP for a particular nonattainment area. ~~Interpollutant trading, for example using a NO<sub>x</sub> credit to offset a VOC emission increase, is not allowed. Except as specified in Subsection M of this Section, offsets shall be required at the ratio specified in Subsection L, Table 1 of this Section.~~

F.2. - J.4.b. ...

5. Public Participation Requirement for PALs. Procedures to establish, renew, or increase PALs for existing major stationary sources shall be ~~the same as the procedures for permit issuance in accordance with LAC 33:III.519~~ consistent with 40 CFR 51.160 and 51.161. These include the requirement that the administrative authority provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comments. The administrative authority shall address all material comments before taking final action on the permit.

6. - 15.b. ...

K. Definitions. The terms in this Section are used as defined in LAC 33:III.111 with the exception of those terms specifically defined as follows.

\* \* \*

~~*Malfunctions*—for purposes of this Section, *malfunctions* shall include any such emissions authorized by permit, variance, or the on-line operating adjustment provisions of LAC 33:III.1507.B and 2307.C.2, but exclude any emissions that are not compliant with federal or state standards. Repealed.~~

\* \* \*

~~*Regulated Pollutant*—any air pollutant, the emission or ambient concentration of which is regulated in accordance with the Clean Air Act.~~

a. any pollutant for which a national ambient air quality standard has been promulgated or any constituent or precursor for the identified pollutant, provided that such constituent or precursor pollutant is only regulated under NNSR as part of regulation of the primary pollutant. Precursors identified by the administrative authority for purposes of NNSR include the following:

i. volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas;

ii. sulfur dioxide is a precursor to PM<sub>2.5</sub> in all PM<sub>2.5</sub> nonattainment areas;

iii. nitrogen oxides are presumed to be precursors to PM<sub>2.5</sub> in all PM<sub>2.5</sub> nonattainment areas, unless the administrative authority demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations; and

iv. volatile organic compounds and ammonia are presumed not to be precursors to PM<sub>2.5</sub> in any PM<sub>2.5</sub> nonattainment area, unless the administrative authority demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations.

b. PM<sub>2.5</sub> emissions and PM<sub>10</sub> emissions shall include the gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> in NNSR permits.

\* \* \*

*Significant*—in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed the lower of any of the following rates or the applicable major modification significant net increase threshold in Subsection L, Table 1 of this Section.

Pollutant	Emission Rate
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Ozone	40 tpy of volatile organic compounds or nitrogen oxides
Lead	0.6 tpy
PM <sub>10</sub>	15 tpy
PM <sub>2.5</sub>	10 tpy of direct PM <sub>2.5</sub> emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide <sup>1</sup>
<sup>1</sup> Nitrogen oxides are presumed to be precursors to PM <sub>2.5</sub> in all PM <sub>2.5</sub> nonattainment areas unless the administrative authority demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM <sub>2.5</sub> concentrations.	

\* \* \*

L. Table 1—Major Stationary Source/Major Modification Emission Thresholds

Pollutant	Major Stationary Source Threshold Values (tons/year)	Major Modification Significant Net Increase (tons/year)	Offset Ratio Minimum
Ozone VOC/NO <sub>x</sub>		Trigger Values	
Marginal	100	40(40) <sup>2</sup>	1.10 to 1
Moderate	100	40(40) <sup>2</sup>	1.15 to 1
Serious	50	25 <sup>3</sup> (5) <sup>4</sup>	1.20 to 1 w/LAER or 1.40 to 1 internal w/o LAER
Severe	25	25 <sup>3</sup> (5) <sup>4</sup>	1.30 to 1 w/LAER or 1.50 to 1 internal w/o LAER
Extreme	10	Any increase	1.50 to 1
CO			
Moderate	100	100	>1.00 to 1

<b>Pollutant</b>	<b>Major Stationary Source Threshold Values (tons/year)</b>	<b>Major Modification Significant Net Increase (tons/year)</b>	<b>Offset Ratio Minimum</b>
Serious	50	50	>1.00 to 1
SO <sub>2</sub>	100	40	>1.00 to 1
PM <sub>10</sub> <sup>1</sup>			
Moderate	100	15	>1.00 to 1
Serious	70	15	>1.00 to 1
PM <sub>2.5</sub> <sup>2</sup>	100	10	>1.00 to 1
Lead	100	0.6	>1.00 to 1

Footnotes 1. - 4. ...

<sup>5</sup> Sulfur dioxide is a precursor to PM<sub>2.5</sub> in all PM<sub>2.5</sub> nonattainment areas. Nitrogen oxides are presumed to be precursors to PM<sub>2.5</sub> in all PM<sub>2.5</sub> nonattainment areas unless the administrative authority demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations. Volatile organic compounds and ammonia are presumed not to be precursors to PM<sub>2.5</sub> in any PM<sub>2.5</sub> nonattainment area unless the administrative authority demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations.

VOC = volatile organic compounds

NO<sub>x</sub> = oxides of nitrogen

CO = carbon monoxide

SO<sub>2</sub> = sulfur dioxide

PM<sub>10</sub> = particulate matter of less than 10 microns in diameter

PM<sub>2.5</sub> = particulate matter of less than 2.5 microns in diameter

M. - M.3. ...

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:176 (February 1993), repromulgated LR 19:486 (April 1993), amended LR 19:1420 (November 1993), LR 21:1332 (December 1995), LR 23:197 (February 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 27:2225 (December 2001), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 30:2801 (December 2004), amended by the Office of the Secretary, Legal

Affairs Division, LR 31:2436 (October 2005), LR 31:3123, 3155 (December 2005), LR 32:1599 (September 2006), LR 33:2082 (October 2007), LR 34:1890 (September 2008), LR 37:\*\*.

§509. Prevention of Significant Deterioration

A. Applicability Procedures

1. - 5. ...

B. Definitions. For the purpose of this Section, the terms below shall have the meaning specified herein as follows.

\* \* \*

~~*Malfunctions*—for purposes of this Section, *malfunctions* shall include any such emissions authorized by permit, variance, or the on-line operating adjustment provisions of LAG 33:III.1507.B and 2307.C.2, but exclude any emissions that are not compliant with federal or state standards. Repealed.~~

\* \* \*

*Regulated New Source Review (NSR) Pollutant—*

a. any pollutant for which a national ambient air quality standard has been promulgated ~~and or~~ any constituents or precursors for ~~such the identified pollutants identified by the administrative authority (e.g., volatile organic compounds and nitrogen oxides are precursors for ozone);~~ Precursors identified by the administrative authority for purposes of PSD include the following:

i. volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas;

ii. sulfur dioxide is a precursor to PM<sub>2.5</sub> in all attainment and unclassifiable areas;

iii. nitrogen oxides are presumed to be precursors to PM<sub>2.5</sub> in all attainment and unclassifiable areas unless the administrative authority demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations; and

iv. volatile organic compounds are presumed not to be precursors to PM<sub>2.5</sub> in any attainment or unclassifiable area unless the administrative authority demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations.

b. any pollutant that is subject to any standard promulgated under Section 111 of the Clean Air Act;

c. any Class I or II substance subject to a standard promulgated under or established by Title VI of the Clean Air Act; ~~or~~

d. any pollutant that otherwise is subject to regulation under the Clean Air Act; except that any or all hazardous air pollutants either listed in Section 112 of the Clean Air Act or added to the list in accordance with Section 112(b)(2) of the Clean Air Act, which have not been delisted in accordance with Section 112(b)(3) of the Clean Air Act, are not *regulated NSR pollutants* unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the Clean Air Act; or

e. particulate matter (PM) emissions, PM<sub>2.5</sub> emissions, and PM<sub>10</sub> emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM, PM<sub>2.5</sub>, and PM<sub>10</sub> in PSD permits. Compliance with emissions limitations for PM, PM<sub>2.5</sub>, and PM<sub>10</sub> issued prior to this date shall not be based on condensable particular matter. Applicability determinations made prior to this date without accounting for condensable particular matter shall not be considered in violation of this Section.

\* \* \*

*Significant—*

a. in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emission Rate
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter	25 tpy of particulate emissions
	15 tpy of PM <sub>10</sub> emissions
	10 tpy of direct PM <sub>2.5</sub> emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions <sup>1</sup>
Ozone	40 tpy of volatile organic compounds or nitrogen oxides

Pollutant	Emission Rate
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H <sub>2</sub> S)	10 tpy
Total reduced sulfur (including H <sub>2</sub> S)	10 tpy
Reduced sulfur compounds (including H <sub>2</sub> S)	10 tpy
Municipal waste combustor organics <sup>+2</sup>	0.0000035 tpy
Municipal waste combustor metals <sup>+2</sup>	15 tpy
Municipal waste combustor acid gases <sup>+4</sup>	40 tpy
Municipal solid waste landfills emissions <sup>+5</sup>	50 tpy
<u>GHGs (as CO<sub>2</sub>e)<sup>+6</sup></u>	<u>75,000 tpy</u>
<sup>1</sup> <u>Nitrogen oxides are presumed to be precursors to PM<sub>2.5</sub> in all attainment and unclassifiable areas unless the administrative authority demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations.</u>	
<sup>+2</sup> Measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans.	
<sup>+3</sup> Measured as particulate matter.	
<sup>+4</sup> Measured as sulfur dioxide and hydrogen chloride.	
<sup>+5</sup> Measured as nonmethane organic compounds	
<sup>+6</sup> Effective January 2, 2011.	

b. - c. ...

\* \* \*

C. - AA.15.b. ...

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 16:613 (July 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:478 (May 1991), LR 21:170 (February 1995), LR 22:339 (May 1996), LR 23:1677 (December 1997), LR 24:654 (April 1998), LR 24:1284 (July 1998), repromulgated LR 25:259 (February 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2234

(December 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2437 (October 2005), LR 31:3135, 3156 (December 2005), LR 32:1600 (September 2006), LR 32:1843 (October 2006), LR 36:2556 (November 2010), LR 37:\*\*.

location on a permanent basis (i.e., at least two years) and that operates at that single location for approximately three months (or more) each year. [Note: Clause b.iii of this definition does not apply to an engine after it is removed from the location.]

\* \* \*

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 28:1950 (September 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 37:

#### **Family Impact Statement**

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

#### **Public Hearing**

A public hearing will be held on March 29, 2011, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Donald Trahan at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

#### **Public Comments**

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ317. Such comments must be received no later than April 5, 2011, at 4:30 p.m., and should be sent to Donald Trahan, Attorney Supervisor, Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to donald.trahan@la.gov. Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ317. These proposed regulations are available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

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Herman Robinson, CPM  
Executive Counsel

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Non-Road Engines**

##### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There will be no implementation costs or savings to state or local governmental units as a result of the proposed rule. The

proposed rule creates a general exemption for "non-road engines," which are currently addressed in the Insignificant Activities (IA) list. It also removes "exhaust emissions" from mobile sources from the IA list, as a general exemption for such emissions already exists. Finally, "transportable emissions units" will be deleted from the IA list. As noted above, non-road engines, a type of transportable emissions unit, will be addressed by a general exemption. Other transportable emissions units should not be considered "insignificant" under the existing provision because they are not regulated by Title II of the Clean Air Act.

##### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no effect on revenue collections of state or local governmental units as a result of the proposed rule.

##### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There will be no costs and/or economic benefits to directly affected persons or non-governmental groups as a result of the proposed rule.

##### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There will be no effect on competition or employment in the public or private sector as a result of the proposed rule.

Herman Robinson, CPM  
Executive Counsel  
1102#068

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

#### **NOTICE OF INTENT**

#### **Department of Environmental Quality Office of the Secretary**

Pm2.5 NSR Implementation  
(LAC 33:III.504 and 509)(AQ318)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.504 and 509 (Log #AQ318).

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2008. In sum, to ensure SIP-approvability of LDEQ's PSD and NNSR regulations, the definition of "malfunctions" will be removed from LAC 33:III.504 and 509 and the reference to LAC 33:III.519 in Section 504 will be replaced with text that parallels the federal rule at 40 CFR 51.165. This rule is also a revision to the Louisiana State Implementation Plan for air quality. The basis and rationale for this rule are to incorporate the provisions of EPA's PM<sub>2.5</sub> NSR Implementation Rule into the air quality regulations and modify several existing provisions to ensure SIP-approvability. 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.

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ENVIRONMENTAL QUALITY  
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**§504. Nonattainment New Source Review (NNSR) Procedures**

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F.2. - J.4.b. ...

5. Public Participation Requirement for PALs. Procedures to establish, renew, or increase PALs for existing major stationary sources shall be consistent with 40 CFR 51.160 and 51.161. These include the requirement that the administrative authority provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comments. The administrative authority shall address all material comments before taking final action on the permit.

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K. Definitions. The terms in this Section are used as defined in LAC 33:III.111 with the exception of those terms specifically defined as follows.

\*\*\*

Malfunctions—Repealed.

\*\*\*

*Regulated Pollutant—*

a. any pollutant for which a national ambient air quality standard has been promulgated or any constituent or precursor for the identified pollutant, provided that such constituent or precursor pollutant is only regulated under NNSR as part of regulation of the primary pollutant. Precursors identified by the administrative authority for purposes of NNSR include the following:

i. volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas;

ii. sulfur dioxide is a precursor to PM<sub>2.5</sub> in all PM<sub>2.5</sub> nonattainment areas;

iii. nitrogen oxides are presumed to be precursors to PM<sub>2.5</sub> in all PM<sub>2.5</sub> nonattainment areas, unless the administrative authority demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations; and

iv. volatile organic compounds and ammonia are presumed not to be precursors to PM<sub>2.5</sub> in any PM<sub>2.5</sub> nonattainment area, unless the administrative authority demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations.

b. PM<sub>2.5</sub> emissions and PM<sub>10</sub> emissions shall include the gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> in NNSR permits.

\*\*\*

*Significant*—in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed the lower of any of the following rates or the applicable major modification significant net increase threshold in Subsection L, Table 1 of this Section.

Pollutant	Emission Rate
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Ozone	40 tpy of volatile organic compounds or nitrogen oxides
Lead	0.6 tpy
PM <sub>10</sub>	15 tpy
PM <sub>2.5</sub>	10 tpy of direct PM <sub>2.5</sub> emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide <sup>1</sup>

<sup>1</sup>Nitrogen oxides are presumed to be precursors to PM<sub>2.5</sub> in all PM<sub>2.5</sub> nonattainment areas unless the administrative authority demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations.

\*\*\*

L. Table 1—Major Stationary Source/Major Modification Emission Thresholds

Pollutant	Major Stationary Source Threshold Values (tons/year)	Major Modification Significant Net Increase (tons/year)	Offset Ratio Minimum
Ozone		Trigger Values	
VOC/NO <sub>x</sub>			
Marginal	100	40(40) <sup>2</sup>	1.10 to 1

Pollutant	Major Stationary Source Threshold Values (tons/year)	Major Modification Significant Net Increase (tons/year)	Offset Ratio Minimum
Moderate	100	40(40) <sup>2</sup>	1.15 to 1
Serious	50	25 <sup>3</sup> (5) <sup>4</sup>	1.20 to 1 w/LAER or 1.40 to 1 internal w/o LAER
Severe	25	25 <sup>3</sup> (5) <sup>4</sup>	1.30 to 1 w/LAER or 1.50 to 1 internal w/o LAER
Extreme	10	Any increase	1.50 to 1
CO			
Moderate	100	100	>1.00 to 1
Serious	50	50	>1.00 to 1
SO <sub>2</sub>	100	40	>1.00 to 1
PM <sub>10</sub>			
Moderate	100	15	>1.00 to 1
Serious	70	15	>1.00 to 1
PM <sub>2.5</sub>	100	10	>1.00 to 1
Lead	100	0.6	>1.00 to 1

Footnotes 1. - 4. ...

<sup>5</sup> Sulfur dioxide is a precursor to PM<sub>2.5</sub> in all PM<sub>2.5</sub> nonattainment areas. Nitrogen oxides are presumed to be precursors to PM<sub>2.5</sub> in all PM<sub>2.5</sub> nonattainment areas unless the administrative authority demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations. Volatile organic compounds and ammonia are presumed not to be precursors to PM<sub>2.5</sub> in any PM<sub>2.5</sub> nonattainment area unless the administrative authority demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations.

- VOC = volatile organic compounds
- NO<sub>x</sub> = oxides of nitrogen
- CO = carbon monoxide
- SO<sub>2</sub> = sulfur dioxide
- PM<sub>10</sub> = particulate matter of less than 10 microns in diameter
- PM<sub>2.5</sub> = particulate matter of less than 2.5 microns in diameter

M. - M.3. ...

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:176 (February 1993), repromulgated LR 19:486 (April 1993), amended LR 19:1420 (November 1993), LR 21:1332 (December 1995), LR 23:197 (February 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 27:2225 (December 2001), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 30:2801 (December 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 31:3123, 3155 (December 2005), LR 32:1599 (September 2006), LR 33:2082 (October 2007), LR 34:1890 (September 2008), LR 37:

### §509. Prevention of Significant Deterioration

#### A. Applicability Procedures

1. - 5. ...

B. Definitions. For the purpose of this Section, the terms below shall have the meaning specified herein as follows.

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*Malfunctions*—Repealed.

\*\*\*

#### Regulated New Source Review (NSR) Pollutant—

a. any pollutant for which a national ambient air quality standard has been promulgated or any constituent or precursor for the identified pollutant. Precursors identified by the administrative authority for purposes of PSD include the following:

i. volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas;

ii. sulfur dioxide is a precursor to PM<sub>2.5</sub> in all attainment and unclassifiable areas;

iii. nitrogen oxides are presumed to be precursors to PM<sub>2.5</sub> in all attainment and unclassifiable areas unless the administrative authority demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations; and

iv. volatile organic compounds are presumed not to be precursors to PM<sub>2.5</sub> in any attainment or unclassifiable area unless the administrative authority demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations.

b. any pollutant that is subject to any standard promulgated under Section 111 of the Clean Air Act;

c. any Class I or II substance subject to a standard promulgated under or established by Title VI of the Clean Air Act;

d. any pollutant that otherwise is subject to regulation under the Clean Air Act; except that any or all hazardous air pollutants either listed in Section 112 of the Clean Air Act or added to the list in accordance with Section 112(b)(2) of the Clean Air Act, which have not been delisted in accordance with Section 112(b)(3) of the Clean Air Act, are not *regulated NSR pollutants* unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the Clean Air Act; or

e. particulate matter (PM) emissions, PM<sub>2.5</sub> emissions, and PM<sub>10</sub> emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM, PM<sub>2.5</sub>, and PM<sub>10</sub> in PSD permits. Compliance with emissions limitations for PM, PM<sub>2.5</sub>, and PM<sub>10</sub> issued prior to this date shall not be based on condensable particulate matter. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this Section.

\*\*\*

#### Significant—

a. in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emission Rate
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy

Pollutant	Emission Rate
Sulfur dioxide	40 tpy
Particulate matter	25 tpy of particulate emissions
	15 tpy of PM <sub>10</sub> emissions
	10 tpy of direct PM <sub>2.5</sub> emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions <sup>1</sup>
Ozone	40 tpy of volatile organic compounds or nitrogen oxides
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H <sub>2</sub> S)	10 tpy
Total reduced sulfur (including H <sub>2</sub> S)	10 tpy
Reduced sulfur compounds (including H <sub>2</sub> S)	10 tpy
Municipal waste combustor organics <sup>2</sup>	0.000035 tpy
Municipal waste combustor metals <sup>3</sup>	15 tpy
Municipal waste combustor acid gases <sup>4</sup>	40 tpy
Municipal solid waste landfills emissions <sup>5</sup>	50 tpy
GHGs (as CO <sub>2</sub> e) <sup>6</sup>	75,000 tpy

<sup>1</sup> Nitrogen oxides are presumed to be precursors to PM<sub>2.5</sub> in all attainment and unclassifiable areas unless the administrative authority demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations.

<sup>2</sup> Measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans.

<sup>3</sup> Measured as particulate matter.

<sup>4</sup> Measured as sulfur dioxide and hydrogen chloride.

<sup>5</sup> Measured as nonmethane organic compounds

<sup>6</sup> Effective January 2, 2011

b. - c. ...

\*\*\*

C. - AA.15.b. ...

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 16:613 (July 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:478 (May 1991), LR 21:170 (February 1995), LR 22:339 (May 1996), LR 23:1677 (December 1997), LR 24:654 (April 1998), LR 24:1284 (July 1998), repromulgated LR 25:259 (February 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2234 (December 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2437 (October 2005), LR 31:3135, 3156 (December 2005), LR 32:1600 (September 2006), LR 32:1843 (October 2006), LR 36:2556 (November 2010), LR 37:

#### Family Impact Statement

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

#### Public Hearing

A public hearing will be held on March 29, 2011, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. The hearing will also be for the revision to the State Implementation Plan (SIP) to incorporate this rule. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Donald Trahan at the address given

below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

#### Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ318. Such comments must be received no later than April 5, 2011, at 4:30 p.m., and should be sent to Donald Trahan, Attorney Supervisor, Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to donald.trahan@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ318. This regulation is available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

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

Herman Robinson, CPM  
Executive Counsel

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Pm2.5 NSR Implementation

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change may result in a minimal increase in Department of Environmental Quality administrative costs associated with reviewing and preparing Prevention of Significant Deterioration (PSD) permits for particulate matter less than 2.5 micrometers (PM<sub>2.5</sub>). However, these costs will be offset with the surcharge associated with the PSD permit program. The proposed rule incorporates the Environmental Protection Agency's (EPA) final rule entitled "Implementation of the New Source Review Program for particulate matter less than 2.5 micrometers" into current Louisiana air quality regulations. The proposed rule change also addresses concerns by the EPA and amends existing provisions to match federal law to ensure State Implementation Plan approval.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change may result in an indeterminable increase in revenue collections due to receipt of fees associated with PSD permit applications for PM<sub>2.5</sub>. Any additional permit fees will be deposited into the Environmental Trust Fund.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The impact of the proposed rule will be dependent on the nature of each project proposed by an owner or operator of a major stationary source. Relevant factors include the PM<sub>2.5</sub>, SO<sub>2</sub>, and NO<sub>x</sub> emissions associated with the proposed project, as well as any other projects contemporaneous with the proposed project. When Prevention of Significant Deterioration (PSD) review is required, the selection of best available control technology (BACT) is a case-by-case determination that

accounts for energy, environmental, and economic impacts. The need for post-construction monitoring is dependent on the results of the air quality modeling analyses and the location of the facility in question. Therefore, it is not possible to provide a specific cost estimate for each individual permit review.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no estimated effect on competition or employment in the public or private sector because of the proposed rule.

Herman Robinson, CPM  
Executive Counsel  
1102#069

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Trustees of the Firefighters'  
Pension and Relief Fund**

**Tax Qualification Provisions (LAC 58:V.2001)**

The Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans ("fund"), pursuant to R.S. 11:3363(F), proposes to restate and amend LAC 58:V. The restatement and amendment adds a Chapter 20 to address federal tax qualification issues. All currently stated rules of the fund, unless amended herein, shall remain in full force and effect.

**Title 58**

**RETIREMENT**

**Part V. Firefighters' Pension and Relief Fund  
for the City of New Orleans and Vicinity**

**Chapter 20. Tax Qualification Provisions**

**§2001. General Provisions**

A. The New Orleans Firefighters Pension and Relief Fund shall be a tax-qualified governmental plan as provided in the Internal Revenue Code of 1986, as amended. In accordance with the requirements of the Internal Revenue Code, the following provisions shall apply to the fund:

1. The assets of the fund shall be held for the exclusive benefit of the members of the fund, the retirees thereof, and the survivors and beneficiaries of the retirees and members. No part of the funds held by the trustees of the fund shall be used or diverted for any reason, including any contingency or event or by any other means, to other purposes, including but not limited to reversion to any employer.

2. The retirement benefit of a member shall be fully vested and nonforfeitable no later than the date on which he becomes eligible to retire. Benefits of members shall also become vested and nonforfeitable upon the termination of the fund or the complete discontinuance of contributions to the system.

3. Forfeitures shall not be used to increase the benefits of the remaining members of the fund. This shall specifically not preclude any increase in benefits by amendment to the benefit formula made possible by a change in contribution rate, favorable investment results, or other means.

4. A member's benefit shall begin to be distributed not later than the latest date provided for the commencement of benefits for governmental plans under Section 401(a)(9)(C) of the Internal Revenue Code of 1986, as amended. Distributions to a surviving spouse, dependent, successor and/or beneficiary of a member shall be made at least as

soon as distributions are required to be made by qualified governmental plans under the Internal Revenue Code of 1986, as amended. Benefits payable shall be limited in accordance with IRC Section 415 and applicable Treasury Regulations as applied to governmental plans.

5. In computing benefit accruals, there shall not be taken into account compensation in excess of the limitations specified in Section 401(a)(17) of the Internal Revenue Code, as amended. Such compensation limit was two hundred thousand dollars for tax years beginning after December 31, 2001.

6. The fund, its trustees, consultants, and advisors shall not engage in any prohibited transactions as that term is defined in Section 503 of the Internal Revenue Code of 1986, as amended.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 11:3363.

**HISTORICAL NOTE:** Promulgated by the Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity, LR 37:

**Public Comments**

Any interested person may submit written comments regarding the content of this proposed Rule change to Richard J. Hampton, Jr., Secretary-Treasurer and Executive Officer of the Board of Trustees, 3520 General DeGaulle, Suite 3001, New Orleans, LA, before 5 p.m., March 20, 2010.

**Family Impact Statement**

1. Estimated Effect on the Stability of the Family. There is no estimated effect on the stability of the family.

2. Estimated Effect on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. There is no estimated effect on the authority and rights of parents regarding the education and supervision of their children.

3. Estimated Effect on the Functioning of the Family. There is no estimated effect on the functioning of the family.

4. Estimated Effect on Family Earnings and Family Budget. There is no estimated effect on family earnings and family budget.

5. Estimated Effect on the Behavior and Personal Responsibility of Children. There is no estimated effect on the behavior and personal responsibility of children.

6. Estimated Effect on the Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. There is no estimated effect on the ability of the family or a local government to perform the function as contained in the proposed Rule.

Louis L. Robein  
Fund Attorney

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Tax Qualification Provisions**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

No significant implementation costs are anticipated to result from the proposed new rule. The New Orleans Firefighters' Pension and Relief Fund is publishing rules with respect to permitted benefits distribution and fund governance. The rules are being established in order to comply with the

## Attachment B



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

APR 05 2011

Mr. Donald Trahan  
Louisiana Department of Environmental Quality  
Office of the Secretary  
Legal Affairs Division  
P.O. Box 4302  
Baton Rouge, LA 70821-4302

RE: EPA Comments on Proposed AQ318- LAC 33:III:504 and 509

Dear Mr. Trahan:

Thank you for the opportunity to review the proposed Louisiana Department of Environmental Quality PM<sub>2.5</sub> New Source Review (NSR) Implementation Rule at Louisiana Air Code, Title 33, Part III, Sections 504 and 509. The proposed rulemaking revises the Louisiana air regulations and the Louisiana State Implementation Plan to incorporate provisions to ensure consistency with the Environmental Protection Agency's (EPA) final rule entitled "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>)" published on May 16, 2008 (see 73 FR 28321).

We are supportive of the proposed rule revisions; however, please note that there are several significant differences between the proposed Louisiana provisions and the federal PM<sub>2.5</sub> rule. These areas of difference must be corrected for the Louisiana program to implement the PM<sub>2.5</sub> rule as EPA intended. Please note that our comments today do not constitute final determinations concerning approvability of the revisions to the Louisiana Air Code. We appreciate LDEQ's efforts to update the NSR program and your willingness to consult with EPA Region 6 throughout this process. We look forward to future collaboration with LDEQ on the implementation of the PM<sub>2.5</sub> rule. If you have any questions about the PM<sub>2.5</sub> rule, or about EPA's review of your proposed rulemaking, please feel free to contact me at 214-665-6435 or contact Ms. Melanie Magee of my staff at 214-665-7161.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Jeff Robinson".

Jeff Robinson  
Chief  
Air Permits Section

Enclosure

cc: Mr. Bryan Johnston  
Louisiana Department of Environmental Quality

Enclosure

1. Within the proposed changes to LAC 33:III:504, a broad reference is included to Subsection M of Section 504. Please note that Subsection M has not been approved into Louisiana's State Implementation Plan (SIP). EPA has previously discussed our concerns related to Subsection M with LDEQ and EPA has stated in the past that severe area levels should apply for the Baton Rouge nonattainment area under South Coast's anti-backsliding regulations. However, we do note that if Baton Rouge is redesignated to attainment for the 8-hour standard, PSD would apply. Because of the previously discussed concerns with Subsection M, a broad reference may not be approvable.

2. The revisions to LAC 33:III:504 and LAC 33:III:509 repeal the definition of "malfunction". Please confirm that the "malfunction" definition of Section 111 remains unchanged.

3. Several references are included within the proposed revisions that are related to the changes establishing the greenhouse gas thresholds. Please note our letter today does not provide commentary on LDEQ's greenhouse gas regulatory actions. Please refer to EPA's comments provided on November 24, 2010 regarding LDEQ's proposed adoption and implementation of EPA's final rule "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" published on June 3, 2010.

4. The changes proposed to the definition of *Regulated Pollutant* in LAC 33:III:504(b) do not include all of the federal definition language. Specifically, the proposed definition does not include the following:

"...Compliance with emissions limitations of PM<sub>2.5</sub> and PM<sub>10</sub> issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included."

Please explain why the proposed definition of *Regulated Pollutant* does not contain the additional federal definition language.

## Attachment C

**Comment Summary Response & Concise Statement –  
PM<sub>2.5</sub> NSR Implementation  
LAC 33:III.504 and 509  
Log Number AQ318**

COMMENT 1: The proposed changes to LAC 33:III.504 references Subsection M of this Section, which is not an approved part of Louisiana's State Implementation Plan (SIP). EPA previously stated that severe area levels should apply to Baton Rouge nonattainment area under *South Coast's* anti-backsliding regulations. EPA notes that if Baton Rouge is redesignated to attainment for the 8-hour standard, Prevention of Significant Deterioration (PSD) would apply. Based on EPA's concerns with Subsection M of this Section, a broad reference may not be approvable.

No arguments necessary; comment does not suggest amendment or change.

RESPONSE 1: LDEQ acknowledges EPA's comment.

LDEQ notes that on February 10, 2010, EPA determined that the Baton Rouge Nonattainment Area (BRNA) has attained the 1-hour ozone NAAQS pursuant to the agency's Clean Data Policy (see 75 FR 6570), and on September 9, 2010, EPA determined that the BRNA has attained the 1997 8-hour ozone NAAQS (75 FR 54778).

The BRNA is classified as "moderate" (effective April 21, 2008) with respect to the 8-hour ozone NAAQS. However, LAC 33:III.504.M sets the "major stationary source" definition at 50 TPY of NO<sub>x</sub> or VOC and the significant net emissions increase threshold at 25 TPY of NO<sub>x</sub> and/or VOC for the purpose of determining whether offsets are required. In this way, LDEQ's NNSR rules are more stringent than the Clean Air Act requires based on the area's 8-hour designation.

COMMENT 2: The revisions to LAC 33:III.504 and 509 repeal the definition of *malfunction*. The commenter would like for LDEQ to confirm that the definition of *malfunction* in Section 111 remains unchanged.

No arguments necessary; comment does not suggest amendment

or change.

RESPONSE 2: The definition of "malfunction" in LAC 33:III.111 remains unchanged.

COMMENT 3: With regards to changes establishing greenhouse gas thresholds, the present comments do not provide commentary on LDEQ's greenhouse gas regulatory actions. Refer to EPA's comments provided on November 24, 2010, regarding LDEQ's proposed adoption and implementation of EPA's final rule "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" published on June 3, 2010.

No arguments necessary; comment does not suggest amendment or change.

RESPONSE 3: LDEQ acknowledges EPA's comment.

COMMENT 4: The changes proposed to the definition of *Regulated Pollutant* in LAC 33:III.504(b) do not include all of the federal definition language. Specifically, the proposed definition does not include the following:

"...Compliance with emissions limitation of PM<sub>2.5</sub> and PM<sub>10</sub> issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included."

Explain why the proposed definition does not contain the additional federal language.

No arguments necessary; comment does not suggest amendment or change.

RESPONSE 4: LDEQ will add the following text to LAC 33:III.504.K.*Regulated Pollutant*.b:

Compliance with emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> issued prior to this date shall not be based on condensable particulate matter. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this Section.

This text parallels the federal rule at 40 CFR 51.165(a)(1)(xxxvii)(D).

Note that the Louisiana SIP has not previously required condensable particulate matter to be accounted for in emissions limitations or applicability determinations for PM<sub>2.5</sub> and PM<sub>10</sub>.

**Comment Summary Response & Concise Statement**  
**PM<sub>2.5</sub> NSR Implementation**  
**LAC 33:III.504 and 509**  
**Log Number AQ318**

COMMENT #

SUGGESTED BY

1 - 4

Jeff Robinson - EPA Region 6

Total Commenters: 1  
Total Comments: 4

## Attachment D

**List of Technical Amendments**  
**AQ318**  
**PM<sub>2.5</sub> NSR Implementation**  
**(LAC 33:III.504 and 509)**

<u>Citation</u>	<u>Amendment</u>
1. §504.K. <i>Regulated Pollutant.b</i>	added text
2. §509.B. <i>New Source Review (NSR) Pollutant.e</i>	changed text
3. §509.B. <i>Significant.a</i>	deleted text, changed text

## Attachment E

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

**Chapter 5. Permit Procedures**

**§504. Nonattainment New Source Review (NNSR) Procedures**

A. - E.5. ...

F. Emission Offsets. All emission offsets approved by the department shall be surplus, permanent, quantifiable, and enforceable in accordance with LAC 33:III. Chapter 6 and shall meet the following criteria.

1. Except as specified in Subsection M of this Section, offsets shall be required at the ratio specified in Subsection L, Table 1 of this Section. All emission reductions claimed as offset credit shall be from decreases of the same regulated pollutant or pollutant class (e.g., VOC) for which the offset is required, except that direct PM<sub>2.5</sub> emissions or emissions of PM<sub>2.5</sub> precursors may be offset by reductions in direct PM<sub>2.5</sub> emissions or emissions of any PM<sub>2.5</sub> precursor, if such offsets comply with the interprecursor trading hierarchy and ratio established in the approved SIP for a particular nonattainment area. Interpollutant trading, for example using a NO<sub>x</sub> credit to offset a VOC emission increase, is not allowed. Except as specified in Subsection M of this Section, offsets shall be required at the ratio specified in Subsection L, Table 1 of this Section.

F.2. - J.4.b. ...

5. Public Participation Requirement for PALs. Procedures to establish, renew, or increase PALs for existing major stationary sources shall be ~~the same as the procedures for permit issuance in accordance with LAC 33:III.519~~ consistent with 40 CFR 51.160 and 51.161. These include the requirement that the administrative authority provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comments. The administrative authority shall address all material comments before taking final action on the permit.

6. - 15.b. ...

K. Definitions. The terms in this Section are used as defined in LAC 33:III.111 with the exception of those terms specifically defined as follows.

\* \* \*

~~Malfunctions~~ for purposes of this Section, ~~malfunctions~~ shall include any such emissions authorized by permit, variance, or the on-line operating adjustment provisions of LAC 33:III.1507.B and 2307.C.2, but exclude any emissions that are not compliant with federal or state standards. Repealed.

\* \* \*

*Regulated Pollutant*—~~any air pollutant, the emission or ambient concentration of which is regulated in accordance with the Clean Air Act.~~

a. any pollutant for which a national ambient air quality standard has been promulgated or any constituent or precursor for the identified pollutant, provided that such constituent or precursor pollutant is only regulated under NNSR as part of regulation of the primary pollutant. Precursors identified by the administrative authority for purposes of NNSR include the following:

i. volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas;

ii. sulfur dioxide is a precursor to PM<sub>2.5</sub> in all PM<sub>2.5</sub> nonattainment areas;

iii. nitrogen oxides are presumed to be precursors to PM<sub>2.5</sub> in all PM<sub>2.5</sub> nonattainment areas, unless the administrative authority demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations; and

iv. volatile organic compounds and ammonia are presumed not to be precursors to PM<sub>2.5</sub> in any PM<sub>2.5</sub> nonattainment area, unless the administrative authority demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations.

b. PM<sub>2.5</sub> emissions and PM<sub>10</sub> emissions shall include the gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> in NNSR permits. Compliance with emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> issued prior to this date shall not be based on condensable particulate matter. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this Section.

\* \* \*

*Significant*—in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed the lower of any of the following rates or the applicable major modification significant net increase threshold in Subsection L, Table 1 of this Section.

Pollutant	Emission Rate
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Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Ozone	40 tpy of volatile organic compounds or nitrogen oxides
Lead	0.6 tpy
PM <sub>10</sub>	15 tpy
PM <sub>2.5</sub>	10 tpy of direct PM <sub>2.5</sub> emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide <sup>1</sup>
<sup>1</sup> Nitrogen oxides are presumed to be precursors to PM <sub>2.5</sub> in all PM <sub>2.5</sub> nonattainment areas unless the administrative authority demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM <sub>2.5</sub> concentrations.	

\* \* \*

L. Table 1—Major Stationary Source/Major Modification Emission Thresholds

Table 1 Major Stationary Source/Major Modification Emission Thresholds			
Pollutant	Major Stationary Source Threshold Values (tons/year)	Major Modification Significant Net Increase (tons/year)	Offset Ratio Minimum
Ozone		Trigger Values	
VOC/NO <sub>x</sub>			
Marginal	100	40(40) <sup>2</sup>	1.10 to 1
Moderate	100	40(40) <sup>2</sup>	1.15 to 1
Serious	50	25 <sup>3</sup> (5) <sup>4</sup>	1.20 to 1 w/LAER or 1.40 to 1 internal w/o LAER
Severe	25	25 <sup>3</sup> (5) <sup>4</sup>	1.30 to 1 w/LAER or 1.50 to 1 internal w/o LAER
Extreme	10	Any increase	1.50 to 1
CO			
Moderate	100	100	>1.00 to 1
Serious	50	50	>1.00 to 1
SO <sub>2</sub>	100	40	>1.00 to 1
PM <sub>10</sub> <sup>1</sup>			

Pollutant	Major Stationary Source Threshold Values (tons/year)	Major Modification Significant Net Increase (tons/year)	Offset Ratio Minimum
Moderate	100	15	>1.00 to 1
Serious	70	15	>1.00 to 1
PM <sub>2.5</sub> <sup>5</sup>	100	10	>1.00 to 1
Lead	100	0.6	>1.00 to 1

Footnotes 1. - 4. ...

<sup>5</sup> Sulfur dioxide is a precursor to PM<sub>2.5</sub> in all PM<sub>2.5</sub> nonattainment areas. Nitrogen oxides are presumed to be precursors to PM<sub>2.5</sub> in all PM<sub>2.5</sub> nonattainment areas unless the administrative authority demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations. Volatile organic compounds and ammonia are presumed not to be precursors to PM<sub>2.5</sub> in any PM<sub>2.5</sub> nonattainment area unless the administrative authority demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations.

VOC = volatile organic compounds

NO<sub>x</sub> = oxides of nitrogen

CO = carbon monoxide

SO<sub>2</sub> = sulfur dioxide

PM<sub>10</sub> = particulate matter of less than 10 microns in diameter

PM<sub>2.5</sub> = particulate matter of less than 2.5 microns in diameter

M. - M.3. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:176 (February 1993), repromulgated LR 19:486 (April 1993), amended LR 19:1420 (November 1993), LR 21:1332 (December 1995), LR 23:197 (February 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 27:2225 (December 2001), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 30:2801 (December 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 31:3123, 3155 (December 2005), LR 32:1599 (September 2006), LR 33:2082 (October 2007), LR 34:1890 (September 2008), LR 37:\*\*.

#### §509. Prevention of Significant Deterioration

## A. Applicability Procedures

1. - 5. ...

B. Definitions. For the purpose of this Section, the terms below shall have the meaning specified herein as follows.

\* \* \*

~~*Malfunctions* for purposes of this Section, *malfunctions* shall include any such emissions authorized by permit, variance, or the on-line operating adjustment provisions of LAC 33:III.1507.B and 2307.C.2, but exclude any emissions that are not compliant with federal or state standards. Repealed.~~

\* \* \*

*Regulated New Source Review (NSR) Pollutant—*

a. any pollutant for which a national ambient air quality standard has been promulgated ~~and~~ or any constituents or precursors for such the identified pollutants identified by the administrative authority (e.g., volatile organic compounds and nitrogen oxides are precursors for ozone); Precursors identified by the administrative authority for purposes of PSD include the following:

i. volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas;

ii. sulfur dioxide is a precursor to PM<sub>2.5</sub> in all attainment and unclassifiable areas;

iii. nitrogen oxides are presumed to be precursors to PM<sub>2.5</sub> in all attainment and unclassifiable areas unless the administrative authority demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations; and

iv. volatile organic compounds are presumed not to be precursors to PM<sub>2.5</sub> in any attainment or unclassifiable area unless the administrative authority demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations;

b. any pollutant that is subject to any standard promulgated under Section 111 of the Clean Air Act;

c. any Class I or II substance subject to a standard promulgated under or established by Title VI of the Clean Air Act; ~~or~~

d. any pollutant that otherwise is subject to regulation under the Clean Air Act; except that any or all hazardous air pollutants either listed in Section 112 of the Clean Air Act or added to the list in accordance with Section 112(b)(2) of the Clean Air Act, which have not been delisted in accordance with Section 112(b)(3) of the Clean Air Act, are not *regulated NSR pollutants* unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the Clean Air Act;

e. particulate matter (PM) emissions, PM<sub>2.5</sub> emissions, and PM<sub>10</sub> emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM, PM<sub>2.5</sub>, and PM<sub>10</sub> in PSD permits. Compliance with emissions limitations for PM, PM<sub>2.5</sub>, and PM<sub>10</sub> issued prior to this date shall not be based on condensable particulate matter. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this Section.

\* \* \*

*Significant—*

a. in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emission Rate
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter	25 tpy of particulate emissions
	15 tpy of PM <sub>10</sub> emissions
	10 tpy of direct PM <sub>2.5</sub> emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions <sup>1</sup>
Ozone	40 tpy of volatile organic compounds or nitrogen oxides
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H <sub>2</sub> S)	10 tpy
Total reduced sulfur (including H <sub>2</sub> S)	10 tpy

Pollutant	Emission Rate
Reduced sulfur compounds (including H <sub>2</sub> S)	10 tpy
Municipal waste combustor organics <sup>42</sup>	0.0000035 tpy
Municipal waste combustor metals <sup>43</sup>	15 tpy
Municipal waste combustor acid gases <sup>44</sup>	40 tpy
Municipal solid waste landfills emissions <sup>45</sup>	50 tpy
<i>GHGs (as CO<sub>2</sub>e)</i> <sup>46</sup>	75,000 tpy
<i>GHGs and GHGs as CO<sub>2</sub>e</i>	0 tpy and 75,000 tpy, respectively <sup>46</sup>
<p><sup>1</sup> Nitrogen oxides are presumed to be precursors to PM<sub>2.5</sub> in all attainment and unclassifiable areas unless the administrative authority demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations.</p> <p><sup>42</sup> Measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans.</p> <p><sup>43</sup> Measured as particulate matter.</p> <p><sup>44</sup> Measured as sulfur dioxide and hydrogen chloride.</p> <p><sup>45</sup> Measured as nonmethane organic compounds.</p> <p><sup>46</sup> <del>Effective January 2, 2011</del></p> <p><sup>46</sup> Both of the following conditions must be met: (1) the net emissions increase of <i>GHGs</i> calculated as the sum of the six <i>GHGs</i> on a mass basis (i.e., no global warming potentials applied) equals or exceeds 0 tpy; and (2) the net emissions increase of <i>GHGs</i> calculated as the sum of the six <i>GHGs</i> on a CO<sub>2</sub>e basis (i.e., global warming potentials applied) equals or exceeds 75,000 tpy CO<sub>2</sub>e.</p>	

b. - d. ...

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C. - AA.15.b. ...

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

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Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2234 (December 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2437 (October 2005), LR 31:3135, 3156 (December 2005), LR 32:1600 (September 2006), LR 32:1843 (October 2006), LR 36:2556 (November 2010), LR 37:\*\*.